

Evaluation of the Normal in Exceptional Times

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It has been said time and again that these are exceptional times we live in. In fact it has been said so many times that I am inclined to avoid the c-word in this editorial at all cost. Not because I want to shield myself from reality but because confronted with daily news one lightly forgets that this is just a phase we have to go through and we will. Our way of living may well be affected for a long time, perhaps even forever, but the basic institutions and structures of our society will survive. In fact they have to survive because otherwise we would not be able to deal with this pandemic or any future pandemic for that matter. Against the backdrop of this recognition of the value of our current economic system ECL's Editorial Board thought it a good idea to devote a special issue of this journal to various pieces of EU legislation and recommendations in the field of corporate law adopted after the previous crisis of 2007/2008, in an attempt to see where we stand in terms of our ability to prevent or mitigate future crisis. So let's evaluate the 'normal' EU legislation initiatives taken after the financial crisis in times of exceptional actual crisis.

In her article titled *The Alternative Investment Fund Managers Directive, ten Years After*, Mariia Domina Repiquet analyses and evaluates the Alternative Investment Fund Managers Directive 2011 as a first pan-European regulation of hedge funds and private equity funds. The AIFMD, adopted as a response to the financial crisis, regulates the management and marketing of AIFs to professional investors within the Union. The objective of the Directive is the establishment of a single European market for AIFMs offering units in AIFs to professional investors. The author inter alia concludes that the effectiveness of the AIFMD lies in the fact that it allows for an increased level of stability in financial markets, notably by imposing leverage restrictions on the fund's portfolio and by introducing a harmonized set of duties on AIFMs. In addition, these harmonizing measures strengthen the EU single market for financial

services by creating a single-level playing field for an AIF industry. Furthermore, the rules on third-country AIFM's allow for the access of UK fund managers to the EU-based investors in the aftermath of Brexit.

Hana Horak and Kristijan Poljanec present a regulatory overview in their article *Fighting Short-Termism in EU Company Law after the Financial Crisis*, challenging the prevailing belief that shareholder value dominates EU company law to the detriment of corporate sustainability. Analysing both already existing EU law, such as the capital maintenance requirements for public companies, and legislative initiatives taken after the financial crisis of 2007/2008, such as the recently adopted Mobility Directive, prescribing IFRS standards on accounting and fair value measurement, the setting of remuneration restraints under the revised Shareholder Rights Directive and issuing disclosure rules on non-financial issues, the authors conclude that the stakeholder model and corporate sustainability have been increasingly fostered in the EU by installing various capital and solvency safeguards in the course of the years.

Measures against money-laundering in the UK is the topic of Mohammed Khair Alshaleel's contribution titled *The UK and the EU's Fifth Anti-Money Laundering Directive: Exceeding Expectations*. He concludes that the UK's transposition of this Directive goes beyond the EU minimum requirements, which hopefully causes a headache less to the EU negotiators on Brexit.

In his article titled *Auditors' Reporting to Those Charged with Governance*

Jesper Seehausen discusses two pieces of EU audit legislation adopted in April 2014, to wit (1) Directive 2014/56/EU (the 2014 Auditing Directive) and (2) Regulation (EU) No. 537/2014 on Specific Requirements regarding Statutory Audit of Public-Interest Entities (the PIE Regulation). He focuses his thorough analysis on the precise meaning and scope of the terms 'those charged with governance' and 'PIE's' versus 'non-PIE's'. Without a trace of chauvinism the author concludes that, as regards the auditor's obligation to prepare a separate statement on the management's non-compliance with bookkeeping rules, the European Model Company Act ('EMCA') contains a provision stemming from or at least inspired by the Danish Companies Act.

Finally Angelos Kornilakis, in his article titled *On the Legal structure of Legal Commons*, explores the ideal legal structure of small-scale entrepreneurial digital commons, i.e. web-based

economic networks of not for profit organizations and commercial enterprises. Inter alia inspired by the European Commission's Communication on 'A European Agenda for the Collaborative Economy' of 2016, the author makes a distinction between the

decision-making network and the value network within such a digital commons structure. Different options to give legal shape to these networks are assessed and evaluated, such as the partnership and the franchise contract.