

Paris, the Jurisdiction of Choice?

On January 17th, the President of the Paris Commercial Court (*Tribunal de commerce*) inaugurated a new international division. 

The new division, which is in fact the 3rd division of the court (*3ème Chambre*), is to be staffed with nine judges who speak foreign languages, and will therefore be able to assess evidence written in a foreign language. For now, the languages will be English, German and Spanish, as one judge speaking Spanish and two speaking German are currently on the court.

In an interview to the *Fondation de droit continental (Civil law initiative)*, the President of the Court explained that the point was to make French justice more competitive and attract international cases. It also made clear that France was following Germany's lead, where several international divisions were established in 2009 in Hamburg and Cologne.

French Commercial Courts

It should be pointed out to readers unfamiliar with the French legal system that French commercial courts are not staffed with professional judges, but with members of the business community working part-time at the court (and for free). In Paris, however, many of these judges work in the legal department of their company, and are thus fine lawyers.

Also, French commercial courts (and French civil courts generally) virtually never hear witnesses, so the issue of the language in which they may address the court does not arise.

Some issues

So, the new international division will be able to read documents in several foreign languages. However, nothing suggests that parties or lawyers will be able either to speak, or to write pleadings, in any other language than French. Lawyers arguing these cases will still need to file their pleadings in French, and thus to translate them in English beforehand for their clients. Furthermore, the interview of the Court's President seems to suggest that using a foreign language will not be a right for the parties. Quite to the contrary, it seems

that it will not be possible if one of the parties disagrees, and demands documents be translated in French.

Will that be enough to attract additional commercial cases to Paris?

I wonder whether introducing class actions in French civil procedure would have been more efficient in this respect.

For the full interview of the Court's President, see after the jump.

Creation of an International Chamber at the Tribunal de Commerce [Commercial Court] of Paris

On January 17, 2011, the Tribunal de Commerce of Paris will inaugurate an international chamber, an event all the more in the nature of an official endorsement because this chamber, which already exists, remains unknown to the general public. The President of the Tribunal de Commerce of Paris, Christian de Baecque, explains the stakes of this rehabilitation.

What has driven the need for official recognition of the international chamber of the Tribunal de Commerce of Paris?

Some months ago, I learned of a draft law issued by legislators in Germany allowing documents to be examined by a court without their translation being mandatory. I found the idea to be excellent and after some research, I realized that the French Code allows this practice.

Many people share this idea, with the objective of promoting Paris as a judicial location. There is, in effect, a currently ongoing struggle between the Anglo-American law and civil law. And it is up to us, at the Tribunal de Commerce, to ponder specific actions.

Is the international chamber of the Tribunal de Commerce of Paris therefore participating in this promotional effort?

Yes, absolutely. The stakes underlying a general recognition of this chamber is to avoid the outflow of judicial business to foreign courts. All of the chambers of the Tribunal de Commerce in the resolution of disputes are specialized. We thus also had a chamber specialized in international law. It operated when the parties were neither French nor European. But obviously there were few litigated disputes that actually justified the existence of this chamber. The innovation at the level of the Tribunal is to make public the existence of this chamber, and this publicity should put the Tribunal de Commerce of Paris in a strong position to handle international disputes and thus enhance the position of the civil law.

Could you tell us about the composition of this international chamber?

The 3rd Chamber of the Tribunal, which is the international chamber, will be composed of nine judges having the requisite knowledge of foreign languages, whether English, German or Spanish, so as to be able to accept exhibits that have not been translated into French (to the extent, obviously, that all the parties would be in agreement). This does not exclude the use of foreign languages in any other chamber. The international chamber wishes to serve as a model, it is not intended to be exclusive.

Three languages have been selected, English, German and Spanish. Why not use only English, as is the case in Germany?

In most cases, the judges of the Tribunal de commerce have had the occasion throughout their careers to draft contracts in a foreign language. They have mastered the fine points of the language. Here it is not solely a question a question of translation; the words have an economic meaning and not only a literary one. Also, if that judge has the language skills to grasp the subtleties of a document, it seems logical to provide wider latitude to this mode of operating. Of course, the judgment and the consequences that the judge derives therefrom will be drafted in French.

With the 3rd Chamber, the use of such or another language will depend on of the language skills of the judges. It so happens that next year I will have a judge who speaks Spanish and two German-speaking judges, from whence the decision to hear cases in these two languages.

You are quite willing to state that the object of the process is

marketing.

We are in fact going to put in place a mechanism that already exists in a new packaging, and this is being done so as to promote a practice that is unknown to the judges themselves. The latter, just as is the case with the lawyers, often lose a lot of time in translation. Certain cases by-pass the Tribunal de Commerce because of this linguistic obstacle, and I am not referring here to foreign businessmen who, for lack of information as to this mechanism, do not come to attend the hearings. The re-implementation of this international chamber must show that the language is not a barrier for pursuing international dispute resolution in France.

Germany, The Precursor in Hearing Cases in a Foreign Language

In Germany, the Rhine-North-Westphalia and Hamburg Länder, in 2009, took the initiative of putting international chambers in place in the Courts of First Instance of Hamburg and Koln for international commercial cases. Mr. Brauch, Attorney offers some clarification on the current situation and on the differences in relation to the French mechanism.

The establishment of these first international chambers was followed in 2010 by a request to the Bundesrat (the representative council of the Länder in the Federal Republic) to amend the Federal Code on the Organization of the courts so as to introduce this model in the other Länder of the Federal Republic.

In these “pilot” chambers, the proceeding may thus be held entirely (memoranda of the parties, probative evidence, oral argument at the hearing and the decisions of the Court) in English upon the request of both parties.

English is the only language selected for these chambers because, considered to be the language of international trade, it also serves to pacify the struggles with the courts, with those in England for example, so that the case can be conducted in English in accordance with civil law. English is also in many cases the language of neutrality, as in the case of Franco-German transactions.

This mechanism of the international chamber seems go further than that its

French counterpart, in the sense that the entire proceeding, from the arguments to the judgment and inclusive of the pleadings, is pursued in the English language. Only the executory portion is translated for the bailiff into German. For these specialized chambers, the Court of Appeals is also considering establishing special chambers dedicated to proceedings held in English.

As soon as the Federal code of procedure is amended, the establishment of these international chambers will extend to other Länder in cities such as Frankfurt, Munich, Stuttgart and Düsseldorf.

I absolutely approve of these mechanisms which are especially effective in handling international contracts for financial services or of merger/acquisition, an area in which I am especially involved. In such transactions, all of the documents are often drafted in English, even if the two parties are neither English nor American, but German and French or other. It may be, in fact, that these companies are affiliated with American or English groups, and that the representatives of the parent companies are insisting on having the case litigated in an English language proceeding. Until now, it was necessary in such a case to have recourse to international arbitration or to a foreign English-language court. The establishment of such international chambers thus allows for a proceeding to be held before a German State Court. This is a real opening onto the international horizon.