



Ministère des Affaires Etrangères - France

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RÉPUBLIQUE FRANÇAISE

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The French legislation on extra-financial reporting : built on consensus

In 2009 and 2010, the French Parliament adopted two laws named the Grenelle Acts, which made the production of an annual report on CSR matters for all large companies with activities in France mandatory. Provisions for the implementation of these laws were adopted by the government in April 2012. This regulation built on legislation adopted 10 years earlier, and was the result of a large and lengthy consultation process with the various categories of stakeholders concerned with corporate social responsibility, taking place from 2007 until the end of 2011.

This document will present the various steps in the process that led to this regulation, the meaning attached to it and the range of assessments regarding the relevance of the approach and the difficulties it has met with.

I- The first legal framework:

a. The NRE Act 2001 : a pioneer law

In 2001, while the country was under the leadership of a conservative President and a socialist Prime minister, the French Parliament adopted several laws in order to encourage CSR (corporate social responsibility) and SRI (socially responsible investment) within the private sector. One of these, the Law on New Economic Regulations, otherwise known as the NRE Act, required that listed companies disclose information in their annual report about measures taken to account for the environmental and social impacts of their activities. Around 30 topics were identified in a subsequent 2002 decree.

These prescriptions were designed mainly to ensure security, through transparency, for shareholders. It marked a significant change in that it allowed shareholders and other stakeholders (including rating agencies) to better assess the overall performance of companies.

No provision concerning sanctions was included in the NRE Act. It might seem surprising, but this element referred to a long tradition of what in France is called “orientation laws”. Laws of this sort are regularly adopted in France with the aim of setting important objectives for the nation reinforced with the significance that parliamentary decisions carry. The idea was to give shareholders, to whom these now more in-depth reports were to be distributed during the annual general meetings, the power to order company management to comply with its reporting obligations if it had failed to do so.

b. Company compliance

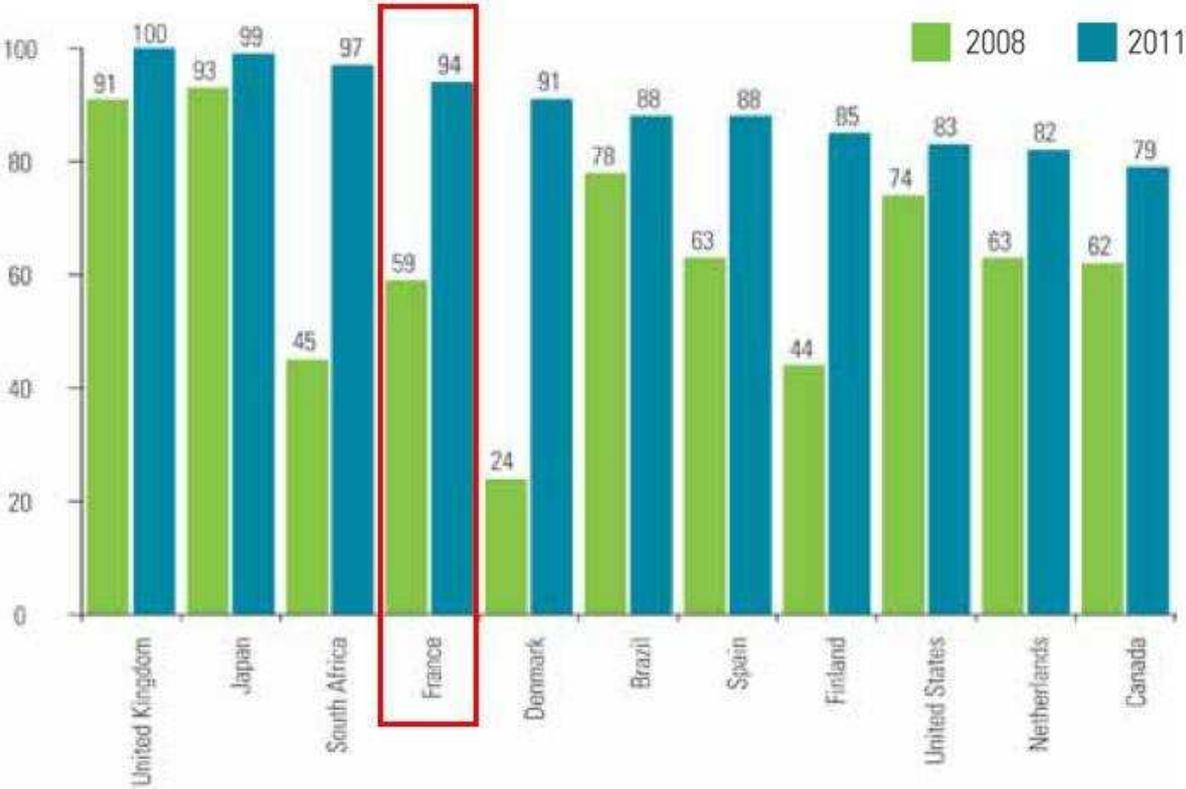
The NRE Act was assessed regularly and its implementation analysed by different bodies. Yearly studies have been published by auditing companies (such as CFIE-Conseil, Alpha, PriceWaterhouseCoopers, KPMG...) and, in 2004, the government ordered a study by three leading associations (ORSE, Orée and EpE). Although the studies showed imperfections in the

implementation of the mechanism, they all concluded that it should be upheld in its current form, without legally enforcing it, in order to encourage experimentation.

The Ministry for Ecology and Development led its own analysis in 2007 and concluded that 81% of companies had at least made some effort in terms of reporting. It was becoming apparent that companies were indeed now incorporating sustainable development and CSR in their core strategies : the C3D organization (College of Sustainable Development Executives) made the observation that following the NRE Act, there was a growing trend among top French companies to create a dedicated sustainable development and/or CSR department. Furthermore, the NRE Act instilled greater responsibility at the highest levels, with the AMF (the French Financial Market Authority) pointing out in 2009 that in 17% of the listed companies, part of the CEO’s variable compensation was indexed on extra-financial performance results.

The auditing company KPMG’s worldwide survey in 2011 on CSR reporting showed that France was now placed 4th in the world in terms of extra-financial reporting among large companies, jumping within three years from 59% to 94% in terms of the number of companies reporting on ESG topics. This was a clear consequence of the implementation of the 2001 NRE Act and of the announcement of further extensions to legal reporting obligations.

PERCENTAGE OF COMPANIES REPORTING ON THE CORPORATE RESPONSIBILITY INITIATIVES 2008-2011 (SOURCE: 2011 KPMG SURVEY)



However, the Ministry for Ecology’s study also underlined that the way in which the NRE Act was written gave companies so much flexibility that some categories were consistently under-reported. Citing the category of relations with stakeholders, the study claimed that because this particular set of data is demanded “where necessary”, there was a substantive lack of information on this subject.

Similarly, a study done in February 2010 by independent French rating agency Vigeo showed the interesting disparity in levels of reporting between different sectors.

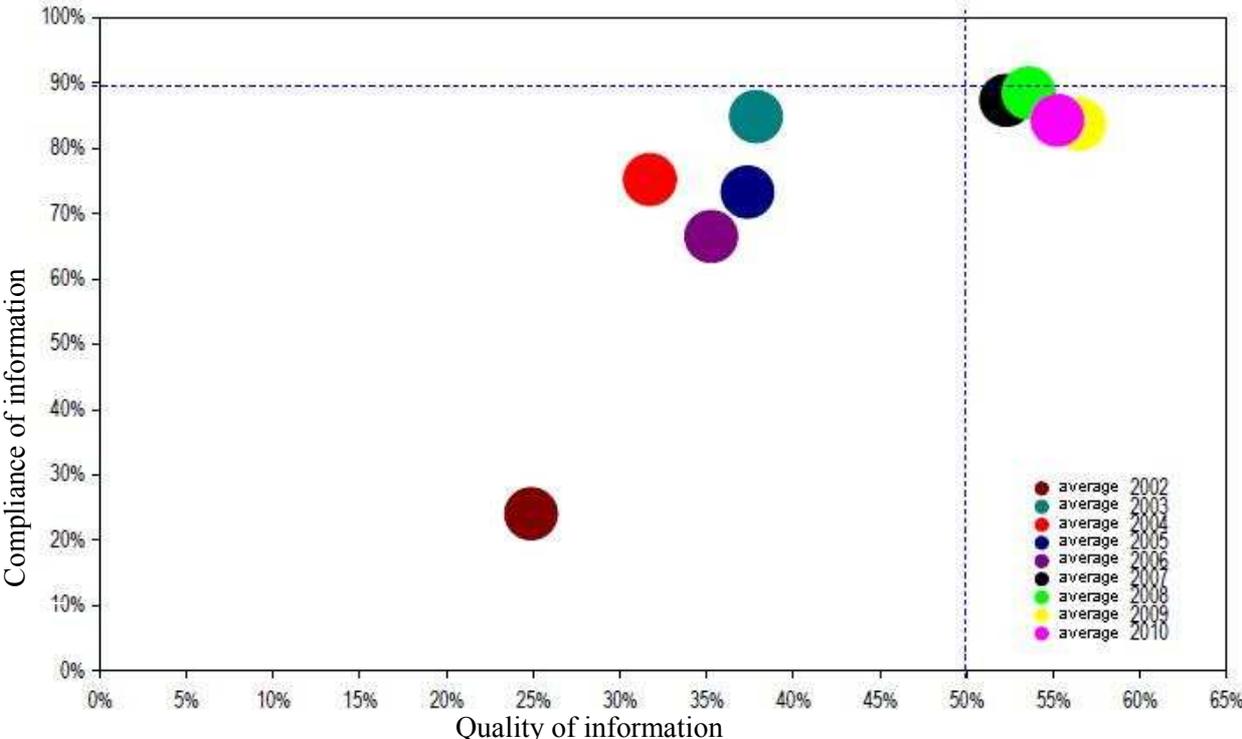
Sector	Average disclosure
Telecommunications	76%
Banks	74%
Petrol and gas	74%
Distribution	71%
Chemicals	70%
Food & drinks	64%
Health	58%
Financial	53%

In the same vein, the Alpha Group’s analysis of 9 years of implementation of the NRE Act, issued in 2011, showed a discrepancy with regards to what information companies chose to disclose:

- Information pertaining to the more “visible” elements of companies were widely reported: education, health, diversity, social dialogue;
- Whereas information pertaining to the internal structure of the company was not sufficiently disclosed: organization and content of work, restructuring, wages, subcontracting.

Such discrepancies therefore hinder a thorough CSR analysis of companies’ impacts.

However, this study also highlighted the growing importance of CSR in the general mindset of businesses. The following graph shows the evolution of the average grade given to companies for the compliance and quality of their reporting. One can clearly see that, although compliance is neither total nor perfect, companies quickly adapted and came up to speed with the legal requirements.



II- The Grenelle process

a. Article 225 of the Grenelle II Act - a new reporting regulation

In 2007, with a new conservative President, Government and Parliament in place, a nationwide multi-stakeholder dialogue on sustainable development was launched in France, called the “Grenelle for environment”. It concluded by setting goals for sustainable development and led to the adoption of two new laws: the Grenelle 1 Act (August 3, 2009) and the Grenelle 2 Act (July 12, 2010).

During this process, in which business organizations, trade unions, environmental and consumer NGOs, and academics participated, agreement was reached regarding the positive effects of the NRE Act. The objective of better security for shareholders, but also for consumers and society as a whole had been widely achieved. Limits were also obvious: many companies with significant social and environmental impacts were outside the scope of the law and hence evaded reporting obligations, particularly large non-listed companies, both private and State-owned. Additionally, several key topics for CSR reporting had been omitted from the list, while some of those on the list were not relevant for all the industrial sectors, and some of the reporting indicators were not informative enough.

Building upon the proven NRE mechanism, Section 225 of the “Grenelle II” Act intends to correct these various flaws. The new requirement is that companies have to provide details in their annual reports *"on how they take into account the social and environmental consequences of [their] activity and [their] social commitments in favour of sustainable development."*

The implementation decree was published on April 26, 2012 and amends Section 225-102-1 of the Commercial Code with several notable innovations:

1. it widens the breadth of companies required to submit reports mandatorily, using several criteria : in short, by the 31st of December 2013, all companies with over 500 employees will be subject to these reporting requirements.
2. it broadens the amount of information required: there are now over 40 topics that companies must report on, divided into three themes:
 - Social (employment, labour relations, health and safety...);
 - Environmental (pollution & waste management, energy consumption...);
 - Commitments to sustainable development (social impacts, relations with stakeholders, human rights...).

The list of subjects reflects the content of the main international guidelines on CSR reporting (ISO 26000, Global Compact, Guiding Principles of Human Rights and Business, the OECD Guidelines for multinational corporations, Global Reporting Initiative). Approximately one third of these topics are to be presented separately, insofar as they are mandatory for listed companies while optional for the other companies.

3. for each required topic, no specific indicators are proposed, thus providing companies with the liberty to select those most relevant to them.
4. a “comply or explain” approach is proposed : companies can choose to omit information on subjects non-relevant to their activity, but must instead provide an explanation for why they chose not to disclose this information. The independent auditor then gives his opinion on the omissions and provided explanations.
5. it provides stricter rules on the breadth and quality of the report: according to the decree, a company’s report should disclose all actions taken by the company and its subsidiaries. It must present data observed during the defined financial year and, if necessary, during the previous one, in order to allow comparison. If the company chooses to comply with a national or international reporting framework (be it social or environmental) in order to fulfil

its reporting obligation, it must mention the nature of this framework and where it can be found.

6. it states that a company's report must be subject to verification by an independent third party (appointed by the executive director or chief executive), which must be accredited by Cofrac (French Committee of accreditation) or by any other accreditation body signatory to the multilateral recognition agreement established by the European coordination of accreditation bodies. This third party must then prepare a report certifying the quality of the company's reporting and provide a "reasoned opinion" on the accuracy of information provided, and also (as mentioned above) on the explanations given by the company for any omitted data.

b. The cost of reporting

Even though some companies may shriek at the idea of mandatory reporting and argue that it would cost a substantial amount, many studies show that the production of extra-financial reporting is rather affordable, especially considering its potential benefits.

A government evaluation of the cost of reporting in compliance with the Grenelle II reporting obligations was made in 2011 :

Size of company by n° of employees	Cost of <u>creating</u> the report		Cost of getting report <u>verified</u>	
	Reasonable estimate	High estimate	Reasonable estimate	High estimate
500 to 999	17 000€	33 300€	7 200 €	11 000 €
1000 to 4999	30 300€	61 600€ €	11 000 €	18 000 €
5000 +	197 000€	357 000€ €	30 000 €	100 000 €
<i>Evaluation for CAC 40 (top companies in France)</i>			60 000 €	200 000 €

Compared to many other costs, these are undeniably affordable expenditures.

The Institute for CSR, a French counselling organization specialized in extra-financial reporting, provides a complementary analysis of the estimated costs. Overall, compared to existing reporting obligations, the undertakings required to comply with the new regulations should demand an increase in expenditure of no more than 5%. These costs will initially be spent on bringing the company "up to speed": it will take a little bit of time and resources for the company to gain reporting know-how, to update its reporting techniques and to train employees. The second expenditure will go towards the creation of the report itself and the "external" devices that may be required (this includes equipment and also guidance/counsel). Finally there is the cost of verification, which according to the Grenelle II Act, must be done by an independent and accredited third party.

The Institute predicts that, although at first companies will have to make a little extra effort and investment to "step up" to the challenge, the yearly cost of complying with these regulations will drastically go down after 3 years, not only because companies will have integrated the operations, but because the general "market" of verifying bodies will have structured itself with competitive prices.

Daniel Lebègue, president of the French Observatory on CSR and also president of the French Institute of Directors (representing business administrators), recently argued, in no uncertain terms, that, "when people say that [the new regulations on reporting] will cost a lot of money to SMEs, it's not true. For SME's, the [existing] audit budget varies from 50 000 to 500 000 euros. On average, the

added expenditure [of complying with the new regulations] will vary from 500 to 15 000 euros, so let's not make a meal of it!"

With the new and broader provisions of article 225 of the Grenelle II Act, companies are now being advised to fully comply with their reporting obligations, especially considering the fact that their report is subject to an independent verification and that there is increasing scrutiny from the wider civil society on these issues. In other words, even though there is still no legal sanction to non-compliance, the verification mechanisms put in place by the Act ensure that companies who do not disclose the required information do so at their own risk, knowing that they will surely have more to lose if they don't comply than if they do. On this subject, Daniel Lebègue also observed in June 2012 that, *"for the first time, general meetings in companies are spending more time discussing social issues than financial ones, [... issues such as] CEO wages, the environment, consumer health, and the fight against poverty and exclusion"*. According to a survey published by the independent cabinet Capitalcom, in 2012, while the decree for article 225 of the Grenelle II Act was in preparation, CSR had become an important element during annual shareholder meetings, in particular during the presentation of the business plans: 19 of the 40 largest corporate groups held their CSR policy as a major component of their growth strategy, presenting it as a competitive edge, an axis of differentiation and a tool for monitoring the regulatory evolution in developed countries. For example: Saint-Gobain introduced sustainable development as an inherent part of its business model; Renault claimed that the core of its operations now focused on new electric products; while GDF-Suez presented an advanced status of extra-financial objectives. As a result of this French legislation, CSR has now become a common and recurring theme at shareholder annual general meetings.

To this effect, many organizations (public, independent, unions...) are compiling and publishing reference guides and practical advice manuals, not only to provide tools for companies that need to establish and implement a CSR policy in the first place, but also to help companies prepare and fulfil their reporting obligations. A good example would be the recently edited "Guide to CSR Reporting" a document produced by MEDEF, the French union of employers and business owners, that provides a full overview of the current (or soon to be implemented) regulations and offers practical guidance and advice on how to comply with them. It also shows how French reporting requirements can be crosscut with international reporting standards (such as ISO 26000, the Global Compact, the OECD Guidelines for Multinational Enterprises, GRI, EFFAS).

III. The September 2012 National Conference on Environment and its outcomes

The President elected in May 2012 decided to organize a series of consultations on key topics concerning the future of French society. A National Conference on Environment was convened on September 14th and 15th.

Its conclusions reassessed the importance of sustainability reporting in order to enhance transparency in ESG company behaviour. The Grenelle Laws were confirmed, with the announcement of a minor change to the text from the April 2012 implementation decree: the discrepancy between the number of topics that must be reported on for listed and non listed companies will be removed.

In addition it was decided to create a multi-stakeholder National CSR Platform to create on-going dialogue on these issues. It will be directly related to the Prime Minister's Office. Its task will be inter alia to monitor the implementation of Grenelle Laws and propose new developments for the development of CSR.

For eleven years, the French policy on CSR reporting has been successfully motivated by a permanent will to build consensus.