

A PRELIMINARY REPLY TO THE PRELIMINARY REPORT

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We welcome the work carried out by the European Corporate Governance Network. These issues are of considerable importance currently and all contributions to elucidating the facts and the problems are helpful. Companies have always been key players in our market economies. Now – with the Single Market, globalisation and EMU – it is all the more important to know that they are run in accordance with good corporate governance principles. Shareholders are more numerous and they are more often at a greater distance from the companies they invest in.

The initial outcome of this research work perfectly illustrates one of the principal themes of reflection in a recent consultation exercise which DG XV has conducted on company law, including corporate governance, and tends to confirm our tentative conclusions. The fact is that not only is there a great variety of practice as regards corporate governance in the EU – some of it enshrined in national law – but there is no clear basis for its harmonisation. We have reason to know that harmonisation in this area is difficult – see our experience with the 5th Directive. Conventional wisdom is that the 5th Directive failed because of the failure to find a solution on worker participation. In this era of subsidiarity, it is clear that there were problems with the 5th Directive in this respect too. The legal and political arguments weigh generally in favour of leaving these issues for regulation at the national level. Moreover, the ECGN tell us that they are still searching for economic evidence that one approach produces better results than another, which suggests that we would have difficulty in agreeing on a harmonised set of rules even if we could establish the legal base for doing so. Member States remain strongly attached to their own systems.

This is not to say that the Commission is inclined to wash its hands of corporate governance. We see the recent consultation as the beginning, not the end of a process and even where legislation is not necessarily the end product, the Commission can play a useful role in helping to organise the debate at the European level, with a view to seeing what degree of agreement can be reached, at least on the general principles that should guide corporate governance. The forum on company law, the possible establishment of which was raised in the questionnaire and which attracted widespread support, could tackle the raising of corporate governance standards as one of its early tasks.

We see the forum as a mechanism which can help avoid too much divergence in national rules and practices; identify provisions in existing Directives which may become obstacles to the modernisation and simplification of national law; and debate and prepare issues for legislation where needed.

Returning to the study, the focus on disclosure is a useful one, provided that we take a rather wide definition of the term, so that it covers not only disclosure concerning ownership, but also disclosure through financial reporting, disclosure about corporate governance practices and so on. The fact is that we shall probably continue to rely heavily

on the market to exercise pressure for improvements in corporate governance practice and the market only works well if there is a high degree of transparency. Disclosure of various kinds is therefore a key element.

On the specific question of disclosure about ownership, the 4th Directive require companies to disclose their ownership of other companies, subject to a 20% threshold and the 7th Directive requires that group accounts reveal the proportion of the capital held in undertakings included in the consolidation. The Large Holdings Directive requires both individuals and companies to make public any share purchases that cross 5%, 10%, 15% etc ownership thresholds.

I note what ECGN say about the difficulty of obtaining information which these rules ought to make readily available, but I have to say that as of now, the Commission has seen to no reason to bring proceedings against any of the Member States for infringement of these Directives. A study is in hand on the implementation of the 4th and 7th Directives which may throw some light on this. But I should recall that the objective of these Directives is more comparable financial reporting, not ownership disclosure as such.

On the Large Holdings Directive, my colleagues in DG XV.C would be happy to see the ECGN's evidence. Perhaps sanctions for non-compliance are inadequate. There may also be case for the information provided under this Directive to be collected and coordinated at EU and not just at national level. New information technologies have undoubtedly made it much easier to provide information if the will to do so is there. We discussed in our consultation exercise the need for the law to make room for the application of these technologies. This question and indeed the whole issue of ownership disclosure could perhaps be explored further through the new mechanism to be provided by the forum.

Whether any of this requires legislative changes is yet another question. I should warn against jumping to the conclusion that just because something is a Good Thing that it necessarily justifies Community legislation. The possible need for legislation is also a question we shall address in the forum. The ECGN report is right, however, to say that we need to look at the accounting Directives and Securities Markets Directives, together with the basic company law Directives. The three sets of legislation are not by any means as well coordinated as they should be, with a gap in particular between work in the securities market area and the other two areas.

I look forward to seeing the results of ECGN's further work in the area of corporate governance.