The suitability of French law to B Corp

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B Corp has been launched more than ten years ago in North America and it has gained all the continents. France has also welcome B Corp, whereas its regulatory landscape is very different from common law. Therefore, it is very stimulating to question the development of B Corp in this country. It can be done with various angles, and we chose to do it through the traditional dogmatic methodology.

As a starting point, however, some figures are important to have in mind :

Figure 1 - <u>Evolution of the number of B Corp per year</u>

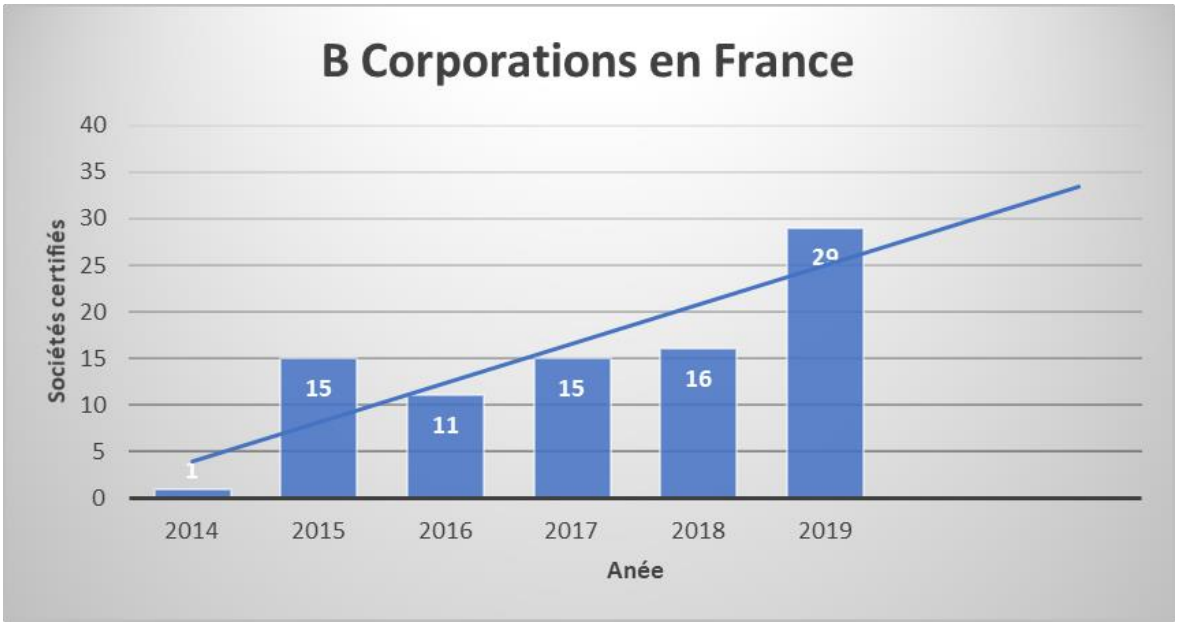
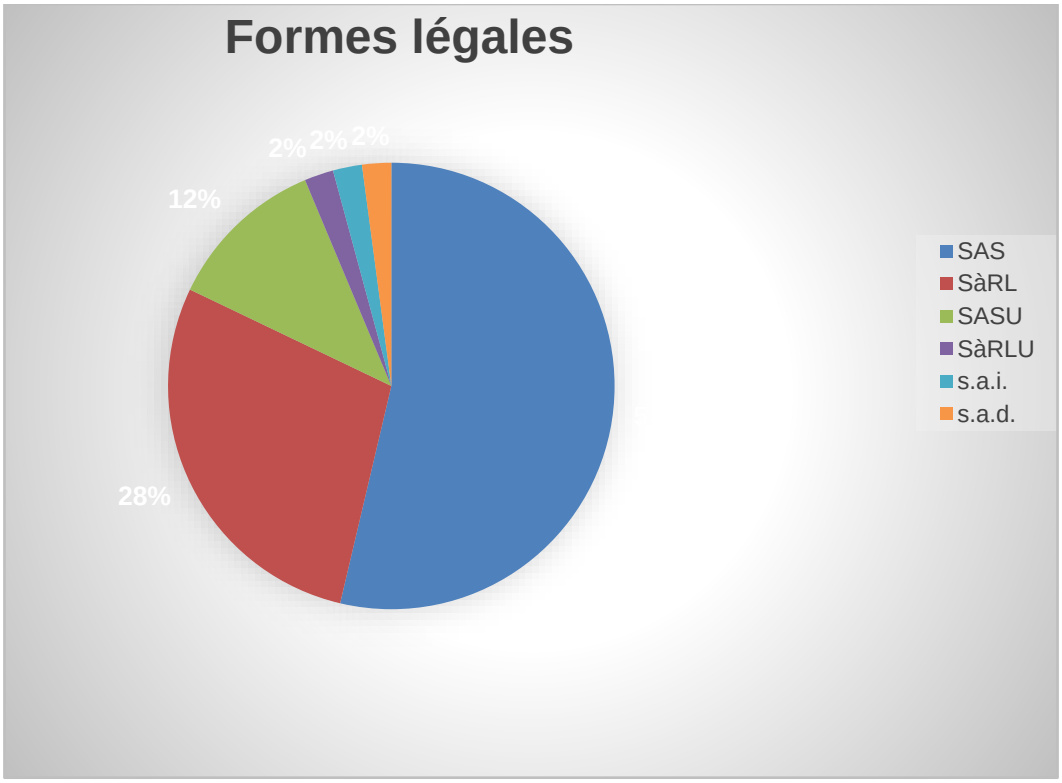


Figure 2 - B Corp and their legal form



Few words are useful to lighten these data. Firstly, about their legal form, one observes that all the labelled enterprises are companies, and no association or mutual. Unfortunately, we did not have time to inquire about the reason of that restriction. Two hypothesis seem plausible : associations or mutual do not need such label to emphasize their social goal, or these enterprises are not connected to networks in which such a label is meaningful ; these two explanations are compatible. It must be noticed, however, that we don't have the figures for cooperatives: as they are registered on the company registry depending on the legal kind of company they adopt, their cooperative nature does not appear there; however, it is sure that some of the labelled enterprises are cooperatives.

Secondly, about the progression of the number of labelled companies. first enterprise B-Corp Utopie in 2014 and development since 2017[1]. The first labels appeared lately compared to North America but increased quickly. The delay to label enterprises as B-Corp is not surprising, since the objective need may appear lower than in North America, precisely because company law is more friendly in France for the social goals pursued by B-Corp. But the subsequent evolution would require further investigations to assess the impact of the legal reforms occurred since

[1] https://www.carenews.com/fr/news/12986-b-corp-qui-sont-les-dernieres-entreprises-francaises-labellisees

2014. Unfortunately, it is far too early to make such a research. One can only notice that the first purpose enterprises have been registered this year (see below), and that could be a challenging process for B-Corp.

The legal framework for B Corp is mainly established through company law, but enterprises don't necessarily use the legal form of company, so that other kinds cannot be fully neglected. However, the focus is to be put on company law, lightened by the perspective of competing legal forms. In a long run perspective, French company law has always been characterized by a tension between profit maximization and social purpose (1). Since few years, the equilibrium has been modified by legal reforms (2) and the situation of B Corp could be severely impacted.

1. The tensions into company law

French company law has not developed with a univocal orientation since the codification period. Its core has concentrated the essential of debates (1.1), but in the margin has always existed original enterprises today gathered into social and solidarity economy (1.2).

1.1 The continuous concern for the social dimension

After the various scandals occurred during the revolutionary period, the commercial code enacted in 1807[2] was rather restrictive for the establishment of companies, especially for limited liability ones[3]. , It did not pay too much attention to companies, which were not considered at that time as prominent to conduct business. The most common companies were regulated through the civil code, and the public limited companies remained rare, submitted to a public authorization. That authorization was the footprint of the public interest of the activities pursued by the company, reason why the company was supported by the state and received the special treatment to call for wide financing. This strict control was notably motivated by the wish to protect small investors from the bankruptcy of the company. That rigueur stimulated the recourse to public joint stock companies, freely established[4].

The major evolution occurred in 1867[5], which is the starting point for the development of companies and the true birth of company law in France. Its major innovation was the deletion of any authorization for the creation of a public limited company, and the generalization of the recognition of civil personality to the companies. This has been completed by the case law. In 1981, the supreme court stated that the civil societies were implicitly but necessarily considered as civil persons, whereas the law did not state it explicitly[6].The next important date is the introduction into French act

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[2] J.-L. Halpérin, *Histoire du droit privé français depuis 1804*, 2012, p.35.
[3] M. Cozian, F. Deboissy & A. Viandier, *Droit des sociétés*, Litec, 2011, n°496.
[4] M. Cozian, F. Deboissy, A. Viandier, op. cit., n°905.
[5] Act 24 July 1867 « *Bulletin des Lois* » 1867 n° 1513.
[6] Cass. Req., 33 February 1891, Dalloz périodique 1891 I. 337; Sirey 1892 I. 73, Meynial.

of the limited liability company in 1925 which has generalized the use of a company to run any kind of business. This period is surely the moment of the establishment of the legal framework of capitalism[7]. But, even during that first moment, some critics already arose.

While the legal framework of capitalism was arising, the awareness of the so-called social question developed. This has characterized the apparition of industrial legislation which became labour law. After the second world war, authors concentrated their research into that new branch, and the key concept of the discipline was thematised as "enterprise" [8]. The picture of a boss owner of the factory and contracting with employees was contested. The number of employees rendered that solution less and less meaningful and the idea of a community around the factory has become more and more strong. The boss lost the position of individual contractor and became the manager of the enterprise, having therefore his powers limited by his function into the enterprise. The notion of enterprise quickly evaded from labour law to be generalized [9]. Truly, the adoption of the notion of enterprise is particularly meaningful in tax law. But the question gained company law, where it has been claimed that the public limited company could be actually a legal frame for the enterprise [10].

In parallel with this dissemination of the notion of enterprise, the theoretical struggle between the contractual and the institutional conception of the company deployed in the 1960s and 1970s. This latter conception has been notably related to the Rennes school[11] (École de Rennes). The development of the institutional conception of the company fit with the adoption of the major reform of company law with the act of 1967 [12], characterized by the number of its mandatory provisions, or some case law sensitive to the defence of the company for itself [13]. Indeed, the institutional analysis fits perfectly with the notion of enterprise and this has been notably studied through the concept of enterprises interest (« *intérêt de l'entreprise* »)[14]. Indeed, the company shows the same diversity of stakeholders than the enterprise in labour law: minority shareholders, creditors, clients, community… Compared to the company, the enterprise's weakness is its lack of legal personality; however, more and more provisions (labour law, insolvency law, competition law…) consider enterprise to ensure that it does not apply only to companies but to any legal form adopted.

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[7] G. Ripert, *Aspects Juridiques du capitalisme moderne*, 2° Edition – Paris. Librairie Générale de Droit de jurisprudence, 1951.

[8] P. Durand, « *Rapport sur la notion juridique d'entreprise* », in *Travaux de l'association Henri Capitant pour la culture juridique, française*, tome 3, Dalloz, 1947, p.54.

[9] M. Despax, *L'entreprise et le droit*, L.G.D.J., Revue international de droit comparé, 1958, page 439-441.

[10] J. Paillusseau, *La société anonyme, technique d'organisation de l'entreprise*, Sirey, 1967.

[11] C. Champaud, *L'entreprise dans la société du 21ème siècle* , Larcier, 2013.

[12] Décret n°67-236 du 23 mars 1967 (le "Décret") sur les sociétés commerciales.

[13] For an example : the famous case Fruehauf : Court of appeal of Paris, 22 May 1976, J.C.P. 1965, II. 14274bis; Dalloz, Jur., 147.

[14] For a summary : A. Pirovano, « *La boussole de la société, intérêt commun, intérêt social, intérêt de l'entreprise* », Dalloz, 1997, chron., 189.

As such, these debates and evolutions do not concern B corp. However, these different points are surely connected. Through the notion of enterprise, or by the defence of the institutional conception of company, the goal has always been to disconnect the company from the proprietary and contractual conception and, in other words, from the single shareholders. Therefore, through the adaptation of the decision process or by allowing a judicial control, other considerations than profit maximization have been facilitated.

Influenced by the Anglo-Saxon evolutions, this institutional approach has been strongly challenged since the 1990s and the power of the shareholders have been continuously been reinforced. The first step has been the development of shareholders' agreement besides the by-laws[15]. But this was not enough ; the doctrine claims for the necessity to give the power back to the shareholders[16] and the legislator revised the governance of the company to strengthen the control of shareholders on the managers, notably with the act named « *nouvelles régulations économiques* » (NRE)[17]. Conceptually, some authors elaborated a deep critic of the whole discussion of a common interest of the company distinct from the interest of the collectivity of shareholders[18]. However, Despite some uncertainties about their extension, the case laws referring to the enterprise 's interest or the common interest of the company have never been reversed. Therefore, the general trend has never been formally opposed to a long run consideration into the management of the companies, and no case law has never been ruled that would oppose the inclusion of social and environmental considerations for the determination of the strategy.

1.2. The social and solidarity economy enterprises

Since several decades, the legal ecosystem has been rather favourable for social and solidarity economy, and this has opened a way to entrepreneurs wishing to pursue a not mainly profit maximization purpose. Long before the birth of the notion of social and solidarity economy and its institutionalization, the enterprises nowadays included in that perimeter existed and flourished[19]. The cooperatives and mutual appeared during the 19th century and could rely on suitable legislation. Associations were in a first stage severely controlled because of the reluctance enforced by the revolution towards intermediary bodies[20]. The legislation was liberalized in 1901[21], but their economic activity developed only after the second world war. In

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[15] M.-C. Monsallier, *L'aménagement contractuel du fonctionnement de la société anonyme*, LGDJ, 1998.

[16] S. L'Hélias, *Le retour de l'actionnaire*, Gualino, 1997.

[17] Loi du 15 Mai 2001 n° 2001-420 relative aux nouvelles régulations économiques.

[18] D. Schmidt, *Les conflits d'intérêt dans la société anonyme*, Joly éditions, 2nd Edition, 2004.

[19] A. Gueslin, *L'invention de l'économie sociale : Idées, pratiques et imaginaires coopératifs et mutualistes dans la France du XIX° siècle*, Economica, 1987.

[20] A.-S. Mescheriakoff, M. Frangi & M. Khdir, Droit des associations, PUF, 1996, pp. 20 f.

[21] L. 1st July 1901 : « *Loi relative au contrat d'association* ».

the silence of the law, the case law has been very open to it[22] and actually no limitation was laid down[23]. The conflicts between associations and capitalist enterprises decreased, but about taxation. An equilibrium has been found with the general idea that associations remain absolutely free to run any activity, but if they do it in a similar way as capitalist enterprises they are taxed likewise. The modernization of tax treatment of associations started in 1998 ; one may find a synthesis of the solutions into the circular of the 18th December 2006[24]. That liberal and pragmatic approach has allowed a strong development of associations, which represent actually three quarters of the activity of social and solidarity economy enterprises. The foundations remain rather marginal in the French context.

The social and solidarity economy as such emerged as a conceptual proposal to enlight the coordination established, first by cooperatives and mutual, then joined by associations running an economic activity[25]. After the victory of the left wing in 1981, the second left succeeded in claiming for an acknowledgement of social and solidarity economy, and an inter-ministerial delegation for social economy was established[26]. With some up and down, the orientation has never been cut down, and gained a new stage with the adoption of an act on social and solidarity economy in 2014 [27].

> **The 2014 act did not amend the nature of the diverse legal forms related to social and solidarity economy but gave them a higher clarity and visibility. It offered a clear alternative to the model of the capitalist enterprise[28]. It provides a definition for social and solidarity economy :**
> **Social and solidarity economy is a mode of undertaking and economic development suitable with all domains of human activity, that is supported by private legal persons which comply with the following conditions:**
> **1° another purpose that the exclusive distribution of profits;**
> **2° a democratic governance, defined and regulated by the by-laws, stating information and participation, whose expression is not only related to the subscription of capital or financial contributions, of shareholders, employees, and stakeholders to the outcomes of the enterprise;**
> **3° a management complying with the following principles:**

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22 J.-C. Hallouin, "*L'activité économique des associations* ", in Septièmes journées Savatier, L'association, PUF, 2001

23 J.-C. Hallouin, « *L'activité économique des associations* », in L'association, Septièmes journées savatier, PUF, 2001, pp. 117 f.

24 Tax instruction 4 H-5-06 N°208 of 18 December 2006 regarding the tax system applicable to the non-profit associations

25 T. Duverger, « *La réinvention de l'économie socialel une histoire du CNLAMCA* », RECMA, 2014, pp. 334 f.

26 Decree 15th December 1981 JO n°81-1125

27 Decree 1st July 2014 L. 2014-756 ; D. Hiez, « *La richesse de la loi économie sociale et solidaire*, rev. Sociétés, 2015, PP. 147 f.

28 D. Hiez, « *Le statut juridique des entreprises non-capitalistes à l'heure des choix* », Rev. sociétés, 2012, pp. 671 f.

aà the profits are mainly allocated to the objective of maintenance and development of the activity of the enterprise;
b) the mandatory reserves are indivisible and may not be distributed.

As such, this does not concern B-Corp companies, but it is important into the legal framework. Indeed, social and solidarity economy usually conflicts with corporate social responsibility, considering either that it is a mock engagement, or at least that the social and environmental colour given to a company does not modify its capitalist nature. In this context, the emphasis put on social and solidarity economy could appear disfavourable for B corp. However, the number of B corp never stopped. And the election of a new President in 2017 opened a new era.

2. The recent reform of company law to include the pursuit of social and environmental purposes

French company law has been amended in 2019[29] with the major goal to reinforce the implication of enterprises into the society, i.e. to emphasize their social dimension.[30] As such, this does not consist in the adoption of the B Corp model, which remains a soft law corporate social responsibility mechanism.[31] However, the B Corp has always been mentioned in the various researches and reports that have preceded the reform.[32] Substantially, the reform has amended some provisions of civil code and adapted some other ones related to public limited liability companies. In one hand, it reinforces the societal dimension of all companies; in the other hand, it facilitates the possibility for an enterprise to go further and get a kind of official label for its engagement.

2.1. The reinforcement of societal dimension for all companies

The concern for the inclusion of non-financial matters into the management of the company is not absolutely new, and the French legislator passed an act already in 2001[33] and precise that the report addressed by the board to the general meeting should contain information about the way the company takes into account the social and environmental consequences of its activity[34]. However, this requirement is limited to listed companies. The provision has been amended several times and progressively completed. Actually, depending on several thresholds, these information are completed

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[29] L. n°2019-486, 22nd of May 2019 on growth and transformation of enterprises, Official Journal of the 23rd of May, arts. 67 s.
[30] H. Le Nabasque, *« Genèse et objectifs de la loi PACTE »*, Bull. Joly Sociétés, 2019, p.33.
A. Lienhard, Loi PACTE : *consécration de l'intérêt social et des enjeux sociaux et environnementaux*, D., 2019.
[31] I. Tchotourian, "*Légiférer sur l'article 1832 du code civil : une avenue pertinente pour la RSE ? L'expérience canadienne"*, Rev. sociétés, 2018, p.211-219.
[32] K. Levillain, *Les entreprises à mission Un modèle de gouvernance pour l'innovation*, Vuiber, 2017. B. Segrestin, K. Levillain, S. Vernac et H. Hatchuel, *« Société à objet social étendue »*, Presse des Mines, 2015.
[33] Loi du 15 Mai 2001 n° 2001-420 relative aux nouvelles régulations économiques.
[34] At that time C.com., art. L.225-102-1 line 4. This provision is now C.com. art. L.225-100-1.

by non-financial indicators, information about corruption, tax evasion, the consequences of its activity and of the use of goods and services it produces on climate change, its societal engagements for sustainable development, circular economy, struggle against food waste… Moreover, some companies have to obtain a report from an independent and accredited organisation about these points[35]. Because of the very exigent thresholds, this ambitious mechanism is not very efficient so far.

Since several years, it has been proposed to modify the definition of a company in article 1832 of the civil code.[36] Indeed, article 1832 states grossly that a company is a contract through which the contractors share something in order to distribute among them the profit that may result. In other words, the only purpose of a company is to distribute profits. Literally, the definition has been softened since its origin in 1804, notably in 1978)[37] in order to extend the object to the enjoyment of the savings realized thanks to the company. The change is theoretically important, because the distribution of profits, distinct from the enjoyment of savings, had been the key element to distinguish companies and associations after the adoption of the act on associations in 1901[38]. We may mention that the solution has been stated in a case about a cooperative bank,[39] solution that has been finally reversed by the law[40]. However, in practice, the amendment of article 1832 did not have a significant influence, since the qualification of company or association is nearly always stated by the law.

The extension of the object of the company is not infinite, and some authors raised the point that, actually, company law does not allow a social goal.[41] Therefore, a company that would not aim at distributing profits or savings would be void. And the author claims that it is obsolete to oblige a person with a social project to use the shape of philanthropy instead of company if the entrepreneur wishes to rely on the tools established through centuries for companies. To avoid that restrictive solution, it was proposed to amend article 1832 and to make the distribution of profits or savings one possibility and to add another one: to finance or achieve an activity corresponding to a social need.[42] Actually, the proposal to redraft article 1832 has not been successful and most authors do not claim for that modification anymore.[43] This is a strong difference between the American and French context; no case has stated a liability for a manager who would have pursued another purpose than distributing profits.

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[35] C.com., art. L.102-1.

[36] D. Hurstel, « *La nouvelle économie sociale* », Pour réformer le capitalisme, Odile Jacob, 2009, p. 12.

[37] L. n°78-9, 4 Jan. 1978 amending Title IX of Book III of the Civil Code.

[38] L. 1st july 1901 on the contract of association.

[39] Manigod, Court of Cassation, United Chambers, of 11 March 1914. https://www.legifrance.gouv.fr

[40] L. n°47-1775, art. 1.

[41] D. Hurstel, op. cit., p.97.

[42] D. Hurstel, op. cit., p. 100.

[43] A. Couret, *« Faut-il réécrire les articles 1832 et 1833 du code civil? »*, D., 2017, p. 222. ; D. Poracchia, *« De l'intérêt social à la raison d'être des sociétés »*, Bull. Joly Sociétés, 2019, p.40.

Similarly to case law and traditional company law doctrine, the debate on the PACTE act has been centred on the social interest stated into article 1833. Before the reform of 2019, article 1833 provided that the company is constituted in the common interest of the partners. This question has been debated since decades. Some authors claim that the common interest of shareholders limits the interest to be considered, by excluding other interests. Other authors insist on the fact that the provision aims at forbidding the company to be established in the single interest of one shareholder and that nothing prevents from taking into account other interests of stakeholders.[44] The promotors of an inclusion of stakeholders, or at least the necessity to pay attention to them, highlight the notion of social interest, i.e. the interest of the company itself. A case of the 60s[45] is still mentioned, in which the decision of a company was challenged because it was detrimental to the interest of the company, whereas it was targeted to the interest of one shareholder.

In the last decades, case law has developed the notion of social interest or interest of the company, notably as a condition to admit the fault of a manager or its removal, or a condition to declare a decision or a contract void.[46] With the PACTE act, a new paragraph has been added to article 1833, which states that the company is managed also in its social interest, taking into account the social and environmental issues of its activity. It is admitted that the last part of the sentence is not an element of the social interest, but an additional consideration. The precision is important, since decisions must comply with the social interest, whereas social and environmental considerations only have to be taken into account in the decision process. Surely, this shows the necessary social concern of the company, but its concrete consequences are slight, since it is possible to take these issues into consideration and to hold an opposite decision. To sum up, the new provision does not really change positive law, but it reinforces the so-called enterprise doctrine,[47] which claims that the company has to include the consideration of its stakeholders. The point is important, notably because the provision is applicable to all companies; moreover, the law extends the obligation to take into consideration social and environmental issues to most enterprises that are not company.[48] However, the reform goes beyond, with optional provisions for some enterprises.

2.2. The adoption of special provisions for peculiar enterprises

Apart from the general obligation stated into article 1833 of the civil code, the act of 2019 contains two other innovations: the possibility for any company to adopt a rationale, a « raison d'être », and for the public limited liability company to register as a mission enterprise. These two sets of

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[44] A. Pirovano, *« La "boussole" de la société : intérêt commun, intérêt social, intérêt de l'entreprise ? »*, D., 1997, p. 189-196. D. Schmidt, *« De l'intérêt social »*, JCP E, 1995, p.488 et s.

[45] Paris, 22 mai 1965, Fruehauf, JCP 1965, II, 14274 bis, concl. Nepveu ; D. 1968. 147, R. Contin.

[46] D. Poracchia, op.cit., p.40.

[47] C. Champaud, « *Manifeste pour la doctrine de l'entreprise* », Larcier, 2011.

[48] D. Hiez, *« Chronique de droit de l'économie sociale et solidaire »*, RTDcom, 2019.

provisions challenge the social and solidarity economy enterprises[49] and it is necessary to assess the coherence of the whole legal framework.

2.2.1. The optional rationale (« raison d'être »)

Some enterprises may wish to go further than others in the pursuit of a social goal or to make it more visible. Whereas the pursuit and distribution of profits is related to having, enterprises are also motioned by being, and all of their stakeholders may profit of the emphasis on it. This has been stated into article 1835 of the civil code, related to the content of the by-laws. Besides the contribution of each shareholder, the form of the company, its object, its denomination, its legal seat, its capital, its term and the modalities of its functioning, the provision has been completed : the by-laws may precise a rationale, constituted of principles that the company adopts and for the respect of which it allocates some means in the achievement of its activity. The expression rationale is difficult to catch and far more difficult to translate. Of course, it relies on the opposition of being and having, but it refers as well to the idea of a rationale, the reason why. In substance, the new sentence of the provision provides two elements: the principles and the means to achieve them. An author specialist in the topic considers that it is the values carried on by the company and that it engages to perform in the achievement of its activity.[50]

The rationale may be stated into the by-laws, that is the explicit solution provided by the new act. As such, the solution is not new, nothing prevented previously the drafters to include such a provision into the by-laws; the point is not contested, and that makes a major difference with American law. However, by its official recognition into the act and the definition of its content, this initiative is facilitated. Moreover, any company may choose to insert the rationale out of its by-laws, for example in its internal regulation. Actually, the most important is not the document in which the rationale is stated, but its intensity. Indeed, if the article 1835 precise that the rationale consists in principles, the company is absolutely free to determine them, and depending on the principles the obligations for the company will be more or less heavy. The latitude is lower for the determination of the means allocated to the performance of the principles; surely, the company will precise which means it will allocate, but any insufficiency could be sanctioned. The freedom to precise the means aims only a adapting them to the principles.

The last question is about the consequences of the adoption of a rationale, i.e. the possible sanctions in case of infringement of the provision included in the by-laws. Firstly, the company may be liable if it did not perform the obligations it engaged through the rationale ; the claim could be made, not only by a natural person victim of the infringement of the obligation, but also by an association, struggling against such damage, since they are allowed to sue with the only condition that the claim

[49] D. Hiez, « *Loi Pacte, coopératives et économie sociale et solidaire* », rev.trim.dr.com., 2019, pp.
[50] I. Parléani, « *L'article 1835 et la raison d'être* », Rev. sociétés, D., 2019, p. 575.

is in the scope of their social object.[51] It must be precise that the violation of the rationale cannot make a decision held by the company void[52]. Apart from the company, the managers of the company may also be liable, in case of a violation of the by-laws or of a fault in its management. Nevertheless, the conditions of this action are rather strict and it will not be easily successful. The most common sanctions for the managers could be their removal.

2.2.2. The purpose companies

In its modification of company law, the act of 2019 created a new optional registration for commercial companies, considered as an additional flour for the company wishing to highlight its social involvement. They may register as purpose company.[53] This registration is optional and is conditioned by several additional obligations, both substantial and procedural. Substantially, it is required that the company provides for a rationale in its by-laws, but it must also provide in its by-laws for some social and environmental objectives in the achievement of its activity. This is completed by some procedural adjustments aimed at the control of the achievement of its purpose. Firstly, the company must implement a new organ, the purpose committee, distinct from existing organs, in which at least one employee must be member, aimed at follow-up the achievement of the mission, and which will make a report to the general meeting; this committee may obtain all the documents required to the accomplishment of its mission. When the company has less than fifty employees, the purpose committee may be replaced by a purpose referee, who may be an employee. But that follow-up is completed by a control performed by an external and independent organ; this organ will make a report joined to the report of the purpose committee. When these conditions are met, the company registers its quality of purpose company on the trade and company register. If any of the conditions are not met, or if the report shows that the purpose is not achieved, the public prosecutor and any interested person may ask for the removal of the quality of purpose company and the prohibition to mention that quality in any document of the company.[54]

2.3 A short comparison between purpose companies and social and solidarity enterprises

At a first glance, one may wonder why to deal with social and solidarity economy in a paper focusing on B corporation. Indeed, in one hand social and solidarity economy enterprises usually consider both movements as different ; in the other hand B Lab does not refer to social and solidarity economy. However, the new act raises the question since it could put both categories of enterprises in competition. Traditionally, the B Corp belongs to the soft law approach, since all its process is external to the state: assessment, label, control… In its substance, the mission company is close to B

[51] I. Parléani, art. préc., ns° 29 s.
[52] C.civ., art. 1844-10.
[53] C.com., art. L.210-10.C.com., art. L.210-12.
[54] C.com., art. L.210-11.

corps; the major feature of the act of 2019 that distinguishes it from B Corp approach is its utilisation of hard law (positive law to define and public organs to register). In that respect, beyond differences, the PACTE act and the 2014 act on social and solidarity economy are comparable, and the task of the doctrine is to enlighten the way they are connected.

This requirement is far more necessary when one considers that some social and solidarity economy enterprises decided to launch the procedure to get the qualification of purpose companies for themselves, in addition to their inclusion into social and solidarity economy. This raises the question whether purpose enterprise and social and solidarity economy enterprises are similar and, if not, if the former are more attractive than the latter. As a starting point, it must be noted that both the rationale and the purpose company is inapplicable to associations and foundations. In the French context, in which associations and foundations may have economic activities without any limitation, the rationale for this inapplication is questionable. Concerning other social and solidarity economy enterprises, they are all allowed to adopt a rationale, but only cooperatives and mutual may qualify as purpose companies.[55]

About the concrete distinction, we must distinguish again the substance and the procedure. The substance of the purpose company refers to the principles each enterprise adopts and the means it allocates to their achievement,[56] as well as the social and environmental objectives it fixed[57]. By contrast, the substance of social and solidarity economy enterprises consists in their democratic governance, their limited profitability, and their predominant allocation of profits to the enterprise itself, at least partly through the creation of indivisible reserves.[58] The requirements for both enterprises appear to be totally different, not opposite as such but on different levels. Another requirement for social and solidarity economy appears closer to purpose company: social utility.[59] The elements of social utility and of social and environmental issues are not identic, but they share both a same orientation and function.

The procedure set up in the two hypothesis are very different as well. For social and solidarity economy enterprises, the procedure flows from and relies on the substance of their definition, since it is connected with the democratic governance, and consists mainly in the direct or indirect control of the enterprise by its users. As such, there is no specific control on the achievement of the proper object of the social and solidarity economy enterprise, notably because the object of the enterprise and its structure are strongly connected. By contrast, the social and environmental issues in a purpose company derogate or nuance the core object of the company, so that it is necessary to establish a suitable control in order to ensure its achievement. To sum up, social and solidarity economy

[55] D. Hiez, op.cit.
[56] C.com., art. L.210-10 al. 2.
[57] ibid., al. 3.
[58] L. n°2014-856, 31st July 2014 art. 1.
[59] L. n°2014-856, 31st July 2014, art. 2.

enterprises are structurally and substantially original, whereas purpose companies are essentially companies which object is nuanced and the structure adapted.

An important question must be asked after that quick comparison between the new adaptations of companies and social and solidarity economy enterprises: are B-Corp and SSE enterprises compatible and, maybe, comparable? The answer is the same as for purpose companies. In other words, a social and solidarity economy enterprise may easily qualify as a B-Corp. This does not mean that being a social and solidarity economy enterprise entails ipso facto the qualification as B Corp. Despite the proximity of the substantial conditions to be a B-Corp and social utility of social and solidarity economy, they do not match exactly, and the major focus of a B Corp on this purpose reinforces its importance. However, there is no contradiction between B-Corp and social and solidarity economy enterprises. By the way, some of the latter decided to be labelled as B-Corp or qualified as purpose company. This questions the importance attributed by each enterprise to its inclusion in the social and solidarity economy. At least, it shows that the policy makers, and maybe the employees and clients, pay less attention to it; it would be more marketable and energizing to be part of B-corp. Indeed, the contrast if high between 2014 and 2019 and the view of the government and the legislator on social and solidarity economy have severely evolved. Whereas in 2014 social and solidarity economy was considered in its alternative dimension, what has been translated into the law through the reinforcement of major social and solidarity economy principles, the new government has multiplied attacks towards social and solidarity economy, limited by the opposition of the Sénat.[60] The new attention is focused on social enterprises, even if their existence in France is only discursive, since no provision deals specifically with them, and on capitalist enterprises with a social and environmental focus. This is not a national specificity but it is mainly related, in France, to the political context.

[60] D. Hiez, « *Chronique de droit de l'économie sociale et solidaire* », RTD com., 2019, p. 425.

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