

One year after the enactment of French law, is your company vigilant enough to avoid civil liability?

4 April 2018

On 27 March 2017, France went one step further than other countries by adopting "hard" law on human rights with the very broad Law on the "duty of vigilance of the parent companies and main contractor companies". This statute is now into force and the first "vigilance plans" are being published as companies file their financial statements, which vigilance plans are now part of, where applicable. At the time of these publications, it is worth stressing that the main sanction for non-compliance will come from civil litigation and potential liability for parent companies.

A new and mandatory compliance plan

In summary, the statute provides that French corporations with over 5,000 employees in France and/or over 10,000 employees worldwide (including the employees of subsidiaries and controlled affiliates) are to set up, publish and implement a "vigilance plan". In particular, this may apply to French subsidiaries of foreign companies or global groups insofar they meet the above-mentioned requirement. The objective of such plan is to identify, anticipate and prevent human rights violations that might result from the activities of the parent company, its subsidiaries and controlled affiliates, and suppliers and subcontractors. More precisely, the statute aims at ensuring effective protection of fundamental rights, individuals' safety and of the environment.

The vigilance plan is inspired by other compliance requirements existing under French law (in particular anticorruption plans). The plan should cover items like risk mapping, regular assessment procedures, appropriate actions for mitigating risks or preventing serious breaches, warning and reporting mechanisms, as well as monitoring processes to assess the effectiveness of the measures implemented.

There is a clear intent from the French lawmakers to make this new duty of vigilance cover the operations of the parent company, its subsidiaries and any other company in the supply chain, regardless of whether these operations take place in France or abroad. One should bear in mind that one of the drivers for the enactment of this statute can be found in the significant engagement from NGOs that followed recent mass accidents, in particular the collapse of the Rana Plaza textile factory in 2013 in Bangladesh which was used by sub-contractors of several global companies, including French ones.

Potential liability risks

In case of non-compliance with the obligation to publish and, as from next year, report on the effective implementation of the vigilance plan, parent companies may be given formal notice to do so by any interested parties. They may also be brought into summary proceedings by the same stakeholders in order for the Court to order injunctive relief, with the potential application of a penalty payment to secure enforcement of the order.

Most importantly, parent companies may be held liable in civil proceedings for any damage resulting from non-compliance, i.e. failing to prevent human rights violations through the effective implementation of a well-designed vigilance plan. There are a number of questions which the statute does not answer as to how this type of civil actions will work in practice. One can hope that future case law may provide guidance to determine the precise scope of application of the statute and its implications in terms of civil liability.

Our recommendation: have a Legal look at the plan

The vigilance plan is not just another compliance report to be prepared. It is advisable that the preparation of the vigilance plan is not only the work of Compliance teams, but that the Legal function (whether in-house or outside Counsel) be involved as well. Indeed, vigilance plans might potentially become a source of litigation in the future.

The global context: what the Law could mean for non-French businesses

Even those businesses which are not directly affected by the Law should take note. Law makers in other jurisdictions are considering the introduction of similar "hard" law and will be paying close attention to how the French Law works in practice. In the UK, new guidance released in 2017 toughened disclosure requirements under the Modern Slavery Act (see our post) and the Joint Parliamentary Committee on Human Rights has recently proposed a "hard" legal duty to prevent adverse human rights impacts. As we have written previously, there are proposals in Switzerland to amend the constitution to require mandatory human rights due diligence.

International businesses wishing to stay ahead of the curve and anticipate regulatory changes would do well to consider introducing or fine tuning existing human rights due diligence processes before it becomes mandatory. Not only will this put them at a competitive advantage should new "hard" law be introduced, in the meantime, it will boost stakeholder confidence and reduce the risk of involvement in an adverse human rights impact and associated litigation and adverse publicity.

We will continue to provide updates on the next developments and guidance on this topic. If you have any questions, feel free to contact us. We are available to provide personalized and fine-tuned advice on specific situations wherever helpful.

Contacts



Christelle
Coslin

Partner

> [Read the full article online](#)