

French Vigilance Law – Latest from the Paris Court

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Six years after France adopted its law on the corporate duty of vigilance (the “Vigilance Law”),¹ the Paris Civil Court has now rendered several decisions in injunction proceedings brought by NGOs to compel compliance by companies with their obligations under the law. The first decision was issued in November 2021, with three having been issued between February and July of this year. All four requests have been dismissed as inadmissible. If endorsed by the higher courts, the reasoning of the Paris court will make it more difficult for claimants to obtain vigilance injunctions.

Background on Vigilance Law

On February 21, 2017, the French legislature adopted the Vigilance Law, which created new human rights and environmental due diligence obligations for large companies headquartered in France.

The Vigilance Law applies to companies whose head office is in France and who have at least (i) 5,000 employees in France (directly or employed by their subsidiaries); or (ii) 10,000 employees globally (directly or employed by their subsidiaries).

In-scope companies are required to establish and implement a due diligence plan (referred to as a “vigilance plan”), which must contain *reasonable* 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 arise not only from the operations of the company and any companies it controls but also from the operations of subcontractors and suppliers with whom it has an established commercial relationship, where the operations are connected with that relationship.

The vigilance plan must: (i) map, identify, analyse and rank risks; (ii) establish procedures to evaluate the company, subsidiaries, subcontractors and suppliers against these risks; (iii) set out appropriate action to mitigate risks and prevent serious

¹ Law No. 2017-399 of March 27, 2017, <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000034290626>.

violations; (iv) establish an alert mechanism for risk reporting; and (v) establish a monitoring scheme to assess the efficacy of any measures taken to address identified risks.

The Vigilance Law has long been regarded as a significant step forward in businesses' responsibility for human rights and environmental impacts. It has heralded similar initiatives in other jurisdictions, with Germany having since enacted its own due diligence law in the form of the Corporate Supply Chain Due Diligence Act (see our update [here](#)), and Spain having proposed similar legislation.²

However, the Vigilance Law has also come under scrutiny for its lack of detail and the perceived difficulty in interpreting and implementing its requirements. In February 2022, French MPs published an [evaluation report](#), making several recommendations to update and improve the law.³ In July 2023, a group of academics and practitioners also published a [report](#) with a number of recommendations, hoping to bring more efficiency and legal predictability to the existing law.⁴ It remains to be seen if any changes will be made before the draft EU Directive on Corporate Sustainability Due Diligence (the "CSDD Directive") that is currently being negotiated among EU institutions (see our update [here](#)) is adopted and implemented in France.⁵ In the meantime, applications made under the Vigilance Law to date have given the French courts the opportunity to interpret certain of its provisions.

Paris Court's First Decisions

The Vigilance Law provides for a civil liability proceeding, whereby companies failing to comply can be sued and ordered to compensate the loss that could have been avoided if the Vigilance Law's obligations had been fulfilled. Claims have been brought on that basis⁶ but there have been no decisions yet.

² Spanish Preliminary Draft Bill for the Protection of Human Rights, Sustainability and Due Diligence in Transnational Business Activities, <https://www.mdsocialesa2030.gob.es/servicio-a-la-ciudadania/proyectos-normativos/consultas-publicas.htm>.

³ French National Assembly, Report No. 5124, February 24, 2022, https://www.assemblee-nationale.fr/dyn/15/rapports/cion_lois/115b5124_rapport-information#_Toc256000073.

⁴ Club des Juristes, 'Due diligence: What's the outlook for Europe?', July 2023, <https://www.leclubdesjuristes.com/les-commissions/publication-du-rapport-devoir-de-vigilance-quelles-perspectives-europeennes/>.

⁵ The CSDD Directive provides for much lower employee thresholds than the Vigilance Law and extends to certain non-EU countries.

⁶ See <https://plan-vigilance.org/les-affaires-en-cours/>.

The Vigilance Law also provides for injunctive relief, whereby the Paris Civil Court can order companies to comply with their duties. Any person with a “legitimate interest” has standing to initiate that proceeding.

There are two stages to any application for an injunction under the Vigilance Law: (i) the party with standing must first send the relevant company a *formal notice* demanding that it complies with its obligations (i.e., to correctly establish and implement a vigilance plan); (ii) if the company does not comply within three months, the notifying party can then file an *injunction request* with the Paris Civil Court.

The four Paris Civil Court decisions rendered so far (including three between February and July 2023) have all ruled the relevant injunction requests inadmissible. The court adopted a strict interpretation of the Vigilance Law, noting that the legislative intent was to see vigilance plans developed through a “*collaborative process and dialogue*” between the company and relevant stakeholders. The court stressed the importance of a notice procedure that is intended to provide the company with an opportunity to remedy the specific identified issues. In each of the four cases, the court decided that the claimants’ injunction requests failed because they did not cover the exact same issues that had been articulated in the relevant notice.

- *EDF Case (Paris Civil Court, Nov. 30, 2021, No 20/10246)*. In September 2019, a group of NGOs sent a formal notice to EDF in relation to its 2018 vigilance plan, in particular with regards to risks associated with its projects in Latin America and the alleged adverse impacts on indigenous peoples’ rights. In December 2019, EDF responded to the notice, asserting that its 2018 vigilance plan was compliant. In October 2020, the NGOs filed an injunction request before the French courts pointing to alleged insufficiencies in EDF’s 2019 vigilance plan. On November 30, 2021, the Paris Civil Court declared that request inadmissible, on the grounds that no prior formal notice had been sent to EDF about its 2019 vigilance plan.
- *Total Energies Case (Paris Civil Court, Feb. 28, 2023, No 22/53942)*. In June 2019, certain NGOs sent Total Energies a formal notice in relation to its 2018 vigilance plan, regarding risks associated with projects in Uganda and Tanzania. In September 2019, Total Energies responded explaining why its 2018 vigilance plan was compliant. In October 2019, the NGOs filed an injunction request. The hearing before the Paris Civil Court took place more than two years later, in December 2022, by which point the company had published its vigilance plans for the years 2019 to 2021. At the hearing, the NGOs focused their criticism on the 2021 vigilance plan, which the court said was “substantially” different from the 2018 plan mentioned in the NGOs’ formal notice. The Paris Civil Court thus declared the injunction request inadmissible, again on the grounds that no prior formal notice had been sent to Total Energies about its 2021 vigilance plan.

Interestingly, the court explained that the summary proceedings (*référé*) used by the NGOs in that case would only be appropriate where the lack of compliance with the Vigilance Law was self-evident (e.g., where there was a total absence of a vigilance plan, or one of the mandatory components of the plan was clearly missing). Where the court was being asked to rule on the substance of a vigilance plan, claimants would need to initiate regular proceedings on the merits (*fond*).

- *Suez Case (Paris Civil Court, June 1, 2023, No 22/07100)*. In July 2020, a group of NGOs sent Suez a formal notice in relation to its 2019 vigilance plan and certain incidents that allegedly had resulted in the contamination of drinking water in Chile. In June 2021, the NGOs filed an injunction request in relation to Suez's vigilance plan for the year 2021. In its June 2023 decision, the Paris Civil Court declared the injunction request inadmissible, on the grounds that no formal notice had been sent to Suez about its 2021 vigilance plan. According to the court, "*if the formal notice does not relate to the plan mentioned in the request, the latter is issued without any prior discussion having taken place between the parties on the plan to which it relates, which is contrary to the legislative intent that vigilance plans must be drawn up in a spirit of consultation.*"
- *Total Energies Case (Paris Civil Court, July 6, 2023, No 22/03403)*. In June 2019, Total Energies received another formal notice, this time in relation to its 2019 vigilance plan. In January 2020, NGOs and local authorities filed an injunction request before the French courts, requesting that the company incorporate a number of additional measures into its 2019 vigilance plan. In its July 2023 decision, the Paris Civil Court noted that not all of the requested measures had been identified in the notice of 2019, and declared the injunction request inadmissible on that basis. The court explained that "*requests made in the formal notice must be the same as those mentioned in the summons, insofar as each of those should be discussed between the parties before the proceedings is started.*"

The Paris Civil Court also rejected the claimants' argument that their injunction request should be granted on the basis of a different statute (Article 1252 of the French Civil Code) providing that a "*judge may order reasonable steps to prevent or stop [ecological] damage from occurring*" without having to send a prior formal notice. The court dismissed this argument which "*was clearly made with a view to circumventing the formal notice requirement*" under the Vigilance Law.

What Next

If confirmed by the Paris Court of Appeal, the decisions described above will make it difficult for claimants to obtain vigilance injunctions in the French courts. As a practical

matter, given the time it usually takes between the filing of an injunction request and the hearing—including in summary proceedings (which, as noted above, will only be available in rare cases)—the Paris court will rarely decide an injunction request before the publication of a new vigilance plan. While the claimants can then send a fresh notice in relation to any new plan, that will simply restart the process.

While the decisions may seem harsh for that reason, they appear to be based on the court's view that the intention of the Vigilance Law is to encourage companies and their stakeholders to work collaboratively on addressing perceived defects in a vigilance plan. The court has also emphasized the “monumental” objective that the Vigilance Law imposes on companies; in effect, the prevention of adverse human rights and environmental impacts associated with their business. The court thus may also be signaling its reluctance to interfere with companies' decision-making processes in this regard and the related consultations with their stakeholders.

In any event, it remains to be seen if the Vigilance Law's injunction mechanism will remain unchanged in the future. In the above-referenced evaluation report, French MPs called for the creation of a supervisory authority whose role could include issuing notices and injunctions to non-compliant companies. The draft CSDD Directive also provides for the designation of national supervisory authorities that would enforce companies' due diligence obligations under the Directive.

Of course, NGOs and other interested parties can still be expected to bring claims under the Vigilance Law (and to test its boundaries) for so long as the injunction procedure remains available. Future claimants may attempt to adapt any injunction request to cure the procedural defects that so far have been identified by the courts. Equally, they might consider that an injunction application can bring pressure to bear on the relevant company, even if success is unlikely. Either way, in-scope companies should still expect to find themselves in the crosshairs while, at least in the short to medium term, the French courts continue to grapple with this novel legislation.

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