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

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## Introduction



## Traditionally two types of limited liability companies in France

- Public limited company (*Société anonyme* or SA) reformed in 1867 and inspired by the UK Plc : designed to finance the industrial revolution by raising equity from the public but can also be a close corporation
- Private limited liability company (*Société à responsabilité limitée* or SARL) introduced in 1925 and was inspired by the German GmbH (1892): designed to be for family businesses and can only be a close corporation



## Evolution of French company law in the XXth century

- Move from liberalism toward more rigidity as a consequence of the economic depression of the 1930s (1940 Act and Motte decision of 1946)
- 1966 new company Act makes the *Société anonyme* and the *SARL* more rigid because of the desire to increase shareholders' protection and because economic growth did not make this approach too costly
- The economic crisis in the 1970s and continuous economic difficulties in the 1980s made this rigid approach more problematic for businesses
- Problem was made worse because number of *Société anonymes* was high in comparison with *SARL* and other European countries, due to tax reasons



## European legislation and case law on limited liability companies

- European directives in the area of close corporations were limited to specific issues and basic principles (representation, mergers) but did not deal with the functioning of the company, except for the 2d Directive of 1976 on capital requirements applicable only to public limited companies
- Member States have a lot of freedom to change their laws for private limited companies (SARL) and non listed public limited companies (SA)
- National company law in the Member States (MS) became subject to competitive pressure due to the right to establish companies in other MS (Art 54 of the TFEU) and case law of the European Court of Justice (ECJ) forcing MS to recognize companies incorporated in other MS



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- **Competitive pressure and economic crisis have triggered a French revolution in close corporation which is in full swing in other MS**
- French reform started in 1994 with the creation of a new company: the simplified public limited company, the *Société par actions simplifiée* or SAS
- The SAS has been a laboratory for the reform of French company law, and these reforms have been extended to the SARL and now even the SA
- The turning point is 1999 and the pace of reform has accelerated since 2003 often under the influence of the Ministry of Economy and Finance
- Other Member States have implemented similar liberal minded reforms, 7 in northern Europe to limit competition, and in southern Europe,



# I

## I. The creation and reform of the simplified public limited company (SAS)





## Reasons for the creation of the SAS

- French company forms were facing competition from more flexible Dutch company forms, especially the BV, for joint ventures for groups
- A working group at the French business association prepared a draft and submitted it to the Ministry of Justice which supported it
- The approach chosen was to create a sub-company form and not to change the SARL, because of limitation to financing, and not to liberalize the *Société anonyme*, because opposition would have been too strong



## Main characteristics of the SAS

- Rules applicable to the SA apply also to the SAS as a default rule if not excluded (**rules on management and shareholders meeting**) but, when not excluded, SA rules apply only if « compatible » with the SAS
- Freedom to organize the management of company except need for a « President » and some minimum powers granted to the shareholders
- Provisions on control on sale of shares, inalienability, suspension from voting and exclusion of a shareholder valid if adopted by unanimous vote, and transfers in violation of the provisions are null and void



## Provision designed to protect potential shareholders and investors

- Transformation of any company form into an SAS requires unanimity
- Level of capital identical to an SA (37,000 euros) but obligation for the shareholders to be legal persons with a level of capital of 225,000 euros
- No possibility to be have securities listed and to make a public offer of securities



## Reforms of the SAS regarding the functioning of the company

- Shareholders of an SAS can be legal or natural persons and no minimum level of capital is required for legal persons (1999)
- An SAS can have a single shareholder (1999)
- No need for a statutory auditor if SAS is below certain thresholds (2008)
- Simplified rule for publicity and accounts for single member SAS whose natural person shareholder is also the President of the company (2008)
- **The 1999 reform has made the SAS a huge success in France**



## Reforms of the SAS regarding the financing of the company

- Reduction of minimum capital to 1 euro (2008), following the SARL
- Contribution for services (2008), following the SARL
- SAS can list shares and bonds on a Multilateral trading facility (MTF) provided the securities were sold through a private placement, and list bonds on a regulated market with the same applicable conditions (2009)
- SAS can issue securities to the public (although technically a private placement) in case of crowdfunding on dedicated websites (2014)



## II

# The reform of the private limited liability company (SARL)



## Reforms of the SARL regarding the financing of the company

- Contributions in cash of 20 % and remaining over a 5 years period (2001)
- Contribution for services (2001)
- Reduction of minimum capital to 1 euro from 7,500 euros (2003)
- Right to issue bonds through private placement, under certain conditions (2004)
- Contributions in cash of 25 % in case of increase of capital and the remaining to be paid within a 5 years period (2012)



### Reforms of the SARL regarding the functioning of the company

- Maximum number of shareholders increased from 50 to 100 (2004)
- Reduction in the quorum and majority necessary for decision in extraordinary meeting (2005)
- Simplified rules for accounts, annual report and disclosure when certain conditions are met as to size or if natural person SMC (2005, 2008, 2012)
- Chains of EURL are authorized (2014)
- Right of the manager to transfer the statutory seat in an adjacent department (2004), subject to ratification, and in all France (2014 Bill)





## Reform of the SARL and the SAS is now moving in direction of the SA

- Most reforms of the SA were targeted at listed companies although not limited to them (financing, quorum in shareholders' meeting, RPTs ...)
- Reduction of the minimum number of shareholders from 7 to 2 (2014 Bill)



### **III**

## **The similar reforms of close corporations in other European Member States**



## Reforms in MS reacting to competition from other MS: Germany

- Creation of the *Unternehmergeellschaft* (UG) in 2008 which is a sub-GmbH
- Designed to prevent German small businesses to create UK Limited
- 1 euro capital requirement, instead of 12,500 euros, but with some precautionary measures : obligation to constitute reserves (25 % of profit) and directors' liability if distributions lead to insolvency (“solvency test”)
- Immediate and great success of the UG



## Reforms in MS reacting to competition from other MS: Netherlands

- Flex BV introduced in October 2012
- No minimum capital, instead of 18,000 euros, but precautionary measures : distribution subject to balance sheet and solvency test
- Flexibility in tailoring the articles of association: no “one share – one vote principle”, appointment and dismissal of members of the management board and the supervisory board by shareholders, share transfer restrictions optional, lock-up, shareholders meetings outside the Netherlands, shareholders’ resolutions outside a meeting possible



## Reforms in Member States since the 2009 Eurozone crisis : Italy

- Simplified Srl (s.r.l. semplificata) : created in 2012
  - limited to natural persons (2012-2013 limited to persons under the age of 35)
  - minimum capital of 1 euro paid in cash, with a maximum of 9,999 euros, instead of 10,000 euros but precautionary measure : obligation to constitute reserves (20 % of profit) until the 10,000 threshold has been reached
  - Reduced incorporation costs but compulsory use of a template
- Srl with reduced capital (2012-2013) : created after the Simplified Srl (2012) and limited to natural persons but no cost advantage
  - All Srl (2013)
  - Same rules on minimum capital as in the Simplified srl
  - Shareholders can be both natural or legal persons
  - No reduced incorporation cost but not compulsory use of a template



## Reforms in Member States since the 2009 Eurozone crisis: Spain

- *Sociedad limitada de formación sucesiva* (2013)
  - Minimum capital of 1 euro, instead of 3,000 euros but precautionary measure : obligation to constitute reserves (20 % of profit) until the 3,000 threshold has been reached; prohibition on payment of dividend until capital has reached 1,800 euros; indemnification of managers capped at 20 % of assets; obligation to pay up to the minimum capital in case of liquidation



## IV. Conclusion



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- French « revolution » of company law, especially on capital as well as the creation of the SAS, have inspired other MS and even foreign countries
- Wave of reforms in MS has been very much directed at, but is not limited to, limited liability companies with a natural person as shareholder(s)
- Reform has not touched the public limited company as to capital because it would imply a modification of the second company law directive
- European Union introduced in April 2014 a proposal of directive on a single member private limited liability company (SUP) which would further liberalize MS laws as well as help set up subsidiaries in other MS