

## Foreword

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CSR (Corporate Social Responsibility) was introduced into French business law by Article 116 of the NRE Law (Law on New Economic Regulations) of 15 May 2001, although it was not referred to by that acronym at the time. This article marking the discreet birth of what was still private non-financial reporting of information of a societal nature, and on commitments in favour of sustainable development, concerned only listed companies. This non-financial information is a precious component of corporate governance and has become a must-have for almost all companies (large and small, listed or not, public and private), organisations, mutual companies and local governments. In no time at all, it has become everybody's business, although at the risk of being no more than a mere tool of managerial seduction. No one can deny that this CSR groundswell has brought unprecedented upheaval to company, labour and environmental law, as CSR insinuates its way into all the existing branches of law and causes them to influence each other (financial law, environmental law, labour law and business law). It is modifying our relationship with business law in general, to such an extent that the initial criticisms have gradually given way to a particularly refreshing construction phase consisting in studying the relevant standards, and even to a worthy consensus. CSR appears to be something of an enormous jigsaw puzzle with pieces from all kinds of different origins. The key (and perhaps ultimate) question is whether it constitutes a new branch of law, although it might be better described as the sap that enables the existing branches of law to grow further and support the challenges of the twenty-first century.

Looking through the remarks and articles published on the advent of CSR in French business law, I have noted a metamorphosis both of CSR itself and of business law, making it possible to attempt to assemble the scattered pieces and seek a common thread, looking upstream at corporate governance itself, which has undergone the many influences of CSR (in very different ways), and downstream at the role of the various stakeholders. Companies are in the front line in CSR and have been given primary responsibility by the European Union for driving the sustainable and inclusive growth it is targeting, a growth that is sustainable for future

generations and inclusive, in that nobody should be forgotten, the most vulnerable should be protected and the world should be addressed globally. A far-reaching movement can be seen here and there, promoting the idea of shared value that has come from the United States. France has always led the way in this area, and cannot and must not miss out on this opportunity, as the advances of the Grenelle I and Grenelle II laws have shown. But how can this vast programme be implemented in France, Europe and worldwide?

There has been no shortage of questions. Should we be seeking new foundations? The early years of the twenty-first century have been more chaotic for listed companies in the US, UK and France alike, as they have found themselves facing a crisis of confidence on account of the behaviour of their management and the shortcomings of their control systems. In order to restore first those control mechanisms and then the confidence of the markets, French law drew its inspiration some 25 years ago from the fresh wind of corporate governance blowing in from across the Atlantic, although not without some misgivings and scepticism on some sides. This was followed by an even stronger message from the European authorities, setting down a masterplan for a CSR with increasingly ambitious objectives (such as, for example, achieving a sustainable and inclusive recovery and fighting against poverty). This movement was then enriched by concepts from northern Europe, seen as a model of virtuous behaviour (quotas of women on boards of directors, exemplary behaviour among executives, raising awareness of the environment).

Can we really address corporate governance in the same way as in 1932 in the United States, without taking account of its more or less successful adaptation to our vast European territory in the 1990s? Can we not create our own benchmarks and points of reference? Can the opposition or even “combat” between Shareholder Primacy and Stakeholder Theory not point to a third way guided by the notions of contractual solidarity, of the protection of the most vulnerable party and of the protection of the weak against the strong? Our Environmental, Consumption, Commercial and Monetary and Financial Codes, along with our Civil Code of course, have demonstrated their ability, over the years, to adapt to new issues and give shape to new concepts; our case law has always preceded, provoked, held back and framed these major advances. Given the disproportionate scale of the issues addressed by CSR (demographics, environment, economic crisis, emerging countries and poverty), the challenge is well worth it.

Does climate change justify so many often-binding measures, notably in tax law and in corporate governance? Is the long term the only valid view, to the detriment of the medium and short term? Ultimately, are we

in the presence of a new kind of legal sociology for the twenty-first century? What contributions might be made by comparative law? And how can we resist the temptation of retrospective fiction, referring back to Montesquieu and his theory of climates, and to Géný, Saleilles, and Carbonnier? What would they have thought of CSR?

These are the questions that have nourished these perspectives for corporate social governance.

Might we not also draw on the lessons of English law which is certainly leading the way in matters of corporate governance codes? The European Union “would welcome a link between good corporate responsibility and good corporate governance.”<sup>1</sup> What better invitation could we hope for to look into the perspectives for sustainable corporate governance? The time is therefore right to destructure and reconstruct our corporate governance in order to take account of the interests of stakeholders, although without allowing ourselves to be blinded in our efforts by the criterion of the long-term view that is supposed to do away with the conflicts of interest that exist between shareholders, management and stakeholders. Could involvement, protection and profit not be the new motto of this “sustainable” corporate governance thanks to information? But information for whom? Information for all, provided by all, perhaps? The new missions assigned to CSR seem to represent an enormous undertaking, and although the “C” in CSR reminds us that it is the corporate world that is expected to play a leading role here, this “C” will need to be confronted with the notions of profit, performance, control and commitments “to society”, and we would also be well advised to include in our analysis the “O” in OSR (Organisational Social Responsibility).

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<sup>1</sup> Point 23 of the Resolution of the European Parliament of 6 February 2013 on corporate social responsibility: accountable, transparent and responsible business behaviour and sustainable growth [2012/2098 (INI)] <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0049+0+DOC+XML+V0//EN>.