

# \*Sherpa

## European human rights due diligence laws for international accountability

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Turning Down the Heat: Can We Mine Our Way Out of  
the Climate Crisis?  
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# 1. From soft law to hard law: an overview of European initiatives

- From soft law concept of **human rights due diligence**
  - UN Guiding Principles and OECD Guidelines

## To hard law?

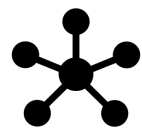
- **Disclosure** legislations in the EU
  - Modern Slavery Act (UK) or EU Non-Financial Reporting directive
- **Mandatory** due diligence legislation
  - EU Conflict Minerals Regulation (2017)
- **Corporate liability regimes** for human rights violations
  - French law on the duty of vigilance of parent companies (2017)
  - Swiss Responsible Business Initiative
  - Toward a new EU Directive?

## 2. The French law on the duty of vigilance: content of the obligation

- Duty to **establish, publish and effectively implement** a vigilance plan



A mapping of the risks



Regular evaluation processes regarding the company's subsidiaries, and its subcontractors or suppliers with whom there is an established commercial relationship



Adapted actions to mitigate risks or prevent serious harm



An alert and complaint mechanism



A system monitoring the implementation of measures and evaluating their effectiveness

### **3. The French law on the duty of vigilance: judicial mechanisms**

Two judicial mechanisms in the Law adopted on 27 March 2017 :

- **Request for a judicial order** (« injonction »)
  - Formal notice to comply
  - If no compliance within 3 months, request for an order to comply before a judge (including penalty payment)
- **Civil liability** (tort)
  - Action in civil liability under articles 1240 and 1241 of the French Civil Code
  - Burden of proof on the victims

# 4. The French law on the duty of vigilance: assessment after more than 2 years

- No official list of companies covered by the law
  - Our list: [www.vigilance-plan.org](http://www.vigilance-plan.org)
- At least  $\frac{1}{4}$  of companies covered have not published any plan so far
- First vigilance plans published by French companies in 2018 and 2019
  - Limited risk mapping
  - List of existing measures: code of conduct, contractual clauses, auditing, internal surveys etc.



## 5. First formal notices against companies

- So far, **5 formal notices** have been sent under the Law ; 1 request for injunction has been filed
- First formal notice sent to French oil giant **Total** on 19 June 2019 by 4 NGOs and 14 cities:
  - Failure to identify risks to human rights and the environment caused by its greenhouse gas emissions
  - Failure to take adequate measures against climate change
- Other formal notice sent to EDF by ProDESC to **EDF** with respect to the development of a wind farm in Oaxaca

**Thank you!**

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