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*Labour and the Locusts: Trade Union
responses to corporate governance
regulation in the European Union*

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Structure

- The context: Labour and the financial crisis
- The focus: EU Corporate governance and Financial Market Regulation
- The question: Which role for (organised) labour at the EU level?

Labour and the financial crisis

‘ The conditions are there for a trade union counter attack’
(John Monks 2008)

But:

- Bailouts plans, nationalisations top-down initiatives
- Regulatory responses at EU level – focus on macro financial supervision (but e.g. debates on AIFM, CRAs, FTT)
- Fragmentation of labour interests

EU Corporate Governance Regulation - From an Industrial to a Shareholder Democracy?

‘Employees are increasingly seen to have interests in the functioning of enterprises which can be as substantial as those of shareholders, and sometimes more so’ (European Commission 1975: 9).

‘The shareholder is king or queen’ (McCreevy 2005)

- Emergence of shareholder value paradigm – fairly consolidated political project at EU level from 2000s onwards
- Increasingly under financial market imperatives – regulation *through* the market *for* the market (external control, disclosure, transparency)

Corporate governance in crisis?

‘The financial crisis can to an important extent be attributed to failures and weaknesses in corporate governance arrangements’ (OECD 2009)

- Systemic governance failures (mainly in banking/finance)
- Debates focus mainly on
 - Executive remuneration
 - Risk assessment
 - Role of supervisory boards

EU Commission (2010): ‘this problem does not only affect financial institutions. More generally, it raises questions about the effectiveness of corporate governance rules based on the presumption of effective control by shareholders’

Shareholder vs Worker rights

- Complexity of company law and securities regulation – assumption of ‘technical’ nature of shareholder value paradigm
- Labour law and workers’ rights relegated to Social and Employment Policy, Social Dialogue and CSR (but: EWC, SE)

e.g. Company Law Action Plan 2003:

‘We realised that we as a trade union didn’t have anything to do with this – there is this Action Plan but we’re doing Social Dialogue’ (Interview ETUI 2006)

A question of expertise?

- Example: Regulation of Alternative Investment
 - Focus on Hedge Funds and Private Equity
 - Discussion brought up in EP before the crisis (e.g. ‘locust’ debate)
 - 2009 Alternative Investment Fund Manager Directive proposal
- Contentious claims to expert knowledge
- Political function of experts

Expert group mandate

‘to advise the Commission on matters relating to the European market and in doing so, [...] describe and analyse current trends and issues; [...] identify, describe and document the legal, organisational, regulatory and administrative and other barriers hindering the efficient development of the Hedge Fund and Private Equity fund markets’ (Commission 2006:2).

SUB GROUP ON PRIVATE EQUITY FUNDS						
		name	surname	MS	company	
1	Ms	Monique	Cohen	FR	APAX	
2	Ms	Anne	Glover	UK	Amadeus Capital Partners	
3	Ms	Josyane	Gold	UK	SJ Berwin	
4	Ms	Carol	Kennedy	UK	Pantheon Group	
5	Mr	Javier	Loizaga	ES	Mercapital	
6	Mr	Jan	Moulijn	NL	Taros Capital	
7	Mr	Vince	O'Brien	UK	Montagu Private Equity	
8	Mr	Fabio	Sattin	IT	Private Equity Partners	
9	Mr	Ulf	Söderholm	SE	Andulf Advokaat	
10	Mr	Ari	Tolppanen	FI	Capman	
OBSERVERS						
		name	surname	MS	Organisation	Stakeholder group
1	Mr	Pascal	Lagarde	FR	CDC entreprises	Private sector interface
2	Ms	Maria	Leander	EU	European Investment Fund	Public sector investor
3	Mr	Tom	Pütter	DE	Allianz Capital Partners	Buy-side of market
4	Mr	Julian	Tzvetkov	HU	Hungarian Dev, bank (MFB)	Public sector investor

"CESR (Committee of European Securities Regulators) and ECB (European Central Bank) may also appoint observers to these groups".

SUB GROUP ON HEDGE FUNDS						
		name	surname	MS	company	
1	Mr	Segun	Aganga	UK	Goldman Sachs	
2	Mr	Antonio	Ary dos Santos Freire	P	Santander	
3	Ms	Odette	Cesari	FR	Axa-IM	
4	Mr	Neil	Donnelly	IRL	Pioneer	
5	Mr	Alain	Dubois	FR	Lyxor	
6	Mr	Horst	Eich	DE	Allianz	
7	Mr	Paul	Feeney	UK	Gartmore	
8	Mr	Holger	Hartenfels	DE	Deutsche Bank	
9	Ms	Gay	Huey Evans	US	Citigroup-Tribeca	
10	Mr	Alain	Reinhold	FR	ADI	
11	Mr	Rupert	Rossander	CH	MAN	
12	Mr	Lindsay	Tomlinson	UK	BGI	
13	Mr	Jack	Tracy	UK	Morgan Stanley	
14	Mr	Luc	de Vet	LUX	Citco (Lux)	
15	Mr	Neil	Warrender	UK	RAB capital	
16	Mr	Damian	Neylin	IRL	PricewaterhouseCoopers	
OBSERVERS						
		name	surname	MS	Organisation	Stakeholder group
1	Ms	Jella	Benner-Heinacher	DE	DWS/Euro-shareholders	Retail investors
2	Mr	Robert	Coomans	NL	ABP pension fund	Wholesale investor
3	Mr	Gernot Karl	Heitzinger	AUT	SMN Investment Services	Wholesale investor
4	Ms	Florence	Lombard	INT	AIMA	Industry
5	Ms	Tatiana	Verrier	DE	DB/FIN-USE	Retail investors
6	Mr	Martin	Ziegenbald	DE	UNICE	Corporate

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The HF group's advice

'The group calls on European regulatory authority to adopt a policy of enlightened self-interest. This would recognise that attempts to further regulate this evolving industry will drive the businesses and its investors offshore or lead to the packaging of hedge fund based investment in other forms. Therefore, efforts to create a suitable regulatory environment in Europe should work within this concept of the market' (Expert Group on Hedge Funds 2006: 4)

Alternative Alternative Investment Expert Group (PES)

Amongst others:

- Michel Aglietta, Paris X, France
- Simon Cox, EFFAT, Brussels;
- Reiner Hoffmann, ETUI-REHS, Brussels;
- Sam Ironside, UNI-Europa, Brussels;
- Lothar Kamp, Hans Böckler Stiftung, Germany;
- Dr. Norbert Kluge, ETUI-REHS, Germany;
- Dr. Roland Köstler, Hans Böckler Stiftung, Germany;
- Dr. Norbert Wieczorek, ex-MP, Germany;
- Andrew Watt, ETUI-REHS, Brussels;
- Paul Windolf, University Trier, Germany.

Critique of Commission expert groups

- PES report – bias towards ‘deregulation’ in alternative investment expert groups (PES 2007: 4).
- As the PES experts argue, ‘our analyses have shown that some hedge funds and private equity funds contribute to making capital markets function more efficiently [...] however, overwhelming evidence and practical experience show that most_of their activities raise serious concerns and problems in the real economy’(PES 2007: 5).
- Expert reports criticised for their industry bias and unrepresentativeness, and for being ‘based on scientifically assailable methods’ (PES 2007: 109).

Which role for labour?

- EU regulatory instruments; committee governance; question of Legal basis
- “Post-ricardian” phase of European integration (see eg role of ECJ)

BUT

- ETUC 2006 Resolution on Corporate Governance at the European level
- Increasing alliances with EP (PES), contestation of governance/expertise