

Mission to monitor the implementation of the Duty of Vigilance Act

On May 6th 2019, the French Minister for the Economy and Finance ordered a monitoring mission of the “Duty of Vigilance Act”, and the respect of this law and its interest. The French High Council For Economy ([Conseil Général de l'Économie](#), presentation [brochure in English](#)), designated Mrs. Anne DUTHILLEUL and Mr. Matthias DE JOUVENEL to accomplish this mission. They submitted their report on February 20th 2020. This document is a translation, based on the eTranslation¹, of the abstract of this report.

Abstract

The Rana Plaza tragedy in Bangladesh on 24 April 2013 triggered a global reaction. Although corporate social, environmental and societal issues were already taken into account, frameworks and guidelines were already published by international organisations (OECD, UN, ILO), public opinion called for the multinational companies’ liability in a globalised economy.

In France, NGOs, trade unions and elected officials wanted to go further than the soft law norms by advocating for the creation of a legal requirement. After a difficult journey, the “Duty of Vigilance Act” (No. 2017-399 of 27 March 2017, the duty of vigilance of parent companies and contracting companies²) was adopted.

This Act applies to companies and groups located in France that employ either more than 5,000 employees in France, or more than 10,000 in France and abroad for two consecutive years. They must establish, publish, implement and monitor a “Vigilance Plan” to identify and prevent risks of severe violations of human rights and fundamental freedoms, health and safety of people and to the environment in their entire sphere of influence, subsidiaries and subcontractors when “an established commercial relationship” exists, which represents tens or even hundreds of thousands of companies for a single French group.

The Act lists the five mandatory components of the Vigilance Plan:

- a risk mapping ;
- procedures for a regular assessment of the situation of subsidiaries, subcontractors or suppliers ;
- adapted due diligence measures to mitigate risks and prevent serious harm ;
- a mechanism for alerting and collecting reports ;
- a mechanism to monitor and evaluate the effectiveness of measures taken.

The link with other legal requirements, including reporting of non-financial performance, facing multiple challenges since 2002, and fighting against corruption, is not easy because the scope of each instrument is different, and companies see an increase in the weight of these reporting obligations year by year.

The transition from soft law, based on voluntary approaches, to hard law with this Act has important consequences for businesses and can lead to judicial remedies and sanctions. First formal notices and claims that have been filed and following proceedings will need to be closely monitored in order to analyse their respective scopes. Existing studies and analysis of the Mission show that some companies do not yet formally respect their Duty of Vigilance while others play the game well and have been publicly rewarded with evaluations and awards.

¹ <https://webgate.ec.europa.eu/etranslation/public/welcome.html>

² <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000034290626>

The strengths of the Act can be seen in particular in the higher governance of the Duty of Vigilance, compared to other policies such as Corporate Social Responsibility, but also in efforts to use relevant benchmarks (such as those of the ILO, the OECD and the UN on Business and Human Right), adapting pre-existing tools or creating new ones for its implementation.

The weaknesses of the Act lie in the still unclear and unevenly shared understanding of the Duty of Vigilance, its insufficient readability and visibility in the already heavy Management Report, the relevant level of details, an alert mechanism that is still being sought, and a dialogue to be strengthened with trade union organisations and even more with NGOs.

The paths of progress in the application of the Act are the gradual uptake in companies' vigilance, which is better in France than in the rest of the world, but is still insufficient. Strengthening sector-wide approaches and harmonising of practices would allow for greater efficiency and a shift from an obligation to a real opportunity for businesses. Considering the substantial number of obligations and commitments that companies must comply with, the increased effort required for the Duty of Vigilance is substantial, equivalent to several full time jobs and relatively large and frequent external service contracts that increase the cost of social and environmental progress expected by consumers and citizens. The expectations of the actors, such as NGOs and civil society, trade union organisations and surrounding communities, businesses and their sector-led federations, are already partially met. The spirit of the Act must be preserved so that it continues to apply more and more concretely to the substance, in a pragmatic way, and does not return to a pure formalism that would cause all its interest to be lost.

The French Law is often cited as an example to be followed internationally, but international law is not ready to lead to a legally binding mandatory due vigilance. Progress – often partial – has been made in a few European countries or outside Europe, but the European Union is not unanimous on this issue. However, it could be mobilised during the Finnish and German Presidencies in 2019 and 2020. The revision of Directive 2014/95/EU on non-financial reporting directive (NFRD) could provide an opportunity to integrate the Duty of Vigilance at European level.

In conclusion, the Law on the Duty of Vigilance is useful in that it reinforces principles derived from soft law, on which all can agree, by giving them “force of law” in France and, by “cascade effect”, in all the countries where French largest groups' subsidiaries and subcontractors are established.

However, its application must be better ensured by expressly commissioning a State service to this support, in order to promote its implementation by concerned companies. As this scope is difficult to verify as it is, the criteria of companies' social form and size could be specified occasionally. This service could carefully monitor the implementation of the Act, contribute to harmonising and converging businesses towards good practices, and promote sectoral and multi-stakeholder approaches. For the sake of fair competition, the extension of the Duty of Vigilance to a European level would be desirable.

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