Current European and French Legislation:

Sustainable Development as Reflected in the Law … Reality or Appearance?

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Current European and French legislation leads to a paradox. On the one hand, it cannot be denied that sustainable development absorbs both European and French law. It has become an inescapable reality on the legal scene. On the other hand, sustainable development is source of new questions. In the first place, its place on the European chessboard shows itself uncertain. Secondly, this notion surrounds itself with mist when it is a question of defining it at the national level. In spite of these questions, is it so daring to assert that the new century is that of the sustainable development?
Espaces juridiques : La notion de développement durable appréhendée par les lois... Réalité ou apparence ?
Dedicated in the international texts, omnipresent on the political plan, the notion of « sustainable development » is not clearer towards the European or French law there. So that such a concept is effective and so that he can have a future, it is advisable to verify that it apprehended by the law. Now, to answer in an affirmative way this question is delicate.
Certainly, the European institutions were interested in the sustainable development and try to build a policy around it. In the same direction, the French law « thinks » of the « sustainable development » as give evidence of it the adoption of the Charter of the environment and the recent legislative reforms intervened in domains so varied as the company law, the law of financials markets, the civil liability, the law of ailing firms, law of the real-estate or the private law of contracts. After all, the law appears to apprehend the sustainable development, the movement the reach of which it is necessary to measure through a certain number of European and French illustrations.
However, of the zones of shade surrounding the relation of the law and the sustainable development will be clarified what will lead, not to call into question the existence even of this apprehension, but to minimize it.

3 In its article 6, the Charter of the environment (constitutional Law 2005-205 of March 1, 2005) retains that « the public policies must promote a sustainable development ».
Current European legislation attests of a taking into account of the environmental, economic and social data by the European legislator. Such is the « side face » of the sustainable development that the law takes into account in an effort of protection. However, this current also devotes a « side crushes » which places the sustainable development in an uncomfortable situation in comparison with the law.

« Side face »

Several European initiatives as regards sustainable development must be announced. It appeared relevant to present some of it by distinguishing the various communications from the European Commission on the sustainable development since July 2002, the directive of 2004 instituting an environmental responsibility and the rules of law adopted recently as regards accountancy, tool inseparable from the right since the recent evolutions as regards French right of the companies. Indeed, companies communicating the assessment of their action by the means of social documents, the apprehension of the environmental influence must be made possible by the rules governing the constitution of these documents and, in particular, the rules countable.

Concurrently to this certainly skimped presentation of the European legislation, it should not be neglected that the importance of the sustainable development is reflected in the treaty on the European Union (article 2) and that it is registered in the Constitution. In addition, the Council of the European Union takes part in this awakening of the growing place of the sustainable development. He is only to evoke the declaration on the guiding principles of the sustainable development of the European Council of June the 16, and 17 2005. « the sustainable development is a key objective, statement in the treaty, for all the policies of the European

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5 The Community environmental matter legislation constitutes an important capital. If it is not very convenient to evaluate the exact number of Community acts in this field, in 1999, of the authors raised that some two hundred legislative acts were adoptees, with a dominating character of the directives (Teissonnier-Mucchielli B., 2000, L'action en manquement. In L'effectivité du droit européen de l'environnement : 221, La documentation Française).

6 The Constitution calls the Union with « work for the sustainable development of Europe based on a balanced economic growth and the price stability, a social market economy highly competitive, which tends to the full employment and the social progress, and on a high level of protection and improvement of the environmental quality ».

7 The European Parliament is registered in right-hand side line of this tendency, since it adopted two resolutions on the green Book in 2002 and 2003 (Report adopted on 28 May 2003, established by Philip Bushill-Matthews ; Report adopted on April 30, 2002, drawn up by Richard Howitt).
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Community. It aims to the continuous improvement of the quality of life on Earth, to support the life in all its diversity. It rests on the principles of the democracy and the State of right like on the respect of the basic rights, including the freedom and the equal opportunity for all. It ensures solidarity intra- and intergénérationnelle. It seeks to promote a dynamic economy, which has a high level of employment, education, protection of health, social and territorial cohesion, as well as environmental protection in a world in peace and sure, respecting cultural diversity. The Council defines not only key objectives (environmental protection, social equity and cohesion, economic prosperity and the measurement of the international responsibilities), but also of the guiding principles of the policies (promotion and the protection of the basic rights, intergenerational equity intra- and, an open and democratic company, a participation of the citizens, a participation of the companies and the two sides of industry, a coherence of the policies and governorships, an integration of the policies, an exploitation of best knowledge available, a principle of precaution and a principle of the pollutant-payer).

Communications of the European Commission

Since the publication of the green Book in 2001, the European Commission decided with five recoveries on the « sustainable development » and the talk of these positions is not uninteresting to understand the value attached to the sustainable development.

In the communication of July 2, 2002 concerning « the social responsibility for the companies: a contribution of the companies to the sustainable development »8, the concept of social responsibility is defined by the Commission like « voluntary integration by the companies of social and environmental concerns in their commercial activities and their relationships to their fascinating parts ».

The European Commission notes that the social responsibility is intrinsically related to the concept of sustainable development and that the companies must integrate the economic repercussions, social and environmental in their management. Concerning the European Community action, the Commission proposes a strategy in certain fields based on principles. For the strategy, the latter is organized around the following fields: to make known the positive impact of social responsibility, to reinforce the experiment and the good practices, to promote the development of the capacities of management, to stimulate the social responsibility of
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small compagnies, to facilitate the convergence and the transparency of the practices and to integrate the social responsibility into the European policies. For the principles melting the strategy, figure recognition of the voluntary nature of the social responsibility, need for returning the practices of the credible and transparent social responsibility, focusing on activities, a global solution of the social responsibility, a taking into account of the needs and characteristic of small compagnies a respect of the agreements and instruments international.

One year after the world top of Johannesburg on the sustainable development, the Commission gives a description of the progress made in the realisation of engagements in its communication with the Council and the European Parliament of December 23, 2003. At side of the external aspects of the European policy turned towards the reduction of poverty, initiatives in the field of water, of energies and the forests, the durability of the trade and universalization and the « governorship with the service of the sustainable development », the Commission studies the internal aspects of the European policy. Firstly, the Commission is interested in the strategy « in favour of a sustainable development » (point 3.1.). The European Union took into account the sustainable development through its policies as regards agriculture, of fishing, energy or transport. Then, the Commission worked out a horizontal instrument intended to evaluate the impact of all the proposals for important actions. Moreover, the European Union began to integrate the concerns economic, social and environmental concerns in its policies and actions. In addition, at the time of the European Council, the leaders of the EU agreed to set up an ecological network of diplomacy. Lastly, the Commission and the Member States established in 2003 an abstract network on coherence in the field of the development co-operation pursuant to article 179 of Treaty EC. Secondly, the Commission analyzes them difficulties surrounding « sustainable management of the natural resources » and notes, on a side, that the policy of and that bearing on the marine environment and the grounds are to be re-examined ; on another side, that a strategy aiming at promoting a more durable use of the resources is under development (point 3.2.). Thirdly, concerning « sustainable consumption and production », the Commission notices the setting systems of objective voluntary labels, transparencies and nondiscriminatory, founded on conventions of ILO or recognized environmental standards and assistances with the developing countries so that they use these systems. Moreover, the Commission insists

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on the sectors where the emissions continue to grow and proposes a reform of the policy relating to the chemical substances (point 3.3.). Fourthly, in connection with widening, the Commission underlines the necessary harmonization with the asset environmental and social of the new Member States and the assistance which must be brought to them (point 3.4.).

In the communication of the Commission to the Council and the European Parliament of February 9, 2005 in connection with the « examination of the strategy of the European Union in favour of sustainable development for 2005 »¹⁰, this one insists on the fact that the sustainable development is a « total concept which underlies all the policies, all the actions, all the strategies of the Union ». In its preamble, the Commission announces the place important left with the sustainable development: « We will take care that it is possible to meet the needs for the future generations and to come. This fundamental objective will show through in all the Community policies. The advent of the sustainable development require that we act as of now (...) Europeans as the citizens of the rest of the world can hope on its determination to guarantee to a whole a future placed under the sign of the sustainable development ». New orientations are proposed which two objectives continue: to keep to the commitment of Europe to apply a long-term program of work in favour of the sustainable development and to give the means of taking up the challenges more effectively. These orientations are as follows: to reaffirm the guiding principles of the strategy of the European Union in favour of the sustainable development, to reaffirm the new approach development coherence of the policies, to continue to stress the nondurable tendencies and to study the bonds between the nondurable tendencies, to lay down objectives and expiries, to ensure a follow-up by the means of indicators of sustainable development, to improve the cooperation of the public and deprived actors, to improve coherence of the initiatives and to encourage the actions and the dialogue with partners out of the Union.

A policy of development of the strategy in favour of the sustainable development is proposed by the Commission in its communication with the Council and the European Parliament of December 13, 2005¹¹. This policy is directed around fields of action which are: climatic change and clean energy, public health, social

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exclusion, demography and migration, natural stock management, durable transport, poverty in the world. This strategy in favour of the sustainable development aims at « gathering the European institutions, the Member States, the companies, the citizens and their representative organizations around a clear prospect and of a framework of political action ».

Additional obligations following Act # 2004 of April 21, 2004 concerning environmental responsibility, prevention, and damage repair\(^\text{12}\)

The environmental damage mentioned in the European text must meet certain criteria: to be measurable, consist of a negative modification of a natural resource or a deterioration of a service related to natural resources, to occur in a direct or indirect way, to reach the environment in one of the three fields which composes it (protected species and natural habitats\(^\text{13}\), water within the meaning of the directive # 2000/60 of October 23, 2000\(^\text{14}\), grounds contaminated because of direct or indirect introduction of substances, preparations, organizations or micro-organisms) and being of a significant gravity adapted to each three field.

Neither victims, nor organizations of defense environment do not have a right of action against the owner at the origin of an environmental damage envisaged by the directive. However, they can seize a proper authority indicated by the Member State of Europe of a request for action\(^\text{15}\). This request is then examined by the authority in question which will inform the applicant of his decision to or not act.

Moreover, the directive contains both prevention measures, for cases of probable damage likely to happen in near future, and directions for damage repairs in case the damage should have already happened. For the first measurements, in the case of a sufficient probability of supervening of an environmental damage in the near future, the owner will have to take measurements to prevent it or limit it. For the second measurements, the owner will have to fight, dam up, eliminate or treat the factors of damage and to subject to approval proper authority measurements of repair aiming to restore, rehabilitate or replace the natural resources considered.

\(^\text{13}\) They are those concerning the directive # 79/409 of April 2, 1979 concerning the conservation of the wild birds (J.O.C.E., # L. 103, April 29, 1979) and # 92/43 of May 21, 1992 concerning the conservation of the natural habitats as well as fauna and wild flora (J.O.C.E., # L. 206, July 22, 1992).
\(^\text{15}\) This request is then examined by the authority in question which will inform the applicant of his decision to or not act.
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Whereas the mode of responsibility is particularly strict in cases of real danger, it in parallel envisages important exemptions in particular cases. On the one hand, owners of activities considered as dangerous according to European legislation\(^\text{16}\) will have to support the damage caused by those, which they or not made a fault or a negligence. In addition, two additional exceptions apply: firstly, when emission or damage happens after proved authorization, and when all specifications contained in the authorization have been respected in accordance with the European Community’s rules, and secondly when activity leads to damage that was not reasonably predictable fo lack of scientific knowledge.

The national legislations have the possibility of maintaining, of reinforcing or of creating more strict obligations of prevention and compensation for the environmental damages. Moreover, the Member States can extend the range of the directive to other activities or other persons in charge.

**Countable movement of harmonization of the environmental data**

In a plentiful context, it is appropriate to distinguish the « nonconstraining initiatives » from the « constraining initiatives »\(^\text{17}\).

For the « nonconstraining initiatives », the European Commission testified as of 2001 to an awakening to the importance to enter the data relating to the environment\(^\text{18}\). On a side, in its recommendation of May 30, 2001 concerning the consideration of the environmental aspects in the accounts and annual reports of the companies, the European Commission indicates that « the absence of rules explicit contributed to create a situation in which the various fascinating parts (...) are likely to regard environmental information revealed by the companies as inadequate or not very reliable » and details in the Appendix of this text accounting treatment of the environmental expenditure as a whole its aspects. On another side, the European Commission published a

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\(^{16}\) They are the installations subjected to the directive # 96/61 of September 24, 1996 (J.O.C.E., # L. 257 of concerning 10 October 1996) relating to the prevention and the reduction integrated of the pollution and those sectoral directives relating to the management of waste, with the water pollution, with the dangerous substances and preparation. On this point: Thieffry P., La directive sur la responsabilité environnementale enfin adoptée, 2004. *Petites affiches*: 7.

\(^{17}\) Whereas the Community directives and regulations present an obligatory character for the States, it is not the same recommendations or communications. The first category of texts forms part of the « constraining initiatives » and the second category « nonconstraining initiatives ».

\(^{18}\) In more of the evoked texts: Recommendation of the Commission # 2001/256/CE of November 15, 2000 on the minimal requirements as regards quality control of the statutory audit of the accounts in the European Union (J.O. # L. 91 of the 31/03/2001 p.91); Communication of the Commission of June 13, 2000 concerning the « Strategy of the EU as regards financial information : procedure ». 

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green Book on July 18, 2001 which aims at promoting a European framework for the social responsibility\textsuperscript{19} and which insists on the fact that the social responsibility must be applied more largely in small companies. In an identical way, the European Parliament took a position advanced as regards environmental communication in his report of April 30, 2002 while asking the European Commission to take various inciting measurements. In parallel, the Committee European of the regulators of the markets of transferable securities (CESR) published in December 2003 a recommendation relating to the transition pours the international countable standards.

For the « constraining initiatives », the European Commission adopted on April 6, 2004\textsuperscript{20} the regulation on standard IFRS 1 after having adopted, September 29, 2003\textsuperscript{21} a regulation approving the whole of the existing standards and their interpretation, except for standards IAS 32 and IAS 39. In parallel, the Parliament and the Council adopted the directive of June 18, 2003\textsuperscript{22} aiming at a harmonization between various directives and IAS. Initially, in order to facilitate the passage to the international countable standards and the international standards of financial information, the regulation \# 1725/2003 was modified by that of April 6, 2004 which envisages in its article 1st that « In the appendix with regulation (EC) \# 1725/2003, the SIC-8: first application of the IAS as a countable reference frame is replaced by the text annexed to the present regulation ». With term, the IFRS 1 should allow to as well compare the data contained in the financial statements established in accordance with the IFRS by a company applying them for the first time as between the financial statements of various companies applying them for the first time to a given date, owing to the fact that the current figures and those provided on a purely comparative basis will be founded on the same set of standards in force at the time of the first application of the IAS. In the second place, the European regulation of September 29, 2003 imposed the respect of international standards IAS. As from January 1, 2005, the companies of a member state of Europe whose titles are allowed with the negotiation on the Stock Exchange are held to prepare their group accounts in accordance with the international countable standards\textsuperscript{23}. In third place, modifying directives 78/660/CEE, 78/660/CEE, 83/349/CEE, 86/635/CEE and 91/674/CEE of the Council on the annual statements and the group accounts of certain categories of companies: J.O.C.E. \# L. 178, July 17, 2003, p.16.

\textsuperscript{19} The social responsibility is definite like voluntary integration for the social and ecological concerns for the companies to their commercial activities and their relationships to the fascinating parts.


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83/349/CEE, 86/635/CEE, 91/674/CEE, that of June 18, 2003 brought a certain number of precise details for a harmonization as regards taking into account of the data environmental. These modifications make it possible to eliminate the discordances between these European texts and the IAS.

« Side crushes »

The European Union shows its will to fall under a development prospect sustainable and seems to give itself the tools to reach that point. However, appearance should not be misleading and the European legislation is disturbed when is evoked the most recent strategy of the Commission, effectiveness of the environmental protection and the assessment of the European action.

* A criticizable modification of the strategy of the Commission *

March 22, 2006, the Police chief European with the Companies and Industry published a communication in a relative discretion entitled « To make Europe a pole of excellence as regards social responsibility for companies »24. This communication proposes the launching of a « European alliance for the social responsibility » based on an exclusive partnership between the Commission and the business world. The European Commission breaks thus with the strategy as regards social responsibility developed since the Summit of Lisbon in 2000. In opposition with fascinating waitings of the participants in the Forum multi left on the social responsibility, the Commission makes the choice entrust the future of the social responsibility in Europe to the only companies. It is placed in contradiction with the proposals of the European Parliament formulated by the Deputy European Richard Howitt, with work of the Economic and Social Committee European, with the European opinion of a number of ONG and confirms the fears expressed by the European Confederation of the Trade unions « of an unbalanced approach, unilateral of the social responsibility, which takes into account only the points of view of one actor: companies ». In addition, obligation of information of the citizens by the companies on their social and environmental impacts is isolated by this communication by calling upon the fact that a « approach imposing [with the companies] new obligations and administrative formalities would be likely to be against-productive (...) ». Lastly, although this vision is not new since exposed

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In the communication of the Commission of July 2, 2002, the Commission defines the taking into account by a company of its social and environmental impact only like one possibility by indicating the social responsibility like a voluntary integration of social and environmental concerns. Don’t such positions reinforce the feeling of the citizens that there is a resignation of the European authorities?

_A respect of the European rules of law (in)effective?_

The uniform and simultaneous application of the rules of the European legislation of the environment in all the Member States constitutes the fundamental condition of the existence of the Community of right. The control of the application of the European legislation of the environment is exerted by the European Commission on the base of article 211 of Treaty EC and by means of the procedure in observation of failure. Each Member State must transpose in its national law the European directives, within the time limits by this one. The technique of the transposition in national law causes difficulty, so that the dispute of the execution of the directives is the ground of the recourse in failure.

In spite of the existence of a control, it proves that the procedure can be long and that its character formal delays the decision. «This delay decreases considerably the effectiveness of the decisions taken, even if the application of the European legislation is assured» (Teissonnier-Mucchielli B., 2000, L’action en manquement. In _L’effectivité du droit européen de l’environnement_: 231, La documentation Française).

However, doesn’t the field of the environment require more than very other of fast measurements aiming at stopping the aggravation of the caused damage? Moreover, the number of judgments of the Court of Justice not carried out is still considerable25, in spite of an improvement of the situation by the voice of the obligation26.

_A disappointing assessment of stage marked by a lack of political good-will_

In 2005, Mr. Reichenbach, general manager Companies at the European Commission, draws up a mitigated assessment of the European strategy as regards social responsability. Indeed, the assessment is in on this side


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expressed waitings and even if progress were made, the downward trend of the growth of the productivity of workers persists. In the same direction, Mr. Kok, former Dutch Prime Minister and president of a working group on high level, notes that « the European Union and its Member States slowed down (...) the movement, fault of having fact shows necessary diligence in the application of a great part of the strategy. These disappointing results are explained by an overloaded diary, a poor coordination and irreconcilable priorities. It does not remain about it less than the absence of solved political action posed a major problem ».

A RICH CURRENT AT THE FRENCH LEVEL… BUT A LEGAL ABSENCE OF DEFINITION OF THE « SUSTAINABLE DEVELOPMENT »

The French law integrates the sustainable development in many aspects. To present in an exhaustive way the influence of this concept on the legislative and lawful evolutions contemporary proves to be unrealistic, the covered disciplinary fields being vast. Some examples will be brought in order to seize the extent of the phenomenon ... examples borrowed from disciplines close to the right of the businesses being given the topic of the conference: company law and countable right.

Obligation of environmental information to the load of the limited companies

Act # 2003-699 of July 30, 2003 on the prevention of technological and natural risks and damage repair puts at the load of all the limited companies an obligation of information. Thus, these companies exploiting one or more classified installations « Seveso seuil haut »29, that is to say those which are liable to threaten the health and security of inhabitants and the environment, must clearly inform their shareholders on its activities.

Consequently, the manager’s general report must issue information to shareholders on « (...) the prevention policy of the technological risk of accident carried out by the company », to account for the « (...) capacity of

29 In accordance with article L 515-8-IV Code de l’environnement.
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The company to be covered its civil liability with respect to the goods and for the people because of exploitation of such installations » and to specify them « (...) average envisaged by the company to ensure the management of the compensation for the victims in the event of technological accident engaging its responsibility »31.

The Act also tries to reinforce the financial base of the companies which must ensure the depollution of their factory site. It imposes the constitution of technical and financial guarantees on the installations classified and subjected to authorization. Under the terms of the article L. 512-1 Code de l’environnement, the prefect who delivers an authorization to exploit a classified installation will have to check that the company brings technical and financial guarantees to face its obligations of repairing of the site at the end of the activity.

Moreover, the Act adds a new obligation during the activity of the companies exploiting a career, a center of storage of waste or an installation presenting of the important risks. The article L. 516-2 Code de l’environnement notes that they must inform the prefect of the substantial modifications relative to their technical capabilities and financial. If the prefect notes that they do not allow any more depollution of the site, it can to them enjoindre the revision of their financial guarantees or the constitution of new guarantees32.

Moreover, beyond the introduction of the elements of prevention of the technological damage, the Act affects the repair of the attacks within the framework of the companies in difficulty. If the company exploits one or of the classified installations, subjected to declaration or with authorization, the administrator will have to make write an environmental assessment of the company which comes to supplement its economic and social assessment33. In addition, the project of plan of rectification presented by the administrator at the president of the court must hold account of the repair work listed by the environmental assessment34. If the diligent administrators mentioned already this element35, the Act of July 30, 2003 worsens the cost of this work by imposing measurements of repairing lasting the activity36. However, this new obligation not only is essential...

31 Article 225-102-2 Code de commerce.
32 However, as Mrs. Rolland indicates it, « [it remains] namely if the prefects will be very demanding on the conditions and the circumstances of this financial guarantee relative to work which can relate to important sums in the event of depollution of the site (...) » : Rolland B., 2004, Les nouvelles incidences du droit de l’environnement sur le droit commercial (après la loi n°2003-699 du 30 juillet 2003). Semaine Juridique, Edition Entreprises : 368.
33 Article L. 651-24 al. 3 Code de commerce.
34 Article L. 651-24 al. 7 Code de commerce.
36 Article L. 512-7 Code de l’environnement.
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only on the companies for which a receiver was named, but still does not apply if the company is put immediately in bankruptcy.

Obligation of environmental and social information to the load of the companies whose titles are allowed with the negotiations on a Stock Exchange

The article 116 I of the Act # 2001-420, May 15, 2001 pertaining to New Economic Regulations created a fourth paragraph 4 to the article L. 225-102-1 Code de commerce that the leader of a company whose titles are allowed with the negotiations on a Stock Exchange will have to indicate in his annual report «(...) the way in which the company takes into account the social and environmental consequences of its activity ». The decree # 2002-221 of February 20, 2002 enforcing article L. 225-102-1 (new version), added articles 148-2 and 148-3 in the decree of March 23, 1967 on the Trade Enterprises.

Contents of environmental and social information... Interrogations

Social and environmental information became «(...) one of the aspects of the financial communication obligatorily carried out »

In this direction, the C.O.B., in its recommendation of February 16, 2003 for the elaboration of the reference documents relating to 2002, indicate the environment with the title of the one of the fourteen topics which must be analyzed within the framework of controls of the reference documents. On the level of the contents of information, it results from article 148-2 of the decree of March 23 which 1967 must appear in the report of the board of directors or the directory, of information concerning more particularly total staff complement of the company, social plans, the organization of the working time, remunerations, industrial relationships and the assessment of the collective agreements, conditions of hygiene and safety, formation, employment and the insertion of the handicapped workers and subcontracting. Compared to the social assessment envisaged with the articles L. 438-1 and s. Code du travail, the annual report adopts a more qualitative step. The environmental data provided in the annual report are of two types. On a side, certain data

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are financial data concerning the measurements taken with the title of the prevention of the industrial risks which can have effects on the environment and financial consequences for the company, caused by attacks actually carried to the environment. On another side, certain data are of a bearing qualitative nature on potential risks or specifying certain real events which did not give place yet to a countable translation.

Some interrogations are posed. Firstly, certain obligations are written in broad terms. Thus, that is necessary it to understand by « (...) [workers] external at the company » (Sobczak A., 2003, L’obligation de publier des informations sociales et environnementales dans le rapport annuel de gestion : une lecture critique de la loi NRE et de son décret d’application. *Semaine Juridique, Edition Entreprises*, no 542 : 598) or by « subsidiary company » (Malecki C., 2003, Informations sociales et environnementales : de nouvelles responsabilités pour les sociétés cotées ? *Dalloz* : 820) ? Concerning are environmental information, which the « expenditure » which will have to be regarded as having been « (...) committed to prevent the consequences of the activity of the company on the environment » (Hinfray A., Hinfray B., 2002, La responsabilité sociale des entreprises. *Gazette du Palais* : 1467) ? Secondly, environmental and social information, of qualitative nature, is likely to raise difficulties. For example, for information on the potential risks, « it appears delicate even random to determine the extent of the event, its significant character for the company, and the occurrence even of a financial incidence » (Rolland B., 2003, Toutes les sociétés doivent rendre des comptes environnementaux ! *Droit des sociétés* : 5).

**Development of the annual report**

The annual report is drawn up by the board of directors or the directory in the event of bicephalous S.A. with board of trustees and directory. Nothing prevents the board of directors or the directory to utilize other actors in the drafting of the report. Relative to the role of the auditors, the C.O.B. provides some contributions. In its recommendations, this last request which information is given on a consolidated basis and which it appears in chapter IV of the reference document relative to risks incurred by the transmitter.

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41 Article L. 225-100, al. 2 et L. 232-1 Code de commerce.
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The indications of the national Company of the auditors also make it possible to provide some elements as for the function of the auditors\(^\text{43}\). The solution recommended in the technical opinion of the CNCC is that the companies fix a « rule of the game, in term of perimeter, of definition, principles and criteria selected, in a preoccupation of exhaustiveness and a comparability, but also of transparency and credibility of information given ». Moreover, according to opinion’s of the CNCC, diligences of the auditor are of two types: it appreciates if the annual report satisfied to its contents with the obligations of information envisaged by the decree and it checks sincerity and the agreement with the accounts of these information. On this last point, the auditor checks if the « rule of the game » and the precise definitions were indeed given. Testifying to a movement of harmonization of the accounting methods at the European level, the European topicality made it possible to answer the one concerns of the commentators of Act May 15, 2001 as for the mission of the auditor. The High Council of the Audit Office\(^\text{44}\) specify that the auditor must follow the whole of the processes set up by the company to ensure the passage the international countable standards and to give the opinions and recommendations which appear necessary to him without being involved in the business management. The auditor must take care that the company makes sure that the passage to these standards is not the occasion for it to make voluntarily incomplete applications of the new rules of law\(^\text{45}\).

Companies concerned

The companies with the negotiations on the Stock Exchange there are held, i.e., S.A. and the limited partnerships with share capitals\(^\text{46}\). The holdings are also concerned. Indeed, subparagraph 5 of art. 148-2 of the decree of March 23, 1967 and the 9\(^\circ\) of art. 148-3 of the decree of 23 March 1967 evoking the information of the foreign subsidiary companies, « (...) it is rather difficult to admit that the holding is not held to reveal information relating to the activity of its French subsidiary companies (...) » (Trébulle F. G., 2004, La comptabilisation de l’environnement, Droit des sociétés : 12).

In addition, it is advisable to hold account of the impact of the European position imposing the respect of international standards IAS. The companies whose titles are allowed at the negotiations on the Stock Exchange

\(^{43}\) Bulletin. CNCC, # 128, décembre 2002.

\(^{44}\) Advice of the High Council of the Audit Office in annuel report of 2004.
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and the most important non quoted companies cannot overlook in their annual report the environmental and social impact their activities.

**Recipients of information**

The shareholder can ask the company to address to him, inter alia, the annual report, before the meeting of the assembly\textsuperscript{47}. It can also go to consult it with the seat of the company\textsuperscript{48}. At the time of the behaviour of the annual general assembly, the integral reading of the annual report is not imposed any more to the leaders, a simple presentation is enough. The annual report is presented at the clerk’s office of the commercial court which holds the trade register and companies, with the annual statements, in the thirty days of the meeting of the general assembly\textsuperscript{49}. Consequently, any person can take note of it and receive copy from it. The minority shareholders saw their laws increased by Act NRE. It is thus possible that associations of shareholders seize the environmental and social questions to play a part more important.

The work’s council is also recipient of information. First of all, in accordance with the article L. 432-4 al. 5 Code du travail, information on the social and environmental impact must be submitted to the work’s council. This one can formulate all useful observations which are obligatorily submitted to the assembly of the shareholders or the associates\textsuperscript{50}. The committee can also convene the auditors to receive their explanations on the various stations of the communicated documents\textsuperscript{51}. Then, on the basis of article L. 432-6-1 I Code du travail the work’s council can also require the inscription of draft Resolutions on the agenda of the assemblies\textsuperscript{52}. Moreover, the article L. 432-6-1 II Code du travail specifies that « (...) two members of the work’s council (...) can attend the general assemblies ». In parallel, « they owe, with their request, being heard at the time of all the deliberations requiring the unanimity of associated ». Lastly, the work’s council has a right of alarm and can,

\textsuperscript{45} In such a case, the auditors will have to hold of it account in the expression of their opinion on the group accounts subjected to their control.
\textsuperscript{46} Article L. 226-1 al. 2 Code de commerce.
\textsuperscript{47} Article 138 D. march 23, 1967.
\textsuperscript{49} Article L. 232-23 Code de commerce.
\textsuperscript{50} Article L. 432-4 al. 6 Code du travail.
\textsuperscript{51} Article L. 432-4 al. 7 Code du travail.
\textsuperscript{52} Article R. 432-21 Code du travail.
Current European and French legislation: The sustainable development apprehended by the law … Reality or appearance? consequently, to ask for in justice the designation of an agent charged to convene the general assembly of the shareholders in the event of urgency.

Civil sanctions as regards annual report

At side of the « administrative » responsibility weighing on the company and of the penal responsibility striking the leaders, the responsibility can be civil. The erroneous or fallacious presentation of social and environmental information is with difficulty sanctionnable. Indeed, on the contrary others, the assumption of inaccurate information was not envisaged by Act NRE and its decree. However, the common right applies as Mrs. Rolland notes it.

On the base of the article L. 225-251 Code de commerce, it is conceivable that the responsibility for the leaders can be brought into play for omission of information on the grounds, is of an infringement to the legislative and lawful rules applicable to the limited companies maybe of a fault of management. However, several difficulties can be raised, in particular those of the demonstration of the non-observance of the rules of the ILO

54 The communication of vague or misleading inaccurate information can be constitutive of an attack to the good information of the public (Reg. COB # 98-07, relating to the obligation of information of the public, Article 3) and the company exposes to sanctions of the C.O.B.
Current European and French legislation: The sustainable development apprehended by the law … Reality or appearance?
for the subsidiary companies of the company or those of the figuring of the damage undergone by the company.

In parallel, the shareholders can ask in summary procedure the president of the commercial court, to pronounce an injunction under obligation with the leaders, to have to communicate social and environmental information. However, it seems to be necessary to be careful as for the recognition of this possibility to the profit of the shareholders for various reasons.

Although the extent of its mission lends to discussion, it appears certain which the responsibility for the auditors is committed each time that it is established that it did not achieve its environmental matter mission correctly … in the same manner as in its more usual fields of intervention.

**Information social and environmental becoming a countable inscription**

In addition to the recommendation of the national Council of the accountancy of October 21, 2003 and the regulation 2002-10 of the Committee of the countable regulation relating to the damping and the depreciation of the credits, the Government in its ordinance # 2004-1382 of December 20, 2004 « carrying the adaptation of rules legislative relating to the accountancy of the companies to the European rules in the field of the countable regulation » transposed in French law the directive of June 18, 2003 and reinforced the contents of the annual report in the SA, limited liability companies, SCA, the SNC whose whole of the shares is held by a limited liability company, SA or a SCA.

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62 Article L. 238-1 Code de commerce.
65 CNC, Recommendation # 2003-r02, October 21, 2003, concerning the catch in consideration of the environmental aspects in the individual and consolidated accounts companies.
Current European and French legislation: The sustainable development apprehended by the law … Reality or appearance?

The report of the board of directors or the directory must include an analysis of the key indicators of performance of non-financial nature having milked to the specific activity of the company, in particular of information relating to the questions of environment and of personnel with, if necessary, of the references to the amounts indicated in the annual statements and of the additional explanations. Then, for the companies not establishing group accounts, the article L. 225-100-1 Code de commerce exempts the companies whose titles are not allowed on the Stock Exchange, not filling two of the three criteria relating to the total of the assessment, value it net of the sales turnover or numbers average permanent employees employed during the exercise, to provide the information required to subparagraphs 3 to 6 of the article L. 225-100. In the same way, do not have to provide social and environmental information required by the article L. 225-100 companies not establishing group accounts and whose titles are not allowed with the negotiations on the Stock Exchange when they do not exceed with the end of the financial year two of the three criteria which will be specified by decree. In addition, in addition to the key indicators of financial nature, the ordinance of 20 December 2004 introduced a new obligation for the companies establishing of the group accounts: the individual annual report as well as the consolidated report of management must comprise key indicators of performance of non-financial nature having milked to the specific activity of the company, in particular of information relating to the questions of environment and personnel. The report comprises also a description of the principal risks and uncertainties with which the company is confronted. Lastly, Act # 2005-842 of July 26, 2005 extends to the information aimed to the article L. 225-102-1 Code de commerce the measurements envisaged with the last two subparagraphs of the article L. 225-102. Finally, «(...) all the companies whose titles are allowed with the negotiations on the Stock Exchange, and most important of the non quoted companies, [must] to necessarily integrate social and environmental dimension of their activity in their annual report» (Trébulle F. G., 2006, Entreprise et développement durable. Semaine Juridique, Edition Entreprises, n°1257 : 310).

_Unanimous absence of definition noted in the texts and confirmed to the authors_

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68 Article L. 225-100 paragraph 3, 4 and 5 Code de commerce.
69 Article L. 225-100-1 paragraph 1 Code de commerce.
70 Article L. 225-100-1 paragraph 2 Code de commerce.
71 Article L. 225-100-2 Code de commerce.
Current European and French legislation: The sustainable development apprehended by the law… Reality or appearance?

Two remarks arise from the studied texts. On a side, certain rules of the law of the businesses do not use the term « sustainable development ». On another side, when they evoke this name, the texts use heterogeneous formulas. Beyond those exposed, others can be quoted which do not bring more single vision of the sustainable development. The article L. 110-1 Code de l’environnement this concept does not define but it results from the combination from I and II that protection, the development, the restoration, the repairing and the space management, resources and natural environments are of general interest and contribute to the durable objective of development which aims at satisfying the needs for the development and the generation of the generations present without compromising the future capacity of the generations futures to answer theirs. This definition refers to nondefinite concepts themselves\(^72\)… Other texts associate the sustainable development installation\(^73\) or with a prospect\(^74\), consider it like a logic\(^75\). The current Acts multiply the references to the sustainable development without clarifying it\(^76\). The French doctrines were interested in the concept of sustainable development and does not seem to be unanimous. To quote only some, Misters Prieur and Doumbé-Billé propose a comparative approach of the environment and sustainable development\(^77\). If the two approaches should not be confused, those can be associated and one must or will penetrate the other. Moreover, in his work of right of the environment, Mr. Prieur considers the sustainable development like an evolution of the narrow meaning concept of environment\(^78\). Mr. Romi sees a « sustainable development » with the bond of a « durable development ». Whereas the first is a long-term vision and relates to ecology; the second is a medium-term vision and aims at the economy. Other authors bind sustainable development and right

\(^73\) Article 2 Act # 95-115 of February 4, 1995 relating to the regional planning.
\(^74\) Article 39 Act # 99-209 of March 19, 1999 relating to New Caledonia.
\(^75\) Article 1 Act # 97-135 of February 13, 1997 relating to the creation of Shoed Network of France.
\(^76\) Act # 2001-616 of July 11, 2001 relative to Mayotte ; Act # 2001-602 of July 9 2001 of orientation on the forest ; Act # 2001-420 of May 15, 2001 relative to the new economic regulations ; Act # 2000-1208 of December 13, 2000 relating to solidarity and the urban renewal ; Act # 2000-698 of July 20, 2000 relating to hunting.
Current European and French legislation: The sustainable development apprehended by the law … Reality or appearance? environment is by integrating the sustainable development in the environment\textsuperscript{80} maybe by making these two notions of the prospects different of protection for ecology\textsuperscript{81}. However, in the absence of precise definition of the sustainable development, one of the risks is not it that the right of the environment becomes the right of the sustainable development.

CONCLUSIONS

The sustainable development is present on the legal scene so national as European today\textsuperscript{82}. Far from being a bait\textsuperscript{83}, the Act translated this new aspiration and the sustainable development became a notion of substantive law. However, Some questioning live: does not this reproduction of the references to the sustainable development border on a stammering in which the legal constituent becomes secondary\textsuperscript{84}? Is it acceptable that this standard is not defined with more certainty and that its relationship with the environment calls so many discussions\textsuperscript{85}? The apprehension of the sustainable development by the legal sciences does not thus make disappear vaguenesses surrounding its definition … Vaguenesses the solution of which could be to admit that the sustainable development is a transverse problem and not a notion directly operating\textsuperscript{86}.

\textsuperscript{81} If the right of the environment brings an answer specific and specific to ecological problems, the sustainable development has as an ambition to propose total and prospective solutions: Petit B., 2004, \textit{La dimension sociale du développement durable : le parent pauvre du concept}. \textit{Petites affiches}, n°12 : 10.
\textsuperscript{82} It is enough to compare the current situation of the equitable trade (Malaurie-Vignal M., 2006, \textit{Le commerce équitable appréhendé par les juristes}. \textit{Contrats Concurrence Consommation} : 1) to realize of the way traversed by the sustainable development in the meanders of the law.
\textsuperscript{85} At the international level, questions around the definition of the sustainable development and its bonds with concepts like the environment and the economy arise. For an illustration of the bond between economy and sustainable development: Von Moltke K., 2004, Quelle gouvernance pour le développement durable? In \textit{Créer une organisation mondiale de l'environnement ? Eléments pour le débat} : 26, Les notes de l’Iddri, n°5.