CORPORATE GOVERNANCE AND BOARD OF DIRECTORS IN GREEK LISTED COMPANIES

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Abstract

Corporate governance is widely acknowledged as a key factor of market's efficiency and corporate performance. Greek company law, under the influence of the financial crisis, has responded actively by incorporating in national law EU directives on corporate governance of listed companies and by adopting recently self-regulatory provisions. This regulatory framework contributes essentially to enhance board accountability and transparency, empower shareholder protection and promote financial disclosure. In that regard, two pillars should be illustrated as regards board of directors in listed companies: Greek company law provides traditionally for the establishment of the general duties of loyalty and care of all board members in companies limited by shares, which are furthermore reinforced by the provisions of the Hellenic Code of Corporate Governance for listed companies. Secondly, hard law rules introduce the participation of non-executive and non-executive independent directors as a legal mechanism of confronting agency problems in listed companies. These provisions have been strongly argued as regards the exact content of the obligations of all board members of listed companies to promote the corporate interest and especially as regards the monitoring role of non-executive directors. These conceptions should be followed by empirical researches in order to address a completely legal and functional approach.

Keywords: Board of Directors, Duty of Loyalty and Care, Non-executive Directors

1. INTRODUCTION: CONCEPTIONS OF CORPORATE GOVERNANCE

The corporate governance debate has, during the last two decades, gained significant momentum in Europe and worldwide. In fact, the corporate governance discussion in a theoretical and conceptual perspective focuses on various definitions aiming at conceptualizing key governance criteria and tasks. In spite of the absence of a single definition due to the differences in national legal systems in Europe and worldwide, the OECD Principles of Corporate Governance originally developed in 1999 and updated in 2004, have introduced a clear-cut and substantial definition, according to which corporate governance is defined as: "A set of relationships between a company's board, its shareholders and other stakeholders" (Principles of Corporate Governance, 2004). This definition is significant in that it relies on the structure through which the objectives of the company are set with the means of attaining these objectives.

In this context, two different models of corporate governance have emerged: shareholder model and stakeholder model. Classic shareholder model, identified by dispersed ownership and competition, is oriented exclusively on shareholders' protection against opportunistic actions of managers, pursuing their own interests (Fama & Jensen, 1983; Hirschman, 1970). Shareholder theory considers the primary purpose of the firm as the maximization of financial returns to shareholders. According to this perspective, three fundamental assumptions shape the shareholder view of the firm: primarily externalization of costs, in order to maximize earnings and cash flow to shareholders, reduce risks and lower relevant costs (Jensen, 2001; Stout 2012). Secondly, as aforementioned, shareholder theory relies on the fundamental consideration that individuals are motivated by self-interest, acting occasionally at the detriment of the corporate interest (Berle & Means, 1932; Jensen & Meckling, 1976, Ferraro et al., 2005). Accordingly, the third assumption is the nexus of contracts theory that describes the company as a network of implicit and explicit contracts between the firm and other actors-stakeholders (Alchien & Demsetz, 1972; Coase, 1937; Jensen & Meckling, 1976; Bainbridge, 2008).

In that regard, the separation of ownership and control advocated by shareholder primacy has engendered the principal-agent problem. According to a substantial and innovative approach (Armour, Hansman and Kraakman, 2017a), legal strategies employed to reduce agency costs consist of two types: regulatory strategies, which aim at prohibiting directly the conflicts between principals and agents and secondly governance based strategies, which intend to empower the principals' control over the agents. The efficacy of these mechanisms depends mainly on their differential nature: governance strategies refer to the ability of the principals to control their agents which imply that they do not require high coordination costs, while regulatory strategies are based on the ability of these structures to examine the compliance of the agents with the regulatory rules and prescriptions.

In the alternative, stakeholder theory, based on the original assumption of Freeman (Freeman, 1984; Freeman et al., 2010), considers that the purpose of the company is to serve societal interests. In that regard, the theoretical foundation of this approach is that groups, as well as shareholders, are motivated to have claims on the company's assets and earnings because they contribute to its capital (Karmel, 1993; Freeman et al., 2010; Harrison & Wicks, 2013). Therefore, directors have the duty to maximize shareholders' wealth, but also to serve the interests of a multitude of other actors-stakeholders who affect or could be affected by the actions of the company, such as creditors, employees, suppliers and other community factors (Clarkson, 1995; Freeman et al., 2004). Stakeholder theory contributes substantially to business ethics and corporate social responsibility (Donaldson & Preston, 1995; Phillips, 2003; Stuebs & Sun, 2015). However, it creates controversial issues as regards the crucial matter of providing precise instructions and theoretical foundations for balancing the interests of various stakeholders in case of conflicts. Furthermore, the theory fails to provide a way of enforcing directors to consider constituency interests of all stakeholders (Greenfield, 2015).

In that regard, the emergence of the enlightened shareholder value theory (ESV), in relation to the provisions of Section 172(1) of the UK Companies Act 2006, contributes to developing a more comprehensive and reliable approach. The ESV was advocated by the Company Law Review Steering Group in order to adopt a properly balanced view in reforming company law, taking into consideration the impact of the operations of the firm on the community and the environment (The Company Law Review Steering Group, 1999). In fact, the provisions of Section 172(1) of the Companies Act 2006 stipulate that:

"(1) A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to: (a) the likely consequences of any decision in the long term, (b) the interests of the company's employees, (c) the need to foster the company's business relationships with suppliers, customers and others, (d)the impact of the company's operations on the community and the environment, (e) the desirability of the company maintaining a reputation for high standards of business conduct, and (f) the need to act fairly as between members of the company".

Academics have pointed out the effects and benefits of ESV, in that it enforces managers and directors to take into consideration the interests of non-shareholders-stakeholders, so far as it fosters corporations' benefits (Collison et al., 2011; Ho, 2010; Keay, 2013). The approach, similar to enlightened value maximization proposed by Jensen (Jensen, 2001), endorses directors to focus on long term benefits of the business and by that to balance the interests of different constituencies that make up the company. This is consistent with the general idea, advocated even by supporters of shareholder value theory that corporate law should principally contribute to increasing long term shareholder value (Hansman & Kraakman, 2001; Jensen, 2001). However, it has been strongly argued that the pursuance of long term profitability, meeting the fair expectations of stakeholder groups, is not always consistent with long term shareholder value (Keay, 2013). In that way, directors' duty to consider long term strategy should not prevail over the success of the company for the benefit of its members.

The debate, highly controversial, has also been raised in Greek company law, as will be examined below, due to the relatively broad definition of directors' primary duties in listed companies "to pursue constantly the enhancement of the long term economic value of the company and to promote the general corporate interest", according to the provisions of article 2 par. 1 L. 3016/2002 on "Corporate governance, remuneration matters and other issues", which is the main legal instrument on corporate governance for listed companies under Greek law.

Furthermore, corporate governance scandals and economic failures in Europe and worldwide have driven corporate stock exchange and capital market law reforms. This impact concerns also corporate governance regulatory framework as regards both mandatory and default rules in listed companies (Hart & Moore, 1996; Kondgen, 1998), aiming at enhancing corporate responsibility, board accountability, financial disclosure and auditing.

The regulatory corporate governance framework in EU promotes the aforementioned principles, as illustrated in the first "Action Plan on Modernising Company Law and enhancing corporate governance in the EU" of 21 May 2003 and followed by a large number of EU regulatory initiatives (Hopt, 2015).

Furthermore, in light of the recent financial crisis, self-regulatory initiatives, mainly in the form of corporate governance codes, as well as best practice standards and recommendations of various sources have gained ground. In that matter, the UK Corporate Governance Code, going back to the Combined Code of the Cadbury Committee 1992 and updated consequently until its version of April 2016 (UK Corporate Governance Code, 2016) should be considered as a substantial model of these instruments, especially as regards Corporate Governance Codes. The content and structure of these codes are diversified, depending on each legal system's traditions (Hopt, 2012). In general, corporate governance codes concern internal corporate governance actors and procedures, regulating mainly the board of directors of listed companies regarding the size, composition and function, as well as its committees, such as the audit, the nomination and the remuneration committees. It is worth mentioning at this point, that the coexistence of corporate governance law and self-regulatory provisions, in the form of corporate governance codes, could be a source of legal incoherence, due to the potential diversification in the way of application and enforcement of the codes. In that regard, the "comply or explain" mechanism could contribute, in a way, to confront the crucial matter of the enforcement of the codes (Hopt, 2012; Pietrancosta, 2010).

This article proceeds in three Sections: the first describes the general principles and regulatory framework of corporate governance in Greek listed companies with regard to the harmonization of national law with EU regulations and the incorporation of soft law in the form of corporate governance codes. The second presents the specific role and duties of board members in listed companies, according to their legal status, with emphasis on the establishment of the general duties of loyalty and care and on the monitoring role of non-executive directors as a legal strategy of confronting conflicts of interest. Finally, the conclusion contains critical remarks and perspectives of the aforementioned analysis.

2. THE REGULATORY FRAMEWORK OF CORPORATE GOVERNANCE IN GREEK LEGAL SYSTEM

In Greece, the corporate governance framework of companies limited by shares – Societes Anonymes (SAs), which are only permitted to be accepted for trading on a regulated market according to the listing rules of articles 1-10 of L. 3371/2005 on Capital Market, consists mainly of legal rules established during the decade of 2000s, in order to enhance market's transparency, restore investors' protection and protect minority shareholders' rights. In fact, hard law rules were introduced due to severe corporate governance failures, identified as the key reason for underperformance of the Greek capital market (Spanos, 2005; Xanthakis, Tsipouri & Spanos, 2005). In that regard, empirical studies illustrate a remarkable decrease of the total value of transactions of the ASE (Athens Stock Exchange) capitalization between the years 1995-2002 (Hellenic Capital Market Commission, 2000, 2003). This decline is due mostly to speculative investments of the short term which created an increasing cycle of self-fulfilling expectations among investors (Spanos, 2004).

Thus, these regulatory initiatives refer to the transposition of EU directives into national law, establishing new corporate governance rules:

- Law 3698/2008 "Harmonization of the Greek legislation with the Directive 2006/43/EU on the mandatory control of the annual and consolidated accounts, the amendment of Directives 78/660/EC and 83/349/EC of the European Council and other provisions", transposing in the national legal system the 8th European Directive in company law, which mandates disclosure obligations regarding the ownership of companies as well as the creation of an audit committee in all listed companies.
- Law 3884/2010 "Transposition on Greek law of the provisions of the Directive 2007/36/EC of the European Parliament and of the European Council of 11 July 2006 on the exercise of certain rights of shareholders in listed companies…", incorporating in Greek law the provisions of "Directive 2007/36/EC of the European Parliament and of the Council on the exercise of certain rights of shareholders in listed companies", which enforces further obligations as regards disclosure of information to shareholders prior to general meetings.

Furthermore, the provisions of Law 3016/2002 on Corporate Governance establish core governance rules for listed companies, regulating: a) the duties and obligations of all members of the board of directors (article 2); b) the distinction of directors in three categories: executive members, non-executive members and non-executive independent members (articles 3-4); c) the remuneration of non-executive members (article 5) and d) the organization of the internal audit regulation and the internal audit service of these companies (articles 6-8). In that regard, we should point out that these rules are characterized, in some of the cases, by in concrete and inconsistent provisions, e.g. as regards the duties of all members of the board of directors as well as the duties of non-executive directors, which create legal uncertainty and constraint in a way the efficiency of the new corporate governance framework.

Moreover, the provisions of article 2 par. 1 Law 3873/2010 amending article 43a L. 2190/1920 on Societes Anonymes, incorporating into Greek legislation the regulations of Directive 2006/46/EC of the European Parliament and of the Council regarding the annual accounts and consolidated accounts of certain types of companies, mandate all companies admitted to trading on a regulated market, to include in their annual report a corporate governance statement, enforcing the regulatory framework as regards transparency and accountability of internal corporate governance structures.

In addition to legislation, self-regulation is a key factor of corporate governance best practices. In 1999, the Committee on Corporate Governance under the coordination of the Hellenic Capital Markets Commission (HCMC), inspired by the OECD principles on corporate governance, published a White Paper entitled "Principles on Corporate Governance in Greece – Recommendations for competitive competitiveness" (Principles on Corporate Governance, 1999). Furthermore, the Greek Federation of Enterprises' (SEV) initiative to publish a corporate governance framework known as "Principles of Corporate Governance by the Federation of Greek Industries" reflects the significance of self-regulatory measures. Recently, these initiatives have resulted in drafting the "Hellenic Corporate Governance Code for Listed Companies" by SEV in 2011, which was subsequently reviewed by the Hellenic Corporate Governance Council (HCG Council) in June 2013 (Hellenic Corporate Governance Code for Listed Companies, 2013).

Key objectives of the Code include: to provide general instructions to the board of directors on corporate governance best practices, to enhance board accountability and transparency, to improve shareholder information and activism, to enforce the internal control function and to establish three committees, namely nomination, remuneration and audit committee. The structure and content of the code facilitate the establishment of best corporate governance policies and practices for all companies limited by shares, whether or not admitted to trading on a regulated market. To ensure this scope, the code contains two types of provisions: general principles that are addressed to all SAs provide general guidance and are excluded from the "comply or explain" mechanism. The general principles are followed by special practices that apply only to listed companies and provide detailed and specific instructions, as regards the composition, role and function of the board of directors, as well as the committees. Furthermore, the code's main contribution to promoting transparency and disclosure consists in adopting the "comply or explain" approach, in accordance with the provisions of article 43 par. 3 sub. e' of L. 2190/1920 on Societes Anonymes, as amended by article 2 par. 2 L. 3873/2010. Specifically, according to the provisions of article 2 par. 2 L. 3873/2010, transposing in Greek legislation the rules of Directive 2006/46/EC, the "comply or explain" is a regulatory mechanism, which requires listed companies that choose to implement the Code as a reference framework to: (a) disclose its use as reference framework and either (b) comply with the special practices of the Code or (c) explain the reasons for non-compliance with specific provisions. The Hellenic Corporate Governance Code underlines, following best corporate governance practices, that "such explanation should not be limited to a simple reference to the principle or practice the company does not comply with but should be specific to the company's position, meaningful in that it provides a convincing rationale for the action the company takes, and finally understandable and persuasive" (Hellenic Corporate Governance Code for Listed Companies, 2013).

3. THE LEGAL STATUS OF THE BOARD OF DIRECTORS IN LISTED COMPANIES: LITERATURE REVIEW

3.1. The Enhancement of the Duties of Loyalty and Care

Furthermore, the aim of the study is to present the legal and regulatory framework of the board of directors in Greek listed companies with an emphasis on the enhancement of the general duties of loyalty and care. Under Greek company law, the board of directors in all companies limited by shares, whether or not admitted to trading on a regulated market, is the main administrative and advising body, elected by the general meeting of shareholders. According to the provisions of article 18 of L. 2190/1920 on companies limited by shares (Societes Anonymes – SAs), the board of directors is invested with decisional competence as regards the general management of the company and the accomplishment of its objectives (Alexandridou, 2012; Livada, 2010; Perakis, 2007). In that regard, academics point out the emergence of the monitoring and advising role of the board of directors, especially in listed companies, due to the existence of the one-tier system, prevailing in the governance of all companies limited by shares in the Greek legal system (Livada, 2016). This perspective should be considered below as regards the supervising role of non-executive directors in listed companies, as opposed to the executive and administrative role of executive members.

Generally, under Greek company law, board members in all Societes Anonymes owe a duty of loyalty towards the company and the shareholders, which requires that they should act with integrity and protect the confidentiality of the information which has not been revealed to the public (Livada, 2010; Sotiropoulos, 2003). Thus, the duty of loyalty, deriving from the general principle of good faith in civil law (articles 281 and 288 of Greek Civil Code), implies a specific duty of confidentiality, which mandates that all board members should not compete with the company during their tenure and avoid to occupy a position or endeavor any activity which could create actually or potentially any sort of conflict between the corporate interest and their personal interests (article 22a par. 3 L. 2190/20) (Alexandridou, 2012; Antonopoulos, 2012; Livada, 2010; Rokas, 2012; Sotiropoulos, 2003). Accordingly, this duty refers to the prohibition of occupying board or executive positions in competing companies, without the approval of the general meeting of shareholders.

The duty of loyalty is enforced as regards board members of listed companies, the provisions of article 2 par. 1 of L. 3016/2002 on corporate governance requiring explicitly, that board members have principally the obligation and the duty "to pursue constantly the enhancement of the long term economic value of the company and to promote the general corporate interest". This provision has raised significant debate in theory (Athanassiou, 2003; Aygitides, 2013; Pamboukis, 2003; Perakis, 2002), arguing the imprecision and incoherence of the formulation. In fact, academic literature sets forth that the aforementioned article is not adequately precise, as to the exact content of the obligation of all board members in listed companies "to promote the interest of the company". In that regard, academics consider that key objective of this article is not to incorporate stakeholder theory in the Greek legal system and point out the primacy of shareholder theory (Aygitides, 2013, Livada, 2010), considering that the maximization of shareholders' earnings is the dominant theoretical foundation of corporate governance in all listed companies. According to this approach, board members have principally the duty to improve the profitability of the firm, which refers to the maximization of the stock market value as well as the financial returns – cash flows to shareholders. In that way, the provisions of article 2 par. 1 L. 3016/2002, should not be interpreted as to establish a legally enforceable obligation of board members to protect the interests of other stakeholders.

In our opinion, the recently established theory of enlightened shareholder value (ESV) in the UK (according to the provisions of art. 172 of Companies Act 2006 UK as aforementioned), could apply accordingly in Greek legal framework on corporate governance, providing a complementary theoretical foundation of corporate governance key objectives. According to this perspective, ESV could be taken into account for the establishment of a diversified theory that lies in the intermediary between shareholder and stakeholder theory. More specifically, the approach aims at enlightening shareholder theory towards the area of corporate social responsibility (CSR), illustrating the importance of business ethics for enhancing corporate efficiency and profitability. Furthermore, we consider that this approach is implicitly embraced by the Hellenic Code of Corporate Governance, stating that "in discharging its role, the board in listed companies should take into account the interests of key stakeholders, such as employees, clients, creditors, and the communities in which the company operates as long as this does not go against the company's interests" (Hellenic Corporate Governance Code for Listed Companies, 2013).

Furthermore, under Greek company law, directors have a general duty of care to the company, implying their liability, personally as well as a collective body of administration, in case of any fault committed in the management of the company's affairs. However, this regime of board of directors' liability has been reformed since 2007 by the provisions of article 30 par. 2 L. 3604/2007 amending the provisions of article 22a par. 2 L. 2190/1920, so that their liability for faults committed during their tenure, should be excluded, as long as they can prove to have acted as prudent businessmen (business judgment rule), implying that "their business decisions were reasonable and taken in good faith, on the basis of adequate information and with the sole purpose of serving the company's interests" (Marinos, 2009, Mikroulea, 2013). The general principle of the duty of care applies accordingly to all board members of listed companies, regardless of their quality and position as executive or non-executive and non-executive independent directors. In that regard, the Code of Corporate Governance introduces special practices that aim to enhance the standard of the prudent businessman in listed companies: it explicitly requires that all board members should perform their duties with integrity and objectivity, as well as devote their personal skills and competencies to the accomplishment of their responsibilities. Accordingly, the Code recommends restrictions as regards the number of board members' appointments in other affiliated publicly listed companies. Furthermore, the duty of care implies that shareholders should be properly and adequately informed on the diligence of board members.

3.2. The Emergence of the Monitoring Role of Non-executive Directors

The legal framework regarding the composition and the duties of the board of directors in Greek listed companies is established in accordance with EU regulation, deriving from the "European Recommendation of 15 February 2005 on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board", as well as best corporate governance practices, in order to improve board accountability, transparency and enhance the effective functioning of the board (Hopt, 2015; Keay & Loughrey, 2015).

In that regard, the mandatory rules regarding the composition of the board of directors in listed companies with non-executive directors according to articles 3 and 4 L. 3016/2002 on corporate governance, illustrate an outstanding development in Greek legal framework. In fact, in order to ensure board balance, board efficiency and protection against conflicts of interests, the provisions of article 3 par. 1 of Law 3016/2002 on corporate governance, require that at least one-third of the members of the board of directors should be non-executive directors, of which at least two members should be independent. According to these provisions, executive members are engaged with the daily management of the company, while non-executive members are not invested with any executive responsibilities. The quality of board members as executive or non-executive is determined by the board of directors and validated by the general meeting of shareholders.

Independent directors are non-executive members, invested with certain independence criteria, required by article 4 par. 1 L. 3016/2002, in order to ensure the independence of mind and action, most importantly in tasks where there is a potential for conflicts of interest. In that regard, independent non-executive members are not permitted "to own more than 0.5% of the company's share capital or to have a relation of dependence with the company or persons related to the company". Independent members are appointed by the general meeting of shareholders. The board is obliged to determine whether individual candidates meet the criteria of independence before their election by the general meeting of shareholders.

The Greek Code of Corporate Governance, in line with the context and the scope of L. 3016/2002, provides for supplementary criteria of independence: for example, it requires expressly, that "independent board members should not be connected to the company or its major shareholders either directly or through other parties". Moreover, the Code requires a higher proportion of non-executive and independent non-executive directors than established by L. 3016/2002, in accordance with best corporate governance practices: a majority of non-executive directors including independent non-executive directors and at least two executive members. Accordingly, the Code underlines that diversity in the board's composition is an important factor that facilitates the effective fulfilment of directors' responsibilities. It is worth mentioning that in order to enhance transparency as well as accountability the Code provides that the corporate governance statement should include information on the board's composition, the names of the chairman, the vice-chairman, the chief executive as well as the names of the members of all board committees. In addition, the corporate governance statement should mention the tenure of each board member.

This regulatory framework is consistent, as aforementioned, with key objectives of corporate governance in Greek legal system, to embrace board accountability, transparency and efficiency. However, the rules of L. 3016 /2002 on corporate governance do not provide for a precise and concrete description of the role and duties of non-executive and non-executive independent directors (Athanassiou, 2003; Livada, 2016; Tellis, 2004; Tountopoulos, 2005). In that matter, we should point out that L. 3016/2002 regulates explicitly only the power of independent directors to prepare and submit separate reports, as opposed to those of the board of directors, to the general meeting of shareholders (art. 4 par. 2 L. 3016/2002). Moreover, according to the provisions of art. 7 par. 2 L. 3016/2002, internal auditors should be supervised by one to three non-executive directors. According to academics, the ratio of these provisions implies regard to the monitoring function of non-executive and non-executive independent directors towards the executive directors as well as the internal audit service (Athanassiou, 2003; Livada, 2016; Rokas, 2012; Tountopoulos, 2005). In that regard, non-executives are invested with the general duty to supervise the executives in the management of the company, which is in accordance with the general conception of the role of the NEDS and non-executive independent members as a legal strategy to control agency problems (Bainbridge, 2012; Armour, Hansman & Kraakman, 2017b). In fact, the composition of the board of directors with external directors i.e. independent directors is considered as an effective mechanism to prohibit conflicts of interest among corporate constituencies, including conflicts between controlling shareholders and managers or between majority and minority shareholders (Armour, Hansman & Kraakman, 2017b; Pargendler, 2016).

According to this approach, the independence of action and state of mind which is endogenous typically and functionally to non-executive independent directors' quality, assures board balance and control of conflicts of interests between majority and minority shareholders. This conception is particularly important in Greek regulatory framework of corporate governance, where agency problems concern mainly the second type of conflicting interests, implying that large shareholders are using their controlling position to appropriate private benefits of control at the detriment of small shareholders. In fact, it is well established by empirical studies that most firms in Greece are controlled by large shareholders (Spanos, 2004), whereas ownership dispersion is at a lower level. Academics in accounting point out that the ownership structure of Greek companies is characterized by high concentration, particularly in the form of family ownership (Ballas, Sykiannakis, Tzovas, & Vassilakopoulos, 2014). In that regard, owners and large shareholders of the companies are most actively involved in the management of the company by occupying important positions such as CEO or executive directors' positions in the organizational structure of their firms. Thus, Greek regulatory framework could provide an outstanding example, as regards the monitoring role of non-executive independent directors as a legal strategy to protect minority shareholders.

This approach, as regards the monitoring role of non-executive directors, entails regard to liability issues according to corporate law. In that regard, art. 22a par. 2 L. 2190/20, as amended by L. 3604/2007, stipulates that all board members are collectively liable towards the company for any fault committed in the management of the company. Specifically, art. 22a par. 2 sub.a' of L. 2190/20 provides that the personal liability of the directors for any breach of their duties shall be joint and several. However, the following subparagraph b' of art. 22a par. 2 L. 2190/20 provides that, in establishing each director's personal liability, the specific duties entrusted to each director should be taken into consideration. According to some academics, the latter provision should be considered as regards listed companies, in relation to the diversified duties of the directors deriving from their quality as an executive, non-executive and non-executive independent member (Alexandridou, 2012; Antonopoulos, 2012; Livada, 2016; Marinos, 2009; Rokas, 2012). Thus, non-executive members should not be held liable for breaching a duty that concerns rationae materiae the management of the company. On contrary, we should consider that non-executive directors, as well as non-executive independent directors, could incur their personal liability, in case of breaching a duty in their monitoring role of the executives. In that regard, we should point out that non-executive members should be adequately and properly informed, in order to be able to exercise effectively their supervising role of the executives. This implies the emergence of a specific duty of non-executive members to request for information regarding the company's affairs and consequently to vote in shareholders' meetings against decisions which do not promote the interests of the company (Livada, 2016; Mikroulea, 2016; Triantafyllakis, 2010). Accordingly, non-executive directors should be opposed to the accomplishment of actions by executives at the detriment of the corporate interest.

4. CONCLUSION: CRITICAL PERSPECTIVE

The legal framework regarding the specific role and duties of board directors in Greek listed companies relies primarily on the formal and conceptual distinction between internal executive and external non-executive directors, in accordance with the conception that external directors due to their independence of action and mind are prima facie qualified to confront conflicts of interest. In that regard, hard law rules have been established, which provide explicitly for the formalities of this distinction as well as the qualification of non-executive independent directors. However, academics in company law are particularly preoccupied with the conceptual and functional role of non-executive and non-executive independent directors, due to the legal inconsistencies and the imprecision deriving from the literal interpretation of these provisions. Thus, the emergence of the monitoring role of non-executive directors, according to the ratio of these provisions, contributes to revealing the substantial role of non-executive directors as a legal strategy to control agency problems. Moreover, the Hellenic Code of Corporate Governance for listed companies provides for supplementary and more precise instructions as to the specific role of non-executive directors, which aim at enhancing their supervising role.

However, this functional and legal analysis illustrates the general framework of the role of non-executive directors and should be the object of empirical studies as to the specific content and evaluation of the efficiency of non-executives' role in listed companies. Moreover, the aforementioned analysis regarding the personal liability status of non-executives as well as executive directors has not yet been treated by Greek civil courts, in order to implement the functional distinction between executive and non-executive directors in case of breach of their duties and obligations. Therefore, these theoretical conceptions should be specified in the future in order to create a more reliable and comprehensible framework of the board of directors' function in listed companies.

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