

SHAREHOLDERS' DUTIES AS A VEHICLE FOR TRANSFORMATION OF EU COMPANY LAW

AGENDA

- Shareholders' duties in EU Company Law
 - Why shareholders?
- Shareholders' duties in EU Company Law
 - Starting point and trends
 - The variety and variance of shareholders' duties
- Drivers for a transformation?
- Implications

SHAREHOLDERS' DUTIES IN EU COMPANY LAW

**‘We have spoken for years about shareholders’ rights.
It is time to also talk about shareholders’ obligations’**

(Commissioner for Internal Market and Services, Michel Barnier, 2010)

WHY SHAREHOLDERS? (I)

- Shareholders have a unique position in company law and in internal corporate governance
 - Economic theory
 - Residual claimants or owners
 - Company law
 - Shareholders own the company shares
 - But are given rights in the company that resemble proprietary rights
 - ❖ Protected by company law

WHY SHAREHOLDERS? (II)

- The EU framework
 - Contemporary corporate governance
 - ‘Effective, sustainable shareholder engagement is one of the cornerstones of listed companies’ corporate governance model’
 - Checks and balances
- External corporate governance
 - Part of an efficient market
 - Exit

SHAREHOLDERS' DUTIES – A TREND

- Trend in company law and capital market law
- Traditional company law perception – shareholders have no duties
- To what extent can shareholders' duties serve as a vehicle for transformation of EU company law?

THE VARIETY OF SHAREHOLDERS' DUTIES

- There is great variety of shareholders' duties
 - Classification according to their source
 - Contractual or statutory
 - ❖ Regulatory and enforcement strategies
 - Classification according to the interests they intend to safeguard
 - The investee company, fellow shareholders or company stakeholders
 - Society's interests
 - The market

THE VARIANCE OF SHAREHOLDERS' DUTIES

- Listed vs. non-listed companies
- Small companies vs. large companies
- Types of shareholders
- Size of shareholding
- Purpose of shareholding

SHAREHOLDERS AS DRIVERS FOR TRANSFORMATION?

- Duty of loyalty?
- Shareholders' interests and motives for investing?
- Likely to be a politically driven process

THE SHAREHOLDER RIGHTS DIRECTIVE

- Shareholder engagement
 - Disclosure duties for institutional investors
- Sustainability and long-term commitment
 - A recurring motif in the Directive
 - Institutional investors and asset managers
 - Remuneration

IMPLICATIONS FOR THE TRANSFORMATION OF EU COMPANY LAW

- Politically driven process
 - Statutory duties
 - Are there limits to shareholders' duties?
 - Interests to be safeguarded?
 - Type and size of company
 - Type and size of shareholder



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