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# The Development and Decline of Law in French Accounting Regulation

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## 1. Introduction

This article deals with French accounting regulation in terms of approaches taken by the French state to develop accounting law as a means to standardise the organisation and operation of financial accounting by enterprises, especially companies and company groups. It will show that development of detailed autonomous law in this regard, though comparatively recent, is now unlikely to survive in light of wider related European Union and international developments.

Major successive stages of French accounting regulation are shown in Table I.

France was one of the earliest countries to create a law requiring commercial entities to keep accounts and to undertake a periodic inventory of what would now be regarded as the assets and liabilities making up their financial position. This was the 1673 Edict [1] of Colbert, the Finance Minister, later somewhat amplified by the Commercial Code of 1807, as part of the *Code Napoléon*. These enactments and the later Companies Law of 1867 did not, however, deal in any detail with the required organisation of accounting records, the enterprise accounting system, recognition of assets and liabilities or presentation of articulated periodic financial statements. Moreover, it seems certain that their exiguous requirements were not generally observed, given that there was no effective regulatory arrangement for supervision of their application.

The first serious attempt by the state to specify by regulation detailed requirements for organisation of the individual entity accounting system and presentation of the annual balance sheet and profit and loss account occurred during World War II when the so-called Vichy Government sponsored development of a general accounting code intended to be applied nationally by commercial enterprises. Although the code was without significant effect under the circumstances of the times, the immediate post-war government

*Table I.* Successive stages of French accounting regulation

| Year | Category | Reference | Title or description |
|---|---|---|---|
| 1673 | Edict | | Ordonnance de Colbert |
| 1807 | Code | | Code de Commerce |
| 1867 | Law | | Loi sur les sociétés |
| 1947 | MO | | Approbation du projet de plan comptable général … |
| 1957 | MO | | Approbation du plan comptable général révisé |
| 1959 | Law | 59-1472 | Réforme du contentieux fiscal et divers aménagements fiscaux |
| 1965 | Decree | 65-968 | Conditions d'application du Code Général des Impôts … relatif aux renseignements que les entreprises industrielles et commerciales doivent fournir … |
| 1996 | Law | 66-537 | Sociétés commerciales |
| 1967 | Decree | 67-236 | Sociétés commerciales |
| 1982 | MO | | Approbation du plan comptable général révisé |
| 1983 | Law | 83-353 | Mise en harmonie des obligations comptables … avec la IVe Directive européenne … |
| | Decree | 83-1020 | Application de la Loi 83-353 … |
| 1984 | Law | 84-148 | Prévention et règlement amiable des difficultés des entreprises |
| 1985 | Law | 85-11 | Mise en harmonie des obligations concernant les comptes consolidés… avec la VIIe Directive européenne … |
| | Decree | 85-295 | Application de la Loi 84-148 … |
| 1986 | Decree | 86-221 | Application de la Loi 85-11 … |
| | MO | | Complétant et modifiant le plan comptable général |
| 1996 | Decree | 96-749 | Conseil national de la comptabilité |
| 1998 | Law | 98-261 | Réforme de la réglementation comptable … |
| | MO | | Nomination au Comité de la Réglementation Comptable |
| 1999 | CRC | 99-02 | Comptes consolidés des sociétés commerciales et entreprises publiques |
| | CRC | 99-03 | Réécriture du plan comptable général |

| | | | |
|---|---|---|---|
| | CRC | 99-07 | Règles de consolidation des entreprises ... bancaire et financière |
| 2000 | CRC | 00-05 | Règles de consolidation et de combinaison des entreprises … assurances et des institutions de prévoyance … |

MO Ministerial Order
CRC Regulation of the Comité de la Réglementation Comptable

pursued the concept of a national accounting code, leading to its promulgation in 1947 as the *Plan comptable général* (PCG). As shown in Table I, further versions of the PCG followed in 1957, 1982, 1986 and 1999.

Nevertheless, the state did not endow either the 1947 or 1957 versions of the PCG with clear legal standing or establish any regulatory arrangement for supervising their application. Instead, it sought to draw significant economic and social interest groups in both the public and private sectors into a consensual institutional framework for consideration of issues of financial accounting and thereby to secure the willingness and cooperation of these groups in bringing about a satisfactory general application of the PCG by individual entities. Given that financial accounting information potentially serves the varied and possibly conflicting interests of managers, their employees, enterprise owners (including equity investors at arms length from managers) and the state, especially tax administration and national statistics, it may be thought that the notion of achieving a voluntary and largely uniform response to state-imposed accounting standardisation was unrealistic. Furthermore, the state itself undercut any possibility of the PCG being seen as a non-coercive instrument of state control by requiring as from 1965 (Decree 65-968) that commercial enterprises present their tax returns in conformity with the PCG, unless otherwise provided for by tax legislation.

In the eyes of the state, the PCG was a social template for fostering accounting standardisation, notwithstanding its reluctance to accept greater genuine involvement by non-state interests, notably the accounting and auditing profession and larger French enterprises. Although the consequences of state control were masked for a considerable time by the relative unimportance of the French securities market as the medium for risk capital pricing and allocation, it had become apparent by the 1980s that the PCG was inadequate to meet the needs of increasingly diversified and demanding financial information users. Nevertheless, the forms, if not the reality, of wide cross-sectional involvement in accounting standardisation were persisted with until the major 1996–1998 reforms of the institutional framework for accounting standardisation and regulation (Law 98-261). The purpose of the reforms was to reduce the range of interest groups directly involved in accounting

standardisation, to expedite revision and development of accounting standards, and to give them clear regulatory effect, as explained in Section2.

## 2. French Accounting Regulation: Institutional Framework, Adoption and Application

Key institutional elements in the framework for accounting regulation in France are shown in Table II.

### 2.1. SETTING ACCOUNTING STANDARDS

The setting of accounting standards in France is effectively reserved to the CNC, an agency of the state subject to the Minister for the Economy. Other institutions and bodies are free to develop and present recommendations on financial accounting issues, as OEC has at times in the past, but no other body has acquired the same standing as the CNC in this respect. This is so for two reasons. First, the composition of the CNC as decreed by the state has throughout its life been broadly based, with the objective as previously noted of involving all economic and social groups with an interest in outcomes from accounting standard setting in both the public and private sectors. Second, the CNC alone has the moral authority that comes from its sponsorship by the state and its pivotal role as the gateway through which recommendations must pass to the CRC for regulatory adoption.

The CNC is largely staffed by civil servants but makes extensive use of CNC members and outside experts appointed on a voluntary basis to serve on its various sections, commissions and task forces, with CNC staff acting as project managers, in a process for developing what are here termed CNC accounting standards, though the French equivalent of that expression is nowhere used officially. Typically, a proposed standard will be developed and issued as a statement of best practice (*avis*) after consideration and adoption by the CNC Plenary Assembly (as further explained in CNCC–OEC, 2002, 16-18). As the CNC is not a regulatory body and has no powers of compulsion, its statements of best practice only have the status of recommendations, a position that explains much of the uncertainty regarding the extent to which they were observed prior to establishment of the CRC in 1998 as a means of giving regulatory effect to selected CNC standards.

Composition of the CNC is shown in Table III.

There are several notable consequences of the CNC composition. First, the CNC is precluded from acting in a manner comparable to standard setting bodies in the English-speaking world or the International Accounting Standards Board (IASB), given its plenary size, the unremunerated basis of its membership and the consequent relative infrequency of plenary meetings. Second, the extensive state representation, especially the tax administration

*Table II.* Key institutional elements in accounting regulation in France

| Acronym | Title | Translated title | Responsibility |
|---|---|---|---|
| CNC | Conseil National de la Comptabilité | National Accounting Council | Development of accounting standards by due process for application by entities generally or within specified entity categories, mostly issued as Statements of Best Practice |
| CRC | Comité de la Réglementation Comptable | Accounting Regulation Committee | Establishment by regulation of accounting requirements, following CNC advice or recommendation, applicable to entities required to keep accounting records, or to particular sectors, other than for entities subject to public law, exempt from CRC regulation |
| COB | Commission des Opérations de Bourse | National Securities Commission | Ensuring protection of investors in securities issued to the public and adequacy of information provided by listed companies and companies issuing securities to the public |
| CNCC | Compagnie Nationale des Commissaires aux Comptes | National Institute of Statutory Auditors | Ensuring compliance of statutory auditors with CNCC standards for audit and professional conduct, especially as regards auditor independence |
| OEC | Ordre des Experts-Comptables | Institute of Public Accountants | Supervision of the public accounting profession, which has the exclusive right to assist enterprises with development, interpretation and attestation of their annual accounts |

Table III. CNC composition by affiliation or attachment

| | | |
|---|---|---|
| Public sector: | | |
| CNC President | 1 | |
| Finance/Budget (including the tax administration) | 4 | |
| Justice | 1 | |
| National Institute of Statistics (INSEE) | 1 | |
| Securities Commission (COB) | 1 | |
| State Audit Office/Control Service | 2 | |
| Statutory commissions: | | |
| Banking | 1 | |
| Insurance | 1 | |
| Provident and mutual institutions | 1 | |
| Total public sector | | 13 |
| Private sector and non-government: | | |
| Accounting profession: | | |
| Statutory auditors (CNCC) | 5 | |
| Registered public accountants (OEC) | 5 | |
| Total accounting profession | 10 | |
| Specified quasi-professional bodies | 2 | |
| Economic interest groups: | | |
| Commerce, industry and trades chambers/tribunals | 12 | |
| Enterprise chief accountants | 4 | |
| Employer organisation representatives | 7 | |
| Trade union representatives | 5 | |
| Total non-government economic interest groups | 28 | |
| Other – Personal standing in the field of accounting | 5 | |
| Total private sector and non-government | | 45 |
| Total CNC 2000 membership | | 58 |

and justice, operates to prevent the CNC from pursuing a standard setting agenda preoccupied with commercial accounting and considerations of financial communication to heterogeneous users, especially investors. It also ensures that the CNC devotes much of its time and attention to standards for exclusive application by enterprises and other bodies in public ownership. Finally, the CNC composition opens the overall direction of CNC standard setting to the potential influence of organisations, notably of employer organisations and trade unions, which do not ordinarily possess expertise in complex accounting issues.

## 2.2. IMPARTING REGULATORY EFFECT TO ACCOUNTING STANDARDS

A key objective of the 1996–1998 reforms was to achieve a systematic ongoing arrangement for imparting regulatory effect to CNC statements of best practice. This was to be achieved by creating the CRC, which is to establish by regulation the accounting requirements generally applicable to those individuals or legal entities obligated to establish accounting records, as well as requirements applicable to particular sectors. Only legal entities subject to public law and public accounting regulation are exempt from CRC regulation. Its composition is shown in Table IV.

Composition of the CRC is notable, as with the CNC, for the representation of diverse state and non-state interests, creating ambiguity about its intended role and operation. On the one hand, the CRC may only adopt regulations having regard to recommendation from the CNC (Law 98-261, Art. 3), while on the other hand its broad composition suggests a deliberative body in its own right. As constituted, the CRC deals with issues applicable to industrial and commercial enterprises generally or is augmented where the issue concerns adoption of requirements applicable to a particular sector. The latter applies, in particular, to accounting rules for enterprises governed by the Banking and Financial Regulation Committee or the Insurance Code, mutual associations governed by the Mutual Code and provident institutions

*Table IV*. Composition, Accounting Regulation Committee (CRC)

| | |
|---|---|
| State | |
| President: Minister for the Economy or representative | 1 |
| Vice-President:Justice Minister or representative | 1 |
| Budget Minister or representative | 1 |
| Member, Supreme Civil Court, *Conseil d'Etat* | 1 |
| Councillor, Supreme Criminal Court, *Cour de Cassation* | 1 |
| Representative, State Audit Office, *Cour des Comptes* | 1 |
| COB President or representative | 1 |
| CNC President | 1 |
| Total government ministries, councils, agencies | 8 |
| Private sector and non-government, drawn from CNC | |
| OEC President or representative | 1 |
| CNCC President or representative | 1 |
| Enterprise representatives appointed by the Minister for the Economy | 3 |
| Trade union representatives | 2 |
| Total private sector and non-government | 7 |
| Total | 15 |

governed by the Social Security Code. CRC decisions are adopted by a majority of its members. To have regulatory force, proposed CRC regulations must be approved by interministerial order, signed by the Ministers for the Economy, Justice, Budget, and, as applicable, the minister responsible for the relevant sector.

### 2.3. SUPERVISING THE APPLICATION OF ACCOUNTING STANDARDS

Recognising that accounting standards and regulations for their adoption are of little effect without appropriate arrangements for supervision of their application, this section reviews relevant arrangements in France (extensively set out in Stolowy, 2001).

#### 2.3.1. *Regulatory authorities*

##### 2.3.1.1. *Commercial companies*

All companies are required to file with the Registre du Commerce et des Sociétés their annual accounts and, where applicable, consolidated accounts, together with the related statutory audit report and certain other documents. The various Registres, located throughout France, check filings for inclusion of required documents but not their conformity with accounting regulations.

##### 2.3.1.2. *Consolidated groups*

Consolidated accounts of listed companies and companies issuing securities to the public are required to be filed with the COB, the securities commission created in 1967 and modelled for regulatory purposes on the US SEC (Dessertine, 1997). The COB is charged with supervision of listed companies and is in particular to investigate any infringement of COB regulations and company law. In addition to filing their consolidated annual accounts, commercial companies subject to COB supervision are required to file their half-yearly results and quarterly turnover, with somewhat different filing requirements applicable, respectively, to credit institutions and insurance companies (detailed in CNCC–OEC 2002, Fig. 2.1). Should a company release what the COB judges to be inaccurate or misleading information, it may invoke various sanctions, including an order for the company to publish a rectification, and under exceptional circumstances may require suspension of stock exchange trading in securities of that company.

In addition to its supervision of filings of consolidated accounts and associated information, the COB plays an important role in setting policy and issuing COB regulations with the effect of extending the flow and quality of financial information supplied by listed companies to the securities markets. In some instances, COB pronouncements and regulations are in effect interpretations of aspects of CRC regulations. In other instances, they deal with issues not covered by CRC accounting regulations as such but which

might be regarded as crucial to the conditions under which companies develop and release accounting information. Examples of the latter in the period 1999–2000 include the COB position in relation to aspects of corporate governance, financial information for credit risk evaluation, comparability of annual report information on added shareholder value, company profit warnings, company release of financial information on the internet, and real estate valuation methods and their associated issues of professional conduct (CNCC–OEC, 2002, Part 2.3).

Although the supervisory role of the COB and its encouragement for improved standards of listed company reporting are of great importance for French companies, the scale of resources employed by the COB in detailed examination of company filings is not as comparably extensive as, for example, those of the US SEC. Accordingly, doubts and criticisms have been raised from time to time about the full extent of compliance by listed companies with French accounting regulations and associated COB recommendations and requirements.

### 2.3.2. *Statutory auditors*

In France, as elsewhere in the developed world, statutory auditors bear the brunt of detailed ongoing assessment of company compliance with accounting regulations. Again as seen elsewhere, the likelihood of statutory auditors complying with required standards of professional conduct depends crucially on their independence from client company management. In France, two distinctive aspects of statutory audit appointment are intended to enhance auditor independence, namely that appointments are ordinarily for a six-year term and secondly that listed companies are required to make a joint appointment of at least two statutory auditors from separate audit firms. A particular issue of recent concern is the growth of non–audit services supplied by the major accounting and audit firms, viewed by regulatory authorities as posing potential threats to audit independence and therefore to a proper assessment of company compliance with accounting regulations. To assess statutory auditor compliance with professional audit standards, and by agreement with the COB, the CNCC conducts an annual audit quality control review, with particular attention to whether practice firms holding listed company audit appointments refrain from providing services to clients deemed incompatible with audit independence (CNCC–OEC, 2002, Part 4.4).

### 2.3.3. *Public accountants*

OEC membership is restricted to accountants in public practice, with the result that accountants within enterprises are not members of OEC, which is the sole recognised professional institution for accountants in France. Given that OEC members have the exclusive legal right to assist enterprises with

development, interpretation and attestation of their annual accounts (other than for purposes of statutory audit), it may be inferred that they have a role of particular importance to play in assisting enterprises to comply with accounting regulations and, desirably, with any CNC statements of best practice not yet adopted by way of CRC regulation. To this end, the OEC operates a quality control review procedure involving assessment of practice firm procedures and technical capacity, as well as analysis of selected client files to assess application of practice and technical standards (CNCC–OEC, 2002, Part 5.1).

## 3. An Overview of Sources of Written French law

Although the demarcation is not always clear and is called into question by the contemporary evolution of legal systems, a distinction is generally drawn between common law countries, where the law is elaborated by the courts through judicial decisions, and written-law countries, where legal rules are set down as black-letter text by competent authorities of the state, for example, as acts of parliament or ministerial regulations, and where the role of the courts is essentially to interpret authoritative text. Although earlier a common law country, France experienced a period of intense legislative activity during the Revolution from 1789 and the succeeding Napoleonic period, the latter particularly associated with development of the Code Napoléon, including its Civil and Commercial Codes. In consequence, France mutated into a country of written law in which the sources of legal rules are organised in a hierarchical order intended to provide successive elaboration of the law (Terre, 1996). Common law, in the form of judicial decisions and recognised customary usages, especially in commercial relations, nevertheless continues to exist in France but plays a secondary role. In this context, the sources of the law are organised into a hierarchy comprising constitutional and supra-national law, national law, common law and jurisprudence.

### 3.1. ORGANIC AND SUPRA-NATIONAL LAW

The organic law of the French state derives from the authority of Parliament, the President of the Republic and Government. In particular, the law derives its authority from the 1958 Constitution, which governs the organisation and the functioning of the institutions of the Republic. In defined circumstances, French law is subject to international treaties, notably the 1957 Treaty of Rome establishing the European Economic Community (EEC) and the 1992 Maastricht Treaty establishing the European Union (EU) as successor to the EEC. International treaties entered into by France are subordinate to the Constitution, other than where the Constitution is amended to permit adoption of a treaty. Resulting from adherence to the EEC and EU, French

written law includes, where required, the various EEC and EU rules, directives and decisions taken in application of relevant EEC and EU treaties.

### 3.2. NATIONAL LAW

Among the sources of national law, it is necessary to distinguish legislative sources, expressed as acts of Parliament, from regulatory sources, in the form of decrees and regulations issued by the government.

#### 3.2.1. *Legislation*

In the French republican constitutional tradition, the representatives of the people elected to the parliament exercise national sovereign power. Its two assemblies, the National Assembly and the Senate, are ordinarily required to agree on the text of legislation. In the event of failure to agree, the vote of the National Assembly is decisive.

#### 3.2.2. *Regulation by decree and administrative order*

The 1958 Constitution confers power on the executive, namely, the President of the Republic and the Prime Minister, to make regulations by decree. In addition, Ministers acting within their designated responsibilities, prefects acting in relation to their regional districts (*départements*), and mayors in relation to their municipalities may issue regulations in the form of administrative orders.

Whether dealing with decrees or administrative ministerial orders (*arrêtés ministeriels*), there are two categories of regulations, those for the execution of existing legislation, and the remainder, which are independent of legislative sources. In certain instances, legislation authorises the government to issue a decree by way of supplementing the provisions of the particular law and to permit its application. In addition, the government has the power as a matter of executive prerogative to institute details for the execution of a law in order to ensure its application. Executive regulations may be adopted in all fields not expressly reserved by the 1958 Constitution for the exercise of legislative power.

Having regard to the limited scope for the exercise of legislative power, it could be said that under the 1958 Constitution the power to create law by regulation is the norm and the power to legislate is the exception. Nevertheless, the executive power is not untrammelled. Regulations issued by executive authority must respect the Constitution and the law generally. Executive regulations are particularly suited to the regulation of new fields of activity or those undergoing marked evolution.

## 4. The Belated Emergence of French Accounting law

The creation of accounting law in France, organised on a hierarchical basis analogous to the normal hierarchy of legal sources generally valid for most fields of French law, is a recent matter. Prior to the 1980s, accounting standards were entirely contained in the PCG, which had a relatively ambiguous legal status. It was only thereafter that the PCG was inserted into a set of legal texts organised on a hierarchical basis, thereby constituting a true accounting law.

### 4.1. THE AMBIGUOUS LEGAL STATUS OF THE PCG

The PCG has the legal status of a ministerial order, which within the legal structure explained above gives it a somewhat insignificant legal standing. The first version of the PCG to acquire the authority of the state was adopted in 1947 by ministerial order, as occurred again with the 1957 PCG Decree. The 1982 PCG, also approved by ministerial order, on this occasion stipulated that accounting by enterprises needed to be conducted in accordance with the provisions of the PCG as from the first financial year after 31 December 1983, thereby making application of the PCG obligatory.

Although it had taken this time for the obligatory status of the PCG to be formalised, in a practical sense the PCG had effectively become obligatory by virtue of steps taken by the government in the early 1960s. To promote a climate for easier acceptance by enterprises of the PCG, recognised trade and industry sector committees were charged by Law 59–1472, 1959, with the task of adapting the 1957 PCG to reflect accounting practices and needs within given sectors, always allowing individual sectors to adopt the 1957 PCG without modification as their preferred outcome. Any adaptations were expected to be confined to the PCG chart of accounts involving variations to account nomenclature or addition of further sub-accounts, specification of additional or improved definitions of terms and consequent modifications to the prescribed formats for annual accounts. Sector proposals for adapted versions of the PCG or for retention of the PCG without change were subject to approval by the CNC and any ministry deemed to have an interest in accounting requirements for that sector, with approval taking the form of a ministerial order rendering the proposal obligatory. As this procedure developed over time, the effect was to give broad authority to the concept of a national accounting code, whether in its general form or as adapted, with 77 sector adaptations approved in the period 1968–1979, and a further 63 adaptations in the period 1958–1973 approved for application by individual public agencies or nationalised enterprises (Standish, 1997, 91).

Even more significantly was the creation of a firm linkage between the PCG and tax accounting. In 1962, the CNC stated its policy regarding the impact of tax requirements on commercial accounting and measures for

avoiding or mitigating any adverse effects on commercial accounting. It recognised the many respects in which, in order to enjoy tax advantages, enterprises might adopt accounting policies with unsatisfactory consequences for the balance sheet and profit and loss account. These in turn were regarded as prejudicial to the rights of parties, including third parties, with an interest in enterprise profit or loss. The CNC strongly recommended that tax requirements not affect accounting terminology or the PCG rules for the keeping of accounts, and that inconsistencies between tax and accounting requirements be eliminated. This declaration may have encouraged later measures which brought financial accounting and tax compliance into closer alignment, partly through greater acceptance in the tax code of the role of the PCG and partly through procedures to be followed for tax compliance purposes.

Prior to 1965, tax law definitions of taxable enterprise profit and its component income and charges existed independently of the PCG, as was also the case with procedural requirements for compiling accounting statements for tax return purposes. In that year, Decree 65–968 specified the following

- Formats and descriptions to be adopted by industrial and commercial enterprises in the presentation of accounting documents for the annual declaration of profits and losses for tax purposes.
- Valuation rules directly affecting calculation of taxable income.
- Entries in the various accounts, balance sheet items, and schedules to be in conformity with the requirements of the PCG, in so far as compatible with rules for tax assessment.

Broadly speaking, the accounting requirements of this Decree, particularly in relation to the balance sheet and profit and loss account formats, were taken direct from the 1957 PCG.

The state had thus managed to impose the PCG on French enterprises without recourse to legislation for the specification of accounting requirements, acting instead by way of regulation and ministerial order (Ledouble and Windsor, 1977). This method of proceeding was, however, to change in the 1980s in response to European accounting harmonisation.

### 4.2. THE ESTABLISHMENT OF ACCOUNTING LAW

Adoption of EEC/EU Directives to deal with issues of enterprise financial accounting and reporting created the necessity for France to legislate accordingly, given its treaty commitment to pass Directives into national legislation. By doing so, a law was created at a higher level of authority than the ministerial order previously used to adopt the PCG (Viandier and de Lauzainghein, 1993). The Fourth Directive concerning the annual accounts

of the companies, adopted in 1978, introduced into French law by Law 83-353, 1983, by way of amendment to the Commercial Code and the 1966 Companies Law, marked the first instance of a law in France concerned with accounting by commercial enterprises.

Other succeeding laws dealing with accounting issues expanded the scope of accounting law. Law 84-148, for the prevention and settlement by agreement of difficulties of enterprises, established procedures relating to the ascertainment and communication of accounting information intended to alert directors, shareholders and employees to any deteriorating financial conditions in entities subject to this Law and to avert or mitigate their financial failure. Law 85-11 introduced into French law the requirements of the Seventh Directive for consolidation of accounts. In each case, these Laws were followed by important decrees setting out details for their application.

The PCG was itself affected by these laws and decrees. In anticipation of adoption of the Fourth Directive into French law, the 1957 PCG was replaced by the extensively revised 1982 PCG, approved by ministerial order prior to the 1983 accounting law. In contrast, a ministerial order in 1986 to integrate the methodology for consolidated accounts into the PCG followed Law 85-11 and its decree of application.

By 1990, France was consequently endowed with a body of law to deal with financial accounting and reporting, a field that previously had barely attracted the attention of the legislator. This development owed more, however, to developments at the EEC/EU level than to any domestic motivation to change the status of the PCG and related accounting regulation (Colasse and Standish, 1998). In other words, the legislators and regulators were not strongly motivated, or indeed were even disinclined, to create a regulatory structure and set of accounting regulations more responsive to emerging needs and preferences of the accounting and auditing profession, major French companies, especially multi-listed companies, and the securities markets generally. Achievement of this would have required a better resolution between the various authorities of the state of their conflicting priorities for accounting regulation and better alignment of regulatory concerns with those of commercial, professional and investor interests. As will be seen, this did not really take place, leading to a weakening of efforts to create and sustain a coherent body of accounting law.

## 4.3. RESOLVING ACCOUNTING REGULATION PRIORITIES AND ESTABLISHING THEIR AUTHORITY

### 4.3.1 *Enunciation of accounting principles*

Financial accounting is in essence an exercise in interpretation of complex events and ambiguous outcomes, inevitably caught up in contentious selec-

tion and application of measurement and valuation bases and techniques. Given this, it has become essential to adduce or construct accounting principles as a conceptual foundation for accountants and auditors, as well as a means for assuring other interested parties of the high intent and professionalism attached to financial accounting. In the English-speaking world, the task of enunciating accounting principles was first undertaken by the accounting profession, and then passed to specialised accounting standard setting bodies such as the UK ASB and US FASB. In France, the CNC might have seemed the obvious body to concern itself with enunciation of accounting principles. However, though the CNC was not formally a regulatory authority, the state was shown earlier to have used the CNC prior to creation of the CRC to construct detailed accounting standards for enterprises that it then imposed by indirect regulation, principally as related to tax administration. From the viewpoint of the CNC, it accordingly had no particular need to deal abstractly with issues of accounting principles.

Thus prior to the creation of the CRC, there was in formal terms a regulatory space to be filled, as well as a conceptual or intellectual space, with the latter having a low, almost non-existent, claim on the attention of the CNC. At times, the accounting profession through the OEC sought to fill this space by sponsoring projects for developing a conceptual accounting framework (e.g. Cailliau, 1996) and by issuing recommendations on accounting principles, but these efforts were without discernible effect. Nor have French academic accountants shown much interest in contributing to enunciation of accounting principles. Even following establishment of the CRC in 1998, with the CNC now able to be regarded purely as a standard setting body unencumbered by regulatory overtones, the CNC has made no move to formulate accounting principles other than as may arise in relation to projects for specific standards.

The absence of enunciated general accounting principles, for example, via a statement of a conceptual accounting framework, therefore had no particular significance for either the earlier informal regulatory structure or the present CRC structure. Moreover, this has enabled the various authorities of the state with a strong interest in outcomes from accounting regulation to avoid the resolution of conflicting priorities.

#### 4.3.2. *The persistence of a patrimonial concept of financial position*

Although not stated explicitly, the PCG rests on an underlying proprietary or patrimonial concept, with its emphasis on determination of owner equity as the difference between asset and external liabilities, with the objective of providing a proper reckoning by the enterprise of claims on debtors and claims by creditors (Standish, 1997, index references; Raybaud-Turrillo, 1997). A distinctive aspect of this stance in the PCG, as well as in French

commercial law, regarding the boundaries of owner equity and its constituent assets and liabilities is that they may only include assets over which the enterprise has rights of property ownership and therefore of use and disposal. This has had persistent and significant implications for accounting standards and regulation. For example, assets leased by an enterprise as lessee may not enter into its assets for balance sheet purposes, whilst lease commitments may not correspondingly enter into its balance sheet external liabilities. Furthermore, a debt payable that has not been the subject of a claim by the creditor must be retained in the accounts until settled, however long that may take, and may not be removed simply by its cancellation in the accounts.

#### 4.3.3. *Conflicts between commercial and tax accounting*

The linkage between commercial and tax accounting is established through the Code Général des Impôts, Annex II, Art.38*bis* ff., which offers enterprises the possibility of calculating taxable profit by the formula or procedure set out in Tax Schedule 2058–AN. In other words, the enterprise determines its profit and loss account in accordance with commercial accounting rules and the resulting profit or loss is to be shown in the Tax Schedule prior to adjustment, taking into account differences between accounting and tax rules. However, this disconnection between commercial and tax accounting law is apparent rather than real, in that tax benefits for enterprises are dependent on their being taken into account through the enterprise commercial accounting system, rather than simply adjusted in the Tax Schedule.

To take a major example, the PCG recommends adoption of depreciation methods representing the economic reality of diminution in value experienced with fixed assets, thereby enabling accounts to be drawn up so as to give a true and fair view of financial position and profits or losses of the enterprise. Separately, in order to procure a tax benefit for certain enterprises for reasons of government economic policy, the tax administration allows them to record depreciation greater than would correspond to economic diminution in value. To benefit from this tax concession, however, the enterprise must record in its accounts the tax-deducted depreciation. The consequence is to place the enterprise in the dilemma of choosing between truth and fairness of the accounts or gaining a tax benefit, with truth and fairness the more likely casualty. This difficulty, it is to be noted, applies only to individual entities, to which the tax determination procedure is confined, not to consolidation of group accounts which does not fall within the scope of tax accounting.

#### 4.3.4. *Conflicts between accounting for individual entities and consolidation accounting*

The requirement in France for company groups to publish consolidated accounts arrived as a direct consequence of the Seventh Directive. The Direc-

tive itself was a rather messy compromise. On the one hand were Member States and influential professional and financial interests within those States that saw the form and content of consolidated accounts as needing to be driven primarily by financial markets and their information needs. On the other hand were Member States without historical experience of accounting regulation applied to consolidated accounts and, in varying degrees, agnostic about their importance. In the case of France, it was accepted that the particular constraints of the PCG as it existed would need to be loosened so as to permit consolidation accounting more in tune with internationally recognised accounting standards and practices. Attachment to the PCG, especially by the tax administration, not to mention the generations of French accountants schooled only in the PCG, remained strong, while the claimed needs of large and especially of listed companies were regarded by the state as a special case, concessions to which should not be allowed to transform the overall structure and content of accounting regulation. The intrusive effects of the Seventh Directive were accordingly quarantined in a 1986 modification to the PCG giving listed companies alone the option to modify their consolidation accounting by adoption of specified alternative accounting treatments not otherwise permitted for use by individual French companies. The alternatives were derived from accounting principles or standards used or advocated internationally, such as last-in-first-out as a basis for inventory valuation or general price-level adjusted accounting. At the same time, member entities of a consolidated group were required to continue to maintain and produce annual accounts in conformity with the PCG.

With hindsight, the 1986 modification to the PCG for consolidated accounts was unsatisfactory in merely tacking onto the PCG an arbitrary selection of alternative accounting treatments for aspects of consolidation accounting. With the advent of the CRC, regulations relating to consolidated accounting have been hived off from the PCG into separate regulation, respectively for commercial companies (99-02), banks and credit institutions (99-07), and insurance companies and provident institutions (00-05). In addition, Law 98-261, Art.6, widened and systematised the issue of alternatives by permitting listed companies to use until end-2002 any internationally recognised accounting standards. However, the principle of the 1986 quarantine still operates to prevent the use of international accounting standards by unlisted company groups for their consolidated accounts or by individual entities, where these differ from French accounting regulations.

Several consequences ensue. Unlisted company groups that might be moving toward listing or wishing to be active in mergers and acquisitions are unable to prepare consolidated accounts on an internationally recognised basis, unless as a private exercise separate from their legally required accounts. The same applies to individual entities on an initial consolidation of

any acquisition or creation of subsidiaries. In other words, a large number of individual entities and company groups are impeded from gaining formative experience with use of international accounting standards.

A further effect relates to the development and diffusion of ideas and analytic techniques related to assessment of financial performance. For example, the financial database service, Infogreffe, provided by the Registres du Commerce et des Sociétés and widely employed in the financial community for financial performance analysis, is restricted to individual entity data and therefore to data not in conformity with international accounting standards. No comparable service exists for consolidated accounts, which, although required to conform to French accounting regulation, may in effect be prepared at this stage in accordance with the PCG as applied to individual entities, IASC/IASB standards, FASB standards or mixtures of the foregoing.

In summary, two sets of accounting law and regulation have emerged, the PCG applicable to all individual entities and unlisted company groups, and what may be termed the law on consolidation accounting, applicable to listed companies in relation to their consolidated accounts. The former retains and entrenches state objectives in which commercial accounting is subordinated to French juridical concepts and priorities for tax administration. Originally conceived as a nationally standardised design for financial accounting sufficient to meet all needs for financial accounting information, subject to approved modification for the circumstances of particular activity sectors, the PCG has now lost its intended universality in the face of irreconcilable demands for consolidated accounts to be drawn up on a different basis. As seen in Section 5, however, the law on consolidation accounting has not at any time been the subject of a thoroughgoing reconsideration of the purposes to be served by consolidated accounts, let alone commercial accounting more generally, in a context of shrinking state direction of risk investment and close control of financial markets.

## 5. Recent Developments in French Accounting law

Although so recently put in place, French accounting law is increasingly subject to two sources of influence. The first arises from economic and financial globalisation and its particular element of international accounting harmonisation. From the time of establishment of the International Accounting Standards Committee, and especially with the accelerated process of international standard setting and associated institutional reform leading to establishment in 2001 of the International Accounting Standards Board, France has been confronted with the example of institutional arrangements and a standard setting process demonstrably more flexible and expeditious than those operating in France prior to the 1996–1998 CNC–

CRC reform. Indeed, it was recognition of the inadequacy of French institutional arrangements for accounting standard setting that stimulated this reform.

The second influence, amounting to a constraint, is the effect of treaty obligations for adoption of EU Directives, within the context of accelerating EU political and economic integration, in itself in part a response to financial globalisation.

### 5.1. THE RISE IN NON-STATE INFLUENCE ON FRENCH ACCOUNTING REGULATION

Within France, the process of accounting regulation and its outcomes reflect the growing influence of non-state interests and demands, with relevant regulatory bodies comprising representatives of the state and its administrative agencies, as well as significant private sector economic and social interests. As previously seen, though the CNC has since inception been made up of members drawn from a range of state and non-state organisations and interest groups, its role has at all times been confined to provision of advice on issues of accounting standardisation and development of accounting standards. As seen in Section 2.2 and Table IV, with the creation of the CRC, the state instituted a more systematic process for giving regulatory effect to accounting standards, with inclusion for the first time of non-state representation in the actual regulatory process.

The composition of the CRC has approximately equal state and non-state representation, with the latter drawn *ex officio* from the accounting and auditing professional institutions, enterprises (in practice, from major corporate groups) and trade unions. This structure is an instance of an independent authority of mixed composition (Raybaud-Turrillo and Teller, 2000; Raybaud-Turrillo, 2001), a type of institutional arrangement that has occurred frequently in France during the last twenty years, especially in fields of activity in which complexity and rapidity of change make direct intervention by the state difficult and relatively ineffectual. For example, financial markets are regulated by the COB, audiovisual transmission by the Comité Supérieur de l'Audiovisuel (CSA), and telecommunication by the Agence de Régulation des Télécommunications (ART), each being of mixed state and non-state composition, creation of which may be regarded as a form of state deregulation. With the CRC, it may similarly be considered that accounting standardisation has entered a phase of deregulation, with its pyramidal structure now open to progressive replacement by a flat structure for approval of CRC regulations by ministerial order, not unlike the earlier phase of accounting regulation in France prior to the emergence of accounting law.

### 5.2. RECOGNITION OF INTERNATIONAL ACCOUNTING STANDARDS

The need in France to recognise international accounting standards directly reflects the increasing standing of IAS/IFRS in international commerce and investment, in particular in the context of securities markets. Recognition of this need explains the importance attached in France to having a direct French input to the IASB programme and process. It also raises the issue of absorbing more fully the dominant conceptual framework and discourse of the IASB process (Standish, 2003).

As standards produced by IASC/IASB, bodies that are without state or international treaty recognition, IAS/IFRS are without national legal effect unless adopted or endorsed by the state. Although prior to the end of the 1990s, France had not shown itself disposed to endorse general application of international standards, Law 98–261 denoted a limited change of attitude in this regard. By its Article 6, listed companies were permitted to depart from French accounting regulations relating to consolidated accounts once they adopted international accounting standards under conditions to be set by the CRC, with the proviso that those standards be translated into French, be in conformity with EU law and be approved by CRC regulation.

The effect of Article 6 was to open the pathway for application by company groups of IAS/IFRS, notwithstanding these strict conditions, given the commitment of the French accounting profession to undertake their translation into French and IASC/IASB willingness to authorise translated versions of its standards. On the other hand, Article 6 in effect excluded the future possibility of French company groups basing their consolidated accounts on US GAAP, given the unavailability of officially authorised translated versions of FASB standards and other components of US GAAP. The point was moreover made explicitly in Article 6, which stated that listed French companies could no longer apply generally recognised accounting standards that did not meet the prescribed conditions after 31 December 2002. Nevertheless, Article 6 has not yet been applied, for want of the necessary decree of application and, if it were to be applied, would now only be so within the context of the new European Union strategy for accounting standardisation.

In the absence of an accounting standard setting body for the EU and given the need felt by the European Commission, EU Member States and powerful financial interests within the EU to exert influence over future activities of the IASB, the Commission in 2000 adopted a new strategy for accounting standardisation within the EU. This strategy has been put into effect through Regulation EC 1606/2002, by which all EU-listed companies are required to prepare consolidated accounts in conformity with IAS/IFRS for financial years starting on and after 1 January 1 2005 (Article 4). By exception, Member States may defer the date for application of Article 4 to 1

January 2007 in the case of companies only having EU-listed debt securities and of companies listed in a non-member state and already using internationally accepted standards (Article 9). Related to this, application by the European Commission of IAS within the EU is to follow the procedure laid down in Decision 1999/468, whereby the Commission is to be assisted by the Accounting Regulatory Committee (ARC), a Committee comprising Member State representatives. In the case of France, its ARC representative is to be the CNC President. In turn, the ARC is to be supported at a technical level by the non-official European Financial Reporting Advisory Group (EFRAG), established in 2001 by the European accounting profession, major accounting firms, enterprises, stock exchanges, financial analysts and other interested groups. EFRAG will particularly monitor the IASB programme and satisfy itself that IASB standards and interpretations are in conformity with European law. The result of these measures is to institute for the EU a mechanism for integration of international standards by associating private and public law capabilities.

Implementation of this new EU strategy unmistakably reduces the prerogatives of Member State governments in regard to accounting regulation, which is now to be restricted to annual accounts of individual companies and consolidated accounts of unlisted companies. Even in that regard, Article 5 of Regulation EC 1606/2002 gives Member States the option of permitting or requiring that annual accounts of individual companies and consolidated accounts of unlisted companies be in conformity with IAS, thereby opening the way to application of IAS in all circumstances.

For the short and medium term, the CNC has proposed that annual accounts of companies continue to be drawn up according to French national standards, which will be amended to bring them closer to IAS/IFRS. As regards consolidated accounts of unlisted companies, the CNC proposes that they may choose between French national and international standards. By taking this path, the CNC is implicitly redefining its function. In the future, its principal role will be to set out and advance the positions adopted by France in the changed international context. It will furthermore maintain its standardising role for annual entity accounts with the understood aim of achieving convergence of French national standards with international standards.

## 6. Conclusion

Although France is a country of written law, its regulation of financial accounting for long remained relatively normalised, with the PCG as the sole regulatory instrument, notwithstanding its limited legal significance and authority. It was not until the 1980s that French accounting regulation was organised in a manner conforming to the French conception of what

constitutes written law, namely statute, application decree and ministerial order. Though accounting regulation was now endowed with this classic formulation, its timing and content failed to recognise changing economic and political circumstances and, notwithstanding its recent adoption, is already in the process of being dismantled.

In the future, it will no longer be the state which will orchestrate French accounting standardisation but a mixed public–private body, the CRC created in 1998, with further French accounting law by way of ministerial orders approving CRC regulations. On this view, laws and decrees adopted in the 1980s may constitute obstacles to the application of CRC regulations where incompatible with the latter. Accordingly, abrogation of existing French accounting law may become necessary, signalling a move away from its hierarchical structure and the retreat of the state from the field of accounting standardisation.

In addition, in application of the new EU strategy for accounting standardisation, the development and issuance of IAS/IFRS directed to consolidated accounts will bypass French accounting standardisation, with the national standard setting process limited to ratifying standards accepted by the ARC. This raises the issue of the future role for the CNC, possibly limited to accounting standardisation to be applied to individual entity accounts, for as long as these remain bound to the requirements of the tax administration. Evolution of the role of the CNC along these lines would amount to a return to its original role in the early years after World War II, when the CNC was seen as a means for regulating financial accounting in the service of national income statistics and income tax administration. It would also represent a defeat for attempts to preserve the CNC as a broadly-based standard setting body with competence in relation to conceptions of the role of financial accounting in the service of financial investment and securities markets generally.

This evolution of French accounting regulation in the end only illustrates the more general evolution of company law in France and no doubt elsewhere, linked as it is to economic and financial globalisation operating through the privatisation and internationalisation of law making. From this viewpoint, the role effectively assigned to EFRAG, a private body, in EU accounting standardisation is a perfect example.

## Note

[1] Stolowy, 2001, 5, refers to a Spanish law of 1594 for broadly similar purposes.

## References

Colasse, B. and P. Standish: 1998, ''De la réforme 1996–1998 du dispositif français de normalisation comptable'', *Comptabilité-Contrôle-Audit* 2: 5–28.

Colasse, B. and P. Standish: 1998, ''State versus market: Contending Interests in the Struggle to Control French Accounting Standardisation'', *Journal of Management and Governance* 2(2): 107–147.

Comité professionnel de doctrine comptable [Cailliau Report]: 1996, ''Cadre conceptuel de la comptabilité en tant que système de représentation publique de la situation économique (et financière) de l'entreprise'', *Revue française de comptabilité* (May): 17–51.

Compagnie Nationale des Commissaires aux Comptes and Ordre des Experts-Comptables: 2002, *Developments in French Accounting and Auditing* 2000 (Paris: Ordre des Experts-Comptables).

Dessertine, P.: 1997, ''La commission de contrôle des marchés dans la normalisation comptable'' *Comptabilité-Contrôle-Audit* 1: 69–87.

Ledouble, D. and F. Windsor: 1977, ''Existe-t-il un droit comptable?'', *Revue française de comptabilité* pp. 575–594.

Raybaud-Turrillo, B.: 1997, *Le modèle comptable patrimonial : les enjeux d'un droit comptable substantiel* (Paris: Vuibert).

Raybaud-Turrillo, B. and R. Teller: 2000, ''Droit et comptabilité'', in B. Colasse (ed.), *Encyclopédie de comptabilité, contrôle de gestion et audit* (Paris: Economica), pp. 611–625.

Raybaud-Turrillo, B.: 2001, ''La juste valeur : un grain de sable dans les processus de normalisation comptable ?'', in J.-F. Casta, and B. Colasse (eds.), *Juste valeur : enjeux techniques et politiques* (Paris: Economica), pp. 239–269.

Standish, P.: 1997, *The French Plan Comptable* (Paris: Ordre des Experts-Comptables, in conjunction with The Institute of Chartered Accountants in England and Wales).

Standish, P.: 2003, ''Evaluating national capacity for direct participation in international accounting harmonization: France as a test case'', *Abacus*, 39/2.

Stolowy, N.: 2001, *Les délits comptables* (Paris: Economica).

Terre, F.: 1996, *Introduction générale au droit* (Paris: Dalloz).

Viandier, A. and C. de Lauzainghein: 1993, *Droit Comptable* (Paris: Dalloz).