

## **IMPACTS OF GRENELLE II ON CORPORATE GOVERNANCE'S OBLIGATIONS AND INFORMATION DUTIES**

The bill on the national commitment for the environment (“*projet de loi portant engagement national pour l’environnement*”), also called *Grenelle II* (hereinafter the “**Bill**”), which is currently being discussed by the French Parliament, sets out a few new provisions that impact on companies’ obligations insofar as corporate governance and information duties of companies are concerned.

The implementation of such Bill is contemplated further to the *Grenelle de l’Environnement*, which, among others, includes the commitment of France to divide its greenhouse gas emissions by four by 2050 compared to its emission rate in 1990.

As it is generally recognized that such objective could not be achieved without a change in the consumption habits of households and in the behaviours of companies, the Bill puts forward various measures to give companies a higher sense of environmental responsibility and to make consumers aware of the impacts of their consumption habits where sustainable development is at stake.

In this context, we draw your attention to two specific articles of the Bill that, if passed, will have significant consequences on companies with regard to corporate governance and, more generally, to their information duties towards costumers.

➤ Article 83 of the Bill provides for an amendment of article L. 225-102-1 of the French Commercial Code in order to extend to some non-listed companies the social and environmental reporting

obligations that were implemented in France by the law n°2001-420 on New Economic Regulations dated May 15, 2001 (the “**NRE Law**”).

Indeed, article 116 of the NRE Law provides for an obligation for listed companies to include, in their annual management reports, a section on social and environmental consequences of their activities. This obligation has encouraged the said companies to dedicate specific attention to sustainable development concerns.

Therefore, article 83 of the Bill aims at extending the scope of article L. 225-102-1 of the French Commercial Code to non-listed companies in order for them to include social and environmental data in their annual management reports. The concerned companies shall employ more than 500 employees and have a total balance sheet exceeding an amount that will be later published in a decree.

In conclusion, aside from extending the scope of the companies concerned, article 83 of the Bill will certainly entail other companies to include permanently corporate and social responsibility in their global strategic concerns.

➤ Article 85 of the Bill implements, by 2011, an obligation for companies to provide customers with some specific information on the carbon footprint of some products and packagings and of certain transportation services.

In the frame of the improving battle against greenhouse gas emissions, some measures were implemented, in particular at the EU level, concerning the CO<sub>2</sub> consumption of cars and of houses. Besides, as consumers show an increased interest in renewable energies and in green products - which are topics that now often hit the headlines - some companies wish to benefit from this green trend and mention carbon data on some of their products.

In this context, article 85 of the Bill brings in a new kind of obligation for companies as it refers to the greenhouse gas emissions pertaining to the whole product life cycle of consumer goods. Indeed, as from 2011, consumers will have to be informed on the related carbon footprint of products and packagings.

Above all, article 85 of the Bill aims at defining a legal framework for such display of carbon information in order to avoid misleading advertising and to provide companies with a reliable method to assess the environmental impacts of their products. Decrees shall be adopted in that respect. Such decrees shall also specify, for each category of product, the conditions of application of such article.

Furthermore, last paragraph of article 85 provides that any person who commercializes or organizes people or goods transportation services or moving services must provide to the beneficiary of the services, information on the quantity of CO<sub>2</sub> emitted by the transportation means used to provide

the said service. Decrees shall set out the scope, terms and conditions of application of such provision, including the timeframe for the implementation depending on the size of the transportation companies, the calculation methods for the CO<sub>2</sub> emission and the way the beneficiary shall be informed.

As well as article 83, article 85 will have a significant impact on companies and on the day-to-day performance of their activities. Indeed, a mandatory display of carbon footprints on consumer goods and transportation services will lead companies to increasingly take into account the environmental impacts of such activities. Not only will they have to implement new reporting methods to comply with these future environmental information duties but they will also have to - even more - refocus their strategy on environmental and social items to remain competitive.

As mentioned above, the Bill is still discussed by the French Parliament. It was adopted by the *Sénat* (French Senate) on October 8, 2009 and was transmitted for review to the *Assemblée Nationale* (the other "House" of the French Parliament) on October 9, 2009. Besides, if adopted, the effective implementation of articles 83 and 85 will be subject to the publication of decrees.

Therefore, some details will be clarified in the coming months. However, one thing remains certain: we are only at the beginning of a paramount integration of environmental and social concerns at every level of companies' corporate life.

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