

New law on the duty of vigilance of parent companies and on its affiliated entities

Issued by: DG Trésor | 9 May 2017

Act no. 2017-399 on the duty of vigilance of parent companies and instructing undertakings was promulgated on 27 March 2017. The outcome of a lengthy parliamentary process, the measure completes the regulatory framework for corporate social responsibility in France. It means that companies will have to better control risks of all kinds associated with their subcontracted supply chain.

The Act creates a requirement for joint-stock companies that have at least 5,000 employees in France or 10,000 worldwide, either directly or in their subsidiaries, to draw up, implement and publish a due vigilance plan.

The plan must include “due diligence measures such as to identify risks and forestall serious infringements of or harm to human rights and fundamental freedoms, personal health and safety and the environment”. It covers the activities of the company, its direct or indirect subsidiaries, and subcontractors and suppliers with which it maintains an established business relationship, insofar as those activities are linked to that relationship.

It includes the following measures in particular:

- a risk map;
- procedures to regularly assess the situation of subsidiaries, subcontractors or suppliers;
- appropriate action to mitigate risks and prevent serious infringements or harm;
- a mechanism for issuing alerts and gathering reports of the existence or occurrence of risks;
- a system to monitor and assess the measures implemented.

Promulgation of the Act marks the completion of a legislative process that has lasted several years. It started with the tabling of a first bill on 6 November 2013 by three MPs, Messrs Auroi, Potier and Noguès, in reaction to the Rana Plaza disaster, when the collapse of a building in Dacca containing clothing factories caused nearly 1,200 deaths, sparking an emotional response in civil society. The initial bill was withdrawn in favour of a new, legally more precise version, filed on 11 February 2015 following the report by Dominique Potier.

Implementation of the due diligence requirements now in force may draw on existing soft-law measures, notably the OECD principles and guidelines, in relation with the work of the National Contact Point, for which the Directorate General of the Treasury provides the chairmanship and secretariat.

- Act no. 2017-399 of 27 March 2017 published in [OJ no. 0074 of 28 March 2017](#)
- [See also the French National Contact Point](#)

Decision of the Constitutional Council

In its decision no. 2017-750 DC of 23 March 2017, the Constitutional Council rejected the imposition of a civil fine for non-compliance with the duty of care but otherwise left all the requirements instituted by the

Act untouched. The rejection was partly founded on the nulla poena sine lege principle arising from Article 8 of the 1789 Declaration of the Rights of Man and of the Citizen, which requires that a penalty imposed as a punishment can be applied only to infringements defined in sufficiently clear and precise terms [1]. However, the Council rejected complaints based on infringement of the right of free enterprise and the accountability principle, considering that the reference to the ordinary law of criminal liability contained in the Act eliminated any rule of vicarious liability. It also rejected plaintiffs' complaints arguing that the Act failed to respect the principles of equality, accessibility and comprehensibility.

A means of sanction remains, in the possibility of service of formal notice that may result in the issuance of a commercial court order and the imposition of a daily fine. The reminder, given in Article 2 of the Act, that the rules of ordinary civil liability apply to these new requirements is supplemented by the option allowed to the court of publishing its decision. Although the requirements instituted by the Act are immediately applicable, the sanctions and the requirement to report on implementation of the plan will take effect only as of the date of the management reports relating to the first financial year begun after promulgation of the Act.

[1] "In view of [...] the extensive and indeterminate nature of the reference to 'human rights' and 'fundamental freedoms', and the scope of the companies, undertakings and activities falling within the scope of the due vigilance plan, parliament could not [...] institute a rule that a company committing an infringement defined in such insufficiently clear and precise terms should be required to pay a fine [...]."
(Cons. 13)