
EU Regulatory Measures Following the Crises: What Impact on Corporate Governance of Financial Institutions?

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Abstract:

Purpose: This study investigates the relevance of certain EU regulatory measures introduced in response to the financial and sovereign debt crises for corporate governance and their possible impact on the modalities of company operation, notably in terms of risk assessment and management.

Design/Methodology/Approach: The contribution is based on a review of literature and an analysis of EU legislative and soft law measures agreed in 2008 onwards pertinent to corporate governance, notably of financial institutions due to their systemic relevance. The applied research methodology includes a combination of theoretical and analytical methods.

Findings: It is submitted that there is an observable trend of extending the power of shareholders and of regulation in the public interest at the cost of the management power. Moreover, certain aspects of corporate governance seem to steadily evolve from code-based 'soft law' norms to mandatory rules.

Practical Implications: EU regulatory-corrective measures constitute 'grosso-modo' a desirable progress towards a more transnational approach. However, there can be no single blueprint for reforms given the differences between national systems of corporate governance, including their scope, contents, and means of implementation. Hence, the potentials of an incentive-oriented approach should be better exploited in both national and EU level regulatory activities.

Originality/Value: The study offers an updated account of the most recent EU legislative activity in the area up to the end of the 8th term of the European Parliament. It may be used for corporate governance practitioners allowing for informed adapting to the new regulatory framework and trends in the foreseeable future.

Keywords: EU corporate governance framework, risk management, financial institutions, regulatory measures.

JEL codes: G3, G01, K2, K39.

Paper type: Research study.

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1. Introduction

Following the outbreak of the economic and financial crisis in 2008, the European Union institutions have introduced a number of measures intended at tackling macroeconomic imbalances and implement fiscal and budgetary discipline, notably in the euro area. It turned out that mere coordination of Member States' economic policies⁴, including budgetary surveillance and consolidation⁵ were insufficient vis-à-vis the challenges posed by the crisis, notably in the light of the necessity of intervention by the public sector to keep some financial institutions solvent. This resulted in the spillover of the financial crisis to a sovereign debt crisis.

This contribution analyses selected EU economic governance measures introduced in response to the said crises with a view to determining their potential relevance for the company law, in particular corporate governance. To that end it will also shed some light on certain developments in the field of corporate governance that were not conceived as reaction to these crises, but resulted from an ongoing policy of modernising EU corporate governance framework.⁶ However, the contribution can neither draw up a full overview on EU company law nor does it amount to an exhaustive account of the EU reform packages introduced in response to the crises. It focuses on those legislative and soft law measures which are likely to have tangible impact on corporate governance, notably in financial institutions due to their systemic relevance.

Three basic premises may be indicated which incline to analyse this subject matter. Firstly, in recent years the volume and complexity of EU regulation in the field of financial services has made it difficult to extract and navigate those provisions which relate specifically to corporate governance. Secondly, the modalities of corporate governance are first and foremost the responsibility of companies, subject to the company law of a particular state or the EU rules on the *societas europae* (SE). Relevant national and EU level rules ensure that certain standards are respected in the public interest. When it comes to the EU competences in this area, they pertain to full implementation and safeguarding of proper functioning of the EU internal market (Article 3(3) of the Treaty on European Union (TEU), Articles 26-27

⁴Cf. Article 121 paragraphs 1 and 3 of the Treaty on the Functioning of the European Union, TFEU.

⁵See Council Regulation (EC) No 1466/97 of 7 July 1997 (OJ L 209, 2. 8. 1997, p. 1).

⁶Cross-border operation of companies and rapid development of new information and communication technologies count among the factors influencing the need to modernise the European regulatory framework for company law and corporate governance. The action plan in that respect was put forth in 2003 (including the timescale 2009 onwards) in a Communication from the Commission to the Council and the European Parliament - Modernising Company Law and Enhancing Corporate Governance in the European Union - A Plan to Move Forward,

<http://eur-lex.europa.eu/legal-content/PL/TXT/?uri=celex%3A52003DC0284>. (Accessed 17 March 2019).

TFEU), in particular with regard to free movement of goods, people, services, capital and freedom of establishment. Given the constantly changing economic environment, European undertakings are in need of a streamlined company law and a corporate governance framework facilitating their adaptation to the demanding reality of economic flux. A question may be posed to what extent the EU corporate governance framework is up to that challenge, notably when it comes to providing favourable development and functioning environment for the European business. The third relevant aspect pertains to weaknesses which have been uncovered in corporate governance of both financial and non-financial institutions in the context of the crisis.

More significant deficiencies concern, however, the former institutions where failures in risk assessment and management were further aggravated by remuneration and incentive schemes encouraging excessive risk-taking instead of the long-term profitability of investments (Rose, 2017, Johansen *et al.*, 2017). By way of example, many companies defined their performance benchmark in terms of exceeding the expected quarterly earnings, thus contributing to a short-term expansion of the volume of risky trades (De Larosière *et al.*, 2009). Given that efficient and responsible corporate governance is perceived as a possible means to curb harmful short-term policy orientation and excessive risk-taking, it is worth while to investigate whether the EU crisis management regulatory activity is in that sense improving the corporate governance framework for European businesses.

This article is structured as follows: In the next section (Section 2) the concept, scope and legal basis of EU corporate governance framework are briefly explained. Section 3 contains an account of the most significant shortcomings in corporate governance of financial institutions in the wake of the financial and sovereign debt crises as well as of pertinent EU measures undertaken to amend for them. Section 4 attempts to take stock of the impact of EU measures on corporate governance of financial institutions. Section 5 concludes, hinting at remaining obstacles to EU corporate governance framework reform.

2. EU Corporate Governance Framework

In broad terms, corporate governance provides for an arrangement whereby objectives of a business undertaking as well as means of attaining them (including monitoring performance) are determined. To this end it embraces a set of relationships between a company's management, its board, its shareholders and other stakeholders (OECD, 2004: 11). Corporate governance amounts to a valid criterion for any company's existence and competitiveness in so far as it determines the manner in which it is managed and controlled (Vogel, 2007: 217). Regarding EU competences in that area (in view of proper functioning of the internal market), the EU corporate governance framework encompasses both legislation in areas such as transparency of listed companies, corporate governance statements, shareholders' rights and takeover bids, as well as non-binding recommendations ('soft law')

concerning inter alia the role of company directors. The relevant soft law consists in corporate governance codes elaborated at national level.⁷ Companies may be subject to a particular corporate governance code in accordance with stock companies acts and/or the listing rules of stock exchanges. By way of example, under § 161 of the German Stock Corporation Act (*Aktiengesetz, AktG*)⁸, the board and supervisory board of listed companies annually need to declare whether the recommendations contained in the *Deutsche Corporate Governance Kodex* were complied with or which recommendations were not complied with and for what reasons.

Pursuant to Article 20 of Directive 2013/34/EU⁹ corporate governance codes are to be applied on a 'comply or explain' basis. This leaves companies and their shareholders a substantial degree of flexibility in the manner of implementing code-based rules. The advantage of the 'comply or explain' system is that companies are not forced to implement principles and/ or solutions which do not suit their sector and enterprise- specific needs. In addition, it is said to provide for effective market-led regulation insofar as investors may be inclined to abstain from or withdraw investment from companies which are not well-governed. Not under all circumstances, however, may reputation play an effective market control function. Both industry/ sector-specific (Sturm 2016: 30-31), as well as investor-related factors (e.g. short-termism and rent pursuit) may be at stake. Moreover, to take appropriate investment decisions, investors require good quality information. Justification provided by some companies regarding deviations from corporate governance codes not infrequently fails to be sufficiently informative (see Section 3.3. below).

3. EU Corporate Governance Framework vis-à-vis the Financial and Sovereign Debt Crises

The financial and sovereign debt crises have exposed numerous shortcomings in the current corporate governance framework with regard to European listed companies (Dijkhuizen, 2015). The latter are the focal point for the present study since EU corporate governance rules apply exclusively to companies listed on a stock exchange. On the positive note, the identification of the said shortcomings

⁷*Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions. Action Plan: European company law and corporate governance – a modern legal framework for more engaged shareholders and sustainable companies, COM (2012) 740 final, p. 2-3, note 11; <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52012DC0740>.*

⁸*German Stock Corporation Act (Aktengesetz) of 6 September 1965 (BGBl. I S. 1089), last amended by Article 9 of the Law from 17 July 2017 (BGBl. I S. 2446).*

⁹*Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC, IO L 182, 29.6.2013, p. 19-76.*

constituted a powerful stimulus to revisit the existing EU regulatory framework (Thalassinos *et al.*, 2015). In its assessment on the functioning of the current framework, the European Commission was supported by two institutions, namely: the *European Corporate Governance Forum* (the Forum was set up in 2004 to examine best practices in Member States with a view to enhancing the convergence of national corporate governance codes and providing advice to the Commission) and the *Group of Non-Governmental Experts on Corporate Governance and Company Law*. The latter body is an Expert Group which provides advice to the European Commission on the preparation of Company Law and Corporate Governance measures.

The following sections discuss the most significant shortcomings that were identified and the pertinent measures taken in order to improve the EU corporate governance.

3.1 Risk Management

The financial and sovereign debt crises have notably exposed the failings of risk management at numerous financial and non-financial institutions. Firstly, the ever more complex financial instruments were not properly assessed. Some allegedly innovative instruments which were believed to be contributing to the stability of the financial system *de facto* turned out exactly to the opposite (Krugman, 2012: 75). Secondly, risk management tends not to be aligned with corporate strategy, or even completely exempted from it. As reported by OECD (OECD Guidelines 2010, notably point 35), risk management is typically covered either insufficiently or not at all in the already agreed corporate governance standards or codes. To counteract such deficiencies, references to risk-management should be included or strengthened in national or transnational corporate governance standards and codes¹⁰ (or even, if need there is – legislation) so as to raise awareness and enhance implementation.

Good practice in risk management does not focus primarily on risk elimination or discouragement, but more on developing a system allowing to better monitor and manage different types and degrees of risk in pursuit of concrete company objectives (risk policy). In other words, company's intended risk profile (or risk appetite) should be an inherent part of corporate strategy.¹¹ An important factor contributing to the effective implementation of a risk management strategy and in general

¹⁰See for example the *German Corporate Governance Code (as modified on 7 February 2017)* where issues of risk management in general terms are referred to in Articles 3.4, 4.1.3, 4.1.4, 5.2., 5.3.2., 7.1.1. The cited code provisions fail, however, to address concrete concerns as developed under the present section of the paper.

¹¹OECD Principle VI.D.1 on the functions of the board in relation to risk policy, p. 14. In the context of the ongoing debate within United Nations and beyond (countries are supposed to develop their national action plans) on prospective corporate liability for infringements on human rights, it may be expected that future corporate risk management policies will need to a certain extent embrace company's negative impact on people.

promoting the risk management culture is accountability for management. It implies the creation of a proper link between risk management and incentives (not limited to remuneration, also including e.g. promotions), whereby e.g. bonuses may be subject to risk correction. Furthermore where the management takes a share of a company's gains, its financial responsibility could also be extended to cover an equivalent share of its losses. At the same time the principle of independence of the risk assessment function and line management should be safeguarded (e.g. by way of direct reporting to the board by a chief risk officer (CRO) independent of CEO and line business), thereby enabling a holistic approach to the company risk position and policy.¹²

As demonstrated by the financial and sovereign debt crises, inappropriate risk management and excessive short-termism in financial institutions may pose systemic risk and affect the economy as a whole. It was therefore considered of paramount importance to create sound remuneration policies that do not encourage or reward excessive risk-taking. Article 90 of the UCITS Directive¹³ obliged EU Member States to prescribe, by 1 July 2011, the remuneration and the expenditure which an investment company is empowered to charge to a fund that it manages and the method of calculation of such remuneration. A first step towards specific¹⁴ European Union rules on remuneration in financial institutions was achieved in the context of the adoption of the CRD III package.¹⁵ It required implementation in two phases: provisions on remuneration and the extension of some pre-existing minimum capital requirements by 1st January 2011, and the remaining provisions by 31st December 2011. Furthermore, in order to strengthen the framework aimed at countering

¹²*Ibid.*, p.15.

¹³Directive 2009/65/EU of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), OJ L 302, 17.11.2009, p. 32-96.

¹⁴General EU company law has evolved step by step and was recently codified in Directive 2017/1132/EU of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (O J L 169, 30.6.2017 p. 46-127). It is rather focussed on implementing within the EU full freedom of establishment including transfers of seat, mergers and divisions. A first amendment of this directive (Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions, 25 April 2018, COM(2018) 241 final) was provisionally agreed between the European Parliament and the Council in March/April 2019 (European Parliament, text adopted on 18 April 2019, P8_TA-PROV(2019)0429, awaiting signature). It notably seeks to strengthen the protection of shareholders, creditors and employees in case of cross-border conversions, mergers or divisions. For further account, see Davies et al. (2019), Garcimartin and Gandia (2019), Schmidt (2019), Teichmann (2019).

¹⁵Directive 2010/76/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies, OJ L 329, 14.12.2010, p. 3-35.

excessive risk taking, the new Capital Requirements Directive (CRD IV)¹⁶ and Regulation on prudential requirements for credit institutions and investment firms (CRR)¹⁷ have operated more restrictive requirements for the relationship between the variable (or bonus) component of remuneration and the fixed component (or salary), with these new rules being applicable to credit institutions and investment firms, both listed and non-listed. Similarly, in accordance with Directive 2011/61/EU¹⁸ Alternative Investment Funds are required to implement risk management systems respecting well defined minimum standards and separate the functions of risk management functionally and hierarchically from the operating units (Article 15). Their remuneration policy needs to be consistent with and promote sound and effective risk management (Article 13) and respect detailed criteria, notably an appropriate balance between the fixed and variable components of total remuneration (Annex II, notably 1j). The EU Member States were bound to adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive by 22 July 2013.

Moreover, on 9 April 2014 the Commission put forth a legislative initiative¹⁹ aimed at safeguarding that shareholders have a vote on the remuneration policy and report, as well as related party transactions. The said amendment of the Directive 2007/36/EC by inserting Articles 9a, 9b and 9c, respectively became binding as from June 2017, with Member States being obliged to transpose this Directive into national law by 10 June 2019.²⁰ Recently three EU legislative acts²¹, also known as

¹⁶Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, OJ L 176, p. 338.

¹⁷Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, OJ L 176, 27.6.2013, p. 1–337.

¹⁸Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers, OJ L 174, 1.7.2011, p. 1–73.

¹⁹Proposal for a Directive of the European Parliament and of the Council amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement and Directive 2013/34/EU as regards certain elements of corporate governance statement, (COM (2014) 213 final).

²⁰Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement, OJ L 132, 20.5.2017, p. 1–25. For further account, see Section 3.3 below.

²¹Regulation (EU) 2017/2395 of the European Parliament and of the Council of 12 December 2017 amending Regulation (EU) No 575/2013 as regards transitional arrangements (...) and for the large exposures treatment of certain public sector exposures denominated in the domestic currency of any Member State, OJ L 345, 27.12.2017 p. 27; Regulation of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements and amending Regulation (EU) No

CRD-V package, were agreed that further strengthen the capital requirements for financial institutions doing business in the EU, implementing the most recent regulatory standards for banks, set at international level ('Basel III framework') (Stamegna, 2019).

Weaknesses in corporate governance of financial institutions contributed significantly to the gravity of the financial crisis, in the course of which bailouts were repeatedly performed at the expense of the member States' budgets to shore up non-viable banks. Incidentally, as regards the aid granted by States to some financial institutions, exceptions to the general prohibition of state aid which distorts or threatens to distort free competition within the internal market were granted as provided for in paragraph 3(b) of Article 107 (1) TFEU. Under the said Article "aid to promote the execution of an important project of common European interest or to remedy a serious disturbance in the economy of a Member State" may be considered as compatible with the internal market, it being understood that such an aid should be of temporary character embracing periods of considerable disturbances on the financial markets (Majewska-Jurczyk, 2014: 157). The European Commission approved 592 billion euros of state aid to lenders between October 2008 and the end of 2012 (Dixon, 2016). In regard to sustainability of financial institutions, inherent moral hazard should not be underestimated when it comes to the state aid to the infamous "too big to fail" institutions, whereby incentives to correct are lessened. The costs of such bailouts are absorbing the States' financial margins of manoeuvre with harmful consequences in particular for the financing of the welfare state and thus for the less wealthy levels of the society, while the failure of insolvent banks would have directly damaged rather its wealthier levels.

Given that the costs of a systemic banking crisis to economy, globally and more locally, are very high and tend to have lasting effects on the real sectors, risk management is in particular crucial in the financial institutions. Good practice involves inter alia appropriate assessment and disclosure of risk factors as well as the already mentioned independence of the risk assessment function and line management. The crisis has, however, revealed an excessive risk-taking trend, and thus ultimately the problem of excessive risk accumulation in the financial system. In response to those developments, in 2010 the European Commission published a Green Paper on corporate governance in financial institutions. As mentioned above, in 2013 stricter rules on capital requirements and corporate governance in financial institutions were adopted in the framework of the CRR / CRD IV package and

648/2012 (awaiting publication in OJ, EP adopted texts P8_TA(2019)0369); Directive of the European Parliament and of the Council amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures (provisionally agreed between Council and Parliament, EP adopted text P8_TA(2019)0370, awaiting signature).

developed further in the CRD V package. The said EU secondary law instruments provide for the adoption of further delegated and implementing acts aimed to give full effect to the single banking rule book. By way of example, Commission Delegated Regulation (EU) No 527/2014²² specifies the classes of instruments which are intended to reflect the credit quality of an institution and be appropriate for the purposes of variable remuneration. As stipulated in in the first recital of the act, such variable remuneration awarded in instruments should promote sound and effective risk management, while not encouraging risk-taking which exceeds the level of tolerated risk of the institution.

Given the prolific regulatory activity regarding banking and finance at EU level (e.g. only from January to May 2016 the European Commission adopted seven delegated regulations)²³, a comprehensive analysis of all relevant instruments is beyond the scope of this paper. Suffice it to say here that various failings of the financial sector are aimed to be corrected through a step-by-step building up of the Banking Union, i.e. an EU-level banking supervision and resolution system operating on the basis of EU-wide rules, the aim of which is to ensure that the banking sector in the euro area and the Union as a whole is reliable and that bust banks are resolved without recourse to taxpayers' money and with the smallest possible impact on the real economy (Thalassinos and Dafnos, 2015). The building blocks of the Banking Union are: prudential requirements (notably capital requirements and structural separation), stricter controls of banks by means of establishing a Single Supervisory Mechanism (SSM)²⁴ and a Single Resolution Mechanism (SRM)²⁵ with a Single Resolution Fund (SRF) to be built up progressively over (a period of 8 years) with 'ex-ante' contributions from the banking industry. Amendments to the statute of the

²²*Commission Delegated Regulation (EU) No 527/2014 of 12 March 2014 supplementing Directive (EU) No 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the classes of instruments that adequately reflect the credit quality of an institution as a going concern and are appropriate to be used for the purposes of variable remuneration, OJ L 148, 20.5.2014, p. 21–28.*

²³http://ec.europa.eu/finance/bank/crisis_management/index_en.htm. Accessed 25 March 2019.

²⁴*See Council Regulation (EU) No 1024/2013 of 15 October 2013, conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, OJ L 287, p. 63-89 and Regulation (EU) No 1024/2013 of the European Parliament and the Council of 22 October 2013 amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority) as regards the conferral of specific tasks on the European Central Bank pursuant to Council Regulation (EU) No 1024/2013, OJ L287, p. 5-14.*

²⁵*Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council, OJ L 173, 12.6.2014, p. 190–348.*

European Stability Mechanism (ESM) allowing to recur to it as a backstop for the SRF were agreed by the Eurozone finance ministers on 14 June 2019 and endorsed by the European Council on 21 June 2019²⁶.

The SRM established by the Bank Recovery and Resolution Directive (BRRD)²⁷ has become fully operational on 1 January 2016, thus making mandatory the EU rules on bank ‘bailins’, i.e. an instrument giving resolution authorities the statutory power to cancel shares and to write down or to convert liabilities of banks which are failing or likely to fail (Wojcik, 2016). It is noteworthy that only if at least 8% of the total liabilities of the bank have been bailed-in can the SRF contribute to resolution via pooling financial resources for crisis management. Whilst the innovations put in place by the implementation of Directive 2014/59/EU (BRRD) are substantial, notably in terms of risk mitigation by way of risk sharing, it might take time for stakeholders to adjust behaviour so as to fully incorporate the new framework.

3.2 Shareholders’ Engagement

An effective corporate governance requires effective shareholder engagement, including voting rights. This in turn enables to properly exercise the checks and balances between different company organs and stakeholders. Consequently, significant weaknesses in corporate governance may be observed when shareholders’ engagement with their investee companies is limited. The EU Commission identified the following problems:

- ✓ insufficient engagement of asset owners and asset managers with their investee companies, insufficient link between pay and performance of company directors;
- ✓ lack of shareholder oversight on related party transactions;
- ✓ inadequate transparency of activities performed by proxy advisors;
- ✓ difficult and costly exercise of rights flowing from securities for investors.²⁸

In other words, basic shareholder rights should not exclusively be construed in terms of share in the profits of the corporation, but also cover access to relevant information on a timely and regular basis as well as voting rights, including appointment and removing members of the board. With regard to protection of investors who are non-controlling shareholders and at whose expense corporate boards, managers and controlling shareholders may have the opportunity to pursue their own interests, a distinction can usefully be made between *ex ante* and *ex post*

²⁶Agence Europe, *Bulletin 12275 of 15-6-2019 p. 1 and Bulletin 12280 of 22-6-2019 p. 1.*

²⁷See *supra* note 25.

²⁸*Proposal for a Directive of the European Parliament and of the Council amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement and Directive 2013/34/EU as regards certain elements of the corporate governance statement COM/2014/213 final, p. 4-5.*

shareholder rights. The former rights involve, for example, pre-emptive rights and qualified majorities for certain decisions, while the latter allow for the seeking of redress once specific rights have been violated.²⁹ Investors' confidence that their capital will be protected from misuse or misappropriation by corporate managers, board members or controlling shareholders is central for the proper functioning of capital markets. As rightly postulated by the G 20/OECD Principles "in jurisdictions where the enforcement of the legal and regulatory framework is weak, it can be desirable to strengthen the *ex ante* rights of shareholders such as by low share ownership thresholds for placing items on the agenda of the shareholders meeting or by requiring a supermajority of shareholders for certain important decisions"³⁰.

Remarkably, whilst corporate governance in institutions outside the financial sector gave not so much concern as that of the financial sector, also these institutions have been affected by a lack of shareholder interest in holding management accountable for their decisions and actions, which appears to be linked to limited shareholders' commitment demonstrated in particular by the fact that many shareholders hold their shares for only a short period of time.³¹ In response to that development and aiming at encouraging long-term shareholder engagement, in April 2014 the European Commission proposed a Directive amending Directive 2007/36/EC³² that already established certain requirements in relation to the exercise of shareholder rights. The proposal put forth a number of elements of corporate governance as requiring to be dealt with at EU level in a more binding form so as to ensure a harmonized approach across the Union (notably in view of ever more intense cross-border activity of companies). After complicated negotiations and parliamentary procedures³³ Directive (EU) 2017/828³⁴ was eventually agreed between the European Parliament and the Council. Its provisions needed to be implemented in the law of the EU Member States by 10 June 2019. Its specific requirements notably apply in relation to identification of shareholders, transmission of information, facilitation of exercise of shareholders rights, transparency of institutional investors, asset managers and proxy advisors, remuneration of directors and related party transactions (Article 1).

²⁹G20/ OECD Principles of Corporate Governance 2015, p. 19.

³⁰*Ibid.*

³¹Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions: Action Plan: European company law and corporate governance - a modern legal framework for more engaged shareholders and sustainable companies, COM (2012) 740 final, p. 3.

³²Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies, OJ L 184, 14.7.2007, p. 17.

³³See the overview in the Procedural File of the European Parliament Legislative Observatory (Oeil), available at

[https://oeil.secure.europarl.europa.eu/oeil/popups/printficheglobal.pdf?reference=2014/0121\(COD\)&l=en](https://oeil.secure.europarl.europa.eu/oeil/popups/printficheglobal.pdf?reference=2014/0121(COD)&l=en) (Accessed 26 February 2019).

³⁴Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement.

In particular, under Articles 3g-3i of the Directive institutional investors (e.g. pension funds, life insurance companies) and asset managers are bound to disclose to the public their policy on shareholder engagement (including how it has been implemented and the results thereof). In case of non-compliance, they need to provide reasoned explanation why they have chosen not to comply with one or more of those requirements. Such measures are expected to contribute to better managing actual or potential conflicts of interests. Likewise, appropriate operational rules for proxy advisors (typically firms providing services to shareholders, in particular voting advice), especially in regard of transparency and conflicts of interests are laid down in draft Article 3i. They require proxy advisors to publicly disclose certain key information related to the preparation of their voting recommendations and, to their clients and the listed companies concerned information on any actual or potential conflict of interest or business relationships that may influence the preparation of the voting recommendations.

Furthermore, Articles 9a and 9b empower shareholders to vote on remuneration policy and the remuneration report, thus opening a path for better accountability of directors. The vote by the shareholders at the general meeting on the remuneration policy is made binding.

Better shareholders' oversight on related party transactions is the objective of Article 9c. Pursuant to para 4 thereof, in order to provide adequate protection for the interests of the company, material transactions with related parties have to be submitted to the approval either of the shareholders or of the administrative or supervisory body. Such approval must occur according to procedures which prevent the related party from taking advantage and provide adequate protection for the interests of the company and of the shareholders. In addition, companies will be obliged to publicly announce material transactions with related parties at the latest at the time of the conclusion of the transaction, together with information necessary to assess whether or not the transaction is fair and reasonable from the perspective of the company and of the shareholders who are not a related party, including minority shareholders (see para 2).

Last but not least, Articles 3a-3c lay grounds for a system of shareholder identification, transmission of information and facilitation of exercise of shareholder rights, while having regard to Directive 95/46/EC on the protection of personal data.³⁵ In brief, the law of the Member States has to oblige intermediaries to communicate without delay to a listed company that so requests the relevant information regarding shareholder identity. Member States may provide that companies having a registered office on their territory may request the identification only of the shareholders holding more than a certain percentage (maximum 0,5 %)

³⁵Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, 23.11.1995, p. 31.

of shares or voting rights.

3.3 Board Practices

Given that rules on Board composition, structure and functions are at the heart of effective corporate governance, numerous good practices have been elaborated, including the Board's right to manage the company for a long term and mechanisms promoting high competences of Board members. Within the European Union different board structures coexist, which implies that oversight of the executive directors or the management board is performed either by the non-executive directors or by supervisory boards. Regarding proper balance of power within the corporate structure, there seems to be now a broad consensus to the effect that the separation of the functions of the CEO and the Chair of the board, notably in countries with the single-tier board system is of paramount importance.

With regard to systems providing for two-tier boards, ensuring accountability and detachment of the board's decision-making from the management may require preventing retired CEOs from moving to the chairs' post in the supervisory board, as such moves may considerably impair the safeguards for sufficient independence and objectivity vis-à-vis the management as well as the transparency of company leadership (cf. OECD, point 46). For this reason, where the separation of CEO and Chair functions is not warranted in large and complex corporate environment, there is a need for explanation how the integrity of the chair function and avoiding conflict of interest are safeguarded (OECD, point 49 *in fine*). Against this background, "meaningful" board evaluation, in contrast to the current praxis of internal evaluations conducted by the chairman or lead director, should ideally be performed by an independent third party tasked to design a process and then to conduct the reviews (Subramanian, 2015).

Whilst the enforcement of the new regulatory framework for the encouragement of long-term shareholder engagement is to be safeguarded by sanctions (Member States are obliged to lay down the rules on penalties applicable to infringements of the national provisions adopted pursuant to Directive (EU) 2017/828 and to take all measures necessary to ensure that they are implemented), Board practices are as a matter principle subject to a comply-or-explain mechanism. The absence of enforceable rules may to some extent be compensated by rendering certain fields of corporate activity more transparent.

There are many levels of corporate structure and activity which could be subject to enhanced transparency. It is arguable that more transparency not only increases external impulses or even pressure on the company in some corporate governance areas, but it also inclines companies themselves to better reflect on and modify their specific policies. For this reason, the European Commission advocates inter alia increased transparency with regard to companies' board diversity policy (2012 Action Plan, p. 5). Such diversity of competences and views amongst the Board

members is rightly viewed as a potential catalyst for the Board's capacity to effectively and constructively challenge the management's decisions.

Enhanced policy of transparency would also benefit corporate governance reporting. Significant shortcomings were identified in regard of the quality of explanations provided under Article 20(1) of Directive 2013/34/EU by listed companies in their corporate governance statement for departure from the application of the corporate governance codes to which they are subject or which they have voluntarily decided to apply. Therefore, in April 2014 the Commission adopted a recommendation on the quality of corporate governance reporting ('comply or explain')³⁶. It requires listed companies to provide information about specific aspects of their corporate governance arrangements, in particular any concrete recommendation they have departed from, the manner of, reasons for and (where relevant) time limits for such a departure, the modalities of taking the decision to depart from the recommendation within the company and finally, where applicable, to describe the measure applied instead (see point 8 of the Recommendation).

4. What Impact on Corporate Governance?

It is premature to fully assess the future impact of the described EU regulatory measures on the corporate governance practice. Firstly, given that many legislative provisions have just been or still need to be transposed by Member States, their impact cannot be concretely assessed at this stage. Such rules need to be in operation for several years before their real impact can be properly evaluated. Secondly, with the exception of EU Regulations Member States have certain margins of discretion when incorporating the supranationally agreed rules into national law. Moreover, harmonisation of legal provisions is no guarantee of uniform corporate practice. A telling example in that regard is the application of corporate governance codes through comply-or-explain mechanism made mandatory under Directive 2006/46/EC³⁷.

The modalities of implementation of this mechanism by Member States vary considerably, not to mention the level of compliance of companies with the provisions of national corporate governance codes when it comes to availability and quality of explanations for deviations from these codes provided in the statements. This situation is compounded by uneven distribution in EU Member States of corporate governance rules between legislative measures and "soft law" (codes). Such distribution depends on a variety of factors, including legal tradition, ownership structures and the maturity of the corporate governance tradition.³⁸

³⁶Commission Recommendation of 9 April 2014 on the quality of corporate governance reporting ('comply or explain'), 2014/208/EU, OJ, L 109, 12.04.2014, p. 43-47.

³⁷OJ L 224, 16.8.2006, p. 1-7.

³⁸See the Study on Monitoring and Enforcement Practices in Corporate Governance in the Member States, p. 11,

Generally, there seems to be a tendency to regulate by law some fields such as: general board organization, audit committees, statutory audit and procedural shareholder rights, not infrequently implementing EU legislation, whereas issues relating to board members' independence, remuneration and nomination committees, or internal control and risk management tend to be treated in non-compulsory codes of conduct, although regulatory instruments are stricter for financial institutions and generally vary between Member States.³⁹ Last but not least, given the exclusive competence of domestic jurisdictions to judge and supervise whether agreed non-compulsory standards have any impact on the national law, their implementation is still carried out by and large on a voluntary basis. At the same time, it seems that the recognition of a need for a more vertical and institutionalized response and regulation based on a more supranational attitude (Segura-Serrano, 2014: 694) instead of "chacun pour soi" solutions is steadily growing.⁴⁰

A preliminary observation may be formulated regarding the Open Method of Coordination (OMC) envisaged in Article 5 TFEU. Its very soft coordination patterns have proven insufficient for safeguarding the conduct of an effective macro-prudential policy and the respect of budgetary discipline by Member States. This led to the adoption of legal instruments outside the European Union's institutional framework and of stricter EU regulatory measures and even financial sanctions in case of non-compliance⁴¹. In the same vein certain aspects of corporate governance seem to evolve from code-based 'soft law' norms to mandatory rules. The already mentioned rules for the remuneration of directors in financial institutions are a telling example. Under the aforementioned 'CRD-IV Package', i.e. the Capital Requirements Directive (Directive 2013/36/EU) and the Capital Requirements Regulation (Regulation (EU) No 575/2013), the Union regulators have targeted bonuses paid to bankers by way of imposing a cap forcing banks to limit bonuses to 100% of the fix salary, with an option to increase it to 200% with shareholders' approval.⁴² The UK initially tried to block the EU bonus cap rules by means of a lawsuit before the Court of Justice of the EU⁴³, but ultimately withdrew it in

http://ecoda.org/uploads/media/REPORT - 2009_09_23_CoE_RiskMetrics.pdf.

³⁹*Ibid.*

⁴⁰*This was confirmed by the feedback from stakeholders in the Commission's consultation process on two Green Papers: Corporate governance in financial institutions (COM (2010) 284 final) and The EU corporate governance framework (COM (2011) 164 final).*

⁴¹*Financial sanctions for errant Eurozone countries failing to take corrective action were introduced by the legislative package commonly referred to as Six-Pack [OJ, L 306, 23.11.2011] with a view to strengthening both the preventive and corrective arm of the Stability and Growth Pact (SGP) and subsequently strengthened by Two-Pack [OJ, L 140, 27.05.2013].*

⁴²*See Article 94(1)(g) of Directive 2013/36/EU cited supra note 13.*

⁴³*Case C-507/13, action brought on 20 September 2013 — United Kingdom of Great Britain and Northern Ireland v European Parliament, Council of the European Union, available at: <http://curia.europa.eu/juris/document/document.jsf?docid=144846&doclang=EN> (Accessed 21 May 2019).*

November 2014 in the light of limited perspectives to win the case. Certain banks have attempted to circumvent the constraints imposed by the bonus cap e.g. by way of introducing concepts such as “allowances” or “role-based pay” to be conceived of as fixed pay. These practices were, however, immediately identified and curtailed by the European Banking Authority (EBA) as violating the EU bonus cap. Corrective activity by some national authorities was also taken up regarding limited engagement of shareholders. For instance, the French “Loi Florange” attributes a double voting right in the company’s general assembly to those shareholders who are holding their shares for already more than two years, thereby diminishing the influence on the company’s policy of shareholders mainly pursuing speculative interests.⁴⁴

Interestingly, Söderström (2015: 115) points additionally at a shift in the instrument that is applied to regulate at EU level, namely: numerous directives are said to be replaced or complemented by directly applicable EU regulations, with the latter instrument having the advantage of taking immediate effect in all Member States in the same way as a national instrument. Banking sector is said to be particularly targeted through this regulatory agenda (ibid.).

Another tendency which may be observed regarding the impact of the new EU regulatory measures on company law and corporate governance is extending the powers of shareholders and of regulation in the public interest at the cost of the management power. That trend was observable even before the outbreak of the financial crisis, and as a result of it was further accelerated, not exclusively in Europe (Ramsey, 2015). This development is part of a more general trend of counter-acting excessive economic liberalism and deregulation which previously dominated the discourse on corporate governance but was increasingly put into question since the outbreak of the financial and sovereign debt crises (see e.g. Tuori and Tuori, 2014; Adamski, 2013; Picketty, 2013; Krugman, 2012; Broner and Ventura, 2010; Thalassinos and Thalassinos, 2018 *et al.*, 2015 for partly opposite view, see e.e. Majerbi and Rachdi, 2014). While the embedded liberal bargain of the EU internal market (Ashiagbor, 2013) presupposes financial liberalisation, its commitment to a social market economy (Article 3(3) TEU) requires strict supervision and, if needed, corrective regulatory activity. This trend became prevailing in macro-economics as part of the EU crisis management as well as regarding corporate governance.

A certain regulation of corporate governance at transnational and international levels has become essential in the light of ever more intense cross-border (see e.g. Garcimartín and Gandía, 2019: 42) and international business activity. Such regulation is devised to ensure a level playing field through the respect of certain

⁴⁴*Loi n° 2014-384 du 29 mars 2014 visant à reconquérir l'économie réelle, JORF n°0077 du 1 avril 2014 p. 6227; for a brief account, see e.g. « L'Etat réussit à imposer les droits de vote doubles à l'Assemblée générale », Libération, AFP 30 April 2015.*

standards, thereby also contributing to legal certainty (Schmidt, 2019: 223), which is in the best interest of investors. Nonetheless, the effective implementation of such rules depends on the practices followed by national authorities and the interpretation of the relevant legal provisions by domestic jurisdictions. By way of example, a number of lawsuits were brought in Germany claiming liability of managing directors under the German Stock Corporation Act (Aktengesetz, AktG). Most liability suits concern German banks' loss-generating investments in US structured securities, notably the US sub-prime market. Interestingly, apart from directors' civil liability vis-à-vis the company, the IKB Bank case gave rise to criminal charges against managing directors. Particularly noteworthy is the fact that the criminal proceedings in relation to misguided investments were not based on accusations of fraudulent breach of trust (German: *Untreue*), but more on grounds of market manipulation by having misstated in a press release the possible risks for the Bank regarding US asset-backed securities (Fleischer, 2015: 69). The said misleading press release gave also rise to claims for damage by shareholders against the company for incorrect capital market information, with relevant provisions of the German Securities Trading Act (Wertpapierhandelsgesetz, WpHG) and general principles of tort law constituting the basis of the lawsuit (*ibid.*). The case was decided by the German Federal Court (Bundesgerichtshof), which ruled in favour of the claimant even though, as pointed out by the Court, granting such protection to individuals does not seem to be intended by Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse)⁴⁵, but rather the protection of market integrity⁴⁶.

To sum up, even though the reform of the EU regulatory framework for company law and corporate governance may not yet be regarded as fully accomplished, it is possible to point to some major policy objectives that the EU regulators are attempting to attain. In some areas it seems that the introduced measures are not only remarkable in terms of quantity, but also amount to a clearly qualitative change. As discussed above, risk management in financial institutions has been given a lot of attention, including hampering perverse pay incentives by introducing requirements for banks and investment firms to conduct sound remuneration policies that do not encourage or reward excessive risk-taking and empowering banking supervisors to sanction institutions whose remuneration policies do not comply with the new legal requirements. The need of elaborating tailored solutions for specific needs of individual institutions also seems to be gaining recognition. In the initial phase of the crisis management certain requirements and solutions were proposed which were difficult, or even impossible to be met by small and medium-sized enterprises (e.g. required leverage ratios). Given the essential role that SMEs play in strengthening the economy, especially in the face of the economic crisis, it is of vital importance

⁴⁵O.J. L 096, 12/04/2003 p. 16-25.

⁴⁶See Judgment of the German Federal Court: *Bundesgerichtshof, Urt. v. 13.12.2011, Az.: XI ZR 51/10 point 24. The objective to protect market integrity is repeated in recitals (2), (11), (12), (15), (24), (34), (37) und (43) of the Directive 2003/6/EC against market manipulation.*

that the regulatory measures take account of the specific situation of SMEs and do not create unnecessary burdens for such companies. It is a positive step that the European Union recognizes the need to anchor the “think small first” principle in policy-making (see e.g. first recital of Directive 2013/34/EU). Tailored solutions for SMEs are also steadily being elaborated, such as e.g. Directive 2012/6/EU of the European Parliament and of the Council of 14 March 2012 amending Council Directive 78/660/EEC on the annual accounts of certain types of companies as regards micro-entities.⁴⁷ Likewise, differences between the corporate governance in financial institutions and other sectors have been by and large taken account of in regulatory measures.

Particular attention should be given to the European Union’s activity aimed at fairer, simpler and more effective corporate taxation within the EU. A Commission proposal concerning a common consolidated corporate tax base pending since 2011 was relaunched in 2016⁴⁸. Due to the requirement of unanimity in the Council and the strong opposition expressed by the governments of Ireland and Hungary⁴⁹ there is, however, little chance for a rapid adoption of this cornerstone for fair corporate taxation in the EU.

The objective of the Anti Tax Avoidance Package launched by the European Commission in January 2016⁵⁰ is not only to enhance tax transparency, but also to prevent tax evasion and “aggressive” tax planning, thus strengthening big companies’ responsibility towards the general public. The said package of legislative and non-legislative measures involves inter alia:

- The Anti Tax Avoidance Directive⁵¹ aimed at ensuring a minimum level of protection against corporate tax avoidance throughout the Union, while at the same time providing for a fairer and more stable environment for businesses. It takes stock of the G 20 and the OECD project against Base Erosion and Profit Shifting (BEPS) and contains legally binding measures against common forms of

⁴⁷OJ L 81, 21.3.2012, p. 3–6.

⁴⁸Commission proposal of 25.10.2016 for a Council Directive on a Common Corporate Tax Base (COM (2016)685 final); a favorable opinion of the European Parliament was delivered on 15 March 2018 (P8_TA (2018)0088).

⁴⁹Reuters Business News of 4 January 2018, <https://www.reuters.com/article/us-hungary-ireland-taxation/hungary-ireland-oppose-eu-wide-tax-harmonization-efforts-idUSKBN1ET1ZY> (Accessed 26 June 2019).

⁵⁰A presentation is available at https://ec.europa.eu/taxation_customs/business/company-tax/anti-tax-avoidance-package_en (Accessed 26 June 2019).

⁵¹Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market, OJ L 193, 19.7.2016, p. 1–14.

- aggressive tax planning⁵², which all Member States should apply as from 1 January 2019;
- The Directive 2016/881⁵³ amending the Directive on Administrative Cooperation in the field of taxation⁵⁴ as regards the mandatory automatic exchange of information, introducing a country-by-country reporting between Member States' tax authorities concerning essential tax-related information on multinational companies operating within the EU;
 - The Commission Recommendation of 28.1.2016 on the implementation of measures against tax treaty abuse.⁵⁵

Any EU regulatory-corrective activity with regard to corporate governance must respect the legal limits (Vossestein, 2010) flowing from the principles of conferral (Article 5(1) TEU) and of subsidiarity (Article 5(3) TEU). The question which legal base is appropriate for an envisaged measure may prove delicate since depending on the answer, either agreement between the European Parliament and the Council or unanimity at the Council is required for its adoption. Coordinated EU action against tax avoidance is justified under both the aspect of competence as well as of subsidiarity. It is essential for the functioning of a social market economy in which the Member States are capable of operating efficient tax systems. It also tackles a cross-border and global phenomenon that leads to the erosion of the Member States' tax base. To counteract the shifting of profit outside of the EU a common (global) approach towards third countries is required. On the other hand EU and international regulation is not conceived to substitute the capacity of states to autonomously regulate company law, thus also corporate governance, within the framework set by transnational EU-rules.

5. Conclusions

The preceding overview illustrates a prudent and flexible approach of EU regulatory measures in the field of corporate governance. Several relevant principles and good practices had already been identified by scholars and international organizations before the outbreak of the crises. They have, however, only to a limited extent been

⁵²*These measures aim, amongst others, to deter profit shifting to a low/no tax country, deter artificial debt arrangements designed to minimise taxes, prevent companies from double non-taxation of certain income, e.g. when re-locating assets or exploiting national mismatches to avoid taxation. The latter measure on hybrid mismatches was subject to further complementary regulation in Council Directive (EU) 2017/952 of 27 May 2017 amending Directive (EU) 2016/1164 as regards hybrid mismatches, OJ L 144, 7.6.2017 p. 1-11.*

⁵³*Council Directive (EU) 2016/881 of 25 May 2016 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation, OJ L 146, 3.6.2016, p. 8-21.*

⁵⁴*Council Directive 2011/16 (EU) of 15 February 2011 on the Administrative Cooperation in the field of taxation and repealing Directive 77/799/EEC, OJ L 64, 11.3.2011, p.1.*

⁵⁵*(COM92016) 271 final.*

taken over both at the level of political institutions and national jurisdictions. The obstacles to such institutionalization may be searched in the existing national regulatory and supervisory policies and practices *per se*, which in the vein of neo-liberalist approaches rather oppose regulatory action instead of developing an appropriate normative impetus to advance the incorporation of relevant internationally recognized principles into European Union or domestic legislation.

Leaving aside the strengthening of prudential rules and banking supervision, EU regulation had only moderate impact on corporate governance, with the exception of very few measures such as the new binding rules on variable parts of management remuneration or shareholders voting rights on remuneration policy. Keeping the *status quo* implementation of principles of good governance thus remains a voluntary process. In the light of the above, the main contention of this contribution is that whilst EU regulatory-corrective measures may constitute desirable progress towards a more transnational approach in selected areas (for an opposite view, see Wen, 2013), there can be no single blueprint for reforms given the differences between national systems of corporate governance, including their scope, contents, and means of implementation.

Both national and EU regulators should be prepared to assess on a case-by-case basis which aspects of corporate governance may reasonably be improved by way of legislation on either level. In the absence of EU measures it remains for the national legislatures to provide where necessary for hard law solutions and national jurisdictions to safeguard effective enforcement. Certain standards should remain under the responsibility of corporate institutions themselves (such constraints apply e.g. to improvement of board performance) and be implemented on a voluntary basis. Given the difficulties in implementing mandatory measures and in particular non-obligatory principles and good practices, which are nevertheless vital for a healthy functioning of companies, the potential of a positive (incentive-oriented) approach could be better exploited. Incentivizing long-term shareholding directly translates into commitment of businesses to long-term profitability of investment.

Besides incentives addressed to shareholders such as increased voting rights and fiscal benefits for long-term investment, employee empowerment could constitute a potentially effective means to achieve long-term shareholding. The employees' interest in the sustainability of their company is likely to prove pivotal to the well-functioning governance framework. Such employee empowerment may range from access to information, consultation and participation in the board⁵⁶ to forms of financial involvement, notably employee share ownership schemes, whereby the proportion of long-term oriented shareholders may be increased (Lowitzsch and

⁵⁶*Such forms of empowerment have already proved to be beneficial in selected sectors and major companies of German industry.*

Hashi, 2014).⁵⁷ Further exploring of such opportunities would justify a separate research analysis.

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⁵⁷To this end, the European Commission intends to explore opportunities to encourage the development of trans-national employee share ownership schemes in Europe (see *European Commission 2012 Action Plan*, p. 11).

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