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The European Parliament's Rejection of the Take-over Directive Proposal:

A Corporate Governance Approach[1]

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Abstract

This article examines why Members of the European Parliament (MEPs) in 2001 turned down a proposal for an EU take-over directive? The first explanation focuses on party ideology. However, MEPs overwhelmingly voted according to national rather than party lines. Two additional explanations emphasise national characteristics: labour market legislation (national schemes to protect employees against dismissals) and corporate governance issues. Labour market legislation can explain the UK and German MEP votes but not the Swedish and French MEPs votes. These votes can be explained by emphasising measures against take-overs such as a high level of market capitalisation and unequal voting rights.

[1] I thank Michel Goyer for suggesting the idea for this paper and for letting me use tables 7 and 8 from his own work. I also thank Jaap Winter, Jonathan Rickford and anonymous Commission officials for useful information.

INTRODUCTION

In March 2000, the European Council in Lisbon set out a ten-year strategy to make the EU the world's most dynamic and competitive economy. The hope is that the strategy will lead to a stronger economy. Behind the lofty rhetoric is an important fact: although the 1957 Treaty of Rome set out to create a single market in goods, services, capital and people, Europe maintains a wide range of barriers to a single market. DG Internal Market has carried out several studies, which show that economic gains could be had if more reforms were undertaken in financial services for example. This article examines some of the obstacles to the creation of a single market in financial services by looking at the attempt to create a common take-over directive in the EU.

The European Commission in its 1985 White Paper on completing the internal market proposed the adoption of a take-over directive to create a legal framework for consistent take-over rules across the EU. Such a directive was intended as part of a broader program of financial market integration. Subsequently the Commission on 19 January 1989 presented to the Council of Ministers a proposal for a law concerning take-over bids. After a long and difficult political process the proposal was struck down in the European Parliament on 4 July 2001 in a historic vote, which was tied 273-273[2]. This article examines why the EU has found it so difficult to agree on a take-over directive and focuses in particular on the vote in the European Parliament on 4 July 2001[3]. Specifically, this article asks why a significant number of continental European countries

[2] When a vote is tied in the third and final vote in the European Parliament the proposal is turned down.
[3] As a result of the European Parliament's rejection of the proposal in the third and final vote the Commission had to draft a fresh legislative proposal. In October 2002 the Commission presented its new proposal.

including France and the UK voted in favour of the take-over directive? And furthermore, this article asks why Germany changed its position from support to opposition? At first German Members of the European Parliament (MEPs) and the German government were actively involved in drafting a common European take-over code. However, eventually German MEPs changed their minds and strongly opposed the directive in the crucial 2001 vote.

We examine three different explanations for the outcome and focus in particular on the votes by UK, German and French MEPs. A brief discussion of Sweden is also included. The first explanation examines the impact of political ideology. Typically MEPs vote according to political party affiliation (Simon Hix, Abdul Noury and Gérard Roland, 2002). However, in the case of the take-over directive MEPs voted according to country affiliation rather than party affiliation. For example German MEPs overwhelmingly voted against the directive while UK MEPS voted in favour of the directive. We therefore turn to two explanations that focus on national institutional characteristics as determinants of the voting pattern. One such explanation examines the impact of national labour market institutions, in particular the strictness of protection against dismissals. A second explanation explores the impact of national models of corporate governance.

Labour market institutions are important because at least in the short run take-overs often lead to redundancies. The take-over wave in the US in the 1980s illustrated this. We therefore expect that countries with flexible labour laws (indicated in particular by low barriers to dismissal) would be more likely to vote for the directive because these countries are expected to take advantage of the greater possibility for take-overs than

countries with inflexible labour laws. We find that this prediction fits the UK which has flexible labour laws and whose MEPs supported the take-over code. Germany also fits the prediction with its rigid labour laws and German MEP opposition to the directive. However, while this explanation might account for the UK and German MEP votes it cannot account for the voting patterns of French and Swedish MEPs. In spite of inflexible labour laws in Sweden and France, MEPs from both countries overwhelmingly supported the take-over directive.

Next, in order to explain the disagreement in the European Parliament we turn to national models of corporate governance. We expect that countries characterized by a continental corporate governance model such as Germany, France and Sweden will not favour a take-over directive while liberal market economies such as the UK might find a take-over directive to be compatible with their institutional structures. The reason is that the directive increases the importance of the market for corporate control, which is in line with the UK model of corporate governance rather than the continental model. This simple view of national corporate governance models cannot account for the French (and Swedish) MEP voting patterns. Instead we look to specific national barriers against take-overs. If an EU member state possesses barriers that shelter it from hostile take-overs and the proposed directive does not remove these barriers, then MEPs from this member state might not oppose the directive.

The article is divided into five parts. Part I briefly describes the political history of the take-over directive. Part II examines the role of ideology while part III focuses on the impact of labour market institutions. Part IV constitutes the core of the argument and

stresses the role of divergent corporate governance traditions. Finally, part V presents our conclusions.

I THE POLITICAL HISTORY OF THE TAKE-OVER DIRECTIVE

The European Commission views a take-over directive as a crucial step towards the integration of European capital markets. According to the Commission, the objectives of the directive are threefold:

> *First, it is to draw up fair common rules for take-over bids in the EU for all interested parties (companies, shareholders and stakeholders, including employees of the companies concerned). Second, to offer companies increased legal certainty and as "level a playing field" as possible when operating in several Member States. Third, to provide proper protection to minority shareholders in the case of a change of control* (speech by Commissioner Bolkestein held at the Centre for European Policy Studies, 4 March, 2003).

1.1 The Initial Process

On 19 January 1989 the Commission presented to the Council of Ministers a proposal for a "Thirteenth Council Directive on company law concerning take-over and other general bids". On 10 September 1990 the Commission adopted an amended proposal that took account of the opinions of the Economic and Social Committee and the European Parliament. However, the UK feared that the shift toward a legislative system would create problems for its active take-over market by "… introducing

scope for legal challenges and tactical delays" (Pill and Vogel, 2002). On the other hand, Germany objected to encouraging take-overs because it favoured its own stakeholder system. The Commission subsequently sent out questionnaires to member states asking them to identify issues of importance. Finally, the Commission on 8 February 1996 presented a framework proposal. The European Parliament endorsed the proposal but suggested amendments, which were incorporated by the Commission at the end of 1997.

1.2 A Change in the German Position

In October 1998 the Social Democrat Gerhard Schröder became the new German Chancellor. Schröder strongly favoured the take-over directive, which he saw as supporting his 1998 Corporate Sector Supervision and Transparency Act (KonTraG)[4]. According to Hoepner, "[B]esides some limited modifications to supervisory board regulation, risk management and bank ownership of industrial capital, this capital-market-oriented law legalized share buybacks, facilitated the introduction of stock options and, above all, abolished unequal voting rights … [I]n its commentary on the law the Federal Ministry of Justice took the historical step of abolishing the stakeholder view of the firm (which had been written down in the Stock Corporation Act of 1937 and approved by the Federal Constitutional Court in 1979) and of introducing a shareholder-oriented view…" (Hoepner, 2002, p 13). The Social Democrats wanted to prohibit the industrial stock ownership of banks, and saw the development of the capital market as important goals.

Furthermore, in the context of the 2000 Tax Reduction Act the Schröder government opted for the total abolition of corporate income tax. The new Tax Reduction Act meant that capital gains tax on sales of large corporate shareholdings had been removed. The intention according to Hoepner was "… explicitly to abolish interlocking capital and as a consequence to change the corporate governance mechanisms and to create a more open market for corporate control" (Hoepner, 2002, p 16). This intention was in line with the European Commission's plans. In the summer 2000 the Council of Ministers reached an agreement on the directive and sent the text to the European Parliament for a second reading. However, surprisingly

discussions in the European Parliament did not go smoothly. MEP Klaus-Heiner Lehne, a German right-of-centre Christian Democrat had been appointed rapporteur for the take-over directive by the European Parliament's Committee on Legal Affairs and the Internal Market. Lehne was opposed to many of the directive's key provisions and managed to play a leading role in the discussions of the directive. In fact, Lehne was seen as instrumental in ensuring that most German MEPs voted against the directive.

Two developments had occurred in Germany in 2000 that played a major role for the change in the positions of German MEPs. First, in February 2000 the British telecommunications company Vodafone acquired the German mobile phone company Mannesmann in a hostile take-over. Second, later in the year American Ford Motor Company indicated an interest in acquiring the German car manufacturer VW. Many Germans began to worry that prime German companies would be taken over by foreign firms.

Lehne's main argument against the directive was that it did not ensure a level playing field, in particular because the directive did not remove golden shares. A golden share is a share owned by the government and vested with sufficient voting rights to maintain control and thus fend off potential predators. German firms do not have golden shares except VW[5] whereas golden shares exist in several EU member states such as France´s Société Nationale Elf-Aquitaine. Countries such as France permitted the holding by their respective governments of golden shares, which

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[4] Gesetz zur Kontrolle und Transparenz im Unternehmensbereich.

[5] Germany limits individual ownership in VW to 20 % thus rendering it immune to any hostile takeover. Lower Saxony also owns an 18.6 % stake in the company.

conferred special rights on them. The perceived threat in Germany of an increase in hostile take-overs following the take-over of Mannesmann and the possibility of VW being taken over by a US auto manufacturer led to Schröder's change of heart. Schröder told a workers' gathering at a VW plant in Lower Saxony that, "any efforts by the Commission in Brussels to smash the VW culture will meet the resistance of the federal government as long as we are in power" (Handelsblatt, 27 February 2001). Schröder's position was somewhat ironic because Germany argued strongly against golden shares yet fought hard to justify the existence of golden shares in VW.

1.3 Conciliation

In December 2000 the European Parliament had proposed a number of amendments, which did not meet with the Council's approval. If the Council of Ministers does not approve the amendments which the European Parliament has adopted at its second reading the proposal is subsequently submitted to a Conciliation Committee. This committee is made up of the fifteen members of the Council of Ministers or their representatives and an equal number of representatives from the European Parliament. The political groups appoint the 15 members of the European Parliament delegation so that the delegation reflects the overall political balance in the European Parliament. The Conciliation Committee reached an agreement on 6 June 2001. Within a period of 6-8 weeks the agreement had to be submitted to the Presidents of the European Parliament and Council delegations for approval by the European Parliament and the Council of Ministers without any possibility of amendment. On 4 July 2001 the European Parliament rejected the joint text in its third reading. 273

MEPs voted for the proposal and 273 MEPs voted against. When a vote is unanimous a proposal falls.

MEPs stressed three major problems with the directive. First, many MEPs rejected the principle whereby in order to take defensive measures in the face of a bid, the board of the offeree company must first obtain the approval of shareholders once the bid has been made (Article 9). Secondly, many MEPs found that the protection, which the directive would afford employees of companies involved in a take-over bid, was insufficient. Finally, many MEPs argued that the proposal failed to achieve a level playing field with the US and between EU member states (Article 11).

Need sections on the UK and French positions (to be finalized)

II IDEOLOGY

Political scientists have shown than in most cases in the European Parliament, MEPs vote according to party affiliation (Simon Hix, Abdul Noury and Gérard Roland, 2002). However, concerning the take-over directive MEPs voted according to their country affiliation and not according to their party affiliation. According to Hix, Noury and Roland, "coalition formation in all five European Parliaments takes place along the left-right dimension. The only exception to this left-right pattern of coalition behaviour are the Gaullists (and their allies), who have tended to vote more with the Radical Left, at the opposite end of the left-right dimension, than with the Green or Socialists. This can be explained by the second dimension of conflict found in the European Parliament, namely the pro/anti-Europe dimension" (Hix, Noury and Roland, 2002, p 29). Gaullists are likely

to take an anti-Europe view. Gaullists see the proposal as posing a threat to national models of capitalism in order to strengthen European Union liberalisation policies.

In our case, however, it is clear that country affiliation and not party affiliation is the main determinant for how MEPs voted. For example 73 out of 79 UK MEPs voted in favour of the directive (92percent). In contrast 95 out of 97 German MEPs (98percent) voted against the directive. In the case of France the picture is a little less clear. However, 46 of 72 MEPs voted in favour of the directive (64percent). Finally, all Swedish MEPs voted in favour of the directive.

Table 1
MEPs who voted “No” to the take-over directive divided into country and party affiliation[6]

	EDD	GUE/NGL	PPE-DE	PSE	TDI	Verts/Ale	
Austria			6	7		1	14
Belgium			6	5	1	5	16
Denmark							0
Finland			1				1
France		9	4	4		9	26
Germany		5	51	34		5	95
Greece		6	8	7			21
Ireland			1			1	2
Italy		4	30		3		37
Luxembourg						1	1
Netherlands	3	1	9	5		4	22
Portugal				1			1
Spain		4	4	22		1	31
Sweden							0
United Kingdom	2					4	6

[6] EDD: Eurosceptic Group of Parliamentarians
GUE/NGL: Confederal Group of the European United Left/Nordic Green Left
PPE-DE: Christian Democrats and European Democrats
PSE: party of European Socialists
TDI: Technical Group of Independent Members

Table 2

MEPs who voted “Yes” to the take-over directive divided into country and party affiliation

YES	EDD	ELDR	GUE/NGL	NI	PPE-DE	PSE	UEN	TDI	Verts/Ale	
Austria				3						3
Belgium		5								5
Denmark	3	5			1	3	1			13
Finland		4			3	3				10
France	6			5	15	16	3		1	46
Germany				1	1					2
Greece					1	1				2
Ireland		1			4	1	4			10
Italy		4	1		2	12	6	7		32
Luxembourg		1			2	2				5
Netherlands		8				1				9
Portugal					9	8	2			18
Spain		3			20				3	26
Sweden		4			7	6			2	19
UK		10			34	27			2	73

In the “no” category as shown in table 1 we find Germany as well as Austria, Belgium, Greece, the Netherlands and partly Italy and Spain. In the “yes” category as shown in table 2 we find countries such as the UK, France and Sweden as well as Finland, Ireland, Luxembourg, and Portugal.

Table 3 lists the countries where the majority (defined here as 50percent or more of the MEPs) voted in favour of the directive. Table 4 lists the countries where the majority (defined as 60percent or more of the MEPs) voted against the directive.

Table 3: 50 percent or more MEP voted yes to the take-over directive:

Country	Yes/no votes	percentage yes
Denmark	13/0	100
Finland	10/1	90
France	46/26	64
Ireland	10/2	83
Luxembourg	5/1	83
Portugal	18/1	95
Sweden	19/0	100
United Kingdom	73/6	92

Table 4: 50 percent or more MEPs voted no to the take-over directive

Country	Yes/no votes	percentage yes
Austria	14/3	82
Belgium	16/5	76
Germany	95/2	98
Greece	21/2	91
Italy	37/32	53
Netherlands	22/9	71
Spain	31/26	54

But if country specific reasons rather than party ideology seem to account for the voting pattern what might these country specific reasons be?[7] Next, we examine if labour market flexibility might be a determinant of MEP positions on the take-over directive.

III LABOR MARKET FLEXIBILITY

We expect that countries with flexible labour market regulations (indicated in particular by low barriers to dismissal) would be more likely to vote for the directive than those with rigid labour market regulations (indicated by high barriers to dismissal). The experience from the intensive merger activity in the US in the 1980s showed that mergers lead to dismissals. Since the take-over directive is expected to encourage merger activity we expect the directive to increase the risk of dismissals. We expect that countries with

[7] Explain that party line split can explain some of the votes in France (and possibly Italy and Spain as well)

rigid labour laws are particularly wary of dismissals and hence MEPs from these countries are not expected to support the take-over directive.

In order to evaluate this hypothesis we examine OECD data concerning employment protection and labour market performance. As a rough indicator we use the OECD's indicators for "difficulty of dismissal" from the late 1990s (table 2.2 p 57 in "Employment Protection and Labour Market Performance", 1999). The summary score can range from 0 to 6, with higher values representing stricter regulation. Their calculation is explained in the OECD Annex 2.B).

Table 5

A ranking of countries based on the difficulty of dismissal

Country	**Difficulty of dismissal (average value: 2.9)**
Portugal	4.5
Italy	4.0
Sweden	3.8
Germany	3.5
Greece	3.3
Austria	3.3
The Netherlands	3.3
Spain	3.3
France	2.8
Denmark	2.3
Finland	2.3
Ireland	2.0
Belgium	1.8
UK	0.3

Table 6

A ranking of countries based on the overall strictness of protection against dismissals

Country	**Overall strictness of protection against dismissals (average value: 2,4)**
Portugal	4.3
The Netherlands	3.1
Italy	2.8
Sweden	2.8
Germany	2.8
Spain	2.6
Austria	2.6
Greece France	2.4 2.3
Finland	2.1
Ireland	1.6
Denmark	1.6
Belgium	1.5
UK	0.8

Certainly the UK and Germany fit the expectation. As shown in table 5, Germany's score for difficulty of dismissal is 3.5, which is 0.6 higher than the average value. The UK's score is 0.3, which is 2.4 below the average value. Similarly according to table 6, Germany's score for strictness of protection against dismissal is 2.8, which is 0.4 higher than the average value while the UK's score is 0.8, which is 1.6 below the average value. Thus, Germany has strict regulations and German MEPs oppose the directive, as we should expect while the UK has lax regulations and UK MEPs favour the directive as we should expect. However, not all countries fit this prediction. It is even harder to dismiss workers in Sweden compared to Germany according to table 5. Furthermore, according to table 6, Sweden's score on the strictness of protection against dismissal is the same as Germany's but all Swedish MEPs voted for the directive. Furthermore, a majority of French MEPs voted in favour of the directive although French labour market regulations are not particularly lax but average. According to table 5, the average value of difficulty of dismissal is 2.9 while the French value is almost similar at 2.8. According to table 6 the average value of strictness of protection against dismissal is 2.4 and the French value is 2.3

In conclusion, while labour market flexibility for some countries is correlated with support for the take-over directive and labour market rigidity with opposition to the directive, this correlation does not hold true for all countries. In short, the prediction does not fit the voting pattern of French (and Swedish) MEPs.

IV CORPORATE GOVERNANCE

The third explanation examined in this paper stresses the importance of the characteristics of national systems of corporate governance as a driver behind the voting result in the European Parliament. We examine the impact of national institutional features of corporate governance on the voting patterns by MEPs from France, Germany and the United Kingdom. In particular, we focus on 1) the evolution of market capitalisation as a percentage of GDP and 2) the impact of voting rights.

4.1 The Traditional View of Corporate Governance

Two competing systems of corporate governance have long been seen to exist in Europe (see Coffee 1999; LaPorta et al. 2000; Roe 2000; Sheifler and Vishny 1997 for reviews). First, the British model of corporate governance is characterized by a diffuse ownership structure, mutual and pension funds as major shareholders, high financial transparency, active securities markets, and the importance of the market for corporate control. Secondly, the continental European model of corporate governance has traditionally been associated with a concentrated ownership structure, banks and non-financial firms as key shareholders, low financial transparency, underdeveloped securities markets, and the absence of hostile take-overs. A crude analysis might predict that harmonization of EU take-over law might be supported by MEPs from the United Kingdom (and possibly Ireland) and opposed by MEPs from continental Europe because the take-over directive enhances the importance of market forces.

According to such a crude analysis, the UK supported the take-over directive for three reasons: 1) UK companies have the highest market capitalisation in Europe. Market

capitalisation is the market price of a company, calculated by multiplying the number of shares outstanding by the price per share. A high market capitalisation would be a crucial advantage in the merger and acquisitions market, especially if payment is in the form of an equity swap. As a result, UK companies stood to gain the most from a common take-over directive; 2) The UK would like the rest of Europe to be open to take-over bids from UK companies since the UK is itself an open market. A take-over directive would likely serve to create a more level playing field; 3) The biggest shareholders in the UK are institutional investors. Since take-overs are a device to keep a tight check on management then mutual and pension funds favour take-overs. In contrast, the continental model of corporate governance predicts that Germany and France would NOT favour a take-over directive because market capitalisation is lower in these two countries than in the UK. Furthermore, French and German markets have traditionally been closed off to competition in order to protect domestic values such as employee representation on company boards, etc.

4.2 Rethinking The Traditional View of Corporate Governance

However, at least one argument puts serious doubts on this somewhat crude analysis about an Anglo-Saxon model and a continental model of corporate governance. The relative unimportance of (hostile) take-overs within a country does not imply that domestic companies are not interested in proceeding to mergers and acquisitions abroad (Kummerle 1999)[8]. Firms can typically desire to acquire foreign firms as part of a strategy to get greater market proximity. Moreover, take-overs increasingly serve as a

device for companies to get access to complementary types of technologies, thereby improving their innovative capabilities (Serapio and Dalton 2000). Firms engage themselves in a process of institutional arbitrage whereby they acquire companies in countries whose national systems of corporate governance sustain different types of innovative capabilities than those found at home (Hall and Soskice 2001: 57). Finally, take-overs constitute the privileged option for firms in building their innovative capabilities if their current situation is characterized by technological backwardness (Simonin 1997). In short, firms originating in a continental system of corporate governance such as Sweden and France might favour a take-over directive as a means to obtaining easier access to a market as well as to complementary types of technology and to building innovative facilities.

4.3 Market Capitalisation and Voting Rules

The argument presented in this paper derives the preferences of MEPs from two factors. First, we argue that support for a more liberal take-over market in Europe is intimately linked to the level of market capitalisation of domestic firms. The issue of market capitalisation is an important theme in the corporate governance and strategic management literatures. It is likely that the extent of market capitalisation is a major determining factor for management views on take-overs, which we assume, are reflected in the preferences of MEPs. A high market capitalisation level constitutes an advantage for undertaking mergers and acquisitions, especially if companies use equity swaps as their means of payment. A high market capitalisation for companies entails that

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[8] A growing body of literature in political science illustrates the problem of tracing back the process of preference formation. In this paper we simply state that the characteristics of domestic companies are

companies would have an easier task proceeding to acquisitions, particularly via equity swaps (Coffee 1999: 649; Hoepner 2003). Moreover, a high level of stock market capitalisation implies that the degree of vulnerability from being the recipient of a take-over bid is reduced.

Secondly, we examine the impact of voting rules. Support for a more liberal take-over code in Europe can also result from the presence of take-over barriers. Unequal voting rights and other types of deviations from the one share-one vote principle contribute to lower the degree of vulnerability of companies from being the recipient of unwanted take-over bids. Furthermore, firms with unequal voting rights but with low market capitalisation would be at a comparative disadvantage in the global market for mergers and acquisitions but they would not have to worry about being the victim of an unwanted take-over bid. Data on these two indicators -- market capitalisation and voting rules-- for France, the UK and Germany are presented in tables 7 and 8.

First, the high stock market capitalisation of British and French companies implies that domestic companies are more likely to be active in the merger and acquisition marketplace. For French firms, however, the excellent performance of their share price is a recent phenomenon. As recently as the mid 1990s data on stock market capitalisation illustrated relative similarities between France and Germany. Most German companies, on the other hand, are unlikely to be able to use equity swap as a means for acquisitions. The relatively low level of overall stock market capitalisation entails that only a limited number of firms will be able to use equity swaps as a means to acquire other companies.

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reflected in the voting patterns of MEP (see Frieden, 1999).

Second, unequal voting rights and other deviations from the one share-one vote principle are more prevalent in France than in either Germany or the United Kingdom (see Table 8). French firms can rely on exceptions to one-share one vote voting rights as a form of protection from unwanted take-over bids -- in addition to their high level of stock market capitalisation. German companies, in contrast, currently face the exact opposite situation: low market capitalisation and absence of deviations from the one share-one vote principle[9]. However, it is important to note that these changes are recent. As recently as 1996, over 1/3 of the largest 100 German companies had unequal voting rights (Goyer, 2003b). The 1998 KonTraG abolished unequal voting rights as previously discussed. By contrast, less than one-fifth of the 100 largest French companies had unequal voting rights or ownership ceilings in 1990 (Goyer, 2003b).

In short whereas a focus on ideology or labour market flexibility could not account for the voting pattern by French MEPs, a corporate governance perspective adds a piece to the puzzle. French firms have both a high level of market capitalisation and extensive take-over barriers. A high level of market capitalisation is consistent with French support for the proposal. Furthermore, the directive did not contain a change in voting rules, which could affect French firms. French MEP support for the directive fits our argument.

[9] It must also be noted that these two indicators of voting preference of MEPs – the level of stock market capitalisation and the presence of voting rights that deviate from the one share-one vote principle – can also be extended beyond the cases of France, Germany, Sweden and the UK. Several countries (Finland, Netherlands) possess a high ratio of stock market capitalisation over GDP. Moreover, the voting rights in most continental European countries -- with the notable exception of Germany -- deviates from the one share-one vote principle (see the various contributions in Barca and Becht, 2001).

Our argument also fits the German position on the take-over directive proposal in 2001. Germany voted against the directive, which is what we would expect, because Germany has a low level of market capitalisation and an absence of take-over barriers.

Finally, take-over barriers are largely absent in the UK. However, although we expect an absence of take-over barriers to be correlated with a negative view of a directive proposal that does not contain a removal of derogations from the one-share one-vote rule, British MEPs overwhelmingly voted in favour of the directive[10]. However, the UK has a higher level of market capitalisation than France and Germany, which could result in British firms standing to gain substantially from a common European take-over code. In sum, the UK's high market capitalisation can explain the UK's support for the directive.

[10] The UK does have golden shares in certain companies such as Airport authority. Such shares have been ruled unlawful by the ECJ (except when justified by national security concerns).

Table 7

Evolution of Market Capitalisation as percent of GDP,

(1980-2001)

	1980	1985	1990	1994	1996	1998	2000	2001	2002 **
FRANCE	8	15	26	34	38	105*	112	103	72
GERMANY	9	29	22	24	28	51	68	61	39
ITALY	6	14	14	18	21	48	72		
JAPAN	36	71	99	77	66	64	102*		
SPAIN	8	12	23	25	33	72	90		
UNITED KINGDOM	37	77	87	114	142	167	185	166	
UNITED STATES	48	57	56	75	114	157	181*	152	

Source: European Commission 2002: 31; OECD (1999): 18.

*Figures are for 1999.

**Figures are from 1. July 2002.

Table 8

Voting Rights (1996 & 2000)

Exception to one-share, one-vote	France Top 120 96 – 00	Germany Top 120 96 – 00	UK Top 250 96 - 00	United States 96 – 00
percent of firms with voting rights or ownership ceilings	20 – 22	3 – 2	1 – 1	0 – 0
percent of firms with unequal voting rights	32 – 68	3 – 3	7 – 0	12 – 13

Source: Goyer 2003a

4.4 Update and a Focus on Unequal Voting Rights: A Scandinavian Perspective

After the Commission's draft proposal had been rejected in the European Parliament it was submitted to a so-called High-Level Group of Company Law Experts headed by Jaap Winter with a mandate to address outstanding issues[11]. The group submitted its recommendations in January 2002. Among the most controversial was a suggestion to fully abolish multiple voting rules. On October 2, 2002 the European Commission then adopted a new take-over directive proposal. Some aspects of the new proposal were similar to the old proposal and in particular the controversial Article 9 had been maintained. The Commission considered it a key principle that owners and not managers should decide the future of the company (speech by Frits Bolkestein 4th March 2002). The new proposal also contained a provision recalling the general legislation applicable to protect the rights of employees in the case of company restructuring. However, the level playing field issue was the most contentious issue and in particular the proposed Break-Through rule. The Commission would have liked to abolish multiple voting rights but found that such a proposal would meet too much opposition (speech by Commissioner Bolkestein, 4 March 2003 at the Centre for European Policy Studies). Instead the Commission proposed the Break-Through rule which means that once a bidder successfully reaches a threshold of shares in accordance with national company law then the structural defensive devices mentioned above could be annulled by the new majority shareholder.

The take-over proposal was tabled in the Council of Ministers 3 March 2003 and Bolkestein reiterated on 4 March 2003 that the directive has always been considered

[11] The additional members of The High Level Group of Company Law Experts were Jonathan Rickford,

an essential step towards the integration of European capital markets mandated for 2005.

In short, the proposal does not do away with voting rights which shareholders have negotiated and which are enshrined in different classes of shares such as proposed by the Winter group but focuses only on restrictions: if a bidder is successful at reaching a threshold of shares in accordance with national company law, the structural defensive devices such as voting rights can be annulled by the new majority shareholder. It means that if successful the bidder may call a general meeting to change the articles of association and the board in accordance with national company law[12].

The Greek Presidency presented a new proposal on 16 April 2003. According to this proposal, all voting barriers to take-overs will fall if a public bid has been made for 75percent of the firm according to the so-called Break-Through Rule. The proposal met extensive opposition in Sweden and Denmark because of the prevalence of the A and B share system in these countries (Bob Sherwood, "The European take-over directive 'will deter bid activity', Financial Times, 20 December 2002, national news, p 2). At the time of writing (June 1, 2003) the Council of Minister has decided to deter a vote on the Break-Through Rule until further investigations have been undertaken concerning the possible implications of such a rule.

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[12] In January 2003 Romano Prodi, European Commission President, accused member states of backtracking on their promises to liberalize their economies. The worst offenders were said to be Germany, France and Italy. According to the Financial Times, "even relatively modest proposals such as the creation of a common EU patent or agreeing an EU takeover directive has become bogged down in national disagreement" (George Parker, "EU's big three promise to push reforms", Financial Times, February 6, 2003, Europe, page 8).

The 2001 proposal did not contain a provision to abolish unequal voting rights. However, the new take-over proposal, which Commissioner Bolkestein presented in October 2002 proposed a breakthrough rule (Article 11). This proposed change caused Swedish and Danish MEPs to change their views on the take-over directive. While Swedish and Danish MEPs strongly endorsed the take-over directive in the July 2001 vote in the European Parliament the situation was very different when a revised take-over proposal was presented under the Greek Presidency. Swedish and Danish MEPs as well as major corporations, politicians and lobby organizations from these two countries adamantly oppose the new take-over proposal. Sweden possesses a high ratio of stock market capitalisation over GDP. However, more importantly family foundations, whose shares are divided into A and B shares, own many of the largest companies in Sweden and Denmark. For example Novo Nordisk, a Danish pharmaceutical company has a share capital of DKK 709,388,320 (EURO 100,000,000), which is divided into an A share capital of nominally DKK 107,487,200 and a B share capital of nominally DKK 601,901,120. Novo Nordisk's A shares are non-listed shares and held by Novo A/S, a private limited Danish company, which is 100 percent owned by the Novo Nordisk foundation. The B shares are traded in units of DKK 2. The ratio of Novo Nordisk B shares to A shares is 1:1. Each holding of DKK 2 of A share capital carries ten times as many votes as each holding of DKK 2 of B share capital. Each A-share carries 20 votes, whereas each B-share carries 2 votes. The proposed Break-Through Rule could abolish this system.

In the spring 2003 Swedish and Danish MEPs, large businesses with A and B shares and unions began to lobby hard against the directive. They argued that the A and B share system allowed companies to retain a long-term outlook, and to protect jobs, technological expertise as well as certain values such as the triple bottom line accounting method. The Swedish government even declared that a take-over directive, which abolished the A and B share system might negatively affect the Swedish referendum on the Euro scheduled in 2003. Media coverage on the issue in Denmark and Sweden was massive and when agreement failed to emerge in the Council of Ministers on 19 May 2003, Danish and Swedish MEPs expressed relief. In short, protection against take-overs in the form of voting rules is a main determinant of MEP positions on the take-over directive.

V CONCLUSION

Features of national systems of corporate governance account to a large extent for the way UK, German and French MEPs voted on the take-over directive in July 2001. These features include protection of continental European companies from unwanted take-over bids in the form of unequal voting rights and protection in the form of an increasing level of stock market capitalisation. When these aspects of corporate governance are included in the analysis we have to broaden our categories beyond the traditional liberal market economies such as in the UK and the continental market economies such as in Germany in order to explain the French (and Swedish) MEP voting pattern.

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