

# Client Update

## French Corporate Human Rights and Environmental Due Diligence Legislation

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On 21 February 2017, the French legislature adopted the *Loi relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre* (the “Legislation”), which created a new requirement of human rights and environmental due diligence for large companies headquartered in France.<sup>1</sup>

The French Constitutional Council has examined the Legislation following a challenge brought by members of the legislature as to the consistency of the Legislation with the French Constitution. On March 23, 2017, the Constitutional Council struck down large penalties originally included in the Legislation (up to €30 million), and otherwise upheld the Legislation as adopted. An amended version of the Legislation (without the unconstitutional provisions) was promulgated by the French President on March 27, 2017, and it will enter into force on March 29, 2017.

The Legislation applies to companies either:

- whose head office is in France and which have at least 5,000 employees in France (directly or employed by their subsidiaries); or
- whose head office is in France, and which have at least 10,000 employees globally (directly or employed by their subsidiaries).

Affected companies will be required to establish and implement a due diligence plan (the “Plan”), which must contain due diligence measures sufficient to identify relevant risks, and to prevent serious human rights violations, serious bodily injury and environmental damage. The Plan must cover risks that may arise not only from the operations of the company, and any companies it controls, but also from the operations of subcontractors and suppliers with

<sup>1</sup> *Loi relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre* (available at <http://www.assemblee-nationale.fr/14/ta/ta0843.asp>).

whom it has an established commercial relationship, where such operations derive from this relationship.

The Plan must include provision to:

- map, identify, analyse and rank risks (Art. I(1));
- implement procedures to evaluate the company, subsidiaries, subcontractors and suppliers against these risks (Art. I(2));
- take appropriate action to mitigate risks and prevent serious violations (Art. I(3));
- put in place an alert mechanism to report on risks (Art. I(4)); and
- put in place a monitoring scheme to assess the efficacy of measures implemented. (Art. I(5)).

Affected companies will now need to start working on their Plan, which must be drafted in cooperation with company stakeholders and published in the company's annual report.

Of particular note is that under the Legislation, any person with a "legitimate interest" may initiate proceedings against businesses that fail to include adequate Plans in their annual reports, commencing with annual reports in respect of the first full fiscal year commencing after March 28, 2017 (i.e., the date of publication of the Legislation).

In addition, the failure to prepare and publish a Plan may help substantiate claims against companies under the general *délit* / tort principle in the French Civil Code. Articles 1240 and 1241 of the French Civil Code establish the general principle whereby a person who causes harm must repair that damage (whether as a result of their action, omission or negligence). The failure to comply with the provisions of the Legislation will likely constitute a "fault" for the purposes of Articles 1240 and 1241, giving rise to potential claims of otherwise avoidable human rights-related or environmental damage.

### ANALYSIS

Companies are increasingly subject to requirements to report on the human rights and environmental impacts of their operations. In Europe, Directive 2014/95/EU (the "EU Non-Financial Reporting Directive") requires certain large companies incorporated in the European Union (namely, those with over 500 employees) to disclose information on policies, risks and outcomes in respect of

*inter alia* environmental, human rights, anti-corruption and bribery matters.<sup>2</sup> In the United States, the Federal Acquisition Regulation requires federal contractors and subcontractors performing work both in and outside the United States to develop and maintain a compliance plan aimed at preventing human trafficking and forced labor.

However, the Legislation goes significantly further than the requirements of the EU Non-Financial Reporting Directive or the Federal Acquisition Regulation. It requires that companies not merely report on such matters, but actively implement their Plan designed to address these risks.

The Legislation has been heralded as a major step forward in businesses' responsibility for human rights impacts in Europe. It comes amidst a number of other similar initiatives, including the United Kingdom's Modern Slavery Act 2015, which requires reporting on measures that UK-incorporated companies have taken to combat human trafficking in their supply chains;<sup>3</sup> the Netherlands' Child Labour Due Diligence Bill ("*Wet Zorgplicht Kinderarbeid*"), adopted in February 2017, which would require that certain companies identify whether child labour is used in their supply chains, and if so, propose measures to combat this; and the EU Conflict Minerals Regulation (expected to be passed in 2017), which will require EU importers to undertake due diligence on suppliers of specified minerals with a view to preventing the financing of armed groups and human rights abuses through trade in minerals.

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Please do not hesitate to contact us should you have any questions.

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<sup>2</sup> The deadline for the transposition of the Non-Financial Reporting Directive into EU Member States' national law was 6 December 2016.

<sup>3</sup> See "Client Update: Organisations Carrying on Business in the United Kingdom Must Now Publish Annual 'Slavery and Human Trafficking Statement'", *Debevoise & Plimpton LLP*, 14 September 2015 available at [http://www.debevoise.com/~media/files/insights/publications/2015/09/20150914\\_organisations\\_carrying\\_on\\_business\\_in\\_the\\_united\\_kingdom.pdf](http://www.debevoise.com/~media/files/insights/publications/2015/09/20150914_organisations_carrying_on_business_in_the_united_kingdom.pdf). The Modern Slavery Act is available here: <http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>.