

Moot Court ODENSE SE's TRAVELS

Jacques – Louis COLOMBANI
AVOCAT – PARIS

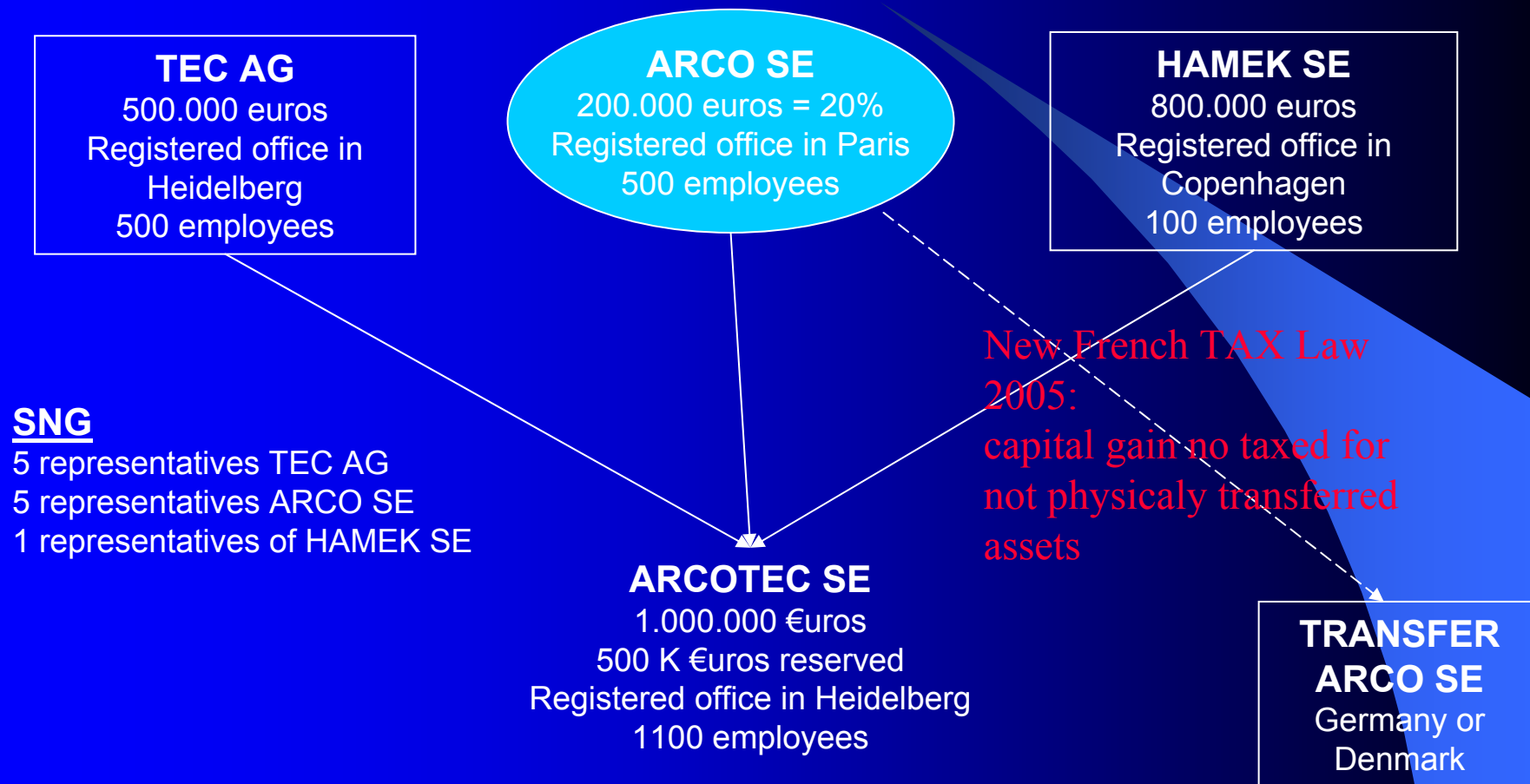
French National Support Team
-Julie CADIN, J-L FLAMAND

Introduction

- This event is a continuation of the moot court that was organised in Paris last year thanks to Mr RAFFARIN (French Prime Minister)
- Participation to this session will improve your skills and ability to use the SE in order to make business on the internal market
- The French team will stay in France and is 100% composed of practitioners: JULIE CADIN AVOCAT; J-L FLAMAND CFO PRECISION VALVE EUROPE

Schedule

- **1. Merger with PERNA SA**
- Describe if and how it is possible to merge PERNA SA with ARCOTEC SE, and consider the major legal effects of such a merger with respect to the company law and tax law problems.
- **2. Transfer of Head office and / or registered office**
- Describe if and how it is possible to transfer of head office and / or registered office of ARCOTEC SE to either Italy (Rome), or Denmark (Copenhagen). Consider also a transfer of the registered office / head office seat of ARCO SE to Germany or Denmark.
- **3. Change of Structure**
- Consider the possibility to change the structure of ARCOTEC SE from a two-tier system to a one-tier-system. Consider the options for the management structure for any holding companies





ARCOTEC Holding SE
 Heidelberg 2 tier Sys Supervisory Board

ARCO SE
200 K€

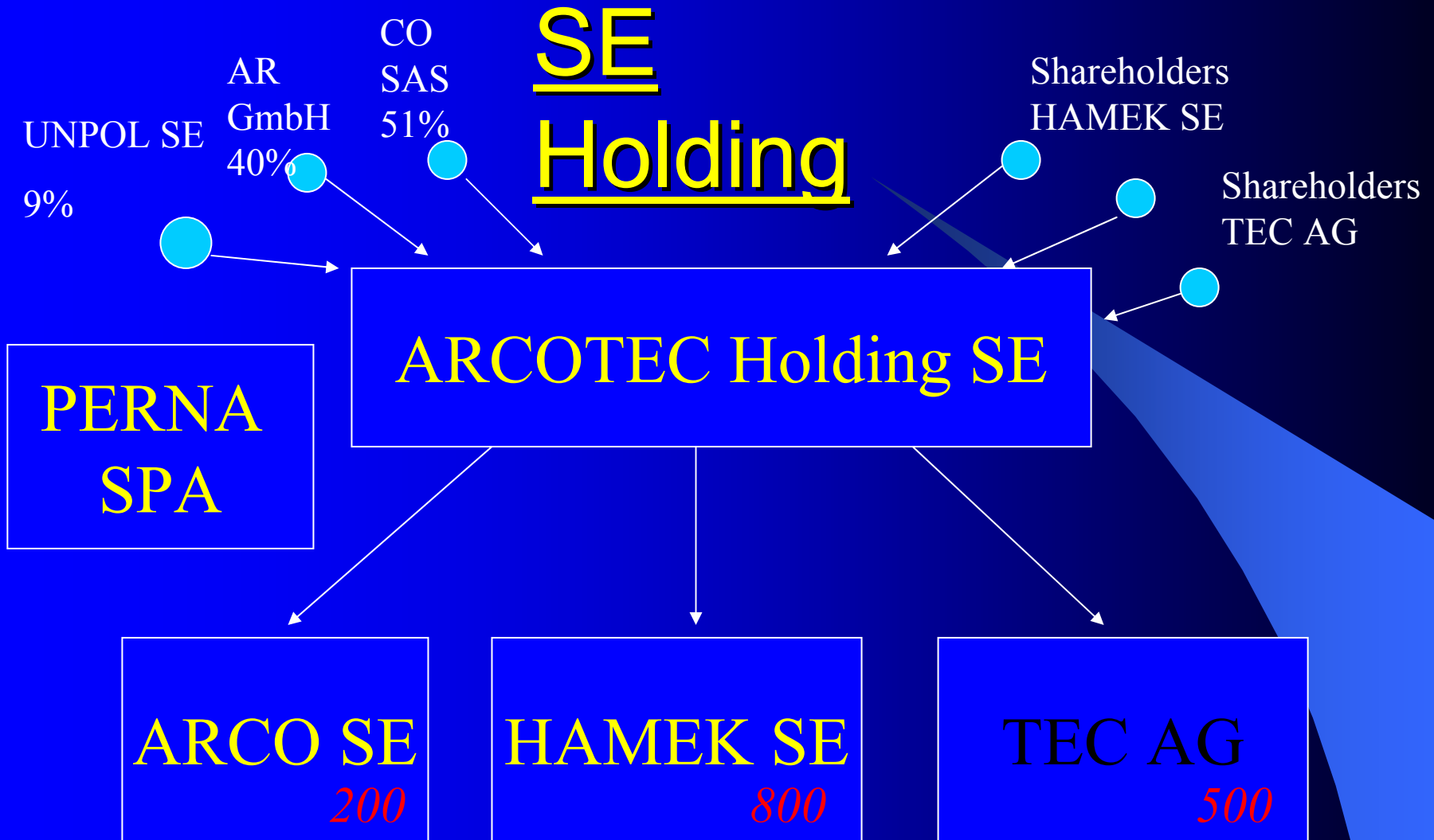
HAMEK SE
800 K€

TEC SE
500 K€

Shareholders ARCO SE

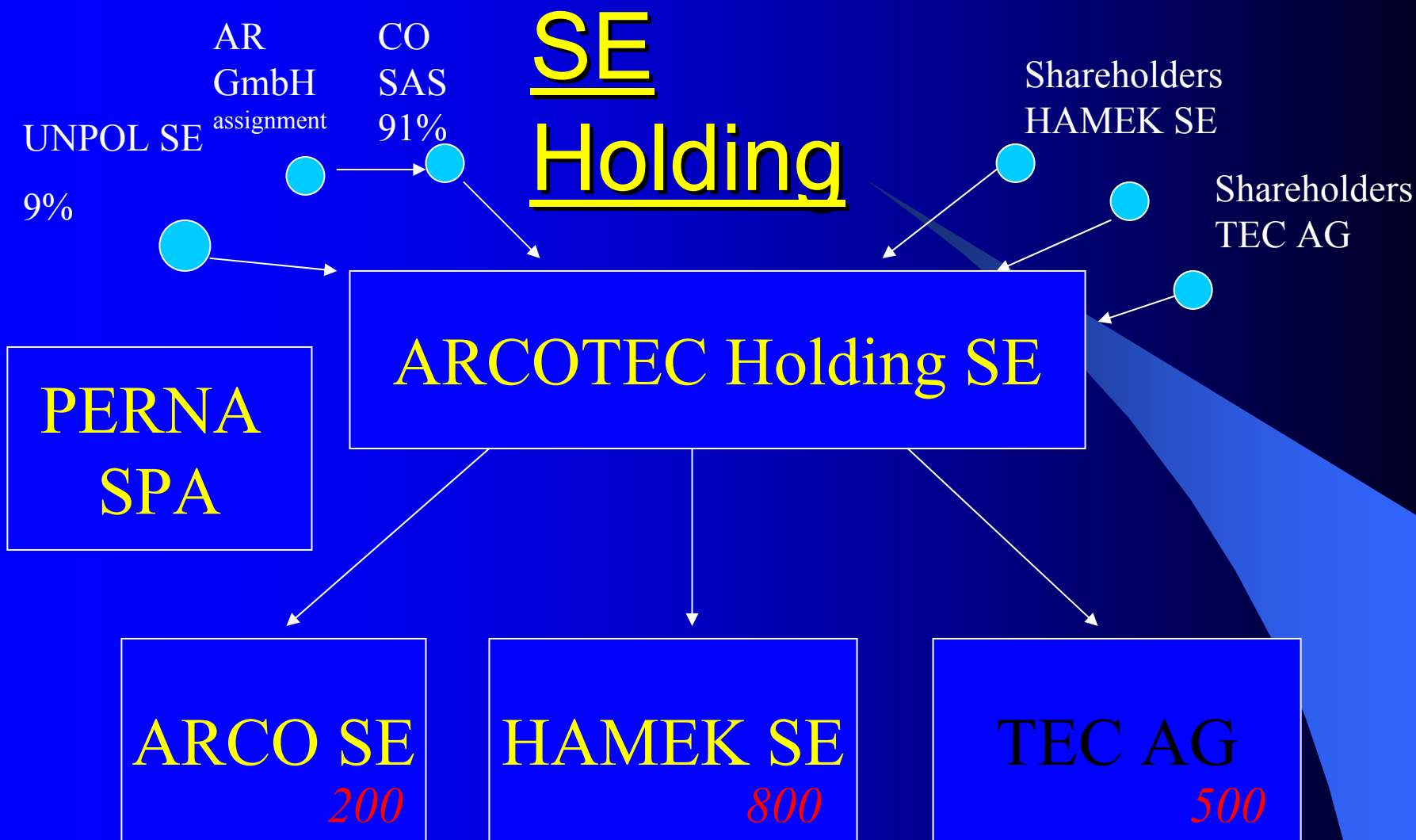


The context of the bid made by PERNA SPA



Meeting of the supervisory board

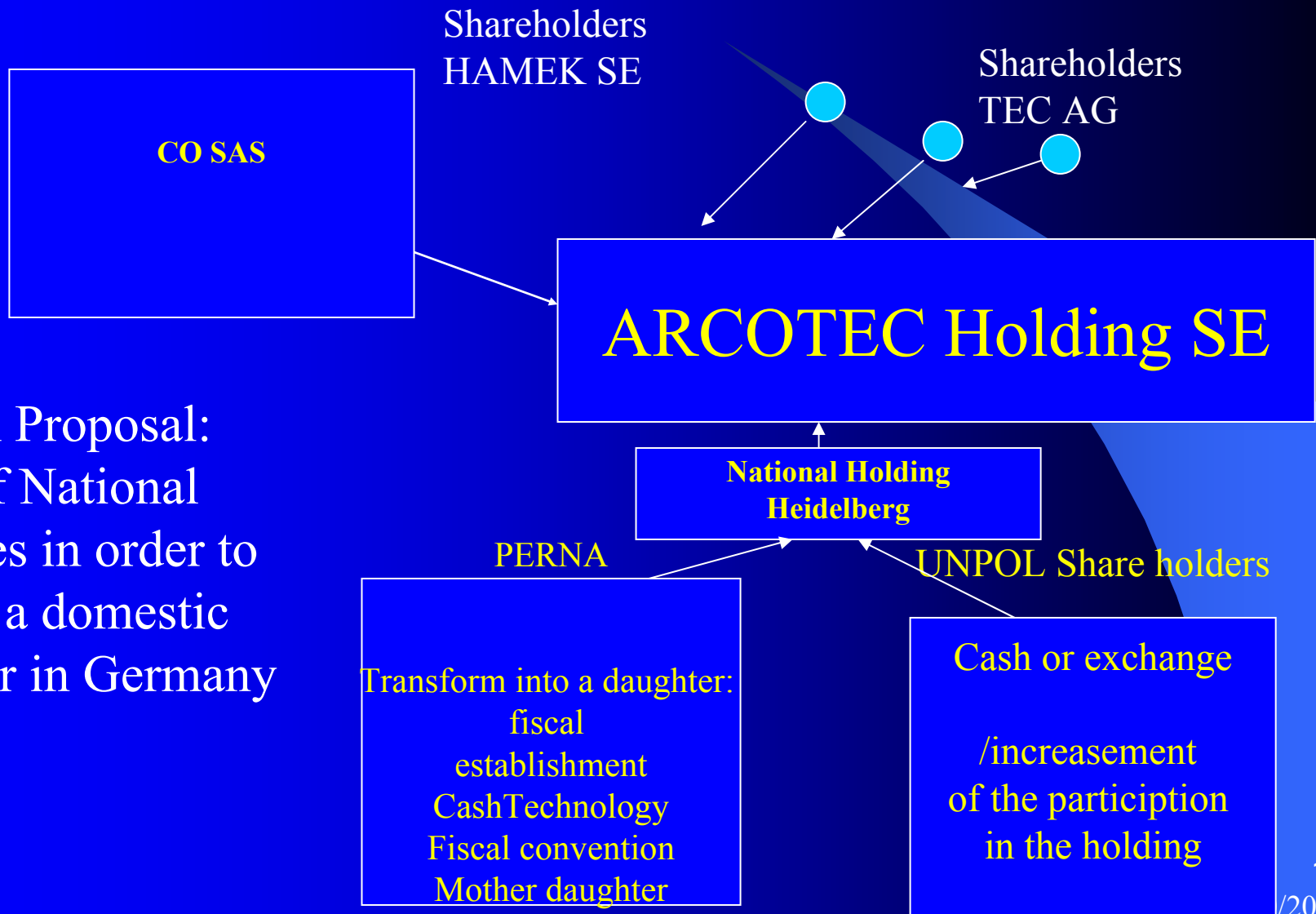
First scheme: DIRECT MERGER with ARCOTEC



Questions

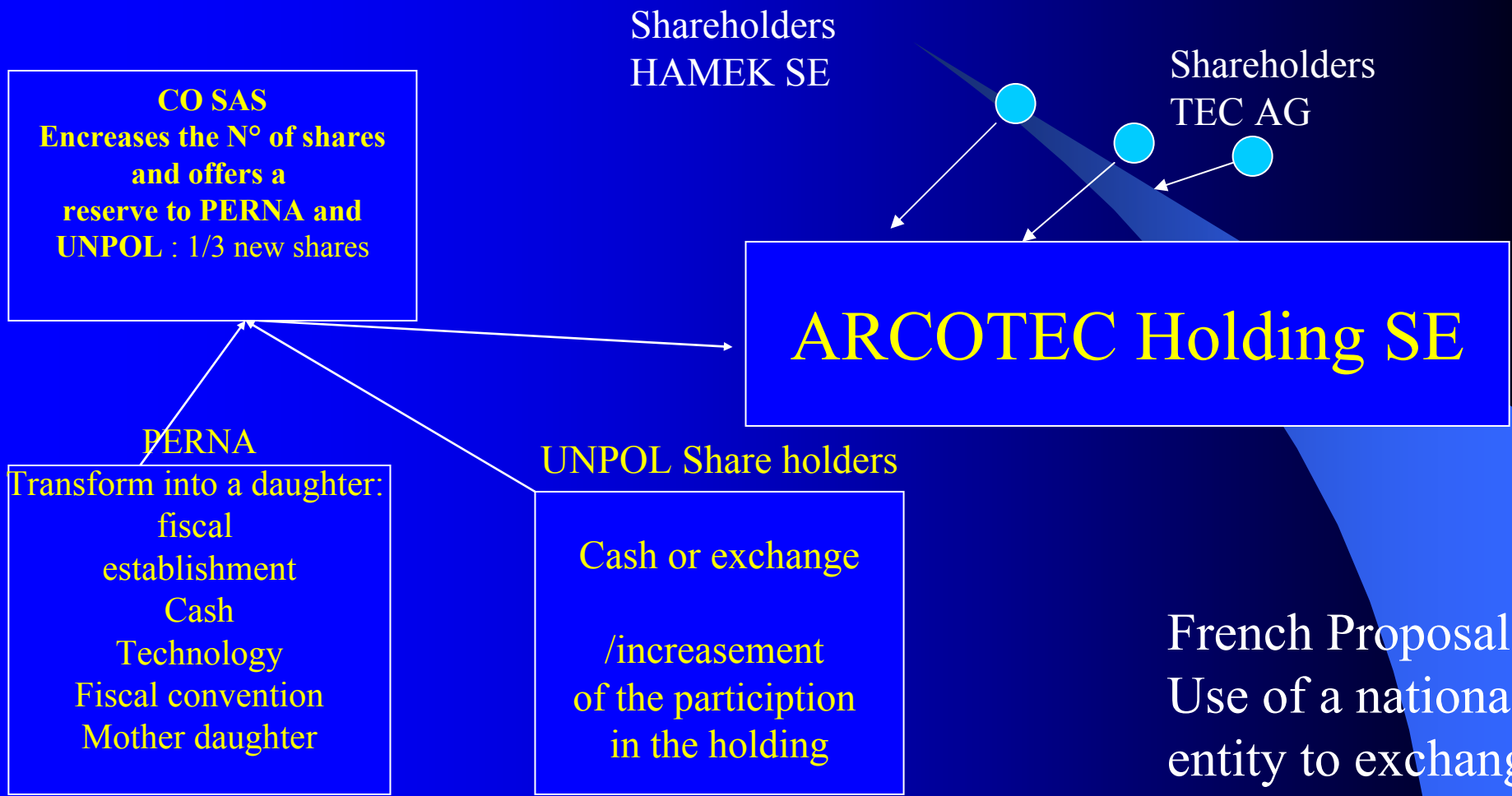
- Directive of 1990 on mergers application to the SE?
- Material:
- See,
- - Jacques - Louis Colombani, Petites Affiches, 27 oct. 1993.
- - Clemens P. Schindler, Die Europäische Aktiengesellschaft, Lexis Nexis 2002, and The SE Code that was adopted in Austria.
- Implementation of the directive on the workers involvement in Italy?
- A gentlemen agreement with ARCOTEC?

Second scheme: CO SAS as a bridge from Italy to ARCOTEC



Italian Proposal:
Use of National
Entities in order to
set up a domestic
merger in Germany

Second scheme: CO SAS as a bridge from Italy to ARCOTEC



French Proposal:
Use of a national
entity to exchange
the shares.

Discussion to the Board Through Video Conference PARIS/HEIDELBERG/ODENSE

Fiscal issues

- BEFORE
- Capital gain
 - Historical values in the SE without recording the capital gain?
 - Main topics that have to be dealt with in the reports by countries.
- AFTER
- National treatment:
 - pensions, results, Industrial Property (25/5%)... NO CHANGE
 - E. G. Withholding tax FR/XX remain the same

Exemple of tax strategy (Mother Daughter Directive):

CALCULATION

BEFORE: In Italy withholding tax, normal regime 15%
reduced to 5% as per tax treaty;

AFTER

In National law implementation as eprdate of the
Mother/Daughter, Minimum capital ownership 10%/15%, will decrease.

I.E: dividends paid by PERNA to CO will be exempted
of withholding tax

National treatment: Tax paid in Italy for 100 benefit = 5% (more than 10% of
capital owned by COSAS)

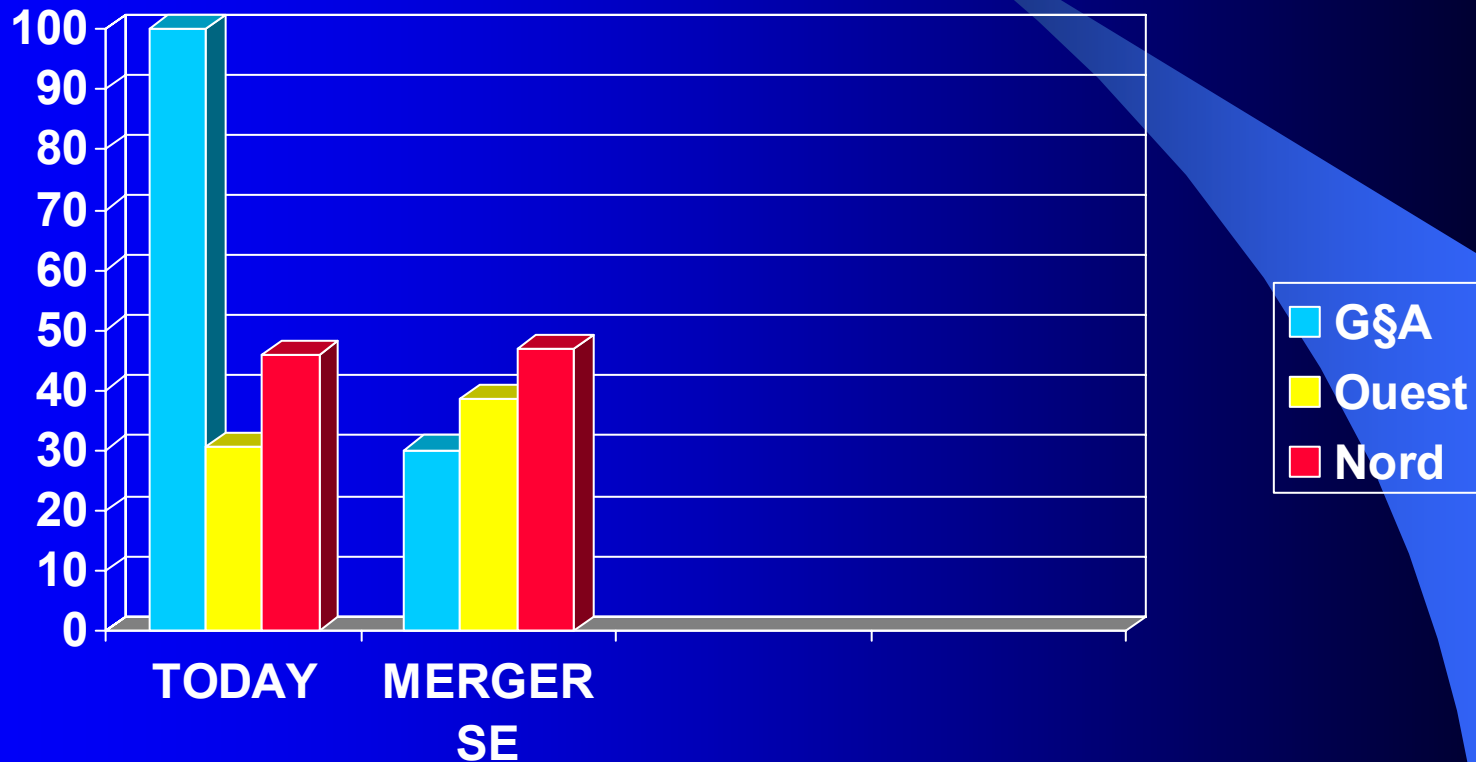
In CO SASU: net income 95%

Global tax assesment:

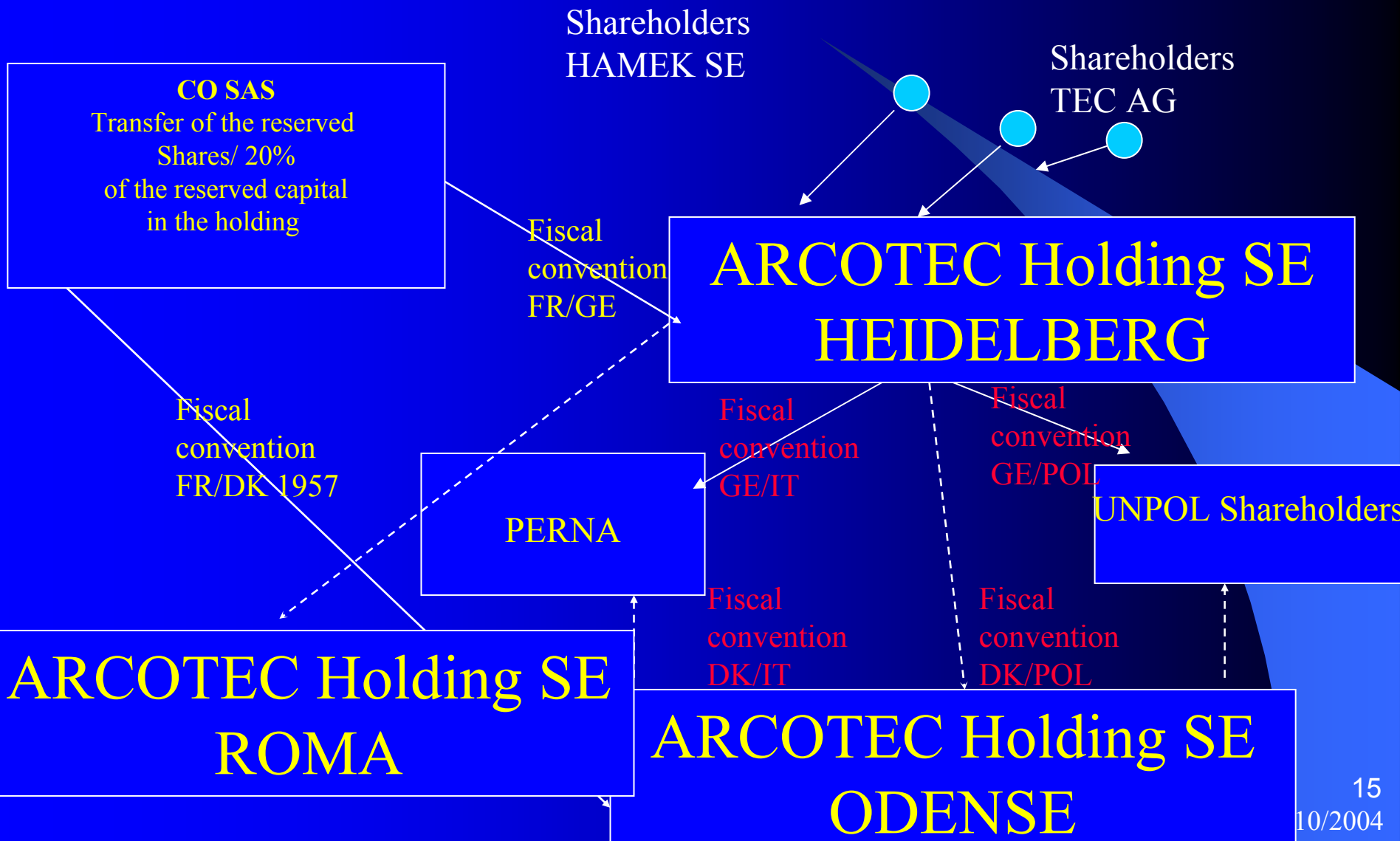
Mother/Daughter in France: 5% of the net dividend (95) can be deduced for
expenses. New taxable base is $95 - (5\%/95 = 4,75) = 90,25$

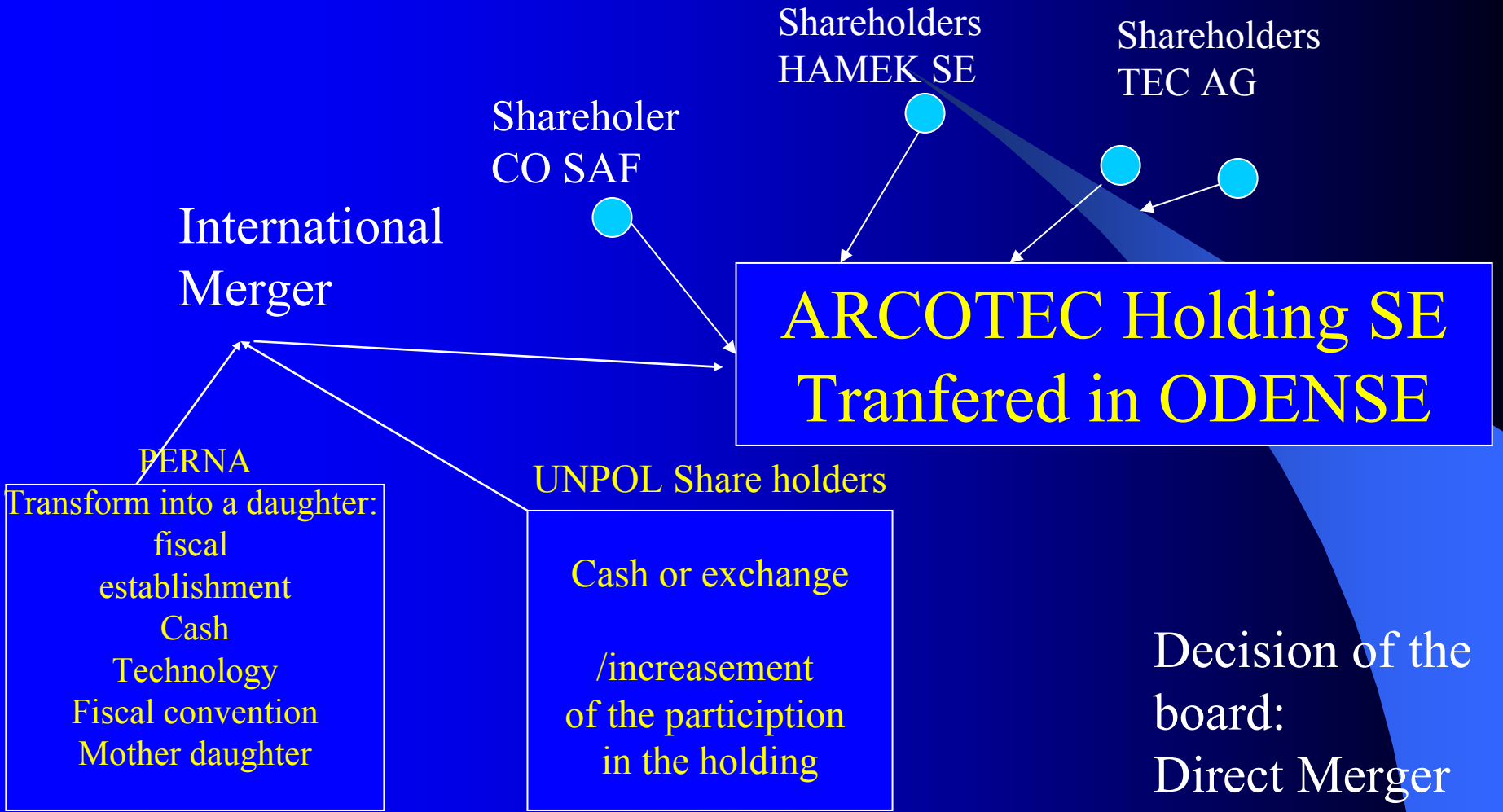
SAME ASSESMENT CAN BE MADE FOR EACH PART OF THE PROCESS

Target: Reduce significantly the G&A costs (JLF).



Global scheme





The Special Negotiating Body and the agreement (Directive art 3, 4)

- **Bullet points:**
 - **Scope of the agreement**
 - **Composition, number of members and allocation of seats on the representative body which will be the discussion partner of the competent organ of the SE in connection with arrangements for the information and consultation of the employees of the SE and its subsidiaries and establishments etc..**

Questions:

- Should the exchange between CO and ARCOTEC be operated before or after the transfer?
- Representative body/Minorities?
- Fiscal issues?
- Head office? Effective place of management? Registered office?
- Management nerve?
- Lieu où se prennent les principales décisions: VIDEO CONFERENCE?

Issue

- Can we consider that tax matters are classical and that with regard to the current applicable law we could prefer a gentlemen agreement between PERNA and ARCOTEC through CO SAS?
- Comments?

Material

- Bylaws and relevant agreements in CO SAS.
- See The European Company all over Europe (De Gruyter Recht - Teichmann/Oplustill Ed).
- First part of the moot court available on:http://www.senat.fr/senateurs/branger_jean_guy/colloque.html