



Mr Charlie McCreevy
Member of the European Commission
200 rue de la Loi
1049 - Bruxelles

17 July 2007

Dear Commissioner,

RE: BUSINESSEUROPE COMMENTS ON THE COMMISSION STUDY ON PROPORTIONALITY

BUSINESSEUROPE has actively participated in the debate on proportionality between ownership and control. In this context, we have called for an independent study to be conducted before any action on this topic is taken at EU level. BUSINESSEUROPE therefore welcomes the ISS study which we consider objective and impartial.

As you know, BUSINESSEUROPE considers that as long as transparency exists, company owners should have the freedom and flexibility to agree on any type of share system that best suits the needs of the company and its owners.

Article 10 of the Takeover Directive together with other pieces of EU legislation such as the 4th and 7th Company Law Directives and the Transparency Directive already stipulate an extensive transparency regime for EU companies. In our opinion, this is sufficient. The focus should now be on implementing existing EU rules at national level. European companies need time to allow these new systems to become embedded and see what results they produce before there are calls for more regulation, albeit 'soft' in the form of a Recommendation.

Furthermore, at a time when the Commission is involved in an exercise of simplification of Company Law and Corporate Governance rules, any action that is not proved vital for the better functioning of the Internal Market will prove burdensome and difficult to justify in light of the Better Regulation principles. In some countries, the public company is even falling out of favour, because of its burdensome regulatory framework, also due to capital market regulation companies have to comply with.



The ISS study did not reveal a problem needing a pan-European solution. What it did show was that companies actively utilised the flexibility offered by different share capital structures, and although there was no conclusive link between the proportionality principle and a company's economic performance or governance, investors tended to discount certain structures. The report states on its page 14 that "the first and most obvious result of the legal Study is that no jurisdiction within the sample has opted for an all-OSOV or all-IRSO legal system" acknowledging therefore that all "one share, one vote" is not the perfect structure.

Indeed, the ISS study has not identified one structure as being more beneficial than another and as you yourself stressed at the 5th European Company Law and Corporate Governance Conference in Berlin on 28 June: "even on the side of investors, there is no systematic call for imposing the one share, one vote principle". Therefore, we would like to stress that in our view no case has been made for EU action.

We believe that the debate on share capital structure should continue (as mentioned by the study on page 6 "prior to drawing any definitive conclusions on the OSOV and IRSO principles, certain additional areas should be explored, such as laws governing groups, related-party transactions and conflicts of interest") but with a view to identifying if there are problems. If problems exist, then, we believe that the solution should come first from the market and only then at a national or pan-European level.

We recognise you as a strong supporter of the EU better regulation policy, a key element for strengthening competitiveness and supporting sustainable growth and employment as a means to achieve the Lisbon goals.

We would therefore like to stress that any EU action on the field of Company Law and Corporate Governance should focus on strengthening companies' attractiveness by addressing - not adding to - the excessive regulatory burdens currently faced by companies, especially mainly when the current national systems prove efficient and the market is functioning well.

We remain at your disposal should you wish to discuss these comments further.

Yours sincerely,

Philippe de Buck