



Session 6 - Summing up

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We have a tradition in the ECGI that we do not let you go away, although it is late in the day, before having done some summation or wrapping up. So I'll start off and give you a summary of some of the things that I heard today and that I'm going to take away.

Starting with session one. As Roberta Ramo said, "that was the proof that empirical finance is not boring when we heard Luigi and René Stulz disagreeing". However I thought they agreed on something that was very important. I heard them both agree that Sarbanes-Oxley actually had a small, if any, impact on the competitiveness of US capital markets. Where the disagreement was, was about whether the US capital market has become more or less attractive.

Luigi very forcefully argued that if you take a variety of measures, it has become less attractive, but not because of Sarbanes-Oxley. The two reasons he gave were liquidity on the one hand, and then enforcement. In session two, Luigi came up with the idea that maybe Australia can help us to test this out, which I thought was interesting, and I'm looking forward to his next paper on this issue.

Then, session two said it was about enforcement, but as an economist I really thought it was about regulatory productivity. The question, here are your regulatory objectives which you want to achieve; how many inputs do you put in in order to achieve this? And I thought the numbers were very striking. Just contrasting the US and the UK, you can have three kinds of interpretations. The US clearly puts in a lot of resources. We're not quite sure how much it achieves with that, but say it achieves a lot. Now, the UK puts in quite few resources. Now, does it achieve a lot, or not that much? If it achieves very little, you achieve little with few resources, so your productivity is low. If it achieves very much with few resources, it might actually be the world champion in regulation, because it has the highest regulatory productivity.

I think the difficulty here was that we cannot actually measure very well the regulatory outcomes, so I was actually not sure what the answer to that question from the second session was. I did hear an interesting thesis. That was that the question, are shareholder rights a substitute for regulation, and is that why we might have the UK being a very high regulatory productivity country? I think that's something that's worthwhile testing. Just to draw the parallel to bankruptcy law, I think in bankruptcy law we do have evidence that UK bankruptcy law is very efficient compared to Chapter 11, although it doesn't really go through all the formal processes. So, if this is like bankruptcy law, the UK might actually be a very high productivity country.

Now moving to the morning, I think Chairman Cox really asked the crucial questions: when is it wiser to be different? When is it wiser to be the same? Economists have an answer for this. They think that it's wiser to be the same if you have market failures, for example, economies of scale. And I was reassured to here from both Eddy Wymeersch and Chairman

Cox that in two areas where we clearly have economies of scale, there is cooperation on being the same. One is IFRS, the accounting standards. I was very encouraged by what I heard. And the second one is, of course, Edgar and XPIL [?]. Now, the fact that apparently Eddy had a chat with the SEC this morning on whether Europe might be able to copy Edgar and call it OAMS - which is a slightly less attractive name, may I say - I think that's very good, and that's really what I hope Europe will be doing: we should copy the SEC's computer. That would be really great.

Now, when should you be different? Well, economists are actually in favour of difference, because that promotes competition. Which then leads us to the next part, which is this word mutual recognition. Now, economists like mutual recognition very much because it fosters competition. And within the single market in the EU, we really like to embrace, whenever it's possible, mutual recognition. So that's whenever you don't have a market failure. Now on this, mutual recognition is not the same as substitute compliance. Mutual recognition does not mean that the other thing has to be equivalent.

Now, let me illustrate this point as a German living in Belgium. There is a German notion of what beer is. It is made of water, malt, and hops. The Belgian notion of beer is that anything that ferments you put into a bottle can be called beer. Now, mutual recognition means that you mutually recognise the other's definition of beer. That doesn't mean that Belgian beer is definitely not substitute compliant, I can tell you.

Now, on the serious point, from these discussions, when a US retail investor today wants to buy security, if somebody wants to sell a security to a US retail investor, it is apparently not enough to write very clearly on the bottle, this is FSA-regulated. If you drink it, you might end up like you do when you drink Belgian beer. Now, I'm not sure why that is. Why is it not enough to have clear labelling, and if people come with the clear label, to be able to sell direct? And vice versa, we heard from Howell that when US-regulated issuers go to Europe, and they put the sticker on "SEC-regulated", they can then sell securities directly to the market. And maybe this is a very good sticker to have. Certainly German beer producers think that their purer beer is something that people in Belgium actually like to drink.

Now the future, I was surprised by one thing, which was that the NYSE Euronext merger was not very much mentioned today because, if you like, capital market competitiveness today is really the New York Stock Exchange actually copying the French computer and having the same trading platform. And what we're really going to see is competition between the regulatory segments, and not really between capital market as such, because the capital market is actually going to unite. That then will reinforce the need for mutual recognition, because it is quite possible that US issuers will do their IPOs on Euronext Paris, and then want to issue their securities to wherever they please. So I think competition is going to intensify, and mutual recognition is going to become even more important.

Which then leads me to something that Paul Sarbanes said, and which we also have in the Union. When you have this mutual recognition phenomenon in an intensified competition, there is then the danger that you do have declining standards, because US issuers can escape the SEC and go to Paris and still issue. And then people start getting to get worried, and then, in fact, you run the problems of systemic risk and so forth. So, paradoxically, intensified mutual recognition and competition will, in fact, probably increase the need for doing more the same and agreeing on minimum standards.

Now, all of this being said, this in fact reminds me very much of the debates we're having constantly within the European Union, so I took away from today that, in fact, the transatlantic debate is becoming more like the debate we've been having inside the Union for about 15 to 20 years, which I find very reassuring, and it's going to be great.

Lance Liebman
Director, The American Law Institute
William S. Beinecke Professor of Law, Columbia University

I will be exceedingly brief. First, I want to thank the SEC, Marco and his colleagues at ECGI, and the various people at The American Law Institute who brought off this very good day's meeting, including the snacks and the coffee, and all the other aspects. In particular, I would name Deanne Dissinger and Sandrine Forgeron of my team on the ALI side and thank them in particular.

I just want, for literally two minutes, to disagree with Jaap Winter, who sounded rather pessimistic having listened to the whole day. I feel extremely optimistic. You see, from my point of view, five years ago Bob Mundheim introduced Marco to me and vice versa, and with this notion that maybe it would be good to discuss some of these issues transatlantically. And in the first conversation that Marco had, I remember him saying, we need much more research, much more empirical knowledge about the different aspects of this subject. One thing he said that I remember is that the European side is going to become more legalised - there's going to be more connection to legal issues in some of the ways that had been traditionally true in the United States.

All that has absolutely come to pass. We have had now, at this moment, four very good meetings, and I think all the people involved have learned a great deal and things have changed significantly in the four years that this has been going on.

First of all, the law stuff mixing with economic stuff has become more sophisticated. There's just no question that there is better communication and understanding between the legal academics and policy people in government working on these things, and the economists and those whose training is from the economic side.

Second of all, globalisation has moved more rapidly even than I expected, and as we now turn to issues involving China, India, Russia, Brazil, etc., we're a little bit better prepared to deal with it. It's going to be challenging and chaotic but I think we understand it better.

Third, we're very clear that these decisions are going to be made in national governments and in Europe in both national governments and at the Europe level. They're going to be made according to whatever the politics, the culture of those institutions, those countries, those jurisdictions think, and their sense, accurate or not, of their self-interest. Nonetheless, a certain amount of coordination would be efficient, and I'm now repeating what Marco said a minute ago. I think what we heard from Eddy Wymeersch and from Christopher Cox was another sign of both of them, as the leaders of these very important institutions, being completely aware of the need for transatlantic coordination on certain aspects of their jobs, this being on their agenda in a significant way.

And finally, I think we could see today the utility of academic work. That's not true in very many fields that I know about. Here, serious work is being done, more is being learned, and it has relevance and is being debated and sometimes accepted and applied. So I just think we have to go forward in exactly the ways that these conversations of the four years have been taking place and in the directions that you could see pointed today.

Mainly I want to thank those in the audience who have given us a great deal of time and engaged in these issues. Obviously there is much more to do by all of you and all of us. Thank you very much.