UNICE
THE VOICE OF BUSINESS IN EUROPE

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Address by Philippe de Buck

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to

The European Corporate Governance Summit

"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 CFOs and specialists in corporate governance. I also would like to congratulate the organisers of this event.

Let me first say a few words about UNICE. UNICE represents more than 20 million small, medium, and large companies. UNICE's members are 38 central industrial and employers federations from 32 countries, working together to achieve growth and competitiveness in Europe. UNICE has been an active participant in the many discussions taking place in recent years on corporate governance.

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

The second half of the 1990s was a period of tremendous economic growth. It was also a period when the pressure for short-term results sometimes tossed aside strict compliance with existing standards.

These developments 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 in and debate on this topic has, in many ways, served to raise as many questions as it strives to answer.

Corporate governance 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, the legal framework and finally also the economic culture prevailing in each country.

A comparative study of corporate governance codes which was undertaken a few years ago (in 2002) provides a detailed comparison of the existing corporate governance codes and rules[1].

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.

We do not need to create or invent new codes or new layers of rules. The issue is rather how to create a better culture of transparency and accountability.

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. Market-driven solutions emerging from competition among alternative practices should be favoured above those mandated by regulatory authorities. Politicians are not corporate governance specialists!

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.

We should be careful that discussions on corporate governance do not have a negative impact on companies' competitiveness.

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.

In Europe, the European Commission adopted a Communication in May 2003 to "modernise company law and enhance corporate governance in the EU", otherwise known as the Company Law Action Plan.

[1] See "*Comparative Study of Corporate Governance Codes relevant to the European Union and its Member States*" by Weil, Gotshal & Manges LLP on behalf of the European Commission, 27.3.2002, available at the following link:
http://europa.eu.int/comm/internal_market/company/news/1997-2003_en.htm#comparativestudy

The fact that one of the key policy objectives of the Commission's Company Law Action Plan is to "*foster the global* ***efficiency and competitiveness of businesses*** *in the EU*[2]" is particularly welcomed.

Nevertheless after a careful assessment of the numerous consultations and proposals implementing the Action Plan, UNICE believes that the Commission is losing sight of this objective.

Good and efficient company law and corporate governance are of utmost importance to companies and their stakeholders. However, excessive regulatory burdens may ultimately restrict the freedom of companies to do business, thereby holding them back from releasing their potential. This is detrimental to business, to company shareholders and more generally to the EU as a whole.

The European Commission has repeatedly indicated that it is not appropriate to adopt a European Corporate Governance Code. According to the Commission, "*the adoption of such a code would not contribute significantly to the improvement of corporate governance in the EU*" [3].

UNICE shares this view. However we question whether the Commission is delivering on its declared intention NOT to create a European Corporate Governance Code. If the Commission proceeds as intended, this will effectively lead to the adoption of a piecemeal European Corporate Governance Code, albeit without the official title (we already have EU recommendations on directors' remuneration and on non-executive directors' independence and ongoing proposals on board responsibility and corporate governance information, on statutory audit committees, on shareholders rights etc). All these topics are the usual chapters of a corporate governance code. UNICE therefore calls on the Commission to stay true to its original view that the introduction of a European Corporate Governance Code is both unnecessary and undesirable, and to stop doing the contrary.

In our view the following principles must be met for any EU intervention in this area.

Principles for an EU approach to company law and corporate governance

Subsidiarity

The EU should only intervene when it is proven that the foreseen objective cannot be reached by national action. EU action should not disrupt the delicate balance found at national level, which takes into account national traditions and cultures. (e.g: code on corporate governance is better dealt with at national level).

Principle-based approach

In light of the subsidiarity principle, in any EU intervention, a general principles-based approach should prevail over a rules-based approach. This would allow a degree of flexibility necessary for companies to develop the governance model best suited to them.

[2] See the Action plan: COM(2003)284, 21.5.2003, Commission Communication "*Modernising Company Law and Enhancing Corporate Governance in the European Union – A Plan to Move Forward*"
[3] See footnote 2, in section 3.1 of COM (2003) 284, 21.5.2003

Market-driven approach

In UNICE's view corporate governance is better served by flexible self-regulatory initiatives as opposed to regulatory interventions. Over-regulating is a disincentive for companies to go beyond legislation and adopt corporate governance best practice.

Comply or Explain

When a corporate governance code is applicable, companies should either conform to the provisions of that code, or provide an explanation as to why the principles have not been followed. This 'Comply or Explain' approach has been in operation for over 10 years and the flexibility it offers has been widely welcomed both by company boards and by investors.

Transparency and disclosure

Transparency is an essential ingredient for any form of outside monitoring. It is very important for the shareholders and investors to see the manner in which a company follows the recommendations on corporate governance. Transparency enhances confidence in a company.

Global orientation

EU policy should be oriented towards and take into account the global environment in which European companies inevitably evolve. Adding an additional and possibly contradictory EU layer of regulation would be a hindrance to achieving the goals of corporate governance.

Best practices

Exchange on best practices should be encouraged so that society can benefit from an emulation effect. To be competitive, companies and investors must be allowed to innovate and to adapt their governance practices to new economic circumstances. In this context, the EU should ensure that Member States mutually recognise each other's legal systems.

Better regulation

Impact assessments and proper consultations[4] are the basis of good regulation. Consultation remains one of the basic principles of participatory democracy but consultation needs to be carried out in the right conditions: sufficient time for considered responses and a weighted analysis of responses received are fundamental ingredients for successful consultations.

Observance of these principles would help to meet users' needs more fully.

UNICE also urges public authorities to resist pressure to include in corporate governance issues which do not belong there such as corporate social responsibility (CSR), which is a much broader topic.

Finally, I cannot address the issue of corporate governance without touching on the impact of the Sarbanes-Oxley Act (the so-called "SARBOX") on EU developments. SARBOX clearly gives an illustration of one country wanting to export its model of corporate governance and related liability to other regions of the world.

[4] As highlighted by the High Level Group of Company Law Experts that largely inspired the afore-mentioned Commission Action Plan "for both primary legislation and any alternatives, proper consultation is necessary". See "A modern regulatory framework for Company Law in Europe" presented on 4 November 2002, available at the following page of the Commission website: http://europa.eu.int/comm/internal_market/en/company/company/modern/, p. 4.

This is why UNICE, while sharing the objective of SARBOX 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 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 layers of strict rules that would ultimately hinder their competitiveness and for some of them render access to the US capital market impossible.

Since I am talking about transatlantic discussions, I want to make a remark about the on-going debates on accounting standards. I would urge you as business representatives to be more active in the current discussions on convergence with the US. The transition to IFRS in the EU and the lack of progress on the convergence agenda with the US is creating lots of problems for EU companies and is very costly. We need more business pressure to progress this agenda. We also need more business participation and commitment in the internal EU debate on accounting standards. The functioning and governance of the international accounting standard board (IASB) is currently being discussed as well as its financing. The business voice must be heard more in these debates. European Business must also strengthen its influence vis-à-vis national regulators and the EU Commission. We need to be better organised to ensure that the voice of Europe in accounting discussions is taken into account. Companies are not present enough in the discussions.

As a conclusion I would like to say

- 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.

In order for this strategy to be a success, two conditions have to be met. If you CFOs, if you managers want to play your role in society, you have a duty to set an example. Business ethics is not an empty phrase. What is true for politicians is also true for the business world. Corporate governance, ethical investments, transparency in information, these are concepts which company directors must take into account if they wish to be credible. The authority of representative organisations such as UNICE is dependent on the credibility of each company.

Secondly, if CFOs, if managers want to be heard, they must communicate better.

Over the last twenty years companies have learnt to communicate with employees, and not only with their representatives, and later on with their shareholders and immediate partners.

Today the time has come to communicate more widely and in greater depth. European business must communicate with all stakeholders as well as with policy-makers. For instance, at UNICE we have defined a charter vis-à-vis consumers precisely to strengthen dialogue, to find alternatives to legislation, to take care of product safety in such a way as to avoid administrative and regulatory red tape.

Enterprise is at the heart of Europe, business has a role to play to ensure that Europe regains a level of excellence and, as a result, again becomes attractive for investors.

Thank you for your attention

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