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dans le cadre de la table ronde sur l'actionnaire européen

Why is a minimal harmonization of the EU shareholder's rights and duties necessary?

Clearly, with the new legal incentive of cross border mergers, the time has come, as for international groups of companies, to set up an EU shareholder who is unhindered by borders of any kinds.

With or without cross border mergers, integration of the EU financial market is to be achieved through the **harmonization, at the least minimal, of shareholders' rights for two main reasons:**

- First, harmonization is indispensable **to strengthening the single market** and to providing EU companies with the legal certainty they need to develop their activity throughout Europe.
- Second, it's essential in my view to define shareholders' rights in reference to EU values as a **more accountable relationship between shareholders and directors**. The aim being not only to control excess – for instance to avoid fraudulent bankruptcy, - but also to enable shareholders to make their voices heard regarding the management of the company.

This is not to imply that shareholders' rights are similar to popular sovereignty in a democracy in the political sense of the term. Directors' decisions about what will best promote the success of the company must continue to be governed by their business judgment. It would be ill-advised to transfer those principles of direct democracy to shareholders. But within companies they will have more and more to play the role of **balance of power** against management. And I think this is necessary in a world where financial transactions are global.

First let's review the facts:

- With time **the percentage of individual shareholders has decreased** dramatically. According to a study of the Federal Reserve Board, in the US in 1955, 88 % of corporate equity securities were held by individuals. Fifty years later, this figure is down to 38% for the US. And it's 9% for France.
- Second remark: Apart from the traditional collective investors - institutional investors, pension and mutual funds – new actors - **hedge funds** – have made their mark on the market and **have completely changed its functioning in a way which is by and large quite positive.**

I. WHY AND HOW TO INCREASE THE PERCENTAGE OF INDIVIDUAL SHAREHOLDERS?

It's appropriate more for political reasons than economic.

Economically speaking, the growth in the role played by institutional investors and by funds has indeed been good. It has resulted in a dramatic increase of financial investments to the benefit of the companies and of the economy. Moreover especially hedge funds have put pressure on underperforming managers. They have allowed for a better control of management and further pushed forward the need for transparency. Consequently, they have had a positive effect by setting up new checks and balances.

Politically speaking, capital markets cannot be solely funded by funds. Citizens have to be convinced that they can partake in the benefit of these markets. As everyone notes, capital investment is remunerated better than labor. The increasing gap between both types of remuneration is dangerous. Many people find it unacceptable to see companies' profitability at its highest along with high unemployment and stagnation of salaries of those employed. The only way to reconcile most workers – especially in France – with the market economy is to increase the percentage of individual shareholders who will help fill this gap. That's why in France the government is now keen to encourage

How to achieve this? I fully agree with the Commission in that respect which I think very accurate

- **Electronic voting:** Now that we have a population that is fully aware of and comfortable with the internet and computer technology, we need encourage electronic voting for shareholders. This must be an individual right.
- Other rights cannot but be based on the ownership of a certain % of shares. That's the case of the right to allow shareholders to **ask questions** and participate in general shareholder meetings through these same electronic means, for instance in adding **items to the agenda or tabling resolutions. I agree with the Commission, these rights** are key to ensure awareness on the really important issues that the management has to deal with even if the risk is to create new burdens on business.

II. HOW IS HARMONIZATION TO BE ATTAINED?

Shareholders' rights are key to create the “*affectio societatis*” at the basis of the concept of corporate company.

By setting up new means for shareholders to control management:

- I agree with the Commission that adoption of certain guiding principals at the EU level may prove helpful in the area of **director nomination and dismissal**, if procedures are consistent within a given company;
- I also agree that providing for a **special investigation right** for shareholders could be useful if carefully crafted. If it's limited to shareholders having together a certain percentage – 5% - of the company shares, this right could include the right to appoint a special auditor in certain circumstances. (the question is: who pays?)
- Undoubtedly, according to EU standards, the most controversial issue at the present time has to do with **the remuneration of directors**. The public is more and more concerned by the question, especially in France as was shown a few days ago. I don't think that it would be appropriate to recognize the right of shareholders to vote on this issue. But it could perfectly well be recommended at the EU level to prevent any increase of remuneration of directors in case of difficulties of the firm...

Do shareholders have duties as well? What about hedge funds' short term strategy?

One must admit that discussion about these issues mainly stem from hedge funds rather than individual shareholders. This doesn't mean they are not justified. Regardless of the truthful criticisms on certain hedge funds' activism, one cannot deny the positive aspects of the way hedge funds ask management to respond to the challenge of good corporate governance.

However, I admit that rights must go with duties. In that respect, one cannot remain indifferent to the recent report of the ECB on Financial stability. For the first time, this report puts into question hedge funds activism as a cause of vulnerability of the market. It considers the increasing tendency of hedge funds to enforce short term, high returns, and speculative policies as a real danger. And it demands for greater transparency, saying the release of relevant information on hedge funds "is clearly warranted".

Is it time to regulate hedge funds? Have we gone too far in protecting minority shareholders' rights? How to ensure that capital markets don't lead to neglect the long term company's interests in favor of short term financial yield? What about a European regulation of preferred shares to encourage investors' stability?

This should be the next debate and this debate must not be limited to Europe. Indeed there are many kinds of hedge funds: on shore, off shore and tomorrow foreign-based hedge funds in emerging countries. Since companies and the economy by and large are more and financed at a global level.