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**ECFR**

**8<sup>th</sup> European  
Company  
and Financial  
Law Review  
Symposium**

27 September 2013  
Università Bocconi  
Room N06  
Piazza Sraffa 13  
Milan

# **The Theory and Practice of Corporate Groups**

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Università Commerciale  
Luigi Bocconi

Angelo Sraffa Department  
of Legal Studies and  
Bocconi School of Law



EUROPEAN COMMISSION  
Directorate General Internal Market and Services  
CAPITAL AND COMPANIES  
Corporate governance, social responsibility

# THE FUTURE OF EUROPEAN COMPANY LAW

## X. GROUPS OF COMPANIES

### QUESTION 19

*Do you see a need for EU intervention in the field of groups of companies?*

Hey, don't worry  
about me.

## Legal Framework for Groups of Companies



# Consultation on the future of European Company Law

## X GROUPS OF COMPANIES

From a business perspective, company groups or holdings are a reality. However, not all national legal systems have come up with specific legal frameworks dealing with groups of companies. Many Member States have legal safeguards in place which try to deal with the most important legal issues that may arise in such a context. At EU level, there were attempts in the past to produce a comprehensive European framework on groups of companies, the so-called 9<sup>th</sup> company law Directive. This initiative never succeeded. The Reflection Group has tabled recommendations which are not aimed at creating an exhaustive legal framework, but try to target specific aspects where they feel action<sup>6</sup> is needed. We would like to seek views on them.

### 19. Do you see a need for EU intervention in this field? (*Single choice*)

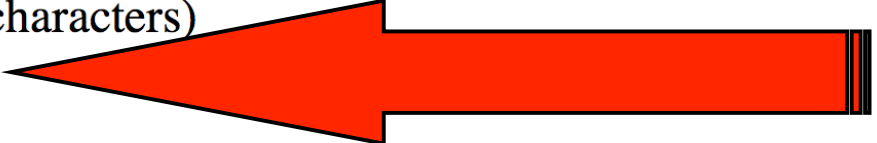
- **Yes**, there should be an EU intervention (*Multiple choice*)
  - The Commission should recommend the recognition of group interest.
  - The EU should require groups to provide information on their structure in a consolidated, investor-friendly and easy-to-read document.
  - Other: *Please specify*. (max 500 characters)
- **No**, there is no need for EU intervention.
- **No opinion.**

# Consultation on the future of European Company Law

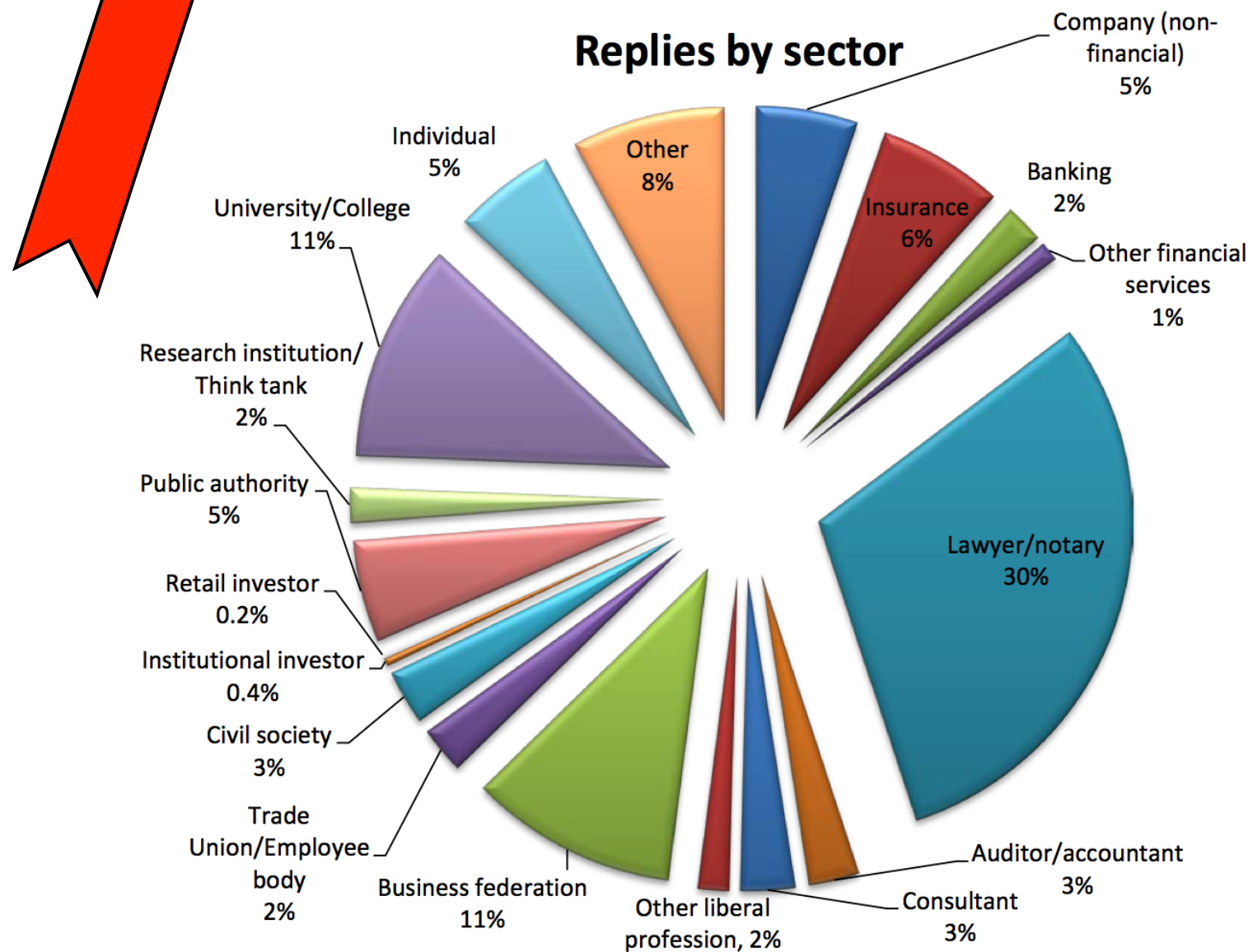
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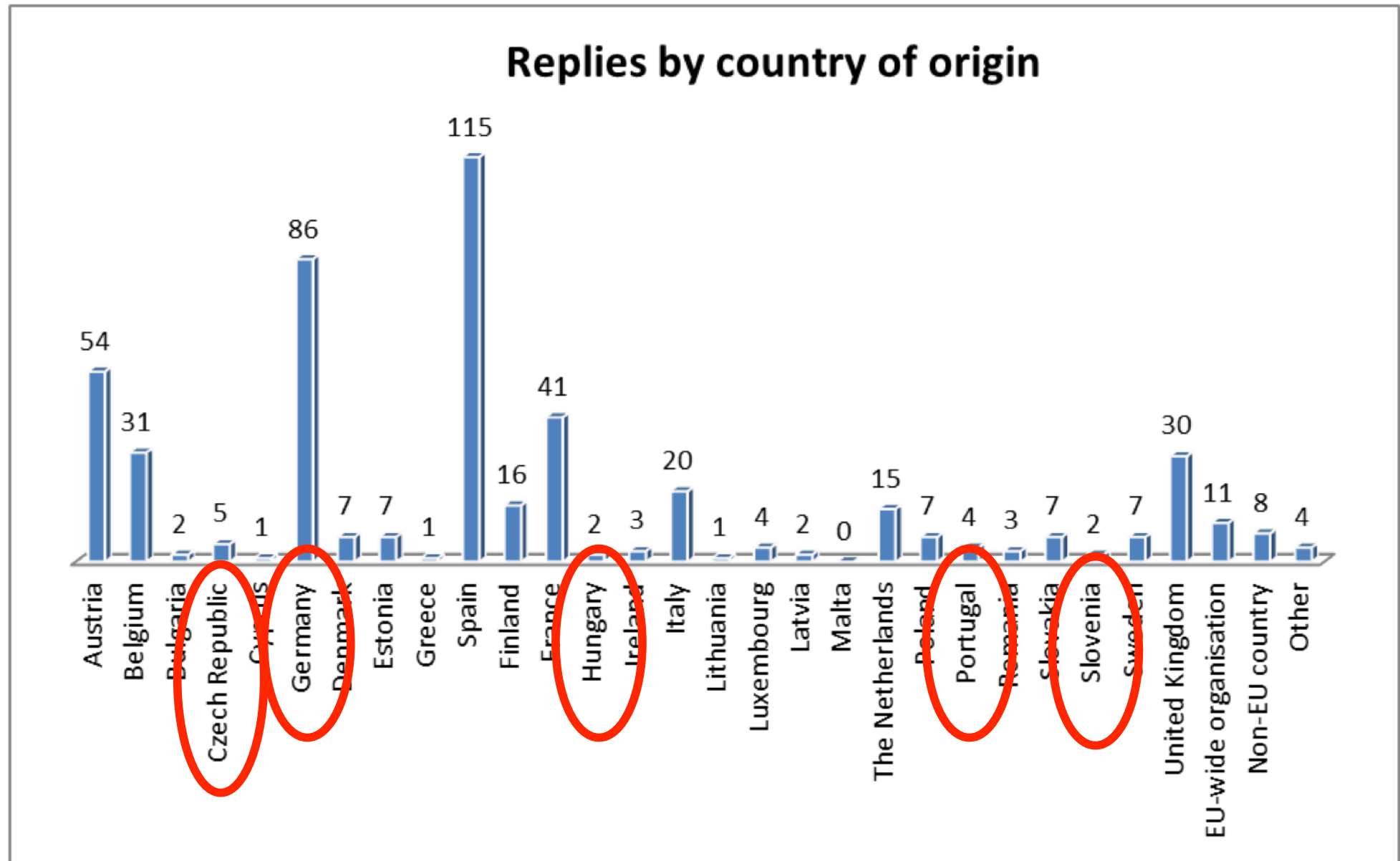
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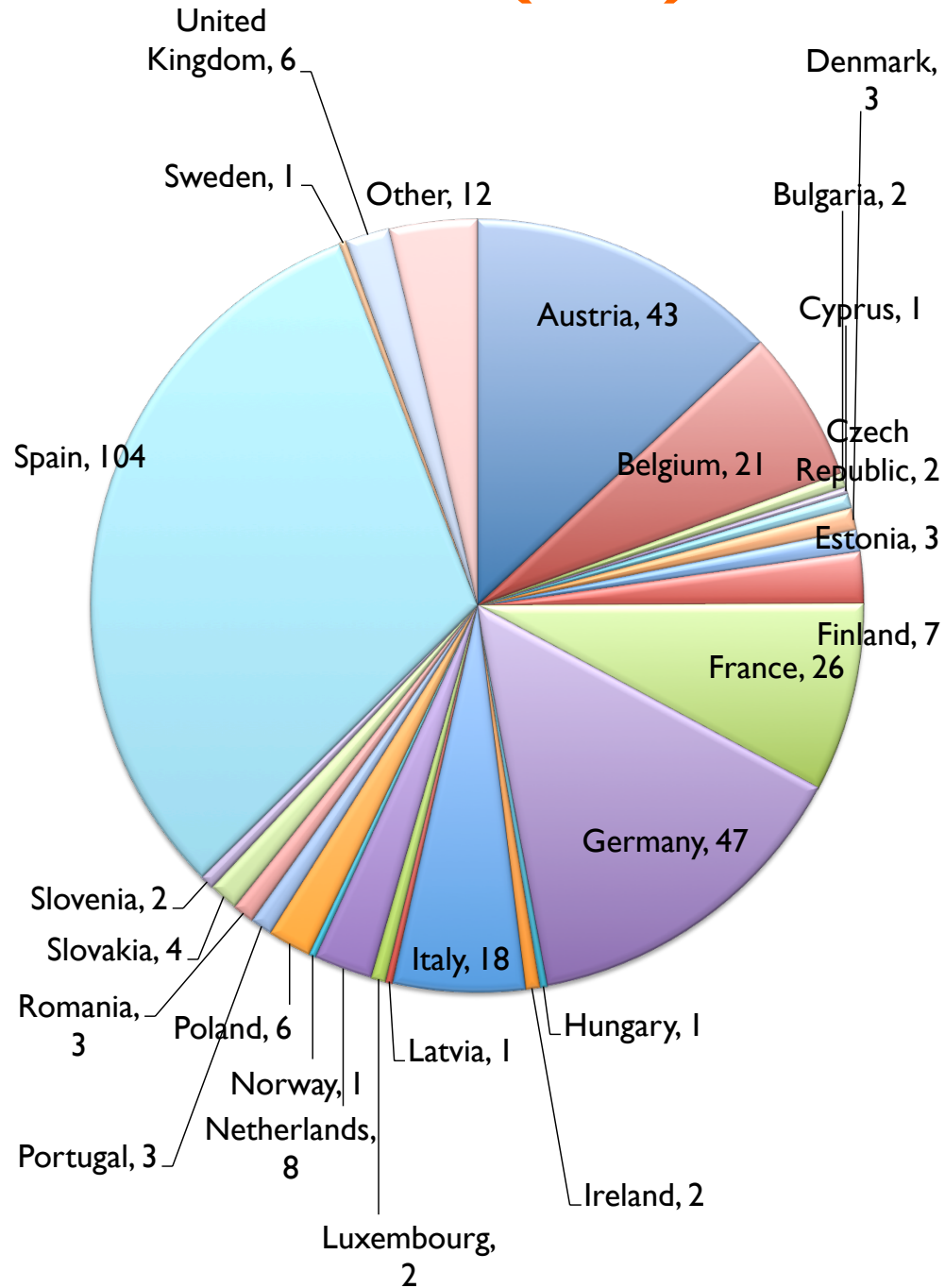
Over two thirds of respondents expressed support for EU intervention in the area of groups of companies. Support came in particular from lawyers but also from companies, trade unions and universities.



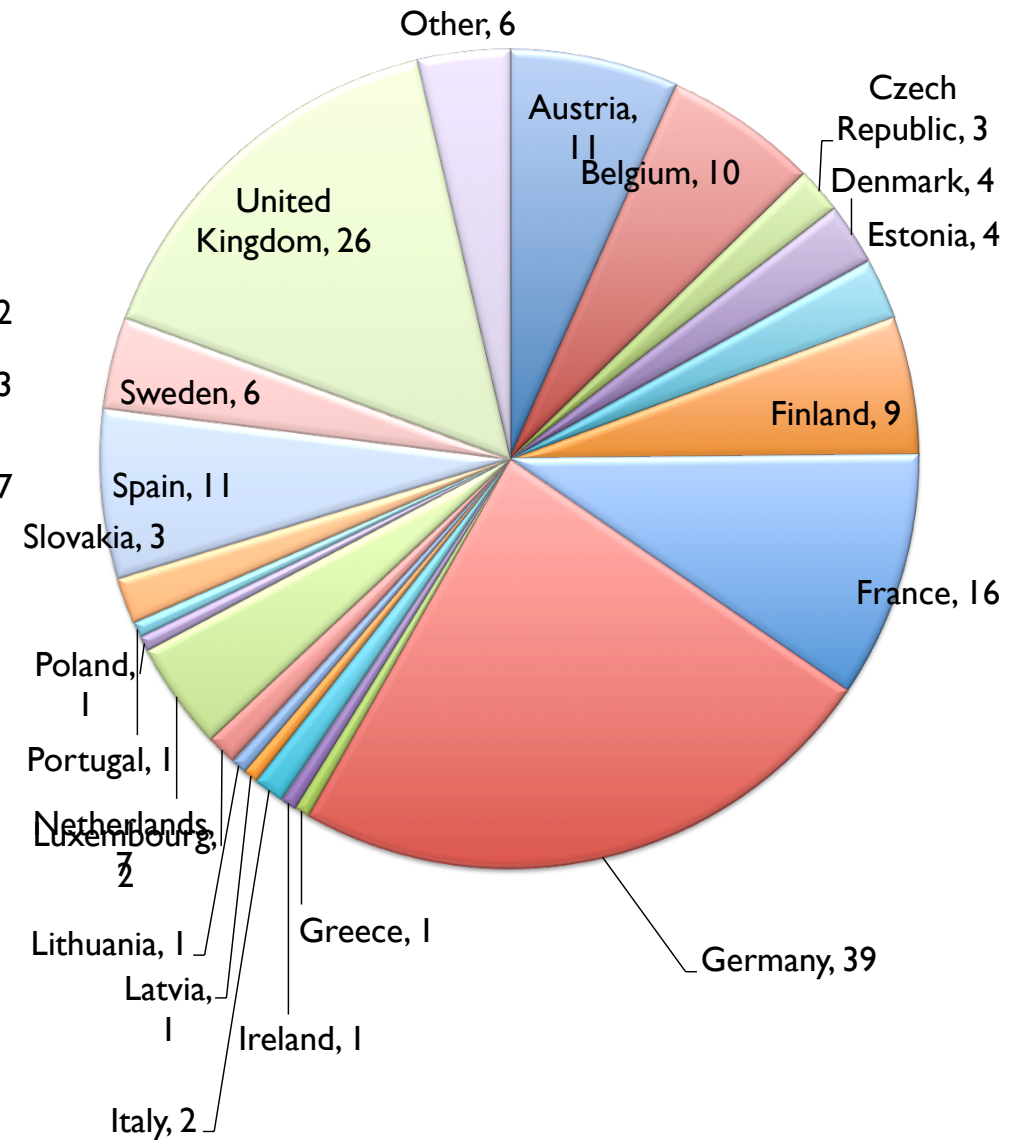
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## Yes (330)



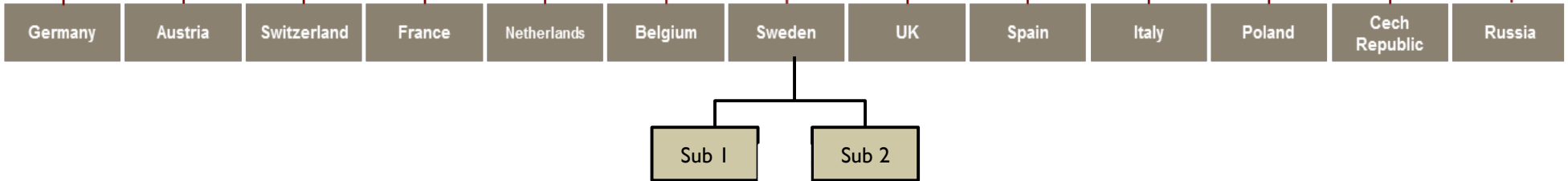
## No/No Opinion (105)/(61)



**The Theory**

HoldCo NL

*Europe*



*America's*



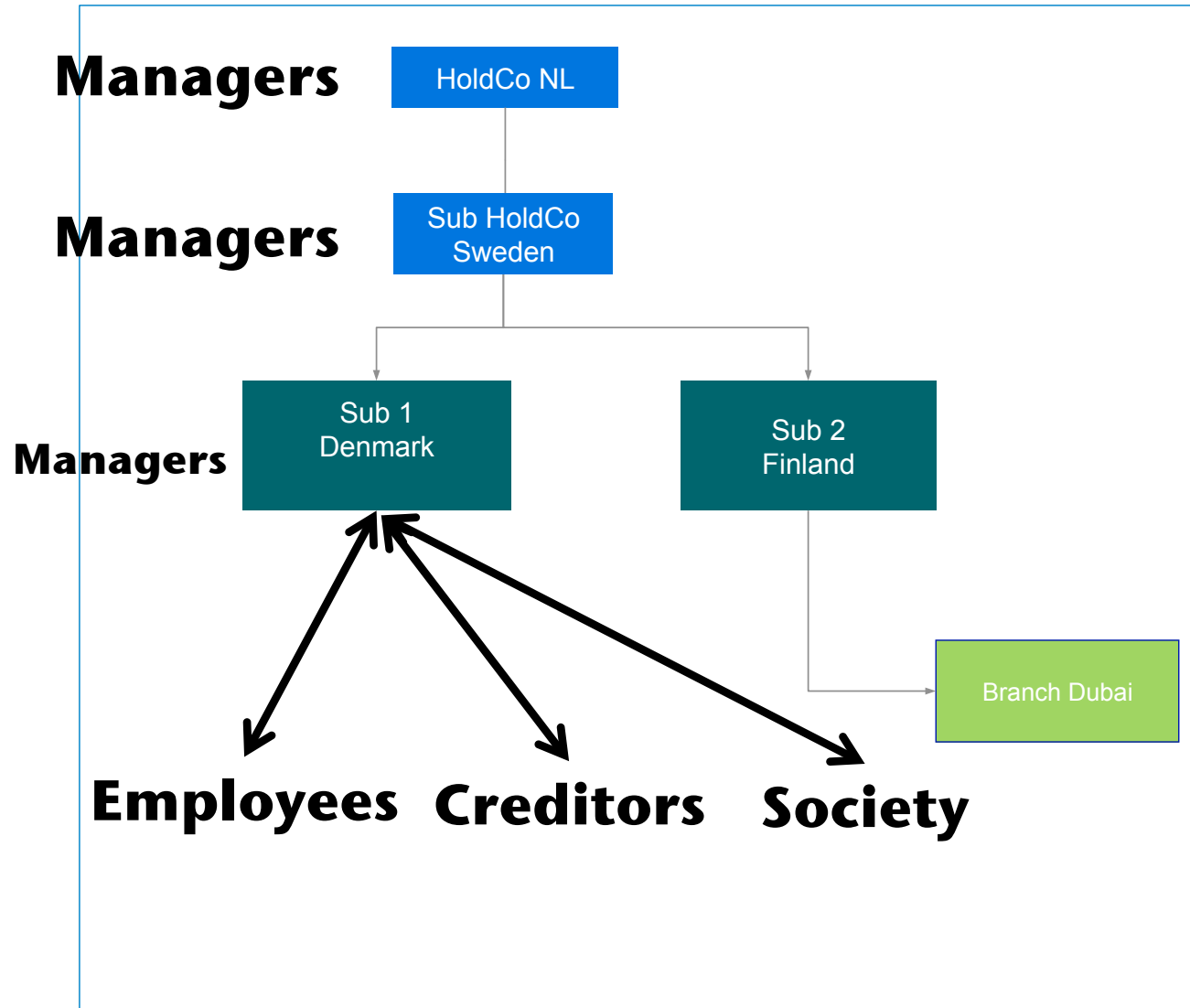
*Middle East & Africa*



*Asia*



# The Issues





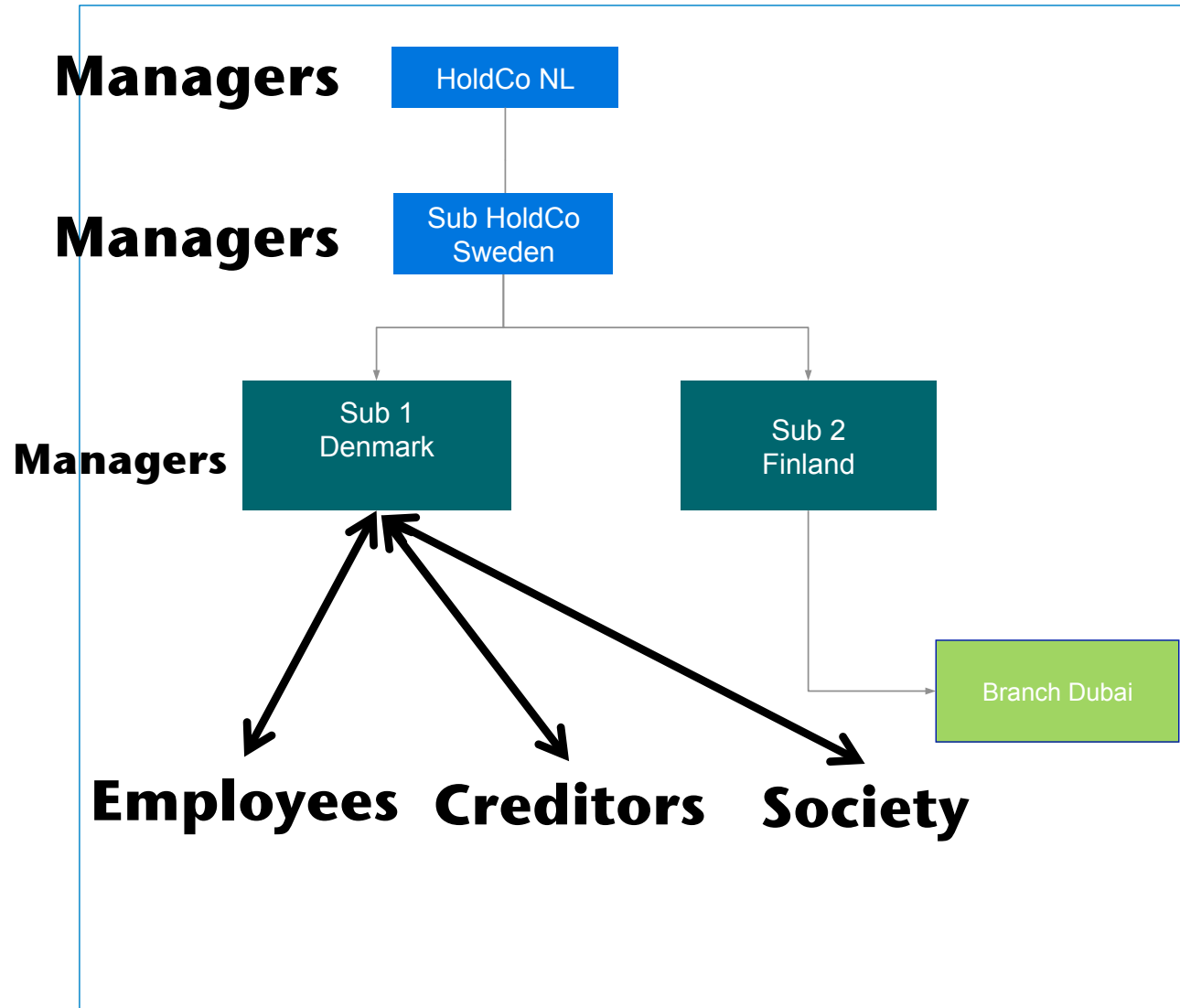
EUROPEAN COMMISSION  
Directorate General Internal Market and Services

CAPITAL AND COMPANIES  
**Corporate governance, social responsibility**

# FEEDBACK STATEMENT

Proponents of EU action supported almost equally measures for better information on the group structure and the recognition of the group interest. Some also recommended other actions in this area, and namely several respondents mentioned the need for rules establishing liability of the parent company for subsidiaries. A small number of respondents also supported a harmonised European framework for corporate groups. Many respondents underlined, however, that any rules on groups should protect the interests of stakeholders involved, namely those of minority shareholders and creditors. Several responses also supported rules on groups of entities other than limited liability companies (such as mutual companies), rules on cash pooling or the need for equal treatment of vertical and horizontal groups.

# The Issues



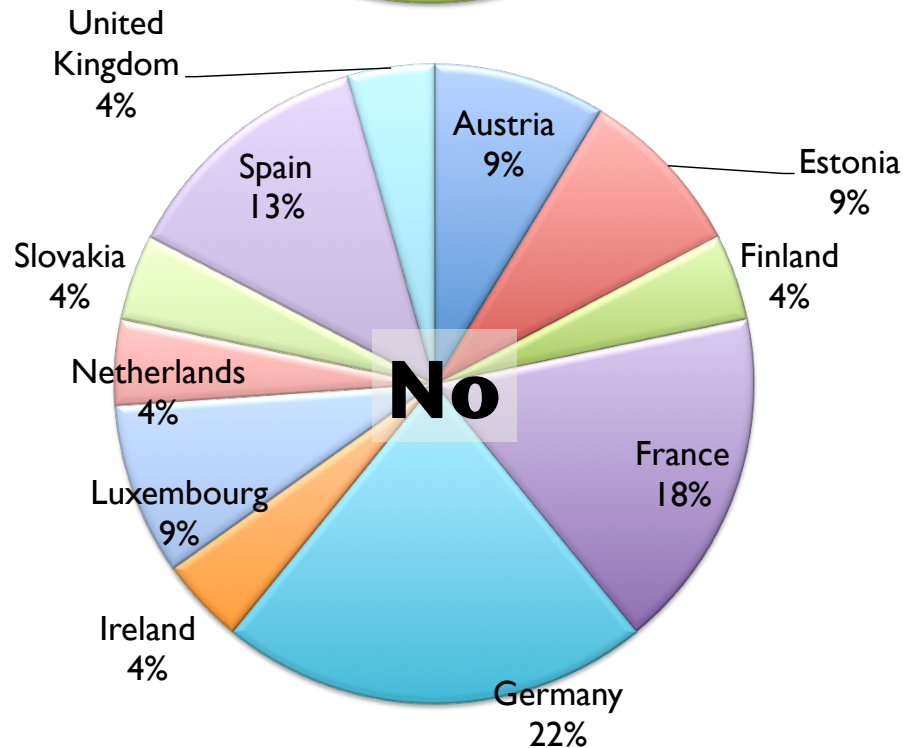
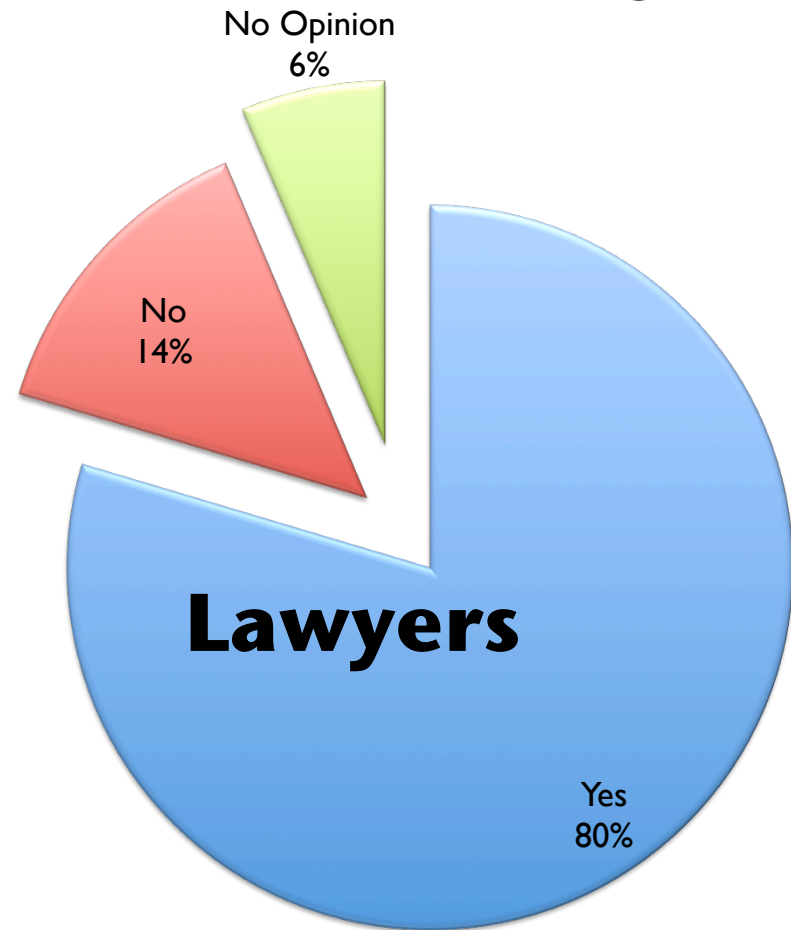
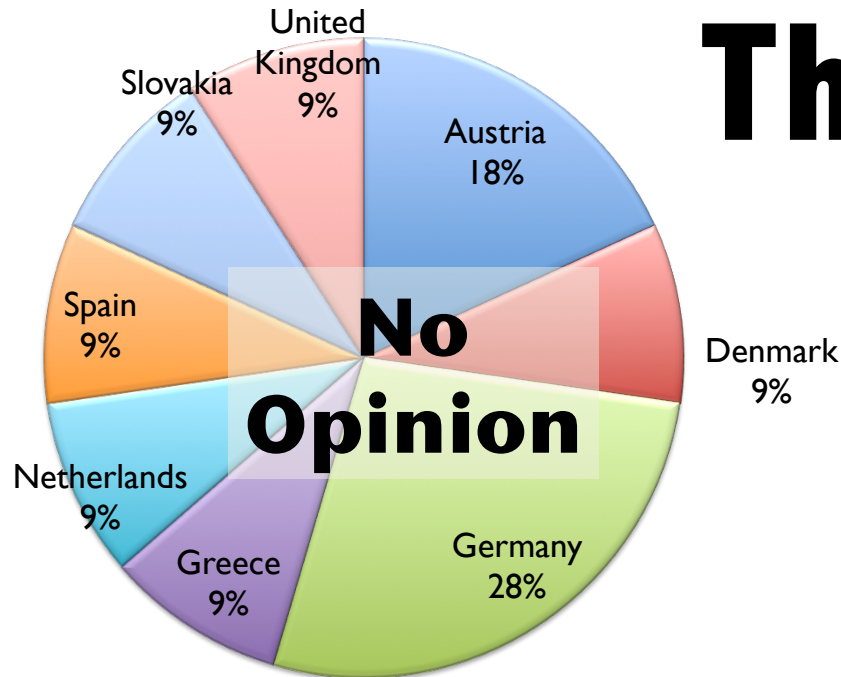
**Recognizing the Interest of the Group**

**Providing Information on the Group Structure, Group Functioning and Management**

**Safeguarding the Interests of Subsidiaries and its Stakeholders**

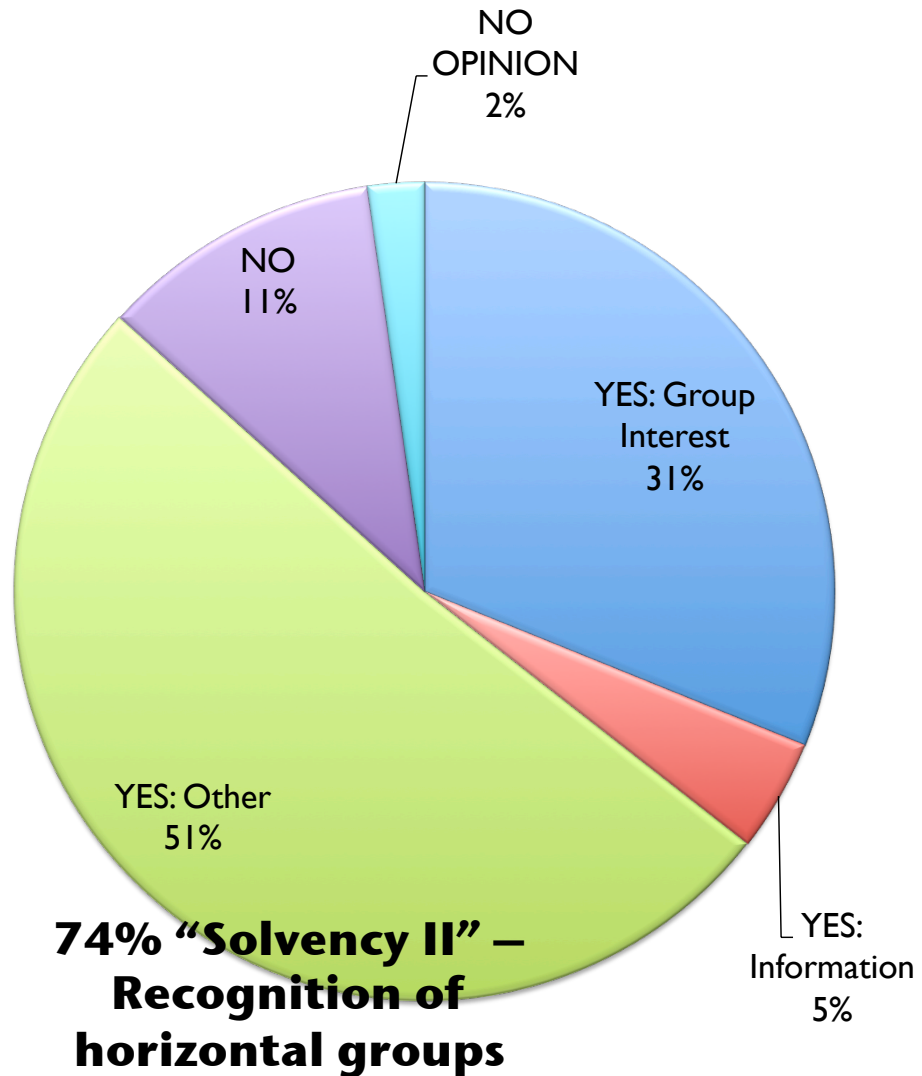


# The Real Story...

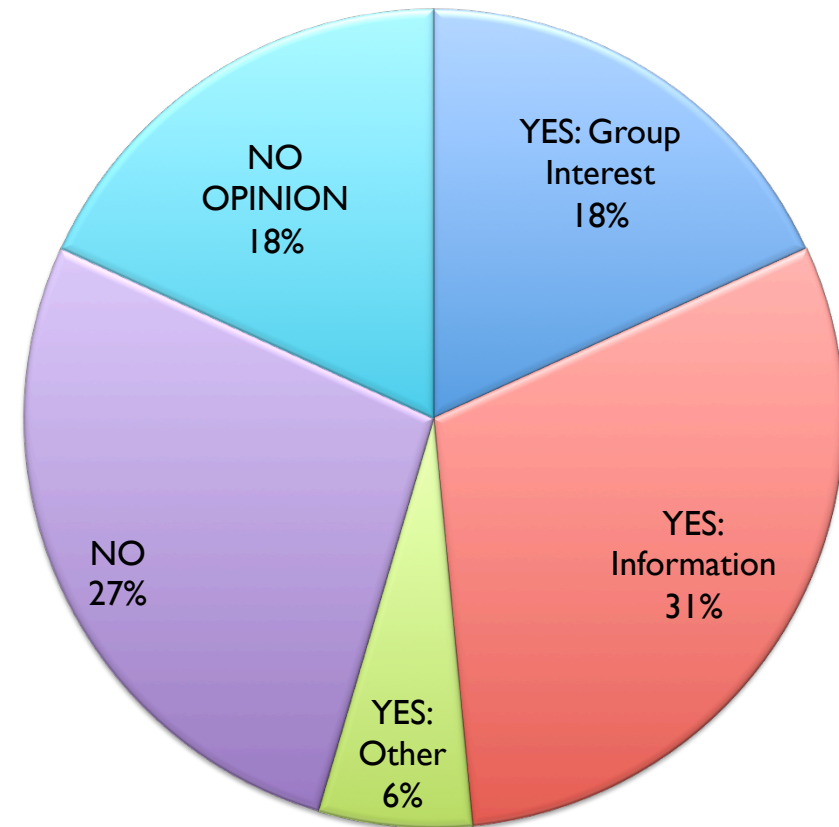


**Interest Group  
Regulation?**

# More Interest Groups

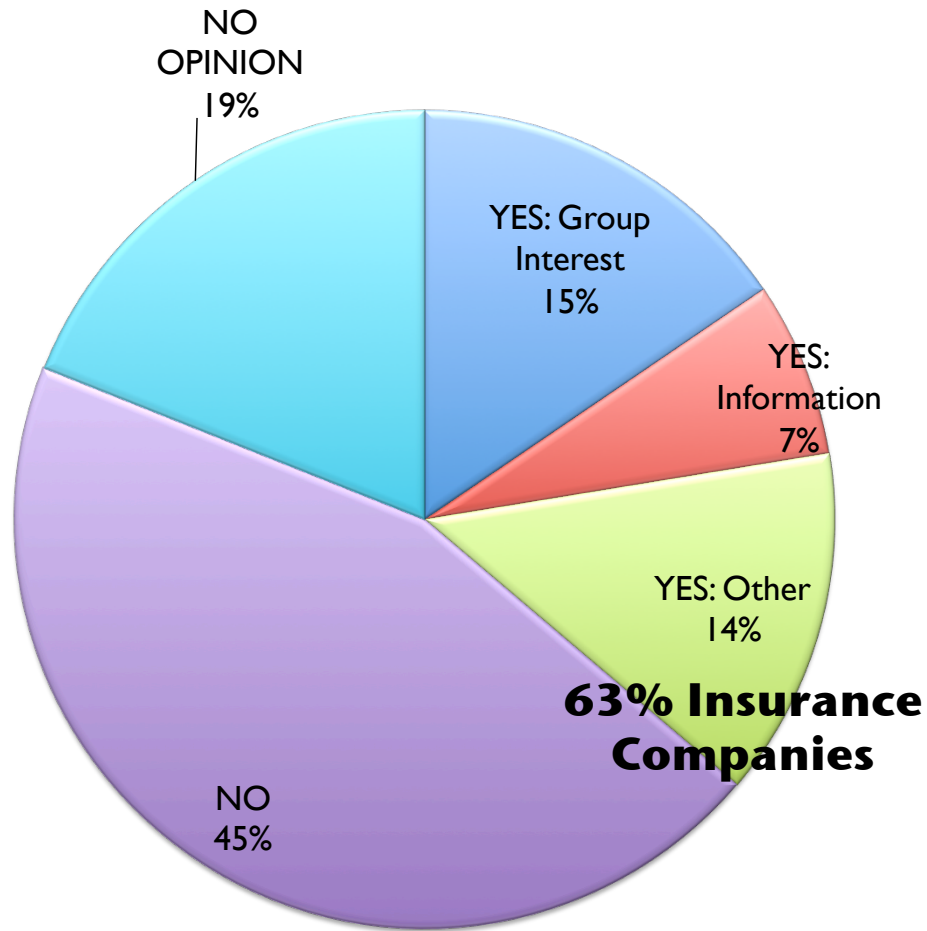


**Insurance  
Companies**

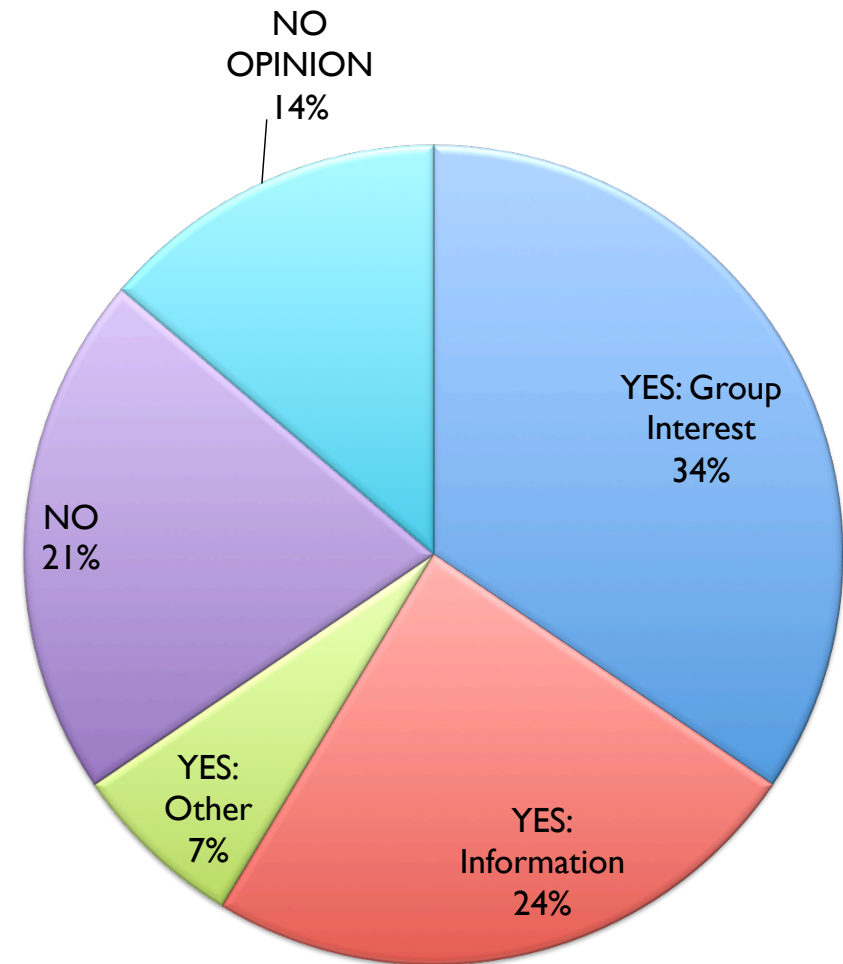


**Public  
Authority**

# What about Companies?



**Business  
Federations**



**Non-Financial  
Companies  
n=26 (54% German)**

# Report of the Reflection Group

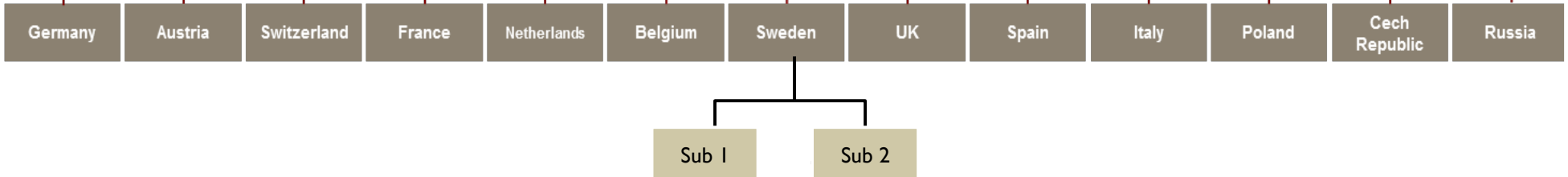
Because these issues relate to all companies, and most groups are not listed, an EU legislation and/or recommendation on groups should not be limited to public listed companies but also include private ones. However, two different alternative approaches have been also suggested in the Reflection Group. Some members of the Reflection Group are of the opinion that the recognition of the interest of the group should be limited to wholly-owned subsidiaries. Other members considered that the regime should not apply to listed subsidiaries.

Furthermore, some members of the Reflection Group are not in favour of any action at EU level on groups. Other members would not oppose the recognition of a doctrine involving the interest of the group and adoption of ‘an interest of the group’ doctrine, be it for listed or non listed companies, with appropriate safeguards, but only as a choice made by individual companies (*opt-in*).

# **The Practice**

HoldCo NL

*Europe*



*America's*



*Middle East & Africa*



*Asia*



HoldCo NL

*Europe*



Sub 2

*America*

*Middle East & Africa*



*Asia*



**History**

**Fiscal/Legal**

**Governance/Incentives**

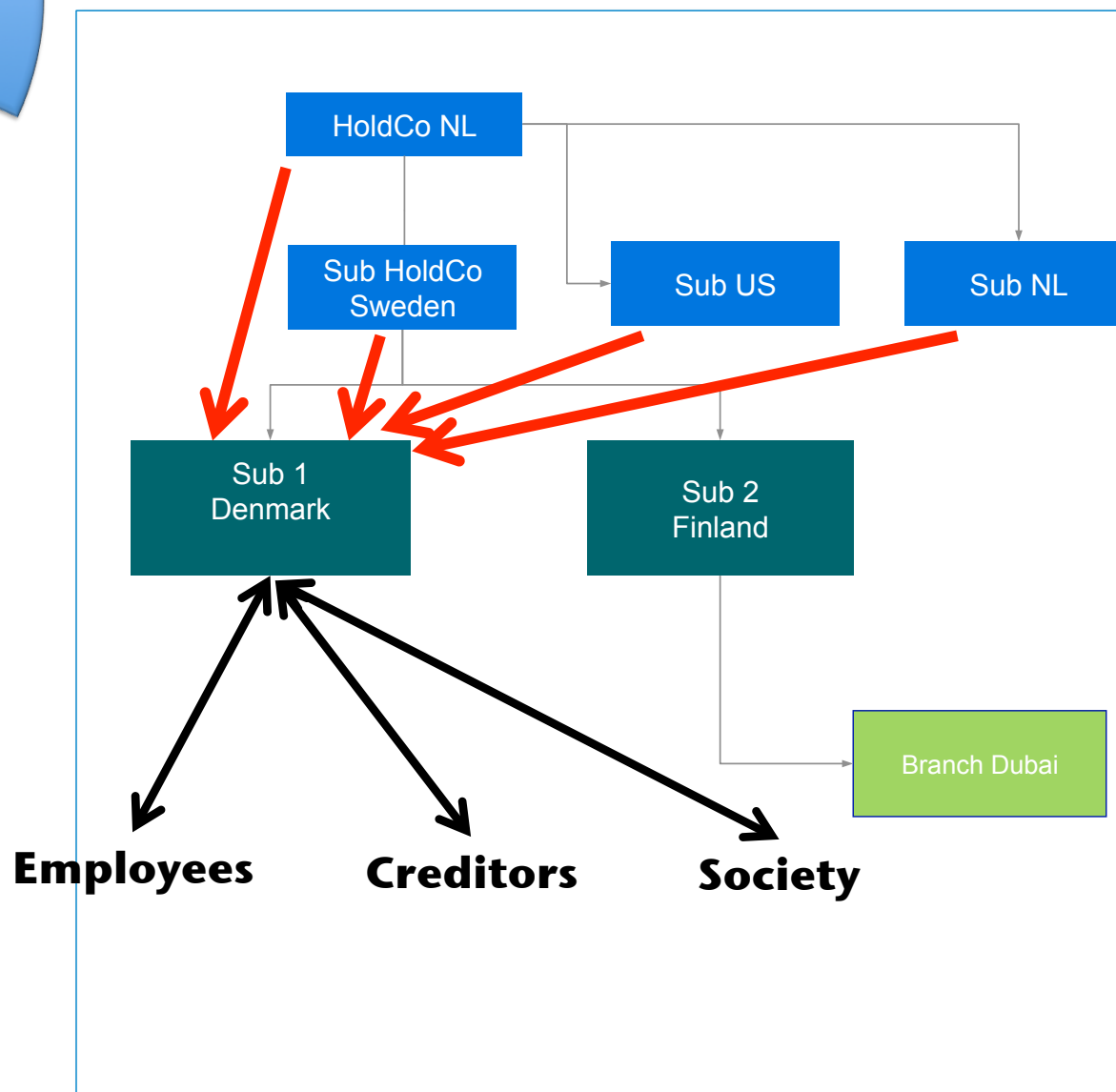
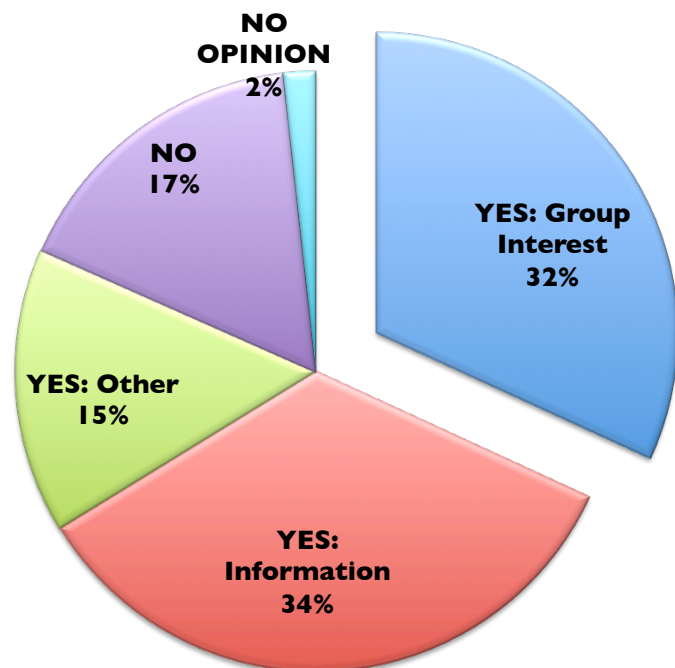
**Acquisitions**

**Restructuring**

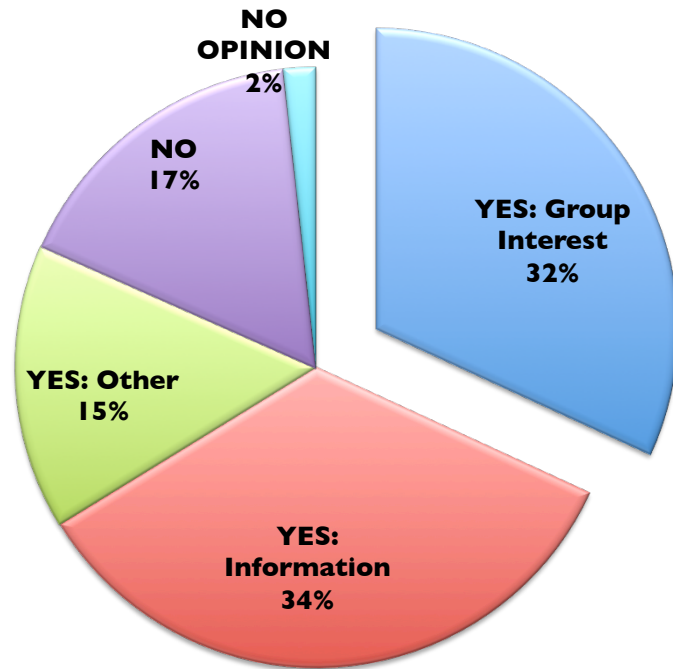
# Practice



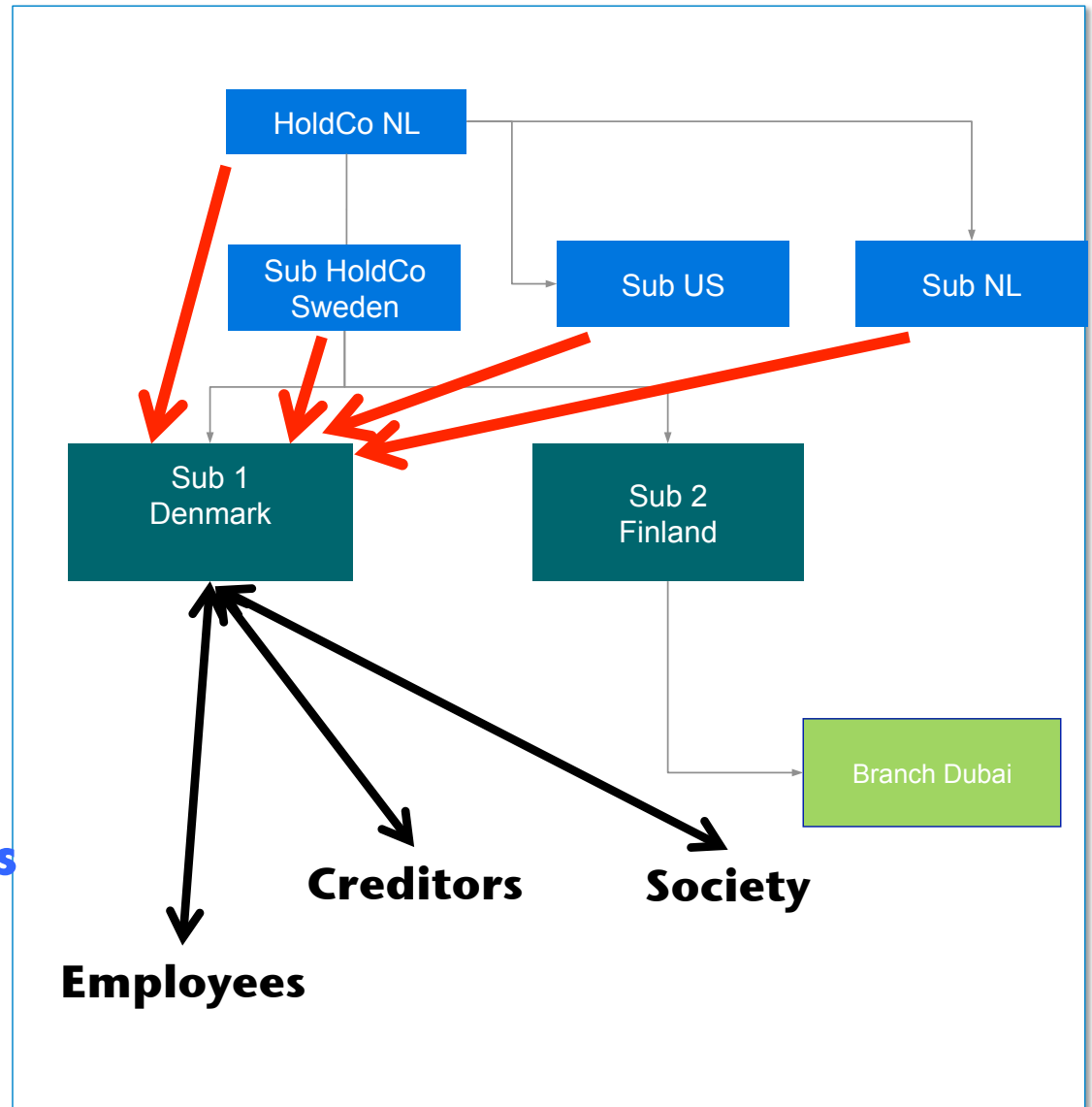
# Safe Harbour for Managers?

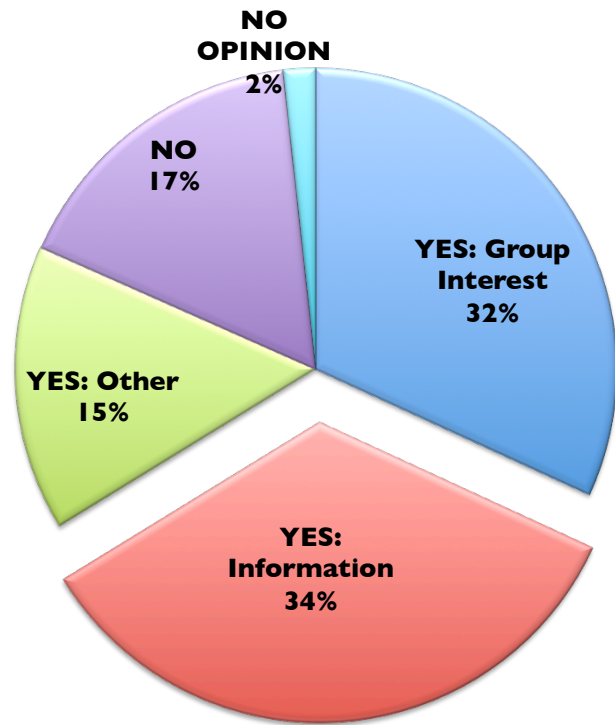


# Safe Harbour for Managers?

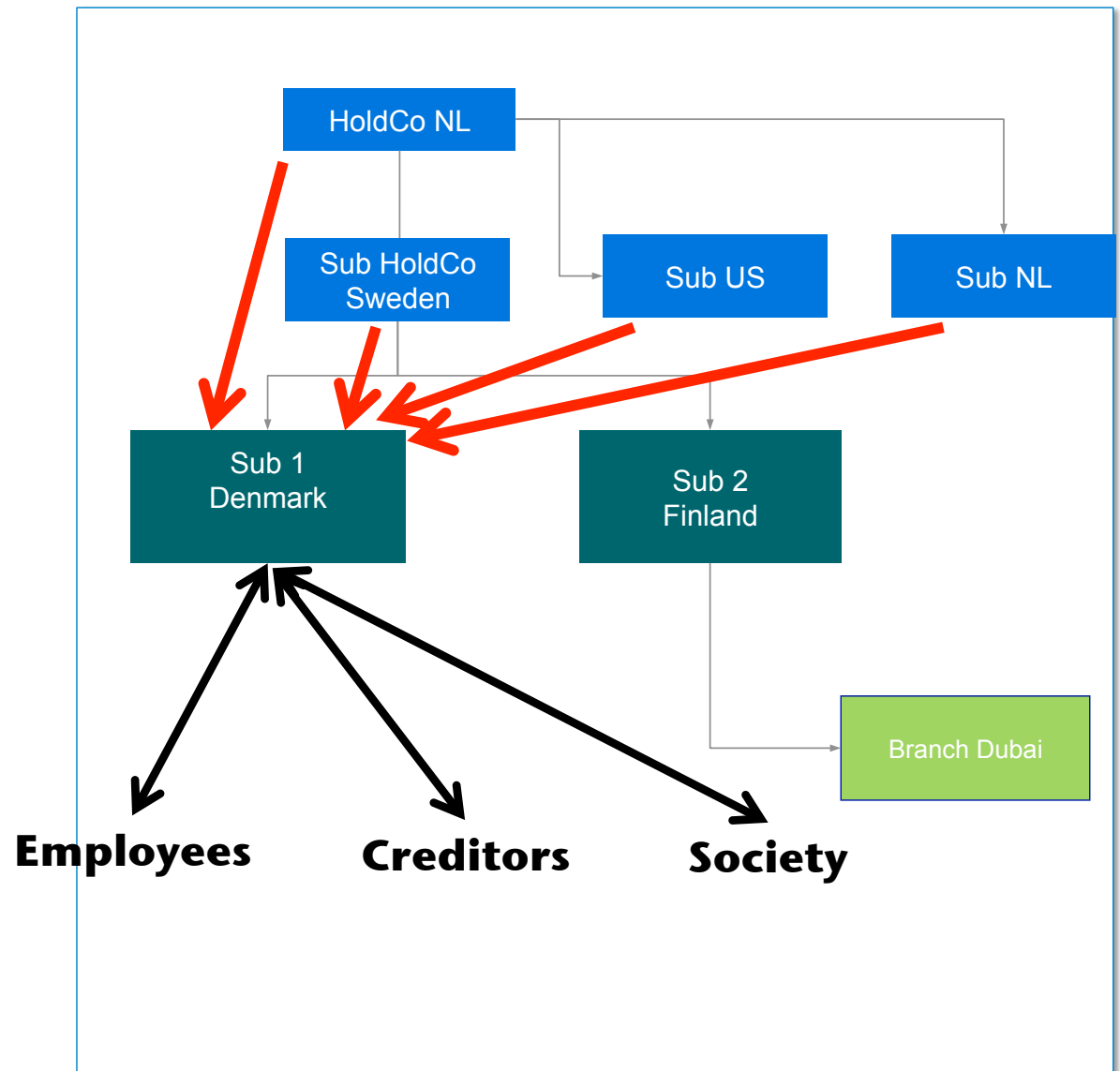


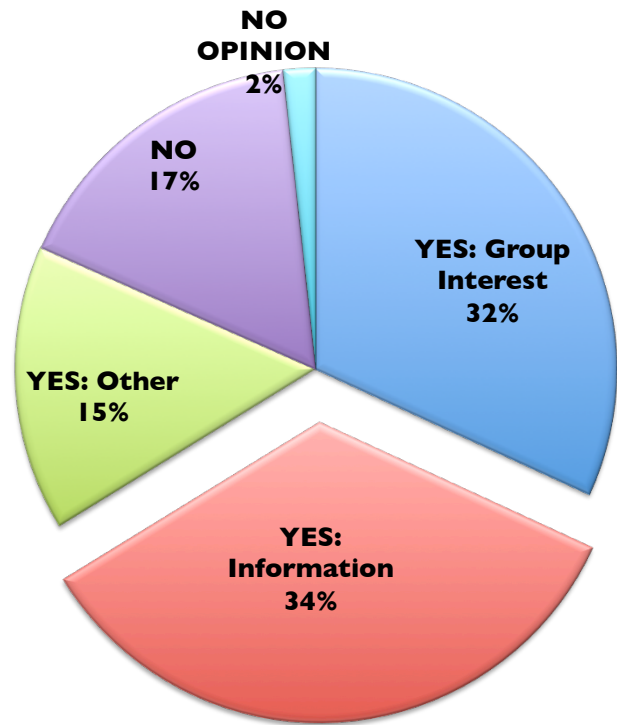
- ① **One-Size-Does-Not-Fit-All**
- ② **More Interests than Group, Parent and Subsidiary**
- ③ **More reporting lines**
- ④ **Formalization at EU level leads to inflexibility & uncertainty**
- ⑤ **Internal Rules & Guidelines**



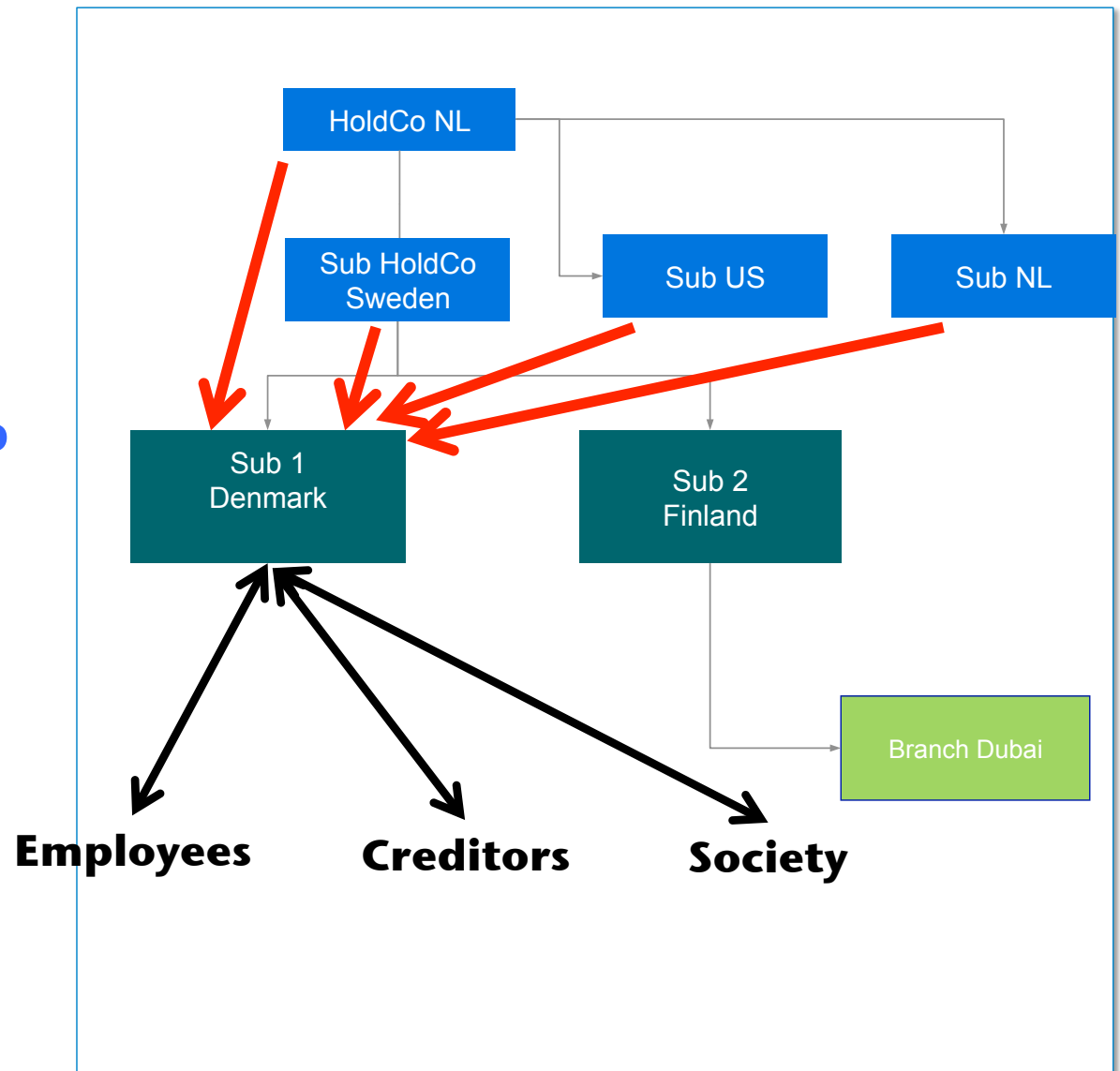


## Basic Information on Group Structure (and Management)



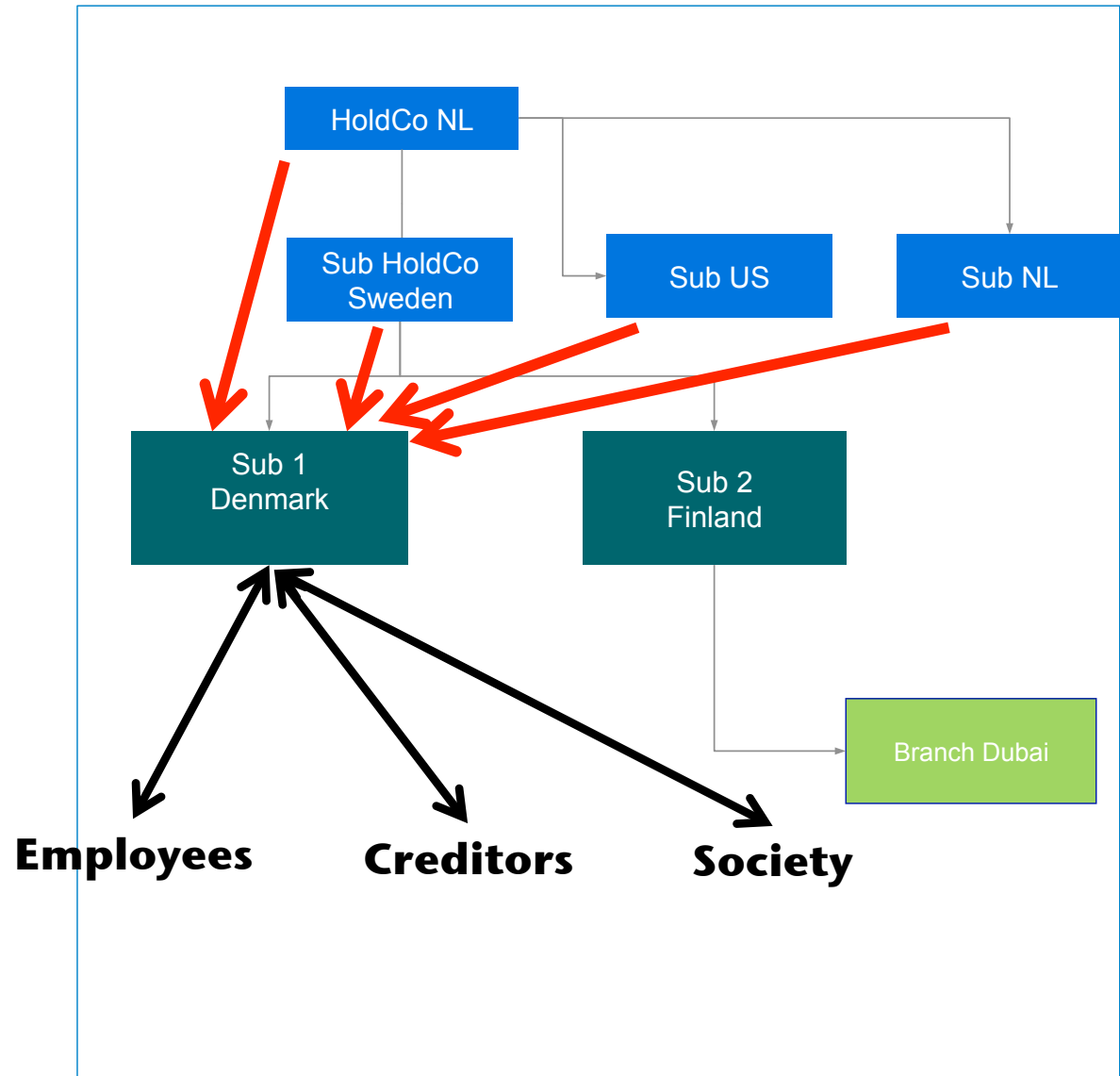
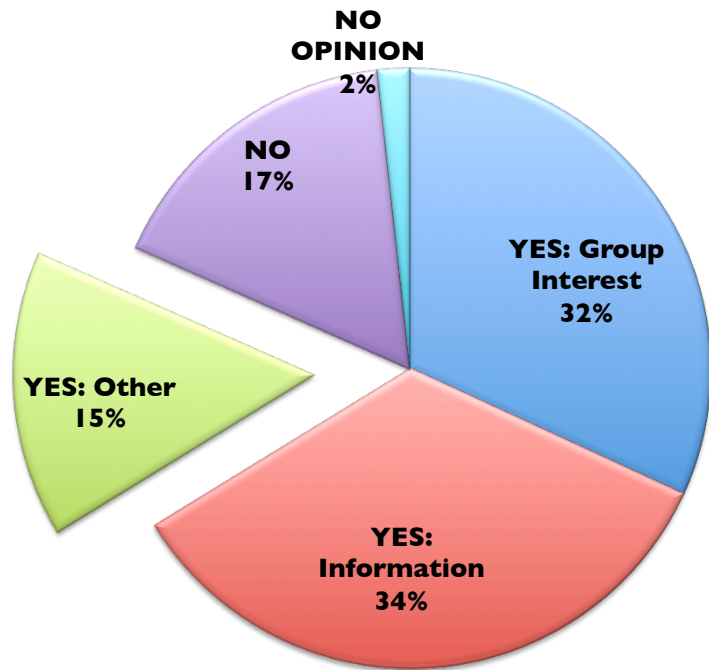


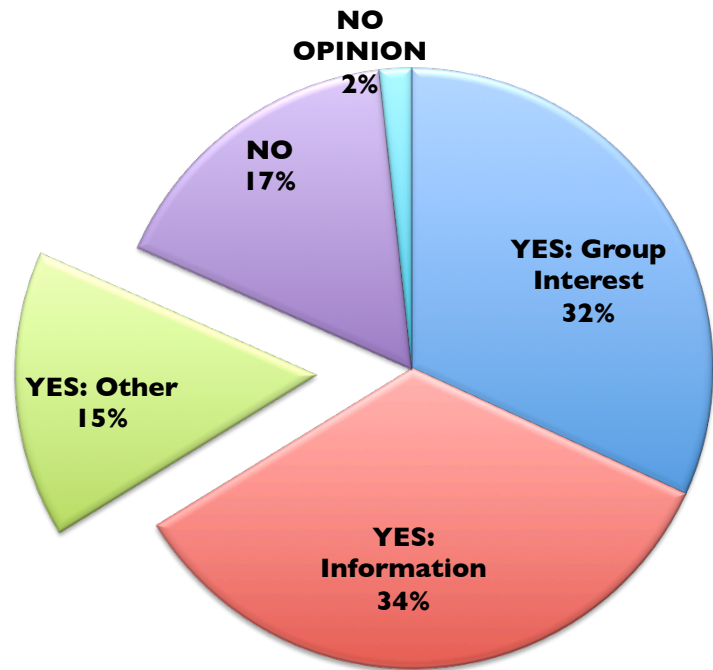
## Basic Information on Group Structure (and Management)



- ① **Investor friendly and easy to read? Generic & boilerplate statements!**
- ② **Technical information is needed for a clear understanding**
- ③ **“Separation of ownership & control”**

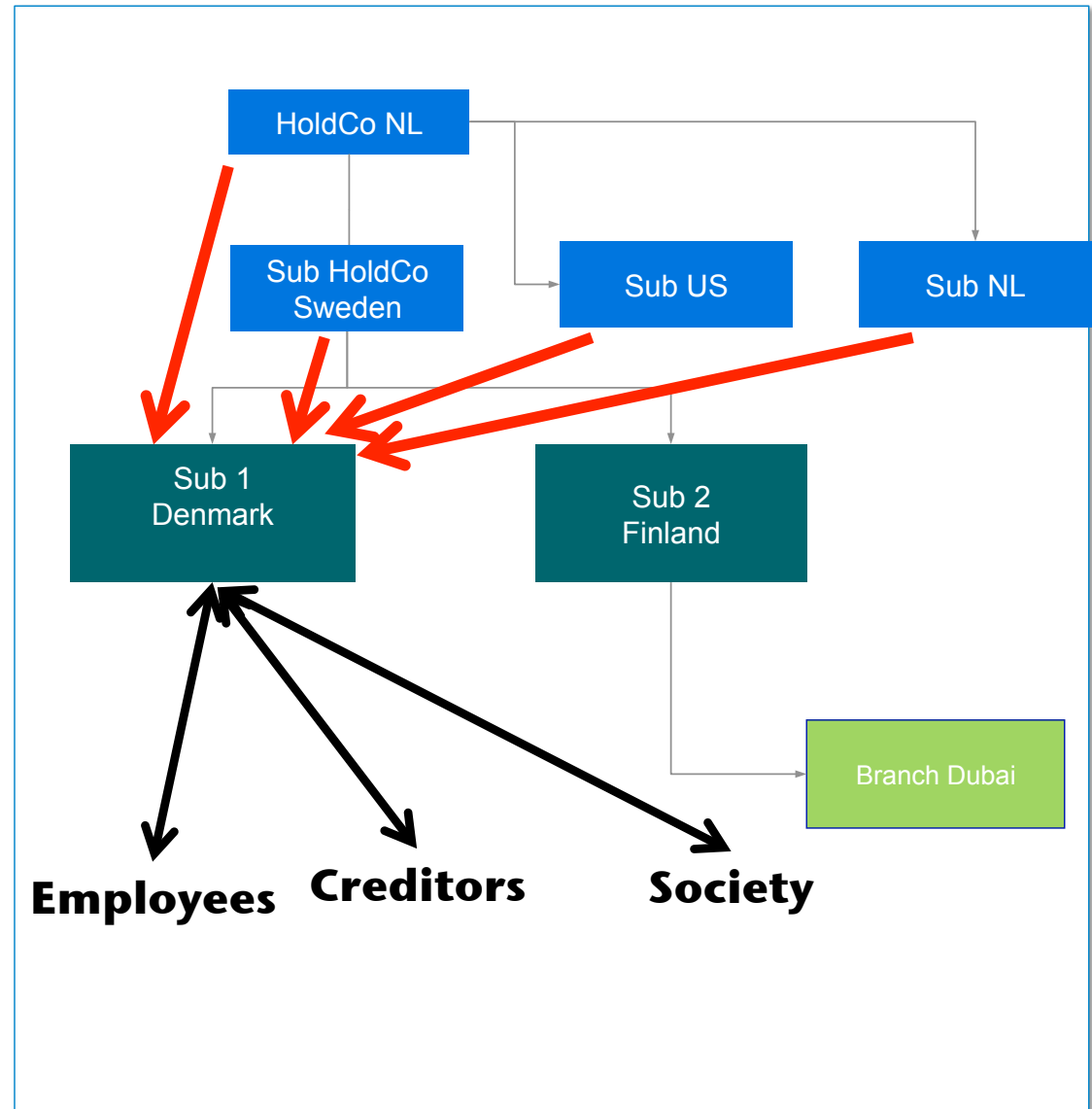
# Appropriate rules to safeguard the interests of the subsidiary and its stakeholders





# Appropriate rules to safeguard the interests of the subsidiary and its stakeholders

- ① Focus on “agency problems”
- ② Formalization leads to more questions + change in behaviour
- ③ “Financializing” or “derisking” the group of companies (less innovation and value creation)







- ① **No EU Intervention**
- ② **EU Intervention, but more research is needed: “one-size-does-not-fit-all”**
- ③ **EU Intervention: Opt-in approach (particularly relevant to non-listed groups)**

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**Thank you!**

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**PHILIPS**