Corporate Governance in Non-profit Organizations in Europe

by Focusing the Governance Model

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1 Introduction – idea and theoretical background

Corporate Governance has become an important topic within science. Corporate governance came into the field of high interest, because of many worldwide crashes of corporations, due to a lack of guidance and supervision. It seemed to be, that the existence of balance sheets and their rules to establish them should be enough to show investors a “true and fair view” of a business. It did obviously not (Mallin, 2007, p. 1).

According to an overview of Turnbull, the idea of corporate governance is not new (Turnbull, 1997, p. 185), it started already in 1962 (Nippa, 2002, p. 11). Corporate Governance as a term is relatively young. It has been used in the English spoken literature only since the years 1990 (Witt, 2002, p. 41). The purpose of corporate governance in for-profit organizations is, to define the roles, responsibilities, and balance of power, among executives, directors, and shareholders (Ryan et al., 2010, p. 673) in order to help a firm to be sustainable in the longer term (Mallin, 2006, 2006, p. 3).

The principles of corporate governance are relevant to all forms of company, but the attention has been centered on public corporations because of their economic significance (Cadbury, 2000, p. 8).

The well-known definition of Sir Adrian Cadbury - “Corporate Governance is the system by which companies are directed and controlled” (Cadbury, 1992) – is not convenient to be used as a general definition but a as starting point, as it represents a certain meaning of corporate governance. It can only be understood on special implications but it has influenced the development of many corporate governance rule sets globally (Mallin, 2007, p. 22). Corporate Governance models were historically developed on different academic theories: It started with agency-theory (Jensen and Meckling, 1976) which addressed the separation of ownership and control between the principal as the shareholder and the agent as manager. The second area referred to the shareholders’ view of the corporation which focused on the shareholder as supplier of finance (Shleifer and Vishny, 1997).
The focus on profitability was considered to narrow and provoked the claim to include many other interest groups, i.e. stakeholders (Freeman, 2010, 1984). But most of the corporate governance literature focuses on a governance system being shareholder-centric as shareholders are seen as the most important stakeholder (Mostovicz et al., 2011, pp. 614). The underpinning theoretical basis of agency theory stresses accountability and control. It further focuses on the Anglo-American capital market and misses out that especially the capital market is different in Europe, see for example Germany (Witt, 2003, pp. 81).

The general importance of corporate governance called for a general valid definition and governance model, but the purpose of a general valid concept for any type of organization failed on the underlying theory and the various compelling laws in different countries. The corporate governance debate faces therefore several dilemmas: **First**, there exists no generally accepted definition for this term. The historical development brings out two extreme viewpoints, as the narrow one concentrating on accountability and control of managers and a wider one focusing on the integration of several interest groups as stakeholders. The already mentioned definition of corporate governance of Sir Adrian Cadbury represents the narrow definition, focusing on accountability and control. Under these circumstances an unmanageable number of different definitions have been developed. The **second** dilemma is the unequal embodiment of the capital market, for example in Anglo-Saxon countries or continental Europe (Li and Harrison, 2008, p. 608). The ideas are embedded in the first mentioned economic and legal system and cannot be transferred to continental Europe without considering their economic and legal systems (Nippa, 2002, p. 19). Even Europe cannot be seen as homogenous unit. Within Europe nearly any country has developed its own corporate governance code. There exist about fifty country-specific regulations, based on the legal differences (Roth, 2006, p. 5). The **third** dilemma is that corporate governance focuses on the governance structure of the Anglo-Saxon countries, the board model as one-tier model. Especially corporations in Germany and Austria are forced to use the two-tier model. Details on this model will be discussed shortly in the next chapter. Corporate Governance has drawn attention of several disciplines in the for-profit as well as nonprofit-area.

The figure below illustrates, that corporate governance, as widely discussed discipline, may start in different angles and with different viewpoints. It goes without saying that it results in different questions and solutions to them. The purpose within this paper is to transfer the conception of corporate governance to non-profit organization. This conception has to consider carefully the theoretical basis, it has to consider distinctive features of the selected type of organizations and consequently it leads to a completely different endowment of corporate governance.
The missing unitary definition and scope of corporate governance does not even allow just a single copying of the ideas developed within the for-profit area to non-profit organizations.

1.1 Basic governance models
In the literature there are discussed two basic governance models, the one-tier model and the two-tier model. These models are shown briefly as basic models and to distinguish them from governance models of non-profit organizations.

One-tier model of governance
The first governance model is the one-tier model, consisting of inside directors and outside directors. The inside-directors’ obligation is the governance of the corporation. The decision-making power is concentrated on the chief executive officer (CEO). He is superior to its members within the board. The outside directors’ obligation is the supervision of the corporation (Witt, 2002, p. 62). Both parties of directors are united in one governing body. This model is embedded in countries with long tradition in raising capital from the capital market by a several number of shareholders, i.e. USA and United Kingdom (Mallin, 2007, p. 124).

The figure below shows a shareholder-centric notion of corporate governance. It is driven by the shareholders as principal and the capital market (CHOI, 2011, p. 167). According to agency theory the shareholders are the principal, or the owner and the board of directors, the first-order agent and the management as the second-order agent of the board. The hierarchy is top-down.
The two-tier model of governance

The two-tier model has a characteristic difference to the one-tier model: It consists of two different boards, whereas in the one-tier model the inside and outside directors are united within one board. The management board’s obligation is the governance of the company. The supervisory board appoints supervises and advises the members of the management board (Werder and Talaulicar Till, 2006, p. 31). The supervisory board’s task is not only supervision as this control oriented towards the past does not serve the company in the future. The supervisory board also advises the management board and is involved in decisions of fundamental importance to the enterprise. Management board and supervisory board are in steady contact (Schmidt and Brauer, 2005, p. 307) but latter is not a better management board. It is not allowed to take part in day-to-day business as it is the task of the management board (Roth and Wörle, 2006, p. 37). The members of the supervisory board are elected by the shareholders at the general meeting (Cromme, 2007, p. 176). The emphasis within this system lies on the work of the supervisory board (Nietsch, 2005, p. 370).

Fig. 3: Two-tier model of corporate governance

Source: Choi, 2011, p. 169
Above figure shows the two-tier model of corporate governance. On the contrary to the one-tier model shareholders are not the unique centre of the governance system. Stakeholders as shareholders and employees, banks and others are in the centre of the governance system and therefore stresses the broader stakeholder view (Witt, 2003, pp. 79). This governance model is not so commonly used as the one-tier model. Germany and also Austria are the only countries in Europe besides Netherlands, Italy, France and some Eastern European countries (Roth and Wörle, 2006), p.35) using the two-tier model for the board of directors. This governance model strictly separates the roles of management and supervision. This strict separation demands, that the same person cannot be a member of both boards of the company. All board members have to participate in the management of the company on equal terms. A nominated chairperson is not allowed to instruct colleagues of the management board, it is only the primus inter pares. The composition of the supervisory board depending on the size of the company may be codetermined. That means that some members have to be elected by the domestic work force (Nietsch, 2005, p. 368).

2 Corporate governance in non-profit organizations

Corporate governance in non-profit organizations provides also no unique definition, but the predominant focus is also on the organizational level of governance and on boards and their behavior (Cornforth, 2012, p. 1121). Corporate governance in non-profit organizations also refers to arrangements of guidance and supervision (Siebart and Reichard, 2004, p. 271) considering all given ideas above. „The word corporate in corporate governance is no longer restricted to for-profit organizations“(Jegers, 2009, p. 144). Apart from focusing on an exact definition, it is very important to define explicitly the basic requirements of corporate governance in non-profit organizations: Corporate governance is about ensuring, that the organization has a clear mission and strategy, but not necessarily about developing it; it is about ensuring that the organization is well managed, but not about managing it (Anheier, 2005, p. 231). Discussion on corporate governance in non-profit organizations also has to consider the country-specific specialties, because of their different historical background of the countries and further legal prepositions. Research on non-profit organizations in USA is huge and comparatively young in Europe (Zimmer and Basic, 2008), p. 139), (Hopt, 2010, p. 533). The presented research concentrates on Europe and its tradition on the voluntary associations. Important research and visible outcome of the corporate governance discussion in German speaking Europe is the Corporate Governance Code of the Social Welfare Service of the Protestant Churches in Württemberg (Bachert, 2006, pp. 447) and the Swiss NPO-Code for non-profit organizations in Switzerland (Swiss NPO-Code, 2006), both representing
public-serving organizations according to a classification of Toepler and Anheier (Toepler and Anheier, 2004, p. 260): Public-serving organizations are providing collective goods, their decision-making process is hierarchical. Public-serving organizations resemble firms more than associations. Member-serving associations are providing club goods, their decision-making procedure is directly democratic. Representative research in the German speaking countries is the Freiburger Management Modell (Lichtsteiner et al., 2013, pp. 172). Scanning the literature and scientific discussion regarding underlying theories regarding corporate governance in the nonprofit-area, agency theory is the prevailing theoretical concept, even with all these mentioned nameable researches. Agency conflicts in non-profit organizations get some attention in literature, see for example Koss (Koss, 2005, pp.197). Some scholars recommend even a multiple principals concept (Jegers, 2009, p. 146) or (van Puyvelde et al., 2012, p. 433) instead of rethinking the suitability of this concept. As implication and consequence of agency theory the topic of control also got a certain attention in the adoption of the corporate governance model within non-profit organizations, for example Schuhen (Schuhen, 2005, pp. 221) or Krönes (Krönes, 2008, pp. 157). Considering the distinctive features of non-profit organizations stewardship theory gets only craven attention though for example Siebart provides striking arguments to follow this conception (Siebart, 2005, p. 858). Promoting stewardship theory as relevant theoretical conception will be discussed with this paper. Stakeholder theory is implicitly accepted from the organizational design of non-profit organizations as multiple stakeholder organizations, though Hippel (Hippel, 2007, p. 55) criticizes its appliance because of the huge number of stakeholders and its methods to reduce the number of stakeholders. The most important area of corporate governance in non-profit organizations is to look at the impact of the various stakeholders. Non-profit organizations have no owner and it is the stakeholder to substitute the owner. They assess the effectiveness of an organization on their personal point of view. A multiple system of goals represents various interest of stakeholders (Matul, 2003, p. 504). Non-profit organizations need a governance model where stakeholders can easily integrated on a broad level. There does not exist a perfect model of corporate governance which can be used for non-profit organizations. It has to be adapted to the specialties of this type of organization. When establishing corporate governance in non-profit organizations the solution is not just to change the organizational structure or adding just one additional board member (Schuhen, 2005, p. 235) or make minor adjustments to the organization’s bylaws (Alexander and Weiner, 1998, p. 225). Following citation of Macey and Miller was developed within the discussion of applying corporate governance concepts of for-profit-organizations to other countries, but it fits perfectly in the discussion of transferring the corporate governance idea to non-profit organizations. “Rather than investing resources in copying each others’ system, each system would profit by focusing on […] its own problems” (Macey and Miller, 1995, p. 112).
2.1 Distinctive features of non-profit organizations

Non-profit organizations are an important social, political and cultural part of a civil society. They are different, regarding scope, scales, mission, social and political importance and professionalism. Anheier and Salamon developed an international classification of non-profit organizations (ICNPO) consisting of twelve chapters (Anheier, 2005, p. 55 and pp. 383). Furthermore, there exist fundamental historical and consequently legal differences in the development of the nonprofit-sector: in America, historically the nonprofit-sector was developed in the years of 1970 (Zimmer and Hallmann, 2005, p. 106) and legally there exists a nonprofit-corporation as opposite to business corporations. The demarcation criterion is the non-distribution constraint (Hippel, 2007, p. 6). In Europe, the historical development of the nonprofit-sector was influenced by the Second World War, above all in the Western European countries. Legally the term nonprofit does not exist. The term nonprofit is only existing in the scientific literature but faced a critical discussion (Hippel, 2010, p. 200). The term “nonprofit” itself means “not for profit” but is often misunderstood as “no profit”. Non-profit organizations are allowed to make profits in a certain scope but not to distribute it. The term “nonprofit” is therefore used to distinguish nonprofit organizations from the profit sector (Zimmer, 2007, p. 38). In many European countries, the most important legal framework to build non-profit organizations is the association, above all in Western European countries. Implications and outcome on this special legal type are different. The great variety and diversity within this sector makes it difficult to generalize statements even within Europe. It is inevitable to narrow the research field as any field within the non-profit-sector has its distinctive features and claims for special treatment. The following table looks at various features to distinguish non-profit organizations i.e. the voluntary association to for-profit organizations according to the concept of corporate governance:

<table>
<thead>
<tr>
<th>Feature</th>
<th>Corporate Governance in for-profit-organizations</th>
<th>Corporate Governance in non-profit organizations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Legal framework</td>
<td>Corporations listed on the stock exchange</td>
<td>Associations, Foundations, Cooperatives</td>
</tr>
<tr>
<td>Property rights</td>
<td>Private owner, corporate owners, shareholder</td>
<td>Founder but no legal personal owner</td>
</tr>
<tr>
<td>On whose interest will the organization be governed?</td>
<td>Private owner, corporate owners, shareholder</td>
<td>Multiple stakeholder</td>
</tr>
<tr>
<td>Distribution of earnings</td>
<td>Annual distribution of earnings to shareholders</td>
<td>Non-distribution constraint</td>
</tr>
<tr>
<td>Performance</td>
<td>Financial bottom line</td>
<td>Several bottom lines</td>
</tr>
<tr>
<td>Structure of governing bodies</td>
<td>Two-tier model</td>
<td>Voluntary board-“One-tier model”</td>
</tr>
<tr>
<td></td>
<td>Separation of executive board and supervisory board, Separation of decision-making and control</td>
<td>No separation of executive board and supervisory board</td>
</tr>
<tr>
<td>Personnel</td>
<td>Paid staff in all hierarchical levels</td>
<td>Especially in associations volunteers in all hierarchical levels and paid staff in larger organizations</td>
</tr>
</tbody>
</table>

Source: own table
Legal framework

The issue of corporate governance in for-profit organizations concentrates on stock corporations. Stock corporations are the only legal form which allows the company to go public and to gain capital from the stock market. These organizations are in the centre of interest because of a certain amount of capital invested by a significant number of shareholders. (Werder and Talaulicar Till, 2006, p. 30). For-profit organizations as small or family owned businesses, partnerships, limited liability companies are not forced to the rules of corporate governance. The legal framework of non-profit organizations can be of different nature: In Europe the most popular framework to build a non-profit organization is the voluntary association (Freise and Pajas, 2004, p. 134), (Heitzmann and Simsa, 2004, p. 716), (Zimmer et al., 2004, p. 690). Further frameworks are foundations and cooperatives. These frameworks differ in detail so the issue of corporate governance may concentrate on different aspects: Whereas associations have members, foundations have no members but beneficiaries. Cooperatives are very similar to associations, they also support their members, but they differ in their activities to associations. Cooperatives may also be compelled to the non-distribution-constraint (Freise and Pajas, 2004, pp. 137).

Property rights

A further important feature to differ non-profit organizations from for-profit organizations, with consequences on appliance of corporate governance, is property rights: The owners of for-profit organizations may be private owners, corporate owners or shareholders. Non-profit organizations have founders but no owners. In young non-profit organizations, the founders may play an important role within the organization, in mature organizations founders are only part of their history. Legally, non-profit organizations have a juridical personality (Nowotny and Fida, 2007, p. 215), too. As a consequence and on the contrary to for-profit-organizations in non-profit organizations because of the missing owner there is nobody who can be entitled to a part of the organization’s profit (Jegers, 2009, p. 144).

On whose interest the organization will be governed

In the for-profit area, organizations are governed on those owners who also have the property rights. Non-profit organizations face the challenge of being multiple-stakeholder organizations (Simsa and Patak, 2008, p. 30), (Schröer, 2009, p. 148). Stakeholders can be: members, customers, volunteers, employees, interest groups, government, etc. (Haddad et al., 2003, p. 24). The question is which stakeholders are considered as important for the non-profit organization.
Distribution of earnings

A distinctive feature of non-profit organizations is their non-distribution constraint (Hansmann, 2010, p. 61). There is no pie to divide (Speckbacher, 2008, p. 313) among several stakeholders. But the annual distribution of earnings to shareholders including private or corporate owners is one important feature of the corporate governance discussion in the field of for-profit organizations, as well as the remuneration of the board members (Mallin, 2007, p. 129).

Performance

The financial bottom line, as profit or loss depicted in the balance sheet, describes the performance of a for-profit organization in two ways: First it shows, if the business mission is accepted on the market, as doing the right things and second it shows how efficient the goals are reached, as doing the things right (Malik, 2007, p. 169). The performance will be monitored by the owner (private owner, corporate owner, shareholders). On the contrary to profit-organizations in non-profit organizations it is not enough to look at profit or loss as unique bottom line. According to the characteristic as multiple-stakeholder organization non-profit organizations have several bottom-lines too (Schröer, 2009, p. 148), (Anheier, 2005, p. 227). They concentrate on task goals and the economic performance is only the basis (Schuhlen, 2005, p. 230). This distinctive feature of non-profit organizations results in a lack of general accepted criteria to measure performance (Miller, 2002, p. 443). “Nonprofit organizations lack the simple elegance of a financial measure…” (Kaplan, 2001, p. 354). The performance of a non-profit organization will be evaluated by the multiple stakeholders. These interest groups interpret the fulfillment of the mission, i.e. performance of the organization, on their specific expectations.

The structure of the governing bodies

The structure of the governing bodies is also a distinctive feature of non-profit organizations and has a great impact on the appliance of the philosophy corporate governance. Potential for-profit organizations apply either the one-tier model with a unitary board or the two-tier model with a dual board (Mallin, 2007, p. 122) as explained in chapter 1.1 of this paper. Non-profit organizations normally only have one governing body, the so-called voluntary board. The board consists mainly of volunteers, who are not employed in the organization. The voluntary board is not a mere one-tier model, it is similar to the one-tier model: The voluntary board guidance and supervision are united in one body and is exerted by the same members of this body (Siebart, 2006a, p. 197).

Personnel

The personnel working in for-profit organizations are paid staff in all hierarchical levels. The
difference is the endowment of power, competence and responsibility. People working in for-profit organizations gain their income from these jobs. The major part of the personnel working in non-profit organizations, especially associations, is volunteers. Volunteers may working in all hierarchical levels of an organization. Volunteers gain their income from other paid jobs. Paid staff in associations is rare. The challenge is the collaboration between paid staff and volunteers.

3 Corporate Governance in non-profit organizations – governance structure

The structure of a non-profit organization has to correspond to its environment, its area of engagement, its size and its goals. The country’s law on associations has to be considered as legal frame but the governance concept of an association is determined by the constitution. It is the most important building block of an organization’s governance structure (Siebart and Reichard, 2004, p. 278).

![Fig. 4: Corporate governance in associations – elements](image1)

Source: own figure

The figure above shows the important elements when discussing corporate governance for non-profit organizations and especially associations. As shown there are substantial differences in the structure and consequently the embodiment of corporate governance in non-profit organizations cannot be just a copy of the established models within the for-profit area. The most important difference between corporate governance of for-profit-organizations and non-profit organizations is the absence of the specific discussion about the remuneration of the governing body, as it is manned by volunteers. The executive director as the highest representative of paid staff is legally not responsible for the survival of the non-profit organizations consequently its remuneration is not part of the corporate governance discussion. The collaboration between the executive director and the voluntary board is a vital element of corporate governance in non-profit organizations for several distinctive features which will be discussed below.
3.1 The (voluntary) board in non-profit organizations

Within corporate governance, the board is seen as an important mechanism that can influence (Neville, 2011, p. 528) or form the governance of an organization. Most of the non-profit organizations in Europe, i.e. associations are governed by a voluntary board. Only in larger organizations the board is assisted by an executive director. This structure is somehow similar to the one-tier model. But associations do not apply the mere one-tier model consisting of executive and non-executive directors or inside and outside directors (Siebart and Reichard, 2004, p. 275).

Voluntary board members are in one and the same person executive and supervisory director (Siebart, 2006a, p. 230). This personal union is contrarian to the mentioned one-tier model as well as the two-tier model. Especially within the two-tier model the independence of the members of the supervisory board is given great attention. A member of the management board is not allowed to be at the same time member of the supervisory board (Roth, 2006, pp. 41). With the structure of the voluntary board this dictum is totally neglected. According to the Austrian law on associations, it is possible to install a supervisory board (Brändle and Rein, 2011, p. 120) but the composition and size of the board matter more than a separate supervisory board (Hopt, 2010, p. 545). The voluntary board is the governing body of a non-profit organization. Volunteer leaders are responsible, accountable for the performance of an association as well as they represent legally their organization (Preston and Brown, 2004, p. 221). The board has to determine the mission, to select and support the executive director, plan for the future, manage and secure financial resources, enhance the organization’s public image (Miller-Millesen, 2003, p. 526). This responsibility is also laid down in the law on associations, see for example (Brändle and Rein, 2011, pp. 118). The role of the voluntary board is crucial to the success of a non-profit organization and therefore a lot of considerations have to be taken: terms of board members, frequency and organization of board meetings, size and composition of the voluntary board (Siebart and Reichard, 2004, p. 281).

The reality of the board’s activities may occur in various endowments: The members of the voluntary board in small non-profit organizations have to consider these normative responsibilities but are not only consigned to do strategic work, but are also involved in the day-to-day business (Madrian, 1998, p. 126). In large associations the normative obligation may differ from the reality, considering that the members of the voluntary boards are volunteers: According to the principal-agent-relationship governance and strategic work in practice is not executed along this principle (Schuhen, 2009, p. 105): Honorary managers (volunteer leaders) make decisions, prepared by paid staff. Bylaws to the constitution of an association describe the restriction of power of the executive director or managing committee. In practice in large associations also strategic work will be done by the executive director because of greater information and a greater stake in and identification
with the organization. The voluntary board is exposed to end as rubber-stamp-board (Renz, 2007, p. 57). The final decision-making power and responsibility remains with the voluntary board. As the voluntary board’s obligation is the governance of the associations, the scope of decisions may cover operational as well as strategic issues.

Associations working with voluntary board members face a lot of challenges: They are not employed and therefore not available on regular working hours. Their time is even restricted as far as they are not retired. Consequently honorary managers are not in a steady process of thinking about goals, problems, business fields. They may have a lack of continuous information for decision making. To face these obstacles the emphasis has to be put on excellent communication.

There exists a big challenge for voluntary board members according to above described problem to align the normative function of the voluntary board with existing practice: Either board members are educated, so that they gain skills to do their managing job or they better transfer the time-consuming operational tasks to a managing committee (Schuhlen, 2005, p. 236) with high decision-making power and concentrate on supervising (Proeller et al., 2008, p. 253). The question is, if the ultimate responsibility remains with the volunteers or the managing committee is endowed with a high scope of decision making power. The bigger an association becomes the more it is necessary to consider an additional supervisory board on the one hand to solve existing governance problems in practice and provide a structure to integrate stakeholders.

### The role of the voluntary board

The basic role of a board in a non-profit organization is management and control (Hopt, 2010, p. 540). Hung shows the relation between several roles of governing boards and the organization theories behind: He talks about six roles: linking, coordinating, control, strategic, maintenance and support role (Hung, 1998, p. 105). This overview is an example of an all-embracing overview of the roles of the governing board and its underlying theories.

### Table 2: Roles of governing boards

<table>
<thead>
<tr>
<th>Governing Board</th>
<th>Board involvement in decision-making process</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Extrinsic Influence Perspective</strong></td>
<td></td>
</tr>
<tr>
<td>Contingency Perspective</td>
<td>The role to be shaped by contingent factors</td>
</tr>
<tr>
<td><strong>Intrinsic Influence Perspective</strong></td>
<td></td>
</tr>
<tr>
<td>Institutional perspective</td>
<td>The role to conforming to institutional expectations</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th></th>
<th>External environment</th>
<th>Internal environment</th>
<th>Institutionalized through external pressure</th>
<th>Institutionalized through internal pressure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Networking/interlocking role</td>
<td>Pluralistic organization</td>
<td>Conformance function</td>
<td>Performance function</td>
<td>Identifying with the societal expectation of organization</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Instrumental view of directors</td>
</tr>
</tbody>
</table>

12
<table>
<thead>
<tr>
<th>Linking role</th>
<th>Coordinating role</th>
<th>Control role</th>
<th>Strategic role</th>
<th>Maintenance role</th>
<th>Support role</th>
</tr>
</thead>
<tbody>
<tr>
<td>Resource Dependency Theory</td>
<td>Stakeholder Theory</td>
<td>Agency Theory</td>
<td>Stewardship Theory</td>
<td>Institutional Theory</td>
<td>Managerial Hegemony</td>
</tr>
</tbody>
</table>

Source: Hung, 1998, p. 105

The conclusion to the table above is that each theory stresses only one part of the role of a board, no one is able to perceive the whole picture: Resource dependency theory is used to explain the inter-relationship, in the form of resources provision, among organizations and in some cases individuals. Stakeholder theory and institutional theory are sociological paradigms which are used to describe the interaction between organizations and their environment. Agency theory presumes a conflict of interest when there is a separation of ownership and management in an organization. Managerial hegemony, like agency theory, focuses on the modern trend of management-based organizations. Stewardship theory is a metaphor of human relations school of organization studies, which portrays a harmonious picture in respect of the management of organizations (Hung, 1998, p. 108). Board members may play different roles at the same time in various priorities. A possible concentration of the role of the voluntary board on only one theory may limit the picture.

### 3.2 The executive director

Big non-profit organizations support their voluntary board by an employed executive director. It is the highest rank of paid staff. The executive director has limited rights compared to a CEO (Chief Executive Officer) of a for-profit-organization. The limitation of rights will be written down in so-called bylaws to the constitution of an association (Siebart and Reichard, 2004, p. 278). Consequently the executive director is legally only an assistant, a subordinate to the board (Siebart, 2005, p. 857) according to agency theory. Paid staff including the executive director will execute operational work and therefore relieve board members from these tasks. The board’s task moves normatively to strategic work.

Siebart points out, that the relationship between the board and the executive director is very crucial to the success of a non-profit organization and better to describe as partnership or team-work. The board retains its legal and hierarchical superiority while the executive director normally has greater information and a greater stake in and identification with the organization (Siebart, 2005, p. 859). Axelrod describes this situation as the central paradox of nonprofit organizations: The board holds the ultimate power but does not ordinarily wield it operationally (Axelrod, 2005, p. 134).
Above figure shows the collaboration between the board of directors and the executive director which is based on mutual trust. In reality both partners work on the same hierarchical level and the board retains its hierarchical superiority only in case of the final decision-making to which it is authorized. The board’s responsibilities normatively are defining the organization’s mission, establishing policies and further decisions of high importance. Board members are elected for their leadership qualities and or professional skills in different areas. The executive director is hired for his or her management skills. Its task is also to improve the decision-making quality of the board (Siebart, 2003, p. 239). The choice of a trustworthy executive director is a fundamental task of the nonprofit board. The challenge in the collaboration between board and executive directors is the existing information asymmetry, in favour to the executive director as being a full-time employee of the respective organization but also different knowledge in favour to the board members. As the board members may represent different stakeholders of the organization they may have better knowledge of certain interest groups. According to Siebart the provision of different knowledge should be seen as providing different resources for the organization. (Siebart, 2006, pp. 858). In practice the executive director may have a lot of informal power, according to the above mentioned information asymmetry. Within the literature this danger is also discussed as the executive director may expropriate this situation and more influence the board on decision-making than rather support or give advice to the board members. The challenge of the executive director is to find a balance in his leadership function to the board to avoid the board to become a rubber stamp board. This situation is characterized as managerial hegemony (Hung, 1998, p. 107).
3.3 The members and further stakeholders

Characteristic feature of associations is their members on the contrary to foundations being also a legal frame for a non-profit organization (Freise and Pajas, 2004, p. 134). Codetermination of members is a constitutive element of associations (Proeller et al., 2008, p. 254). Members of an association play a significant role, they can be classified as one important group of stakeholders: With their money they support the organization financially, they contribute to the success of an association. In return they get special services from their organizations at a reasonable price. Members are not classified as owner from the juridical or legal point of view although they have certain rights, e.g. they elect the members of a board at the annual general meeting and after each period they approve the members of the board. Voting rights of members are not subject to bargained on an effects market. If a member leaves an association it cannot claim for a part of the association’s assets (Siebart, 2006b, p. 204). The motives to become a member of an association are dependent on the purpose or offered services of an association.

An increasing part of members see their possibilities of being stakeholder to participate in offered services in paying the annual membership fee as done. A smaller group also takes part in the association’s life by working as volunteer: It is already discussed within the literature and further confirmed by an empirical study of the author of this paper around Alpine Club associations, that only few members of an association are interested in the annual general meeting and make use of the voting right. Zimmer compares this lack of interest of being an active member with the existing political disinterest (Zimmer and Basic, 2008, p. 147). If only a few members execute their voting right on an annual general meeting, these few members decide for a lot of other members. On the other side a huge number of members apart from not taking part in the associative life or the above mentioned political disinterest represents an association as an alternative resource of legitimacy but only if it is in a position to maintain members loyalty and to be attractive for potential new members (Zimmer and Basic, 2008, p. 147).

Further stakeholders

It is a distinctive feature of corporate governance in non-profit organizations, to consider several stakeholders and their impact on the organization. Stakeholders replace the missing owners and it is the board members who should be representatives of different stakeholders of the organization (Siebart, 2005, p. 859). On the contrary to for-profit organizations stakeholder of non-profit organizations do not struggle for financial returns but rather for intangible returns. The generated pie is intangible and cannot be divided among stakeholders. The so-called return on investment of stakeholders is the promotion of the organization’s mission and vision and in an ideal case stakeholders share the same expectations on them (Speckbacher, 2008, p. 313). Stakeholders can be
the voluntary board, members, volunteers, employees, customers, interest groups, government, etc. Stakeholders are different to a for-profit organization and even different within non-profit organizations (Theuvsen, 2001, p. 3). The question, which stakeholders are to be considered as important for the non-profit organization is the same, as in for-profit organizations. There exist several theoretical models to reduce the number of stakeholders which may be applied also to nonprofit organizations, see for example (Mitchell et al., 1997).

It is vital to non-profit organizations to be aware and to be sensitive to its several interest groups otherwise the interpretation of the environment may be done incorrectly and may further lead to wrong policies. The board of directors is the key link to understand the multiple constituents. The result may be opposing goals and expectations on the organization. Conflicts may occur (Brown, 2002, pp. 371). Stakeholder management is a proper tool to provide a consistent approach to stakeholders as the dynamic of their interactions may be better anticipated (Balser and McClusky, 2005, p. 298) and reduce uncertainty to them. The highest level of integration of stakeholder is to integrate them in decision making and control which is done first along the constitution where the influence of possible stakeholders might be laid down. Different decision-making bodies are empowered with different decision-rights, considering the board as a stakeholder. Further to this it is to take account in interests of stakeholders in a stakeholder-oriented organizational structure besides the legal necessities (Theuvsen, 2001, pp. 18).

3.4 Scope of supervision and control

Scope of supervision and control is an essential part of corporate governance. In this chapter, the normative role of the voluntary board has been discussed in detail, it is management and control. Further roles of the board have also been presented according to the comprehensive overview of Hung (Hung, 1998). Supervision and control is discussed in the literature at length as many crashes of corporations were caused by a lack in it (Mallin, 2007, pp. 2). At the latest in discussing the scope of supervision and control the underlying theories on which a corporate governance structure is built on become relevant. Again, the prevailing theory in discussion supervision and control is agency theory. Several scholars discuss the applicability of this theory to non-profit organizations because of lack of the clear identification of the owner (Mwenja and Lewis, 2009, p. 360) and (Miller, 2002, p. 434). The alternative and more adequate concept to understand supervision and control is stewardship theory with its quite opposite assumption: Agency theory assumes a conflict between interests of the principal to those of the agent. Consequently supervision and control is a very important task of a board. On the contrary stewardship theory assumes, that board members want to do a good job and will act as effective stewards of an organization’s recourses (Cornforth, 2003, p. 8).
Supervision and control in non-profit organizations respectively associations is dedicated to several bodies or authorities, like the state, the auditors, the members, the voluntary board. The most important question refers to the effectiveness of common supervision and control. Non-profit organizations are distinctive organizations and consequently supervision and control has to be structured differently for these organizations for following three reasons: The first striking argument is the personnel working throughout all hierarchical levels of associations which are volunteers. According to Krönes in non-profit organizations supervision and control is very sensible as volunteers in general are namely intrinsically motivated and this motivation may be destroyed by stressing the control or supervision according to agency theory (Rochester, 2003, p. 169). Extensive control would cause even an opposite effect, a so-called crowding out effect (Frey and Jengen, 2000, pp. 9) of intrinsic motivation. The second argument refers to the missing principal or owner according to agency theory. Members cannot be classified juridical or legally as owners which will be argued in the following chapter. Members have certain rights, even control rights which are according to the laws on association extremely week. Third, as already mentioned the board’s role is management and control but within non-profit organizations the effectiveness of this control is a complex theme. Because of the absence of an owner, board members are not sure to whom they are accountable (Miller, 2002, p.439). Furthermore, control mechanism from profit corporations fail, as there is no inside control by shareholders, no external control by capital markets and threat of takeover (Hopt, 2010, p. 551).

Control by the state
According to the historical based freedom of assembly, government has not installed a lot of control mechanisms (Heitzmann and Simsa, 2004, p. 722), (Cornforth, 2003, p. 691): An association has contact to a legal authority mainly in the state of foundation. After the incorporation in the Association Register there is no further contact as annual control by filing a balance sheet compared to registered companies to the commercial register. Contact to the legal authority will be only in case of changing the constitution of an association or changing of legal representatives.

Supervision and control by auditors
The Austrian law on associations executes control only by defining accounting standards for small, middle and large associations and the nomination of two auditors or an auditing company in case of a large association. The auditors are responsible for checking the financial conduct in respect to its compliance with accounting principles and its proper use of resources in ways compatible with the constitution. This type of control is a very formal one, e.g. checking if documents are available for any business transaction, if the balance within the accounting system corresponds with the bank
statement, the check of the cash etc. The auditors look also on the execution of made board’s decisions corresponding to the minutes. It is not the duty of the auditor to check the activities of an association concerning profitability, utility, economy or purpose. The function of an auditor must not be mixed with managerial accounting (Höhne, 2013, p. 160). The German law on associations does not stipulate associations to different types of control depending on the size of the organization (Hippel, 2007, p. 368).

Supervision and control by members
Scholars trying to apply agency theory to non-profit organizations classify members as principal (Koss, 2005, p. 206) and consequently give them the right to execute control. Apart from an underlying theory members of an association can execute their control rights almost exclusively at the annual general meeting. Member’s control rights according to the law on associations are less developed. Members get information only around the annual general meeting and control rights are further limited outside this meeting (Kalss, 2010, p. 808) or (Hippel, 2007, p. 329). Additionally it is to consider the low participation of members on the annual general meeting consequently this control right is further of weak nature. Along the annual general meeting the members’ voting right is to elect the members of the board and accept and approve the financial reports and accounts of the previous year, see for example (Hippel, 2010, p. 201) and (Kalss, 2010, p. 808). This common type of control together with the already mentioned weak information rights is extremely questionable regarding its effectiveness.

Supervision and control by the voluntary board
The board’s function concerning supervision and control refers to an installed executive director or managing committee. This scope of control is discussed at length in the literature as it is relevant also in non-profit organizations. The board is authorized to give instructions to the executive director but the information asymmetry (Schuhen, 2005, p. 232) is a disadvantage for the board being responsible for the supervision of the executive director (Siebart, 2006b, p. 198). Schwarz and Schnurbein show that the execution of control is first of all dependent on the amount of power of the board and the executive director (Schwarz and Schnurbein, 2005, p. 359). The distinctive feature in non-profit organizations, i.e. associations is that the members of the board are volunteers, i.e. honorary managers. They are not available on normal office hours and therefore dependent on information of the executive director and further the executive director even prepares the information being the basis for the supervision and control of themselves. According to this lack the board’s control is reduced to a check of the compliance of formal rules within established structures. The important control which may induce a structural change or the appropriateness of
complex decisions is not possible (Proeller *et al.*, 2008, p. 258). Miller shows with her research on the board as monitor of organizational activity some core problems and point of views (Miller, 2002, pp. 436): The relationship between the board and the executive director is based on trust and mutual respect. Board members rely on the executive director in providing them with information. “We are volunteers, we may have the ideas and the enthusiasm, but without them [paid staff] the work would not get done”. Consequently board members are even not willing to execute control as they do not recognize any goal conflicts. Their behavior can be better compared with the assumptions of stewardship theory. Schwarz and Schnurbein suggest that in case of an installed executive director or managing committee the voluntary board should better concentrate on a role as steering committee focusing on strategic work (Schwarz and Schnurbein, 2005, p. 372). The role of the board according to the mentioned stewardship-theory is primarily strategic, i.e. driving forward organizational performance (Cromme, 2007, p. 13).

These remarks show already a few arguments that execution of control according to agency theory fails according to several reasons. Supervision and control by the voluntary board is further problematic and demands for an alternative concept: Ouchi discusses the idea of social control for organizations where neither the behavior nor the output can be measured. There are no defined rules of behavior which if followed will lead to a result. Instead of a rational form of control such organizations, like hospitals, schools, government agencies and even non-profit organizations use ritualized, ceremonial forms of control (Ouchi, 1979, p. 844). Trust and collaboration are fundamentals in working within non-profit organizations. In this respect the mode of control has to be adapted to the behavior of the organizational members. Regarding the underlying theories being applicable for a corporate governance system stewardship fits better to the behavior of these mentioned members and further to the topic of control otherwise the mentioned crowding-out effect of intrinsic motivation may occur.

*Supervision and control by stakeholders*

Supervision and control by important stakeholders like the members have already been discussed deeply. How stakeholders judge the effectiveness of an organization refers also to members. Stakeholders play an important role for non-profit organizations as they judge the organization’s effectiveness, i.e. performance (Herman and Renz, 1998, p. 25). Stakeholders are inside and outside the organization. As already-mentioned, non-profit organizations face the lack of generally accepted performance measurements. Such performance measurements are developed and executed inside the organization. The question remains how stakeholders outside the organization judge the effectiveness of an organization. Performance indicators suffer even greater diversity. Herman and
Renz present an insight how stakeholders may create their judgements and to a certain extent diversity will remain: Social constructionism considers reality or some parts of reality to be created by the beliefs, knowledge, and actions of people. This reality is not a preexisting thing independent of people and an ongoing process. Different people look for different things and what they see is a product of a social process. (Herman and Renz, 1998, p. 26). Hence, stakeholder’s criteria to judge the effectiveness of an organization are not of objective nature and even differ between stakeholders. Stakeholders are further dependent on the information they get to make their judgements. Balser offers a possibility to come across with multiple stakeholder groups and their varying and sometimes conflicting expectations: Strategic stakeholder management by establishing a consistent approach will be an advantage for stakeholders themselves as they are better able to anticipate the dynamics of their interactions with the non-profit organization as well as the organization itself. With a consistent thematic approach the organization may influence, but not manipulate the expectations and on the same time can still pursue its mission and provision of services (Balser and McClusky, 2005, pp. 297). In recognizing that the effectiveness of a non-profit organization is a socially constructed and not a stable construct, it makes clear, that different stakeholders will judge differently. Effectiveness seems to be arbitrary but it can be grounded by certain hard facts as those of a balance sheet, like revenue, cost etc. And even these apparent objective measurements may be interpreted different by different stakeholders (Herman and Renz, 2008, pp. 410). Stakeholders can only contribute to performance when they are empowered to lead (Gazley et al., 2010, p. 612) as member of a board. Executive directors play an important role in dealing with these various expectations. Additionally the board can act as linking role between the organization and important stakeholders.

**Accountability**

The board is not only executing control over the executive director as discussed above a further function is its accountability. The board is accountable to its stakeholders. In case of an association with members it is obvious that the board feels above all accountable to its members. Miller found out in her research that in the absence of an owner it is difficult for the board to name the constituencies to whom they may be accountable (Miller, 2002, p. 439). Even though a non-profit organization is able to name its constituencies or stakeholders a further complex topic comes up which will not be discussed in detail within this frame: it is about measurement of performance, i.e. effectiveness. The total nonprofit-sector lacks on commonly accepted measure of performance (Miller, 2002, p. 446). This topic challenges scholars and practitioners equally. Effectiveness of non-profit organizations is multidimensional and cannot be measured with a single indicator.
(Herman and Renz, 2008, p. 401). Greiling as well as Bono have as exemplary authors discussed detailed performance measurement in non-profit organizations (Greiling, 2009, Bono, 2010).

Performance in case of a non-profit organization is the extent, to which the organization’s mission is achieved (Herman and Renz, 1998, p. 24). For such mission-driven organizations measuring success is extremely difficult (Sawhill and Williamson, 2001, p. 371) because as being multiple stakeholder organizations, non-profit organizations have multiple bottom lines (Anheier, 2005, p. 227) and probably conflicting goal sets by their stakeholders to achieve. Even though there is a difficulty to exactly measure the performance of a non-profit organization it is far below the definition to reduce performance measurement to the financial bottom line.

4 New governance model for non-profit organizations (associations)

4.1 Theoretical basis of the new governance model

The important difference between for-profit organizations, i.e. corporations and non-profit organizations is that a corporation has shareholders, a non-profit organization, especially an association has members. As capital providers shareholders are owners of shares and will get compensation relative to their shares and risk. Non-profit organizations mainly associations have members. These members are also capital providers but on the contrary to shareholders they are not entitled to a part of the organizations profit (Olson, 2000, p. 283). Members will take part in tangible and intangible services provided by the organization.

The legal model of the firm/corporation

Classical agency theory’s governance model is the economic model of the firm. In this model, the firm is seen as nexus of contracts ((Jensen and Meckling, 1976), p. 310 where several relationships exist: between owners and managers, managers and employees, etc. The capital providers, i.e. shareholders as residual claimants, are the owners of the firm. They have the ultimate right of control. The managers/employees’ task is to perform their work along the interests of the owners. The managers (agents) may have different goals than the principal, which will occur in decision-making. According to LAN (2010, p. 299) this model is called the shareholder primacy model. The shareholders as principal are on the top of the hierarchical model, the board of directors as first-order agent on the second level and the managers as second-order agents on the third level. All other stakeholders, i.e. creditors, suppliers, employees are under these three levels.

On the contrary to the economic model, the legal model, approves the corporation itself as separate legal entity, independent of its managers, employees and creditors. As “juridical” person it has
rights, assets and liabilities same to a natural person. Shareholders are only owners of their shares, they are capital providers and their liability is even limited to their shares. Legally they cannot be owners of the juridical person. The purpose of shareholders is provision of capital and earning interests out of this contract. Apart from the ultimate right to control and monitor the management, control of the corporation is the task of directors/managers (Abbasi, 2009, p. 407). Abassi (Abbasi, 2009, p. 410) further shows that even in the economic view it is inevitable to consider that shareholders have limited liability, their risk-bearing is limited to their invested capital. This causes an effect of transferring some risk to the creditors in case of a bankruptcy. Consequently the residual rights holders’ argument for regarding the shareholders as the owners fails even in the economic paradigm. Even Fama (Fama, 1980, p. 290) said: “Ownership of capital should not be confused with ownership of the firm”. The legally based perspective takes away the focus from the shareholder, enabling the application of agency theory in the not-for-profit sector. In non-profit organizations there are no owners, expecting to earn profit, getting paid (Olson, 2000, pp. 281). Further the non-distribution constraint (Hansmann, 2010, p. 60) forbids the distribution of earnings.

In classical agency theory shareholders are classified as owners and consequently represent the principal. In applying classical agency theory to non-profit organizations some scholars tried to interpret members as quasi-principal (Koss, 2005, p. 206) but this will be seen as misleading interpretation by the author for several reasons: The consequence of interpreting members as principal would mean, that the organization might have to be governed to maximize the welfare of this principal, i.e. members. Non-profit organizations can be interpreted as multiple-stakeholder organizations and the classical shareholder primacy model might exclude the existence of other interest groups a non-profit organization is also dependent on. Van Puyvelde’s attempt to integrate agency theory with stakeholder and stewardship theory leads to the identification of several principal-agent relationships. He divides these relationships in external nonprofit principal-agent relationships with donors, consumers, clients, members and internal nonprofit principal-agent relationships, like between board and managers and managers and employees. Even with volunteers he implies a principal-agent relationship (van Puyvelde et al., 2012, pp.433). Being principal implies a vertical organization as predicted in the shareholder-primacy model. But having more than one principal makes it nearly impossible to balance different interests. It is argued that control would become impossible if there are more than one principal (Segrestin and Hatchuel, 2011, p. 487). With her research Miller shows that the appliance of agency theory in non-profit organizations is deficient. The agency problems are not existing: The assumption of a goal-conflict between the principal and the agent is not existent, further non-profit organizations have problems in identifying their owner which leads only to a rhetoric accountability. And the monitoring activities of the board
are limited because of the not identified owner and further no commonly used performance criteria are available in non-profit organizations (Miller, 2002, pp. 436).

Non-profit organizations have no owner, consequently the appliance of the classic shareholder primacy model as a shareholder-centric model, with its vertical organization due to the principal-agent relation fails consequently it is to look for an adequate alternative by considering the distinctive features of non-profit organizations, namely associations and some already discussed specialties.

4.2 The director primacy model as new governance model for non-profit organizations

The legal model of the firm with its theoretical background provides a first path to a new governance model for non-profit organization. In order to provide a valuable alternative to the shareholder-primacy model of the firm, a further theory is adopted to justify and explain the new ideas of an enlarged and enriched agency theory by appliance of team production theory (Alchian and Demsetz, 1972, p. 779). Team production theory understands a firm as a “nexus of firm-specific investments, in which several different groups contribute unique and essential resources to the corporate enterprise and who each find it difficult to protect their contribution through explicit contracts” (Blair and Stout, 1999, p. 275). Within this theory hierarchy plays an important role, in ensuring decision making, but recognizes, that some productive activities depend at least as much upon horizontal relationships as verticals one (p. 264). The basic work in explaining the function of hierarchy as mediating role, to bring team production to success, is based on Rajan/Zingales (Rajan and Zingales, 1998). Hierarchy in this model is to the benefit of the team members, as only an independent or third party is able to mediate between the firm-specific investments, provided by all team members. Applying team production theory to a corporation, the hierarchy will be different: The corporation itself as legal entity appears as principal as the highest unity, the shareholder as principal falls apart. The status and the role of the board are very different to the shareholder primacy model: its function is that of an autonomous fiduciary and not that of an agent to the shareholders. Its role is not to represent hierarchy in itself, but being the mediating hierarch to the benefit of all team members. The firm is viewed as a team and the shareholder is only one of various parties that make a “specific contribution” to the firm. The model’s idea comes close to the idea, that a corporation will not only have one stakeholder, i.e. shareholder, making specific contribution, but a several number, i.e. management, creditors, suppliers, etc. contributing to the overall success. To overcome the shareholder-primacy model, it is important to redefine the principal of the corporation, the status and the role of the board:
Redefine the principal of the corporation – from shareholder to the corporation

The basis for this redefining is the legal model of the corporation. Within this model the corporation itself is a legal entity, having rights, assets and liabilities. Shareholders are owners of their shares and could never be owners of the legal entity, the corporation. It is also argued, that the limitation of the liability of shareholders weakens the claim of shareholders, to be the owner of a corporation. Lan (Lan, 2010, p. 301) argues further, that moreover directors/managers may have potentially unlimited personal liability, if they act beyond the fiduciary duty.

Redefine the status of the board – directors as autonomous fiduciary of the corporation

This idea blows away the classical hierarchy and sequence within agency theory. The board as autonomous fiduciary will mean, that on the contrary to the shareholder primacy model, the board is no agent, it is the ultimate decision-making body, members of the board are fiduciaries, with respect to the corporation and its shareholders (Clark, [1991], c1985, p. 56). A fiduciary is defined as someone, who is entrusted with the power to act on behalf of and for the benefit of another. A fiduciary is expected to act in good faith and honesty for the beneficiary’s interest (Lan, 2010, p. 302).

Redefine the role of the board – mediating hierarch

The board’s role as mediating hierarch, is understood to balance the competing interests of team members. The idea is to reduce uncertainty and dependency among team members (Lan, 2010, p. 303). If one of the team members might have control over the division of profit, the other team member(s) will be reluctant to invest, to make firm-specific investments. Only when they give up control to a third party, (the board) which makes no firm-specific investments, all parties can improve their welfare (Rajan and Zingales, 1998, p. 422). The model does not imply, that a possible surplus will be distributed equally, the board’s role is to mediate between different interests of the team members. The basic ideas of the director primacy model open the path to further theories: This model implies the idea, that more than one stakeholder is responsible for the total success of an organization. The attitude towards the board as fiduciary is related to the ideas of stewardship theory, characterized by the absence of a goal conflict between the goals of the principal and the steward.

What remains from classic agency theory

From classic agency theory remains the implications of shareholder voting rights. Shareholders play an important role in the shareholder primacy model. As entitled owners, they are the residual claimants executing the ultimate right of control. Having a look on the director primacy model, the
shareholder is only one of a several number of contributors, of firm-specific investments. The question remains, what to do with the voting rights of the shareholders. Legally they still exist even under the team production theory. First, shareholders have the right to elect and remove the directors. Blair and Stout (Blair and Stout, 1999, p. 310) show, that in corporations where the shares are in hand of a small number of stockholders, shareholders can execute power via their voting rights, in selecting members of the board. On the contrary to public corporations, shareholders do not in any realistic sense elect boards. Rather boards elect themselves. Second, shareholders’ right to vote on “fundamental” corporate affairs seems to be a fig leaf. Rights of shareholders are exactly defined in the so-called statutes. The quality of shareholder voting rights is veto rights: Shareholders cannot initiate fundamental changes, but can only vote yes or no (Blair and Stout, 1999, p. 311). Considering these two arguments, the question arises, why voting rights still exist in national laws. Are voting rights only a ceremony on the annual general meeting or is there still an associated function? Shareholder voting rights even with weak power act, as a safety net to protect against extreme misconduct. Blair & Stout further explain that though shareholders are no longer the principal in the director primacy model, their voting rights can be reconciled with this model: Someone has to choose the members of the board, the directors and shareholders are in the best position to do so. Though their probably given large number all of them follow the same interest. The conflict, which will arise, if various stakeholders look for their best candidate, is not imaginable. Moreover shareholder voting rights are seen as partial compensation for their unique vulnerabilities. Other stakeholders have contracts and interact most regularly and therefore have other possibilities to influence the distribution of firm rents. Shareholders rarely have the opportunity to negotiate directly with the firm for advantages (Blair and Stout, 1999, pp. 310).

Fig. 6: Director primacy model for non-profit organizations

Source: Lan 2010, p.302 adapted to non-profit organizations
The director primacy model identifies no shareholder as owner. The problem in finding the owner in non-profit organizations has already been discussed. Like a corporation, also the non-profit organization itself appears as principal. It will enter in contracts, will have assets, contract debts and be responsible as juridical person. Similar to shareholders members may never enter in debts or be responsible in the case of a bankruptcy of their organization. On the contrary to shareholders members hold no equity on their organizations meaning, which they would get back in case of a withdrawal of their membership. The only logical consequence is that the non-profit organization itself represents the principal. The board of non-profit organizations with its various embodiments is also classified as autonomous fiduciary. The board acts as primary defender of the mission statement (Caers et al., 2006, p. 32) and as representative of all stakeholders. It represents a steward according to the organization and its constitution. Managers as stewards are motivated in achieving high performance but in absence of a goal conflict (Muth and Donaldson, 1998, p. 6). Board members being represented by volunteers possess high trust and confidence in their management and make decisions based primarily on information provided by paid managers and its paid staff (Caers et al., 2006, p. 33). Collaboration with the management and also work between volunteers is only possible on a high amount of trust. The given explanations above and the implication of the director-primacy model show that stewardship theory fits better to explain corporate governance in non-profit organizations: It further offers a different set of motivations (collective behavior), which could include the interests of all relevant stakeholders (Preston, 1998, p. 9). Davis et al (Davis et al., 1997, p. 25) gives a connection between stewardship theory and stakeholder theory in the way, as a steward who improves the performance of the organization implicitly satisfies the wishes of most stakeholders even if their interests compete.

Volunteers as additional justification for stewardship theory

Volunteers are an important stakeholder in the voluntary association to which this governance model mainly belongs. They will act on all hierarchical levels of a non-profit organization. Volunteers as managers or volunteers as unpaid staff are different in their behaviour and motivation to their paid counterparts, i.e. managers and employees. Motivation of volunteers can be better mirrored in stewardship theory (Siebart, 2006b, p. 205.) For that reason applying agency theory as basis for corporate governance in non-profit organizations will be contradictory. Control in the sense of agency theory will not motivate volunteers it will be rather counterproductive. The already mentioned research results from Miller (Miller, 2002, p. 447) can be additionally interpreted as confirmation to use stewardship theory as basis to explain corporate governance in non-profit organizations. The non-distribution constraint of non-profit organizations (LeRoux, 2009, p. 163) might function additionally as confidence-building boundary: non-profit organizations are allowed
to generate profits but they are not allowed to distribute these profits to managers or board members.

To keep the legal frame of the voluntary association following features will remain
Associations are a conjunction of members. Becoming a member of an association presumes to sign a membership. Because of this special relationship members are endowed with several rights, for example the right to elect and remove the members of the board and in this function they execute their control right. The setting of this control right appears weak in its effect but it can be seen as ultimate boundary for the board. Even an autonomous fiduciary might have a border line for its action. In mature non-profit organizations members join the organizations for their purpose and their mission. And so they trust the board as autonomous fiduciary to act on behalf of the mission.

4.3 Discussion of the new governance model

The owner of an association
In this governance model the discussion about the owner of the non-profit organization, i.e. the voluntary association is solved. Members cannot be entitled legally as owner as discussed above, they are classified as important stakeholder and are endowed with the right to elect the members of the board. As argued above the majority of members are not willing to actively execute this right. The stakeholder function of a lot members ends in paying their membership fee. Members are moreover interested in the services provided by the association and therefore the majority of the decision making right has to be put to the so called “autonomous fiduciary”, i.e. the voluntary board. The association with its legal frame is presented as principal. It enters in contracts, will have assets or contract debts, it holds also the constitution of the organization. The board acts as primary defender of the mission statement, the constitution and acts as steward.

Decision-making process on an efficient and effective level
This model takes away the illusion of governing a voluntary organization by decision of the members as quasi-owners made at the general assembly. The voluntary board is classified as autonomous fiduciary and includes the ultimate decision making power. The voluntary board-members are entrusted by the general assembly to make decisions in good faith of the constitution, the members and other important stakeholders. Considering deeply the new governance model it might become obvious that governing of today’s voluntary associations with the mentioned low interest of members in attending the general assembly is already reality. But the general assembly as ultimate decision-making body still has the normative function in the constitution of associations
because of long lasting tradition and habit. Nobody has so far requested the real decision-making power of this body. As already argued members’ control rights are less developed as their information right is also restricted more or less to the general assembly.

Integration of stakeholders in non-profit organizations as multiple-stakeholder organizations
This model reflects the characteristic of non-profit organizations in general and the voluntary association specifically. All these organizations are multiple-stakeholder organizations and consequently to this classifications members are an important stakeholder but not seen as quasi-owner. This view opens the path to a broad integration of stakeholders on various levels. Spitzeck and Hansen as an example offer a model to a systematic integration on power and scope: Power describes the stakeholder’s level of influence in decision making and scope describes the breath of power in decision-making either in operational, managerial or strategic issues (Spitzeck and Hansen, 2010, p. 380). Integration of stakeholders is done first along the constitution but there are several groups of stakeholders which may affect the organization but are not interested in decision making. For all these groups of stakeholders the mode of integration is important to get the adequate level of attention: “Not all stakeholders want a voice in organizational decision making, but those who do desire a voice should have it” (Phillips, 2004, p. 2).

Stewardship theory as main basic theory instead of agency theory
The most popular theory to explain corporate governance and its governance model is agency theory. That’s because corporate governance has its origin in the for-profit area and the corresponding governance model to explain corporate governance is the shareholder-centric model. In order to align the interest of the principal and the agent and to avoid agency conflicts a lot of monitoring activity is installed in this model. Non-profit organizations and especially the voluntary association are organizations with distinctive features, with a special governance structure which is the voluntary board and the special personnel with volunteers at all organizational levels. As already argued in non-profit organizations respectively associations there exists no goal-conflict between the agent and the steward for several reasons. Stewardship theory argues, that in maximizing the principal’s wealth the steward maximizes his or her personal utilities (Davis et al., 1997, p. 25).

Integration of the new governance model in several country laws on association
To show the non-profit organization as principal on top of an organizational chart is not common for voluntary associations. As the general assembly is the highest decision making body it is usual to present the general assembly on the top and the board as first-order agent. By using this hierarchy
it gets clear that agency theory is also common to explain governance models for the voluntary association as non-profit organization. It is argued above, that the general assembly is not replaced by the board as autonomous fiduciary, its function is the absolute border line for the decision-making by the voluntary board. It might be necessary to adapt partially the country’s laws on association to align the ideas of the new model with the national laws on associations.

**Supervision and control in the new governance model**

Corporate governance is described by Sir Adrian Cadbury as “system by which companies are directed and controlled”. The question is how these functions are taken into account in the new governance model. The basic function of control is dedicated to auditors as external control body and to managerial accounting inside the organization as well. Corporate governance’s supervision and control subsumes the organization’ effectiveness or performance which is judged by the multiple stakeholders of an association and not by members only consequently it is necessary to integrate important stakeholders at various levels of the organization.

5 Conclusion and further prospect

This paper has discussed the corporate of non-profit organizations in Europe. The most important legal framework to build non-profit organizations in Europe is the voluntary association. It is depicted at length that corporate governance in non-profit organizations can never be just a copy of corporate governance in for-profit organizations. By discussing the distinctive features of non-profit-organizations respectively the association it gets clear that corporate governance in these organizations has to consider a different theoretical framework which is stewardship theory instead of agency theory, it has further to consider the specific governance body which is the voluntary board with members who perform their work not for pay and the non-distribution constraint as absolute border-line for this type of organizations.

Corporate governance started in the for-profit area with a shareholder-centric governance model with the shareholder in the center of attention as important capital provider. The corresponding basic theoretical background is agency theory. The above mentioned distinctive features in the discussion of corporate governance in non-profit organizations respectively associations call for a new governance model. In this model the non-profit organization itself appears as principal as non-profit organizations have no owner and members cannot be entitled as quasi-owners. Further it is the stakeholder, who represent the missing owner and the logical consequence is to broadly integrate them which is provided also by the new governance model. This model further reflects an
adequate theoretical background which is stewardship theory instead of commonly used agency theory. The ideas are embedded in and tested by a qualitative empirical research on Alpine Clubs in Europe in the countries Germany, Austria, Italy and Switzerland. Alpine Clubs are voluntary associations and face the challenge of all distinctive features of this legal and organizational framework. The empirical research investigates also the reliability of the voluntary board. Alpine Clubs are constructed as a federal system (Heilmair, 2009, p. 10) with an umbrella association, legally independent associations called sections and regional committees. Alpine Clubs are a perfect example for a deep investigation as they unite under one roof associations of all different sizes, i.e. from the smallest to the biggest which is the umbrella association. The results of the empirical research show that the reliability of the voluntary board as governing body is maintained in the sections as they use some intelligent means to keep it. For big associations like the umbrella associations the voluntary board is suggested to be enlarged as the reliability of the governance might suffer for several reasons: The Voluntary board is supported by a paid managing board with a large scope of responsibility. The voluntary board itself may concentrate its activities to strategic governing, i.e. make decisions of fundamental importance. This discussion is presented in detail in the dissertation “Corporate Governance in Alpine Clubs in Europe” which is in the status of defense.

References

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