

The Balance of Power in Eastern European Corporations (on the example of Poland)

Joanna WARCHOL

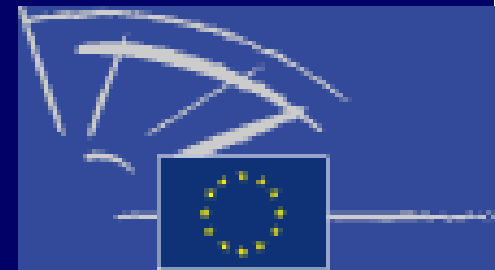
joanna.warchol@europarl.europa.eu

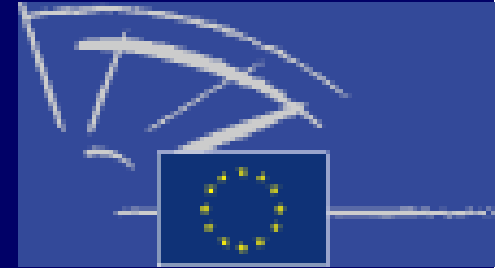


Member states of the European Union (2010)

Candidate countries

15 September 2008





"**Corporate governance** . . . involves a set of relationships between a company's management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined."

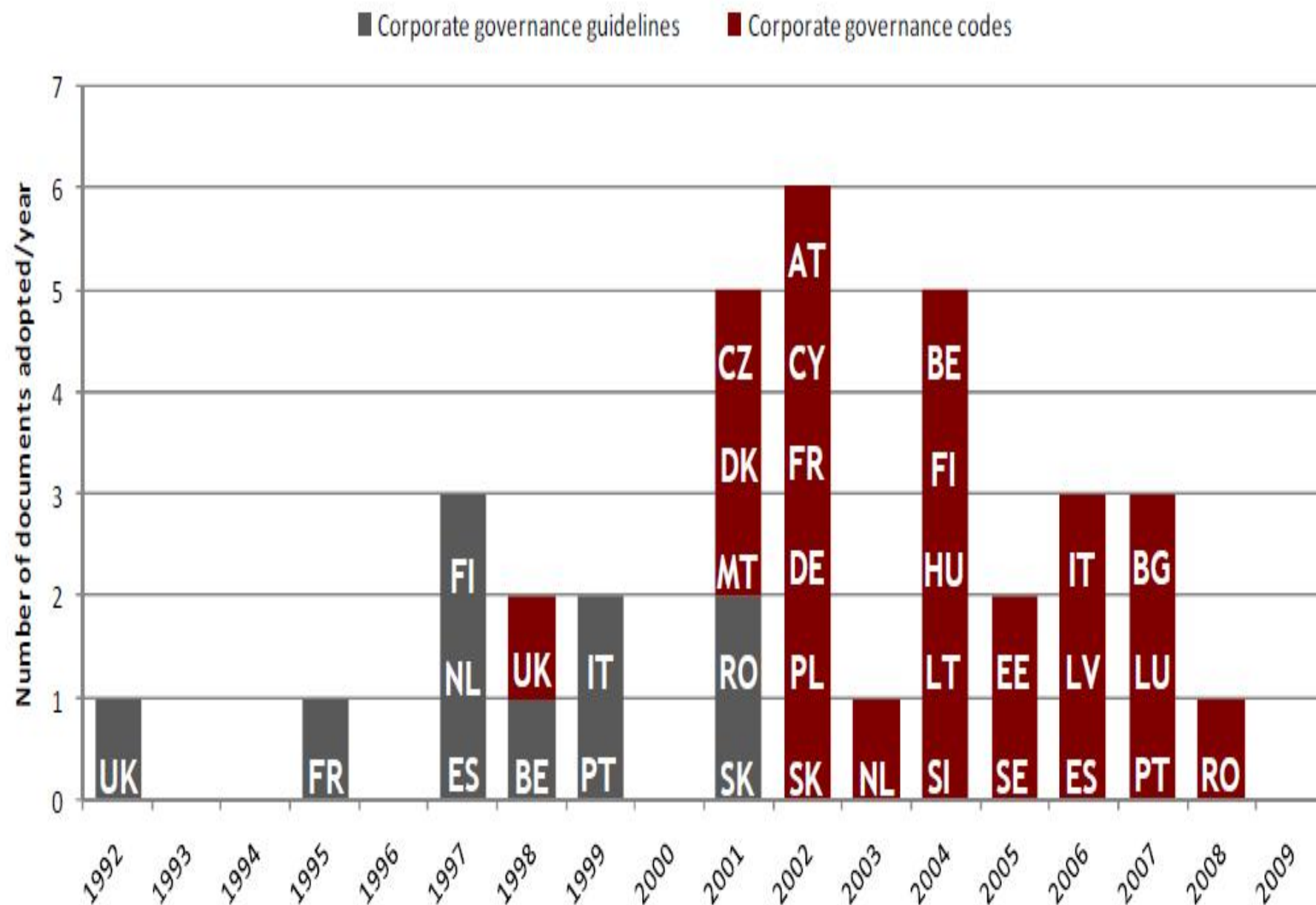
■ OECD Principles, Preamble

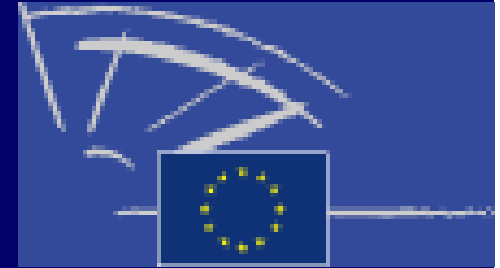
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"**Corporate governance** comprehends that structure of relationships and corresponding responsibilities among a core group consisting of shareholders, [supervisory] board members and managers designed to best foster the competitive performance required to achieve the corporation's primary objective."

■ Millstein Report to OECD, p. 13

Adoption of corporate governance guidelines and codes





Should we have a common
European Directive on
Corporate Governance ?

Balance of Power - old wine in the new skin ?

Neither – nor, but a consequence of:

- Historical
- Economical
- Cultural

development of capital markets for listed companies.

Legislative history:



Economic crisis: 1882/1884; 1899/1900; 1929/1931; 2001/2002 ENRON ; 2008 Lehman Brothers

GERMANY	POLAND	AUSTRIA / inkl. KRAKOW
1861: ADHGB: Board System	ADHGB: Board System	1862/1863: ADHGB: Board System
1884: B. Directors v. Supervisory B.	Two-Tire-Board-Strukture	
1900: HGB	Actio pro socio,	1899: AktR: B. Directors v. Supervisory B.
Legal Entity: Gierke v. Savigny	GIERKE: Corporate Person	SAVIGNY: Legal Fiction Theory
1931: NotarVO	1929: Stakeholder Interest	Rechnungsrevisoren (Direktionsrat)
1937: AktG, BilanzR, Public Interest	1934: Polish Commerce Codex	1938: like German AktG, BilanzR
1965: AktG, Fuehrerprinzip	2001: Polish Company Code	1965: like German AktG,
2002: CG Guidelines / Codes	2002: CG Guidelines / Codes	2002: CG Guidelines / Codes

- Should membership of Board of Directors be separated from the membership of Supervisory Board?



Praktiken auf dem Prüfstand

Goldman kommt ins Grübeln

Blankfein will bleiben

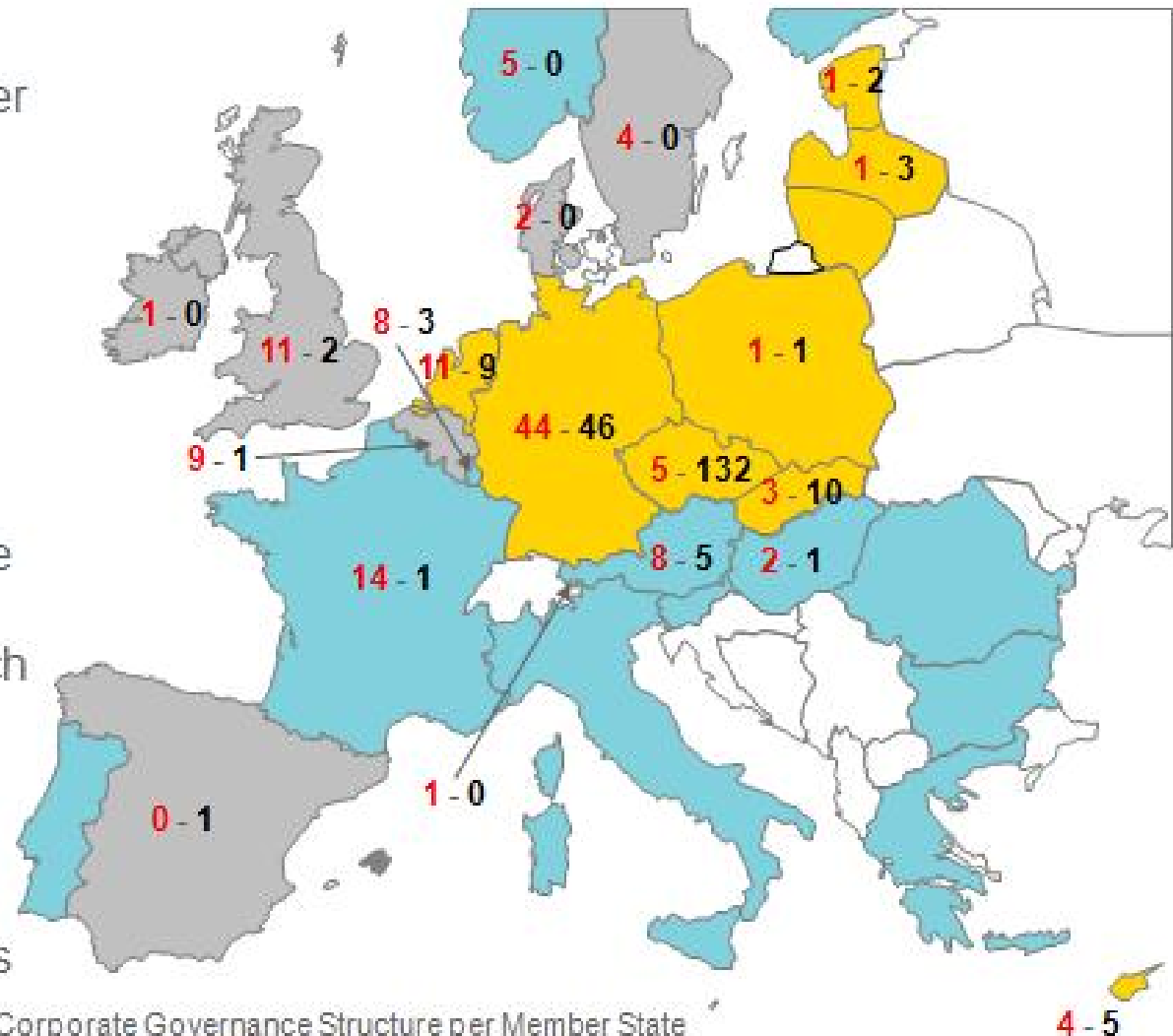
Die Aktionäre leiden mit der Bankführung. Seit Aufkommen der Vorwürfe ist der Kurs um ein knappes Viertel gefallen. Große Anteilseigner wie die Investorenlegende Warren Buffett haben Blankfein zwar den Rücken gestärkt, doch gibt es andererseits auch erste Schadenersatz-Klagen. Einige Medien spekulieren bereits über die Ablösung Blankfeins, andere über die Trennung der Ämter des geschäftsführenden Firmenchefs und des beaufsichtigenden Verwaltungsratschefs.

Adresse:

<http://www.n-tv.de/wirtschaft/Goldman-kommt-ins-Gruebeln-article862346.html>

Distribution of SE according to corporate governance structure

- ▶ The number of Member States where a majority of companies have opted either for the one-tier or the two-tier corporate governance structure is balanced: 12 countries for the one tier-structure and 8 countries for the two-tier structure
- ▶ More than 60% of the SEs have opted for a two-tier structure, only 37% if the SEs in the Czech Republic are excluded
- ▶ In Member States which were only familiar with the two-tier system, the one-tier system has met with success



Until 15 April 2009

One tier

Two tier

One and Two tier

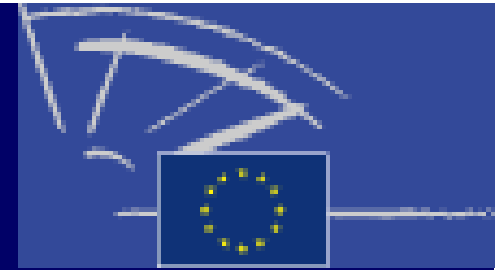
One tier - Two tier

Does the ownership matter at all?



- how the economical factors are affecting the board's performance?
- how the rule of law affects the board's performance?

Various factors affecting CG systems:



USA/U.K./WE

- market culture
- market-oriented short-term strategy
- more reliance on equity
- stock exchange relatively large
- relatively less influence of controlling shareholder(s)
- dispersed ownership – free rider problem

Eastern Europe

- consensus culture
- network-oriented long-term strategy
- more reliance on debt
- stock exchange relatively small
- relatively more influence of controlling shareholder(s)
- blockholders ownership – strategic problem

From The Sunday Times

November 8, 2009

I'm doing 'God's work'. Meet Mr Goldman Sachs

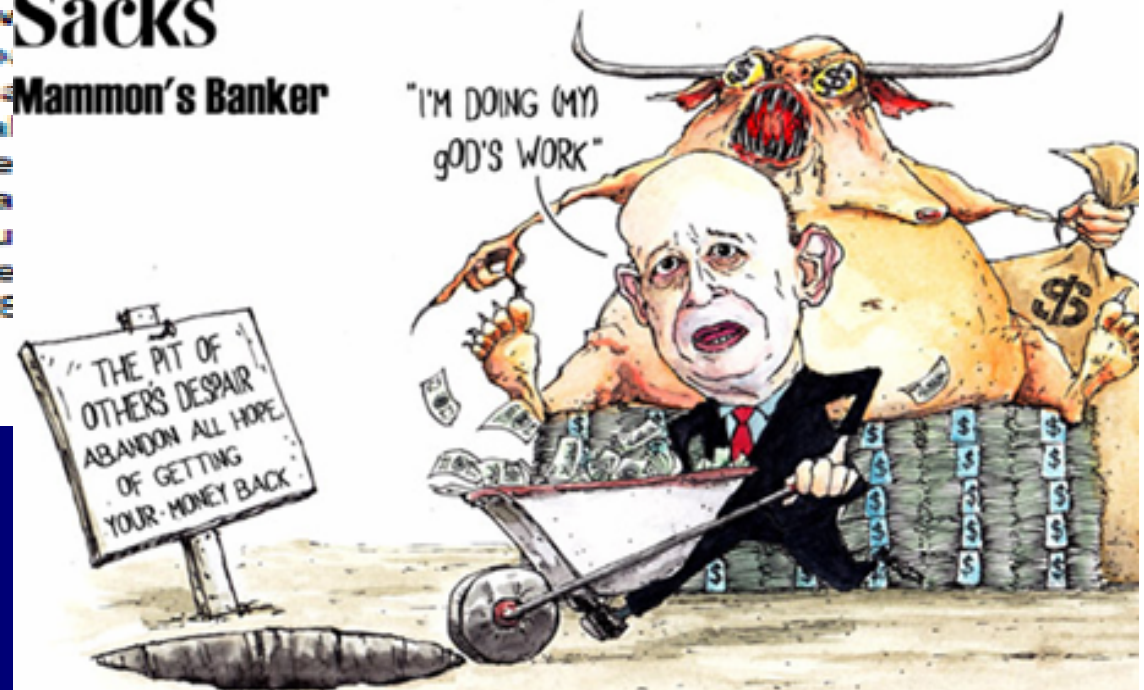
The Sunday Times gains unprecedented access to the world's most powerful, and most secretive, investment bank

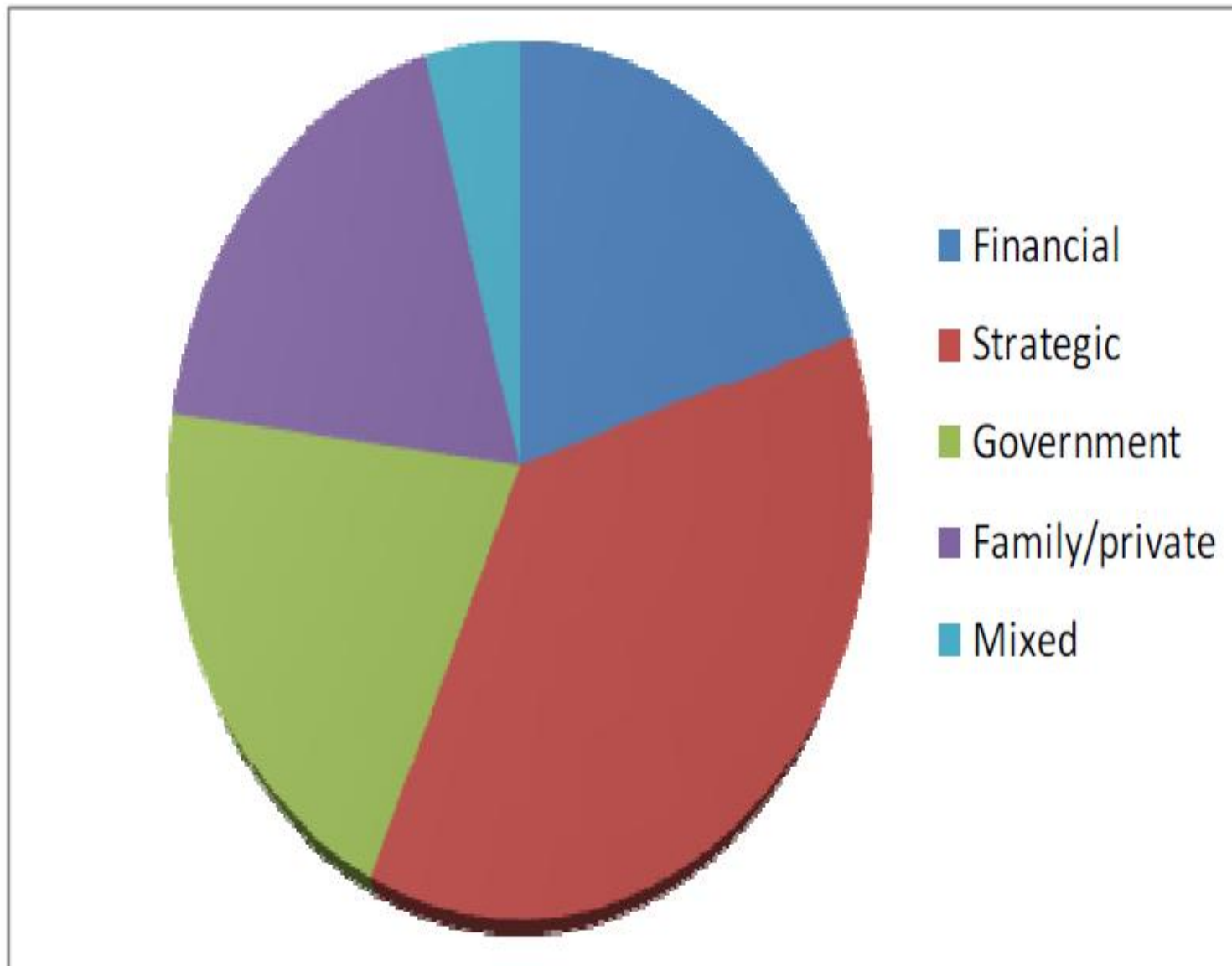
John Arlidge

It's the site of the best cash-making machine that global capitalism has ever produced, and, some say, a political force more powerful than governments. The people who work behind the brass-trim glass doors make more money than some countries do. They are the rainmakers' rainmakers, the biggest swinging dicks in the financial j trillion, their annual revenues n their profits are in the billions, v among themselves. Average p 30,000 staff is expected to be s will get tens of millions, several than a cleaner at the firm. Whe rich by 40", as the company sa put their feet up. They parachu political posts in the US and be they "rule the world". Number 8 Goldman Sachs.

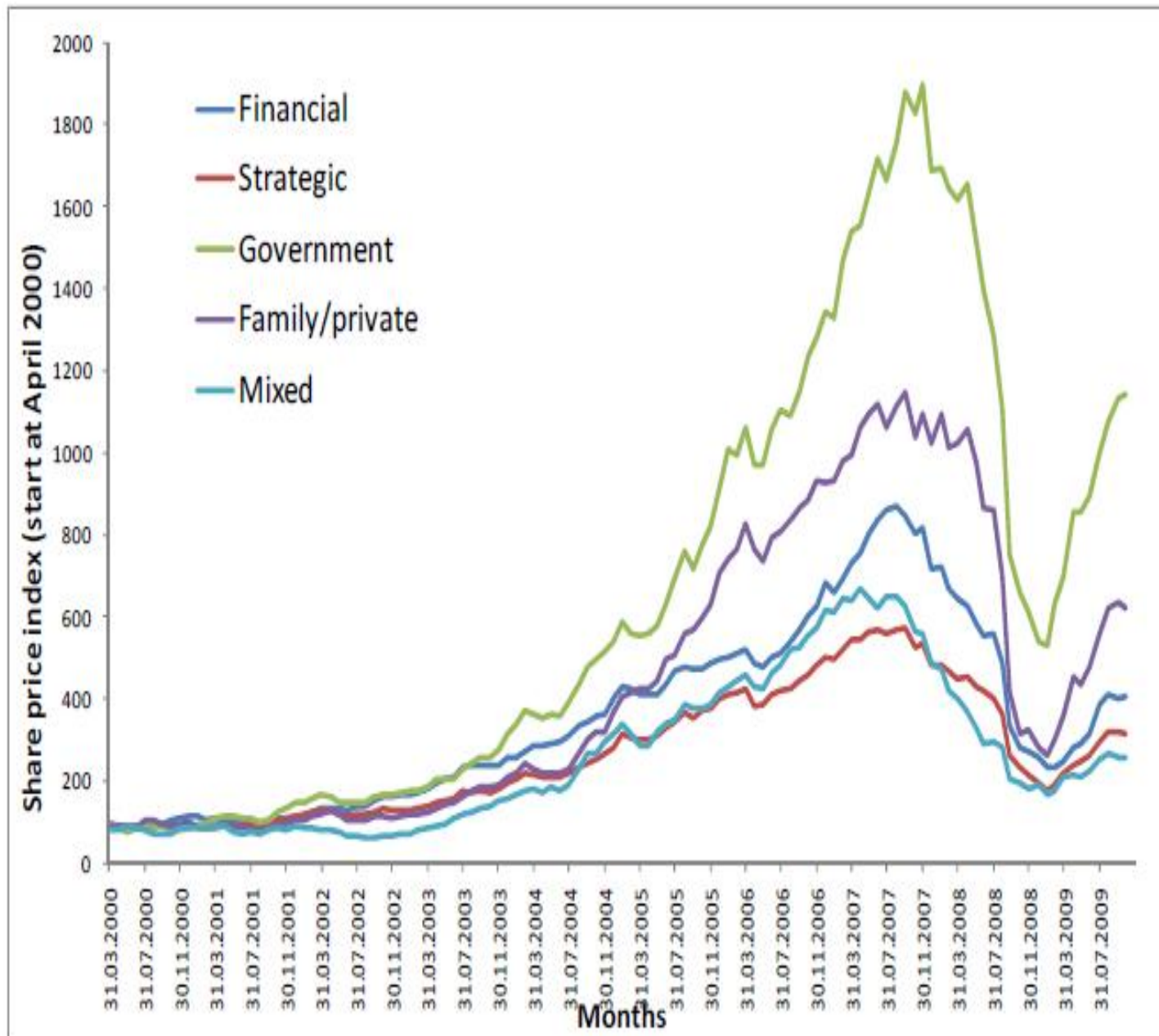
Goldman Sachs

Mammon's Banker





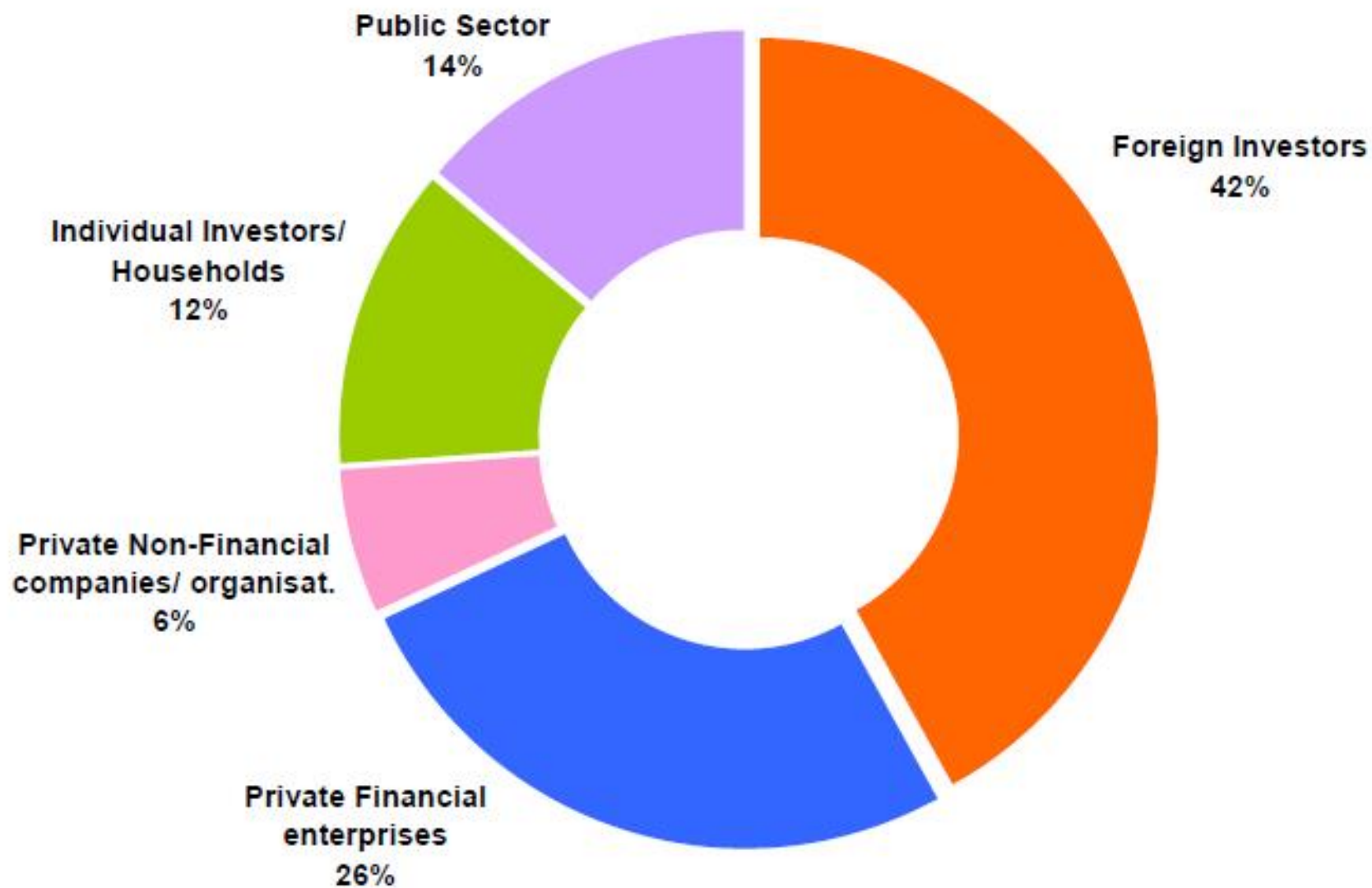
Groups of CEE companies according to their major shareholders



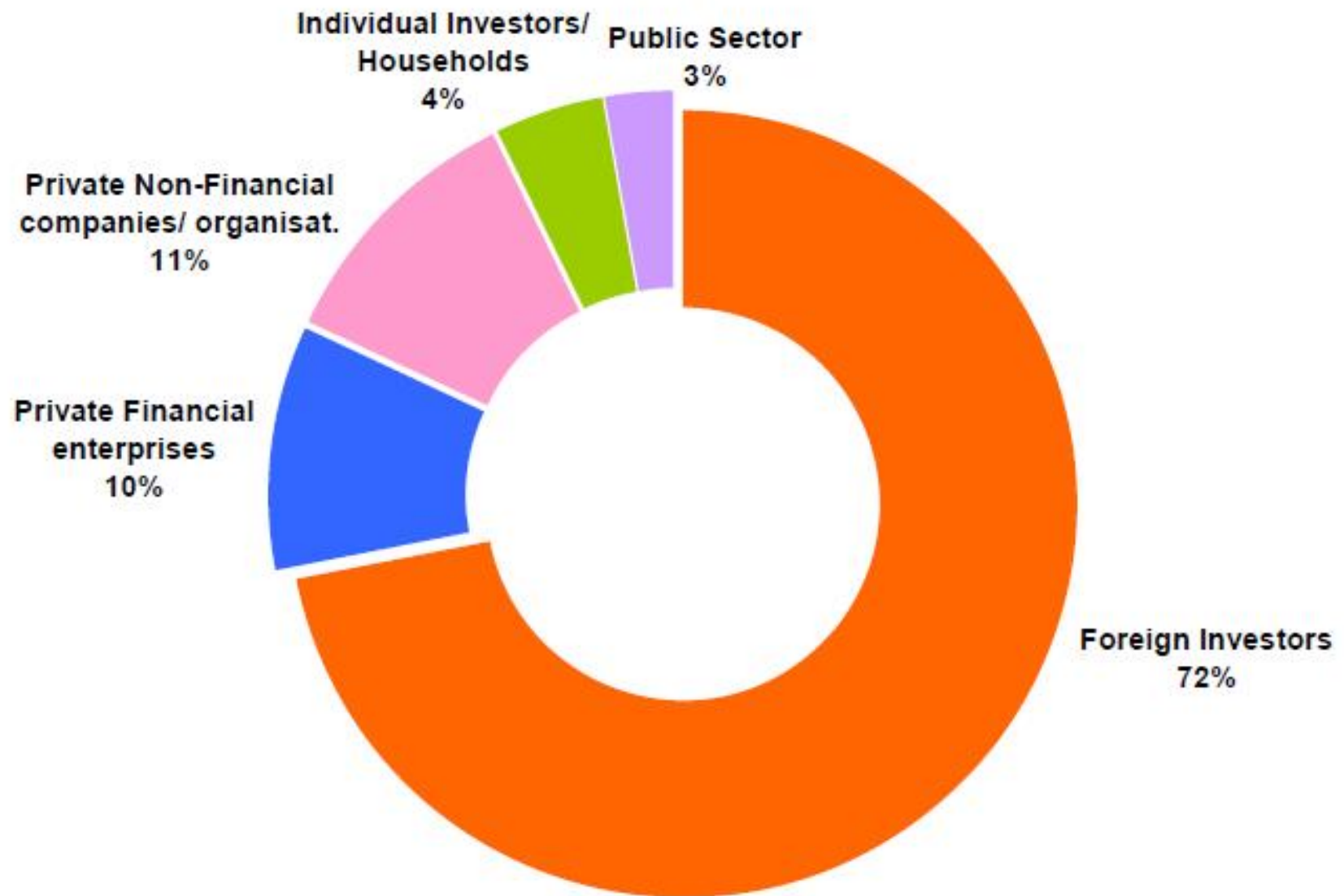
Performance of CEE companies according to their shareholding structure groups

SHARE OWNERSHIP STRUCTURE

Poland 2010

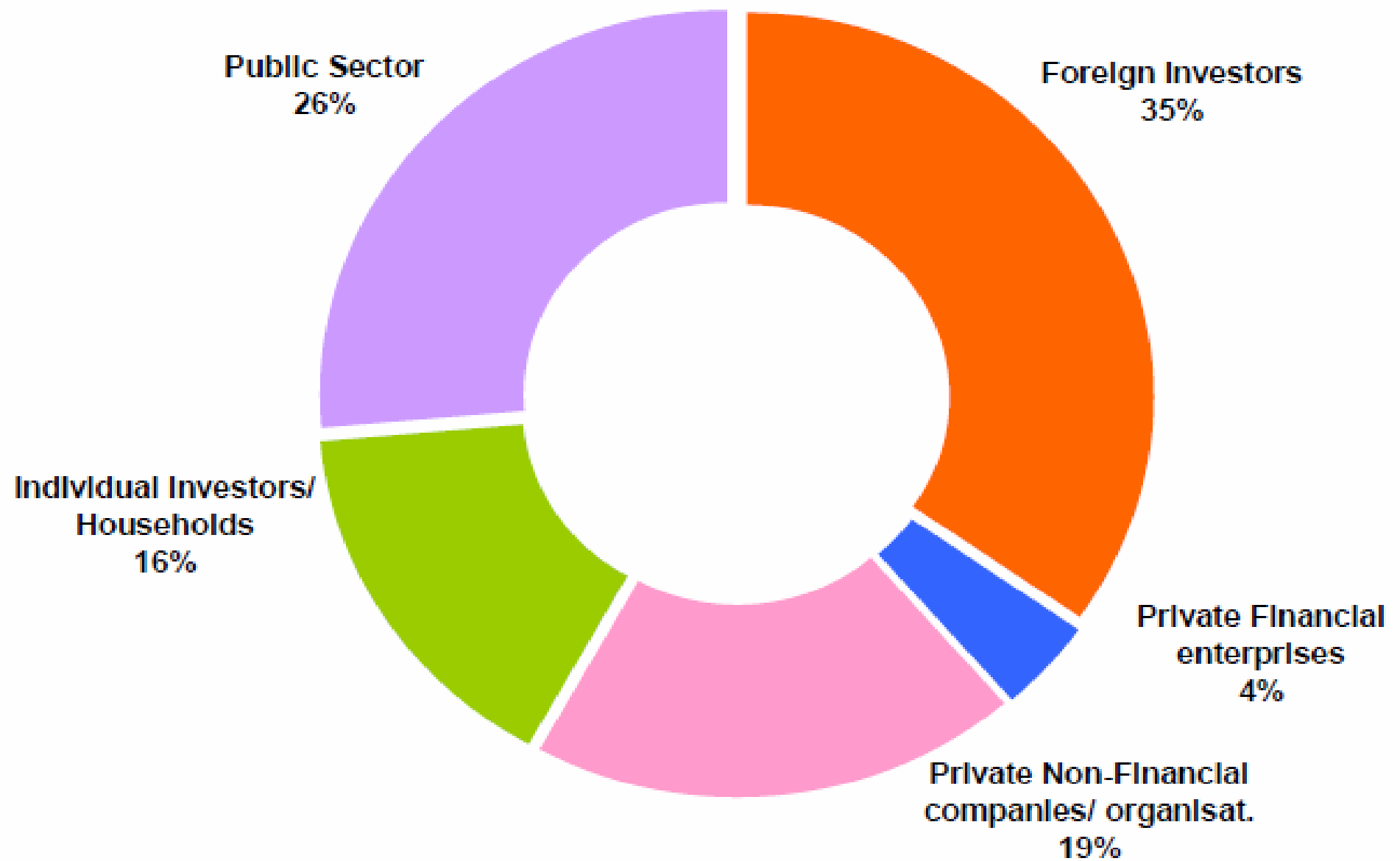


SHARE OWNERSHIP STRUCTURE Hungary 2010



SHARE OWNERSHIP STRUCTURE

Lithuania 2007



Ownership Structures and Investment Performance in Central and Eastern Europe

Dennis C. Mueller* and Evgeni Peev**



ER VADYBA: 2010. 15

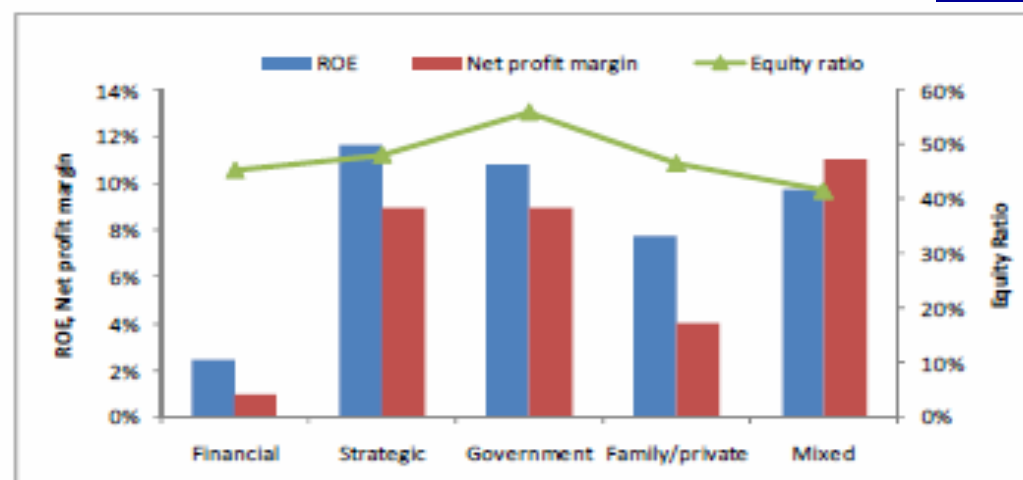
ECONOMICS AND MANAGE

OWNERSHIP STRUCTURE IN CEE COMPANIES AND ITS INFLUENCE ON STOCK PERFORMANCE

Julia Bistrova¹, Natalja Lace²

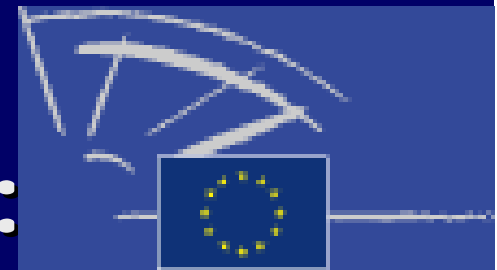
¹Riga Technical University, Latvia, julija_g@inbox.lv

²Riga Technical University, Latvia, natalja.lace@rtu.lv



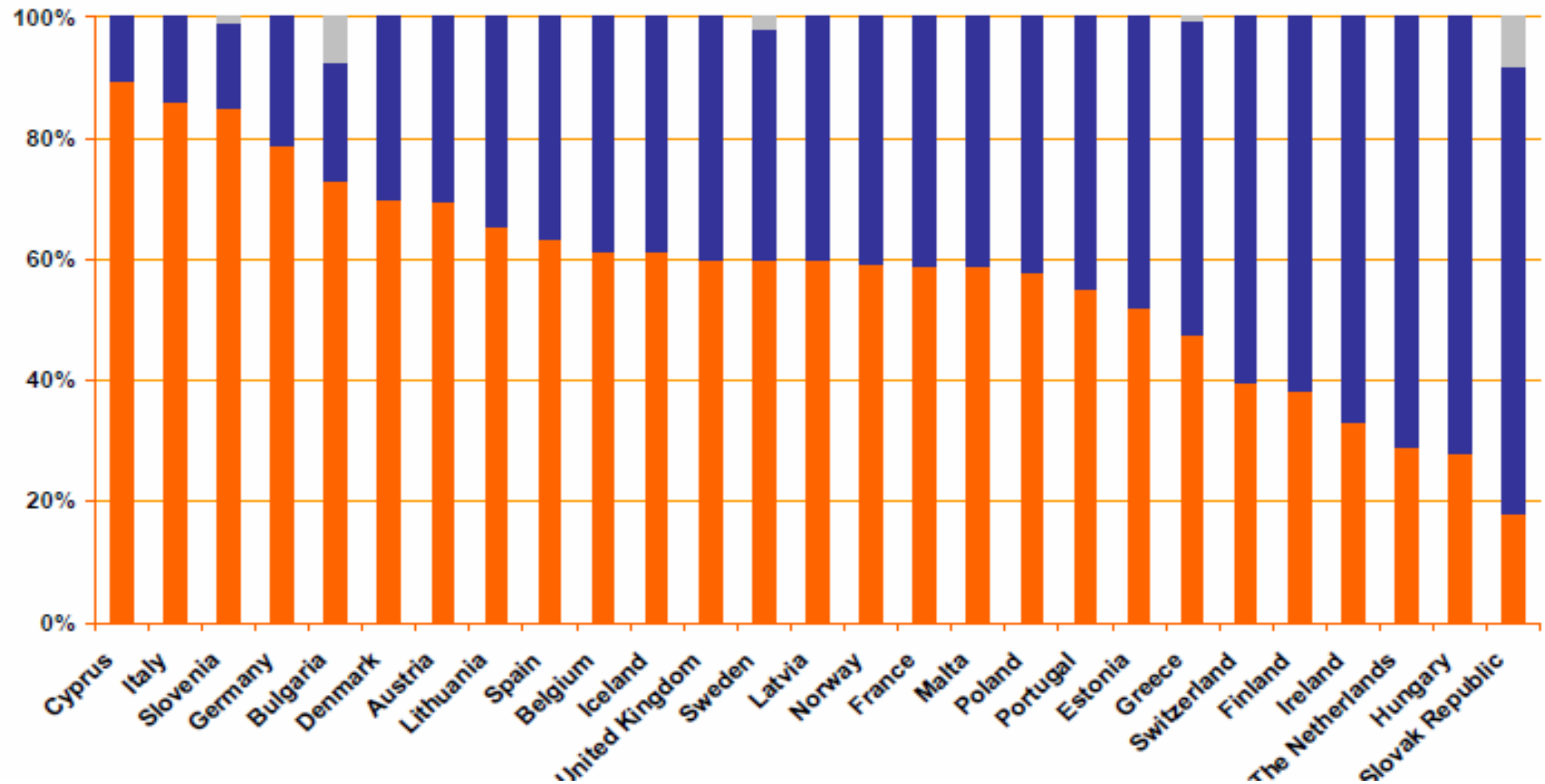
4. Financial characteristics of CEE companies according to their shareholding structure

Ownership of the markets:



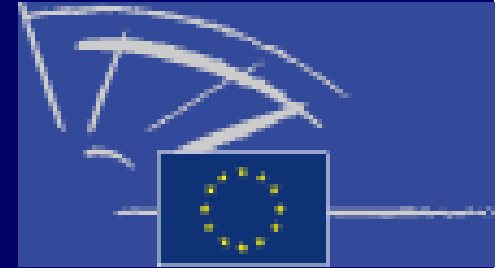
DOMESTIC AND FOREIGN INVESTORS 2007

Domestic Foreign Not Identified

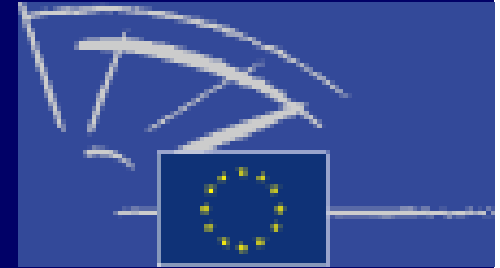


Conclusion:

- In Eastern European Corporations ownership structure adds value to financial performance of the company and helps to balance the excess of management power.

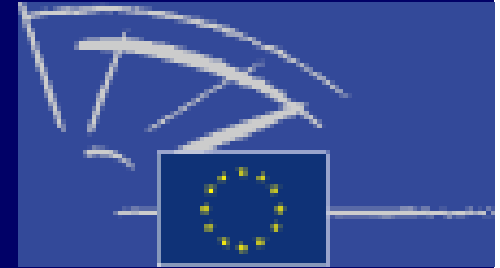


- How the rule of law affects the board's performance?



Relation between company and shareholders affect something in the „nature of a constitutional division of powers“ as between the shareholders (in general meeting) and the board.

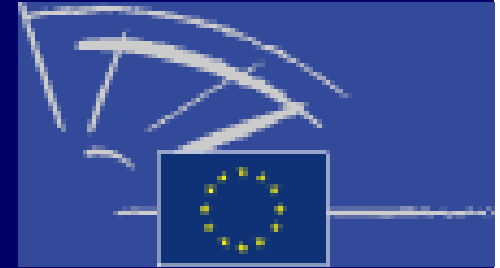
ABSOLUTORIUM



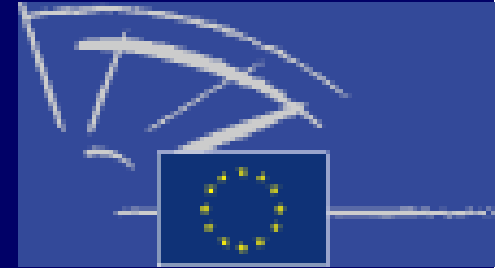
„Approval of board performance“
has a large definition and includes:

- discharge from liability
- open the way for removal the existing directors

Conclusion:



- The exercising of governance right by shareholders is important instrument to limit the power of the Board of Directors and effective way of providing accountability.

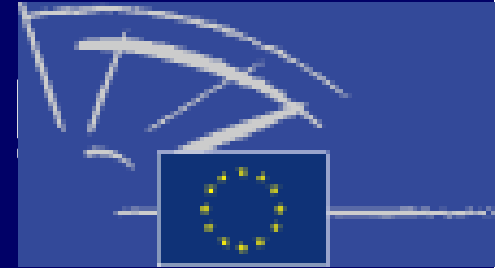


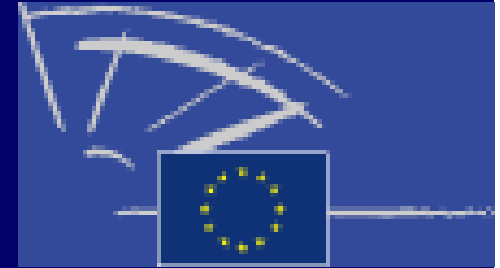
Specialized risk committee at
board level

versus

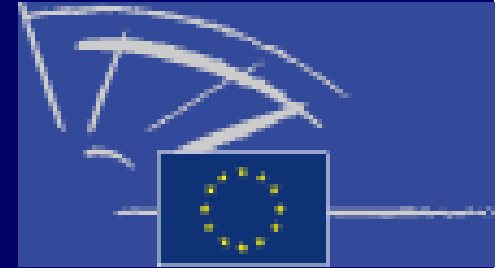
specialisation of the board
members?

Risk management: Be careful





- What kind of information?
- Who is going to design the remuneration ?
- Who is responsible?



■ Remuneration policy ...

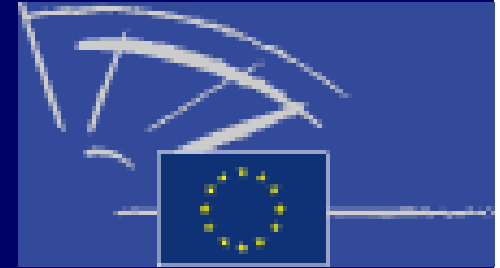
Type of variable remuneration components in EU - per country

Country	Annual bonus plan	Stock option plan	Performance share plan	Deferral plan with matching	Matching plan	Phantom share plan	Phantom stock option plan
Belgium	13	8	3	0	1	0	0
Bulgaria	0	0	0	0	0	0	0
Denmark	10	11	2	0	0	0	2
Estonia	3	3	0	0	0	0	0
Finland	14	10	11	0	0	0	1
France	13	13	11	0	0	0	0
Germany	13	8	2	0	0	3	0
Greece	5	8	0	0	0	0	0
Hungary	9	5	1	0	0	0	1
Ireland	15	13	9	0	0	0	0
Italy	11	9	3	0	0	0	1
Luxembourg	8	6	2	0	0	1	0
Netherlands	15	10	11	1	2	2	0
Poland	4	7	1	0	0	1	1
Portugal	10	7	7	0	0	0	0
Spain	12	1	3	2	0	0	0
Sweden	14	6	6	0	4	0	2
UK	15	6	14	6	1	0	0
Total	184	131	86	9	8	7	8

on the proposal for a directive of the European Parliament and of the Council amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations, and the supervisory review of remuneration policies
(COM(2009)0362 – C7-0096/2009 – 2009/0099(COD))

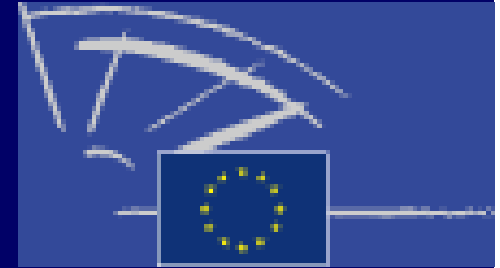
Amendment

(5a) Payment of at least 40 % of the bonus should be deferred for an appropriate period. Payment of at least half of the deferred part of the bonus should be made in shares or share-linked instruments of the credit institution or investment firm, subject to the legal structure of the institution or firm concerned. In the case of non-listed credit institutions or investment firms, the payment should, where appropriate, be made in other non-cash instruments. The principle of proportionality is of great importance in this context, since it may not always be appropriate to apply these requirements to small credit institutions and investment firms.

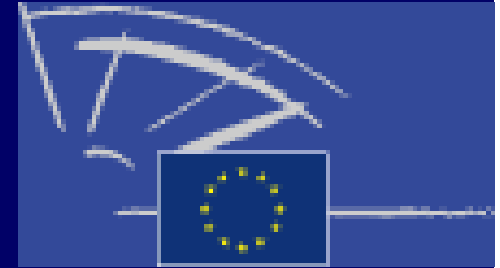


■ Maybe: 6 x average salary ?

Conclusion:



- Proper checks and balances, management functions, transparency and risk control and active shareholders' involvement in decision-making
- Ethical and moral behaviour: less greed, less bonuses but more responsibility



■ Thank you for your attention!