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CEO Compensation and Shareholder Rights in the United States and Europe: A Comparative Analysis of the Tesla and Stellantis Case Studies

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Abstract (Italian)

Il lavoro affronta il tema della retribuzione dei top managers, confrontando i diritti degli azionisti, gli assetti di governance aziendale e gli incentivi manageriali negli Stati Uniti e in Europa.

Adottando una prospettiva sia giuridica che economica, la ricerca mette in parallelo due visioni differenti: da un lato il modello statunitense, focalizzandosi sul contesto del Delaware, fortemente orientato al mercato; dall'altro quello europeo, più attento alla tutela degli stakeholder e coordinato dalla Direttiva sui diritti degli azionisti (SRD II). L'analisi si sviluppa poi attraverso due vicende emblematiche ovvero il caso Tornetta v. Musk, relativo al controverso piano di incentivi per Elon Musk in Tesla, e la struttura compensativa di Carlos Tavares all'interno di Stellantis.

Partendo da questi esempi concreti, la tesi indaga le dinamiche chiave della governance contemporanea come il ruolo del controllo giudiziario, la ricerca del domicilio societario più vantaggioso, l'efficacia dei meccanismi di Say-on-Pay e l'integrazione delle metriche ESG nei piani di incentivo. L'obiettivo finale è capire se i modelli retributivi tipici del contesto americano possano ritrovare una dimensione sostenibile anche all'interno del quadro normativo europeo.

In conclusione, il documento dimostra che l'importazione diretta dei mega-piani di incentivazione americani è in contrasto con la tutela degli azionisti di minoranza e con il paternalismo giuridico del modello europeo. Tuttavia, il lavoro propone un quadro teorico sostenibile basato su un tetto massimo dinamico ma finito, che incorpora indicatori chiave di performance (KPI) industriali e ESG reali e clausole di recupero dei profitti.

Abstract (English)

This paper addresses the topic of top executive compensation, comparing shareholder rights, corporate governance structures, and managerial incentives in the United States and Europe.

Adopting both a legal and economic perspective, the research parallels two different visions: on the one hand, the US model, focusing on the Delaware context, which is highly market-oriented; on the other, the European model, more attentive to stakeholder protection and coordinated by the Shareholder Rights Directive (SRD II). The analysis then develops through two emblematic cases: the Tornetta v. Musk case, concerning the controversial incentive plan for Elon Musk at Tesla, and the compensation structure of Carlos Tavares at Stellantis.

Starting from these concrete examples, the thesis explores key dynamics of contemporary governance, such as the role of judicial oversight, the phenomenon of forum shopping, the effectiveness of say-on-pay mechanisms, and the integration of ESG metrics into incentive plans. The goal is to understand whether typical American compensation models can be sustainably applied within the European regulatory framework.

In conclusion, the paper demonstrates that directly importing American mega-incentive plans conflicts with the protection of minority shareholders and the legal paternalism of the European model. However, the paper proposes a sustainable theoretical framework based on a dynamic yet finite cap, incorporating industrial and ESG key performance indicators (KPIs) and profit clawback clauses.

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Introduction

In recent years, the debate over executive compensation has achieved unprecedented attention from legal scholars, institutional investors, and regulators worldwide. At the top of this discussion lies the tension between the need to attract and retain top corporate managers, the so-called “Super-CEOs” and the fundamental principles of corporate governance, transparency and shareholder protection. The classic “Governance Triangle”, based on the balance between shareholders, directors, and managers has been heavily tested, mainly due to the massive performance-related stock incentive plans. While the Anglo-American model pushes for the maximization of shareholder value through highly compensation packages, European law has moved toward stakeholder capitalism. In this context, the integration of ESG criteria and the protection of minority shareholders have become central and essential elements of corporate regulation.

This systemic divergence can be observed through the *Tornetta v. Musk* case, in which the Delaware Court of Chancery voided Elon Musk's \$55 billion Tesla compensation package. The ruling highlighted the potential risks of board capture, inadequate disclosure and agency rents by dominant corporate figures. As a result, Super CEOs like Musk are seeking jurisdictions with less judicial oversight, leading to strategic reincorporations such as Tesla's move to Texas. Meanwhile, within the European Union, the adoption of the Shareholder Rights Directive II (SRD II), along with national regulatory frameworks such as the Italian Financial Act (TUF) and the Dutch Civil Code, has significantly strengthened shareholder rights through binding or advisory “say-on-pay” mechanisms and stringent rules on related-party transactions. However, this regulatory framework creates a tension: can European companies find ways to remain competitive attracting high-profile leaders like Carlos Tavares without compromising the fundamental protections of the European stakeholder model?

How do US and European legal frameworks address the conflict between high executive compensation packages and the protection of minority shareholders?

Is it possible to build a “Musk-style” incentive model adapted to the European regulatory environment without violating fundamental governance principles?

To answer these questions, this research uses a comparative analysis of law and economics, combining regulatory frameworks with real-world case studies. The study compares the context of the United States, with a focus on Delaware corporate law, SEC rules, and Texas case law, with European jurisdictions, focusing specifically on EU directives (SRD II), the Dutch legal system, the Italian corporate governance code and Consob regulations. The main analysis compared Tesla Inc. and Stellantis N.V, analyzing their respective remuneration strategies, internal compensation and shareholder engagement mechanisms. This thesis is structured into five main chapters, from general theoretical foundations to comparative case analysis and final sustainable proposals. Chapter 1 examines the governance triangle, the agency problem, the executive compensation committees, and the global evolution of the “say-on-pay”. Chapter 2 provides a detailed analysis of the *Tornetta v. Musk* litigation, Court of Chancery rulings, SEC disclosure requirements, the value of brands as intangible assets and the forum shopping strategy shifted to Texas. Chapter 3 analyzes the implementation of the Shareholder Rights Directive II, with particular attention to the Italian legal framework (Article 123-ter of the Consolidated Law on Finance and the Consob Regulation on Related Party Transactions). Chapter 4 explores the practice of corporate shopping in Europe, focusing on Dutch corporate law and compares Carlos Tavares’ compensation plan at Stellantis with that of Elon Musk at Tesla. It also focuses on the “superstar CEO” narrative, internal compensation relationships and the resulting compensation paradox. Chapter 5 explores the boundaries between shareholder democracy and judicial paternalism, proposing a

new regulatory framework capable of granting high incentive packages in Europe while ensuring long-term sustainability and stakeholder protection.

Chapter 1: Theoretical and Legal Framework of Executive Compensation

1.1 Governance triangle: shareholders, directors, and managers

In modern public companies, corporate governance is based on three main actors: shareholders, board of directors, and managers. This system is designed to solve the possible conflict of interest between those who provide capital (principals) and those who manage the business activity (agents). Shareholders contribute to the company's capital by purchasing shares. They bare the risk of business activity, as their investment is not guaranteed and their right to economic return is residual; receiving profits only after all creditors have been satisfied since they are residual claimants. Creditors can have a claim against the assets of the company and not against the personal assets of shareholders (limitation of responsibility for shareholders). The money a shareholder put in a company is the amount of the loss that he's ready to lose, it's the risk he's taking, if things go well shareholder might have profit. The loss is not more than the amount of the investment they made. Shareholders own the equity, but they don't have the right to withdraw from the company and have back the money, the recovery of their investment occurs only upon liquidation of the company, after all corporate debts have been satisfied following the rule of priority. They can divest exclusively by selling the shares. However, shareholders do not participate directly in the management of the company; their main control tool is the voting right exercised in the general assembly meeting, through which they appoint the members of the board of directors. The residual position of shareholders justifies the attribution of administrative powers and voice rights within the company, since they are the only investors whose returns fully depend on the firm's performance.

The level of involvement of shareholders in public companies can vary significantly, many of them are described as rationally apathetic, meaning they have little incentive to actively participate in the governance of the company, this is largely due to the small size of their individual investment compared to the time and effort required to monitor corporate management. Despite this limited participation, shareholders still retain important rights, including the right to vote in shareholders' meetings and the right to receive a share of the company's profits. The right to vote is a key essence for having good corporate governance of the company, manage in the interest of the investors, higher is trust, higher is confident, higher would be the intention to invest. The different categories of shareholders are institutional investors, they are professional investors in banks and retirement funds, meaning collecting the money from potential investors and professionally investing them in listed companies. Funds are sophisticated investment, they're bound by contractual agreement to use the money they receive properly to have a return, among the main ones there are Vanguard Group and BlackRock in Tesla. Then there are individual shareholders like Musk, in addition retail shareholders are small investors who buy shares on the market, own very small stakes in the company, in theory they have the right to vote but in practice many of them are rationally apathetic as they do not have sufficient economic incentives to monitor the management and finally minority shareholders. In Tesla alongside the large number of retail investors, a key role is played by qualified shareholders, particularly institutional investors and large individual shareholders. Unlike small investors, these generally have greater financial resources and expertise, which allow them to more effectively monitor the company's management and to play a more active role in corporate governance.

An important debate concerns the extent to which minority protection and any kind of voice must be granted to any and all shareholders, even to the smallest or should be allocated only on sophisticated and professional investors. Minority shareholders generally have the same

basic rights as the other ones. They can vote proportional to their shares, unless they decide voluntarily to invest in a class of shares with no voting right, however, for the most important decisions, such as making mergers or issuing new shares, higher percentages of votes are required. They must have access to information about the company (duty of disclosure), before every GAM shareholders need all info and materials/documents, draft of proposal that are going to be discussed, they have to be shared in advance to the market and uploaded on the website of the company, from that moment shareholders can start to raise questions that must be answered. Directors and managers must act according to their fiduciary duties that are duty of care, they must act with the care and prudence of a reasonable person in similar circumstances. Business judgment rule is a rule according to which the court cannot interfere with the managers' decisions, obviously if they have acted in good faith, avoiding conflicts of interest. Courts do not examine the appropriateness or the merit of the decision itself but only the decision-making process. According to the duty of loyalty, the fiduciary must put the interests of the beneficiary or the company above their own interests, no room for self-dealing; they do not personally take advantage of company opportunities (corporate opportunity doctrine). There are other forms of voices, not only voting, that can be granted also to minority, like claw back a lawsuit action (legal initiative according to which shareholders claim damages from the directors for managing wrongly the company, violating their duties). The typical actions are direct suit: the shareholder sues because he was directly harmed or in the case of derivative suit, the shareholder sues on behalf of the company against the directors, claiming that their behavior harmed the company. In the U.S. a well-known example is Richard Tornetta, a minority shareholder of Tesla, who initiated a derivative lawsuit, challenged the approval of the compensation package (2018) granted to Elon Musk. Tornetta wasn't suing for personal gain, but to protect the company and the interests of all shareholders.

The board of directors represents the central body of the governance system. It is elected by the shareholders and has the power and duty to manage the company and monitor management. It makes fundamental strategic decisions, such as approving business plans, appointing and remunerating executive officers and monitoring corporate performance. It is composed of executive directors and independent directors, in a position of total independency, they are important because they will take decisions that are not in the interest of other directors or controlling shareholders. Corporate governance suggests that the board of directors of public companies should be composed for the majority by independent directors because grants that decisions are taken not only in the interest of the agents but also in the interest of the principals (shareholders). Public companies typically rely on a multi-member board, more people around the table usually means more ideas, perspective, and constructive debate. Each director often brings their own mix of experience, skills and background which help the company makes more balanced and thoughtful decisions. A clear example is Tesla, where shareholders elect a multi-member board responsible for guiding the company's overall strategy. This group doesn't handle day-to-day operations directly, instead, it entrusts that responsibility to executive leaders, including the CEO, Elon Musk. He is a significant shareholder and a member of the board, this concentration of roles does not eliminate the principle of delegated management, but it can reduce the distance between ownership, management and monitor. In addition, in the Musk-Tornetta case, the Delaware court attributed to Musk the role of controlling shareholder de facto, even though he did not have a majority, but he exercised actual influence over the board members.

Finally, the managers, including the Chief Executive Officer (CEO), are responsible for the daily operational management of the company. They implement the strategies defined by the board and direct business activities daily.



Figure 1. *Corporate governance structure*

Note. From the corporate governance implementation, by Eris Technology Corporation

The United States follow a monistic (one tier) system. it's the board of directors who does appoint itself; some members are invested of the duty to perform the monitoring function, looking and scrutinise what the other directors do, but they are within the board of directors. The problem in this system is a lack of effectiveness in the independency instead the pros are efficacy, tempestive, rapidity because they all sit in the board, they all share the same information, same data, same documents, there is much more transparency and share of the information. In the U.S. traditionally there was no monitoring function, going back to the 30s and 40s the U.S. system has shareholders and board of directors then the financial crisis happened and the SEC (securities exchange commission) decided to split the organ in board of directors and an internal committee with specific duty to monitor and it's composed totally of independent directors who don't have any form of relation (familiar, economic, financial, professional) with the shareholders and the company itself.

One Tier System
A = Agent
P = Principal
R = Reporting line

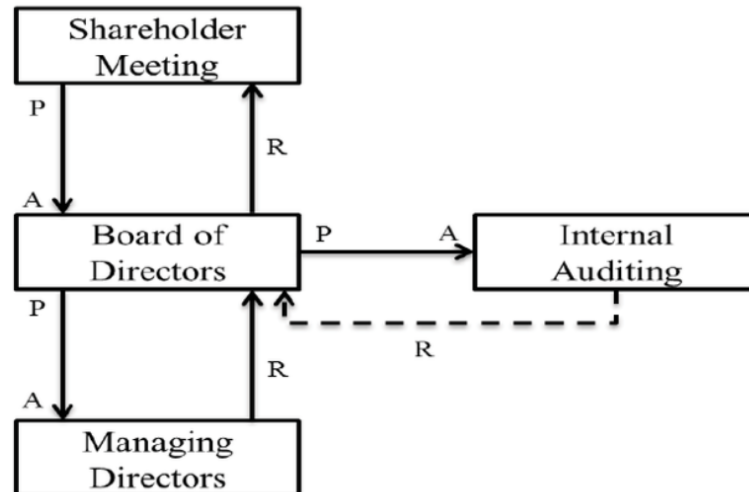


Figure 2. *One tier system*

Note. From internal auditors' contribution to good corporate governance. An empirical analysis for the one-tier governance system with a focus on the relationship between internal audit function and audit committee, M. Eulerich, P. Velte, J. C. Theis.

1.2 General Assembly Meeting

The general assembly meeting is summoned annually and deals with the election of directors, approval of compensation, proposals from the shareholders and ratification of extraordinary operations. In American companies like Tesla, the physical participation of shareholders is costly, so can be implemented alternative ways for participating in the GAM and express voting right. The first means is through electronic systems, connecting shareholders through a virtual device. The other way is voting by correspondence, express vote through email before the GAM or at least during the meeting. In the U.S. traditionally it was totally free to appoint the directors with the power of representation, because the capital was dispersed and shareholders weren't incentivised to exercise voting rights, so company law gave the power to the directors to collect proxies to exercise voting right, nominating themselves.

Proxy statements are regulated by Section 14(a) of the Security Exchange Act of 1934. In particular, the DEF14A (definitive proxy statement) establishes that before any shareholders' meeting, the company, for example Tesla, is required to file Schedule 14A with the SEC and send it to the shareholders. The compensation discussion and analysis section shows whether managers are paid on performance-based results or if they receive guaranteed bonuses even if the stock collapses, analyze the board composition, showing whether the directors are truly independent or have ties that are too close to the CEO. In the case of Tesla, Musk's 2018 compensation package had been canceled precisely because the proxy statement sent to shareholders was not transparent enough; in fact, it lacked the description of personal ties between Musk and the members of the committee that approved the plan. (Frank D. Emerson, 1950)

1.3 Shareholders' democracy vs directors' primacy

The question is the equilibrium between directors and shareholders in CG structure. The general belief is that in all EU company law, but also in the U.S. (even if it is board centric) must be implemented an effective Shareholder Democracy. A good corporate governance needs to increase shareholder powers, specifically the right of directly intervene in any major corporate decisions, by means of the right to vote resolutions at GAM.

Even in the U.S., where the decision of issuing new shares/increasing capital was left to directors, the tendency is to involve the shareholders in taking this kind of decision:

- Rule of the game decision: changes in the corporate purpose or modifications of the capital structure, modify business object. This is altering the condition of risk of the shareholders' investment, for this reason these decisions shouldn't be left only to the directors.

- Game ending decisions: any kind of decision dealing with the ending of the company (liquidation).
- Scaling down decisions: reduction of capital for example, requires shareholders' approval.

Starting from the 70s/80s, thanks to economists like Milton Friedman, there was also in America a push towards shareholder democracy with tools such as proxy access and the say on pay principle and proxy advisors, large consulting firms like ISS and Glass Lewis, suggesting to large funds how to vote. However, there are influential academics supporting director primacy like Stephen Bainbridge, law professor at UCLA university, he argues that the success of American companies is due to the fact that the final decision is concentrated in the hand of the board of directors.

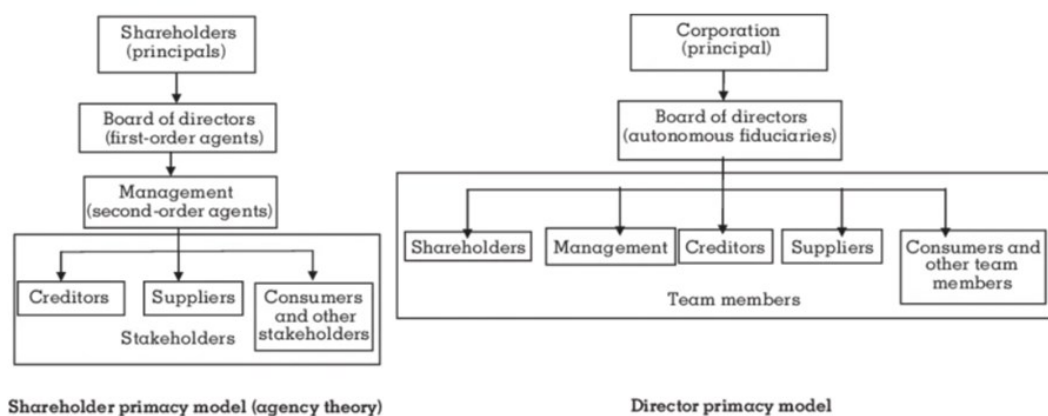


Figure 3. *Shareholder' Primacy vs director' primacy model*

Note: from Rethinking Agency Theory: The View from Law, L. Lan, L. Heracleous

1.3.1 Say on pay principle

Before the 2008 crisis, American shareholders had no power over managers' salaries; only the board decided. However, doubts about moral hazard were present, CEOs often received big

bonuses even when their companies were losing value. In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act was approved, section 951 introduced the say-on-pay principle. All listed companies must give shareholders a vote on the compensation of the highest-paid executives. This vote is mandatory but only advisory, not binding. So, the board can ignore it, but this may expose the company to legal pressure. In addition, Section 953(b) introduced the obligation for companies to disclose the pay ratio starting in 2018, that is, the CEO's total compensation with the median compensation of the company's employees. Rather than imposing limits on executive pay, this provision aims to improve transparency and provide shareholders with better information when evaluating compensation policies. The number of compensation proposals that did not reach the 50% threshold among S&P 500 companies nearly doubled between 2020 and 2021, rising from 9 to 21. Many academics are convinced that the say-on-pay principle helped because before 2010 CEOs received enormous bonuses even if the company was performing poorly. Today it is almost impossible unless performance-based targets are met. Many critics consider it a failure, arguing that say-on-pay did not stop the explosion of salaries, but pushed companies to tie the entire salary to stock options, so if the stock market rises, CEOs earn enormous amounts. Tesla shareholders in November 2025 approved a new plan for Musk potentially worth 1 trillion dollars; the criticism is that the say-on-pay principle allows a single man to earn an enormous amount of money. (Blair, 2025)

1.4 Agency problem, compensation committee, stock options

The paramount critical issue ("endemic risk") in PLCs, the company's governance is potentially separated from the property of the capital and therefore the link between accountability (risk) and power is (or can be) significantly diluted. There is a problem when someone has more power compared to the risk, this is what happened in Tesla: Musk had

enormous power, but limited risk to his stake and the board had control power but lacked effective independence. Endemic risk in public companies is largely a manifestation of the agency problem, derived from the misalignment between managers' and shareholders' interests.

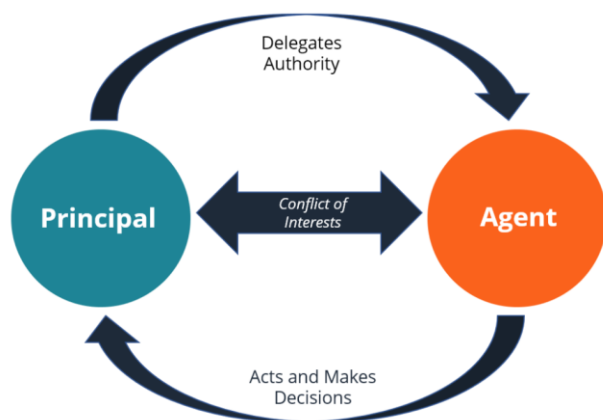


Figure 4. *Agency problem*

Note: From Agency Conflicts Between Managers and Shareholders, Trevor Lyman

Before the theories of Jensen and Meckling, two famous economists, the firm was seen as a black box that sought to maximize profit. Jensen and Meckling propose a revolutionary vision. The firm is not individual; it is simply a nexus of contracts between different individuals: shareholders, managers, employees. They define the agency relationship as a contract in which one party, the principal (e.g., the shareholder), delegates decision-making power to another, the agent (e.g., the manager). The problem arises because both seek to maximize their own profit, the agent will not always act in the best interest of the principal, so to limit this conflict, agency costs arise, which are the sum of monitoring costs (like auditing, expenses of the principal to control the manager), bonding costs and residual loss (the economic damage that still remains because it is impossible and too costly to fully align perfectly the interests). The essay explains how the structure of ownership influences behavior. It argues about the effect of partial ownership, if a manager owns 100% of the

company, he will work to the maximum to increase its value. If he owns only one part, he will be tempted to waste company resources on personal benefits because the cost of these wastes will fall on the shareholders. This essay therefore justifies stock options giving shares to managers to try to turn the agent into an owner by reducing agency costs. (Jensen, 1976)

In public companies like Tesla, stock option plans are commonly used as a system to remunerate executives and align their interests with those of shareholders. Through these plans, managers are granted the possibility to purchase shares of the company at predetermined or favorable conditions as part of their compensation. On the one hand, stock options may have a good effect on corporate governance because they reduce the agency problem between managers and shareholders, becoming shareholders, managers are exposed to the same risks as investors and so have an incentive to increase the value of the company in the long term. On the other hand, stock option plans may also create risks because managers might be incentivized to pursue short-term strategies or very risky activities to increase the market price of the shares. Once the price increases, they could sell their shares and earn significant profits, while the company still may be exposed to higher long-term risks. For this reason, corporate governance rules require that stock option plans are approved by shareholders in advance. In companies such as Tesla, shareholders vote on equity compensation plans during the general assembly meeting. Moreover, these plans are usually regulated through mechanisms such as vesting periods, managers must wait for a certain period or achieve specific performance targets before obtaining the shares, and holding periods, which limit the possibility of selling the shares immediately after receiving them.

The compensation committee conducts a benchmarking analysis by comparing the compensation with a peer group to ensure that the company is competitive and determines the KPIs that management must achieve to unlock the awards. The compensation structure can be composed of:

Base salary: this is the fixed part; short-term incentives like annual cash bonuses, long-term incentives like stock options and claw back provisions, clauses that allow the company to recover bonuses if the financial results turn out to be wrong.

In the 2018 plan, Musk did not receive any salary or guaranteed bonus. If Tesla had not achieved incredible market value and profit milestones, he would have received nothing. Musk 2018 compensation plan was based on Stock options; they are mainly criticized because they dilute the value of existing shares for the other shareholders. (Hermanson Dana R., 2012)

Chapter 2: Corporate governance and Delaware jurisdiction: The Musk-Tornetta case study

2.1 Delaware Corporate Law and Transparency: Why Companies Incorporate in Delaware, the Role of the Court of Chancery and SEC Rules on Executive Compensation Disclosure.

Although it is one of the smallest states in the USA, Delaware plays a key role in corporate law thanks to the flexibility of the DGCL (Delaware General Corporate Law); it is not a prescriptive law, allowing shareholders to write in the bylaws, for example, deciding on different classes of shares.

Founded in 1792, the Court of Chancery is a court of equity; legal battles are judged by experts in corporate law called chancellors. The court is known for its speed, even regarding legal disputes worth billions. Its main features are the so-called internal affairs doctrine which means that only Delaware can decide on the company's internal disputes, votes, dividends, regardless of where the company physically operates. In addition, Delaware has a series of rulings that cover almost every possible topic, this makes it possible to have a lot of predictability from the court's decisions. A core pillar is the business judgment rule implying that judges cannot punish a CEO for making a wrong decision if it was made in good faith, without a conflict of interest and with diligence.

Companies must, however, comply not only with Delaware rules but also with the SEC (securities and exchange commission), born after crash of 1929 and the Great Depression. Many companies lied about their real profits. When the bubble burst in 1929, many people lost their life savings because they had invested in companies that seemed solid but were not. In 1934, the Securities Exchange Act was approved, which established the SEC as an agency to oversee the markets every day. It requires compliance rules based on completeness,

timeliness and readability of documents. The SEC establishes what must be reported to the public, the fundamental rules are contained in Regulation S-K (Item 402). Each company must include in its proxy statement (Form DEF 14A) the CD&A section (Compensation Discussion and Analysis) where it must explain the executive compensation and the objectives, the SCT (Summary Compensation Table), a table that summarizes everything received by the named executive officers over the last three years, not only salary but also bonuses and any perks and stock awards, the Pay ratio disclosure, that is, the ratio between the CEO's salary and the average employee compensation. The other key document required is the 10-K form is a mandatory annual report, is more in-depth than a mere financial statement, describes the business overview, the main risks to face, the financial statements, the management discussion and Analysis, executives' compensation and legal proceedings. Form 8-K document for urgent news, the SEC requires companies to file it within 4 business days of a significant event and the 10-Q similar to the 10-K is filed 3 times a year. In case the company wants to go public must disclose the Form S-1.

Recently more rules have been introduced to protect transparency like disclosure on compensation actually paid (cap), a company must calculate not only how much the CEO is entitled to, but how much he earned, showing if the money given to executives corresponds to the results achieved.

The SEC wants to prevent financial fraud and ensure that the stock price is fair instead Delaware wants to guarantee that the relationship between executives and shareholders is balanced and what happened to Tesla is a perfect example, Musk and the board of directors followed SEC rules for document disclosure, but Judge McCormick found that the quality of the information was not sufficient to allow shareholders to vote knowledgeably. (Preeti Choudhary, 2013) (Friedman, 2013)

2.2 The Tornetta v. musk litigation

At those times, Tesla had a nine-person Board including Musk, Kimbal, Brad W. Buss, Robyn M. Denholm, Ira Ehrenpreis, Antonio J. Gracias, Steve Jurvetson, James Murdoch and Linda Johnson Rice. The Board had a standing compensation committee which was responsible for negotiating Musk's compensation plan. Ehrenpreis, Buss, Denholm and Gracias served on the Compensation Committee with Ehrenpreis as chair. Musk and Kimbal abstained from most of the meetings and of the votes on 2018 Grant and Jurvetson had extended permissions during the reference period. The fiduciaries responsible for Tesla regarding the 2018 Grant were the Compensation Committee members plus Murdoch and Johnson Rice. (Tornetta v. Musk, 2024, p. 21)

On April 9, 2017, Ira Ehrenpreis, the Chairman of the Compensation Committee, and Mr. Musk discussed the possibility of a new performance award that would have an incentive structure like the 2012 Performance Award but with even more challenging performance goals. During this meeting, Mr. Musk suggested performance targets that would grant stock option awards equal to 1% of the Company's current total outstanding shares based on \$50 billion increases in market capitalization, so that if Tesla grew by \$750 billion, a maximum possible award would amount to 15% of the Company's current total outstanding shares. Mr. Musk indicated that such an award structure would align his incentives with those of stockholders and incentivized him to continue leading the management of the Company over the long term. Mr. Ehrenpreis indicated that the Compensation Committee would consider Mr. Musk's perspectives as part of its analysis, but this conversation doesn't appear in the final proxy statement, just in other drafts. (Tornetta v. Musk, 2024, p. 33).

At the first meeting of the Compensation Committee, the discussion concerned Musk's base proposal and a "M&A Adjustment", which is a provision that takes into account the impact of

financing or acquisitions on market capitalization targets. These clauses are standard, there is a hold period, which was a post-exercise period during which Musk cannot sell shares. The presentation noted that post-exercise hold periods reduce the grant value of the stock as follows: 2 years = -15%; 3 years = -18%; and 5 years = -22%.

Musk restarted the discussions only on the morning of November 9, 2017, because of Tesla Model 3 production, which he described as hell. He changed the original request and asked for a structure aimed at a 10% increase in his total shareholding on a fully diluted basis. However, this meant the issuance of about 29 million shares; his original request from April, that is, 15% of the total undiluted shares, would have required only 25 million shares. When his lawyer Todd Maron pointed out to him that this new “reduced” proposal was actually more expensive than the first, Musk responded to go with 10% of the current number of shares, which translated into 20.3 million options, later admitting that he was practically negotiating against himself. (*Tornetta v. Musk*, 2024, p. 66)

While the market milestones, that is, the capitalization, had been proposed by Musk, the working group, composed of internal managers and directors Ehrenpreis and Gracias, took care of establishing the operational criteria to balance the growth of stock value with corporate sustainability. A total of 16 operational milestones were defined, 8 based on revenue and 8 on adjusted EBITDA; to unlock a tranche, Tesla had to achieve both a capitalization goal and one of these operational objectives. The structure was named 12/12 for this reason. The shares were not given immediately, but divided into 12 equal blocks (tranches), each tranche representing 1% of Tesla's total shares at the time of the grant. To vest a tranche, Musk had to achieve incredibly ambitious goals.

	Revenue		Adjusted EBITDA	
	2017 3-Yr LRP	The Grant		2017 3-Yr LRP
FY2018	\$27.5B	\$20B	\$1.5B	\$3.8B
FY2019	\$41.9B	\$35B	\$3B	\$8.1B
FY2020	\$69.6B	\$55B	\$4.5B	\$14.4B
		\$75B	\$6B	
		\$100B	\$8B	
		\$125B	\$10B	
		\$150B	\$12B	
		\$175B	\$14B	

Figure 5. Operational Milestones

Note. From *Tornetta v. Musk*, C.A. No. 2018-0408-Ksjm (Del. Ch. Jan. 30, 2024), p.74

Following the logic of the all upside, the goal was to bring Tesla's capitalization from 50 billion to 650 billion, an increase of 600 billion. If Musk had reached this milestone, he would have obtained options equal to 6% of Tesla's shares (from about 21.9% to at most 28.3%) and the shareholders would have seen the value of their investment multiplied by 13 if all milestones were achieved. According to the defense, while the shareholders benefited even from a small increase in stock, Musk had to overcome almost insurmountable milestones. The logic held that the plan would have had no cost to the shareholders if there had been no growth.

The board approved the grant on January 21, 2018. In its final form, the grant also included the claw back provision, leadership requirement, M&A adjustments and five-year hold period, the grant expired after 10 years.

The Proxy states: "With the 2012 Performance Award nearing completion, the Board engaged in more than six months of active and ongoing discussions regarding a new compensation program for Mr. Musk, ultimately concluding in its decision to grant the CEO Performance Award. These discussions first took place among the members of the Compensation Committee of the Board (the "Compensation Committee"), all of whom are independent

directors, and then with the Board's other independent directors, including its two newest independent directors, Linda Johnson Rice and James Murdoch". (Tornetta v. Musk, 2024, p. 84)

The plan was also approved by 73% of the disinterested shareholders on March 21, 2018.

2.2.1 Public's reaction and subsequent events

The judgment of the proxy advisory firms ISS and Glass Lewis, that provide voting advice to large investment funds such as BlackRock, Vanguard, criticized Musk and recommended voting against. ISS also spoke of staggering size of compensation plan. The retail investors saw it as a guarantee of Musk's presence at Tesla for another 10 years. The board of directors' thesis was that the market approved because the stock price did not collapse at the announcement, demonstrating that investors supported the all upside logic. The judge McCormick notes that despite the astronomical premium, Musk bought Twitter and began dedicating most of his working hours to it. To buy Twitter, he created downward pressure on Tesla's stock, harming exactly those shareholders who were paying him to protect them, which shows that Musk's interests and those of the company were not aligned at all. (Tornetta v. Musk, 2024, p. 87)

2.2.2 Post-Trial Judicial Opinions: Insights from 30 January 2024

In this Litigation Plaintiff Richard Tornetta, a Tesla stockholder, filed his complaint on June 5, 2018. He asserted four counts: Count I for breach of fiduciary duty against Musk in his capacity as a controlling stockholder; Count II for breach of fiduciary duty against Musk, Kimbal, Gracias, Jurvetson, Ehrenpreis, Buss, Denholm, Murdoch, and Johnson Rice as directors (together, "Defendants"); Count III for unjust enrichment against Musk; and Count

IV for waste. Counts I and II were asserted as both direct and derivative claims. Counts III and IV were asserted as derivative claims. (*Tornetta v. Musk*, 2024, p. 98)

To determine whether corporate fiduciaries have breached their duties, Delaware law provides three levels of transaction review standards: business judgment, enhanced scrutiny and entire fairness. To invoke the entire fairness standard, the plaintiff argues that Musk's compensation plan was a conflicted-controller transaction. Normally, to be a controller an individual needs to own 51% of the shares. Musk only had 21.9%; however, the ruling established that Musk was an actual controlling shareholder for two reasons: dominant influence, the board saw him as irreplaceable, holding some of the most influential corporate positions (CEO, Chairman and founder), saw as superstar CEO, having strong ties with the executives and control of the process.

In addition, Judge McCormick appeals to the section 203 of the DGCL, “[a] person who is the owner of 20% or more of the outstanding voting stock of any corporation . . . shall be presumed to have control of such entity, in the absence of proof by a preponderance of the evidence to the contrary.” (*Tornetta v. Musk*, 2024, p. 114) It is reasonable to think that with almost 22% Musk had enough power to influence the board at the meeting; this percentage is almost impossible to beat if the rest of the shares are fragmented among thousands of small investors who often vote with management.

The concept of fairness considers two fundamental issues: the process and the price. The process that led to the approval of Musk's compensation plan was deeply flawed. *A director lacks independence if he or she is “so beholden to an interested director that his or her discretion would be sterilized.”* (*Tornetta v. Musk*, 2024, p. 123). Musk had extensive relationship with the people that negotiated on behalf of Tesla. He had a 15-year relationship with the chairman of the compensation committee, Ira Ehrenpreis. The other member of the

committee placed on the working group, Antonio Gracias, had business dealings with Musk dating back more than 20 years, as well as a personal relationship that led him to regularly spend holidays with Musk's family. General Counsel Todd Maron, who had been Musk's former divorce lawyer and whose admiration for Musk brought him to tears during his deposition, in fact Maron was the main intermediary between Musk and the committee. Ehrenpreis testified that he did not view negotiation as an adversarial process, saying: "*We were not on opposite sides of things*". Maron explained that he viewed the process as "*cooperative*" with Musk. Gracias admitted that there was no "*positional bargaining*" This testimony comes as close as possible to an admission of a controlled mindset and the committee avoided using objective benchmarking data that would have revealed the unprecedented nature of the compensation plan. With a \$55.8 billion maximum value and \$2.6 billion grant date fair value, the plan is the largest potential compensation opportunity in public markets, 250 times larger than the contemporaneous median peer compensation plan and over 33 times larger than the plan's closest comparison, which was Musk's prior compensation plan. (*Tornetta v. Musk*, 2024, p. 165-168).

The defendants also recall the duration of the process (nine months) and the committee meetings (ten) as evidence that the process was thorough and extensive. However, the defendants' statistics overlook the lack of substantive work, most of the effort on the compensation plan took place during short segments of those nine months and under significant time pressure imposed by Musk that dictated the timing of the process, making last-minute changes to the schedule. The committee seemed more like an advisory body according to the judge, than an independent supervisor of the shareholders' interests. Moreover, by Brown's own admission, there was never a real comparative benchmarking because Musk's plan was out of scale compared to the market.

There was also an information filter, the directors knew that some targets were already likely according to the audit committee's data, but in the proxy statement they continued to define them as almost impossible, at the beginning of the dispute, Judge McCormick devoted a lot of attention to Tesla's master plans, such as those from 2006 and 2016, highlighting that one of the objectives of the 2018 compensation plan was precisely autonomous driving, but this goal was already present in Master Plan Part Deux and therefore not so difficult and achievable by Musk, making a \$55.8 billion incentive unnecessary according to McCormick. There was no negotiation even for the size of the grant, this is the main proof that the process was not arm's length, the two parties were not acting independently, there was no distance between the board and the CEO and a lack of bargaining negotiation.

The Delaware Supreme Court stated that when the entire fairness standard is applied, the defendants may shift the burden of persuasion by one of two means: they may show that the transaction was approved by a well-functioning committee of independent directors; or they may show that the transaction was approved by an informed vote of a majority of the minority shareholders. As previously seen, there was no well-functioning committee of independent directors, thus Defendants' only hope for burden shifting is to show that the stockholder vote was fully informed. To demonstrate, the defendants must show that *"the shareholders were informed of all material information regarding that transaction."* A fact is material if *"there is a substantial likelihood that a reasonable shareholder would consider it important in deciding how to vote."* In assessing materiality, courts must balance *"the benefits of further disclosure against the risk that trivial or insignificant information may dilute potentially valuable information."* (*Tornetta v. Musk*, 2024, p. 148-149). The plaintiff put forward many arguments as to why the shareholders' vote was not fully informed. The Proxy did not disclose the potential ties of the members of the Compensation Committee and omitted material information regarding the process. The defendants sought to prove otherwise and

generally argue that the shareholders' vote was fully informed because the most important facts regarding the Grant, the economic terms, were disclosed. But the defendants failed to meet their burden of proving entire fairness.

Fairness has two fundamental aspects: fair dealing and fair price. However, the fairness criterion is not divided into two between fair dealing and price. All aspects must be considered together since the matter concerns full fairness. Results in one area can influence the results in another. Consequently, *"a fair process usually produces a fair price"*. The reverse also holds: *"an unfair process can influence the price"*. Here, the defendants failed to demonstrate that the Compensation was the result of fair negotiations or at a fair price. *"The element of fair dealing focuses upon the conduct of the corporate fiduciaries in effectuating the transaction."* (*Tornetta v. Musk*, 2024, p. 160-170). In a fair dealing context, the board should decide the appropriate moment to negotiate; here instead the board simply reacted to Musk's input. The timing was chosen by the controller to maximize his bargaining power. As seen previously there was no counterproposal, the judge emphasized with disbelief that during months of discussions, the compensation committee never presented a counteroffer regarding the size of the award or the economic terms. McCormick criticizes the fact that the board did not explore alternative models but used a copy-and-paste model in fact the structure of the 12 tranches based on market capitalization was almost identical to that proposed by Musk, the board did not consider other metrics such as profitability or productive efficiency.

In the fair price analysis, *"the court looks at the economic and financial considerations of the transaction to determine if it was substantively fair."* McCormick uses the give/get test to evaluate the economic fairness of the exchange. In a standard employment contract, what Tesla gets is Elon Musk's time and effort to bring the company to a capitalization of 650 billion. What Tesla gives is 10% of the share capital at the time, almost 56 billion. The defendants showed the court to compare what Tesla "gave" with what Tesla "got." The

defendants stated that the main goal of the board with the compensation plan was to position Tesla to achieve transformative growth and that Tesla achieved this goal by ensuring the continuity of Musk's leadership. Musk already owned 21.9% of Tesla when the board approved his compensation, this ownership stake gave him every incentive to push Tesla toward growth in fact Musk could earn over \$10 billion for every \$50 billion increase in market capitalization. Additionally, Musk had no intention of leaving Tesla, and he made clear from the beginning. Moreover, the compensation plan was not conditioned on Musk devoting a certain amount of time to Tesla because the board never proposed such a condition, it never asked if the plan was necessary for Tesla to hold Musk and achieve his milestones. (*Tornetta v. Musk*, 2024, p. 171-191).

Rescission was considered a reasonable and appropriate remedy by the court. In law, rescission had the function to restore the parties to the situation prior to the contract, the status quo ante, since the reward consisted of options on shares not yet exercised or securities still bound, it was enough to cancel those options from Tesla's accounting records according to the judge. Many wondered why she had not simply cut the reward, but a judge cannot rewrite a contract for the parties if the process that led to this has a lack of fair dealing. (*Tornetta v. Musk*, 2024, p. 192).

Tesla has also tried to argue that under Delaware law a contract cannot be automatically voided just because the process was imperfect, if the result appears reasonable or if the shareholders have benefited from it. When Musk unlocks his awards, millions of new shares are created. For shareholders, this is a silent loss, seeing the value of their percentage share decrease in favor of Musk. Their slice is smaller, but without Musk the pie would have remained tiny. It's better to have 0.9% of a company worth 1,000 billion than 1% of a company worth 50 according to the defendants.

2.2.3 Post-Trial Judicial Opinions: Insights from 19 December 2025

It is reported that based on the agreements between the parties before the trial and the official documents such as the 2023 10-K form, Musk successfully completed all 12 tranches, all market capitalization parameters and all required operational targets had been met. As a result, all 303,960,630 options had become vested (with a market value higher than the exercise price). (In Re Tesla, inc. Derivative litigation, 2025, p. 10). As previously mentioned, as a remedy for the breach of fiduciary duties, the Chancery Court ordered the rescission of the 2018 Grant. It held that the rescission was “*reasonable, appropriate, and practicable*” because the 2018 Grant was not “*too complex to unscramble*”. The rescission was considered an appropriate remedy, according to the court, because it was possible to restore all parts of the transaction to their prior state. Exercising its discretion, the court decided that rescission was the right remedy. This choice was based on the fact that the decision didn't affect third-party interests: the stock allocation, in fact, had mostly not been exercised and was in any case subject to a five-year lock-up. For the judge, rescission remains the preferable solution when facing a breach of fiduciary duties, especially if one of the parties was tricked into the contract. Finally, the court rejected the defendants’ argument that rescission was an inappropriate remedy because it would have left Musk without compensation for his nearly six years of work. It referred to Musk’s pre-existing equity stake, which would have provided him with tens of billions of dollars for his work. The court also emphasized that the defendants did not offer a valid alternative remedy to leave the entire 2018 Grant intact.

After the chancery court ordered the invalidation of the plan in January 2024, Tesla’s board of directors formed a special committee to evaluate two proposals: the transfer of the legal headquarters to Texas and the ratification of the 2018 plan. Initially composed of two members, the committee remained with only Kathleen Wilson Thompson after the other

member resigned due to potential independence issues. Tesla sent new secondary proxy documentation which included a full copy of the chancery court ruling so the shareholders were aware of the critical issues identified by the judge. On June 13, 2024, the majority of disinterested shareholders, excluding Musk and his brother, voted in favor of the plan. After that Tesla's lawyers filed a motion to revise asking Judge McCormick to recognize the new vote as a valid ratification, replace the remedy of rescission with a favorable ruling for Musk, arguing that the shareholders' will had cured the initial problems. The Court of Chancery rejected the motion for the following reasons:

- Procedural violation: the judge ruled that Tesla should have raised the issue of ratification by the shareholders during the 2022 trial. By introducing this element only after losing the case, Tesla was trying to get a second chance not allowed by the rules.
- Closure of the investigation: the court refused to reopen the court file to include evidence (the 2024 vote, which did not exist when the case was discussed in court in 2022)
- Inadequate disclosure: the judge ruled that although Tesla had attached the previous ruling to the voting documentation, the overall message sent to shareholders was still partial and did not provide a neutral view, making the vote legally ineffective (In Re Tesla, inc. Derivative litigation, 2025, p. 16-20).

For a rescission to be valid and fair, Delaware law establishes that it is not enough for one party to return what they have received, but that both parties must be restored to their original position, defined as status quo ante. Musk's defenders argued that it was impossible to restore Musk to the 2018 situation because he cannot get back the six years of time, commitment and intellectual effort dedicated to Tesla to achieve the milestones of the plan, the impossibility of unscrambling. The Supreme Court did not agree with the trial's court decision of rescission, criticizing the view that the remedy was appropriate because the options had not yet been

exercised. It highlighted that Musk had already done his part of the agreement by dedicating his time and work to Tesla, and these contributions could not be returned. Bringing back the parties to their original position before the contract was no longer possible. If the award were canceled at this stage, Tesla would retain all benefits without paying the agreed compensation; for the court this outcome is inequitable, meaning unfair and contrary to common sense. The Supreme Court then overturned the trial court's decision that Musk had already been given a reward thanks to the rise in value of his old shares, according to the judges, that gain came only from his stock holdings and not from the extra work required by the 2018 agreement. For this reason, the court decided that rescission was not the right move. Instead of canceling the plan, the court ruled that the breach of fiduciary duties should be sanctioned with only 1 dollar in nominal damages. This dollar serves to legally acknowledge that the process was not correct, without depriving Musk of the award he earned through the results. (In Re Tesla, inc. Derivative litigation, 2025, p. 21-25).

The court established that a defendant is not obligated to provide the judge with a mathematical calculation for an alternative remedy just to avoid the rescission; the defenders argued that they could not propose lower compensation during the trial because doing so would have meant admitting that the original 55.8 billion award was unfair. The Supreme Court wrote that the chancery court misjudged in concluding that the defenders had waived their arguments against rescission. Since Tornetta requested rescission, it was up to him to demonstrate that was an appropriate, practicable, and fair remedy. The document explained that the plaintiff deliberately chose not to present evidence on what a fair price for Musk's work would have been; Tornetta put everything on total rescission. Equitable rescission consists of the complete cancellation of the contract as if it had never existed. The parties must return what they have received. The court explains that a judge should use it only if it produces an equitable result. Instead, rescissory damages are applied when the physical return

of goods is not possible or fair; instead of rescinding the contract, the court calculates a sum of money representing the value of what a party has lost due to the breach. Tornetta focused entirely on equitable rescission and never alternatively requested rescissory damages. The chancery court had established that since the 2018 approval process was flawed, the award had to be canceled unless the defenders had demonstrated that a lower amount would have been fairer. The Delaware Supreme Court addressed what it considers a very serious procedural and conceptual mistake committed by the Court of Chancery, which had demanded that Musk's lawyers propose another compensation; instead, according to the law, the burden of proving that the remedy was fair falls on the plaintiff. (In Re Tesla, inc. Derivative litigation, 2025, p. 26-46).

As the court correctly observed in Ravenswood Investment Co., L.P. v. Est. of Winmill: Nominal damages are not given as an equivalent for the wrong, but rather merely in recognition of a[n] [] injury and by way of declaring the rights of the plaintiff. Nominal damages are generally assessed in a trivial amount, selected simply for the purpose of declaring an infraction of the Plaintiff's rights and the commission of a wrong. (In Re Tesla, inc. Derivative litigation, 2025, p. 46).

The Court of Chancery had awarded the petitioner's lawyers \$345 million (the largest legal fee award by far in Delaware litigation history). The Supreme Court, however, ruled that, since only nominal damages are now awarded, the legal fee must be based on quantum meruit (i.e., the reasonable value of the lawyer's services). The Supreme Court stated that the fee would be the lawyer's "lodestar" (reasonable hours multiplied by a reasonable hourly rate) with a four-times multiplier which, reportedly, amounts to about \$54 million. (Weinstein, 2026)

A shift is observed from a capitalism of rules and duties to one of power and contracts. On one hand, Musk is seen as a strategic and intangible asset that requires control to innovate; on the other hand, critics see his \$56 billion award as a failure of corporate democracy and board independence. In the end, American law has chosen to prioritize economic results and the will of the majority of shareholders over the procedural purity requested in the first ruling.

2.3 Brand equity vs incentive redundancy: the CEO as an intangible asset vs Lucian Bebchuck rent extraction

The ruling created a battleground between those who supported Musk and those who, instead, defended the balances of corporate governance. According to Kam-Ming Wan and Joseph P.H Fan, professors and authors of *Outliers in CEO Compensation: The case of Elon Musk's 2018 pay package*, they investigate whether extraordinarily high outlier compensations for founding CEOs are rent-extraction tools or mechanisms that give shareholders the power to increase corporate value. The main part of the research, through an event study, analyzes the reactions of Tesla's stock price at key moments such as judicial ruling approvals. The market reacted positively to news that increased the likelihood of the approval of the package and negatively, with a loss of value, to news of judicial cancellation. There is an analogy with Steve Jobs' return in Apple 1997; even Jobs received an enormous option package and in both cases the market did not see the compensation as a cost, but as the guarantee that the CEO would remain focused. (Kam-Ming Wan, 2025)

In contrast there is Bebchuck and Fried's vision, the central thesis of the authors is that the system is broken because it does not follow the laws of the market, but those of power. According to classical economic theory, the board of directors should negotiate with the CEO with equal bargaining power, as strangers would on the market, to get the best price. Bebchuck and Fried argue that this never happens, the board is not truly independent because

members want to be re-elected and the CEO has great influence over their appointment; they are often linked by friendships and directors use shareholders' money, not their own, so they do not have a real incentive to save, managerial power means that CEOs dictate the terms. Compensation is not a way to motivate them (incentive) but a way to extract wealth (rent extraction). The question is why if the CEOs control the boards, they do not give themselves a salary of one billion dollars, according to the authors the only real limit is the constraint of outrage. (Lucian Bebchuk, 2004)

According to Bebchuk, as highlighted in many articles in the New York Times and academic analyses, Musk is seen as an extreme example of rent extraction, for the author the \$56 billion package is not a necessary incentive, but a form of wealth extraction, taking money from the company simply because he has the power to do so, because the board is starstruck by the figure of Superstar CEO, Tesla's board of directors is a typical example of a board captured by the CEO, many directors are tied to Musk through personal or family friendships. According to Bebchuk, this prevented negotiation at a reasonable distance. He sees in Musk clear evidence that the outrage constraint has broken, the CEO managed to make acceptable an amount that, based on Bebchuk's view, is objectively indefensible from any corporate governance perspective.

In the first document analyzed, Kam-Ming Wan and Joseph Fan, instead of seeing the reward as a cost of extracting rent, see it as an investment by shareholders to secure Musk. The market fluctuates, empirically showing that he is the company's intangible value, this view argues that in highly innovative companies, value does not reside only in machinery but in the leader's "human capital", in their ability to attract capital, talent and customers at zero cost (without traditional advertising). Xavier Gabaix and Augustin Landier, in the talent theory, argue that marginal differences in a CEO's talent can have a huge impact on the market value

of a very large company. If a CEO is even just 2% better than the average, in a company worth 500 billion, that 2% of intangible talent is worth 10 million.

A superstar CEO is an individual whom the market, investors and the board of directors consider indispensable to the company's value. He is not a mere manager, but a figure whose presence influences the stock price; the legal problem arises from the fact that this indispensability creates a power imbalance. The board of directors is afraid to contradict him for fear that he will leave the company, challenging traditional rules. Although the Musk case raised the issue, the legal status of the superstar CEO in Delaware remains ambiguous. The courts have recognized that Musk is a superstar CEO but have not yet established a clear rule on how to handle these leaders in the future. (Keilty, 2024)

Another possible interpretation of the legal battle shifted the point to the strategic focus. The authors of *Tesla as a Global Competitor: Strategic Control in the EV Transition* argue that Tesla's success is not due to the market, but to Musk's ability to exert control over the company's strategy for 16 years. Musk has used his power to transform Tesla from an uncertain startup into a global leader by investing in innovation when no one else believed in it. Control allows Musk to prevent the company from being looted by short-term investors, such as activist hedge funds that would like to cut costs or do stock buybacks instead of investing in the future. The article introduces a fascinating thesis: Musk does not want the 56 billion to buy personal benefit, but to have enough voting power. The authors explain that Musk aims to own about 25% of Tesla's shares, this threshold is psychologically and technically important to discourage activists from attempting to take control of the board of directors to change Tesla's strategy. Bonuses as a shield, not as pay, are tools for accumulating votes to allow Musk to maintain strategic control. The paper harshly criticizes the economic theory that wants shareholders at the center of everything, if Tesla had followed Wall Street's advice, it would never have survived the initial crises. The authors suggest that the legal battle

is dangerous because if Musk loses stock control, Tesla could fall prey to short-term financial logic. (Lazonick, 2024)

2.4 Jurisdictional choice and forum shopping: The Texas shift

Forum shopping is a very common legal practice in which an interested party strategically chooses the court or jurisdiction in which to initiate a lawsuit or where to establish the legal headquarters of a company to obtain the most favorable legal treatment. In the United States, a company can run its day-to-day operations in one place while being legally incorporated somewhere else, often in Delaware. States compete to attract these incorporations because they generate franchise tax revenue. Roughly 40% of Delaware's state revenue comes from fees and taxes paid by incorporated companies and the state is home to over 1.9 million business entities, including more than 68% of fortune 500 companies.

For decades, Delaware has been the gold standard of corporate law. In the court of chancery, the judges are nominated by the governor and confirmed by the senate, and they serve long 12-year terms. This provides insulation from short-term political pressure. The chancery court handles only equitable claims, meaning it's only going to conduct bench trials where the specialized judges are deciding the facts. However, business leaders are beginning to perceive Delaware courts as too protective of minority shareholders and too restrictive toward controlling shareholders. In Texas, the view of leaders is considered the primary value to protect; the author suggests that Delaware is shifting from a standard based on the business judgment rule, where the judge does not interfere in business decisions, to one of fair completeness. Texas has responded to this by creating specialized business courts designed to compete directly with Delaware. This competition between states will lead to a race to the bottom. This theory was first introduced by William Cary, a famous jurist, in 1974,

competition for corporate incentives states, adopting more flexible standards to attract firms, can erode the investors' rights.

The essay *"Leaving Delaware? The essential role of specialized Corporate Courts"* by Goshen and Stein explains that Delaware's primacy does not derive only from its DCGL civil code, but above all from its Court of Chancery. This court is unique because it does not rely on juries; decisions are made by expert judges, it operates very quickly and it generated a huge amount of precedent that makes rulings predictable. According to the authors "Dexit" (changing state just to have more favorable laws) is not sufficient to undermine Delaware's dominance, a company that leaves Delaware loses access to highly specialized judges with deep expertise in financial matter, risking ending up in ordinary courts that could make costly errors. Based on the authors' view, it will be difficult to create a specialized court with the same expertise and reputation; it takes decades. However, they warn that Delaware, to maintain its position, must continue to balance shareholders' rights with managers' freedom. (Zohar Goshen, 2025)

According to S. Bainbridge, professor at UCLA, believes that the dexit is the direct consequence of an error by the Delaware Chancery Court. In his view, rulings like *Tornetta* have violated the principle of the primacy of directors. He thinks that judges should not replace the board of directors in deciding what is fair. Bainbridge sees the dexit not as a whim of Musk but as a rational reaction to a judicial system that has become unpredictable. Bainbridge warns that if states like Nevada offers laws that overly protect managers, there is a risk of harming shareholders' fundamental rights. Based on Bainbridge, Delaware has enjoyed a de facto monopoly for decades because it was the safest and most predictable place. If Delaware begins to be perceived as a place where judges make politics or punish superstar CEOs, it will lose its most precious asset, which is predictability.

In contrast with Goshen's view, Alexander Hook author of "*Reform or Remove: Tornetta, Moelis, Stockholder Agreements & DExit*" sees the dexit as the threat of a mass exodus of companies from Delaware to states like Texas or Nevada, companies perceive that Delaware is no longer business-friendly but judge-friendly, meaning that judges are intervening too much in contractual decisions. The paper discusses the fact that recent sections of the DGCL have been amended for cases like that of Musk and Moelis. An example is the revision of section 122 of the DGCL, creating 122(18) expressly authorizes the company to enter into agreements with shareholders that judges previously considered illegal. (Hook, 2025)

2.4.1 From controversy to reform: laws emerging after Musk

When the chancery court rescinded Musk's 2018 56-billion-dollar compensation package it set off some shock waves not only because of the size, but because the court used entire fairness based on transaction specific control. Delaware seems to be becoming hostile to boards, executive, and controlling shareholders.

Senate Bill 313 was one of the fastest bills in the Delaware landscape, drafted and approved in a few months. Many academics saw it to bypass judges, who were trying to protect minority shareholders, and save market practices after some court rulings. It amended several section of the DGCL, including: the most recent amendment is to Section 122 by approving the new subsection 122(18) occurred in 2024, in response to a controversial chancery court ruling (*West Palm Beach Firefighter's Pension Fund v. Moelis & Co*), this new clause allows, as seen before, the company to enter into contracts with the shareholders. Delaware continues to respect parties' ability to shape corporate governance through negotiated agreements rather than having everything by rigid rules, granting more contractual freedom to controlling shareholders. S.B. 313 introduced section 147 of the DGCL and came into effect on August 1, 2024. This new section allows the board of directors to approve, for example, a merger even if

the final version of the document is not yet complete, provided that the essential terms are clear, there is also post-approval ratification allowing the board to ratify a document after it has been presented to the shareholders, if it concerns minor changes. Section 261 clarifies that companies can appoint shareholder representatives to manage post-merger disputes and better define the penalties and Section 232 simplifies the rules on electronic communication with shareholders.

In the attempt to stop the flight of companies like Tesla to Texas, Senate Bill 21 which provided more protection for directors and simplifies processes for shareholders' approval, took effect in March of 2025. This bill creates a safe harbor process for boards and limits shareholder access to corporate records, acting as a corporate shield to protect directors and controlling shareholders from litigation. It introduces a higher and stricter threshold to define a controlling shareholder, making more difficult for small shareholders to challenge for example a compensation plan

The Senate Bill 313 amends:	
Delaware General corporation Law	<i>Function:</i>
Section 122(18)	To allow members to have legal veto rights.
Section 147	To prevent bureaucratic errors from canceling the merger.
Section 261	To appoint shareholder representatives to manage post-merger disputes.
Section 232	To simplify the rules on notifying shareholders electronically.

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Figure 6. Amendments

Note. Author's own elaboration

The Senate Bill 21 amends:	
Delaware General Corporation Law	<i>Function</i>
Section 220	The amendment limits the right to inspect the formal board documents, to access them a shareholder must demonstrate that they have a proper purpose, for example a suspicion of fraud.

Figure 7. Amendments 2

Note. Author's own elaboration

Many believe that the December 2025 ruling was influenced by the climate created by the new laws. SB 21 amends section 220. The plaintiff's lawyers used section 220 to dig into Tesla's internal communications. By limiting this section, Delaware took away the activists' main weapon. (Lebovitch, 2024) (Khoo, 2025)

2.5 Elon Musk's new trillion-dollar plan

The board and the shareholders approved a new equity-based incentive compensation package for Musk, for the next ten years, which will give \$1 trillion of compensation with new milestones to achieve. Any challenge to the new \$1 trillion compensation package would be discussed under Texas law, Senate Bill 29 set a 3% ownership threshold to file a derivative

lawsuit. At Tesla's current market capitalization, acquiring a 3% interest would involve an investment of \$45.3 billion. As a practical matter, only a combination of major institutional holders likely could challenge the compensation package. (By contrast, under Delaware law, any shareholder, regardless of percentage ownership, can file a derivative suit, indeed Tornetta who sued in Delaware challenging the \$56 billion compensation package owned just nine Tesla shares.) (Gail Weinstein, 2026)

Like the 2018 package, this new award is split into 12 different tranches. While the 2018 award asked Musk to raise Tesla's market cap from \$54 billion to \$650 billion, the 2025 award will only vest in full if the Company's market cap jumps from \$1 trillion to \$8.5 trillion. The 2018 award set out to raise Tesla by \$600 billion in market cap, while the 2025 award focused on growing the Company by \$7.5 trillion. If fully vested, Musk's combined holdings in Tesla would make him a trillionaire. (Yu, 2025)

For Musk to vest any tranche, a corresponding operational milestone needs to be met. In 2018, was about revenue and adjusted EBITDA. Now, the adjusted EBITDA goals are still there but product goals are being introduced in place of revenue goals. The most significant difference between the two awards concerns voting power. Under the 2018 options didn't confer to Musk any additional voting rights until the options were exercised. By contrast, the 2025 award includes a voting agreement between Tesla and Musk that allow him to vote with earned shares once milestones are achieved, regardless of whether the shares have vested or not. Usually shares only receive voting influence upon vesting, but this new structure will allow Musk to reach his desired 25% ownership of tesla. (Yu, 2025)

	2018 Award	2025 Award
Market Cap at Time of Award	~\$54B	~\$1T
Goal #1	\$100B	\$2T
Goal #2	\$150B	\$2.5T
Goal #3	\$200B	\$3T
Goal #4	\$250B	\$3.5T
Goal #5	\$300B	\$4T
Goal #6	\$350B	\$4.5T
Goal #7	\$400B	\$5T
Goal #8	\$450B	\$5.5T
Goal #9	\$500B	\$6T
Goal #10	\$550B	\$6.5T
Goal #11	\$600B	\$7.5T
Goal #12	\$650B	\$8.5T

Figure 8. *Market Caps Goals (2018 vs 2025)*

Note. From The Trillion-Dollar Man? Comparing Musk’s 2018 Pay Plan to His Latest Tesla Award, by Courtney Yu, Harvard School Forum on Corporate Governance.

2018 Award *	2025 Award **
\$1.5B Adjusted EBITDA	\$50B Adjusted EBITDA
\$3B Adjusted EBITDA	\$80B Adjusted EBITDA
\$4.5B Adjusted EBITDA	\$130B Adjusted EBITDA
\$6B Adjusted EBITDA	\$210B Adjusted EBITDA
\$8B Adjusted EBITDA	\$300B Adjusted EBITDA
\$10B Adjusted EBITDA	\$400B Adjusted EBITDA ***
\$12B Adjusted EBITDA	\$400B Adjusted EBITDA ***
\$14B Adjusted EBITDA	\$400B Adjusted EBITDA ***
\$20B Revenue	20M Tesla Vehicles Delivered
\$35B Revenue	10M Active FSD Subscriptions
\$55B Revenue	1M Bots Delivered
\$75B Revenue	1M Robotaxis in Commercial Operation
\$100B Revenue	
\$125B Revenue	
\$150B Revenue	
\$175B Revenue	

*Only 12 of the 16 milestones needed to be achieved

**The 11th and 12th tranches only become earned if Elon Musk also develops a framework for CEO succession

***\$400 billion in adjusted EBITDA needs to be met in three non-overlapping periods for these milestones to be achieved

Figure 9. *Other performance goals (2018 vs. 2025)*

Note. From The Trillion-Dollar Man? Comparing Musk's 2018 Pay Plan to His Latest Tesla Award, by Courtney Yu, Harvard School Forum on Corporate Governance

Award Component	2018 Award	2025 Award
Award Vehicle	Options	Restricted Stock
Vesting of Tranches	Upon achievement of milestones	Any tranches earned before the fifth anniversary of the grant date will vest after 7.5 years of the grant date Any tranches earned thereafter will vest on the 10th anniversary of the grant date
Reduction of Value Upon Vesting	Pay an exercise price of \$23.33 per each option exercised	Reduced by the product of \$334.09 multiplied by the number of shares being vested
Voting Power	Upon options being exercised	Upon shares being earned
Holding Period	Five years after vesting	Five years after being earned

Figure 10. *Key award differences*

Note. From The Trillion-Dollar Man? Comparing Musk's 2018 Pay Plan to His Latest Tesla Award, by Courtney Yu, Harvard School Forum on Corporate Governance

Some criticism has been raised, much of the plan's valuation is based on future growth, tied to the feasibility of Musk's vision of transforming the electric vehicle manufacturer into an artificial intelligence and robotics giant, although Tesla's core business remains automobiles, a concern that has been growing recently, with intensifying Chinese competition and Tesla's shrinking margins.

Chapter 3: The Shareholders' Rights II Directive (EU Directive 2017/828) and the rules on remuneration

3.1 The evolution of the historical-economic context and the crisis of the short-term shareholder value maximization paradigm.

To understand the rationale behind European legislators' intervention in the regulation of managerial remuneration, it is necessary to conduct a retrospective analysis of the macroeconomic developments that characterized the first two decades of the 21st century. Historically, western corporate governance systems have moved along two very divergent legal lines: on the one hand, the Anglo-Saxon model of shareholder primacy, originally theorized by Milton Friedman, according to which the sole social purpose of business is the maximization of profit for the exclusive benefit of shareholders; on the other, the continental European model of stakeholder capitalism, which conceives the business as a collection of heterogeneous interests, including workers, creditors, suppliers, and the local community in which the company operates.

During the 1990s and early 2000s, many European listed companies began to adopt compensation practices inspired by the North American model. In particular variable forms of remuneration, such as stock options and share-based plans linked to stock market performance. This choice was based on agency theory, in fact to align the interests of managers (agents) with those of shareholders (principals), the former needed to become shareholders themselves and so benefit from rising stock prices.

However, the 2007-2008 global financial crisis exposed the structural limitations of this approach. Legislators noted that compensation excessively tied to short-term stock metrics incentivized managers to engage in highly speculative behavior. To achieve the stock market targets needed to unlock million-dollar bonuses, many CEOs favored financial engineering

(such as buyback plans, i.e., the repurchase of own shares to artificially inflate their value) at the expense of industrial investments in research, development, and human capital. This phenomenon, known as managerial short-termism, played a significant role in the failure of major banks and large industrial companies, causing economic and social damage in the medium and long term. In response, the European Union adopted a fragmented approach, relying on soft law instruments, such as Commission Recommendation 2004/913/EC. This text represents one of the first interventions by the European Commission to address the issue of managerial compensation in listed companies, trying to create adequate transparency and ensuring control over managerial remuneration for shareholders. The subsequent Recommendation 2009/385/EC, issued immediately after the outbreak of the global financial crisis, supplemented the 2004 text by calling on companies to align compensation with the company's long-term sustainability. This too was a flexible instrument; national legislators and corporate governance codes applied the “comply or explain” principle. Therefore, companies were not legally required to follow sustainable compensation guidelines, but if they chose not to, they were required to publicly explain their reasons in their governance reports.

Leaving the sustainability of remuneration to the autonomy and voluntary choice of private individuals has triggered two major problems. First, regulatory fragmentation, with each member state responding differently, creating disparities in the European single market. Furthermore, without the requirement of a binding vote by shareholders or sanctions for directors, the indications contained in the 2004 and 2009 recommendations were often implemented only formally. Consequently, many companies have not substantially changed their remuneration policies, continuing to link managers' bonuses primarily to short-term results and stock market performance. It was precisely this that prompted the European Union to change its strategy by approving Directive (EU) 2017/828 (SRD II). (Sacconi, 2014)

3.1.1 Exegetical Analysis of Directive (EU) 2017/828: "Say-on-Pay" as a Countervailing Power of the Shareholders' Meeting

The Shareholders' Rights II Directive impacts the very structure of European company law, amending Directive 2007/36/EC to promote long-term shareholder engagement. The most significant aspect of the reform is the mandatory introduction of the Say-on-Pay mechanism, a legal formula that transfers ultimate responsibility for determining compensation from the Board of Directors (often guilty of self-serving dynamics) to the Shareholders' Meeting.

Recital 15 of the Directive explains that institutional investors and asset managers often fail to engage with the companies in which they hold shares, this passivity has often put pressure on companies to achieve short-term results. Shareholder apathy among large investment funds has effectively removed all barriers to control, allowing managers to structure variable incentive plans tied exclusively to sudden stock price increases, to the expense of structural investments in research, development, and human capital. Recital 14 establishes that active shareholder engagement must become a cornerstone of the corporate governance model, tying such engagement not only to financial results but also to non-financial metrics (environmental, social, and governance). (Unione Europea, 2017)

Through related articles, particularly Article 3octies, the Directive requires funds to adopt and publish an engagement policy, and, above all, Recital 18 establishes that they must disclose how they have exercised their voting rights. From an exegetical perspective, this step is crucial, as it forces large institutional investors to expose their votes to public scrutiny and accountability to savers. The Directive removes apathy and forces shareholders to exercise the countervailing power of "Say-on-Pay". (Unione Europea, 2017)

Article 9-bis, right to vote on remuneration policy, of the Directive regulates the Remuneration Policy, establishing an ex-ante control. Under this provision, listed companies must develop a policy document that clearly and comprehensively defines all components of the remuneration they intend to pay to directors. The regulation requires Member States to ensure that shareholders have the right to vote on the remuneration policy at the general meeting. The general rule is that the shareholder vote is binding; the company may remunerate directors with a policy approved by the general meeting, revealing a profound transition from soft law to hard law.

The choice of binding vote represents a clear distinction from the US federal system, where the Say-on-Pay introduced by the Dodd-Frank Act remains exclusively consultative in nature. In continental Europe, if the meeting rejects the proposed policy, the board of directors is deprived of the legal basis for awarding variable compensation. Under Article 9-bis, paragraph 2, two situations may arise, the first is when an approved policy does not yet exist; therefore, if shareholders reject the initial proposal, the company may continue to follow the remuneration practices already in use, while prepared a revised policy which must be submitted for approval at the next general meeting. The second situation occurs when an approved policy already exists; in this case, if shareholders vote against the new proposal, the previously approved policy remains in force. Here too, the company must present a revised version at the next meeting.

According to Article 9-bis, paragraph 3, the Directive allows Member States to provide, as an alternative to a binding vote, a consultative vote of shareholders on directors' remuneration policy. In this case, the vote does not necessarily formally approve the policy, but shareholders still express their opinion. If the proposed policy is rejected, the company must develop a revised version and submit it again to a vote of shareholders at the next general meeting. (Unione Europea, 2017)

Furthermore, according to paragraph 5, Member States shall ensure that companies submit the remuneration policy to a vote of the general meeting whenever a material change is made to it and, in any case, at least every four years.

Transparency regarding share allocation criteria (Art. 9-bis, par. 6) indicates that the use of stock options or the allocation of treasury shares has historically represented the main fuel for managerial short-termism. To prevent manipulation of stock prices (e.g., through speculative buyback plans), paragraph 6 of Article 9-bis requires a radical and detailed level of transparency regarding compensation based on financial instruments. When a company provides stock-based compensation, the policy must explicitly state:

Vesting Periods: The policy must clearly indicate the time horizon that must elapse between the moment the option is promised to the manager and the moment he acquires the right to exercise it. The purpose is clear, bonuses should be deferred so that the company's performance can be assessed over time, whether performance is solid and not simply based on stock market value. In addition, the remuneration policy must also specify whether and for how long the director, once in possession of the shares, is obligated to retain them in his portfolio (retention period) before being able to resell them on the market. This requirement is needed to transform the manager into a medium to long-term shareholder, linking his personal wealth to the future of the company.

In addition, the Directive stipulates that share awards cannot be automatic or tied to mere permanence in the company (pay for presence) but must explain *“how share-based compensation contributes to the company's strategy, long-term interests, and sustainability”*.

Metrics must explicitly include non-financial and ESG targets. (Unione Europea, 2017)

Disclosures and Voting Rights on the Remuneration Report Article 9-ter introduces ex-post review of the Remuneration Report. This document, to be prepared annually, must provide a

clear and comprehensive overview of compensation, including all benefits of any kind, paid or owed to individual directors during the last financial year. Unlike policy, the Directive allows Member States to opt for a purely consultative vote on the report. However, the European legislator has introduced strong reputational transparency requirements, as the company must explain in detail in the subsequent report how it has considered the shareholder vote and resolutions.

A vote against or strong dissent from a minority of shareholders at the meeting on the final report results in a formal motion of no confidence in the board. This immediately activates the attention of proxy advisors and public opinion, catalyzing the risk of greenwashing or improper conduct.

Article 9 ter, paragraph 1, letter b

"The annual change in directors' remuneration, the performance of the company's results, and the average remuneration based on the full-time equivalent of company employees other than directors, over at least the last five financial years, presented together to facilitate comparison."

From a technical-legal perspective, this rule requires the publication of a three-part historical comparison, measured over five years:

1. Manager's paycheck: how much the overall compensation (fixed and variable) of top directors has increased or decreased.
2. Company performance: the actual performance of the company's profits and industrial targets over the same period.
3. Pay Ratio: the performance of the company's average employees' compensation (calculated on full-time workers). (Unione Europea, 2017)

This indicator highlights the gap between top management and the production base (for example, by highlighting whether the CEO earns 50, 100, or 300 times more than an average worker or employee at the same company).

The inclusion of the Pay Ratio in the European system is not a purely accounting objective but rather pursues a radical redistributive transparency goal. Its primary function is to act as a social and reputational deterrent to counter the exacerbation of internal inequalities.

A scandalous Pay Ratio, or one not supported by an exceptional increase in company performance, offers shareholders the opportunity to reject the final report or force the Remuneration Committee to reduce managers' variable components in the following year's policy, to avoid permanent damage to the company's reputation. (Unione Europea, 2017)

3.1.2 Compensation and ESG Metrics: The Clash Between European Stakeholder Capitalism and the Delaware Model

In 2018, as discussed in the previous chapters, Tesla approved an extraordinary compensation plan for Elon Musk worth approximately \$56 billion, structured around 12 tranches of stock options that would be unlocked upon reaching large market capitalizations and revenue targets.

From the perspective of European law (SRD II), a remuneration plan of this kind reflects the systemic risk that the directive seeks to prevent, when variable compensation is based exclusively on increases in market capitalization, directors may be encouraged to focus on short-term strategies or financial engineering techniques focused at temporarily boosting the company's share price. This creates incentives to maximize short-term market value rather than the company's long-term performance and may allow executives to gain before any subsequent decline in the share price.

The Directive therefore discourages compensation structures that rely solely on short-term market indicators and instead promotes incentive mechanism based on long-term value creation and sustainable corporate performance. If the stock price rises for six months and then collapses due to shortsighted industrial decisions, under European law the manager loses his bonus or is subject to a claw back.

The true revolution of Directive (EU) 2017/828 lies in the requirement to include non-financial award criteria. A manager's paycheck no longer reflects solely accounting indicators (EBITDA, EPS), but must also integrate ESG (Environmental, Social, Governance) factors:

Environmental: variable bonuses for European managers are now contingent on the achievement of measurable targets such as reducing greenhouse gas emissions, improving energy efficiency in the supply chain, or transitioning to renewable resources.

Social: this includes the performance of the Pay Ratio (the internal wage gap), the rate of accidents at work, gender equality in senior positions, and levels of corporate welfare protection.

Governance (integrity): Assesses compliance with the law, the fight against corruption, and supply chain transparency.

Delaware is the state where most American multinationals are legally domiciled, thanks to ultra-flexible corporate law and a specialized court (Court of Chancery) historically focused on protecting business, this system is based on Milton Friedman's vision, namely, that the sole fiduciary duty of directors is to maximize profit for shareholders. Stakeholders are considered external. The Musk case clearly shows one thing, as long as the majority of shareholders agree and the bylaws allow it, the Board of Directors basically has free rein to approve astronomical salaries based on purely speculative market performance, leaving the courts to

intervene only ex post in extreme cases of violation of transparency duties towards shareholders (as occurred in Tesla case). (Capelli, 220)

Europe responds with an institutional model. European Stakeholder Capitalism, protected by the regulatory framework of SRD II, establishes that companies have a political and social responsibility toward a wider range of stakeholders. The Directive uses Say-on-Pay not as a tool to satisfy the shareholders, but as a channel through which they can oversee remuneration and support the company's long-term interests. (Capelli, 220)

3.2 The Italian legal framework: Article 123-ter of the Consolidated Law on Finance and the protection of minority shareholders in related-party transactions.

Article 123-ter of the Consolidated Law on Finance provides that the shareholders' meeting shall adopt a binding vote on the first section of the report (the remuneration policy) and an advisory vote on the second section (the compensation paid). In the case of Musk, the shareholder vote was initially manipulated by a lack of disclosure (failure to disclose a conflict of interest); in Italy, the transparency requirements of Article 123-ter are very strict.

Although the company chosen as an operational benchmark in the following chapter (Stellantis N.V.) is primarily subject to Dutch law by virtue of its registered office, its listing on the Italian regulated market (Euronext Milan) and its industrial origins require a thorough comparative analysis with the Italian civil and financial systems. Italy represents, within continental Europe, one of the most advanced and stringent legal systems regarding public and private oversight of top management remuneration.

Article 123-ter of the Consolidated Law on Finance (TUF, enacted with Legislative Decree No. 58 of February 24, 1998). This article is the result of a complex legislative layering,

culminating in the implementation of the SRD II Directive by Legislative Decree No. 49 of May 10, 2019. Prior to this reform, the Italian regulatory framework provided for a single, exclusively consultative shareholder vote on the entire remuneration report, this one had proven largely inefficient. Indeed, boards of directors could ignore the dissent of minority shareholders, dismissing a dissenting vote as a mere indicator of relational tension with no impact on the stability of previously signed remuneration agreements. (Sepe, 2012)

The 2019 legislator, implementing EU requirements, undermined this structure by introducing a true “bicameral assembly” based on the strict separation of the Remuneration Report into two distinct sections, each with a different degree of legal cogency:

1. Section I (The Ex-ante Remuneration Policy): This section sets out the company's remuneration policy for the members of the board of directors, general managers, and, without prejudice to Article 123-quater, managers with strategic responsibilities for the following financial year, it also explained the procedures through which the policy is adopted and implemented. Under Article 123-ter, paragraph 3-ter of the TUF, the shareholders' meeting must vote on this section with a binding resolution. If the shareholders' meeting rejects the policy proposed by the Board, the company is legally barred from awarding bonuses or stock incentives based on that plan and must continue to pay compensation in accordance with the previously approved policy or, failing that, current practices. This binding “Say-on-Pay” mechanism prevents the creation of compensation plans that are not dependent on the approval of a real majority of invested capital.

2. Section II (Ex-Post Compensation Statement): This section provided a detailed overview of the remuneration paid during the financial year to each member of the management and supervisory bodies. Following paragraph 6, the shareholders' meeting vote on this section, which, apart from companies like banking and insurance companies, subject to special

supervision, has an advisory nature. However, the effectiveness of the advisory vote has improved thanks to the transparency requirement. If Section II is rejected or received a significant percentage of votes against, the company must formally disclose this in the following year's report, detailing the reasons for the dissent and the changes made to align with market sentiment. (Sepe, 2012)

Article 114-bis of the Consolidated Law on Finance shifts the focus to the transparency of the share instrument, establishing that compensation plans based on financial instruments intended for members of the board of directors, employees, or collaborators of listed companies must be approved in advance by the ordinary shareholders' meeting. The rationale of the provision is clear, remove directors' power to self-regulate their own share incentives, leaving the final decision to the shareholders. To ensure that the shareholders' vote is genuine and informed, the Italian legislator, in coordination with the regulatory powers of Consob (Article 84-bis of the Issuers' Regulation), requires the publication of a detailed Information Document. It must explain the reasons that motivate the adoption of the plan, the criteria for the identification of beneficiaries, the conditions for granting and exercising the option (vesting period and lock-up), and the dilutive impact on the shareholding held by shareholders. In the Italian legal system, the disclosure standard acts as a preventative filter, making it extremely difficult to submit partial or misleading information to a vote.

	The Delaware model	The Italian model
Goal	High risk, high reward. Pay-for-performance.	Long-term sustainability, balance between fixed and variable components.
Transparency	Often delegated to complex	Rigid, standardized by

	contracts, with the risk of information asymmetries.	Consob with identical information templates for all issuers.
Role of shareholders	Assembly vote which can be influenced by the charismatic weight of the founder.	Binding prior assembly vote, supported by proxy advisors who monitor Compliance with best practices.

Figure 11. *Comparison between the Delaware and the Italian model*

Note. Author's own elaboration

3.2.1 The Consob Regulation on Related-Party Transactions (Resolution No. 17221/2010 and subsequent amendments): the definition of a Related Party and the criteria for materiality.

While Article 123-ter of the TUF regulates the nature of managerial compensation, the most powerful legal barrier against potential abuses by the majority or self-referential tendencies of “Super-CEOs” is the Consob Regulation on Related-Party Transactions, adopted with Resolution No. 17221 of March 12, 2010, and subsequently amended to align with SRD II.

The rationale behind this regulation is rooted in the protection of savings and the integrity of corporate assets against the risk of tunneling (expropriation of company resources for the benefit of the controlling shareholder or top managers). In the Italian corporate context, historically characterized by concentrated ownership (the presence of a stable controlling shareholder, such as the Agnelli family for the Exor/Stellantis group), the primary risk is not the isolated agency conflict between managers and dispersed shareholders, typical of the US

public company model, but rather the conflict between the majority shareholder and minority shareholders.

For the application of the regulation, Consob adopts the definition of Related Party borrowed from international accounting standards, specifically IAS 24. This category therefore includes a person or entity that is related to the issuing company if they exercise control, joint control, or significant influence over the company, as well as key management personnel, including the Chief Executive Officer (CEO). Consequently, if a CEO also holds a significant shareholding (constituting an identity overlap identical to that of Elon Musk in Tesla), any resolution concerning his variable remuneration, unless the ordinary exemptions apply, qualifies as a related-party transaction. (Consob, 2010)

The Consob regulation makes a fundamental distinction based on the economic-financial dimensions of the transaction, dividing them into:

Transactions of Lesser Importance, which are subject to a simplified procedural regime. A committee of independent directors must express a non-binding but reasoned opinion on the company's interest in completing the transaction and the appropriateness of the related conditions.

Transactions of Greater Importance: Identified by exceeding specific quantitative thresholds (equal to 5%) (or 2.5% for smaller listed companies) calculated on three relevance indicators: the value relevance indicator, the asset relevance indicator, and the liability relevance indicator. (Consob, 2010)

A stock option or extraordinary equity incentive plan on the scale of the one granted to Elon Musk in 2018 (with an original theoretical value of \$2.6 billion and a final value of \$56 billion) would instantly and massively exceed the 5% threshold of the entire company's market capitalization. Consequently, under Italian law, such a plan would be classified as a

Related Party Transaction of Greater Importance. Once an extraordinary compensation plan is thus classified, the decision-making authority is removed from the free and unquestionable discretion of the ordinary board of directors. The Consob Regulation imposes a rigid procedural framework, aimed at artificially recreating a remote market negotiation (arm's length transaction), eliminating the decision-making pollution generated by conflicts of interest.

The procedural safeguards imposed by Italian law are structured on four mandatory levels:

1. The negotiation reserve for the Independent Directors Committee. The committee responsible for evaluating and negotiating the compensation plan must be composed exclusively of independent and unrelated directors. Pursuant to the regulation, this committee must be involved from the negotiation and preliminary investigation phases. It has the right to receive a complete and constant flow of information and may be assisted, at the company's expense, by independent financial experts and advisors of its choice, who are responsible for issuing a fairness opinion on the financial appropriateness of the plan with respect to the interests of the company and all shareholders.

2. The Committee's veto power: In the U.S. system, board committees generally have an advisory role, and their recommendations can be ignored by the board. The Consob Regulation gives the Independent Directors Committee stronger power. In case of transactions of greater significance, the board of directors cannot approve the transaction if the Independent Directors Committee gives a negative opinion. The appointment of independent directors is not just a consultative act but is a condition for the admissibility and validity of the resolution.

3. The obligation of the urgent Information Document: To ensure complete market transparency, within seven days of the transaction's approval by the competent body, the

company is required to make a detailed Information Document available to the public at its registered office and on its website. This document must contain a detailed description of the conflict of interest, the financial rationale for the transaction, the criteria for determining the price (or bonus), and, in an attachment, the full opinion issued by the Independent Directors Committee, allowing any investor to verify the linearity of the process. (Consob, 2010)

4. The Whitewash Mechanism, Article 11, Paragraph 3 (Conditional Shareholders' Approval):

If the Board of Directors, recognizing a vital strategic interest for the company, intends to proceed with the execution of the extraordinary plan despite the opposition of the Committee of Independent Directors, the Consob Regulation offers a single legal solution, known as a whitewash clause. The effectiveness of the board's resolution is conditional upon express approval by the ordinary shareholders' meeting. However, to prevent the controlling shareholder (the interested CEO and his supporters) from using their numerical strength to impose the plan, the regulation establishes that the transaction is prohibited if a majority of unrelated voting minority shareholders oppose it, provided that they represent at least 10% of the share capital with voting rights. (Consob, 2010)

In US case law, control over conflicts of interest of controlling shareholders is entrusted to subsequent judicial review (ex-post judicial review), activated through costly derivative actions based on Entire Fairness standards. The American judge must reconstruct, after several years, whether the price was "fair" and the procedure "correct". The Italian legal system, on the contrary, adopts a preventive and procedural (ex-ante) protection model. Had Elon Musk proposed the same remuneration package in Italy, and assuming it qualified as a related party transaction, neither he nor the shareholders connected to him would have been able to influence the outcome of the vote through the whitewash mechanism. The decision would instead have been left to the unrelated minority shareholders, who would have cast

their votes based on a publicly available Information Document and within a system subject to Consob's supervisory oversight.

<i>Process phase</i>	Process in Delaware (Tesla case)	Process in Italy (under Consob regulation)
<i>Investigation and negotiation</i>	Conducted by a remuneration committee composed of individuals linked to Musk by historical business ties and friendships. The company lacks true independent advisors.	Mandatory entrusted to a committee composed only of independent directors. Assistance from an independent financial advisor paid by the company to calculate the appropriateness of the plan.
<i>Power of the committee</i>	The committee “captured” by the CEO, passively accepted Musk’s requests, proposing the plan to the board of directors without conducting any real downward negotiation.	Faced with a disproportionate request lacking any maximum limits (cap), the committee would have been obliged to oppose a negative opinion by blocking the board of directors’ resolution due to a manifest lack of substantial correctness.
<i>Information transparency</i>	Partial information provided to the market through the proxy statement. Omission of the actual relationships of interdependence between the directors and the controlling shareholder.	Obligation to publish within 7 days the information document with an explanation of all conflicts and the publication of the text of the committee’s negative opinion.
<i>Vote in the assembly</i>	Approval by a large majority thanks to the decisive vote of the shares of Musk and his	Activation of the whitewash: a complete ban on Musk and related shareholders counting

	allies/insiders of the company, which crushed the dissent of the small shareholders.	their votes. The final decision would rest exclusively with the majority of small savers and unrelated institutional funds.
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Figure 12. *Process in Italy vs process in Delaware*

Note. Author's own elaboration

3.2.2 Related-Party Transactions and Controlling Shareholders: A Comparative Analysis of Delaware and Italy

In contemporary corporate law, managing transactions involving conflicts of interest represents one of the most complex challenges for the protection of the market and investors. When a company enters a transaction with a party related to it, be it a director, an executive, or, especially, a controlling shareholder, there is a concrete risk that those in senior positions will pursue their own interests to the detriment of the company and its minority shareholders. In Delaware, when a company enters a transaction with its controlling shareholder (such as the massive payout to Elon Musk), judges are naturally wary. The default judgment standard is automatically entire fairness. Under this rigorous scrutiny, the burden of proof shifts entirely to the defendant, who must demonstrate the coexistence of the two pillars of fair dealing and fair price.

The company and its directors do not want to undergo this strict scrutiny. Their goal is to obtain the application of the Business Judgment Rule, because with this standard, the judge trusts their decision and dismisses the case in their favor. The Delaware Supreme Court has ruled that it is possible to switch from the rigorous scrutiny of entire fairness to the BJR, if the MFW procedure is followed (Judgment Kahn v. M & F Worldwide Corp. 2014). The

transaction is conditioned *ex ante* on joint compliance with two procedural requirements: Prior approval by a Special Committee composed of independent and diligent directors and second a favorable vote and fully informed of the majority of the non-interested minority shareholders (majority of the minority). (Ghilardi, 2025)

Although the MFW ruling originated in the context of mergers with liquidations of minority shareholders (cash-out mergers), subsequent case law has extended the application of this dual protection to other contexts, including directors' compensation and decisions to transfer the registered office (reincorporation). Some critics have defined this expansion as "MFW creep", believing that for transactions other than cash-out mergers, a single procedural safeguard should be sufficient, due to intrinsic limitations such as the cognitive biases of independent directors. However, the Delaware Supreme Court, in the recent *Match* decision, rejected these objections, confirming that the dual MFW procedure is necessary for all transactions with the controlling shareholder because there is a risk of coercion. Therefore, if the company has correctly followed all the MFW rules, the judge will apply the BJR. If the company has not followed or has poorly followed the MFW rules, the judge will apply the entire fairness principle, and the transaction is being scrutinized and risks being annulled, as in *Tornetta 1*. In fact, since there was a controlling shareholder and the company had not activated both safeguards of the MFW procedure from the outset, it had obtained the shareholder vote but had not used a committee of truly independent directors. The case had to go to trial under the strict scrutiny of the entire fairness principle, and neither fair dealing nor fair price were satisfied, given that the negotiation process had been profoundly flawed and anything but independent. Even on a strictly economic level, the court held that the company had not been able to demonstrate the fairness of the \$56 billion sum. (Ghilardi, 2025)

While in Delaware the discipline is predominantly based on case law (created by judges' rulings), in Italy the matter is regulated by law, as Article 2391-bis of the Civil Code,

introduced by the 2003 reform, requires the boards of directors of companies that resort to the venture capital market to adopt internal rules to ensure transparency and substantive correctness procedures for transactions with related parties (including controlling shareholders). This legislative delegation is implemented in the Consob OPC Regulation (Resolution No. 17221/2010), which analytically regulates, as previously seen, the decision-making process depending on the significance (major or minor) of the transaction. The Consob regulation requires the mandatory intervention of a committee composed exclusively of independent and unrelated directors before the transaction is carried out. This committee is responsible for conducting negotiations and must express a binding favorable opinion on the transaction. If the independent committee expresses a negative opinion, the transaction is blocked. However, company regulations may provide for a safety valve like the majority of the minority in Delaware, in fact, the bylaws may allow the shareholders' meeting to approve the transaction anyway, as long as the majority of the minority shareholders do not vote against it. (Ghilardi, 2025)

In Italy, on the contrary, the Business Judgment Rule, understood as the non-judicial review of the merits of management decisions, enjoys a consolidated stability established by the jurisprudence of the Court of Cassation. Italian judges are declared structurally lacking the necessary expertise to re-determine the "fair market price" of a deal. In Italy, judges cannot review the economic merits of a business decision, i.e., whether a deal was profitable or not. Judges can only verify whether directors acted with due professional diligence, i.e., whether they gathered adequate information, assessed the risks, and followed the correct decision-making process. Therefore, if a company violates the procedures of the Consob Regulation or acts in a conflict of interest, the court's review does not shift to the economic merits. Rather, the procedural violation is classified as a breach of the duty of professional diligence (Article 2392 of the Civil Code). The primary remedy is not the annulment of the deed of disposal

(which generally remains valid and effective against third parties), but rather a liability action pursuant to Articles 2392 and 2393 of the Italian Civil Code. The directors will be ordered to compensate the financial damages suffered by the company or minority shareholders pursuant to Article 2395 of the Italian Civil Code, but the judicial determination will remain based on the conduct and procedural negligence of the agents, without creating a pervasive control over the intrinsic value of the asset. (Ghilardi, 2025)

Therefore, despite starting from different technical assumptions, a system based on written rules in Italy versus a system based on judicial disputes in Delaware, both systems converge towards the same objective: isolating the controlling shareholder through the mandatory filter of independent directors and, ultimately, placing the democratic decision back in the hands of the minority shareholders.

3.3 The Italian Corporate Governance Code: Effectiveness of the “Comply or Explain” Principle

An analysis of the rules governing related-party transactions highlights how the Italian legal system has developed rules aimed at preventing conflicts of interest in corporate management. In addition to the statutory provisions, a set of soft law rules contained in the Corporate Governance Code operates, strengthening the principles of independence, transparency, and fairness in decision-making, particularly regarding determining directors’ remuneration.

Alongside primary sources such as the Consolidated Law on Finance (TUF), the structure of compensation and controls in Italian listed companies is profoundly influenced by the soft law provisions contained in the Corporate Governance Code (approved by the Corporate Governance Committee and promoted by Borsa Italiana, ABI, Ania, Assogestioni, Assonime, and Confindustria). This tool is part of the functioning of the financial market through the

“Comply or Explain” principle, typical of European corporate governance systems and incorporated into Italian law by Article 123-bis of the TUF. Listed companies are therefore required to describe their corporate governance model and explain any deviations from the reference recommendations. (Comitato per la Corporate Governance, 2020)

If a company decides to deviate from one or more recommendations, it does not face a legal penalty, but is legally required to provide a detailed, clear, and market-comprehensible explanation. Institutional investors and proxy advisors will then assess whether the deviation is justified by industrial needs or whether it represents a sign of governance opacity.

Article 5 of the Corporate Governance Code devotes a significant section to directors’ remuneration, with the aim of avoiding excessive or unbalanced compensation systems. From this perspective, the remuneration policy for executive directors must be geared towards the sustainable success of the company and provide a balanced structure between fixed and variable components. Specifically, the variable component should be subject to caps, tied to long-term objectives, and partially deferred. The Code also encourages the use of indicators that are not only financial but also linked to ESG factors. (Comitato per la Corporate Governance, 2020)

A central role is also assigned to the Remuneration Committee, which must be composed of non-executive directors, the majority of whom are independent. This structure serves to ensure greater autonomy in decision-making and reduce the risk of compensation decisions being excessively influenced by executive management, a risk that comparative literature has also highlighted in cases such as *Tornetta v. Musk*. (Comitato per la Corporate Governance, 2020)

3.3.1 The Internal Control Model: The Role of the Board of Statutory Auditors and Independent Directors

One of the peculiarities of Italian corporate law, which clearly differentiates it from both the Delaware monistic model and the Central European dualistic models, lies in the structure of the traditional management and control system, characterized by the presence of the Board of Statutory Auditors as an independent internal supervisory body.

Pursuant to Article 2403 of the Italian Civil Code and Article 149 of the Consolidated Law on Finance (TUF), the Board of Statutory Auditors constantly monitors compliance with the law and the bylaws, adherence to the principles of management, and, in particular, the adequacy of the organizational, administrative, and accounting structure adopted by the company. In the context of remuneration policies, the statutory auditors do not enter the merits of financial decisions (governed by the business judgment rule), but they have the strict duty to monitor the procedural regularity of the resolutions of the Board of Directors.

Statutory auditors are required to attend meetings of the Compensation Committee and the Board of Directors. If they determine that a stock option plan or bonus has been approved in violation of Consob procedures on related parties, or without meeting the disclosure quorums required by Article 123-ter of the TUF, the statutory auditors have the power and duty to challenge the board resolution or, in the most serious cases, to urgently convene a shareholders' meeting or file a complaint with the Court pursuant to Article 2409 of the Civil Code.

At the same time, the role of Independent Directors within the Board of Directors has gradually been elevated from mere formality to a true fulcrum of board discussion. Pursuant to the TUF and the Corporate Governance Code, an independent director is one who does not

have, nor has recently had, even indirectly, any commercial, financial, or professional relationships that could influence their independent judgment with the company, its parent companies, or executive directors. Their presence on board committees (remuneration, control and risk, nominations) ensures that crucial decisions regarding management compensation are reviewed by individuals who are structurally free of conflicts of interest, guaranteeing impartiality. (Melis, 2004)

In fact, the Italian legal system not only grants supervisory powers to the Board of Statutory Auditors and independent directors, but also regulates their selection procedures, ensuring, through the list voting system, stable minority representation on the administrative and control bodies.

The most disruptive legal innovation in the Italian legal system, considered unique at the international level and studied by jurists around the world, is the List Voting mechanism for the election of members of the Board of Directors and the Board of Statutory Auditors, introduced by Article 147-ter of the TUF (for the Board of Directors) and Article 148 of the TUF (for the Board of Statutory Auditors). In Anglo-Saxon and American corporate systems, the list that obtains the majority of votes at the shareholders' meeting (even by a single vote) wins all the seats on the Board of Directors (winner-takes-all). This system allows a controlling shareholder, or a majority coalition, to appoint a board composed entirely of individuals they trust, eliminating internal dissent. Italian law has undermined this principle by requiring listed companies to structure their bylaws so that at least one member of the Board of Directors and the Chairman of the Board of Statutory Auditors are drawn from the minority list that received the highest number of votes and is in no way connected to the majority shareholders. Usually, this list is presented by the big national and international institutional investment funds that act in coordination through Assogestioni. (Passador, 2018)

The director elected from the minority list has a permanent seat on the Board of Directors and often also on the Compensation Committee. This means that the controlling shareholder and executives can't secretly negotiate bonuses or stock options; the minority director has full access to documents and can inform the market or raise formal objections.

Furthermore, the requirement that the Chairman of the Board of Statutory Auditors be a minority-elected auditor ensures that the supervisory body is a third-party body with penetrating inspection powers.

At Tesla, Musk was able to dominate a board devoid of truly independent voices. In an Italian listed company, the mandatory presence of minority directors and auditors elected by institutional funds would have prevented the emergence of a one-party, compliant board, ensuring continuous internal and preventive oversight against any attempt to expropriate corporate value. The presence of independent directors, a Board of Statutory Auditors, and minority representatives aims to prevent opportunistic decisions from being adopted within the company. The Italian legal system, however, does not rely exclusively on these preventive tools: it also provides civil remedies that allow minority shareholders to challenge illegitimate or abusive shareholder resolutions, even after their adoption.

The first and most relevant case of law protection is the concept of Abuse of Majority (or the defect of excess of power in a shareholder resolution). Although the Italian Civil Code does not define the concept of abuse of majority power, the Supreme Court of Cassation's case law establishes that a shareholders' resolution is illegitimate and can be annulled under Article 2377 of the Italian Civil Code if it is intentionally aimed solely at harming the interest of minority shareholders and cannot be justified by any corporate interest.

In the field of executive compensation, there's an abuse of majority power when a controlling shareholder or a controlling coalition uses their voting weight at the shareholders' meeting to

approve a stock option plan or an extraordinary bonus for themselves or related parties, causing an unfair dilution of minority shareholders' shares. The minority, demonstrating the lack of economic rationality of the plan and the intent to expropriate, can appeal to the Business Court to have the resolution annulled and to claim damages.

The right to withdraw from is a different matter. It does not constitute a remedy against remuneration policies as such but may be relevant when these policies are part of extraordinary transactions or amendments to the bylaws falling within the cases provided for by Article 2437 of the Italian Civil Code.

Chapter 4: Tesla and Stellantis, a comparative case study

4.1 The phenomenon of European “Corporate Law Shopping” and the attractiveness of Dutch corporate law.

The comparative analysis developed in the previous chapters highlights a clear difference: on the one hand, the North American legal system (Delaware) is oriented towards flexibility and the centrality of top management; on the other, the European context, focused on procedural protection, sustainability, and stakeholder rights. To understand the practical impact of this transatlantic difference, we examined the Stellantis N.V. group. With strong European (Italian and French) industrial roots, but governed by Dutch corporate law, the Stellantis case and the controversial remuneration of its CEO, Carlos Tavares, perfectly exemplify the governance dynamics examined thus far.

The Stellantis N.V. group, formed in 2021 from the merger of the Italian American automotive groups Fiat Chrysler Automobiles (FCA) and the French group PSA (Peugeot), represents a corporate model of interest for the study of comparative corporate governance. Despite concentrating their production facilities and target markets primarily in Italy, France, and the United States, the contracting parties agreed to establish the holding company's registered office in Amsterdam, qualifying Stellantis as a *Naamloze Vennootschap* (N.V.), a public limited company under Dutch law. To understand the reasons that drive large industries born along the Italian French axis to establish their registered offices in Amsterdam, it is essential to analyze the phenomenon of corporate law shopping. This mechanism, in fact, hinges on the contrasting models for determining the *lex societatis*, the practical effects of which are diverging in terms of legal certainty. The place of incorporation is a real principle, no ambiguity, is a formal element, it is where company is incorporated; the real seat is not precise, is the strongest physical connection to the state, it can look at the place of jurisdiction

where the company makes more revenues or also where the board of directors is located or the place where the manufacturing is located. Place of incorporation would be more appropriate for granting an effective freedom of establishment and movement and gives the opportunity to choose the law prefer. In a system based on the incorporation principle, corporations are free to choose the state in which they prefer to incorporate independently of where they are physically located or where they do business. In other words, they can engage “regulatory arbitrage”, means a phenomenon of cherry picking/selecting the law they prefer. On the other hand, under the “real seat” approach, since the applicable law depends on physical contacts with a specific jurisdiction, it might be impossible or inefficient, for a corporation, to choose incorporation in one jurisdiction over another. The ECJ has substantially overload such a juxtaposition, with various pronouncements around year 2000 and afterwards, shook the foundations of European Corporate Law and heralded a new era in the freedom of incorporation and choice of law within EU (the “negative harmonization”). ECJ said whatever is the principle applied, nevertheless the EU union and principle of freedom of movement and establishment come first. The ECJ established that the principle to be applied is the place of incorporation, the most appropriate to grant the freedom of movement. (Baelz, 2002)

The superiority of the place of incorporation principle is not merely a theoretical preference, but a direct response to the practical barriers created by the real seat theory. A prime example of this dynamic is the *Überseering Case* and *Centros case*. In the *Überseering Case*, two German business partners bought a Dutch limited company known as a BV and moved all their operations to Germany. The German courts applied the real seat theory and refused to recognize it as a real company in Germany. Because of that, they treated the owners as a simple partnership, leaving them personally liable for all the company’s debts. But the European Court of Justice stepped in and set things straight. The Court ruled that because the

company was legitimately set up under Dutch law, it was a fully valid legal entity. That meant it had every right to do business across the European Union as a proper limited company, protecting the owners from unlimited personal liability. (Baelz, 2002)

The Centros case deals with a Danish couple that incorporated a company in UK but never did a single activity in there, went back in Denmark opening a branch and asked the Danish authority to register it, but the Danish authority did not agree because applied the real seat principle and they had to comply with the company laws of Denmark stated that for incorporating a private limited company is required a minimum initial capital. UK allowed that the incorporation of private limited company required no limits of initial capital. ECJ stated that such a refusal wasn't comply with the general principle of freedom of movement and establishment within European union, the only principle to be applied is the place of incorporation. The refusal of the Danish authorities was in violation of the over standing EU principles.

Within the European single market, the freedom of establishment guaranteed by Articles 49 and 54 of the Treaty on the Functioning of the European Union (TFEU), combined with the Court of Justice's landmark case law, such as the Centros, Überseering, and Inspire Art rulings, has established the replacement of the "real seat" criterion with the "incorporation" one. Consequently, those initiating a corporate transaction can freely choose their national legal system, regardless of the location of the production facilities or operational headquarters.

Over the past two decades, the Netherlands has emerged as the preferred jurisdiction for European multinational holding companies. Contrary to popular belief, the attractiveness of Dutch law is not primarily linked to tax avoidance concerns (protections against profit shifting are now harmonized at the OECD and EU levels), but rather to the extraordinary

flexibility of its corporate governance, and particularly the instruments protecting shareholder control. Dutch corporate law allows the introduction of a mechanism called loyalty voting structure. Thanks to the issuance of special voting shares, long-term Stellantis shareholders, like the Agnelli/Elkann family's holding Exor, the Peugeot family, and the French state, manage to multiply their influence at shareholder meetings without having to invest more capital. This way, the main shareholders ensure strategic control of the company and the appointment of the board of directors, even if there are recapitalizations or simultaneous listings on three different stock exchanges like Milan, Paris, and New York. In the face of mergers and extraordinary reorganizations that would have diluted the shareholdings of the main long-term shareholders, the special voting shares have allowed them to maintain a position of strategic control. Despite holding a relatively small share of the total financial capital, the assignment of special votes allows these shareholders to control a significant percentage of the actual voting rights at shareholders' meetings. (Baelz, 2002) (Gomes de Gouveia, 2021)

However, this marked flexibility in protecting ownership control is counterbalanced by rigid and binding regulations regarding the regulation of managerial compensation and the protection of minority interests.

4.1.1 Implementation of SRD II into the Dutch Civil Code (Burgerlijk Wetboek)

The incorporation of the provisions of Directive (EU) 2017/828 into Dutch law was formalized through amendments to Book 2 of the Dutch Civil Code (Burgerlijk Wetboek - DCC). The approach adopted by the Dutch legislator is notable for raising the requirements for approving the remuneration policy well beyond the minimum standards imposed by the EU directive, transforming the general meeting into a highly binding supervisory body. (Van

der Elst & Lafarre, Shareholder Stewardship in the Netherlands: The Role of Institutional Investors in a Stakeholder Oriented Jurisdiction, 2020)

The core of the legislation is Article 2:135a of the DCC. This provision establishes that the (ex-ante) remuneration policy for members of the management board (bestuur) and the supervisory board (raad van commissarissen, in Dutch two-tier or one-tier systems) must be adopted by the general meeting of shareholders. The unique feature of the Dutch legal system lies in the quorum rules established by law. Generally, approval requires a qualified majority of 75% of the votes cast at the meeting, unless the bylaws expressly provide for a lower threshold. Stellantis intended to exploit this flexibility, setting the threshold at 50%+1 of the votes to prevent the fragmentation of small shareholders from paralyzing decisions. In addition to the voting requirements, however, Dutch law imposes stringent documentation requirements that effectively eliminate any discretionary power of the Board of Directors. The remuneration policy submitted for a vote must precisely describe how it contributes to the company's long-term strategy but must also contain a detailed explanation of the impact of compensation on the working conditions and compensation of the company's employees. (Van der Elst & Lafarre, Shareholder Stewardship in the Netherlands: The Role of Institutional Investors in a Stakeholder Oriented Jurisdiction, 2020)

Pursuant to Article 2:135b of the DCC, the annual remuneration report (the ex-post review) must be specifically drafted. It is mandatory to disclose the annual change in each director's remuneration, the evolution of the company's financial performance, and the change in the average remuneration of full-time employees over the last five financial years. This tripartite historical comparison, known in legal literature as the comparative table requirement, makes any discrepancies between the top management and the workforce immediately visible to institutional investors and the market. (Van der Elst & Lafarre, Shareholder Voice on Executive Pay: A Decade of Dutch Say on pay, 2017)

If the shareholders' vote on the ex-post report expresses a negative opinion (although formally advisory), Article 2:135b establishes that the company cannot limit itself to merely acknowledging the situation. The Board of Directors is legally required to include a dedicated chapter in the following year's report, detailing how the remuneration policy has been modified to comply with the shareholders' criticisms or, alternatively, why it was deemed inappropriate to comply, thus exposing itself once again to market scrutiny. (Van der Elst & Lafarre, Shareholder Voice on Executive Pay: A Decade of Dutch Say on pay, 2017)

Dutch corporate law provides for a dualistic governance structure (two-tier board), characterized by a clear separation between a Management Board (Raad van Bestuur) and a Supervisory Board (Raad van Commissarissen). However, the legal system allows for the adoption of a mitigated one-tier board model, which Stellantis has specifically chosen. Stellantis's single Board of Directors comprises both executive directors, such as Executive Chairman John Elkann and former CEO Carlos Tavares and non-executive directors with supervisory functions, many of whom meet the independence requirements set by the Dutch Corporate Governance Code. (Van der Elst & Lafarre, Shareholder Voice on Executive Pay: A Decade of Dutch Say on pay, 2017)

Furthermore, in the Netherlands, employee participation in the strategic life of the company is regulated by the Works Councils Act (Wet op de ondernemingsraden - WOR). Every company operating in the Netherlands with more than fifty employees is required to establish a Works Council (Ondernemingsraad), a body directly elected by workers with specific consultation powers and, in certain matters, veto power. Before the compensation policy of the Board of Directors of a giant like Stellantis is submitted to the shareholders' meeting for a vote, the Works Council has the right to express a reasoned and formal opinion (adviesrecht). The Remuneration Committee is required to present the draft plan in advance, at least six weeks before the meeting. At this stage, employee representatives carefully review the document,

focusing on internal pay disparities (pay ratios), the relationship between the maximum executive bonuses and the salary levels established by collective agreements and any restructuring or layoff plans.

While not binding on the outcome, the Works Council's opinion carries significant legal and reputational weight. The document must be submitted in writing to the Board, included in the file available to shareholders, and published on the company website. If the Board of Directors decides to deviate from the workers' position, it is formally required to provide detailed written justification for its decision to the meeting. (Van der Elst & Lafarre, *Shareholder Voice on Executive Pay: A Decade of Dutch Say on pay*, 2017)

In the *Tornetta v. Musk* case, Elon Musk's compensation plan was negotiated in confidentiality between the CEO and a compliant board of directors, without Tesla employees having any visibility or opportunity to express their opinions. In a company governed by Dutch law, a plan of billions of dollars and with no cap would have instead triggered immediate formal opposition from the works council. This would have alerted large Dutch pension funds like APG and PGGM, among the world's largest institutional shareholders, effectively blocking its approval at the shareholder meeting well before any judicial intervention.

In addition to the primary legislative provisions of the Civil Code, Stellantis' compensation must comply with the Dutch Corporate Governance Code. This soft law, expressly referenced in Article 2:391 of the DCC, operates according to the well-established "comply or explain" principle, listed companies are required to comply with its recommendations or, failing that, to provide a detailed and convincing justification in the annual report.

The Dutch Code devotes the entirety of Chapter 3 to remuneration, basing it on the principle that directors' compensation must promote long-term sustainable value creation. This legal

definition is the opposite of the target structure set for Elon Musk in 2018. Tesla's plan, in fact, was based on twelve tranches of objectives tied exclusively to the achievement of certain levels of market capitalization (from \$100 billion to \$650 billion) and operating revenue. The Dutch Code implicitly prohibits such a purely financial and speculative approach, requiring the Remuneration Committee to conduct a preemptive scenario analysis. Before deciding on the variable compensation structure, the committee must mathematically simulate the performance of the compensation plan under different market conditions, verifying the impact of the bonuses on the company's financial stability in the event of macroeconomic shocks. (Van der Elst & Lafarre, Shareholder Voice on Executive Pay: A Decade of Dutch Say on pay, 2017)

Furthermore, the Code requires the adoption of clawback and malus clauses with extremely broad scope. Pursuant to Article 2:135, paragraph 6 of the DCC (which incorporates a recommendation from the Code), the Supervisory Board or independent directors have the unilateral legal power to modify or revoke variable bonuses awarded to managers if they prove inadequate or unfair in light of subsequent events, or if the financial statements used for the calculation are proven incorrect (restatement). The Dutch Civil Code thus provides the board of directors with a preventive arm. In Delaware, once stock options have been contractually granted to a manager, revoking them requires a complex and uncertain legal action for breach of fiduciary duties; in Delaware, removing or revoking a manager's maximum bonus is extremely difficult and requires a full-blown legal battle in court, as has happened. (Van der Elst & Lafarre, Shareholder Voice on Executive Pay: A Decade of Dutch Say on pay, 2017)

4.2 Analysis of the Compensation Plan of Carlos Taveras, Former CEO of Stellantis

To understand the corporate governance dynamics that have affected Stellantis N.V., it is necessary to conduct a quantitative and qualitative analysis of the compensation of its CEO, Carlos Tavares, in office from 2021 to 2024, now replaced by Antonio Filosa. In accordance with European directives and the disclosure requirements of Section II of the Compensation Report, Stellantis adopts a pay-for-performance compensation policy. However, the structure of Tavares's package has reached such figures that, in effect, he is comparable to those of US corporations. Carlos Tavares's compensation at Stellantis has been biased toward variable components from the outset; in fact, over 90% of his potential compensation was not guaranteed, but rather depended on the achievement of specific financial, industrial, and sustainability objectives. (Stellantis, Annual report and form 20-F for the year ended december 31, 2021, 2022)

Analyzing the CEO's compensation structure, specifically for 2021, it is structured according to three macro-components: Fixed Compensation, established on an annual monetary basis of approximately €2 million, a figure in line with European automotive industry benchmarks, with the aim of remunerating the role, permanent responsibilities, and managerial value; and Short-Term Variable Compensation (MBO - Management by Objectives), a portion of which is strictly tied to the achievement of annual financial and operational targets measured ex post such as adjusted operating profit margins and industrial free cash flow. For 2021, the focus is on the short-term incentive component (SAIP), a cash bonus with a target value of 200% of the base salary (€4 million) and a maximum cap of 400% so €8 million. For that year, the bonus paid out was €7.5 million, linked to the achievement of four key indicators: adjusted operating margin, free cash flow, expected economic and production synergies from the FCA-PSA merger, and vehicle quality indicators.

(Stellantis, Annual report and form 20-F for the year ended december 31, 2021, 2022)

And finally, the long-term incentive plans (LTIPs), which are the true driving force behind Tavares's compensation package. A significant portion of the compensation is paid in shares, divided into 75% Performance Share Units and 25% Restricted Share Units, and multi-year bonuses linked to technological transition. These equity awards were not cashed in immediately, but vested over three or more years, provided the company achieved specific objectives such as shareholder return (TSR) compared to global automotive competitors (such as Volkswagen, Ford, GM, or Toyota), completed the integration of the group's various brands, and met CO2 emission reduction limits set by European and American regulations. Regarding the award and actual payout of the 2021 Long-Term Incentive Plan (LTIP) to Carlos Tavares, the process is divided into two phases: the Initial Award in 2021 (Gained Value), and the target LTIP opportunity for the CEO was set at 600% of base salary (i.e., €12 million in theoretical market value at the time of award). The Actual Payout Performance Share Units (PSUs), and Restricted Share Units (RSUs) awarded under the 2021 plan had a three-year vesting and performance review period (2021-2023). Thanks to the exceeding of three-year targets such as TSR and the achievement of merger synergies and the strong increase in the Stellantis share price in the 2021-2023 period, the real value of this incentive at the time of vesting increased significantly, contributing over €13-14 million to the deferred incentives accrued in subsequent years. (Stellantis, Annual report and form 20-F for the year ended december 31, 2021, 2022)

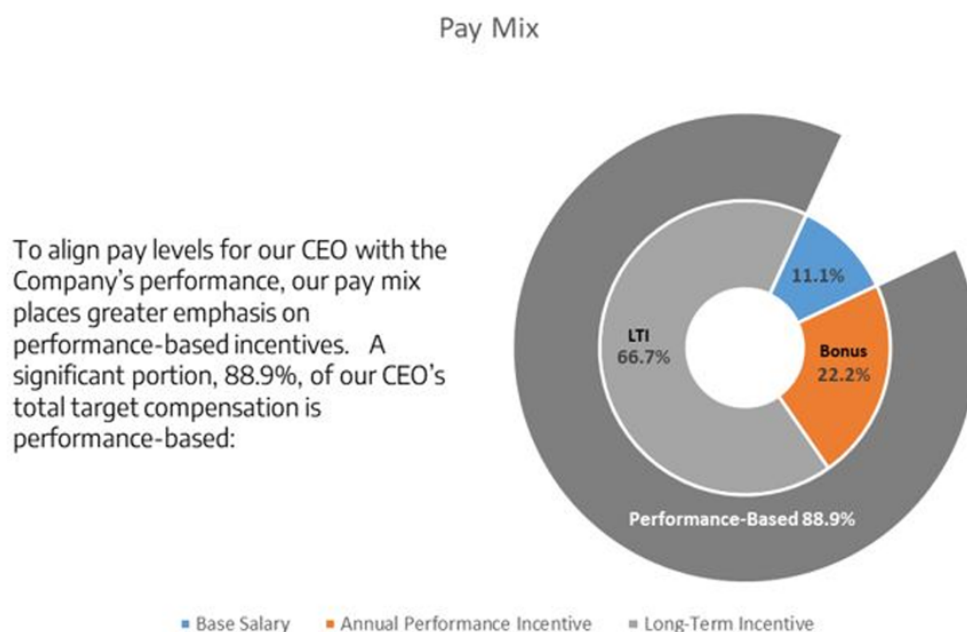


Figure 13. *Pay mix*

Note. From Annual Report and Form 20-F for the year ended December 31, 2021

4.2.1 The Historic Shareholders' Meeting and the Activation of the Dutch Say-on-Pay

The Stellantis shareholders' meeting cast a 52.1% advisory vote against the 2021 Compensation Report, deeming Tavares's remuneration of approximately €19 million excessive. This also sparked considerable controversy from the French government, which holds a stake through Bpifrance, sparking a violent chain reaction from institutional investors and political actors. The climax of the controversy occurred during the Annual General Meeting (AGM). At that meeting, major international investment funds, coordinated by the recommendations of proxy advisors (such as ISS and Glass Lewis) and encouraged by institutional managers such as Allianz Global Investors, expressed a united and forceful dissent against the Compensation Report. The central criticism did not challenge the

manager's skill, but rather the unfairness of the pay ratio over 500 times the average salary of a group worker and the lack of an ethical justification for such a high transformation bonus in the face of staff cuts and industrial plant closures in Europe and the United States.

In an interview with French media, Carlos Tavares defended his compensation, comparing it to the salaries of professional footballers or Formula 1 drivers and pointing out that the market for top managers is now global and extremely competitive. The CEO then emphasized that over 90% of his compensation was tied to company results, which were record in both 2021 and 2023, finally launching a provocation at politicians: *"If you find this salary unacceptable, pass a law to regulate it, and I will respect it"*.

From a legal perspective, the case highlighted the functioning of Dutch corporate law, incorporating the provisions of SRD II. Under the Dutch regulations currently in force for the Naamloze Vennootschap (N.V.), the shareholders' vote on the Report on Remuneration Paid (Section II) has a consultative nature. Therefore, the shareholders' negative vote, which on a historic first occasion nearly achieved an absolute majority and which in subsequent meetings continued to record exceptionally high opposition rates, ranging between 30% and 44%, could not legally invalidate or revoke the sums already contracted and paid to Tavares for the relevant financial year. However, dismissing the shareholders' outcome as a mere exercise in ineffective rhetoric fails to understand the reputational sanctioning power of the European system. The negative vote forced the Stellantis Board of Directors and Remuneration Committee to undertake a massive market engagement campaign. (Stellantis, Remuneration report, 2023) (Stellantis, Remuneration report, 2024)

Following the feedback and criticism received from shareholders during the 2022 and 2023 Annual General Meetings, Stellantis undertook an intensive consultation process involving approximately 74% of the top 50 institutional shareholders. The primary objective of this

dialogue was to better align the compensation structure with the company's long-term strategy, while also ensuring greater transparency regarding executive targets. The most significant changes included increased transparency, improved disclosure of performance objectives, CEO Transformation Incentive targets, and the ways in which results determine payouts. Furthermore, no cash retention bonus was paid to Carlos Tavares in 2022 (in 2021, he was paid €1.7 million). Beginning with the 2023 award, the long-term incentive plans for Executive Directors consist of 100% Performance Share Units (PSUs), eliminating non-performance-related Restricted Stock Units (RSUs). Furthermore, any payout based on the Total Shareholder Return (TSR) metric for performance below the competitor median has been eliminated. To ensure greater fairness, the shareholders' advisory vote has been split into two separate parts, one for commitments/compensation related to the pre-merger period and one for post-merger compensation. The 2023-2025 LTI plan also includes a three-year Adjusted Operating Income (AOI) with a weighting of 40%, while the short-term plan (SAIP) has introduced targets related to low-emission vehicles (LEVs) and product quality. (Stellantis, Remuneration report, 2023) (Stellantis, Remuneration report, 2024)

To avoid a downgrade in sustainability parameters, the board was forced, through subsequent annual reports, to analytically justify how it had considered and considered the shareholders' critical comments, remodulating future targets, increasing the weight of ESG metrics linked to decarbonization and electrification and reducing the discretionary components of bonuses. The Stellantis case therefore demonstrates that the European Say-on-Pay, while serving as an ex-post consultative vote, acts as a means of democratic pressure capable of influencing boards of directors ex-ante, distinguishing itself from the ownership anarchy of Delaware. (Stellantis, Remuneration report, 2023) (Stellantis, Remuneration report, 2024)

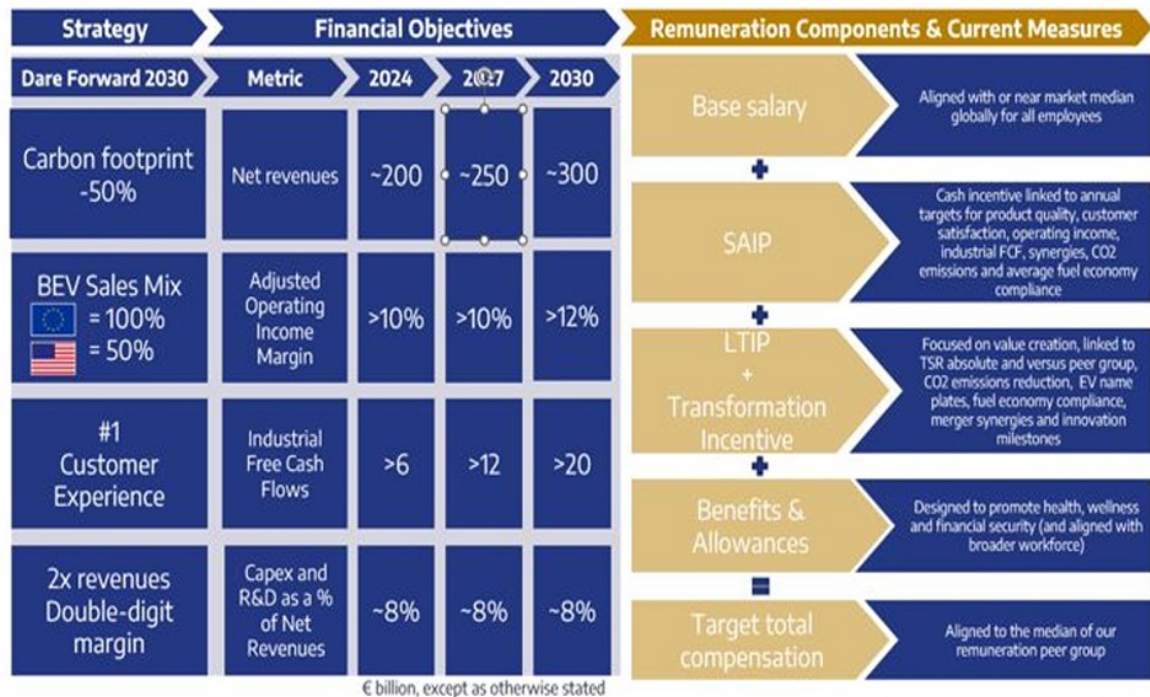


Figure 14. Strategy, financial objectives and remuneration

Note. From the remuneration report 2024 of Stellantis N.V.

The company links each individual compensation item to specific financial and operational objectives. Figure 14 above shows the Dare Forward 2030 strategy focuses on electrification, a 50% reduction in emissions and leadership in customer satisfaction. At the heart of this plan are very concrete targets to be achieved by 2030, such as doubling revenue and generating a cash flow exceeding €20 billion. This image also answers the question of how managers are compensated, a fixed salary ensures coverage of the role, while annual bonuses (SAIP) and long-term equity incentives (LTIP and Transformation Incentive) are activated only if these sustainability and cash flow objectives are achieved.

(Stellantis, Remuneration report, 2023) (Stellantis, Remuneration report, 2024)

4.2.2 The Evolution of the CEO Transformation Incentive 2021-2025

The CEO Transformation Incentive is a special bonus established in 2021 that consists of two main components, the Transformation Incentive (in cash), an incentive up to a target value of €25 million, tied to the achievement of 7 operational/technological milestones by December 31, 2025; and the Shareholder Return Incentive (in shares), the award of 750,000 shares (PSUs) contingent on the creation of shareholder value through stock price appreciation.

The shareholder return incentive represents the purely financial component of Tavares's share package. The €25 million transformation incentive rewarded him for the group's industrial reconversion, instead this tool is only activated if the manager can generate real value on the stock market for shareholders. Unlike many traditional companies, where a 10% or 20% increase in the share price is enough for the CEO to receive a proportional share of the bonus, the logic here is quite different. Stellantis has set a very strict limit:

- Below 80% return the CEO receives ZERO shares. If the stock had gained 79%, Tavares would not have received any of this incentive.
- At 80% return the basic unlock is triggered, the CEO receives 1,000,000 shares.
- At 100% return (doubling of value), the maximum bonus is triggered, 2,000,000 shares.

The initial reference price set by the Board of Directors was €9.64 per share (January 2021). This means that to reach the maximum bonus, Stellantis stock had to double and exceed €19.28. The return is calculated based on the Absolute TSR (total shareholder return). The TSR not only measures the increase in the share price on the stock exchange but also calculates the total shareholder return by adding growth in the share price on the stock exchange and all dividends paid by Stellantis to shareholders during that period. (Stellantis, Remuneration report, 2023) (Stellantis, Remuneration report, 2024)

Between February and August 2024, thanks to record post-merger earnings, Stellantis stock and its TSR had exceeded +100% for over 60 consecutive days. On paper, Tavares was entitled to the maximum award of 2 million shares in 2026. With the market slowdown in 2024 and the subsequent exit of the CEO, the company and Tavares renegotiated the terms. Through a settlement agreement, it was agreed that Tavares would receive 800,000 shares in January 2026, while the remaining 1,200,000 shares were forfeited. This is the perfect example of alignment of interests. The board gives the manager up to 2 million shares, but only if he doubles the capital invested by the shareholders in the company. Musk also had market capitalization targets, but at Tesla there was no realignment in the event of his exit or reduction of bonuses. At Stellantis, when the expansion phase stalled and management separation occurred, the contractual clauses and settlement agreements decreed a cut of 1.2 million shares, demonstrating the presence of parachutes and brakes. (Stellantis, Remuneration report, 2023) (Stellantis, Remuneration report, 2024)

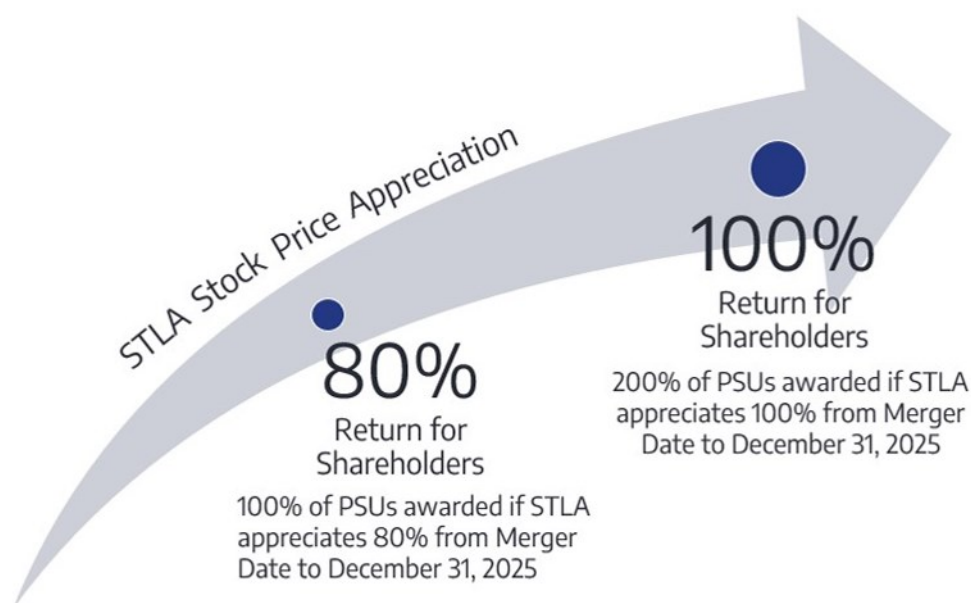


Figure 15. *Stock price appreciation*

Note. From the remuneration report 2024 of Stellantis N.V.

When the extraordinary bonus was introduced in 2021, it sparked a wave of controversy. The central criticism from major investment funds and proxy advisors was not only the amount, but above all the lack of transparency regarding the triggering criteria. Markets were concerned that it was yet another “blank check” issued by the Board of Directors to the CEO, unbound by precise and verifiable parameters. To regain the trust of institutional shareholders, the company agreed to make public, detailed, and binding the seven operational and technological milestones required to unlock the bonus. The milestones concern two blocks, namely the Electrification Commitment, including:

1. Battery Technology, agreements and development of the first competitive solid-state battery technology (ACC).
2. Key Product Launches, transformation of production facilities to launch electric models across all segments.
3. eDCT Platform, production of eDCT modules for hybrid and electric vehicles.
4. STLA Medium Platform, range expansion and launch of production on new electric platforms.
5. LEV Leadership in Europe, achieve a market share of over 15% in low-/zero-emission vehicles in Europe.

And the Technology Commitment, including:

6. Autonomous Vehicles, partnerships and development to integrate safe and scalable autonomous driving technologies.
7. Over-The-Air (OTA) Updates, ability to update car software remotely, increasing residual value and revenue opportunities.

The milestones were not invented after the fact, but were rigidly, mathematically, and transparently linked to the targets of the Dare Forward 2030 strategic plan. The uniqueness of Tavares' compensation plan lies in the inclusion of specific and controversial extraordinary bonuses, including the Transformation Incentive. This plan generated unprecedented overall revenue for the European market, with total compensation of €36.49 million in 2023 and €23.08 million in 2024. If the CEO achieved fewer than two of the seven pre-established targets, the bonus would be zero. If all targets were met, the bonus would double to 200%, reaching €50 million, but no more. The potential cost to the company was therefore clear, estimable, and predetermined in the financial statements from day one. Consider that this enormous bonus represents only 0.157% of the group's total planned industrial investments, amounting to €30 billion. (Stellantis, Remuneration report, 2023) (Stellantis, Remuneration report, 2024)

The payout schedule for the Transformation Incentive award is shown below:

Innovative Milestone Achieved during the 5-year Performance Period	Cash Award (percentage of Target Value)
0-1	0%
2	20%
3	40%
4	80%
5	120%
6	160%
7	200%

Figure 16. *Payout schedule*

Note. From the remuneration report 2024 of Stellantis N.V.

The seven milestones of Stellantis' Transformation Incentive demonstrate how compensation in Europe is tied to complex and multidimensional objectives. It doesn't simply reward stock price growth, but also the achievement of technological and sustainability milestones. These include partnerships on solid-state batteries, plant conversions, development of electric

vehicle platforms (STLA), over-the-air software updates, and targets for low-emissions vehicle (LEV) market share. Added to this is the 20% ESG component included in the annual incentives. If the industrial transition stalls or cash flow fail, bonuses are lost.

Milestone Achieved	Significance to Long-Term Strategy	Stellantis Sustainability and Future
European LEV sales mix at 15% <i>(achieved in 2022)</i>	- European LEV sales mix < 9% prior to 2021 - Industry is transforming away from carbon-emitting internal combustion engines	- Beginning of the journey to become a global leader in electrification and mobility - Drive Stellantis in the LEV (BEV/PHEV) competition to be a top player in industry
First start of production of e-motors made at Nidec PSA E-motors (NPE) <i>(achieved in 2023)</i>	- Starting from ground up – modify plants to produce new technology and retraining employees - Cornerstone for e-components vertical integration (not outsource like competition) - Provides highest efficiency at competitive costs - Over €93M of industrial investments to date	- Stellantis Trémery plant first facility to produce electric motors - Aims to drive electrification growth while also meeting the needs of other automakers
First start of production of eDCT electrified <i>(achieved in 2023)</i>	- Starting from ground up – modify plants to produce new technology and retraining employees - Cornerstone for e-components vertical integration insource (not outsource like competition) - Provides broader availability of affordable electrified powertrains on global market - Over €57M of industrial investments to date	- Stellantis Metz site ramping up production of 600,000 electrified dual-clutch gearboxes per year - Supply mild Hybrid Electric Vehicles and PHEV - Solution will gradually be extended to all brand models in Europe to reduce CO₂ emissions
Achieve over 15 million Over the Air Software update of Vehicles over three years beginning 2021 <i>(achieved in 2024)</i>	- Increase the attractiveness and residual values of our vehicles - Controls and reduces the number of SW versions in operation - Creates revenue opportunity over the life cycle of the vehicle, an in car communication channel for CRM and cross selling - Meaningful warranty cost avoidance and customer satisfaction achieved avoiding physical recalls	Additional revenue opportunities over the vehicle's life cycle

Figure 17. Milestones achieved

Note. From the remuneration report 2024 of Stellantis N.V.

The table above demonstrates the vesting of tranches. Having achieved one milestone in 2022, two in 2023, and one in 2024, for a total of at least four confirmed milestones, the

Board of Directors was able to legally unlock the payout percentages envisaged by the grid reaching 80% of the target value, equal to approximately €20 million. It also confirms the connection between Remuneration and Industrial/ESG; unlike pure stock market bonuses (e.g., Tesla), here, every euro earned is justified by converted factories (Trémery and Metz), millions of euros in real investments, emissions reductions, and software transformation. It explains the payments up to 2025, clarifying why Tavares continued to accrue rights and benefits even close to the end of his term. The results were, in fact, tied to industrial milestones verified annually by the Remuneration Committee and internal audits. Since the payment of these bonuses was spread over time, Tavares continued to collect nearly 12 million euros in 2025, when he was no longer operationally at the helm of the company. (Stellantis, Remuneration report, 2023) (Stellantis, Remuneration report, 2024)

4.3 Transatlantic Comparative Analysis: The Musk Plan (Tesla) vs. the Tavares Plan (Stellantis)

Carlos Tavares' compensation at Stellantis has often been the subject of debate, however, the Stellantis model is based on a solid rule of continental governance: each euro has an explicit maximum cap. Both the annual bonus and the long-term Performance Share Units (PSUs) are governed by precise mathematical limits, defined as multiples of fixed compensation. This structure allows the maximum cost associated with the CEO role to be calculated and forecasted from the outset, with clear budget planning. Specifically, the long-term incentive plans (LTIPs) and the incentive linked to the Dare Forward 2030 plan limit the number of shares that can be granted, creating a crucial barrier against potential speculative fluctuations in the share price.

Musk's plan, by contrast, was structured around 12 tranches of stock options unlockable only through market capitalization growth and the achievement of financial targets, with no limit

on the final bonus value, this changed his package from an initial theoretical estimate of around \$2.3 billion to a potential payout of over \$55 billion, deliberately approved by the board of directors. As Judge McCormick objected in the Tornetta ruling, this approach violates the principle of economic proportionality, resulting in wealth completely devoid of causal rationality beyond its simple incentive function.

Analyzing the criteria (KPIs) that trigger payments, the difference becomes clear. On the one hand, Stellantis combines financial statements with binding non-financial parameters. In fact, 20% of short-term incentives are tied to ESG targets, such as fleet decarbonization, the reduction of industrial CO₂ emissions, BEV/LEV sales targets, and service quality and customer satisfaction metrics. If the company fails to meet these operational and sustainability parameters, bonuses plummet to zero, as happened with the annual bonus in 2024. Tesla, on the other hand, adopted 100% market value and EBITDA. The 2018 plan did not contain KPIs related to vehicle safety, supply chain emissions, the environmental impact of factories, or workers' rights. Tesla's message was clear, increase share price to be paid.

The final substantial difference lies in the negotiating checks and balances. To secure approval of the compensation policy, the Stellantis Board of Directors must engage in grueling negotiations with independent proxy advisors (such as ISS and Glass Lewis) and critical institutional shareholders. Past years have seen heated debates at the shareholders' meeting, with votes against reaching nearly 50%, forcing the remuneration committee to continually review its policies to maintain market consensus. (Stellantis, Remuneration report, 2023) (Stellantis, Remuneration report, 2024)

The Stellantis case is a classic example of the implementation of the Shareholder Rights Directive II into Dutch company law by the Naamloze Vennootschap (N.V.). In the Netherlands, the shareholders' meeting's vote on the Remuneration Report is advisory in

nature. This explains an apparent paradox. When the shareholders' meeting rejected the report in 2022 with a resounding 52.1% of votes against, the decision could not legally cancel contracts and accrued sums. However, that wave of dissent, which remained high in subsequent years, between 30% and 44% forced the Board and the Remuneration Committee into a continuous, exhausting dialogue with proxy advisors (ISS, Glass Lewis) and institutional funds, forcing the company to publish milestone analysis tables to obtain formal approval. At Tesla, the internal control system simply failed. A Delaware court ruling (*Tornetta v. Musk*) was required to overturn Musk's compensation plan, revealing that Tesla's Remuneration Committee lacked true independence and was composed of figures with close personal and business ties to Musk. (Stellantis, Remuneration report, 2023) (Stellantis, Remuneration report, 2024)

In conclusion, the apparent freedom of the American corporate model generates financial distortions, as seen in the Musk case, which only a judge can remedy *ex post facto*. On the contrary, the European model, in the Stellantis case, although constrained by rigid procedural constraints, caps, and ESG metrics, offers stability and transparency that systematically protects the market, minorities, and the sustainable success of the company.

	Stellantis (Carlos Tavares)	Tesla (Elon Musk)
<i>Payout caps</i>	Ex ante and binding limits: All awards (SAIP and LTI) mathematical limits defined as multiples of base salary	Absent: No maximum limit on the final value of the package, linked only to equity expansion.
<i>Compensation</i>	Balanced and hybrid structure: Fixed salary, annual cash bonus, long-term	100% equity based: divided into 12 tranches, zero fixed

	shares (PSUs).	salary or cash bonus.
<i>Balancesheet predictability</i>	Predictable, quantifiable and tied to ex-ante budgeting.	Unlimited, from \$2.3 billion to over \$55 billion.
<i>ESG and sustainability integration</i>	20% of short-term incentives and LTI targets linked to BEV/LEV transition and decarbonization.	Not present
<i>key performance indicators related to quality and operational efficiency</i>	Focused on parameters such as customer care, qualitative excellence of production and the protection of safety in the workplace	Not present
<i>key indicators of profitability and financial growth</i>	Adjusted Operating Income and Free Cash Flow with binding gatekeeper provisions.	A plan structured in tranches linked to the achievement of market capitalization objectives, incrementable by \$50 billion, combined with operational objectives in terms of revenue and adjusted EBITDA
<i>Board independence</i>	an independent Remuneration Committee, called upon conducting negotiations directly with the shareholders	Conflict of interests between the Committee and the CEO
<i>Proxy advisors</i>	An intense dialogue activity which led to a revision of the plan, to respond promptly to the concerns raised by the proxy advisors ISS and Glass	Despite the critical comments expressed by proxy advisors ISS and Glass Lewis, the Board and the majority of shareholders have chosen to approve the proposal.

	Lewis	
<i>Shareholder voting</i>	Shareholders vote against it, prompting continued adjustments.	Package struck down in the Tornetta v. Musk ruling (2024) due to fiduciary breaches and misleading disclosures.

Figure 18. *Stellantis vs Tesla comparison*

Note. Author's own elaboration

Although both Tesla and Stellantis operate in the same industrial sector (the global automotive industry) and share the same theoretical goal, namely, to align the interests of managers with those of owners through pay-for-performance logic, the ways in which the plans are structured and the related regulatory counterweights reveal two diametrically opposed legal philosophies.

4.3.1 The “Superstar CEO” Narrative and Criticisms of the European Model: The Compensation Paradox

Both Carlos Tavares and Elon Musk have been described by their boards of directors as irreplaceable figures. Tesla's value has long been tied to Musk's presence as a capital creator; the Stellantis board justified awarding super bonuses to Tavares by describing him as the only one capable of managing the merger between PSA and FCA and leading 14 brands in the electric transition. In both cases, the boards applied Agency Theory: over 80-90% of the two managers' compensation was tied to shares and financial performance. The fundamental difference between the two models therefore lies not in the substance of the amount, but in the

legitimation technique. Tesla's American model openly declares its shareholder-oriented nature, while Musk's compensation package was solely tied to the growth of market capitalization. Stellantis' European model, on the other hand, had to consider the Shareholder Rights Directive II (SRD II), which met with strong dissent from shareholders resulting in a 52.1% vote against in 2022 and public opinion. To make annual compensation of over €30 million acceptable, the Board tied Tavares' contract to seven technological and sustainability milestones included in the Transformation Incentive plan.

However, this is precisely where some scholars accuse of pay greenwashing. They argue that milestones such as achieving 15% low-emission vehicle (LEV) sales or converting plants to electric vehicles are not extraordinary achievements but rather constitute the regulatory minimum that any European manufacturer is legally bound to avoid EU penalties for CO2 emissions. Furthermore, tying super bonuses to the achievement of sustainable and ESG KPIs while simultaneously implementing plans to downsize staff, implement layoffs, and incentivized departures in Europe is contradictory.

The selection of Antonio Filosa as Stellantis' new CEO marks a strategic and cultural shift by the Board led by John Elkann. While Carlos Tavares typified the role of an external manager-centralizer, focused on cost cutting, short-term financial metrics, and building a public profile as an irreplaceable CEO, Filosa represents the opposite. Filosa grew up within the group, first at FIAT, then at FCA and finally at Stellantis, building a solid reputation in the industry, thanks to his successes, first managing the South America region and then the North American market at the helm of the Jeep brand. Unlike Tavares, Filosa is recognized as a manager capable of restoring industrial and commercial relationships, prioritizing listening to the supply chains rather than short-term financial margins. (Stellantis, Remuneration report, 2025). The data reveal a clear shift in the group's leadership transition, compared to the approximately €23.1 million earned by Carlos Tavares in 2024, Antonio Filosa's total

compensation for 2025 has been set at €5.42 million, covering both his new role as CEO and his previous role as COO for North America, with a fixed base salary of \$1.8 million. The incentive structure includes a target annual bonus (SAIP) equal to 200% of the fixed component, while the award of Performance Share Units (PSUs) is equal to 500% of the base salary upon reaching the target. A loyalty-based annual cash bonus of \$1.2 million for the CEO has also been introduced for the three-year period 2025-2027.

Faced with significant operating losses and a negative industrial free cash flow of € -4.5 billion (2025), they didn't meet the positive cash flow requirement, resulting in the elimination of Filosa's annual bonus. (Stellantis, Remuneration report, 2025)

The most significant difference lies in the reworking of the Key Performance Indicators (KPIs) that govern long-term variable compensation for the three-year period 2025-2027. Unlike in the past, which focused on cost-cutting policies and short-term financial margins, the new governance framework has introduced a direct industrial metric tied to product quality. In the new LTIP plan, in fact, a 30% weight was tied to the Quality KPI, measured by the failure rate and defect rate of vehicles in the first three months of use (Failure Rate 3MIS). The remaining incentive assets were redistributed between the three-year adjusted Operating Income (40%) and Relative Total Shareholder Return versus a group of eleven industry peers (30%). (Stellantis, Remuneration report, 2025)

Antonio Filosa (from 2025)	Carlos Tavares (until 2024)
• Salary: €5.42M • CEO Pay Ratio: 82x • KPI Focus: Quality/Volume/TSR • Style: Industrial	• Salary: €23.1M-€36.5M • CEO Pay Ratio: 350x-518x • KPI Focus: Cost/Margin Cutting • Style: Centralizing

Figure 19. *Filosa vs Tavares*

Note. Author's own elaboration

4.3.2 Internal Inequality and Governance: A Comparison of the Stellantis-Tesla Pay Ratio

Stellantis' CEO Pay Ratio, i.e., the ratio of the CEO's (Carlos Tavares) total compensation to the average salary of the company's employees, stood at 518 to 1 in 2023 (or 315 to 1 excluding the accounting impact of the Transformation Incentive). In that year, the CEO's total compensation amounted €36.49 million, compared to an average compensation per employee of approximately €70,404. In 2024, this gap narrowed, reaching a ratio of t 350 to 1 (or 124 to 1 excluding the Transformation Incentive). This decline is due both to the reduction in Tavares's total compensation, which fell to €23.08 million, partly due to the elimination of the annual bonus, and to the stabilization of average compensation per employee, which stood at €65,993.

In the Stellantis model, a ratio between 350x and 500x is very high by European standards and has sparked intense union and political controversy especially in France and Italy, but it remains a measurable figure within the parameters of large, traditional multinationals. Under the management of new CEO Filosa, the CEO Pay ratio has dropped to 82x by 2025.

In 2018, when Elon Musk's \$55 billion package was approved, Tesla's theoretical multi-year pay ratio was not calculable on a standard industrial scale, exceeding tens of thousands of times the average salary of a Gigafactory worker. (Stellantis, Remuneration report, 2025)

Chapter 5: A “Musk Plan” for Europe: The Super-CEO Challenge and a Proposal for a Sustainable Model of Massive Incentives

5.1 The New Frontiers of Corporate Governance: Between Shareholder Democracy, Judicial Paternalism, and the Challenge of Super-CEOs in Global Markets

The technological and ecological transformation undergone by the global automotive industry has accelerated the emergence of the “Super-CEO” figure. Management historiography and corporate governance literature describe this figure as a charismatic and irreplaceable leader, to whom the Board of Directors attributes not only strategic direction but also the very financial and reputational identity of the company. However, following the empirical evidence emerging from the comparative analysis of the Tesla and Stellantis cases, a question arises: to what extent is the Rockstar CEO model sustainable for capital markets and the long-term stability of industrial organizations? (Hayward, 1997) (Tate, 2008)

On the one hand, concentrating power in the hands of a single leader and offering him millions of dollars in bonuses allows for lightning-fast decisions, a crucial factor when an entire industry is being disrupted by new technologies. From a purely financial perspective, agency theory suggests that tying almost all of a manager’s wealth to changes in stock prices represents the best disincentive to strategic inertia. However, this structure creates a vulnerability known as Key Man Risk. When the stock market value of a company with hundreds of thousands of workers ends up dependent on the words, public statements, or image of a single man, it is a huge risk. In these cases, it becomes extremely difficult to distinguish between those who are truly creating industrial value and those who are merely fueling a bubble of stock market expectations. (Hayward, 1997) (Tate, 2008)

Boards of directors end up under constant pressure from the markets. The fear of losing their “Super-Ceo” pushes committees to accept sky-high salaries. The massive stock incentive plans, originally created to ensure that the CEO truly works in the interests of shareholders, have the opposite effect, instead of remaining a manager at the service of the company, the manager becomes an untouchable ruler, unstoppable by anyone inside. (Hayward, 1997) (Tate, 2008)

The most striking example is the famous ruling by which the Delaware Court of Chancery annulled the massive \$55 billion stock award intended for Elon Musk. The singular aspect of that decision is that the compensation package was not imposed from above, shareholders had initially approved it in 2018 with 73% of the vote and then reaffirmed it by a majority in 2024. (Tornetta v. Musk, 2024)

At this point, an inevitable question arises: if those who risk their capital approve a huge bonus for the company’s top management, how can a judicial body override the shareholders’ vote and reject that agreement?

The controversy has given rise to two opposed visions of corporate governance:

On one side the Shareholder Sovereignty view: if the Shareholders’ Meeting is transparently informed and votes by a large majority on a bonus plan, no matter how enormous or uncapped, a judge should never replace the market in judging whether that amount is excessive or not. Advocates of this approach view court intervention as a form of invasive “court paternalism”, in which the state claims to protect shareholders from decisions they themselves have deemed beneficial to their own portfolios. (John E. Core, 1999)

On the other side, the Judicial Oversight view: this perspective assumes that shareholder democracy is merely semblances if the company’s internal processes are flawed. In the Tesla case, in fact, the judge’s decision was based on two key points, the Compensation Committee

was not truly independent of Elon Musk and the information provided to shareholders before the vote was incomplete. In this view, the court does not address the economic viability of the agreement, but intervenes to sanction the lack of transparency, the violation of fiduciary duties, and the pressure exerted by an overly powerful manager. The consequences of this retrospective intervention, however, risk creating a rift in the system. If even the shareholders' meeting's decision isn't enough to sanction a contract, companies lose certainty. The real danger is that many companies will begin "corporate relocations", abandoning historically business-friendly states like Delaware for states with much more flexible rules, as Tesla did when it decided to move its headquarters to Texas. (John E. Core, 1999)

In the United States, the emphasis is on contractual freedom, the law intervenes as little as possible before decisions are made, leaving the parties free to define compensation and incentives as they see fit. The core of this system is the Business Judgment Rule, the golden rule that prevents judges from commenting on managers' strategic choices. This flexibility allows for the creation of maxi-incentive plans, but by not imposing formal limits, it ends up shifting all issues to the courts after the fact.

The European Union, on the other hand, adopts a completely opposite approach, implemented in Italy in the Civil Code, the Consolidated Law on Finance (TUF), and strengthened by the SRD II directive. In this model, the company is not a simple bundle of private contracts, but a social institution that must balance the interests of all parties involved. The protection is designed in advance precisely to prevent legal disputes like the one in Tesla, focusing on three key points:

- Transparency and voting on compensation (Say-on-Pay): Companies are required to publish clear and detailed reports on compensation and submit their salary policy to a vote at the Shareholders' Meeting.

- European regulations and the Italian Corporate Governance Code require that the majority of bonuses are linked to multi-year objectives, avoiding huge bonuses driven by temporary stock market peaks.
- Protection of minorities and social stability: The European model prevents abuse and protects minority shareholders within the company. (Unione Europea, 2017)

<u><i>American model</i></u>	<u><i>European-italian model</i></u>
• Contractual matrix • Absence of maximum limits • Centrality of the Business Judgment Rule • Ex-post control • Risk of litigation	• Institutional Matrix • Maximum Caps and Transparent Grids • Say on Pay • Ex-ante Preventive Control • Bureaucratization and ESG Verification

Figure 20. *American vs European model*

Note. Author's own elaboration

5.2 Bridging the Gap: A Sustainable Framework for High-Incentive Plans in Europe

The reasons why a plan like Musk's in Italy/Europe is nearly impossible are:

- The problem of Related Party Transactions. In the Tornetta case, the Delaware court punished Musk because he controlled the board of directors that was supposed to approve the plan. In Italy, there is Consob Resolution No. 17221 (Regulation on Related Party Transactions). Musk, as the controlling shareholder and CEO, is a related party. Such a plan would have had to be reviewed by a committee of exclusively independent directors and, if classified as a transaction of greater

importance, would have required approval by the shareholders' meeting using "whitewash" rules, excluding Musk's vote and requiring a majority of unrelated minority shareholders. (Consob, 2010)

- Capital dilution and minority protection: Under Italian law, capital increases for stock option plans, regulated pursuant to Article 2441, paragraphs 5 or 8, of the Civil Code, must be justified by the company's genuine interest and requires a qualified quorum for approval. Compared to market contexts such as Delaware, minority shareholders have far more effective protection and can potentially block abusive majority resolutions. (Campobasso, 2022)
- Compensation structure: Musk's plan has zero fixed salary, everything is tied to stock options with targets. In Europe, banking guidelines and corporate governance practices require a balance between fixed and variable components, prohibiting structures that incentivize excessive or company-destructive risk-taking in the short term.

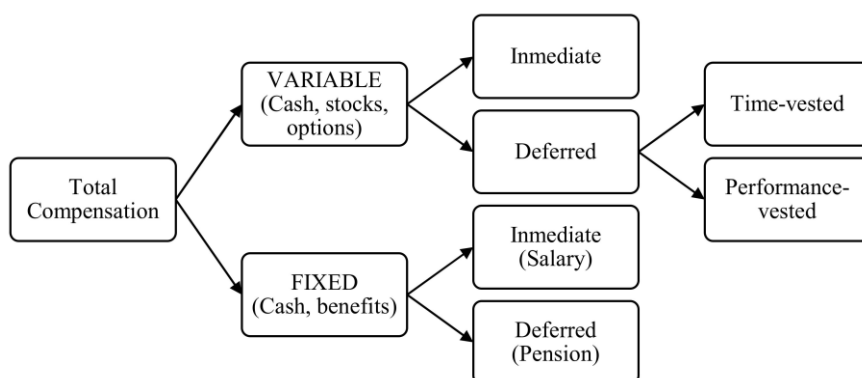


Figure 21. *The composition of the total compensation package*

Note. From The New EU Remuneration Policy as Good but Not Desired Corporate Governance Mechanism and the Role of CSR Disclosing, Porcuna

During the 2008 global financial crisis, compensation mechanisms focused on short-term bonuses were considered the main cause of excessive risk-taking. Therefore, the

European Union intervened by establishing that at least 50% of variable compensation must be paid in financial instruments such as shares or convertible bonds, and that 40-60% must be deferred, subject to reduction or repayment clauses in the event of misconduct or poor performance. Furthermore, the variable component of compensation cannot exceed 100% of the fixed component, which can be increased up to 200% only with the approval of the shareholders' meeting. (Porcuna Enguix, 2021)

- Lack of Board Independence. In the Tornetta ruling, Judge McCormick found that the Tesla committee that negotiated with Musk was composed of his longtime friends, business associates, or family members such as his brother Kimbal.
- Contradiction to SRD II: A plan that enriches a single individual at the expense of the long-term stability of the company and its workforce violates the Shareholders' Rights Directive II. In Europe, the excessive disproportion between CEO pays and that of the average worker, the so-called Pay Ratio, raises systemic reputational and legal risks. (Unione Europea, 2017)
- The Wall of Proxy Advisors and Institutional Funds: Large European and international investment funds such as BlackRock, Vanguard, Norges and proxy advisors like ISS, Glass Lewis apply extremely strict governance guidelines in Europe. They would unanimously vote against a plan without caps and not linked to operational and ESG metrics. (Enriques, 2014)

For a plan like Musk's to work in Europe, it would be necessary to:

1. Insert a Dynamic but Finite Maximum Cap

The main weakness of Tesla's 2018 plan was the lack of a maximum cap, without a defined cap, Elon Musk's compensation rose to over €55 billion. In Europe, the Shareholder Rights Directive II (SRD II) and the rules of large investment funds prohibit infinite-return stock compensation. To work in the European context, a "Musk

plan” would have to immediately set a maximum cap on the value of the share payout, calculated as a predefined multiple of the fixed salary or as a maximum percentage of the created surplus value. This is also crucial for the company’s accounting management; that must be able to calculate and set aside the maximum cost of compensation on its balance sheet from day one, exactly as Stellantis did. This also allows it to meet the risk quantification criteria required by institutional investment funds and proxy advisors. A “Musk-style” structure with aggressive share tranches can be created, but the payout must be halted once a certain threshold of generated value is reached. This reassures shareholders that the cost to the company remains predictable and quantifiable on the balance sheet. (Unione Europea, 2017)

However, as Porcuna Enguix (2021) points out, regulatory mechanisms designed to limit variable compensation can lead to “unintended consequences”. When limits on variable compensation are imposed without strategic vision, companies tend to drastically increase fixed salaries to remain competitive, creating cost rigidity that threatens business stability during market downturns. The definition of salary caps must follow a dynamic logic and be strictly linked to performance; in fact, a rigid constraint must be avoided that would only end up transferring corporate risk onto fixed management costs. (Porcuna Enguix, 2021)

Analyzing data from the European Banking Authority (EBA) on so-called high earners between 2010 and 2017, Porcuna highlighted how the introduction of the bonus cap pushed European credit institutions to decrease the ratio between variable and fixed remuneration, which went from over 200% to less than 100%. To maintain high pay levels for top managers, banks tripled the fixed component, partially neutralizing the effects of the measure. This has led to unintended consequences such as cost rigidity and bankruptcy risk in fact if a bank faces a crisis, it cannot reduce executives’ fixed

compensation (unlike bonuses). The second consequence could be the incentives for “Bad Risks” and Rejection of “Good Risks”, if a fixed compensation is very high and independent of performance, managers have less incentive to be disciplined and may take “bad risks” (low-value deals) knowing their base pay is safe. With an Upper Limit (bonus cap), when a manager reaches the bonus cap, they are no longer compensated for additional efforts. As a result, they will tend to reject profitable projects (“good risks”) or postpone profits to subsequent periods.

An additional consequence could be results management and income smoothing, to avoid wasting profits beyond the bonus cap, managers are incentivized to manipulate accounting (earnings management/income smoothing), artificially shifting profits from boom years to lean years to ensure they always receive their bonus. This reduces the transparency of bank balance sheets. Another unintended consequence could be adverse selection and talent migration in fact the rigid regulatory framework makes the EU less attractive to top-performing bank managers, pushing them to migrate to countries with less stringent regulations (e.g., post-Brexit United Kingdom or the United States), leaving less efficient or less merit-oriented profiles in EU banks. (Porcuna Enguix, 2021)

The figure 22 shows the evolution of the fixed (FIX) and variable (VAR) components in the EU (excluding the UK). It visually illustrates the “scissors” and convergence effect since 2014, with the fixed component increasing to compensate for the cut in the variable component.

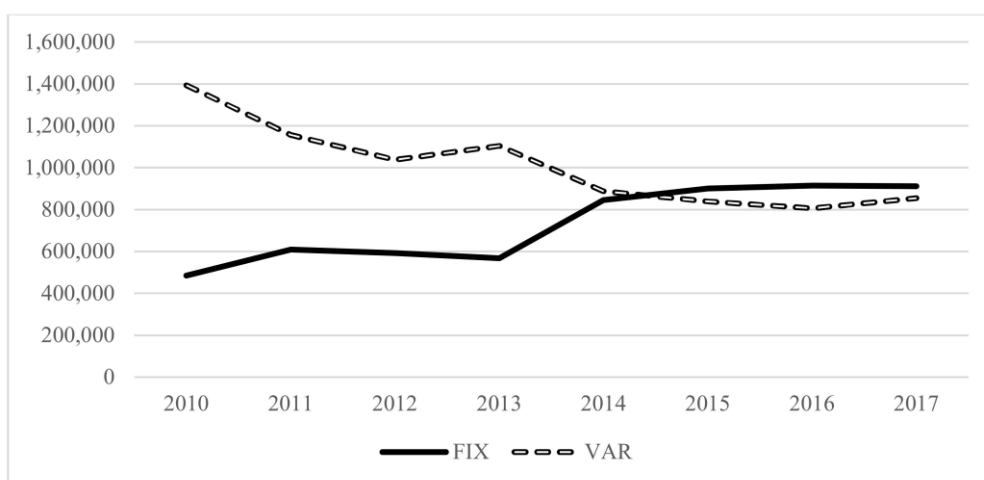


Figure 22. Total fixed and variable remuneration per HE in the EU, excluding the UK.

Note. From The New EU Remuneration Policy as Good but Not Desired Corporate Governance Mechanism and the Role of CSR Disclosing, Porcuna.

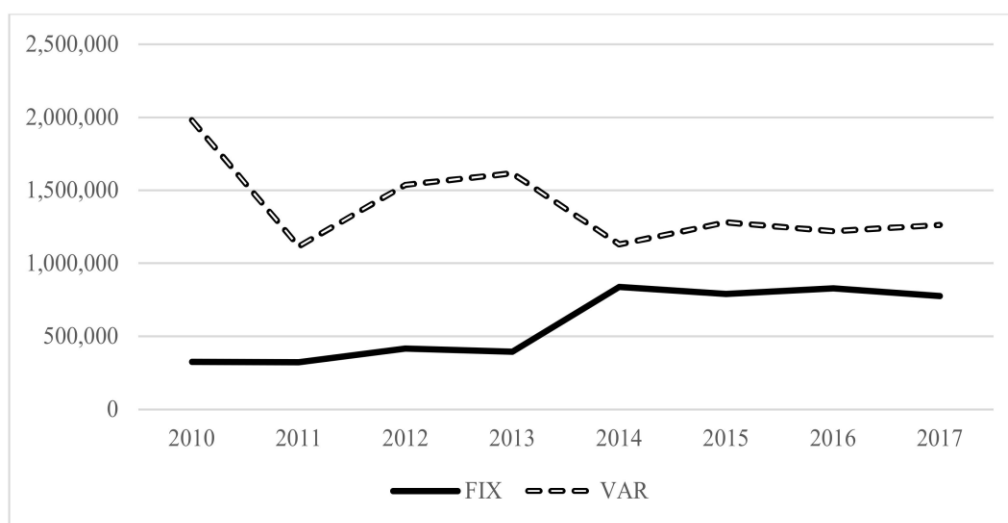


Figure 23. Total fixed and variable remuneration per HE in the EU in the UK

Note. From The New EU Remuneration Policy as Good but Not Desired Corporate Governance Mechanism and the Role of CSR Disclosing, Porcuna.

The figure 23 shows that, although the European CRD IV directive on bonus limits also applied to the UK during the period analyzed (2010-2017), British banks managed to keep the variable component above the fixed component (FIX). They used flexibility tools permitted by the regulation, such as role-based allowances (RBAs): additional role-related allowances that the EBA/EU has often criticized as “variables disguised as fixed”, allowing them to preserve the true variable component.

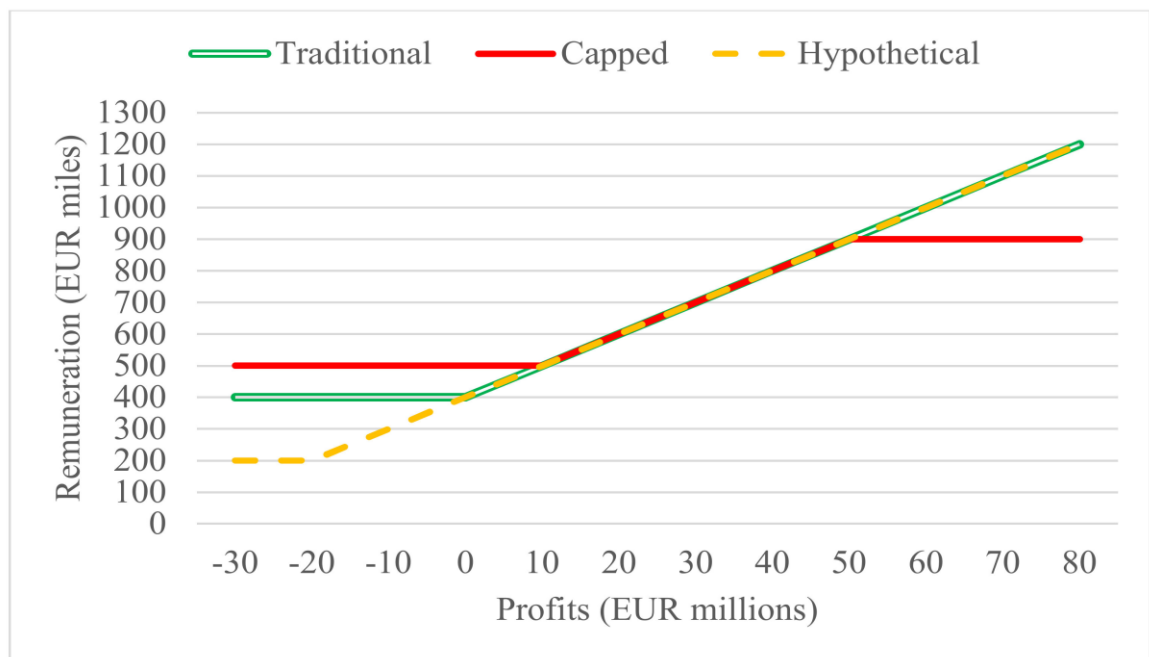


Figure 24. *Traditional, capped and hypothetical model*

Note. From The New EU Remuneration Policy as Good but Not Desired Corporate Governance Mechanism and the Role of CSR Disclosing, Porcuna.

The figure 24 distinguishes three models. The traditional one offers protection against downside losses; compensation does not fall below €400,000 even if losses exceed -€30 million but allows unlimited upward growth if profits increase. This is responsible for the moral hazard effect, in fact the manager is encouraged to take reckless risks, if the bet goes well, he earns a lot; if it goes badly, his salary remains at the minimum level. The second model is the rigid cap, it imposes both a minimum salary cap,

increased to €500,000 due to the substitution effect on the fixed salary, and a maximum salary cap (a limit set at €900,000 as soon as profits exceed €50 million). This model discourages excessive performance, once a profit of €50 million is achieved, the manager has no financial incentive to further develop the bank or take on greater risks, since his compensation remains fixed at €900,000. The third model is the hypothetical/optimal one, it introduces a real penalty for losses (the compensation is drastically reduced to €200,000 if results are significantly negative) and maintains gradual variable growth without rigid cap. It perfectly aligns the manager's interests with those of the bank. The manager is penalized if he destroys value and is rewarded proportionally if he creates real and sustainable value over time. (Porcuna Enguix, 2021)

2. Incorporate Real Industrial and ESG KPIs

Elon Musk's mega-plan was 100% tied to market capitalization, revenue, and EBITDA, completely ignoring aspects such as worker safety, product quality, employee protection, and environmental impact. In the European context, such an approach would never pass the scrutiny of the Remuneration Committees and major proxy advisors like ISS, Glass Lewis, or Norges Bank. To work in Europe, the manager would only unlock the shares if, in addition to increasing the share price, specific industrial milestones were achieved, such as the sustainable conversion of plants, the reduction of CO₂ emissions, or the development of new technologies, while simultaneously ensuring the sustainability of the company's cash flow. Measuring the impact on the supply chain, such as workforce conversion rather than layoffs, is fundamental. To operate in the European context, the allocation of shares to managers should be unlocked exclusively upon the achievement of specific industrial and

sustainability targets. This approach is supported by the findings of Porcuna Enguix (2021), who demonstrate how transparent corporate social responsibility (CSR) reporting plays a key compensatory role in European governance, reducing information asymmetries, discourages the manipulation of short-term results, and pushes managers' actions toward long-term value creation, protecting them from purely speculative logic. (Porcuna Enguix, 2021)

An equally important aspect to consider is the geopolitical variable in the automotive sector. A company's results no longer depend solely on the management of its CEOs but are also affected by customs duties and trade wars. The introduction of protective tariffs by the United States and Europe on electric cars produced in China has changed market price competitiveness, while government decisions to change or even eliminate state purchase incentives, as happened in Germany, and the constant rethinking of the timing of the Fit for 55 directives make market demand completely unpredictable. Furthermore, geopolitical tensions along the lithium, cobalt, and rare earth supply chain cause constant price fluctuations, impacting battery production costs and final profitability. Tesla's market capitalization has benefited for years from American government subsidies (the Inflation Reduction Act) and European incentive policies. When the European Union introduced tariffs on vehicles imported from China, where the Shanghai Gigafactory is located, the company's margins suffered an immediate hit. In Europe, Carlos Tavares's compensation structure at Stellantis in particular the variable component was tied to profitability parameters and complex ESG indicators. However, faced with the sudden abolition of subsidies for electric vehicles in Germany and the resulting contraction in demand in the European market, electric car sales volumes plummeted, triggering production cuts and the implementation of welfare measures at historic plants like Mirafiori. Experience shows that financial

KPIs defined years in advance often are completely inadequate given the changing dynamics of the industry. The governance of automotive companies could evolve towards the introduction of “geopolitical neutralization” clauses. This approach would require Remuneration Committees to implement ex-post correction mechanisms or use relative performance evaluation (RPE) metrics. Instead of judging the CEO’s performance based on absolute values planned in old scenarios, management would be evaluated by comparing the company’s results with those of direct competitors (peer groups), called upon to face the same geopolitical and market troubles. This way, the true value created by the CEO is calculated, thus avoiding awarding billion-dollar bonuses or lowering them due to unforeseeable exogenous crises. (Murphy, 1990)

3. Introducing Extended Lock-Up and Clawback Clauses

Another major risk of the Tesla model is that a bonus tied solely to stock performance pushes managers to fuel short-term speculative bubbles; some announcement is needed to boost the stock price and collect bonuses. To address this moral hazard, the European solution is to impose a lock-up requirement for the shares for at least 3-5 years after their release (vesting). In addition, should include specific clawback clauses designed to allow for the recovery of amounts paid if it emerges that the share price appreciation was caused by purely speculative bubbles. In the European context, both banking guidelines and corporate governance best practices require a strict balance between fixed and variable components, precluding the adoption of remuneration structures aimed at incentivizing excessive risk-taking. As highlighted in Porcuna Enguix's (2021) study on remuneration policies in the European banking sector, EU legislation, particularly through the CRD III and IV directives, strictly regulates the position of material risk-takers and high earners, limiting bonuses

imposing mechanisms for the deferral of variable components (between 40% and 60%), and requiring the mandatory application of malus and clawback clauses. (Porcuna Enguix, 2021)

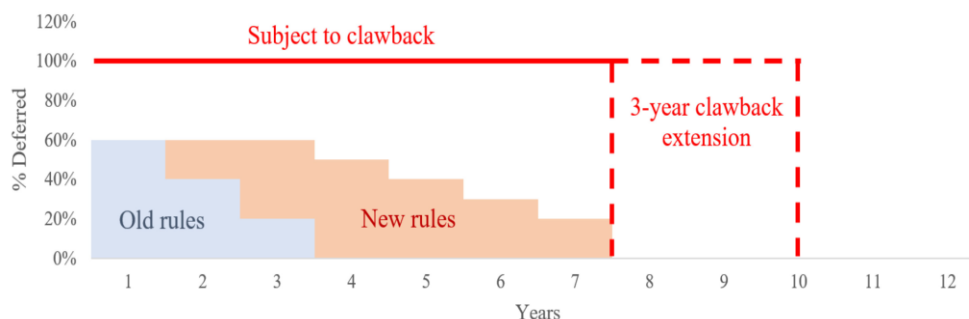


Figure 25. New extended deferral requirements.

Note. From The New EU Remuneration Policy as Good but Not Desired Corporate Governance Mechanism and the Role of CSR Disclosing, Porcuna.

Figure 25 shows that the manager’s accrued bonus is not paid out in full in one sum. A significant portion of the variable component is frozen and distributed “in installments” over an extended period (3-7 years). The manager receives the bonus only if the bank continues to maintain stable results over time. The red line and the dotted rectangle (“3-year clawback extension”) indicate the period during which the bank has the right to request the return of the bonus already awarded or paid. Bonus recovery coverage extends to a total of 10 years. If, during this decade, misconduct, fraud, or serious risk management errors committed by the manager in the past are discovered, the bank can legally recover that amount.

It visually illustrates the shift from a focus on immediate profit to one on long-term sustainability. It shows that extending lock-in periods and bonus clawback clauses discourage managers from making risky short-term decisions to cash in on bonuses immediately, knowing that any future damages will be felt by them up to 10 years later. (Porcuna Enguix, 2021)

4. Extend Share Ownership to the Workforce to Mitigate the Pay Ratio

Conduct intensive preventive engagement with proxy advisors (ISS, Glass Lewis) and employee representatives. It must be demonstrated that the plan aligns positively with agency theory, meaning that the manager takes personal risks and is only rewarded if he generates enormous value for all stakeholders. If the company's stock price soars, that success can't remain a privilege for a select few at the top. It must be translated into shares and participation bonuses for those who work every day in the factories or offices, proportionate to the growth created together.

The Stellantis plan worked in Europe precisely for the reasons stated above:

- It had a known cap.
- It included transparent frameworks, the 7 milestones provided shareholders with ex-post verification metrics, realigning the majority of shareholders in 2023 and 2024.
- It contained safety valves, when the employment relationship with Carlos Tavares ended before the plan's natural expiration, the settlement agreements allowed the Board to automatically cancel 60% of the shares due, 1.2 million shares canceled out of a planned 2 million, demonstrating the presence of effective negotiating brakes.
- It protected the contracts with the 2022 shareholder advisory veto.

In conclusion, the comparison between Tesla and Stellantis demonstrates that the American "Superstar CEO" model cannot be directly transferred to Europe without filters. A plan without limits like Elon Musk's would be rejected by European governance rules. However, the Stellantis story demonstrates that Europe hasn't created a completely opposite alternative; it has built a system of "bureaucratic super-compensation".

Reiterating the central thesis of Porcuna Enguix (2021), European remuneration rules often appear as a “good but not desired” governance mechanism: while necessary to prevent systemic risk and shareholder abuse, their rigid application risks generating adverse selection and competitive disadvantages. (Porcuna Enguix, 2021)

The solution lies not in American excess or European formalism, but in responsible governance. Freedom of action and significant rewards are needed, but anchored to caps, real sustainability goals, and genuine worker participation in the company's profits.

Also, the author points out a key solution in promoting engagement in CSR; in fact, CSR reporting increases transparency and restores stakeholder trust, investments in CSR generate long-term benefits, managers who are strongly motivated by sustainability and ethical goals tend to discourage accounting manipulation (earnings management) and the excessive pursuit of short-term gains. CSR-related reputation acts as a buffer against risks and helps banks retain sustainability-minded talent, balancing out the negative effects of strict pay rules. (Porcuna Enguix, 2021)

	Eu regulation (Bonus cap/CRD IV)	Unintended effect	Corrective role of CSR/ESG
Fixed salaries	Limit to the variable portion (100%-200%).	Disproportionate increase in guaranteed fixed salary.	Focusing on performance metrics on real goals.
Management/risk	Reducing short-term greed.	Cost rigidity in crisis and refusal of “good risks”.	Focus on long-term business sustainability.
Accounting	Deferral and	Risk of earnings	Reducing

transparency	clawback clauses.	manipulation (earnings management).	information asymmetry with stakeholders.
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Figure 26. *Comparison of regulatory constraints, Unintended effects and CSR integration*

Note. Author's own elaboration

Conclusion

The central objective of this thesis was to analyze the complex issue of excessive executive compensation through the agency theory and corporate governance, comparing the solutions adopted in the European Union and the United States.

Elon Musk's Tesla case emerged as the most emblematic example of the United States's misdirection of compensation. The derivative action initiated by a shareholder brought to light structural issues, although the Delaware Court of Chancery had initially struck down the mega-compensation plan, the subsequent Delaware Supreme Court ruling, focusing on purely procedural issues and the objective impossibility of restoring the status quo ante, preferred not to dig into the governance flaws that the analysis revealed. To assess the true fairness of compensation, one cannot stop at the amount alone; rather, must examine the decision-making process by which it is established. In the Tesla case, the CEO was able to influence because both the Board of Directors and the Compensation Committee lacked true independence. Furthermore, traditional protection mechanisms such as shareholder voting were undermined by incomplete disclosure. Musk had a triple role as CEO, controlling shareholder, and "Superstar CEO", a figure capable of strongly influencing the entire corporate environment. Tesla's subsequent decision to relocate its headquarters from Delaware to Texas consolidated this corporate supremacy, highlighting the rejection of a regulatory framework designed to protect minority interests. From an ethical and systemic perspective, the answer to these distortions lies not in penalizing incentive tools, but rather in reorganizing corporate governance mechanisms, a goal that can be achieved by ensuring effective board independence, maximum information transparency, and more stringent approval standards to counter interference from controlling shareholders.

This paradigm contrasts with the European Union's regulatory model. The European union adopts a rigid approach, through the Shareholder Rights Directive, implemented in Italy through the Consolidated Financial Act (TUF) and Consob regulations. EU legislation imposes a strict link between remuneration and long-term value creation, integrates sustainability criteria, and strictly regulates related-party transactions, requiring proposals for extraordinary compensation to be approved only by a majority of minority shareholders (a "whitewash" mechanism). The practical implications of this approach were clearly demonstrated in the Stellantis case, the compensation package for Carlos Tavares sparked heated controversy, culminating in a majority vote against it at the 2022 shareholder meeting. Although the vote was purely consultative, the intense reputational and democratic pressure typical of the European context pushed the Board of Directors to review the remuneration parameters, significantly reducing bonuses and the shareholding envisaged upon the manager's departure from the group.

Reaching the heart of the thesis and the answers to the research questions, it becomes clear that a direct and unadapted transplant of "Musk style" compensation package is completely inapplicable in the European context. The European Union's protection mechanisms structurally prevent the level of interference with corporate management and the share price devaluation observed in the United States. However, this thesis proposes a sustainable model for high-performance incentive plans in Europe. This model is based on a dual-key approval rule, requiring a majority vote of minority shareholders for packages that exceed market benchmarks, and are structured on very specific principles. First, dynamic but finite maximum caps must be defined to ensure financial statement predictability for investment funds. Second, the achievement of bonuses must be tied to real industrial and ESG metrics, integrating geopolitical neutralization clauses to prevent the CEO from being penalized or rewarded by unseen external factors such as tariffs or cuts to state subsidies. Furthermore, to

counter short-term speculation, the equity component must be subject to multi-year lock-up periods and bonus recovery mechanisms, or clawbacks, extended up to ten years in the event of misconduct or errors in financial data. Finally, the enormous value created at executive level, it must be rebalanced through widespread share ownership plans and profit sharing for employees, strengthening transparency and corporate social responsibility to reduce information asymmetry, restore the trust of all stakeholders and retain talent in compliance with ethical principles.

Only through this renewed balance between incentives and responsibilities will corporate governance be able to return to its primary function: guiding companies towards fair, transparent and forward-looking growth.

Bibliography

- Tornetta v. Musk, C.A. No. 2018-0408-KSJM (Court of Chancery of the state of Delaware january 30, 2024).
- Baelz, K. B. (2002). The End of the Real Seat Theory (Sitztheorie): the European Court of Justice . *German Law Journal* , article 214.
- Blair, M. A. (2025). *Ceo compensation disclosure under the Dodd-Frank Act: A fairness Analysis*. SSRN.
- Campobasso, G. F. (2022). *Diritto commerciale 2: Diritto delle società (10^a ed.)*. UTET Giuridica.
- Capelli, I. (220). The environmental and social sustainability in the compensation policies of the directors of listed companies: the relevance of stakeholder interests after SHRD II. *Orizzonti del Diritto Commerciale*, 553-588.
- Comitato per la corporate . (n.d.).
- Comitato per la Corporate Governance. (2020). *Codice di Corporate Governance*. Milano: Comitato per la Corporate Governance.
- Consob. (2010 , marzo 12). Regolamento recante disposizioni in materia di operazioni con parti correlate (Delibera n. 17221). *Gazzetta Ufficiale della Repubblica italiana* . Roma: Consob.
- Consob. (2010, marzo 12). Delibera Consob n. 17221 Adozione del regolamento recante disposizioni in materia di operazioni con parti correlate. *Gazzetta Ufficiale della Repubblica Italiana* .
- Enriques, M. B. (2014). Institutional investor activism in a context of concentrated ownership and high private benefits of control: The case of Italy. *Corporate Governance: An International Review*, Vol. 22, N. 2, pp. 117–132.
- Frank D. Emerson, F. C. (1950). Sec proxy regulation: Steps toward more effective stockholder participation. *The Yale Law Journal*, 636-676.
- Friedman, D. (2013). The regulator in robes: Examining the SEC and the Delaware Court of Chancery's parallel disclosure regimes. *Columbia law review*, 1543-1584.

- Gail Weinstein, P. R. (2026, february 2). *What the Tesla Decision Means for Executive Compensation and Other Corporate Issues*. Retrieved from Harvard Law School Forum on Corporate Governance: <https://corpgov.law.harvard.edu/2026/02/02/what-the-tesla-decision-means-for-executive-compensation-and-other-corporate-issues/>
- Ghilardi, M. (2025). L'evoluzione dell'entire fairness standard e della business judgment rule: spunti da Tornetta v. Musk. *RDS*, 173-201.
- Gomes de Gouveia, P. H. (2021). *EQUITY RESEARCH: STELLANTIS N.V.* ISEG.
- Hayward, M. L. (1997). Explaining the Premiums Paid for Large Acquisitions: Evidence of CEO Hubris . *Administrative Science Quarterly*, 103-127.
- Hermanson Dana R., T. J. (2012). The compensation Commitee Process. *Contemporary Accounting Research*, 66-709.
- Hook, A. (2025). *Reform or Remove: Tornetta, Moelis, Stockholder Agreements & DExit*. Iowa city: University of iowa college of law.
- In Re Tesla, inc. Derivative litigation, No. 534, 2024 (Court of Chancery of the State of Delaware december 19, 2025).
- Jensen, M. C. (1976). Theory of the firm: Managerial behaviour, agency costs and ownership structure. *Journal of financial Economics*, 305-360.
- John E. Core, R. W. (1999). Corporate governance, chief executive officer compensation, and firm performance. *Journal of Financial Economics*, Volume 51, Numero 3, Pagine 371–406.
- Kam-Ming Wan, J. P. (2025). *Outliers in CEO Compensation: The case of Elon Musk's 2018 pay package**. SSRN.
- Keilty, D. P. (2024). Starstruck: The Superstar CEO Concept in Delaware Corporate. *University of Miami Business Law review*, 263-272.
- Khoo, T. (2025). *The Price of Delaware Corporate Law Reform**. SSRN.
- Lazonick, M. H. (2024). *Tesla as a Global Competitor: Strategic Control in the EV Transition*. New York: Institure for New Economic Thinking.

- Lebovitch, M. (2024). *Five Predictions About DGCL 122(18)'s Effect on Delaware Law and Practice*. Rochester, NY: SSRN.
- Lucian Bebchuk, J. F. (2004). *PAY WITHOUT PERFORMANCE: THE UNFULFILLED PROMISE OF EXECUTIVE COMPENSATION*. Cambridge, MA: Harvard University Press.
- Melis, A. (2004). On the Role of the Board of Statutory Auditors in Italian Listed Companies. *Corporate Governance: An International Review*, 74-84.
- Murphy, R. G. (1990). Relative performance evaluation for chief executive officers. *Industrial and Labor Relations Review*, Vol. 43, N. 3, pp. 30-S–51-S.
- N.V., S. (2022). *Annual Report and Form 20-F for the year ended december 31, 2021*. Stellantis N.V.
- Passador, M. L. (2018). List Voting's Travels: The Importance of Being Independent in the Boardroom. *Fordham Journal of Corporate & Financial Law*, 1-46.
- Porcuna Enguix, L. (2021). The New Eu Remuneration Policy as Good but Not Desired Corporate Governance Mechanism and the role of CSR Disclosing. *Sustainability*, 35.
- Preeti Choudhary, J. D. (2013). Boards, Auditors, Attorneys and compliance with mandatory SEC disclosure Rules. *Managerial and decision economics* , 471-487.
- Sacconi, L. (2014). Il modello di impresa all'origine della crisi, e l'alternativa dell'impresa socialmente responsabile. *Lessico di Etica pubblica*, 40.
- Sepe, M. (2012). La regolazione dei mercati in divenire. *Rivista Elettronica di Diritto, Economia, Management*, 34-68.
- Stellantis. (2022). *Annual report and form 20-F for the year ended december 31, 2021*. Stellantis .
- Stellantis. (2023). *Remuneration report*. Stellantis .
- Stellantis. (2024). *Remuneration report*. Stellantis.
- Stellantis. (2025). *Remuneration report*. Stellantis .
- Tate, M. &. (2008). Superstar Ceos. *The Quarterly Journal of Economics*, 1-44.

Tornetta v. Musk, No. 2018-0408-KSJM (Court of Delaware gennaio 30, 2024).

Unione Europea. (2017, maggio 20). Direttiva (UE) 2017/828. *Gazzetta Ufficiale dell'Unione Europea*. Lussemburgo: Eur-lex.

Unione Europea. (2017, maggio 20). Direttiva (UE) 2017/828 del Parlamento europeo e del Consiglio che modifica la direttiva 2007/36/CE per quanto riguarda l'incoraggiamento dell'impegno a lungo termine degli azionisti (Shareholder Rights Directive II - SRD II. *Gazzetta Ufficiale dell'Unione Europea*. Lussemburgo: Ufficio delle pubblicazioni dell'Unione europea.

Unione Europea. (2017, maggio 17). Direttiva (UE) 2017/828 del parlamento europeo e del consiglio, del 17 maggio 2017, che modifica la direttiva 2007/36/CE per quanto riguarda l'incoraggiamento dell'impegno a lungo termine degli azionisti. *Gazzetta ufficiale dell'Unione europea*, L 132, 1-25.

Van der Elst, C., & Lafarre, A. (2017). Shareholder Voice on Executive Pay: A Decade. *European Business Organization Law Review*, 51-83.

Van der Elst, C., & Lafarre, A. (2017). Shareholder Voice on Executive Pay: A Decade of Dutch Say on pay. *European Business Organization Law Review*, 51-83.

Van der Elst, C., & Lafarre, A. (2020). *Shareholder Stewardship in the Netherlands: The Role of Institutional Investors in a Stakeholder Oriented Jurisdiction*. ECGI.

Weinstein, G. R. (2026, february 2). *What the Tesla Decision Means for Executive Compensation and Other Corporate Issues*. Retrieved from Harvard Law School Forum on Corporate Governance: <https://corpgov.law.harvard.edu/2026/02/02/what-the-tesla-decision-means-for-executive-compensation-and-other-corporate-issues/>

Yu, C. (2025, september 29). *The Trillion Dollar Man? Comparing Musk's 2018 Pay Plan to His Latest Tesla Award*. Retrieved from Harvard Law School Forum on Corporate Governance: <https://corpgov.law.harvard.edu/2025/09/29/the-trillion-dollar-man-comparing-musks-2018-pay-plan-to-his-latest-tesla-award/>

Zohar Goshen, T. S. (2025). LEAVING DELAWARE? THE ESSENTIAL ROLE OF SPECIALIZED CORPORATE. *Columbia Law Review*, 2077-2144.