

Corporate Sustainability Due Diligence & Liability

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The French Duty of Vigilance

Law n° 2017-399, 27 March 2017 on a
duty of vigilance

5.000 employees in France at a group level

10.000 employees in France or abroad at a
group level



Sanctions

Initially, civil penalty of up
to 10 Million € → struck
down by the French
Constitutional Court
(violation of the principle
of legality)

Judicial injunction under
penalty to comply with
vigilance duties

Regular tort liability (fault
- causality - damage)

Governance & CSR

Law n° 2019-486, 22 May 2019 PACTE

The company's purpose is still to make profits

Art. 1832: A company is formed by two or more persons who agree by contract to assign property or their industry to a common enterprise with a view to sharing the profit or benefiting from the economy which may result.

Directors need to manage the company in its interest taking into account the impact on the environment and social rights

Art. 1833: The company is managed in its social interest, taking into consideration the social and environmental challenges/impacts of its activity.

The company can pick an additional corporate purpose

Art. 1835: The articles of association may specify a *raison d'être*, consisting of the principles with which the company equips itself and for the respect of which it intends to allocate means in carrying out its activity.

Examples of « raison d'être »

- **Carrefour**

Our mission is to offer our customers quality services, products and food accessible to all through all distribution channels

- **Atos**

Our purpose is to **design the future of the digital space.**

Our expertise and services support the development of knowledge, education and research in a multicultural approach and **contribute to the development of scientific and technological excellence.**

Across the world, **Atos enables its customers and employees, and members of societies at large to live, work and develop sustainably, in a safe and secure digital space.**

Liability of the parent company

No vicarious liability

Liability for its own fault

- Absence of a vigilance plan
- Insufficient vigilance plan

Problem: causality

Loss of chance

Additional liability to the liability of the person directly responsible

Liability of directors

The law does not specifically target directors

The company acts through its legal representative

<u>Internal liability</u>	Director violated the law	No vigilance plan	<u>External liability</u>	Shareholders would need to demonstrate a different damage than the one suffered by the company	Unlikely to be the case
		Insufficient vigilance plan			
y	The company suffered a loss	Injunction under penalty			
		Damages paid under tort law			
<i>Ut universi</i> : the new legal representative initiates a liability action against an old legal representative					
<i>Ut singuli</i> : shareholder acts against the director in the name and on behalf of the company					
			Third parties → theory of the separable fault → the director intentionally commits a particularly serious fault that is incompatible with the normal exercise of corporate functions		
			Unlikely to be the case		

Art. 22 CSDDD & Liability of the parent company

EU Commission

Liability for its own fault (art. 22 § 1)

No joint and several liability (art. 22 § 3)

No vicarious liability

→ Quite similar to the French law

EU Parliament (7 nov. 2022)

Liability for its own fault & vicarious liability (art. 22 § 1)

Facilitation of the burden of proof (art. 22 § 2) & obligation of disclosure of evidence (art. 22 § 2a)

Limitation period of 10 years (art. 22 § 2a)

Judicial injunction mechanism

Standing for trade unions, NGOs, civil society etc.

CSDDD & Director Liability

Notion of directors (art. 3 (o))

- Broader than French law

Duty of care (art. 25)

- Already introduced into French law by the PACTE law (2019)

Obligation to set up and oversee due diligence (art. 26)

- More complete than French law but ultimately dependent on national law

Liability

- French law (internal liability & external liability)

Questions?

