

# Preliminary Report

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## The Separation of Ownership and Control: A Survey of 7 European Countries

Submitted to the European Commission DGIII on 27 October 1997

### Volume 1

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# **Strong Blockholders, Weak Owners and the Need for European Mandatory Disclosure**

European Corporate Governance Network

## **Executive Report**

**by Marco Becht\***

*Last Revised : 27 October, 1997*

\* A substantial part of the quantitative and legal material on Member States presented in this executive report is taken from the individual papers produced by the European Corporate Governance Network's country teams that are available for downloading from the European Corporate Governance Network's experimental Web-site (<http://www.ecgn.ulb.ac.be/>, send e-mail to [mbecht@ulb.ac.be](mailto:mbecht@ulb.ac.be) for a password). The central theme of the executive summary (in Europe blocks matter and European mandatory disclosure is lacking) emerged during the 1<sup>st</sup> Annual Conference of the European Corporate Governance Network held 7-8 March 1997 at Fondazione Eni Enrico Mattei in Milan. "Strong Blockholders, Weak Owners" is the verbal expression of these developments that is due to Patrick Bolton. The executive summary presents the findings of the European Corporate Governance Network during 1996/97 and was drafted by the author as Executive Co-ordinator of the Network. However, the views expressed here do not necessarily shared by the individual members of the country teams and/or other members of the European Corporate Governance Network. Fabrizio Barca read and commented three full drafts of this paper. Erik Berglöf, Patrick Bolton and Colin Mayer provided many comments and suggestions. Marcello Bianchi, Laurence Bloch, Ekkehart Böhmer, Ariane Chapelle, Rafel Crespi, Klaus Gugler, Abe de Jong, Susanne Kalss, Elizabeth Kremp, Luc Renneboog, Ailsa Röell, Klaus Stomper and Josef Zechner also provided comments, corrections and/or additional material. Roberta Romano provided references, materials and thoughts on mandatory disclosure in the United States. The legal summary tables were inspired by Luca Enriques who also made comments. Stefano Paleari provided the material for the Mediobanca example. Access to individual company data through Bureau van Dijk (<http://www.bvdep.com>) is gratefully acknowledged. Address: ECARE/DULBEA, Université Libre de Bruxelles, Av. Franklin D. Roosevelt 39, 1050 Brussels, Tel. : ++32-2-6504466, Fax. : ++32-2-650.4475, e-mail: [mbecht@ulb.ac.be](mailto:mbecht@ulb.ac.be) and Fondazione Eni Enrico Mattei, Corso Magenta 63, 20123 Milano, Italy, Tel. : ++39-2-520.36934, Fax. : ++39-2-520.36946. The final draft of this paper was written at the Bernheim Research Centre of the Solvay Business School at the Université Libre de Bruxelles.

Publicity is justly commended for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.

( ..... )

But the disclosure must be real. And it must be a disclosure to the investor. It will not suffice to require merely filing a statement of facts with the Commissioner of Corporations or with a score of other officials, federal and state. That would be almost as ineffective as if the Pure Food Law required a manufacturer merely to deposit with the Department a statement of ingredients, instead of requiring the label to tell the story.

Louis D. Brandeis, *Other People's Money*, Chapter V, 1914

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# Summary of Results and Policy Recommendations

The problem of corporate governance in the United States – “Strong Managers, Weak Owners” – is not the corporate governance problem for most companies in continental Europe. Europe’s problem is a problem of “Strong Blockholders, Weak Owners”. In Europe, small owners are potentially exploited by large voting blockholders – and the managers these blockholders appoint to run the companies; in turn, the managers are constrained to devising company strategies that are subject to the non-transparent obligations blockholders impose on them. This situation does not necessarily call for further attempts to move towards a European company law, or for restrictions on the behaviour and investment possibilities of existing and potential blockholders. It does call for major improvements in European mandatory disclosure regulation; to make current arrangements transparent for European investors and to fully preserve the interests of blockholders.

## **1 Main Results of the Survey**

This executive report presents the results obtained by 7 country teams from 7 Member States that have been investigating the separation of ownership and control in Europe. The findings are alarming. None of the directives and regulations the Union has adopted provide for a degree of disclosure that would allow us to compute comparable measures of ownership concentration, ownership distribution by type of shareholder, voting power concentration and the separation of ownership and control. The rules that are in place often do not provide for effective European disclosure. Access to ownership and control information is usually difficult within a Member State, but even more difficult from another Member State.

The research was conducted by the European Corporate Governance Network (ECGN), a non-profit research network that brings together scholars and practitioners residing in different European countries and abroad who take an active interest in European and comparative corporate governance issues. Further information on the Network and a copy of the complete 1996/97 Preliminary Report and additional material can be obtained from the ECGN’s experimental Web-site.<sup>1</sup>

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<sup>1</sup> The address of the experimental Web-site is <http://www.ecgn.ulb.ac.be/>. For a login name and a password send e-mail to [mbecht@ulb.ac.be](mailto:mbecht@ulb.ac.be). In summer 1996 the Network set out to formulate a Work Programme. A draft proposal was discussed at a meeting of the country teams on 10 October 1996 in Brussels and resulted in a 1996/97 Work Programme (ECGN, 1996). The 1996/97 Work Programme had two purposes:

Cross-border transparency is not as effective as transparency within the Member States. We found several examples where, under the Transparency Directive (88/627/EEC), a listed company in Member State A notified a listed company in Member State B to have ultimate control. At the same time the company listed in Member State A had received control notifications from other companies or individuals. The company in Member State A should have notified the company in Member State B – but it did not. In some cases non-listed holding companies in third Member States with no disclosure rules are used to further disrupt the notification chain and make enforcement even more difficult. For example, under the transposition of the Transparency Directive (88/627/EEC) in Germany, Pirelli Deutschland AG has notified to be controlled by Pirelli Tyre Holding N.V. in Amsterdam. From the portfolio disclosure of the Pirelli Group in Italy we know that Pirelli Tyre Holding N.V. is controlled by the Italian companies of the Pirelli group and, because some of them are listed in Italy, from the Italian transparency filings we know who controls the Pirelli group. At the moment German investors do not have access to this information on the basis of the German filings, Italian investors do have access on the basis of the Italian filings.<sup>2</sup> Collecting such transparency data at the European level would resolve this problem. These findings underline the need to make existing disclosure rules more effective and to introduce mandatory disclosure rules at the European level.

Our practical difficulties in obtaining ownership and/or control information that should be generated by the EU Transparency Directive (88/627/EEC), the 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup> and 8<sup>th</sup> Company Directives, the Financial Institutions and Bank Accounting Directive (86/635/EEC) and the Insurance Company Accounting Directive (91/674/EEC) cast doubts on the effectiveness of disclosure at the European level today. Many relevant areas are not covered by EU Directives

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1. To make an inventory and an assessment of the information on ownership and control structures, and control transfers in the European Union. The surveys aimed at covering both economic and legal aspects of corporate governance and extended to listed as well as unlisted companies;
  2. To use the available, affordable and accessible information to compute summary statistics on ownership, voting power concentrations, control and the separation of ownership and control in the Member States that were covered by the country teams.

First results obtained by the country teams, on both aspects of the Work Programme, were presented at a conference in Milan on 7-8 March 1997. The results presented in the next section, and in more detail in Part B, cover both aspects of the Work Programme. What is the status quo of de facto disclosure of information that would be necessary to compute adequate and reliable measures of the separation of ownership and control? Which legal provisions, at the level of the European Union and the Member States, already exist and how are they applied in practice? What does a comparison of the available data reveal about ownership, voting power, control and the separation of ownership and control in the European Union?

<sup>2</sup> In Part B we report another example along these lines and provide further explanations.

at all. For example, not a single Directive makes the disclosure of ownership information (as opposed to voting rights information) compulsory, not even for listed companies. Investors purchasing shares in a listed company that belongs to a business group are unable to determine with precision what portfolio they are buying and/or who exerts control.

## ***2 The Case for Mandatory European Disclosure Rules***

The need for higher and more comprehensive mandatory European disclosure standards, that ensure true transparency, clearly emerge from our findings. Mandatory European disclosure is not merely an academic concern. By preventing increasingly sophisticated investors from identifying – with certainty and ease – the ownership and control structure of European corporations and the group structures these corporations might be embedded in, the lack of disclosure seriously undermines Europe’s ability to compete for globally mobile capital. International fund managers, who are administering a rising share of the World’s and Europe’s savings, deplore obscurity. When disclosure standards are low they demand a high-risk premium. When they are very low they do not invest at all.

The introduction of the Euro will further increase the competitive pressure and the unevenness of disclosure standards raises questions about the completion of an integrated European equity market. The global competition for savings calls for a new, upgraded response that is common to all European countries: true disclosure about ownership and control structures, including possible deviations from one-share-one-vote and contractual or quasi-contractual agreement between shareholders.

The European corporate governance debates have focused too much on comparing institutions and the possibility of importing foreign arrangements that appear to be superior. Our understanding of the link between the corporate governance system and economic performance is too uncertain to allow anyone to advocate such measures. Should we pass a regulation that prevents European banks from acquiring equity stakes in non-financial companies? The honest answer is that nobody knows. What we do know is that there should be effective disclosure of the influence banks have over non-financial companies and how this influence is exerted.

Disclosure must be largely mandatory because self-regulation cannot ensure its quality and effectiveness. It is widely shared, even by the neo-contractualist school and orthodox liberals,

that disclosure externalities provide a rationale for federal, mandatory disclosure. When the interests of the owners and those in control are not aligned, as is often the case in Europe, the case is even more compelling. Federal mandatory disclosure was at the heart of the Securities Act of 1933 and the Securities and the Exchange Act of 1934, under which the United States Congress created the Securities and Exchange Commission (SEC).

Endorsing the mandatory disclosure principle does not necessarily mean to approximate European corporate governance institutions or to devise one type of company law for all European countries. On the contrary, endorsing the disclosure doctrine is not meant to prevent blockholders from exerting control and from undertaking monitoring. Effective disclosure is supposed to bring this role to the light, to allow micro or small shareholders to judge, to permit a more substantive application of market rules and to facilitate the operation of national Exchange Commissions.

Europe's blockholders often admit that they are powerful but argue that they use their power to everybody's benefit. Such blockholders should endorse effective mandatory disclosure because it would bring their beneficial role to the light. Forward looking European managers and blockholders do indeed favour more disclosure. Managers, in particular, see more disclosure as an opportunity for enjoying greater independence, free from the non-transparent obligations that are often imposed on them today.

But, in many managers' and blockholders' view, while possibly bringing long-term benefits, more disclosure surely brings short-term costs. Disclosure is time-consuming and any type of action, structure or decision is going to be controversial. When nothing is known there is nothing to be discussed. Disclosure should be mandatory because the optimal level of disclosure will not attain automatically. Individual companies do not disclose enough because of the public goods aspect of disclosure and because there are important third party effects (positive externalities).

With all due emphasis on listed companies, equity and capital markets, the financing and governance of non-listed companies should not be overlooked. When non-listed companies are part of a business group that involves listed companies, the disclosure requirements should be as high as for listed companies. For independent listed companies, transparency of ownership and control structures is important for the European fight against money

laundering, organised crime, free-riding that undermines the common tax base and is reassuring for suppliers and customers.

However, as far as the “good” governance of corporations is concerned, disclosure is not the only prerequisite. For the interests of anonymous shareholders to be guaranteed and for managers to be free from the non-transparent obligations imposed on them by strong blockholders, reforms will have to be introduced in either one of the following fields: proxy voting, independence of outside directors, supervisory boards, fiduciary duties, and monitoring by the courts. But whatever the choice, disclosure is an indispensable condition to reduce the cost of direct monitoring and interference with managers’ choices.

### ***3 Structure of the Executive Report***

The remainder of this document has two parts. Part A is self-contained and presents the main questions that were addressed, the method that was applied and the results that were obtained so far. The conclusions analyse the implications of our findings for future research and present first policy implications. Part B presents different methods for measuring ownership structures, voting power, control and the separation of ownership and control. Annex 1 provides a list of the country studies the comparative tables presented in this paper draw on. Annex 2 contains the bibliography. An Appendix contains the definitions of “control” that can be found in European Law, and the text of important articles of the Transparency Directive (88/627/EEC) that is the focus in the control sections of the present analysis.

Part A has five Sections. Section 1 provides a general overview. Section 2 discusses the economic theory of the separation of ownership and control. The importance of high disclosure standards, at least for listed companies and groups, already emerges from this largely theoretical discussion. Section 3 presents the most striking results that emerge from the statistical survey. Section 4 discusses the implications the findings might have for possible directions of future work. Section 5 concludes by discussing the European Policy issues that arise from the findings of the statistical survey. Part B is targeted at the specialised reader. It contains details on measuring ownership, control and the separation of ownership and control. The problems associated with computing the proposed measures is highlighted by comparing the data that would be needed with what is available by law and in practice.

# Part A: Theory, Results and Policy Recommendations

## *1 Introduction*

We put forward the thesis that fundamental aspects of the international debates on corporate governance can be understood in terms of the separation between ownership and control : the degree of separation, the separation mechanisms and the identity of the respective parties. We discuss how the separation of ownership and control can be measured and what type of data is needed to compute the appropriate statistics. We have surveyed the availability of such data and the quantitative results that could be obtained are reported. Hence, the current paper is mostly descriptive. However, identifying different separation mechanisms and quantifying the separation between ownership and control is the first step towards formulating testable hypotheses on the link between corporate governance arrangements and the economic performance of companies.

How should we measure ownership in the presence of hierarchical groups and cross-shareholdings? What is the definition of “control” and how can control be measured? What is the difference between voting power, control and monitoring? What legal devices can be used to concentrate voting power without concentrating ownership (claims on cash-flow rights)? How can we measure the separation between ownership and voting power (and ownership and control)? Do the existing EU Directives generate the data that is required to compute these measures? Why should the European Union care?

Without comprehensive and timely disclosure we cannot measure the separation of ownership and control, nor the distribution of ownership by type of investor, nor the individual net-cash flow rights an investor acquires when purchasing the stock of a listed company that is part of business group. This is not just an academic concern. High disclosure standards are an important signal to international institutional investors who are controlling an increasing proportion of the world’s savings. Institutional investors want to know where they are investing. When disclosure standards are low international investors will demand a risk-premium. When disclosure standards are very low, international investors will not invest in a company or country at all. High disclosure standards cannot always be set by individual companies but need to be set by governments and regulators. For example, companies do not

have the power to force the owners of bearer shares to reveal their identity, only the government can do so.

Furthermore, mandatory rules to disclosure might be necessary to start-up a disclosure wave: no corporation wants to be the one to be the first to experiment with disclosure when the costs are certain and the benefits are not yet appreciated (Associazione Preite, 1997).

What ultimately matters is whether corporate governance affects corporate performance and competitiveness. The theoretical predictions are generally ambiguous. For example, concentrated ownership might provide monitoring incentives that lead to better performance, benefiting everybody. But concentrated ownership might also lead to the pursuit of goals that lie in the interest of the controlling blockholders, but not in the interest of the minority shareholders (the extraction of private benefits): the blockholder might transfer resources, leading to sub-optimal performance of the controlled company.

Whether there is a positive or negative link between different corporate governance arrangements and economic performance is an empirical question. On the other hand, **theory unambiguously predicts that for a given degree of concentration of ownership, say for a high one, small and micro-shareholders interests are better guaranteed by higher disclosure standards** on the very names of blockholders and on their control instruments (contractual, quasi-contractual). We show that the data that is required to test the nature of the link is not currently available and what practical efforts and disclosure reforms would be required to obtain it.

In the United States and the United Kingdom the corporate debate focuses on the responsibility and accountability of corporate managers. Some of the shibboleths are: Hostile takeovers, greenmail, golden parachutes, fiduciary duties, shareholder activism, shareholder value, fat cats, independent directors, performance pay, stock options, codes of conduct, accountability, insider trading, shareholder democracy, disclosure. The main issue in these debates is a lack of control and direct monitoring by shareholders, the inadequacy of substitute mechanisms for direct monitoring, outside control and problems with monetary incentive mechanisms. In the United States and the United Kingdom, dispersed ownership is combined with dispersed voting power or, in the United States, voting power is concentrated in the hands of the management through the proxy voting system. The corporate governance

debate is about the mechanisms that can ensure that powerful managers run the companies in the interest of their owners.

**TABLE 1. THE SEPARATION OF OWNERSHIP AND VOTING POWER**

	<b>Dispersed Voting Power</b>	<b>Concentrated Voting Power</b>
<b>Dispersed Ownership</b>	<p style="text-align: center;">I</p> <ul style="list-style-type: none"> <li>• United States</li> <li>• United Kingdom (“voluntary dispersion”, some empirical evidence)</li> </ul>	<p style="text-align: center;">II</p> <ul style="list-style-type: none"> <li>• United States (management obtains proxy votes)</li> <li>• Continental Europe (violations of “one-share-one vote” and other devices that separate ownership and control: some empirical evidence produced by European Corporate Governance Network)</li> </ul>
<b>Concentrated Ownership</b>	<p style="text-align: center;">III</p> <ul style="list-style-type: none"> <li>• Some companies in countries that allow voting right restrictions</li> </ul>	<p style="text-align: center;">IV</p> <ul style="list-style-type: none"> <li>• Continental Europe</li> <li>• all US and UK companies after takeovers; some companies permanently (even listed companies)</li> </ul>

Note: The “management control” that is most often associated with Berle & Means (1932) occurred in Quadrant I. In the United States today, “CEO control” often occurs in Quadrant II. The CEO is able to concentrate voting power through the proxy voting process without holding a proportional equity stake. The other separation constellations identified by Berle and Means (1932) are also captured in the table. Majority control occurs in Quadrant II, but it borders on Quadrant IV. Control through a legal device occurs in Quadrants II and III, although III was not mentioned by Berle and Means (1932). Berle and Means argue that pyramiding and voting trusts are the legal devices that bring about the strongest separation in Quadrant II. Minority control also occurs in Quadrant II but borders on Quadrant I, as does joint-control. The misuse of “Other People’s Money” the preoccupied Brandeis (1914) and pre-WWII regulators in the United States occurs in Quadrant II. European managers who are endorsing the “shareholder value approach” are expressing a preference for being in Quadrant I rather than in Quadrants II or IV. Ownership can be separated from control in all four Quadrants.

In continental Europe many of the words that are heard in the Anglo-Saxon debate are used as well. The much debated concept of “**shareholder value**” was originally promoted to provide a quantitative measure of a manager’s duty to maximise value for dispersed shareholders. The original “shareholder value approach” tries to ensure that strong managers

maximise value for weak owners (Rappaport, 1986).<sup>3</sup> We shall argue that these concepts and the words have a completely different meaning when used in the European context.

In Europe, managers are often forced to maximise “blockholder value”. Even when a large voting block is tied to a large cash-flow block (Quadrant IV, Table 1), voting blockholders do not necessarily maximise the minority shareholders’ return. The blockholders might force the company to pursue objectives that are more profitable for them, for example by diverting resources to institutions they own completely. Hence, European managers who are endorsing the “shareholder value approach” are promising to maximise value for weak minority owners, often against the will of strong controlling blockholders. In the United States “shareholder value approach” means weak owners are trying to “tame” strong managers. In Europe “creating shareholder value” often means that managers and weak minority owners have to stand up to powerful controlling blockholders. If the European managers succeed and dispersed ownership is matched by dispersed voting power, the Pandora’s Box of Anglo-Saxon corporate governance problems might be opened, but without any of the disciplining devices available in the Anglo-Saxon systems.

In the United States, **insider trading regulation** makes it difficult (costly) to hold voting blocks that are larger than 10%.<sup>4</sup> Beneficial owners holding more than 10% of a company’s stock are automatically considered as insiders and the SEC monitors their trading activity. The SEC does not have to prove that 10%+ beneficial owners possess insider information, only whether they use this information to engage in insider trading. In Europe any shareholder can be considered as an insider, but only if the regulator proves that he or she has insider information and uses this information for insider trading. European insider trading legislation does not necessarily make it more costly to hold and trade in large blocks, but does not provide shareholders with incentives for being well informed. Voting blockholders who do not hold any capital (complete separation) do not even fall under Article 3 of the Insider Trading Directive (89/592/EEC).

**Direct monitoring** in the Anglo-Saxon corporate governance debate means that some shareholders, typically institutional shareholders with an ownership stake of moderate size

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<sup>3</sup> Indeed the title of Rappaport’s book, as printed on the cover page, is: “Creating Shareholder Value. The New Standard for Business Performance”.

<sup>4</sup> There are relatively few beneficial owners that hold blocks that are larger than 10% in the United States and the costs imposed by tight insider regulation might be one of the factors that discourage large block holdings.

(giving cash-flow and voting rights) are collecting information about the activities of managers. When ownership is dispersed the incentives to perform direct monitoring are weak, one of the alleged weaknesses of the Anglo-Saxon system. When voting power is dispersed the means for performing direct monitoring might not be available. When voting rights are concentrated because ownership is concentrated, there are incentives to conduct direct monitoring, but also incentives to extract private benefits (Quadrant IV). When voting power is concentrated but ownership is not (Quadrant II), the incentives for extracting private benefits are much stronger. How strong they are depends on the device that is used to separate ownership and control. Hence, in Europe, direct monitoring takes on a different meaning. Voting blockholders might not be checking whether the management is maximising shareholder value, they might be checking whether the managers are maximising private benefits.

In the United States and in the United Kingdom, “**shareholder activism**” refers to increased monitoring of managers by some of the (weak) shareholders, for example pension funds. In continental Europe voting blockholders are not weak (Quadrant II or IV). Blockholders who command substantial voting power are either top managers themselves or are appointing the managers they remunerate and can remove. In Europe, “shareholder activism” refers to small shareholders defending their interests against controlling blockholders.

In the United States, some institutional shareholders seek to maximise the **shareholder value** of their portfolios’ performing **direct monitoring** and, if necessary, engage in **shareholder activism** (borderline between Quadrant I and IV). Such investors are regularly clashing with the management of major U.S. corporations. Institutions like the California Public Employees Retirement System (CalPERS, <http://www.calpers.ca.gov/default.htm>) have won important victories over allegedly entrenched management, for example by playing an important role in removing former CEOs of IBM and General Motors. In the quest to diversify their portfolios, these institutional investors are also starting to show a presence in Europe. However, here they not only clash with management, but also with the voting blockholders and the European disclosure system (Quadrant II).

The opinion that “shareholders are dumb and obnoxious; dumb because they buy shares and obnoxious because they expect to receive a dividend” was not expressed by a continental European manager. It was pronounced by the representative of a powerful blockholder at the

beginning of the century, the Berlin banker Carl Fürstenberg.<sup>5</sup> To be fair, Fürstenberg was known for his sharp wit and merely pronounced what many continental blockholders thought and think. The sentence “Small minority shareholders: small idiots; large minority shareholders: big idiots” (Fralon, 1997, pg. 49) was not spoken by a manager either. This view is attributed to Albert Frère, the self-made Belgian financier.<sup>6</sup> Frère built a considerable part of his empire on exploiting the passivity of small and large owners who were failing to exert control.

However, a fundamental change is under way in Europe today. Due to the fading stakes of blockholders, especially of corporations and founding family blockholders, and the increasing share of institutional investors, managers’ power and independence from blockholders are increasing. This trend opens up room for new potential problems. Once the controlling-monitoring power of large blockholders starts fading away, and no new monitoring devices are introduced, managers are becoming less tightly supervised. This process creates greater incentives for them, but might in turn allow for greater abuses of control on their part. These changes in the blockholding structure create further pressure to reform the current corporate governance system (Barca, Bertucci, Capello, Casavola, 1997).

Many of the national debates can be rationalised as conflicts that arise from different degrees of separation between ownership and control and different mechanisms for achieving such a separation. In this paper we aim to describe the different devices that are used in the EU Member States for achieving different degrees of separation, at the company level. We believe that such a description helps us to put the national debates in context and to draw policy conclusions that should hold at the level of the European Union.

For example, the German corporate governance debate is focused on “the power of the banks”. Non-bankers are concerned that banks control industry and not always to the non-bank shareholders’ advantage; a charge the banks deny. The banks argue that they perform the (beneficial) direct monitoring that is lacking in Anglo-Saxon countries but that they do not control their industrial clients. For listed companies with dispersed ownership the most

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<sup>5</sup> In German: "Die Aktionäre sind dumm und frech; dumm, weil sie Aktien kaufen, und frech, weil sie auch noch Dividende erwarten." Carl Fürstenberg was a director at the powerful Berliner Handelsgesellschaft (BHG), one of the pre-WWI Berliner Großbanken, and sat on the board of numerous companies. I first heard this quote from Martin Hellwig. Fürstenberg is also on the record for saying that “profit after provisions is that part of the balance sheet which the managers, against their best will, cannot hide from the shareholders” (“Der Reingewinn ist der Teil der Bilanz, den der Vorstand beim besten Willen nicht mehr vor den Aktionären verstecken kann”).

<sup>6</sup> In the original: "Petit actionnaire minoritaire : petit con; grand actionnaire minoritaire : grand con."

important devices for concentrating voting power without concentrating ownership are proxy voting (*Depotstimmrecht*) and absenteeism. Hence there is a large degree of separation between ownership and control, particularly for listed companies with dispersed ownership. Does the German proxy voting system provide banks with the incentives to perform direct monitoring in the Anglo-Saxon sense, or do the incentives for extracting private benefits dominate?

In Belgium, France, and Italy hierarchical groups are said to be an important device for concentrating voting power without concentrating ownership (often without violations of “one-share-one-vote”, i.e. without issuing dual-class or non-voting stock). The corporate governance debate focuses on the importance of these pyramids, that are difficult to trace, and the identity of those controlling them. Are hierarchical groups created out of the desire to separate ownership and control, or do they reflect knowledge sharing devices, market structures or fiscal distortions? Who is controlling the hierarchical groups? Do these institutions or persons have an incentive to perform direct monitoring (in the Anglo-Saxon sense)? Are hierarchical groups effective for extracting private benefits? How do companies controlled by hierarchical groups perform relative to companies that are controlled through other devices? Does economic performance depend on the identity of those controlling the group?

## **2 The Economics of Separation**

Legal forms that allow management to attract large scale external financing are one of the main innovations of the industrial revolution. A large share of our current wealth is built on the economic success of these entities. The champion of these legal forms – the stock corporation – dominates industry, banking, insurance and commerce almost everywhere in the world. In a corporation the functions of the classical “entrepreneur” who founds, controls and finances a company, can be separated. Corporate governance problems arise from splitting up these functions and allocating them to several groups of individuals who can have conflicting interests.

## 2.1 Theories of Ownership and Control

There are several strands of the literature that provide theories of ownership, theories of control and theories of the separation between ownership and control. Most of this theoretical and empirical work refers to the corporate governance of the United States or the Japanese corporate governance system when analysed from a U.S. perspective. International comparative studies and theoretical or empirical work on European corporate governance systems are relatively scarce.

There are several classes of economic models of ownership, governance and/or group structures :

1. **Vertical Integration** models are found in the industrial organisation literature. Ownership structure is determined by the effect of ownership structures on market behaviour. It can be advantageous to integrate vertically, because costs are not always fully internalised by independent companies. Theories of vertical integration make predictions about the structure of business groups, not only of the ownership concentration of individual companies. The contributions of Dixit (1983), Salinger (1988) and Waterson (1982) are examples of the industrial organisation approach.
2. **Principal-Agent Theory** is probably the most popular approach to the analysis of ownership structures and corporate governance. Corporate governance in the business world and the financial press, explicitly or implicitly, draw on the insights provided by this literature. In a principal-agent setting, often associated with Jensen and Meckling (1976), owners (the agents) delegate the running of the firm to managers (their principals) under asymmetric information. In such a setting, “corporate governance deals with the ways in which suppliers of finance to corporations assure themselves of getting a return on their investment. How do the suppliers of finance get managers to return some profits to them? How do they make sure that managers do not steal the capital they supply or divert it to other uses? How do suppliers of finance control managers?” (Shleifer and Vishny, 1995, page 2). The main advantage of the principal-agent approach is that it is very intuitive. Unfortunately, principal agent models do not justify the existence of diverse governance and asset structures. Principal agent theory cannot be used to analyse important phenomena like fiduciary duties and/or voting behaviour; see Hart (1995a,b) for a discussion of the limits of

agency theory. Hart and Holmstrom (1987) and Milgrom and Roberts (1992) survey the principal-agent literature.

3. **Transaction Cost Theory** stipulates that it is more costly to perform transactions between those inside and outside a firm than between those inside a firm (or business group, or organisation). Transaction cost theory makes predictions about ownership and business group structures. Transaction cost theory is often associated with Coase (1937), Williamson (1975, 1985), Klein, Crawford and Alchian (1978) and Aoki, Gustafson and Williamson (1988).
4. **Incomplete Contract Theory** models the firm as a way to allocate control to those who have entrepreneurial skills and are most indispensable in a world where contracts are costly to write and usually incomplete, especially if they extend over long periods. Contracts, for example those written between owners and managers, cannot take into account all contingencies that might arise. Substitute arrangements must be found that complete these contracts. “Governance structures can be seen as a mechanism for making decisions that have not been specified in the initial contract” (Hart, 1995a pg. 680). Grossman and Hart (1986), Hart and Moore (1990) and Hart (1995b) analyse corporate governance in an incomplete contracts setting.

## **2.2 Berle and Means and Beyond: Towards a Definition of Corporate Governance**

Berle and Means (1932) put forward an argument and their name, probably not quite fairly, is often associated with “the separation of ownership and control”.<sup>7</sup> Since their work is the classic reference on the separation of ownership and control, their argument is reviewed here. The 1932 study by Berle and Means was quantitatively updated by Larner (1966, 70) and Herman (1981). The separation of ownership and control was “revisited” in a special issue of the *Journal of Law and Economics* (1983) and by Leech (1987).

Berle and Means put forward three propositions on the role of the *Modern Corporation*. The *Modern Corporation* grows and concentrates economic power, growth is only possible with ownership dispersion and the resulting separation of ownership and control yields weak owners and strong managers :

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<sup>7</sup> Adam Smith, Hilferding, Einaudi, Veblen and many others had written on the subject previously.

1. Economic power is concentrated : “the huge corporation ... has come to dominate most major industries if not all industry in the United States. A rapidly increasing proportion of industry is carried on under this form of organisation. There is apparently no limit to its increase.” (Berle and Means 1932, page 44).
2. Ownership is dispersed and dispersion will increase over time : “Accompanying the concentration of economic power, growing out of it, and making it possible, has come an ever wider dispersion of stock ownership. .. Dispersion in the ownership of separate enterprises appears to be inherent in the corporate system. It has already proceeded far, it is rapidly increasing, and appears to be an inevitable development.” (Berle and Means 1932, page 47).
3. The separation of ownership and control arises from the fact that “under the corporate system, control over industrial wealth can be and is being exercised with a minimum ownership interest. Conceivably it can be exercised without any such interest. Ownership without wealth and control of wealth without appreciable ownership appear to be the logical outcome of corporate development.” (Berle and Means 1932, page 69)

Combining these three propositions leads to the prediction that concentrated economic power is not necessarily exercised by wealthy owners but can be exercised by others, typically managers. **The combination of concentrated economic power, ownership dispersion and “control” that is exercised by managers has become synonymous with “THE separation of ownership and control”. This is a misleading use of the words, that is not appropriate in the European context.**

The separation of ownership and control is only one of three propositions put forward by Berle and Means. THE separation of ownership and control (between management control and dispersed ownership) only arises when all three propositions are combined and true. We show that for many of the largest European listed corporations voting power is concentrated and ownership is dispersed. Control does not lie in the hands of the management but with a blockholder. Hence there is a separation of ownership and control but not THE separation. We also show that the predicted inevitability of a convergence towards the combination of concentrated economic power, dispersed ownership and management control is not born out by the European evidence.

There is a further caveat on the terminology associated with Berle and Means. For them, management control arose “when the largest single interest amounts to but a fraction of one per cent .... no stockholder is in the position through his holdings alone to place important pressure upon the management or to use his holdings as a considerable nucleus *for the accumulation of the majority of votes necessary for control*” (emphasis not in original). For Berle and Means, “management control” was a residual category that arose from a voting power vacuum.

In the United States today, “CEO control” is often sustained, reinforced and/or enhanced through the proxy voting process, not just a voting power vacuum. The management sets the agenda for the general meeting and solicits proxy votes from shareholders. For shareholders, even when they own more than 1% of the stock, soliciting votes is expensive. Without proxy voting, a legal separation device, CEO control would be far more difficult to secure, even in the United States today. Hence, strictly speaking, management control in the United States today is often exercised (or enhanced) through a “legal device”. Bank managers in Germany are also said to appoint themselves in this way. However, they use the proxy votes given to banks by its clients and do not solicit the proxies directly.

To conclude, Berle and Means took into account the possibility that “the control” lies with individuals or groups of individuals outside the company who have small ownership stakes. Hence, they were aware that “the control” does not necessarily have to be the management. Furthermore, in their analysis voting power was the most important instrument for obtaining control since, almost always, the general assembly appoints the board members (or, under a two-tier system, the supervisory board members appoint the managers). The analysis of voting power concentration is the first, and often last, step required to find “the control”. There are cases when “the control” does not use concentrated voting power, or the absence of voting power, to exert control. However, these cases are very rare and the exception, not the rule, especially in Europe. Also, modern economic theory views control as a probabilistic concept based on co-operative game theory, not a discrete variable (Leech, 1986).

The “investor approach” to corporate governance that the European Corporate Governance Network investigated during 1996/97 only offers a partial view and the tendency to measure

control through voting power is very much part of this view.<sup>8</sup> A broader view defines corporate governance as the problem of allocating investors' capital and determining who is holding control, when control is defined "as the power to dispose of the firm's capital, assets and customer relations (goodwill) in any way not expressly prohibited by existing legislation, regulations or contracts" (Barca 1997, page 195). This view of control differs from the voting power approximation that defines control as "the power to appoint directors" and is implicit in the "investor approach".

To exclude managers protect investors' interests through ever increasing levels direct monitoring and sanctions on managers, as is often suggested by single-handed application of the "investor approach", is not likely to result in an optimal allocation of control. Even the most hard-line supporters of investor protection rules must agree that managers' control over capital assets and firms' strategies is necessary for them to contribute (with information, fixed investment and/or human capital) to locating and undertaking profitable projects, and therefore to economic efficiency. Hence, a substantial erosion of control, as defined above, is potentially upsetting of this incentive.

In the broader view of corporate governance, the separation of ownership and control can be a necessary and desirable outcome when the distribution of wealth and the distribution of control skills (management skills) do not coincide. The difference between the allocation of skills to manage and the allocation to accumulate savings, and the concentration of management skills versus the distribution of wealth, makes it necessary for a separation between ownership and control to occur. The two allocations do not always coincide because of history; and it happens because a firm's potential for growth grows beyond a firm's self-financing capacity and the founders' own-capital.

Hence, whenever separation exists (because the allocation of wealth and managerial skills do not coincide) a trade-off arises. There are costs of unbounded control exercised by managers that decrease when more control is exercised by investors and there are benefits from control exerted by managers that diminish when more control is exercised by investors; and vice-versa. Too much direct monitoring can reduce the managers' long-term effort, while too little

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<sup>8</sup> Blair (1996) calls the "investor approach" the "finance model of corporate governance". Shleifer and Vishny (1996) define that "corporate governance deals with the ways in which suppliers of finance to corporations assure themselves of getting a return on their investment".

direct monitoring can increase the cost of capital. Corporate governance institutions are supposed to strike the optimal balance in this trade-off at a low cost.

### **2.3 Concentration versus Dispersion**

By “good corporate governance” we mean a set of institutions that is conducive to wealth creation, growth and the efficient utilisation of resources. Throughout this paper we discuss these institutions from the investor’s perspective. However, as we just argued, there are other dimensions to “good corporate governance” that we are not taking into account. Focusing on the important and complex questions associated with the investor view of corporate governance is legitimate, but not exhaustive. This partiality of the discussion should be born in mind.

Following Berle and Means (1932), the control problems that arise when ownership is dispersed have been analysed by many authors, for example Manne (1965), Alchian and Demsetz (1972) and Fama and Jensen (1983). Grossman and Hart (1990) have formulated the control vacuum that can arise from ownership and voting power dispersion as a free-riding problem.

The international control literature is predominantly a U.S. literature and has focused on the issues that arise from separation through ownership dispersion : monitoring and control by independent (non-executive directors), executive compensation, managerial incentive schemes, fiduciary duties and markets for corporate control. In Europe, other separation mechanisms dominate and different theoretical and policy issues arise.

If we define control like Berle and Means (see previous section), measures of the concentration of voting power provide a good approximation for finding “the control”. Throughout this paper we approximate control by voting power. When control can be exerted with very little or with no voting power (like in the case of classical management control) we point this out separately. For example, when voting power is dispersed and ownership is dispersed, management control is very likely but not inevitable.

In most countries, voting power at the general assemblies of *Modern Corporations* can be concentrated (or diluted) without concentrating (or diluting) ownership. If we assume that the

concentration of ownership is never complete, as will almost always be the case for listed companies, there are four ownership – voting-power combinations (see Table 1):

1. Dispersed ownership and dispersed voting power (“Strong Managers, Weak Owners”). Typical separation devices : absenteeism and free-riding.
2. Dispersed ownership - concentrated voting power (“Weak Managers, Weak Owners, Strong Voting Blockholders” or “Strong Managers, Weak Owners”). Typical separation devices : voting trusts, hierarchical groups, violations of “one-share-one-vote” (non-voting stock and dual class shares), voting pacts, minority voting blocks & absenteeism, soliciting proxy votes (in Germany banks, in the United States the management).
3. Concentrated ownership - dispersed voting power (“Strong Managers, Weak Majority Owners”). Typical separation device : voting right restrictions.
4. Concentrated ownership - concentrated voting power (“Weak Managers, Weak Minority Owners, Strong Voting Majority Owners” or “Weak Managers, Weak Minority Owners, Weak Majority Owners, Strong Voting Blockholders”). Typical separation device : voting trusts.

Some special cases that are mentioned need some elaboration. The 1<sup>st</sup> case is what Berle and Means (1932) have called “management control”, the residual category. “Management control” is likely but not inevitable. The 2<sup>nd</sup> category includes their minority control, control through a legal device and joint control. It also includes modern US management control obtained through proxy voting. The 3<sup>rd</sup> case arises from the fact that in some countries, voting rights can be restricted irrespective of the number of total votes held. For example, someone could own 30% of the votes in a corporation but the statutes allow him or her to vote a maximum of 5%. If everybody else owns 5% voting blocks, ownership is more concentrated than voting power. In the 4<sup>th</sup> case separation can also arise. For example, the ownership certificates issued by a voting trust are not necessarily dispersed. In this case ownership (of non-voting) ownership certificates is concentrated and the voting rights are concentrated (in the hands of the voting trust or foundation) and the separation between ownership and control is complete. Even in the United Kingdom and the United States, more companies are covered by the 4<sup>th</sup> case than is generally thought. This case also covers UK and US companies immediately after a takeover.

Table 2 summarises the advantages and disadvantages (costs) associated with the 4 dispersion-concentration combinations. We first consider the “classic” trade-off between dispersed ownership & voting power (Quadrant I) and concentrated ownership & voting power (Quadrant IV). The separation of ownership and control that arises from the implementation of European voting power concentration devices like “golden shares” and voting trusts is discussed subsequently (Quadrant II).

The main advantages of dispersed ownership (Quadrants I & II) are liquidity, enhanced diversification opportunities (risk sharing) and a low cost of capital. The advantages are strongest for listed companies. If investors are risk-averse, they prefer a well diversified portfolio over a narrow portfolio and they want to invest in liquid assets (assets that can be sold easily). There is a gain from dispersion and liquidity that will be, typically, split between the risk-averse investors and the company. The company benefits through a lower cost of equity and investors benefit from a higher return. Hence, companies have an incentive to place shares in liquid markets populated by many investors and investors have an incentive to buy the shares of companies traded in such markets.

The freedom of movement of capital has increased the push towards dispersion. In global capital markets, investors can spread their risks more widely and easily buy shares in the most liquid markets. Companies that attract many investors and have a liquid market in their shares benefit from a relatively lower cost of equity, which can make them more competitive. Under global competition, this puts pressure on other companies to follow.

Dispersion and liquidity also have a cost. Small shareholders, individually, have no incentive to monitor and/or control the managers. Managers, if left to their own devices, might decide to maximise their own return and not the return of the stockholders. As was mentioned several times already, this problem is usually referred to as “the problem of the separation of ownership and control” and is particularly severe with “management control” (Quadrant I).

The problem of “management control” can be overcome, at least partially, by concentrating ownership. Large shareholders have an incentive and the power to monitor managers. However, there are two disadvantages associated with concentrated ownership & voting power. Concentrating ownership reduces the possibilities for diversification and liquidity, the main advantage of dispersed ownership. Concentrating voting power raises the possibility that voting blockholders collude with management to exploit small shareholders. The

benefits of concentrated ownership in overcoming the Grossman and Hart (1990) free-rider problem are analysed in Shleifer and Vishny (1986) and Admati, Pfleiderer and Zechner (1993). Jensen (1989) took this argument to the extreme by predicting that leveraged buyouts (LBOs), even when they were financed by junk-bond issues, would perform much better than firms with more dispersed ownership.

There is a trade-off between dispersed ownership & voting power (Quadrant I) and concentrated ownership & voting power (Quadrant II). Moderate degrees of concentration are likely to have a positive net-effect on economic performance, for very high degrees of concentration the negative effects are likely to dominate. Since there is a trade-off, there should be an optimal degree of dispersion. Market forces are not likely to bring about the optimal degree. Managers are likely to “over-disperse” because they want to retain some control. However, since it is impossible to compute the optimal level of dispersion, there is no evidence to back-up this assertion. The trade-off between dispersed and concentrated ownership has been analysed, for example, in Aghion and Tirole (1994) and Burkart *et. al.* (1994).

In Europe it is possible to concentrate voting power without concentrating ownership, or vice-versa. By concentrating voting power, but not ownership, it is possible to preserve some degree of liquidity and have an instrument for monitoring management at the same time, or for blockholders to be managers themselves. However, a serious problem arises that was not present when voting power was proportional to cash flow stakes. Since controlling blockholders have a disproportionate stake in the companies profits, they are likely to seek other forms of compensation. Either blockholders are managers themselves, or collusion with the management the blockholder appoints is likely. Potential problems arise from a conflict between the interests of controlling blockholders and small shareholders, not from a lack of monitoring (Quadrant II). When ownership is dispersed and voting power is concentrated in the hands of voting blockholders or managers who appoint themselves with proxy votes, dispersed shareholders are the potential victims. This problem is particularly severe in the case of small shareholders of listed companies that belong to pyramidal groups. They can be expropriated by blockholders that control the whole groups through inter-groups transfers (Barca, 1996). In Europe they are the potential victims of a controlling blockholder (and the management the blockholder appoints), not the self-appointed non-owner managers.

**TABLE 2. DISPERSION –CONCENTRATION TRADEOFFS FOR INVESTORS**

	Dispersed Voting Power	Concentrated Voting Power
<b>Dispersed Ownership</b>	<p style="text-align: center;">I</p> <ul style="list-style-type: none"> <li>ⓘ advantages:               <ul style="list-style-type: none"> <li>+ liquidity</li> <li>+ investors can diversify</li> <li>+ lowest cost of capital</li> </ul> </li> <li>Ⓣ disadvantages:               <ul style="list-style-type: none"> <li>– lack of direct monitoring (free-riding problem, “hands off” portfolio investment)</li> <li>– takeovers are possible, do not act as a substitute for direct monitoring and can be disrupting</li> </ul> </li> </ul> <p>implications :</p> <ul style="list-style-type: none"> <li>✓ managers and dispersed owners favour liquidity enhancing transparency</li> <li>✗ “Strong Managers, Weak Owners”</li> </ul>	<p style="text-align: center;">II</p> <p>If management has concentrated voting power (e.g. through proxy votes) “Strong Managers, Weak Owners” as in QI. Otherwise :</p> <ul style="list-style-type: none"> <li>ⓘ advantages:               <ul style="list-style-type: none"> <li>+ direct monitoring</li> <li>+ more liquidity than IV</li> <li>+ diversify more than in IV</li> <li>+ lower cost of capital than in IV</li> </ul> </li> <li>Ⓣ disadvantages:               <ul style="list-style-type: none"> <li>– cash-flow and control incentives misaligned (with voting trusts : 100%)</li> <li>– collusion between weak managers and controlling blockholder likely</li> <li>– strong incentives to extract private benefits for controlling blockholder</li> <li>– no takeovers</li> </ul> </li> </ul> <p>implications :</p> <ul style="list-style-type: none"> <li>✗ controlling blockholder and management are opposed to transparency</li> <li>✗ controlling blockholder and management advertise widespread share ownership</li> <li>✗ “Weak Managers, Weak Owners, Strong Voting Blockholders”</li> </ul>
<b>Concentrated Ownership</b>	<p style="text-align: center;">III</p> <ul style="list-style-type: none"> <li>ⓘ advantages:               <ul style="list-style-type: none"> <li>+ some protection of small shareholders from voting right restrictions</li> </ul> </li> <li>Ⓣ disadvantages:               <ul style="list-style-type: none"> <li>– cash-flow and control incentives misaligned</li> <li>– no monitoring</li> <li>– no liquidity</li> <li>– no diversification opportunities</li> <li>– high cost of capital</li> <li>– takeovers difficult</li> </ul> </li> </ul> <p>implications :</p> <ul style="list-style-type: none"> <li>✗ mostly disadvantages</li> <li>✗ “Strong Managers, Weak Owners”</li> </ul>	<p style="text-align: center;">IV</p> <p>If concentrated owner does not have concentrated voting power “Weak Managers, Weak Owners, Weak Owners, Strong Voting Blockholders”, implications as in QII. Otherwise:</p> <ul style="list-style-type: none"> <li>ⓘ advantages:               <ul style="list-style-type: none"> <li>+ direct monitoring</li> <li>+ cash-flow and control interests aligned</li> </ul> </li> <li>Ⓣ disadvantages:               <ul style="list-style-type: none"> <li>– no or low liquidity</li> <li>– difficult to diversify</li> <li>– strong majority owner wants to be compensated through private benefits</li> <li>– high cost of equity</li> <li>– monitoring might be “too intense” and may prevent managers from taking initiatives</li> <li>– no takeovers</li> </ul> </li> </ul> <p>implications :</p> <ul style="list-style-type: none"> <li>✗ strong majority owner is opposed to transparency</li> <li>✗ “Weak Managers, Weak Owners, Strong Voting Owners”</li> </ul>

For countries other than the United States, there is little evidence on the proportion of companies that lie in the different quadrants of Table 2. La Porta *et. al.* (1996, 97) have provided some evidence by computing the concentration of voting rights controlled by the largest 3 blockholders in the 10 largest listed companies in 49 countries. In lack of other evidence their data was used in a recent overview of corporate governance issues in Europe (Berglöf, 1997).<sup>9</sup>

The country teams of the European Corporate Governance Network aimed to collect data that would allow us to allocate listed European companies, individually, to the four Quadrants. The country teams also tried to determine (when applicable) how voting power is concentrated without concentrating ownership, how voting power translates into control and, hence, how control is separated from ownership. The results that have been obtained so far show that most continental European companies are located in Quadrants II or IV. Some companies are located in Quadrant I and very few companies are located in Quadrant III.

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<sup>9</sup> La Porta *et. al.* (1996) provide information on the “quadrant” a country’s company law or commercial code allows companies to be in. They also provide evidence on the location of the average of the Top 10 listed companies by computing the concentration of voting rights. La Porta *et. al.* (1996) do not provide conclusive evidence on the distribution of companies over the 4 quadrants. In most cases, companies could be located in any one of the 4 quadrants ( Table 3). To be sure, this was not the purpose of their study and one would not expect them to have provided such a classification. For example, the company law of Hong-Kong, Malaysia, Singapore, Brazil, Chile, Greece, Peru, Uruguay, Japan and South Korea does not allow companies that are registered in these countries to issue shares with multiple voting rights and/or non-voting stock and/or set voting caps (La Porta *et. al.*’s definition of “one-share-one-vote”, *opus cit.* Table 1). This implies that companies in these countries cannot concentrate voting power without concentrating ownership by using these devices. However, this does not mean that the companies registered in these countries are not located in Quadrant II. There are other devices (like hierarchical groups) that can be used to concentrate voting power without concentrating ownership. Indeed, one could argue that those who want to separate ownership from control use the best available device: Greek pyramids, *kaebols* or *kereitsus*? Furthermore, the ownership concentration statistics for the Top 10 listed companies do not report the concentration of ownership but of voting power, at least for European companies. The country papers show that for many European listed companies, data on the concentration of cash-flow rights is not available. The data sources cited in La Porta *et. al.* (1996) contain the concentration of voting rights for the Top 10 European listed companies, not the concentration of cash-flow rights (*opus cit.*, Tables 1 and 10). Indeed, the ownership (dependent or explanatory) variable is only measured correctly (if direct stakes are used) when there are no violations of “one-share-one-vote”, an explanatory variable. Even then, direct stakes are disclosed as part of voting blocks (see Part B). Hence, countries with a high concentration level of voting rights could lie in Quadrants II or IV of ( Table 3).

**TABLE 3. OWNERSHIP CONCENTRATION AND THE OUTER LIMITS TO CONTROL**

	<b>Dispersed Voting Power</b>	<b>Concentrated Voting Power</b>
<b>Dispersed Ownership</b>	<p style="text-align: center;">I</p> <ul style="list-style-type: none"> <li>• is possible in all 49 countries</li> <li>• is probably not common in (average of sum of holding of Top 3 shareholders in Top 10 listed companies more than 50% of the votes): Hong Kong, Malaysia, South Africa, Sri Lanka, Zimbabwe, Argentina, Belgium, Brazil, Colombia, Egypt, Greece, Indonesia, Italy, Mexico, Portugal, Turkey, Austria.</li> </ul>	<p style="text-align: center;">II</p> <ul style="list-style-type: none"> <li>• is possible (through violations of “one-share-one-vote” and provided it is not ruled out by listing requirements) in 38 out of 49 countries, including the US and the UK</li> <li>• is not possible through deviations from “one-share-one-vote” (company law) in: Hong-Kong, Malaysia, Singapore, Brazil, Chile, Greece, Peru, Uruguay, Japan, South Korea.</li> <li>• is possible through hierarchical groups or other devices in all 49 countries</li> </ul>
<b>Concentrated Ownership</b>	<p style="text-align: center;">III</p> <ul style="list-style-type: none"> <li>• not explicitly covered by La Porta <i>et. al.</i></li> <li>• is possible in many EU Member States</li> </ul>	<p style="text-align: center;">IV</p> <ul style="list-style-type: none"> <li>• is possible in all 49 countries</li> </ul>

Note: Ownership concentration is computed with data for the Top 20 listed companies in each country. In Europe we know that there are no disclosure rules for such data, but that the data refers to the concentration of votes. La Porta *et. al.* use the limits imposed by company law to design a “one-share-one-vote” indicator. Market regulation could impose tougher rules and in practice, companies might not actually break with “one-share-one-vote”. To be sure, La Porta *et. al.* did not explicitly try to measure the separation of ownership and control.

Berle and Means (1932) had warned, and several authors after them have tested, that the separation of ownership and management control could lead to inefficiencies and problems of economic performance and growth. In the United States this link between “management control”, market myopia and the potential for losing the competitive edge vis-a-vis competitors that had different (and possibly superior) governance structures became a major concern in the United States during the 1980s. Although US corporations are tremendously successful again, the debate continues.

Until now, empirical research that tries to link the “separation of ownership and control” has almost exclusively focused on the distinction between “ownership control” and “management control”. As we have argued, this is not the relevant distinction to make in Europe. We propose to relate the whole spectrum of separation devices, the identity of blockholders and the degree of separation between ownership and control to economic performance. The importance of pursuing this avenue will become even clearer after we have presented the first empirical results obtained by the European Corporate Governance Network in the next section. We return to the link between corporate governance, separation devices and economic performance in a later section of Part A (“Implications for Future Research”).

### **3 Main Results**

In order to investigate the extent of the separation between ownership and control, the available data on ownership structures and control were investigated. The results presented below show that several existing EU Directives are not generating the data they are supposed to generate and that access to this data is often difficult, in the broadest sense of the word. We also identify several areas of complete darkness, where no European disclosure rules exist, especially for non-listed companies.

Using the data that is available, the comparative statistical results show that there are huge differences in ownership and control patterns across Member States, even for listed companies. The findings have implications for the completion of an integrated European equity market, especially when the Euro will be introduced.

Finally, the statistical findings raise questions about the link between the observed differences in ownership structures, control patterns and the comparative performance of European companies. Are possible deficiencies policy induced? If so, what type of regulatory changes are needed, especially at the European level?

#### **3.1 Data Availability Survey**

1 In most countries ownership data is not disclosed at all, not disclosed to the general public or practically inaccessible (Table 4); even for listed companies, with some exceptions.

- 1.1 In all the surveyed countries, most company managers know the identity of the company's owners. The exception are corporations that issued bearer shares, mostly listed companies. Here the management only knows what it learns from voluntary communications, voting power notifications made on the basis of the Transparency Directive (EEC/627/88) and the registration and attendance lists of annual and extraordinary meetings (Table 4, Column 3).
- 1.2 How much of the ownership information that is known to the management has to be disclosed to the general public varies from country to country. With the exception of the Transparency Directive (EEC/627/88) such disclosure is not covered by Community Law. In Belgium, 10% stakes in corporations (SA) should be notified and disclosed in the annual reports. In practice this law is violated and no declarations are made. No other ownership information is disclosed. In Austria, Germany and France full ownership information should be disclosed for all companies but corporations (even when these do not issue bearer shares). Non-compliance is known to be widespread in Germany. Compliance figures for Austria and France could not be obtained. In Italy, ownership data should be disclosed for all companies including corporations. However, this disclosure rule only covers "1<sup>st</sup> layer" ownership. It is enough for Italian companies to create a holding company in Belgium to work around this requirement (Table 4, Column 4). For listed companies the coverage is more complete because the whole superstructure is covered.
- 1.3 When ownership data has to be disclosed and when there is compliance with the law, the ownership data is deposited at the company register. Access to the registers is very difficult and/or very expensive in all countries that were surveyed. Even when the company register has been partially migrated to electronic media, the contents is unreliable because the electronic version is based on transcriptions from paper (errors, omissions, delays) and access is even more expensive than for access to the paper records. With the exception of Italy, ownership data does not have to be published in the annual report and/or accounts (Table 4, Column 5 & 6).
- 1.4 Commercial databases produced by companies that specialise in obtaining company register information are usually unsuitable for statistical purposes.

The clients of these companies, for example specialised credit-agencies, want the most recent information on a company on demand, not a representative cross-section or panel produced for statistical analyses. Hence, commercial databases are updated whenever a client makes an information demand. Very often the last record is overwritten and backups are written at irregular intervals, not every time an update occurs. Since information demands and corporate governance events are highly correlated, the non-response/non-compliance problem is exacerbated. Some of the data for the UK presented in the next section was obtained from a commercial database and suffers from this problem.

- 1.5 The Stock Market Supervision Authorities receive voting rights notifications that are filed as a result of the Transparency Directive (88/627/EEC). The notification of ownership data was optional. As we will show in Part B, the whole philosophy of the Transparency makes it unsuitable generating the data required to compute representative ownership statistics for listed companies. In many countries, other government agencies collect ownership data, namely the Banking Supervision Authority, the Insurance Supervision Authority and the Competition Authority. Public disclosure of such data varies greatly from country to country. The Commission's competition department (DGIV) does not make its ownership and control data available to the public (Table 4, Column 5 & 6).
- 2 In the portfolio dimension the European Company Accounts Directives have led to more disclosure convergence than we could detect in the ownership dimension. However, there are many exceptions, the disclosure thresholds are often too high and access to the data – once again – is difficult or impossible.
  - 2.1 Not all institutions that play an important role in corporate governance have to prepare annual accounts in all countries. When they do their portfolio holdings must not always be disclosed. Foundations that act as *de facto* financial holdings are one example. These institutions are usually not affected by any European directives (company and/or accounting directives).

- 2.2 In all countries that were surveyed, all companies that have to prepare annual accounts have to include information on their holdings in the annex to the accounts.
- 2.3 Belgium has put in place a system for collecting and distributing annual account information that is exemplary, although here too there is room for improvement. The paper copies of the annual accounts are transmitted to a special department of the Central Bank (*Department Centrale des Bilans*), not to the company registers. The Central Banks has the paper filings transcribed into a computer readable format. With the help of an electronic publisher (Bureau van Dijk, <http://www.bvdep.com>) the data is put on CD-ROM. The CD is not cheap (BEF 160,000) but reliable and easily available world-wide. The production costs could be much lower, of course, if filings were made electronically on standardised forms. However, a comparison of the printed annual reports and the CD-ROM revealed that that the portfolio information is frequently faulty.
- 2.4 In other EU countries the Central Banks collect balance sheet data, including portfolio holdings data, but store it in internal databases that are treated as confidential (for example in France, Germany and Spain).
- 2.4.1 In France, the *Banque de France* collects company information from public sources like the company register and the bulletin of legal notices. However, the internal database also contains confidential data obtained through private contacts with credit institutions and information the firms provide voluntarily. The database is not accessible by the general public (Bloch and Kremp, 1997). In Germany, the *Bundesbank* keeps a similar database (see Becht and Böhmer, 1997).
- 2.4.2 In Spain, a “confidential” questionnaire survey is used to ask companies for the same information they deposit at the company register. Since the questionnaire is confidential the data collected by the Central Bank cannot be distributed to the general public. The questionnaire responses are not audited, the accounts deposited at the company register are (Crespi, 1997).

- 2.5 In consolidated accounts, neither the group structure nor the size of intermediate holdings are reported (Table 6). Both pieces of information are vital for assessing the leverage effects in hierarchical groups and for computing measure of the separation of ownership and control.
- 2.6 The criterion for reporting portfolio holdings in consolidated accounts is a complicated “control” definition. This definition varies from country to country. Furthermore, when trying to assess the importance of holdings in net-cash flow terms, using a control criterion as the basis for disclosure is misleading.
- 3 Voting power data for listed companies should be generated by the Transparency Directive (88/627/EEC). The type of data that is disclosed on the basis of this directive and the accessibility of the data varies greatly between Member States. The Transparency Directive provides for notifications of changes based on first time notifications of the “voting block stock”. Hence, the main difficulty lies in obtaining regular, accurate and up-to-date cross-sections of voting block holdings for all listed companies (Table 7).
- 3.1 In most surveyed countries, data on significant voting block holdings is difficult to obtain. Individual notifications are published in newspapers but, obviously, this requirement does not provide for much transparency. We surveyed whether cross-sections and/or the individual notifications are available from the competent authorities (or the stock exchanges) and at what intervals. In some countries, private information providers or banks gather the individual notifications and compile cross-sections. However, there is no quality assurance and electronic versions of such data are usually very expensive (Table 7, Column 3).
- 3.1.1 In Austria the competent authority is not yet fully operational. Individual notifications are published in newspapers. No cross-sections are available.
- 3.1.2 In the Netherlands cross-sections are not available from the competent authority.

- 3.1.3 In Belgium, the competent authority does not disseminate any of the data. The publication of the notifications is undertaken by the stock exchange that also runs an online database. Access is restricted and the data is overwritten continuously. A commercial bank publishes free cross-sections, but at irregular intervals. A consulting company sells cross-sections at a cost that puts it well beyond the reach of the ordinary investor.
- 3.1.4 In France the competent authority publishes a CD-ROM with individual notifications.
- 3.1.5 In Italy the competent authority publishes a monthly statistical bulletin, but only on paper.
- 3.1.6 In Spain the competent authority has put the individual publications on the internet, but retrieval is one company at a time (<http://www.cnmv.es>). The site features Spanish and English pages.
- 3.1.7 In Germany, a complete cross-section is available from the internet site of the competent authority (<http://www.bawe.de/>). Updates are available twice a month. The spreadsheet also contains a reference to the newspaper where the original notification was published. Access to the individual publications is not available. The site features German and English pages.
- 3.2 The disclosed identity of the agent who has ultimate control over a significant voting block is not entirely reliable in any of the Member States that were surveyed. In Belgium, Spain and Italy the information is often reliable. In Austria, Germany and The Netherlands the information is often unreliable (Table 7, Column 4).
- 3.3 The basis of disclosure in the Transparency Directive are voting blocks controlled by physical or legal persons. These blocks can be composed of a number of direct stakes, for example 60 direct stakes voted jointly by a family or 4 direct stakes held by companies that belong to the same business group. In Belgium, Spain and France all direct stakes in a voting block are notified. The notification of direct stakes is irrespective of their individual size and the

identity of those holding the stakes is revealed. In Germany and the Netherlands this is not the case (Table 7, Column 5).

3.4 The reason why certain direct stakes are included in the voting block notification (for example because the direct stakes are held by a business groups or voting coalitions) is notified in all countries (Table 7, Column 6).

3.5 The identify of the intermediate agents – companies controlled by the notifying ultimate controlling agent that control the companies that hold direct stakes – is only known in Belgium and sometimes known in Austria (Table 7, Column 7).

3.6 An exact picture (organisation chart or organigramme) of the control structure is only available in Belgium (Table 7, Column 8).

3.7 In France and Italy the percentage of total capital held by agents who control significant voting blocks is notified along with the percentage of voting rights held. In Italy this leads to confusions because it is difficult to disentangle voting rights and capital blocks (Table 7, Column 9).

4 Detailed information on legal devices that separate ownership and control is contained in company statutes. According to Article 2 (a)&(c) of the 1<sup>st</sup> Company Law Directive (68/151/EEC) there is “compulsory disclosure” of the latest version of the company statutes. Furthermore, according to Article 3 (3), “a copy of the whole or any part of the documents or particulars referred to in Article 2 must be obtainable by application in writing at a price not exceeding the administrative cost thereof”. In the ownership disclosure section (above) we documented that access to the company registers – where the statutes are usually kept – is difficult and expensive. Our findings are not a contradiction with the letters of Article 3(3). Article 3(3) does not mention how one can find the information to make an application (like the address of the register) and how long it should take to obtain a copy of the statute. Article 3(3) does not contain any incentives for improving the efficiency of the company register. On the contrary, the higher the administrative costs, the higher the prices that can be charged and the lower the demand for company register information.

## 3.2 Quantitative Results

Despite the unevenness of effective disclosure and data availability across countries, a number of striking facts emerged. Due to data (un)availability most findings refer to listed companies.

- 1 For listed companies, the **concentration of ownership and voting power** is higher in continental Europe than in the United Kingdom. On the other hand, for non-listed companies, the ownership concentration is very high in the United Kingdom. In the United Kingdom the expression “going public” is appropriate. It appears that in continental Europe “going public” often means “keeping it private”, at least as far as ownership and control structures are concerned. Companies where more than 95% of the shares are owned and/or voted by a single blockholder, as is often the case on the continent, are more private than public.
- 2 For listed companies, the shape of the distribution of voting blocks and direct stakes seems to be influenced by the presence or absence of **takeover legislation** (or rules). In countries without a mandatory bid requirement, company law control thresholds have a decisive influence on the distribution of voting blocks.
  - 2.1 In Germany, voting blocks are grouped at the 25%, 50% and 75% thresholds that correspond to the maximum blocking minority to prevent statute changes, majority control and absolute control (including statute changes). These are company law thresholds. In countries that have takeover rules, mandatory bid requirements seem to influence the distribution of stakes. The average size of the largest ownership stake in Austria is 52.4%. Neither Germany nor Austria have a mandatory bid requirements.
  - 2.2 In the United Kingdom, direct stakes are grouped before the 30% threshold, at 50% and in the 95-100% range. This distribution corresponds to the mandatory bid threshold, majority control and the outcome of successful takeovers.<sup>10</sup> The Belgian voting block distribution shows a similar pattern with a “hole” in the mandatory bid range from 33.33-50% and a peak after 50%.

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<sup>10</sup> The large number of stakes in the 95-100% range might be due to the fact that the database that was used to not contain data that is completely updated all the time. Up-to-date annual accounts data suggests that the large blocks created by successful takeover bids are quickly diluted, at least to the 50% level.

However, in Belgium the absolute control threshold (company law) of 66.66% also exhibits a peak. The average size of the largest voting block in Spain, a country with takeover legislation, is only 39%.

3 **Insider trading rules** can impose an additional cost on holding blocks because they make it more difficult to dispose of them. Hence, insider trading rules could also have a visible effect on the distribution of blocks. We find a visible effect of insider trading rules on the distribution of voting blocks in the United States. We find no such effect in Europe because large blockholders are not automatically considered to be insiders. Indeed, in legal terms, small shareholders are as likely to be insiders as large voting blockholders.

3.1 In the United States, beneficial owners holding blocks that are larger than 10% are “insiders”, even when they claim to have no insider information. Who is a beneficial owner is determined on the basis of a control criterion, not a cash flow criterion. The ability of 10%+ insiders to trade in the shares of a company is seriously restricted because their trades are monitored continuously by the SEC. In the distribution of blocks held by beneficial owners in the United States, a large peak is visible in the 5-10% range (Becht, 1997). This peak is often attributed, at least in part, to insider rules (Blair, 1995).

3.2 In Europe, Article 2 of the Insider Trading Directive (89/592/EEC) stipulates that “each Member State shall prohibit any person who ... by virtue of his holding of the capital of the issue .. possesses inside information from taking advantage of that information .... [when] ... acquiring or disposing of ... transferable securities of the issuer or issuers to which that information relates.”

3.3 In Europe ownership, and not voting power, might make European blockholders insiders. However, they are not automatically insiders because the insider trading directive does not stipulate any thresholds. Hence, the competent authority has to prove that an agent with a holding of any size is actually using insider information. Indeed, large owners who can show that they are not well informed about a company’s affairs are less restricted in their trades than small owners who try to be well informed. Since any shareholder,

irrespective of size, is a potential insider the Insider Trading Directive does not, *ceteris paribus*, affect the distribution of blocks. This is confirmed by our findings.

- 4 On the whole, **banks** do not hold large direct ownership stakes in listed non-financial companies. Hence, one could argue that banks are equally unimportant in European corporate governance. In fact, the role of banks differs substantially from country to country (Table 9).
  - 4.1 In Germany, banks are in the position to take advantage of powerful separation devices : proxy voting (*Depotstimmrecht*), pyramiding, voting pacts and interlocking directorates. Indeed the separation of ownership and control for listed companies with dispersed ownership is very large. Banks have considerable voting power but small equity stakes. This voting power is not reflected in the transparency declarations because proxy voting is not included in the list of “attribution” requirements.
  - 4.2 Spanish banks hold a very large number of smaller voting blocks and a substantial number of large and very large voting blocks (Crepsi 1997).
  - 4.3 In Belgium, France and Sweden banks are an integral part of business groups or provide the link between different business groups. In Italy banks only play the latter role because they are not allowed, by law, to play the former. Mediobanca does not control a single company in its portfolio but acts as a power-broker. In France, it is often hard to draw the line between banks and financial holding companies. Hence, banks provide the “glue” for group structures that are used to separate ownership and control.
- 5 The role of **insurance companies** is very similar to the role played by banks. However, their holdings are even smaller in France and Italy, but somewhat larger in Germany (Table 9). Many hierarchical groups involve both banks and insurance companies.
- 6 The involvement of the **state** in listed companies is usually not very large (Table 9). State holdings are concentrated in some sectors, due to historical reasons, and non-listed companies. However, the figures should be treated with care because the state is

not always identified as the ultimate owner. State ownership through banks, holdings and unlisted non-financial corporations often goes undetected (Table 9).

- 7 We do not yet have conclusive evidence on the importance of cross-shareholdings and hierarchical groups because the required data is often unavailable (see Part B). The exception is Italy where a report published in 1994 showed that as a whole the phenomenon was not extremely relevant but that it provided, in some cases, a way for blockholders/managers to sustain each other (Barca *et. al.* 1994).
- 8 Data for own-shareholdings is available for Belgium and Sweden. In Belgium, even for listed companies, own-shareholdings through cross-shareholding loops are surprisingly large. There are 31 Belgian listed companies with own-shareholdings and 4 companies with own-shareholdings larger than 10%. Considering the shareholders of listed companies as well as the companies themselves, there are 84 companies with own-shareholdings and 14 companies with own-shareholdings larger than 10%.

### **3.3 Comparative Summary Tables**

**TABLE 4. PUBLIC ACCESS TO DIRECT OWNERSHIP INFORMATION I (CASH-FLOW RIGHTS)**

1	2	3	4	5	6	7	8
Country Acronym	Full Name	Ownership Information Known to the Company	Ownership Information in Company Register	Access to Company Register	Must be Published in Annual Report	Available from a non-commercial Database	Available from a Commercial Database
<b>A</b>	Austria	all - except listed AG and AG with bearer shares	AG: No; GmbH: Yes	paper, copies not easy, recently electronic, expensive (170ATS per request)	No	No	Yes. Quality not tested.
<b>B</b>	Belgium	all – except listed SA and SA with bearer shares	No	paper, copies expensive, not easy	No	No	No
<b>DK</b>	Denmark						
<b>D</b>	Germany	all – except listed AG and AG with bearer shares when stake < 20%	AG: No, GmbH : Yes (significant non-compliance)	paper, copies expensive, geographically dispersed	No	No	Yes . Either incomplete or of bad quality.
<b>E</b>	Spain	all - except SA with bearer shares	No	Paper, copies expensive, geographically dispersed	No	Only for listed companies	Available for large firms. Quality not tested.
<b>F</b>	France	all - except listed SA	Yes - except SA	paper, electronically not easy & unreliable, both expensive	No, only for listed SA (>5%)	No access for the general public.	Yes. Only listed companies, incomplete, not standardised.
<b>I</b>	Italy	all legal forms	Yes	paper, electronically unreliable, both expensive	Yes	No	Yes. Quality was not tested.
<b>NL</b>	The Netherlands	all legal forms					
<b>S</b>	Sweden	all legal forms	Yes	paper, electronic	No	Yes. Listed.	Yes, listed.
<b>UK</b>	United Kingdom						

Notes and sources : see next page

Note: The table records the availability of direct ownership data for cash-flow rights, not for voting rights. It does not cover portfolio declarations either (e.g. in consolidated accounts). Even in Italy, with the exception of listed companies, only the first ownership layer is covered and the ownership chain is not declared up to the ultimate owners. Hence it is enough for the owner of an Italian company to “hide” behind a Dutch or Belgian company (or a company outside the Union) to remain anonymous.

Source: Gugler, Kalss, Stomper, Zechner (1997) for Austria; Becht and Chapelle (1997) for Belgium; Becht and Böhmer (1997) for Germany; Crespi (1997) for Spain, Bloch and Kremp (1997) for France; Bianchi, Bianco and Enriques (1997) for Italy.

**TABLE 5. PUBLIC ACCESS TO DIRECT OWNERSHIP INFORMATION II (CASH-FLOW RIGHTS)**

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>5</b>
<b>Country Acronym</b>	<b>Market Supervision Authority</b>	<b>Banking Supervision Authority</b>	<b>Insurance Company Supervision Authority</b>	<b>Competition Authority</b>
<b>A</b>	authority not yet operational	Yes	Yes	No
<b>B</b>	do not have ownership; voting rights data not accessible (handled by the Stock Exchange)	No	No	
<b>DK</b>				
<b>D</b>	do not have ownership; voting rights data “snapshots” at irregular intervals on paper	No	No	Yes (paper)
<b>E</b>	do not have ownership data; voting rights data on WWW one company at a time ( <a href="http://www.cnmv.es">http://www.cnmv.es</a> )	No		No
<b>F</b>	No	No	No	No
<b>I</b>	Yes (soon on CD-ROM)	No	Yes (paper)	Yes (paper)
<b>NL</b>	yes, but believes the data is contaminated and has stopped distributing it			
<b>S</b>				
<b>UK</b>				
<b>EU</b>	-	-	-	No (DGIV)

Note: The table records the availability of direct ownership data for cash-flow rights, not for voting rights. The Belgian and German market supervision authorities have voting rights data, but no ownership data. The cells show the availability of ownership information that is known to the relevant authority. When the authority itself has no direct ownership information the cell shows the entry “do not have it”.

Source: Gugler, Kalss, Stomper, Zechner (1997) for Austria; Becht and Chapelle (1997) for Belgium; Becht and Böhmer (1997) for Germany; Crespi (1997) for Spain, Bloch and Kremp (1997) for France; Bianchi, Bianco and Enriques (1997) for Italy.

**TABLE 6. DISCLOSURE OF PORTFOLIO INFORMATION (CASH-FLOW RIGHTS)**

1	2	3	4	5	6	7
Country Acronym	Participations Published in Annual Accounts	Annual Account Published By	Account available from	Access	Reports Intermediate Direct Holdings <sup>1</sup>	Criterion for Inclusion
<b>A</b>	Yes. Only above certain minimum size.	all companies that have to draw up annual accounts	Company Register/Wr. Zeitung	difficult	No	control definition of consolidation rules & company law
<b>B</b>	Yes. Only above certain minimum size.	as above	Central Balance Sheet Office (Central Bank)	Excellent (CD-ROM)	No	as above
<b>DK</b>						
<b>D</b>	Yes. Only above certain minimum size.	all companies that have to draw up annual accounts	Company Register	Difficult, expensive	No	control definition of consolidation rules & company law
<b>E</b>	Yes. Only above certain minimum size.	as above	Market regulator for listed companies	Scanned auditing reports on CD-ROM	No	as above
<b>F</b>	Yes. Only above certain minimum size.	as above	Company Register	difficult	No	as above
<b>I</b>	Yes. Only above certain minimum size.	as above				as above
<b>NL</b>						
<b>S</b>	Yes. Only above certain minimum size.	as above	Company Register	easy (CD-ROM)	No	as above
<b>UK</b>						

1 - intermediate direct holdings would allow us to construct an organisation chart that shows the ownership links between all companies in a group from the portfolio declarations of the head. In many countries only the consolidated participations are reported which makes it necessary to collect the annual accounts of all companies in the group.

Source: Gugler, Kalss, Stomper, Zechner (1997) for Austria; Becht and Chapelle (1997) for Belgium; Becht and Böhmer (1997) for Germany; Crespi (1997) for Spain; Bloch and Kremp (1997) for France; Bianchi, Bianco and Enriques (1997) for Italy; De Jong, Kabir, Marra and Röell (1997) for the Netherlands.

**TABLE 7. QUALITY AND AVAILABILITY OF THE CONTROL DATA GENERATED BY THE TRANSPOSITIONS OF THE TRANSPARENCY DIRECTIVE**

1	2	3	4	5	6	7	8	9
Country Acronym	Full Name	Publication & Availability	Identity of Agent with Ultimate Control Known Reliably	Direct Stakes of all Shareholders Notified Separately	“Attribution Reason” Known	Identity of Intermediate Shareholders Known	Control Structure Intelligible	Ownership Data Notified
<b>A</b>	Austria	N	3	3, OL1	2-3	sometimes	No	No
<b>B</b>	Belgium	N, OL1, CUM1	2 (B1)	Yes	Yes (B2)	Yes	A	No
<b>DK</b>	Denmark							
<b>D</b>	Germany	N, CUM1, CUM2, WWW (http://www.bawe.de)	3 (D1)	No	Yes	No	C	No
<b>E</b>	Spain	N, WWW one company at a time (http://www.cnmv.es)	2	Yes		No	No	No
<b>F</b>	France	N, CD2	3	Yes	Yes	No	No	Yes
<b>I</b>	Italy	N, CUM3, CD2	2					Yes (I1)
<b>NL</b>	The Netherlands	N	3 (NL1)	No	Yes	No	No	No
<b>S</b>	Sweden							
<b>UK</b>	United Kingdom							

Shortened Cell Entries: 1 – reliable (always or very often); 2 – often reliable (often); 3 – unreliable (never, or almost never); N – newspaper, OL1 – real-time online (continuously overwritten), CUM1 – cumulative paper volume (cross-section) private from newspaper, CUM2 – cumulative by competent authority irregularly, CUM3 – cumulative by competent authority monthly, CD1 – CD-ROM with individual notifications commercial from newspaper, CD2 – CD-ROM produced by competent authority;

Notes: B1 – only newspaper publication transparent; B2 – Belgium uses a slightly different attribution classification than the Directive

D1 – many exceptions lead to early cut off in control chain; NL1 – group blocks and voting blocks do not add up to 100% (double counting); I2 – the notification of the ownership data leads to confusion in Italy since it difficult to distinguish between cash-flow rights and votes

Source: Gugler, Kalss, Stomper, Zechner (1997) for Austria; Becht and Chapelle (1997) for Belgium; Becht and Böhmer (1997) for Germany; Crespi (1997) for Spain, Bloch and Kremp (1997) for France; Bianchi, Bianco and Enriques (1997) for Italy; De Jong, Kabir, Marra and Röell (1997) for the Netherlands.

**TABLE 8. OWNERSHIP STATISTICS BY RANK OF DIRECT STAKE AND BLOCK**

1	2	3	4	5	6		7		8		9	10		11
Country Acronym	Full Name	No. of Comp.	Source	Year	Mean Largest Direct		2 <sup>nd</sup> Largest Direct		3 <sup>rd</sup> Largest Direct		>4	4-10th		>10
					Dir.	Gr.	Dir.	Gr.	Dir.	Gr.	Dir.	Dir.	Gr.	Dir.
<b>A</b>	Austria	600 TOP	Trend Mag.	1996	82.2		9.5		1.9		6.5	-		-
		62 L, TOP	Trend Mag.	1996	52.4		10.6		2.9		34.1			
<b>B</b>	Belgium	-												
<b>DK</b>	Denmark	-												
<b>D</b>	Germany	-												
<b>E</b>	Spain	-												
<b>F</b>	France	281,642 NL, P	FibEN, BAFI	1996	66.2		17.8		4.8		-	2.2		0.0
		680 L, P	FibEN, BAFI	1996	55.7		16.6		5.9		-	4.8		0.2
<b>I</b>	Italy	214 L, P	88/627/EEC	1996	48.0	51.9	10.1	7.7	4.1	3.46		6.1	5.1	
		4161 RS	Medioc. Cen.	1994	61.0		22.5		9.2			7.2		
		973 RS	Invind	1992	66.5		17.1		7.7			6.4		
<b>NL</b>	The Netherlands	137 L	88/627/EEC	1996	28.2		9.2		4.3					
<b>S</b>	Sweden	-												
<b>UK</b>	United Kingdom	1580 L, Av	Jordans	96F	20.7		8.0		5.9			4.3		3.3
		12600 NL, Av	Jordans	96F	86.4		15.9		8.7			3.2		0.9
		189 L, RS	Renneboog	1992	14.4		7.3		5.95			4.1		3.1
<b>US</b>	United States	-												

Abbreviations : Dir. - direct stakes; Gr. - group ownership blocks (includes double counting due to cross-shareholdings); L - listed; NL - non-listed; RS - representative sample; TOP - largest non-financial; P - population; Av - companies available in database, selection criterion unknown, 96F - corresponds to financial data dating 1996, date of ownership data unknown; could be the same year, older or more recent.

See next page of notes and sources.

Notes: A group block is defined as the sum of shares that are owned directly and indirectly by the same natural or legal person of public or private law. Double counting due to cross-shareholdings has not been netted out. Direct stakes are holdings “one level up”. Two stakes held by two companies that both belong to the same company higher up in a group are not added. In Italy the transposition of 88/627/EEC requires the notification of ownership stakes. In France the data comes from a confidential databases held at the Banque de France (Fichier Bancaire des Entreprises and BAFI) that records ownership stakes with some additions from the commercial DAFSAliens CD (<http://www.bvd.com>). The Austrian data is questionnaire data published by Trend, a business magazine. For Italy, ownership statistics for smaller firms are based on survey data collected by the Bank of Italy and Mediocredito Centrale; see Bianchi, Bianco and Enriques (1997). One UK dataset comes from the Bristol company registration agency Jordans who obtain the data from the company register. Strictly speaking the data is not for 1996 since Jordans does not update all companies each year. The second dataset was collected by Luc Renneboog using printed annual reports.

Sources: Gugler, Kalss, Stomper and Zechner (1997) Table 6 & 9 for Austria; Bloch and Kremp (1997) Table 1.B & 2.A for France and Bianchi, Bianco and Enriques (1997) Table 16, 18, 22, 24 for Italy; De Jong, Kabir, Marra and Röell (1997) Table C.b.1. for the Netherlands. For the UK, own calculations using Bureau van Dijk's (<http://www.bvd.com>) Amadeus CD-ROM (data collected by Jordans, <http://www.jordans.co.uk>) and data collected and provided by Luc Renneboog.

**TABLE 9. OWNERSHIP STATISTICS BY INVESTOR TYPE**

1 Country Acronym	2 No. Comp.	3 Year	4 Individ. & Families		5 Foreign		6 State		7 Non- Financial Company		8 Banks		9 Insurance		10 Mutual Funds		11 Holdings		12 Other Financial	
			Dir	Gr	Dir	Gr	Dir	Gr	Dir	Gr	Dir	Gr	Dir	Gr	Dir	Gr	Dir	Gr	Dir	Gr
<b>A</b>	600 TOP	1996	22.6	38.6	30.3	33.9	5.2	11.7	33.6	0.0	4.0	5.6		-		-		-		-
	62 L, TOP	1996	8.9	27.2	17.1	15.3	3.3	7.6	25.9	0.0	11.4	13.3								
<b>B</b>																				
<b>DK</b>																				
<b>D</b>	all L, F&D	1995	14.6		8.7		4.3		42.1		10.3		12.4						7.6	
<b>E</b>																				
<b>F</b>	281,642 NL, P	1996	51.3	-	-	-	0.0	-	27.8	-	2.7	-	0.3	-	-	-	8.9	-	-	-
	680 L, P	1996	15.6		-	-	0.7	-	13.4	-	16.4	-	3.4	-	-	-	13.4	-	-	-
<b>I</b>	214 L, P	1996	5.0	20.1	9.3	9.1	2.6	6.8	38.1	20.1	9.6	9.5	2.4	1.1	0.8	0.8		-	1.1	1.1
	4161 RS	1994	24.4		15.9		12.2		11.8								32.1		0.47	
	973 RS	1992	48		8.1		4.6		15.3								21.6		0.17	
<b>NL</b>	137 L	1996	10.8				1.3		10.6		7.2		2.4				0.3		15.5	
<b>S</b>																				
<b>UK</b>																				
<b>US</b>																				

Abbreviations : Dir. - direct stakes; Gr. - group ownership blocks (includes double counting due to cross-shareholdings); L - listed; NL - non-listed; F&D - foreign and domestic; RS - random sample; TOP - largest non-financial; P - population; Av - companies available in database, selection criterion unknown.

See next page of notes and sources.

Notes: The investors do not necessarily have ultimate control. In some cases the data does not add up to 100% because small stakes do not have to be notified. The German figures are taken from the DAI Factbook 1996. They are neither “group” nor “direct” holdings, hence they were placed in the middle of the two cells.

Sources: Gugler, Kalss, Stomper and Zechner (1997) Tables 7.a.b & 9.a.b for Austria; Becht and Böhmer (1997) for Germany; Kremp (1997) Tables 3.B and 4.B for France; Bianchi, Bianco and Enriques (1997) Tables 26, 27, 32, 34 for Italy; De Jong, Kabir, Marra and Röell (1997) Table C.b.3. for the Netherlands .

**TABLE 10. OWN-SHAREHOLDINGS IN INTEGRATED TERMS**

	<b>Belgium</b>		<b>Sweden</b>	
	Listed Companies	Listed Companies and Shareholders with Voting Power > 5%	Listed Companies	Listed Companies and Shareholders with Voting Power > 5%
<b>Min.</b>	0.000003	0.000002		0.0001
<b>1%</b>	0.000003	0.000002		0.0001
<b>5%</b>	0.000003	0.000004		0.0004
<b>10%</b>	0.000030	0.000019		0.0004
<b>25%</b>	0.016	0.00025		0.0015
<b>50%</b>	1.003	0.65		0.0081
<b>75%</b>	3.37	3.04		0.39
<b>90%</b>	16.0	20.3		1.44
<b>95%</b>	27.2	22.8		20.0
<b>99%</b>	29.95	29.95		23.64
<b>Max.</b>	29.95	29.95		23.64
<b>&gt; 0%</b>	31	84		21
<b>&gt; 10%</b>	4	12		2
<b>Mean</b>	4.22	4.18		2.29
<b>Std. Dev.</b>	7.96	7.91		6.53
<b>Total</b>	142	722		238

Note : The table reports the distribution of own-shareholdings on the diagonal of the integrated ownership matrix. For Belgium the matrix was constructed for listed companies and shareholders that command more than 5% of the voting rights. The companies in the portfolios of listed companies are not included. If they were the number of companies with own-shareholdings would be higher. For Belgium we assume that the companies have not issued non-voting or dual-class stock.

Source : Becht and Chapelle (1997), Björklund and Ulriksson (1997).

**TABLE 11. VOTING POWER CONCENTRATION STATISTICS**

1	2	3	4	5	6	7	8	9	10
Country Acronym	Full Name	Mean C3 in Top 10 Listed Non-Financial Firms La Porta et. al.	Mean C3 Voting Block	Min. C3 Voting Block	Max. C3 Voting Block	Std. C3 Voting Block	Percentage of C3 Voting Block less than 50%	Mean C3 Direct Stakes	Std. C3 Direct Stakes
A	Austria	0.63							
B	Belgium	0.57	0.6260	0.1576	0.9997	0.1903	0.2370	0.5928	0.201
DK	Denmark	0.45							
D	Germany	0.42	0.6831	0.049	1.00	0.2630	0.2537	0.686	0.2562
E	Spain	0.43	0.576					0.4839	
F	France	0.33							
I	Italy	0.58							
NL	The Netherlands	0.43	0.451	0.249					
S	Sweden	0.28	0.519	0.079	0.985	0.216			
UK	United Kingdom	0.22					0.8804 (stakes)	0.318	0.2323
US	United States	0.20	0.3226	0.05	0.9999	0.2385	0.8015	-	-

Note: For each company, the 3 largest direct stakes or the 3 largest voting blocks were added resulting in one concentration ratio per company. The summary statistics were computed over these concentration ratios. Ironically, there is no control data for Italy. Because the ownership notification option was implemented it is very hard to disentangle ownership and control data.

Sources: Becht and Chapelle (1997) for Belgium, Becht and Böhmer (1997) for Germany; Kabir, Cantrijn and Jeunink (1997) for the Netherlands, Crespi (1997) for Spain; Becht (1997) for the United States.

**TABLE 12. CONTROL STATISTICS BY RANK OF VOTING BLOCK**

<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>				<b>5</b>				<b>6</b>				<b>7</b>				<b>8</b>			
<b>Country Acronym</b>	<b>Full Name</b>	<b>No. of Comp.</b>	<b>Largest Voting Block</b>				<b>2<sup>nd</sup> Largest Voting Block</b>				<b>3<sup>rd</sup> Largest Voting Block</b>				<b>4-10<sup>th</sup> Largest Voting Block</b>				<b>&gt;10<sup>th</sup> Voting Block</b>			
			Min	Med	Mea	Max	Min	Med	Mea	Max	Min	Med	Mea	Max	Min	Med	Mea	Max	Min	Med	Mea	Max
<b>A</b>	Austria																					
<b>B</b>	Belgium	135	8.5	55.8	56.1	99.8	0.0	10.2	6.6	44.3	0.0	4.7	4.5	18.3	0.1	3.8	3.9	7.9	-	-	-	-
<b>DK</b>	Denmark																					
<b>D</b>	Germany	402	4.9	59.7	63.4	100.0	0.06	17.4	15.6	49.9	0.1	11.2	10.0	26.7	0.14	7.8	6.8	24.0	-	-	-	-
<b>E</b>	Spain	394			38.2				11.6				7.7									
<b>F</b>	France																					
<b>I</b>	Italy																					
<b>NL</b>	The Netherlands																					
<b>S</b>	Sweden		4.2	30.6	70.4		0.92	8.5	10.8	45.2	0.5	5.0	6.0	28.0	0	1.4	1.9	13.7				
<b>UK</b>	United Kingdom																					
<b>US</b>	United States	6559	0.05	15.1	22.8	99.99	0.001	9.02	11.3	50.0	0	6.99	7.95	33.3	0.001	1.74	2.08	5.72	0.08	0.3	0.3	0.6

Note: Becht and Chapelle (1997) for Belgium, Becht and Böhmer (1997) for Germany; Crespi (1997) for Spain; Becht (1997) for the United States.

## **4 Implications for Future Research**

### **4.1 Ownership, Control and the Separation of Ownership and Control**

The quantitative results presented in this paper and in the country papers are not exhaustive. The methods and measures that could be applied have already been discussed or will be discussed in Part B. Our ability to conduct further research on the subject of ownership, control and the separation of ownership and control depends on improved data availability.

The results presented in this summary are a fair representation what material one can obtain and analyse in less than 12 months. The time frame effectively excluded the possibility of collecting data that is available on paper and would have to be transcribed. In our view there are three ways to improve the quantitative results relating to ownership and control:

- 1 The first limitation to our quantitative analysis that we identified was the problem of obtaining data that should be disclosed (by law or regulation) but is not disclosed or difficult to obtain in practice. There are several potential solutions for obtaining this data and, thereby, improving our statistical results and insights :
  - 1.1 By spending large amounts of money on obtaining paper records and transcribing them, great progress could be made. It would be possible to obtain all paper notifications made in accordance with the Transparency Directive (88/627/EEC) by going through all relevant newspapers, annual reports could be obtained by writing to the companies, company register filings could be obtained by making written requests to the registers (for example for company statutes). However, in practice, it is unrealistic to expect that anyone would be willing to fund University researchers to collect such data.
  - 1.2 Commercial company data providers might be convinced to undertake the necessary data collection. Our findings suggest that this is not a likely solution. Collecting ownership and control data is not profitable. Even if it were, the way similar data is collected by credit rating agencies at the moment suggests that the data would be collected in a way that would make it rather useless for academic researchers.

- 1.3 The National Statistical Offices, Eurostat, the Central Banks and the European Central Bank to be might put the collection of ownership and control data on their agenda if and when they decide to reform the collection of company data in Europe. This would be an ideal solution, but judging from the failure to create a publicly accessible European company database that contains basic, company level financial data this is an unrealistic scenario.
  - 1.4 The competent authorities have a declared interest in improving transparency and the power to enforce disclosure. Working with the competent authorities to make the disclosure of voting power data more effective and to initiate the disclosure of ownership data (as is already the case in Italy and France) is the most viable alternative. The quality of the statistical results and the effective disclosure for listed companies and groups could be improved rather quickly. Past collaboration between CONSOB, Banca d'Italia and university researchers shows that the markets and academic research can benefit from such initiatives.
- 2 As we showed in the disclosure survey section, even if we were able to obtain and transcribe all the legally available and disclosed data, huge gaps would remain. These gaps could be filled in two ways :
- 2.1 Disclosure legislation could be reformed at the level of the Member States and the Union. This would be desirable but would take a long time, if it were undertaken at all.
  - 2.2 One could try to obtain the required data via a confidential questionnaire survey. The advantage of this approach would be its immediacy. The disadvantage would be the cost and the possibility of a low response rate. Also, the survey unit would be the company and one could only obtain information the company itself has and wishes to reveal. As we discussed elsewhere, listed companies do not necessarily know who own the company and who commands the voting blocks at the annual meetings.

To conclude, the quality of future research in this area depends on our ability to obtain more comprehensive and more reliable data. The fastest and most feasible way forward is to intensify the collaboration with the Competent Authorities in the Member States and the responsible Commission Directorates.

## 4.2 Ownership, Control and Economic Performance

- 1 Corporate governance data is the starting point for efficiency analysis undertaken by empirical economists. The lack of adequate corporate governance data prevented progress to be made in assessing these questions. The data that has been collected by the European Governance Network during 1996/97 has brought us closer to the point where efficiency analysis can be undertaken.
- 2 The economic literature that links ownership, control and performance is surveyed in Short (1994) and Hunt (1986). Short's analysis of 26 performance studies shows that performance has been linked to ownership control and management control – THE separation of ownership and control associated with Berle and Means. The fact that control can and, in Europe, usually is exerted by voting blockholders that are not identical with the management and hold small cash-flow stakes has not been considered.
  - 2.1 Different types of controlling owner have different objectives. Does the identity of large owners matter? Do companies where the state own a substantial part of the capital stock perform worse than privately owned companies?
  - 2.2 Is company performance affected by the degree of separation of ownership and control? Do companies with a large owners perform better than companies with a large voting blockholder and dispersed ownership?
  - 2.3 Is company performance affected by the method that is used to separate ownership from control? For example, do companies that are controlled through pyramidal structures perform better or worse than companies controlled through voting trusts or proxy voting?
  - 2.4 How does worker involvement matter? Do companies where companies own shares perform better than companies that have co-determination or a work council? Do companies that have some kind of worker involvement perform better or worse than companies without co-determination and/or work council and/or employee ownership?
- 3 The link between the presence of voting blockholders, different separation devices and board representation did not feature on the 1996/97 Work Programme of the ECGN. This link needs to be explored in future work.

## **5 First Policy Implications**

There are three types of policy recommendations that arise from the findings presented here. The data survey and collection effort was a **first assessment of the effectiveness of existing EU Directives**, particularly of the Transparency Directive, the Annual Accounts Directives and the 1<sup>st</sup> and 2<sup>nd</sup> Company Law Directives. As Part B will show more clearly, we have also identified **what additional disclosure rules would be needed to generate the data** required to compute quantitative measures of the separation between ownership and voting power and ownership and control. On the last issue, **policy implications** arise from our finding **on the degree of separation of ownership and control** (and the control devices used): because the available data is incomplete these results are still very preliminary. We will postpone such recommendations until we have undertaken the sort of performance analysis set out in the previous section.

### **5.1 The Scope and Effectiveness of Existing EU Directives**

This section reviews existing European legislation and initiatives that relate to the disclosure of ownership and control data. The scope and effectiveness of these Directives is evaluated. We conclude that the European legislation does not cover all areas. In the areas that are covered disclosure is not always as effective as it could and should be. Although we do not always state them explicitly, there are clear policy implications.

At the European level, the only EU Directive that imposes common conditions for the disclosure of control data is the Transparency Directive of 12 December 1988 “on the information to be published when a major holding in a listed company is acquired or disposed of (88/627/EEC)”. The annual account and report directives (per company and for groups) provide for some disclosure of portfolio disclosures, but they are insufficient.

- 1 For listed companies Council Directive (88/627/EEC) on “the information to be published when a major holding in a listed company is acquired or disposed of” approximates the disclosure of control rights. The Directive is based on the idea that “investors should be informed of major holdings and of changes in those holdings in Community companies the shares of which are officially listed on stock exchanges situated or operating within the Community”. Directive (88/627/EEC) aims at improving “investor protection, to increase investors' confidence in securities markets

and thus to ensure that securities markets function correctly” and by “making such protection more equivalent, co-ordination of that policy at Community level is likely to make for greater inter-penetration of the Member States' transferable securities markets and therefore help to establish a true European capital market”. The disclosure of ownership rights is optional and has not been implemented, with the exception of Italy, by the surveyed Member States. **The results obtained by the Network show that the practical implementation of the Directive is not satisfactory and that the Directive, at the moment, fails to achieve its objectives.**

- 2 There is some approximation on the disclosure of portfolio holdings in the annual reports of certain companies (4<sup>th</sup> Company Law Directive 78/660/EEC). The ownership of holdings of at least 20% of a company's capital must be published. However, the 20% rule is subject to many exceptions and the list of holdings is often far from complete. The sanctions against non-compliance were set by the Member States and non-compliance is of concern. The organisational structure of the portfolio companies and the size of the individual links are not published (only the size of the total participation is listed). Both pieces of information would be needed to compute a possible separation of ownership and control.
- 3 The disclosure requirements for consolidating groups have been approximated by the 7<sup>th</sup> Company Law Directive (83/349/EEC) and Directive (86/635/EEC) for banks and Directive (91/674/EEC) for insurance companies.<sup>11</sup> Consolidated accounts and annual reports contain some additional portfolio information, in particular control information, but only indirectly. The main difference between the list of holdings published on the basis of (78/660/EEC) and the list of holdings published in the annex of consolidated accounts is that the former is based on a cash-flow concept, the latter on a control-concept. Hence, it is possible to identify the members of a group based on a control definition but not how control is exerted. Since Member States had many options when defining “control” the consolidation perimeter is not identical in all Member States. Even if we had the necessary ownership and financial data, company by company – so that we could compute the separation of ownership and control between the parent and the perimeter companies – the numbers would not be comparable across Member States. The 7<sup>th</sup> Company Law and other consolidation

Directives do not provide for the disclosure of the owners and/or those in control of the group parent.

- 4 Information on legal devices that separate ownership and control and information on the capital structure of a firm are contained in the company statute (or equivalent documents). The 1<sup>st</sup> Company Law Directive (68/151/EEC) provides that these documents are available in all Member States from a company register (or equivalent). “A copy of the whole or any part of the documents or particulars referred to in Article 2 [including the statutes] must be obtainable by application in writing at a price not exceeding the administrative cost thereof” (Article 3-3). Most country teams had great difficulties in obtaining a list of registered companies – in many countries such a list does not exist, not even for listed companies – finding out where the company is registered and locating the address of the register.<sup>12</sup> **The country teams also found that responses to written inquiries are ignored by the company register and/or the “administrative cost” is very high and/or the request of “any part” is ruled out and the registers insist on providing full copies at the full price.** In a few countries some of the information from the company register is available in electronic form, but only at considerable extra cost and/or delayed and/or containing severe transcription errors.
- 5 Eurostat does not produce comparable European company micro-data: data where companies can be identified by name, address, registration number and/or VAT number. **In some Member States, company data that is public by law and/or data companies disseminate via the internet becomes “confidential” once it is transmitted to the national statistical office and/or Eurostat.** One Member State uses a confidential questionnaire to obtain data companies have to deposit at the company register. This applies to all company data including capital stock, ownership and control data. The confusion between household level data, where confidentiality is vital, and public access company data prevents European researchers from

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<sup>11</sup> The 4<sup>th</sup> and the 7<sup>th</sup> Company Law Directives have been amended by Directives (90/604/EEC) and (90/605/EEC).

<sup>12</sup> Article 4 of Directive (68/151/EEC) prescribes that “letters and other forms shall state the following particulars: the register in which the file mentioned in Article 3 is kept, together with the number of the company in that register”. This implies that, in order to find out the name (not address) of the register and the registration number one has to write to the company (that is not obliged to respond). After obtaining the letterheads one has to find out the address of the registers. This is detective work that is impossible to carry out on a limited budget for a representative sample of companies.

investigating questions that are vital for understanding Europe's unemployment and competitiveness problems.

- 6 The only Eurostat database that does contain company level data is the Database of Large European Enterprises (DABLE). DABLE was formerly administered by the Commission's Directorate for Industry (DGIII). DABLE contains data that is purchased from private company information providers (who might have obtained it from the government gazette, the national company register and/or annual reports). It does not contain reliable ownership or control data. **Eurostat is forced to purchase company data from private data producers because some Member States refuse to transmit company data intended for inclusion in a European company level database.**
  
- 7 The separation of ownership and control that is introduced by the acquisition of own-shares is addressed by Council Directive (92/101/EEC) and the 2<sup>nd</sup> Company Law Directive (77/91/EEC).<sup>13</sup> **The Directives do not include disclosure provisions, neither for ownership, nor for control.**<sup>14</sup> Since other disclosure provisions on ownership and control data are lacking at the European level (see above), **it is often impossible to apply computational methods that would allow third parties** (like financial analysts or fund managers) **to confirm the true position of the company's holdings of own-shares.** One country team found that 4 listed firms (out of 142) exceed the 10% threshold, by quite a margin, and that this fact was not declared in the annual reports. Since the data used to perform the computations is not entirely reliable, the country teams has refrained from disclosing the identity of the affected companies.<sup>15</sup>
  
- 8 For non-listed companies, disclosure rules have not been approximated. They range from the near absence of such rules in Belgium to very tight anti-Mafia rules in Italy.

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<sup>13</sup> The Directives seek to "maintain the subscribed capital [of public limited companies] and ensure equal treatment of shareholders" and extend "not only to acquisitions made by a company itself but also by those made by any person acting in his own name but on the company's behalf."

<sup>14</sup> Directive (78/660/EEC), Article 46(2-D) prescribes that information on the acquisitions of own shares must be contained in the annual reports of companies falling under the Directive. However, the annual report does not include enough information to compute the figure that might be provided.

<sup>15</sup> The computations were performed assuming that the relevant groups comply with "one-share-one-vote". If any one of them had issued non-voting stock it does not own, the cross-ownership stakes might be lower and the company might comply with the 10% threshold. Also, Directive (92/101/EEC) contains several transitory provisions that might make these own-shareholdings "legal" under the Directive.

Even when legal rules are in place at the level of the Member States, it is often impossible to obtain any ownership and control data in practice. In the light of the legal and practical disclosure arrangements, the quantitative results obtained by the Network are least incomplete for the concentration of major holdings of voting blocks in listed companies.

## **5.2 General Policy Implications**

- 1 When the concentration of ownership and/or control is very high, disclosure is important. Small investors should be informed about what the large blockholders are doing with their money. Controlling blockholders control large amounts of “other people’s money” with very little of their own money. In his famous attack on the Money Trusts in the United States, Louis Brandeis observed that: “Publicity is justly commended as a remedy for the social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman” (Louis D. Brandeis, *Other People’s Money*, 1914). When small shareholders are uninformed about the standing of their company, they have no information that would allow them to formulate a complaint. When small shareholders are in the dark about who controls their company, they do not know what they should complain about and to whom. When the regulators are in the dark, they do not know when to act. The best argument for increased disclosure is that there are no good arguments against disclosure. Why should companies want to hide essential information from their existing and potential shareholders?
- 2 Disclosure of “information to be published when a major holding in a listed company is acquired or disposed of” (88/627/EEC) can only be enforced by the regulator. The stock exchanges (through their listing requirements) and the companies themselves cannot force the holder of bearer shares to make such declarations. The difficulties the country teams of the European Corporate Governance Network experienced in obtaining ownership data for listed companies and the huge differences that were found between Member States suggest that the Transparency Directive is not very effective.
- 3 Article 54(2)(g) of the Treaty of European Union obliges Council and the Commission to co-ordinate “to the necessary extent the safeguards which, for the

protection of the interests of members and other, are required by Member States of companies or firms ... with a view of making such safeguards equivalent throughout the Community”. If access to informative ownership and control data for all companies registered in the European Union is considered to be “in the interests of members of the companies and other”, and *other* is not defined too narrowly, the findings of the European Corporate Governance Network raise doubts that Art. 54(2)(g) is enforced in practice.

- 4 The interests of pension funds are very similar to those of small shareholders. **Pension funds with a proper corporate governance are also likely to push management to do “what is best” in the long run.** Since large pension funds represent the interests of many individuals they are good candidates for taking over a private representation role. Pension fund regulation is very important in ensuring that pension funds do play this beneficial role. As expected, we have found that pension funds are not amongst the important controlling blockholders in the European Union.
- 5 “On-share” tax-havens inside the Union, that attract companies at the expense of other Member States, often do so through a combination of low tax rates and “confidentiality assurance”. Common tax standards and high disclosure standards might be better for the Union as a whole, but low-tax rates and no-disclosure are individually preferable for some groups, Member States or regions. As a result, at the moment, there are Union wide tax-incentives for obscurity, not for high disclosure standards. Improving Union wide disclosure standards is closely linked to closing tax-loopoles inside the Single Market. “On-shore” centres with few disclosure rules that border on the Union, like Liechtenstein, also play an important role in preserving obscurity.
- 6 **There are numerous reasons why disclosure should be mandatory.** Even Chicago liberal’s like Easterbrook and Fischel acknowledge that “third-party effects” provide a rationale for mandatory disclosure. Coffee (1984) provides further justifications. In particular, he argues that self-regulated disclosure would not work, even if there were no third-party effects, when the interests of owners and those in control are not perfectly aligned. We have demonstrated that there is ample reason to believe that this is the case in Europe.

- 7 At the moment, access to company information for a Spanish investor investing in a German company is not the same as those of a German investor investing in a German company – and vice-versa. This is an obstacle to the creation of a truly integrated European stock market. Although a lot of progress has been made in legal terms, too many practical obstacles to equal access to such information remain. Some degree of European-wide availability of ownership and control information for all investors would help. In the United States, electronic filings on standardised forms are becoming compulsory. These are made in English and understood by analysts around the globe.
- 8 The market for company information is not delivering cheap and timely access to very basic and general company information, including information on the composition of equity capital, contained in the company statutes. The country teams of the European Corporate Governance Network found that there are enormous differences in the availability and quality of commercial company information, especially of ownership information. With few exceptions, the information commercial data producers collect is often incomplete, out-of-date, unreliable and/or very expensive. An extreme example is the legally transparent Italy, where Cerved S.p.A have a monopoly in providing access to company register information. **Apparent market failures in the market for private information disclosure and dissemination is yet another justification for mandatory disclosure via easily accessible electronic media.** In the United States, there is an active market for value added products based on the SECs public access, mandatory disclosure EDGAR database.
- 9 Given the high degrees of concentration of ownership and/or control in continental Europe, the legal protection of minority shareholders – who cannot protect themselves – is paramount. The same degree of protection must be enjoyed by all European investors, no matter where they reside. The creation of pan-European institutions who protect minority shareholders’ rights is a solution that promises effective protection. Again, pan-European pension funds would be amongst the strongest contenders for playing this role.
- 10 Ownership and control is an important aspect of product labelling. This is particularly true for media contents producers, but not exclusively. Using the new tools put at

their disposition by the information society European citizens should be able to look up, free of charge, who controls and owns the newspapers and the television channels they read or watch.

- 11 The Italian country survey shows that the ownership declaration rules for Italian companies are the most transparent in continental Europe. The Italian Parliament passed the appropriate laws in order to prevent organised crime from secretly taking control of large parts of the Italian company sector. The law has helped to reduce the potential influence of organised crime over business, that is no longer just an Italian concern. In a Single Market with the freedom to establish and the free circulation of goods, capital and services the Italian concerns are European problems.
- 12 Money laundering is an international concern and has been addressed through the creation of organisations like the Financial Action Task Force (FATF) at the OECD. FATF has published 40 recommendations on the prevention of money laundering that stress the reporting of suspect transactions recorded by banks, but also by non-financial institutions (<http://www.ustreas.gov/treasury/bureaus/fincen/40rec.pdf>). Many suspected offshore money laundering centres are the overseas dependencies of Member States. These centres feature quite prominently as the geographic origin of several large blockholders in the statistical survey.
- 13 At the European level, but also at the level of the Member States, there are many overlapping rules on the publication of ownership, control and portfolio data lead to duplication on the one hand and huge gaps on the other. A review of the various regulations, their simplification and co-ordination at the European level might be necessary. Such an initiative should fit with the European Commission's effort to develop "New Methods to Simplify Single Market Legislation" (SLIM, <http://europa.eu.int/comm/dg15/en/index.htm>).
- 14 Only the regulator can ensure that European disclosure standards are respected internationally as well as at home. For example, European companies depend on control notifications in accordance with (88/627/EEC) for their SEC Form 20-F filings. If the European standards are not considered adequate, the SEC will impose its own standards or international investors will required a disclosure uncertainty premium from European companies. For control declarations, European companies

cannot comply with the SEC standards by themselves since they cannot force their shareholder to make the necessary notifications.

## Part B : Data and Methods

### 1 Introduction

This section discusses how ownership, control and the separation of ownership and control can be measured in practice. The definition of quantitative measures, data requirements and data availability are covered.

The ownership sub-section presents a number of concentration measures that can be found in the literature. These measures apply to “flat” ownership structures. The presence of hierarchical groups poses special measurement problems. These issues are discussed with the help of examples and references to the relevant literature.

“Control” is defined and the definitions that can be found in European Law are surveyed. Command over voting rights is the most important control device. Summary statistics for voting rights are very similar to summary statistics for ownership. Again, the presence of hierarchical groups poses special measurement problems. Disclosure rules for control data vary greatly between Member States. As was discussed before, the only EU Directive that imposes common conditions for the disclosure of control data is the Transparency Directive of 12 December 1988 “on the information to be published when a major holding in a listed company is acquired or disposed of (88/627/EEC)”. Hence, this section focuses on listed companies and the control data generated by the Transparency Directive. It is the only source of comparable control data that could be obtained and analysed by the country teams.

Three measures of the separation of ownership and control are defined and 24 devices that can be used to separate ownership from control in Europe are presented. We show that the information required to compute these separation measure is not available in the countries that were surveyed (with the possible exception of Italy and Sweden).

In general, there are three sources of ownership and control information:

1. **Shareholder and controlling blockholder declarations** of control and/or cash-flow rights (usually triggered by a control criterion). The company has no influence over the timing and accuracy of these notifications. It must rely on government and/or stock market regulation for obtaining this information. Even when the company is notified, it might not have to notify the general public;

2. **Portfolio declarations by individual companies** in their annual reports (publication of cash-flow rights information triggered by a cash-flow criterion, holdings smaller than 20% usually do not have to be reported and only parts of the cash-flow perimeter are covered);
3. **Portfolio declarations by consolidating groups** in their annual report (publication of cash-flow rights information triggered by a control criterion that defines the perimeter of the “consolidating group”);

Unfortunately the implementation of these three measures is lacking in all Member States. The details are reviewed in the next section. Each sub-section identifies the information and/or accessibility gaps in these three data sources for each Member State in the ownership and control dimension.

## **2 Ownership Data**

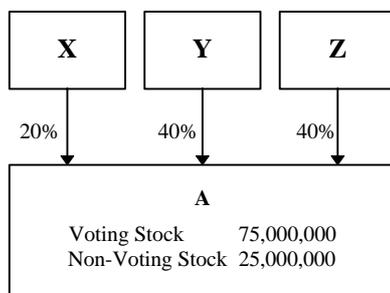
This section discusses the ownership of cash-flow rights. The ownership of control rights is discussed in the next section (“control”). There are two types of ownership data for cash-flow rights: direct ownership and integrated ownership. Direct ownership statistics for cash-flow rights (concentration ratios, summary statistics over the largest stakes) are the standard in the literature; for example Prowse (1992) for Japan, Demsetz and Lehn (1985) for the United States, Iber (1985) and Franks and Mayer (1995) for Germany, Leech and Leahy (1991) for the U.K. and Barca *et. al.* (1994) for Italy.

When group structures and cross-ownership are important, direct ownership measures overestimate the ownership concentration due to double counting. There is a large literature on this phenomenon for Japan that has also demonstrated that standard statistics, like gross-market capitalisation and stock market payout statistics, are biased through double counting (double gearing); see Brioschi, Buzzacchi, Colombo (1989, 91), Brioschi and Paleari (1995, 1996), Hoshi and Ito (1991), Flath (1989, 92a,b), French and Poterba (1991) and McDonald (1989).

## 2.1 Direct Ownership

Consider the simple case of a company that has issued 75,000,000 shares of voting stock and 25,000,000 shares of non-voting stock. Otherwise the two types of stock are identical (Figure 1). Company A has three direct shareholders X, Y and Z who own 20,000,000 shares and twice 40,000,000 shares respectively. How many of these shares are voting and non-voting is not relevant for ownership because the cash-flow rights of the two types of shares are the same. From the control perspective (discussed in the control section) this would matter because Y or Z might own the majority of the voting stock (37,500,001 shares) and control the company.

**FIGURE 1. SIMPLE DIRECT OWNERSHIP STRUCTURE**



Note: The voting and non-voting stock of company A is identical apart from the difference in voting rights. X, Y and Z are three individuals. The percentages represent shares in total capital.

With an ownership structure like the one depicted in Figure 1, descriptive ownership statistics are easily constructed. For example, for each company one can compute the statistics defined in Table 1.

TABLE 13. DEFINITION OF DIRECT OWNERSHIP STATISTICS

Statistic	Definition	Value from Figure 1
<b>Concentration Ratios</b>		
$C_1$	size of the maximum stake (by rank, see below)	40%
$C_3$	sum of the 3 largest stakes (by rank, see below)	20%+40%+40% = 90%
$C_n$	sum of n largest stakes	
<b>Herfindahl Index</b>	The sum of the square of the individual stakes	$(0.2)^2+(0.4)^2+(0.4)^2 = 0.36$
<b>Statistics by Rank of Stakes</b>		
<b>Largest Stake</b>	stake with rank > 2 (for ties : average rank)	40% (rank 1.5)
<b>2<sup>nd</sup> Largest Stake</b>	stake with rank <= 2 and rank > 3	none
<b>3<sup>rd</sup> Largest Stake</b>	stake with rank <= 3 and rank > 4	20% (rank 3)
<b>Descriptive Statistics</b>		
<b>Minimum</b>	minimum	20%
<b>Maximum</b>	maximum stake (ties are not taken into account)	40%
<b>Mean</b>	mean	33.33%
<b>Median</b>	median	40%
<b>Interquartile Range</b>	distance between 25 <sup>th</sup> and 75 <sup>th</sup> percentile	20%
<b>Percentiles</b>	standard definition	

For most countries, we were unable to construct such simple statistics because the data is either not published or not available. Table 4 and Table 5 summarise the availability and accessibility of direct ownership data in the EU Member States covered by the European Corporate Governance Network. Companies with nominative ownership certificates (partnerships and limited liability companies) know the identity of their owners. For the ownership claim to be valid it must be registered; either with the company itself or with the company register (or equivalent). The same is true for corporations that have issued nominative shares. Corporations that have issued bearer shares, especially listed corporations, do not necessarily know the identify of their direct shareholders.

Even when the company itself knows the identify of its direct shareholders, it might not be required to disclose this information. For example, in Belgium and France all companies that issue nominative parts keep an ownership register at the company headquarters. However, access to the register is limited to “interested parties” (Becht and Chapelle, 1997; Bloch and Kremp, 1997). The term “interested party” is interpreted very narrowly. In Germany the list of owners of a *GmbH* must be deposited at the company register every year. In practice

access to the company registers is very difficult (there are approximately 720 registers) and expensive (photocopies cost 1DM a page; see Becht and Böhmer, 1997). The Austrian situation is very similar (see Gugler, Kalss, Stomper and Zechner 1997). In Italy direct ownership information must be published in the annual reports (Bianchi, Bianco and Enriques 1997).

Companies and/or shareholders might be required to transmit direct ownership information to the stock market supervision authority, the banking supervision authority the insurance company supervision authority and/or the competition authorities (including the Merger Task Force of the European Commission, DGIV). Table 5 shows that, in most cases, this information is not available to the general public and if it is access is difficult because the records are kept on paper.

## 2.2 Integrated Ownership

### 2.2.1 Concept and Interpretation

For group structures it is not as easy to compute the ownership stake an ultimate shareholder holds in each company of the group. What percentage of the cash flow rights does an investor own when he or she invests in a pyramidal group? One way of answering this question is to apply input-output analysis to the problem. This technique has been used extensively to calculate net cash-flow right of outside investors in Japanese and Italian business groups, for example by Brioschi, Buzzacchi and Colombo (1989, 91), Brioschi and Paleari (1995, 1996), Hoshi and Ito (1991), Flath (1989, 92a,b) and McDonald (1989).

The integrated ownership share in a company that belongs to a business group is “defined by the sum of direct and indirect ownership shares of an outside stockholder in all the firms of the group” (Brioschi, Buzzacchi and Colombo 1989, page 752). Indeed, integrated ownership is more than the sum of direct and indirect stakes because it represents the claim of an outside shareholder on the assets of the firm “when all double counting due to share interlocks have been netted out” (Baldone, Brioschi and Paleari 1996). The integrated ownership concept applies to all types of business groups : *hierarchical groups* where the outside stockholder exerts control over the whole group and *associative groups*, where independent firms are linked through cross-shareholdings but where control is not centralised (Baldone, Brioschi and Paleari 1996).

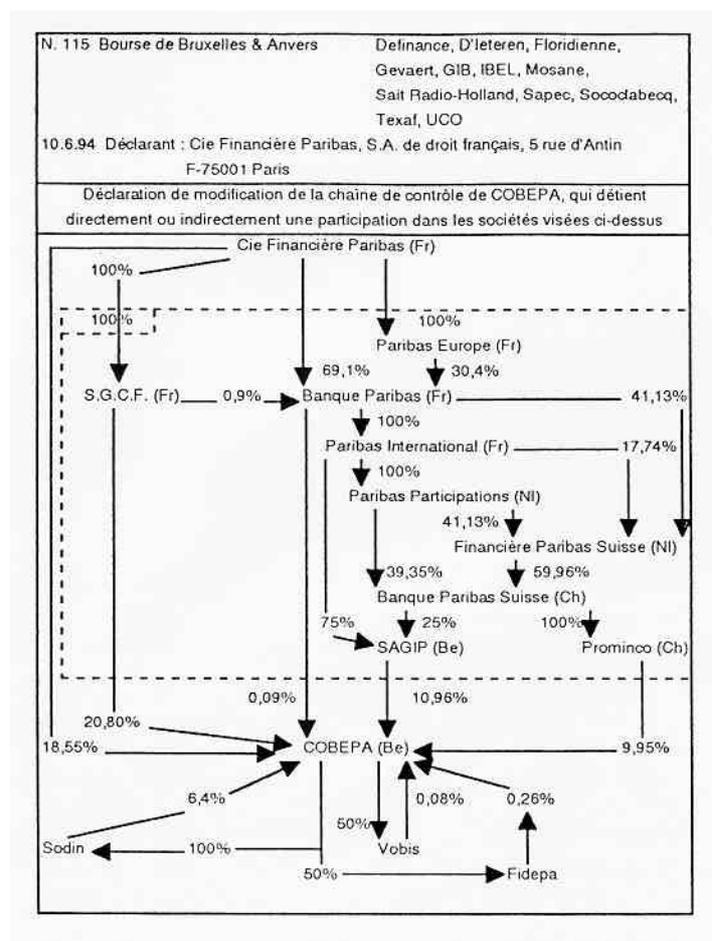
We illustrate how integrated ownership can be computed using a Belgian example. The data is taken from a notification that was made in compliance with the Belgian transposition of the Transparency Directive (88/627/EEC). We assume that none of the companies in the example have issued non-voting or dual class stock, so that the ownership of voting rights is equal to the ownership of cash-flow rights.

Figure 2 is a facsimile of the published ownership structure of the Belgian Cobepa Holding (that is listed on the Brussels Stock Exchange) that is controlled by the French Cie Financière Paribas. We assume that the percentages, that represent the fraction of total voting rights, also represent the shares in total capital. The information in the chart is entered into a Leontief input-output matrix, where the rows represent portfolio holdings and the columns direct ownership stakes. Using a standard matrix language package like S, SAS-IML, Gauss

or Matlab and applying formula (7) in Baldone, Brioschi and Paleari (1997) the computation of the integrated ownership stakes is rather straightforward.

Table 15 reports the direct ownership stakes of Paribas and intermediate companies in Cobepa SA as well as the corresponding integrated ownership stakes. Note that the integrated ownership stakes do not sum up to 100% because they are the net-ownership at each level of the hierarchical group. Cie Paribas owns 18.55% of Cobepa SA directly, but 64.50% when integrating all indirect holdings, including cross-shareholdings and loops. Indeed, through such loops, Cobepa SA owns 6.5% of its own cash-flow rights. Hence **this methodology could be used to check for compliance with the 2<sup>nd</sup> Company Law Directive (77/91/EEC) and (92/101/EEC) with respect to own-shareholdings – if all the required data were available**. Paribas International has no direct stake in Cobepa, but its integrated ownership stake is 18.94%.

**FIGURE 2. OWNERSHIP STRUCTURE OF THE BELGIAN COPEPA HOLDING**



Note: Transparency declaration filed by Cobepa S.A. published 07/19/94.

**TABLE 14. PARTICIPATION MATRIX FOR PARIBAS-COBEPA GROUP**

	Cie Finan. Paribas (Fr)	S.G.C.F. (Fr)	Paribas Europe (Fr)	Banque Paribas (Fr)	Paribas International (Fr)	Paribas Participations (NI)	Finan. Paribas Suisse (NI)	Banque Paribas Suisse (Ch)	SAGIP (Be)	Prominco (Ch)	Cobepa (Be)	Vobis (Be)	Sodin (Be)	Fidepa (Be)
<b>Cie Finan. Paribas (Fr)</b>	0.0000	1.0000	1.0000	0.6910							0.1855			
<b>S.G.C.F. (Fr)</b>		0.0000		0.0090							0.2080			
<b>Paribas Europe (Fr)</b>			0.0000	0.3000										
<b>Banque Paribas (Fr)</b>				0.0000	1.0000		0.4113				0.0009			
<b>Paribas International (Fr)</b>					0.0000	1.0000	0.1774		0.7500					
<b>Paribas Participations (NI)</b>						0.0000	0.4113	0.3935						
<b>Finan. Paribas Suisse (NI)</b>							0.0000	0.5996						
<b>Banque Paribas Suisse (Ch)</b>								0.0000	0.2500	1.0000				
<b>SAGIP (Be)</b>									0.0000		0.1096			
<b>Prominco (Ch)</b>										0.0000	0.0995			
<b>Cobepa (Be)</b>											0.0000	0.5000	1.0000	0.5000
<b>Vobis (Be)</b>											0.0008	0.0000		
<b>Sodin (Be)</b>											0.0640		0.0000	
<b>Fidepa (Be)</b>											0.0026			0.0000

Note: The cells of the matrix were filled using the information in Figure 2. It was assumed that none of the companies in the matrix have issued non-voting or dual-class stock. The rows represent direct portfolio holdings, the columns contain direct ownership stakes.

**TABLE 15. OWNERSHIP OF THE BELGIAN COBEPa HOLDING BY “UPSTAIRS” PARIBAS GROUP COMPANIES**

<b>Company</b>	<b>Direct Ownership %</b>	<b>Net Cash-Flow Rights (Integrated Ownership) %</b>
<b>Cie Finan. Paribas (Fr)</b>	18.55	64.50
<b>S.G.C.F. (Fr)</b>	20.80	22.46
<b>Paribas Europe (Fr)</b>	0.00	6.71
<b>Banque Paribas (Fr)</b>	0.09	22.38
<b>Paribas International (Fr)</b>	0.00	18.94
<b>Paribas Participations (NI)</b>	0.00	8.69
<b>Finan. Paribas Suisse (NI)</b>	0.00	8.14
<b>Banque Paribas Suisse (Ch)</b>	0.00	13.58
<b>SAGIP (Be)</b>	10.96	11.73
<b>Prominco (Ch)</b>	9.95	10.65
<b>Cobepa (Be)</b>	0.00	6.57
<b>Vobis (Be)</b>	0.08	0.09
<b>Sodin (Be)</b>	6.40	6.41
<b>Fidepa (Be)</b>	0.26	0.28
<b>Sum</b>	67.09	does not apply (double counting)

Note: The “loops” that are visible in the organigramme are taken into account when computing integrated ownership. Summing integrated ownership over all companies is not valid since it is integrated at each level of the hierarchical group.

Ownership statistics like those presented in the previous section can also be constructed. However, instead of considering the first level owners (non-zero entries in Column 2 of Table 15), we now consider the integrated cash-flow rights of the ultimate owner. Ultimate owners are physical or moral persons that do not have any shareholders. In the example, there is only one ultimate shareholder – Cie Paribas. The concentration statistics change substantially. For Cobepa the C1 statistic is 20.8% for direct ownership, but 64.5% for integrated ownership (lower than the sum of all direct stakes, which is 67.09%, because Cobepa owns own-shares).

In practice, ultimate owners are physical or legal persons that have no known shareholders. In the case of Cobepa SA, the ultimate known owner is Cie Paribas – but not the ultimate owner, since we know that Paribas itself has shareholders. If we knew all the individuals (including the state) who ultimately own Paribas, the maximum integrated ownership stake might be much lower than 64.5%.

We make two observations with respect to integrated ownership. For countries in which group structures are important:

1. Direct ownership statistics overestimate the concentration of cash-flow when there are cross-shareholdings because of double counting (double gearing);
2. Direct ownership statistics can underestimate the concentration of cash-flow when the individual stakes that belong to the same ultimate shareholder are not added (for example, the 5 largest direct stakes ultimately belong to the same individual but for a C3 measure only the largest 3 are added);
3. Integrated ownership statistics can overestimate the concentration of cash-flow rights when the ultimate owners are not known and the ownership chain cannot be traced beyond, for example, a holding company;

This implies that the precision of ownership concentration statistics in continental Europe depends on the accuracy with which we can identify group structures (cash-flow links under 5%, 10% or 20% might be truncated) and the ultimate owners – the size of concentration statistics and the degree of disclosure are correlated.

The concentration of the ownership of cash-flow rights ultimately depends on the distribution of wealth. Countries with a large number of billionaires (few individuals that own a large proportion of a country's wealth) and/or significant state ownership should have a larger ownership concentration than countries with a flat wealth distribution and/or little state ownership. This observation is at odds with the stylised facts on ownership concentrations and the distribution of wealth in different countries.

The concentration of corporate ownership is said to be very high in Europe and very low in the United States. On the other hand, the distribution of wealth is estimated to be more highly skewed in the United States. According to some recent estimates, the United States is the country with the largest number of billionaires in the world, where the 1% richest individuals are estimated to own (or have owned) up to 40% of the country's wealth (De Long and Goldin, <http://econ161.berkeley.edu/Projects/Billionaires.html>). We have argued that the failure to trace ultimate owners and double counting are likely to bias ownership concentration statistics in Europe upwards. Are we underestimating the ownership concentration in the United States or do American billionaires abstain from equity investment? Have American billionaires diversified globally or do they own non-listed U.S. companies that are rarely studied? We find this question puzzling and hope that future cross-

Atlantic research of the European Corporate Governance Network will shed further light on these questions.

### ***2.2.2 Integrated Ownership in the Portfolio Dimension***

The previous sub-section discussed integrated ownership from the perspective of a company at, or close to, the bottom of a business group (Cobepa SA in the previous example). Another way of analysing integrated ownership, that fits more naturally with the cash-flow perspective, is to take a portfolio view (Paribas in the previous example).

In terms of integrated ownership stakes (integrated percentage of total capital owned) the analysis is exactly the same. However, from the portfolio point of view one might want to weight the different ownership stakes in terms of their value. How much of the book value of a business group is owned by individuals, the state, bank or insurance companies? When an investor purchases Ecu 100 of capital (at book or market value), how much capital does he/she acquire of each group company? These questions cannot be answered by computing integrated ownership stakes as a percentage of total capital.

To illustrate the weighted portfolio approach, we draw on the published example of the Italian Mediobanca Group, analysed in Brioschi, Paleari, Santi, Bertacchi and Faieta (1995).<sup>16</sup> Mediobanca plays a very important role in the Italian financial system. Itself a listed company, in 1993 it had (known) cash-flow links with 53 other listed companies and 3 non-listed companies. Many of these links are indirect and/or reciprocal. The Mediobanca example is well suited to illustrate how the value of integrated ownership stakes of a particular blockholder – here Mediobanca – can be computed. The next section will extend the example to include the control over the portfolio companies exerted by Mediobanca (not all of them are “controlled”) and a final section will put together all results to obtain quantitative measures of the separation of ownership and control.

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<sup>16</sup> As we shall document in the next section, it is very time consuming (often impossible) to obtain the data that is required to perform a weighted portfolio analysis. Since Italian listed companies have to make detailed portfolio declarations, the data availability is much more conducive to this type of analysis than in other countries.

**TABLE 16. DIRECT AND INTEGRATED OWNERSHIP STAKES AND BOOK AND MARKET VALUE OF MEDIOBANCA PORTFOLIO**

Name	Listed	Direct	Integrat.	B1	B2	M1	M2	M3	M4	Name	Listed	Diretta	Integrata	B1	B2	M1	M2	M3	M4
				$\omega_j^B$	$\frac{y_{1j} \omega_j^B}{1 - y_{11}}$	$v_j^M$	$a_{ij} v_j^M$	$\omega_j^M$	$\frac{y_{1j} \omega_j^M}{1 - y_{11}}$					$\omega_j^B$	$\frac{y_{1j} \omega_j^B}{1 - y_{11}}$	$v_j^M$	$a_{ij} v_j^M$	$\omega_j^M$	$\frac{y_{1j} \omega_j^M}{1 - y_{11}}$
<b>Mediobanca</b>	yes	0	1.05	2460	26	7092	0	2384	27	<b>Pirelli S.p.A.</b>	yes	0	3.46	2379	83	3162	0	3095	117
<b>Generali</b>	yes	5.96	6.32	5929	379	28057	1672	20845	1333	<b>Gim</b>	yes	2.31	2.48	0	0	89	2	-34	-1
<b>Alleanza</b>	yes	0	3.69	1374	51	10452	0	10405	399	<b>Smi</b>	yes	0	1.27	41	1	111	0	-92	-1
<b>Ras</b>	yes	0	0.1	2811	0	6496	0	6164	1	<b>Lmi</b>	yes	0	1.59	381	6	228	0	228	4
<b>Comit</b>	yes	0	0.09	5251	5	5232	0	4369	4	<b>Italmobiliare</b>	yes	3.4	3.57	446	16	884	35	-96	-4
<b>Credit</b>	yes	0	0.02	4159	1	3644	0	2981	1	<b>Italcementi</b>	yes	0	1.32	1836	24	1732	0	324	6
<b>Banca di Roma</b>	yes	0	0	10199	0	5877	0	5355	0	<b>Cim. Francais</b>	yes	19.5	20.02	2653	537	3005	639	3005	667
<b>Ferfin</b>	yes	0.1	0.49	-1508	-7	454	0	-1126	-7	<b>Tosi</b>	yes	0	2.32	434	10	370	0	209	6
<b>Gaic</b>	yes	0	1.17	443	8	763	0	-115	-2	<b>Editoriale</b>	yes	1.93	2.23	187	4	173	3	173	4
<b>Fondiaria S.p.A.</b>	yes	14.97	15.92	2342	377	3052	457	2523	407	<b>Falck</b>	yes	0	0.69	733	5	278	0	176	1
<b>Montedison</b>	yes	3.15	3.35	587	20	2178	74	-1373	-51	<b>Camfin</b>	yes	0	0.21	12	0	78	0	17	0
<b>Edison</b>	yes	0.02	2.71	1192	33	4408	1	4408	132	<b>Premafin</b>	yes	0	0.26	221	1	657	0	-568	-2
<b>Isvim</b>	yes	0	0.43	50	0	290	0	65	0	<b>Sai</b>	yes	1.46	1.54	1141	18	2990	53	2344	44
<b>Ifi</b>	yes	0	0.04	870	0	2501	0	-1461	0	<b>Stet</b>	yes	0.24	0.36	3009	11	17761	46	4668	18
<b>Ifil</b>	yes	0	0.05	1868	1	2560	0	1262	1	<b>Sip</b>	yes	1.18	1.39	14815	208	20613	251	20613	302
<b>Fiat</b>	yes	1.85	1.93	11537	225	14511	331	13228	317	<b>Italcable</b>	yes	0.1	0.31	1203	4	2281	3	2281	8
<b>Gemina</b>	yes	11.71	12.74	1486	191	2272	269	2007	265	<b>Marzotto</b>	yes	1.02	1.02	290	3	643	7	593	6
<b>Cartiere Burgo</b>	yes	14.07	17.07	763	132	817	116	786	137	<b>Stefanel</b>	yes	1.74	1.74	179	3	357	6	322	6
<b>Snia BPD</b>	yes	11.01	11.9	1373	165	1052	116	997	123	<b>Pininfarina</b>	yes	3.41	3.41	156	5	220	7	220	7
<b>Caffaro</b>	yes	5.55	12.23	213	26	119	7	119	14	<b>Ratti</b>	yes	3.75	3.75	177	7	154	5	145	5
<b>Rinascente</b>	yes	0.46	0.52	831	4	1723	9	1723	10	<b>Safilo</b>	yes	2.05	2.08	95	2	137	3	137	3
<b>Unicem</b>	yes	0	0.02	505	0	570	0	542	0	<b>S.R.I.L.</b>	yes	1.14	1.14	-3	0	735	8	-493	-6
<b>Fochi</b>	yes	4.17	4.18	140	6	283	12	283	12	<b>Eurafrance</b>	yes	3.54	4.21	2593	110	2103	75	989	42
<b>Cofide</b>	yes	2.41	3.06	111	3	617	17	220	8	<b>Paribas</b>	yes	1.51	1.51	8320	127	13346	202	13346	204
<b>Cir</b>	yes	0	0.85	1576	14	1147	0	527	6	<b>BHF</b>	yes	2.03	2.12	3711	80	3768	76	3711	76
<b>Olivetti</b>	yes	2.49	2.69	2881	78	2451	62	2288	65	<b>Fin.Priv.</b>	no	0	5.19	0	0	142	0	0	0
<b>Pirelli &amp; C.</b>	yes	8.86	9.67	424	41	879	85	-139	-15	<b>Paleocapa</b>	no	3.6	3.72	0	0	321	12	0	0
<b>SIP</b>	yes	2.76	6.44	127	8	1619	45	127	9	<b>Euralux</b>	no	0	3.68	0	0	1338	0	0	0
															3052		4706		4708

Notes: The first subscript is always 1 and refers to Mediobanca; the second subscript  $j$  refers to company  $j$  in the portfolio;  $y_{11}$  is the integrated ownership stake company 1 holds in itself. B1 - net assets at book value of portfolio company  $j$ ; B2 - book value of Mediobanca stake; M1 - market capitalisation (gross assets at market value); M2 - value of direct stake held by Mediobanca; M3 - market value of net-assets (netting out double-gearing); M4 - integrated value of Mediobanca at market value (value of Mediobanca's integrated stake at market value)

The 3<sup>rd</sup> and 4<sup>th</sup> column of Table 16 report the direct and integrated ownership (cash-flow) stakes of Mediobanca in the 56 portfolio companies. Columns B1 & B2 report net-assets of the portfolio companies and the Mediobanca stake at book values. Columns M1-M4 report the market capitalisation (gross assets at market value), the market value value of the direct Mediobanca stake, the market value of net-assets (netting out double-gearing) and the integrated value of the Mediobanca stake.

The direct stakes and integrated stakes are taken from the input-output matrices that were illustrated in the Cobepa example (but from the point of view of Paribas, here Mediobanca). The additional ingredient used in the portfolio analysis is  $\omega$ , total assets net of equity holdings and credit extended to the affiliated companies. Net-total assets can be valued at book or market value. The valuation at book value is possible for all companies that prepare accounts, the valuation at market value is only possible for listed companies or by estimating the market value of the assets. Net-assets ( $\omega$ ), can be negative when the stakes held by affiliated companies in the holding company are larger than the stakes held by the company and/or when the acquisition of the equity holdings were debt financed.

### ***2.2.3 Data Requirements and Availability***

The data requirements for computing integrated ownership are much higher than those for computing direct ownership. When ownership structures are not “flat” most direct shareholders of companies (below the top of an hierarchical group) are companies. To compute integrated ownership the direct ownership structure of all companies in the hierarchical group must be known. This is hardly ever the case.

1. In each country there are several legal forms that do not have to disclose their ownership structure. For example, in Germany the *Kapitalanlagegesellschaften* (legal form: AG), a special type of investment company, are explicitly exempted from ownership disclosure (also control information, even when they hold major stakes in listed companies). It is impossible to accurately compute integrated ownership for German groups that include such companies.
2. Ownership declarations are often triggered by a control criterion. Important cash-flow links that do not correspond to a control link might not be revealed (compare the next section on the separation of ownership and control). Furthermore, like in the Cobepa example above, most of the published information contains voting rights not cash-

flow rights. Unless all companies in the group comply with “one-share-one-vote” it is not legitimate to perform a cash-flow calculation based on the ownership of voting rights. Finally, the ownership of voting rights is usually not declared. For example, from the transposition of the Transparency Directive (88/627/EEC) for many Member States we only know the voting rights an agent commands at the annual general meeting of the company, not the number of voting rights the agent owns. Hence, even when companies comply with “one-share-one-vote” we are unable to compute integrated ownership (even of voting stock) using such data.

3. Individual companies publish their portfolio holdings in the annual report. In accordance with the Annual Accounts Directive (78/660/EEC), most Member States have imposed a 20% threshold (the maximum allowed by Article 17 in 78/660/EEC). The data generated by this Directive is insufficient for computing integrated ownership. A threshold of 20% is far too high and is easily circumvented. Furthermore, having data “from the top to the bottom” of a hierarchical group poses the problem that those at the bottom find it difficult to identify the top.
4. Consolidated groups in the Consolidated Accounts and Reports Directive (83/349/EEC) are defined on the basis of a control definition. In cases where the group head controls companies without holding substantial cash flow rights it is not possible to find out who owns the remaining cash-flow rights (unless they are large enough to be attributed to another company according to 78/660/EEC) or another “cash-flow based” regulation. Hence, in such cases, it is not possible to compute integrated ownership.
5. Cross-border groups are hard to analyse for those who do not reside in the country of the group parent. When the company that makes a portfolio declaration is located in one Member State (or outside the Union), and the portfolio companies in other Member States, difficulties arise. Someone analysing the portfolio company will find it hard to find out who the parent (in control or cash-flow terms) is. Also, since data access is so difficult, it will be very hard for such a person or institution to obtain the portfolio declaration of the parent.
6. The balance sheet information that is required to perform integrated ownership calculations in terms of book value (or market value) – which is the basis for a weighted measure of the separation of ownership and control – is difficult to obtain.

The annual reports of the parent company do not contain the required information. To compute  $\omega$  (net-assets in terms of book value, see above) the annual report of each portfolio company must be obtained. Even then the annual reports might not contain all the required information (for example because they publish abridged accounts).

To conclude, the provisions of the Accounting Directives pertaining to business groups were not designed to compute integrated ownership. This is surprising since integrated ownership should be of vital interest to investors who purchase shares of a consolidated group. Our difficulties (inability) in computing integrated ownership from the portfolio perspective are not merely an academic concern.

The ownership of business groups is usually not disclosed. It appears that there are no Commission proposals for improving this situation. This is another obstacle on the way to an integrated European capital market that provides rational price signals instead of being driven by uninformed herd-instincts.

It would be advisable to modify the Consolidated Accounts Directives and the Transparency Directive. In both bodies of legislation cash-flow “triggers” should be introduced and the two pieces of legislation should be co-ordinated, at least for groups that include at least one listed company. Since the ownership of cash-flow rights is much easier to define (in legal terms) than “control”, as we shall further demonstrate in the next section, implementation and enforcement would be much easier and transparency would be greatly enhanced.

### **3 Control Data**

“Control” is hard to define and even harder to measure in practice. Berle and Means (1932, pg. 66) observed that : “**Control divorced from ownership is not, ... a familiar concept. It is a characteristic product of the corporate system. Like sovereignty, its counterpart in the political field, it is an elusive concept, for power can rarely be sharply segregated or clearly defined.**”

Berle and Means (1932, pg. 66) provided a practical definition of control : “Since direction over the activities of a corporation is exercised through the board of directors, we may say for practical purposes that control lies in the hands of the individual or group who have the actual power to select the board of directors (or its majority), either by mobilising the legal right to choose them – controlling a majority of the votes directly or through some legal device – or by exerting pressure which influences their choice. Occasionally a measure of control is exercised not through the selection of directors, but through dictation to the management, as where a bank determines the policy of a corporation seriously indebted to it. In most cases, however, if one can determine who does actually have the power to select the directors, one has located the group of individuals who for practical purposes may be regarded as ‘the control’.”

What is the relationship between monitoring and control (as defined by Berle and Means)? Monitoring “ought to be understood in a broad sense as any form of collecting information about the firm, its investment prospects and its behaviour” (Hellwig 1991, page 46). Why should anybody perform such a function? Hellwig (1991, page 49) argues that “‘monitoring’ as a form of collecting information about the firm is useful only because the information that is collected has consequences for the behaviour and resource allocation within the relationship”. He argues that monitoring rarely occurs without influencing business decision, Berle and Means criterion for locating “the control”. In practice, drawing the line between monitoring, voting power and control is difficult.

For example, Daimler Benz in their Form 20-F for the fiscal year ending 31 December 1994 (filed on 12 April 1995) declared that “the company been informed in March 1995 that Deutsche Bank AG and the Emirate of Kuwait had shareholdings of approximately 24.4% and 13%, respectively, of the outstanding Ordinary Shares. .. The company believes, and it

has been advised by Deutsche Bank AG that it believes, that Deutsche Bank AG does not control the business or affairs of the Company” (Daimler Benz 1994, page 42). Deutsche Bank AG had, however, placed the head of its management board as head of the supervisory board of Daimler Benz AG (and another supervisory board member). Hence, Deutsche Bank AG was in the position to perform direct monitoring.

The example shows that it is difficult to distinguish between monitoring (supervisory board members have the legal duty to collect information), the ability to exert minority control (the supervisory board appoints the management) and the incentives for monitoring (does Deutsche Bank AG extract private benefits?) with clarity and precision. Hellwig (1991) raises the possibility that Daimler Benz AG wants to learn more about “other firms and industries” the Deutsche Bank AG representatives, not so much the other way round (*opus cit.*, page 50).

Table 16 provides a list of control definitions found in European Law. In the case of EU Directives, Member States have transposed these definitions. Some Member States, like Italy (see Italian country paper) also have their own definitions of “control”.

TABLE 17. CONTROL DEFINITIONS IN EUROPEAN LAW

Subject	Source	Intended to Generate Control Data	Public Access Intended	Definition
<b>Control of Listed Companies</b>	Council Directive (88/627/EEC)	yes	yes	see Appendix and sub-section “Listed Companies” below
<b>Consolidated Accounts</b>	Council Directive (83/349/EEC)	no <sup>1</sup>	yes <sup>2</sup>	OJ L 193 18/07/1983 p. 1 or Celex 383L0349; a mixture of the US/UK legal definition of control and the German economic definition of control; there is a whole accounting literature on the subject
<b>Merger Regulation</b>	Council Regulation (EEC) n° 4064/89	no <sup>3</sup>	no <sup>4</sup>	see Appendix (including Form CO)
<b>Amendment of 2<sup>nd</sup> Company Law Directive</b>	Council Directive 92/101/EEC amending 77/91/EEC	no <sup>5</sup>	no	see Appendix
<b>State-Aid</b>		no <sup>6</sup>	no	
<b>Takeover Bids</b>	COM (95) 655 final	yes <sup>7</sup>	yes <sup>8</sup>	see Appendix

1 - The directive has to define who must prepare consolidated accounts and which companies must be included. With a few exceptions, the control concept is the guiding principle.

2 - Control data is disclosed indirectly because all companies that are consolidated are “controlled”, in the definition of the Directive. How they are controlled is not revealed.

3 - The aim is to prevent market concentration. A definition of control is necessary when determining whether companies operating in the same market form part of a business group. Whether the adopted control definition of “group” is adequate is debatable.

4 - The notification that a certain concentration threshold has been passed is notified to the Commission and the information submitted – including the ownership and control information – is only accessible for “interested parties”.

5 - Directive (77/91/EEC) tries to prevent the separation of ownership and control and the reduction of a company’s capital through the purchase of own-shares. The amendment (92/101/EEC) extends the provisions, that only applied to treasury shares, to the purchase of a company’s shares by affiliated companies and/or agents. To determine who is affiliated control must be defined.

6 - The state-aid notification rules apply whenever an entity that is controlled by the state engages in transactions that a similar entity that is controlled by a private agent would not have engaged in on the same terms. Hence, the state-aid rules have to define when a company or institution is state or otherwise “controlled”.

7 - A takeover bid is a proposal (friendly or hostile) to change the control of a listed company. Hence, a definition of control must be provided.

8 - The current holdings of the natural person or legal entity in public or private law making a bid are disclosed but, obviously, only when there is a bid.

The most comprehensive definition of control is provided in the Consolidated Accounts and Reports Directive (83/349/EEC). The control definition is a compromise between a legal definition of control that originates in the United States and the United Kingdom and an economic definition of control that was common in Germany. Indeed, the U.S. definition stems from the beginning of the century (and the time period analysed by Berle and Means, 1932) when business groups were an important phenomenon in the United States. A separate sub-section reviews the definitions of control that can be found in this Directive.

The Consolidated Accounts Directives only generates a limited amount of control data. The control definition is used to define who has to prepare and publish consolidated accounts. However, the annex of the consolidated accounts does not contain information on voting rights but on consolidated cash-flow stakes. Information on the type of control exerted is included, provided it conforms with one of the control devices listed in the Consolidated Accounts and Reports Directive (83/349/EEC, Article 34). The main shortcoming of the control data in the notes to the consolidated annual accounts is the lack of structural information. There are no requirements to provide a diagram that would give a clear picture of the group composition (as required on Form CO pertaining to Merger Regulation (EEC) No 4064/89, see the section on separation data below).

Publicly accessible control data is generated by the Transparency Directive (88/627/EEC) that applies to companies that have their registered office in a Member State of the Union and that have all or some of their stock listed on an official market. Natural persons or legal entities of public or private law have to disclose the number of votes they control when they satisfy certain control criteria and cross thresholds that are defined in terms of the percentage of votes controlled relative to the total number of votes attached to the voting capital issued (not relative to the number of votes at the general assembly). Some Member States (for example Belgium) have made use of the control definitions laid down in the Consolidated Accounts Directives to define “control”. However, unlike the Consolidated Accounts Directive and the Transparency Directive, the Belgian implementation rules require the publication of an organisational chart. Because of its importance, a separate section focuses on the data that should be generated by the Transparency Directive (88/627/EEC).

### **3.1 The Definition of Control in the Consolidated Accounts Directive**

The Consolidated Accounts Directive contains control definitions for vertical and horizontal groups. For banks and insurance companies two separate Directive set out somewhat “tougher” rules. As was argued before, the consolidated accounts do not contain control data that could be used for the purpose of the present analysis. The notes contain a list of control instruments, identified in the transposition of the Directive, that tie an undertaking to a parent but otherwise they report cash-flow stakes. This section reports which control devices are identified in the Consolidated Accounting Directive. It does not discuss under which circumstances a parent has to prepare a consolidated account, which undertakings fall into the consolidation perimeter (as opposed to the control perimeter) and which accounting methods must be used.

Not all legal instruments that give “control” are available in all Member States and not all control definitions had to be transposed when defining the consolidation perimeter. Some transposition exemptions (“opt-outs”) were the result of lobbying efforts by Member States and/or industrial and financial interest groups. For example, Luxembourg obtained exceptions for financial holding companies (with the argument that they would relocate off-shore) which meant that special control devices used by such parents did not have to be considered. In many cases the exact definition of control was left to the Member States. For example, the exact definition of “control agreement” or “dominant influence” cannot be found in the Directive.

#### ***3.1.1 Vertical Groups***

According to the Consolidated Accounts Directive a control relationship exists when :

1. A parent controls the majority of the voting rights of the shareholders or members of a subsidiary (Article 1(1)(a));
2. The parent is a shareholder in the subsidiary and has the right to appoint or remove the majority of the directors on the board (Article 1(1)(b));
3. The parent exercises a “dominant influence” over the subsidiary by means of a contract (Article 1(1)(c));
4. The parent exercises a “dominant influence” over the subsidiary because of a provision in the company’s memorandum or articles of association (Article 1(1)(c));

5. The parent controls the majority of the shares as a result of an agreement with the other shareholders (Article 1(1)(bb)). Finding an exact definition of “agreement” was left to the Member States;
6. The parent exerts “dominant influence” by means not mentioned above. What other means could give the parent “dominant influence” was left to the Member States to define;
7. The parent manages itself and the subsidiary on a unified basis (Article 1(2));
8. Votes attached to own-shares held by a subsidiary, including those held indirectly through other subsidiaries (cross-shareholdings), are not attributed to the parent (Article 2(2)(b)). Own-shares increase the effective voting power of the parent, even when they cannot be exercised.

### ***3.1.2 Horizontal Groups***

By definition it is hard to speak of “control” in horizontal groups (otherwise they would be hierarchical groups). The Directive identifies two types of “associative links” that tie together horizontal groups :

1. Undertakings that are managed on a unified basis (Article 12(1)(a));
2. Undertakings are tied together through interlocking directorates (Article 12(1)(b)).

Cash-flow links and cross-shareholdings are not mentioned specifically, although they are typical features of horizontal groups.

### ***3.1.3 Conclusions***

The notes of the consolidated annual accounts list the companies that fall into the control perimeter of a consolidating parent. The undertakings that are included in the consolidated accounts are marked separately (the consolidation perimeter). The control device that lead to the inclusion of an undertaking in the control perimeter is listed. In practice this information is of little use and/or unreliable.

It is not enough to know that an undertaking is controlled because the parent holds (at least) the majority of the votes without knowing the percentage of the votes that are actually held. Are these votes held directly, are they attributed and if they are attributed from whom and how? Numerous exceptions render the information incomplete. Small parents, parents that

are non-limited liability or holding companies might not have to file complete reports (or file at all). The list of undertakings that are inside the control parameter is incomplete because of numerous reporting exceptions. Finally, control perimeters are not comparable across Member States because concepts like “dominant influence” have been interpreted when the Directive was transposed. The control data generated by the Consolidated Accounts Directive is of limited value for the analysis of control structures in European business groups.

### **3.2 Listed Companies and the Transparency Directive**

The only EU Directive that imposes common conditions for the disclosure of control data is the Transparency Directive of 12 December 1988 “on the information to be published when a major holding in a listed company is acquired or disposed of (88/627/EEC)”. It applies to listed companies registered anywhere in the Union. The disclosure of ownership data was an option for the Member States, but a notification can still be triggered by a control threshold (88/627/EEC, Article 4-1, last sentence). There are no Directives that make the disclosure of ownership data compulsory throughout the Union – rules that force investors to notify a company when they acquire or dispose of certain proportions of its cash-flow rights.

The Transparency Directive is very similar in spirit to the Williams Act in the United States that now forms part of the Securities and Exchange Act of 1934 (see the country note for the United States). It is no coincidence that some transpositions were enacted alongside national takeover legislation, for example in Belgium. From the point of view of academic research, the data generated by the Directive is most useful for studying the (absence of) takeovers in continental Europe and the (lack of) a market for corporate control.

Who has to notify? Article 4(1) of the Transparency Directive (88/627/EEC) defines that when “the proportion of voting rights held by that person or legal entity reaches, exceeds or falls below one of the thresholds of 10 %, 20 %, 1 / 3, 50 % and 2 / 3, he shall notify the company and at the same time the competent authority ... within seven calendar days of the proportion of voting rights he holds following that acquisition or disposal”. The thresholds are maximum levels and could be lowered by the Member States. The thresholds were chosen deliberately because 20% and 33.33% (or 25%) are maximum blocking minorities for statute changes in many countries.

In addition to any voting rights a person or entity might own, Article 4 defines that nine reasons that can lead to the “attribution” of additional votes. In addition to defining the legal basis of the data used in the country papers, Article 7 also provides a first list of possible mechanisms for separating the ownership and control of European companies :<sup>17</sup>

1. The voting agent acts as a nominee;
2. The entity that owns the shares is controlled by the voting agent, for example a subsidiary in a business group (see above for a definition of control);
3. Votes that stem from a written voting pact;
4. A temporary transfer of voting rights to the voting agent or a business group (proxy voting);
5. Votes that could be exercised by an agent who holds them as collateral, but only if the owner does not exercise the votes;
6. “Voting rights attaching to shares of which that person or entity has the life interest” (annuities, in the German transposition: *Nieðbrauch*);
7. Formal agreements that allow the voting agent to acquire voting rights (by any of the means listed above); when such votes are acquired the company must be notified, even when no threshold has been crossed;
8. Voting rights deposited with the voting agent for safekeeping when the owner did not give specific voting instructions.

Article 7 is the basis for three definitions, that are used in the statistical section of this paper, of different types of control block:

1. Voting rights attached to shares that are owned by the voting agent are called “**direct voting stakes**” (the notified voting block minus all the votes attributed because of 1-8);
2. Voting rights attached to shares that are notified according to reason (2), votes that are controlled by companies belonging to the same business group, are called a “**group voting block**”;
3. Voting rights that are notified because of any reason stipulated by the Directive (1-8) are called a “**coalition voting block**”.

Figure 3 provides an example of the type of data the notifications should provide. Company 2 holds a voting block of 72% in Company 4, that is listed. The block is composed of three smaller blocks: a group block controlled by Company 2 (via its subsidiary Company 3), a

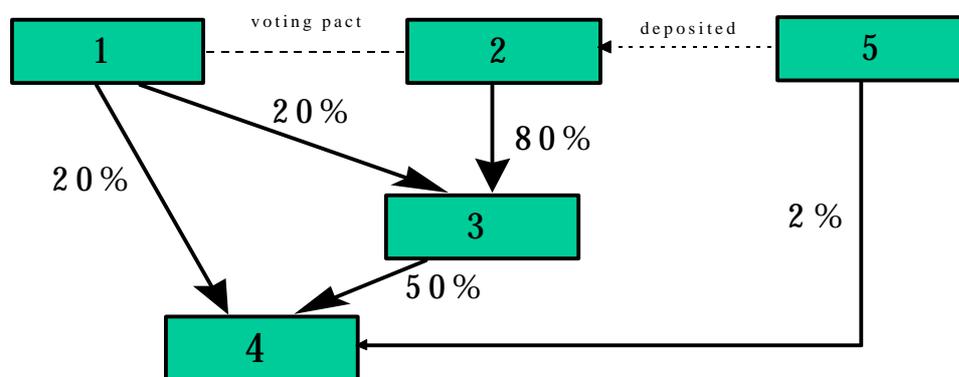
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<sup>17</sup> The list is very similar to the list of control devices found in the Consolidated Accounts Directive (83/349/EEC) discussed in the previous section, but somewhat more complete.

larger direct stake (20%) that belongs to Company 1 and a small direct stake that Individual 5 has deposited with Company 2 (for safekeeping or as collateral).

The basis for the notification is the coalition voting block of 72%. This is a very important feature of this data and has implications when making cross-country comparisons. This feature also makes the data different to the ownership and control data that has been previously analysed in the literature, for example in Franks and Mayer (1997) for “pre-Transparency Directive transposition” Germany.

**FIGURE 3. DIRECT STAKES, GROUP BLOCKS AND VOTING BLOCKS**



Note: Company 4 is a listed company. Company 3 is a subsidiary of 2 and Companies 1 and 2 have a voting pact. The control-rights voted by 1 are owned by 2. Individual 5 has deposited his or her shares with 2 who controls them. The **direct voting stakes** are 20% (1), 50% (3) and 2% (5, not notified as a direct stake except in the U.K. and Italy). The notified **group voting block** in this constellation is 50% (votes controlled by 2 & 3) and the notified **coalition voting block** is 72% (votes of 1, 3 and 5 controlled by 2).

Franks and Mayer (1997) analyse ownership data for 171 German listed companies for 1990. In 1990 the Transparency Directive had not been transposed and the basis for disclosure was company law (all stakes larger than 25% had to be disclosed). To arrive at a picture like the one provided in Figure 3, “when large shareholdings were held directly, the ultimate owner was identified by tracing all corporate shareholdings of greater than 25% through intermediate layers of ownership. We recorded the number of layers in the pyramid and the shareholdings at each level” (opus cit., pg. 11), which often “raises the question as to who is the ultimate shareholder and where ultimate control lies” (opus cit., pg. 14). In the case of pyramidal structures Franks and Mayer (1997) started from the bottom and tried to find the controlling top by tracing cash-flow links.

The Transparency Directive data poses the opposite problem. Those who have ultimate control – control as defined by the Directive (see Appendix, Article 8, 88/627/EEC) – have to reveal their identity and their controlling interest. The country teams were provided with the identity of a controlling agent at the top and a listed company at the bottom. The problem faced by, for example, Franks and Mayer (1997) seemed to have disappeared.

Unfortunately, the Transparency Directive data poses new problems: Is the definition of control in the Directive sufficiently narrow to pin down the ultimate controlling agent? Do ultimate controlling agents reveal their identity in practice? If they do not, how could the Competent Authority ever find out? Once the agent at the top of a control structure (e.g. a pyramid) has been identified, how much is revealed about how control is exerted (how much do we see looking down the pyramid)?

The country surveys that were conducted by the European Corporate Governance Network show that, in practice, it is unclear who has ultimate control (Table 7). The transposition of the Transparency Directive (88/627/EEC), which is what Member States notify to the European Commission, is not enough to guarantee that those who have ultimate control can be identified by interested parties throughout the Union.

Table 18 provides a few examples that illustrate this problem. The examples draw on groups that include companies listed on different EU stock exchanges. When a listed company in one Member State commands the necessary voting power in a company listed in another Member State, transparency declarations in the first Member State can be used to check the completeness of the notifications in the second.

We provide two examples of German companies that were notified to be controlled by companies that are listed in Belgium and Italy. Ymos AG is listed on the official market in Germany. On 21/04/95 the German *Börsenzeitung* published the notification that Cockerill Sambre Beteiligungsgesellschaft mbH (a Düsseldorf registered holding company) commands 95.146% of the votes of Ymos AG. On 18/09/96 the *Börsenzeitung* published the notification that Cockerill S.A. (listed on the Belgian official market) commands 95.146% of the votes of Ymos AG. According to the latest information from the Bundesaufsichtsamt für den Wertpapierhandel (15 September 1997), no other information was notified in Germany.<sup>18</sup>

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<sup>18</sup> The information was obtained from the BAWe data spreadsheet available from [http://www.bawe.de/english/db\\_si\\_e.htm](http://www.bawe.de/english/db_si_e.htm).

In Belgium, the transparency notifications contain more information on the control structure of Cockerill Sambre. They contain the information that that Cockerill Sambre S.A. is controlled by SWS (Société Wallone pour la Siderurgie). The small print of the published notification (20/12/1993) contains the information that SWS is fully owned by the Wallonia region. Since this information is not notified in Germany, a German investor buying shares in Ymos AG would find it difficult to find out who controls Cockerill S.A. (unless he or she speaks French or Dutch and has access to Belgian newspapers) and is unlikely to know that SWS is controlled by the Wallonia region. A German investor who buys shares in Ymos AG would be lead to believe that the company is controlled by a privately controlled company (Cockerill S.A.) when, in fact, ultimate control lies with a Belgian region. This confusion is likely to be relevant for the purchase decision of the German investor. The lack of transparency at various levels is likely to discriminate the against the German investor. In the Ymos AG example the Wallonia region, who failed to notify, probably did not know that it had to notify a company listed in Germany. This illustrates the problem of “notifications from the top” when the top cannot always see the bottom.

The case of Pirelli Deutschland AG is very similar, but more difficult to trace. On 09/07/96, the Frankfurter Allgemeine Zeitung published a notification where Pirelli Tyre Holding N.V. (Amsterdam) declares that it commands, via Deutsche Pirelli Reifen Holding GmbH (Höchst), 98.94% of the shares of Pirelli Deutschland GmbH. The whole Italian superstructure is not notified in Germany. Indeed, since Pirelli Tyre Holding N.V. is not a listed company, and no even registered in Italy, it is not obvious how the holding is tied to the listed companies of the Pirelli group.

**TABLE 18. NOTIFIED AND LIKELY IDENTITY OF CONTROLLING AGENT**

<b>Listed Company</b>	<b>Notified “Ultimate” Control</b>	<b>Further Layer (from other sources)</b>	<b>Ultimate Control Actually Lies With (from other sources)</b>
<b>YMOS AG (D)</b>	Cockerill Sambre S.A. (B), 95.146% source: German transparency declaration	SWS, Société Wallone pour la Sidérurgie, 79.79% source: Belgian transparency declaration	Wallonia Region source: transparency declaration
<b>Pirelli Deutschland AG (D)</b>	Pirelli Tyre Holding N.V. (NL), 98.94% source: German transparency declaration	Pirelli S.p.A. (It), 82.2% source: AIDA 1997	Pirelli Partecipazioni S.p.A., 50.94% source: AIDA 1997

Note: The table list a few examples of companies that have filed to have ultimate control, as defined by the Transparency Directive, but where the name or other sources of information (for example databases that contain company register information, like the German Markus database) indicate that they might not have ultimate control. Either the definition of “control” is not detailed enough in the Directive, or the transposition is flawed, or enforcement is lacking.

In many countries it is not possible to distinguish between direct stakes, group blocks and coalition voting blocks. This is due to the fact that notifications are triggered by coalition voting blocks. Hence, only the size of coalition voting blocks is notified initially. Whether any further details are notified, published and processed depends on the rules imposed by the “Competent Authorities”.

For complete transparency, an annotated organisational chart like Figure 3 would have to be published. To our knowledge the only EU country where this is the case is Belgium (and not always). In Germany, France and Spain the newspaper publications only contain the size of the voting block and the percentage of the votes in the voting block that were attributed for one of the 9 “attribution” reasons listed above. Access to the individual notifications and/or cumulative “snapshots” is difficult and/or expensive in most countries. In German a snapshot is now available from the internet, in Spain the complete records can be retrieved one-company at a time.<sup>19</sup>

#### ***4 The Separation of Ownership and Voting Power***

In Part A (pp. 17) we discussed the difficulty of identifying “the control” using voting power concentration statistics, the procedure applied by Berle and Means (1932) and subsequent authors. In this section, we confine ourselves to defining measures of the separation between ownership and voting power. When the measured degree of voting power also gives “control”, these indicators automatically become measures of the separation between ownership and control.

The separation of ownership and voting power is the wedge that is driven, by various devices, between the command over voting rights and the ownership of cash-flow rights. We present 24 devices that can be used to separate ownership and voting power in Europe (the list is probably not exhaustive).

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<sup>19</sup> From [http://www.bawe.de/english/db\\_si\\_e.htm](http://www.bawe.de/english/db_si_e.htm) and <http://www.cnmv.es/CNMV/dpps.htm>.

Hierarchical groups are one of the most powerful tools for separating ownership and voting power. They can be used to chain the other devices and provide additional leverage to their effectiveness. The Van Sweringen System of Railroads example of pyramiding that was given by Berle and Means is presented. Two measures for the separation leverage that was obtained by this pyramid are presented. The measure can be used to measure the separation leverage of the other 23 devices as well.

Furthermore, two measures of the separation between ownership and control are defined. Many other measures are conceivable. The discussions of ownership and control data presented in the previous sections are re-examined. We will show that additional information is needed to compute the separation measures because the cash-flow perimeter has to be tied to the voting power (control) perimeter. The availability of the data needed to compute the proposed separation measures is discussed.

#### **4.1 Devices that Separate Ownership and Voting Power**

This section 24 devices that can be used to separate ownership and voting in Europe. Many had already been identified by Berle and Means (1932) for U.S. registered and listed corporations, but many are not available under U.S. company law. Not all devices are legal in all Member States. Some devices leverage voting power at the level of the general assembly and/or at the level of the board (supervisory board). For example, German co-determination leverages voting power at the level of the supervisory board, not the annual meeting.

1. **Majority voting.** For most legal forms, many decisions are taken by majority vote. Majority voting introduces a separation of ownership and control.
2. **Legal form.** Some legal forms are designed to induce a complete separation between ownership and control. For example the German *Kommanditgesellschaft auf Aktien* has some unlimited liability owners (*Komplementäre*) who run the company. A second class of limited liability owners (*Kommanditen*) contribute equity capital but their control rights are very limited.
3. **Statutory Provisions.** The company statutes can contain control relevant provisions. For example, they might automatically appoint certain members of the board. Many of the other instruments in this list are recorded in or enacted through the company statute. In most European countries, the majority needed to change the provisions of

the company statute can be increased from the prescribed legal minimum. Hence, the minority voting block necessary to prevent statute changes can be very low. Hence, “pure” statutory provisions can contribute significantly to separating ownership and control.

4. **Multiple voting rights** (dual class stock and “golden shares”). In many European countries, companies can issue voting stock with different voting power. For example, one type of stock gives one vote per unit of par value, a second type of stock gives 100 votes per unit of par value. In some countries the stock can be of the same type, but some shares – the “golden shares” – have multiple voting power.
5. **Non-voting stock.** Almost all European legal forms can issue non-voting stock. Although it is not necessary, non-voting stock is usually issued with special cash-flow rights. There are limits on the fraction of non-voting stock that can be issued as a fraction of total capital.
6. **Voting caps.** Voting caps impose a limit on the number of shares a shareholder can vote, irrespective of how many voting shares are held. Voting caps introduce an “inverse separation” because they disperse control.
7. **Voting rights that are not attached to equity** (paid in capital). This device is provided through a special type of ownership certificate that some legal forms in some European countries are allowed to issue. For example, in Belgium *parts bénéficiares* can have voting rights and/or cash-flow rights attached. It is possible to issue such certificates, with attached voting rights, to someone who has not paid in any capital. There are limits on the fraction of *parts bénéficiares* in total capital.
8. **Investment and pension funds (absenteeism).** In the United States, mutual funds are a special type of mutual society that are owned by those who deposit funds. Depending on the governance procedures of the fund, there is a separation of ownership and control. If the funds do not vote at all, the separation is complete. In Europe investment funds are often owned by financial institutions. The investment contract or the law do not require these funds to ask their depositors for voting instructions. Either the funds claim to invest “passively” (exert governance through buying and selling), or they claim to vote in the best interest of their clients.

9. **Voting Pacts.** Shareholders can write contracts in which they agree to vote in an agreed way.
10. **Pre-emption Pacts.** Shareholders often sign (mutual) agreements to buy each other's shares in case one of the parties wants to sell them.
11. **Option Contracts.** Call-options or put-options are similar to pre-emption pacts.
12. **Safekeeping.** Shareholders deposit their shares with a financial institution for safekeeping. The financial institution is often given the right to vote the shares (explicitly or by default). Although the financial institution might be required to ask its customers for voting instructions, few shareholders take advantage of this possibility. The German *Depotstimmrecht* is a well known example.
13. **Collateral.** Shareholders can put up their shares and/or voting rights as collateral.
14. **Annuity Contracts.** Shareholders can sell their shares and/or voting rights in an annuity-type contract. For example, the cash-flow rights are transferred and the seller receives a monthly payment until he or she dies. The voting rights are still exercised by the seller. Alternatively, the voting rights are sold.
15. **Control and Cash-Flow Contracts.** Companies in many countries can sign control contracts. After the contract is signed the management of the controlled company responds to the management of the controlling company, not the owners of the company. Companies can also sign cash-flow contracts.
16. **Foundations and associations** (voting trusts). In some European countries, notably in the Netherlands, companies place share issues with a foundation. The foundation keeps the voting shares and issues cash-flow ownership certificates that are held by the general public. Hence, although the company has issued no non-voting stock, it is governed as if it had issued 100% of non-voting stock. In many countries foundations and associations are not subject to any disclosure requirements. In Germany they are not even subject to Federal Law, but to the law of the Federal Regions (*Länder*).
17. **Treasury Shares.** Treasury shares separate ownership and control because controlling stakes are leveraged. For example when a company owns 50% treasury shares, ownership of 25.01% of the voting stock provides for a simple majority.
18. **Cross-Holdings.** Although a company might not hold or control treasury shares outright, cross-shareholdings and "loops" can have a similar effect. The loops can

involve other devices listed here which give additional leverage to the separation effect.

19. **Hierarchical Groups** (pyramidal groups). This device is based on the idea that the separation of ownership and control introduced by majority voting and/or the devices listed above can be increased by chaining several companies. Each company brings in additional external capital while the agent who made a small investment initially (or no investment, in the case of the voting trust) retains control of the complete chain. The longer the chain and/or the larger the number of companies that break with “one-share-one-vote” and/or the larger the break, the higher the degree of separation. The structure of the chain (pyramidal or double helix) is of little importance, the principle is always the same. The problem of such group structures is to keep control of all entities in the group – that can become large very quickly. This problem is often overcome by chaining holding companies. In the extreme case these holding companies have no employees and they are run out of a post office box. Interlocking Directorates are another way of minimising the chain size problem.
20. **Influence**. An outside entity can exert influence on shareholders without controlling or owning any of the voting rights. For example, large customers and/or suppliers of factors and/or debt finance can use their influence to have representatives appointed to the company board (or supervisory board). Franchising contracts also fall under this category.
21. **Co-determination**. Worker councils or the German co-determination system give the employees of a company control rights without them owning any of the shares of the company. In the Germany case, 50% of the supervisory board members are appointed in this way (but the capital side has the casting vote).
22. **Chairman of the Board**. In two-tier board systems, especially with co-determination, the chairman (who has the casting vote) of the supervisory has disproportional power. Being the chairman of the supervisory board provides considerable leverage for the other devices listed here.
23. **Interlocking Directorates**. Interlocking directorates can provide additional leverage to mutual control contracts and reinforce any of the other instruments listed here.

24. **Voting costs.** High voting costs and the free-rider problem (for small shareholders) can lead to low attendance rates at general meetings. Since most decisions are taken (at the latest after calling a second meeting) on the basis of majorities that are calculated as a fraction of the votes present at the meeting, absenteeism can provide considerable leverage for attending blockholders. The leverage effect is correlated with dispersion.

The importance of these instruments differs between Member States. With the exception of the Consolidated Accounts Directive and national company law provisions (for example in Germany control contracts must be deposited at the company register) very little data is available on these separation devices. Yet, information on these devices is important. Investors purchasing Fiat shares should have the right to know that the group is effectively controlled by a pre-emption pact.

## 4.2 Measuring the Voting Power Leverage of Separation Devices

The separation of ownership of voting power and command over voting power is always measured from the point of view of the agent that decides how the votes are cast. Hence, the accuracy of the measure depends on our ability to identify this agent. As we showed when discussing the Transparency Directive, one of the most sophisticated pieces of legislation that tries to trace voting power, this is not an easy task.

We propose two measures of the voting power leverage obtained with different separation devices. In all cases, the difficulty lies in determining when an agent has effective command over voting rights he/she does not own :

1 **Agent's ownership of voting rights versus command of voting rights.** This measure is given by the percentage of votes owned by the agent (net of all cross-shareholdings) as a multiple of the votes commanded by the agent.

1.1 In the Belgian Cobepa-Paribas example, that was presented in the ownership section, the ultimate (known) voting agent was the French Paribas Group. Paribas commands 67.09% of the votes of the Cobepa Holding and owns (in integrated terms) 64.5% of its capital. One Cobepa share has one vote, and Paribas owns 64.5% of the voting rights. Hence the separation between

ownership of voting power and actual voting power is very moderate and the leverage effect in the first measure is a mere 1.04.

1.2 Figure 1 is a facsimile of the pyramiding example used by Berle and Means (1932); the Van Sweringen Railroad System. The proposed measure is 124 for the Hocking Valley Ry. Co. (31% of the voting shares were held by a Van Sweringen controlled company, compared to a Van Sweringen ownership interest of 0.25%).

1.3 Applying the proposed measure to all companies in a group/and or investors grouped by type and computing the arithmetic mean gives an unweighted measure of the separation between ownership and command over voting power in the group and/or investor class.

2 **Agent's ownership of voting rights versus expected voting power.** This measure is identical to the previous measure, but takes into account that not everybody will attend the general meeting. Hence, this measure takes the agent's expected voting power, conditional upon a certain attendance rate at the annual meeting, and sets it into relation with the votes owned. For the same company and agent, the figure will be at least as high or higher than in the previous case.

To compute the first measure we need to know :

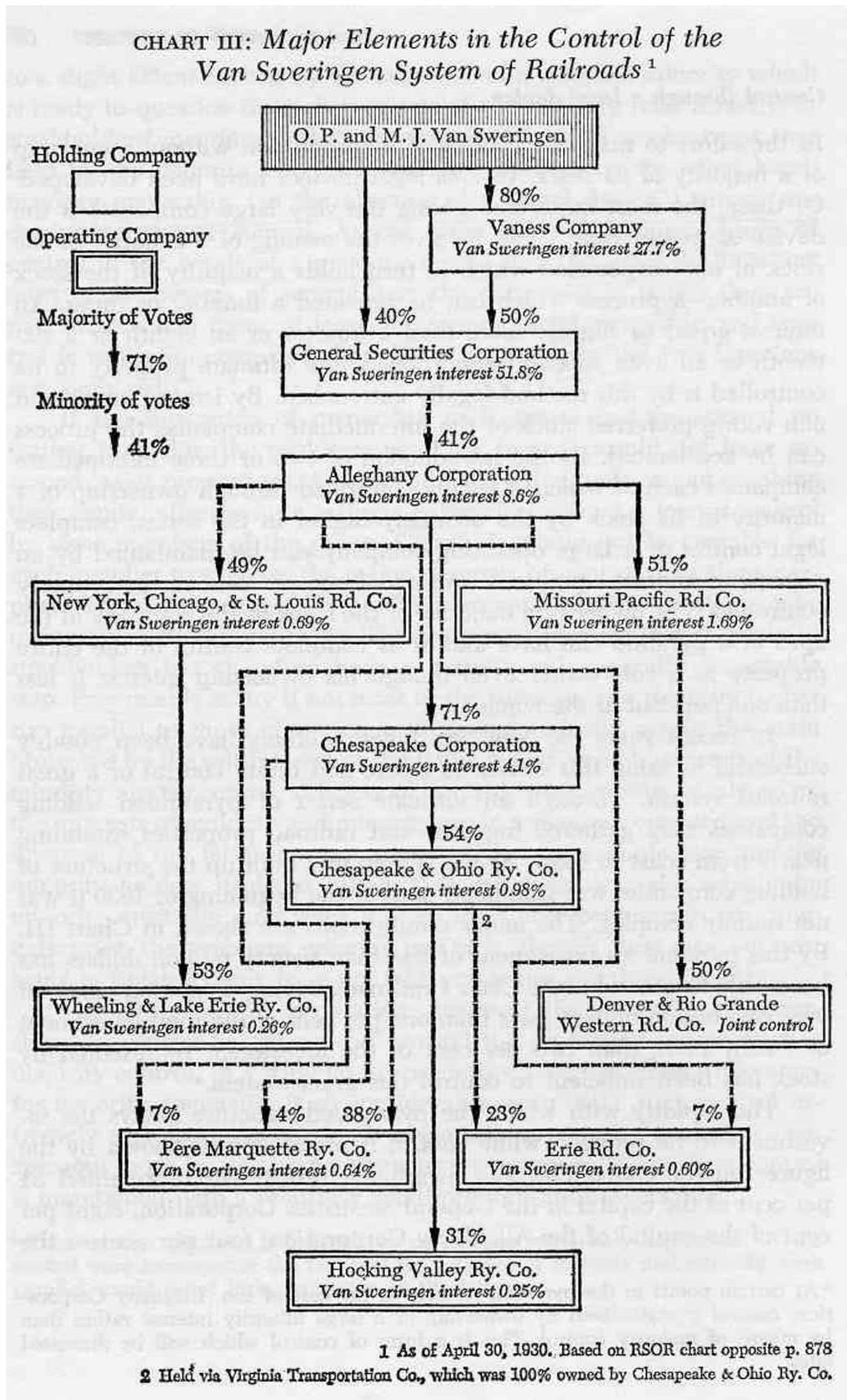
1. The identity of the physical or legal person that decides how the votes are cast;
2. The net-ownership of voting stock held by the voting agent for each company;
3. The control perimeter of the voting agent, i.e. the percentage of votes commanded and the devices (like control contracts) that are used to exert control;
4. The structure of the ownership and the control perimeter (so we can match the information);

Figure 4 contains all the required information. Berle and Means (1932) apparently knew that O.P. and M.J. Van Sweringen voted 80% of the voting stock of the Vaness Company and 40% of the General Securities Corporation. We have documented that the Transparency Directive often identifies control structures up to entities like Alleghany Corporation (a holding company). Because the General Securities Corporation only commands 41% of the

votes, the superstructure with the likes of O.P. and M.J. Van Sweringen at the top often remains in the dark.

Berle and Means (1932) also had the information required to calculate the net-ownership stake for each company in the pyramid. They were also able to determine when a minority interest, like in the case of the pivotal Allegheny Corporation, gave minority control. Since they were able to draw Chart III, they also knew the structure of the Van Sweringen System of Railroads. In Europe today, such information is usually not available. We are unable to draw charts like the one reproduced in Figure 4, even for Europe's largest and most important business groups.

FIGURE 4. THE BERLE AND MEANS PYRAMIDING EXAMPLE



Source : Berle and Means, *The Modern Corporation & Private Property*, Reprint Edition, Transaction Publishers, New Brunswick and Londong, 1991, page 70. Chart III in the 1932 edition was in landscape format. The contents, of course, was the same.

### 4.3 Measuring the Separation of Ownership and Control

The separation of ownership and control is largest (infinite) when “the control” has the power to decide how a company is run but does not own any cash-flow stake. This type of extreme separation occurs with management control (provided the managers own no stock) and voting trusts (or foundations).

- 1 **Percentage of cash flow-rights owned by “the control” in total capital.** This measure compares the integrated ownership stake (see section on integrated ownership for a definition) of the “the control” to the percentage of total capital controlled (100%). In the Mediobanca example, the total cash-flow rights (100%) are controlled by an entity (Mediobanca) that owns (directly and indirectly and net of all cross-shareholdings) 5.96% of these cash-flow rights. For this measure a separation factor of 16.8 obtains. Obviously this is equivalent to the ratio gross-capital under control divided by the integrated stake at book value.
- 2 **Total cash-flow rights controlled versus net-cash flow rights owned at book value.** This measure is given by the total capital of the controlled company compared to the capital owned by the controlling agent at book value (net of all cross-shareholdings). A book value measure was already proposed by Hilferding (1910, page 119), Einaudi (1911) and Berle and Means (1931, page 70).
  - 2.1 In the Mediobanca example, absenteeism gives Mediobanca control over the Generali insurance group. Mediobanca owns Lit. 379 of the capital at book value (in integrated terms) compared to a total capital of Lit. 5929. The separation of ownership and control in this case and for this measure is 15.6.
  - 2.2 In the Van Swerigen Railroad System example “an investment of less than twenty million dollars has been able to control eight Class I railroads having combined assets of over two billion dollars” (Berle and Means, 1932), yielding a book value separation (leverage) measure of 100.
  - 2.3 For the group and or investor class a weighted aggregate measure can be derived; see Barca, Bianchi, Brioschi, Buzzacchi, Casavola, Filippa and Pagnini (1994, pg. 156).

- 2.4 The weighted aggregation property and data availability issues make this the most attractive measure of the separation of ownership and control.
- 3 **Total cash-flow rights versus voting rights controlled at market value.** The measure is identical to the previous measure but at market value.
- 3.1 In terms of market value, the separation between ownership and control in the case of Generali is 21 (Lit. 28057 divided by Lit. 1333).
- 3.2 In the case of Generali, the leverage effect at market values is larger than the leverage effect at book value obtained previously (15.6). When non-voting stock is used to secure control, the market valuation usually gives a smaller leverage effect than the book value calculation. Non-voting stock and voting stock can have the same book value but different market value. The market value of the voting stock is usually higher because the value of the votes is taken into account.
- 3.3 Again, a weighted aggregate measure can be derived.
- 3.4 Because the market value takes into account the value of control, it is more attractive conceptually. However, the data required to compute the measure is not generally available, even to the companies themselves. The market value measure cannot be computed of non-listed companies unless the market values is estimated (guessed).

To compute these measures we need to know :

1. The identity of “the control”;
2. The cash-flow perimeter of “the control” and the percentage of the total capital owned in each company;
3. The control perimeter of “the control” (the percentage of votes controlled and the devices that are used to exert control);
4. The structure of the cash-flow perimeter and the control perimeter (so we can match the information);
5. The book value (and/or market value) of the net-assets of each company in the ownership perimeter (portfolio) of the ultimate owners. In most Member States the required data is not or only partially available.

When the information provided by the transposition of the Transparency Directive is complete and the country has opted to implement the ownership notification option, it is possible to compute the first measure. This is the case in Italy. Assuming that the companies have not issued non-voting or dual-class stock, it is possible to compute the first measure even when the ownership information is not notified separately. This was the case in Belgium. If none of these conditions are met is impossible to compute separation measures using Transparency Directive data. In any case, the Transparency does not generate the data that would be necessary to compute the first separation measure for companies that lie “lower” than the listed companies in a hierarchical group.

To compute the book value measures, balance sheet data is required for each of the companies in the group. Since the Transparency Directive does not require the controlling agent to publish such data, other disclosure legislation must be in place that can fill the gap. The only country where this is the case is Italy and even there it is hard to collect and process such data. The market value measure only applies to listed groups.

The European Commission requires companies to provide all the data required to compute separation measures in merger cases. Instead of the net-assets (at book or market value) the Commission’s Merger Task Force requires information of market shares. The idea of “integrated ownership” that underlies the separation calculations can be applied to portfolio as well as product market calculations; see Flath (1989) and Baldone, Brioschi and Paleari (1997). Hence, it is not surprising that the European Merger Regulation should generate this type of data. The merger (market concentration) information collected by the Commission is not disclosed to the general public.

**FORM CO RELATING TO THE NOTIFICATION OF A CONCENTRATION  
PURSUANT TO REGULATION (EEC) No 4064/89**

SECTION 3

Ownership and control (11)

For each of the parties to the concentration provide a list of all undertakings belonging to the same group.

This list must include:

- 3.1. all undertakings or persons controlling these parties, directly or indirectly;
- 3.2. all undertakings active on any affected market (12) that are controlled, directly or indirectly:
  - (a) by these parties;
  - (b) by any other undertaking identified in 3.1.

For each entry listed above, the nature and means of control shall be specified.

The information sought in this section may be illustrated by the use of organization charts or diagrams to show the structure of ownership and control of the undertakings.

As we show, ownership and control information of the type submitted on Form CO is not available to the general public although it is important for creating a European equity market. This fact reflects a fundamental difference in the role the European Commission plays in the merger control and in the securities markets fields. **Form CO was designed by the Commission in its role as a European Merger Agency.** The Treaty and Regulation No 4064/89 give the Commission the power to exercise this power. **The European Commission is not a European Securities and Exchange Agency.**

The lack of transparency in the fields of company law, accounting standards and securities markets are the result of the inability of the Commission to pass proposals against the will of some Member States who block such proposals in Council. The example of Form CO is further evidence that a Federal European Agency with the power to design forms that are modelled on those of the SEC might be the way forward for transparency and integrated capital markets in Europe.

#### **4.4 An Extended Example: Separation of Ownership and Control in Italy**

The separation of ownership and control is hard to compute even if the necessary data is available. Quantitative measures of the separation and ownership and control are only presented for Italy and for two reasons. One, Italy is the only country with legal disclosure requirements that provide the basis for obtaining the necessary data. Two, research on these topics in Italy was started in the 1980s and a large scale national research effort was undertaken by the Bank of Italy and Consob between 1992 and 1994 (Barca *et. al.*, 1994). This research project lead to more effective disclosure of that required data that should have been available legally. We strongly hope that this preliminary report will have a similar impact in the other Member States and that a final report will contain tables that are far more complete and comparable.

Table 19 shows the separation between ownership and control amongst the 30 largest Italian business groups. The separation varies from very small (ratio of capital under control to capital owned close to one) to large (10.33 in the case of Carlo de Benedetti). However, the average of 2.8 is probably an underestimate of the true degree of separation. In many cases, the ultimate controlling agents are not known and the control chain ends with the company that is the head of the group. Groups with a high degree of separation might make additional efforts to hide their true size and the companies with the highest degree of leverage are excluded. For example, there is additional separation between those who control Allianz Holding AG and the proportion of capital they own. It is no coincidence that the degree of separation is relatively higher when the individual who has ultimate control could be identified (e.g. Silvio Berlusconi, Carlo de Benedetti, Sergio Pininfarina).

The Italian figures illustrate three problems that were already mentioned several times :

1. Our inability to identify the individuals or institutions who have ultimate control substantially changes the results;
2. Failing to trace the whole cash-flow perimeter leads to significant measurement errors;
3. It is difficult to measure control and some companies that are controlled might go undetected. Again, this can lead to significant measurement errors;

4. Averages, like the ones presented in Table 19, that are not weighted using net-assets ( $\omega$ ) can be misleading when group structures are important.

**TABLE 19. SEPARATION BETWEEN OWNERSHIP AND CONTROL IN THE LARGEST ITALIAN GROUPS (1996)**

Head of the group	Capital under control in proportion to owned (1)
Ministero del Tesoro	1.24
IRI Istituto per la ricostruzione ind.	2.40
Giovanni Agnelli & C. S.a.p.a.	8.86
Compart S.p.a.	4.35
Generali S.p.a.	1.53
Compagnia di San Paolo	1.54
Allianz Holding A.G.	1.78
Benetton	1.46
Cassa di Risparmio di Roma	2.40
Mediobanca S.p.a. <sup>(2)</sup>	2.00
Credito Italiano S.p.a.	2.35
Pirelli	1.95
IMI Istituto Mobiliare Italiano	1.34
Radici Pesenti Rosalia	4.15
Banco Ambrosiano Veneto <sup>(2)</sup>	1.55
Tanzi Calisto	1.68
Mediolanum S.p.a. <sup>(2)</sup>	1.96
Ligresti Salvatore	4.83
Berlusconi Silvio	3.66
Gemina S.p.a. - Generale <sup>(2)</sup>	2.22
Bulgari S.p.a. <sup>(2)</sup>	1.80
De Benedetti Carlo	10.33
Fondaz. Cassa di Resp. Genova	1.22
Credit Lyonnais S.a	1.76
Pininfarina Sergio	5.93
INA Istituto Nazionale Assic.	1.06
Banca San Paolo di Brescia <sup>(2)</sup>	1.98
Bosatelli Domenico	1.39
Falck S.p.a. <sup>(2)</sup>	4.20
Saes Getters S.p.a.	1.48

(1) Groups are ordered by market capitalization

(2) The head of the Group is the coalition controlling the company.

Source: Consob. Information are based on all the communications to Consob referring to holdings in listed companies larger than 2% of capital

Source: Bianco, Bianchi and Enriques (1997), Table B.55.

## **Annex 1: List of Country Papers**

The individual country papers can be downloaded from the European Corporate Governance Network's experimental Web-site (<http://www.ecgn.ulb.ac.be/>) or from the Network's experimental ftp-server (<ftp://www.ecgn.ulb.ac.be>). A login name and a password can be obtained by sending e-mail to [mbecht@ulb.ac.be](mailto:mbecht@ulb.ac.be).

### **Austria**

Gugler, Klaus, Susanne Kalss, Alex Stomper, Josef Zechner (1997). The Separation of Ownership and Control: An Austrian Perspective. University of Vienna and University of Economics (Vienna) in *The Separation of Ownership and Control: A Survey of 7 European Countries*, Preliminary Report to the European Commission submitted on 27 October 1997. Volume 2.

### **Belgium**

Becht, Marco and Ariane Chapelle (1997), Ownership and Control in Belgium. ECGN mimeo. Université Libre de Bruxelles in *The Separation of Ownership and Control: A Survey of 7 European Countries*, Preliminary Report to the European Commission submitted on 27 October 1997. Volume 2.

Renneboog, Luc (1997), Concentration of Ownership and Pyramidal Shareholding Structures in Belgian Listed Companies. Catholic University of Leuven in *The Separation of Ownership and Control: A Survey of 7 European Countries*, Preliminary Report to the European Commission submitted on 27 October 1997. Volume 2.

### **France**

Bloch, Laurence and Elizabeth Kremp (1997). Ownership and Control in France. INSEE (Paris) and Banque de France (Paris). in *The Separation of Ownership and Control: A Survey of 7 European Countries*, Preliminary Report to the European Commission submitted on 27 October 1997. Volume 3.

### **Germany**

Becht, Marco and Ekkehart Böhmer, Ekkehart (1997). Transparency of Ownership and Control in Germany. Université Libre de Bruxelles and Humboldt Universität Berlin. in *The Separation of Ownership and Control: A Survey of 7 European Countries*, Preliminary Report to the European Commission submitted on 27 October 1997. Volume 3.

### **Italy**

Bianchi, Marcello, Magda Bianco and Luca Enriques (1997), Ownership, Pyramidal Groups and the Separation between Ownership and Control in Italy. Banca d'Italia and CONSOB, Rome. in *The Separation of Ownership and Control: A Survey of 7 European Countries*, Preliminary Report to the European Commission submitted on 27 October 1997. Volume 3.

### **The Netherlands**

De Jong, Abe, Rezaul Kabir, Teye Marra and Ailsa Röell (1997). Ownership and Control in The Netherlands. Tilburg University, Université Libre de Bruxelles and Princeton University. in *The Separation of Ownership and Control: A Survey of 7 European Countries*, Preliminary Report to the European Commission submitted on 27 October 1997. Volume 4.

### **Spain**

Crespi, Rafel (1997), A Survey on Spanish Corporate Governance Rules, Statistics and Institutions. Universitat Autònoma de Barcelona. in *The Separation of Ownership and Control: A Survey of 7 European Countries*, Preliminary Report to the European Commission submitted on 27 October 1997. Volume 4.

### **United States**

Becht, Marco (1997). Beneficial Ownership of Listed Companies in the United States. ECGN mimeo. Université Libre de Bruxelles. in *The Separation of Ownership and Control: A Survey of 7 European Countries*, Preliminary Report to the European Commission submitted on 27 October 1997. Volume 4.

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# Appendix :

## 1 The Transparency Directive

### 1.1 Who has to Notify? (88/627/EEC)

#### Article 1

1. Member States shall make subject to this Directive natural persons and legal entities in public or private law who acquire or dispose of, directly or through intermediaries, holdings meeting the criteria laid down in Article 4 (1) which involve changes in the holdings of voting rights in companies incorporated under their law the shares of which are officially listed on a stock exchange or exchanges situated or operating within one or more Member States.

#### Article 4

1. Where a natural person or legal entity referred to in Article 1 (1) acquires or disposes of a holding in a company referred to in Article 1 (1) and where, following that acquisition or disposal, the proportion of voting rights held by that person or legal entity reaches, exceeds or falls below one of the thresholds of 10 %, 20 %, 1 / 3, 50 % and 2 / 3, he shall notify the company and at the same time the competent authority or authorities referred to in Article 13 within seven calendar days of the proportion of voting rights he holds following that acquisition or disposal. Member States need not apply:

- the thresholds of 20 % and 1 / 3 where they apply a single threshold of 25 %,
- the threshold of 2 / 3 where they apply the threshold of 75 %. The period of seven calendar days shall start from the time when the owner of the major holding learns of the acquisition or disposal, or from the time when, in view of the circumstances, he should have learnt of it.

Member States may further provide that a company must also be informed in respect of the proportion of capital held by a natural person or legal entity.

### 1.2 Definition of Control (88/627/EEC)

#### Article 8

1. For the purposes of this Directive, 'controlled undertaking' shall mean any undertaking in which a natural person or legal entity:

- (a) has a majority of the shareholders' or members' voting rights; or
  - (b) has the right to appoint or remove a majority of the members of the administrative, management or supervisory body and is at the same time a shareholder in, or member of, the undertaking in question; or
  - (c) is a shareholder or member and alone controls a majority of the shareholders' or members' voting rights pursuant to an agreement entered into with other shareholders or members of the undertaking.
2. For the purposes of paragraph 1, a parent undertaking's rights as regards voting, appointment and removal shall include the rights of any other controlled undertaking and those of any person or entity acting in his own name but on behalf of the parent undertaking or of any other controlled undertaking.

### **1.3 Definition of Attributable Votes in (88/627/EEC)**

#### **Article 7**

For the purposes of determining whether a natural person or legal entity as referred to in Article 1 (1) [that defines who such legal entities are] is required to make a declaration as provided for in Article 4 (1) [that sets out the maximum notification thresholds] and in Article 5 [that defines when the declarations have to be made for the first time], the following shall be regarded as voting rights held by that person or entity:

- voting rights held by other persons or entities in their own names but on behalf of that person or entity,
- voting rights held by an undertaking controlled by that person or entity;
- voting rights held by a third party with whom that person or entity has concluded a written agreement which obliges them to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the management of the company in question.
- voting rights held by a third party under a written agreement concluded with that person or entity or with an undertaking controlled by that person or entity providing for the temporary transfer for consideration of the voting rights in question,
- voting rights attaching to shares owned by that person or entity which are lodged as security, except where the person or entity holding the security controls the voting rights and declares his intention of exercising them, in which case they shall be regarded as the latter's voting rights,

- voting rights attaching to shares of which that person or entity has the life interest,
- voting rights which that person or entity or one of the other persons or entities mentioned in the above indents is entitled to acquire, on his own initiative alone, under a formal agreement; in such cases, the notification prescribed in Article 4 (1) shall be effected on the date of the agreement,
- voting rights attaching to shares deposited with that person or entity which that person or entity can exercise at its discretion in the absence of specific instructions from the holders.

By way of derogation from Article 4 (1), where a person or entity may exercise voting rights referred to in the last indent of the preceding subparagraph in a company and where the totality of these voting rights together with the other voting rights held by that person or entity in that company reaches or exceeds one of the thresholds provided for in Article 4 (1), Member States may lay down that the said person or entity is only obliged to inform the company concerned 21 calendar days before the general meeting of that company.

## **2 Definitions of Control**

### **2.1 European Merger Legislation (Council Regulation EEC n° 4064/89)**

(Council Regulation (EEC) n° 4064/89 of 21 December 1989, <http://europa.eu.int/en/comm/dg04/lawmerg/en/4064.htm>)

#### **Article 3**

3. For the purposes of this Regulation, control shall be constituted by rights, contracts or any other means which, either separately or in combination and having regard to the considerations of fact or law involved, confer the possibility of exercising decisive influence on an undertaking, in particular by:
  - (a) ownership or the right to use all or part of the assets of an undertaking;
  - (b) rights or contracts which confer decisive influence on the composition, voting or decisions of the organs of an undertaking.
4. Control is acquired by persons or undertakings which:
  - (a) are holders of the rights or entitled to rights under the contracts concerned; or

- (b) while not being holders of such rights or entitled to rights under such contracts, have the power to exercise the rights deriving therefrom.
5. A concentration shall not be deemed to arise where:
- (a) credit institutions or other financial institutions or insurance companies, the normal activities of which include transactions and dealing in securities for their own account or for the account of others, hold on a temporary basis securities which they have acquired in an undertaking with a view to reselling them, provided that they do not exercise voting rights in respect of those securities with a view to determining the competitive behaviour of that undertaking or provided that they exercise such voting rights only with a view to preparing the disposal of all or part of that undertaking or of its assets or the disposal of those securities and that any such disposal takes place within one year of the date of acquisition; that period may be extended by the Commission on request where such institutions or companies can show that the disposal was not reasonably possible within the period set;
  - (b) control is acquired by an officeholder according to the law of a Member State relating to liquidation, winding up, insolvency, cessation of payments, compositions or analogous proceedings;
  - (c) the operations referred to in paragraph 1 (b) are carried out by the financial holding companies referred to in Article 5 (3) of the Fourth Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies (4), as last amended by Directive 84/569/EEC (5), provided however that the voting rights in respect of the holding are exercised, in particular in relation to the appointment of members of the management and supervisory bodies of the undertakings in which they have holdings, only to maintain the full value of those investments and not to determine directly or indirectly the competitive conduct of those undertakings.

#### **Article 5**

4. Without prejudice to paragraph 2, the aggregate turnover of an undertaking concerned within the meaning of Article 1 (2) shall be calculated by adding together the respective turnovers of the following:
- (a) the undertaking concerned;
  - (b) those undertakings in which the undertaking concerned, directly or indirectly:
    - owns more than half the capital or business assets, or

- has the power to exercise more than half the voting rights,  
or
  - has the power to appoint more than half the members of the  
supervisory board, the administrative board or bodies  
legally representing the undertakings, or
  - has the right to manage the undertakings; affairs;
- (c) those undertakings which have in the undertaking concerned  
the rights or powers listed in (b);
- (d) those undertakings in which an undertaking as referred to  
in (c) has the rights or powers listed in (b);
- (e) those undertakings in which two or more undertakings as  
referred to in (a) to (d) jointly have the rights or powers  
listed in (b).

**FORM CO RELATING TO THE NOTIFICATION OF A CONCENTRATION  
PURSUANT TO REGULATION (EEC) No 4064/89**

(11) See Articles 3 (3) to 3 (5) and 5 (4).

SECTION 3

Ownership and control (11)

For each of the parties to the concentration provide a list of  
all undertakings belonging to the same group.

This list must include:

- 3.1. all undertakings or persons controlling these parties,  
directly or indirectly;
- 3.2. all undertakings active on any affected market (12) that  
are controlled, directly or indirectly:
  - (a) by these parties;
  - (b) by any other undertaking identified in 3.1.

For each entry listed above, the nature and means of control  
shall be specified.

The information sought in this section may be illustrated by  
the use of organization charts or diagrams to show the  
structure of ownership and control of the undertakings.

# Preliminary Report

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## The Separation of Ownership and Control: A Survey of 7 European Countries

Submitted to the European Commission DGIII on 27 October 1997

### Volume 2

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# The Separation of Ownership and Control: An Austrian Perspective

European Corporate Governance Network

September 1997

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# 1. Introduction

Increasing global competition has recently focused research efforts on the analysis of the effects of countries' corporate governance systems on the performance of their financial and product markets. However, most of the existing work is restricted to the exploration of few countries such as the US, Germany, Japan, and the UK. In a logical next step, research will be extended to international comparisons of a wider range of corporate governance systems. This study contributes to this research effort by providing information on Austria's corporate governance system.

Until now the structure of Austrian corporate governance has remained largely unexplored. This is partly due to the complex structure of the system and partly due to the difficulty in obtaining data. This paper therefore represents a first step towards a systematic analysis of corporate governance in Austria. The focus of this study is on the separation of ownership and control of Austrian firms.

The legal part contains basic information on the Austrian legal framework which determines the relationship between ownership and control. After a presentation of relevant regulation concerning the most important corporate legal forms, we summarize the basic features of legal forms characterized by the lack of a clearly defined residual owner. These „ownerless“ legal forms are very important in the Austrian financial sector.

In the empirical part, we present data concerning the Austrian corporate landscape. Moreover, we discuss which information about control structures has to be publicly disclosed via the company register and under the Austrian implementation of the EU-transparency directive. Thereafter, we present our empirical investigations. Based on information about the 600 largest Austrian firms, the following findings are particularly relevant in this context:

First, Austria seems to be the European country with the highest direct ownership concentration. The average fractional ownership of the largest shareholder in our sample of the 600 largest firms is over 80%!

Second, the state and the banking-sector play a disproportionately large role in corporate governance. Especially for the larger firms in our sample, the government and banks are major shareholders. For the largest size decile, the government and banks jointly own more than 30% of the stock! By contrast to e.g. Germany, these institutions rather than families are major players in the corporate governance of large firms.

Third, the banking and insurance industry is dominated by entities different from stock corporations (i.e. cooperatives, savings banks and mutual insurance associations). In order to grant these entities access to the capital market they have been allowed by law to found stock corporations, to transfer assets between those corporations and to mix the different legal forms. The result is a very complex system of corporate governance of financial institutions. In particular, a significant fraction of banks and insurance companies are organized as associations and are therefore effectively ownerless. Many of these associations are dominated by municipalities. The generally close relationship between political institutions and these associations provides the government with even more influence on the corporate sector.

Fourth, corporate ownership of Austrian companies is significant. Such inter-corporate equityholdings typically take the simple form of pyramids. By contrast to other EU countries (Belgium, Germany), there are virtually no cross-holdings in our sample of the 600 largest Austrian firms. The large ownership stake of foreign firms can be partly explained by the important role that German parent companies play in Austrian corporate governance. It is evident that foreign firms prefer direct investment in non-listed firms as they own a much smaller fraction of firms listed on the stock exchange.

Fifth, we find that the size of the supervisory board is determined by (i) the legal form, (ii) firm-size as well as (iii) the identity of the largest shareholder. In particular, we find that the size of the supervisory board is significantly positively related to state- and bank- control of a corporation even after controlling for firm-size and legal form.

Some of these features of Austrian corporate governance can be explained historically. In particular, after the second World War, a significant portion of the Austrian economy was nationalized, partly in order to withdraw their assets from the claims of the victorious nations. For several reasons this fact still influences today's corporate governance structures, despite numerous privatisations. First, some segments of the economy such as a significant part of the banking industry have in effect not yet been privatized. Second, partly because the nationalized part of Austria's economy was not represented on the stock market, the Vienna Stock Exchange remained small and illiquid. This fact was reinforced by the Austrian pension system, which almost exclusively relies on intergenerational transfer payments. Under Austrian law, pension funds exist only as of 1990 and institutional investment by pension funds is still of minor importance.

One possible interpretation of Austrian corporate governance is that of an "insider system" where changes in corporate strategy are triggered by "committees" rather than the outcome of bidding on a "market for corporate strategy". Franks and Mayer (1996)<sup>4</sup> define an "insider system" of corporate governance to be characterized by (i) few listed companies, (ii) a large number of substantial share stakes and (iii) large intercorporate equityholdings. The Austrian situation is characterized by all of these features.<sup>5</sup> In the light of these findings, it comes as no surprise that there does not exist a market for corporate strategy comparable to Anglo-American takeover-markets.<sup>6</sup> Instead, the design of the corporate strategy resides with a firm's boards.

This report is structured as follows. Part one summarizes the relevant regulation. Part two contains information on data sources concerning the Austrian corporate landscape and summarizes our empirical findings.

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<sup>4</sup> Franks and Mayer, 1996, „Ownership, Control and the Performance of German Corporations“, LBS Working Paper.

<sup>5</sup> Looking at a sample of 62 out of a total of only 74 nonfinancial companies listed on the Vienna Stock Exchange, we find that even for these companies, the largest shareholder owns on average more than 50% of the common stock. Moreover, there frequently exist minority shareholders such as banks holding significant stakes of the equity. Also, as discussed above, our findings illustrate the omnipresence of pyramiding albeit pyramids are usually less complex and smaller than in the case of Germany.

<sup>6</sup> There also exist legal impediments to control-changes: The acquirer of a majority stake in a corporation is not automatically entitled to direct the company. This is the case since the management board of a corporation can only be resolved prematurely by the supervisory board conditional on a substantial cause. The premature removal of a member of the supervisory board requires a resolution of the general meeting of shareholders with a majority of at least three-fourths of the votes cast.

## 2. Legal Survey

As in most other jurisdictions Austrian corporate law distinguishes between (business in) legal forms involving personal liability of the entrepreneur and forms in which a corporate entity serves as a „shelter“ to avoid shareholders‘ personal liability for the obligations of the company<sup>7</sup>. (Basically Austrian law recognizes sole proprietorships and personal trading companies on the one hand and corporations on the other.) Appendix A contains a list of all corporate and non-corporate legal forms.

The most important corporate legal forms are the „company with limited liability“ (Gesellschaft mit beschränkter Haftung or short GmbH) and the „stock corporation“ (Aktiengesellschaft or short AG). Subsection 2.1 presents the major characteristics of these two legal forms. Moreover, this Subsection summarizes important legal provisions which may induce a divergence between ownership and control for the stock corporation. In particular, we discuss institutional determinants of voting in stock corporations such as voting-pacts or depository voting which may result in a deviation from the principle of „one share-one vote“. In this context, we also present legal provisions relevant for intercorporate equityholdings and, hence, deviations from „one share-one vote“ by chaining (ownership stakes in) several corporations.

Subsection 2.2 presents some legal forms characterized by the lack of a clearly defined residual owner. An important „ownerless“ corporate legal form in the banking industry is the „commercial cooperative“ (Erwerbs- und Wirtschaftsgenossenschaft). Other important ownerless legal forms in the financial sector are the „savings bank“ (Sparkasse) and the „mutual insurance association“ (Versicherungsverein auf Gegenseitigkeit).

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<sup>7</sup> Look generally Horvath in Heller/Löber/Bahn/Huber/Horvath, *Austrian Business Law* (1984) 123-228; N Simon, *Introduction to Austrian Company Law*, in Gröhs/Pollak, *Austrian Law & International Business - Company Law and Accounting in Austria* (1995); Kastner/Doralt/Nowotny, *Gesellschaftsrecht*, 5. edition, (1990); Maitland-Walker, *Guide to European Company Laws* (1993) 1-66.

## 2.1 The Company with Limited Liability and the Stock Corporation

### 2.1.1 Basic Structure

Stock corporations are subject to much tighter mandatory regulation than companies with limited liability. Both types of legal entities come into existence upon entry into the company register. Subsection 3.1.1 in the empirical part of this survey lists the data which the company register must provide.

The more standardized character of the stock corporation is reflected by the ease with which shares of stock can be transferred. Table 1 compares the company with limited liability with the stock corporation.

Table 1: Company with Limited Liability, Stock Corporation

Legal Form	Min. Capital (in ATS)	Mandatory Reserves	Superv.Board, Auditors	Transfer of Shares	Owners listed in company- register
Comp. w. Ltd. Liability	500.000	None	Voluntary for small firms	notarial deed	Yes
Stock Corporation	1.000.000	5% of annual profits; up to a maximum of 10% of share capital.	Mandatory	Free (or as specified in bylaws)	No

Organizationally, the supreme organ of both a stock corporation and a company with limited liability is the general meeting. The most striking difference between the organizational form of a stock corporation and a company with limited liability is the position of the managing directors: Whereas the managing director of a stock corporation is quite independent, the managing director of a company with limited liability has to obey instructions of the shareholders. While a managing director of a stock corporation can be revoked prematurely only with substantial cause, a managing director of a company with limited liability can be revoked at any time.

These differences are reflected by the provisions concerning the establishment of a supervisory board in order to monitor the management board. A supervisory board is mandatory in case of a stock corporation. By contrast, in a company with limited liability a

supervisory board is only required when the company is quite large (the amount of share capital is at least 1 Mio ATS and the number of shareholders exceeds 50 or the number of employees is more than 300). In case a limited liability company controls a group or runs an investment fund, it also has to maintain a mandatory supervisory board. Similar provisions determine whether a company with limited liability has to appoint auditors.

To summarize, the stock corporation is characterized by a mutually dependent system of checks and balances comprising the management board, the supervisory board and the general meeting of shareholders. While the supervisory board of a stock corporation is the principal link between the general meeting of shareholders and the management board, the owners of a company with limited liability are in much closer contact with the management. The following Subsection summarizes important legal provisions concerning the structure of the supervisory board of a stock corporation and large companies with limited liability.

### 2.1.1 The Supervisory Board

The main tasks of the supervisory board are (i) the appointment and – given substantial cause - the premature removal of the complete management board or single members; (ii) the supervision of the management of the company and the group; (iii) the approval of important decisions of the management. The supervisory board must hold quarterly meetings. The managing directors are obliged to submit reports to the supervisory board both on a regular basis and in case of important events. The supervisory board may at any time demand reports from the managing directors and may inspect the books and documents of the company

The supervisory board of both the stock corporation and the company with limited liability consists of at least three members. The maximum number of board members increases in proportional relation to the corporations' share capital. One third of the members of the supervisory board are appointed by the council of shop stewards which represents the employees of the company.<sup>8</sup> The chairman of the supervisory board is always elected by the shareholders and holds a casting vote.

In general, all the members of the supervisory board have the same rights and duties. They have to act with the care of orderly businessmen. While no special know-how is required.

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<sup>8</sup> For large corporations, workers' representation on the supervisory board is fractionally smaller relative to Germany where workers' representation makes up for one half of the board.

the knowledge base of the supervisory board as a whole must enable the board to perform its task of supervising the managing directors.

No person may be a member of more than 10 supervisory boards. Thereby, board membership in representation of affiliated companies or banks is counted as one seat irrespective of the number of seats actually held by a single person. In spite of this extension, a single person may not occupy more than 20 seats on supervisory boards either in stock corporations or companies with limited liability. No person may chair more than five supervisory boards.

Once elected, the premature removal of a member of the supervisory board requires a resolution of the general meeting of shareholders agreed upon with a majority of at least three-fourth of the votes cast.

The next Subsection summarizes legal provisions relevant for voting in the general meeting of a stock corporation.

### 2.1.2 Voting in Stock Corporations

According to the Austrian Stock Corporation Act, every shareholder is entitled to attend the general meeting irrespective of the type of his shares. In general, one share has one vote. By contrast to German law, it is strictly forbidden under Austrian law to introduce multiple voting rights. However, a maximum number of votes per stockholder can be specified in the articles of association.

Up to one half the overall nominal amount of ordinary shares (i.e. one-third of the overall capital), it is possible to issue non-voting preference shares. Non-voting preference shares have to be provided with dividend preferences to be paid to the respective shareholders upon the distribution of the profits or the surplus realized upon liquidation of the corporation. If the holders of preference shares do not receive the annual payments they are entitled to for two subsequent years, non voting preference shares assume a right to vote until the claims of the holders of preference shares are met.

### Voting by Depository Banks and Investment Funds

In practice, many minority shareholders do not attend the shareholders' meeting and vote personally but are represented by depository banks. These banks have to be authorized specifically in writing by the shareholder in order to exercise their depository votes. The authorization can be revoked at any time and expires after a maximum period of 15 months.

The depository bank is not obliged to reveal the name of the holder of the share in the general meeting. As there are few corporations with a wide-spread ownership-structure there do not exist strict legal provisions concerning the voting rights of depository banks.

Whereas in Germany banks have to communicate any relevant information (including motions) concerning the shareholder meeting to the shareholders and have to ask for voting instructions there do not exist similar specific legal provisions in Austria

### Voting Pacts

Voting pacts are a common instrument used by shareholders to establish a common voting policy in the shareholder meeting. There are no special rules dealing with voting agreements. In general, if a shareholder breaks a voting pact this infringement does not render void the resolution of the shareholders' meeting.

To the degree that voting pacts give control to a party which does not hold a correspondingly high ownership stake in a corporation, such agreements deviate from the principle of one share-one vote. The separation of ownership and control can also be increased by „pyramiding“, i.e. chaining ownership stakes in several companies. The remainder of the Section summarizes the regulation concerning intercorporate equityholdings.

#### 2.1.3 Intercorporate Equityholdings

In Austria a company, its subsidiaries and the trustees either of the company itself or a subsidiary are restricted from buying and holding its own shares. There are only few exceptions to this restriction and Austrian law enumerates these cases in which the acquisition of a company's own shares is allowed.

In case a company, its subsidiary<sup>9</sup>, or its trustee hold shares of the company in question, no votes may be cast on the basis of these shareholdings – irrespective of whether these shares are held in violation of the law or not. If a company issues new shares, any subsidiary and trustee of this company may not subscribe to these shares.

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<sup>9</sup> In terms of this regulation, a subsidiary is an undertaking which is controlled by the parent company. Thereby, the control concept comprises not only the existence of a unified management for both companies, but - much broader - also any other legally manifested right to exert significant influence.

In any case, the total amount of shares held by a company itself, its subsidiaries and their trustees must not exceed ten percent of the capital of the company in question. In case this threshold is exceeded, the company is obliged to sell the shares or even to withdraw them.

There are no explicit regulations governing cross or ring shareholdings. However, the above-mentioned provisions dealing with the acquisition of own shares are interpreted to apply also to indirect shareholdings.

## 2.2. Legal Forms without clearly defined Residual Owner

Whereas the above mentioned legal forms have owners, the following legal forms are examples of legal entities without a clearly defined residual owner. Whenever these „ownerless“ legal entities hold a controlling stake in a stock corporation, the resulting hybrid legal form is potentially characterized by an especially large divergence of ownership and control. As documented below, such hybrid legal forms constitute a large portion of the Austrian financial sector. Hence, the separation of ownership and control is of great practical importance in Austria. This is even more so given the substantial equityholdings of financial institutions in large Austrian non-financial companies documented in the empirical part of this survey.

### 2.2.1. The Commercial Cooperative

The main difference between corporations and cooperatives is in their different purposes: Whereas corporations aim for profit, the purpose of the cooperative lies in the promotion of its members. The following table 2 compares the commercial cooperative to the stock corporation.

Table 2: Commercial Cooperative vs. Stock Corporation

Legal Form	Purpose	General Meeting	Voting	Transfer of Shares
Commercial Cooperative	Promotion of members	May be replaced by Meeting of Representatives	One Vote per member	If provided for by bylaws: Subject to approval by management
Stock Corporation	Shareholder profit maximization	Mandatory	One Vote per share of common stock	Free (if not otherwise provided for by bylaws)

Both a stock corporation as well as a commercial cooperative have to appoint a supervisory board. However, whereas the members of the supervisory board of a stock corporation are elected by the general meeting, a commercial cooperative is not obliged to regularly call a general meeting of its members. The possibility to establish a meeting of representatives instead of a meeting of members of the cooperative implies the opportunity to exclude members from the direct control of the board members. In any case, the ability of the members of a commercial cooperative to control the management is limited by the voting structure of a cooperative. Each member of a commercial cooperative is only entitled to cast one vote – irrespective of the number of membership stakes held. Moreover, the transfer of membership stakes between members may be subject to approval by the management. As a consequence, the voting structure of commercial cooperatives is usually characterized by a uniform distribution of voting rights across its members.

### 2.2.2 The Private Foundation

A potentially even larger separation of ownership and control may prevail under the legal form of a private foundation. The private foundation was established in Austria in 1993. Such a foundation must execute and fulfill the purpose specified by the founder. This purpose may be private or public, charitable or not. It should be stressed, however, that a foundation may not trade or run a business itself but only hold shares and other assets. The private foundation has two mandatory organs, the managing board and the auditors. The Board must consist of at least three members. The Managing Board is the most important body as it manages and represents the foundation. The beneficiaries or any person with an economic interest in the sound operation of the foundation are neither entitled to be member of the managing board nor to nominate its members. In case a

supervisory board exists, only half of its members may be beneficiaries or have an economic interest in the operation of the private foundation.<sup>10</sup>

### 2.2.3. The Savings Bank

Saving banks are corporate entities which are founded either by municipalities (Gemeindeparkasse) or by savings bank associations (Vereinssparkasse). It should be noted that savings banks have no owner but instead there is a special relationship between the saving bank and either the municipality or the savings bank association in that these founders guarantee for the savings bank. While upon foundation, the founders of a savings bank have to provide sufficient capital, the capital subsequently belongs to the savings bank and will not be paid back to the founder.

Savings banks have two organs: the board of directors (Vorstand) and the savings-bank-council (Sparkassenrat) which can be compared to the supervisory board.

Since savings banks do not have owners, they cannot raise capital by issuing shares. In order to mitigate this problem, a special hybrid legal form was created, the so-called savings-bank-stock corporation (Sparkassen-Aktiengesellschaft). A savings-bank-stock corporation is a savings-bank which owns equity in a stock-corporation. The legal construction therefore comprises institutions at three levels: (i) the municipality or savings bank association which controls (ii) the saving bank which in turn holds equity of (iii) the savings-bank-stock corporation.

An example of such a hybrid legal form is the largest Austrian bank, Bank Austria, which recently acquired control over Creditanstalt. Bank Austria itself emerged from a merger involving a savings bank founded by the municipality of Vienna such that the city of Vienna guarantees Bank Austria's liabilities in case of default. However, triggered by the recent acquisition of Creditanstalt by Bank-Austria, a law is underway which amends the rules about the relationship among the different legal entities within this area – in particular concerning the guarantee-relationship between savings banks and municipalities.

### 2.2.4 The Mutual Insurance Association

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<sup>10</sup> The number of private foundations has increased dramatically over the last year. While there were only 365 of these legal entities at the beginning of April 1996, there now exist more than 600 private foundations. For more detailed information on private foundations, see Breindl, A. G., *Typologie der Privatstiftung: Eine empirische Analyse der ersten 365 Stiftungsurkunden*, Service Fachverlag, Wien 1997.

In Austria only stock corporations and mutual insurance associations are allowed to run an insurance business upon permission by the competent authority. A mutual insurance association is an economic association which provides insurance to its members. A member of an insurance association at the same time contracts insurance by this association. However, mutual insurance associations can offer insurance to non-members as well. Large mutual insurance associations have to maintain three organs: the board of directors, the supervisory board and a supreme organ which is either the meeting of members or the meeting of representatives. Similar to a commercial cooperative, it is possible to exclude the members of a mutual insurance association from control whenever the articles of association specify that a meeting of representatives replaces the meeting of members.

Similar to savings banks, mutual insurance associations cannot issue shares. To allow mutual insurance associations to access the capital market, a special type of restructuring for insurance associations was allowed in 1991. According to section 61a of the Insurance Supervision Act, mutual insurance associations are permitted to contribute their business partly or wholly to a stock corporation which is founded only for this purpose. In this case, only the mutual insurance association itself receives stock, but no stock is distributed to the members of the association.

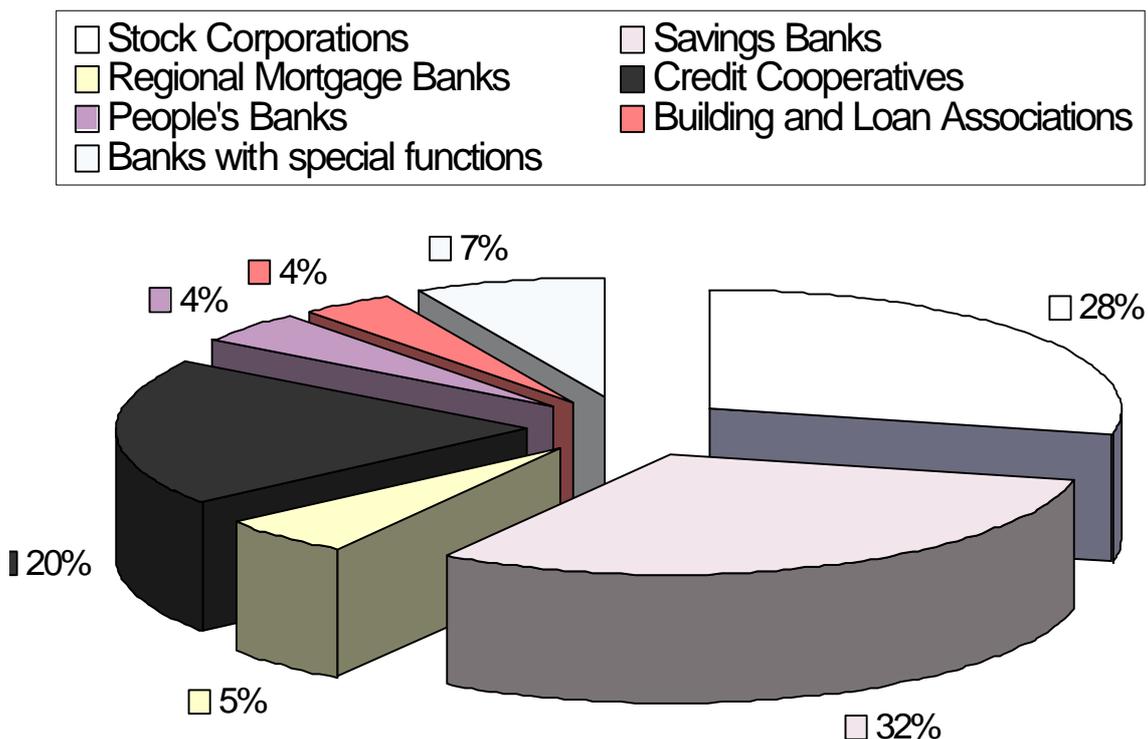
Mutual insurance associations also hold significant stakes in other Austrian companies. As an example, a mutual insurance association, Wiener Städtische Versicherung, holds a 9% stake of the equity of Bank Austria. Similar to the savings bank council of Bank Austria, this mutual insurance association is presided by the mayor of Vienna.

#### 2.2.5 The Prevalence of „Ownerless“ Legal Forms in the Banking Industry

Figure 1 shows the relative importance of the various legal forms in the credit sector in Austria as measured by total assets in 1995. This figure depicts the situation before Bank Austria acquired control over Creditanstalt. The most important legal forms are savings banks (Sparkassensektor) with a "market share" of 32%, and Credit cooperatives (mainly the Raiffeisensektor, 20% of total assets). Problems associated with the separation of ownership and control should be expected here because ownership structures are typically not well defined. Since Creditanstalt has been the largest bank organized as a stock corporation, 52% is likely to be a lower bound of the „ownerless“ segment of the credit sector. Complementary to market shares, in a 1989 study of the ownership structure in

Austria, Beer et al. (1989)<sup>11</sup> found that the state ultimately owned 24%, Savings Banks 17.4%, and Commercial Cooperatives 13.5% of the equity in the credit sector.

Figure 1: The Credit Sector in Austria  
(Total Assets in Percent of Total in 1995)



<sup>11</sup> Beer, Elisabeth et al., 1991, "Wem gehört Österreichs Wirtschaft wirklich?", Studie der Kammer für Arbeiter und Angestellte für Wien, Orac Verlag.

## 3. Statistical Survey

This section summarizes our quantitative assessment of the Austrian corporate landscape based on data provided by the Austrian Statistical Office (ÖSTAT) and an Austrian publisher, the Wirtschafts-Trend Zeitschriftenverlagsgesellschaft m.b.H..

Subsection 3.1 summarizes regulation relevant for the disclosure of information about the control structure of Austrian corporations and presents some data sources on the Austrian corporate landscape.

### 3.1. Data on the Austrian Corporate Landscape

#### 3.1.1 The Company Register

At the company register the following data on stock corporations are available on line: the business name; the registered office; the business area, the amount of share capital; the number of the shares, the members of the management board, how the company is represented and by whom; every resolution of the shareholders concerning an important matter.

At the court which is in charge of the geographical area into which a company's registered office falls, the following additional documents are publicly available: the Articles of association; information on the subscription of shares by the founders; the names of the members of the supervisory board; information on the foundation of the company; the minutes of the shareholder-meetings including the list of participants of each meeting; mandatory reports concerning mergers, successions, transformations of the business area; the annual financial statements.

In addition to the above mentioned documents, a company with limited liability has to submit a list of shareholders to the company register.

#### 3.1.2 The Transparency Directive

Austria has implemented the transparency directive in 1990. The aim of the relevant provisions in the Stock Exchange Act is to enhance the transparency of control structures of Austrian stock corporations: Large acquisitions or sales of control over voting-rights trigger the duty to announce that a major change in the control structure of

a listed stock corporation has occurred. In particular, Section 91 of the Stock Exchange Act specifies „notification thresholds“, i.e. certain critical values for the portion of voting rights controlled by a single party. Anybody crossing a notification threshold due to a direct or indirect acquisition<sup>12</sup> or sale of control over voting rights has to announce which notification threshold has been crossed. In particular, the thresholds specified by the law are 5%, 10%, 25%, 50%, 75% and 90% of the total voting rights of the company.<sup>13</sup>

The disclosure requirement comprises neither the exact portion of voting rights controlled nor information on the way and the “channel“ through which these voting rights are controlled. However, in practice it is not unusual that such information is disclosed voluntarily.<sup>14</sup> Note also that under the Stock Exchange Act the managers of a corporation are generally not obliged to disclose their own holdings of shares unless a threshold is crossed.

According to the Act on the Supervision of Investment Services, the crossing of a notification threshold must be announced to the Bundeswertpapier-Aufsicht as well as the corporation in question within 7 days. According to Section 93 of the Stock Exchange Act the corporation in question is obliged to inform the general public via an announcement in the official newspaper within additional 9 days. If a corporation learns that its control structure is materially altered (relative to what is publicly known) without proper prior notification the corporation has to instantaneously inform the general public. Besides announcement in the official newspaper, it is also possible to communicate the occurrence of a control change in real time via the information system of the Vienna Stock Exchange, HERMES.

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<sup>12</sup> Section 92 of the Stock Exchange Act lists situations in which indirect control of voting rights is deemed equivalent to direct control of voting rights. The most important are (i) voting rights held by other persons or entities in their own name but on behalf of the person or entity in question; (ii) voting rights held by an undertaking controlled by the person or entity in question; (iii) voting rights held by a third party with whom the person or entity in question has concluded a long-term written agreement which obliges the third party to adopt a certain voting policy; (iv) voting rights held by a third party when there exists a written agreement between this party and the person or entity in question which temporarily transfers control over these voting rights for consideration, (v) voting rights attached to shares deposited with a person or entity which the person or entity in question can exercise at its discretion in the absence of specific instructions from the holders.

<sup>13</sup> Hence, relative to the transparency directive, there are two additional thresholds, 5% and 90%, which are important due to the fact that certain minority rights and majority rights are linked to these thresholds.

<sup>14</sup> As an example, consider Allgemeine Baugesellschaft A. Porr AG. In this corporation, there exists a voting pact controlling more than 75% of the votes which comprises Bank Austria, Bundesländer Versicherung, RZB, GTM Entrpose, BeTePe Bau AG, Wiener Städtische Allg. Versicherung and Wiener Holding.

Although the law does not specify effective sanctions in case of non-compliance with the provisions of the Stock Exchange Act, it seems that control changes are regularly disclosed in practice.<sup>15</sup> Based on these disclosures, the Vienna Stock Exchange provides a summary of the current voting structure of listed corporations on request. There also exist plans to make this information available on the Internet.<sup>16</sup>

### 3.1.4 Data

Data about basic population statistics was provided by the Austrian Statistical Office and is census data as of 1991. The data provided by the *Wirtschafts-Trend-Zeitschriftenverlagsgesellschaft m.b.H*<sup>17</sup> is based on information collected by a credit-rating agency, the *Österreichischer Kreditschutzverband von 1870*, as well as information supplied by the corporations themselves. Our sample includes the largest 600 Austrian non-financial corporations as measured by turnover. Ownership data, pyramids, data about management and supervisory boards, and key accounting data are available for the year 1996. About 25 % of the Austrian workforce were employed by a corporation in our sample. The aggregate turnover of these corporations accounts for about 30% of GDP. Furthermore, a subsample of 62 listed non-financial companies covering 80% of total listed non-financial corporations is constructed.

## 3.2. Basic Population Statistics

Table 3 gives a breakdown of the total number of active companies by legal form in 1991. The most important legal form in terms of number of companies is the sole-proprietorship (EU) of which 166,420 existed in 1991 representing 73.8% of the total number of companies in Austria (225,367). Economically (in terms of employees) the most important legal form is the company with limited liability (GmbH) of which 37,491 (16.6% of the total) existed in the reporting year employing 868,904 people or 36.3% of the work force (excluding civil servants). In general, the largest companies adopt the stock corporation (AG) as the legal form. Only 733 AGs (0.33%) employ nearly 12% of the employees.

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<sup>15</sup> The Vienna Stock Exchange built up the reputation to enforce the disclosure of control changes when the Julius Meinel AG was delisted as a consequence of non-compliance with the disclosure requirements.

<sup>16</sup> We would like to thank Dr. Heider from the Vienna Stock Exchange for helpful discussions. The http address under which the HERMES information system can be accessed is <http://www.vienna-stock-exchange.at>.

<sup>17</sup> The name of the CD-Rom is: trend TOP 500 CD-ROM.

Tables 4.a) and 4.b) provide information on the total number and percentages, respectively, of companies broken down by sector of activity and legal form. The sector of activity is defined by the Austrian Statistical Office according to the öNACE classification scheme. Slight inconsistencies between table 3 and tables 4 and 5 concerning the total number of companies arise due to ÖSTAT estimation procedures.

Most Austrian companies operate in the retail sector (more than 68,000 or 30.1%), followed by tourism (17.9%), and manufacturing (nearly 30,000 or 13.2%). More than one third of the GmbHs are located in the retail sector. AGs operate disproportionately often in the manufacturing (23.4% of AGs), the credit and insurance (20.7%), the real estate (17.5%), and the retail sector (17.2%). Interesting is the cluster of Commercial Cooperatives (Gen) in the credit sector (nearly 60%) mainly due to the presence of the Raiffeisen cooperatives. We compute the standardized residuals of the Frequency Table 4.a) relative to fitted values when legal form and sector are independent categorical variables. The Pearson Chi-squared test with 40 degrees of freedom rejects the null hypothesis of independence of legal-form and sector at a p-value below 0.001.<sup>18</sup>

Tables 5.a) and 5.b) display the distribution of the number, respectively, percentages of companies by employee size classes and legal forms. Obviously, the distribution of the number of sole-proprietorships over size-classes is skewed towards the smaller size categories. The largest part of these companies consist only of the owner-entrepreneur and do not at all employ other people. Sole proprietorships with fewer than 19 employees remain the single most important legal form. The size classes from 20 up to 999 employees are dominated by GmbHs, but more than 95% of the GmbHs employ less than 100 people. This strongly reflects the small and medium sized corporate structure in Austria. While AGs are (as expected) most prominent in the largest size class (1000 - ), holding companies, which do not have many employees, are responsible for the nearly uniform distribution of AGs across size classes.

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<sup>18</sup> We regrouped categories in order to obtain fitted values in excess of one under the assumption of independence. The test does not adjust for company size.

Table 3: Total Number of Active Companies by Legal Form in 1991

Legal Form	Companies		Employees	
	Number	Percent of Total	Number	Percent of Total
Stock Corporation (AG)	733	0.33	282,578	11.79
Company with Limited Liability (GmbH)	37,491	16.64	868,904	36.25
Limited Partnership with a Company with Limited Liability (GmbH & CoKG)	5,649	2.51	168,855	7.04
Limited Partnership (KG)	4,358	1.93	96,440	0.40
General Partnership (OHG)	2,212	0.98	44,805	1.87
Small Registered Limited Partnership (KEG)	64	0.03	193	0.01
Small Registered Partnership (OEG)	137	0.06	492	0.02
Civil Law Partnership (GesbR)	4,779	2.12	29,366	1.23
Sole Proprietorship (EU)	166,420	73.84	641,417	26.76
Commercial Cooperative (Gen)	1,552	0.69	61,569	2.57
Other Legal Forms	1,972	0.88	202,238	8.44
<b>TOTAL</b>	<b>225,367</b>	<b>100.0</b>	<b>2,396,857</b>	<b>100.0</b>

Source: ÖSTAT (Austrian Statistical Office)

Table 4.a): Distribution of the Number of Companies by Sector and Legal Form

	GmbH	EU	AG	Other	GmbH&CoKG	Gen	OHG	GesbR	KG	OEG	KEG	TOTAL
Agriculture and Forestry	10.0	117.0	0.0	2.0	3.0	22.0	2.0	2.0	0.0	1.0	1.0	160.0
Fishery	0.0	1.0	0.0	0.0	0.0	0.0	0.0	1.0	0.0	0.0	0.0	2.0
Mining	92.0	188.0	5.0	0.0	36.0	0.0	6.0	9.0	18.0	0.0	0.0	354.0
Manufacturing	5915.0	20253.0	171.0	68.0	1397.0	179.0	448.0	558.0	950.0	10.0	6.0	29955.0
Utilities	60.0	102.0	29.0	97.0	8.0	32.0	3.0	9.0	17.0	0.0	0.0	357.0
Construction	4005.0	10173.0	21.0	32.0	817.0	4.0	157.0	190.0	323.0	5.0	2.0	15729.0
Retail Sector	13388.0	47936.0	126.0	82.0	1996.0	269.0	1015.0	1125.0	2052.0	29.0	15.0	68033.0
Tourism	4508.0	33168.0	18.0	356.0	390.0	12.0	295.0	1027.0	511.0	26.0	22.0	40333.0
Transport and Communications	2122.0	6722.0	77.0	141.0	423.0	16.0	68.0	94.0	113.0	3.0	0.0	9779.0
Banking and Insurance	292.0	1057.0	151.0	148.0	25.0	923.0	7.0	26.0	8.0	2.0	0.0	2639.0
Real Estate and Consulting	5728.0	19374.0	128.0	174.0	370.0	86.0	128.0	1147.0	272.0	42.0	13.0	27462.0
Education	56.0	784.0	0.0	117.0	2.0	3.0	1.0	47.0	0.0	1.0	1.0	1012.0
Health Care, Veterinary Services and Social Services	110.0	13444.0	0.0	270.0	18.0	1.0	5.0	154.0	3.0	6.0	0.0	14011.0
Other Services	1203.0	13104.0	5.0	485.0	163.0	5.0	77.0	392.0	90.0	12.0	4.0	15540.0
TOTAL	37489.0	166423.0	731.0	1972.0	5648.0	1552.0	2212.0	4781.0	4357.0	137.0	64.0	225366.0

Source: ÖSTAT (Austrian Statistical Office)

Table 4.b): Distribution of Percentages of Companies by Sector and Legal Form

SECTOR	GmbH	EU	AG	Other	GmbH &CoKG	Gen	OHG	GesbR	KG	OEG	KEG	TOTAL (Firms)
Agriculture and Forestry	0.03	0.07	0.00	0.10	0.05	1.42	0.09	0.04	0.00	0.73	1.56	0.07
Fishery	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.02	0.00	0.00	0.00	0.00
Mining	0.25	0.11	0.68	0.00	0.64	0.00	0.27	0.19	0.41	0.00	0.00	0.16
Manufacturing	15.78	12.17	23.39	3.45	24.73	11.53	20.25	11.67	21.80	7.30	9.38	13.29
Utilities	0.16	0.06	3.97	4.92	0.14	2.06	0.14	0.19	0.39	0.00	0.00	0.16
Construction	10.68	6.11	2.87	1.62	14.47	0.26	7.10	3.97	7.41	3.65	3.13	6.98
Retail Sector	35.71	28.80	17.24	4.16	35.34	17.33	45.89	23.53	47.10	21.17	23.44	30.19
Tourism	12.02	19.93	2.46	18.05	6.91	0.77	13.34	21.48	11.73	18.98	34.38	17.90
Transport and Communications	5.66	4.04	10.53	7.15	7.49	1.03	3.07	1.97	2.59	2.19	0.00	4.34
Banking and Insurance	0.78	0.64	20.66	7.51	0.44	59.47	0.32	0.54	0.18	1.46	0.00	1.17
Real Estate and Consulting	15.28	11.64	17.51	8.82	6.55	5.54	5.79	23.99	6.24	30.66	20.31	12.19
Education	0.15	0.47	0.00	5.93	0.04	0.19	0.05	0.98	0.00	0.73	1.56	0.45
Health Care, Vertenary Services and Social Services	0.29	8.08	0.00	13.69	0.32	0.06	0.23	3.22	0.07	4.38	0.00	6.22
Other Services	3.21	7.87	0.68	24.59	2.89	0.32	3.48	8.20	2.07	8.76	6.25	6.90
TOTAL (All Sectors)	16.63	73.85	0.32	0.88	2.51	0.69	0.98	2.12	1.93	0.06	0.03	100.00

Source: ÖSTAT (Austrian Statistical Office)

Table 5.a): Distribution of Number of Companies by Employee Size Classes and Legal Form

Size Class (# of employees)	GmbH	EU	AG	Other	GmbH & CoKG	Gen	OHG	GesbR	KG	OEG	KEG	TOTAL
0.0	391.0	64870.0	14.0	484.0	311.0	6.0	274.0	1598.0	368.0	74.0	27.0	68049.0
1.0	4772.0	31703.0	50.0	346.0	252.0	91.0	197.0	643.0	308.0	20.0	13.0	38087.0
2-4	11840.0	42193.0	68.0	462.0	789.0	184.0	501.0	1191.0	875.0	31.0	18.0	57277.0
5-9	7972.0	18117.0	63.0	204.0	1056.0	307.0	523.0	769.0	1020.0	5.0	5.0	29021.0
10-19	5538.0	6992.0	65.0	180.0	1299.0	349.0	348.0	419.0	855.0	7.0	1.0	15198.0
20-49	3953.0	2140.0	73.0	138.0	1196.0	359.0	234.0	139.0	589.0	0.0	0.0	8232.0
50-99	1508.0	299.0	73.0	68.0	433.0	153.0	73.0	14.0	199.0	0.0	0.0	2621.0
100-199	843.0	82.0	67.0	48.0	196.0	73.0	38.0	7.0	82.0	0.0	0.0	1354.0
200-499	487.0	26.0	97.0	20.0	100.0	22.0	16.0	1.0	43.0	0.0	0.0	769.0
500-999	122.0	1.0	84.0	8.0	15.0	6.0	5.0	0.0	14.0	0.0	0.0	241.0
1000-	63.0	0.0	78.0	14.0	1.0	2.0	3.0	0.0	4.0	0.0	0.0	161.0
TOTAL	37489.0	166423.0	732.0	1972.0	5648.0	1552.0	2212.0	4781.0	4357.0	137.0	64.0	221010.0

Source: ÖSTAT (Austrian Statistical Office)

Table 5.b): Distribution of Percentages of Companies by Employee Size Classes and Legal Form

Size Class (# of employees)	GmbH	EU	AG	Other	GmbH & CoKG	Gen	OHG	GesbR	KG	OEG	KEG	TOTAL
0.0	1.04	38.98	1.91	24.54	5.51	0.39	12.39	33.42	8.45	54.01	42.19	30.79
1.0	12.73	19.05	6.83	17.55	4.46	5.86	8.91	13.45	7.07	14.60	20.31	17.23
2-4	31.58	25.35	9.29	23.43	13.97	11.86	22.65	24.91	20.08	22.63	28.13	25.92
5-9	21.26	10.89	8.61	10.34	18.70	19.78	23.64	16.08	23.41	3.65	7.81	13.13
10-19	14.77	4.20	8.88	9.13	23.00	22.49	15.73	8.76	19.62	5.11	1.56	6.88
20-49	10.54	1.29	9.97	7.00	21.18	23.13	10.58	2.91	13.52	0.00	0.00	3.72
50-99	4.02	0.18	9.97	3.45	7.67	9.86	3.30	0.29	4.57	0.00	0.00	1.19
100-199	2.25	0.05	9.15	2.43	3.47	4.70	1.72	0.15	1.88	0.00	0.00	0.61
200-499	1.30	0.02	13.25	1.01	1.77	1.42	0.72	0.02	0.99	0.00	0.00	0.35
500-999	0.33	0.00	11.48	0.41	0.27	0.39	0.23	0.00	0.32	0.00	0.00	0.11
1000-	0.17	0.00	10.66	0.71	0.02	0.13	0.14	0.00	0.09	0.00	0.00	0.07

Source: ÖSTAT (Austrian Statistical Office)

### 3.3. Ownership Structure

The findings reported in this subsection are based on data on the 600 largest listed and non-listed non-financial Austrian corporations as measured by total sales.

#### 3.3.1. The Ownership-Structure of the 600 largest Austrian Companies

Among the 600 largest Austrian firms, there are 242 (40.3%) stock corporations (AGs), 301 (50.2%) companies with limited liability (GmbHs), 25 GmbH&CoKGs, 24 personal liability companies (mainly KGs and OHGs), and 8 cooperatives (Gen). The data provided by the TREND-Verlag is as of 1996. We split the sample in 8 size-classes where firm size is measured by sales.

As can be seen from table 6 and figure 2, (direct) ownership concentration is very high and prevalent in all size classes in Austria: Even in the largest 5% of the companies the largest shareholder holds 67% of the equity on average. This percentage rises (though not monotonically) as companies become smaller, and the average largest stake in the 600 largest Austrian corporations is 82.2%! In 297 companies, the largest stake is 100%, only 97 have more than 3 owners! By international standards, Austria seems to be the European country with the largest ownership concentration.

Tables 6.a), 6.b), and figure 3 show direct and ultimate (direct plus indirect) ownership broken down by investor categories (bank, domestic firm, foreign firm, state, family, and dispersed<sup>19</sup> (public) ownership) and size class. Overall, the most important shareholders are domestic and foreign firms holding together nearly 64% of total equity directly. At first sight, banks and the state play only a minor role in influencing corporations by means of ownership. Families hold 22.6% of the stakes directly. Based on the Pearson Chi-squared statistic, we can reject the hypothesis of independence of firm-size and direct ownership of different investor-categories. The large direct ownership of domestic firms (33.6%) indicates the omnipresence of pyramiding. The average pyramid in the largest 600 firms in Austria comprises 3 layers.

Ultimate holdings change the picture: Families nearly double their control to 38.6% of the shares. Together, state and bank ultimate holdings equal 17.3% of total equity. Foreigners control Austrian firms mainly via direct ownership.

Figures 4 to 7 show direct and ultimate ownership broken down by investor categories and size classes. By contrast to the German situation, the importance of ultimate family

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<sup>19</sup> A dispersed ownership structure is one where no shareholder owns a stake in excess of 5%.

ownership of large firms is relatively smaller than the importance of the state's and banks' equityholdings. Together, state and banks' ultimate ownership equals 30% of the equity of the largest 5% of Austrian firms.<sup>20</sup> Strikingly, state and bank ownership is positively related to firm size, while family ownership is negatively related to firm-size. We do not find evidence of a relationship between ownership by foreign firms and firm size.

Table 6: Average Ownership by Company Size and Ownership Stake Size Class

Size Classes by Sales		Ownership Distribution			
Class	Number of Companies	Largest Stake	2nd Stake	3rd Stake	Rest
95 – 100%	30	67,0	10,6	2,9	19,5
90 – 95%	30	84,1	4,1	1,0	10,8
75 – 90%	91	80,1	10,7	2,4	6,8
50 – 75%	149	83,4	9,8	1,3	5,5
25 – 50%	149	83,5	9,3	1,4	5,7
10 – 25%	91	83,9	9,2	2,1	4,8
5 – 10%	30	86,9	8,1	2,0	3,0
0 – 5%	30	78,3	11,6	3,9	6,2
All	600	82,2	9,5	1,9	6,5

Data Basis: Trend-Verlag

<sup>20</sup> This finding is important in the light of the close relationships between Austrian governmental institutions and Austrian banks.

Table 7.a): Direct Ownership by Investors and Size Classes

Size Classes by Sales		Investor Categories					
Class	Number of firms	Banks	Domestic Firms	Foreign Firms	State	Family	Public
95 - 100%	30	3,4	29,6	31,6	13,4	7,2	14,8
90 - 95%	30	8,9	32,6	32,3	8,4	8,4	9,4
75 - 90%	91	3,5	44,2	27,5	6,0	16,0	3,0
50 - 75%	149	4,5	35,1	26,7	7,4	23,1	3,3
25 - 50%	149	4,8	30,3	35,8	2,3	22,2	4,7
10 -25%	91	2,8	29,8	29,0	1,8	32,9	3,7
5 - 10%	30	1,6	42,1	27,1	6,7	21,3	1,2
0 - 5%	30	0,3	20,0	33,6	3,3	41,6	1,2
All	600	4,0	33,6	30,3	5,2	22,6	4,3

Table 7.b): Direct plus Indirect Ownership by Investor and Size Class

Size Classes by Sales		Investor Categories					
Class	Number of firms	Banks	Domestic Firms	Foreign Firms	State	Family	Public
95 - 100%	30	6,5	0	35,3	26,8	7,4	21,5
90 - 95%	30	9,6	0	29,7	18,1	19,1	23,6
75 - 90%	91	7,8	0	34,2	13,7	34,2	10,0
50 - 75%	149	5,9	0	29,1	12,8	44,3	7,6
25 - 50%	149	5,9	0	39,0	8,8	35,8	10,4
10 -25%	91	3,5	0	35,0	4,7	48,3	7,4
5 - 10%	30	2,5	0	31,1	19,0	40,4	7,1
0 - 5%	30	0,3	0	34,6	6,7	57,2	1,2
All	600	5,6	0	33,9	11,7	38,6	9,8

Data Basis: Trend-Verlag

Figure 2: Average Ownership by Company Size Classes and Ownership Stakes

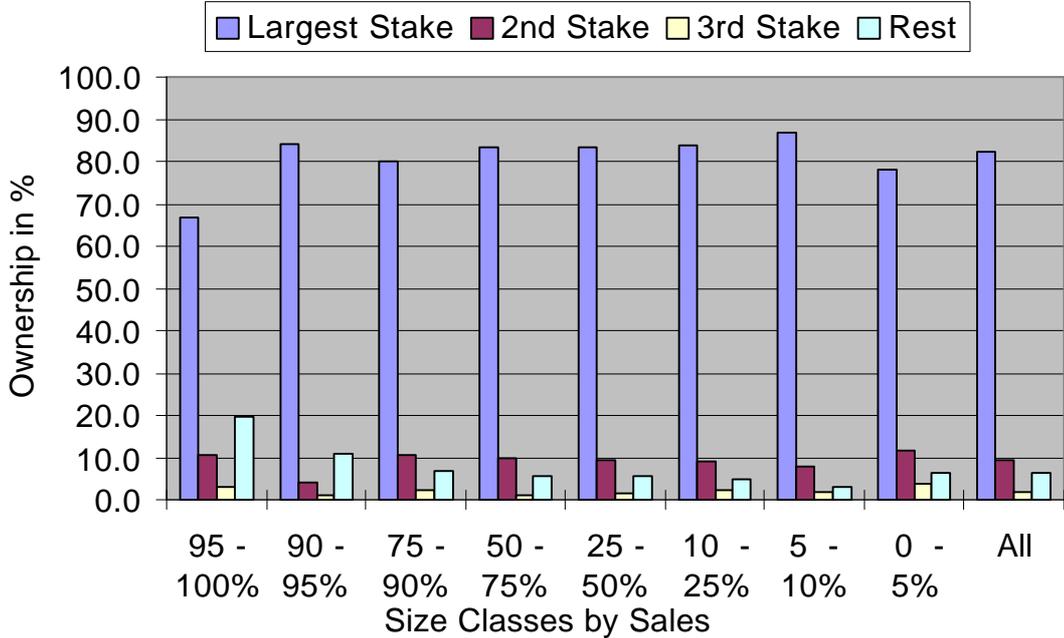


Figure 3: From Direct to Ultimate Ownership

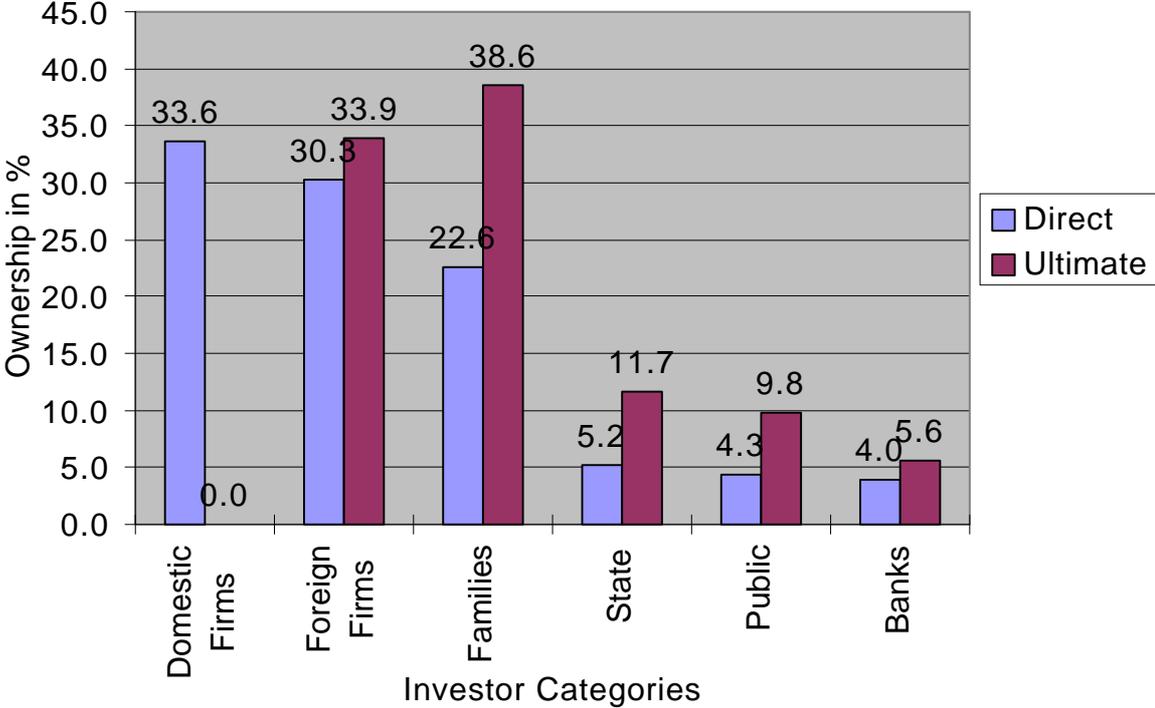


Figure 4: THE STATE

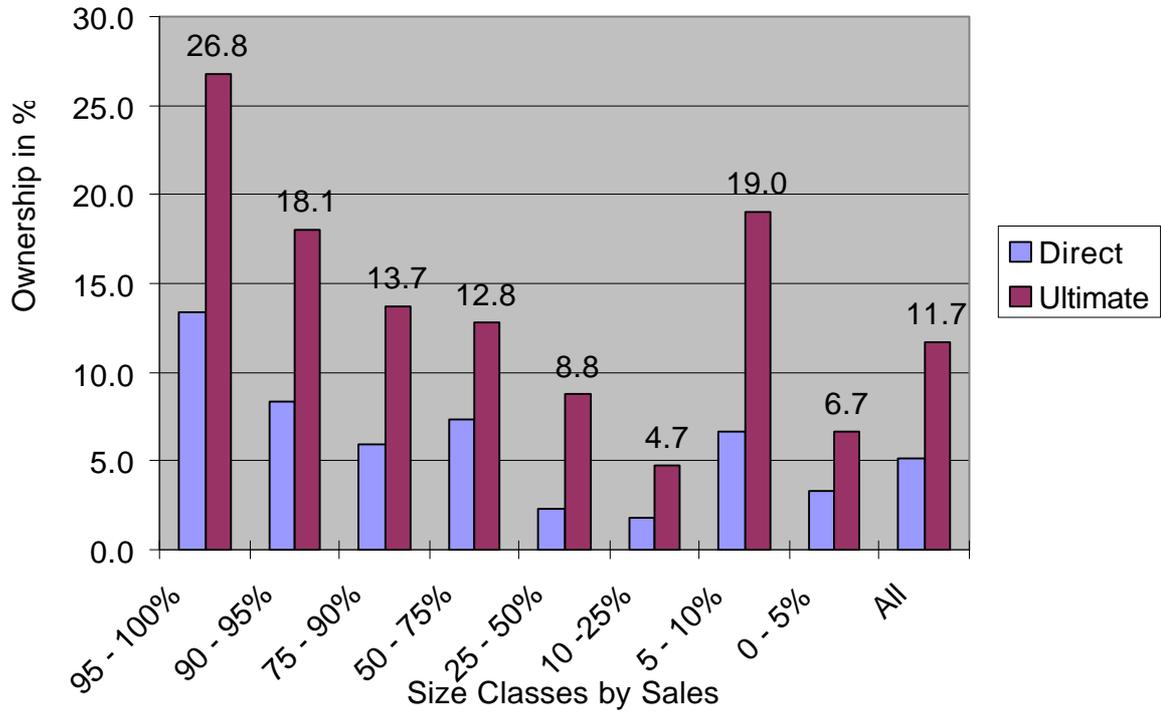


Figure 5: BANKS

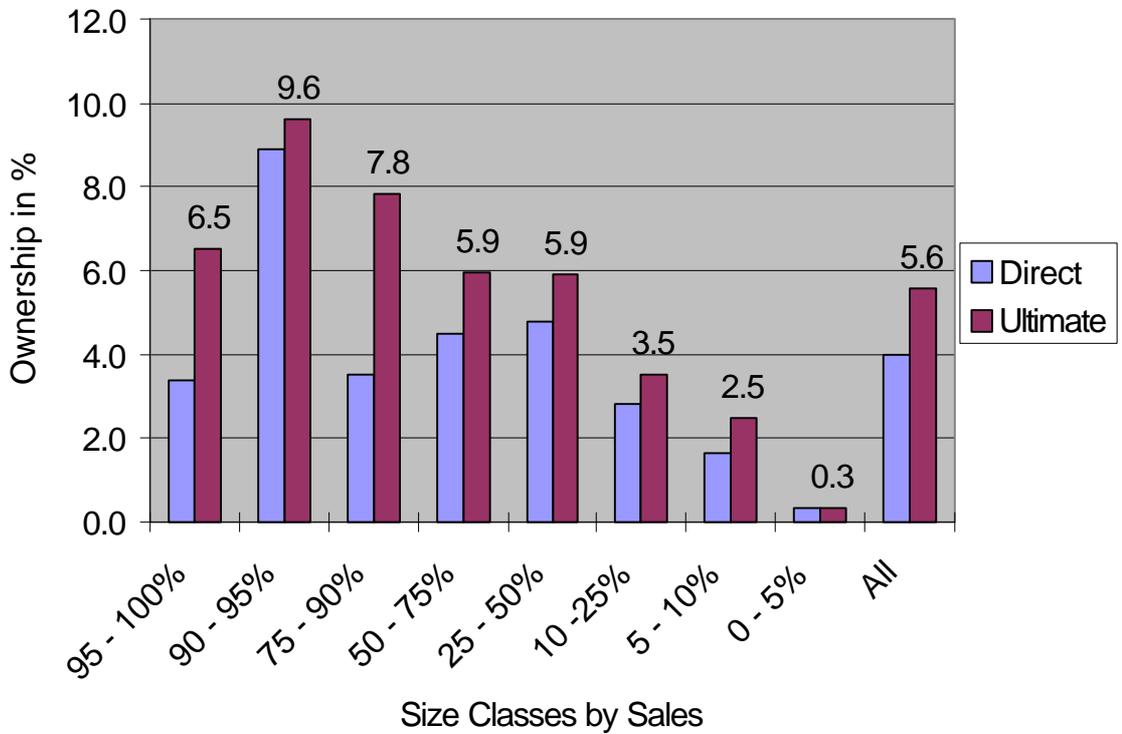


Figure 6: FAMILIES

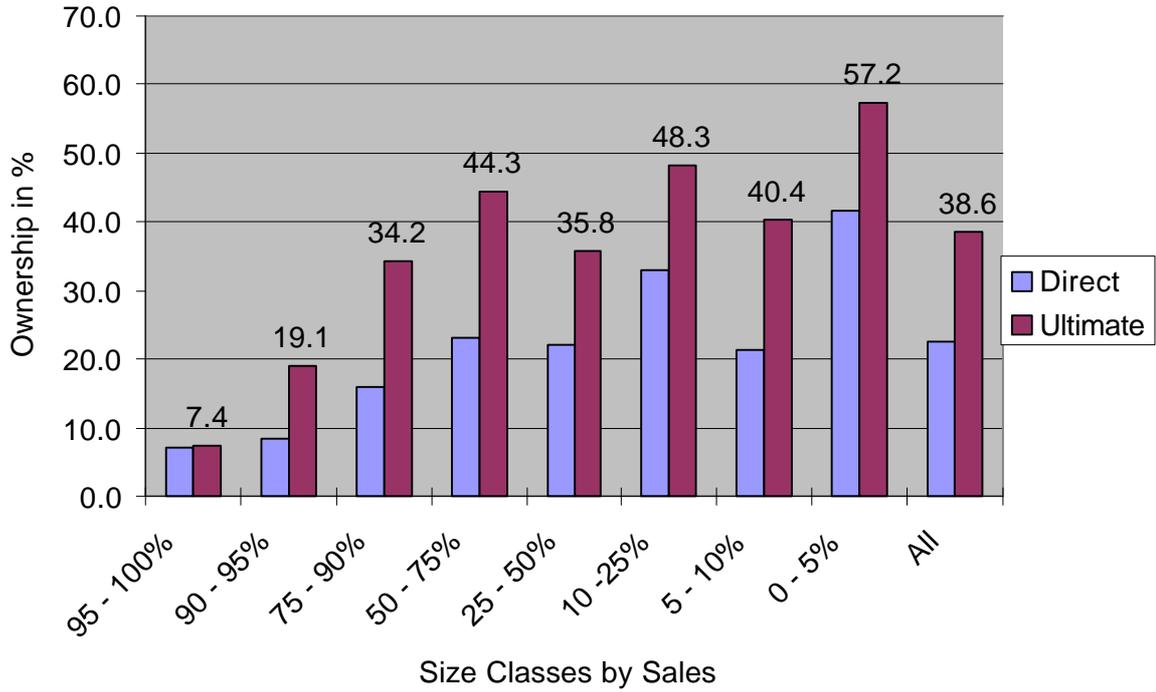
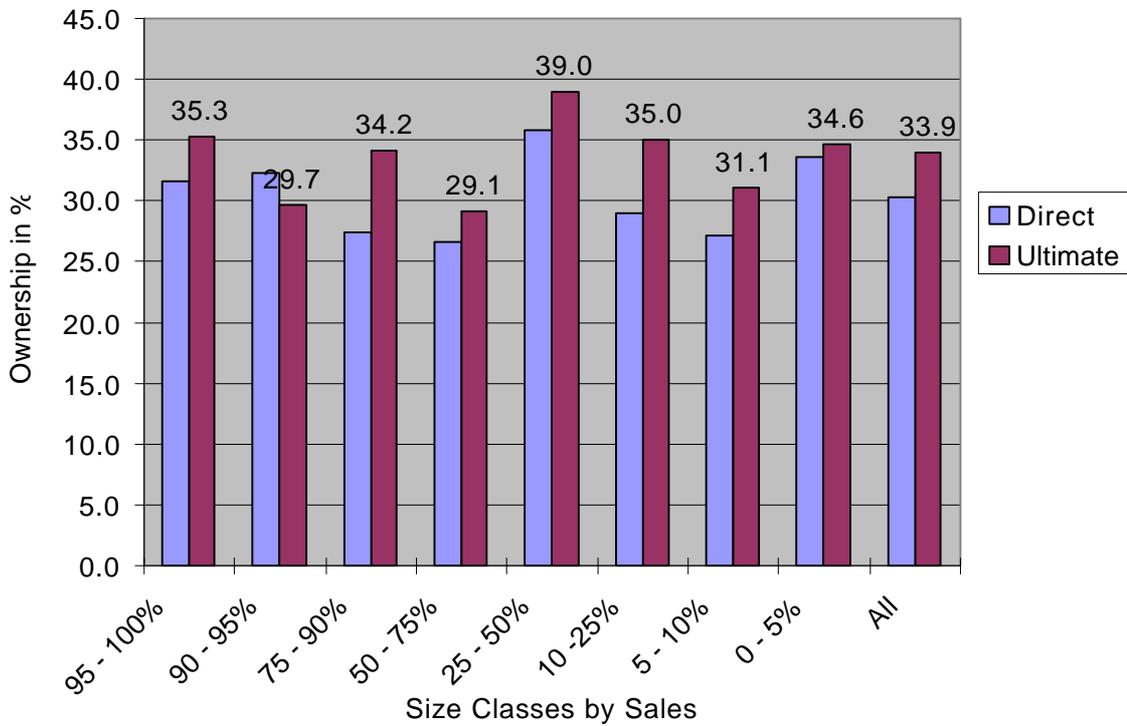


Figure 7: FOREIGN FIRMS



3.3.2. The Ownership Structure of Non-Financial Listed Firms

Despite the small sample of listed non-financial firms (62 companies) a comparison to the complete sample of the 600 largest corporations is interesting. Ownership concentration in listed firms remains very high (see table 8). On average, the largest shareholder holds 52.4% of the equity, only 2 (!) companies have a dispersed ownership structure<sup>21</sup>, in all other firms at least one large controlling shareholder remains.

The most striking features of tables 9.a) and 9.b) are the increased role of ownership by banks and the state in the larger size classes, and the minor importance of foreign firms in Austrian listed companies. While banks hold ultimately 5.6% of the shares in the 600 largest companies, they own 13.3% of the equity of listed Austrian firms. Again, state control is more prevalent in larger firms, family control in smaller.

Table 8: Stock Exchange:  
Average Ownership by Company Size Classes and Ownership Stakes

Size Classes by Sales		Ownership Distribution			
Class	Number of Companies	Largest Stake	2nd Stake	3rd Stake	Rest
90 - 100%	7	48.9	7.0	0.7	43.4
75 - 90%	9	48.0	9.2	2.7	40.1
50 - 75%	15	59.6	15.5	3.1	21.8
25 - 50%	15	48.6	9.4	2.5	39.5
10 - 25%	9	50.5	11.8	5.9	31.8
0 - 10%	7	56.8	6.9	1.4	34.9
All	62	52.4	10.6	2.9	34.1

Data Basis: Trend-Verlag

<sup>21</sup> We define a dispersed ownership structure to be one in which no shareholder owns a stake in excess of 5%.

Table 9.a): Stock Exchange:  
Direct Ownership by Investors and Size Classes

Size Classes by Sales		Investor Categories					
Class	Number of firms	Banks	Domestic Firms	Foreign Firms	State	Family	Public
90 - 100%	7	1.4	36.0	4.1	7.3	7.7	43.5
75 - 90%	9	19.0	15.1	6.5	11.4	11.1	36.9
50 - 75%	15	16.7	31.1	24.9	3.5	2.3	21.5
25 - 50%	15	2.7	24.8	21.8	0.0	11.2	39.5
10 - 25%	9	15.3	23.4	19.8	0.0	10.8	30.7
0 - 10%	7	13.8	24.3	13.8	0.0	13.2	34.9
All	62	11.4	25.9	17.1	3.3	8.9	33.4

Table 9.b): Stock Exchange:  
Direct plus Indirect Ownership by Investor and Size Class

Size Classes by Sales		Investor Categories					
Class	Number of firms	Banks	Domestic Firms	Foreign Firms	State	Family	Public
90 - 100%	7	1.4	0.0	4.1	33.8	7.7	53.0
75 - 90%	9	21.4	0.0	6.5	11.4	21.5	39.2
50 - 75%	15	21.4	0.0	15.2	8.9	24.0	30.5
25 - 50%	15	2.7	0.0	21.1	0.0	38.3	37.9
10 - 25%	9	18.6	0.0	19.8	0.0	30.9	30.7
0 - 10%	7	13.8	0.0	19.4	0.0	31.9	34.9
All	62	13.3	0.0	15.3	7.6	27.2	36.6

Data Basis: Trend-Verlag

### 3.4. Board Structure

As discussed in the legal part of this survey, Austrian corporate law provides for a dual-board system. Thereby, the supervisory board is obligatory in case of stock corporations and large companies with limited liability. By contrast, small companies with limited liability are not obliged to maintain a supervisory board. Reich-Rohrwig (1993) reports that only 2.3% of Austrian GmbHs maintain a supervisory board; none of the companies with limited liability in a 1% random sample drawn by Reich-Rohrwig voluntarily installed a supervisory board.

#### 3.4.1. The Board-Structure of the 600 largest Austrian Companies

A common share has value for two reasons: (1) it is an ownership claim on the dividends paid by the firm, and in the case of its liquidation on the value of its assets, and (2) it confers a right to vote on certain organizational and strategic corporate decisions. It is the latter point to which we now turn: We hold the view that the structure of ownership is only one, albeit important, dimension of corporate governance. Crucial is what these ownership claims imply for the governing of companies. There are two options available for shareholders to express dissatisfaction with current management, the exit and the voice option, that is shareholders can simply sell their shares and exit the company or they can cast their votes on the general assembly and/or, perhaps more effectively, take part in corporate decisionmaking by holding seats on the supervisory board. As a first step in assessing the importance of the board of directors, tables 10 to 12 describe the board structures of the 600 largest Austrian companies.

Table 10 breaks down board size by sale size classes. 395 out of the 600 firms do have a supervisory board. Of course, all firms employ at least one manager. On average, the supervisory board constitutes 6.9 for those firms that have a supervisory board (4.5 members averaged over all companies). The total size of this board increases nearly monotonically with size as measured by sales. The management board consists of 3 members on average, and the total size of this board is more or less evenly distributed across size classes.

Table 11 gives a breakdown of total board size by standardized legal forms. As could be expected from the size distributions of table 1, on average supervisory boards in stock corporations are largest followed by companies with limited liability. Non corporate legal forms rarely have a supervisory board.

Variation of the size of the management board across legal forms is very limited with the possible exception of Cooperatives (which have larger than average management boards). Table 12 describes differences in total board sizes across ownership categories. A firm is classified as a state, bank, foreign firm or family company if the ultimate ownership of the respective category is the largest across investor categories. Evidently, state and bank controlled firms have the largest, firms under foreign or family control the smallest mean number of people sitting on the supervisory board. Again, no large differences arise with respect to the total size of the management board across firm size classes.

Table 10: Total Size of Boards by Size Classes  
(Average Number of People)

Size Classes by Sales	Boards		
	Supervisory Board		Management Board
	All firms	Firms with s.b.	
95 - 100%	8.8	10.2	3.8
90 - 95%	6.9	7.9	2.8
75 - 90%	5.6	6.9	3.4
50 - 75%	5.1	7.1	3.0
25 - 50%	3.7	6.0	3.0
10 - 25%	2.9	5.7	2.9
5 - 10%	3.7	6.5	2.6
0 - 5%	2.4	6.0	2.7
All	4.5	6.9	3.0

Data Basis: Trend-Verlag

Table 11: Total Size of Boards by Legal Form  
(Average Number of People)

Legal Form	Supervisory Board		Management Board
	All firms	Firms with s.b.	
AG	7.2	7.6	3.1
GmbH	3.2	6.1	2.9
Gen	2.9	3.3	5.1
GmbH&CoKG	1.1	7.0	3.4
KG, OHG	0.5	4.3	2.9
All	4.5	6.9	3.0

Data Basis: Trend-Verlag

Table 12: Total Size of Boards by Investor  
(Average Number of People)

Investor Categories	Supervisory Board		Management Board
	All firms	Firms with s.b.	
State	8.6	9.7	2.9
Banks	7.5	7.9	3.5
Domestic Firms <sup>1</sup>	5.3	7.0	3.0
Foreign Firms	3.9	5.8	3.2
Family	3.3	6.0	3.0

<sup>1</sup> Direct Ownership > 0

Data Basis: Trend-Verlag

### 3.4.2. The influence of ownership on supervisory board size

To assess whether state and bank ownership is causal for the observed larger supervisory boards, regression analysis is needed to control for other influencing factors as firm size and chosen legal form. In tables 13 and 14 the number of members of the supervisory board (SUP) is regressed on the logarithms of sales (LNSAL95) and employees (LNEMP95) in 1995 and dummies for the legal forms AG, GmbH, GmbH&CoKG, GEN, and the non corporate legal forms in the sample (PERS). In addition, dummies for bank (DBANK), state (DSTATE), and family (DFAM) ultimate controlling ownership<sup>22</sup> are included. By leaving out the foreign controlled firms dummy, the coefficients of DBANK, DSTATE, and DFAM measure the differential effects of these ownership categories to foreign controlled firms concerning the number of people on the supervisory board. In table 13 all firms (600), in table 14 only those firms that have a supervisory board are included (395)<sup>23</sup>.

As can be seen from the OLS cross section estimates in the second and third column of table 13, state and bank controlled firms have significantly more supervisory board members than foreign controlled firms (and domestic family controlled firms) holding the size and legal form of the company fixed. In particular, for given size and legal form, state controlled firms employ on average 3.9 members (with a t statistic of 9.66!), bank dominated firms 2.3 members more than foreign controlled firms on the supervisory board. The adoption of the legal form AG greatly increases the size of the supervisory board. Sales and employment cross sectional variation approximately equally determines supervisory board variation as would be expected by the legal provisions.

To account for the discrete nature of the dependent variable (which is a nonnegative count variable) columns 4 to 6 of table 13 report Poisson Maximum Likelihood estimates. The basic conclusions of the OLS regression are replicated: ultimate state and bank control significantly increases the size of the supervisory board by 82% and 47%, respectively, relative to foreign controlled firms as measured by the incidence rate ratios (IRR<sup>24</sup>).

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<sup>22</sup> As before, ultimate controlling ownership is attributed to that investor category whose ultimate ownership stake in a given firm is the largest across investor categories with the exception public ownership. As nearly all (even listed) firms in the sample have (at least) one controlling large shareholder our approach seems justified. For example, if a bank holds 40 % of the stakes and the rest is in public ownership the firm is classified as ultimately controlled by the bank and a dummy with value 1 is assigned to the category "bank" and 0 to the other investor categories.

<sup>23</sup> This avoids a preponderance of zeros in the dependent variable SUP. As larger firms are more likely to have a supervisory board this also reduces possible heteroscedasticity in the residuals.

<sup>24</sup> The incidence rate ratio is defined as  $e^b$ , where b is the estimated coefficient.

Domestic family control significantly reduces board size. The Poisson estimates further reveal that the size of the supervisory boards of GmbHs and GENs are half of those of AGs. The noncorporate legal forms in the sample reduce board size to 23% (GmbH&CoKG) and 7% (all other noncorporate legal forms), respectively, of AG average board size. The employment variable dominates sales as the size influence measure. Unfortunately, the null hypothesis of a Poisson distribution of the data is rejected at a very high significance level by the  $\chi^2(590)$  test. Therefore, we rerun our supervisory board regressions with only those firms that have a supervisory board.

Table 14 shows that the basic conclusions are not altered. State and bank control significantly increases the size of supervisory boards, as does the legal form AG. The remarkable stability of results<sup>25</sup> gives us great confidence in these findings. Interesting is the dominance of the sales to the employment cross sectional variation in explaining cross sectional supervisory board size variation for those firms that have a supervisory board. This could mean that once a given firm size threshold is surpassed (installation of a supervisory) turnover becomes the relevant size measure.

Similar conclusions follow from the Poisson estimates in table 14. Now, the null hypothesis of a Poisson distribution is not rejected by the  $\chi^2(385)$  test.

Back of the envelope calculations<sup>26</sup> suggest that in the 89 supervisory boards where the state is ultimately the largest shareholder 325 people are "too much" as compared to foreign controlled firms. The 40 bank controlled firms carry an overload of 60 supervisory board members. Two alternative explanations can be offered for these findings. First, the state represents many heterogeneous groups. This is especially so in Austria's system of so-called "Social Partnership", where social partners such as the chamber of commerce, the chamber of labor etc. actively influence government decisions. Symmetric information flows to these interest groups secured by broad representation on supervisory boards may improve cooperation between the social partners – a desirable goal from the government's perspective. Second, there is the suspicion that the large supervisory boards do neither improve the monitoring efficiency of the corporations nor improve the cooperation between social partners but are merely ways to provide persons close to the political parties with financial rewards. Further research on this question is necessary to arrive at sound conclusions.

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<sup>25</sup> Although the sample size is increased by more than one third, coefficient estimates of the state and bank dummies do not change by much.

<sup>26</sup> Using the conservative OLS estimates of table 14.

Table 13: Regression Analysis:  
The Determinants of the Number of People on the Supervisory Board  
(All firms: 600)

Independent Variables:	Dependent variable: SUP				
	Estimation Method				
	OLS		Poisson Maximum Likelihood		
	Coeff	t-Value	Coeff	z	IRR <sup>1</sup>
Constant	-0.27	0.21	0.76	4.40***	-
LNSAL95	0.40	2.09**	0.02	0.65	1.02
LNEMP95	0.47	3.51***	0.13	5.35***	1.13
GmbH	-2.91	10.20***	-0.61	14.19***	0.54
GmbH&CoKG	-4.16	6.17***	-1.49	7.74***	0.23
GEN	-2.93	2.60***	-0.62	2.95***	0.54
PERS	-5.00	7.49***	-2.64	7.87***	0.07
DBANK	2.25	4.00***	0.38	5.42***	1.47
DSTATE	3.88	9.66***	0.60	11.51***	1.82
DFAM	-0.48	1.64	-0.15	3.02***	0.86
R <sup>2</sup> -bar	0.45				
Pseudo R <sup>2</sup>	-		0.24		
Goodness of fit $\chi^2(590)$	-		1763.3		
Prob > $\chi^2(590)$	-		0.00		
No. Obs.	600		600		
DF	590		590		

<sup>1</sup> incidence rate ratio  
\*\*\* significant at the 1% level  
\*\* significant at the 5% level  
\* significant at the 10% level

Table 14: Regression Analysis:  
The Determinants of the Number of People on the Supervisory Board  
(Included are only firms that have a supervisory board: 395)

Independent Variables:	Dependent variable: SUP				
	Estimation Method				
	OLS		Poisson Maximum Likelihood		
	Coeff	t-Value	Coeff	z	IRR <sup>1</sup>
Constant	-0.12	0.09	0.97	5.50***	-
LNSAL95	0.57	3.03***	0.09	3.02***	1.09
LNEMP95	0.25	1.51	0.03	1.28	1.03
GmbH	-1.31	4.54***	-0.19	4.57***	0.83
GmbH&CoKG	-0.21	0.15	-0.03	0.14	0.97
GEN	-3.49	3.34***	-0.73	3.44***	0.48
PERS	-2.16	1.12	-0.40	1.18	0.67
DBANK	1.49	2.84***	0.22	3.15***	1.25
DSTATE	3.65	9.56***	0.47	9.33***	1.61
DFAM	0.05	0.17	0.02	0.72	1.02
R <sup>2</sup> -bar	0.33				
Pseudo R <sup>2</sup>	-		0.10		
Goodness of fit $\chi^2(385)$	-		374.4		
Prob > $\chi^2(385)$	-		0.64		
No. Obs.	395		395		
DF	385		385		

<sup>1</sup> incidence rate ratio  
\*\*\* significant at the 1% level  
\*\* significant at the 5% level  
\* significant at the 10% level

## 4. Conclusions

This study gives an overview over the structure of corporate governance in Austria. Several main observations were made.

- The corporate sector in Austria is characterized by a large number of small and medium-sized corporations which are mainly in the legal form of sole proprietorships, trade-corporations with unlimited liability, and companies with limited liability. For these corporations there is no significant separation between ownership and control.
- The larger firms choose either the legal form of a company with limited liability or that of a stock corporation. Even here we find that ownership concentration is extremely high by international standards. In our sample of the 600 largest corporations, the average size of the largest stake is above 80%!
- When we distinguish between the main types of owners (e.g. individuals/families, foreign investors, state,...), we find that families are important owners of companies of smaller size whereas the state and financial institutions are predominant players in the corporate governance of the larger firms.
- A significant fraction of banks and insurance companies is effectively ownerless. Savings banks are usually dominated by municipalities so that the political influence in the banking sector and, via ownership claims in non-financial firms, in the whole economy is significant.
- For stock corporations, large companies with limited liability, cooperatives and savings banks the law requires a dual board structure. The size of the supervisory board increases with the size of the company but also depends on the ownership structure. In particular, we find that the size of the board increases significantly when the major shareholder is the state.

A number of interesting questions arise as a consequence of these observations. First, does the identity of the major owner of a company affect corporate decisions in a systematic way? For example, we might expect differences depending on whether or not the major owner is a bank, a family, or the state. In particular, a bank has its own agency problems and might therefore not be as effective a monitor as a private owner. In addition, a bank may also grant loans to the firm and therefore its incentives in corporate governance may differ from those of a pure equityholder.

Second, within the banking sector a number of interesting questions arise. The fact that a major fraction of the banks is effectively ownerless should be explored in detail. Do a bank's profitability and operating decisions depend on its respective governance structure?

Third, it would be interesting to explore the structure of supervisory boards and their influence on firm performance more carefully. For example, what are the consequences of workers' representation on the board? How does the composition of the board members depend on the

respective ownership structure? Are there performance differences due to the composition of boards?

A fruitful extension of current work are international comparisons. Here, Austria's extreme concentration of ownership on the one hand and the fact that a major segment of the financial sector is ownerless on the other hand would provide an interesting benchmark against which other systems of corporate governance should be compared.

## Appendix A: Legal Forms

### (1) Non corporate legal forms:

- Sole Proprietorship (Einzelkaufmann)
- Civil Law Partnerships (Gesellschaft bürgerlichen Rechts or short GesbR)
- General Partnerships (Offene Handelsgesellschaft or short OHG)
- Limited Partnerships (Kommanditgesellschaft or short KG)
- Small Registered Partnerships (Offene Erwerbsgesellschaft or short OEG)
- Small Registered Limited Partnerships (Kommandit-Erwerbsgesellschaft or short KEG)
- Silent Partnerships (Stille Gesellschaft)
- European Economic Interest Grouping  
(Europäische Wirtschaftliche Interessenvereinigung or short EWIV)

### (2) Corporate Legal Forms:

- Companies with limited liability (Gesellschaft mit beschränkter Haftung or short GmbH)
- Stock Corporations (Aktiengesellschaft or short AG)

### (3) Other corporate Legal Forms:

- Commercial Cooperatives (Erwerbs- und Wirtschaftsgenossenschaften)
- Mutual Insurance Associations (Versicherungsvereine auf Gegenseitigkeit or short VVaGs)

### (4) Other Legal Entities:

- Saving Banks (Sparkassen)
- Privat Foundations (Privatstiftung)

# Ownership and Control in Belgium

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## **Abstract**

### *Ownership and Control in Belgium*

This paper analyses the ownership and control of Belgian companies. The concept of “ownership” is reviewed for different company types. For each company type the legal basis for ownership disclosure are set out and the practical arrangements for obtaining ownership data are explored. The survey concludes that ownership data should be available, by law, for the *Société Anonyme* (corporation) and the *Société Commandite par Actions* (SCA). Practically, ownership data is only available for listed corporations and disclosure rules focus on the control of control rights, not on the ownership of cash flow and/or control rights. The remainder of this paper undertakes an exploratory analysis of the data. The analysis reveals that control of listed companies in Belgium is highly concentrated. Business groups, holding companies, and voting pacts, play an important role in bringing about this concentration.

Keywords: Ownership, Control, Corporate Governance

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# 1. Introduction

## 1.1 Summary and Main Results

- 1 In Belgium, ownership data is publicly available for “anonymous” bearer shares but not for registered ownership certificates. Ownership data is only available for *Sociétés Anonymes* (SA, Limited Liability Stock Corporations) that are listed on an official market. For the non-listed SA or *Société en Commandite par Actions* (SCA), or an SA that is listed on the second or over-the-counter markets, ownership data on 10% beneficial owners should exist. In practice, we found no trace of it. The capital of all other legal forms is nominative. The ownership certificates are registered at the company headquarters and the register is not accessible to the general public. For most legal forms, the list of owners at foundation is deposited at the company register. In practice, it is impossible to reconstruct the ownership stock today from the original stock. Access is geared towards reading the documents “on-site” and not to processing the data in the sense of a statistical survey. The only – indirect – source of ownership data for companies, other than listed *Sociétés Anonymes*, are portfolio declarations of other Belgian companies. Hence, it is impossible to obtain data - even indirectly - when the owners are individuals, and even more difficult when the owners are companies registered outside Belgium.
- 2 There are approximately 140 companies listed on the official market in Brussels. Their control is very concentrated.
  - 2.1 There are, on average, few direct shareholders per listed firm (approx. 5). The largest stake dominates with 45% of the votes – compared to 11% held by the second largest shareholder. For 60% of the companies, the sum of the three largest stakes is larger than 55%.
  - 2.2 For most companies, stakes are concentrated into blocks through business group structures and voting pacts. In December 1995, there were 135 companies that had received the notification that at least one shareholder held a stake or block of 5% (sometimes 3%) or more in the company. In total, there were 750 stakes that were held by 562 direct shareholders. These stakes corresponded to 489 group blocks held by 328 different business groups.

Voting pacts between these shareholders and/or business groups resulted in 269 voting blocks controlled by 195 different voting pacts.

- 2.3 When considering voting blocks (or group blocks) instead of direct stakes, the control of control rights is even more concentrated. The mean largest voting block is 56%, the mean of the second largest voting blocks is 6.6% (and there are only 76 companies with more than one block – just under half of the 135 listed companies do not have a second 5% blockholder). For 51.85% of the companies the largest voting block is larger than 50% and for 64.44% the sum of the three largest blocks is larger than 50%.
- 3 The most important voting block holders are the *Société Generale de Belgique Group* (SGB, the largest holding company in the country and listed itself) and the *Suez Group* (large French holding company, shareholder in SGB with 63%). Together they control 17 voting blocks in 17 different companies. The median block they control is larger than 45%. The second most important blockholder, is the *Paribas-Cobepa Group* (a French holding and its Belgian subsidiary that is itself listed). They hold 12 voting blocks in 12 different listed companies and the median block is almost 40%. The *Soges Star Fund* (an investment fund of the *Banque Bruxelles Lambert Group*, BBL) controls 10 small blocks (mean 4%, median 4.5%) but, since it is an investment fund, it is supposed to act independently of BBL management. There are several important family blocks that control up to 7 voting blocks in 7 companies.

## **1.2 General Overview**

Belgium is a small country with approximately 10 million inhabitants. There are approximately 220,000 firms in the country. Many of them are small with half of them counting less than five employees or less than BF 10 million of total assets. Two legal forms dominate: the *Société Privée à Responsabilité Limitée* (SPRL, a limited liability partnership) and the *Société Anonyme* (SA, a stock corporation). There are about 90,000 companies of each type.

SPRLs are the most numerous among small firms (99% of SPRLs are firms under BF 100 millions of total assets). Their ownership certificates are nominative and the transferability of the certificates is subject to restrictions, for example the agreement of the other partners. Most large firms are SAs (84% of firms over 100 millions of total assets are SAs). Their

distinguishing feature is the possibility of issuing anonymous shares with no restriction on their transferability. All listed firms are SAs.

There are approximately 140 Belgian registered firms that are listed on the official market of the Brussels Stock Exchange. They are of various sizes and belong to all sectors of the economy. Holding companies account for 23% of the market capitalisation, while electricity and gas companies represent 20% of the capitalisation on the Brussels Stock Exchange. These are followed by banks and financial service companies (14%), chemical companies (9%) and insurance companies (8%). Market capitalisation is highly concentrated among a few large firms: the Top 10 account for 50% of the total market capitalisation, while the Top 50 represent 95% of the market capitalisation. Turnover is low for smaller listed firms: the BEL20 market index, that includes 20 firms, accounts for 83% of the total market turnover.

### ***1.3 Outline of the Paper***

Section 1 is devoted to data sources. It covers the legal basis for ownership disclosure and practical aspects of data availability. The focus of this paper is, due to a lack of other data sources, on listed companies. A long sub-section and a long appendix are dedicated to the transposition of the EU Transparency Directive and the mechanics of the notification process. These are central reading for having a full understanding of the summary statistics presented in Section 2.

Section 2 presents the results of our exploratory data analysis on the control of control rights for Belgian listed firms. The usual summary statistics for ownership per company are presented for voting blocks and direct stakes (ranking stakes by size and concentration ratios). The portfolios of important blockholders and the composition of the individual blocks are also analysed in detail. The results are presented in the form of figures and tables that contain explanatory notes. Section 2 includes individual listings of summary statistics by company and for voting block holders with more than two blocks.

An appendix provides legal and institutional background information on company types and data sources. A short legal survey focuses on the main requirements common to all firms, like disclosure, registration and accounting rules. Some specific features of each legal form and in particular those closely related to corporate governance (transferability of ownership certificates and their attached rights, the organisational structure of management and control)

are treated in greater detail. The transposition and the mechanics of the notification process for listed companies are covered in detail.

## **2. Data Sources**

### **2.1 Data on Ownership Certificates**

For all legal forms the structure the composition and size of a company's paid-in capital is set out in the company statute. The company statute also contains information on claims on control or cash-flow rights that do not correspond to paid in capital. The company statute is always available from the company register.

#### **2.1.1 Private Firms**

Ownership certificates for private firms are nominative. They give the right to cash-flow and they are either voting or non-voting. The stakes of the partners are, in principle, not transferable without the agreement of all the other partners.

#### **2.1.2 Société Privée à Responsabilité Limitée (SPRL)**

The capital of the SPRL is divided into a number of *parts* ("*parts d'intérêts*" for SPRL, as opposed to "*actions*" for the SA). The parts can be issued with or without voting rights. All parts have an equal residual claim and they are indivisible. The capital must be divided equally and the *parts* are indivisible. The *parts* can be issued with or without value (the denomination of the latter is the total capital issued divided by the number of such *parts*). The SPRL cannot issue *parts* that give preferential rights, for example cash-flow rights. Parts are always issued in return for paid-in capital.

*Parts* are not physical pieces of paper. They are claims that take the form of an inscription in a partner register (*registre des associés*). The register mentions the identity of the partners, the number of shares they have, the payments made to release them, and the transfers made.

Transferability of ownership claims in an SPRL is restricted by law. The company statute can always reinforce the restrictions but not reduce them. The main principles are that transfers to other partners or to a person agreed by the statutes are free and transfers to other type of

persons are subordinated to the agreement of half the partners representing 75% of the capital. Preferred stocks (*parts privilégiées ou de préférence*) are not allowed in SPRL.

### **2.1.3 Cooperatives**

Cooperatives can have limited liability (*Sociétés Cooperatives à Responsabilité Limitée, SC*) or unlimited liability (SCRIS). There are relatively fewer rules for the SC and SCRIS than for the SPRL, SCA or SA. Hence, the company statutes are very important and provide for a great deal of flexibility. The capital of a co-operative is proportional to the number of partners. The *parts* in a co-operative always give the right to vote (the co-operative cannot issue non-voting parts) and each partner has one vote regardless of the *parts* held. Also, at least 50% of the profits must be distributed equally amongst all the partners, irrespective of the amount of the capital they own. The remainder is distributed proportionally.

### **2.1.4 Société Anonyme**

Stocks in these firms can be either bearer (*actions au porteur*) or registered (*actions nominatives*). A bearer stock is anonymous and it can be transferred to an other person by handing over the asset. Like in the case of the SPRL, a nominative share is registered. The transfer is made by modifying the inscription in the register. The amount and characteristics of bearer and registered stock are set out in the company statute. The owners of registered shares are automatically notified by the company about the date of the next general meeting and they automatically receive all written material. The SA or SCA can assign preferential cash flow rights to certain stocks. However, no share can have preferential voting rights (if it is a voting share).

The SA and SCA can issue *parts bénéficiaires*. These can have a cash flow and/or voting right and they are issued to holders that have not paid-in any capital. *Parts bénéficiaires* can be registered or bearer. Hence, they allow for complete flexibility in combining paid-in capital, cash-flow, voting rights and anonymity. The company can issue *parts bénéficiaires* with or without a fee. *Parts bénéficiaires* can represent up to 50% of the votes and they always have the right to vote on issues related to the company's capital. For an SPRL, it is not possible to issue *parts bénéficiaires*.

Owners of non-voting shares have the right to attend the general meeting. Under special circumstance non-voting shares can have a vote:

1. when the company is dissolved or the purpose is changed;
2. when the general assembly wants to strip an existing preferential cash flow right;
3. when cumulative preferential dividends have not been paid for at least three years;
4. when the conditions attached to the issue of the non-voting shares are not or no longer respected.

There are also shares named "AFV" or "VVPR". They carry the same rights as usual stocks. The only difference concerns the fiscal regime with a reduced tax (*précompte mobilier*) from 25% to 15% for the VVPR shares and exoneration of inheritance taxes (*droits de succession*) for AFV types.

## **2.2 Ownership Data**

### **2.2.1 Private Firms, SPRL, SC and SCRIS**

The *parts* of the SPRL are always nominative and owners (partners) are registered in a register of partners (*registre des associés*) that is kept at the firm's headquarters. This register is only accessible to the partners themselves, to the fiscal authorities, and to third parties having an interest in the firm, such as debtors and creditors. The public does not have access to the partner register, even for scientific reasons. Without a change in the law or its interpretation – in the definition who is a “tiers intéressé” (interested party) – there is no way for us to build a database on the ownership of these legal forms from this data source.

The company register contains a list of the founders of private companies and SPRLs. Since most companies were not founded yesterday and since ownership changes do occur after foundation, this data is of little use for constructing ownership statistics.

In practice, the best one can do is to infer the ownership of SPRLs and private firms from the portfolio declarations of other companies. However, we do have some information on ownership when the owner is a Belgian SA or the owner has to prepare consolidated accounts.

SAs have to publish, in their annual report, the content of their participation portfolios, either Belgian or foreign, and of any legal form (Belgian company law, Article 52SEXIES). The same is true for SCAs because most of the legal provisions for SAs apply (Article 107). By gathering all this information the SAs' participations in other firms it is possible to identify the owners of a given firm, but only when the owner is a Belgian SA or SCA. Indeed, the Central Bank (*Banque Nationale de Belgique, Centrale des Bilans*) has compiled a database that contains this information. The database is published by *Bureau Van Dijk* on CD-ROM and contains figures from the annual accounts and selected information from the annexes for all Belgian companies (that file accounts). The BNB-CD does not contain consolidated accounts. Consolidated accounts are contained in Bureau van Dijk's European company database Amadeus (that draws on the BNB-CD). The consolidated accounts were specifically added for inclusion in Amadeus by Bureau van Dijk.

There are some practical difficulties in using the BNB data too. The companies that make the declarations use different abbreviations and languages (Dutch or French) for different share types. As a result, for the same company and the same share type, there can be different entries (one for each SA or SCA that made a portfolio declaration). It is impossible to recode these share types even with relatively sophisticated filter programmes and calculate ownership by share type and/or the ownership of total capital. The alternative is to recode the share types by hand. This would require access to all the company statutes (to know which share types there are), which are themselves difficult to obtain (see the section on ownership certificates). This is the main reason why we have not analysed the ownership data (through participations) on the BNB CD-ROM in this paper.

A similar source of information stems from the law on consolidated accounts. When a company has to publish consolidated accounts, it must include a list of all consolidated companies. The consolidation perimeter is defined in terms of control and not in terms of cash flow. The rules on consolidated accounts are very similar, although less stringent, than the company law provisions of Article 52SEXIES. Hence, consolidated accounts provide additional information when the company that publishes the accounts is not a *Société Anonyme* or a *Société en Commandite par Action*. In 1994 there were 324 SAs and 7 SCAs that published consolidated accounts, 7 public companies but no other legal forms (Amadeus, Update 27, December 1996). Hence, in the Belgian context, consolidation rules are not an

important additional source of information on participations (and an indirect source of information on ownership).

In other countries similar portfolio rules might apply, but to find the foreign owners of Belgian companies one would need to have access to the global population of companies. Although there are some databases that promise to come close to this requirement (Dun & Bradstreet's WorldBase is one example) this seems a strange way to find out who owns the company next door. In any case, individuals are not usually subject to portfolio declarations and companies that really do not want to have their participations traced can route them through countries that do not have any portfolio publication requirements.

We conclude that the information on ownership of companies that are not SAs or SCAs is sparse. We can identify Belgian SAs (or SCAs) as 10% owners. With access to a database that contains all the participations of all the companies in the world we could identify foreign companies that hold stakes in Belgian companies, other than SAs. We cannot identify individuals as owners of Belgian non-SAs.

### **2.2.2 SAs and SCAs not Listed on an Official Market**

For nominative shares of SAs and SCAs, the same rules as for SPRLs apply. The shares are registered at the company's headquarters and third parties do not have access to the register.

Bearer shares are "anonymous" and there is no register. However, there are a number of legal provisions that allow us to trace the ownership of these certificates with some accuracy:

1. When the owners are SAs or SCAs the portfolio declaration considerations described in the previous section apply (from the BNB CD-ROM).
2. The consolidation rules apply but, as we argued before, are unlikely to provide additional insights.
3. Companies (not individuals) who control 10% or more of the capital of a Belgian SA must notify the company and the company must publish this information in its annual report (Art. 52SEXIES, co-ordinated commercial laws). For the, admittedly few, companies we checked this information was not published. For example, Interbrew SA (the non-listed producer of beers like Stella Artois or Rolling Rock) has three 10% shareholders: Diligentia Gestion (26.8%), Verlafi (25.43%) and Sebastien

Holding (15.57%). We found these shareholders through the portfolio declarations on the BNB CD-ROM (November 1996, Release 6.2, see point 1). In Interbrew's annual report for 1994-95 we found no trace of shareholder publications that are published in accordance with Art. 52SEXIES. We did find a declaration of 1.98% own shareholdings (treasury shares) and would have expected to find an ownership declaration under the same sub-section. There are two possibilities why this information is missing from the annual report: One, the 10% shareholders did not notify the company. Two, Interbrew SA did not publish the information. For Belgonucleaire SA we found two shareholders: Electrabel holds 37.3% of the preference shares and 28.52% of the ordinary shares; Tractebel holds 21.48% of the ordinary shares directly and 28.5% indirectly and 12.58% of the preference shares directly and 37.5% indirectly. Again, the annual report for 1996 does not mention these stakes.

We conclude that we should know much more about the ownership of SAs and SCAs that are not listed on an official market than we can know (given the current legal situation) about the ownership of private companies or SPRLs. In practice we know just as little.

### **2.2.3 SAs Listed on an Official Market**

The main source of ownership information for listed companies (companies listed on an official market), in addition to those already described, is the transposition of the EU Transparency Directive (88/627/EEC). The Belgian transposition is, on the whole, satisfactory and provides for swift and transparent ownership notifications. Unfortunately, the data is on paper and considerable effort must be exerted to obtain a computer readable dataset. The construction of the dataset analysed here is described in detail in an appendix.

The law of 2d March 1989 on the publication of important holdings of voting rights in listed firms (*Loi sur la transparence des participations importantes dans des sociétés cotées*) became effective in June 1989. The notification requirements extend to all natural persons and legal entities in public or private law who acquire or dispose of directly and indirectly, holdings in Belgian companies that are listed on the official market of a EU Member State.

All shareholders who control more than 5% (3% if the company chooses) have to notify. Each time a shareholder crosses a threshold of a multiple of 5% of the votes, the holder has

to notify the competent authority and the listed company. The competent authority is the Banking and Financial Commission that controls the banking sector and the financial markets. In practice most of the work relating to notifications is undertaken by the Brussels Stock Exchange (see below).

For business groups, declarations can be made by the ultimate controlling agent in the group. In such case the control structure had to be explained, preferably in the form of an organisational chart. Each member of the group has to make a separate declaration. In the case of voting pacts, the same rules as for business groups apply.

The notifications contain detailed information on the declaring owner, the date at which the notified holding structure was valid and an explicit calculation of the notified percentages, such as the number of votes in each type of shares, actual voting rights as well as potential voting rights (convertible warrants and other similar instruments). Even when the conversion of warrants into actual votes does not result in crossing a threshold, a declaration should be made. Sample notifications are reproduced in an appendix.

A share- or blockholder has to notify the competent authority and the listed company within 48 hours after buying the shares. The notifications are gathered, processed and published in the financial press by the Brussels Stock Exchange. The contents of the publication and the declaration is checked by the Banking and Financial Commission before it is released. New ownership information are entered simultaneously in an on-line database run by the Stock Exchange : "BDPart". Since the database is updated continuously but "backed up" infrequently there is no computer readable, historic ownership series. However, since 1994 the Stock Exchange decided to make a yearly print-outs of the database (the custom made software of BDPart does not include a "save" command). Such paper "backups" are available for December 1994, 1995 and 1996. The data we use for this study comes from the December 1995 "backup".

### 3. Quantitative Analysis

The tables in this appendix are constructed from three different points of view. From the point of view of the company we ask: How many stakes (blocks) are there per company and what do we know about the relative and absolute size of the stakes (blocks) per company? From the point of view of the blockholders we ask: Who are the important blockholders and what is the composition of their portfolios? Finally we take the point of view of the blocks and ask: What is the composition of the blocks?

**TABLE 1. NUMBER OF LISTED COMPANIES, STAKES, BLOCKS, SHARE- AND BLOCKHOLDERS**

Number of Listed Companies (31 Dec. 1995), Brussels Official Market	140
Number of Listed Companies with at least one ownership notification	135
Number of companies with no notification	5
<hr/>	
No. of Notified Voting Blocks	269
No. of Group Blocks notified with Voting Blocks	489
No. of Direct Stakes notified with Voting Blocks	750
<hr/>	
No. of Voting Block Holders who filed the notification	195
No. of Group Block Holders mentioned in the notifications	328
No. of Shareholders mentioned in the notifications	562

Table 1 summarises the number of companies, stakes, blocks, shareholders and blockholders we analyse. It already indicates that there are few companies with a float that is larger than 5% and that there is a considerable concentration of voting power through shareholder agreements. Table 1 also indicates that all ownership information is driven by the concept of the “voting block” because the voting block holders are responsible for notifying the group blocks and stakes in their voting block. Each of the 195 voting block holders filed at least one notification and all other data is taken from these declarations.

#### 3.1 Units of Analysis

##### 3.1.1 Voting Blocks and Blockholders

Notifications are “triggered” when a direct stake or a voting block exceeds 5% (3%, if the company writes this into its statute) or moves below 5% (3%) of the voting capital of a listed

company. Hence, voting block statistics are truncated at the 5% level (3% level). However, there are exceptions. Our data set contains some cases where voting blocks below the 5% (3%) threshold were notified. This might be due to one of four reasons :

1. Some owners previously had a participation exceeding 5% but reduced it below 5%;
2. The notification thresholds apply to actual and potential votes (for example from warrants). When an investor holds warrants that correspond to 4.2% of the (future) voting capital and shares that correspond to 1% of the existing voting capital the investor has to notify the company. We only consider the 1% existing voting capital;
3. Listed firms can lower the notification threshold from 5% to 3% (but not lower than 3%);
4. When a shareholder leaves a voting pact that has previously notified a holding in excess of 5% (or 3%) and the shareholder, by leaving the voting pact, crosses a notification threshold, the investor has to notify the company. For example, a voting pact consists of three shareholder who each hold 3% of the voting capital. Together they hold 9% and have to notify. When one of the shareholders leaves the voting pact, he/she crosses the 5% threshold and has to notify.

We use and report the information the declaring blockholders provide. This, sometimes leads to inaccuracies. For example, one of the largest blockholders is the French Paribas parent and its Belgian subsidiary, the Cobepa Holding. Their holdings are not always declared under the heading “Paribas-Cobepa” but sometimes individually as “Paribas” and “Cobepa”. To be consistent with cases where we do not know the true identity of the blockholder - and to show the shortcomings of the transparency legislation - we consistently report these notifications individually. This introduces a downward bias into our blockholder statistics.

### **3.1.2 Direct Stakes and Group Blocks in Voting Blocks**

The elements of voting blocks are direct stakes and group blocks. Direct stakes are the holdings of independent shareholders. Group blocks are the stakes of companies that are part of a business group that is subject to consolidation rules under Belgian law (that are derived from the various EU directives on consolidated accounts).

### **3.1.3 Direct Stakes and Shareholders**

Because the Belgian transparency rules and practice force detailed notifications, the data on direct stakes is complete and very reliable. However, there is a truncation problem that should be taken into account when interpreting the summary statistics for direct stakes.

Like voting block statistics, direct stake statistics are truncated, but not necessarily at the 5% level. There are many reported direct stakes that are smaller than 5% (or 3%), but only when they form part of a voting block that is larger than 5% (or 3%, or they are subject to the exceptional circumstances set out in the voting block section). The truncation is endogenous because it is likely that there are more observed direct stakes smaller than 5% (3%) when there are large voting blocks that pool many small shareholders. For example, if there were voting blocks larger than 5% in Delhaize SA (see below), we would observe many small blocks too.

### **3.1.4 Float**

We define “float” as the sum of notified blocks. Since the statistics on blocks are truncated, so are the statistics on float. Although we could have considered the 5 cases with no notifications as “100% float” we chose to exclude them from the summary statistics. Hence, all tables and figures in this Appendix refer to the 135 listed companies that were quoted on the Brussels official market on 31 December 1995.

### **3.1.5 No Notification**

Table 2 lists the five listed companies (in December 1995) that had received no notification. Dispersion does not necessarily imply complete management control. For example, although there are no notifications for SOLVAC, it is well known in Belgium that SOLVAC is owned by the Solvay family members who each hold less than 5% of the voting stock.

Table 3 shows the attendance list of an extraordinary meeting of Delhaize SA (these listed are available at the company register and accessible by the public). It illustrates that “absenteeism” leads to a considerable degree of voting power concentration. However, this type of concentration is not comparable to the concentration through voting blocks because

attendance rates are endogenous. They are likely to be higher when important or controversial decisions are to be taken.

**TABLE 2. COMPANIES WITH NO NOTIFICATION**

<i>Name</i>	<i>Activity</i>	<i>Market</i>	<i>No. of Ordinary Shares (1995)</i>	<i>Market Value (BF, High in 1995)</i>
<b>Delhaize “Le Lion”</b>	Supermarket Chain	MaT	51,314,515	71,121,917,790
<b>HSPL</b>	Holding Company	MaC, SF	55,000	27,610,000
<b>Koramnic Bulding Products</b>	Brick Production and Distr.	MaT	5,699,483	9,261,659,875
<b>SCF</b>	Holding Company	MaC, SF	394,859	49,357,375
<b>Solvac</b>	Financial Transactions	MaC, DF	7,519,950+5,954,654	14,212,705,500+14,707,995,380

Notes: MaT refers to the *Marché à Terme* and MaC refers to the *Marché à Compte*, DF to double fixing and SF to single fixing. The *Marché à Terme* and the *Marché à Compte* are segments of the official market and should not be confused with the *Second Marchè* that is reserved for medium sized companies. In the *Marché à Terme*, stocks are traded continuously for nine hours or “semi-continuously” with at least two quotations a day. In the *Marché à Compte* prices are quoted once (single fixing) or twice a day (double fixing). Solvac has issued 5,954,654 voting shares (VVPR) that are subject to a different fiscal regime than the ordinary voting shares. The VVPR shares had a market value of BF 14,707,995,380 in 1995.

**TABLE 3. ATTENDANCE LIST OF EXTRAORDINARY MEETING OF DELHAIZE SA**

Shareholder	Registered	% of Total
16 Individuals	134,529	1.312%
COBEPA	4,950	0.048%
ASSUBEL-VIE S.A.	98,945	0.965%
COPPIETERS 't WALLANT J.C.	500	0.005%
ROYALE BELGE S.A.	7,200	0.070%
BANQUE DEGROF S.C.S.	100,000	0.975%
ASSUBEL LEVEN	11,820	0.115%
CA PERS COUNTY NATWEST	3,600	0.035%
CA PERS SCHRODER	21,400	0.209%
LA ROYALE BELGE	100	0.001%
WELLS FARGO INST TRUST CY	12,754	0.124%
STATE STREET BANK	25,270	0.246%
URBAINE UAP	8,251	0.080%
Total Registered	563,848	5.500%
<b>Total Attending</b>	<b>366,154</b>	<b>3.572%</b>
Total Number of Votes	10,251,645	100.000%

Note: On 3 May 1991, Delhaize Frères et Cie “Le Lion” held an extraordinary meeting that had to decide on a proposed increase in the company’s equity capital. The attendance lists of extraordinary meetings are deposited at the company register. To take extraordinary decisions, at least 50% of the eligible votes must be present at the meeting (quorum). If the first meeting does not meet the 50% requirement a second extraordinary meeting is called. At this meeting the decisions are taken by simple majority vote. We report the attendance list of the first meeting (that failed to attain the necessary attendance rate, which was only 3.57%). Only two shareholders that registered for the meeting almost hold 1% of the votes, Assubel S.A. and Banque Degroof S.C.S. - well below the notification threshold even if it were set at 3%. However, note that this evidence is not very reliable. Many shareholders, knowing that the quorum would not be attained, could have abstained from attending the first extraordinary meeting. The increase in capital authorised by the second 1991 extraordinary meeting allowed Delhaize to increase its ordinary shares from 10,251,645 in 1991 to 51,283,815 in 1992.

## 3.2 Summary Statistics by Company

TABLE 4. SUMMARY STATISTICS FOR DIRECT STAKES AND VOTING BLOCKS IN ALL LISTED COMPANIES (1 OF 5)

Company Name	Serial No.	No. Stakes	No. Group Blocks	No. Voting Blocks	Direct Stakes					Group Blocks					Voting Blocks					Float
					Min.	Max.	Mean	Med.	Intqr.	Min.	Max.	Mean	Med.	Intqr.	Min.	Max.	Mean	Med.	Intqr.	
ABELOR	1	3	1	1	0.78	50.25	22.99	17.93	49.47	68.96	68.96	68.96	68.96	0.00	68.96	68.96	68.96	68.96	0.00	31.04
ACKERMANS & VAN HAAREN	2	2	2	2	7.49	28.32	17.91	17.91	20.83	7.49	28.32	17.91	17.91	20.83	7.49	28.32	17.91	17.91	20.83	64.19
AFRIFINA NV	3	5	4	4	0.64	71.34	17.07	4.52	2.63	3.12	71.34	21.34	5.46	35.05	3.12	71.34	21.34	5.46	35.05	14.63
AGRICOM SA	4	1	1	1	94.96	94.96	94.96	94.96	0.00	94.96	94.96	94.96	94.96	0.00	94.96	94.96	94.96	94.96	0.00	5.04
AGRIDEC	5	3	2	2	3.39	27.18	14.68	13.48	23.79	3.39	40.66	22.03	22.03	37.27	3.39	40.66	22.03	22.03	37.27	55.95
AGRIDUS	6	1	1	1	56.10	56.10	56.10	56.10	0.00	56.10	56.10	56.10	56.10	0.00	56.10	56.10	56.10	56.10	0.00	43.90
ALMANIJ	7	58	50	3	0.01	12.00	0.93	0.23	0.89	0.01	12.00	1.08	0.25	0.72	10.18	32.72	17.97	11.00	22.54	46.10
AUREX	8	1	1	1	56.26	56.26	56.26	56.26	0.00	56.26	56.26	56.26	56.26	0.00	56.26	56.26	56.26	56.26	0.00	43.74
AUXIMINES	9	1	1	1	15.76	15.76	15.76	15.76	0.00	15.76	15.76	15.76	15.76	0.00	15.76	15.76	15.76	15.76	0.00	84.24
AXA BELGIUM	10	4	3	3	0.48	65.49	23.47	13.96	41.83	0.48	88.77	31.30	4.64	88.29	0.48	88.77	31.30	4.64	88.29	6.11
BANQUE NATIONALE DE BELGIQUE	11	1	1	1	50.00	50.00	50.00	50.00	0.00	50.00	50.00	50.00	50.00	0.00	50.00	50.00	50.00	50.00	0.00	50.00
BANQUE BRUXELLES LAMBERT	12	15	10	2	0.22	12.32	4.50	3.10	7.22	0.22	20.06	6.75	4.45	11.82	7.23	60.31	33.77	33.77	53.08	32.46
BARCO	13	3	2	2	5.23	41.55	17.46	5.59	36.32	5.23	47.14	26.19	26.19	41.91	5.23	47.14	26.19	26.19	41.91	47.63
BEFIMMO SCA	14	1	1	1	33.61	33.61	33.61	33.61	0.00	33.61	33.61	33.61	33.61	0.00	33.61	33.61	33.61	33.61	0.00	66.39
BEHERMAN AUTO	15	3	1	1	5.67	37.68	21.70	21.75	32.01	65.10	65.10	65.10	65.10	0.00	65.10	65.10	65.10	65.10	0.00	34.90
BEKAERT	16	10	9	1	0.16	21.40	5.27	3.02	5.63	0.16	21.40	5.85	4.88	5.63	52.66	52.66	52.66	52.66	0.00	47.34
BELCOFI/ Belgian Finance Company	17	5	4	2	0.24	46.96	18.96	2.52	43.48	0.24	46.96	23.70	23.79	43.84	44.27	50.51	47.39	47.39	6.24	5.22
BELECTRIC	18	1	1	1	77.90	77.90	77.90	77.90	0.00	77.90	77.90	77.90	77.90	0.00	77.90	77.90	77.90	77.90	0.00	22.10
BELGO-KATANGA	19	3	2	1	4.49	55.80	21.93	5.50	51.31	5.50	60.29	32.90	32.90	54.79	65.79	65.79	65.79	65.79	0.00	34.21
BELGOLAISE	20	7	3	3	0.02	53.38	8.66	1.49	2.90	0.02	57.62	20.21	3.00	57.60	0.02	57.62	20.21	3.00	57.60	39.36
BEMAT	21	2	1	1	8.90	58.52	33.71	33.71	49.62	67.42	67.42	67.42	67.42	0.00	67.42	67.42	67.42	67.42	0.00	32.58
BERGINVEST	22	8	6	5	0.02	27.18	9.65	5.00	13.84	1.83	30.57	12.87	6.31	22.20	5.00	30.57	15.44	9.45	22.20	22.78
BERNHEIM-COMOFI	23	5	4	2	0.48	40.46	16.72	20.35	19.39	0.48	61.30	20.90	10.90	39.86	0.48	83.10	41.79	41.79	82.62	16.42
B.M.T.	24	6	6	3	4.26	26.35	9.70	6.31	4.99	4.26	26.35	9.70	6.31	4.99	5.00	43.22	19.40	9.99	38.22	41.79
BREDERODE	25	3	1	1	8.94	50.47	22.80	9.00	41.53	68.41	68.41	68.41	68.41	0.00	68.41	68.41	68.41	68.41	0.00	31.59
CAMPINE	26	4	3	2	9.58	25.86	19.32	20.93	11.22	17.85	35.44	25.76	24.00	17.59	17.85	59.44	38.65	38.65	41.59	22.71
PAPETERIES CATALA	27	2	2	1	10.01	16.00	13.01	13.01	5.99	10.01	16.00	13.01	13.01	5.99	26.01	26.01	26.01	26.01	0.00	73.99
CBR	28	2	2	2	0.03	44.41	22.22	22.22	44.38	0.03	44.41	22.22	22.22	44.38	0.03	44.41	22.22	22.22	44.38	55.56
CHANIC	29	3	3	2	0.01	55.94	22.61	11.88	55.93	0.01	55.94	22.61	11.88	55.93	11.88	55.95	33.92	33.92	44.07	32.17

**SUMMARY STATISTICS FOR DIRECT STAKES AND VOTING BLOCKS IN ALL LISTED COMPANIES (2 OF 5)**

Company Name	Serial No.	Direct Stakes			Group Blocks					Voting Blocks					Float					
		No. Stakes	No. Group Blocks	No. Voting Blocks	Min.	Max.	Mean	Med.	Intqr.	Min.	Max.	Mean	Med.	Intqr.		Min.	Max.	Mean	Med.	Intqr.
CHARBONNAGES D'ANS ET DE ROCOUR	30	2	2	1	2.08	57.79	29.94	29.94	55.71	2.08	57.79	29.94	29.94	55.71	59.87	59.87	59.87	59.87	0.00	40.13
CHARBONNAGES DU GOUFFRE	31	4	2	2	0.02	50.42	19.02	12.82	26.20	25.65	50.42	38.04	38.04	24.77	25.65	50.42	38.04	38.04	24.77	23.93
CHARBONNAGES NEERLANDAIS WILLEM SOPHIA CFE	32	1	1	1	21.25	21.25	21.25	21.25	0.00	21.25	21.25	21.25	21.25	0.00	21.25	21.25	21.25	21.25	0.00	78.75
CIE DU BOIS SAUVAGE	33	4	3	2	0.75	43.00	12.35	2.83	22.44	2.26	43.00	16.47	4.14	40.74	4.14	45.26	24.70	24.70	41.12	50.60
CIMESCAUT	34	11	5	4	0.09	56.32	6.34	0.85	2.34	0.14	56.32	13.95	2.95	8.31	0.14	65.65	17.44	1.99	33.72	30.24
CITY HOTELS	35	5	4	4	7.22	25.04	13.97	8.78	11.84	7.22	33.52	17.46	14.55	18.92	7.22	33.52	17.46	14.55	18.92	30.16
CMB	36	8	7	7	2.06	50.10	10.20	4.60	3.28	2.06	58.60	11.66	4.28	1.82	2.06	58.60	11.66	4.28	1.82	18.38
COBEPA	37	9	2	1	0.02	49.84	5.99	0.26	1.02	0.02	53.86	26.94	26.94	53.84	53.88	53.88	53.88	53.88	0.00	46.12
CO.BR.HA.	38	6	1	1	0.08	39.43	12.54	3.36	28.82	75.23	75.23	75.23	75.23	0.00	75.23	75.23	75.23	75.23	0.00	24.77
COCKERILL SAMBRE	39	3	2	2	19.61	35.28	26.96	26.00	15.67	35.28	45.61	40.45	40.45	10.33	35.28	45.61	40.45	40.45	10.33	19.11
COFINIMMO SA	40	1	1	1	79.79	79.79	79.79	79.79	0.00	79.79	79.79	79.79	79.79	0.00	79.79	79.79	79.79	79.79	0.00	20.21
COKERIES D'ANDERLUES	41	12	7	7	0.20	7.57	3.52	3.73	2.38	3.24	12.57	6.03	4.38	4.05	3.24	12.57	6.03	4.38	4.05	57.78
COLRUYT	42	3	3	1	7.19	19.48	14.58	17.06	12.29	7.19	19.48	14.58	17.06	12.29	43.73	43.73	43.73	43.73	0.00	56.27
COMPAGNIE IMMOBILIERE DE BELGIQUE	43	7	4	2	1.32	17.44	7.40	5.46	12.45	2.76	38.38	12.95	5.34	17.94	5.21	46.60	25.91	25.91	41.39	48.19
COMPAGNIE ROYALE ASTURIENNE DES MINES	44	12	6	2	0.03	30.59	5.55	1.93	5.97	0.03	30.66	11.09	8.36	9.03	5.06	61.50	33.28	33.28	56.44	33.44
CORONA-LOTUS	45	1	1	1	59.34	59.34	59.34	59.34	0.00	59.34	59.34	59.34	59.34	0.00	59.34	59.34	59.34	59.34	0.00	40.66
CREDICOM	46	2	2	1	14.59	55.41	35.00	35.00	40.82	14.59	55.41	35.00	35.00	40.82	70.00	70.00	70.00	70.00	0.00	30.00
CREDIT GENERAL	47	10	6	6	0.84	68.99	9.65	2.53	3.08	0.98	84.15	16.08	2.53	2.57	0.98	84.15	16.08	2.53	2.57	3.55
CREYF'S INTERIM	48	9	5	2	0.01	63.93	9.16	1.84	5.64	0.02	76.05	16.49	1.84	1.60	6.40	76.05	41.23	41.23	69.65	17.55
DECEUNINCK PLASTICS INDUSTRIES	49	7	5	3	0.01	50.10	9.17	2.82	3.91	0.01	52.92	12.84	3.36	2.03	2.94	57.90	21.40	3.36	54.96	35.80
DEFINANCE SA	50	2	2	2	14.99	25.61	20.30	20.30	10.62	14.99	25.61	20.30	20.30	10.62	14.99	25.61	20.30	20.30	10.62	59.40
DESIMPEL KORTEMARK COMPANY	51	8	8	8	3.11	35.56	9.00	4.88	3.77	3.11	35.56	9.00	4.88	3.77	3.11	35.56	9.00	4.88	3.77	27.98
D'IETEREN	52	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
EGECIM	53	3	2	2	2.03	50.10	18.27	2.68	48.07	4.71	50.10	27.41	27.41	45.39	4.71	50.10	27.41	27.41	45.39	45.19
ELECTRABEL	54	6	3	2	2.78	17.48	8.93	7.61	10.76	7.68	23.92	17.85	21.96	16.24	7.68	45.88	26.78	26.78	38.20	46.44
ELECTRAFINA	55	3	3	2	1.84	50.87	19.29	5.16	49.03	1.84	50.87	19.29	5.16	49.03	5.16	52.71	28.94	28.94	47.55	42.13
	56	27	7	2	0.01	26.34	1.81	0.12	0.38	0.09	26.34	6.98	2.04	15.03	3.30	45.58	24.44	24.44	42.28	51.12
	57	9	4	3	0.02	33.38	7.94	1.67	9.49	0.19	46.18	17.87	12.55	28.35	0.19	53.37	23.82	17.90	53.18	28.54

**SUMMARY STATISTICS FOR DIRECT STAKES AND VOTING BLOCKS IN ALL LISTED COMPANIES (3 OF 5)**

Company Name	Serial No.				Direct Stakes					Group Blocks					Voting Blocks					Float	
		No. Stakes	No. Group Blocks	No. Voting Blocks	Min.	Max.	Mean	Med.	Intqr.	Min.	Max.	Mean	Med.	Intqr.	Min.	Max.	Mean	Med.	Intqr.		
ELECTRORAIL	58	6	2	1	0.26	13.90	3.58	1.91	2.36	0.56	20.90	10.73	10.73	20.34	21.46	21.46	21.46	21.46	0.00	78.54	
ENGRAIS ROSIER	59	3	2	2	4.89	29.61	20.58	27.25	24.72	4.89	56.86	30.88	30.88	51.97	4.89	56.86	30.88	30.88	51.97	38.25	
FABRIQUE DE FER DE CHARLEROI	60	2	2	1	22.24	28.32	25.28	25.28	6.08	22.24	28.32	25.28	25.28	6.08	50.56	50.56	50.56	50.56	0.00	49.44	
FIMEUSE	61	1	1	1	79.75	79.75	79.75	79.75	0.00	79.75	79.75	79.75	79.75	0.00	79.75	79.75	79.75	79.75	0.00	20.25	
FINANCIERE D'OBourg	62	7	1	1	0.08	59.84	10.28	2.49	3.36	71.98	71.98	71.98	71.98	0.00	71.98	71.98	71.98	71.98	0.00	28.02	
FINANCIERE DE TUBIZE	63	6	2	2	0.10	25.00	12.14	12.80	12.16	5.00	67.86	36.43	36.43	62.86	5.00	67.86	36.43	36.43	62.86	27.14	
FINOUTREMER	64	3	2	2	1.47	55.16	19.38	1.51	53.69	1.51	56.63	29.07	29.07	55.12	1.51	56.63	29.07	29.07	55.12	41.86	
FLORIDIENNE	65	3	2	2	8.38	19.72	13.39	12.08	11.34	12.08	28.10	20.09	20.09	16.02	12.08	28.10	20.09	20.09	16.02	59.82	
FORD MOTOR COMPANY (BELGIUM)	66	1	1	1	84.17	84.17	84.17	84.17	0.00	84.17	84.17	84.17	84.17	0.00	84.17	84.17	84.17	84.17	0.00	15.83	
FORGES DE CLABECQ	67	3	2	2	4.87	32.07	15.11	8.40	27.20	13.27	32.07	22.67	22.67	18.80	13.27	32.07	22.67	22.67	18.80	54.66	
FORTIS AG	68	10	8	2	0.03	19.30	3.77	1.15	4.55	0.03	19.37	4.71	1.15	7.51	6.94	30.71	18.83	18.83	23.77	62.35	
FRANKI	69	2	2	1	5.48	55.00	30.24	30.24	49.52	5.48	55.00	30.24	30.24	49.52	60.48	60.48	60.48	60.48	0.00	39.52	
GENERALE DE BANQUE	70	12	5	3	0.01	27.16	2.73	0.04	1.09	0.01	27.54	6.55	1.75	2.27	1.76	28.14	10.92	2.87	26.38	67.23	
GROUPE BRUXELLES LAMBERT	71	12	6	3	0.01	44.23	5.43	0.93	3.17	0.09	44.23	10.86	1.07	18.30	0.65	62.82	21.72	1.69	62.17	34.84	
GEVAERT	72	29	26	1	0.02	17.83	2.09	0.76	0.83	0.02	18.84	2.34	0.75	0.96	60.72	60.72	60.72	60.72	0.00	39.28	
GIB	73	7	6	3	0.08	14.90	3.24	1.43	3.57	0.23	14.90	3.78	1.54	3.11	3.08	15.82	7.57	3.80	12.74	77.30	
GLACES DE CHARLEROI	74	5	5	1	0.69	19.52	9.01	9.84	4.68	0.69	19.52	9.01	9.84	4.68	45.05	45.05	45.05	45.05	0.00	54.95	
GLACES DE MOUSTIER	75	4	4	2	5.00	19.99	12.45	12.40	9.92	5.00	19.99	12.45	12.40	9.92	5.00	44.79	24.90	24.90	39.79	50.21	
GLAVERBEL	76	1	1	1	67.53	67.53	67.53	67.53	0.00	67.53	67.53	67.53	67.53	0.00	67.53	67.53	67.53	67.53	0.00	32.47	
CHARBONNAGES DU HASARD	77	1	1	1	46.36	46.36	46.36	46.36	0.00	46.36	46.36	46.36	46.36	0.00	46.36	46.36	46.36	46.36	0.00	53.64	
HENEX	78	5	5	1	4.51	16.63	10.91	9.97	3.48	4.51	16.63	10.91	9.97	3.48	54.53	54.53	54.53	54.53	0.00	45.47	
HER-FIC	79	1	1	1	79.96	79.96	79.96	79.96	0.00	79.96	79.96	79.96	79.96	0.00	79.96	79.96	79.96	79.96	0.00	20.04	
LA HERSEAUTOISE	80	2	1	1	29.96	52.37	41.17	41.17	22.41	82.33	82.33	82.33	82.33	0.00	82.33	82.33	82.33	82.33	0.00	17.67	
HSPL	81	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
IBEL	82	4	2	1	0.27	68.00	19.28	4.43	36.03	0.27	76.85	38.56	38.56	76.58	77.12	77.12	77.12	77.12	0.00	22.88	
IMPERIAL INVEST	83	5	5	1	5.00	15.35	8.58	7.38	0.42	5.00	15.35	8.58	7.38	0.42	42.91	42.91	42.91	42.91	0.00	57.09	
KORAMIC	84	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
KREDIETBANK	85	6	1	1	0.09	38.57	6.73	0.42	0.50	40.35	40.35	40.35	40.35	0.00	40.35	40.35	40.35	40.35	0.00	59.65	

**SUMMARY STATISTICS FOR DIRECT STAKES AND VOTING BLOCKS IN ALL LISTED COMPANIES (4 OF 5)**

Company Name	Serial No.	Direct Stakes			Group Blocks					Voting Blocks					Float					
		No. Stakes	No. Group Blocks	No. Voting Blocks	Min.	Max.	Mean	Med.	Intqr.	Min.	Max.	Mean	Med.	Intqr.		Min.	Max.	Mean	Med.	Intqr.
LA LIEVE	86	3	3	3	5.01	13.99	10.29	11.86	8.98	5.01	13.99	10.29	11.86	8.98	5.01	13.99	10.29	11.86	8.98	69.14
LONRHO BELGIUM	87	2	2	2	5.00	81.83	43.42	43.42	76.83	5.00	81.83	43.42	43.42	76.83	5.00	81.83	43.42	43.42	76.83	13.17
MECANIVER	88	4	3	2	4.52	73.82	24.81	10.44	39.72	4.52	89.33	33.07	5.37	84.81	9.89	89.33	49.61	49.61	79.44	0.78
MERCANTILE-BELIARD	89	3	3	3	0.08	99.76	33.32	0.13	99.68	0.08	99.76	33.32	0.13	99.68	0.08	99.76	33.32	0.13	99.68	0.03
MONCEAU-ZOLDER	90	3	1	1	12.18	47.93	27.52	22.45	35.75	82.56	82.56	82.56	82.56	0.00	82.56	82.56	82.56	82.56	0.00	17.44
MOSANE (EX-COFILIM)	91	5	1	1	0.48	38.70	15.34	1.59	34.86	76.71	76.71	76.71	76.71	0.00	76.71	76.71	76.71	76.71	0.00	23.29
MUSSON & HALANZY (new Cie foncière Vauban)	92	1	1	1	69.79	69.79	69.79	69.79	0.00	69.79	69.79	69.79	69.79	0.00	69.79	69.79	69.79	69.79	0.00	30.21
NATIONALE PORTEFEUILLEMAATSCHAPPIJ	93	14	6	3	0.04	48.81	5.21	1.46	3.31	0.28	51.44	12.15	4.92	9.24	3.06	59.54	24.30	10.29	56.48	27.11
PCB	94	2	2	1	41.37	45.46	43.42	43.42	4.09	41.37	45.46	43.42	43.42	4.09	86.83	86.83	86.83	86.83	0.00	13.17
PEK société de participations	95	1	1	1	39.49	39.49	39.49	39.49	0.00	39.49	39.49	39.49	39.49	0.00	39.49	39.49	39.49	39.49	0.00	60.51
PETROFINA	96	19	9	1	0.02	22.79	2.41	0.40	2.35	0.03	29.58	5.10	0.74	2.29	45.86	45.86	45.86	45.86	0.00	54.14
PICANOL	97	2	1	1	2.33	55.10	28.72	28.72	52.77	57.43	57.43	57.43	57.43	0.00	57.43	57.43	57.43	57.43	0.00	42.57
PLANTATIONS NORD-SUMATRA	98	4	4	2	4.64	25.11	13.71	12.55	13.03	4.64	25.11	13.71	12.55	13.03	4.64	50.20	27.42	27.42	45.56	45.16
POWERFIN	99	10	3	3	0.02	60.06	6.42	0.17	0.33	0.12	63.66	21.39	0.40	63.54	0.12	63.66	21.39	0.40	63.54	35.82
PROFRIGO	100	1	1	1	94.98	94.98	94.98	94.98	0.00	94.98	94.98	94.98	94.98	0.00	94.98	94.98	94.98	94.98	0.00	5.02
PROMINTER	101	1	1	1	65.78	65.78	65.78	65.78	0.00	65.78	65.78	65.78	65.78	0.00	65.78	65.78	65.78	65.78	0.00	34.22
QUICK RESTAURANTS	102	11	2	2	0.01	57.44	5.86	0.24	1.73	6.99	57.44	32.22	32.22	50.45	6.99	57.44	32.22	32.22	50.45	35.57
RECTICEL	103	2	1	1	0.03	69.95	34.99	34.99	69.92	69.98	69.98	69.98	69.98	0.00	69.98	69.98	69.98	69.98	0.00	30.02
ROTON COMPAGNIE INDUSTRIELLE ET FINANCIERE	104	2	2	2	7.61	82.73	45.17	45.17	75.12	7.61	82.73	45.17	45.17	75.12	7.61	82.73	45.17	45.17	75.12	9.66
ROYALE BELGE	105	9	4	2	0.03	52.10	8.18	2.94	3.24	0.03	55.07	18.41	9.28	33.00	0.03	73.62	36.83	36.83	73.59	26.35
SABCA	106	2	2	2	42.80	52.96	47.88	47.88	10.16	42.80	52.96	47.88	47.88	10.16	42.80	52.96	47.88	47.88	10.16	4.24
SABECH	107	1	1	1	96.58	96.58	96.58	96.58	0.00	96.58	96.58	96.58	96.58	0.00	96.58	96.58	96.58	96.58	0.00	3.42
SAIT-RADIOHOLLAND	108	3	3	2	0.38	64.34	24.36	8.37	63.96	0.38	64.34	24.36	8.37	63.96	8.75	64.34	36.55	36.55	55.59	26.91
SAPEC	109	11	6	3	0.35	33.40	6.91	3.15	11.45	1.00	55.21	12.67	3.17	11.36	3.15	69.71	25.35	3.18	66.56	23.96
SCF	110	0	1	1						0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	100.00
SIDRO	111	1	1	1	71.40	71.40	71.40	71.40	0.00	71.40	71.40	71.40	71.40	0.00	71.40	71.40	71.40	71.40	0.00	28.60
SIPEF NV	112	5	4	4	3.34	5.22	4.50	4.92	1.20	3.91	8.45	5.63	5.07	2.42	3.91	8.45	5.63	5.07	2.42	77.50

**SUMMARY STATISTICS FOR DIRECT STAKES AND VOTING BLOCKS IN ALL LISTED COMPANIES (5 OF 5)**

Company Name	Serial No.	Direct Stakes			Group Blocks					Voting Blocks					Float					
		No. Stakes	No. Group Blocks	No. Voting Blocks	Min.	Max.	Mean	Med.	Intqr.	Min.	Max.	Mean	Med.	Intqr.		Min.	Max.	Mean	Med.	Intqr.
SOCIETE BELGE DES BETONS	113	10	10	3	0.07	20.55	6.78	4.86	6.90	0.07	20.55	6.78	4.86	6.90	6.25	41.00	22.60	20.55	34.75	32.20
SOCFIN	114	9	4	4	0.15	44.43	9.61	5.28	7.77	7.85	44.43	21.63	17.12	26.16	7.85	44.43	21.63	17.12	26.16	13.48
SOCOBOM	115	3	2	2	5.12	50.58	25.41	20.52	45.46	5.12	71.10	38.11	38.11	65.98	5.12	71.10	38.11	38.11	65.98	23.78
SOCOCLABECQ	116	4	3	3	0.92	30.83	19.82	23.76	20.39	18.33	31.75	26.42	29.19	13.42	18.33	31.75	26.42	29.19	13.42	20.73
SOCIETE GENERALE DE BELGIQUE	117	13	6	2	0.01	49.38	5.85	0.66	3.75	0.19	62.60	12.68	0.95	10.07	10.73	65.34	38.04	38.04	54.61	23.93
SOFINA	118	6	6	4	3.18	12.60	6.83	5.97	3.26	3.18	12.60	6.83	5.97	3.26	5.01	18.08	10.25	8.95	10.19	59.01
SOGEFOR	119	1	1	1	53.39	53.39	53.39	53.39	0.00	53.39	53.39	53.39	53.39	0.00	53.39	53.39	53.39	53.39	0.00	46.61
SOLVAC	120	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
SOLVAY	121	1	1	1	25.01	25.01	25.01	25.01	0.00	25.01	25.01	25.01	25.01	0.00	25.01	25.01	25.01	25.01	0.00	74.99
SPADEL	122	2	2	2	34.83	49.00	41.92	41.92	14.17	34.83	49.00	41.92	41.92	14.17	34.83	49.00	41.92	41.92	14.17	16.17
SPECTOR	123	8	4	4	0.60	50.21	8.78	2.80	2.87	2.97	56.97	17.56	5.15	28.66	2.97	56.97	17.56	5.15	28.66	29.76
SUN INTERNATIONAL	124	4	3	3	7.24	43.60	20.11	14.79	21.78	7.24	54.79	26.81	18.39	47.55	7.24	54.79	26.81	18.39	47.55	19.58
SURONGO	125	3	1	1	0.32	67.43	23.48	2.68	67.11	70.43	70.43	70.43	70.43	0.00	70.43	70.43	70.43	70.43	0.00	29.57
TELINFO	126	7	2	2	0.21	30.03	10.48	6.51	18.80	28.40	44.93	36.67	36.67	16.53	28.40	44.93	36.67	36.67	16.53	26.67
TER BEKE	127	4	3	3	3.09	51.36	17.55	7.87	26.06	5.94	54.45	23.39	9.79	48.51	5.94	54.45	23.39	9.79	48.51	29.82
TESSENDERLO CHEMIE	128	1	1	1	54.83	54.83	54.83	54.83	0.00	54.83	54.83	54.83	54.83	0.00	54.83	54.83	54.83	54.83	0.00	45.17
TEXAF	129	3	2	1	6.70	48.31	27.12	26.34	41.61	33.04	48.31	40.68	40.68	15.27	81.35	81.35	81.35	81.35	0.00	18.65
TRACTEBEL	130	24	11	1	0.01	27.63	2.79	0.10	1.36	0.01	40.30	6.09	0.06	4.28	67.03	67.03	67.03	67.03	0.00	32.98
TRUSTMETAL	131	1	1	1	55.89	55.89	55.89	55.89	0.00	55.89	55.89	55.89	55.89	0.00	55.89	55.89	55.89	55.89	0.00	44.11
UCB	132	2	2	2	4.87	32.13	18.50	18.50	27.26	4.87	32.13	18.50	18.50	27.26	4.87	32.13	18.50	18.50	27.26	63.00
UCO NV	133	3	2	1	2.03	34.77	16.05	11.35	32.74	13.38	34.77	24.08	24.08	21.39	48.15	48.15	48.15	48.15	0.00	51.85
CARRIERES UNIES DE PORPHYRE	134	10	10	2	0.42	20.08	2.99	0.42	0.99	0.42	20.08	2.99	0.42	0.99	9.86	20.08	14.97	14.97	10.22	70.06
UNION MINIERE	135	5	2	2	0.03	46.51	10.99	3.26	4.37	4.76	50.19	27.48	27.48	45.43	4.76	50.19	27.48	27.48	45.43	45.05
UNIWEAR SA	136	5	5	3	0.58	39.84	13.45	5.90	18.88	0.58	39.84	13.45	5.90	18.88	0.58	60.76	22.41	5.90	60.18	32.76
VERELST NV	137	2	2	1	14.80	80.08	47.44	47.44	65.28	14.80	80.08	47.44	47.44	65.28	94.88	94.88	94.88	94.88	0.00	5.12
WALIBI	138	8	5	1	1.15	34.84	8.26	5.78	5.80	4.67	37.15	13.21	8.03	0.15	66.06	66.06	66.06	66.06	0.00	33.94
WERISTER	139	5	3	2	0.23	38.74	10.43	3.67	8.80	0.23	42.76	17.38	9.15	42.53	0.23	51.91	26.07	26.07	51.68	47.86
WITTOCK VAN LANDEGHEM	140	5	5	5	4.07	48.57	17.70	6.93	19.08	4.07	48.57	17.70	6.93	19.08	4.07	48.57	17.70	6.93	19.08	11.51

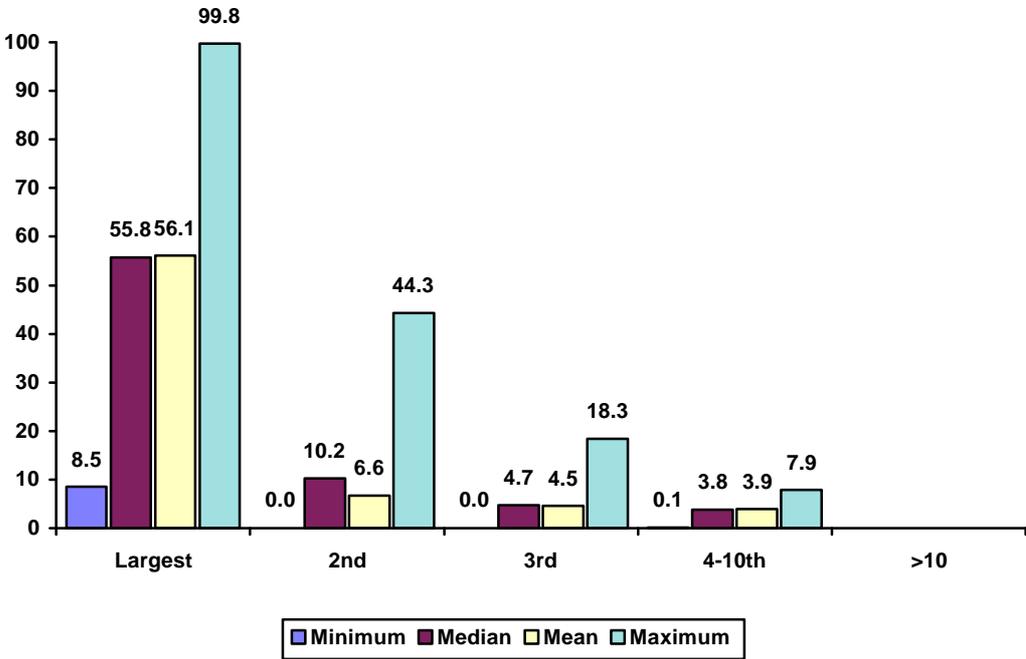
### 3.3 Voting Blocks

TABLE 5. FREQUENCY DISTRIBUTION OF STAKES AND BLOCKS

No.	Direct Stakes			Group Blocks			Voting Blocks		
	Freq.	Percent	Cum.	Freq.	Percent	Cum.	Freq.	Percent	Cum.
1	25	18.52	18.52	38	28.15	28.15	60	44.44	44.44
2	19	14.07	32.59	35	25.93	54.07	43	31.85	76.3
3	23	17.04	49.63	17	12.59	66.67	19	14.07	90.37
4	11	8.15	57.78	12	8.89	75.56	7	5.19	95.56
5	13	9.63	67.41	10	7.41	82.96	2	1.48	97.04
6	7	5.19	72.59	10	7.41	90.37	1	0.74	97.78
7	6	4.44	77.04	3	2.22	92.59	2	1.48	99.26
8	5	3.7	80.74	2	1.48	94.07	1	0.74	100
9	5	3.7	84.44	2	1.48	95.56	-	-	-
10	6	4.44	88.89	3	2.22	97.78	-	-	-
11	3	2.22	91.11	1	0.74	98.52	-	-	-
12	4	2.96	94.07	-	-	-	-	-	-
13	1	0.74	94.81	-	-	-	-	-	-
14	1	0.74	95.56	-	-	-	-	-	-
15	1	0.74	96.3	-	-	-	-	-	-
19	1	0.74	97.04	-	-	-	-	-	-
24	1	0.74	97.78	-	-	-	-	-	-
26	-	-	-	1	0.74	99.26	-	-	-
27	1	0.74	98.52	-	-	-	-	-	-
29	1	0.74	99.26	-	-	-	-	-	-
50	-	-	-	1	0.74	100	-	-	-
58	1	0.74	100	-	-	-	-	-	-
Notified	135	100		135	100		135	100	
Not Noti.	5			5			5		
Total	140			140			140		

Note: The table compares the number of stakes per company with the number of group blocks and the number of voting blocks per company. There is one company with 58 direct stakes, one company with 50 group blocks and one company with 9 voting blocks. In terms of numbers, group blocks and voting blocks concentrate the voting power considerably. Again, note that there are 5 companies without notification that could be considered to have “zero” stakes, group and voting blocks.

**FIGURE 1. VOTING BLOCKS BY RANK OF BLOCK FOR ALL LISTED COMPANIES**



Note: For each of the 135 notified companies the blocks were ranked. For blocks of equal size the same value the average rank was assigned. This was never the case for the largest stake. For each category the minimum, median, mean and maximum were computed for all stakes in the category.

The median and the mean of the largest direct block in a listed Belgian firm is around 56%, which is already above the simple majority level. It follows that, on average, the biggest blockholder in a listed firm has, alone, the absolute control on the firm. The second observation is that the second largest blockholder lags far behind the first one, with a median stake around 10%, and a mean stake even smaller. Further ranks do not attain 5% of the votes on average. We can see here that direct voting blocks are characterised by the control exercised by a single blockholder, when other minor blockholders stay around 10% of 5% of the votes.

**TABLE 6. FREQUENCY DISTRIBUTION OF C1, C3, C5, C20 AND C<sub>ALL</sub>**

Range	C1		C3		C5		C20		C <sub>all</sub>	
	Frequency	Cum. Pct.	Frequency	Cum. Pct.						
0-4.99	-	-	-	-	-	-	-	-	-	-
5-9.99	1	0.74	-	-	-	-	-	-	-	-
10-14.99	2	2.22	-	-	-	-	-	-	-	-
15-19.99	3	4.44	2	1.48	1	0.74	1	0.74	1	0.74
20-24.99	3	6.67	3	3.7	4	3.7	4	3.7	4	3.7
25-29.99	6	11.11	4	6.67	3	5.93	3	5.93	3	5.93
30-34.99	8	17.04	3	8.89	3	8.15	3	8.15	3	8.15
35-39.99	2	18.52	5	12.59	5	11.85	4	11.11	4	11.11
40-44.99	10	25.93	7	17.78	8	17.78	9	17.78	9	17.78
45-49.99	12	34.81	8	23.70	8	23.7	8	23.7	8	23.7
50-54.99	18	48.15	16	35.56	15	34.81	15	34.81	15	34.81
55-59.99	16	60.00	9	42.22	9	41.48	9	41.48	9	41.48
60-64.99	8	65.93	8	48.15	8	47.41	7	46.67	7	46.67
65-69.99	15	77.04	21	63.70	19	61.48	19	60.74	19	60.74
70-74.99	7	82.22	11	71.85	12	70.37	13	70.37	13	70.37
75-79.99	8	88.15	15	82.96	15	81.48	14	80.74	14	80.74
80-84.99	8	94.07	10	90.37	9	88.15	10	88.15	10	88.15
85-89.99	3	96.3	2	91.85	5	91.85	5	91.85	5	91.85
90-94.99	3	98.52	7	97.04	6	96.3	6	96.3	6	96.3
95-100	2	100.00	4	100.00	5	100.00	5	100.00	5	100.00
<b>Total</b>	<b>135</b>		<b>135</b>		<b>135</b>		<b>135</b>		<b>135</b>	

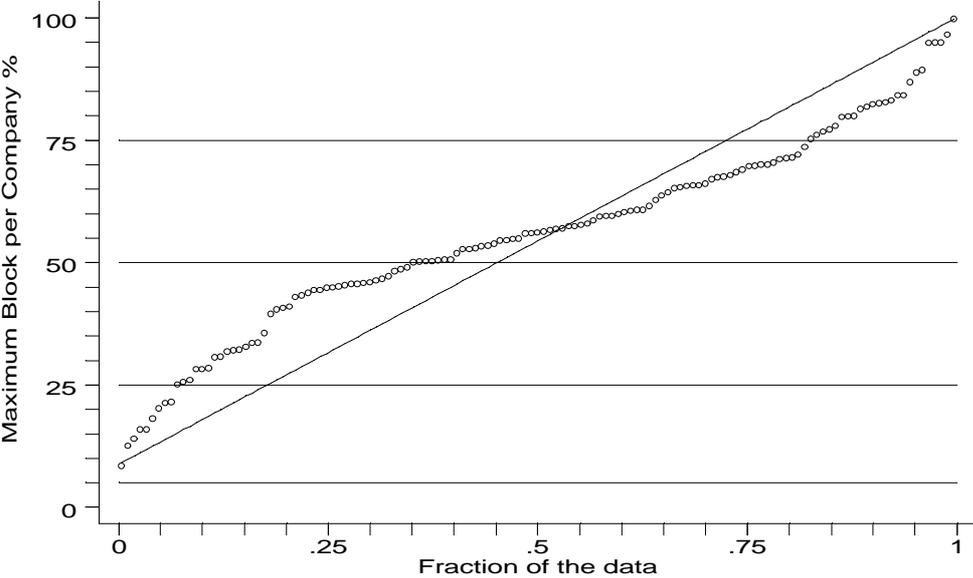
**TABLE 7. SUMMARY STATISTICS AND CORRELATION OF C1, C3, C5, C20 AND C<sub>ALL</sub>**

Measure	Mean	Std. Dev.	Min.	Max.		C1	C3	C5	C20	C <sub>All</sub>
C1	55.77	19.80	8.45	99.76		1				
C3	62.60	19.03	15.76	99.97		0.8552	1			
C5	63.19	19.08	15.76	99.97		0.8272	0.9943	1		
C20	63.37	19.07	15.76	99.97		0.8181	0.9883	0.9980	1	
C <sub>All</sub>	63.37	19.07	15.76	99.97		0.8181	0.9883	0.9980	1.0000	1

The first 5 columns show the mean, standard deviation, minimum and maximum of the five concentration measures for voting blocks. The last five columns show a correlation matrix for the five measures.

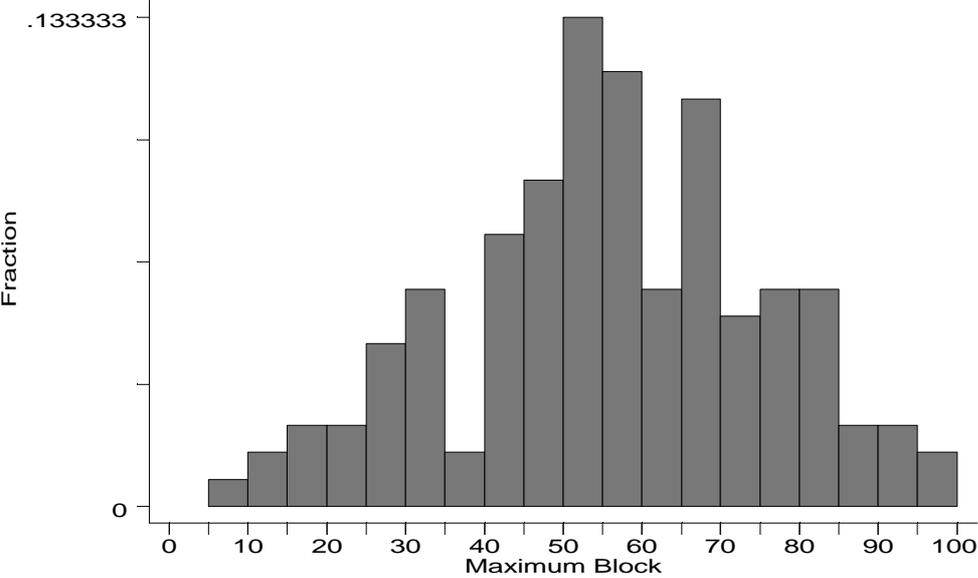
As the data on the previous figure already showed, concentration measures are very high when we consider voting blocks, since the first blockholders has control on the firm and that the difference between his holdings and the whole registered ownership is below 10%.

**FIGURE 2. PERCENTILE PLOT OF MAXIMUM VOTING BLOCK**



Note: Percentile plot of the maximum voting block for 135 notified companies. The five companies with no notified stake are not included. A step at 50% is visible. Based on the same data, the histogram below is more speaking.

**FIGURE 3. HISTOGRAM OF MAXIMUM VOTING BLOCK**



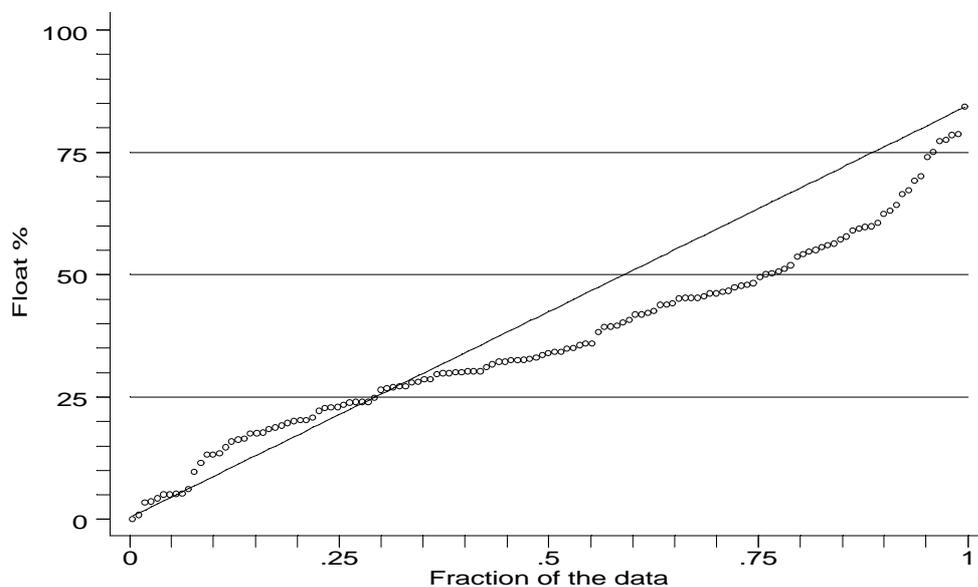
Note: Histogram with the maximum voting block for 135 notified companies. The five companies with no notified stake are not included. There are no maximum voting blocks smaller than 5%.

The histogram indicates three clear peaks : 50%-55%, 55%-60%, and 65%-70%. The first peak obviously corresponds to the 50% majority level. The last peak corresponds to the “qualified majority” of two third of the votes, required for certain decisions at the General Meeting. The second peak however - 55% to 60% - is harder to justify. Another surprising result, compared for instance to a country like Germany, is the absence of peak at 75%, which is the threshold required in Belgian law to modify the statutes of a firm.

However, these two last facts might be related to the influence of the float that can strongly increase the influence of voting blocks in practice. With 65% of the total votes and 35% of float on average, a blockholders controls the entire ownership known.

A remarkable point is the sharp frequency decrease for 35%-40% band. This phenomenon can possibly be explained by the Belgian legislation on take-overs. In the 1989 law, a buyer that acquires 33% (or more) of the stocks of a given company has the obligation to make a public offering for the totality of the stocks. This might explain why smaller blockholders keep their holdings below 33%, or jump to the next step, seeking for control. With an average float of 35%, a blockholding of 40% is sufficient to have the majority of the ownership known :  $40\% / 65\% = 62\%$ .

**FIGURE 4. PERCENTILE PLOT OF “FLOAT”**



Note: “Float” is defined as 100% minus the sum of all notified direct stakes (which, in the case of Belgium, is equal to the sum of all notified blocks). The float is rather homogeneously distributed among listed Belgian firm. The minimum value is zero, for a few companies that are fully owned by one shareholder. The maximum value is 100% for the five listed firms for which no notification is registered. The median is at 34%, roughly corresponding to the value of the mean. One quarter of the listed firms have, however, a float exceeding 50% of the votes.

**TABLE 8. SUMMARY STATISTICS FOR FLOAT**

<i>Statistic</i>	<i>Value</i>
<b>Min.</b>	0.03
<b>1%</b>	0.78
<b>5%</b>	5.04
<b>10%</b>	13.17
<b>25%</b>	22.88
<b>50%</b>	33.94
<b>75%</b>	49.44
<b>90%</b>	62.35
<b>95%</b>	73.99
<b>99%</b>	78.75
<b>Max.</b>	84.24
<b>Mean</b>	36.63
<b>Std. Dev.</b>	19.07

Note: Summary statistics for 135 observations on “float”. The five companies with no notification (100% float) are not included.

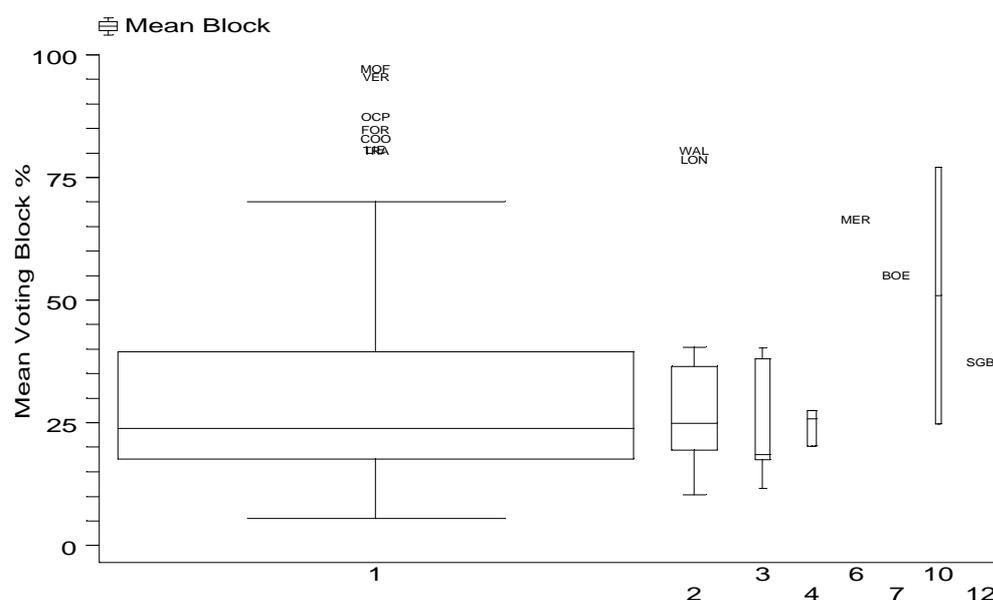
### 3.4 Portfolios of Blockholders

TABLE 9. FREQUENCY DISTRIBUTION OF VOTING BLOCK HOLDERS

No. of Blocks held per Blockholder	Freq.	Percent	Cum.
1	167	85.64	85.64
2	15	7.69	93.33
3	5	2.56	95.90
4	3	1.54	97.44
6	1	0.51	97.95
7	1	0.51	98.46
10	2	1.03	99.49
12	1	0.51	100
<b>Total</b>	195	100	

Note: This section considers the point of view of the blockholder. Data show that most (85.64%) voting blockholder control a single block. That is, they have only one voting block in one listed firm in their investment portfolio. Largest blockholders however have a much larger perimeter of control, up to 12 blocks in 12 firms. This largest investor is the group SUEZ-SGB (Société Générale de Belgique). The sizes of the blocks for each blockholder are detailed in the plot below.

FIGURE 5. BOX PLOT OF MEAN HOLDING BY NUMBER OF HOLDINGS



Note: This box plot represents the size of the blocks in a blockholders' portfolio. The horizontal axis shows the number of holdings per blockholder, the vertical axis shows the mean percentage of the votes outstanding held. The width of the box is proportional to the number of blockholders with one holding, two holdings and up to 12 holdings. The outliers are printed with the first three letters of their mnemonic.

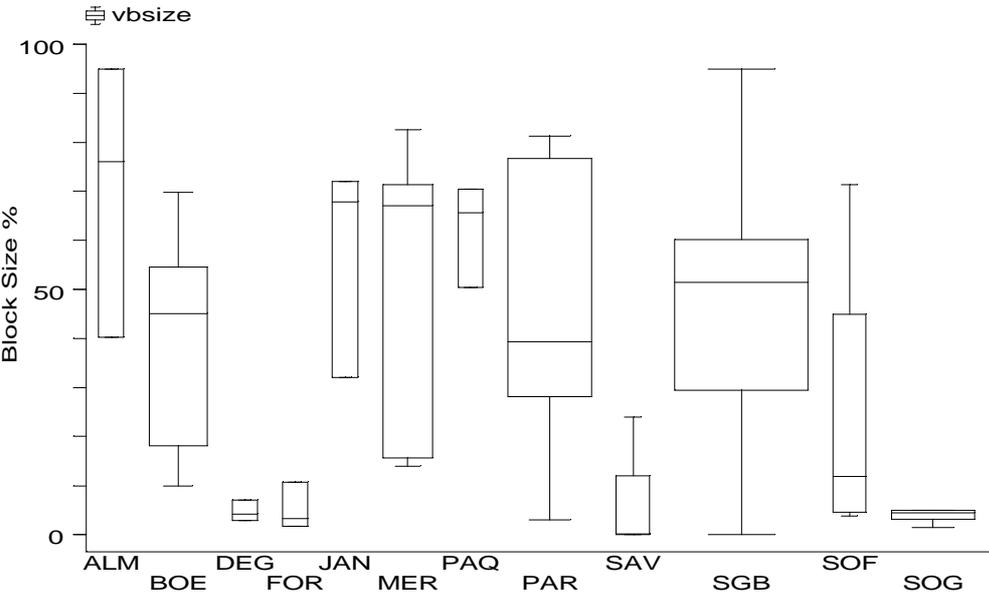
Data show that blockholders controlling one or two blocks hold on average about 25% the votes in the firm(s) they invest, which corresponds to a blocking minority. More powerful blockholders, controlling six or more blocks (Family group Boël, French group Paribas, Suez-SGB,...) hold larger blocks on average, such that they are powerful both by the number of the blocks and by the size of the blocks they control. The origin and full names of these blockholders are detailed in the table below.

**TABLE 10. NUMBER AND SIZE OF VOTING BLOCKS PER BLOCKHOLDER**

<i>Voting Blockholder Name</i>	<i>Voting Blockholder Mnemonic</i>	<i>Number of Companies</i>	<i>Min. Block</i>	<i>Max. Block</i>	<i>MeanBlock</i>	<i>Median</i>	<i>Intr quart.. Range</i>
Société Générale de Belgique - Compagnie Financière de Suez (Fr)	SGB_SUEZ	12	0.03	94.96	40.15	45.42	39.81
Banque Paribas - Cobepa (Fr)	PARCOB	10	3.06	81.35	45.44	39.36	48.61
Soges Star Fund (B)	SOGES	10	1.51	5	3.96	4.43	1.74
Groupe familial Boel (B)	BOELGrf	7	9.89	69.79	41.81	45.05	36.45
Groupe familial Van der Mersch (B)	MERSCH	6	13.99	82.56	52.97	67.1	55.58
Société Générale de Belgique (B-Fr)	SGB	4	50.19	69.98	59.31	58.53	15.03
Sofina (B)	SOFINA	4	3.8	71.4	24.7	11.8	40.39
Famille Saverys (B)	SAVERYS	4	0.02	24	6.07	0.12	11.99
Almanij Holding Group (B)	ALMGr	3	40.35	94.98	70.46	76.05	54.63
Mr. Guy Paquot (B)	PAQUOT	3	50.42	70.43	62.17	65.65	20.01
Groupe familial Janssen (B)	JANSGrf	3	32.13	71.98	57.32	67.86	39.85
Groupe AG - Fortis (B)	FORTIS	3	1.76	10.73	5.26	3.3	8.97
Banque Degroof (B)	DEGROOF	3	2.94	7	4.74	4.28	4.06
Lonrho Belgium (B)	LONRHO	2	77.9	81.83	79.87	79.87	3.93
Groupe Bruxelles Lambert (B)	GBL	2	60.31	73.62	66.96	66.96	13.31
Groupe Danone (Fr)	DANGr	2	5.3	89.33	47.32	47.32	84.03
Région Wallonne (B)	WALLONNE	2	13.27	79.79	46.53	46.53	66.52
Banques Paribas (Fr)	PARIBAS	2	7.68	75.23	41.46	41.46	67.55
Heideberg Zement Groupe (G)	HZEMGr	2	33.52	44.41	38.97	38.97	10.89
Artois - Piedboeuf - Interbrew Groupe (B)	ARTGr	2	34.83	35.28	35.06	35.06	0.45
Gewestelijke Investerings- maatschappij voor Vlanderen (B)	GIMV	2	9.99	47.14	28.56	28.56	37.15
Ackermans Van Haaren Groupe (B)	ACKGr	2	3.39	50.51	26.95	26.95	47.12
Royale Belge / Union des Assurances de Paris Groupe (B/Fr)	SCUAP	2	3.49	14.99	9.24	9.24	11.5
Groupe des Assurances Generale de France (Fr)	AGFGGr	2	7.24	8.75	7.99	7.99	1.51
Mutuelle Solvay (B)	MSOL	2	2.87	12.6	7.74	7.74	9.73
Groupe Familial Verbert (B)	VERBERT	2	5	5	5	5	0
Mercury Asset Management Group (UK)	MERCURY	2	4.64	4.76	4.7	4.7	0.12
Cobepa Holding (B-Fr)	COB	2	0.65	7.41	4.03	4.03	6.76
Total Holders w. 2 Blocks or more		<b>102</b>					
Total All Blockholders		<b>269</b>					

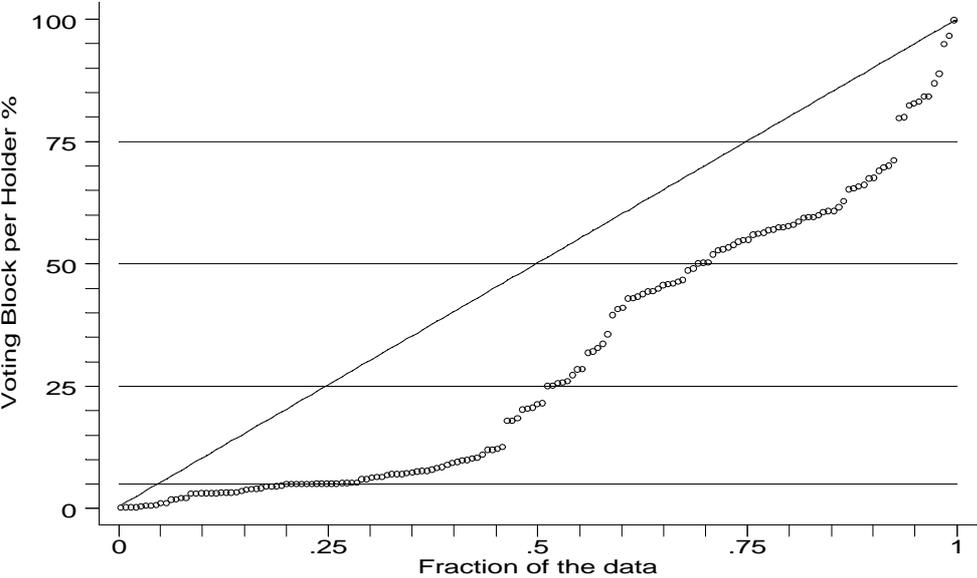
Note : The table reports summary statistics over these classes. Among blockholders, the case of the SUEZ / Générale de Belgique (SGB) group, with a portfolio of 73 stakes in 16 different listed firms (12 + 4), is the most striking example of the presence of French shareholders on the Brussels Stock Exchange. Paribas is another significant example of it. Soges is a special case since it is an investment fund. Besides this, Belgian family groups are important in the country : Boël, Janssen, Van der Mersch are large family holding often controlling blocks in several listed firms. Soges belongs to the GBL group but it acts independently for its investments. This type of shareholder holds relatively small stakes (no more than 5%) and it is not an active shareholder.

**FIGURE 6. BOX PLOT OF VOTING BLOCKS HELD BY HOLDERS OF 2 OR MORE BLOCKS**



Note: The horizontal axis is split up by blockholder, the vertical axis shows the size of the blocks held. The width of the boxes is proportional to the number of blocks held. The central bar of the box corresponds to the mean, the rectangle spans the 25<sup>th</sup> to 75<sup>th</sup> percentile and the extended lines end at the 10<sup>th</sup> and 90<sup>th</sup> percentile. Outliers (below the 10<sup>th</sup> percentile or beyond the 90<sup>th</sup> percentile) are marked individually. More detailed than the previous box plot, this figure shows the high variance between blockholdings across investors.

**FIGURE 7. PERCENTILE PLOT OF VOTING BLOCKS HELD BY HOLDERS WITH A SINGLE BLOCK**



Note: There are 167 voting blockholders with a single block. For each one of them the size of the holding is plotted here. As we could note in the summary statistics, single blockholders concentrate around 25% stakes, constituting a blocking minority at the Assembly. 70% of the single blockholders control less than 50% of the votes.

**TABLE 11. SUMMARY STATISTICS BY BLOCKHOLDER TYPE**

<i>Blockholder Type</i>	<i>Mnemonic</i>	<i>Number of Blockholders of this Type</i>	<i>Mean</i>	<i>Min.</i>	<i>Max.</i>	<i>Median</i>	<i>Interqr.</i>
Belgian State	ETAT	1	50	50	50	50	0
Individuals (Belgian)	PP	51	27.66	0.02	82.33	13.99	47
Individuals (Foreign)	PPE	2	39.48	7.85	71.1	39.48	63.25
Individuals (French)	PPF	1	84.15	84.15	84.15	84.15	0
Belgian Listed Firm	SBC	25	32.69	0.19	81.83	32.07	50.89
Belgian Listed Firm - Foreign French Firm	SBC_SEF	1	62.82	62.82	62.82	62.82	0
Belgian Non Listed Firm	SBN	49	25.06	0.14	96.58	9.25	35.74
Belgian Non Listed Firm - Foreign Firm	SBN_SE	1	69.71	69.71	69.71	69.71	0
Belgian Non Listed Firm - Foreign French Firm	SBN_SEF	3	58.31	53.88	61.5	59.54	7.62
Foreign Firm	SE	4	24.14	3.24	60.76	16.28	37.47
Foreign German Firm	SEDEU	1	33.52	33.52	33.52	33.52	0
Foreign French Firm	SEF	22	32.44	0.03	88.77	30.35	47.95
Foreign French Firm - Belgian Listed Firm	SEF_SBC	1	45.86	45.86	45.86	45.86	0
Foreign French Firm - Belgian Non Listed Firm	SEF_SBN	1	65.34	65.34	65.34	65.34	0
Foreign Italian Firm	SEI	1	0.58	0.58	0.58	0.58	0
Foreign Japanese Firm	SEJ	2	37.24	6.94	67.53	37.24	60.59
Foreign Firm of Luxembourg	SEL	13	29.02	3.12	59.87	20.32	28.51
Foreign Dutch Firm	SEPB	3	39.44	3.91	57.43	56.97	53.52
Foreign Swiss Firm	SESU	3	4.74	3.11	5.9	5.22	2.79
Foreign British Firm	SEUK	3	5.6	4.76	6.99	5.06	2.23
Foreign American Firm	SEUS	4	37.77	3.05	84.17	31.93	68.07
Flemish Government	VLA	1	99.76	99.76	99.76	99.76	0
Walloon Government	WALL	1	13.27	13.27	13.27	13.27	0
State of Zaire	ZAIRE	1	11.88	11.88	11.88	11.88	0

Note: Each of the 195 blockholders was classified. The table reports summary statistics over these classes. Non listed Belgian firms and individuals dominate overall, followed by French firms, sometimes associated with a Belgian firm - either listed or not- inside a voting block. Large Belgian listed firms show a significant presence in the ownership of the other listed firms.

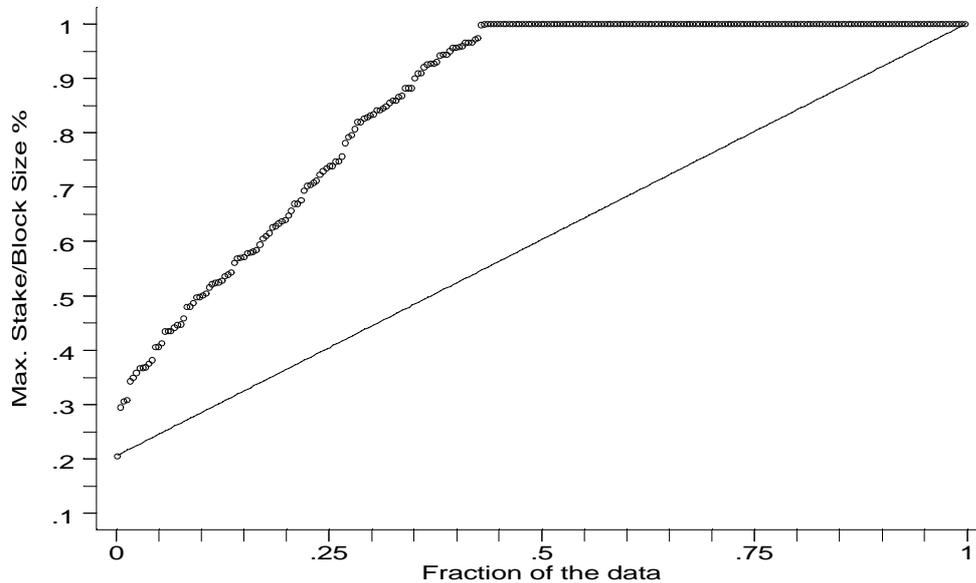
### 3.5 Stakes and Group Blocks in Voting Blocks

**TABLE 12. NUMBER OF STAKES IN VOTING BLOCK**

<i>No. of Stakes in a Voting Block</i>	<i>Freq.</i>	<i>Percent</i>	<i>Cum.</i>
1	150	55.76	55.76
2	43	15.99	71.75
3	21	7.81	79.55
4	15	5.58	85.13
5	11	4.09	89.22
6	6	2.23	91.45
7	5	1.86	93.31
8	3	1.12	94.42
9	5	1.86	96.28
10	3	1.12	97.4
11	1	0.37	97.77
14	1	0.37	98.14
19	1	0.37	98.51
20	1	0.37	98.88
24	1	0.37	99.26
29	1	0.37	99.63
49	1	0.37	100
<b>Total No. of Voting Blocks</b>	<b>269</b>	<b>100.00</b>	

Note: The table shows the number of stakes in a voting block. Contrary to what one could have expected, voting blocks include many distinct shareholders. This is really not the case. In more than 50 percent of the cases, the voting blocks is only composed of one single shareholder and can hardly be called “blocks”. Blocks including between 2 and 5 shareholders represent one third of the data. The maximum value is 49 shareholders in one block. It is a coalition of mainly individuals and non listed firms voting in the holding Almanij. Globally, with 269 voting blocks for 750 direct stakes, it make an average of less than 3 (2.8) shareholders per voting block which supposes narrow and stable voting blocks.

**FIGURE 8. PERCENTILE PLOT OF FRACTION OF LARGEST STAKE IN VOTING BLOCK**



Note: The percentile plot shows plots the distribution of the fraction of the largest stake in each one of the 269 voting blocks. Nevertheless, some voting pacts, resulting from a simple contractual agreements, might be temporary or fragile, especially in bad times, so that they do not always reflect the real voting structure of a General Assembly. It is the reason why voting blocks are not always taken into account by certain studies, or by the firm itself, and by the other shareholders.

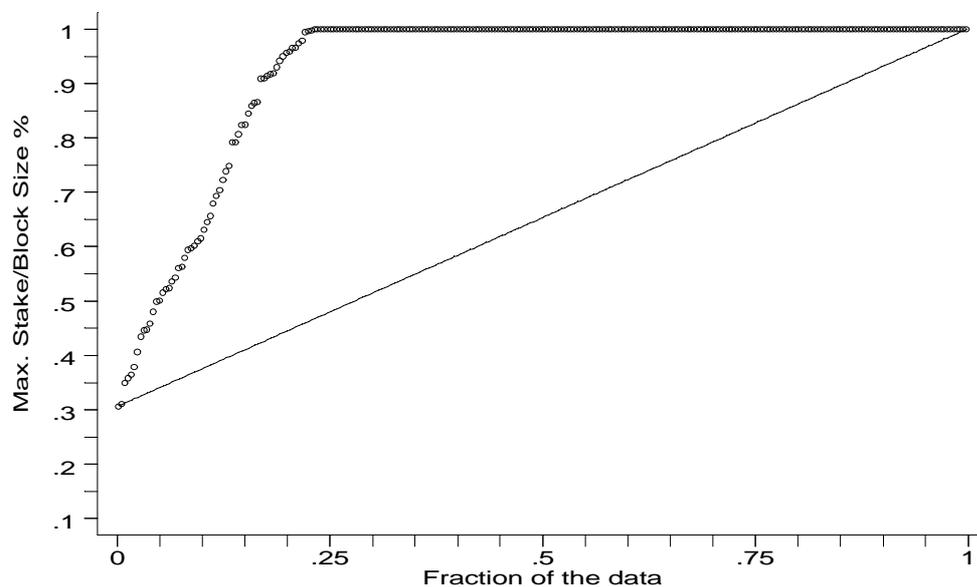
The percentile plot here (figure 10) is therefore very useful to estimate the stability of voting blocks in Belgian listed firms. The figure expresses the part of the votes the largest shareholders inside one block holds. For blocks with a single shareholder, the share of votes is 100% of course. But it is interesting to see that, for blocks composed of two shareholders or more, the largest investor controls more than 50% of the votes, in 75% of the cases. Such that, we can estimate the structure of a voting block as a coalition between a large investor and several smaller owners. If this is the case, the breaking up of voting block will not affect the voting structure of the firm much, since small investors allied in blocks around one large shareholder, do not have much weight.

**TABLE 13. NUMBER OF GROUP BLOCKS IN VOTING BLOCK**

<i>No. of Group Blocks in Voting Block</i>	<i>Freq.</i>	<i>Percent</i>	<i>Cum.</i>
1	205	76.21	76.21
2	31	11.52	87.73
3	14	5.20	92.94
4	4	1.49	94.42
5	6	2.23	96.65
7	1	0.37	97.03
8	1	0.37	97.40
9	4	1.49	98.88
11	1	0.37	99.26
26	1	0.37	99.63
46	1	0.37	100.00
<b>Total No. Voting Blocks</b>	<b>269</b>	<b>100</b>	

Note: The table shows the number of group blocks in a voting block. In three quarters of the cases, a group block corresponds to a voting block : shareholders belonging to the same group of firms form a coalition of voters with no external members. In 25% of the cases however, one or several voters joint an existing group block to vote. Or, individuals and stand-alone firms decide to vote jointly, without necessarily being part of an industrial group.

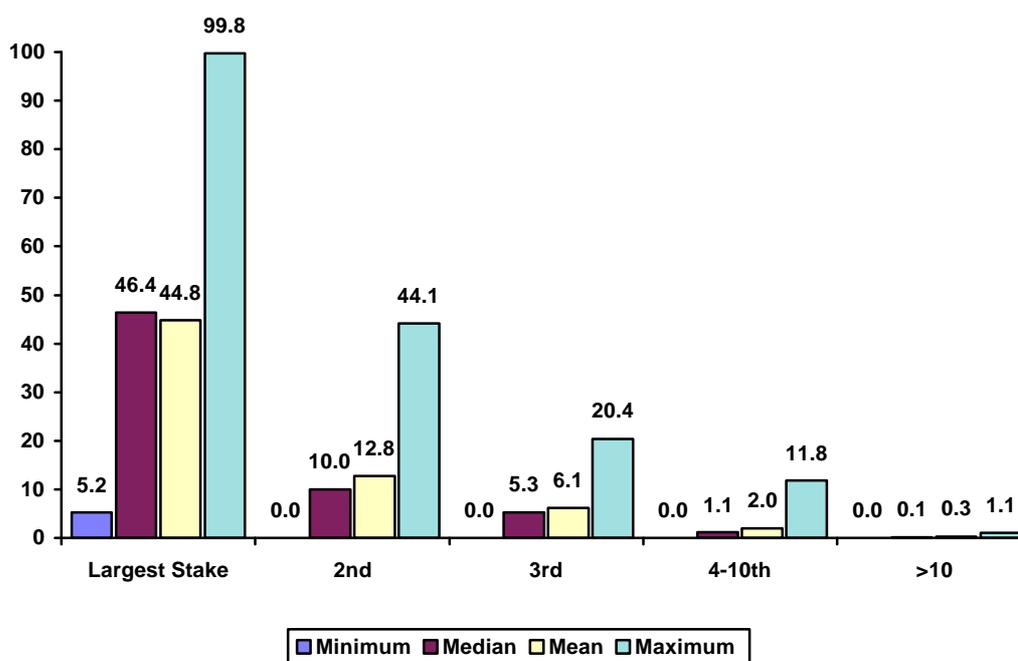
**FIGURE 9. PERCENTILE PLOT OF FRACTION OF LARGEST GROUP BLOCK IN A VOTING BLOCK**



Note: The percentile plot shows the distribution of the fraction of the largest group block in each one of the 269 voting blocks. The very large majority of voting blocks (95%) are dominated by a group block controlling more than 50% of the votes of the coalition, making those ensembles very stable.

### 3.6 Direct Stakes

FIGURE 10. DIRECT STAKES BY RANK OF STAKE FOR ALL LISTED COMPANIES



Note: For each of the 135 notified companies the stakes were ranked. For blocks of equal size (ties) the average rank was assigned. This was never the case for the largest stake. For each category the minimum, median, mean and maximum were computed for all stakes in the category.

The median and the mean of the largest direct stake in a listed Belgian firm is around 45%, which is below the majority level. It follows that, on average, the biggest shareholder in a listed firm does not have, alone, the absolute control on the firm, although the float might change this situation in practice.

The second result we can tell from this graph is that the second largest shareholders lags neatly behind the first one, with a median stake and a mean stake around 11%, which is two times less than a blocking minority. The third rank of stakes is even much smaller, around five percent, and the rest is negligible. It follows that direct shareholdings are characterised by a small number of significant shareholders - one to three - but each rather small since the largest investor lies below the majority level, and the second largest lies below the blocking minority level.

**TABLE 14. SUMMARY STATISTICS FOR DISTRIBUTION OF DIRECT STAKES**

	<i>Min. Stake</i>	<i>Max. Stake</i>	<i>Median Stake</i>	<i>Interq. Range</i>	<i>Mean Stake</i>	<i>Std. Dev. Stake</i>
<b>Min.</b>	0.0	5.2	0.0	0.0	1.0	0.0
<b>1%</b>	0.0	7.6	0.1	0.0	1.8	0.0
<b>5%</b>	0.0	14.0	0.3	0.0	3.0	0.0
<b>10%</b>	0.0	17.5	0.9	0.0	5.3	0.0
<b>25%</b>	0.2	27.2	3.1	1.1	9.0	4.3
<b>50%</b>	3.1	46.4	10.4	7.1	17.8	12.0
<b>75%</b>	13.4	56.2	29.3	28.0	31.8	20.7
<b>90%</b>	56.3	73.8	56.3	49.6	56.3	32.6
<b>95%</b>	79.8	81.8	79.8	65.1	79.8	38.1
<b>99%</b>	95.0	96.6	95.0	76.8	95.0	54.3
<b>Max.</b>	96.6	99.8	96.6	99.7	96.6	57.5
<b>Obs</b>	135	135	135	135	135	135

Note: For the distribution of stakes held in each of the 135 notified listed companies the minimum, maximum, median, interquartile range, mean and standard deviation was computed. The table gives percentiles for the resulting seven times 135 values for these summary statistics.

**TABLE 15. SUMMARY STATISTICS BY DIRECT SHAREHOLDER TYPE**

<i>Investor</i>	<i>Minimum</i>	<i>Median</i>	<i>Mean</i>	<i>Maximum</i>	<i>Number</i>
<b>Belgian Listed</b>	0.02	11.71	22.11	94.98	122
<b>Belgian Non-Listed Industrial</b>	0.01	2.68	10.53	99.76	323
<b>Federal Government</b>	50.00	50.00	50.00	50.00	1
<b>Wallonia Region</b>	8.18	8.40	32.12	79.79	3
<b>Belgian Non-Listed Insurance</b>	0.01	0.39	3.13	65.49	58
<b>Belgian Non-Listed Banks</b>	0.24	1.88	2.47	7.23	9
<b>France</b>	0.02	3.45	10.21	67.53	38
<b>United Kingdom</b>	0.09	5.00	15.72	73.82	37
<b>Luxembourg</b>	0.02	1.50	7.24	81.83	15
<b>Netherlands</b>	0.03	1.93	9.70	68.99	56
<b>Other Countries</b>	0.01	2.93	15.12	84.17	16
<b>Individuals</b>	0.01	2.07	5.19	50.10	78
<b>Float</b>	0.03	34.2	38.6	100.00	unknown

Note : The most important group of direct Belgian shareholders of listed Belgian firms are non listed industrial firms (323 direct stakes for 299 shareholders) and individuals (78 direct stakes and shareholders), followed by the listed Belgian firms themselves (122 stakes and 51 shareholders).

Note that banks and institutional investors are absent of the list, due to the institutional structure of the country. After the big crisis of the thirties, the 1935 law that forbid universal banking in the country. Belgian bankers, who lost the expertise of being a shareholders in industrial matters, did not take participations in non financial industries when the law changed in 1992 with the transposition of EU 2nd banking directive.

Foreign investors became important in Belgium over the last decade (162 stakes and 151 shareholders in 1995). Among them, France have the leading position with 29 investors and 38 stakes, followed by the United Kingdom (14 investors) the Netherlands (13 investors). French investors are large groups investing in Belgian holdings : the SUEZ holding group through the Générale de Belgique, UAP insurance companies allied to Frere-Bourgeois - Royale Belge and the Financière de PARIBAS, holding, via its Belgian subsidiary Cobepa. Such that, with rather few direct stakes, those groups play a significant role in the economic life of some large listed Belgian firms and their subsidiaries, indirectly.

The links between Belgium and the Netherlands are characterised by several small shareholdings in various industrial Belgian listed companies. There is also links between Belgian and Deutsch banks, like ING (large Deutsch bank) and BBL (second Belgian commercial bank). Most of UK investors are members of a single group (Henderson). Finally the most numerous foreign direct investors in Belgium are from Luxembourg (55). Nevertheless, these are, in some cases, subsidiaries of Belgian companies, located there for fiscal reasons so that Luxembourg, for the Belgian point of view, is not exactly a foreign country.

**TABLE 16. FREQUENCY DISTRIBUTION OF C1, C3, C5, C20 AND C<sub>ALL</sub>**

Range	C1		C3		C5		C20		C <sub>all</sub>	
	Frequency	Cum. Pct.	Frequency	Cum. Pct.						
0-4.99	0	0.00	0	0.00	0	0.00	0	0.00	0	0.00
5-9.99	2	1.48	0	0.00	0	0.00	0	0.00	0	0.00
10-14.99	6	5.93	0	0.00	0	0.00	0	0.00	0	0.00
15-19.99	11	14.07	4	2.96	1	0.74	1	0.74	1	0.74
20-24.99	5	17.78	2	4.44	4	3.70	4	3.70	4	3.70
25-29.99	15	28.89	4	7.41	4	6.67	3	5.93	3	5.93
30-34.99	10	36.30	8	13.33	3	8.89	3	8.15	3	8.15
35-39.99	9	42.96	8	19.26	6	13.33	4	11.11	4	11.11
40-44.99	8	48.89	10	26.67	8	19.26	8	17.04	8	17.04
45-49.99	11	57.04	5	30.37	10	26.67	8	22.96	8	22.96
50-54.99	17	69.63	13	40.00	14	37.04	15	34.07	15	34.07
55-59.99	15	80.74	14	50.37	8	42.96	10	41.48	10	41.48
60-64.99	3	82.96	9	57.04	11	51.11	6	45.93	6	45.93
65-69.99	8	88.89	19	71.11	15	62.22	19	60.00	19	60.00
70-74.99	3	91.11	7	76.30	13	71.85	12	68.89	12	68.89
75-79.99	4	94.07	11	84.44	14	82.22	15	80.00	15	80.00
80-84.99	4	97.04	9	91.11	9	88.89	10	87.41	10	87.41
85-89.99	2	98.52	2	92.59	5	92.59	6	91.85	6	91.85
90-94.99	2	100.00	6	97.04	5	96.30	5	95.56	5	95.56
95-100	2	100.00	4	100.00	5	100.00	6	100.00	6	100.00
<b>Total</b>	135		135		135		135		135	

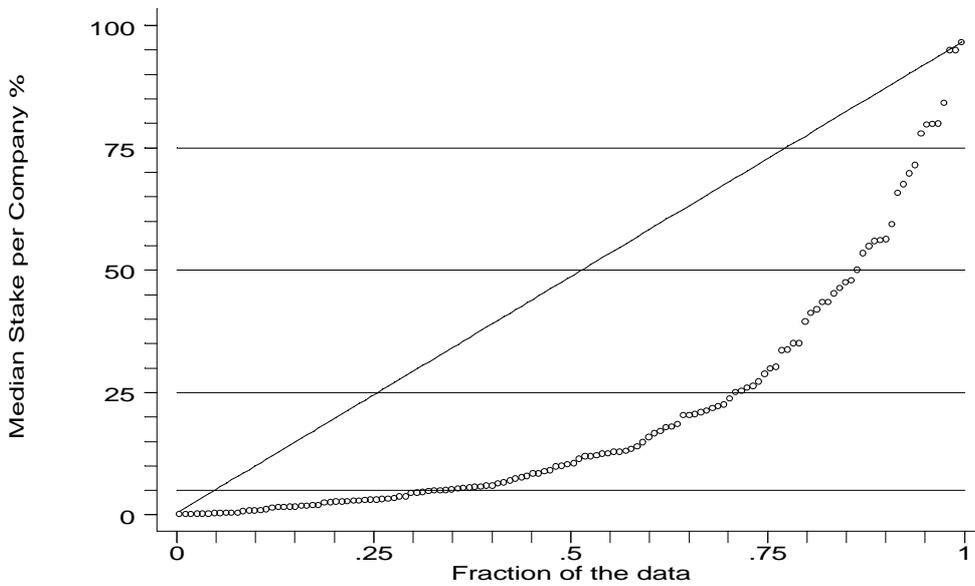
**TABLE 17. SUMMARY STATISTICS AND CORRELATION OF C1, C3, C5, C20 AND C<sub>ALL</sub>**

Measure	Mean	Std. Dev.	Min.	Max.	C1	C3	C5	C20	C <sub>ALL</sub>
C1	44.75	20.88	5.22	99.76	1				
C3	59.28	20.10	15.25	99.97	0.8050	1			
C5	62.25	19.42	15.76	99.97	0.7314	0.9770	1		
C20	63.75	19.20	15.76	99.97	0.6777	0.9380	0.9826	1	
C <sub>ALL</sub>	63.83	19.18	15.76	99.97	0.6724	0.9337	0.9788	0.9993	1

The first 5 columns show the mean, standard deviation, minimum and maximum of the five concentration measures for 5% beneficial owner blocks. The last five columns show a correlation matrix for the five measures. If there were just one direct stake, the correlation between C1 and all other measures would be 1.

Concentration figures give the same trend of results than the ranks of stakes. There is a large gap between the largest shareholder and the top three. But the distance gets reduced as the ranks of shareholders get bigger : the top three direct shareholders own a cumulated percentage of 59.3% of the votes, while the top five own 62.3% and the total of shareholders (float expected) own together 63.8% of the votes of the firm.

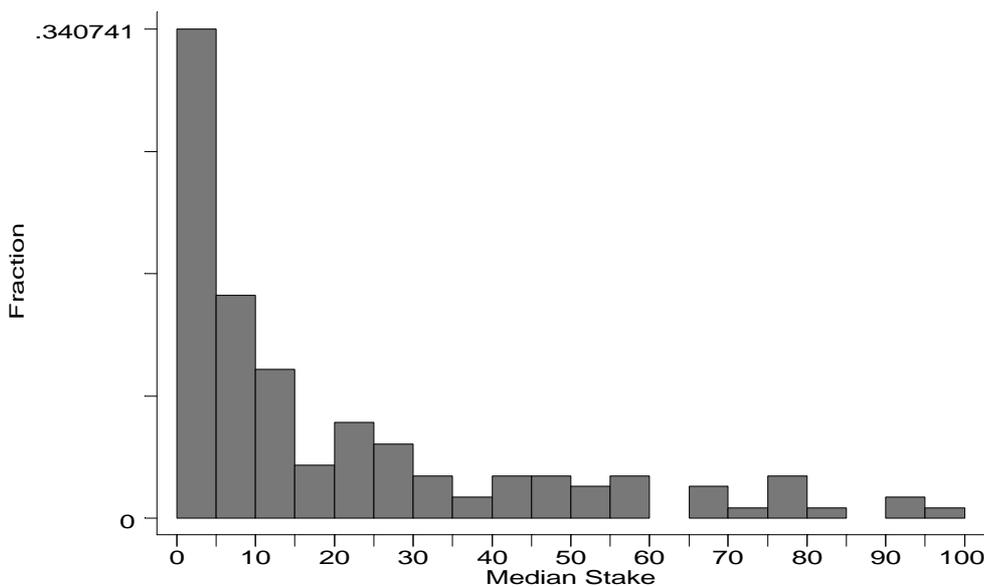
**FIGURE 11. PERCENTILE PLOT OF MEDIAN DIRECT STAKES**



Note: Percentile plot of median direct stake for 135 notified companies. The five companies with no notified stake are not included.

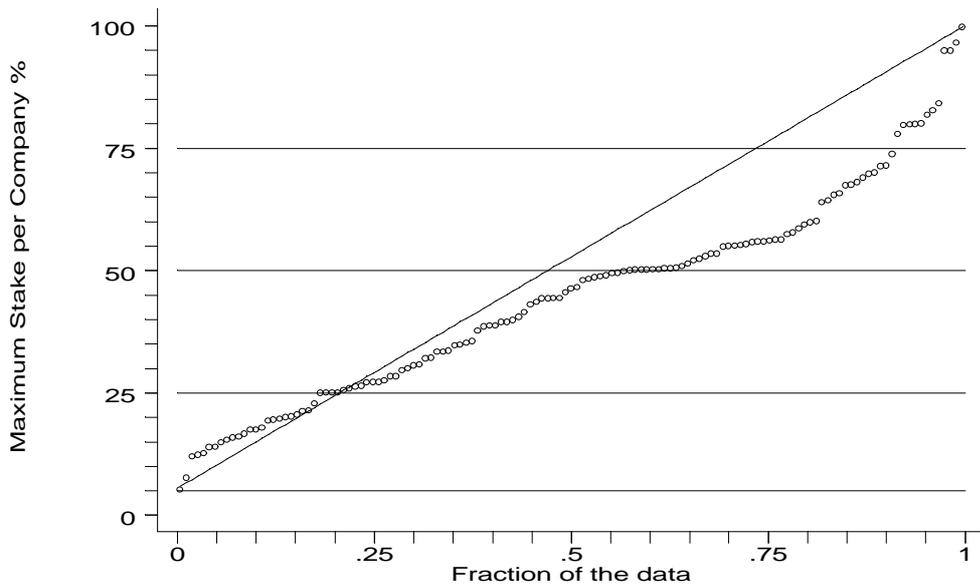
Even more clearly than the statistics on ranks, the percentile plot reveals the myriad of small direct shareholders registered on the Brussels Stock Exchange. Almost one third of the data are stakes below 5%, the notification threshold. Why all these people notify? The most obvious explanation to this, especially after reviewing the data on blockholders, is that they belong to some voting blocks. Smallest shareholders excepted, it remains that 70% of the data are stakes below 25%, the blocking minority. This extreme dispersion of direct stakes on the Brussels Stock Exchange explains, partly at least, the need for shareholders to regroup in voting blocks.

**FIGURE 12. HISTOGRAM OF MEDIAN DIRECT STAKES**



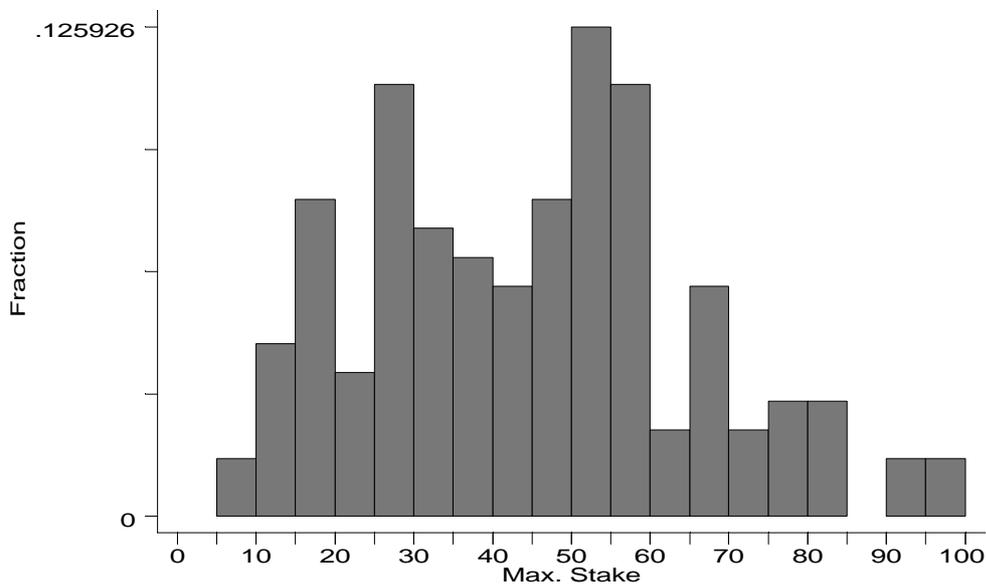
Note: Histogram with median stake for 135 notified companies. The five companies with no notified stake are not included. The observations in the interval 0-4.99 are below 5%. The observations for direct stakes originate from block notifications. Since all stakes that make up the block have to be notified individually it is possible to have direct stakes that are smaller than 5% (or 3%). Indeed, most of the small stakes in the first bin come from the Almanij Group that has 58 direct stakes but only three voting blocks.

**FIGURE 13. PERCENTILE PLOT OF MAXIMUM DIRECT STAKE**



Note: Percentile plot of the maximum direct stake for 135 notified companies. The five companies with no notified stake are not included. Some steps are visible. This is confirmed in the histogram below.

**FIGURE 14. HISTOGRAM OF MAXIMUM DIRECT STAKE**



Note: Histogram with the maximum direct stake for 135 notified companies. The five companies with no notified stake are not included. The steps in the percentile plot show up as peaks in the 25-29.99% and 50-54.99% bins. There are additional peaks for the 15-19.99, the 55-59.99% and 65-70% bins. The same histogram for voting blocks is more revealing since any of the smaller direct stakes could actually come from a larger group or voting block.

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## 5. Appendix

### 5.1 Legal Forms

#### 5.1.1 Company Types

##### 5.1.1.1 Common features

Before going into the specific characteristics of the different legal forms of firms in Belgium, it may be useful to mention the **common features** to all of them.

There are five fields where common rules apply to commercial firms. These are :

- Social relationships inside the firm : councils, collective and individual relationships between workers and with employers. Social Law that is relevant for this field.
- The name of the firm
- Disclosure.
- The use of languages inside the firm. Administrative Law that is relevant for this field.
- The accounting and annual accounts of firms.

We detail shortly two of these common fields which are of interest for Corporate Governance: the publicity of the firm, and the annual accounts of firms.

##### 5.1.1.1.1 Publicity of the Firm

Various types of disclosure are organised by law in order to inform the stakeholders of the firm. Some of them relate to the firm itself. They collect information about the firms' activities, its owners and its registered offices. These are :

- the *Registre de Commerce* (Company Register) : where all types of companies have to be registered at their foundation. The Register is a public repertoire of the commercial firms created by a law of 1924. The obligation of registration is completely general :

all commercial firms, either national or foreign, of all types, have to be registered before starting an activity. The agreement is provided by the Commercial Court where the headquarters of the firm are. The registration comprises information that is of interest to third parties : description of the activities, identity of the owner(s) (name, domicile, civil status), identity of the persons having a managing or a representative power in the firm. Moreover, each time a change occurs during the life of the firm, the latter must make a modifying registration (*inscription modificative*),. For example, a change in the identity of owners or managers or a bankruptcy judgement. There are civil and penal sanctions in case of violation of these rules.

- a file that is kept at the office of the clerk of the Commercial Court (*le greffe*) in the name of the commercial firms, containing about the same information.

Other types of disclosure concern certain operations initiated by the firm (change in the statutes, capital increases) or certain situations in which firms can be (bankruptcy, mergers).

#### **5.1.1.1.2 Accounting Rules**

It is only in 1975, with the law of July 17: "*Loi relative à la comptabilité et aux comptes annuels des entreprises*" that the Belgian Code really defined the accounting legislation in the country. This law has been modified and completed several times since then.

Several big principles apply for the accounting of the firm: it is mandatory for all. The enterprise (or the shopkeeper) that does not holds accounts may incur penal sanctions. It must be appropriate to the nature of the enterprise's activities. The accounts must be complete and include all the operations of the enterprise and not only those affecting the patrimony. Each transcription has to be based on justifying pieces. The rubrics have to follow a harmonised minimum accounting plan (*Plan Comptable Minimum Normalisé*).

Two books have to be hold:

- The "*livre journal*" (daily book): it includes all the daily operations made by the firm,
- The "*livre des comptes annuels*" (annual accounts book): it includes the inventory, the balance sheet, the profit & loss account, theirs annexes and the justifying pieces.

### 5.1.1.1.3 Publicity of Annual Accounts

Annual accounts have to be deposited at the Central Bank (Centrale des Bilans) and sent also to the office of the clerk (*Greffe*) of the Commercial Court. This publicity yields only for enterprises constituted as commercial companies (capital firms, sprl, cooperatives, and private firms where all the partners are not individuals (see below). The rule does not apply to individual shopkeepers, and individual retailers nor to private firms where all partners are individuals.

As far as the structure and the extent of annual accounts are concerned, the law makes three distinctions between firms:

- Small firms: these are the individual exercising a commercial activity, or private unlimited firms (*sociétés de personnes*) of which the gross sales do not exceed a limit fixed by *Arrêté Royal* (royal decree) - it is currently BEF 20 millions a year - . Small firms are exempted to follow an accounting plan (*plan comptable*). They must provide annual accounts but these are not submitted to legal requirements of form and contents.
- Medium firms : these are firms in which the number of workers, the gross sales or the total of the balance-sheet exceed some thresholds defined by decree. These are :
  - maximum 50 workers employed, on annual average
  - gross sales of BEF 170 million, VTA excluded.
  - balance-sheet total of BEF 85 million, except if the number of workers employed exceeds 100 people.

Medium firms have to follow a standardised accounting plan and they have to register all their operations in their accountancy. They must follow legal requirements on the form and the contents of the annual accounts. However, they are allowed to make and to provide annual accounts according to an abridged scheme, less detailed than the full one.

- Big firms : these are all the firms exceeding one of the thresholds mentioned above. Big firms are due to provide full annual accounts, plus complementary information in certain situations, like consolidated accounts.

### 5.1.1.2 *Types of company*

A major legal distinction between various types of Belgian companies concerns whether they do or not exist as a separate legal entity (*personnalité morale*) in their own right. The distinction here concerns whether or not a firm exists as a legal entity clearly separable from the individual or the others companies that have brought together the resources.

#### 5.1.1.2.1 **Type I : Enterprises without a separate legal entity**

Firms without a separate legal entity are the property of the partners (either firms or individuals) who brought its resources and who are linked by a co-operative agreement. The differences between these firms - rather named associations - and the ones with a legal entity are the following :

- The agreement constituting the association is not submitted to formal rules and does not even have to be written.
- The association has no own patrimony, distinct from the partners resource. It follows that the creditors can exercise their rights on the goods that partners have put in common.
- The association can not sue or be sued in its own name. Actions have to be taken by or against each of the partner, or by a delegated-partner.
- The association can not go bankrupt, only the partners individually can.
- The liquidation is ruled differently than for the other type of firms. The dissolution leads to the splitting of profits and losses and the distribution of the resources in common between the partners.

There are two forms of companies of this type. Each of them has their own characteristics:

- ***la société momentanée*** (temporary association) : this firm can only be created for the realisation of precise and temporary objectives, like the building of a plant, or some specific furnishing, etc. The partners are jointly liable to third parties. However, inside their mutual agreement, partners can organise the reliability of debt as they like. The management is in principle the task of everyone. In practice however, the statutes delegate the day-to-day management to a committee or to one of the partners.

Global directions are taken by a "direction committee" with the same powers as an administration committee in other firms.

- ***la société en participation*** (participation firm): the main characteristic of this association is its occult character. The managing partner is the only one to deal with stakeholders and he is the only one who can sue or be sued by them. The third parties have no juridical link whatsoever with the other partners. They often ignore who the other partners are.

#### **5.1.1.2.2 Firms that constitute legal entities**

These are the largest and most important type of firms. They can be divided in three groups: private firms (*sociétés de personnes*), public firms (*sociétés de capitaux*) and mixed firms (*sociétés mixtes*). In private firms, the identity of the partners is directly linked to the existence of the firm. In public firms (*sociétés de capitaux*), the identity of the partners does not matter for the firm's existence. In mixed firms (*sociétés mixtes*), the transferability of ownership certificates is restricted like in private firms, but that are ruled and controlled like public firms.

The first type is now almost non existent in the country, essentially because of the unlimited liability of the partners to the firm's debts. The mixed type, essentially represented by the SPRL (*société privée à responsabilité limitée*) is predominant, especially among small and medium firms. The public type, finally, is essentially represented by the SA (*Société Anonyme*). It is the other predominant type of firm in the country. We will detail below the main characteristics, the common features and the main differences between SA and SPRL.

#### **5.1.1.2.3 Type I : Les sociétés de personnes (private firms)**

The existence of this type of firms is directly linked to the identity of their partners, and it brings the following common features to all private firms :

- the shares of the partners are, in principle, non transferable without the agreement of all the other partners
- the death, the interdiction or the bankruptcy of one of the partners causes, in principle, the dissolution of the firm

- the faulty agreement of one of the partners at the foundation of the firm causes its nullity
- the social pact can not be modified without the agreement of all partners
- the partners may not exert any personal activity that could be harmful to the firm (for example by working for a competitor)

#### **5.1.1.2.3.1 Legal forms of private firms :**

- the *Société en Nom Collectif* (Collective Name Firm) : it is the association that two or more partners form in order to run commercial activities. Partners are personally, jointly and indefinitely responsible for the debts of the firm. Because of the unlimited liability, there are almost no firm of this type in practice.
- the *Société en Commandite Simple* (Partnership with two types of partners) : this form is the same as the precedent, except that there are two types of partners : passive (*les commanditaires*) and active (*les commandités*). The passive partners bring funds into the firm and they delegate the management to one or more active partners. The active partners manage the firm and are personally, jointly, and indefinitely responsible for the firm's liabilities. Here again, one can consider that this type of firm does not exist anymore.

#### **5.1.1.2.4 Type II : Les Sociétés Mixtes**

##### **5.1.1.2.4.1 The SPRL (*Société Privée à Responsabilité Limitée* : Limited Liability Partnerships)**

In 1935 the SPRL was introduced in the law as a private firm with limited liability for partners, limited number of partners, restrictions to some activities and different rules of control form capital firms. In 1985 and in the following years, a large reform changed the statute of the SPRL and suppressed the limitation in the number of partner and the restrictions on activities. Some of the rules of the SA were applied to SPRL and other firms were allowed to be partners in an SPRL.

Since the SPRL and SA are the most important legal forms in the country, we will first review their common points before coming to their specific features. SA will be fully described in the next paragraph related to public firms.

### **Common points between SPRL and SA :**

- *Limited liability* : partners of SPRL and shareholders of SA are both liable to the extent of the funds they have brought into the firms. They are not liable on their personal goods. There are two exceptions to this rule : the non respect of the legal conditions when founding the company, and a fraudulent behaviour leading to the bankruptcy of the firm (*faillite frauduleuse*). The last case yields also in case of financial losses of the firm, but is harder to prove in practice.
- *Procedures for founding a company* : Registration procedures are the same for all types of firms. The legal entity is set up by notary's deed, deposited to the Company Register, and published in the annexes of the *Moniteur Belge*, the official legal newspaper.
- *Minimum number of partners / owners* : is two. For SPRL, however, there exists a special case of SPRLU (SPRL Unique). SPRLU is an individual partnership, created in 1988 essentially for liberal professions (lawyers and doctors) who wanted to be able to separate their professional activities from their personal activities and to benefit from the same fiscal advantages that firms do. SPRLU are submitted to the same legal regime as SPRL but, of course, with simpler organisational structures. The unique partner of an SPRLU must be an individual (*personne physique*) and not a firm (*personne morale*). Another major advantage of the SPRLU is to allow individuals to transfer their business to heirs - or others- with a highly simplified procedure (via a simple transfer of shares) .
- *Rights attached to ownership certificates* (parts sociales): like in all other types of firms, the capital is divided into a number of legal shares ("*parts d'intérêts*" for SPRL "*actions*" for SA), distributed to the shareholders in counterpart to their contribution. Each share gives the same rights to :
  - the profits of the firm,
  - attend the General Meeting (*Assemblée Générale des Actionnaires*),

- vote at the General Meeting,
  - be informed about the situation of the firm,
  - be answered to the questions asked at the General Meeting,
  - participate, after the dissolution of the firm, to the distribution of the remaining assets, according to a strict equality between the partners
  - subscribe by priority to new issues of shares (this right is the same for non-voting shareholders).
- *Organisational structure* of the SPRL has been organised by law following the model of the SA. There is thus a managing organ, a controlling organ, and a deliberating organ.
    - **Management (SPRL):** it is assumed by one or several managers that can either be partners or not. The number of managers is fixed by the statutes. The managers are appointed either by the constituent act of the firm, or by the General Meeting. Their appointment has to be published (the information is deposited at the Company Register). There is no limit to the duration of their function, except if the statutes mention one. The end of the function of a manager can be: death, interdiction, bankruptcy, resignation and revocation. Each of the managers has the full power to accomplish the social goals of the firm, except the powers reserved to the General Meeting. Managers of SPRL have the same responsibilities as the administrators of the SA, including the penal responsibility in case of bankruptcy or insufficiency of the assets.
    - **Management (SA) :** The board (Conseil d'administration) : members are minimum three. They are appointed and revoked by the shareholders in General Meeting. Their mandate is limited to 6 years, but they re-eligible indefinitely. Their remuneration is either fixed by the statutes or decided by the General Meeting. The board is a deliberating organ. The statutes define the frequency of the meeting and the procedures of decision taking. The board has all the managing power to act in the firm's best interests. The General Meeting cannot overlap on its competence. Administrators have the full representative power of the firm. It

often happens that they delegate the power to a delegated administrator that will act in the name of the firm. The name of the delegated administrator is published. Administrators are responsible contractually in case of professional faults, penal in case of violation of the law, and legally in case of bankruptcy or insufficiency of the assets.

- **Control (SA and SPRL):** the control of the annual accounts and the financial situation of the SPRL and the SA is identical. The control of the actions of the administrators is delegated by the shareholders to specific representatives (the *commissaires*). It is only in 1985 that the law required a specific expertise to be *commissaire*. For larger firms at least, they have to be agreed auditors (*réviseurs d'entreprise*). Auditors are independent according to their professional statutes. Their task is to verify the accountancy of the firm and check for any irregularity. They have the full power to fulfil their mission. They make a report on their activities and their observations and they submit the report to the General Meeting of Shareholders.

The number and the identity of the controllers are decided by the General Meeting. The duration of the mandate is three years but it may be renewed. The auditors can not be revoked by the General Meeting. This principle is to guarantee their independence. They can not resign during the time of their mandate, except at a General Meeting and the reason has to be notified in a specific report. The remuneration is fixed and defined by the General Meeting.

- **Deliberation (SA and SPRL):** the deliberating organ is the General Meeting. All the rules of SA apply for SPRL. The tasks that the law reserves to the General Meeting are the following :
  - to appoint and to revoke the administrators,
  - to vote de discharge of the administrators,
  - to approve the balance-sheet and the allocation of the profits,
  - to decide the issue bonds and stocks,
  - to modify the statutes.

The ordinary meeting is mandatory. It is organised once a year. Every shareholders may attend the meeting and they may vote (according to the one share - one vote principle) themselves or via a proxy. Requirements for proxy voting are organised by the statutes. Vote by mail are possible if the statutes allow for it. All the other meetings are "extraordinary" meetings. They are necessary each time the statutes are to be modified (like in case of bond issues for example). (see below).

- *Annuals accounts and allocation of profits* : the sequence of tasks for the ending of a fiscal year is the following :
  1. Provision of the annual accounts,
  2. Provision of the "rapport de gestion" (management report) of the managers of which the contents has been recently described by the law :
    - Comments on the annual report and summary of the evolution of the business and the situation of the firm.
    - Information on the major events that could have arisen after the end of the fiscal year.
    - Information on the circumstances that are likely to have a major incidence on the firms' development.
    - Information about the R&D activities.
  3. Verification of the annual accounts and of the management report by auditors (*commissaires-reviseurs*), and written report of its comments
  4. Communication to the partners/shareholders for SA before the shareholders meeting (General Meeting), of all the documents mentioned above.
  5. Shareholder meeting
  6. Publication of the annual accounts via a depositing to the Central Bank, followed by a mention at the office of the clerk of the Commercial Court and in the annex of the *Moniteur Belge* (Official Legal Journal).
- *Modification of the statutes*: it implies the convocation of an extraordinary meeting if it does not coincide with the ordinary annual shareholder meeting. To modify the statutes, shareholders representing minimum one half of the voting capital must attend the meeting. If they do not, another assembly has to be convoked and decisions

can be taken whatever the number of shareholders to attend. A "qualified majority" (3/4 of votes) are required to modify the statutes. The modifications have to be acted by notary's deed. In case of capital raise, the incumbent shareholders have a preferential right on the subscription over the new partners/shareholders. Since a capital raise needs a modification of the statutes, it falls into the competence field of the general Meeting. However, since 1984, the law allows the General Meeting to define a limit under which the board can decide to raise the capital: the "authorised capital" (*capital autorisé*).

- *Acquisition of own shares.* Decision to buy own shares is taken by the General Meeting. The statutes organise the modality of the buying: amount duration, price, etc. Acquisition is proposed to all shareholders at the same conditions. Loans cannot be made to buy own shares: they should be bought only with reported profits. The voting rights of the shares are suspended as long as the shares are detained by the firm. The rules are the same as for SA and SPRL, except that own shares can not be distributed to employees in SPRL.

### **Specific features to SPRL:**

- *Minimum capital:* capital requirements are smaller for SPRL (BEF 750,000 and 250,000 released) than for SA (BEF 2,500,000 and released fully). Contributions in nature must be fully released (but only partially for SA).
- *Form of ownership certificates (parts d'intérêts).* The existence of a "part d'intérêts" is not materialised by a piece of paper, but by an inscription into the Partner Register (*Registre des associés*) prescribed by law. The register mentions the identity of the partners, the number of shares they have, the payments made to release them, and the transfers made.
- *Transferability of ownership certificates :* the regime of the ownership certificates of SPRL is very close to the one of nominative shares in the SA (*actions nominatives*). Compared to usual shares of SA (*actions au porteur*) their transferability is restricted by law. Statutes can always reinforce the restrictions to the transferability of shares, but not reduce them. The main principles concerning transferability of shares are the following :

- transfers to other partners, their conjoint or direct ascendant and descendant or to a person agreed by the statutes are free;
- transfers to other type of persons are subordinated to the agreement of half the partners representing 75% of the capital;
- if this agreement is refused, the partner concerned may sue the opponent and ask the Court to solve the disagreement. The partner may always sell its shares to the other partners if he wants to be out of the firm.
- the transfers of shares are effective (opposable to the tiers) only once they are registered in the *Registre des associés* (Partners Register).
- *Bonds issue* : since 1991, SPRL are allowed to issue bonds, but under more restrictive conditions than the SA. Bonds can only be nominative. Their juridical statutes is the same as for SA. SPRL are not allowed to issue bearer bonds (*obligations au porteur*) nor convertible bonds (*obligations convertibles*) into shares or into rights to subscription, like SA do.
- *Preferred stocks* (parts privilégiées ou de préférence) : they are not allowed for SPRL.

#### **5.1.1.2.4.2 Other type of mixed firms**

It is economically less important. We will present it shortly.

- *The Société Coopérative* (Cooperative firm) : in co-operatives, the number of partners is variable : partners can enter or resign without affecting the functioning of the firm. The capital is variable above fixed amount of BEF 750.000 minimum. New stakes can be issued in case of a new partner, or stakes can be cancelled when one of the partners leaves the firm. Shareholders stakes are in not transferable to others than the existing partners, except in case of death and at very restrictive conditions. The liability of partners can either be limited or unlimited. In practice, one find only co-operative with limited liability. Three partners minimum are needed to found a co-operative.

Two points in the statutes of co-operatives are remarkable. Stakes representing the capital have all the same value but each partner has one vote regardless of the number of stakes he holds. Profits and losses of the firm are divided for one half, in equal parts among the partners, and for the other half, in parts proportional to the number of stakes of each partner.

The firm holds a register where the identity, the quality, and the stakes held by each partner is registered and up to date. Usually, the statutes organise the management of the firm the same way as for SA and SPRL. Accounting rules and the control of annual accounts are the same as in SA and SPRL.

#### **5.1.1.2.5 Type III : Les sociétés de capitaux (public firms)**

Pure public capital firms may take two different legal forms : the **Société Anonyme (SA)** or the **Société en Commandite par Actions (SCA)**. SA are, by far, the most important form of the two.

##### **5.1.1.2.5.1 The Société en Commandite par Actions (SCA)**

SCA has two types of partners (commandités - commanditaires) active and passive, like the SC in private firm. But, besides this particularity, the SCA is governed by the same rules as the SA.

##### **5.1.1.2.5.2 The Société Anonyme (SA, a Limited "Anonymous" Public Firm)**

One can define the SA as a firm where the partners, named *shareholders* hold rights represented by tradable assets, named *shares*. Shareholders are reliable to the firm only within the limit of their contribution.

The SA is thus a legal mechanism aimed at raising capital and where the identity of the shareholders is not important. Founders excepted, shareholders do not know each other often. They come in and out of the firm via the buying and selling of shares and are not often active in the life of the firm. The SA is usually seen as an institution, meaning a permanent organisation completely detached from the social contract. The firm is not the resultant of a mutual consent between partners, but it comes from the unilateral willingness of each shareholder to adhere to the institution.

The SA plays a major role in the economic life of the country. All listed firms are SA by definition, and the majority of biggest non listed firms are SA (84% of firms over 100 millions of total assets are SA). One find also many SA of small size, although SPRL are most numerous among smaller companies firms (99% of SPRL are firms under BEF 100 millions of total assets).

Constitution and accountancy of SA are common to all types of firms, as we already detailed before. Conditions for existence and rules of functioning are, moreover, quite close to SPRL, as it has been exposed in earlier paragraphs. Therefore, we will only here focus on the features specific to SA and relevant for Corporate Governance. Those are essentially related to the types and the transferability of shares.

### **Specific features to SA:**

- *Minimum capital and share value*: capital requirements are higher for SA than for SPRL: a minimum BEF 2,500,000 has to be released fully. Contributions in nature must be fairly evaluated. Each share has to be released at least for one quarter of its value. As for SPRL, the value of a share corresponds to the amount of the capital divided by the total number of shares. It is the *pair* value. One cannot issue shares under its pair value. A financial plan (*plan financier*) must be set up by the founders to justify the capital brought into the firm. The amount must be at least sufficient to ensure the normal functioning of the firm for two years.
- *Types of assets issued* : they can be three : stocks (*actions*) beneficiary parts (*parts bénéficiaires*) and bonds (*obligations*).
- The same rights are attached to the stocks of an SA than to the partners shares of an SPRL. The value can either or not be mentioned on the stock. Its value is the value of the own funds of the firm, divided by the number of existing shares. SA may issue preferred stocks that SPRL may not : those stocks give right to a first dividend on annual profit and to a priority reimbursement in case of the firm liquidation. Since 1991, the law allows non voting stocks for SA. The goal is to allow a shareholder to contribute to a large part in a capital raise, without taking the control of the firm. Non voting stocks can be issued either at the firm foundation or during a capital raise, or through the conversion of existing voting stocks. These shares are representative of the capital. They have the same rights to

dividends and profits as the preferred stock, plus a bonus in case of liquidation in compensation of the absence of voting power.

- The beneficial parts are assets non representative of the capital and that are in most cases issued to remunerate the contribution of a founder that is not always valuable in money. These assets are often named "founders shares" (*parts de fondateur*). They give right to a share of the profit, as organised by the statutes. The statutes define also if these assets have a voting right or not. However, the law restricts the voting right in order to leave the priority to ordinary shareholders. A written procedure is needed to transfer the part within the two years following its issue.
- *Transferability of stocks* : stocks can be either bearer (*actions au porteur*) or registered (*actions nominatives*). A bearer stock is represented by a document. It is anonymous, liquid, and it can be transferred to an other person simply by giving the asset. A registered stock is materialised by an inscription in a register kept by the firm. The transfer is made by a modifying inscription dated and signed by the giving person and the given person. The statutes define freely what stock will be bearer and registered. However, a stock is registered until it has been completely released. Any stockholder can ask the conversion of its stock from bearer type to registered type.
- *Shareholders equality*: this rule means that all shareholders have the same rights when they are in the same situation. When they are different categories of stocks, it implies that no discrimination is allowed inside a given category of stocks. Consequences of this rule are the sanctions against majority abuses and the protection of minority shareholders.
- *Cross-shareholdings*: two principles are defined by law: (1) cross-shareholdings between two firms cannot exceed 10% of the voting capital. This rule applies for two independent firms when one of the two firms has its headquarters in Belgium. It applies also between a mother firm and its subsidiaries: the subsidiaries taken together may not hold more than 10% of the mother's voting capital. (2) Firms are obliged to liquidate the cross-shareholdings acquired in violation (or ignorance) of the law. Shares have to be liquidated within one year and the votes attached to the shares are suspended before the alienation.

### Company Types : Liability, Partners and Managers

<i>Names</i>	<i>Limited Liability</i>	<i>Minimum Capital</i>	<i>Smallest Number of Owners</i>	<i>Smallest Number of Managers</i>	<i>Number of Firms in Belgium</i>
<b>Private Firms</b>					
<b>Société en Nom Collectif (SNC)</b>	No	No	2	1	0
<b>Société en Commandite Simple (SCS)</b>	No for the active managers (commandités) and yes for passive managers (commanditaires)	No	2	1	0
<b>Mixed firms</b>					
<b>Société Privée à responsabilité Limitée (SPRL)</b>	Yes	BEF 750,000	2	1	91,000
<b>Société Privée à responsabilité Limitée Unique (SPRLU)</b>	Yes	BEF 750,000	1 (Single Owner Firm)	1	13,300
<b>Société Coopérative (SC)</b>	Yes, if specified in the statutes.	BEF 750,000	3	1	16,600
<b>Public Firms</b>					
<b>Société en Commandite par Actions (SCA)</b>	Yes	BEF 2,500,000	2	3 (the managers are partners designated by the statutes of the firm)	250
<b>Société Anonyme (SA)</b>	Yes	BEF 2,500,000	2	3	92,000

## Company Law : Foundation, Transfers, Transparency

<i>Names</i>	<i>Deposit of statutes and of list of owners at foundation</i>	<i>Transfer procedures</i>	<i>Manager's ownership</i>	<i>Buy-out of own shares</i>	<i>Publicity of the list of the partners</i>
<b>Private Firms</b>					
<b>Société en Nom Collectif (SNC)</b>	Yes	Submitted to the agreement of all other partners. Notified in the firm's register.	No limit	Not allowed	No
<b>Société en Commandite Simple (SCS)</b>	Yes	Submitted to the agreement of all other partners. Notified in the firm's register.	No limit for active partners.	Not allowed	No
<b>Mixed firms</b>					
<b>Société Privée à responsabilité Limitée (SPRL)</b>	Yes	Restricted to agreed partners or submitted to the agreement half of the other partners. Notified in the firm's register.	No limit	No limit. Must be bought with reported profit. Voting rights are suspended as long as owned by the firm.	No
<b>Société Privée à responsabilité Limitée Unique (SPRLU)</b>	Yes	Submitted to the agreement of the single partner. Transform the firm into a SPRL or another SPRLU. Notified in the firm's register.	100%	-	-
<b>Société Coopérative (SC)</b>	Yes	No transfer allowed	No limit	Not allowed	No
<b>Public Firms</b>					
<b>Société en Commandite par Actions (SCA)</b>	Yes	No restriction to transfer. Notification in the register if shares are nominative.	No limit for active partners.	Same rules as for SA	No
<b>Société Anonyme (SA)</b>	Yes	No restriction to transfer. Notification in the register if shares are nominative.	Ruled by the statutes	Same rule as for SRPL. Distribution to employees allowed.	No

## Accounting Rules : Form, Contents and Control of Annual Accounts

<i>Names</i>	<i>Obligation to make and deposit annual accounts</i>	<i>Form of annual accounts</i>	<i>Information on ownership in annual accounts</i>	<i>Information on shareholdings in annual accounts</i>	<i>External control of annual accounts</i>	<i>Consolidated accounts</i>
<b>Private Firms</b>						
<b>Société en Nom Collectif (SNC)</b>	Yes	Full or Abridged : it depends on the firm size.	No	No	No	No
<b>Société en Commandite Simple (SCS)</b>	Yes	id.	No	No	No	No
<b>Mixed firms</b>						
<b>Société Privée à responsabilité Limitée (SPRL)</b>	Yes	id.	No	No	Yes. Rules for SA apply.	No
<b>Société Privée à responsabilité Limitée Unique (SPRLU)</b>	Yes	id.	Yes, by definition.	No	Yes	-
<b>Société Coopérative (SC)</b>	Yes	id.	No	No	Yes. Rules for SA and SPRL apply.	No
<b>Public Firms</b>						
<b>Société Anonyme (SA)</b>	Yes	id.	Yes, for shareholders owning more than 10% of the votes.	Yes, from 10% of one category of shares in a firm.	Yes. Auditors must be officially agreed ( <i>réviseurs</i> ) if the firm exceeds a certain size.	Yes if the firm is large enough controls one or more other firms.
<b>Société en Commandite par Actions (SCA)</b>	Yes	id.	id.	id.	id.	id.

### **5.1.2 Basic Demographics**

The following section presents some figures about firms in Belgium, both listed and non listed, in order to draw a schematic picture of the industrial environment of the country.

Small country of 10 million inhabitants, Belgium counts many firms of small size. The total number of firms in the country approximates 220,000 among which half of them count less than five employees or less than BEF 10 million of total assets.

Main sectors of activity are sales and trade, real estate and construction, and services and hotels. These three sectors represent the activity of about 150,000 firms in the country.

In the legal field, two types of firms dominate : the Limited Private Firm (SPRL : Société Privée à Responsabilité Limitée) and the Public Firm (SA : Société Anonyme). There are about 90,000 firms of each type in the country.

There are 14 Belgian firms listed on the Brussels stock exchange in 1995. The largest listed Belgian firm is ELECTRABEL (Electricity distributor) with a market capitalisation of BEF 380,4 billion and total assets of BEF 377 billion. The smallest listed Belgian firms have market capitalisation around a couple of hundreds million of BEF. As one can see in the following plots, market capitalisation is highly concentrated : the 10 largest firms listed on the Brussels Stock Exchange represent more than 50% of the total market capitalisation, and the 50 largest firms account for 95% of the whole market capitalisation.

Sectors of listed firms are slightly different from sectors of activity in the country. Holding companies account for 23% of the market capitalisation, while electricity and gas companies represent one fifth of the capitalisation on the Brussels Stock Exchange, followed by banks and financial services, chemical companies and insurance companies.

Finally, some figures about the Bel 20 Index, including 20 large firms of the Stock Exchange, from a panel of sectors, are presented. Market capitalisation of the Bel 20 Index is of about three quarters of the capitalisation of the 140 domestic securities, and the turnover of the Bel 20 is of about 82% of the market, suggesting a relatively low turnover of the minor Belgian securities.

### 5.1.2.1 Legal Forms

TABLE 18. NUMBER OF COMPANIES BY LEGAL FORM

<i>Legal form</i>	<i>Number of firms</i>
<b>Unlimited liability</b>	0
<b>Limited Liability</b>	
<b>Private Forms / Partnerships</b>	
<b>Société en commandite simple (SCS)</b>	n.a.
<b>Société en nom collectif (SNC)</b>	n.a.
<b>Mixed Forms</b>	
<b>Société privée à responsabilité limitée (SPRL)</b>	104 442
<b>among them, SPRLU (one owner)</b>	13 340
<b>Société coopérative, limited liability (SC)</b>	16 590
<b>Public Forms</b>	
<b>Société anonyme (SA)</b>	91 952
<b>Société en commandite par actions (SCA)</b>	261
<b>Various others</b>	620
<b>TOTAL</b>	<b>213 865</b>

Source: BNB CD-ROM and own calculations

### 5.1.2.2 Type of Account Statement

TABLE 19. NUMBER OF COMPANIES BY TYPE OF ANNUAL ACCOUNT

<i>Form of annual accounts</i>	<i>Number of firms</i>
<b>Consolidated</b>	
<b>industrial</b>	
<b>banks</b>	
<b>insurance</b>	
<b>Complete</b>	17 547
<b>Abbreviated</b>	196 318

Source: BNB CD-ROM and own calculations

### 5.1.2.3 Activity

**TABLE 20. NUMBER OF FIRMS BY TYPE OF ACTIVITY**

<i>Sector (NACE)</i>	<i>Number of firms</i>
Sales & Trade	65 000
Real Estate & Construction	43 000
Services & Hotels	41 000
Raw Material & Transportation	22 800
High tech & Manufacturing	8 200
Finance	8 200
Extra territorial	8 100
Metal Industry	7 100
Public Goods	6 000

Source: BNB CD-ROM and own calculations

### 5.1.2.4 Size Distribution

**TABLE 21. DISTRIBUTION BY TOTAL ASSETS**

<i>Totals assets</i>	<i>Number of firms</i>
less than 5 million	81 911
5 - 10 million	38 605
10 - 20 million	34 715
20 - 50 million	30 838
50 - 100 million	12 540
over 100 million	14 622
n.a.	2 634
<b>TOTAL</b>	<b>213 865</b>

Source: BNB CD-ROM and own calculations

**TABLE 22. DISTRIBUTION BY TOTAL NUMBER OF EMPLOYEES**

<i>Employees per firm</i>	<i>Number of firms</i>
0	6 550
1 to 5	108 819
5 to 10	17 454
10 to 100	20 983
100 or more	1 925
n.a.	58 134
<b>TOTAL</b>	<b>213 865</b>

Source: BNB CD-ROM and own calculations

### 5.1.2.5 Sectors

TABLE 6. DISTRIBUTION BY SECTORS OF ACTIVITY

<i>Sectors of Belgian Firms</i>	<i>Nbr of firms</i>
<i>Sales &amp; Trade</i>	<i>65 000</i>
<i>Real Estate &amp; Construction</i>	<i>43 000</i>
<i>Services &amp; Hotels</i>	<i>41 000</i>
<i>Raw Material &amp; Transportation</i>	<i>22 800</i>
<i>High tech &amp; Manufacturing</i>	<i>8 200</i>
<i>Finance</i>	<i>8 200</i>
<i>Extra territorial</i>	<i>8 100</i>
<i>Metal Industry</i>	<i>7 100</i>
<i>Public Goods</i>	<i>6 000</i>

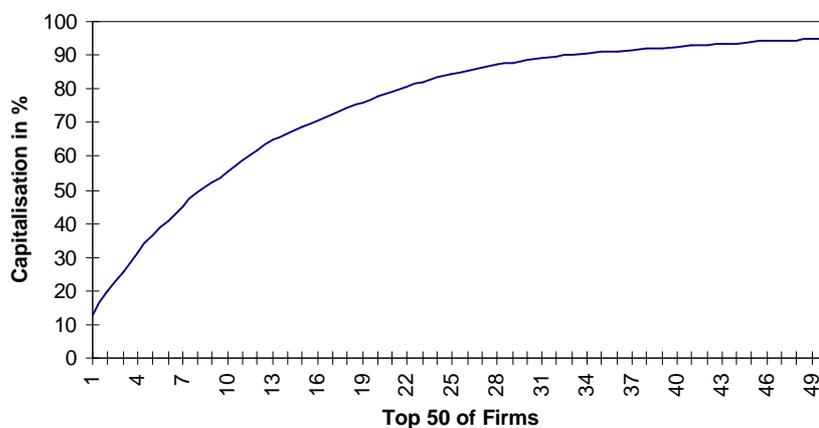
### 5.1.2.6 Listed firms

#### 5.1.2.6.1 Size

TABLE 7. DISTRIBUTION BY MARKET CAPITALISATION

<i>Top 10</i>	<i>Names</i>	<i>BEF Millions</i>	<i>% Cap</i>	<i>Cum.</i>
<i>1</i>	<i>Electrabel</i>	<i>380 400</i>	<i>12.74</i>	<i>12.74</i>
<i>2</i>	<i>Petrofina</i>	<i>209 523</i>	<i>7.02</i>	<i>19.76</i>
<i>3</i>	<i>Générale de Belgique</i>	<i>171 914</i>	<i>5.76</i>	<i>25.52</i>
<i>4</i>	<i>Tractebel</i>	<i>167 144</i>	<i>5.6</i>	<i>31.12</i>
<i>5</i>	<i>Générale de Banque</i>	<i>155 694</i>	<i>5.22</i>	<i>36.34</i>
<i>6</i>	<i>Solvay</i>	<i>132 619</i>	<i>4.44</i>	<i>40.78</i>
<i>7</i>	<i>Fortis AG</i>	<i>129 533</i>	<i>4.34</i>	<i>45.12</i>
<i>8</i>	<i>Kredietbank</i>	<i>117 935</i>	<i>3.95</i>	<i>49.07</i>
<i>9</i>	<i>BBL</i>	<i>95 563</i>	<i>3.2</i>	<i>52.27</i>
<i>10</i>	<i>GBL</i>	<i>95 412</i>	<i>3.2</i>	<i>55.47</i>

#### Cumulated Percentage of Market Capitalisation



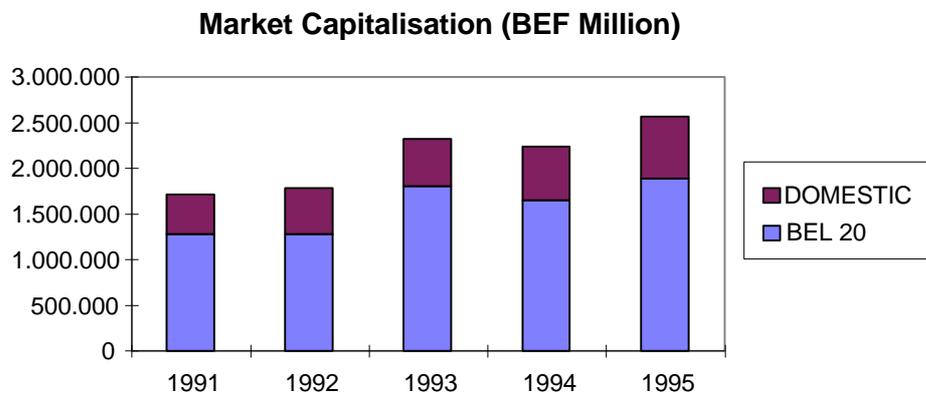
### 5.1.2.6.2 Sectors

TABLE 8. DISTRIBUTION BY SECTORS OF ACTIVITY

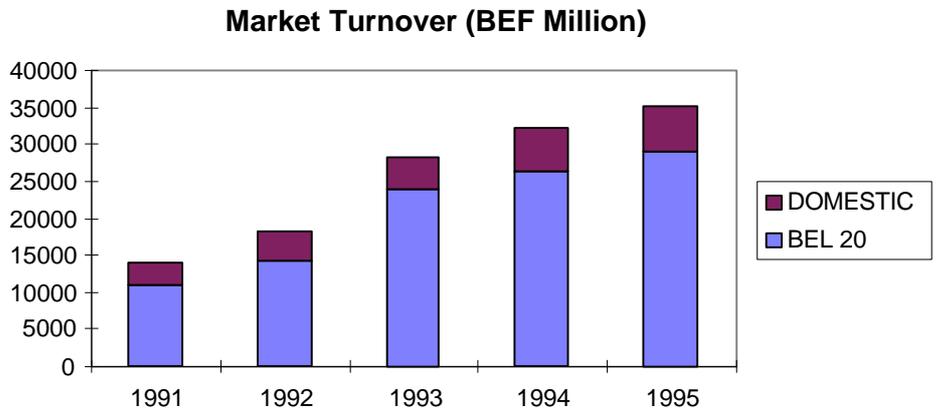
<i>Sectors</i>	<i>% Capitalisation</i>	<i>Nbr. of firms</i>
<i>Holdings</i>	<i>22.53</i>	<i>45</i>
<i>Electr. &amp; Gas</i>	<i>21.45</i>	<i>3</i>
<i>Banks and fin. services</i>	<i>13.8</i>	<i>7</i>
<i>Chemicals</i>	<i>9.11</i>	<i>11</i>
<i>Insurance</i>	<i>7.79</i>	<i>3</i>
<i>Oil</i>	<i>7.12</i>	<i>2</i>
<i>Retailing</i>	<i>4.58</i>	<i>3</i>
<i>Met.-Electro-Electron.</i>	<i>3.38</i>	<i>8</i>
<i>Building</i>	<i>2.71</i>	<i>10</i>
<i>Miscellaneous services</i>	<i>2.18</i>	<i>11</i>
<i>Non-ferrous</i>	<i>1.65</i>	<i>2</i>
<i>Property</i>	<i>1.1</i>	<i>6</i>
<i>Miscellaneous industries</i>	<i>0.99</i>	<i>8</i>
<i>Food</i>	<i>0.81</i>	<i>7</i>
<i>Steel</i>	<i>0.48</i>	<i>3</i>
<i>Tropical</i>	<i>0.29</i>	<i>5</i>
<i>Temporary</i>	<i>0.01</i>	<i>6</i>
<b>TOTAL</b>		<b>140</b>

### 5.1.2.6.3 Bel 20

CHART1. CAPITALISATION COMPARED TO DOMESTIC SECURITIES



**CHART2. TURNOVER COMPARED TO DOMESTIC SECURITIES**



## **5.2 Data Sources: Details**

### **5.2.1 Equity Capital and Share Types**

We can review here the main characteristics of the different types of ownership certificates one can find in different legal forms of firms. We keep here the same classification between private, mixed and public firms, like in the previous section about legal forms.

#### **5.2.1.1 Private firms**

Their shares are nominative, they give right to cash-flow and they are voting. The shares of the partners are, in principle, non transferable without the agreement of all the other partners. Private firms barely exist.

#### **5.2.1.2 Mixed firms**

The regime of the ownership certificates of mixed firms (SPRL) is very close to the one of nominative shares in the SA. Like in all other types of firms, the capital is divided into a number of legal shares ("*parts d'intérêts*" for SPRL "*actions*" for SA), distributed to the shareholders in counterpart to their contribution. Each share gives the same rights as described in the previous section about legal forms.

Ownership certificates are not materialised by a piece of paper, but by an inscription into the Partner Register (*Registre des associés*) prescribed by law. The register mentions the identity of the partners, the number of shares they have, the payments made to release them, and the transfers made.

Transferability of certificates in mixed firms is restricted by law. Statutes can always reinforce the restrictions but not reduce them. The main principles are that transfers to other partners or to a person agreed by the statutes are free and transfers to other type of persons are subordinated to the agreement of half the partners representing 75% of the capital. Preferred stocks (*parts privilégiées ou de préférence*) are not allowed in SPRL.

Since 1991, SPRL are allowed to issue bonds, but under more restrictive conditions than the SA. Bonds can only be nominative.

As far as the availability of data is concerned, private firms and mixed firms are generally very obscure. Indeed, since all the ownership certificates are nominative in those firms, owners (partners) are registered in a Register of Partners (Régistre des Associés) kept at the firm's headquarters. This register is only accessible to the partners themselves, to the fiscal authorities, and to third parties having an interest in the firm, like debtors and creditors. The public cannot have access to the Register, even for scientific reasons. It is thus quite impossible to build a complete database including the identity of owners of firms other than public firms.

### **5.2.1.3 Public firms**

*Public firms* (SA) : Stocks can be either bearer (*actions au porteur*) or registered (*actions nominatives*). A bearer stock is represented by a document. It is anonymous, liquid, and it can be transferred to an other person simply by giving the asset. A registered stock is materialised by an inscription in a register kept by the firm, like in mixed firms. The transfer is made by a modifying inscription dated and signed by the giving person and the given person. The statutes define freely what stock will be bearer and registered.

The rights attached to the stocks are the same both types and they are mentioned above. Stocks can be either voting and non voting, but, as we mentioned already, non voting stocks barely exist, unifying this way control rights and cash flow rights for shareholders. There exist also shares named "AFV" or "VVPR", they carry the same rights as usual stocks. The only difference concern the fiscal regime with a reduced tax (*précompte mobilier*) from 25% to 15% for the VVPR shares and exoneration of inheritance taxes (*droits de succession*) for AFV types.

According to the rule of shareholders equality, all shareholders have the same rights when they are in the same situation. When they are different categories of stocks, it implies that no discrimination is allowed inside a given category of stocks.

All different possible types of ownership certificates per legal form can be reviewed in the table below :

<b>Share Types</b>	<b>Public firms SA and SCA</b>	<b>Mixed firms SPRL</b>	<b>Private Firms SCS, SNC</b>
<b>Nominative</b>	Yes	Yes (100%)	Yes (100%)
<b>Bearer (Anonymous)</b>	Yes	No	No
<b>Voting</b>	Yes	Yes	Yes
<b>Non Voting</b>	Yes	No	No
<b>No mention of Value</b>	Yes	No	No
<b>AFV / VVPR</b>	Yes	No	No
<b>Preferred Stock</b>	Yes	No	No

In the three following sections, we will review the legal dispositions that make possible a data collection about the ownership of listed firms, first, and of other SA's (public firms) more generally. For listed firms, it is the Transposition of the EU Transparency Directive (section B). For non listed public firms, there two other company laws (section C). Finally, there are rules for consolidated accounts that apply for all firms (section D).

## 5.2.2 Transposition of The EU Transparency Directive

### 5.2.2.1 Background

The Belgian transposition of the EU Transparency Directive was accomplished through the law of 2 March 1989 “concerning the declaration of important holdings in listed companies and the regulation on public offerings and acquisitions”.<sup>1</sup> The legislation was published on 24 May 1989 in the Belgian Official Journal (*Moniteur Belge*) and most of the relevant rules became effective on 3 June 1989.

Despite its title, the legislation is about the declarations of “important holdings of voting rights” and not about “important holdings of capital”. Since violations of “one-share-one-vote” are possible under Belgian company law there is a difference between the two concepts. The Belgian transposition did not take advantage of the option, provided for in the EU Directive, of forcing shareholders to declare important holdings of capital as well as of voting rights.

The Belgian transposition and the practical arrangements that implement it try to contribute to achieving the purpose of the EU Transparency Directive:

*Whereas a policy of adequate information of investors in the field of transferable securities is likely to improve investor protection, to increase investors' confidence in securities markets and thus to ensure that securities markets function correctly; Whereas, by making such protection more equivalent, coordination of that policy at Community level is likely to make for greater inter-penetration of the Member States' transferable securities markets and therefore help to establish a true European capital market;*

*Whereas to that end investors should be informed of major holdings and of changes in those holdings in Community companies the shares of which are officially listed on stock exchanges situated or operating within the Community;*

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<sup>1</sup> *Loi du 2 mars 1989 relative à la publicité des participations importantes dans les sociétés cotées en bourse.*

*Whereas coordinated rules should be laid down concerning the detailed content and the procedure for applying that requirement; Whereas companies, the shares of which are officially listed on a Community stock exchange, can inform the public of changes in major holdings only if they have been informed of such changes by the holders of those holdings;*

*Whereas most Member States do not subject holders to such a requirement and where such a requirement exists there are appreciable differences in the procedures for applying it; whereas coordinated rules should therefore be adopted at Community level in this field.*

*COUNCIL DIRECTIVE of 12 December 1988 on the information to be published when a major holding in a listed company is acquired or disposed of (88/627/EEC), Preamble*

### **5.2.2.2 The Mechanics of the Notification Process**

In the Belgian case, the “competent authority” mentioned in the EU Directive is the Banking Commission (Commission Bancaire). The Banking Commission is in charge of supervising the banking sector as well as the Belgian financial markets. Although the practical arrangements for the Belgian notification process involve the Banking Commission, they are centred on the stock exchange. Figure 15 illustrates the mechanics of the notification process. A shareholder who crosses a notification threshold has to notify the Banking Commission and the listed company. There are two possible exceptions to this process.

1. Until 31 December 1990, natural persons could send a confidential notification to the Banking Commission. The Banking Commission would then pass on the notification without revealing the identity of the notifying person.
2. The notified company can always apply for a notification exemption with the Banking Commission. If an exemption is granted, the notification is not published. An exemption can be granted if the publication of the notification would result in a serious injury for the notified company.

Notifications are made on standardised sheets that were appended to a note in which the Banking Commission laid down the practical guidelines for implementing the law of 2 March 1989.<sup>1</sup> The forms ensure a degree of homogeneity in the declarations.

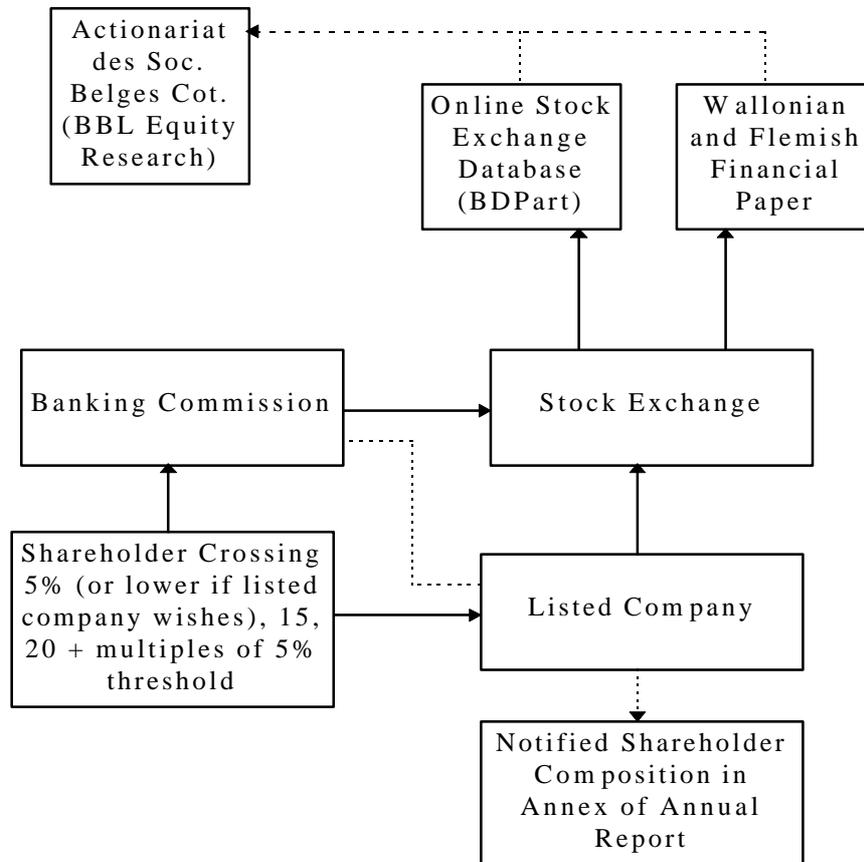
The Stock Exchange uses these sheets to prepare newspaper publications which are published in a Wallonian (French language) and a Flemish (Dutch language) financial newspaper. The information is also entered in a special online database. The notified listed companies are obliged to publish their notified shareholder structure in the annex of their annual report.

From the day a shareholder passes a threshold to the time the shareholder notifies the company and the Banking Commission, a maximum of two working days may pass. The company or the Banking Commission (at the expense of the company) has to publish the information on the next day.

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<sup>1</sup> Lettre Circulaire, Brussels, 26 May 1989, No. 139, Commission Bancaire.

**FIGURE 15. THE MECHANICS OF THE NOTIFICATION AND PUBLICATION PROCESS**



Note: When one of the notification rules “triggers” a notification (see Section 5.2.2.3) the shareholder has to notify the Banking Commission and the listed company. The listed company and the Banking Commission notify the Stock Exchange that prepares the announcement that is published in a Wallonian and a Flemish Financial Newspaper. The Stock Exchange also posts the change in a special online database (BDPart). To our knowledge the Equity Research Department of the Banque Bruxelles Lambert is the only institution that uses these publications to publish “snapshots” of the ownership situation (at irregular intervals).

### **5.2.2.3 Who has to Notify?**

The notification requirement extend to all natural persons and legal entities in public or private law who acquire or dispose of, directly or through intermediaries, holdings in Belgian companies that are listed on the official market of an EU Member State. Shareholders of companies that are listed on regulated and over-the-counter markets are excluded. Somewhat different rules apply to first time and subsequent notifications.

### 5.2.2.3.1 Initial Notifications

Initial notifications (*declaration de base*) provided a picture of the distribution of votes at the time the law of 2 March 1989 became effective. The initial notifications provide the basis for subsequent “snapshots” of the distribution of voting rights that must be computed from the first time notifications and the subsequent, notified changes in the voting structure.

For initial notifications, different requirements applied for natural persons and for natural and legal persons holding votes in companies with less than BF 250,000,000 of equity capital. The exemption for natural persons that was valid until 31 December 1991 was mentioned in the previous section. Natural persons could make declarations only to the Banking Commission and remain anonymous.

Shareholders of listed companies with less than BF 250,000,000 equity capital, at the time the legislation came into force, enjoyed a “grace period”. They only had to make their initial declaration by 31 December 1991. Shareholders of larger companies had to make the initial declaration during the month the new legislation came into force. If, before 31 December 1991, the company’s equity capital exceeded the BF250,000,000 threshold a notification had to be made. Shareholders of larger companies had to make the first declaration during the month the new legislation came into force.

All shareholders who controlled more than 5% of the votes in a listed company had to notify. The company statute of the listed company could reduce the notification threshold, but not lower than 3% of the total votes. For direct individual shareholders the notification requirements were clear. For shareholders who acted jointly (“in concert”, through voting pacts or similar arrangements) and for shareholders that are linked through group structures the notification requirements were more complicated. The Belgian transparency rules provide clear guidelines, also in these cases.

For business groups, declarations could be made by the ultimate controlling agent in the groups. In such a case the control structure had to be explained, preferably in the form of an organisational chart (*organigramme*). Each member of the business group had to make a separate declaration. Even if there is joint control of a company in a business group (the business group controls 50% of the voting stock and another natural or physical person controls the other 50%) this company had to make a declaration. This is an important difference to transpositions of the Transparency Directive and due to Article 3 of the Law of

2 March 1989. It clearly states that companies that control, directly or indirectly, a company that controls 5% or more of the votes of a listed company has to make a separate notification. Article 3 also stipulates that, in the case of joint control, each shareholder has to file a separate notification.

In the case of voting pacts, the same rules as for business groups apply. A legal person that held less than 5% (or 3%, if the statute of the listed company prescribed this minimum reporting threshold) had to notify. For natural persons this rule did not apply. Indeed, in the case of voting agreements each member of the agreement had to make a separate declaration.

#### **5.2.2.3.2 Subsequent Notifications**

For subsequent notifications, similar but somewhat “tougher” rules than for initial notifications apply. The “grace period” concessions for natural persons no longer apply. Also, notifications resulting from holdings that cross (upwards or downwards) a 20% or higher threshold must be accompanied by a statement why the holding was increased or decreased (see Section 5.2.2.4.5.2.2.4.2).

A natural or physical person who crosses a notification threshold of 5%, 10%, 15%, 20% (or multiples of 5% thereafter) has to notify the Banking Commission and the listed company. The 5% bottom threshold can be lowered individually by the listed company, but only to 3% and not lower. For groups of natural or physical persons the same thresholds apply.

#### **5.2.2.4 Contents of the Notifications**

Like in the case of the notification rules, the contents of first time and subsequent notifications differ.

##### **5.2.2.4.1 Contents of Initial Notifications**

First time notifications are made on Form 1 and 2. Form 1 contains the details of the declaration. Form 2 clarifies the control structure of business groups that make a notification. Notifications on the basis of Form 1 contained the following information (a facsimile of the form can be found in Appendix I):

1. An indication whether the declaration is made on own account, on behalf of a third party, a part of a business group and/or a voting pact;
2. The name of the listed company that is notified;

3. The identity of the natural or legal persons making the notification (subject to the anonymity clause for natural persons that was in force until 31 December 1990, see above);
  - 3.1. In the case of natural persons the name and address.
  - 3.2. In the case of a legal person the legal form, place of registration, address, company register address, VAT number and the position of the person signing the declaration.
4. A declaration whether the person that made the notification is part of a business group or has a voting agreement with someone else. In both cases the names of the natural or legal person that are part to this relationship or agreement had to be provided. Alternatively, the declaration had to contain a separate sheet for such a natural or legal person.
5. The date at which the notified holding structure was valid.
6. A breakdown of the holdings by type and an explicit calculation of the notified percentages:
  - 6.1. The number of votes that can be exercised by the shareholder at the time the notification is made and correspond to the issued equity capital of the listed company. The percentage these votes represent in the total number of votes must also be declared.
  - 6.2. The number of votes that can be exercised by the shareholder at the time the notification is made and do not correspond to the issued equity capital of the listed company. This special case arises from the fact that, in Belgium, it is possible to issues share that have a vote but no par value. The percentage these votes represent in the total number of votes that do not correspond to issued par value had to be declared as well.
  - 6.3. The number of votes that might become available in the future and the investor already has a claim on. For example, the number of votes that can be obtained from warrants, convertible bonds, claims, options and similar instruments that have been issued but have not yet been converted into shares

with par value and voting rights or shares without par value but voting rights. The percentage of these potential votes in the total number of votes corresponding to the total number of votes when all instruments are converted must also be declared. Form 1 distinguishes between four different classes of instruments that fall into this category: convertible bonds, convertible loans, warrants, other drawing rights on shares that will be created (and have been approved by the general assembly).

- 6.4. The number of existing votes the shareholder has a claim on. An example would be the ownership of a call option on shares of the listed company. Again, the percentage of these claims on the total number of shares for which such claims exist must be reported as well. Form 1 distinguishes four different classes of claims that fall into this category: traded options, warrants on issued capital, claims resulting from a contract, others (with the obligation to specify the nature of the claim).

All the information collected on Form 1 and Form 2 can be found in the published notification that appears in the newspaper.

#### **5.2.2.4.2 Contents of Current Notifications**

Current notifications are made on Form 3 and 4 (a facsimile of these forms can be found in the Appendix). Form 3 is very similar to Form 1 and contains all the quantitative information. Form 4 corresponds to Form 2. It captures the possibility of control transfers that occur because a company that holds a stake in a listed company is, for example, sold to a third company that takes control of the notified stake. The type of control transfer and the identity of the parties to the control transfer are notified using Form 4.

The Banking Commission distinguishes two types of ongoing notifications: first time notifications and subsequent notifications. Furthermore, there are two types of subsequent declarations: notifications that result from changes in a holding that results from crossing a threshold and notifications that result from the conversion of “potential votes” into actual votes (e.g. through exercising an option or the conversion of warrants).

First time notifications are not identical to the initial notifications discussed in the previous section. The need to make a first time notification can arise from the fact that:

1. a shareholder crosses a notification threshold for the first time
2. a company Belgian company is listed for the first time on an official market of a Member State of the EU (initial public offering)

Subsequent notifications can be triggered by two events. One, a shareholder crosses a threshold. Two, a shareholder converts “potential votes” into “actual votes”, for example by converting warrants or by exercising an option. Even if the conversion of warrants does not result in crossing a threshold, a declaration must be made.

In terms of contents, there are hardly any differences between first time and subsequent notifications that are triggered by crossing a threshold. The main differences between the contents of such notifications and the contents of the initial notifications are:

1. A declaration of the nature of the notification
  - 1.1. A change in the stake that is held (without a change in the total number of votes) that led to crossing a declaration threshold. This is the rule encountered with Form 1 and the quantitative information that must be provided is almost identical. In addition to the information provided on Form 1, the change in the holding compared to the previous declaration must be notified as well.
  - 1.2. An update due to a change in the total number of votes (e.g. due to an increase in capital). In this case, a part of Form 3 has to be filled in. Logically, there is no corresponding section on Form 1.
2. When the 20% or a higher threshold is crossed, the notification must be accompanied by a statement that sets out the reason for the increase/decrease in the holding.
3. The “statement of policy” must be accompanied by a declaration that shows how many shares and other instruments were acquired/sold during the 12 months before the current notification. The declaration must show whether the holdings were acquired/sold through the stock exchange or by other means.

Again, all the information on Forms 3 and 4 is contained in the published notification. The published notification also contains the number of notified shares prior to the current notification and the change from the previous with respect to the current notification (in absolute numbers and percentages).

## 5.2.2.5 Sample Notifications

### 5.2.2.5.1 Simple Group Notification

On 20 June 1996 Société Générale de Belgique SA made an initial notification of its holding in Distrigaz. The notification contained five sheets and an organisational chart. Sheet one contained the notification of the interests of 1 company controlled by SGB (Tractebel SA) and two companies that acted in concert with the SGB group but that are not part of the group (Belgian Shell SA and Socogaz SA). Sheet 2 contained the notified holdings of the SGB group without Belgian Shell SA. Sheet 3 contained the declaration of Tractebel SA (part of the SGB group). Sheet 4 contained the notification of Belgian Shell (acting in concert with Tractebel SA). Sheet 5 contained the notification of Socogaz SA (acting in concert with Tractebel SA). The organisational chart showed that Tractebel SA is controlled by SGB and that SGB is controlled by Cie de Suez.

FIGURE 16. NOTIFICATION OF SGB GROUP FOR HOLDING IN DISTRIGAZ

N. 71 Bourse de Bruxelles		Distrigaz	
20.06.96 Déclarant : Société Générale de Belgique SA - Première déclaration			
Origine droits de vote	Nombre	%	
Dénominateur	702 636		
T.R.C.			
Tractebel SA, Place du Trône 1, 1000 Bruxelles, agissant de concert avec Belgian Shell SA, Socogaz SA	404 250	57,53	
T.R.C.			
Belgian Shell SA, Cantersteen 47, 1000 Bruxelles, agissant de concert avec Tractebel SA, Socogaz SA	117 106	16,67	
T.R.C.			
Socogaz SA, rue Royale 55, 1000 Bruxelles, agissant de concert avec Tractebel SA, Belgian Shell SA	63 881	9,09	
T.R.C.			
Total détenu par les sociétés du groupe de la Société Générale de Belgique et du groupe de la Compagnie de Suez, y inclut les participations des sociétés avec lesquelles les susnommées agissent de concert	585 237	83,29	
T.R.C.			
T.R.C. = Titres représentatifs du capital			
Organigramme			
Cie de Suez → SGB → Tractebel → Distrigaz			

Source: *Echo de la Bourse*

The sheets show that the four companies hold votes that correspond to issued equity capital (Category 1 on Form 1; see previous Section).

In the published notification the information from each of the five sheets is reproduced in five boxes. The organisational chart is reproduced as well.

The organisational chart and the notification sheets did not show the holding of SGB in Tractebel SA and the holding of Cie de Suez in SGB. However, since Tractebel SA and SGB are Belgian listed companies, this information is available from the notifications these

companies received. In June 1996, the Suez/SGB group held 40.45% of the voting stock of Tractebel SA. The Cie de Suez groups notified to hold 62.59% of SGB (BBL 1996).

#### **5.2.2.5.2 Complex Group Notification**

This example shows a group notification of Groupe Bruxelles Lambert SA (GBL SA). The Group notified an increase in its holding in Electrafina SA. The notification was triggered by two events that each could have triggered a notification.

- GBL Group and GBL SA crossed the 55% and 35% notification thresholds respectively. This resulted from the subscription in a capital increase of Electrafina SA.
- GBL Groups converted warrants into voting stock. Such an action must always be notified and accompanied by a declaration of the breakdown of the total capital after the conversion of the warrants.

Since the GBL Group and GBL SA hold more than 20% of the voting stock of Electrafina SA, the notification is accompanied by a “statement of policy” (bottom box, above control chart). GBL SA declares (on behalf of the group) that the change in its stake is the result of a subscription to a capital issue undertaken by Electrafina SA. The GBL Group has a “friendly shareholder” agreement with Electrafina SA and the subscription to increases in equity capital are part of this agreement. The GBL Group declares that there is no change in its policy *vis-a-vis* Electrafina SA which is said to represent an important strategic participation for the GBL Group. The “statement of policy” also contains a declaration that shows the total number of shares that were purchased by GBL Group in the 12 months prior to the current notification. Most shares were purchased off the exchange (4,592,103 versus 329,750 traded shares).

**FIGURE 17. NOTIFICATION OF THE GBL GROUP FOR HOLDING IN ELECTRAFINA**

N. 122 Bourse de Bruxelles & Anvers			Electrafina		
27.7.94 Déclarant : GBL, av. Marnix 24, 1050 Bxl - Déclaration Subséquente					
Origine	Précédent 15.4.94		Modif.	Nouveau	
droits de vote	Nombre	%	( +/- )	nombre	%
<b>Dénominateur</b>					
T.R.C.	26.482.950		+3.310.368	29.793.318	
<b>1. GBL et sociétés liées</b>					
T.R.C.	14.182.117	53,55	+1.720.178	15.902.295	53,37
<b>2. GBL S.A.</b>					
T.R.C.	11.033.566	41,66	-1.089.744	9.943.822	33,37
<b>2a. Sagerpar S.A., liée à GBL</b>					
T.R.C.	274.695	1,04	+34.337	309.032	1,04
<b>2b. Natural Resources Consultants, liée à GBL</b>					
T.R.C.	0	0	+3.137.553	3.137.553	10,53
<b>2c. Fonds de Pension de GBL, lié à GBL</b>					
T.R.C.	6.807	0,03	+851	7.658	0,03
<b>3. Royale Belge S.A. et sociétés liées, liée à GBL</b>					
T.R.C.	1.891.349	7,14	+252.214	2.143.563	7,19
<b>3a. Royale Belge S.A., liée à GBL</b>					
T.R.C.	1.448.185	5,47	+196.817	1.645.002	5,52
<b>3b. L'Assurance Liégeoise, liée à Royale Belge</b>					
T.R.C.	63.393	0,24	-63.393	0	0
<b>3c. L'Ardenne Prévoyante, liée à Royale Belge</b>					
T.R.C.	270	0	+34	304	0
<b>3d. Urbaine UAP S.A., liée à Royale Belge</b>					
T.R.C.	366.501	1,38	-366.501	0	0
<b>3e. Le Foyer belge, liée à Royale Belge</b>					
T.R.C.	13.000	0,05	-13.000	0	0
<b>3f. Royale Belge 1994, liée à Royale Belge</b>					
T.R.C.	0	0	+498.257	498.257	1,67
<b>4. CNP S.A. et sociétés liées, liée à GBL</b>					
T.R.C.	738.307	2,79	-738.307	0	0
<b>4a. CNP S.A., liée à GBL</b>					
T.R.C.	421.376	1,59	-421.376	0	0
<b>4b. SLP S.A., liée à CNP</b>					
T.R.C.	302.911	1,14	-302.911	0	0
<b>4c. Financière de la Sambre S.A., liée à CNP</b>					
T.R.C.	8.020	0,03	-8.020	0	0
<b>4d. Bureaux du Centre, liée à CNP</b>					
T.R.C.	3.000	0,01	-3.000	0	0
<b>4e. Haras de la Biercaire, liée à CNP</b>					
T.R.C.	3.000	0,01	-3.000	0	0
<b>5. Belgian Sky Shops S.A. et sociétés liées, liée à GBL</b>					
T.R.C.	237.393	0,90	+123.274	360.667	1,21
<b>5b. Agespar S.A., liée à Belgian Sky Shops S.A.</b>					
T.R.C.	237.393	0,90	+123.274	360.667	1,21
T.R.C. = Titres représentatifs du capital					
Cette déclaration résulte de plusieurs éléments et principalement de:					
1. la restructuration interne de la participation de GBL dans Electrafina et notamment le glissement de 10,53% de titres Electrafina détenus par GBL dans Natural Resources Consultants "NRC", filiale à 100% de GBL récemment acquise à Electrafina et Finance et Participations.					
2. la mise à jour due à l'émission de 3.310.368 nouvelles parts sociales Electrafina qui a été décidée le 14.6.94 par le Conseil d'Administration de cette société et dont la période de souscription vient d'être définitivement clôturée le 26 juillet dernier.					
3. d'un déplacement à l'intérieur du groupe Royale Belge à la suite d'une restructuration.					
<b>Organigramme de contrôle</b>					
<pre> graph TD     CNP --&gt; Parjointco     Parjointco --&gt; Pargesa     Pargesa --&gt; GBL     CNP --&gt; BSS[Belgian Sky Shops]     BSS --&gt; Agespar     CNP --&gt; Sagerpar     CNP --&gt; NRC     NRC --&gt; Electrafina     GBL --&gt; Electrafina     GBL --&gt; RV[Royale Vendôme]     RV --&gt; RB[Royale Belge]     RB --&gt; Electrafina     </pre>					

Source: Echo de la Bourse

The “threshold notification” was made on 12 sheets that correspond to the twelve numbered boxes on the declaration form. The “conversion of warrants” notification was made on a separate sheet and corresponds to the to box that has no number. Box 1 shows the number of shares held.

The first notification (Box 1) is for the GBL Groups as a whole. It shows an increase in the total holding of the GBL Group in Electrafina from 53.37% to 56.62%. A second block of notifications is for GBL SA and three companies that are directly associated with it (Boxes 2, 2a-2c). A third block is for the Royale Belge Group, a group by itself, that is tied to the GBL Group (Box 3, 3a-3c). The holding of the Royale Belge Group is reported in Box 3. The holding of Royale Belge SA, the company, is reported in Box 3a. The Royale Belge Group holds 7.89% of Electrafina, Royale Belge SA holds 5.63% and Royale Belge 1994 holds 2.27%. A fourth block is held by the Belgian Sky Shops Group that is also part of the GBL Group (Box 4, 4a-4b). The Belgian Sky Shops Group holds 0.91% of Electrafina (Box 4), 0.24% directly (Box 4a) and 0.67% indirectly through Agespar (Box 4b). Agespar must be a 100% owned subsidiary of Belgian Sky Shops (from the organisational chart and the fact that  $0.24\% + 0.67\% = 0.91\%$ ).

The BDPart database contains the direct holdings from the notifications but not the group holdings. We compare a backup of the BDPart database from 29 December 1995 at 9.16 with the GBL notification (Table 23). The entries that correspond to the the GBL Group refer to the notification of 27 July 1994 referred to as “Précédent 27.7.94” in Figure 17. At the time, only the companies in Block 2 (Box 2, 2a-c) were declared to belong to the GBL Group. The Royale Belge Group was not affiliated with the GBL Group but with the French UAP Group. This fact was notified on 27 July 1997 and the entered into the PDPart database on 1 August 1994. The entries for the GBL Group exactly corresponds to the information found in the published notification. What is important for our purposes is to note that PDPart contains the holdings of the individual companies that formed part of the GBL Group (GBL SA, Sagerpar SA, Natural Resources Consultants and Fonds de Pension de GBL) not only the overall holding of the GBL Group. As will become clearer when we discuss the construction of our dataset, this is very important for our purposes. We are interested in the holdings of the individual companies, not the GBL Group.

**TABLE 23. SHAREHOLDERS OF ELECTRAFINA SA IN DBPART DATABASE ON 29 DECEMBER 1995 AT 9:06**

<b>Code Holder</b>	<b>Code Origin</b>	<b>Date and Exercise</b>	<b>Code Group</b>	<b>Number Declared</b>	<b>Number Issued</b>	<b>Percent</b>	<b>Date Declaration</b>	<b>Last Update</b>
<b>AGESPAR</b>	11		0 GBL	360,667.000	29,793,318.000	1.210	19940727	19940801
<b>ARDENNE</b>	11		0 SCUAP	304.000	29,793,318.000	0.001	19940727	19940801
<b>BIL</b>	11		0 CREDCOM	57,000.000	29,793,318.000	0.191	19910916	19910920
<b>GBL</b>	11		0 GBL	9,943,822.000	29,793,318.000	33.376	19940727	19940801
<b>GENEAUX</b>	11		0 GENAUX	5,332,009.000	29,793,318.000	17.896	19940418	19940425
<b>NATURAL</b>	11		0 GBL	3,137,553.000	29,793,318.000	10.531	19940727	19940801
<b>PENSGBL</b>	11		0 GBL	7,658.000	29,793,318.000	0.025	19940727	19940801
<b>ROB</b>	11		0 SCUAP	1,645,002.000	29,793,318.000	5.521	19940727	19940801
<b>ROB1994</b>	11		0 SCUAP	498,257.000	29,793,318.000	1.672	19940727	19940801
<b>SAGERPAR</b>	11		0 GBL	309,032.000	29,793,318.000	1.037	19940727	19940801

Legend:

Company		Group	
AGESPAR	Agespar SA	GBL	Groupe Bruxelles Lambert
ARDENNE	L'Ardenne	GENEAUX	Gen. Des Eaux Cie (France)
BIL	Banque Int. Lux. SA	SCUAP	Soc. Centrale UAP (France)
GBL	Groupe Bruxelles Lambert SA	CREDCOM	Credit Communal de Belgique
GENEAUX	Gen. des Eaux Cie		
NATURAL	Natural Resources Consultants	Codes	
PENSGBL	Fonds de Pension de GBL	11	Equity
ROB	Royale Belge		
ROB1994	Royale Belge 1994		
SAGERPAR	Sagerpar SA		

### **5.2.2.6 Shortcoming of the Belgian Transposition**

The Belgian transposition of the EU Transparency Directive, but especially the implementation rules put into place by the Banking Commission are satisfactory. The weaknesses of the Belgian transposition stem from inadequacies in the EU Directive and some remaining practical problems.

### **5.2.3 Company Law**

For non listed public firms, there are three legal rules that can be a source of data for a research on ownership. However, these yield for bearer shares only. For nominative shares of SA and SCA, indeed, the same rule of Register of Partners applies as for private and mixed firms and the Register is not available to the general public.

The potential sources of information here are :

- the obligation made for all SA's to publish, in their annual report, the content of their shareholdings portfolio in others firms, either Belgian or foreign, and of any legal form. Then, by gathering all these information on shareholdings in other firms, it is possible to identify the shareholders of a given firm when they are Belgian SA's. Indeed, the Central Bank (*Banque Nationale de Belgique, Centrale des Bilans*) does this in collaboration with a software company (*Bureau Van Dijk*) that publishes regularly a CD-ROM gathering the annual accounts of all Belgian firms from which they deduct the shareholdings and shareholders of all possible firms. This is the main source of information on ownership for non listed firms in the country.
- Besides this, Belgian company law contains a separate provision that is comparable to the Transparency Directive rules for listed companies. The rules applies, exclusively, to *Société Anonyme* (SA). According to Article 52(6) Paragraph 2 of the *Lois Coordonnées sur les Sociétés Commerciales* (Coordination Officielle au 13 Avril 1995), any company that becomes the shareholder of a *Société Anonyme* registered in Belgium and holds more than 10% of the total votes in one category of shares has to notify that company. The company that made the acquisition notify the SA by registered mail. The notification must be made on the same day the acquisition took place. When the notified holding is decreased to less than 10% another notification must be made. Unfortunately, however, empirical research showed that this rule is not respected in practice.

- Finally, the last legal element that can provide us some information on ownership is the law on consolidated accounts. It is described in the section below.

## **5.2.4 Annual and Consolidated Accounts**

Shareholdings of a firm into other firms have to be mentioned in the annual accounts under the rubric "Financial assets" (Immobilisations financières). They are separated into three groups, in a decreasing order of importance.

### **5.2.4.1 Tied firms ("*Entreprises liées*")**

The firms tied to another firm are :

- the firms that control her,
- the firms that she controls,
- the firms with whom she forms a consortium,
- the other firms that, to the knowledge of the board, are controlled by one of the firms mentioned above.

The "control" of a firm is defined by law as the power to exert a significant influence on the majority of the board members or the managers or on the orientation of its management.

To determine the extent of this control rights:

- the rights held indirectly via a subsidiary is added to the rights held directly;
- the suspensions of voting rights and limitation the exercise of voting rights are not taken into account
- the voting rights held into a firm are calculated after the deduction of the shares and the social rights of that this firm or its subsidiary hold in itself.

### **5.2.4.2 The firms with whom there exists a participation link**

Are included in this category :

the firms, other than tied firms, in which the firm or its subsidiary holds directly, or indirectly, a participation

A participation is either

- the holding of at least 10% of the own funds, or of one category of shares in a firm,
- or the holding of rights representing less than 10%, but when the addition of the rights held by the shareholder firm and by its subsidiary exceeds 10% of the capital or 10% of one category of shares, or when there is a special agreement between smaller shareholders exceed 10% when taken together.

### ***5.2.4.3 Other financial assets***

Here are mentioned the social rights held in other firms that do not constitute a participation, but when these shareholdings are aimed at contributing to the activities of a firm by establishing a specific and durable link with this firm.

### ***5.2.4.4 Consolidated accounts***

#### **5.2.4.4.1 Principle**

The general principle of consolidated accounts is to gather the annual accounts of the firms of a group as if they were a single firm. Three methods are therefore used as we detail below.

#### **5.2.4.4.2 Contents and publicity**

Contents and publicity of consolidated accounts are similar to annual accounts. The accounts include a balance-sheet, a profit and loss account, and the annex, plus a management report. The structure is similar to the annual accounts, and they must reflect a true image of the patrimonial situation of the group. They are established in the same delays as the annual accounts and put at the disposal of the administrators at the same time. They are presented to the General Meeting and published together with annual accounts. The control of the accounts are made by auditors named by the General Meeting.

Consolidated accounts are also provided to the central bank and can be consulted at request by the public, just like annual accounts

The extent of consolidation ("Périmètre de consolidation")

The "consolidating firm" is the mother firm, head of the group, that will establish and publish the consolidated accounts. The "consolidated firms", included into the accounts are all the subsidiaries of the consolidating firm. However, some firms may be exempted from establishing consolidated accounts, these are the smaller firms of which neither the consolidating firm nor its subsidiary exceed more than one of the following limits :

- gross sales below 1700 million BEF
- total of the balance-sheet below 850 million BEF
- number of person employed below 500
- There is no exemption for listed firms.

#### **5.2.4.4.3 Methods of consolidation**

The method of consolidation applied depends on the importance of the shareholdings of the consolidating firm in its subsidiaries :

##### **5.2.4.4.3.1 *Global integration***

For the subsidiaries in which the consolidating firm exerts an exclusive control.

The global integration implies the summation of all the rubrics of annual accounts of the subsidiary and of the consolidating firm, of which one can deduct the proportion represented by the "intérêt des tiers" (other shareholders than the consolidating firm and its other subsidiaries).

##### **5.2.4.4.3.2 *Proportional integration***

For the subsidiaries in which the consolidating firm exerts a joint control. (The firms acts jointly with one or several other large shareholders to control the subsidiary).

The proportional integration implies the summation of the rubrics of annual accounts in proportion of the capital owned by the consolidating firm alone into the firm (and not together with the other subsidiaries like in global integration).

#### **5.2.4.4.3.3 Equivalence ("*Mise en équivalence*")**

Either for the subsidiaries in which the consolidating firm exerts a joint control ("filiales communes"), but having activities that are too different from those of the consolidating firm to reflect a faithful image of the reality, or for the associated firms, meaning in which the consolidating firm holds a shareholding exceeding 20% of the capital.

The equivalence results only in adding a rubric "Entreprise mises en équivalence" (firms consolidated by equivalence) in the balance sheet of the consolidated accounts. The amount is the fraction of the capital held in the consolidated firm.

#### **5.2.4.4.3.4 Annex of the consolidated accounts**

It must include the criteria applied to establish the various consolidation methods and the identification of the consolidated firms with each methods :

- list of the firms consolidated by global integration
- list of the firms consolidated by proportional integration
- list of the firms consolidated by equivalence.

The annex might add also the list of firms not included in the consolidated accounts but in which the group have shareholdings comprised between 10% and 20% of the capital.

# **Concentration of Ownership and Pyramidal Shareholding Structures in Belgian Listed Companies**

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**Abstract :**

This paper provides an overview of the main characteristics of the ownership structure of the Belgian companies quoted on the Brussels Stock Exchange. Prior to the changes in corporate law regarding ownership disclosure in 1989 little was known about ownership and control. We detail ownership concentration, the importance of different shareholder classes, the violation of the one share-one vote rule via pyramidal ownership structures, and the corporate control market for share stakes. We start with a summary of the main aspects of the Belgian equity market which is compared with Anglo-American and other Continental European markets.

## 1. Insider versus outsider ownership and control systems.

According to Berle and Means (1932), dispersed ownership has given rise to separation of ownership and control. Demsetz and Lehn (1985) argue that ownership patterns reflect a trade off of the risk to investors of concentrated investments in large firms and the control potential of the firm. Diversified shareholdings are useful from the point of view of risk reduction but discourage active participation of investors. As Franks and Mayer (1995c) point out, it is puzzling that the resolution of this trade off has taken such different forms in different countries. German and French equity markets can be characterized by few listed companies, an illiquid capital market where ownership and control is infrequently traded and complex systems of intercorporate holdings (Mayer 1993, Franks and Mayer 1992). Consequently, these structures are appropriately described as *insider systems* in which the corporate sector has controlling interests in itself; outsider investors, while able to participate in equity returns through the stock market, are not able to exert much control. In contrast, the Anglo-American system is a market oriented or *outsider system* and is characterised by a large number of listed companies, a liquid capital market where ownership and control rights are frequently traded and few intercorporate holdings.<sup>1</sup> There are few large, controlling shareholdings and these are rarely associated with the corporate sector itself.

The main characteristics of the Belgian corporate ownership and equity market can be summarized as follows : (i) few Belgian companies are listed, (ii) there is a high degree of ownership concentration, (iii) holding companies and families, and to a lesser extent industrial companies, are the main investor categories, (iv) control is levered by pyramidal and complex ownership structures and (v) there is a market for share stakes. Properties (i) to (iv) imply that Belgium can be portrayed as a German-French 'insider system' rather than an Anglo-American system. However, typical for

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<sup>1</sup> Wymeersch (1994b) makes a distinction similar to Franks & Mayer (1992) between *company-oriented* and *enterprise-oriented* systems. A company-oriented system is characterised by the existence of a large number of listed companies. Most of their shares are effectively traded on the markets. The monitoring function is essentially undertaken by the securities market and active market trading is an essential prerequisite for efficient monitoring. Privileged tools of intervention are the appointment of non executive directors who are chosen on their technical abilities and the designation of special board committees. Ultimately, takeovers drive out inefficient management. The U.S. and the U.K. fall clearly under the definition of a company-oriented corporate control system. An enterprise-oriented system has a low number of listed companies, control is held by major shareholder so that a limited number of shares are effectively on the market. Monitoring does not take place via the market, but is regulated by group law.

Belgium is the importance of holding companies which are often part of pyramidal ownership chains and are used to lever control.<sup>2</sup>

Table 1 shows the number of quoted companies per country and the total market capitalization as a percentage of GDP. The U.K., U.S. and Japan are characterised by a large number of quoted companies; respectively 1878, 6342 and 1627 in 1992. The market capitalization of companies quoted on the London Stock Exchange is around 81 percent of the U.K. GDP. Companies quoted on the Tokyo Stock Exchange have a value of 89 percent of the Japanese GDP while the value of corporations listed on the New York Stock Exchange and NASDAQ amounts to 56 percent of U.S. GDP. The capital markets of France, Germany, Belgium and Spain and of most of the remainder of continental Europe, present a different situation: they have many less quoted companies with a market capitalization as a percentage of GDP which is lower than 32 percent.<sup>3</sup>

Compared to the shareholding structure of Continental European corporations, ownership in the U.S. and the U.K. is much less concentrated (Franks, Mayer & Renneboog 1996). For the U.S., the average shareholding of the five largest shareholders in a sample of Fortune 500 companies is 15.4 percent and 23 percent of these companies do not have a shareholder with a share stake over more than 5% (Shleifer and Vishny 1986, Demsetz and Lehn 1985). These two percentages compare to respectively 60 percent and to 1 percent for Belgium. The large shareholders with a stake of at least 5% in the U.S. are mostly families, pension and profit-sharing plans as well as banks, insurance companies and investment funds. About two-thirds of the market capitalization are held by individual investors and institutional investors on behalf of individuals in U.S. and U.K. quoted companies, but the U.S. has a far higher proportion of equity owned directly by individuals. However, Davies and Stapledon (1994) report the enormous growth in the percentage (by value) of equity held by institutional investors in the U.K. and a decline in the percentage held by individuals.

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<sup>2</sup> In this sense, the Italian equity market is similar to the Belgian one : few companies are quoted, concentration of ownership is high, pyramidal ownership structures with holding companies as intermediate investment vehicles are common (Nikodamo 1995, Bianchi and Casavola 1995). But, whereas the Italian state controls a large number of industrial groups and holding companies, Belgian state ownership is rare.

<sup>3</sup> This is also the case for the Netherlands and for Switzerland when the impact of respectively the five Dutch large multinationals and the Swiss financial sector are excluded from the data.

**Table 1 : Number of domestic quoted companies per country and the market capitalization as a percentage of GDP.**

The numbers of quoted companies refer to 1992, but to 1991 for the U.S. and Japan. For each country, only domestic companies listed on the main stock exchanges have been considered : New York and NASDAQ combined, London, Tokyo, Paris, Frankfurt, Madrid, Amsterdam, all Swiss exchanges, and Brussels.

Country	number of domestic quoted companies	equity of quoted co's as % of GDP
U.S.	6,342	56 %
U.K.	1,878	81 %
Japan	1,627	89 %
France	786	26 %
Germany	665	18 %
Spain	433	20 %
Netherlands	314	44 %
Switzerland	180	78 %
Belgium	171	31 %

Source : Own calculations for Belgium and the U.K. are based on data from the Brussels Stock Exchange and the Department of Trade and Industry in London, Wymeersch (1994b) for the Netherlands, Germany, France and Switzerland, Goergen (1993) for Spain, Franks and Mayer (1992) for the U.S. and Japan.

Germany, like Belgium, has few widely held listed companies : only 15 percent of a German sample of the 171 largest companies do not have any shareholder with an equity stake of 25 percent or more (Franks and Mayer 1995b and 1995c).<sup>4</sup> Other German companies and families own the largest share stakes. Trusts and institutional investors are sometimes large shareholders but their stakes are rarely majority holdings. The same holds for banks. However, the significance of banks is greater than their direct equity holdings would suggest : as holders of bearer shares they are able to exercise proxy votes on behalf of dispersed shareholders.<sup>5</sup> Control is maintained at low cost via complex and pyramidal structures : the average tier of company holdings is 2.2 compared with 3.1 for families and 4.2 for banks.

In a French sample of the largest 155 quoted companies, almost 89 percent have a shareholder with an equity stake of 25 percent or more. The major shareholders in the French sample are predominantly other industrial companies (Goergen 1993). So, in France, like in Germany, the corporate sector is by far the single largest group of shareholders. Foreign companies, families and banks are the other large shareholders. Corporations who hold equity stakes in each other are often in related industries or in the same industry (Franks and Mayer 1995c). Furthermore, in most cases, these companies are not trading partners.

The Italian shareholding structure is characterized by high concentration of ownership, the presence of family owners and the pervasive role of the state (see Bianco, Gola and Signorini 1995). About 95 percent of the largest 500 non-financial companies are controlled with absolute majority (Bianchi and Casavola 1995). Contrary to what one would expect, the concentration of direct ownership is greater in larger firms. Controlling shareholders hold via pyramids and coalitions, 88 percent of the largest companies.

Japanese ownership is, similar to Continental Europe, highly concentrated. Financial and industrial groups (keiretsu), represent about 61 percent of the market capitalization of the Tokyo Stock Exchange (Lichtenberg and Pushner 1992). Average ownership in quoted companies held by

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<sup>4</sup> For the evolution of German ownership structure : see Baums (1994).

<sup>5</sup> Chirinko and Elston (1995) find strong evidence that bank influence and concentrated ownership serve as substitutes for controlling corporations.

financial groups has risen to 30 percent in 1989, while average corporate ownership remained stable over the period 1975-1989 at 43 percent.<sup>6</sup>

Franks and Mayer (1995c) argue that the theories of ownership and corporate control<sup>7</sup> do not provide adequate explanations for the organization and operation of Anglo-American, Japanese and Continental European capital markets. They advance the hypothesis that the patterns of ownership are associated with different forms of corporate control that allow for different types of correction. Concentrated ownership allows relations involving commitment on the part of investors to be sustained. Large shareholders who face limited free riding costs of control, can give a long-term commitment to the firm, while allowing a large number of small shareholders to trade in investment opportunities without having any effect on control. Dispersed ownership gives management more discretionary power but permits restructuring of management (e.g. by takeovers or by a market for share stakes) even in the absence of past failure, largely because owners are unable to commit. Consequently, it could be expected that different forms of ownership would be suited to promoting different types of activity. Concentrated ownership is needed where investment by other stakeholders is important and cannot be promoted contractually. When little investment is required by other parties or adequate contracts can be written, dispersed ownership will be advantageous.

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<sup>6</sup> Miyajima (1995) examines the creation and growth of bank centred corporate groups. For a detailed description of the Japanese ownership structure : see Prowse (1992).

<sup>7</sup> There are two strands of the literature on ownership and control. The first focuses on the determinants of ownership while the second concentrates on how corporate control is exercised. With regard to ownership, there are into three classes of models. A first class of the models argues that transaction costs make transactions through markets more costly than internal activities within the firm. In this literature, the firm is considered as a nexus of contracts and it may be costly to write the contracts necessary to undertake transactions between firms through the market place (See, for instance, Coase (1937), Williamson (1975), Aoki, Gustafsson and Williamson (1990)) Secondly, the industrial economics literature emphasizes vertical ownership relations and attempts to explain the reasons why upstream and downstream firms hold stakes in each other (See e.g. Dixit (1983), Salinger (1988)). When upstream firms do not take full account of the interests of downstream firms e.g. with regard to the prices they set, ownership may be required to internalize such externalities in the absence of suitable contractual alternatives. A third series of models concentrate on the effect of incomplete contracts on the ex ante incentive that firms have to make sunk investments. Ownership is here considered as a commitment device with regard to specific investments. Ownership allows parties to avoid decisions being taken in the future that adversely affect the value of past investments (See e.g. Grossman and Hart (1986), Hart and Moore (1990)). The second strand of the literature focuses on corporate control. Manne (1965), Alchian and Demsetz (1972) and Fama and Jensen (1983) state that separation of ownership and control in the outsider system has evoked a number of mechanisms to limit the agency problems that would be expected to arise. Such mechanisms include monitoring and control by non-executive directors, incentive systems and a market in corporate control.

## 2. Concentrated ownership in Belgium.

### 2.1 Ownership disclosure legislation.

Up to 1989, little was known about the ownership structure of companies listed on the Belgian stock exchanges, given the general use of bearer shares and the lack of ownership disclosure obligation. Following the takeover battle in 1988 between the French Compagnie Financière de Suez and the de Benedetti group for the largest Belgian holding company, Generale Maatschappij van België (Société Générale de Belgique), new legislation concerning corporate control and ownership was initiated. An Ownership Disclosure Law<sup>8</sup> was introduced in 1989 and amendments to the company law with regard to takeovers<sup>9</sup> were made in 1991.

The Ownership Disclosure Law requires all investors, both individuals and companies, to reveal their share stakes in those companies governed by Belgian law, all or part of whose securities conferring voting rights are officially listed on a stock exchange located in a Member State of the European Union. Notification is obligatory if a shareholding equals or exceeds 5 percent<sup>10</sup>. Furthermore, shareholders have to declare any increases and decreases in ownership and their new ownership position if their stake exceeds a multiple of 5 percent of the voting rights or falls below such a threshold. For instance, a company that has revealed that it owns a stake of 11 percent will have to notify the Banking Commission<sup>11</sup> again once this ownership stake reaches 15 percent or more, or decreases below the 10%-threshold.

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<sup>8</sup> Law of 22 March 1989, called '*Transparantiewetgeving*' (transparency legislation) and Royal Decrees of 10 May 1989 and of 8 November 1989.

<sup>9</sup> Law of 18 July 1991.

<sup>10</sup> Individual companies can reduce this threshold in the articles of incorporation, but not to less than 3%. Notification of changes in stakes by the shareholders will have to be made if the following thresholds are passed : 3%, 5%, 10%, 15%, and further multiples of 5%. (Law of 22 March 1989, Section 5.) Currently, about 20 companies have adopted the 3% threshold (Wuille 1994).

<sup>11</sup> The Commission for Banking and Finance, usually abbreviated to Banking Commission, is the Belgian equivalent of the S.E.C. in the U.S. In a strict legal sense, the authority of the Banking Commission in the area of ownership disclosure supervision and M&A activity is limited, but the Commission has considerable influence on market participants on the basis of its 'moral authority'.

The notification percentages refer to real and potential voting rights. As a result, ownership of securities convertible into shares (convertible bonds, warrants, etc) is treated in the same way as shares in the company.<sup>12</sup> So, when investors make voting rights declarations, they include : (i) the percentage of the actual total voting rights they own proportional to all the actual voting rights outstanding, (ii) the potential voting rights, as a percentage to the aggregate of all potential voting rights and (iii) the percentage of cumulative actual and potential voting rights in the company based on the aggregate number of the voting rights associated with all outstanding shares and convertible instruments.<sup>13</sup>

Furthermore, the law applies not only to the direct owners of the voting rights, but also to those investors who control voting rights indirectly via a pyramid structure of intermediate companies.<sup>14</sup> Investors are obliged to reveal whether they are affiliated to a group of companies or whether they act in concert<sup>15</sup> with other investors. If the real or potential voting rights of the individual investor or of the investor group exceed or fall below the notification thresholds, they have to reveal their cumulative and individual direct and indirect ownership positions and changes in shareholdings. The Banking Commission suggests that the ultimate shareholder of an investor group assume notification responsibility for voting rights of its own direct and indirect holdings and for those share stakes held by investors this 'reference shareholder' is affiliated to or acts in concert with.<sup>16</sup> In addition, once the stake of an investor (or of the investors belonging to the same investor group) reaches 20 percent of the voting rights of the company, the strategic policy with regard to the target has to be declared to the Banking Commission and the target.<sup>17</sup>

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<sup>12</sup> Law of 22 March 1989, Section 1, paragraph 3.

<sup>13</sup> Banking Commission 1989, p. 4-6.

<sup>14</sup> 'Note on the application of the Law of 22 March 1989' (Banking Commission 1989 p.2).

<sup>15</sup> The definition of 'affiliated investors' is given in Article 5 of the Royal Decree of 10 May 1989 and is based on the Royal Decree of 8 October 1976 on the company's annual accounts and consolidation of accounts. 'Acting in concert' is defined in Articles 7 of the Royal Decree of 10 May 1989. Companies acting in concert have agreements with regard to the possession, the acquisition and the selling of securities.

<sup>16</sup> Banking Commission 1989 p.8-9.

<sup>17</sup> Most 'strategy' statements, however, have a low informational content. For instance, on 14 March 1994, Generale Maatschappij van België (Société Générale de Belgique), the reference shareholder for Union Minière and Naviga, notified that these three shareholders had liquidated their combined shareholdings of 62% in Asturienne because 'the share stake is not considered as strategic'.

With regard to timing of notification, the investor who purchases or sells shares (voting rights) has to disclose his shareholding and the changes in his position to the target and to the Banking Commission in Brussels at the latest on the second working day after the transaction, if a notification threshold has been passed. The target who has been notified about changes in ownership by substantial investors, has a maximum of one working day after disclosure to pass on this information to the Documentation and Statistics Department of the Brussels Stock Exchange (Maertens 1994). This department updates its on-line ownership database BDPart and makes this information available *ad valvas* on the trading floor (*parquet*)<sup>18</sup>. The following day, the Documentation department publishes the information in the *Cote de la Bourse*<sup>19</sup>, a Stock Exchange publication that is inserted in the two Belgian financial newspapers, *De Financieel Economische Tijd* and *L'Echo de la Bourse*. The same notification timing applies to disclosure of investors' policies (20 percent ownership rule).

An investor's failure to disclose a substantial shareholding may lead to an interdiction for the investor in question to participate to the annual meeting, to a cancellation of the annual meeting which has been called for, to a suspension of the exercise of all or part of the rights pertaining to the securities for a certain period and to liability to penalties<sup>20, 21</sup>. The voting rights of recently acquired major shareholdings (5 percent and more) can only be exercised 45 days after notification.<sup>22</sup>

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<sup>18</sup> If a target faxes a ownership notification to the Stock Exchange in the morning, this information is disclosed to the floor at 11.00 a.m. at the earliest via the bulletin board (*ad valvas*) and via the on-line BDPart database. Important news is via this channel quickly dispersed via Tijd Electronic Services or Reuters.

<sup>19</sup> The information in the *Cote de la Bourse* is the full responsibility of the Stock Exchange. The *Cote de la Bourse* in its current form appeared as of 1 January 1992. Before this date, the Stock Exchange disclosed information via de *Wisselkoerslijst* which was sent to about 1000 subscribers, mostly brokerage houses, banks, institutional investors and news agencies.

<sup>20</sup> Penalties are enumerated in Section 204 of the Coordinated Laws on Commercial Companies.

<sup>21</sup> Law of 22 March 1989, Sections 7-11. In May 1995, minority shareholders of PB Finance, a listed real estate company, sued the Dutch holding Euver in order to annul Euver's voting rights or to limit them to 5% because Euver had not disclosed the size of its shareholding (of 67%) to the Commission of Banking and Finance and there were suspicions of fraud.

<sup>22</sup> Ownership Disclosure Law of 22 March 1989, article 6.

## **2.2 Voting rights and restrictions, and the rights of the minority shareholders.**

In principle, the general assembly takes decisions based on a simple majority of the voting rights. Since 1991, the balance of corporate power has shifted to the controlling shareholders who have been given legal instruments to entrench their position in the company and to protect themselves against undesired takeovers. Anti-takeover instruments, like share repurchase schemes or issuance of warrants, are valid for a maximum of 5 years but can be reinstated for a similar period by the general assembly (Wymeersch 1994a).<sup>23</sup> Such measures have further reduced the likelihood of hostile takeovers in Belgium.<sup>24</sup>

However, to provide more protection to small shareholders a supermajority of 75 percent of the voting rights voted at the general assembly, is needed with regard to decisions about changes in the acts of incorporation, increases of the equity capital, limitations or changes in the preferential rights of existing shareholders to purchase shares in new equity issues, changes in the rights of different classes of shareholders<sup>25</sup>, repurchases of shares and changes in the legal form of the corporation (Lievens 1994).

Since 1991, minority shareholders or a group of minority shareholders owning at least 1 percent of the equity capital or shares with a value of not less than BEF 50 million, can appoint one or more

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<sup>23</sup> The percentage of ownership of the major shareholders is often an underestimation of the real corporate power these shareholders can exercise. The board, nominated by the major shareholders, could interpret a takeover threat as 'grave and imminent danger' which would allow them to repurchase shares. Furthermore, the board can allow share warrants to be exercised or sold to friendly shareholders for a maximum of 10% of equity capital in order to dilute shareholdings of a potential raider. This authority, for a maximum but renewable period of 5 years, has to be granted specifically to the board by the annual general meeting. Autocontrol mechanisms can also be installed whereby the company's shares are held by a subsidiary. However, a subsidiary's stake in the mother company is restricted to 10%.

<sup>24</sup> The mandatory bid rule which existed since 1965 on a self-regulatory basis has been incorporated into the amendments of law of 1991. The rule requires the acquirer of shares, in as far as he obtains control as a consequence of this acquisition, to bid for all remaining shares and the bid price should be set at a premium above the highest market price over the last 12 months. This way, equal treatment of shareholders is ensured since all shareholders are offered the benefit of the control premium. Furthermore, the propensity to trade large blocks, resulting in companies taken over against their will, is diminished. In practice, the proof that (in)direct control is acquired can still be difficult.

<sup>25</sup> There are additional conditions for changes in the rights of different classes of shareholders. The board of directors needs to document the reasons for the changes extensively and has to send that report to all shareholders before the annual meeting. On the annual meeting, the proposal is only valid if 50% of the total outstanding voting rights are present and 75% of each category of shareholders votes in favour (Company Law, article 71).

experts who can scrutinize the company's accounting and its internal operations.<sup>26</sup> The appointment of experts is conditional on indications that the interests of the company are threatened. Shareholders owning at least 1 percent of the votes can initiate a *minority claim* against the directors for the benefit of the company, if it can be proven that the directors have managed or supervised the company poorly and if the minority shareholders have voted against the directors' *discharge*<sup>27</sup> at the annual meeting. For instance, a minority claim would be justified when directors ensured that the company paid out benefits to large shareholders they represent at the detriment of the company.<sup>28</sup>

Another important change, since the law of 1991, is the abolition of automatic voting rights restrictions.<sup>29</sup> This abolition was motivated by the fact that the restrictions could be easily evaded by redistributing the shares to family members, friends and subsidiaries (Van Nuffel 1994). Still, as in Germany, individual companies can still apply voting right restrictions by including such clauses in the acts of incorporation. While automatic voting restrictions are abolished, voting agreements among shareholders for (renewable) periods of 5 years are allowed since 1991 if these agreements do not limit the responsibilities of the directors or are used to create different classes of voting rights.

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<sup>26</sup> Law of 18 June 1991, article 191. This law reduced the threshold from 20% to 1%.

<sup>27</sup> At the annual general meeting, the directors are 'discharged' from liabilities that may arise in the future if shareholders present at the annual meeting judge, with information from the external auditors and data in the annual report, that the directors fulfilled their tasks adequately during the fiscal year.

<sup>28</sup> Note that the minority claim (Company Law articles 66 bis paragraph 2, article 132 bis and article 158 bis) is for the benefit of the company and not for the benefit of the minority shareholder directly, although the minority shareholders, like all shareholders, might benefit. Consequently, this procedure to appoint experts cannot be used following conflicts between shareholders, but only if the company's economic position and its long term survival is endangered. Case law is rare, but the appointment of experts was justified in these cases: the stocks were overvalued, a company was badly managed and had negative earnings (Lievens 1994). In addition to lowering the threshold level for the minority claim, the rules of conflicts of interest have been tightened : personal liability cannot be excluded if directors take undue advantage of their position to the detriment of the company (Wymeersch 1994a). An individual liability claim can only be initiated if the shareholder can prove that he has experienced personal damage.

<sup>29</sup> Before 1991, no shareholder could participate in the voting at the annual meeting for more than 20 percent of the voting rights associated with the total shares outstanding or for more than 40 percent of the voting rights associated with shares represented at the annual meeting. The restriction limiting the exercise of voting rights most had priority.

### 3. Data.

#### 3.1 Sample description.

The sample consists of all Belgian companies listed on the Brussels Stock Exchange during July 1989 and August 1994<sup>30</sup>. In total, 192 firms are included in the sample; some of these went bankrupt in the period under consideration, while others were introduced after 1989. In 1989 and 1994, respectively, 186 and 165 companies were listed. Sector codes, dates of introduction and of delisting are provided by the Documentation and Statistics Department of the Brussels Stock Exchange. In the analysis, the sample size was reduced by 9 companies in 1989 and by 10 in 1994 as these listed firms, all in coal mining and steel production, were involved in a long liquidation process but were still listed. Table 2 shows that 40 percent of the Belgian listed companies are holding companies with multi-industry investments, 13 percent are in the financial sector (banking, insurance and real estate) and 47 percent are industrial and commercial companies.

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<sup>30</sup> Only two listed companies (Delhaize and An-Hyp) were not included in the sample since ownership information was not available in the Brussels Stock Exchange. These companies should be regarded as widely held (no shareholdings of more than 5% exist). However, the Delhaize family, for instance, is believed to own around 30% of the shares. The non-declaration of these stakes is only legally allowed if several family members own less than 5% (see infra for the Ownership Disclosure Legislation) and if they do not 'act in concert'.

**Table 2 : Sample Description**

	1989	1994
All listed sample companies <sup>1</sup>	177	155
Holdings <sup>2</sup>	71	64
Financial sector	23	19
Industrial and Service companies	83	72
Financial Sector		
Banks	8	7
Insurance	7	5
Real estate	8	7
Industry		
energy <sup>3</sup>	6	5
materials <sup>4</sup>	4	26
capital equipment <sup>5</sup>	13	12
consumer goods <sup>6</sup>	19	16
Services	11	13

<sup>1</sup> For 1989 and 1994, respectively, nine and ten listed companies that have been in liquidation for years, were not included in the sample. These companies are all in coal mining and steel production. The number of delistings in the period 1989-1994 surpasses the number of new introductions due to mergers, industry restructurings (e.g. in the energy sector) and the policy of the stock exchange to delist infrequently traded companies with tiny market capitalizations.

<sup>2</sup> The holding companies have multi-industry investments. The categorization is based on the NACE classification of the National Bank and the classification of the Bank Brussel Lambert.

<sup>3</sup> mainly petrochemical and electricity production.

<sup>4</sup> ferro, non-ferro, chemicals, building, paper, glass.

<sup>5</sup> electricals, electronics, construction, machine building.

<sup>6</sup> mainly food, pharmaceuticals and retail.

### 3.2 Ownership data.

Data on the ownership structure over the period 1989-1994 were collected from the Documentation and Statistics Department of the Brussels Stock Exchange. Ownership data are only available since 1989, following the introduction of the Ownership Disclosure. The Documentation Department maintains a daily updated database BDPart (Bourse Data Participations) of the shareholding structure of Belgian listed companies. BDPart provides data on the first level of shareholding (direct ownership) in all Belgian listed companies, such as the names of the investors, the number of shares declared, number of shares issued and the percentage of ownership. Apart from voting rights linked to the shareholdings, BDPart also displays potential voting rights linked to securities that will represent voting rights when converted or exercised (e.g. convertible bonds, warrants). Previous ownership positions in the BDPart database are overwritten once new ownership information becomes available. To capture a company's ownership position at the end of its fiscal year since 1989 and changes in shareholdings during each year, about 5000 hardcopy Notifications of Ownership Change from 1989 till 1994 were consulted. These Notifications were sent by the target to the Brussels Stock Exchange which published this information in the official Stock Exchange newspaper *Cote de la Bourse*. Apart from details on voting rights, the investors' status (independent, affiliated or acting in concert with other investors) was compiled from the Notifications. With this information about major direct shareholdings and indirect control, the multi-layered ownership structure was reconstructed for each company over the period 1989-1994. The shareholding data from BDPart and the Notifications of Ownership Change were verified with ownership data of the database of the National Bank which is based on annual reports.<sup>31</sup>

The 1988-1994 yearbooks of *Trends 20,000*, which comprise industry sector classification and financial data for most listed and non-listed Belgian companies, were used to classify all Belgian investors into the following categories : (i) holding companies, (ii) banks, (iii) institutional investors, (iv) insurance companies, (v) industrial companies, (vi) families and individual investors, (vii)

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<sup>31</sup> The database of the National Bank also comprises data on large shareholdings as reported in the annual reports. However, the data on the Notifications of Ownership Changes are more detailed, often present organization charts of pyramidal ownership structures and give all the ownership changes that took place during the fiscal year rather than the ownership structure at the end of the fiscal year.

federal or regional governments and (viii) real estate investors. Foreign companies owning a large share stake in Belgian companies were classified with information from *Kompass*.

## 4. Ownership structure in Belgium

### 4.1 Concentrated direct and ultimate ownership by shareholder class.

The structure of substantial shareholdings in all Belgian companies listed on the Brussels Stock Exchange in August 1994 is presented in table 3. On average, the sum of the direct share stakes held by large shareholders (who own at least 5 percent of the outstanding shares) amounts to more than 65 percent (panel A). Cumulative direct ownership is higher, almost 70 percent in the financial sector (panel C), and around 65 percent for both holding companies (column 1 of panel B) and industrial and commercial companies (panel D). It is clear that the concentrated ownership structure does not facilitate hostile takeovers if the acquirer does not initially have a large toehold. In their analysis of the Belgian market for corporate control over the period 1970-1985, Van Hulle, Vermaelen and de Wouters (1991) confirm that tender offers made directly to the public were characterised by substantial initial toehold interests.<sup>32</sup>

Table 3 also reports the cumulative ownership of the three most important investor classes: holding companies, families and individual investors, and industrial and commercial companies.<sup>33</sup> From panel A can be concluded that holding companies are the largest direct investors<sup>34</sup>; they hold on average 33 percent of the shares and account for half of the substantial ownership stakes in Belgian companies. Domestic and foreign holding companies have invested more in the Belgian holding companies than in the industrial and in the financial sector. Direct investment of industrial and services companies (panel A) totals almost 15 percent and is focused on other industrial and

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<sup>32</sup> Legal aspects of the mandatory bid are discussed by Wymeersch (1992).

<sup>33</sup> The columns with data on holding companies, families and industrial companies do not add up to the numbers in the all investors column since the total cumulative concentrated ownership of this column is the sum of 8 investor categories. Institutional investors, banks etc do not hold substantial stakes in the sample companies and are not shown in this table but are available upon request.

<sup>34</sup> It was assumed that direct shareholders are not affiliated to any other shareholder; control relations by other shareholders at a higher ownership tier are ignored.

commercial companies (panel D). Families' direct investment is of less importance with an average stake of about 4 percent.

A substantial number of share stakes are held by other companies which in turn are held by other shareholders. Therefore, if we want to answer the question who actually owns and controls a sample company, pyramidal and complex ownership structures should be taken into account. Examples of pyramidal and complex ownership structures are illustrated in figures 1 and 2. Figure 1 shows part of the ownership structure of Floridienne, a company in the chemical and food industry, at the end of 1994. On the direct investment level, Mosane and its fully owned subsidiary Cippar hold 25 percent of Floridienne's voting rights. Ultimate minority control lies with the Paribas group which controls its Belgian subsidiary Copeba. Ultimate minority control exists when there is a continuous chain of at least 25 percent if there are no other shareholders with large stakes available at any ownership tier. A continuous chain of holdings of at least 50 percent is called ultimate majority control while supermajority control arises when an uninterrupted chain of 75 percent is in place. The most important reason for the use of pyramids in Belgium is leverage (Wymeersch 1994a) : external equity can be raised while retaining control. The Paribas group controls the blocking minority in Floridienne with an interest in cash flow rights of merely 11 percent ( $60\% \times 74\% \times 25\%$ ). In fact, Paribas exercises *pyramidal or levered control* over Mosane. It is clear that, although the one share-one vote rule applies to each individual ownership tier, pyramidal or levered control constitutes a violation of the one share-one vote rule if control extends throughout multiple ownership tiers (see also Renneboog 1996). Cobepa, a Belgian holding company, is also listed on the Brussels Stock Exchange and its organization chart is exhibited in figure 2. Within the ownership chain, Swiss, French and Dutch companies and banks belonging to the Paribas group control the underlying levels with almost 100 percent of the voting rights. This complex ownership structure, however, is not an example of an ownership pyramid, but is a case of majority control where there is hardly any control leverage. Basically, 60 percent of Cobepa's voting rights are held by one major shareholder, the Compagnie Financière Paribas.

**Table 3 : Ownership concentration in all Belgian companies listed on the Brussels Stock Exchange.**

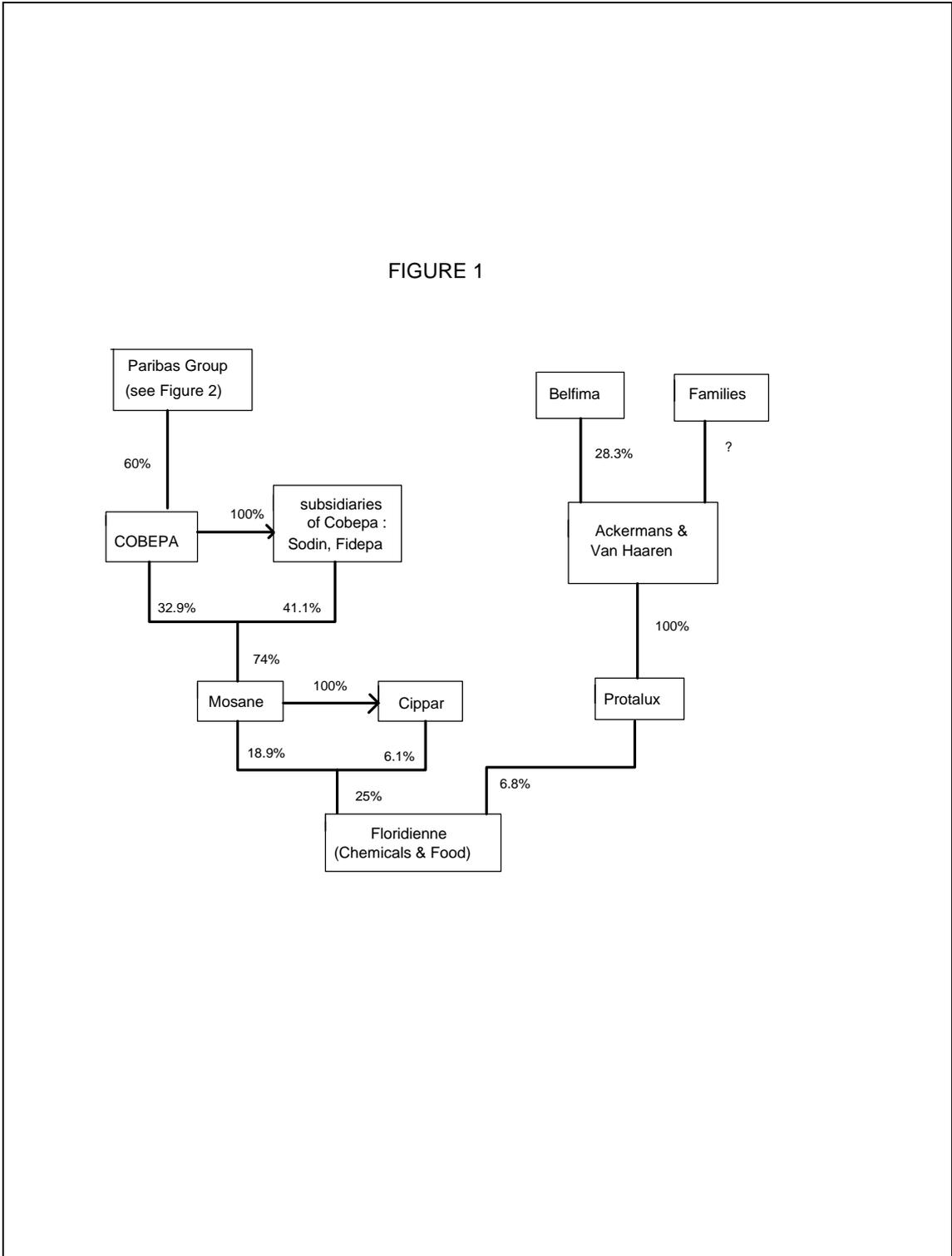
This table reports the aggregate of individual shareholdings of 5% and more<sup>1</sup> for the main ownership categories. The shareholder classes (holding companies, industrial and commercial companies, and families) consist of both Belgian and foreign investors. Direct stands for the direct shareholdings. Ultimate refers to the fact that the direct shareholdings were classified according to the shareholder class of the ultimate investor and these direct shareholdings belonging to the same ultimate investor group were subsequently summed. Ultimate control is control based on (i) a majority control (minimal 50% of the voting rights) on every ownership tier of the ownership pyramid or (ii) shareholdings of at least 25% on every tier in the absence of other shareholders holding stakes of 25% or more. A chain of fully owned subsidiaries are considered as one single shareholder.

Aug. 1994	all investors	holding co's	families	industr. co's	Belgian investors	foreign investors
PANEL A : ALL SAMPLE COMPANIES (N=155)						
Direct	65.38	32.71	3.90	14.60	49.38	16.00
Ultimate	65.38	26.68	15.59	10.84	39.60	24.35
PANEL B: ALL HOLDING COMPANIES (N=64)						
Direct	63.92	36.73	5.15	13.11	46.85	17.07
Ultimate	63.92	34.43	14.12	8.33	36.08	27.97
PANEL C : FINANCIAL SECTOR (BANKS, INSURANCE, REAL ESTATE) (N=19)						
Direct	69.96	26.45	1.18	5.45	55.00	14.96
Ultimate	69.96	26.22	5.31	5.41	38.40	23.63
PANEL D : INDUSTRIAL AND COMMERCIAL COMPANIES (N=72)						
Direct	65.48	30.80	3.50	18.34	50.16	15.32
Ultimate	65.48	20.02	19.70	14.52	43.01	21.36

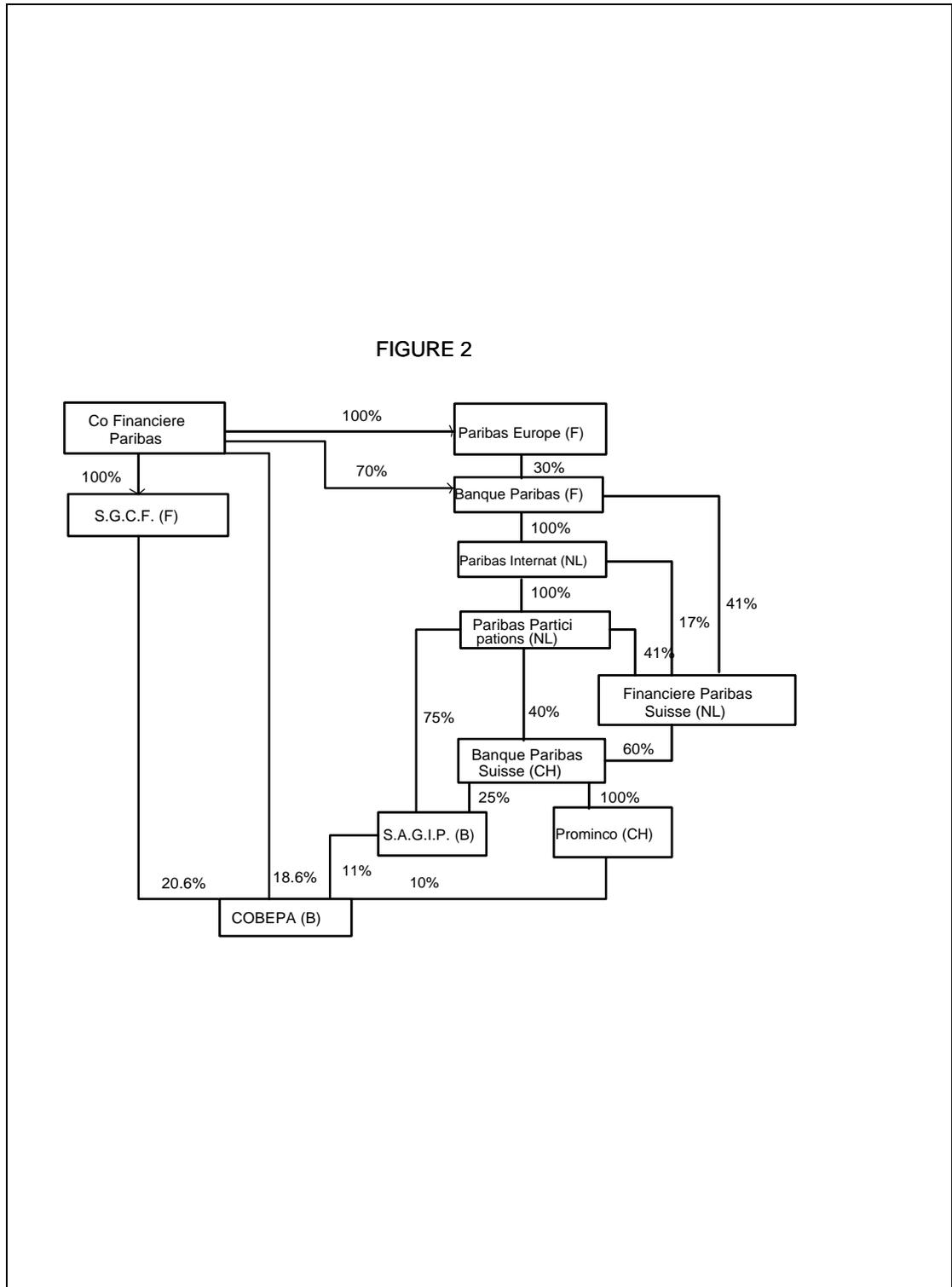
Source : Own calculations based on information from the BDPart database of the Brussels Stock Exchange and Ownership Notifications of the Documentation Centre of the Brussels Stock Exchange.

<sup>1</sup> In line with the Ownership Disclosure Legislation, substantial shareholdings are defined as share stakes that equal or exceed 5% (of the voting rights), unless investors with smaller shareholdings are affiliated to or act in concert with major shareholders, in which case small stakes ought to be revealed as well. The 5% threshold can be reduced to 3% if the company states this in its acts of constitution.

FIGURE 1 : Pyramidal shareholding structure of Floridienne.



**FIGURE 2 : Shareholder structure of Cobepa.**



Previous examples clarified that the true owners of the Belgian sample companies are mostly not the direct shareholders (at ownership level 1), but that control is exercised by an ultimate shareholder on a higher ownership tier in the pyramid. It is important to identify these *ultimate shareholders* so that the percentages of voting rights held by direct or first-level shareholders controlled by the same ultimate investor can be aggregated into investor groups. Such investor group is named after and classified according to the identity and shareholder class of the ultimate shareholder.<sup>35</sup> Control exerted by an ultimate shareholder on a sequence of intermediate companies and, ultimately, on the sample company exists if (i) there is a series of uninterrupted majority shareholdings on every ownership tier throughout the pyramid or (ii) if there is a large shareholding of at least 25 percent on every ownership level in the absence of other shareholders with stakes of blocking minority size or larger. Applying this criterion, henceforth called the *ultimate shareholder criterion*, to the example (figures 1 and 2), the direct shareholdings of Mosane (18.9%) and Cippar (6.1%) are summed to 25% and classified according to the shareholder category of the ultimate shareholder (Paribas), namely, a holding company.

Table 3 also details the aggregate large share stakes of the main investor classes after applying the ultimate shareholder criterion.<sup>36</sup> Although holding companies remain the most important shareholder class in Belgian listed companies, their average cumulative shareholding on an ultimate control basis decreases to 26.7 percent from an average direct shareholding of 32.7 (panel A, table 3). The differences are explained by the fact that family controlled holding companies are now classified according to the identity of the ultimate investors, namely, families and individuals. The average shareholding held by industrial and commercial companies decreases to 11 percent for similar reasons. Industrial and commercial companies seem more inclined to hold substantial stakes

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<sup>35</sup> To identify and classify investor groups according to the ultimate shareholder criterion, the BDPart database, the Notifications of Ownership Change and annual reports were consulted. If data on the percentage of voting rights held in a part of the control chain were not given and the top company explicitly declared that it controlled a company lower in the control chain, a 51% share stake was assumed and used in the calculations. Our control criterion is closely related to the one used by Bianchi & Casavola (1995). Applying their criterion does not yield significantly different results. They assign a company to an investor group if the voting shares held by the investor group represent a sufficient relative majority. A relative majority in a company  $i$  held by the group  $G$  ( $q_{Gi}$ ) is defined as sufficient when it exceeds the sum of the maximum stake held by any other group  $j$  ( $q_{ji}$ ) plus the sum of all the stakes held by the companies not assigned to any other group ( $w_{ji}$ ). The condition for control to be assigned becomes :  $q_{Gi} > \max(q_{ji} + w_{ji})$ .

<sup>36</sup> Note that for tables 3, 6, 7 and 8, the ultimate shareholder criterion is only used to determine those direct shares that need to be aggregated and reclassified when they belong to the same investor group.

in other industrial firms (panel D). Individual and family investors frequently do not hold shares directly in Belgian companies, but use intermediate companies as their average concentrated ownership amounts to almost 16 percent, while direct stakes held by individual and family investors average only 4 percent (panel A). Family shareholdings are most distinctly present in the ownership structure of industrial and commercial companies (panel D) with an average substantial shareholding of nearly 20 percent.

The relative importance of domestic and foreign investors is examined in the last two columns of table 3. More than 75 percent of the direct large shareholdings (or an average of 49.4 percent of the voting rights) are held by Belgian investors, while foreign investors' direct investments account for an average of 16 percent. This proportion is similar for holding companies (panel B) and the industrial firms (panel D), but for the financial sector, domestic investments are higher with an average of 55 percent (panel C). When applying the ultimate shareholder criterion and taking account of the nationality of the ultimate shareholders, columns 5 and 6 show that foreign investors often use Belgian intermediary companies to control Belgian listed companies. Domestic ownership in a Belgian company amounts to nearly 40 percent; slightly lower (36%) in holding companies, and somewhat higher (43%) in industrial and service companies. Foreign investors hold about 38 percent of the substantial shareholdings (or an average of 24.3 percent of the total number of shares) in Belgian listed companies.

A comparison of the size of means and medians of concentrated cumulative ownership in 1994 and 1989 via parametric and non-parametric tests reveals that neither the total ownership concentration nor the average shareholding by shareholder class has changed significantly over time. This suggests that stakes are mostly sold to investors of the same shareholder class with whom the seller has a priority purchase agreement or to investors who belong to the same investor group.

## **4.2 Pyramiding and the violation of one share-one vote rule.**

The ultimate shareholder criterion served to determine control relations through the pyramidal ownership structures. In previous section, we aggregated direct shareholdings which belonged to the same investor group and reclassified the aggregate share stake according to the investor class of the ultimate shareholder. In the example of figure 1, we found that the Paribas controlled 25 percent of the shares of Floridienne. In this section, we examine pyramiding by estimating deviations from the one share-one vote rule. These deviations have potentially important implications with regard to dilution of control. For instance, it is not certain whether a sequence majority control with e.g. 50% at every ownership tier, yields a determining voice in board decisions of the target sample company (level 0).

Table 4 shows the average ultimate ownership level (ultimate shareholder criterion). Direct share stakes are defined as level 1-shareholdings. The level from which ultimate control is exercised is, on average, 2.2 and only slightly decreases to 2.1 over the four year period.

**Table 4 : Largest direct and ultimate levered shareholdings, and the control leverage factor**

This table presents the ultimate ownership level, defined as the highest level of ownership in an uninterrupted control chain (direct shareholdings are level 1). Ultimate control is control based on (i) a majority control (minimal 50% of the voting rights) on every ownership tier of the ownership pyramid or (ii) shareholdings of at least 25% on every tier in the absence of other shareholders holding stakes of 25% or more. A chain of fully owned subsidiaries are considered as one single shareholder.

The direct largest shareholding is the average direct largest share stake of at least 25%. The ultimate levered shareholding is calculated by multiplying the share stakes of subsequent ownership tiers. The control leverage factor is the ratio of the direct shareholding divided by the ultimate levered shareholding. For instance, company A, whose shares are widely held, owns 40% of company B which, in turn, owns 40% of company C. The ultimate shareholder level is 2, the direct largest shareholding (of B in C) is 40%, the ultimate shareholding is 16% (40% x 40%), and the leverage factor is 2.5 (40/16).

There was no direct shareholding of at least 25% in 17 sample companies, which were not included in this table. Standard deviation in parentheses.

	1989	1990	1991	1992
sample size	160	156	156	156
ultimate ownership level	2.2 (1.364)	2.2 (1.290)	2.1 (1.188)	2.1 (1.159)
direct largest shareholding	55.1 (19.737)	56.4 (19.509)	57.2 (19.923)	57.8 (20.632)
ultimate levered shareholding	38.0 (22.524)	38.5 (22.906)	40.3 (23.988)	41.7 (24.600)
control leverage factor (direct/ultimate shareholding)	3.6 (8.391)	3.6 (8.650)	3.0 (6.756)	2.9 (6.710)

Source : Own calculations based on data from the BDPart database and the Notifications of Ownership.

As a proxy for the control leverage effect of the pyramid structures, we define the control leverage factor as the ratio of the direct largest shareholding<sup>37</sup> and its ultimate levered shareholding. The average of the largest direct stake per investor group amounts to about 58% in 1992. The ultimate levered shareholding is calculated by multiplying the consecutive controlling shareholdings. For example, the ultimate levered shareholding of Paribas in Floridienne (see figures 1 and 2) amounts to 11 percent ( $60\% * 74\% * 25\%$ ) while the largest direct shareholding of the Paribas group is 25 percent. Consequently, the control leverage factor is 2.27 ( $25\%/11\%$ ). The smaller the shareholdings with which control is maintained throughout intermediate levels and the more intermediate ownership tiers, the higher the control leverage factor or the more considerable the violation of one share-one vote. Table 4 discloses that the control leverage factor in 1989 was 3.6 and decreases to 2.9 in 1992. Since the average ultimate ownership level and the ultimate levered shareholding do not change significantly over time, the decline of the control leverage factor indicates that control on intermediate levels becomes more concentrated. The average direct largest shareholding for companies with a direct share stake of at least 25 % amounts to 57 percent while the ultimate levered shareholding is 41 percent.

There are substantial differences in pyramiding among the subsamples of the listed Belgian holding companies, financial firms and industrial and commercial companies.<sup>38</sup> In 1992, the ultimate ownership level for financial firms amounted to 2.6 versus 1.9 for industrial companies. Moreover, the control leverage factor for financial firms was 7.1, 3.0 for holding companies and only 1.9 for industrial companies. This reveals that control of holding companies and financial firms is more levered than that of industrial firms.

We also investigate the control leverage established by the different classes of ultimate investors (table 5). Of the 156 sample companies in 1992, 64 ultimate investors were holding companies, 49 were families and 27 were industrial companies.<sup>39</sup> Both the ultimate ownership level and the control

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<sup>37</sup> Seventeen companies which did not have a large direct shareholder owning at least 25 percent of the shares were excluded. Table B1 of appendix B summarizes the data inclusive of companies without a direct shareholding of at least 25%. With regard to these companies the same ultimate control criterion was applied to the largest direct stakeholder. The results are similar to table 5.3.

<sup>38</sup> See table B2 in appendix B.

<sup>39</sup> Only one bank was among ultimate shareholders. The results of this table refer to 1992, but other years in the period 1989-1991 reflect a similar picture.

leverage factor point out that holding companies, insurance companies and families use more intermediate companies and smaller intermediate share stakes to ascertain control than industrial companies. Hence, the deviation of the concept of one share-one vote is considerable for investing holding companies and, consequently, the potential for dilution of control increases.

**Table.5 : Largest direct and ultimate levered shareholdings, and the control leverage factor by ultimate investor category.**

This table presents the ultimate ownership level, defined as the highest level of ownership in an uninterrupted control chain (direct shareholdings are level 1). Ultimate control is control based on (i) a majority control (minimal 50% of the voting rights) on every ownership tier of the ownership pyramid or (ii) shareholdings of at least 25% on every tier in the absence of other shareholders holding stakes of 25% or more. A chain of fully owned subsidiaries are considered as one single shareholder.

The direct largest shareholding is the average direct largest share stake of at least 25%. The ultimate levered shareholding is calculated by multiplying the share stakes of subsequent ownership tiers. The control leverage factor is the ratio of the direct shareholding divided by the ultimate levered shareholding. For instance, company A, whose shares are widely held, owns 40% of company B which, in turn, owns 40% of company C. The ultimate shareholder level is 2, the direct largest shareholding (of B in C) is 40%, the ultimate shareholding is 16% (40% x 40%), and the leverage factor is 2.5 (40/16).

There was no direct shareholding of at least 25% in 17 sample companies, which were not included in this table. Standard deviation in parentheses.

1992	ULTIMATE SHAREHOLDERS					
	holding co's	investment co's	insurance co's	industrial co's	families	government
sample size	64	5	5	27	49	6
ultimate ownership level	2.3 (1.270)	1.4 (0.489)	2.4 (1.496)	1.7 (1.116)	2.0 (0.868)	1.7 (1.105)
direct largest shareholding	57.0 (17.906)	44.6 (12.116)	75.2 (23.961)	60.4 (23.584)	54.6 (20.649)	63.3 (18.607)
ultimate levered shareholding	35.1 (21.741)	31.2 (12.023)	43.6 (27.659)	50.8 (25.277)	41.5 (23.997)	63.3 (21.116)
control leverage factor (direct/ultimate shareholding)	4.3 (9.959)	1.7 (0.877)	3.0 (3.121)	1.5 (1.387)	2.9 (1.387)	1.1 (1.185)

Source : Own calculations based on data from the BDPart database and the notification of ownership disclosure.

### 4.3 Blocking minorities, majorities and supermajorities.

Table 6 examines control patterns and gives the percentage of Belgian companies with an ownership structure characterized by the presence of blocking minorities, majorities and supermajorities. When a shareholder possesses more than 50 percent of the voting rights, he can dominate the agenda at the annual meeting and control the selection and hiring process of the board members and the delegated director (CEO). In practice, less than 50 percent of the voting rights will be needed to have a majority on the annual meeting because some - predominantly the small - investors usually choose not to be involved in active monitoring and will only use their voting rights under special circumstances e.g. in the case of a potential acquisition. Table 6 shows the percentage of sample companies with the critical threshold stakes of 25%, 50% and 75%. Both the direct threshold shareholdings are presented and the threshold shareholdings per investor group<sup>40</sup>. Panel A reveals that a voting rights majority exists in more than half (56%) of the Belgian listed companies based on the ultimate shareholder criterion. In 18 percent of the Belgian companies, a supermajority gives absolute control to one shareholder or a group of shareholders as blocking minorities cannot be formed. Shareholdings of 25 percent or more are present in 85 percent of all companies. The concentrated ownership pattern is similar in all subsamples. Share stakes of more than 25 percent exist in more than 80 percent of the holding companies (panel B) and the financial firms (panel C) and even in 93 percent of the industrial and commercial companies (panel D). We find that ownership concentration is very strong in most companies within each subsample. Consequently, as, to large extent, takeovers have to be ruled out as a corporate control mechanism, large shareholders bear responsibility for monitoring management's performance.

Holding companies, both Belgian and foreign, are the main ultimate investors since they dominate with voting rights majorities 26 percent of the Belgian firms (panel A). Holding companies invest mainly in other Belgian and foreign holding and companies (see panels B and D). Family and individual investment (panel A) is high (on ultimate control basis) since they hold stakes of at least 25 percent in almost one fourth of all Belgian listed companies and majorities in 14 percent. This shareholder class owns large stakes (of over 25%) in 29 percent of the industrial and commercial

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<sup>40</sup> For each direct large shareholding we applied the ultimate shareholder rule : we then aggregated these direct shareholding belonging to the same investor group (ultimate shareholder criterion).

sector (panel D) and has absolute control in 18 percent. The industrial shareholders predominantly hold share stakes of minimum blocking minority size in other industrial companies (panel D).

Total Belgian and foreign ownership concentration based upon direct shareholdings gives a different picture when ultimate control is considered. The proportion of about 75%-25% of the sample companies with direct share stakes of at least blocking minority size held by respectively Belgian and foreign shareholders, changes to a 60%-40% ratio on an ultimate shareholder basis. This fact reconfirms that foreign investors predominantly control stakes in Belgian companies via Belgian intermediaries.

With regard to absolute control in the form of supermajorities, foreign investors control 10 percent of the companies while Belgian investors only control 9 percent (panel A). Table 11 also reveals that Belgian and foreign investors each hold majority stakes in 30 percent of the Belgian listed holding companies. Consequently, the proportion domestic versus foreign ultimate investors has changed to a 50%-50% proportion. The majority of Belgian industrial and services companies (panel D) is still dominated by Belgian investors.

This section has disclosed that over the period 1989 till 1994, Belgian ownership was highly concentrated with more than half of the listed companies controlled with majority stakes. The average substantial stakes held by the different ownership classes has remained relatively stable.<sup>41</sup>

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<sup>41</sup> Parametric and non-parametric tests on means and medians show that the difference is not statistically significant.

**Table 6 : Blocking minority, majority and supermajority shareholdings.**

Percentage of the sample companies with a minority, majority or supermajority shareholdings held by the main shareholder categories.

MIN = % of companies with a stake of 25% or larger,

MAJ = % of companies with a stake of 50% or larger,

SUP = % of companies with a stake of 75% or larger.

Direct stands for the direct shareholdings. Direct stands for the direct shareholdings. Ultimate refers to the fact that the direct shareholdings were classified according to the shareholder class of the ultimate investor and these direct shareholdings belonging to the same ultimate investor group were subsequently summed. Ultimate control is control based on (i) a majority control (minimal 50% of the voting rights) on every ownership tier of the ownership pyramid or (ii) shareholdings of at least 25% on every tier in the absence of other shareholders holding stakes of 25% or more. A chain of fully owned subsidiaries are considered as one single shareholder.

AUG. 1994	all investors			holding co's			families			indus. co's			Belgian investors			foreign investors		
	MIN	MAJ	SUP	MIN	MAJ	SUP	MIN	MAJ	SUP	MIN	MAJ	SUP	MIN	MAJ	SUP	MIN	MAJ	SUP
PANEL A : ALL SAMPLE COMPANIES (N=157)																		
Direct	82	45	14	48	23	5	2	1	1	21	12	5	63	36	9	19	9	5
Ultimate	85	56	18	41	26	6	23	14	3	15	8	5	51	33	9	34	23	10
PANEL B : HOLDING COMPANIES (N=64)																		
Direct	79	39	14	50	23	8	5	2	2	17	9	2	59	31	11	20	8	3
Ultimate	83	59	20	50	36	13	22	13	2	9	6	3	45	30	11	38	30	13
PANEL C : FINANCIAL SECTOR (BANKING, INSURANCE, REAL ESTATE) (N=20)																		
Direct	75	50	10	35	15	0	0	0	0	5	5	5	62	40	10	13	10	0
Ultimate	80	55	15	40	15	0	5	5	0	5	5	5	48	33	10	32	22	5
PANEL D : INDUSTRIAL AND COMMERCIAL COMPANIES (N=73)																		
Direct	86	47	15	48	25	4	0	0	0	28	15	8	66	37	7	20	10	8
Ultimate	93	55	16	34	19	3	29	18	4	24	11	7	61	37	8	32	18	8

Source : Own calculations based on BDPart and Ownership Notifications.

#### 4.4 Belgian shareholder classes

Of the Belgian shareholder classes<sup>42</sup>, the dominant stake holders are families and holding companies. These two shareholder groups hold most of the controlling stakes (in respectively 12% and 11% of all the sample companies) and each shareholder class holds share stakes of more than 25 percent in about 20 percent of the sample companies.

##### Family shareholders.

Belgian families own a voting rights majority in 15 percent of the industrial and commercial companies and hold 26 percent of the shareholdings of at least 25%. Families also often use the holding companies as investment vehicles to control indirectly a variety of listed and non-listed companies in different industries.

##### Holding companies.

Belgian holding companies are substantial investors in all sectors : in other Belgian holding companies, in the financial sector and in industrial and commercial companies. The importance of the Belgian holding companies and the lack of large share stakes held by banks should be understood in its historic framework : banking and investment business had to be separated by law in 1934. This resulted in the creation of large financial holding companies which became the major shareholders in the financial institutions and diversified their investments over a wide gamut of industrial and commercial sectors. As clarified in figure 1, pyramidal ownership structures allowed holding companies<sup>43</sup> to exercise levered control with relatively small share stakes.

##### Financial Institutions.

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<sup>42</sup> Ownership tables about the different Belgian shareholder classes (holding companies, banks, investment and pension funds, insurance co's, industrial co's, families, federal and regional government) are not shown, but are available upon request.

<sup>43</sup> Since 1967 (See Article 1 of Royal Decree nr. 64 of 10 November 1967), there is a registration requirement for Belgian holding companies with a portfolio value of over 0.5 billion BEF (£ 10 million). Company Law does not distinguish between different holding categories and in this paper the NACE classification of the National Bank and of the Bank Brussel Lambert is used. However, as Bodson (1993) points out, the group of holding companies is still rather heterogeneous and includes holdings which are purely financial (e.g. Sofina), a combination of financial and industrial (Generale Maatschappij van België / Société Générale de Belgique) or more like a conglomerate (Tractebel).

As of 1934, 'credit institutions' were prohibited from taking share participations in industrial companies. Only since the 1993 Credit Institutions Act<sup>44</sup> which implemented the Second Banking Directive of the European Union, are credit institutions (banks, savings banks and other financial institutions) entitled to hold shares in industrial corporations and holding companies. Currently, credit institutions are allowed to hold up to 10 percent of their equity in Belgian shares. There is no limitation with regard to the percentage of the outstanding shares of an individual company a credit institution is allowed to own.

In practice, banks still do not invest much in shares of non-financial companies to avoid conflicts of interest :

- According to Belgian law, banks are held liable towards creditors of bankrupt companies, if the banks granted credit to these companies at times when a reasonably prudent banker should not have granted nor maintained the credit. A substantial shareholding in a financially distressed company by a bank might influence that bank's decision with regard to ceasing additional credit.
- Since most banks are controlled by a holding company which might be a substantial shareholder in a company, it is doubtful whether banks would be able to make independent decisions with regard to a shareholding in that company or the loans granted to a company (Verwilt 1992).
- Most investment and pension funds are managed by a bank that ensures the distribution of the investment fund's certificates (shares). Legally, investment and pension funds' management should use the voting rights associated with the shares of a company they have invested in, independent of the managing bank.

### The Government .

In principle, the federal state does invest in listed Belgian companies. But it owns 50 percent of the shares of the National Bank, of which the shares are listed in the Brussels Stock Exchange, and 50 percent of the 'public credit institutions'. The role of the public credit institutions has been

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<sup>44</sup> Law of 22 March 1993. The Royal Decree of 8 May 1990 had already allowed the credit institutions to purchase shares up to 5% of their own funds since 1990.

broadened to that of a bank and they are being privatised. The 'public investment companies', owned by the regional governments hold blocks in shares of a few listed companies. Those investments were made either to save ailing companies or to provide risky companies with growth capital so as to stimulate and support entrepreneurial and industrial expansion activities. In general, in contrast to France, federal and regional governments have not considered their shareholdings in companies as a long term financial investment. Only in two percent of the listed companies, the state still holds a share stake via the regional investment companies.

#### Employee shareholdership.

Since 1991, mechanisms of beneficial acquisition of shares by employees have been introduced. In general, employee ownership in most companies remains low. For instance, employees of Petrofina own 5.4 percent of the shares; in de Bank Brussels Lambert, employees hold 7%; in Creyf's Interim 0.9%; in Desimpel Kortemark 0.5%; in Royale Belge, 0.69% (Wymeersch 1994a).

#### Institutional investors.

Belgian institutional investors (insurance companies, pension funds, credit institutions, investment funds and investment companies) usually hold small share stakes (of under 5 percent), but own in aggregate about 22 percent of the shares in Belgian listed companies.<sup>45</sup> For instance, the average shareholding of all Bevek/Sicav-investment funds<sup>46</sup> in the 60 most traded Belgian companies, amounted to 1.5 percent in 1994 and the average shareholding of pension funds measures about 4 percent (B.B.L. 1994).<sup>47</sup> Insurance companies are legally allowed to invest up to 25 percent of their

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<sup>45</sup> Most share stakes held by institutional investors are under 5% and are as such not included in the analysis. Data about investment funds should be interpreted with caution since some investment funds investing in Belgian shares are domiciled in Luxembourg but managed by subsidiaries of Belgian banks. The Luxembourg authorities do not differentiate according to nationality of the managers of the fund.

<sup>46</sup> *Beleggingsfonds met veranderlijk kapitaal (Bevek)/ Société d'Investissement à Capital Variable (Sicav)* (mutual fund with variable capital).

<sup>47</sup> Until the end of 1990, the investors in investment funds could not be represented by the investment fund on annual general meetings of companies in which the investment fund held shares. In practice, this legal prohibition made it impossible that the voting rights of shares held by investment funds were exercised. The legislation wanted to avoid that investment funds would become instruments of financial groups which could strengthen their control on quoted companies. However, the result of this legislation was not neutral since the position of controlling shareholders was even reinforced (Cornelis & Peeters 1992). The Law of 4 December 1990, article 112, abolished this prohibition and stated that the acts of incorporation can determine in which cases the investment fund is to exercise the voting rights.

reserves in shares listed on the Belgian stock exchanges, but owned only about 12 percent of the Belgian shares over the period 1986-1991. Most institutional investors reinforce the present majority's power by systematically voting in favour of management or, more commonly, by not taking part in the general assembly.

#### **4.5 Foreign shareholder classes**

Of the foreign investors, it is primarily the holding companies that hold large share stakes and control with a majority stake in 15 percent of all the Belgian listed companies.<sup>48</sup> Foreign holding companies invest predominantly in Belgian holding companies, one fourth of which they control with a majority of the voting rights. This way foreign holding companies also indirectly invest in unlisted Belgian companies with shares held in the investment portfolios of Belgian holding companies. Foreign industrial companies prefer Belgian industrial companies as long term investments, while foreign banks and insurance companies are substantial shareholders in the Belgian financial and insurance sector. Foreign institutional investors do not rely heavily on the Belgian stock market.

Although shareholders from a wide variety of countries<sup>49</sup> are present in the ownership structure of Belgian listed companies, the main investors are from the neighbouring European countries. Dutch investors own an average direct share stake of 3.8 percent and invest predominantly in Belgian industrial and commercial companies. German direct average ownership is low. German industrial companies mainly invested in the concrete industry via e.g. Heidelberger Zement. Investors from Luxembourg own, on average, directly 4.1 percent of Belgian companies, and have invested mainly in industrial and commercial companies. But, companies from Luxembourg are almost never the ultimate investor and are used as intermediary investment vehicles by e.g. French companies. U.K.

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<sup>48</sup> Ownership tables with the relative importance of each of the foreign shareholder classes (holding companies, banks, institutional investors, insurance companies, industrial companies, families and the government) are available upon request.

<sup>49</sup> Shareholders of almost all the member states of the European Union, Switzerland, U.S.A., Canada, Japan, Panama, Zaire, Rwanda, Liberia and the Cayman Islands hold stakes of at least 5% in Belgian listed companies. Details per country are available upon request.

and North American shareholders hold large stakes in only 3 companies. Only one large shareholding of a Belgian listed company is Japanese: Ashaki acquired a majority stake in the glass manufacturer Glaverbel. The average French direct average shareholding is higher and close to 4.3 percent. The single most important foreign ultimate investors are French; their accumulated substantial shareholdings amount on average to almost 13 percent. They invest mainly in the Belgian holding companies of which they own an average stake of 19 percent and in the financial sector in which they hold an average of 14 percent of the voting rights. Via controlling participations in Belgian large holding companies, French investors control a substantial part - estimated at 30% (Wymeersch 1994a) - of all the listed and unlisted industrial companies in Belgium. Columns 2 to 5 of table 7 reveal that it is the French holding companies, rather than French family investors or industrial companies that have acquired substantial stake of the Belgian listed companies. French insurance companies own significant shareholdings in the Belgian banks and insurance companies.

**Table 7 : Size of large shareholdings held by a French ultimate investor (group).**

This table reports the aggregate substantial shareholdings<sup>1</sup> owned by the main French investor groups. Ultimate refers to the fact that the direct shareholdings were classified according to the shareholder class of the ultimate investor and these direct shareholdings belonging to the same ultimate investor group were subsequently summed. Ultimate control is control based on (i) a majority control (minimal 50% of the voting rights) on every ownership tier of the ownership pyramid or (ii) shareholdings of at least 25% on every tier in the absence of other shareholders holding stakes of 25% or more. A chain of fully owned subsidiaries are considered as one single shareholder.

AUG.1994	SHAREHOLDINGS OWNED BY ULTIMATE FRENCH INVESTORS					SHAREHOLDINGS EXCLUDING SUEZ AND PARIBAS	
	all investors	holding co's	insurance co's	indus. co's	families	all investors	holding co's
PANEL A : ALL SAMPLE COMPANIES (N=157)							
MEAN	12.89	9.37	1.05	1.41	0.45	6.32	2.80
STD	25.17	22.27	8.53	8.91	5.67	19.39	13.91
t-stat <sup>3</sup>	-1.775 <sup>4</sup>	-1.740 <sup>4</sup>	-0.453	0.125	-0.600	-0.670	-0.513
PANEL B : ALL HOLDING COMPANIES (N=64)							
MEAN	18.82	15.28	0.16	2.28	1.11	9.21	5.67
STD	31.09	29.11	1.25	12.40	8.88	24.30	20.07
t-stat <sup>3</sup>	0.040	-0.015	0.120	0.472	-0.064	0.050	-0.025
PANEL C : FINANCIAL SECTOR (BANKS, INSURANCE, REAL ESTATE) (N=20)							
MEAN	13.96	5.72	7.76	0.00	0.00	11.61	3.37
STD	25.82	15.04	23.19	0.00	0.00	26.01	13.98
t-stat <sup>3</sup>	-1.253	-0.933	-0.408	0.000	-1.000	-0.729	-0.080
PANEL D : INDUSTRIAL AND COMMERCIAL COMPANIES (N=73)							
MEAN	7.39	5.19	0.00	1.04	0.00	2.33	0.13
STD	17.00	14.87	0.00	6.00	0.00	9.38	0.84
t-stat <sup>3</sup>	-2.274 <sup>5</sup>	-2.484 <sup>5</sup>	-0.998	-0.384	0.000	-0.783	-1.511

Source : Own calculations based on BDPart and Ownership Notifications.

<sup>1</sup> In line with the Ownership Disclosure Legislation, substantial shareholdings are defined as share stakes that equal or exceed 5% (of the voting rights), unless investors with smaller shareholdings are affiliated to or act in concert with major shareholders, in which case small stakes ought to be revealed as well. The 5% threshold can be reduced to 3% if the company states this in its acts of constitution.

<sup>2</sup> The direct shareholdings are accumulated if they are directly owned or (indirectly) controlled by a French ultimate investor (group)

<sup>3</sup> The t-stat. tests the difference between the ownership means in 1994 and 1989. Non-parametric tests give similar results.

<sup>4</sup> Statistical significance at 10%. <sup>5</sup> Statistical significance at 5%.

The French Suez group controls the Generale Maatschappij van België (Société Générale de Belgique) and the Paribas group dominates the Belgian Cobepa holding. To investigate the prominence of these two large French holding companies, the average substantial shareholdings held by French investors excluding the Suez and the Paribas group are presented in columns 6 and 7 of table 7. A comparison of the aggregate concentrated French ownership including and excluding Suez and Paribas reveals that these holding companies account for more than half of the substantial French investments in Belgian listed companies (holding and industrial companies). The average large share stake held by the French holding companies falls from 9.4% to 2.8% after exclusion of the Suez and Paribas holding companies (columns 2 and 7). The 9.4% average shareholding is equivalent to majority control in 10 companies and the 2.8% represents control in 2 companies. Apart from controlling stakes, Suez and Paribas are present with minority stakes in 45 listed companies. Panel D (column 7) shows that the French holding companies other than Suez and Paribas, control virtually no voting rights directly in the Belgian industry.

The French average shareholding slightly decreases from 1989 to 1994 mainly due to a reduction of ownership by the French holding companies.<sup>50</sup> An important reason is the restructuring of the Generale Maatschappij van België (Société Générale de Belgique) after the takeover by Suez. Since then, the Generale focuses on eight core strategic sectors and has reduced its shareholdings in others.

#### **4.6 Changes in large shareholdings.**

We have shown that the aggregated large shareholdings per shareholder category remained stable over time. As selling activity of stakes within shareholder categories is not reflected in the aggregate ownership data, table 8 examines these changes in large shareholdings. Over the period 1989-1992, there were 238 shareholding increases of more than 1 percent, while 247 stakes were sold. Of these changes in ownership, there were 120 increases of a magnitude between 5% and 24.9%, versus 110 decreases of similar size. In 16 cases, majority shareholdings were acquired and 28 blocks of blocking minority size were purchased. Thirty-three blocking minorities were sold, in

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<sup>50</sup> Parametric and non-parametric tests on means and medians show that the average investment by French holding companies was significantly reduced (at 1% level).

addition to 28 majority stakes. It should be noted that the changes are corrected for shareholding restructuring within investor groups. For example, a redistribution of share stakes in a sample company held by two companies which are controlled by the same ultimate investor, has a limited impact on control and is consequently not included in the changes of large shareholdings. These observations suggest that this market for share stakes is not insignificant : in one fourth of the sample companies, share stake changes of 5 percent or more occur in the period 1989-1992. The relevance of this market as a an external corporate control mechanism will be investigated in the following chapter. Table 8 discloses that the holding companies are the main sellers and purchasers of share stakes. Institutional investors, mainly banks and insurance companies, acquire 38 shareholdings of more than 5 percent and sell 30 stakes of similar sizes. Families sell 15 stakes of blocking minority size and more, while 8 such stakes are bought by this shareholder category.<sup>51</sup> Most of the exchanges of blocks of shares are negotiated deals and take place ex exchange.<sup>52</sup>

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<sup>51</sup> If a firm acquires control of another company through a private transaction, and pays a premium to the selling shareholders, a public tender offer has to be made all the remaining shareholders, under the same terms as the private transaction. Van Hulle, Vermaelen en de Wouters (1991) mention that when the private transaction only involves a fraction of the large shareholder's holding, the offer has to be made for only the same fraction of the remaining shares. For example, if the bidder acquires 60% of the shares of a large shareholder who owns 80% of the outstanding shares, the bidder has to make an offer for 60% of the other 20% of the outstanding shares.

<sup>52</sup> Unlike in the U.S., U.K. and France, undisclosed accumulation of large shareholdings in Belgium via open market and private transactions was possible until March 1989. Van Hulle, Vermaelen and de Wouters (1991) test, over the period 1970-85, the Schleifer & Vishny (1986) hypothesis which states that bidders in a tender offer would benefit most if they had accumulated large holdings prior to the tender offer. Van Hulle et al. find that, while the targets in tender offers earn significant abnormal returns of 37%, bidders earn abnormal returns or zero. The authors advance as part of the explanation for the bidders' low return, the negotiation process with major shareholders. In most companies it is impossible to build up a large stake via open market transactions. Therefore, private negotiations are almost inevitable for an outsider who wants to enlarge his share stake.

## **5. Conclusion.**

We have shown that the Belgian equity market is similar to most Continental European ones as few companies are quoted, ownership concentration is strong, pyramidal ownership structures are used to lever control and there is a market for share stakes. Typical for Belgium is the dominance of holding companies as large shareholders. Pyramiding of shareholding structures violates the one share one vote rule as ultimate shareholders can exercise control with a low percentage of cash flow rights. Despite the strong concentration of relatively stable large shareholdings, the existence of a market for small share stakes reveals the importance of reaching critical control levels, blocking minorities, majorities and supermajorities, for the exertion of corporate control.

**Table 8 : Increases and decreases of large shareholdings over 1989-1992.**

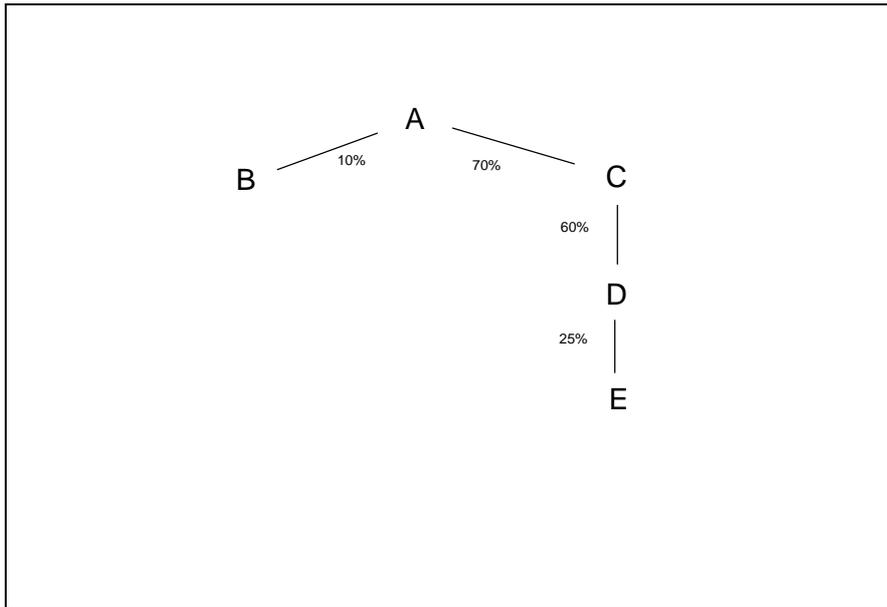
This table gives the size distribution of increases and decreases of large shareholdings over the period 1989-1992. Increases and decreases were calculated by comparing the share stakes of a shareholder category of a fiscal year to the shareholdings of previous year.

1989-1992	Number of increases and decreases stakes					
	[1%-5%[	[5%-10%[	[10%-25%[	[25%-50%[	[50%-100%[	Total
<b>PANEL A : INCREASES FOR ALL SAMPLE COMPANIES (number of observations : 693)</b>						
Increases : all shareholders	74	72	48	28	16	238
Increases : holding companies	34	35	17	16	2	104
Increases : institutional investors	24	17	12	4	5	62
Increases : industr. & commerc. co's	5	9	8	4	5	31
Increases : families	11	11	11	4	4	41
<b>PANEL B : DECREASES FOR ALL SAMPLE COMPANIES (number of observations : 693)</b>						
Decreases : all shareholders	76	51	59	33	28	247
Decreases : holding companies	26	31	34	12	18	121
Decreases : institutional investors	31	8	11	9	2	61
Decreases : industr. & commerc. co's	3	2	6	1	4	16
Decreases : families	16	10	8	11	4	49

Source : Own calculations based on BDPart and Ownership Notifications.

## Appendix A :

To describe the ownership relation between companies, we can distinguish among affiliation, association and participation. Two companies are affiliated if one owns at least 50% in the other company (the subsidiary).<sup>53</sup> When two companies are associated, one of these companies holds a stake of more than 25% in the other company.<sup>54</sup> Note that 25% is the blocking minority threshold. If a company X owns a stake of less than 25% in company Y, there is a 'participating relationship' between them.<sup>55</sup>



- A, C and D are affiliated. The control percentage of A in D is 60%, while its percentage of interest on a levered basis amounts of 42% (70% \* 60%).
- A and E are associated. The control percentage of A in E is 25%, whereas its percentage of interest on a levered basis is only 11% (70% \* 60% \* 25%).
- A has a participation in B ; percentage of control and interest is 10%.

### Cross shareholdings

It is possible that there is a reciprocal shareholdings between two companies. For instance, company P (parent) owns 75% of the shares of company S (subsidiary) while company S owns 5% of company P.<sup>56</sup>

<sup>53</sup> Article 4, par. 1 of the Royal Decree of 8 October 1976.

<sup>54</sup> Article 3 of the Royal Decree of 9 March 1990 and article 6 of the Royal Decree of 30 December 1991.

<sup>55</sup> Participation is the translation of '*deelnemingsverhouding*' (article 67 of Royal Decree of 9 March 1990).

<sup>56</sup> Cross participation between two companies, if one of them has the legal form of a '*vennootschap*', is limited to 10% by article 52 quinquies and sexies of the coordinated company laws and by article 11 of the Law of 19 July 1991. For instance, if a company owns 55% in another company, the latter company is not permitted to hold more than 10% of the shares in the former.

--- 75% -->  
 P                      S  
 <-- 5% ---

To calculate the percentage of interest of P in S, let us assume that  $a=75\%$  and  $b=5\%$ . P's shareholders own  $(1-b)$  of the share capital of P the remaining  $b\%$  is held by S. The direct interest of P's shareholders in S is  $[(1-b) * a]$ . Indirectly - this is via the shareholdings of S in P, they possess :  $(1-b) * a * b * a$ .

If this circular reasoning is repeated several times, the total interest of P in S can be expressed as follows :

direct holding of :  $(1-b) * a$

plus an indirect holding of :

$$(1-b) * a + (1-b) * a^2b + \dots + (1-b) * a^{n+1}b^n$$

This sum is a geometrical progression :

$$(1-b) * a * (1 + ab + a^2b^2 + \dots + a^n b^n)$$

$$= (1-b) * a * (1 - a^n b^n) / (1 - ab)$$

And since  $a^n b^n$  converges to one for a large  $n$ , we can write P's interest in S as :

$$(1-b) * a / (1 - ab)$$

Applying this result to our example, we conclude that P's ownership in S amounts to 74,03%.

Via a similar reasoning, we find that the percentage of interest of S in P can be formalized (Uyterschaut 1989) :

$$(1 - a) / (1 - ab)$$

Applied to our example, we find that S owns 5,97% of the share capital of P.

Since the shareholdings of the 'subsidiary' are limited to 10% of the share capital of the parent company, the difference between the percentage of interest of the 'parent' company in the subsidiary with and without considering the cross shareholding of the subsidiary will not be substantial.<sup>57</sup>

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<sup>57</sup> In our example, the parent's holding of 75.0% (assuming no cross shareholding) would decrease to 74.0% if the subsidiary's cross shareholding of 5% is taken into account. The maximum reduction of the parent's shareholding amounts to 2% (the parent effectively owns 73%) and can be found by considering the maximum allowed cross shareholding of 10%.

**Appendix B : Table B1 : Largest direct and ultimate shareholdings, and the top level of uninterrupted ownership chains.**

This table presents ultimate control, defined as control which is uninterrupted throughout the pyramid if there is a majority shareholding or if there is a large shareholder with at least 25% of the voting rights in the absence of other shareholders with stakes of 25% and more.

The ultimate ownership level defined as the highest level of ownership in an uninterrupted control chain, whereby direct shareholdings are at level 1. The direct largest shareholding is the average direct largest share stake. The ultimate levered shareholding is calculated by multiplying subsequent share stakes.

The control leverage factor is the ratio of the direct shareholding divided by the ultimate levered shareholding. For instance, company A, whose shares are widely held, owns 40% of company B which, in turn, owns 40% of company C. The ultimate shareholder level is 2, the direct largest shareholding (of B in C) is 40%, the ultimate shareholding is 16% (40% x 40%), and the leverage factor is 2.5 (40/16).

A chain of fully owned subsidiaries are considered as one single shareholder.

There was no direct shareholding of at least 25% in 17 sample companies, for which the ownership structure of the largest holding was taken into account.

Standard deviations in parentheses.

	1989	1990	1991	1992
sample size	177	173	173	170
ultimate ownership level	2.3 (1.471)	2.1 (1.330)	2.1 (1.312)	2.1 (1.300)
direct largest shareholding	50.4 (22.898)	51.5 (22.943)	52.6 (23.073)	53.6 (23.453)
ultimate levered shareholding	34.8 (22.131)	35.3 (24.544)	37.1 (24.544)	38.6 (25.222)
control leverage factor (direct/ultimate shareholding)	3.5 (7.956)	3.4 (8.917)	3.0 (6.535)	2.9 (6.555)

Source : Own calculations based on data from the BDPart database and the Notifications of Ownership.

## Appendix B : Table B2 : Largest direct and ultimate shareholdings, and the top level of uninterrupted ownership chains.

This table presents ultimate control, defined as control which is uninterrupted throughout the pyramid if there is a majority shareholding or if there is a large shareholder with at least 25% of the voting rights in the absence of other shareholders with stakes of 25% and more.

The ultimate ownership level defined as the highest level of ownership in an uninterrupted control chain, whereby direct shareholdings are at level 1. The direct largest shareholding is the average direct largest share stake of at least 25%. The ultimate shareholding is calculated by multiplying subsequent share stakes. The control leverage factor is the ratio of the direct shareholding divided by the ultimate levered shareholding. For instance, company A, whose shares are widely held, owns 40% of company B which, in turn, owns 40% of company C. The ultimate shareholder level is 2, the direct largest shareholding (of B in C) is 40%, the ultimate shareholding is 16% (40% x 40%), and the leverage factor is 2.5 (40/16). A chain of fully owned subsidiaries are considered as one single shareholder.

There was no direct shareholding of at least 25% in 17 sample companies, which were not included in this table. Standard deviations in parentheses.

	1989	1990	1991	1992
<b>PANEL A : HOLDING COMPANIES (sample size = 60)</b>				
ultimate ownership level	2.2 (1.313)	2.2 (1.330)	2.1 (1.202)	2.0 (1.197)
direct largest shareholding	51.8 (16.125)	51.7 (16.491)	53.3 (16.569)	55.3 (18.722)
ultimate levered shareholding	37.213 (20.903)	37.4 (21.604)	38.4 (21.457)	40.7 (23.053)
control leverage factor (direct/ultimate shareholding)	3.7 (9.253)	3.8 (9.498)	3.0 (7.107)	3.0 (7.150)
<b>PANEL B : FINANCIAL SECTOR (sample size = 20 in 1989 and 17 in other years)</b>				
ultimate ownership level	2.9 (2.021)	2.6 (1.606)	2.6 (1.603)	2.6 (1.610)
direct largest shareholding	55.7 (19.606)	57.8 (19.746)	61.6 (20.322)	61.5 (20.654)
ultimate levered shareholding	29.8 (23.313)	32.4 (22.654)	33.8 (27.109)	34.8 (28.220)
leverage factor (direct/ultimate shareholding)	7.5 (13.597)	6.4 (13.535)	6.9 (13.535)	7.1 (13.841)
<b>PANEL C : INDUSTRIAL AND COMMERCIAL COMPANIES (sample size = 78 in 1989 and 76 in other years)</b>				
ultimate ownership level	2.2 (1.117)	2.1 (1.152)	2.0 (1.018)	1.9 (0.958)
direct largest shareholding	57.3 (21.845)	58.9 (21.113)	59.272 (21.656)	59.012 (21.826)
ultimate levered shareholding	38.8 (23.126)	40.779 (23.614)	43.2 (24.657)	43.9 (24.634)
leverage factor (direct/ultimate shareholding)	2.7 (4.847)	2.8 (5.908)	2.1 (2.337)	1.9 (1.642)

Source : Own calculations based on data from the BDPart database and the Notifications of Ownership.

### Appendix B Table B3 : Changes in large shareholdings.

This table presents the size distribution of increases and decreases of large shareholdings over the period 1989-1992. Increases and decreases were calculated by comparing the share stakes of a shareholder category of a fiscal year to the shareholdings of previous year. The changes in shareholdings per size class over the period 1989-92 are summed.

1989-1992	Number of increases and decreases stakes					
	[1%-5%[	[5%-10%[	[10%-25%[	[25%-50%[	[50%-100%[	Total
<b>PANEL A : CHANGES FOR THE HOLDING COMPANIES (number of observations : 273)</b>						
Decreases : all shareholders	28	35	27	6	1	97
Decreases : holding companies	13	18	14	3	0	48
Decreases : institutional investors	7	6	4	0	0	17
Decreases : industr. & commerc. co's	2	3	2	2	0	9
Decreases : families	6	8	7	1	1	23
Decreases : all shareholders	34	25	29	12	6	106
Decreases : holding companies	9	18	23	4	3	57
Decreases : institutional investors	14	2	4	7	2	29
Decreases : industr. & commerc. co's	1	1	0	0	0	2
Decreases : families	10	4	2	1	1	18
<b>PANEL B : CHANGES FOR THE FINANCIAL SECTOR (number of observations : 91)</b>						
Increases : all shareholders	21	13	2	2	4	42
Increases : holding companies	9	4	0	1	1	15
Increases : institutional investors	10	8	2	1	2	23
Increases : industr. & commerc. co's	2	1	0	0	1	4
Increases : families	0	0	0	0	0	0
Decreases : all shareholders	13	6	9	5	7	40
Decreases : holding companies	6	2	2	0	5	15
Decreases : institutional investors	7	3	6	0	0	16
Decreases : industr. & commerc. co's	0	0	0	0	2	2
Decreases : families	0	1	1	5	0	7
<b>PANEL C : CHANGES FOR THE INDUSTRIAL AND COMMERCIAL COMPANIES (number of observations : 329)</b>						
Increases : all shareholders	25	24	19	21	11	100
Increases : holding companies	12	13	3	12	1	41
Increases : institutional investors	7	3	6	3	3	22
Increases : industr. & commerc. co's	1	5	6	3	4	19
Increases : families	5	3	4	3	3	18
Decreases : all shareholders	29	20	21	16	15	101
Decreases : holding companies	11	11	9	8	10	49
Decreases : institutional investors	10	3	1	2	0	16
Decreases : industr. & commerc. co's	2	1	6	1	2	12
Decreases : families	6	5	5	5	3	24

Source : Own calculations based on BDPart and Ownership Notifications.

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# Preliminary Report

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## The Separation of Ownership and Control: A Survey of 7 European Countries

Submitted to the European Commission DGIII on 27 October 1997

**Volume 3**

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October 1997

## **Ownership and Control in France**

European Corporate Governance Network

D97/97

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The opinions expressed in this paper are those of the authors, and not necessary those of the institutions to whom they belong to.

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## INTRODUCTION AND SUMMARY

In this paper we provide an overview on French ownership structure and control system, both in terms of institutional and legal framework and of quantitative analysis, following the guidelines proposed by the European Corporate Governance Network.

The European Transparency Directive (88/627/EEC of December, 12, 1988) has been transposed in the French law (n°89-531 of August, 2<sup>nd</sup>, 1989) regarding safety and transparency of financial markets. But, in fact, as it will be shown in the paper, it remains very difficult to reconstitute the direct and integrated ownership by investor of a rather large set of companies (even for a set of listed companies) using the information given by annual reports or existing commercial databases, both available to general public.

In the first section we give general information on legal forms of companies, listed companies and definitions of groups and also basic population statistics: number of companies by legal form and activity sector. The second section refers to the institutional aspects of ownership structure such as company law and transposition of the European Transparency Directive. Furthermore we give information on existing ownership data. The last section is devoted to quantitative ownership structure based on information collected by the French Central Bank. After a description of the main features of this dataset, this section provides the first results on concentration and distribution of ownership in France, showing the extremely high concentration of ownership both for non listed and listed companies.

More precisely, the main results are the following:

Concentration of ownership is very high both in non listed and listed companies. On average, the first identified owner of a non listed company has 66% of the capital. This degree of concentration increases with the size of the firm: 63% for a firm with less than 20 employees, more than 88% for firms with more than 500 employees. The degree of concentration is a little lower for listed firms, but still over half of the capital.

Individuals («families») represent the main category of non listed firms' owners: they hold half of the capital. Non financial firms and holdings are the second category of owners, with more than 35% of the capital. Financial firms (banks and insurance) and foreign investors own respectively almost 3% of the capital. State owns nearly zero of the capital. When financial firms, holdings or the state are owners, they hold more than the majority of the capital.

The distribution of ownership by investor is rather different in listed firms than other companies. The first category of identified owners corresponds to holdings and their share is around 25%. Then except State and foreign investors, the other categories of owners, which are individuals, float, banks and non financial firms, hold approximately the same average share of capital (10-15%).

# 1. LEGAL FORMS

## 1.1 Company Types and Groups

### 1.1.1 Company types: legal forms

A major legal distinction between French companies concerns whether they do or not exist as a separate legal entity (*personnalité morale*) in their own right.

a) Enterprises without a separate legal entity : natural persons or special forms of partnership companies (*sociétés de personnes*) - *sociétés créées de fait et sociétés en participation* -.

b) Firms that constitute legal entities (see Table 1)

They can be divided in four groups : partnership companies (*sociétés de personnes*), limited liability companies (*sociétés à responsabilité limitée SARL*), public limited companies (*sociétés anonymes SA*), partnerships limited by shares (*sociétés en commandites par actions*).

- In the first group, for general partnerships (*sociétés en nom collectif*), partners' liability for debts is joint and unlimited.

- Respectively in the first and fourth groups, limited partnerships (*sociétés en commandite simple*) and partnerships limited by shares (*sociétés en commandite par actions*) are «hybrid companies» : active partners (*commandités*)' liability for debts is joint and unlimited ; sleeping partners (*commanditaires*)' liability for debts is limited to their contribution.

- In the second and third groups, partners' liability for debts is limited to their contribution.

Table 1: Company types and legal forms (legal entities)

COMPANY TYPES	FOUNDATION		PARTNERS LIABILITY	MANAGERS
	Capital	Partners		Smallest number
<b>1. Partnership Company</b> <i>Société de personnes</i>				
<b>General Partnership</b> <i>Société en Nom Collectif</i>	no minimum	minimum 2 no maximum	joint and unlimited liability of partners for debts	1
<b>Limited Partnership</b> <i>Société en Commandite Simple</i>	no minimum	The company must have at least 2 partners (one active, one sleeping)	1. active partners: joint and unlimited liability 2. sleeping partners: liability limited to their contribution	1
<b>2. Limited Liability Company</b> <i>Société à Responsabilité Limitée SARL</i>	minimum 50 000 F	1 for sole owner otherwise minimum 2 maximum 50	liability limited to their contribution	1
<b>3. Public Limited Company</b> <i>Société Anonyme SA</i>	minimum 250 000 F if the company is not financed by public, otherwise 1 500 000 F	minimum 7 no maximum	liability limited to their contribution	3 directors
<b>4. Partnership Limited by Shares</b> <i>Société en Commandite par Actions</i>	idem SA	minimum 1 active partner, 3 sleeping partners shareholders no maximum	1. active partners: joint and unlimited liability 2. sleeping partners: liability limited to their contribution	1

### 1.1.2 Listed companies

Among the public companies - public limited companies (*sociétés anonymes*) and partnerships limited by shares (*sociétés en commandites par actions*) - listed companies can be distinguished. Their

list is published by the SBF (*Société des Bourses Françaises*) and Paris Stock Exchange, called *la Cote officielle*.

The Paris stock Exchange consists of three sections<sup>1</sup>: the Official List, the Second Market and the *Hors-cote* Market. Each brings different obligations to issuers, especially on the part of share capital floated and the information provided to investors. Admission to the Official List and Second Market is granted by the CBV (*Conseil de Bourses de Valeurs*), which has been replaced by the CMF (*Conseil des Marchés à Terme*) since 1996, and other securities may be traded on the Hors-Cote Market by a member firm acting on behalf of an issuer or shareholder.

The Official List includes large French and Foreign companies and nearly all bond issuers. Candidates must meet strict quantitative and qualitative criteria, including a flotation of at least 25% of total equity on listing. Stocks are traded on two different markets: the Monthly Settlement Market, (*Règlement Mensuel*), and the Cash Market, (*Marché Comptant*).

The Second Market is more flexible. Designed for medium-sized companies, it requires candidates to offer only 10% of total equity to the public initially. A few foreign companies are listed.

The *Hors-Cote* Market is not a regulated market and is just a facility for small or illiquid companies that are not listed on the Paris stock exchange's regulated markets. This market disappeared in July 1996. there are approximately 700 *hors-cote* companies.

In February 1996, the New Market (*Nouveau Marché*) was launched. It is a full exchange in itself with its own rules and members. The market is aimed primarily at listing companies with a high-growth potential and high-technology firms. The SNM (*Société du Nouveau marché*) was set up in spring 1995 as a subsidiary of the SBF-Bourse de Paris to organize and promote the new market.

In November 1996, there were 682 listed companies: 405 belong to the Official List, 277 to the Second Market. 13 firms entered the New Market.

### 1.1.3 Groups

a) Definition of the group according to the rules on drawing up consolidated accounts (transposition of Directive 83/349/EEC)

In France, consolidated accounts methodology is in accordance with the law n°85-11 of January, 3<sup>rd</sup>, 1985, and its enforcement (n° 86-221 of February, 17, 1986), based on the 7<sup>th</sup> European Directive 83/349/EEC (the scope of this last Directive has been enlarged by the European Directive 90/605 /EEC).

For listed companies, although a methodology for consolidated accounts has been developed since 1966 through COB (*Commission des Opérations en Bourse*) rules, consolidation has been effective only since 1986; for the other companies, it has been effective since 1990.

To be obliged to establish consolidated accounts, a company must **control exclusively or jointly** one or several companies or must **exert a notable influence** on them. The parent company must establish consolidated accounts including the controlled companies (new article 357-1 of the Business Law of July 1966). They must also fulfil at least one of the following criteria:

turnover >200 millions of francs

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<sup>1</sup> The information provided in this section comes from The French Company Handbook, 1996, Detailed profiles of France's leading companies, published by the International Herald Tribune and SBF- Bourse de Paris.

total of assets >100 millions of francs  
employees >500

There is **exclusive control**:

-when a company owns directly or indirectly a part of the capital giving it the majority of voting rights (*contrôle de droit*).

-when a company appoints the majority of the members of the Board of Directors of another company for two successive years. This parent company is assumed to have during this period, directly or indirectly, more than or equal to 40% of the total voting rights and no other partner or shareholder is assumed to have a higher part of the voting rights than the parent company (*contrôle de fait*).

-when a company exerts a dominating influence on another company based on a contract or articles (*contrôle contractuel*).

The **joint control** is the share of the control of a company jointly run by a limited number of partners or shareholders, in such a way that decisions result from their agreement.

The **notable influence** on the management and the financial policy of a company is assumed when a company have directly or indirectly more than or equal to 20% of the total voting rights of this company.

Therefore, the different notions of control are defined in relationship to the **voting rights**.

The accounts are consolidated using different methodologies based on whether the consolidating company exerts an exclusive or joint control, or a notable influence:

-when there is an exclusive control, the accounts are consolidated by the global integration method (this method eliminates double accounts between the parent company and the subsidiary).

-when there is a joint control, the accounts are consolidated by the proportional integration method.

-when there is a notable influence, the accounts are consolidated by the equivalency method.

In fact, the 7<sup>th</sup> European Directive offers many methodological possibilities. For example, in the equivalency method, goodwill is valued and depreciated differently in the French, IASC (International Accounting Standard Committee) and FASB (Financial Accounting Standard Board) accounting standards. The IASC 27/28 definition is compatible but different, with more subjective notions based on costs and benefits analysis. Consequently, it is not only difficult to compare the successive accounts of one group, but also the accounts between different groups.

#### b) Legal definition of the group

In the French law, the group is not a legal entity. It is a set of companies which have their own legal existence, but which are linked by various relations based on the fact that one of them, usually called the parent company, exerts some control on the other ones, subsidiaries and stakes. So, the group is an economic entity but not a legal one.

If the group is not a legal entity, there is nevertheless various legal sources: accounting sources used for consolidation, fiscal sources used for fiscal integration, and labour sources (labor legislations on group work's council and profit sharing for exemple). There is also the reference to case laws.

c) Definition of the group applied by the competition authorities

Following the French law on the control of concentrations (rule n°86-1243, December 1986), any buying stake allowing one or a group of companies to exert directly or indirectly a dominating influence must be controlled. But this control applies only when the companies make together more than 25% of the transactions on a national market or when their total turnover is superior or equal to 7 billions francs, with at least two companies having a turnover superior or equal to 2 billions francs.

d) Definition of the group applied by prudential regulation for credit institutions

Each company of the group (stakes, subsidiaries and parent company) is an independent legal entity. Consequently, the parent company is not responsible for subsidiaries and stakes' liabilities and vice versa. Moreover, a creditor cannot claim a joint liability of the companies of the group, except in some special cases.

However:

-the parent company can stand surety for the subsidiary;

-the parent company can give up a claim on a subsidiary in order to avoid the subsidiary's financial difficulties;

-a lawsuit against the parent company can sometimes occur: for example, when the parent company leads one of its subsidiary to bankruptcy, or when the parent company interferes in the management of its subsidiary.

Moreover, a regulation on large risks control from the Banking Supervision Authority (*Commission Bancaire*) (regulation 96/06 of May, 24, 1996) stems that banks have to apply the large risk exposures' regulation to companies that may present a risk of payment default for their own creditors through the payment default of another company on which the firm has exclusive control.

e) Definition of the group stemming from Eurostat regulation (regulation 696/93 of March, 15, 1993)

This regulation aims to define the different statistical unities of the productive system, among which the group. If the definition stems from the 7<sup>th</sup> European Directive, there are several adjustments, because the accounting approach from the 7<sup>th</sup> Directive does not define groups as separate and additive entities of firms.

## 1.2 Basic Population Statistics

### 1.2.1 Number of active companies by legal form

Table 2

Legal Form	Number	Percentage
1. Natural persons	1 372 152	56.1
2. Enterprises without a separate legal entity	25 873	1.1
3. Legal entities (foreign law)	255	0.0
4. Legal entities (public law)	451	0.0
5. Commercial companies	853 993	34.9
5.1 Special co-operative companies	508	0.0
5.2 General partnerships ( <i>sociétés en nom collectif</i> )	30 360	1.2
5.3 Limited partnerships ( <i>sociétés en commandite simple et par actions</i> )	1 410	0.1
5.4 Limited liability companies ( <i>sociétés à responsabilité limitée</i> )	654 817	26.8
5.5 Public limited companies ( <i>sociétés anonymes</i> )		
with board of directors ( <i>à conseil d'administration</i> )	162 652	6.7
<i>à directoire</i>	3 569	0.1
6. Other registered legal entities	150 532	6.2
7. Legal entities (administrative law)	28 284	1.2
8. Special private organizations	1 655	0.0
9. Associations (private law)	14 283	0.6
<b>Total</b>	<b>2 447 478</b>	<b>100</b>

Sources: Company register (*Registre du Commerce et des Sociétés*) and national statistical office (*INSEE*), database *SIRENE* ; April 1st, 1996

### 1.2.2 Number of active companies by activity sector

Table 3

NACE	Activity Sector	Number	Percentage
<b>A</b>	Agriculture and Hunting	408 486	1.7
<b>B</b>	Fishing and Aquaculture	7 818	3.2
<b>C</b>	Extractive Industries	2 830	0.1
<b>D</b>	Manufacturing Industries	63 857	10.8
<b>E</b>	Electricity, Gas, Steam and Hot Water Supply	9 726	0.4
<b>F</b>	Construction	316 033	12.9
<b>G</b>	Trade and Repairs	644 032	26.3
<b>H</b>	Hotels and Restaurants	207 179	8.5
<b>I</b>	Transports and Communications	97 125	4.0
<b>J</b>	Financial Activities	50 623	2.1
<b>K</b>	Real Estate, Rental Services and Business Services	439 769	18.0
<b>Total</b>		<b>2 447 478</b>	<b>100.</b>

Sources: Company register (*Registre du Commerce et des Sociétés*) and National statistical office (*INSEE*), database *SIRENE*; April 1<sup>st</sup>, 1996.

### 1.2.3 Size and Age

For each standardised legal form, distribution of the total number of employees, distribution of total sales and distribution of age can be calculated.

## 2. OWNERSHIP STRUCTURE AND VOTING RIGHTS

### 2.1 Separation of Ownership and Control Rights

French companies can issue ownership certificates without voting rights. It is provided by the law without modifications of statutes:

-*Actions à dividende prioritaire* (ADP) (law n°78-74, July 1978). They give right to dividend streams without any voting right. This type of shares can be created when an increase of capital or a conversion of shares occur. ADP cannot represent more than 25% of the capital;

-Possibility to separate two types of rights: certificates of investment, *certificats d'investissement CDV*, (right to dividend streams); certificates of voting right, *certificats de droit de vote CI*. These two types of certificates are issued simultaneously when an increase of capital or a splitting of existing shares occur. CDV are distributed among voting shareholders in proportion of their voting rights. The CDV are not transferable, but the CI are. The CI cannot represent more than 25% of the capital.

Differentiation of ownership certificates can also result from a modification of statutes:

-shares with double voting rights: only faithful shareholders (minimum two years of holding) can benefit from this type of shares. For listed companies, the maximal period of holding is 4 years;

-preferred shares. This type of shares gives right to preferential financial advantages: increased dividend streams, cumulative dividend streams;

-limitation of voting rights. The statutes can limit the influence of large shareholders (a maximum voting rights per shareholder can be imposed).

### 2.2 Ownership Disclosure Rules

#### 2.2.1 Company Law

a) All types of companies have to be registered at their foundation at the company register (*Registre du Commerce et des Sociétés RCS*) before starting an activity. The agreement is provided by the Commercial Court where the headquarters of the company are. The registration includes the activities' description, the managers and directors' identity, the owners' identity (name and address), statutes in annex. Each time a change occurs during the firm life, the latter must take a modifying registration (*inscription modificative*).

b) Legal procedure for transferring shares

In partnership companies (*sociétés de personnes*), transferring shares is submitted to the agreement of all other partners. It is notified in the firm's head office register and in the company register (*Registre du Commerce et des Sociétés*).

In limited liability companies (*sociétés à responsabilité limitée*), the transfer of ownership certificates to a third person is submitted to the agreement of the majority of partners owning at least 75% of the ownership certificates. There is no restriction to the transfer of ownership certificates between partners, unless a written clause in the statutes. There is no restriction to the transfer of ownership certificates to husband or wife, descendants and ascendants, unless a written clause in the statutes. The transfer is notified in the firm's head office register and in the company register.

In public companies - public limited companies (*sociétés anonymes*) and partnerships limited by shares (*sociétés en commandite par actions*) - there is no restriction to transfer shares unless a written clause in the statutes. This one can allow the shareholders to control transfers of shares through an agreement of the board of directors or of the ordinary general meeting. It is notified in the firm's head office register only for nominative shares and not in the company register.

c) Buy-out of own shares

Usually a public company cannot buy its own shares, but four exceptions exist:

- buying by transfer of wealth or by law decision;
- buying in case of capital reduction;
- in order to be distributed to employees;
- in order to regulate the share price.

These shares must be nominative and have no voting rights. They can't represent more than 10% of the all shares (table 4).

d) cross-shareholdings

Cross-shareholdings between two public firms cannot exceed 10% of the voting capital. This rule applies for two firms having their headquarters in France (not if one has its headquarters out of France).

e) information

Information from the company register is available on paper and in computer readable form. The information is available also from databases and is consistent.

### 2.2.2 Competition Rules

The notification of concentrations can be submitted to the opinion of the competition council (*Conseil de la Concurrence*) in the Ministry of Economics and Finance, but is not compulsory.

### 2.2.3 Transparency Directive

a) The European Transparency Directive (88/627/EEC of December, 12, 1988) has been transposed in the French law n° 89-531 of August, 2<sup>nd</sup>, 1989 regarding safety and transparency of financial markets. This law modifies some articles of the French Business Law of July 1966 and introduces new articles.

b) When a natural person or a legal entity crosses the thresholds, he must notify the company itself (listed on the official list or on the second market or belonging to the over-the-counter market, with its head office on French territory) and the «competent authorities» referred in the article 13 of the Directive. The «competent authority» was the SBF (*Société des Bourses Françaises*) for a listed company (official list and second market) and now is, since its creation, the CMF (*Conseil des Marchés à Terme*). Moreover, when a natural person or a legal entity crosses the threshold 20% of purchasing, he must notify the company itself, and other «competent authorities» - the CBV (*Conseil des Bourses de Valeurs*), which has been replaced by the CMF since 1996, and the COB (*Commission des Opérations de Bourse*) - of his objectives for the forthcoming year (to continue buying stakes in the

company or not; to get the control of the company or not; to ask to be appointed to the Board of Directors; in each case, he must inform if he is acting by himself or in an agreement with others).

c) The reporting thresholds chosen in the French law are 5%, 10%, 20%, 1/3, 50% and 2/3 of the total voting rights (transposition of article 4.1 of the Directive in article 356-1 of the French law). The first time notification threshold is 5%, lower than the 10% referred to in article 5 of the Directive. Moreover, a company can write in its articles a lower minimum threshold, down to 0.5%.

d) The shareholder concerned by the crossing of a threshold must take into account, in addition to the shares or voting rights he owns directly, assimilated shares and voting rights (transposition of article 7 of the Directive in article 356-1-2 of the French law). The assimilated shares or voting rights of the concerned shareholder are:

-shares or voting rights owned by other persons on behalf of the concerned shareholder;

-shares or voting rights owned by companies who control the concerned shareholder, in the meaning of the article 355-1 (*contrôle de droit, contrôle conjoint, contrôle de fait*);

-shares or voting rights owned by a third party with whom the concerned shareholder takes concerted action;

-shares or voting rights that the concerned shareholder (or the other persons previously mentioned above) can purchase by his own initiative according to an agreement.

**Therefore, only the four first possibilities of article 7 of the Directive are applied in the French law.**

Thus, the new article 356-1-3 of the Business Law defines «persons taking concerted action» (3<sup>rd</sup> possibility of article 7 of the Directive). These persons have entered into an (written, verbal, tacit) agreement with the aim of purchasing or selling voting rights or exerting their voting rights in the view of a common policy towards the company.

Such an agreement is presumed to exist:

-between a company, the chairman and the executives;

-between a company and the other companies which it controls (vertical agreement);

-between companies controlled by the same persons (horizontal agreement).

Persons taking concerted action are jointly under the obligations of the law.

e) The definition of the control here (*contrôle de droit, contrôle de fait, contrôle conjoint*) is the same as in article 8 of the Directive.

f) Fifteen days may pass between crossing a threshold by the concerned shareholder and his reporting it to the company. Five active stock market days may pass between crossing a threshold by the concerned shareholder and his reporting it to the SBF and now the CMF, or when the threshold is superior to 20% reporting it also the COB (all of which are different from the seven days written in article 4 of the Directive). Then, the SBF must notify the public; the COB publishes it on the official list and notifies the public by a financial press release (transposition of article 10).

g) Sanctions (transposition of the article 15 of the Directive)

In article 356-4 (law n° 89-531) it is written that the shares (listed on the official market or the second market) exceeding the threshold which should have been reported are deprived of voting rights for two years (before this law, it was three months). This sanction also applied to the voting rights which have not been regularly reported. The deprivation of voting rights must be asked for by the company before the vote of its general meeting.

Another sanction can be pronounced by the commercial court, after a saisine from the Chief Executive of the company, or from a shareholder, or from the COB (one of the competent authority). It is the total or partial suspension, for a period no longer than five years, of the voting rights of the concerned shareholder.

#### . Penal sanction

Natural persons, chairmen, directors of companies who, on purpose, fail to notify when crossing a threshold can be punished by a fine less than or equal to 120 000 Francs. For public companies, legal actions can be taken only after a request has been made to the COB (one of the competent authority).

### 2.2.4 *Shareholders and Partners' Information on Stakes*

#### a) Information on significant stakes

In all companies, whatever legal type, the annual report must mention any buying shares, during the fiscal year, representing more than 5%, 10%, 20%, 1/3, 50%, 2/3, of the capital of another company having its head office on French territory. The annual report must mention also any take-over of another company (law n° 66-537, July 1966, art. 356-1 ; law n° 87-416, June 1987).

#### b) Information on subsidiaries and controlled companies' activities

In all companies, whatever legal type, the annual report must report activities and performances of the company itself, its subsidiaries and controlled companies (directly and indirectly) by sector of activity. This information is not required for stakes which don not give control (law n°66-537, July 1966, art. 356-2).

#### c) Information on the ownership distribution

On the basis of articles 356-1 and 356-2, public companies (*sociétés par actions*) must inform their shareholders of their ownership distribution. More precisely, the annual report must mention (art. 356-3):

- the identity of natural persons or legal entities owning more than 5%, 10%, 20%, 1/3, 50%, 2/3 of the capital or of the voting rights;

- the modifications which occurred during the fiscal year, in particular those being subject of notifications;

- the names of controlled companies and the share of capital of the company they own (art 356-3).

This obligation concerns only public companies. It is in fact difficult for non listed companies to give this information, because they know their direct shareholders (because of the nominative shares), but often don't know their indirect shareholders. Usually this obligation is not filled up for non listed companies.

Moreover, for listed companies (rule n°88-04, COB, July 1988), the annual report must publish the identity of the shareholders or groups of shareholders owning 5% or more of the capital, including number of shares owned, percentage of capital and percentage of voting rights.

d)Table on subsidiaries and stakes

In the annual report of all companies publishing consolidated accounts, the annex of the balance-sheet must include a table on subsidiaries and stakes.

Table 4: Ownership Disclosure Rules - Company Law

COMPANY TYPES	FOUNDATION FORMALITIES	TRANSFERRING SHARES PROCEDURES	MANAGERS' OWNERSHIP	BUY-OUT OF OWN SHARES
<b>1. Partnership Company</b> <i>Société de personnes</i>				
<b>General Partnership</b> <i>Société en Nom Collectif</i>	.written and registered statutes	submitted to the agreement of all other partners	no limit	no
	.no deposit in bank			
	.no evaluation of contribution in kind			
	.legal notice			
	.registration in the company register (RCS)			
	.advertisement in BODACC by the clerk of the commercial court			
<b>Limited Partnership</b> <i>Société en Commandite simple</i>	idem, see SNC	idem, see SNC	no limit	no
<b>2. Limited Liability Company</b> <i>Société à Responsabilité Limitée</i>	.written and registered statutes	transfer to a third person is submitted to the agreement of the majority of partners owning at least 75% of the ownership certificates;	no limit	no
	.deposit of capital in a delay of 8 days	no restriction to the transfer between partners, or to husband and wife, descendants and ascendants*		
	.evaluation of contributions in kind except when no contribution > 50 000F all the contributions <= capital/2			
	.legal notice			
	.registration in the company register (RCS)			
	. advertisement in BODACC			
<b>3. Public Limited Company</b> <i>Société Anonyme</i>	<b>1. set up without public financing</b>	no restriction*	no limit*	no, but 4 exceptions:
	.written and registered statutes			.buying by transfer of wealth
	.subscription to capital			.buying in case of capital
	.deposit of capital			.in order to be distributed
	.certificate from the depository			.in order to regulate the share
	.legal notice			no voting rights,
	.registration in the company register (RCS)			limit of 10% of the all shares
	.advertisement in BODACC			
	<b>2. set up with public financing</b>			idem than above
	.statutes' project at the clerk of the commercial court			
	.BALO notice			
	.information report certified by the COB			
	. constituting assembly			
	.registration in the company register (RCS)			
	.advertisement in BODACC			
<b>4. Partnership Limited by Shares</b> <i>Société en Commandite par Actions</i>	idem SA	idem SA	idem SA	idem SA

\*unless written clause in the statutes

BODACC: Bulletin Officiel des Annonces Civiles et Commerciales

BALO: Bulletin des Annonces Légales Obligatoires

RCS: Registre du Commerce et des Sociétés

COB: Commission des Opérations de Bourse

## 2.3 Ownership Data

### 2.3.1 Basic information

For partnership companies and limited liability companies, statutes with information on partners (identity, stakes) are registered at the company register (*Registre du Commerce et des Sociétés*). Each time there is a transfer of stakes the modification is registered at the company register. So, in theory, from the information in the company register it is possible to reconstruct the ownership. In fact, it is rather difficult : you are obliged to read documents on site or to consult expensive databases. Ownership certificates are also registered at the company's head office, but this information is not available to general public.

For non listed public companies, transfers of shares (all the shares are nominative) are registered in the company's head office but the information is not available to general public. Transfers of shares are usually not registered at the company register unless mergers, take-overs. In theory, the annual report must mention the identity of natural persons or legal entities owning more than 5%, 10%, 20%, 1/3, 50%, 2/3 of the capital or voting rights but in fact does not do it.

For listed companies, transfers of shares (bearer shares) are registered neither in the company's head office, nor in the company register. However, transfers of shares crossing the thresholds (5%, 10%, 20%, 1/3, 50%, 2/3 of the voting rights) must be notified to the company and the competent authority SBF. Then, the COB publishes the notification in the financial press and stores it in databases. The cumulative notification could eventually be used to reconstitute the ownership of listed companies. In listed companies' annual report are mentioned the names of shareholders owning 5% or more of the capital (percentage of capital, percentage of voting rights). But, usually, the identification number (n° *SIREN*) is not given and the information is not standardized.

At last, for all companies publishing consolidated accounts, information from the table of subsidiaries and stakes can be used. «Ortélématique», «DAFSA liens», «Dun&Bradstreet» have compiled databases that contain this information.

### 2.3.2 Databases

a) As it has been previously written, many commercial databases are available to general public, where, for one chosen firm (mainly listed), one can find information on direct shareholders (percentage of capital they own). But the use of these databases is expensive and it is in fact very difficult (almost impossible) to calculate direct and integrated ownership distribution by investor for a rather large set of companies (even for listed companies).

b) The French National Statistical Office (INSEE) gathers by an annual survey, called «*Liaisons financières*», information on ownership of large financial and non-financial companies (about 16 000 companies). More precisely, for each company, is collected:

- shareholders' names (only legal entities), their identification number (n° *SIREN*) and the percentage of voting rights they own;
- the names of its stakes and subsidiaries with their identification number;
- its ownership distribution (only capital, not voting rights), by large types - French legal entities, Foreign legal entities, French natural persons, Foreign natural persons, employees, State and the company itself. This database is not available to general public and is covered by the statistical secret. At the present time, this database is not used by INSEE for statistics and studies on ownership and control, but only for the description of groups (number of employees, total sales...). Thus, in 1993,

INSEE has counted 4 992 groups of firms. They concern 35 200 companies (with INSEE definition: parent companies and companies controlled directly or indirectly) which employ 5.7 millions of employees, about 45% of the private sector's employees.

c) The French Central Bank

The French Central Bank collects information on non financial firms in a data set called *Fiben: Fichier Bancaire des ENTreprises*. It deals with information of different kinds of nature (descriptive qualitative data but also accounting data) on 2 320 000 firms, 1 280 000 managers, 150 000 annual balance sheet data, 495 000 judicial incidents, 18 000 decisions of judicial bans. This data set is not available to the public but is used by the Central Bank for its own purposes and is sold to the banks.

The descriptive information on firms and managers is updated by the bulletins of legal notices (*Journaux d'annonces légales*), commercial courts (*Greffes des Tribunaux de commerce*), contacts with credit institutions, or information given by the firms.

Annual accounting data from the tax balance sheet are collected for 150 000 firms of economic or financial interest (minimum of assets ..) or firms being subject to an incident affecting their credit. This information is collected by the Bank of France branches (200 all over France) and available during the following months after the end of the fiscal year (which can vary from one firm to another, but most of them end their fiscal year in December).

The last eight years of balance sheets data are available (1988 to 1995); the accounting data for the year 1996 will be available for the majority of the firms by mid 1997.

Since April 1991, the different branches of the Bank of France have introduced information about the capital distribution of firms belonging to their district. No information is available on voting rights. Sources are meetings reports, legal notice reports (*journaux d'annonces légales*), firms, tax balance sheet. Information from other data bases are not used.

The French Central Bank has also a database concerning financial firms, called *Bafi (BAse Financière)* and available at the Banking Supervision Authority (*Commission Bancaire*), gathering information on their ownership and on their annual accounts. As *Fiben*, this database is not available to general public.

### 3. QUANTITATIVE ANALYSIS ON OWNERSHIP STRUCTURE WITH THE CENTRAL BANK INFORMATION<sup>2</sup>

#### 3.1 Description of the Dataset

The primary source used to built the data set for this study is the database described above called *Fiben*, supplemented by *Bafi* in order to make up for information concerning financial firms. This data set covers the information available in August 1996 for 282 322 firms. As already underlined, this data set is not public.

The list of listed companies has been collected from the official publication of the SBF-*Bourse de Paris*, called la *Cote Officielle*.

For each firm, identified by its number *SIREN*, its sectoral classification, its size, and its owners (firms, banks, individuals, the float...) are recorded (see Table 5 for the shareholders' classification). Then, the capital's percentage for which the owner is unknown has been computed by difference (and called unknown in the tables). 112 644 firms have some capital for which the owner is unknown. This unknown percentage can have very different meanings (see below, Paragraph 4).

Table 5: Classification of the shareholders in the Bank of France Dataset

	NAF code	French label
Banks	65	<i>Intermédiation financière (dont OPCVM* : 652E)</i>
	671	<i>Administration de marchés financiers, gestion de portefeuille, autres auxiliaires financiers</i>
Insurance	66	<i>Assurance</i>
	672	<i>Auxiliaires d'assurances</i>
Holdings	714J	<i>Administration d'entreprises</i>
Firms		all other firms (i.e. not banks, insurance and holdings) identified by a <i>SIREN</i>
Foreign*		all firms (financial and non financial) identified by a foreign <i>SIREN</i> (starting by a digit 2)
Float		<i>Public (ensemble des petits porteurs)</i>
State		<i>Etat</i>
Employees		<i>Salariés</i>
Individuals		<i>Famille, personnes, indivision, succession, divers</i>
Unknown		computed by difference between the percentage of capital held by all above listed criteria and 100

\* In some tables, foreign firms (financial and non financial) and Mutual funds (OPCVM) have been isolated. For foreign firms, this has been done using the identification number *SIREN* first digit, which may not be a perfectly reliable method. When not mentioned, foreign firms are classified with French firms in «Firms», «Banks», «Insurance», and «Holdings».

<sup>2</sup> We thank Claude Truy for very valuable research assistance and perspicacity to put together the information on financial institutions.

Table 6: Description of the dataset in terms of number of firms and of different owners

282 322 owned firms	Owners	Number of owners	from which foreign firms
	Individuals	336 634	
	Banks	5 405	26
	<i>from which Mutual funds</i>	2 993	16
	Insurance	720	8
	Non Financial Firms	86 130	9 073
	Holdings	12 821	11
	Float	1	
	State	1	
	Employees	1	
	Unknown	1	
	Total	441 713	

Each firm can of course have several owners. Each identified owner can also owned shares in different firms. The description of the dataset in terms of number of financial links is the following:

Table 7: Description of the dataset in terms of number of financial links

Owned firms 590 586 financial links	Owners	Number of financial links	from which foreign firms  Number of financial links
	Individuals	397 751	
	Banks	15 042	50
	<i>from which Mutual funds</i>	7 166	28
	Insurance	1 743	19
	Non Financial Firms	138 879	10 558
	Holdings	35 420	16
	Float	1 268	
	State	81	
	Employees	402	

Table 8: Listed companies

		Official numbers	In the dataset
Official List		<b>405</b>	<b>404</b>
	Monthly Settlement Market	<i>174</i>	<i>174</i>
	Cash market	<i>231</i>	<i>230</i>
Second Market		<b>277</b>	<b>276</b>
New Market		<b>13</b>	<b>11</b>

Table 9: Bank of France Dataset: Distribution of firms by sector and size

		< 2	2 - < 20	20 - < 500	500 - < 2000	>= 2000	Total
EA Agriculture	Number	4 321	1 279	726	5	0	6 331
	Percent	1.5	0.5	0.3	0.0	0.0	2.2
	Row Pct	68.5	20.2	11.5	0.1	0.0	
	Col Pct	3.4	1.4	1.2	0.3	0.0	
EB Food Processing Industries	Number	2 203	2 495	2 680	111	10	7 499
	Percent	0.8	0.9	1.0	0.0	0.0	2.66
	Row Pct	29.4	33.3	35.7	1.5	0.1	
	Col Pct	1.7	2.75	4.4	7.6	3.3	
EC Consumer Goods Industries	Number	3 511	4 407	4 728	161	16	12 823
	Percent	1.2	1.6	1.7	0.1	0.0	4.54
	Row Pct	27.4	34.4	36.9	1.3	0.1	
	Col Pct	2.7	4.9	7.7	10.9	5.3	
ED Automobile Industry	Number	190	260	430	48	18	946
	Percent	0.1	0.1	0.2	0.0	0.0	0.3
	Row Pct	20.1	27.5	45.5	5.1	1.9	
	Col Pct	0.2	0.3	0.71	3.3	5.9	
EE Equipment Industry	Number	2 661	4 344	4 688	151	33	11 877
	Percent	0.94	1.54	1.66	0.1	0.0	4.2
	Row Pct	22.4	36.6	39.5	1.3	0.3	
	Col Pct	2.1	4.8	7.7	10.3	10.8	
EF Intermediary Goods Industries	Number	4 779	7 839	9 807	283	46	22 754
	Percent	1.69	2.78	3.47	0.1	0.0	8.1
	Row Pct	21.0	34.5	43.1	1.2	0.2	
	Col Pct	3.7	8.6	16.1	19.2	15.1	
EG Energy	Number	355	112	168	26	12	673
	Percent	0.1	0.0	0.1	0.0	0.0	0.2
	Row Pct	52.8	16.6	25.0	3.9	1.8	
	Col Pct	0.3	0.1	0.3	1.8	3.9	
EH Construction	Number	8 006	9 167	8 125	99	20	25 417
	Percent	2.8	3.3	2.9	0.0	0.0	9.0
	Row Pct	31.5	36.1	32.0	0.4	0.1	
	Col Pct	6.2	10.1	13.3	6.7	6.6	
EJ Trade	Number	26 158	38 462	14 455	184	59	79 318
	Percent	9.3	13.62	5.1	0.1	0.0	28.1
	Row Pct	33.0	48.5	18.2	0.2	0.1	
	Col Pct	20.3	42.4	23.7	12.5	19.3	
EK Transports	Number	3 632	3 808	3 893	66	16	11 415
	Percent	1.3	1.4	1.4	0.0	0.0	4.0
	Row Pct	31.8	33.4	34.1	0.6	0.1	
	Col Pct	2.8	4.2	6.4	4.5	5.3	
EL Financial Services	Number	4 333	622	179	25	6	5 165
	Percent	1.53	0.2	0.1	0.0	0.0	1.8
	Row Pct	83.9	12.0	3.5	0.5	0.1	
	Col Pct	3.4	0.7	0.3	1.7	2.0	
EM Real Estate	Number	31 652	2 558	936	12	1	35 159
	Percent	11.2	0.91	0.3	0.0	0.0	12.5
	Row Pct	90.0	7.3	2.7	0.0	0.0	
	Col Pct	24.6	2.8	1.5	0.8	0.3	
EN Corporate Services	Number	20 275	10 565	6 557	244	51	37 692
	Percent	7.2	3.74	2.3	0.1	0.0	13.4
	Row Pct	53.8	28.0	17.4	0.6	0.1	
	Col Pct	15.7	11.6	10.8	16.6	16.7	
EP Household Services	Number	9 574	4 211	2 221	49	17	16 072
	Percent	3.4	1.49	0.79	0.0	0.0	5.69
	Row Pct	59.6	26.2	13.8	0.3	0.1	
	Col Pct	7.4	4.6	3.5	3.3	5.6	
EQ + ER Social services and Administration, Education	Number	5 961	4	2	0	0	5 967
	Percent	2.1	0.0	0.0	0.0	0.0	2.1
	Row Pct	99.9	0.1	0.0	0.0	0.0	
	Col Pct	4.63	0.0	0.0	0.0	0.0	
Unknown	Number	1 237	631	1 339	7	0	3 214
	Percent	0.4	0.2	0.47	0.0	0.0	1.1
	Row Pct	38.5	19.6	41.7	0.2	0.0	
	Col Pct	1.0	0.7	2.2	0.5	0.0	
Total		128 848	90 764	60 934	1 471	305	282 322
		45.6	32.2	21.6	0.5	0.1	100.0

## 3.2 Methodology

### Notations

The firm  $i$  belongs to the  $I$  population ((called  $N\_all$  in the tables).

The capital of this  $i$  firm can be held by different classes of investors  $j$ .

$I_j$  is the number of **firms** that have at least one investor from the  $j$  **category** in their capital (called  $N\_cat$  in the tables).

$I_{jl}$  is the number of **investors** (owners) in the  $j$  category of investors because each firm can have several investors in the same  $j$  category (called  $N\_inv$  in the tables).

Several investors  $l$  belonging to the same  $j$  category can hold stakes in the same  $i$  firm. The percentage is noted  $PCT_j^i$ . For each firm  $i$ , one can aggregate all the percentages of the different investors  $l$  from the same category  $j$ , as if there was only one investor per firm in that category.

$$PCT_j^i = \sum_l PCT_{jl}^i$$

### Definitions of means

The mean of the percentage of capital held by an investor can be computed several ways, each one having a different meaning. The three different means are computed using the three different denominators defined above: the total number of firms ( $I$ ), the number of firms that have an investor from the category  $j$  ( $I_j$ ), the number of investors in a  $j$  category ( $I_{jl}$ ).

The first mean, called **Mean\_all** in the tables, allows to answer the question: On average, what is the percentage of capital held by a category of investors?

The sum of this different means over all the categories of investors equal 100.

The second mean, called **Mean\_cat**, answers the question: What is the average percentage of capital held by a category of investors, when that category of investors is a stakeholder of the firm? In that case, the denominator is not the total number of firms ( $I$ ), but the total number of firms which have that category of investors as owners. To compute that mean, one has to aggregate for a firm, all the different investors from the same category, as if there was only one investor per firm in that category.

The third mean, called **Mean\_inv**, answers the question: What is the average percentage of capital held by an investor of a category? In that case, the denominator is the total number of investors in a category.

## Methodology (continuing)

$$Mean\_all_j = \frac{\sum_{i \in I} PCT_j^i}{I}$$

$$Mean\_cat_j = \frac{\sum_{i \in I_j} PCT_j^i}{I_j} = \frac{\sum_{i \in I_j} \sum_l PCT_{jl}^i}{I_j}$$

$$Mean\_inv_j = \frac{\sum_{i \in I_j} PCT_{jl}^i}{I_j}$$

<b>Example</b> (see Tables 1A and 3A in annex)	Name	Number
There are 282 322 firms in the dataset.	N_all	282 322
Among them, 1 324 have at least one insurance firm as an owner.	N_cat <sub>j</sub>	1 324
	<i>j</i>	Insurance
On average, insurance firms hold 0.3% of the capital of all firms.	Mean_all <sub>j</sub>	0.3%
Insurance firms are identified 1749 times as investors.	N_inv <sub>j</sub>	1 749
If an insurance company holds stake, it holds on average 41.9% of small firms.	Mean_inv <sub>j</sub>	41.9%
But, on average the amount hold by insurance companies when they hold stakes is 54.4%.	Mean_cat <sub>j</sub>	55.4%

## 4. CONCENTRATION AND DISTRIBUTION OF DIRECT OWNERSHIP

The corporate governance system of a country can first be characterised by two types of information, which are the two topics of the following sections: the degree of concentration of ownership and the information on the ownership structure.

In interpreting the results, one has to keep in mind one important drawback concerning the percentage of capital for which the owner is not known<sup>3</sup>. Several options exist, and there is no possibility to choose among them (Float, institutional investors, non residents, but also small shareholders than can be firms, banks or insurance companies). In some cases, the variable Public is clearly identified. In others, it is not and this unknown capital may be held by the Public. That is why it has been decided not to make any assumption, and to let it under the name unknown.

### 4.1 Concentration of Direct Ownership

Graph 1 shows the average ownership by ownership stake for all firms and listed firms. It gives the average ownership of the three first direct owners, and the average ownership of the next 4 to 10 direct owners. For each category, two means are reported (see above insert on methodology): the first shows the average share that each stake holds. The second gives the importance of this stake, when this category has a percentage of the capital of the firm. As all firms in this table have a first owner, the two means are identical for the largest owner.

The detail information is shown in Annex 1 for all firms (Table 1A), non listed firms (Table 1B), listed firms (Table 2A), and listed firms by market: Cash Market (Table 2B), Monthly Settlement Market (Table 2C), Second Market (Table 2D).

This detail information is also given by size, but it is difficult to interpret for listed firms. Identified holdings have been put apart because they have often only a few employees, but other firms not identified as holdings by their sector classification may in fact be also holdings and have only a few employees. On top of that, for some companies, mainly banks, the size information is not available and these firms have also been put aside, by defining a size class for the less than 2 employees.

#### 4.1.1 *Non listed firms*

##### *a) The degree of concentration increases is very high specially for large firms*

On average, the first identified owner of a non listed company holds 66% of the capital. This is a very high number, which confirms this idea that the concentration of ownership is very important in France. This degree of concentration increases with the size of a firm: 63% for a firm with less than 20 employees, 88% for firms with 500 to 2000 employees, or firms with more than 2000 employees.

This suggest that large non financial firms are controlled by one owner.

##### *b) Direct versus integrated ownership*

One can argue that by looking at direct ownership only, the degree of concentration is biased. The problem is to determine in which direction is the bias. Because of double counting, this concentration could be overestimated. But, in case of groups with several loops and large amounts of cross shareholdings, the degree of concentration can also be underestimated, the ultimate shareholder (i.e. the owner that does not have any shareholder) ending with a higher percentage in a in the integrated

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<sup>3</sup> In the march 1997 version of this paper, we underlined an other important drawback concerning the lack of information on financial firms' ownership, which has been corrected since then.

ownership matrix (i.e. taking into account all the loops among the different direct and indirect shareholders) than in the direct ownership matrix.

In any case, bringing together the information on concentration of ownership and on distribution of ownership (next paragraph), suggests two different conclusions for non listed firms.

For non listed firms under 500 employees, the high level of concentration is not due to a bias of direct ownership versus integrated ownership. In fact, individuals held on average over 50% of non listed firms. When they are identified as owners, they possess almost 80% of the capital, and each individual has 36%. This result holds for all categories of firms below 500 salaries.

For large non listed firms (500 to 2000 salaries, and over 2000 salaries), individuals hold on average a much smaller share (5 to 6%) whereas holdings possess on average between 40 and 45%. When identified as owners, they have around 90% of the capital of large non listed firms.

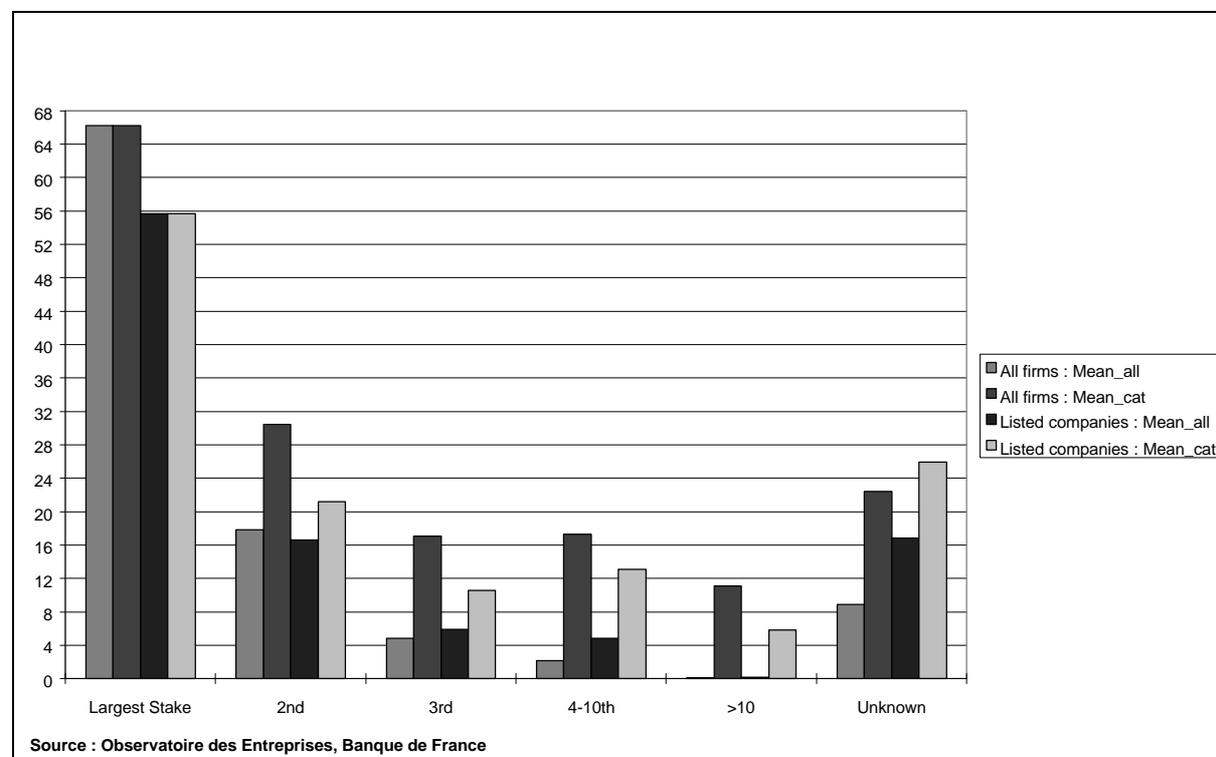
#### *c) The second owner*

On average, 6 out of 10 non listed firms have a second identified owner. The second owner holds on average 18% of the capital, and when it exists, this owner has 30% of the capital. For large non listed firms (over 500 employees, see Table 1B), only 3 out of 10 firms have a second identified owner, with around 20% of the capital.

#### *d) Unknown capital*

40% of non listed firms have a percentage of capital for which the owner is not known (see above for the meaning of unknown). This percentage represents on average 9% of their capital.

**Graph 1 : Average ownership by ownership stake**



Note: Mean\_all is the average percentage of capital held by each category. Mean\_cat is the average percentage of capital held by the category of investors, when the category is present. See insert on methodology for more details.

### 4.1.2 *Listed firms*

*a) The degree of concentration of direct ownership is lower than for non listed firms but still very important*

The degree of concentration is a little lower for listed firms, but still over half of the capital: 56%. Therefore, for listed firms, 8 out of 10 have a second owner. When there is a second owner, this owner holds 21% of the capital. A little over half of the listed firms have three identified owners. These results do not differ significantly when they are computed by size.

*b) Direct versus integrated ownership*

For listed firms, the integrated ownership matrix is under construction. The interpretation of the results is not easy, because one has to avoid to define an ultimate ownership firm only because no information is available on its owners. To compute the integrated matrix for 680 listed firms in the French case, the first approximation is a matrix of around 2000 firms. A first result suggests that the first owner of the 680 listed firms holds 56%. Concentrating on listed firms that have at least one identified firm as an owner (612 listed firms), this percentage declines to 49%. Using the integrated matrix, the first ultimate ownership has 32% of the capital.

*c) Unknown capital*

65% of listed firms have a percentage of capital for which the owner is not known. This percentage represents on average 17% of their capital.

## 4.2 Distribution of Direct Ownership by Investor

Graph 2 shows the average ownership by category of investors for all firms and listed firms. For each category, two means are again reported. The great divergence between the levels of these two means, and the very high level of the second type of means, computed when a category of investors is present as an owner, confirms the high level of concentration.

Tables 3 and 4 give the average ownership by category of investors. Again they allow to compare all firms (Table 3A) to non listed firms (Table 3B), listed firms ((Table 4A), and listed firms by market: Cash Market (Table 4B) Monthly Settlement Market (Table 4C), Second Market (Table 4D).

In its recent study on France, OECD defined France as the country with Italy where financial institutions have the smallest share of firms' capital. This is verified in our data<sup>4</sup>.

### 4.2.1 *Non listed firms: individuals hold half of the capital and are identified in 65% of the cases*

Individuals have by far the most important share: 65% of French companies have individuals as owners of their capital, and on average these individuals hold half of the capital. These numbers cover very different situations, because they have effectively almost 80% of the capital when they are identified as owners and each individual holds on average 36% of the capital.

Non financial firms are the second category of owners, with 28% of the capital. They have been separated from holdings, which own on average 9% of the capital. When identified as owners<sup>5</sup>, financial

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<sup>4</sup> These results are preliminary and should be improved by reclassifying holdings to which industry they really belong. 217 listed firms are classified as holdings. Some of them are banks, others are insurance companies, others are well-known industrial firms. A better distribution of ownership will be obtained by creating sub classifications of holdings by industry.

<sup>5</sup> Some financial institutions may be classified as holdings and/or some of the unknown capital may in fact be held by financial companies.

institutions (banks and insurance companies) hold on average 3% of the capital of French firms (Table 3B).

If banks and insurance companies are not very often identified as owners (respectively 4.5% and 0.5% of the cases), holding on average 2.7% and 0.3% of the capital, when they are owners, they own approximately the same share, i.e. around 60% of the capital.

To summarize, on average for all non listed firms, individuals hold 51% of the capital of non listed firms, non financial and financial firms hold 40%, and 9% of the capital has an unknown owner. Graph 2 underlines that these means are just average over all firms (mean\_all), but that they cover very different situations. When banks, insurance or holdings are owners, they have most often the majority.

#### 4.2.2 *Size is decisive to characterize non listed firms*

As already underlined when commenting on direct and indirect ownership of non listed firms, the numbers are pretty different for large non listed firms (firms over 500 employees): on average, individuals hold only 5 to 6% of the capital of non listed firms, non financial and financial firms hold 85 to 90%, and only 3% of the capital is unknown.

Even among these large non listed firms, considerable differences exist. If on average, individuals hold only 5 to 6% of the capital, when they are present, they still hold half of the capital. on the contrary, holdings have on average 40 to 45% of the capital, but when they are owners, they have 90% of the capital.

#### 4.2.3 *Listed firms: a large share not identified*

For listed firms, the fact that there is a large amount of capital for which the owner is not identified has to be underlined again. This represents on average 17% of the capital of all listed firms, and 26% of the capital of listed firms that have an unknown owner.

The first category of identified owners corresponds to holdings. their share is almost 26%. This share is probably underestimated because a closer look at individual data shows that some non financial firms are not classified as holdings, their name and their number of employees suggest that they are in fact holdings<sup>6</sup>.

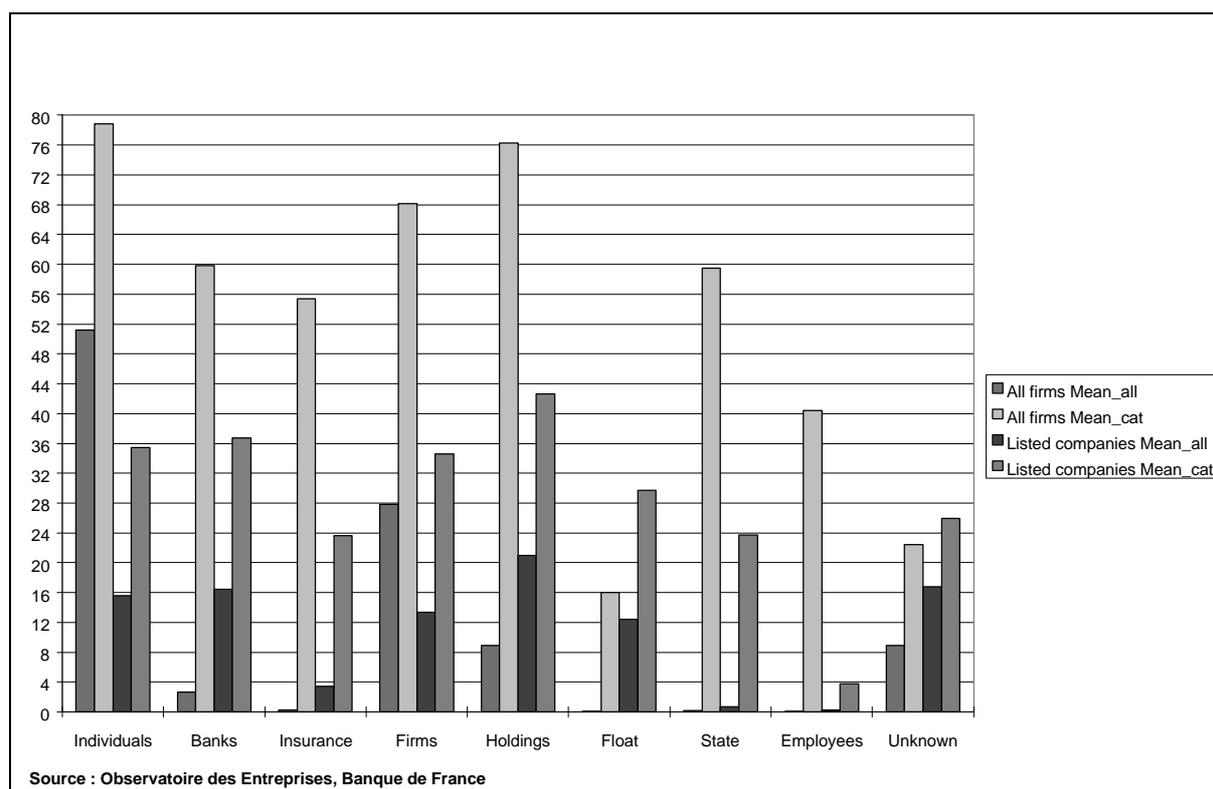
Four categories of owners have approximately the same average share of the capital: individuals (16%), banks (13%), non financial firms (12%) and Float (12%). Each category is a holder in about a third of the 680 listed firms. So, their share of the capital when they are owners stands between 30 and 35%. Insurance companies hold 3.1% of the listed firms' capital, which corresponds to 23% when they are effectively shareholders.

The distinction by type of market shows that insurance companies are more represented in firms belonging to the Cash Market. They hold on average 5% of this category of firms, and their share, when they are owners, is 27%.

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<sup>6</sup> But, in the other way, the importance of holdings may imply an underestimate of banks and insurance companies, some of them being classified as holdings. It will be useful to try to classify holdings in terms of sector of activity (industry, services, banks insurance...).

**Graph 2 : Average ownership by category of investors**



Note: Mean\_all is the average percentage of capital held by each category. Mean\_cat is the average percentage of capital held by the category of investors, when the category is present as an owner.

#### 4.2.4 Foreign firms and Mutual funds

In Tables 5, foreign firms (financial and non financial) and Mutual funds (OPCVM) have been isolated as investors. For foreign firms, this has been done using the identification number *SIREN* first digit, which may not be a perfectly reliable method. Nevertheless, the opposition between non listed and listed firms seem interesting.

For non listed firms, foreign investors hold on average less than 3% of the capital, but when they are identified as owners (3% of the cases); they hold almost 80% of the capital, which is the same percentage than when individuals are identified as owners, and much higher than when non financial firms are (66%).

For listed firms, the foreign ownership is much more spread out. Foreign firms also owned on average 3% of the capital of the listed firms, but they are owners of 12% of the listed firms, and own 30% of those firms.

These numbers suggest that foreign firms are the main owner (with the majority) of non listed firms when they are identified as owners, but only one of the many shareholders when they are identified as owners of a listed firm.

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## ANNEXES

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Listed and Non Listed Companies

Table 2B: Average Ownership by Ownership stake and Size Classes  
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Table 2A: Average Ownership by Ownership stake and Size Classes  
Listed Companies

Table 2B: Average Ownership by Ownership stake and Size Classes  
Listed Companies  
Cash Market

Table 2C: Average Ownership by Ownership stake and Size Classes  
Listed Companies  
Monthly Settlement Market

Table 2D: Average Ownership by Ownership stake and Size Classes  
Listed Companies  
Second Market

Table 3A: Average Ownership by Investor and Size Classes  
Listed and Non Listed Companies

Table 3B: Average Ownership by Investor and Size Classes  
Non Listed Companies

Table 4A: Average Ownership by Investor and Size Classes  
Listed Companies

Table 4B: Average Ownership by Investor and Size Classes  
Listed Companies  
Cash Market

Table 4C: Average Ownership by Investor and Size Classes  
Listed Companies  
Monthly Settlement Market

Table 4E: Average Ownership by Investor and Size Classes  
Listed Companies  
Second Market

Table 5A: Average Ownership by Investor with Mutual Funds and Foreign Firms considered separately  
Listed and Non Listed Companies

Table 5B: Average Ownership by Investor with Mutual Funds and Foreign Firms considered separately  
Non Listed Companies

Table 6A: Average Ownership by Investor with Mutual Funds and Foreign Firms considered separately  
Listed Companies

Table 1A: Average Ownership by Ownership Stake and Size Classes  
Listed and Non Listed Companies

Size		Number of Companies	Largest stake	2nd	3rd	4-10th	> 10	Unknown
< 2	N_category	121,552	121,552	66,646	28,718	12,245	109	45,278
	Mean_cat		64.7	32.6	18.5	19.3	13.2	29.7
	Mean_all		64.7	17.9	4.4	1.9	0.0	11.1
	Std Error of M.		0.1	0.1	0.1	0.1	1.3	0.1
2 - <20	N_category	88,512	88,512	59,155	29,867	12,956	71	36,501
	Mean_cat		63.3	30.4	17.3	17.1	12.3	19.3
	Mean_all		63.3	20.3	5.8	2.5	0.0	8.0
	Std Error of M.		0.1	0.1	0.1	0.1	1.7	0.1
20 - <500	N_category	60,484	60,484	33,768	17,867	8,757	121	26,179
	Mean_cat		72.2	26.6	14.8	15.0	8.7	14.6
	Mean_all		72.2	14.9	4.4	2.2	0.0	6.3
	Std Error of M.		0.1	0.1	0.1	0.1	1.1	0.1
500 -2000	N_category	1,471	1,471	509	212	123	5	389
	Mean_cat		85.6	22.3	10.6	11.5	1.5	15.5
	Mean_all		85.6	7.7	1.5	1.0	0.0	4.1
	Std Error of M.		0.6	0.7	0.5	0.9	0.5	1.0
>= 2000	N_category	314	314	116	51	31	4	89
	Mean_cat		84.1	21.2	9.0	10.6	6.0	19.2
	Mean_all		84.1	7.8	1.5	1.0	0.1	5.4
	Std Error of M.		1.3	1.5	0.9	2.0	3.0	2.7
Holdings	N_category	9,989	9,989	5,426	2,689	1,380	24	4,186
	Mean_cat		70.5	27.3	14.6	15.6	13.0	20.3
	Mean_all		70.5	14.8	3.9	2.2	0.0	8.5
	Std Error of M.		0.3	0.2	0.2	0.3	3.1	0.4
Total	N_category	282,322	282,322	165,620	79,404	35,492	334	112,622
	Mean_cat		66.2	30.4	17.1	17.3	11.1	22.4
	Mean_all		66.2	17.8	4.8	2.2	0.0	8.9
	Std Error of M.		0.1	0.0	0.0	0.1	0.7	0.1

Table 1B Average Ownership by Ownership Stake and Size Classes  
Non Listed Companies

Size		Number of Companies	Largest stake	2nd	3rd	4-10th	> 10	Unknown
< 2	N_category	121,497	121,497	66,609	28,692	12,229	107	45,236
	Mean_cat		64.7	32.6	18.5	19.3	13.2	29.7
	Mean_all		64.7	17.9	4.4	1.9	0.0	11.1
	Std Error of M.		0.1	0.1	0.1	0.1	1.3	0.1
2 - <20	N_category	88,462	88,462	59,112	29,836	12,934	66	36,476
	Mean_cat		63.3	30.4	17.3	17.1	12.5	19.3
	Mean_all		63.3	20.3	5.8	2.5	0.0	8.0
	Std Error of M.		0.1	0.1	0.1	0.1	1.8	0.1
20 - <500	N_category	60,281	60,281	33,606	17,746	8,671	110	26,062
	Mean_cat		72.3	26.6	14.8	15.0	9.1	14.6
	Mean_all		72.3	14.8	4.4	2.2	0.0	6.3
	Std Error of M.		0.1	0.1	0.1	0.1	1.2	0.1
500 -2000	N_category	1,367	1,367	425	157	89	3	330
	Mean_cat		87.6	22.3	10.8	12.4	1.6	14.0
	Mean_all		87.6	6.9	1.2	0.8	0.0	3.4
	Std Error of M.		0.6	0.8	0.6	1.2	0.5	1.1
>= 2000	N_category	274	274	87	30	16		64
	Mean_cat		88.3	21.0	9.5	8.1		15.0
	Mean_all		88.3	6.7	1.0	0.5		3.5
	Std Error of M.		1.3	1.9	1.4	2.8		3.0
Holdings	N_category	9,761	9,761	5,249	2,564	1,303	20	4,012
	Mean_cat		70.9	27.5	14.9	15.8	14.7	19.9
	Mean_all		70.9	14.8	3.9	2.1	0.0	8.2
	Std Error of M.		0.3	0.2	0.2	0.3	3.6	0.4
Total	N_category	281,642	281,642	165,088	79,025	35,242	306	112,180
	Mean_cat		66.2	30.4	17.1	17.3	11.6	22.4
	Mean_all		66.2	17.8	4.8	2.2	0.0	8.9
	Std Error of M.		0.1	0.0	0.0	0.1	0.8	0.1

Table 2A: Average Ownership by Ownership Stake and Size Classes  
Listed Companies

Size		Number of Companies	Largest stake	2nd	3rd	4-10th	> 10	Unknown
< 2	N_category	55	55	37	26	16	2	42
	Mean_cat		55.0	19.7	10.7	15.0	13.0	28.7
	Mean_all		55.0	13.3	5.1	4.4	0.5	21.9
	Std Error of M.		3.5	1.6	1.0	2.4	8.4	3.7
2 - <20	N_category	50	50	43	31	22	5	25
	Mean_cat		56.4	18.8	12.0	14.1	9.4	25.6
	Mean_all		56.4	16.2	7.4	6.2	0.9	12.8
	Std Error of M.		3.2	1.5	1.0	2.2	3.2	3.8
20 - <500	N_category	203	203	162	121	86	11	117
	Mean_cat		58.4	21.1	11.3	14.3	4.3	20.2
	Mean_all		58.4	16.8	6.7	6.1	0.2	11.6
	Std Error of M.		1.5	0.8	0.6	1.2	1.8	1.6
500 -2000	N_category	104	104	84	55	34	2	59
	Mean_cat		60.3	22.5	9.9	8.9	1.3	23.5
	Mean_all		60.3	18.2	5.2	2.9	0.0	13.3
	Std Error of M.		2.2	1.4	1.0	1.3	1.2	2.6
>= 2000	N_category	40	40	29	21	15	4	25
	Mean_cat		55.4	21.8	8.2	13.4	6.0	30.2
	Mean_all		55.4	15.8	4.3	5.0	0.6	18.9
	Std Error of M.		3.2	2.5	1.0	2.7	3.0	5.3
Holdings	N_category	228	228	177	125	77	4	174
	Mean_cat		51.1	21.4	10.1	12.7	4.1	29.3
	Mean_all		51.1	16.6	5.5	4.3	0.1	22.4
	Std Error of M.		1.5	0.9	0.5	1.0	2.0	2.0
Total	N_category	680	680	532	379	250	28	442
	Mean_cat		55.7	21.2	10.6	13.1	5.8	25.9
	Mean_all		55.7	16.6	5.9	4.8	0.2	16.8
	Std Error of M.		0.9	0.5	0.3	0.6	1.2	1.1

Table 2B: Average Ownership by Ownership Stake and Size Classes  
Listed Companies  
Cash market

Size		Number of Companies	Largest stake	2nd	3rd	4-10th	> 10	Unknown
< 2	N_category	35	35	22	14	7	1	30
	Mean_cat		56.3	17.4	10.3	15.6	4.6	29.6
	Mean_all		56.3	10.9	4.1	3.1	0.1	25.4
	Std Error of M.		4.5	2.3	1.4	3.3		4.4
2 - <20	N_category	22	22	17	13	12	2	13
	Mean_cat		57.7	16.8	8.7	13.0	16.1	26.4
	Mean_all		57.7	13.0	5.1	7.1	1.5	15.6
	Std Error of M.		5.3	2.7	1.1	3.1	2.1	5.8
20 - <500	N_category	59	59	44	26	20	6	41
	Mean_cat		60.3	16.3	10.7	18.6	6.4	22.8
	Mean_all		60.3	12.2	4.7	6.3	0.7	15.8
	Std Error of M.		3.1	1.5	1.2	2.8	3.0	2.7
500 -2000	N_category	26	26	24	12	4		21
	Mean_cat		59.9	21.8	7.3	5.8		19.5
	Mean_all		59.9	20.1	3.4	0.9		15.8
	Std Error of M.		3.2	2.3	1.6	1.9		3.3
>= 2000	N_category	3	3	2				3
	Mean_cat		81.2	5.0				15.5
	Mean_all		81.2	3.3				15.5
	Std Error of M.		7.7	2.0				7.1
Holdings	N_category	85	85	55	32	18	1	72
	Mean_cat		55.7	19.6	9.2	10.6	0.6	29.8
	Mean_all		55.7	12.7	3.5	2.2	0.0	25.2
	Std Error of M.		2.7	1.7	0.9	2.0		2.6
Total	N_category	230	230	164	97	61	10	182
	Mean_cat		57.9	18.3	9.5	13.9	7.6	26.5
	Mean_all		57.9	13.0	4.0	3.7	0.3	21.0
	Std Error of M.		1.6	0.9	0.5	1.4	2.4	1.6

Table 2C: Average Ownership by Ownership Stake and Size Classes  
Listed Companies  
Monthly Settlement Market

Size		Number of Companies	Largest stake	2nd	3rd	4-10th	> 10	Unknown
< 2	N_category	7	7	6	4	3		6
	Mean_cat		54.1	25.3	9.6	13.0		15.3
	Mean_all		54.1	21.7	5.5	5.6		13.1
	Std Error of M.		9.1	2.7	4.2	7.9		7.7
2 - <20	N_category	6	6	5	3	1		3
	Mean_cat		55.6	24.8	14.7	5.9		30.8
	Mean_all		55.6	20.7	7.4	1.0		15.4
	Std Error of M.		4.5	4.1	3.7			14.1
20 - <500	N_category	23	23	21	18	15	4	13
	Mean_cat		46.2	25.0	7.7	11.0	1.0	31.1
	Mean_all		46.2	22.8	6.0	7.2	0.2	17.6
	Std Error of M.		2.9	2.5	1.3	2.2	0.4	6.6
500 -2000	N_category	32	32	29	21	15	2	19
	Mean_cat		50.1	23.1	9.5	8.5	1.3	31.4
	Mean_all		50.1	20.9	6.2	4.0	0.1	18.6
	Std Error of M.		3.6	2.4	1.4	1.6	1.2	5.8
>= 2000	N_category	31	31	24	18	14	4	17
	Mean_cat		52.6	23.2	7.9	11.4	6.0	34.4
	Mean_all		52.6	18.0	4.6	5.1	0.8	18.9
	Std Error of M.		3.5	2.7	1.0	2.0	3.0	7.3
Holdings	N_category	75	75	65	43	26	3	54
	Mean_cat		43.9	22.5	9.5	11.7	5.2	37.4
	Mean_all		43.9	19.5	5.4	4.1	0.2	26.9
	Std Error of M.		2.4	1.8	1.0	1.5	2.3	4.1
Total	N_category	174	174	150	107	74	13	112
	Mean_cat		47.7	23.3	9.1	10.8	3.6	33.8
	Mean_all		47.7	20.1	5.6	4.6	0.3	21.8
	Std Error of M.		1.5	1.1	0.6	0.9	1.2	2.6

Table 2D: Average Ownership by Ownership Stake and Size Classes  
Listed Companies  
Second Market

Size		Number of Companies	Largest stake	2nd	3rd	4-10th	> 10	Unknown
< 2	N_category	13	13	9	8	6	1	6
	Mean_cat		51.9	21.3	12.0	15.5	21.4	37.2
	Mean_all		51.9	14.7	7.4	7.2	1.6	17.2
	Std Error of M.		7.2	2.4	1.2	4.5		10.4
2 - <20	N_category	22	22	21	15	9	3	9
	Mean_cat		55.4	18.9	14.3	16.5	4.9	22.8
	Mean_all		55.4	18.0	9.8	6.8	0.7	9.3
	Std Error of M.		5.1	1.8	1.5	3.5	2.6	5.2
20 - <500	N_category	121	121	97	77	51	1	63
	Mean_cat		59.9	22.5	12.3	13.6	5.4	16.2
	Mean_all		59.9	18.0	7.8	5.7	0.0	8.4
	Std Error of M.		2.0	1.0	0.8	1.5		1.9
500 -2000	N_category	46	46	31	22	15		19
	Mean_cat		67.6	22.6	11.8	10.1		19.8
	Mean_all		67.6	15.2	5.6	3.3		8.2
	Std Error of M.		3.6	2.5	1.7	2.4		3.8
>= 2000	N_category	6	6	3	3	1		5
	Mean_cat		56.8	21.8	10.2	41.1		24.4
	Mean_all		56.8	10.9	5.1	6.9		20.3
	Std Error of M.		8.2	9.6	2.6			6.9
Holdings	N_category	68	68	57	50	33		46
	Mean_cat		53.4	21.8	11.2	14.8		19.1
	Mean_all		53.4	18.3	8.2	7.2		12.9
	Std Error of M.		2.4	1.3	0.8	1.8		3.3
Total	N_category	276	276	218	175	115	5	148
	Mean_cat		58.8	21.9	12.0	14.1	8.3	19.1
	Mean_all		58.8	17.3	7.6	5.9	0.2	10.2
	Std Error of M.		1.3	0.7	0.5	1.0	3.6	1.5

Table 3A: Average Ownership by Investor and Size Classes  
Listed and Non Listed Companies

Size		Individuals	Banks	Insurance	Firms	Holdings	Float	State	Employees	Unknown
< 2	N_category	74,428	4,755	838	55,098	10,350	183	9	42	45,278
	N_investor	154,444	5,647	1,040	65,698	10,846	183	9	42	45,278
	Mean_all	49.3	2.5	0.4	30.4	6.2	0.0	0.0	0.0	11.1
	Mean_cat	80.6	63.1	59.8	67.1	72.6	18.7	48.8	48.1	29.7
	Mean_inv	38.8	53.1	48.2	56.3	69.3	18.7	48.8	48.1	29.7
2 - <20	N_category	68,201	2,571	201	31,063	7,292	344	12	51	36,501
	N_investor	150,625	2,953	255	37,258	7,614	344	12	51	36,501
	Mean_all	60.9	1.8	0.1	23.0	6.2	0.0	0.0	0.0	8.0
	Mean_cat	79.0	60.7	54.4	65.4	75.2	10.7	38.9	33.1	19.3
	Mean_inv	35.8	52.8	42.8	54.6	72.0	10.7	38.9	33.1	19.3
20 - <500	N_category	34,507	3,800	187	24,805	12,857	525	18	206	26,179
	N_investor	79,558	4,510	286	30,779	13,480	525	18	206	26,179
	Mean_all	42.2	3.7	0.1	30.1	17.2	0.1	0.0	0.2	6.3
	Mean_cat	74.0	59.3	43.4	73.4	80.7	13.2	50.6	46.6	14.6
	Mean_inv	32.1	50.0	28.4	59.1	77.0	13.2	50.6	46.6	14.6
500 -2000	N_category	199	165	18	799	665	58	11	19	389
	N_investor	373	217	34	1,045	758	58	11	19	389
	Mean_all	6.3	5.6	0.4	44.5	37.4	1.0	0.5	0.1	4.1
	Mean_cat	46.9	50.2	34.8	81.9	82.7	25.4	69.6	8.4	15.5
	Mean_inv	25.0	38.2	18.4	62.6	72.5	25.4	69.6	8.4	15.5
>= 2000	N_category	40	43	10	140	173	25	19	15	89
	N_investor	56	62	15	180	237	25	19	15	89
	Mean_all	5.0	5.1	0.8	31.9	43.8	2.7	4.6	0.7	5.5
	Mean_cat	38.9	37.4	24.4	71.5	79.5	34.0	75.2	15.0	19.2
	Mean_inv	27.8	25.9	16.3	55.6	58.0	34.0	75.2	15.0	19.2
Holdings	N_category	6,084	1,175	65	3,139	2,142	133	12	69	4,186
	N_investor	12,695	1,653	113	3,919	2,485	133	12	69	4,186
	Mean_all	49.8	5.3	0.3	21.0	14.4	0.4	0.1	0.3	8.5
	Mean_cat	81.7	45.1	41.7	66.8	67.0	30.0	67.2	36.7	20.3
	Mean_inv	39.2	32.1	24.0	53.5	57.7	30.0	67.2	36.7	20.3
Total	N_category	183,459	12,509	1,319	115,044	33,479	1,268	81	402	112,622
	N_investor	397,751	15,042	1,743	138,879	35,420	1,268	81	402	112,622
	Mean_all	51.2	2.6	0.3	27.8	9.0	0.1	0.0	0.1	8.9
	Mean_cat	78.8	59.5	55.2	68.1	76.1	16.0	59.5	40.4	22.4
	Mean_inv	36.3	49.5	41.7	56.4	72.0	16.0	59.5	40.4	22.4

Table 3B: Average Ownership by Investor and Size Classes  
Non Listed Companies

Size		Individuals	Banks	Insurance	Firms	Holdings	Float	State	Employees	Unknown
< 2	N_category	74,417	4,727	821	55,078	10,319	171	8	42	45,236
	N_investor	154,428	5,586	1,002	65,668	10,803	171	8	42	45,236
	Mean_all	49.4	2.5	0.4	30.4	6.2	0.0	0.0	0.0	11.1
	Mean_cat	80.6	63.3	60.4	67.2	72.7	18.2	50.4	48.1	29.7
	Mean_inv	38.8	53.5	49.5	56.3	69.4	18.2	50.4	48.1	29.7
2 - <20	N_category	68,176	2,549	189	31,037	7,264	324	8	48	36,476
	N_investor	150,591	2,898	232	37,213	7,556	324	8	48	36,476
	Mean_all	60.9	1.8	0.1	23.0	6.2	0.0	0.0	0.0	8.0
	Mean_cat	79.0	60.9	55.8	65.5	75.3	10.1	55.0	35.0	19.3
	Mean_inv	35.8	53.6	45.5	54.6	72.3	10.1	55.0	35.0	19.3
20 - <500	N_category	34,401	3,723	156	24,740	12,741	434	16	196	26,062
	N_investor	79,369	4,316	216	30,679	13,326	434	16	196	26,062
	Mean_all	42.3	3.7	0.1	30.2	17.1	0.1	0.0	0.2	6.3
	Mean_cat	74.1	59.8	48.1	73.5	81.0	10.9	55.8	48.8	14.6
	Mean_inv	32.1	51.6	34.7	59.2	77.4	10.9	55.8	48.8	14.6
500 -2000	N_category	155	121	8	756	607	15	9	9	330
	N_investor	313	154	14	994	670	15	9	9	330
	Mean_all	6.0	4.7	0.3	46.7	38.3	0.1	0.5	0.1	3.4
	Mean_cat	52.5	52.8	51.1	84.4	86.2	11.8	75.3	11.7	14.0
	Mean_inv	26.0	41.5	29.2	64.2	78.1	11.8	75.3	11.7	14.0
>= 2000	N_category	25	24	4	119	146	4	14	8	64
	N_investor	39	28	4	147	175	4	14	8	64
	Mean_all	4.5	4.7	0.8	34.3	46.7	0.1	4.8	0.7	3.5
	Mean_cat	49.3	53.4	56.6	78.9	87.6	5.1	93.1	24.4	15.0
	Mean_inv	31.6	45.8	56.6	63.8	73.1	5.1	93.1	24.4	15.0
Holdings	N_category	5,984	1,092	48	3,064	2,010	36	7	54	4,012
	N_investor	12,523	1,508	78	3,813	2,287	36	7	54	4,012
	Mean_all	50.6	5.2	0.2	21.3	14.1	0.1	0.1	0.3	8.2
	Mean_cat	82.5	46.6	49.7	67.7	68.6	16.4	92.8	46.0	19.9
	Mean_inv	39.4	33.7	30.6	54.4	60.3	16.4	92.8	46.0	19.9
Total	N_category	183,158	12,236	1,226	114,794	33,087	984	62	357	112,180
	N_investor	397,263	14,490	1,546	138,514	34,817	984	62	357	112,180
	Mean_all	51.3	2.6	0.3	27.8	9.0	0.0	0.0	0.1	8.9
	Mean_cat	78.8	60.1	57.6	68.2	76.5	12.1	70.4	45.0	22.4
	Mean_inv	36.3	50.8	45.7	56.5	72.7	12.1	70.4	45.0	22.4

Table 4A: Average Ownership by Investor and Size Classes  
Listed Companies

Size		Individuals	Banks	Insurance	Firms	Holdings	Float	State	Employees	Unknown
< 2	N_category	11	28	17	20	31	12	1		42
	N_investor	16	61	38	30	43	12	1		42
	Mean_all	5.5	18.8	10.0	11.6	26.0	5.6	0.7		21.9
	Mean_cat	27.4	37.0	32.5	31.8	46.1	25.5	36.4		28.7
	Mean_inv	18.8	17.0	14.5	21.2	33.2	25.5	36.4		28.7
2 - <20	N_category	25	22	12	26	28	20	4	3	25
	N_investor	34	55	23	45	58	20	4	3	25
	Mean_all	14.3	11.9	7.4	16.8	28.3	7.7	0.5	0.2	12.8
	Mean_cat	28.6	27.1	30.8	32.4	50.6	19.3	6.6	3.4	25.6
	Mean_inv	21.0	10.8	16.0	18.7	24.4	19.3	6.6	3.4	25.6
20 - <500	N_category	106	77	31	65	116	91	2	10	117
	N_investor	189	194	70	100	154	91	2	10	117
	Mean_all	21.6	13.4	3.1	11.9	27.2	11.0	0.1	0.1	11.6
	Mean_cat	41.4	35.4	20.0	37.1	47.6	24.6	9.1	2.6	20.2
	Mean_inv	23.2	14.0	8.9	24.1	35.8	24.6	9.1	2.6	20.2
500 -2000	N_category	44	44	10	43	58	43	2	10	59
	N_investor	60	63	20	51	88	43	2	10	59
	Mean_all	11.4	18.2	2.1	15.7	25.5	12.4	0.8	0.5	13.3
	Mean_cat	27.0	42.9	21.7	37.9	45.7	30.1	44.0	5.5	23.5
	Mean_inv	19.8	30	10.9	32	30.1	30.1	44.0	5.5	23.5
>= 2000	N_category	15	19	6	21	27	21	5	7	25
	N_investor	17	34	11	33	62	21	5	7	25
	Mean_all	8.1	8.1	0.5	15.6	24.2	20.7	3.1	0.8	18.8
	Mean_cat	21.6	17.2	3.0	29.7	35.9	39.5	25.1	4.4	30.2
	Mean_inv	19.1	9.6	1.7	18.9	15.6	39.5	25.1	4.4	30.2
Holdings	N_category	100	83	17	75	132	97	5	15	174
	N_investor	172	145	35	106	198	97	5	15	174
	Mean_all	16.3	9.4	1.4	10.0	24.7	14.9	0.7	0.2	22.4
	Mean_cat	37.1	25.9	18.9	30.3	42.7	35.0	31.3	3.4	29.3
	Mean_inv	21.6	14.8	9.2	21.4	28.5	35.0	31.3	3.4	29.3
Total	N_category	301	273	93	250	392	284	19	45	442
	N_investor	488	552	197	365	603	284	19	45	442
	Mean_all	15.6	12.8	3.1	12.4	25.9	12.4	0.7	0.3	16.8
	Mean_cat	35.3	31.9	22.6	33.6	44.9	29.7	23.7	3.8	25.9
	Mean_inv	21.8	15.8	10.7	23.0	29.2	29.7	23.7	3.8	25.9

Table 4B: Average Ownership by Investor and Size Classes  
Listed Companies  
Cash Market

Size		Individuals	Banks	Insurance	Firms	Holdings	Float	State	Employees	Unknown
< 2	N_category	9	13	11	14	19	2	1		30
	N_investor	14	29	16	20	22	2	1		30
	Mean_all	7.2	13.3	12.4	15.1	25.1	0.5	1.0		25.4
	Mean_cat	28.0	35.7	39.4	37.8	46.2	9.1	36.4		29.6
	Mean_inv	18.0	16.0	27.1	26.4	39.9	9.1	36.4		29.6
2 - <20	N_category	10	10	8	16	11	6	2	2	13
	N_investor	13	34	12	22	24	6	2	2	13
	Mean_all	6.2	16.4	7.9	21.4	26.6	5.5	0.1	0.2	15.6
	Mean_cat	13.6	36.2	21.8	29.4	53.2	20.3	1.2	2.4	26.4
	Mean_inv	10.5	10.6	14.5	21.4	24.4	20.3	1.2	2.4	26.4
20 - <500	N_category	23	21	14	28	36	14	1		41
	N_investor	36	77	27	51	52	14	1		41
	Mean_all	11.3	14.8	4.0	21.0	29.2	3.8	0.1		15.9
	Mean_cat	28.9	41.6	16.9	44.2	47.9	15.9	4.1		22.8
	Mean_inv	18.5	11.3	8.7	24.3	33.1	15.9	4.1		22.8
500 -2000	N_category	6	6	3	14	18	8			21
	N_investor	7	7	7	17	24	8			21
	Mean_all	8.2	7.2	4.0	17.7	42.0	5.1			15.8
	Mean_cat	35.5	31.0	34.6	33.0	60.7	16.7			19.5
	Mean_inv	30.4	26.6	14.8	27.1	45.5	16.7			19.5
>= 2000	N_category				3	1				3
	N_investor				4	1				3
	Mean_all				61.9	22.6				15.5
	Mean_cat				61.9	67.9				15.5
	Mean_inv				46.4	67.9				15.5
Holdings	N_category	25	30	8	29	49	13			74
	N_investor	33	48	15	43	69	13			74
	Mean_all	9.8	13.4	2.9	13.7	30.2	4.0			26.0
	Mean_cat	33.3	38.0	31.1	40.1	52.4	26.3			29.8
	Mean_inv	25.2	23.7	16.6	27.0	37.2	26.3			29.8
Total	N_category	73	80	44	104	134	43	4	2	182
	N_investor	103	195	77	157	192	43	4	2	182
	Mean_all	9.1	13.2	5.2	17.6	30.1	3.6	0.2	0.0	21.0
	Mean_cat	28.7	37.8	27.2	38.9	51.6	19.5	10.7	2.4	26.5
	Mean_inv	20.4	15.5	15.5	25.8	36.0	19.5	10.7	2.4	26.5

Table 4C: Average Ownership by Investor and Size Classes  
Listed Companies  
Monthly Settlement Market

Size		Individuals	Banks	Insurance	Firms	Holdings	Float	State	Employees	Unknown
< 2	N_category		4	1	1	6	4			6
	N_investor		13	1	1	14	4			6
	Mean_all		9.2	0.3	0.1	54.6	22.7			13.1
	Mean_cat		16.1	2.0	0.7	63.7	39.7			15.3
	Mean_inv		4.9	2.0	0.7	27.3	39.7			15.3
2 - <20	N_category	3	2		2	4	2			3
	N_investor	5	2		2	6	2			3
	Mean_all	18.9	2.2		16.5	36.3	10.8			15.4
	Mean_cat	37.8	6.7		49.4	54.4	32.3			30.8
	Mean_inv	22.7	6.7		49.4	36.3	32.3			30.8
20 - <500	N_category	11	14	12	9	14	9	1	1	13
	N_investor	14	41	30	13	27	9	1	1	13
	Mean_all	19.3	12.5	9.5	4.7	19.9	15.8	0.6	0.0	17.6
	Mean_cat	40.4	20.5	18.1	12.1	32.7	40.5	14.0	0.5	31.1
	Mean_inv	31.8	7.0	7.3	8.4	17.0	40.5	14.0	0.5	31.1
500 -2000	N_category	15	16	6	12	20	17	2	5	19
	N_investor	18	31	12	15	36	17	2	5	19
	Mean_all	10.0	11.4	3.4	11.4	24.1	18.1	2.8	0.3	18.7
	Mean_cat	21.3	22.8	18.3	30.3	38.5	34.0	44.0	1.8	31.4
	Mean_inv	17.7	11.8	9.2	24.3	21.4	34.0	44.0	1.8	31.4
>= 2000	N_category	14	16	6	15	22	19	5	7	17
	N_investor	16	30	11	24	56	19	5	7	17
	Mean_all	9.9	7.8	0.6	9.8	23.0	25.1	4.0	1.0	18.9
	Mean_cat	21.8	15.1	3.0	20.2	32.4	40.9	25.1	4.4	34.4
	Mean_inv	19.1	8.1	1.7	12.6	12.7	40.9	25.1	4.4	34.4
Holdings	N_category	29	29	8	25	49	40	5	8	54
	N_investor	42	58	17	38	84	40	5	8	54
	Mean_all	10.5	7.1	0.5	7.1	20.5	24.9	2.1	0.3	26.9
	Mean_cat	27.1	18.4	4.9	21.4	31.4	46.6	31.3	3.1	37.4
	Mean_inv	18.7	9.2	2.3	14.1	18.3	46.6	31.3	3.1	37.4
Total	N_category	72	81	33	64	115	91	13	21	112
	N_investor	95	175	71	93	223	91	13	21	112
	Mean_all	11.3	8.7	2.2	8.1	23.5	21.9	2.2	0.4	21.8
	Mean_cat	27.3	18.6	11.7	22.0	35.5	41.9	29.5	3.1	33.8
	Mean_inv	20.7	8.6	5.5	15.2	18.3	41.9	29.5	3.1	33.8

Table 4D: Average Ownership by Investor and Size Classes  
Listed Companies  
Second Market

Size		Individuals	Banks	Insurance	Firms	Holdings	Float	State	Employees	Unknown
< 2	N_category	2	11	5	5	6	6			6
	N_investor	2	19	21	9	7	6			6
	Mean_all	3.8	38.9	9.1	8.2	13.0	9.9			17.2
	Mean_cat	24.6	46.0	23.5	21.2	28.1	21.5			37.2
	Mean_inv	24.6	26.6	5.6	11.8	24.1	21.5			37.2
2 - <20	N_category	12	10	4	8	13	12	2	1	9
	N_investor	16	19	11	21	28	12	2	1	9
	Mean_all	21.1	10.0	8.9	12.4	27.9	9.0	1.1	0.2	9.3
	Mean_cat	38.7	22.0	48.7	34.0	47.2	16.6	12.0	5.3	22.8
	Mean_inv	29.1	11.6	17.7	13.0	21.9	16.6	12.0	5.3	22.8
20 - <500	N_category	72	42	5	28	66	68		9	63
	N_investor	139	76	13	36	75	68		9	63
	Mean_all	27.1	12.9	1.4	8.8	27.6	13.6		0.2	8.4
	Mean_cat	45.5	37.2	33.4	37.9	50.6	24.2		2.9	16.2
	Mean_inv	23.6	20.6	12.9	29.5	44.5	24.2		2.9	16.2
500 -2000	N_category	23	22	1	17	20	18		5	19
	N_investor	35	25	1	19	28	18		5	19
	Mean_all	14.3	29.1	0.1	17.5	17.2	12.7		1.0	8.2
	Mean_cat	28.6	60.9	3.6	47.3	39.5	32.4		9.3	19.8
	Mean_inv	18.8	53.6	3.6	42.3	28.2	32.4		9.3	19.8
>= 2000	N_category	1	3		3	4	2			5
	N_investor	1	4		5	5	2			5
	Mean_all	3.1	14.1		22.5	31.4	8.6			20.3
	Mean_cat	18.9	28.1		45.0	47.1	25.8			24.4
	Mean_inv	18.9	21.1		27.0	37.6	25.8			24.4
Holdings	N_category	46	24	1	21	34	44		7	46
	N_investor	97	39	3	25	45	44		7	46
	Mean_all	30.8	7.0	0.5	8.5	22.5	17.5		0.4	12.9
	Mean_cat	45.6	19.9	32.6	27.4	44.9	27.0		3.6	19.1
	Mean_inv	21.6	12.2	10.9	23.0	33.9	27.0		3.6	19.1
Total	N_category	156	112	16	82	143	150	2	22	148
	N_investor	290	182	49	115	188	150	2	22	148
	Mean_all	23.8	15.2	1.9	10.7	24.0	13.8	0.1	0.4	10.2
	Mean_cat	42.1	37.4	32.2	36.0	46.3	25.3	12.0	4.7	19.1
	Mean_inv	22.6	23.0	10.5	25.7	35.2	25.3	12.0	4.7	19.1

# Transparency of Ownership and Control in Germany

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# 1 Introduction<sup>1</sup>

The purpose of this report is to provide an exploratory description and analysis of the transparency of ownership and control structures in Germany. In addition to a comprehensive legal survey, we present descriptive statistics on the concentration of voting rights. This is an original contribution because such data became first available in December 1996. The quantitative analysis draws on the German transposition of the EU Transparency Directive (88/627/EEC). Hence, our statistical analysis also puts the effectiveness of this piece of legislation to the test.

Why is transparency of ownership and control structures for listed companies, and for business groups that involve listed companies beneficial? This is not too basic a question to ask. We will show that transparency is not a reality in Germany and arguments against transparency still abound. The concept of disclosure and transparency are very much a novelty for German financial markets. A German Federal Securities Supervisory Office, *the Bundesaufsichtsamt für den Wertpapierhandel* (BAWe), was established under the German Securities Trading Act (*Wertpapierhandelsgesetz, WpHG*) in 1995. The necessary legislation was passed on 26 July 1994 (*Zweites Finanzmarktförderungsgesetz*).

Enhancing transparency is one of the declared goals of the BAWe : “Transparency is an essential element for the proper functioning of a financial market. It is not only interesting to know who holds the voting rights in a listed company but also constitutes an important prerequisite for achieving transparent securities markets. The timely publication of significant purchases and sales facilitates investor decisions and limits the possible misuse of inside knowledge“ (<http://www.bawe.de>). Our study benchmarks the effectiveness of the legal and practical measures that have been implemented against this declared goal.

From the cash-flow point of view, transparency is important because investors need to know what cash-flow rights they are acquiring when they purchase a particular stock. An investor who buys the shares of Allianz Holding AG is not merely purchasing cash-flow rights in an insurance company. The investor is purchasing a portfolio that includes insurance companies, reinsurance companies, banks and non-financial companies in Germany and abroad. Many of these companies hold equity portfolios themselves. A shareholder purchasing DM10,000 of Allianz stock should know how many DM he or she is investing in each of the holding companies.

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<sup>1</sup> Sections 2 and 3 of this report and the associated tables are taken from Böhmer (1997 b), which also contains an extension to section 5.

From the control perspective, transparency is important because the investor should know who is making the important long-term decisions in the company he invests in. Is the company controlled by a grand coalition of small shareholders? Is the company controlled by a family? Is the company controlled by its managers? Is it possible for an outsider to launch a hostile takeover bid? Investors should have the right to know who their business partners are and who is taking care of their money.

Transparency of the separation of ownership and control allows investors to assess the motivation of those who control the company. Investors are not indifferent to the information that a company is run by managers that have no cash flow stakes, a bank that controls the company using proxy votes, or by a large owner with a substantial cash flow stake. The German corporate governance debate on the “power of the banks” is also a debate of the separation of ownership and alleged bank control.

From the insider trading perspective, it is important to note that “insiders” are not just those working inside a company. Anybody can be an insider as long as he or she has access to privileged price-relevant information that has not yet been revealed to other market participants. Transparency is an important safeguard against insider trading. Those who potentially have access to such information can be identified and supervised.

The transparency of the board composition, the remuneration of the management, the professional history of the management and board members are also of interest to the investor. Interlocking directorates are yet another device that can be used to separate ownership from control. We only touch upon these aspects of transparency in the current draft. The link between ownership, control, disclosure, transparency and board composition will be the subject of future research.

Fairness, in the widest sense, is yet another motivation for effective disclosure and transparency. Large investors like banks, insurance companies, non-financial companies, and wealthy individuals usually have the means to obtain the information they require to make investment decisions and exert control. The central banks run company information databases that are accessible to banks. The motivation is to contribute to the stability of the financial system. Wealthy individuals can count on the services of specialized credit-rating agencies that, like detective agencies, will collect the information they require to take decisions. Ordinary investors do not have such means at their disposition. Transparency can help to insure that they get a chance to make equity investments on the same terms as the powerful and the wealthy. Transparency also helps to ensure that small

shareholders are not exploited or, at least, that they have a chance to learn about it. Finally, the best argument for transparency is that there are no good arguments against it.

From a European perspective, transparency is an important requirement for creating a truly integrated capital and goods market. For listed companies, transparency can help to ensure the equal and fair treatment of all investors, no matter in which EU country they reside. For all companies, transparency is important in the fight against money laundering, organised crime, free-riding that undermines the common tax base and is reassuring for suppliers and customers. Most Germans know who owns and controls important non-listed companies like Quelle and Bertelsmann. Non-German EU citizens and companies probably do not know, but should be given easy access to this information.

If ownership and control of German companies were to be transparent, what information would have to be disclosed? To compute the ultimate ownership of cash-flow rights it would be necessary to know the complete cash-flow perimeter of a listed company. This includes all cash-flow links (percentages of capital at par value) of all companies that are linked, directly or indirectly, with the listed company, both in the ownership and portfolio dimension. Allianz Holding AG would have to disclose its significant shareholders (larger than, say, 0.25%) and the holdings of all companies in its portfolio, the holdings of those companies, and so forth. We will show that, by law and in practice, we are unable to obtain complete information on the cash-flow perimeter.

The control perimeter is more difficult to measure than the cash-flow perimeter. Control is hard to define because in Germany it is not always proportional to voting power. When ownership is dispersed, voting 30% of the votes at an annual meeting can give complete control. Since control is so hard to define, the transparency of control structures is a particularly difficult subject. The disclosure and transparency of the control structure for listed companies, when control is measured by voting power, is one of the focal points of this report.

In Germany there are numerous legal devices that can be used to separate ownership, voting power and control. These include voting pacts (formal and informal), control and cash flow contracts, proxy voting, voting right restrictions, and pyramiding. We will show that it is very hard to connect the cash-flow perimeter with the control perimeter and obtain the information that would be necessary to compute, even approximately, quantitative measures of the separation between ownership and control.

In section 2 we first analyze legal disclosure requirements for all important legal forms in Germany. This discussion provides a general description of the environment in which German firms

operate. After defining various legal forms and groups we discuss the information content of annual reports and other company publications. Here we put a special emphasis on ownership and control information that can be extracted from publicly available documents and on how difficult it is to obtain. Next we describe the special regulation affecting AGs, stock exchanges, banks, investment companies, and insurance companies. In section 3 we present descriptive statistics on the relative importance of the respective legal forms in Germany. Here we also provide basic information on the distribution of legal forms across size classes and industries. Section 4 is exclusively devoted to the German implementation of the Transparency Directive. We first discuss the mechanics of the resulting control reporting system and then focus on the shortcomings of the current practice. We document several obstacles to true transparency. We find that some are due to the way the German security law was designed, while others are due to the way the law was implemented by the competent authority (the BAWe). To document these shortcomings we provide several examples. In section 5, we use the data generated by the new securities law (the WpHG) and present descriptive statistics on distribution of voting blocks in German AGs that are listed on (at least) one of the official markets. Section 6 concludes the report.

## **2 Legal and institutional background in Germany<sup>2</sup>**

In this section, we focus on the legal and institutional background in Germany. To assess the transparency of German ownership and control structures, it is necessary to understand disclosure rules and differences across legal forms. Disclosure and transparency are of greatest importance for the development of equity markets. Since they are the only legal form that can be listed, we put the emphasis on *Aktiengesellschaften*. Other legal forms also play an important role, because they are frequently part of the same group as listed AGs. Listed companies may own and control non-listed companies and vice versa. As we will argue below, group structures that involve listed and non-listed companies pose the biggest challenge for disclosure and transparency because they simultaneously involve firms with strict disclosure rules and firms with lax disclosure rules. Overall transparency is difficult to ensure in these cases.

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<sup>2</sup> All legal references are based on the most recent available versions as of June 1997. Most legal references are made in the tables and, for brevity, are generally not repeated in the body of the paper.

## 2.1 Company types

German commercial laws define several ways to organize firms with limited or unlimited liability for owners. Table 1 lists the basic characteristics of the most important legal forms of German firms. The most relevant legal distinction is between AGs and GmbHs (*Kapitalgesellschaften*), which provide limited liability to owners, and other legal forms. All limited-liability firms are heavily regulated, while other forms have considerable freedom in designing company statutes and contractual relations between owners and other stakeholders. We try to describe the extent of this freedom by a subjective assessment of the degree of imperativeness of the legal rules (last column). It should be noted that some "low imperativeness" forms are of substantial importance in Germany, most notably *Vereine* (unions) and *Stiftungen* (foundations). *Vereine* (unions) sometimes appear as organizational form of large enterprises (for example, the largest German automobile association (ADAC) is organized as a *Verein*, and so are all soccer clubs).<sup>3</sup> *Stiftungen* often appear as dominant stakeholders or sole owners of the largest companies.<sup>4</sup> Other forms like the GbR or the *stille Gesellschaft* play only minor roles among larger firms.

## 2.2 Company groups: Definition and publicly available information

In this country survey, we investigate the effective disclosure of ownership and control structures. Ownership, even in business groups, is relatively easy to define and to measure. In contrast, it is far more difficult to measure "control," especially in business groups.. To assess the transparency of control structures in Germany we need a definition of control that is (i) measurable and (ii) publicly observable.

Germany has no legal or otherwise official definition of a holding company or a group. Groups usually must, however, prepare consolidated annual reports and play a role with regard to several types of regulation. Table 2 provides summaries of various legal definitions of control in German law, while Table 3 lists ownership-related information that must be published in the annual accounts. In the following discussion, we relate the control definitions of different legal codes to the publication requirements associated with them.

With the exception of the banking code, each row in Table 2 corresponds to control information that is, at least theoretically, public information. Generally speaking, control is most easily defined in terms of a deciding majority of voting rights or contractual arrangements delegating

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<sup>3</sup> Currently, the larger clubs contemplate following the British model and convert to corporations.

the decision power over the resources of a firm. Thus, in basic terms, we should consider companies that are ultimately majority controlled by a common parent as belonging to the same group. This is the basic idea behind the definition of groups in Germany's commercial code (HGB). The relevant part of the code governs how incorporated firms (AGs, KGaAs, and GmbHs) have to consolidate subsidiaries, whether fully or partially owned, into their annual financial report. With respect to effective disclosure, this regulation has two effects. First, after identifying all parent companies, one could construct a tree containing all major stakes held by this company. Second, § 285 XIV requires that all incorporated firms state which company includes them in its consolidated accounts. As a result, the HGB definition allows identifying groups as long as incorporated firms are involved. It does not provide sufficient information on group structures if the group hierarchy includes different legal forms.

The group definitions of the corporate code (AktG) serve as a basis for various legal requirements concerning AGs. Most notably, if a company owns more than 20% of the shares of an AG, it has to report this holding to that corporation, which in turn must publish this information in its annual financial report. The shortcoming in terms of effective disclosure is, again, that only shares held by incorporated firms in the same are affected by this regulation.

The PublizitaetsG governs most unlimited-liability companies that exceed moderate size criteria (see Table 2). Its primary intention is to require all but the smallest firms to publish their annual reports in a format similar to incorporated firms, except that § 285 XIV is not extended to these firms (there is no requirement to publish the parent company). Another notable deviation is stated in § 5 II, which exempts most unincorporated legal forms (OHG, GmbH & Co KG, KG, and GbR) from annually publishing their stakes in other firms.

The WpHG, the German transposition of the EU transparency directive (discussed in detail below), yields the most comprehensive control information, albeit only for the few incorporated firms that have their shares listed on an official German market.

Control information of potentially similar richness is prompted by the German antitrust code (GWB) for a similarly small set of firms. Once a firm has to file a change in ownership or voting blocks crossing 25% or 50% (which could be caused by a stake sale, a formal voting arrangement, appointing at least 50% of the managing or supervisory board, or other means), it must provide very

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<sup>4</sup> Herrman (1997) analyzes the financial performance of companies led by Stiftungen.

detailed information on its ownership structure.<sup>5</sup> The reason is the GWB's requirement that each acquirer of such a stake must disclose the complete group structure to the BKartA (the federal antitrust office). This information is published monthly for approved stake purchases. The regulation, however, affects only firms that (i) are sufficiently large (bidder and target jointly exceed DM 500 Mio. in sales),<sup>6</sup> (ii) succeed in purchasing a stake prompting the filing requirement, and (iii) do not wish to exert sufficient effort to disguise their group structure.<sup>7</sup> Finally, the KWG defines financial and banking groups without directly requiring public disclosures.

### **2.2.1 Publicly accessible ownership information in annual accounts**

Table 3 provides a detailed account of ownership information that firms of different legal forms must provide with or in their annual reports. While public disclosure of annual reports is mandatory for all larger firms (see footnote 1 in Table 3), the control information included in these reports varies greatly across legal forms. With the exception of GmbHs, no firm must reveal the identity of owners who are individuals in its annual report. In contrast, if a company owns more than 25% in an AG, KGaA, or an eG, the latter must include this information in its annual report. In addition, AGs, GmbHs, KGaAs, eGs, and large *Vereine* must include their own stakes in other firms, if they exceed 20%.<sup>8</sup> Overall, the most stringent publication requirements are associated with incorporated firms, while other legal forms are often not required to annually provide such information.

The lax regulation of some legal forms has a propagation effect. Consider, for example, the notification of a 25% stake in an AG to that corporation required by § 20 AktG. While that article stipulates that stakes held by firms belonging to a group must be cumulated, it seems plausible that this notification could substantially understate the true stake size of a group if that group includes layer(s) of unincorporated firms; no regulator or investor can generally associate the group structure above with that below, because the intermediate layer is not required to publish ownership information.

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<sup>5</sup> § 23 V GWB.

<sup>6</sup> § 23 I GWB.

<sup>7</sup> Several conversations with BKartA officials indicate quite a few instances where acquirors attempted to avoid filing requirements by engaging in various attempts to hide the size of the stake purchased (for example, by distributing the new stake over several individuals or firms) or the ultimate owner of the acquiror.

<sup>8</sup> Stakes do not have to be reported, if its effect on the firm's financial status is deemed minor or if disclosure would harm the

To conclude, the publication requirements in Table 3 may provide comprehensive ownership information for some firms, but are certainly not sufficient to construct a systematic picture of control structures in Germany. Even though the filings based on the WpHG provide a substantially deeper picture of ownership of officially listed AGs (with the shortcomings discussed below), the additional publication requirements discussed above also affect the quality of these filings.

To see that these requirements are the weak link in the chain, consider the following example. Let us presume that the parent company of a group controlling votes in a listed AG does not wish to make the true degree of control public. The parent company should limit the votes held directly to the degree it wishes to disclose. Since votes held by subsidiaries that cannot be traced back to the parent company are suitable to be overlooked, all other necessary votes should be held by these subsidiaries. Then the group should structure itself such that one (or more) layers consist of unincorporated firms. The more such layers are part of the group, the less probable it is that the true group structure is publicly known, and the less likely are WpHG filings providing true transparency, because votes controlled by unincorporated subsidiaries or their daughter firms can hardly be linked to the parent.

### **2.2.2 Publicly accessible ownership information unrelated to annual accounts**

In this section we discuss publication requirements regarding founders, company statutes, and owners, as well as restrictions on share transfers and repurchases of own shares. Especially company statutes and related contractual arrangements provide valuable control information, because German companies frequently enter contracts where one company fully foregoes claims on profits or decision power in favor of another company. For AGs and KGaAs these contracts are tightly regulated and must be filed with the company register, making them publicly accessible.<sup>9</sup> Similar contracts involving other legal forms are not directly regulated, providing potential loopholes as far as transparency is concerned.

Table 4 lists the publication requirements for each of the legal forms introduced above. It should be noted that we use the term 'publication' in the sense of information being publicly accessible, which does not generally imply that it can be obtained easily, quickly, or from a single, centralized source. Issues relating to the availability of information are discussed in section 2.2.3.

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<sup>9</sup> §§ 291 -318 AktG.

Company statutes must be filed by all incorporated firms, cooperatives, and unions. All legal forms except e.G.s that have physical founders must file the identity of these individuals. The GbR is a less common form of organization, because it is hardly regulated and prone to fraudulent activities. The '*stille Gesellschaft*' is not a stand-alone entity, but rather an extremely flexible way to become a stakeholder in any other legal form. The German word '*still*' literally means 'quiet,' which describes the purpose of this legal form well. Via a suitable contractual agreement, a quiet partner can obtain equity-like claims, debt-like claims, or a mixture of both. This contract does not have to be disclosed to the extent it is not covered by laws like §§ 297-318 AktG (governing contracts delegating control or cash flow rights that involve incorporated firms).

A different picture emerges for information about current company owners (as opposed to founders). All companies (except the ones not filing their founders) but AGs must keep the company register up to date with respect to owners. In the context of the transparency of groups, this implies that an unlisted AG where each shareholder owns less than 20% is the easiest way to disguise group structures: as soon as such an AG is used as an intermediate group layer, it becomes virtually impossible to link group levels below the AG to group levels above. Owners smaller than 20% do not have to be included in the AGs annual report, and none of the owners must publicize its stake in that AG. This is actually an example for a situation where not even WpHG (transparency directive) filings may be effective. Assuming that this AG owns a majority of another listed AG and some ultimate parent has majority control over three 19% shareholders in the unlisted AG. Then the WpHG would require the parent to disclose its majority control over the listed AG. However, since there is no way to identify the owners of the unlisted AG, the parent may refrain from reporting appropriately without fear of sanctions.

AGs do have to file participation lists for each annual general meeting (AGM). This list provides the identity of each individual or organization exercising votes. In practice, it does not substantially help identifying the A's ownership structure, because proxy votes delegated to banks, individuals, or organizations cannot be traced back to their real owners. This is true even if the real owner has given explicit instructions on how to vote the shares (see footnote 3 in Table 4).

If they are not already implied by the nature of the legal form (for example, in the case of unlimited-liability firms), restrictions on the transfer of ownership may generally be imposed by company statutes. For example, AGs are free to create registered shares and require company approval for transfers. While industrial companies rarely use such restrictions, they are employed by most insurance companies organized as AGs, even when they are listed on a stock exchange. Finally,

with the stated reason of creditor protection, if share repurchases are allowed, they are tightly regulated.

### **2.2.3 Accessibility and availability of ownership data**

All companies that are required to make their annual reports public must file them with the responsible company register. The company register then has to publish the filings in the official newspaper of the federal government (*Bundesanzeiger*) and, in addition, in another newspaper.<sup>10</sup> Several filings, however, are exempt from newspaper publishing. For example, participation lists of AGMs and the identity of limited partners of a KG must be reported to the register (and are publicly accessible there), but need not be published elsewhere. The reasons that the publication requirement does not imply that 'publicly accessible' information is easily, quickly, or systematically available to the public is discussed in the following.

#### *2.2.3.1 Company registers*

Company registers are decentralised and operated by local courts<sup>11</sup> and firms must file their documents to each local court where they operate a business. Several obstacles exist to actually obtaining this publicly accessible information.

- First, to obtain filings of a particular company, one must approach a potentially very distant court where the company of interest operates a business.
- Second, the typical register stores all information on paper and is confined to a few rooms in the local court building. This has the consequence that generally only the most recent filings are on site, while older documents are deposited in some archive without public access. Court employees will then take requests to transport the filings to the court for inspection. Since most courts are significantly understaffed, this may require a couple of days or weeks.
- Third, filings are sorted by company, but not by the type of document. Thus, to obtain, say, the items on the agenda of an AGM for a period of 10 years, one often has to manually search through thousands of pages.
- Fourth, and perhaps most serious, most companies simply violate the law by not furnishing mandatory filings. Hansen (1996, p. 56) estimates that two thirds of German companies break the law in this way. He argues that because of understaffing, courts are not able to sanction or even recognize these violations. While the largest firms most likely experience sufficient public scrutiny to fear adverse publicity if they do not file, this may not be a credible threat for smaller firms. In particular, for smaller holding companies on some intermediate group level simply not filing

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<sup>10</sup> § 10 HGB.

<sup>11</sup> § 125 I FGG.

required documents may represent a blunt alternative to more elaborate disguises of control structures. The maximum penalty for such a violation is a modest DM 10000.<sup>12</sup>

In sum, company registers theoretically provide valuable information about control structures. In practice, if the required filings have actually been made, it is very difficult and especially time consuming to obtain such information.

#### 2.2.3.2 *Bundesanzeiger*

The *Bundesanzeiger* is an official newspaper of the federal government serving various purposes. It includes partial company register filings and/or references to other papers where related firm data has been published. The relevant part of the *Bundesanzeiger* is available on CD-ROM from 1991 onwards. Since the relevant *Bundesanzeiger* section obtains its content from the company registers, it cannot be more informative than the registers. While the CD-ROMs make a search substantially faster compared to the registers, they are of limited use. First, each CD contains one calendar quarter of filings. For example, to determine the owners of a GmbH one must potentially search dozens of CDs. An index CD is available, but personal experience proves it incomplete and of a cumbersome structure that substantially reduces search efficiency. Second, owners of GmbHs that last changed ownership before 1991 cannot be identified electronically and the relevant filing would have to be searched by going through paper copies page by page. In short, the *Bundesanzeiger* has been designed for official announcements and not for easy access to information.

#### 2.2.3.3 *Federal security office (BAWe)*

The BAWe publishes share-price relevant announcements (required by insider trading regulation) continuously and information on voting stakes in listed firms annually. In its recent annual report (BAWe 1997) it announces further steps to provide voting information more promptly. A first step in this direction has been taken by improving BAWe (1996) and by publishing bi-monthly cross-sections on the internet.

#### 2.2.3.4 *Federal antitrust office (BKartA)*

The BKartA publishes all filings related to successful and approved stake purchases and takeovers in its bi-monthly newsletter. It generally follows an information-friendly approach in providing access to data on completed transactions.

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<sup>12</sup> § 14 HGB.

### 2.2.3.5 Federal banking and insurance supervision

Both offices publish only aggregate information and are not allowed to provide details on individual-firm filings.

## 2.3 Regulation of share corporations (Aktiengesellschaften)

Since AGs are the only legal form that may list on a stock exchange we discuss their features in more detail below.

### 2.3.1 Shareholder meetings and board structure

The AG has three governing bodies: the AGM (*Hauptversammlung*), a supervisory board (*Aufsichtsrat*), and a managing board (*Vorstand*). In the AGM, shareholders generally decide by simple majority, although the law or statutes may require different voting rules.<sup>13</sup> The supervisory board must have at least three members<sup>14</sup> and includes worker representatives for all but the smallest AGs.<sup>15</sup> The supervisory board elects the managing board that must have at least one member.<sup>16</sup> No supervisory-board member may be on the managing board or in a position of similar executive power.<sup>17</sup>

Table 6 describes selected features of AGMs and boards for German AGs. To call an irregular AGM, at least 5% of capital is necessary, although company statutes may specify a smaller percentage. In Germany, no individual compensation package of board members must be published. Aggregates are included in the annual reports. Similarly, executive trading in their firm's shares could be traced by the BAWe (after 1995), but is not made public. Both potentially beneficial disclosure requirements would be in conflict with Germany's strong legal protection of personal data.

Very revealing with respect to transparency are several suits advanced by Ekkehard Wenger for disclosure of stakes in other firms and hidden reserves.<sup>18</sup> For example, in *Wenger vs. Siemens AG* (see note 6 to Table 6) the court compared a shareholder's request for disclosure of stakes held by the firm to the information provided to the general public as intended by the EU Transparency

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<sup>13</sup> § 133 AktG.

<sup>14</sup> § 95 I AktG.

<sup>15</sup> § 96 AktG.

<sup>16</sup> § 76 II AktG, except for insurance companies, where the managing board must have at least two members (§ 34 VAG).

<sup>17</sup> § 105 AktG.

<sup>18</sup> Ekkehard Wenger is a tenured professor of business administration at the University of Würzburg and a well known shareholder activist.

Directive. It ruled that shareholders should have at least the information that is soon available to the public. Observers expect similar rulings on related issues in the future (see Schneider 1995). The fact that a court ruling is necessary to reassure this basic right of shareholders illustrates well the German tradition of preserving the incumbents' power by emanating as little information about the firm's activities as possible.

Finally, the corporate code also provides for legal suits by shareholders against executives. §§ 93 and 116 AktG define the fiduciary duty of the members of both boards and make executives personally liable for damages they have caused to the company by violating these duties.

### **2.3.2 Proxy rules**

§ 135 AktG governs how shareholders can name proxy agents as their representatives at the AGM (summarized in Table 7). The proxy vote may be cast by any organization, bank, or other agent of the shareholder. The shareholder has the option to reveal his name, regardless of whether he provides explicit instructions how to vote his shares or not. Typically, shareholders remain anonymous, deposit their shares with banks, and grant general power of attorney to that bank with respect to all shares in their portfolio.

### **2.3.3 Share types**

Information on different share types is presented in Table 8. AGs must issue common stock (*Stammaktien*) with one vote per share.<sup>19</sup> In addition, up to 50% of total capital can be preferred stock (*Vorzugsaktien*), where each share receives a cumulative, preferential dividend.<sup>20</sup> The preference can be defined, for example, in terms of seniority to the dividend claim of common stock or in terms of a larger dividend. Given the preference, these shares may be issued without the right to vote. Strictly speaking, however, these shares do have a (dormant) vote; § 140 II requires that each preferred share has a vote if the preferred dividend is not paid for two years in a row. In addition, preferred-share holders may have the right to vote in matters of special interest to them.<sup>21</sup>

In addition, firms may issue *Genußscheine* (participation rights), that are very similar to U.S. type preferred stock. These rights have no voting rights attached and may be designed sufficiently

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<sup>19</sup> The only cases where one class of shares has several votes per share are formerly state-owned firms where the state has retained control in this way. While illegal under current law (§ 12 II), state governments may grant exceptions to the rule if it is in the interest of the economy.

<sup>20</sup> § 189 AktG.

<sup>21</sup> § 141 AktG.

debt-like to make dividends tax deductible, or equity-like to be included in banks' equity capital. Even though *Genußscheine* can be listed on stock exchanges, they are primarily used by banks (one prominent exception is family-owned Bertelsmann AG, whose only listed securities are *Genußscheine*). New issues of equity securities generally requires a 75% majority at the AGM.

#### **2.3.4 Ownership versus control of *Aktiengesellschaften***

German law allows various devices that detach control rights from cash flow rights. Table 9 summarizes the most important practices and their implications for transparency. First, shares may have limited, but not multiple voting rights. As discussed in the previous section, the AktG explicitly allows nonvoting shares up to the amount of ordinary shares outstanding.<sup>22</sup> Non-voting shares are a potentially powerful mechanism to double the relative voting power of ordinary shares, but are primarily used by relatively small, family-owned companies. Also, non-voting shares can be turned into voting shares by those controlling the majority of voting shares and non-voting shares. Since the ownership of non-voting share is not usually disclosed, they can represent an important pool of hidden voting power.

In contrast, multiple voting rights per share are generally illegal, but may be authorized by state authorities.<sup>23</sup> Company statutes may further impose voting caps that limit the percentage of votes by individual shareholders.<sup>24</sup> In practice, multiple voting rights are of little importance and limited to a few formerly state-owned firms. Voting caps are often claimed to reduce the power of large shareholders. It is not clear, however, how appropriately structured informal voting pacts to overcome the caps could be detected. Voting caps have an adverse effect on transparency: large voting power cannot be exercised once it is revealed. Again, the company statutes containing the voting cap information can be difficult to obtain (see the discussion on access to company registers).

Large share blocks in themselves do not leverage voting power relative to the ownership of cash-flow rights. However, the weak protection of minority shareholders effectively allow sizeable transfers to blockholders once a coalition owns at least 75% of the votes. Specifically, a 75% majority may legally make a binding tender offer to minority shareholders below the market price.<sup>25</sup>

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<sup>22</sup> § 139 AktG.

<sup>23</sup> § 12 AktG.

<sup>24</sup> § 134 I AktG.

<sup>25</sup> §§ 304, 320b. Wenger (1996) analyzes such offers to minority shareholders and finds that in 39 of 53 cases the offer is below the market value on the day before, and in 32 cases below the market value three months earlier. For the former 39 cases, the market value exceeds the compensation by 74%.

In this sense a 75% coalition effectively controls 100% of the voting rights. Given the power of blockholders on corporate disclosure policy, its effect on transparency hinges on the blockholders' attitude towards disclosure.<sup>26</sup>

Probably the most important device to leverage control are group structures involving cross shareholdings, contractual arrangements, and pyramids. Cross holdings effectively imply (potentially illegal) holdings of own shares and increase the voting power of any existing blockholder. In addition, they promote inefficient 'voting cartels,' where involved management teams vote in favor of each other at the respective AGMs. Contractual arrangements delegating control are widely used within German groups. Pyramids with outside equity on various levels may concentrate highly leveraged control at the top layer. To the extent that intermediate group levels do not have to report ownership or stakes held, pyramids substantially reduce transparency.

Finally, supervisory-board composition may have substantial influence on control leverage. First, some shareholders may have a high board representation relative to their shareholdings. This is true especially for banks and other financial institutions. To the extent that represented banks also hold debt, their incentive to provide transparency to other shareholders may be very limited. Second, personal interlocks between companies have the same effect as cross holdings.

## 2.4 Stock exchanges

Eight regional exchanges operate in Germany and each is primarily regulated by state authorities. The major market is in Frankfurt and is owned by Deutsche Börse AG, a holding company that in turn is owned primarily by banks, specialists (*Kursmakler*), and brokers (*Freimakler*). The other seven regional exchanges operate in Berlin, Bremen, Düsseldorf, Hamburg, Hannover, München, and Stuttgart. Each exchange operates three market segments: *amtlicher Handel* (official market), *geregelter Markt* (regulated market), and *Freiverkehr* (OTC). Since 1997, Frankfurt additionally operates *Neuer Markt* (new market) to accommodate young growth firms.

Table 10 lists the number of firms, their aggregate market capitalisation, and the number of IPO's between 1977 and 1995 on each market segment. In terms of market capitalisation, the official markets have about 42 times the size of the regulated markets, and about 66 times the size of the OTC markets. Put differently, its capitalisation of DM 795 billion amounts to 96% of total

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<sup>26</sup> Even though voting control in excess of 5% must be disclosed to the BAWe, blockholders may use their power to structure their involvement in such a way that true group structures remain undisclosed. See the discussion in section 2.2.1 above.

capitalisation. The OTC markets are dominated by foreign firms, which account for 87% of all OTC firms.

Among the major segments, several trading systems exist. First, approximately the largest 100 firms are traded continuously on IBIS, a computerised trading system. Second, round lots in all officially listed firms can be traded with variable prices. Third, all smaller orders are filled at the *Kassakurs*, a price set daily to maximise transaction volume based on the order book.

Table 11 provides some basic descriptive statistics on share trading and ownership in Germany for exchange-listed shares. First, both trading and market capitalisation is highly concentrated: the 5% most actively traded AGs account for 83% of all trading (in terms of DM volume), and the 5% largest AGs account for 67% of total market capitalisation. The most important type of shareholder are companies, owning about 42% of all shares. Banks, insurance, and investment companies together own 30%, foreign owners 9%, the government 4%, and private households 15%. Only little above 5% of the population holds stock, and in the aggregate stock accounts for only 5% of total assets held by private households.

#### **2.4.1 Special requirements for listed AGs**

German law sets forth several requirements for listed securities. In the following paragraphs, we describe the rules for listing equity shares on each of the market segments.

##### *2.4.1.1 Amtlicher Handel (official market)*

The issuer, together with a credit institution that has a seat on a German exchange, can apply for listing.<sup>27</sup> For their own listing, credit institutions do not need another institution to accompany its listing. It is mandatory to publish a prospectus<sup>28</sup> and an interim financial report during the fiscal year.<sup>29</sup> For an initial listing, the expected market value of the listed shares must generally exceed DM 2.5 Mio. and at least 25% of the issue must be widely held, but the exchange may admit smaller issues or a lower percentage widely held if it anticipates a sufficiently deep market.<sup>30</sup> It is further

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<sup>27</sup> §§ 36 II BörsG.

<sup>28</sup> § 36 III BörsG.

<sup>29</sup> § 44b I BörsG.

<sup>30</sup> §§ 2, 9 BörsZulV.

required that the issuer have existed for at least three years, unless the issue is expected to be in the interest of the issuer and the public.<sup>31</sup>

The prospectus must contain detailed information on the securities to be listed and its contents are comparable to SEC form S-1. In addition to basic information on the issuer and price, size, and cost of the issue, it must contain all potential restrictions on transfers and the procedure for future seasoned issues of the same security.<sup>32</sup> The issuer must also publish the nature and result of potential tender offers or exchange offers pertaining to the security during the year prior to listing.<sup>33</sup> With respect to control over the issuer, the prospectus must contain a listing of all shareholders owning 5% or more of capital or votes, all shares held by management and board, and other persons or companies that have a controlling influence on the issuing firm.<sup>34</sup> Interim financial reports must contain basic information on the issuer, at least sales and profits following the requirements for regular annual reports.<sup>35</sup>

#### *2.4.1.2 Geregelter Markt (regulated market)*

The issuer, together with a credit institution that has a seat on a German exchange, can apply for listing.<sup>36</sup> For their own listing, credit institutions do not need another institution to accompany its listing. The issuer has to publish a financial report at the time of the listing (as opposed to a more detailed prospectus<sup>37</sup>), but no additional reports during the fiscal year. On the other hand, in the case of a first public offering the issuer must publish a prospectus.<sup>38</sup> It must contain basic information on issue and issuer and is less comprehensive than that required for official listings. It nevertheless contains the items listed in the previous sections, except for shares held by management and board.<sup>39</sup>

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<sup>31</sup> § 3 BörsZulV.

<sup>32</sup> § 15 I BörsZulV.

<sup>33</sup> § 16 BörsZulV.

<sup>34</sup> §§ 19 II, 28 II BörsZulV.

<sup>35</sup> § 54 I BörsZulV.

<sup>36</sup> §§ 71 II BörsG.

<sup>37</sup> § 73 I BörsG.

<sup>38</sup> § 1 VerkProspG.

<sup>39</sup> § 7 VerkProspG and §§ 2, 4, 5, 6, 7, 8, 10 VerkProspVO.

### 2.4.1.3 Other market segments

Listing requirements for all other market segments (*Freiverkehr* and *Neuer Markt*) are set up by the exchanges and not governed by law. The only legal requirement is a prospectus (as described in section 2.4.1.2) in the case of initial public offerings.<sup>40</sup>

## 2.5 Regulation of banks and insurance companies

For regulatory purposes, German banking law distinguishes between three major types of banks: credit institutions, financial institutions, and financial holdings. § 1 KWG defines activities that are considered banking activities and labels a company a credit institution (*Kreditinstitut*), if it performs banking functions such as taking deposits, extending loans, and securities brokerage. If a company is not a credit institution, but its main business is, for example, to purchase stakes in other firms, factoring, leasing, credit cards, securities trading, or other investment banking activities, it is labeled a financial institution (*Finanzinstitut*). Finally, a financial holding (*Finanzholding*) is a financial institution whose subsidiaries are primarily financial or credit institutions, where at least one subsidiary is a credit institution. Only credit institutions, and by implication financial holdings, are regulated by the supervisory authorities (*Deutsche Bundesbank* and *Bundesaufsichtsamt für das Kreditwesen*). For the sake of brevity, in the following we will use “bank“ as a synonym for both credit institutions and financial holdings.

Banks can be organised in any legal form except as sole proprietorships.<sup>41</sup> Private insurance companies may be organised as *Aktiengesellschaften* or as *Versicherungsverein auf Gegenseitigkeit* (mutual companies).<sup>42</sup> The supervisory authorities must license all banks and insurance companies.

The ownership of stakes in non-banking and non-insurance firms is not heavily restricted. There is no general limit on stakes held by insurance companies (except for very rigorous restrictions on the assets of life insurers). Banks may not hold more than 15% of their own equity as long-term investments in any unrelated firm, and not more than 60% of their capital for all such investments together.<sup>43</sup>

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<sup>40</sup> § 1 VerkProspG.

<sup>41</sup> § 2a KWG. Additional restrictions apply to real estate banks, which may only be organized as AG or KGaA (§ 2 HypBankG), and (private) real estate savings banks, which may only be organized as AG (§ 2 BausparkG).

<sup>42</sup> § 7 I VAG.

<sup>43</sup> § 12 V KWG.

Both banks and insurance companies face extensive ownership-disclosure requirements for their owners and for stakes in other firms. All such filings go to the respective supervisory authorities and are confidential.<sup>44</sup> Public disclosure requirements are governed by the rules on the respective legal form. Only mutual insurance companies, which are a variant of the *Verein* (union), face stricter requirements with respect to their financial reporting compared to other unions.<sup>45</sup>

## 2.6 Regulation of investment companies

The most important type of investment company is the *Kapitalanlagegesellschaft* (KAG), a special type of credit institution and as such subject to banking regulation.<sup>46</sup> KAGs may set up public funds and special funds. The latter faces less rigorous publication requirements, but may have at most 10 investors whose certificates cannot be transferred without consent of the KAG. Admissible legal forms are the AG and the GmbH.<sup>47</sup> AGs must issue registered shares and their transfer is subject to the approval of the management board.<sup>48</sup> In contrast to U.S.-type fund-management companies, KAGs must separate their own assets from investor's assets (investors receive certificates and not shares of common stock). Every six months KAGs have to publish a detailed list of the assets of each of their funds.

Another type of investment company is the *Unternehmensbeteiligungsgesellschaft* (UBG). The investment of KAGs in non-listed shares is restricted to 10% of each fund, or up to 30% as "stille Beteiligung" if the fund's stated purpose is to invest in such firms.<sup>49</sup> In contrast, UBGs exclusively invest in such "quiet stakes" and unlisted securities. UBGs are not considered credit institutions and are supervised by regional (state) authorities. The mandatory legal form is the AG with a minimum capital of DM 2 Mio. Within 10 years of incorporation, 70% of the equity must be

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<sup>44</sup> In an apparent tribute to the authors of the EU Transparency Directive, § 7a II VAG specifies that owners of stakes in insurance companies (mandatory reporting of 10%-stakes) must calculate their stake according to 88/627/EEC, Art. 7 (1). Ownership reporting is for regulatory purposes only and is not publicly disclosed. The same applies to the code defining the calculation of stakes in banks (§ 1 IX KWG).

<sup>45</sup> § 16 VAG subjects mutuals to most of the commercial code, HGB; §§ 341 - 341o govern issues specific to insurance companies in general.

<sup>46</sup> § 2 KAGG. One difference to banks is the minimum capital of DM 5 Mio. (§ 2 II KAGG), as opposed to ECU 5 Mio for credit institutions.

<sup>47</sup> § 1 III KAGG.

<sup>48</sup> § 1 V KAGG, GmbH statutes can deviate from this rule.

<sup>49</sup> § 8 II, § 25b I-III KAGG.

officially listed and offered to the public.<sup>50</sup> The major distinction to KAGs is that UBGs do not manage funds that issue certificates to investors, but rather hold investments as their own assets.

Until they go public, UBGs do not have to disclose a list of their investments. At the time of the IPO, a company report must identify all stakes held via securities, but not those held via quiet stakes.<sup>51</sup> In contrast to stakes held by KAGs, those held by UBGs remain by and large anonymous. In their annual reports only the number of stakes held and changes during the year have to be presented.<sup>52</sup>

### 3 Estimating the relative importance of legal forms

Table 12 to Table 14 provide descriptive statistics on the number of firms in the various industries by legal form. While no complete survey of companies exists, both the *Bundesbank* and the German Statistical Office periodically publish summary information on companies reporting to them. The *Bundesbank* obtains balance sheets from all firms issuing bills of exchange, the statistical office from all firms filing tax returns. Both consider individual-firm annual reports as opposed to consolidated accounts.

#### 3.1 The number of firms in Germany

Table 12 shows the number of manufacturing and trading companies grouped by industry, sales, and a crude categorisation of legal form. The latter is split into incorporated firms, not incorporated firms, and sole proprietorships. The table reveals that incorporated firms cover the largest and the smallest firms, in terms of sales, in most industries. It is often alleged that most of the smallest limited liability firms are GmbHs, while most of the largest companies are AGs. Unlimited liability firms cover the medium size class in most industries.

The data from the Statistical Office is summarised in Table 13 and Table 14. The former presents a rough estimate of the relative aggregate taxable value of each legal form (the basis for property taxes), the latter of taxable sales additionally grouped by actual sales. The taxable value estimated in Table 13 is highly correlated with total asset value and represents a measure available for most firms. The most important legal forms are the AG and the GmbH, each representing almost one third of economy-wide value. The average AG is about 120 times larger than the average

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<sup>50</sup> § 2 I, §§ 9, 10 I UBGG.

<sup>51</sup> §§ 11 and 12 I, II UBGG.

<sup>52</sup> § 12 II UBGG.

GmbH. Of similar importance are the unlimited-liability forms OHG and KG together. Their average size is about twice that of GmbHs.

Table 14 contains related information, but is in terms of those sales on which value-added tax is based. It shows that for AGs, 98% of taxable sales come from firms where regular sales exceed DM 100 Mio. In contrast, the corresponding figure is 42.5% for GmbHs, 43.4% for OHGs, and 50% for KGs.

To conclude, the most important limited-liability forms in Germany are the AG and the GmbH, and the most important unlimited-liability forms are the OHG and the KG. All remaining legal forms, including sole proprietorships, have relatively little economic importance in the aggregate.

### **3.2 The number of banks and insurance companies in Germany**

Table 15 shows the number of banks and their aggregate assets. The most important type of bank, in terms of total assets, are private credit banks. They account for about 24% of total bank assets in Germany, closely followed by state savings banks (20%) and state banks (18%). Similar information on insurance companies is listed in Table 16, showing aggregate gross premia across different insurance types. Data on banks and insurance firms separated by legal form is not available.

## **4 The German transposition of the EU Transparency Directive**

### **4.1 Background**

In Germany, the Transparency Directive was transposed as part of a securities trading law (*Wertpapierhandelsgesetz*, WpHG, BGBL 30. 7. 1994, I S. 1749ff) that contains a series of measures that are intended to strengthen Germany's financial markets.<sup>53</sup> In addition to transposing the transparency directive, the WpHG provides the legal basis for creating a securities trading commission (*Bundesaufsichtsamt für den Wertpapierhandel*, BAWe, <http://www.bawe.de>). The BAWe formally addresses regulations and penalties relating to insider trading, the real-time publication of price-relevant information (*ad-hoc Publizität*), and the rules for operating securities houses.

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<sup>53</sup> The complete title of the law is "Gesetz über den Wertpapierhandel und zur Änderung börsenrechtlicher und wertpapierrechtlicher Vorschriften" and is part of the second law to promote the German financial markets ("Zweites Finanzmarktförderungsgesetz").

The WpHG was passed on 26 July 1994 and some sections became effective on 1 August 1994. The Transparency Directive (88/627/EEC) was supposed to have been transposed by 1 January 1991.<sup>54</sup> The sections that transposed the EU Transparency Directive became effective on 1 January 1995. The BAWe, the “competent authority” referred to in the Transparency Directive, started its operations on the same day.

The transposition of the Transparency Directive marks a distinct change in the definition of “markets” and the attitude towards listed corporations by German politicians, industrialists and the financial community. For example, before 30 July 1994 there was no effective legislative difference in the disclosure requirements of listed and non-listed corporations. Although German law makes a number of provisions for the disclosure of ownership information and German cartel and business group law imposes disclosure requirements for control, the issues of ownership and control have traditionally been regarded as private, sensitive and not for the eyes of the general public. Even in the current discussion ownership and control information is rarely regarded as share-price relevant. Many owners of listed and non-listed firms prefer to stay anonymous and their mentality is captured more accurately by the French name for *Aktiengesellschaft - Société Anonyme*. The debate surrounding the passage of the WpHG reflects this clash of cultures and may be one of the main reasons why Germany was so late in transposing the Transparency Directive. As we shall document in this section, much of the old mentality survives and the current regulation is a good start but insufficient to make corporate Germany transparent.

The BAWe is executing the law and bound by its content, the associated annotations and, eventually, the decisions of the courts. We stress this fact because the BAWe’s does not have the power to enhance transparency beyond the limits imposed by the German transposition of Transparency Directive and the official implementation guidelines. Even though Article 29(2) of the WpHG gives the BAWe the mandate to draft practical guidelines, the freedom of the BAWe in choosing the contents of these guidelines is limited. For example, the law or its annotations do not require business groups holding a block to provide a transparent view of their organization. Hence, the BAWe does not have the power to require blockholders to submit supplemental information such as an organizational chart

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<sup>54</sup> 88/627/EEC, Art. 17 I.

## 4.2 The mechanics of the notification process

The mechanics of the notification process are simple and closely follow the Transparency Directive. Figure 1 illustrates the notification process. The main features of the transposition and the Directive are:

1. the filings are made and published on paper;
2. the shareholder notifies the company and the company notifies (and pays for notifying) the market;
3. notifications can take up to 16 days to reach the market.

The system is not very practical, too slow and too expensive. It puts the company under considerable stress to publish the information within 9 calendar days and does not ensure the rapid dissemination of the information. A maximum of 16 days (a maximum of 7 days for the shareholder to notify the company and a maximum for 9 days for publication) can pass between someone crossing the threshold and the moment the information reaches the market. Before reaching the market the information has passed through many hands and, if it is price relevant, could easily be used for illegal insider trades. Indeed, the shareholder could have crossed other thresholds during the notification period and, by the time the original notification reaches the market, the information could be out of date already. Since this unacceptable delay has been implemented by the transposition of the EU Directive, a revision of the law would be required to modify current procedures.

It is not clear where to look for the information either. If the company is listed on a German official market, the company has to publish a notification in a German newspaper that has been awarded the privilege of publishing such notifications by the relevant German stock exchange(s). At the same time, the company has to publish a note in the official newspaper of the Federal Government (*Bundesanzeiger*), indicating in which newspaper(s) the notification is published. The *Bundesanzeiger* has a very low circulation (approximately 15,000) and as one commentator observed “the *Bundesanzeiger* is not usually read for breakfast.” Additionally, the information will typically have been published in the relevant newspaper before the *Bundesanzeiger* publishes the reference.

There are plans to scrap the *Bundesanzeiger* requirement. Since September 1997, the BAWe publishes the reference to the notifications that were used to compile its new bi-monthly publications via its internet site (<http://www.bawe.de>). If the BAWe would decide to scan the newspaper articles

and offer hyperlinks to the facsimiles of the newspaper notifications, transparency would be enhanced considerably by providing full information within a potentially much shorter time span. However, the BAWe has been allocated only five and a half positions for handling all matters relating to voting-block notifications (for roughly 430 companies on the official market) and the *ad-hoc* notifications (for over 600 companies on the official and second-tier market). Therefore, given the current resource allocation by the German parliament it is unlikely that such an improvement is within reach.

Since the number of steps involved is large, the notification process is costly and prone to errors. In comparison to the United States, where all SEC filings are made via EDGAR (Electronic Data Gathering Analysis and Retrieval), the German notification system appears rather antiquated and in stark contrast to repeated claims that Europe is moving towards an “information society.” It is not in the power of the BAWe to change this situation and the shortcomings of the notification process have their origin in the Transparency Directive which the German legislation followed very closely. However, the German transposition did not use the possibility of imposing stricter conditions or to provide sufficient resources, which the Directive clearly allows for, to significantly improve the whole process. We did not investigate the German government’s position in the negotiations in Council leading up to the acceptance of the final text of the Transparency Directive. However, Schneider (1995) reports that the German government blocked certain transparency enhancing measures at the proposal stage and/or in Council.

### **4.3 Who has to report voting stakes?**

§ 21 WpHG (notifications of direct shareholdings), § 22 (notifications of shares “attributed” to a shareholder because he or she controls the way the shares are voted) and § 41 (first time notification since the law came into force) are the legal “triggers” for the notification process.

- § 21 states that someone crossing 5%, 10%, 25%, 50% or 75% (through purchase, sale or other means) of the votes of a German company listed on an official EU market has to notify according to the mechanisms set out in section 4.2. The requirement does not depend on the share of voting capital controlled but the fraction of the total votes controlled. Voting caps (*Höchststimmrechte*) are not taken into account when computing the percentages (Nottmeier and Schäfer 1997, page 91).
- § 22 is the most complicated piece of the legislation and sets out the rules for “multi-layer” control of voting shares. It defines which indirectly controlled votes are “attributed” to a

shareholder. Much of this section will concentrate on providing examples of the provisions of § 22 and documenting its limitations. It will be shown that the current version of §22 is inadequate for providing real transparency on who exerts considerable voting power in German listed companies.

- § 24 states that the parent of a business group that prepares consolidated accounts can make notifications for itself and/or other companies in the business group. The parent's notification must report the name of the subsidiary and all other details that would have to be published had the subsidiary notified itself, but only if the subsidiary has passed a notification threshold individually.
- § 41 is the first-time notification rule that provides the starting stock from which, through tracing changes, future "snapshots" of the ownership structure of the voting stock can be constructed. It states that, unless a notification according to § 21 has already been made before the first general meeting in 1995, shareholders have to report holdings above 5%. The provisions of § 22 also apply to first-time notifications.

#### **4.4 Transparency and the WpHG**

**4.4.1 Although the provisions of these articles appear rather straightforward, a number of complications arise. Since the provisions of the WpHG are legally uncharted territory in Germany, the annotations to the WpHG (Schneider 1996) are binding and there are few court rulings to date.<sup>55</sup> Practical issues that arise from the day-to-day implementation of the WpHG are discussed in Nottmeier and Schäfer (1997). The authors are the responsible for the implementation of the German transposition of the Transparency Directive at the BAWe.<sup>56</sup> Banks' proxy votes are not reported**

The German government, in its annotations to the WpHG, decided that banks have not to report proxy votes (the well known and much discussed *Auftragsstimmrecht* mechanism). This decision is justified by the fact that §135(5) and §128(2) AktG force banks to consult shareholders,

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<sup>55</sup> The *Gesetzesbegründung* was published in the *Bundestagsdrucksache* 12/6679.

<sup>56</sup> Although their contribution is not legally binding and the authors stress that it reflects their personal views and not those of the BAWe, it is an account of the de facto interpretation and implementation of the WpHG text, legal guidelines issued by the government with the law, the interaction between the provisions of the WpHG and other legal texts and legal opinion.

make a voting proposal and, unless the shareholder instructs them otherwise, are afterwards bound by their proposal (Bundestagsdrucksache 12/6679, page 54). Since the banks must stick with their original proposal, it is argued that the votes should not be attributed to the banks because legally it is not under their discretion to decide how the shares are voted. Although there are no precise figures on how many bank customers actually take advantage of the possibility to instruct their bank, it is alleged that very few customers do. In practice, there is no difference between “free to propose to propose how to vote and not be challenged” and “free to vote.” Hence, if the spirit of the Transparency Directive were to be applied rigorously, a notification should be required and the banks would have to notify the shares for which they have received no explicit voting instructions. Alternatively, they could be forced to declare on whose behalf they vote the shares. The limitations this notification exemption imposes on the available voting-power data is discussed in section 4.6.5. Even if the BAWe were to disagree with the treatment of proxy voting by banks prescribed by the government, it has to tolerate the resulting obscurity.

#### **4.4.2 Votes of investment companies are not attributed to any party**

While limited reporting requirements apply to *Kapitalanlagegesellschaften* (investment funds), they neither affect their owners or the holders of investment certificates.<sup>57</sup> One would expect that the funds invested by investment companies are either controlled by the owners of the investment company or the investors who deposited the funds with the company. In practice the voting stock is attributed to neither group. § 10 Ia explicitly exempts votes owned by KAGs from the requirements of § 22 WpHG. Controlling owners of the investment companies do not have to notify because it is alleged that the managers of the investment fund act in the best interest of their clients. Holders of certificates do not have to notify because they do not exert control themselves. Hence, in practice *Kapitalanlagegesellschaften* play the role of making controlling ownership anonymous. To provide equal treatment to all investment companies, the equivalent of *Kapitalanlagegesellschaften* from other Member States will soon benefit from this obscurity provision.

#### **4.4.3 Votes are not always attributed to their de facto owners**

When the shareholder of the listed company is not an individual but a company, a voting trust, a family pool, etc., votes controlled by this company should be attributed to its owners. The

interpretation of the relevant §21 and §22 allows for too many exceptions and very often the notification requirement does not extend beyond the shareholder company. For example, Nottmeier and Schäfer (1997, page 93) argue that shares held by non-listed firms only have to be attributed to their owner if the owner controls that firm. This judgement is based on the WpHG §22(3) where “control” is clearly defined and therefore Nottmeier and Schäfer argue that other definitions of “control” found in German or European law are not applicable. This limitation opens the opportunity to hide controlling stakes by dispersing votes over a number of small intermediate holding companies. For example, shares held by unlisted firms with two 50%-owners are never attributed beyond the level of the unlisted firm, because none of the owners is deemed to be “controlling“ in these cases. Thus, if two individuals control 100% of a listed corporation via two unlisted holding companies, of which each individual owns 50%, they jointly have full control over the listed firm, but do not have to notify it.

The number of possible combinations between the type of direct shareholders of a listed company on the one hand and the type of institution (or individual) who controls the shareholding company and the control mechanism (ownership link, power of attorney, proxy voting, control contract) on the other, is very large. Hence, the debate of who has to notify beyond “the first level” is likely to keep courts and regulators busy. Whether more transparency will result from potential refinements or whether a fundamental redesign of the disclosure procedure is required remains to be seen.

#### **4.5 Contents of the notifications**

The *Bundesaufsichtsamt für den Wertpapierhandel* (BAWe, 1996) has published a cross-section “snapshot” of the control structure of 402 German companies that were officially listed on a German market on 30 September 1996. It contains the cumulative result of all notifications up to this date according to §§ 21, 22, and 41 since 1 January 1995. According to BAWe (1996, pg. I), 435 German companies were listed on the official market of at least one German stock exchange on 30 September 1996. Hence, 33 companies had not received any notifications since the WpHG came into force. There are several explanations for this shortfall:

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<sup>57</sup> § 10 Ia 3 KAGG specifies the limitation to § 21 WpHG that voting control less than 10% deriving from a fund controlled by the KAG does not have to be reported. This contrasts to the general 5% minimum for other entities.

1. companies that only have non-voting stock listed do not need to be notified;<sup>58</sup>
2. companies that have no shareholders that passed the notification threshold were not notified;
3. shareholders that should have notified might have failed to do so.<sup>59</sup>

## 4.6 Examples of control notifications

In this section, we first describe the contents of transparency filings. Then we present some case examples of the shortcomings of the current reporting practice. Each of the latter examples represent issues that deserve attention in future refinements of the legal requirements and the reporting practice if transparency is to be achieved.

### 4.6.1 Example of an original notification

In December 1996 we asked all 435 officially listed German companies to support this project by furnishing annual reports, company statutes, AGM voting lists, and control notifications for the past two fiscal years, all of which are publicly accessible documents.<sup>60</sup> RWE AG is one of the companies that responded and that has supplied us with copies of the four notifications it received during 1996. The notification by Allianz AG Holding is of particular interest, because it illustrates three important aspects of the German notification process.

<b>RWE Aktiengesellschaft</b>	
<b>Essen</b>	
<b>Announcement according to §§ 41 (3), 25 (1) Wertpapierhandelsgesetz</b>	
Allianz Aktiengesellschaft Holding, Berlin and Munich, has notified us that, in connection with § 41 (2) and § 24 Wertpapierhandelsgesetz, its share of our voting capital as of 1 January 1995 was 8,117%.	
In the share of voting capital, the attributable voting rights of § 22 (1) Wertpapierhandelsgesetz were	
No. 2	7.661% and
No. 7	0.015%.
Essen, 12 December 1995	<b>RWE</b> <b>Aktiengesellschaft</b> <b>The Management</b>

Source: Translation of a notification published in the *Börsenzeitung* No. 240 on 14 December 1995

<sup>58</sup> On some occasions non-voting stock has a vote, notably when the company did not honor the “preferential treatment” (e.g. a larger dividend) or when the “preference” is to be removed. In the latter case preference shares become ordinary voting shares.

<sup>59</sup> We shall investigate the ownership structure of the 33 listed companies that were not notified and companies that are listed on the regulated and over the counter markets (for which the transparency rules do not apply) in a future version of this paper.

RWE AG was notified by Allianz Aktiengesellschaft Holding about the RWE AG voting block Allianz AG Holding commanded on 1 January 1995. The notification was made at the time of Allianz AG Holding's first annual meeting during 1995 (in October 1995) under the provisions of § 41 WpHG. Unlike in the case of notifications made on the basis of § 21 WpHG, RWE AG had one month (§ 41 III WpHG) and nine days (§ 25 I WpHG) to publish the notification. The notification was published in the *Börsenzeitung* No. 240 on 14 December 1995. Allianz Aktiengesellschaft Holding notified as the parent of a business group that publishes a consolidated annual account (§ 24 WpHG). However, if Allianz AG Holding would report on behalf of a subsidiary, the name of the subsidiary would have to be mentioned in the notification. Hence, in this case, we infer that Allianz AG Holding is making the notification on its own behalf or on behalf of affiliated companies that, individually, fall under the notification threshold.

The notification breaks down the “attributed” shareholding into:

- No. 2: Shares owned by a company (or companies) that is (are) controlled by Allianz AG Holding (7.661%).
- No. 7: Shares that have been deposited with Allianz AG Holding, but the depositor has not left Allianz AG Holding with precise instructions for voting the shares (0.015%).
- The remaining 0.44% of RWE AG voting shares are a residual and we infer that they are directly owned by Allianz AG Holding.

The BAWe has taken the data from the notifications and tabulated them. The entry for RWE AG is reproduced in Table 17. While it would enhance transparency, the breakdown of the “attribution reason” is not published.

The column “direct and attributed shares” reports the total percentage of shares the notifying company controls. The column “attributed” shows how many of these shares are attributed. The single-vote column refers to situations where a company owns 50% of the voting shares of a company plus one “casting vote” that gives majority control.

In the examples below, we calculate two additional numbers representing direct stakes and voting blocks in the reporting listed firm. The columns “direct & attributed” and “attributed” correspond to the BAWe (1996) publication. To compute the total controlled by reporting shareholders, we cannot simply sum the percentages in the column “direct and attributed.” Therefore

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<sup>60</sup> The authors are currently preparing an exploratory study of the responses, the companies' willingness to provide information,

we construct a “direct“ column which may be aggregated to determine total block ownership.<sup>61</sup> “Direct“ is simply the difference between columns “direct and attributed“ and “attributed.“ “Blocks“ is intended to show the existing individual voting blocks, but we document below that this inference is often ambiguous. Small discrepancies between the sum of direct participations and the sum of assigned blocks can arise when small “attributed” stakes are added to a direct shareholding but not notified (do not appear in the direct column). Table 18 provides an example of such a case.<sup>62</sup>

#### **4.6.2 What is lost from not knowing the attribution reason**

In this section we illustrate what is lost from not having electronic access to facsimiles of the original notifications (as they are published in the newspapers). If the BAWe were provided with the resources to create an archive with all published notifications, transparency would be enhanced considerably. In each of the following three examples the original notifications would reveal the true control structure, but the data published by the BAWe do not.

The first example is presented in Table 20, where it is not possible to identify the ultimate controlling party. The way the data is arranged suggests that there are two voting blocks: one held by RWE AG (54.09%) and one controlled by Preussen Elektra AG (40%). In fact, the appendix of the annual report of VEBA AG reveals that it owns 100% of the total capital of Preussen Elektra AG, 56.3% of the capital of Thüga AG and 41.3% of Rhenag AG. Without such information, it is not possible to assign a voting block to the company that has ultimate control over the 40% block.

In the case of Markt- und Kühlhallen AG there are two block holdings (Table 21). One held by Alfons Doblinger via Doblinger Industriebeteiligung KG (41.41%) and a second block of almost the same size held by BB-Kapitalbeteiligungsgesellschaft mbH (41.40%). It is very easy to miss out the latter. Indeed, according to Markus (1996), BB-Kapitalbeteiligungsgesellschaft mbH is owned by Bankgesellschaft Berlin AG (50%) and Gothaer Versicherung auf Gegenseitigkeit (50%), and not by A. Doblinger.

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and its implications for transparency and the ‘shareholder value’ paradigm.

<sup>61</sup> The cross-section spreadsheets the BAWe publishes on the internet now also contain a “direct” column.

<sup>62</sup> Altogether there are about 50 such cases. In 25 cases the discrepancy between the sum of direct shareholdings and the sum of block shareholdings is less than 5% and can be explained by attributions of stakes that are below the individual notification threshold. In the remaining 25 cases the discrepancy between the sum of direct shareholdings and the sum of block shareholdings was more than 5% (the notification threshold). The stakes were not reported for various reasons. For example: in the case of Dyckerhoff AG there is a discrepancy of 11.6% (family pool) and in the case of Heidelberger Zement AG there is a discrepancy of 9.22% (attribution to a physical person). For Schering AG (7.2%) and Tarkett AG (7.2%) the discrepancy of the sum of direct stakes and block stakes results from an “anonymous” attribution to Allianz Holding AG. According to Hoppenstedt (1997), Villeroy and Boch AG is actually controlled by a block of 100% in the hands of a family pool. The sum of direct stakes is 35.13% leading to the largest discrepancy of 64.87%.

A more striking example is the case of Monachia AG (Table 22). Again there are two reported direct stakes. One is held by Allianz Holding AG (45.22%) and a second block of the same size held by RWE AG via Hochtief AG (45.22%). Only the fact that no shares get attributed to Allianz AG and Hochtief AG indicates that there are two blocks and not just one block with two attributions. Again, the fact that RWE controls Hochtief must be obtained from other sources.

#### **4.6.3 A large number of notifications is not always informative**

In 55% of all cases the reported control structure has one or two entries (Table 23). As we show below, more entries per company do not necessarily provide more transparency under the present reporting practice.

Table 24 shows the companies with 8 or more entries, most of which are formal family pools or pools of heirs (*Erbengemeinschaft*). Only for formal pools and individual family members who control more than 5% of the votes the notification rules apply (illustrated in Table 26 below). The reporting practice of foreign owners of German firms varies substantially. While owners based in the United States and the United Kingdom generally report the whole intermediate structure right back to the controlling parent, other European companies are much less forthcoming. For example, there are only two reported blockholders of Pirelli Deutschland AG (Deutsche Pirelli Reifen Holding GmbH and Pirelli Tire Holding N. V.). The vast Italian superstructure, that could have put Pirelli at the top of Table 24, is missing.

Table 25 shows the reported voting blocks for Tarkett AG, one of the companies with the largest number of entries. It is evident that, given the current reporting practice, the data taken from such a detailed notification is not very helpful in reconstructing the control structures that lead back to the companies that (according to Hoppenstedt 1997) have ultimate control: Goldman Sachs Advisors, L. P. and Standard Chartered Bank.

#### **4.6.4 Obscurity of family control**

There are implicit notification exemptions for listed companies controlled by families. No exceptions are made for family pools that are tied by formal contractual arrangements (like the Porsche pool and the Schwarz heirs in Table 24), even when they contain the clause that the pool contract is not always binding. In these cases the names of all pool members must be reported to the BAWe, but only the total voting block of the pool, the name of the head of the pool and the names of the individual members commanding more than 5% of the voting stock are published (Nottmeier

and Schäfer 1997, page 94). Whenever no formal pool contract exists, control by families does not become transparent.

Table 26 shows that two members of the Herlitz family reported a voting stake in Herlitz AG. The direct holdings of Dr. Klaus Herlitz are under the 5% threshold but he votes 1.52% of, potentially, another family member's shares. This information contrasts with Hoppenstedt (1997) who report that 32 family members jointly control more than 50% of the voting stock. The stakes of the non-reporting 30 family member are not considered "attributable" if they have not entered a formal voting contract or placed their shares in a formal family holding. In the case of Herlitz AG this is obviously not the case and 30 of the 32 family members do not notify. The capital of Herlitz AG consists of 51.3% voting stock and 46.9% nonvoting stock, making it a corporation tightly controlled by a family. Judging from the notification information alone, Herlitz AG would be misclassified as a widely held company.<sup>63</sup>

#### **4.6.5 Reported votes vs. exercised votes**

VEBA AG was one of the companies that, in response to our December 1996 survey, provided us with a copy of the attendance list of its annual meeting that took place on 23 May 1996.<sup>64</sup> Table 27 reports the VEBA AG entry in BAWe (1996). It shows that Allianz AG Holding controls 11.46% and Lambda Vermögensverwaltungsgesellschaft mbH 10.20% of VEBA AG's voting shares. Again it is not obvious from the publication or the original filings whether the Lambda votes are attributed to Allianz. They could have been attributed from various companies controlled by Allianz each holding less than 5% and Lambda could be an independent company, especially since the latest published BAWe data (15 September 1997) reveals that the Allianz stake and the Lambda stake were published on two different dates (Handelsblatt 17/06/95 and Handelsblatt 29/04/96). Additional information is necessary to assign the voting blocks appropriately: the annual report of Allianz AG Holding reveals that it owns (potentially indirectly) 70.5% of the total capital of Lambda Vermögensverwaltungsgesellschaft mbH and 10.3% of the capital of VEBA AG.

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<sup>63</sup> There are several additional cases where BAWe (1996) contains the notifications of a few family members but other sources indicate that a family as a whole owns a much larger portion of the voting stock. For example, five family members have reported to control 45.95% of Villeroy und Boch AG, but Hoppenstedt (1997) reports that 100% of the voting stock (plus part of the nonvoting stock) is owned by the family.

<sup>64</sup> VEBA AG also prepares accounts according to US-GAAP, its 1996 annual report contains S&P and Moody's credit ratings and a pledge to further improve its investor relations. From the format of the annual report and the positive response to our mailing we conclude that VEBA AG is one of the few German corporations that takes an "investor friendly" attitude, as one would expect from a DAX company.

The attendance list (summarized in Table 28) and a comparison to the VEBA AG entry in BAWe (1996) reveals a number of interesting facts:

1. With the exception of Bankgesellschaft Berlin AG and a local savings bank, German banks did not vote own equity at the VEBA AG meeting. Although Dresdner Bank AG alone voted 16.6% of the total capital of VEBA AG and 33.3% of the capital that attended the meeting, Dresdner Bank AG did not have to notify VEBA AG because these are proxy votes. What happens when, say, Dresdner Bank AG votes shares Deutsche Bank has deposited for safekeeping (and vice-versa) is unclear.
2. Investment companies (*Kapitalanlagegesellschaften*), most of them belonging to banks, voted capital they have under administration without reporting a link to the controlling financial institution or potentially controlling investor.
3. Less than half of the voting capital attended the annual meeting (49.96%). Since VEBA AG has only issued one class of voting shares, this is equivalent to less than 50% of total capital. The example shows the well documented fact that there is a big difference between the total number of shares an individual or company owns and the voting power of this stake at an annual meeting with a low attendance rate. Indeed, if shareholder dispersion and attendance rates are inversely correlated, the leverage effect for voting blocks that attend the meeting is high when dispersion is high.
4. Allianz AG Holding has reported to control 11.46% of the VEBA AG capital (see Table 27). This corresponds to DM 279,726,647 of VEBA AG's equity capital. Allianz is "visibly" represented at the meeting through Allianz Kapitalanlagegesellschaft, voting 0.11% of VEBA's shares. According to Markus (1996), Allianz Kapitalanlagegesellschaft has two owners: Allianz AG Holding (75.1%) and Allianz Lebensversicherungs AG (24.9%). Lambda Vermögensverwaltungsgesellschaft mbH does not appear at the meeting, although it reported to control 10.2% of the voting capital of VEBA AG directly. One explanation we have is that Allianz AG has deposited its shares with a bank (and instructs the bank how to vote) or has it under management by a related investment company.
5. The composition of the supervisory board is consistent with the major voting blocks. On 23 May 1996, the chairman of the supervisory board was Hermann Josef Strenger, chairman of the supervisory board of Bayer AG, Leverkusen (Allianz AG reported to control 5% of Bayer AG). Allianz AG is represented by its CEO Dr. Henning Schulte-Noelle. Dresdner Bank AG is

represented by the managing board member Dr. Bernd Voss. Deutsche Bank AG is represented by its then-CEO Hilmar Kopper.

The VEBA example shows that neither the attendance lists nor the notifications made on the basis of the WpHG provide clarification about who controls VEBA AG. The BAWe publication legislation reveals the 11.46% interest of Allianz AG. The attendance list is more informative because we can identify *Kapitalanlagegesellschaften* (with 8.9% of the total vote and 17.8% of the effective vote) that attend the meeting even when they own or manage less than 10% of the total share capital, and identify banks' proxy votes. It remains unclear, however, who controls the shares voted by banks. Neither source reveals how Allianz AG exerts its influence.

#### **4.6.6 Hidden group structures**

It is often not possible to trace ultimate ownership because holding companies disguise ultimate ownership. Table 29, for example, shows a single reported stake in DEPFA AG. The shareholder, DEPFA Holding Verwaltungsgesellschaft mbH, disguises a whole shareholding superstructure as illustrated in Figure 2. The reason is that this holding company has no majority shareholder and hence DEPFA AG's voting power is not attributed to any of the holding's shareholders. In such cases, the German transposition of the Transparency Directive provides no transparency at all.

## **5 Summary statistics on the concentration of voting power in Germany**

In this section we present descriptive statistics on the concentration of voting power in Germany. The data we analyse is taken from BAWe (1996), the first ever official cross-section "snapshot" of the distribution of voting blocks in Germany taken on 30 September 1996. As discussed above, only the control of voting rights, as opposed to cash-flow rights, is reported to the BAWe. Additionally, dormant voting rights such as those associated with *Vorzugsaktien* do not have to be reported.

In the following, we provide separate sets of statistics for direct stakes and voting blocks (the sum of direct and attributed stakes), and aggregate both by company and by blockholder. Even though filings with the BAWe are triggered by changes in the voting blocks, information on direct stakes provides additional insights. We also calculate a measure of concentration  $C_n$ , defined as the sum of the  $n$  largest stakes.

## 5.1 Summary statistics for individual companies

All results in this paragraph are based on aggregation across the 402 companies that reported to the BAWe by 1996. Blockholders hold 884 direct stakes and 735 voting blocks in these companies, an average of 2.2 notified direct stakes and 1.8 notified voting blocks per company. The size of the mean direct stake is 47.4% and that of the mean voting block is 53%. At the lower end of the block size distribution, only 16.4% of each company's largest voting block are smaller than 25% (the maximum percentage of voting rights needed to block statute changes). At the top end of the distribution, 21% of the largest voting blocks exceed 90%. Table 30 shows the empirical distribution of direct stakes and voting blocks aggregated by company. For example, in half the firms the smallest stake is below 25%, while the largest stake exceeds 54.1%. In 75% of the firms, the largest voting block exceeds 33.3%. In sum, these results confirm the general view that control is highly concentrated in Germany.

Table 31 and Table 32 present the frequency distribution, summary statistics, and correlations of concentration ratios for stakes and blocks, respectively. Since only 14 out of 402 firms have more than four registered blockholders, we focus on concentration ratios up to  $C_5$ . The mean of the largest block ( $C_1$ ) is 59.7%, that of the largest direct stake 55.8%. Only about 6.5% or 26 of all firms have no voting block or stake exceeding 25%. On the one hand, these findings confirm the high degree of concentration of control discussed above. On the other hand, the high correlations between the concentration ratios imply that most firms have a dominant shareholder in the sense that the second and third largest blocks are substantially smaller than the largest one. Specifically, adding the second and third largest voting block increases the mean concentration ratio by only 8.6%; the corresponding increase for direct stakes is 12.8%. This observation is confirmed by the graphical representation of block sizes in Figure 3 and Figure 4, which compare the size of the largest stake to that of smaller holdings. The median size of the largest stake is more than three times that of the second largest, and the median size of the largest voting block is more than four times that of the second largest.

Figure 5 and Figure 7 show percentile plots of each firm's largest direct stake and voting block, respectively. An interesting observation emerges with respect to both, because stakes and blocks are clustered at 25%, 50% and 75% of the votes. These "steps," also illustrated in the corresponding histograms in Figure 6 and Figure 8, correspond to the blocking minority (that can be used to block statute changes), a simple majority and a supermajority. Since the supermajority can be set higher than 75% in the company statute, voting blocks of less than 25% could also represent a

blocking majority. The figures suggest that block sizes are carefully chosen and control is an important issue for blockholders.

## **5.2 Summary statistics for holders of direct stakes and voting blocks**

All results in this paragraph are based on aggregation across the 688 direct stakeholders and 503 blockholders, respectively, who reported to the BAWe by 1996. Table 34 shows that 88.4% of all direct shareholders and 84.1% of all blockholders control just a single stake. The remaining parties control up to 23 stakes and 25 blocks. Table 36 lists all stakeholders and blockholders controlling stakes or voting blocks in more than three listed firms. An interesting observation is that 16 out of 20 stakeholders (80%) and 15 out of 23 blockholders (65%) in that table are financial institutions or insurance companies.

To assess the economic importance of voting blocks, each block should be weighted by a variable measuring the importance of the company, such as sales or market value. We are currently extending the data set in this direction, but can only provide an exploratory step towards this end in Table 38. Without regard to the economic importance, we summarize the number of blocks held by various shareholder types. Most blocks (37%) are held by individuals and families, while banks and insurance companies hold only 7.6%. This measure is likely to misrepresent economic importance, however, because family-controlled blocks tend to be of substantially lower value than bank-controlled blocks.

Figure 10 contains an alternative representation of the importance of different shareholder types. The width of each rectangle is proportional to the number of blocks held, its height to the range from the 25<sup>th</sup> to the 75<sup>th</sup> percentile. The central bar indicates the mean, while outliers are represented by individual circles (see Figure 10 for an exact description). Most notably, blocks held by industry (code 3) have a median close to 70% of the votes (of affected firms) and 21.3% of all blocks. Blocks held by holding companies have a median of 25% and account for 19.3% of all blocks. Thus, for about 40% of all blocks that were reported to the BAWe the filings do not reveal who ultimately controls the voting rights. The reason is that attribution of control usually ends at the level of the controlling firm, as opposed to extending to the controlling firms owners. Especially given the highly concentrated ownership structure in Germany, this appears to be an tremendous obstacle to transparency.

## 6 Summary and conclusions

The German legal environment imposes explicit disclosure requirements for certain legal forms, in particular for AGs. Pre-1995 rules include mandatory disclosure of annual reports and stakes in other firms larger than 20%. After 1995, with the transposition of the EU Transparency Directive, AGs listed in an official market also must disclose parties controlling more than 5% of the voting rights. Since creditor protection is deeply rooted in German commercial law, the practical efficacy of disclosure regulation is very low: the formation of groups involving less regulated legal forms as intermediate layers can substantially reduce transparency. This argument is illustrated using hypothetical examples and by documenting the deficiencies of the WpHG in providing transparency.

We further show that German capital markets are dominated by few large firms accounting for the major chunk of the market's capitalization and trading volume. The concentration of control is very high in the sense that 85% of all officially listed AGs have a dominant shareholder (controlling more than 25% of the voting rights). Insider trading rules do not automatically discourage agents to hold large voting blocks in German companies. Unlike in the United States, outside investors are not automatically considered to be insiders (to have access to private, price sensitive information) when a 10% voting power threshold is passed.

In addition, there is little inside competition for control at the firm level: only very few listed AGs have more than one large shareholder. Since there is no mandatory bid requirement, and since there are few legal differences between listed and unlisted AGs, the distribution of voting blocks is visibly driven by control thresholds derived from company law (25%, 50% and 75%). The only potential counterweight results from the proxy-voting mechanism that gives banks an important vote at AGMs, with all the inherent incentive problems of having a creditor represent shareholders. The German proxy voting process separates ownership, often completely, from control.

This exploratory study represents a first step towards explaining German corporate governance and ends with several open questions. Future work needs to address the economic value of stakes controlled by various shareholder types, compare voting power to ownership, measure the separation of ownership and control, determine the link between the distribution of voting blocks and supervisory board representation, contrast integrated ownership to direct ownership, and determine the consequences of these phenomena for corporate performance.

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Table 1: Important legal forms of private companies

	Limited liability	Minimum capital (thousand DM)	Smallest number of founders	Smallest number of managers	Degree of im- perativeness of the legal rules
<i>Aktiengesellschaft</i> (AG)	Yes	100 <sup>1</sup>	1 <sup>2</sup>	1 <sup>3</sup>	High
Gesellschaft mit beschränkter Haftung (GmbH)	Yes	50 (at least 0.5 per owner) <sup>4</sup>	1 <sup>5</sup>	1 <sup>6</sup>	High
Kommanditgesellschaft auf Aktien (KGaA)	General partners: No Shareholders: Yes <sup>7</sup>	100 <sup>8</sup>	5 <sup>9</sup>	1 <sup>10</sup>	High
Kommanditgesellschaft (KG)	General partners: No Limited partners: Yes <sup>11</sup>	-	2 <sup>12</sup>	1	Medium
GmbH (or AG) & Co. KG <sup>13</sup>	Yes	50	1	1	Medium
Offene Handelsgesellschaft (OHG)	No	-	1	1	Medium
Eingetragene Genossenschaft (e. G.)	Usually <sup>14</sup>	0	7 <sup>15</sup>	2 <sup>16</sup>	Medium
Gesellschaft bürgerlichen Rechts (GbR)	No	-	1	1	Low
Stille Gesellschaft <sup>17</sup>	Yes <sup>18</sup>	-	-	-	Low
Eingetragener Verein (e. V.)	Yes	0	7 <sup>19</sup>	1 <sup>20</sup>	Low
Stiftung <sup>21</sup>	Not applicable	-	-	-	Low
Banks, any legal form except sole proprietorship	Depends on legal form	ECU 5 Mio. <sup>22</sup>	Depends on legal form	2 <sup>23</sup>	Very high

<sup>1</sup> § 7 AktG.

<sup>2</sup> § 2 AktG.

<sup>3</sup> § 76 I AktG.

<sup>4</sup> § 5 I GmbHG.

<sup>5</sup> § 1 GmbHG.

<sup>6</sup> § 6 I GmbHG.

<sup>7</sup> § 278 I AktG. General partners are referred to as *Komplementäre*, shareholders as *Kommanditaktionäre*.

<sup>8</sup> § 7 AktG.

<sup>9</sup> § 280 AktG.

<sup>10</sup> § 76 I AktG.

<sup>11</sup> § 161 I HGB. General partners are referred to as \_\_\_\_\_, limited partners as *Kommanditisten*.

<sup>12</sup> At least one general partner and at least one limited partner, § 161 I HGB.

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<sup>13</sup> This represents a hybrid form where the general partner of a KG is a (limited-liability) GmbH. While the GmbH & Co KG is the most widely used hybrid form, the (unlimited-liability) general partner may also be an AG, and the enclosing form may also be an OHG. If a GmbH or an AG are involved, all regulations affecting these forms still apply.

<sup>14</sup> The e. G. is generally a limited-liability company (§ 2 GenG). Company statutes may deviate from this rule (§ 6 (3) GenG): In case of bankruptcy, members may be obligated to pay, in addition to their initial investment, a limited or an unlimited amount to creditors.

<sup>15</sup> § 4 GenG.

<sup>16</sup> § 24 II GenG.

<sup>17</sup> This is not a stand-alone organization, but rather a way to participate in any other organizational form.

<sup>18</sup> § 232 II HGB.

<sup>19</sup> § 56 BGB.

<sup>20</sup> § 26 I BGB.

<sup>21</sup> More precisely, this refers to “rechtsfähige Stiftungen bürgerlichen Rechts“ that operate a business.

<sup>22</sup> § 33 I KWG, net of securities that have a cumulative preferential dividend.

<sup>23</sup> § 33 IV KWG.

Table 2: Definition of control over a company

Source of definition	Aim of regulation	Object of regulation	Content of regulation
Commercial code (HGB)	Defining firms that must publish consolidated annual financial statements	Aktiengesellschaft, GmbH	<p>§ 290 I: Firms within a group are controlled by a parent if they are led by the same parent company and the parent has a long-term stake in these firms (exceeding 20%, § 271 I)</p> <p>§ 290 II, qualifying the former: A parent always controls a subsidiary, if (i) it controls the majority of votes, (ii) it has the right to appoint the majority of management or supervisory board members AND controls votes, or (iii) exerts controlling influence via contractual agreements or company statutes<sup>1</sup></p>
Corporate code (AktG)	Definition of affiliated firms and groups, requirement for controlling firms to report their stake to the controlled firm	Aktiengesellschaft	<p>§ 15: Affiliated firms are stand-alone entities that match one of the following criteria:</p> <ul style="list-style-type: none"> <li>• a firm is majority controlled, if the parent owns a majority of the capital or the majority of the votes (§ 16 I)</li> <li>• a firm is dependent on a parent, if the latter can directly or indirectly exert controlling influence or has majority control (§ 17)</li> <li>• firms form a group (Konzern), if firms are under common leadership (§ 18)</li> <li>• firms are mutually involved in each other, if each owns at least 25% of the capital or the votes of the other<sup>2</sup></li> </ul>
Law for unlimited-liability firms (PublizitätsG)	Publication of annual financial statements	All firms except AG, GmbH, Genossenschaft, banks, insurance companies matching at least two of the following three criteria: (i) total assets > DM 150 Mio., (ii) total sales > DM 250 Mio., (iii) average employment > 5000.	<p>§ 1 V: all commercial activities of a single person form one undertaking, even if they are conducted by more than company</p> <p>§ 11 I: Firms within a group are controlled by a parent if they are led by the same parent company</p>
Security trading law (WpHG)	Reporting of control	Aktiengesellschaft (AG) if listed in an official market	<p>§ 22: Voting rights are attributed to an entity, if (excerpt):</p> <ul style="list-style-type: none"> <li>• they are owned by a third party in the interest of the entity or a company controlled by the entity</li> <li>• they are owned by a company controlled by the entity</li> <li>• they are owned by a third party but a contractual voting agreement exists with the entity</li> <li>• the entity can purchase them by exercising an option</li> <li>• they are deposited with the entity, and it can vote in its interest unless specific instructions are given<sup>3</sup></li> </ul>

Source of definition	Aim of regulation	Object of regulation	Content of regulation
Law on takeovers and antitrust issues (GWB)	Control over antitrust issues	All firms	<ul style="list-style-type: none"> <li>• § 23 I: extends §§ 17, 18 AktG to all firms and further states that if several firms jointly control another company, each of them is considered a controlling firm</li> </ul>
Banking code (KWG)	Defining consolidated regulatory equity of a financial holding	Credit institutions in all legal forms	<p>§ 1 VI, VII, and VIII: refer to § 290 HGB but extends the definition to all legal forms</p> <p>§ 1 IX: A major stake exists, if a company owns directly or indirectly at least 10% of the capital or of the voting rights, or if it holds any stake and can exert material control over management</p> <p>§ 10 II: A financial group exists, if a bank owns at least 40% of a company that operates a banking-related business</p>

<sup>1</sup> § 290 III, IV further qualify control by adding influence exerted by other subsidiaries of the parent company and subtracting influence exerted on behalf of third parties.

<sup>2</sup> Mutually involved firms may exercise at most 25% of the votes in each other, unless one of the firms controls more than 50% of the other (§ 19 IV, § 328 AktG). In the latter case, all votes may be exercised.

<sup>3</sup> According to the BAWe and Schneider (1995), this does not include votes from shares deposited with banks.

Table 3: Ownership information that must be provided with the annual financial statements<sup>1</sup>

	Rules requiring information on stakes in other companies in the annual accounts	Rules requiring information on company owners in the annual accounts, if the stake owner is a company	Rules requiring information on company owners in the annual accounts, if the stake owner is an individual	Availability of annual accounts to the public
Aktiengesellschaft (AG)	Stakes > 20% <sup>2,3</sup>	Stakes > 25% <sup>4</sup>	No	Yes <sup>5</sup>
Gesellschaft mit beschränkter Haftung (GmbH)	Stakes > 20% <sup>2</sup>	All stakes <sup>6</sup>	All stakes <sup>6</sup>	Yes <sup>5</sup>
Kommanditgesellschaft auf Aktien (KGaA)	Stakes > 20% <sup>2,3</sup>	Stakes > 25% <sup>4</sup>	No	Yes <sup>5</sup>
Kommanditgesellschaft (KG)	No	No	No	Small: No; Large: Yes
GmbH (or AG) & Co. KG	No	No	No	Small: No; Large: Yes
Offene Handelsgesellschaft (OHG)	No	No	No	Small: No; Large: Yes
Eingetragene Genossenschaft (e.G.)	Stakes > 20% <sup>7</sup>	Stakes > 50% <sup>8</sup>	No	Yes <sup>9</sup>
Gesellschaft bürgerlichen Rechts (GbR)	No	No	No	Small: No; Large: Yes
Stille Gesellschaft	No	No	No	No
Eingetragener Verein (e. V.)	Small: No; Large: Yes <sup>10</sup>	No	No	Small: No; Large: Yes
Stiftung	Small: No; Large: Yes <sup>10</sup>	No	No	Small: No; Large: Yes
Banks <sup>11</sup>	Stakes > 20% <sup>12</sup>	AG: stakes > 25%; others: stakes > 50% <sup>13</sup>	No	Yes <sup>14</sup>
Insurance companies <sup>15</sup>	Stakes > 20% <sup>16</sup>	AG: stakes > 25%; others: stakes > 50% <sup>17</sup>	No	Yes <sup>18</sup>

<sup>1</sup> The categorization “small“ and “large“ in the body of the table refers to companies regulated by the PublizitätsG. § 1 classifies a company as “large“ in this context, if it meets two of the following three criteria: (i) total assets exceed DM 125 Mio., (ii) Total sales exceed DM 250 Mio., (iii) average employment exceeds 5000 during the previous financial year.

<sup>2</sup> § 285 XI HGB requires disclosure of the percentage stake in the target firm (if larger than 20% of the target capital), the targets nominal capital and its profit. § 286 III HGB exempts those stakes from disclosure that either have a minor effect on presenting the financial status of the reporting firm or whose disclosure could harm one of the two firms. § 313 II HGB further regulates how stakes are to be consolidated.

<sup>3</sup> In addition, AGs must file all contractual arrangements that give them control over other firms with the company register (§§ 294 I, 298, 319 IV 327 III AktG).

<sup>4</sup> § 160 VII, VIII AktG requires disclosure of all owners of more than 25% of its shares in the annual report, but only if the owner is a company. All such stakes have to be reported to the target company by the stakeholder (§ 20 I, IV AktG) and be immediately published in a financial newspaper (§ 20 VI AktG). The reporting firm has to state whether the stake exceeds 25% or 50%, and

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whether the reporting firm also holds at least a 25% stake in the stakeholder. If such stakes are not reported, the owner cannot exercise voting rights associated with this stake. In principle, this means that a stake can be bought secretly. In this paper, however, the issue is control over a company and control can only be exerted if the target company is notified. Thus, we can regard the reporting requirement in § 20 AktG as binding for our purposes.

<sup>5</sup> §§ 325-329 HGB.

<sup>6</sup> § 40 I GmbHG. Information on owners must be published immediately (as opposed to annually), if all stakes are taken over by a single individual or company (§ 40 II GmbHG).

<sup>7</sup> § 336 HGB, § 285 XI HGB.

<sup>8</sup> § 336 HGB, § 285 XIV HGB. The majority owner must be named publicly if it includes the subsidiary in its consolidated annual report.

<sup>9</sup> § 339 HGB.

<sup>10</sup> § 5 II PublizitätsG, § 285 XI HGB.

<sup>11</sup> As defined in § 340 HGB and §§ 1f KWG.

<sup>12</sup> § 340i HGB, § 311 HGB, § 285 XI HGB.

<sup>13</sup> § 160 VII, VIII AktG and § 340i HGB referring to § 285 XIV HGB, respectively. Also see note 8.

<sup>14</sup> § 340i I HGB.

<sup>15</sup> As defined in § 341 HGB.

<sup>16</sup> § 341i HGB, § 311 HGB, § 285 XI HGB.

<sup>17</sup> § 160 VII, VIII AktG and § 341i HGB referring to § 285 XIV HGB, respectively. Also see note 8.

<sup>18</sup> § 341i I HGB.

Table 4: Legal requirements on publishing ownership information

	Deposit of list of founding members publicly	Deposit current company statutes publicly	Deposit current list of owners publicly	Restrictions on transfers of ownership	Repurchase of own shares
Aktiengesellschaft (AG)	Yes <sup>1</sup>	Company register	No <sup>2,3,4</sup>	None for bearer shares, notification of company for registered shares <sup>5</sup>	No <sup>6</sup>
Gesellschaft mit beschränkter Haftung (GmbH)	Yes <sup>7</sup>	Company register	Company register <sup>8</sup>	Notarized sale <sup>9</sup>	Yes <sup>10</sup>
Kommanditgesellschaft auf Aktien (KGaA)	Yes <sup>11</sup>	Company register	Company register, only general partners <sup>12,3,4</sup>	See AG for transfers of limited shares. See OHG for changes of general partners	No <sup>6</sup>
Kommanditgesellschaft (KG)	Yes <sup>13</sup>	No	Company register <sup>14</sup>	No transfers unless defined in company statutes or approved by all partners <sup>15</sup>	Not applicable for general partners, yes for limited shares <sup>16</sup>
GmbH (or AG) & Co. KG	Yes	Company register	Company register <sup>8,14</sup>	See GmbH for transfers of GmbH shares and KG for transfers of limited shares	See GmbH for GmbH shares and KG for limited shares
Offene Handelsgesellschaft (OHG)	Yes <sup>17</sup>	No	Company register <sup>18</sup>	No transfers unless defined in company statutes or approved by all partners <sup>19</sup>	Not applicable
Eingetragene Genossenschaft (e.G.)	No <sup>20</sup>	Register for cooperatives	No	None unless imposed by statutes <sup>21</sup>	Possible <sup>22</sup>
Gesellschaft bürgerlichen Rechts (GbR)	No	No	No	No transfers unless defined in statutes or approved by all partners	Not applicable
Stille Gesellschaft	No	No	No	No transfers unless defined in partnership contract or approved by all partners	Not applicable
Eingetragener Verein (e. V.)	Management	Register of unions <sup>24</sup>	No	No transfers possible <sup>25</sup>	Not applicable

	Deposit of list of founding members publicly	Deposit current company statutes publicly	Deposit current list of owners publicly	Restrictions on transfers of ownership	Repurchase of own shares
	only <sup>23</sup>				
Stiftung	not applicable	No	not applicable	Not applicable	Not applicable
Banks <sup>26</sup>			No <sup>27</sup>		
Insurance companies		Company register	AGs: see above Mutuals: No	Yes, <sup>28</sup> also see AG	No, see AG if organized as AG

<sup>1</sup> § 39f AktG. Among other things, firms must register nominal share capital as well as name, profession, and addresses of founders and of members of the first supervisory board.

<sup>2</sup> There are two exceptions to this rule. First, an AG where all shares are owned by one person, the shareholder must register name, profession, and address (§ 42 AktG). Second, if a company owns 25% of the capital, or 25 or 50% of capital *or* votes in an AG, it must notify the AG (§ 20 I, IV AktG). The AG, in turn, must immediately publish this information in a financial newspaper (§ 20 VI AktG). § 20 AktG, however, applies only to companies and not to individuals.

<sup>3</sup> Owners who decide to vote personally at the AGM are publicly known, because § 129 I AktG requires that each shareholder present at the AGM is registered. This list is public and is later deposited with the company register. De facto, however, the list does not provide informative knowledge about the owners of the AG, because proxy votes delegated to banks or other entities cannot be traced back to the owner, even though the owner may have given explicit instructions on how to vote (§ 129 II, III AktG).

<sup>4</sup> In addition, stake purchases leading to ownership crossing 25% or 50% must be filed immediately for approval by the BKartA, if the combined sales of buyer and target exceed DM 500 Mio. (§ 23 GWB). These filings are generally publicly available if the acquisition is approved.

<sup>5</sup> § 67f AktG. The company statutes may require approval by the management board, supervisory board, or general assembly.

<sup>6</sup> § 71 AktG. The major exceptions include repurchases to avoid substantial and imminent damage to the company, to issue shares to employees, or to pay a consideration associated with a takeover or similar transaction. All own holdings must be listed in the annual financial statements (§ 160 I, II AktG). Holdings of own shares must never exceed 10% of nominal capital. A further exception applies to financial institutions who may repurchase, with approval of the AGM, up to 5% of their own shares for trading purposes. Repurchased shares lose all of their rights, including dividend claims and voting rights.

<sup>7</sup> § 8 GmbHG. Among other things, firms must register nominal capital as well as name, profession, and addresses of founders.

<sup>8</sup> § 53f GmbHG.

<sup>9</sup> § 15 GmbHG. The statutes may require approval by the company.

<sup>10</sup> § 33 GmbHG. Repurchases are only allowed if nominal capital is fully paid in and the repurchase does not reduce nominal capital.

<sup>11</sup> §§ 39f, 282 AktG. Requirements are the same as for AGs, except that the KGaA files the name of the general partners instead of those of the management board.

<sup>12</sup> § 282f AktG.

<sup>13</sup> §§ 106, 162 HGB. The filing includes the identity of general and limited partners and their individual shares in the firm's capital. Even though the required publication according to § 10 I HGB (which requires the company register to publish records in the government newspaper) does not include the names of limited partners, these names can be obtained directly from the register.

<sup>14</sup> §§ 107, 175 HGB.

<sup>15</sup> §§ 131-144 HGB for changes in general partners; § 174, 175 HGB for changes in limited partners.

<sup>16</sup> Absent other rules in the company statutes, the repurchase of limited shares (or other changes in limited partners or capital) require approval by all partners (§ 174, 175 HGB).

<sup>17</sup> § 106 HGB.

<sup>18</sup> § 107 HGB.

<sup>19</sup> §§ 131-144 HGB.

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<sup>20</sup> Only the members of the managing board must be published (§ 10 I GenG).

<sup>21</sup> § 76 I GenG.

<sup>22</sup> In the context of cooperatives, the repurchase of own shares amounts to terminating membership. The company has certain rights to expel members which can be defined in the statutes (§ 68 GenG). Any member has the right to terminate membership, but has to adhere to certain waiting periods (§65 I, II GenG). Statutes can extend the waiting period up to five years, but cannot deny the termination right for members. In addition, membership can be terminated for other reason, such as bankruptcy of a member (§ 66 I GenG) or , under certain conditions, after a change in statutes (§ 67a GenG).

<sup>23</sup> § 64 BGB.

<sup>24</sup> Refers to the *Vereinsregister*, § 59 BGB.

<sup>25</sup> § 38 BGB.

<sup>26</sup> As defined in § 340 HGB and §§ 1f KWG.

<sup>27</sup> Several filing requirements exist for banks, which must provide information on their stakes in other companies and on their ownership to the Bundesamt für Kreditwesen and to the Deutsche

<sup>28</sup> All stakes exceeding 10% of share capital for AGs or founding capital for mutuals must be approved by the BAV (§ 7a VAG).

Table 5: Accessibility and availability of ownership data

	Legal forms	Accessibility of data	Availability of data on computer
Company registers, registers of cooperatives <sup>1</sup>	All	Yes	No <sup>2</sup>
Market Supervision Authority (Bundesamt für den Wertpapierhandel (BAWe), founded in 1996)	AGs listed in an official stock market	Annual publications of control rights exceeding 5%, but only a snapshot and no information on changes <sup>3</sup>	Only the data contained in annual publication
Banking Supervision Authorities (Bundesaufsichtsamt für Kreditwesen, Deutsche Bundesbank)	Financial institutions	No <sup>4</sup>	No
Insurance Companies Supervision Authority	Insurance companies		No
Competition Authorities (Bundeskartellamt, BKartA)	All	Monthly publications of takeover filings	No

<sup>1</sup> The register of cooperatives is held at the same courts that hold the company registers (§ 10 II GenG).

<sup>2</sup> The company registers are administered in a decentralized way by local courts. Even though § 8a HGB allows a computerized register, to our knowledge no court is using this option to date.

<sup>3</sup> According to BAWe (1997), the office is planning more elaborate disclosures. The full text of publications on share-price relevant events as required by the insider regulation are already available on several WWW sites.

<sup>4</sup> The Bundesbank publishes aggregate figures of banking and other economic activity periodically, but does not provide data on individual institutions.

Table 6: Shareholders' meetings and boards of Aktiengesellschaften

	% of capital needed to initiate an irregular AGM	Depositing of shares before the AGM	Maximum term of appointment for management board (MB) and supervisory board (SB) executives	Disclosure of executive compensation	Disclosure of information upon request of individual shareholders at the AGM	Disclosure of executive trading in shares of their company	Legal actions by shareholders against executives
Aktiengesellschaft (AG)	5 <sup>1</sup>	3 or 10 days <sup>2</sup>	MB: 5 years, renewable <sup>3</sup> SB: 4 years, renewable <sup>4</sup>	Aggregates for MB and SB, respectively <sup>5</sup>	Since 1993: Stakes in other firms exceeding 10% of their votes or capital, or DM 100 Mio market value and the identity of large owners <sup>6</sup>	No	Yes <sup>7</sup>
Additional requirements or special rules for listed companies	None	None	None	None	None	No <sup>8</sup>	None

<sup>1</sup> § 122 I AktG. Company statutes may specify a smaller percentage.

<sup>2</sup> § 123 III, IV AktG. Company statutes may require that shareholders deposit their shares with a notary or a financial institution (under discretion of the shareholders) at least 10 days prior to the AGM. Statutes may further require that shareholders register for the AGM at least three days prior to the meeting.

<sup>3</sup> § 84 I AktG.

<sup>4</sup> § 102 I AktG.

<sup>5</sup> § 285 IX HGB. The aggregate must include all compensation and other benefits to board members that have accrued during the past financial year. Companies are exempt from this rule, if publishing this information allows the public to identify compensation paid to a specific individual (§ 286 IV AktG).

<sup>6</sup> § 131 AktG and KG, 26.8.93 - 2 W 6111/92, ZIP 1993, 1618. This ruling was the result of a successful suit of E. Wenger against Siemens AG. The court argues that since the EU Transparency Directive requires disclosure of 10% stakes to the public, at least the same right should apply to shareholders of the firm. Thus, Schneider (1995) expects that after 1996, when the transposition of the Transparency directive becomes effective, stakes exceeding 5% must be disclosed to shareholders. According to Schneider it is not clear, however, whether this only applies to stakes in listed firms or to stakes in any firm. Schneider's argument that large owners must be disclosed upon request follows the same reasoning.

<sup>7</sup> If executives violate their fiduciary duty according to § 93 AktG, they are generally personally liable for damages to the company. Shareholders representing at least 10% of capital can initiate legal proceedings against executives.

<sup>8</sup> § 17 WpHG explicitly specifies for AGs listed in an official market, that data related to specific individuals must be deleted unless it is relevant to a currently prosecuted insider-trading violation. In no instance must this information be published prior to publicly accessible court proceedings.

Table 7: Proxy rules

	Can company employees exercise proxy votes?	Can banks exercise proxy votes?	Can other individuals or organizations exercise proxy votes?
Aktiengesellschaft	Yes <sup>1</sup>	Yes <sup>1</sup>	Yes <sup>1</sup>
Additional req. or spec. rules for listed companies	None	None	None

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<sup>1</sup> § 135 AktG. All proxy votes are exercised anonymously in the sense that the owner of the votes is not named publicly (§ 129 II, III AktG).

Table 8: Important types of limited-liability equity securities

Type of share	Issuing legal form	Exchange listing	Voting rights	Requirements for new issues
Stammaktie (common stock)	AG, KGaA	Possible	Always, generally one per share	75% AGM vote <sup>1</sup>
Vorzugsaktie (preferred stock)	AG, KGaA	Possible	Generally no, unless the required cumulative preferential dividend is not paid in two consecutive years, and in special matters of interest to preferred-stock holders <sup>2</sup>	75% AGM vote <sup>3</sup>
Genußschein (participation right)	All	Possible	No	75% AGM vote <sup>4</sup>
Geschäftsanteil (cooperative share)	e. G.	No	Generally one vote per member, independent of stake size <sup>5</sup>	Membership request and management approval <sup>6</sup>
Geschäftsanteil (GmbH share)	GmbH	No	Votes proportional to stake size <sup>7</sup>	75% AGM vote <sup>8</sup>

<sup>1</sup> § 182 AktG. The company statutes may stipulate more or less restrictive requirements.

<sup>2</sup> §§ 139-141. AGs may only issue shares without votes if they have a cumulative preferred dividend claim attached.

<sup>3</sup> § 182 AktG. The company statutes may stipulate only more restrictive requirements. A different situation arises if a company has already preferred stock outstanding. In that case, old preferred-stock holders must approve new preferred share with equal or better preference with a 75% majority (not adjustable by company statutes and in addition to the AGM approval) (§141 II, III AktG). This additional vote is not required if further issues of preferred shares have been explicitly approved prior to the first preferred issue.

<sup>4</sup> For AGs and KGaAs: § 221 AktG. The company statutes may stipulate more or less restrictive requirements. For all other forms, issuance generally requires 75% majorities.

<sup>5</sup> § 43 III GenG. The statutes can grant a maximum of three more voting rights to specific members.

<sup>6</sup> § 15 GenG. Increasing the share of existing members requires a 75% AGM majority (§ 16 II GenG).

<sup>7</sup> § 47 II GmbHG.

<sup>8</sup> A seasoned equity offering by a GmbH requires a change of statutes and thus a 75% majority (§§ 3 I, 53 II GmbHG).

Table 9: Legal devices to leverage control relative to ownership in listed AGs

Device	Current relevance	Limitations	Implications for transparency
Non-voting shares	All AGs can issue two classes of stock	Nominal value of non-voting shares must not exceed that of voting shares	None: distribution of voting rights across classes of stock published in annual report
Multiple-vote shares	Only relevant in a few formerly state-owned firms	Illegal unless specifically approved by state government	None: shareholders with multiple voting rights per share are published in annual report
Voting caps	May be imposed by company statutes	In practice easy to circumvent	Reduces transparency: to circumvent caps, shareholdings must be disguised by depositing them with friendly parties
Proxy Voting	Possible in all AGs. Widely used by banks, especially in listed companies with a significant % of dispersed shareholdings	Voting instructions must be sought; but usually no instructions are provided	Reduces transparency significantly. It is not possible to determine who owns the shares and who controls the votes (the owner or the person voting the shares)
Large share blocks	Widely used, weak minority protection allows blockholders to pursue interests that may not match that of other shareholders	Certain (legal) transfers from minority shareholders require 75% AGM votes	None given the WpHG: voting blocks must be disclosed
Pyramids	Widely used	None except potentially higher administrative costs	Reduces transparency: intermediate levels may legally hide true ownership structure
Cross shareholdings	Widely used	Need at least three companies to circumvent voting limitation	(see comment on pyramids)
Contractual control arrangement	Widely used	Requires 75% AGM vote	None: must be published in annual report
Personal interlockings	Widely used	Needs supporting voting block at AGM (blockholder, bank)	Reduces transparency: affiliation of supervisory board members is often not obvious; often creditors without shareholdings are represented, who do not benefit from providing transparency to (potential) shareholders

Table 10: Descriptive statistics on listed AGs in 1995

	Amtlicher Handel (official market)	Geregelter Markt (regulated market)	Freiverkehr (OTC market) <sup>1</sup>	All segments
Number of AGs, of which	755	194	869	1818
domestic firms	522	173	117	812
foreign firms	233	21	752	1006
Market value of domestic firms (DM Bn.)	795	19	12	826
IPOs of domestic AGs 1977 - 1995	121	127	21	269

Source: DAI Factbook 1996

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<sup>1</sup> Geregelter Freiverkehr until April 1987, then Freiverkehr.

Table 11: Descriptive statistics on share trading and ownership in 1995

1995	All shares	Domestic shares
Trading volume <sup>1</sup> (DM Bn.)	1683	1644
Share of total volume by the 5% highest-volume companies		83%
Share of total market value by the 5% highest-valued companies		67%
Trading volume / market capitalization (1993)	114%	
Trading volume / GDP (1993)	30%	
Market capitalization / GDP (1993)	24%	
Shares as a percentage of total assets of private households	5.3%	
Percentage of population holding shares	5.5%	
Percentage of shares held by private households	14.6%	
Shares as a percentage of total financial portfolio of private households	32.8%	21.7%
Percentage of shares held by companies	42.1%	
Percentage of shares held by banks	10.3%	
Percentage of shares held by investment companies	7.6%	
Percentage of shares held by insurance companies	12.4%	
Percentage of shares held by government	4.3%	
Percentage of shares held by foreign owners	8.7%	

Source: DAI Factbook 1996

<sup>1</sup> Volume includes all transactions, regardless of whether the trade is on floor, off floor, by member firms, or by non-member firms. In addition, the reported figures include double counting.

Table 12: Number of companies by industry and sales in 1990

Industry	All companies						AG, KGaA, GmbH						KG, OHG, GmbH & Co KG						Sole proprietorships			
	Sales in DM Mio.						Sales in DM Mio.						Sales in DM Mio.						Sales in DM Mio.			
	Total	< 5	< 10	< 25	< 100	>= 100	Total	< 5	< 10	< 25	< 100	>= 100	Total	< 5	< 10	< 25	< 100	>= 100	Total	< 5	< 10	>= 10
All companies	61741	23879	11668	12922	9684	3588	28983	9854	5885	6397	4637	2210	19585	4638	3868	5275	4551	1253	12253	9161	1763	1329
Manufacturing	26150	8641	4807	5571	5051	2080	13070	4071	2499	2726	2471	1303	9552	2012	1778	2566	2464	732	3324	2483	498	343
Chemicals	853	127	117	183	250	176	524	83	55	102	134	150	305	34	56	75	114	26	24	10	6	8
Plastics	1564	466	295	398	316	89	934	291	187	225	169	62	508	101	82	154	144	27	121	73	26	22
Rubber	164	52	17	25	34	36	92	23	10	17	20	22	63	21	6	8	14	14	8	?	?	?
Stone	1402	497	324	322	213	46	477	177	98	79	86	37	794	226	204	231	124	9	128	92	22	14
Ceramics	304	74	52	74	70	34	160	29	30	31	42	28	114	25	17	40	27	5	?	?	?	?
Iron	1303	357	261	309	269	107	645	181	116	156	125	67	533	91	118	144	140	40	125	85	27	13
NE-Metals	139	16	10	14	45	54	94	10	6	5	31	42	40	?	4	8	14	11	5	?	?	?
Foundries	335	69	50	94	101	21	172	41	20	44	53	14	138	17	22	46	46	7	25	11	8	6
Steel	944	310	204	227	162	41	557	186	126	132	85	28	296	56	65	90	72	13	89	66	13	10
Machines	4350	1287	805	1006	883	369	2645	796	512	594	494	249	1354	229	240	385	380	120	346	257	53	36
Cars & Trucks	631	201	123	107	119	81	335	89	77	60	59	50	202	40	30	44	57	31	93	71	16	6
Electronics	1814	471	322	366	433	222	1171	317	221	233	243	157	520	77	76	117	185	65	121	75	25	21
Metal products	1626	466	340	400	318	102	763	236	179	166	137	45	696	110	130	228	172	56	165	118	31	16
Wood	795	429	158	120	72	16	212	85	57	38	26	6	321	133	64	70	44	10	260	210	37	13
Wood products	1546	768	282	248	203	45	671	324	140	117	71	19	511	139	104	115	128	25	358	300	37	21
Paper	143	17	16	26	43	41	65	12	7	10	13	23	73	?	8	16	29	18	5	?	?	?
Paper products	535	123	92	139	130	51	281	70	49	69	64	29	213	29	35	63	65	21	41	24	8	9
Printing	1100	439	263	238	143	17	563	248	137	110	60	8	404	99	98	117	81	9	132	91	28	13
Textiles	1257	383	215	282	305	72	526	160	92	100	131	43	605	127	105	172	172	29	125	96	17	12
Clothing	919	303	166	210	194	46	428	142	93	92	81	20	366	74	59	99	108	26	125	87	14	24
Food	2271	774	312	423	461	301	723	154	98	158	189	124	845	173	121	190	222	139	531	398	63	70
Construction	5083	2735	1003	829	430	86	2469	1293	527	415	183	51	1494	480	376	359	244	35	1102	946	99	57
Wholesale	16405	5216	3158	3957	3050	1024	8446	2534	1716	2119	1481	596	4745	965	849	1298	1274	359	2572	1615	478	479
Retail	11742	5883	2327	2334	979	219	4015	1499	980	1036	403	97	3114	831	730	938	503	112	4573	3530	614	429

Source: Deutsche Bundesbank 1996

Table 13: Taxable value (Einheitswert) of commercial companies in 1989 by legal form<sup>1</sup>

Legal form	Number of reporting firms	Taxable value in DM Mio.	Average value in DM Mio.
Total	580396	755767	1.30
Individuals	234058	61920	0.26
Companies, of which	346338	693847	2.00
Aktiengesellschaften (AGs), Kommanditgesellschaften auf Aktien (KGaAs)	1774	210366	118.58
Gesellschaften mit beschränkter Haftung (GmbHs)	230037	214839	0.93
Genossenschaften <sup>2</sup>	2286	6256	2.74
Offene Handelsgesellschaften (OHGs), Kommanditgesellschaften (KGs), and similar forms	108372	246741	2.28
Firms owned by state and municipalities	1354	12217	9.02
Others	2515	3427	1.36

Source: Statistisches Jahrbuch 1996

<sup>1</sup> West Germany only, excluding financial institutions, insurance companies, investment funds, and holding companies.

<sup>2</sup> Erwerbs- und Wirtschaftsgenossenschaften.

Table 14: Sales taxed with value-added tax by legal form and sales in 1992<sup>1</sup>

Legal form (Number of firms)	Sales in DM Mio., percentage of total taxable sale												
	25 000-50 000	50 000-100 000	100 000-250 000	250 000-500 000	500 000-1 Mio.	1 Mio.-5 Mio.	5 Mio.-10 Mio.	10 Mio.-25 Mio.	25 Mio.-50 Mio.	50 Mio.-100 Mio.	> 100 Mio.	Total	
All (2,631,812)	Mio. DM	12 172	31 526	103 428	150 291	228 922	783 980	396 355	570 526	445 591	442 344	3 163 309	6 328 444
	%	0.2	0.5	1.6	2.4	3.6	12.4	6.3	9.0	7.0	7.0	50.0	100
Proprietorships (1,926,988)	Mio. DM	10 592	27 310	86 125	114 978	152 275	334 783	84 213	71 322	30 037	16 579	22 530	950 743
	%	1.1	2.9	9.1	12.1	16.0	35.2	8.9	7.5	3.2	1.7	2.4	100
of which: OHG (210,167)	Mio. DM	932	2 250	8 183	12 977	20 032	64 348	31 072	40 297	25 324	23 127	175 191	403 734
	%	0.2	0.6	2.0	3.2	5.0	15.9	7.7	10.0	6.3	5.7	43.4	100
KG (87,317)	Mio. DM	56	190	972	2 368	6 719	73 794	81 526	176 524	177 081	191 154	709 435	1 419 818
	%	0.0	0.0	0.1	0.2	0.5	5.2	5.7	12.4	12.5	13.5	50.0	100
AG, KGaA, bergrechtl. Gewerkschaften (2,164)	Mio. DM	1	5	21	42	109	921	1 078	3 306	5 894	13 252	1 204 503	1 229 132
	%	0.0	0.0	0.0	0.0	0.0	0.1	0.1	0.3	0.5	1.1	98.0	100
GmbH (359,358)	Mio. DM	368	1 219	6 817	18 161	46 597	289 820	182 220	250 276	180 154	164 462	841 237	1 981 329
	%	0.0	0.1	0.3	0.9	2.4	14.6	9.2	12.6	9.1	8.3	42.5	100
Cooperatives <sup>2</sup> (10,151)	Mio. DM	15	45	170	353	805	8 489	8 119	12 805	11 466	13 578	64 330	120 176
	%	0.0	0.0	0.1	0.3	0.7	7.1	6.8	10.7	9.5	11.3	53.5	100
Firms owned by state and municipalities (6,012)	Mio. DM	8	32	168	346	737	3 536	2 151	3 324	3 760	5 073	75 403	94 538
	%	0.0	0.0	0.2	0.4	0.8	3.7	2.3	3.5	4.0	5.4	79.8	100

Source: Statistisches Jahrbuch 1996

<sup>1</sup> West Germany only, excluding financial institutions, insurance companies, investment funds, and holding companies.

<sup>2</sup> Erwerbs- und Wirtschaftsgenossenschaften.

Table 15: Financial institutions in 1995

Type of institution	Number of institutions	Total assets in DM Mio. <sup>1</sup>	Average total assets in DM Mio.
All institutions	3622	7538879	2081
Credit banks (Kreditbanken)	335	1824933	5448
State banks (Girozentralen)	13	1370397	105415
State savings banks (Sparkassen)	626	1512917	2417
Cooperative head banks (Genossenschaftliche Zentralbanken)	4	263630	65908
Credit unions (Kreditgenossenschaften)	2591	882082	340
Real estate banks, private and state-owned (Hypothekenbanken, öffentlich-rechtliche Grundkreditanstalten)	35	968728	27678
Special credit institutions (Kreditinstitute mit Sonderaufgaben)	18	716192	39788

Source: Statistisches Jahrbuch 1996

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<sup>1</sup> Excluding assets of foreign subsidiaries and real-estate savings banks (Bausparkassen).

Table 16: Insurance companies in 1994

Type	Number of reporting companies	Gross premia in DM Mio.	Average gross premia in DM Mio.
Life insurance	120	83976	700
Pension insurance	1115	3528	3
Health insurance	101	28007	277
Property damage and casualty insurance	777	98820	127
All companies excl. reinsurance	2113	214331	101
Reinsurance	32	55218	1726

Source: Statistisches Jahrbuch 1996

Table 17. Reported voting stakes in RWE AG as reported by BAWe

Name of shareholder	Direct and attributed shares	Single vote	Attributed	Single vote
RW Holding Aktiengesellschaft	12.1			
Stadt Essen	8.1893997			
Allianz Aktiengesellschaft Holding	8.1169996		7.676000118	
Quarta-Vermögensverwaltungsgesellschaft mbH	6			

Source: BAWe (1996), p. 60

Table 18. Reported voting stakes in Aachener und Münchener Versicherung AG

Name of shareholder	Direct	Direct & attributed	Attributed	Blocks
AMB Aachener und Münchener Beteiligungs-Aktiengesellschaft	75.50	77.00	1.50	77.00

Source: BAWe (1996) and own calculations

Table 19. Reported voting stakes in AGIV AG: Source of attributed votes is ambiguous

Name of shareholder	Direct	Direct and attributed	Attributed	Blocks
BHF-Bank AG	48.70	48.70		48.70
EVS AG	0.00	10.01	10.01	10.01?
STOCK Beteiligungsgesellschaft mbH	10.01	10.01		0.00?

Source: BAWe (1996) and own calculations

Table 20. Reported voting stakes in Rhenag AG: Parent company is ambiguous

Name of shareholder	Direct	Direct and attributed	Attributed	Blocks
RWE AG	0.00	54.09	54.09	54.09
RWE Energie AG	54.09	54.09		
Preussen Elektra AG	0.00	40.00	40.00	?
VEBA AG	0.00	40.00	40.00	40.00
Thüga AG	40.00	40.00		

Source: BAWe (1996) and own calculations.

Table 21. Reported voting stakes in Markt- und Kühlhallen AG: Number of blocks

Name of shareholder	Direct	Direct and attributed	Attributed	Blocks
DIB Industriebeteiligung GmbH & Co. Holding KG	0.00	41.41	41.41	
Doblinger, Alfons	0.00	41.41	41.41	41.41
Doblinger Industriebeteiligung KG	41.41	41.41		
BB-Kapitalbeteiligungsgesellschaft mbH	41.40	41.40		41.40

Source: BAWe (1996) and own calculations.

Table 22. Notified voting stakes in Monachia AG: Number of blocks

Name of Shareholder	Direct	Direct & Attributed	Attributed	Blocks
RWE Aktiengesellschaft	0.00	45.22	45.22	45.22
Allianz Aktiengesellschaft Holding	45.22	45.22		45.22
HOCHTIEF Aktiengesellschaft	45.22	45.22		?

Source: BAWe (1996) and own calculations.

Table 23. Number of entries per notified company

No. of entries	Frequency	Percentage
14	2	0.5
12	1	0.3
10	2	0.5
9	2	0.5
8	4	1.0
7	7	1.7
6	21	5.2
5	20	5.0
4	53	13.1
3	69	17.1
2	101	25.0
1	121	30.0
Total	403	100.0

Source: BAWe (1996) and own calculations. Note: BAWe (1996) lists 404 companies, but two companies had a double entry, reducing the actual number of companies to 402.

Table 24. Companies with the largest number of notifications

Company name	Number of entries	Type of owners
PORSCHE, Dr. Ing. h. c., F., Aktiengesellschaft	14	family pool
Tarkett Aktiengesellschaft	14	Standard Chartered Bank and Goldman Sachs and all subsidiaries
SAP Aktiengesellschaft	12	founders and their holdings
Flachglas Aktiengesellschaft	10	Elders Glass Ltd and all subsidiaries (including Dahlbusch AG)
SCHWARZ Pharma Aktiengesellschaft	10	pool of heirs (Erbengemeinschaft)
Dahlbusch Aktiengesellschaft	9	Elders Glass Ltd and all subsidiaries
Süd-Chemie Aktiengesellschaft	9	different first level shareholders: individuals, banks, Allianz, the Messerschmitt Trust
FUCHS Petrolub AG Oel + Chemie	8	Fuchs family holdings and banks (the latter direct)
STEUCON Grundbesitz- und Beteiligungs-Aktiengesellschaft	8	family members over 5% and holdings
VBH Vereinigter Baubeschlag-Handel Aktiengesellschaft	8	family pool
ZWL Grundbesitz- und Beteiligungs-Aktiengesellschaft	8	family pool and holdings

Source: BAWe (1996) and own calculations

Table 25. Reported voting stakes in Tarkett AG: Number of entries per voting block vs. information content

Name of shareholder	Direct	Direct and attributed	Attributed	Blocks
Advisory Partners, L. P.	0.00	28.87	28.87	
Chartered Financial Holdings Limited	0.00	32.73	32.73	
CWB Capital Partners (Investments) Limited	0.00	32.73	32.73	
CWB Capital Partners (Nominees) Limited	32.73	32.73		
CWB Capital Partners Limited	0.00	32.73	32.73	
Goldman Sachs & Co. Verwaltungs GmbH	12.19	12.19		
Goldman Sachs Advisors, Inc.	0.00	28.87	28.87	
Goldman Sachs Advisors, L. P.	0.00	28.87	28.87	28.87
Goldman Sachs Capital Partners, L. P.	9.58	28.87	19.29	
Goldman Sachs Invest. Partners Esp. C.V.	7.10	7.10		
Rhein-Donau Capital Partners	0.00	12.19	12.19	
Standard Chartered (SFD No. 1) Limited	0.00	32.73	32.73	
Standard Chartered (SFD No. 2) Limited	0.00	32.73	32.73	
Standard Chartered Bank	0.00	32.73	32.73	32.73

Source: BAWe (1996) and own calculations

Table 26. Reported voting stakes in Herlitz AG: Informal family pools are not reported

Name of shareholder	Direct	Direct and attributed	Attributed	Blocks
Herlitz, Günter	6.36	6.36		6.36
Herlitz, Dr., Klaus	3.60	5.13	1.52	5.13

Source: BAWe (1996) and own calculations

Table 27. Reported voting stakes in Veba AG

Name of shareholder	Direct	Direct and attributed	Attributed	Blocks
Allianz Aktiengesellschaft Holding	0.01	11.46	11.45	11.46
Lambda-Vermögensverwaltungsgesellschaft mbH	10.20	10.20		?

Source: BAWe (1996) and own calculations.

Table 28. Exercised votes at Veba AG's annual general meeting, 23 May 1996

Voting Shareholders	Own shares voted	Other directly controlled shares	Deposited shares	Total shares voted	% of attending par value	% of total par value
Dresdner Bank	0	0	405,939,535	405,939,535	33.29%	16.63%
Deutsche Bank	0	0	113,401,145	113,401,145	9.30%	4.65%
Commerzbank	0	0	22,793,400	22,793,400	1.87%	0.93%
BHF-Bank	0	0	24,426,855	24,426,855	2.00%	1.00%
Bayerische Hypobank	0	0	16,782,800	16,782,800	1.38%	0.69%
Bayerische Vereinsbank	0	0	13,968,900	13,968,900	1.15%	0.57%
Chase Bank	0	0	36,202,560	36,202,560	2.97%	1.48%
Vereins-u. Westbank	0	0	13,387,755	13,387,755	1.10%	0.55%
Bankgesellschaft Berlin	5,780,800	0	2,197,795	7,978,595	0.65%	0.33%
Other German private banks	0	400,000	112,129,320	112,529,320	9.23%	4.61%
Foreign Banks	0	0	6,410,420	6,410,420	0.53%	0.26%
WestLB	0	0	42,820,065	42,820,065	3.51%	1.75%
NordLB	0	0	14,615,585	14,615,585	1.20%	0.60%
Other state banks	75,000	0	34,702,220	34,777,220	2.85%	1.42%
DG Bank	0	0	14,982,660	14,982,660	1.23%	0.61%
Other credit unions	0	0	18,244,415	18,244,415	1.50%	0.75%
Kapitalanlagegesellschaften	0	219,512,250	0	219,512,250	17.77%	8.88%
Allianz	0	0	2,797,000	2,797,000	0.23%	0.11%
Kapitalanlagegesellschaft	0	0	0	0	0.00%	0.00%
Other Companies	3,200	93,552,800	0	93,556,000	7.67%	3.83%
Shareholder Associations	0	1,258,950	1,815,005	3,073,955	0.25%	0.13%
Small Shareholders	N/A.	N/A.	N/A.	4,019,820	0.33%	0.16%
Attending						
Total Attending				1,219,423,255	100.00%	49.96%
Total Not Attending				1,221,472,445		50.04%
Total Par Value				2,440,895,700		100.00%

Source: VEBA AG and own calculations

Table 29. Reported voting stakes in DEPFA AG: No group structure reported

Name of shareholder	Direct	Direct and attributed	Attributed	Blocks
DEPFA Holding mbH	40.00	40.00		40.00

Source: BAWe (1996)

Table 30. Empirical distribution of direct stakes and voting blocks for 402 officially listed Aktiengesellschaften

Percentiles	Minimum stake	Maximum stake	Median stake	Interquartile range	Mean stake	Standard deviation of stakes
<b>A. Direct stakes</b>						
Minimum	0.0	0.0	0.0	0.0	0.0	0.0
1%	0.1	5.0	3.4	0.0	4.9	0.0
5%	1.8	10.7	7.0	0.0	8.2	0.0
10%	4.7	15.7	10.0	0.0	10.7	0.0
25%	7.9	27.3	16.5	0.0	18.8	0.0
50%	25.0	54.1	39.4	1.5	39.4	1.4
75%	76.8	80.5	76.8	18.5	76.8	13.5
90%	96.6	96.6	96.6	46.3	96.6	29.9
95%	98.4	98.4	98.4	65.4	98.4	38.9
99%	99.4	99.4	99.4	75.5	99.4	52.3
Maximum	100.0	100.0	100.0	89.1	100.0	57.4
<b>B. Voting blocks</b>						
Minimum	0.1	4.9	4.9	0.0	4.9	0.0
1%	3.1	5.0	5.0	0.0	5.0	0.0
5%	5.0	12.0	8.9	0.0	10.0	0.0
10%	6.1	18.2	10.3	0.0	12.5	0.0
25%	10.0	33.3	20.2	0.0	23.9	0.0
50%	42.2	63.5	48.4	0.0	48.4	0.0
75%	85.1	85.7	85.1	14.1	85.1	9.7
90%	96.9	96.9	96.9	44.7	96.9	28.2
95%	98.4	98.4	98.4	60.5	98.4	38.4
99%	99.5	99.5	99.5	73.9	99.5	50.5
Maximum	100.0	100.0	100.0	89.1	100.0	54.9

For each of the 402 listed companies we compute the minimum, maximum, median, interquartile range, mean and standard deviation of stakes in that company. The table reports percentiles for these summary statistics.

Table 31. Concentration ratios of direct stakes of 402 officially listed Aktiengesellschaften

	$C_1$		$C_3$		$C_5$		$C_{all}$	
A. Empirical distribution								
Concentration	N	Cumulative percentage	N	Cumulative percentage	N	Cumulative percentage	N	Cumulative percentage
0-4.99	5	1.24	5	1.24	5	1.24	5	1.24
5-9.99	7	2.99	5	2.49	5	2.49	5	2.49
10-14.99	26	9.45	8	4.48	8	4.48	8	4.48
15-19.99	15	13.18	5	5.72	5	5.72	5	5.72
20-24.99	19	17.91	3	6.47	3	6.47	3	6.47
25-29.99	38	27.36	11	9.2	8	8.46	8	8.46
30-34.99	11	30.1	16	13.18	12	11.44	12	11.44
35-39.99	14	33.58	15	16.92	16	15.42	15	15.17
40-44.99	17	37.81	9	19.15	9	17.66	8	17.16
45-49.99	16	41.79	21	24.38	12	20.65	12	20.15
50-54.99	36	50.75	13	27.61	10	23.13	11	22.89
55-59.99	14	54.23	21	32.84	18	27.61	18	27.36
60-64.99	19	58.96	23	38.56	28	34.58	25	33.58
65-69.99	10	61.44	18	43.03	13	37.81	12	36.57
70-74.99	16	65.42	17	47.26	16	41.79	17	40.8
75-79.99	37	74.63	49	59.45	56	55.72	55	54.48
80-84.99	8	76.62	26	65.92	30	63.18	32	62.44
85-89.99	22	82.09	30	73.38	33	71.39	35	71.14
90-94.99	21	87.31	33	81.59	36	80.35	36	80.1
95-100	51	100	74	100	79	100	80	100
B. Descriptive statistics and correlations								
Measure	Mean	Standard deviation	Minimum	Maximum	$C_1$	$C_3$	$C_5$	$C_{all}$
$C_1$	55.8	29.1	0.01	100.0	1.000			
$C_3$	68.6	25.6	0.01	100.0	0.850	1.000		
$C_5$	70.7	25.3	0.01	100.0	0.777	0.978	1.000	
$C_{all}$	71.1	25.3	0.01	100.0	0.760	0.966	0.996	1.000

$C_n$  is defined as the sum of the n largest direct stakes per company.

Table 32. Concentration ratios of voting blocks of 402 officially listed Aktiengesellschaften

	$C_1$		$C_3$		$C_5$		$C_{all}$	
A. Empirical distribution								
Concentration	N	Cumulative percentage	N	Cumulative percentage	N	Cumulative percentage	N	Cumulative percentage
0-4.99	2	0.5	2	0.5	2	0.5	2	0.5
5-9.99	8	2.49	6	1.99	6	1.99	6	1.99
10-14.99	23	8.21	10	4.48	10	4.48	10	4.48
15-19.99	14	11.69	5	5.72	5	5.72	5	5.72
20-24.99	19	16.42	8	7.71	3	6.47	3	6.47
25-29.99	29	23.63	13	10.95	8	8.46	8	8.46
30-34.99	11	26.37	16	14.93	12	11.44	11	11.19
35-39.99	9	28.61	13	18.16	13	14.68	13	14.43
40-44.99	11	31.34	17	22.39	11	17.41	10	16.92
45-49.99	13	34.58	12	25.37	13	20.65	13	20.15
50-54.99	36	43.53	12	28.36	14	24.13	13	23.38
55-59.99	13	46.77	17	32.59	15	27.86	14	26.87
60-64.99	20	51.74	26	39.05	26	34.33	26	33.33
65-69.99	11	54.48	12	42.04	12	37.31	13	36.57
70-74.99	19	59.2	18	46.52	19	42.04	18	41.04
75-79.99	48	71.14	49	58.71	54	55.47	55	54.73
80-84.99	11	73.88	25	64.93	29	62.69	31	62.44
85-89.99	20	78.86	32	72.89	34	71.14	35	71.14
90-94.99	27	85.57	34	81.34	36	80.1	35	79.85
95-100	58	100	75	100	80	100	81	100
B. Descriptive statistics and correlations								
Measure	Mean	Standard deviation	Minimum	Maximum	$C_1$	$C_3$	$C_5$	$C_{all}$
$C_1$	59.7	28.9	4.9	100.0	1.000			
$C_3$	68.3	26.2	4.9	100.0	0.877	1.000		
$C_5$	70.9	25.1	4.9	100.0	0.819	0.949	1.000	
$C_{all}$	71.2	25.1	4.9	100.0	0.807	0.932	0.990	1.000

$C_n$  is defined as the sum of the n largest voting blocks per company.

Table 34. Number of shareholders and blockholders in 402 officially listed Aktiengesellschaften

Number of holdings	Holders of direct stakes			Holders of voting blocks		
	Frequency	Percent	Cumulative percentage	Frequency	Percent	Cumulative percentage
1	608	88.4	88.4	423	84.1	84.1
2	45	6.5	94.9	42	8.4	92.5
3	15	2.2	97.1	15	3.0	95.4
4	9	1.3	98.4	5	1.0	96.4
5	2	0.3	98.7	7	1.4	97.8
6	2	0.3	99.0	3	0.6	98.4
7	1	0.2	99.1	1	0.2	98.6
8	1	0.2	99.3			
9	1	0.2	99.4	1	0.2	98.8
10				1	0.2	99.0
11	1	0.2	99.6			
12	1	0.2	99.7	1	0.2	99.2
13				1	0.2	99.4
14				1	0.2	99.6
19	1	0.2	99.9			
23	1	0.2	100.0			
24				1	0.2	99.8
25				1	0.2	100.0
Sum	688	100.0		503	100.0	

Table 36. Shareholders controlling votes in 3 or more officially listed Aktiengesellschaften

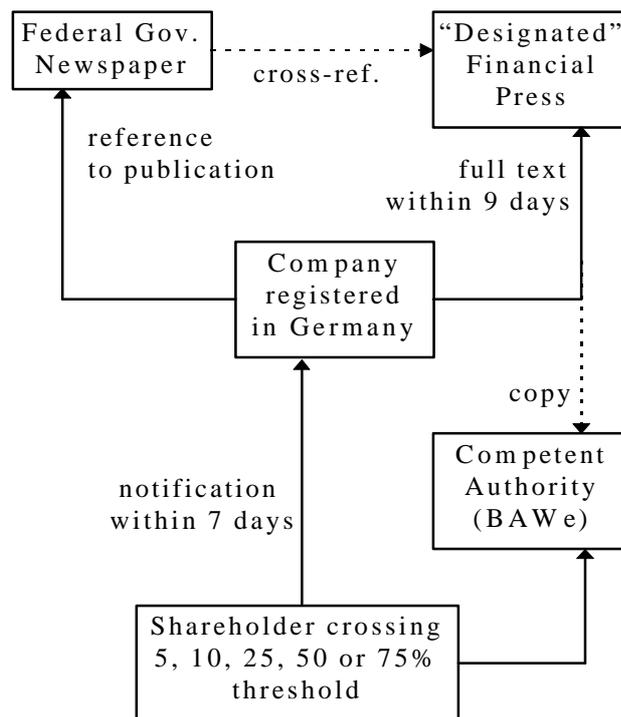
	N	Mean	Minimum	Maximum	Median
A. Holders of direct stakes					
Deutsche Bank Aktiengesellschaft	23	20.4	5.00	94.3	10.0
Allianz Aktiengesellschaft Holding	19	13.3	0.01	45.2	10.0
Münchener Rückversicherungs-Gesellschaft Aktiengesellschaft	12	25.4	3.70	96.7	15.9
Dresdner Bank Aktiengesellschaft	11	30.5	0.80	96.5	14.2
Bayerische Vereinsbank Aktiengesellschaft	9	56.3	9.90	85.4	75.0
Commerzbank Aktiengesellschaft	8	28.8	10.00	97.5	12.2
Bayernwerk Aktiengesellschaft	7	44.2	6.80	98.3	26.3
Bayerische Hypotheken- und Wechselbank Aktiengesellschaft	6	34.7	5.00	75.8	29.9
DG Bank, Deutsche Genossenschaftsbank	6	18.2	5.40	55.4	8.5
AMB Aachener und Münchener Beteiligungs-Aktiengesellschaft	5	59.7	25.80	76.5	75.5
WestLB Westdeutsche Landesbank, Girozentrale	5	8.0	4.68	10.0	8.5
AGIV Aktiengesellschaft für Industrie und Verkehrswesen	4	70.8	50.59	96.9	67.8
BHF-Bank Berliner Handels- und Frankfurter Bank Aktiengesellschaft	4	34.7	5.10	75.1	29.4
BW Bank Baden-Württembergische Bank Aktiengesellschaft	4	10.4	6.25	15.0	10.1
Bayerische Landesbank Girozentrale	4	19.1	4.96	29.7	21.0
Deutsche Babcock Aktiengesellschaft	4	54.1	0.04	75.5	70.5
METRO Aktiengesellschaft	4	83.4	75.00	95.6	81.6
RWE Aktiengesellschaft	4	66.8	41.14	99.5	63.2
RWE Energie Aktiengesellschaft	4	32.5	22.17	54.1	26.9
Württembergische Aktiengesellschaft Versicherungs-Beteiligungsgesellschaft	4	27.6	5.00	53.9	25.8
B. Holders of voting blocks					
Allianz Aktiengesellschaft Holding	25	16.7	4.0	46.5	12.4
Deutsche Bank Aktiengesellschaft	24	21.8	5.0	94.3	10.5
Dresdner Bank Aktiengesellschaft	14	28.0	6.5	96.5	14.5
Münchener Rückversicherungs-Gesellschaft Aktiengesellschaft	13	22.2	5.0	96.7	13.6
VIAG Aktiengesellschaft	12	47.5	6.8	98.3	50.6
RWE Aktiengesellschaft	10	65.0	34.9	99.5	65.2
Bayerische Vereinsbank Aktiengesellschaft	9	56.3	9.9	85.4	75.0
Commerzbank Aktiengesellschaft	7	31.4	10.2	97.5	13.7
Bayerische Hypotheken- und Wechselbank Aktiengesellschaft	6	34.7	5.0	75.8	29.9
Bayerische Landesbank Girozentrale	6	24.7	5.0	61.4	21.0
WestLB Westdeutsche Landesbank, Girozentrale	6	11.5	4.7	29.1	9.1
Oetker, Rudolf August	5	82.8	64.0	96.6	86.7
AMB Aachener und Münchener Beteiligungs-Aktiengesellschaft	5	81.3	75.2	98.4	77.0
METRO Holding Aktiengesellschaft	5	80.2	67.2	95.6	75.8
Deutsche Babcock Aktiengesellschaft	5	69.7	65.5	75.5	67.3
Württembergische Aktiengesellschaft Versicherungs-Beteiligungsgesellschaft	5	39.7	5.0	97.3	25.1
BW Bank Baden-Württembergische Bank Aktiengesellschaft	5	10.8	6.3	15.0	12.6
DG Bank, Deutsche Genossenschaftsbank	5	20.8	6.9	55.4	9.6

Bayerische Braustiftung Josef Schörghuber & Co. Holding KG	4	79.1	49.3	98.1	84.5
Schickedanz Holding-Stiftung & Co. KG	4	65.1	25.0	96.6	69.5
AGIV Aktiengesellschaft für Industrie und Verkehrswesen	4	70.8	50.6	96.9	67.8
BHF-Bank Berliner Handels- und Frankfurter Bank Aktiengesellschaft	4	34.7	5.1	75.1	29.4
Gothaer Lebensversicherung AG	4	19.7	10.0	48.9	10.0

Table 38. Control of voting blocks by type of shareholder in 402 officially listed Aktiengesellschaften

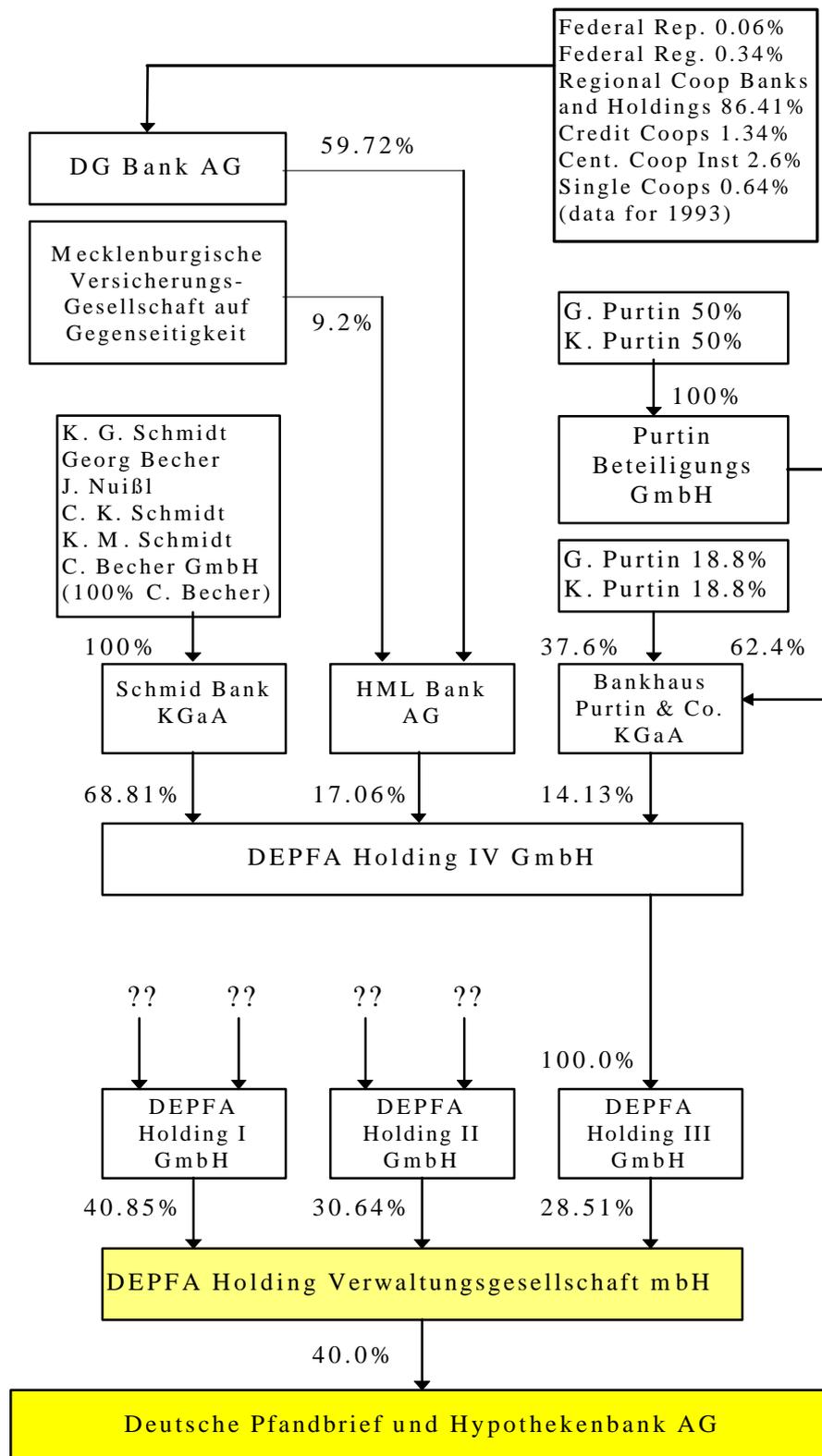
Code	Shareholder type	N	Percentage	Cumulative percentage
1	Insurance companies	9	1.8	1.8
2	Banks	29	5.8	7.6
3	Industry and trade	107	21.3	28.8
4	Designated holding companies	97	19.3	48.1
5	Individuals and family pools	186	37.0	85.1
6	Federal republic, States, Municipalities	13	2.6	87.7
7	Pension funds and similar	2	0.4	88.1
8	Foreign (EU and non-EU)	48	9.5	97.6
9	Foundations and Vereine	12	2.4	100.0
Sum		503	100	

Figure 1. The Mechanics of the Notification and Publication Process



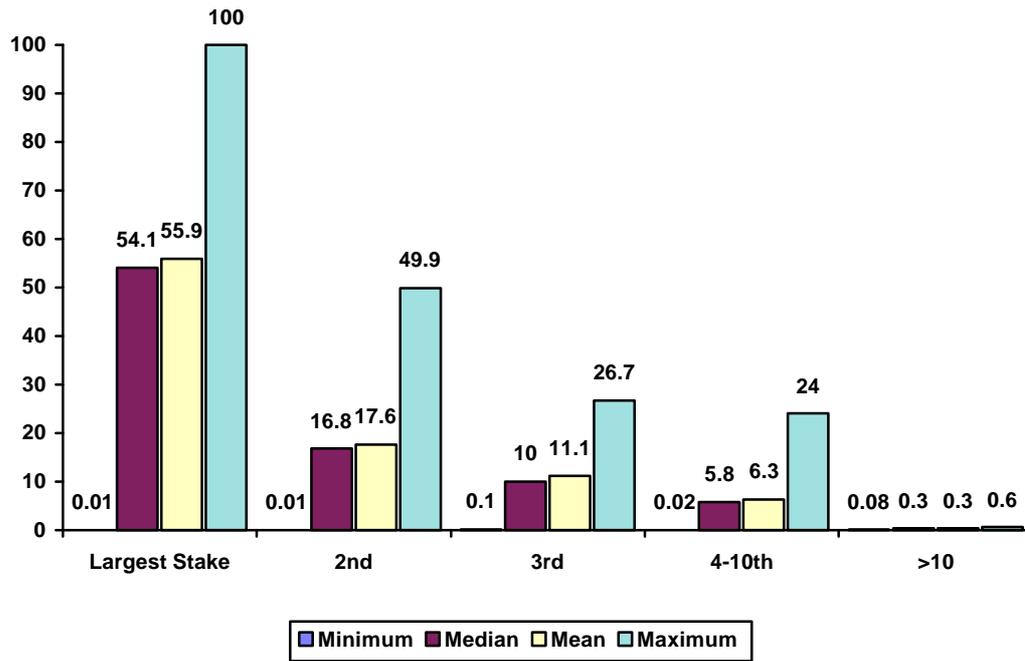
Shareholders who hold shares that have a vote at the annual general meeting of German companies listed in an official EU market have to notify this company and the competent authority (BAWe) when their holding rises or falls above or below 5%, 10%, 25%, 50% or 75% of the total votes attributable to the share type. For first time notifications during 1995, special rules applied. The initial notification threshold was 5%. All companies listed on a German official market must publish a notification in a German financial paper that has been awarded the privilege of publishing such notifications by the relevant German stock exchange(s). At the same time the company has to publish a note in the official government newspaper (*Bundesanzeiger*), indicating in which newspaper(s) the notification is published. If the company is listed on another market within the EU the company has to publish the same information in a similar local newspaper in the local language. The companies also provide the competent authority (BAWe) with copies of the published notifications. The shareholder has to notify the company and the competent authority within 7 calendar days and the company must publish the information within 9 days. Hence, a maximum of 16 days can pass from the day the shareholder crossed the threshold and the day the public is informed.

Figure 2. Ownership structure of DEPFA AG



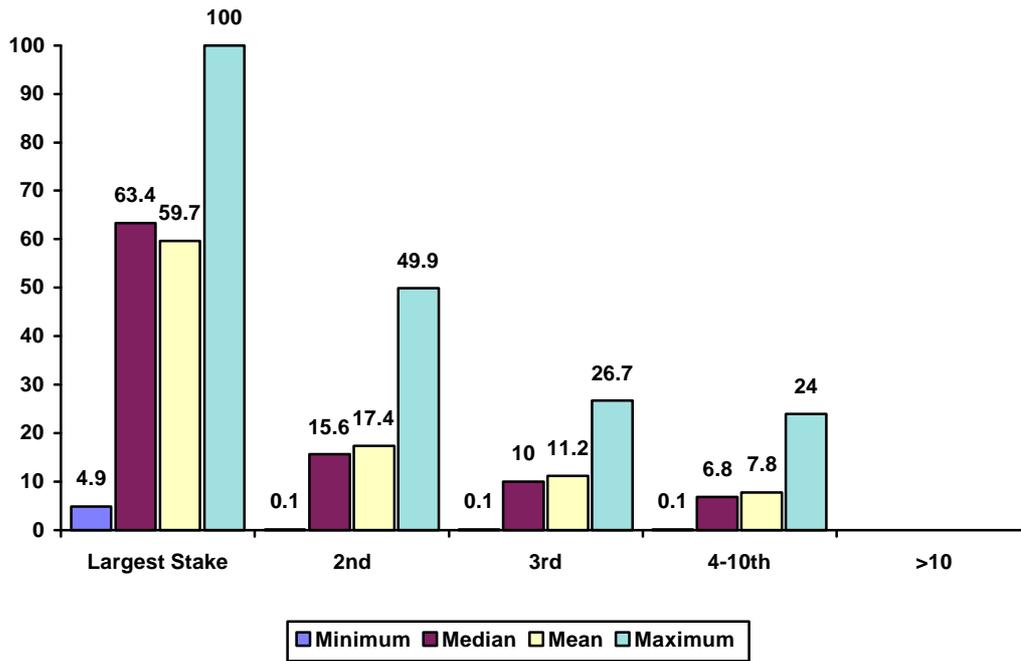
Source: Markus (Update 26, Nov. 1996), Wer gehört zu wem (1994).

Figure 3. Direct stakes by rank of stakes for 402 officially listed *Aktiengesellschaften*



For each of the 402 companies we first rank the direct stakes in these firms. For observations with the same value the average rank was assigned. For each category the minimum, median, mean and maximum are represented in the figure.

Figure 4. Voting blocks by rank of stakes for 402 officially listed *Aktiengesellschaften*



For each of the 402 companies we first rank the voting blocks in these firms. For observations with the same value the average rank was assigned. For each category the minimum, median, mean and maximum are represented in the figure.

Figure 5. Percentile plot of the largest direct stake in 402 officially listed *Aktiengesellschaften*

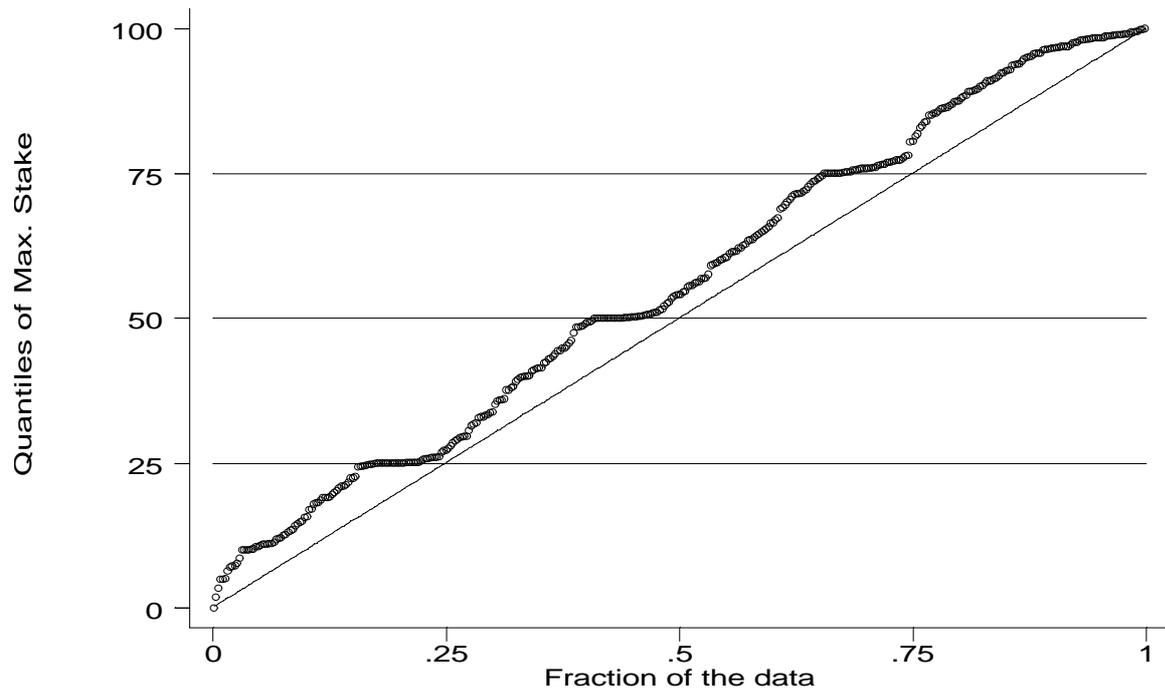


Figure 6. Histogram of the largest direct stake in 402 officially listed *Aktiengesellschaften*

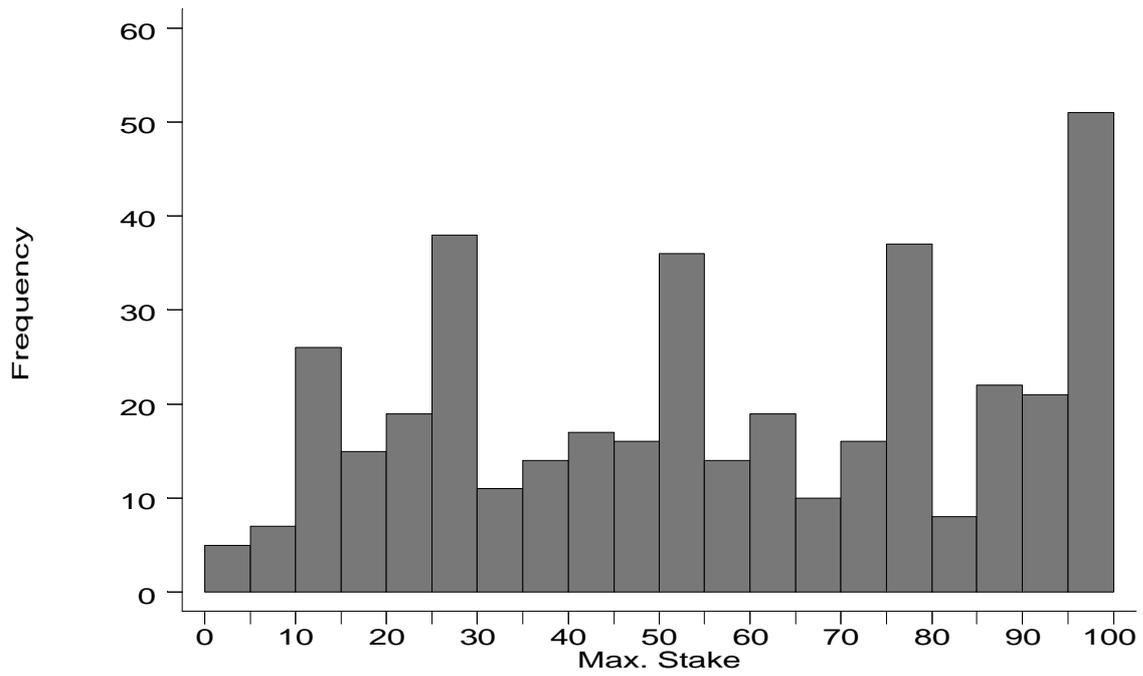


Figure 7. Percentile plot of the largest voting block in 402 officially listed *Aktiengesellschaften*

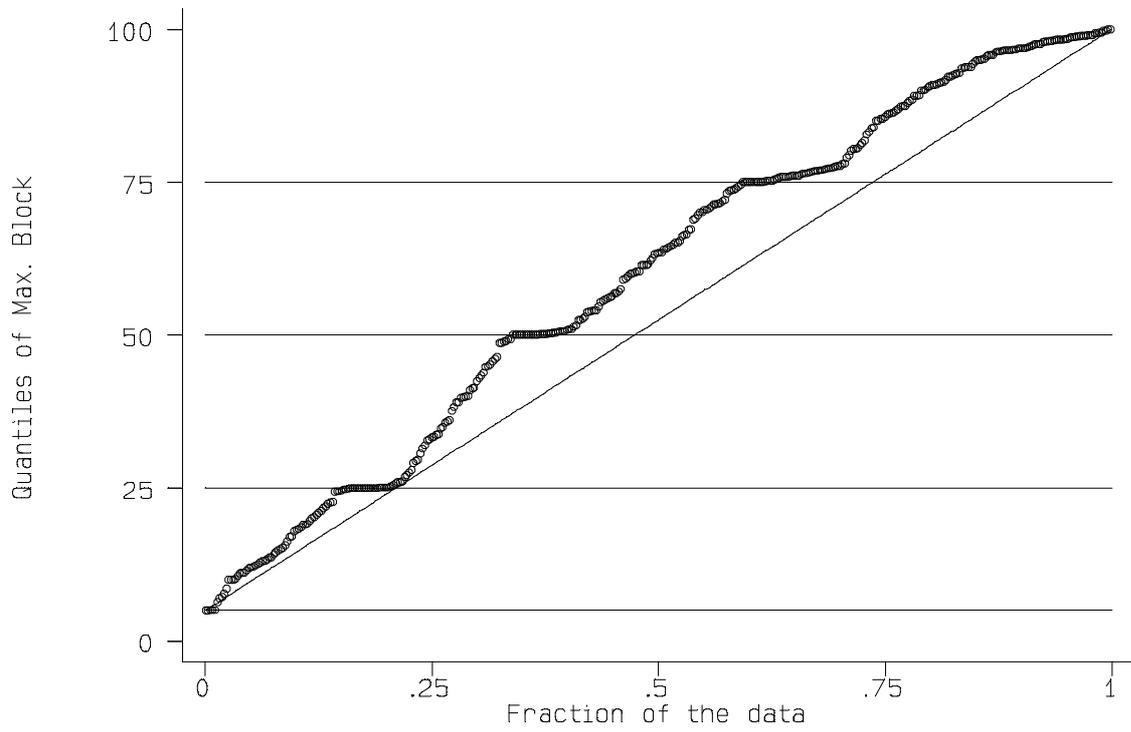


Figure 8. Histogram of the largest voting block in 402 officially listed *Aktiengesellschaften*

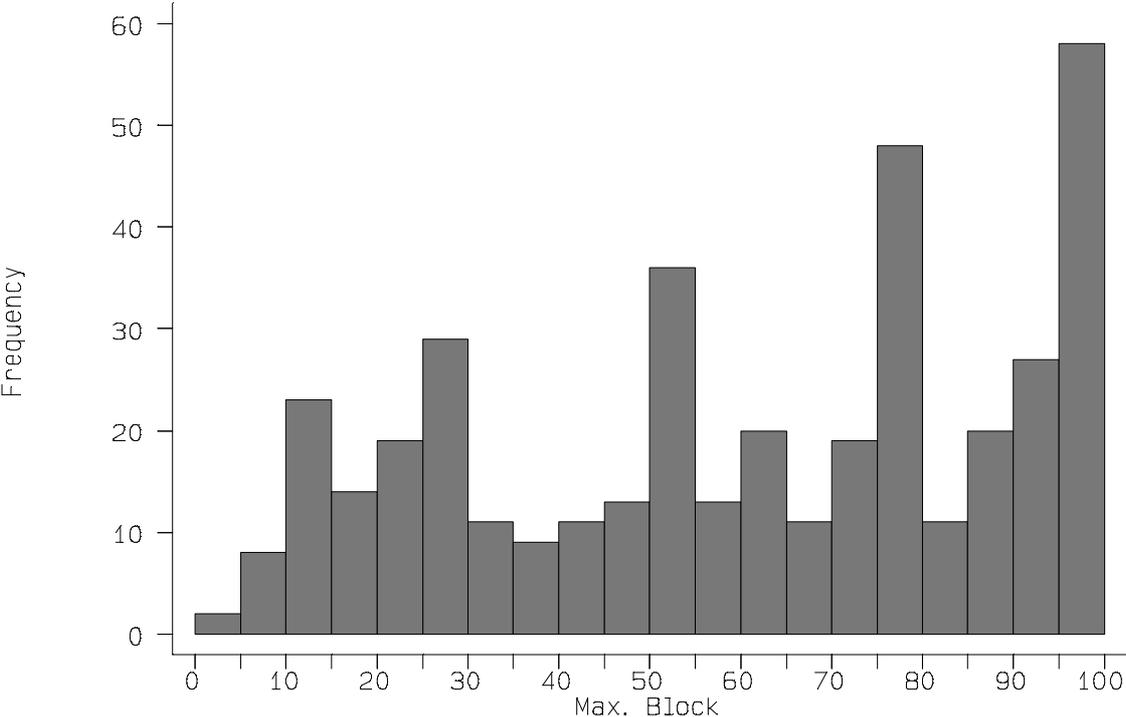
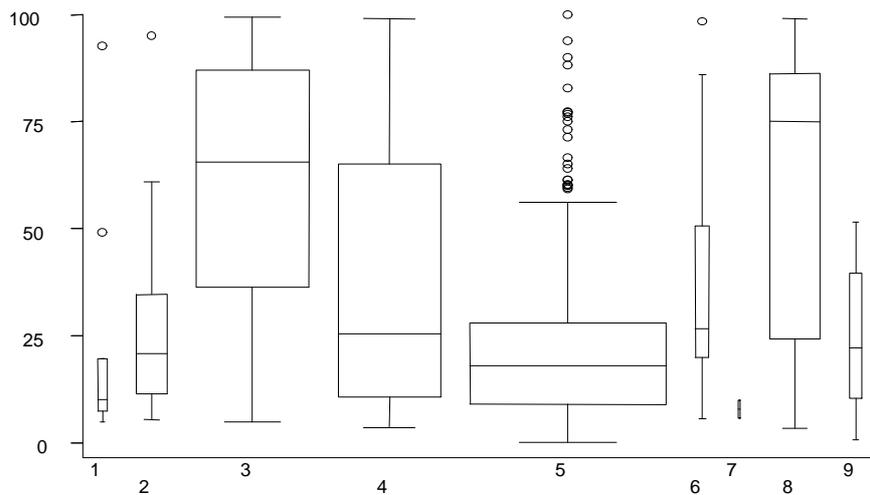


Figure 10. Distribution of stakes in 402 officially listed *Aktiengesellschaften* by blockholder type



See below for a definition of the categories on the horizontal axis. The figure shows a standard box-and-whisker plot. The box extends from the 25th to the 75th percentile and the line in the middle of the box is drawn at the median (50th percentile). The line connecting the box with the upper bar (whisker) is drawn from the 25<sup>th</sup> percentile to the datapoint (upper adjacent value) equal or just below a value given by the 75th percentile plus 1.5 the interquartile range. Larger datapoints, if applicable, are marked individually (outside values). The width of the boxes is proportional to the number of observations in the category.

Codes	Blockholder Category
1	Insurance companies
2	Banks
3	Industry and trade
4	Designated holding companies
5	Individuals and family pools
6	Federal republic, States, Municipalities
7	Pension funds and similar
8	Foreign (EU and non-EU)
9	Foundations and Vereine

# EUROPEAN CORPORATE GOVERNANCE NETWORK

## OWNERSHIP, PYRAMIDAL GROUPS AND SEPARATION BETWEEN OWNERSHIP AND CONTROL IN ITALY

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September 1997

\* Consob

\*\* Banca d'Italia

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## 1. Introduction and summary<sup>1</sup>

In this report we provide an overview of the Italian corporate governance system, both in terms of its institutional and legal framework, and of its quantitative characteristics.

The main features of the Italian system are the following:

- a high concentration of direct ownership both for non listed and for listed companies. In the former the largest shareholder owns on average 60 per cent (the first three own more than 90 per cent). In listed companies the corresponding values are respectively 48 and 50 per cent. This suggests at a first glance a very limited amount of separation between ownership and control;
- the analysis of direct ownership and of the identity of owners reveals that a major role is played by families, coalitions, the State, but especially by other companies: the largest share of non listed and listed companies is held by other non financial or holding companies. The amount of shares held by financial institutions is instead limited. In order to evaluate correctly the amount of separation, the presence of non financial companies among the main shareholders has to be kept into account;
- this phenomenon is accounted by the fact that more than 50 per cent of Italian industrial companies belong to a pyramidal group: the reason for the adoption of this organizational structure, especially among listed companies, is mainly linked with the possibility of controlling a vast amount of resources with a limited amount of capital; hence it is a means for achieving separation between ownership and control;
- by taking into account the pyramidal structure we are able to identify ultimate owners and evaluate the real degree of separation between ownership and control. Measuring the degree of separation as the amount of capital under control for each unit of capital owned, we find that in 1996 on average it was 2.4 for listed companies. It was higher for private non banking groups and lower for State controlled groups. In the private sector, the separation appeared to be greater for larger groups: for the ten largest groups it is approximately 5;
- therefore in Italy pyramidal groups led by families, coalitions and the State have substituted other forms of separation. On the other side, a very limited role has been played by financial institutions in favoring separation: neither banks (due the long lasting banking supervision policy preventing

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<sup>1</sup> We would like to thank F. Barca, M. Becht, M. Morvillo, M. Perassi, G. Ronzani for providing us some information and useful suggestions, and I. Longhi and C. Ortenzi for assistance with the editing. The usual disclaimers apply. Opinions expressed do not necessarily reflect our institutions' point of view.

them from owning shares in industrial companies), with one important exception, Mediobanca, nor other financial institutions such as pension funds or investment funds have owned a large amount of shares of non financial companies, due both to the generous public pension system and to its financing through government bonds;

- this structure, reinforced by cross-ownership and board interlocks, has allowed a stable control over both small and large Italian companies, with a limited amount of control changes, in particular of hostile takeovers;
- the institutional framework underlying this corporate governance structure is characterized by a limited degree of protection of minority shareholders: fiduciary duties of companies' directors are difficult to enforce; proxy fights are discouraged by a very strict regime for proxies; takeover rules are inefficient;
- it is interesting to notice however that ownership disclosure rules in Italy are relatively satisfactory: for listed companies the Italian law imposed a 2 per cent threshold for the disclosure of holdings in listed companies; for non listed companies - except for «società di persone», i.e. partnerships - a 1993 Law provides that the identity of each shareholder be disclosed, by way of notification to the company register («registro delle imprese»).

In what follows we first provide some legal and institutional information on the different «actors» (legal forms for companies, definition of groups, specific rules for holding companies, pension funds, investment funds, stock exchanges, etc.), on the provisions affecting corporate governance mechanisms (shareholders' rights, directors liability etc.), on ownership disclosure rules. Secondly, we offer a detailed quantitative description of the Italian corporate governance system, both for non listed and listed companies. We detail their ownership structure (concentration and identity of owners), both direct and indirect, i.e., keeping into account group structures; the control structure; the diffusion of pyramidal groups; an evaluation of the separation between ownership and control. Finally we discuss some of the changes that are taking place recently. In particular the simplification of pyramidal groups structure, due to the privatization process and to the financial difficulties of private groups; the larger role played by financial institutions in recent years; the debate that has developed and that is leading to a process of reform of some of the Italian corporate governance mechanisms.

## 2. Legal Forms and Institutional Framework

In this section we discuss the characteristics of the institutional framework that are most relevant for Italian corporate governance. In particular we describe the provisions of Italian company law (voting procedures in limited liability companies), the characteristics of holding companies (particularly important due to the diffusion of pyramidal groups), and the characteristics of intermediaries that are relevant for companies' governance structure.

### 2.1 Company Types and Groups

Table 1 shows the different types of legal forms for companies in Italy. The most relevant legal distinction is between *società di persone* (*società semplici*, *società in nome collettivo*, *società in accomandita semplice*), where liability is unlimited for at least some of the owners, and *società di capitali* (*società per azioni*, *società in accomandita per azioni* and *società a responsabilità limitata*), where liability is, normally, limited. For the former, the legal regime is quite basic and a wider space is left to private parties' arrangements. For the latter, the law designs also the internal structure of the company, and is normally mandatory, especially for *società per azioni* and *società in accomandita per azioni*. *Società cooperative*, i.e., cooperatives, have a legal regime similar to that of *società di capitali*.

Groups here will be defined as the set of companies with separate legal status, which are all subject to the direct or indirect control - through one or more lines of control - of one leadership (an individual, a coalition of individuals or a government body). The Italian law usually defines the concept of control instead of that of «group». Hence in Table 2 we present the most relevant definitions of «control»<sup>2</sup>. In general, the common element of such definitions is the concept of «dominant influence», which is differently specified and exemplified in the various definitions.

#### 2.1.1 Società per Azioni

We present here some of the main provisions regarding *società per azioni* in Italy. *Società per azioni* are the most important type of limited liability companies. Such legal form is chosen not

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<sup>2</sup> The Italian law offers more than twenty definitions of «control»: see Marchetti (1992).

only by large firms, but also by medium size ones. The reasons for its wide adoption are various. First of all, the minimum capital required is quite low. Secondly, banks prefer to deal with *società per azioni*, and generally some sort of prestige is attached to this legal form<sup>3</sup>. Third, the fact that the law defines thoroughly the organizational rules of this type of company and usually has a mandatory nature, together with the circumstance that a considerable body of case law exists for *società per azioni*, provides private parties with more certainty about their rights and duties, as compared to *società a responsabilità limitata*. The latter gives parties more freedom in shaping the organization of the company, but at the same time makes them bear the risk that the courts will not uphold the customized provisions they may choose, or that the courts will construe them in an unforeseen way.

In what follows we present the main institutional provisions regarding *società per azioni*.

In *società per azioni* the shareholders meeting adopts resolutions upon the following matters: the approval of annual accounts; the election and removal of directors («amministratori»), internal auditors («sindaci»), and liquidators; determination of their compensation; for listed companies, choice of the external auditor; other matters as indicated in the company statute or as submitted to its approval by directors or by internal auditors; the authorization of liability suits against directors, «sindaci», and liquidators; the modifications of the company statute (including mergers, divisions, and new issues of shares), issue of bonds, listing on a stock exchange, election and powers of liquidators.

Minority shareholders representing at least 20% of the issued capital may obtain the convocation of the meeting. In order for shareholders to take part to the meeting, transfers of shares have to be registered in the shareholder register, and shares have to be deposited at the company's site or at the bank (or at one of the banks) indicated in the convocation announcement, at least five days before the meeting. This quorum makes it rather difficult for minority shareholders of large companies to obtain a shareholders meeting.

For the different kinds of general meetings' resolutions there are different default quorums<sup>4</sup> (companies may fix higher quorums in their statutes):

- Simple majority is the general rule, applying to any resolution not listed below.
- More than one fifth of the capital:
  - *for listed companies*: modification of the company statute, issue of bonds, election and powers

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<sup>3</sup> See Weigmann (1996).

<sup>4</sup> Higher quorums are required for the «first convocation» of the shareholders meeting. However, meetings are normally held as second convocation meetings, at the choice of the company and of the dominating shareholder; only the quorums required for the second meeting are hence reported here.

of liquidators;

- *for privatized companies and for listed companies the statutes of which contain a limit to shareholdings*: modification of company statute, issue of bonds, election and powers of liquidators, change of activity as described in the company statute, change of legal form, dissolution of the company, transfer of site abroad, issue of preferred stock.

- More than one third of capital:

- *for non listed companies*: modification of the company statute, issue of bonds, election and powers of liquidators;
- *for listed companies*: change of activity as described in the company statute, change of legal form, dissolution of the company, transfer of site abroad, issue of preferred stock, voluntary reduction of capital, mergers and divisions.

- More than half of the capital:

- *for non listed companies*: change of activity as described in the company statute, change of legal form, dissolution of the company, transfer of site abroad, issue of preferred stock;
- *for all companies*: increases in capital with the exclusion or limitation of preemption rights.

*One-share-one-vote*: The principle is not adopted by the Italian law. However, shares with limited vote and non-voting shares (only listed companies being allowed to issue the latter, apart from exceptional circumstances) can be issued for a total par value no higher than the total par value of voting shares.

*Shareholders agreements*: Shareholders agreements are valid according to the Italian law. However, a recent decision by the Supreme Court (Corte di Cassazione) has judged that shareholders' agreements are invalid if they have no temporal limitation and combine a voting agreement with a reciprocal preemption right agreement. Shareholders' agreements concerning listed companies have to be notified to Consob within five days and their essential content has to be published in three newspapers. If a shareholders agreement is not disclosed it is not legally binding and a fine from Lit. 25 millions (approx. ECU 13,125) to 100 millions (approx. ECU 52,500) applies.

*Cross Holdings*: For non listed companies there are no limits to cross holdings between two companies, when neither of them controls the other, although it is generally forbidden for two companies to reciprocally underwrite each other's shares. When a company is controlled by another company, it may not hold more than one tenth of the shares in the latter (taking also into account treasury shares and shares held by other controlled companies). The rules are more restrictive when listed companies are involved. In this case, the maximum cross-holding allowed is two per cent when both companies are listed (i.e., if a listed company reports a two per cent holding or more in another listed company, the latter may not exercise the voting rights attached to shares in the former exceeding two per cent of the voting shares. If one of the two gains control on the other, however,

the votes of the other cannot be exercised. If one company is listed and the other one is not, then when the listed company reports a ten per cent holding or more in the non listed company, the latter may not hold more than two per cent of the shares in the former;

when the non listed company reports a two per cent holding or more in the listed company, the latter may not hold more than ten per cent of the shares in the former.

*Proxy Rules:* Directors, *sindaci*, general managers, and employees of the company or of a subsidiary company may not act as proxy in the company's meeting. Since 1974, banks are forbidden from offering proxy voting services; in 1996 they were allowed to offer them to the clients of their asset management department. No one can act as proxy agent for more than 50, 100 or 200 shareholders of a listed company (10 for a non-listed company), the increasing number being a function of its issued capital. The name of the agent has to be specified by the shareholder in the proxy form (see table 3).

The 1974 reform of proxy rules was originally aimed at preventing managers from perpetuating themselves with the help of banks. However, the strict legal regime now in force results to be discouraging even for potential raiders.

*Shareholders Associations:* There is no specific legal regime for shareholder associations in Italy. Shareholder associations have recently been formed in order to organize small investors in privatized companies. Their experience is not particularly encouraging, mainly due to two factors: first, the direct and indirect costs imposed on small investors who may want to take part, even through a proxy agent or an association, to a shareholders' meeting are very high<sup>5</sup>; secondly, procedures to be followed by the associations (especially in order to abide by the limit of 200 shareholders for each agent, person or legal entity, and to the rule imposing that the name of the agent is specified in the proxy form) are cumbersome<sup>6</sup>.

*Board Structure and Liabilities:* Italian companies may have either a board («consiglio di amministrazione») or a single director («amministratore unico»). A supervisory organ («collegio sindacale»), composed of either three or five members (*sindaci*), to be chosen among «revisori contabili» (certified public accountants), controls the management of the company, mainly with respect to accounting issues. The civil code leaves companies free in the choice of the election

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<sup>5</sup> For instance, in order to be admitted to the shareholders' meeting, one has to get a certificate, released by one's bank or investment firm, and stating one's ownership of the shares. The bank or investment firm, then, charges *the company* Lit. 25,000 (approx. ECU 13) for each certificate released.

<sup>6</sup> See Schiano, Ristuccia, and Segni (1995).

system for directors and *sindaci* and the most common system is a winner-takes-all one. In 1994, the Law on privatization imposed to privatized companies whose statutes contain a maximum limit of shareholdings, an election system based on list of candidates, which should allow minority shareholders to have one fifth of the board seats and to elect one of the internal auditors. *Amministratori* are elected for no more than three years, but they can be removed, with or without cause. *Sindaci* are elected for three years and cannot be removed without cause.

The powers and functioning of the *consiglio di amministrazione* are defined in companies' statutes. However, some decisions have to be taken by the *consiglio di amministrazione* itself (that is, they may not be delegated to executive directors: e.g., approval of annual accounts, reduction of capital). *Amministratori* have to notify the company register about their election and of the election of *sindaci*.

Annual accounts report only the total compensation received by *amministratori* altogether and by *sindaci* altogether. Every year, *amministratori* and *sindaci* of listed companies have to inform Consob about the compensation received in the preceding year. Consob does not release such information nor employment contracts may not be obtained by shareholders.

Listed companies' *amministratori*, *sindaci*, and *direttori generali* (general managers) have to inform Consob about their, their spouses', and minor children's holdings in the company or in companies controlled by the latter after they are elected and, every three months, about any trading on the company's shares (giving notice of date and price).

Individual shareholders or minority shareholders may not sue directors for damages suffered by the company. Only the company, after a resolution by the shareholders' meeting, may do so. Directors are forbidden, even *qua* shareholders, from voting in the resolutions regarding their liability,. Shareholders representing at least 10% of the issued shares may ask a Court to order an inspection of the company, alleging serious irregularities; if such irregularities emerge, the Court may nominate a «judiciary director» who might also sue former directors.

Table 4 and 5 summarize some of the information provided in this Section.

### **2.1.2 Holding Companies**

In Italy there is no specific legal form for holding companies, but specific rules apply to them. Holding companies<sup>7</sup> with net assets larger than 20 billion Lit. (approx. 10,500,000 ECU), listed or

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<sup>7</sup> Defined broadly by Article 19, l. 1974/216 as companies involved in the business of holding shares in other

non-listed, are subject to Articles 3 and 4, l. 1974/216, which confers Consob the power of: imposing them the publication of data and news which are deemed to be necessary for the market; asking them for data, information, or documents; inspecting them on site.

Holding companies also have to send to Consob: their annual accounts; proposals to the shareholders' meeting concerning the modification of the company's charter, the issue of shares, bonds, merger or divisions, the sale or acquisition of its own shares; the minutes of the shareholders meetings where such issues have been discussed; the half-year report.

Holding companies are not exempted from the obligation of drawing up consolidated accounts.

## 2.2 Basic population statistics

In tables 6, 7, 8 we present some basic statistic on the diffusion in Italy of the various types of *società*, and their employees. In tables 3 and 4 all types of firms (*imprese*) are included: *società* represent 26% of all firms, and 62% of all employees. Among the *società*, *società per azioni* are the most common for large firms. As a whole they represent 3% of all *società*, with 35% of employees. Among firms with more than 50 employees more than 50 per cent of firms are *società per azioni*, with nearly 80 per cent of all firms' employees.

## 2.3 Intermediaries

### 2.3.1 Banks

Since 1936 and until 1993, the possibility for banks with demand or short term deposits of acquiring significant shareholdings in non-financial companies was precluded by the Bank of Italy's policy in favour of separating banks from manufacturing firms. Such policy did not cover «istituti di credito», banks with no short term liabilities, such as IMI and Mediobanca. The latter institution appears to have been the only one having had a central role in Italian corporate governance in the last decades, while other banks have not adequately supported and advised industrial firms in their need of resources and strategies for growth<sup>8</sup>.

Following the EC harmonization of banking law, there are now less stringent limits for the

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companies, and/or of trading, managing or underwriting securities).

<sup>8</sup> See De Cecco, Ferri (1996).

equity investments of banks in non financial companies. Banks with a capital<sup>9</sup> lower than 2,000 billions Lit. (approximately ECU 1,025,500,000) are allowed to invest 15 percent of their capital in shares of nonfinancial companies (half of such percentage having to be invested in listed companies). They can invest in each company or group of companies no more than 3 percent of their capital. Any single share in a nonfinancial company may not be above 15 percent of its capital. Banks with a higher capital («banche abilitate») may be authorized to make higher equity investments in non financial companies. They may be allowed to invest 50 percent of their capital with a maximum threshold of 6 per cent of their capital with regard to each company or group of companies; any holding in a single firm may not, however be higher than 15 per cent of its capital, unless it represents less than 2 per cent of the bank's capital and provided that the sum of all the holdings above 15 per cent represents no more than 2 percent of the bank's capital. Finally, specialized banks («banche specializzate»), banks with a capital higher than 2,000 billions lira, and with no demand or short term deposits among their liabilities, may be authorized to hold non financial company's equity for no more than 60 percent of their capital, and to hold no more than 15 percent in any single nonfinancial company or group, the limitation to single holdings described above for *banche abilitate* applying also to such banks.

Too little time has elapsed since the new regulation came into force in order to notice a more active stance in corporate governance by Italian banks. Consistently with their role as creditors, they seem in fact to have made little use of such new opportunities of investment, except for the cases of debt to equity swaps realized in connection with the reorganization of distressed firms.

### **2.3.2 Insurance Companies**

Laws 295/78 and 742/86 regulate insurance companies. For what concerns the possibility to buy shares, insurance companies may use both their technical reserves and their net equity capital. They may invest in domestic companies which have been listed for at least 3 years or whose balance sheet has been audited for at least three years. They cannot invest more than 3 per cent of their technical reserves in the same company, or more than 5 per cent of the company's shares. A further limit derives from the prohibition to invest more than 20 per cent of their technical reserves in companies' shares. Insurance companies may control only companies whose activity is related to insurance.

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<sup>9</sup> As determined according to prudential supervision rules.

### 2.3.3 Pension Funds<sup>10</sup>

Until now, due to the very generous public pension system, there have been very few pension funds in Italy<sup>11</sup>. They have had no active role in corporate governance.

In 1993, a new Law, amended in 1995, was passed to regulate such institutions and to promote them with a more generous tax regime (Decreto legislativo 1993/124). In 1997, the secondary rules needed to start up the new system have been approved. According to the new law pension funds may take the legal form either of an association, or of a legal person (*persona giuridica*) or, in some cases, of a sort of «trust» (*patrimonio di destinazione*). They may be either reserved to employees of specific firms and industries or open to any employee; in the latter case an investment fund, a bank, an insurance company or an investment firm takes the initiative for their foundation. Pension funds may not hold more than 5 or 10 per cent of the voting shares of any listed or non-listed companies respectively, and in no way an amount of shares which gives the pension fund the direct<sup>12</sup> control of a company (Article 6.5., D.lgs. 1993/124). Pension funds' assets have to be managed by investment funds, banks, investment firms or insurance companies, but pension funds may directly hold (and trade) shares in real estate companies or funds. The law provides that voting rights attached to shares held by pension funds pertain to the funds, as opposed to the asset manager. This solution has been criticized since the separation between investment decisions and exercise of the voting rights should reduce the incentives of an active involvement in corporate governance issues<sup>13</sup>.

### 2.3.4 Investment Funds

Open-end investment funds may take the form either of a sort of trust («fondo comune») or of a «società per azioni» with a special regime («SICAV»). *Fondi comuni* may be created and managed by management companies («Società di gestione di fondi comuni»), who are, as a matter of law, specialized in such activity. *Fondi comuni* or *SICAV* have to abide by some minimal diversification rules fixed by the Bank of Italy within the limits established by the law. They may not

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<sup>10</sup> Accounting aspects are regulated by the supervising authority («Commissione di vigilanza sui fondi pensione»).

<sup>11</sup> Pension funds have existed since a long time for employees in the banking and insurance industries.

<sup>12</sup> It is not easy to understand what «direct» («in via diretta») means in this context. See Enriques (1995).

<sup>13</sup> See Bianco, Signorini (1994).

hold more than 5% of the voting shares of a single listed company, or more than 10% of the voting shares of a single non-listed company, or, in any case, such holding as to confer on the fund the power to exercise a significant influence on a company<sup>14</sup>.

Closed-end funds were first allowed and regulated by a 1993 law containing very strict and pervasive rules<sup>15</sup>, which in fact discourage the use of such investment vehicle. As a matter of fact, as of September 1997, there are only four active investment funds in Italy.

### **2.3.5 Foundations (and Trusts)<sup>16</sup>**

Although the law does not explicitly prevent *foundations* from acting as for profit business entities, foundations are generally used for non profit purposes in Italy. In foundations a general meeting is not required by the law. Some foundations (especially those having a quasi-public nature, like «fondazioni bancarie»<sup>17</sup>) do have a sort of «participants» meeting, some other don't. The equivalent of a director in a foundation is the «amministratore». The act of foundation usually includes the rules for her/his appointment. Amministratori are under the supervision of the Ministry for Internal Affairs, or of Regions in case of local foundations. *Fondazioni bancarie* are under the control of the Ministry of Treasury.

### **2.3.6 Stock Exchanges**

Since July 1996, *stock exchanges* may take the form of *società per azioni*, for profit or not for profit. Before that date, and in the transitory period thereafter, stock exchanges have been public entities. The Minister of the Treasury has to define the integrity («onorabilità») requirements for stock exchanges owners. With regard to the Milan Stock Exchange, the privatization of which is under way, d.lgs. 1996/415 provides that 51 per cent of the voting shares of the new Stock Exchange company shall be sold to intermediaries admitted to trade on the Exchange.

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<sup>14</sup> Accounting aspects are regulated by the supervising authority (Bank of Italy).

<sup>15</sup> Just as an example, the law provides that after a maximum period of ten years a closed-end fund has to be liquidated.

<sup>16</sup> Trusts are not allowed according to Italian law. However, foreign trusts can operate in Italy. The correspondent institutions, besides foundations, are «società fiduciarie», which hold assets on the account of other persons but in their own name. These «società» are supervised by the Ministry of Industry (Ministero dell'Industria).

<sup>17</sup> «Fondazioni bancarie» used to be public banks: after a 1990 Law, their banking assets were spun off in «società per azioni» which became, and still are (with only two exceptions), controlled companies of «fondazioni bancarie». They are non profit organizations.

«Borsa Italiana S.p.A.» organizes three markets: «Borsa Valori», «Mercato Ristretto», and «Mercato di Borsa per la negoziazione degli strumenti finanziari derivati» (where derivatives contracts on stock exchange indexes are traded). Table 11 shows the number of companies listed on the two stock exchanges and their capitalization.

Consob is in charge of supervising them.

### 3. Ownership Structure and Voting Rights

#### 3.1 Ownership Disclosure Rules and Availability of Information

Table 9 shows ownership disclosure requirements imposed by *company law* and table 10 those imposed by *accounting rules*, *i.e.* rules defining the contents and structure of annual reports. Table 12 shows whether and how ownership data from different sources are *available* to the public.

##### 3.1.1 Listed companies

For listed companies there are additional statutory requirements concerning ownership information. L. 216/1974, as amended in 1992, at Article 1/5, provides that holdings of more than 2 per cent of a listed companies have to be reported to Consob within 48 hours. Consob immediately informs the public of such notifications (in practice, on the same day or the day after).

Variations of the 2% threshold have to be reported within thirty days, if the holding percentage becomes lower than 2 per cent or changes for more than 1 per cent. Such a low threshold is a unique case from a comparative point of view, at least as far as we know and, interestingly, it was introduced by a provision in the 1992 law on takeovers (l. 1992/149). Its origin suggests that such requirement is to be classified as a statutory antitakeover device no less than as a tool aimed at having a more transparent market. Furthermore, the Italian law on transparency of listed companies' ownership imposes that all the relevant (larger than 10 %) shareholdings of listed companies in non listed ones must be disclosed. A weakness in the disclosure system may be found in that whoever crosses a relevant threshold does not have to inform the market about the reason for the acquisition and about his or her intentions. The Transparency Directive is also silent on this point<sup>18</sup>.

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<sup>18</sup> If the notification is made with a delay of more than thirty days the sanction is the same as that provided for violations of the Transparency Directive requirements. If the delay is less than thirty days, the fine is from Lit. 1.000.000 to Lit. 20.000.000 (approx. ECU 520 to 10,500) and no penal sanction is applied.

Notifications are stored through computer. According to a project under way, starting June 1997, updated ownership information will be available to the public on electronic support. However some critical issues in disclosure regulation make it more difficult to identify true shareholders and controlling agents in Italy. The first refers to the issue of *joint control*: in the Transparency Directive (see Article 8) and in the Italian Law implementing it, the definition of control covers exclusively those cases in which a single person or entity is in control. Joint control (e.g., 50/50 control) is not taken into account. This omission has relevant consequences upon ownership data, since it does not allow having a complete picture of «horizontal» groups (see figure 1 for an illustration on how data may be distorted by this loophole). The second concerns *informal coalitions* and has similar effect on the possibility of drawing the «maps» of listed groups. In order to identify a controlling agent in a company Consob data on control, as defined by the Law on takeovers have to be used. This law does not take into account informal coalitions and shareholders' agreements concerning other issues than voting rights into account. Given that informal coalitions and other shareholders' agreements are common, especially at the highest levels of the control chains, it is often difficult to identify the true head of a group (see figure 2 for an illustration on how data may be distorted by this loophole). A final issue refers to the increasing role of *asset managers*: asset managers on behalf of their clients often hold major holdings. Formally, shares are in the name of clients, each of them holding a percentage lower than that for which disclosure has to be made. Therefore, no disclosure requirement applies in principles to asset managers, even though their role in corporate governance is increasingly relevant. All these issues reduce the transparency of ownership and control information.

Another regulatory rule that imposes additional ownership data reporting requirements is Regulation 1991/5553, adopted by Consob, which provides that listed companies have to inform Consob, the Stock Exchange and the public of any change in the control of the company, and of any acquisition or sale of holdings in other companies. The information has to be made available by press release with no delay. Consob stores this information only on paper.

The stock exchange does not impose additional ownership data reporting requirements. Until the implementation of the Investment Services Directive (July 1996), the Italian Stock Exchanges, which used to have a public nature, had no regulatory power upon such matters as market information (see also Section 6.1).

In 1996 the Italian Parliament, following the widely held view that Italian corporate governance system has tended to favor excessively the certainty of control at the expenses of

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shareholders' protection<sup>19</sup>, has delegated the Government to modify the laws regulating listed companies (e.g., with regard to internal controls, shareholders agreements, infra-group transactions, minority shareholders' rights ...). The Government ought to reform these laws with the aim of «strengthening investors' protection and minority shareholders»<sup>20</sup>. The new laws should be enacted by February 1998.

Table 13 describes how the Transparency Directive has been transposed in Italy.

### **3.1.2 Unlisted companies**

For non listed companies - except for *società di persone*, i.e. partnerships - a 1993 Law provides that the identity of each shareholder be disclosed, by way of notification to the company register (*registro delle imprese*). The rationale for this Law is not to be found in any business or economic policy reason: the Law is in fact aimed at preventing money laundering.

Ownership data for a significant sample of non listed companies are collected by Cerved (a consortium among *Camere di Commercio*) and made available only at a relatively high costs<sup>21</sup>. As a consequence, for our quantitative analysis on such companies we resort to sample information based on surveys.

## **3.2 Quantitative Analysis**

### **3.2.1 The Samples Available**

In this note we make use of three different samples (see Table 14):

1) Listed companies and firms gravitating around the stock exchange. As discussed in section 3.1.2, for this set of firms the source of information is the administrative data on shareholdings that are collected by Consob and stored on computer. The number of companies in this set is defined by the regulations regarding the disclosure of identity of listed companies' relevant (owning more than 2 per cent) direct and indirect shareholders and of listed companies' direct and indirect relevant shares

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<sup>19</sup> See, for example, Barca (1996) and Costi (1995), but, for a different view, see Ciocca (1997).

<sup>20</sup> L. 56/96, art.21, par. 4.

<sup>21</sup> See Table 12, note 1.

(larger than 10 per cent) in non listed companies<sup>22</sup>. Groups were identified by means of the information about control relationships reported to Consob and through some algorithms which, on the basis of shareholders' stakes, enabled to identify the existence of control relations also when not explicitly stated<sup>23</sup>. Data have been analyzed with reference to two periods: January 1993 and June 1996. With reference to 1993 this set includes 263 listed companies (including those on the secondary market), 3,000 shareholders (individuals and limited liability companies) that hold shares in about 7,000 companies, 4,500 of which Italian. Values referring to this dataset are weighted with an indicator which combines the firm's net worth and the «consolidated» number of employees. Consolidated employees are those of the company itself and the share of all those of companies owned directly or indirectly in proportion to the stake owned by the company. With reference to 1996 we present data referring to 214 listed companies and their identified shareholders (approximately 1,100 direct shareholders and 800 ultimate shareholders). Values are presented both unweighted and weighted either with market capitalization (direct and indirect shareholdings) or with what we define market capitalization «deintegrated», i.e., the difference between the company market capitalization and the market value of shares held by the company in other listed companies belonging to the same group (integrated ownership and controlled shares). Table 15 provides the size distribution (in terms of market capitalization) of listed companies in 1996. In the Appendix the form used for the communications to Consob is attached.

2) Since, as was discussed in section 3.1, data on ownership of non listed companies are stored by Cerved but disclosed only to a cost, here we make use of survey data on manufacturing companies. A random sample of (approximately 1000) manufacturing companies with more than 50 employees was surveyed both in 1993 and in 1996, within the yearly survey of the Bank of Italy on firms' investments (called INVIND). In 1993, these companies were interviewed and asked their ownership and control structure (up to the 10th shareholder). In particular, for each of these shareholders, it was asked its «type»<sup>24</sup>, the share owned, whether they controlled the company, whether they formed a coalition, whether they were relatives of other shareholders. The values from this sample are

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<sup>22</sup> Disclosure requirements on ownership structure and control relations were introduced in the 1970s.

<sup>23</sup> For all the details, see Barca et al. (1994a) and Bianchi, Casavola (1996).

<sup>24</sup> The classification for the type of owners was: 1) individual, 2) foreign company, 3) state owned company, 4) insurance company, 5) holding company, 6) other financial company belonging to the same group, 7) financial company belonging to other group, 8) independent financial company (merchant bank, venture capital..), 9) privately owned company controlled by another company, 10) privately owned company controlled by an individual.

weighted to take into account the different coverage of the sample by size, sector and geographical area. Moreover we present tables with values weighted by the size of each company (measured by employees)<sup>25</sup>. In the 1996 survey, questions on ownership concentration, identity of controlling agents, diffusion of pyramidal groups and shares held by financial institutions have been included. In all the surveys from 1993 to 1996 firms were asked information on control transfers. In the Appendix the questionnaire used in the survey is attached.

3) A random sample of (approximately 4,400) manufacturing companies with more than 10 employees surveyed in 1995 by Mediocredito Centrale. As for the previous survey, ownership and control structure (but only up to the third shareholder) were asked to the companies<sup>26</sup>; moreover they were asked whether they belonged to a pyramidal group. As compared to the previous survey, this dataset includes a representative sample of small and medium companies (with less than 500 employees, and in particular of those with 10 to 50 employees) and all companies with more than 500 employees. In what follows values are only weighted by employees but not by a weight that keeps into account the different coverage of the sample. Hence the weighted totals should be taken with care. The two samples are not totally comparable also because of the slightly different classification of types of owners. See the Appendix for the questionnaire used for the survey.

The information on groups either refer to what we define «listed groups» (i.e. to those including at least one listed company) or to those including one of the randomly selected companies in the samples (2 and 3): the companies in the two surveys were asked whether they belonged to a group, how many companies belonged to the group and how many employees the group had.

In the analysis, we shall first discuss results referring to manufacturing firms as a whole; secondly those valid for listed companies. Moreover (for 1993) we also present information on the set of companies belonging to pyramidal groups which include at least one listed company (which we shall define as listed groups).

### ***3.2.2 Ownership concentration***

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<sup>25</sup> See Barca et al (1994b) and Bianco et al. (1996) for a description of the sample.

<sup>26</sup> The classification for the types of owners is: 1) individual, 2) foreign company, 3) industrial company, 4) holding company, 5) other financial company.

Average ownership concentration of manufacturing companies both non-weighted and weighted by the size (measured by employees), is presented in tables 16-21 for the years 1992-94-96.

The tables show that in Italy (direct) ownership of company shares is, in most cases, heavily concentrated. In 1992 the largest shareholder of manufacturing companies owned on average approximately 66 per cent of a company, the 3 largest shareholders owned more than 90 per cent (table 16). The concentration of ownership (measured by the stake of the first shareholder) is greater in larger firms: in firms with less than 100 employees the largest stake is on average 60 per cent, while in those with more than 1000 employees it is approximately 83 per cent. Hence any measure of concentration that weights firms according to their size yields even higher values. If firm size is defined by employment, the average largest share is equal to 77 per cent (table 17). This phenomenon is largely dependent on the fact that the largest shareholder is often another company with a majority stake, and this is more frequent for large companies. Partly due to this, data referring to 1994, which include also smaller companies, exhibit a lower concentration, with the average largest share equal to 61 per cent. For very small firms (11 to 50 employees) the largest shareholder owns on average approximately 53 per cent of the company (table 18)<sup>27</sup>. Even if data referring to the same size classes show a slightly lower concentration, it is difficult to argue that this corresponds to a true reduction in ownership concentration in Italy, due to the differences in the datasets. When the data are weighted by employees, results are in fact very similar (table 19). In 1996 concentration appears to be slightly higher (tables 20 and 21). If we consider the 3 largest shareholders the positive relationship between size and concentration disappears: in all the years for which we have observations the cumulated share is stable at approximately 90-92 per cent; hence, independently on the type of owner (person or company), Italian companies are tightly held.

For listed companies we are able to distinguish between direct stakes and group blocks. Direct stakes are those owned by each independent shareholder. Group blocks are all the stakes of companies that are part of a business group and are the sum of all the stakes owned directly or indirectly by the same agent.

The first shareholder of listed companies in 1993 owned on average 51.4 per cent. For the whole set of companies belonging to listed groups the largest shareholders owned on average 70.6 per cent, the first three 73.7 per cent (for companies with identified control, the respective values are

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<sup>27</sup> However it has to be kept into account that data are not weighted to take into account the different coverage of the sample by size, sector and area. Since small firms are less represented in the sample than larger ones, if data were weighted the average value of concentration would be even smaller.

86.6 per cent and 89.9 per cent)<sup>28</sup>. In 1996 ownership concentration of listed firms is slightly lower but still very high (the largest shareholder has on average 48 per cent, tables 22 and 23). For smaller firms (the lowest 25th percentile in terms of market capitalization) the owner has the absolute majority. On average the first three shareholders own 62 per cent. In 1996 in more than 10 per cent of the companies the largest shareholder had a stake larger than 75 per cent and only in 15 per cent of the cases ownership was rather dispersed (i.e. the largest shareholder had less than 20 per cent). As opposed to manufacturing companies as a whole, ownership concentration of listed companies is not positively related with size. With the exception of the lowest percentiles (where values may be biased due to the fact that in this group we include companies suspended from trading for their financial difficulties) and those in the highest percentile we observe, as expected, a negative relationship between concentration and market capitalization. The fact that the positive relationship disappears in the highest percentile is partly due to the presence of the oil company ENI, which is in the process of being privatized and has been listed in 1995, thus becoming the largest listed company (15 per cent of total market capitalization) and where the state in June 1996 still owned 85 per cent) In particular, for listed companies we observe that the larger is the market capitalization of the company, the smaller is the share owned by the main shareholder, but also by minority shareholders (from the second to the tenth largest) and the larger is the share owned by the «market», which we define as the sum of all holdings lower than 2 per cent.

The difference between listed and unlisted companies is due to the fact that in a large number of cases, listed companies are at the head of pyramidal groups (and hence are not owned by other companies) or to the fact that pyramidal groups are used to maximize the resources controlled with the minimum possible amount of capital that allow to keep the control of the capital and the latter decreases the larger is the company.

The first step in trying to assess whether the group structure is able to produce a sufficient level of separation between ownership and control is the measurement of group blocks, i.e., of the total share held by an ultimate owner both directly and through controlled companies<sup>29</sup>. In pyramidal groups ultimate owners may be either controlling shareholders or investors (outsiders). The value for group block ownership in 1996 shows as expected a slightly higher concentration as compared to direct ownership (tables 24 and 25). The difference between direct and group block largest share is

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<sup>28</sup> See Barca et al. (1994a).

<sup>29</sup> I.e., if the agent controls company A and has a share  $b_1$  in company B and company B has a share  $b_2$  in B, the group block ownership in B is given by the sum of  $b_1$  and  $b_2$ .

particularly large for listed companies with a size included between the 50<sup>th</sup> and the 90<sup>th</sup> percentile and suggests that for this set of companies the group structure is more complex, with the controlling shareholders participating in the listed companies through various channels.

It is interesting to notice that for the most recently listed companies concentration is, on average, lower: the largest direct shareholder owns 40 per cent, the second 7.3 per cent, the third 4 per cent, while the share of the 4<sup>th</sup> to 10<sup>th</sup> shareholders is larger as compared to other listed companies (8.2). If we weight the values by market capitalization, concentration appears extremely high due to the presence of ENI and Telecom Italia Mobile, the two largest newly listed companies, where the state had respectively 85 and 61 per cent. Among smaller firms (up to the 95<sup>th</sup> percentile) instead, the first shareholder on average had less than 45 per cent.

### ***3.2.3 Identity of owners***

Considering the ten largest shareholders of each firm, the ownership of the average manufacturing firm is shared almost equally between individuals and companies (48.0 vs. 49.7 per cent, table 26). As expected, individuals own a larger share in smaller companies (in those with less than 100 employees they have the absolute majority) and a very small one in the largest. However also in small and medium firms other companies, and in particular holding companies and other private domestic non financial companies have a role. The larger is the size the more important is the presence of foreign companies, the state and holding companies among the shareholders. This explains the difference between non weighted values and those weighted by size. The latter show a much lower average value of the stake of individuals (who directly own 24 percent of firm capital) and a larger one for holding companies (32 per cent), foreign companies (16 per cent) and the state (12 per cent) (table 27) as compared to non weighted values<sup>30</sup>. Notice that financial companies have nearly no share in manufacturing companies<sup>31</sup>.

Results are qualitatively similar if we consider the more recent Mediocredito Centrale dataset (tables 28 and 29). Here, however, only the three largest shareholders are taken into account and the state was not included in the list of possible owners (hence it might have been included among «industrial companies», «holding companies» or «financial companies»). The weight of individuals is

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<sup>30</sup> Values are weighted by employees. Hence we are assuming that the size measured by employees is a proxy of the firm's capital.

<sup>31</sup> Remember that only the ten largest shareholders in each company are considered; residual shareholdings account for only a small fraction of capital on average, but they may be important in some large firms.

slightly higher (69 per cent on non weighted values, and 38 per cent on weighted values), mainly due to the presence of very small companies (11-50 employees) where individuals own on average 89 per cent. Again, it is interesting to notice that also extremely small companies have industrial and holding companies among their shareholders: this can be interpreted as a sign of the diffusion of groups also among small companies. Finally, in the Mediocredito Centrale sample on 1994 we observe a much larger presence of financial companies among the shareholders as compared to 1992 data. Even if partly due to a different classification<sup>32</sup>, this probably reflects an increasing role that financial intermediaries are performing in Italian companies.

The main shareholders of listed companies in 1993 were non financial companies (21.6 per cent on weighted data), the state (19.3 per cent) and individuals (28.7 per cent, measured as the sum of reported shares of individuals and the difference between 100 and all the reported shares). Financial companies (banks, insurance companies, mutual funds and other) had approximately 25 per cent. If we consider the set of all the companies belonging to «listed groups», shareholders with reporting requirements owned 75 per cent. Other companies belonging to groups held the largest share (40 per cent, approximately equally shared between companies belonging to private and state controlled groups) followed by the state (15 per cent) and banks (9.5 per cent) (tables 30-31).

In 1996, among direct owners of listed companies we observe a very large weight of non financial companies, including holding companies, (on unweighted data they represent nearly 40 per cent), again evidence of the diffusion of pyramidal groups (table 32). As noticed above about ownership concentration, their weight decreases with the size of the company. Individuals do not own significant shares in single large companies. If we consider values weighted by market capitalization, we observe a reduction in the weight of individuals (from 5 to 1 per cent) and the increase in importance of the state, which is important mainly in very large companies. In particular the weight of the state is similar to the value of 1993, due to the listing of some large state owned companies<sup>33</sup>. Banks own approximately 8 per cent of the capitalization, mainly in other banks and insurance companies, but also, recently, in non financial companies. The role of other financial companies (such as mutual funds and pension funds) is still very limited, even if here it is underestimated due to limit of 2 per cent in the communication to Consob. If we correct these data

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<sup>32</sup> Which might have led to include some group sub-holding among the financial companies.

<sup>33</sup> Currently (September 1997) the stake of the state in ENI, the largest company on the stock market, has decreased to 51,5 %; hence the data today would show a larger role for institutional investors (Italian and foreign) and for the market.

by keeping into account the fact that mutual funds and other institutional investors who own shares in listed companies usually do not have reporting requirements because their holdings are smaller than 2 per cent, we find that institutional investors at the end of 1996 owned approximately 14 per cent of total capitalization. This leads to an approximate estimate of individuals' shares of 29 per cent.

The weighted share of foreign investors is quite modest: they own about 2.5 per cent of capitalization, mainly concentrated in small size companies (their unweighted share is 10 per cent). Their share has reduced from 1993. However again these are only the significant shares (those larger than 2 per cent) and hence usually they represent a share in coalitions. Investments by foreign institutional investors are instead underestimated as those of the domestic investors.

When we consider group block ownership (tables 34 and 35), the weight of individuals, foreign investors and the state (the typical ultimate owners) obviously increase, and correspondingly decrease that of non financial companies. A significant share of group block holdings (approximately 1/3 of declared holdings), however, is held by what we define «apparent» ultimate shareholders, whose ownership structure does not allow, according to the Italian law, to identify a controlling agent. Some of these are bank foundations, whose ownership and control structures are not very well defined (see section 2.3.5). The other ones are partnerships or limited liability companies (with 15 per cent of declared holdings) mostly controlled by coalitions, which are considered «not relevant» for the Italian law on communications obligations (see section 3.1.1).

### ***3.2.4 The role of financial institutions***

As discussed in section 2.3.1, banks have had a limited role in companies' ownership and governance in Italy, due to the separation between banks and non financial firms imposed by the law in 1936. A remarkable exception has been however Mediobanca, an investment bank with stakes in all the largest Italian private groups, which has played a substantial corporate governance role guaranteeing their stability (and growth) over time<sup>34</sup>. After the abolition of the 1936 separation, at the end of 1992, banks are now allowed to hold shares of non financial companies (up to a limit). However until recently they have exploited this possibility mainly to help companies in financial distress, converting debt into equity.

For what concerns other financial institutions (insurance companies, pension funds, open and

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<sup>34</sup> See De Cecco, Ferri (1996), Ferri, Pesaresi (1996).

closed end funds) their development has been substantially delayed mainly due to the very generous public pension system and at the same time to the growth of government deficit and its financing by means of government bonds. In the 1980s these financial instruments represented the largest share of households' financial assets. Even insurance companies - the largest of this group of financial institutions - even when holding large shares of their financial assets in companies' stakes did not play any corporate governance role. The recent laws introduced in 1983 (see section 2.3.4) have favored the development of open-end funds. Even if they invest mainly in bonds, in the last few years they are starting to play a more active role in some companies' shareholders meetings or they are trying to induce companies to introduce more transparent means of communications or better protection for investors<sup>35</sup>. The introduction of pension funds could work in the direction of increasing the role of financial institutions in the Italian corporate governance even if the rules concerning the exercise of voting rights do not seem to offer the correct incentives.

The data presented above confirm the limited role of financial institutions in Italy. However the data referring to very recent years suggest that some change are taking places.

First in the Mediocredito Centrale dataset firms where a financial company own shares are 10.7 per cent of the total sample. In 70 per cent of the cases the financial company also shares the control of the company. These cases occur more frequently among medium and large companies (for firms with more than 200 employees they represent more than 20 per cent of the sample). At a closer look, even if we do not have more detailed information about the identity of the financial companies, they appear to be in various cases financial companies belonging to a group that cannot be classified as holding companies<sup>36</sup>. In other cases they are banks (for example in restructured firms) or other financial companies such as venture capital (private or state-owned) or merchant banks. It is interesting to notice that for the small companies (with less than 200 employees) with a «financial» shareholder, ownership concentration is higher than for the other small companies, suggesting that in these cases the financial company is possibly a «family owned» one. The reverse is true for larger firms, indicating that the presence of financial companies tends to be associated with a larger shareholder dispersion. Moreover in these cases also the stake with which the company is controlled is lower than the average value (see below, section 3.2.6).

Secondly the comparison between the 1992 and the 1996 INVIND surveys show a slight

<sup>35</sup> See Rubino, Verna (1997), Bianco, Goldstein (1995), Assogestioni (1996).

<sup>36</sup> Remember that in the Mediocredito Centrale sample there is no clear distinction between a purely financial companies and a financial company belonging to a pyramidal group.

increase in the percentage of firms with a share owned by a financial company, even if smaller than that emerging from the Mediocredito Centrale survey<sup>37</sup>. In 1996 6.5 per cent of the companies have a financial shareholder (3.7 per cent if we take into account the different coverage of the sample by size and sector and 7.6 per cent if weighted also by employees). Also in these cases they are more common among firms with larger size and we observe a lower ownership concentration where financial companies are among the shareholders. The average share owned is 20 per cent.

### ***3.2.5 Diffusion and role of groups***

The definition of hierarchical group, or group, that we shall use is that of "a set of companies with separate legal status which are all subject to the direct or indirect control - through one or more lines of control - of one leadership (an individual, a coalition of individuals or a government body)" (see section 2.1). It is worthwhile to point out that in this definition of groups we include those with only one manufacturing company and other companies supplying services<sup>38</sup> and those with one manufacturing company and other companies whose purpose is only financial control.

The results of the survey on 1992 show that more than fifty percent (56 per cent) of Italian industrial firms belong to a hierarchical group (table 36). Moreover the diffusion of the phenomenon increases with the size of companies. Almost all Italian companies with more than 1,000 employees adopt this structure but the percentage remains very high also for small and medium size companies and this is perhaps the most surprising result. It shows the central role played by this form of organization and control in the Italian industry. If we distinguish among state owned companies, subsidiaries of foreign companies, and Italian privately held companies, we see that nearly all the state owned companies are organized in groups (except for some local government companies), and that all the subsidiaries of foreign companies, by definition, belong to a group. Even keeping this into account the diffusion of groups among privately owned firms appears extremely high (Fig. 3). The group organization is more frequent in high technology industries (possibly because it allows to limit the liability of controlling companies in a very risky environment) and in "scale intensive" industries, where it may reconcile the need to centralize control with that of widening the scope for attracting

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<sup>37</sup> In this survey however, the definition is strict: among financial companies are included banks, merchant banks, investment companies, venture capital companies.

<sup>38</sup> In our 1992 sample these represent approximately 37 per cent of all groups with 13 per cent of total employment in groups.

venture capital (Fig. 4).

In the survey by Mediocredito Centrale (table 37) numbers are lower also due to the presence of very small firms, which are more rarely organized as groups<sup>39</sup>.

The 1996 survey shows that fewer companies are organized as groups than in 1992. In particular the share of firms belonging to groups has slightly decreased among medium size firms (table 38). An estimate of the distribution of "economic" manufacturing companies with more than 50 employees was made possible by the availability of data on the size of groups<sup>40</sup>. As expected, the size distribution of "economic" companies differs considerably from that of companies as defined legally. There is a smaller share of "economic" companies of small size than defined legally, while the numbers of large "economic" companies is much larger. What we do not observe, rather surprisingly, is an increased presence of medium-large firms, even when we keep into account groups. The greater number of large companies is in fact offset by a lower number of medium size companies. Almost 700,000 employees are concentrated in the first 34 groups (Fig. 5).

Various reasons have been identified for the adoption of the group structure in Italy<sup>41</sup>. First of all a pyramidal group represents a device to exert control: a group structure enables one or more individuals to control a wide set of activities with a limited share of assets owned. By spreading out the voting rights of minority shareholders over a large number of firms and concentrating those of the entrepreneur in the company at the top of the pyramid, this model allows the latter «to obtain control over the greatest possible amount of other people's capital with the smallest possible amount of his own»<sup>42</sup>. An approximate evaluation of this motivation may be obtained by selecting the firms (belonging to a group) controlled by other firms (industrial or financial) with a share smaller than 100 per cent. In 1992 among Italian privately owned firms organized in groups 37 per cent (28 per cent if weighted by employment) are holding companies (i.e. they are controlled by individuals,

<sup>39</sup> This survey allows to distinguish the position of the companies surveyed within the group: 20 per cent of the companies are head of the group, 24 are intermediate companies, 56 per cent are only controlled. Head of groups are concentrated in the 100-500 size class. Moreover firms were also asked about what were, in their perception, the advantages of the group organization: among the answers those which received higher weight referred to «better distribution of costs», «diversification», «backward or forward integration», «raising equity capital».

<sup>40</sup> Until now statistics were only available for local units and companies as defined by legal status. Here an "economic" company has been defined as the set of manufacturing companies incorporated in Italy that belong to the same group.

<sup>41</sup> See Barca et al. (1994b), Bianco, Gola, Signorini (1996).

<sup>42</sup> See Hilferding (1910).

families or coalitions), 31 per cent (32 if weighted) are controlled by another company with 100 per cent of shares and 32 per cent (40 per cent if weighted) are controlled by another company with less than 100 per cent of shares. We may proxy the cases where the group is a control device with the last number. We might instead exclude this motivation in those 30 per cent of cases where firms are controlled with 100 per cent of shares. We are not able to evaluate the relevance of this motivation among the holding companies since we have no information on firms controlled by them. Therefore the need to separate ownership and control is not the only reason that has induced Italian entrepreneurs to choose the group form of organization. Other different functions of the hierarchical group form of organization can be identified.

The group is also used as a means of limiting liability. Within a group the juridical autonomy of subsidiary companies allows the parent company (and each subsidiary) to limit its liability as compared with the alternative situation where the companies in the group are organized as divisions of one single large company.

The group may also represent an incentive structure. The substitution of delegated monitoring of divisions within a single company with relationships (contractual and other) between individual companies may enrich incentive structures needed in a world where principals are not always fully informed of the actions of those under them. Alternatively, a group structure may make it easier to share management functions among the members of a controlling family, favoring co-operation and reducing the risk of conflict. A group structure multiplies the number of different roles and positions that different members of the family may take so that each has his/her own sphere of influence. It is far from rare, for example, for each member of a family to "control" an individual company so that he/she decides that company's strategic policies. For small and medium size companies a group structure might be the first stage of a process towards more open control structures.

The group may be an "elusive" tool. The organization of an enterprise into multiple companies may allow them to avoid disclosing information to the market and the government.

Finally the group may be a means of co-operation. A group organization may make it possible to reach co-operation agreements (even without contracts) with external parties. A group structure increases the number of boards of directors where the controlling shareholder may interact with other relevant shareholders, increasing his chances of reaching long term agreements. In general this instrument increases the probability of collusion by means of the control (single or reciprocal) of sub-systems.

The vast majority of listed companies belong to a pyramidal group, where often another

company is listed as well. Here the motivation for the adoption of this structure is mostly a control reason. We shall evaluate in the next sections the degree of success of Italian pyramidal groups (mainly listed ones) in achieving separation between ownership and control.

### **3.2.6 Control**

We turn now from ownership structure to control structure of Italian companies. Even if ownership is one of the main mode to exercise control, and hence it should be the first aspect to be considered, there may be different ones which in particular allow to obtain separation (and hence a larger growth of the company). The limited degree of separation between ownership and control obtained on average in Italian companies is clear from tables 40-45. On average in Italy the controlling agent alone owns more than 80 per cent of the company. Smaller manufacturing firms are usually controlled with a slightly smaller share (table 40-43)<sup>43</sup>. If we add to those in control also the shares of their relatives and of those linked to controlling agents by voting agreements, this share increases to 90 per cent (93 in 1994): hence less than 10 per cent (7 per cent) of the capital of Italian manufacturing companies can be exchanged on the market (tables 44 and 45).

Listed firms are on average controlled with a lower stake (approximately 60 per cent on both unweighted and weighted values) (tables 46 and 47). Considering weighted values the controlling stake is approximately 70 per cent when the agent is the State or a bank (mostly controlling other banks) or an insurance company (mostly controlling other insurance companies). Only when control is exercised by a non financial company it is on average lower than 50 per cent (and this is only due to the weight of the largest percentile). It is worth noticing that the controlling stake is affected by company size only to a limited extent: it is in fact larger than 50 per cent in most cases for all size classes.

Given this identity between ownership and control among manufacturing firms it is not surprising that in most cases the distribution of control across types of investors reflects rather closely the distribution of ownership (tables 48-53). Some changes emerge from the comparison between 1992 and 1996: the amount of companies controlled by individuals has increased especially among medium size companies; similarly for the number of companies controlled by foreign companies and by financial institutions in all size classes<sup>44</sup>. Correspondingly the weight of holding

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<sup>43</sup> The survey on 1994 shows similar values.

<sup>44</sup> For the 1996 dataset we do not have information on ownership distribution by type of investor, but only those

companies and of state-owned companies has decreased (compare tables 49 and 53).

Among listed companies the largest share is controlled by the state, even when we exclude the largest company on the stock market, still state owned (tables 54-55). In the lowest percentiles individuals and formal agreements are those with the largest amount of capital controlled, while among medium and large companies (except for the largest percentile) non financial companies control most of the capital. This finding is partly due to the difficulty of moving up along the control chain beyond partnerships or other companies where there is joint control or informal agreements. Similarly, the rather large share of banks among controlling agents is due to the presence of bank foundations whose ownership and control structure is not well defined.

In order to evaluate the degree of separation between ownership and control, we need to go a step further, in particular we need to consider «ultimate» owners. For listed companies this is what will be done in section 3.2.8. However since for the companies in the INVIND surveys we are not able to go up along the control chain, we proxy the computation of the separation by grouping firms according to «control models» (fig. 6)<sup>45</sup>. We define as absolute control the case where there is nearly no separation between ownership and control: control is exerted by an individual with a majority of voting rights. This control model accounts for approximately 9 per cent of the activity of manufacturing firms with more than 50 employees. As expected, it is more common among small firms and extremely rare among the largest ones. A hierarchical group control is the most frequent corporate governance model; it accounts for 52 per cent of manufacturing activity and is more frequent among larger firms. The second most relevant model is what we define as family control, a case where family links exist among those in control or between the latter and non controlling shareholders. It may be interpreted as another device which allows separation between ownership and control. A fourth model of corporate control is what we define coalition control: this model is similar to the previous one but is slightly more complex. The trust-link between entrepreneurs and investors is based on their sharing common values (belonging to the same industrial district, to the same political party etc.) and might further be forged with formal agreements. Empirically it is proxied by all cases with joint control or single control without majority of votes, except when there are family links. It accounts for 9 per cent of total manufacturing activity and is more common among small firms. The financial supervision model, where financial guarantees to non controlling

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referring to control. This is the reason why we could not comment on these changes also for ownership distribution in section 3.2.1.

<sup>45</sup> See Barca (1996); Barca et al. (194b); Bianco, Gola, Signorini (1996).

shareholders are represented by the presence of financial companies with privileged information exerting monitoring (banks, merchant banks, institutional investors etc.), is proxied by all cases where among the owners there is an independent financial company with a relevant share (larger than 20 per cent). This model was basically absent among Italian manufacturing firms in 1992 (only four cases are found in the INVIND survey). State ownership can be interpreted as a model where the state collects capital directly from savers and finances entrepreneurs by entrusting the political authorities the power to safeguard the interests of investors. This model accounts for approximately 13 per cent of the activity, and is more frequent among larger companies. Finally we proxied public companies by cases in which control is exerted without ownership of shares or where ownership is extremely dispersed. A limited number of firms was identified. In all these cases however the market for corporate control was not active and no real threat of take-over existed for these companies. Hence this model, which accounts for 1 per cent of the activity, was named pseudo-public company.

In sum the Italian case is peculiar in that regulation and corporate culture did not favor the development of relationships between banks and companies that emerged in Germany, but at the same time other corporate governance devices (more frequent in the Anglo-Saxon countries) such as acquisitions, fiduciary duties and other financial institutions did not develop. Firms' financing and growth have been solved through the mechanisms of the State, the families, the coalitions, often organized into pyramidal groups. Banks or other financial and non financial institutions have not exerted monitoring or played an active role as advisors or intermediaries in the transfer of control. Takeovers have never worked as a monitoring device. Company and securities laws have not provided fiduciary duties, nor guarantees that adequate information was given to shareholders. A large number of companies are organized into pyramidal groups where no special guarantees exist for minority shareholders. The State has played a central, direct role via ownership and via financial transfers to private companies. Implicit rules, such as family relations and coalitions among owners sharing common interests or values, have been widely used, further preventing the exit mechanism from working. The separation between ownership and control has been limited. The difficulty in realizing the separation is further shown by the wide diffusion of clauses restricting control transfer in the company by-laws. Approximately 41 per cent of the firms, especially among those with family or coalition control, have such clauses.

If we consider listed groups in 1993 the largest share was controlled by state owned holdings (40.5 per cent) followed by private companies (19.4 per cent) and banks (12.7 per cent) (table 30). If we only consider the private non banking sector 45.9 per cent was controlled by private companies and 24.4 by individuals, whereas coalitions controlled 17.9 per cent (table 31)

Among listed companies in 1996, the largest share is still controlled by the State (47 per cent) (table 54). This share is especially large in the highest percentile, due to the presence of some state-owned companies listed recently. A large share is controlled also by non financial companies: this might be taken as evidence of the presence of informal agreements. Formal agreements are also extremely common. If ENI (the largest state-owned company) is excluded from the sample, the weight of the State decreases to 33 per cent (table 55) whereas non financial companies increase their share from 20 to 25 per cent.

### ***3.2.7 Boards and interlocking***

As discussed above, in Italy the appointment of directors is the responsibility of the stockholders' meeting which decides on a majority vote (see section 2.1.1). The board has supervisory duty over the executive directors. In large Italian companies they are usually both non-executive and executive directors. A recent research on the role and the functioning of Italian boards (Crisci, Tarizzo, 1985) shows that the board represents mainly the interests of majority owners<sup>46</sup>. Usually the directors are proposed by the president of the board or by the majority shareholder and are chosen (in 90 % of cases) among employees or persons with professional relationships with the company. From table 5 we see that boards of listed companies have on average 12 directors. This number is increasing in the company's size<sup>47</sup> and is slightly lower for financial and holding companies. The size appears to be relatively stable over the last 10 years. More complex ownership structures (as is the case for large companies) seem to generate boards with a higher number of directors. It is possible to distinguish between executive and non executive directors: on average listed companies have 1.3 executive directors<sup>48</sup>. The boards' turnover is rather high over the period: every year 14 per cent of directors on average left the board, and approximately the same percentage entered<sup>49</sup>. For banks the turnover

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<sup>46</sup> The research was performed on a sample of all listed companies and the 300 largest companies (except those listed) in 1994 through a questionnaire sent to 1,500 directors. It should be noted that the results are based on the answers of 219 directors and hence might not be totally representative.

<sup>47</sup> See also Barca et al. (1994b), ch. IV, for an analysis of the relationship between boards structures and control models.

<sup>48</sup> The differences with the results of Crisci and Tarizzo (1995) may be due to the different samples used of to an over-representativeness of executive directors in their sample. For what concerns the possibility to distinguish more clearly between insiders and outsiders, it must be noticed that directors, internal auditors and chief executive officers must reveal their ownership share in the company to Consob (art. 17, L. 216/74). The introduction of new «schemes» for the communication to Consob will guarantee a better use of these data.

<sup>49</sup> The slight difference between the two rates is due to the turnover of the listed companies.

is slightly higher (table 56). In particular directors with more than one position are more «mobile». For executive directors the turnover is similar to that of the others. A rather stable composition and size of the board are accompanied by a relatively high internal mobility.

Interlocking directorates are a rather common phenomenon among Italian listed companies<sup>50</sup>. The share of directors with multiple positions is approximately 20 per cent (table 57). This is a preliminary evidence that the Italian system is characterised in a stable way by a strong network of links not only through the ownership structure but also through interlocking directorships.

The average number of positions held by a director is 1.4. Also in this case the value is stable over the last 10 years (table 57). Most of the links are generated by directors with a large number of positions: in 1995, more than 60 per cent of the interlocks was due to directors with more than 4 positions. It should be noticed that, since 1990, this share decreased, even if this might be due to a reduction in the number of listed companies. If we take into account only «close» links, i.e., those established by the presence of directors which are executive or president of the board (*in-in* interlocks), we find that they are mainly established across companies belonging to the same group (Fiat group, Cofide group etc.). Therefore *in-in* interlocks seem to strengthen ownership links or substitute them when they are indirect. Within pyramidal groups executive directors are mainly representative of the majority owners. This structure is relatively stable: its changes are linked to changes in the groups' ownership structures.

It is worth noticing that, with a legislation imposing separation between banks and non financial companies (at least until 1993) (with both banks forbidden from owning shares in non financial companies and viceversa), personal links have been a way to substitute ownership. There are in fact many instances of *in-out* or *out-in* links (i.e., where the director has an executive position in one of the company and a non executive one in the other) between non financial companies and banks among Italian listed companies.

### ***3.2.8 Separation between ownership and control***

A further step in measuring the success of pyramidal groups in obtaining separation between ownership and control is the evaluation of «integrated ownership», i.e. the amount that has been

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<sup>50</sup> For a description and a preliminary analysis of the phenomenon see Bianco and Pagnoni (1997), here we report some of their main conclusions.

actually provided in the company by the controlling agent. Integrated ownership is computed for each listed company with an identified controlling agent moving from the direct shareholding of the controlling agent along the control chain. If agent A controls company B with a 50 per cent share and B controls company C with a 50 per cent share, the integrated ownership of A in C is 25 per cent.

In 1993, average integrated ownership for controlling agents in listed groups was 39 per cent; in private non banking groups it was 17 per cent. In 1996 integrated ownership of controlling agents in the set of all listed companies with an identified controlling agent amounts to 51% of capital (table 58). The State holds more than half of total integrated ownership. If however ENI is excluded, integrated ownership reduces to 42% and the share of the State to about one third of total value (table 59).

The high value of integrated ownership reflects a limited degree of separation between ownership and control. In 1993 on average, the ownership of one unit of capital allowed the control of 2.7 units of capital. In 1996 for listed firms this number was 1.95 (table 60); it is about 1.6 for the State, while it is above the average value for individuals (3.62) and non financial companies (4.48)<sup>51</sup>. If ENI is excluded, the value increases to 2.4 for all companies, and is higher also for the State (2.3) (table 61). In private groups where the head of the company is a non financial company the separation increases with size.

The degree of separation of ownership and control may appear modest, in particular if compared to the absolute separation realized in the pure public company model. Considering, however, that control, in most of the cases, is not contestable and that there is a very little external efficient monitoring (due to the low protection of minority shareholders and the limited role of financial shareholders), the separation may not be considered so small. Indeed separation between ownership and control in private groups, especially where the head of the group is not a financial company, is much larger than in State controlled group. For the private groups in fact the pyramidal structure is exploited to gain as much external finance as possible.

If we look at the first 30 groups by market capitalization, the dichotomy between private and State controlled groups appears to be even more evident (tables 62, 63). For the Agnelli group, the third one by capitalization, the capital controlled with one unit of capital is about 9; for the De Benedetti group it is about 10<sup>52</sup>, and it is higher than 4 for Compart, Radici Pesenti, Ligresti,

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<sup>51</sup> In many instances it is not possible to move up along the control chain above non financial companies (often partnerships).

<sup>52</sup> Notice that since the end of 1995 Olivetti is not controlled by this group any more.

Pininfarina and Falck groups. For State controlled groups, the value is 1.2 for those controlled by Ministero del Tesoro, and 2.4 for the IRI group, respectively first and second by capitalization. Furthermore, it should be noticed that for many private groups it was not possible to identify the true head of the group, due to the presence of coalitions controlling the holding company of the group that are not relevant according to the regulation about ownership disclosure. Were it possible to identify the true head of these groups, the separation would appear to be considerably higher.

#### **4. The recent evolution**

Recently some changes are recognizable in the Italian corporate governance structure, some of which cannot still be traced in the data, at least not in those referring to 1996.

As far as the group structure is concerned, it is recognizable a tendency towards a simplification of pyramidal private groups: this trend seems to be led mostly by financial difficulties of some groups and it has involved mostly listed companies located at low levels of pyramidal groups. The difficulties of some private groups have also led to a greater instability of ownership structure with a larger role for financial institutions (both banks and institutional investors).

On the contrary, an increase of leverage is noticeable for State controlled groups, due to the spin-off of some assets (like in the case of the cellular phone company Tim) and to a decrease of control stakes owned, mostly in the framework of progressive privatization (see for examples INA and ENI). In the process of restructuring, on the other side, some simplification of group structure is taking place.

The privatization process is enlarging stock market capitalization but this is occurring slowly and with some ambiguities: in some instances ownership has been transferred from the state to banks which are controlled by foundations, and can be hardly considered private. In other cases the state still controls 51 per cent of the capital.

Also due to financial incentives, in 1995 and 1996 a relatively large number of medium size companies was listed, especially among those with venture capital participations.

Financial institutions seem to be playing a larger role both in terms of their ownership share in non financial companies and in terms of their voice in shareholders' meetings. These changes however are taking place very slowly: banks, who are now allowed to own shares in non financial companies have used this possibility only in a limited number of cases and mostly to convert their

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debt towards firms in financial difficulties into shares.

Consistently with the tradition of continental Europe legal systems, and in the absence, until today, of any E.C. harmonization imposing corporate governance systems more sensitive to the need for investors' protection, the current Italian company law, according to the dominant view<sup>53</sup>, has tended to favour excessively the certainty of control at the expenses of shareholders' protection. Adhering to this view, in 1996 the Italian Parliament has delegated the Government to modify the laws regulating listed companies with specific regard to internal controls, shareholders agreements, infra-group transactions, minority shareholders' rights. The Government ought to reform these laws with the aim of «strengthening investors' protection and minority shareholders»<sup>54</sup>. The new law should be enacted by February 1998. In the meantime, a wide debate among academicians and professional associations is taking place<sup>55</sup>; even the press has recently started to discuss the issue. It is too early to know what kind of legislation will finally be enacted, although it is fairly predictable that, in general, the government will be very cautious in shifting the balance of the law from insiders to minority shareholders, as the Parliament requires it to do.

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<sup>53</sup> See, for example, Barca (1996) and Costi (1995), but, for a different view, see Ciocca (1997).

<sup>54</sup> L. 56/96, art.21, par. 4.

<sup>55</sup> See, e.g., Ceradi (1996); Assogestioni (1996); Associazione Preite (1997); Assonime (1997).

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Table 1

## COMPANY TYPES

	Limited Liability	Minimum Capital (millions lire)	Smallest number of owners	Smallest number of managers	Degree of imperativeness of the legal rules
Società semplice <sup>(1)</sup>	Only for partners not participating in the management of the company, if (a) the partnership contract so provides, and (b) creditors are informed of the existence of such clause.	No	2	1	Low
Società in nome collettivo	No	No	2	1	Low
Società in accomandita semplice	Unlimited for “soci accomandatari”; limited for “soci accomandanti” <sup>(2)</sup> .	No	2	1	Low
Società per azioni	Yes, unless the Co. has a single owner	200 Approx. ECU 105,000	2 at foundation, 1 thereafter	1	High
Società in accomandita per azioni	Unlimited for “soci accomandatari” and limited for “soci accomandanti”.	200	2 at foundation, 1 thereafter	1	High
Società a responsabilità limitata	Yes	20 Approx. ECU 10,500	1 <sup>(3)</sup>	1	Medium
Società cooperative	Cooperatives can be founded either as companies with limited liability or as companies with unlimited liability.	No	3	1	High

<sup>1</sup> This legal form can be used for agricultural firms only.

<sup>2</sup> Partners are identified as “accomandanti” or “accomandatari” in the partnership contract. The liability of accomandanti becomes unlimited if they act as managers of the company.

<sup>3</sup> The 12th Company Law Directive on single owner companies was transposed with Decreto legislativo 3 marzo 1993 n. 88, which provides that whenever the company falls into the hands of (or is founded by) a single owner, the directors or the single owner shall deposit at the company register (“registro delle imprese”) a statement indicating the identity of the owner, his date and place of birth, his domicile and his citizenship.

## DEFINITION OF CONTROL

Source of definitions	A company is controlled by another entity if:
COMPANY LAW:	1.1 the latter has a majority of the shareholders' voting rights; 1.2 the latter has enough voting rights to exert a dominant influence on the shareholders' meeting of the former; 1.3 the latter has a dominant influence on the former by force of some contractual ties with the former; 1.4 for the application of nn. 1. and 2. above, voting rights pertaining to subsidiary companies, and to companies or persons acting as "trustees" - "società fiduciarie" <sup>(1)</sup> - or nominees of another company are considered to be pertaining to this company.
LAW IMPLEMENTING DIRECTIVE 83/349/EEC <sup>(2)</sup> :	2.1 in the cases 1.1 and 1.2 above; 2.2 another undertaking has the right to exercise a dominant influence, pursuant to a contract entered into with that undertaking or to a provision in its memorandum or articles of association, when the law governing that subsidiary undertaking permits such contract or provision <sup>(3)</sup> ; 2.3 another company controls alone, pursuant to an agreement with other shareholders or members, a majority of shareholders' or members' voting rights in that undertaking, taking into account the voting rights pertaining to subsidiary companies, and to persons acting as fiduciaries or nominees.
ANTITRUST LAW <sup>(4)</sup> :	3.1 in cases 1.1 and 1.4; 3.2 in the presence of rights, contracts or other legal relations, which, separately or jointly, and taking the legal and factual circumstances into account, give the power of exerting a determining influence on the activity of an enterprise, such as, e.g.: - rights of property or use on the enterprise's assets or part of them; - rights, contracts or other legal relations which confer a determining influence on the composition, deliberations and decisions of a company's organs; 3.3 control is considered to be held by the person, enterprise, group of persons or enterprises who either are entitled to exercise such rights or to benefit from such contracts or legal relations, or have a de facto power to exercise the rights related to them.

<sup>1</sup> See section 2.2.5.

<sup>2</sup> D.lgs. 1991/127, Article 26.

<sup>3</sup> According to Italian law, such contract or provision is void.

<sup>4</sup> L. 1990/287, Article 7.

Table 2  
(continued)

**DEFINITION OF CONTROL**

Source of definitions	A company is controlled by another entity if:
BANKING LAW:	<p>4.1 in cases 1.1, 1.2 ((account is also taken of holdings acquired or held in any way through subsidiary companies and companies or persons acting as “trustees” - “società fiduciarie” - or nominees of the latter);</p> <p>4.2 in cases of dominant influence, which is deemed to exist:</p> <ul style="list-style-type: none"> <li>- where a person, pursuant to agreements with other members, is entitled to appoint or remove a majority of the directors or controls alone a majority of the voting rights at ordinary general meetings;</li> <li>- where a person owns a holding which would allow him to appoint or remove a majority of the members of the board of directors;</li> <li>- where there exist financial or organizational relationships, including those between members, which are likely to produce one of the following effects: a) the transfer of profits and losses; b) the coordination of the management of an undertaking with that of other undertakings for the purpose of pursuing a common objective; c) the attribution of powers greater than those deriving from the shares or capital parts owned; d) the attribution of powers in the choice of directors or managers of undertakings to persons other than those entitled to exercise such powers on the basis of the ownership structure;</li> <li>- where undertakings are subject to common management arising from the composition of the administrative bodies or other concurrent factors.</li> </ul>
PRUDENTIAL REGULATION:	<p>5.1 for companies other than banks or financial intermediaries the definition is 2.1, 2.2, 2.3;</p> <p>5.2 for banks and other financial intermediaries the definition is 4.1, 4.2.</p>
LAW IMPLEMENTING DIRECTIVE 89/627/EEC:	<p>6.1 in case 1.1-1.4;</p> <p>6.2 in case of a person who, pursuant to agreements with other members, controls alone a majority of the voting rights at ordinary general meetings or is entitled to appoint or remove a majority of the directors.</p>
LAW ON TAKEOVERS <sup>(5)</sup> ;	<p>7.1 when the latter holds enough shares to dispose of the majority of the voting rights in the ordinary meetings, or to exercise a dominant influence upon the meeting, taking into account also shares held through nominees and “società fiduciarie”; shareholders’ agreements concerning voting rights are also relevant, if they allow to exercise a dominant influence on the shareholders’ meeting.</p>

<sup>5</sup> L. 1992/149, Article 10.2.

Table 3

**PROXY RULES**

	Insiders <sup>(1)</sup>	Banks <sup>(2)</sup>	Quantitative limits <sup>(3)</sup>
Società per azioni	No	No <sup>(4)</sup>	10
Additional req. or spec. rules for listed companies	Same	Same	50, 100, 200 <sup>(5)</sup>

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<sup>1</sup> May directors, managers, employees act as proxies?

<sup>2</sup> May banks act as proxies?

<sup>3</sup> Does the law state that the same proxy may not act in the name of a certain number or % of capital of shareholders? If yes, what is the limit?

<sup>4</sup> They may do so only in order to represent clients of the asset management department.

<sup>5</sup> 50 shareholders for companies with a capital of less than Lit. 10 billions (approx. ECU 5,244,000); 100 for companies with a capital between Lit. 10 billions and 50 billions (approx. ECU 26,220,000); 200 for companies with a capital of more than Lit. 50 billions.

Table 4

**SHAREHOLDERS' MEETINGS AND BOARDS OF "SOCIETÀ PER AZIONI"**

	% of capital needed to obtain con- vocation of meeting	Deposit of shares <sup>(1)</sup>	Directors' maximum term of appointment	Is directors' compensation disclosed?	Is directors' trading disclosed?	Derivative suits <sup>(2)</sup>
Società per azioni	20	Yes, 5 days before	3 years	Only the total compensation paid to directors altogether	No	No
Additional requirements or special rules for listed companies	Same	Same	Same	Directors inform Consob about their compensation	Directors inform Consob	Same

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<sup>1</sup> Do shares have to be deposited at the company's site or at a financial institution in order to have access to the meeting?

<sup>2</sup> May individual shareholders or a qualified minority of them sue directors for damages to the corporation?

Table 5

**BOARD SIZE OF LISTED COMPANIES**

	1985	1990	1995
Industrial companies:			
≤ - 99	9.1	8.7	8.0
100 - 499	8.6	9.9	9.5
500 - 999	9.8	9.5	8.6
1000 - 4999	12.4	12.8	12.2
more than 5000	18.4	17.9	14.7
Financial companies	9.7	8.7	9.4
Holdings companies	11.4	12.5	10.0
Total	12.0	12.7	11.5
<i>of which: executive</i>	1.3	1.3	1.2
N. companies	187	250	217

Source: Consob.

**TOTAL NUMBER OF ACTIVE COMPANIES AND THEIR EMPLOYEES**  
(Absolute values)

Size classes (employees)		Imprese individuali	Società							Municipa- lizzate	Other	Total
			semplici	in nome collettivo	in accomandita	per azioni	a respons. limitata	cooperative				
1 - 9	Number	2,334,999	747,970	112,287	324,619	121,974	7,605	156,962	24,523	101	24,269	3,107,339
	Employees	3,995,740	2,558,321	330,016	1,156,814	360,932	29,439	586,862	94,258	535	70,029	6,624,625
10 - 49	Number	30,176	141,357	3,926	42,407	10,883	13,063	61,758	9,320	110	1,761	173,404
	Employees	455,532	2,620,277	57,066	652,191	188,429	342,385	1,196,097	184,109	2,751	30,958	3,109,518
50 - 99	Number	323	11,271	50	553	349	5,183	4,112	1,024	50	166	11,810
	Employees	20,670	771,249	3,270	36,027	23,222	364,814	274,504	69,412	3,734	11,568	807,221
100 - 199	Number	54	4,960	13	116	83	3,075	1,203	470	58	96	5,168
	Employees	6,765	677,337	1,613	15,043	10,885	426,308	159,234	64,254	8,595	12,790	705,487
200 - 499	Number	9	2,513	-	33	19	1,846	395	220	57	67	2,646
	Employees	2,296	747,377	-	9,619	5,237	550,544	115,211	66,766	18,586	20,891	789,150
500 - 999	Number	1	662	2	2	6	491	104	57	28	38	729
	Employees	755	447,039	1,298	1,363	3,854	332,752	69,150	38,622	19,203	26,459	493,456
1000 -	Number	1	387	-	1	1	320	33	32	25	42	455
	Employees	1,097	1,292,083	-	2,053	1,501	1,124,240	97,388	66,901	84,570	694,605	2,072,355
Total	Number	2,365,563	909,120	116,278	367,731	133,315	31,583	224,567	35,646	429	26,439	3,301,551
	Employees	4,482,855	9,113,683	393,263	1,873,110	594,060	3,170,482	2,498,446	584,322	137,974	867,300	14,601,812

Source: ISTAT - Censimento sul 1991

**TOTAL NUMBER OF ACTIVE COMPANIES AND THEIR EMPLOYEES**  
(Percentages)

Size classes (employees)		<b>Imprese individuali</b>	<b>Totale società:</b>	semplici	in nome collettivo	in accomandita	per azioni	a respons. limitata	cooperative	<b>Municipa- lizzate</b>	<b>Other</b>	<b>Total</b>
1 - 9	Number	75.1	24.1	3.6	10.4	3.9	0.2	5.1	0.8	0.0	0.8	100.0
	Employees	60.3	38.6	5.0	17.5	5.4	0.4	8.9	1.4	0.0	1.1	100.0
10 - 49	Number	17.4	81.5	2.3	24.5	6.3	7.5	35.6	5.4	0.1	1.0	100.0
	Employees	14.6	84.3	1.8	21.0	6.1	11.0	38.5	5.9	0.1	1.0	100.0
50 - 99	Number	2.7	95.4	0.4	4.7	3.0	43.9	34.8	8.7	0.4	1.4	100.0
	Employees	2.6	95.5	0.4	4.5	2.9	45.2	34.0	8.6	0.5	1.4	100.0
100 - 199	Number	1.0	96.0	0.3	2.2	1.6	59.5	23.3	9.1	1.1	1.9	100.0
	Employees	1.0	96.0	0.2	2.1	1.5	60.4	22.6	9.1	1.2	1.8	100.0
200 - 499	Number	0.3	95.0	0.0	1.2	0.7	69.8	14.9	8.3	2.2	2.5	100.0
	Employees	0.3	94.7	0.0	1.2	0.7	69.8	14.6	8.5	2.4	2.6	100.0
500 - 999	Number	0.1	90.8	0.3	0.3	0.8	67.4	14.3	7.8	3.8	5.2	100.0
	Employees	0.2	90.6	0.3	0.3	0.8	67.4	14.0	7.8	3.9	5.4	100.0
1000 -	Number	0.2	85.1	0.0	0.2	0.2	70.3	7.3	7.0	5.5	9.2	100.0
	Employees	0.1	62.3	0.0	0.1	0.1	54.2	4.7	3.2	4.1	33.5	100.0
Total	Number	71.7	27.5	3.5	11.1	4.0	1.0	6.8	1.1	0.0	0.8	100.0
	Employees	30.7	62.4	2.7	12.8	4.1	21.7	17.1	4.0	0.9	5.9	100.0

Source: ISTAT - Censimento sul 1991.

Table 8

**TOTAL NUMBER OF ACTIVE COMPANIES AND THEIR EMPLOYEES**  
(Percentages)

Size classes (employees)		Società semplici	Società in nome collettivo	Società in accomandita	Società per azioni	Società a responsabilità limitata	Società cooperative	<b>Total</b>
1 - 9	Number	15.0	43.4	16.3	1.0	21.0	3.3	100.0
	Employees	12.9	45.2	14.1	1.2	22.9	3.7	100.0
10 - 49	Number	2.8	30.0	7.7	9.2	43.7	6.6	100.0
	Employees	2.2	24.9	7.2	13.1	45.6	7.0	100.0
50 - 99	Number	0.4	4.9	3.1	46.0	36.5	9.1	100.0
	Employees	0.4	4.7	3.0	47.3	35.6	9.0	100.0
100 - 199	Number	0.3	2.3	1.7	62.0	24.3	9.5	100.0
	Employees	0.2	2.2	1.6	62.9	23.5	9.5	100.0
200 - 499	Number	0.0	1.3	0.8	73.5	15.7	8.8	100.0
	Employees	0.0	1.3	0.7	73.7	15.4	8.9	100.0
500 - 999	Number	0.3	0.3	0.9	74.2	15.7	8.6	100.0
	Employees	0.3	0.3	0.9	74.4	15.5	8.6	100.0
1000 -	Number	0.0	0.3	0.3	82.7	8.5	8.3	100.0
	Employees	0.0	0.2	0.1	87.0	7.5	5.2	100.0
Total	Number	12.8	40.4	14.7	3.5	24.7	3.9	100.0
	Employees	4.3	20.6	6.5	34.8	27.4	6.4	100.0

Source: ISTAT - Censimento sul 1991.

Table 9

### COMPANY LAW

	Deposit of list of owners at foundation	Transfer procedures	Directors' ownership	Buy-out of own shares	Notification of acquisitions to the company register
Società di persone <sup>(1)</sup>	Yes <sup>(2)</sup>	Same form as that used for the company's foundation <sup>(3)</sup>	No limit	Not allowed	No
Società per azioni (non listed)	Yes <sup>(2)</sup>	Certified endorsement, registration in the shareholders' register <sup>(4) (5)</sup>	No limit	Up to 10% <sup>(6)</sup>	No
Società a responsabilità limitata	Yes <sup>(2)</sup>	Registration in the "registro delle imprese" and in the shareholders' register <sup>(7)</sup>	No limit <sup>(8)</sup>	Not allowed	No
Società cooperative	Yes <sup>(2)</sup>	Approval by directors, registration in the shareholders' register <sup>(9)</sup>	No limit <sup>(10)</sup>	No limit <sup>(11)</sup>	No

<sup>1</sup> Società semplici, società in nome collettivo, società in accomandita semplice.

<sup>2</sup> Name, birth place, birth date, address, citizenship, number of shares (or percentage of capital). "Società semplici" and "società in nome collettivo" may however be founded by way of an informal agreement, and without any notification to the "registro delle imprese". The sanction in case of omitted notification to the "registro delle imprese" is a fine from Lit. 20,000 to Lit. 1,000,000 (approx. ECU 10.5 to 525).

<sup>3</sup> The transfer has to be registered at the "registro delle imprese" as well.

<sup>4</sup> Shares cannot be anonymous. They can be transferred with an endorsement certified by either a notary public or an investment firm, but such endorsement has no effect as against the company: in order for the transfer to have effect against the company, it has to be recorded in the "libro dei soci" (shareholder register), the keeping of which is care of the company's directors. Shareholders and the bondholders' agent have access to the "libro dei soci".

<sup>5</sup> Companies may limit, but not totally preclude, the transferability of shares. At least since 1986, when a Law was enacted to this purpose, charter provisions which make the transfer conditional on the directors' mere agreement are void (before 1986 some case law had already affirmed this rule).

<sup>6</sup> The acquisition and the sale of shares by the company have to be authorized by the shareholders' general meeting. Treasury shares cannot be voted.

<sup>7</sup> By charter provision the transferability of shares can be excluded. There is no specific rule for the transfer of shares between the buyer and the seller; as for "società per azioni", in order for the transfer to have effect against the company, it has to be recorded in the "libro dei soci" (shareholder register), the keeping of which is care of the company's directors. Shareholders have access to the "libro dei soci". Since 1993, when a Law aimed at preventing money laundering was enacted (l. 1993/310), in order for the transfer to be recorded in the "libro dei soci", the transfer contract or act has first to be recorded in the "registro delle imprese".

<sup>8</sup> Unless otherwise provided by the company's statute, directors have to be shareholders.

Table 9  
(continued)

**COMPANY LAW**

	Deposit of list of owners at foundation	Transfer procedures	Directors' ownership	Buy-out of own shares	Notification of acquisitions to the company register
Società per azioni (listed)	Yes <sup>(2)</sup>	Book entries in registers kept by intermediaries and registration in the shareholders' register <sup>(12)</sup>	No specific limit	Up to 10% (6) (13)	No (14)
Società in accomandita per azioni	Yes <sup>(2)</sup>	See società per azioni	No limit	Up to 10% <sup>(6)</sup>	No
Banks <sup>(15)(16)</sup>	Yes <sup>(2)</sup>	Same as for their legal form <sup>(17)</sup>	No limit	Same as for their legal form <sup>(18)</sup>	No <sup>(19)</sup>
Insurance companies (15) (16)	Yes <sup>(2)</sup>	Same as for their legal form <sup>(20) (21)</sup>	No limit	Same as for their legal form	No

<sup>9</sup> In order for the transfer to have effect against the company, it has to be approved by directors and recorded in the "libro dei soci" (shareholder register), the keeping of which is care of the company's directors. Shareholders have access to the "libro dei soci". By charter provision the transferability of shares can be excluded.

<sup>10</sup> Directors have to be shareholders or agents of legal persons who are shareholders.

<sup>11</sup> The acquisition can take place only within the limits of distributable reserves and income.

<sup>12</sup> Transfers take place by way of book entries in the registers kept by intermediaries, when, as normally, shares are in the custody of Monte titoli s.p.a., a central depository institution. Otherwise, see società per azioni, non listed.

<sup>13</sup> Since 1992, acquisitions of listed companies' shares can only take place by trades on the market.

<sup>14</sup> Besides rules concerning notifications of acquisitions of holdings in listed companies (see Sections 3.1), acquisitions of holdings of 10% or more in non listed companies by a listed company have to be notified to Consob, which gives immediate notice of such acquisition to the public.

<sup>15</sup> The additional requirements imposed on listed "società per azioni" apply to banks and insurance companies, when they are listed. The BCCI directive has not yet been transposed in Italy.

<sup>16</sup> Banks and insurance companies can be formed either as "società per azioni" or as "società cooperativa per azioni".

<sup>17</sup> For holdings of 2% or more and for controlling holdings, there needs to be an authorization of the acquisition by the Bank of Italy. If the Bank of Italy refuses to give its authorization, the buyer will have to resell its holding within the term fixed by the Bank of Italy.

<sup>18</sup> However, "banche di credito cooperativo" (i.e., small cooperative banks) may not buy their own shares.

<sup>19</sup> Acquisitions of holdings have to be notified to the Bank of Italy, with the exception of holdings of less than 2%, so long as no more than 2% of the bank's capital (net assets as calculated according to banking supervision rules) is engaged for the acquisition.

<sup>20</sup> Insurance companies can be formed either as "società per azioni" or as "società cooperativa".

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<sup>21</sup> Acquisitions of holdings of 5% or more in an insurance company have to be notified to ISVAP (Istituto di Vigilanza sulle Assicurazioni Private, the supervising authority); for holdings of 10% or more and for controlling holdings or holdings which guarantee a significant influence on the insurance company, there needs to be an authorization of the acquisition by ISVAP. Shares for which there has been no notification to or authorization by ISVAP cannot be voted.

<sup>22</sup> Acquisitions of holdings by an insurance company have to be notified to ISVAP, with the exception of acquisitions of non-controlling holdings under 5%. ISVAP informs the public of the notifications received and it may forbid the acquisition for soundness reasons. For the acquisitions of stakes in other insurance companies, see the preceding footnote.

Table 10

**ACCOUNTING RULES<sup>(1)</sup>**

	Rules requiring information on holdings in the annual accounts	Rules requiring information on owners in the annual accounts	Availability of annual accounts to the public
Società di persone	No	No	No
Società per azioni - non listed	Yes (2)	Yes (3)	Yes
Società per azioni - listed	Yes (2)	Yes (4)	Yes
Società in accomandita per azioni	Yes (2)	Yes (3) (4)	Yes
Società a responsabilità limitata	Yes (2)	Yes (3)	Yes
Società cooperative	Yes (2)	Yes (3)	Yes
Banks	Yes (5)	Yes (3)	Yes
Insurance companies	Yes (2)	Yes (3)	Yes

<sup>1</sup> See Fourth Company Law Directive (78/660/EEC), and Seventh Company Directive (83/349/EEC), implemented with Decreto Legislativo 1991/127; for banks, see Financial Institutions and Bank Accounting Directive (86/635/EEC), implemented with Decreto Legislativo 1992/87; for insurance companies, see Insurance Company Accounting Directive 91/674/EEC, not yet implemented in Italy.

<sup>2</sup> Annual accounts have to list holdings in controlled undertakings, connected undertakings, and controlling undertakings (Civil Code, Articles 2427 and 2428, as amended by d.lgs. 1991/127).

<sup>3</sup> Following the 1993 legislation against money laundering (see above), non listed companies have to deposit at the company register, together with the annual accounts, the list of owners at the date of their approval by the shareholders' meeting, with the indication of persons or entities, other than owners, having any right on the shares. All of the annotations made in the "libro dei soci" during the precedent year have also to be reported to the company's register (Civil Code, Article 2435, as amended by d.lgs. 1993/310).

<sup>4</sup> Consob recommends that companies provide shareholders, at the annual meeting, with a list of shareholders holding a stake of more than 2%.

<sup>5</sup> Annual accounts have to list holdings in controlled undertakings and connected undertakings (D.lgs. 1992/87, Article 23).

Table 11

**STOCK EXCHANGES<sup>(1)</sup>**

	Number of companies	Market capitalization
Borsa Valori	217	Lit. 386,157 billions <sup>(2)</sup>
Mercato Ristretto	30	Lit. 6,388 billions <sup>(3)</sup>

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<sup>1</sup> Consob data at 12/31/1996.

<sup>2</sup> Approx. ECU 202.5 billions.

<sup>3</sup> Approx. ECU 3.3 billions.

Table 12

**ACCESSIBILITY AND AVAILABILITY OF OWNERSHIP DATA**

	Accessibility of data	Availability of data on computer
Company register	Yes	Yes <sup>(1)</sup>
Market Supervision Authority	Yes <sup>(2)</sup>	Not yet <sup>(3)</sup>
Banking Supervision Authority	No	No
Insurance Companies Supervision Authority	Yes <sup>(4)</sup>	No
Competition Authorities <sup>(5)</sup>	Yes	No

<sup>1</sup> Some of the information collected by the offices of the “registro delle imprese” (such as legal form, name, stated capital, kind of activity, date of foundation, name and date of appointment of directors, bankruptcy issues) is available on computer. The fee to be paid is Lit. 5,000 (approx. ECU 2.6) for each single company for which information is requested. For companies the foundation of which has been notified after 26 January 1994, the name of owners at the date of foundation is also available on computer. Other information, such as the annual accounts and current ownership is available on paper for a fee varying in accordance with the kind of information requested. The information from the two sources (paper and computer) is sometimes inconsistent, because many of the offices throughout Italy insert data in the computer network with a significant delay.

<sup>2</sup> See Section 3.1.

<sup>3</sup> See Section 3.1.

<sup>4</sup> See Table 9, note 22. ISVAP also communicates every year to insurance companies, their association and the Ministry of Trade (Ministero dell’Industria) the transfers of control which have taken place in the previous six years.

<sup>5</sup> Every firm, whatever its legal form, is subject to antitrust rules. When a concentration takes place (involving either firms which jointly sale in Italy for more than Lit. 671 billions - approx. ECU 344,000,000 - or a taken over firm with sales in Italy for more than Lit. 67 billions - approx. ECU 34,000,000), it has to be reported either to the antitrust authority (“Autorità garante della concorrenza e del mercato”), or, in case of banks (for which the sales are assumed to be equal to one tenth of the assets), to the Bank of Italy. The antitrust authorities’ decisions upon whether to instruct an antitrust case (and hence with all the relevant data about the concentrations which take place) are published on the “Bollettino dell’Autorità garante della concorrenza e del mercato”, a weekly publication by the Italian Government.

**SOCIETÀ PER AZIONI (LISTED): THE TRANSPARENCY DIRETTIVE**

1. <i>When was the TD transposed?</i>	In 1992, with Decreto legislativo 1992/90.
2. <i>When did the legislation become effective?</i>	On March, 1st 1992.
2a. <i>What was the reason for the delay?</i>	No specific reason.
3. <i>Which are the “competent authorities”?</i>	Consob
4. <i>In Article 4(1), what are the reporting thresholds that were chosen?</i>	10, 20, 33, 50, 75.
5. <i>What is the first time notification threshold referred to in Article 5?</i>	10%.
6. <i>Do natural persons or legal entities have to notify why they notified?</i>	Yes.
7. <i>Do natural persons or legal entities have to notify how they control an undertaking?</i>	Yes.
8. <i>How much time may pass between crossing a threshold and reporting to the company?</i>	Two days.
9. <i>How much time may pass between the notification of the company (and the competent authority) and the notification of the public?</i>	Two trading days.
10. <i>Who notifies the public?</i>	The “target” company.

Table 13  
(continued)

**SOCIETÀ PER AZIONI (LISTED): THE TRANSPARENCY DIRETTIVE**

11. <i>Does the national law prescribe that “a company must also be informed in respect of the proportion of capital held by a natural person or legal entity”?</i>	Yes.
12. <i>By what means are the company and the competent authority notified?</i>	Either by direct delivery, or by facsimile followed by a registered letter with acknowledgment of receipt, or telematically.
13. <i>How does the competent authority store the notifications?</i>	On paper.
14. <i>Does the competent authority distribute the notifications cumulatively?</i>	See Section B.a.1.3.
15. <i>Does the competent authority have to declare how often it has applied the waiver rule set out in Article 11 (and for which natural person, legal entity)?</i>	No. But this power, which according to D.lgs. 1990/92 should be circumscribed by the means of a Consob Regulation (which has never been adopted), has never been exercised.
16. <i>What are the sanctions mentioned in Article 15?</i>	Imprisonment up to three months and fine from Lit. 2 millions to 20 millions (approx. ECU 1,050 to 10,500).
17. <i>How are these sanctions applied (or, what powers are conferred upon the competent authority for the performance of their duties (Art. 12(2))?</i>	Besides Consob’s general powers on listed companies, holdings etc. (inspection, information etc.), D.lgs. 1992/90 provides that Consob may ask parts to the relevant transaction for information and the acquiring company for data on its shareholders.

Table 14

## DATASET USED

Size classes (employees)	INVIND <sup>(1)</sup> (year 1992)		Mediocredito Centrale <sup>(2)</sup> (year 1994)		INVIND <sup>(1)</sup> (year 1996)	
	Number of firms	Percentages	Number of firms	Percentages	Number of firms	Percentages
11 - 49	-	-	1869	44.8	-	-
50 - 99	196	20.1	906	21.7	211	20.0
100 - 199	200	20.6	736	17.6	255	24.2
200 - 499	291	29.9	431	10.3	307	29.1
500 - 999	143	14.7	138	3.3	133	12.6
1000 -	143	14.7	90	2.2	149	14.1
Total	973	100	4173	100	1055	100

Size classes (market capitalization)	LISTED FIRMS <sup>(3)</sup> (year 1996)	
	Number of firms	Percentages
5 percentile	19	8.9
10 percentile	10	4.7
25 percentile	31	14.5
50 percentile	51	23.8
75 percentile	51	23.8
90 percentile	31	14.5
95 percentile	10	4.7
>95 percentile	11	5.1
Total	214	100

(1) Yearly survey of the Bank of Italy on manufacturing firms investments, based on a representative sample of manufacturing firms with more than 50 employees.

(2) Survey of Mediocredito Centrale on manufacturing firms, based on a representative sample of manufacturing firms with more than 10 employees.

(3) All listed firms in June 1996. Source: Communications to Consob.

Table 15

PERCENTILE	NAME	MARKET CAPITALIZATION
<b>5 percentile</b> (19 companies)	DEL FAVERO SPA - IMPRESA DI COSTRUZIONI	(*)
	F.M.C. SPA - FABBRICA MILANESE CONDUTTORI	(*)
	FIMPAR SPA	(*)
	FINREX SPA IN AMMINISTRAZIONE	(*)
	GRASSETTO SPA IN LIQUIDAZIONE	(*)
	OLD GOTTARDO RUFFONI SPA	(*)
	SANTAVALERIA - SOC. DI PARTECIPAZIONI IND.LI SPA	(*)
	TRIPCOVICH & CI. SPA	(*)
	MANIFATTURA ROTONDI SPA	7,623
	PERLIER SPA	14,240
	RODRIQUEZ SPA	15,694
	BRIOSCHI FINANZIARIA SPA	16,859
	COATS CUCIRINI SPA	17,040
	AUSILIARE SPA	17,423
	LA GAIANA SPA	17,956
	FINCASA 44 SPA	19,538
	NAI SPA - NAVIGAZIONE ALTA ITALIA	20,221
SCHIAPPARELLI 1824 SPA	21,750	
TERME DEMANIALI DI ACQUI SPA	21,969	
<b>10 percentile</b> (10 companies)	TEXMANTOVA SPA	25,025
	WABCO WESTINGHOUSE SPA	25,200
	FOCHI SPA - FILIPPO FOCCHI	26,097
	IPI SPA - ISTITUTO PIEMONTESE IMMOBILIARE	27,192
	CENTENARI E ZINELLI SPA	28,358
	RAGGIO DI SOLE FINANZIARIA SPA	30,072
	ISEFI SPA - INTERNAZIONALE DI SERVIZI FINANZIARI	32,331
	FINANZIARIA AUTOGRILL SPA	32,800
	GABETTI HOLDING SPA	33,568
LINIFICIO E CANAPIFICIO NAZIONALE	34,106	
<b>25 percentile</b> (31 companies)	GARBOLI REP SPA - IMPR.GENERALE DI COSTRUZIONI	35,100
	STAYER SPA	35,905
	BOERO BARTOLOMEO SPA	35,982
	OLCESE SPA - COTONIFICIO OLCESE VENEZIANO	42,260
	BERTO LAMET IMPES SPA	45,873
	BASTOGI SPA	46,166
	VIANINI INDUSTRIA SPA	46,316
	FIAR SPA - FABB. ITAL. APPARECCH.RE RADIOELETTR.	47,393
	SMURFIT SISA SPA	47,680
	FAEMA SPA	47,938
	ACQUE POTABILI SPA	51,238

NECCHI SPA	52,117
PREMUDA SPA - SOCIETA' DI NAVIGAZIONI	52,853
GIFIM INIZIATIVE IMMOBILIARI SPA	53,757
EUROMOBILIARE SPA	54,693
SCI SPA	63,081
CAMFIN CAM FINANZIARIA SPA	63,432
BANCO DI SARDEGNA SPA	63,545
RIVA FINANZIARIA SPA	66,533
BONIFICA TERRENI FERRARESI E IMPR. AGRICOLE SPA	67,500
SAVINO DEL BENE SPA TRASPORTI	70,006
MAFFEI SPA	70,500
CEMENTERIA DI BARLETTA SPA	72,244
LA MAGONA D'ITALIA SPA	73,594
ACQUEDOTTO NICOLAY SPA	75,816
MITTEL SPA	76,395
MONRIF SPA	81,000
BANCA INTERMOBILIARE DI INVESTIMENTI E GESTIONI	84,000
CMI SPA	88,320
BINDA SPA	94,655
REJNA SPA	95,226

**50 percentile**  
(51 companies)

LINIFICIO E CANAPIFICIO NAZIONALE	34,106
ITALJOLLY SPA - COMP. ITALIANA DEI JOLLY HOTELS	111,006
CANTONI I.T.C. SPA	112,350
CEMENTERIA DI AUGUSTA SPA	116,151
ATTIVITA' DI INVESTIMENTO E PROMOZIONE IMM.RE	119,140
MARANGONI SPA	120,000
ROLAND EUROPE SPA	125,708
STEFANEL SPA	130,202
ACQUEDOTTO DE FERRARI GALLIERA	130,621
BASSETTI SPA	135,720
AUTOSTRADA TORINO MILANO SPA	136,688
INTERBANCA - BANCA FINANZIAMENTI A M/L TERM.	141,943
SAFFA SPA	148,851
TECNOST SPA	152,700
TEKNECOMP SPA	154,148
TELECO CAVI SPA	157,122
SAIAG SPA - INDUSTRIA ARTICOLI GOMMA	157,307
ZUCCHI SPA - VINCENZO ZUCCHI	164,953
AEDES SPA - LIGURE LOMBARDA IMPR. E COSTRUZ.	166,488
TRENNO SPA	167,577
CEMENTERIE DI SARDEGNA SPA	171,180
SNIA FIBRE SPA	171,471
ZIGNAGO SPA - INDUSTRIE ZIGNAGO S. MARGHERITA	176,120
PAGNOSSIN SPA	176,700
PREMAFIN FINANZIARIA SPA	186,728
CALCEMENTO SPA - SOC. CALCESTRUZZO E CEMENTO	187,523

ACQUA PIA ANTICA MARCIA SPA	189,408
BANCO DI CHIAVARI E DELLA RIVIERA LIGURE	190,050
RATTI SPA	192,000
GIM SPA - GENERALE INDUSTRIE METALLURGICHE	194,379
ANSALDO TRASPORTI SPA	196,426
VITTORIA ASSICURAZIONI SPA	196,500
CREDITO FONDIARIO E INDUSTRIALE SPA	198,000
RISANAMENTO NAPOLI SPA	199,971
CEMENTERIE SICILIANE SPA	200,756
RECORDATI SPA - INDUSTRIA CHIMICA E FARMACEUT.	201,978
LA DORIA SPA	207,018
CALP SPA - CRISTALLERIA ARTISTCA LA PIANA	208,738
SERONO SPA - ISTITUTO FARMACOLOGICO SERONO	212,625
SERFI SPA	226,426
COMAU FINANZIARIA SPA	244,872
VIANINI LAVORI SPA	247,778
FRANCO TOSI SPA	248,741
ESAOTE SPA	
COSTA CROCIERE SPA	253,973
SIMINT SPA	256,119
SO.PA.F. SPA - SOC. DI PARTECIPAZIONI FINANZIARIE	260,441
BANCA DI LEGNANO SPA	267,267
CALTAGIRONE SPA	272,668
FINARTE CASA D'ASTE SPA	283,920
MONTEFIBRE SPA	300,450
<b>75 percentile</b> (51 companies)	
CAFFARO SPA	300,618
BANCO DI DESIO E DELLA BRIANZA	302,679
CEMENTIR SPA - CEMENTERIE DEL TIRRENO	323,595
SOGEFI SPA	335,212
MERLONI ELETTRODOMESTICI SPA	336,164
CARRARO SPA	338,184
COFIDE SPA - COMPAGNIA FINANZIARIA DE BENEDETTI	343,010
EDITORIALE LA REPUBBLICA SPA	353,478
CONDEA AUGUSTA SPA	375,000
GIOVANNI CRESPI SPA	378,000
BANCA AGRICOLA MILANESE SPA	386,400
I.M.A. INDUSTRIA MACCHINE AUTO	392,407
FIN.PART SPA	414,086
ITALFONDIARIO SPA - IST. ITAL. CREDITO FONDIARIO	418,500
POLIGRAFICI EDITORIALE SPA	421,080
BNL - BANCA NAZIONALE DEL LAVORO SPA	429,477
SMI SPA - SOCIETA' METALLURGICA ITALIANA	438,337
EDITORIALE L'ESPRESSO SPA	444,865
BANCA POPOLARE DI BRESCIA SCRL	447,156
DALMINE SPA	449,949
ALLIANZ SUBALPINA SPA	450,212

IMMOBILIARE METANOPOLI SPA	452,047
ERICSSON SPA	465,070
FALCK SPA	478,065
STANDA SPA	479,270
BANCA NAZIONALE DELL'AGRICOLTURA SPA	492,070
LA PREVIDENTE ASSICURAZIONI SPA	492,836
CIRIO SPA	501,279
AVIR SPA - AZIENDE VETRARIE IND.LI RICCIARDI	527,637
DANIELI SPA - OFFICINE MECCANICHE DANIELI & C.	557,444
ALITALIA LINEE AEREE ITALIANE	572,535
BANCO DI NAPOLI SPA	587,589
BREMBO SPA - FRENI BREMBO	645,265
ITALMOBILIARE SPA	665,530
CIR SPA - COMPAGNIE INDUSTRIALI RIUNITE	678,365
MARZOTTO SPA - MANIFAT. LANE G.MARZOTTO & Figli	690,174
SASIB SPA	717,577
CIGA SPA	739,392
SAFILO SPA - SOC. AZ. FABBR. ITAL. LAV.NE OCCHIALI	784,665
SME SPA - SOCIETA' MERIDIONALE FINANZIARIA	792,439
FINANZA & FUTURO SPA	802,424
SONDEL SPA - SOCIETA' NORDELETTRICA	802,980
IMPREGILO SPA	810,413
UNIPOL SPA - COMPAGNIA ASSICURATRICE	840,784
IFI SPA - ISTITUTO FINANZIARIO INDUSTRIALE	852,891
PIRELLI & C. ACCOMANDITA PER AZIONI	863,225
BANCA TOSCANA SPA	864,653
FINMECCANICA SPA	886,065
SAES GETTERS SPA	887,177
GEWISS SPA	919,480
UNICEM SPA UNIONE CEMENTERIE EMILIANE SPA	929,679
<b>90 percentile</b>	
(31 companies)	
MAGNETI MARELLI SPA	932,624
BANCA SAN PAOLO DI BRESCIA SPA	935,280
SORIN BIOMEDICA SPA	947,092
CARTIERE BURGO SPA	1,073,813
ASSITALIA SPA - ASSICURAZIONI D'ITALIA	1,168,258
PININFARINA SPA	1,212,305
CREDITO BERGAMASCO SPA	1,217,686
SNIA BPD SPA	1,264,898
CAB CREDITO AGRARIO BRESCIANO	1,407,793
BANCA CARIGE SPA - CASSA RISP.GENOVA E IMPERIA	1,424,260
ARNOLDO MONDADORI EDITORE SPA	1,487,468
AUTOSTRAD SPA - CONCESS. E COSTR. AUTOSTRAD	1,542,041
FIDIS SPA - FINANZIARIA DI SVILUPPO	1,561,500
BANCA POPOLARE DI MILANO SCRL	1,669,287
TORO ASSICURAZIONI SPA	1,723,205
BULGARI SPA	1,748,016

	GEMINA SPA - GENER. MOBILIARE INTERESSENZE AZ.	1,950,950
	LA RINASCENTE SPA	2,068,355
	MILANO ASSICURAZIONI SPA	2,091,257
	SAI SPA - SOCIETA' ASSICURATRICE INDUSTRIALE	2,131,473
	SIRTI SPA	2,180,200
	MEDIOLANUM SPA	2,200,091
	COMPART SPA - COMP. PARTECIP.NI ASSIC.VE E IND.LI	2,317,406
	PARMALAT FINANZIARIA SPA	2,323,958
	ITALCEMENTI SPA FABBRICHE RIUNITE CEMENTO	2,482,492
	BANCO AMBROSIANO VENETO SPA	2,567,187
	SAIPEM SPA	2,569,732
	IFIL SPA - FINANZIARIA DI PARTECIPAZIONI	2,664,874
	LA FONDIARIA ASSICURAZIONI SPA	2,840,397
	OLIVETTI SPA - ING. C. OLIVETTI & C.	2,984,090
	BANCA FIDEURAM SPA	3,036,003
<b>95 percentile</b> (10 companies)	BENETTON GROUP SPA	3,470,128
	ITALGAS SPA - SOCIETA' ITALIANA PER IL GAS	3,924,156
	PIRELLI SPA	3,945,464
	CREDITO ITALIANO SPA	4,021,077
	ROLO BANCA 1473 SPA	4,568,942
	BANCA DI ROMA SPA	4,589,518
	MEDIOBANCA SPA	4,631,956
	MONTEDISON SPA	5,426,662
	BANCA COMMERCIALE ITALIANA SPA	5,546,586
	EDISON SPA	5,814,357
<b>&gt;95 percentile</b> (11 companies)	RAS SPA - RIUNIONE ADRIATICA DI SICURTA'	6,223,512
	IMI - ISTITUTO MOBILIARE ITALIANO	7,714,200
	ISTITUTO BANCARIO SAN PAOLO DI TORINO SPA	7,987,754
	ALLEANZA ASSICURAZIONI SPA	8,223,830
	INA - ISTITUTO NAZIONALE DELLE ASSICURAZIONI SPA	9,232,000
	FIAT SPA	21,262,338
	STET SPA - SOCIETA' FINANZIARIA TELEFONICA	25,689,778
	TELECOM ITALIA SPA	25,796,815
	TELECOM ITALIA MOBILE SPA	26,135,826
	GENERALI SPA - ASSICURAZIONI GENERALI SPA	28,373,517
	ENI SPA	60,809,960

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(\*) These companies have been suspended from the trading due to financial difficulties.

Table 16

**AVERAGE OWNERSHIP CONCENTRATION OF  
MANUFACTURING COMPANIES  
(1992, unweighted) <sup>(1)</sup>**

Size classes (employees)	Ownership Distribution			
	Largest stake	2nd	3rd	4-10th
50 - 99	60.11	20.16	9.52	7.98
100 - 199	71.82	14.65	6.49	5.47
200 - 499	78.25	12.32	3.36	3.20
500 - 999	80.76	11.27	3.08	2.11
1000 -	83.23	8.50	1.79	1.89
Total	66.45	17.09	7.69	6.40
N. companies	973	973	973	973

(1) The values are weighted in order to take into account the different coverage of the sample by size, sector and geographical area.

Source: Indagine sugli investimenti della Banca d'Italia (1993) on a representative sample of manufacturing companies with more than 50 employees.

Table 17

**AVERAGE OWNERSHIP CONCENTRATION OF  
MANUFACTURING COMPANIES  
(1992, weighted) <sup>(1)</sup>**

Size classes (employees)	Ownership Distribution			
	Largest stake	2nd	3rd	4-10th
50 - 99	59.20	20.19	9.90	8.13
100 - 199	71.95	14.62	6.54	5.46
200 - 499	77.53	12.90	3.39	3.28
500 - 999	82.58	10.36	2.62	1.75
1000 -	82.48	8.52	1.99	2.12
Total	76.64	12.09	1.24	3.78
N. companies	973	973	973	973

(1) The values are weighted in order to take into account the different coverage of the sample by size, sector and geographical area. Moreover they are weighted by employees.

Source: Indagine sugli investimenti della Banca d'Italia (1993) on a representative sample of manufacturing companies with more than 50 employees.

Table 18

**AVERAGE OWNERSHIP CONCENTRATION OF  
MANUFACTURING COMPANIES  
(1994, unweighted)**

Size classes (employees)	Ownership Distribution			
	Largest stake	2nd	3rd	other
11 - 49	52.77	27.50	11.69	8.04
50 - 99	61.59	21.87	8.97	7.57
100 - 199	66.83	18.65	7.28	7.24
200 - 499	74.69	14.75	5.96	4.60
500 - 999	82.72	10.27	2.82	4.17
1000 -	81.04	11.13	3.24	4.58
Total	61.05	22.46	9.24	7.23
N. companies	4161	4161	4161	4161

Source: Indagine Mediocredito Centrale (1996) on a representative sample of manufacturing companies with more than 10 employees.

Table 19

**AVERAGE OWNERSHIP CONCENTRATION OF  
MANUFACTURING COMPANIES  
(1994, weighted)<sup>(1)</sup>**

Size classes (employees)	Ownership Distribution			
	Largest stake	2nd	3rd	other
11 - 49	53.66	26.46	11.51	8.36
50 - 99	62.05	21.62	8.82	7.50
100 - 199	66.94	18.67	7.25	7.14
200 - 499	75.36	14.38	5.70	4.55
500 - 999	83.08	9.88	2.85	4.18
1000 -	83.18	9.27	2.59	4.95
Total	75.24	14.07	5.11	5.56
N. companies	4161	4161	4161	4161

(1) The values are weighted by employees.

Source: Indagine Mediocredito Centrale (1996) on a representative sample of manufacturing companies with more than 10 employees.

Table 20

**AVERAGE OWNERSHIP CONCENTRATION OF  
MANUFACTURING COMPANIES  
(1996, unweighted)<sup>(1)</sup>**

Size classes (employees)	Ownership Distribution		
	Largest stake	2nd and 3rd	other
50 - 99	64.91	25.24	9.86
100 - 199	69.36	22.12	8.52
200 - 499	77.33	14.36	8.31
500 - 999	76.19	13.74	10.07
1000 -	82.46	8.98	8.56
Total	68.76	22.00	9.23
N. companies	952	952	952

(1) The values are weighted in order to take into account the different coverage of the sample by size, sector and geographical area.

Source: Indagine sugli investimenti della Banca d'Italia (1997) on a representative sample of manufacturing companies with more than 50 employees.

Table 21

**AVERAGE OWNERSHIP CONCENTRATION OF  
MANUFACTURING COMPANIES  
(1996, weighted)<sup>(1)</sup>**

Size classes (employees)	Ownership Distribution		
	Largest stake	2nd and 3rd	other
50 - 99	64.51	25.83	9.66
100 - 199	69.44	21.76	8.80
200 - 499	78.37	14.26	7.37
500 - 999	77.26	12.81	9.92
1000 -	83.74	9.40	6.86
Total	75.64	16.17	8.19
N. companies	952	952	952

(1) The values are weighted in order to take into account the different coverage of the sample by size, sector and geographical area. Moreover they are weighted by employees.

Source: Indagine sugli investimenti della Banca d'Italia (1997) on a representative sample of manufacturing companies with more than 50 employees.

Table 22

**AVERAGE OWNERSHIP CONCENTRATION  
OF LISTED COMPANIES  
(1996, unweighted)**

Size classes (market capitalization)	Ownership Distribution			
	Largest stake	2nd	3rd	4-10th
5 percentile	50.53	14.18	4.19	4.20
10 percentile	46.33	10.31	6.59	9.29
25 percentile	53.27	8.90	4.92	10.87
50 percentile	47.57	11.98	5.09	6.54
75 percentile	50.09	10.11	3.52	6.12
90 percentile	42.42	9.36	2.95	3.54
95 percentile	37.02	7.00	3.17	2.23
>95 percentile	48.63	2.55	2.03	2.31
Total	48.02	10.14	4.12	6.13
N. companies	214	214	214	214

Source: Consob. Information are based on all the communications to Consob referring to holdings in listed companies larger than 2% of capital.

Table 23

**AVERAGE OWNERSHIP CONCENTRATION  
OF LISTED COMPANIES  
(1996, weighted)<sup>(1)</sup>**

Size classes (market capitalization)	Ownership Distribution			
	Largest stake	2nd	3rd	4-10th
5 percentile	45.63	15.32	5.91	5.39
10 percentile	45.89	10.13	6.54	9.56
25 percentile	53.96	8.78	5.00	10.85
50 percentile	47.57	11.47	4.98	6.32
75 percentile	49.65	9.99	3.46	6.24
90 percentile	41.16	10.05	3.28	3.75
95 percentile	35.88	7.19	3.23	2.41
>95 percentile	55.38	1.68	1.34	1.04
Total	50.10	4.62	2.16	2.23
N. companies	214	214	214	214

(1) By market capitalization.

Source: Consob. Information are based on all the communications to Consob referring to holdings in listed companies larger than 2% of capital.

Table 24

**AVERAGE GROUP BLOCK OWNERSHIP CONCENTRATION  
(1996, unweighted)**

Size classes (market capitalization)	Ownership Distribution			
	Largest stake	2nd	3rd	4-10th
5 percentile	54.21	12.53	3.45	3.01
10 percentile	51.21	9.29	3.52	8.51
25 percentile	55.47	8.35	4.89	9.82
50 percentile	53.40	8.39	4.12	5.65
75 percentile	55.47	6.48	3.09	4.81
90 percentile	46.06	7.54	2.38	2.27
95 percentile	41.25	4.58	2.62	0.98
>95 percentile	49.36	2.32	1.87	1.89
Total	52.32	7.73	3.46	5.05
N. companies	214	214	214	214

Group block ownership is defined as the sum of shares directly owned and those owned through other companies by the same agent.

Source: Consob. Information are based on all the communications to Consob referring to holdings in listed companies larger than 2% of capital.

Table 25

**AVERAGE GROUP BLOCK OWNERSHIP CONCENTRATION  
(1996, weighted)<sup>(1)</sup>**

Size classes (market capitalization)	Ownership Distribution			
	Largest stake	2nd	3rd	4-10th
5 percentile	50.86	13.14	4.71	3.69
10 percentile	50.34	9.44	3.56	8.77
25 percentile	52.36	8.49	4.99	9.97
50 percentile	52.95	8.28	4.03	5.52
75 percentile	54.67	6.21	3.04	4.94
90 percentile	45.14	7.96	2.76	2.52
95 percentile	40.38	4.55	2.70	1.09
>95 percentile	56.10	1.47	1.15	0.75
Total	52.25	3.24	1.84	1.57
N. companies	214	214	214	214

Group block ownership is defined as the sum of shares directly owned and those owned through other companies by the same agent.

(1) Values are weighted by market capitalization.

Source: Consob. Information are based on all the communications to Consob referring to holdings in listed companies larger than 2% of capital.

**AVERAGE OWNERSHIP BY TYPE OF INVESTOR**  
**(1992, unweighted)<sup>(1)</sup>**

Size classes (employees)	Individual	Foreign company	State-owned company	Holding company	Other non financial company	Financial company	Total
50 - 99	62.86	5.30	1.99	13.65	13.64	0.00	97.43
100 - 199	37.71	7.69	6.33	28.01	18.64	0.20	98.57
200 - 499	25.12	14.13	6.84	33.62	17.52	0.53	97.76
500 - 999	14.37	20.13	15.59	34.04	12.27	0.91	97.32
1000 -	6.10	22.98	14.55	42.63	8.16	0.58	94.99
Total	48.03	8.05	4.59	21.57	15.33	0.17	97.72

(1) The values are weighted in order to take into account the different coverage of the sample by size, sector and geographical area. Row sums do not add up to 100 per cent because in the survey only information regarding the 10 largest shareholders were asked.

Source: Indagine sugli investimenti della Banca d'Italia (1993) on a representative sample of companies with more than 50 employees.

**AVERAGE OWNERSHIP BY TYPE OF INVESTOR**  
**(1992, weighted)<sup>(1)</sup>**

Size classes (employees)	Individual	Foreign company	State-owned company	Holding company	Other non financial company	Financial company	Total
50 - 99	62.61	5.42	1.77	13.84	13.61	0.00	97.25
100 - 199	36.33	7.67	7.02	28.33	19.15	0.16	98.66
200 - 499	23.45	14.68	6.96	33.78	18.44	0.48	97.79
500 - 999	13.56	21.39	15.89	33.93	11.69	0.79	97.24
1000 -	3.40	24.02	21.57	41.66	3.88	0.74	95.27
Total	24.35	15.89	12.23	32.14	11.81	0.47	96.89

(1) The values are weighted in order to take into account the different coverage of the sample by size, sector and geographical area. Moreover they are weighted by employees. Row sums do not add up to 100 per cent because in the survey only information regarding the 10 largest shareholders were asked. Source: Indagine sugli investimenti della Banca d'Italia (1993) on a representative sample of companies with more than 50 employees.

Table 28

**AVERAGE OWNERSHIP BY TYPE OF INVESTOR  
(1994, unweighted)**

Size classes (employees)	Individual	Foreign company	Industrial company	Holding company	Financial company	Total
11 - 49	88.66	1.02	6.03	2.14	2.08	99.93
50 - 99	71.20	3.22	11.75	5.80	7.94	99.91
100 - 199	52.65	3.90	17.02	13.90	12.49	99.96
200 - 499	31.64	8.66	20.45	23.56	15.54	99.85
500 - 999	16.73	9.34	22.64	38.43	12.83	99.97
1000 -	13.42	9.89	20.46	43.30	12.52	99.59
Total	68.57	3.26	11.57	9.34	7.16	99.90

Row sums do not add up to 100 per cent because in the survey only information regarding the 3 largest shareholders were asked.

Source: Indagine Mediocredito Centrale (1996) on a representative sample of manufacturing companies with more than 10 employees.

**AVERAGE OWNERSHIP BY TYPE OF INVESTOR  
(1994, weighted)<sup>(1)</sup>**

Size classes (employees)	Individual	Foreign company	Industrial company	Holding company	Financial company	Total
11 - 49	86.55	1.32	7.04	2.61	2.44	99.96
50 - 99	69.89	3.45	12.04	6.29	8.22	99.89
100 - 199	52.12	4.19	17.26	13.91	12.48	99.96
200 - 499	29.48	8.91	21.34	25.04	15.09	99.86
500 - 999	16.92	10.29	23.12	37.40	12.16	99.89
1000 -	14.85	10.95	18.52	47.96	7.47	99.75
Total	33.56	8.10	18.13	29.98	10.10	99.87

Row sums do not add up to 100 per cent because in the survey only information regarding the 3 largest shareholders were asked.

(1) The values are weighted by employees.

Source: Indagine Mediocredito Centrale (1996) on a representative sample of manufacturing companies with more than 10 employees.

**OWNERSHIP AND CONTROL OF COMPANIES BELONGING TO LISTED GROUPS  
(1993, weighted)<sup>(1)</sup>**

Shareholders	Direct ownership	Integrated ownership: control	Integrated ownership: non controlling	Control	Capital under control in proportion to owned
<b>Total shareholders with reporting requirements</b>	<b>75.3</b>	<b>37.0</b>	<b>6.5</b>	<b>-</b>	<b>-</b>
<b>Non banking Private Sector</b>	<b>32.1</b>	<b>5.5</b>	<b>1.7</b>	<b>43.3</b>	<b>7.9</b>
HEADS OF GROUPS					
- individuals and partnerships	0.8	2.8	0.3	11.2	4.0
- private companies	1.0	2.0	0.1	19.4	9.7
- other companies	0.6	0.7	0.2	1.6	2.3
- coalitions	-	-	-	11.1	-
COMPANIES BELONGING TO GROUPS	1.7				
- Italian	26.8	-	-	-	-
- Foreign	1.8	-	-	-	-
INVESTORS					
- individuals and partnerships	0.4	-	0.4	-	-
- companies not belonging to groups	0.5	-	0.5	-	-
- investment fund management companies	0.2	-	0.2	-	-
<b>Non banking Public Sector</b>	<b>29.0</b>	<b>21.3</b>	<b>2.0</b>	<b>40.5</b>	<b>1.9</b>
- heads of groups	15.1	21.3	2.0	40.5	1.9
- other companies	13.9	-	-	-	-
<b>Banks</b>	<b>9.5</b>	<b>8.6</b>	<b>1.1</b>	<b>12.7</b>	<b>1.5</b>
<b>Foreign Sector</b>	<b>2.7</b>	<b>1.6</b>	<b>1.7</b>	<b>3.6</b>	<b>2.3</b>
<b>Other shareholders with no reporting requirements</b>	<b>24.7</b>	<b>-</b>	<b>56.5</b>	<b>-</b>	<b>-</b>
<b>TOTAL</b>	<b>100</b>	<b>37.0</b>	<b>63.0</b>	<b>100</b>	<b>2.7</b>

(1) By an indicator which combines the company's net worth and its "consolidated" number of employees. Consolidated employees are those of the company itself and the share of employees of the companies owned directly or indirectly, corresponding to the company's stake.

Source: Barca et al. (1994) based on Consob.

**OWNERSHIP AND CONTROL OF COMPANIES BELONGING TO LISTED GROUPS:  
PRIVATE NON BANKING  
(1993, weighted)<sup>(1)</sup>**

Shareholders	Direct ownership	Integrated ownership: control	Integrated ownership: non controlling	Control	Capital under control in proportion to owned
<b>Total shareholders with reporting requirements</b>	<b>72.5</b>	<b>16.6</b>	<b>8.1</b>	<b>-</b>	<b>-</b>
<b>Non banking Private Sector</b>	<b>60.7</b>	<b>12.8</b>	<b>3.7</b>	<b>92.0</b>	<b>7.2</b>
HEADS OF GROUPS					
- individuals and partnerships	1.5	6.5	0.6	24.4	3.8
- private companies	2.0	4.7	0.2	45.9	9.7
- other companies	1.0	1.7	0.2	2.8	2.2
- coalitions	-	-	-	17.9	-
COMPANIES BELONGING TO GROUPS	1.7				
- Italian	51.2	-	-	-	-
- Foreign	3.3	-	-	-	-
INVESTORS					
- individuals and partnerships	0.6	-	1.2	-	-
- companies not belonging to groups	0.8	-	1.1	-	-
- investment fund management companies	0.3	-	0.4	-	-
<b>Non banking Public Sector</b>	<b>0.1</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
- heads of groups	0.0	-	-	-	-
- other companies	0.1	-	-	-	-
<b>Banks</b>	<b>3.2</b>	<b>0.5</b>	<b>1.4</b>	<b>0.6</b>	<b>1.2</b>
<b>Foreign Sector</b>	<b>8.5</b>	<b>3.3</b>	<b>3.0</b>	<b>7.4</b>	<b>2.2</b>
<b>Other shareholders with no reporting requirements</b>	<b>27.5</b>	<b>-</b>	<b>75.3</b>	<b>-</b>	<b>-</b>
<b>TOTAL</b>	<b>100</b>	<b>17.3</b>	<b>82.7</b>	<b>100</b>	<b>5.9</b>

(1) By an indicator which combines the company's net worth and its "consolidated" number of employees. Consolidated employees are those of the company itself and the share of employees of are the companies owned directly or indirectly, corresponding to the company's stake.

Source: Barca et al. (1994) based on Consob.

**AVERAGE OWNERSHIP OF LISTED COMPANIES BY TYPE OF INVESTOR  
(1996, unweighted)**

Size classes (market capitalization)	Individuals	Foreign	State	Non Financial Company	Banks	Insurance	Mutual Funds	Other Financial	Total
5 percentile	9.00	17.02	0.00	38.98	6.36	0.07	0.44	1.35	73.22
10 percentile	19.14	15.19	0.00	23.81	11.14	3.52	0.44	0.00	74.58
25 percentile	6.00	11.15	0.00	46.68	12.18	0.47	0.47	2.16	79.11
50 percentile	5.22	9.44	0.60	43.90	8.06	1.13	1.46	1.94	72.41
75 percentile	3.39	10.55	5.87	38.17	8.04	2.88	0.85	0.42	69.26
90 percentile	2.74	4.05	0.70	34.31	10.22	5.61	0.53	0.19	58.35
95 percentile	0.00	1.77	1.38	26.74	17.68	1.05	0.20	0.62	49.44
>95 percentile	0.00	0.43	16.42	17.22	10.40	5.66	0.00	0.77	50.90
Total	5.01	9.29	2.62	38.08	9.57	2.37	0.76	1.09	68.50

Source: Consob. Information are based on all the communications to Consob referring to holdings in listed companies larger than 2% of capital. This is the reason why row sums do not add up to 100 per cent. Therefore the difference between 100 and the row sums is "dispersed ownership".

**AVERAGE OWNERSHIP OF LISTED COMPANIES BY TYPE OF INVESTOR  
(1996, weighted)<sup>(1)</sup>**

Size classes (market capitalization)	Individuals	Foreign	State	Non Financial Company	Banks	Insurance	Mutual Funds	Other Financial	Total
5 percentile	14.28	10.91	0.00	35.74	8.60	0.00	0.44	2.27	72.24
10 percentile	19.71	14.28	0.00	23.27	11.92	3.24	0.48	0.00	74.40
25 percentile	6.23	9.59	0.00	48.03	12.58	0.47	0.42	2.37	79.69
50 percentile	4.85	9.71	0.53	43.43	7.84	1.15	1.47	1.93	71.93
75 percentile	2.95	10.57	6.08	37.75	8.43	2.57	0.87	0.44	68.85
90 percentile	2.61	4.83	0.60	32.98	11.90	4.78	0.46	0.17	58.33
95 percentile	0.00	2.04	1.37	25.85	17.72	1.03	0.17	0.53	48.71
>95 percentile	0.00	0.61	31.76	18.22	5.65	2.45	0.00	0.77	59.46
Total	0.82	2.52	20.16	23.79	8.42	2.60	0.20	0.66	59.12

(1) By market capitalization.

Source: Consob. Information are based on all the communications to Consob referring to holdings in listed companies larger than 2% of capital. This is the reason why row sums do not add up to 100 per cent. Therefore the difference between 100 and the row sums is "dispersed ownership".

Table 34

**AVERAGE GROUP BLOCK OWNERSHIP OF LISTED COMPANIES BY TYPE OF INVESTOR  
(1996, unweighted)**

Size classes (market capitalization)	Individuals	Foreign	State	Non Financial Company	Banks	Insurance	Mutual Funds	Other Financial	Total
5 percentile	35.81	10.03	0.00	22.39	2.87	0.00	0.63	1.47	73.20
10 percentile	19.88	14.51	0.51	27.11	11.04	0.00	0.44	0.00	73.49
25 percentile	21.90	8.55	7.25	26.47	11.89	0.40	0.55	2.16	79.17
50 percentile	23.48	7.99	4.33	23.34	9.29	0.00	1.41	1.94	71.78
75 percentile	22.13	12.84	8.13	16.80	8.16	0.54	0.85	0.42	69.87
90 percentile	13.76	4.79	6.95	17.82	10.11	3.96	0.53	0.34	58.26
95 percentile	0.50	7.41	5.57	17.15	17.69	0.30	0.20	0.62	49.44
>95 percentile	0.00	5.29	26.91	2.12	10.29	5.44	0.00	0.79	50.84
Total	20.07	9.07	6.79	20.06	9.48	1.07	0.78	1.12	68.44

Group block ownership is the sum of shares directly owned and those owned through other companies by the same agent.

Source: Consob. Information are based on all the communications to Consob referring to holdings in listed companies larger than 2% of capital. This is the reason why row sums do not add up to 100 per cent. Therefore the difference between 100 and the row sums is "dispersed ownership".

**AVERAGE GROUP BLOCK OWNERSHIP OF LISTED COMPANIES BY TYPE OF INVESTOR  
(1996, weighted)<sup>(1)</sup>**

Size classes (market capitalization)	Individuals	Foreign	State	Non Financial Company	Banks	Insurance	Mutual Funds	Other Financial	Total
5 percentile	45.11	6.52	0.00	14.66	2.86	0.00	0.76	2.49	72.40
10 percentile	20.52	13.53	0.52	26.28	11.86	0.00	0.49	0.00	73.20
25 percentile	23.32	7.26	5.45	28.20	12.25	0.36	0.51	2.37	79.72
50 percentile	24.93	7.78	5.41	20.60	8.93	0.00	1.42	1.94	71.01
75 percentile	20.12	11.28	7.99	19.32	8.33	0.50	0.88	0.44	68.86
90 percentile	14.47	4.93	7.70	15.70	11.79	3.10	0.46	0.25	58.40
95 percentile	0.47	6.89	4.96	17.63	17.73	0.36	0.17	0.53	48.74
>95 percentile	0.00	2.22	46.13	2.37	5.62	2.36	0.00	0.78	59.48
Total	4.66	4.10	30.81	8.26	8.40	2.01	0.20	0.68	59.12

Group block ownership is the sum of shares directly owned and those owned through other companies by the same agent.

(1) By market capitalization.

Source: Consob. Information are based on all the communications to Consob referring to holdings in listed companies larger than 2% of capital. This is the reason why row sums do not add up to 100 per cent. Therefore the difference between 100 and the row sums is "dispersed ownership".

Table 36

**DIFFUSION OF GROUPS AMONG MANUFACTURING COMPANIES  
(1992)**

Size classes (employees)	Percentages of firms		Percentages of employees	
	Not organized in groups	Organized in groups	Not organized in groups	Organized in groups
50 - 99	60.51	39.49	60.69	39.31
100 - 199	31.35	68.65	29.88	70.22
200 - 499	17.28	82.72	15.24	84.76
500 - 999	11.24	88.76	10.64	89.36
1000 -	0.81	99.19	0.28	99.72
Total	43.75	56.25	19.93	80.07

Source: Indagine sugli investimenti della Banca d'Italia (1993) on a representative sample of manufacturing companies with more than 50 of employees.

Table 37

**DIFFUSION OF GROUPS AMONG MANUFACTURING COMPANIES  
(1994)**

Size classes (employees)	Percentages of firms		Percentages of employees	
	Not organized in groups	Organized in groups	Not organized in groups	Organized in groups
11 - 49	91.10	8.90	89.00	11.00
50 - 99	75.00	25.00	73.50	26.50
100 - 199	57.60	42.40	56.40	43.60
200 - 499	37.00	63.00	33.90	66.10
500 - 999	12.30	87.70	11.70	88.30
1000 -	8.90	91.10	5.60	94.40
Total	71.76	28.24	31.90	68.10

Source: Indagine Mediocredito Centrale (1996) on a representative sample of manufacturing companies with more than 10 employees.

**DIFFUSION OF GROUPS AMONG MANUFACTURING COMPANIES  
(1996)**

Size classes (employees)	Percentages of firms		Percentages of employees	
	Not organized in groups	Organized in groups	Not organized in groups	Organized in groups
50 - 99	64.23	35.77	63.86	36.14
100 - 199	47.90	52.10	46.55	53.45
200 - 499	29.78	70.22	27.52	72.48
500 - 999	15.66	84.34	15.45	84.55
1000 -	7.54	92.46	5.56	94.44
Total	52.21	47.79	30.17	69.83

Source: Indagine sugli investimenti della Banca d'Italia (1997) on a representative sample of manufacturing companies with more than 50 employees.

**AVERAGE GROUP SIZE**

	<b>Number of firms</b>	<b>Numbers of employees</b>
Indagine sugli investimenti della Banca d'Italia (year 1992)	36.70	12,769.00
Mediocredito Centrale (year 1994)	37.21	7,062.84

Table 40

**STAKE OWNED BY CONTROLLING AGENT IN  
MANUFACTURING COMPANIES  
(1992, unweighted)<sup>(1)</sup>**

Size classes (employees)	TOTAL
50 - 99	81.5
100 - 199	86.9
200 - 499	86.2
500 - 999	89.1
1000 -	87.2
Total	84.0

(1) The values are weighted in order to take into account the different coverage of the sample by size, sector and geographical area.

Source: Indagine sugli investimenti della Banca d'Italia (1993) on a representative sample of manufacturing companies with more than 50 employees.

Table 41

**STAKE OWNED BY CONTROLLING AGENT IN  
MANUFACTURING COMPANIES  
(1992, weighted)<sup>(2)</sup>**

Size classes (employees)	TOTAL
50 - 99	81.6
100 - 199	87.5
200 - 499	86.3
500 - 999	88.9
1000 -	88.0
Total	86.3

(2) The values are weighted in order to take into account the different coverage of the sample by size and sector. Moreover they are weighted by employees.

Source: Indagine sugli investimenti della Banca d'Italia (1993) on a representative sample of manufacturing companies with more than 50 employees.

Table 42

**STAKE OWNED BY CONTROLLING AGENT  
IN MANUFACTURING COMPANIES  
(1994, unweighted)**

Size classes (employees)	TOTAL
11 - 49	87.80
50 - 99	86.76
100 - 199	86.04
200 - 499	88.11
500 - 999	90.83
1000 -	88.01
Total	87.40

Source: Indagine Mediocredito Centrale (1996), on a representative sample of manufacturing companies with more than 10 employees.

Table 43

**STAKE OWNED BY CONTROLLING AGENT  
IN MANUFACTURING COMPANIES  
(1994, weighted)<sup>(1)</sup>**

Size classes (employees)	TOTAL
11 - 49	87.24
50 - 99	86.62
100 - 199	86.04
200 - 499	88.05
500 - 999	90.81
1000 -	88.49
Total	88.10

(1) The values are weighted by employees  
Source: Indagine Mediocredito Centrale (1996) on a representative sample of manufacturing companies with more than 10 employees.

**STAKES OWNED BY CONTROLLING SHAREHOLDERS**  
**(1992, weighted)<sup>(1)</sup>**

Size classes (employees)	Controlling shareholders	Together with those linked by voting agreements	Together with relatives and those linked by voting agreements
50 - 99	81.6	88.8	91.4
100 - 199	87.5	90.3	93.2
200 - 499	85.7	88.1	90.7
500 - 999	87.8	88.9	90.1
1000 -	88.0	89.5	90.1
Total	86.3	89.2	91.0

(1) The values are weighted in order to take into account the different coverage of the sample by size, sector and geographical area. Moreover they are weighted by employees.

Source: Indagine sugli investimenti della Banca d'Italia (1993) on a representative sample of manufacturing companies with more than 50 employees.

**STAKES OWNED BY CONTROLLING SHAREHOLDERS**  
**(1994, weighted)<sup>(1)</sup>**

Size classes (employees)	Controlling shareholders	Together with those linked by voting agreements	Together with relatives and those linked by voting agreements
11 - 49	87.2	93.0	94.5
50 - 99	86.6	93.0	94.4
100 - 199	86.0	91.2	92.9
200 - 499	88.0	92.8	93.9
500 - 999	90.8	93.7	93.9
1000 -	88.5	92.0	92.0
Total	88.1	92.4	93.2

(1) The values are weighted by employees.

Source: Indagine Mediocredito Centrale (1996) on a representative sample of manufacturing companies with more than 10 employees.

**STAKE OWNED BY THE CONTROLLING AGENT IN LISTED COMPANIES BY TYPE OF INVESTOR  
(1996, unweighted)**

Size classes (market capitalization)	Individuals	Foreign	State	Non Financial Company	Banks	Insurance	Through Formal Agreements	Other Financial	Total
5 percentile	54.79	86.12	0.00	61.37	0.00	0.00	73.61	0.00	63.23
10 percentile	49.36	64.81	0.00	53.41	60.79	0.00	0.00	0.00	55.86
25 percentile	61.46	66.88	70.67	64.83	80.05	0.00	45.54	62.19	63.00
50 percentile	61.39	77.05	63.50	58.25	72.63	0.00	55.90	58.60	61.66
75 percentile	57.20	72.20	75.79	59.91	62.28	0.00	50.31	0.00	61.96
90 percentile	50.91	56.80	70.84	51.83	78.51	93.91	53.37	0.00	58.00
95 percentile	0.00	51.21	41.93	54.96	69.56	0.00	50.00	0.00	55.89
>95 percentile	0.00	56.13	68.55	25.38	65.04	65.27	0.00	0.00	60.75
Total	57.56	70.43	68.95	57.38	70.63	79.59	54.45	60.40	61.02

Source: Consob. Information are based on all the communications to Consob referring to holdings in listed companies larger than 2% of capital.

**STAKE OWNED BY THE CONTROLLING AGENT IN LISTED COMPANIES  
(1996, weighted)<sup>(1)</sup>**

Size classes (market capitalization)	Foreign	State	Non Financial Company	Banks	Insurance	Through Formal Agreements	Other Financial	Total
5 percentile	72.85	0.00	59.86	0.00	0.00	72.87	0.00	63.71
10 percentile	62.90	0.00	53.74	60.79	0.00	0.00	0.00	55.47
25 percentile	67.65	70.54	65.68	81.54	0.00	45.92	62.19	63.79
50 percentile	79.65	64.17	56.84	69.44	0.00	55.98	58.60	61.28
75 percentile	71.07	73.28	61.71	63.77	0.00	52.79	0.00	62.33
90 percentile	56.80	69.51	48.20	77.20	93.91	54.28	0.00	56.65
95 percentile	51.21	41.93	52.96	69.57	0.00	50.00	0.00	55.38
>95 percentile	56.13	72.70	25.38	65.04	65.27	0.00	0.00	65.93
Total	59.47	71.74	43.60	69.11	68.83	53.01	59.51	62.73

1) By market capitalization

Source: Consob. Information are based on all the communications to Consob referring to holdings in listed companies larger than 2% of capital.

**AVERAGE CONTROLLED SHARE BY TYPE OF INVESTOR IN MANUFACTURING COMPANIES  
(1992, unweighted)<sup>(1)</sup>**

Size classes (employees)	Individual	Foreign company	State-owned company	Holding company	Other non financial company	Financial company	Total
50 - 99	66.05	5.62	1.28	13.82	13.24	0.00	100.00
100 - 199	40.10	7.24	6.13	27.64	18.89	0.00	100.00
200 - 499	27.06	13.99	6.25	35.09	17.27	0.34	100.00
500 - 999	15.87	20.65	15.64	35.87	11.97	0.00	100.00
1000 -	6.95	21.70	15.55	46.72	9.09	0.00	100.00
Total	50.72	8.07	4.10	21.91	15.16	0.04	100.00

The share controlled by an agent in a company is 100% if she is the only agent in the control. It is 100/n if control is exercised jointly by n agents. Values are averaged over all companies of that size class. As opposed to the data on ownership, row sums have to add up to 100 (except for some case without a declared control).

(1) The values are weighted in order to take into account the different coverage of the sample by size, sector and geographical area.

Source: Indagine sugli investimenti della Banca d'Italia (1993) on a representative sample of manufacturing companies with more than 50 employees.

**AVERAGE CONTROLLED SHARE BY TYPE OF INVESTOR IN MANUFACTURING COMPANIES  
(1992, weighted)<sup>(1)</sup>**

Size classes (employees)	Individual	Foreign company	State-owned company	Holding company	Other non financial company	Financial company	Total
50 - 99	65.89	5.84	0.90	14.09	13.28	0.00	100.00
100 - 199	38.42	7.14	6.97	27.90	19.58	0.00	100.00
200 - 499	25.38	14.65	6.29	35.10	18.23	0.35	100.00
500 - 999	15.38	21.90	16.21	35.25	11.25	0.00	100.00
1000 -	4.81	22.18	23.84	45.04	4.14	0.00	100.00
Total	26.35	15.38	12.77	33.70	11.83	0.06	100.00

The share controlled by an agent in a company is 100% if she is the only agent in the control. It is 100/n if control is exercised jointly by n agents. Values are averaged over all companies of that size class. As opposed to the data on ownership, row sums have to add up to 100 (except for some case without a declared control).

(1) The values are weighted in order to take into account the different coverage of the sample by size, sector and geographical area. Moreover they are weighted by employees.

Source: Indagine sugli investimenti della Banca d'Italia (1993) on a representative sample of manufacturing companies with more than 50 employees.

**AVERAGE CONTROLLED SHARE BY TYPE OF INVESTOR IN MANUFACTURING COMPANIES  
(1994, unweighted)**

Size classes (employees)	Individual	Foreign company	Industrial company	Holding company	Financial company	Total
11 - 49	88.06	1.02	5.59	1.96	1.65	98.28
50 - 99	71.81	3.03	10.36	4.99	7.03	97.22
100 - 199	54.30	3.77	15.70	13.12	10.52	97.41
200 - 499	35.51	8.66	19.48	22.34	12.61	98.60
500 - 999	16.24	8.94	22.95	39.43	10.26	97.82
1000 -	13.62	9.68	17.74	44.44	11.29	96.77
Total	69.11	3.19	10.69	8.88	6.01	97.88

The share controlled by an agent in a company is 100% if she is the only agent in the control. It is 100/n if control is exercised jointly by n agents. Values are averaged over all companies of that size class. As opposed to the data on ownership, row sums have to add up to 100 (except for some case without a declared control).

Source: Indagine Mediocredito Centrale (1996) on a representative sample of manufacturing companies with more than 10 employees.

Table 51

**AVERAGE CONTROLLED SHARE BY TYPE OF INVESTOR IN MANUFACTURING COMPANIES  
(1994, weighted)<sup>(1)</sup>**

Size classes (employees)	Individual	Foreign company	Industrial company	Holding company	Financial company	Total
11 - 49	85.76	1.31	6.65	2.46	1.97	98.15
50 - 99	70.49	3.27	10.73	5.39	7.18	97.06
100 - 199	53.44	4.10	15.93	13.25	10.67	97.39
200 - 499	33.35	8.92	20.13	23.90	12.37	98.67
500 - 999	16.15	9.93	23.53	38.58	9.52	97.71
1000 -	14.36	10.74	16.23	49.81	6.47	97.61
Total	34.22	7.94	16.80	30.39	8.43	97.78

The share controlled by an agent in a company is 100% if she is the only agent in the control. It is 100/n if control is exercised jointly by n agents. Values are averaged over all companies of that size class. As opposed to the data on ownership, row sums have to add up to 100 (except for some case without a declared control).

(1) The values are weighted by employees.

Source: Indagine Mediocredito Centrale (1996) on a representative sample of manufacturing companies with more than 10 employees.

**AVERAGE CONTROLLED SHARE BY TYPE OF INVESTOR IN MANUFACTURING COMPANIES  
(1996, unweighted)<sup>(1)</sup>**

Size classes (employees)	Individual	Foreign company	State-owned company	Holding company	Other non financial company	Financial company	Total
50 - 99	64.54	8.61	2.98	11.53	9.64	2.71	100.00
100 - 199	51.09	13.07	0.99	17.44	9.38	8.03	100.00
200 - 499	33.97	20.17	3.22	28.13	10.06	4.44	100.00
500 - 999	27.45	29.51	2.29	28.49	8.25	4.00	100.00
1000 -	9.39	38.27	5.53	9.58	30.46	6.77	100.00
Total	54.38	12.67	2.50	16.31	9.67	4.47	100.00

The share controlled by an agent in a company is 100% if she is the only agent in the control. It is 100/n if control is exercised jointly by n agents. Values are averaged over all companies of that size class. As opposed to the data on ownership, row sums have to add up to 100 (except for some case without a declared control).

(1) The values are weighted in order to take into account the different coverage of the sample by size, sector and geographical area.

Source: Indagine sugli investimenti della Banca d'Italia (1997) on a representative sample of manufacturing companies with more than 50 employees.

**AVERAGE CONTROLLED SHARE BY TYPE OF INVESTOR IN MANUFACTURING COMPANIES  
(1996, weighted)<sup>(1)</sup>**

Size classes (employees)	Individual	Foreign company	State-owned company	Holding company	Other non financial company	Financial company	Total
50 - 99	65.02	8.27	3.14	11.62	9.25	2.72	100.00
100 - 199	50.74	13.51	1.08	17.43	9.29	7.95	100.00
200 - 499	30.61	21.06	3.45	30.18	10.22	4.48	100.00
500 - 999	26.42	33.37	1.93	27.21	7.30	3.77	100.00
1000 -	7.85	39.00	9.46	29.02	8.69	5.98	100.00
Total	35.10	23.09	4.32	23.26	9.13	5.10	100.00

The share controlled by an agent in a company is 100% if she is the only agent in the control It is 100/n if control is exercised jointly by n agents Values are averaged over all companies of that size class. As opposed to the data on ownership, row sums have to add up to 100 (except for some case without a declared control).

(1) The values are weighted in order to take into account the different coverage of the sample by size and sector. Moreover they are weighted by employees.  
Source: Indagine sugli investimenti della Banca d'Italia (1997) on a representative sample of manufacturing companies with more than 50 employees.

**AVERAGE CONTROLLED SHARE BY TYPE OF INVESTOR IN LISTED COMPANIES<sup>(1)</sup>**  
**(1996, weighted)<sup>(2)</sup>**

Size classes (market capitalization)	Individuals	Foreign	State	Non Financial Company	Banks	Insurance	Other Financial	Through Formal Agreements	Total
5 percentile	44.87	9.56	0.00	13.42	0.00	0.00	0.00	32.16	100
10 percentile	23.64	21.10	0.00	42.92	12.34	0.00	0.00	0.00	100
25 percentile	21.77	5.56	8.27	36.58	7.31	0.00	4.17	16.35	100
50 percentile	28.01	5.97	9.15	33.55	8.90	0.00	2.53	11.89	100
75 percentile	24.67	17.63	12.41	26.31	7.63	0.00	0.00	11.36	100
90 percentile	21.27	2.78	14.39	27.19	10.20	2.67	0.00	21.50	100
95 percentile	0.00	12.13	11.97	34.27	27.38	0.00	0.00	14.24	100
>95 percentile	0.00	3.91	72.54	12.72	5.34	5.49	0.00	0.00	100
Total	6.79	6.04	47.38	19.88	9.26	3.64	0.10	6.91	100

The share controlled by an agent in a company is 100% if she is the only agent in the control. It is 100/n if control is exercised jointly by n agents. Values are averaged over all companies of that size class. As opposed to the data on ownership, row sums have to add up to 100.

(1) Companies with identified controlling agent only.

(2) By market capitalization "deintegrated", defined as the difference between the company market capitalization and the market value of shares held by the company in other listed firms belonging to the same group.

Source: Consob. Information are based on all the communications to Consob referring to holdings in listed companies larger than 2% of capital.

**AVERAGE CONTROLLED SHARE BY TYPE OF INVESTOR IN LISTED COMPANIES <sup>(1)</sup>**  
**(1996, weighted)<sup>(2)</sup>**

Size classes (market capitalization)	Individuals	Foreign	State	Non Financial Company	Banks	Insurance	Other Financial	Through Formal Agreements	Total
5 percentile	44.87	9.56	0.00	13.42	0.00	0.00	0.00	32.16	100
10 percentile	23.64	21.10	0.00	42.92	12.34	0.00	0.00	0.00	100
25 percentile	21.77	5.56	8.27	36.58	7.31	0.00	4.17	16.35	100
50 percentile	28.01	5.97	9.15	33.55	8.90	0.00	2.53	11.89	100
75 percentile	24.67	17.63	12.41	26.31	7.63	0.00	0.00	11.36	100
90 percentile	21.27	2.78	14.39	27.19	10.20	2.67	0.00	21.50	100
95 percentile	0.00	12.13	11.97	34.27	27.38	0.00	0.00	14.24	100
>95 percentile	0.00	3.91	55.83	20.47	8.59	8.84	0.00	0.00	100
Total	8.70	7.73	32.61	25.47	11.86	4.66	0.13	8.85	100

The share controlled by an agent in a company is 100% if she is the only agent in the control. It is 100/n if control is exercised jointly by n agents. Values are averaged over all companies of that size class. As opposed to the data on ownership, row sums have to add up to 100 (except for some case without a declared control).

(1) Companies with identified controlling agent, excluding ENI, the largest listed company, where the State still had 85%.

(2) By market capitalization "deintegrated", defined as the difference between the company market capitalization and the market value of shares held by the company in other listed firms belonging to the same group.

Source: Consob. Information are based on all the communications to Consob referring to holdings in listed companies larger than 2% of capital.

Table 56

**DIRECTORS' TURNOVER**  
(percentage)

	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	<i>Average</i>
All companies												
Exits	16.5	9.5	12.9	13.5	11.8	12.9	13.4	11.8	19.3	19.0	–	14.1
Entries	10.7	12.2	16.9	17.4	13.9	18.8	15.3	12.8	12.6	15.3	12.2	14.4

Source: based on Consob data.

Table 57

**SHARE OF DIRECTORS WITH MULTIPLE POSITIONS**

	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995
Share of directors with more than one position	20.3	21.6	21.9	22.1	22.7	22.9	23.9	22.5	22.0	22.1	20.5
Number of directors	1,669	1,807	1,974	2,106	2,084	2,188	2,156	2,125	2,113	2,026	1,832
Number of positions	2,250	2,517	2,824	3,056	2,971	3,163	3,096	3,029	2,978	2,812	2,493
Cumulation ratio	1.35	1.39	1.43	1.45	1.43	1.45	1.44	1.43	1.41	1.39	1.36

Source: based on Consob data.

**AVERAGE INTEGRATED OWNERSHIP BY TYPE OF INVESTOR IN LISTED COMPANIES <sup>(1)</sup>**  
**(1996, weighted)<sup>(2)</sup>**

Size classes (market capitalization)	Individuals	Foreign	State	Non Financial Company	Banks	Insurance	Other Financial	Through Formal Agreements	Total
5 percentile	14.95	6.96	0.00	5.33	0.00	0.00	0.00	23.43	50.67
10 percentile	11.63	9.45	0.00	15.47	3.21	0.00	0.00	0.00	39.76
25 percentile	4.12	3.76	3.71	12.20	5.69	0.00	2.59	7.51	39.58
50 percentile	10.07	3.14	4.68	13.75	4.89	0.00	1.48	6.95	44.96
75 percentile	8.05	11.75	8.89	9.21	4.42	0.00	0.00	6.43	48.75
90 percentile	4.86	1.58	8.43	4.35	7.87	2.51	0.00	11.67	41.27
95 percentile	0.00	6.21	4.27	12.93	12.98	0.00	0.00	7.12	43.51
>95 percentile	0.00	2.19	46.02	1.31	3.47	3.59	0.00	0.00	56.58
Total	1.88	3.47	29.56	4.44	5.55	2.50	0.06	3.71	51.17

Integrated ownership is defined as the percentage of capital that has been actually provided by the controlling agent and is computed moving up from direct shareholdings to the top of the pyramidal group along the control chain. Hence if A controls B with 50 per cent and B controls C with 50 per cent, the integrated ownership of A in company C is 25 per cent.

(1) Companies with identified controlling agent only.

(2) By market capitalization "deintegrated", defined as the difference between the company market capitalization and the market value of shares held by the company in other listed firms belonging to the same group.

Source: Consob. Information are based on all the communications to Consob referring to holdings in listed companies larger than 2% of capital.

**AVERAGE INTEGRATED OWNERSHIP BY TYPE OF INVESTOR IN LISTED COMPANIES <sup>(1)</sup>**  
**(1996, weighted)<sup>(2)</sup>**

Size classes (market capitalization)	Individuals	Foreign	State	Non Financial Company	Banks	Insurance	Other Financial	Through Formal Agreements	Total
5 percentile	14.95	6.96	0.00	5.33	0.00	0.00	0.00	23.43	50.67
10 percentile	11.63	9.45	0.00	15.47	3.21	0.00	0.00	0.00	39.76
25 percentile	4.12	3.76	3.71	12.20	5.69	0.00	2.59	7.51	39.58
50 percentile	10.07	3.14	4.68	13.75	4.89	0.00	1.48	6.95	44.96
75 percentile	8.05	11.75	8.89	9.21	4.42	0.00	0.00	6.43	48.75
90 percentile	4.86	1.58	8.43	4.35	7.87	2.51	0.00	11.67	41.27
95 percentile	0.00	6.21	4.27	12.93	12.98	0.00	0.00	7.12	43.51
>95 percentile	0.00	3.53	22.28	2.11	5.58	5.77	0.00	0.00	39.27
Total	2.41	4.45	13.99	5.69	7.11	3.21	0.08	4.75	41.69

Integrated ownership is defined as the amount that has been actually provided by the controlling agent and is computed moving up from direct shareholdings to the top of the pyramidal group along the control chain. Hence if A controls B with 50 per cent and B controls C with 50 per cent, the integrated ownership of A in company C is 25 per cent.

(1) Companies with identified controlling agent, excluding ENI, the largest listed company, where the State still had 85%.

(2) By market capitalization "deintegrated", defined as the difference between the company market capitalization and the market value of shares held by the company in other listed firms belonging to the same group.

Source: Consob. Information are based on all the communications to Consob referring to holdings in listed companies larger than 2% of capital.

**SEPARATION BETWEEN OWNERSHIP AND CONTROL** <sup>(1) (2)</sup>  
**(1996, weighted)**<sup>(3)</sup>

Size classes (market capitalization)	Individuals	Foreign	State	Non Financial Company	Banks	Insurance	Other Financial	Through Formal Agreements	Total
5 percentile	3.00	1.37	0.00	2.52	0.00	0.00	0.00	1.37	1.97
10 percentile	2.03	2.23	0.00	2.77	3.85	0.00	0.00	0.00	2.52
25 percentile	5.28	1.48	2.23	3.00	1.29	0.00	1.61	2.18	2.53
50 percentile	2.78	1.90	1.95	2.44	1.82	0.00	1.71	1.71	2.22
75 percentile	3.07	1.50	1.40	2.86	1.72	0.00	0.00	1.77	2.05
90 percentile	4.38	1.76	1.71	6.25	1.30	1.06	0.00	1.84	2.42
95 percentile	0.00	1.95	2.81	2.65	2.11	0.00	0.00	2.00	2.30
>95 percentile	0.00	1.78	1.58	9.72	1.54	1.53	0.00	0.00	1.77
Total	3.62	1.74	1.60	4.48	1.67	1.45	1.68	1.86	1.95

(1) Defined as the ratio between the amount of capital under control and the amount of capital owned (integrated ownership).

(2) Companies with identified controlling agent only.

(3) By market capitalization "deintegrated", defined as the difference between the company market capitalization and the market value of shares held by the company in other listed firms belonging to the same group.

Source: Consob. Information are based on all the communications to Consob referring to holdings in listed companies larger than 2% of capital.

**SEPARATION BETWEEN OWNERSHIP AND CONTROL <sup>(1) (2)</sup>**  
**(1996, weighted)<sup>(3)</sup>**

Size classes (market capitalization)	Individuals	Foreign	State	Non Financial Company	Banks	Insurance	Other Financial	Through Formal Agreements	Total
5 percentile	3.00	1.37	0.00	2.52	0.00	0.00	0.00	1.37	1.97
10 percentile	2.03	2.23	0.00	2.77	3.85	0.00	0.00	0.00	2.52
25 percentile	5.28	1.48	2.23	3.00	1.29	0.00	1.61	2.18	2.53
50 percentile	2.78	1.90	1.95	2.44	1.82	0.00	1.71	1.71	2.22
75 percentile	3.07	1.50	1.40	2.86	1.72	0.00	0.00	1.77	2.05
90 percentile	4.38	1.76	1.71	6.25	1.30	1.06	0.00	1.84	2.42
95 percentile	0.00	1.95	2.81	2.65	2.11	0.00	0.00	2.00	2.30
>95 percentile	0.00	1.78	2.51	9.72	1.54	1.53	0.00	0.00	2.55
Total	3.62	1.74	2.33	4.48	1.67	1.45	1.68	1.86	2.40

(1) Defined as the ratio between the amount of capital under control and the amount of capital owned (integrated ownership).

(2) Companies with identified controlling agent, excluding ENI, the largest listed company, where the State still had 85%.

(3) By market capitalization "deintegrated", defined as the difference between the company market capitalization and the market value of shares held by the company in other listed firms belonging to the same group.

Source: Consob. Information are based on all the communications to Consob referring to holdings in listed companies larger than 2% of capital.

**INTEGRATED OWNERSHIP OF CONTROLLING AGENTS  
IN THE LARGEST ITALIAN LISTED COMPANIES <sup>(1)</sup>  
(1996)**

ENI S.p.a.	85
Telecom Italia Mobile S.p.a.	39
Telecom Italia S.p.a.	41
STET S.p.a.	63
FIAT S.p.a.	10
Alleanza Assicurazioni S.p.a.	65
Istituto Bancario San Paolo di Torino	65
RAS S.p.a.	56
Edison S.p.a.	20
Montedison S.p.a.	32
Mediobanca S.p.a.	50
Banca di Roma S.p.a.	52
Rolo Banca 1473 S.p.a.	43
Pirelli S.p.a.	51
Italgas S.p.a.	36
Benetton Group S.p.a.	71
Banca Fideuram S.p.a.	75
La Fondiaria Assicurazioni	32
IFIL S.p.a.	53
Saipem S.p.a.	65
Banco Ambrosiano Veneto	64
Italcementi S.p.a.	25
Parmalat Finanziaria S.p.a.PA	26
Mediolanum S.p.a.	51
Sirti S.p.a.	31
SAI S.p.a.	21
Milano Assicurazioni S.p.a.	16
La Rinascente S.p.a.	14
Gemina S.p.a.	45
Bulgari S.p.a.	56

(1) Integrated ownership is defined as the percentage of capital that has been provided by the controlling agent (see Table 56). Companies are ordered by market capitalization.

Source: Consob. Information are based on all the communications to Consob referring to holdings in listed companies larger than 2% of capital.

**SEPARATION BETWEEN OWNERSHIP AND CONTROL  
IN THE LARGEST ITALIAN GROUPS <sup>(1)</sup>  
(1996)**

Head of the group	Capital under control in proportion to owned
Ministero del Tesoro	1.24
IRI Istituto per la ricostruzione industriale	2.40
Giovanni Agnelli & C. S.a.p.a.	8.86
Compart S.p.a.	4.35
Generali S.p.a.	1.53
Compagnia di San Paolo	1.54
Allianz Holding A.G.	1.78
Benetton	1.46
Cassa di Risparmio di Roma	2.40
Mediobanca S.p.a. <sup>(2)</sup>	2.00
Credito Italiano S.p.a.	2.35
Pirelli	1.95
IMI Istituto Mobiliare Italiano	1.34
Radici Pesenti Rosalia	4.15
Banco Ambrosiano Veneto <sup>(2)</sup>	1.55
Tanzi Calisto	1.68
Mediolanum S.p.a. <sup>(2)</sup>	1.96
Ligresti Salvatore	4.83
Berlusconi Silvio	3.66
Gemina S.p.a. - Generale <sup>(2)</sup>	2.22
Bulgari S.p.a. <sup>(2)</sup>	1.80
De Benedetti Carlo	10.33
Fondaz. Cassa di Resp. Genova	1.22
Credit Lyonnais S.a	1.76
Pininfarina Sergio	5.93
INA Istituto Nazionale Assic.	1.06
Banca San Paolo di Brescia <sup>(2)</sup>	1.98
Bosatelli Domenico	1.39
Falck S.p.a. <sup>(2)</sup>	4.20
Saes Getters S.p.a.	1.48

(1) Defined as the ratio between the amount of capital under control and the the amount of capital owned (integrated ownership). Groups are ordered by market capitalization.

(2) The head of the Group is the coalition controlling the company.

Source: Consob. Information are based on all the communications to Consob referring to holdings in listed companies larger than 2% of capital.

**CONTROL TRANSFERS AMONG MANUFACTURING FIRMS**  
**(% of manufacturing firms)<sup>(1)</sup>**

Size classes (employees)	1993	1994	1995	1996
50 - 99	1.81	0.00	2.74	0.96
100 - 199	3.99	0.00	1.79	1.76
200 - 499	5.71	0.94	3.28	2.22
500 - 999	3.40	1.68	0.45	1.27
1000 -	4.93	1.58	2.07	3.11
Total	3.05	0.22	2.48	1.40

Defined as the percentage of manufacturing firms whose controlling agent changed during that year, excluding the transfers within the same group.

(1) The values are weighted in order to take into account the different coverage of the sample by size, sector and geographical area.

Source: Indagine sugli investimenti della Banca d'Italia (1993, 1994, 1995, 1996) on a representative sample of manufacturing companies with more than 50 employees.

Figure 1

Critical issues of disclosure regulations:  
1) definitions of control in cases of “joint control”

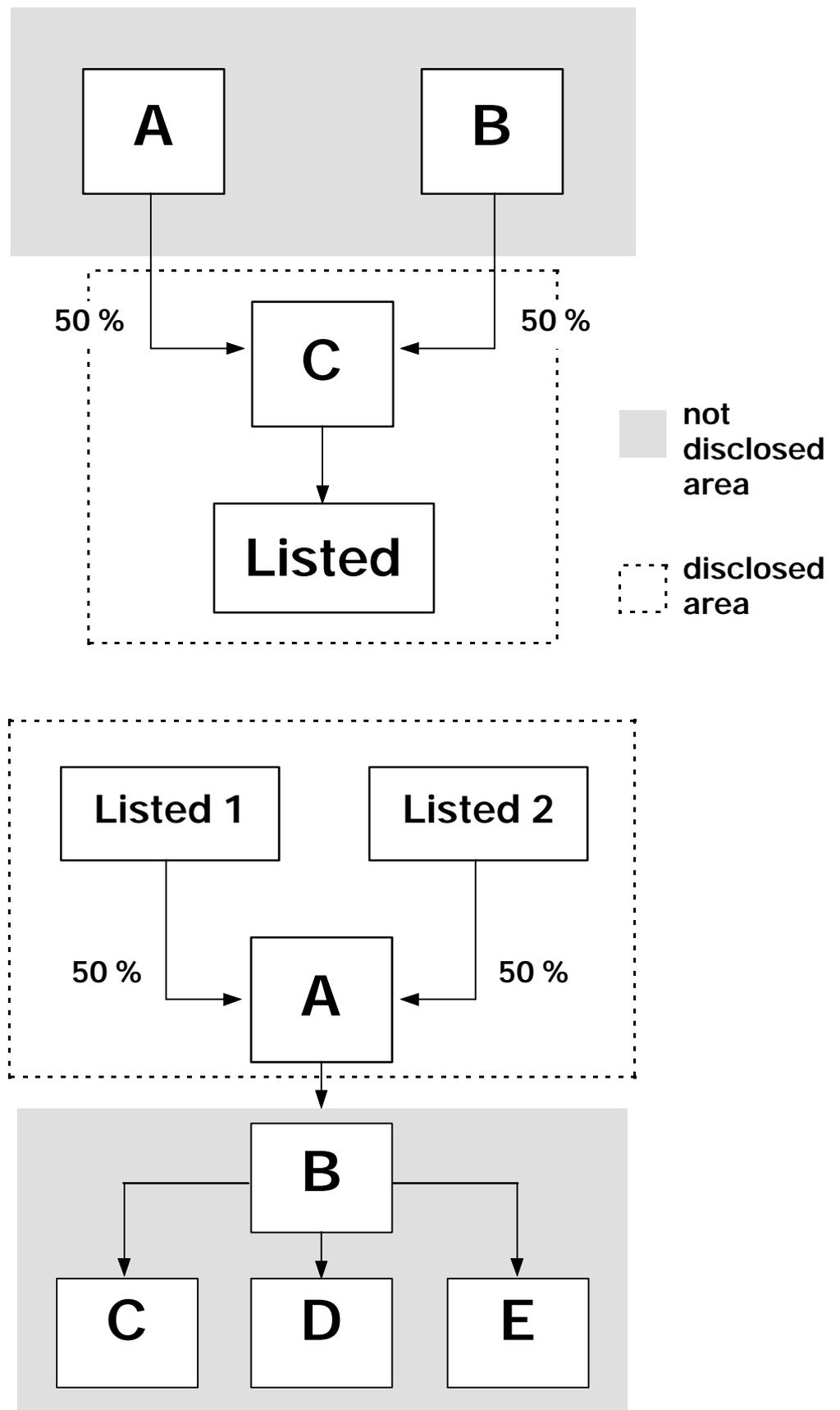
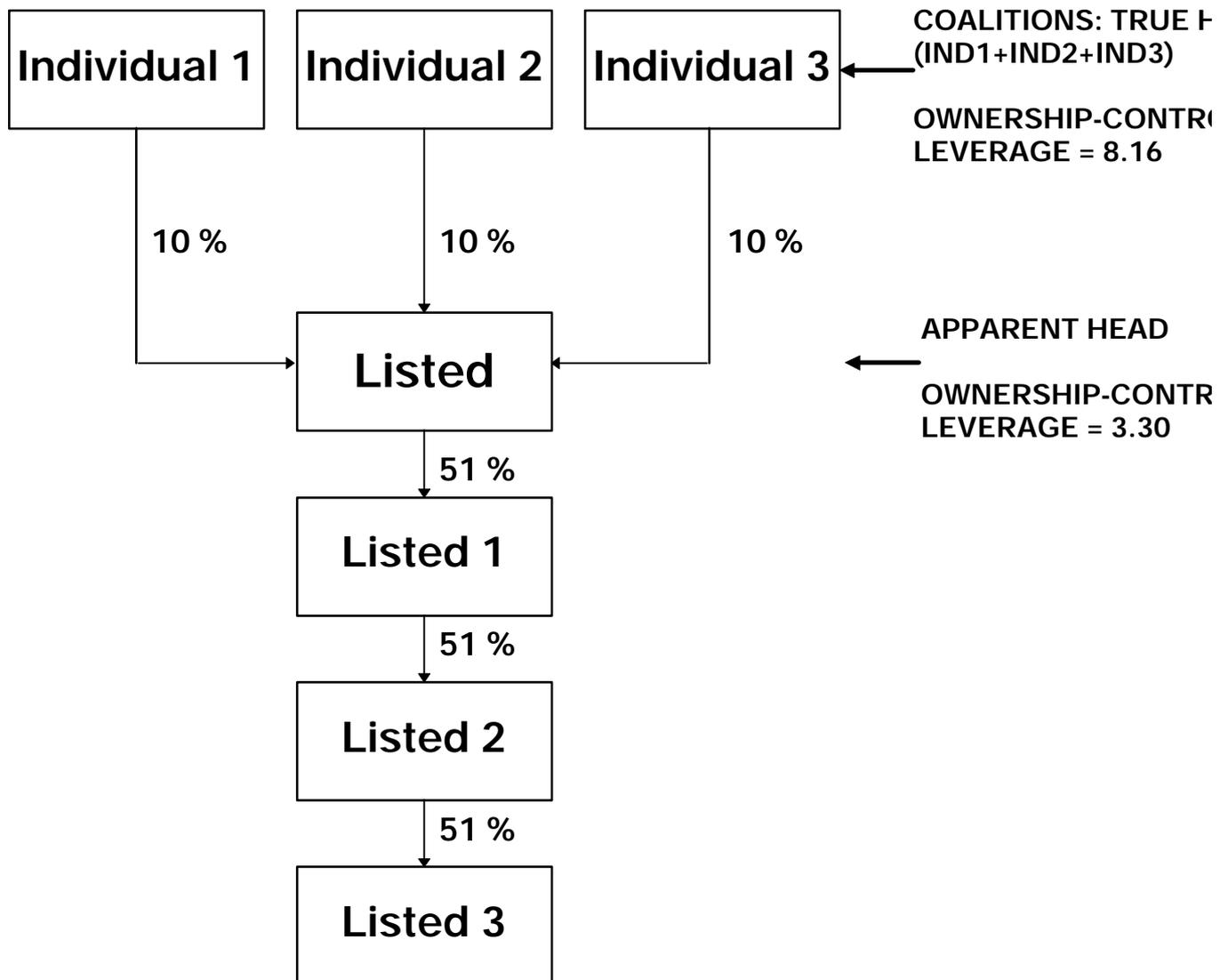
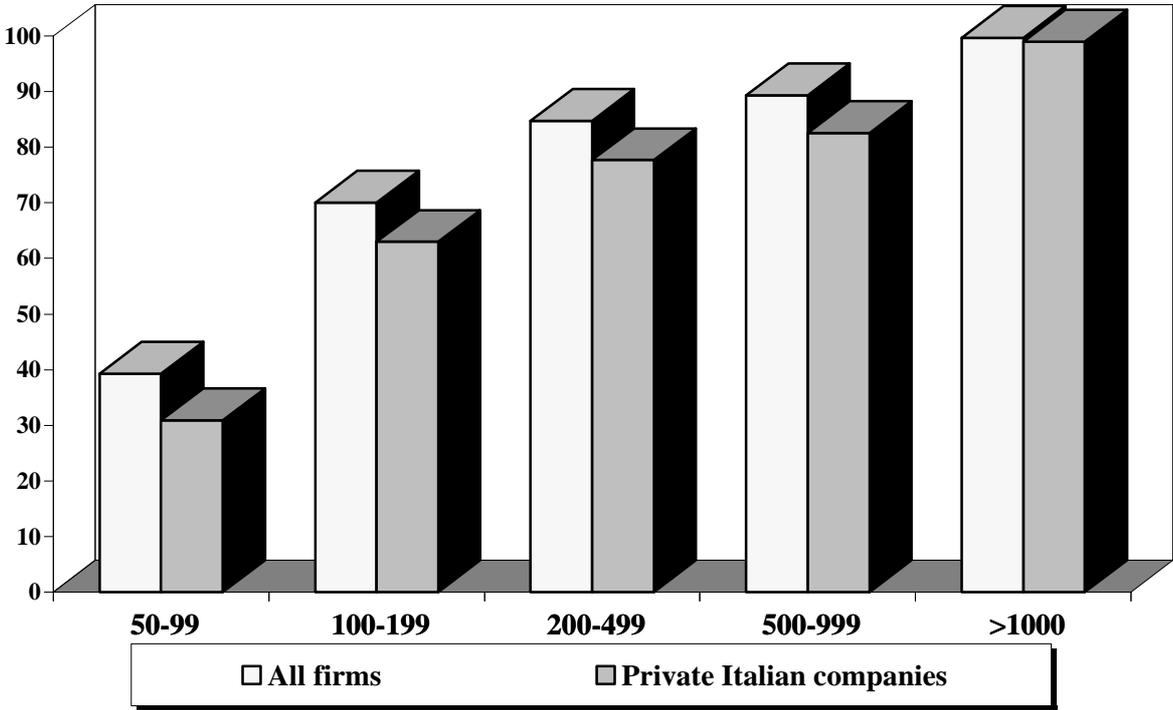


Figure 2

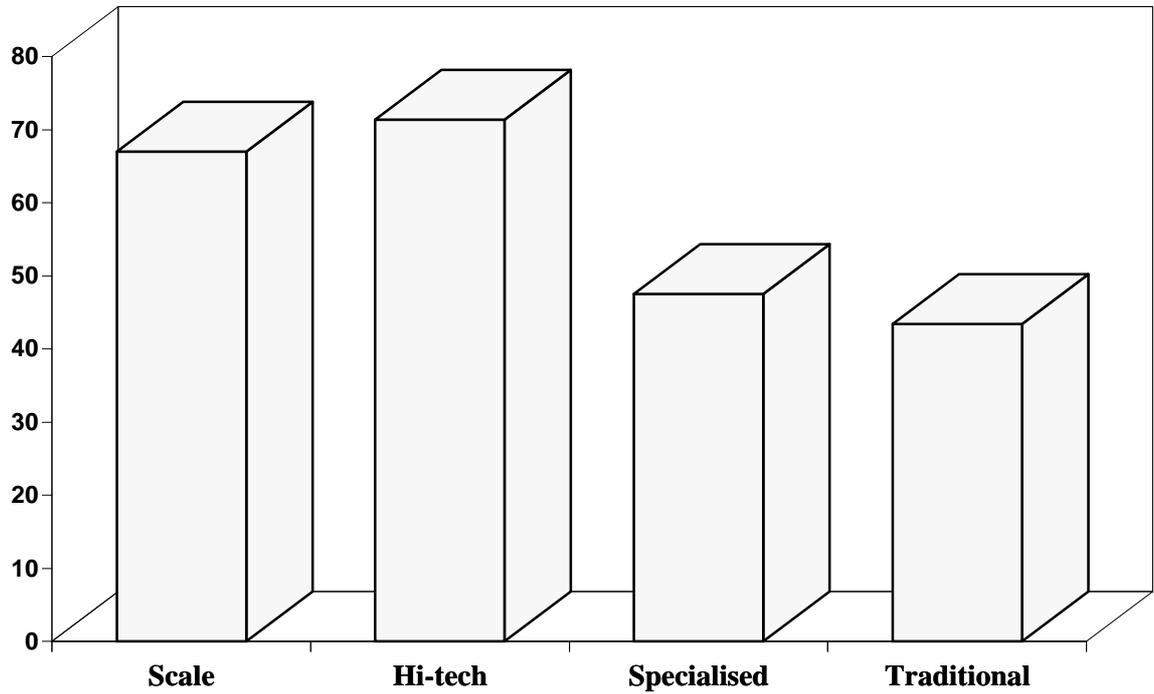
Critical issues of disclosure regulations:  
2) identification of control coalitions → non  
relevance of informal coalitions



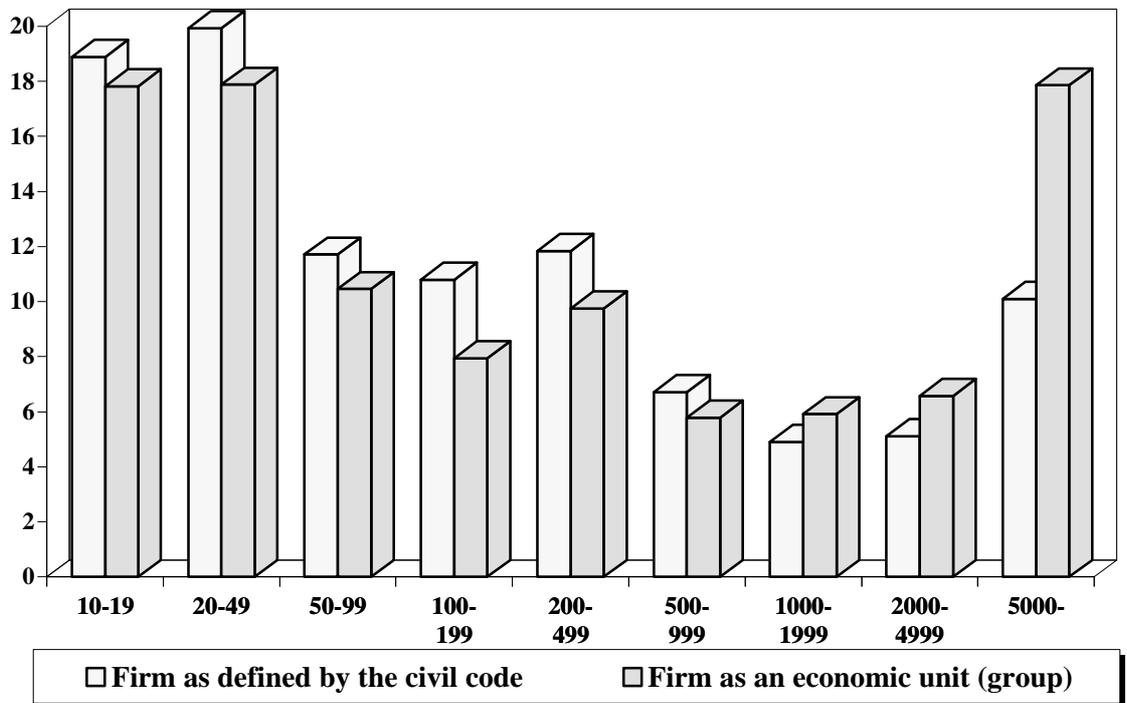
**Fig. 3: Diffusion of hierarchical groups in Italian industry**



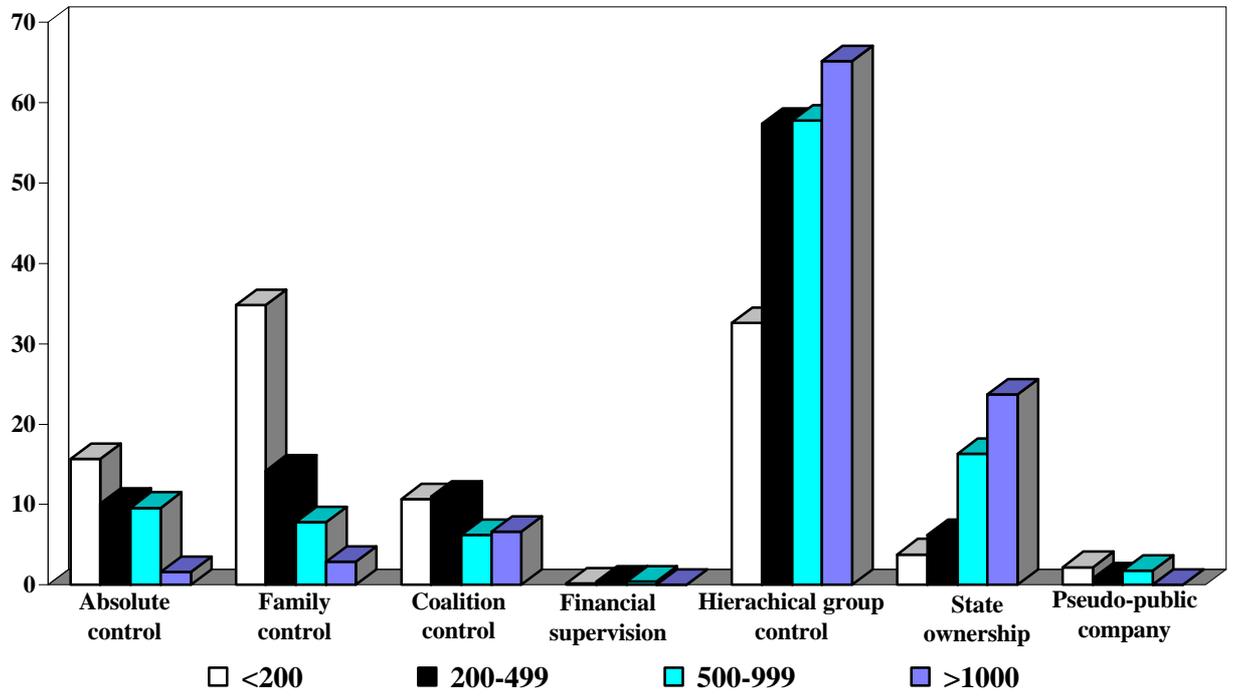
**Fig. 4: Diffusion of groups in different sectors**



**Fig. 5: The size distribution of employees in manufacturing companies**



**Fig. 6: Models of corporate control in Italian industry (percentages)**



# Preliminary Report

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## The Separation of Ownership and Control: A Survey of 7 European Countries

Submitted to the European Commission DGIII on 27 October 1997

**Volume 4**

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## **European Corporate Governance Network**

### **Country Survey**

## **Ownership and Control in The Netherlands**

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### **INTRODUCTION**

The main purpose of this paper is to exhibit some of the evidence available regarding the ownership and control of Dutch listed companies that has become available as a result of the transposition of the EU Transparency Directive. At the same time, the paper describes the legal framework for the disclosure of share ownership, together with some of the specificities of the Dutch legal and institutional framework for corporate governance. As much as possible, the analysis addresses the topics suggested by the 1996-97 Work Programme of the European Corporate Governance Network.

The paper is organised as follows. Section A of the paper describes the various legal forms of enterprises in the Netherlands and exhibits basic population statistics. The purpose of this section is to place listed firms in context, and to give an idea of their relative importance in Dutch economic activity. Section B describes the framework for reporting and publicizing ownership stakes that was enacted in order to carry out the aims of the Transparency Directive. A summary of the public debate on the effectiveness of the relevant legislation, as reported in the Dutch financial press, is included. This discussion at the same time serves as a caution in interpreting the quantitative data.

Sections C and D are the heart of the paper. Section C contains descriptive statistics concerning large blockholdings in Dutch listed companies, while Section D focuses on ownership of share stakes by company insiders.

Lastly, Section E gives some information about the outside supervision of Dutch listed companies.

## A. LEGAL FORMS OF ENTERPRISES IN THE NETHERLANDS

### a. *Types of company*

A first crucial legal distinction between various types of Dutch companies concerns whether they do or do not exist as a separate legal entity (*rechtspersoon*) in their own right. The main point at issue here is whether the resources drawn together by the company are a separate unit, or whether they are not sharply distinguishable from the non-company related property of the parties involved.

#### **Firms that constitute legal entities (*met rechtspersoonlijkheid*)**

These are the largest and most important firms (*NVs* and *BVs*), together with a set of less economically important legal forms like cooperatives, associations, mutual insurance societies and foundations.

#### *NVs* and *BVs* (public and private limited corporations)

The *naamloze vennootschap* (*N.V.*) is an “anonymous” limited company. In 1971, a new legal form, the *besloten vennootschap* (*B.V.*) or closed limited company was introduced, at the same time that *NVs* were first obliged by law to publish their annual accounts. 90% of the 50,000 or so *NVs* existing at the time subsequently converted to *BV* status. *BVs* are generally smaller firms, and also sometimes (increasingly) used as a form of professional partnership.

Let us first consider the common features of these two legal forms:

- *limited liability*. In the past, in both cases this important feature has been abused for personal enrichment at the expense of creditors (assets removed and debts allowed to accumulate). As a result, there is now sharper supervision at the stage where the firm is founded, the legal accountability of managers has been strengthened and procedures to wind up empty shells put into place.
- *procedures for founding a company*. The legal entity is set up by a notary’s deed that records the amount of capital issued, the identity of the founding executives, and the statutes, which must include the name, seat of business (which must be in the Netherlands) and goals of business, the number of shares, the provisions for replacement of executives and any procedures for blocking the transfer of shares. A declaration of approval is needed from the Minister of Justice, who can deny it if shady people are involved or the proposed statutes do not conform to the law. All this information must be registered in the *handelsregister* (company register maintained by the *Kamer van Koophandel* (Chamber of Commerce); the information required on an ongoing basis (annual accounts, etc.) is specified in articles 5-20 of the relevant law, the *handelsregisterwet*. Such information about individual firms is publicly available for viewing; extracts and summaries are supplied on request at cost.
- *organisational structure*. The company will have a management (*bestuur*) and a shareholder’s meeting (*algemene vergadering van aandeelhouders*) which (unless

the company is subject to the 'structural regime' described below) appoints management (*bestuur*) and directors (*commissarissen*) and approves annual accounts (unless it is a single-owner company). The management is held personally responsible for any misbehaviour prior to a bankruptcy, the presentation of misleading accounts, improper payment of taxes, taking on obligations to third parties that clearly cannot be met, and environmental damage. The shareholders' meeting has residual rights not allocated elsewhere, as well as the right to approve annual accounts, appoint investigating accountants, increase and decrease the firm's capital, hire and fire management, appoint at least 2/3 of *commissarissen* and alter the statutes. By law, the statutes cannot require more than a 2/3 majority for most decisions. In many cases there will be supervisory and advisory board of directors (*raad van commissarissen* - I will refer to this body as the Supervisory Board) and an enterprise council (*ondernemingsraad* - to be referred to as Council).

- There are special regulations governing the structure of larger firms, known as the structural regime or *structuurregeling*. All firms which ordinarily employ at least 100 employees or at least 35 for 1/3 of normal working hours, must set up a Council. This is a body for representing and consulting the views of employees. It has a right to relevant information, a right to advise on major decisions (e.g. transfers of ownership, relocation and important investments); it can delay decisions it disagrees with for 1 month and appeal to the *ondernemingskamer* (company chamber) of the Amsterdam Court. Its permission is required for changes to social arrangements (pensions, working hours, wages, safety rules) and if it disagrees the employer must obtain a local judge's decision to go ahead. These and other large firms (with capital and reserves of at least f25 mn, with a legal obligation to set up a Council or with at least 100 employees in the Netherlands) are also obliged to set up a Supervisory Board (*raad van commissarissen*) which inherits some powers otherwise held by the shareholders' meeting. Such a Board consists of at least three members; new members are appointed by coöptation by the Board itself (unless the Shareholders' Meeting or Council object), and the statutes can determine that one or more are to be government appointees. Supervisory Board members (*commissarissen*) have a tenure of at most 4 years. The board supervises important managerial decisions, appoints and dismisses the management board (*raad van bestuur*) and draws up the yearly accounts (which are subjected to shareholder approval).

In practice the *structuurregime* gives shareholders very little say in the appointment or removal of Supervisory Board members and management, and the coöptation system is currently the topic of intense public debate.

- *certification of share capital*. A commonly used device for denying voting rights to shareholders is to set up an *administratiekantoor* (AK: administration office) that holds the original shares and issues share certificates instead. The *administratievoorwaarden* (conditions of administration) determine the exact status of certificate holders' rights, which usually include a right to dividends (net of administrative costs) but no voting rights at the shareholders' meeting: these are exercised by the AK. The certificates can be owner-registered or bearer; and the rules of the *fondsenreglement* (stock exchange listing requirements) give prerequisites for the listing of certificates. Certificate holders retain the right to attend and speak at shareholders' meetings, to challenge the legitimacy of company decisions, to obtain annual accounts for free and to call for extra meetings just like any shareholder. Certification is used as a means of protection against hostile takeovers.

- *priority shares (prioriteits aandelen) and preference shares ('prefs')*: priority shares have specific control rights, for example they may have the right to make a binding nomination for the appointment of management. *Prefs* are sometimes issued on a temporary basis into friendly hands, not to raise capital but to change the balance of power in the shareholders' meeting; a common method of defence against hostile takeovers, that is legally permitted if it is in the interest of the company as a whole.
- *enqueterecht* (right to call for an investigation): shareholders or certificateholders owning at least 10% of the share capital (or f500,000 nominal, whichever is lower) can request an investigation into the company's affairs by court-appointed experts.
- *publication of accounts*. Dutch law in this respect conforms closely to European guidelines.

The major differences between NVs and BVs are the following:

- *transferability of shares*. An NV can issue both bearer and registered shares (*aandelen aan toonder* and *aandelen op naam* respectively); a BV can only issue registered shares. Whereas the statutes of an NV **can** limit the free transferability of shares, the statutes of a BV **must** do so (except possibly for transfers to other existing shareholders, close family and the BV itself). Such a *blokkeringsregeling* (arrangement for blocking undesired transfers) can take one of two forms. Either transfers are subject to approval by an organ of the company designated in the statutes; or a right of first refusal must be given to certain persons (or persons to be determined by a designated organ of the company). And transfers require a notary's deed. Clearly, no such restrictions are possible for bearer shares; and NV status is a prerequisite for a stock exchange listing.
- *constraints on the issue and buyback of shares*. These are stricter for an NV than for a BV. For example, a BV can acquire up to 50% of its own issued capital; an NV only 10% without ongoing shareholder approval. In a BV, the statutes can rule out preemptive rights for existing shareholders when new capital is issued; in an NV, a decision of the shareholder meeting is required.

#### Other companies that are separate legal entities

These are economically less important. A brief description:

- *coöperatie* and *onderlinge waarborgmaatschappij* (cooperatives and mutual insurance societies). These are set up by a notary's deed that specifies the statutes, its name, its goals, the obligations of members, the liability of members (none, limited or full), the way it is run and the division of any proceeds at liquidation. It must register in the *handelsregister* and include the list of members if they are to be liable. The *structuurregeling* applies if the cooperative is large or has at least 100 employees.  
Cooperatives are rather uncommon, and mainly used in agriculture.

- *Europees Economisch Samenwerkingsverband (EESV)*. An organisation founded by members from different countries, as described in EU ordinance # 2137.
- *stichting* (foundation). A *stichting* has no members; it is set up by a notary's deed which describes its name, purpose, location, procedures for appointing and removing management, and the destination of its surplus. Its goal cannot be payouts to founders. It must be registered by the *kamer van koophandel*.  
Foundations are used in the nonprofit sector and also for trade associations, pension funds and the earlier mentioned *administratiekantoren*.

### **Enterprises without a separate legal existence** (*zonder rechtspersoonlijkheid*)

Firms that are not separate legal entities are the property of two or more legal subjects (either people or legal entities) who enter into a cooperative agreement. They include the following forms (leaving aside *eenmanszaken*, or single-person businesses, which are not separately regulated by law):

- *maatschap* (partnership): a flexible, free-form agreement between partners (known as *maten* or *vennoten*) to contribute inputs such as physical assets or skilled labour and divide the proceeds according to agreed rules (in equal proportions, if not otherwise specified). Partners are obliged not to engage in outside activities that might be harmful to the partnership. All partners are authorised to engage in its normal business; unusual decisions (e.g. the buying of new premises by a partnership of doctors) must be taken by all the partners together, or delegated by explicit arrangement. Partners are liable in equal proportion for obligations to third parties such as creditors (unless other arrangements have been specified). However, if partners take actions for which they are not authorised they are personally responsible (unless other partners have enforced the action or benefited from it).  
Common examples: professional personal services not requiring very large investments: doctors, lawyers, accountants, notaries.
- *vennootschap onder firma (V.O.F.)*: a partnership similar to a *maatschap*, with one important difference: the partnership has *afgescheiden vermogen* (ring-fenced assets) to which creditors of the partnership have prior recourse, before any creditors of the partners on personal account. Thus third parties cannot net out their debts to the VOF against money owed to them by partners in private capacity. Any activities pursued on behalf of the VOF give rise to claims on the entire assets of the partnership, and every partner is responsible for the entire payment and not just a pro rata share (they are *hoofdelijk aansprakelijk*: jointly and severally liable). The VOF is regarded as a firm with a common name (*firma*). The VOF must be registered in the *Handelsregister*, which gives a public record of its name, purpose and activities, and any limits on the powers of members (if these are overstepped, the partner concerned is personally liable towards third parties for such unauthorised actions).  
The VOF is a very popular legal form (there are nearly 90,000 of them). For third parties doing business with a VOF, there is more security than with a *maatschap*. The business which partners are authorized to conduct on behalf of the VOF is clearly stated in the *handelsregister*, there are assets to which those trading with the VOF have prior recourse over the private creditors of the partners, and all partners are liable for the entire debt of the VOF.

- *commanditaire vennootschap* (partnership with silent partners): a device for allowing one or more “silent” partners (*commanditaire vennoten*) to supply money to a VOF whilst limiting their liability to the amount of their contribution. The involvement of the silent partners in managerial activities is strictly proscribed.

**b. Basic Population Statistics**

Table A.b.1 records the number of enterprises by legal form. Clearly the *NVs* are quite small in number, though these are on average the largest firms.

**Table A.b.1 Number of enterprises by legal form, 1 January 1995**

<b>Legal form</b>	<b>Number of firms</b>
Naamloze vennootschappen	2042
Besloten vennootschappen	156170
Eenmanszaken	332438
V.O.F.	87072
Various others	72601
<b>Total</b>	<b>650323</b>

Source: Centraal Bureau voor de Statistiek (CBS),  
Statistisch Jaarboek 1996.

Table A.b.2 cross-classifies firms by activity and legal form. Activity is classified by SBI'93 code (a Dutch classification system based on NACE, with minor variations to take account of peculiarly Dutch situations. The activities can be transposed into English from their NACE code). The legal forms along the top of the table have all been described already, apart from the last two: *overheid* or public sector and *overige (incl. onbekend)* or other (incl. unknown).

**Table A.b.2. Enterprises by activity and legal form, January 1 1994.** [Table 4 of CBS, *Bedrijven in Nederland*, 1996, p. 50.]

The most reliable and comprehensive **size distribution** data are those published by the *Centraal Bureau voor de Statistiek* (CBS).<sup>1</sup> Their data are based on the *Algemeen Bedrijfsregister* (General Register of Companies) in which, in principle, all Dutch companies are included; the characteristics recorded in this database (economic activity code, number of employees, name and address) form the basis for the classification used in CBS statistics. Additional data sources and sample surveys are used to correct, update and complete the statistics.

The company demographic information published by the CBS invariably uses *employment* as the basis for the size classification. Thus we do not have size distribution data by total assets or sales readily available. Such information is, however, in principle available for smaller subsets of all firms such as *NVs*, listed companies, larger companies, etc. using the REACH CD-ROM database. We reproduce here the size distribution in terms of workforce

**Table A.b.3 Enterprises by size of workforce, 1 January 1995**

<b>Employees per firm</b>	<b>Number of firms</b>
0	330,394
1 to 5	227,267
5 to 10	40,402
10 to 100	47,322
100 or more	4,938
<b>Total</b>	<b>650,323</b>

Source: CBS, Statistisch Jaarboek 1996

The size distribution of the different legal forms, by number of employees, in January 1994 is given in Table A.b.4.

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<sup>1</sup> Somewhat more detailed information than is published is available at cost from the CBS: Economic Demography group, Sector Waarnemingsmethodologie, tel. 045 5707937, fax 045 5706266.

**Table A.b.4 Enterprises by legal form and size of workforce, January 1 1994**

Legal form	Total	Number of employees								
		0	1 to 5	5 to 10	10 to 20	20 to 50	50 to 100	100 to 200	200 to 500	500 & more
Total	607590	312525	199610	39670	24290	18685	6530	3235	1995	1055
NV	1030	140	225	80	105	130	90	70	95	95
BV	128030	26880	44290	20650	15655	12975	4295	1875	985	430
Cooperatives	2000	595	920	155	95	105	40	30	40	15
Foundations	18705	1405	9440	2185	1860	1990	855	530	300	140
One-man cos.	236410	146860	80255	6805	1765	630	85	10	0	0
Partnerships	5375	940	3450	515	275	125	35	10	10	10
VOFs	83050	34670	39350	6115	2105	695	85	25	10	5
Public sector	1395	395	895	50	15	15	10	0	5	5
Other (incl. unkn.)	131600	100640	20785	3110	2410	2030	1035	685	545	355

Source: CBS, Bedrijven in Nederland, 1996 (Table 5 p. 51)

## B. DISCLOSURE OF BLOCKHOLDINGS IN THE NETHERLANDS: THE CURRENT SITUATION

### a. *The legal framework for disclosure of large shareholdings*

To our knowledge there is no legal obligation to disclose ownership stakes in unlisted NVs and BVs (except in the case of single-owner companies, where the identity of the owner must be recorded in the publicly accessible *handelsregister* together with a written account of all transactions between himself and the company). If the company has issued registered shares (*aandelen op naam*), as is the case for all BVs and many NVs, its management obviously keeps a register of shareholdings (*aandelenregister*), which must include the names and addresses of all the shareholders. But there is no legal obligation to make this information freely and conveniently accessible to the general public.

For **listed companies** (which must clearly be NVs, for BVs do not have freely transferable shares), shareholders are subject to the disclosure requirements of the law that carries out the EU Transparency Directive 88/627, namely the *Wet Melding Zeggenschapsrecht* (henceforth the *WMZ*). Shareholders in all NVs incorporated under Dutch law and listed on a European Union stock exchange must notify both the company itself and the *Stichting Toezicht Effectenverkeer* or *STE* (a foundation set up in 1988 to supervise share trading on behalf of the Minister of Finance) of any purchases or sales of share stakes which cross the boundaries of 5, 10, 25, 50 or 66 2/3 % of issued capital.

The first *WMZ* went into effect on February 1 1992. Recently, some of the more glaring defects of the law have been repaired, with a new version of the *WMZ* replacing the old one as of June 1 1997<sup>2</sup>. As our data in this paper were collected under the old regime, we will describe both, and give a brief review of the public debate surrounding the *WMZ*.

Under both versions of the *WMZ*, investors are obliged to notify a listed company of any purchases or sales of its shares which lead their share stake to cross the notifiable boundaries of 5, 10, 25, 50 or 66 2/3 %. This **obligation to notify applies to both voting rights and ownership (income) rights separately**. At the same time, the investor must indicate whether the stake is indirect (*middelijk*), that is, held via a daughter company or a third party; and whether the stake represents a potential (*potentieel*) stake rather than a current one, for example in case of a convertible bond or a warrant.

The listed company concerned is obliged to transmit this information promptly to the *STE*, which under the new law publishes the announcement in the financial press (in practice, *Het Financieele Dagblad*) in a standardised format, after verifying the

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<sup>2</sup> Enacted 29 November 1996. Text in *Staatsblad* 1996, nr. 629.

information, after between 5 and 9 calendar days<sup>3</sup>. (Under the old law, the company itself was responsible for making an announcement in a newspaper with nationwide circulation. But it was felt that direct publication of the information by the *STE* would be more transparent and less error-prone.)

A major source of concern with the share stake database maintained by the *STE* is that over time, it has become increasingly contaminated. The main problem is that share stakes can and do cross the notifiable percentage boundaries whenever the total outstanding share capital of the company changes; for example as a result of employee option plans, stock dividends, or mergers paid for by issuing shares. A large shareholder, who takes no active part in this modification of the denominator, has no obligation to report the resulting change in his percentage stake even if his percentage stake crosses a notifiable boundary as a result of the dilution. Thus over time the quality of the database, which is based on initial notifications of percentage stakes, has deteriorated. The *STE* has pleaded strenuously but unsuccessfully for the new law to institute a periodic (say annual) obligation for companies to report their total share capital and the holdings of their known large shareholders, so that the *STE*'s database would give a more accurate picture of current blockholdings. The government and a majority in Parliament felt that periodic disclosure would impose an unnecessary burden on companies and large shareholders, though leftwing parties generally spoke out in favour of more disclosure. The *STE* is now sufficiently concerned by the contamination of its database that it has threatened again (in May 1997) to lock up its data base and stop providing *WMZ* data to third parties who request it (mostly multinationals, institutional investors, analysts and the press) and to limit its role to publishing the original notifications in the press.

The *STE* views the *WMZ* as a means of providing greater transparency regarding the ownership structure of listed companies. The Minister of Finance, however, indicated to Parliament in 1996 (prior to the adoption of the revised law) that he felt its role is simply to make market movements visible. Opposition to the tightening of the law was not based on considerations of administrative cost alone: since 1995, a pressure group to protect the privacy of large individual shareholders has been pursuing a lawsuit to limit information dissemination by the *STE*.

The new *WMZ* repairs several other deficiencies of the old law:

- One important lacuna concerned pre-existing large shareholders of companies listed after the original *WMZ* went into effect; such shareholders were not obliged to notify their stakes. From now on all initial shareholders in newly listed companies must disclose any large stakes<sup>4</sup> (*initiele meldingsplicht*).

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<sup>3</sup> At the same time, the Amsterdam stock exchange's *fondsenreglement* (provisions governing listed companies) requires the company to report all price-sensitive information promptly so that it can be made public by the exchange on its electronic information dissemination system *Beursnet*. In practice, most mutations in large shareholdings would reasonably be considered price-sensitive, so that the information is likely to be made public on the exchange before the *STE* publishes it.

<sup>4</sup> Large shareholders in the 70 or so companies that were listed between February 1992 and June 1997 were given a July 1 1997 deadline to disclose their holdings; but by then, only 20 notifications had been received, some of which were incorrect, whilst the *STE* was expecting a total of about 280, namely roughly four notifications per company involved!

- Professional intermediaries (banks, underwriters of new issues) who retain stakes of over 5% ‘on the shelf’ (*emissierestanten*) 3 months after a new issue or placing, must disclose such stakes as they will be regarded as part of their investment rather than trading portfolio.
- Custodians (*bewaarders*) are now exempt from the obligation to disclose provided that they have no control rights.
- There is now a standard form on which information must be disclosed to the *STE*, and the information must include the exact date on which the notification obligation arose and details of how the stake is held (e.g. via a daughter company, “for the account of”, or via a voting agreement)
- The law was rephrased in terms of six “bands” (0-5, 5-10, 10-25, 25-50, 50-66 2/3, 66 2/3-up); shareholders must report any movement of their stake into a different band. In the past, people did not seem to understand that they also had to disclose whenever their stake crossed a boundary downwards (a significant source of inaccuracy in the *STE* database).
- Open-end funds or unit trusts (*BMVKs: beleggingsmaatschappijen met veranderlijk kapitaal*, or investment companies with varying capital, who buy in or expand their own share capital in response to investor demand at a price close to the intrinsic value of the underlying portfolio) now have weaker disclosure obligations, with 0-25% treated as one band.
- If a natural person discloses a stake, his/her “daughter” company does not need to do so as well (this was already the case for group companies under the old *WMZ*). Thus double notifications are reduced.
- The *STE* is empowered to correct inaccurate data.

Up to the end of May 1997 there have been a total of 3300 *WMZ* disclosures. The notifying listed company pays the processing cost to the *STE*, currently running at about f2300.- excluding the cost of newspaper publication.

#### **b. Public availability of data**

The *STE* itself does not provide a record of disclosures in electronic form; indeed, in May 1997 it announced that it would no longer provide data to third parties at all because of its concerns about the inaccuracy of its database. Starting in 1992, when the *WMZ* first went into effect, the main Dutch financial newspaper *Het Financieele Dagblad* has periodically published a supplement with a complete overview of all disclosed blockholdings, based on the original situation in 1992 adjusted by intervening announcements of changes<sup>5</sup>.

The database has over time become increasingly inaccurate for a number of reasons. First of all, when shareholders’ proportional stakes are changed, not by any trading of their own but by changes in the total amount of issued capital of the company, they do not need to report such changes. In addition, stakeholders tend

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<sup>5</sup> The two most recent overviews were published on 28 May 1996 and 31 May 1997. The newspaper’s published data is taken from a related commercial data provider, which has collected it in electronic form.

to be forgetful about notifying decreases in their stakes. There have also been cases of large shareholders attempting to avoid or delay disclosure in order to hide their controlling interest from the public eye<sup>6</sup>. Lastly, pre-existing large shareholders in the 70 or so companies newly listed between February 1992 and June 1997 have not until July 1997 been obliged to disclose their stakes.

The *Financieele Dagblad* has taken some measures to improve the accuracy of the data:

- Whenever there is a series of filings by the same shareholder in the same company, only the most recent one has been kept
- Any disclosures of stakes strictly below 5% in the *STE* database have been eliminated
- “Remnants” of overlapping stakes (direct and indirect), arising after only one sale is reported, have been removed
- Some disclosures that have been published in the press but apparently not sent to the *STE* are included.

The data is organised in the *FD* as follows. For each blockholding six categories are distinguished:

- a *kapitaalbelang* (includes b and c): total ownership (capital, dividend) rights
- b *middellijk kapitaalbelang*: indirect ownership (held by a subsidiary or a firm with which the filing firm has a long term agreement on joint policies in exercising the voting rights)
- c *potentieel kapitaalbelang*: potential ownership, for example from warrants, convertibles, or call options.
- d *stemrecht* (includes e and f): voting rights
- e *middellijk stemrecht*: indirect voting rights
- f *potentieel stemrecht*: potential voting rights

Clearly, these data are imperfect and further cleaning up work would be desirable before they are used in empirical research:

- indirect holdings need to be clarified. Sometimes in-depth perusal of the original notifications may be enough; but sometimes it may be necessary to contact the persons and/or companies involved, in hopes that they will be forthcoming with the information;
- the earlier mentioned deterioration of the data set over time due to changes in the denominator is hard to deal with unless the relevant law is tightened;
- share stakes of directors and company insiders are not included in the data base and need to be collected separately.

For all its faults, the *FD* database is the only one currently available, and in the next sections we will base our quantitative analysis on it.

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<sup>6</sup> *Financieele Dagblad*, 7 May 1993. Possible sanctions range from polite reminders to fines and imprisonment.

## C. OWNERSHIP STRUCTURE AND VOTING RIGHTS: QUANTITATIVE ANALYSIS

### a. *The data*

As mentioned before, the Dutch disclosure requirements concern listed firms and we will focus on those alone. Our ownership data for Dutch listed companies are taken from the annual overview published in the appendix of *Het Financieele Dagblad* on May 28, 1996. The data describe the situation on May 8, 1996. The sample consists of 137 Dutch industrial companies listed on the Amsterdam Exchange. Only blockholdings of at least 5% are taken into account.

As in The Netherlands no groups of listed companies are found, we do not analyse groups separately. In addition, we focus on direct holdings only. Regarding indirect holdings, we can only obtain information regarding stakes of listed firms in other listed firms. Thus the data for indirect holdings would very incomplete. In any case, the data for the listed firms only reveals few and minor stakes, and no controlling stakes.

Many Dutch companies issue common shares directly to administrative offices (*administratiekantoren*) which in turn issue depository receipts after detaching voting rights. Ownership stakes reported by these administrative offices are excluded. Trusts for non-paid up preferred stock are also excluded. In addition, we adjust the data, wherever possible, for double reporting.

We make three adjustments to the data reported in *Het Financieele Dagblad*. First, many Dutch firms issue a large proportion of their shares in nonvoting certificate form via an administrative office (*administratiekantoor*), as described in Section A.a of this paper. The filings of such administrative offices are removed from the data set, as the ownership structure of the *AK* itself is unknown (though it is generally controlled by the company's management). Second, potential stakes are removed from the data. In general, the potential rights are non-paid up preferred stock placed in a foundation (*stichting preferente aandelen* or *stichting continuïteit*). Third, the indirect stakes may lead to double counting, as both the subsidiary and the parent may have filed the same stake; indeed, if the parent is a person and not a company, that is obligatory under the pre- June 1997 law. We try to correct for this by eliminating the stake of the subsidiary. The following example illustrates our procedure:

#### **Example: WEGENER**

Shareholder	a	b	c	d	e	f
Amev/VSB NV	5.15	5.15	0	-	-	-
Britt Holding BV	5	0	0	-	-	-
Heinsbroek, H.Ph.J.E.	5.837	0	0	-	-	-
Houwert, C.J.	21.27	21.27	0	-	-	-
Loeff Beheer, BV van der	21.27	0	0	-	-	-
Scottish Widows Invt.	5.38	0	0	-	-	-

Telegraaf, Holdingsmij NV	15.93	15.93	0	-	-	-
Wegener, St.Adm.Ktr	99.998	0	0	99.998	0	0
Wegener, St.Pref.Aand.	99.99	0	99.99	99.99	0	99.99
Wovang BV	5	0	0	-	-	-

Note: Column headings are defined in section B.b above.

For Wegener we would make the following adjustments. First, a 99.998% stake of administration office ('Wegener, St.Adm.ktr') is reported. This entry will be deleted. Second, a 99.99% potential stake of preferred stock is reported by a foundation ('Wegener, St.Pref.Aand'). This entry will be deleted. Third, we investigate the indirect stakes in columns b and e. In the row an indirect stake of Amev/VSB is reported. The problem is that we cannot find the direct shareholder, because no stake of the same magnitude is reported. This entry will not be deleted. Mr C.J Houwert reported an indirect stake of 21.27%. Van der Loeff Beheer has reported a stake of exactly the same percentage. It is very likely that mr C.J. Houwert controls Van der Loeff Beheer. For this reason this latter entry will be deleted. As with the stake of Amev/VSB, the stake of Telegraaf shows no clear resemblance with the other stakes. We choose to remove double entries as much as possible by eliminating the subsidiaries.

## **b. Analysis of findings**

Table C.b.1 represents average ownership (of income rights) by company size and ownership stake classes. We find that the average size of the largest stake is 28.16%. There is a sharp decline for the second largest stake; here the average is 9.19%. We also report average stakes in companies classified into different size groups based on total assets at the end of 1995. Here we observe that average largest block (in percentage terms) decreases as the size of companies increases. For example, for companies in the smallest size category (total assets less than £70m) the average largest stake is 35.45%, while for companies in the largest size category (total assets over £2000m) the average stake is 28.16%.

Table C.b.2 repeats the analysis for voting rights. The same pattern of concentration decreasing with firm size is found. On the face of it, the voting blocks are comparable in size but slightly smaller than the ownership blocks of Table C.b.1. However, it should be remembered that blocks controlled by *Administratiekantoren*, as well as potential rights (which are often triggered whenever there is a takeover threat) are not included in the analysis. Thus voting rights are in reality, when it matters, more concentrated than our table would suggest; and typically controlled to a large extent by company insiders.

We also analyse the ownership data based on a broad categorisation of **types of investors** (Tables C.b.3 and C.b.4). The average reported ownership stakes (income rights) of banks, insurance companies and other financial institutions are 7.21%, 2.37% and 15.48% respectively. Individuals and corporations have average stakes of 10.79% and 10.64% respectively. Voting rights are, again, somewhat less

concentrated.

Graphical plots are provided in Figures 1 to 4 at the end of the paper.

Table C.b.5 describes the use of *administratiekantoren*. We selected all shareholdings labelled *administratiekantoor* or *stichting continuïteit* (“continuity foundation”), excluding any stakes that represent a potential rather than a current interest. The *AK*'s function is to detach voting rights from the shares that it controls, passing them on to investors in nonvoting certificate form; control of the *AK*'s votes typically rests with a foundation board appointed by the underlying firm and/or its initial shareholders. 55 of the 137 firms in the sample used this device; and, as can be seen from the table, in the majority of these cases more than 2/3 of the firm's share capital was certificated.

Table C.b.6 describes a common device for countering the threat of takeovers: the use of *potential capital*, contingent claims which are only issued under specified circumstances, such as when the continuity of the firm is under threat (in other words, in case of takeover threats). These potential claims are typically held by a body called a *stichting preferente aandelen* or a *stichting continuïteit*. We limit our table to those firms where potential capital is at least 25% of the currently outstanding capital (thus excluding various individuals and employee share option schemes which typically hold no more than about a 10% stake). Note that potential stakes can and do exceed 100% in some cases, as the denominator is currently outstanding capital. We find that 35 of the 137 sample firms have important amounts of potential capital; indeed, in 27 of these the amount of potential capital is 98% or above, suggesting that the purpose of the potential stakes is to achieve a voting majority of 50% under the control of company management in any circumstances which trigger the the potential voting rights.

The conversion of shares into nonvoting certificates and the use of potential shareholdings do not seem to be substitute defence devices, as many firms use both. 18 firms both use an *AK* and have outstanding potential capital rights of over 25%.

**Table C.b.1: Average ownership stakes of largest shareholders, May 1996.** Means (and in parentheses, medians) are taken over the entire sample.

Size class	Number of observations	Largest stake	2 <sup>nd</sup> largest stake	3 <sup>rd</sup> largest stake	4 <sup>th</sup> largest stake	5-10 <sup>th</sup> largest stakes
1	29	35.45 (37.04)	14.51 (10.00)	6.00 (5.57)	2.67 (0)	6.53 (0)
2	28	30.31 (18.75)	9.25 (8.33)	5.47 (5.94)	3.94 (5.07)	7.81 (2.55)
3	27	31.38 (25.54)	11.07 (9.54)	5.03 (5.47)	3.88 (5.09)	4.39 (0)
4	28	21.42 (14.31)	7.71 (5.79)	3.00 (0)	2.02 (0)	2.08 (0)
5	25	21.35 (8.70)	2.57 (0)	1.39 (0)	0.91 (0)	0.66 (0)
All firms	137	28.16 (19.40)	9.19 (7.52)	4.25 (5.13)	2.71 (0)	4.39 (0)

Note: Size categories are defined in terms of total assets (TA) in millions of Dutch guilders on 31 December 1995:

- 1 TA < 70
- 2 70 < TA 300
- 3 300 < TA 550
- 4 550 < TA 2000
- 5 2000 TA

**Table C.b.2. Largest blocks of voting rights, May 1996. Means (medians in parentheses).**

Size class	Number of observations	Largest stake	2 <sup>nd</sup> largest stake	3 <sup>rd</sup> largest stake	4 <sup>th</sup> largest stake	5-10 <sup>th</sup> largest stakes
1	29	32.29 (37.02)	12.06 (10.00)	4.11 (0)	1.50 (0)	3.04 (0)
2	28	26.54 (17.53)	7.55 (7.80)	4.23 (5.18)	3.19 (2.51)	6.52 (0)
3	27	27.39 (20.06)	6.01 (5.39)	2.57 (0)	1.84 (0)	2.06 (0)
4	28	18.41 (11.34)	5.84 (0)	1.87 (0)	1.15 (0)	0.56 (0)
5	25	18.70 (6.30)	1.34 (0)	0.41 (0)	0.00 (0)	0.00 (0)
All firms	137	24.83 (14.91)	6.72 (5.33)	2.70 (0)	1.56 (0)	2.50 (0)

Size classes are defined in Table C.b.1.

**Table C.b.3: Ownership blocks by types of large shareholders, May 1996.** Means (medians) are taken over the entire sample.

Size class	Number of observations	Banks	Insurance companies	Other financial institutions	Pension funds	<i>Participatie maatschappijen</i>	Individuals	Industrial firms	State
1	29	5.74 (0)	1.82 (0)	23.81 (19.49)	1.36 (0)	0 (0)	19.11 (8.67)	11.59 (0)	1.72 (0)
2	28	9.64 (5.06)	3.58 (0)	15.11 (11.18)	0.51 (0)	0.65 (0)	20.42 (12.66)	6.85 (0)	0 (0)
3	27	6.82 (5.89)	3.00 (0)	23.29 (10.29)	0 (0)	0.38 (0)	4.94 (0)	17.32 (0)	0 (0)
4	28	7.83 (5.72)	1.49 (0)	9.03 (2.50)	0.80 (0)	0.45 (0)	6.01 (0)	10.62 (0)	0 (0)
5	25	5.90 (5.54)	1.97 (0)	5.05 (0)	0.22 (0)	0 (0)	2.00 (0)	6.57 (0)	5.18 (0)
All firms	137	7.21 (5.14)	2.37 (0)	15.48 (9.91)	0.60 (0)	0.30 (0)	10.79 (0)	10.64 (0)	1.31 (0)

Size classes are defined under Table C.b.1.

**Table C.b.4 Voting rights by type of investor, May 1996.** Means (medians in parentheses).

Size class	Number of observations	Banks	Insurance companies	Other financial institutions	Pension funds	<i>Participatie maatschappijen</i>	Individuals	Industrial firms	State
1	29	3.66 (0)	0.72 (0)	19.17 (10.00)	1.05 (0)	0 (0)	16.80 (0)	9.87 (0)	1.72 (0)
2	28	5.93 (0)	2.76 (0)	12.27 (10.00)	0.51 (0)	0.68 (0)	19.76 (8.33)	6.14 (0)	0 (0)
3	27	4.25 (0)	1.57 (0)	15.55 (5.01)	0 (0)	0.38 (0)	2.79 (0)	15.33 (0)	0 (0)
4	28	4.55 (0)	0.89 (0)	7.83 (0)	0.37 (0)	0.45 (0)	4.83 (0)	8.90 (0)	0 (0)
5	25	2.98 (0)	1.30 (0)	2.42 (0)	0.00 (0)	0 (0)	2.00 (0)	6.57 (0)	5.18 (0)
All firms	137	4.30 (0)	1.45 (0)	11.67 (0)	0.40 (0)	0.30 (0)	9.49 (0)	9.38 (0)	1.31 (0)

Size classes are defined under Table C.b.1.

**Table C.b.5 Certification of shares**

	Number of firms
No <i>administratiekantoor</i>	82
At least one <i>administratiekantoor</i> - with shareholdings (x) of:	55
$x \leq 25\%$	5
$25\% < x \leq 50\%$	15
$50 < x \leq 66 \frac{2}{3}\%$	5
$66 \frac{2}{3}\% < x \leq 90\%$	10
$90 < x \leq 99\%$	10
$99\% < x$	10

Note: All holdings that are labelled *administratiekantoor* or *stichting continuïteit* are included unless they represent potential rather than actual capital. In seven cases there were two (rather than one) AKs involved.

**Table C.b.6 Potential stakes over 25%**

	Number of firms
No potential capital over 25% reported	104
At least 25% potential capital - representing shareholdings (x) of:	35
$25\% < x \leq 50\%$	8
$50\% < x \leq 98\%$	0
$98\% < x \leq 100\%$	24
$100\% < x$	3

## D INSIDE SUPERVISION

Most listed Dutch companies are large enough to fall under the *structuurregime* described in Section A.a, whereby the supervisory board is appointed by coöptation without direct shareholder input, and the management board is appointed by the supervisory board. There is much current debate on whether the shareholders and the employees of companies should have greater powers to appoint, re-appoint and depose Supervisory Board members.

Table D.1 describes average board sizes and the composition of boards, for listed firms only, for our sample of 137 listed Dutch industrial firms.

As far as we know, there has not yet been any systematic quantitative information collected about Dutch supervisory boards. The only information available is the names of individuals acting as members of different Boards. According to the October 1996 report published by the Dutch Committee on Corporate Governance, 69 individuals are members of two Boards, 39 persons are members of three Boards, and 20 persons are members of at least four Boards.

Table D.2 represents the *percentage of shares owned by board members*. The first column lists the 25 firms in which blockholders (with stakes large enough to be reported in accordance with the *WMZ*) or members of their family are on the supervisory or management board. The second column (*RvB*) provides the percentage of shares owned by members of the managerial board (*raad van bestuur*). The third column (*RvB/RvC*) adds the percentage of shares owned by the supervisory board (*raad van commissarissen*). In the fourth column (*RvB/RvC/Fam*) the percentage of shares owned by people with the same family name as member of the managerial and supervisory board is added. The average stakes (taken over the 25 firms with an inside blockholder) are 24.77%, 37.26% and 39.84% respectively.

**Table D.1. Management board (RvB) and supervisory board (RvC) size and composition.** Means (medians) are taken over the entire sample.

Size class	Number of observations	Number of positions: RvB	Number of positions: RvC	Total board size	Number of firms with insiders In RvB	Number of firms with insiders in RvC	Average stake of insiders RvB	Average stake of insiders RvC
1	29	1.76 (2)	3.10 (3)	4.86 (5)	5 (17.2%)	4 (13.8%)	5.70 (0)	11.91 (0)
2	28	1.93 (2)	3.71 (4)	5.64 (6)	7 (25.0%)	3 (10.7%)	9.90 (0)	13.56 (0)
3	27	2.41 (2)	5.00 (5)	7.41 (7)	2 (7.4%)	0 (0%)	2.07 (0)	2.07 (0)
4	28	2.89 (2)	5.36 (5)	8.25 (8)	3 (10.7%)	1 (3.6%)	4.32 (0)	5.37 (0)
5	25	4.84 (4)	7.52 (7)	12.36 (11)	0 (0%)	0 (0%)	0 (0)	0 (0)
All firms	137	2.72 (2)	4.87 (5)	7.58 (7)	17 (12.2%)	25 (18.2%)	4.52 (0)	6.80 (0)

Size classes are by total assets on 31-12-1995, as defined under Table C.b.1.

**Table D.2. Insider ownership of listed firms.** ‘RvB’ is the managerial board (*raad van bestuur*). ‘RvC’ is the supervisory board (*raad van commissarissen*). ‘Fam’ includes blockholders with the same surname as one or more member of one of the boards. Data reflect disclosed stakes (of at least 5%) only.

Naam	RvB	RvB/RvC	RvB/RvC/Fam
Sligro Beheer N.V.	0.00	12.46	23.85
Gouda Vuurvast Holding N.V.	0.00	13.60	13.60
Rood Testhouse International N.V.	0.00	19.40	19.40
N.V. Holdingmaatschappij De Telegraaf	0.00	29.41	29.41
Neways Electronics International N.V.	0.00	42.84	42.84
Cindu International N.V.	0.00	46.93	46.93
Burgman Heybroek N.V.	0.00	49.98	49.98
Naeff N.V.	0.00	97.05	97.05
Aalberts Industries N.V.	7.85	7.85	31.85
Nedcon Groep N.V.	8.67	8.67	8.67
Flexovit International N.V.	8.78	8.78	8.78
N.V. Dico International	10.58	10.58	10.58
Tulip Computers N.V.	17.53	17.53	17.53
Delft Instruments N.V.	20.41	20.41	20.41
Wegener N.V.	21.27	21.27	21.27
De Drie Electronics Beheer N.V.	24.40	24.40	48.80
Kondor Wessels Groep N.V.	35.35	35.35	40.85
Mulder Boskoop N.V.	44.65	44.65	44.65
Koninklijke Begemann Groep N.V.	46.60	46.60	46.60
Baan Company N.V.	47.60	47.60	47.60
Content Beheer N.V.	51.70	51.70	51.70
Randstad Holding N.V.	53.06	53.06	53.06
A.I.R. Holdings N.V.	55.63	55.63	55.63
Hollandia Industriële Maatschappij N.V.	77.10	77.10	77.10
Free Record Shop Holding N.V.	88.22	88.22	88.22
Average (over all 137 firms)	4.52	6.80	7.27

## E. OUTSIDE SUPERVISION

### Stock Market Institutions and Supervision of Securities Trading

There is one officially approved stock market in The Netherlands, now called the Amsterdam Exchanges Effectenbeurs N.V. (AEX-Effectenbeurs N.V.; *AEX* for short). The *AEX* is the outcome of a merger at the end of 1996 of three pre-existing institutions: the Amsterdam Stock Exchange (*de Amsterdamse Effectenbeurs*) the European Option Exchange (*de Europese Optiebeurs*) and the Financial Futures Market Amsterdam (*de Financiële Termijnmarkt Amsterdam*). At the same time, the governance structure of the exchange has been changed from a members' organisation to a straight commercial venture, a joint-stock company (NV), with share capital that will be listed in the near future. Currently ownership of the parent company, the *Amsterdamse Beursholding*, is as follows:

- members of the *Vereniging voor de Effectenhandel* (50%)
- institutional investors (25%)
- listed firms (25%)

This major change has coincided with a considerable upheaval in the regulatory structure. In particular, a working agreement reached between the *AEX* and the *STE* (*Stichting Toezicht Effectenverkeer*) in December 1996 confirmed a major shift away from self-regulation by the exchange to regulation by an independent outside body, the *STE*, whose supervisory role is now much broader than it has been to date. Responsibilities of the *AEX* and the *STE* have been divided as follows. The *STE* will carry out all control and supervision tasks that are not "exchange-specific"; in particular, it will now be in charge of vetting and licensing those who want to participate in securities trading, thus in effect controlling access to exchange membership. The *STE* will also monitor and verify the *maand- en kwartaalrapportages* (monthly and quarterly financial reports) of member firms; these are used to determine whether firms are financially sound enough to meet the criteria for permission to trade on own account or, in general, to engage in exchange-traded securities business. Meanwhile, the compliance division of the *AEX* will continue to monitor members' day-to-day position-taking. The *AEX* will also continue to take charge of evaluating candidates for a new listing, and approve prospectuses and other documents put forth by firms who issue listed securities.

The impetus for this shift away from self-regulation is partly derived from public perception of past failures. In two notorious cases of bankruptcies of securities houses, the exchange members' self-regulatory body (the *vereniging voor effectenhandel*) had failed to take action despite clear signs that there were problems. The Nusse Brink case concerned a firm that was allowed to continue trading for own account even when its equity capital fell below the prescribed norm; the authorities failed to verify the financial information provided by the firm despite clear signs of administrative failures within it. In the case of Regio Effect, its directors were accepted as exchange members even though it was known that they had been denied options exchange membership and fired from their previous banking jobs because of a massive suspected fraud involving options contracts. They subsequently continued with a host of unauthorised and fraudulent practices (misappropriation of clients' funds, misleading disclosures of their financial position,

settlement at false stock prices, etc.); the authorities were extremely slow to respond to signs of these activities thrown up by routine monitoring.

At the same time, the conversion of the exchange into a commercial organisation also makes a self-regulatory approach to supervision less appropriate.

Formally, the supervision of securities trading is the responsibility of the Ministry of Finance. The Minister, however, has delegated most of his tasks and authorities to the *STE*, which in turn supervises the selfregulation by the exchange. Some changes to the current version of the law governing securities business (the *Wet Toezicht Effectenverkeer 1995*, or *WTE* for short) are required to delimit the areas of competence and adjust to the new regime<sup>7</sup>. A revised *WTE* is currently being debated in parliament.

Meanwhile, some further changes are expected in the longer term to cope with the increased degree of integration between banking, securities business and insurance. Many integrated Dutch financial firms, such as Fortis and ING, are commingling these activities, necessarily creating overlap between the authorities responsible for supervision, and creating an impetus for a possible future merger of the three relevant authorities:

- the *STE* for securities business;
- *De Nederlandsche Bank* for banking supervision; and
- the *Verzekeringkamer* for insurance companies.

So far cooperation between these authorities is mostly limited to producing a joint register for vetting individuals who wish to run businesses in these areas. An added reason for integration of the three authorities is that financial fraud so often has an international dimension. The Bank for International Settlements has recently suggested that placing supervisory authority in one hand within each country would facilitate liason among supervisors in different countries.

### **Listing requirements**

As of January 1 1997, the Minister of Finance has awarded the status of “competent authority” for purposes of the evaluation of new candidates for listing to the *AEX*<sup>8</sup> (formerly, the *vereniging voor effectenhandel* was in charge). Firms who want a listing must sign the *Fondesenreglement*<sup>9</sup> and the *Modelcode*. The *Fondesenreglement* sets down trading rules and listing requirements such as the size and composition of the capital issued, and the contents of the prospectus. The

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<sup>7</sup> For example, the *STE*'s denial of a licence to a securities firm was challenged in court in April 1997.

<sup>8</sup> Despite some dissent from the *STE*, which felt that the new exchange holding company has a commercial interest in evaluating potential new listings. An interesting possibility will soon arise: will the *AEX* be evaluating its own listing prospectus in the near future?

<sup>9</sup> An ongoing dispute concerns the listing agreement of CSM, a company which has refused to sign a section of the *Fondesenreglement* forbidding the use of ‘niet-royeerbare certificaten’ as a takeover defense measure. CSM has been using this device for 60 years. The exchange has tried to terminate CSM’s listing unilaterally; but this decision has been successfully challenged by CSM in court.

*Modelcode* contains agreements about, among other things, trading in the listed company's own shares and options by company officials. These rules, developed over time by the *vereniging voor effectenhandel*, form the basis for trading on the *AEX*.

Since the abolition of the Officiële Parallelmarkt in October 1993 there has been only a one-tier market on the Amsterdam Exchanges. Just recently a second tier has been established by the foundation of the New Market Amsterdam (*Nieuwe Markt Amsterdam: NMAX*) segment of the *AEX*. The listing requirements on the *AEX* main market (*Officiële Markt*) are:

- a history of at least five years.
- in at least three of these five years a profit must have been reported.
- at least f10.000.000 equity capital.
- at least 10% of the equity capital must be available for trading with a market value of at least f10.000.000.
- a listed firm has to be a *N.V.* or a *cooperatie*.
- a listed firm has to obey to additional requirements set down in the *fondsenreglement*.

The listing requirements on the *Nieuwe Markt* are:

- a history of at least three years.
- at least ECU 1.000.000 equity capital.
- at least ECU 1.000.000 (market value) of the equity capital must be available for trading.
- quarterly disclosure.
- the same additional requirements set down in the *fondsenreglement* apply.
- lock-up: initial shareholders with a stake larger than 5% are not allowed to sell shares during a certain period.
- a sponsor (bank or brokerage house) is required during the first three years of listing.

The *Nieuwe Markt* is linked to the French and Belgian second-tier markets in the *Euro-NM* initiative, an attempt to develop a unified trading forum for small European companies.

The rules with respect to the distribution of information before a public offering are framed in the *Fondsenreglement*. Some rules are: an unlisted security is not eligible for trading until a prospectus has been published (article 8). The prospectus must be published: a) in a Dutch newspaper that is distributed nationwide or has a large circulation, or b) as a brochure which must be available free of charge to the general public (article 20, paragraph 2). Every new potentially price-sensitive fact that becomes known during the period in between the determination of the contents of the prospectus and the first day of trading, must be published in a supplementary document (article 21, paragraph 1).

### **Insider trading**

Rules regarding the use of inside information are framed in article 46 of the current law on the supervision of securities trading, the *Wet Toezicht Effectenverkeer 1995*. In addition, the *Modelcode* that forms a part of the *AEX* listing agreement bans

trading by high-ranking company officials at sensitive times such as the period around the publication of company financial results.

At the moment proposals for amendment of the law are under consideration by the parliament. The proposed changes would lighten the burden of proof somewhat, as it has proved extremely difficult to prosecute even blatant cases of misuse of inside information successfully. In particular, the prosecutor will no longer need to prove that it was clear in advance how the stock price would move. There is also some debate about making it possible for insider trading to be prosecuted under civil rather than criminal law, which a correspondingly less stringent burden of proof. In addition, the law is to be more closely aligned with European guidelines; and the prohibition is to be extended to initial public offerings. There are also proposals regarding a *meldingsplicht* (obligation to disclose) for securities trading by certain individuals, including supervisory board members (*commissarissen*) and executives, associated with the issuing firm. Some other issues that are being debated are the regulation of employee share option plans to prevent related insider trading, the recognition of “Chinese walls” within banks and securities firms (so that a division can still trade even if price-sensitive information exists elsewhere in the firm), share issuance and underwriting procedures, and clarification of the legality of building up stakes in a company that is to be taken over.

The rules are enforced as follows. Suspicious dealings, possibly uncovered by the exchange’s routine surveillance procedures, are investigated by the *STE*, in co-operation with the Ministry of Finance’s *Economische Controle Dienst* and the *Openbaar Ministerie* or *OM* (which prosecutes suspected offenders if the evidence is strong enough).

The *OM* is severely understaffed and therefore quite slow, and it has in the past not always taken a very tough line<sup>10</sup>. Moreover the burden of proof is very high, and the collapse of an important insider trading case (HCS) generated a public perception that inside information can be abused with impunity in The Netherlands. More recently, in the Weveler case in 1997, the *OM* has been more successful, obtaining a conviction in a case without absolute proof or incriminating witness declarations, just strong circumstantial evidence. Several other well-publicised cases are currently pending.

Possible penalties for insider trading include fines, disgorgement of profits and a prison sentence.

### **Takeover rules**

Rules regarding conduct in takeover situations are spelled out in the Merger Conduct Code of a national body, the Social and Economic Council (the *sociaal economische raad* or *SER*). This code gives rules for negotiations leading up to a possible merger

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<sup>10</sup> In a case that came to public attention as a result of journalists’ efforts in February 1997, the public prosecutor had in 1995 agreed to a quiet settlement even though the defendant admitted guilt and the facts of the case were unambiguously established. Only after the case came to light in 1997, was the person concerned (a senior ABN-Amro bank employee) forced to step down from his job.

or participation. The Merger Conduct Code is designed to protect two parties: shareholders and employees. With respect to shareholders: (i) all holders of shares for which a bid is made should have access to as complete and accurate as possible information regarding the merits of the bid; (ii) they should all receive equal opportunities to accept or reject the bid; (iii) unjustified gains to inside shareholders as a result of inside information should be prevented. Preventing the abuse of inside information is achieved by obliging every managerial and supervisory board member of the company involved to notify the above mentioned *SER* of their shareholdings and their transactions therein (both direct and indirect) during the six months preceding the merger announcement. If a third party makes a higher bid in the meantime, the management of the company that is taking over must promptly make public the measures on its part to which this bid gives rise. To shareholders who retain their shares after the bid, no higher bid may be made during the three following years, other than with the permission of the *SER*-commission or in regular stock exchange trading. In early 1996 the *SER* brought out an advisory document, proposing, amongst other things, to give a legal foundation to the *SER* merger rules. This could ameliorate a number of deficiencies in the rules.

As mentioned before, the listing agreement with the *AEX* also places some limits on companies' arsenal of defenses against hostile takeovers, as well as on trading by insiders.

### **Auditors**

The annual and semi-annual financial reports published by companies are subjected to auditor scrutiny before release. In recent years some auditing firms have changed their structure to create limited liability. There are some well-known cases where auditors have been brought to court, for example, the Smit-Trafo initial public offering and the Vie d'Or case.

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Tabel 3  
Bedrijven naar activiteit en rechtsvorm, 1993  
Enterprises by activity and legal form, 1993

SBI 1993	Totaal	Rechtsvorm								Overheid	Overige (incl. onbekend)
		Naamloze vennootschappen	Besloten vennootschappen	Coöperatieve vereniging	Stichtingen	Eenmanszaken	Maatschappen	Vennootschappen	Overheid		
Totaal	596020	905	127405	1645	17725	235530	5270	73095	2200	132	
A Landbouw, jacht en bosbouw											
01 Landbouw en jacht	119710	0	970	155	15	5250	20	1505	0	111	
02 Bosbouw; dienstverlening tbv de bosbouw	485	0	50	5	10	335	0	75	0		
05 Visserij, kweken van vis en schaaldieren	740	0	280	0	0	160	5	275	0		
C Delfstoffenwinning											
10 Turfwinning	10	0	5	0	0	0	0	0	0		
11 Aardolie- en aardgaswinning	85	0	60	0	0	0	0	0	0		
14 Zand-, grind-, klei-, zoutwinning	105	0	80	0	0	10	0	15	0		
D Industrie											
15 Voedingsmiddelen en drankenindustrie	6090	10	1765	65	20	2050	0	2025	0		
16 Tabakverwerkende industrie	20	0	15	0	0	5	0	0	0		
17 Textielindustrie	1255	5	495	0	0	570	0	160	0		
18 Kleding- en bontindustrie	2170	0	355	0	0	1530	0	255	0		
19 Leer-, lederwaren- en schoenindustrie	445	0	180	0	0	190	0	65	0		
20 Hout-, kurk-, rietindustrie	2020	0	660	0	0	1030	0	300	0		
21 Papier(waren) en karton(waren)	240	5	195	0	0	20	0	10	0		
22 Uitgeverijen, drukkerijen, reproductie	6270	10	2800	10	150	2235	0	965	0	1	
23 Aardolie- en steenkoolverwerkende industrie	25	0	20	0	0	0	0	0	0		
24 Chemische industrie	625	10	485	0	0	85	0	25	0		
25 Rubber- en kunststofverwerkende industrie	1165	5	795	0	5	215	0	110	0		
26 Glas, aardewerk-, cement-, kalkindustrie	1265	5	655	0	0	415	0	175	0		
27 Basismetallindustrie	165	0	130	0	0	25	0	5	0		
28 Metaalproductenindustrie	6020	5	2780	0	0	2355	0	770	0	1	
29 Machine en apparatenindustrie	3515	15	2185	5	5	885	0	355	0		
30 Kantoomachine en computerindustrie	200	0	85	0	0	80	0	30	0		
31 Overige elektrische apparatenindustrie	950	0	510	0	0	325	0	95	0		
32 Audio-, video-, telecom-apparatenindustrie	190	0	100	0	0	60	0	20	0		
33 Medische en optische apparatenindustrie	1615	5	660	0	5	630	5	275	0		
34 Auto-, aanhangwagen- en opleggerindustrie	510	0	295	0	0	150	0	55	0		
35 Overige transportmiddelenindustrie	1240	5	440	0	0	610	0	175	0		
36 Meubel- en overige industrie n.e.g.	5045	0	1145	5	50	2995	0	695	95		
37 Voorbereiding tot recycling	40	0	30	0	0	0	0	5	0		
E Openbare voorzieningsbedrijven											
40 Openbare energievoorzieningsbedrijven	130	70	30	10	0	0	0	5	10		
41 Waterleidingbedrijven	30	20	0	0	0	0	0	0	5		
45 Bouwnijverheid	40875	10	12940	20	10	20460	0	7090	0	34	
G Reparatie consumentenartikelen; handel											
50 Handel, reparatie auto's en motorfietsen	19340	10	6045	5	10	9795	0	3210	0	27	
51 Groothandel en handelsbemiddeling	48105	80	23060	200	10	17535	5	5650	0	157	
52 Detailhandel (incl. reparatie)	87090	5	12900	30	220	52140	10	20835	0	95	
55 Horeca	37220	15	3855	30	320	21980	5	10385	5	62	
I Vervoer, opslag en communicatie											
60 Vervoer over land	10865	20	3795	285	10	3905	0	2705	10	132	
61 Vervoer over water	5435	5	670	5	5	2845	45	1720	0	132	
62 Vervoer door de lucht	100	5	45	0	0	30	0	5	0	12	
63 Dienstverlening t.b.v. het vervoer	4445	10	2215	90	95	1275	0	345	15	402	
64 Post en telecommunicatie	990	20	275	50	45	415	0	85	80	12	
J Financiële instellingen											
65 Financiële instellingen (excl. verzekering)	1810	120	1470	10	45	30	0	15	20	102	
66 Verzekeringswezen en pensioenfondsen	605	90	90	205	85	5	0	5	0	122	
67 Activiteiten tbv financiële instellingen	8400	60	4440	20	175	2655	15	810	0	222	
K Verhuur en zakelijke dienstverlening											
70 Verhuur van en handel in onroerend goed	17510	130	12375	55	495	2785	25	825	80	735	
71 Verhuur van roerend goederen	3765	5	1140	20	5	1970	0	585	0	45	
72 Computerservice, informatietechnologie	6265	5	2045	10	40	3180	10	805	0	170	
73 Research	830	5	275	5	230	190	5	55	5	60	
74 Overige zakelijke dienstverlening	53365	35	15150	150	880	29005	1385	5700	30	1035	
75 Openbaar bestuur, sociale verzekeringen	1300	0	10	25	60	15	0	0	1140	50	
80 Onderwijs	16400	5	645	10	4050	8360	15	770	450	2095	
85 Gezondheids- en wetzijnszorg	38630	5	2800	30	7055	19520	3700	365	75	5075	
O Cultuur, recreatie en overige dienstverlening											
90 Milieudienstverlening	410	5	165	5	5	45	0	30	150	10	
91 Ideële en belangenorganisaties	2745	0	55	75	1135	40	0	15	5	1420	
92 Cultuur, sport en recreatie	10410	75	1835	35	2325	1640	15	565	25	3900	
93 Overige dienstverlening	16750	0	855	15	135	13510	10	2055	0	170	

Figure 1a (ownership)

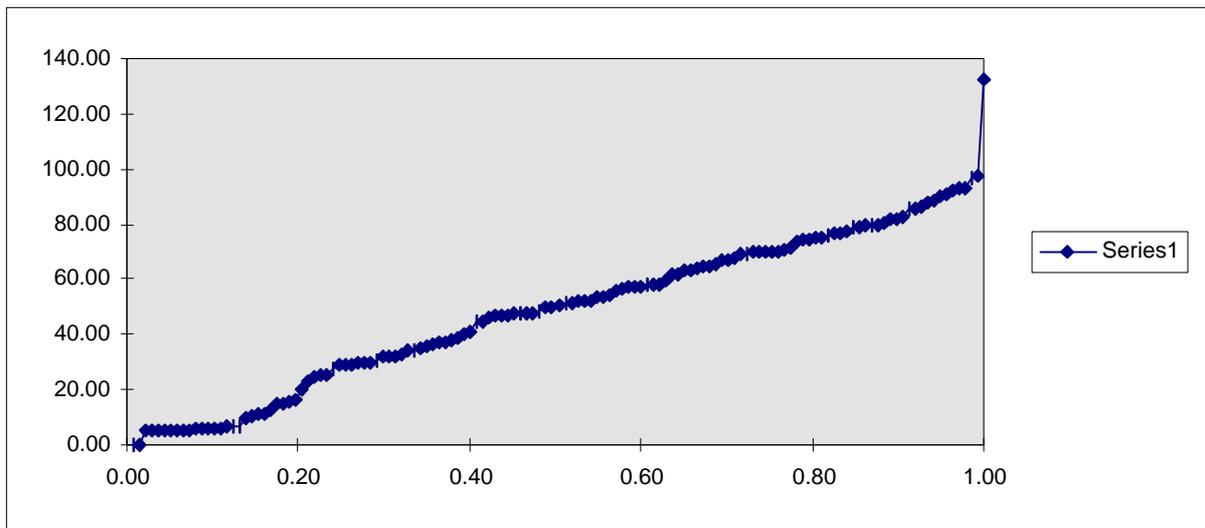


Figure 1b (control)

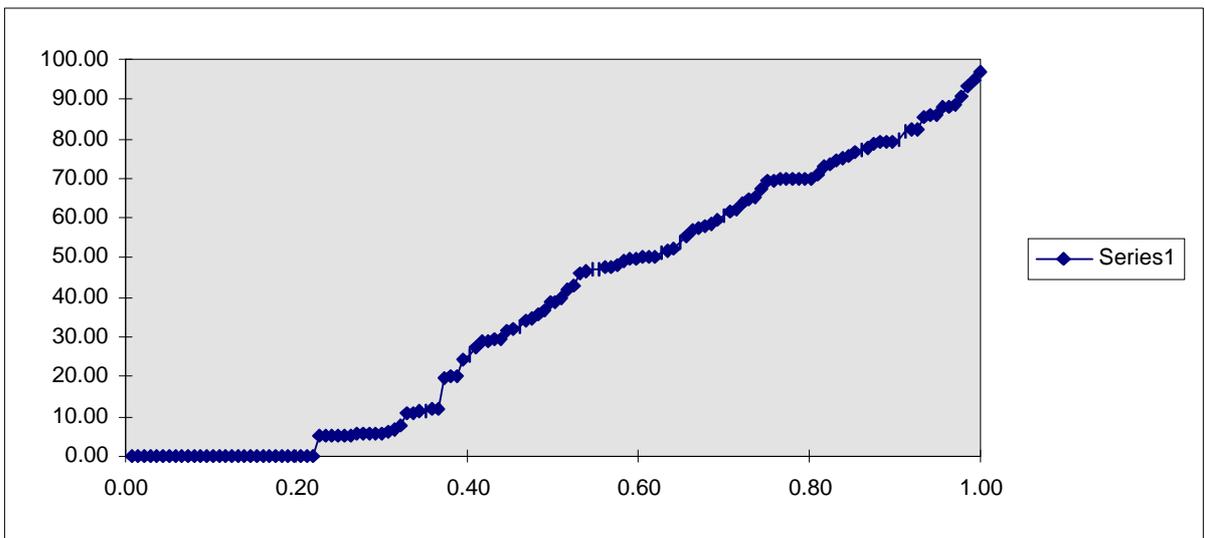


Figure 2a (ownership)

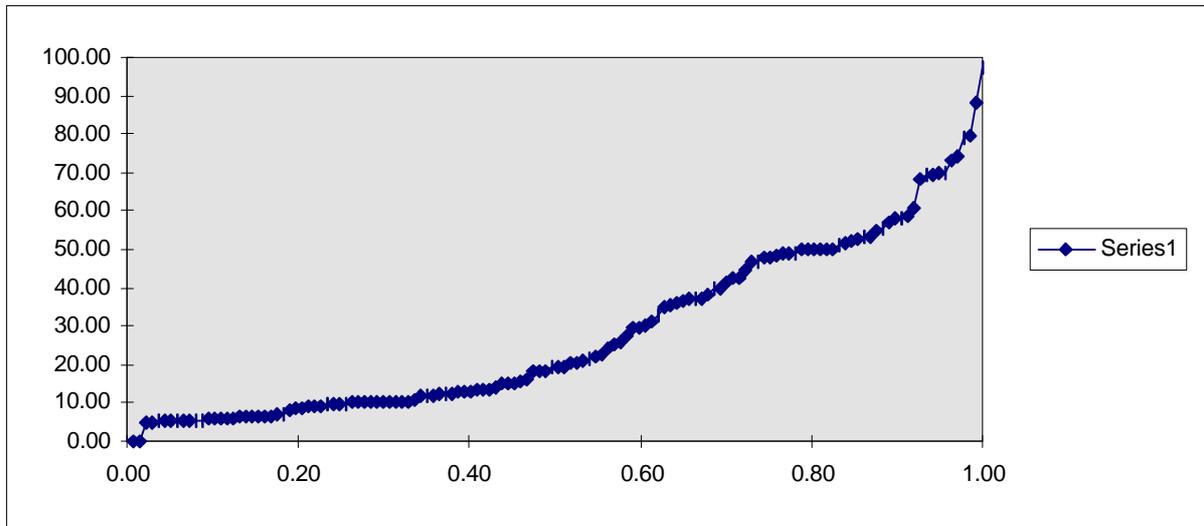


Figure 2b (control)

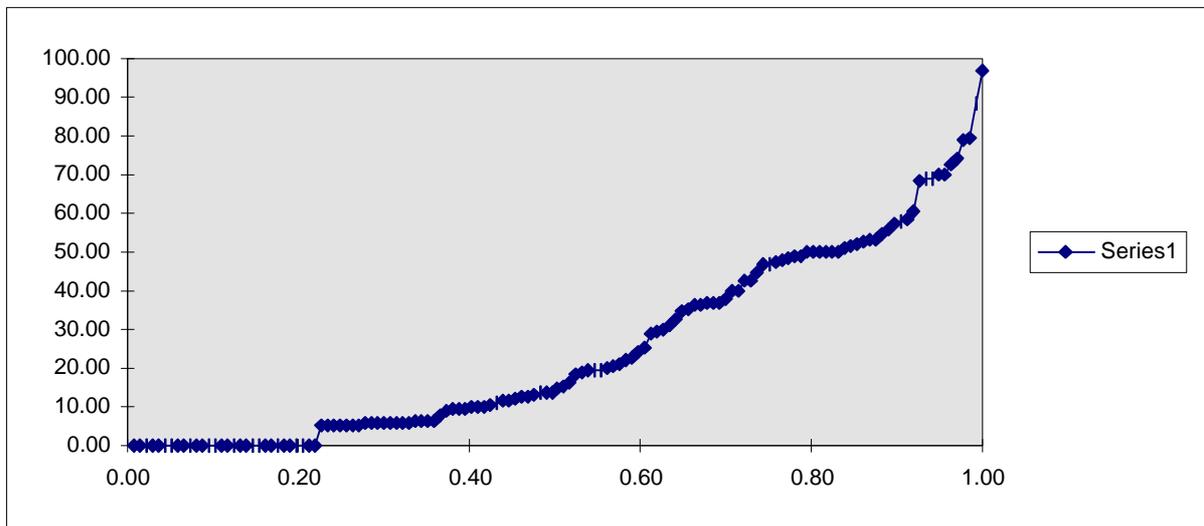


Figure 3a (ownership)

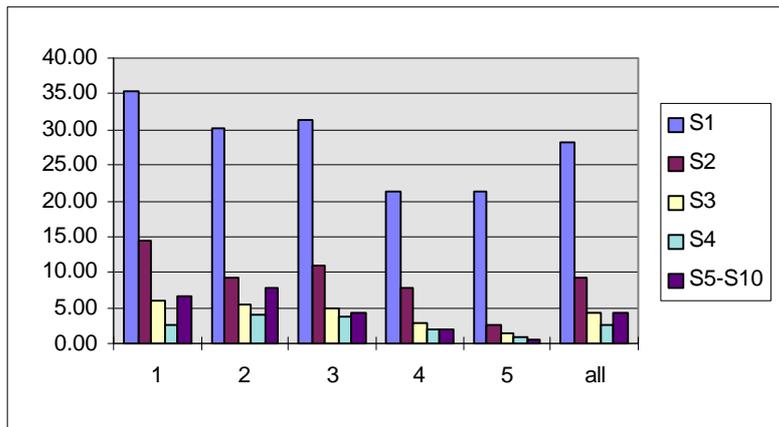


Figure 3b (control)

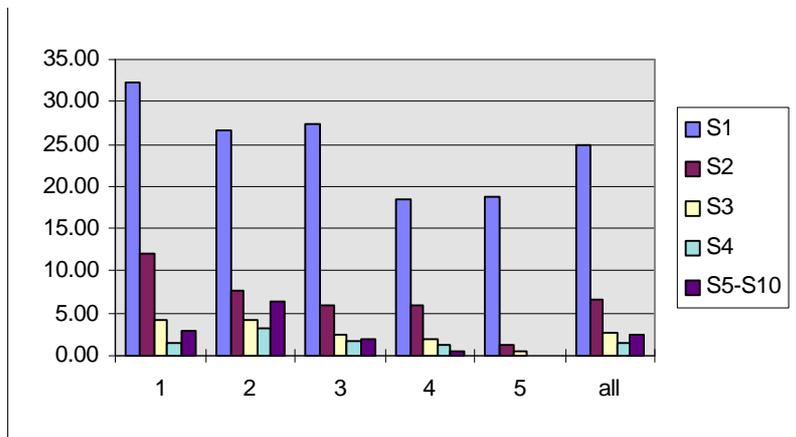


Figure 4a (ownership)

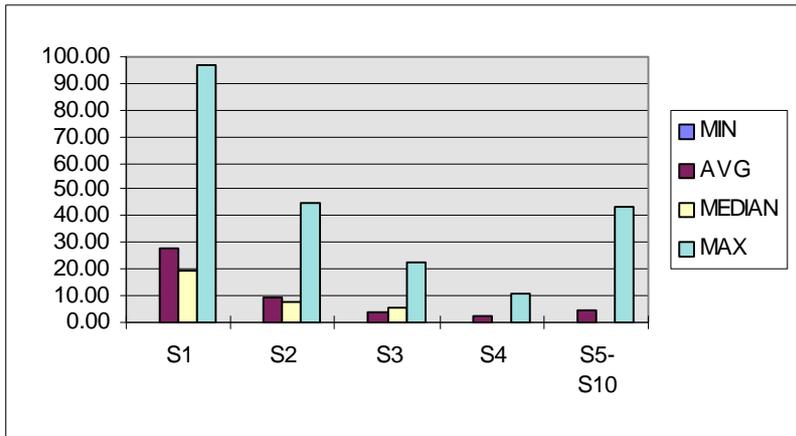
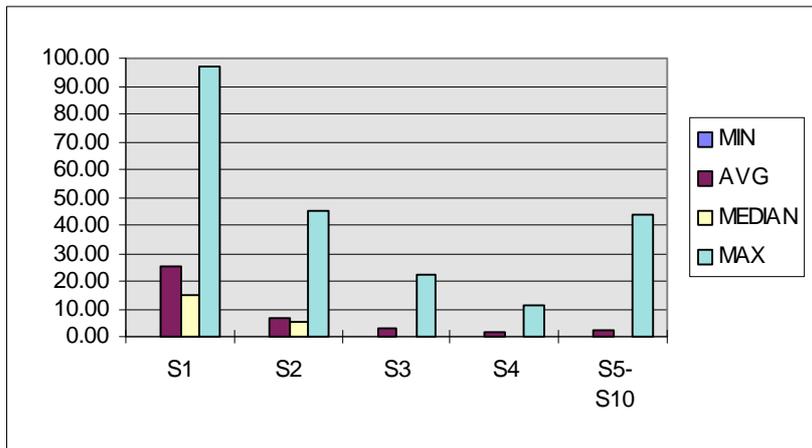


Figure 4b (control)



# European Corporate Governance Network

## A Survey on Spanish Corporate Governance Rules, Statistics and Institutions

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## 1. Introduction

This survey is structured following the guidelines proposed by The European Corporate Governance Network. The institutional information is provided through crossed tables for those cases where information on company types was coming from different sources. The quantitative data is reported whenever available, even if it is incomplete or biased. In all cases the reference year is 1995, except for Board composition where data refers to 1994.

We present First a few tables that make possible to compare some characteristics of governance structures by different legal forms. There are also some descriptive tables concerning the relative importance of specific legal forms. Next section refers to the institutional aspects of ownership structure such as company law, accounting rules and transposition of the Transparency Directive. Furthermore there are quantitative tables on ownership structure for a sample of Spanish listed companies, the only type of firms for which the information is available. We also provide descriptive information for the legal definition of groups, with a special reference to the difficulties of defining groups given the information at hand. We have done a few tables based on a small sample, for board size and composition. There are, finally, two tables where we summarise the importance of formal take-over activity in Spain.

## 2. Legal forms

### 2.1. *Company Types and Groups*

#### 2.1.A. Legal forms and information requirements

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Legal Forms.	COOPERATIVES	LABOR MANAGED FIRMS	COMPANIES	COMPANIES with LIMITED LIABILITY	COMPANIES with UNLIMITED LIABILITY	SINGLE OWNER ENTERPRISES
Names of the legal forms:	<ul style="list-style-type: none"> <li>• "Sociedad cooperativa" de primer grado:</li> <li>• "Sociedad cooperativa" de segundo y ulterior grado.</li> </ul>	Sociedad Anónima Laboral	Sociedad Anónima	Sociedad Limitada	<ul style="list-style-type: none"> <li>• Sociedad Regular Colectiva. (SRC)</li> <li>• Sociedad en Comandita por Acciones (S. Com. Por A.)</li> </ul>	"Empresario Individual" or Autónomo
Main features: limited versus unlimited liability	<ul style="list-style-type: none"> <li>• Governed by the "free adherence", "voluntary give up" and "democratic management" principles.</li> <li>• Limited liability is feasible. This characteristic has to be expressed in the name of the legal form.</li> <li>• Unlimited liability is possible.</li> </ul>	<ul style="list-style-type: none"> <li>• Workers with unlimited and full-time contract have to own at least 51% of the Capital.</li> <li>• 25% of the capital is the maximum stake allowed for a single owner. (There is an exception rule for Government entities, 49%).</li> <li>• Limited liability.</li> </ul>	Limited liability	Limited liability	<ul style="list-style-type: none"> <li>• Unlimited liability for "collective" members. (SRC), all members and some owners in (S. Com. Por A.)</li> <li>• Limited liability for "non collective members in (S. Com. Por A.)</li> </ul>	Unlimited liability
Minimum capital	Variable	10.000.000 Pts.	10.000.000 Pts.	500.000 Pts.	None	None
Smallest number of owners	First level: 5 owners, Second level: two co-operatives	4 owners			At least One <i>collective</i> member (with unlimited liability) in "Sociedad en Comandita"	
Smallest number of managers	"Consejo Rector": 3 members	Variable. Decided by the General Meeting and statutes. For more than 2 members there is a Board of Directors.	Variable. Decided by the General Meeting and statutes. For more than 2 members there is a Board of Directors.	Variable. Decided by the General Meeting and statutes. For more than 2 members there is a Board of Directors.		

## 2.1.B. Groups. Legal definition.

Companies that have to report consolidate accounts as a group

According to the Spanish Company Law a firm belongs to a group if one of the following conditions take place:

- There is a majority of voting rights (direct plus indirect shares)
- There is the right to appoint or remove the majority of the management Board Members.
- Exists a majority of votes through internal contractual arrangements among shareholders
- Appointed a majority of Board Members with its own votes. For this purposes the law considers current Board members and the named during the last two years.

2.2. *Basic Population Statistics*

## 2.2.A. Number of Companies by legal Form. 1995

Legal Form	Number
Sociedades Anónimas (S.A.)	116.888
Sociedades Limitadas (S.L.)	326.644
Sociedades Regular Colectiva (S.R.C.)	604
Sociedades Comanditarias (S. Com.)	85
Cooperativas	16.494
Sociedades Anónimas Laborales (S.A.L.)	5.939
Empresario Individual (Autónomo)	1.086.256

Source: Anuario El País 1997

## 2.2.B. Number of Companies by Activity Sector. 1995

NACE	Activity Sector	Number of Companies
0	griculture, livestock, hunting, forestry and fishing.	7.756
1	ergy and water.	1.893
2	traction and transformation of non-energy producing minerals and derived products. Chemical industry..	20.014
3	etal transforming industries. Precision mechanics	61.196
4	ther manufacturing industries.	161.849
5	onstruction.	110.672
6	ommerce, restaurants and hotel business. Repairs.	1.037.843
7	ansportation and communications.	113.141
8	nancing, insurance, company service and rental institutions.	123.587
9	ther services.	178.247

Source: Anuario El País 1997

## 2.2.C. Size

Not available the size distribution by legal forms.

There is only information on the N (1.000, 3.000) largest companies, which is obtainable from different private sources, some on CD-Rom, other in paper format.

## 2.2.D. Age

Information not available.

3. **Ownership Structure and voting Rights**3.1. *Ownership Disclosure Rules*

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3.1.A. Company Law

Company Law	COOPERATIVES Sociedad cooperativa	LABOR MANAGED FIRMS Sociedad Anónima Laboral	COMPANIES Sociedad Anónima	COMPANIES with LIMITED LIABILITY Sociedad Limitada	COMPANIES with UNLIMITED LIABILITY Sociedad Colectiva y Comanditaria
Register when a company is founded.	Co-operatives Register. For Insurance Co-operatives a previous authorisation by the Ministry of Economy is required.	Administrative Register at Dirección General De Cooperativas y SAL., Companies Register Registro Mercantil.	Companies Register Registro Mercantil.	Companies Register Registro Mercantil.	Companies Register Registro Mercantil.
Documents that the company have to deposit:	Public Inscription of the statute in the Companies Register.				
Legal procedure for transferring shares				Account annotations in the company. Document Shares. These can be nominative or bearing without person's name	
Limits on the Directors to hold ownership certificates of the company	No	No	No	No	No
Company notification for acquisitions or holdings of a stake in another company	No	No	No	No	No
Is the list of the owners deposited ?	Yes, in the Creation Statute (Escritura Pública)	Yes, in the Creation Statute (Escritura Pública)	No. Only the founder's names and Directors		Only for Collective members
Where is the registration data transmitted?	Instituto Nacional de Fomento de la Economía Social Ministerio De Economía Y Hacienda Federaciones de cooperativas.	Instituto Nacional de Fomento de la Economía Social Ministerio De Economía Y Hacienda	No transmission is done. BORME (Boletín Oficial del Resgistro Mercantil)		
Are the company Register Centralised?	Centralised in the Direccions General de Cooperativas y SAL Exception for Catalunya, Basc Country, Valencia and Andalucia	Centralised in the Direccions General de Cooperativas y SAL Exception for Catalunya, Basc Country, Valencia and Andalucia	Centralised only for Headlines and general information when inscribed Detailed information at provincial level	Centralised only for Headlines and general information when inscribed Detailed information at provincial level	Centralised only for Headlines and general information when inscribed Detailed information at provincial level

## 3.1.B. Accounting Rules

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Ownership information that companies must enclose in the annex of their annual reports	None
Which national law transposed the accounting standards directives ?	Law 19/1989 “de reforma parcial y adaptación de legislación mercantil...” RDL 1564/89 (22 dec. 89) Ley de Sociedades Anónimas
Has the Member State imposed additional requirements via its national accounting standards?	No
Is the information from this source only available on paper (the printed annual report) or in computer readable form?	Available on paper. Available on computer readable format for Listed companies.
Is the information from the different sources consistent?	Not usually

## 3.1.C. Competition Rules

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Are there any competition (anti-trust) rules on ownership stake notifications that apply to the companies?	Only for Mergers or acquisitions in the same industry
To whom do the companies have to notify and where is this data published ?	To the “Tribunal de Defensa de la Competencia” (Anti-trust)

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3.1.D. Transparency Directive

When was the Transparency Directive transposed?	22/03/89
When did the legislation become effective?	15/11/89
Which are the “competent authorities or authorities” referred to in Article 13?	CNMV
What are the reporting thresholds that were chosen?	Minimum 5% and successive increases or decreases
Is the first time notification threshold referred to in Article 5 10% or lower?	5%
Do natural persons or legal entities have to notify why they notified	No
How much time may pass between crossing a threshold and reporting to the company	7 days
How much time may pass between the notification of the company (and the competent authority/authorities) and the notification of the public.	Immediate
Who notifies the public; Art. 10(1)	<ul style="list-style-type: none"> <li>• The Company, when shareholders require it</li> <li>• Stock Exchanges</li> <li>• CNMV</li> </ul>
Does the national law prescribe that “a company must also be informed in respect of the proportion of the capital held by a natural person or legal entity”; Art. 4(1)(3)?	Yes
By what means are the company and the competent authority/authorities notified; Art. 4(2)?	Standardised Form
How does the competent authority store the notifications (paper, computer)?	Computer
In addition to the immediate distribution mentioned in the does the competent authority distribute the notifications	<ul style="list-style-type: none"> <li>• Upon request</li> <li>• On the screen in the CNMV</li> </ul>
Does the competent authority/authorities have to declare how often it has applied the waiver rule set out in Article 11 (and for which natural person, legal entity)?	No
What are the sanctions mentioned in Article 15?	Limits or restrictions in trading on the stock market
How are these sanctions applied?	<ul style="list-style-type: none"> <li>• Applied by the CNMV</li> <li>• Very Important infractions up to 5 years of exclusion</li> <li>• Unimportant infractions one year exclusion</li> </ul>

### 3.2. *Quantitative analysis*

#### 3.2.A. Companies

##### a) Non Listed Companies

We do not have quantitative information for a sample of non listed companies.

There exists a sample of all kind of companies called the “Central de Balances del Banco de España”, managed by the Studies Service of the Central Bank and is collected via questionnaires. This is not a publicly available information in a company by company basis.

As mentioned in the information requirements of the company law, there is an obligation to report accounting information to the Register. This is only available on paper, company by company and the information decentralised in more than 50 offices. This is an information required by law although firms break this law often. (recently appeared information on the newspapers that one third on the companies never sent information to the register).

Accounting information could be collected via agreements with commercial companies that provide all kind of information to other firms. In this case, the cost of doing this would depend on the arrangement conditions.

##### b) Listed Companies

Listed companies have to report accounting, ownership and board information to the Securities and Exchange Commission (CNMV). The quality of information depends on the reports and forms sent by the companies. In general, there is no monitoring in the CNMV concerning accounting, ownership and board

information. The lack of records for some companies, the deficient reporting for some fields of information in others, and the absence of information on some share transactions by relevant shareholders decrease significantly the number of companies that may be included in balanced samples.

The information is available from November 1989 up to date.

#### ◆ Direct Holdings

#### ◇ *Average Ownership by Investor and Size Classes*

Before to report information on ownership structure is important to mention the characteristics of the data set form the main source of information, the Spanish securities and exchange commission. The full data set on listed companies we use, provided by the CNMV, has ownership information on 721 companies. The sector of activity distribution is shown in the table.

**Table 1.****Number of companies by sector in the initial data set**

Sector of economic activity	Number
Agriculture and Fishing	4
Utilities, Mining and Electricity production	30
Basic Metals	21
Cement and Building Materials	18
Chemicals	21
Metal Manufacturing	41
Other Manufacturing (Food, paper,...)	77
Construction	14
Commerce and Services	34
Transport and Communications	20
Property	62
Financial and Insurance	379
Banking	48
Insurance	14
Investment Trusts	307
Investment Companies	5
Real State Financing	5
Total	721

This initial number of companies with available information on ownership structure is biased (more than 40% of cases and 307 companies) toward the financial sector. This number reduces to 394 when we cross ownership data with market value information. The reasons that explain this are the errors in sector classification, cases where the aggregated known ownership structure was higher

than 100%, differences in data codification among stock exchanges and CNMV and related problems that make impossible to have full identification for some companies,

The percentile breaks, in terms of market value (10<sup>9</sup> Pts.) are shown in the following table

**Table 2.****Number of companies (final data set) by market capitalization (10<sup>9</sup> Pts.)**

Market Value	Percentile	Number
MV < 0,224	≤ 5%	20
0,224 ≤ MV < 0,267	5% - 10%	21
0,267 ≤ MV < 0,440	10% - 25%	59
0,440 ≤ MV < 3,022	25% - 50%	98
3,022 ≤ MV < 20,736	50% - 75%	98
20,736 ≤ MV < 91,150	75% - 90%	58
91,150 ≤ MV < 476,254	90% - 95%	20
176,254 ≤ MV	≥ 95%	20
Total		394

We report information on market value as a size basis in order to have a higher number of companies in our sample. When we cross information on ownership structure with accounting data as Total Assets or Total Sales the number of companies with complete information decreases below 100. This figures have a strong relationship with the concept of Active Companies used by the CNMV which refers to those companies that have a minimum of trading days or a minimal effective trading on the stock exchange markets. Some companies do not report all accounting information that required, and for some cases is necessary to complete the reported data with sources different from the CNMV.

**Table 3.****Companies listed on the Spanish stocks exchange equity segment**

	1991	1992	1993	1994	1995
Total	868	801	763	652	615
Electronic Market	122	124	121	127	127
Outcry Market	746	677	642	525	488
Active Companies	715	665	616	608	585

The aggregated market value of the 394 companies included in our sample is 19.308 (10<sup>9</sup>) Pts. which represents the 88% of the electronic market capitalisation in 1995, and the .81.7% of the total (all stocks markets) capitalisation.

**Table 4.****Capitalization on the Spanish stocks exchange equity segment (Pta. Billion)**

	1991	1992	1993	1994	1995
Total	14902.2	13961.1	21253.1	20895.1	23629.3
Electronic Market	12508.4	12193.8	19705.9	19319.1	21929.1
Outcry Market	2393.8	1767.3	1582.7	1576.0	1700.2

The distribution of ownership structure by type of investors is done according to the information contents on the files of CNMV. At the first level we are able to distinguish foreign investor from Spanish ones. Among the Spanish investors is possible differentiating individual investor from Companies. These companies are identified as non financial or financial. Finally the financial companies are categorised as banking and financial non banking.

**Table 5****Ownership structure. Percentage of direct shares owned by the largest investor for investor type and Size**

Size Percentile	Number	Total	Type of Investors				
			Banking	Financial other than Banking	Foreign	Non Financial Companies	Individuals
< 10%	41	24,53	0,58	3,42	5,10	12,59	12,94
10% - 25%	59	26,47	0,09	2,72	1,82	13,95	16,46
25% - 50%	98	27,29	2,90	4,74	4,35	15,67	9,83
50% - 75%	98	29,51	7,19	9,78	9,50	14,29	3,86
75% - 90%	58	44,42	9,48	12,33	7,82	26,04	4,34
90% - 95%	20	37,34	8,05	8,05	10,10	19,06	4,67
≥ 95%	20	23,51	2,17	2,37	7,41	17,15	0,19
	394	30,27	4,50	6,72	6,29	16,52	8,10

◇ *Average Ownership by Investor and Sector of Activity Classes*

**Table 6**  
**Ownership structure. Average percentage of direct shares owned by**  
**the largest investor for investor type and sectors of activity**

Sector	Number	Total	Type of Investors				
			Banking	Financial other than Banking	Foreign	Non Financial Companies	Individuals
Agriculture and Fishing	3	38,74	0,00	0,00	6,99	38,74	0,00
Utilities, Mining and Electricity produc.	22	40,56	6,65	8,00	5,05	34,64	0,65
Basic Metals	6	26,84	8,81	15,83	4,82	12,15	0,22
Cement and Building Materials	14	38,29	1,61	2,53	13,96	28,49	2,33
Chemicals	9	21,02	2,26	4,39	2,34	20,90	2,27
Metal Manufacturing	22	33,65	1,34	2,60	21,74	11,72	3,59
Other Manufacturing (Food, paper,...)	49	29,48	1,54	2,19	7,47	15,46	11,05
Construction	11	25,62	1,99	1,99	4,46	19,86	2,14
Commerce and Services	15	32,11	1,32	3,21	11,80	20,08	4,73
Transport and Communications	10	35,42	4,74	4,74	5,41	34,81	1,84
Property	32	31,38	2,83	7,47	5,85	18,64	5,49
Financial and Insurance	201	28,49	6,20	8,86	3,92	12,40	11,01
Banking	28	41,11	29,86	30,17	7,28	5,38	1,06
Insurance	5	33,28	0,12	0,12	2,68	33,28	1,76
Investment Trusts	164	26,54	2,38	5,56	3,43	13,03	13,17
Investment Companies	3	14,62	6,11	6,11	2,68	12,67	1,53
Real State Financing	1	11,42	0,00	6,00	0,00	0,00	11,42
<b>TOTAL</b>	<b>394</b>	<b>30,27</b>	<b>4,50</b>	<b>6,72</b>	<b>6,29</b>	<b>16,52</b>	<b>8,10</b>

- ◆ Direct plus Indirect Holdings
  - ◇ *Average Ownership by Company Size and Stake Size Classes*

The ownership stakes are calculated considering direct plus indirect holdings. If the amount of indirect holdings is greater than 5% (the Spanish threshold to communicate) then this indirect holder is removed from subsequent order as direct holder and so on. Thus allows have accurate values when aggregate percentages of shares for a given company.

The tables presented below show different averages of percentage held by investors or categories of investors. The first way we compute is the Overall Average, which is calculated aggregating the percentages of shares owned by all investors, or different categories of investors, divided by the number of companies in the sample (also size percentile or activity sector). A second way to calculate the mean is through the same method and changing the denominator by the number of companies in which every category of investors hold shares. This Category Average let us answer the question about the average percentage of capital held by a given type of investors, when that category of investors is a significant shareholder<sup>1</sup>.

Finally there is a third procedure to calculate the average percentage of shares owned by significant shareholders. In this case the mean represent the average amount of shares owned by the investor of a given category in the case these investors participating as owners in that category. Is the Investor Average.

Table 7

**Ownership structure. Overall Average percentage of direct plus indirect shares owned by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4-10<sup>th</sup> largest investors by size**

SIZE Distribution	Number Comp.	Aggregated value (percentage) of shares owned by significant shareholders			
		1	2	3	4 to 10
Size < 5%	20	23,7	40,0	49,8	65,6
5 < Size < 10	21	29,3	45,9	59,3	77,4
10 < Size < 25	59	30,5	46,2	58,9	77,9
25 < Size < 50	98	36,1	48,6	57,5	69,1
50 < Size < 75	99	39,4	49,0	55,0	62,9
75 < Size < 90	58	54,0	61,8	65,6	69,5
90 < Size < 95	20	43,9	52,9	56,2	58,8
95 < Size	20	37,7	45,6	48,4	50,1
	394	38,21	49,77	57,45	67,70

<sup>1</sup> The distinction among these means is done according to the idea presented in a draft (1997) by the French team from this European Corporate Governance Network, and written by Elizabeth Kremp.

◇ *Average Ownership by Investor type and Size Classes***Table 8**

**Ownership structure. Overall Average percentage of direct plus indirect shares owned by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4-10<sup>th</sup> largest investor by company size and investor type**

SIZE Distribution	Spanish Non Financial companies				Banking				Financial no Banking				Foreign				Individuals			
	1	2	3	4 to 10	1	2	3	4 to 10	1	2	3	4 to 10	1	2	3	4 to 10	1	2	3	4 to 10
Size < 5%	11,1	15,0	17,5	19,7	0,6	0,8	0,8	0,8	3,9	4,4	4,4	4,4	5,0	6,0	6,0	6,0	21,2	29,3	34,1	42,0
5 < Size < 10	12,0	13,6	14,4	14,7	0,6	0,6	0,6	0,6	1,5	1,5	1,5	1,5	5,5	8,2	8,4	8,4	16,1	25,1	29,8	38,2
10 < Size < 25	15,5	19,8	21,9	23,4	0,1	0,1	0,1	0,1	2,9	2,9	2,9	2,9	1,8	2,2	2,4	2,4	16,7	25,7	31,8	38,7
25 < Size < 50	18,0	22,5	24,4	25,7	3,8	4,1	4,1	4,1	4,9	5,3	5,3	5,3	6,2	7,1	7,3	7,4	14,5	20,3	23,5	27,4
50 < Size < 75	14,9	17,8	18,8	19,2	9,6	9,8	9,8	9,8	12,3	13,0	13,0	13,0	10,5	11,6	11,9	12,2	6,9	9,7	10,9	12,3
75 < Size < 90	30,0	31,6	32,2	32,3	13,6	14,0	14,0	14,0	15,2	15,7	15,8	15,8	13,8	14,5	14,8	14,8	6,2	8,4	9,4	10,7
90 < Size < 95	20,1	21,4	21,5	21,5	10,8	11,0	11,0	11,0	15,1	15,3	15,3	15,3	12,2	13,1	13,1	13,1	5,1	6,5	6,6	6,7
95 < Size	13,1	13,3	13,3	13,3	7,4	7,5	7,5	7,5	7,4	7,5	7,5	7,5	12,0	14,4	14,8	14,8	0,3	0,5	0,6	0,8
Total	17,80	20,88	22,18	22,97	6,34	6,55	6,55	6,55	8,38	8,77	8,78	8,78	8,24	9,26	9,49	9,59	10,93	15,71	18,37	21,77

**Table 9**

**Ownership structure. Category Average percentage of direct plus indirect shares owned by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4-10<sup>th</sup> largest investor by company size and investor type**

SIZE Distribution	Spanish Non Financial companies				Banking				Financial no Banking				Foreign				Individuals			
	1	2	3	4 to 10	1	2	3	4 to 10	1	2	3	4 to 10	1	2	3	4 to 10	1	2	3	4 to 10
Size < 5%	18,6	25,1	29,2	32,9	11,3	15,4	15,4	15,4	6,5	7,3	7,3	7,3	20,2	23,8	23,8	23,8	23,5	32,5	37,9	46,6
5 < Size < 10	22,9	25,9	27,4	28,0	12,5	12,5	12,5	12,5	15,4	15,4	15,4	15,4	23,1	34,3	35,5	35,5	17,7	27,8	32,9	42,3
10 < Size < 25	27,8	35,3	39,1	41,8	1,9	1,9	1,9	1,9	12,9	13,3	13,3	13,3	15,3	18,2	20,0	20,1	19,3	29,7	36,8	44,8
25 < Size < 50	29,0	36,1	39,3	41,4	17,9	19,1	19,1	19,1	15,0	16,1	16,1	16,1	25,4	29,2	29,7	30,2	17,7	24,8	28,8	33,6
50 < Size < 75	21,0	25,2	26,6	27,2	21,6	22,0	22,1	22,1	21,7	23,0	23,1	23,1	20,7	23,0	23,5	24,1	7,7	10,7	12,1	13,7
75 < Size < 90	39,6	41,7	42,5	42,6	27,3	28,0	28,0	28,0	26,7	27,7	27,7	27,7	33,4	35,0	35,8	35,8	6,5	8,8	10,0	11,3
90 < Size < 95	33,5	35,7	35,9	35,9	19,6	20,0	20,0	20,0	21,5	21,9	21,9	21,9	30,5	32,6	32,6	32,6	5,1	6,5	6,6	6,7
95 < Size	21,8	22,2	22,2	22,2	14,7	15,1	15,1	15,1	14,7	15,1	15,1	15,1	16,1	19,2	19,8	19,8	0,4	0,6	0,7	1,0

**Table 10**

**Ownership structure. Investor Average percentage of direct plus indirect shares owned by the investors by company size and investor category**

SIZE Distribution	All	Spanish Non Financial companies	Banking	Financial no Banking	Foreign	Indiv.
Size < 5%	10,6	14,2	7,7	6,2	17,0	10,5
5 < Size < 10	12,3	18,1	12,5	15,4	19,7	10,6
10 < Size < 25	12,0	18,2	1,9	12,4	10,8	10,0
25 < Size < 50	10,7	18,1	18,2	14,7	17,3	6,9
50 < Size < 75	9,2	12,6	20,7	19,3	13,4	3,2
75 < Size < 90	10,1	26,8	23,2	21,8	21,5	2,6
90 < Size < 95	7,8	25,3	17,0	19,2	23,7	1,5
95 < Size	6,5	19,0	13,7	13,7	10,2	0,2

◇ *Average Ownership by Investor and Sector of Activity Classes*

**Table 11**

**Ownership structure. Overall Average percentage of direct plus indirect shares owned by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4-10<sup>th</sup> largest investor by sector of activity.**

Activity Sector Distribution	Number Co.	1	2	3	4 to 10
Agriculture and Fishing	3	45,2	55,4	60,4	66,7
Utilities, Mining and Electricity produc.	22	46,0	53,8	57,9	61,2
Basic Metals	6	30,8	39,3	42,4	44,7
Cement and Building Materials	14	55,7	65,5	70,0	74,3
Chemicals	9	36,0	48,3	56,1	62,3
Metal Manufacturing	23	34,6	44,6	50,6	59,9
Other Manufacturing (Food, paper,...)	49	36,9	49,2	56,8	64,7
Construction	11	40,8	47,5	52,6	58,3
Commerce and Services	15	45,6	59,0	65,9	74,6
Transport and Communications	10	41,0	50,8	55,3	61,5
Property	32	36,1	46,1	51,9	60,5
Financial and Insurance	200	36,7	49,3	58,7	72,1
Banking	28	51,0	55,3	57,2	59,7
Insurance	5	65,6	70,1	72,9	75,2
Investment Companies	3	20,7	27,7	34,6	44,5
Investment Trusts	164	33,6	48,1	59,0	74,6
Total	394	38,3	49,8	57,5	67,8

Table 12

**Ownership structure. Overall Average percentage of direct plus indirect shares owned by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4-10<sup>th</sup> largest investor by sector of activity and investor type.**

Activity Sector Distribution	Spanish Non Financial companies				Banking				Financial no Banking				Foreign				Individuals			
	1	2	3	4 to 10	1	2	3	4 to 10	1	2	3	4 to 10	1	2	3	4 to 10	1	2	3	4 to 10
Agriculture and Fishing	38,1	42,1	43,6	43,6	-	-	-	-	-	-	-	-	7,0	10,1	10,1	10,1	14,0	14,0	14,0	14,0
Utilities, Mining and Electricity	36,5	38,7	39,8	40,0	9,4	9,8	9,8	9,8	10,3	11,0	11,0	11,0	11,6	12,9	13,2	13,2	3,9	4,3	4,5	4,8
Basic Metals	13,7	14,8	14,8	14,8	15,8	15,8	15,8	15,8	7,5	7,5	7,5	7,5	2,7	4,5	5,3	5,4	0,2	0,3	0,4	0,4
Cement and Building Materials	28,3	29,7	29,9	29,9	3,9	3,9	3,9	3,9	3,9	4,7	4,7	4,7	23,3	24,6	25,0	25,0	2,1	2,6	2,8	3,0
Chemicals	25,1	29,1	30,6	30,6	5,8	5,8	5,8	5,8	5,8	6,1	6,1	6,1	13,0	14,5	14,5	14,5	6,7	9,0	10,0	11,4
Metal Manufacturing	15,3	20,4	22,5	25,3	1,3	1,8	2,0	2,0	2,5	3,0	3,2	3,2	21,2	22,3	22,3	22,3	5,6	7,4	8,2	9,1
Other Manufacturing	13,9	15,7	16,1	16,2	3,0	3,0	3,0	3,0	3,8	4,2	4,2	4,2	10,0	11,5	12,0	12,3	17,3	22,6	25,3	28,6
Construction	30,4	32,5	33,7	34,2	3,1	3,1	3,1	3,1	3,9	3,9	3,9	3,9	4,7	5,5	5,6	5,6	7,5	9,2	9,3	9,4
Commerce and Services	15,6	20,9	22,7	25,4	1,3	1,3	1,3	1,3	3,2	3,2	3,2	3,2	16,4	17,2	17,3	17,3	5,2	8,0	9,4	12,7
Transport and Communications	32,8	34,7	36,2	36,7	18,1	19,8	19,8	19,8	18,1	19,8	19,8	19,8	5,4	6,3	6,3	6,3	2,3	3,2	3,5	4,0
Property	17,6	22,7	24,1	24,8	6,4	6,6	6,6	6,6	8,6	8,9	8,9	8,9	7,5	9,4	10,0	10,7	13,1	17,2	19,4	20,7
Financial and Insurance	14,8	17,8	19,3	20,2	7,5	7,7	7,7	7,7	10,7	11,1	11,1	11,1	4,8	5,4	5,5	5,5	12,5	19,2	23,2	28,4
Banking	8,3	8,4	8,4	8,4	27,6	27,8	27,9	27,9	29,8	30,4	30,5	30,5	9,7	10,4	10,7	10,7	1,4	1,8	2,1	2,5
Insurance	59,2	63,3	63,3	63,3	2,3	2,3	2,3	2,3	19,5	19,5	19,5	19,5	1,1	1,4	1,4	1,4	4,8	6,5	7,4	8,5
Investment Companies	12,7	17,4	17,4	17,4	12,6	12,6	12,6	12,6	12,6	17,2	17,2	17,2	2,7	2,7	2,7	2,7	7,2	9,6	11,0	12,2
Investment Trusts	14,5	18,0	19,8	20,9	4,1	4,3	4,3	4,3	7,1	7,4	7,4	7,4	4,1	4,7	4,8	4,8	14,8	22,7	27,5	33,7

Table 13

**Ownership structure. Category Average percentage of direct plus indirect shares owned by the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 4-10<sup>th</sup> largest investor by sector of activity and investor type.**

Activity Sector Distribution	Spanish Non Financial companies				Banking				Financial no Banking				Foreign				Individuals			
	1	2	3	4 to 10	1	2	3	4 to 10	1	2	3	4 to 10	1	2	3	4 to 10	1	2	3	4 to 10
Agriculture and Fishing	38,1	42,1	43,6	43,6	-	-	-	-	-	-	-	-	10,5	15,2	15,2	15,2	21,0	21,0	21,0	21,0
Utilities, Mining and Electricity	38,3	40,6	41,7	42,0	11,5	12,0	12,0	12,0	12,6	13,4	13,4	13,4	23,2	25,9	26,3	26,3	4,3	4,7	4,9	5,3
Basic Metals	20,5	22,2	22,2	22,2	23,8	23,8	23,8	23,8	11,2	11,2	11,2	11,2	8,2	13,4	15,9	16,1	0,3	0,4	0,5	0,5
Cement and Building Materials	33,0	34,7	34,8	34,9	10,9	10,9	10,9	10,9	9,1	10,9	10,9	10,9	40,8	43,1	43,7	43,7	2,1	2,6	2,8	3,0
Chemicals	25,1	29,1	30,6	30,6	10,5	10,5	10,5	10,5	10,5	11,0	11,0	11,0	23,4	26,2	26,2	26,2	10,1	13,5	15,0	17,2
Metal Manufacturing	22,1	29,3	32,4	36,4	3,9	5,2	5,9	5,9	5,9	7,0	7,5	7,5	34,9	36,6	36,6	36,6	7,1	9,4	10,4	11,6
Other Manufacturing	23,6	26,5	27,3	27,3	13,6	13,6	13,6	13,6	11,7	12,9	12,9	12,9	20,3	23,5	24,5	25,1	18,5	24,0	26,9	30,5
Construction	41,8	44,7	46,3	47,0	8,4	8,4	8,4	8,4	7,1	7,1	7,1	7,1	8,6	10,1	10,3	10,3	7,5	9,2	9,3	9,4
Commerce and Services	19,5	26,1	28,4	31,8	6,6	6,6	6,6	6,6	8,0	8,0	8,0	8,0	49,3	51,7	51,9	52,0	6,0	9,3	10,9	14,6
Transport and Communications	49,2	52,1	54,3	55,1	32,5	35,6	35,6	35,6	32,5	35,6	35,6	35,6	9,1	10,5	10,5	10,5	2,8	4,0	4,4	4,9
Property	24,4	31,6	33,6	34,5	13,7	14,0	14,0	14,0	16,2	16,7	16,7	16,7	21,7	27,3	29,0	31,0	13,5	17,8	20,0	21,4
Financial and Insurance	26,4	31,7	34,5	36,0	35,7	36,5	36,5	36,5	27,2	28,2	28,2	28,2	21,6	24,6	25,1	25,2	14,4	22,1	26,6	32,6
Banking	23,2	23,5	23,5	23,5	42,9	43,3	43,4	43,4	41,8	42,6	42,7	42,7	30,1	32,3	33,2	33,2	1,5	2,0	2,3	2,7
Insurance	59,2	63,3	63,3	63,3	11,6	11,6	11,6	11,6	48,8	48,8	48,8	48,8	5,3	7,2	7,2	7,2	4,8	6,5	7,4	8,5
Investment Companies	12,7	17,4	17,4	17,4	18,9	18,9	18,9	18,9	12,6	17,2	17,2	17,2	8,0	8,0	8,0	8,0	7,2	9,6	11,0	12,2
Investment Trusts	25,4	31,4	34,6	36,5	32,3	33,5	33,5	33,5	22,1	23,0	23,0	23,0	20,2	23,5	24,0	24,0	17,3	26,6	32,2	39,4

**Table 14.**

**Ownership structure. Investor Average percentage of direct plus indirect shares owned by the investors by activity sector and investor category**

Activity Sector Distribution	All	Spanish Non Financial companies	Banking	Financ. no Banking	Foreign	Indiv.
Agriculture and Fishing	67,5	21,8	-	-	10,1	14,0
Utilities, Mining and Electricity produc.	61,7	25,9	10,3	11,0	18,1	1,1
Basic Metals	44,9	17,7	23,8	11,2	5,4	0,1
Cement and Building Materials	75,2	20,9	10,9	8,1	23,3	0,7
Chemicals	64,2	16,2	10,5	9,1	16,3	3,2
Metal Manufacturing	64,7	15,9	4,7	6,2	28,5	2,8
Other Manufacturing (Food, paper,...)	66,6	16,2	13,6	11,4	13,2	7,1
Construction	60,0	18,8	8,4	7,1	6,8	2,2
Commerce and Services	77,0	16,0	6,6	8,0	20,0	3,6
Transport and Communications	62,8	20,7	22,2	22,2	9,0	1,1
Property	63,4	14,2	13,1	15,0	12,9	4,6
Financial and Insurance	75,2	17,7	32,6	24,2	15,2	7,0
Banking	60,5	18,1	37,2	34,2	16,6	0,5
Insurance	76,1	45,2	11,6	48,8	3,6	1,4
Investment Companies	46,3	10,4	18,9	12,9	8,0	3,3
Investment Trusts	78,2	16,9	30,6	20,3	15,3	8,7

3.2.B. Groups

a) Definition and Mapping

The translation of the legal definition of “group” for practical purposes for all companies is complex, and far from satisfactory. One reason is that the legal criteria “*having majority of voting rights*” is hard to combine with “*having the*

*right to appoint or remove the majority of the management Board Members*”

For a sample of companies, given the set of ownership data and participation, the definition of “group” has to establish the percentage of shareholdings t considered as “controlling ownership”. This percentage could be fixed at the majority level and if so, we say a company belongs to a group if the group has or some other company in the company has more than 50% of shares.

But in order to gain the right to appoint or remove Board Members is not necessary to own 50% or more of shares. For instance, 25% could be a sufficient criteria.

The third legal way of defining a “group” is the “*existence a majority of votes through internal contractual arrangements among shareholders*”. To the extent that this kind of agreements are not publicly reported the utilisation of this criterion becomes not possible.

In order to throw some addle on this subject we further report information concerning “groups” formed by the number of companies with stakes of 5% or more in other companies.

b) Diffusion

◆ Controlling criteria (50%)

The following are elaborated according to the information available in our data set. For those significant shareholders who communicate their holdings (in this case “the groups”) we only know the percentage of direct and indirect shares they control. The main restriction is that to define this percentage in terms of economic participation, as market value of shares, or book value of the

controlled companies, the original data has to be crossed with other databases. For those companies not listed in the stock exchange or companies that do not have to report to the CNMV there is no information available, at least in a systematic way, and becomes a very hard task the collection of data other than the percentage of shares under control or the number of companies under control.

One piece of information we can provide refers to the existence of banking Groups. In Spain, as it happened in other Continental European countries, the financial system was and still is, mainly bank-oriented. Although there is an important process to incorporate and move closer to a market oriented system (increasing importance of stock market) the role of some banks are still quite important.

The three following tables capture the present importance of some banks and saving banks as controlling groups and we can observe there is more than a unique approach to this problem.

Table 15

Groups ordered by number of “controlled” companies through 50% (direct plus indirect ) shares

Company Name	Number of Companies	Average Direct %	Average Direct + Indirect	Information Available		
				Number of Co's controlled	Average Market Value	Average market value Participation
BANCO BILBAO VIZCAYA, S.A.	14	41,01	95,39	2	47,900	43,167
BANCO SANTANDER, S.A.	9	23,24	75,59	9	71,789	41,743
SOCIEDAD ESTATAL DE PARTICIPACIONES INDUSTRIALES	6	0,00	73,78	6	353,440	243,354
DIRECCION GENERAL DEL PATRIMONIO DEL ESTADO(M <sup>o</sup> .E.H.)	6	40,47	85,90	3	76,606	49,423
BANCO POPULAR ESPAÑOL, S.A.	5	80,71	81,07	5	41,599	33,091
BANCO CENTRAL HISPANOAMERICANO, S.A.	5	52,36	88,42	1	1,505	0,754
CORPORACION GENERAL FINANCIERA, S.A	5	74,32	74,32	0		
TENEO, S.A.	4	61,64	61,64	4	461,038	306,793
EMPRESA NACIONAL DE ELECTRICIDAD, S.A.	4	73,87	73,87	4	84,991	66,274
CAJA DE AHORROS Y PENSIONES DE BARCELONA	4	50,91	92,85	3	26,076	21,932
BANCA MARCH, S.A.	4	15,30	77,57	0		
LAFARGE COPPEE, S.A.	3	0,00	93,86	2	27,929	27,133
FOMENTO DE CONSTRUCCIONES Y CONTRATAS, S.A.	3	14,86	53,33	2	41,715	22,116
FAES.FABRICA ESPAÑOLA DE PRODUCTOS QUIMICOS ..	3	88,93	99,03	3	0,427	0,424
NEFINSA, S.A.	3	51,85	51,85	3	0,354	0,185
COMFINANCE, S.A.	3	15,49	90,30	0		
ERCROS, S.A.	3	24,76	85,35	0		
ASLAND, S.A.	2	97,15	97,15	2	27,929	27,133
CIMENTS FRANCAIS	2	25,49	82,38	1	19,167	16,685
BANCO ESPAÑOL DE CREDITO, S.A.	2	92,69	92,69	2	11,390	10,852
FILO, S.A.	2	65,57	65,66	2	7,818	5,134
FUNDACION PEDRO BARRIE DE LA MAZA	2	2,60	56,05	2	4,527	2,660
REPSOL, S.A.	2	73,97	80,53	1	3,783	2,325
RUBINSA, S.A.	2	56,47	56,47	2	1,366	0,771
INSTITUTO NACIONAL DE HIDROCARBUROS	2	0,00	95,30	0		
IBERDROLA, S.A.	2	91,97	91,97	0		
PLEAMAR, S.A.	2	72,90	82,90	0		
UNION DE VALORES, S.A.	2	100,00	100,00	0		
CORPORACION FINANCIERA ALBA, S.A.	2	64,09	64,09	0		
BANCO EXTERIOR DE ESPAÑA, S.A.	2	98,15	98,15	0		

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## ◆ Controlling criteria (25%)

**Table 16**  
**Groups ordered by number of “controlled” companies through 25% (direct plus indirect ) shares**

Company Name	Number of Companies	Average Direct %	Average Direct + Indirect	Information Available		
				Number of Co's controlled	Average Market Value	Average Participation
BANCO BILBAO VIZCAYA, S.A.	19	32,41	77,85	4	50,918	28,363
BANCO SANTANDER, S.A.	10	20,91	72,25	10	68,489	39,204
BANCO CENTRAL HISPANOAMERICANO, S.A.	9	42,15	66,86	4	34,313	12,161
SOCIEDAD ESTATAL DE PARTICIPACIONES INDUSTRIALES	8	0,00	66,39	8	322,614	207,369
DIRECCION GENERAL DEL PATRIMONIO DEL ESTADO(M°.E.H.)	8	30,35	72,63	4	58,499	37,366
EMPRESA NACIONAL DE ELECTRICIDAD, S.A.	7	60,19	60,19	7	115,162	66,568
CAJA DE AHORROS Y PENSIONES DE BARCELONA	5	45,83	79,38	4	195,869	61,409
BANCO POPULAR ESPAÑOL, S.A.	5	80,71	81,07	5	41,599	33,091
FOMENTO DE CONSTRUCCIONES Y CONTRATAS, S.A.	5	16,09	46,88	4	38,672	18,784
KOKMEEUW HOLDINGS, B.V.	5	7,94	39,05	4	18,657	7,094
BANCA MARCH, S.A.	5	12,24	68,07	1	18,723	5,626
CORPORACION GENERAL FINANCIERA, S.A	5	74,32	74,32	0		
FINANZAS INMUEBLES CISNEROS, S.A.	5	30,67	30,92	0		
TENEO, S.A.	4	61,64	61,64	4	461,038	306,793
PLEAMAR, S.A.	4	49,35	54,35	2	0,427	0,110
REPSOL, S.A.	3	64,42	68,79	2	354,515	160,901
LAFARGE COPPEE, S.A.	3	0,00	93,86	2	27,929	27,133
CIMENTS FRANCAIS	3	21,59	67,96	2	29,721	16,224
GRUPO FERROVIAL, S.A.	3	48,27	48,37	3	27,750	12,050
URALITA, S.A.	3	49,43	49,43	3	20,975	10,368
FUNDACION PEDRO BARRIE DE LA MAZA	3	15,17	50,87	3	22,402	9,624
RUBINSA, S.A.	3	50,22	50,22	3	1,004	0,549
FAES.FABRICA ESPAÑOLA DE PRODUCTOS QUIMICOS ...	3	88,93	99,03	3	0,427	0,424
INVERSIONES ERCASA, S.A.	3	54,48	54,48	3	0,600	0,360
NEFINSA, S.A.	3	51,85	51,85	3	0,354	0,185
ERCROS, S.A.	3	24,76	85,35	0		
UNION DE VALORES, S.A.	3	77,46	80,78	0		
COMFINANCE, S.A.	3	15,49	90,30	0		
ASLAND, S.A.	2	97,15	97,15	2	27,929	27,133
DRAGADOS Y CONSTRUCCIONES, S.A.	2	55,04	55,04	1	105,425	26,367
CORPORACION INDUSTRIAL Y FINANCIERA DE BANESTO, S.A.	2	58,05	58,05	2	31,268	16,954
BANCO ESPAÑOL DE CREDITO, S.A.	2	92,69	92,69	2	11,390	10,852

## ◆ Number of companies criteria

Table 17

## Groups ordered by number of “controlled” companies through 5% (direct plus indirect ) shares

Company Name	Number of Companies	Average Direct %	Average Direct + Indirect	Information Available		
				Number of Co's controlled	Average Market Value	Average Participation
BANCO BILBAO VIZCAYA, S.A.	51	13,56	33,74	28	133,121	12,742
BANCO CENTRAL HISPANOAMERICANO, S.A.	24	21,71	31,69	17	27,209	5,424
BANCO SANTANDER, S.A.	19	12,33	41,99	14	59,842	29,471
UNION DE VALORES, S.A.	17	18,67	19,69	10	1,228	0,137
CAJA DE AHORROS Y PENSIONES DE BARCELONA	13	20,64	34,19	11	98,530	23,943
DIRECCION GENERAL DEL PATRIMONIO DEL ESTADO	12	21,89	53,71	8	241,346	63,273
BANCA MARCH, S.A.	11	5,56	35,11	3	172,566	18,037
SOCIEDAD ESTATAL DE PARTICIPACIONES INDUSTRIALES	10	0,00	55,23	10	275,405	167,887
FOMENTO DE CONSTRUCCIONES Y CONTRATAS, S.A.	8	10,31	32,84	7	48,653	11,234
IBERDROLA, S.A.	8	23,49	28,52	6	189,023	8,588
CORPORACION INDUSTRIAL Y FINANCIERA DE BANESTO, S.A.	8	17,78	17,78	6	25,251	7,300
NEFINSA, S.A.	8	28,38	28,38	8	1,624	0,308
EMPRESA NACIONAL DE ELECTRICIDAD, S.A.	7	60,19	60,19	7	115,162	66,568
KOKMEEUW HOLDINGS, B.V.	7	5,67	34,48	5	15,251	5,747
BILBAO BIZKAIA KUTXA, AURREZKI KUTXA ETA	7	9,90	9,90	4	23,072	2,955
MERCAPITAL, S.A.	7	13,27	18,47	5	9,529	1,427
BANCO ESPAÑOL DE CREDITO, S.A.	6	32,41	37,12	4	141,278	9,924
CAJA DE AHORROS Y MONTE DE PIEDAD DE ZARAGOZA,	6	9,68	9,68	6	10,603	0,398
AURIUM, S.A.	6	7,27	9,18	4	1,294	0,011
FORUM INMOBILIARIO CISNEROS, S.A.	6	2,75	2,75	0		
FINANZAS INMUEBLES CISNEROS, S.A.	6	28,97	29,18	0		
ESTUDIOS FINANCIEROS GUDAR, S.A.	6	8,44	8,53	0		
BANCO POPULAR ESPAÑOL, S.A.	5	80,71	81,07	5	41,599	33,091
BANCO INDUSTRIAL DE BILBAO, S.A.	5	13,26	13,26	3	110,845	7,898
FUNDACION PEDRO BARRIE DE LA MAZA	5	9,10	32,60	5	22,046	5,951
ESPAÑOLA DE INVERSIONES, S.A.	5	6,01	6,01	4	99,313	3,429
INTRA CORPORACION FINANCIERA, S.A.	5	7,54	7,54	5	13,063	0,387
CORPORACION GENERAL FINANCIERA, S.A	5	74,32	74,32	0		
FINANCIERAS AGRUPADAS, S.A.	5	2,98	2,98	0		
FOMENTO INMOBILIARIO CENTRAL, S.A.	5	5,81	5,81	0		
TENEO, S.A.	4	61,64	61,64	4	461,038	306,793

Do the companies in the same groups undertake the same or similar activities or do they represent “conglomerates”? The answer to this type of questions would be possible to the extent that the “controlled” firms were identified in the “listed companies” data set. Otherwise it is impossible to cross information from the point of view of the “significant shareholders”.

3.2.C. The Separation of Ownership and Control

The calculation of capital held by controlling entity directly versus total capital controlled can be done through the pyramidal structure with listed companies. The consequence is that is that for pyramidal groups where the participation is held via non listed companies (or companies for which public information is not available) is unknown the relationship between economic participation and voting power.

**4. Inside Supervision**

4.1.A. Boards

a) Legal and Institutional Description

◆ Board Structure (Managers & Directors)

Legally available board structures (one or two-tier board)	One tier Board
Are they the same for all legal forms?	Yes
Are there different categories of directors and/or of managers?	No Exception for the Sociedad Comanditaria
What are their titles (in the original language)?	Consejo de Administración
What are their functions?	Represent and deal in name of the company
What are their powers?	Hire and fire managers
Does the chairman of the board of directors have veto power or a “golden vote”?	No
By whom are directors/managers nominated, appointed (and for how long), re-appointed, promoted, removed, remunerated?	Legally by the Shareholders Meeting. Proposal (agenda) is done by the Board.
How are these decisions taken (majority voting, unanimity)?	Fixed by company law. Proportional system as a general rule. Co-optation is possible temporary. Is possible to introduce modification through the statutes
Does anybody have veto power?	No

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Are the nomination and appointment rules set out in company law, the company statute, imposed by the stock exchange?	The company law establishes a safeguard for minority shareholders accessing to the board. Nomination rules are set out in the company statute
Is it possible to obtain a list with the names of the persons who sit on the board and in the various committees for each company?	Is mandatory to report this list to the Companies Register and to the CNMV for Listed Companies
Is it possible to find out how much the individual directors and managers earn (pay, bonuses, stock options)?	Individually not. The annual report has to inform about the total amount received by the board collectively
Do directors have to declare how many shares in their own company they possess and when they buy and sell?	Just for Listed companies
Is it possible for a shareholder/a member of the public to obtain a copy of the managers employment contract/the directors employment contracts?	No

◆ Manager Independence:

For which business decision must the managers seek approval by the shareholder meeting and/or the board and/or worker representatives?	Mergers, acquisitions, new capital issues and capital reduction. It is possible to set out additional restrictions in the company statute.
In particular, do these decision include financing decisions (IPOs, new equity issues, bond issues, bank loans, use of derivative products)?	New issues require the approval of the Shareholders Meeting
Is approval granted by majority voting?	Established in the company statute
Is the catalogue of decisions that the managers cannot take independently set out in the company statute, laid down by company law, stock exchange or other regulation?	Set out in the Company Statute according to the company law (minimum requirements)
Are managers allowed to buy shares in the company in the name of the company?	Yes. Communicate to the CNMV acquisitions greater than 1% Limit 5% of Company Shares
Is the management allowed to vote these shares?	There is no restriction in the Company Law

## b) Quantitative Description

## ◆ Board composition by Activity Sector.

This tables on Board structure have been constructed only with 94 companies due to lacks and errors on the information reported by the companies to the CNMV. The most frequent error is that some directors do not report their position; tables constructed on this basis report unusual small size boards. Then the correction, with alternative sources of data, company by company and year by year is, necessary and this reduces the number of companies that can be included in our data set.

The definition of external directors is for those board members who do not have executive responsibilities as General finanger, or division executives.

**Table 18**  
**Board Composition by activity sector**

Activity Sector	Average Board Size	Average Internal Directors (I)	Average External Directors (E)	Proportion $\frac{(I)}{(I)+(E)}$
Agriculture and Fishing	15,25	4,06	11,19	24,40%
Utilities, Mining and Electricity production	8,50	1,64	6,86	18,15%
Basic Metals, Building Materials and Chemicals	8,70	1,50	7,20	17,51%
Metal and Other Manufacturing	10,33	1,00	9,33	11,25%
Construction	10,00	2,20	7,80	23,67%
Commerce and Services	6,00	1,50	4,50	27,50%
Transport and Communications	12,25	2,13	10,13	15,53%
Banks	8,00	1,07	6,93	8,81%
Other services	7,67	1,33	6,33	16,67%

**Table 19**  
**Board size and distribution by Company Size (Total Assets)**

Size Percentile	Number	Average Board Size	Average Internal Directors (I)	Average External Directors (E)	Proportion (I) + (E)
5	10	5,20	0,40	4,80	8,93%
10	37	7,92	1,05	6,86	13,59%
50	37	11,54	2,16	9,38	19,93%
90	5	14,80	2,20	12,60	14,78%
95	5	20,60	9,40	11,20	44,51%

◆ Shareholder Meeting

1. Shareholder Meeting (Shareholders):

Who has the right to attend the shareholder meeting?	Shareholders and Board members
Is it possible to delegate (or transfer) voting rights to third parties?	Yes, through proxy voting
What percentage of the equity capital has to be present at the meeting to take binding decisions?	By company law: 25% Statutes can modify this quorum
What majority is required to change the company statute?	Majority rule. Is possible to set out in the company statute supermajority requirements.
Can this required majority be increased or decreased in the company statute?	Only can be increased
Is it possible to obtain a copy of the attendance list of the shareholder meeting as a shareholder/as a member of the public?	No
Is it possible to obtain the minutes of the annual meeting with the results of the votes for each item on the agenda?	No
What other information do the minutes contain?	Decisions taken by the shareholder meeting
Can the shareholder ask the management to disclose whether the company holds stakes in other companies?	Unknown. Presumably yes
How many shares (voting rights) does the shareholder need to own to make such a request?	Minimum to participate at the shareholder meeting

5. Outside Supervision

5.1. *Market Supervision*

5.1.A. Legal and Institutional Description

a) Stock Market Institutions and Rules

What are the main stock markets and who is in charge of supervising them?	Four Outcry Stock Exchanges. Madrid. Barcelona, Valencia and Bilbao. One electronic Market
Who owns the main stock markets?	The brokers and dealers through brokers firms which own the Stock Exchange via a company called "Sociedad Rectora"

b) Public Offerings:

What are the listing requirements on the main, second and third tier markets	Requirements on information on accounting data and relevant information
What are the insider trading rules associated with a public offering	Public information on any merger, acquisition process with takeover requirements
What are the information diffusion policies before a public offering	Public information about the bidder objective over the target company

c) Takeover Rules:

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Are there any take-over rules	Yes. R.D. 1197/91. July 1991 Requirement of minimum of equity control for takeover Declare the purpose of Takeover
What are the main ingredients of these rules	Restriction of some activities for managers of target company Regulation of competitive bids Approval by the CNMV

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Auditors:

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Which documents the companies publish are previously checked by auditors?	Annual report and the information required by the company law
What legal responsibilities, for example liability, do the auditors assume?	Control by professional associations.
Have there been any well known cases where auditors have been brought to court by shareholders or directors?	Arthur Andersen for the Banesto Case

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e) Market Transfers

2. Transfers:
3. The procedure for transferring shares of listed companies of different classes is through annotation in the Stock exchange office.

5.1.B. Quantitative Description

The information on take-overs in Spain is done by the CNMV and is quite comprehensive. Includes information on the bidder, target and the purpose and characteristics of the acquisition. We present two tables where is summarised the number of formal take-overs, by sector and according to the bidder purpose.

**Table 20**  
**Takeovers of Spanish listed Companies by sector and year.**

Sector	1990	1991	1992	1993	1994	1995	total
Utilities, and Electricity production	1	6	2		1	1	11
Mining	5	7	5	5	2	5	29
Basic Metals, Building Materials and Chemicals	2	1		2	3	1	9
Metal and Other Manufacturing	3	5	3	4	3	3	21
Construction			2	1		1	4
Commerce and Services		1	1	1		1	4
Transport and Communications				2	1		3
Banks and Investment Companies	8	8	10	13	7	10	56
Other services		2	1	1			4
Total	19	30	24	29	17	22	141

**Table 21**  
**Takeovers of Spanish listed Companies by bidder objective and year.**

Purpose	1990	1991	1992	1993	1994	1995	Number
Control 100%	9	6	4	2	2	3	26
Partial control	6	7	9	16	8	12	58
Delisting	4	10	7	9	5	5	40
Company Growth		3					3
Merger		1	2	1			4
Equity Reduction		2	2	1	2	1	8
Sector Restructuring		1				1	2
Total equity trading (10 <sup>9</sup> )	73.0	396.5	234.6	87.5	76.5	123.8	

## 6. Final remarks

The diagnosis of the institutional aspects of the Spanish Corporate governance System is, generally, in line with those proposed or approved by the European Union Institutions. The Company Law, accounting and Competition Rules, Stock Exchange regulations and related codes have been recently developed, joining the EU in 1986. These rules, in most cases, are new and adapted to suit the European Union Directives.

The available statistical data refers only to listed companies. On one hand the recent development of rules such as the Transparency Directive and the Stock Market requirements of financial information addressed to the investors and the collaboration of the CNMV allows us to have data on several aspects of the company.

On the other hand, accounting data come from the Stock Exchanges and is provided on a quarterly basis. Companies have to report standardised forms with accounting data and other relevant information, considered important and able to influence the share prices. The quality of this information is low and, usually, stock exchanges do not exert control over its contents.

Additional financial information like stock prices, trading volumes and indices come from Stock Exchange services. This is high quality information, but designed to be used as on line queries more than to provide historical perspective. The difficulty to connect this financial data with accounting data remains high due to the codification system of both databases.

Governance related information like ownership structure or Board Composition is centralised by the CNMV and computerised. The accessibility to this data set is high. Nevertheless the quality of this information requires some corrections manually. It is also necessary to complete Board composition from different sources. Moreover, specific information like the composition of groups is not directly obtainable from the ownership structure databases. Complementary information from external sources, like companies annual reports, is therefore required.

Concerning non-listed companies information on a company by company basis is not available. There exist some data on CD-Rom from private editors which have, for instance, information on the largest 2000 companies. This information is relatively poor: just accounting data on sales, profits and number of employees. There is not information on governance structures, or full Board Composition for instance.

In the future the main source of information for non-listed companies will be the Companies Register. They recently launched a project to computerise the data that companies have to report by law. Moreover The content of this data set is limited to accounting information and is still reported in a decentralised way to the provincial Registers.

As main conclusions, we mention that the institutional and regulatory aspects of Spanish Corporate Governance System harmonise with the EU rules. The availability of quantitative data for listed companies is high, but the quality should be enhanced. Furthermore, there is a lack of useful information for non listed companies.

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# Beneficial Ownership of Listed Companies in the United States

*European Corporate Governance Network*

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# I. Introduction

This note analyses the control of control rights exerted by “beneficial owners” of listed companies in the United States. The stylised facts have been recently summarised by Mark Roe (1994, pg. 223):

Institutions owned only 8 percent of the stock of the largest American firms in 1950. Now they only own half, but in small, unconcentrated blocks. The five largest holders rarely together own much more than 5% of the largest U.S. firms. The rarities are mainly the large blocks held by Berkshire Hathaway. Even with their weaker holdings, some institutions have been active, seeking to elect directors, making shareholder proposals, petitioning the SEC to loosen constraints on their activity.

Aggregate concentration already makes the U.S. look like a pale comparison of its foreign counterparts. The top twenty-five institutional investors on average vote 16% of the stock of the largest twenty-five U.S. corporations. While U.S. concentration trends tended to slow down in the early 1990s, and the U.S. concentration is a far cry from the five banks in Japan that vote 20 percent of the stock, or the three German banks that vote 40 percent, large firm ownership is no longer that of an atomised Berle-Means corporation. ... The United States is now in an intermediate stage, whose future is uncertain.

I do not aim to challenge Roe’s assessment. As he argues elsewhere in his book, the dispersion of ownership in the United States is the result of banking, insurance, investment company and pension fund regulation. Hence, the ownership of listed companies, when taking into account all shareholders, is dispersed by law and regulation. On the other hand, Roe observes that recent developments have lead to an aggregate concentration that “already makes the U.S. ownership look like a pale imitation of its foreign counterparts” (Roe, *opus cit.*). How pale a comparison is the U.S. ownership concentration?

I shall argue that the widely cited U.S. summary statistics that have been used for making comparisons between the U.S. and Europe are not entirely suitable for answering this question. The U.S. studies are often based on data that, with the same degree of detail, is not available in other countries. This poses a fundamental problem for comparing ownership concentrations. If one is able to trace ownership to individuals, as is often the case in the United States, European ownership too would be more dispersed than the available figures suggest.

The idea that is implemented in this note is very simple. Instead of using ownership data from *all* available US sources I shall concentrate on *one* source that is comparable to the national

laws that result from the transposition of the EU Transparency Directive (88/627/EEC). By limiting myself to analysing the portfolios of 5% beneficial owners whose holdings we can observe in Europe the results obtained for the United States become comparable.

The EU Transparency Directive is very similar in spirit to the Williams Act of 1968 and Section 13(d) of the Securities and Exchange Act (SEA). The Williams Act requires “beneficial owners” of voting blocks exceeding 5% of the outstanding shares of a listed company to make regular filings with the stock exchanges where the company is traded and the Securities and Exchange Commission. Section 13(d)(1) of the SEA stipulates that:

Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is registered pursuant to [section 12](#) of this title, .... , is directly or indirectly the beneficial owner of more than 5 per centum of such class shall, within ten days after such acquisition, send to the issuer of the security at its principal executive office, by registered or certified mail, send to each exchange where the security is traded, and file with the Commission, a statement containing such of the following information, and such additional information, as the Commission may by rules and regulations prescribe as necessary or appropriate in the public interest or for the protection of investors—

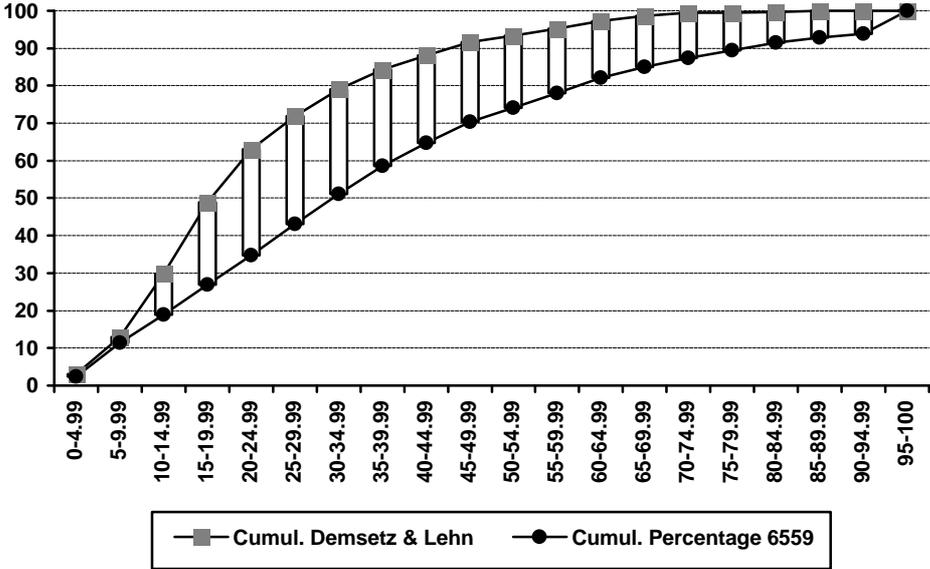
Hence, the data generated by Section 13(d) and the corresponding Rules and Forms is very similar to the data one can obtain from the provisions of the EU Transparency Directive.

Previous work on ownership patterns for the United States, for example Demsetz and Lehn (1985), made use of all ownership data that is available for the United States (proxy statements, insider declarations, filings of institutional investors) and concentrated on the largest firms, for example the Fortune 500. In this note I shall deliberately limit myself to data originating from Forms 13D and 13G and cover 6559 listed companies from all U.S. exchanges for which such data is available. I apply the same sample selection on the U.S. data that is imposed on European research by the lack of proxy statements, insider declarations and filings of institutional investors.

A first comparison of the cumulative frequency distribution reported in Demsetz and Lehn (1985, pg. 1157) shows that the samples do have different properties. Ownership in the detailed Fortune 500 sample of Demsetz and Lehn is less concentrated than in my 6559 company, beneficial owner sample. Since the Demsetz and Lehn data contains stakes that are smaller than 5% (from proxy statements and insider filings) this is hardly surprising. Also, many of the Fortune 500 companies might not have a 5% beneficial owner and, hence, do not

appear in Figure 1 (complete dispersion). European beneficial ownership data has the same properties and the U.S. data I use here. Figure 1 confirms that comparing European data to the Demsetz and Lehn data potentially exaggerates the differences in ownership concentration between the United States and Europe.

**FIGURE 1. FREQUENCY DISTRIBUTION OF C5**



Note: The figure shows the cumulative percentages of the frequency distribution of a C5 concentration measure (the sum of the percentage of outstanding shares held by the top 5 beneficial owners) for our sample and the Demsetz and Lehn Fortune 500 sample. The Demsetz and Lehn sample is more concentrated. For their sample, 91.59% of the companies have a C5 measure of less than 50%, compared to 70.3% for our sample. The cumulative percentage curve rises more steeply and levels off just after the 50-54.99% range. For our sample the curve levels off in the 65-75% range but is still below 100% (their curve reaches 100% in the 85-89.99% range).

The summary statistics reported here are comparable to those reported in La Porta, Lopez-de-Silanes, Shleifer and Vishny (1996, Table 10). These authors concentrate on the three largest stakes in the 10 largest non-financial domestic firms. The concentration ratios I find for the larger sample are higher than those reported in in La Porta *et. Al.* (1996). However, the mean and the median over the stakes held by the largest three beneficial owners I report are actually lower; see Table 1.

**TABLE 1. OWNERSHIP BY LARGEST THREE BENEFICIAL OWNERS**

	La Porta, Lopez-de-Silanes, Shleifer, Vishny (1996, Table 10), 10 Large Firms	6559 Firms
Sum of stakes held by largest 3 shareholders (C3)		
mean	0.20	0.32
median	-	0.24
All stakes held by 3 largest shareholders		
mean	0.20	0.15
median	0.12	0.01

Note: For the 6559 firms more data can be found in the appendix.

The sensitiveness of the results the type of summary measure and to the sample definition is a warning. To concentrate on a few indicators derived from highly selective samples can be misleading, especially when conducting international comparisons.

The remainder of this note is organised as follows. Section II provides a more detailed discussion of Section 13(d) of the SEA, the concept of “beneficial owner”, the format of the relevant SEC filings and the data source used for obtaining the descriptive statistics. Section III summarises the main results. An Appendix contains tables and figures with the descriptive statistics (that should be comparable to similar tables and figures for the EU). The full text of Rule 13d-3 that defines “beneficial ownership” is reproduced in a second Appendix. All relevant legal documents, for example Sections 13(d) SEA, Rules 13d-1 to 13-5 and electronic filings made on Forms 13D and 13G can be found on the internet (see References).

## **II. Data**

### **A. Regulatory Basis**

For companies incorporated in the United States and traded on at least one of the U.S. stock exchanges there are numerous and often overlapping sources of ownership information:

- 1      Declarations by companies (registration with the SEC, periodic reporting, proxy statements);
- 2      Declarations by 5% Beneficial Owners (13D, 13G and 14D-1 filings) based on Williams Act that regulates takeovers;
- 3      Insider filings (Form 3, 4, 5, 144). Although these are called “insider filings” they include filings by outsiders who are 5% beneficial owners and have a claim on more than 10% of a company’s cash flow rights.
- 4      Portfolio disclosure by institutional investors
  - 4.1    General institutional holdings filed on Form 13F (going back to 1978 when this measure was introduced)
  - 4.2    Mutual Fund holdings
  - 4.3    Insurance Company holdings
  - 4.4    Pension Fund holdings

In this note I limit myself to declarations filed by 5% beneficial owners on Forms 13D, 13G and 14D-1 filings.

When a beneficial owner buys up more than 5% of the outstanding voting stock of a company (less any treasury stock) the holder must, within 10 days, file with the SEC and the stock exchanges where the company is traded. The beneficial owner must report on the reason for the purchase of the block any make subsequent filings when the size of the block increases or decreases by more than 1 percent. If the beneficial owner acts in concert with other institutions or persons their names and the relationship with the beneficial owners must be disclosed. The relevant section of the Securities and Exchange Act of 1934 and the corresponding forms are reproduced in an Appendix. They are clearly written and I shall not discuss them further here.

For the purposes of the present analysis the most important question is: What is the definition of “beneficial owner”? Rule 13d-3 provides a clear definition:

- (a) For the purposes of Sections [13\(d\)](#) and [13\(g\)](#) of the [Act](#) a beneficial owner of a security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares:
  - (1) Voting power which includes the power to vote, or to direct the voting of, such security; and/or
  - (2) Investment power which includes the power to dispose, or to direct the disposition of, such security.
- (b) Any person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement or any other contract, arrangement, or device with the purpose or effect of divesting such person of beneficial ownership of a security or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the reporting requirements of Section [13\(d\)](#) or [13\(g\)](#) of the [Act](#) shall be deemed for purposes of such sections to be the beneficial owner of such security.
- (c) All securities of the same class beneficially owned by a person, regardless of the form which such beneficial ownership takes, shall be aggregated in calculating the number of shares beneficially owned by such person.

A fourth provision (d) is less important, lengthy and reported in the Appendix. The definition of beneficial ownership is very similar to the spirit of the EU Transparency Directive (88/627/EEC). Hence, as far as the legal definition of beneficial owner is concerned, we can be sure that the definition of owner for the United States is very similar to the definition that should apply throughout the European Union.

## ***B. Data Source***

The data used in this note is taken from the Global Researcher Database assembled by Disclosure Inc (<http://www.disclosure.com>) and produced by Bureau van Dijk (<http://www.bvd.com>). The ownership data originates with CDA Technologies Inc (<http://www.cda.com>) and their CDA/Spectrum database. I use what CDA call “5% owner” information that is taken from Forms 13D, 13G and 14D.

The Global Research Database contains an identification record for 12,000 U.S. registered companies that are listed on at least one of the US Exchanges. For 8864 companies at least one of four types of ownership information was available (information from proxy statements, portfolio filings of institutional investors, 5% owners or insider filings). For 6559 companies 5% beneficial ownership information was reported.

The quality of US ownership was investigated by Anderson and Lee (1997) and must be considered exemplary for this type of research. Their paper also shows that it is possible to

publish rigorous data surveys in academic journals, at least in the United States.<sup>1</sup> **Anderson and Lee (1997) find that the CDA 5% ownership information suffers from a “stale data” problem. The database is not updated completely at all times. Hence, the results reported here should be treated with great caution.** In particular, very large blocks of 99.99% are likely to be “leftovers” from takeovers and it is likely that the companies are no longer listed and/or the blocks have been diluted.

**TABLE 2. DISTRIBUTION OF FILINGS BY YEAR AND FORM**

Year	No. of Filings	Form	No. of Filings
n.a.	1	13D	8279
70	1	13G	15477
85	1	14D	22
86	2		
88	2		
89	239		
90	411		
91	582		
92	1120		
93	1432		
94	2474		
95	8900		
96	7587		
97	1026		
<b>Total</b>	<b>23778</b>		<b>23778</b>

Most filings were made on Form 13G and 13D. In 22 cases CDA obtained the beneficial ownership information from Form 14D. Most of the forms were filed between 1992 and 1997, but one filing dates back as far as 1970. I do not interpret this dispersion as a failure of CDA to collect the latest forms, but as an indicator of the relative stability of 5% ownership in the United States. More detailed information on this aspect of the data and a dynamic analysis would be important, but are beyond the scope of this note.

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<sup>1</sup> I am very grateful to Roberta Romano for pointing me to this article that appeared in the September issue of the Journal of Financial and Quantitative Analysis.

### III. Results

Tables with detailed results are reported in an appendix. The main findings are summarised here. I began the analysis by computing summary statistics of beneficial ownership for each of the 6559 companies (minimum stake, maximum, mean, median, dispersion and concentration measures). In the next step I analysed the portfolios of the 11442 individuals and institutions who hold blocks in the 6559 companies. I report similar statistics to those reported for the companies.

#### A. *Beneficial Ownership of Companies*

A number of observations emerge from analysing 5% ownership by company.

1. There are 701 companies with a “float” (percentage of outstanding shares that are not in the hands of a 5% beneficial owner) of less than 10%. They represent 10.7% of all companies considered (6559) and more companies than are listed on most European markets.
2. For each company the blocks were ranked. The mean of the 6559 largest blocks is 22.8%, the median is 15.1%, the minimum 0.05% and the maximum 99.9%. For the second largest block the mean is 11.3%, the median 9%, the minimum 0.001% and the maximum 49.99%.
3. The frequency distribution of the concentration ratios obtained here lies above the distributions reported in Demsetz and Lehn (1985). This is true for C5 (the sum of the percentage of shares outstanding for the three largest blocks) and C20 (the of shares outstanding for the 20 largest blocks).
4. The mean of C3 (the sum of the shares outstanding for the three largest shareholders) is 32.3%. The mean of C5 is 39.8%, the of C20 is 43.6% and almost identical to the sum of all blocks ( $C_{all}$ ). This is not surprising since the largest number of blocks per company is 22.
5. The five concentration measures are highly correlated. The lowest correlation of 0.7437 can be observed for C1 and C20 (and  $C_{all}$ ). This is, of course, the result of the 5% truncation introduced by the 5% beneficial owner disclosure rule.

## **B. Portfolios of 5% Beneficial Owners**

Apart from their name and geographical origin, no further information (for example activity) of the beneficial owners is available. Due to the high number of beneficial owners it was not possible to add such information “by hand”. Hence, the present analysis focuses on the distribution of summary statistics for the individual portfolios.

1. Most 5% beneficial owners are registered in the United States. The European Union has a strong presence in terms of the number of blocks held. “Offshore” places of incorporation also have a visible presence. There are surprisingly few beneficial owners that are registered in Japan.
2. Mark Roe (1994, page 223) states that in the world of U.S. block ownership, “the rarities are mainly the large blocks held by Berkshire Hathaway”. I could only find one block of 9.8% that is held by Berkshire Hathaway Inc.<sup>1</sup> Instead, the company with the largest number and largest size blocks (in terms of percentage of outstanding shares held per company) is FMR Corp, the acronym for Fidelity Management & Research Company (registered at 82 Devonshire Street, Boston, Massachusetts 02109, <http://www.fidelity.com/>). Fidelity holds 1174 blocks with a mean size of 7.3% (the median size 6.9%). Fidelity is followed by Putnam Investments Inc that holds 352 blocks with mean size 8.5% (median 7.4%). The Wisconsin Investment Board (<http://badger.state.wi.us/agencies/invbd/>) is the 5<sup>th</sup> most important blockholder (273 stakes, mean 7.2%, median 7.1%). It is followed by the French Axa Group with 160 participations (mean 7.7%, median 6%). These institutions, in particular Fidelity, could be playing an important role in corporate governance in the United States.
3. Most beneficial owners hold one stake (86.7%). Most of the beneficial owners who hold more than one stake hold stakes that are similar in size. For 75% of the 1594 owners who hold more than one stake the interquartile range of their holdings is 75%. For 90% the interquartile range is less than 27.8%. The extreme case is a single portfolio with an interquartile range of 97.2%.

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<sup>1</sup> This could be due to a stale data problem, but this is not very likely.

## IV. References

Anderson, R. C. and D. S. Lee (1997), "Ownership Studies: The Data Source Matters", *Journal of Financial and Quantitative Analysis*, 32, September 1997.

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Roe, Mark J. (1994), *Strong Mangers, Weak Owners. The Political Roots of American Corporate Finance*, Princeton University Press.

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## V. Appendix: Tables and Figures

### A. Analysis by Company

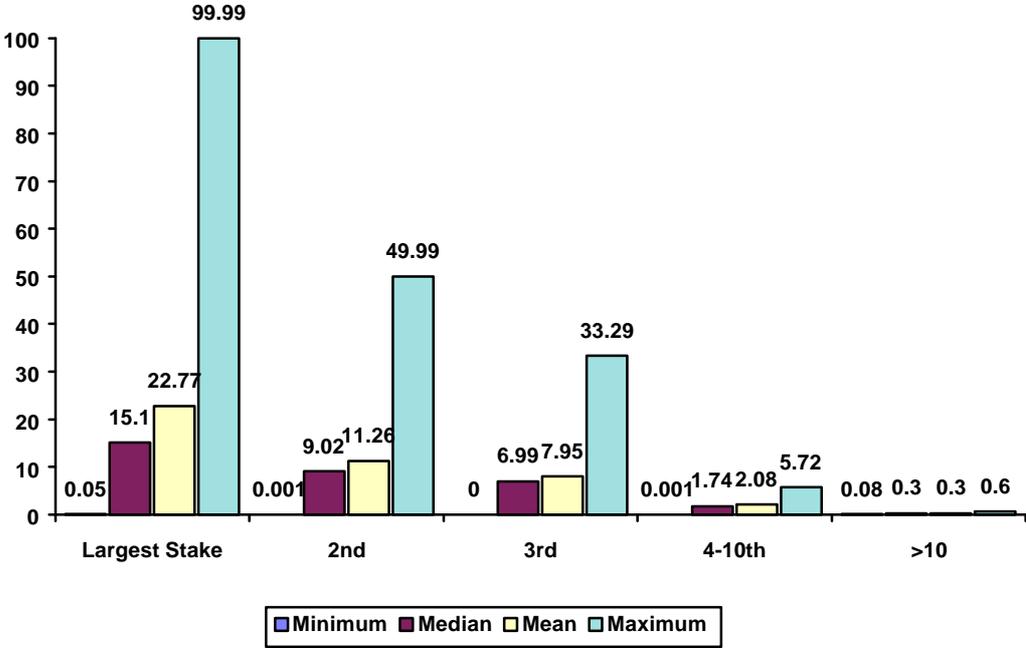
**TABLE 3. COMPANIES WITH A BENEFICIAL OWNER LARGER THAN 90 PERCENT**

Company Name	No. of Blocks	Min. Block	Max. Block	Mean Block	Std.	Median	Interqr.	Float
ADVANCED MEDICAL INC	1	99.99	99.99	99.99	0	99.99	0	0.01
ASPEN EXPLORATION CORP	1	99.99	99.99	99.99	0	99.99	0	0.01
CODED COMMUNICATIONS CORP	1	99.99	99.99	99.99	0	99.99	0	0.01
COSMETIC SCIENCES INC	1	99.99	99.99	99.99	0	99.99	0	0.01
COSTA RICA INTERNATIONAL INC	1	99.99	99.99	99.99	0	99.99	0	0.01
CUSA TECHNOLOGIES INC	1	99.99	99.99	99.99	0	99.99	0	0.01
DEVELOPMENT BANCORP LTD	1	99.99	99.99	99.99	0	99.99	0	0.01
ENCORE COMPUTER CORP	1	99.99	99.99	99.99	0	99.99	0	0.01
ESCO TRANSPORTATION CO	1	99.99	99.99	99.99	0	99.99	0	0.01
EUTRO GROUP HOLDING INC	1	99.99	99.99	99.99	0	99.99	0	0.01
FIRST COMMONWEALTH CORP	1	99.99	99.99	99.99	0	99.99	0	0.01
FOOD TECHNOLOGY SERVICE INC	1	99.99	99.99	99.99	0	99.99	0	0.01
GOLDEN INTERSTATE MEDICAL MANAGEMENT INC	1	99.99	99.99	99.99	0	99.99	0	0.01
GOLDEN OIL CO	1	99.99	99.99	99.99	0	99.99	0	0.01
GRAND UNION CO	1	99.99	99.99	99.99	0	99.99	0	0.01
GYRODYNE CO OF AMERICA INC	1	99.99	99.99	99.99	0	99.99	0	0.01
MAKO MARINE INTERNATIONAL INC	1	99.99	99.99	99.99	0	99.99	0	0.01
NATIONAL AFFILIATED CORP	1	99.99	99.99	99.99	0	99.99	0	0.01
NATIONAL MEDICAL FINANCIAL SERVICES CORP	1	99.99	99.99	99.99	0	99.99	0	0.01
RADYNE CORP	1	99.99	99.99	99.99	0	99.99	0	0.01
REDOX TECHNOLOGY CORP	1	99.99	99.99	99.99	0	99.99	0	0.01
RPM INC	1	99.99	99.99	99.99	0	99.99	0	0.01
SIXX HOLDINGS INC	1	99.99	99.99	99.99	0	99.99	0	0.01
TANGRAM ENTERPRISE SOLUTIONS INC	1	99.99	99.99	99.99	0	99.99	0	0.01
TV COMMUNICATIONS NETWORK INC	1	99.99	99.99	99.99	0	99.99	0	0.01
U S MEDICAL PRODUCTS INC	1	99.99	99.99	99.99	0	99.99	0	0.01
VAC TEC SYSTEMS INC	1	99.99	99.99	99.99	0	99.99	0	0.01
VITAFORT INTERNATIONAL CORP	1	99.99	99.99	99.99	0	99.99	0	0.01
STYLES ON VIDEO INC	2	0.77	99.22	49.99	69.62	49.99	98.46	0.01
WEST COAST BANCORP NEW	3	0.1	98.97	33.33	56.85	0.92	98.88	0.01
FIDELITY BANCORP INC PA	4	0.23	98.83	25	49.22	0.47	49.48	0.01
IMMUNOTHERAPEUTICS INC	2	1.27	98.72	50	68.9	50	97.44	0.01
HEALTH MANAGEMENT INC DE	2	1.43	98.56	50	68.68	50	97.13	0.01
SABRE GROUP HOLDINGS INC	2	2.34	97.65	49.99	67.39	49.99	95.3	0.01
HUNGARIAN TELEPHONE & CABLE CORP	2	2.76	97.23	49.99	66.8	49.99	94.47	0.01
PORTSMOUTH BANK SHARES INC	4	0.89	97.2	25	48.14	0.95	48.17	0.01
ICIS MANAGEMENT GROUP INC	2	3.64	96.35	49.99	65.55	49.99	92.71	0.01
THERMO ECOTEK CORP	2	3.86	96.13	50	65.24	50	92.26	0.01

**COMPANIES WITH A BENEFICIAL OWNER LARGER THAN 90 PERCENT (CONTINUED)**

Company Name	No. of Blocks	Min. Block	Max. Block	Mean Block	Std.	Median	Interqr.	Float
SAN FRANCISCO CO	2	4.58	95.41	50	64.22	50	90.82	0.01
SOUND SOURCE INTERACTIVE INC	2	5.62	94.37	49.99	62.75	49.99	88.74	0.01
VECTOR AEROMOTIVE CORP	2	5.66	94.33	50	62.7	50	88.67	0.01
READING ENTERTAINMENT INC	2	5.82	94.17	49.99	62.47	49.99	88.34	0.01
MCLEOD INC	3	1.21	94.05	33.33	52.61	4.74	92.84	0.01
BENTLEY INTERNATIONAL INC	2	6.19	93.8	50	61.95	50	87.61	0.01
PENN AMERICA GROUP INC	2	6.21	93.78	50	61.92	50	87.57	0.01
R&G FINANCIAL CORP	3	2.56	93.66	33.33	52.25	3.77	91.1	0.01
SUPER VISION INTERNATIONAL INC	2	6.86	93.13	49.99	61.01	49.99	86.28	0.01
ROADWAY EXPRESS INC	2	6.92	93.07	49.99	60.92	49.99	86.15	0.01
FOODQUEST INC	2	6.99	93	49.99	60.82	49.99	86.01	0.01
DELTA COMPUTEC INC	2	7.38	92.61	49.99	60.26	49.99	85.23	0.01
GROUP TECHNOLOGIES CORP	2	7.39	92.6	49.99	60.26	49.99	85.22	0.01
FIRST ENTERTAINMENT INC	2	7.75	92.24	50	59.74	50	84.49	0.01
VALLICORP HOLDINGS INC	3	1.72	92.2	33.33	51.03	6.06	90.48	0.01
MEDCROSS INC	2	8.73	91.26	50	58.36	50	82.53	0.01
XYVISION INC	2	8.76	91.23	49.99	58.32	49.99	82.47	0.01
TELETEK INC	2	8.9	91.09	50	58.11	50	82.18	0.01
MBF USA INC	2	9.17	90.82	49.99	57.74	49.99	81.65	0.01
ENRON OIL & GAS CO	2	9.87	90.12	49.99	56.74	49.99	80.24	0.01

**FIGURE 2. BLOCKS BY RANK OF BLOCKS FOR ALL LISTED COMPANIES**



Note: For each of the 6559 companies for which data was available the stakes were ranked. For observations with the same value the average rank was assigned. This was never the case for the largest stake. These ranks were attributed to the larger category (e.g. 2.5 in second largest, 10.5 in 4-10th largest). Larger average ranks were attributed to the category 10th largest stake or bigger. For each category the minimum, median, mean and maximum were computed for all stakes in the category.

**TABLE 4. FREQUENCY DISTRIBUTION OF C1, C3, C5, C20 AND C<sub>ALL</sub>**

Range	C1		C3		C5		C20		C <sub>all</sub>	
	Frequency	Cum. Pct.	Frequency	Cum. Pct.	Frequency	Cum. Pct.	Frequency	Cum. Pct.	Frequency	Cum. Pct.
0-4.99	219	3.34	168	2.56	157	2.39	157	2.39	157	2.39
5-9.99	1742	29.90	636	12.26	586	11.33	583	11.28	583	11.28
10-14.99	1308	49.84	730	23.39	500	18.95	493	18.80	493	18.80
15-19.99	750	61.27	980	38.33	520	26.88	496	26.36	496	26.36
20-24.99	506	68.99	877	51.70	518	34.78	466	33.47	466	33.47
25-29.99	374	74.69	612	61.03	550	43.16	440	40.17	440	40.17
30-34.99	316	79.51	417	67.39	516	51.03	381	45.98	381	45.98
35-39.99	262	83.50	320	72.27	500	58.65	382	51.81	382	51.81
40-44.99	204	86.61	281	76.55	401	64.77	377	57.55	377	57.55
45-49.99	203	89.71	236	80.15	363	70.30	359	63.03	359	63.03
50-54.99	147	91.95	178	82.86	254	74.17	281	67.31	281	67.31
55-59.99	114	93.69	200	85.91	257	78.09	304	71.95	304	71.95
60-64.99	76	94.85	154	88.26	266	82.15	295	76.44	295	76.44
65-69.99	66	95.85	133	90.29	184	84.95	238	80.07	238	80.07
70-74.99	74	96.98	114	92.03	163	87.44	183	82.86	183	82.86
75-79.99	49	97.73	91	93.41	134	89.48	153	85.20	153	85.20
80-84.99	47	98.44	92	94.82	127	91.42	145	87.41	145	87.41
85-89.99	24	98.81	66	95.82	91	92.80	125	89.31	125	89.31
90-94.99	34	99.33	54	96.65	73	93.92	79	90.52	79	90.52
95-100	44	100.00	220	100.00	399	100.00	622	100.00	622	100.00
<b>Total</b>			<b>6559</b>		<b>6559</b>		<b>6559</b>		<b>6559</b>	

**TABLE 5. SUMMARY STATISTICS AND CORRELATION OF C1, C3, C5, C20 AND C<sub>ALL</sub>**

Measure	Mean	Std. Dev.	Min.	Max.		C1	C3	C5	C20	C <sub>All</sub>
C1	22.75	19.48	0.05	99.99		1				
C3	32.26	23.85	0.05	99.99		0.8541	1			
C5	39.80	26.47	0.05	99.99		0.8155	0.8932	1		
C20	43.60	28.95	0.05	99.99		0.7437	0.7804	0.9313	1	
C <sub>All</sub>	43.60	28.95	0.05	99.99		0.7437	0.7804	0.9313	1	1

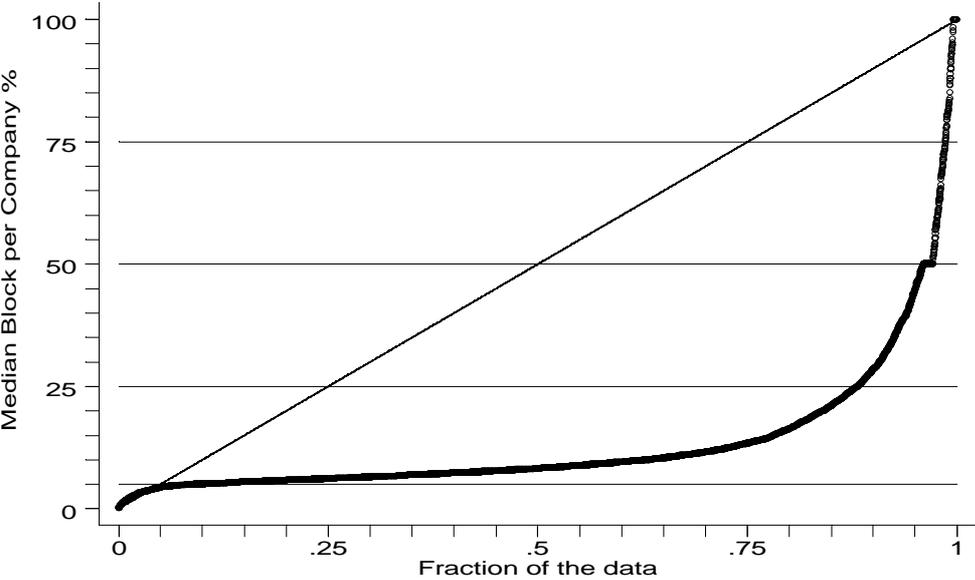
The first 4 columns show the mean, standard deviation, minimum and maximum of the five concentration measures for 5% beneficial owner blocks. The last five columns show a correlation matrix for the five measures.

**TABLE 6. DISTRIBUTION OF SUMMARY STATISTICS**

	<i>Min. Stake</i>	<i>Max. Stake</i>	<i>Median Stake</i>	<i>Interq. Range</i>	<i>Mean Stake</i>	<i>Std. Dev. Stake</i>
<b>Minimum</b>	0.00	0.05	0.05	0.00	0.05	0.00
<b>1%</b>	0.02	2.75	1.86	0.00	2.37	0.00
<b>5%</b>	0.50	5.41	4.30	0.00	4.59	0.00
<b>10%</b>	1.49	6.45	5.05	0.00	5.33	0.00
<b>25%</b>	3.86	9.31	6.13	0.89	6.87	0.85
<b>50%</b>	5.37	15.05	8.20	4.11	9.71	3.46
<b>75%</b>	7.88	30.30	13.32	10.59	16.66	8.51
<b>90%</b>	16.43	50.34	28.41	26.99	29.31	18.93
<b>95%</b>	34.26	65.90	44.62	41.34	43.08	26.85
<b>99%</b>	81.25	92.37	81.25	71.19	81.25	47.29
<b>Maximum</b>	99.99	99.99	99.99	98.88	99.99	69.62
<b>Obs</b>	6559	6559	6559	6559	6559	6559

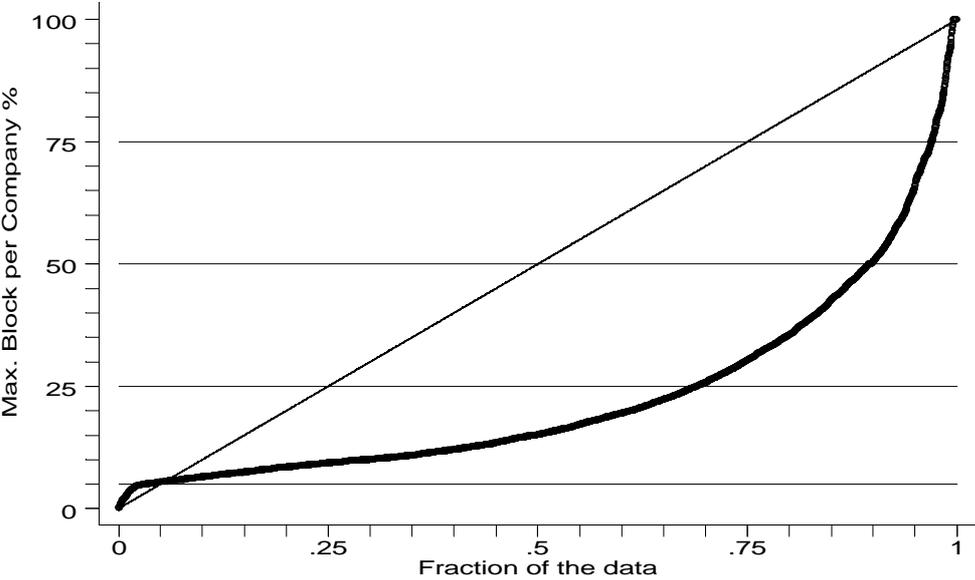
Note: The table shows the distribution of summary statistics that were computed for each of the 6559 companies in the sample (e.g. the minimum stake per company, the mean stake per company).

**FIGURE 3. PERCENTILE PLOT OF MEDIAN BLOCK HELD BY BENEFICIAL OWNERS**



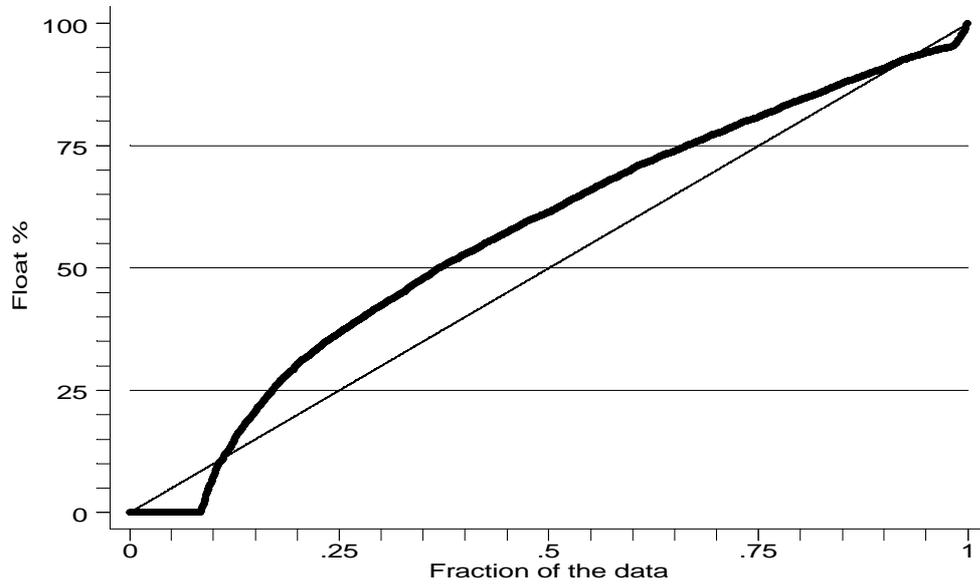
Note: Percentile plot of the median 5% beneficial owner who filed under the Regulations set out in Section 13(d) of the Securities Exchange Act. The horizontal axis shows the fraction of the 6559 companies and the vertical axis shows the corresponding median ownership stake.

**FIGURE 4. MAXIMUM BLOCK HELD BY BENEFICIAL OWNERS**



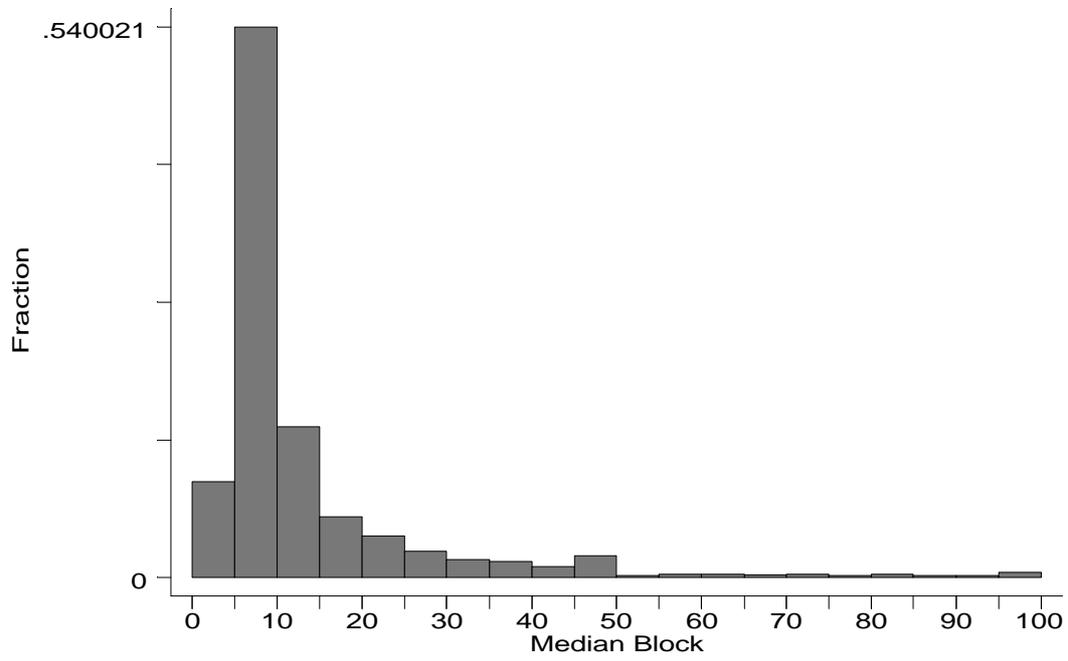
Note: Percentile plot of the maximum stake held in each of the 6559 companies with at least one 5% beneficial owner. . The horizontal axis shows the fraction of the 6559 companies and the vertical axis shows the corresponding median ownership stake. In the United States, 90% of the maximum stakes (per company) held by 5% beneficial owners are smaller than 50%.

**FIGURE 5. PERCENTILE PLOT OF “FLOAT”**

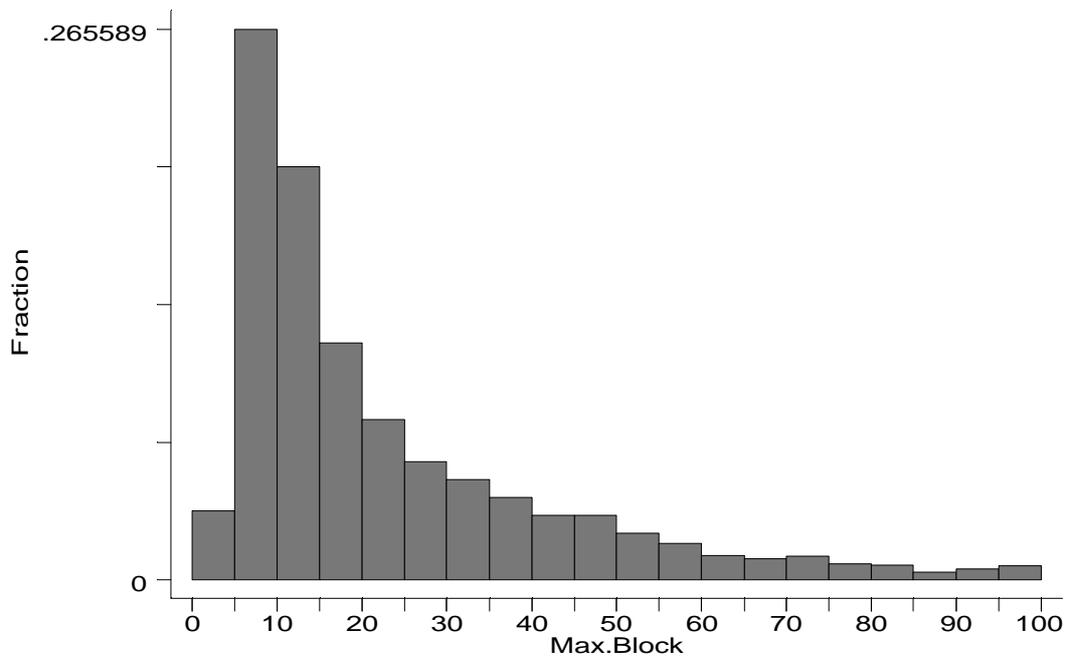


Note: There are a surprisingly large number of companies with a float just over zero percent.

**FIGURE 6. HISTOGRAM OF MEDIAN BLOCK HELD BY BENEFICIAL OWNERS**



**FIGURE 7. HISTOGRAM OF MAXIMUM BLOCK HELD BY BENEFICIAL OWNERS**



## B. Origin and Portfolios of 5% Beneficial Owners

**TABLE 7. COUNTRY OF ORIGIN OF BENEFICIAL OWNERS**

<i>Index</i>	<i>Country of Origin</i>	<i>Frequency</i>	<i>Percent</i>	<i>Index</i>	<i>Country of Origin</i>	<i>Frequency</i>	<i>Percent</i>
1	ALGERIA	1	0.01	38	ITALY	9	0.08
2	ANTIGUA	1	0.01	39	JAPAN	46	0.4
3	AUSTRALIA	21	0.18	40	JORDAN	1	0.01
4	AUSTRIA	2	0.02	41	KUWAIT	2	0.02
5	BAHAMAS	10	0.09	42	LEBANON	2	0.02
6	BARBADOS	2	0.02	43	LIBERIA	9	0.08
7	BELGIUM	13	0.11	44	LIECHTENSTEIN	8	0.07
8	BELIZE (BRITISH)	3	0.03	45	LUXEMBOURG	11	0.1
9	BERMUDA	30	0.26	46	MALAYSIA	2	0.02
10	BOTSWANA	1	0.01	47	MAURITIUS & DEPE	1	0.01
11	BRAZIL	1	0.01	48	MEXICO	7	0.06
12	BRITISH INDIAN	1	0.01	49	MYANMAR (BURMA)	1	0.01
13	BRITISH ISLES	1	0.01	50	NETHERLANDS	28	0.24
14	BRITISH VIRGIN ISLANDS	41	0.36	51	NETHERLANDS ANTILLES	21	0.18
15	CANADA	143	1.25	52	NEW ZEALAND	1	0.01
16	CAYMAN ISLANDS	20	0.17	53	NORTH KOREA	4	0.03
17	CHANNEL ISLANDS	11	0.1	54	NORWAY	5	0.04
18	CHILE	1	0.01	55	PANAMA	7	0.06
19	CHINA	4	0.03	56	PARAGUAY	1	0.01
20	COOK ISLANDS	2	0.02	57	PERU	1	0.01
21	COSTA RICA	2	0.02	58	PUERTO RICO	4	0.03
22	DENMARK	1	0.01	59	ROMANIA	1	0.01
23	EGYPT	1	0.01	60	RUSSIA	2	0.02
24	EL SALVADOR	1	0.01	61	SAUDI ARABIA	6	0.05
25	FINLAND	2	0.02	62	SINGAPORE	16	0.14
26	FRANCE	44	0.38	63	SOUTH AFRICA	3	0.03
27	GERMANY	40	0.36	64	SPAIN, CANARY &	3	0.03
28	GIBRALTAR	1	0.01	65	SUDAN	1	0.01
29	GREECE	2	0.02	66	SWEDEN	11	0.1
30	GUERNSEY	6	0.05	67	SWITZERLAND	32	0.28
31	HONG KONG	17	0.15	68	TAIWAN	8	0.07
32	INDIA	4	0.03	69	THAILAND	2	0.02
33	INDONESIA	3	0.03	70	TURKEY	1	0.01
34	IRAN	4	0.03	71	TURKS & CAICOS ISLANDS	3	0.03
35	IRELAND (REPUBLIC)	9	0.08	72	UNITED KINGDOM	96	0.84
36	ISLE OF MAN	2	0.02	73	UNITED STATES	10615	92.76
37	ISRAEL	21	0.18	74	VENEZUELA	2	0.02
<b>Total</b>						<b>11442</b>	<b>100</b>

Note: Inspecting the European owners the State of Wisconsin Investment Board was listed with Germany as the country of origin. This mistake was corrected. No other such mistakes were found through visual inspection of the data. Even if the mistake had not been discovered, the number of beneficial owners of German origin would have been 41 instead of 40.

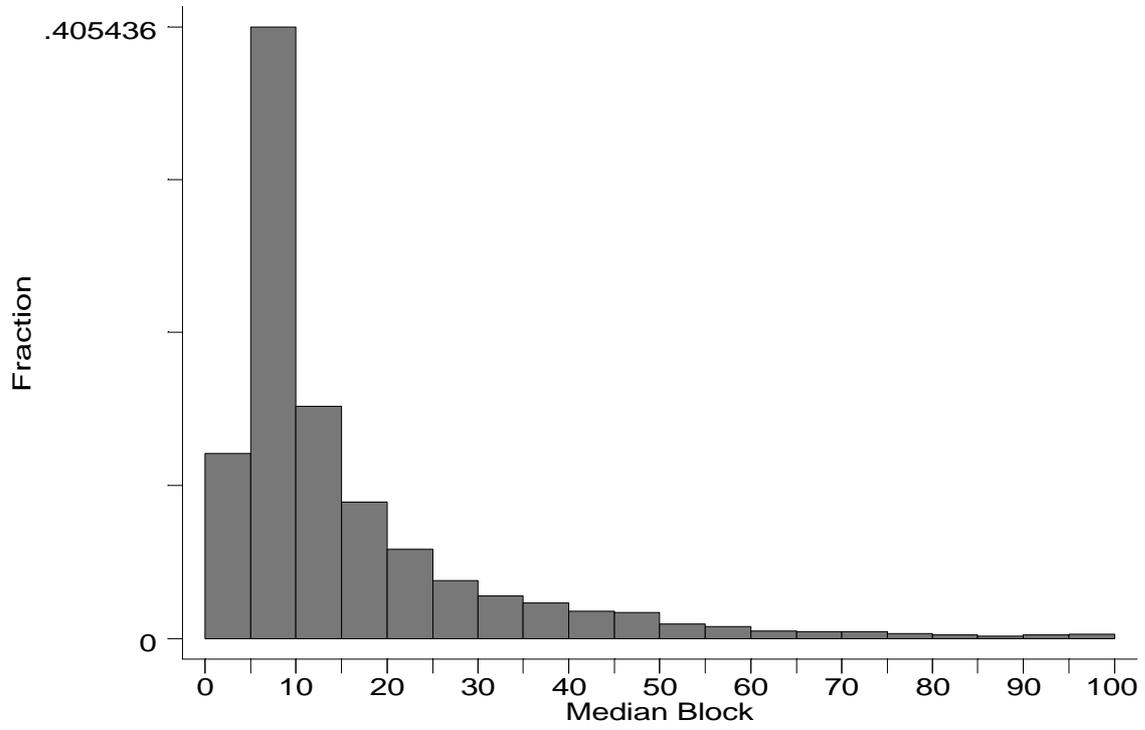
**TABLE 8. FREQUENCY DISTRIBUTION OF 5% BENEFICIAL OWNERS' STAKES**

<i>Cell No.</i>	<i>No. of Blocks</i>	<i>Freq.</i>	<i>%</i>	<i>Cumul.</i>	<i>Cumul. %</i>	<i>Cell No.</i>	<i>No. of Blocks</i>	<i>Freq.</i>	<i>%</i>	<i>Cumul.</i>	<i>Cumul. %</i>
1	1	9848	86.07	9848	86.07	41	43	1	0.01	11392	99.56
2	2	751	6.56	10599	92.63	42	46	2	0.02	11394	99.58
3	3	249	2.18	10848	94.81	43	47	1	0.01	11395	99.59
4	4	135	1.18	10983	95.99	44	48	3	0.03	11398	99.62
5	5	76	0.66	11059	96.65	45	51	1	0.01	11399	99.62
6	6	54	0.47	11113	97.12	46	53	2	0.02	11401	99.64
7	7	25	0.22	11138	97.34	47	56	3	0.03	11404	99.67
8	8	49	0.43	11187	97.77	48	57	1	0.01	11405	99.68
9	9	31	0.27	11218	98.04	49	58	3	0.03	11408	99.70
10	10	20	0.17	11238	98.22	50	59	1	0.01	11409	99.71
11	11	10	0.09	11248	98.30	51	60	2	0.02	11411	99.73
12	12	10	0.09	11258	98.39	52	61	1	0.01	11412	99.74
13	13	18	0.16	11276	98.55	53	63	1	0.01	11413	99.75
14	14	10	0.09	11286	98.64	54	65	1	0.01	11414	99.76
15	15	9	0.08	11295	98.72	55	71	1	0.01	11415	99.76
16	16	10	0.09	11305	98.80	56	72	1	0.01	11416	99.77
17	17	5	0.04	11310	98.85	57	74	3	0.03	11419	99.80
18	18	8	0.07	11318	98.92	58	77	1	0.01	11420	99.81
19	19	3	0.03	11321	98.94	59	80	1	0.01	11421	99.82
20	20	4	0.03	11325	98.98	60	81	1	0.01	11422	99.83
21	21	6	0.05	11331	99.03	61	87	2	0.02	11424	99.84
22	22	4	0.03	11335	99.06	62	88	1	0.01	11425	99.85
23	23	1	0.01	11336	99.07	63	90	1	0.01	11426	99.86
24	24	4	0.03	11340	99.11	64	97	1	0.01	11427	99.87
25	25	7	0.06	11347	99.17	65	103	1	0.01	11428	99.88
26	26	5	0.04	11352	99.21	66	114	1	0.01	11429	99.89
27	27	6	0.05	11358	99.27	67	120	1	0.01	11430	99.90
28	28	4	0.03	11362	99.30	68	121	1	0.01	11431	99.90
29	29	5	0.04	11367	99.34	69	127	1	0.01	11432	99.91
30	30	2	0.02	11369	99.36	70	134	1	0.01	11433	99.92
31	31	1	0.01	11370	99.37	71	153	1	0.01	11434	99.93
32	32	2	0.02	11372	99.39	72	160	1	0.01	11435	99.94
33	33	1	0.01	11373	99.40	73	173	1	0.01	11436	99.95
34	34	1	0.01	11374	99.41	74	181	1	0.01	11437	99.96
35	35	6	0.05	11380	99.46	75	273	1	0.01	11438	99.97
36	36	2	0.02	11382	99.48	76	337	1	0.01	11439	99.97
37	37	4	0.03	11386	99.51	77	352	1	0.01	11440	99.98
38	38	1	0.01	11387	99.52	78	393	1	0.01	11441	99.99
39	39	2	0.02	11389	99.54	79	1174	1	0.01	11442	100.00
<b>Total</b>								<b>11442</b>	<b>100.00</b>		

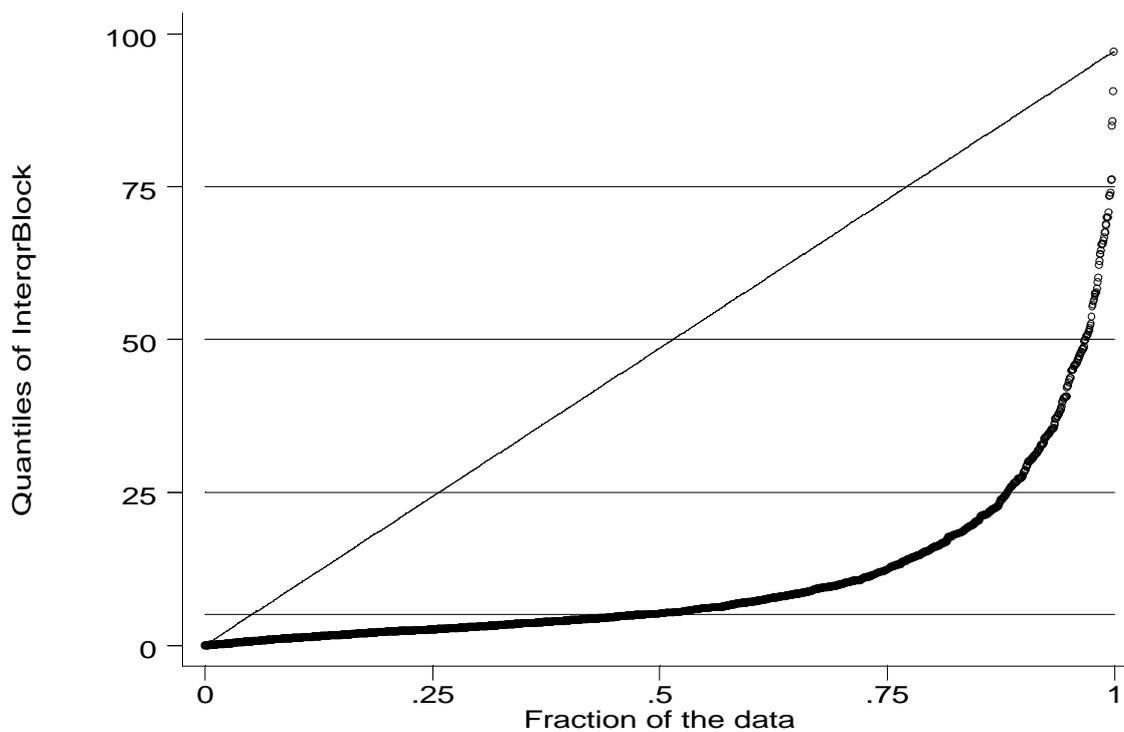
**TABLE 9. 5% BENEFICIAL OWNERS WITH MORE THAN 50 STAKES**

<i>Name of Beneficial Owner</i>	<i>No. Stakes</i>	<i>Min. Stake</i>	<i>Max. Stake</i>	<i>Mean Stake</i>	<i>Std. Stake</i>	<i>Median Stake</i>	<i>Intqr. Stake</i>
FMR CORP	1174	0.00	76.74	7.33	4.60	6.93	5.13
DIMENSIONAL FUND ADVS.	393	0.09	9.71	5.34	1.31	5.31	1.34
PUTNAM INVT INC ET AL	352	0.00	94.05	8.52	6.90	7.41	5.45
WELLINGTON MGMT CO	337	0.07	19.06	7.37	3.22	7.06	4.34
STATE OF WISCONSIN INVEST BD	273	0.11	42.29	7.21	3.48	7.12	3.70
PRUDENTIAL INS CO OF AMER	181	0.00	30.25	6.15	4.45	5.59	4.38
MORGAN J P & CO INC	173	0.00	48.88	6.92	5.36	5.95	4.45
AXA ET AL	160	0.00	73.15	7.66	9.18	5.95	5.01
PIONEERING MGMT CORP	153	0.53	17.97	7.34	2.52	7.21	3.87
MELLON BANK ET AL	134	0.24	41.29	7.81	7.46	6.04	6.16
NEUBERGER & BERMAN	127	0.02	18.14	6.27	2.88	5.68	2.96
HEARTLAND ADVISORS INC	121	1.30	24.71	9.98	4.82	9.58	6.06
CAPITAL GROUP INC.	120	0.15	22.78	6.02	3.43	5.69	3.03
QUEST ADVISORY CORP ET AL	114	1.02	31.14	7.07	3.19	6.67	2.61
KENNEDY CAPITAL MGMT INC	103	0.55	76.34	7.58	8.11	6.03	2.95
CAPITAL GROUP COS INC ET AL	97	1.65	88.54	8.66	9.26	6.49	5.07
PRICE T ROWE ASSOCIATES	90	0.11	19.44	6.29	2.83	5.90	3.70
PRICE T ROWE ASSOC INC ET AL	88	1.46	16.65	6.86	2.88	6.14	3.91
MERRILL LYNCH & CO ET AL	87	0.00	46.05	8.89	8.08	7.21	5.21
GOLDMAN SACHS & CO ET AL	87	0.50	44.99	8.18	6.65	6.06	5.83
BABSON DAVID L & CO	81	0.27	99.99	8.30	10.71	6.94	3.51
GAMCO INVESTORS INC ET AL	80	0.51	78.35	12.29	10.61	10.62	10.60
AMERICAN CENTURY COS INC	77	0.86	15.44	6.75	1.98	6.58	1.85
JANUS CAPITAL CORP ET AL	74	0.61	22.95	7.44	4.40	6.11	4.93
RCM CAPITAL MANAGEMENT	74	0.03	15.05	6.57	3.24	6.68	4.50
AMERICAN EXPRESS CO ET AL	74	0.01	19.02	5.04	3.26	4.58	3.21
TCW GROUP	72	0.48	52.42	7.12	7.67	5.87	2.38
NICHOLAS APPLGATE CAP MGMT	71	0.01	15.18	5.50	2.73	5.41	1.92
AIM MGMT GROUP INC ET AL	65	0.91	14.03	6.10	2.42	5.49	2.55
BRINSON PARTNERS INC	63	0.36	17.76	6.63	2.91	6.30	2.80
INVESCO PLC ET AL	61	0.87	18.49	6.69	3.22	6.11	4.08
TRAVELERS GROUP INC ET AL	60	0.01	47.65	9.83	10.67	5.84	8.93
SANFORD C BERNSTEIN & CO	60	0.05	9.37	6.31	2.49	6.28	3.51
KOPP INVESTMENT ADVISORS	59	0.95	64.10	13.71	9.69	11.64	9.08
RYBACK MANAGEMENT CORP	58	0.27	47.10	9.29	7.85	7.55	4.59
FRANKLIN RESOURCES INC	58	0.30	24.33	6.57	3.69	6.02	2.53
FIRST UNION CORP	58	0.02	29.83	6.20	4.31	5.62	3.24
HANCOCK JOHN MUT LIFE ET AL	57	0.01	34.65	7.51	5.45	6.13	3.21
LGT ASSET MANAGEMENT INC	56	3.26	16.50	7.91	2.85	7.20	3.80
PILGRIM BAXTER & ASSOC	56	1.00	17.20	6.34	2.72	6.16	2.94
METROPOLITAN LIFE INSUR	56	0.00	30.42	5.83	4.65	5.55	4.87
DRESDNER BANK AG	53	4.96	15.05	8.18	2.21	8.16	3.61
CHANCELLOR CAP MGMT ET AL	53	0.68	13.42	6.76	2.51	6.44	2.79
WARBURG PINCUS COUNSELLR	51	2.88	17.48	7.93	3.20	6.84	4.62

**FIGURE 8. HISTOGRAM OF MEDIAN VOTING BLOCK PER 5% BENEFICIAL OWNERS**



**FIGURE 9. PERCENTILE PLOT OF PORTFOLIO INTERQUARTILE RANGE S**



Note: The figure shows the interquartile range for the 1594 portfolios with more than one stake (in the case of one stake the interquartile range is obviously zero).

## VI. Rule 13d-3. Determination of Beneficial Owner

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- (a) For the purposes of Sections [13\(d\)](#) and [13\(g\)](#) of the [Act](#) a beneficial owner of a security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares:
- (1) Voting power which includes the power to vote, or to direct the voting of, such security; and/or
  - (2) Investment power which includes the power to dispose, or to direct the disposition of, such security.
- (b) Any person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement or any other contract, arrangement, or device with the purpose or effect of divesting such person of beneficial ownership of a security or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the reporting requirements of Section [13\(d\)](#) or [13\(g\)](#) of the [Act](#) shall be deemed for purposes of such sections to be the beneficial owner of such security.
- (c) All securities of the same class beneficially owned by a person, regardless of the form which such beneficial ownership takes, shall be aggregated in calculating the number of shares beneficially owned by such person.
- (d) Notwithstanding the provisions of paragraphs [\(a\)](#) and [\(c\)](#) of this rule:
- (1)
    - (i) A person shall be deemed to be the beneficial owner of a security, subject to the provisions of [paragraph \(b\)](#) of this rule, if that person has the right to acquire beneficial ownership of such security, as defined in [Rule 13d-3\(a\)](#) within sixty days, including but not limited to any right to acquire:
      - (A) through the exercise of any option, warrant or right;
      - (B) through the conversion of a security;
      - (C) pursuant to the power to revoke a trust, discretionary account, or similar arrangement; or
      - (D) pursuant to the automatic termination of a trust, discretionary account or similar arrangement;provided, however, any person who acquires a security or power specified in paragraphs (A), (B) or (C), above, with the purpose or effect of changing or influencing the control of the issuer, or in connection with or as a participant in any transaction having such purpose or effect, immediately upon such acquisition shall be deemed to be the beneficial owner of the securities which may be acquired through the exercise or conversion of such security or power. Any securities not outstanding which are subject to such options, warrants, rights or conversion privileges shall be deemed to be outstanding for the purpose of computing the percentage of outstanding securities of the class

owned by such person but shall not be deemed to be outstanding for the purpose of computing the percentage of the class owned(?) by any other person.

- (ii) [Paragraph \(i\)](#) remains applicable for the purpose of determining the obligation to file with respect to the underlying security even though the option, warrant, right or convertible security is of a class of equity security, as defined in [Rule 13d-1\(c\)](#), and may therefore give rise to a separate obligation to file.
- (2) A member of a national securities exchange shall not be deemed to be a beneficial owner of securities held directly or indirectly by it on behalf of another person solely because such member is the record holder of such securities and, pursuant to the rules of such exchange, may direct the vote of such securities, without instruction, on other than contested matters or matters that may affect substantially the rights or privileges of the holders of the securities to be voted, but is otherwise precluded by the rules of such exchange from voting without instruction.
- (3) A person who in the ordinary course of business is a pledgee of securities under a written pledge agreement shall not be deemed to be the beneficial owner of such pledged securities until the pledgee has taken all formal steps necessary which are required to declare a default and determines that the power to vote or to direct the vote or to dispose or to direct the disposition of such pledged securities will be exercised, provided that:
- (i) The pledgee agreement is bona fide and was not entered into with the purpose nor with the effect of changing or influencing the control of the issuer, nor in connection with any transaction having such purpose or effect, including any transaction subject to [Rule 13d-3\(b\)](#);
  - (ii) The pledgee is a person specified in [Rule 13d-1\(b\)\(1\)\(ii\)](#), including persons meeting the conditions set forth in [paragraph \(G\)](#) thereof; and
  - (iii) The pledgee agreement, prior to default, does not grant to the pledgee:
    - (A) The power to vote or to direct the vote of the pledged securities; or
    - (B) The power to dispose or direct the disposition of the pledged securities, other than the grant of such power(s) pursuant to a pledge agreement under which credit is extended subject to Regulation T (12 CFR 220.1 to 220.8) and in which the pledgee is a broker or dealer registered under [Section 15](#) of the [Act](#).
- (4) A person engaged in business as an underwriter of securities who acquires securities through his participation in good faith in a firm commitment underwriting registered under the [Securities Act of 1933](#) shall not be deemed to be the beneficial owner of such securities until the expiration of forty days after the date of such acquisition.