

*The costs of flexibilization; external effects*

Understandably, there is much attention for the disadvantages and costs of the present legislation, and the potential advantages of legislative changes. However, one should also carefully look to the possible costs and pitfalls when making these changes. I have the feeling that there is often a bias here. The present disadvantages are clear and real, while the future disadvantages are still vague. Let me give an example.

I am not an opponent in principle of (further) flexibilization, but there are both (potential) advantages and costs. The latter are neglected. A particular weak spot here is supervision and inspection, both nationally and much more in cross border situations.

More generally the possible external effects (not only positive but also negative) of changes in company law should get sufficient attention. By now impact assessment for individual firms are more or less common, but assessments of the effects on the macro level are not. This is even more important since the shift from harmonization of company to the more regulatory approach based on minimum requirements and mutual recognition.

*Corporate governance; some notes on shareholders and employees*

The discussion on corporate governance –notwithstanding a lot of lip service to stakeholder principles- still focuses on way shareholders can discipline management (through direct supervision, or voice, or remuneration strategies etc.). A lot of effort has been done to get rid of barriers for shareholders. At the same time, in many cases shareholders are not very active, to say the least. We may go on pulling and pushing shareholders to take their responsibility, but it might be interesting to at least explore alternative mechanisms to check management. One well known mechanism is co-determination by employees, who by definition have a long term interest in the continuity of the firm.

As we all know, this can take very different forms. Here I would like to make a distinction between:

- employees being on (the) board (Germany, Austria, Sweden are major examples)
- the right to say no in extreme cases (Dutch works councils, the right of enquiry for Dutch unions)

Of course this distinction is not absolute, e.g. the right of boards (including labor) to veto management decisions. But I think there is more room for the 'right to say no'. The reflection Group mentions the special investigation right, recommended by the High Level Group in 2003, but only for shareholders (p. 52). I think that there are major advantages in granting such a right to labor as well. The possibility to ask the relevant court for a special investigation should be restricted to rather extreme situations, in which the continuity of the firm is at stake. I repeat: the aim is to curb opportunistic behavior by management, leaving sufficient leeway for management in more or less normal circumstances.