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Law and economics in European company law

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Abstract

Discussing company law nowadays, it is difficult not to face some kind of economics arguments. What is interesting is that these arguments are of United States origin, developed in their legal and political environment and not easily implemented to the European legal, economic and political context.

The most important economic theory in company law are the agency theory that is an implication of the theory of the firm developed from the beginning of the 1970's in the United States. One of the most important implications of agency theory is what is called the "shareholder primacy". According to the view, the sole or at least the primary fiduciary duty of company directors is and should be the maximization of the company value to the shareholders, as the residual "owners" of the company.

As company law is highly political, the company being the most important private legal vehicle to gather capital, generate profits and redistribute income in the world, this political aspect of agency theory cannot be underestimated as it is in contrast with the traditional Continental company law thinking. Historically, the main difference between US and Continental company law rises from the difference between American liberalism based on economic efficiency and European social-democracy based on idea of equality, even in the cost of reduced efficiency. This dichotomy has dictated how the roles of controlling and minority shareholders, directors and other constituencies, especially employees, are set in the company law game. The hard core of this political nature of

company law is in the discussion on company objective, is it the interest of the shareholders solely or does the company has a wider social purpose.

During the present financial crisis, the way companies are governed has brought into focus how we see the companies role in society and has the shareholder-based thinking a role in the problems we have faced. The purpose of this article is to analyze the role of the US-based economic thinking in the evolution European company law, both on the Union and the Member States level, the consequences of this evolution and possible solutions to the problems it has caused. On more general level, the political role of economics in company law theory and law-making is analyzed.

Keywords: company law, corporate governance, law and economics, agency theory

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