

*European  
Business  
Organization  
Law Review*

EBOR

Financial Regulation: Principles v. Rules

Financial Tunnelling

Adjusting Disclosure in EU Corporate Governance

Modifying the EU's SE Regulation

Corporate Actors and the (De)composition of Firms

Autopoietic Systems, Corporate Actors and Luhmann's  
Theory of Organisations

T · M · C · A S S E R P R E S S

10:2  
2009

#### AIMS AND SCOPE

The European Business Organization Law Review aims to promote a scholarly debate which critically analyses the whole range of organizations chosen by companies, groups of companies, and state-owned enterprises to pursue their business activities and offer goods and services all over the European Union. At issue are the enactment of corporate laws, the theory of firm, the theory of capital markets and related legal topics.

#### EDITORIAL BOARD

- Dr Rainer Kulms, LL.M.* (University of Michigan), Editor-in-Chief, Max Planck Institute, Hamburg  
*Prof. Luca Enriques*, CONSOB and University of Bologna, Faculty of Law  
*Prof. Brigitte Haar, LL.M.* (University of Chicago), University of Frankfurt/Main, Faculty of Law  
*Dr Vesna Lazić*, T.M.C. Asser Institute, The Hague  
*Prof. Francisco Marcos*, Instituto de Empresa, Madrid  
*Prof. Joseph McCahery*, University of Amsterdam Centre of Law and Economics/  
University of Tilburg  
*Prof. Niamh Moloney*, London School of Economics  
*Prof. Katharina Pistor*, Columbia Law School, New York

#### ADVISORY BOARD

- Prof. Talia Einhorn*, Tel-Aviv University, Faculty of Management  
*Prof. Julian Franks*, Professor of Finance, London Business School  
*Prof. Martin Hellwig*, Director, Max Planck Institute for Research on Collective Goods, Bonn  
*Prof. Heribert Hirte*, Professor of Law, University of Hamburg  
*Prof. Francis Jacobs*, Advocate General, European Court of Justice, Luxembourg  
*Prof. Hideki Kanda*, Professor of Law, University of Tokyo  
*Dr Alfred E. Kellermann*, General Advisor, T.M.C. Asser Institute, The Hague  
*Prof. Harm-Jan de Kluiver*, Universiteit van Amsterdam / De Brauw Blackstone Westbroek  
*Prof. Herbert Kronke*, Secretary General, UNIDROIT, Rome  
*Prof. Colin Mayer*, Peter Moores Professor of Management Studies (Finance),  
Saïd Business School, University of Oxford  
*Prof. Ernst-Joachim Mestmaecker*, Director (emeritus), Max Planck Institute, Hamburg  
*Dr Olivier Ribbelink*, Research Director, T.M.C. Asser Institute, The Hague  
*Prof. Roberta Romano*, Allen Duffy/Class of 1960 Professor of Law, Yale Law School, New Haven  
*Prof. Wolfgang Schön*, Director, Max Planck Institute for Intellectual Property,  
Competition and Tax Law, Munich  
*Prof. Tadeusz Skoczny*, Jean-Monnet Chair on European Economic Law,  
Warsaw University Faculty of Management  
*Prof. Louis Vogel*, University Panthéon-Assas (Paris), Director, Institut de droit comparé  
*Prof. Jan Wouters*, Professor of Law, Catholic University of Leuven

#### EDITORIAL OFFICE

European Business Organization Law Review  
T.M.C. ASSER INSTITUTE  
P.O. Box 30461, 2500 GL The Hague, The Netherlands  
Tel. +31(70)3420300, Fax +31(70)3420359  
e-mail: EBOR@asser.nl  
<http://www.asserpress.nl/cata/ebor/fra.htm>

**Contents**

**Editorial**

RAINER KULMS, Editorial ..... 167

**Articles**

**Special Section:  
Principles v. Rules in Financial Regulation**

KERN ALEXANDER, Principles v. Rules – Conference Report ..... 169  
STEVEN L. SCHWARCZ, The ‘Principles’ Paradox ..... 175  
EDWARD J. KANE, Ethical Failures in Regulating and Supervising  
the Pursuit of Safety-Net Subsidies ..... 185  
DAVID G. MAYES, Some Rules for Cross-Border Banks in Europe ..... 213

**Other Articles**

JEREMY GRANT, TOM KIRCHMAIER AND JODIE A. KIRSHNER, Financial  
Tunnelling and the Mandatory Bid Rule ..... 233  
KARSTEN ENGSIG SØRENSEN, Disclosure in EU Corporate Governance:  
A Remedy in Need of Adjustment? ..... 255  
STUDY GROUP FOR GERMAN STOCK CORPORATION AND CAPITAL  
MARKETS LAW, The Eight Most Important Recommendations for  
Modification of the SE Regulation ..... 285  
ANDREAS NICKLISCH, The (De)composition of Firms: Interdependent  
Preferences of Corporate Actors ..... 291  
BORIS BRANDHOFF, Autopoietic Systems, Not Corporate Actors:  
A Sketch of Niklas Luhmann’s Theory of Organisations ..... 307

## **Editorial policy**

The journal encourages submissions from lawyers, both academic and practitioners, and economists. Contributions of authors from other disciplines, such as political and social scientists, are welcome. Occasionally, policy makers and business people will be invited to express their opinion within their fields of expertise. Theoretical and applied works are equally considered. Articles will be subjected to a review procedure. Accepted manuscripts will be edited, if necessary, to enhance their effectiveness. In case of extensive editing, the approval of the author will be sought prior to typesetting.

## **Submission of manuscripts**

Manuscripts should be submitted to the Editor, accompanied by an assurance that the article has not been published or accepted elsewhere. However, exceptional contributions originally written in other languages may be considered for publication in proximity to their publication in that other language.

The articles should be comprehensible to readers outside the specific field of expertise. Special terms and abbreviations should be clearly defined. Manuscripts should range between 3,000 and 10,000 words and be prefaced by an abstract of no longer than 200 words. Contributors are requested to submit one hard copy of their manuscript and a diskette (preferably Word for Windows). Alternatively, manuscripts may be sent by email (Word for Windows and rtf, rich text format attachments). A hard copy would only be requested if necessary.

## **Fees**

Authors will not receive a fee, but will be presented with the issue of EBOR in which their contribution appears, together with 25 offprints of their work in the case of articles and case reports and 5 offprints in the case of book reviews. Additional offprints may be ordered prior to publication, upon payment of a standard fee.

## **Copyright**

The acceptance of a manuscript for publication implies that the author assigns to the publisher the copyright to the contribution whereby the publisher shall have the exclusive right to publish it everywhere during the full term of copyright and all renewals and extensions thereof. These rights include mechanical, electronic and visual reproduction, electronic storage and retrieval; and all other forms of electronic publication including all subsidiary rights.

The author retains the right to republish the article in any other publication one year after its publication in the journal, provided only that the author notifies the Publisher and ensures that the Publisher is properly credited and that the relevant copyright notice is repeated verbatim.