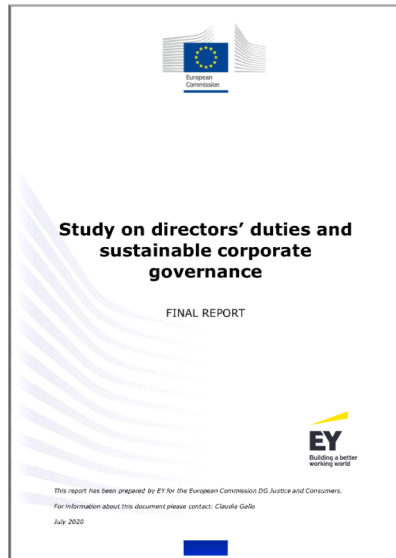




Leading Research with Global Impact



# Directors' Duties and Sustainable Corporate Governance

11 – 13 November 2020 | Online





european corporate governance institute

EUROPEAN COMMISSION STUDY BY ERNST & YOUNG (EY)

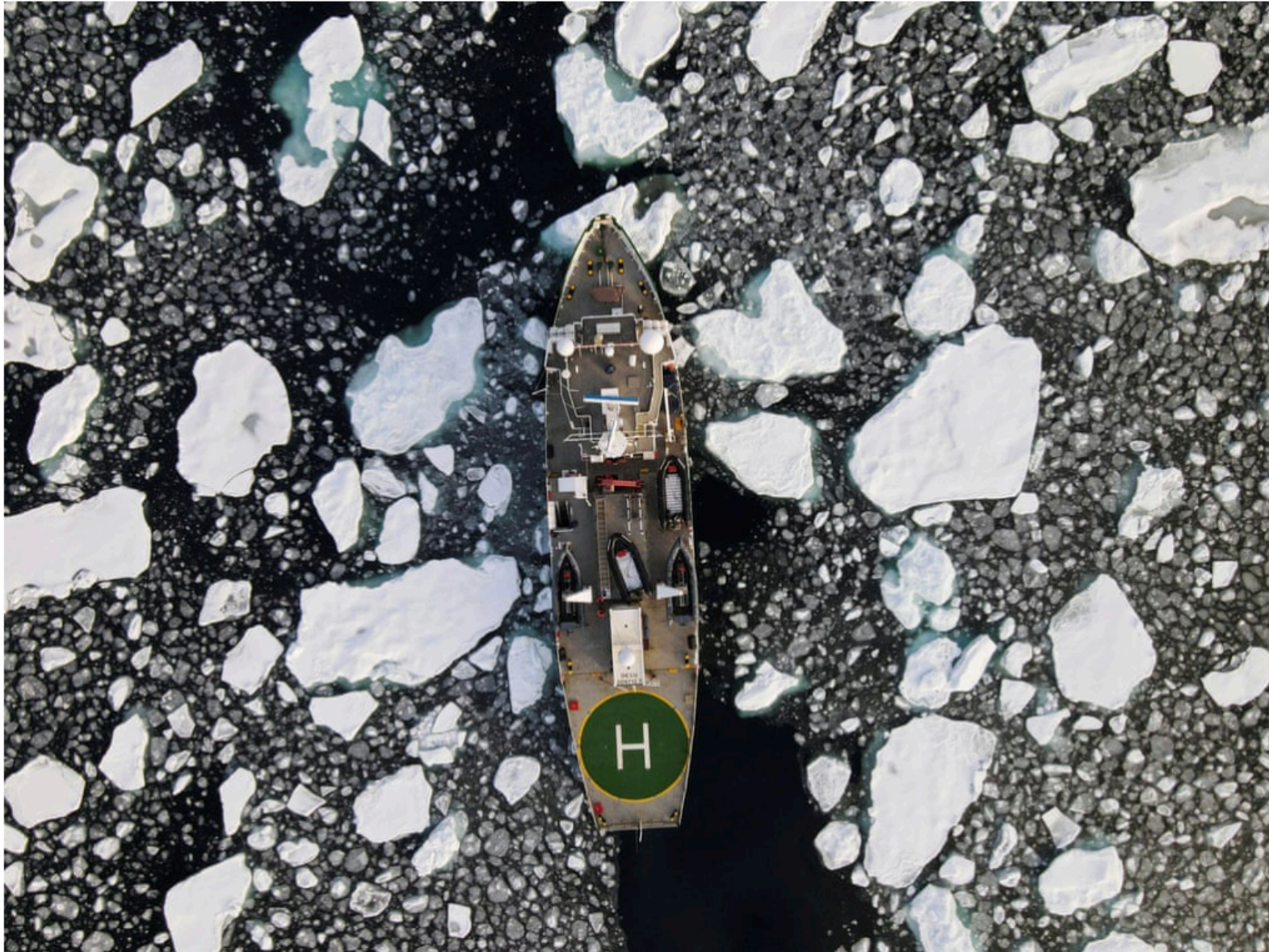
# Directors' Duties and Sustainable Corporate Governance

11 - 13 November 2020 • Online Policy Workshop

## Wrap Up

Marco Becht and Luca Enriques

# 'We packed long underwear and never wore it': Arctic scientists shocked at warming

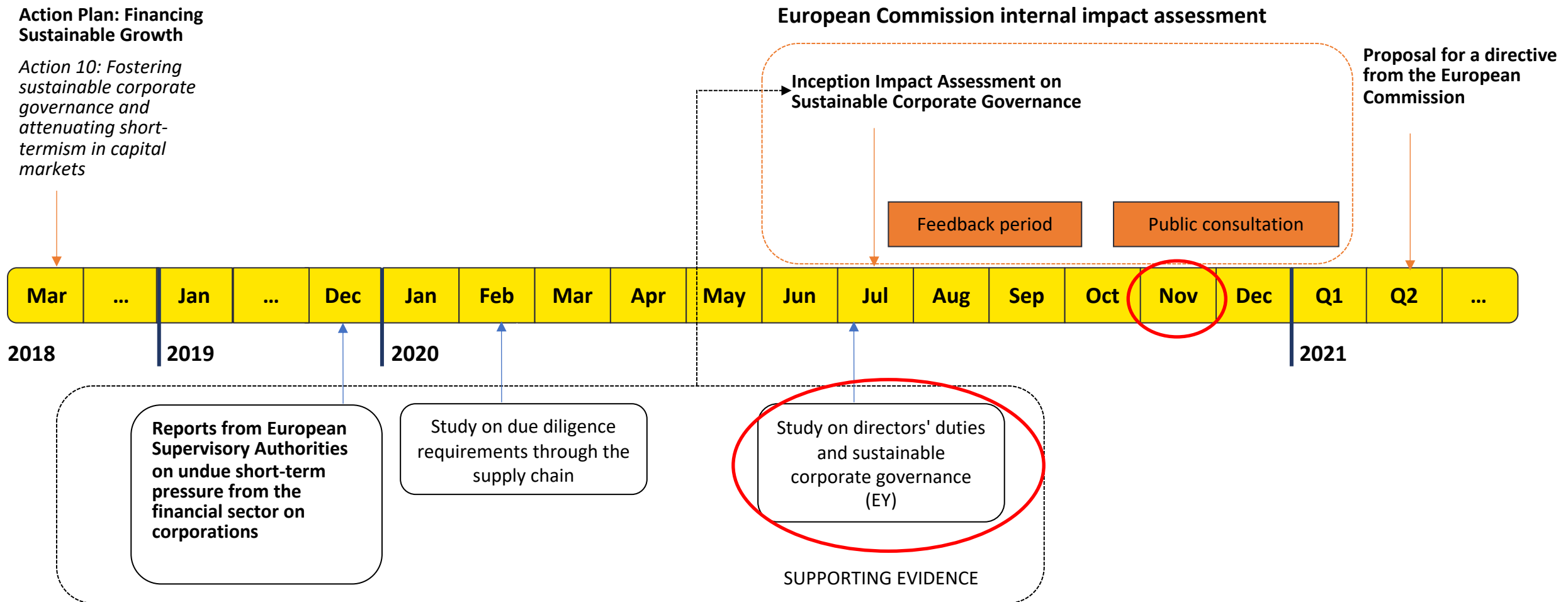


The Guardian  
13 November 2020

# Sustainable Corporate Governance Timeline

## Action Plan: Financing Sustainable Growth

*Action 10: Fostering sustainable corporate governance and attenuating short-termism in capital markets*



# So, our conclusion

- **Conflation**
  - Climate change is an externality
  - Environmental degradation is an externality
  - Whether long-term or short-term
- Poor use of buyback evidence (Jesse)
- **Poor use of overall evidence: no more than mixed**
- Poor planning on purported cures (Holger)
- **Hence, EU, be cautious! Do *not* rely on the EY report**

Source: Slides Marc Roe



# DG Justice and Consumers Conference "Sustainable Corporate Governance"

📅 24 January 2019

📍 Bruxelles/Brussel, Belgium

## Academic input



**Towards Sustainability:  
Clarifying the Role of the Corporate Board**

Professor Beate Sjøfjell, University of Oslo

Brussels, 24 January 2019

Sustainable Market Actors for Responsible Trade (SMART)

### Corporate Governance for Sustainable Prosperity

**William Lazonick**

**The Academic-Industry Research Network**

([william.lazonick@gmail.com](mailto:william.lazonick@gmail.com))

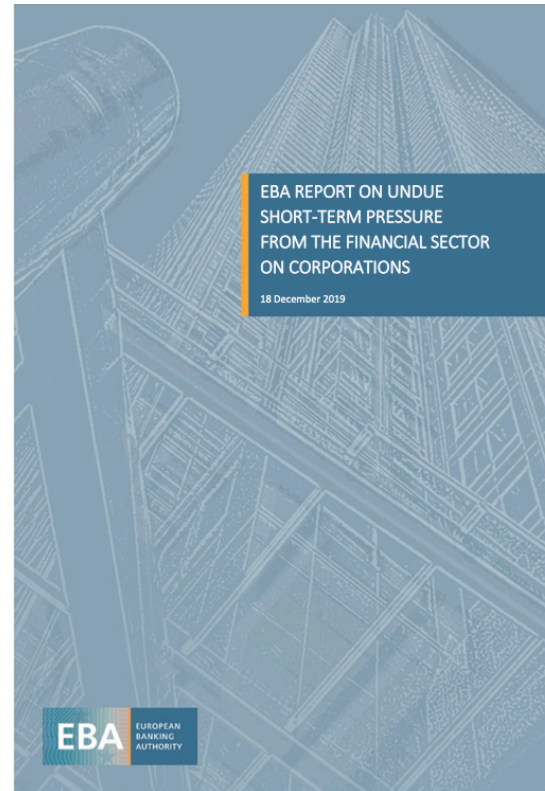
**Conference on  
Sustainable Corporate Governance  
European Commission DG JUST**

Brussels, January 24, 2019

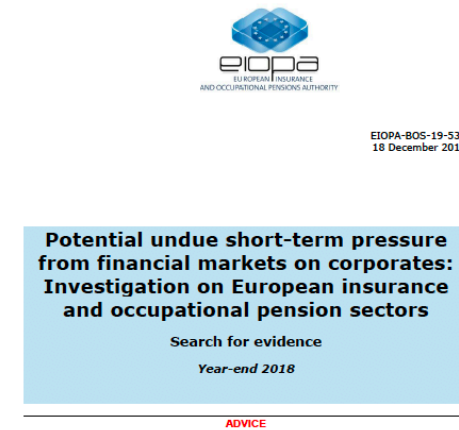
# ESA's 2019 advice



18 Dec 2019



18 Dec 2019



18 Dec 2019

“Under the Action Plan ‘Financing Sustainable Growth’, in the beginning of 2019 the European Commission (Commission) invited the three European Supervisory Authorities (ESAs) to each develop a report presenting evidence and possible advice on potential undue short-termism. In its call for advice (see Annex I), the Commission asked the three ESAs to investigate potential sources of undue short-termism on corporations from the financial sector and provide advice on areas which regulators should address.”

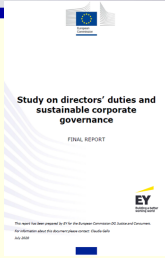
“Let the jury consider their verdict,” the King said, for about the twentieth time that day.



“No, no!” said the Queen.  
“Sentence first – verdict afterwards!”

Source: Alex Edmans Slides





# The EY Report is History

- But the policy agenda is here to stay and moving forward at full speed
- Legislation next year is likely
- *"The Commission has stopped listening"*
- How can policy be influenced to do as little damage and as much good as possible?



Source: Steen Thomsen Slides

<https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance/F594592>

# How not to frame a 'yes/no' question

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“Do you believe that corporate directors should balance the interests of all stakeholders, instead of focusing on the *short-term* financial interests of shareholders, and that this should be clarified in legislation as part of directors’ duty of care?” (Question 8 of Commission Consultation of October 2020)

How do you answer this if you think that focussing on the *long-term* interests of shareholders promotes overall social welfare in the most effective way?

Yes implies you favour a stakeholder approach

No implies you favour a focus on short-term shareholder value.

Neither is what you believe. Your view is “hidden”.

Or suppose you think reform of directors’ duties is not the best way to protect stakeholders.

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Journal

**Journal of Sustainable Finance & Investment** >

Volume 5, 2015 - Issue 4

Enter keywords, authors, DOI

107,635

Views

242

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to date

350

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ARTICLES

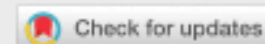
# ESG and financial performance: aggregated evidence from more than 2000 empirical studies

Gunnar Friede, Timo Busch  & Alexander Bassen

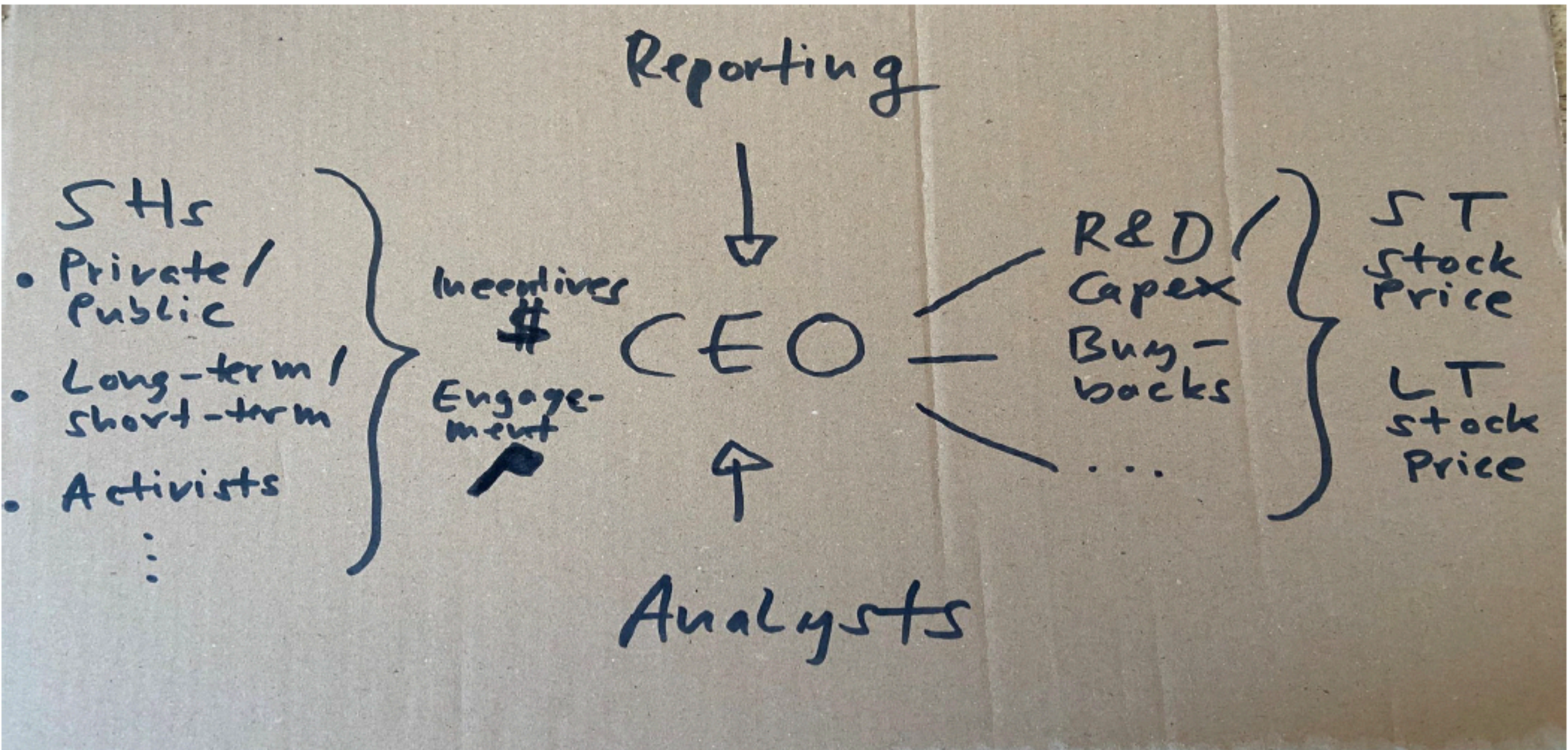
Pages 210-233 | Received 22 Oct 2015, Accepted 09 Nov 2015, Published online: 15 Dec 2015

 Download citation

 <https://doi.org/10.1080/20430795.2015.1118917>



# Zacharias Sautner's Short Termism "Map"



# Zacharias Sautner's Summary of Short Termism Evidence

## Summary of Evidence

- Executive compensation
  - Short-term incentives and long-term investment
  - Short-term incentives and long-term firm value
- Financial reporting
  - Frequency of reporting and long-term investment
  - Analyst earnings forecasts and long-term investment
- Ownership
  - Private versus public
  - Long-term versus short-term
  - Activist versus non-activist

Short-termism?

Some evidence

Mixed evidence

No evidence



# 1. Short-Term Shareholder Value

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- Finance 101:  $P_0 = \sum_{t=1}^{\infty} \frac{D_t}{(1+r)^t}$
- “Maximising shareholder value” / “shareholder capitalism” does *not* mean maximising the short-term stock price or short-term profits
  - Mixes up *horizons* (LT vs. ST) with *objectives* (shareholders vs. stakeholders). See Harvard response
- The solution is *more* shareholder capitalism
  - Von Lilienfeld-Toal and Ruenzi (2014): CEO equity incentives improve long-term shareholder returns
  - Flammer and Bansal (2017): long-term CEO pay improves profitability, innovation, and stakeholder value
  - Edmans et al. (2017), Ladika and Sautner (2020): short-term incentives lead to investment cuts

# Some policy thoughts

- (Tax externalities, punish misbehaving firms, international coordination ESG issues, etc...)
- Improve ESG measurement and disclosure
- If change fiduciary duties of managers, use the “shield” rather than “sword” approach
  - E.g. fiduciary duties to creditors in financial distress (Becker & Strömberg, 2011)
- Encourage (/don't discourage) informed owners ability to own and influence firms
  - Facilitate ability of main shareholders to be represented on boards
  - Encourage pension funds etc to invest in socially responsible PE & activist funds?
  - Beware of negative effects of wealth and inheritance tax on ability of physical owners to exercise informed governance

## Corporate Governance Debates

1. Short-Termism
2. Stakeholder Capitalism
3. Managerial Capitalism
4. “Enlightened” Shareholder Value
  - ETS and Carbon Tax
5. Responsible Investment
6. Responsible Banking
7. Corporate Purpose
8. Integrated Reporting

## Policy Objectives





# Sustainable Corporate Governance Timeline

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