Corporate governance in the EU: A Community dimension

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Introduction

The concepts of corporate governance and corporate social responsibility have been vastly debated and analysed in the last decades by both scholars and the business community. Corporate governance has emerged at the centre point of the debates, following the corporate scandals and failures of companies, such as Enron\(^1\) and WorldCom\(^2\) in the US and Parmalat\(^3\) in Europe. Since stakeholders were heavily affected, scholars focused their attention on agency issues and shareholder value maximization.\(^4\) Furthermore, corporate social responsibility (CSR) debates evolved around the need for companies to comply with social, economical and environmental issues in order to achieve sustainable development.\(^5\)

The aftermath of the corporate scandals and collapses made the issue of responsibility the turning point of finding ways to create value for the multiple stakeholders.\(^6\) With globalization, the demands and pressures by various stakeholders for transparency and accountability have increased, particularly for multinational enterprises (MNEs) whose global activities affect diverse societies socially, economically and environmentally.\(^7\) As a result, there is growing interest by shareholders in having a defined set of governance good standards that help monitoring the company. These standards do not only serve this purpose, but provide for means of attracting investment opportunities that benefit a country’s economy, help promote market efficiency and enhance the confidence of local and foreign investors.

\(^1\) Enron, available at: news.bbc.co.uk/2/hi/business/1780075.stm, last accessed on (March 12, 2012)
\(^2\) WorldCom, available at: news.bbc.co.uk/2/hi/business/2077838.stm, last accessed on (March 12, 2012)
\(^7\) See supranote 5
Indeed, in today’s globalized world, where international flows of capital enable listed companies to access financing from larger pool of investors, corporate governance acquires even more importance. It has become crucial for companies to have complete set of good governance practices in order to benefit from a global capital market by attracting long term investments.\(^8\) The discussion further developed on a European level with double dimension. At the national level, there is an ever-growing amount of reports, norms and regulations addressed to define the best way to introduce corporate governance measures. However, at Community level the discussion remained rather muted and only until recently was identified as one of the key topics in the Community Agenda. The EU approach is hindered by many obstacles rooted in the diverse economic, political and legal basis. Hence, despite the diversity of systems, complexity of the discussion promotes interesting possibilities and perspectives for policy makers and scholars to take advantage of.

This essay highlights that this diversity should be reflected in the rules passed by policy makers and that the discussion of corporate governance in the EU should acknowledge the importance of a Community dimension. It is argued that, the corporate governance scandals in the US and Europe differ greatly from one market to another since such markets are deeply rooted in different economic and legal structures.\(^9\) While it has been argued that the Community should not base its legislation on the Sarbanes-Oxley Act 2002, because it is addressed to tackle the fallouts of a market-control economy; the EC institutions should follow the actions taken by the US federal government in order to allow more active participation and involvement.


Part I of this essay defines the term corporate governance as a starting point for the discussion. Part II highlights the important need of a Community dimension (coherent set of standards at the Community level) in the area of corporate governance by comparing and analysing the US and EU responses to the corporate misconduct. Part III demonstrates that the different legal and economic background of the EU Member States must be taken into account by EC policy makers when passing rules in the area of corporate governance. To illustrate these differences and facilitate the analysis, two cases will be evaluated: the American Enron case, which shows the particularities of the US market (rooted on a market-control system)\textsuperscript{10} and the European Parmalat case, which evidences the specificities of the European model (rooted mostly on a large-control system).\textsuperscript{11} The discussion is complemented by analysis of the US and EU legal systems. Part IV observes the general implications of the legal and economic differences and proposes solutions to tackle these problems, followed by a thorough conclusion on the topic.

\textsuperscript{10} See supranote 1
\textsuperscript{11} See supranote 3
Part I
Defining Corporate Governance

Most nations have different legislation providing for a set of good corporate practices. Likewise, there are many definitions, as well as codes of corporate governance along different jurisdictions within the EU Member States:

In the UK, corporate governance is defined as "the system by which companies are directed and controlled."\(^\text{12}\)

In Italy, Preda Report defines corporate governance as the “set of rules according to which firms are managed and controlled (...) the result of norms, traditions and patterns of behaviour developed by each economic and legal system."\(^\text{13}\)

The German Corporate Governance Code distinguishes between internal and external corporate governance. Internal corporate governance refers to "the responsible control and administration inside the Companies", whereas the external refers to "the exercise of the voting and any additional shareholder rights by the Companies as institutional investors in the interest of their clients".\(^\text{14}\)

The above definitions illustrate that the term corporate governance lacks unified definition. However, for the purpose of the analysis, this essay will depart from the definition provided by the OECD Principles, which states that: “corporate governance (...) involves a set of relationships between a company’s management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the


\(^{13}\) Committee for the Corporate Governance of Listed Companies, "Code of Conduct Report (the "Preda Report"), October 1999, p.18.

\(^{14}\) Corporate Governance Code for Asset Management Companies of April 2005 (the "Crome Code"), modified by the Amendment to the German Corporate Governance Code of June 2005.
objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined.”

The OECD definition is instrumental in illustrating the importance of studying corporate governance. Hence, it shows that corporate governance is an area, touching upon both the internal and external aspects of a company. It also evidences that corporate governance mechanisms help companies pursue their corporate objectives by providing an adequate monitoring system to control the performance of the managerial bodies and the company in general.

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15 See supranote 8
Part II
Corporate Governance actions: The US and EU responses

The corporate governance scandals have had a strong repercussion in the legal and economic arenas of the US and the EU. However, the responses taken by the US following the Enron downfall, and the response taken by the EU have been completely different, as illustrated below. Nevertheless, the Community lacks involvement in a unified approach.

i) The US Response

The collapse of Enron in 2001 evidenced that a close relationship between the managerial bodies and the external auditors was detrimental for the well-being of a company. Consequently, the US Congress passed the Accounting Industry Reform Act of 2002, commonly known as the Sarbanes-Oxley Act (SOA). The SOA is a far-reaching reform that applies to both US and non-US companies with listings in the US stock market. Tackling governance misconduct, the SOA seeks to strengthen the independence and responsibilities of the management and the internal and external auditors of the company by sharpening directors’ duties and composition of the boards. It also mandates the Securities Exchange Commission (SEC) to impose several structural board reforms through the New York Stock Exchange (NYSE) and the National Association of Securities Dealers listing standards. In addition, stringent rules to monitor the activities of directors have been imposed, particularly in matters related to financial statements. Thus, directors are required to certify that quarterly and annual reports are in full compliance with securities laws and that they properly reflect the company’s status. Penalties for non-compliance include up to US$1 million fine or imprisonment for up to 10 years, or both.

On the contrary, SOA fosters the independence of the external and internal auditors of the company and establishes a more demanding and transparent approach to accounting.

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18 See SOA, Section 1520 (c)
practices. Currently, listed companies must have an audit committee comprised of only independent members. Additionally, a new regulatory body, the Public Company Accounting Oversight Board (PCAOB) was created with the main purpose to oversee the audit of companies subject to securities laws.¹⁹ The PCAOB may also extend the Act to firms that do not issue audit reports, but which play substantial role in the preparation of such reports. The Act further extends the operation of its requirements to foreign public accountancy firms that furnish an audit report with respect to any issuer of securities, subject to SEC (Securities Exchange Commission) regulation.²⁰

ii) The EU Response

Although the term corporate governance was unknown to many EU Member States by the early 1990’s, the domino effect of the corporate scandals in the US changed this tendency. The initial US response to corporate misconducts and fraud eventually derived in a governance revolution in the EU. Today almost every jurisdiction has or is in the process of drafting a body of rules in this area.²¹

Efforts to incorporate rules of corporate governance have been taken by variety of bodies ranging from committees composed by representatives from the investment and academic community, governmental bodies and stock exchanges, aiming at improving and reforming governance rules in local markets. The following approaches represent a general overview of the efforts taken by some Member States to foster good governance practices. They are complemented by a review of the efforts taken by the EU institutions in this area.

a) The Cadbury Approach

The development of corporate governance in the UK was fostered by the early Polly Peck scandal.²² In May 1991, the Financial Reporting Council, the London Stock Exchange and

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¹⁹ S.102 states that it is unlawful for any person that is not a registered public accountancy firm to prepare, issue or participate in the preparation of an audit report


²¹ For corporate governance codes issued by the EC Member States, see: www.ecgi.org, last accessed on (March 26, 2012)

²² For Polly Peck, see The Telegraph, available at: http://www.telegraph.co.uk/news/uknews/crime/9032865/Asil-Nadir-raided-146m-from-Polly-Pecks-accounts.html, last accessed on (March 11, 2012)
the accountancy profession established the *Committee of Financial Aspects of Corporate Governance* aiming at tackling financial fraud and corporate misconduct. By the end of 1992, the Committee chaired by Sir Adrian Cadbury, delivered a set of recommendations known as the Cadbury Report.\(^{23}\) The Cadbury Report became a milestone in the development of corporate governance codes around the world by introducing the famous "comply or explain" mechanism, by means of which a company is required to annually declare as to whether or not it has complied with the code provisions. The Cadbury report was complemented by the Greenbury Report of 1995,\(^{24}\) which analyzed the rules on disclosure of director’s remuneration packages; and consequently the Combined Code of 1998.

In July 2003, the UK issued a new version of the 1998’s Combined Code which introduced the recommendations of two other reports: the Smith Review on the role of audit committees\(^ {25}\), and the Higgs Review on the role and effectiveness of non-executive directors within the structure of a company.\(^ {26}\)

b) The Viénot Approach

The approach taken in the UK has been imitated in France. Hence, the *Viénot I* and *Viénot II* Reports of July 1995 and July 1999 respectively, analyze in depth the powers, duties and scope of operation of the board of directors in French listed companies. The *Viénot* reports were followed by the *Bouton* Report of September 2002, which proposed recommendations for promoting better corporate governance practices in listed companies. The *Bouton* Report was subsequently complemented by the *Report of Corporate Governance of Listed Corporations* of October 2003. The latter combined recommendations from both *Bouton* and *Viénot* Reports and presented detail analysis on the role of the board of directors. In March 2004, *The Recommendations on Corporate Governance* report was introduced, which put

\(^{23}\) Cadbury, A., supranote 21  
\(^{24}\) Greenbury, R., *Ibid*  
\(^{25}\) Smith, R., *Ibid*  
\(^{26}\) Higgs, D., *Ibid*
forward a plan for the role of the board of directors and the Shareholders General Assembly.27

c) The Cromme Approach

Contrary to the UK and French approaches, the situation in Germany is quite unique. This is due to the peculiarities of the German company law that provides for a two-tier board system (i.e. supervisory board and management board). The board structure was at the centre point of a big debate before the adoption of a generalized set of governance practices.28 The important efforts of the Baums Commission established in July 2001, which made a series of recommendations for the modernization of the company law in Germany, were finally concluded in the 2002 German Code of Corporate Governance (the Cromme Code29) focused at improving governance practices in listed corporations.30

d) The Preda Approach

In Italy, the Testo Unico sulle disposizioni in material di intermediazione (Unified Text on the dispositions on Intermediation) of 1998 introduced a specific set of rules for listed companies. Following Testo Unico, the Preda Report of 1999 established the ground basis for the development of a corporate governance culture in Italy by launching the first such code in the country.31

Preda Report was followed by the issuance of Il Codice di Autodisciplina delle società quotede rivisitato (Corporate Governance Code) issued by the Italian Stock Exchange in 1999 and its revised version of 2006, which established the basic framework of good corporate practices for listed companies.32

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27 Viénot I, Viénot II, Bouton and the Recommendations on Corporate Governance reports, Ibid
29 Corporate Governance Code for Asset Management Companies of April 2005 (the "Crome Code"), modified by the Amendment to the German Corporate Governance Code of June 2005, supranote 21
30 The German code of corporate governance, modified by an amendment of June 2, 2005, supranote 21
31 Committee for the Corporate Governance of Listed Companies, "Code of Conduct Report (the "Preda Report"), October 1999, p.18, supranote 21
32 See, supranote 21
iii) Community dimension: a lack of response?

As discussed above, the efforts on corporate governance in some Member States have taken place for more than a decade. In contrast, there has been a lack of involvement by the EU institutions. This is quite surprising considering that one of the fundamental objectives of the Community is the promotion of an internal market free of boundaries. In May 1999, following the adoption of the Financial Services Action Plan, the Commission instructed the law firm Weil, Gotshal & Menges LLP to prepare a comparative study of the corporate governance codes in the Community. The study published in May 2002 found a high degree of convergence among the national corporate governance codes and therefore did not recommend the adoption of a unified code for the EC. The analysis concluded that in spite of the variation between the codes of the EU members, there was a little indication that this would affect the formation of a single European market. It observed that instead of focusing on drafting a European-wide code, the European Commission should concentrate its efforts in the reduction of shareholders-participation barriers and the reduction of information barriers among companies domiciled within the EU.

The study further established that despite the diversity of cultures, financing traditions, ownership structures and legal origins, there was a remarkable similarity among the codes of the Member States, particularly in matters pertaining to the responsibilities of the board of directors and the supervisory board, financial reporting, the auditors' role, and the function of the Shareholders General Meeting.

In light of these recommendations, the European Commission instructed a group of legal experts to make recommendations on a modern regulatory framework for company law in

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33 See Articles 2 and 3 of the EC Treaty
34 Gregory, H. & Simmelkjaer, R. (2002), “Comparative Study of Corporate Governance Codes Relevant to the European Union and its Member States”, Well, Gotshal & Manges LLP in Consultation with EASD (European Association of Securities and Dealers) and ECGN (European Corporate Governance Network), January;
35 Ibid, p.6
36 Ibid, p.48
the EC.\textsuperscript{37} The instruction was further extended in April 2002 to cover corporate governance topics as a result of the corporate collapses in the US.

In November 2002, the group of experts presented the High Level Group Report II,\textsuperscript{38} which gave a series of recommendations as to the scope of community rules in corporate governance and its interaction with national rules. The HLGR II Report recommended that the EC Institutions should:

- assist the creation of efficient and competitive business in the EC by establishing mechanisms to protect shareholders and creditors;
- modify company law making and consider the use of broader use of alternatives to primary legislation
- enhance the flexibility of rules to avoid hindering the development and use of efficient company law structures;
- amplify rules on pre-meeting activities so shareholders are duly informed when they participate in the meetings;
- create voting and participation mechanisms for shareholders.

The HLGR II Report was followed by the EC Action Plan on the transformation of company law and the enhancement of corporate governance in the EC.\textsuperscript{39} The plan established that the two main objectives of the Community in the area of corporate governance are to:

- Reinforce shareholders rights and the protection of third parties
- Promote efficiency and competitiveness of business.

The EC Action Plan has been followed by a series of recommendations addressed to protect the most problematic areas that were identified in the plan. Among other initiatives, measures have been taken in regards to (i) the introduction of an annual corporate

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\textsuperscript{37} The recommendations contained in the High Level Group Report I were rejected by the European Parliament in July 2001
governance statement; (ii) the development of a legislative framework to promote the protection of shareholders; (iii) the promotion of the role of independent directors; (iv) the adoption of measures on director's remuneration, and (iv) the creation of a European Corporate Governance Forum to help encourage coordination and convergence of national codes and of the way they are enforced and monitored.40

The above discussion illustrates the different approaches taken by the US government and the EC in dealing with governance problems. Contrary to the vigorous response of the US Congress, the activities taken at the EC level seem rather muted. Both proposals adopted by the HLGR II and the Action Plan involve a lengthy implementation period that often requires further development and long periods of consultation, nevertheless debate among company experts, Member States and interested EU Institutions.

Thus, a question arises as to whether or not the EC is taking appropriate measures, on a time, legal and economic basis to avoid the appearance of new unlawful governance activities that may jeopardize the stability of the internal market and thus, the development of companies in the Community.

Answering this question seems rather complicated and requires a detail legal and economic analysis, which will be evaluated in the following section.

40 Ibid
Part III
Identifying economic and legal differences between the US and EU

Although there is a clear tendency towards the creation of a single European market, EU Member States show a rich diversity in corporate governance practices, corporate structures, financing options and corporate ownership concentration patterns.\(^{41}\) This diversity results from the different political, economic, legal and cultural backgrounds in which the EU Member States are rooted and therefore, this should be taken into account when enacting rules and regulations that will be common to all Member States.

Accordingly, the implementation of new rules into a legal system cannot result from the mere transposition of alien rules of foreign systems, notably the SOA.

As the EC Action Plan acknowledged, the EU should define its own corporate governance approach adapted to its own cultural and business traditions.\(^ {42}\)

i) Economic differences: The “large – control” and “market – control” systems

Corporate governance mechanisms differ depending on the way economies are structured. The literature has identified two major economic models: large- control and a market- control systems.\(^ {43}\)

The US economy is a typical example of a market-control system. It is characterized by a liquid capital market with developed corporate control and takeovers,\(^ {44}\) rigorous disclosure standards, high share turnover and high market transparency.\(^ {45}\) In the US, companies are often listed in the stock market, using either traditional funding mechanisms, such as public offers, or more innovative mechanisms, such as private equity funds. As a result, there is low influence and participation of the banks in the corporate structure.\(^ {46}\)

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\(^{41}\) See Gregory, H. & Simmelkjaer, R., supranote 34

\(^{42}\) See Action Plan, supranote 39, p.4


On the contrary, the EU (except the UK\textsuperscript{47}) is traditionally rooted in a large-control system, where ownership is concentrated in the hands of large shareholders, such as banks, wealthy families and pyramidal structures of companies\textsuperscript{48}, who exercise control over the board of directors, usually composed by representatives of such major shareholders.\textsuperscript{49} In addition, implicit contracting and close personal trust relationships among managers is common.

The EU economy is also characterized by a relatively non-liquid capital market. This is primarily, because the EU companies are not commonly associated with the stock market funding mechanism.\textsuperscript{50} This is further evident from the OECD Report published in 2004, which shows that only 4,404 companies were listed in Europe, a very small number compared to NASDAQ and the NYSE, which account for a total of 5,522 listed companies, hence they do not represent the entire number of companies listed in the US.\textsuperscript{51} Additionally, the total value of US bonds and equity outstanding in the securities market was twice as large in the US than in the EU.\textsuperscript{52}

Another interesting feature is the notorious participation of the banks in the EU economy, compared to that in the US. The total assets of the banking sector in the EU, measured as percentage of the GDP, increased from 161% in 1990 to 239% in 2001. By way of contrast, the assets of such institutions in the US increased from 59% in 1990 to 78% in 2001.\textsuperscript{53}

Should the economic differences be taken into consideration by policy makers in the area of corporate governance and are these differences relevant?

There is no simple answer to these questions. However, it is clear that the economic differences of the EU should be taken into consideration by policy makers before enacting rules in the area of corporate governance. The following sub-sections show that the structure

\textsuperscript{47} Similarly to the US, the UK is rooted on a market-based system.
\textsuperscript{49} Ibid
\textsuperscript{50} Becht, M. & Röell, A. (1999) "Block holdings in Europe: An international Comparison", European Economic Review, Volume 43, No. 4-6, p. 1051.
\textsuperscript{51} OECD Report 2004
\textsuperscript{53} Ibid
of the market has major repercussions in the rules that are needed to properly run the market and in the governance problems that may emerge.

a) Different markets imply different rules

The type of rules required for the proper functioning of a large-control system differ greatly from the rules required in a market-control economy. While in a large-control system the process of implementing regulations is simple and involves low costs; the body of rules required to obtain a well-functioning market-control system is more demanding and complex, thus requiring longer periods for implementation. In the process of incorporating a company, the entrepreneurs in a large-control system, such as those in the EU, see as a principal source of funding, the long-term finance mechanisms offered by the banks. Alternative financial structures, such as venture capitals and private equity funds, proven successful in market-control structures are rarely used. Thus, to achieve a proper functioning in large-control systems, government authorities are only compelled to establish well-defined risk-weighting mechanisms to assess the risk level of companies. These mechanisms help determining the interest rates that banks would charge, if they would lend money to companies.

In contrast, structuring a market-control system, such as the US, requires the active participation of market intermediaries, such as investment banks, insurance companies or stock brokers, who are key players in the functioning of the securities market. Most importantly, such system require well-structured legal mechanisms for efficient dispute resolution, particularly to tackle "principal-agent" conflicts, which often imply an enormous amount of litigations raised by shareholders against the management body.\textsuperscript{54}

b) Different markets imply different governance problems

The differences between a large-control and a market-control system do not only have economic consequences, but an immense impact in managerial behaviour. While in a large-control system the governance problems result from the abuses of majority shareholders in

\textsuperscript{54} See Lannoo, K. & Khachturyan, A., supranote 52, p.40.
prejudice of minority shareholders, the problems in market-control economies emerge from the abuses of the management body. Since the ownership structure of a market-control system is reduced, only few shareholders are capable (on a time and costly basis) to monitor the company’s performance. Thus, the board of directors plays an important role for determining the corporate strategy of the company. Additionally, the high level of powers enjoyed by the management body often result in principal-agent conflicts. A clear example is provided in the US and EU corporate scandals. Contrary to what happened in the Enron case, the collapse of Parmalat is not associated with accounting and financial irregularities resulting from the actions of low-monitored management, but instead from the actions taken by strong controlling shareholders over auditing bodies. In this case, the controlling shareholders used their influence in the board to expropriate considerable amounts from minority shareholders by implementing false accounting mechanisms. Although this case may seem extreme, it is by no means rare in the EU Member States to find companies with limited or no representation of minority shareholders in the board of directors.

The above analysis suggest that companies located in the EU, predominantly rooted on a large-control system with a concentrated ownership structure are most likely to confront fraudulent actions taken by the controlling shareholders against the minority shareholders. On the contrary, the managerial body of companies’ located in the US, rooted on a market-control system with a dispersed ownership structure are most likely to carry out fraudulent actions, namely the alteration of financial statements for their own benefit. Therefore, the rules that need to be passed to solve these governance issues must be radically different.

ii) Legal differences

As discussed above, the economic structure of the US differs greatly from that of the EU. However, this is not the only difference. There are two major legal differences that should be...
taken into account by EU policy makers when passing rules in the area of corporate
governance: the different legal backgrounds of the Member States and the diverse approach
to the composition of the board of directors.

Contrary to the homogenous common-law structure in the US, the EU has a wide range of
legal origins. Like US, UK and Ireland share the common-law system, whereas France,
Germany and Italy are rooted in the civil-law system. Thus, the legal backgrounds of the
Member States have a mammoth effect in the way corporate law is structured and in the
range of corporate control mechanisms. Although EU Member States have similar
approaches on how companies should be regulated, there are still deep-rooted differences
in their systems that affect the way companies are seen by the society.

The legal background of a country determines the role and the responsibilities of companies
to the shareholders; the market, and the society. Equally, the legal framework of a country
determines the rights and responsibilities of the management body and shareholders within
the company’s context. In this context, two classical approaches on the role of companies
have been identified: shareholder-based system and stakeholder-based system.

In shareholder-based systems, the relationship of the company with its shareholders and its
directors is at the centre point. Clear examples of shareholder-based systems are the
common-law systems of the US and the UK. In this respect, it is worth noting the UK’s
Hampel Report, which states that "the single overriding objective shared by all listed
companies, whatever their size or type of business, is the preservation and the greatest
practicable enhancement over time of their shareholders' investment." The report further
ascertains that even if the management body is obliged to respect the interests of
stakeholders, they are only accountable to the shareholders.

Stakeholder-based systems on the other hand are represented by Continental European
countries, such as Germany, rooted on a civil-law tradition. They focus on company-society

57 Berglöf, E. (1997), "Reforming Corporate Governance in Europe", Journal of Economic Policy, Volume 12,
Issue 24, p. 105.
58 Wymeersch E.(1994) in "Elements of Comparative Corporate Governance in Western Europe" in Isaakson, M.
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relationship, favouring not only shareholders, but also other actors who may be affected by the actions of a company. Thus, there is a strong partnership between investors and the workforce. As a result, employee’s representation at the managerial board and bank representation (in their role as major investors) at the supervisory board can be often seen. The differences between these two systems, as well as the debate along the doctrine of Corporate Social Responsibility are important from a corporate governance perspective. Thus, a question arises as to which of these two systems is more beneficial for a society, hence the discussion exceeds the scope of this essay.

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50 See Guillén, M. et al, supranote 46
Part IV
General implications: the way forward?

The above analyses highlight the enormous legal and economic differences between the US and the EU. It has also been argued that there is lack of homogeneity among the systems of the Community. This has transcendental effect in the area of corporate governance, since it is not clear which is the best governance approach within the EU.

While it is desirable to promote a common system of corporate governance, the approach of the EC institutions should nevertheless be cautious, especially if imitating alien rules, such as the SOA. Such rules would diminish the development of corporate practices and destroy the efforts taken so far by the Member States. Moreover, they would totally disregard the different economic and legal backgrounds in which the EU is rooted.

It is thus suggested, that the Community takes a flexible approach that promotes diversity and recognizes the different approaches of the Member States. While diversity and flexibility are desirable, the approach of the Community should encompass Member States to adopt common set of measures (and ultimately mechanism for enforceability) in order to guarantee the existence of proper governance protection for all investors.

What is the way forward?

Perhaps the best step taken by the Community institutions to enhance business efficiency is the passed statute for the European Private Company (Societas Europaea). The statute allows companies that perform activities in more than one Member State, the option of being incorporated as a single company under Community law without the costly and time-consuming obligation of having to set up a network of subsidiaries.

Societas Europaea is an example of how the Community can tackle the various obstacles resulting from the different legal and economic backgrounds of the Member States, with a measure that reflects the economic and legal particularities of the Community.

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**Conclusion**

This essay shows that there is an urgent need for a Community dimension in the area of corporate governance. It highlights that the EC should take a stronger approach by setting up rules and standards that guarantee an adequate level of protection for market players. Only with such approach, the EC institutions would efficiently manage to reduce the probability of new corporate governance fallouts.

The above analysis suggests that stronger approach of the EC should be carried out taking into account three factors of important consideration:

- diverse legal and economic backgrounds imply different approaches
- EC should follow the steps taken in the US, but only where it is appropriate
- the approach adopted by the EC institutions should reflect the current state of the Community

While the essay highlights the fact that there is no need for a unified corporate governance code, as such code would eliminate experimentation and diversity at the national level; a coherent set of corporate governance standards is required. Thus, the results of these analyses do not follow the conclusions reached by the studies taken at the Community level, which considered that the OECD principles provided a coherent set of governance practices and therefore, a European set of governance standards would merely provide an extra-layer of principles.

It has been argued instead that the Community should promote the issuance of governance standards that reflect the differences of the Member States. Accordingly, the essay shows that the OECD principles of corporate governance do not serve the purpose of achieving effective convergence among the governance practices of the Member States. This is because the OECD principles do not depart from the specificities of the Member States and therefore, the actual practices among the Community do not reflect the standings of such principles.
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