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**Corporate Governance in the EU and U.S.:
Comply-or-Explain Versus Rule**

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Abstract

A few years ago, the “Study on Monitoring and Enforcement Practices in Corporate Governance in the Member States” was prepared on behalf of the European Commission. This study aimed to evaluate how different stakeholders perceived corporate governance codes within the EU. It especially emphasized the comply-or-explain principle, which has become an important feature of the EU approach to corporate governance. In contrast to the comply-or-explain approach, in the U.S. corporate governance is put into force mainly through rule, such as through the Sarbanes-Oxley-Act. Although the U.S. was considered to be the starting point of the financial crisis, even in Europe the call for more legislative action to address corporate governance problems has increased. Therefore, this doctoral thesis explains the comply-or-explain-principle and describes its development in the UK and Germany by examining the background of EU Law, the different corporate governance codes in the UK and Germany, and the results of the “Study on Monitoring and Enforcement Practices in Corporate Governance in the Member States.” In a second step, this thesis examines and compares the corporate governance rules in the U.S. to the corporate governance rules and codes in the UK and Germany, particularly with regard to the acceptance of the rules by stakeholders and their effectiveness in the economy. In particular, a special emphasis has been placed on the following points: 1) the level of compliance of companies with the applicable codes and laws, 2) the availability and quality of explanations for deviation, 3) the perception of corporate governance codes and laws by directors on the one and by shareholders on the other hand, 4) the complementary aspects of legislation and corporate governance codes, 5) the level of activity of investors and how it could be increased, and 6) the effectiveness of the different monitoring and enforcement practices.

The aim of this paper is to examine how insights from the U.S. corporate governance system can be used to make corporate governance in Europe more effective and to improve the comply-or-explain-approach. Whenever a new rule for corporate governance is presented, the legislator must consider if it should become a law or not. And although there is a long-standing and on-going discussion about corporate governance, and stricter rules are often proposed by politicians and the media, the EU comply-or-explain-approach itself has never really been questioned. The “Comparative Study of Corporate Governance Codes relevant to the European Union and its Member States” (2002) by *Weil, Gotshal & Manges LLP* on behalf of the European Commission emphasizes the advantages of comply-or explain. In particular, the study emphasizes the flexibility, which, of course, is also preferred by the enterprises which have to apply the corporate-governance codes, but need not to comply with them. Furthermore, the comply-or-explain approach has advantages with regard to the reduced financial and bureaucratic burden, and the superior quality of information it provides to shareholders and investors. In addition, no disadvantage in terms of enforceability gaps can be observed. The comply-or-explain approach enjoys wide acceptance, in the EU and the U.S., and the deficiencies in its practical implementation could be eliminated by introducing a corporate governance code for institutional investors based on the example set by the UK Stewardship Code.