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FROM INNOVATION TO OVERHAUL: RETHINKING THE DUTY OF VIGILANCE LAW IN THE REALM OF THE EU DIRECTIVE

Dissertation to obtain a Master's Degree in Law, in the specialty of International and European Law

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Para a minha Irmã

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"There will be a time when we must choose between what is easy and what is right"

J.K. Rowling, Harry Potter and the Goblet of Fire

Quoting

This dissertation follows the rules of the provisions of the Portuguese Norms 405-1 and 405-4 of the Portuguese Quality Institute. This dissertation contains all works referenced in the footnotes and in the bibliography. All legal citations and references in this dissertation are formatted according to the OSCOLA (Oxford University Standard for Citation of Legal Authorities). In the footnotes, they are cited in full when first mentioned and then in abbreviated form. They are listed in full in the bibliography.

The body of this dissertation, with spaces and notes, contains a total of 167.087 characters.

Abstract

Binding national legislation seems to be the way to hold multinationals accountable for their human rights and environmental violations. The French Duty of Vigilance Law, originally inspired by the United Nations Guiding Principles on Business and Human Rights, is considered an important milestone in the further development of the regulation of corporate responsibility in the field of business and human rights. Indeed, this law adopted in 2017, creates a legally binding due diligence framework for companies in order to prevent violations of human rights and the environment in their activities, as well as in the activities of their subsidiaries and other business relationships.

Seven years after this law was adopted, it has faced numerous challenges. These include the limited scope of application, the interpretation of key terms of the law, the need for greater stakeholder involvement and debates around the civil liability regime. Thus, the civil liability regime was seen as an innovative mechanism as companies can be held liable for human rights and environmental violations.

These challenges can also be found in litigation cases. In fact, several cases have already been brought before the French courts, but with limited success. One notable case is the “La Poste” case, a public French company, which remains the only case to date that has been judged on its merits.

Despite a certain reluctance with regard to this law, the French Law on the Duty of Vigilance is still perceived as an inspiring law for many legislations. Seven years after the adoption of the first national human rights due diligence law, the EU also adopted the Corporate Sustainability Due Diligence Directive (CSDDD) in 2024. However, if one compares the key elements of the French legislation on the Duty of Vigilance with the CSDDD, the transformation that this law must undergo becomes undeniable. As the first national binding human rights due diligence law, this law will have to meet EU expectations as France must transpose it in into national law by 2026.

The aim of this dissertation is to analyze the strengths and weaknesses of this French law by comparing it to the United Nations Guiding Principles on Business and Human

Rights, as it was inspired by them. Additionally, this dissertation will analyze the necessary steps for aligning the law with EU expectations in the coming years.

Resumo

A legislação nacional vinculativa parece ser a forma de responsabilizar as multinacionais pelas suas violações dos direitos humanos e do ambiente. A lei francesa relativa ao dever de vigilância, originalmente inspirada nos Princípios Orientadores das Nações Unidas sobre Empresas e Direitos Humanos, é considerada um marco importante no desenvolvimento da regulamentação da responsabilidade das empresas no domínio das empresas e dos direitos humanos. Com efeito, esta lei, adoptada em 2017, cria um quadro de diligência devida juridicamente vinculativo para as empresas, a fim de evitar violações dos direitos humanos e do ambiente nas suas actividades, bem como nas actividades das suas filiais e noutras relações comerciais.

Sete anos após a sua adoção, esta lei tem enfrentado numerosos desafios. Estes incluem o âmbito de aplicação limitado, a interpretação de termos-chave da lei, a necessidade de um maior envolvimento das partes interessadas e debates em torno do regime de responsabilidade civil. Assim, o regime de responsabilidade civil foi visto como um mecanismo inovador, uma vez que as empresas podem ser responsabilizadas por violações dos direitos humanos e do ambiente.

Estes desafios podem também ser encontrados em processos judiciais. De facto, já foram apresentados vários casos aos tribunais franceses, mas com um êxito limitado. Um caso notável é o caso "La Poste", uma empresa pública francesa, que continua a ser o único caso até à data que foi julgado pelos seus méritos.

Apesar de uma certa relutância em relação a esta lei, a lei francesa relativa ao dever de vigilância continua a ser considerada como uma lei inspiradora para muitas legislações. Sete anos após a adoção da primeira lei nacional sobre o dever de diligência em matéria de direitos humanos, a UE também adoptou a Diretiva relativa ao dever de diligência em matéria de sustentabilidade das empresas (CSDDD) em 2024. No entanto, se compararmos os elementos-chave da lei francesa relativa ao dever de vigilância com a CSDDD, a transformação que esta lei deve sofrer torna-se inegável. Sendo a primeira lei nacional

vinculativa sobre o dever de diligência em matéria de direitos humanos, esta lei terá de corresponder às expectativas da UE, uma vez que a França terá de a implementar em 2026.

O objetivo desta dissertação é analisar os pontos fortes e fracos desta lei francesa, comparando-a com os Princípios Orientadores das Nações Unidas sobre Empresas e Direitos Humanos, uma vez que foi inspirada por eles. Para além disso, esta dissertação analisará os passos necessários para alinhar a lei com as expectativas da UE nos próximos anos.

1. Introduction

The French Law on the Duty of Vigilance has long been a pioneer in the regulation of companies in the field of human rights and the environment.[1] It was the first national mandatory Human Rights Due Diligence legislation (mHRDD) to be adopted by a State, turning soft law into hard law.[2] Until this law was adopted, soft law instruments were the only legal instruments available to companies. Originally, this responsibility arose from the social and moral expectations that companies had to fulfill towards society.[3] Accordingly, numerous initiatives were taken in this area[4] :

(i) Corporate policies voluntarily adopted by companies, such as codes of conduct and clauses in contracts with their business partners;

(ii) Normative standards adopted by international organizations such as the United Nations[5], the Organization for Economic Cooperation and Development (OECD)[6] and the International Labor Organization (ILO)[7];

(iii) Normative standards adopted by private organizations such as the Principles for Responsible Investment (PRI)[8].

These initiatives are further explained in the following chapters. Ultimately, the transition to hard law is of the utmost importance for the regulation of companies in the area of business and human rights, as this law aims to impose binding obligations on companies.

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[1] LOI n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre (1) (2017) < https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000034290626/>

[2] Bose D, "Decentring Narratives around Business and Human Rights Instruments: An Example of the French Devoir de Vigilance Law" (2023) 8 Business and Human Rights Journal 18 <https://doi.org/10.1017/bhj.2023.6>

[3] Bueno N and Bright C, "IMPLEMENTING HUMAN RIGHTS DUE DILIGENCE THROUGH CORPORATE CIVIL LIABILITY" (2020) 69 International and Comparative Law Quarterly 789 <https://doi.org/10.1017/s0020589320000305>

[4] D'Ambrosio L and Institut de recherche en droit international et européen de la Sorbonne (IREDIES), Université Paris 1 Panthéon-Sorbonne, "Le Devoir de Vigilance : Une Innovation Juridique Entre Continuités et Ruptures," vol 106

[5] United Nations, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (2011) <https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf>

[6] OECD Guidelines for Multinationals Enterprises on Responsible Business Conduct <https://www.oecd.org/en/publications/oecd-guidelines-for-multinational-enterprises-on-responsible-business-conduct_81f92357-en.html>

[7] ILO Declaration on Fundamental Principles and Rights at Work <https://www.ilo.org/ilo-declaration-fundamental-principles-and-rights-work>

[8] Principles for Responsible Investment <https://www.unpri.org/about-us/what-are-the-principles-for-responsible-investment>

As Dominique Potier, a French MP and the Rapporteur of the proposed law, explained, this law is inspired by a very "*humanist philosophy*" and aims to protect the rights of people impacted by activities of French multinationals outside France.[9]

As the world becomes increasingly globalized, multinational companies have a major influence on the world economy and international trade through their numerous global supply chains. However, these activities have an impact on human rights and the environment. Thus, these negative impacts on human rights and the environment have forced States to address these issues. This includes the protection of human rights, biodiversity and the environment.[10]

In addition, there is increasing pressure from consumers, investors and workers for companies to change their approach to human rights and the environment. In fact, these stakeholders are generally less willing to work with companies that are involved in serious human rights and environmental abuses.[11] The proliferation of domestic, regional as well as international regulation is undeniable.[12]

It is important to understand the "*rationale*" for implementing a national legislation on human rights due diligence to grasp the benefits and effectiveness that such a law can bring.

First, this law will encourage companies to innovate and develop new technologies and new jobs, as companies will be competing for the most sustainable technologies and products.[13] Besides that, this law can help to attract foreign investment to France and can be seen as a competitive advantage for companies.[14]

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[9] De Saint-Affrique D and Pailot P, "Loi Sur Le Devoir de Vigilance : Éléments d'analyse d'une Forme de Juridicisation de La RSE" (2020) 24 Management International 109 <https://doi.org/10.7202/1072645ar>

[10] *Proposition de la loi relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre 2015* (Assemblée Nationale) 2578

[11] European Commission: Directorate-General for Justice and Consumers, Lise S and others, "Study on Due Diligence Requirements through the Supply Chain – Final Report" (Publications Office 2020) p. 220., <https://data.europa.eu/doi/10.2838/39830>

[12] European Commission: Directorate-General for Justice and Consumers, Lise S and others, "Study on Due Diligence Requirements through the Supply Chain – Final Report" (Publications Office 2020) p. 192., <https://data.europa.eu/doi/10.2838/39830>

[13] Clerc C, "The French 'Duty of Vigilance' Law: Lessons for an EU Directive on Due Diligence in Multinational Supply Chains," vol N°1/2021 (2021) Policy Brief <https://ssrn.com/abstract=3765288>

[14] *Avis fait au nom de la Commission des Affaires Économiques sur la Proposition de Loi, relative au Devoir de Vigilance des Sociétés Mères et des Entreprises Donneuses d'ordre 2015* (Assemblée Nationale) 2578

This is because the duty of vigilance law promotes transparency of companies' activities and ultimately better information for consumers. In fact, studies have shown that the adoption of the duty of vigilance law has not reduced France's attractiveness.[15]

The most important argument for the adoption of this law is above all a level playing field for French companies, as it creates a harmonized legal framework for these companies.[16] As we progress towards binding rules in this field, this law shall create legal certainty for businesses. Studies have already shown that companies are in favor of binding legislation.[17]

The EU also established its stance in this field. In fact, it is not only France that is pushing for a level playing field for French companies, but also the EU with the adoption of the Corporate Sustainability Due Diligence Directive (CSDDD) on May 24, 2024.[18]

Indeed, in 2020, the EU presented a "Study on due diligence requirements" to create a binding framework for companies' regulation in the field of business and human rights.[19] However, this study was criticized several times, mainly because of the role of SMEs in the regulation and the emphasis on directors' duties.[20] After several amendments, the European Commission published the proposed Directive on Corporate Sustainability due diligence on February 23, 2022.[21]

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[15] Bright C, "Creating a Legislative Level Playing Field in Business and Human Rights at the European Level: Is the French Law on the Duty of Vigilance the Way Forward?" (EUI Working Paper MWP 2020/01 2020) book p.10., <https://ssrn.com/abstract=3262787>

[16] Bright C, "Creating a Legislative Level Playing Field in Business and Human Rights at the European Level: Is the French Law on the Duty of Vigilance the Way Forward?" (EUI Working Paper MWP 2020/01 2020) book <https://ssrn.com/abstract=3262787>

[17] European Commission: Directorate-General for Justice and Consumers, Lise S and others, "Study on Due Diligence Requirements through the Supply Chain – Final Report" (Publications Office 2020) p. 89., <https://data.europa.eu/doi/10.2838/39830>

[18] Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 < https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202401760>

[19] European Commission: Directorate-General for Justice and Consumers, Lise S and others, "Study on Due Diligence Requirements through the Supply Chain – Final Report" (Publications Office 2020), <https://data.europa.eu/doi/10.2838/39830>

[20] Zonta E, "The EU's CSDDD: Lawful Extraterritoriality or Jurisdictional Overreach?," vol 6:1 (Trento Student Law Review, 2024) p.16.

[21] European Parliament, "Legislative Proposal on Corporate Sustainability Due Diligence | Legislative Train Schedule" (*European Parliament*) <https://www.europarl.europa.eu/legislative-train/spotlight-JD22/file-legislative-proposal-on-sustainable-corporate-governance#:~:text=On%2023%20February%202022%2C%20the,behaviour%20throughout%20global%20value%20chains.>

The CSDDD is considered to be the first EU legislation on binding due diligence obligations in the field of human rights and environmental protection.[22] However, like the French duty of vigilance law, this law was the result of several political compromises between EU Member States and has been the subject of much debate.[23] The aim of this directive is to ensure that the companies concerned address the negative impacts of their activities on human rights and the environment in Europe and beyond.[24]

The directive was published in the official Journal of the EU on July 5, 2024, and will come into force on July 25, 2024. The EU Member States must then transpose the directive into their national law by July 26, 2026.[25]

In addition, the Corporate Sustainability Reporting Directive (CRSD) came into force on January 5, 2023, which is also intended to strengthen the rules for social and environmental reporting. [26]

Despite the ongoing evolution in the field, much work remains to be done to hold multinational companies accountable. It is therefore important to recall the role of the French duty of vigilance law today more than ever. This law was hailed as an important step forward for corporate accountability, but where does it stand today?

Against this background, the following research questions are addressed in this dissertation: To what extent does the French duty of vigilance law meet international standards? Is the French legislation on the duty of vigilance aligned with the requirements of the EU Corporate Sustainability Due Diligence Directive (CSDDD)? If not, what are the main changes needed to ensure its alignment with the CSDDD?

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[22] Bueno N and others, "The EU Directive on Corporate Sustainability Due Diligence (CSDDD): The Final Political Compromise" [2024] Business and Human Rights Journal 1 <https://doi.org/10.1017/bhj.2024.10>
[23] Bueno N and others, "The EU Directive on Corporate Sustainability Due Diligence (CSDDD): The Final Political Compromise" [2024] Business and Human Rights Journal 1 <https://doi.org/10.1017/bhj.2024.10>
[24] "Corporate Sustainability Due Diligence" (*European Commission*) <https://commission.europa.eu/business-economy-euro/doing-business-eu/sustainability-due-diligence-responsible-business/corporate-sustainability-due-diligence_en>.
[25] Phyu AMP, "CSDDD Published in the Official Journal of the European Union | German-Southeast Asian Center of Excellence for Public Policy and Good Governance (CPG)" <https://cpg-online.de/csddd-published-in-the-official-journal-of-the-european-union/>
[26] Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting, < https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021PC0189>

This research was conducted mainly through a detailed literature review by analyzing academic articles on this topic and interpreting the collected material. Studies and policy documents such as guidelines from international organizations and French NGOs as well as legislation were also used to answer the above research questions.

This dissertation first explains the regulatory background of the French duty of vigilance law (2). It then examines the global emergence of business and human rights regulation (3) in order to understand the need for the adopting of a domestic legislation on human rights due diligence. Next, the legal framework of the duty of vigilance law (4) will be analyzed by addressing the key elements of the law. Finally, we will take a closer look at the role of the law in litigation (5) to better understand its practical implications in court proceedings.

2. The Regulatory Background of the French Duty of Vigilance Law

The French law on the duty of vigilance emerged from an effort that lasted four years by French Non-Governmental Organizations (NGOs), trade unions, and Members of Parliament (MPs).[27] To fully understand the challenges in drafting this law and the factors that influenced its limitations, it is essential to examine its regulatory background.

This law is often referred to as the "Rana Plaza law"[28], as many authors believe that this tragic event favored the adoption of the law, which seems to be closely connected to the public awareness of the Rana Plaza tragedy in 2013.[29] In this tragedy, a textile factory collapsed, killing 1 138 workers and injuring around 2 500.[30] These workers were working for large Western companies, including French companies, which hastened the passage of this law.

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[27] Schilling-Vacaflor A, "Putting the French Duty of Vigilance Law in Context: Towards Corporate Accountability for Human Rights Violations in the Global South?" (2020) 22 Human Rights Review 109 <https://doi.org/10.1007/s12142-020-00607-9>

[28] Malat J, "10 Years on from Rana Plaza: Is France's Duty of Vigilance Law Living up to Its Promise? « Law# « Cambridge Core Blog" (*Cambridge Core Blog*, June 2, 2023) <https://www.cambridge.org/core/blog/2023/06/06/10-years-on-from-rana-plaza-is-frances-duty-of-vigilance-law-living-up-to-its-promise/>

[29] Schilling-Vacaflor A, "Putting the French Duty of Vigilance Law in Context: Towards Corporate Accountability for Human Rights Violations in the Global South?" (2020) 22 Human Rights Review 109 <https://doi.org/10.1007/s12142-020-00607-9>

[30] D'Ambrosio L and Institut de recherche en droit international et européen de la Sorbonne (IREDIES), Université Paris 1 Panthéon-Sorbonne, "Le Devoir de Vigilance : Une Innovation Juridique Entre Continuités et Ruptures," vol 106

The original bill was introduced in 2013 after Dominique Potier, the Rapporteur of the bill, formed a working group in 2012. This group included representatives from different sectors such as MPs, NGOs and lawyers to draft this initial proposal.[31] However, the adoption of the law encountered numerous challenges. Thus, there was an intense debate between the National Assembly and the Senate, which led to various amendments to the original proposal. Nevertheless, a compromise was found in which civil society played an important role.[32] The final draft was finally adopted in March 2017 by an almost unanimous vote of the National Assembly.[33]

2.1. Business Opposition to the Proposed Law and a Strong Political Divide

In 2013, four left-wing parties put forward a proposal to make companies fully accountable to their subsidiaries, subcontractors and suppliers, as well as a new mechanism that provides remediation to the victims. However, this proposal met with fierce opposition from business associations and the then Ministry of Economy, Emmanuel Macron.[34] As a result, a revised and more limited proposal was drafted in order to obtain the approval of the National Assembly. Despite these efforts, the Senate rejected the bill with a conservative majority. This led to a political battle between the National Assembly and the Senate.[35]

The main reason for the difficulties in passing the law was the political division between the National Assembly and the Senate, the massive opposition of business representatives, in particular the French Association of Private Enterprises (AFEP) and the legal uncertainty of the law.[36]

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[31] Clerc C, "The French 'Duty of Vigilance' Law: Lessons for an EU Directive on Due Diligence in Multinational Supply Chains," vol N°1/2021 (2021) Policy Brief <https://ssrn.com/abstract=3765288>
[32] Cossart S, Chaplier J and De Lomenie TB, "The French Law on Duty of Care: A Historic Step towards Making Globalization Work for All" (2017) 2 Business and Human Rights Journal 317 <https://doi.org/10.1017/bhj.2017.14>
[33] Clerc C, "The French 'Duty of Vigilance' Law: Lessons for an EU Directive on Due Diligence in Multinational Supply Chains," vol N°1/2021 (2021) Policy Brief <https://ssrn.com/abstract=3765288>
[34] Gustafsson M, Schilling-Vacaflor A and Lenschow A, "Foreign Corporate Accountability: The Contested Institutionalization of Mandatory Due Diligence in France and Germany" (2022) 17 Regulation & Governance 891 <https://doi.org/10.1111/rego.12498>
[35] Gustafsson M, Schilling-Vacaflor A and Lenschow A, "Foreign Corporate Accountability: The Contested Institutionalization of Mandatory Due Diligence in France and Germany" (2022) 17 Regulation & Governance 891 <https://doi.org/10.1111/rego.12498>
[36] Vercher-Chaptal C, "Limitations and Perspectives of Responsible Management of Global Value Chains: From Codes of Conduct to the French Law on the Duty of Vigilance" [2018] EURAM 2018 13 p.13., <https://shs.hal.science/halshs-02141407> p.35

The opposition's main argument was that this law would entail costly and disproportionate obligations for companies and that France would lose its attractiveness on the economic market, as well as violating the freedom to trade and conduct business.[37]

In order to reach an agreement between the political forces, a Joint Commission was formed, which included members of the National Assembly and the Senate.[38] However, given the strong disagreements between the parties, this did not appear to be a solution to the problem. Under French law, in the event of a deadlock, the decision of the National Assembly is decisive.[39]

An unlikely turn of events happened when the government decided to support the bill in 2016.[40] The resignation of Emmanuel Macron from the Ministry of Economy allowed the bill to be passed, as Michel Sapin, who had been in favor of the bill, took his place.[41] This led to the final adoption of the law on February 21, 2017.

2.2. Legal Battles: Intervention by France's Highest Court

After its adoption in February 2017, the law continued to be challenged and had to make its way to the Constitutional Council, France's highest court, in March 2017 due to significant setbacks. In fact, the law was challenged again, but this time on the grounds of unconstitutionality, when 120 right-wing MPs referred the law to the Council.[42] Firstly, opponents claimed that the terms of the law were too vague, i.e. there was a lack of clarity in the terminology.

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[37] Hatchuel A and Segrestin B, "Devoir de Vigilance : La Norme de Gestion Comme Source de Droit ?" (2021) N° 106 Droit Et Société 667 <https://doi.org/10.3917/drs1.106.0667>

[38] Gustafsson M, Schilling-Vacaflor A and Lenschow A, "Foreign Corporate Accountability: The Contested Institutionalization of Mandatory Due Diligence in France and Germany" (2022) 17 Regulation & Governance 891 <https://doi.org/10.1111/rego.12498>

[39] Gustafsson M, Schilling-Vacaflor A and Lenschow A, "Foreign Corporate Accountability: The Contested Institutionalization of Mandatory Due Diligence in France and Germany" (2022) 17 Regulation & Governance 891 p.902. <https://doi.org/10.1111/rego.12498>

[40] Delalieux G, "La Loi Sur Le Devoir de Vigilance Des Sociétés Multinationales : Parcours d'une Loi Improbable" (2021) N° 106 Droit Et Société 649 p.11.,<https://doi.org/10.3917/drs1.106.0649>

[41] Delalieux G, "La Loi Sur Le Devoir de Vigilance Des Sociétés Multinationales : Parcours d'une Loi Improbable" (2021) N° 106 Droit Et Société 649 p.8.,<https://doi.org/10.3917/drs1.106.0649>

[42] Cossart S, Chaplier J and De Lomenie TB, "The French Law on Duty of Care: A Historic Step towards Making Globalization Work for All" (2017) 2 Business and Human Rights Journal 317 <https://doi.org/10.1017/bhj.2017.14>

They referred to terms such as "appropriate monitoring measures" and "appropriate risk mitigation measures" as well as the scope of companies and their value chain covered by this law. Not to be forgotten is the argument of the lack of definition of "violations of human rights and fundamental freedoms". According to opponents of the law, this violates the principle of the legality of criminal offences and penalties ("*nullum crimen, nulla poena sine lege"*) under French law.[43]

On the basis of the principle of the legality of criminal offences and penalties, the Council overturned the civil fine, which is a criminal penalty under French law and was originally imposed by the law. The civil fine could amount to up to 10 million euros. However, the civil liability regime for companies remains in force.[44] The opponent's main argument against the civil liability regime was based on the "principle of separation", which prohibits holding a parent company liable for damage caused by another entity, e.g. subcontractor or subsidiary.[45]

Furthermore, opponents of this law argued that this law allows civil society organizations to sue companies and not the victims of the damage caused.[46] The Council rejected these arguments on the basis of article 4 of the French Declaration of the Rights of Man and of the Citizen of 1789, which states that: "*Liberty consists in the freedom to do everything which injures no one else; hence the exercise of the natural rights of each man has no limits except those which assure to the other members of the society the enjoyment of the same rights. These limits can only be determined by law*." The Council emphasizes the importance of the civil liability system and points out that this system must be applied when necessary and must not be limited by the corporate purpose of a company.

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[43] Assemblée Nationale, 15e législature, *Rapport n°5124 fait au nom de la Commission des Lois Constitutionnelles, de la Législation et de L'administration Générale de la République en conclusion des travaux d'une mission d'information sur l'évaluation de la loi du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre* (2022), Février 24, 2022 (Dubost Coralie, Potier Dominique) p.37

[44] Cossart S, Chaplier J and De Lomenie TB, "The French Law on Duty of Care: A Historic Step towards Making Globalization Work for All" (2017) 2 Business and Human Rights Journal 317 <https://doi.org/10.1017/bhj.2017.14>

[45] De Saint-Affrique D and Pailot P, "Loi Sur Le Devoir de Vigilance : Éléments d'analyse d'une Forme de Juridicisation de La RSE" (2020) 24 Management International 109 p.7.,<https://doi.org/10.7202/1072645ar>

[46] Cossart S, Chaplier J and De Lomenie TB, "The French Law on Duty of Care: A Historic Step towards Making Globalization Work for All" (2017) 2 Business and Human Rights Journal 317 <https://doi.org/10.1017/bhj.2017.14>

Another point raised by opponents was the infringement of companies' freedom of trade and commerce, which will result from the disclosure of information that companies must provide about their business and the interference in the relationships between parent companies and their subsidiaries and business relations. Nonetheless, the Council did not censor the publication of the vigilance plan as it considers that freedom of trade and commerce is subject to certain restrictions in favor of other constitutional principles or the public interest, but with the limitation that these are justified by an outcome. [47]

To summarize, in March 2017, the Council considered most of the legislative text to be constitutional, which represents an important endorsement of the law.

2.3. The Final Enacted Version of the Duty of Vigilance Law

After examining the legislative process that led to the creation of the French duty of vigilance law, it is important to present the final version of the law. The final provisions, Articles 1 and 2 are codified in the following new articles of the French Commercial Code: Article L.225-102-4 and Article L.225-102-5 and have been in force since 2018.

Article 1[48]

After Article L. 225-102-3 of the Trade and Industry Code, an Article L. 225-102-4 shall be inserted reading as follows:

"Art. L. 225-102-4. – I. – Any company that at the end of two consecutive financial years, employs at least five thousand employees within the company and its direct and indirect subsidiaries, whose head office is located on French territory, or that has at least ten thousand employees in its service and in its direct or indirect subsidiaries, whose head office is located on French territory or abroad, must establish and implement an effective vigilance plan.

[47] Cossart S, Chaplier J and De Lomenie TB, "The French Law on Duty of Care: A Historic Step towards Making Globalization Work for All" (2017) 2 Business and Human Rights Journal 317 <https://doi.org/10.1017/bhj.2017.14>

[48] Translation provided by Respect International (2017) <https://respect.international/wp-content/uploads/2017/10/ngo-translation-french-corporate-duty-of-vigilance-law.pdf>

“The controlled subsidiaries or companies that exceed the thresholds mentioned in the first paragraph are deemed to satisfy the obligations laid down in this Article from the moment that the company which controls them, within the meaning of Article L. 233- 3, establishes and implements a vigilance plan for the company’s operations, as well as the operations of all the subsidiaries or companies that it controls.

“The plan shall include the reasonable vigilance measures to allow for risk identification and for the prevention of severe violations of human rights and fundamental freedoms, serious bodily injury or environmental damage or health risks resulting directly or indirectly from the operations of the company and of the companies it controls within the meaning of Article L.233-16, II, as well as from the operations of the subcontractors or suppliers with whom it maintains an established commercial relationship, when such operations derive from this relationship.

“The plan shall be drafted is association with the company stakeholders involved, and where appropriate, within multiparty initiatives that exist in the subsidiaries or at territorial level. It shall include the following measures:

“1° A mapping that identifies, analyses and ranks risks;

“2° Procedures to regularly assess, in accordance with the risk mapping, the situation of subsidiaries, subcontractors or suppliers with whom the company maintains an established commercial relationship;

“3° Appropriate action to mitigate risks or prevent serious violations;

“4° An alert mechanism that collects reporting of existing or actual risks, developed in working partnership with the trade union organizations representatives of the company concerned;

“5°A monitoring scheme to follow up on the measures implemented and assess their efficiency.

“The vigilance plan and its effective implementation report shall be publicly disclosed and included in the report mentioned in Article L. 225-102.

“A Council of State decree can add to the vigilance measures laid down in 1° to 5° of this Article. It can specify the modalities for elaborating and implementing the vigilance plan, within multiparty initiatives that exist in the subsidiaries or at territorial level where appropriate.

"II. – When a company does not meet its obligations in a three months period after receiving formal notice to comply with the duties laid down in I, the relevant jurisdiction can, following the request of any person with legitimate interest in this regard, urge said company, under financial compulsion if appropriate, to comply with its duties.

"An application may be made to the president of the court, ruling in interlocutory proceedings, for the same purpose.

Article 2[49]

After the same Article L. 225-102-3, an Article L. 225-102-5 shall be inserted reading as follows:

"Art. 225-102-5. – According to the conditions laid down in Articles 1240 and 1241 of the Civil Code, the author of any failure to comply with the duties specified in Article L. 225-102-4 of this code shall be liable and obliged to compensate for the harm that due diligence would have permitted to avoid.

"The action to establish liability shall be filed before the relevant jurisdiction by any person with a legitimate interest to do so.

"The court may order the publication, distribution or display of its decision or an extract thereof, in accordance with its procedures. The costs shall be paid by the person convicted.

"The court may order its decision to be carried out under financial compulsion."

After reading this law, it is essential to address the question of what inspired it. Many authors are of the opinion that this law has two different dimensions[50] – a political and a legal one. The political dimension is that it aims to achieve a certain behavior required of companies. According to the author Fabre-Magnan Brunet, the intention is to create or maintain an ideal social world, and the legal techniques appear as "*servants of a certain number of ideas and representations of a possible desirable or even necessary social world*."[51]

[49] Translation provided by Respect International (2017) <https://respect.international/wp-content/uploads/2017/10/ngo-translation-french-corporate-duty-of-vigilance-law.pdf>
[50] De Saint-Affrique D and Pailot P, "Loi Sur Le Devoir de Vigilance : Éléments d'analyse d'une Forme de Juridicisation de La RSE" (2020) 24 Management International 109 <https://doi.org/10.7202/1072645ar>
[51] De Saint-Affrique D and Pailot P, "Loi Sur Le Devoir de Vigilance : Éléments d'analyse d'une Forme de Juridicisation de La RSE" (2020) 24 Management International 109 <https://doi.org/10.7202/1072645ar>

Furthermore, this law is mainly inspired by the UN Guiding Principles on Business and Human Rights (UNGPs) by John Ruggie from 2011.[52] These principles are paramount for understanding the French law on the duty of vigilance.

In 2011, Professor John Ruggie, the UN Special Representative on Business and Human Rights, developed the UNGPs in a multi-year consultation process with various stakeholders.[53] These principles were unanimously endorsed by the UN Human Rights Council in 2011. They provide "*a common global platform of normative standards and authoritative policy guidance for states, businesses and civil society*".[54] They are indeed the global authoritative reference in preventing companies from human rights violations.[55]

The UNGPs were introduced to improve the human rights obligations of companies in relation to their activities.[56] These principles are based on three pillars[57] :

- Pillar 1: "The state duty to protect human rights", encouraging states to enact effective regulations to ensure that businesses on its territory respect human rights.
- Pillar 2: "The corporate responsibility to respect human rights", encouraging companies to carry out due diligence processes to "identify, prevent and mitigate" adverse human rights impacts.
- Pillar 3: "Access to remedy", promoting both judicial and non-judicial means for victims affected by violations committed by businesses.

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[52] United Nations, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (2011) <https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf>

[53] Faracik B, "Implementation of the UN Guiding Principles on Business and Human Rights" (Trans European Policy Studies Association (TEPSA) ed, Policy Department, Directorate-General for External Policies and European Parliament's Subcommittee on Human Rights (DROI), European Parliament 2017) Study p.13., <https://ssrn.com/abstract=2955762>

[54] Ruggie JG, "JUST BUSINESS: Multinational Corporations and Human Rights," *AMNESTY INTERNATIONAL GLOBAL ETHICS SERIES* (AMNESTY INTERNATIONAL 2013) p.13., <https://edisciplinas.usp.br/pluginfile.php/4424946/mod_resource/content/1/Ruggie%20-%20Just%20Business.pdf>

[55] Faracik B, "Implementation of the UN Guiding Principles on Business and Human Rights" (Trans European Policy Studies Association (TEPSA) ed, Policy Department, Directorate-General for External Policies and European Parliament's Subcommittee on Human Rights (DROI), European Parliament 2017) Study <https://ssrn.com/abstract=2955762>

[56] Faracik B, "Implementation of the UN Guiding Principles on Business and Human Rights" (Trans European Policy Studies Association (TEPSA) ed, Policy Department, Directorate-General for External Policies and European Parliament's Subcommittee on Human Rights (DROI), European Parliament 2017) Study <https://ssrn.com/abstract=2955762>

[57] Ruggie JG and Sherman JF, "The Concept of 'Due Diligence' in the UN Guiding Principles on Business and Human Rights: A Reply to Jonathan Bonnitcha and Robert McCorquodale" (2017) 28 European Journal of International Law 921 <https://doi.org/10.1093/ejil/chx047>

Even if these principles are not legally binding for companies, they have a considerable impact, as they represent a reference for many countries and companies worldwide.[58]

Indeed, there is a notable similarity in the terminology used in the duty of vigilance law. For instance, the legislator goes into detail about the "reasonable means" that companies must take and make up the vigilance plan.[59] Thus, the vigilance plan shall be drawn up in collaboration with the company's stakeholders. It must include a detailed description of the risks, their prioritization, the risk assessment procedures in relation to the situation of the subsidiaries, subcontractors or suppliers and the measures to mitigate and prevent these risks. Additionally, the plan must include an alert mechanism in the event of risks, which must be developed in collaboration with the representatives of the company's trade union organizations, as well as a monitoring system to evaluate the effectiveness of the measures implemented.[60]

However, there are some differences in the wording that are worth noting. Although the law also has a remedial dimension, the legislator emphasizes the preventive dimension by choosing the word "duty" rather than "obligation". In other words, the law is intended not only to remedy the damage caused by companies, but also to prevent the negative impact on people and the environment.[61] This underlines the proactive approach that the law seems to focus on.[62]

Furthermore, the legislator has chosen the word "vigilance" and not "diligence", which is often referred to in international standards.

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[58] Deva S and Macquarie Law School, "Mandatory Human Rights Due Diligence Laws in Europe: A Mirage for Rightsholders?" [2023] Leiden Journal of International Law 389 <https://doi.org/10.1017/S0922156522000802>

[59] D'Ambrosio L and Institut de recherche en droit international et européen de la Sorbonne (IREDIES), Université Paris 1 Panthéon-Sorbonne, "Le Devoir de Vigilance : Une Innovation Juridique Entre Continuités et Ruptures," vol 106

[60] Thunis X and Gollier J-M, "Devoir de Vigilance Des Entreprises: Vers Une « responsabilité Sociétale Des Entreprises » Juridiquement Obligatoire" (*The Research Portal - University of Namur*, 2021) <https://researchportal.unamur.be/en/publications/devoir-de-vigilance-des-entreprises-vers-une-responsabilité-socié> ; Brabant S and others, "The Vigilance Plan" [2017] REVUE INTERNATIONALE DE LA COMPLIANCE ET DE L'ÉTHIQUE DES AFFAIRES <https://media.business-humanrights.org/media/documents/ba571b7294311e42b3605af7cc4eeaad149c33b2.pdf>

[61] D'Ambrosio L and Institut de recherche en droit international et européen de la Sorbonne (IREDIES), Université Paris 1 Panthéon-Sorbonne, "Le Devoir de Vigilance : Une Innovation Juridique Entre Continuités et Ruptures," vol 106

[62] D'Ambrosio L and Institut de recherche en droit international et européen de la Sorbonne (IREDIES), Université Paris 1 Panthéon-Sorbonne, "Le Devoir de Vigilance : Une Innovation Juridique Entre Continuités et Ruptures," vol 106

The term "vigilance" comes from the term "due diligence" introduced by the UNGPs, which expect companies to conduct risk assessments on human rights in order to prevent human rights violations, mitigate and remedy violations that have already occurred.[63]

According to Principle 17 of the UNGPs, due diligence is defined as a process that includes "*assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed*."[64] In other words, three essential steps are required to fulfil this due diligence obligation:

1. "The identification and assessment of any actual or potential adverse human rights impacts" (Principle 18) ;
2. "The integration and appropriate implementation of results" (Principle 19) ;
3. "Tracking the effectiveness of their response" (Principle 20).

Despite the efforts of the UNGPs, due diligence processes are still perceived under the doctrine as a process obligation rather than an outcome obligation. In fact, the UN Guiding Principles consist of a set of appropriate measures to be achieved, i.e. an objective defined in an international standard. According to the French Gérard Cornu's legal vocabulary, due diligence is defined as "*the completion of the formalities necessary for the conclusion of a legal transaction*."

By choosing the word "vigilance", the legislator thus seems to want to emphasize that the result of these "reasonable means" implemented by this plan must be aimed at preventing and reducing "risks and serious harms" to human rights.[65] The aim of this law is to have specific conditions in order to achieve the desired results.[66]

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[63] Mastaki GA, Darondeau S and Tariqui A, *Le Devoir de Vigilance Des Entreprises En Matière de Durabilité : Quel Avenir Avec La CS3D ?* (HAL Open Science 2024) <https://hal.science/hal-04577023v2> ; Muchlinski P, "The Impact of the UN Guiding Principles on Business Attitudes to Observing Human Rights" (2021) 6 Business and Human Rights Journal 212 <https://doi.org/10.1017/bhj.2021.14>

[64] United Nations, "Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework", p. 17 and 18, <https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf>

[65] D'Ambrosio L and Institut de recherche en droit international et européen de la Sorbonne (IREDIES), Université Paris 1 Panthéon-Sorbonne, "Le Devoir de Vigilance : Une Innovation Juridique Entre Continuités et Ruptures," vol 106

[66] European Commission: Directorate-General for Justice and Consumers, Lise S and others, "Study on Due Diligence Requirements through the Supply Chain – Final Report" (Publications Office 2020) p. 157., <https://data.europa.eu/doi/10.2838/39830>

According to the UNGPs, the usual rules of complicity apply to human rights violations.[67] Consequently, a negligent company is not held responsible for the mere violation of its human rights obligations through its business relationships. The UNGPs therefore have a very restrictive view on this. In fact, it must be demonstrated that the company has "*knowingly provided practical assistance*" to the company in question to hold the company liable.[68] This approach is confirmed by the OECD Guidelines, which state even more clearly that negligent conduct "*should not be interpreted as transferring responsibility from the entity causing the negative impact to the enterprise with which it has a business relationship*." French law on the duty of vigilance goes beyond this definition, as the law prescribes reasonable but above all "effective measures."[69] The law not only requires an obligation of means but also expects these efforts to lead to a concrete result that prevents risks to human rights and the environment. In other words, the law is not only to be applied as a procedural obligation, but above all to achieve the required effects.[70] This wording will have an impact in legal proceedings, which we will dive into in Chapter 5.

In addition, this law introduces a new liability regime by imposing on the company the damage caused by its subsidiaries, subcontractors and suppliers.[71] However, the lack of a definition will become a problem in the practical implementation of this law, which will be discussed in the following chapters.

Nevertheless, it is important to point out that this law did not take its current form from the outset. As a result, the differences between the original and the final draft are clearly visible.

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[67] D'Ambrosio L and Institut de recherche en droit international et européen de la Sorbonne (IREDIES), Université Paris 1 Panthéon-Sorbonne, "Le Devoir de Vigilance : Une Innovation Juridique Entre Continuités et Ruptures," vol 106 p.6.
[68] D'Ambrosio L and Institut de recherche en droit international et européen de la Sorbonne (IREDIES), Université Paris 1 Panthéon-Sorbonne, "Le Devoir de Vigilance : Une Innovation Juridique Entre Continuités et Ruptures," vol 106 ; UNGPs, Commentary to Principle 17
[69] Mastaki GA, Darondeau S and Tariqui A, *Le Devoir de Vigilance Des Entreprises En Matière de Durabilité : Quel Avenir Avec La CS3D ?*(HAL Open Science 2024) <https://hal.science/hal-04577023v2>
[70] Cossart S and others, "Extension Du Domaine de La Vigilance, La Loi Sur Le Devoir de Vigilance, Au-Delà de La Compliance" Revue Des Juristes De Sciences Po - N° 16 - Janvier 2019 < https://www.asso-sherpa.org/wp-content/uploads/2019/02/Sherpa-Extension-du-domaine-de-la-vigilance.pdf>
[71] D'Ambrosio L and Institut de recherche en droit international et européen de la Sorbonne (IREDIES), Université Paris 1 Panthéon-Sorbonne, "Le Devoir de Vigilance : Une Innovation Juridique Entre Continuités et Ruptures," vol 106

If we compare the first and final drafts of the law, there are clearly two important differences[72] that explain why the current draft of the law has many shortcomings. Firstly, the original proposal was aimed at all companies based in France and not just those that exceed a certain number of employees. Secondly, the original proposal provided for the burden of proof to lie with the companies. Specifically, the proposal outlined that companies accused of breaching French legislation must prove that they were unable to prevent the damage by their own means.[73] These differences will not be without impact on the effectiveness of the law. Even though we know that the final version is a compromise, we must bear in mind that this compromise will certainly have an impact on the effectiveness of the law.

3. The Emergence of Business and Human Rights Regulation

The French corporate duty of vigilance law is no longer the first national law in the area of corporate responsibility for human rights and the environment. In Europe, there are many national laws that require companies to exercise human rights and environmental due diligence.[74] Countries such as the Netherlands[75], Switzerland[76], Norway[77] and Germany[78] have introduced binding laws in order to prevent human rights and environmental violations.[79] Other European countries are also actively promoting similar measures.[80]

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[72] Schilling-Vacaflor A, "Putting the French Duty of Vigilance Law in Context: Towards Corporate Accountability for Human Rights Violations in the Global South?" (2020) 22 Human Rights Review 109 <https://doi.org/10.1007/s12142-020-00607-9>

[73] Schilling-Vacaflor A, "Putting the French Duty of Vigilance Law in Context: Towards Corporate Accountability for Human Rights Violations in the Global South?" (2020) 22 Human Rights Review 109 <https://doi.org/10.1007/s12142-020-00607-9>

[74] "Mandatory Due Diligence - Business & Human Rights Resource Centre" (*Business & Human Rights Resource Centre*) <https://www.business-humanrights.org/en/big-issues/mandatory-due-diligence/>

[75] Wet zorgplicht kinderarbeid 2019, the Netherlands

[76] Indirect Counter-Proposal to the Popular Initiative' For responsible businesses–protecting human rights and the environment' 2020, Switzerland

[77] Lov om virksomheters åpenhet og arbeid med grunnleggende menneskerettigheter og anstendige arbeidsforhold (åpenhetsloven) 2021, Norway

[78] 'Act on Corporate Due Diligence in Supply Chains' 2021, Germany, <https://www.bmas.de/EN/Services/Press/recent-publications/2021/act-on-corporate-due-diligence-in-supply-chains.html>

[79]European Commission: Directorate-General for Justice and Consumers, Lise S and others, "Study on Due Diligence Requirements through the Supply Chain – Final Report" (Publications Office 2020) p. 193-196., <https://data.europa.eu/doi/10.2838/39830>

[80] European Commission: Directorate-General for Justice and Consumers, Lise S and others, "Study on Due Diligence Requirements through the Supply Chain – Final Report" (Publications Office 2020) p. 192., <https://data.europa.eu/doi/10.2838/39830>

What is certain is that companies can no longer shirk their responsibilities and must address the human rights violations caused by their business practices.[81]

3.1. A Voluntary Approach

The regulation of business in the area of human rights and the environment began with voluntary frameworks that provided guidance to companies.

These efforts have been characterized by various attempts to define the obligations of companies in the field of human rights and the environment. [82] A first attempt was the UN Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights, adopted by the Sub-Commission on the Promotion and Protection of Human Rights in 2003. However, a year later, in 2004, the UN Commission on Human Rights rejected their adoption.[83]

Another voluntary initiative that addresses the obligations of companies in relation to their human rights and environmental activities is the Global Compact, which was introduced in 2000 by former UN Secretary-General Kofi Annan.[84] This guideline encourages companies to adopt sustainable practices based on ten principles regarding "human rights, labor, environment and anti-corruption".

It is not only the United Nations that has taken up this challenge, but also the Organization for Economic Cooperation and Development (OECD) with the Guidelines for Multinational Enterprises on Responsible Business Conduct.[85]

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[81] Muchlinski P, "The Impact of the UN Guiding Principles on Business Attitudes to Observing Human Rights" (2021) 6 Business and Human Rights Journal 212 <https://doi.org/10.1017/bhj.2021.14>
[82] Faracik B, "Implementation of the UN Guiding Principles on Business and Human Rights" (Trans European Policy Studies Association (TEPSA) ed, Policy Department, Directorate-General for External Policies and European Parliament's Subcommittee on Human Rights (DROI), European Parliament 2017) Study <https://ssrn.com/abstract=2955762>
[83] Ruggie JG and Harvard Kennedy School, "The Social Construction of the UN Guiding Principles on Business & Human Rights" (John F Kennedy School of Government, Harvard University 2017) RWP17-030 <https://ssrn.com/abstract=2984901>
[84] "Uniting Business for a Better World | UN Global Compact" <https://unglobalcompact.org/take-action/20th-anniversary-campaign#:~:text=Launched%20in%202000%20by%20former,face%20to%20the%20global%20market.>
[85] OECD Guidelines for Multinationals Enterprises on Responsible Business Conduct <https://www.oecd.org/en/publications/oecd-guidelines-for-multinational-enterprises-on-responsible-business-conduct_81f92357-en.html>

These guidelines contain a set of recommendations for companies to ensure that they carry out their activities responsibly.[86] Furthermore, they are endorsed by all adhering Member States and may also be endorsed by non-adhering Member States. To bring the OECD Guidelines in line with the UNGPs, they were revised in 2011 and a chapter on human rights and the concept of due diligence was added.[87] These guidelines have drawn a lot of attention to corporate social responsibility.[88]

The Guidelines are supported by a unique implementation mechanism, the National Contact Points for Responsible Business (NCPs), established by governments to promote the effectiveness of the Guidelines. France also set up this mechanism in 2000.[89] This mechanism enables interested parties, usually non-governmental organizations, to submit a complaint to the relevant NCP if they believe that the company in question has not fulfilled its obligations under the Guidelines. The NCP then examines the case and if it decides to pursue the case further, it tries to reach an agreement. However, the NCP has no power to resolve the conflict, but it can urge companies to better comply with their obligations under the Guidelines in order to avoid the public attention which can ruin the reputation of the companies.[90] These mechanisms are still perceived as weak, as few complaints have led to a solution acceptable to all parties.[91]

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[86] Svoboda O, Charles University, and Ministry of Industry and Trade of the Czech Republic, "The OECD Guidelines for Multinational Enterprises and the Increasing Relevance of the System of National Contact Points" in P Šturma and VA Mozetic (eds), *Business and Human Rights* (2018)

[87] Ruggie JG and Sherman JF, "The Concept of 'Due Diligence' in the UN Guiding Principles on Business and Human Rights: A Reply to Jonathan Bonnitcha and Robert McCorquodale" (2017) 28 European Journal of International Law 921 <https://doi.org/10.1093/ejil/chx047>

[88] Svoboda O, Charles University, and Ministry of Industry and Trade of the Czech Republic, "The OECD Guidelines for Multinational Enterprises and the Increasing Relevance of the System of National Contact Points" in P Šturma and VA Mozetic (eds), *Business and Human Rights* (2018)

[89] Delalieux G, "La Loi Sur Le Devoir de Vigilance Des Sociétés Multinationales : Parcours d'une Loi Improbable" (2021) N° 106 Droit Et Société 649 <https://doi.org/10.3917/drs1.106.0649>

[90] Thunis X and Gollier J-M, "Devoir de Vigilance Des Entreprises: Vers Une « responsabilité Sociétale Des Entreprises » Juridiquement Obligatoire" (*The Research Portal - University of Namur*, 2021) <https://researchportal.unamur.be/en/publications/devoir-de-vigilance-des-entreprises-vers-une-responsabilit%C3%A9-soci%C3%A9>

[91] Thunis X and Gollier J-M, "Devoir de Vigilance Des Entreprises: Vers Une « responsabilité Sociétale Des Entreprises » Juridiquement Obligatoire" (*The Research Portal - University of Namur*, 2021) <https://researchportal.unamur.be/en/publications/devoir-de-vigilance-des-entreprises-vers-une-responsabilit%C3%A9-soci%C3%A9>

The International Labour Organisation's (ILO)[92] Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy are also principles, that were created in 1977. These principles provide guidance to multinational businesses, states and trade unions in the field of "working and living conditions, employment and training."[93]

Many studies have shown that in the absence of a legally binding framework, few companies choose to take human rights and the environment seriously. When they do, it is often due to pressure from customers.[94] Furthermore, voluntary frameworks often do not provide victims with access to justice such as a remediation mechanism in the event that a company has caused them harm.[95]

Voluntary frameworks have several limitations, such as the imbalance of power[96] between companies and victims, low and weak implementation of the mechanisms and insufficient follow-up of the measures implemented.[97]

Against this background, there was a need to introduce binding national HRDD laws. The urge to transform soft law into hard law is undoubtedly there. France has taken the initiative and clearly expressed its support for a national binding HRDDD law by adopting the duty of vigilance law.

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[92] International Labour Organization < https://www.ilo.org/ilo-declaration-fundamental-principles-and-rights-work>

[93] Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) < https://www.ilo.org/ilo-department-sustainable-enterprises-productivity-and-just-transition/areas-work/tripartite-declaration-principles-concerning-multinational-enterprises-and#:~:text=Areas%20of%20work-,Tripartite%20Declaration%20of%20Principles%20concerning,and%20Social%20Policy%20(MNE%20Declaration)&text=The%20MNE%20Declaration%20is%20the,responsible%20and%20sustainable%20workplace%20practices.>

[94] Deva S and Macquarie Law School, "Mandatory Human Rights Due Diligence Laws in Europe: A Mirage for Rightsholders?" [2023] Leiden Journal of International Law 389 <https://doi.org/10.1017/S0922156522000802>

[95] Deva S and Macquarie Law School, "Mandatory Human Rights Due Diligence Laws in Europe: A Mirage for Rightsholders?" [2023] Leiden Journal of International Law 389 <https://doi.org/10.1017/S0922156522000802>

[96] Deva S and Macquarie Law School, "Mandatory Human Rights Due Diligence Laws in Europe: A Mirage for Rightsholders?" [2023] Leiden Journal of International Law 389 <https://doi.org/10.1017/S0922156522000802>

[97] Schilling-Vacaflor A, "Putting the French Duty of Vigilance Law in Context: Towards Corporate Accountability for Human Rights Violations in the Global South?" (2020) 22 Human Rights Review 109 <https://doi.org/10.1007/s12142-020-00607-9>

3.2. An International Pressure for Domestic Implementation of the UNGPs

Before we examine the movement towards adopting binding national human rights due diligence laws, the question arises as to why there are still no binding regulations at international level to enhance corporate responsibility.

According to Ruggie, the weakness of international law lies in the fact that states are also economic actors and want to attract foreign investment, which means that the adoption of corporate and human rights legislation would diminish their attractiveness.[98] The International Criminal Court (ICC) also seemed reluctant to set up an international treaty to regulate corporations for human rights abuses, as international liability would pose a huge risk to multinational corporations and their subsidiaries.[99]

This is why France voted against the drafting of a binding treaty in 2014, which explains part of the motivation for the Corporate Duty of Vigilance Law.[100] Indeed, France believed that corporate responsibility for human rights and the environment could best be regulated by national norms and not international regulations. According to a report by French MP Dominique Potier, "*France, which voted against the proposal, justified its position by a preference for normative action by States within their domestic legal order*."[101] The report states that international law only serves as a goal to strive for. In fact, in their commentary, the UNGPs encourage states to adopt national laws to hold companies accountable for human rights violations in their home countries.[102]

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[98] Schilling-Vacaflor A, "Putting the French Duty of Vigilance Law in Context: Towards Corporate Accountability for Human Rights Violations in the Global South?" (2020) 22 Human Rights Review 109 <https://doi.org/10.1007/s12142-020-00607-9>

[99] Lichuma CO, "Mandatory Human Rights Due Diligence (MHRDD) Laws Caught between Rituals and Ritualism: The Forms and Limits of Business Authority in the Global Governance of Business and Human Rights" [2024] Business and Human Rights Journal 1 <https://doi.org/10.1017/bhj.2023.47>

[100] Bose D, "Decentring Narratives around Business and Human Rights Instruments: An Example of the French Devoir de Vigilance Law" (2023) 8 Business and Human Rights Journal 18 <https://doi.org/10.1017/bhj.2023.6>

[101] Translated by Bose D, "Decentring Narratives around Business and Human Rights Instruments: An Example of the French Devoir de Vigilance Law" (2023) 8 Business and Human Rights Journal 18 p.30., <https://doi.org/10.1017/bhj.2023.6>

[102] Bose D, "Decentring Narratives around Business and Human Rights Instruments: An Example of the French Devoir de Vigilance Law" (2023) 8 Business and Human Rights Journal 18 <https://doi.org/10.1017/bhj.2023.6>

The next question that arises: Is adopting national mandatory legislation on human rights due diligence the right approach to effectively hold multinational companies accountable?

According to Charlesworth and Larking, domestic laws on human rights due diligence allow companies to become co-regulators in the management of their activities, which implies that they themselves must take a certain approach. By influencing the behavior of their subsidiaries themselves, companies can better encourage them to comply with human rights and environmental standards. The aim of the legislator is for companies themselves to influence the behavior of their subsidiaries.[103] However, the issue of power seems to be a problem here, as the company must have the will to comply for this argument to be valid. Indeed, these authors attribute considerable power to companies, suggesting the need for a paradigm shift in the corporate mindset, which has so far proven not to work.

On the other hand, there are also authors who claim that national mandatory legislation on human rights due diligence do not appear to be effective and conclude that they focus on the process rather than the results.[104] According to this second approach, while these binding national laws represent progress, they are not sufficient to fully hold companies accountable. Secondly, domestic laws on human rights due diligence usually do not focus sufficiently on redressing imbalances in power, information and resources between companies and rights holders. Third, most national laws do not have effective remediation mechanisms that allow victims access to justice.[105] These shortcomings appear to be problems that exist in national binding human rights due diligence legislation worldwide.

The adoption of the Duty of vigilance law in France is an example of how the national approach to corporate accountability is evolving from soft law to enforceable obligations. The question is whether the Duty of Vigilance Law presents the same shortcomings.

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[103] Lichuma CO, "Mandatory Human Rights Due Diligence (MHRDD) Laws Caught between Rituals and Ritualism: The Forms and Limits of Business Authority in the Global Governance of Business and Human Rights" [2024] Business and Human Rights Journal 1 <https://doi.org/10.1017/bhj.2023.47>

[104] Deva S and Macquarie Law School, "Mandatory Human Rights Due Diligence Laws in Europe: A Mirage for Rightsholders?" [2023] Leiden Journal of International Law 389 p.17., <https://doi.org/10.1017/S0922156522000802>

[105] Deva S and Macquarie Law School, "Mandatory Human Rights Due Diligence Laws in Europe: A Mirage for Rightsholders?" [2023] Leiden Journal of International Law 389 p.25 and p.26., <https://doi.org/10.1017/S0922156522000802>

4. The Legal Framework of the French Duty of Vigilance Law

The duty of vigilance law poses a number of challenges that need to be analyzed in detail in order to assess its alignment with international standards. However, I will focus on the challenges and innovative aspects that have the greatest impact on the law, consequently, on its implementation.

4.1. The Scope of Application

One of the main problems with this law is its high application threshold.[106] The enforcement of the law depends on the identification of the companies that fall within its scope, which is why more attention has been paid to this issue.[107] As mentioned in the previous chapter, the law applies to (i) companies with more than 5 000 employees in France and/or (ii) more than 10 000 employees worldwide.

4.1.1. Challenges Arising from a Limited Scope of Application

The problem with this scope is that it excludes many companies that are involved in human rights and environmental violations. Due to the innovative nature of this law and the still unresolved legal issues, the French legislator only wanted to include large companies in the threshold of the law.[108] Two problems arise in connection with the limited scope of application to a small number of companies.

Firstly, it is important to note that it remains a challenge to identify all companies falling within the scope of the law.

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[106] Malat J, "10 Years on from Rana Plaza: Is France's Duty of Vigilance Law Living up to Its Promise? « Law# « Cambridge Core Blog" (*Cambridge Core Blog*, June 2, 2023) <https://www.cambridge.org/core/blog/2023/06/06/10-years-on-from-rana-plaza-is-frances-duty-of-vigilance-law-living-up-to-its-promise/>

[107] Savourey E and Brabant S, "The French Law on the Duty of Vigilance: Theoretical and Practical Challenges Since Its Adoption" (2021) 6 Business and Human Rights Journal 141 <https://doi.org/10.1017/bhj.2020.30>

[108] Assemblée Nationale, 15e législature, *Rapport n°5124 fait au nom de la Commission des Lois Constitutionnelles, de la Législation et de L'administration Générale de la République en conclusion des travaux d'une mission d'information sur l'évaluation de la loi du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre* (2022), Février 24, 2022 (Dubost Coralie, Potier Dominique) p.36-37

French NGOs point out that the lack of an official list subject to the law makes it difficult to identify companies.[109] Since 2019, Sherpa and the "*Comité catholique contre la faim et pour le development"* (CFFD) have published an annual report on the scope of application of the law in order to better identify the companies falling within its scope based on publicly available data.[110] In the 2021 edition (the latest edition), only 263 companies were covered by the law and 44 companies did not even appear to publish their vigilance plan.

The 2020 report of the General Council of Economy states that "*no government department currently has all the information needed to determine whether the Law applies to a particular company"*[111], which illustrates the practical difficulties of the law. For this reason, Sherpa and "CCFD – Terre solidaire" are talking about the creation of an administrative authority responsible for publishing the list of companies included. This administrative authority would have the task of supporting companies in the implementation of the law. It is important to remember that this procedure should also be accessible to stakeholders and persons with a legitimate interest in taking legal actions.[112] However, there are some caveats that need to be considered, such as the power to impose sanctions, given that legal control already exists. Furthermore, this procedure must not be seen as a compliance exercise that would legally protect companies. This means that it should be effective and give victims the opportunity to take legal action.[113]

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[109] Schilling-Vacaflor A, "Putting the French Duty of Vigilance Law in Context: Towards Corporate Accountability for Human Rights Violations in the Global South?" (2020) 22 Human Rights Review 109 <https://doi.org/10.1007/s12142-020-00607-9>

[110] Sherpa, *Vigilance Plans Reference Guidance* (Sherpa 2021) <https://www.asso-sherpa.org/wp-content/uploads/2019/02/Sherpa_VPRG_EN_WEB-VF-compressed.pdf>

[111] Assemblée Nationale, 15e législature, *Rapport n°5124 fait au nom de la Commission des Lois Constitutionnelles, de la Législation et de L'administration Générale de la République en conclusion des travaux d'une mission d'information sur l'évaluation de la loi du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre* (2022), Février 24, 2022 (Dubost Coralie, Potier Dominique) p.79

[112] Assemblée Nationale, 15e législature, *Rapport n°5124 fait au nom de la Commission des Lois Constitutionnelles, de la Législation et de L'administration Générale de la République en conclusion des travaux d'une mission d'information sur l'évaluation de la loi du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre* (2022), Février 24, 2022 (Dubost Coralie, Potier Dominique) p.81

[113] Assemblée Nationale, 15e législature, *Rapport n°5124 fait au nom de la Commission des Lois Constitutionnelles, de la Législation et de L'administration Générale de la République en conclusion des travaux d'une mission d'information sur l'évaluation de la loi du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre* (2022), Février 24, 2022 (Dubost Coralie, Potier Dominique) p.81

The CSDDD already stipulates that each Member State must set up a supervisory authority to monitor compliance with its obligations.[114] Among other tasks, the supervisory authority has the right to request information from companies and to carry out investigations, but also to impose sanctions.[115] As regards the publication of the list of companies subject to the Directive, the European Network of Supervisory Authorities is only required to publish an indicative list of third-country companies subject to the Directive, but not of EU companies. It would be beneficial to include EU companies as well.

Secondly, there are some companies that are not covered by the law, meaning that do not fall within its scope, but may be more involved in human rights and environmental violations. While there is a tendency for large companies to be more involved in human rights and environmental abuses than other smaller companies, this may not always be the case. Mainly because there are sectors where human rights abuses occur much more often than in others, such as mineral extraction, the textile industry and the agri-food industry, i.e. cocoa farming.[116]

Against this background, the Max Havelaar France Asssociation believes that the law should apply to all companies, regardless of their size.[117] They argue that the activities of some companies that are not covered by the law can have "*important impacts on human rights and the environment*". They claim that the size of a company says nothing about the risks that a company has on human rights and the environment, but rather that these risks are related to the sectors and regions in which the parent company operates. However, it is important to remember that SMEs do not have the same human, financial and technical resources to implement the duty of vigilance law. [118]

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[114] CSDDD, Article 24
[115] Krajewski M, "Administrative Enforcement of Corporate Human Rights Due Diligence Legislation" (*Verfassungsblog - on Matters Constitutional*, May 29, 2024) <https://verfassungsblog.de/administrative-enforcement-of-corporate-human-rights-due-diligence-legislation/>
[116] Assemblée Nationale, 15e législature, *Rapport n°5124 fait au nom de la Commission des Lois Constitutionnelles, de la Législation et de L'administration Générale de la République en conclusion des travaux d'une mission d'information sur l'évaluation de la loi du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre* (2022), Février 24, 2022 (Dubost Coralie, Potier Dominique) p.11
[117] Assemblée Nationale, 15e législature, *Rapport n°5124 fait au nom de la Commission des Lois Constitutionnelles, de la Législation et de L'administration Générale de la République en conclusion des travaux d'une mission d'information sur l'évaluation de la loi du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre* (2022), Février 24, 2022 (Dubost Coralie, Potier Dominique) p.54
[118] Assemblée Nationale, 15e législature, *Rapport n°5124 fait au nom de la Commission des Lois Constitutionnelles, de la Législation et de L'administration Générale de la République en conclusion des*

This approach is also in line with the UNGPs, which assume that all business enterprises are subject to the UNGPs "*regardless of their size, sector, location, ownership and structure"*. Furthermore, the UNGPs set out how this should be done and emphasize that factors such as the scale, complexity and gravity of human rights abuses by the business enterprise must be taken into account.[119] The UNGPs state that "*some small and medium-sized enterprises can have severe human rights impacts, which will require corresponding measures regardless of their size"*.[120] This means that it is important to include all companies in order to fulfill their corporate responsibility.

After pointing out the two problems, the French NGOs Sherpa and "CCFD-Terre solidaire" call for a reduction in the threshold for application and recommend aligning the threshold with the European Directive on disclosure of non-financial and diversity information in order to harmonize the two obligations.[121] Furthermore, the General Council of Economy recommends that the turnover and balance sheet thresholds be included in the scope of the law, as these criteria allow a better understanding of the economic impact of the company.

As we can see, the CSDDD applies to[122]:

i) large EU limited liability companies and partnerships with more than 1000 employees and a global turnover of more than EUR 450 million (net).

ii) large non-EU companies with a turnover of more than EUR 450 million (net) in the EU.

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travaux d'une mission d'information sur l'évaluation de la loi du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre (2022), Février 24, 2022 (Dubost Coralie, Potier Dominique) p.55

[119] UNGPs, Principle 14

[120] UNGPs, Commentary to Principle 14

[121] Assemblée Nationale, 15e législature, *Rapport n°5124 fait au nom de la Commission des Lois Constitutionnelles, de la Législation et de L'administration Générale de la République en conclusion des travaux d'une mission d'information sur l'évaluation de la loi du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre* (2022), Février 24, 2022 (Dubost Coralie, Potier Dominique) p.18

[122] "Corporate Sustainability Due Diligence: Fostering Sustainable and Responsible Corporate Behaviour for a Just Transition towards a Sustainable Economy." (*European Commission*) <https://commission.europa.eu/business-economy-euro/doing-business-eu/sustainability-due-diligence-responsible-business/corporate-sustainability-due-diligence_en#what-are-the-obligations-for-companies>

However, unlike the French law, the CSDDD appears to have lowered the threshold and included net turnover as a criterion for the application of this directive, so that it applies to a larger number of companies. Furthermore, the CSDDD provides support and guidance for SMEs and micro-enterprises that may be indirectly affected as their business partners are subject to the law.[123]

In conclusion, it would be beneficial to follow the UNGPs guidelines and include all companies in the scope of the law. The UNGPs state that "*the responsibility to respect human rights applies fully and equally to all business enterprises*".[124] However, this law does not seem to provide an answer to the question of how to ensure that all French companies fulfil their corporate responsibility. A first step would be to lower the threshold to bring it into line with the CSDDD. Moreover, while there is a reluctance to apply the law to all companies, it would be beneficial to extend its scope to SMEs and micro-enterprises, albeit with fewer restrictions and more guidance, as the CSDDD has already introduced.

One of the main problems is that companies are different entities, of different sizes and carrying out different activities, which makes it difficult to apply the same standards to all companies. Considering the impact that companies can have on human rights and the environment, it is important to take into account the degree of risk of environmental or human rights violations in the sector concerned or a differentiation of due diligence according to the size of the company in order to include SMEs and micro-enterprises.[125] What is certain is that the employee criterion is not a reliable one. In other words, it is important to not only consider the number of employees and the thresholds, but also other criteria so that the law holds companies with the greatest impact on human rights and the environment accountable.

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[123] "Corporate Sustainability Due Diligence: Fostering Sustainable and Responsible Corporate Behaviour for a Just Transition towards a Sustainable Economy." (*European Commission*) <https://commission.europa.eu/business-economy-euro/doing-business-eu/sustainability-due-diligence-responsible-business/corporate-sustainability-due-diligence_en#what-are-the-obligations-for-companies>

[124] UNGPs, Commentary to Principle 14

[125] Assemblée Nationale, 15e législature, *Rapport n°5124 fait au nom de la Commission des Lois Constitutionnelles, de la Législation et de L'administration Générale de la République en conclusion des travaux d'une mission d'information sur l'évaluation de la loi du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre* (2022), Février 24, 2022 (Dubost Coralie, Potier Dominique) p.56

4.1.2. Entities Covered by the Scope of Application

Having identified the problem of limiting the scope to a smaller number of companies, it is important to determine which companies fall within the scope of the vigilance law. To determine whether a company is covered by the law, we need to look not only at the number of employees, as required by the law, but also to determine the type of company, its subcontractors or suppliers and finally the number of employees of these companies.[126]

Firstly, there is still legal uncertainty as to whether the law applies to all legal forms of companies. Although the law explicitly states that it applies to "*any company*", the debate revolves around SAS (*société par actions simplifiée*) due to the structure of these companies, which are much more flexible than other corporate structures.[127] Furthermore, the SARL (*société à responsabilité limitée*) and the SNC (*société en nom collectif*) are excluded from the scope of the law, even if they exceed the threshold of the number of employees. It was generally assumed that these types of companies do not exceed the thresholds and are therefore excluded from the scope of the law. However, according to the National Assembly's information report on the evaluation of the vigilance law, companies such as Zara or Hennes & Mauritz (H&M), which are registered as SARLs, exceed the thresholds and also have a massive impact on human rights and the environment.[128]

In the context of the CSDDD, the scope of application concerns "companies" by defining companies as[129] :

(i) "a legal person constituted as one of the legal forms listed in Annexes I and II to Directive 2013/34/EU;

(ii) a legal person constituted in accordance with the law of a third country in a form comparable to those listed in Annexes I and II to Directive 2013/34/EU;

(iii) a regulated financial undertaking, regardless of its legal form, which is (…)"

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[126] Sherpa, *Vigilance Plans Reference Guidance* (Sherpa 2021) <https://www.asso-sherpa.org/wp-content/uploads/2019/02/Sherpa_VPRG_EN_WEB-VF-compressed.pdf>

[127] Savourey E and Brabant S, "The French Law on the Duty of Vigilance: Theoretical and Practical Challenges Since Its Adoption" (2021) 6 Business and Human Rights Journal 141 <https://doi.org/10.1017/bhj.2020.30>

[128] Assemblée Nationale, 15e législature, *Rapport n°5124 fait au nom de la Commission des Lois Constitutionnelles, de la Législation et de L'administration Générale de la République en conclusion des travaux d'une mission d'information sur l'évaluation de la loi du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre* (2022), Février 24, 2022 (Dubost Coralie, Potier Dominique) p.47-48

[129] CSDDD, Article 3

Thus, the CSDDD appears to give more detail on the specific entities included than the french law and has a broader approach by including third country companies and regulated financial undertakings.[130] Furthermore, this means that SASs, SARLs and SNCs fall within the scope as they are listed in Annex I and Annex II of the Directive 2013/34/EU.[131] In summary, it can be said that the debate about these company forms should no longer be continued.

Secondly, it is important to recall that these companies ("the parent companies") are not the only ones that fall within the scope of the law, but also the activities of a number of other companies linked to the parent company.[132] Indeed, the vigilance plan should also cover the activities of the following companies: "*the companies that it controls, within the meaning of article L. 233-16 II, directly or indirectly, as well as the activities of subcontractors or suppliers with whom they have an established commercial relationship, when these activities are related to this relationship*." [133]

This description of the companies included in the vigilance plan raises a number of questions, as it increases the number of companies to be included.[134] Before defining the activities that must be covered by the law, the question of the principle of separation arises. In France, a "group of companies" does not have legal personality. Each company is a separate entity with its own legal personality and autonomy. According to the principle of separation, each company is responsible for its own actions, which means that the parent company cannot be held responsible for the actions of its subsidiaries.

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[130] Sinnig J and others, "The EU's Corporate Sustainability Due Diligence Directive: From Disclosure to Prevention of Adverse Sustainability Impacts in Supply Chains" Universite Du Luxembourg - Faculty of Law, Economics and Finance; European Banking Institute

[131] DIRECTIVE 2013/34/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC < https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0034>

[132] Brabant S and others, "The Vigilance Plan" [2017] REVUE INTERNATIONALE DE LA COMPLIANCE ET DE L'ÉTHIQUE DES AFFAIRES <https://media.business-humanrights.org/media/documents/ba571b7294311e42b3605af7cc4eeaad149c33b2.pdf>

[133] LOI n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre, Article 1

[134] Brabant S and others, "The Vigilance Plan" [2017] REVUE INTERNATIONALE DE LA COMPLIANCE ET DE L'ÉTHIQUE DES AFFAIRES <https://media.business-humanrights.org/media/documents/ba571b7294311e42b3605af7cc4eeaad149c33b2.pdf>

This law represents a major step forward in challenging this principle, as companies can no longer use the argument of their complex and numerous supply chains.[135]

However, questions still persist regarding the definitions of subsidiaries, subcontractors, and suppliers. Companies remain uncertain about which specific business relationships fall under the duty of vigilance law.

First, the law requires that controlled companies are included in its scope. Article L. 233-16 II of the Commercial French Code classifies control "as exclusive control", i.e. when the company has decision-making authority, particularly regarding financial and operational decisions of another company.[136]

Moreover, the definition of an "established business relationship" in the context of the duty of vigilance law also remains a challenge.[137] The problem often arises that only the first level of suppliers or subcontractors are included in the vigilance plans. According to case law, this term is defined by its regularity, significance and stability. Moreover, a written contract is not necessarily required to have an "established business relationship". Thus, in 2016, the Paris Court of Appeal specified that the scope of application of this law may be extended "*beyond simple contractual relations, to very diverse situation, independently of any contract*."[138] This means that occasional contractors are not affected.[139] This could lead to circumvention strategies on the part of certain companies, i.e. companies could tend to increase the number of their tenders instead of maintaining a permanent relationship with a single supplier.[140]

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[135]"Loi Relative Au Devoir de Vigilance Des Sociétés Mères et Des Entreprises Donneuses d'ordre" (*Clifford Chance*, April 2017) <https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2017/05/loi-relative-au-devoir-de-vigilance-des-societes-meres-et-des-entreprises-donneuses-dordre.pdf>

[136] Brabant S and others, "The Vigilance Plan" [2017] REVUE INTERNATIONALE DE LA COMPLIANCE ET DE L'ÉTHIQUE DES AFFAIRES <https://media.business-humanrights.org/media/documents/ba571b7294311e42b3605af7cc4eeaad149c33b2.pdf>

[137] Savourey E and Brabant S, "The French Law on the Duty of Vigilance: Theoretical and Practical Challenges Since Its Adoption" (2021) 6 Business and Human Rights Journal 141 <https://doi.org/10.1017/bhj.2020.30>

[138]*Décision n°150/01355 du 27 octobre 2016* (Cour d'appel de Paris)

[139] De Saint-Affrique D and Pailot P, "Loi Sur Le Devoir de Vigilance : Éléments d'analyse d'une Forme de Juridicisation de La RSE" (2020) 24 Management International 109 <https://doi.org/10.7202/1072645ar>

[140] Assemblée Nationale, 15e législature, *Rapport n°5124 fait au nom de la Commission des Lois Constitutionnelles, de la Législation et de L'administration Générale de la République en conclusion des travaux d'une mission d'information sur l'évaluation de la loi du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre* (2022), Février 24, 2022 (Dubost Coralie, Potier Dominique) p.40

According to the French Directorate for Civil Affairs and Seals ("*la direction des affaires civiles et du sceau"*), the established nature of the relationship can also be assessed "*by taking into account the importance of the subcontracted activity or the goods or services supplied in the value chain of the client company*."[141] They recommend the inclusion of this economic criterion as it allows a better assessment of whether this relationship has a major impact on human rights and the environment, while ensuring that occasional relationships are also taken into account. This criterion emphasizes the importance of the relationship. On the other hand, the French Treasury fears that a new definition of the "established business relationship", which in this case could be a contract, could on the contrary narrow the scope of the value chain.[142]

In addition, not only must all direct or indirect subsidiaries of the companies be identified, but also the number of employees of these companies.[143] The challenge here also lies in the difficulty of obtaining information, given that these companies are usually located abroad and the calculation of the number of employees may differ from one country to another, e.g. due to tax regulations.[144]

Unlike the duty of vigilance law, which determines the companies subject to the vigilance plan, the selection of companies subject to due diligence under the UNGPs depends on the extent of their involvement in adverse human rights impacts.[145]

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[141] Assemblée Nationale, 15e législature, *Rapport n°5124 fait au nom de la Commission des Lois Constitutionnelles, de la Législation et de L'administration Générale de la République en conclusion des travaux d'une mission d'information sur l'évaluation de la loi du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre* (2022), Février 24, 2022 (Dubost Coralie, Potier Dominique) p.39

[142] Assemblée Nationale, 15e législature, *Rapport n°5124 fait au nom de la Commission des Lois Constitutionnelles, de la Législation et de L'administration Générale de la République en conclusion des travaux d'une mission d'information sur l'évaluation de la loi du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre* (2022), Février 24, 2022 (Dubost Coralie, Potier Dominique) p.40

[143] Assemblée Nationale, 15e législature, *Rapport n°5124 fait au nom de la Commission des Lois Constitutionnelles, de la Législation et de L'administration Générale de la République en conclusion des travaux d'une mission d'information sur l'évaluation de la loi du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre* (2022), Février 24, 2022 (Dubost Coralie, Potier Dominique) p.53

[144] Assemblée Nationale, 15e législature, *Rapport n°5124 fait au nom de la Commission des Lois Constitutionnelles, de la Législation et de L'administration Générale de la République en conclusion des travaux d'une mission d'information sur l'évaluation de la loi du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre* (2022), Février 24, 2022 (Dubost Coralie, Potier Dominique) p.53

[145] Brabant S and others, "The Vigilance Plan" [2017] REVUE INTERNATIONALE DE LA COMPLIANCE ET DE L'ÉTHIQUE DES AFFAIRES <https://media.business-humanrights.org/media/documents/ba571b7294311e42b3605af7cc4eeaad149c33b2.pdf>

According to Principle 17, due diligence "*should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships*." In the latter case, "directly linked" does not mean that the company itself causes or contributes to the adverse human rights or environmental impacts. Rather, this concept refers to the company's connection to adverse impacts caused by the company with which it has a business relationship.[146] The vigilance law does not mention the terms "causing", "contributing" or "directly linked". However, it could be argued that they are implicitly included, as reference is made to the UNGPs in the preparatory work of the vigilance law.[147]

The CSDDD seems to consider upstream suppliers, while downstream suppliers seem to be excluded. As such, article 2 of the CSDDD states that the directive applies to companies "*with respect to their own operations, the operations of their subsidiaries and the operations carried out by their business partners in the chains of activities of those companies.*"[148] Firstly, a business partner under the CSDDD means : (i) a company with which the company has concluded a commercial contract, and (ii) a company with which the company conducts commercial transactions.

"Chain of activities" are defined as (i) upstream business partners' activities such as the "production of goods or the provision of services (…)" and (ii) downstream business partner's activities such as "the distribution, transport and storage of a product".[149] Thus, activities such as distribution, transportation and storage of the product are included, while the product that is used and disposed of is not covered by the Directive.[150]

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[146] Brabant S and others, "The Vigilance Plan" [2017] REVUE INTERNATIONALE DE LA COMPLIANCE ET DE L'ÉTHIQUE DES AFFAIRES <https://media.business-humanrights.org/media/documents/ba571b7294311e42b3605af7cc4eeaad149c33b2.pdf>

[147] Bright C and others, "A Comparative Analysis between the Corporate Sustainability Due Diligence Directive and the French and German Legislation" [2024] Verfassungsblog - on Matters Constitutional <https://verfassungsblog.de/a-comparative-analysis-between-the-corporate-sustainability-due-diligence-directive-and-the-french-and-german-legislation/>

[148] CSDDD, Article 1(1) (a)

[149] CSDDD, Article 3 (g)

[150] Bright C and others, "A Comparative Analysis between the Corporate Sustainability Due Diligence Directive and the French and German Legislation" [2024] Verfassungsblog - on Matters Constitutional <https://verfassungsblog.de/a-comparative-analysis-between-the-corporate-sustainability-due-diligence-directive-and-the-french-and-german-legislation/>

In summary, the CSDDD covers a broader range of business activities that are intended to be covered by the CSDDD than the French law. As a result, it is important for French legislation to include the entire value chain of the company's activities whenever there is a business relationship.

4.2. The Interpretation of Key Concepts: Understanding the notions of "risk" and "severity"

According to the doctrine and several studies, the vigilance plans lack clarity in mapping, meaning there is no real methodology on how they "*identify the risks and prevent severe impacts on human rights and fundamental freedoms, health and safety of persons and on the environment*."[151] Information such as the actions and measures they have taken to mitigate risks and prevent serious impacts is mostly missing from the vigilance plans.[152]The implementation of this task seems to be the most difficult aspect of the process.[153]

The problem is caused by the numerous interpretations of the terms "severity" and "risk". The lack of definitions leads to ambiguities in the interpretation of the implementation of the vigilance plan. This complicates the application and implementation of the law in practice. The AFEP ("*l'Association française des entreprises privées"*) has criticized the law for its '*extremely broad scope and ambiguity'*.[154]

The lack of clear definitions in national law therefore makes it necessary to use international guidelines such as the UNGPs as an aid to interpretation.

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[151] Boudjellal F, "Chapitre 5. Premiers Regards Sur Le Devoir de Vigilance" in Marion Bary, *L'entreprise et la reddition de compte en matière sociale et environnementale. Regards croisés droits français, de l'Union européenne et brésilien* (Amplitude du droit 2023)

[152] Assemblée Nationale, 15e législature, *Rapport n°5124 fait au nom de la Commission des Lois Constitutionnelles, de la Législation et de L'administration Générale de la République en conclusion des travaux d'une mission d'information sur l'évaluation de la loi du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre* (2022), Février 24, 2022 (Dubost Coralie, Potier Dominique) p.30

[153] Assemblée Nationale, 15e législature, *Rapport n°5124 fait au nom de la Commission des Lois Constitutionnelles, de la Législation et de L'administration Générale de la République en conclusion des travaux d'une mission d'information sur l'évaluation de la loi du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre* (2022), Février 24, 2022 (Dubost Coralie, Potier Dominique) p.30

[154] Assemblée Nationale, 15e législature, *Rapport n°5124 fait au nom de la Commission des Lois Constitutionnelles, de la Législation et de L'administration Générale de la République en conclusion des travaux d'une mission d'information sur l'évaluation de la loi du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre* (2022), Février 24, 2022 (Dubost Coralie, Potier Dominique) p.34-35

Thus, many companies saw the risk as the risk to their business and proceeded with the same methods they had used in previous due diligence operations. However, this law does not refer to such company-related risks, but focuses on the risks to rights holders as interpreted by the UNGPs.[155]

It is essential to define the term "risk" before implementing the vigilance plan. For instance, the vigilance plan must contain a "*mapping that identifies, analyses and ranks risks".*[156] However, very few companies define this concept in their vigilance plan. This can be a little confusing for companies, as they only consider the risks that are serious. The problem is that the law does not explicitly state that only the risk of serious effects should be considered. However, it would be difficult to rank the risks if they have not all been identified and analyzed beforehand.[157] The Constitutional Council seems to follow the same approach, as it stated in its decision of 23 March 2017 that the due diligence measures "*are intended to identify all risks and prevent all serious* harm."[158]

As the law does not contain an explicit definition of the term "severity", the UNGPs state in their commentary on Principle 14 that the severity of the impact is to be assessed by:

(i) their scale
(ii) their scope
(iii) the irremediable character of the impact

[155] Savourey E and Brabant S, "The French Law on the Duty of Vigilance: Theoretical and Practical Challenges Since Its Adoption" (2021) 6 Business and Human Rights Journal 141 <https://doi.org/10.1017/bhj.2020.30>
[156] LOI n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre (1) (2017) < https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000034290626/>
[157] Assemblée Nationale, 15e législature, *Rapport n°5124 fait au nom de la Commission des Lois Constitutionnelles, de la Législation et de L'administration Générale de la République en conclusion des travaux d'une mission d'information sur l'évaluation de la loi du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre* (2022), Février 24, 2022 (Dubost Coralie, Potier Dominique) p.36
[158] *Décision n° 2017-750 DC du 23 mars 2017* (Conseil Constitutionnel) <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000034290632>

Understanding severity

Dimensions	Definition	Examples	
		Potentially less severe	Potentially more severe
Scale:	• How grave or serious the impact would be	• A 14-year-old helping out behind the counter in the family store	• A 10-year-old child working in artisanal mining
Scope	• How widespread the impact would be (i.e., how many people would be affected)	• One or two individuals	• A whole community
Remediability	• How hard it would be to put right the resulting harm	• A worker is fired on a discriminatory basis but can be promptly reinstated with appropriate compensation, apologies and guarantee of non-repetition	• A worker contracts an incurable disease due to a lack of appropriate health and safety measures

Figure 1 – Shift, Oxfam and Global Compact Network Netherlands, "Doing Business with Respect for Human Rights : A Guidance Tool for Companies", 2016, available at : <https://www.businessrespecthumanrights.org/image/2016/10/24/business_respect_human_rights_full.pdf>

The figure above shows examples of how the "scale, scope and irremediable character of the impact" can be assessed.

Businesses should also take into account any negative impacts on human rights. However, Principle 24 states that when prioritization is required, companies should "*first seek to prevent and mitigate those that are most severe or where delayed response would make them irremediable*'. The commentary to this principle states that "*severity is not an absolute concept in this context but is relative to the other human rights impacts the business enterprise has identifie*d." Experience has already shown that the larger the scope or extent of the impact, the more difficult it is to remedy.[159]

[159] Assemblée Nationale, 15e législature, *Rapport n°5124 fait au nom de la Commission des Lois Constitutionnelles, de la Législation et de L'administration Générale de la République en conclusion des travaux d'une mission d'information sur l'évaluation de la loi du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre* (2022), Février 24, 2022 (Dubost Coralie, Potier Dominique)

According to the UNGPs, risks are associated with the effects that a company's activities have, which can be risk factors "*in the consequences of an event (severity) and its probability*."[160]

With regard to the CSDDD, the directive seems to follow the same approach as the UNGPs. With regard to the term "risk", the CSDDD defines risks as "*facts, situations or circumstances that relate to the severity and likelihood of an adverse impac*t." In addition, according to the CSDDD, severe impacts are also assessed according to their scale, scope or irreversible nature.[161]

Although the French law is based on the UNGPs, the proposal does not explicitly refer to them.[162] This could lead to companies arguing that they are not obliged to follow the interpretation of the UNGPs.

While the broad interpretation of these terms has been widely criticized, French NGOs recall the importance of the flexibility of the law, because of the interdependence of the risks. Indeed, a broader approach to the law makes it possible to take everything into account.[163] They express the concern that an overly precise legal approach could reduce the law to a "box-ticking" exercise.

However, misinterpretation by companies could undermine the whole purpose of this law. As observed with the term "risk", companies referred to the risks that may arise for themselves and not for society. Without clear definitions and concepts, it will be challenging to hold companies responsible.

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[160] United Nations, "THE CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS: An Interpretive Guide" (2012) <https://www.ohchr.org/sites/default/files/Documents/Publications/HR.PUB.12.2_En.pdf>

[161] CSDDD, Article 3 (l) and Article 3 (v)

[162] Assemblée Nationale, 15e législature, *Rapport n°5124 fait au nom de la Commission des Lois Constitutionnelles, de la Législation et de L'administration Générale de la République en conclusion des travaux d'une mission d'information sur l'évaluation de la loi du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre* (2022), Février 24, 2022 (Dubost Coralie, Potier Dominique) p.36

[163] Assemblée Nationale, 15e législature, *Rapport n°5124 fait au nom de la Commission des Lois Constitutionnelles, de la Législation et de L'administration Générale de la République en conclusion des travaux d'une mission d'information sur l'évaluation de la loi du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre* (2022), Février 24, 2022 (Dubost Coralie, Potier Dominique) p.37

Therefore, it is essential to find a balance between clearly defining the various concepts and ensuring the law's ultimate goal, which is holding multinational accountable for their human rights and environmental violations. The interpretation of the UNGPs and the CSDDD seems to be the right approach for the French corporate duty of vigilance law.

4.3. Enhancing Stakeholder Engagement in the Duty of Vigilance Law

Under French law, the plan shall be drawn up in consultation with the parties concerned, which means that it does not constitute an obligation. In contrast to the establishment of an alert mechanism, the law requires cooperation with the trade unions, which are considered representatives within the company.

Two problems arise from this provision for the preparation of the plan. Firstly, companies are not obliged to consult the relevant stakeholders when drawing up the plan. Secondly, even if companies decide to involve stakeholders in the process, the law does not clarify what this means in practice.[164] For example, the question of whether and how they involve the relevant stakeholders in the drafting process remains open. In practice, it is often the case that they are neither identified nor consulted.[165] In fact, companies fail to mention the human, technical and financial resources used to develop the plan. It is also noted that dialogue with trade unions is more frequent than with NGOs. Thus, the National Assembly's information report states that: "*if dialogue with NGOs, the very reason for the law, does not improve, the duty of vigilance could become a paper obligation [...] rather than a genuine policy for reducing risks on a day-to-day basis*."[166]

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[164] Lichuma CO, "Mandatory Human Rights Due Diligence (MHRDD) Laws Caught between Rituals and Ritualism: The Forms and Limits of Business Authority in the Global Governance of Business and Human Rights" [2024] Business and Human Rights Journal 1 <https://doi.org/10.1017/bhj.2023.47>

[165] Assemblée Nationale, 15e législature, *Rapport n°5124 fait au nom de la Commission des Lois Constitutionnelles, de la Législation et de L'administration Générale de la République en conclusion des travaux d'une mission d'information sur l'évaluation de la loi du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre* (2022), Février 24, 2022 (Dubost Coralie, Potier Dominique) p.14

[166] Assemblée Nationale, 15e législature, *Rapport n°5124 fait au nom de la Commission des Lois Constitutionnelles, de la Législation et de L'administration Générale de la République en conclusion des travaux d'une mission d'information sur l'évaluation de la loi du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre* (2022), Février 24, 2022 (Dubost Coralie, Potier Dominique) p.30

French non-governmental organizations also point out that when companies involve stakeholders in the process, they only do so because they need information from them. Thus, often neither trade union organizations nor employee representatives are involved in the process.[167] One interesting point is that the vigilance plan is included in the management report submitted by the board of directors. However, this should not be an obstacle to the involvement of the parties concerned in the process.[168]

In this respect, soft law instruments seem to provide clearer guidance on stakeholder engagement, as both the UNGPs and the OECD Due Diligence Guidance for Responsible Business Conduct require it. In contrast to French law, both instruments define relevant stakeholders as communities, workers, employees, trade unions, human rights defenders, investors, NGOs and civil society organizations.[169] Both guidelines emphasize the importance of understanding the individuals and communities affected, while recognizing that not all stakeholders should be treated equally, as some may be more important than others. [170]

In addition, the OECD Guidelines and the UNGPs go beyond simple stakeholder involvement and require that consultation is "meaningful" and "effective". "Meaningful" is characterized by the goodwill of both parties, while "effective" is characterized by the potential barriers that may exist, such as the language barrier.[171]

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[167] Assemblée Nationale, 15e législature, *Rapport n°5124 fait au nom de la Commission des Lois Constitutionnelles, de la Législation et de L'administration Générale de la République en conclusion des travaux d'une mission d'information sur l'évaluation de la loi du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre* (2022), Février 24, 2022 (Dubost Coralie, Potier Dominique) p.44

[168] Assemblée Nationale, 15e législature, *Rapport n°5124 fait au nom de la Commission des Lois Constitutionnelles, de la Législation et de L'administration Générale de la République en conclusion des travaux d'une mission d'information sur l'évaluation de la loi du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre* (2022), Février 24, 2022 (Dubost Coralie, Potier Dominique) p.44

[169] Lichuma CO, "Mandatory Human Rights Due Diligence (MHRDD) Laws Caught between Rituals and Ritualism: The Forms and Limits of Business Authority in the Global Governance of Business and Human Rights" [2024] Business and Human Rights Journal 1 <https://doi.org/10.1017/bhj.2023.47>

[170] Lichuma CO, "Mandatory Human Rights Due Diligence (MHRDD) Laws Caught between Rituals and Ritualism: The Forms and Limits of Business Authority in the Global Governance of Business and Human Rights" [2024] Business and Human Rights Journal 1 <https://doi.org/10.1017/bhj.2023.47>

[171] "Due Diligence for Responsible Business Conduct" (*OECD*) <https://www.oecd.org/en/topics/sub-issues/due-diligence-guidance-for-responsible-business-conduct.html#:~:text=The%20OECD%20Guidelines%20for%20Multinational,supply%20chains%20and%20business%20relationships.> ; UNGPs, Commentary to Principle 18

The UNGPs also talk about timing, meaning that consultation with relevant stakeholders shall be done "*prior to a new activity or relationship, prior to major decisions or changes in the operation; in response to or anticipation of changes in the operating environment and periodically throughout the life of an activity or relationship*."[172]

These shortcomings do not seem to be present in the CSDDD, as this directive provides a clear definition of stakeholders and includes them in the due diligence process.[173] The CSDDD emphasizes that not only language can be an obstacle, but that the quality and transparency of information is also important. Although the term "meaningful" is not explicitly defined in the CSDDD, the directive nevertheless provides ways to ensure that consultation is conducted safely by addressing issues such as retaliation and retribution as well as confidentiality and anonymity. [174]

The French law on the duty of vigilance must be adapted, as it lacks the effectiveness of involvement, does not provide further guidance and is not aligned with international standards. Firstly, the law must oblige companies to involve stakeholders in the development of the plan. Secondly, the law must name the relevant stakeholders and include a list of relevant stakeholders, such as local communities. In addition, the law must provide guidance on the conditions, locations of consultations and specify methods for involving marginalized and vulnerable groups.[175] It must also be remembered that some specific situations also require specific solutions, e.g. for minorities or vulnerable communities, which must be carefully considered.[176]

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[172] UNGPs, Commentary to Principle 18
[173] Bright C and others, "A Comparative Analysis between the Corporate Sustainability Due Diligence Directive and the French and German Legislation" [2024] Verfassungsblog - on Matters Constitutional <https://verfassungsblog.de/a-comparative-analysis-between-the-corporate-sustainability-due-diligence-directive-and-the-french-and-german-legislation/>; CSDDD, Article 13(3)
[174] Bright C and others, "A Comparative Analysis between the Corporate Sustainability Due Diligence Directive and the French and German Legislation" [2024] Verfassungsblog - on Matters Constitutional <https://verfassungsblog.de/a-comparative-analysis-between-the-corporate-sustainability-due-diligence-directive-and-the-french-and-german-legislation/>; CSDDD, Recital 65
[175] Fielitz P-D, Fachin MG and Pamplona DA, "More of the Same or True Evolution?" [2024] Verfassungsblog – on Matters Constitutional <https://verfassungsblog.de/more-of-the-same-or-true-evolution/>
[176] Fielitz P-D, Fachin MG and Pamplona DA, "More of the Same or True Evolution?" [2024] Verfassungsblog – on Matters Constitutional <https://verfassungsblog.de/more-of-the-same-or-true-evolution/>

Finally, the law must also provide for access to information for stakeholders, which is paramount to overcoming an information asymmetry which has already been considered under the CSDDD.[177]

If companies do not take their obligation to consult relevant stakeholders seriously and involve them in the development of the plan, there could be a real imbalance of power created by this law. Furthermore, this process is not only beneficial for the rights holders concerned, but more importantly for companies to reduce the legal risks and costs they could face and to better understand their obligations under the corporate duty of vigilance law.

4.4. Access to Remedies: A Fault-Based Liability at the Expense of the Victims

The French legislation on the Duty of Vigilance of parent and subcontracting companies would be incomplete if it did not allow victims to take legal action. The UNGPs mention that access to remedy is part of the State's duty to protect human rights violations related to corporate activities.[178] This can be done through "*judicial, administrative, legislative or other appropriate means*."[179] The UNGPs use the word "complaint" in a broader sense by including many mechanisms to ensure access to remedy. For example, these mechanisms may include "*a branch or agency of the State, or an independent body on a statutory or constitutional basis*." The UNGPs also note the importance of ensuring that those affected understand these mechanisms and that the public is aware of them.[180]

This law is undoubtedly an important step in challenging the "separation principle", as it allows foreign claims to be brought before the French jurisdictions.[181]

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[177] Fielitz P-D, Fachin MG and Pamplona DA, "More of the Same or True Evolution?" [2024] Verfassungsblog – on Matters Constitutional <https://verfassungsblog.de/more-of-the-same-or-true-evolution/>
[178] UNGPs, Principle 25
[179] UNGPs, Principle 25
[180] UNGPs, Commentary to Principle 25
[181] Schilling-Vacaflor A, "Putting the French Duty of Vigilance Law in Context: Towards Corporate Accountability for Human Rights Violations in the Global South?" (2020) 22 Human Rights Review 109 <https://doi.org/10.1007/s12142-020-00607-9>

Thus, the law first provides for a mechanism to ensure compliance with the law, i.e. before a risk materializes (4.4.1.), and a civil liability regime when fundamental freedoms, health and safety or the environment are damaged, meaning when the damage has already occurred (4.4.2.). [182]

4.4.1. The formal notice

Article 2 of the law creating Article L.225-102-5 of the French Commercial Code allows *"anyone with a legitimate interest"* to bring an action before the French courts. Individuals or groups affected, but also non-affected individuals or groups such as non-governmental organizations or trade unions, can take legal action if they believe that the company has not complied with its obligations under the vigilance law. In the event of non-compliance with the obligations (e.g. lack of plan, non-publication or deficiencies in effective implementation), this enforcement mechanism consists of requesting the court to issue an injunction ordering the company to respect its obligations under the French legislation on the duty of vigilance.[183]

The company then receives a formal notice and has three months to meet its obligations. If the company still fails to comply after the three-month period from the date of the letter of formal notice, the judge may order compliance, possibly imposing a fine. [184] As mentioned in the previous section, in its decision of March 21, 2017, the Constitutional Council rejected the fine originally provided for in the law in the event that companies do not comply with their obligations. However, this does not mean that they are exempt from financial sanctions, as the judge may still impose fines.[185]

A question arises in connection with the formal notice: Is this injunction action a mandatory preliminary procedure?

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[182] Lichuma CO, "Mandatory Human Rights Due Diligence (MHRDD) Laws Caught between Rituals and Ritualism: The Forms and Limits of Business Authority in the Global Governance of Business and Human Rights" [2024] Business and Human Rights Journal 1 <https://doi.org/10.1017/bhj.2023.47>
[183] Deva S and Macquarie Law School, "Mandatory Human Rights Due Diligence Laws in Europe: A Mirage for Rightsholders?" [2023] Leiden Journal of International Law 389 <https://doi.org/10.1017/S0922156522000802>
[184] Sherpa, "Loi Sur Le Devoir de Vigilance : Questions Fréquemment Posées (FAQ)" (2019) <https://www.asso-sherpa.org/loi-devoir-de-vigilance-questions-frequemment-posees-faq>
[185] Sherpa, "Loi Sur Le Devoir de Vigilance : Questions Fréquemment Posées (FAQ)" (2019) <https://www.asso-sherpa.org/loi-devoir-de-vigilance-questions-frequemment-posees-faq>

It is important to recall that in its decision of June 18, 2024, the Paris Court of Appeal emphasized that the letter of formal notice is a mandatory first step before seeking compensation for damages.[186] These three months are intended to give the company sufficient time to fulfill its obligations under the letter of formal notice in order to avoid legal proceedings. This judicial procedure is seen as a preventive measure against legal risks. The Court also emphasizes in this decision that no dialog between the two parties is required from the time of the date of the formal notice until the expiry of the three months.[187]

4.4.2. Remediation Mechanism

A second legal action allows victims to obtain compensation for damages caused by activities that fall within the scope of the law. Companies may be held legally responsible under Articles 1240 and 1241 of the French law if their failure to meet the obligations of the vigilance law is linked to the damage caused to the injured party.[188] As the legislator intended this law to be an obligation of process ("*obligations de moyens"*) and not of result, the injured party can only claim damages for the absence, inadequacy of the plan or for failures in its implementation.[189] This means that a company that implements a vigilance plan in accordance with the law does not run any legal risk even in the event of damage.[190]

If the law were to regulate companies' obligations more precisely, damage would not be likely to occur. As a result of the shortcomings outlined so far, the law only sanctions a specific fault, which we consider is a shortcoming of this law. [191]

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[186] Ilcheva A., "Devoir de Vigilance : Décryptage Des Premières Décisions de La Chambre 5-12 de La Cour d'appel de Paris" (Dalloz actualité)
[187] Ilcheva A., "Devoir de Vigilance : Décryptage Des Premières Décisions de La Chambre 5-12 de La Cour d'appel de Paris" (Dalloz actualité)
[188] Lichuma CO, "Mandatory Human Rights Due Diligence (MHRDD) Laws Caught between Rituals and Ritualism: The Forms and Limits of Business Authority in the Global Governance of Business and Human Rights" [2024] Business and Human Rights Journal 1 <https://doi.org/10.1017/bhj.2023.47>
[189] Sherpa, "Loi Sur Le Devoir de Vigilance : Questions Fréquemment Posées (FAQ)" (2019) <https://www.asso-sherpa.org/loi-devoir-de-vigilance-questions-frequemment-posees-faq>
[190] Sherpa, "Loi Sur Le Devoir de Vigilance : Questions Fréquemment Posées (FAQ)" (2019) <https://www.asso-sherpa.org/loi-devoir-de-vigilance-questions-frequemment-posees-faq>
[191] Thunis X and Gollier J-M, "Devoir de Vigilance Des Entreprises: Vers Une « responsabilité Sociétale Des Entreprises » Juridiquement Obligatoire" (*The Research Portal - University of Namur*, 2021) <https://researchportal.unamur.be/en/publications/devoir-de-vigilance-des-entreprises-vers-une-responsabilit%C3%A9-soci%C3%A9>

Plaintiffs bear the burden of proof, meaning they must prove that the law applies to their situation by meeting three conditions:

(i) damage ;

(ii) fault arising from their legal obligations ;

(iii) a causal link between the damage and the fault.[192]

This mechanism raises a number of practical and technical problems. First, the question of the extraterritorial dimension of the law needs to be addressed (i). Secondly, the burden of proof, which lies with the victims (ii).

i) The Transnational Dimension of the Duty of Vigilance Law

While some authors argue that the civil liability regime of the French law only applies in the event of the parent company's own fault [193], others consider that this law opens up the possibility of holding the parent company liable for damages caused by its subsidiaries, subcontractors and suppliers. Some authors even consider that the law opens up the liability of the parent company for damages caused abroad, thus calling into question the tradition "separation principle."[194] Other take the same approach, pointing out that French tort law does not apply to cross-border disputes, as it was not originally intended for such cases. Therein lies the legal innovation of this law.[195]

Proponents of the first opinion, such as the author Rafael Encinas de Munagorri believes that this law does not have a transnational dimension, since the law only obliges companies established in France to comply with the duty of vigilance law. Indeed, the author argues that only some external factors are taken into account in the application of the law, such as facts and legal situations that occurred outside French territory.[196]

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[192] Savourey E and Brabant S, "The French Law on the Duty of Vigilance: Theoretical and Practical Challenges Since Its Adoption" (2021) 6 Business and Human Rights Journal 141 <https://doi.org/10.1017/bhj.2020.30>

[193] Savourey E and Brabant S, "The French Law on the Duty of Vigilance: Theoretical and Practical Challenges Since Its Adoption" (2021) 6 Business and Human Rights Journal 141 <https://doi.org/10.1017/bhj.2020.30>

[194] De Saint-Affrique D and Pailot P, "Loi Sur Le Devoir de Vigilance : Éléments d'analyse d'une Forme de Juridicisation de La RSE" (2020) 24 Management International 109 <https://doi.org/10.7202/1072645ar>

[195] De Saint-Affrique D and Pailot P, "Loi Sur Le Devoir de Vigilance : Éléments d'analyse d'une Forme de Juridicisation de La RSE" (2020) 24 Management International 109 <https://doi.org/10.7202/1072645ar>

[196] Sherpa, "Loi Sur Le Devoir de Vigilance : Questions Fréquemment Posées (FAQ)" (2019) <https://www.asso-sherpa.org/loi-devoir-de-vigilance-questions-frequemment-posees-faq>

This law is not intended to produce legal effects abroad, but to take into account the abuses caused by the company's subsidiaries, subcontractors and suppliers abroad, in order to produce legal effects in France.

Others claim that the law has an extraterritorial dimension, as the victim located abroad has the right to sue in the French courts to hold companies responsible for the actions of their subsidiaries, subcontractors and suppliers.[197]

However, it is important to clarify in this debate that in its decision of June 12, 2024, the court made it clear that the violation of the vigilance law may only burden the entity that is legally obliged to comply with its obligations under the French legislation on the duty of vigilance law.[198] This means that the law does not allow a subsidiary of the parent company to be sued if it is required to do under the vigilance law. The question that remains open is whether a company's subsidiary can be sued under the French law on the duty of vigilance for damages resulting from the parent's company failure to comply with its obligations under that law.

Nonetheless, the CSDDD has an extraterritorial effect. This is indisputable. For EU companies, the extraterritorial dimension is thus present as it is based on the nationality of the company and not on the territorial factor. For non-EU companies, economic presence in the EU is the relevant factor, which means that the territorial factor (the EU) is the relevant criterion in this case.[199] The preamble to the Directive states that the EU's values "*should guide the Union's action on the international scene*", meaning "*fostering the sustainable economic, social and environmental development of developing countries*."[200]

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[197] Boudjellal F, "Chapitre 5. Premiers Regards Sur Le Devoir de Vigilance" in Marion Bary, *L'entreprise et la reddition de compte en matière sociale et environnementale. Regards croisés droits français, de l'Union européenne et brésilien* (Amplitude du droit 2023)
[198] Ilcheva A., "Devoir de Vigilance : Décryptage Des Premières Décisions de La Chambre 5-12 de La Cour d'appel de Paris" (Dalloz actualité)
[199] Zonta E, "The EU's CSDDD: Lawful Extraterritoriality or Jurisdictional Overreach?," vol 6:1 (Trento Student Law Review, 2024)
[200] Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 < https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202401760>

Ultimately, the principle of active legal personality recognized in international law supports the idea that home states play a key role in holding companies responsible for their actions outside their territory[201], which means that the transnational dimension of law should be encouraged.

ii) The Burden of Proof

A further challenge arises from the reversal of the burden of proof that occurred following the adoption of the law. Originally, the burden of proof was on the companies, but it has shifted to the victims. This is one of the most criticized parts of the civil liability regime. The difficulty for victims is to gather clear and valid evidence. If the damage is caused by a subsidiary or supplier that is far down the value chain, the more difficult it becomes for the victim to meet the three conditions required by the law.[202] Furthermore, victims face additional challenges when bringing their case to a French court, including language barriers and significant social and cultural differences, which can pose a challenge to the innovative civil liability regime.[203] Moreover, the Constitutional Council has stated that only the victim has an interest in acting in France.[204] Consequently, it is unlikely that victims, who are often in a precarious situation, will be informed of what action they can take in France.[205]

Like the French law, the CSDDD imposes similar conditions to hold companies liable, such as (i) "a harm caused to a natural or legal person", (ii) an intentional or negligent behavior of the company to prevent adverse human rights impacts, (iii) a causality between the first two conditions.[206]

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[201] Bright C, "Creating a Legislative Level Playing Field in Business and Human Rights at the European Level: Is the French Law on the Duty of Vigilance the Way Forward?" (EUI Working Paper MWP 2020/01 2020) book <https://ssrn.com/abstract=3262787>
[202] Savourey E and Brabant S, "The French Law on the Duty of Vigilance: Theoretical and Practical Challenges Since Its Adoption" (2021) 6 Business and Human Rights Journal 141 <https://doi.org/10.1017/bhj.2020.30>
[203] Savourey E and Brabant S, "The French Law on the Duty of Vigilance: Theoretical and Practical Challenges Since Its Adoption" (2021) 6 Business and Human Rights Journal 141 <https://doi.org/10.1017/bhj.2020.30>
[204] Boudjellal F, "Chapitre 5. Premiers Regards Sur Le Devoir de Vigilance" in Marion Bary, *L'entreprise et la reddition de compte en matière sociale et environnementale. Regards croisés droits français, de l'Union européenne et brésilien* (Amplitude du droit 2023)
[205] Boudjellal F, "Chapitre 5. Premiers Regards Sur Le Devoir de Vigilance" in Marion Bary, *L'entreprise et la reddition de compte en matière sociale et environnementale. Regards croisés droits français, de l'Union européenne et brésilien* (Amplitude du droit 2023)
[206] CSDDD, Article 29 (1)

As with the French law, the burden of proof lies with the plaintiffs.[207] However, the directive specifies that national courts must disclose the relevant information about the companies to plaintiffs in accordance with "national procedural law" in order to facilitate their legal action.[208] In addition, the directive sets a maximum period of five years for bringing liability actions. [209]

To overcome the aforementioned obstacles, a reversal of the burden of proof is essential. Some authors proposed a presumption of fault regime, whereby companies would have to prove that they have done everything in their power and have complied with their legal human rights and environmental obligations. It was also proposed to include companies in the burden of proof to ease the burden of proof for victims. However, the government rejected this proposal.[210]

To conclude this section, remedies should be required whenever harm has resulted from a failure to comply with obligations under the French law on the duty of vigilance, and not only in the absence or failure of the vigilance plan.

As for the CSDDD, it seems to address some of these shortcomings by stating that companies must provide remediation whenever they have "*caused or jointly caused an actual adverse impact*."[211] Thus, the directive focuses on the degree of the involvement of the company has on the harm, referring to the concepts of "*cause, contribute and directly linked*." This means that the legal framework is much more focused on actual harm and not just procedural failures.

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[207] Bueno N and others, "The EU Directive on Corporate Sustainability Due Diligence (CSDDD): The Final Political Compromise" [2024] Business and Human Rights Journal 1 <https://doi.org/10.1017/bhj.2024.10>
[208] Bueno N and others, "The EU Directive on Corporate Sustainability Due Diligence (CSDDD): The Final Political Compromise" [2024] Business and Human Rights Journal 1 <https://doi.org/10.1017/bhj.2024.10>
[209] CSDDD, Recital 85
[210] Malat J, "10 Years on from Rana Plaza: Is France's Duty of Vigilance Law Living up to Its Promise? « Law# « Cambridge Core Blog" (*Cambridge Core Blog*, June 2, 2023) <https://www.cambridge.org/core/blog/2023/06/06/10-years-on-from-rana-plaza-is-frances-duty-of-vigilance-law-living-up-to-its-promise/>
[211] CSDDD, Article 12(1)

The directive specifies that this is only the case if the remedies are proportionate to the company's contribution to the harmful effects.[212] Furthermore, in contrast to the legislation on duty of vigilance, which only takes into account a specific fault (absence or ineffectiveness of the plan), a company can be held liable if it has breached its obligations "intentionally" or "negligently".[213]

Moving from a process-oriented to a result-oriented obligation would increase the effectiveness of this civil liability regime. In other words, the scope of application must be broadened by including remediation as part of companies' human rights and environmental due diligence obligations.[214] By addressing these issues, we can pave the way for a more rigorous system of corporate responsibility. France's implementation of this civil liability regime represents a proactive step forward, while the CSDDD highlights further improvements that can be made in the right direction.

5. The Role of the Duty of Vigilance Law in Litigation

To date, not many cases relating to the duty of vigilance law have been successful.[215] Although there have been a few lawsuits filed in court, they have never been declared admissible, except for one, which will be analyzed in detail.

The need for this national French law is underlined by its application in the courts. The application of the law is not only important to know what difficulties this law faces, but also how the law is interpreted by judges. Indeed, the judge plays an important role in interpreting the law. This law places the judge at the center of its enforcement[216], so that the legal uncertainties and ambiguities arising from the law can be finally addressed.[217]

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[212] Bright C and others, "A Comparative Analysis between the Corporate Sustainability Due Diligence Directive and the French and German Legislation" [2024] Verfassungsblog - on Matters Constitutional <https://verfassungsblog.de/a-comparative-analysis-between-the-corporate-sustainability-due-diligence-directive-and-the-french-and-german-legislation/>

[213] CSDDD, Article 29(1) (a)

[214] Bright C and others, "A Comparative Analysis between the Corporate Sustainability Due Diligence Directive and the French and German Legislation" [2024] Verfassungsblog - on Matters Constitutional <https://verfassungsblog.de/a-comparative-analysis-between-the-corporate-sustainability-due-diligence-directive-and-the-french-and-german-legislation/>

[215] Soilihi A and Haranger X, "The First French Court Rulings on the Duty of Vigilance" (March 5, 2024) <https://www.morganlewis.com/pubs/2024/03/the-first-french-court-rulings-on-the-duty-of-vigilance>

[216] Cazeneuve B and Mennucci A, "Le Devoir de Vigilance Européen : Instrument de Promotion d'un Modèle de Gouvernance Vertueux" (2023) N° 5 RED 53 <https://doi.org/10.3917/red.005.0053>

[217] De Saint-Affrique D and Pailot P, "Loi Sur Le Devoir de Vigilance : Éléments d'analyse d'une Forme de Juridicisation de La RSE" (2020) 24 Management International 109 <https://doi.org/10.7202/1072645ar>

5.1. Notable Cases before French Courts

Before analyzing the reasons for the dismissal of cases before the French courts, the first question that arises in many cases must be first clarified, namely, which Court has jurisdiction to deal with these matters. Indeed, these cases require many different legal skills and also a solid knowledge of business and human rights.[218] Since the law does not specify which Court has jurisdiction over matters related to the vigilance law, the debate has been between the civil or commercial court. Many companies supported this debate, as it allowed them to delay the court proceedings[219] and distract the courts from the substantive matter of the case.[220]

Ultimately, this debate is no longer relevant, as the new article L.221-21 of "*the Code de l'organisation judiciaire"*, recently created by the law of December 22, 2021, gives the Judicial Court of Paris jurisdiction over matters related to the duty of vigilance law. Even if the cases are more commercial and international in nature, they also require a solid expertise in human rights and environmental matters.[221] A judicial review of this law appears to be the best option.[222]

In addition, it is important to note that the Paris Court of Appeal recently created a chamber on January 15, 2024 for the upcoming litigation related to the French law on the duty of vigilance under Articles L.225-102-4 and L.225-102-5 of the French Commercial Code. This chamber will also deal with issues related to the European directive on the publication of sustainability information (CSRD), that has been transposed in French national law.[223]

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[218] Laniyan B, "Les Enseignements de La Décision La Poste En Matière de Vigilance Environnementale" *Actu Environnement* (March 1, 2024) <https://www.actu-environnement.com/ae/news/decision-la-poste-devoir-vigilance-apports-jurisprudence-43552.php4>

[219] *Décision n°1904967 du 3 Février 2023, Notre Affaire à Tous and Others v. Total* (Tribunal administratif de Paris)

[220] Ilcheva A-M, "La Compétence Du Juge Judiciaire Dans Les Contentieux Relatifs Au Devoir de Vigilance," vol 47 (Éditions Lavoisier 2022) journal-article <https://www.cairn.info/revue-juridique-de-l-environnement-2022-1-page-139.htm>

[221] Ilcheva A-M, "La Compétence Du Juge Judiciaire Dans Les Contentieux Relatifs Au Devoir de Vigilance," vol 47 (Éditions Lavoisier 2022) journal-article <https://www.cairn.info/revue-juridique-de-l-environnement-2022-1-page-139.htm>

[222] Ilcheva A-M, "La Compétence Du Juge Judiciaire Dans Les Contentieux Relatifs Au Devoir de Vigilance," vol 47 (Éditions Lavoisier 2022) journal-article <https://www.cairn.info/revue-juridique-de-l-environnement-2022-1-page-139.htm>

[223] Benhamla N, "Devoir de vigilance : création d'une nouvelle chambre à la cour d'ap..." (*DECIDEURS MAGAZINE - Accédez À Toute L'actualité De La Vie Des Affaires : Stratégie, Finance, RH, Innovation*,

As already mentioned, several legal proceedings have already been initiated under the French law against large companies such as Total Energies, the supermarket Casino and the bank BNP Paribas. The claims mostly focus on the impacts caused by parent's company activities[224].

Some of the allegations concern, for example, environmental harms, in particular the companies' contribution to climate change, biodiversity and pollution, but also the deforestation caused by their supply chains. These cases also often involve serious human rights violations that are interconnected with environmental violations.

As far as climate change is concerned, two cases are worth mentioning. First, the case "*Notre Affaire à Tous and Others v. Total*"[225], in which Total Energies was accused of complicity in climate change. Firstly, in 2019, French NGOs and French local authorities began the formal notice proceeding accusing Total of not limiting its contribution to climate change to the average temperature of 1.5% in line with the Paris Agreement.[226] Second, in January 2020, the plaintiffs filed a lawsuit asking the court to order Total to respect its obligations under the French corporate duty of vigilance law. They argue that Total did not recognize the consequences of its business activities and therefore did not take effective measures to reduce its greenhouse gas emissions. In July 2022, the City of New York also took part in the legal proceedings, arguing that it has a major interest in combating climate change at a local and global level. The court rejected the claim due to procedural grounds, meaning that the judge emphasized the substantial difference between the first claim and the summons. Following an appeal against the decision, the Paris Court of Appeal ruled to the contrary in June 2024[227], which means that the vigilance plan of these companies will continue to be examined, which represents a real victory in clarifying the interpretation of the law.

January 23, 2024) <https://www.decideurs-juridiques.com/affaires-juridiques/57333-devoir-de-vigilance-creation-d-une-nouvelle-chambre-a-la-cour-d-appel-de-paris.html>

[224] "TotalEnergies Lawsuit (Re Climate Change, France) - Business & Human Rights Resource Centre" (*Business & Human Rights Resource Centre*) <https://www.business-humanrights.org/en/latest-news/total-lawsuit-re-climate-change-france/>

[225] *Décision n°1904967 du 3 Février 2023, Notre Affaire à Tous and Others v. Total* (Tribunal administratif de Paris)

[226] "TotalEnergies Lawsuit (Re Climate Change, France) - Business & Human Rights Resource Centre" (*Business & Human Rights Resource Centre*) <https://www.business-humanrights.org/en/latest-news/total-lawsuit-re-climate-change-france/>

[227] "France: Legal Actions against TotalEnergies and EDF Admissible, Paris Court of Appeal Rules - Business & Human Rights Resource Centre" (*Business & Human Rights Resource Centre*) <https://www.business-humanrights.org/en/latest-news/france-la-cour-dappel-de-paris-juge-laction-judiciaire-contre-totalenergies-recevable/>

It is worth mentioning a case that is also directed against Total, namely the case "*Les Amis de la Terre v. Total"*[228], in which Total was accused of not mentioning the Ugandan oil project, which impacted local communities and the environment.[229] This case is not only about pollution and biodiversity, but also about human rights violations. The plaintiffs claim that its vigilance plan is not consistent with an effective greenhouse gas emissions strategy. Like the first case, this case was declared inadmissible on procedural grounds in February 2023.[230]

These two cases encountered the same difficulty – they do not go beyond admissibility proceeding.

An example of deforestation cases is the lawsuit against supermarket Casino for alleged deforestation in its supply chain caused by its cattle farming in Brazil and Colombia, as well as human rights violations. [231] According to the plaintiffs, cattle farming has destroyed carbon sinks. In this case "*Envol Vert et al. v. Casino*"[232], the plaintiffs demanded a detailed vigilance plan and compensation for the indigenous population for the damage caused by Casino.[233] A decision is still pending.

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[228] *Décision n° R.G. : 19/02833 du 30 Janvier 2015, Les Amis de la Terre v. Total,* (Tribunal judiciaire de Nanterre) < https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2020/20200130_NA_judgment-1.pdf>

[229] "France: Landmark 'duty of Vigilance' Case against TotalEnergies over Human & Environmental Rights Impacts of EACOP Dismissed on Procedural Grounds - Business & Human Rights Resource Centre" (*Business & Human Rights Resource Centre*) <https://www.business-humanrights.org/en/latest-news/france-landmark-duty-of-vigilance-case-against-totalenergies-over-human-environmental-rights-impacts-of-eacop-dismissed/>

[230] "France: Landmark 'duty of Vigilance' Case against TotalEnergies over Human & Environmental Rights Impacts of EACOP Dismissed on Procedural Grounds - Business & Human Rights Resource Centre" (*Business & Human Rights Resource Centre*) <https://www.business-humanrights.org/en/latest-news/france-landmark-duty-of-vigilance-case-against-totalenergies-over-human-environmental-rights-impacts-of-eacop-dismissed/>

[231] "Envol Vert et al. v. Casino - Climate Change Litigation" (*Climate Change Litigation*, April 28, 2021) <https://climatecasechart.com/non-us-case/envol-vert-et-al-v-casino/> ; Climate Law Accelarator - NYU School of Law, "Envol Vert v. Casino - CLX - Climate Law Accelerator Toolkit" (*CLX - Climate Law Accelerator Toolkit*, June 13, 2024) <https://clxtoolkit.com/casebook/envol-vert-v-casino/>

[232] ENVOL VERT and others, "Assignation Devant Le Tribunal Judiciaire de Saint-Etienne" (2021) <https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2021/20210302_13435_complaint.pdf>

[233] Essex Court Chambers, "Seeing the Wood for the Trees: Developments in Deforestation Legislation and Litigation. Week 5. Series 3. | Essex Court Chambers" (*Essex Court Chambers*, March 28, 2024) <https://essexcourt.com/publication/seeing-the-wood-for-the-trees-developments-in-deforestation-legislation-and-litigation-week-5-series-3/>

The bank BNP Paribas was also accused of financing companies allegedly involved in deforestation in the Amazon region, violating the territory of the indigenous population and using forced labor in cattle ranches.[234] In the case "*Comissão Pastoral da Terra and Notre Affaire à Tous v. BNP Paribas"*[235]*,* the NGOs believe that the French bank violated the duty of vigilance law by financing the company Marfing, a beef producer that causes a lot of deforestation. Accordingly, BNP's vigilance plan is inadequate as it fails to mention human rights violations such as indigenous peoples' land rights and forced labor. The NGOs called on the court to order BNP to comply with the French corporate legislation on the duty of vigilance.[236]

From the precedents brought before the court, we can already conclude that in these few cases all companies had already implemented a vigilance plan. In other words, the absence of a vigilance plan has not yet been the subject of legal proceedings, which means that many companies subject to the French legislation on the duty of vigilance, including subsidiaries, have not yet been held legally responsible.[237] We can see that it is easier for plaintiffs to demonstrate the inadequacy of the plans and the impact of the plans on the companies' human rights and environmental impact.[238] Since these vigilance plans must be publicly available, it is also easier for plaintiffs to verify that the company is complying with its obligations under the vigilance law.

It is also interesting to note that before sending a letter of formal notice, the applicants try to communicate with the other party through letters or communication campaigns to get the companies to comply. They also tried to communicate through the French national contact point.[239] However, these initial initiatives appeared insufficient.

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[234] "Comissão Pastoral Da Terra and Notre Affaire à Tous v. BNP Paribas - Climate Change Litigation" (*Climate Change Litigation*, August 6, 2024) <https://climatecasechart.com/non-us-case/comissao-pastoral-da-terra-and-notre-affaire-a-tous-v-bnp-paribas/>

[235] Comissão Pastoral da Terra and others, "ASSIGNATION DEVANT LE TRIBUNAL JUDICIAIRE DE PARIS" (2023) <https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2023/20230227_19040_summons.pdf>

[236] "Comissão Pastoral Da Terra and Notre Affaire à Tous v. BNP Paribas - Climate Change Litigation" (*Climate Change Litigation*, August 6, 2024) <https://climatecasechart.com/non-us-case/comissao-pastoral-da-terra-and-notre-affaire-a-tous-v-bnp-paribas/>

[237] Brabant S and Savourey E, "All Eyes on France – French Vigilance Law First Enforcement Cases (1/2) Current Cases and Trends" (*Cambridge Core Blog*, January 24, 2020)

[238] Laniyan B, "Les Enseignements de La Décision La Poste En Matière de Vigilance Environnementale" *Actu Environnement* (March 1, 2024) <https://www.actu-environnement.com/ae/news/decision-la-poste-devoir-vigilance-apports-jurisprudence-43552.php4

[239]Brabant S and Savourey E, "All Eyes on France – French Vigilance Law First Enforcement Cases (1/2) Current Cases and Trends" (*Cambridge Core Blog*, January 24, 2020)

These cases show the legal uncertainties that still exist in relation to the French law on the duty of vigilance and the reluctance of judges to hear these cases, as they all do not go beyond admissibility. To date, the only case that has not stopped at the procedural issue is the "La Poste" case, which was ruled on December 5, 2023 and could point the way for the future. This case is further analyzed in the following section.

5.2. Case Study: "La Poste" - The First Company Challenged under the Duty of Vigilance Law

This is the first case before a French court that gives us an insight into how the law works and how it is interpreted by the judge. This case shows that companies cannot rely on the fact that there is no decree applying the law or that the law is too general to apply. [240]

This case involves a French trade union federation Sudd PTT (the plaintiffs) and a French postal company "La Poste", a public company (the defendant).[241] The trade union federation sent several formal requests to the company regarding the company's vigilance plan. Following a negative response from "La Poste", the French trade union filed a legal complaint with the French court on December 22, 2021, asking the judge to order "La Poste" to comply with its legal obligations.[242]

On the issue of admissibility, the judge took into account the last vigilance plan submitted by "La Poste", which means that the original plan, that was the subject of the legal proceeding is no longer relevant. In other words, the modification of the vigilance plan has no impact on the issue of admissibility, which represents a procedural step forward that could pave the way for similar cases in the future.[243]

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[240] Laniyan B, "Les Enseignements de La Décision La Poste En Matière de Vigilance Environnementale" *Actu Environnement* (March 1, 2024) <https://www.actu-environnement.com/ae/news/decision-la-poste-devoir-vigilance-apports-jurisprudence-43552.php4

[241] *Décision n°21/15827 du 5 décembre 2023, La Poste,* (TJ Paris) <https://web.lexisnexis.fr/LexisActu/laposte.pdf>

[242] Lecourt A, "Devoir de Vigilance : Première Condamnation, Première Décision Au Fond" [2023] RTD Com.

[243] Lecourt A, "Devoir de Vigilance : Première Condamnation, Première Décision Au Fond" [2023] RTD Com.

5.2.1. Trade Union Claims Upheld: Company's Inadequate Measures

First, we will analyze the first injunction, which is considered more general, since it consists of evaluating in detail the vigilance plan, which includes risk mapping, the evaluation of suppliers and subcontractors, the alert mechanism and the monitoring system. In other words, the plaintiffs are asking the judge to evaluate the inadequacy of the company's measures implemented.

i) Risk mapping

Sudd PTT argued that the company had breached the law through its inadequate mapping, which was decided in favor of the claimants. Thus, the court recalled that risk mapping is an activity that constitutes an essential step in the drawing up of the plan. This step is preliminary to the following steps and ultimately for the effectiveness of the plan.[244]

The judge is of the opinion that risk mapping is carried out at a very general level, which means that the identification, analysis and hierarchization of risks are conducted in a very broad manner. With regard to the identification of risks, the judge notes that the company has not explained in sufficient detail what kind of risks it is confronted with and in what context they occur.[245] In addition, the judge considers that the risk prioritization was also inaccurate as the risk mapping is based on risks that the company has already mitigated. This approach does not take into account all other risks and reveals the inadequacy of the mitigated risks and ultimately of the plan. Accordingly, the court was unable to assess whether the risk prioritization measures implemented by the company were adequate.[246] In addition, the court could not adequately assess the evaluation of the company's suppliers and subcontractors.[247]

[244] Lecourt A, "Devoir de Vigilance : Première Condamnation, Première Décision Au Fond" [2023] RTD Com.
[245] Annat L, "First Ruling on the Merits in French Duty of Vigilance Case | Due Diligence Design" <https://duediligence.design/first-ruling-on-the-merits-in-french-duty-of-vigilance-case/>
[246] Annat L, "First Ruling on the Merits in French Duty of Vigilance Case | Due Diligence Design" <https://duediligence.design/first-ruling-on-the-merits-in-french-duty-of-vigilance-case/>
[247] Leray G and Abadie P, "Premiers Enseignements Relatifs Au Contrôle Judiciaire Du Devoir de Vigilance" (Tribunal judiciaire de Paris, 2024)

Besides that, the court notes that the structure of the plan is not logically organized, leading the court to state that : "*the plan doesn't allow to know if the evaluation strategy is aligned with the severity of the risks*."[248] In addition, the judge considers that the company must take into account factors such as "*the sector, the activity's nature, the activity's localization, the kind of relation it has and the legal framework*".

Another common mistake made by the company is that the plan does not only consider the risks that the company presents to society and the environment, but also the risks that the company faces from society and the environment.[249]

ii) Stakeholder Engagement

As mentioned earlier in this dissertation, the law provides that relevant stakeholders may be consulted in drawing up of the plan, but this is not an obligation. However, for the alert mechanism and the monitoring system, the law stipulates that stakeholders must be consulted, which is an obligation for companies. In this case, the Sud PTT also argued that the company did not involve the representatives of the trade union organizations within the company in the development of the alert and monitoring mechanism, which is explicitly required by the law. The defendant could not prove that a meeting was held with the trade unions in relation to the Duty of vigilance law and the lack of such proof[250] results on the non-compliance with the obligations under the French legislation.

What is new in this judgement is that the judge allows the stakeholders concerned to take legal action against the company if they were not involved in the elaboration of the risk map (as required by law). [251] The judge thus underlines the protection afforded to the stakeholders concerned.

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[248] Dorgans O, "Le Groupe La Poste Est Enjoint à Plusieurs Égards de Consolider Sa Démarche Relative Au Devoir de Vigilance" *Lefebvre Dalloz Éditions Législatives* (December 18, 2023) <https://www.editions-legislatives.fr/actualite/le-groupe-la-poste-est-enjoint-a-plusieurs-egard-de-consolider-sa-demarche-relative-au-devoir-de-vig/>

[249] Leray G and Abadie P, "Premiers Enseignements Relatifs Au Contrôle Judiciaire Du Devoir de Vigilance" (Tribunal judiciaire de Paris, 2024)

[250] Dorgans O, "Le Groupe La Poste Est Enjoint à Plusieurs Égards de Consolider Sa Démarche Relative Au Devoir de Vigilance" *Lefebvre Dalloz Éditions Législatives* (December 18, 2023) <https://www.editions-legislatives.fr/actualite/le-groupe-la-poste-est-enjoint-a-plusieurs-egard-de-consolider-sa-demarche-relative-au-devoir-de-vig/>

[251] Lecourt A, "Devoir de Vigilance : Première Condamnation, Première Décision Au Fond" [2023] RTD Com.

Finally, the court ordered the company to publish a "real system" in relation to the monitoring system, which includes all the measures implemented by the company. Not only must the plan be published, but also a report detailing the measures implemented.[252]

5.2.2. Trade Union Claims Rejected: Request for Specific Actions

Another injunction, considered more specific, is analyzed in this section, as it consists of requiring the adoption of certain specific measures regarding psychosocial and harassment risks, as well as illegal subcontracting and covert work. The trade union accused the company of serious human rights violations in terms of working conditions, in particular the presence of undocumented workers within the company's subsidiary.

i) Identification of Company's Business Relationships

The court states here that the company is not obliged to publish a list of the subcontractors or its subsidiaries with which it has a business relationship, as requested by the plaintiffs. One argument is that this appears to be a complex task due to the number of subsidiaries the company may have.[253] Furthermore, the judge states that: "*it has not been demonstrated to what extent such identification would be necessary for the implementation and evaluation of the vigilance plan*."[254]

According to the French court, the identification of the companies' subsidiaries and business relationships is considered a competitive tool to be protected.[255] However, the CSDDD seems to take a different approach in this respect, as it requires the disclosure of such information on the condition it is justified for "company's compliance with due diligence obligations".[256]

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[252] Lecourt A, "Devoir de Vigilance : Première Condamnation, Première Décision Au Fond" [2023] RTD Com.
[253] Lecourt A, "Devoir de Vigilance : Première Condamnation, Première Décision Au Fond" [2023] RTD Com.
[254] Dorgans O, "Le Groupe La Poste Est Enjoint à Plusieurs Égards de Consolider Sa Démarche Relative Au Devoir de Vigilance" *Lefebvre Dalloz Éditions Législatives* (December 18, 2023) <https://www.editions-legislatives.fr/actualite/le-groupe-la-poste-est-enjoint-a-plusieurs-egard-de-consolider-sa-demarche-relative-au-devoir-de-vig/>
[255] Leray G and Abadie P, "Premiers Enseignements Relatifs Au Contrôle Judiciaire Du Devoir de Vigilance" (Tribunal judiciaire de Paris, 2024)
[256] CSDDD, Recital 23

Furthermore, how can the judge assess whether an activity of the company's subsidiary breaches the duty of vigilance law if he does not have the list of the company's business relationships?[257] The most effective way to ensure accountability of a parent company's subsidiaries and subcontractors is to have a list of these entities and share it with other companies, thereby facilitating an overview of the subsidiaries and subcontractors.[258]

ii) Limitation on the Court's Intervention

The court did not rule in favor the plaintiffs with regard to the specific measures they requested from the company in relation to subcontracting, psychological and harassment risks.[259] The plaintiffs demanded the creation of an independent unit to support employees who are victims of harassment, the possibility for employees to leave the company and financial support in the event of domestic violence, as well as the inclusion of specific clauses in the contracts of this subsidiaries in the event of illegal work.[260] However, the Court rejected this claim.

The court's reasoning was based on the principle of entrepreneurial. It noted that the law does not give the judge the power to order the company to take specific measures, but only to ensure that the company "*complies with the obligations set out in I of article L. 255-102-4 of the French Commercial Code*", including the obligation to include in the plan "*appropriate actions to mitigate risks or prevent serious harm*."[261] Indeed, the court considers that the company is in a more advantageous position than the judge to identify the risks caused by its activities and those of its subsidiaries.

[257] Leray G and Abadie P, "Premiers Enseignements Relatifs Au Contrôle Judiciaire Du Devoir de Vigilance" (Tribunal judiciaire de Paris, 2024)
[258] Leray G and Abadie P, "Premiers Enseignements Relatifs Au Contrôle Judiciaire Du Devoir de Vigilance" (Tribunal judiciaire de Paris, 2024)
[259] Lecourt A, "Devoir de Vigilance : Première Condamnation, Première Décision Au Fond" [2023] RTD Com.
[260] Leray G and Abadie P, "Premiers Enseignements Relatifs Au Contrôle Judiciaire Du Devoir de Vigilance" (Tribunal judiciaire de Paris, 2024)
[261] Dorgans O, "Le groupe La Poste est enjoint à plusieurs égards de consolider sa démarche relative au devoir de vigilance" (*Lefebvre Dalloz EDITIONS LEGISLATIVES*, January 9, 2024) <https://www.editions-legislatives.fr/actualite/le-groupe-la-poste-est-enjoint-a-plusieurs-egard-de-consolider-sa-demarche-relative-au-devoir-de-vig/>

The court's argument was based on the judicial review in regards of the law. The judge therefore has the power to review the measures taken in connection with the vigilance plan, to assess the relevance of the plan and, above all, to sanction any failure to comply with the law.[262] The Court states that the law does not allow the "*the judge to take the place of the company and stakeholders in requiring them to introduce precise, detailed measures".* Therefore, the court highlights the process of self-regulation, which is one of the company's tasks.

However, opinions on the court's reasoning differ – some align with the court's perspective, while others do not. One author argues that this reasoning is consistent with the important role that relevant stakeholders play in the elaboration of the vigilance plan and in the analysis of risk factors, which must be conducted in consultation with relevant stakeholders to limit the risks. The author points out a number of problems that could arise when the judge gets involved in such cases. For instance, according to the author, the judge is not in a position to assess which measures are most appropriate, as he does not know about the company's activities or internal processes. According to this author, the judge has no legitimacy as he cannot assess the relevance of the plan or its scope.[263]

Another author who takes the same approach considers that the judge must take into account the interest of the company, including the interests of shareholders under French Law.[264] According to another author, the judge must find an appropriate balance between the company's profits and the amount it spends on implementing the vigilance plan.[265] Besides that, some studies have already shown which risks are easier and cheaper to manage than others. [266]

[262] Lecourt A, "Devoir de Vigilance : Première Condamnation, Première Décision Au Fond" [2023] RTD Com.
[263] Lecourt A, "Devoir de Vigilance : Première Condamnation, Première Décision Au Fond" [2023] RTD Com.
[264] Hatchuel A and Segrestin B, "Devoir de Vigilance : La Norme de Gestion Comme Source de Droit ?" (2021) N° 106 Droit Et Société 667 <https://doi.org/10.3917/drs1.106.0667>
[265] Delalieux G and Moquet A-C, "French Law on CSR Due Diligence Paradox The Institutionalization of Soft Law Mechanisms through the Law" (Emerald Insight 2019)
[266] Delalieux G and Moquet A-C, "French Law on CSR Due Diligence Paradox The Institutionalization of Soft Law Mechanisms through the Law" (Emerald Insight 2019) p.131

The other approach argues that the judge here does not have to assess the economic profit of a company, but the objectives set by the law, namely respect for human rights, health and the environment.[267] The author recognizes that the vigilance plan is an act of management, but must also comply with the duty of vigilance law.

This author argues that the legislator intends to include social and environmental considerations in the legal control, which leads to a broader judicial and goal-oriented control of the vigilance plan. The author supports his argument by stating that the judge has the power to issue injunctions if the company does not comply with its obligations, which means that the judge has the power to intervene in corporate affairs of a company.[268]

Regarding the argument that the judge replaces the stakeholders, the author argues that the judge still has the power to impose more efficient measures on the company that would complement the measures already taken by the company and the stakeholders. In our case, the court gave more recommendations and did not even impose a fine on the company, which means that it did not interfere in the role of the stakeholders.[269]

What is clear is that there is still no certainty about what the judge can or cannot do. This case shows the judge's reluctance to interfere in the governance of the company. However, the judge has the task of interpreting the law[270]. Does not that imply interfering in the management of the company?

In contrast to the French law on the duty of vigilance, the CSDDD grants powers to supervisory authorities as they can take interim measures when serious damage occurs and the risk of irreparable damage is to be avoided.[271]

[267] Leray G and Abadie P, "Premiers Enseignements Relatifs Au Contrôle Judiciaire Du Devoir de Vigilance" (Tribunal judiciaire de Paris, 2024)
[268] Leray G and Abadie P, "Premiers Enseignements Relatifs Au Contrôle Judiciaire Du Devoir de Vigilance" (Tribunal judiciaire de Paris, 2024)
[269] Leray G and Abadie P, "Premiers Enseignements Relatifs Au Contrôle Judiciaire Du Devoir de Vigilance" (Tribunal judiciaire de Paris, 2024)
[270] Magnon X, *Théorie(s) Du Droit* (Ellipses 2008)
[271] CSDDD, Article 25(5) (c)

5.2.3. The Judge's Interpretation Tools

After analyzing the reasoning of the court, it is important to understand the tools that the judge used for his reasoning and for the next cases and, finally, whether the reasoning complies with international standards, as this is the question of this dissertation.

The judge in this case explicitly refers to the UNGPs and the OECD Guidelines and establishes a link between these soft law mechanisms and the duty of vigilance law. However, the judge only mentions them at the beginning of the decision and does not refer to them during the decision. From this, however, we can conclude that the decision is not always in line with the UNGPs. As such, when assessing the risks, the judge refers to their probability and their severity, while the UNGPs emphasize the severity of the risks. [272] Indeed, we can assume that the judge does not address the severity of the risks in this decision, as the company's identification of the was inaccurate.

Nevertheless, this decision highlights the importance of using these soft law mechanisms as a tool to interpretation. [273]

Furthermore, as mentioned above, the judge refers to the importance of identifying the risks as they represent a potential severity for these issues of general interest. As mentioned earlier, the judge uses the political dimension of the law and requires that the objectives of the law are met.[274]

[272] Leray G and Abadie P, "Premiers Enseignements Relatifs Au Contrôle Judiciaire Du Devoir de Vigilance" (Tribunal judiciaire de Paris, 2024)
[273] Laniyan B, "Les Enseignements de La Décision La Poste En Matière de Vigilance Environnementale" *Actu Environnement* (March 1, 2024) <https://www.actu-environnement.com/ae/news/decision-la-poste-devoir-vigilance-apports-jurisprudence-43552.php4>
[274] Leray G and Abadie P, "Premiers Enseignements Relatifs Au Contrôle Judiciaire Du Devoir de Vigilance" (Tribunal judiciaire de Paris, 2024)

5.3. The Judge's Role in Implementing the Duty of Vigilance Law

As we can see from this case, the role of the judge plays a key role in understanding the implementation of the vigilance law. This role is underlined in article 4 of the French Civil Code, which states that: "*A judge who refuses to give judgment on the pretext of legislation being silent, obscure or insufficient may be prosecuted for being guilty of a denial of justice*."[275]

Thus, this law stipulates in its article 1 that companies falling within the scope of the law must *"establish and implement a vigilance plan*" and "*the plan shall include the reasonable vigilance measures*". In this decision, the Court evaluated in detail the strategy of the vigilance plan and its effectiveness. As can be seen from the decision, although the "reasonable criterion" gives the company some flexibility in deciding on the measures to be taken, it is up to the judge to assess the "effectiveness" of the implementation of the reasonable measures taken and to find a balance between these two provisions.[276]

Furthermore, this decision did not take into account all the problems that the judge will still face. The term "reasonable" raises several questions: Will the judge evaluate the reasonable measures taken by the company based on the company's financial and technical resources? Or will the judge prefer to assess the reasonable measures based on the actual risks?[277]

The question of the company's liability is also at the discretion of the judge. This difficulty has already been addressed in the previous chapter and it remains a challenge for the judge to decide up to what point the parent company can no longer be liable. Until what point could the company not have taken the necessary measures to avoid the damage caused? These questions have not yet been addressed in recent litigation.

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[275] Gruning D and others, "Traduction Du Code Civil Français En Anglais Version Bilingue" *HAL Open Science*(October 20, 2016) <https://shs.hal.science/halshs-01385107v1/document>

[276] D'Ambrosio L and Institut de recherche en droit international et européen de la Sorbonne (IREDIES), Université Paris 1 Panthéon-Sorbonne, "Le Devoir de Vigilance : Une Innovation Juridique Entre Continuités et Ruptures," vol 106

[277] Delalieux G and Moquet A-C, "French Law on CSR Due Diligence Paradox The Institutionalization of Soft Law Mechanisms through the Law" (Emerald Insight 2019)

It can be deduced from this chapter that the judge has been requesting more detailed information in order to be able to assess the law properly. The current version of this law therefore lacks the necessary clarity for a better evaluation of the law in court proceedings. Judges' hesitation in evaluating cases related to the duty of vigilance law is evident. In the context of "La Poste" case, if the law required a list of the company's subsidiaries and business relationships, the judge could better assess the risks to which the company is exposed.

5.3.1. Implications for Companies and Future Expectations

This first decision on the merits calls on companies to take their obligations under the duty of vigilance seriously. Even though this court case has not yet been concluded and the decision has not yet been confirmed, it represents an important step forward in the legal interpretation of this law. This ruling can become a pivotal jurisprudence, which companies cannot ignore.

In a nutshell, the court has strengthened company's obligations under the duty of vigilance law: companies will have to provide a detailed vigilance plan with a detailed risk mapping and procedures to assess their subsidiaries, subcontractors and suppliers, involving stakeholders in the elaboration of the plan, particularly in the alert and monitoring mechanism. Finally, companies will need to be transparent about their measures implemented by a monitoring system. It remains to be seen how the court will decide if the companies do not comply with this decision. Nonetheless, this decision sets expectations for future legal challenges.[278]

It should be emphasized that the introduction of supervisory authorities, as required by the CSDDD will have an impact on court proceedings.[279] Indeed, the CSDDD requires each Member State to appoint one or more supervisory authorities responsible for monitoring companies' human rights and environmental obligations.

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[278] Laniyan B, "Les Enseignements de La Décision La Poste En Matière de Vigilance Environnementale" *Actu Environnement* (March 1, 2024) <https://www.actu-environnement.com/ae/news/decision-la-poste-devoir-vigilance-apports-jurisprudence-43552.php4>

[279] Massiera C, Melo J and Rouhette T, "Quel Avenir Pour Le Contentieux Français de La Vigilance Sous l'ère de La Directive Européenne ?" (2024) p.3-4. <https://lext.so/0ohSp1>

As mentioned earlier, these authorities will have several powers – the power to conduct investigations, to issue orders, to impose penalties and to adopt interim measures.[280]

On the one hand, it is to be expected that even fewer cases will be brought before French courts, as the supervisory authorities will be responsible for compliance. This phenomenon is knowns as "*déjudiciarisation du contentieux"*.[281]

On the other hand, the opposite effect is to be expected, as the decisions of these authorities are not final, so appeals to the courts are possible. Furthermore, applicants can not only turn to the supervisory authorities, but also take legal action in parallel.[282]

6. Conclusion

The debate on the implementation of binding due diligence legislation remains complex and ongoing, as was recently seen with the European Directive on Corporate Sustainability Due Diligence. Similarly, the French law on the duty of vigilance is also the result of a compromise between different interest groups. On the one hand, its extraterritorial scope and its legal substance provides victims with the legal means to take action against companies that violate human rights and the environment. On the other hand, the limited scope of application and the fault-based liability regime, which places the burden of proof on the claimants, have a negative impact on court proceedings, making it difficult for them to take action against companies.

As a result, this compromise has proven insufficient in practice, as the law has had limited success in holding companies responsible for human rights and environmental abuses. Businesses, civil society organizations and judges are calling for clarity and precision in this law. The adoption of the CSDDD and the proliferation of other EU countries with binding national legislation could also encourage French judges to take a clearer stance when assessing legal cases in the field of business and human rights.

[280] CSDDD, Article 25
[281] Massiera C, Melo J and Rouhette T, "Quel Avenir Pour Le Contentieux Français de La Vigilance Sous l'ère de La Directive Européenne ?" (2024) p.3-4. <https://lext.so/0ohSp1>
[282] Massiera C, Melo J and Rouhette T, "Quel Avenir Pour Le Contentieux Français de La Vigilance Sous l'ère de La Directive Européenne ?" (2024) p.4. <https://lext.so/0ohSp1>

Indeed, this law was designed from the outset to interfere with the freedom of business and trade. However, companies must operate within certain limits in order not to violate human rights and the environment. While the French law on duty of vigilance is an important step forward, further legal developments are needed.

To answer the research questions of this dissertation, the French corporate duty of vigilance law is not fully in line with the CSDDD. Several important changes are needed to achieve this. These include lowering the threshold for application of the law and including the turnover and balance sheet criteria, which would extend the scope of the law to the companies with the greatest impact. The law should also be extended to more types of companies and cover more business activities in the value chain. Key terms such as "risk" and "severity" also need to be interpreted in the light of the CSDDD for the establishment of the vigilance law. In addition, the law needs to set out clear legal obligations and provide more guidance on stakeholder engagement in due diligence processes. Furthermore, the introduction of a supervisory authority, as required in the CSDDDD, is likely to lead to more litigation proceedings. It remains to be seen which authority will be entrusted with oversight.[283]

France's reticence towards the CSDDD, by calling for the threshold for the application of the CSDDD to be raised[284] shows that it is slow and cautious in its approach to corporate accountability in the field of business and human rights. However, there is still the possibility that France could strengthen its legislation beyond the requirements of the CSDD.

National regulations and EU regulations will primarily encourage companies and States to change their behaviour. This means that there must be a rethink in companies and State's mindset by taking their human rights and environmental obligations serious. Seven years after the entry into force of this innovative law, France must now seize the opportunity to clarify its legal framework on human rights and environmental due diligence in line with the CSDDD.

It is now or never to get this done.[285]

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[283] Massiera C, Melo J and Rouhette T, "Quel Avenir Pour Le Contentieux Français de La Vigilance Sous l'ère de La Directive Européenne ?" (2024) <https://lext.so/0ohSp1>

[284] "France Strikes Again to Undermine the CSDDD - ECCJ" (*ECCJ*, February 29, 2024) <https://corporatejustice.org/news/france-strikes-again-to-undermine-the-csddd/>

[285] Gambetta G, "CSDDD Faces 'Race against Time' after EU Member States Fail to Back Text" (*Responsible Investor*, June 13, 2024) <https://www.responsible-investor.com/csddd-faces-race-against-time-after-eu-member-states-fail-to-back-text/>

Bibliography

"Comissão Pastoral Da Terra and Notre Affaire à Tous v. BNP Paribas - Climate Change Litigation" (*Climate Change Litigation*, August 6, 2024) < https://climatecasechart.com/non-us-case/comissao-pastoral-da-terra-and-notre-affaire-a-tous-v-bnp-paribas/>.

"Corporate Sustainability Due Diligence: Fostering Sustainable and Responsible Corporate Behaviour for a Just Transition towards a Sustainable Economy." (*European Commission*) <https://commission.europa.eu/business-economy-euro/doing-business-eu/sustainability-due-diligence-responsible-business/corporate-sustainability-due-diligence_en#what-are-the-obligations-for-companies>.

"Due Diligence for Responsible Business Conduct" (*OECD*) < https://www.oecd.org/en/topics/sub-issues/due-diligence-guidance-for-responsible-business-conduct.html#:~:text=The%20OECD%20Guidelines%20for%20Multinational,supply%20chains%20and%20business%20relationships.>.

"Envol Vert et al. v. Casino - Climate Change Litigation" (*Climate Change Litigation*, April 28, 2021) < https://climatecasechart.com/non-us-case/envol-vert-et-al-v-casino/>.

"France: Landmark 'duty of Vigilance' Case against TotalEnergies over Human & Environmental Rights Impacts of EACOP Dismissed on Procedural Grounds - Business & Human Rights Resource Centre" (*Business & Human Rights Resource Centre*) <https://www.business-humanrights.org/en/latest-news/france-landmark-duty-of-vigilance-case-against-totalenergies-over-human-environmental-rights-impacts-of-eacop-dismissed/>.

"France: Legal Actions against TotalEnergies and EDF Admissible, Paris Court of Appeal Rules - Business & Human Rights Resource Centre" (*Business & Human Rights Resource Centre*)<https://www.business-humanrights.org/en/latest-news/france-la-cour-dappel-de-paris-juge-laction-judiciaire-contre-totalenergies-recevable/>.

"France Strikes Again to Undermine the CSDDD - ECCJ" (*ECCJ*, February 29, 2024) <https://corporatejustice.org/news/france-strikes-again-to-undermine-the-csddd/>.

"Loi Relative Au Devoir de Vigilance Des Sociétés Mères et Des Entreprises Donneuses d'ordre" (*Clifford Chance*, April 2017) <https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2017/05/loi-relative-au-devoir-de-vigilance-des-societes-meres-et-des-entreprises-donneuses-dordre.pdf>.

"Mandatory Due Diligence - Business & Human Rights Resource Centre" (*Business & Human Rights Resource Centre*) <https://www.business-humanrights.org/en/big-issues/mandatory-due-diligence/>.

"TotalEnergies Lawsuit (Re Climate Change, France) - Business & Human Rights Resource Centre" (*Business & Human Rights Resource Centre*) < https://www.business-humanrights.org/en/latest-news/total-lawsuit-re-climate-change-france/>.

Allison Soilihi and Xavier Haranger, "The First French Court Rulings on the Duty of Vigilance" (March 5, 2024) <https://www.morganlewis.com/pubs/2024/03/the-first-french-court-rulings-on-the-duty-of-vigilance>.

Almut Schilling-Vacaflor, "Putting the French Duty of Vigilance Law in Context: Towards Corporate Accountability for Human Rights Violations in the Global South?" (2020) 22 Human Rights Review 109 <https://doi.org/10.1007/s12142-020-00607-9>.

Ana-Maria Ilcheva, "Devoir de Vigilance : Décryptage Des Premières Décisions de La Chambre 5-12 de La Cour d'appel de Paris" (Dalloz actualité).

Ana-Maria Ilcheva, "La Compétence Du Juge Judiciaire Dans Les Contentieux Relatifs Au Devoir de Vigilance," vol 47 (Éditions Lavoisier 2022) journal-article <https://www.cairn.info/revue-juridique-de-l-environnement-2022-1-page-139.htm>.

Armand Hatchuel and Blanche Segrestin, “Devoir de Vigilance : La Norme de Gestion Comme Source de Droit ?” (2021) N° 106 Droit Et Société 667 <https://doi.org/10.3917/drs1.106.0667>.

Arnaud Lecourt, “Devoir de Vigilance : Première Condamnation, Première Décision Au Fond” [2023] RTD Com.

Assemblée Nationale, 15e législature, *Rapport n°5124 fait au nom de la Commission des Lois Constitutionnelles, de la Législation et de L’administration Générale de la République en conclusion des travaux d’une mission d’information sur l’évaluation de la loi du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d’ordre* (2022), Février 24, 2022 (Dubost Coralie, Potier Dominique)

Avis fait au nom de la Commission des Affaires Économiques sur la Proposition de Loi, relative au Devoir de Vigilance des Sociétés Mères et des Entreprises Donneuses d’ordre 2015 (Assemblée Nationale) 2578

Aye Moe Pwint Phyu, “CSDDD Published in the Official Journal of the European Union | German-Southeast Asian Center of Excellence for Public Policy and Good Governance (CPG)” <https://cpg-online.de/csddd-published-in-the-official-journal-of-the-european-union/>.

Beata Faracik, “Implementation of the UN Guiding Principles on Business and Human Rights” (Trans European Policy Studies Association (TEPSA) ed, Policy Department, Directorate-General for External Policies and European Parliament’s Subcommittee on Human Rights (DROI), European Parliament 2017) Study <https://ssrn.com/abstract=2955762>.

Bernard Cazeneuve and Alexandre Mennucci, “Le Devoir de Vigilance Européen : Instrument de Promotion d’un Modèle de Gouvernance Vertueux” (2023) N° 5 RED 53 <https://doi.org/10.3917/red.005.0053>.

Brian Laniyan, “Les Enseignements de La Décision La Poste En Matière de Vigilance Environnementale” *Actu Environnement* (March 1, 2024) <https://www.actu-environnement.com/ae/news/decision-la-poste-devoir-vigilance-apports-jurisprudence-43552.php4>.

Caroline Omari Lichuma, “Mandatory Human Rights Due Diligence (MHRDD) Laws Caught between Rituals and Ritualism: The Forms and Limits of Business Authority in the Global Governance of Business and Human Rights” [2024] Business and Human Rights Journal 1 <https://doi.org/10.1017/bhj.2023.47>.

Christophe Clerc, “The French ‘Duty of Vigilance’ Law: Lessons for an EU Directive on Due Diligence in Multinational Supply Chains,” vol N°1/2021 (2021) Policy Brief <https://ssrn.com/abstract=3765288>.

Claire Bright and others, “A Comparative Analysis between the Corporate Sustainability Due Diligence Directive and the French and German Legislation” [2024] Verfassungsblog - on Matters Constitutional <https://verfassungsblog.de/a-comparative-analysis-between-the-corporate-sustainability-due-diligence-directive-and-the-french-and-german-legislation/>.

Claire Bright, “Creating a Legislative Level Playing Field in Business and Human Rights at the European Level: Is the French Law on the Duty of Vigilance the Way Forward?” (EUI Working Paper MWP 2020/01 2020) book <https://ssrn.com/abstract=3262787>.

Claire Massiera, Jennifer Melo and Thomas Rouhette, “Quel Avenir Pour Le Contentieux Français de La Vigilance Sous l’ère de La Directive Européenne ?” (2024) <https://lext.so/0ohSp1>.

Climate Law Accelarator - NYU School of Law, “Envol Vert v. Casino - CLX - Climate Law Accelerator Toolkit” (*CLX - Climate Law Accelerator Toolkit*, June 13, 2024) <https://clxtoolkit.com/casebook/envol-vert-v-casino/>.

Corinne Vercher-Chaptal, “Limitations and Perspectives of Responsible Management of Global Value Chains: From Codes of Conduct to the French Law on the Duty of Vigilance” [2018] EURAM 2018 13 <https://shs.hal.science/halshs-02141407>.

Comissão Pastoral da Terra and others, “ASSIGNATION DEVANT LE TRIBUNAL JUDICIAIRE DE PARIS” (2023) <https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2023/20230227_19040_summons.pdf>.

David Gruning and others, “Traduction Du Code Civil Français En Anglais Version Bilingue” *HAL Open Science* (October 20, 2016) <https://shs.hal.science/halshs-01385107v1/document>.

Debadatta Bose, “Decentring Narratives around Business and Human Rights Instruments: An Example of the French Devoir de Vigilance Law” (2023) 8 Business and Human Rights Journal 18 <https://doi.org/10.1017/bhj.2023.6>.

Décision n° 2017-750 DC du 23 mars 2017 (Conseil Constitutionnel) <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000034290632>.

Décision n°21/15827 du 5 décembre 2023, La Poste, (TJ Paris) < https://web.lexisnexis.fr/LexisActu/laposte.pdf>.

Décision n° R.G. : 19/02833 du 30 Janvier 2015, Les Amis de la Terre v. Total, (Tribunal judiciaire de Nanterre) <https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2020/20200130_NA_judgment-1.pdf>.

Décision n°150/01355 du 27 octobre 2016 (Cour d’appel de Paris).

Décision n°1904967 du 3 Février 2023, Notre Affaire à Tous and Others v. Total (Tribunal administratif de Paris).

Diane De Saint-Affrique and Philippe Pailot, “Loi Sur Le Devoir de Vigilance : Éléments d’analyse d’une Forme de Juridicisation de La RSE” (2020) 24 Management International 109 <https://doi.org/10.7202/1072645ar>.

Elsa Savourey and Stéphane Brabant, “The French Law on the Duty of Vigilance: Theoretical and Practical Challenges Since Its Adoption” (2021) 6 Business and Human Rights Journal 141 <https://doi.org/10.1017/bhj.2020.30>.

Enrico Zonta, “The EU’s CSDDD: Lawful Extraterritoriality or Jurisdictional Overreach?,” vol 6:1 (Trento Student Law Review, 2024).

ENVOL VERT and others, “Assignation Devant Le Tribunal Judiciaire de Saint-Etienne” (2021) <https://climatecasechart.com/wp-content/uploads/non-us-case-documents/2021/20210302_13435_complaint.pdf>.

Essex Court Chambers, “Seeing the Wood for the Trees: Developments in Deforestation Legislation and Litigation. Week 5. Series 3. | Essex Court Chambers” (*Essex Court Chambers*, March 28, 2024) < https://essexcourt.com/publication/seeing-the-wood-for-the-trees-developments-in-deforestation-legislation-and-litigation-week-5-series-3/>.

European Commission: Directorate-General for Justice and Consumers, Smit Lise and others, “Study on Due Diligence Requirements through the Supply Chain – Final Report” (Publications Office 2020) <https://data.europa.eu/doi/10.2838/39830>.

European Parliament, “Legislative Proposal on Corporate Sustainability Due Diligence | Legislative Train Schedule” (*European Parliament*) <https://www.europarl.europa.eu/legislative-train/spotlight-JD22/file-legislative-proposal-on-sustainable-corporate-governance#:~:text=On%2023%20February%202022%2C%20the,behaviour%20throughout%20global%20value%20chains.>.

Firouse Boudjellal, “Chapitre 5. Premiers Regards Sur Le Devoir de Vigilance” in Marion Bary, *L’entreprise et la reddition de compte en matière sociale et environnementale. Regards croisés droits français, de l’Union européenne et brésilien* (Amplitude du droit 2023).

Gabriel Ajabu Mastaki, Styven Darondeau and Amine Tariqui, *Le Devoir de Vigilance Des Entreprises En Matière de Durabilité : Quel Avenir Avec La CS3D ?* (HAL Open Science 2024) <https://hal.science/hal-04577023v2>.

Gina Gambetta, “CSDDD Faces ‘Race against Time’ after EU Member States Fail to Back Text” (*Responsible Investor*, June 13, 2024) <https://www.responsible-investor.com/csddd-faces-race-against-time-after-eu-member-states-fail-to-back-text/>.

Grégoire Leray and Pauline Abadie, “Premiers Enseignements Relatifs Au Contrôle Judiciaire Du Devoir de Vigilance” (Tribunal judiciaire de Paris, 2024).

Guillaume Delalieux and Anne-Catherine Moquet, “French Law on CSR Due Diligence Paradox The Institutionalization of Soft Law Mechanisms through the Law” (Emerald Insight 2019).

Guillaume Delalieux, “La Loi Sur Le Devoir de Vigilance Des Sociétés Multinationales : Parcours d’une Loi Improbable” (2021) N° 106 Droit Et Société 649 <https://doi.org/10.3917/drs1.106.0649>.

Jen Malat, “10 Years on from Rana Plaza: Is France’s Duty of Vigilance Law Living up to Its Promise? « Law# « Cambridge Core Blog” (*Cambridge Core Blog*, June 2, 2023) <https://www.cambridge.org/core/blog/2023/06/06/10-years-on-from-rana-plaza-is-frances-duty-of-vigilance-law-living-up-to-its-promise/>.

John Gerard Ruggie and Harvard Kennedy School, “The Social Construction of the UN Guiding Principles on Business & Human Rights” (John F Kennedy School of Government, Harvard University 2017) RWP17-030 <https://ssrn.com/abstract=2984901>.

John Gerard Ruggie and John F Sherman, “The Concept of ‘Due Diligence’ in the UN Guiding Principles on Business and Human Rights: A Reply to Jonathan Bonnitcha and Robert McCorquodale” (2017) 28 European Journal of International Law 921 <https://doi.org/10.1093/ejil/chx047>.

John Gerard Ruggie, “JUST BUSINESS: Multinational Corporations and Human Rights,” *AMNESTY INTERNATIONAL GLOBAL ETHICS SERIES* (AMNESTY INTERNATIONAL 2013) <https://edisciplinas.usp.br/pluginfile.php/4424946/mod_resource/content/1/Ruggie%20-%20Just%20Business.pdf>.

Julia Sinnig and others, “The EU’s Corporate Sustainability Due Diligence Directive: From Disclosure to Prevention of Adverse Sustainability Impacts in Supply Chains” Universite Du Luxembourg - Faculty of Law, Economics and Finance; European Banking Institute.

Libby Annat, “First Ruling on the Merits in French Duty of Vigilance Case | Due Diligence Design” <https://duediligence.design/first-ruling-on-the-merits-in-french-duty-of-vigilance-case/>.

Luca D’Ambrosio and Institut de recherche en droit international et européen de la Sorbonne (IREDIES), Université Paris 1 Panthéon-Sorbonne, “Le Devoir de Vigilance : Une Innovation Juridique Entre Continuités et Ruptures,” vol 106.

Maria-Therese Gustafsson, Almut Schilling-Vacaflor and Andrea Lenschow, “Foreign Corporate Accountability: The Contested Institutionalization of Mandatory Due Diligence in France and Germany” (2022) 17 Regulation & Governance 891 <https://doi.org/10.1111/rego.12498>.

Markus Krajewski, “Administrative Enforcement of Corporate Human Rights Due Diligence Legislation” (*Verfassungsblog - on Matters Constitutional*, May 29, 2024) <https://verfassungsblog.de/administrative-enforcement-of-corporate-human-rights-due-diligence-legislation/>.

Nicolas Bueno and Claire Bright, “IMPLEMENTING HUMAN RIGHTS DUE DILIGENCE THROUGH CORPORATE CIVIL LIABILITY” (2020) 69 International and Comparative Law Quarterly 789 <https://doi.org/10.1017/s0020589320000305>.

Nicolas Bueno and others, “The EU Directive on Corporate Sustainability Due Diligence (CSDDD): The Final Political Compromise” [2024] Business and Human Rights Journal 1 <https://doi.org/10.1017/bhj.2024.10>.

Nora Benhamla, “Devoir de vigilance : création d’une nouvelle chambre à la cour d’ap...” (*DECIDEURS MAGAZINE - Accédez À Toute L’actualité De La Vie Des Affaires : Stratégie, Finance, RH, Innovation*, January 23, 2024) <https://www.decideurs-juridiques.com/affaires-juridiques/57333-devoir-de-vigilance-creation-d-une-nouvelle-chambre-a-la-cour-d-appel-de-paris.html>.

Olivier Dorgans, “Le Groupe La Poste Est Enjoint à Plusieurs Égards de Consolider Sa Démarche Relative Au Devoir de Vigilance” *Lefebvre Dalloz Éditions*

Législatives (December 18, 2023) <https://www.editions-legislatives.fr/actualite/le-groupe-la-poste-est-enjoint-a-plusieurs-egard-de-consolider-sa-demarche-relative-au-devoir-de-vig/>.

Ondřej Svoboda, Charles University, and Ministry of Industry and Trade of the Czech Republic, "The OECD Guidelines for Multinational Enterprises and the Increasing Relevance of the System of National Contact Points" in P Šturma and VA Mozetic (eds), *Business and Human Rights* (2018).

Padma-Dolma Fielitz, Melina Girardi Fachin and Danielle Anne Pamplona, "More of the Same or True Evolution?" [2024] Verfassungsblog – on Matters Constitutional <https://verfassungsblog.de/more-of-the-same-or-true-evolution/>.

Peter Muchlinski, "The Impact of the UN Guiding Principles on Business Attitudes to Observing Human Rights" (2021) 6 Business and Human Rights Journal 212 <https://doi.org/10.1017/bhj.2021.14>.

Peter Muchlinski, "The Impact of the UN Guiding Principles on Business Attitudes to Observing Human Rights" (2021) 6 Business and Human Rights Journal 212 <https://doi.org/10.1017/bhj.2021.14>.

Sandra Cossart and others, "Extension Du Domaine de La Vigilance, La Loi Sur Le Devoir de Vigilance, Au-Delà de La Compliance" Revue Des Juristes De Sciences Po - N° 16 - Janvier 2019.

Sandra Cossart, Jérôme Chaplier and Tiphaine Beau De Lomenie, "The French Law on Duty of Care: A Historic Step towards Making Globalization Work for All" (2017) 2 Business and Human Rights Journal 317 <https://doi.org/10.1017/bhj.2017.14>.

Sherpa, "Loi Sur Le Devoir de Vigilance : Questions Fréquemment Posées (FAQ)" (2019)< https://www.asso-sherpa.org/loi-devoir-de-vigilance-questions-frequemment-posees-faq>.

Sherpa, *Vigilance Plans Reference Guidance* (Sherpa 2021) <https://www.asso-sherpa.org/wp-content/uploads/2019/02/Sherpa_VPRG_EN_WEB-VF-compressed.pdf>.

Stéphane Brabant and Elsa Savourey, “All Eyes on France – French Vigilance Law First Enforcement Cases (1/2) Current Cases and Trends” (*Cambridge Core Blog*, January 24, 2020).

Stéphane Brabant and others, “The Vigilance Plan” [2017] REVUE INTERNATIONALE DE LA COMPLIANCE ET DE L’ÉTHIQUE DES AFFAIRES <https://media.business-humanrights.org/media/documents/ba571b7294311e42b3605af7cc4eeaad149c33b2.pdf>.

Surya Deva and Macquarie Law School, “Mandatory Human Rights Due Diligence Laws in Europe: A Mirage for Rightsholders?” [2023] Leiden Journal of International Law 389 <https://doi.org/10.1017/S0922156522000802>.

United Nations, “THE CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS: An Interpretive Guide” (2012) <https://www.ohchr.org/sites/default/files/Documents/Publications/HR.PUB.12.2_En.pdf>.

Xavier Magnon, *Théorie(s) Du Droit* (Ellipses 2008).

Xavier Thunis and Jean-Marc Gollier, “Devoir de Vigilance Des Entreprises: Vers Une « responsabilité Sociétale Des Entreprises » Juridiquement Obligatoire” (*The Research Portal - University of Namur*, 2021) <https://researchportal.unamur.be/en/publications/devoir-de-vigilance-des-entreprises-vers-une-responsabilit%C3%A9-soci%C3%A9>.

Legislation

‘Act on Corporate Due Diligence in Supply Chains’, Germany, <https://www.bmas.de/EN/Services/Press/recent-publications/2021/act-on-corporate-due-diligence-in-supply-chains.html>.

“Uniting Business for a Better World | UN Global Compact” <https://unglobalcompact.org/take-action/20th-anniversary-campaign#:~:text=Launched%20in%202000%20by%20former,face%20to%20the%20global
%20market.>.

Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202401760>.

DIRECTIVE 2013/34/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ILO Declaration on Fundamental Principles and Rights at Work < https://www.ilo.org/ilo-declaration-fundamental-principles-and-rights-work>.

DIRECTIVE 2013/34/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0034>.

Indirect Counter-Proposal to the Popular Initiative ‘For responsible businesses–protecting human right sand the environment’ 2020.

International Labour Organization < https://www.ilo.org/ilo-declaration-fundamental-principles-and-rights-work>.

LOI n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre (1) (2017) <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000034290626/>.

Lov om virksomheters åpenhet og arbeid med grunnleggende menneskerettigheter og anstendige arbeidsforhold (åpenhetsloven) 2021, Norway.

OECD Guidelines for Multinationals Enterprises on Responsible Business Conduct <https://www.oecd.org/en/publications/oecd-guidelines-for-multinational-enterprises-on-responsible-business-conduct_81f92357-en.html>.

Principles for Responsible Investment <https://www.unpri.org/about-us/what-are-the-principles-for-responsible-investment>.

Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021PC0189>.

Proposition de la loi relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre 2015 (Assemblée Nationale) 2578

Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) < https://www.ilo.org/ilo-department-sustainable-enterprises-productivity-and-just-transition/areas-work/tripartite-declaration-principles-concerning-multinational-enterprises-and#:~:text=Areas%20of%20work-,Tripartite%20Declaration%20of%20Principles%20concerning,and%20Social%20Policy%20(MNE%20Declaration)&text=The%20MNE%20Declaration%20is%20the,responsible%20and%20sustainable%20workplace%20practices.>.

United Nations, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (2011) <https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf>.

Wet zorgplicht kinderarbeid 2019, the Netherlands.

Figures

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