Preliminary Report

The Separation of Ownership and Control: A Survey of 7 European Countries

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Volume 1
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Strong Blockholders, Weak Owners and the Need for European Mandatory Disclosure

European Corporate Governance Network

Executive Report

by Marco Becht

Last Revised : 27 October, 1997

A substantial part of the quantitative and legal material on Member States presented in this executive report is taken from the individual papers produced by the European Corporate Governance Network’s country teams that are available for downloading from the European Corporate Governance Network’s experimental Web-site (http://www.ecgn.ulb.ac.be/, send e-mail to mbecht@ulb.ac.be for a password). The central theme of the executive summary (in Europe blocks matter and European mandatory disclosure is lacking) emerged during the 1st Annual Conference of the European Corporate Governance Network held 7-8 March 1997 at Fondazione Eni Enrico Mattei in Milan. “Strong Blockholders, Weak Owners” is the verbal expression of these developments that is due to Patrick Bolton. The executive summary presents the findings of the European Corporate Governance Network during 1996/97 and was drafted by the author as Executive Co-ordinator of the Network. However, the views expressed here do not necessarily shared by the individual members of the country teams and/or other members of the European Corporate Governance Network. Fabrizio Barca read and commented three full drafts of this paper. Erik Berglöf, Patrick Bolton and Colin Mayer provided many comments and suggestions. Marcello Bianchi, Laurence Bloch, Ekkehart Böhmer, Ariane Chapelle, Rafel Crespi, Klaus Gugler, Abe de Jong, Susanne Kalss, Elizabeth Kremp, Luc Renneboog, Ailsa Röell, Klaus Stomper and Josef Zechner also provided comments, corrections and/or additional material. Roberta Romano provided references, materials and thoughts on mandatory disclosure in the United States. The legal summary tables were inspired by Luca Enriques who also made comments. Stefano Palarei provided the material for the Mediobanca example. Access to individual company data through Bureau van Dijk (http://www.bvdep.com) is gratefully acknowledged. Address: ECARE/DULBEA, Université Libre de Bruxelles, Av. Franklin D. Roosevelt 39, 1050 Brussels, Tel. : ++32-2-6504466, Fax. : ++32-2-650.4475, e-mail: mbecht@ulb.ac.be and Fondazione Eni Enrico Mattei, Corso Magenta 63, 20123 Milano, Italy, Tel. : ++39-2-520.36934, Fax. : ++39-2-520.36946. The final draft of this paper was written at the Bernheim Research Centre of the Solvay Business School at the Université Libre de Bruxelles.
Publicity is justly commended for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.

( ....... )

But the disclosure must be real. And it must be a disclosure to the investor. It will not suffice to require merely filing a statement of facts with the Commissioner of Corporations or with a score of other officials, federal and state. That would be almost as ineffective as if the Pure Food Law required a manufacturer merely to deposit with the Department a statement of ingredients, instead of requiring the label to tell the story.

Louis D. Brandeis, Other People’s Money, Chapter V, 1914
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Summary of Results and Policy Recommendations

The problem of corporate governance in the United States – “Strong Managers, Weak Owners” – is not the corporate governance problem for most companies in continental Europe. Europe’s problem is a problem of “Strong Blockholders, Weak Owners”. In Europe, small owners are potentially exploited by large voting blockholders – and the managers these blockholders appoint to run the companies; in turn, the managers are constrained to devising company strategies that are subject to the non-transparent obligations blockholders impose on them. This situation does not necessarily call for further attempts to move towards a European company law, or for restrictions on the behaviour and investment possibilities of existing and potential blockholders. It does call for major improvements in European mandatory disclosure regulation; to make current arrangements transparent for European investors and to fully preserve the interests of blockholders.

1 Main Results of the Survey

This executive report presents the results obtained by 7 country teams from 7 Member States that have been investigating the separation of ownership and control in Europe. The findings are alarming. None of the directives and regulations the Union has adopted provide for a degree of disclosure that would allow us to compute comparable measures of ownership concentration, ownership distribution by type of shareholder, voting power concentration and the separation of ownership and control. The rules that are in place often do not provide for effective European disclosure. Access to ownership and control information is usually difficult within a Member State, but even more difficult from another Member State.

The research was conducted by the European Corporate Governance Network (ECGN), a non-profit research network that brings together scholars and practitioners residing in different European countries and abroad who take an active interest in European and comparative corporate governance issues. Further information on the Network and a copy of the complete 1996/97 Preliminary Report and additional material can be obtained from the ECGN’s experimental Web-site.¹

¹ The address of the experimental Web-site is http://www.ecgn.ulb.ac.be/. For a login name and a password send e-mail to mbacht@ulb.ac.be. In summer 1996 the Network set out to formulate a Work Programme. A draft proposal was discussed at a meeting of the country teams on 10 October 1996 in Brussels and resulted in a 1996/97 Work Programme (ECGN, 1996). The 1996/97 Work Programme had two purposes:
Cross-border transparency is not as effective as transparency within the Member States. We found several examples where, under the Transparency Directive (88/627/EEC), a listed company in Member State A notified a listed company in Member State B to have ultimate control. At the same time the company listed in Member State A had received control notifications from other companies or individuals. The company in Member State A should have notified the company in Member State B – but it did not. In some cases non-listed holding companies in third Member States with no disclosure rules are used to further disrupt the notification chain and make enforcement even more difficult. For example, under the transposition of the Transparency Directive (88/627/EEC) in Germany, Pirelli Deutschland AG has notified to be controlled by Pirelli Tyre Holding N.V. in Amsterdam. From the portfolio disclosure of the Pirelli Group in Italy we know that Pirelli Tyre Holding N.V. is controlled by the Italian companies of the Pirelli group and, because some of them are listed in Italy, from the Italian transparency filings we know who controls the Pirelli group. At the moment German investors do not have access to this information on the basis of the German filings, Italian investors do have access on the basis of the Italian filings.\(^1\) Collecting such transparency data at the European level would resolve this problem. These findings underline the need to make existing disclosure rules more effective and to introduce mandatory disclosure rules at the European level.

Our practical difficulties in obtaining ownership and/or control information that should be generated by the EU Transparency Directive (88/627/EEC), the 1\(^{st}\), 2\(^{nd}\), 4\(^{th}\) and 8\(^{th}\) Company Directives, the Financial Institutions and Bank Accounting Directive (86/635/EEC) and the Insurance Company Accounting Directive (91/674/EEC) cast doubts on the effectiveness of disclosure at the European level today. Many relevant areas are not covered by EU Directives

\(^1\) To make an inventory and an assessment of the information on ownership and control structures, and control transfers in the European Union. The surveys aimed at covering both economic and legal aspects of corporate governance and extended to listed as well as unlisted companies;

\(^2\) To use the available, affordable and accessible information to compute summary statistics on ownership, voting power concentrations, control and the separation of ownership and control in the Member States that were covered by the country teams.

First results obtained by the country teams, on both aspects of the Work Programme, were presented at a conference in Milan on 7-8 March 1997. The results presented in the next section, and in more detail in Part B, cover both aspects of the Work Programme. What is the status quo of de facto disclosure of information that would be necessary to compute adequate and reliable measures of the separation of ownership and control? Which legal provisions, at the level of the European Union and the Member States, already exist and how are they applied in practice? What does a comparison of the available data reveal about ownership, voting power, control and the separation of ownership and control in the European Union?

\(^2\) In Part B we report another example along these lines and provide further explanations.
at all. For example, not a single Directive makes the disclosure of ownership information (as opposed to voting rights information) compulsory, not even for listed companies. Investors purchasing shares in a listed company that belongs to a business group are unable to determine with precision what portfolio they are buying and/or who exerts control.

2 The Case for Mandatory European Disclosure Rules

The need for higher and more comprehensive mandatory European disclosure standards, that ensure true transparency, clearly emerge from our findings. Mandatory European disclosure is not merely an academic concern. By preventing increasingly sophisticated investors from identifying – with certainty and ease – the ownership and control structure of European corporations and the group structures these corporations might be embedded in, the lack of disclosure seriously undermines Europe’s ability to compete for globally mobile capital. International fund managers, who are administrating a rising share of the World’s and Europe’s savings, deplore obscurity. When disclosure standards are low they demand a high-risk premium. When they are very low they do not invest at all.

The introduction of the Euro will further increase the competitive pressure and the unevenness of disclosure standards raises questions about the completion of an integrated European equity market. The global competition for savings calls for a new, upgraded response that is common to all European countries: true disclosure about ownership and control structures, including possible deviations from one-share-one-vote and contractual or quasi-contractual agreement between shareholders.

The European corporate governance debates have focused too much on comparing institutions and the possibility of importing foreign arrangements that appear to be superior. Our understanding of the link between the corporate governance system and economic performance is too uncertain to allow anyone to advocate such measures. Should we pass a regulation that prevents European banks from acquiring equity stakes in non-financial companies? The honest answer is that nobody knows. What we do know is that there should be effective disclosure of the influence banks have over non-financial companies and how this influence is exerted.

Disclosure must be largely mandatory because self-regulation cannot ensure its quality and effectiveness. It is widely shared, even by the neo-contractualist school and orthodox liberals,
that disclosure externalities provide a rationale for federal, mandatory disclosure. When the interests of the owners and those in control are not aligned, as is often the case in Europe, the case is even more compelling. Federal mandatory disclosure was at the heart of the Securities Act of 1933 and the Securities and the Exchange Act of 1934, under which the United States Congress created the Securities and Exchange Commission (SEC).

Endorsing the mandatory disclosure principle does not necessarily mean to approximate European corporate governance institutions or to devise one type of company law for all European countries. On the contrary, endorsing the disclosure doctrine is not meant to prevent blockholders from exerting control and from undertaking monitoring. Effective disclosure is supposed to bring this role to the light, to allow micro or small shareholders to judge, to permit a more substantive application of market rules and to facilitate the operation of national Exchange Commissions.

Europe’s blockholders often admit that they are powerful but argue that they use their power to everybody’s benefit. Such blockholders should endorse effective mandatory disclosure because it would bring their beneficial role to the light. Forward looking European managers and blockholders do indeed favour more disclosure. Managers, in particular, see more disclosure as an opportunity for enjoying greater independence, free from the non-transparent obligations that are often imposed on them today.

But, in many managers’ and blockholders’ view, while possibly bringing long-term benefits, more disclosure surely brings short-terms costs. Disclosure is time-consuming and any type of action, structure or decision is going to be controversial. When nothing is known there is nothing to be discussed. Disclosure should be mandatory because the optimal level of disclosure will not attain automatically. Individual companies do not disclose enough because of the public goods aspect of disclosure and because there are important third party effects (positive externalities).

With all due emphasis on listed companies, equity and capital markets, the financing and governance of non-listed companies should not be overlooked. When non-listed companies are part of a business group that involves listed companies, the disclosure requirements should be as high as for listed companies. For independent listed companies, transparency of ownership and control structures is important for the European fight against money
laundering, organised crime, free-riding that undermines the common tax base and is reassuring for suppliers and customers.

However, as far as the “good” governance of corporations is concerned, disclosure is not the only prerequisite. For the interests of anonymous shareholders to be guaranteed and for managers to be free from the non-transparent obligations imposed on them by strong blockholders, reforms will have to be introduced in either one of the following fields: proxy voting, independence of outside directors, supervisory boards, fiduciary duties, and monitoring by the courts. But whatever the choice, disclosure is an indispensable condition to reduce the cost of direct monitoring and interference with managers’ choices.

3 Structure of the Executive Report

The remainder of this document has two parts. Part A is self-contained and presents the main questions that were addressed, the method that was applied and the results that were obtained so far. The conclusions analyse the implications of our findings for future research and present first policy implications. Part B presents different methods for measuring ownership structures, voting power, control and the separation of ownership and control. Annex 1 provides a list of the country studies the comparative tables presented in this paper draw on. Annex 2 contains the bibliography. An Appendix contains the definitions of “control” that can be found in European Law, and the text of important articles of the Transparency Directive (88/627/EEC) that is the focus in the control sections of the present analysis.

Part A has five Sections. Section 1 provides a general overview. Section 2 discusses the economic theory of the separation of ownership and control. The importance of high disclosure standards, at least for listed companies and groups, already emerges from this largely theoretical discussion. Section 3 presents the most striking results that emerge from the statistical survey. Section 4 discusses the implications the findings might have for possible directions of future work. Section 5 concludes by discussing the European Policy issues that arise from the findings of the statistical survey. Part B is targeted at the specialised reader. It contains details on measuring ownership, control and the separation of ownership and control. The problems associated with computing the proposed measures is highlighted by comparing the data that would be needed with what is available by law and in practice.
Part A: Theory, Results and Policy Recommendations

1 Introduction

We put forward the thesis that fundamental aspects of the international debates on corporate governance can be understood in terms of the separation between ownership and control: the degree of separation, the separation mechanisms and the identity of the respective parties. We discuss how the separation of ownership and control can be measured and what type of data is needed to compute the appropriate statistics. We have surveyed the availability of such data and the quantitative results that could be obtained are reported. Hence, the current paper is mostly descriptive. However, identifying different separation mechanisms and quantifying the separation between ownership and control is the first step towards formulating testable hypotheses on the link between corporate governance arrangements and the economic performance of companies.

How should we measure ownership in the presence of hierarchical groups and cross-shareholdings? What is the definition of “control” and how can control be measured? What is the difference between voting power, control and monitoring? What legal devices can be used to concentrate voting power without concentrating ownership (claims on cash-flow rights)? How can we measure the separation between ownership and voting power (and ownership and control)? Do the existing EU Directives generate the data that is required to compute these measures? Why should the European Union care?

Without comprehensive and timely disclosure we cannot measure the separation of ownership and control, nor the distribution of ownership by type of investor, nor the individual net-cash flow rights an investor acquires when purchasing the stock of a listed company that is part of business group. This is not just an academic concern. High disclosure standards are an important signal to international institutional investors who are controlling an increasing proportion of the world’s savings. Institutional investors want to know where they are investing. When disclosure standards are low international investors will demand a risk-premium. When disclosure standards are very low, international investors will not invest in a company or country at all. High disclosure standards cannot always be set by individual companies but need to be set by governments and regulators. For example, companies do not
have the power to force the owners of bearer shares to reveal their identity, only the government can do so.

Furthermore, mandatory rules to disclosure might be necessary to start-up a disclosure wave: no corporation wants to be the one to be the first to experiment with disclosure when the costs are certain and the benefits are not yet appreciated (Associazione Preite, 1997).

What ultimately matters is whether corporate governance affects corporate performance and competitiveness. The theoretical predictions are generally ambiguous. For example, concentrated ownership might provide monitoring incentives that lead to better performance, benefiting everybody. But concentrated ownership might also lead to the pursuit of goals that lie in the interest of the controlling blockholders, but not in the interest of the minority shareholders (the extraction of private benefits): the blockholder might transfer resources, leading to sub-optimal performance of the controlled company.

Whether there is a positive or negative link between different corporate governance arrangements and economic performance is an empirical question. On the other hand, theory unambiguously predicts that for a given degree of concentration of ownership, say for a high one, small and micro-shareholders interests are better guaranteed by higher disclosure standards on the very names of blockholders and on their control instruments (contractual, quasi-contractual). We show that the data that is required to test the nature of the link is not currently available and what practical efforts and disclosure reforms would be required to obtain it.

In the United States and the United Kingdom the corporate debate focuses on the responsibility and accountability of corporate managers. Some of the shibboleths are: Hostile takeovers, greenmail, golden parachutes, fiduciary duties, shareholder activism, shareholder value, fat cats, independent directors, performance pay, stock options, codes of conduct, accountability, insider trading, shareholder democracy, disclosure. The main issue in these debates is a lack of control and direct monitoring by shareholders, the inadequacy of substitute mechanisms for direct monitoring, outside control and problems with monetary incentive mechanisms. In the United States and the United Kingdom, dispersed ownership is combined with dispersed voting power or, in the United States, voting power is concentrated in the hands of the management through the proxy voting system. The corporate governance
debate is about the mechanisms that can ensure that powerful managers run the companies in the interest of their owners.

**Table I. The Separation of Ownership and Voting Power**

<table>
<thead>
<tr>
<th>Dispersed Ownership</th>
<th>Concentrated Voting Power</th>
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<tr>
<td><strong>Dispersed Voting Power</strong></td>
<td><strong>Concentrated Voting Power</strong></td>
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<tr>
<td>I</td>
<td>II</td>
</tr>
<tr>
<td>• United States</td>
<td>• United States (management obtains proxy votes)</td>
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<tr>
<td>• United Kingdom (“voluntary dispersion”, some empirical evidence)</td>
<td>• Continental Europe (violations of “one-share-one vote” and other devices that separate ownership and control: some empirical evidence produced by European Corporate Governance Network)</td>
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<table>
<thead>
<tr>
<th>Concentrated Ownership</th>
<th>IV</th>
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<tr>
<td>III</td>
<td></td>
</tr>
<tr>
<td>• Some companies in countries that allow voting right restrictions</td>
<td>• Continental Europe</td>
</tr>
<tr>
<td></td>
<td>• all US and UK companies after takeovers; some companies permanently (even listed companies)</td>
</tr>
</tbody>
</table>

Note: The “management control” that is most often associated with Berle & Means (1932) occurred in Quadrant I. In the United States today, “CEO control” often occurs in Quadrant II. The CEO is able to concentrate voting power through the proxy voting process without holding a proportional equity stake. The other separation constellations identified by Berle and Means (1932) are also captured in the table. Majority control occurs in Quadrant II, but it borders on Quadrant IV. Control through a legal device occurs in Quadrants II and III, although III was not mentioned by Berle and Means (1932). Berle and Means argue that pyramiding and voting trusts are the legal devices that bring about the strongest separation in Quadrant II. Minority control also occurs in Quadrant II but borders on Quadrant I, as does joint-control. The misuse of “Other People’s Money” the preoccupied Brandeis (1914) and pre-WWII regulators in the United States occurs in Quadrant II. European managers who are endorsing the “shareholder value approach” are expressing a preference for being in Quadrant I rather than in Quadrants II or IV. Ownership can be separated from control in all four Quadrants.

In continental Europe many of the words that are heard in the Anglo-Saxon debate are used as well. The much debated concept of “shareholder value” was originally promoted to provide a quantitative measure of a manager’s duty to maximise value for dispersed shareholders. The original “shareholder value approach” tries to ensure that strong managers
maximise value for weak owners (Rappaport, 1986). We shall argue that these concepts and the words have a completely different meaning when used in the European context.

In Europe, managers are often forced to maximise “blockholder value”. Even when a large voting block is tied to a large cash-flow block (Quadrant IV, Table 1), voting blockholders do not necessarily maximise the minority shareholders’ return. The blockholders might force the company to pursue objectives that are more profitable for them, for example by diverting resources to institutions they own completely. Hence, European managers who are endorsing the “shareholder value approach” are promising to maximise value for weak minority owners, often against the will of strong controlling blockholders. In the United States “shareholder value approach” means weak owners are trying to “tame” strong managers. In Europe “creating shareholder value” often means that managers and weak minority owners have to stand up to powerful controlling blockholders. If the European managers succeed and dispersed ownership is matched by dispersed voting power, the Pandora’s Box of Anglo-Saxon corporate governance problems might be opened, but without any of the disciplining devices available in the Anglo-Saxon systems.

In the United States, insider trading regulation makes it difficult (costly) to hold voting blocks that are larger than 10%.

3 Beneficial owners holding more than 10% of a company’s stock are automatically considered as insiders and the SEC monitors their trading activity. The SEC does not have to prove that 10%+ beneficial owners possess insider information, only whether they use this information to engage in insider trading. In Europe any shareholder can be considered as an insider, but only if the regulator proves that he or she has insider information and uses this information for insider trading. European insider trading legislation does not necessarily make it more costly to hold and trade in large blocks, but does not provide shareholders with incentives for being well informed. Voting blockholders who do not hold any capital (complete separation) do not even fall under Article 3 of the Insider Trading Directive (89/592/EEC).

Direct monitoring in the Anglo-Saxon corporate governance debate means that some shareholders, typically institutional shareholders with an ownership stake of moderate size

3 Indeed the title of Rappaport’s book, as printed on the cover page, is: “Creating Shareholder Value. The New Standard for Business Performance”.

4 There are relatively few beneficial owners that hold blocks that are larger than 10% in the United States and the costs imposed by tight insider regulation might be one of the factors that discourage large block holdings.
(giving cash-flow and voting rights) are collecting information about the activities of managers. When ownership is dispersed the incentives to perform direct monitoring are weak, one of the alleged weaknesses of the Anglo-Saxon system. When voting power is dispersed the means for performing direct monitoring might not be available. When voting rights are concentrated because ownership is concentrated, there are incentives to conduct direct monitoring, but also incentives to extract private benefits (Quadrant IV). When voting power is concentrated but ownership is not (Quadrant II), the incentives for extracting private benefits are much stronger. How strong they are depends on the device that is used to separate ownership and control. Hence, in Europe, direct monitoring takes on a different meaning. Voting blockholders might not be checking whether the management is maximising shareholder value, they might be checking whether the managers are maximising private benefits.

In the United States and in the United Kingdom, “shareholder activism” refers to increased monitoring of managers by some of the (weak) shareholders, for example pension funds. In continental Europe voting blockholders are not weak (Quadrant II or IV). Blockholders who command substantial voting power are either top managers themselves or are appointing the managers they remunerate and can remove. In Europe, “shareholder activism” refers to small shareholders defending their interests against controlling blockholders.

In the United States, some institutional shareholders seek to maximise the shareholder value of their portfolios’ performing direct monitoring and, if necessary, engage in shareholder activism (borderline between Quadrant I and IV). Such investors are regularly clashing with the management of major U.S. corporations. Institutions like the California Public Employees Retirement System (CalPERS, http://www.calpers.ca.gov/default.htm) have won important victories over allegedly entrenched management, for example by playing an important role in removing former CEOs of IBM and General Motors. In the quest to diversify their portfolios, these institutional investors are also starting to show a presence in Europe. However, here they not only clash with management, but also with the voting blockholders and the European disclosure system (Quadrant II).

The opinion that “shareholders are dumb and obnoxious; dumb because they buy shares and obnoxious because they expect to receive a dividend” was not expressed by a continental European manager. It was pronounced by the representative of a powerful blockholder at the
beginning of the century, the Berlin banker Carl Fürstenberg. To be fair, Fürstenberg was known for his sharp wit and merely pronounced what many continental blockholders thought and think. The sentence “Small minority shareholders: small idiots; large minority shareholders: big idiots” (Fralon, 1997, pg. 49) was not spoken by a manager either. This view is attributed to Albert Frère, the self-made Belgian financier. Frère built a considerable part of his empire on exploiting the passivity of small and large owners who were failing to exert control.

However, a fundamental change is under way in Europe today. Due to the fading stakes of blockholders, especially of corporations and founding family blockholders, and the increasing share of institutional investors, managers’ power and independence from blockholders are increasing. This trend opens up room for new potential problems. Once the controlling-monitoring power of large blockholders starts fading away, and no new monitoring devices are introduced, managers are becoming less tightly supervised. This process creates greater incentives for them, but might in turn allow for greater abuses of control on their part. These changes in the blockholding structure create further pressure to reform the current corporate governance system (Barca, Bertucci, Capello, Casavola, 1997).

Many of the national debates can be rationalised as conflicts that arise from different degrees of separation between ownership and control and different mechanisms for achieving such a separation. In this paper we aim to describe the different devices that are used in the EU Member States for achieving different degrees of separation, at the company level. We believe that such a description helps us to put the national debates in context and to draw policy conclusions that should hold at the level of the European Union.

For example, the German corporate governance debate is focused on “the power of the banks”. Non-bankers are concerned that banks control industry and not always to the non-bank shareholders’ advantage; a charge the banks deny. The banks argue that they perform the (beneficial) direct monitoring that is lacking in Anglo-Saxon countries but that they do not control their industrial clients. For listed companies with dispersed ownership the most

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5 In German: “Die Aktionäre sind dumm und frech: dumm, weil sie Aktien kaufen, und frech, weil sie auch noch Dividende erwarten.” Carl Fürstenberg was a director at the powerful Berliner Handelsgesellschaft (BHG), one of the pre-WWI Berliner Großbanken, and sat on the board of numerous companies. I first heard this quote from Martin Hellwig. Fürstenberg is also on the record for saying that “profit after provisions is that part of the balance sheet which the managers, against their best will, cannot hide from the shareholders” (“Der Reingewinn ist der Teil der Bilanz, den der Vorstand beim besten Willen nicht mehr vor den Aktionären verstecken kann”).

6 In the original: "Petit actionnaire minoritaire : petit con; grand actionnaire minoritaire : grand con.”
important devices for concentrating voting power without concentrating ownership are proxy voting (Depotsstimmbrecht) and absenteeism. Hence there is a large degree of separation between ownership and control, particularly for listed companies with dispersed ownership. Does the German proxy voting system provide banks with the incentives to perform direct monitoring in the Anglo-Saxon sense, or do the incentives for extracting private benefits dominate?

In Belgium, France, and Italy hierarchical groups are said to be an important device for concentrating voting power without concentrating ownership (often without violations of “one-share-one-vote”, i.e. without issuing dual-class or non-voting stock). The corporate governance debate focuses on the importance of these pyramids, that are difficult to trace, and the identity of those controlling them. Are hierarchical groups created out of the desire to separate ownership and control, or do they reflect knowledge sharing devices, market structures or fiscal distortions? Who is controlling the hierarchical groups? Do these institutions or persons have an incentive to perform direct monitoring (in the Anglo-Saxon sense)? Are hierarchical groups effective for extracting private benefits? How do companies controlled by hierarchical groups perform relative to companies that are controlled through other devices? Does economic performance depend on the identity of those controlling the group?

2 The Economics of Separation

Legal forms that allow management to attract large scale external financing are one of the main innovations of the industrial revolution. A large share of our current wealth is built on the economic success of these entities. The champion of these legal forms – the stock corporation – dominates industry, banking, insurance and commerce almost everywhere in the world. In a corporation the functions of the classical “entrepreneur” who founds, controls and finances a company, can be separated. Corporate governance problems arise from splitting up these functions and allocating them to several groups of individuals who can have conflicting interests.
2.1 Theories of Ownership and Control

There are several strands of the literature that provide theories of ownership, theories of control and theories of the separation between ownership and control. Most of this theoretical and empirical work refers to the corporate governance of the United States or the Japanese corporate governance system when analysed from a U.S. perspective. International comparative studies and theoretical or empirical work on European corporate governance systems are relatively scarce.

There are several classes of economic models of ownership, governance and/or group structures:

1. **Vertical Integration** models are found in the industrial organisation literature. Ownership structure is determined by the effect of ownership structures on market behaviour. It can be advantageous to integrate vertically, because costs are not always fully internalised by independent companies. Theories of vertical integration make predictions about the structure of business groups, not only of the ownership concentration of individual companies. The contributions of Dixit (1983), Salinger (1988) and Waterson (1982) are examples of the industrial organisation approach.

2. **Principal-Agent Theory** is probably the most popular approach to the analysis of ownership structures and corporate governance. Corporate governance in the business world and the financial press, explicitly or implicitly, draw on the insights provided by this literature. In a principal-agent setting, often associated with Jensen and Meckling (1976), owners (the agents) delegate the running of the firm to managers (their principals) under asymmetric information. In such a setting, “corporate governance deals with the ways in which suppliers of finance to corporations assure themselves of getting a return on their investment. How do the suppliers of finance get managers to return some profits to them? How do they make sure that managers do not steal the capital they supply or divert it to other uses? How do suppliers of finance control managers?” (Shleifer and Vishny, 1995, page 2). The main advantage of the principal-agent approach is that it is very intuitive. Unfortunately, principal agent models do not justify the existence of diverse governance and asset structures. Principal agent theory cannot be used to analyse important phenomena like fiduciary duties and/or voting behaviour; see Hart (1995a,b) for a discussion of the limits of

3. **Transaction Cost Theory** stipulates that it is more costly to perform transactions between those inside and outside a firm than between those inside a firm (or business group, or organisation). Transaction cost theory makes predictions about ownership and business group structures. Transaction cost theory is often associated with Coase (1937), Williamson (1975, 1985), Klein, Crawford and Alchian (1978) and Aoki, Gustafson and Williamson (1988).

4. **Incomplete Contract Theory** models the firm as a way to allocate control to those who have entrepreneurial skills and are most indispensable in a world where contracts are costly to write and usually incomplete, especially if they extend over long periods. Contracts, for example those written between owners and managers, cannot take into account all contingencies that might arise. Substitute arrangements must be found that complete these contracts. “Governance structures can be seen as a mechanism for making decisions that have not been specified in the initial contract” (Hart, 1995a pg. 680). Grossman and Hart (1986), Hart and Moore (1990) and Hart (1995b) analyse corporate governance in an incomplete contracts setting.

2.2 **Berle and Means and Beyond: Towards a Definition of Corporate Governance**

Berle and Means (1932) put forward an argument and their name, probably not quite fairly, is often associated with “the separation of ownership and control”. Since their work is the classic reference on the separation of ownership and control, their argument is reviewed here. The 1932 study by Berle and Means was quantitatively updated by Larner (1966, 70) and Herman (1981). The separation of ownership and control was “revisited” in a special issue of the *Journal of Law and Economics* (1983) and by Leech (1987).

Berle and Means put forward three propositions on the role of the *Modern Corporation*. The *Modern Corporation* grows and concentrates economic power, growth is only possible with ownership dispersion and the resulting separation of ownership and control yields weak owners and strong managers:

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7 Adam Smith, Hilferding, Einaudi, Veblen and many others had written on the subject previously.
1. Economic power is concentrated: “the huge corporation ... has come to dominate most major industries if not all industry in the United States. A rapidly increasing proportion of industry is carried on under this form of organisation. There is apparently no limit to its increase.” (Berle and Means 1932, page 44).

2. Ownership is dispersed and dispersion will increase over time: “Accompanying the concentration of economic power, growing out of it, and making it possible, has come an ever wider dispersion of stock ownership. .. Dispersion in the ownership of separate enterprises appears to be inherent in the corporate system. It has already proceeded far, it is rapidly increasing, and appears to be an inevitable development.” (Berle and Means 1932, page 47).

3. The separation of ownership and control arises from the fact that “under the corporate system, control over industrial wealth can be and is being exercised with a minimum ownership interest. Conceivably it can be exercised without any such interest. Ownership without wealth and control of wealth without appreciable ownership appear to be the logical outcome of corporate development.” (Berle and Means 1932, page 69)

Combining these three propositions leads to the prediction that concentrated economic power is not necessarily exercised by wealthy owners but can be exercised by others, typically managers. The combination of concentrated economic power, ownership dispersion and “control” that is exercised by managers has become synonymous with “THE separation of ownership and control”. This is a misleading use of the words, that is not appropriate in the European context.

The separation of ownership and control is only one of three propositions put forward by Berle and Means. THE separation of ownership and control (between management control and dispersed ownership) only arises when all three propositions are combined and true. We show that for many of the largest European listed corporations voting power is concentrated and ownership is dispersed. Control does not lie in the hands of the management but with a blockholder. Hence there is a separation of ownership and control but not THE separation. We also show that the predicted inevitability of a convergence towards the combination of concentrated economic power, dispersed ownership and management control is not born out by the European evidence.
There is a further caveat on the terminology associated with Berle and Means. For them, management control arose “when the largest single interest amounts to but a fraction of one per cent .... no stockholder is in the position through his holdings alone to place important pressure upon the management or to use his holdings as a considerable nucleus for the accumulation of the majority of votes necessary for control” (emphasis not in original). For Berle and Means, “management control” was a residual category that arose from a voting power vacuum.

In the United States today, “CEO control” is often sustained, reinforced and/or enhanced through the proxy voting process, not just a voting power vacuum. The management sets the agenda for the general meeting and solicits proxy votes from shareholders. For shareholders, even when they own more than 1% of the stock, soliciting votes is expensive. Without proxy voting, a legal separation device, CEO control would be far more difficult to secure, even in the United States today. Hence, strictly speaking, management control in the United States today is often exercised (or enhanced) through a “legal device”. Bank managers in Germany are also said to appoint themselves in this way. However, they use the proxy votes given to banks by its clients and do not solicit the proxies directly.

To conclude, Berle and Means took into account the possibility that “the control” lies with individuals or groups of individuals outside the company who have small ownership stakes. Hence, they were aware that “the control” does not necessarily have to be the management. Furthermore, in their analysis voting power was the most important instrument for obtaining control since, almost always, the general assembly appoints the board members (or, under a two-tier system, the supervisory board members appoint the managers). The analysis of voting power concentration is the first, and often last, step required to find “the control”. There are cases when “the control” does not use concentrated voting power, or the absence of voting power, to exert control. However, these cases are very rare and the exception, not the rule, especially in Europe. Also, modern economic theory views control as a probabilistic concept based on co-operative game theory, not a discrete variable (Leech, 1986).

The “investor approach” to corporate governance that the European Corporate Governance Network investigated during 1996/97 only offers a partial view and the tendency to measure
control through voting power is very much part of this view. A broader view defines corporate governance as the problem of allocating investors’ capital and determining who is holding control, when control is defined “as the power to dispose of the firm’s capital, assets and customer relations (goodwill) in any way not expressly prohibited by existing legislation, regulations or contracts” (Barca 1997, page 195). This view of control differs from the voting power approximation that defines control as “the power to appoint directors” and is implicit in the “investor approach”.

To exclude managers protect investors’ interests through ever increasing levels direct monitoring and sanctions on managers, as is often suggested by single-handed application of the “investor approach”, is not likely to result in an optimal allocation of control. Even the most hard-line supporters of investor protection rules must agree that managers’ control over capital assets and firms’ strategies is necessary for them to contribute (with information, fixed investment and/or human capital) to locating and undertaking profitable projects, and therefore to economic efficiency. Hence, a substantial erosion of control, as defined above, is potentially upsetting of this incentive.

In the broader view of corporate governance, the separation of ownership and control can be a necessary and desirable outcome when the distribution of wealth and the distribution of control skills (management skills) do not coincide. The difference between the allocation of skills to manage and the allocation to accumulate savings, and the concentration of management skills versus the distribution of wealth, makes it necessary for a separation between ownership and control to occur. The two allocations do not always coincide because of history; and it happens because a firm’s potential for growth grows beyond a firm’s self-financing capacity and the founders’ own-capital.

Hence, whenever separation exists (because the allocation of wealth and managerial skills do not coincide) a trade-off arises. There are costs of unbounded control exercised by managers that decrease when more control is exercised by investors and there are benefits from control exerted by managers that diminish when more control is exercised by investors; and vice-versa. Too much direct monitoring can reduce the managers’ long-term effort, while too little

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1 Blair (1996) calls the “investor approach” the “finance model of corporate governance”. Shleifer and Vishny (1996) define that “corporate governance deals with the ways in which suppliers of finance to corporations assure themselves of getting a return on their investment”.
Direct monitoring can increase the cost of capital. Corporate governance institutions are supposed to strike the optimal balance in this trade-off at a low cost.

2.3 Concentration versus Dispersion

By “good corporate governance” we mean a set of institutions that is conducive to wealth creation, growth and the efficient utilisation of resources. Throughout this paper we discuss these institutions from the investor’s perspective. However, as we just argued, there are other dimensions to “good corporate governance” that we are not taking into account. Focusing on the important and complex questions associated with the investor view of corporate governance is legitimate, but not exhaustive. This partiality of the discussion should be born in mind.

Following Berle and Means (1932), the control problems that arise when ownership is dispersed have been analysed by many authors, for example Manne (1965), Alchian and Demsetz (1972) and Fama and Jensen (1983). Grossman and Hart (1990) have formulated the control vacuum that can arise from ownership and voting power dispersion as a free-riding problem.

The international control literature is predominantly a U.S. literature and has focused on the issues that arise from separation through ownership dispersion: monitoring and control by independent (non-executive directors), executive compensation, managerial incentive schemes, fiduciary duties and markets for corporate control. In Europe, other separation mechanisms dominate and different theoretical and policy issues arise.

If we define control like Berle and Means (see previous section), measures of the concentration of voting power provide a good approximation for finding “the control”. Throughout this paper we approximate control by voting power. When control can be exerted with very little or with no voting power (like in the case of classical management control) we point this out separately. For example, when voting power is dispersed and ownership is dispersed, management control is very likely but not inevitable.

In most countries, voting power at the general assemblies of Modern Corporations can be concentrated (or diluted) without concentrating (or diluting) ownership. If we assume that the
concentration of ownership is never complete, as will almost always be the case for listed companies, there are four ownership – voting-power combinations (see Table 1):

1. Dispersed ownership and dispersed voting power ("Strong Managers, Weak Owners"). Typical separation devices: absenteeism and free-riding.

2. Dispersed ownership - concentrated voting power ("Weak Managers, Weak Owners, Strong Voting Blockholders" or "Strong Managers, Weak Owners"). Typical separation devices: voting trusts, hierarchical groups, violations of "one-share-one-vote" (non-voting stock and dual class shares), voting pacts, minority voting blocks & absenteeism, soliciting proxy votes (in Germany banks, in the United States the management).


Some special cases that are mentioned need some elaboration. The 1st case is what Berle and Means (1932) have called "management control", the residual category. "Management control" is likely but not inevitable. The 2nd category includes their minority control, control through a legal device and joint control. It also includes modern US management control obtained through proxy voting. The 3rd case arises from the fact that in some countries, voting rights can be restricted irrespective of the number of total votes held. For example, someone could own 30% of the votes in a corporation but the statutes allow him or her to vote a maximum of 5%. If everybody else owns 5% voting blocks, ownership is more concentrated than voting power. In the 4th case separation can also arise. For example, the ownership certificates issued by a voting trust are not necessarily dispersed. In this case ownership (of non-voting) ownership certificates is concentrated and the voting rights are concentrated (in the hands of the voting trust of foundation) and the separation between ownership and control is complete. Even in the United Kingdom and the United States, more companies are covered by the 4th case than is generally thought. This case also covers UK and US companies immediately after a takeover.
Table 2 summarises the advantages and disadvantages (costs) associated with the 4 dispersion-concentration combinations. We first consider the “classic” trade-off between dispersed ownership & voting power (Quadrant I) and concentrated ownership & voting power (Quadrant IV). The separation of ownership and control that arises from the implementation of European voting power concentration devices like “golden shares” and voting trusts is discussed subsequently (Quadrant II).

The main advantages of dispersed ownership (Quadrants I & II) are liquidity, enhanced diversification opportunities (risk sharing) and a low cost of capital. The advantages are strongest for listed companies. If investors are risk-averse, they prefer a well diversified portfolio over a narrow portfolio and they want to invest in liquid assets (assets that can be sold easily). There is a gain from dispersion and liquidity that will be, typically, split between the risk-averse investors and the company. The company benefits through a lower cost of equity and investors benefit from a higher return. Hence, companies have an incentive to place shares in liquid markets populated by many investors and investors have an incentive to buy the shares of companies traded in such markets.

The freedom of movement of capital has increased the push towards dispersion. In global capital markets, investors can spread their risks more widely and easily buy shares in the most liquid markets. Companies that attract many investors and have a liquid market in their shares benefit from a relatively lower cost of equity, which can make them more competitive. Under global competition, this puts pressure on other companies to follow.

Dispersion and liquidity also have a cost. Small shareholders, individually, have no incentive to monitor and/or control the managers. Managers, if left to their own devices, might decide to maximise their own return and not the return of the stockholders. As was mentioned several times already, this problem is usually referred to as “the problem of the separation of ownership and control” and is particularly severe with “management control” (Quadrant I).

The problem of “management control” can be overcome, at least partially, by concentrating ownership. Large shareholders have an incentive and the power to monitor managers. However, there are two disadvantages associated with concentrated ownership & voting power. Concentrating ownership reduces the possibilities for diversification and liquidity, the main advantage of dispersed ownership. Concentrating voting power raises the possibility that voting blockholders collude with management to exploit small shareholders. The
benefits of concentrated ownership in overcoming the Grossman and Hart (1990) free-rider problem are analysed in Shleifer and Vishny (1986) and Admati, Pfleiderer and Zechner (1993). Jensen (1989) took this argument to the extreme by predicting that leveraged buyouts (LBOs), even when they were financed by junk-bond issues, would perform much better than firms with more dispersed ownership.

There is a trade-off between dispersed ownership & voting power (Quadrant I) and concentrated ownership & voting power (Quadrant II). Moderate degrees of concentration are likely to have a positive net-effect on economic performance, for very high degrees of concentration the negative effects are likely to dominate. Since there is a trade-off, there should be an optimal degree of dispersion. Market forces are not likely to bring about the optimal degree. Managers are likely to “over-disperse” because they want to retain some control. However, since it is impossible to compute the optimal level of dispersion, there is no evidence to back-up this assertion. The trade-off between dispersed and concentrated ownership has been analysed, for example, in Aghion and Tirole (1994) and Burkart et. al. (1994).

In Europe it is possible to concentrate voting power without concentrating ownership, or vice-versa. By concentrating voting power, but not ownership, it is possible to preserve some degree of liquidity and have an instrument for monitoring management at the same time, or for blockholders to be managers themselves. However, a serious problem arises that was not present when voting power was proportional to cash flow stakes. Since controlling blockholders have a disproportionate stake in the companies profits, they are likely to seek other forms of compensation. Either blockholders are managers themselves, or collusion with the management the blockholder appoints is likely. Potential problems arise from a conflict between the interests of controlling blockholders and small shareholders, not from a lack of monitoring (Quadrant II). When ownership is dispersed and voting power is concentrated in the hands of voting blockholders or managers who appoint themselves with proxy votes, dispersed shareholders are the potential victims. This problem is particularly severe in the case of small shareholders of listed companies that belong to pyramidal groups. They can be expropriated by blockholders that control the whole groups through inter-groups transfers (Barca, 1996). In Europe they are the potential victims of a controlling blockholder (and the management the blockholder appoints), not the self-appointed non-owner managers.
### Table 2: Dispersion – Concentration Tradeoffs for Investors

<table>
<thead>
<tr>
<th>Dispersed Voting Power</th>
<th>Concentrated Voting Power</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Dispersion</strong></td>
<td><strong>Concentration</strong></td>
</tr>
<tr>
<td><strong>Ownership</strong></td>
<td></td>
</tr>
<tr>
<td><strong>I</strong></td>
<td></td>
</tr>
<tr>
<td><strong>advantages:</strong></td>
<td></td>
</tr>
<tr>
<td>+ liquidity</td>
<td></td>
</tr>
<tr>
<td>+ investors can diversify</td>
<td></td>
</tr>
<tr>
<td>+ lowest cost of capital</td>
<td></td>
</tr>
<tr>
<td><strong>disadvantages:</strong></td>
<td></td>
</tr>
<tr>
<td>– lack of direct monitoring (free-riding problem, “hands off” portfolio investment)</td>
<td></td>
</tr>
<tr>
<td>– takeovers are possible, do not act as a substitute for direct monitoring and can be disrupting</td>
<td></td>
</tr>
<tr>
<td><strong>implications:</strong></td>
<td></td>
</tr>
<tr>
<td>✓ managers and dispersed owners favour liquidity enhancing transparency</td>
<td></td>
</tr>
<tr>
<td>× “Strong Managers, Weak Owners”</td>
<td></td>
</tr>
<tr>
<td><strong>II</strong></td>
<td></td>
</tr>
<tr>
<td>If management has concentrated voting power (e.g. through proxy votes) “Strong Managers, Weak Owners” as in QI. Otherwise:</td>
<td></td>
</tr>
<tr>
<td><strong>advantages:</strong></td>
<td></td>
</tr>
<tr>
<td>+ direct monitoring</td>
<td></td>
</tr>
<tr>
<td>+ more liquidity than IV</td>
<td></td>
</tr>
<tr>
<td>+ diversify more than in IV</td>
<td></td>
</tr>
<tr>
<td>+ lower cost of capital than in IV</td>
<td></td>
</tr>
<tr>
<td><strong>disadvantages:</strong></td>
<td></td>
</tr>
<tr>
<td>– cash-flow and control incentives misaligned (with voting trusts: 100%)</td>
<td></td>
</tr>
<tr>
<td>– collusion between weak managers and controlling blockholder likely</td>
<td></td>
</tr>
<tr>
<td>– strong incentives to extract private benefits for controlling blockholder</td>
<td></td>
</tr>
<tr>
<td>– no takeovers</td>
<td></td>
</tr>
<tr>
<td><strong>implications:</strong></td>
<td></td>
</tr>
<tr>
<td>× controlling blockholder and management are opposed to transparency</td>
<td></td>
</tr>
<tr>
<td>× controlling blockholder and management advertise widespread share ownership</td>
<td></td>
</tr>
<tr>
<td>× “Weak Managers, Weak Owners, Strong Voting Blockholders”</td>
<td></td>
</tr>
<tr>
<td><strong>III</strong></td>
<td></td>
</tr>
<tr>
<td>If concentrated owner does not have concentrated voting power “Weak Managers, Weak Owners, Weak Owners, Strong Voting Blockholders”, implications as in QII. Otherwise:</td>
<td></td>
</tr>
<tr>
<td><strong>advantages:</strong></td>
<td></td>
</tr>
<tr>
<td>+ some protection of small shareholders from voting right restrictions</td>
<td></td>
</tr>
<tr>
<td><strong>disadvantages:</strong></td>
<td></td>
</tr>
<tr>
<td>– cash-flow and control incentives misaligned</td>
<td></td>
</tr>
<tr>
<td>– no monitoring</td>
<td></td>
</tr>
<tr>
<td>– no liquidity</td>
<td></td>
</tr>
<tr>
<td>– no diversification opportunities</td>
<td></td>
</tr>
<tr>
<td>– high cost of capital</td>
<td></td>
</tr>
<tr>
<td>– takeovers difficult</td>
<td></td>
</tr>
<tr>
<td><strong>implications:</strong></td>
<td></td>
</tr>
<tr>
<td>× mostly disadvantages</td>
<td></td>
</tr>
<tr>
<td>× “Strong Managers, Weak Owners”</td>
<td></td>
</tr>
<tr>
<td><strong>IV</strong></td>
<td></td>
</tr>
<tr>
<td>If concentrated owner does not have concentrated voting power “Weak Managers, Weak Owners, Strong Voting Blockholders”, implications as in QII. Otherwise:</td>
<td></td>
</tr>
<tr>
<td><strong>advantages:</strong></td>
<td></td>
</tr>
<tr>
<td>+ direct monitoring</td>
<td></td>
</tr>
<tr>
<td>+ cash-flow and control interests aligned</td>
<td></td>
</tr>
<tr>
<td><strong>disadvantages:</strong></td>
<td></td>
</tr>
<tr>
<td>– no or low liquidity</td>
<td></td>
</tr>
<tr>
<td>– difficult to diversify</td>
<td></td>
</tr>
<tr>
<td>– strong majority owner wants to be compensated through private benefits</td>
<td></td>
</tr>
<tr>
<td>– high cost of equity</td>
<td></td>
</tr>
<tr>
<td>– monitoring might be “too intense” and may prevent managers from taking initiatives</td>
<td></td>
</tr>
<tr>
<td>– no takeovers</td>
<td></td>
</tr>
<tr>
<td><strong>implications:</strong></td>
<td></td>
</tr>
<tr>
<td>× strong majority owner is opposed to transparency</td>
<td></td>
</tr>
<tr>
<td>× “Weak Managers, Weak Owners, Strong Voting Owners”</td>
<td></td>
</tr>
</tbody>
</table>
For countries other than the United States, there is little evidence on the proportion of companies that lie in the different quadrants of Table 2. La Porta et al. (1996, 97) have provided some evidence by computing the concentration of voting rights controlled by the largest 3 blockholders in the 10 largest listed companies in 49 countries. In lack of other evidence their data was used in a recent overview of corporate governance issues in Europe (Berglöf, 1997).

The country teams of the European Corporate Governance Network aimed to collect data that would allow us to allocate listed European companies, individually, to the four Quadrants. The country teams also tried to determine (when applicable) how voting power is concentrated without concentrating ownership, how voting power translates into control and, hence, how control is separated from ownership. The results that have been obtained so far show that most continental European companies are located in Quadrants II or IV. Some companies are located in Quadrant I and very few companies are located in Quadrant III.

La Porta et al. (1996) provide information on the “quadrant” a country’s company law or commercial code allows companies to be in. They also provide evidence on the location of the average of the Top 10 listed companies by computing the concentration of voting rights. La Porta et al. (1996) do not provide conclusive evidence on the distribution of companies over the 4 quadrants. In most cases, companies could be located in any one of the 4 quadrants (Table 3). To be sure, this was not the purpose of their study and one would not expect them to have provided such a classification. For example, the company law of Hong-Kong, Malaysia, Singapore, Brazil, Chile, Greece, Peru, Uruguay, Japan and South Korea does not allow companies that are registered in these countries to issue shares with multiple voting rights and/or non-voting stock and/or set voting caps (La Porta et al.’s definition of “one-share-one-vote”, opus cit. Table 1). This implies that companies in these countries cannot concentrate voting power without concentrating ownership by using these devices. However, this does not mean that the companies registered in these countries are not located in Quadrant II. There are other devices (like hierarchical groups) that can be used to concentrate voting power without concentrating ownership. Indeed, one could argue that those who want to separate ownership from control use the best available device: Greek pyramids, kaebols or kereitsus? Furthermore, the ownership concentration statistics for the Top 10 listed companies do not report the concentration of ownership but of voting power, at least for European companies. The country papers show that for many European listed companies, data on the concentration of cash-flow rights is not available. The data sources cited in La Porta et al. (1996) contain the concentration of voting rights for the Top 10 European listed companies, not the concentration of cash-flow rights (opus cit., Tables 1 and 10). Indeed, the ownership (dependent or explanatory) variable is only measured correctly (if direct stakes are used) when there are no violations of “one-share-one-vote”, an explanatory variable. Even then, direct stakes are disclosed as part of voting blocks (see Part B). Hence, countries with a high concentration level of voting rights could lie in Quadrants II or IV of (Table 3).
### Table 3. Ownership Concentration and the Outer Limits to Control

<table>
<thead>
<tr>
<th></th>
<th>Dispersed Voting Power</th>
<th>Concentrated Voting Power</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Dispersed Ownership</strong></td>
<td>I</td>
<td>II</td>
</tr>
</tbody>
</table>
|                         | • is possible in all 49 countries  
                         | • is probably not common in (average of sum of holding of Top 3 shareholders in Top 10 listed companies more than 50% of the votes):  
                         |       Hong Kong, Malaysia, South Africa, Sri Lanka, Zimbabwe, Argentina, Belgium, Brazil, Colombia, Egypt, Greece, Indonesia, Italy, Mexico, Portugal, Turkey, Austria. |
| **Concentrated Ownership** | III                    | IV                        |
|                         | • not explicitly covered by La Porta *et. al.*  
                         | • is possible in many EU Member States  
                         | • is possible (through violations of “one-share-one-vote” and provided it is not ruled out by listing requirements) in 38 out of 49 countries, including the US and the UK  
                         | • is not possible through deviations from “one-share-one-vote” (company law) in:  
                         |       Hong-Kong, Malaysia, Singapore, Brazil, Chile, Greece, Peru, Uruguay, Japan, South Korea.  
                         | • is possible through hierarchical groups or other devices in all 49 countries  
                         | • is possible in all 49 countries |

Note: Ownership concentration is computed with data for the Top 20 listed companies in each country. In Europe we know that there are no disclosure rules for such data, but that the data refers to the concentration of votes. La Porta et. al. use the limits imposed by company law to design a “one-share-one-vote” indicator. Market regulation could impose tougher rules and in practice, companies might not actually break with “one-share-one-vote”. To be sure, La Porta *et. al.* did not explicitly try to measure the separation of ownership and control.

Berle and Means (1932) had warned, and several authors after them have tested, that the separation of ownership and management control could lead to inefficiencies and problems of economic performance and growth. In the United States this link between “management control”, market myopia and the potential for loosing the competitive edge vis-a-vis competitors that had different (and possibly superior) governance structures became a major concern in the United States during the 1980s. Although US corporations are tremendously successful again, the debate continues.
Until now, empirical research that tries to link the “separation of ownership and control” has almost exclusively focused on the distinction between “ownership control” and “management control”. As we have argued, this is not the relevant distinction to make in Europe. We propose to relate the whole spectrum of separation devices, the identity of blockholders and the degree of separation between ownership and control to economic performance. The importance of pursuing this avenue will become even clearer after we have presented the first empirical results obtained by the European Corporate Governance Network in the next section. We return to the link between corporate governance, separation devices and economic performance in a later section of Part A (“Implications for Future Research”).

3 Main Results

In order to investigate the extent of the separation between ownership and control, the available data on ownership structures and control were investigated. The results presented below show that several existing EU Directives are not generating the data they are supposed to generate and that access to this data is often difficult, in the broadest sense of the word. We also identify several areas of complete darkness, where no European disclosure rules exist, especially for non-listed companies.

Using the data that is available, the comparative statistical results show that there are huge differences in ownership and control patterns across Member States, even for listed companies. The findings have implications for the completion of an integrated European equity market, especially when the Euro will be introduced.

Finally, the statistical findings raise questions about the link between the observed differences in ownership structures, control patterns and the comparative performance of European companies. Are possible deficiencies policy induced? If so, what type of regulatory changes are needed, especially at the European level?

3.1 Data Availability Survey

1 In most countries ownership data is not disclosed at all, not disclosed to the general public or practically inaccessible (Table 4); even for listed companies, with some exceptions.
1.1 In all the surveyed countries, most company managers know the identity of the company’s owners. The exception are corporations that issued bearer shares, mostly listed companies. Here the management only knows what it learns from voluntary communications, voting power notifications made on the basis of the Transparency Directive (EEC/627/88) and the registration and attendance lists of annual and extraordinary meetings (Table 4, Column 3).

1.2 How much of the ownership information that is known to the management has to be disclosed to the general public varies from country to country. With the exception of the Transparency Directive (EEC/627/88) such disclosure is not covered by Community Law. In Belgium, 10% stakes in corporations (SA) should be notified and disclosed in the annual reports. In practice this law is violated and no declarations are made. No other ownership information is disclosed. In Austria, Germany and France full ownership information should be disclosed for all companies but corporations (even when these do not issue bearer shares). Non-compliance is known to be widespread in Germany. Compliance figures for Austria and France could not be obtained. In Italy, ownership data should be disclosed for all companies including corporations. However, this disclosure rule only covers “1st layer” ownership. It is enough for Italian companies to create a holding company in Belgium to work around this requirement (Table 4, Column 4). For listed companies the coverage is more complete because the whole superstructure is covered.

1.3 When ownership data has to be disclosed and when there is compliance with the law, the ownership data is deposited at the company register. Access to the registers is very difficult and/or very expensive in all countries that were surveyed. Even when the company register has been partially migrated to electronic media, the contents is unreliable because the electronic version is based on transcriptions from paper (errors, omissions, delays) and access is even more expensive than for access to the paper records. With the exception of Italy, ownership data does not have to be published in the annual report and/or accounts (Table 4, Column 5 & 6).

1.4 Commercial databases produced by companies that specialise in obtaining company register information are usually unsuitable for statistical purposes.
The clients of these companies, for example specialised credit-agencies, want the most recent information on a company on demand, not a representative cross-section or panel produced for statistical analyses. Hence, commercial databases are updated whenever a client makes an information demand. Very often the last record is overwritten and backups are written at irregular intervals, not every time an update occurs. Since information demands and corporate governance events are highly correlated, the non-response/non-compliance problem is exacerbated. Some of the data for the UK presented in the next section was obtained from a commercial database and suffers from this problem.

1.5 The Stock Market Supervision Authorities receive voting rights notifications that are filed as a result of the Transparency Directive (88/627/EEC). The notification of ownership data was optional. As we will show in Part B, the whole philosophy of the Transparency makes it unsuitable generating the data required to compute representative ownership statistics for listed companies. In many countries, other government agencies collect ownership data, namely the Banking Supervision Authority, the Insurance Supervision Authority and the Competition Authority. Public disclosure of such data varies greatly from country to country. The Commission’s competition department (DGIV) does not make its ownership and control data available to the public (Table 4, Column 5 & 6).

2 In the portfolio dimension the European Company Accounts Directives have lead to more disclosure convergence than we could detect in the ownership dimension. However, there are many exceptions, the disclosure thresholds are often too high and access to the data – once again – is difficult or impossible.

2.1 Not all institutions that play an important role in corporate governance have to prepare annual accounts in all countries. When they do their portfolio holdings must not always be disclosed. Foundations that act as de facto financial holdings are one example. These institutions are usually not affected by any European directives (company and/or accounting directives).
2.2 In all countries that were surveyed, all companies that have to prepare annual accounts have to include information on their holdings in the annex to the accounts.

2.3 Belgium has put in place a system for collecting and distributing annual account information that is exemplary, although here too there is room for improvement. The paper copies of the annual accounts are transmitted to a special department of the Central Bank (*Department Centrale des Bilans*), not to the company registers. The Central Banks has the paper filings transcribed into a computer readable format. With the help of an electronic publisher (Bureau van Dijk, http://www.bvdep.com) the data is put on CD-ROM. The CD is not cheap (BEF 160,000) but reliable and easily available world-wide. The production costs could be much lower, of course, if filings were made electronically on standardised forms. However, a comparison of the printed annual reports and the CD-ROM revealed that that the portfolio information is frequently faulty.

2.4 In other EU countries the Central Banks collect balance sheet data, including portfolio holdings data, but store it in internal databases that are treated as confidential (for example in France, Germany and Spain).

2.4.1 In France, the *Banque de France* collects company information from public sources like the company register and the bulletin of legal notices. However, the internal database also contains confidential data obtained through private contacts with credit institutions and information the firms provide voluntarily. The database is not accessible by the general public (Bloch and Kremp, 1997). In Germany, the *Bundesbank* keeps a similar database (see Becht and Böhmer, 1997).

2.4.2 In Spain, a “confidential” questionnaire survey is used to ask companies for the same information they deposit at the company register. Since the questionnaire is confidential the data collected by the Central Bank cannot be distributed to the general public. The questionnaire responses are not audited, the accounts deposited at the company register are (Crespi, 1997).
2.5 In consolidated accounts, neither the group structure nor the size of intermediate holdings are reported (Table 6). Both pieces of information are vital for assessing the leverage effects in hierarchical groups and for computing measure of the separation of ownership and control.

2.6 The criterion for reporting portfolio holdings in consolidated accounts is a complicated “control” definition. This definition varies from country to country. Furthermore, when trying to assess the importance of holdings in net-cash flow terms, using a control criterion as the basis for disclosure is misleading.

3 Voting power data for listed companies should be generated by the Transparency Directive (88/627/EEC). The type of data that is disclosed on the basis of this directive and the accessibility of the data varies greatly between Member States. The Transparency Directive provides for notifications of changes based on first time notifications of the “voting block stock”. Hence, the main difficulty lies in obtaining regular, accurate and up-to-date cross-sections of voting block holdings for all listed companies (Table 7).

3.1 In most surveyed countries, data on significant voting block holdings is difficult to obtain. Individual notifications are published in newspapers but, obviously, this requirement does not provide for much transparency. We surveyed whether cross-sections and/or the individual notifications are available from the competent authorities (or the stock exchanges) and at what intervals. In some countries, private information providers or banks gather the individual notifications and compile cross-sections. However, there is no quality assurance and electronic versions of such data are usually very expensive (Table 7, Column 3).

3.1.1 In Austria the competent authority is not yet fully operational. Individual notifications are published in newspapers. No cross-sections are available.

3.1.2 In the Netherlands cross-sections are not available from the competent authority.
3.1.3 In Belgium, the competent authority does not disseminate any of the data. The publication of the notifications is undertaken by the stock exchange that also runs an online database. Access is restricted and the data is overwritten continuously. A commercial bank publishes free cross-sections, but at irregular intervals. A consulting company sells cross-sections at a cost that buts it well beyond the reach of the ordinary investor.

3.1.4 In France the competent authority publishes a CD-ROM with individual notifications.

3.1.5 In Italy the competent authority publishes a monthly statistical bulletin, but only on paper.

3.1.6 In Spain the competent authority has put the individual publications on the internet, but retrieval is one company at a time (http://www.cnmv.es). The site features Spanish and English pages.

3.1.7 In Germany, a complete cross-section is available from the internet site of the competent authority (http://www.bawe.de/). Updates are available twice a month. The spreadsheet also contains a reference to the newspaper where the original notification was published. Access to the individual publications is not available. The site features German and English pages.

3.2 The disclosed identity of the agent who has ultimate control over a significant voting block is not entirely reliable in any of the Member States that were surveyed. In Belgium, Spain and Italy the information is often reliable. In Austria, Germany and The Netherlands the information is often unreliable (Table 7, Column 4).

3.3 The basis of disclosure in the Transparency Directive are voting blocks controlled by physical or legal persons. These blocks can be composed of a number of direct stakes, for example 60 direct stakes voted jointly by a family or 4 direct stakes held by companies that belong to the same business group. In Belgium, Spain and France all direct stakes in a voting block are notified. The notification of direct stakes is irrespective of their individual size and the
identity of those holding the stakes is revealed. In Germany and the Netherlands this is not the case (Table 7, Column 5).

3.4 The reason why certain direct stakes are included in the voting block notification (for example because the direct stakes are held by a business groups or voting coalitions) is notified in all countries (Table 7, Column 6).

3.5 The identity of the intermediate agents – companies controlled by the notifying ultimate controlling agent that control the companies that hold direct stakes – is only known in Belgium and sometimes known in Austria (Table 7, Column 7).

3.6 An exact picture (organisation chart or organigramme) of the control structure is only available in Belgium (Table 7, Column 8).

3.7 In France and Italy the percentage of total capital held by agents who control significant voting blocks is notified along with the percentage of voting rights held. In Italy this leads to confusions because it is difficult to disentangle voting rights and capital blocks (Table 7, Column 9).

4 Detailed information on legal devices that separate ownership and control is contained in company statutes. According to Article 2 (a)&(c) of the 1st Company Law Directive (68/151/EEC) there is “compulsory disclosure” of the latest version of the company statutes. Furthermore, according to Article 3 (3), “a copy of the whole or any part of the documents or particulars referred to in Article 2 must be obtainable by application in writing at a price not exceeding the administrative cost thereof”. In the ownership disclosure section (above) we documented that access to the company registers – where the statutes are usually kept – is difficult and expensive. Our findings are not a contradiction with the letters of Article 3(3). Article 3(3) does not mention how one can find the information to make an application (like the address of the register) and how long it should take to obtain a copy of the statute. Article 3(3) does not contain any incentives for improving the efficiency of the company register. On the contrary, the higher the administrative costs, the higher the prices that can be charged and the lower the demand for company register information.
3.2 Quantitative Results

Despite the unevenness of effective disclosure and data availability across countries, a number of striking facts emerged. Due to data (un)availability most findings refer to listed companies.

1. For listed companies, the **concentration of ownership and voting power** is higher in continental Europe than in the United Kingdom. On the other hand, for non-listed companies, the ownership concentration is very high in the United Kingdom. In the United Kingdom the expression “going public” is appropriate. It appears that in continental Europe “going public” often means “keeping it private”, at least as far as ownership and control structures are concerned. Companies where more than 95% of the shares are owned and/or voted by a single blockholder, as is often the case on the continent, are more private than public.

2. For listed companies, the shape of the distribution of voting blocks and direct stakes seems to be influenced by the presence or absence of **takeover legislation** (or rules). In countries without a mandatory bid requirement, company law control thresholds have a decisive influence on the distribution of voting blocks.

2.1 In Germany, voting blocks are grouped at the 25%, 50% and 75% thresholds that correspond to the maximum blocking minority to prevent statute changes, majority control and absolute control (including statute changes). These are company law thresholds. In countries that have takeover rules, mandatory bid requirements seem to influence the distribution of stakes. The average size of the largest ownership stake in Austria is 52.4%. Neither Germany nor Austria have a mandatory bid requirements.

2.2 In the United Kingdom, direct stakes are grouped before the 30% threshold, at 50% and in the 95-100% range. This distribution corresponds to the mandatory bid threshold, majority control and the outcome of successful takeovers. The Belgian voting block distribution shows a similar pattern with a “hole” in the mandatory bid range from 33.33-50% and a peak after 50%.

---

10 The large number of stakes in the 95-100% range might be due to the fact that the database that was used to not contain data that is completely updated all the time. Up-to-date annual accounts data suggests that the large blocks created by successful takeover bids are quickly diluted, at least to the 50% level.
However, in Belgium the absolute control threshold (company law) of 66.66% also exhibits a peak. The average size of the largest voting block in Spain, a country with takeover legislation, is only 39%.

3 **Insider trading rules** can impose an additional cost on holding blocks because they make it more difficult to dispose of them. Hence, insider trading rules could also have a visible effect on the distribution of blocks. We find a visible effect of insider trading rules on the distribution of voting blocks in the United States. We find no such effect in Europe because large blockholders are not automatically considered to be insiders. Indeed, in legal terms, small shareholders are as likely to be insiders as large voting blockholders.

3.1 In the United States, beneficial owners holding blocks that are larger than 10% are “insiders”, even when they claim to have no insider information. Who is a beneficial owner is determined on the basis of a control criterion, not a cash flow criterion. The ability of 10%+ insiders to trade in the shares of a company is seriously restricted because their trades are monitored continuously by the SEC. In the distribution of blocks held by beneficial owners in the United States, a large peak is visible in the 5-10% range (Becht, 1997). This peak is often attributed, at least in part, to insider rules (Blair, 1995).

3.2 In Europe, Article 2 of the Insider Trading Directive (89/592/EEC) stipulates that “each Member State shall prohibit any person who ... by virtue of his holding of the capital of the issue .. possesses inside information from taking advantage of that information .... [when] ... acquiring or disposing of ... transferable securities of the issuer or issuers to which that information relates.”

3.3 In Europe ownership, and not voting power, might make European blockholders insiders. However, they are not automatically insiders because the insider trading directive does not stipulate any thresholds. Hence, the competent authority has to prove that an agent with a holding of any size is actually using insider information. Indeed, large owners who can show that they are not well informed about a company’s affairs are less restricted in their trades than small owners who try to be well informed. Since any shareholder,
irrespective of size, is a potential insider the Insider Trading Directive does not, *ceteris paribus*, affect the distribution of blocks. This is confirmed by our findings.

4 On the whole, **banks** do not hold large direct ownership stakes in listed non-financial companies. Hence, one could argue that banks are equally unimportant in European corporate governance. In fact, the role of banks differs substantially from country to country (Table 9).

4.1 In Germany, banks are in the position to take advantage of powerful separation devices: proxy voting (*Depotstimmrecht*), pyramiding, voting pacts and interlocking directorates. Indeed the separation of ownership and control for listed companies with dispersed ownership is very large. Banks have considerable voting power but small equity stakes. This voting power is not reflected in the transparency declarations because proxy voting is not included in the list of “attribution” requirements.

4.2 Spanish banks hold a very large number of smaller voting blocks and a substantial number of large and very large voting blocks (Crepsi 1997).

4.3 In Belgium, France and Sweden banks are an integral part of business groups or provide the link between different business groups. In Italy banks only play the latter role because they are not allowed, by law, to play the former. Mediobanca does not control a single company in its portfolio but acts as a power-broker. In France, it is often hard to draw the line between banks and financial holding companies. Hence, banks provide the “glue” for group structures that are used to separate ownership and control.

5 The role of **insurance companies** is very similar to the role played by banks. However, their holdings are even smaller in France and Italy, but somewhat larger in Germany (Table 9). Many hierarchical groups involve both banks and insurance companies.

6 The involvement of the **state** in listed companies is usually not very large (Table 9). State holdings are concentrated in some sectors, due to historical reasons, and non-listed companies. However, the figures should be treated with care because the state is
not always identified as the ultimate owner. State ownership through banks, holdings and unlisted non-financial corporations often goes undetected (Table 9).

We do not yet have conclusive evidence on the importance of cross-shareholdings and hierarchical groups because the required data is often unavailable (see Part B). The exception is Italy where a report published in 1994 showed that as a whole the phenomenon was not extremely relevant but that it provided, in some cases, a way for blockholders/managers to sustain each other (Barca et al. 1994).

Data for own-shareholdings is available for Belgium and Sweden. In Belgium, even for listed companies, own-shareholdings through cross-shareholding loops are surprisingly large. There are 31 Belgian listed companies with own-shareholdings and 4 companies with own-shareholdings larger than 10%. Considering the shareholders of listed companies as well as the companies themselves, there are 84 companies with own-shareholdings and 14 companies with own-shareholdings larger than 10%.
3.3 Comparative Summary Tables
### Table 4. Public Access to Direct Ownership Information I (Cash-Flow Rights)

<table>
<thead>
<tr>
<th>Country Acronym</th>
<th>Full Name</th>
<th>Ownership Information Known to the Company</th>
<th>Ownership Information in Company Register</th>
<th>Access to Company Register</th>
<th>Must be Published in Annual Report</th>
<th>Available from a non-commercial Database</th>
<th>Available from a Commercial Database</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Austria</td>
<td>all - except listed AG and AG with bearer shares</td>
<td>AG: No; GmbH: Yes</td>
<td>paper, copies not easy, recently electronic, expensive (170ATS per request)</td>
<td>No</td>
<td>No</td>
<td>Yes. Quality not tested.</td>
</tr>
<tr>
<td>B</td>
<td>Belgium</td>
<td>all – except listed SA and SA with bearer shares</td>
<td>No</td>
<td>paper, copies expensive, not easy</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>DK</td>
<td>Denmark</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>D</td>
<td>Germany</td>
<td>all – except listed AG and AG with bearer shares when stake &lt; 20%</td>
<td>AG: No, GmbH : Yes (significant non-compliance)</td>
<td>paper, copies expensive, geographically dispersed</td>
<td>No</td>
<td>No</td>
<td>Yes. Either incomplete or of bad quality.</td>
</tr>
<tr>
<td>E</td>
<td>Spain</td>
<td>all - except SA with bearer shares</td>
<td>No</td>
<td>Paper, copies expensive, geographically dispersed</td>
<td>No</td>
<td>Only for listed companies</td>
<td>Available for large firms. Quality not tested.</td>
</tr>
<tr>
<td>F</td>
<td>France</td>
<td>all - except listed SA</td>
<td>Yes - except SA</td>
<td>paper, electronically not easy &amp; unreliable, both expensive</td>
<td>No, only for listed SA (&gt;5%)</td>
<td>No access for the general public.</td>
<td>Yes. Only listed companies, incomplete, not standardised.</td>
</tr>
<tr>
<td>I</td>
<td>Italy</td>
<td>all legal forms</td>
<td>Yes</td>
<td>paper, electronically unreliable, both expensive</td>
<td>Yes</td>
<td>No</td>
<td>Yes. Quality was not tested.</td>
</tr>
<tr>
<td>NL</td>
<td>The Netherlands</td>
<td>all legal forms</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>S</td>
<td>Sweden</td>
<td>all legal forms</td>
<td>Yes</td>
<td>paper, electronic</td>
<td>No</td>
<td>Yes. Listed.</td>
<td>Yes, listed.</td>
</tr>
<tr>
<td>UK</td>
<td>United Kingdom</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Notes and sources: see next page
Note: The table records the availability of direct ownership data for cash-flow rights, not for voting rights. It does not cover portfolio declarations either (e.g. in consolidated accounts). Even in Italy, with the exception of listed companies, only the first ownership layer is covered and the ownership chain is not declared up to the ultimate owners. Hence it is enough for the owner of an Italian company to “hide” behind a Dutch or Belgian company (or a company outside the Union) to remain anonymous.

Source: Gugler, Kalss, Stomper, Zechner (1997) for Austria; Becht and Chapelle (1997) for Belgium; Becht and Böhmer (1997) for Germany; Crespi (1997) for Spain, Bloch and Kremp (1997) for France; Bianchi, Bianco and Enriques (1997) for Italy.
### Table 5. Public Access to Direct Ownership Information II (Cash-Flow Rights)

<table>
<thead>
<tr>
<th>Country Acronym</th>
<th>Market Supervision Authority</th>
<th>Banking Supervision Authority</th>
<th>Insurance Company Supervision Authority</th>
<th>Competition Authority</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>authority not yet operational</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>B</td>
<td>do not have ownership; voting rights data not accessible (handled by the Stock Exchange)</td>
<td>No</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>DK</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>D</td>
<td>do not have ownership; voting rights data “snapshots” at irregular intervals on paper</td>
<td>No</td>
<td>No</td>
<td>Yes (paper)</td>
</tr>
<tr>
<td>E</td>
<td>do not have ownership data; voting rights data on WWW one company at a time (<a href="http://www.cnmv.es">http://www.cnmv.es</a>)</td>
<td>No</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>F</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>I</td>
<td>Yes (soon on CD-ROM)</td>
<td>No</td>
<td>Yes (paper)</td>
<td>Yes (paper)</td>
</tr>
<tr>
<td>NL</td>
<td>yes, but believes the data is contaminated and has stopped distributing it</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>S</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>UK</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>EU</td>
<td></td>
<td></td>
<td></td>
<td>No (DGIV)</td>
</tr>
</tbody>
</table>

Note: The table records the availability of direct ownership data for cash-flow rights, not for voting rights. The Belgian and German market supervision authorities have voting rights data, but no ownership data. The cells show the availability of ownership information that is known to the relevant authority. When the authority itself has no direct ownership information the cell shows the entry “do not have it”.

Source: Gugler, Kalss, Stomper, Zechner (1997) for Austria; Becht and Chapelle (1997) for Belgium; Becht and Böhmer (1997) for Germany; Crespi (1997) for Spain, Bloch and Kremp (1997) for France; Bianchi, Bianco and Enriques (1997) for Italy.
### Table 6. Disclosure of Portfolio Information (Cash-Flow Rights)

<table>
<thead>
<tr>
<th>Country Acronym</th>
<th>Participations Published in Annual Accounts</th>
<th>Annual Account Published By</th>
<th>Account available from</th>
<th>Access</th>
<th>Reports Intermediate Direct Holdings</th>
<th>Criterion for Inclusion</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>Yes. Only above certain minimum size.</td>
<td>all companies that have to draw up annual accounts</td>
<td>Company Register/Wr. Zeitung</td>
<td>difficult</td>
<td>No</td>
<td>control definition of consolidation rules &amp; company law</td>
</tr>
<tr>
<td>B</td>
<td>Yes. Only above certain minimum size.</td>
<td>as above</td>
<td>Central Balance Sheet Office (Central Bank)</td>
<td>Excellent (CD-ROM)</td>
<td>No</td>
<td>as above</td>
</tr>
<tr>
<td>DK</td>
<td>Yes. Only above certain minimum size.</td>
<td>all companies that have to draw up annual accounts</td>
<td>Company Register</td>
<td>Difficult, expensive</td>
<td>No</td>
<td>control definition of consolidation rules &amp; company law</td>
</tr>
<tr>
<td>E</td>
<td>Yes. Only above certain minimum size.</td>
<td>as above</td>
<td>Market regulator for listed companies</td>
<td>Scanned auditing reports on CD-ROM</td>
<td>No</td>
<td>as above</td>
</tr>
<tr>
<td>F</td>
<td>Yes. Only above certain minimum size.</td>
<td>as above</td>
<td>Company Register</td>
<td>difficult</td>
<td>No</td>
<td>as above</td>
</tr>
<tr>
<td>I</td>
<td>Yes. Only above certain minimum size.</td>
<td>as above</td>
<td>as above</td>
<td></td>
<td>as above</td>
<td></td>
</tr>
<tr>
<td>NL</td>
<td>Yes. Only above certain minimum size.</td>
<td>as above</td>
<td>Company Register</td>
<td>easy (CD-ROM)</td>
<td>No</td>
<td>as above</td>
</tr>
<tr>
<td>UK</td>
<td>Yes. Only above certain minimum size.</td>
<td>as above</td>
<td>Company Register</td>
<td>easy (CD-ROM)</td>
<td>No</td>
<td>as above</td>
</tr>
</tbody>
</table>

1 - intermediate direct holdings would allow us to construct an organisation chart that shows the ownership links between all companies in a group from the portfolio declarations of the head. In many countries only the consolidated participations are reported which makes it necessary to collect the annual accounts of all companies in the group.

Source: Gugler, Kalss, Stomper, Zechner (1997) for Austria; Becht and Chapelle (1997) for Belgium; Becht and Böhmer (1997) for Germany; Crespi (1997) for Spain; Bloch and Kremp (1997) for France; Bianchi, Bianco and Enriques (1997) for Italy; De Jong, Kabir, Marra and Röell (1997) for the Netherlands.
Table 7. Quality and Availability of the Control Data Generated by the Transpositions of the Transparency Directive

<table>
<thead>
<tr>
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<th>Publication &amp; Availability</th>
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Shortened Cell Entries: 1 – reliable (always or very often); 2 – often reliable (often); 3 – unreliable (never, or almost never); N – newspaper, OL1 – real-time online (continuously overwritten), CUM1 – cumulative paper volume (cross-section) private from newspaper, CUM2 – cumulative by competent authority irregularly, CUM3 – cumulative by competent authority monthly, CD1 – CD-ROM with individual notifications commercial from newspaper, CD2 – CD-ROM produced by competent authority;

Notes: B1 – only newspaper publication transparent; B2 – Belgium uses a slightly different attribution classification than the Directive; D1 – many exceptions lead to early cut off in control chain; NL1 – group blocks and voting blocks do not add up to 100% (double counting); I2 – the notification of the ownership data leads to confusion it Italy since it difficult to distinguish between cash-flow rights and votes.
### Table 8. Ownership Statistics by Rank of Direct Stake and Block

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Abbreviations: Dir. - direct stakes; Gr. - group ownership blocks (includes double counting due to cross-shareholdings); L - listed; NL - non-listed; RS - representative sample; TOP - largest non-financial; P - population; Av - companies available in database, selection criterion unknown; 96F - corresponds to financial data dating 1996, date of ownership data unknown; could be the same year, older or more recent.

See next page of notes and sources.
Notes: A group block is defined as the sum of shares that are owned directly and indirectly by the same natural or legal person of public or private law. Double counting due to cross-shareholdings has not been netted out. Direct stakes are holdings “one level up”. Two stakes held by two companies that both belong to the same company higher up in a group are not added. In Italy the transposition of 88/627/EEC requires the notification of ownership stakes. In France the data comes from a confidential databases held at the Banque de France (Fichier Bancaire des Entreprises and BAFI) that records ownership stakes with some additions from the commercial DAFSAliens CD (http://www.bvd.com). The Austrian data is questionnaire data published by Trend, a business magazine. For Italy, ownership statistics for smaller firms are based on survey data collected by the Bank of Italy and Mediocredito Centrale; see Bianchi, Bianco and Enriques (1997). One UK dataset comes from the Bristol company registration agency Jordans who obtain the data from the company register. Strictly speaking the data is not for 1996 since Jordans does not update all companies each year. The second dataset was collected by Luc Renneboog using printed annual reports.

### Table 9. Ownership Statistics by Investor Type

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<td>2.4</td>
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Abbreviations: Dir. - direct stakes; Gr. - group ownership blocks (includes double counting due to cross-shareholdings); L - listed; NL - non-listed; F&D - foreign and domestic; RS - random sample; TOP - largest non-financial; P - population; Av - companies available in database, selection criterion unknown.

See next page of notes and sources.
Notes: The investors do not necessarily have ultimate control. In some cases the data does not add up to 100% because small stakes do not have to be notified. The German figures are taken from the DAI Factbook 1996. They are neither “group” nor “direct” holdings, hence they were placed in the middle of the two cells.

### Table 10. Own-shareholdings in integrated terms

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<th>Sweden</th>
<th></th>
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<td>Listed Companies and Shareholders with Voting Power &gt; 5%</td>
<td>Listed Companies</td>
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</tr>
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Note: The table reports the distribution of own-shareholdings on the diagonal of the integrated ownership matrix. For Belgium the matrix was constructed for listed companies and shareholders that command more than 5% of the voting rights. The companies in the portfolios of listed companies are not included. If they were the number of companies with own-shareholdings would be higher. For Belgium we assume that the companies have not issued non-voting or dual-class stock.

<table>
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<th>Mean C3 in Top 10 Listed Non-Financial Firms</th>
<th>Mean C3 Voting Block</th>
<th>Min. C3 Voting Block</th>
<th>Max. C3 Voting Block</th>
<th>Std. C3 Voting Block</th>
<th>Percentage of C3 Voting Block less than 50%</th>
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<th>Std. C3 Direct Stakes</th>
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<td>0.985</td>
<td>0.216</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>UK</td>
<td>United Kingdom</td>
<td>0.22</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>0.8804 (stakes)</td>
<td>0.318</td>
<td>0.2323</td>
</tr>
<tr>
<td>US</td>
<td>United States</td>
<td>0.20</td>
<td>0.3226</td>
<td>0.05</td>
<td>0.9999</td>
<td>0.2385</td>
<td>0.8015</td>
<td>-</td>
<td>-</td>
</tr>
</tbody>
</table>

Note: For each company, the 3 largest direct stakes or the 3 largest voting blocks were added resulting in one concentration ratio per company. The summary statistics were computed over these concentration ratios. Ironically, there is no control data for Italy. Because the ownership notification option was implemented it is very hard to disentangle ownership and control data.

### Table 12. Control Statistics by Rank of Voting Block

<table>
<thead>
<tr>
<th>Country Acronym</th>
<th>Full Name</th>
<th>No. of Comp.</th>
<th>Largest Voting Block</th>
<th>2nd Largest Voting Block</th>
<th>3rd Largest Voting Block</th>
<th>4-10th Largest Voting Block</th>
<th>&gt;10th Voting Block</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>Min</td>
<td>Med</td>
<td>Mea</td>
<td>Max</td>
<td>Min</td>
</tr>
<tr>
<td>A</td>
<td>Austria</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>B</td>
<td>Belgium</td>
<td>135</td>
<td>8.5</td>
<td>55.8</td>
<td>56.1</td>
<td>99.8</td>
<td>0.0</td>
</tr>
<tr>
<td>DK</td>
<td>Denmark</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>D</td>
<td>Germany</td>
<td>402</td>
<td>4.9</td>
<td>59.7</td>
<td>63.4</td>
<td>100.0</td>
<td>0.06</td>
</tr>
<tr>
<td>E</td>
<td>Spain</td>
<td>394</td>
<td>38.2</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>F</td>
<td>France</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I</td>
<td>Italy</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>NL</td>
<td>The Netherlands</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>S</td>
<td>Sweden</td>
<td>4.2</td>
<td>30.6</td>
<td>70.4</td>
<td></td>
<td></td>
<td>0.92</td>
</tr>
<tr>
<td>UK</td>
<td>United Kingdom</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>US</td>
<td>United States</td>
<td>6559</td>
<td>0.05</td>
<td>15.1</td>
<td>22.8</td>
<td>99.99</td>
<td>0.001</td>
</tr>
</tbody>
</table>

Note: Becht and Chapelle (1997) for Belgium, Becht and Böhmer (1997) for Germany; Crespi (1997) for Spain; Becht (1997) for the United States.
4 Implications for Future Research

4.1 Ownership, Control and the Separation of Ownership and Control

The quantitative results presented in this paper and in the country papers are not exhaustive. The methods and measures that could be applied have already been discussed or will be discussed in Part B. Our ability to conduct further research on the subject of ownership, control and the separation of ownership and control depends on improved data availability.

The results presented in this summary are a fair representation what material one can obtain and analyse in less than 12 months. The time frame effectively excluded the possibility of collecting data that is available on paper and would have to be transcribed. In our view there are three ways to improve the quantitative results relating to ownership and control:

1. The first limitation to our quantitative analysis that we identified was the problem of obtaining data that should be disclosed (by law or regulation) but is not disclosed or difficult to obtain in practice. There are several potential solutions for obtaining this data and, thereby, improving our statistical results and insights:

1.1 By spending large amounts of money on obtaining paper records and transcribing them, great progress could be made. It would be possible to obtain all paper notifications made in accordance with the Transparency Directive (88/627/EEC) by going through all relevant newspapers, annual reports could be obtained by writing to the companies, company register filings could be obtained by making written requests to the registers (for example for company statutes). However, in practice, it is unrealistic to expect that anyone would be willing to fund University researchers to collect such data.

1.2 Commercial company data providers might be convinced to undertake the necessary data collection. Our findings suggest that this is not a likely solution. Collecting ownership and control data is not profitable. Even if it were, the way similar data is collected by credit rating agencies at the moment suggests that the data would be collected in a way that would make it rather useless for academic researchers.
1.3 The National Statistical Offices, Eurostat, the Central Banks and the European Central Bank to be might put the collection of ownership and control data on their agenda if and when they decide to reform the collection of company data in Europe. This would be an ideal solution, but judging from the failure to create a publicly accessible European company database that contains basic, company level financial data this is an unrealistic scenario.

1.4 The competent authorities have a declared interest in improving transparency and the power to enforce disclosure. Working with the competent authorities to make the disclosure of voting power data more effective and to initiate the disclosure of ownership data (as is already the case in Italy and France) is the most viable alternative. The quality of the statistical results and the effective disclosure for listed companies and groups could be improved rather quickly. Past collaboration between CONSOB, Banca d’Italia and university researchers shows that the markets and academic research can benefit from such initiatives.

2 As we showed in the disclosure survey section, even if we were able to obtain and transcribe all the legally available and disclosed data, huge gaps would remain. These gaps could be filled in two ways:

2.1 Disclosure legislation could be reformed at the level of the Member States and the Union. This would be desirable but would take a long time, if it were undertaken at all.

2.2 One could try to obtain the required data via a confidential questionnaire survey. The advantage of this approach would be its immediacy. The disadvantage would be the cost and the possibility of a low response rate. Also, the survey unit would be the company and one could only obtain information the company itself has and wishes to reveal. As we discussed elsewhere, listed companies do not necessarily know who own the company and who commands the voting blocks at the annual meetings.

To conclude, the quality of future research in this area depends on our ability to obtain more comprehensive and more reliable data. The fastest and most feasible way forward is to intensify the collaboration with the Competent Authorities in the Member States and the responsible Commission Directorates.
4.2 Ownership, Control and Economic Performance

1 Corporate governance data is the starting point for efficiency analysis undertaken by empirical economists. The lack of adequate corporate governance data prevented progress to be made in assessing these questions. The data that has been collected by the European Governance Network during 1996/97 has brought us closer to the point where efficiency analysis can be undertaken.

2 The economic literature that links ownership, control and performance is surveyed in Short (1994) and Hunt (1986). Short’s analysis of 26 performance studies shows that performance has been linked to ownership control and management control – *the* separation of ownership and control associated with Berle and Means. The fact that control can and, in Europe, usually is exerted by voting blockholders that are not identical with the management and hold small cash-flow stakes has not been considered.

2.1 Different types of controlling owner have different objectives. Does the identity of large owners matter? Do companies where the state own a substantial part of the capital stock perform worse than privately owned companies?

2.2 Is company performance affected by the degree of separation of ownership and control? Do companies with a large owners perform better than companies with a large voting blockholder and dispersed ownership?

2.3 Is company performance affected by the method that is used to separate ownership from control? For example, do companies that are controlled through pyramidal structures perform better or worse than companies controlled through voting trusts or proxy voting?

2.4 How does worker involvement matter? Do companies where companies own shares perform better than companies that have co-determination or a work council? Do companies that have some kind of worker involvement perform better or worse than companies without co-determination and/or work council and/or employee ownership?

3 The link between the presence of voting blockholders, different separation devices and board representation did not feature on the 1996/97 Work Programme of the ECGN. This link needs to be explored in future work.
5 First Policy Implications

There are three types of policy recommendations that arise from the findings presented here. The data survey and collection effort was a first assessment of the effectiveness of existing EU Directives, particularly of the Transparency Directive, the Annual Accounts Directives and the 1st and 2nd Company Law Directives. As Part B will show more clearly, we have also identified what additional disclosure rules would be needed to generate the data required to compute quantitative measures of the separation between ownership and voting power and ownership and control. On the last issue, policy implications arise from our finding on the degree of separation of ownership and control (and the control devices used): because the available data is incomplete these results are still very preliminary. We will postpone such recommendations until we have undertaken the sort of performance analysis set out in the previous section.

5.1 The Scope and Effectiveness of Existing EU Directives

This section reviews existing European legislation and initiatives that relate to the disclosure of ownership and control data. The scope and effectiveness of these Directives is evaluated. We conclude that the European legislation does not cover all areas. In the areas that are covered disclosure is not always as effective as it could and should be. Although we do not always state them explicitly, there are clear policy implications.

At the European level, the only EU Directive that imposes common conditions for the disclosure of control data is the Transparency Directive of 12 December 1988 “on the information to be published when a major holding in a listed company is acquired or disposed of (88/627/EEC)”. The annual account and report directives (per company and for groups) provide for some disclosure of portfolio disclosures, but they are insufficient.

For listed companies Council Directive (88/627/EEC) on “the information to be published when a major holding in a listed company is acquired or disposed of” approximates the disclosure of control rights. The Directive is based on the idea that “investors should be informed of major holdings and of changes in those holdings in Community companies the shares of which are officially listed on stock exchanges situated or operating within the Community”. Directive (88/627/EEC) aims at improving “investor protection, to increase investors’ confidence in securities markets
and thus to ensure that securities markets function correctly” and by “making such protection more equivalent, co-ordination of that policy at Community level is likely to make for greater inter-penetration of the Member States’ transferable securities markets and therefore help to establish a true European capital market”. The disclosure of ownership rights is optional and has not been implemented, with the exception of Italy, by the surveyed Member States. The results obtained by the Network show that the practical implementation of the Directive is not satisfactory and that the Directive, at the moment, fails to achieve its objectives.

2 There is some approximation on the disclosure of portfolio holdings in the annual reports of certain companies (4th Company Law Directive 78/660/EEC). The ownership of holdings of at least 20% of a company’s capital must be published. However, the 20% rule is subject to many exceptions and the list of holdings is often far from complete. The sanctions against non-compliance were set by the Member States and non-compliance is of concern. The organisational structure of the portfolio companies and the size of the individual links are not published (only the size of the total participation is listed). Both pieces of information would be needed to compute a possible separation of ownership and control.

3 The disclosure requirements for consolidating groups have been approximated by the 7th Company Law Directive (83/349/EEC) and Directive (86/635/EEC) for banks and Directive (91/674/EEC) for insurance companies. Consolidated accounts and annual reports contain some additional portfolio information, in particular control information, but only indirectly. The main difference between the list of holdings published on the basis of (78/660/EEC) and the list of holdings published in the annex of consolidated accounts is that the former is based on a cash-flow concept, the latter on a control-concept. Hence, it is possible to identify the members of a group based on a control definition but not how control is exerted. Since Member States had many options when defining “control” the consolidation perimeter is not identical in all Member States. Even if we had the necessary ownership and financial data, company by company – so that we could compute the separation of ownership and control between the parent and the perimeter companies – the numbers would not be comparable across Member States. The 7th Company Law and other consolidation
Directives do not provide for the disclosure of the owners and/or those in control of the group parent.

Information on legal devices that separate ownership and control and information on the capital structure of a firm are contained in the company statute (or equivalent documents). The 1st Company Law Directive (68/151/EEC) provides that these documents are available in all Member States from a company register (or equivalent). “A copy of the whole or any part of the documents or particulars referred to in Article 2 [including the statutes] must be obtainable by application in writing at a price not exceeding the administrative cost thereof” (Article 3-3). Most country teams had great difficulties in obtaining a list of registered companies − in many countries such a list does not exist, not even for listed companies − finding out where the company is registered and locating the address of the register. The country teams also found that responses to written inquiries are ignored by the company register and/or the “administrative cost” is very high and/or the request of “any part” is ruled out and the registers insist on providing full copies at the full price. In a few countries some of the information from the company register is available in electronic form, but only at considerable extra cost and/or delayed and/or containing severe transcription errors.

Eurostat does not produce comparable European company micro-data: data where companies can be identified by name, address, registration number and/or VAT number. In some Member States, company data that is public by law and/or data companies disseminate via the internet becomes “confidential” once it is transmitted to the national statistical office and/or Eurostat. One Member State uses a confidential questionnaire to obtain data companies have to deposit at the company register. This applies to all company data including capital stock, ownership and control data. The confusion between household level data, where confidentiality is vital, and public access company data prevents European researchers from

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11 The 4th and the 7th Company Law Directives have been amended by Directives (90/604/EEC) and (90/605/EEC).

12 Article 4 of Directive (68/151/EEC) prescribes that “letters and other forms shall state the following particulars: the register in which the file mentioned in Article 3 is kept, together with the number of the company in that register”. This implies that, in order to find out the name (not address) of the register and the registration number one has to write to the company (that is not obliged to respond). After obtaining the letterheads one has to find out the address of the registers. This is detective work that is impossible to carry out on a limited budget for a representative sample of companies.
investigating questions that are vital for understanding Europe’s unemployment and competitiveness problems.

The only Eurostat database that does contain company level data is the Database of Large European Enterprises (DABLE). DABLE was formerly administered by the Commission’s Directorate for Industry (DGIII). DABLE contains data that is purchased from private company information providers (who might have obtained it from the government gazette, the national company register and/or annual reports). It does not contain reliable ownership or control data. **Eurostat is forced to purchase company data from private data producers because some Member States refuse to transmit company data intended for inclusion in a European company level database.**

The separation of ownership and control that is introduced by the acquisition of own-shares is addressed by Council Directive (92/101/EEC) and the 2nd Company Law Directive (77/91/EEC).\(^\text{13}\) **The Directives do not include disclosure provisions, neither for ownership, nor for control.**\(^\text{14}\) Since other disclosure provisions on ownership and control data are lacking at the European level (see above), **it is often impossible to apply computational methods that would allow third parties** (like financial analysts or fund managers) **to confirm the true position of the company’s holdings of own-shares.** One country team found that 4 listed firms (out of 142) exceed the 10% threshold, by quite a margin, and that this fact was not declared in the annual reports. Since the data used to perform the computations is not entirely reliable, the country teams has refrained from disclosing the identity of the affected companies.\(^\text{15}\)

For non-listed companies, disclosure rules have not been approximated. They range from the near absence of such rules in Belgium to very tight anti-Mafia rules in Italy.

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\(^\text{13}\) The Directives seek to “maintain the subscribed capital [of public limited companies] and ensure equal treatment of shareholders” and extend “not only to acquisitions made by a company itself but also by those made by any person acting in his own name but on the company’s behalf.”

\(^\text{14}\) Directive (78/660/EEC), Article 46(2-D) prescribes that information on the acquisitions of own shares must be contained in the annual reports of companies falling under the Directive. However, the annual report does not include enough information to compute the figure that might be provided.

\(^\text{15}\) The computations were performed assuming that the relevant groups comply with “one-share-one-vote”. If any one of them had issued non-voting stock it does not own, the cross-ownership stakes might be lower and the company might comply with the 10% threshold. Also, Directive (92/101/EEC) contains several transitory provisions that might make these own-shareholdings “legal” under the Directive.
Even when legal rules are in place at the level of the Member States, it is often impossible to obtain any ownership and control data in practice. In the light of the legal and practical disclosure arrangements, the quantitative results obtained by the Network are least incomplete for the concentration of major holdings of voting blocks in listed companies.

5.2 General Policy Implications

1 When the concentration of ownership and/or control is very high, disclosure is important. Small investors should be informed about what the large blockholders are doing with their money. Controlling blockholders control large amounts of “other people’s money” with very little of their own money. In his famous attack on the Money Trusts in the United States, Louis Brandeis observed that: “Publicity is justly commended as a remedy for the social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman” (Louis D. Brandeis, Other People’s Money, 1914). When small shareholders are uninformed about the standing of their company, they have no information that would allow them to formulate a complaint. When small shareholders are in the dark about who controls their company, they do not know what they should complain about and to whom. When the regulators are in the dark, they do not know when to act. The best argument for increased disclosure is that there are no good arguments against disclosure. Why should companies want to hide essential information from their existing and potential shareholders?

2 Disclosure of “information to be published when a major holding in a listed company is acquired or disposed of” (88/627/EEC) can only be enforced by the regulator. The stock exchanges (through their listing requirements) and the companies themselves cannot force the holder of bearer shares to make such declarations. The difficulties the country teams of the European Corporate Governance Network experienced in obtaining ownership data for listed companies and the huge differences that were found between Member States suggest that the Transparency Directive is not very effective.

3 Article 54(2)(g) of the Treaty of European Union obliges Council and the Commission to co-ordinate “to the necessary extent the safeguards which, for the
protection of the interests of members and other, are required by Member States of
governments or firms ... with a view of making such safeguards equivalent throughout
the Community”. If access to informative ownership and control data for all
governments registered in the European Union is considered to be “in the interests of
members of the companies and other”, and other is not defined too narrowly, the
findings of the European Corporate Governance Network raise doubts that Art.
54(2)(g) is enforced in practice.

4 The interests of pension funds are very similar to those of small shareholders.
Pension funds with a proper corporate governance are also likely to push management to do “what is best” in the long run. Since large pension funds represent the interests of many individuals they are good candidates for taking over a private representation role. Pension fund regulation is very important in ensuring that pension funds do play this beneficial role. As expected, we have found that pension funds are not amongst the important controlling blockholders in the European Union.

5 “On-share” tax-havens inside the Union, that attract companies at the expense of other Member States, often do so through a combination of low tax rates and “confidentiality assurance”. Common tax standards and high disclosure standards might be better for the Union as a whole, but low-tax rates and no-disclosure are individually preferable for some groups, Member States or regions. As a result, at the moment, there are Union wide tax-incentives for obscurity, not for high disclosure standards. Improving Union wide disclosure standards is closely linked to closing tax-loopholes inside the Single Market. “On-shore” centres with few disclosure rules that border on the Union, like Liechtenstein, also play an important role in preserving obscurity.

6 There are numerous reasons why disclosure should be mandatory. Even Chicago liberal’s like Easterbrook and Fischel acknowledge that “third-party effects” provide a rationale for mandatory disclosure. Coffee (1984) provides further justifications. In particular, he argues that self-regulated disclosure would not work, even if there were no third-party effects, when the interests of owners and those in control are not perfectly aligned. We have demonstrated that there is ample reason to believe that this is the case in Europe.
At the moment, access to company information for a Spanish investor investing in a German company is not the same as those of a German investor investing in a German company — and vice-versa. This is an obstacle to the creation of a truly integrated European stock market. Although a lot of progress has been made in legal terms, too many practical obstacles to equal access to such information remain. Some degree of European-wide availability of ownership and control information for all investors would help. In the United States, electronic filings on standardised forms are becoming compulsory. These are made in English and understood by analysts around the globe.

The market for company information is not delivering cheap and timely access to very basic and general company information, including information on the composition of equity capital, contained in the company statutes. The country teams of the European Corporate Governance Network found that there are enormous differences in the availability and quality of commercial company information, especially of ownership information. With few exceptions, the information commercial data producers collect is often incomplete, out-of-date, unreliable and/or very expensive. An extreme example is the legally transparent Italy, where Cerved S.p.A have a monopoly in providing access to company register information. Apparent market failures in the market for private information disclosure and dissemination is yet another justification for mandatory disclosure via easily accessible electronic media. In the United States, there is an active market for value added products based on the SECs public access, mandatory disclosure EDGAR database.

Given the high degrees of concentration of ownership and/or control in continental Europe, the legal protection of minority shareholders — who cannot protect themselves — is paramount. The same degree of protection must be enjoyed by all European investors, no matter where they reside. The creation of pan-European institutions who protect minority shareholders’ rights is a solution that promises effective protection. Again, pan-European pension funds would be amongst the strongest contenders for playing this role.

Ownership and control is an important aspect of product labelling. This is particularly true for media contents producers, but not exclusively. Using the new tools put at
their disposition by the information society European citizens should be able to look up, free of charge, who controls and owns the newspapers and the television channels they read or watch.

11 The Italian country survey shows that the ownership declaration rules for Italian companies are the most transparent in continental Europe. The Italian Parliament passed the appropriate laws in order to prevent organised crime from secretly taking control of large parts of the Italian company sector. The law has helped to reduce the potential influence of organised crime over business, that is no longer just an Italian concern. In a Single Market with the freedom to establish and the free circulation of goods, capital and services the Italian concerns are European problems.

12 Money laundering is an international concern and has been addressed through the creation of organisations like the Financial Action Task Force (FATF) at the OECD. FATF has published 40 recommendations on the prevention of money laundering that stress the reporting of suspect transactions recorded by banks, but also by non-financial institutions (http://www.ustreas.gov/treasury/bureaus/fincen/40rec.pdf). Many suspected offshore money laundering centres are the overseas dependencies of Member States. These centres feature quite prominently as the geographic origin of several large blockholders in the statistical survey.

13 At the European level, but also at the level of the Member States, there are many overlapping rules on the publication of ownership, control and portfolio data lead to duplication on the one hand and huge gaps on the other. A review of the various regulations, their simplification and co-ordination at the European level might be necessary. Such an initiative should fit with the European Commission’s effort to develop “New Methods to Simplify Single Market Legislation” (SLIM, http://europa.eu.int/comm/dg15/en/index.htm).

14 Only the regulator can ensure that European disclosure standards are respected internationally as well as at home. For example, European companies depend on control notifications in accordance with (88/627/EEC) for their SEC Form 20-F filings. If the European standards are not considered adequate, the SEC will impose its own standards or international investors will required a disclosure uncertainty premium from European companies. For control declarations, European companies
cannot comply with the SEC standards by themselves since they cannot force their shareholder to make the necessary notifications.
Part B : Data and Methods

1 Introduction

This section discusses how ownership, control and the separation of ownership and control can be measured in practice. The definition of quantitative measures, data requirements and data availability are covered.

The ownership sub-section presents a number of concentration measures that can be found in the literature. These measures apply to “flat” ownership structures. The presence of hierarchical groups poses special measurement problems. These issues are discussed with the help of examples and references to the relevant literature.

“Control” is defined and the definitions that can be found in European Law are surveyed. Command over voting rights is the most important control device. Summary statistics for voting rights are very similar to summary statistics for ownership. Again, the presence of hierarchical groups poses special measurement problems. Disclosure rules for control data vary greatly between Member States. As was discussed before, the only EU Directive that imposes common conditions for the disclosure of control data is the Transparency Directive of 12 December 1988 “on the information to be published when a major holding in a listed company is acquired or disposed of (88/627/EEC)”. Hence, this section focuses on listed companies and the control data generated by the Transparency Directive. It is the only source of comparable control data that could be obtained and analysed by the country teams.

Three measures of the separation of ownership and control are defined and 24 devices that can be used to separate ownership from control in Europe are presented. We show that the information required to compute these separation measure is not available in the countries that were surveyed (with the possible exception of Italy and Sweden).

In general, there are three sources of ownership and control information:

1. **Shareholder and controlling blockholder declarations** of control and/or cash-flow rights (usually triggered by a control criterion). The company has no influence over the timing and accuracy of these notifications. It must rely on government and/or stock market regulation for obtaining this information. Even when the company is notified, it might not have to notify the general public;
2. **Portfolio declarations by individual companies** in their annual reports (publication of cash-flow rights information triggered by a cash-flow criterion, holdings smaller than 20% usually do not have to be reported and only parts of the cash-flow perimeter are covered);

3. **Portfolio declarations by consolidating groups** in their annual report (publication of cash-flow rights information triggered by a control criterion that defines the perimeter of the “consolidating group”);

Unfortunately the implementation of these three measures is lacking in all Member States. The details are reviewed in the next section. Each sub-section identifies the information and/or accessibility gaps in these three data sources for each Member State in the ownership and control dimension.

## 2 Ownership Data

This section discusses the ownership of cash-flow rights. The ownership of control rights is discussed in the next section (“control”). There are two types of ownership data for cash-flow rights: direct ownership and integrated ownership. Direct ownership statistics for cash-flow rights (concentration ratios, summary statistics over the largest stakes) are the standard in the literature; for example Prowse (1992) for Japan, Demsetz and Lehn (1985) for the United States, Iber (1985) and Franks and Mayer (1995) for Germany, Leech and Leahy (1991) for the U.K. and Barca *et. al.* (1994) for Italy.

When group structures and cross-ownership are important, direct ownership measures overestimate the ownership concentration due to double counting. There is a large literature on this phenomenon for Japan that has also demonstrated that standard statistics, like gross-market capitalisation and stock market payout statistics, are biased through double counting (double gearing); see Brioschi, Buzzacchi, Colombo (1989, 91), Brioschi and Paleari (1995, 1996), Hoshi and Ito (1991), Flath (1989, 92a,b), French and Poterba (1991) and McDonald (1989).
2.1 Direct Ownership

Consider the simple case of a company that has issued 75,000,000 shares of voting stock and 25,000,000 shares of non-voting stock. Otherwise the two types of stock are identical (Figure 1). Company A has three direct shareholders X, Y and Z who own 20,000,000 shares and twice 40,000,000 shares respectively. How many of these shares are voting and non-voting is not relevant for ownership because the cash-flow rights of the two types of shares are the same. From the control perspective (discussed in the control section) this would matter because Y or Z might own the majority of the voting stock (37,500,001 shares) and control the company.

**Figure 1. Simple Direct Ownership Structure**

<table>
<thead>
<tr>
<th></th>
<th>X</th>
<th>Y</th>
<th>Z</th>
</tr>
</thead>
<tbody>
<tr>
<td>Share</td>
<td>20%</td>
<td>40%</td>
<td>40%</td>
</tr>
<tr>
<td>Voting Stock</td>
<td>75,000,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Non-Voting Stock</td>
<td>25,000,000</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Note: The voting and non-voting stock of company A is identical apart from the difference in voting rights. X, Y and Z are three individuals. The percentages represent shares in total capital.

With an ownership structure like the one depicted in Figure 1, descriptive ownership statistics are easily constructed. For example, for each company one can compute the statistics defined in Table 1.
TABLE 13. DEFINITION OF DIRECT OWNERSHIP STATISTICS

<table>
<thead>
<tr>
<th>Statistic</th>
<th>Definition</th>
<th>Value from Figure 1</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Concentration Ratios</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>$C_1$</td>
<td>size of the maximum stake (by rank, see below)</td>
<td>40%</td>
</tr>
<tr>
<td>$C_3$</td>
<td>sum of the 3 largest stakes (by rank, see below)</td>
<td>20%+40%+40% = 90%</td>
</tr>
<tr>
<td>$C_n$</td>
<td>sum of n largest stakes</td>
<td></td>
</tr>
<tr>
<td><strong>Herfindahl Index</strong></td>
<td>The sum of the square of the individual stakes</td>
<td>$(0.2)^2+(0.4)^2+(0.4)^2 = 0.36$</td>
</tr>
<tr>
<td><strong>Statistics by Rank of Stakes</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Largest Stake</strong></td>
<td>stake with rank $&gt; 2$ (for ties: average rank)</td>
<td>40% (rank 1.5)</td>
</tr>
<tr>
<td><strong>2nd Largest Stake</strong></td>
<td>stake with rank $\leq 2$ and rank $&gt; 3$</td>
<td>none</td>
</tr>
<tr>
<td><strong>3rd Largest Stake</strong></td>
<td>stake with rank $\leq 3$ and rank $&gt; 4$</td>
<td>20% (rank 3)</td>
</tr>
<tr>
<td><strong>Descriptive Statistics</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Minimum</strong></td>
<td>minimum</td>
<td>20%</td>
</tr>
<tr>
<td><strong>Maximum</strong></td>
<td>maximum stake (ties are not taken into account)</td>
<td>40%</td>
</tr>
<tr>
<td><strong>Mean</strong></td>
<td>mean</td>
<td>33.33%</td>
</tr>
<tr>
<td><strong>Median</strong></td>
<td>median</td>
<td>40%</td>
</tr>
<tr>
<td><strong>Interquartile Range</strong></td>
<td>distance between 25th and 75th percentile</td>
<td>20%</td>
</tr>
<tr>
<td><strong>Percentiles</strong></td>
<td>standard definition</td>
<td></td>
</tr>
</tbody>
</table>

For most countries, we were unable to construct such simple statistics because the data is either not published or not available. Table 4 and Table 5 summarise the availability and accessibility of direct ownership data in the EU Member States covered by the European Corporate Governance Network. Companies with nominative ownership certificates (partnerships and limited liability companies) know the identity of their owners. For the ownership claim to be valid it must be registered; either with the company itself or with the company register (or equivalent). The same is true for corporations that have issued nominative shares. Corporations that have issued bearer shares, especially listed corporations, do not necessarily know the identify of their direct shareholders.

Even when the company itself knows the identify of its direct shareholders, it might not be required to disclose this information. For example, in Belgium and France all companies that issue nominative parts keep an ownership register at the company headquarters. However, access to the register is limited to “interested parties” (Becht and Chapelle, 1997; Bloch and Kremp, 1997). The term “interested party” is interpreted very narrowly. In Germany the list of owners of a **GmbH** must be deposited at the company register every year. In practice
access to the company registers is very difficult (there are approximately 720 registers) and expensive (photocopies cost 1DM a page; see Becht and Böhmer, 1997). The Austrian situation is very similar (see Gugler, Kalss, Stomper and Zechner 1997). In Italy direct ownership information must be published in the annual reports (Bianchi, Bianco and Enriques 1997).

Companies and/or shareholders might be required to transmit direct ownership information to the stock market supervision authority, the banking supervision authority the insurance company supervision authority and/or the competition authorities (including the Merger Task Force of the European Commission, DGIV). Table 5 shows that, in most cases, this information is not available to the general public and if it is access is difficult because the records are kept on paper.
2.2 Integrated Ownership

2.2.1 Concept and Interpretation

For group structures it is not as easy to compute the ownership stake an ultimate shareholder holds in each company of the group. What percentage of the cash flow rights does an investor own when he or she invests in a pyramidal group? One way of answering this question is to apply input-output analysis to the problem. This technique has been used extensively to calculate net cash-flow right of outside investors in Japanese and Italian business groups, for example by Brioschi, Buzzacchi and Colombo (1989, 91), Brioschi and Paleari (1995, 1996), Hoshi and Ito (1991), Flath (1989, 92a,b) and McDonald (1989).

The integrated ownership share in a company that belongs to a business group is “defined by the sum of direct and indirect ownership shares of an outside stockholder in all the firms of the group” (Brioschi, Buzzacchi and Colombo 1989, page 752). Indeed, integrated ownership is more that the sum of direct and indirect stakes because it represents the claim of an outside shareholder the assets of the firm “when all double counting due to share interlocks have been netted out” (Baldone, Brioschi and Paleari 1996). The integrated ownership concept applies to all types of business groups: 

- **hierarchical groups** where the outside stockholder exerts control over the whole group
- **associative groups**, where independent firms are linked through cross-shareholdings but where control is not centralised (Baldone, Brioschi and Paleari 1996).

We illustrate how integrated ownership can be computed using a Belgian example. The data is taken from a notification that was made in compliance with the Belgian transposition of the Transparency Directive (88/627/EEC). We assume that none of the companies in the example have issued non-voting or dual class stock, so that the ownership of voting rights is equal to the ownership of cash-flow rights.

Figure 2 is a facsimile of the published ownership structure of the Belgian Cobepa Holding (that is listed on the Brussels Stock Exchange) that is controlled by the French Cie Financière Paribas. We assume that the percentages, that represent the fraction of total voting rights, also represent the shares in total capital. The information in the chart is entered into a Leontief input-output matrix, where the rows represent portfolio holdings and the columns direct ownership stakes. Using a standard matrix language package like S, SAS-IML, Gauss
or Matlab and applying formula (7) in Baldone, Brioschi and Paleari (1997) the computation of the integrated ownership stakes is rather straightforward.

Table 15 reports the direct ownership stakes of Paribas and intermediate companies in Cobepa SA as well as the corresponding integrated ownership stakes. Note that the integrated ownership stakes do not sum up to 100% because they are the net-ownership at each level of the hierarchical group. Cie Paribas owns 18.55% of Cobepa SA directly, but 64.50% when integrating all indirect holdings, including cross-shareholdings and loops. Indeed, through such loops, Cobepa SA owns 6.5% of its own cash-flow rights. Hence this methodology could be used to check for compliance with the 2nd Company Law Directive (77/91/EEC) and (92/101/EEC) with respect to own-shareholdings – if all the required data were available. Paribas International has no direct stake in Cobepa, but its integrated ownership stake is 18.94%.
**Figure 2. Ownership Structure of the Belgian Cobepa Holding**

Note: Transparency declaration filed by Cobepa S.A. published 07/19/94.

**Table 14. Participation Matrix for Paribas-Cobepa Group**

<table>
<thead>
<tr>
<th></th>
<th>Cie Finan. Paribas (Fr)</th>
<th>S.G.C.F. (Fr)</th>
<th>Paribas Europe (Fr)</th>
<th>Banque Paribas (Fr)</th>
<th>Paribas International (Fr)</th>
<th>Paribas Participations (Fr)</th>
<th>Finan. Paribas Suisse (Fr)</th>
<th>Banque Paribas Suisse (Ch)</th>
<th>SAGIP (Be)</th>
<th>Prominco (Ch)</th>
<th>Cobepa (Be)</th>
<th>Vobis (Be)</th>
<th>Sodin (Be)</th>
<th>Fidepa (Be)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cie Finan. Paribas (Fr)</td>
<td>0.0000</td>
<td>1.0000</td>
<td>1.0000</td>
<td>0.6910</td>
<td>0.1855</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
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<td></td>
<td></td>
</tr>
<tr>
<td>S.G.C.F. (Fr)</td>
<td>0.0000</td>
<td></td>
<td>0.0090</td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
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<td>Paribas Europe (Fr)</td>
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<td></td>
<td>0.3000</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Banque Paribas (Fr)</td>
<td>0.0000</td>
<td></td>
<td>1.0000</td>
<td>0.4113</td>
<td></td>
<td></td>
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<tr>
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<td>1.0000</td>
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</tr>
<tr>
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<td></td>
<td>0.4113</td>
<td>0.3935</td>
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</tr>
<tr>
<td>Finan. Paribas Suisse (Fr)</td>
<td>0.0000</td>
<td></td>
<td>0.5996</td>
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<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Banque Paribas Suisse (Ch)</td>
<td>0.0000</td>
<td></td>
<td>2.5000</td>
<td>1.0000</td>
<td></td>
<td></td>
<td></td>
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<td></td>
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</tr>
<tr>
<td>SAGIP (Be)</td>
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<td></td>
<td>0.1096</td>
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<td></td>
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</tr>
<tr>
<td>Prominco (Ch)</td>
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<td></td>
<td>0.0995</td>
<td></td>
<td></td>
<td></td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cobepa (Be)</td>
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<td></td>
<td>0.5000</td>
<td>1.0000</td>
<td>0.5000</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vobis (Be)</td>
<td>0.0000</td>
<td></td>
<td>0.0000</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Sodin (Be)</td>
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<td>0.0640</td>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td>Fidepa (Be)</td>
<td>0.0000</td>
<td></td>
<td>0.0026</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Note: The cells of the matrix were filled using the information in Figure 2. It was assumed that none of the companies in the matrix have issued non-voting or dual-class stock. The rows represent direct portfolio holdings, the columns contain direct ownership stakes.
Table 15. Ownership of the Belgian Cobepa Holding by “upstairs” Paribas Group Companies

<table>
<thead>
<tr>
<th>Company</th>
<th>Direct Ownership %</th>
<th>Net Cash-Flow Rights (Integrated Ownership) %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cie Finan. Paribas (Fr)</td>
<td>18.55</td>
<td>64.50</td>
</tr>
<tr>
<td>S.G.C.F. (Fr)</td>
<td>20.80</td>
<td>22.46</td>
</tr>
<tr>
<td>Paribas Europe (Fr)</td>
<td>0.00</td>
<td>6.71</td>
</tr>
<tr>
<td>Banque Paribas (Fr)</td>
<td>0.09</td>
<td>22.38</td>
</tr>
<tr>
<td>Paribas International (Fr)</td>
<td>0.00</td>
<td>18.94</td>
</tr>
<tr>
<td>Paribas Participations (Ni)</td>
<td>0.00</td>
<td>8.69</td>
</tr>
<tr>
<td>Finan. Paribas Suisse (Ni)</td>
<td>0.00</td>
<td>8.14</td>
</tr>
<tr>
<td>Banque Paribas Suisse (Ch)</td>
<td>0.00</td>
<td>13.58</td>
</tr>
<tr>
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<td>10.96</td>
<td>11.73</td>
</tr>
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<td>10.65</td>
</tr>
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<td>0.00</td>
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<tr>
<td>Vobis (Be)</td>
<td>0.08</td>
<td>0.09</td>
</tr>
<tr>
<td>Sodin (Be)</td>
<td>6.40</td>
<td>6.41</td>
</tr>
<tr>
<td>Fidepa (Be)</td>
<td>0.26</td>
<td>0.28</td>
</tr>
<tr>
<td>Sum</td>
<td>67.09</td>
<td>does not apply (double counting)</td>
</tr>
</tbody>
</table>

Note: The “loops” that are visible in the organigramme are taken into account when computing integrated ownership. Summing integrated ownership over all companies is not valid since it is integrated at each level of the hierarchical group.

Ownership statistics like those presented in the previous section can also be constructed. However, instead of considering the first level owners (non-zero entries in Column 2 of Table 15), we now consider the integrated cash-flow rights of the ultimate owner. Ultimate owners are physical or moral persons that do not have any shareholders. In the example, there is only one ultimate shareholder – Cie Paribas. The concentration statistics change substantially. For Cobepa the C1 statistic is 20.8% for direct ownership, but 64.5% for integrated ownership (lower than the sum of all direct stakes, which is 67.09%, because Cobepa owns own-shares).

In practice, ultimate owners are physical or legal persons that have no known shareholders. In the case of Cobepa SA, the ultimate known owner is Cie Paribas – but not the ultimate owner, since we know that Paribas itself has shareholders. If we knew all the individuals (including the state) who ultimately own Paribas, the maximum integrated ownership stake might be much lower than 64.5%.

We make two observations with respect to integrated ownership. For countries in which group structures are important:
1. Direct ownership statistics overestimate the concentration of cash-flow when there are cross-shareholdings because of double counting (double gearing);

2. Direct ownership statistics can underestimate the concentration of cash-flow when the individual stakes that belong to the same ultimate shareholder are not added (for example, the 5 largest direct stakes ultimately belong to the same individual but for a C3 measure only the largest 3 are added);

3. Integrated ownership statistics can overestimate the concentration of cash-flow rights when the ultimate owners are not known and the ownership chain cannot be traced beyond, for example, a holding company;

This implies that the precision of ownership concentration statistics in continental Europe depends on the accuracy with which we can identify group structures (cash-flow links under 5%, 10% or 20% might be truncated) and the ultimate owners – the size of concentration statistics and the degree of disclosure are correlated.

The concentration of the ownership of cash-flow rights ultimately depends on the distribution of wealth. Countries with a large number of billionaires (few individuals that own a large proportion of a country’s wealth) and/or significant state ownership should have a larger ownership concentration than countries with a flat wealth distribution and/or little state ownership. This observation is at odds with the stylised facts on ownership concentrations and the distribution of wealth in different countries.

The concentration of corporate ownership is said to be very high in Europe and very low in the United States. On the other hand, the distribution of wealth is estimated to be more highly skewed in the United States. According to some recent estimates, the United States is the country with the largest number of billionaires in the world, where the 1% richest individuals are estimated to own (or have owned) up to 40% of the country’s wealth (De Long and Goldin, http://econ161.berkeley.edu/Projects/Billionaires.html). We have argued that the failure to trace ultimate owners and double counting are likely to bias ownership concentration statistics in Europe upwards. Are we underestimating the ownership concentration in the United States or do American billionaires abstain from equity investment? Have American billionaires diversified globally or do they own non-listed U.S. companies that are rarely studied? We find this question puzzling and hope that future cross-
Atlantic research of the European Corporate Governance Network will shed further light on these questions.

### 2.2.2 Integrated Ownership in the Portfolio Dimension

The previous sub-section discussed integrated ownership from the perspective of a company at, or close to, the bottom of a business group (Cobepa SA in the previous example). Another way of analysing integrated ownership, that fits more naturally with the cash-flow perspective, is to take a portfolio view (Paribas in the previous example).

In terms of integrated ownership stakes (integrated percentage of total capital owned) the analysis is exactly the same. However, from the portfolio point of view one might want to weight the different ownership stakes in terms of their value. How much of the book value of a business group is owned by individuals, the state, bank or insurance companies? When an investor purchases Ecu 100 of capital (at book or market value), how much capital does he/she acquire of each group company? These questions cannot be answered by computing integrated ownership stakes as a percentage of total capital.

To illustrate the weighted portfolio approach, we draw on the published example of the Italian Mediobanca Group, analysed in Brioschi, Paleari, Santi, Bertacchi and Faieta (1995).\(^\text{16}\) Mediobanca plays a very important role in the Italian financial system. Itself a listed company, in 1993 it had (known) cash-flow links with 53 other listed companies and 3 non-listed companies. Many of these links are indirect and/or reciprocal. The Mediobanca example is well suited to illustrate how the value of integrated ownership stakes of a particular blockholder – here Mediobanca – can be computed. The next section will extend the example to include the control over the portfolio companies exerted by Mediobanca (not all of them are “controlled”) and a final section will put together all results to obtain quantitative measures of the separation of ownership an control.

\(^{16}\) As we shall document in the next section, it is very time consuming (often impossible) to obtain the data that is required to perform a weighted portfolio analysis. Since Italian listed companies have to make detailed portfolio declarations, the data availability is much more conducive to this type of analysis than in other countries.
<table>
<thead>
<tr>
<th>Name</th>
<th>Listed</th>
<th>Direct</th>
<th>Integrat.</th>
<th>B1</th>
<th>B2</th>
<th>M1</th>
<th>M2</th>
<th>M3</th>
<th>M4</th>
<th>Name</th>
<th>Listed</th>
<th>Direct</th>
<th>Integrat.</th>
<th>B1</th>
<th>B2</th>
<th>M1</th>
<th>M2</th>
<th>M3</th>
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<td>2379</td>
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<td>20845</td>
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Table 16. Direct and Integrated Ownership Stakes and Book and Market Value of Mediobanca Portfolio
Notes: The first subscript is always 1 and refers to Mediobanca; the second subscript j refers to company j in the portfolio; $y_{1j}$ is the integrated ownership stake company 1 holds in itself. B1 - net assets at book value of portfolio company j; B2 - book value of Mediobanca stake; M1 - market capitalisation (gross assets at market value); M2 - value of direct stake held by Mediobanca; M3 - market value of net-assets (netting out double-gearing); M4 - integrated value of Mediobanca at market value (value of Mediobanca’s integrated stake at market value)
The 3rd and 4th column of Table 16 report the direct and integrated ownership (cash-flow) stakes of Mediobanca in the 56 portfolio companies. Columns B1 & B2 report net-assets of the portfolio companies and the Mediobanca stake at book values. Columns M1-M4 report the market capitalisation (gross assets at market value), the market value value of the direct Mediobanca stake, the market value of net-assets (netting out double-gearing) and the integrated value of the Mediobanca stake.

The direct stakes and integrated stakes are taken from the input-output matrices that were illustrated in the Cobepa example (but from the point of view of Paribas, here Mediobanca). The additional ingredient used in the portfolio analysis is $\omega$, total assets net of equity holdings and credit extended to the affiliated companies. Net-total assets can be valued at book or market value. The valuation at book value is possible for all companies that prepare accounts, the valuation at market value is only possible for listed companies or by estimating the market value of the assets. Net-assets ($\omega$), can be negative when the stakes held by affiliated companies in the holding company are larger than the stakes held by the company and/or when the acquisition of the equity holdings were debt financed.

2.2.3 Data Requirements and Availability

The data requirements for computing integrated ownership are much higher than those for computing direct ownership. When ownership structures are not “flat” most direct shareholders of companies (below the top of an hierarchical group) are companies. To compute integrated ownership the direct ownership structure of all companies in the hierarchical group must be known. This is hardly ever the case.

1. In each country there are several legal forms that do not have to disclose their ownership structure. For example, in Germany the Kapitalanlagegesellschaften (legal form: AG), a special type of investment company, are explicitly exempted from ownership disclosure (also control information, even when they hold major stakes in listed companies). It is impossible to accurately compute integrated ownership for German groups that include such companies.

2. Ownership declarations are often triggered by a control criterion. Important cash-flow links that do not correspond to a control link might not be revealed (compare the next section on the separation of ownership and control). Furthermore, like in the Cobepa example above, most of the published information contains voting rights not cash-
flow rights. Unless all companies in the group comply with “one-share-one-vote” it is not legitimate to perform a cash-flow calculation based on the ownership of voting rights. Finally, the ownership of voting rights is usually not declared. For example, from the transposition of the Transparency Directive (88/627/EEC) for many Member States we only know the voting rights an agent commands at the annual general meeting of the company, not the number of voting rights the agent owns. Hence, even when companies comply with “one-share-one-vote” we are unable to compute integrated ownership (even of voting stock) using such data.

3. Individual companies publish their portfolio holdings in the annual report. In accordance with the Annual Accounts Directive (78/660/EEC), most Member States have imposed a 20% threshold (the maximum allowed by Article 17 in 78/660/EEC). The data generated by this Directive is insufficient for computing integrated ownership. A threshold of 20% is far too high and is easily circumvented. Furthermore, having data “from the top to the bottom” of a hierarchical group poses the problem that those at the bottom find it difficult to identify the top.

4. Consolidated groups in the Consolidated Accounts and Reports Directive (83/349/EEC) are defined on the basis of a control definition. In cases where the group head controls companies without holding substantial cash flow rights it is not possible to find out who owns the remaining cash-flow rights (unless they are large enough to be attributed to another company according to 78/660/EEC) or another “cash-flow based” regulation. Hence, in such cases, it is not possible to compute integrated ownership.

5. Cross-border groups are hard to analyse for those who do not reside in the country of the group parent. When the company that makes a portfolio declaration is located in one Member State (or outside the Union), and the portfolio companies in other Member States, difficulties arise. Someone analysing the portfolio company will find it hard to find out who the parent (in control or cash-flow terms) is. Also, since data access is so difficult, it will be very hard for such a person or institution to obtain the portfolio declaration of the parent.

6. The balance sheet information that is required to perform integrated ownership calculations in terms of book value (or market value) – which is the basis for a weighted measure of the separation of ownership and control – is difficult to obtain.
The annual reports of the parent company do not contain the required information. To compute $\omega$ (net-assets in terms of book value, see above) the annual report of each portfolio company must be obtained. Even then the annual reports might not contain all the required information (for example because they publish abridged accounts).

To conclude, the provisions of the Accounting Directives pertaining to business groups were not designed to compute integrated ownership. This is surprising since integrated ownership should be of vital interest to investors who purchase shares of a consolidated group. Our difficulties (inability) in computing integrated ownership from the portfolio perspective are not merely an academic concern.

The ownership of business groups is usually not disclosed. It appears that there are no Commission proposals for improving this situation. This is another obstacle on the way to an integrated European capital market that provides rational price signals instead of being driven by uninformed herd-instincts.

It would be advisable to modify the Consolidated Accounts Directives and the Transparency Directive. In both bodies of legislation cash-flow “triggers” should be introduced and the two pieces of legislation should be co-ordinated, at least for groups that include at least one listed company. Since the ownership of cash-flow rights is much easier to define (in legal terms) than “control”, as we shall further demonstrate in the next section, implementation and enforcement would be much easier and transparency would be greatly enhanced.
3 Control Data

“Control” is hard to define and even harder to measure in practice. Berle and Means (1932, pg. 66) observed that: “Control divorced from ownership is not, ... a familiar concept. It is a characteristic product of the corporate system. Like sovereignty, its counterpart in the political field, it is an elusive concept, for power can rarely be sharply segregated or clearly defined.”

Berle and Means (1932, pg. 66) provided a practical definition of control: “Since direction over the activities of a corporation is exercised through the board of directors, we may say for practical purposes that control lies in the hands of the individual or group who have the actual power to select the board of directors (or its majority), either by mobilising the legal right to choose them – controlling a majority of the votes directly or through some legal device – or by exerting pressure which influences their choice. Occasionally a measure of control is exercised not through the selection of directors, but through dictation to the management, as where a bank determines the policy of a corporation seriously indebted to it. In most cases, however, if one can determine who does actually have the power to select the directors, one has located the group of individuals who for practical purposes may be regarded as ‘the control’.”

What is the relationship between monitoring and control (as defined by Berle and Means)? Monitoring “ought to be understood in a broad sense as any form of collecting information about the firm, its investment prospects and its behaviour” (Hellwig 1991, page 46). Why should anybody perform such a function? Hellwig (1991, page 49) argues that “monitoring” as a form of collecting information about the firm is useful only because the information that is collected has consequences for the behaviour and resource allocation within the relationship”. He argues that monitoring rarely occurs without influencing business decision, Berle and Means criterion for locating “the control”. In practice, drawing the line between monitoring, voting power and control is difficult.

For example, Daimler Benz in their Form 20-F for the fiscal year ending 31 December 1994 (filed on 12 April 1995) declared that “the company been informed in March 1995 that Deutsche Bank AG and the Emirate of Kuwait had shareholdings of approximately 24.4% and 13%, respectively, of the outstanding Ordinary Shares. .. The company believes, and it
has been advised by Deutsche Bank AG that it believes, that Deutsche Bank AG does not control the business or affairs of the Company” (Daimler Benz 1994, page 42). Deutsche Bank AG had, however, placed the head of its management board as head of the supervisory board of Daimler Benz AG (and another supervisory board member). Hence, Deutsche Bank AG was in the position to perform direct monitoring.

The example shows that it is difficult to distinguish between monitoring (supervisory board members have the legal duty to collect information), the ability to exert minority control (the supervisory board appoints the management) and the incentives for monitoring (does Deutsche Bank AG extract private benefits?) with clarity and precision. Hellwig (1991) raises the possibility that Daimler Benz AG wants to learn more about “other firms and industries” the Deutsche Bank AG representatives, not so much the other way round (opus cit., page 50).

Table 16 provides a list of control definitions found in European Law. In the case of EU Directives, Member States have transposed these definitions. Some Member States, like Italy (see Italian country paper) also have their own definitions of “control”.

82
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1 - The directive has to define who must prepare consolidated accounts and which companies must be included. With a few exceptions, the control concept is the guiding principle.
2 - Control data is disclosed indirectly because all companies that are consolidated are “controlled”, in the definition of the Directive. How they are controlled is not revealed.
3 - The aim is to prevent market concentration. A definition of control is necessary when determining whether companies operating in the same market form part of a business group. Whether the adopted control definition of “group” is adequate is debatable.
4 - The notification that a certain concentration threshold has been passed is notified to the Commission and the information submitted – including the ownership and control information – is only accessible for “interested parties”.
5 - Directive (77/91/EEC) tries to prevent the separation of ownership and control and the reduction of a company’s capital through the purchase of own-shares. The amendment (92/101/EEC) extends the provisions, that only applied to treasury shares, to the purchase of a company’s shares by affiliated companies and/or agents. To determine who is affiliated control must be defined.
6 - The state-aid notification rules apply whenever an entity that is controlled by the state engages in transactions that a similar entity that is controlled by a private agent would not have engaged in on the same terms. Hence, the state-aid rules have to define when a company or institution is state or otherwise “controlled”.
7 - A takeover bid is a proposal (friendly or hostile) to change the control of a listed company. Hence, a definition of control must be provided.
8 - The current holdings of the natural person or legal entity in public or private law making a bid are disclosed but, obviously, only when there is a bid.
The most comprehensive definition of control is provided in the Consolidated Accounts and Reports Directive (83/349/EEC). The control definition is a compromise between a legal definition of control that originates in the United States and the United Kingdom and an economic definition of control that was common in Germany. Indeed, the U.S. definition stems from the beginning of the century (and the time period analysed by Berle and Means, 1932) when business groups were an important phenomenon in the United States. A separate sub-section reviews the definitions of control that can be found in this Directive.

The Consolidated Accounts Directives only generates a limited amount of control data. The control definition is used to define who has to prepare and publish consolidated accounts. However, the annex of the consolidated accounts does not contain information on voting rights but on consolidated cash-flow stakes. Information on the type of control exerted is included, provided it conforms with one of the control devices listed in the Consolidated Accounts and Reports Directive (83/349/EEC, Article 34). The main shortcoming of the control data in the notes to the consolidated annual accounts is the lack of structural information. There are no requirements to provide a diagram that would give a clear picture of the group composition (as required on Form CO pertaining to Merger Regulation (EEC) No 4064/89, see the section on separation data below).

Publicly accessible control data is generated by the Transparency Directive (88/627/EEC) that applies to companies that have their registered office in a Member State of the Union and that have all or some of their stock listed on an official market. Natural persons or legal entities of public or private law have to disclose the number of votes they control when they satisfy certain control criteria and cross thresholds that are defined in terms of the percentage of votes controlled relative to the total number of votes attached to the voting capital issued (not relative to the number of votes at the general assembly). Some Member States (for example Belgium) have made use of the control definitions laid down in the Consolidated Accounts Directives to define “control”. However, unlike the Consolidated Accounts Directive and the Transparency Directive, the Belgian implementation rules require the publication of an organisational chart. Because of its importance, a separate section focuses on the data that should be generated by the Transparency Directive (88/627/EEC).
3.1 The Definition of Control in the Consolidated Accounts Directive

The Consolidated Accounts Directive contains control definitions for vertical and horizontal groups. For banks and insurance companies two separate Directive set out somewhat “tougher” rules. As was argued before, the consolidated accounts do not contain control data that could be used for the purpose of the present analysis. The notes contain a list of control instruments, identified in the transposition of the Directive, that tie an undertaking to a parent but otherwise they report cash-flow stakes. This section reports which control devices are identified in the Consolidated Accounting Directive. It does not discuss under which circumstances a parent has to prepare a consolidated account, which undertakings fall into the consolidation perimeter (as opposed to the control perimeter) and which accounting methods must be used.

Not all legal instruments that give “control” are available in all Member States and not all control definitions had to be transposed when defining the consolidation perimeter. Some transposition exemptions (“opt-outs”) were the result of lobbying efforts by Member States and/or industrial and financial interest groups. For example, Luxembourg obtained exceptions for financial holding companies (with the argument that they would relocate off-shore) which meant that special control devices used by such parents did not have to be considered. In many cases the exact definition of control was left to the Member States. For example, the exact definition of “control agreement” or “dominant influence” cannot be found in the Directive.

3.1.1 Vertical Groups

According to the Consolidated Accounts Directive a control relationship exists when:

1. A parent controls the majority of the voting rights of the shareholders or members of a subsidiary (Article 1(1)(a));
2. The parent is a shareholder in the subsidiary and has the right to appoint or remove the majority of the directors on the board (Article 1(1)(b));
3. The parent exercises a “dominant influence” over the subsidiary by means of a contract (Article 1(1)(c));
4. The parent exercises a “dominant influence” over the subsidiary because of a provision in the company’s memorandum or articles of association (Article 1(1)(c));
5. The parent controls the majority of the shares as a result of an agreement with the other shareholders (Article 1(1)(bb)). Finding an exact definition of “agreement” was left to the Member States;

6. The parent exerts “dominant influence” by means not mentioned above. What other means could give the parent “dominant influence” was left to the Member States to define;

7. The parent manages itself and the subsidiary on a unified basis (Article 1(2));

8. Votes attached to own-shares held by a subsidiary, including those held indirectly through other subsidiaries (cross-shareholdings), are not attributed to the parent (Article 2(2)(b)). Own-shares increase the effective voting power of the parent, even when they cannot be exercised.

3.1.2 Horizontal Groups

By definition it is hard to speak of “control” in horizontal groups (otherwise they would be hierarchical groups). The Directive identifies two types of “associative links” that tie together horizontal groups:

1. Undertakings that are managed on a unified basis (Article 12(1)(a));

2. Undertakings are tied together through interlocking directorates (Article 12(1)(b)).

Cash-flow links and cross-shareholdings are not mentioned specifically, although they are typical features of horizontal groups.

3.1.3 Conclusions

The notes of the consolidated annual accounts list the companies that fall into the control perimeter of a consolidating parent. The undertakings that are included in the consolidated accounts are marked separately (the consolidation perimeter). The control device that lead to the inclusion of an undertaking in the control perimeter is listed. In practice this information is of little use and/or unreliable.

It is not enough to know that an undertaking is controlled because the parent holds (at least) the majority of the votes without knowing the percentage of the votes that are actually held. Are these votes held directly, are they attributed and if they are attributed from whom and how? Numerous exceptions render the information incomplete. Small parents, parents that
are non-limited liability or holding companies might not have to file complete reports (or file at all). The list of undertakings that are inside the control parameter is incomplete because of numerous reporting exceptions. Finally, control perimeters are not comparable across Member States because concepts like “dominant influence” have been interpreted when the Directive was transposed. The control data generated by the Consolidated Accounts Directive is of limited value for the analysis of control structures in European business groups.

3.2 Listed Companies and the Transparency Directive

The only EU Directive that imposes common conditions for the disclosure of control data is the Transparency Directive of 12 December 1988 “on the information to be published when a major holding in a listed company is acquired or disposed of (88/627/EEC)”. It applies to listed companies registered anywhere in the Union. The disclosure of ownership data was an option for the Member States, but a notification can still be triggered by a control threshold (88/627/EEC, Article 4-1, last sentence). There are no Directives that make the disclosure of ownership data compulsory throughout the Union – rules that force investors to notify a company when they acquire or dispose of certain proportions of its cash-flow rights.

The Transparency Directive is very similar in spirit to the Williams Act in the United States that now forms part of the Securities and Exchange Act of 1934 (see the country note for the United States). It is no coincidence that some transpositions were enacted alongside national takeover legislation, for example in Belgium. From the point of view of academic research, the data generated by the Directive is most useful for studying the (absence of) takeovers in continental Europe and the (lack of) a market for corporate control.

Who has to notify? Article 4(1) of the Transparency Directive (88/627/EEC) defines that when “the proportion of voting rights held by that person or legal entity reaches, exceeds or falls below one of the thresholds of 10 %, 20 %, 1/3, 50 % and 2/3, he shall notify the company and at the same time the competent authority ... within seven calendar days of the proportion of voting rights he holds following that acquisition or disposal”. The thresholds are maximum levels and could be lowered by the Member States. The thresholds were chosen deliberately because 20% and 33.33% (or 25%) are maximum blocking minorities for statute changes in many countries.
In addition to any voting rights a person or entity might own, Article 4 defines that nine reasons that can lead to the “attribution” of additional votes. In addition to defining the legal basis of the data used in the country papers, Article 7 also provides a first list of possible mechanisms for separating the ownership and control of European companies:

1. The voting agent acts as a nominee;
2. The entity that owns the shares is controlled by the voting agent, for example a subsidiary in a business group (see above for a definition of control);
3. Votes that stem from a written voting pact;
4. A temporary transfer of voting rights to the voting agent or a business group (proxy voting);
5. Votes that could be exercised by an agent who holds them as collateral, but only if the owner does not exercise the votes;
6. “Voting rights attaching to shares of which that person or entity has the life interest” (annuities, in the German transposition: Nießbrauch);
7. Formal agreements that allow the voting agent to acquire voting rights (by any of the means listed above); when such votes are acquired the company must be notified, even when no threshold has been crossed;
8. Voting rights deposited with the voting agent for safekeeping when the owner did not give specific voting instructions.

Article 7 is the basis for three definitions, that are used in the statistical section of this paper, of different types of control block:

1. Voting rights attached to shares that are owned by the voting agent are called “direct voting stakes” (the notified voting block minus all the votes attributed because of 1-8);
2. Voting rights attached to shares that are notified according to reason (2), votes that are controlled by companies belonging to the same business group, are called a “group voting block”;
3. Voting rights that are notified because of any reason stipulated by the Directive (1-8) are called a “coalition voting block”.

Figure 3 provides an example of the type of data the notifications should provide. Company 2 holds a voting block of 72% in Company 4, that is listed. The block is composed of three smaller blocks: a group block controlled by Company 2 (via its subsidiary Company 3), a

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17 The list is very similar to the list of control devices found in the Consolidated Accounts Directive (83/349/EEC) discussed in the previous section, but somewhat more complete.
larger direct stake (20%) that belongs to Company 1 and a small direct stake that Individual 5 has deposited with Company 2 (for safekeeping or as collateral).

The basis for the notification is the coalition voting block of 72%. This is a very important feature of this data and has implications when making cross-country comparisons. This feature also makes the data different to the ownership and control data that has been previously analysed in the literature, for example in Franks and Mayer (1997) for “pre-Transparency Directive transposition” Germany.

**Figure 3. Direct Stakes, Group Blocks and Voting Blocks**

![Diagram showing ownership and voting block relationships]

Note: Company 4 is a listed company. Company 3 is a subsidiary of 2 and Companies 1 and 2 have a voting pact. The control-rights voted by 1 are owned by 2. Individual 5 has deposited his or her shares with 2 who controls them. The direct voting stakes are 20% (1), 50% (3) and 2% (5, not notified as a direct stake except in the U.K. and Italy). The notified group voting block in this constellation is 50% (votes controlled by 2 & 3) and the notified coalition voting block is 72% (votes of 1, 3 and 5 controlled by 2).

Franks and Mayer (1997) analyse ownership data for 171 German listed companies for 1990. In 1990 the Transparency Directive had not been transposed and the basis for disclosure was company law (all stakes larger than 25% had to be disclosed). To arrive at a picture like the one provided in Figure 3, “when large shareholdings were held directly, the ultimate owner was identified by tracing all corporate shareholdings of greater than 25% through intermediate layers of ownership. We recorded the number of layers in the pyramid and the shareholdings at each level” (opus cit., pg. 11), which often “raises the question as to who is the ultimate shareholder and where ultimate control lies” (opus cit., pg. 14). In the case of pyramidal structures Franks and Mayer (1997) started from the bottom and tried to find the controlling top by tracing cash-flow links.
The Transparency Directive data poses the opposite problem. Those who have ultimate control – control as defined by the Directive (see Appendix, Article 8, 88/627/EEC) – have to reveal their identity and their controlling interest. The country teams were provided with the identity of a controlling agent at the top and a listed company at the bottom. The problem faced by, for example, Franks and Mayer (1997) seemed to have disappeared.

Unfortunately, the Transparency Directive data poses new problems: Is the definition of control in the Directive sufficiently narrow to pin down the ultimate controlling agent? Do ultimate controlling agents reveal their identity in practice? If they do not, how could the Competent Authority ever find out? Once the agent at the top of a control structure (e.g. a pyramid) has been identified, how much is revealed about how control is exerted (how much do we see looking down the pyramid)?

The country surveys that were conducted by the European Corporate Governance Network show that, in practice, it is unclear who has ultimate control (Table 7). The transposition of the Transparency Directive (88/627/EEC), which is what Member States notify to the European Commission, is not enough to guarantee that those who have ultimate control can be identified by interested parties throughout the Union.

Table 18 provides a few examples that illustrate this problem. The examples draw on groups that include companies listed on different EU stock exchanges. When a listed company in one Member State commands the necessary voting power in a company listed in another Member State, transparency declarations in the first Member State can be used to check the completeness of the notifications in the second.

We provide two examples of German companies that were notified to be controlled by companies that are listed in Belgium and Italy. Ymos AG is listed on the official market in Germany. On 21/04/95 the German Börsenzeitung published the notification that Cockerill Sambre Beteiligungsgesellschaft mbH (a Düsseldorf registered holding company) commands 95.146% of the votes of Ymos AG. On 18/09/96 the Börsenzeitung published the notification that Cockerill S.A. (listed on the Belgian official market) commands 95.146% of the votes of Ymos AG. According to the latest information from the Bundesaufsichtsamt für den Wertpapierhandel (15 September 1997), no other information was notified in Germany.18

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18 The information was obtained from the BAWe data spreadsheet available from http://www.bawe.de/english/db_SI_e.htm.
In Belgium, the transparency notifications contain more information on the control structure of Cockerill Sambre. They contain the information that that Cockerill Sambre S.A. is controlled by SWS (Société Wallone pour la Siderurgie). The small print of the published notification (20/12/1993) contains the information that SWS is fully owned by the Wallonia region. Since this information is not notified in Germany, a German investor buying shares in Ymos AG would find it difficult to find out who controls Cockerill S.A. (unless he or she speaks French or Dutch and has access to Belgian newspapers) and is unlikely to know that SWS is controlled by the Wallonia region. A German investor who buys shares in Ymos AG would be lead to believe that the company is controlled by a privately controlled company (Cockerill S.A.) when, in fact, ultimate control lies with a Belgian region. This confusion is likely to be relevant for the purchase decision of the German investor. The lack of transparency at various levels is likely to discriminate the against the German investor. In the Ymos AG example the Wallonia region, who failed to notify, probably did not know that it had to notify a company listed in Germany. This illustrates the problem of “notifications from the top” when the top cannot always see the bottom.

The case of Pirelli Deutschland AG is very similar, but more difficult to trace. On 09/07/96, the Frankfurter Allgemeine Zeitung published a notification where Pirelli Tyre Holding N.V. (Amsterdam) declares that it commands, via Deutsche Pirelli Reifen Holding GmbH (Höchst), 98.94% of the shares of Pirelli Deutschland GmbH. The whole Italian superstructure is not notified in Germany. Indeed, since Pirelli Tyre Holding N.V. is not a listed company, and no even registered in Italy, it is not obvious how the holding is tied to the listed companies of the Pirelli group.

**Table 18. Notified and Likely Identity of Controlling Agent**

<table>
<thead>
<tr>
<th>Listed Company</th>
<th>Notified “Ultimate” Control</th>
<th>Further Layer (from other sources)</th>
<th>Ultimate Control Actually Lies With (from other sources)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>YMOS AG (D)</strong></td>
<td>Cockerill Sambre S.A. (B), 95.146% source: German transparency declaration</td>
<td>SWS, Société Wallone pour la Sidérurgie, 79.79% source: Belgian transparency declaration</td>
<td>Wallonia Region source: transparency declaration</td>
</tr>
<tr>
<td><strong>Pirelli Deutschland AG (D)</strong></td>
<td>Pirelli Tyre Holding N.V. (NL), 98.94% source: German transparency declaration</td>
<td>Pirelli S.p.A. (It), 82.2% source: AIDA 1997</td>
<td>Pirelli Partecipazioni S.p.A., 50.94% source: AIDA 1997</td>
</tr>
</tbody>
</table>
Note: The table list a few examples of companies that have filed to have ultimate control, as defined by the Transparency Directive, but where the name or other sources of information (for example databases that contain company register information, like the German Markus database) indicate that they might not have ultimate control. Either the definition of “control” is not detailed enough in the Directive, or the transposition is flawed, or enforcement is lacking.

In many countries it is not possible to distinguish between direct stakes, group blocks and coalition voting blocks. This is due to the fact that notifications are triggered by coalition voting blocks. Hence, only the size of coalition voting blocks is notified initially. Whether any further details are notified, published and processed depends on the rules imposed by the “Competent Authorities”.

For complete transparency, an annotated organisational chart like Figure 3 would have to be published. To our knowledge the only EU country where this is the case is Belgium (and not always). In Germany, France and Spain the newspaper publications only contain the size of the voting block and the percentage of the votes in the voting block that were attributed for one of the 9 “attribution” reasons listed above. Access to the individual notifications and/or cumulative “snapshots” is difficult and/or expensive in most countries. In German a snapshot is now available from the internet, in Spain the complete records can be retrieved one-company at a time.19

4 The Separation of Ownership and Voting Power

In Part A (pp. 17) we discussed the difficulty of identifying “the control” using voting power concentration statistics, the procedure applied by Berle and Means (1932) and subsequent authors. In this section, we confine ourselves to defining measures of the separation between ownership and voting power. When the measured degree of voting power also gives “control”, these indicators automatically become measures of the separation between ownership and control.

The separation of ownership and voting power is the wedge that is driven, by various devices, between the command over voting rights and the ownership of cash-flow rights. We present 24 devices that can be used to separate ownership and voting power in Europe (the list is probably not exhaustive).

Hierarchical groups are one of the most powerful tools for separating ownership and voting power. They can be used to chain the other devices and provide additional leverage to their effectiveness. The Van Sweringen System of Railroads example of pyramiding that was given by Berle and Means is presented. Two measures for the separation leverage that was obtained by this pyramid are presented. The measure can be used to measure the separation leverage of the other 23 devices as well.

Furthermore, two measures of the separation between ownership and control are defined. Many other measures are conceivable. The discussions of ownership and control data presented in the previous sections are re-examined. We will show that additional information is needed to compute the separation measures because the cash-flow perimeter has to be tied to the voting power (control) perimeter. The availability of the data needed to compute the proposed separation measures is discussed.

4.1 Devices that Separate Ownership and Voting Power

This section identifies 24 devices that can be used to separate ownership and voting in Europe. Many had already been identified by Berle and Means (1932) for U.S. registered and listed corporations, but many are not available under U.S. company law. Not all devices are legal in all Member States. Some devices leverage voting power at the level of the general assembly and/or at the level of the board (supervisory board). For example, German co-determination leverages voting power at the level of the supervisory board, not the annual meeting.

1. **Majority voting.** For most legal forms, many decisions are taken by majority vote. Majority voting introduces a separation of ownership and control.

2. **Legal form.** Some legal forms are designed to induce a complete separation between ownership and control. For example the German *Kommanditgesellschaft auf Aktien* has some unlimited liability owners (*Komplementäre*) who run the company. A second class of limited liability owners (*Kommanditen*) contribute equity capital but their control rights are very limited.

3. **Statutory Provisions.** The company statutes can contain control relevant provisions. For example, they might automatically appoint certain members of the board. Many of the other instruments in this list are recorded in or enacted through the company statute. In most European countries, the majority needed to change the provisions of
the company statute can be increased from the prescribed legal minimum. Hence, the minority voting block necessary to prevent statute changes can be very low. Hence, “pure” statutory provisions can contribute significantly to separating ownership and control.

4. **Multiple voting rights** (dual class stock and “golden shares”). In many European countries, companies can issue voting stock with different voting power. For example, one type of stock gives one vote per unit of par value, a second type of stock gives 100 votes per unit of par value. In some countries the stock can be of the same type, but some shares – the “golden shares” – have multiple voting power.

5. **Non-voting stock.** Almost all European legal forms can issue non-voting stock. Although it is not necessary, non-voting stock is usually issued with special cash-flow rights. There are limits on the fraction of non-voting stock that can be issued as a fraction of total capital.

6. **Voting caps.** Voting caps impose a limit on the number of shares a shareholder can vote, irrespective of how many voting shares are held. Voting caps introduce an “inverse separation” because they disperse control.

7. **Voting rights that are not attached to equity** (paid in capital). This device is provided through a special type of ownership certificate that some legal forms in some European countries are allowed to issue. For example, in Belgium *parts bénéficiaires* can have voting rights and/or cash-flow rights attached. It is possible to issue such certificates, with attached voting rights, to someone who has not paid in any capital. There are limits on the fraction of *parts bénéficiaires* in total capital.

8. **Investment and pension funds (absenteeism).** In the United States, mutual funds are a special type of mutual society that are owned by those who deposit funds. Depending on the governance procedures of the fund, there is a separation of ownership and control. If the funds do not vote at all, the separation is complete. In Europe investment funds are often owned by financial institutions. The investment contract or the law do not require these funds to ask their depositors for voting instructions. Either the funds claim to invest “passively” (exert governance through buying and selling), or they claim to vote in the best interest of their clients.
9. **Voting Pacts.** Shareholders can write contracts in which they agree to vote in an agreed way.

10. **Pre-emption Pacts.** Shareholders often sign (mutual) agreements to buy each other’s shares in case one of the parties wants to sell them.

11. **Option Contracts.** Call-options or put-options are similar to pre-emption pacts.

12. **Safekeeping.** Shareholders deposit their shares with a financial institution for safekeeping. The financial institution is often given the right to vote the shares (explicitly or by default). Although the financial institution might be required to ask its customers for voting instructions, few shareholders take advantage of this possibility. The German *Depotstimmrecht* is a well known example.

13. **Collateral.** Shareholders can put up their shares and/or voting rights as collateral.

14. **Annuity Contracts.** Shareholders can sell their shares and/or voting rights in an annuity-type contract. For example, the cash-flow rights are transferred and the seller receives a monthly payment until he or she dies. The voting rights are still exercised by the seller. Alternatively, the voting rights are sold.

15. **Control and Cash-Flow Contracts.** Companies in many countries can sign control contracts. After the contract is signed the management of the controlled company responds to the management of the controlling company, not the owners of the company. Companies can also sign cash-flow contracts.

16. **Foundations and associations** (voting trusts). In some European countries, notably in the Netherlands, companies place share issues with a foundation. The foundation keeps the voting shares and issues cash-flow ownership certificates that are held by the general public. Hence, although the company has issued no non-voting stock, it is governed as if it had issued 100% of non-voting stock. In many countries foundations and associations are not subject to any disclosure requirements. In Germany they are not even subject to Federal Law, but to the law of the Federal Regions (*Länder*).

17. **Treasury Shares.** Treasury shares separate ownership and control because controlling stakes are leveraged. For example when a company owns 50% treasury shares, ownership of 25.01% of the voting stock provides for a simple majority.

18. **Cross-Holdings.** Although a company might not hold or control treasury shares outright, cross-shareholdings and “loops” can have a similar effect. The loops can
involve other devices listed here which give additional leverage to the separation effect.

19. **Hierarchical Groups** (pyramidal groups). This device is based on the idea that the separation of ownership and control introduced by majority voting and/or the devices listed above can be increased by chaining several companies. Each company brings in additional external capital while the agent who made a small investment initially (or no investment, in the case of the voting trust) retains control of the complete chain. The longer the chain and/or the larger the number of companies that break with “one-share-one-vote” and/or the larger the break, the higher the degree of separation. The structure of the chain (pyramidal or double helix) is of little importance, the principle is always the same. The problem of such group structures is to keep control of all entities in the group – that can become large very quickly. This problem is often overcome by chaining holding companies. In the extreme case these holding companies have no employees and they are run out of a post office box. Interlocking Directorates are another way of minimising the chain size problem.

20. **Influence.** An outside entity can exert influence on shareholders without controlling or owning any of the voting rights. For example, large customers and/or suppliers of factors and/or debt finance can use their influence to have representatives appointed to the company board (or supervisory board). Franchising contracts also fall under this category.

21. **Co-determination.** Worker councils or the German co-determination system give the employees of a company control rights without them owning any of the shares of the company. In the Germany case, 50% of the supervisory board members are appointed in this way (but the capital side has the casting vote).

22. **Chairman of the Board.** In two-tier board systems, especially with co-determination, the chairman (who has the casting vote) of the supervisory has disproportional power. Being the chairman of the supervisory board provides considerable leverage for the other devices listed here.

23. **Interlocking Directorates.** Interlocking directorates can provide additional leverage to mutual control contracts and reinforce any of the other instruments listed here.
24. **Voting costs.** High voting costs and the free-rider problem (for small shareholders) can lead to low attendance rates at general meetings. Since most decisions are taken (at the latest after calling a second meeting) on the basis of majorities that are calculated as a fraction of the votes present at the meeting, absenteeism can provide considerable leverage for attending blockholders. The leverage effect is correlated with dispersion.

The importance of these instruments differs between Member States. With the exception of the Consolidated Accounts Directive and national company law provisions (for example in Germany control contracts must be deposited at the company register) very little data is available on these separation devices. Yet, information on these devices is important. Investors purchasing Fiat shares should have the right to know that the group is effectively controlled by a pre-emption pact.

### 4.2 Measuring the Voting Power Leverage of Separation Devices

The separation of ownership of voting power and command over voting power is always measured from the point of view of the agent that decides how the votes are cast. Hence, the accuracy of the measure depends on our ability to identify this agent. As we showed when discussing the Transparency Directive, one of the most sophisticated pieces of legislation that tries to trace voting power, this is not an easy task.

We propose two measures of the voting power leverage obtained with different separation devices. In all cases, the difficulty lies in determining when an agent has effective command over voting rights he/she does not own:

1. **Agent’s ownership of voting rights versus command of voting rights.** This measure is given by the percentage of votes owned by the agent (net of all cross-shareholdings) as a multiple of the votes commanded by the agent.

   1.1 In the Belgian Cobepa-Paribas example, that was presented in the ownership section, the ultimate (known) voting agent was the French Paribas Group. Paribas commands 67.09% of the votes of the Cobepa Holding and owns (in integrated terms) 64.5% of its capital. One Cobepa share has one vote, and Paribas owns 64.5% of the voting rights. Hence the separation between
ownership of voting power and actual voting power is very moderate and the leverage effect in the first measure is a mere 1.04.

1.2 Figure 1 is a facsimile of the pyramiding example used by Berle and Means (1932); the Van Sweringen Railroad System. The proposed measure is 124 for the Hocking Valley Ry. Co. (31% of the voting shares were held by a Van Sweringen controlled company, compared to a Van Sweringen ownership interest of 0.25%).

1.3 Applying the proposed measure to all companies in a group/and or investors grouped by type and computing the arithmetic mean gives an unweighted measure of the separation between ownership and command over voting power in the group and/or investor class.

2 Agent’s ownership of voting rights versus expected voting power. This measure is identical to the previous measure, but takes into account that not everybody will attend the general meeting. Hence, this measures takes the agent’s expected voting power, conditional upon a certain attendance rate at the annual meeting, and sets it into relation with the votes owned. For the same company and agent, the figure will be at least as high or higher than in the previous case.

To compute the first measure we need to know:

1. The identity of the physical or legal person that decides how the votes are cast;
2. The net-ownership of voting stock held by the voting agent for each company;
3. The control perimeter of the voting agent, i.e. the percentage of votes commanded and the devices (like control contracts) that are used to exert control;
4. The structure of the ownership and the control perimeter (so we can match the information);

Figure 4 contains all the required information. Berle and Means (1932) apparently knew that O.P. and M.J. Van Sweringen voted 80% of the voting stock of the Vaness Company and 40% of the General Securities Corporation. We have documented that the Transparency Directive often identifies control structures up to entities like Alleghany Corporation (a holding company). Because the General Securities Corporation only commands 41% of the
votes, the superstructure with the likes of O.P. and M.J. Van Sweringen at the top often remains in the dark.

Berle and Means (1932) also had the information required to calculate the net-ownership stake for each company in the pyramid. They were also able to determine when a minority interest, like in the case of the pivotal Allegheny Corporation, gave minority control. Since they were able to draw Chart III, they also knew the structure of the Van Sweringen System of Railroads. In Europe today, such information is usually not available. We are unable to draw charts like the one reproduced in Figure 4, even for Europe’s largest and most important business groups.
FIGURE 4. THE BERLE AND MEANS PYRAMIDING EXAMPLE

CHART III: Major Elements in the Control of the Van Sweringen System of Railroads

Holding Company

O. P. and M. J. Van Sweringen

80%

Vaness Company
Van Sweringen interest 27.7%

40%

50%

General Securities Corporation
Van Sweringen interest 51.6%

41%

Alleghany Corporation
Van Sweringen interest 6.6%

49%

New York, Chicago, & St. Louis Rd. Co.
Van Sweringen interest 0.59%

71%

Missouri Pacific Rd. Co.
Van Sweringen interest 1.69%

51%

Chesapeake Corporation
Van Sweringen interest 6.3%

54%

Chesapeake & Ohio Ry. Co.
Van Sweringen interest 0.98%

53%

Wheeler & Lake Erie Ry. Co.
Van Swearingen interest 0.38%

53%

Pere Marquette Ry. Co.
Van Swearingen interest 0.64%

23%

Hocking Valley Ry. Co.
Van Swearingen interest 2.25%

23%

Erie Rd. Co.
Van Swearingen interest 0.89%

7%

Denver & Rio Grande
Western Rd. Co. Joint control

7%

50%

4.3 Measuring the Separation of Ownership and Control

The separation of ownership and control is largest (infinite) when “the control” has the power to decide how a company is run but does not own any cash-flow stake. This type of extreme separation occurs with management control (provided the managers own no stock) and voting trusts (or foundations).

1 Percentage of cash flow-rights owned by “the control” in total capital. This measure compares the integrated ownership stake (see section on integrated ownership for a definition) of the “the control” to the percentage of total capital controlled (100%). In the Mediobanca example, the total cash-flow rights (100%) are controlled by an entity (Mediobanca) that owns (directly and indirectly and net of all cross-shareholdings) 5.96% of these cash-flow rights. For this measure a separation factor of 16.8 obtains. Obviously this is equivalent to the ratio gross-capital under control divided by the integrated stake at book value.

2 Total cash-flow rights controlled versus net-cash flow rights owned at book value. This measure is given by the total capital of the controlled company compared to the capital owned by the controlling agent at book value (net of all cross-shareholdings). A book value measure was already proposed by Hilferding (1910, page 119), Einaudi (1911) and Berle and Means (1931, page 70).

2.1 In the Mediobanca example, absenteeism gives Mediobanca control over the Generali insurance group. Mediobanca owns Lit. 379 of the capital at book value (in integrated terms) compared to a total capital of Lit. 5929. The separation of ownership and control in this case and for this measure is 15.6.

2.2 In the Van Swerigen Railroad System example “an investment of less than twenty million dollars has been able to control eight Class I railroads having combined assets of over two billion dollars” (Berle and Means, 1932), yielding a book value separation (leverage) measure of 100.

2.3 For the group and or investor class a weighted aggregate measure can be derived; see Barca, Bianchi, Brioschi, Buzzacchi, Casavola, Filippa and Pagnini (1994, pg. 156).
The weighted aggregation property and data availability issues make this the most attractive measure of the separation of ownership and control.

3 Total cash-flow rights versus voting rights controlled at market value. The measure is identical to the previous measure but at market value.

3.1 In terms of market value, the separation between ownership and control in the case of Generali is 21 (Lit. 28057 divided by Lit. 1333).

3.2 In the case of Generali, the leverage effect at market values is larger than the leverage effect at book value obtained previously (15.6). When non-voting stock is used to secure control, the market valuation usually gives a smaller leverage effect than the book value calculation. Non-voting stock and voting stock can have the same book value but different market value. The market value of the voting stock is usually higher because the value of the votes is taken into account.

3.3 Again, a weighted aggregate measure can be derived.

3.4 Because the market value takes into account the value of control, it is more attractive conceptually. However, the data required to compute the measure is not generally available, even to the companies themselves. The market value measure cannot be computed of non-listed companies unless the market values is estimated (guessed).

To compute these measures we need to know:

1. The identity of “the control”;

2. The cash-flow perimeter of “the control” and the percentage of the total capital owned in each company;

3. The control perimeter of “the control” (the percentage of votes controlled and the devices that are used to exert control);

4. The structure of the cash-flow perimeter and the control perimeter (so we can match the information);

5. The book value (and/or market value) of the net-assets of each company in the ownership perimeter (portfolio) of the ultimate owners. In most Member States the required data is not or only partially available.
When the information provided by the transposition of the Transparency Directive is complete and the country has opted to implement the ownership notification option, it is possible to compute the first measure. This is the case in Italy. Assuming that the companies have not issued non-voting or dual-class stock, it is possible to compute the first measure even when the ownership information is not notified separately. This was the case in Belgium. If none of these conditions are met is impossible to compute separation measures using Transparency Directive data. In any case, the Transparency does not generate the data that would be necessary to compute the first separation measure for companies that lie “lower” than the listed companies in a hierarchical group.

To compute the book value measures, balance sheet data is required for each of the companies in the group. Since the Transparency Directive does not require the controlling agent to publish such data, other disclosure legislation must be in place that can fill the gap. The only country where this is the case is Italy and even there it is hard to collect and process such data. The market value measure only applies to listed groups.

The European Commission requires companies to provide all the data required to compute separation measures in merger cases. Instead of the net-assets (at book or market value) the Commission’s Merger Task Force requires information of market shares. The idea of “integrated ownership” that underlies the separation calculations can be applied to portfolio as well as product market calculations; see Flath (1989) and Baldone, Brioschi and Paleari (1997). Hence, it is not surprising that the European Merger Regulation should generate this type of data. The merger (market concentration) information collected by the Commission is not disclosed to the general public.
FORM CO RELATING TO THE NOTIFICATION OF A CONCENTRATION PURSUANT TO REGULATION (EEC) No 4064/89

SECTION 3
Ownership and control (11)

For each of the parties to the concentration provide a list of all undertakings belonging to the same group.
This list must include:
3.1. all undertakings or persons controlling these parties, directly or indirectly;
3.2. all undertakings active on any affected market (12) that are controlled, directly or indirectly:
   (a) by these parties;
   (b) by any other undertaking identified in 3.1.
For each entry listed above, the nature and means of control shall be specified.
The information sought in this section may be illustrated by the use of organization charts or diagrams to show the structure of ownership and control of the undertakings.

As we show, ownership and control information of the type submitted on Form CO is not available to the general public although it is important for creating a European equity market. This fact reflects a fundamental difference in the role the European Commission plays in the merger control and in the securities markets fields. Form CO was designed by the Commission in its role as a European Merger Agency. The Treaty and Regulation No 4064/89 give the Commission the power to exercise this power. The European Commission is not a European Securities and Exchange Agency.

The lack of transparency in the fields of company law, accounting standards and securities markets are the result of the inability of the Commission to pass proposals against the will of some Member States who block such proposals in Council. The example of Form CO is further evidence that a Federal European Agency with the power to design forms that are modelled on those of the SEC might be the way forward for transparency and integrated capital markets in Europe.
4.4 An Extended Example: Separation of Ownership and Control in Italy

The separation of ownership and control is hard to compute even if the necessary data is available. Quantitative measures of the separation and ownership and control are only presented for Italy and for two reasons. One, Italy is the only country with legal disclosure requirements that provide the basis for obtaining the necessary data. Two, research on these topics in Italy was started in the 1980s and a large scale national research effort was undertaken by the Bank of Italy and Consob between 1992 and 1994 (Barca et. al., 1994). This research project lead to more effective disclosure of that required data that should have been available legally. We strongly hope that this preliminary report will have a similar impact in the other Member States and that a final report will contain tables that are far more complete and comparable.

Table 19 shows the separation between ownership and control amongst the 30 largest Italian business groups. The separation varies from very small (ratio of capital under control to capital owned close to one) to large (10.33 in the case of Carlo de Benedetti). However, the average of 2.8 is probably an underestimate of the true degree of separation. In many cases, the ultimate controlling agents are not known and the control chain ends with the company that is the head of the group. Groups with a high degree of separation might make additional efforts to hide their true size and the companies with the highest degree of leverage are excluded. For example, there is additional separation between those who control Allianz Holding AG and the proportion of capital they own. It is no coincidence that the degree of separation is relatively higher when the individual who has ultimate control could be identified (e.g. Silvio Berlusconi, Carlo de Benedetti, Sergio Pininfarina).

The Italian figures illustrate three problems that were already mentioned several times:

1. Our inability to identify the individuals or institutions who have ultimate control substantially changes the results;

2. Failing to trace the whole cash-flow perimeter leads to significant measurement errors;

3. It is difficult to measure control and some companies that are controlled might go undetected. Again, this can lead to significant measurement errors;
4. Averages, like the ones presented in Table 19, that are not weighted using net-assets ($\omega$) can be misleading when group structures are important.
<table>
<thead>
<tr>
<th>Head of the group</th>
<th>Capital under control in proportion to owned (1)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ministero del Tesoro</td>
<td>1.24</td>
</tr>
<tr>
<td>IRI Istituto per la ricostruzione ind.</td>
<td>2.40</td>
</tr>
<tr>
<td>Giovanni Agnelli &amp; C. S.p.a.</td>
<td>8.86</td>
</tr>
<tr>
<td>Compart S.p.a.</td>
<td>4.35</td>
</tr>
<tr>
<td>Generali S.p.a.</td>
<td>1.53</td>
</tr>
<tr>
<td>Compagnia di San Paolo</td>
<td>1.54</td>
</tr>
<tr>
<td>Allianz Holding A.G.</td>
<td>1.78</td>
</tr>
<tr>
<td>Benetton</td>
<td>1.46</td>
</tr>
<tr>
<td>Cassa di Risparmio di Roma</td>
<td>2.40</td>
</tr>
<tr>
<td>Mediobanca S.p.a.</td>
<td>2.00</td>
</tr>
<tr>
<td>Credito Italiano S.p.a.</td>
<td>2.35</td>
</tr>
<tr>
<td>Pirelli</td>
<td>1.95</td>
</tr>
<tr>
<td>IMI Istituto Mobiliare Italiano</td>
<td>1.34</td>
</tr>
<tr>
<td>Radici Pesenti Rosalia</td>
<td>4.15</td>
</tr>
<tr>
<td>Banco Ambrosiano Veneto</td>
<td>1.55</td>
</tr>
<tr>
<td>Tanzi Calisto</td>
<td>1.68</td>
</tr>
<tr>
<td>Mediolanum S.p.a. (2)</td>
<td>1.96</td>
</tr>
<tr>
<td>Ligresti Salvatore</td>
<td>4.83</td>
</tr>
<tr>
<td>Berlusconi Silvio</td>
<td>3.66</td>
</tr>
<tr>
<td>Gemina S.p.a. - Generale (2)</td>
<td>2.22</td>
</tr>
<tr>
<td>Bulgari S.p.a. (2)</td>
<td>1.80</td>
</tr>
<tr>
<td>De Benedetti Carlo</td>
<td>10.33</td>
</tr>
<tr>
<td>Fondaz. Cassa di Risp. Genova</td>
<td>1.22</td>
</tr>
<tr>
<td>Credit Lyonnais S.a</td>
<td>1.76</td>
</tr>
<tr>
<td>Pininfarina Sergio</td>
<td>5.93</td>
</tr>
<tr>
<td>INA Istituto Nazionale Assic.</td>
<td>1.06</td>
</tr>
<tr>
<td>Banca San Paolo di Brescia (2)</td>
<td>1.98</td>
</tr>
<tr>
<td>Bosatelli Domenico</td>
<td>1.39</td>
</tr>
<tr>
<td>Fulck S.p.a. (2)</td>
<td>4.20</td>
</tr>
<tr>
<td>Saes Getters S.p.a.</td>
<td>1.48</td>
</tr>
</tbody>
</table>

(1) Groups are ordered by market capitalization
(2) The head of the Group is the coalition controlling the company.

Source: Consob. Information are based on all the communications to Consob referring to holdings in listed companies larger than 2% of capital.

Source: Bianco, Bianchi and Enriques (1997), Table B.55.
Annex 1: List of Country Papers

The individual country papers can be downloaded from the European Corporate Governance Network’s experimental Web-site (http://www.ecgn.ulb.ac.be/) or from the Network’s experimental ftp-server (ftp www.ecgn.ulb.ac.be). A login name and a password can be obtained by sending e-mail to mbecht@ulb.ac.be.

Austria


Belgium


France


Germany

**Italy**


**The Netherlands**


**Spain**


**United States**

Annex 2: Bibliography


Appendix :

1 The Transparency Directive

1.1 Who has to Notify? (88/627/EEC)

**Article 1**

1. Member States shall make subject to this Directive natural persons and legal entities in public or private law who acquire or dispose of, directly or through intermediaries, holdings meeting the criteria laid down in Article 4 (1) which involve changes in the holdings of voting rights in companies incorporated under their law the shares of which are officially listed on a stock exchange or exchanges situated or operating within one or more Member States.

**Article 4**

1. Where a natural person or legal entity referred to in Article 1 (1) acquires or disposes of a holding in a company referred to in Article 1 (1) and where, following that acquisition or disposal, the proportion of voting rights held by that person or legal entity reaches, exceeds or falls below one of the thresholds of 10 %, 20 %, 1 / 3, 50 % and 2 / 3, he shall notify the company and at the same time the competent authority or authorities referred to in Article 13 within seven calendar days of the proportion of voting rights he holds following that acquisition or disposal. Member States need not apply:

- the thresholds of 20 % and 1 / 3 where they apply a single threshold of 25 %,
- the threshold of 2 / 3 where they apply the threshold of 75 %. The period of seven calendar days shall start from the time when the owner of the major holding learns of the acquisition or disposal, or from the time when, in view of the circumstances, he should have learnt of it.

Member States may further provide that a company must also be informed in respect of the proportion of capital held by a natural person or legal entity.

1.2 Definition of Control (88/627/EEC)

**Article 8**

1. For the purposes of this Directive, 'controlled undertaking' shall mean any undertaking in which a natural person or legal entity:
(a) has a majority of the shareholders' or members' voting rights; or
(b) has the right to appoint or remove a majority of the members of the administrative, management or supervisory body and is at the same time a shareholder in, or member of, the undertaking in question; or
(c) is a shareholder or member and alone controls a majority of the shareholders' or members' voting rights pursuant to an agreement entered into with other shareholders or members of the undertaking.

2. For the purposes of paragraph 1, a parent undertaking's rights as regards voting, appointment and removal shall include the rights of any other controlled undertaking and those of any person or entity acting in his own name but on behalf of the parent undertaking or of any other controlled undertaking.

1.3 Definition of Attributable Votes in (88/627/EEC)

**Article 7**

For the purposes of determining whether a natural person or legal entity as referred to in Article 1 (1) [that defines who such legal entities are] is required to make a declaration as provided for in Article 4 (1) [that sets out the maximum notification thresholds] and in Article 5 [that defines when the declarations have to be made for the first time], the following shall be regarded as voting rights held by that person or entity:

- voting rights held by other persons or entities in their own names but on behalf of that person or entity,
- voting rights held by an undertaking controlled by that person or entity;
- voting rights held by a third party with whom that person or entity has concluded a written agreement which obliges them to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the management of the company in question.
- voting rights held by a third party under a written agreement concluded with that person or entity or with an undertaking controlled by that person or entity providing for the temporary transfer for consideration of the voting rights in question,
- voting rights attaching to shares owned by that person or entity which are lodged as security, except where the person or entity holding the security controls the voting rights and declares his intention of exercising them, in which case they shall be regarded as the latter's voting rights,
- voting rights attaching to shares of which that person or entity has the life interest,
- voting rights which that person or entity or one of the other persons or entities mentioned in the above indents is entitled to acquire, on his own initiative alone, under a formal agreement; in such cases, the notification prescribed in Article 4 (1) shall be effected on the date of the agreement,
- voting rights attaching to shares deposited with that person or entity which that person or entity can exercise at its discretion in the absence of specific instructions from the holders.

By way of derogation from Article 4 (1), where a person or entity may exercise voting rights referred to in the last indent of the preceding subparagraph in a company and where the totality of these voting rights together with the other voting rights held by that person or entity in that company reaches or exceeds one of the thresholds provided for in Article 4 (1), Member States may lay down that the said person or entity is only obliged to inform the company concerned 21 calendar days before the general meeting of that company.

### 2 Definitions of Control

#### 2.1 European Merger Legislation (Council Regulation EEC n° 4064/89)


**Article 3**

3. For the purposes of this Regulation, control shall be constituted by rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by:

   (a) ownership or the right to use all or part of the assets of an undertaking;

   (b) rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking.

4. Control is acquired by persons or undertakings which:

   (a) are holders of the rights or entitled to rights under the contracts concerned; or
(b) while not being holders of such rights or entitled to rights under such contracts, have the power to exercise the rights deriving therefrom.

5. A concentration shall not be deemed to arise where:

(a) credit institutions or other financial institutions or insurance companies, the normal activities of which include transactions and dealing in securities for their own account or for the account of others, hold on a temporary basis securities which they have acquired in an undertaking with a view to reselling them, provided that they do not exercise voting rights in respect of those securities with a view to determining the competitive behaviour of that undertaking or provided that they exercise such voting rights only with a view to preparing the disposal of all or part of that undertaking or of its assets or the disposal of those securities and that any such disposal takes place within one year of the date of acquisition; that period may be extended by the Commission on request where such institutions or companies can show that the disposal was not reasonably possible within the period set;

(b) control is acquired by an officeholder according to the law of a Member State relating to liquidation, winding up, insolvency, cessation of payments, compositions or analogous proceedings;

(c) the operations referred to in paragraph 1 (b) are carried out by the financial holding companies referred to in Article 5 (3) of the Fourth Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies (4), as last amended by Directive 84/569/EEC (5), provided however that the voting rights in respect of the holding are exercised, in particular in relation to the appointment of members of the management and supervisory bodies of the undertakings in which they have holdings, only to maintain the full value of those investments and not to determine directly or indirectly the competitive conduct of those undertakings.

Article 5

4. Without prejudice to paragraph 2, the aggregate turnover of an undertaking concerned within the meaning of Article 1 (2) shall be calculated by adding together the respective turnovers of the following:

(a) the undertaking concerned;

(b) those undertakings in which the undertaking concerned, directly or indirectly:

- owns more than half the capital or business assets, or
- has the power to exercise more than half the voting rights, or
- has the power to appoint more than half the members of the supervisory board, the administrative board or bodies legally representing the undertakings, or
- has the right to manage the undertakings; affairs;
(c) those undertakings which have in the undertaking concerned the rights or powers listed in (b);
(d) those undertakings in which an undertaking as referred to in (c) has the rights or powers listed in (b);
(e) those undertakings in which two or more undertakings as referred to in (a) to (d) jointly have the rights or powers listed in (b).

FORM CO RELATING TO THE NOTIFICATION OF A CONCENTRATION PURSUANT TO REGULATION (EEC) No 4064/89

(11) See Articles 3 (3) to 3 (5) and 5 (4).

SECTION 3

Ownership and control (11)

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For each entry listed above, the nature and means of control shall be specified.
The information sought in this section may be illustrated by the use of organization charts or diagrams to show the structure of ownership and control of the undertakings.