# Company law perspectives in the European Union

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The European Parliament adopted a resolution based on the own-initiative report drafted by Fiorella GHILARDOTTI (PES, I) on modernising company law. Parliament stated that the events which occurred recently, first in Japan and subsequently in the United States and Europe, involving major industrial groups (in particular Parmalat), illustrate that the rules on transparency that should provide a frame of reference for action by European companies need to be more clearly defined. The effects of such scandals are borne in particular by small shareholders, savers investing in funds or trusts and other creditors as well as workers, who lose their jobs and salaries. Furthermore, the current restructuring process is leading to greater fragmentation, outsourcing and delocalisation among companies, sometimes making it difficult to make out the actual composition of a company or where its real decision making centres are, and often making it almost impossible to understand holdings and cross-ownership of shares or the rules and contractual provisions governing workers whose jobs have been dislocated to different parts of a pyramid or group structure. Therefore Parliament felt that, whilst respecting the traditions in Member States' company law provisions in line with the principle of subsidiarity, it supported the need for urgent action to be taken on European company law. The enlargement process and subsequent consolidation of the internal market will make it necessary to harmonise or coordinate the different national laws so as to establish a general framework that will allow for mobility between European countries. Parliament put particular emphasis on the importance of paying attention to the fact that the aim of measures to harmonise EU company law is to help create a level playing field for companies and that a level playing field must be ensured in the case of all measures. Parliament supported the Commission's view that competition between national company rules is healthy, and therefore considered that competition under level playing field conditions may take the place of efforts to bring about maximum harmonization. On the question of stakeholders, Parliament felt that European corporate governance and company law must encompass substantial arrangements to inform and consult workers and that all directives concerning company law must lay down an obligation to inform and consult workers' representatives when it is necessary to take important decisions affecting the continued survival of companies and jobs. It is necessary in all cases to distinguish between large and small shareholders, mainly as regards the use of modern technology in the exercise of shareholders' voting rights, given that small shareholders are usually more at risk Parliament agreed with the Commission that there is no need to draw up a specific European code of corporate governance, but the EU should spell out a framework of international standards to be observed and determine procedures for these to be transposed, so as to supplement the existing regulatory provisions at national level. Priorities at EU level should be in genuine cross-border areas. Parliament warned of the emergence of a tendency to copy US solutions for US problems and to import US traditions and rules that would be counterproductive for proper corporate governancein Europe. On national codes, Parliament stated that is vital that the Member States' supervisory and monitoring bodies should meet three requirements: stability of the financial system, transparency of markets, corporate balance sheets and corporate behaviour, and safeguarding competition. In particular, it is vital to: - ensure the autonomy, independence and integrity of members of the management and supervisory boards, auditors and rating companies; - ensure that the authorities responsible for monitoring the stock exchange are able to function effectively, giving them the necessary resources and staff; - create framework conditions for the work of anti-trust authorities; - promote an effective system of cooperation between central banks. Parliament maintained that the basic principles of corporate social responsibility must be fully integrated into all spheres of Community activity, particularly company law, the internal market, competition policy, legislation on financial markets, commercial policy, the common foreign and security policy, and development cooperation policy. In order to attain these objectives, there must be a distinction drawn between those listed on the stock exchange, companies not listed on the stock exchange and particularly small and medium-sized businesses in this category. Parliament went on to regret that the Commission makes no mention of the consequences for corporate governance of certain practices resulting from differences in the financing of companies, especially between the Anglo-Saxon tradition - where share

ownership spread through financial markets predominates - and the continental tradition where banks and majority shareholders play a more important role. Finally, Parliament insisted on the need to guarantee that, in the case of listed companies, the possibility of being audited and advised by the same firm is ruled out.