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CORPORATE GOVERNANCE: THE RIGHTS OF SHAREHOLDERS AND ROLE OF THE BOARD – A COMPARISON OF US, UK AND GERMANY

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***Abstract**: Corporate Governance is gaining importance in a global perspective, especially since financial scandals like Enron or Worldcom. Consequently on one hand investors' protection, the rights of the shareholders and the role of the board became more essential for a company, on the other hand the attractiveness for (global) investors needs to be considered as well. This article is focusing on the role of the shareholders and boards in an international environment. Many different models due to diverse legal and cultural backgrounds are predominant regarding to Corporate Governance approaches. Exemplary this work is comparing the rights of the shareholders and role of the boards in Germany, the United Kingdom and the United States. The Corporate Governance Models of those economies find common ground, but can differ significantly in certain aspects. Especially the Appointment of Board members, Board Composition and Chair Duality are treated differently in the countries concerned.*

***Keywords**: Corporate Governance, Right of Shareholders, Board of Directors*

Regulation and historic background

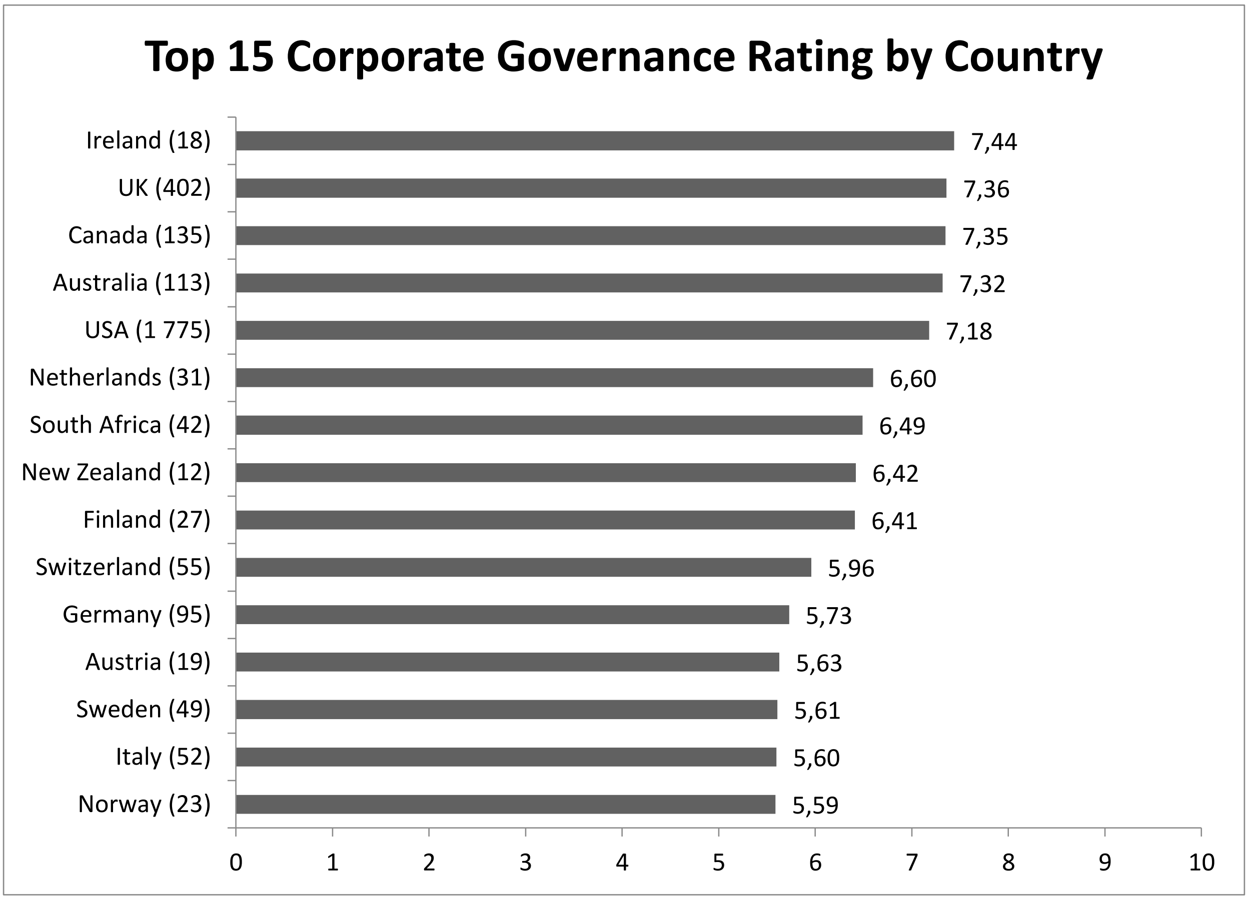
Corporate Governance can be seen as the system in which organizations are governed and controlled and is primarily concerned with corporations and the relationship of their management and their shareholders. It also includes rules, processes or laws by which businesses are operated, regulated as well as controlled and comprises the corporate charter, bylaws of the corporation, formal policies and rules of law. Shareholders in a corporation pass on certain rights with regard to management decisions made by the company in return for voting rights and the right to receive dividends. Shareholders delegate this decision making authority to professional management and to the board of directors. Corporate Governance therefore is, to a large extent, a set of mechanisms through which outside investors protect themselves against expropriation by the insiders (Meier, Meier 2014; La Porta et al. 2000).

Corporate Governance involves accountability and communication. Accountability is about how those entrusted with day-to-day management of company's affairs are held to account to shareholders and other providers of finance. Communication deals about how the company presents itself to all interested parties including shareholders, potential investors, regulators, employees and bankers. As companies increasingly do business and raise funds at an international level, the issue of Corporate Governance becomes more crucial as the different stakeholders demand more accurate corporate information. This leads to additional pressure on a company's management to disclose high quality information and to be accountable to various interested parties (Solani 2005). Corporate Governance has to be adapted periodically to the changing circumstances like new laws or requirements, to perform well on a corporate level (Hilb 2011).

The move, especially of the United States, to harmonize accounting standards from US-GAAP towards IFRS raised awareness as to whether a similar type of harmonization could take place with regards to Corporate Governance models. As there are many differences in existing Corporate Governance models due to diverse legal and cultural factors, investors look for exchange listing policies and Corporate Governance requirements that are less costly and more beneficial to them (Oxera 2006).

Governance Metrics International (GMI) announced its latest ranking based on overall quality of Corporate Governance in 2009. The following table shows an overview of Corporate Governance quality listed per country and at a scale from 1.0 to 10.0, with 10.0 being the highest. The number in brackets states how many companies have been examined. GMI gives bad grades for example for accounting irregularities, significant related-party transactions, limitations concerning shareholder rights, significant litigation and criminal investigations and non-independent directors of boards. While some emerging markets like China (3.01), Mexico (2.48) and Chile (1.96) are ranked at the very last places, it might be surprising that Japan can only achieve a ranking of 3.32. The reason therefore is that many Japanese companies have no or a majority of non-independent directors in their boards (GMI 2009).

Table 1: Top 15 Corporate Governance rating sorted by country



The financial crisis has exposed the lack of value and insight of much published work in Corporate Governance and has confirmed Corporate Governance to be a topic of major social, economic and political significance on a global perspective (Ahrens et al. 2011). A survey of Bocconi School of Management in Milan reviews qualitative studies on Corporate Governance and found a growth in number in European journals since the 1990s, especially between 2000 and 2009 (McNulty et al. 2013). Due to big differences in certain parts of the Corporate

Governance approaches the focus of this article lies on the comparison of three big industrialized economies – US, UK and Germany.

Since the financial scandals of Enron, Worldcom and Tyco, there was an increased interest in Corporate Governance and questions were raised about the adequacy of current regulations. These concerns led directly to the Sarbanes-Oxley Act (SOX) in 2002. This act is an amendment to the Securities Acts of 1933 and 1934 and legislates specific revisions to the framework for Corporate Governance for SEC registrants (Meier, Meier 2014). The Sarbanes-Oxley Act imposes therefore new requirements on parties who produce, certify, audit and analyze public financial information (Jain et al. 2008). In that regard the SEC established clear accountability of a public company's CEO and CFO for the accuracy of the company's public disclosures, and to strengthen the role played by the board of directors and key board committees in the oversight of corporate management (Butler, Goldberg and Fitzgerald 2004). Among those who criticize SOX as a hasty and costly reaction it is notable that some requirements were already proposed in the early 1900s, but needed a special incident to be aware of its importance (Gupta et al. 2013). The US model for Corporate Governance emphasizes the interests of shareholders, management and directors. It is based on a one-tiered Board of Directors which is primarily comprised of non-executive directors who have been elected by shareholders. There are certain elements that are essential to define good Corporate Governance. These characteristics focus on concepts of ethics, aligning business goals, strategic management, organization and reporting (Meier, Meier 2014). However, there are many different guidelines according to Corporate Governance like for example the Corporate Governance Policies by the Council of Institutional Investors, the Report of the National Association of Corporate Directors Blue Ribbon Commission on Board Evaluation, Principles of Corporate Governance by the Business Roundtable, Principles of Corporate Governance, Analysis and Recommendations by the American Law Institute, etc. amongst other requirements like those of the stock exchanges and the Sarbanes Oxley Act.

Like in the US, Corporate Governance has received much more attention in Europe in the last decade. Several committees examined how governance and therefore trust could be reinforced and in 2003 the European Commission proposed a framework for Corporate Governance which includes enhanced disclosures, risk management, composition and operation of board and committees, description of shareholder rights including voting and control rights (Soltani 2005). This 8th European Union Directive is also well known as 'Euro-SOX' (Menden, Kralisch 2008).

The United Kingdom (UK) model is based on the 'UK Corporate Governance Code' which establishes good governance practices relating to the role and composition of the board and its committees and the development of a solid system of internal control. However, the Code operates rather on principles than rules. Companies can choose through their shareholders to adopt a different approach if it is more appropriate to their business model. This system exemplifies the importance of the relationship between the company and its shareholders which leads to strong Corporate Governance at a relatively low cost (Meier, Meier 2014). This flexibility is limited by legislative provisions of the Companies Acts 1985 and 2006 and rules made by the Financial Service Authority. In addition to the formal guidance, a number of leading industry bodies have also produced additional guidance, however it is not strictly binding. Due to public perception and investor pressure it often has significant influence on the Corporate Governance policies of companies (Risk Metrics Group 2009).

The German Corporate Governance model focuses unlike the US model on stakeholders and emphasizes cooperative relationships among banks, shareholders, boards, managers and employees (Barnett, Balasundrun 2008). In Germany the term 'Corporate Governance' is not defined by law but is generally understood as meaning the principles of proper corporate management and control, however statutory rules on Corporate Governance and control can be found in various codes of law (e.g. German Commercial Code, Private Limited Companies Act, Stock Corporation Act, Securities Trading Act). In 2002 the Stock Corporation Act was updated with an requirement that the management board and supervisory board of a listed company has to declare annually to what extent the company follows the German Corporate Governance Code and publish in the notes. Furthermore the German Corporate Governance Framework contains as well several recommendations, which extend beyond what is required by mandatory law (Risk Metrics Group 2009).

The Corporate Governance Codes and Recommendations of the three countries, Germany, United Kingdom and the United States consists of many principles. This article is primarily focusing on the Role of the Shareholder and the Boards, which will be examined in the following paragraphs.

Rights of the Shareholders

In general shareholders can slip into various roles and consequently have different images. A shareholder of a corporation is on one hand maybe seen as the owner, as a bystander or managerial partner but on the other hand he can be seen as a threat for the company due to short term interests of investors and focusing on earnings and not on their long term sustainability. Another point of view may outline a shareholder as a victim, aiming at scandalous events in the period such as Enron or companies, which were going down because of the dotcom boom and the financial crisis (Hill 2010).

Stronger shareholder rights protections are associated with better firm performance in competitive industries (Knyazeva, Knyazeva 2012). Following this statement, giving shareholders more rights appears favourable for the whole corporation. However, some Corporate Governance policies have to be fulfilled whether the regulation is contributing positively or negatively to the company's performance and efficiency. The following paragraphs give an overview of regulations in concern with shareholders.

Shareholder Communication

The communication between shareholders and the supervisory board, as well as the management board, can be of different nature and art. The formal kinds of ways are the proxy statement, annual report and the annual meeting (general meeting). On top of that there can be other meetings and correspondence. Especially through new media the correspondence has been facilitated over the years and communication all over the world is possible. This development has also been taken up in several Corporate Governance codes.

Starting with the regulations of Germany, the Corporate Governance code of this country has already included the possibilities of new media as stated before. For example, shareholders shall have the possibilities to contribute to the general meeting from elsewhere via the internet. The board members should ease the process of making use of the rights of the shareholders and inform them about new matters of facts concerning the company's business (German Government Commission 2013).

The regulations of the UK Code of Corporate Governance contain the duty of the chairman of the board that the company maintains communication with the principal shareholder regarding remuneration. The board as a whole has to ensure a satisfying contact between the shareholders and the board. Issues like the strategy shall also be discussed with the principal shareholder, whilst the non-executive board members have the possibility to take part in such meetings (Financial Reporting Council 2012).

Concerning the rules in the US, there are different types of regulations. One of them is the Report of the NACD Blue Ribbon Commission on Board-Shareholder Communications. Another one, which is available for everyone for free, is the Corporate Governance Policies by the Council of Institutional Investors, which were published at the end of September 2013. Thus these policies are the latest Corporate Governance policies we are referring to concerning the communication with shareholders.

The mentioned guideline recommends establishing special board-shareowner communication policies. These policies should include basic rules for communication and contact information of involved parties. Policies which enforce that each kind of communication between a board member and a shareholder has to go through all members of the board should be avoided unless it is essential for purposes of documentation. Additionally, shareholders should have the right to ask questions during the annual general meeting, even if they do not represent one of the principal shareholders (Council of Institutional Investors 2013). The table underneath sums up the different regulations of the three countries:

Table 2: Comparison Shareholder Communication (Weil 2013)

Comparison – Communication to Shareholders		
Germany (German Corporate Governance Code 2013)	**UK** (The UK Code of Corporate Governance 2012)	**US** (Corporate Governance Policies by the Council of Institutional Investors 2013)
The company shall send notification of the convening of the General Meeting together with the convention documents to all domestic and foreign financial services providers, shareholders and shareholders' associations by electronic means if the approval requirements are fulfilled (§ 2.3.2). The company's treatment of all shareholders in respect to information shall be equal. All new facts made known to financial analysts and similar addressees shall also be disclosed to the shareholders by the company without delay (§ 6.3). The company shall use suitable communications media, such as the internet, to inform shareholders and investors in a prompt and uniform manner (§ 6.4). Any information which the company discloses abroad, in line with corresponding capital market law provisions shall also be disclosed domestically without delay (§ 6.5).	The chairman should ensure effective communication with shareholders (Supporting Principle A.3). [On] joining the board … directors should avail themselves of opportunities to meet major shareholders (Code Provision B.4.1). The chairman of the board should ensure that the company maintains contact as required with its principal shareholders about remuneration (Supporting Principle D.2). There should be a dialogue with shareholders based on the mutual understanding of objectives. The board as a whole has responsibility for ensuring that a satisfactory dialogue with shareholders takes place (Main Principle E.1). Whilst recognizing that most shareholder contact is with the chief executive and finance director, the chairman should ensure that all directors are made aware of their major shareholders' issues and concerns. The board should keep in touch with shareholder opinion in whatever ways are most practical and efficient (Supporting Principles E.1). The chairman should ensure that the views of shareholders are communicated to the board as a whole. The chairman should also discuss governance and strategy with major shareholders. Non-executive directors should be offered the opportunity to attend scheduled meetings with major shareholders and should expect to attend meetings if requested by major shareholders. The senior independent director should attend sufficient meetings with a range of major shareholders to listen to their views in order to help develop a balanced understanding of the issues and concerns of major shareholders (Code Provision E.1.1).	Directors should respond to communications from shareowners and should seek shareowner views on important governance, management and performance matters. To accomplish this goal, all companies should establish board-shareowner communications policies. Such policies should disclose the ground rules by which directors will meet with shareowners. The policies should also include detailed contact information for at least one independent director. Companies should also establish mechanisms by which shareowners with non-trivial concerns can communicate directly with all directors. Policies requiring that all director communication go through a member of the management team should be avoided unless they are for record-keeping purposes. In such cases, procedures documenting receipt and delivery of the request to the board and its response must be maintained and made available to shareowners upon request. Directors should have access to all communications. All directors should attend the annual shareowners' meetings and be available, when requested by the chair, to answer shareowner questions. During the annual general meeting, shareowners should have the right to ask questions, both orally and in writing. Directors should provide answers or discuss the matters raised, regardless of whether the questions were submitted in advance. While reasonable time limits for questions are acceptable, the board should not ignore a question because it comes from a shareowner who holds a smaller number of shares or who has not held those shares for a certain length of time. (2.6b)

Executive Compensation

As the compensation of the executives is a very sensitive topic, the rights of the shareholders and their involvement in the decision process of the payment for executives needs to be mentioned in this article.

In Germany, the compensation of the executives is finally decided by the supervisory board. There are a number of regulations written down in the Corporate Governance code, dealing with policies for the remuneration of the executives (German Government Commission 2013). The UK Code of Corporate Governance suggests, additionally to the required principle in the table below, installing a remuneration committee. Special recommendations concerning the remuneration are made (Financial Reporting Council 2012).

In the US, a separate compensation committee must be installed for issues of executive pay. There are several suggestions given, which should be considered in creating a compensation committee. The philosophy of the compensation in the company shall be clearly disclosed to the shareholders in the annual proxy statement. Listing standards prescribe, that for equity-based compensation plans, the voting of shareholders is required (Council of Institutional Investors 2013).

The following table summarizes the regulations of the three countries' policies:

Table 3: Comparison of Shareholder Voting Rights on Executive Pay

Comparison – Shareholder Votes on Executive Pay		
Germany (German Corporate Governance Code 2013)	**UK** (The UK Code of Corporate Governance 2012)	**US** (Corporate Governance Policies by the Council of Institutional Investors 2014)
The General Meeting can resolve on the authorization of the remuneration system for the members of the Management Board (2.2.1). The full Supervisory Board determines the respective total compensation of the individual Management Board members. If there is a body which deals with Management Board contracts, it shall submit its proposals to the full Supervisory Board. The full Supervisory Board resolves the Management Board compensation system and reviews it regularly (4.2.2).	Levels of remuneration should be sufficient to attract, retain and motivate directors of the quality required to run the company successfully, but a company should avoid paying more than is necessary for this purpose. A significant proportion of executive directors' remuneration should be structured so as to link rewards to corporate and individual performance (D1, Main principle).	**Shareowner Approval of Equity-based Compensation Plans**: Current listing standards require shareowner approval of equity-based compensation plans and material amendments to plans (with limited exceptions). The Council strongly supports this concept and advocates that companies adopt conservative interpretations of approval requirements when confronted with choices. For example, this may include material amendments to the plan. (5.4). **Role of Compensation Committee**: The compensation committee is responsible for structuring executive pay and evaluating executive performance within the context of the pay structure of the entire company, subject to approval of the board of directors (5.5).

As a result, shareholders are rarely integrated in the decision process of executive payments and in the end, the board takes the decision (except of listed companies). Nevertheless the so called "Say on Pay" principle which should give shareholders more power to influence the CEO compensation, is still heavily discussed and the opinion of the shareholders concerning the remuneration of executives has still an impact too.

Because of information asymmetry it is difficult to ensure that managers behave in the interest of the shareholders. A sophisticated compensation system is one instrument to overcome this issue. Rationales like the principal/agency theory rely on such basics and assume that shareholders appreciate a strong relationship between the performance of the company and the remuneration of the managers. Researchers include another theory, the prospect theory which supports the assumption that shareholders only react negatively to high manager compensation if the company is performing poorly (Krause et al. 2014). However, compensation is not the only instrument in order to avoid information asymmetry. Monitoring is a more cost effective way of reducing risks of managerial abuse of power (Marler, Faugère 2010).

Rights regarding selection of board members

The process of selecting the board members is quite equal considering the three regulations of Germany, the UK and the US. All three nations emphasise to install a separate committee for electing the board members, the detail regulations are in fact differing from each other. In any case, the shareholders should have profound possibility in the nomination process and should give their recommendations.

The German way of selecting supervisory board members is to build up a separate committee only consisting of shareholders which gives proposals for the supervisory board. The election of the management board is determined by the supervisory board, so there is no shareholder directly involved in the selection process (German Government Commission 2013).

The UK Code of Corporate Governance also foresees building up a nomination committee. Contrary to the regulations in Germany, in the UK the committee need not to consist out of shareholders, the regulation in the UK codex states that the majority of members should be independent non-executive directors. This nomination committee is responsible for giving recommendations of candidates to the board, making appointments of the nomination process. The committee has also to evaluate the “balance of skills” of the board in order to search for appropriately for the required skills of the new board member (Financial Reporting Council 2012).

In the US, Corporate Governance rules state, again, that there should be established a committee for nominating the board directors. This committee should act entirely independent and therefore all directors shall be involved in all stages of the nomination process (Council of Institutional Investors 2013).

The table underneath summarizes the different regulations of the three countries:

Table 4: Comparison of the Voting Rights of Shareholders (Weil 2013)

Comparison – Director Selection		
Germany (German Corporate Governance Code 2013)	**UK** (The UK Code of Corporate Governance 2012)	**US** (Report of the National Association of Corporate Directors Blue Ribbon Commission on Board Evaluation)
Supervisory Board The Supervisory Board shall form a nomination committee composed exclusively of shareholder representatives which proposes suitable candidates to the Supervisory Board for recommendation to the General Meeting (§ 5.3.3). *See* Foreword (The members of the Supervisory Board are elected by the shareholders at the General Meeting. In enterprises having more than 500 or 2000 employees in Germany, employees are also represented on the Supervisory Board, which then is composed of employee representatives to one third or to one-half respectively. …The representatives elected by the shareholders and the representatives of the employees are equally obliged to act in the enterprise's best interests.). *See also* Topic Heading III.A, *above*. Management Board The Supervisory Board appoints and dismisses the members of the Management Board… The Supervisory Board can delegate preparations for the appointment of members of the Management Board, as well as for the handling of the conditions of the employment contracts including compensation, to committees (§ 5.1.2). The Chairman of the Supervisory Board shall also chair the committees that handle contracts with members of the Management Board... (§ 5.2).	There should be a formal, rigorous and transparent procedure for the appointment of new directors to the board (Main Principle B.2). The board should satisfy itself that plans are in place for orderly succession for appointments to the board and to senior management, so as to maintain an appropriate balance of skills and experience within the company and on the board and to ensure progressive refreshing of the board (Supporting Principle B.2). There should be a nomination committee which should lead the process for board appointments and make recommendations to the board. A majority of members of the nomination committee should be independent non-executive directors. The chairman or an independent non-executive director should chair the committee, but the chairman should not chair the nomination committee when it is dealing with the appointment of a successor to the chairmanship. The nomination committee should make available its terms of reference, explaining its role and the authority delegated to it by the board (B 2.1).	Boards should establish a wholly independent committee that is responsible for … nominating directors for board membership... (p. 3). Creating an independent and inclusive process for nominating … both directors and the CEO will ensure board accountability to shareholders and reinforce perceptions of fairness and trust between and among management and board members (p.4). Boards should involve all directors in all stages of the CEO and board member selection and compensation processes (p. 4). Boards should institute as a matter of course an independent director succession plan and selection process, through a committee or overseen by a designate director or directors (p. 5). In selecting members, the board must assure itself of [their] commitment to: • Learn the business of the company and the board • Meet the company's stock ownership requirements • Offer to resign on change of employment or professional responsibilities, or under other specified conditions, [and] • Devote the necessary time and effort (p. 20). *See generally* Chapter 3, Selection: Who Directors Should Be, pp. 7-13.

Some years ago as a reaction of the financial crisis, especially the regulations in the US were under discussion. Shareholders should be given more power. There was a demand for more proxy materials for shareholders. However this movement did not only come across proponents. Some commentators stated that a potential lack of shareholder power has neither contributed to previous crises, nor will it contribute to prevent such events. Other critics were wondering why they did not find shareholder empowerment in the market place if it was precious for Corporate Governance? Finally it could be responded that regarding not exclusively the US juridical situation there were other regulations which gave shareholders more power, for example referring to voting board members (Hill 2010).

Considering the Corporate Governance Policies of the Council of Institutional Investors, there is access to proxy material provided to shareholders, as if they are investing long-term in the company. If a shareholder or a group of shareholder owns at least three percent of a company's voting stock, for a minimum of 2 years, he is eligible to nominate less than a majority of the directors of the board.

Role of the Board

Board of Directors

The board of directors fulfil important functions for a corporation. A strong and effective board oversees and gives advice to the management and improves accountability and is therefore valuable for a company. The functions of a board are carried out in different ways and are grounded in various sets of legal frameworks depending on the country the company is located. Despite of large diversity in leadership structure, organization structure and composition of the board a wide range of board models are apparent; in general there are two main approaches how a board can be structured. In an international perspective there is the Anglo-Saxon one tier board model and the continental European two-tier board model (Maassen 2002). The United States and the United Kingdom are following a single board structure approach, while in Germany the dual board system applies.

Board structure

The main factors mentioned in literature affecting board structure are board size, board independence and board leadership (Jain, Prasad 2012). This article will compare the responsibilities, independence and chair duality of the board according to the Corporate Governance code of Germany, UK and the NACD Report of the US. The NACD Report was chosen for comparison because this guideline comprises extensive recommendations for the board of directors in the United States.

Germany has a clear two tier system with two separate segments, an executive board and a supervisory board which is rooted by law for German stock corporations. Each of the two boards has a chairman, who coordinates the work of the board (Van Veen/Elbertsen 2008). There is no chair duality in the German system and furthermore the members of the Management Board cannot be Members of the Supervisory Board as well.

The Codetermination principle of the supervisory board implies that one-third to one-half of the supervisory board seats are reserved for employee representatives which can include representatives of the company as well as outside union representatives (Renaud 2007). The other half of the representatives is reserved for shareholder representatives (Van Veen/Elbertsen 2008). The recognition of employees is one of the significant differences between Germany and models of the UK and US.

The law in UK and US does not make a distinction between the role and position of executive and non-executive directors in general. They have the same legal responsibilities and legal liabilities as executive directors (Maassen 2002). The board of US and UK companies is based on a single-tiered system and comprises non-executive and executive directors (Meier/Meier 2014). However, there are substantial differences between the approach of the US and the UK.

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Responsibilities

Different countries have different approaches regarding to the board of directors. The main principle of the Corporate Governance Code in the UK says “Every company should be headed by an effective board which is collectively responsible for the long-term success of a company.” (Financial Reporting Council 2012). The guideline of each company compared recognizes the importance of the board for the company’s success. Differences become visible in comparing how the guidelines are set to achieve this goal.

Table 5: Comparison of the Responsibilities of the Board (Weil 2013)

Comparison - Responsibilities of the Board (Weil 2013)		
Germany (German Corporate Governance Code 2013)	**UK** (The UK Code of Corporate Governance 2012)	**US** (Report of the National Association of Corporate Directors Blue Ribbon Commission on Board Evaluation)
The Management Board and Supervisory Board cooperate closely to the benefit of the enterprise (§ 3.1). Supervisory Board: For transactions of fundamental importance, the Articles of Association or the Supervisory Board specify provisions requiring the approval of the Supervisory Boards (§ 3.3). The task of the supervisory board is to advise regularly and supervise the Management board in the management of the enterprise. It must be involved in decision of fundamental importance to the enterprise (§ 5.1.1). The Supervisory Board appoints and dismisses the members of the Management Board (§ 5.1.3). Management Board: The shareholders General Meeting is to be convened by the Management Board ... (§ 2.3.1). The Management Board ensures that all provisions of law and the enterprise`s internal policies are abided by works to achieve their compliance by group companies (§ 4.1.3). The Management Board ensures appropriate risk management and risk controlling in the enterprise (§ 4.1.4). By-Laws shall govern the work of the Management Board, in particular the allocation of duties among individual Management Board members, matters reserved for the Management Board as a whole, and the required majority for Management Board resolutions (§ 4.2.1).	All directors must act in what they consider to be the best interests of the company, consistent with their statutory duties (A.1 Supporting Principle). The annual report should include a statement of how the board operates, including a high level statement of which types of decisions are to be taken by the board and which are to be delegated by to management (A.11 Code Provision). As part of their role as members of a unitary board, non-executive directors should constructively challenge and help develop proposals on strategy (A.4 Main Principle). Non-executive directors should scrutinise the performance of management in meeting agreed goals and objectives and monitor the reporting of performance. They should satisfy themselves on the integrity of financial information and that financial controls and systems of risk management are robust and defensible. They are responsible for determining appropriate levels of remuneration of executive directors and have a prime role in appointing and, where necessary, removing executive directors, and in succession planning (A.4 Supporting Principle).	Each Board has the freedom – and the Commission believes, the obligation – to define its role and duties in detail (p.1). Board responsibilities include: Approving a corporate philosophy and mission, Selecting, monitoring, evaluating, compensating, and if necessary, replacing the CEO,... and ensuring management succession Reviewing and approving management's strategic and business plans Reviewing and approving material transactions not in the ordinary course of business Monitoring, corporate performance against the strategic and business plans Ensuring ethical behaviour and compliance with laws and regulations, auditing and accounting principles, and the corporation's own governing documents Assessing its own effectiveness... Performing such other functions as are prescribed by law or are assigned to the board in the corporation's governing documents (pp.1-2). Board should periodically review board and CEO role descriptions to accommodate changes in Corporate Governance and company operations (p.4). More information in Chapter 2, Processes: How Boards Should Fulfil Their Responsibilities. (pp. 3-6).

The German Corporate Governance Code clarifies the responsibilities for the Management Board and the Supervisory Board and is compared to the other guidelines more specific and regulative. The sentence "The Supervisory Board must be involved in decisions of fundamental importance to the enterprise" is an example that the German Code is more precise and strict in its wording and regulation (German Government Commission 2013). Compared to Germany the general "comply or explain" Corporate Governance approach of the UK is visi-

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ble in the sections in the code above too. The board can mainly structure itself, but should fulfil fundamental tasks and act in the best interest of the company. The NACD report of the US generally gives freedom regarding to the composition of the board but is more specific about what should be within the scope of the responsibilities of the board.

Apart from the responsibilities of the board, the independence of the board received more importance in the literature in evaluating effectiveness and in the decision making process. Jain/Prasad conclude that it is imperative for the board to be objective in evaluate management quality and therefore an independent board can be expected to be more efficient (Jain/Prasad 2012). The following table compares the guidelines regarding to independence of the board of directors:

Table 6: Comparison - Independent Board Majority (Weil 2013)

Independent Board Majority (Weil 2013)		
Germany (German Corporate Governance Code 2013)	**UK** (The UK Code of Corporate Governance 2012)	**US** (Report of the National Association of Corporate Directors Blue Ribbon Commission on Board Evaluation)
The Supervisory Board shall include what it considers an adequate number of independent members... Not more than two former members of the Management Board shall be members of the Supervisory Board (§5.4.2). In enterprises with more than 500 or 2000 employees in Germany, employees are also represented on the Supervisory Board, which then is composed of employee representatives to one-third or to one-half respectively (Foreword).	The board should include an appropriate combination of executive and non-executive directors (and, in particular, independent non-executive directors) such that no individual or small group of individuals can dominate the board's decision taking (B.1 Supporting Principle). Except for smaller companies, at least half the board, excluding the chairman, should comprise non-executive directors determined by the board to be independent. A smaller company should have at least two independent non-executive directors (B1.2. Code Provision).	Board should require that independent directors fill the substantial majority of board seats. Boards should ensure that any director candidate under consideration, with the exception of their own CEO or senior managers, is independent (p. 9).

The German Code ensures independency through the dual system and the regulation that no more than two former members of the Management Board shall be members of the Supervisory Board too (German Government Commission 2013). The Code of the UK outlines that no individual or small group should dominate the decision taking and is more precise regarding smaller companies, who should at least have two independent non-executive directors (UK Code of Corporate Governance 2012).

According to Chhaochharia/Grinstein an independent director is a board member who has not been an employee of the firm and who is not affiliated with the firm through business ties or family ties. Independent directors are associated with higher firm value and better corporate decisions, but more independent directors do not necessarily perform better (Chhaochharia/Grinstein 2007).

Independency in the US is also linked to the independence of the three main committees that boards form (audit, compensation, and nominating committee). The nominating committee has an important role in this matter, because they appoint non-dependent or dependent directors. Vafeas for example found out that independent committees appoint more independent directors than non-independent committees (Vafeas 1999). The same authors also asserted that the more dependent members are part of the compensation committee the higher the fixed portion of compensation will be. In relation the contingent part will be lower in this scenario (Vafeas 2003). Anyways the SEC and stock exchanges have toughened the independence requirements from boards. Also SOX narrowed the definition of an independent director and requires that the majority of the directors on the board be independent (Meier/Meier 2014). This regulation can also be found in the NACD-Report.

Also the regulations of the stock exchanges require a majority of independent directors and (audit, compensation and nominating) committees. For example the NASDAQ allows firms not to have a formal compensation and nominating committees as long as decisions are not made by a majority of independent directors (Chhaochharia, Grinstein 2007).

Table 7: Independent Directors in the US (Chhaochharia, Grinstein 2007)

Percentage of independent directors (of the total number of directors)

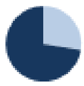
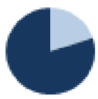
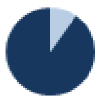
US 2003	Mean in %	
S&P 500	72,3	
MidCap	67,7	
SmallCap	66,0	

Table 8: Independent non-executive Directors in the UK (Chang et al 2006)

Percentage of independent non-executive directors (of the total number of non-executive directors)

UK 2004	Mean in %	
Top 50 (of FSTE 100)	79,9	
Construction (21)	90,3	

Mean	Top 50	Construction
Number of directors	13,12	9,10
Number of non-executive directors	7,86	3,90
Independent non-executive directors	6,28	3,52

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The previous table 7 shows that in 2003 in average 72.3% of all directors of the board are independent directors in the S&P 500 in the United States (Chhaochharia, Grinstein 2007). Another study of Chang et al. gives an impact about the independency of board in the United Kingdom although it is not directly comparable with the data of the United States. It reveals that about 80 % of the non-executive directors of the top 50 companies in UK are independent. Comparing the construction industry with the top 50 the absolute number of directors attracts attention. In the field of construction only about 3.9 non-executive directors are appointed while in the top 50 in average 7.8 directors are carrying this function (Chang et al 2006). In Germany about 62% of the members of the supervisory board consists of representatives of the shareholder in 16 companies of the DAX in 2012 (Ruhwedel 2012).

CEO-Chairmen

Several authors recommend separating the CEO and the Chairmen position because the board evaluates and compensates the CEO and there might be a conflict in interest. However, this might entail extra coordination and administration costs. Chair duality might imply higher compensation for the CEO and a greater likelihood of manipulations (Chhaochharia/Grinstein 2007). Therefore the CEO turnover based on performance may be affected by board leadership structure (Goyal and Park 2002). Linck, Netter and Yang (2008) argue that the choice of a combined position of the CEO and the chairman of board is also affected by business complexity and information asymmetry (Jain/Prasad 2012). The question of whether chair duality has positive effects for the companies is irrelevant for German companies, because this country separates the positions by law.

Table 9: Comparison – Chair Duality (Weil 2013)

Separation CEO and Chairman (Weil 2013)		
Germany (German Corporate Governance Code 2013)	**UK** (The UK Code of Corporate Governance 2012)	**US** (Report of the National Association of Corporate Directors Blue Ribbon Commission on Board Evaluation)
The two-tiered board separate the chairman of the Supervisory board from the chairman of the Management Board.	There should be a clear division of responsibilities of the board and the executive responsibility for the running of the company's business. No one individual should have unfettered powers of decision (A.2 Main Principle). The roles of chairman and chief executive should not be exercised by the same individual. The division of responsibilities between the chairman and chief executive should be clearly established, set out in writing and agreed by the board (A.2.1 Code Provision). The chairman should on appointment meet the independence criteria ... A chief executive should not go on to be chairman of the same company. If, exceptionally, a board decides that a chief executive should become chairman the board should consult major shareholders in advance and should set out its reasons to shareholders at the time of the appointment in the next annual report (A.3.1. Code Provision).	The roles of a non-executive chairmen or board leader have been under consideration for some years. The independent board leader concept continues to grow in acceptance, according to current surveys. The purpose of creating these positions is not to add another layer of power but instead to ensure organization of, and accountability for, the thoughtful execution of certain critical independent director functions. The board should ensure that someone is charged with: organizing the board's evaluation of the CEO and providing continuous ongoing feedback; chairing executive sessions of the board; setting the agenda with the CEO; and leading the board in anticipating and responding to crises. ... Boards should consider formally designating a nonexecutive chairmen or other independent board leader. If they do not make such a designation, they should designate, regardless of title, independent members to lead the board in its most critical functions ... (pp.3-4).

Regarding to chair duality the Codes of Corporate Governance of the three countries compared differ significantly. Germany clearly divides the positions through its dual system (German Government Commission 2013). The Code of the UK do not recommend that the position of the Chairmen and the Chief Executive Officer to be hold by a single person (The UK Code of Corporate Governance 2012). The NACD report is formulating this topic more openly. According to a study in average 75% of the CEOs of the S&P 500 in the US are also the Chairmen of the board as well (Mid Cap 64%, Small Cap 59%) (Chhacocharia, Grinstein 2007). In the UK in the top 50 companies these roles are always split, however in the construction companies the duality of the chairman and the CEO insists to in average 24% (Chang et al 2006).

Does Board composition matter?

Studies demonstrated that good Corporate Governance leads to reduced manipulations especially regarding to remuneration, better investor protection, increased company market value and stock returns (Chang et al. 2006; La Porta et al. 2000). If board composition plays an important role for those positive effects is difficult to evaluate in practice.

Generally boards are influenced by the level of shareholder power and presence, visibility, information asymmetry, pressure of stakeholders and Corporate Governance and legislation amongst other factors (Long et al. 2005). For example Long et al. suggests that in unlisted companies non-executive directors are more involved in strategic development, shareholder communication and financial monitoring than non-executive directors in listed companies in the UK. However, they are less involved in monitoring the management, determining remuneration and in the appointment and removal of directors (Long et al. 2005). Therefore board composition may be not the only factor in evaluating whether the quality of Corporate Governance is good or not.

Empirical studies for example found that there is a positive relation between financial stake of board members and board effectiveness (Chhacocharia, Grinstein 2007). Also multiple directorships might increase board quality. Directors who serve on other boards too have greater experience which is beneficial for the company (Peyer, Perry 2005). If multiple directorship exists in board might also depend on board size. Generally board size is correlating with company size. Large companies tend to have more directors so more people can oversee and monitor the company, but it can happen that too many people are involved in the process and a free ride problem occur. It suggests that individual members avoid investing time and effort in collecting information and therefore the quality of the board will suffer (Jain, Prasad 2012). This statement is an argument for keeping the board of directors small as well as because of bureaucratic and cost issues.

But also social aspects in board composition can have an influence on the decision making process. Groupthink, herd effect and pluralistic ignorance (board members fail to express concerns about corporate strategy based on others failure not to express their concerns) can occur in boards as well. If those failures can be attributed to board composition remains unclear. A study of Muller-Kahle and Lewellyn about the differences in board composition of financial institutions engaged in subprime lending and financial institutes who did not, found that the board members of subprime lenders were busier, had less tenure and were less diverse with respect to gender (Muller-Kahle, Lewellyn 2011). The authors recommend to pay special attention to younger, unexperienced board members and to board members who may be too consumed with other matters as well as to diversify the board in respect of gender (Muller-Kahle, Lewellyn 2011). There are studies which suggests that women are more collaborative (Konrad et al. 2008) and more civilized and sensitive which may lead to an increased heterogeneity of ideas. Some people frequently suppose that the board of directors is an “old boys” network and may be characterized as a “small world” (Conyon/Muldoon 2006). This assumption is consistent with the suggestion that a higher number of women on boards would add value through a different approach of thinking.

Ray, an author of the United States, argues for more diversity on US boards and proposes “... there should be at least two candidates for each board seat, nominations should come from shareholders, the board and employees, and that a majority is required for election to the board” (Ray 2005). In the United States chair duality is a common practise, but not in the UK and in Germany, where it is not possible due to the legal framework. He also emphasis the role of employee representatives, which is compared to Germany largely defined in the German Corporate Governance Code. However, according to the GMI Corporate Governance Score the UK has the best Corporate Governance quality, followed by the US and at least

Germany comparing only the three countries mentioned (GMI 2009). To give a fundamental answer if and how board composition matters in regard to Corporate Governance quality further research is needed.

In the field of Corporate Governance and board structure there may be not a “one size fits all“ concept, but global principles and fundamental values are based on common ground (Chang et al. 2006). As companies become more international and have to deal with different cultures and regulations around the world, as a result their board will be affected (Jain/Prasad 2012).

Conclusion

Right now there are many differences in existing Corporate Governance models due to legal or cultural factors. Especially the US and UK Corporate Governance model are focused on shareholders. Due to the delegation of the decision making authority to professional management, Corporate Governance is needed for the outside investors to protect themselves against expropriation by the insiders. As companies increasingly do business and raise funds at an international level, the issue of Corporate Governance becomes more crucial as the different stakeholders demand more accurate corporate information. This leads to additional pressure on a company’s management to disclose high quality information and to be accountable to various interested parties. The financial crisis has exposed the lack of value and insight of much published work in Corporate Governance and has confirmed Corporate Governance to be a topic of major social, economic and political significance on a global perspective. While in the US the Sarbanes-Oxley Act of 2002 mainly regulates Corporate Governance, in Europe the European Commission proposed a framework for Corporate Governance in 2003 which includes enhanced disclosures, risk management, composition and operation of board and committees, description of shareholder rights including voting and control rights. This 8th European Union Directive is also well known as ‘Euro-SOX’. While the German Corporate Governance model focuses on stakeholders and emphasizes cooperative relationships among banks, shareholders, boards, managers and employees, the UK Corporate Governance Code operates rather on principles than rules. Companies can choose through their shareholders to adopt a different approach if it is more appropriate to their business model. This system exemplifies the importance of the relationship between the company and its shareholders which leads to strong Corporate Governance at a relatively low cost.

A study by McKinsey in 2002 proved the importance of Corporate Governance in the capital market as it shows that investors would be willing to pay as much as an 18 per cent premium for companies that they believe apply superior Corporate Governance (Monks, Minow 2004). In near future the ‘New Governance Approach’ will contribute to changes in Corporate Governance. The basic concept of New Governance argues for collaborative governance, in which stakeholder groups, public agencies and private parties work together to define standards for a mutually acceptable objective (Rahim 2012).

Regarding the Rights of Shareholders, we can say that the regulations of the Corporate Governance codes of the US, the UK and Germany, are roughly of the same kind. Going into detail, they turn out to be different in special aspects. Commonalities of the Corporate Governance codes of all three countries are the regulations concerning the selecting of board members. Therefore a special nomination committee is prescribed. Regarding the process of deciding the remuneration of executives, the regulations of the UK and the US also recommend the creation of a separate committee. In Germany, the Supervisory Board has the last word in deciding the payment of executives. Concerning the communication to shareholders, the US recommends setting up special rules for the communication between the board and

shareholders. The regulations of the UK and Germany do not include such suggestions, but also make some recommendations relating to the communication to shareholders.
Comparing the Corporate Governance Codes of Germany, the UK and the recommendation of the NACD Report representing the US according to board of directors it becomes visible that there are many differences. In Germany the chairman of the supervisory board and the chairman of the management board are separated by law. The dual system in this country gives a framework with whom companies have to deal with. The concepts in the US and UK give more freedom regarding to board composition. However in the US it become compulsory to have a majority of independent directors through SOX 2002 (as a reaction of financial scandals). Anyways, more regulations do not automatically lead to better Corporate Governance. The UK for example is ranked best (in comparison to the US and Germany) in the GMI ranking of Corporate Governance, but its general approach is to give room for individual compositions regarding to the board and the governance in general. This may give cause of thinking that there are more factors which influences the quality of Corporate Governance like social and behavioral factors than board composition alone. Still, in practice there is one significant factor which is different in the US. In the United States it is common to have chair duality in large companies. In the UK these cases are the exception, not the rule and in Germany this is not possible due to law. To find out if board composition really matters in respect to good Corporate Governance practice further research is needed especially in the field of the decision making process and influence of the board on the executive management and shareholders.

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