



DIRECTORS  
ROUNDTABLE

# WORLD RECOGNITION of DISTINGUISHED GENERAL COUNSEL

GUEST OF HONOR:

**John Harrison**

Group General Counsel, Airbus Group

## THE SPEAKERS



**John Harrison**  
*Group General Counsel,  
Airbus Group*



**Fabrice Cohen**  
*Partner, Clifford Chance  
Europe LLP*



**Bertrand Cardi**  
*Partner, Darrois Villey Maillot  
Brochier A.A.R.P.I.*



**Stéphane Lemarchand**  
*Partner, DLA Piper*



**Hervé Pisani**  
*Partner, Freshfields Bruckhaus  
Deringer LLP*



**Alistair Scott**  
*Vice President, Intellectual Property,  
Airbus Group*

(The biographies of the speakers are presented at the end of this transcript. Further information about the Directors Roundtable can be found at our website, [www.directorsroundtable.com](http://www.directorsroundtable.com).)

## TO THE READER

General Counsel are more important than ever in history. Boards of Directors look increasingly to them to enhance financial and business strategy, compliance, and integrity of corporate operations. In recognition of the achievements of our distinguished guest of honor and his colleagues, we presented John Harrison and the Legal Department of Airbus Group with the leading global honor for General Counsel and law departments. Airbus Group is a global pioneer in aeronautics, space, and defense-related services, creating cutting-edge technology.

Mr. Harrison's address focused on key issues facing the General Counsel of an international aeronautics corporation. The panelists' additional topics included global intellectual property; governance and activism; and corporate transactions, including mergers & acquisitions and foreign investments.

The Directors Roundtable is a civic group which organizes the preeminent worldwide programming for Directors and their advisors, including General Counsel.

Jack Friedman  
Directors Roundtable Chairman & Moderator



**John Harrison**  
*Group General Counsel*



**Alistair Scott**  
*Vice President, Intellectual Property*

## Airbus Group

Airbus is an international pioneer in the aerospace industry. We are a leader in designing, manufacturing and delivering aerospace products, services, and solutions to customers on a global scale. We aim for a better-connected, safer, and more prosperous world.

A commercial aircraft manufacturer, with Space and Defence as well as Helicopters Divisions, Airbus is the largest aeronautics and space company in Europe and a **world-wide leader**.

John Harrison has been Group General Counsel since June 2015. Solicitor of the Supreme Court of England & Wales, John Harrison completed his academic studies at the University of McGill, Montréal, Canada.

He holds a Bachelor LLB (Hons) and Masters LLM of Laws degree. John Harrison began his career in 1991 at the international law firm Clifford Chance, working consecutively in their London, New York and Paris offices.

He joined Airbus, then Technip S.A., where he served as Group General Counsel and Member of the Group Executive Committee from 2007–2015.

Alistair Scott is currently the Vice President, Intellectual Property at Airbus Group. Concurrently, he is the Vice President, Intellectual Property at Airbus SAS. Prior to that, he was Head of IP at Airbus Operations Limited, starting in 2005. He has also worked at Hewlett-Packard as an Intellectual Property Counsel and as a Patent Attorney at RGC Jenkins & Company and Baldwin Shelston Waters in the United Kingdom.

Airbus has built on its strong European heritage to become truly international – with roughly **180 locations** and **12,000 direct suppliers** globally. The company has aircraft and helicopter final assembly lines across Asia, Europe, and the Americas, and has achieved a more than sixfold order book increase since 2000.

**Airbus** is at the forefront of the aviation industry, building the most innovative commercial aircraft and consistently capturing about half of all commercial airliner orders. Thanks to its deep understanding of changing market needs, customer focus, and technological innovation, Airbus helps **airlines grow and people connect**.

Prior to joining Technip, Mr. Harrison fulfilled various senior legal positions in Airbus Group companies over a ten-year period, culminating his tenure from 2003–2007 as General Counsel of the EADS Defence Division.

John Harrison was born on 12 July 1967 in the United Kingdom.

Alistair's private practice specialized in patents for physics disciplines, computational sciences, electronics, optoelectronics, communications and internet technologies.

He received law degrees from the University of Canterbury and Victoria University of Wellington and a PhD in physics from the University of Melbourne.

As the world's **No. 1 helicopter manufacturer**, Airbus provides the most efficient civil and military helicopter solutions to our customers, who serve, protect, save lives, and safely carry passengers in highly demanding environments.

The company contributes to nations' defense and security through its strong capabilities in **military aircraft** and **cybersecurity** markets. Airbus' **space technologies** also have a growing impact on our daily lives: from **deep-space exploration** and scientific missions to today's most reliable telecommunications and Earth observation satellites.

**JACK FRIEDMAN:** Good morning. I am Jack Friedman, Chairman of the Directors Roundtable. I would like to welcome everybody here. We are going to present the leading world honor for General Counsel and law departments to John Harrison and the legal department of Airbus today.

The Directors Roundtable is a *pro bono* group. As a result, we have not charged anyone to attend 800 events for 26 years. Our purpose is to organize the finest programs for Boards of Directors and their advisors, which includes inhouse counsel and outside law firms, as well as the financial community, business executives, and others.

This global series evolved from comments by Boards of Directors that their company is rarely acknowledged for the good they do. We created this series to give business leaders and General Counsel an opportunity to talk about their companies including positive achievements.

The format today will start with a presentation by John Harrison, our Guest of Honor. He will be followed by brief presentations from the other speakers on different topics, and then, if we have time, we will take some audience questions towards the end of the program. A full-color transcript of this program will be made available electronically globally to leaders in the business and legal communities.

I would like to briefly introduce our Guest of Honor. He is originally from England and was educated at McGill University in Canada. He worked in the private sector at Clifford Chance, Airbus Group for ten years, and then was the Group General Counsel at Technip. He has been Group General Counsel at Airbus since 2015. I have a surprise for him today. It is a letter of congratulations from the Dean of the Law School at McGill. It is from Robert Leckey, Dean and Samuel Gale Professor, of McGill University.

Dear John:

On behalf of incoming Director of the Institute of Air and Space Law, Brian Havel,



and of the McGill Faculty of Law, warmest congratulations to you, an LLM graduate from 1992. Our vibrant international network of air and space graduates have accomplished amazing things around the globe, and you are prominent among them.

Without further ado, I would like to have our distinguished Guest of Honor, John Harrison of Airbus, give his presentation. [APPLAUSE]

**JOHN HARRISON:** Thank you very much, Jack, for the introduction, and the Directors Roundtable for the organization of this event. I'd like to thank Clifford Chance for hosting us today, and the panelists, who are among our most trusted advisors.

This year, I am celebrating the twentieth anniversary of my first employment at Airbus in 1997, after having first been seconded from Clifford Chance London, and it is almost my second anniversary as Airbus Group General Counsel, also in charge of legal compliance, after a little break – I'm not sure that I can call it a "break" – of eight years at Technip.

There's been quite a journey from the transformation of Airbus from the GIE Airbus Industry – the Groupement d'Interet Economique Airbus Industrie – into an integrated company. This year, the merger of Airbus Group, ex-EADS [European

Aeronautic Defence and Space] into Airbus will be effective in July, so it's really the last step in a long number of changes. We're coming to, hopefully, the end of the restructuring period.

In 1997, I joined a €10 billion or Fr 70 billion turnover company, which was focusing on commercial aircraft. Now I'm leading the Legal & Compliance team of close to €70 billion turnover international group active in commercial aircraft, but also in defense and space – Airbus is the #1 defense company in Europe – and helicopters. Every other helicopter flying in the civil market is an Airbus helicopter. Of course, we are proud to have our shares listed in France, Germany, and Spain.

Before I continue, I'd like to show you a video which is going to be presenting some of our greatest products, so I hope this will work!

[Click to Watch Video](#)

It is supposed to be really loud and get you all hyped [LAUGHTER], but we are at Clifford Chance, we mustn't forget! Keep it calm!

When I joined Airbus in 1997, the legal team comprised ten lawyers. I'm now leading a team of approximately four hundred lawyers and compliance specialists, some of whom are present in the room today. The

team is also involved in very highly sophisticated transactions. As a couple of examples, we signed two of the five largest 2016 M&A deals in the aerospace and defense sector, which was effectively the monetization of our 23% stake in Dassault Aviation for approximately €2.4 billion, and the sale of our defense electronics business to KKR for €1.1 billion.

Now, the Dassault deal was described as “high-flying finance” by the *Financial Times*. Nine percent was sold to institutional investors, and another 5.5% to Dassault as part of a stock buy-back program. The monetization of the remaining 9% was made via the issuance of a €1.1 billion, five-year, zero-coupon bond. This was described as reflecting how credit investors have adapted to lower for longer interest rates, but it was a pretty sexy deal, and done in a very, very short space of time.

The defense electronics KKR transaction was also pretty remarkable. It’s the largest deal we’ve ever done with a P.E., and as you can imagine, the interests of the German and the French states for a business that must continue to serve the European military programs was very important for us, notwithstanding the disposal. It was at the heart of our objectives, but we had to ensure the delivery of the transaction and, obviously, selling in line with our strategy – so, quite complex.

Last month, we placed a US\$1.5 billion bond, a Yankee bond with a thirty-year maturity. This was our second venture into the U.S. debt markets, and it was very successful.

Apart from sexy complex transactions obviously, we have to be involved in the operational matters of the company on a day-to-day basis – securing our supply chain; getting our aircraft delivered. The team was very instrumental in last year’s record-setting delivery of 688 aircraft – this was above our guidance – and also in the receipt of more than 730 net orders last year.



This is big stuff, and we’re very proud of the very interesting work we do with a lot of you. Also, we’d like to thank you for the recognition, and to have the opportunity to share this with my colleagues – our peers, our lawyers, and all of those present today.

Our work as lawyers is extremely demanding, and it has evolved tremendously over the years. I would say we’re more business enablers than technical experts, and our role is particularly challenging in today’s world. While the role of lawyers is to ensure predictability, we have to recognize that we live in a very fast-changing and uncertain environment. What could make us stand apart from others is our ability to anticipate these changes, to adapt to them, to simplify for our management the problems, innovate, and then obviously navigate in this fast-changing, complex and uncertain environment.

I’m going to give you three examples this morning, which are political unpredictability, regulations and technology, and digitalization. Some of the team members working on these topics who have helped me to prepare this are here today, notably Alistair Scott, who is head of I.P. at Airbus, and Alison Adams from our U.K. office.

First of all, there is the subject of *political unpredictability*. I was in this office participating in a panel approximately a year ago concerning Brexit, and I was honored to be on the panel with Jean-Pierre Raffarin, the former French Prime Minister; Marwan Lahoud, former Head of Strategy; Charles-Henri Filippi from Citi; and Michel Petite from Clifford Chance. We did a poll in the room, and I think it was almost unanimous “remain” would win. We were wrong! A year ago, who would have believed that Donald Trump would win the U.S. elections?

Who would have guessed that Emmanuel Macron is just over the road, Président de la République?

Airbus is a global company selling its product worldwide, and with final assembly lines in the U.S., in Mobile, Alabama; in China, in Tianjin. We cannot escape the fact that we live in a world where economies are more and more integrated, communications are much faster than they ever were, and goods and people are moving around the world at an exponential rate.

As a consequence, political, economic, social events in *one* region of a country which, in past years may have been of passing interest to us, now have the ability to impact us directly and immediately. This can be in economic terms, in terms of our markets or through our supply chain; and this can be man-made instability, the saber rattling of North Korea; or as a consequence of a natural phenomenon, like a tsunami. Brexit, the Middle East – Syria, Eastern Europe – Ukraine, Southeast Asia, South America – Venezuela – across the globe, there’s an acute sense of unease today that we have not felt so keenly for many years in this connected world. We cannot ignore it, and we’ve got to be very conscious of it.

A General Counsel and the legal department of a large global company have to meet this challenge and take practical steps when operating in this world of political instability.

One example is Brexit. Airbus is a global leader in aerospace, space, and related services. We have 15,000 British in our workforce, so hundreds of thousands of jobs depend on those 15,000, spread over thirty U.K. sites. We have a turnover generated from U.K. operations close to £6 billion. We are a major contributor to the U.K. economy, and we're the third-largest aerospace and defense employer in the U.K., after Rolls-Royce and BAE Systems.

The ability of workers to move freely, and the importance of moving our products from Broughton – we make the wings in Broughton; every Airbus aircraft's wings are made in the U.K. in Broughton – is absolutely key. If you think about it, if you take the wings away from the airbus, it just becomes a bus. It's very important that we get those wings. [LAUGHTER]

Following the result of the U.K. referendum on the 23rd of June, 2016, and the U.K. government eventually formally triggering the process of leaving the EU and Article 50 of the Treaty of Lisbon, we have convened a Brexit Task Force. It draws representatives from all parts of the business, including the Legal Department. We're monitoring and analyzing the political evolution and, obviously, the economic value conditions. When they start, we'll be following the negotiations to extract policy and regulatory changes that will affect us. We have to look at every aspect of how the negotiations can impact us, by defining our key interests; and, obviously, prepare for the relevant actions.

We're not going to take sides on the political and institutional process, but we concentrate on facts and provide our home nation governments – the U.K., Spain, France, and Germany – with appropriate information that ensures that they are aware for the negotiation of our interests – so we're on both sides of the negotiating table, essentially.

Brexit involves a number of key issues for Airbus. Our production organization approval, our design organization approval,

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to be able to do what we do, that's absolutely fundamental, industrially speaking. The U.K. must maintain a strong involvement in Space. The R&D funding of the industry is a top priority for us. We have to ensure the free circulation of people – if we want to send an engineer from Bremen to Broughton, we don't want to have to queue up or get a visa. We have to avoid new tariffs or custom constraints. We have to avoid the supply chain disruption. We have to preserve intergovernmental cooperation. It sounds beautiful, but it's actually key to us that the governments are working together in a fluid way. Also, the cooperation continues in Defense matters, and we need to have an adequate regulatory framework, and the U.K. must remain competitive. Those are very big challenges.

As the course of Brexit has progressed, the work streams of the task force have developed, and we're looking at the effect of Brexit on English law of contracts, jurisdiction clauses, and service provisions. Now that Article 50 has been triggered, and more clarity around the type of Brexit has actually emerged, work is beginning in earnest. The full implications of Brexit may not be clear yet, but we believe that the draft Great Repeal Act, as it's been called, does give us a degree of certainty that EU law will be preserved as it stands the moment the U.K. leaves the EU. It will allow changes to be made by secondary legislation in order to ensure that it functions sensibly, so it avoids a cliff effect.

But the areas where action is required now, such as customs, we've got to address our practical supply chain issues. Seventy percent of what we produce is actually from outside, so the supply chain is everything.

Based on the assumption, that is our assumption today – that the U.K. will be outside the single market and operating, initially, at least, on WTO rules – the effects of being outside the Customs Union is one of the areas where both Airbus and the supply chain need to be prepared.

We've identified other risks, such as additional administrative burden; IT system changes – maybe we need additional personnel for this, extra cost. There is a need, as I keep reiterating, to educate the SMEs [small and medium-sized enterprises] in the supply chain, because if they don't appreciate it, and they're too late – for example, if we don't get a toilet door, we can't deliver an aircraft without a toilet door, and the toilet doors, we don't make. I use that as an example because we have a lot of problems with the toilet doors! [LAUGHTER]

Looking beyond Europe, Trump's "America First" position declares a global theme of protectionism coming into play. We have a final assembly line, as I mentioned earlier, in Mobile, Alabama, producing single-aisle aircraft. Having this foothold in the U.S., creating new jobs, of course could offset the implications of America First, but it's relative. We've only delivered 27 A321s so far, because it's new. Now, obviously, Mr. Trump knows that three-quarters of Boeing's commercial aircraft are sold outside of the U.S., so he doesn't want to shoot himself in the foot. But we have to be very careful and watch over these matters, because they can come before you're prepared.

If we come back to Europe, I think the election of Emmanuel Macron is really good news. I think it's avoided Brexit. Protectionism is now in the background.

This is very good for Europe; I think it's going to be very good – I hope – for Franco-German relations and economic reforms. We will have to be on the cutting edge to know how those reforms are going to – hopefully – positively affect us.

I transition to my second topic, which is *regulatory changes* and the necessity to be vigilant as to all the changes and the effects on our business and on our customers.

Under the Hollande presidency, 260 laws were passed; 264 were passed under Nicolas Sarkozy. Some were to improve company competitiveness, such as the reform of the Contracts law, and others aimed at allowing France to play on a level playing field, such as the Sapin II, which entered into force in December, is an example of how Airbus was very much engaged in compliance. It's a big subject for us at the moment – we welcome the new law, and it's encouraging us to get our compliance in order. As I say, it's key, and it's also part of the company's desire to be a good corporate citizen. It's not just about ticking the box and complying with the law. We have to be a good corporate citizen. We call it CSR – corporate social responsibility. It includes applying the law, the spirit of the law, being a good corporate citizen, respecting our suppliers, and our stakeholders.

CSR is within my portfolio of responsibility and we are a signatory to the UN Global Compact. We have selected a number of the many UN sustainable development goals for the world. We've selected them, and we're focusing on – and I'll list them in a moment – what we can do as a company to advance those. These are: quality education – so, we do a lot of training; gender equality; decent work and economic growth; industry innovation and infrastructure; responsible consumption and production; climate action; and peace, justice, and strong institutions. We've taken all of those, and we've got specific plans as to what Airbus and its 135,000 people can do to forward those development goals to make the world a better place.



Sapin II completed the French anti-corruption law updates of 2000, 2005, and 2007. Now, its main features include a prohibition of passive *and* active corruption of public officials and private individuals, and there are *no* exemptions, as in the U.S. law for facilitation payments. It's applicable to offenses by French nationals abroad, where victims are French, and where acts took place in France. Tax laws prohibit fraudulent accounts for concealment of bribery, and penalties are pretty stiff – up to ten years' imprisonment and fines of €750,000, debarments, confiscation. There's a larger scope in the law of Sapin II than the FCPA and the U.K. Bribery Act, because it includes private corruption and *trafic d'influence*, which we call "influence peddling" in English, which is very nice, Victorian English.

Also, the creation of the Anti-Corruption Agency, with a surveillance enforcement and a sanction role. Risk mapping, codes of conduct, effective disciplinary systems, whistleblowing lines, due diligence on main commercial partners, accounting controls, training, and monitoring of compliance programs are all part of this. Sylvie Kandé de Beaupuy, Airbus Group Ethics & Compliance Officer, is working very closely with the Ministry of Finance to help companies actually comply with this law, with our great experience.

We are very happy – we actually lobbied for several years to get France on a level playing field, so that companies can come out of these problems. We welcome the legislation.

My last topic is *technology and digitalization*. Airbus technology and innovation is organized around our Chief Technical Officer and our Digital Transformation Officer. We call them the CTO and the DTO.

In 2015, we set up a subsidiary dedicated to innovation, called A3 [A cubed] in the Silicon Valley. We simultaneously set up a corporate venture capital vehicle, Airbus Corporate Ventures, also in the Silicon Valley, with a budget of \$150M to invest in disruptive technologies which could create value for Airbus.

Our CTO, Paul Eremenko, is only 37. He's even younger than Emmanuel Macron. He was formerly with Google, and prior to that, he worked at the U.S. Department of Defense DARPA, which is the Defense Advanced Research Projects Agency. That's really where the eggheads think about amazing things – aircraft that can't be spotted by radar – that comes from DARPA. We're very proud to be able to attract someone like Paul.

Now, by 2030, 60% of the world's population will be living in cities – 10% more than today. We are innovating, taking this fact into account. We have many projects, in particular Urban Air Mobility, and we have the Vahana Project, which is a self-piloted flying platform for individual passenger and cargo transport. In the next ten years, you're going to be seeing flying objects in the sky, probably not in Paris immediately – we might do it a bit later than some of the other places – but there are cities where I think this is going to be happening.

If you quote Jeff Immelt, the CEO of GE, he says that whatever we call it – the Internet of Things, Big Data, Industrial Internet – we're really on the verge of a massive technical disruption of manufacturing processes that hasn't been seen for 35 years. Maybe we're on the edge of a third industrial revolution.



I'm going to give the floor, now, to Alistair Scott, because he knows, he's a geek *and* a lawyer, which is unique! He will be able to probably give a more convincing presentation. Thank you very much. [APPLAUSE]

**ALISTAIR SCOTT:** Thank you, John. Yes, I am in the CTO organization, and I very rarely wear a tie! I'm quite uncomfortable wearing it!

What I'm going to do is just very quickly give you a flavor of two of our main digitalization projects. It's a little bit geeky, so stop me if I go too far!

Airbus has more than 400 digitalization projects ongoing at any one time, and it's a massive range. The first task as IP attorney, is to decide what is actually a digitalization project and what isn't – are we talking about all technology which we're just rebranding, or is it really digitalization? The two topics that I really quickly want to talk about are Big Data in Airbus, and Additive Layer Manufacturing. It's hard to get your mouth around that one.

Big Data. It's – how do I characterize it? It's hugely important in Airbus. It's data aggregation – by that, I mean the collection of massive amounts of data; what Facebook and Google do all the time, to

you – you're the product in that case. It's about visualization of data – what you do with it, extracting meaningful information and perspectives from it.

When I was in Silicon Valley visiting A3, I saw a great t-shirt: "Data is the New Bacon." Everyone loves bacon. I thought it was a really cool t-shirt.

Anyway, the rise of Big Data, particularly in Airbus, has been driven by the availability of cheap storage and cheap computational power. These are the two things which have let us see this as a business opportunity.

In our case, the case study for Big Data is digitalization and big data collection for aircraft. Each of our aircraft creates data: an A350 carries 25,000 sensors, and it creates about 500 GB of data in a single flight. That's a lot of information to extract from the aircraft; it's a lot of information to be able to manipulate. But what we do with that – this is what I think you might find interesting – we can analyze this information to tell us what the pilot's doing, what the aircraft is doing, at any one time. We can model it – model the aircraft over hundreds, thousands, millions of flight cycles; work out the piloting attributes, the habits of the pilots, how the aircraft is behaving.

This is very, very interesting, because the legal issues are two-fold – well, the two main ones – who owns that data first? To be able to access our own aircraft data – this is machine-generated data – and the question is, legally, who owns machine-generated data? The aircraft are owned by the airlines or the leasing companies. We really have no access to it once the aircrafts leave the company, other than by telemetry and for safety purposes. One of the legal issues we have is how to get access to it.

Another issue that you can imagine, if we're looking at piloting behaviors and the aircraft behaviors, the pilots' unions have something to say about this. This is something which is coming back to issues under

law that we've never really thought about before, and it's quite interesting. So that's Aircraft Big Data.

The second topic is Additive Layer Manufacturing (ALM). I'm sorry, this is a little bit geeky, but it's quite interesting. Additive Layer Manufacturing is where we can build a metal structural component in layers with a laser. We use powder metallics and laser-sinter it, and we can build structures. Now, the interesting thing with ALM is we design it digitally – it's all part of the digitalized supply chain. We design the aircraft with this end production technique in mind, and that means we design in a different way. We can design what we call "anthropomorphic structures" modeled on bird bones, because we can build internal structures into the components.

But ALM is interesting because it fits into a different model for spare parts production. If we want to ship spare parts all over the world, then all we would have to do is physically send them. With ALM, what we can do is send a data file, a digital file, whereby one of our remote operators can build the component on the spot very, very quickly. The legal issues here are integrity of the data file – all of these parts are certified, and they have to be very, very highly compliant with the original design. There are issues of integrity. Who can use the files? Interoperability. Should or could Boeing have a similar system to create the same type of structural parts for their aircraft?

This is going to be a massive enabler, technically, in our maintenance/spare parts business and how we operate, and our customers operate the aircraft. It's an excellent example of an end-to-end digitalization approach from design right through to the structural component parts of the aircraft. It's a fascinating one.

Finally, there's one last topic on digitalization, and that's actually digitalization in our workplace. Airbus is digitalizing our legal department. We're looking at things

such as eBilling, document repositories, document management systems. This is a slightly controversial one, but it's going to be a huge enabler in our business. One of the points which is interesting is we're moving to things like social media platforms in the company. The critical decision which needs to be made is: are these useful; are they interfering with work? Do these digitalization initiatives that work so well in the rest of the world, can they be copied and translated into the company? This is a major question we're dealing with now, at the more organizational level.

That's all I wanted to cover, just three examples of digitalization.

Thanks, John. [APPLAUSE]

**JOHN HARRISON:** Basically, we wanted to share with you some insight into what we do every day, and a lot of this stuff, we use. It's no surprise to you. Airbus is a very exciting place to work. I feel very privileged to be the General Counsel, even though I don't sleep very much! But it's also nice to read about what you do in the newspapers almost every day, and it's a unique company, because it's really Europe in action.

Thanks for coming, first of all. It's not finished yet, by the way! Thanks for all *you* do for us; we really appreciate it. I'm going to hand over now to Stéphane Lemarchand from DLA Piper, who is going to elaborate on digitalization and technology topics. Thank you. [APPLAUSE]

**JACK FRIEDMAN:** I want to introduce all of our Panelists now, and then when each one speaks, they will introduce their topics. We have Fabrice Cohen from Clifford Chance; Stéphane Lemarchand from DLA Piper; Bertrand Cardi from Darrois Villey Maillot Brochier; and Hervé Pisani, from Freshfields Bruckhaus Deringer.

**STÉPHANE LEMARCHAND:** Thank you very much, Jack, and thank you very much, John, and all the Airbus legal team

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for hosting and inviting me to contribute to this presentation this morning. I am quite privileged to be here. I will continue on the topic about digitalization as a witness. As an IT lawyer for the last 20 years, I've seen the shift in technology, of course, but also in technology law. I see the decline phase, how this topic – which was seen, when I started at McCarey, as a niche practice of guys. I remind my colleagues at Lonte Law Firm, where I started, that the M&A guys were looking at IT guys and thinking, “Okay, we need him for due diligence work,” but there is a big change now. You look at the size and the scale of the IT legal needs in companies and in law firms – that's a big change. That says a lot about how this topic is becoming structured for businesses.

I won't be dallying on that, because you've said a lot of stuff, and I want also to share with you some of my experience, being privileged to assist Airbus in many digital projects over the last 15 years, probably starting with the A380 program.

What I want to say is to give you a quick definition of what we talk about, digital transformation. It clearly means a lot of stuff. I think it's not virtual at all; it's a reality. I like some words that Marc Fontaine says – the Digital Transformation Officer at Airbus – he says it's not about building a digital strategy; it's actually building a strategy in a digital world.

It says a lot, again, because of where we are. Digital is a reality, and the digital world is here; it's not tomorrow. It's even probably not the age; we are running and building and leading in an industry, in a world where

everything is now connected, everything is interoperable, interfaced, and everything is application or cloud-based.

Quickly, why this change today? First, because there is a strong and disruptive technology shift in this world. Software is not new; hardware is not new; the Internet is not new. But the combination of super calculation, the combination of speeds in networks – we are at the age of having 5G in Europe very soon now, which is real-time communication – the combination of all of that with the capability of applications, which are far more efficient today, to analyze databases – which are, again, databases are not brand-new stuff – but having the capability to take the data, analyze, and making some predictive analysis of databases, is helping the decision-making process.

This is what is happening in the world, and that's affecting any industry sector, including the legal services industry sector. Law firms, obviously, are looking at that, and those who don't understand that and change and adapt will definitely die in the future, like any other company.

It's affecting many industry sectors, and it's affecting, of course, the aviation sector and the manufacturing sector, in particular.

The good news is that when you speak to the Airbus people, the technology is almost in the DNA of that company from day one. It's not the first time that we're talking about software, the application arrays producing automatized mechanisms. Speaking about the A380 program, the applications in the cockpit of the A380 was almost 1,000, compared to the previous version of the family in the Airbus was probably a

dozen or hundreds. The numbers of applications onboard are developing; but that's not new, again.

What is clearly new is the fact that technology is giving companies an opportunity to improve their manufacturing process, and that's true in industry in particular, and to change their business model. That's what happened to other companies and other industries before; if you look at the real estate sector, the financial sectors, the hospitality sectors, you will see the change has been made, and people who don't understand that they need to adapt, they are dying.

In the manufacturing industry, there is a need to change, as well. That's why Airbus, before any other, and in Europe is probably one of the most important companies who understands the importance to transform. Two or three years ago they sent the whole management team to Silicon Valley to assess the reality of the Silicon Valley energy, and understand the agility.

The reality is that it's about trying to see in which sense this digital era is going to help you to change and find a new business model. Airbus knows how to design, manufacture, sell, support, deliver aircraft, and do that fantastically well. The question is, what is my business tomorrow? Am I going to be in a position to deliver all the sorts of services to my customers, based on data; am I going to be a provider of services, which is, at some point, potentially also finding the right innovation to the new flyway in the world. This is the purpose of A3 in Silicon Valley, because if Airbus doesn't do that, someone else will do it.

This is quite fascinating to see a company decide, itself, to invest in a company, the purpose of which is actually to disrupt the business model. That's really important to also understand. Every industry, again, every company – I'm pushing very hard in my law firm to say, "Are we ready to spend money to invest in people in the firm, the purpose of



which will be to try to find the right way to disrupt our business model?" Because if we don't do that, others will do it.

That's what digital transformation is about. There are many practical examples today in Airbus, which show how efficient technology is helping manufacturing. We are using smart glasses to assemble aircraft on the assembly line; we are using predictive maintenance analysis in order to facilitate safe fuels – all that stuff that, at the end of the day, with that technology, that up-to-date, allows the company to do it.

That implies legal challenges, of course, and, there are many different types of legal topics that are involved in this change. Think about connected aircraft, connected cars, and product liability. Think about, therefore, the way in which the existence of potential incidents can be caused by just a technology or a software. But product liability is going to be a legal regime where it is going to be seriously impacted by technology – how do we address this legal regime in a world where the software potentially is very difficult to analyze as a cause of a defect, because that's not predictable.

Other examples, of course, there is cybersecurity – an obsession of CEOs. How do we prepare? The question is not about are we going to be attacked; the question is when. The question is, what do we do? That's all about anticipating, preparing, potentially getting the right best practices, and that's a compliance issue in a company, as well, to get ready to fight this sort of challenge.

But one other probable legal aspect that is quite fascinating to the industrial world, is for all these B2B business, such as Airbus, initially, are now looking at the B2C regulations. Because the purpose of the business model change, at some point, is to be in a position to know the customer better. I'm not talking about the airlines; I'm talking about the passengers – you and I – and how we're going to be, at some point, data, personal data used for the manufacture of aircraft. The more we know about, and the more Airbus will know about the field, defining the trends, the habits of consumers, the more it will be in a position to actually be relevant from the business standpoint. That, as well, is driving the legal priorities into different kinds of topics.

There are two main topics in the legal area which, I believe, are definitely of interest in terms of priority. It's quite a challenge, by the way, for a company like Airbus, which is dealing with digital transformation.

The first one is the IP-related one. Of course, Alistair is on it. He probably is not sleeping a lot at night, because the question is, we are living and coming from a world, from a very hard IP, long-term investment, innovation protection, patents, administrative process, costly process, and obviously, that's the only way, and the best way, ever, that industry has found to protect its innovation.

This is changing. We are living in a digital application world where probably most of what we do is not patentable – and if it is, it's not relevant, because by the time you do the project and the application, the time it's launched, and the time it's introduced,



and it is probably already obsolete. Still, you need to protect it; you need to find a way to leverage on that basis.

We come from hardware, software, Internet, and what is coming to value all of that, today, is the data; we just mentioned that. Big Data is important, of course, but the data, the rough data, is what is making the value. How do you protect the data? From an IP lawyer – that’s my background – actually, I have no answer. By definition, the data is not protectable. How do I do that? That’s, obviously, a lot of ideas and probably a lot of changes to make in the legal environment, to make proposals and be proactive in order to protect investments rather than innovation. That’s a different topic, and that’s a key challenge, I would say, for lawyers facing the innovation in digital.

The other challenge in protecting innovation is about the way we are innovating today. We’re no longer innovating ourselves in our labs, alone, with good engineers – of course, the smarter ones still are, probably – but actually, these guys are working, now, on a collaborative basis with external people, with potential peers and potential competitors. We are trying to leverage altogether what we are learning from others. We

even go on the Internet, finding some software, open-source programs, just to build something. This is co-working in cooperation; this is collaborative; this is changing, as well, the mindset in terms of “how do I protect my IP in a company?” This is obviously another challenge

The other big one – and I will be even quicker on this one, because you have probably seen many newsletters from law firms already – is obviously the privacy one. Privacy is going to be the most structured legal topic in the digital transformation. It’s not an IT law issue; it’s a compliance issue more and more, because of the fines, because of the risk, because of 4% on the risk. Companies need to adapt, obviously, to embrace the regulation and to make sure that the way they collect, the way they inform, the way they potentially use the data, if there are some personal data, and there are *always* some personal data in what you do – then you need to, obviously, be compliant. That’s the compliance.

It’s also an opportunity. That’s a business point, because if you are compliant, and if you are building your innovation in compliance with that regulation, then you are in a position to use the data to monetize it, to

sell it. Then you are in a position, of course, to create the relevant trust with your partners and your companies, in the fact that you’ve been compliant. That’s another legal topic which is going to be very structured.

I will finish with this last point. Digital transformation drives, as well, mindset shift and a complete cultural change. That’s true for lawyers, as well. We are, as I mentioned earlier, facing business needs which are quicker, which are potentially experimental, brand-new ones, where you don’t really have precedents to say “we’ve done that already”; that’s probably never happening now. We usually say that lawyers can be seen as people who just buy the business, people who just say, “No.” The problem today with digital data – we don’t say, “No”; we just say, “We don’t know.” Because we are living in opportunities where there are so many challenges and there are not a lot of precedents. You are living with people who are ready to fail, who are ready to fail often, but to fail early, as we say in Silicon Valley. That’s the mindset and the shift you need to adapt, as well, as a lawyer – to be ready to say, “Okay, let’s try to find the right solution, but let’s move on. Do I really need to negotiate this NDA with that guy? Because actually, I don’t really have time.” If that’s stopping the project, we need to move on. Because we harness the mode internally, and these people want me to be very reactive. Do I really need to negotiate? Do I really *want* this ownership of IP on this? I will never get it; it will probably take six months of negotiation to get it; it’s too late.

The balance, by the way, in negotiation, is changing. You are no longer the big procurement company who says, “I’m paying, and then you guys will give me what I want.” The guy who owns the technology, even if he’s very small, will just look at you and say, “You’ll never get it! You’ll never get it. If you want this, working with me, if you want the technology, let’s make this partnering agreement today, now, but don’t get any ownership – let’s work together.” That’s how it’s happening.



That's a major shift, as well, that also lawyers need to adapt in order to, at the end of the day, deliver and assist the business in the best way. I know this is what is happening anywhere, at Airbus legal department. I just wanted to share this experience with you guys. Thank you very much. [APPLAUSE]

**FABRICE COHEN:** First, on behalf of Clifford Chance, let me just say that we are very pleased to welcome you in our Paris office this morning, to celebrate our long-standing friend, John Harrison. I could even say, considering that I understand you started your career at Clifford Chance, that maybe it's a member of the family that is this morning honored, and we are very pleased to do this in our Paris office. I guess that you all know very well that Airbus and Clifford Chance have developed over the years a very close relationship in many, many different legal areas, and all around the world – in particular, in the M&A sector, where we have had the pleasure to advise Airbus on many different transactions – private, public, national, cross-border, and others. Having the pleasure to talk about the topic of M&A and foreign investment makes sense this morning. It also makes perfect sense, because the business of Airbus is very

much focusing on sensitive, very specific areas, such as defense and security, and in the defense and security system, obviously, foreign investments are very important.

Maybe just very quickly some general considerations around protectionism and the link with M&A, because you mentioned, John, that protectionism is a bit far from us. However, we have seen that, in history, we have seen cycles where sometimes we had some protectionism, sometimes followed by periods of free trading, and back and forth, and today the trend is more on protectionism. Protectionism, because it's very attractive to the public; because it's very much used by politicians to remain in the front of the scene; and therefore, people are under the pressure of foreign investments and national protection.

In the media, what we have seen is that very often, the legislation has changed under the pressure of some M&A transactions. If you remember, a long time ago, at some point where Danone was supposed to be the subject matter of hostile takeover in 2005, at that time, there was a discussion around the new decree to expand this group of foreign investment regulation and limitation or restrictions to foreign investments. Some people were saying, "Why not include the food industry in the scope of this new decree?" Actually, it was never implemented, and maybe the people around the world would have loved to say that French yogurts would be a sensitive or strategic asset in France! But it's very interesting to see how sometimes the politicians or legislation try to use events occurring on the market to change the legislation and protect the interests of France.

We have seen this the second time in 2014; when Aston was selling its energy activity to GE. At that time, there was then the modification of the legislation with the famous (decree 2014-479) that expanded the scope of foreign investment regulation, just to protect the energy that was not at the time protected by the regulation.

Very recently, this year, the Chantiers de l'Atlantique were in the process of being sold by the current Korean shareholder. At the time, the French state was a shareholder of the Chantiers de l'Atlantique and it's a place where, obviously, some military ships are built. The French state was under huge pressure to exercise any rights that they had just to avoid that unfriendly investor who had acquired the shares of this Korean shareholder. There was huge pressure to use its preemptive rights and any possible tools available in that respect. What would be interesting, probably, is to talk a little bit about the different tools that actually are available for the French state to protect its interests.

By the way, it's not only France, because here we are talking about Airbus mainly, and Airbus is an international company, just like Clifford Chance is an international law firm. What is interesting is that we are not the only ones facing those kinds of issues. We have seen, and you mentioned, the U.S. The U.S. had very strong legislation with these issues and had authorization in case of any kind of investment that may have a security interest in the U.S. The legislation is very broad. We see on almost any M&A transaction with Airbus, the requirement for a CFIUS certification, either when we are selling or when we are buying. The problem is that this legislation is strong; it takes a lot of time; and therefore, it influences also the timing of an M&A transaction. Actually, we think that the U.S. is very smart in that way, by interfering in any transactions involving their interests, broadly speaking. We have seen that the Trump administration is starting to go even beyond this element by saying that it is going to make some new legislation to protect their manufacturing in the U.S., or renegotiating international treaties like NAFTA, just to further protect national interests.

We have seen in the U.K., with Brexit, as a new way of protectionism. Just after the Brexit vote, the U.K. administration

mentioned that they were contemplating modifying the legislation for any investments, just to protect its infrastructure in the U.K. The U.K.'s choice is strengthening the legislation.

We've seen this not only in Europe; we've also seen it in Canada and Australia. Germany is very much concerned, and I would say this will be strengthened later on in Germany. We are seeing it everywhere.

In France, we can say that the legislation already exists and is well-established, and even though they got some pressure from the politicians to enlarge it, actually there are a lot of tools that may be used by the French state.

We've seen notably, first and as a general principle, let's remember that there are not, per se, in the French legal system, any limitations in the financial relationship between France and foreigners. There is only, obviously, a requirement for some declarations, but purely from a statistics standpoint, when you are making a transaction with foreign investors. Still it's only a statistics declaration. For the rest, it's zero freedom for the business with foreigners. Which, by the way, is not the case everywhere around the world. When you are looking at the Middle East, when you are looking at Asia, it's much more restrictive, and locally, you are required to team up with local partners before being able to give up your business. In France, this is not the case. You are not forced to create a joint venture with a foreigner before being able to give up your business in France. It's only in certain limited areas that there is a preauthorization system, just to protect the essential interests of the states.

There are so many lawyers in the room, that I am not going to return to the boring lawyers' details of the regulations for foreign investments. I just want to mention that it's limited to very essential subject matters, many around defense and security, weapons, etc., having been extended in 2014 to



energy, infrastructure, water, and communication. All the essential elements to enable the state to operate without being under the pressure of foreigners.

We should say everybody is always talking about that kind of foreign investment regulation and restrictions, but actually — and we are seeing this with Airbus all the time — there is only one tool available to the French state to try to influence. We knew, for example, that in businesses such as in defense and security, a lot of contractual relationships are governed by confidentiality, *SécuritéFrance*, for protection. In that case, as you all know, the French state, through the *SécuritéFrance*, is limiting the access of certain sensitive information to only French citizens. By doing so, they are avoiding foreign influence, shifting of technology, knowledge or specific information going outside France. This is so important that sometimes, you even have limitations in terms of reporting to the board, and we have that kind of restriction across the Airbus Group and certain entities, where certain subject matters can only be addressed with certain individuals on the board of the relevant company. This can sometimes be seen as slightly difficult, and actually, it is the case, and we need to address this. Without saying any word,

obviously, on these kinds of contracts, we know that at Airbus, the famous ballistic missiles contract, which is very sensitive because it's the missiles and the protection of the military interests of the French state is very much ringfenced to national citizens. We have exactly the same in Germany, as Peter Kleinschmidt in the room knows very well. In Germany, we have exactly the same, and access to the same kind of contract only to German citizens. Airbus is required to adapt also its organization, including its governance, to comply with those kinds of restrictions. It's not only investments; it's on an ongoing basis in its operations.

We know, also, that sometimes you need to have the presence of representatives of the state in your organization. You've got the famous *commissaire du gouvernement* in certain entities, whereby the guy is existing in the organization, although outside the group. He has access to certain sensitive information — administrative, accounting, financial — just to check how the business is operating, and therefore whether the interests of the French state are protected. You also need to live with that kind of individual in your organization, with the specific reporting to the French government. Obviously, this is only in the security and defense legal entities, and even on those entities where you have a

need for a separation of different business activities; however, the person is there. John, you obviously know that by heart, but we are currently advising you on the merger of Airbus Group SAS and Airbus SAS with the airplanes. One of the questions was what are we going to do with the *commissaire de gouvernement* that is currently existing in Airbus Group SAS but has nothing to do with the airplanes? How can we ringfence the influence and the access to information to this representative of the French state on certain business items that have nothing to do with him. This was one of the difficulties of the merger of these two entities.

There is also the concept of the French state being a shareholder in the relevant entity, and through its shareholder activity it has access to certain information and tries to influence certain decisions, either with legal rights or certain transfers of share's rights, preemption in others.

We have talked about the famous "golden share" that the state has had in the past in a certain number of entities, even though it has been ruled at the EU level that it was against the free movement of capital at the time, the "golden share" of the state is in denial. Nevertheless, the state, today, even if it's not any more called the "golden share" but rather "preferred share," the idea is more or less the same – is the right to participate in shareholders' meetings and try to influence certain decisions, with a view to protect the French interests, but nevertheless be active in the group.

You find, more or less, all of these tools across the Airbus Group. Nevertheless, let me say – and I know, John, that it is very important for you that we always say that, so I'm going to say this again – that Airbus is not under the influence, either of the French or the German state. It's really a normal company operating in a very interesting but normal business. We comply with the regulation; we accept certain constraints because of the business that we are operating; but the states are different from our entity, which is very important.



As a conclusion, before leaving the floor to Bertrand and thereafter Hervé, on their specific topics, let me say that this is still a very important topic currently. Why? Because first, we understand that at the beginning of this year, the French state, the Italian state and the German state have sent a letter to the European Commission asking for an extension of the regulation protecting European industry against foreign investments. Even though the regulation is here and there are a lot of tools, the states still want to protect themselves. It was under the pressure of the German state this time, because in 2016 €11 billion in investments were made by Chinese investors in Germany, representing more than the last ten years. With so many critical areas in Germany, it is stressed about this issue as are Italy and France.

Our President, Emmanuel Macron, mentioned that his program would try to create new legal restrictions, but at the level of Europe. Europe would be the new geographical area, instead of France, Germany, and Italy each with its own system, and to have Europe resist the rest of the world, and to strengthen the border of Europe. Let's see, in practice, whether it will happen,

because our new government has just taken place. It's interesting to see this trend towards strengthening of protectionism everywhere around the world. Thank you. [APPLAUSE]

**BERTRAND CARDIN:** Thank you very much, Jack. Before introducing my topic, I would like to thank Jack for organizing this event; Fabrice, for hosting us; and above all, John, for the many good adventures we could live, with EADS first, and Airbus afterward. We as a firm participated with him in the creation of EADS, now more than 17 years ago, as the company has changed a lot. Thank you, as well, to all the Airbus people in the room who have participated in this adventure.

As an M&A lawyer, I wanted to discuss today two topics shortly which are very related to what happened to EADS and Airbus. First, the governance; and second, maybe showing that even if you have good governance, you are never protected against active shareholders in the current world.

I see people smiling, because I said shortly I will be short. [LAUGHTER]

The issue is governance. As a lawyer, we are often very technical, and we try to get all the details of the governance – what is good, what is not, comply with the code, etc. But there is one question which, to my mind, is more interesting: "Can you create market value through governance?" There are not so many clear examples, which is why I really like the Airbus example. As you know, the capital restructuring of Airbus happened four years ago. Before this restructuring, EADS was controlled by Lagardère, the French state, and Daimler. You cannot say that this was a totally normal entity and governance.

After the restructuring, we can say that trying to normalize, as much as possible, the governance has created value. As John said, Airbus has gone from a €20 billion company to \$60 billion market capitalization



“The full implications of Brexit may not be clear yet, but we believe that the draft Great Repeal Act, as it’s been called, does give us a degree of certainty that EU law will be preserved as it stands the moment the U.K. leaves the EU.”

– John Harrison

company. You have now increased liquidity with a 70% free float. Most of the public – even the FT – are recognizing that the governance is more normal.

So, what happened? What has EADS, its managers and legal counsel, done? It was trying to organize the exit of the industrial shareholders, Daimler and Lagardère, and find a new holding structure for the states, which is more normal. The formal agreements and partnership agreements were finished, and the three states – France, Germany, Spain – were 12/12/4, which means 28%, and were no longer and are no longer, controlling the company. Why 28%? Something is helping to get this company normal, which is the Dutch rule for takeover at 30%. They cannot go above 30% because they have to bid on another company, which at €60 billion, would be very expensive in the current world. I don’t think this will happen.

That being said, being normal doesn’t mean not finding a balance with certain constraints. What balance had to be found? First, being normal doesn’t mean that you should be subject to hostile bids. First you have States’ shareholdings, which protects the company

against a hostile bid, which could come from other parts of the world. But you also have in the bylaws a transfer restriction and voting restriction at 15%, which someone could break through only if he gets 80% following a bid for all the share capital. The company is normal as the minority shareholders are pleased, market cap is going up, but the company is protected against hostile bids – normal, but protection.

Second, it’s not because you want to be normal that you just say to the states, “Shut up!” The states are important, as they are an important customer, as well. You have to find a balance so that they can protect their national security interests. And I have to say that I fully agree with what Fabrice previously described as the evolution of the state position in France. In a way, it was initiated with this Airbus restructuring. Why? Because the positions that we defended at the time were satisfactory for the states. You have to find protections, but the state is not here to control normal industrial and business companies. You have to find a way to protect, but not to control. How did it work? It worked through, as an innovation, in a kind of U.S. way, the creation of defense holding companies in France and Germany, where the strategy assets are put, and where the states benefit from more protection. U.S. companies are specialists in this type of protection, because they have the state defense companies, but there are very strong protections there; you cannot get information; you have only independent directors. Here, in the French example, from what is public, you can see that it’s much softer.

The only important thing is that for each country there are three directors consented to by the states in each defense holding. Two

of them go to the main Airbus board. But to go back to this Airbus main board, it is truly normal – there are no director appointment rights for the States, and you don’t have specific composition rules. You have nine independent directors – as many independent directors as you can get in Holland.

Now, we are discussing being normal but finding balance: it’s also not because you are normal that you are not European. In the Board regulations of Airbus, you have rules of balance of nationality. A majority of the directors must be EU nationals and residents. It also has a remuneration and nomination committee to appoint people to the board, to choose the best candidate for the position, but also balance among the nationalities with respect to the locations of the main industrial centers of Airbus.

This is what I wanted to say on governance, to give a concrete example of a change in governance which has brought some success, and created value.

Now, I will speak shortly on activism. Activism is a word you hear all the time these days. I think France is a paradox, because in the U.S. it’s a widespread phenomenon and there are many companies which are subject to the attention of activists. Sometimes the companies say they are being attacked, but they are protecting their vision of what the management should be; sometimes the strategy; sometimes other ideas. It’s very widespread. You always hear people say, “Does it come to Europe?” People say it is coming more and more. That is true. France is a paradox. Why? Because France is certainly one of the countries where you have a lot of legal tools for activists. You have the possibility

to put forward resolutions at the shareholders' meeting; you have the possibility to ask the Commercial Court to convene a shareholders' meeting if you have a legitimate purpose; you can ask for the dismissal of a board member at any time during a shareholders' meeting. Some examples show that even when you have less than 30%, sometimes you can *de facto* control a big industrial company. France, in fact, is a country where you have many legal tools, but where activists have been shy and less active so far, than in the U.S. and other European countries.

That being said, Airbus is a good example of the influence that some activists can have, which can also be constructive in certain instances. There is not a hard rule that they are bad or good; it depends on the situation. It is true that TCI asked Airbus in 2012, five years ago, to divest Dassault. That was a company which was difficult to divest on, because Dassault, at the time, was a company which was controlled by the family and Airbus, Airbus being a minority shareholder, and with a very limited free float. In such context, you cannot divest Dassault the next day.

That being said, there was a dialogue with TCI which was easy in this case, because the strategic objective of Airbus was also to divest Dassault. John has explained how it worked, and it's true that it was a very successful structure, because despite the very little liquidity, we could find investors to buy into Dassault without doing a full IPO. I won't give you the details, but this was very interesting.

Something also very interesting is that it shows the impact of the economic cycles, because the first blocks of Dassault shares were sold at a time where the jet business was booming, this is what helped. The last blocks were sold at a time when the military business was again booming.

On activism, maybe Jack will want to ask questions about this, so I will not say much more, but the world will be changing on that one. We see that this very year, because the

U.S. activists bring what Elliott Management is calling a "prosecutorial approach." What does it mean, a prosecutorial approach? It is simple; it is a lot of work for lawyers, because this means that they go to court now. You can see, as they want AkzoNobel in London to negotiate with the buyer because they are not happy, so they have put a derivative action against the Board and the manager of AkzoNobel. Elliott did the same thing in France to one of our clients. And you can also see how TCI is behaving on Safran, which is a very aggressive position.

Definitely the world is changing, and we will see where it will bring us. [APPLAUSE]

**HERVÉ PISANI:** I am Hervé Pisani of Freshfields. I would like to say that I'm proud to be here to celebrate John's world recognition, and we are also very grateful as a firm to have the trust of Airbus.

Why have I decided to talk about conflicts of interest? To be honest with you, this is mainly the result of me missing the first conference call between the panelists! [LAUGHTER] When I saw the focus of this discussion, I said, "Oh, my God – what am I going to talk about? I'm a corporate lawyer; I have to talk about something which is in the focus of a General Counsel, and which is within my scope of knowledge – and this second part is a serious limitation to the scope of my speech!" [LAUGHTER]

However, I think that conflicts of interest are a central concept in our society and it's probably going to compliance and ethics, a key topic for General Counsel, so I decided to take this opportunity and to speak about conflicts of interest. I'm actually a lucky guy, because if you look at the newspaper today, there is an article in *Les Echos* which provides for a very good illustration of the interest of this concept. There is an article about EDF which talks about the closing of the nuclear power plant in Fessenheim, and there is a statement by someone from the French Ministry of Economy saying, "We understand that EDF



has to protect its own corporate interests, but it cannot go first above the interests of the state in the energy transition." The reality is that, yes, as a matter of law it can go first, because you cannot do something which is against the corporate interest of a listed company with minority shareholders. This is a perfect illustration of what is a conflict of interest.

A conflict of interest, as I said, is a central concept in our modern society. It was first more a political and ethical issue, and it became progressively more and more a legal issue. Now it's something that numerous branches of our law are dealing with, not only in France but everywhere in the world.

There is no clear definition or unique definition under French law or under any law that I know, and I don't know so many laws, but I have had the opportunity to investigate in that direction, and there is no clear, unique definition of "conflict of interest." It's partly common sense. There are situations where you can clearly identify that there is a conflict of interest. The lawyers are very used to this concept, because we are instructed by

our bar rules to avoid acting in situations where we have a conflict of interest. If I have advised one client on a situation, I cannot advise another client in the same situation going hostile against the interests of my first client; this is obvious. But there are more complex situations. If I am advising a client doing an M&A transaction, and the general manager of the other company is a very good friend, is it a conflict of interest? Or to go into a different direction, when a banker advises a client on the basis of a success fee, is he free to advise a client on something which is against the interests of his success fee, i.e., not to do the transaction? There is a conflict of interest. This is just to illustrate that this is a very broad concept, and not easy to deal with.

On the corporate law side, there are two ways to address the issue of conflict of interest. Conflict of interest being a situation where mainly a director of a company, or a shareholder, has or serves interests which could have an influence on its objectivity in the exercise of its mission towards the company, what we very often call, taking the U.S. equivalent, “fiduciary duty.”

There are two ways to address this issue. The first one is to try to prevent the occurrence of conflicts of interest. The second one, which is not necessarily alternative and which can be cumulative, is to sanction the occurrence of conflicts of interest, which is also a way to prevent conflicts of interest, because sanction normally has a preventive effect, also, vis-à-vis the outside world.

Under French law, actually, we have a combination of both. There is the specific regime that some of you may know, which is the related party transaction’s regime, which perimeter is very broad, too systematic and rigid. This is a very complex regime which tries to prevent the occurrence of conflicts of interest. It’s broad in the sense that it applies in many situations by the effect of the law. It’s broad in terms of defining who are the interested parties – and there are a number of the interested parties – and we



can go back to that later. If there is, under this regime, a conflict of interest, then you need to have a prior board approval. The interested director is not able to vote, and the second step is an ex post authorization by the shareholders meeting. If the shareholders meeting does not approve the transaction, and if the transaction causes a prejudice to the company, the related party will have to indemnify the company.

There is a broader regime which actually derives from the normal liability of the directors. If they are in the position of being conflicted, they have to declare it to the company, and this is mainly what the soft law deals with. Under this AFEP-MEDEF governance code, for instance; they have to declare that they are in conflict, and they have to abstain from voting.

The difficulty in that situation, both as a director and a shareholder, is that this is soft law, this is not corporate law. If they abstain, they are supposed to vote against the resolution, which is a difficulty of the soft law in our situation. Ultimately, if they haven’t provided the company with information about their conflict, they could be held liable for the prejudice that they have created for the company.

This is for France. The U.S. and U.K. have, not surprisingly, a more liberal approach which is based more on transparency and, indeed, potential liability. This is true for the U.K., and under the U.K. Companies Act of 2006, the directors have to disclose their potential interests, but there is no requirement for a prior board approval. In the U.S., it’s even stronger; there is no conflict of interest policy – there is just a risk of liability for the directors. This is true for corporate law. Soft law and listing requirements can provide for different rules; for instance, in the U.K., if you apply for a premium listing, the listing requirements or the U.K. Governance Code will create an obligation which is very similar to what is happening under French law, which is to have an authorization by the board and the interested directors not voting.

German statutory law doesn’t really have this well-organized concept of conflict of interest as we have in the French regime, but the soft law, again, provides for rules which are very similar to what we know. The Netherlands has an approach which is based more on transparency, which is very close to what the new directive, the Shareholders Right Directive, will provide. I will finish with this, because this is

interesting — this is our future. The directive is based on, first, a concept of related parties which is based on the IAS 24 Accounting Rules. This is different from our concept of related parties under French law, which can lead to the situation where one director being an independent director in two different companies creates a conflict — which is stupid, because he is independent in both companies, so he has no interest in those in either situation.

Second, the difference with our regime is that it applies only to important transactions and not all transactions, whereby French law catches everything. Then it's based on transparency, so the company will have to give, immediately, at the time of the signing, information to the shareholders, and if it's a listed company, to the public, which can be based — and this will be left to the appreciation of the states — on a report which is either prepared by an independent third-party advisor or by the board directly, stating that the transaction is fair and reasonable. Then there will be an authorization by the relevant corporate body, which can be the board of directors, the supervisory board or the shareholders meeting, depending on what the different states individually will decide.

I hope that I have not been too long.  
[APPLAUSE]

**JACK FRIEDMAN:** I would like to thank all the speakers, particularly our Guest of Honor, and all the experts here. The accumulated billing rate of this panel is almost beyond the budget of the French government, so we thank them for this morning.

I'd like to ask John how a General Counsel and his law department work with the business side, and how, at the highest level, do you work with your board?

**JOHN HARRISON:** I mentioned that we're business enablers. For the board, often, if you're General Counsel, you happen to be secretary to the board, so you're

“We have to be a good corporate citizen. We call it CSR — corporate social responsibility. It includes applying the law, the spirit of the law, being a good corporate citizen, respecting our suppliers, and our stakeholders.”

— John Harrison

the only other member of management who is actually attending all of the board meetings and the committees.

By virtue, that's one of the requests I made when I joined Airbus — I wanted to have the corporate secretary as my part, because it makes you a real General Counsel, because you're at the table where the decisions are being made. That's to be encouraged for General Counsel, to be corporate secretary, even though it's a lot of work. I have a great team who assists me on that — a lot of administrative work. That's the first thing.

The second thing is how do we work with the business? I started as a real lawyer at Clifford Chance, so I see ourselves as service providers, as business enablers. We are providing a service; we're advising. We're embedded all across the business — and that's what's fascinating about being a General Counsel, is you're like a mini-CEO. You look, you are the legal lens through which the CEO looks, but you're everywhere. That's the privilege and interest of the job. In people, it's a big secret — people don't realize that, and that's fine. Non-lawyers, non-General Counsel, they don't see what a fascinating job it is, because you're everywhere. Whereas sales, it does sales — HR does HR, when there's a sale, when there's an HR problem. Service provider, advisor — we mustn't try to replace them. We are embedded across the business. That's the vision I have.

**JACK FRIEDMAN:** Do any other members of the legal department attend business meetings, where ideas are being discussed? Do the lawyers sit in and dialogue instead of waiting to review a decision that has been made?

**JOHN HARRISON:** What you don't want is the lawyer at the end of the corridor that they go to whenever the deal's been done and say, “Right, paper it.” We've got some pretty impressive guys on the panel; they *always* play a role, much more than just a lawyer, by their experience, particularly in M&A deals. There's nothing better than a frustrated M&A lawyer, because they love to get in the business; that's what makes them passionate. We leverage off that. These are very talented individuals. They do so many deals that they become better deal-doers sometimes than the actual principal. That's a hidden benefit of top M&A lawyers.

We try to attend business meetings if we can, but we also must retain our role, so it's a balance between the two. But I agree — if you're totally excluded from — so, for example, I'm on the Group Executive Committee. Before, this was not the case, this was not in the culture of the company. If we had problems like insider dealing, my personal belief is that if a lawyer had been present, perhaps we would have had less problems of that nature. It was very important for the company to acknowledge that, and my predecessor here fought for that. I was the beneficiary of the work that he did, so I thank Peter Kleinschmidt, my predecessor, for that, because we had to get into the twenty-first century and have a lawyer at the table. There were communicators, HR people — where's the lawyer? When I joined Technip, the CEO, Thierry Pilenko, had been a CEO of a U.S.-listed company, and he looked around and told me, when he interviewed, he said, “Where's my General Counsel?” They said, “There's the head of contracts, and there's the head of corporate,” and he said, “I want a General Counsel!”



It's a concept like, I was saying Sapin II comes effectively from the FCPA and the U.S. system on prosecution agreements. We are adopting certain Anglo-Saxon/U.S. legal concepts and General Counsel is one of them.

**JACK FRIEDMAN:** It used to be in the U.S. that you would take for granted bringing in the outside counsel to meet with the board. One of the most recent things in the U.S. which surprised me was one of our Panelists saying, "We have the problem that the outside law firm hardly ever meets with the board. The General Counsel generally acts as the intermediary between the law firm and the board." Is that a trend in Europe also?

**JOHN HARRISON:** The practice is more to go through the General Counsel. The General Counsel is, as I say, the lens through which the CEO has to look at legal problems and you are tried and tested. One of the skill sets you have to have is managing up to your CEO, because they're not interested in the law; they're not lawyers. They want to understand what the solution is, what the restrictions are, what the risks are. We only do it when we really have to.

**JACK FRIEDMAN:** A company like Airbus is not just factories, machines, or money. Its success is also built around people, and not just top management. It can even be the factory worker who does a conscientious job. Could you describe the people side of Airbus, and how you handle dealing with so many legal regimes on employment?

**JOHN HARRISON:** First thing, people are everything – 135,000 people directly employed by the company all over the world. As I said, we're around 400 people in the legal and compliance department. People are everything. One of the things that you learn as you become a senior or a top manager is how vulnerable you are, because you are one person, and how much you need your teams. Alone, you're nothing. The teams are everything, and people are very important. We do, obviously, spend a lot of time thinking about how we deal with our people. For example, we're doing a value survey at the moment amongst all the employees. We've asked them to select five values from a series of twenty. We're asking the employees – 55,000 people responded to the email survey, which is very good. We're asking people, "What do you want the company to be? What are the values that

you want us to actually have as a company?" That's the type of thing we're doing, listening to the people.

Now, in terms of regulations, in continental Europe, we have codetermination in Germany; we have rigid labor laws in France, which hopefully will be liberalized; and probably pretty liberal laws in the U.K. compared to France and Germany. We adapt. We have to be pragmatic. That was a bit my theme, is we've got to be nimble; we've got to always be adapting to the situation in each country. It's complex, but we've got to do it; we've got no choice.

**JACK FRIEDMAN:** Jim Comey, before he was at the FBI, was an independent director at HSBC globally, and before that, he was the global General Counsel of Lockheed. In an interview, he commented that employees watch executives like children watch their parents to find out how to conduct themselves.

**JOHN HARRISON:** The same applies to companies. Our CEO doesn't wear ties, and you would not be surprised to find out that many in our company now come to meetings without ties. It's walking the talk in terms of your behavior.

This is one of the challenges for companies, in terms of culture and doing the right thing. If the bosses make a nice speech, but go back to their office with three people and dismiss what they said, that will be shared. The behavior of top guys is absolutely everything.

**JACK FRIEDMAN:** Boards that are made up of business people, not lawyers, try to make sure that they understand not only their duties but also the dangers. Hervé, could you talk a bit about the role of outside counsel in dealing with top management and the board?

**HERVÉ PISANI:** John is providing a very good example of the situation we are often facing, where people have many responsibilities and have to carefully manage their

“In the next ten years, you’re going to be seeing flying objects in the sky, probably not in Paris immediately – we might do it a bit later than some of the other places – but there are cities where I think this is going to be happening.”

– *John Harrison*

time. Basically, dealing with board members is a matter of understanding where they are coming from, understanding that the legal aspect is just one part of the decision-making process, trying to make things short, and provide solutions when we raise issues.

**YVES WEHRLI** (Clifford Chance - Managing Partner, Paris, and Regional Managing Partner, Continental Europe): On behalf of

Clifford Chance, of the other law firms which have the privilege of working with Airbus on a regular basis, I would like to thank you, Jack, for organizing this event. And I would like the room to give a big applause to our dear friend, John Harrison, for this honor. [APPLAUSE]



**Fabrice Cohen**  
Partner, Clifford Chance  
Europe LLP

C L I F F O R D  
C H A N C E

Fabrice is a partner in the Corporate department of Clifford Chance and the head of the private equity practice in Paris.

He specializes in domestic and cross-border M&A transactions, private equity, and securities law.

Fabrice regularly advises large industrial groups, listed companies, prominent private equity firms, and financial institutions on all corporate aspects of public and private M&A and on corporate reorganizations.

Fabrice further benefits from a strong expertise in the following business sectors: Aerospace and Defense, Consumer, Infrastructure, and Automotive.

Fabrice is widely recognized as one of the top M&A lawyers in France (Chambers).

Admitted to the Paris Bar, Fabrice graduated from Paris I Panthéon-Sorbonne's University (LLM in business and tax law) and ISG business school, and holds a degree in chartered accountancy. He is further an active member of the AFIC (*Association Française des Investisseurs en Capital*), the French private equity association.

Before joining Clifford Chance, Fabrice was a partner at Freshfields Bruckhaus Deringer LLP and Willkie Farr & Gallagher LLP, in Paris.

## Clifford Chance Europe LLP

Our Paris office has been a leader in the French market for more than 50 years.

We opened our Paris office in 1962 and are recognized as one of France's leading law firms. We have 36 partners and over 175 lawyers. Our clients include leading French and international corporates, banks, and financial institutions.

We have developed a veritable *savoir faire* in a number of sectors in France. Our lawyers have a fine understanding of the legal and economic environment in which our clients

operate and can easily and promptly adapt their advice in the light of the relevant business and operational constraints.

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**Bertrand Cardi**  
*Partner, Darrois Villey Maillot  
Brochier A.A.R.P.I.*

DARROIS VILLEY MAILLOT BROCHIER

Bertrand Cardi is a partner at Darrois Villey Maillot Brochier. He joined the firm in early 2010, after having been a partner at Linklaters since 2004.

He has more than 20 years of securities law experience and is one of the leading experts in mergers and acquisitions, securities as well as capital market laws (and also has experience in related litigation, arbitration and regulatory investigations). He has acted for industrial clients or investment funds in numerous major French or cross-border transactions.

He also advises companies (listed or not) in financial difficulties and acts regularly on public law matters (for example to advise the French State or CDC, the main French public financial institution).

Finally, Bertrand Cardi advises a number of listed companies on their governance and their strategic developments abroad.

Bertrand Cardi, in addition to his Assas University law diploma, is a graduate of Ecole des Hautes Etudes Commerciales (“HEC”), the French leading business school. He is a Director of the Board of the HEC Foundation/Trust, and advised on the improvement of the corporate form and governance of HEC from 2010 until today. He is ranked in the top tier in various legal guides (including *Chambers* and *Legal 500*). He is an Officer of the M&A Committee of the International Bar Association (IBA) and regularly speaks at legal conferences on governance as well as M&A and Capital Market issues. The French Stock Exchange Authority (AMF) has invited him to join its consultative Commission on Disclosures and Corporate Finance as one of the few securities law experts.

## **Darrois Villey Maillot Brochier A.A.R.P.I.**

The firm was founded in 1987. From the beginning, we focused on the growing area of law relating to public companies. On this foundation, we established a highly developed expertise in major corporate transactions and dispute resolution.

We have continued to grow these two practices through the present day, regularly expanding our ranks to admit new partners from a variety of backgrounds, and creating in the process mergers and acquisition and dispute resolution teams that are among the most highly regarded in Paris.

At the end of the 1990s, we began to expand into new areas in order to continue to provide our clients with the service that had become

our hallmark: rigor, creativity, and a depth of experience, each assured by the significant personal involvement of our partners.

As a result, our offerings grew to include competition law, public law, financing and restructuring, and tax. As these practice areas have matured, they have gained in prominence, and each is now widely recognized as a market leader in its own right.

In recent years, we have developed significant expertise in international and cross-border transactions, including some of the largest and most complex deals in France and the world. Finally, we have expanded our practice to include white-collar criminal matters.



**Stéphane Lemarchand**  
Partner, DLA Piper



Stéphane Lemarchand assists IT service providers in litigation matters as well as on their strategic projects.

Stéphane is joint global head of the intellectual property and technology practice and head of the practice across Europe, the Middle East, and Africa.

#### Publications

- Digital transformation in the aviation sector, 28 April 2017

Stéphane writes regularly for publications such as *La Semaine Juridique*, *Lamy Droit de l'Immatériel*, *Les Echos* and *Expertises*.

- “Outsourcing: A Practical Guide,” *Globe Law and Business*, September 2015

#### Presentations and Seminars

- Stéphane is a frequent speaker at international conferences on IT and e-commerce matters.
- DLA Piper Tech Day, The Peninsula Hotel, 4 December 2014

- Singapore TechLaw Event 2013, 25 November 2013

#### Recognitions

- “Stéphane Lemarchand heads DLA Piper’s superb IT practice, which continues to attract new high-profile clients and panel appointments.[...]” (*Legal 500*)
- Listed in the “Top 50 Lawyers” *Décideurs* 2017 annual ranking
- Listed as Acritas Star™ Lawyer 2017
- Nominated as “Avocat de l’année 2014” in the IT field by the magazine *Best Lawyers*

#### Credentials

*Education:* University of Paris II Panthéon-Assas Postgraduate degree (DESS) in intellectual technology

University of Paris XI Paris Sud Postgraduate degree (DESS) in new technologies

*Professional Qualifications:* Avocat admitted to the Paris Bar

*Languages:* French, English

## DLA Piper

We are located in more than 30 countries throughout the Americas, Asia Pacific, Europe, and the Middle East, positioning us to help companies with their legal needs anywhere in the world.

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With very strong practices on both sides of the Atlantic, we are one of the few international legal services providers in France that has presence on both coasts of the United States.



**Hervé Pisani**  
Partner, Freshfields Bruckhaus  
Deringer LLP



## Freshfields Bruckhaus Deringer LLP

The world's biggest international organizations rely on us to help them make the right decisions in a fast-changing world. We combine the knowledge, experience, and energy of the whole firm to solve our clients' most complex challenges, wherever and whenever they arise. Whether it's entering new markets, defending corporate reputation or managing multi-jurisdictional regulation, we are renowned for breaking new legal ground to help our clients go further.

We enjoy our work and are determined to do an outstanding job, whatever our role in the firm. We observe the highest personal, ethical, and professional standards in everything we do and operate with integrity at all times.

*Avocat à la cour*, Hervé heads our corporate practice and is recognised as one of the leading M&A lawyers in France.

Hervé has a solid experience in advising listed and non-listed companies in relation to their most strategic M&A transactions, either in France or globally.

In addition, Hervé has a particularly strong expertise in relation to stock market litigation, and represents French and international corporates, public companies and the French state in relation to their most complex disputes.

Hervé is fluent in French and English. Some of his recent work includes:

- Advising EDF on the acquisition of a majority stake in Areva NP's business and the governance aspects of the U.K. Hinkley Point C nuclear power plant project.
- Advising Danone on the acquisition of: the 42% stake owned by Unimilk in the Danone-Unimilk joint venture; and

We recognise that the reputation of our firm is vital to our success and we all have a duty to preserve and grow it for the long term.

We are a people business. We see diversity as strength and value the fresh perspectives, creative ideas and connections that flow from bringing together people with different backgrounds. We want to create a welcoming, supportive environment in which all can flourish. No matter how challenging a matter or heavy our workload, in our daily interaction we must never lose sight of the essential human qualities that we prize.

We know we deliver best when working as a team rather than as individuals operating alone. Being a great colleague and working efficiently and effectively with our clients and other stakeholders around the world to achieve the right outcome is crucial to our success. We welcome feedback from others on how we are doing.

the acquisition of the Egyptian company Halayeb for Dairy Products and Juice.

- Advising Caisse des dépôts et consignations (CDC) on: the merger of Icade and Holdco SIIC; the creation of a public real estate company to be managed jointly by the French state and CDC; and the discussions between CNP and BPCE regarding the renewal of the agreement governing the distribution of CNP insurance products in the Caisse d'Epargne network.
- Advising Airbus Defence and Space on the carve-out and subsequent sale of its defence sensors and border security businesses.
- Advising Etisalat on the acquisition from Vivendi of its controlling interest (53 per cent) in Maroc Telecom, and the subsequent disposal of its African subsidiaries in Benin, Ivory Coast, Gabon, Niger, Central African Republic and Togo to Maroc Telecom.
- Advising U.S. investment firm Blackstone on its participation in French real estate investment firm Gecina.

We are one partnership across the world, sharing the risk and rewards of our business and with an overriding duty to bequeath the firm in better shape than we inherited it.

We have a "one-firm" mindset. We don't just say we are one firm; we act like one firm right across the world. We bring together the knowledge, experience and energy of the whole firm to help our clients. We encourage, support and share in the success of all our colleagues.

We work wherever our clients need us. This is how we define ourselves, not by reference to where we have offices. Cross-border work isn't just what we do, it is what we excel at. We understand what it really takes to work across different legal systems and commercial environments and to bridge language and cultural gaps.