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THE PROBLEMS OF TERM LIMITS FOR DIRECTORS OF PUBLIC LIMITED COMPANIES IN EUROPEAN LEGAL SYSTEMS

Key words: governance of public companies, directors, term limits, sustainability, ESG objectives

Summary

The paper examines the time limits on the term of office of directors in public limited companies in the main European legal systems. The existence of a threshold is not limited to domestic regulations, but it is a transnational feature that generally responds to a need for corporate democracy. The actual determination of the maximum number of years in office is the result of a political decision. It is explored whether, especially in light of new ESG approaches, the provision of fairly restrictive thresholds is still an appropriate choice or whether *de iure condendo* a reshaping of it can be envisaged.

Introduction

The temporary nature of administrative offices, and corporate offices in general, is a feature of the governance of public limited companies.[1]

This characteristic is not limited to domestic regulations, but is actually transnational. In fact, in almost all European countries, administrative positions in public limited companies cannot be permanent, but are subject to a time limit, that depends on the choice made by the different legal systems.

Firstly, the focus will be on the reasoning behind the term limits in question, and then we will attempt to verify whether these are compatible with the medium

[1] Sanfilippo P. Funzione amministrativa e autonomia statutaria nelle societa per azioni [Administrative function and statutory autonomy in public limited companies]. Torino: Giappichelli, 2000, p. 289; Minervini G. Gli amministratori di societa per azioni [The directors of public limited companies]. Milano: Giuffre, 1956, p. 71.

to long-term management prospects, which are imposed by recent sustainability regulations.

1. The purpose of the term limits for directors of public limited companies

The existence of a time limit on the duration of directorships in public limited companies, serves the purpose of corporate democracy. In fact, the limit aims to ensure a balance between stable corporate governance and the possibility of replacing directors, if the company is not satisfied with their performance. Indeed, many legal systems allow for the removal of directors before the natural expiry of their term of office, but, in the absence of just cause, this involves a cost for the company in the form of compensation for damages to the removed director.[2]

The aforementioned threshold represents an inviolable limit on private autonomy; if there is a cap on the term of office, not even a shareholders' agreement could establish the appointment of a director for a longer period.[3]

This principle applies not only to the administrative body, but generally to all corporate offices in these companies, in particular to the supervisory bodies. The aim is the same, namely to avoid situations where governance becomes overly consolidated.

The temporary nature of the appointment is a mechanism for restoring the relationship of trust, between the administrative body and the entity that appointed it[4]: the shareholders' meeting or the supervisory body, respectively, in companies that use the traditional or one-tier model or in companies that use the two-tier model.

The limit on the duration of directorships in public limited companies is essentially aimed at preventing the concentration of decision-making power in the hands of the same people for excessively long periods of time, and thus at preventing the consolidation of positions of dominance within companies.

In many legal systems, the time limit is mitigated by the possibility of re-election in the following term of office, although company statutes may contain clauses that preclude re-election.

In any case, it should be noted that the re-election of a director obviously requires a new appointment and therefore a desire to confirm the director.

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[2] Rossi S., Di Cataldo V. Osservazioni in tema di revoca per giusta causa degli amministratori di societa di capitali [Observations on the removal of directors of limited companies for just cause]. Giurisprudenza commerciale, 2022, I, p. 535.

[3] Cagnasso O. Patti parasociali e contratto a favore di terzo [Shareholders' agreements and contracts in favour of third parties]. Societa, 2022, p. 137.

[4] See Jensen M. C., Meckling W. H. Theory of the firm: Managerial behaviour, agency costs and ownership structure. Journal of Financial Economics, No. 3, 1976, p. 305; Friedman M. Capitalism and Freedom. Chicago: University of Chicago, 1962, p. 133.

This shows that the legislator does not reject the idea that a director may manage the company for a very long period of time, but rather the idea that he may do so without having received a renewal of confidence from the person who appointed him.

2. The transnational nature of the term limits for directors. A comparison between different countries

In many legal systems, such as the Italian one, there is a maximum limit. This means that the administrator may be appointed for shorter periods, but no longer ones. For example, a director may be appointed for only one year, or, in the case of a board of directors, it may be possible to opt for so-called staggered board.

This mechanism is quite widespread in the United States. It provides that the board of directors is not renewed entirely every three years, but that, for example, one director or a portion of the directors is appointed each year. The staggered board has numerous benefits.[5] Above all, it ensures "managerial continuity and stability"[6], since the partial renewal of the board each time allows for the continuation of strategies that have already been initiated. Furthermore, it facilitates the integration of different professional skills within the body and promotes integration between previous members, who are already experts, and new members.

As mentioned above, the provision of a term limit for directors in public limited companies is a transnational feature.

The temporary nature of the position of director is evident in the *Societas Europea*.[7] Doctrine has stated that "members of the organs of an SE – as well as members of the organs of public companies established according to many domestic legislations – may not be appointed for a lifelong period".[8]

Moving on to individual legal systems, to mention just a few, Spanish law[9] is quite unique in that it provides for a difference in the maximum term depending on whether the company is listed or unlisted. Specifically, the term of office of

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[5] Sacco Ginevri A. Why Staggering Italian Banks' Boards in a World of Destaggering? Rivista trimestrale di diritto dell'economia, No. 1, 2016, p. 52; Massa Felsani F. Scadenza "contemporanea" e scadenza "scaglionata" del consiglio di amministrazione ["Simultaneous" expiry and "staggered" expiry of the board of directors]. Rivista del diritto commerciale, 1995, I, p. 545; Cremers K. J. M., Litov L. P., Sepe S. M. Staggered Boards and Firm Value. Journal of Financial Economics, No. 2, 2017, p. 422.

[6] Bebchuk L. A., Coates J. C., Subramanian G. The Powerful Antitakeover Force of Staggered Boards: Theory, Evidence and Policy. Stanford Law Review, 2002, p. 887; Koppes R. H., Ganske L. G., Haag C. T. Corporate Governance Out of Focus: The Debate over Classified Boards. Business Lawyers, No. 3, 1999, p. 1051.

[7] Council Regulation (EC) No. 2157/2001 of 8 October 2001 on the Statute for a European company (SE).

[8] De Luca N. European Company Law. Cambridge: Cambridge University Press, 2017; Rivaro R. La Societa Europea [The European Company]. Nuovo diritto delle societa, 2017, p. 47.

[9] Ley de Sociedades de Capital, Section 221.

directors may not exceed four years if the public limited company is listed, and six years if the public limited company is unlisted.[10]

The maximum term of six years also applies in French law.[11] A relatively shorter term is provided for in German law: members of the management board of an *Aktiengesellschaft* are appointed for a maximum term of five years.[12] The same term is also provided for in Latvian law in relation to the *Akciju Sabiedriba*, the Latvian public company: the *Komerclikums* states that "Members of the executive board shall be elected to position for five years if the articles of association do not specify a shorter term".[13]

In the Italian legal system, the maximum duration is three financial years;[14] this limit applies to all public limited companies, whether listed or unlisted, private or public, regardless of their size.

The actual determination of the maximum number of years in office is the result of a political decision. The provision of a maximum term of office represents a trade-off between corporate balance and management efficiency. On the one hand, an excessively short term is useful for corporate democracy but disadvantageous from a management perspective; on the other hand, an excessively long term is risky for maintaining balance within governance, although advantageous from the point of view of management continuity.

3. The consideration of the term limit as an obstacle to the managerial continuity of companies

However, the precise number of the limit can be justified in economic doctrine, which usually takes the period of 3–5 years as the dividing line between the short and long term. It is not a coincidence that companies typically draw up three-year or, in some cases, five-year business plans. Nor is it a coincidence that, in all legal systems that provide for a time limit, this is between 3 and 6 years.

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[10] Rojo A. Consideraciones sobre el derecho espanol de las sociedades mercantiles [Considerations on Spanish commercial company law]. Rivista di Diritto Societario, I, 2008, p. 2; Cortes Domìnguez L. La temporalidad del cargo de administrador en la sociedad anonima [The temporary nature of the position of director in a public limited company]. Revista de Derecho Mercantil, 1979, p. 411; Sanchez Calero F. Los administradores en las sociedades de capital [Directors in limited companies]. Madrid: Editorial Civitas, 2007, p. 121.

[11] Code de commerce, Section L. 225-18. See Menjucq M. Corporate Governance Issues in France. European Business Law Review, 2005, p. 1007; Cozian M., Viandier A., Deboissy F. Droit des Societes [Company Law]. Paris: Litec, 1999, p. 240.

[12] Aktiengesetz (AktG), Section 84, paragraph 1. See Bernhard W. Aufsichtsrat – die schoenste Nebensache der Welt? Defizite fuer eine effiziente Aufsichtsratstaetigkeit [Supervisory board – the most enjoyable secondary matter in the world? Deficits for efficient supervisory board activity]. Zeitschrift fuer das gesamte Handels und Wirtschaftsrecht, 1995, p. 312; Raiser T., Veil R. Recht der Kapitalgesellschaften [Company Law]. Muenchen: Verlag Franz Vahlen, 2006, p. 149.

[13] Komerclikums, Section 305, paragraph 3.

[14] Italian Codice civile, Section 2383, paragraph 2.

The critical issue with these thresholds arises primarily, from a management perspective. In fact, the equality between the term of office of directors and that of business plans is often only nominal and not effective.

Especially in cases where new top management is appointed for the first time, the first year in office is essentially spent getting to know the company. In any case, as a practice, business plans are defined and approved six or twelve months after the new top management takes office; therefore, the actual implementation of the business plan only begins during the second year of the term of office.

Furthermore, in the last year of the term of office, in light of the presumed instability regarding the re-election of board members, it is likely that the implementation of the plan will suffer some setbacks.

In this context, a three-year period definitely does not allow for the execution and completion of a three-year (let alone five-year) business plan. It should also be remembered that the possibility of re-election of directors, where not precluded by the articles of association, is only potential; the confirmation of directors requires in any case a decision by the shareholders' meeting, or a decision by the different body responsible for the appointment.

4. The impact of ESG factors and sustainable development on the term limits for directors

Further problems arise in terms of sustainability. So-called sustainable development is the driving force behind recent European ESG regulations.

Sustainable development requires a mitigation of the concept of social interest as maximization of shareholder profit; it requires that the corporate purpose also consider ESG factors and, in general, the interests of stakeholders involved in the business. Therefore, sustainable development certainly has an impact on the definition of business strategies[15].

Despite some recent setbacks (such as the so called "Stop the clock Directive"[16]), the inclusion of social, environmental and governance sustainability objectives in the management policies of large companies seems to be a given, from which it will be difficult to turn back. The new legislation in question – especially the Corporate Sustainability Reporting Directive[17] and the Corporate

[15] Denozza F. Due concetti di stakeholderism [Two concepts of stakeholderism]. Orizzonti del diritto commerciale, No. 1, 2022, p. 34.

[16] Directive (EU) 2025/794 of the European Parliament and of the Council of 14 April 2025 amending Directives (EU) 2022/2464 and (EU) 2024/1760 as regards the dates from which Member States are to apply certain corporate sustainability reporting and due diligence requirements.

[17] Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting.

Sustainability Due Diligence Directive[18] – highlights the need for a long-term perspective in the management of social enterprises.

The consideration of ESG factors in business management has breathed new life into the contrast between short-term and long-term concepts[19]. For some time now, US doctrine has been proposing an extension of the reference horizon for management strategies, especially in listed companies. In this context, the short-term horizon is mainly affected by the markets, which are characterized by an excessive focus on current share prices rather than on the company's growth prospects. This is reflected in pressure from shareholders on boards, which are often incentivized to focus on short-term goals. Thus, a longer term of office for directors could give them greater autonomy from shareholders.

The necessary consideration of ESG factors and the ideal association of shareholder primacy with the short term has led to an exaltation of the long term and, conversely, a resolute criticism of the short term.[20] As if the short term were necessarily good and beneficial for ESG factors and the long term were implicitly harmful to them. In reality, this criticism is certainly valid. However, beyond the criticism expressed in doctrine, regarding the exaltation of the so-called long term[21], there is no doubt that most of the negative externalities caused to the environment and human rights are the result of short-term management decisions. Therefore, a focus on long-term development necessarily impacts the time horizons taken as a reference for the strategic decisions of directors.

Conclusions

In this framework, the need for management stability, on the one hand, and consideration of ESG objectives, on the other, are not always compatible with excessively short terms of office for directors.

Thus, the hope is that the thresholds will be reconsidered in those jurisdictions that still have term limits of only three or four years.

In particular, a real term of office for directors that is significantly shorter than the nominal term certainly does not encourage the adoption of decisions

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[18] Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859.

[19] Ferrarini G., Siri M., Zhu S. The EU Sustainable Governance Consultation and the Missing Link to Soft Law. European Corporate Governance Institute. Law Working Papers, 2021, p. 10.

[20] Haldane A. G. The cost of short-termism. The Political Quarterly, 2016, p. 66, according to which the term "short term" "is generally taken to refer to the tendency of agents in the financial intermediation chain to weight too heavily near-term outcomes at the expense of longer-term opportunities".

[21] Stella Richter M. Long-Termism. Rivista delle societa, 2021, p. 41. See also Amatucci C. Responsabilita sociale dell'impresa e nuovi obblighi degli amministratori. La giusta via di alcuni legislatori [Corporate social responsibility and new obligations for directors. The right path for some legislators]. Giurisprudenza commerciale, 2022, I, p. 620.

based on sustainability principles. The problem of limited tenure is obvious: it is difficult to imagine that a director who, after only three or four years, risks leaving the company he or she manages, would be willing to invest in long-term objectives, let alone prioritize the interests of third parties over those of the shareholders.

Above all, sustainable choices need time to be implemented and put into practice. Short time horizons do not allow for this. Rather than considering possible regulatory changes to the corporate purpose, the legislator could begin to reflect on extending the time limits for directorships. Alternatively, consideration could be given to introducing partially differentiated rules for listed companies, which are more exposed to ESG issues. In these companies, more than in closed companies with a limited number of shareholders, there is a problem of limited terms of office for directors. The proposed change would benefit not only ESG issues, but more broadly the management dynamics of companies, which often need more time to perform at their best.

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