

OPENING

M. Ian HUNTER,

Q.C., Barrister, Avocat à la Cour de Paris, Président de la section anglaise du FBL

Ladies and gentlemen,

Welcome very much to this important and I hope interesting seminar on “Company law as a tool for companies in the Europe of the 21st century”. We are facing up to the Millennium in the important and interesting field.

I am Ian Hunter. I am not going to say very much and I just want to welcome you all here. I had particularly pleasure as out going, because this is my last event President of the English section of the Franco-British lawyers’ society, working on this particular event. In particular the great pleasure of working with Aristide Levi of the Chamber of commerce and industry of Paris. Aristide, it’s really in a sense, his brand child this particular program this afternoon and I am very grateful to him through the hard work he has put into it and for allowing me to participate in the program with him. We will hear a lot more about the work of CREDA, the research institute of the Paris’s Chamber of commerce, during the course of the afternoon but he was one of the joint rapporteurs of the rapport on the private European company which lies at the heart of a good deal of what we will be talking about this afternoon. So I want to pay my tribute to him.

And since I may not have an opportunity to do so at the end of the program, I would like to thank all of the speakers who come today. Number of them come from France, Paris particular, there are all most welcome and thank you to you for coming.

Now, we got a series of openings but they are not going to be very long and I am going to get straight into them and invite first of all Monsieur Michel Franck, President of the Chamber of commerce and industry of Paris who’s come over with us here and who is particularly welcome.

M. Michel FRANCK,

Président de la Chambre de commerce et d’industrie de Paris

My Lord,

Mme le Bâtonnier,

Messieurs les Présidents,

Mesdames et Messieurs

Ladies & Gentlemen,

Thank you for the kindness of your welcome. I am indeed very touched by such a friendly greeting, especially today, as our “Entente Cordiale” may have seemed threatened by tiny particles. Their name, “PRIONS”, for us, French people, curiously evokes spiritual communication and high feelings of love and mercy. Dare I say “Prions pour la perennité de notre amitié séculaire...qui en a vu d’autres...!” or “Let us pray for the durability of our secular friendship...which has seen worse...!”.

Some months ago, a very interesting and original seminar was presented by the Franco-British lawyers Society and CREDA, which stands for “Business Law Research centre” of the

Chamber of commerce and industry of Paris. The topic was the negotiation of contracts between a French company and a British company. The device used was a role-play, which showed – and explained – step by step, the negotiation. Happily, all this was caught on a video sponsored by VIVENDI, which is now available. Such a fruitful and friendly co-operation could not stop there. That is why we have the pleasure of finding ourselves gathered here today to discuss another interesting matter: “company law as a tool for companies in the Europe of the twenty first century”. For this colloquium, the organisers have had the honour of the participation of very prestigious French and British institutions.

I would like to emphasise a word, which I consider to be very important in the title of today's meeting: “Company law as a TOOL...” Company law should not be seen as a self-sufficient academic subject matter but rather as a finely tuned tool, which answers companies' needs as precisely as possible. In other words, a tool which, far from being a barrier to their incorporation, will promote their development and facilitate their transfer in a world where competition is harder and harder. As the Chairman of an Institution which represents 290 000 French firms and defends their interests, I can tell you that they do need – as well as any other firms – such a tool.

Thus, the Chamber of commerce and industry of Paris is very keen on supporting actively any initiative which will tend to adapt companies structures to a highly competitive environment. Which means greater flexibility and greater freedom.

This was precisely the conclusion of a CREDA recent study, published in 1997 by the European Commission, in which experts from England, Germany, the Netherlands and France have elaborated a new type of European company: a “European close company”. The aim was to promote a form of company likely to meet expectations of all firms – small and medium-size as well as big ones – willing to find partnerships or to extend their cross-border activity.

On the basis of CREDA's proposals, the CCIP and the MEDEF drew up, with the assistance of a European working party chaired jointly by Mrs Jeanne Boucourechliev and Mr Bernard Field, a draft regulation relating to the rules governing a “European Private Company”. This draft has been supported by European professional bodies such as UNICE and Eurochambres. And the European institutions and organisations concerned by the project have been very interested by this contribution made by Business for Business.

Before I give you the microphone, Mme le Bâtonnier, I would like to thank everyone who has contributed to make today's meeting a success and to thank in particular the speakers of the highest level who are going to share their knowledge and thoughts with us.

And last but not least, I would like to tell you that it is a great pleasure to be here with you all this afternoon.

Mme Dominique de LA GARANDERIE,
Bâtonnier de l'Ordre des Avocats à la Cour de Paris

President,
Ladies and Gentlemen,
Please do excuse me for my accent.

The friendly understanding which was recall by President Franck has changed over the years into the true friendship between English and French lawyers. The attendance each year by the head of the London Bar and many UK lawyers at the Rentrée of the Paris Bar evidences this friendship. My attendance and before me that of my predecessors at the Rentrée of the London Bar symbolises such friendship. I should mention the registration of many English lawyers and also French lawyers with our two Bars.

I wish to insist in greater detail upon the crucial importance of the subject for which we all are assembled: "Company law at the service of Europe". I (...)also see opportunity to thank the French Chamber of commerce in Great Britain and to the university of Exeter. Both have gathered together the Paris Bar, the MEDEF and the CBI, thus giving an opportunity to jurists and businessmen to compare and discuss their points of view. The assistance of the French Embassy in the UK underlines the importance of the subject. I am pleased to remind that as early as 1960 the Paris Bar organised the seminar on the topic for the establishment of a commercial company subject to European law. 1960: almost 40 years ago and the European company is not born yet. And yourself, your British friends have multiplied efforts to work out a European law. Through the CREDA and the IFC, it's the training institute of the Paris Bar, we have organised on 4 December 1997 a seminar on this subject with the presence of Mr Mario Monti, the European Commissioner. Even more recently, in November 1998 and November 1999, during my 2 years as head of the Paris Bar, the Paris conference on law and economics has assembled at the Paris Bar initiative, the most well known managers in the world economy, public and private governmental bodies and companies. On this occasion, the expected hoped and claimed birth of a European company. I must mention, speaking from the entrepreneurs' point of view, M. Vincent Boloré called for a homogeneous clear stable and effective legal system. He also claimed a better knowledge of foreign legal systems as a means of selecting the best rules. In this respect as far as Europe is concerned an harmonising process including sometimely legal bench marking is much better than the kind of individual legal shopping led by firms themselves and meet the conclusion of competing legal system. While Jean Perelevade, Chairman of the Crédit Lyonnais, agreed with this legitimacy concern stressing the important function of the public source of law in the process. He also called for global rules for globalisation. In opposition, unilateralism currently, prevailing in the definition of standards. He stated that the present merging logic underlined the necessity of harmonising European legal system particularly in fiscal matters. Otherwise these merging processes may too often take aggressive forms which would eventually endanger Europe. As all of the speakers from the economical world, he estimated that such a harmonisation should be helped by the creation of a European society statute. The phenomenon of globalisation has forced businesses to reorganise its activities into networks and has led to an important restructuring in various sectors. It is imperative that the construction of Europe, the Euro zone, gives priority to facilitating restructuring of these businesses at European level. This European priority will have as a consequence a true competition for businesses European block, American block, Japanese block. In certain sectors and activities, the European stage is indispensable. Thus, the coherence of construction of Europe requires convergence of legal systems that would permit the creation of European corporate entity as a structure for European businesses which are currently confronted by these obstacles which oblige them to find torturous legal ways to achieve their aim. All the leaders of business ask for this. Haven't we, the lawyers, the obligation to demand the putting in place of a model in the same manner than the economists used to do it in their area. Our work today will be a strong thing for we consider that this

demand is legitimate. This is why it is urgent to hold a meeting such as today's meeting. I would like to thank everyone for such an event and I thank you very much.

M. Jonathan Hust,
QC...,

Welcome to all on behalf of England-Wales. What you have to discuss today are issues of great significance for us all. I cannot pretend to being gifted with a great knowledge of English company law. Dan Prentice who is speaking too later tried hard to teach me in the course of the Teen case, the special laws of corporations... I am not sure he completely succeeded; we lost at any rate. As each of our two great countries does more business with each other and we compete internationally across the globe, it has become more important that we understand and merge our two traditions of corporate structures. We live in a time of great change. We can see how French companies come over here and they have bought large trunks of our water industry and our railways. You are welcome to them. We will stick to your claridge. But I hope this afternoon we have a constructive and useful meeting and that we end with a greater understanding of the issues that require to be solved. Thank you.

Mme Joëlle SIMON,
Directeur des Affaires juridiques, MEDEF

Ladies and Gentlemen,

First of all I would like to excuse Mr Kessler who should have been speaking this afternoon as the representative of a French enterprises association MEDEF formally CNPF. But he has been called at short notice to a government meeting. He asked me to express his apologies and I know he was looking forward to being with you here today.

The MEDEF considers that this meeting is of utmost importance because in times of great change in society with the rapid evolution of European integration and globalisation, business structures have to adapt quickly to this new business environment.

We really need flexible forms of companies. That is why the MEDEF and the Paris Chamber of commerce have decided to introduce for debate a new company structure: the European Private Company. We are very pleased to have this opportunity today to present this project and to get feed back from you.

Thank you for your attention and I hope that this meeting will be a fruitful one.

M. Jean-Claude BANON,
Président de la Chambre de commerce française de Grande-Bretagne

Ladies and gentlemen, thank you very much for inviting me to speak today here. As a matter of fact wearing my hat as a chief executive of Vivendi in the U.K. I would say that the media tend to make too much of how much water we've bought in this country. I can assure you that it is much less than they present.

Now this being said, I think that back to our subject, as the single market matures the focus is very much shifting from creating the legal framework necessary for the integration of national markets to that of securing high level performance for the European economy. However the two, the legal framework and the high performance often go hand in hand. When the European company statute comes into force it is hoped that it will paved the way for higher performance by pan-european companies. Unfortunately, the European legislative process seems to be rather lengthy. In this case we are still waiting a decision on a proposal which was made by the Commission in 1989.

What is exciting about the European company statute is that it will allow companies incorporated in different member states to merge or form a holding company or joint subsidiaries while avoiding the legal and practical constraints arising from the existence of 15 different legal systems. There is no doubt that this will simplify arrangements for international companies. While there will be no obligation for firms to set up as European companies, businesses will have an option for managing their affairs within the EU. The few worries surrounding Vodaphone's bid for Mannesman has been accompanied by clamours for changes in European company law. Mario Monti, the EU competition commissioner remarked that the Vodaphone/Mannesman case clearly demonstrated the need both for a European company statute and a Directive on European take-overs.

On the employment front, a break-through was reached on 29 November, just few days ago when the Council of Ministers approved the entire employment package that was put to it, notably the employment guideline for 2000 and the recommendations to Member states on the implementation of their employment policies. The employment package will now go for approval to the Helsinki sommet later this week. We may be well on the way to having a truly European employment strategy for Europe.

However the proposal on the European company statute has not been passed yet. After the Davignon report came out in May 1997, outlining recommendations on employee involvement in a European company, the Commission was forced to take a fresh look at the proposal for a European company statute. Issues needing to be resolved included employee participation and acceptable fiscal regime and the provision of adequate protections for creditors. Although compromises have been made the failure to solve the issue of employee participation continues to be a major stumbling block against reaching a political agreement. As a matter of fact, Ader Turner is not here, but having had the opportunity to discuss very much at the CBI Council those issues I think is fair to outline that the CBI maintain that provisions on the employee involvement should be excluded from all European company law proposals. However, when it became clear that such provisions had to remain the CBI continued, successfully I should say, to push for greater flexibility in these arrangements. So let's hope that the disagreement between the EU Member states especially Spain and Germany over the level of employees' involvement in a European company can be resolved before the end of this year. Once this issue is sorted out the way should be clear for the European company statute to come into force. Thank you.