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Address by Philippe de Buck

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to

The Second European Conference on Corporate Governance

Organised by the European Foundation for Corporate Governance

"UNICE's views on Corporate Governance: What is Corporate Governance and what do we need?"

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Ladies and Gentlemen,

It is an honour for me to address this distinguished audience of important specialists in Corporate governance. I also would like to congratulate the organisers of this important event.

This timely conference clearly provides a unique opportunity for relevant stakeholders, and I am thinking in particular of business leaders, academics, and decision-makers, to reflect on the crucial questions concerning the opportunities and threats for Europe's corporate and economic future. The first conference was organised in 2000, the second is this one. The least we can say is that some important elements have changed in such a way that we will have to take another look at / rethink the Corporate Governance issue.

From being a little used term some years ago, 'corporate governance' is now a golden topical subject for courses, seminars and conferences like this one today. Why is that?

Turbulence in the global financial market, past and present, illustrate the extent to which financial markets have become inextricably linked as a result of rapidly accelerating globalisation, especially in this area.

At the same time, a new stock-market culture has developed. There is – or there was - increasing pressure for return on investment. The management of companies is being – or was being - asked to become more oriented toward shareholder value. In addition, shareholder structure is becoming more international and there is a dramatic change taking place in the composition of institutional and private portfolios.

Global corporate and social responsibility and accountability are today's issues, certainly at EU level where we are already involved in corporate social responsibility discussions. Faced with increasing challenges, managers are expected to combine skills that go beyond the traditional business approach.

Even if the recent financial scandals – merely in the US, but also in Europe - may not have been generalised, they have shown how a high level of uncertainty in companies' corporate governance can stifle new investment and slow economic recovery. The second half of the 1990s was a period of tremendous economic growth. As we are now learning, it was also a period where the pressure for short-term results sometimes tossed aside strict compliance with existing standards.

These financial scandals have clearly put corporate governance at the forefront of business, government and NGO agendas, launching intense discussions about:

- what is corporate governance?
- what it is actually for ?
- and how can it best be achieved?

There are still many differences of opinion about what corporate governance is for, what it encompasses and how it should be brought about. So far, the increased interest and debate on this topic has, in many ways, served to raise as many questions as it strives to answer.

Is corporate governance to increase shareholder returns,
to optimise the management of companies,
to prevent unethical behaviour,
to improve economic and social well-being,
or to do all of these things?

I would tend to consider that corporate governance encompasses the full range of principles: looking after shareholder interests, attaining transparency and a well-balanced relationship of management and control and maintaining decision-making capacity and operational effectiveness.

The corporate governance of companies is the product of a complex system which has its roots in the country in which these companies are incorporated. It is a system that derives from a combination of laws, regulations, self-regulation, accepted practices and, more generally, of the legal framework and finally also the economic culture prevailing in each country and even within each company.

There is no single model of good corporate governance.
At least hundreds of codes exist in this area and the issue we are facing is not about creating or inventing new codes or new layers of rules. The issue is rather now to create a better culture of transparency and accountability.

There is no static or final structure in corporate governance that every country's companies should emulate. Experimentation and variety should be expected and encouraged within the limits of credible regulations emphasising fairness, transparency, accountability and responsibility.

Just to take one example, a new Italian piece of company law would make it possible to choose among three existing structures for a company's board (the Anglo-American one, the German one, and the Italian one). After all, what really matters is that the same objectives are met. In addition, adaptation and adjustment to corporate governance should remain an ongoing process. To be competitive, companies and investors must be allowed to innovate and to adapt their governance practices to new economic circumstances. Market-driven solutions emerging from competition among alternative practices should be considered generally superior to those mandated by regulated authorities.

In the debate on corporate governance most proposals for reforms have been directed at improving the accountability of managers to owners. But there is also an underlying question concerning the impact of corporate governance for corporate competitiveness.

Discussions on 'corporate governance' should not relegate to a second division improvements needed at EU level to support and boost companies' competitiveness. Generating long-term economic gain to enhance shareholder value is necessary to attract equity investment capital and should remain a company's central objective.

Business needs a more effective, cost-effective, and flexible legal framework for companies to improve their competitiveness at EU and global levels. In particular the need for further action in European company law should concentrate on the elimination of mobility constraints on companies within the single market, in particular concerning cross-border mergers and transfer of the seat of companies.

New rules should be flexible enough to facilitate companies' activities while not restricting or hindering the needed competitive business environment. In addition, tax laws should not prevent companies from making use of the possibilities potentially offered to them through revision of company law.

The main objective of company law should be to provide a legal framework that enables investors to undertake business activities efficiently, in a way they consider to be best suited to attain success.

The question is therefore one of ensuring an appropriate and sustainable balance between the different goals that companies want to achieve, including better governance.

How can this be achieved?

Once again we should not start the discussion from scratch. A lot of debates have already taken place on this subject, particularly at EU level.

In March 2002, the Barcelona European Council stressed that responsible corporate governance was a pre-condition for economic efficiency and measures were called for in order to guarantee the transparency of corporate governance and corporate accounts and to better protect the shareholders and all the stakeholders.

The European Commission has launched a wide-ranging exercise on these issues with its Financial Services Action Plan on the one hand and with the work of the high-level group of experts on company law on the other hand. The Financial Services Action Plan concerns primarily securities regulations. The work of the Jaap Winter high-level group of experts on company law has been focusing very much on external corporate governance and outside control. Progress has been made on both internal and external governance and I will just refer to latest developments at Council level on the directives on prospectus, on insider dealing and market manipulation.

The high-level group of experts on company law believes that the primary focus of the European Union should be to develop and implement company law mechanisms that enhance the efficiency and competitiveness of business across Europe. As UNICE, we couldn't have said it better.

We have answered in detail the high-level expert group's questionnaire which addressed in particular the issue of corporate governance and we are pleased to find most of our position in this second report.

I quote from the report: “The key input for code of Corporate Governance should continue to come from the market and their participants. Each Member State should designate one particular Corporate Governance code as the code with which companies subject to their jurisdiction have to comply or by reference to which they have to explain how and why their practices are different”.

A comparative study of corporate governance codes which was undertaken a few months ago provides a detailed comparison of the existing corporate governance codes and rules.

One of the main conclusions of this study is that the most important differences in corporate governance practices among companies incorporated in EU Member States result from differences in company law and securities regulations rather than differences in code recommendations coming from the business community or independent bodies.

The study highlights that there is little indication that code variations pose an impediment to the formation of a single European equity market. In other words, the various codes emanating from the Member States appear to support a convergence of governance practices.

The OECD principles of corporate governance already provide coherent basic corporate governance principles.

The Corporate governance should remain a private sector prerogative, but also a responsibility. The governments have a distinct and important responsibility in providing a framework that allows investors and enterprises to adapt corporate governance practices to rapidly changing circumstances.

The debate within UNICE clearly reveals that companies do not need and do not want a new layer of EU legislation on corporate governance.

Binding regulation does not allow for the flexibility required to deal with diverse and complex concrete situations. It would therefore be advised to adopt uniform rules in this area. At national level, it has largely been left to the private initiative of companies to adopt guidelines or codes of good practice. This has already happened and national rules or guidelines adapt all the time to the globalising regulatory environment. They are not at all static!

Another layer of mandatory EU legislation in this area has to be perceived as over-regulating.

In this context, this second European Conference is a useful forum to discuss further how best to evaluate best practices and to discuss whether and to what extent the existing codes on corporate governance have to be coordinated.

Finally, I cannot address the issue of corporate governance without mentioning the recent developments in the USA. The Sarbanes-Oxley Act clearly gives an illustration of one country wanting to export its model of corporate governance to other regions of the world. As stated above, imposing pre-determined corporate governance arrangements is not the solution.

This is why UNICE, while sharing the objective of the Sarbanes-Oxley Act to restore investor confidence in the integrity of capital markets, has voiced deep preoccupation about the approach taken by the US authorities in this area.

The Sarbanes-Oxley Act marks a radical change in the attitude of the United States to the application of its corporate governance rules to foreign issuers.

In fact the solution adopted in the past consisted in requiring non-US companies simply to disclose their corporate governance arrangements, without the US authorities interfering with the national law and the internal organisation of foreign issuers. The rationale underlying this approach was the implicit recognition of the ability of other national legal systems to ensure the equivalent level of investor protection. This should remain the main approach if we do not want to overburden companies with different rules that would ultimately hinder their competitiveness and for some of them render access to the US capital market impossible.

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Ladies and gentlemen, compared with 2000, the prevailing situation today is very different. In 2000, the essential objective was to maintain and even to increase growth and in particular stock-market capitalisation.

Today, the number one priority is to restore the confidence that is essential for a re-invigoration of stock-market activity.

Even in this environment:

- The market should remain the key pressure for corporate governance;
- The philosophy of corporate governance rules in the EU is based on self-regulation, and this should remain the main line of conduct;
- There must be better coordination of existing codes.

I hope that these issues amongst many others will be discussed during this conference. Most of you will play an important role in the introduction, presentation and, I am sure, in the lively debates.

I finally express the wish – that you could share with me – namely that this biennial conference becomes the most important European event where corporate governance will be discussed in the future.

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