

The French revolution of close corporation : a model for Europe?

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In the last 20 years, French company law of close corporations has undergone two waves of reforms which have made company law more competitive and flexible.

The first wave has been triggered by competition from company laws of other countries. The European Court of Justice has allowed, through several decisions, competition between company forms of different Member States of the European Union. Therefore, it became possible for a founder in one Member State to choose a company form in another Member State, even if the business and activity would be only conducted in the first Member State. This has led in France to the creation in 1994 of the simplified public limited company or *Société par actions simplifiée* (SAS). *The SAS is a sub-category of the public-limited company (Société anonyme) but with a lot of flexibility. It is designed to be a close corporation. This competition between Member States is similar to the « Delaware effect » in the US. However, it has led to a significant liberalization of French and of other Member States company law (eg Germany). Therefore, the result is a modernisation and liberalization of French company law, as well as of other Member States, and not a « race to the bottom ».*

A second wave of reform has been directly due to the economic crisis in Europe. Company law has been considered in France as a major tool to create jobs and growth, by facilitating the creation of start-ups and small businesses, since employee jobs have become harder to find. This wave can be traced in France to 1999 and, since 2003, has led to almost annual reforms of French company law. The most important reform consists in giving up of rules on minimum capital. With the financial crisis, followed by the eurozone crisis in 2009, other Member States, especially in southern Europe (Italy, Spain...) have embarked for the same reasons on similar reforms of their company law. Therefore, this « revolution » started in France, has now been expanded to other Member States and is still in full swing.

The presentation will illustrate the reforms of French company law but also provide some examples from other Member States which adopted similar reforms and/or were even sometimes inspired by France. The presentation will also describe the dynamics at play in Europe, where these reforms are headed, and their limits.