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# The Role of Planning Contracts in the Conduct of French Industrial Policy

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and  
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Planning contracts are in principle legally enforceable agreements between a government and public or private corporations, devised within the framework of a national plan and used to implement economic strategy. Many governments use contractual agreements with enterprises as an instrument of industrial or social policy; a recent example in the United States (U.S.) is the Chrysler rescue. Several western capitalist economies, notably France, employ indicative planning systems to build and implement medium-range national economic strategies. In recent years, proposals have emerged in France and elsewhere to link government industrial aid through contracts to the achievement of specific performance criteria related to broader national goals. Our aim in this paper is to evaluate this potential tool of industrial policy conceptually and through French experience with a contractual planning system.

The success of the Chrysler rescue in the U.S. highlights the advantages of conditionality in industrial subsidies and argues for a more systematic approach to industrial policy. The conditions attached were fairly strict and were met. Proponents of other rescue schemes have become increasingly aware of the need to tie grants to performance within a tight time schedule. At the same time, the case history of Chrysler does not suggest an adequate rationale for the rescue of some firms rather than others. Such economic intervention requires the formation of industrial policy goals against which any particular industrial aid proposal can be checked.

Industrial policy has to contain systematic sets of related "macro" and "micro" criteria, with the "macro" criteria being derived from the government's overall policy goals.<sup>1</sup> Although these are generally not made explicit in most

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1. This is with respect to inflation or the level of unemployment.

countries, in France they are elaborated in the National Plan. While plan priorities may be unwise or obscure, and may well be ignored in practice, the existence of the planning system means day-to-day policies need not result only from *ad hoc* interest group lobbying. The "micro" criteria for effectiveness are the specific conditions attached to an individual loan. These are similar to the conditionality accompanying loans by the IMF or the World Bank. However, these conditions will differ from those imposed by private bankers who are primarily concerned with the security of their loans and rapid repayment.

Explicit overall national objectives, perhaps relating to national or regional employment, the balance of payments, the industrial composition of output or technical change, are expressed in the form of the plan. The public authorities wish to see those goals achieved whether or not private firms currently see them as profitable. The next step is to identify the relevant actions that firms must take to promote the national goals and to give firms inducements to act in the desired way. Planning contracts are one method of inducement, imposing on firms performance criteria which make the terms of repayment or the availability of further funding contingent either on certain actions being carried out or on particular results being achieved.

The French have a long history of state economic planning, of comprehensive industrial policy, and of contractualised relations between the state and firms, though the links between them have not always been close.<sup>2</sup> In the following section we review the relevant history of French planning and industrial policy. We focus in the second section on the development of contractual relations between corporations and the state in postwar France until the Socialists took office in 1981. In the third section we discuss recent developments, and we conclude with a theoretical appraisal of the experience.

## I. FRENCH PLANNING AND INDUSTRIAL POLICY

The French have done national economic planning since the end of World War II. In principle the procedure has two interrelated elements, though the practice has often fallen short of these ideals. The first is an attempt to coordinate economic activity in the direction of pre-determined and hopefully socially agreed targets. The second assumes that the choices made by private decision-makers will be affected by the government's publication of predictions about the future state of the economy.<sup>3</sup> Under a completely decentralized system, private agents would be making decisions on the basis of different and inconsistent guesses about the plans of their competitors and the likely growth path of their industry and of the economy as a whole. Indicative planning promotes the dissemination of government predictions and might be expected to produce a pattern of investment which is more rational and less risky than the pure market outcome without requiring any coercive public actions.

French planning was created at the instigation of Jean Monnet, a visionary French public servant who went on to help found the European Coal and Steel

2. See S. ESTRIN & P. HOLMES, *FRENCH PLANNING IN THEORY AND PRACTICE* 177-92 (1983).

3. Masse, *French Planning and Economic Theory*, 33 *ECONOMETRICA* 265 (1965).

Community. Despite previous forms of state intervention, the First Plan in 1946 represented a major break with the past.<sup>4</sup> Monnet was not a *dirigiste* trying to create a comprehensive system for the centralized state control of French industry. Rather he sought to use planning to create what was signally lacking in France, a dynamic entrepreneurial capitalism. This entailed much government intervention in the early years, but the objective was always the development of the underlying structure of the industrial system rather than the day-to-day management of resources.

Monnet's planners were very influential in helping to allocate Marshall Aid funds for postwar reconstruction. They controlled financial resources that were large relative to those of the private sector in the immediate postwar period, and to some extent directed the investment of private companies. However, since the 1950s this line of influence has waned because most industrial investment has been self-financed.

The *Commissariat General au Plan* (CGP) drafts the plan for the government and persuades ministries to conform to its general spirit. Although its 100 staff members are attached to the Premier's office, the CGP has no executive power nor financial resources of its own. The plan normally lasts for five years and lays down the key national priorities over the period without much operational detail. Plan implementation depends on the functional ministries, above all the Ministry of Finance. Relations between the CGP and Ministry of Finance have been uneasy for most of the past twenty years, in part because of the innate conflict between an agency devoted to long-term strategy and a ministry devoted to responding flexibly to short-term problems.<sup>5</sup> In recent years, the power of the Industry Ministry has also grown.

In the four plans spanning the period 1952–1970 (the Second to Fifth Plans), the authorities laid down overall targets or forecasts at the sectoral and industrial level, but there was no attempt to enforce compliance from particular corporations.<sup>6</sup> The planners' most important role in this period was probably exhortative and informational, encouraging an atmosphere of modern business practice and rationalization throughout French industry, both public and private. The period from 1970 to 1981 under the conservative Presidents Pompidou and Giscard, and in particular under Prime Minister Barre after 1976, saw an increasing reliance on free market forces in what was by then a modern capitalist economy. In the Sixth Plan (1970–75), the authorities explicitly recognized what had been the case for a number of years, namely that they could not direct nor even guide the evolution of the entire industrial sector.<sup>7</sup> The main thrust of industrial policy therefore shifted towards a few individual sectors, with the emphasis in recent years being an increasing effort to base operational industrial policy on particular firms.<sup>8</sup>

The growth of French industrial production has been extraordinarily fast since 1946, particularly in comparison with prewar performance. Industrial output

4. See R. KUISEL, *CAPITALISM AND THE STATE IN MODERN FRANCE* (1981).

5. See S. ESTRIN & P. HOLMES, *supra* note 2, at 89–120.

6. See J. MCARTHUR & B. SCOTT, *INDUSTRIAL PLANNING IN FRANCE* 443–44 (1969).

7. *Commissariat General au Plan, SIXTH PLAN 1971–75*, at 51–55 (Documentation Francaise 1970).

8. See, e.g., *Rapport sur l'Adaptation du 7e Plan*, 59 (1978).

normally grew even faster than the planners' forecast rate, at around 6 percent per annum during the 1950s and 1960s and with a peak rate of nearly 10 percent per annum in the late 1960s, though the pace slowed markedly in the 1970s.<sup>9</sup> Largely on the basis of this industrial development, the French economy sustained a gross domestic product (GDP) growth rate of 5.7 percent between 1960 and 1970 and 3.6 percent between 1970 and 1980.<sup>10</sup> This compares with 5.1 percent and 3.3 percent respectively for all developed economies taken together, and 4.7 percent and 2.8 percent respectively for the members of the European Economic Community.<sup>11</sup> While the general impact of planning on the economy was undoubtedly favorable,<sup>12</sup> detailed analysis suggests that industrial policy in regards to particular sectors was less coherent and effective.<sup>13</sup> Some rationalization of industrial policy occurred in the late 1970s, but, although promises were made to give aid to 'new' industries, the bulk of industrial subsidies supported traditional and declining industries.<sup>14</sup>

The Socialists took office in 1981, committed to far-reaching social and economic reforms and short-term policies to tackle unemployment, both in the framework of the plan. The budget was formally linked to the plan to a greater degree than before, and a system of planning contracts was proposed to improve implementation. On industrial policy, the Socialists promised less reliance on market forces, aiming to program French industrial policy toward meeting long-term employment and growth objectives.<sup>15</sup> At the heart of the new strategy was a wave of nationalizations designed to give the state direct decision-making authority in key industrial units, as well as leverage over the private sector via full control over the banking system. This enlarged public sector, coherently planned and committed to particular actions by contractual agreements, was to provide the "motor" for French industrial regeneration, spearheading an upsurge in private as well as public investment to lay the foundations for future employment. The Socialists also promised a massive stimulation of French research and development and government aid to support viable firms regardless of sector.<sup>16</sup>

## II. THE ROLE OF CONTRACTUAL ARRANGEMENTS IN FRENCH PLANNING, 1946-81.

There have been four phases of French interest in planning contracts: contractual arrangements for Monnet's First Plan, the anti-inflation contracts of the

9. See Estrin & Holmes, *The Performance of French Planning 1952-78*, 16 *ECONOMICS OF PLANNING* 71-86 (1980).

10. UNCTAD, *HANDBOOK OF TRADE AND DEVELOPMENT STATISTICS*, U.N. Doc. TD/STAT. 10 (Supp. 1982).

11. *Id.* at 354.

12. See J. CARRE, P. DUBOIS & E. MALINVAUD, *FRENCH ECONOMIC GROWTH* 458-495 (1975).

13. See J. McARTHUR & B. SCOTT, *supra* note 6, at 411-45; C. STOFFAES, *LA GRANDE MENACE INDUSTRIELLE* 492-513 (1978); L. STOLERU, *L'IMPERATIF INDUSTRIEL* 174-87 (1969).

14. See, e.g., *RAPPORT DU COMITE FINANCEMENT* 212 (Documentation Francaise 1981).

15. COMMISSARIAT GENERAL AU PLAN, *PLAN INTERIMAIRE 1982-83*, at 147-49 (Documentation Francaise 1983).

16. A typical example would be the speech by President Mitterrand in Ministry of Industry, *UNE POLITIQUE INDUSTRIELLE POUR LA FRANCE*, at 416-22 (Documentation Francaise 1982).

1960s and early 1970s, the contractual industrial policy programs of the 1970s, and contracts in the new era of Socialist planning, post-1981. Differences among these revolve around whether the contracts were developed independently in particular Ministries or Departments or within the framework of the plan, and whether they covered public corporations or private firms.

### A. *Contractual Arrangements During Monnet's First Plan*

Planning contracts first appeared in Monnet's First Plan, which was primarily concerned with stimulating postwar reconstruction, and took the form of investment programs, initially for six basic sectors of the economy.<sup>17</sup> The plan promised "contractual agreements between the public authorities and the industry, to furnish it with the necessary means (credit, materials, etc.) or to facilitate its obtaining them."<sup>18</sup> There is no evidence, however, as to whether such contracts were undertaken. There is no reference to a contractual system in the various reports on the realization of the First Plan. Moreover, there appears to have been little reference to the notion of planning contracts during the 1950s when the authorities gradually moved towards a freer market mechanism. During the 1950s and 1960s, one goal was the creation of a "concerted economy," where planning was seen as operating on the private sector by persuasion via the consultative apparatus of the plan.<sup>19</sup> The state may have been using its power to ensure that particular private actions conformed with the plan, but this does not appear to have been done through contractual agreements.

### B. *Anti-Inflation Contracts*

Interest in the potential role of contracts in economic policy began to revive in the mid-1960s as a part of a counter-inflation program. By 1965, a rigid system of price controls was generating significant distortions, and the authorities sought to give private producers more flexibility. Finance Minister Giscard introduced the first contractual price policy, the *Contrats de Stabilité*, to be signed with representatives of an industry, allowing firms adhering to the agreement to raise some of their prices provided they lowered others to ensure that a norm was respected.<sup>20</sup>

In March 1966, *Contrats de Programmes* between the Ministry of Finance and industrialists, either collectively for the entire sector or individually, were introduced. These gave firms the authority to set prices at the level they desired in return for meeting certain conditions with respect to enterprise or industry investments, exports, wages, professional training, regional location, and productivity.<sup>21</sup> The authorities had the power to withdraw price setting freedom if the firm

17. See Dubois, *La Planification Industrielle en France*, 61 C COLLECTIONS DE L'I.N.S.E.E. 143 (May 1978).

18. Rapport General sur le Premier Plan de modernisation et d'equipement (Nov. 1946–Jan. 1947), reprinted in V. LUTZ, *CENTRAL PLANNING FOR THE MARKET ECONOMY* 27 (1967).

19. See J. MCARTHUR & B. SCOTT, *supra* note 6, at 268–89.

20. See *id.* at 299.

21. *Id.*

or industry failed to meet the conditions. They were initially signed for the duration of the Fifth Plan, 1966–70, but the two sides reviewed the various clauses and conditions annually and some contracts ran on until the early 1970s.<sup>22</sup> The use of the French term “*contrat*” in this context does not imply that the contracts had a traditional legal form.<sup>23</sup> Although these anti-inflation contracts contained commitments in considerable detail, their legal status was still vague.

A related innovation was the *Contrat de Progres*, devised in 1969 and covering the determination of wages in the public sector. The state sponsored meetings between public enterprises and the relevant trade union officials to fix an increase in wages for the coming year in light of expected inflation and likely changes in corporate productivity. Although the authorities were not direct signatories of these agreements, they were in principle similar to *contrats de programmes*, with the firms offering workers real wage increases in return for concessions on productivity.<sup>24</sup>

### C. Contractual Industrial Policy Programs

During the 1970s two forms of planning contracts were used as instruments of industrial policy covering the public and private sectors respectively, and in phases corresponding to the Sixth and Seventh Plans. *Contrats de programme* were signed with the major corporations in the late 1960s and early 1970s with respect to the Sixth Plan and in about 1978 corresponding to the Seventh Plan (1976–80).<sup>25</sup> These met with varying degrees of success. Contracts were also negotiated with various firms in the private sector. In principle this process was a major basis of industrial policy, though in practice very few agreements of this sort were actually signed.<sup>26</sup>

#### 1. Public Sector Contracts

To promote the granting of autonomy to companies in the public sector,<sup>27</sup> in 1969 the state began signing contracts with the major nationalized corporations

22. Inflation escalated in 1971 and the government responded with a stricter system, the “*Contrats Anti-Hausse*” which limited price increases on manufactured products to 1.5 percent for six months without increases at all for services. The authorities effectively re-introduced a traditional anti-inflation policy based on direct controls with the “*Programmation Annuelle*” of 1972.

23. Lutz notes that although voluntary, the *contrats de programme* were not necessarily legally binding over the medium-term because of the possibility of changing circumstances. Moreover as Jacquemin and Schrans point out, it is hard to imagine a French firm suing the government for imposing price controls when it had said it would not, even though one can imagine legal regimes under which firms might claim compensation in the courts in such circumstances. A. JACQUEMIN & G. SCHRANS, *LE DROIT ECONOMIQUE* 40–61 (1970). Bazex notes that parliamentary procedure does not permit the state to make budgetary authorisations running beyond the present year, though if it did so and indeed did not obtain subsequent parliamentary approval, the party to whom funds were promised could in principle sue. See Bazex, *Contrats de Plan entre l'Etat et les entreprises* in *DROIT ADMINISTRATIF*, 20 February 1984, at 68–71.

24. OECD, *THE INDUSTRIAL POLICY OF FRANCE 70* (1974).

25. See Y. CARSALADE, *BILAN DES CONTRATS PASSES ENTRE L'ETAT ET LES ENTREPRISES PUBLIQUES* 20 (1982).

26. See C. STOFFAES, *supra* note 13, at 698.

27. See Y. CARSALADE, *supra* note 25, at 3.

which reduced the need for detailed involvement in enterprise management by the authorities without sacrificing scrutiny of overall objectives. They were signed for initial periods of four or five years, and stressed giving state corporations greater financial responsibility. Indeed, except when the authorities required particular services to be run at a loss, each contract required the firm to become at least self-sufficient financially and contained targets with respect to productivity, profitability, future trends in prices, loans, and capital acquisitions.<sup>28</sup> However, in general they did not cover wages, employment, regional issues, or consumers' interests.<sup>29</sup>

The first two public sector *contrats de programme* were made with the state railway company, SNCF, and the national electric utility, EDF.<sup>30</sup> They were largely concerned with investment finance, investment goals, and productivity. Each established greater managerial autonomy with respect to pricing and to tariff structures. The 1969 SNCF contract provided for a gradual return to break even, with an agreed, decreasing level of subsidies over the duration of the contract.<sup>31</sup>

The EDF contract of 1970 defined certain features of the overall objectives of EDF which the original nationalization law had not done.<sup>32</sup> The contract also established *a posteriori* accountability, relieving management of the obligation to consult the government in advance of all decisions.

These two early contracts laid down a number of quantitative performance indicators linked to projections of GNP growth with which firms were expected to comply.<sup>33</sup> It was recognized that these would have to be varied if circumstances changed, and rather than specify in advance detailed formulae for such adjustments, each contract contained a safeguard clause which envisaged revision of the agreement if the underlying economic hypotheses were not fulfilled.<sup>34</sup> The safeguard clauses were later invoked after the oil crisis of 1973, and as a consequence SNCF was effectively without a contract from 1974 to 1975 and there was a delay before contracts were negotiated to cover the latter part of the 1970s.

Nevertheless, following another report to the Prime Minister on the management of nationalized industries, negotiations began on a new generation of contracts for virtually all the nationalized corporations.<sup>35</sup> The problems which hit the earlier generation of contracts during their execution began to show up again, during the negotiation phase. It proved impossible to secure an agreement with EDF in 1978, particularly concerning the issue of compensation for any price constraints imposed by the government above those envisaged in the contract.<sup>36</sup> For SNCF it proved impossible to retain even the goal of a subsidy fixed in advance, or a specified link between rail prices and overall inflation. However,

28. *See id.* at 6.

29. *See id.* at 7.

30. *See id.* at 8–10.

31. *See id.* at 10.

32. *See id.* at 8.

33. *See id.* at 15.

34. *See id.* at 14.

35. *See id.* at 4.

36. *See id.* at 20.

the idea of setting the annual capital budget in the context of a long-term program was effectively retained.

Contracts were signed at the same time with the coal company Charbonage de France (CDF), Air France, and the shippers Compagnie Generale Maritime (CGM). The CDF pact contained useful and interesting contingent clauses, linking the subsidies payable by the state to certain economic indicators.<sup>37</sup> However, it was notably deficient in that state policy towards coal and the ties with electricity were never fully considered, and there does not seem to have been coordination with overall sectoral policy. The Air France contract was distinguished by the very large number of performance indicators it contained, and it appears to have been a success. In contrast, the CGM contract only ran for two years, 1978–80, because the state and management could not agree on a four year program for restoring financial equilibrium.<sup>38</sup>

This experience indicates some success in the achievement of intra-program coherence, but there is little evidence of the overall inter-program coherence desirable in a long-term contractual system linked to national planning. The SNCF and EDF contracts were negotiated ostensibly within the framework of the Sixth Plan, and the CGP was involved in their elaboration. The EDF contract may have contributed to the emergence of a more coherent policy towards electricity,<sup>39</sup> but the 1969 letter of intent underlying the SNCF contract was very vague about the government's actual transport policy.<sup>40</sup> One glaring inconsistency between the two early contracts concerned the test discount rate to be used in project appraisal; EDF was instructed to use the normal public sector or "plan" rate, while SNCF was advised to use this figure plus 3 percent.<sup>41</sup> No sensible economic rationale for this difference is apparent.

## 2. Private Sector Contracts

Contracts with the private sector were even less well integrated with the national plan during the 1970s, and the CGP was not directly involved with them at all. *Programme d'Actions Concertees* was a general term used from the late 1960s to describe a diverse set of medium-term plans for the rationalization and modernization of particular industries.<sup>42</sup> The first such industry program was for steel in 1966. Later sectoral programs under the Sixth Plan included contractual components, though the sectors chosen did not always accord with the plan's declared objectives.<sup>43</sup> The state signed these contracts with trade associations, promising financial aid in return for factory closures or conversions, personnel redeployment, and retraining. Although the schemes remained voluntary, the underlying idea was for the authorities to provide financial incentives for private

37. *See id.* at 16.

38. *See id.* at 12.

39. However, Carsalade notes how diversity of purpose on the government side obstructed the signing of the contract. *Id.* at 20–21.

40. *See id.* at 10.

41. *See id.* at 20.

42. *See* OECD, *supra* note 24, at 69.

43. *See* Dubois, *supra* note 17, at 149.

firms in backward sectors to modernize.<sup>44</sup> Premier Barre stressed accountability and value for money in dealings with firms, and sought the promotion of structural adjustment in the direction of dynamic sectors rather than older industries, in particular by supporting successful firms.<sup>45</sup> He stressed the *Contrats de Croissance*<sup>46</sup> and *Contrats de Développement* that were to be signed with these high growth companies.<sup>47</sup>

In reality, French industrial policy vis-a-vis the private sector had for a long time been less discretionary than is normally supposed.<sup>48</sup> Aid to small- and medium-sized firms was, for the most part, based on quasi-automatic criteria, with more discriminating grants to large companies.<sup>49</sup> In the late 1970s, only a very small group of large firms received help. In 1976, 56 percent of all aid to industry went to nine firms, three of which were in the public sector and another of which was partly state-owned.<sup>50</sup> It may appear from this concentration of aid that grants to large firms were at least discretionary, but when the Socialists arrived in power they discovered that the six groups, Dassault, CGE, Empain-Schneider, SNIAS, Thomson, and CII-HB, which accounted for 10 percent of value added in industry, were getting over 50 percent of public aid.<sup>51</sup> Thomson, for example, enjoyed a protected market for public purchases and generous subsidies for exports, and was getting most of its research and development paid for by the state. These were benefits upon which the company had become totally reliant in two senses: it needed them for survival, and it had managed to persuade the state of this and thus knew the money was coming. There was therefore no effective contractual conditionality; the firm was totally free of state control in making its strategic decisions.<sup>52</sup>

Non-discriminatory and non-discretionary criteria had attractions from a legal perspective, but left industrial policy analysts worried that aid, though going to firms which met the criteria, might not induce people to alter their behavior. Lack of discretionary power is also undesirable when it locks the government into maintaining grants agreed upon in the past. There was a widely perceived need for legal scrutiny of the highly discriminatory agreements that were being signed in this period, particularly to give opportunities to small firms not already permanent clients of sponsoring departments.

Different from the *contrats de croissance* were the more widely used "*aides remboursables en cas de succes*," in which the state would put up money for

44. A report to the Planning Commission, "Aides a l'industrie," 1982 gave a negative evaluation of the subsidy programme observing that the overwhelming majority of industrial subsidies were granted without any contractual conditionality.

45. See Rapport sur l'Adaptation du 7e Plan, *supra* note 8, at 65-66.

46. "Growth Contract."

47. Rapport sur l'Adaptation du 7e Plan, *supra* note 8, at 66.

48. See J. Bonnaud, *Les instruments d'Execution du Plan Utilises par l'Etat a l'Egard des Entreprises*, 21 REVUE ECONOMIQUE 854-55 (1970).

49. *Id.* at 555.

50. This information was uncovered in the unpublished "Rapport Hannoun" the main findings of which were reproduced in an appendix to a planning commission report and appear to have been widely leaked. See RAPPORT DU COMITE FINANCEMENT, *supra* note 14, at 207-41, app. C4.

51. See P. GALAMBERT, LES SEPT PARADOXES DE LA POLITIQUE INDUSTRIELLE 129 (1982).

52. See *id.*, at 130.

innovation and would in effect share some of the risk with the firms.<sup>53</sup> If the project was a complete failure the state agreed to write off all the debt. But it expected to be rewarded out of profits, though without going so far as to take a direct equity stake in the venture. The administration of this scheme was carried out by the agency ANVAR (Agence Nationale pour la Valorisation de la Recherche) which was responsible for promoting research. ANVAR supported up to 50 percent of an innovation program, and drew up an agreement for certain performance guarantees to be reached in return for the receipt of aid.<sup>54</sup> The firm had to pay the money back for those agreements with which it had failed to comply.

#### D. Contracts Under Socialist Planning

Attempts were made following the arrival of the Socialists in power to construct an inventory of all industrial aid, of which there were estimated to be at least 300 types.<sup>55</sup> The CGP classified aids by type of sector—growing versus declining; and by type of aid—those with a contractualized purpose versus those being given “on a subscription basis.”<sup>56</sup> It was found that the overwhelming majority were “subscription” aids to firms in trouble, and the pattern of concentration had not changed since 1976. Indeed, one of the reasons for the nationalizations of 1982 was the state’s fear of having to subsidize permanently the research and development of private firms.

The new government asked the newly-established Commission on the Reform of Planning to investigate all aspects of planning, including planning contracts. Its report was rather critical of the 1970s experience, noting that the *contrats de programme* with state firms had frequently been abrogated and devoid of sanctions. As to the private sector, it noted that in many cases the *contrats* had not in fact been contracts in a meaningful sense. *Contrats de development* had been used to consolidate relations between large firms and a variety of administrative bodies, and certain of the *contrats* had been based on retrospective performance criteria with no sanctions if future commitments were not respected.<sup>57</sup>

### III. POST-1983 PLANNING CONTRACTS

The new Socialist regime was strongly committed to revitalizing planning and to contractualizing future state aid. *The Report of the Commission for the Reform of Planning* (1982) also called for major reforms in the previous contractual

53. See C. STOFFAES, *supra* note 13, at 697.

54. See, e.g., RAPPORT AU PARLEMENT SUR LES FONDS PUBLICS ATTRIBUES A TITRES D'AIDES AUX ENTREPRISES INDUSTRIELLES, PORTANT REGLEMENT DEFINITIF DU BUDGET DE 1979, at 72 (1981).

55. See J. DUTAILLY, LA POLITIQUE INDUSTRIELLE INTROUVABLE 9 (Nov. 1983) (I.N.S.E.E. Ministry of Finance memo presented to the CNRS Colloquium).

56. CGP, RAPPORT DE LA COMMISSION SUR LA REFORME DE LA PLANIFICATION 89-90 (1982).

57. See Loi sur la Reforme de la Planification., Law No. 82-653, July 30, 1982 Journal Officiel [J.O.] (France); *Neuvieme Plan, Premiere Loi de Plan* Law No. 83-645, July 17, 1983 J.O.; *Neuvieme Plan, Deuxieme Loi de Plan*. Law no. 83-1180, Dec. 30, 1983 J.O.

system, urging that signature of planning contracts be made compulsory for state enterprises and voluntary for private firms.<sup>58</sup> A new planning mechanism was passed into law in July 1982 specifying two legislative acts to effectuate the plan.<sup>59</sup> The first, which was to lay down general objectives, was published for the Ninth Plan in the spring of 1983 and passed, after amendment, in the summer. The second, passed in the autumn of 1983, quantified the elements of the plan more precisely and set forth mechanisms and financial resources for implementation, including all multi-annual expenditure programs.

The 1982 law outlines the new general framework for planning contracts. The state may make contracts with local or regional authorities, public or private enterprises, and with any other legal entity. For firms, the contracts are to specify "the main strategic orientations of the enterprise and the way in which they are compatible with the objectives of the plan."<sup>60</sup> The law specifies that draft planning contracts and their conditions must be discussed with institutional representatives of the work force. Capital grants, subsidies, loan guarantees, tax concessions and other financial aids are to be consistent with the budget of special provisions in the Second Plan Law under procedures laid down in the 1982 law.<sup>61</sup>

Planning contracts have been in fact initiated between the state and regions as a way of achieving decentralization as well injecting some discipline into local spending. The state hoped to avoid open-ended subsidies and to give local authorities greater responsibility.<sup>62</sup> On the industrial side, planning contracts were also signed with the major nationalized enterprises, but they were not used to regulate relations with the private sector.<sup>63</sup>

The government hoped that these new contracts would lead firms to elaborate medium-term plans consistent with that of the state.<sup>64</sup> The intention was not to divert firms from the profitable toward the unprofitable, but to achieve macroeconomic goals which were in the long-term interests of both the state and corporations. The state would declare itself willing to underwrite certain risks necessary for the attainment of particular objectives.<sup>65</sup> However, it was not clear how these goals could be put into practice, since support of risk-bearing could so easily degenerate into pure subsidy, as happened with export credits.

The contracts with public enterprises were drawn up between the Ministry of Industry and the firms concerned, though the CGP was consulted, particularly with regard to the macroeconomic implications of the firms' financial requirements. There was an indirect connection between the overall objectives of the

58. Article 11 of *Loi sur la Reforme de la Planification*, *supra* note 57.

59. *RAPPORT DE LA COMMISSION SUR LA REFORME DE LA PLANIFICATION*, *supra* note 56, at 90.

60. *Id.* at art. 4.

61. *See Politique Industrielle et Contrats de Plan en 1984*, at 212 *Cahiers Francais* 1-4 (Supp. note 8, 1983).

62. *See Premier Bilan des Contrats de Plan Etat-Region* at 4 (Commissariat au Plan, June 1984, unpublished).

63. *See Y. CARSALADE*, *supra* note 25, at 28-29.

64. Its ability to bear risks more efficiently was a point stressed previously by C. STOFFAES, *supra* note 13, at 586-87.

65. B. MIGNUCCI, *L'EXPERIENCE DES CONTRATS DE PLAN ETAT-ENTREPRISES PUBLIQUES* 5 (1983).

Ninth Plan and individual planning contracts. The five plan priorities were saving energy, modernizing industry, reinforcing manufacturing competitiveness, developing agro-industries and promoting new technology; each suggested possible criteria with which to evaluate investment programs at the enterprise level.<sup>66</sup> The actual contracts laid down a number of general and specific objectives for each firm, and the whole exercise reflected a general desire to achieve a financial balance for the entire public sector, with the possible exception of steel, by 1986.

The Ministry of Industry requested the newly nationalized French industrial enterprises to submit corporate plans in July 1982. The plans were to contain the macroeconomic assumptions made, the outline of a "portfolio" of activities in which the firms were engaged, and a breakdown of the groups' strategic objectives.<sup>67</sup> Having requested the firms to specify their own macroeconomic assumptions, the government did not impose centrally planned figures. Signed during 1983, the planning contracts had four elements: a general statement of the objectives of the group itself; a statement of how it was to ensure coherence with the objectives expressed in the Ninth Plan; an agreement on financial support by the state for the firm, which was only specified for the year 1983; and safeguard clauses.<sup>68</sup> In fact budgetary procedures make it impossible to pre-commit funds from one year to the next, which forced the state to adopt a loose form of commitment; this means the engagements expressed in the contract were stronger than an expectation but weaker than a "right".<sup>69</sup>

The contracts themselves have not been published, and only summaries together with official and unofficial commentaries are available.<sup>70</sup> Several of them appear to give quite detailed objectives for the growth of investment over the period to 1986, even though the state guaranteed funds only for 1983. For example, Renault proposed an objective of raising its share from 6.5 percent to 7 percent of the world car market by introducing a new model every year. The EMC chemicals group promised to invest 1.7 billion francs in the three year period to 1986 in return for which the state offered capital of 250 million francs for 1983. The firm also laid down quantitative targets for the growth of research and development, and expressed various objectives for employment and growth of exports.

Observers have remarked that the funds the state declared itself willing to give are small in relation to the investment earlier declared necessary.<sup>71</sup> In electronics, for example, the sums promised in the planning contracts fell far short of the need estimated by an official study group in 1982.<sup>72</sup> Doubts therefore existed

66. *Id.* at 6.

67. *See id.* at 8-9.

68. *See* POLITIQUE INDUSTRIELLE ET CONTRATS DE PLAN EN 1984, *supra* note 61, at 1-4 (Supp. notes 7-8); Ministry of Industry Debat de Strategie Industrielle 55-72 (1983).

69. *See* Bazex, *supra* note 23, at 71. In fact budgetary procedures make it impossible to pre-commit funds from one year to the next, which forced the state to adopt a loose form of commitment; this means the engagements expressed in the *contrat* were stronger than an expectation but weaker than a "right."

70. Dethomas, *Le glissement vers un capitalisme d'état?*, p. 19, col. 1, LE MONDE (Feb. 14, 1984).

71. Quatrepoint, *La Filière électronique: Discours et Réalité*, in *Bilan de l'Année Économique et Sociale*, LE MONDE 175 (1983).

72. Dethomas, *supra* note 70.

about whether the objectives laid down in the planning contracts were consistent with the financial means provided. The inability of the state to give even a minimum guarantee of funding for years beyond the first undermined the whole concept of sustaining a medium-term strategy and insulating the firms from short-term financial pressures. The fact that the groups were nationalized and losing money very heavily cut them off from other sources of internal and external funds. If the state itself is subject to pressures that prevent it from making long-term commitments, then the position of any one firm is even more vulnerable and it is all the more likely that the objectives in the planning contracts will have to be changed. This highlights the need for contingent objectives or agreed procedures for on-going revision of the contracts.

The initial evaluation of Socialist planning contracts is not wholly negative, however. A number of firms were forced to go through long-term planning for the first time and to think through the macroeconomic effects of their actions. The state was able to get itself closely involved with a number of companies whose policies are important to the national economy, while minimizing detailed day-to-day interference in management. The corporate strategies chosen were adopted by management itself and were not dictated by the state.<sup>73</sup> On the whole however, the content of the planning, especially the quantitative aspect, is considered to be less important than the negotiations which preceded them and forced the managements to rethink and clarify corporate strategy.<sup>74</sup> For the newly nationalized firms, losses were being reduced and the planning contracts, at least in principle, underlined the refusal of the state to underwrite losses on an open-ended basis. Further measures to reduce employment in state firms announced in February 1984 indicated that a close relationship between state and firm, even ownership, does not prevent rationalization. It is too early to see whether the contractual system can guarantee the implementation of long-term objectives, but the notion remains worthy of attention.

#### IV. THEORETICAL COMMENTS

The first theoretical justification for non-coercive planning came from Planning Commissioner Pierre Masse.<sup>75</sup> The Fourth Plan promised to be self-fulfilling by virtue of its representing a calculated "general equilibrium" of all agents in the economy at the end-date of the plan. If the economy were genuinely competitive and if the only kind of uncertainty prevailing arose from other actors' decisions, then people would spontaneously choose to do what the plan had forecast. In fact, the Fourth Plan stated that all necessary policy instruments would be deployed to ensure plan fulfillment. Even so, the planners overestimated what could be achieved by reducing the uncertainty emanating merely from firms' failure to inform each other of their future intentions, the "endogenous" component of uncertainty. Even if a firm were aware of the government's goals for the next few years and fully expected other actors to behave consistently

73. Masse, *supra* note 3.

74. See L. ZINSOU, *LE FER DE LANCE* 128 (1985).

75. C. STOFFAES, *supra* note 13, at 697-98.

with those targets, it might not go along, either because it could not decide on its own course of action or because it sought to keep all options for flexibility.

Social benefits might arise, however, from a greater degree of medium-term pre-commitment by firms than they would opt for voluntarily. This is one aspect of the broader rationale for national planning. But if the state gives firms incentives to secure a particular outcome, they may be required to bear additional risk if other parameters do not turn out as the government anticipates. They will require compensation for shouldering this risk. It may be hard to agree on the appropriate cash value of this burden if firms and the state disagree on the likelihood of target fulfillment or the desirability of the state's chosen outcome. If the authorities offer cash conditional on certain performance outcomes, other policy inconsistencies arise. First, the state cannot easily monitor the extent to which favorable outcomes are indeed the result of actions elicited by the incentive system.<sup>76</sup> Moreover, if bonuses are given only in the event of good performance, it may actually increase the riskiness of the firms' profitability. On the other hand, where conditional payments are in the form of compensation for unfavorable outcomes, such as cost escalation insurance underwritten by the state, then there is an incentive to bring about the undesirable case, or at least to avoid it with less zeal.

The problem of incentives is particularly acute in the case of arrangements such as the *contrats de croissance*. The firm is obtaining the reverse of equity finance from the state: if it succeeds it receives the double bonus of extra profits and avoids the cost of repayment. But if it fails it makes no profits and must repay the state. This raises the question of what to do if the firm experiences severe difficulties. The government could further burden a company already in trouble by demanding it repay previous state aid. One commentator has suggested that this scheme could therefore only be used for subsidiaries of otherwise large and healthy firms whose other activities could cross-subsidize the repayments.<sup>77</sup> This arrangement would make sense if "success" were being measured in non-profit terms, for example if a firm were invited to grow faster than was profitable in order to secure a foothold for French suppliers in some fast growing industry. This example illustrates the sort of problems the state can face with incentives in contractual arrangements.

The mere existence of a contract does not rule out opportunistic behavior. It is often better for parties to establish "implicit contracts," where each side learns to act responsibly towards the other in expectation of a similar response, rather than writing explicit contracts. Labor market studies have highlighted the effectiveness of such arrangements between employees and employers, where the building of mutual trust improves flexibility and performance. Whether this is feasible in government-business relations is another matter.

76. Some French government officials in private conversation suggested that the management of some state enterprises had deliberately overstated the degree of financial difficulty in 1983 in order to profit from the perception of a major improvement in 1984 and 1985. In the nature of things there is no firm evidence for or against this hypothesis.

77. See, e.g., Williamson, Wachter and Harris, *Understanding the Employment Relation: The Analysis of Idiosyncratic Exchange*, 6 BELL J. ECON. 250-78 (1975).