

Europe's Ius Commune on Director Revocability

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ECFLR Symposium
October 1, 2010

Introduction

- Importance of possibility for shareholders to remove directors
 - Definition of “*ad nutum* revocability” (ANR)
 - Claim: Part of Europe’s Ius Commune
 - Universality in European Civil Law
 - Absence in Traditional Common Law
 - Historical origins
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I. Universality in European Civil Law (1)

- ❑ Strict Adherence to ANR in One-Tier Boards, e.g.:
 - Belgium
 - France
 - Netherlands
 - Italy
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I. Universality in European Civil Law (2)

☐ Moderate Application in Two-Tier Boards

■ Especially when mandatory, e.g.:

- ☐ Germany
- ☐ Austria
- ☐ The Netherlands (structure regime)

■ Less so when optional, e.g.:

- ☐ France
 - ☐ Italy
 - ☐ The Netherlands (ordinary regime)
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I. Universality in European Civil Law (3)

- European Community Law on the Sidelines
 - Non-Member State, but Civil Law: Switzerland
 - Member State, but Common Law: United Kingdom
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II. Absence in Traditional Common Law

☐ United Kingdom

- Does have ANR now
- But not part of old common law

☐ United States

- Delaware: ANR only in exceptional cases
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III. Historical origins of ANR (1)

□ Development in France

- Stock corporations in Ancien Régime
 - Napoleon's Codifications
 - Example of Art. 2004 Code Civil 1804
 - Art. 31 Code de Commerce 1807: the *société anonyme* is governed by "temporary, revocable agents"
 - Maintained until today
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III. Historical origins of ANR (2)

☐ Spreading around Continental Europe

■ Belgium

- ☐ Directly applicable, maintained upon independence

■ The Netherlands

- ☐ Direct source of inspiration for *Wetboek van Koophandel* 1838

■ Germany

- ☐ Indirect source of inspiration for *ADHGB* 1861 and *HGB* 1897
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Conclusion

- ❑ Characteristic of civil law rather than of European law
 - ❑ Questions for further research
 - ❑ Paper with more details will be on SSRN soon.
 - ❑ Comments welcome at scools@sjd.law.harvard.edu
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