

The European Model Company Act – A Tool for European Integration

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Why is there a need for a European Model Company Act?

- › Future regulation should be a mix of measures.
- › Does regulatory competition work?
- › The EMCA is flexible and can catch new problems (e.g. the financial crisis), and
- › will offer an informal and organic convergence of European company law.

Why is there a need for a European Model Company Act? (cont.)

- › Protection of creditors and shareholders vs. *entrance of competitiveness* of European companies and *reducing compliance cost* on creation and operation of business.
- › The regulatory approach of the EMCA: How to deal with new issues, such as sustainability, CSR etc., company law, corporate governance codes or special regulations?

Creating the Model Law Group

- › One representative from each Member State forms the group.
- › (See list).
- › External experts on special issues, such as private international law, accounting, law and economics, etc.
- › Associated US expert (Ron Gilson).
- › Link to the EU Commission.

Independence

- › The Model Act Group is independent
 - › of business organisations
 - › of Member State governments
 - › of the European Commission.

- › However, the Group accepts the EU 'better regulation' principles on
 - › simplification of regulation (if possible)
 - › flexibility of regulation, and
 - › reduction of agency costs.

What can be learned from the US RMBCA?

- › The RMBCA as model for the single states' corporate statutes.
- › The RMBCA as a resource of company law doctrine and for court decisions.
- › The RMBCA as a resource for (European) comparative analyses.
- › We expect that the EMCA can have similar functions.

The EMCA has both academic and practical purposes

The EMCA aims at:

- › containing and developing *fundamental principles* of European company law
- › being a model for a full text company act, *saving cost* for Member States,
- › establishing *standards of best practice* of European company law by using experience from all Member States.

Where are we?

Eight meetings until now covering:

- › General company law principles
- › Formation of companies
- › Management of companies
- › Law of groups
- › Changes of structure, including takeovers
- › General meetings and minority protection
- › Liquidation of companies

Management of Companies

- › The trend towards freedom of choice between different management structures:
 - › One-tier board
 - › Two-tier board
 - › Systems in between
- › Separation of powers between daily management/supervisory boards:
 - › Overlap of personnel
 - › Overlap or separation of competence
- › Defining directors' duties
 - › Learning from the financial crisis: Risk management
- › Conflicts of interest
- › Directors' liability

Management of Companies

Thank you.

EMCA website: <http://www.asb.dk/emca>