

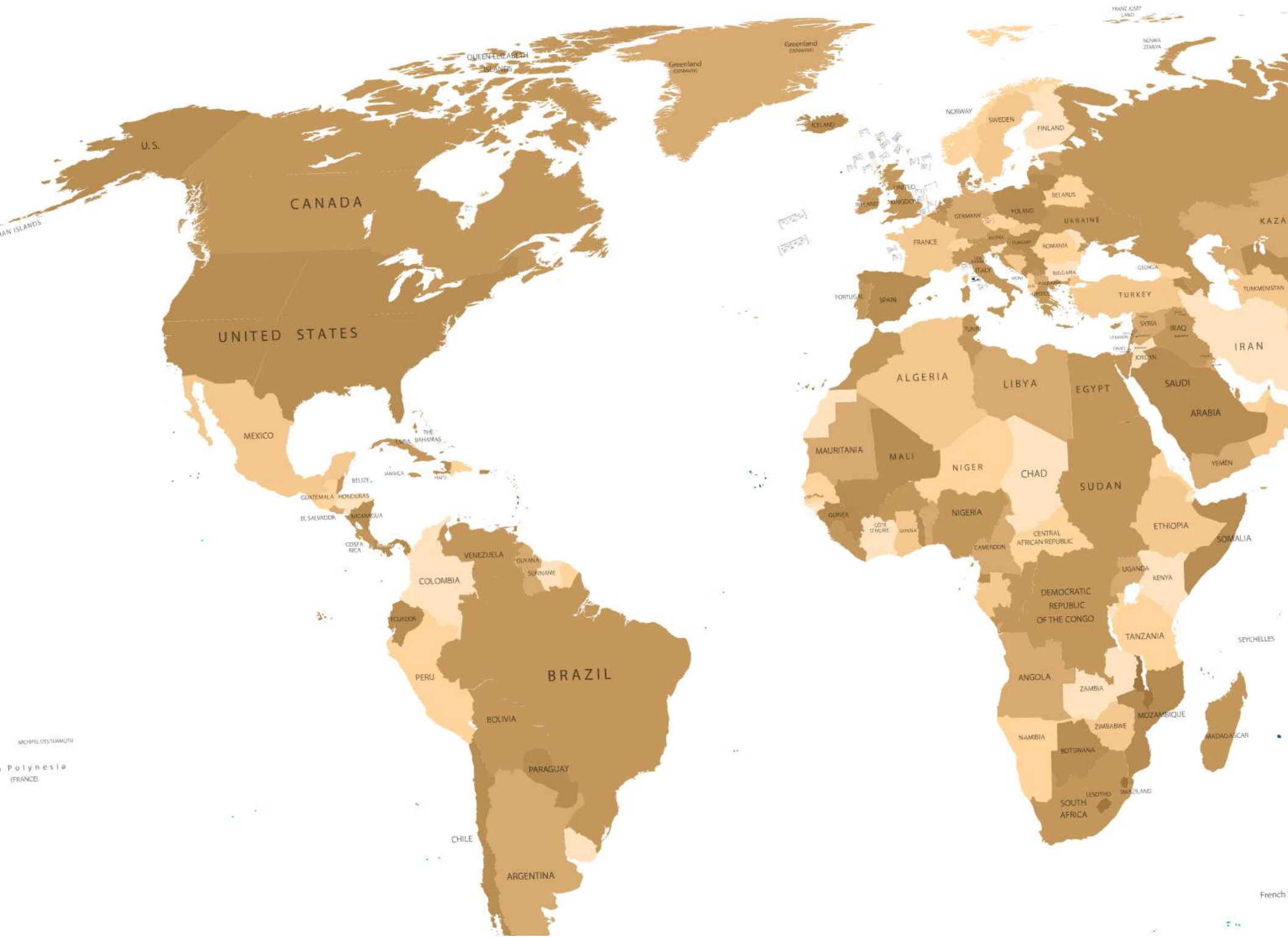


UNIVERSITÀ DEGLI STUDI
DI TRENTO

Multiple Voting Shares A European and Italian Perspective

Corrado Malberti
corrado.malberti@unitn.it

Montréal, 14 October 2016



U.S.

CANADA

UNITED STATES

MEXICO

QUEEN ELIZABETH ISLANDS

Greenland (DENMARK)

Greenland (DENMARK)

NORWAY

SWEDEN

FINLAND

FRANZ JOSEF LAND

KAZAKHSTAN

UZBEKISTAN

TURKMENISTAN

IRAN

PORTUGAL

SPAIN

FRANCE

GERMANY

POLAND

CZECH REPUBLIC

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ROMANIA

BULGARIA

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GEORGIA

ARMENIA

TURKEY

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IRAQ

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YEMEN

ALGERIA

LIBYA

EGYPT

MAURITANIA

MALI

NIGER

CHAD

SUDAN

ETHIOPIA

SOMALIA

GUINEA

COTE D'IVOIRE

GHANA

GUINEA-BISSAU

SIERRA LEONE

LIBERIA

IVORY COAST

GHANA

VENEZUELA

GUYANA

SURINAME

COLOMBIA

ECUADOR

PERU

BRAZIL

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PARAGUAY

CHILE

ARGENTINA

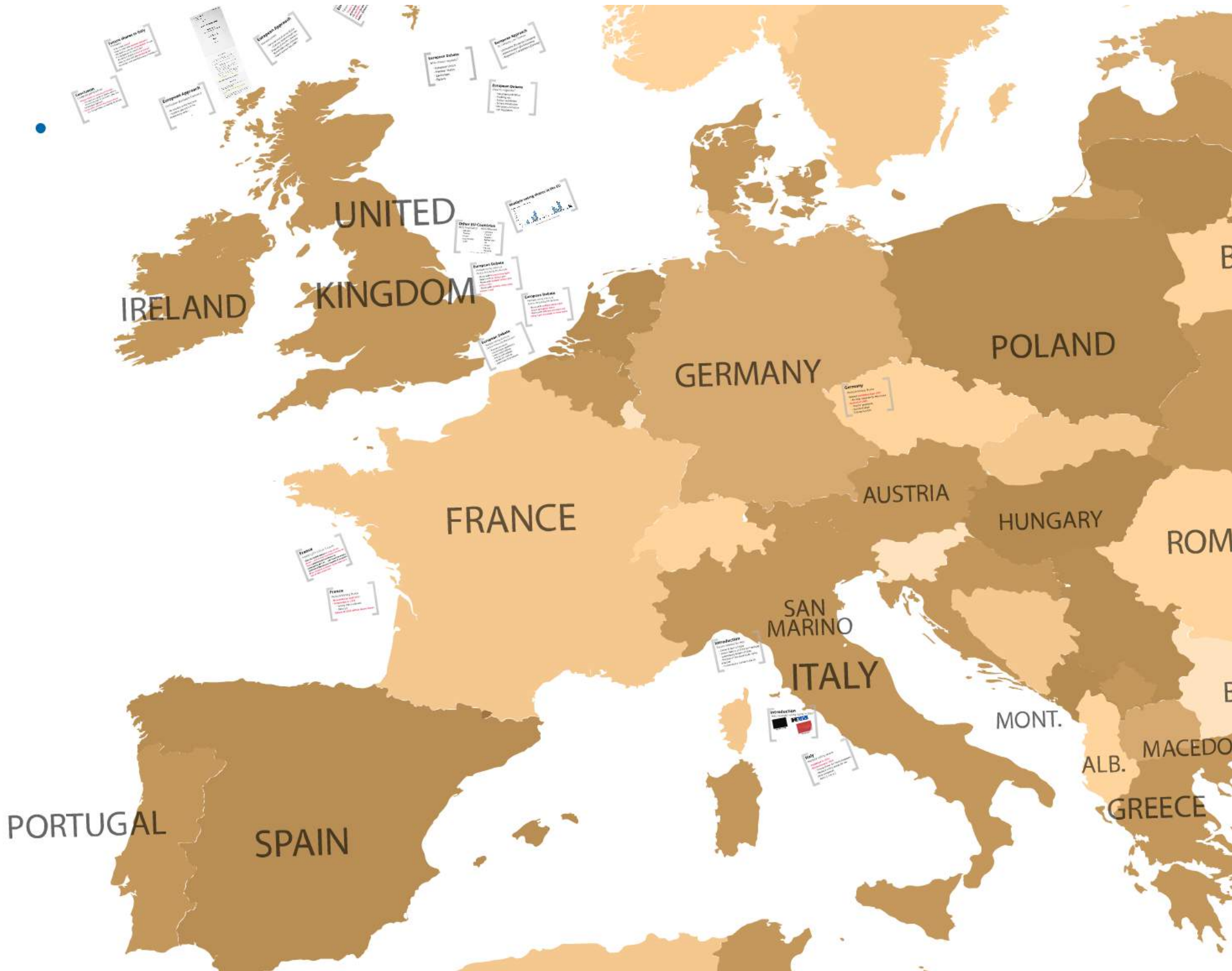
ARCHIPELAGOS (TUAMOTU)

Polynesia (FRANCE)

SEYCHELLES

MADAGASCAR

French



IRELAND
UNITED KINGDOM

GERMANY

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AUSTRIA

HUNGARY

ROMANIA

SAN MARINO

ITALY

MONTENEGRO

MACEDONIA

PORTUGAL

SPAIN

ALBANIA

GREECE

European Approach
European Outlook
Other EU Countries

European Approach

European Approach

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Other EU Countries

European Outlook

European Outlook

European Outlook

Germany

France

France

Introduction

Introduction

Italy

E

HUNGARY

SAN MARINO

ITALY

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ALB.

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GRE

Introduction
 Recent Interest For MNC
 - Italian Reform of 2014 (see it changes)
 - French Reform of 2014 (see it changes)
 - Luxembourg Reform of 2014
 - Revision of the shareholder rights directive
 - Tensura shares debate in the US

Introduction
 Why multiple voting rights in Italy?


Italy
 Multiple Voting Shares
 - Prohibited in 1942
 - Reintroduced in 2014
 - Tensura shares for listed companies
 - Multiple voting shares for the other companies
 - Ratio 1/3 or 1/2

Introduction

Why multiple voting rights in Italy?



Agnelli Family



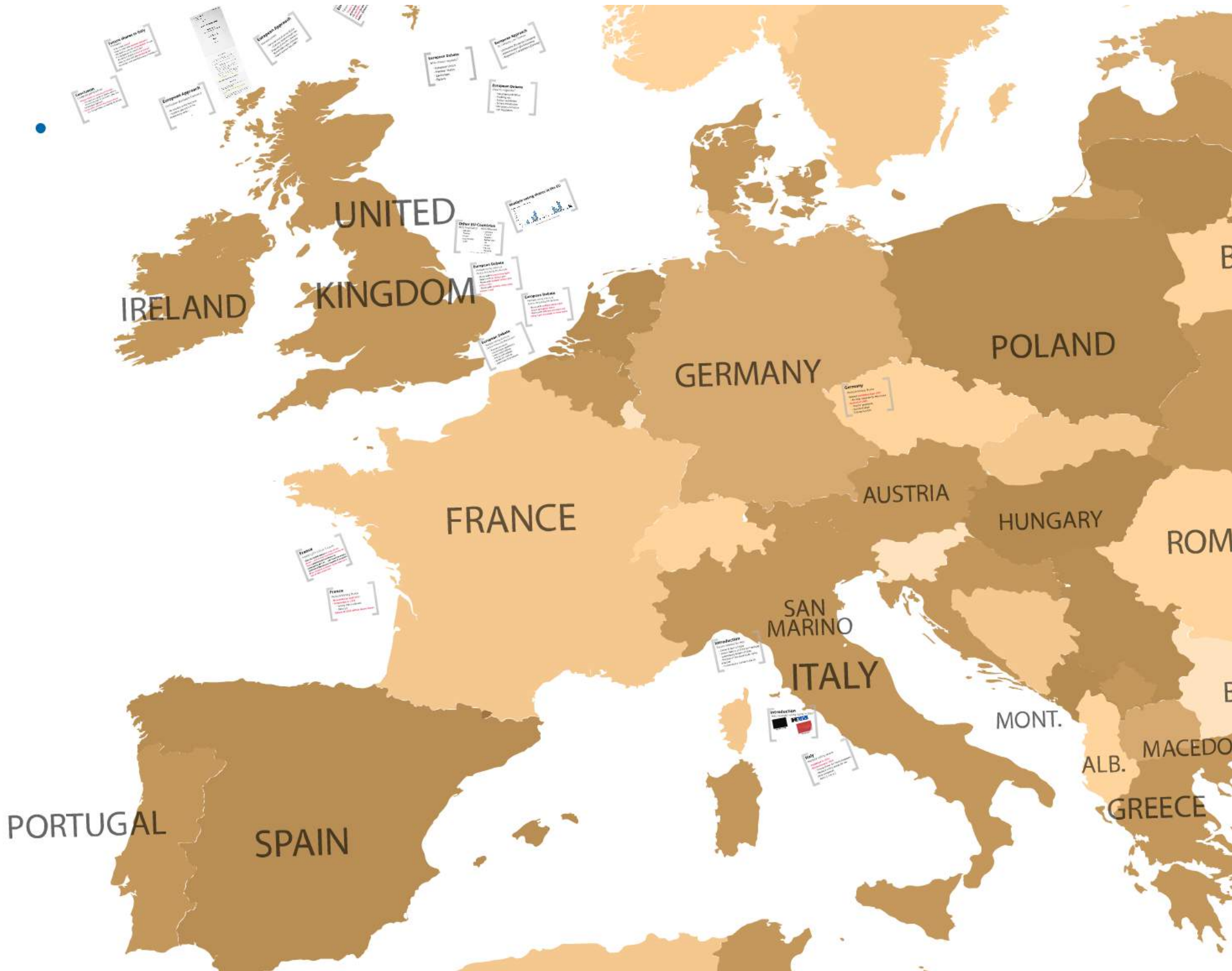
Ferrari N.V.



Introduction

Recent interest for MVS

- Italian Reform of 2014
- French Reform of 2014 (loi Florange)
- Luxembourg Reform of 2016
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- Tenure shares debate in the US



Country
[Text]

European Approach
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European Approach
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European Approach
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European Estate
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European Approach
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European Estate
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Other EU Countries
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European Estate
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European Estate
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European Estate
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France
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France
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Germany
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Introduction
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Introduction
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Italy
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European Debate

Multiple voting shares as
Control Enhancing Mechanisms

- Pyramid structures
- Shareholders agreements
- Cross-shareholdings
- Voting right ceilings
- Ownership ceilings
- Supermajority provisions

European Debate

Multiple voting shares as
Control Enhancing Mechanisms

- Shares with **limited voting rights**
- Shares with **no voting rights**
- Shares with **multiple voting rights within a ratio**
- Shares with **multiple voting rights without a ratio**

European Debate

Multiple voting shares as
Control Enhancing Mechanisms

- Shares with **multiple voting rights**
- **Tenure (or loyalty) shares**
- Shares with **different par values and voting rights associated to these values**



GERMANY

Germany

Multiple Voting Shares

- General prohibition from 1937
- No clear rationale for this choice
- **KonTraG of 1998**
- Investor protection
- Standardization
- EU proposed law

AUSTRIA

Germany

Multiple Voting Shares

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 - No clear rationale for this choice
- **KonTraG of 1998**
 - Investor protection
 - Standardization
 - EU proposed law

E

HUNGARY

SAN MARINO

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Italy

Multiple Voting Shares

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- **Reintroduced in 2014**
 - Tenure shares for listed companies
 - Multiple voting shares for the other companies
 - Ratio $1/3$ or $1/2$

GERM

FRANCE

France

Article L225-123 et 3 c.com.
(dans les sociétés cotées), les droits de vote
double ... sont de droit, sauf clause contraire des
statuts, adaptés automatiquement à la
proportion de la loi ... pour toutes les actions
primitivement émises pour lesquelles il est passé
d'une situation nominative depuis deux ans de
leur date de souscription.

France

Multiple Voting Shares

- No prohibition until 1936
- Compromise in 1933
- Tenure shares allowed
- Ratio 1/2
- Reform of 2014 default tenure shares

Introduction

- Recent interest for MVS
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France

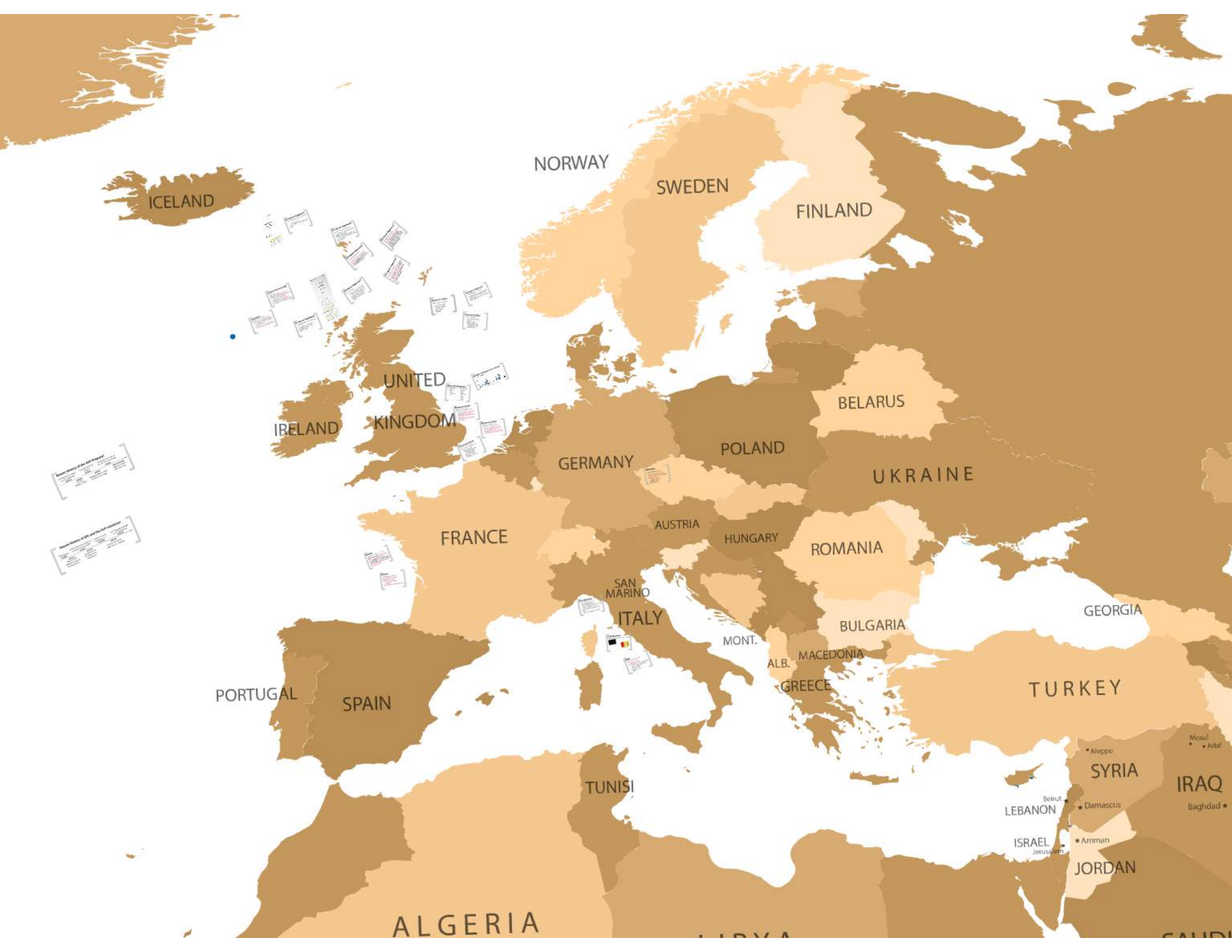
Multiple Voting Shares

- **No prohibition until 1930**
- **Compromise in 1933**
 - Tenure shares allowed
 - Ratio 1/2
- **Reform of 2014 default tenure shares**

France

Article L225-123 al. 3 c.com.

[Dans les sociétés cotées], les droits de vote double ... sont de droit, sauf clause contraire des statuts adoptée postérieurement à la promulgation de la loi ... pour toutes les actions entièrement libérées pour lesquelles il est justifié d'une inscription nominative depuis deux ans au nom du même actionnaire.



ICELAND

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TUNISI

LEBANON

Aleppo

Beirut

Damascus

Jerusalem

Amman

JORDAN

SYRIA

IRAQ

Baghdad

Mosul

Arbil

Other EU Countries

MVS Prohibited

- Belgium
- Estonia
- Greece
- Luxembourg
- Spain

MVS Allowed

- Denmark
- Finland
- Sweden
- Netherlands
- UK
- Ireland
- Poland
- Hungary



NORWAY

SWEDEN

FINLAND

BELARUS

Conclusion
European perspectives
- Member States are converging in this field
- The result is a series of divergent reforms
- EU company law is not moving toward an harmonized approach
- **Taxation shares create practical legal problems**
- E.g. Compensation, ownership, thresholds
- Non-mandatory

European Approach
Unification (European Company)
- No solution in the final text
- Negative approach in the preparatory works

Who should...
- European Union
- Member States
- Exchanges
- Bylaws

European Debate
How to regulate?
- Mandatory prohibition
- Enabling rule
- Default prohibition
- Default introduction
- Mandatory disclosure
- Self Regulation

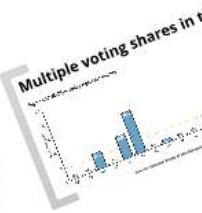


UNITED

KINGDOM

IRELAND

Other EU Countries
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- Luxembourg
- Spain
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- Shares with **limited voting rights**
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European Debate
Multiple voting shares
Control Enhancing Mechanisms
- Shares with **multiple**
votes (or tokens)
- Shares with **different**
voting rights associated

European Debate
Multiple voting shares as
Control Enhancing Mechanisms
- Pyramid structures
- Shareholder agreements
- Cross-shareholdings
- Voting right ceilings
- Ownership provisions
- Supermajority provisions

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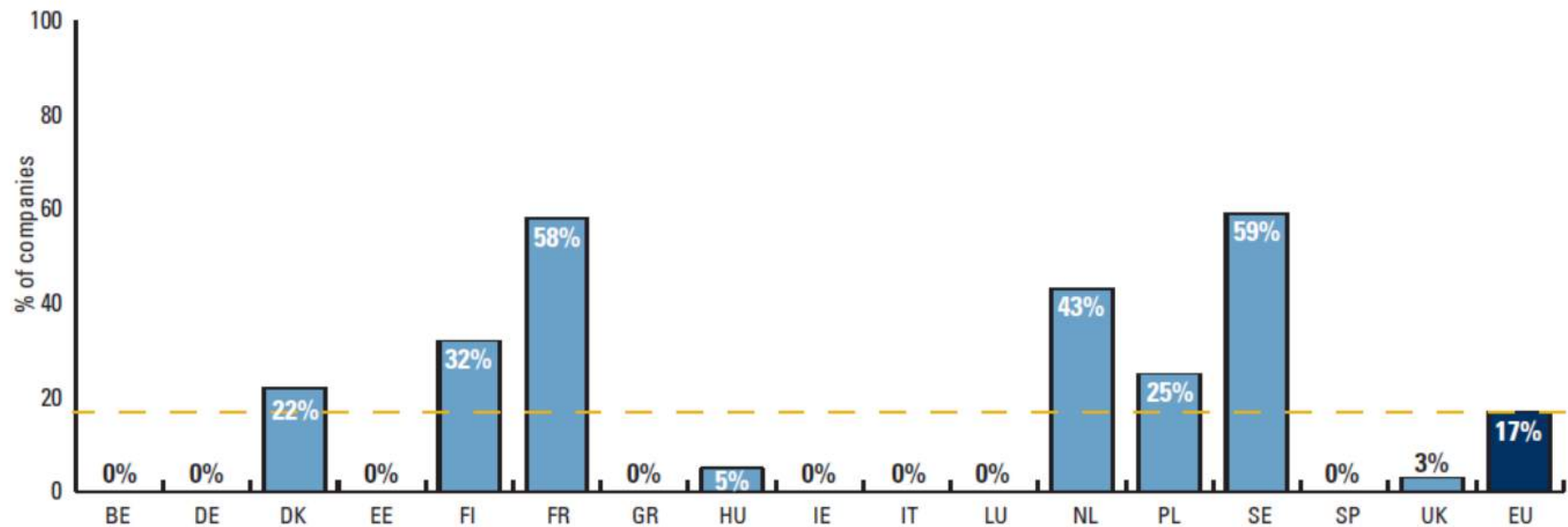
Multiple voting shares as
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- Ownership ceilings
- Supermajority provisions

GERM

Multiple voting shares in the EU

Figure 4.10: Multiple voting rights per country



Source: External Study of the European Commission (2007)

European Approach

EU Company Law Toolbox

- Unification (European Company)
- Harmonization (EU Directives)
- Regulatory Competition (Centros)

European Debate

How to regulate?

- Mandatory prohibition
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- Mandatory disclosure
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European Debate

Who should regulate?

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Unification (European Company)

- No solution in the final text
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COMMUNAUTÉ ECONOMIQUE EUROPEENNE

COMMISSION

Direction générale de la concurrence

SOCIÉTÉ ANONYME EUROPÉENNE

***Projet d'un statut
d'une société anonyme européenne***

par

M. le professeur Pieter Sanders
doyen de la faculté de droit de Rotterdam

Textes

Décembre 1966

Article III - 2 - 2

1. Les actions peuvent donner des droits différents en ce qui concerne la répartition du bénéfice et de l'actif social.

2. Des actions sans droit de vote sont admises aux conditions suivantes :

- a) elles ne peuvent être émises que pour un montant total égal à la moitié du capital;
- b) à l'exception du droit de vote, elles accordent les droits reconnus à chaque actionnaire sous réserve que leur droit de souscription préférentiel ne concerne que des actions sans droit de vote;
- c) elles ne doivent pas entrer en ligne de compte pour le calcul du chiffre minimum exigé par ce Statut ou les statuts, pour le quorum ou la majorité du capital.

3. Les actions à vote plural ne sont pas admises.

2ème section - Actions et droits des actionnaires

Article III - 2 - 1

1. Le montant nominal des actions est libellé dans la même monnaie que le capital.
2. Des actions de valeur nominale différente sont admises.
3. Les actions sont indivisibles. Plusieurs ayants-droit ne peuvent exercer les droits issus d'une action que par l'intermédiaire d'un représentant commun.

European Approach

Harmonization

- Takeover bids directive (2004)
 - Optional breakthrough rule
- Proposal of the fifth directive
- Shareholder rights directive
- Impact assessment (2007)

European Approach

Fifth company law directive (proposal)

- Skeptical approach
- No explicit mention of non-voting shares

COMMISSION
OF THE EUROPEAN COMMUNITIES

Proposal for a fifth directive on
THE STRUCTURE
OF SOCIÉTÉS ANONYMES

COM (72) 887 final
27 September 1972

Bulletin of the European Communities
Supplement 10/72

Article 33

1. The shareholder's right to vote shall be proportionate to the fraction of capital subscribed which the share represents.
2. Notwithstanding paragraph 1, the laws of the Member States may authorize the statutes to allow:
 - (a) restriction or exclusion of the right to vote in respect of shares which carry special advantages;
 - (b) restriction of votes in respect of shares allotted to the same shareholder, provided the restriction applies at least to all shareholders of the same class.
3. In no case may the right to vote be exercised where payment up of calls made by the company has not been effected.

European Approach

Takeover bids directive

"Multiple-vote securities shall carry only one vote each at the general meeting of shareholders which decides on any defensive measures"

European Approach

Takeover bids directive

"multiple-vote securities shall carry only one vote each at the first general meeting of shareholders following closure of the bid, called ... to amend the articles of association or to remove or appoint board members"

European Approach

Takeover bids directive

"Where rights are removed on the basis of paragraphs 2, 3, or 4 and/or Article 12, equitable compensation shall be provided for any loss suffered by the holders of those rights"

European Approach

Shareholder rights directive

- The 2007 directive does not mention multiple voting shares
- In the preparatory works of the new directive mention was made to loyalty (tenure) shares

Tenure shares in Italy

Problems

- Who is the **owner**?
- How to deal with **statutory mergers**?
- Do need to provide **compensation** in case of introduction of conversion?
- Are tenure shares a **class of shares**?
- How to deal with the **thresholds** for mandatory bids and disclosure of holdings?

Conclusion

European perspectives

- *Member States are competing in this field*
 - The result is a series of diverse reforms
 - EU company law is not moving toward an harmonized approach
- *Tenure shares raise practical legal problems*
 - E.g. Compensation, ownership, thresholds

COMMUNAUTÉ ECONOMIQUE EUROPEENNE

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COMMISSION
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