



Implementing the new French law on multinational firms' vigilance duty¹.

On 23 March, two French unions (CGT and CFTD) and various NGOs issued a press release in which they welcomed the adoption of a law on vigilance duty², which compels multinational companies to observe human rights and respect for the environment. This law is a first worldwide, in that it establishes some degree of accountability the part of multinational firms.

Whereas this legislative progress was acclaimed by many unions and NGOs members of the French Citizens' Forum for Corporate Social Responsibility (CSR)³, the French employers'⁴ consider it as a 'further impediment to our economy'.

This law represents a first step to improve prevention of disasters such as Rana Plaza in Bangladesh. It may serve as an example to enforce European law. Moreover, different initiatives are or have been developed at international level with the aim of preventing social and environmental risks inside global value chains:

- At European level, both the directive adopted in October 2014 on extra-financial reporting, which includes social and environmental matters along value chains, and the 2015 European Parliament resolution are pushing state members to pass laws on vigilance duty.
- G7 conclusions under the German presidency includes those considerations
- General discussions at the 2016 International Labour Conference focussed on supply chains
- Negotiations on a new binding treaty on transnational corporations at the United Nations

¹ The vigilance duty is a new binding framework introduced by a French law, called the same, and which strengthens the usual concept of due diligence.

²<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000034290626&dateTexte=&categorieLien=id>

³ <http://www.cgt.fr/Le-Conseil-Constitutionnel-valide-44332.html>

⁴ MEDEF and AFEF

Contents of the law: the vigilance plan

The companies concerned are those having employed over 5,000 workers for the past two years, either directly, or through their subsidiaries and whose head offices are located in France, and 10,000 workers worldwide. Although it is positive that subsidiaries are counted in to assess a company' size, the low threshold means that, unfortunately, there are only slightly over two hundred corporations concerned, which is far from covering French multinationals as a whole⁵.

Those multinationals will have to set up a **vigilance plan** specifying the methods and means through which they will ensure respect for human rights and the environment.

The vigilance plan will entail:

- 1° risk mapping to identify, analyse and classify them;
- 2° regular assessing procedures of the subsidiaries, subcontractors or suppliers with which there is a regular commercial relationship in accordance with risk mapping;
- 3° adequate actions to mitigate risks or to prevent serious attacks;
- 4° an alert mechanism and a compendium of particulars on the existence or materialisation of risks, established together with trade union organisations representative within said company;
- 5° a follow-up mechanism to measure implementation and efficiency.

This plan covers all **subsidiaries**⁶ and **subcontractors**⁷ which maintain a **regular commercial relationship**⁸ with the parent company, in other words, for first time, the entire value chain is concerned.

⁵ The firms concerned would be for instance : Total, Axa, BNP Paribas, Société Générale, Groupe Carrefour, Crédit Agricole, EDF, ENGIE, PSA, Auchan, BPCE, Finatis, Bouygues, Sanofi etc.

⁶ **Subsidiaries:** In commercial law, a subsidiary is a company for which 50% of the capital has been constituted through investment by another company called "parent company" which is usually in charge of management, administration and control through one or several individuals, directors or managers, who are appointed by said parent company.

When a company's capital is constituted of investment whose value exceeds 10% yet remains under 50%, this is called a joint venture.

It should be noted that a subsidiary can be shared common to two or several companies which share 50% of the above-mentioned capital. Usually, members of governing and supervisory boards of these companies are one and the same.

⁷ **Subcontractors: Subcontracting** is a contract through which a company request from, either one company to carry out part of its production, or from several to carry out parts of the work.

Subcontractors are different from main suppliers in that they manufacture products conceived by sleeping partners or frequently in collaboration with them. Products are manufactured by subcontractors exclusively for sleeping partners and do not bear their names. The law distinguishes regular subcontractors from occasional ones.

⁸ **A regular commercial relationship** is established when it demonstrates a certain duration, when it has been persistent and regular (for instance, this can be evidenced through constant progress in turnover) and is meant to be a long term one. A occasional relationship is different from a regular relationship (Versailles Court of Appeal, 18 Sept. 2008: CEPC, rep. 2008-2009, appendix 11, p. 119).

Developing the vigilance plan

'The plan means to be drafted together with the company's **stakeholders**⁹ as part of multi-party initiatives within subsidiaries or at the level of a given territory, as required.

Although the definition of 'stakeholders' is rather vague, we consider that it includes as follows:

- Unions in the principal or parent company will be associated to consultation on the vigilance plan;
- Unions in the subsidiaries and subcontractors;
- NGOs established on the territory where the company develops its activities;
- The company's clients;
- The environment around the parent company and its subcontractors (populations, territories etc.)

The idea of stakeholders, wider than a strict definition of social partners, underlines the fact many different actors intervene inside or around a corporation. This includes NGOs, and their action is complementary to that of unions. However, because they are at the heart of corporations through workers' representation, play a key role in matters of risk prevention, as the first point of alert in case of risks to workers' health or violation of the labour code. The vigilance plan can be considered as a "prevention plan against risks". Unions are therefore a vital component of the mechanism introduced by the new law. This leads naturally to the introduction of corporate social responsibility in the framework of collective bargaining at the same level as pay or health and safety.

We consider that in the future, vigilance plans will have to be negotiated with unions in both parent companies and subcontractors. When such negotiation is of a transnational nature, global union federations (GUFs) should be included.

Organisations confronted with, or belonging to, corporations whose principal companies are French can be involved throughout the discussion process to the establishment of the vigilance plan. At international level, this can take place:

- within the framework of workers' representative bodies such as works councils,
- within a multi-party framework (NGOs, communities, unions etc.) on any given territory.

Tools to enforce the vigilance plan

Legal mechanisms:

- **Observing the vigilance plan:** in case of non-respect, it is possible to call upon a judge to give the company notice to respect its vigilance plan. Should such action be unsuccessful and

⁹ (Novethic) **definition of 'stakeholders'**: company stakeholders designate those who contribute to its economic life as a whole (workers, clients, suppliers, shareholders), those observing the company (trade unions and NGOs) and those who are more or less directly influenced by it (civil society, local communities). All individuals other than shareholders having an interest in the company activities are stakeholders.

Several management theories define stakeholders as follows: "In a company, stakeholders are the individuals and groups which contribute voluntarily or not to the capacity to create value and activity and which are the potential beneficiaries whilst bearing its potential risks".

within 3 months, the judge can, under penalty, compel the company to adopt all necessary measures to enforce its vigilance plan.

- **Should a company have no such plan or fail short in its implementation**, a judge can be referred to by “any person with an interest to act” and this even for damages incurred abroad, and that person can seek compensation for any prejudice.

Hence French unions with an “interest to act for others”, should work together to be able to take multinationals to court and force them to respect their commitments.

NB: This due vigilance involves an obligation of means and not of outcome imposed upon companies, their liability being only incurred in case of non-respect of its own vigilance plan.

Political tools

- The vigilance plan represents a significant negotiation between company managements and stakeholders, to which we shall add union campaigns based upon “naming and shaming” to win the most binding commitments and ensure their respect.
- The vigilance plan will be presented annually as part of the extra-financial report. Therefore, French and international workers’ representative bodies (European works council for instance) will be a significant step in our union process.

Contacts France:

- CGT : Marthe CORPET, conseillère confédérale, m.corpet@cgt.fr
- CFDT : Frédérique LELLOUCHE, secrétaire confédérale, flellouche@cfdt.fr
- UNSA : Emilie TRIGO, secrétaire nationale, emilie.trigo@unsa.org
- FO : Andrée THOMAS, secrétaire confédérale athomas@force-ouvriere.fr / Marjorie ALEXANDRE, assistante confédérale, malexandre@force-ouvriere.fr
- CFE-CGC : Anne-Catherine CUDENNEC, déléguée confédérale, annecatherine.cudennec@cfecgc.fr
- CFTC : Geoffroy DE VIENNE, conseiller du Président, geoffroy.devienne@sfr.fr
- FSU : Julien RIVOIRE, julienrivoire93@gmail.com
- SUD : Stéphane ENJALRAN, secrétaire national senjalran@solidaires.org

Genova, 14 June 2017