

Corporate Governance Developments in Europe : Where are we?

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European legal framework

- **European legal framework on Corporate Governance**
 - Starting point with the European Commission communication in May 2003 – « Modernising Company Law and Enhancing Corporate Governance in the European Union – A Plan to Move Forward »
 - The enhancement of disclosure
 - The reinforcement of shareholders rights
 - The modernisation of board of directors
 - The coordination of corporate governance efforts of Member States => A Commission Decision of 15 October 2004 established the European Corporate Governance Forum
- **Nationals initiatives**
- **The current legal framework at the European level is essentially based on two pillars :**
 - Directives (audit committee, principle of « comply or explain », procedural shareholder rights...)
 - Recommendations (which may be transposed into either law or code at the national level) (remunerations, independence of board members...)

European legal framework

- **Relation between EU legislation, national legislations and codes**
(sources : riskmetrics Group 2009)

Corporate governance topic	EU level	National level	
		Legislation	Code
Composition and functioning of boards	Recommendation 2005/162/EC	***	**
Independence of board members	Recommendation 2005/162/EC	*	***
Audit committees	Directive 2006/43/EC	***	***
Remuneration and nomination committees	Recommendation 2004/913/EC Recommendation 2009/385/EC		***
Executive remuneration	Recommendation 2004/913/EC Recommendation 2009/385/EC	**	**
Internal control and risk management	Directive 2006/43/EC Directive 2006/46/EC	*	*
Statutory audit	Directive 84/253/EEC Directive 2003/51/EC Directive 2006/43/EC Directive 2006/46/EC Directive 2008/30/EC Recommendation 2008/473/EC Recommendation 2008/362/EC Decision 2008/627/EC	***	*
Shareholder rights		***	*
Procedural shareholder rights	Directive 2007/36/EC	**	*
Shareholder responsibilities		*	*

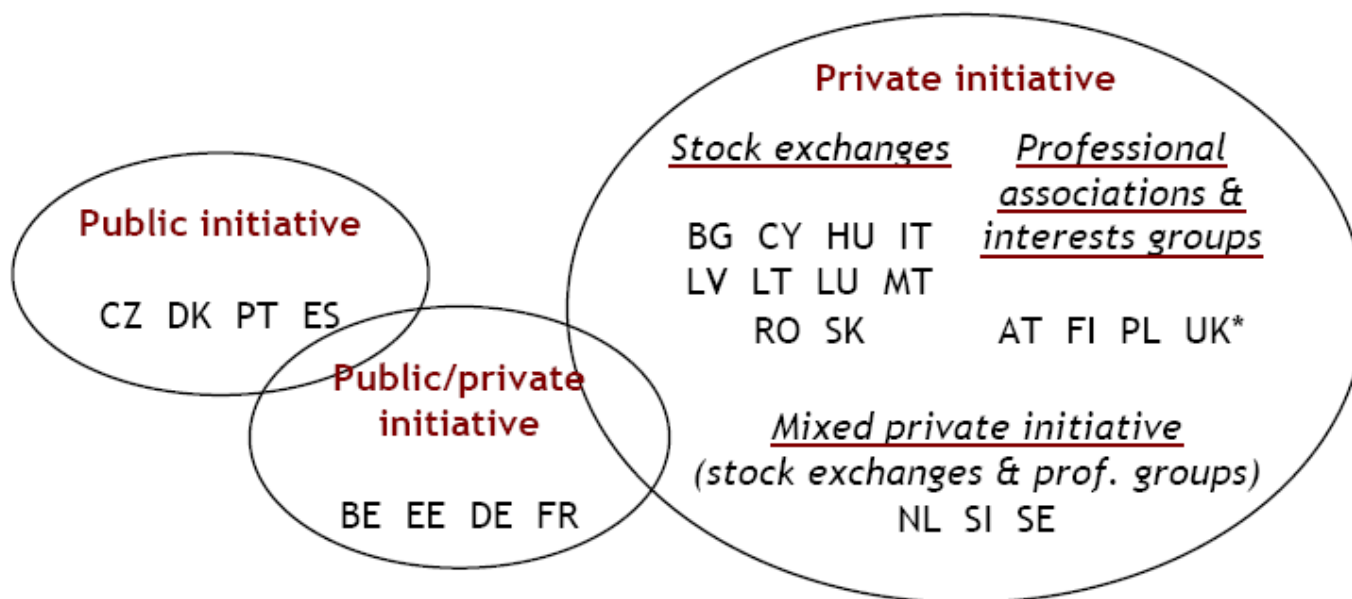
* Low level of regulation; ** Medium level of regulation; *** Extensive level of regulation

National levels

- **At the national levels (hard and soft laws)**
 - A mixture of laws and codes of governance depending on the cultural and historical approaches.
 - A mixture of public and private initiatives. The nature of initiatives is especially relevant when addressing monitoring and enforcement.
 - In several jurisdictions, some codes of governance are specifically designed for SMEs.
 - Statutory auditors may also play a role

National levels

- **Origin of the initial corporate governance code initiatives** (*RiskMetrics Group 2009*)



* Note that the Financial Reporting Council, drafter of the UK Combined code, has some regulatory activities in addition to its primary role of professional association of auditors and actuaries.

Enhancement of disclosure

- **The enhancement of disclosure...in particular the quality of the disclosure**
- **The principle of « comply or explain » is engraved in European law and is the cornerstone of the European legal framework**
 - Although, the implementation of this principle is generally satisfactory, the question of the quality of the disclosure and the explanations given need to be addressed
 - Some explanations can be insufficiently developed
 - Even when developed, some explanations may be unsatisfactory
- **Europe generally tries to strike a balance between disclosure and mandatory requirements. However a crisis tends to favor a more mandatory approach**

Reinforcement of shareholder rights

- **How to ensure an equal treatment, in particular vis-à-vis of minority shareholders?**
- **How to favor a better participation of shareholders**
 - Specific incentives?
 - Better draft resolutions?
 - Electronic participation?
- **Do we need a better transparency on...the shareholders side and in which circumstances?**

Modernisation of board of directors

- **More stringent approach for large companies**
- **Even more stringent approach for credit institutions**
- **Adapted approach for SMEs**

- **Composition**
 - Limiting executive directors outside directorships
 - Diversification of board members
 - Definition and process of selection of independent directors

- **Board accountability**
 - Assessing the boards work and monitoring its result

- **Specialised committees**
 - Audit committees (including their composition) became mandatory with some exemptions
 - Remuneration and nomination committees are still popular
 - Rising interest in particular in strategic committees, environmental committees....

Monitoring and Enforcement

- **Different ways to monitor and enforce which depend on**
 - the source of the principle : Law; Code of governance; Listing rules; Market authority; recommendations...
 - the competent authority in charge of implementing and supervising : Judiciary system; Market authority; Stock exchange;shareholders!
 - and the nature of the monitoring : availability of information; analysis of the information given.
- **French specificity : annual report on corporate governance published by market authority**
 - French law requires the AMF to publish an annual report on corporate governance, executives remunerations and internal control procedures in listed companies
 - The AMF issues recommendations on how listed companies should implement corporate governance codes
 - The AMF also raises topics for discussions on how some corporate governance principles could be implemented or developed in light of new developments

Future developments

- **The European Commission has recently launched a consultation on corporate governance in credit institutions and remuneration policies that details possible ways to deal with the following issues:**
 - How to improve the functioning and the composition of boards of financial institutions in order to enhance their supervision of senior management;
 - How to establish a risk culture at all levels of a financial institution in order to ensure that long-term interests of the business are taken into account;
 - How to enhance the involvement of shareholders, financial supervisors and external auditors in corporate governance matters;
 - How to change remuneration policies in companies in order to discourage excessive risk taking.
- **The European Commission has launched a consultation on the audit sector and how it works**
- **The European Commission is expected to publish a consultation paper before summer 2011 on corporate governance in listed companies**
- **The role and the ecosystem of the shareholders meetings should also be raised next year : Proxy advisors, empty votings....**