



A comparative assessment of the prohibition for shareholders to seek recovery for reflective loss in light of a new typology of remedies: *both ends burning?*

Stijn De Dier

PhD Researcher RU Economic Law

Jan Ronse Institute Company and Financial Law

KU Leuven

FWO fellow

Overview

Enforcement -> standing

- Reflective loss recovery: prohibition and rationales
- Comparative overview
- Comparative analysis
- Subjective and objective remedies
- Comparative assessment

Reflective loss recovery

- Prohibition for shareholders to recover for reflective losses
 - What is reflective loss?
 - Who is the proper plaintiff?
 - Rationales:
 - Double recovery -> *let's concentrate*
 - Governance (distribution of powers) -> *let's make an exception*
 - Creditor protection -> *derivative action (not personal action)*
 - **Cogency** of the rationales

Comparative overview

- UK
 - Company loss -> company/derivative action
 - Personal loss -> personal action
 - BUT: bar to reflective loss
 - YET: unfair prejudice petition, with narrow scope
 - No distinction between remedies
- Belgium
 - Damages
 - Company loss -> company/derivative action
 - Personal loss -> personal action
 - Avoidance of board decisions: every interested party

Comparative overview

- Germany
 - Damages
 - Company loss -> company/derivative action
 - Personal loss -> personal action
 - Avoidance of board decisions
 - No analogy with general meeting decisions, so shareholder cannot sue individually
 - Exception: *Holz Müller*

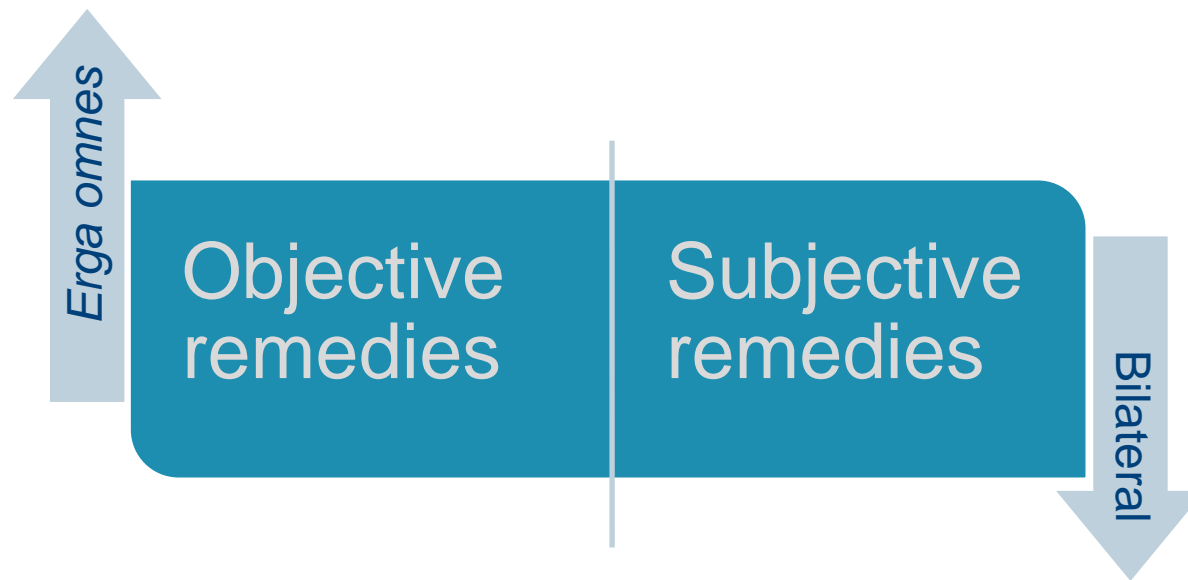
Comparative analysis

- UK: no distinction between remedies
- Belgium: distinction between remedies, also in terms of standing
- Germany: distinction between remedies, however not in terms of standing



Can bar to reflective loss be disapplied with respect to certain remedies?

Typology of remedies



Subjective and objective remedies and the bar to reflective loss

- Rationales
 - Double recovery
 - Governance -> *unpersuasive*
 - Creditor protection
- ***Cogency***
- Comparative assessment

Thank you!

Questions?

stijn.dedier@law.kuleuven.be

<http://www.law.kuleuven.be/jri/en>

jan ronse institute 
for company & financial law