Legal periodicals: a selection

BY EMILE SCHMIEMAN
VAN DER HEIJDEN INSTITUTE, RABOUD UNIVERSITY NIJMEGEN, THE NETHERLANDS

The regulatory framework of a Portuguese corporation is composed of a complex system of sources, ranging from private law to public law. Although the importance of self regulation is increasing, the largest part of this system still consists of statutory law, mainly the Code of Commercial Companies of 1986 (Código das Sociedades Comerciais (CSC)). The CSC aims at providing a global and systematic regulation on commercial companies. The CSC adopted a few original solutions from a comparative law perspective, but was mainly based on foreign legal orders, mainly the German and the French. Many EC-Directives were implemented with the entering into force of the CSC. Since the enactment of the CSC, Portuguese company law has undergone some revisions and complementary legislation has been added to the system of legislation on commercial companies.

The article explores the concept of legal transplants with a view to the emerging corporate governance issue of director’s fiduciairy duties which has been developed in the corporate law systems of the United Kingdom and the United States. The concept of fiduciairy duties is now being applied in central continental jurisdictions. The article reaches a positive overall assessment of this development. It is argued by the author that the importance of comparative research is growing more and more.

After the Enron-affair, it has become clear in France, like everywhere else, that a certain number of principles in the area of corporate governance, financial disclosure and companies’communication need to be reviewed. After the Viénot Reports on corporate governance of 1995 and 1999, the major French employers’ organisation MEDEF asked Mr. Bouton to set up a group charged with examining some questions linked with corporate governance. In fact, the aim of MEDEF was to prevent the French legislator from enacting a law on corporate governance. The MEDEF was of the opinion that soft law was better than hard law. The Bouton Report, that was published in September 2002, was not at all considered to be satisfactory. Many people felt that it did not contain real changes in the corporate governance system. In October 2003 all the above-mentioned reports were "consolidated" in a document called "The corporate governance of listed corporations". Meanwhile, the French Government has abandoned the idea of a general reform of company law but, inspired by the Sarbanes-Oxley Act and the recommendation of the European Commission on "Reinforcing the statutory audit", it reacted with the Financial Security Law (Loi de sécurité financière, (LSF). The LSF was adopted in August 2003. Its purpose is to permit more transparency in companies and to modernise the statutory audit. Next to
that, the aim of the LSF was to provide the French stock market with a more competitive legal framework. The LSF takes into consideration some of the conclusions of the Bouton Report. In fact, this report and the LSF have two common objectives: the improvement of corporate governance with more transparency and the credibility of accounts with a modernisation of statutory audit. Nevertheless, the Bouton Report concerns essentially the functioning of the board of directors (which was the aim of the Law on New Economic Regulations (Loi nouvelles régulations économiques (LNRE))) whereas the LSF basically concerns the information given to shareholders. However, even though the Viénot and the Bouton Reports are being taken into consideration by listed companies, corporate governance rules in France essentially result from the law.


In recent years, disclosure rules have more and more developed to a common instrument to regulate corporate activity. The authors examine the history and philosophy of disclosure rules in European company law and explain the origin of the current proposals. After that, they examine the newest acts and proposals of the European legislator in the area of corporate governance. These include the Recommendations on the role of non-executive directors and directors’ remuneration and the Transparency Directive. Furthermore, the planned amendments of the existing accounting directives in respect of board responsibilities and improving financial and corporate governance are investigated, as is the proposal for a new Audit Directive. The authors finally try to assess whether the approach chosen by the European Commission will work despite diverse legal and factual situations in the different Member States. In this context, the authors take into consideration the disclosure based Cadbury Regime in the United Kingdom and see to what extent this regime can be “translated” to the EU.


Even after years, the reforming of French company law still has not come to an end. At the end of the French parliamentary year, two bills were adopted. The most important of these is Law 2005-842 of 26 July 2005 regarding the enhancement of trust in and the modernisation of the economy (Loi du 26 juillet 2005 pour la confiance et la modernisation de l’économie). It contains some interesting provisions allowing the functioning of the public limited company (société anonyme, SA) to be more flexible. Next to that, the law contains provisions regulating for example the use of telecommunication means in the general meeting as well as lower quota in the general meeting. The most important provisions, however, are those containing new regulations as to transparency and the remuneration of the directors of companies quoted on the stock exchange. Furthermore, the Directive governing the Societas Europaea was implemented by the law of 26 July.