

The Foundation's Newsletter

Agenda of the Foundation :

September - october 2011

- 4-22 July 2011: The 2011 session of the Summer University of Civil Law was held at the University of Paris II Panthéon Assas.
 - 1-9 August 2011: Legal conference for lawyers from New Caledonia, at the University of Law of Sydney, organized by Ms. Gibson. Mr. Grimaldi attended.
 - In September and October 2011, the Foundation will continue to implement its programme of Chairs in Civil Law:
 - Chair in Colombia, on the topic of "law and economy",
 - Chair in Japan, on "managing goods for others".
 - See the comprehensive programme of Chairs developed by the Foundation
 - 17-18 September in Beijing : 5th PACL forum "Making Southeast Asian Contract Law Uniform", on contract performance.
 - 4 October in Santiago : PACL forum "Making South- America" Contract Law Uniform",
 - September : translation into English of the third issue of the Revue Henri Capitant,
 - 13-14 October 2011 : organization, in partnership with the French Embassy in Beijing, of a seminar on the new law on atmospheric pollution (assisting the Chinese Ministry of the Environment in drafting the new law)
 - Mid-October : awarding of the Foundation's thesis prize in China. In 2011, six candidates submitted their theses; two of them will receive prizes awarded by the Foundation's jury.
 - 27 October : colloquium organized by the National Assembly, the CESE and the Foundation on "Civil Law, Vector of Competitiveness".
 - End of 2011 : planned translation of the Civil Law brochure in Portuguese (Brazil) and Spanish (Mexico and Spain),
 - Download brochure in French-English
 - Planned publication of the "Choose your law" report compiled as part of the Foundation's partnership with HEC.
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➤ The Friends of the Foundation Association

23 June 2011 : the Association held a General Assembly and elected its new President, Mr Hervé Delannoy, Vice-president of the AFJE (French Association of Business Lawyers), and legal director of RALLYE SA.

The purpose of this Association is to contribute to achieving the goals and missions of the Foundation for Continental Law.

It also contributes technical expertise in the areas of law and economics to help the Foundation carry out its activities.

It is open to all interested individuals and legal entities.

Interview with Mr Hervé Delannoy



President of the "Association of Friends of the Fondation"

Vice-president of AFJE (The French Association of Corporate Lawyers)

The French Association of Corporate Lawyers (AFJE), a member of the Association of Friends of the Fondation, has just joined the board of directors of the Fondation. Can you give us an introduction to the AFJE?

The AFJE is very honored and pleased to join the board of directors of the Fondation pour le droit continental. The Association Française des Juristes d'Entreprise - French Association of Corporate Lawyers, currently chaired by Jean-Charles Savouré, Associate General Counsel for IBM Europe, comprises approximately 4000 in-house attorneys, including 600 general counsels or heads of law departments at more than 1300 companies. The AFJE was founded more than 40 years ago by Raymond Sié and evolved alongside the profession of in-house counsel, currently the second most popular legal career involving some 16,000 attorneys. The AFJE was from the outset, and remains, the most important organization of corporate lawyers, geared at defending and promoting the corporate attorney position and to provide a forum for meetings, discussions, information, and training. Accordingly, the AFJE has built up an extensive network with the multitude of public and private organizations affecting its professional environment. We maintain regular contacts with public authorities, as well as the other legal professions and their organizations ("avocats", notaries, bailiffs, management), magistrates, law professors and researchers at universities and schools, educational organizations, law journal editors, foreign attorneys, in particular European attorneys, through our participation in the ECLA (European Company Lawyers Association, with offices in Brussels). The AFJE also plays a leading role in issues concerning in-house counsel such as the privilege and confidentiality accorded to their legal opinions as is recognized in continental and common law jurisdictions.

Throughout France, we are represented by very active regional delegations. The AFJE also sponsors some fifteen topic-specific committees that enable in-house counsel to meet and discuss both technical issues of a legal nature (for example, the committee on the law of companies and financial advisors), or are more closely related to the characteristics of professional practice (such as the SME committee and the international lawyers committee), or lastly, technical but non-legal issues (as in the case of the Methods and Organization Committee). It should be noted that AFJE attorneys who practice law abroad likewise constitute a committee.

What are the shared interests of the Fondation and the AFJE ?

The AFJE brings together legal practitioners who work daily on the legal matters affecting their companies' operations, whether in France or abroad or multi-nationally. Through the breadth and diversity of the kinds of businesses in which its members practice and through the variety of the legal problems encountered, the AFJE brings to the table an accurate picture of the practice of commercial law. This perspective from within a company, which is not only current but forward-directed and involving a broad spectrum of the business world, can contribute expertise and further supplement the already rich body of knowledge within the Fondation, including findings, recommendations and suggestions from many companies on the use of Anglo-Saxon or continental law in the actual business practice.. The AFJE will be able to draw on this common pool of ideas and arguments in favor of the defense of continental law.

The AFJE can thus be both a conveyor of the experience of its lawyers to the Fondation and it can also relay the actions, ideas, work and proposals of the Fondation to its members and to its other interlocutors.

The majority of the members of the AFJE are trained mainly in French and thus continental law. The real shared interest is encouraging them to promote this law in their international practice in a fashion that is not detrimental to their companies and could possibly even improve their legal operations.



Interview with Mr Michel Doucin

Ambassador of France for corporate social responsibility and bioethics

The "United Nations Human Rights Council Guiding Principles on Business and Human Rights" adopted by the United Nations on June 17, 2011 carry the imprint of American business law while affirming the role of the States

By Michel Doucin, Ambassador of France for corporate social responsibility and bioethics

It took 18 years for the United Nations Human Rights Council to adopt the Guiding Principles on Business and Human Rights. After several successive attempts since the World Conference on Human Rights of Vienna in 1993, which were essentially numerous confrontations between the "soft law" and written law approaches, in 2005, the Human Rights Council elected Professor John Ruggie, a special representative of the Secretary-General of the UN for human rights, transnational corporations and other enterprises, and six years later it is the product of his efforts that has been adopted.

This is a "soft law" instrument. However, very similar versions of this text having been reiterated in three other international standards documents that were simultaneously negotiated, its legal effects are potentially greater than that of the usual "soft law" instruments: the ISO 26000 [Guidance on social responsibility] (September 2010), the revised OECD Guidelines for Multinational Enterprises (May 2011) and the revised Policy and Performance Standards on Social and Environmental Sustainability (May 2011) are in fact directly inspired by it, the latter two being replete with verification mechanisms, meaning respectively, the National Contact Points and the procedure for granting loans.

However, one can discern from the Principles six broad notions that are distinct from the traditional CSR approach:

- reaffirming the central role of the State in the regulation of Corporate Social Responsibility ("CSR"): the State plays a fundamental role in human rights issues, assert the Principles. The State must, in particular, use all economic means at its disposal, such as public contracts, loans and guarantees to ensure that businesses respect human rights. The State could also consider economic policy considerations in its international agreements.

However, the theory of CSR stresses on "voluntarism."

- priority given to a risk-based approach: Whereas for 60 years the doctrine concerning CSR has been built on the idea that companies are citizen-actors invited to contribute positively to the realization of common wellbeing and (more recently) of sustainable development, this text limits the companies' responsibility to the prevention of violations. By so doing, it reduces this responsibility to mere legal compliance. This approach is paradoxical, considering that among the foundations defined by the same text, the UN's International Covenant on Economic, Social and Cultural Rights defines rights as involving an essential affirmative role for companies..

- a key tool: "due diligence" Companies should manage their risks by "due diligence", a notion arising under the American legal system, and thus American law. Companies are invited to make an exhaustive inventory of the risks they face, and relate them to all their stakeholders, and to issue a "statement of commitment" of their objectives and set up internal protocols for managing these risks.

- all of the supply chains are involved: All commercial ties, whether direct or indirect, should be the subject of a "due diligence" examination and consider the available "flexibility" (the French plea for the concept of influence having been rejected).

- CSR includes mandatory elements: Risk, for companies, is also legal in nature because of certain national laws that concern extraterritorial matters, but also because of fundamental international standards: the Human Rights Charter consisting of the Universal Declaration of Human Rights of 1948 and of the two Covenants of 1966, as well as the eight fundamental labor standards identified in the ILO Declaration on Fundamental Principles and Rights at Work of 1998[A3]. If certain countries do not recognize these texts, the companies will be judged (by public opinion, intergovernmental mechanisms, and even national courts) on their efforts to prioritize these important matters. Incidentally, the boundary between human rights and

labor is blurred.

- CSR henceforth rests on 4 pillars from now on: human rights are now on integrated into CSR, so that it now has a fourth pillar, alongside the the environmental, social, and economic governance . The issue is their harmonious inclusion with the concept of sustainable development, which is not limited to risk management.

Immediately following the adoption of Principles the text, it was decided to install a mechanism for monitoring their implementation. It will consist of a committee of five experts representing the five continents, responsible for observing how the Principles will be adhered to and for proposing interpretations of the incertitudes they contain, in particular responsibilities with regard to the supply chain, the boundary between mandatory and voluntary, etc.

This may be an opportunity for European law professionals to play a role in a field from which they were largely excluded. The question will arise, for example, as to how the European courts will handle information submitted by companies on the "due diligence" mechanisms that they have implemented and how they will interact with their American court counterparts addressing dealing with similar matters.