

Workshop-Pisa-Italy
03 May 2017

Afif Daher

Université De Rennes 1 - France

Socially responsible investments in France

- Soft law

Voluntary
instruments

- Hard law

Enterprises take the following actions next to their legal obligations

- Better work environment
- Better environmental standards
- Good governance
- Anti corruption measures

What could be the added value of the *benefit corporation*?

- Better rules on reporting
 - E.g. on environmental standards
 - On social engagements
- Better rules on the responsibility of the executives

Executive managers tasks

- 1- He must manage the matter in a reasonable manner.
- 2. He must complete the act he has undertaken.
- 3- He must account for his management.
- 4- The manager is obliged, in respect of third parties, only if he has contracted in his own name.

In French law, voluntary action is not synonymous with non-liability. Nor is it the basis of moral responsibility.

- Article 1194 C.civ. stipulates that "Contracts not only impose on what is expressed in them, but also on all the consequences of equity, use or law".
- The fault committed by the parent company in the control it exercises over its subsidiary.

- Article 1300 Code Civil

English

Quasi-contracts are purely voluntary acts, the result of which is an undertaking by the one who takes advantage of them without being entitled to them, and sometimes a reciprocal commitment of both parties.

French

- ***« les faits purement volontaires de l'homme, dont il résulte un engagement quelconque envers un tiers, et quelquefois un engagement réciproque des deux parties »***

Case Law

- French High Court
- 23 January 2007
- Dispute between Créations Nelson, and Camaieu SA and Camaieu International: The precise and firm terms of the moral commitment give it a binding legal force such as to engage the civil liability of the party at fault.

The legal framework of RSE in France, a source of binding legal obligations

1- New Law on Economic Regulations in France

- La loi sur les Nouvelles Régulations Économiques (dite loi NRE), parue le 15 mai 2001

Decree of 20 February 2002

- Three main parts:
- 1. social (internal) aspects, in particular the personal and professional well-being of employees,
- 2. the territorial impacts, the relations maintained by society with integration associations, educational institutions, environmental associations, consumer associations and civil society.
- 3. the environmental consequences of the company's activities, in particular water and energy consumption, measures taken to limit damage to biological balance and natural environments, assessment or Environmental certification, etc.

2- Environmental charter (2005)

- Charte de l'environnement (2005).
- It is a constitutional text.
- It will provide a stronger legal basis for some instruments needed for public policy in the area of environmental protection.

3- Le Grenelle de l'environnement (2007)

New actions of state and civil society

Three priorities:

- 1. The fight against global warming;
- 2. protection of biodiversity;
- 3. reduction of pollution.



• **Two new laws in 2009 and 2010**

4-Further legislation and actions

- Socially responsible investments
- The Energy and Ecological Climate Change Label (TEEC)

5- Law 2016 on transparency, anti corruption and the modernisation of the economic live

- la loi Sapin du 9 décembre 2016 relative à la transparence, à la lutte contre la corruption et à la modernisation de la vie économique

6- The law on the duty of vigilance of the parent companies and the sponsoring companies of 21 February 2017.

- La loi sur le devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre du 21 février 2017.

Questions concerning the creation of a legal structure for the Benefit corporation.

The French law offers the RSE three supports accepted by all:

- 1. voluntary approach, which can be a source of civil liability,
- 2. a binding, legal and regulatory mechanism, whose non-compliance is sanctioned by law, and
- 3. a hybrid procedure (*« comply or explain »*): *Code Afep/Medef*

The reporting encompasses financial and extra-financial results, and covers quantified social and environmental objectives

Other questions to the foreclosure of the Benefit corporation :

- 1- The difficulty of translating into the texts the balance between economic competitiveness and private profit on the one hand, social and environmental utility and general public benefit on the other. The latter two concepts are not legal concepts.
- 2- In case of financial difficulty: what is the best, the economic or the social? Social and environmental utility or social interest? Who should be blamed for the fault?
- 3- Are the qualifying criteria of the Benefit Corporation evolving? The independence of the third party in charge of qualification?

The existence of numerous structures that meet the same objective as the Benefit Corporation in France:

- social and solidarity economy (SSE) enterprises,
- socially responsible investment,
- associations,
- foundations,
- patronage ...

The Benefit Corporation is not the only appropriate legal structure capable of meeting the requirements of RSE.

- It does not have a uniform status.
- Traditional profit-making enterprises also contribute directly or indirectly to the production of the common good and the achievement of the general public benefit.

The French CSR model is global: Incite or constrain companies to apply the rules of RSE in the areas of social, environmental and sustainable development

- RSE is not incompatible with the profit-making purpose of companies.
- The Benefit Corporation has a different philosophy, a voluntary approach that is likely to remain limited to certain sectors of activity and limited in number.

Thanks for your attention

Afif Daher

Université De Rennes 1 - France