Preface

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In December 2001, a colloquium on Company and Financial Market Law in Britain and Scandinavia was organised jointly in London by the British Institute of Comparative and International Law and the Oxford/Stockholm Association in European Law, set up by the Swedish Wallenberg Foundation. The event was sponsored by the Swedish Network for European Legal Studies. The aim of the event was to study current problems in the area of company and financial law of particular interest from a British as well as a Scandinavian viewpoint.

This special issue of the European Business Law Review is devoted to the publication of articles on Scandinavian company and financial law based on papers presented at the colloquium. In today's Europe the scope for national legal approaches to problems of company and financial law is diminishing rapidly as the combined result of internationalisation of business and the EU harmonisation ambitions. These developments are closely observed in the Nordic countries and the legislation is successively being revised. In general, it is the ambition of these countries to offer the business community a modern legislation and, if possible, to be at the legislative forefront.

Here, some general observations may be noted. Traditionally, there has been a strong German influence on company law and neighbouring areas of law in the Nordic countries. However, nowadays this is less and less the case. Instead, English law and commercial practice in the field has become an important source of inspiration. The explanation is presumably partly to be found in the fact that there is, comparatively speaking, rather little government intervention in the Nordic countries in the running of the financial markets. The legislation is primarily based on the principle of freedom of contract and there is a tradition in stock market trading to rely primarily on self-regulation and Codes of good conduct. Here, the Scandinavian attitude has much in common with the British. In continental Europe, legislators often seem to take a more interventionist, regulatory approach.

Another general observation is the close similarity between the legislation in the different Nordic countries in the field of company and financial law, as is the case also in practically all other areas of law. With the Nordic countries we refer primarily to Denmark, Finland, Norway and Sweden. The law of Iceland is normally similar to the law of the other Nordic countries, primarily Denmark, but plays less a role in this area. The Company Acts of the four countries have been drafted and promulgated on

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the basis of close inter-Nordic legislative co-operation and are largely similar and in parts practically identical. However, each country takes its legislative decisions independently and thus one can also find differences in the details in the current state of company law. Also, other basic legislation in the area of private law is often the result of close inter-Nordic legislative co-operation. As examples one may mention the Contracts Act, the Torts Act and the Sale of Goods Act as well as most of the consumer law.

It is a very normal thing that legal scholars from the different Nordic countries work together and participate together in an international arrangement. There is much co-operation going on between Nordic law faculties, based on a common attitude towards legal thinking and methods of interpretation and application of the law. For example Professor Jan Andersson, who participates with an article in this issue, is a Swedish legal scholar from the University of Uppsala who holds a chair as professor at a Norwegian university.

In the past Scandinavian participation in the international discourse on law and its development might have been a bit restricted, partially a result of the relative scarcity of available literature in English and other well-known languages on Nordic law. This is changing. Literature in English by Scandinavian legal scholars is growing rapidly and it is important for the Nordic countries that their views on the law and its development are duly taken into regarded in the ongoing europeanisation process of, i. a., company and financial law. The publication of this issue of the Review plays a role in this regard.

A few words about the contributions in this issue:

Rolf Skog's article on *The Takeover Directive – an endless Saga?* provides a very well informed perspective on the developments which led to the final dramatic vote in the European Parliament of July 4, 2001 when the Parliament rejected with the majority of only one vote the compromise text of the proposed directive which was the result of the conciliation negotiations with the Council. This was an unexpected defeat for the Swedish precidency and a bitter end to much effort to find a workable solution. In this work Rolf Skog has been playing an important role himself and in the final part of his article he discusses what a new attempt to solve the underlying problems could look like.

The subject of Jan Andersson's article is *The Regulatory Technique of EU Securities Law*. Today, this technique is primarily linked to the so-called new approach taken in the Lamfalussy Report and the ongoing work to implement the Lamfalussy ideas. In his article he presents a critical assessment of the developments, pointing at advantages as well as disadvantages with the methods chosen.

Prospectus Liability is a subject which currently is attracting great attention in the Nordic countries. Catarina af Sandeberg presents the current legal situation and ongoing developments in all the four Nordic countries in her article which is based on her recently published Ph D-dissertation at Stockholm University. Traditionally, prospects for successful litigation initiated by investors have been bleak and there has been very little case law on the subject. However, as she points out in her article, several very important cases on aspects of prospectus liability are now pending

before different Scandinavian courts and there are also interesting recent initiatives taken by the legislators.

Take-overs form the background also for the article by Svante Johansson. This article gives a very well-informed presentation of *Undertakings by Target Companies in Take-over Situations*, especially agreements between the bidder and the target company. The article discusses legal problems involved and make use of unreported Swedish cases in the field. In the article Svante Johansson combines his knowledge as a professor of the University of Stockholm and as a practitioner within an international law firm (Linklaters).

European Regulation on Major Shareholdings and Takeovers is the title of the very rich article by the Danish Professors Nis Jul Clausen and Karsten Engsig Sorensen. The primary subject of the article is the 1988 EU Directive on Major Shareholdings, also known as the Transparency Directive. The article highlights and discusses some of the rationales and elements of this directive. However, the extent to which national law requires shareholders to disclose their identity still varies considerably in Europe. The authors of the article have recently produced a Report on Transparency in Shareholdings for the Danish Financial Supervisory Authority. In the article, the major findings of the report are presented and discussed. These findings reveal striking differences between positions taken in different EU Member Countries.

The final article in this issue by Professor Paul Krüger Andersen presents *The New Recommendations for Good Corporate Governance in Denmark*. In the article the objectives and content of these recommendations are discussed. The author also focuses on other codes of a similar type and the legal nature of the recommendations. Thus the article illustrates the formation, important function and structure of soft law. As was mentioned earlier in this preface, soft law plays a major role within Scandinavian company and financial law. In the Nordic countries, the legislators generally tend to favour soft law solutions as long as they are deemed to work satisfactory. This point is also well illustrated by the attitude taken towards rules on transparency in shareholdings as discussed in the above mentioned article by Nis Jul Clausen and Karsten Engsig Sorensen.

In all, the articles in this issue provide great insight in ongoing developments and legal research in Scandinavian company and financial law in its modern European setting.