

QUO VADIS EUROPEAN TRUE AND FAIR VIEW? THE INTEGRATION OF CONTINENTAL EUROPEAN AND ANGLO-SAXON STAKEHOLDER PROTECTION INTERESTS

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Abstract

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The European Accounting Directive 2013/34/EU stipulates the “true and fair view” as an essential principle of financial accounting. Since the original European implementation of the true and fair view principle, there was a controversial discussion on what exactly a true and fair view means in special cases, as well as how and where to meet this principle. Continental European countries, such as Germany, engaged in a fundamental discussion of the true and fair view as an Anglo-Saxon principle due to its conflict with the principle of prudence. Therefore, this paper outlines the different stakeholder protection interests of the true and fair view principle and the principle of prudence by means of agency theory. Over time this conflicting discussion enriched by the jurisprudence of the European Court of Justice (ECJ), emerging an autonomous European true and fair view principle. The contributions of the ECJ's case law to a common and conclusive European true and fair view principle will be pointed out. However, it is the paper's objective to show the development of the European true and fair view principle with its conflicts and the current interpretation of the principle by the new European Accounting Directive. Further, the paper outlines conceptual suggestions on the European true and fair view principle in the interest of predicting how this principle may transform in the future. Hereby the IAS/IFRS-orientation plays a major role in influencing the future development of the true and fair view principle. As a result the paper presents the European solution of solving the conflict between the principle of prudence and the true and fair view principle in respect of both, shareholder and creditor protection interests.

Keywords: European Accounting, True and Fair View Principle, European Jurisprudence, Creditor Protection, Shareholder Protection, Principle of Prudence.

1. INTRODUCTION

The current interpretation of the European true and fair view principle is readily seen in the European Accounting Directive (European Parliament and Council of the European Union, 2013). This interpretation has a long history of discussion and jurisprudence in many European countries, dating back to the Fourth European Accounting Directive (Council of the European Communities, 1978). A conflict arises from two legal areas with different focuses for protecting stakeholders. While the continental European legal interest is to protect a firm's creditors by the

principle of prudence, the Anglo-Saxon legal interest is to protect a firm's shareholders by an expanded and decision-relevant information basis. Since both protection interests are directly linked to agency theory, this paper starts in chapter 2 by illustrating the theoretical framework of both legal areas and their reasonable protection interests.

The normative question of the stance of European accounting regarding the conflict between the continental European and the Anglo-Saxon accounting principles is of particular interest. While some authors argue against a pure orientation on the true and fair view principle (Palea, 2014) especially nowadays in the context of

economic and financial crises (Ryan, 2008), most authors argue for a strict orientation on the true and fair view principle in favor of delivering a decision-useful information basis (Penman, 2007; Benston, 2008). Since Germany, as a representative continental European country, has expanded creditor protection in its commercial law and has a unique way of combining this creditor protection interest with the true and fair view principle, this paper will focus on Germany as an outstanding example of dealing with this normative problem. As a result of the European harmonization of financial accounting, the German principle of prudence codified in Article 252, Sec. 1, No. 4 of the German Commercial Code (GCC) was in conflict with the true and fair principle as implemented by the Fourth European Accounting Directive (GCC Article 264, Sec. 2). German legislator determined to solve discrepancies between these two fundamental principles of financial accounting by means of GCC Article 264, Sec. 2, Sentence 2, which requires that additional information for fulfilling a true and fair view not included in the balance sheet or the profit and loss statement be shown in the notes. This method of providing a true and fair view reflects the decoupling hypothesis developed by Moxter (1979) as a result of a long, fundamental, and ongoing discussion of the true and fair view principle (Paea, 2014; Walton, 2015; Fülber and Klein, 2015).

In this context, this paper will outline the process by which European regulation affects national law and how national law itself affects later regulation, leading in turn to an autonomous, collaborative, European norm-setting. After chapter 2 illustrates the theoretical framework of Continental European and Anglo-Saxon stakeholder protection interests, chapter 3 is divided into three sections. First, analyzing the rivalry between shareholder protection and creditor protection interests using the example of Germany, as the economically most relevant Continental European country. Hereafter the common European integration of both protection interests is shown. As the last step this paper outlines future perspectives for the development of the European true and fair view principle, what forms the focus of the present investigation. It is the aim of the paper to show the development of an autonomous European true and fair view principle and to evaluate its effectiveness in relation to different stakeholder protection interests. Conclusively, future perspectives for the European true and fair view principle will be shown.

2. THEORETICAL FRAMEWORK

2.1. Agency Theory

As a theoretical framework for shareholder and creditor protection as the main functions of financial accounting agency theory is used. This section will provide focused, theoretical insight into agency theory for the purpose of investigating the true and fair view principle, although general theoretical considerations are not the focus of this paper. Rather, it aims to present a direct application of the agency theory to the protection interests of the EU Accounting Directive and its main conflicts, with reference to the relevant

literature (Ross, 1973; Jensen and Meckling, 1976; Jensen, 1983).

In the classical case - the one-stage principal-agent relationship - there is a relationship between the equity holder of a company (principal) and the employed company management (agent) (Jensen, 1983). Within this relationship, the principal is confronted by pre-contractual and post-contractual information asymmetries. The principal cannot estimate *ex ante* whether the personal (hidden) characteristics and the intent (hidden intention) of the agent are implicitly aligned to their own goals (Antle, 1982). This pre-contractual uncertainty can lead to an adverse selection in choosing an agent (Akerlof, 1970). The principal can counteract this risk by means of a detailed and accurate screening of the agent or the agent can credibly demonstrate comparative advantages (signaling) (Antle, 1982). Post-contractual, principal-agent conflict is characterized by behavior which is not in the interest of the principal (hidden action) as well as by an agent's selective information policy (hidden information) which could be used by the agent in an opportunistic manner. A problem arises *ex post* due to incomplete control possibilities and incomplete contracts whereby the adverse behavior of the agent cannot be detected or suppressed (moral hazard). The principal can counteract this problem of divergent objectives by monitoring the agent. A further measure to narrow the principal-agent conflict is incentive-related compensation (bonding) of the agent, whereby the principal's goals form the value driver for the agent's compensation. All variants of incentive agreements are connected to control costs, which the principal tries to minimize (for this section, see Jensen and Meckling, 1976; for an brief overview on literature, see Freidank, 2012).

However, the fact that the principal-agent relationship is not limited to one level but is instead comprised of multi-level relationship complexes is taken into account by literature through further integrative developments of principal-agency relationship constructs (e.g., Freidank and Pasternack, 2011).

2.2. Shareholder protection: Information function of financial accounting

Within the framework of agency theory, the information function of financial accounting is substantiated (also) by shareholder protection interests. Following this line of argumentation shareholders are only in need of financial accounting information because of the deviation between ownership (shareholders) and control (corporate management). To lower - or, ideally, to eliminate - the resulting asymmetries of information between shareholders and management, the firm must provide financial information to its shareholders (Jensen and Meckling, 1976). Financial accounting plays a decisive role in reducing the information deficit of the shareholders and thus contributes to their protection (Küting, 2006). The information contribution aspect of financial accounting is, as mentioned above, related to the post-contractual principal-agent conflict and thus to the problem of hidden actions and hidden information. The following points show how the principal-agent relationship - and with it, the need of the

shareholders to prevent or mitigate conflict - leads to a differentiated and multi-level information requirement which is often codified in existing law.

As a first step there is the need for the existence of financial accounting information. A firm's financial information must be made accessible to a multitude of shareholders who - because of their great number and variety - cannot be determined in concrete terms. Financial accounting provides the basic information of a firm, diminishing the information asymmetry of hidden actions. This primary information requirement is expressed in the firm's legal obligation to prepare and publish financial statements.

Secondly, the provided financial information must be effectivity, thus free from a selectively opportunistic information policy (hidden information) imposed by the firm's management. To ensure the accuracy of the management's provided information; control over this information must be delegated to an external party. Depending on the type and size of a firm, a supervisory board and validation of the financial accounting information by an auditor may be required. Furthermore, by arranging additional and/or special audits, the shareholders can also control the accuracy of a firm's information at a self-selected (higher) level.

Third, it comes to the efficiency of financial accounting information. While the first two points, existence and effectivity, are theoretically based on the information function of financial accounting, they are useful to protect shareholders, although by no means are they exclusively or mainly so. The informational character of financial accounting also serves to protect creditors. The factor which distinguishes shareholder protection from creditor protection within the financial accounting-related information function is the intention of the information. This is where the link to the true and fair view principle comes into play. In addition to the unconditional requirements that shareholders receive accounting information (existence) and that the given information comply with legal requirements with sufficient certainty (effectivity), their decision usefulness is of paramount importance to the shareholders. In the context of principal-agent conflict, shareholders' information is efficient when it reflects the actual economic situation of a company such that one may appropriately recognize whether the company's management is acting in favor of the shareholders (Ijiri and Jaedicke, 1966). For creditors this might not be the case, since the principle of prudence in terms of implying a cautious dividend policy is efficient for creditors. In contrast to the requirements of existence and effectivity, the requirement of efficiency may compete with creditor protection, since a decision's usefulness can sometimes preclude cautious financial accounting (Baetge et al., 2011).

The information function of financial accounting with the aim of shareholder protection can be demonstrated within the scope of agency theory. The efficiency of financial accounting, achieved through information usefulness by providing a true and fair view of a firm, is essential for shareholder protection purposes but may conflict with the goal of creditor protection. In cases of conflict, legislation should define which

function should prevail. A legal assessment of these conflicting interests could be framed in two ways. While Anglo-Saxon countries define shareholder protection as the overriding concern, Continental European countries define creditor protection as overriding. This paper addresses this conflict in the context of a normative discussion to determine an autonomous European true and fair view principle.

2.3. Creditor protection: Prudent distribution as a function of financial accounting

Creditor protection is determined primarily by the creditor's objective. While shareholders pursue an increase in the value of their shares (shareholder value approach), the interest of the creditors is a secure continuation of the firm so that timely interest payments and repayment are guaranteed (Küting and Reuter, 2004). Due to their differing objectives, these two stakeholder groups hold diverging views on a firm's accounting policy implying a diverging dividend policy (Jensen and Meckling, 1976). However, even when a company's creditors, in the context of their financing function, are fundamentally similar to its shareholders, the two stakeholder groups differ in their influence on the firm's management. While shareholders have direct influence on firm management, such influence often does not exist for the creditors. Since there is an adverse client-contractor relationship between the creditors and a firm's management, the creditors are often not in the position to influence the firm's management (Horn, 2011). However, creditors may influence the principal-agent relationship between shareholders and the firm's management by means of the so-called "agency costs of debt" (Jensen and Meckling, 1976). The resulting influence is explained below with reference to the three points of the agency cost of debt.

1) The incentive effect of debt capital: With increasing loans, the risk-taking capacity of shareholders increases, as they are directly affected by the profits and losses of a risk-bearing investment. In contrast, the providers of debt capital (mostly banks) receive only the agreed-upon interest payments by full risk-taking, regardless of a risk shift from the invested capital (Jensen and Meckling, 1976). This asymmetric risk-benefit structure leads to an increasing degree of risk in correspondence to a higher level of debt capital. With higher loans, it is possible for a firm's management to engage in risky investments whereby the profits favor the shareholders but the risk is shared by shareholders and debt holders (Jensen and Meckling, 1976).

2) The control costs resulting from the incentive effect mentioned in 1): In order to prevent the creation of an incentive structure described in 1), lenders may insist upon elaborate contracts prohibiting a firm's risk-averse action by contract. Debt holders must subsequently verify compliance with the contracts and ensure their enforcement. The costs of contract drafting and enforcement (costs of control) must be weighed against their benefits. The costs of control must take account of a firm's risk-taking capacity, which also increases as a result of the incentive structure explained in 1) with an increase in debt capital. Debt holders may include increased costs of

control resulting from increases in debt capital by demanding higher interest payments when lending more capital. This risk adjustment by influencing the interest rate will be anticipated by a firm's management such that it will consider using its own equity to raise capital (capital increase) as more cost-effective than borrowing when the interest rate rises to a certain level. There is also the possibility of debt holders exerting too much influence on a firm's management in the case of excessive debt capital. Debt holders possessing too much influence may result in overly restrictive investment behavior by a firm's management, ignoring risky but ultimately positive investments, which could lead to the so-called "underinvestment problem" and negatively affects debt holders' objective of a firm continuation (for this section, see Jensen and Meckling, 1976; for a discussion of the "underinvestment problem," see Myers, 1977).

3) The costs of insolvency: Finally, potential insolvency costs are also included in the calculation of the interest rate and are weighted by the debt holders according to the probability of insolvency (Jensen and Meckling, 1976).

As seen in the above explanation of the "agency costs of debt," an implicit principal-agent relationship is present between debt holders and a firm's management (Jensen and Meckling, 1976). This relationship, which is also characterized by information asymmetries (Horn, 2011)³⁰, underscores the information function of financial accounting for debt holders (Horn, 2011). One might wonder why there is a special need for creditor protection, when creditors are able to take a firm's risk profile into account by setting the loan interest rate. In the context of the implicit principal-agent relationship, creditor protection becomes a valid interest only by considering the shareholders' limited liability. This is because the limitation of liability on a firm's assets incentivizes its shareholders to create an extensive dividend policy in order to transfer profits as quickly as possible to their private assets (Nikoleyczik, 2007). This allows a firm's shareholders to partake in realized profits and avoid liability. Shareholders decision to distribute firm's profit to their private assets may occur at the expense of the creditors (Nikoleyczik, 2007). This circumstance puts creditors in a subordinate position, as evidenced repeatedly in history (Velte and Köster, 2009), thus theoretically and historically substantiating the need for creditor protection (Homfeldt, 2013). Given this, prudent financial accounting should be the basis for restrictive profit distributions by shareholders to protect creditors (Küting and Reuter, 2004).

3. DIRECTION OF THE EUROPEAN TRUE AND FAIR VIEW

3.1. Anglo-Saxon vs. Continental European true and fair view

According to agency theory, both creditor and shareholder protection interests can be deduced which justifies the information function as well as

the distribution function of financial accounting. In particular, the information function of financial accounting benefits shareholders but also intersects with creditor protection interests³¹. The obvious conclusion would be that a parallel consideration of both legitimate interests is ideal. However, a computationally-defined accounting in the interest of the shareholders may sometimes conflict with the goal of creditor protection (Velte and Köster, 2009), potentially establishing a conflict of interest in a simultaneous implementation of both objectives. The various accounting principles set forth by EU member states focus on the protection of two categories of interests. Anglo-Saxon-influenced legislation values shareholder protection interests, focusing on accounting information relevant to decision-making. Continental European legislation favors creditor protection interests, focusing on shareholders restrictive profit distribution. Since the European Union pursues a harmonization of the financial accounting of their member states, these different financial accounting regimes stand up against each other from a European legislation point of view (Jessen and Haaker, 2013).

Article 4(3) of the EU directive sets out the "true and fair view principle", which was previously codified in GCC by Article 264, Sec. 2, Sentence 1³². Even if this principle, derived from the Anglo-Saxon legal area³³, was first regarded as a contradiction to the German legal tradition (e. g., Küting and Lauer, 2011), the idea of decoupling the "true and fair view principle" found its place in German commercial law (Beisse, 1996). The notion of decoupling the principle is based on Moxter and states that the information function with the aim of shareholder protection is to be fulfilled by the notes as an integral part of the annual financial statement, decoupled of the core components of the annual financial statement (balance sheet and profit and loss statement) which are meant to fulfill a distribution function in order to protect creditors (Moxter, 1979). However, the main conflict created by GCC Article 264, Sec. 2, Sentence 1 remains, as the legislation attempts to protect opposing interests (Reiner, 2013). In German legislation, traditionally the focus was and remains on creditor protection (Moxter, 1978), which is reflected in the restrictive implementation of the true and fair view principle in German law (Beisse, 1996). This German approach in implementing the true and fair view principle generated much discussion about the divergences as well as the advantages and disadvantages of the German true and fair view principle, characterized by the principle of prudence and the decoupling hypotheses (Luttermann, 2013); and the Anglo-Saxon true and fair view principle, characterized by the "fair value" valuation (Zwirner, 2007) for decision-making (Evans, 2003; Zwirner, 2007; Homfeldt, 2013). However, this discussion seems to be solved in a very separate European version of

³¹ In addition to the argumentation of section 2.3, shareholders may also have an interest in a restrictive and protective distribution function of the financial accounting in order to ensure a sustainable firm continuity against possible extensive distortions of dishonest shareholders.

³² This codification is based on the European requirement of Article 2 (3) of Directive 78/660/EEC, which has been implemented in Germany within the framework of the so called "Bilanzrichtliniengesetz" (BilRiLiG) (Reiner, pp. 241 and 270).

³³ The true and fair view principle was first established in the Anglo-Saxon jurisdiction in Article 149 section 1 of the Companies Act of 1948, which has now been incorporated into Article 266 section 2 of the Companies Act of 1985 (Reiner 2013, p. 263).

³⁰ The extent of information asymmetry depends on the degree of debt capital, as long-term debt holders also have strong co-determination rights, especially in the case of extensive debt capital financing. A typical example for strong co-determination rights is the traditional house-bank relationship.

the true and fair view principle (Ordelheide, 1993; for legislation, see European Court, 1999; European Court, 2003).

3.2. The German integration of the true and fair view principle

Up to now the true and fair view principle in German commercial law has not had the function of an overriding principle (Beisse, 1996). In the course of implementing the old Fourth EG directive (Council of the European Communities, 1978), the German legislature justified its own method of implementation (Beisse, 1996). The so-called “principles of proper accounting-reservation” (Jessen and Haaker, 2013) have been established; the GCC states that a “true and fair view” is to be ensured only “in compliance with the principles of proper accounting” (GCC, Art. 264, Sec. 2, Sentence 1). Thereby the principles of proper accounting include the principle of prudence with its creditor protection objective. Without such a reservation prescribing that the principle of prudence needs to be fulfilled by providing a true and fair view, in a conflict between the principles of proper accounting and the true and fair view principle, the legal principle “*lex specialis derogat legi generali*” (Larenz, 1991) would imply that the specific rule³⁴ of the true and fair view principle prevails over the principles of proper accounting, and in particular over the principle of prudence (GCC, Art. 252, Sec. 1, No. 4) as a general norm (Beisse, 1996). But even if the “principles of proper accounting-reservation” solves the conflict between the true and fair view principle and the principles of proper accounting, a conflict remains if, in compliance with the principles of proper accounting, no true and fair view can be ensured. Since the Fourth EG directive requires a true and fair view in any case, such a result - not ensuring a true and fair view - would fail to meet the required European standard (Najderek, 2009). The legislature counteracted this result - which would be unsatisfactory for the European standard setter - with GCC, Article 264, Sec. 2, Sentence 2, which stipulates that the true and fair view in such conflicting cases should be made via the notes as part of the financial disclosure (Jessen and Haaker, 2013). This legislation gave great significance to Moxter’s (1979) decoupling hypotheses, according to which the information given for the preservation of the true and fair view should be presented decoupled from the balance sheet and profit and loss statement in the notes (Alexander and Eberhartinger, 2009). In analyzing how German standardization can coincide with the new EU Accounting Directive (Kreipl, 2013), the EU Accounting Directive’s correspondence table states that Article 4, Sec. 3 of the EU Accounting Directive is not meant to strengthen the true and fair view principle, its implementation, or its effect; rather, it should replace Article 2 Sec. 3 of the old Fourth EG directive. For the German legislator who implements the true and fair view principle in the GCC due article 264 Sec. 2 sentence 1 GCC as a consequence of the old Fourth EG directive, no

change may arise. This corresponds to the prevailing opinion in literature (Winkeljohann and Schellhorn, 2011), although differing interpretations remain (for a review on different voices in literature, see Reiner, 2013). It can be assumed that the EU follows the German way of implementing the true and fair view principle and thus the decoupling hypotheses (Velte, 2013). Whereas the old Fourth EG directive required only “additional information” (Council of the European Communities, 1978) needed to present a true and fair view have to be included into the notes, the new EU Accounting Directive states that “all additional information should be made in the notes” (Article 4, Sec. 3; European Parliament and Council of the European Union, 2013) to ensure a true and fair view. This development of the European “true and fair view” principle will be discussed in the following section.

3.3. Quo vadis European true and fair view?

As early as 1993, Ordelheide spoke of the true and fair view principle as “an autonomous European norm” (Ordelheide, 1993) in the context of the old Fourth EG directive, which is by no means to be interpreted in terms of the Anglo-Saxon legal tradition due to the literal “congruence” (British Companies Act, Art. 266, Sec. 2, 1985) in the British legislation (Ordelheide, 1993). The Anglo-Saxon legal tradition’s ambiguous interpretation of the principle would forbid such an approach (Streim, 1994). In line with the EU’s harmonization mandate (Art. 114 in conjunction with Art. 26 and Art. 115 Treaty on the Functioning of the European Union (TFEU); for critics, see Weiss, 2011), the EU Member States’ financial accounting laws are to be examined teleologically and analyzed compared to each other in order to determine the European legal concept of the true and fair view (Reiner, 2013). Such a process of analysis must depend substantially on case law and, to a lesser degree, on academic literature (European Court, 1996; European Court, 1999; European Court, 2003, for literature see Reiner, 2013). For the scientific discussion, the (further) development of the European true and fair view principle is particularly concerned with its relationship to the principle of prudence (Jessen and Haaker, 2013). In this context, the above-mentioned conflict between shareholder and creditor protection interests plays an elementary role, although European legislators assumed that the application of the directive itself would ensure a true and fair view and that a conflict could arise only in exceptional cases (European Commission, 1998). Although only exceptional cases are named, their special mention makes clear that the possibility of conflicting objectives was recognized by legislators, albeit insufficiently regulated. The question of which interest should be favored in cases of the application of competing general principles, such as the principle of prudence and the true and fair view principle, can be derived from three relevant cases in the European Court of Justice (ECJ) in 1996, 1999, and 2003 (Najderek, 2009). These cases essentially represent the jurisdictional development of a European true and fair view principle (European Court, 1996; European Court, 1999; European Court, 2003).

³⁴ The true and fair view principle has been discussed with some controversy with regards to the principles of proper accounting in literature. The prevailing opinion posits that the true and fair view principle, given its specific application to corporations and not all merchants, is not seen as a general standard but rather a specific, supplementary regulation (Beisse 1996, pp. 45–47). For a critique of this opinion, see Reiner (2013, p. 271).

Firstly, in all three judgments, the ECJ highlights the overwhelming importance of the financial statements' truth (European Court, 1996; European Court, 1999; European Court, 2003) and makes clear that it should be "as far as possible oriented on the general principles contained in Article 31 of the Fourth Directive" (European Court, 1996). However, it also acknowledges the need to break such general principles in exceptional cases in order to ensure a true and fair view (European Court, 1996). This alteration of principles is justified when needed to create a true financial statement, but the Court does not state where in the financial statement to show the required information.

In 1999, the ECJ concretized the legal understanding of the true and fair view principle, stating that breaching individual rules was justified only insofar as "the interest of the corporation" (European Court, 1999) were not affected (European Court, 1999). The stakeholders' interest in a company should be included equally, especially considering shareholder and creditor protection interests. The court's ruling in this case would extend to an equivalent consideration of the interests of shareholders and creditors, requiring decision-relevant information to be shared and restrictive capital distribution to be ordered (Reiner, 2013). This opinion of the ECJ was, however, only made clear in 2003 in the so-called "Banque internationale pour l'Afrique occidentale SA (BIAO)-decision". In this judgment, the principle of prudence was exposed as an individual norm and as derived from the true and fair view, which was to be found, in particular, in combining the balance sheet, the income statement, and the notes to one consistent unit (European Court, 2003). On the basis of this decision rendered by the highest court, literature argued that the principle of prudence, with its aim of creditor protection, could only be reflected in the quantitative parts of annual financial statements and, therefore, in the balance sheet and profit and loss statement, while information necessary to represent a true and fair view could also be shown in a qualitative way as part of the notes (Reiner, 2013). As a result, the European true and fair view principle attempts to settle the conflict between shareholder protection and creditor protection interests equal consideration in financial accounting, whereby the principle of prudence is to be given priority over the quantitative part (balance sheet and income statement) of the annual financial statements (e.g., Najderek, 2009).

An assessment of the future application of the European legislation and potential need for adjustments requires serious contemplation of the increasing International Financial Reporting Standards (IFRS) and/or International Accounting Standards (IAS) orientation in European enacting of accounting law (Reiner 2013). A discussion of this matter emerged from the ECJ's BIAO-decision of 2003 (see Dziadkowski, 2004). In this decision, the ECJ stated that, in interpreting issues of European directives, it is primarily necessary to go back to the relevant rules of the EU member states' law, but in absence of such rules, the IAS/IFRS should be taken into account (European Court, 2003). In

an example of this approach, the Fiscal Court of Hamburg considered the IAS when evaluating a controversy on provisions in the sense of representing a true and fair view (Fiscal Court of Hamburg, 2003). But the Federal Fiscal court of Germany overturned the ruling of the Fiscal Court of Hamburg for formal reasons, without going into the question of whether - in absence of relevant rules of the EU member states' law - an interpretation of the EU accounting principles by involving the IAS/IFRS is generally permissible (Federal Fiscal Court of Germany). In literature, this outlined approach in jurisprudence - involving IAS/IFRS for interpreting European standards - is even seen as a paradigm shift in the sense of European accounting principles orienting on IAS and IFRS (Reiner, 2013). Such a strong IAS or IFRS orientation - by closing gaps in European standard setting in including IAS/IFRS - cannot be seen in the light of the new EU accounting directive; instead the EU is holding on to its own so far existent interpretation of the true and fair view principle. Nonetheless, a possible future need for European adjustments can be seen in particular in an increasing reliance upon IAS and IFRS.


Table 1 incorporates the contribution of the paper's chapters and gives an overview for the main research results.

4. CONCLUSION AND FUTURE PERSPECTIVES

The conflict between the fundamental interests of financial accounting (shareholder and creditor protection interests) plays a key role in applying the true and fair view principle. In addition, providing a true and fair view may conflict with the principle of prudence in the context of both European and German legislation. European financial accounting has developed, in particular in ECJ case law. At the European level, the information and distribution functions of financial accounting have historically been given equal importance. However, interpretation of the new European Accounting Directive leans toward integrating the information function within the notes of financial statements. This approach, which makes use of the German decoupling hypotheses (Moxter, 1979), facilitates a European integration of two fundamental principles of financial accounting with a more comprehensive consideration of a stakeholder protection interests.

The paper's results are limited to European countries that are involved into the European harmonization process, and which national regulatory framework contains financial accounting principles that are, e. g. due to other protection interests, in conflict to the true and fair view principle. Further, research implications are limited to conflicts arising in the context of the true and fair view principle regarding its transposition not its effectivity within a national legal area. Since the implementation of the true and fair view principle is obligatory for EU member states, the paper is limited to the question of transposing the true and fair view principle into national law without violating other financial accounting principles.

Table 1. Research results for the investigation on the integration of Continental European and Anglo-Saxon legal tradition to a conclusive true and fair view principle

<i>CONTINENTAL EUROPEAN</i>		<i>ANGLO-SAXON</i>
Principle of prudence	<i>Dominant principle</i>	True and fair view principle
Creditor protection	<i>Theoretical aim</i>	Shareholder protection
Agency Theory (esp. between creditor and management)	<i>Theoretical framework</i>	Agency Theory (esp. between shareholder and management)
Prudent profit distribution	<i>Economic transition</i>	Decision usefulness
In many ways the true and fair view principle also contributes to creditor protection, but fails to restrict shareholder's profit distribution.	<i>Contradiction between both principles</i>	In many ways the principle of prudence also contributes to shareholder protection, but restricts decision usefulness.
Decoupling hypotheses: Principle of prudence in balance sheet and p&l; true and fair view principle in notes	<i>Legal integration</i>	True and fair view principle as fundamental for all parts of the financial statement
		
<i>ECJ case law</i>		
True and fair view principle is exposed as an individual norm, but <i>only</i> needs to be met in union of balance sheet, p&l and notes. Therefore, decoupling the true and fair view principle is permitted.		
<i>EU Accounting directives</i>		
The new European Accounting Directive 2013/34/EU combines both principles as fundamental and equally principles (see recital 9, Directive 2013/34/EU).		
<i>European solution</i>		
Priority of the principle of prudence in the quantitative parts, but priority of the true and fair view principle in the qualitative part(s) of the financial statement. Simultaneous consideration of both principles.		
<i>Future perspectives</i>		
In absence of relevant rules of EU member states' law in interpreting issues of European directives the IAS/IFRS could be taken into account (controversial).		

While European legislation has enacted the IFRS-adoption for consolidated financial statements of public interest entities, it remains to be seen what the future application of the European true and fair view will be. Since there are indicators that there could be an orientation of the European harmonization process in accounting onto the IAS/IFRS, such an approach would neglect the principle of prudence and with it, creditor protection. One further substantial argument for equal consideration of the principle of prudence and the true and fair view principle is the impact of economic and financial crises (Palea, 2014), in which, due to the principle of prudence, firms cautious about distribution have greater equity than firms not considering the principle of prudence and therefore had greater profit distribution in the past resulting in lower equity. The principle of prudence thus contributes to firms' financial sustainability without reliance upon governmental assistance, which supports creditors as well as long-term oriented shareholders.

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