The Spirit of Corporate Law

Core Principles of Corporate Law in Continental Europe

von
Prof. Dr. Günter H. Roth, Prof. Dr. Peter Kindler

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Preface

Reading the Company Law Action Plan of the European Commission (issued on 21 May 2003) one cannot help having the impression that European company law policy has a certain focus on listed companies and will try to enhance their efficiency by way of state competition if possible, and by harmonisation only if need be. The same is true under the new Action Plan on European company law and corporate governance (issued on 12 December 2012). Furthermore, as to substance, a certain inclination to Anglo-American concepts is prevailing. Just one example is the idea to develop a wrongful trading rule, whereby directors would be held personally accountable for the consequences of the company’s failure, if it is foreseeable that the company cannot continue to pay its debts and they don’t decide either to rescue the company and ensure payment or to liquidate it (sub 3.1.3.b). In the field of legal research, some influence can be ascribed to the important monograph on The Anatomy of Corporate Law, again focused on listed companies and the Anglo-American perspective, defining efficiency and the so called shareholder value as the centre of corporate law (2nd ed., 2009, p. 28–29).

Our book, to the contrary, is first of all based on the fact that throughout Europe only a small number of corporations are listed at all – the reality of corporate law is dominated by small and medium-size enterprises. Therefore legal standards pertaining to control transactions or investor protection and other topics of capital market law in our eyes are not part of the core principles of corporate law. Furthermore, law is not that much about efficiency. Law is first of all about justice. As to corporate law, the question is not how to protect best the interests of shareholders but rather the interests of all parties affected by a firm’s activities, including its creditors and other third parties. The Treaty on the Functioning of the European Union reminds us not to forget that when drawing the attention of the European legislator in the field of corporate law and freedom of establishment to “the protection of the interests of members and others” (art. 50). The book is focusing on the perspective of key jurisdictions in continental Europe, such as (in an alphabetical order) Austria, France, Germany, Italy, Spain, Switzerland, and analysing seminal inputs from Belgium, the Netherlands, Portugal and Scandinavian countries.

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Guenter H. Roth
Peter Kindler
Table of Contents

Preface .................................................................................................................................................. V
Selected Abbreviations .................................................................................................................. XIII
Bibliography ......................................................................................................................................... XIX

Chapter 1. Introduction
I. Freedom and responsibility in European Corporate Law ........................................................... 1
   1. European Company Law at a crossroads .................................................................................. 1
   2. The purpose of Corporate Law ............................................................................................. 3
      a) Regulatory philosophies ...................................................................................................... 3
      b) Regulatory competition ...................................................................................................... 5
   3. Key issues of legal protection in Continental Europe ............................................................ 7
      a) Capital structure .................................................................................................................. 8
      b) Organisational structure ..................................................................................................... 9
      c) Protection of minority interests ......................................................................................... 9
      d) External control .................................................................................................................. 11
II. Regarding the selection of legal systems under review .............................................................. 12
III. The current legal policy background of this study .................................................................... 18
   1. Diversity in the laws governing small corporations and the state of EU legal policy in the area of corporate law ............................................................... 18
      a) Starting point .................................................................................................................... 18
      b) Low degree of “Europeanization” of the small corporation ............................................ 19
      c) State of EU legal policy .................................................................................................... 20
   2. The EU Action Plan 2003 on the modernisation of Company Law and improvement of Corporate Governance .............................................................. 20
      a) Overview ......................................................................................................................... 20
      b) Election between monistic and dualistic management structure ...................................... 21
      c) Capital maintenance and changes in capital ...................................................................... 21
   3. Reform Initiative 2011/12 ........................................................................................................ 21
      a) The EU Green Paper “European Corporate Governance Framework” ......................... 21
      b) “Reflection Group” and Action Plan 2012 ........................................................................ 22
   4. European private company (SPE) ........................................................................................... 23
      a) Status of preliminary work ............................................................................................... 23
      b) Registration formalities and control of legal conformity .................................................. 24
      c) List of shareholders .......................................................................................................... 24
      d) Transfer of shares .............................................................................................................. 25
      e) Raising capital ................................................................................................................... 25
      f) Status and powers of the general meeting ........................................................................ 26

Chapter 2. Minimum Capital and Capital Protection
I. Limitations on liability and transfer of risks ............................................................................... 27
   1. Entrepreneurial liability ........................................................................................................ 27
   2. Limited liability and creditor protection ............................................................................... 29
II. Fixed capital and minimum capital ............................................................................................ 32
   1. Liable equity capital levels ................................................................................................... 32
   2. Analysis .................................................................................................................................. 34
      a) Capitalisation .................................................................................................................... 34
      b) Sharing the risk .................................................................................................................. 36

VII
3. International criticism ........................................................................................................... 38
4. Most recent developments in national law ........................................................................... 39

III. Raising capital ................................................................................................................... 40
   1. The principle ..................................................................................................................... 40
   2. Cash contributions and contributions in kind ................................................................. 42
      a) Contributions in cash .................................................................................................. 42
      b) Contributions in kind .................................................................................................. 43
      c) Flow back ................................................................................................................... 46
   3. Analysis ......................................................................................................................... 47
   4. Pre-formation corporate liability .................................................................................... 48
   5. The capital increase ......................................................................................................... 48
   6. Securing capital contributions in special cases ............................................................. 50
      a) Shareholder loans ....................................................................................................... 50
      b) Shelf company ........................................................................................................... 50
      c) Formation benefits ..................................................................................................... 51

IV. Other aspects of corporate formation .............................................................................. 51
   1. The act of incorporation ................................................................................................... 51
      a) Contents ...................................................................................................................... 51
      b) Form ........................................................................................................................... 52
   2. Analysis .......................................................................................................................... 53
   3. Raising capital .................................................................................................................. 54
      1. Contributed equity capital ......................................................................................... 54
      2. Mere distribution of profits ....................................................................................... 56
      3. Constructive distributions ......................................................................................... 58
      4. Shareholder loans ....................................................................................................... 61
      5. Acquisition of own shares ......................................................................................... 62
   6. Analysis .......................................................................................................................... 63
      a) Capital protection ....................................................................................................... 63
      b) Crisis parameters ...................................................................................................... 65
   7. Capital reduction ............................................................................................................ 66

VI. Piercing the corporate veil (reach-through liability) .......................................................... 66
   1. Limitations on liability and reach-through .................................................................... 66
   2. Risk to the company as a going concern, insolvency trigger .......................................... 68
   3. Analysis .......................................................................................................................... 69

Chapter 3. The Structure of the Corporation
I. Organisational structure and plurality of interests ............................................................. 71
II. Organisational structure and limitation of risks ................................................................. 76

III. The members of the management body as “mandataries” of the shareholders .............. 77
IV. Delimitation of competences and hierarchy of the company organs .................................. 80
   1. Principle of general competence .................................................................................. 80
   2. Fundamentals of the company ...................................................................................... 80
   3. Personnel competence .................................................................................................. 83
      a) Appointment and removal of members of the management body ............................ 83
      b) Discharge ..................................................................................................................... 84
      c) Limitations on personnel competence through employment law? .......................... 84
      d) Shareholder liability for ineligible managers ........................................................... 86
      e) Analysis ...................................................................................................................... 87
   4. Financial structure .......................................................................................................... 87
   5. Particular features of the organisational structure of large corporations ....................... 88
      a) Variety of organisational structures ........................................................................... 88
      b) The dualistic system .................................................................................................. 91
      c) Company management (“corporate governance”) ..................................................... 93
      d) Legal status and function of the general meeting in the large corporation ................ 94
   6. Analysis .......................................................................................................................... 95

V. Duties and liability of members of the management body ................................................. 98
   1. Plurality of interests and conflicting obligations ............................................................ 98
2. General obligation of diligent management vis-à-vis the company ........ 98
   a) Duties of a manager ................................................................. 98
   b) Standard of care and fault ..................................................... 101
   c) Joint responsibility ................................................................. 101
   d) Exclusions ............................................................................. 102
   e) Enforcement ........................................................................... 102
3. Liability vis-à-vis the private limited company based on specific rules of
corporate law and based on tort ................................................... 103
   a) Breaches of prohibitions on disbursements ............................. 103
   b) Acquisition of own shares .................................................... 103
   c) Asset erosion .......................................................................... 103
   d) False information in connection with company formation or a share capital
      increase .................................................................................. 104
   e) Tort liability to the company ................................................... 104
4. Liability vis-à-vis individual shareholders ....................................... 104
5. Instances of liability under general private law vis-à-vis private law company
creditors ...................................................................................... 105
   a) Personal liability based on estoppel ........................................... 106
   b) Pre-contractual liability (culpa in contrahendo) ....................... 106
   c) Violation of rights and legal interests protected under tort law .... 107
   d) Violation of protective laws; liability for manager’s delay in filing for
      insolvency proceedings ........................................................... 108
   e) Intentional immoral harm ....................................................... 109
6. Analysis ...................................................................................... 110

Chapter 4. Protection of Minority Interests

I. General principles ......................................................................... 113
   1. Principle of unanimity and majority decision-making .................. 113
   2. Majority rule and protection of minorities .................................... 115
      a) Legitimacy and limits on majority control ............................... 115
      b) Minority protection and divestment ....................................... 116
      c) Proportionate consideration of the minority interests .............. 117
      d) Qualified majorities ............................................................. 119
      e) Minority protection and individual rights ............................... 119
      f) Minority participation rights .................................................. 119
      g) Minority control rights for minorities above a certain percentage 119
      h) Individual right to information ............................................. 119
         i) Substantive limitation on majority rule by means of exclusions from voting
         j) Individual right to petition to nullify a resolution .................. 120
      k) Substantive review of the contents of a resolution ................. 120
      l) Right of withdrawal and protection against exclusion .............. 120
   II. Formal minority protection ....................................................... 120
      1. Qualified majorities ............................................................. 120
         a) Purpose ............................................................................. 120
         b) Implementation ................................................................. 121
      2. Ensuring participation ......................................................... 122
         a) Purpose ............................................................................. 122
         b) Implementation ................................................................. 123
      3. Minority control rights ....................................................... 127
         a) Purpose ............................................................................. 127
         b) Implementation ................................................................. 128
         c) Excursus: The individual shareholder suit ......................... 129
      4. The individual right to information ........................................ 130
         a) Purpose ............................................................................. 130
         b) Implementation ................................................................. 131
   5. Analysis ............................................................................... 132
Table of Contents

III. Substantive minority protection .................................................................................. 133
  1. Voting right preclusion ......................................................................................... 133
     a) Purpose ........................................................................................................ 133
     b) Implementation .......................................................................................... 134
  2. Contesting majority resolutions .......................................................................... 135
     a) Purpose ........................................................................................................ 135
     b) Implementation .......................................................................................... 135
  3. Substantive control of resolutions .......................................................................... 137
     a) Purpose ........................................................................................................ 137
     b) Implementation .......................................................................................... 137
     c) Excursus: Abusive action for avoidance ...................................................... 142
  4. Withdrawal and exclusion of the minority .......................................................... 143
     a) Purpose ........................................................................................................ 143
     b) Implementation .......................................................................................... 144
  5. Analysis .............................................................................................................. 148

IV. Disclosure ..................................................................................................................... 166
  1. Main principles of commercial disclosure in the European Union ..................... 166
     a) Entry in the commercial registry and publication as the primary means of
disclosure .............................................................................................................. 166
     b) Specific items required to be disclosed ......................................................... 167
     c) Effects of disclosure ..................................................................................... 167
     d) Sanctions ........................................................................................................ 167
  2. Commercial law disclosure, protection of bona fide rights and protection of
the public (based on the example of the acquisition of shares in a German
GmbH from a transferor who is not the true owner) ........................................... 168
     a) General principles of the good faith acquisition of shares in a GmbH .......... 168
     b) The true shareholder’s loss of rights and its constitutional boundaries ......... 169
     c) Transparency of shareholding structures as a policy goal of the drafters of
the 2008 corporate law reform ......................................................................... 170
     d) Quasi-constitutive effect of the notarial attestation for the acquisition of
shares ................................................................................................................ 172
     e) Increasing the role of the notary for reasons of protecting property rights and
public safety and order .................................................................................. 173
  3. Analysis .............................................................................................................. 176
V. The expansion of external controls as a desideratum in terms of legal policy ....... 176
## Table of Contents

Chapter 6. The Future of European Company Law

I. At the outset ................................................................................................................. 177

II. Conclusions from the individual chapters of the book ............................................... 179
   1. Capital structure (*supra*, Chapter 2) ..................................................................... 179
   2. Organisational structure (*supra*, Chapter 3) ........................................................ 180
   3. Minority protection (*supra*, Chapter 4) ............................................................... 181
   4. External controls (*supra*, Chapter 5) .................................................................... 183

III. Conclusions for European legal policy in the area of corporate law .......................... 184

Index ............................................................................................................................... 187