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## CORPORATE GOVERNANCE IN STATE-OWNED COMPANIES IN HUNGARY

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*From the development to the comprehension of the regulation it is necessary to ascertain, in our view, the subject of the regulation is the operation of the company. The regulation regulates the problems arising specifically during the course of the operation of the company, as an “ex ante” tool and by the avoidance of that upon the cessation of the public company, any unjustified or inconceivable costs (social costs) should rise. As an example, there are the infamous earlier corporate scandals (Enron, Parmalat, Vivendi Universal), the infringements of which drew critical social (budget) costs, as they left behind unsettled creditors’ claims, and plenty of workplaces were terminated, etc. To prevent this, one of the techniques is corporate governance, as it focuses on such mechanisms during the course of the operation of the company as direction and control. With this, the cessation of the company can presumably be avoided, as it is publicly acknowledged that the majority of corporate scandals descend from the faults of leadership, direction and control. Based on the above, we may ascertain that in our perception, under “corporate governance” it is the legal facts or interests relevant in the course of the operation of the company that become regulated in terms of corporate law.*

**KEYWORDS:**

company law, business law, corporate governance, state-owned company

The phenomenon, the subject of corporate governance is one such topic in corporate law, that has received extra attention for the past decade in professional literature and from policy makers. The legal definition of corporate governance was set by the Cadbury Report in 1991, as: corporate governance is the system by which companies are directed and controlled. It is as abstract as needed; this definition is appropriate enough to be applicable to define corporate governance in all parts of the world, yet further approaches are required to the unfolding of the content of the topic.

## 1. WHAT DOES CORPORATE GOVERNANCE REGULATE?

From the development and to the comprehension of the regulation it is necessary to ascertain that in our view, the subject of the regulation is the operation of the company. The regulation regulates the problems arising specifically during the course of the operation of the company, as an “ex ante” tool and by the avoidance of that upon the cessation of the public company, any unjustified or inconceivable costs (social costs) arising. As an example, there are the infamous earlier corporate scandals (Enron, Parmalat, Vivendi Universal), the infringements of which drew critical social (budget) costs, as they left behind unsettled creditors’ claims, plenty of workplaces terminated, etc. To prevent this, one of the techniques is corporate governance, as it focuses on such mechanisms during the course of the operation of the company as direction and control. With this, the cessation of the company can presumably be avoided, as it is publicly acknowledged that the majority of corporate scandals descend from the faults of leadership, direction and control. Based on the above, we may ascertain that in our perception, under “corporate governance” it is the legal facts or interests relevant in the course of the operation of the company that become regulated in terms of corporate law.

### *1.1. The subject of corporate governance regulations*

The first key-term generated from the above approach is which situations, state of affairs, interests are regulated by law? Having reviewed the corporate governance rules (codes on best practices), we may constate that such situations are regulated by law as state of affairs, which cannot traditionally be considered as a field of corporate law. For instance how to (technically) summon the general assembly, what instruments should be applied for the efficient conduction of the general assembly?<sup>1</sup> What sort of legal powers the company should assign to the nomination committee, how it should regulate the standing orders and daily work-schedule of the managing directorship, and what HR selection criteria should be applied?<sup>2</sup> None of these fields has formed the set of regulations for corporate law before. This statement certainly needs fine adjustments, as the set of rules on corporate law can alter by eras and economic settlements. The continuous expansion of the rules

1 E.g. the Corporate Governance Recommendations [hereinafter: FVA] of the Hungarian National Assets Management plc (hereinafter: MNV Zrt.) as per recommendations no. 15–33., especially 17. and 18.

2 MNV Zrt.’s FVA recommendations on supervisory-board no. 59–77., on HR criteria 13.

of responsibility in Hungary can serve as an example of continuous development.<sup>3</sup> At the examination of the classical fields of regulation of corporate law, we may claim that the rules of corporate law have covered the categories of economic companies (*numerus clausus*), the foundation mechanism (company procedure), and rules of the same branch applied to termination as well, especially to the procedures of liquidation and bankruptcy as linked with insolvency. These are the terrains where legal regulations give no choice of an option, nor allow for any private autonomy, but provide an entirely exhaustive, flawless legal governance instead. Certainly, the assurances of a “rule-of-law” state the company’s operation are implemented by the acts of law, providing a standard rule for the operation in several cases, such as: the scope of authority, as in the case of the principal organ, conference general assembly, voting by post.

The exhaustive regulation upon the operation of the company (the period from the registry of the business association until the decision on its termination was made) was one of the areas where the private autonomy of the members used to be of the broadest spectrum. Yet, assumably due to the numbers of corporate infringements the legal regulation had to react, and was required to provide a sufficient solution to the occurrences during the course of operation. Since corporate infringements could be traced back to organizational operation, the recommendations of corporate governance apply by nature to the operational period of the company.

### ***1.2. The legal feature of corporate governance rules***

Another examined conceptual element of corporate governance is the legal assessment on the quality of the regulation. Corporate governance has known two types of rules in accordance with international trends: recommendations (for example for the companies listed on stock exchange in Lithuania, Poland, Romania and Hungary)<sup>4</sup> and suggestions. Corporate governance comprises genuinely self-regulatory, non-binding prescriptions, however, in Central and Eastern Europe there exists one peculiar example of it, demonstrated in that the to-be regulated topic in terms of corporate governance rules appears defined by acts of law (typically in act), instead of codes and self-regulatory documents. In the process of the codification of corporate governance rules it can also be observed, that part of the recommendations is not realized in the areas of the recommendations, but on the level of law (e.g. Romania, Slovenia and Hungary), when regulating a given corporate governance topic-area the policy maker genuinely privileges the change in the rule of law (e.g. in Slovenia and Romania in terms of organizational rules).<sup>5</sup> Certainly, this can be found in the

3 To this as a summary see: PAPP Tekla szerk. (2011): *Társasági jog*. Szeged, Lectum. 249–251.

4 International workshop: “Corporate governance in state-owned companies”, 11. 04. 2016., Gdańsk, University of Gdańsk, Faculty of Law and Administration, Societas CEE Company Law Research Network.

5 DJOKIC, Danila (2009): The Corporate Governance Statement and Audit Committee in the European Union and Republic of Slovenia. *Croatian Yearbook of European Law & Policy*, 2009/5. 283–289.; MANOLESCU, Maria – ROMAN, Aureliana Geta – ROMAN, Constantin (2010): Corporate Governance of Romanian Public Interest Entities. *DAAAM International*, 2010/1. 1127–1128.

Hungarian corporate governance practice, for example in the case of the publicly owned business associations it is the matter of remuneration as per Act CXXII of 2009.

The system of comply or explain commenced in Great Britain, where the requirement was specified that public disclosure qualifies a sanction, this encourages the company to align with the practice defined by itself.<sup>6</sup> The proper standards in accordance with the recommendation are applied, yet it is at once questionable to set forth an optimum in the matter of the headcount for the board of directors or the supervisory board to operate. The term “comply or explain” means that in case a company shall not apply a given recommendation, then an explicit explanation must be supplied for the reason why, more precisely it must publicly disclose the practices that are followed. In the EU member states it was the directives to introduce the technique of “comply or explain”, thus this sets the directive for stock-exchange companies in Hungary.<sup>7</sup> The regulation of comply or explain does not equal the traditional denotation of an act of law, as it lacks the potential of state enforcement capability, and legal enforcement only relies on the applicable prescriptions of mandatory public disclosure of the corporate governance report. This indeed is no regulative mistake, but the conceptual element to corporate governance, in which the regulation on the stock exchange alongside the respective publicity is a sufficient sanction. The question of course is whether or not enforcement-potential is required, or is publicity itself a sufficient sanction? As we see it, it depends on stock-exchange culture, and stock-exchange investors’ discipline. The impacts of stock-exchange culture and strictness can effectuate, if the stock exchange’s trading turnover takes up a decisive segment off the economy. Consequentially, the enforcement potential would be necessary to establish in Hungary, as the scope of the economy is not the stock exchange.

From the aspect of the topic of this study, the question arises more intensely within the field of state-owned enterprises as their property is not private but public property.<sup>8</sup>

## 2. CORPORATE GOVERNANCE IN THE PUBLIC SECTOR

In our view, the previously mentioned general assumptions on corporate governance are applicable to state-owned enterprises. Special weight is granted to this field by the state being a proprietor and raises the duplicity as well as the turning into each other of the principal-agent relations. If the state is the proprietor, then behind it are the taxpayers. If the company ceases, then it will also result in consequences upon the budget, thus behind it are also the tax payments of the citizens. These two areas are interconnected, so it is a theory of a duplex commissioner-agent that applies which results in one triangular process as they turn into each other.

6 WINNER, Martin (2012): Der UK Corporate Governance Code. *ZGR*, 2012/2-3. 246-272., 252. and DINE, Janet (2003): A new look at corporate governance. *Company Lawyer*, 2003/5. 130-131., 130.

7 It is also a legal regulation minimum, that acts must regulate the public disclosure of the affidavit. This prescription in Hungary is also included in the Accountancy Act and the Civil Code.

8 In Hungary, The Fundamental Law of Hungary decrees the principle of responsible and transparent management of the public finances. The Fundamental Law of Hungary article N), article 39 (2)

## 2.1. The definition of state-owned enterprises

Rules over state-owned public companies in Hungary must be divided into two. State-owned enterprises certain form a part of the notion. On the other hand, there are the municipalities that may also hold corporate property.

As per The Fundamental Law of Hungary (formerly the Constitution) the economy of Hungary is founded on value-adding work as well as the freedom of enterprises.<sup>9</sup> Everyone possesses the right to select work and occupation freely, and to begin an enterprise, however, everyone is obligated to contribute by his or her capabilities and circumstances to the growth of the community.<sup>10</sup> Besides the freedom of occupation and enterprises, everyone possesses the right to own property, which is bound by social responsibility.<sup>11</sup> Relating especially to this the Fundamental Law of Hungary decrees that the proprieties of both the state and the municipalities comprise the national property.<sup>12</sup> The Fundamental Law of Hungary decrees that any legal entity established upon the basis of acts of law is entitled to hold such fundamental rights and is subject to such liabilities that are not only applicable to humans by their nature.<sup>13</sup> In terms of the national wealth, The Fundamental Law of Hungary regulates the wealth of the state and the municipalities, and also the principles of economy in a unified manner; specifically highlighting that the economic organizations owned by the state and the municipalities conduct their economy in a manner determined by acts of law, independently and responsibly, in accordance with the demands imposed by legality, appropriateness and productivity.<sup>14</sup> The National Assets Act as of 2011. CXCVI. [hereinafter: Nvtv.] also keeps this duplicity, and alongside the state property it marks the property of the local government as well. For this reason, in the study of the economic organizations operating through state-involvement, we must expand the notion to the local governments, too.<sup>15</sup>

Act CVI of 2007, on the wealth of the state, that is the State Property Act [hereinafter: Ávtv.], came into force after the termination of institutional privatization, and regulated

9 The Fundamental Law of Hungary, article M (1)

10 The Fundamental Law of Hungary, article XII (1)

11 The Fundamental Law of Hungary, article XIII (1). The constitutional legal status of the state property demonstrates a clear system in The Basic Law, yet the earlier Constitution – not only in its authentic text, but also after the change of regime – decreed upon the status of public property. § 9 (1) of the Constitution decreed, that the economy of Hungary is such a market economy, in which the public property and the private property share the same rank. The Constitutional Court evaluated this as the expansion of the discrimination interdict to the property right, which in essence defines a discrimination interdict to any forms of property. § 70/A. of the Constitution, Const. Court Provision 1990. 81. To the dismantling of the privileges of state property See: SÓLYOM László (2001): *Az alkotmánybíráskodás kezdetei Magyarországon*. Budapest, Osiris. 128–130.

12 The Fundamental Law of Hungary, article 38

13 The Fundamental Law of Hungary, article I. (4), which decree equals the earlier provisions of the Constitutional Court (first 21/1990. (X. 4.) Const. Court Provision, 7/1991. (II. 28.) Const. Court Provision, with laid principles.

14 The Fundamental Law of Hungary, article 38

15 To the property of the local governments see: PATYI, András – RIXER, Ádám eds. (2014): *Hungarian Public Administration and Administrative Law*. Passau, Schenk Verlag. 342–345.

the property conditions of the state arranged in a new frame.<sup>16</sup> As per the prescriptions of the Ávtv., the following items are the constituents of the property in the proprietorship of the Hungarian state: the things in the proprietorship of the state, and also the natural forces that can be utilized like things; other than this all such property, respective of which the act specifies the exclusive proprietor's right of the state, such stock-paper in the proprietorship of the state which identifies membership rights, and also any other corporate shares that are due to the state, any such immaterial rights bearing property value that are due to the state, which are specified by an act as a right of property value, the monetary assets in the proprietorship of the state.<sup>17</sup>

The duty of the exercising of proprietorial rights and assets management examined from the aspect of our topic is: to ensure the efficient, cost-saving, value-preserving, value-adding application (direct application) of the state-property in compliance with its function – necessary for the fulfilment of state duties, sufficing of social necessities, and fostering the realization of the economy policy of the Government, based on unified principles and appearing as an individual branch –, as well as the indirect utilization (including its sale resulting in the change of the property index), and also the enhancement of state property (including the expansion of the property index).<sup>18</sup> Rules of law designate the Hungarian National Assets Management plc (hereinafter: MNV Zrt.) to exercise the proprietorship rights.

Beside the companies operating through state-involvement in the case of the local governments, the board of representatives holds the right to found various types of organizations, in order to conduct the public services that are forming its scope of duties.<sup>19</sup> Examples to that may be budget organs, economic organs, non-profit organs and other organs.<sup>20</sup>

Based on the above, we can declare that “public property” can be segmented into two, due to the Hungarian constitutional traditions and also according to the effective system of law: first to the property of the state, and then to the property of the municipalities. Regarding the property of the state, it can be declared, that it can be segmented further: to treasury property and business property.<sup>21</sup> The function of treasury property is of the exclusively state-owned property, the restrictedly negotiable property, the national property of highly distinguished concern from a national economy's perspective, all of which are itemized in the Act on National

16 Property obviously covers a broader range as compared to propriety, yet the chapter only analyzes the rules included in the portfolio of economic companies.

17 Ávtv. 1. § (2)

18 Ávtv. 2. § (1)

19 Act CLXXXIX of 2011. § 41. (6)

20 To the topic area of the corporate governance of the local government see: HORVÁTH M. Tamás (2013): *Felelős társaságirányítás – közszektorban?* *Gazdaság és Jog*, 2013/1. 12–16. and HORVÁTH M. Tamás (2014): *Vállalati részesedések igazgatása – köztulajdoni körben*. In LAPSÁNSZKY András – PATYI András (szerk.): *Ünnepi kötet Verébelyi Imre 70. születésnapjára. Rendszerváltás, demokrácia és államreform az elmúlt 25 évben*. Budapest, Akadémiai (Wolters Kluwer). 221–229.

21 TORMA, András (2013): *A nemzetgazdaság igazgatása*. In LAPSÁNSZKY András szerk.: *Közigazgatási jog II. – Fejezetek szakigazgatásaink köréből*. Budapest, *Complex*. 23–59., 43. Analyses the notion of business property: SÁRKÖZY Tamás (2009): *A korai privatizációtól a késői vagyontörvényig*. Budapest, HVG-Orac. 192–195.

Assets.<sup>22</sup> The business property is the property that forms no part of the whole of the treasury property.<sup>23</sup> Following this scheme, Tamás Sárközy argues the existence of business property, yet acknowledging meanwhile that it can still exist, like: the backup companies of the state (for instance companies pursuing educational, research activities), companies of strategical interest, which are in the permanent proprietorship of the state as they are facilitating the fulfilment of public duties.<sup>24</sup> Nonetheless, this system in this composition does not work immaculately, but both the existence and the scope of the business property are in perpetual change, aligning with the ever up-to-date tendencies of economy politics.

From an administrative perspective, based on Act CVI of 2007 in terms of the state property, the entirety of all rights and liabilities of proprietorship due to the Hungarian state shall be designated to be exercised by the Hungarian National Assets Management plc (hereinafter: MNV Zrt.).<sup>25</sup> The MNV Zrt. is a one-man joint-stock (public) company founded by the state, the stock of which is non-negotiable.<sup>26</sup> From among the items of state property included in the duties of the MNV Zrt., the Ávtv. specifically mentions the stock-paper in the proprietorship of the state, which identifies membership rights, and other company shareholdings, that are due to the state.<sup>27</sup>

In Hungary, there are no such special company forms as to conduct publicly owned economic activities; however, the state applies the company forms regulated by the Civil Code while conducting these activities.

It is not only that the Hungarian legal system is unfamiliar with any peculiar company types, but also that it fulfils many public duties in the form a public business associations. These companies have peculiar public-law relevance, status, such as Hungary's central bank, The Hungarian National Bank (MNB), as an example. The Hungarian National Bank is a legal entity, operating in the form of a joint-stock (public) company. In our view, the MNV Zrt. falls in the same category as well, which is a one-man joint-stock (public) company founded by the state, and the stock of which is non-negotiable. The Hungarian National Assets Management plc pursues state service, among others executes proprietary rights over the state fortune. However, the realization of the general prescriptions of civil law varies with respect to each one of the scenarios, and in fact, the specific prescriptions affect relevant elements of the regulation.

## 2.2. *The corporate governance question*

In our perception, regarding the companies owned by the state, the realization of corporate governance should be differentiated depending on the economic profile that they bear.

22 TORMA 2013, 43.

23 *Ibid.*

24 SÁRKÖZY 2009, 193.

25 Act CVI of 2007 § 1 (6a)

26 The approval as well as the amendment of the foundation deed of the MNV Zrt. forms the competence of the minister. The MNV Zrt. may not transform, may not disunite, may not unite with another company. Upon its termination the Parliament may decree in Ávtv. § 18 (1)

27 Ávtv. § 1 (2) c)

The first (1) are the activities conducted by the state through its monopolist position, with the formation of the regulation. More precisely, it does not permit any other market players to enter, yet the activity itself is profitable. Second (2) is the economic situation, when the activity itself is non-profitable, but it could not even be, as it identifies the social function of the state. The sector of public services is an example of this. The (3) last one is the marketplace situation, which means that the state as a player in economic competition is involved in competition. In this case, only the membership position can be linked with the state. Each one of the above economic situations connects with a different governance problem scenario. In the first case (1), the demands for the transparency on the operation of the management can come forth. The second (2) is a special case, as this field of the economy has been blending with the legal system of the European Union, at the arrangement of the activity, specific requirements must be justified, so the membership position of the state and the internal operation of the company may just as well be the subject of corporate governance rules. The role of the state can appear the most conspicuously in the third (3) case, when the state may not create a more advantageous situation against other market-players.

We assume that the variant economic grounds impose variant emphases upon the fields of corporate governance, yet none of the economic grounds can overshadow the relevance of corporate governance. Concerning the question of the state property, we believe, the real corporate governance question is whether the state, as a member of the company, possesses more or any different rights than a traditional company does? Are these, at all, ensured by corporate law even as an option, or not?

For the sake of entirety, let us note that it qualifies as a different situation from the above aspect, when as a special state-intervention, the public company becomes designated by the Government as a strategically outstanding concern. This has a relevance when the activity of the company is distinctive (for instance it conducts public services, it has a connectivity to national defence). This designation only matters when it comes to the condition of insolvency, as those procedures prescribe peculiar rules.

### 3. THE APPLICABLE RULES TO STATE (PUBLIC) COMPANIES

Corporate governance can be scrutinized from two perspectives in the case of economic organizations operating through state or municipality involvement. One of them is intern relations, namely how do the principles of corporate governance become implemented in economic organizations established by the state or the municipality. In answer to this there are the principles developed by the OECD. The OECD first issued the collection of recommendations in 2005, and then it was in 2015, when during the general review of corporate governance the new code was introduced. The recommendations are applicable to such business associations as legal persons, in which the state executes the proprietorship rights – and holds an influential, a sovereign role –, and also to such public-law legal subjects, which have an economic role.<sup>28</sup> Here, in our view, the emphasis falls on whether the state as

<sup>28</sup> OECD 2015. 15.

a shareholder has relevant influence on the decision-making of the company. Certain forms of influencing (golden share, majority shareholder etc.) draw different governance-issues, and with this different resolutions, too. According to the recommendation, the performance of this sector gives a competitiveness factor.

The explanation for the creation of the recommendations directive to the economic organizations operating through state or municipality involvement is the aim to professionalize the ownership function of the state, the implementation of efficiency, transparency and mandatory reporting to the degree of the private economy, and to ensure equitable treatment rules in such cases when the state-owned company is active on the same marketplace with the competition-field.<sup>29</sup> Corporate governance plays a vital role in the development of these warranties, furthermore, the recommendation highlights that the utilization of corporate governance practices is an essential prerequisite to financially effective privatization as well. Special relevance must be attributed to this particular objective in Hungary and in Central and Eastern Europe, although after the privatizations accomplished in the past, it is now the utilization of recommendations directive to the state as a role player of the active economy that can be detected.

In the recommendations directive to state companies, it is recorded that the document includes specific prescriptions, complementary requirements against the document on general corporate governance,<sup>30</sup> thus the efficient system of corporate governance can be composed by the concurrent reading of the two recommendations.

Based on the recommendations, throughout the involvement of the state, distinct attention must be paid so that the state provide an efficient legal regulation framework to the market players, without distorting the competition by its presence. With respect to the regulation, the state must avoid the creation of special, merely self-applicable rules, as that would demonstrate a market-distorting impact; moreover, it must aim at the standardization of legal subject categories whilst avoiding the establishment of a peculiar type of a state company.<sup>31</sup> The state as the owner is advised to develop such a procedure that can fulfil the obligation of accounting by means of transparency, without any distortion. All through this, the following must be considered by exercising the voting right, transparency of the nomination of the directorship board, ensuring independent and impartial decision-making to all participants of the decision-making. Beyond these, the recommendations also affect the obligations of the board, the stakeholders, the requirements of transparency, and the enforcement of the demands of equitable treatment, yet with respect to these, the prescriptions do not include special provisions against general rules, but the collection of recommendations itself refers back to general rules.<sup>32</sup>

We claim that there is another possible way and concept to the application of corporate governance: this means the extern processes, namely those, in which the state participates

29 OECD 2015. 11.

30 OECD/G20 Corporate Governance Principles

31 OECD 2015. 38.

32 PAPP Tekla szerk. (2011): *Társasági jog*. Szeged, Lectum. 532–533.

as a contracting party. One point of connectivity is that the Act on National Assets has introduced the notion of transparency, meaning fundamentally the analysis via tax liability criteria and the revelation of membership.<sup>33</sup> The core principle of the management of the national property is that an agreement can only be concluded by an organization, if it is transparent.<sup>34</sup> In our view, the state may just as well apply such principles in its procurements, in the course of public procurement. Investments and procurements accomplished under the course of public procurement can be compatible to take into account further aspects besides profit, thus the utilization and enforcement of corporate governance principles can appear as a requirement equivalent to this.<sup>35</sup>

### **3.1. The corporate governance recommendations by the MNV Zrt.**

The MNV Zrt. has issued a document alongside the international standards of the corporate governance, to reinforce the Hungarian corporate governance practice. By this, we believe, that it has taken a regionally prominent place in terms of corporate governance thinking.

The Hungarian National Assets Management plc (MNV Zrt.) has issued a recommendation to companies in the ownership of the state, inclusive of recommendations and guidelines in a complex system, addressing the society of economic organizations operating through state-involvement.

The code was proclaimed in the spring of 2013, by the MNV Zrt. The corporate governance ground directive to the companies constituted several parts:<sup>36</sup>

- Corporate Governance Recommendations
- Code of Ethics, according to the initial idea, for the employees of the public service, they are ethical norms of a higher level than on average are set for directives, and they are also required to comply with professional ethical principles that apply exclusively to those in the public service.
- Risk-management Manual, the target of which is to promote the recognition of direction problems, the shaping of the propositions for a sound resolution beyond a risk-management methodology, grounded on an analysis of abilities to direct, and the familiarization with the applicable control-models.
- Investment policy-related recommendation. The target of the recommendation is to provide support in terms of the utilization of free monetary assets and currency rate risk-management, by the application of which the regulations of the companies can be compiled.
- Liquidity planning recommendation. In the case of the companies owned by the state, it projects the operation of a so-called four-week rolling liquidity planning system.

33 Nvtv. § 3 (1)

34 This aspect appears in the Nemzetivtv. among others in: 8. § (1), 12. § (13)

35 See European Court of Justice C-368/10 European Commission – Dutch Kingdom case

36 Available at: [www.mnvzrt.hu/vallalatiranyitasi\\_ajanlasok/vallalatiranyitasi\\_ajanlasok.html](http://www.mnvzrt.hu/vallalatiranyitasi_ajanlasok/vallalatiranyitasi_ajanlasok.html)

Primarily, the collection of recommendations reinforces the stream of information towards the leadership of the company; it provides alternatives for the management on liquidity-problems, and cornerstones to elicit the selection of proper investment options, given a liquidity surplus.

### ***3.2. The place of the recommendations among the Hungarian corporate government requirements***

The Hungarian rules of law prescribe business associations registered on the regulated market to publicly disclose their corporate governance affidavit. Act LII of 2007 incorporated the mandatory preparation of a corporate governance report into the corporate law, which has been upheld by the Civil Code as well. The board of directors of the publicly traded joint stock company is mandated to present the report, exposing the corporate governance practice followed by the joint-stock company, which is compiled in the format prescribed for the participants of the given stock exchange, to the annual ordinary general assembly, the approval of which shall be decided by the general assembly. The provision of the general assembly along with the approved report is mandated to publicly disclose on the website of the joint-stock company.<sup>37</sup>

Then the public disclosure of the corporate governance affidavit was also incorporated into the Accountancy Act – in line with the obligation on the harmonisation of law in the European Union<sup>38</sup> – as regards such entrepreneurs, whose tradable stock-papers have been entered in the regulated market of a state within the European Economic Area.<sup>39</sup>

Besides the corporate governance affidavit, the decrees of the corporate law on the rules of public disclosure were complemented in a special field in 2009, that was: the remuneration, as the publicly-traded joint stock companies entered into the regulated market, were obligated to publicly disclose on an annual basis on their website, at the time of summoning the annual ordinary general assembly, the names of the directorship or the board of directors and, where applicable, also the names of the members of the supervisory-board, along with all monetary and non-monetary remuneration allocated to the members by their membership quality, in a way itemized by member and legal title of remuneration, and in a detailed format. In addition, the joint stock companies had to ensure continuous access to all such data on their websites as well.<sup>40</sup> The rule has been amended by the Civil Code, and the new norm delegates the due definition of the principles upon the long-term remuneration and incentives' system to leading officers, members of the supervisory-board and management employees, into the exclusive competence of the general assembly.<sup>41</sup>

37 Act IV of 2006 on business associations (hereinafter: Gt.) § 312 (1)–(2), Civil Code. § 3:289, which is a cogent rule.

38 Act CXXVI of 2007, having served the compliance with the directive 2006/46/EK.

39 Act C of 2000, § 95/B (1)–(3)

40 Gt. § 312/A

41 Civil Code § 3:268 (2)

The corporate governance affidavit is to be prepared on the basis of the Hungarian Corporate Governance Recommendations (FTA) issued by the Budapest Stock Exchange in 2004, for the first time. The FTA touches upon four topic-areas: (1) the rights of the shareholders and the respective procedures, (2) the competence of the directorship/ board of directors, and the members of the supervisory-board, (3) the committees, (4) transparency and public disclosure, and the respective recommendations and guidelines. The introduction of the recommendation declares that the alignment with the prescriptions of the document is advised, yet non-mandatory.

According to the FTA, the companies are ordered to report their governance practice in two ways. The first part of the report must supply a comprehensive elaboration on the corporate governance applied in the targeted business year, also marking the instances of any incidental peculiar circumstances with that. Thereafter, an announcement must be made upon the compliance with the points of the FTA, in a manner identical with the international practice: a public statement is to be given based on the comply or explain principle. This means that whereas the compliance with the recommendation of the FTA must not, yet the incompliance must be well explained, however, there is no obligation for any explanation regarding the guidelines. The code was significantly revised in 2008, the amendments of which gained force on 16 of May, 2008. The code was then revised in November 2012, again, but this time no relevant, comprehensive changes were drawn.

In the case of the FVA, the recommendation stays unresponsive in this matter. However, we have not traced any references as to whether the companies should issue any form of a statement regarding what is covered by the collection of recommendations. Thus, the question remains open as to what is the form, in which the company may be expected to give an account, and can issue a public statement.

### ***3.3. The guidelines of Responsible Corporate Governance Recommendations (FVA)***

The regulation occurs on three levels. Corresponding to the OECD principles is that every single chapter starts with a main principle, expressing the reason why the regulation at all occurs, why the given topic, at all, must be regulated and what are the major requirements of it content-wise. Alongside the main principles, recommendations and suggestions can be found in a segregated format from each-another.

The international practice on the deviation of the regulation can thus be traced back to which rules are to be deviated from, and in the case of which is it possible to explain. This is the principle, in adherence to which the recommendations and guidelines segregate from each-another, however, also the regulation system of the Civil Code, of the Accountancy Act, and that of the FTA conform to this. The FVA clarifies distinguishing via the principle that the recommendations are generally to be abided by, and that the guidelines are to be abided by, in alignment with the individual characteristics and size of each company, whereas the rules of the FVA cannot be fitted in on this scale. The issuance of the affidavit is entirely missing (without even any respective references in the text), thus, in our view, there is no point in the making of any distinction in terms of the regulation. The difference

is demonstrated by every single recommendation in essence identifying either a general principle or a specific rule.

The purposes of the FVA are congruent with the international trend that focuses on the enhancement of the efficiency of corporate governance, embraced by its constant development.<sup>42</sup> One of the reasons why the operation of the companies in public ownership is crucial is that a decisive part of the GDP is produced by them, and as they are actively involved in employment. In addition to this, we can note that public companies must stand for setting the example, in other words they can serve as a model in terms of the best practices. The FVA expresses that the efficient and transparent governance of the companies also occurs as an intensifying social expectation. They shall set appropriate objectives alongside the precedence of corporate and ownership interests, and achieve them throughout efficient inspection. These factors obviously increase their value as well.

Beyond these, the FVA declares further objectives and principles, which are held to be abided by, as regards the entirety of the collection of recommendations:<sup>43</sup>

- The cooperation of the stakeholders of the company
- The transparent, as well as allocated management directorship responsibilities
- To increase the proprietary value
- The protection of the interests of minority shareholders
- The principle of the accessibility of information and publicity
- The accessibility of information provided for the owners
- The principle of the protection of corporate property
- The principle of sustainable value-creation
- The principle of sustainability

The concept of the principles complies with the construction of the corporate governance requirements assumed classic by the OECD. Two motifs deserve highlighting: one of them is that information is a merit, as the key-element to the efficient operation of the company is also conceived separately. This bears relevance, as it appears among both the OECD principles and the specific principles directive to state-owned companies as well, although not in an equally privileged place. The other is that the FVA can be considered as a blended-type of a code with respect to its topicality, as both sustainable value-creation and sustainability can be considered as forming part of corporate social responsibility, and not responsible corporate governance.<sup>44</sup> Yet, sustainability is one particular objective, which is only accomplished through the sufficient application of corporate governance, and in this given form, it may be considered as the ultimate objective of the collection of recommendations.

42 FVA Introduction

43 FVA chapter no. II.

44 Cf. AUER Ádám (2012): A felelős társaságirányítás és a vállalatok szociális felelősségvállalásának fejleményei az Európai Unióban I–II. *Céghírnök*, 2012/6. 9–12. and 2012/7. 12–14.

### 3.3.1. *The effect and the target of the recommendation*

The FVA affects the companies owned by the state, comprising the endowed property of the MNV Zrt. and within this the public limited joint-stock companies and the limited liability companies.<sup>45</sup> Within the circle of economic organizations operating through state or municipality involvement, as explained previously it results from constitutional rules, it can be deduced that we shall separate the state-sector from the municipality-sector. Our standpoint is that even though sharp as the separation is, the ownership nature (public property) in itself does not automatically draw the equivalent analogy that the requirements of responsible corporate governance should or could be separated still. In the following, we shall deem it as quintessential, that the principles are equally applicable to the companies operating with municipality-shareholding, as a predominant rule.

### 3.3.2. *The organization structure of the company*

Complying with the OECD principles, the FVA describes *the shaping of the decision-making system of the company* as a main criterion.<sup>46</sup> At the establishment of the decision-making mechanisms, central merits are defined that are mandatory to be recognized during the course of the actual operation and the shaping of the organization. Such nominated interests and principles are the preservation of the state-property, the security of proprietors' investments, the protection of the value of the company, the clear division of responsibility and duties. These are general rules, which must be taken into account in general at the establishment of specific regulations.<sup>47</sup>

The key-factor to the efficiency of decision-making is the treatment of information. At the shaping of the organization system, the regulation on traceability must be implied. Consequentially, every underlying process to each decision-making instance can be reconstructed, and this counts as a key-question in regard to whether the company can be inspectable and accountable.

### 3.3.3. *The undertaking of the state as the proprietor*

According to the OECD principles, we have specifically outlined that the state must exercise its proprietary, regulative and commissioner's role-undertakings independently from one another. The same principle has also been adopted by the FVA as a central phenomenon.

The FVA imposes declarations on the summoning of the general assembly and its conduct, and also on the pursuing of the proprietorship rights and the operation of the directorship and its standing orders under separate titles. The FVA complies with the formerly settled general principles in this respect, as per which a proper flow-of-information must be

45 FVA chapter no. III.

46 FVA chapter no. V. 1-8

47 *Ibid.*

provided in-between the individual organs, shareholders.<sup>48</sup> The competence of the chief organ is declared in an exhaustive manner, related to which it can be constated that the replication of the exhaustively set prescriptions of acts may be dismissed, as it is applicable without any separate declaration.<sup>49</sup> Yet on the other hand, the FVA imposes further volumes of competence on the chief organ that are unrecorded by separate acts of law. The approval of a medium-term business, operational and organizational strategy is an example of this.<sup>50</sup>

The FVA imposes declarations on the *management* under a separate title. This has an outstanding relevance, and as in the framework of the material on corporate law regulations they do not clearly demarcate from each other. The Corporate Governance Recommendations of the BÉT (Budapest Stock-Exchange) also adapts a differentiated approach in terms of the management, as it demarcates between the fulfilment of duties as of the management directorship and the management. This option is also implicitly included in acts of corporate-law; nevertheless, it is not unambiguously conspicuous by the reading of the norms.<sup>51</sup>

As a result of traceability and demarcation, the shaping of the internal regulation occurs as a central principle to the system of the FVA, more precisely that the duties, competences and procedures of each organization must be demarcated and segregated in accordance with the duties.

### 3.3.4. *The inspection of the companies*

Inspection belongs to the basic corporate functions. The fact that this must be attributed to a superior value within the circle of economic entities operating through state involvement, does not demand any special explanation. Several types and forms of inspection can be distinguished. Some of these do not require any regulation by either corporate or a separated set of regulative rules, whereas a particular type of a controlling form can be observed which can undergo external inspection, or maintains the same internally in the company. Beyond this, we can also categorize on the basis of whether this originally is the duty of the organ of the company, or if it only exercises inspection complementarily.

*The FVA acknowledges the next forms of inspection*<sup>52</sup>

- 1) supervisory board
- 2) independent internal auditorship
- 3) management directorship
- 4) MNV Zrt.

48 FVA chapter no. V. points 15, 17

49 Such as at rule no. 24 points a), b), c), e), f); or in terms of management directorship no. 39 q)

50 No. 24. l)

51 The Civil Code is non-inclusive of this, either at the legal person's or at the economic company's common ground rules, and neither specifically in the chapter on joint-stock companies. To the earlier corporate law, the "Gt." see: KISFALUDI András – SZABÓ Marianna szerk. (2008): *A gazdasági társaságok nagy kézikönyve*. Budapest, Complex, 334–335.; SÁRKÖZY Tamás szerk. (2009): *Társasági törvény 2006–2009*. Budapest, HVG-Orac. 45.

52 FVA chapter no. VI.

- 5) controlling
- 6) book-auditor

1. In terms of the supervisory board, the FVA exposes recommendations with respect to what role the supervisory board should fulfil in the life of the company. In this configuration, it can be considered a special form. Acts of corporate law prescribe partially assigning it to the decision of the company, if it introduces a supervisory board. However when it determines such perviously mentioned circumstances this type of an inspection organ is mandatory to formulate. Beyond these, Act CXXII of 2009, prescribes it as mandatory to formulate in every company of the majority's proprietorship.
2. In terms of independent internal auditorship<sup>53</sup> the FVA is briefer, as it only regulates the basic interrelations between the supervisory board and the management directorship. In this respect the FTA is setting an example, as it supplies the company with a comprehensively applicable model-regulation.
3. In terms of the management directorship, not a primary but a secondary role is meant by us when commenting upon the duties of the management directorship in the matter of inspection. The management directorship pursues an inspective duty regarding information-supply and information-flow.

In terms of points 4)–6) it is a peculiarly public-property feature that brings on the peculiarity of the inspection form by drawing the book-auditor's inspection into this sphere, which can indeed be considered a classic form of external inspection.

The FVA regulates a broad range of internal inspection activities within the company, both by organizations and procedural types. The listing of various organs in the same place does facilitate in itself the construction of responsible corporate governance. Yet it must be emphasized that the most important feature of this chapter, we believe, consists of rules to carry model-quality, based on which the inspection of an efficiently operating organization can be constructed and shaped. The operational mechanisms of the individual organs along with the variety of the options available (for instance, what sorts of transactions, what types of decisions must the inspection cover) shall present guidance to companies, that could only access and adapt this volume of information by the utilization of heavy resources.

### 3.3.5. *Personnel policy and conflict of interest rules*

In our view, alongside the internal organization guarantees, exceptional attention is to be devoted to human resources recruitment and the assessment of personal and professional competencies. This bears a peculiar value in the case of companies in public proprietorship, thus it shall be highlighted as well as endorsed that the FVA includes the respective recommendations in a separate chapter.<sup>54</sup> Human resources management plays a vital role.

<sup>53</sup> Here, the FTA issues a comprehensive model rule.

<sup>54</sup> FVA chapter VIII.

In the course of exercising the proprietor's right and the activity of property management, such duties shall just as well be executed, to which human resources management is indispensable, and according to the FVA, it is the functions of incentive-management, selection, and performance-evaluation.<sup>55</sup> The recommendation is inclusive of the criteria to apply at the selection of leadership candidates, remuneration rules and policy,<sup>56</sup> it elaborates on the professional and personal requirements of the chief leader.

It is remarkable that it extends conflict of interest rules over to leadership employees. Beyond this, directive rules on personnel policy also cover *related parties' transactions* (in-between connective parties) and special requirements, directive to the members of the supervisory board.

### 3.3.6. Transparency and disclosure

Transparency and disclosure are the most highly accentuated areas of corporate governance. Within the field of economic organizations, operating through state-involvement it carries a duplex value. On the one hand, transparency forms a significant part of corporate governance, since one of the guarantees for keeping the non-mandatory recommendations is ensured by publicity. This of course presupposes the consciousness and the objectivity of investments, whilst the raising of the idea is not dismissible, that public appearance can mean a sort of a conscious discipline to the company. On the other hand, transparency in terms of state-companies is a fundamental constitutional requirement (for example in connection to the right for the knowledge on data of public interest).

In accordance with the FVA, the following must be covered by public disclosure:

- the objectives of the company,
- the results of the activity, and of the management of the company,
- the remuneration and refunding policies of board-members and members of the management
- the full set of relevant information on the employees and other stakeholders,
- the corporate governance practice, and the structure of the corporate governance system,
- the ownership structure.<sup>57</sup>

55 FVA chapter VIII. Introduction

56 Which is regulated in a detailed manner by the remuneration rules of the MNV Zrt. Moreover, Legal Act no. CXXII as per 2009, § (2) the directive on economic companies in terms of prescribing mandatory publicity of the remuneration of leading officials, supervisory board members, leadership employees and also employees entitled to individually exercise company registry right, or the right to the treatment-decision on the bank account.

57 FVA 187.

#### 4. SPECIFIC PRESCRIPTIONS

Regarding the regulation of state-owned companies, it can be established that for these companies also, it is the Civil Code and not special norms, that are to be applied in general.<sup>58</sup> We can also assert that to complete any public assignment, to provide any public services may be demonstrated in accordance with the general (Civil Code) regulations and the specific prescriptions are to be applied as a directive only to the organization of state-owned companies.<sup>59</sup>

The corporate governance has relevance at state-owned companies in both intern (a) and extern (b) relations:

- how the principles of corporate governance can be effective at the economic organizations founded by state or by local government (see OECD Guidelines on Corporate Governance of State-owned Enterprises 2005, focused examination by Worldbank Group and Act CVI of 2007, on state property in Hungary);
- how the state or the local government contracting party can be (see the aspects in tax law and public procurement in Hungary).<sup>60</sup>

Neither the Hungarian Civil Code,<sup>61</sup> nor the Recommendations of the Budapest Stock Exchange for Corporate Governance of Public Company Limited by Shares 2012, contain special provisions for economic enterprises owned by state or by local government. However, the MNV Zrt. has Recommendations for Corporate Governance of Enterprises Owned by State or Local Government, with principles for lawful operation of these companies.<sup>62</sup> The special regulation for state- (or local government)-owned companies can be basically found in two acts: Act CXXII of 2009 on more economical operation of state-owned companies and Act CXCVI of 2011 on national assets.

In the following, we describe the special rules of these two acts for the enterprises of state and local governments on the base of seven aspects.

58 ZOVÁNYI Nikolett (2015): *Kié a felelősség? A társasági jog útvesztőiben.* (Who is responsible? Public enterprises in the labyrinth of company law) Source: [www.kozjvak.hu/hu/kie-felelosseg-kozvallalatok-tarsasagi-jog-utvesztoben](http://www.kozjvak.hu/hu/kie-felelosseg-kozvallalatok-tarsasagi-jog-utvesztoben) (2015. 12. 18.); FÉZER Tamás (2016): *Két úr szolgálai – a közzállalatok vezető tisztségviselőinek felelőssége.* (Servants of two gentlemen – the liability of executive officers of public enterprises) Source: [www.kozjvak.hu/hu/ket-ur-szolgai-kozvallalatok-vezeto-tisztségviseloinek-felelossege](http://www.kozjvak.hu/hu/ket-ur-szolgai-kozvallalatok-vezeto-tisztségviseloinek-felelossege) (19 February 2016)

59 PAPP Tekla – AUER Ádám (forthcoming): *Group Interest in Hungary.* *Acta Universitatis Sapientiae* (Manuscript)

60 AUER Ádám (2015): *Corporate Governance. Állami részvétellel működő gazdálkodó szervezetek.* (Corporate Governance, Economic Organizations Participated by State) Budapest, NKE. 13.,41.; AUER Ádám (2015): *Corporate Governance az állami vagy önkormányzati részvétellel működő gazdálkodó szervezetek esetében.* (Corporate Governance at the Economic Organizations Participated by State and Local Government) In LENTNER Csaba szerk.: *Adózási pénzügytan és államháztartási gazdálkodás.* Budapest, NKE. 811–812.

61 Act V of 2013

62 AUER 2015a, 58–68.; AUER 2015b, 816–824.

## 1. Special prohibitions of further association

Such companies owned in 100% by state or local government, which were founded to perform public duties, must not establish another company for these public duties.<sup>63</sup> The state and local governments must not found such companies and must not receive a share in companies which are not transparent.<sup>64</sup> A non-profit company with majority control of state/local government is permitted to create another non-profit company with majority control of state/local government – apart from recycling activity –, but this new non-profit company must not establish further companies.<sup>65</sup> These provisions also have to apply to the acquisition of shares in other business associations by enterprises owned by state or local government.<sup>66</sup>

## 2. Special issues relating to assets

The share of companies providing public service and with majority control by state may be available as contributions in kind or on the ground of other transferring legal title only for companies owned in 100% by state/local government.<sup>67</sup> The share of companies providing public and parking service, with majority control of local government and of Balaton Shipping Private Company Limited may be available as a contribution in kind or on the ground of other transferring legal title only for companies owned in 100% by state/local government.<sup>68</sup> This means the limited transferability of shares of state/local government in companies. The share in companies owned by state/local government must not be an object of assets management;<sup>69</sup> it means limited legal title and legal base of privity. In connection with the share in companies owned by state, which is a part of national assets and important for the national economy, only the minister thus appointed, or a central budgetary agency or an economic enterprises owned in 100% by state may exercise the owner's rights;<sup>70</sup> it means a limited circle of exercisers of proprietor's rights. To increase capital in a company owned more than 50% by state/local government they must reduce the proportion of state/local government and have:

- the consent of the exerciser of owner's rights is necessary,
- over 2 000 000 HUF, and the resolution of the government of Hungary or municipal council is required,

63 Act CXCVI of 2011 §8 (6)

64 Act CXCVI of 2011 §8 (1)

65 Act CXCVI of 2011 §8 (8), (9)

66 Act CXCVI of 2011 §8 (1), (8), (9)

67 Act CXCVI of 2011 §4 (6)

68 Act CXCVI of 2011 §5 (8)

69 Act CXCVI of 2011 §8 (7)

70 Act CXCVI of 2011 §7/A (3)

– between 5 000 000 HUF, and 2 000 000 000 HUF, the resolution of the minister responsible for supervision of state assets, or the municipal council, is needed;<sup>71</sup> it means limited and controlled capital movements.

In the name of the state MNV Zrt. and the Hungarian Development Bank Private Company Limited by Shares may give credits and loans to the companies with majority control of state.<sup>72</sup>

The reasonable undertaken business risks are determined by company activity and its background, the market surroundings.<sup>73</sup>

In Poland, the ownership rights in state-owned companies were centralized in one organization, the Ministry of Treasury, which was dismissed by the prime minister in September 2016.<sup>74</sup> Lithuania has a decentralised SOE ownership structure, with twelve ministries.<sup>75</sup> In Romania, there is neither single ownership entity: beside the Authority for Administration of State Assets several authorities, and ministries have ownership function.<sup>76</sup>

### 3. Special rules of organization

Among the state-owned companies, and private limited companies, the operative organ usually is the general manager and if the importance, size, type of operation of the company is explained, then the operative organ is the board of directors (with 3–5 members).<sup>77</sup> The legislator allows only the two-tier/dualistic system, but not the one-tier/monistic system for organization of state-owned companies;<sup>78</sup> the same can be found in Poland, Czech Republic,<sup>79</sup> Serbia<sup>80</sup> and Lithuania, but the one-tier organizational system is allowed

71 Act CXCVI of 2011 §8 (10)

72 Act CXCV of 2011 § 45 (1)

73 FÉZER 2016.; BH 2004. 372.

74 ZALESKA-KORZIUK, Kaja: *Report on corporate governance in state-owned enterprises – the Polish perspective*. Presentation “Corporate governance of state-owned enterprises in Central and Eastern Europe”; 14 October, 2016.; Budapest; National University of Public Service and Societas CEE Company Law Research Network

75 JUCHNEVICIUS, Edvardas: *The corporate governance of state-owned enterprises in Lithuania*. Presentation “Corporate governance of state-owned enterprises in Central and Eastern Europe”; 14 October, 2016.; Budapest; National University of Public Service and Societas CEE Company Law Research Network

76 VERESS Emőd: *The state’s role as owner of enterprises: mandatory rules of corporate governance in Romania*. Presentation “Corporate governance of state-owned enterprises in Central and Eastern Europe”; 14 October, 2016.; Budapest; National University of Public Service and Societas CEE Company Law Research Network

77 Act CXXII of 2009 §3 (1)

78 About this see more details in PAPP Tekla (2008): *Corporate governance – felelős társaságirányítás. (Corporate Governance – Responsible Guidance of Companies) Acta Juridica et Politica*, Tomus LXXIII, Fasciculus 1–64. 639–653

79 EICHLEROVA, Katerina: *Corporate governance of state-owned enterprises in the Czech Republic*. Presentation “Corporate governance of state-owned enterprises in Central and Eastern Europe”; 14 October 2016.; Budapest; National University of Public Service and Societas CEE Company Law Research Network

80 MALAGURSKI, Branislav: *Challenges of Serbian public enterprises in the light of points II C and F of OECD Guidelines on corporate governance of state-owned enterprises*. Presentation “Corporate governance of state-owned enterprises in Central and Eastern Europe”; 14 October 2016.; Budapest; National University of Public Service and Societas CEE Company Law Research Network

in Romania.<sup>81</sup> According to the Austrian Public Corporate Governance Code, the state-owned companies with more than 30 employees or with more than 1 million euro turnover shall have a supervisory board consisting of state elected members.<sup>82</sup> In the state-owned companies in Hungary it is obligatory to form supervisory boards with 3 members (over 200 000 000 HUF between 3 and 6 members).<sup>83</sup>

#### 4. Special provision for decision

At the companies with majority control of state/local government, the competence of supreme body includes the foundation, the termination of economic association, the acquisition and the transfer of shares in economic association.<sup>84</sup>

#### 5. Special prescriptions for remuneration

The state-owned companies have to create a regulation about the mode, measure, principles and system of allowance of executive officers and of the members of the supervisory board;<sup>85</sup> non-compliance with this regulation is prohibited and unlawful.<sup>86</sup> The executive officer and the member of the supervisory board may receive remuneration only in one state-owned company, compared to the current minimum wage (sevenfold of current minimum wage for the president of the executive board, fivefold of current minimum wage for members of the board of directors, fivefold for the president of supervisory board and threefold of current minimum wage for members of supervisory board).<sup>87</sup> In Poland, there is a similar situation, namely the remuneration of executives equals the index of an average monthly wage in state-owned enterprises as of the last quarter of the previous year announced by the Central Statistical Office, at small state-owned enterprises multiplied by one to three, at the largest state-owned companies multiplied by seven to fifteen.<sup>88</sup>

81 International workshop: “Corporate governance in state-owned companies”, 11. 04. 2016., Gdańsk, University of Gdańsk, Faculty of Law and Administration, Societas CEE Company Law Research Network

82 WINNER, Martin: *Autonomy and Independence in SOEs*. Presentation “Corporate governance of state-owned enterprises in Central and Eastern Europe”; 14 October 2016.; Budapest; National University of Public Service and Societas CEE Company Law Research Network

83 Act CXXXII of 2009 §4 (1)

84 Act CXCVI of 2011 §8 (14)

85 Act CXXXII of 2009 §5 (3)

86 Act CXXXII of 2009 §5 (4)

87 Act CXXXII of 2009 §6

88 GLINIECKI, Bartłomiej: *Current fundamental changes of the boards members’ remuneration in Poland*. Presentation “Corporate governance of state-owned enterprises in Central and Eastern Europe”; 14 October, 2016.; Budapest; National University of Public Service and Societas CEE Company Law Research Network

## 6. Special regulation of transparency

The state-owned company shall publish the name, the function and the allowances of its executive officers and of its supervisory board members.<sup>89</sup> The head of the state-owned company shall be liable for the publication of these data, for its continuous availability and for the authenticity of publication.<sup>90</sup>

## 7. Special shareholder's rights

For the state-owned company providing fundamental services, the state may exercise the right of option to purchase shares, which are not its property in the interest of safety of supply, of supplying duties, of increasing efficiency, of national economic strategy.<sup>91</sup> Any shareholders at the state-owned company may request that the shareholder exercising the right of option to purchase shall buy his shares (the selling right).<sup>92</sup> These rights are obligatory and pecuniary rights, not rights in accordance with exercise of classical member's rights.

## 8. Special accounts requirements<sup>93</sup>

The public enterprises have to separate the state subventions in their internal accounting. The public enterprises must keep a record of the dividend, the financial benefits and the waiver of recovery of used state monetary assets. The public enterprises, whose net revenue exceeded 250 million euro in the previous business year, shall send to the competent revenue office within six months from the closing of the business year

- their account (with the balance sheet report),
- business report,
- statement about accounting policy,
- reports of executive officers,
- data about own shares, own business shares, preference shares, priority bonds,
- data about not-repayable supports, loans, guarantees,
- data about the paid-out dividends and the held-back profit,
- data about any kind of state intervention.

In Serbia, the State Aid Institution is legally obliged to conduct annual audits of state-owned companies.<sup>94</sup>

89 Act CXXII of 2009 §2 (1)

90 Act CXXII of 2009 §2 (1)

91 Act CXXII of 2009 §7/A (1)

92 Act CXXII of 2009 §7/F (1)

93 On the ground of 3009/2012. NAV útmutató (Guide of the National Revenue and Customs Office)

94 MALAGURSKI, Branislav: *Challenges of Serbian public enterprises in the light of points II C and F of OECD Guidelines on corporate governance of state-owned enterprises*. Presentation "Corporate governance of state-owned enterprises in Central and Eastern Europe"; 14 October 2016.; Budapest; National University of Public Service and Societas CEE Company Law Research Network

### 9. Acceptance of discharge state duties of state-owned companies by central budgetary agency

The central budgetary agency may take over the discharge state duties from the companies owned in 100% by the state, then the concerned company must be terminated and for the debts of terminating company there is no liability of company's member (according to the Civil Code).<sup>95</sup> At the time, the point of acceptance of the discharge of state duties concerning the assets in the property of a company owned 100% by state devolve to the state and the trusteeship is due to the central budgetary agency.<sup>96</sup> Likewise, the point of acceptance of the discharge of state duties in the central budgetary agency is the successor of all rights and commitments of the company owned 100% by state.<sup>97</sup>

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The Hungarian regulation on state and self government owned companies are theoretically in keeping with OECD Guidelines, but not so detailed and comprehensive. The above discussed provisions are not so transparent and too general, *we – the outsiders – do* not have enough information on how these rules operate in practice in Hungary...

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95 Act CXCV of 2011 § 11/A (1), (1a)

96 Act CXCV of 2011 § 11/B (2)

97 Act CXCV of 2011 § 11/C (1)

## 5. BIBLIOGRAPHY

- AUER Ádám (2015): *Corporate Governance. Állami részvétellel működő gazdálkodó szervezetek*. Budapest, NKE.
- AUER Ádám (2015): *Corporate Governance az állami vagy önkormányzati részvétellel működő gazdálkodó szervezetek esetében*. In LENTNER Csaba szerk.: *Adózási pénzügytan és államháztartási gazdálkodás*. Budapest, NKE. 811–812.
- DINE, Janet (2003): A new look at corporate governance. *Company Lawyer*, 2003/5. 130–131.
- DJOKIC, Danila (2009): The Corporate Governance Statement and Audit Committee in the European Union and Republic of Slovenia. *Croatian Yearbook of European Law & Policy*, 2009/5. 283–289.
- FÉZER Tamás (2016): *Két úr szolgálai – a közvállalatok vezető tisztségviselőinek felelőssége*. Source: [www.kozjavak.hu/hu/ket-ur-szolgai-kozvallalatok-vezeto-tisztségviseloinek-felelossege](http://www.kozjavak.hu/hu/ket-ur-szolgai-kozvallalatok-vezeto-tisztségviseloinek-felelossege) (19 February 2016)
- HORVÁTH M. Tamás (2013): Felelős társaságirányítás – közszektorban? *Gazdaság és Jog*, 2013/1. 12–16.
- HORVÁTH M. Tamás (2014): *Vállalati részesedés igazgatása – köztulajdoni körben*. In LAPSÁNSZKY András – PATYI András (szerk.): *Ünnepi kötet Verebélyi Imre 70. születésnapjára. Rendszerváltás, demokrácia és államreform az elmúlt 25 évben*. Budapest, Akadémiai (Wolters Kluwer). 221–229.
- MANOLESCU, Maria – ROMAN, Aureliana Geta – ROMAN, Constantin (2010): Corporate Governance of Romanian Public Interest Entities. *DAAAM International*, 2010/1. 1127–1128.
- PAPP Tekla – AUER Ádám (forthcoming): Group Interest in Hungary. *Acta Universitatis Sapientiae* (Manuscript)
- PAPP Tekla (2008): Corporate governance – felelős társaságirányítás. *Acta Juridica et Politica*, Tomus LXXIII, Fasciculus 1–64. 639–653.
- PAPP Tekla szerk. (2011): *Társasági jog*. Szeged, Lectum.
- PATYI András – RIXER Ádám eds. (2014): *Hungarian Public Administration and Administrative Law*. Passau, Schenk Verlag.
- SÁRKÖZY Tamás (2009): *A korai privatizációtól a késői vagyontörvényig*. Budapest, HVG-Orac. 192–195.
- SÓLYOM László (2001): *Az alkotmánybíráskodás kezdetei Magyarországon*. Budapest, Osiris.
- TORMA András (2013): A nemzetgazdaság igazgatása. In LAPSÁNSZKY András szerk.: *Közigazgatási jog II. – Fejezetek szakigazgatásaink köréből*. Budapest, Complex. 23–59.
- WINNER, Martin (2012): Der UK Corporate Governance Code. *ZGR*, 2012/2–3. 246–272.
- ZOVÁNYI Nikolett (2015): *Kié a felelősség? A társasági jog útvesztőiben*. Source: [www.kozjavak.hu/hu/kie-felelosseg-kozvallalatok-tarsasagi-jog-utvesztoben](http://www.kozjavak.hu/hu/kie-felelosseg-kozvallalatok-tarsasagi-jog-utvesztoben) (18 December 2015)

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