

# **A Modern Regulatory Framework for Company and Takeover Law in Europe**

**Syracuse Conference, 29-31 May 2003**

## **Conference Programme**

Thursday 29 May 2003

Morning session

### **I. General themes**

#### **1. The need for a regulatory framework for company and takeover law in Europe: theory and practice of convergence, path-dependency, harmonization and competition of regulations**

*including federalism/state law, European/national law, comparative patterns (US, Cdn, Aus)*

R: Gérard HERTIG: “Company and Takeover Law Reforms in Europe”

R: Allen FERRELL: “Why European Takeover Law Matters”

#### **2. Regulation in corporate governance, in particular disclosure: economic and legal perspectives**

R: Hanno MERKT

C: Reiner KRAAKMAN: “Disclosure and Corporate Governance: an Overview Essay”

#### **3. Modern company law making (secondary regulation, standard setting, model laws, code movement)**

*including strengths and weaknesses of soft law, corporate governance codes, monitoring compliance, enforcement etc*

R: Eddy WYMEERSCH: “About Techniques of Company Law in the European Union”

C: Klaus J. HOPT

### Afternoon session

#### **4. Distinguishing types of companies (listed, open, closed companies): Is a separate body of rules for the listed company emerging or are special rules for companies tapping the capital market (public offering) the better way?**

*including competition between company laws and regulatory patterns, but not general level playing field issues (cf. topics 1 and 10).*

*Company law regulation taken over by securities laws and regulation including supervision? Does it matter? Consequences for both fields?*

*Free movement of capital as a new source of EU company law (besides freedom of establishment), golden share decisions of European Court of Justice.*

C: Alain PIETRANCOSTA (replacing Michel MENJUCQ)

C: Jaap WINTER

### **II. Corporate governance: Inside the corporation**

#### **5. Board structure, in particular the role of non-executive and supervisory directors**

*a) one tier and two tier structures: differences, convergence, option for all companies?*

*b) non-executive directors: how to ensure independence as well as competence?*

*c) audit committees*

*d) relation to shareholders?*

R: Paul DAVIES: “Post-Enron Developments in the United Kingdom”

R: Jennifer HILL: “Corporate Scandals across the Globe”

#### **6. The remuneration of executive and non-executive managers**

*a) disclosure and shareholder involvement*

*b) caps and other restrictions*

*c) particularities for non-executive managers or supervisory board members*

*d) accounting*

R: Guido FERRARINI and

Niamh MOLONEY: “Executive Remuneration and Corporate Governance in the EU”

R: Kimberly CROOK: “Accounting for Share-based Remuneration”

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**7. The responsibility of the management and the board and its enforcement**

- a) fiduciary duties in different legal systems*
- b) responsibility of management for financial statements*
- c) accountability of directors where the company becomes insolvent*
- d) disqualification and other sanctions*

R: Holger FLEISCHER: “The Responsibility of the Management and its Enforcement”  
C: Michel PRADA

**8. The role of the shareholder: shareholder information, communication and decision-taking**

- a) improvements by using information technology including cross-border voting*
- b) creating special investigation procedures*
- c) the role of the institutional investor, particularly in Europe*
- d) accounting?*

R: Eilís V. FERRAN: “The Role of the Shareholder in Internal Corporate Governance”

**9. The auditors**

- a) role*
- b) independence, conflict of interest*
- c) rotation*
- d) supervision by state, self regulatory bodies, public accounting oversight board*

R: Werner EBKE: “Corporate Governance and the Independent Auditor”  
C: Jens RØDER  
C: John COFFEE : “Gatekeeper Failure and Reform”

Afternoon session

**III. Corporate governance: the market for corporate control and the level playing field**

**10. American experience and EU perspectives**

R: Jeffrey N. GORDON: “An American Perspective on the New German Anti-Takeover Law, with EU Implications”

R: Joseph A. MCCAHERY: “The Economics of the Proposed European Takeover Directive”

**11. The proposed break-through rule**

*a) pros and cons of defences*

*b) the working of the break-through rule*

*c) in particular the case of multiple voting rights (economic and legal theory, treatment under the new draft 13th directive)*

R: John C. COATES IV: “The Effect of the BTR on the Contestability of EU Corporations”

R: Peter O. MÜLBERT: “Make it or Break it: the Break -Through Rule as a Break-Through for the European Takeover Directive?”

R.: Marco BECHT: “Corporate Governance and Control”

**12. Other issues: price of the mandatory bid, squeeze-out and sell-out**

R: Fausto PANUNZI: “Mandatory Bids, Squeeze-out, Sell-out and the Dynamics of the Tender Offer Process”

R: Luca ENRIQUES: “A Veneer of Harmonisation: the Mandatory Bid Rule in the Proposed EC Takeover Directive”