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**The impact of the reform on economic law**
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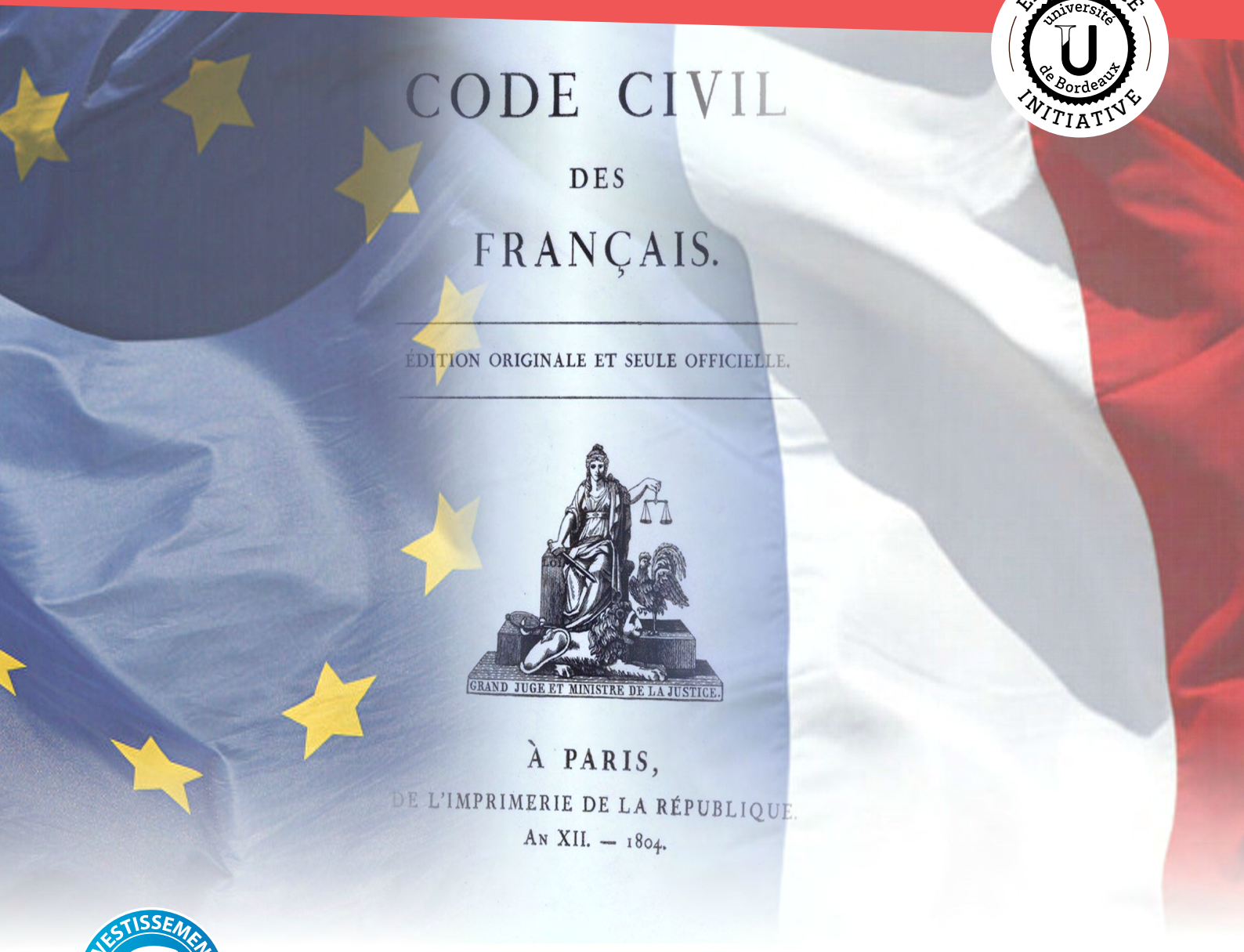


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## The Impacts of the Reform

### The Impact of the Reform on Economic Law

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What is the impact of the reform of the law of obligations and contract law on French economic law?

The question calls for consideration to be given to the rules of economic law which concern exchanges between economic actors: producers, distributors and consumers, which traditionally characterise economic activity (1). In this sense, economic law covers the rules of commercial law with the complement of competition law, as well as consumer law with the complement of civil law provisions relating to acts concluded on a professional basis (2).

At first glance, the impact of the reform, understood as the effect that can be expected in the application but also the evolution of these rules of economic law, appears very limited for two reasons.

The first, highlighted by all commentators, is precisely that the reform, in many of its provisions, has been strongly inspired by the evolution of economic law.

This development took place on the basis of the finding that the provisions of ordinary law were insufficient to protect the weak contracting party in economic relations in the face of a party in a position of strength. This led to the emergence of special consumer protection rules in the 1970s, which gradually became consumer law (3); as well as judicial solutions intended to protect certain professionals – mainly distributors – in their contractual relations with other professionals – mainly their suppliers or the promoters of distribution networks (4). Then, from the 1980s onwards, legislative provisions aimed at sanctioning more widely and severely those abuses committed by professionals in a position of strength against their professional partners in an economic situation of relative weakness (5).

The ordinary law appeared to be overwhelmed by this development which did not affect it insofar as it concerned only relations governed by economic law. Thus the 2016 reform considered it opportune to join economic law by adopting the notions of "imbalance", "dependency", "abuse", "loyalty" that had been put in place to justify controlling those relations (6). However, the generous approach – as clearly expressed by its proponents (7) – is debatable. Indeed, without advocating egoism or even cynicism in contractual relations (8), is it wise to treat these generally from the privileged point of view of imbalance, dependence, and misconduct? To take the example of standard-form contracts, now included in the Civil Code at Article 1110, why would defining them by contrast to bespoke contracts, on the presumption that the absence of negotiation (expressed negatively by the use of the expression "without negotiation") make them unbalanced (as also assumed by Article 1171 of the Civil Code), when on the contrary it could be found, owing to the uniformity of the pollicitation, to be more balanced than a bespoke contract (9)? Would it not have been more consistent with the economy of ordinary law to base the treatment of contractual

relations on a postulate of balance, thus calling on each party to behave responsibly (as the "*bon père de famille*" (literally "good head of the family", meaning to act with due diligence) of yesteryear, or the "reasonable person" today? In this respect, one wonders how the new standard set at Article 1188 of the Civil Code ought to be understood: as a person acting rationally within the meaning of the classic standard of economic law – "*homo economicus*" – inspired by the notion of "reasonable" in American law, or the modern incarnation of the diligent "good father"?), so as to reserve the measures protecting a contractor only to the conventional assumptions of alteration of consent and excesses in the event of non-performance or as a sanction for non-performance, and leaving to special laws – such as, in particular, consumer law, the law on restrictive practices, labour law or insurance law – the task of settling the specific imbalances in the contractual relations that fall within their remit?

Should ordinary law sacrifice to the purely or at least essentially economic consideration of contractual relations which today tends to impose itself in all spheres of social life and marks the triumph of the market society (in health matters, for instance)? Is there not a danger in integrating into ordinary law various concepts and mechanisms conceived solely for relations between professionals, situated in the context of the market and subject furthermore to the particular requirements of national and European economic and social policies (10)? Does economic law – a special law – not have its reasons, of which general law is unaware and which it ought only to consider with great reserve?

The second reason for the weak impact of the reform on economic law is that the latter's provisions on contracts and obligations are distinctly different and increasingly removed from ordinary law. This specific character of economic law is not only limited to economic relations and sanctions – which are essentially repressive and administrative – but also to its authoritative inspiration, which is reflected in a very cumbersome kind of formalism (11) and a framework of stipulations likely to be agreed upon (12), thus paradoxically leading to a restriction of contractual freedom where it seemed the most necessary and least dangerous in the light of the principles of freedom of trade and industry and freedom of competition.

Secondly, the impact of the reform should not be underestimated, given the eminent situation of the ordinary law in both its suppletive and imperative roles. However, here lies the fundamental and main question of the relationship between civil law, ordinary law and economic law, which is a special law.

In principle, as has been clearly pointed out, economic law as a special law must "drive out" civil law (13).

The solution is supported by the legal *cordon sanitaire* created around certain provisions of economic law by the institution of courts specialising in their application (Articles L 442-6 III and D 442-3, Commercial Code).

It is the result, in broad terms, of the adage *speciala generalibus derogant* (14), echoed in Article 1105 of the Civil Code which, having stated that "*rules particular to certain contracts are laid down in the provisions special to each of these contracts*", goes on to specify that "*the general rules are applied subject to these particular rules*". The proposition, behind the evidence of the contrast between general and particular on which it rests, nevertheless raises a number of questions here.

Firstly, what is meant by "*rules particular to certain contracts*"? Are these the rules governing the "special contracts" of the Civil Code, or the rules governing contracts subject to a special regime: civil contracts, of course, but also consumer contracts, contracts between professionals, contracts of employment, insurance, etc., or rules relating to special laws applicable to certain contracts, such as the law of restrictive practices? In the field of economic law, in the rather narrow sense adopted above, the special rules governing contracts specific to economic activity will be considered here as "special" rules.

Secondly, if it is to be understood that the special rule will prevail over the general rule in the event of contradiction, it is appropriate to assess the various scenarios of contradiction.

In particular, where the general provision goes further than the special provision, can we consider it compatible because it does not call into question the latter provision or, on the contrary, because there is a contradiction precisely because the rule should be strictly applied owing to its scope and purpose? For example, is the correct performance of the obligation of pre-contractual information required in certain business relations by Article L 330-3 of the Commercial Code - which sets out very precisely the elements to be disclosed - sufficient to allow the debtor to avoid any complaint of breach of the duty to inform referred to more generally by Article 1112-1 of the Civil Code? The answer may be in the negative on the grounds that the general requirement of information cannot be limited by restrictive provisions; it may, however, be in the positive on the grounds that the special law ought to take precedence in order to comply with ensure that its rules are appropriate to the context which is their own. In support of the latter position, it may be noted that the world of economic relations, and more particularly of professionals, calls for special treatment (15), now accommodated by economic law which aims to reconcile, on the one hand, harshness, even duress, a legitimate and sometimes necessary condition for real competition between professionals subject to the law of the "market" law itself referred to as a "law of the jungle"; and, on the other hand, loyalty and even solidarity, a just and legitimate condition for the pacification of social relations, which the law has generally the aim of ensuring, owing to its primary task of protecting the weak against the strong (in accordance with Lacordaire's formula, which actually evoked divine law).

Lastly, in view of the contrast between ordinary and special law, and whatever the interpretation of Article 1105 of the Civil Code, should the impact of the reform be considered through the examination only of those rules of ordinary law and of economic law having the same purpose, so that the new and numerous rules of ordinary law which may concern economic relations but which have no equivalent or correspondent in economic law cannot be regarded as affecting the latter, or also include the examination of the rules of general law relating to business relations and thus complementing the rules of economic law without being contrasted with them? Taking into account not only the usefulness of a number of new provisions in economic relations but especially their special relevance to the needs of professionals, their impact on economic law will also be considered insofar as they are such as to bolster its implementation.

The impact of the new provisions of civil law on provisions of economic law will therefore be assessed on the sole condition that the special rule of economic law does not clearly exclude the general rule of general law because of their full identity of purpose and their indisputable contradiction.

The reform, by its inspiration, appears then to be of a nature as to reinforce economic law (I) but, by its applications, can affect it in certain circumstances (II).

## I. The reform reinforcing economic law

The reform reinforces economic law in two ways, first by supplementing (*praeter*) the provisions that develop relations between economic actors (A), then by taking (*secundum*) some of them (B).

### A. *Praeter*

Many new provisions, insofar as they are of general scope and application, also relate to relations falling within the scope of economic law. In this respect, they are particularly useful in that they confer, in a complementary or subsidiary manner, greater effectiveness to the agreements which relate to it, to such an extent that they often seem to have been conceived for business relations; professionals being, moreover, better placed than private individuals to implement them in practical terms.

1. This is true of the new negotiating provisions. They complement those which had for the first time governed this process in certain relations between suppliers and distributors or professional buyers (Article L 441-6 et seq. Commercial Code) and between promoter and network members (Article L 330-3 Commercial Code). In particular, the confidentiality provisions (Article 1112-2 Civil Code) are very useful in business relationships where the requirement is not always imposed or formally agreed, when it is often strategic. Similarly, the possibility now offered to question the beneficiary of a pre-emption agreement on his intention to avail himself of it (Article 1123, para. 3 Civil Code) is a source of strength and even security in the realisation of certain business acquisitions, as shown by the abundant litigation arising from the acquisition of the goodwill of a distributor who is a member of a network, by a third party assignee, in breach of the pre-emption agreement agreed between the distributor (the transferor) and the promoter of the network (the beneficiary of the agreement) (16).

2. The same applies to the new provisions relating to the performance of contractual obligations which, as part of a pragmatic approach, are intended to produce as far as possible the effects expected by each party to the contract; this particularly meets the needs of professionals who are always located in a chain and a stream of relationships whose reliability, or even viability, depends on fulfilling commitments made upstream and downstream. Whether they are intended to ensure the performance of the contract as agreed, with the exception of non-performance (Article 1219 Civil Code) especially where it is invoked preventively (Article 1220 Civil Code) and the further performance in kind, now privileged and facilitated (Article 1221 Civil Code, with however the risk of misconduct - for profit - committed strategically by a professional deliberately limiting his performance and reserving the argument of the manifestly excessive cost of the additional performance in order to be exempted from the same), or to restore the balance originally envisaged, with a reduction of the agreed price, in the event of an incomplete but nevertheless acceptable performance (Article 1223 Civil Code), or with an adaptation of the agreed terms, in the event of unforeseen events (Article 1195 Civil Code, a mechanism which could reinforce the renegotiation requirement at Article L 441-8 of the Commercial Code, beyond hardship clauses (17)), or to obtain compensation for the consequences of non-performance (Article 1218 Civil Code) or even the termination of the contract (Article 1224 Civil Code).

3. This is also true of the new provisions relating to the termination of the contract with the affirmation of the freedom to refuse to renew a contract (Article 1212 para. 2 Civil Code) – which is the source of much litigation in economic matters despite of its constant recognition in commercial case law (18) – and also the provision made for the simultaneous lapse of one or more other contracts which may be dependent on the contract coming to an end (Article 1186 Civil Code; this corresponds to the system which, since August 2016, has resulted in the termination of network agreements: Article L 341-1 Commercial Code); this application of lapses also reinforced the solution generally adopted by the courts in sanctioning exclusivity contracts falling within the scope of Article L 330-1 of the Commercial Code which have been concluded for a period exceeding ten years (19), again confirming the principle whereby contractual clauses governing settlement of disputes, a confidentiality clause and a non-compete clause (Article 1230 Civil Code, which has already been admitted in case law), which are more usual in business than in non-professional relations.

B. *Secundum*

The reform also and more obviously reinforces economic law by formally adopting some of its provisions or measures (1); however, this paradoxically calls for a nuanced assessment insofar as it also marks the limits of that reinforcement (2).

1. Measures hitherto specific to economic law but resulting from custom or case law are now integrated into ordinary law and henceforth codified. This applies, for example, to the possibility of replacement without prior judicial authorisation (Article 1222 Civil Code, unlike former Articles 1143 and 1144 of the same Code, which required prior judicial intervention), which is a measure perfectly adapted to the rapidity and implacability of business relationships (20), and the application of which is therefore reinforced.

Concepts also specific to economic law have been taken up and consequently enshrined in the reform:

- The notion of "framework contract" covered by Article L 441-7 of the Commercial Code and elevated to a new category of contracts; which contract is defined at Article 1111 Civil Code as the "*an agreement by which the parties agree the general characteristics of their future contractual relations*".

- The notions of "general conditions" and "special conditions" to which Commercial Code Article L 441-6 refers, and referred to in Civil Code Article 1119 with the twofold objective of neutralising "incompatible clauses" in the event of discrepancy between the general conditions invoked by each party and of affirming the primacy of special conditions over general conditions.

- The notion of dependence formally referred to at Commercial Code Articles L 420-1 and L420-2, and implicitly in Commercial Code Article L 442-6 (particularly Article L 442-6, I, 2 °, by the expression "*subjecting or seeking to subject*"), and reiterated at Civil Code Article 1143 to sanction the duress that would constitute the exploitation of such a state.

- The notion of "significant imbalance" referred to at Article L 442-6- I, 2 ° Commercial Code and reiterated at Article 1171 Civil Code to deem unwritten those clauses that would create such an imbalance between the rights and obligations of the parties.

It is, however, surprising, even disturbing, that these notions - which originated in the field of economic law to respond specifically to the needs of business practice - are now used in the field of ordinary law, where general conditions or standard-form contracts are not usually offered, framework contracts are not concluded or states of dependence established between the parties. The question then arises as to whether these borrowings constitute, beyond their mere revival, a form of "civilisation" of economic law by ordinary law.

2. The adoption of notions and measures of economic law by the reform does not always work in exactly the same way and thus raises questions as to its real scope.

Thus, the concept of framework contracts to which Civil Code Article 1111 refers does not correspond to that used at Commercial Code Article L 441-7. The framework contract under ordinary law assumes the conclusion of subsequent contracts and lays down the sole requirement that their "*general characteristics*" be indicated; whereas the framework contract under economic law requires the conclusion of subsequent contracts and lays down the requirement that all elements essential to their conclusion be stated (in particular: "*the terms of the transaction ... including price reductions*").

The general conditions to which Civil Code Article 1119 refers are in principle neutralised by contrary general conditions issued by the other party, whereas the general conditions at Commercial Code Article L 441-6, considered as the starting point of any negotiation, are binding in the absence of negotiation, in the face of conflicting general conditions coming from the other party requesting goods or services.

The economic duress to which Civil Code Article 1143 refers would appear, through its position in the Code, to be a defect of consent (21), while the condition of obtaining a manifestly excessive advantage would instead constitute a defect in the contract (22) based on the simple presumption of exploitation of the state of dependence (23).

The "significant imbalance" to which Civil Code Article 1171 refers without further clarification corresponds to that which can exist between the ordinary consumer and the professional, i.e. the subjective imbalance to which French consumer law refers (Article L 132-1 Consumer Code); or that which can exist between two professionals of unequal strength, i.e. the objective imbalance covered by the law on restrictive practices (Article L 442-6, I, 2 ° c., a well-known imbalance deliberately accepted by the victim who prefers to enter into the contract on the basis of the conditions imposed than not to enter into the contract at all); or a different consideration given its inclusion in the ordinary law of contracts? In other words, what should the criteria be for assessing this imbalance: economic? Social? Personal? Depending on the choice made, either the economy of the relationship through the whole of the agreement(s) between the parties or the conditions under which the contract was concluded or the social or personal situation of each party will be given precedence.

The differences noted could lead to considerations and solutions that are distinct from those of economic law and able to change the latter so that, behind the reinforcement provided by the adoption of some of its notions and measures by the reform, economic law would find itself disrupted in its application.

## II. The reform disrupts economic law

The reform can disrupt economic law in two ways: first, by going beyond its solutions (*ultra*) and thus changing their application (A); and second and more seriously, by replacing them or at least by placing them as alternatives (*contra*) and thus excluding their application (B).

### A. *Ultra*

In its suppletive function, civil law – which is ordinary law – may change the normal application of rules or solutions of economic law by supplementing (1) or limiting (2) them.

1. By adopting certain solutions from economic law, the reform sometimes supplements those solutions the application of which could prove disruptive in business relations.

Thus, the reform has enshrined a contractual obligation to provide information on all "*information which is of decisive importance for the consent of the other*" (Article 1112-1, Civil Code). Can we take the view that the delivery of the information to which Commercial Code Article R 330-1 frees the network promoter from this obligation or, on the contrary, does not exempt it from providing additional information insofar as it can be described as being "of decisive importance"? The question was asked about forecasts of franchise candidate activity (24). On this specific point, it calls for an answer in the negative (25). It could call for an answer in the affirmative for other items of information not covered by Commercial Code Article R 330-1 but which would nevertheless be of decisive importance for the franchisee's consent, in view of the economy of the franchise agreement in question; unless it is considered that the provisions of Commercial Code Articles L 330-3 and R 330-1 are specific to relations established between professionals, i.e. contractors who are sufficiently informed or even subject to a duty to inquire (26) (the obligation to provide information at Article 1112 of the Civil Code being, moreover, incumbent on both parties) is strictly applicable and excludes the application of ordinary law.

The reform also incorporates the concept of framework contracts (Article 1111 Civil Code) with the aim of codifying existing case law on unilateral price fixing in so-called implementation contracts (see above). Where the price resulting from such unilateral price-fixing is challenged by the party who must pay that price, Article 1164 of the Civil Code provides that the party fixing the price must justify the same. In relations between a supplier and a buyer who are professionals in economic law, is this justification now also required? The answer should be in the affirmative, although case law has not demanded it thus far. Could the requirement be ruled out by agreement between the parties? The answer should be in the negative, given the formal link between the possibility of unilateral price fixing and the need for its justification (27).

2. The reform has substantially amended some of the solutions applied up until now in ordinary law and in economic law. These amendments will have a disruptive effect in economic law insofar as they appear to be unsuitable for business relations.

Thus the question of the validity of termination clauses of general application no longer seems to arise with the requirement set out at Article 1225 Civil Code: "*A termination clause must specify the undertakings whose nonperformance will lead to the termination of the contract*". Challenging an unclear or vague clause is understandable in relations governed by ordinary law; it is still necessary to define the degree of precision required. For example, can a clause covering "any performance" be deemed unclear in contracts that stipulate or involve limited obligations? In

general, should this type of stipulation or its implementation be considered on a case-by-case basis? Moreover, even if the rules are widely applied, it would be excessive in business relationships where the parties, in their capacity as professionals and on account of the professional nature of their activity, may have a greater need for the full and proper performance of agreed obligations, so that the reference to any failure, dispensing with having to make an inventory of all failings likely to affect the agreed economy of the relationship, should suffice to form the basis of the termination of the contract; subject, of course, to the absence of any significant abuse or imbalance reviewed by the courts (Commercial Code, Article L 442-6, I, 2).

The reform also introduces a new general rule interpreting a contract in favour of the debtor and no longer, as in the past, against the stipulator (Civil Code, Article 1190, which provides that standard-form contracts should be interpreted against the party proposing it, i.e. the stipulator). Again, such a solution would appear to be unsuited to contracts governed by economic law. Indeed, in business relations, the debtor is often in a position of strength, as is shown in particular by the treatment of the situation of the unpaid supplier vis-à-vis the big retail debtor by Article L 442-6, II of the Commercial Code, which sanctions the prohibition by the distributor to the supplier voluntarily to assign the purchase price of the goods supplied to a third party (Consumer Code, Article L 133-2).

The disruption of economic law can also be caused by the changes brought to the scope of its rules rather than to their content, i.e. their chosen field. For example, economic duress can now be penalised in business relationships, although they are not covered by Article L 442-6 of the Commercial Code, either because one of the parties is not a "*producer, trader, manufacturer or person recorded in the trade register*" (example of a franchisee engaged in a civil activity) or because he is not a "partner" in the trade, in the sense of "*a contracting party with whom a relationship has already been established*" (28).

By applying those of its provisions that are similar to those of economic law, civil law makes it possible to extend the solutions of the latter beyond their usual scope; this constitutes a disturbance when their perimeter has been precisely delimited in order to meet only the needs of certain economic activities.

Moreover, by widening that perimeter, there begins a process of dominance of the general rule of ordinary law over the special rule of economic law and the alignment of the solutions of commercial case law with the often less stringent rules of civil case law; civil courts being less sensitive than commercial courts (particularly specialised courts - see above), to the economic stakes and, above all, conduct sanctioned by economic law than to the (often justifiable) intentions of their author (29).

Competition between the two schemes can also radically disrupt economic law by calling its application into question.

### B. *Contra*

The reform may lead to the exclusion of economic law either through competition from (1) or the substitution of ordinary law (2).

1. Certain provisions arising from the reform may be applied as an alternative to those corresponding provisions under economic law, where the parties both enter into the contract as professionals.

Such an application appears to have no disruptive effect when the rules of economic law are more stringent than those of ordinary law (which is generally the case in consumer law as in the law on restrictive practices), since the party benefiting from it will seek the application of the former category, especially when this is done by a specialised court considered to be more interventionist (30). However, some differences in the implementation or the outcomes obtained will allow the applicant to choose the civil route to the detriment of economic law.

This concerns Article 1143 of the Civil Code, which sanctions economic duress in conditions similar to those under Article L 442-6, I, 2° of the Commercial Code and Article L.121-8 of the Consumer Code (see above). On the one hand, it would appear that, owing to the different wording of Articles 1130 (general rule: "*Mistake, fraud and duress vitiate consent where they are of such a nature that* [...] *one of the parties would not have contracted or would have contracted on substantially different terms*") and 1143 Civil Code (special rule: "*There is also duress where* [...] *the latter would not have agreed*
[to the contract]"), the implementation of Article 1143 Civil Code assumes that the undertaking would not have been given in the absence of duress and not that it would have been given on "substantially different" terms, the latter being the most frequent; however, on the other hand, the sanction under Article 1143 Civil Code is the annulment of the contract concluded under duress, whereas the sanction under Article L 442-6, I, 2° of the Commercial Code is simply the bringing into play of the liability of the party employing duress.

This also concerns Article 1171 of the Civil Code, which sanctions imbalance in certain circumstances and could apply in business relations to the detriment of Article L 442-6 I, 2 ° of the Commercial Code (it being specified that if two non-professionals enter into a contract, only Article 1171 of the Civil Code will apply; and if a consumer contracts with a professional, only Article L 132-1 of the Consumer Code will apply). Again, on the one hand, the Civil Code excludes any review of the lesion, whereas the Commercial Code allows it (31); on the other hand, Article 1171 of the Civil Code provides as the sole condition that the agreement be a standard-form contract, whereas Article L 442-6, I, 2 ° of the Commercial Code requires the subjugation of the contracting party (32) and deems unwritten any unfair clause, where under economic law the person who put the clause forward is held liable.

2. Lastly, the adoption in ordinary law - viewed as the "compass" of special laws (33) - of concepts or solutions under economic law could lead to the substitution and therefore the elimination of the provisions of the latter by those resulting from the reform.

The process could be promoted or even accelerated by the need for simplification arising from the overly redundant and often repetitive provisions accumulated over the many reforms of consumer law and the law on restrictive practices. As an illustration, it was noted that "*the recognition of the general duty of good faith in the Civil Code ... would make it possible to sanction other practices that are not listed in the Commercial Code and would perhaps prevent the legislative frenzy surrounding Article L 442-6 of the Commercial Code*" (34).

Ultimately, can it still be argued that economic law overcomes the inadequacies of ordinary law in the treatment of obligations and contracts? Is it not becoming a fussy and authoritative regulation applied to increasingly specific economic relations, and therefore a law increasingly removed from the major principles that must govern all contractual relations?

And is it not then civil law which, thanks to the reform, is able fully to recover its function of ordinary law by formulating the general rules applicable to contractual relations including those which come under economic law?

Notes

(1) L. Vogel, *Traité de droit des affaires, du droit commercial au droit économique*, t1, 20 ème ed., LGDJ, 2016, n°874; rapp G Farjat, *Droit économique*, PUF, 1982.

(2) D. Ferrier, *Le droit de la consommation, élément d'un droit civil professionnel*, in *Mélanges J Calais-Auloy*, Dalloz, 2004, p 373.

(3) cf. the presentation of this development: G. Cas & D. Ferrier, *Traité de droit de la consommation*, PUF, 1986.

(4) cf. the regular survey of such decisions concerning business relations, in the "Obligations" section of the *Revue trimestrielle de droit civil*.

(5) D. Ferrier, *Les rapports successifs et leurs effets*, in *Pratiques dans la distribution ; la réforme impossible*, LPA, 1er juillet 2005, n°130.

(6) L. Vogel, *Traité de droit économique*, t1, Lawlex Bruylant, 2015, n°539 et seq.

(7) D. Mazeaud, *Loyauté, solidarité, fraternité, la nouvelle devise contractuelle ?*, in *Mélanges F Terré*, 1999, p 603, raises the small scope of these references in relations between economic actors in a situation of competition and therefore not inclined to compassion for anyone other than themselves.

(8) From *caveat emptor* to *dolus bonus* and including *de non vigilantibus non curat praetor*, cf. case law cited in G. Cas & D. Ferrier, *op cit*, n°387.

(9) D. & N. Ferrier, *Droit de la distribution*, 7ème éd Lexis, 2014, n°413.

(10) G. Cas & D. Ferrier, *op cit*, n°200 s.

(11) cf. the "general" prescriptions at Articles L 441-6 and L441-7; cf. N Ferrier, *De l'influence du droit des contrats sur le droit des pratiques restrictives de concurrence*, Concurrences, 2016-1, p21, n°48 s.

(12) Or even the challenges brought to some freely agreed stipulations, cf. Art L 442-6, I 5° used by the courts to sanction sudden terminations arising in strict compliance with the agreed notice period: N. Ferrier, *Violence économique et droit de la distribution*, in *La violence économique*, dir Y. Picod, and N. Mazeaud, Assoc Capitant, t XXI, Dalloz, 2017, n°52.

(13) M. Chagny, *Droit commun et droit spéciaux*, in *Réforme du droit commun du contrat et droit de la distribution*, dir N. Dissaux et G. Chantepie, RLDA, 2016, p 9.

(14) In this respect, see Cass civ 1, 9 March 2016, n°15-18 899.

(15) As is shown, moreover, by civil law itself which has always applied a specific - and more rigorous - set of rules to certain civil contracts where these are concluded with a professional: D Ferrier, *Le droit de la consommation, élément d'un droit civil professionnel*, in *Mélanges Calais-Auloy*, cited above.

(16) D. & N. Ferrier, *Droit de la distribution*, cited above, n°754.

(17) cf. Y. Lequette, *De l'efficacité des clauses de hardship*, in *Mélanges C Larroumet*, Economica 2010, p 267.

(18) D. & N. Ferrier, *Droit de la distribution*, cited above, n°686.

(19) Com 10 February 1998, Dalloz 1998, somm p 335, obs DF.
(20) cf. M. Pédamon & H. Kenfack, Droit commercial, 4éme ed Dalloz, 2015, n°727.
(21) Or, more specifically, an induced lesion (*lésion provoquée*), as inspired by the approximation with induced mistakes (*erreur provoquée*), cf. Th Revet, *La violence économique dans la jurisprudence*, in *La violence économique*, cited above, p 23.
(22) D. Mazeaud, *La violence économique à l'aune de la réforme du droit des contrats*, in *La violence économique*, cited above, p 30.
(23) H. Lécuyer, *Rapport de synthèse*, in *La violence économique*, cited above, p 128.
(24) S. Meresse, *Synthèse*, in *Les impacts de la réforme du droit des contrats sur les réseaux de distribution*, coll Paris 2016, LPA – forthcoming.
(25) D. Ferrier, *obs Panorama concurrence et distribution*, Dalloz 2017, p 889.
(26) P. Jourdain, *Le devoir de se renseigner*, Dalloz 1983, p 139; the obligation to provide information is incumbent on both parties pursuant to Article 1112 of the Civil Code.
(27) cf. D. Ferrier, *Le contrat cadre*, in *Mélanges Ph Neau-Leduc*, forthcoming.
(28) In this sense, see Aix 13 June 2014, n°12/21625; Lyon 10 May 2012, n° 10/08302; avis CEPC, n°15-03.
(29) As is illustrated by the difference between the strictly objective application of condemnations *per se* inveighed against those abuses specifically targeted – cf. for instance, in matters involving abuse in negotiations: Article L 442-6, I 3° and 4° of the Commercial Code and the subjective assessment of "good faith" in the formation and performance of contracts: Article 1104 of the Civil Code.
(30) "Judicial interventionism exceeds that which usually arises from ordinary law": N Ferrier, *De l'influence du droit des contrats sur le droit des pratiques restrictives de concurrence*, in *Concurrences* n°1 2016 n°51, on amendments to stipulations imposes by the court.
(31) In this sense, Com 25 January 2017, n°1523547, *Lettre de la distribution* February 2017 obs N Eréseo
(32) The two conditions are not always equivalent; cf. S. Bros, *De l'influence du droit des pratiques restrictives de concurrence sur le droit des contrats*, in *Concurrences*, 2016-1, n°19 and N. Ferrier, cited above, ibid. n°51.
(33) M. Chagny, *Droit commun et droits spéciaux*, cited above, p 12.
(34) S. Bros, *De l'influence du droit des pratiques restrictives de concurrence sur le droit des contrats*, cited above, n°9.