

# French Vigilance Law—Paris Courts Provide Clarifications

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Seven years after France adopted its law on the corporate duty of vigilance (the “Vigilance Law”),<sup>1</sup> and after a first round of decisions from the Paris Civil Court we [discussed](#) last year, several new decisions have provided some important clarifications as to companies’ obligations as well as injunction applications in case of non-compliance.

In December 2023, the Paris Civil Court rendered its first decision on the merits on a Vigilance Law case. The Court found French postal company La Poste in violation of the Vigilance Law and ordered the company to amend its vigilance plan, stressing the fundamental importance of risk mapping.

In June 2024, the Paris Court of Appeal rendered its first decisions on admissibility. It clarified important procedural issues and ruled that the claims brought by several NGOs against French energy companies TotalEnergies and EDF on the basis of the Vigilance Law were admissible.

Pending the implementation of the Corporate Sustainability Due Diligence Directive (the “CS3D” or the “Directive”), these recent decisions provide useful indications for the application of the Vigilance Law.

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## Background on Vigilance Law

On 21 February 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).

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

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, analyze 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 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.

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## Applications under Vigilance Law

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. Several claims have been brought on that basis.<sup>2</sup>

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.

Applications made under the Vigilance Law to date have given French courts the opportunity to interpret some of its provisions.

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<sup>2</sup> See <https://plan-vigilance.org/les-affaires-en-cours/>.

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## More Flexible Approach to Injunction Requests

As we [reported](#) last year, the first injunction requests before the Paris Civil Court had all been dismissed on similar grounds of admissibility. In June 2024, the Paris Court of Appeal however adopted a more flexible approach.

In these very first cases, NGOs had sent formal notices to major French companies: TotalEnergies (regarding greenhouse gas emissions), EDF (in respect of the installation of wind farms in Mexico) and VIGIE GROUPE, formerly SUEZ (for its activities in Chile in particular). The companies had responded, explaining why their vigilance plans were compliant. Not satisfied with the companies' responses, NGOs and other stakeholders had filed injunction requests before the Paris Civil Court.

In 2023, the Paris Civil Court had decided that the claimants' injunction requests failed because, in essence, companies had in the meantime published new updated vigilance plans, and that no new prior formal notices had been sent to the companies about these new vigilance plans. The Paris Civil Court had thus 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.

This reasoning made 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, courts rarely decide an injunction request before the publication of a new vigilance plan. The decisions from the Paris Court of Appeal were therefore much awaited.

On 18 June 2024, the Paris Court of Appeal rendered its decisions.<sup>3</sup> In the *TotalEnergies* and *EDF* cases, the Court of Appeal overturned the first instance decisions. The Court of Appeal ruled that, while the injunction request had to relate *in substance* to the same obligations as those that were the subject of the formal notice, it was not required that

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<sup>3</sup> Paris Court of Appeal, 18 June 2024, *Amnesty International France et al. v. TotalEnergies*, RG no. 23/14348, [https://www.courdecassation.fr/decision/6672747f36f1fc00083aac7b?search\\_api\\_fulltext=23/14348&op=Recherche&date\\_du=&date\\_au=&judilibre\\_jurisdiction=all&previousdecisionpage=&previousdecisionindex=&nextdecisionpage=0&nextdecisionindex=1](https://www.courdecassation.fr/decision/6672747f36f1fc00083aac7b?search_api_fulltext=23/14348&op=Recherche&date_du=&date_au=&judilibre_jurisdiction=all&previousdecisionpage=&previousdecisionindex=&nextdecisionpage=0&nextdecisionindex=1); Paris Court of Appeal, 18 June 2024, *EDF*, RG no. 21/22319, [https://www.courdecassation.fr/decision/6672747c36f1fc00083aac3d?search\\_api\\_fulltext=21/22319&op=Recherche&date\\_du=&date\\_au=&judilibre\\_jurisdiction=all&previousdecisionpage=&previousdecisionindex=&nextdecisionpage=0&nextdecisionindex=1](https://www.courdecassation.fr/decision/6672747c36f1fc00083aac3d?search_api_fulltext=21/22319&op=Recherche&date_du=&date_au=&judilibre_jurisdiction=all&previousdecisionpage=&previousdecisionindex=&nextdecisionpage=0&nextdecisionindex=1); Paris Court of Appeal, 18 June 2024, *FIDH et al. v. S.A.S. VIGIE GROUPE*, RG no. 23/10583, [https://www.courdecassation.fr/decision/6672747e36f1fc00083aac67?search\\_api\\_fulltext=23/10583&op=Recherche&date\\_du=&date\\_au=&judilibre\\_jurisdiction=all&previousdecisionpage=&previousdecisionindex=&nextdecisionpage=0&nextdecisionindex=1](https://www.courdecassation.fr/decision/6672747e36f1fc00083aac67?search_api_fulltext=23/10583&op=Recherche&date_du=&date_au=&judilibre_jurisdiction=all&previousdecisionpage=&previousdecisionindex=&nextdecisionpage=0&nextdecisionindex=1).

the request and the formal notice relate to the exact same vigilance plan *in terms of dates*. The Court of Appeal also recognized the right of any person with standing in joining an action before a court after a formal notice has been sent, regardless of whether that person was the author of the formal notice. These important clarifications will now make it easier for claimants to obtain vigilance injunctions in the French courts.

In the *TotalEnergies* case, among the claimants were a number of municipalities. For most of them, the Court of Appeal ruled that they lacked the necessary standing insofar as they did not characterize a harm or a particular impact of global warming on *their* territory. For the city of Paris, however, the Court of Appeal said it had standing, noting that according to official reports the city's exposure to climate risks is qualified as "very high." The city of New York had also joined the proceeding but, like in the first instance, the Court of Appeal ruled that the city did not prove it has the legal capacity to join a claim before a foreign court.

In the *VIGIE Groupe* case, the Court of Appeal upheld the first instance decision. The Court of Appeal confirmed that the action itself was inadmissible, because the injunction request had been served on a subsidiary company (VIGIE Groupe SAS), but not the group parent company (Suez SA) that had published and implemented the vigilance plan. As a result, the subsidiary did not have standing to defend the action. Indeed, under the Vigilance Law, an in-scope company is exempted from the obligation to publish a vigilance plan when its parent company is also in-scope and has published a vigilance plan.

If parties do not further appeal before the French Court of Cassation, the *TotalEnergies* and *EDF* cases will proceed to the merits phase before the Paris Civil Court. The Court will eventually assess whether the companies' vigilance plans complied with the Vigilance Law.

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## First Conviction of a Company

On 5 December 2023, the Paris Civil Court rendered its first decision on the merits in a duty of vigilance case, following an injunction application by a trade union.<sup>4</sup> The Court found French postal company La Poste in violation of the Vigilance Law.

In that case, contrary to its previous decisions of 2023, the Paris Civil Court noted that it would review the claim on the basis of the company's most recent vigilance plan.

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<sup>4</sup> Paris Civil Court, 5 December 2023, RG no. 21/15827.

Although the trade union's initial notice to comply did not refer to that same plan, the company apparently did not raise admissibility arguments.

On the merits, the Court ordered the company to make substantial changes to its vigilance plan, including with regards to:

- Risk mapping, which is the cornerstone of vigilance plans. The Court considered the company's risk mapping as too general, not sufficiently prioritized, and lacking risk factors related to the company's specific activities;
- Assessments of subcontractors and risk control measures, which could not be verified due to the lack of detail in the risk mapping;
- Whistleblowing procedures, which were not established in consultation with the representative trade unions, as legally required; and
- The monitoring system for vigilance measures, which was described as partial and did not provide a useful way of measuring the effectiveness of measures.

The Court however rejected the claimant's injunction requests on specific risk management measures, considering that the Court could not dictate the introduction of precise and detailed measures, but that its role was to exercise control over "the inclusion in the plan of concrete, appropriate and effective measures consistent with risk mapping."

The Court finally highlighted the significant improvements in the company's successive plans and thus did not attach a penalty to the injunctions. La Poste announced that it had appealed the decision.

This decision stresses the importance of risk identification, with a granular risk mapping process. Companies are also expected to demonstrate the correlation and relevance of their measures and policies with respect to the specific risks they identified.

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## What Next?

As previously [covered](#), on 24 May 2024, the European Council formally adopted the CS3D which will enter into force on 25 July 2024. EU Member States will then have two years to implement it into national law. The CS3D adopts a phased-in approach to implementation, with the largest companies expected to be compliant by 2027.

The Directive extends the scope of vigilance obligations to a larger number of companies than under the French Vigilance Law. Following implementation into French law, vigilance obligations are expected to be more precise and stringent than under the Vigilance Law.

The Directive also requires Member States to designate independent national supervisory authorities to monitor and enforce the due diligence obligations. Supervisory authorities will have powers of investigation, as well as powers to order companies to cease the infringement of the CS3D, refrain from repeating the relevant conduct and provide remediation. They will also be able to impose penalties and adopt interim measures. Supervisory authorities will need to establish a mechanism whereby a person can submit “substantiated concerns” if the person believes that a company is failing to comply with its obligations under the CS3D.

As a result, the French enforcement landscape of vigilance obligations is expected to change in coming years, with a new supervisory authority taking over the role played today by French courts regarding injunction requests. French courts will, however, likely be involved when decisions from the new authority are challenged, as well as in civil liability proceedings.

Before the CS3D is implemented in France, companies subject to the Vigilance Law should make sure to conduct detailed risk mapping, with clear identification, analysis and prioritization of risk factors that apply to their activities. This is key as, in the aftermath of the recent French court decisions, businesses can now expect to receive more notices and injunction requests.

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Please do not hesitate to contact us with any questions.



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