

## **Summing up by Marco Becht, Professor of Finance and Economics, Université Libre de Bruxelles; ECGI Executive Director**

We've heard this morning about two schools - David Wright introduced this - school #1 one being the 'harmonised standards' school where it teaches that we should have strong uniform standards applying throughout and that we should have strong home country or state control with destination country control where necessary. This was contrasted with school #2, the 'principles' school, which says that we should really have a light touch approach to regulation and that you should promote regulatory competition.

The contrast between these two schools has been a constant thread running throughout the day. Just to give you a few examples: in the US before Enron what we had, in terms of school #1, (which came out clearly from Mark Roe's presentation) was the 'feds' and he gave us the list of the 'feds'. There is not just one - there are actually several of them. They deal with disclosure, insider dealing, intermediation disclosure and going private. They also deal with the proxy voting process.

School #2 is really Delaware – competition for corporate charters – but even if Delaware has won the race, what it entails is enabling regulation with people being very much allowed to form the corporate contract that suits them best. We also heard that there is an opt-out of school #1 because if you are not eligible for SEC registration, you can happily live under school #2.

In Europe things were quite different before Enron. We had attempts by the European Commission to embark on school #1. This mostly happened during the 80's, with the 5th Company Law Directive that tried to harmonise many things about the public corporation including, for example, imposing one share one vote. Now we know that the 5th Directive did not get anywhere. It got stuck and is now on the shelf. We also saw an attempt to harmonise takeover rules in particular to create a level playing field on corporate takeovers by bulldozing through or banning or making ineffective corporate takeover defences. We know what end to that story we had. We moved from an attempt at school #1 to going to school #2. We also had, in that regime, modest attempts to have a European disclosure regime. One example is the Large Holdings Directive, which Colin Mayer and other colleagues have benefited from because for the first time you could get data on large blocks and control structures in Europe.

School #2 has really always been in existence in Europe, as we learnt this morning, because it is enshrined in the treaties. But as Gerard Hertig has pointed out, we seem to have forgotten about it and it was only over time that the European Court of Justice reintroduced school #2 and has really brought it home to us with a vengeance. To be fair to the Commission, the Commission has also been working in school #2 mode. We have seen and we do see initiatives from the European Commission to promote regulatory competition and to give corporations more emigration and immigration rights.

Now, the great paradox, of course, as a footnote, is the European Company Statute, which started off as school #1, but, in fact, through the amazing processes of this wonderful city some of us live in, Brussels, it ended up to be school #2. So, this can happen in Europe as well.

What happened after the scandals in the US is that we really saw a shift from school #2 to school #1. We've seen a lot more federal action. We had Congress with Sarbanes-Oxley, we have the SEC proposals on proxy rules, we have the very hard soft law as Mel Eisenberg called it, from the New York Stock Exchange on independent directors and boards. And everybody seems to be pouncing and bouncing on the auditors.

Now, Europe, after the scandals, is really doing more of school #1. We heard this morning of attempts to implement more European standards on disclosure, not only from the Commission but also with the help of CESR. We have action on auditors and we have pressure to do more in the school #1 mode because of the pressure that we see being applied on European corporations from the US partners. We also more school #2. We have the rule recommendations on, for example, boards and remuneration and the action plans are supposed to be recommendations.

This is 'comply and explain', very much school #2. One commentator said this is the Commission's typical Trojan horse – they are trying to get a school #1 Directive by first having school #2. David Wright gave us his word this morning that it is school #2. We'll see if this is the European company statute inverted.

Looking at this picture, it's actually no surprise that we had a problem because the foreign issue requirements in the US in the school #1 mode post-Enron clearly clashed with the school #2 emphasis that we have in Europe. And just as an illustration, this was again evoked today.

If you require a European company to put a majority of independent directors on its board where the family controls the majority of the shares and the voting rights, it will not be prepared to do that. In the Belgian code was mentioned this morning, the formulation is there that there should be a balanced board. So family corporations in Europe now seem to be willing accept some independent directors but only very few of them will be willing to accept a majority of independent directors on the board.

You can also think about it the other way. Sweden has a proposal pending to have half of the board members by law to be women. Now, that might be a very good idea. The Swedes haven't passed it yet, I understand. If Europe adopted these standards, I wonder what our American friends would say if we tried to impose this actually very good idea on them. So, the school #1 problem is going to continue to pose problems. I think the ways to solve it is to continue talking to each other. We may actually agree on some school #1 standards. Then we set them across the Atlantic or we convince ourselves that we actually want to go to school #2 with our school #1 standards. Then we apply 'Eurospeak' which is great - mutual recognition across the Atlantic.

There was agreement, however, that the school #1 approach should be applied to disclosure. In this area, it is also very clear that we have some catching up to do with the SEC and with America. The SEC has been at this since the 1930s. We've only really started. We don't have Edgar and there is a lot of work to do.

There then comes the school #1 paradox that Matthias pointed out. We had the European panel, expressing general dissatisfaction with harmonisation attempts in the school #1 mode and three cheers for the European Court of Justice and the Commission as far as it wants to go to school #2. Then our American friends said the exact opposite because they were very dissatisfied with the Delaware monopoly and had three cheers for the Feds. How do we explain this disagreement?

Colin already gave one answer, I have another answer, which goes as follows. I think it is about protectionism. Europeans who believe in the single market see that a lot of corporate governance issues are in fact protectionism in disguise. Three of them were mentioned this morning. One is in takeovers. We all took note of the action of the French government in the Aventis takeover, blocking a bidder from Switzerland. There was also the attempt of the French government to block Siemens from buying Alstom.

Now we also have the debate about national champions. We still do not really have true European corporations. The only possible candidate is Airbus but Airbus is probably also not really European in that sense. It's probably more French than European.

To mention another one, we have co-determination. The shocking aspect of it for me is not so much that it exists but that it only applies to German employees. This for me is a clear case of protectionism. That, by the way, is not a right wing statement. May I remind you that the slogan is and was that workers of the world should unite, not just the workers of Germany! Why is nobody challenging this through the European Court of Justice? I think Gerard had a point there. We might have to review the rules about bringing court cases to the European Court of Justice. Maybe the incentives are not right when after 20 years you only get strange individuals bringing cases. Maybe we should give them more incentives to bring cases.

The general conclusion is, I think, that in the transatlantic relationship, people, even those who have been talking about this to each other for many years, can still learn things and we do start from very different points. In Europe I think there was a preference for regulatory competition but we do want the Feds to keep an eye on what those member states are doing. Thank you.