

COMPARATIVE TABLE OF LEGAL INSTRUMENTS AND LEGISLATIVE PROPOSALS GOVERNING MANDATORY HUMAN RIGHTS DUE DILIGENCE IN SUPPLY CHAINS*



UN LEGALLY BINDING INSTRUMENT



EUROPEAN PARLIAMENT DUE DILIGENCE RESOLUTION



FRENCH CORPORATE DUTY OF VIGILANCE LAW



DUTCH RESPONSIBLE BUSINESS CONDUCT BILL



ACT ON CORPORATE DUE DILIGENCE IN SUPPLY CHAINS

STATUS

Third Revised Draft dated 17.08.2021

Proposal for a directive (annexed to the European Parliament resolution dated 10.03.2021)

In force since 2017

Bill submitted to Parliament in March 2021 to enter into force in January 2023 (provisions on fines and penalties to be in force as of January 2024)

Adopted, it will enter into force in 2023

SCOPE

- All business activities, including business activities of a transnational character

- Large companies governed by the law of a Member State or established in the EU
- Listed SMEs
- SMEs in high-risk sector domiciled or delivering products or services in the EU

- Large companies based in FR (>5,000 employees), or
- Companies with at least 10,000 employees together with their FR based and foreign subsidiaries

- (1) Due diligence obligations apply to all companies that satisfy at least two of the following:
- Balance sheet total of €20 million
 - Net turnover of €40 million, or
 - >250 employees in average
- (2) Duty of care applies to:
- All companies domiciled in or operating in the NL and Caribbean NL, and
 - Large foreign companies that operate in the NL or sell products to the NL

- Large companies (incl. foreign ones with a DE office) based in DE (>3,000 employees; from 2024, >1,000 employees)

STANDARDS

- Human rights
- Environment and climate

- Human rights
- Environment
- Governance

- Human rights
- Health and safety
- Environment (international commitments of FR)

- Human rights
- Labour rights
- Environment

- Human rights
- Environment (Stockholm, Minamata and Basel Conventions)

* This document comprises only legal instruments and legislative proposals at the UN, the EU and the Member States with a general coverage of mHRDD and it leaves out those focusing only on a specific area (e.g., child labour or consumer protection).



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OBLIGATIONS

- Due diligence, incl:
 - Identify, assess and publish any actual or potential human rights abuses
 - Take appropriate measures to avoid, prevent and mitigate effectively the identified actual or potential human rights abuses
 - Monitor the effectiveness of their measures to prevent and mitigate human rights abuses
 - Communicate regularly and in an accessible manner to stakeholders, particularly to affected or potentially affected persons
 - Publish regular human rights and climate change impact assessments throughout their operations

- Due diligence (UNGP/OECD based), incl:
 - Identify and assess potential or actual impacts
 - Establish a due diligence strategy, incl: Specify impacts; Value chain mapping; Measures to cease, prevent or mitigate impacts; Priorisation; Grievance mechanism
 - Publish the DD strategy on the company's website and upload it on EU platform
 - Inform workers' reps, unions, business partners about the DD strategy
- Directors' duties

- Establish and implement an annual vigilance plan (UNGP based) incl.:
 - Mapping that identifies, analyses and ranks risks
 - Procedures assessing the situation of certain subsidiaries, subcontractors or suppliers
 - Actions to prevent and mitigate risks and serious harms; an alert mechanism
 - Monitoring scheme to follow-up on the plan's implementation and efficiency of measures
- Publish the vigilance plan in annual report

- Due diligence (OECD based):
 - Preparing a policy on due diligence
 - Identifying and analyzing risks
 - Preparing and implementing an action plan identifying potential and adverse effects of its own activities and those within its business relationships
 - Ceasing the activities that caused or contributed to negative impacts
 - Monitoring effectiveness of measures
 - Annual reporting
 - Providing remedies within a grievance mechanism
 - Remediation of harms caused

- Due diligence (partially UNGP/OECD-based):
 - Publish a policy statement
 - Risk analysis
 - Implement concrete measures to prevent harms (for own operations and direct suppliers)
 - Companies are required to identify risks linked to indirect suppliers and prevent and mitigate those if they obtain "substantiated knowledge" of abuses
 - Take remedial actions
 - Establish internal complaints procedures
 - Delegate in-house responsibility
 - Publish annual reports on company's website and submit them to the competent authority



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SCOPE OF DD

- Own activities incl. entities or activities which it controls or manages
- Business relationships incl. activities conducted through affiliates, subsidiaries, agents, suppliers, partnerships, joint venture, beneficial proprietorship

- Own operations (via subsidiaries)
- Whole value chain (all direct and indirect business relationships, upstream and downstream)

- Own operations
- Operations of subsidiaries (incl. transnational ones)
- Operations of subcontractors and suppliers with an "established commercial relationship"

- Own operations (via subsidiaries)
 - Whole global value chain
- The Bill covers only foreign activities of the NL-based corporations, leaving out those taking place in the NL.

- DD obligations only apply in full to own operations (incl. subsidiaries) and direct suppliers
- Companies are required to identify risks linked to indirect suppliers and prevent and mitigate if they obtain "substantiated knowledge" of abuses



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ACT ON CORPORATE DUE DILIGENCE IN SUPPLY CHAINS

ENFORCEMENT AND SANCTIONS

- State parties shall ensure that national laws provide:

-A liability regime for natural or legal persons for human rights abuses arising from their business activities or business relationships

-Criminal, civil and/or administrative sanctions for causing or contributing to human rights abuses throughout business activities

-Reparations to the victims

- State authorities have the power to investigate failures to conduct DD and act on concerns raised by third parties

- State authorities may:

-Order injunctive action

-Compel remediation

-Issue fines, exclude undertakings from public procurement, seize commodities and issue other administrative sanctions

Specific civil liability regime to be established in national laws for adverse impacts on human rights, environment or good governance – incl. for undertakings under control.

- Any concerned party can file a complaint for noncompliance before the judge

- The judge may:

-Give formal notice to comply in a three-month period

-If non-compliance persists, the judge may oblige the company to publish a plan and impose periodic penalty payments

Reference to Art. 1240 and 1241 of French Civil Code – extra-contractual liability for damages resulting from failure to comply with legal obligations

- Public authority has the power to investigate failures and act on complaints

- Public regulator may issue fines (incl. administrative)

- Criminal liability for company directors for repeated failure within 5 years to stop activities that cause or contribute to negative impacts or to provide remedy

Tort liability for the breach of duty of care is possible under the existing laws and case law.

- Public authority has the power to review the reports, to conduct risk-based inspections at its own initiative or on claims raised by affected parties

- Public regulator may:

-Order the company to comply within a specific timeline

-Issue fines (up to 2% of annual turnover) for failure to conduct DD (incl. exclusion from public procurement)