Corporate Governance in Europe

Report of a CEPS Working Party

Centre for
European
Policy
Studies

CEPS Working Report No. 12

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This report is the result of a CEPS Working Party set up to give policy directions on the future of corporate governance in Europe. The basic findings of the group are presented in the "Conclusions of the Working Party" which appear at the start of this report. The body of the report was prepared by Karel Lannoo of CEPS to stimulate debate and to serve as a background paper for the conclusions.

June 1995

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ISBN 92-9079-194-2

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Conclusions of the CEPS Working Party on Corporate Governance in Europe

Corporate governance refers mainly to the organisation of the relationship between the owners and managers of a corporation. The ways in which countries structure this relationship take different forms across the globe, reflecting different economic circumstances and national traditions. Corporate governance systems must be seen and understood in the context of the societies in which they function. Much conventional wisdom circulates on the characteristics of national systems, but it is not always supported by empirical evidence.

The wider the distribution of shareholding, the greater is the role of the market in the exercise of corporate control and the need to set rules establishing adequate and effective control over corporations. Shareholding in several continental European countries is rather concentrated, thereby making corporate governance problems less frequent or apparent. In any attempt to understand the control of corporations, the role of insurance companies, pension funds and other institutional investors, and other actors, such as employees or banks, has to be taken into account to different extents in European countries.

In the future, several factors will increase the importance of the market in exercising corporate control: financial market liberalisation, greater reliance on funded schemes in the financing of retirement and further privatisation of functions previously performed by the state. As a consequence of these developments, there is an increased need for clearer corporate governance rules in many European countries.

International diversification and increasing cross-border activity of institutional investors will accelerate this process. American and British pension funds, in particular, which represent about 72% of total pension fund assets in the Western world, can be instrumental in changing corporate governance standards as a result of the active stance towards investment that is required by local laws and codes.

A single market is gradually becoming a reality in the European Union. In the field of corporate governance, however, the achievement of a single area without borders is still a far way off. Several of the draft directives covering the core corporate governance issues have been blocked before the Council for many years. The first proposals for a European company statute and a harmonisation of corporate structures go back to the 1970s! Clearly it is time to try a new approach.

Recommendations

- Considering the specificity of national corporate governance systems and the sensitivity to centralising legislation, the Working Party proposes a set of Guidelines for the operation and control of a corporation in the European Union. These Guidelines should function as a minimum framework for corporate governance standards in the EU. It is suggested that all listed corporations should comply with these Guidelines; other companies, especially those in which there is a high degree of public interest, should attempt to meet the requirements to the extent possible. The European Commission should play a pro-active role in this debate and use the Guidelines as the basis of initial discussions with industry. To launch the initiative, it should constitute a core group of corporations that would subscribe to the Guidelines and give the necessary publicity to this initiative to foster adherence. An independent body could be appointed to guide the negotiations and later to monitor compliance.

- Efforts to reach agreement on international accounting standards (IAS) should be intensified, in order to produce an internationally acceptable standard for quotation on stock exchanges. The Working Party proposes that further initiatives by the European Commission to harmonise accounting standards at European level should take this into account and not undermine the prospects of agreement on IAS. A separate European accounting standard would only strengthen the role of US accounting standards (GAAP).

- The Working Party recommends that the draft 13th directive on takeover bids should be split into two discrete pieces of legislation: a securities law directive, which would harmonise the takeover bid procedures and set rules on transparency and disclosure during a bid, and a company law directive, which would harmonise the regulation of defensive measures at European level.

- Companies might be hindered in planning their operations efficiently in the single European market. Legal requirements for establishing and operating companies are widely divergent from one country to another and are a source of considerable costs. Agreement on a workable European company statute has become more realistic now that procedures have been adopted for pan-European consultation and information of employees. Achieving a consensus on this report's corporate governance guidelines by business could ease the convergence of views towards a European company statute.

- Member states should coordinate their corporate governance legislation with other EU countries. Policies to increase the attractiveness of stock markets should acknowledge the obligations towards the integrated European area. National privatisation operations that discriminate against other European investors can be in open contradiction with membership of a single market. The Commission should continue and step up its efforts to ensure compliance with EC legislation.

Guidelines of Good Practice

a. Basic Rule

- A corporate governance system should aim at achieving a consensus among its principal participants.

b. Shareholder Rights and Responsibilities

- Shareholders should be given the possibility to exercise their voting rights in an informed and independent manner. This activity should also be adapted to the growing internationalisation of shareholding and not be limited to national borders. Banks or institutions that keep shares under custody should be instrumental in this activity.

- Shareholders have the right to determine which rights are attached to their shares. They should be entitled to one vote per share. Any exceptions to this rule require approval by the Annual General Meeting (AGM). Rights which are delegated by shareholders to management should be renewed on a regular basis.

- Shareholders' basic rights comprise the appointment and removal of board members and auditors, approval of the dividend, and approval of the by-laws and the creation of shares.

- Shareholders should respect a corporation's need for long-term growth and stability. Major shareholders have a particular responsibility in this regard.

- Minority shareholders should be treated equitably and fairly, particularly in a takeover situation.

c. Management Structure and Procedures

1. One-Tier Structure

- The board of a corporation is responsible for the sound management of the company. It should be in a position to have full and effective control, meet regularly and closely monitor the performance of management. It should establish and communicate the strategic course of the firm.

- The board should include outside directors who are highly qualified and experienced for the position. They should be of a sufficient number and suitably independent to exercise objective oversight over management.

- The members of the board are responsible and accountable to the AGM. Their tenure, which should be set for a limited number of years, with the possibility for renewal, should be approved by the AGM.

2. Two-Tier Structure

- In a two-tier system, the principles under (1) above apply to the management board or the supervisory board, subject to the statutory provisions for the separation of their powers and for employee representation, if any.

d. Reporting and Control

- The board has the duty to present the company's accounts in a balanced and understandable way to the shareholders for approval.

- All information given to the market must be provided in a way that respects equal treatment of all shareholders.

- The board should report the strategy and the investment decisions of the firm in the annual report.

- The board should make sure that an objective and clear relationship is maintained with the auditors. In view of their position on the board, outside directors should take a special responsibility in overseeing the audit.

Report of a CEPS Working Party on Corporate Governance in Europe

I. Corporate Governance: An Attempt at Definition

A. What's in a Name?

At first sight, the term corporate governance is not easy, even for a native English speaker, to understand. It has two components: corporate, which refers to corporations or big companies; and governance, which is defined as the act, fact, or manner of governing. The second component might be the principal source of confusion, owing to its allusion to government, which brings a public element into something that is considered private. The term was defined as "the system by which companies are directed and controlled" by the Cadbury Committee, one of the first serious efforts to get a handle on this question. (See box on the following page.) Its definition, however, also contains the duality of an internal (directed) and external (controlled) element.

The term cannot be easily transposed into other languages, preserving at the same time the duality of its nature. The rarely used French expression *gouvernement d'entreprise* does justice to the public element, through the word *gouverner*, but an *entreprise* is not always a corporation. A German translation could sound like *Unternehmensverfassung*, although it has a more narrow legal meaning.

The Cadbury Report

The Cadbury Committee was set up in 1991 out of concern about standards of financial reporting and accountability and with the aim of taking a position on the role of executive and non-executive directors in corporations. The Committee adopted a "Code of Best Practice on the Financial Aspects of Corporate Governance" in 1992. Although it is voluntary, the Code is part of the listing requirements for the London Stock Exchange, and UK-listed companies have to make a statement of compliance in their annual report and eventually explain the reasons for any non-compliance.

The main recommendations of the report are outlined below.

The board of directors:

- Strong preference for a division of the role of the chief executive and chairman of a corporation;
- Importance of an independent element on the board: non-executive directors should be truly independent and of high calibre; they should be able to obtain independent advice, their pay should reflect time spent on the board and they should be appointed via a formal process; and
- Executive directors' pay should be disclosed and subject to recommendations of a remuneration committee.

Reporting:

- Requirement to appoint an audit committee, which is obliged to follow very detailed procedures; and
- The directors should report on the effectiveness of the internal control procedures and state that the business is a going concern.

British industry sees the Code as a serious burden and finds that it insists too much on structure. It is not easy to find non-executive directors of the right calibre and with sufficient time to complete their tasks, they argue, and statements in the annual report such as "the business is a going concern" and "internal controls are going on" can have far-reaching implications. A recent study found that more than one-half of a sample of 190 companies did not fully comply with the Code. In a continental European context, certain of the recommendations are seen as very British, whereas others pose little problem.

These linguistic problems reveal the fact that the notion of corporate governance is perceived differently from one country to another and that it sometimes refers to distinctly different matters for different persons and institutions, depending on the circumstances. The priorities in the debate on the management and control of corporations vary, and its intensity and nature are also different depending on the country in which it is taking place. The corporate governance debate in the UK, for example, which resulted in the adoption of the Cadbury report in 1992, was driven by a concern over the adequacy of financial control and accountability and discontent with directors' pay. Similar problems are much less topical in other EU member states. In Germany, the main concern is the efficiency of management control. An issue of regular debate is the influence of universal banks over corporations through the proxy voting rights and seats on supervisory boards. In France, the concerns are centred on the perception of an oligarchy of chief executives who direct big corporations like kings and rotate amongst themselves at the top, without being really accountable to the board of directors or the assembly of shareholders.[1]

The corporate governance debate is also influenced by historical circumstances. The US approach has been shaped by several key developments over the last century: the anti-trust questions raised at the end of the 19th century; the economic crisis of the 1930s which saw the division of banking activities with the Glass Steagal Act and the separation of ownership and control as argued by Berle and Means; and the emergence of "relationship investing" that characterises American pension funds today.

In Europe, the most important historical development in recent years has been the single market programme, and it is foremost in this context that this report addresses the question. What sort of corporate governance framework is needed to allow companies to make full use of the single market, and to ensure that the single market achieves increased efficiency? What progress has been made to date and which proposals have been made by the European Commission? What further should be done?

[1] The recent change of command at the top of Générale des Eaux is characteristic of this behavior. The CEO suddenly introduced his successor to a completely unaware board.

B. A Multi-Disciplinary Approach

Apart from a geographical and historical relativity, the discussion of corporate governance is also relative to the academic discipline in which it is studied. Control of corporations is typically an issue where law and economics intersect, although the theories and approaches in each of the disciplines are rather divergent. The law examines the various powers and duties of the different actors within a given system, whereas the study of economics examines how a company can be financed and run in the most efficient way.

Economic theory has taken profit maximisation as its point of departure. Although one may argue that this approach has never been very realistic, it became accepted after the work of Herbert Simon (1945), who coined the term "satisficing" to best explain corporate behaviour. It means that shareholders' interests are not automatically fulfilled. Agency theory made clear that there exists an inherent conflict of interest between management and shareholders. Shareholders, as owners and principals, leave the running of the company to the agent, the management. Shareholders must then institute controls, at certain costs, to ensure that management's self-interest does not reduce the potential returns of investment belonging to them. There are many examples of such behaviour on the part of management:

- Satisficing behaviour as identified by Simon means that the full potential is not developed because management is satisfied with current levels of profitability. Capital investment may be directed at current activities although they do not give the highest possible return or assets may be underutilised. As a matter of fact, many takeovers are directed at companies in this type of situation. A developed corporate governance structure might preclude the necessity of such drastic solutions.

- The self-interest of management of quoted companies is frequently expressed in the form of excessive remuneration paid either in salaries or stock options. The latter leads to a focus on short-term profitability. Corporate governance is a means of controlling such behaviour.

- Management also plays a role in the balance between bondholders and banks who also want and need to protect their holdings, and equity shareholders. In the case of leveraged buy-outs, the self-interest of management taking the position of shareholders may particularly hurt bondholders.

Economic theory has identified these problems but cannot supply solutions. Only the practice of active corporate governance, which may take many forms, can create a proper balance between the various competing interests of the parties concerned.

Frequently the term stakeholders is used to widen the group of parties which have an interest (stake) in corporate behaviour, such as the workforce, government, suppliers, customers and the public at large. It is difficult to formally include these elements in models of corporate governance. Either through law or through collective bargaining, the interests of these parties appear to be well protected indeed. It certainly cannot be the sole responsibility of management to balance the interests of shareholders against those of other stakeholders. Management acts only as an agent and not as a principal.

In light of this discussion, *corporate governance can be defined as the whole system of rights, processes and controls established internally and externally over the management of a business entity with the objective of protecting the interests of all the stakeholders.* Rights are the various powers reserved to the individual stakeholder groups to influence management. They may be of a constitutional, contractual or statutory nature. Processes are mechanisms other than the exercise of rights to influence the management, such as the works councils. Controls are mechanisms through which stakeholders receive information on the activities of the enterprise, such as an audit.

A rich variety of management literature is available on how companies can be run most efficiently, how to keep shareholders happy or motivate employees, the financing of investments and the relationship with bankers.[2] This report will be more policy-oriented, examining the structural differences of corporate mechanisms from one country to another and drawing implications for the convergence of standards in the EU, or for the resulting distortions to an integrated market. Its focus will be on the regulatory issues that dominate the corporate governance debate at the national, European and global level.

[2] See Handy (1993) for a thorough treatment of management-oriented corporate governance. In the article, he applies political principles, such as subsidiarity and federalism, to the management of a corporation.

II. Corporate Governance Systems in the Western World

Attempts have been made to classify the panoply of corporate governance mechanisms in the industrialised countries. Although these systems are the result of national traditions and legislation, including taxation rules, some global classifications seem feasible. Commonly used is the distinction between the *outsider* and *insider* systems, proposed by Franks and Mayer (1992). The former, currently dominant in the UK and the US, is characteristic of economies with a large number of quoted companies, a liquid capital market where ownership and control rights are frequently traded, and little concentration of shareholdings. The so-called insider system, attributed to continental Europe and Japan, is characterised by a small number of listed companies, an illiquid capital market where ownership and control are not frequently traded, and a high concentration of shareholding in the hands of corporations, institutions, families or government. The outsider system relies on the market and outside investors for corporate control; the insider model uses a system of interlocking networks and committees.

The problem with that definition is that there are no "systems" that are different to such an extent as to explain the various factual phenomena. The fact that there are more large holdings in one country than in others is rarely, if ever, the consequence of a "system". The differences are in reality of degree only. The systems classified as insider, for example, are too divergent to be considered in one category. Each of the continental European systems has to a different extent some elements of the outsider system. From a legal point of view, some are very close to the English system, but are at the same time very different in the development of financial markets. On the other hand, two of the most closed systems, Switzerland and Japan, have a large number of domestic listed companies and a high stock market capitalisation (see Table 1). Citing Germany and Japan as examples of the insider system is also rather problematical. Both might have some similar mechanisms of control, but their dissimilarities are even greater, as revealed in Table 1.

Table 1
Domestic Listed Companies by Country and Their Total Market Value at end of 1993

Country	Capitalisation		Domestic Listed Companies
	in Ecu mn	% of GDP	
B	69,526	38.6	165
DK	35,504	30.6	206
D	409,610	25.1	664
GR	10,738	17.1	130
F	404,926	37.9	726
IRL	15,259	38.9	53
I	128,056	15.1	242
L	17,170	195.1	56
NL	162,356	61.5	239
P	10,432	16.3	89
ESP	105,675	25.9	374
UK	1,065,515	132.4	1,927
EU12	2,434,766	44.3	4,871
AUS	25,178	16.3	111
SF	20,922	29.7	57
SWE	95,095	59.7	197
EU15	2,575,961	43.8	5,236
CH	240,812	113.9	215
N	24,332	27.8	120
JAPAN	2,672,638	73.8	1,667
US-NY SE	3,752,446	70.3	1,788
US-NA SDAQ	703,827	13.2	4,310

Note: Listed companies include main and parallel markets; listed companies and market capitalisation do not include investment trusts, listed unit trusts and UCITS; the data refer to the main market of the states mentioned, except for Germany, where it covers the federation of German exchanges

Sources: FIBV, Federation of European Stock Exchanges, and *European Economy*.

A distinction along the lines of outsider/insider strengthens the popular views of different systems. The myths about the German corporate governance system are commonplace but do not seem to correspond with reality, as was illustrated in a recent book by Edwards and Fischer (1994). According to their findings, there is no evidence to support the view of the house-bank relationship, whereby a single bank provides all the loans to a firm, or the relationship between a bank's voting power and its supervisory board representation.

Certainly, the average capitalisation of European stock markets is low, but other elements influence its importance. A political-ecological perspective on corporate-governance systems (see Gilson, 1992) might prove more useful. An ecological perspective sees a corporate governance system as being embedded in a rich web of mutually dependent and interactive relationships. A corporate governance system has to be understood and studied in the political and economic environment in which it developed. An efficient model can be designed in theory, but each time it will have to be adapted to local conditions and the political decisions of the society in which it operates. The importance of the market in the governance of corporations is dependent on other elements that influence its role. As the main element explaining the importance of capital markets, this report will examine the structure of share-ownership. Some basic market and financial data on the importance of stock markets, the occurrence of mergers and acquisitions, and the structure of the financing of industry will first be compared.

A. Market and Financial Indicators

1. The Importance of Stock Markets

Despite increasing globalisation and the integration of European markets, the relative size of stock markets in EU member states still differs widely. By the end of 1993, stock market capitalisation as a percentage of GDP ranged from 132% of GDP in the UK and

61% in the Netherlands to 25% in Germany and only 13% in Italy.[3] The number of domestic listed companies ranged from 1,927 in the UK to 664 in Germany, 726 in France and 242 in Italy.

Overall, the average stock market capitalisation in the EU, expressed as a percentage of GDP, falls far below the levels registered in Japan and the US. By the end of 1993, the EU 15 had a stock market capitalisation of only 44% of GDP, compared to 73% in Japan and 83% in the US (NYSE and NASDAQ). Excluding the UK, the average stock market capitalisation amounts to 29% of GDP or 30%, including the three new member states. Countries like Sweden and the Netherlands are notable exceptions. Neither is known to have especially transparent or open corporate governance mechanisms, but their stock market capitalisation is much higher than that of other continental European countries. This is even more the case in Switzerland.

The number of domestic listed companies in the EU, especially when those of the new member states are added, comes closer to the figure for the US, NYSE and NASDAQ taken jointly. The difference *within* the EU, however, between the UK on the one hand and the other member states on the other is great.

2. Mergers and Acquisitions

One might expect that the more important are stock markets in the trading of control rights in a given country, the more important might be the takeover activity. This correlation does not seem evident, however, from data on the nationality of firms in mergers and acquisitions in the EU for the period 1991-94 (Table 2). Classification by nationality of the *purchasing* firm shows British and French firms being the most active in

[3] Data on stock market capitalisation may be impaired by circular holdings — the cross-shareholding of listed companies. The Federation of European Stock Exchanges (1993) estimated that the degree of direct circular holdings between the 5% largest companies on a stock exchange was less than 10%. The smallest circular holding ratios were found in Dublin, London and Athens, where they seemed to be almost non-existent. Paris, Brussels and Stockholm had the largest degrees, with 15%, 22% and 26%, respectively.

the takeover market in this period. British companies dominated with an average share of 29.8% in total cross-border mergers and acquisitions in the European Union. French firms followed with a share of 21.5%, and German and Dutch companies occupied the third and fourth place with 17.6% and 10.5%, respectively.

Table 2
Average Share of Cross-Border Mergers and Takeovers by Member State, 1991-94 (in number of occurrences as % of total in the EU)

	B	DK	D	GR	E	F	IRL	I	L	NL	P	UK
Target	5.1	4.2	29.7	0.5	9.2	14.8	1.0	7.2	0.7	8.0	1.0	18.7
Purchaser	3.3	5.6	17.6	0.1	1.4	21.5	3.4	5.3	1.5	10.5	0.2	29.8
Balance	-1.8	1.4	-12.1	-0.4	-7.8	6.7	2.4	-1.9	0.8	2.5	-0.8	11.1

Source: *European Economy*, March 1995.

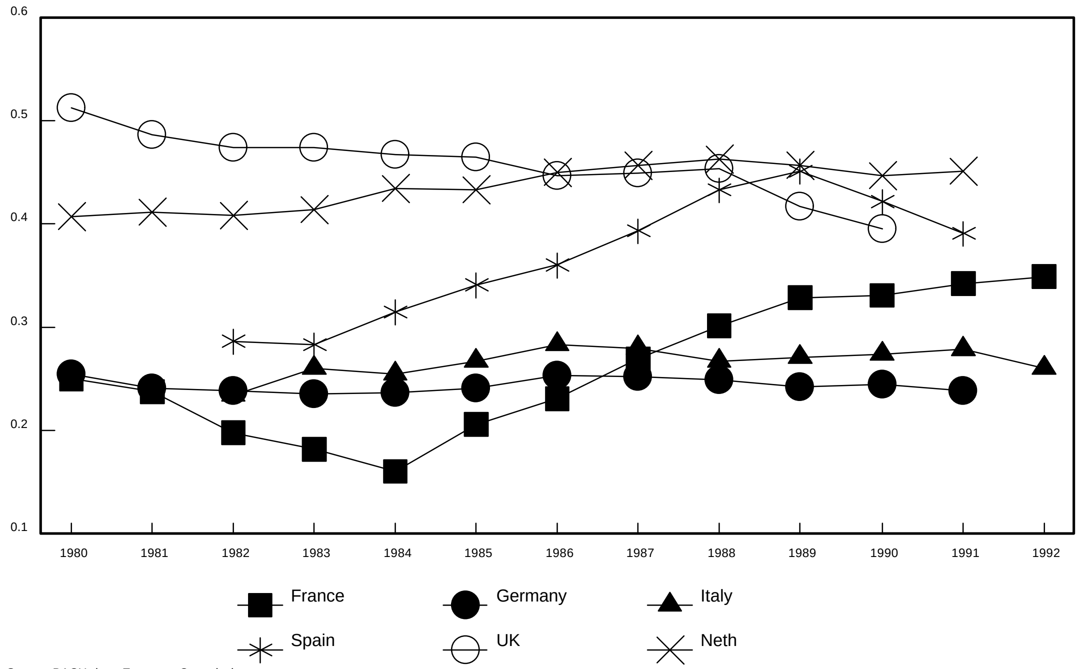
A breakdown according to the nationality of the *targeted* corporation in takeovers shows Germany playing the largest role. In fact, German companies were much more often the object of foreign takeovers than they were the initiator, which was due to the privatisation process in East Germany. A negative balance was recorded in six member states, including the four Mediterranean countries.

3. The Financing of Industry

Although a certain convergence can be discerned over time, patterns of corporate financing show substantial differences in the EU. Figure 1 compares the own-funds ratios of six EU member states, on the basis of consolidated balance-sheet data of the non-financial industry states (BACH data). Generally speaking, it reveals the differences between countries where industry predominantly finances itself through the issue of equity securities, with high own-funds ratios and by other means, such as debt or internal reserves. Generalisations about differences between continental versus Anglo-American systems, however, are not justified. Not only does the UK have a high own-funds ratio, but so does the Netherlands and in recent years, Spain. Overall, the differences between low and highly leveraged countries are becoming less pronounced.

Figure 1. Own Funds Ratios

(non-financial industry)



Source: BACH-data, European Commission.

Note: Capital and reserves as part of total liabilities

Furthermore, although BACH data are processed according to harmonised procedures, they should be considered with care. The Deutsche Bundesbank (1994) investigated the reason for the persistently low own-fund ratios of West German enterprises, as revealed in their consolidated corporate balance-sheet statistics, and found that they do not differ significantly once some important methodological discrepancies are eliminated. In a comparison of four EU countries (France, Germany, Italy and Spain), it found that the national balance-sheet data, used for the BACH data bank, differed considerably in legal form, total amount and sectoral distribution of enterprises covered, the own-funds definition used, and in the accounting principles employed. These differences generally have the effect of presenting a weakened German capital base, compared to the other countries. The form of enterprises covered for France, Italy and Spain includes almost 100% limited-liability corporations, whereas in Germany, one-half of the data consists of partnerships and one-person companies. Accounting rules also show major national differences, diluting the own-funds in the German case. If the data are adjusted and methodological differences eliminated, the average German own-funds ratio amounts to 30% for the period 1981-92 — a result that is comparable to the other countries of the sample. The Deutsche Bundesbank argued that the result would be similar if other European states were included in the analysis, for example the UK, and, it particularly noted, if the German method of accounting for occupational pension provisions (the book reserves) were to be adapted to the English method. Occupational pensions in Germany are invested in the sponsoring enterprise and are shown as provisions on the liability side of a company's balance sheet, whereas they are kept in a separate fund and capitalised in the UK. In our example, taking provisions out of liabilities increases the own-funds ratio of German companies by 7 to 8 percentage points — to a level of 32% in 1991. Balance sheet provisions are on average four times higher in Germany than in the other countries studied.

B. The Corporate Governance Environment

1. Shareholding Structures

Fundamental differences in the shareholding structure in European countries are the key to explaining the variations in the importance of their stock markets. Table 3 shows that the largest share owners of *quoted* companies in the UK are the institutional investors (pension funds, insurance companies, banks and unit trusts), which possess an average equity of 59%. Households are the second largest group in the UK with 19%, and industry (including investment trusts) owns 4%. In Germany, on the other hand, the situation is rather the reverse: industry is the largest owner of quoted companies with 42%, institutional investors possess a much smaller part with only 15% (of which banks hold 10%) and households possess 17%. Households — in this case families — are the most important owners of quoted stock in France and Italy. Government is the second most important shareholder of quoted companies in Italy with 27%. No reliable data exist for the other EU member states not shown in the table.

Only Sweden has a system in which ownership data are constantly followed by the stock exchange authorities.

Table 3
The Structure of Shareholding in Selected Countries
(percentage of total)

	D	F	I	UK	US	JPN
(as at end of year)	1990	1992	1993	1993	1992	1992
Institutional Investors	22	23	11.3	59.3	31.2	48
Banks	10		9.9	0.6	0.3	26.7
Pension Funds/Insurers	12		0.8	51.5	23.9	17.2
Others (Unit trusts)			0.6	7.2	7	4.1
Households	17	34	33.9	19.3	48.1	22.6
Private Companies	42	21	23	4	14.1	24.8
Public Authorities	5	2	27	1.3		0.7
Foreign Investors	14	20	4.8	16.3	6.6	3.9

Note: The figures do not necessarily add up to 100, because of differences in definitions used by the providers of the data and differences in regulatory structures. A bank is a universal bank in Germany and a high-street bank in the UK.

Sources: CREP-France, Central Statistical Office-UK, Deutsche Bundesbank (1991), and OECD (1995).

Seen in comparison with the US and Japan, the dominating role of institutional investors in the UK is fairly exceptional. Foreign investors, on the other hand, are of minor importance in the US and Japan.

Over time, a strong growth can be noticed in the shareholding by institutional investors in several European countries. In Germany, the pattern of share ownership by industry remained constant over the last 30 years (Table 4), whereas shareholding by private investors and government decreased, and institutional and foreign investors increased their share.

Table 4
Aggregate Share Ownership of German Listed Companies

	1960	1970	1980	1985	1990
Industry	44	41	45	43	42
Households	27	28	19	18	17
Foreign Investors	6	8	11	13	14
Insurance Companies	3	4	6	9	12
Banks	6	7	9	8	10
Government	14	11	10	9	5

Note: The figure for banks includes securities held on banks' trading books or held by broker-dealers; insurance companies include private pension funds.
Source: Deutsche Bundesbank (1991).

In the UK, institutional investors strengthened their position significantly in the stock market over the last 30 years. Whereas their share was 19% in 1963, it went up to 59% in 1993, and the share of individual investors declined to 19%. Foreign investors increased their share to 16%.

France shows a similar decline in ownership by households over the last 15 years and an increase by foreign investors. The stake of industry and institutional investors remained stable. The overall data for France, including the non-listed companies, show a much greater decrease in government share-ownership, namely from 22% to 4%. This figure severely understates reality as many nationalised companies are not included.

The Nordic countries also show a general increase in foreign ownership and a decline in household share ownership. In Norway, for example, foreign ownership increased from 18.2% in 1984 to 28.3% in 1993, while private ownership decreased from 26.9% to 11.4% in the same period.

Table 5
Aggregate Share-Ownership of Listed Companies in the UK

	1963	1969	1975	1981	1989	1993
Pension Funds	6.4	9.0	16.8	26.7	30.6	34.2
Insurance Companies	10.0	12.2	15.9	20.5	18.6	17.3
Unit Trusts	1.3	2.9	4.1	3.6	5.9	6.6
Banks	1.3	1.7	0.7	0.3	0.7	0.6
Investm. Trusts, Other	11.3	10.1	10.5	6.8	2.7	3.1
Households	56.1	49.5	39.8	30.4	22.9	19.3
Public Sector	1.5	2.6	3.6	3.0	2.0	1.3
Industry & Commerce	5.1	5.4	3.0	5.1	3.8	1.5
Foreign Investors	7.0	6.6	5.6	3.6	12.8	16.3

Source: Central Statistical Office, UK.

Table 6

Aggregate Share Ownership of Listed Companies in France

	1977	1992
Industry	20	21
Private Investors	41	34
Foreign Investors	12	20
Banks/Insurers	24	23
Government	3	2

Source: CREP, France.

Differences in concentration of ownership are substantial in the EU. Single majority stakes account for about 60% of total stock market capitalisation in Italy, compared to about 5% in the UK, the US and Japan. The largest five shareholders hold on average 87% of outstanding shares of listed companies in Italy, compared to 41% in Germany, 33% in Japan, 25% in the US and 21% in the UK.[4]

2. Legal and Board Structures

[4] See OECD (1995), pp. 60-61.

All of the member states of the Union have comparable legal structures for limited liability companies. A limited liability company is a separate legal entity owned by an individual or an association of individuals who own the firm and share in its profits according to the proportion of the company's capital they own. Their liability for the company's debt is limited to the share they contributed. Limited liability companies can be subdivided into private and public limited companies, in which the former may not, but the latter may, offer their shares for sale to the general public. Corporate governance problems will thus most likely occur in public limited liability companies, since ownership can be transferred without restrictions and is divorced from management. Such companies are subject to additional administrative requirements.

Public limited liability companies in the EU differ in minimum capital requirements, the structure and composition of their boards, and the responsibilities of the assembly of shareholders (see Annex III). Most EU countries have a one-tier board structure, where responsibilities are shared between representatives of management (executive directors) and representatives of the shareholders (non-executive or outside directors). In principle, the latter are appointed because of their wisdom, experience and contacts. In a two-tier structure, the management board is subject to and nominated by a supervisory board, composed of non-executive directors. This type of structure is in place in Denmark, Germany, and the Netherlands, and is optional in France, Portugal and Spain. The former three countries also give employees, or their representatives, seats on the supervisory board, a practice that is best known in Germany, where employee representatives can occupy up to one-half of the seats on the board, in the case of corporations with more than 2,000 employees. The practice of appointing employee representation on the board is also current in Sweden and optional in France.

The board of directors, or the supervisory board in case of the two-tier board structure, is in most countries appointed or approved by the assembly of shareholders at the annual meeting (AGM). The notable exception is the Netherlands, where the supervisory board elects itself and can therefore be self-perpetuating. The other principal tasks of the AGM include the approval of the accounts and dividends, the (re)appointment of auditors, the issue of shares and the agreement on by-laws.

Regarding the composition of the supervisory boards in Germany, aggregate data of the 100 largest German enterprises indeed show that the single most important group comprises trade union and employee representatives, who possess close to one-half of the mandates.[5] Representatives of industry are the second-most important group with 25% of the seats, whereas banks and other financial companies occupy only slightly more than 10%. The total number of bank representatives on the board is furthermore decreasing on a continuous basis. Data on the background of the non-executive directors of UK banks show that a great majority of them (80%) are company chairmen, chief executives or directors.[6] In France, 25% of the board seats in the 100 largest enterprises are occupied by civil servants.

3. Accounting Rules

Accounting regulations establish a series of rules for the reporting of a company's financial state and flows, with a view to giving a "true and fair view" of its financial situation. The results are given in the annual balance sheet and the profit and loss account, and presented to the annual assembly of shareholders for approval. Apart from the shareholders, lenders, employees, clients and tax authorities also take an interest in company accounts which must be certified by the company auditors.

Two broad national traditions can be distinguished in accounting practices: countries in which the accounting process is driven by the needs of financial markets and those in which it is primarily driven by law — the former being mainly the English-speaking countries (and to a certain extent the Netherlands), the latter including most countries of continental Western Europe. In the former grouping, the interpretation of a "true and fair

[5] Schneider-Lenné (1992); Bundesverband deutscher Banken - Info, No. 23/24, December 1993.

[6] Sheridan and Kendall (1992).

view" will be based on whether the accounts convey information of an adequate quality, in accordance with the currently accepted standards and practices developed by the profession. In the latter, it will be based on compliance with statutory requirements. Generally speaking, legal prescription leads to more rigorous methods of reporting and tends to avoid soft information, such as current values, which is of particular relevance to financial markets.

An illustration of the scope for manoeuvre under different accounting systems is given in Table 7. It was drawn from a case study in which practising accountants from different countries were asked to prepare the profit and loss accounts of an international company. They were instructed to perform this task on the basis of three different sets of accounting rules: the one most likely to be followed by companies preparing accounts in their country; one using acceptable alternative assumptions that would result in the net profit being as high as possible; and one using alternative assumptions that would result in the net profit being as low as possible. As seen, comparable performances may be reflected in reporting profits within a range of 85 points for Germany and 12 points for the UK. A large discretionary margin can, other things being equal, be assumed to entail supplementary powers for management. The elements that most commonly cause differences are the depreciation of goodwill and the valuation of stocks.

Table 7
Degree of Flexibility in Reporting of Profit in Selected European Countries (by different accounting rules)

	BE	D	FR	I	NL	SP	UK
Maximum Profit	143	105	107	111	111	147	101
Most Probable Profit	100	100	100	100	100	100	100
Minimum Profit	67	20	81	96	54	92	89
Difference	76	85	26	15	57	55	12

Source: Touche Ross (1989).

III. The EU and Corporate Governance

The above data and discussion have already suggested that further convergence and harmonisation have yet to occur to achieve a true single market. The question, however, is where are policies actively needed to eliminate distortions and where might convergence occur naturally through market forces? The EU has come a long way from the total harmonisation approach that dominated the 1970s. This approach did not succeed and resulted in years of obstruction on proposals in the Council of Ministers, or in heavy compromises and texts with many exceptions and derogations. The method followed with the single market programme of 1985 was one of minimal harmonisation of essential rules and mutual recognition of additional requirements. Market forces would do the rest. It lead, together with the easing of the decision procedures through majority voting, to an impressive package of legislation, whose harmonising effects are only starting to emerge.

In the area of corporate governance in the strict sense, progress on the harmonising legislation was limited, compared to the overall rate of adoption of single market measures and achievements in other areas. On the one hand, harmonising legislation deeply affects areas that are considered to be an essential part of national economic and social traditions. Setting rules on company structures and employee participation has a much greater impact on national systems than does legislation that harmonises rules for food labelling or additives. On the other hand, distortions caused by non-harmonisation of corporate governance rules are much less evident. Differences in accounting systems and company structures do not distort free movement of goods or services directly, but may have an impact on the free movement of capital. The debate over whether the EU should enact harmonising legislation in this area, in the terms of the subsidiarity principle, and what instruments should be used, is highly relevant.

Nevertheless, the achievement of a single market in other sectors will not only highlight the shortcomings in other areas, such as company law, but it will also have a strong impact on the convergence of corporate governance standards, most importantly through financial-market integration. What the EU has done will hereafter be discussed under two different headings: policies that affect corporate control directly, i.e. the harmonisation of legal forms of corporate organisation and control, and policies that have an indirect impact, that is, measures in the financial and social fields.

A. Policies Affecting Corporate Control Directly

A number of directives have already been adopted in the field of company law, independently of the White Paper.[7] Five directives deal with company law issues in the strict sense of the word, four with accounting matters. The first directive sets general rules for the disclosure, obligations and nullity of limited companies. The formation, domestic mergers and divisions of public limited companies are the subject of the second, third and sixth company law directives. The fourth, seventh and eighth directives deal with the annual accounts, the consolidation principles and the auditor's qualifications of limited liability companies, with exemptions for small- and medium-sized enterprises (SMEs).

[7] A full list of the adopted and proposed company law directives can be found in Annex II.

The accounting and auditing directives can be considered as having made the most significant contribution towards a European framework. They made accounting a subject of Community law and stipulate that public and private limited liability companies in the EC should publish annual accounts. This is still not universally observed, as evidenced by the fact that more than 90% of German limited liability companies refuse to publish their accounts — a matter that has that given rise to an infringement procedure from the Commission. The accounting directives do, however, accommodate the basic practices in place for the moment but do not yet put in place European accounting standards, as too many implementation options are left to member states: 62 in the 4th directive, 50 in the 7th. Moreover, great differences exist between EU states with respect to the interpretation of these provisions. A recent study by the European accountants' federation (FEE) found that the prudence principle of the 4th directive was applied in different ways in the Community.[8]

Another series of measures, proposed a long time ago, deal with core corporate governance issues, e.g. the structure and control of public limited companies, takeover bid procedures and employee rights in limited companies. None of these measures has yet been adopted. Some were amended in 1990 (Bangemann proposals) in reaction to the publication of a study by the UK Department of Trade and Industry (DTI). This study argued that takeovers had to be facilitated within the Community to allow companies to restructure and to adapt their size to the single market. The study demonstrated that structural differences form important impediments to cross-border cooperation of companies in the EU. In particular, it was shown that the total value of acquisition in the UK had been 2.5 times larger than the total in the rest of the Community. Furthermore, a big share of UK acquisitions had been made in the form of contested bids, whereas this form of acquisition was insignificant in other member states. The study argued that this was due to structural differences between member states regarding the rights of the employees, shareholders, management and their respective powers, the availability of

[8] FEE (1994).

information, the taxation policies, accounting practices and supervisory practices. Commissioner Martin Bangemann reacted to the study with a series of amendments to the (draft) company law directives intended "to remove barriers to takeovers". Four Commission proposals, described below, remain on the table of the Council.

1. Harmonisation of the Structure of Companies: Draft Fifth Company Law Directive

This draft directive relates to the structure of public limited companies (PLCs) with share capital.[9] It defines the powers and obligations of the board. It provides that PLCs shall be structured in one of two ways: 1) the *two-tier* system, in which the company is managed by management under the supervision of a supervisory organ; or 2) the *one-tier* system, in which the company is managed and controlled by a single board of directors and in which the actions of the executive members are supervised by the non-executives. The draft contains provisions obliging companies to allow a form of employee participation and control of the board, depending on the sort of company and the number of employees. Other provisions concern the holding of general meetings of shareholders, proxy voting and the drawing-up and auditing of annual reports.

The 1990 amended draft removed impediments with regard to the exercise of voting rights, created more transparency for shareholders, instituted the "one share-one vote" principle and majority voting in the general assembly, rendered control on the board more effective, and limited the number of non-voting shares to a maximum of 50% of total capital in issue. The amendments did not, however, ease the proposal's progress, as it still remains stalled in the Council.

2. Requirements for Mergers: Draft Tenth Company Law Directive

[9] The structure of public limited companies and the powers and obligations of their organs, COM(72)887 and COM(83)185; amended proposal (amendments proposed in order to bring the draft directive in line with the Commission policy to remove barriers to takeovers), COM(90)629; re-amended proposal COM(91)372.

This draft directive harmonises company law to ease cross-border mergers (of the share-exchange type) and defines the role of the assembly of shareholders in approving a merger.[10] It would lift restrictions that make cross-border mergers more difficult than national mergers. The sensitive issue of employee participation has kept this directive from making progress, which has never been able to pass a first reading in the European Parliament. More particularly, the draft allowed member states not to apply the directive if there was a problem with the provisions for workers' participation.

3. Harmonisation of Takeover Bid Procedures: Draft Thirteenth Company Law Directive

This directive defines the role of supervisory authorities during a takeover bid, the equity threshold for an obligatory public takeover bid, the protection of and requisite information that must be communicated to shareholders, the transparency of the operation and defensive measures. With the aim of ensuring equal treatment for all shareholders, the proposal obliges a bidder that acquires one-third of the voting rights of a company to make a bid for all the voting stock. It restricts the ability of the management of the targeted company to take defensive action once a bid has been launched. Restrictions on prior-bid defences — such as dual class of shares or ceilings on the number of votes by a single shareholder — are considerably more limited.[11]

The UK opposed the draft on the grounds that it would introduce a statutory form of takeover regulation, and argued that its self-regulatory system, embodied in the City Code on Takeovers and Mergers, was functionally satisfactory. The proposal therefore

[10] Cross-border mergers of public limited companies, COM(84)727; the tax problem of international mergers was settled by Council directive 90/434 of 23 July 1990.

[11] Thirteenth Council directive on company law concerning takeover and other general bids, COM(88)823; amended proposal, COM(90)416; the second company law directive (77/91/EEC) on the formation of public limited liability companies and the maintenance and alteration of their capital was amended in November 1992 (Council directive 92/101/EEC) to prevent companies from using subsidiaries in order to make acquisitions of their own shares during a takeover bid.

figured on the list of proposals that should be revised in line with the subsidiarity principle, as agreed at the 1992 Edinburgh Council. It was part of the list of proposals that in the view of the Council "tended to go into excessive detail in relation to the objective pursued". The Commission is still considering whether this proposal corresponds to the needs of business and whether takeover bids should be subject to more or less detailed regulation at Community level.

4. European Company Statute

The most far-reaching proposal is the regulation on the European company statute (SE).[12] This project is designed to provide an optional structure for companies and follows the pattern of the limited liability company. A SE that is legally established in one member state would be allowed to conduct business throughout the EU and set up branches in other states, while being subject to the laws of its home state. Rules specify the terms of incorporation, which would apply to both public and private companies, the minimum capital (set at minimum 100,000 ecu), the board structure (one-tier or two-tier), voting rights (maintaining the possibility for voting restrictions through dual-class shares and capped voting), and the reporting requirements. The regulation is linked with a draft directive defining the rights of the employees in a SE.

Discussion of the proposal is advancing very slowly, and it is questionable whether a workable form of SE will materialise in the foreseeable future. Although the European Council and the European Commission frequently call for a final agreement on the regulation, the problem remains that it cannot result in an easier structure for companies than the one existing at national level. So far, mainly the draft directive on employee involvement in an SE has posed problems. For some member states, it sets too high a degree of employee involvement, while it is too low for others. Germany has repeatedly

[12] Proposal for a Council regulation on the statute for a European company (SE), COM(89)268; amended proposal COM(91)174-2. A 1970 proposal attempted for a total harmonisation of company law in the Community; see Bulletin of the EC (1970), No. 8.

stated that it will not accept a SE that would introduce a less stringent regime for worker participation than does its own legislation, as German companies would then opt for the SE.[13] Other member states, such as the UK and Ireland, argue in favour of harmonisation of national rules (although this does not seem much easier), rather than creating a new statute. A further problem is taxation and the allocation of tax revenues to member states.

A group of multinational companies has recently started an initiative to unblock the European company statute. They argue that differences in company structures are a heavy burden for companies operating on a European level, reducing their efficiency and affecting the competitiveness of European industry as a whole. They furthermore assert that the worker participation issue is solved now that the European works councils directive, discussed below, has been adopted. Also UNICE, the European employers federation, has recently called for the adoption of the European company statute and the 10th company law directive.

The Commission is aware of the shortcomings in the single market. Regarding accounting, the Commission stressed in its 1994 strategic internal market programme that efforts needed to be made to improve comparability of financial reporting requirements within the Union. This was also thought to increase the Union's influence in the international accounting harmonisation debate. The Commission is also considering how a new approach can be found on the remaining company law directives and has commissioned studies on the subject.

B. Policies Affecting Corporate Control Indirectly

[13] According to the European Commission, a new German law of 2 August 1994, which raised the threshold for employee membership of the board to companies with 500 employees or more, may lead to a change in Germany's position on this subject.

1. In the Social Field

In addition to the drafts on the rights of employees in an SE and the provisions of the 5th company law directive on worker participation, the recently adopted workers councils directive also sets procedures for consultation of employees in multinational undertakings.[14] A European works council, composed of about 30 management and employee representatives, can be set up where it is requested by the employees or their representatives. The initiative can also come from the management of an undertaking, but it must receive the agreement of the employees. Starting in 1997, companies that do not have works councils will be required to open talks with employee representatives with a view to setting up such bodies. Employers will have to announce and discuss all major restructuring plans and transformations of the company with the employee representatives. The directive will apply i) in case a three-year period of consultation fails; ii) when it concerns enterprises with at least 1,000 workers in the EU, of which iii) 150 are working in another member state. The measure was adopted on the basis of the Maastricht agreement on social policy (Social Charter), and will thus not apply in the UK, which fervently opposed the measure. It is estimated that the works councils directive will apply to some 450 German companies, 250 US corporations and 220 French concerns. About 100 UK companies, with big operations in continental Europe, will also be affected (compared to 300 if the rules were applicable on British territory).

A group of multinational companies maintains that the works councils directive should ease progress towards the adoption of the European company statute. They argue that they are required to establish works councils, without having a corresponding European organisational structure. They therefore propose that the works councils directive should be applied to the SE and replace the draft directive on worker participation in

[14] Council directive on the establishment of European Works Councils or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees, OJ L 254, 30 September 1994.

SEs, thereby resolving the main stumbling block to the adoption of the SE. The procedures for consultation are, however, less stringent than those in place in Germany for example, where employee representatives occupy one-half of the seats on the supervisory board of large corporations. Their role goes much further than the information and consultation procedures of the directive. Although the works councils directive provides an adequate platform for compromise on a European level, it will have to seen whether Germany will accept this proposition.

2. In the Financial Field

By far the greatest progress towards more convergence in corporate governance at EU level has been realised through the single financial market programme. On the one hand, capital movements between member states have been liberalised. On the other, almost all the necessary legislation is in place for the free provision of financial services. The relevant directives harmonise the basic rules to allow free branching and provision of services across borders with a single passport. The measures can be subdivided according to the different sectors.

In banking, the second banking directive follows the universal banking model, allowing banks to provide a wide variety of services from commercial to investment banking. Banks are also allowed to have relatively high shareholdings in industry. A bank can have an equity holding of 15% of its own funds in a non-financial undertaking. The total amount of holdings in industry may amount to up to 60% of the bank's equity. This share is higher than was the case in most EU member states. Another directive limits large exposures of a bank to a single client to 25% of the bank's own funds.

The investment services directive gives stock brokerages similar freedoms as enjoyed by banks, allowing them to trade in securities throughout the EU under the sole control of the host country. The directive is, however, subject to some important transitional measures and will only come into force in 1996. Other measures in the securities field ease the integration of EU stock markets through the mutual recognition of listing particulars for admission and membership of stock exchanges. To allow the Eurolist project to proceed (see below), this directive was recently amended to waive the publication of listing particulars for companies of high quality, large size and international standing, listed in the Community for at least three years and showing a good record of compliance with EU listing directives. Another directive deals with disclosure requirements in case of the acquisition or disposal of major holdings in listed companies. The thresholds are set at 10, 20, 33, 50 and 66 percent.[15] Apart from this, the EC also agreed in 1989 to make insider trading a statutory offence, which had not previously been the case in many continental European countries.

A private initiative should contribute further to the integration of European stock markets. The European Federation of Stock Exchanges plans to start a project permitting European blue-chip companies to be listed jointly on several EU stock exchanges (the Eurolist project). It allows major companies already listed on a European stock exchange to obtain a listing on other European exchanges using a simplified procedure. The move is intended to increase the attractiveness, liquidity and transparency of European stocks. The repeated delays in the official launch of the project, however, leaves open to serious doubt whether European stock exchanges are really prepared to cooperate. A more ambitious project, Euroquote, had to be abandoned two years ago, because participating bourses preferred to invest in their own systems rather than joining forces for the development of a unified framework. The same fate might await the proposals to create a European stock exchange for smaller companies — EASDAQ (European Association of Securities Dealers Automated Quoting) — modelled on the American NASDAQ.

In the field of insurance and pension funds, the lifting of localisation and liberalisation of investment requirements in the life and non-life insurance directives, which came into

[15] Disclosure requirements ranged from 3% in the UK to 25% in Germany before.

force on 1 July 1994, is a further move towards an integrated European capital market. A draft directive that opened markets for pension fund investment and management, however, had to be withdrawn because of the great divergency in pension-financing systems in the Community and conflicting views on prudent investment rules in the member states. The Commission now hopes to obtain similar results through a legally non-binding communication.

IV. Pressures for Change

Despite the stalemate on the EU's corporate governance directives, five developments are increasingly having the effect of reducing the specificities of systems, opening national markets to international competition and augmenting the importance of stock markets:

- Growing role of institutional investors;
- Integration of financial markets;
- Harmonisation of accounting standards;
- Increased shareholder activism; and
- The recent wave of privatisations.

A. The Growing Role of Institutional Investors

The trend in which institutional investors have increased their share of listed companies over time in several European countries is likely to continue, above all in continental Europe, due to developments in retirement financing and health care. The aging of the European population will lead to increasing dependency on funded schemes in the financing of retirement provisions. European countries currently rely to a large extent on publicly operated pay-as-you-go financed pension schemes, in which contributions from the active working population pay for the pensions of the retired. Growing pensioner-to-worker ratios and the restraints on public spending will make these schemes more and more untenable, and a larger share of pension contributions will have to be financed by privately managed funded labour-market and/or individual pension schemes. Similar changes might also occur in the sector of health care, where parts of the tasks that are now carried out by the public sector will be divested and handed over to the private sector.

These developments will lead to an increase in the demand for equity and dis-intermediated finance by institutional investors, acting as the depositors of pension funds. They will push companies to adjust their financing methods and may well result in a reduction of the debt-to-equity ratios of European industry. The role of purely commercial banks (as opposed to investment or universal banks) might diminish in favour of securities markets. Governments might have to reconsider the preferential tax treatment of debt as compared to equity financing.

The growing importance of institutional investors in the European capital markets will push corporate governance towards the British/American model. Information to shareholders, the one-share/one-vote principle, dividend policy, executive pay and the assembly of shareholders will all become increasingly important. Institutional investors will be on the demanding side for equal treatment in takeovers and for restrictions on insider trading and dual classes of shares or capped voting arrangements. They can be expected to introduce a more active form of shareholding and pose a direct threat to lax or incompetent management. The growing competition amongst them will only intensify this process.

American pension funds, which possess in volume terms the most assets of all Western countries, are increasingly investing outside the US and bringing their corporate governance standards with them. Overseas equity holdings of US pension funds increased from $117 billion in 1992 to $202 billion in 1993. In percentage terms, the foreign stock of an average US pension fund portfolio was less than 4% in 1986, but rose to 7% in 1993, and is expected to reach 10% in 1996. American pension funds are required by law under the Employee Retirement Income Security Act (ERISA) to actively monitor investments and communicate with corporate management. The US Labor Department declared the proxy vote an asset that must be exercised to comply with ERISA legislation and required the companies managing the funds to develop voting guidelines aimed solely at member interests. This requirement applies to foreign stock as well. In the UK, the Cadbury report has called upon institutional investors to make positive use of their voting rights. The two major British institutional investors' associations — the Association of British Insurers (ABI) and the National Association of Pension Funds (NAPF) — both stress active corporate governance and adequate information to shareholders.

Table 8
Pension-Fund Assets in the EU and the World (billions of ecu)

1992	Pension Fund Assets	Of which Overseas	%
B	5.3	1.7	32.1
DK	19.5	0.7	3.6
D[1]	83	6.7	8.1
E	6.3	0.1	1.6
F	34	0.7	2.1
IRL	13.2	4.6	34.8
I	9.5	0.4	4.2
NL	196.1	33.4	17.0
P	2.2	0.1	4.5
UK	530.7	159.2	30.0
EU-12[2]	899.8	207.6	23.1
US	1393	90	6.5
JAPAN	113		
CH	105	7.56	7.2

[1] Excluding book reserves, which were estimated to amount to bn 231.5 DM in 1991.
[2] Greece and Luxembourg have no pension funds of any significant size.

Source: Mortensen (1993).

B. The Integration of Capital Markets

The former should be seen in connection with the developments in the EU to create an integrated capital market. The EU's third life and non-life insurance directives, which came into force in July 1994, reduce investment restrictions and lift localisation requirements for the investments of insurance companies throughout the EU. Although a draft directive liberalising restrictions in pension funds investment had to be withdrawn, increasing integration of markets and competition between institutional investors will further liberalise the investment climate for institutional investors. At the moment, Ireland, the Netherlands and the UK, which represent over 80% of all pension funds assets in the EU, have no limits on the portfolio distribution of pension funds, the sole exception being the Dutch civil servant pension fund ABP. Foreign asset holdings are limited in Germany, Belgium and Denmark. German insurance companies and pension funds may invest 30% of their stock in shares, but the traditionally risk-averse fund managers have up to now not been constrained by this limit. They are on average at a much lower level of 18%.

Table 9
Pension Funds Portfolio Distribution, 1990
(percentage)

	Liquidity	Bonds	Loans	Property	Equity
US	9	36	0		46
UK	7	14	0	9	63
D	2	25	36	6	18
JAPAN	3	47	13	2	27
NL	3	23	39	11	20
SWE	3	84	10	1	1
DK	1	67	1		1

Source: Davis (1993).

Globally, the worldwide integration of capital markets will lead to more convergence in portfolio distribution of institutional investors. Institutional investors in continental Europe have traditionally overinvested in bonds, whereas equity holdings are underrepresented. The latter form a much more important part of the portfolio of British and US firms. They are more volatile but give a better return in the long run.

C. Harmonisation of Accounting Standards

The increasing globalisation of markets and the need for a more liquid capital stock led the German company Daimler to request a listing on the US stock exchange in September 1993. Daimler aimed to achieve an increase in its stock market capitalisation and a boost to its international standing through the Wall Street share offering. In order to obtain this listing, however, Daimler had to comply with US accounting standards (US GAAP).

The move was not greeted with enthusiasm. Some German businessmen described Daimler's decision as an unconditional surrender to the US side.[16] Seen from a political point of view, Daimler's move jeopardised efforts to come to an agreement on international accounting standards within the International Accounting Standards Committee (IASC)[17] and discredited the European aim to achieve mutual recognition of European and American accounting standards. Daimler's move has in fact given a strong advance to US accounting standards to become the world's accounting language. Other companies are considering whether to follow this example or are making preparations to do so.

Accounting systems are a reflection of corporate control systems, as illustrated above. Whereas the American and English system, dependent as it is on the provision of capital from outsiders, insists on transparency and information, the German system is more closed. The accounting adjustments entailed in the case of Daimler illustrate the differences between the two systems. For the first six months of 1993, Daimler posted a profit of DM 168 million according to German accounting methods, but a loss of DM 949

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[16] See Barry Riley, "Feeling of Corporate Betrayal in Germany", *Financial Times*, 22 September 1993; and *European Report*, 17 July 1993.

[17] IASC is a private organisation representing the accounting profession. It has developed a number of international accounting standards. It has been asked by the International Organisations of Securities Commissions (IOSCO) to come up with a set of standards that could be accepted by all major stock exchanges in the world in order to facilitate multinational securities listings and offerings.

million according to the American system. Other European systems take the form of variants on the English and German systems. In general, it can be stated that the greater the distance between the providers and users of capital, the more demanding are the reporting requirements.

D. Shareholder Activism

Another development that has opened up the control of corporations is the increased activism of shareholders.[18] The trend is clear in the US and the UK, where shareholders are joining forces to have a stronger position vis-à-vis management. Voting services inform shareholders of their rights and encourage them to exercise their proxy. They notify shareholders of the issues that will come up for voting at the annual general meeting and give background information on the different resolutions. They advise shareholders on which issues are contentious and which are not.

The legal requirement for US pension funds under ERISA to actively vote their shares has already been mentioned. On 29 July 1994, the US Department of Labor reaffirmed its position in guidelines for responsible ownership by pension funds, which call for proxy vote decisions to enhance the value of the shares and active monitoring and communication with corporate management. The latter includes not only the selection of candidates for the board, but also consideration of executive compensation, the corporation's mergers and acquisitions policy, the extent of debt financing and capitalisation, long-term business plans, work force training and practices, and other financial and non-financial measures of corporate performance. The guidelines read:

> The Department believes that, where proxy voting decisions may have an effect on the economic value of the plan's underlying investment, plan fiduciaries should make proxy voting decisions, with a view to enhancing the value of the shares of stock, taking into account the period over which the plan expects to

[18] The term shareholder activism refers here only to the professional, investment-oriented behavior and not the other forms of activism based on moral, ethical or ecological considerations.

> hold such shares. Similarly in certain situations it may be appropriate for a fiduciary to engage in activities intended to monitor or influence corporate management if the fiduciary expects that such activities are likely to enhance the value of the plan's investment.[19]

The Cadbury report in the UK has also called upon institutional investors to make positive use of their voting rights and to disclose their policies of voting. The UK pension funds association NAPF and the insurers federation ABI organise a voting issues service to allow their members to exercise their proxy votes. It monitors the largest UK companies, analyses their annual reports and assesses each company's position in relation to the corporate governance criteria of the Cadbury Code. The organisation reports on resolutions requiring shareholder approval at general meetings and dispatches reports on issues on the ballot in time for proxies to be lodged. NAPF feels that these measures can assist fund managers to improve the value of investments. This trend is gradually spreading in continental Europe, not only through the shareholdings of American and British investors, but also through increasing awareness of shareholder rights and the potential benefits of activism.

Shareholder activism has indeed become a strategy of investors. Putting money into poorly performing and badly governed, but potentially strong companies, and then agitating for changes in corporate governance, has proved generally to be a rewarding line of action for some investors. Most companies in the US that have been subject to shareholder-influenced restructuring have shown a measurably enhanced performance. Wiltshire Associates, an American consultancy, analysed the results of 42 shareholder proposals of the California pension fund CalPERS affecting 27 companies during the 1988 to 1991 proxy seasons. Compared to the S&P 500 index total return, the targeted companies realised a positive excess return of 3% over the six months following the announcement, while they experienced a negative excess return of 9.3% over the six months preceding the shareholder proposal announcement. When the date of

[19] US Department of Labor, Pension and Welfare Benefits Administration, 29 July 1994.

negotiated settlement with the management is taken as reference, which precedes the announcement date, the excess return is twice as high. The Wiltshire report, however, adds that only large funds can afford the cost of shareholder activism, while most of the potential gains are distributed to free-riders.[20]

It is sometimes argued that most activist pension funds are also "short-termist" in outlook, thereby increasing the volatility of the stock market. Shareholder activism under ERISA rules tends to be more long-term oriented, considering the issues involved in the monitoring activities. The guidelines referred to above call for proxy voting in light of the period of shareholding. The Cadbury report also calls upon institutional investors "to bring about changes, rather than selling their shares". Short-termism is nevertheless often considered a problem both in the US and the UK. In his report for the US Council on Competitiveness, Michael Porter (1992) considered the short-term orientation of the US market a competitive disadvantage vis-à-vis Germany and Japan, and called on institutional investors to take a more long-term orientation. Recent cases have demonstrated the negative effects of exaggerated shareholder activism, in which the owners do not limit their role versus management, but rather become managers themselves, with dramatic consequences for all shareholders and employees.

E. Privatisations

[20] Nesbitt (1992).

Several continental European countries have launched important privatisation rounds of state assets. Banks, telecommunications, energy and other enterprises are up for sale to the public in Belgium, France, Germany, Italy, the Netherlands and Spain. These moves will increase the importance of stock markets and augment their capitalisation. The prime example is Italy, where the stock market capitalisation in percentage of GDP is the lowest in the EU (see Table 1) and where the share of government ownership of listed companies amounted to 40% in 1991. Having an overall view of the importance of government ownership is difficult, however, since publicly owned corporations in general are not quoted on the stock exchange.

Nevertheless, the member states' desire to keep privatised corporations nationally "anchored", in order to retain a strong shareholding in the hands of nationals and to control national assets, might as well play a role in preventing corporate governance from becoming harmonised and transparent. In several European member states, privatisations are placed with local companies and investors. In France, a core shareholding of the privatised companies is in general placed with French institutional investors and corporations ("les noyaux durs"). Local individual residents came in second place, but not much was left for foreign investors. The same strategy is followed in other European countries, such as Spain and Belgium. Clearly, however, such policies are irreconcilable with membership of an integrated European market.

V. Issues of Common Concern

The previous section outlined the major developments that are responsible for fundamental changes in European corporate governance systems. Before advancing policy recommendations, the first part of this section will discuss the available means at national and EU level.

A. The Need for Further Convergence or Harmonisation at EU Level?

The developments outlined above will exert pressure on national corporate governance systems to become more transparent and convergent, and will reduce their specific differences. Several alternative policy conclusions can be drawn from these changes:

- Market forces will achieve convergence and only minor corrections will be necessary;
- The system that market forces will put in place is unpredictable and therefore unacceptable; or
- Market forces will distort competition and a deliberate policy is necessary to achieve harmonisation.

It should be recalled that the Commission's White Paper on the Single Market left considerable scope for regulatory competition. Only essential regulations are harmonised to allow the free movement of goods and services, with additional rules being subject to mutual recognition. Member states can keep higher standards for companies located within their territory, but they cannot refuse market entry to products or services from other member states that meet the minimum standards. For example, the second banking directive imposes a minimum capital for banks in the EU of 5 million ECU, but member states could well set a higher amount, without being able to deny access to licensed banks from other member states with a lower minimum capital.

In the field of corporate governance, the first step is to examine whether competitive conditions are affected through differences in standards, and, if there is a need for policy intervention, the question is which instruments should be used and at which level. Account has to be taken of the subsidiarity principle, which is now a central element of the Maastricht Treaty. This principle is used to determine the optimal level of government at which a public policy should be undertaken.[21] It assigns policy-making and implementing powers to local government or the lowest policy level, except when

[21] The following draws upon Pelkmans and Sun (1994).

this would likely be ineffective. According to the Treaty on European Union, action at Community level must be in pursuit of the objectives of the Treaty, and, through its scale or effect, promise greater efficiency than if it were taken by the member states individually.

Corporate governance is an excellent domain for the application of the subsidiarity principle. Corporate governance standards are embedded in different national regulatory regimes and are the fruit of long national traditions and differing views on the role of corporations. Even before the subsidiarity debate emerged and the principle was added to the Treaty of Rome, the issue was raised in discussions on the SE regulation and the draft 5th, 10th and 13th company law directive. The question that has to be addressed is whether Community legislation is absolutely necessary for further integration to become a reality or to eliminate distortions. Would EU laws be more effective than national rules to obtain market integration?

Secondly, any action taken must be proportional to the desired objective. The Community must assess what kinds of instruments must be used and whether binding or non-binding measures are pursued, depending on the importance of uniform regulatory conditions in the field in question and the degree of technical complexity. If legislation is not necessary, use could be made of non-binding *recommendations*, which call for the coordination of national measures, or voluntary instruments that promote self-regulation. If legislation is necessary, it should be in the first instance of the type of a framework *directive*, which only harmonises essential elements, leaving national authorities room for manoeuvre for transposition into national law and to allow for competition among rules to work. If uniform conditions are absolutely necessary, it should be a Community *regulation*.

A third condition for action at EU level is the unlikelihood or infeasibility of voluntary and credible policy coordination among member states. If member states could effectively cooperate on a given policy issue, there would be no need for a centralising authority.

But when a large number of parties are involved and the problem is complex, it is unlikely that coordination will be achieved and that policy centralisation is necessary.

In the case of harmonising the various elements of corporate governance standards at European level, there must be a clear argument that what will be achieved through a centralising policy could not, or could only less efficiently happen in another way.

B. Policy Recommendations: A Three-Pronged Approach

Bearing in mind the precautions for legislation at Community level, a three-pronged approach should be followed to make corporate governance standards in the Community more convergent. First at all, there are areas where further harmonisation at European or international level is necessary, and where Community legislation is required (and where market forces will not work). Secondly, since the legislative way is very complex and lengthy, an intermediate way could be followed for a faster integration and convergence of standards through a form of self-regulation via the promotion of a series of guidelines. Thirdly, responses and adaptations by individual member states of their corporate governance framework should take account of the adherence to a single market.

1. Areas to be Further Harmonised

- ***Further Adaptation of Administrative Structures to the Single Market***

The differences in legal requirements for the establishment of corporations in the European Union should be further reduced. Operating in the single market necessitates companies to adapt to different administrative, fiscal and legal requirements. National borders are still a tangible impediment for companies that want to expand, merge or restructure across borders, because of the lack of a European legal framework. Companies are hampered in setting up a single operational structure at European level, since there is no single legal statute. This affects the mobility of companies, the competitive position of European industry and the credibility of the single market.

The European Commission has made proposals for the harmonisation of legal structures of companies in the EU and for the facilitation of mergers in the 5th and 10th company law directive and in the European Company Statute. The latter proposal is the most ambitious, but its history is not very promising. First proposed in 1970, it was successively amended and re-amended. Not only the business community, but also the European Council itself has repeatedly appealed to the Council of Ministers to have the draft regulation adopted, but without success. The recent approval of the European works councils directive may create some momentum for progress, as the workers consultation issue is one of the main stumbling blocks of the SE proposal. Or, to put it in another way, the requirement for large corporations to adopt EU-wide worker information and consultation procedures will highlight even more the lack of a pan-European legal structure.

- ***Harmonisation of Takeover Bid Procedures***

A new effort should be undertaken to harmonise takeover bid procedures in the EU. The combination of the policy goals of disclosure and transparency with equal treatment of shareholders in the draft 13th company law directive is possibly too ambitious. Dividing the draft directive into a securities law and company law measure could be an easier way to advance.[22] The securities law proposal should aim to harmonise the bid procedures to guarantee transparency and disclosure to investors and be presented as an internal market measure (Art. 100a). The company law part should aim to remove

[22] See Wouters (1993).

the most distorting defensive measures that exist in the member states, but might be more difficult to get approved. Moreover, the obligation contained in the draft directive, aimed at equal treatment of shareholders, to bid for all shares once a one-third equity stake is acquired, is an impediment to partial takeovers. This goal could already be attained to a certain extent, if all shareholders were adequately informed.

- ***Priority for International Harmonisation of Accounting Standards***

The EU is confronted with a situation in which accounting standards should be further harmonised on a European level at the same time that powerful market pressures are being exerted for worldwide comparable accounts. There is a need to reduce the options allowed by the accounting directives to make accounts more comparable and transparent within the EU, but the pressure by international capital markets for comparable financial information should also be taken into account. Harmonising accounts in Europe irrespective of international developments would be of little use, since it would hardly reduce the inefficiencies of compliance with different standards experienced by large corporations.

Internationally, the market is tending towards US accounting rules (US GAAP). This development, however, is politically unacceptable to the European Union.[23] These rules have been developed in the US and are adapted to its circumstances, over which Europe has no influence whatsoever. It has been argued that the EU should react in a similarly assertive manner, but the existing differences in accounting in the EU member states, and the fact that most European stock exchanges already accept financial statements prepared under US GAAP for quotation does not place the Community in a strong position.

[23] See the speech of John Mogg, Director General of DG XV of the European Commission, before the FEE General Assembly on 14 December 1994.

A possibility for the EU is to conform to the standards developed by the International Accounting Standards Committee (IASC). The international organisation of securities' supervisors (IOSCO) commissioned the IASC to come up with international standards (IASs) which would enable large corporations to use one set of consolidated financial statements to obtain a listing of their shares on any exchange. The discussions on international accounting standards, however, made little progress at the last IOSCO annual conference (Tokyo, October 1994). IOSCO members failed to reach agreement to endorse the progress realised towards IASs, mainly because of opposition from the US Securities and Exchange Commission (SEC), which does not want to give up US accounting rules. An additional problem for the Community is that it is not directly represented in the IASC, but participates only through some of its member states, with the consequence that there is a lack of coordination. Furthermore, there is some opposition from business to the way in which the IASC is proceeding in its standards-setting work.

Another possibility is to promote harmonisation at European level in the direction of a European standard. Current differences in reporting in the EU are still too wide, as was demonstrated earlier, and national accounts are difficult to compare. The reduction of the options in the 4th and 7th company law directives, through amendments, will however be a very lengthy and difficult process. More harmonisation on European level would, however, weaken the position of the IASC to find internationally comparable standards.

Against this background, it might in the first instance be more promising to give further credit to the on-going IASC discussions. Developing other standards for European corporations would strengthen the position of the US GAAP as the international standard, a development that would not be welcome in the EU. The European Commission should, however, remain vigilant regarding progress in the discussions, while it could demand to play a more official role in the IASC on behalf of its member states. The Commission could on the other hand give priority to more comparability of accounts for small- and medium-sized enterprises.

The quality of the audit function should also be considered and closely followed in the EU. One can hardly speak about an integrated market for business and investors if standards of auditing are too divergent. So far, only the minimum qualifications for persons carrying out statutory audits have been harmonised through EU legislation in the 8th company law directive. The implementation of this directive, however, left much to be desired in several member states. Furthermore, a harmonisation of the definition of audit should be examined at European level. This would in turn help auditors to more clearly delineate their liability. A final issue of concern is the independence of auditors. Auditors are generally appointed by the AGM and must give an independent opinion to the shareholders on the stewardship of the directors as reflected in the annual accounts. Shareholders rarely make an informed decision and appoint the auditors recommended to them by the directors. Auditors' independence might, however, be compromised by the other non-audit tasks performed for their client, or through other auditing tasks carried out for subsidiaries. Some proxy services in the UK require companies to give separate information on the audit and the non-audit fees paid to the auditing firm to allow the AGM to make an informed decision about their appointment, but this does not necessarily allow shareholders to assess the quality of the audit.

The independence of auditors should not be overemphasised, since what counts finally is the professional judgement of the auditor. Auditing accounts is not an exact science and allows room for manoeuvre, as indicated above. Attempts to regulate auditors' independence might even have the opposite effect from that intended and diminish the importance of their professional judgement, as argued by Grout (1994).[24] The issue can probably best be covered through a form of self-regulation, rather than through legislation, by giving the supervisory board or the outside directors a special

[24] See also FEE (1994b) for a discussion of the responsibilities for financial reporting by companies.

responsibility to oversee the auditing function (as called for below in the Guidelines for Good Practice). This provision might strengthen the public confidence that the interests of minorities are being adequately protected.

2. European Guidelines for Good Practice

For the broader areas of protecting shareholder rights and ensuring corporate accountability, there is an urgent need to improve standards within the European Union. We would not propose to tackle these through constraining legislation, but rather by adopting an intermediate approach of self-regulation.

Overall, treatment of shareholders can be considerably enhanced. Complaints about scant information and lack of transparency are commonplace. Shareholders themselves as well, whether institutionals or individuals, are rather passive and do not care about attending or sending a proxy to the AGM. Average participation in the AGM is low. The reasons for this apathy are manifold. Shareholders might prefer to be a free-rider, without taking an interest in the long-term course of the company. There could also be tax reasons for individual shareholders to conceal their dividend income from the authorities. Or shareholders might feel powerless to influence daily management of the firm, or do not expect their vote to be decisive.

Some EU countries have developed strong shareholder-oriented traditions. In Germany, for example, a bank is required to inform depositors of how it plans to vote on various issues on the agenda of the AGM and to ask for instructions on how to exercise the proxy. If no instructions are given, the bank can exercise the power according to its stated intention. In the UK, listed companies are required to state in their annual report whether they comply with the Code of Best Practice of the Cadbury report. Even before the Cadbury Code was drafted, many UK companies displayed a strong shareholder orientation, as exemplified by one British company blue-chip company that dispatched some 300,000 copies of its annual report with proxy forms. Such practices, which to our knowledge rarely occur in other member states, should be further developed and extended to the single European market.

There is still ample room to enhance corporate accountability and shareholder responsibility in Europe. Shareholders should assume more of the responsibilities of ownership. They should exercise the rights attached to shares to protect their long-term interests by appointing a responsible board and well qualified outside (non-executive) directors. They should also ensure that the corporate governance standards developed by the company protect their assets and enhance the long-term value of the shares. The latter is a special responsibility of major shareholders.

Corporations should also cultivate their shareholder relations as an asset which needs the same level of careful management as any other asset. They should supply shareholders with sufficient information about the company's performance and inform them well in advance of the AGM and the issues to be decided in order to allow voting rights to be exercised. The board of a corporation should be in a position to have full and effective control and meet regularly. It should be composed of a sufficient number of outside directors.

It is in the interest of a corporation to develop a shareholder-friendly attitude. It might encourage the share price and the stock market capitalisation, and hence the success of the firm. This also applies to a company's responsibilities towards all its stakeholders, including employees, suppliers and clients, and the communities in which it operates.

In this sense, we would propose the Guidelines of Good Practice, which establish corporate governance standards that should be observed by all listed corporations. (The Guidelines appear in the Conclusions of the Working Party presented at the start of this report on page i). Other (non-listed) companies, especially those that are of special public interest, should attempt to meet the requirements to the extent possible.

The European Commission should play a pro-active role in the corporate governance debate and take these Guidelines as the basis for discussion with industry. It should attempt to constitute a group of some 15-20 European blue-chip companies that would subscribe to such commonly accepted Guidelines and give the necessary publicity to the initiative. The effect on the market and investors would attract attention, and other companies would soon follow suit in subscribing to the Guidelines. It is suggested that observance of the Guidelines be monitored by an independent body, such as the stock exchange authorities or the chartered auditors of the company. As with the Cadbury Code, companies could indicate their level of compliance and explain any deviations in their annual reports.

It is not intended that these guidelines would replace national legislation or codes. Rather, they would set minimum rules for the operation and control of corporations in the EU. Nor should they be seen as a counter-measure against the Commission proposals to harmonise company law in the member states. On the contrary, they would serve as an intermediate and probably faster way to reach convergence in corporate governance standards in Europe. Due to the complexities of governance mechanisms in the member states and the present difficulties to adopt far-reaching harmonising legislation, it might be more appropriate to advance via this proposed form of self-regulation. Adherence by companies to these voluntary Guidelines could also foster the adoption of a European company statute by the EU member states in the longer run.

3. Areas for Action at Member State Level

Several processes are in train in EU member states with the aim of enhancing the attractiveness of their financial markets in general and their stock markets in particular. Reforms in the legal and regulatory environment are taking account of the growing role of institutional investors, the globalisation of markets and the increasing competition for capital. These developments should also recognise the existence of the European framework and not distort the single market. The European Commission should be in a position to take quicker recourse to infringement procedures, if violations are observed. The way privatisations are organised in several member states regrettably shows how far off the single market still is.

Finally, attention should be given to altering the fiscally disadvantaged position of equity versus debt financing. Gains accruing from equity finance are more heavily taxed than those from debt finance through corporate and withholding taxes.

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Annex II
EC Company Law Legislation

A. Harmonisation of National Legislation[26]

Adopted Measures

First Directive (68/151): Public and private limited companies; to coordinate disclosure, the power of representation of the organs, the nullity of companies, OJ L 65 of 14.3.1968

Second Directive (77/91): Public limited companies; formation of companies, the maintenance and alteration of their capital, OJ L 26 of 31.1.1977; amended on 23.11.1992 by Council Directive 92/101, OJ L 347 of 28.11.1992

Third Directive (78/855): domestic mergers of public limited companies; OJ L 295 of 20.10.1978

Fourth Directive (78/660): public and private limited companies; presentation and content of annual report and accounts, valuation rules and disclosure, OJ L 222 of 14.8.1978; amended on 8 November 1990, OJ L 317 of 16.11.1990

Sixth Directive (82/891): divisions of public limited companies, OJ L 378 of 31.12.1982

Seventh Directive (83/349): consolidated accounts of public or private limited companies, OJ L 193 of 18.7.1983; amended on 8 November 1990, OJ L 317 of 16.11.1990

Eighth Directive (84/253): qualifications of persons responsible for carrying out the statutory audits of accounting documents, OJ L 126 of 12.5.1984

Eleventh Directive (89/666): disclosure requirements for branches of public and private limited companies, OJ L 395 of 30.12.1989

Twelfth Directive (89/667): single-member private limited companies, OJ L 395 of 30.12.1989

Merger Control Regulation: 4064/89, OJ L 31.12.1989

[26] There is no ninth company law directive.

Proposed Measures

Proposed Fifth Directive: the structure of public limited companies COM(72)887 & COM(83)185, OJ C 131 of 13.12.1972 & OJ C 240 of 9.9.1983; amended proposal, COM(90)629, OJ C 7 of 11.1.1991

Proposed Tenth Directive: cross-border mergers of public limited companies, COM(84)727; OJ C 23 of 25.1.1985

Proposed Thirteenth Council Directive: harmonisation of takeover bids, COM(88)823, OJ C 64 of 14.3.89; amended proposal, COM(90)416, OJ C 240 of 26.9.1990

B. Regulatory Frameworks for "European Companies"

Adopted Measures

European Economic Interest Grouping: Regulation 85/2137, implementation date 1.7.1989, OJ L 199 of 31.7.1985

European Works Councils: Council directive on the establishment of European Works Councils or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees, OJ No L 254 of 30 September 1994

Proposed Measures

Statute for a European company: Proposal for a Council regulation on the Statute for a European Company, COM(89)268, OJ C 263 of 16.10.1989; amended proposal COM(91)174-2, OJ C 176 of 8.7.1991

Workers participation in ECS: Proposal for Council directive supplementing the European Company Statute concerning workers' participation rights in a European company, COM(89)268, OJ C 263 of 16.10.1989

Statute for European Cooperatives,..: Proposals for regulations on the statute of a European cooperative society (ECS), a European mutual association (EA) and a European foundation (EF), and directives on the role of the employees in these different entities, (COM(91)0273), OJ C 099 of 21.4.1992.

Annex III
Public Limited Companies in the EU and Their Structure

		B	DK	F	G	GR	Irl	I	Lux	Neth	Po	Sp	UK	Sw
		SA	A/S	SA	AG	AE	PLC	SpA	SA	NV	SA	SA	PLC	AB
Board		1	2	1(2)	2	1	1	1	1	2	1(2)	2(1)	1	2
Structure[1]														
Members (min)[2]	3	3	3	3	3		1	3	3	1	3(1)	2		
(max)				12	21						15			
Chairman & CEO		no		no					no				no	
Board Employee		>35 emp	option	> 2000 em				> 100 emp			> 25 emp			
Representation		up to ½	max 2	up to ½									2	
Board Appoint-	AGM	AGM and	AGM	AGM and	AGM	AGM and	AGM	AGM	board	AGM	AGM	AGM	AGM	
ment & Dismissal		employees	employees	directors										
Minimum Capital	1.250 m	500,000	250,000	100,000	10 m	30,000	200 m	1.250 m	100,000	5 m	10 m	50,000		
(1994) in Ecu	31,407	65,858	37,690	51,716	35,193	37,962	107,911	31,407	46,049	25,195	63,452	65,135		
Total Number (app.)	58,000		114,000	2,500					2,000			12,000		

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[1] Number of tiers, with optional arrangements in parentheses.
[2] Number of members refers to supervisory board in case of a two-tier board structure.

Sources: Roney (ed.) (1992), Directors' duties and responsibilities in the EC, London; European Commission.