

EVENT REPORT

ECMI-CEPS Debate on the occasion of the book launch

Boards and Shareholders in European Listed Companies

17 February 2014 | CEPS | Brussels



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All panellists welcomed the timely publication of the volume which provides a critical assessment of EU reform proposals. With contributions by distinguished scholars from legal and financial backgrounds, this collection of essays analyses four main topics in the corporate governance of European listed firms: (i) board structure, composition and functioning and their interaction with ownership structure; (ii) board remuneration; (iii) shareholder activism and (iv) corporate governance disclosure based on the 'comply or explain' approach.

Speakers:

- o **David Jackson**, Company Secretary, BP p.l.c. [Keynote]
- o **Jörgen Holmquist**, Chairman, European Corporate Governance Institute (ECGI)
- o **Ugo Bassi**, Director, Capital and Companies, DG MARKT, European Commission
- o **Guido Ferrarini**, Professor of Business Law and Capital Markets Law, University of Genoa, *Editor of the Book*
- o **Edmond Alphandéry**, Chairman of the CEPS Board
- o **Stefano Micossi**, Director General, Assonime and Member of the CEPS Board [Moderator]

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IMPORTANT NOTICE: The views expressed by the speakers are their own individual views and do not necessarily reflect the views of their companies or institutions. The content of this event report is not a transcription from the speeches delivered by the speakers and should instead be understood as the interpretation of their views by the author. This report was authored by Cosmina Amariei. Contact ecmi@ceps.eu with any comments or questions.

David Jackson (BP p.l.c) addressed the audience on the dichotomy between the rules-based (US) vs. principles-based (EU) approach towards corporate governance. Following a number of corporate scandals, tougher new corporate regulations were introduced in law by SOA (Sarbanes–Oxley Act) in the US. In the wake of the financial crisis, there have been calls for more harmonization across the EU. The Commission responded by adopting two Green Papers on *Corporate Governance in Financial Institutions and remuneration policies* (2010), *Corporate governance in Europe* (2011) and a far-reaching Action Plan on *European company law and corporate governance - modern legal framework for more engaged shareholders and sustainable companies* (2012). The latter is based on four pillars: enhancing corporate governance disclosure, strengthening shareholders' rights, modernizing the board of directors and coordinating corporate governance efforts of Member States. Mr. Jackson indicated that the principles-based approach should be maintained across the EU. Achieving the common goal of better corporate governance requires a continuous and high quality effort of companies and relevant supervisory, regulatory and enforcement authorities, in addition to a right balance of initiatives at national and EU level. If used properly, the 'comply or explain' regime, the trademark of the UK Corporate Governance Code, can deliver greater transparency and trust and provides companies with the necessary flexibility to adapt to their specific situation.

With regard to EU interventions, **Ugo Bassi** (European Commission) indicated that an 'umbrella' legislative package on European Company Law will be published in the coming months. He outlined that the Commission has refrained from adopting an excessively intrusive stance. The proposals have the objective of enhancing transparency, disclosure of both financial and non-financial information and do not attempt to mandate a specific behavior to companies. In relation to the challenges faced by non-listed companies, as compared to listed ones, he encouraged the development of voluntary codes, initiatives taken by relevant professional bodies and convergence of best practices. As for the corporate governance arrangements introduced by CRD IV, he mentioned that financial institutions must make public their policy on board diversity. Furthermore, the remuneration framework doesn't fix any thresholds, but requirements for the relationship between the variable (or bonus) component of remuneration and the fixed component (or salary).

Jörgen Holmquist (ECGI) raised two important questions. First, whether and to what extent is necessary to harmonize legislation across EU? In his view, the differences in traditions in capital markets, board and ownership structures, corporate cultures, business models, adherence to either a shareholder or a stakeholder approach, have shaped investors' expectations to a great extent. These are strong arguments to deal with corporate governance issues at the national level. Second, did poor corporate governance cause the crisis or not? Many have regarded managerial compensation as one of the causes of excessive risk-taking by financial institutions. Nonetheless, Mr Holmquist argued that corporate governance was not a main cause of the recent financial crisis. Managers may have acted perfectly rationally in order to increase shareholders' value. However, the implicit and explicit guarantees allowed financial institutions to become overleveraged.

Guido Ferrarini (University of Genoa) made a distinction between financial institutions - banks in particular - and non-financial companies. Financial institutions are a special case, because of the particular challenges faced in ensuring effective risk management and the systemic risks they may pose to the financial system. Mr Ferrarini, editor of this book, argued that the main reason for excessive risk taking was insufficient supervision or ineffective prudential regulation, rather than flawed corporate governance. On a final note, he warned that self-regulation (more suitable for non-financial companies), as well as public regulation (recommended for financial institutional), can always be subject to failure.

The perspective on shareholder engagement (or 'stewardship') was given by **Massimo Belcredi** (Università Cattolica del Sacro Cuore and editor of the book), who stated that enabling, not binding provisions, would be desirable. He considers that the decision to engage in activism should be left to the investors, as they act according to their own cost-benefit analysis. Low engagement doesn't necessarily mean insufficient engagement. A crucially important component is the ownership structure of the company, either diffused or concentrated. Minority shareholders, knowing that they can hardly influence corporate decisions, may rationally choose to remain passive. Additional protection to minority investors in controlled companies is debatable.

On the issue of corporate governance codes and their implementation, **Eddy Wymeersch** (University of Gent) stated that national standards setters should remain free to adopt only those that fit best their legal order. In most countries, certain entities, such as financial market authorities or stock exchanges and other public or private monitoring bodies, analyze corporate governance statements. The nature of these monitoring bodies and the scope of their action differ considerably in Europe (e.g. panel pressure in France, corporate commission in the Netherlands, pure self-regulation in Sweden).

Stefano Micossi (Assonime and CEPS Board Member) acknowledged the coexistence of corporate governance regimes across Europe, deeply rooted in their national legal systems. He also indicated that the monitoring and enforcement mechanisms of corporate governance in the Member States should be further examined. The effectiveness of corporate governance codes can be significantly reduced if translated into a mere box-ticking exercise that favours content over substance/quality. In addition, market discipline needs to be restored. Whether it should be mandatory to put the remuneration policy and the remuneration report to a shareholder vote remains a very politically sensitive point.

In his concluding remarks, **Edmond Alphandéry** (CEPS Board) shared from his long experience in boards of large companies. Boards shall be entrusted with value creation for the company, so they need to challenge the executive management and be responsible for the long term and sustainable success of the company. The board members must have a wide set of skills that will ultimately allow them to discharge their respective duties effectively. In his view, the roles of chairperson and chief executive should not be exercised by the same individual. Moreover, the remuneration committees should also be more extensively considered. He also expressed its reservation with regard to the meaning of independence for board members.

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