

# RECENT DEVELOPMENTS IN EUROPEAN COMPANY LAW: A WAY FORWARD TO MORE SOCIAL EUROPE?

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# Broader legal background

- The Treaties
- The Charter of Fundamental Rights
- The European Convention on Human Rights
- “social” and “economic” progress; “sustainable development”; “combating social exclusion”; “promoting social justice”; “dialogue between management and labour”

# Common denominator

- Achieving balance between „social” and „economic”
- „social” and „economic” impregnate fundamental laws
- „social” and „economic” are complementary aspects of the Internal Market
- Social model deeply integrated into EU economy

# EU Company Law Today

- not just a set of market-driven principles
- Elements of corporate social responsibility
  - Disclosure of non-financial information
  - Combating discrimination on grounds of gender
  - ....
  - **Employee participation, shareholder and creditor protection**
- Should EU company law serve as a mean for achieving social objectives?
- How will it influence “traditional” company law?

# „New age” or “post-crisis” company law

- A company is not a decontextualized economic entity
- Shareholder model vs. stakeholder model
  - Traditional shareholder primacy vs. orientation to **internal and external** stakeholders
  - “Twin brother” of Angloamerican “progressive corporate law”
- Theoretical backgrounds:
  - A company as „sustainable company” (Vitols, 2012)
  - „holistic approach” to company law (Conchon, 2012)

# Paradigm shift

- **Board level representation**
  - **Employee participation**
- **Promoting transparency and disclosure**
  - Preventing market abuse
  - **Stimulating long-term engagement**
  - **Increasing corporate accountability**
    - Better gender balance on the boards
- **Working parents and caregivers initiatives**
- Emphasizing importance of environmental, social and governance information

# *Ex ante* approach

- more equality, more disclosure and transparency, more diversity, more engagement, more representation aim at preventing problems before they actually occur

# ‘EU Company Mobility Package’

- Fostering employees’ rights
- August 2018: the EP amendments to the Commission’s proposal
  - necessity of strong safeguards and proper protection of creditors, **employees**, shareholders
  - **Employee participation**
  - **Employees’ information and consultation rights**

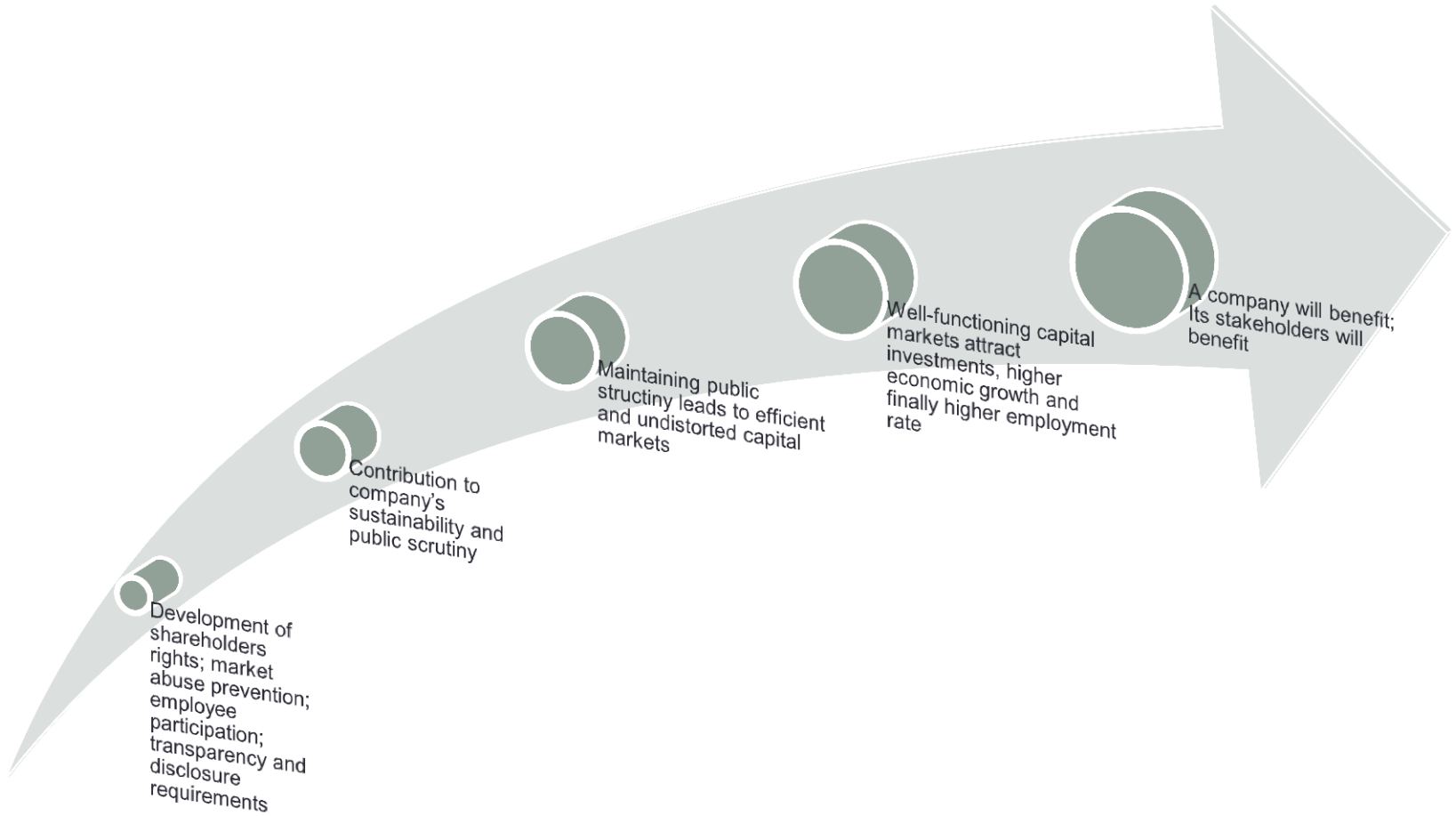


# Joint responsibility

- the EU has introduced a sort of “joint responsibility” of the EU institutions, the Member States and private actors – companies – for combating social issues:
  - It is not anymore the State alone who is responsible for social stability
  - This task has been somehow split among public and private actors
  - It seems almost as a private company has become one of the co-pillars of EU’s social policy
  - A company is somehow forced to introduce socially responsible measures into its corporate governance scheme

# Possible pitfalls – ‘hold up’ problem

- Swiss referendum 2013 – binding vote on remuneration policy in all publicly traded companies
- too much shareholder engagement might affect negatively managerial incentives and thus companies’ performance (Wagner and Wenk, 2017)
- Balance needed!
  - Via advisory vote
  - EU’s Directive on shareholders’ rights (revised)



# Interim conclusions at this point

- stakeholder approach is both **REALITY** and **PERSPECTIVE**
  - Successful projects in the area of EU Company Law were those which have recognized social (mostly employee) participation
  - Pending initiatives include strong social dimension
  - As long as stakeholder dimension is recognized, further development of EU Company Law is both feasible and sustainable
  - Current tendencies are in line with the idea of ‘building social business in Europe’ (Möslein, 2015)

**Thank You for Your  
attention!**