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French Law on the Corporate Duty of Vigilance A Practical and Multidimensional Perspective



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Companies are currently establishing their first vigilance plans and preparing to effectively implement them. However, clarifications are still needed with regard to the interpretation and practical application of the law No. 2017-399 of 27 March 2017 on the corporate duty of vigilance for parent and instructing companies (the "Law"). This publication delves into a series of specific issues related to the Law in order to contribute to a better understanding of the Law, its implications, its grey areas and its effective implementation. Taking a multi-stakeholder approach, this publication includes articles from academics, lawyers dedicated to the practice of business and human rights, NGOs representing victims of economic crimes, and international companies committed to implementing socially responsible practices. The authors provide their own views on the Law.

This publication does not claim to be exhaustive but intends, instead, to contribute to the discussions which have preceded and followed the adoption of the Law. The hope is that this publication clarifies, in theory and in practice, certain provisions of the Law and certain aspects of its implementation.

This publication is an edited volume originally written in French in December 2017, entitled «*La loi sur le devoir de vigilance, une perspective pratique et multidimensionnelle*», published in the International Review of Compliance and Business Ethics [*Revue Internationale de la Compliance et de l'Éthique des Affaires*].

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While companies must establish their first vigilance plans and prepare to implement them effectively, law No. 2017-399 of 27 March 2017 on the corporate duty of vigilance for parent and instructing companies (the "Law") still raises a number of questions, particularly in terms of its interpretation and practical implementation.

Some of these questions, already mentioned in the first comments that preceded or followed the publication of the Law, are now starting to be studied in greater depth. Practical guides on the Law are also being drafted by different stakeholders.

The thematic publication that follows is part of this recent trend of analysis seeking to deepen, on selected themes, several issues that emerge from the Law. Its purpose is to contribute to a better understanding of the Law, its stakes, its grey areas and its effective implementation in a context where the mobilisation of the legal profession is key in encouraging businesses to respect human rights (see IBA, *Practical Guide on Business and Human Rights for Business Lawyers* (2016). - Conseil de l'Ordre du Barreau de Paris, *Résolution portant sur la Business and Human Rights* (Sept. 8, 2015). - American Bar Association, *Resolution 109* (February 2012). - The Law Society of England and Wales, *Business and Human Rights: A Practical Guide* (2016)).

This thematic publication reflects several points of view: that of academics, lawyers advising businesses (and states) on human rights, associations representing populations that are victims of economic crimes, and multinational companies involved in corporate responsibility initiatives. Therefore, in this publication, the authors express their own points of view and interpretations of the Law.

If their perspectives can sometimes differ, they enable us, in any case, to apprehend this complex subject in a more complete way.

This publication does not aim to be exhaustive; numerous issues remain, with new questions emerging as the Law is analysed and implemented. Nevertheless, it should help inform the debate and we hope it will provide answers to the questions currently raised.

In the first contribution, we place the Law in the context of the "business and human rights" movement. An understanding of this movement makes it possible to contextualise the Law and constitutes an essential prerequisite to better comprehend, interpret, implement and communicate on the Law in the international sphere (*article 91*).

In the second contribution, the scope of the Law is analysed in more depth in order to better understand, in practice, which companies are subject to the obligations set in the Law and which are exempted from them (*article 92*).

In the third contribution, we observe jointly with Charlotte Michon, a consultant specialised in business and human rights and the founder of DDH Entreprises, what is the ambit of the vigilance plan, as it is considered the cornerstone of the Law. We also propose methodological elements to establish this plan and prepare its effective implementation (*article 93*).

In the fourth contribution, Tiphaine Beau de Loménie, a lawyer within the Globalization and Human Rights program of the NGO Sherpa, and Sandra Cossart, the executive director of Sherpa, discuss how companies can involve stakeholders in the development and implementation of the vigilance plan (*article 94*).

In the fifth contribution, Horatia Muir Watt, professor at the Sciences Po Law School, examines the Law from both a global governance perspective and a private international law perspective. She shows that, politically, symbolically and technically, the Law enables the removal of several structural obstacles which generally prevent the legislation from apprehending the harmful consequences of the delocalised activities of multinational companies (*article 95*) [not yet translated].

Finally, note that the penalty aspect of the Law has already been analysed in a previous issue of this review in French (*V. Rev. Int. Compliance 2017, Comm. 44, S. Brabant and E. Savourey*). It is also available in English (see <https://business-humanrights.org/en/france-analysis-of-penalties-imposed-on-companies-in-new-duty-of-vigilance-law>).

We would like to express our gratitude to each of the contributors for agreeing to participate in this special publication and for giving it a multidimensional perspective.