



Duty of vigilance



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WHAT IS THE DUTY OF VIGILANCE? WHAT ARE THE RISKS REFERRED TO?

The duty of vigilance, established in the French Commercial Code, derives from a 2017 French law¹, passed following the sinking of the oil tanker Erika (1999) and the collapse of the Rana-Plaza building in Bangladesh which killed more than 1,130 people (2013)².

It requires certain companies to prevent serious adverse impacts on human rights, fundamental freedoms, individuals' health and safety and the environment, resulting from their own activities and those of the companies they control. The duty of vigilance can be defined as a legal obligation to adopt prudent behaviour.

The scope of the duty of vigilance law is very broad. It includes:

1. The abolition of child labour, the elimination of all forms of forced or compulsory labour, the elimination of discrimination in employment and occupation, freedom of association, freedom of opinion, etc.;
2. The health and safety of individuals (e.g. health security, the prevention of accidents at work and occupational diseases, the ability of workers to remove themselves from a work situation in the event of imminent and serious danger, etc.);
3. Environmental issues (e.g. measures taken to avoid pollution of soil, air or water).

This requirement also applies to the activities of a company's subsidiaries and business partners, i.e. subcontractors and suppliers, **in France and worldwide.**

The law applies to the largest French companies, including Covéa³. After identifying and assessing their risks, the French companies concerned must implement measures to prevent and mitigate these risks.

In France, many obligations regarding the environment, health and safety at work were already in place before the duty of vigilance law was passed.

1. French Law no. 2017-399 of 27 March 2017 on the duty of vigilance of parent and contracting companies, promulgated on 27 March 2017. The explanatory memorandum of the draft law is based on the United Nations Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises.

2. The Rana Plaza building housed garment factories working for western brands. Workers in these factories, who had been evacuated urgently the day before the disaster, had been forced to return to their work stations despite the fact that cracks had been found on the building.

3. The law applies to any company operating in France which:

- employs at least 5,000 employees, within the company itself and its subsidiaries, and has its registered office located in France;
- or employs at least 10,000 employees within the company itself and its subsidiaries, and has its registered office located in France or abroad.

WHAT ARE OUR MAIN OBLIGATIONS?

The law concerns the establishment and implementation of a vigilance plan applicable to:

- The activity of the parent company and those of all of its subsidiaries or companies it controls, in France and abroad,
- The activity of suppliers and subcontractors with whom commercial relationships are established⁴.

The vigilance plan, which documents the duty of care obligation, includes the following:

1. Risk mapping for the purpose of identifying, analysing and ranking risks;
2. Procedures for regularly assessing the situation of subsidiaries, subcontractors or suppliers with which an established business relationship is maintained, with regard to the risk mapping;
3. Appropriate measures to mitigate risks or prevent serious damage;
4. A mechanism to issue and compile alerts relating to the existence or materialisation of risks, established in consultation with the representative trade unions in the company concerned;
5. A system to monitor the measures implemented and assess their effectiveness.

In relation to their duty of vigilance, the companies concerned have a legal obligation of transparency and information regarding the measures and action plans they implement. They must therefore make their vigilance plan public and report on its effective implementation, notably through their annual report.

Since 2018 Covéa has established an annual vigilance plan, this document is published on www.covea.com.

4. The commercial relationship or business relationship between two companies is "established" if it is of an ongoing, stable and customary nature, regardless whether it has been formalized by a contract or not.

SUPPLIERS AND SUBCONTRACTORS ARE AFFECTED

A relationship of trust has been established between them and the Covéa Group following a call for tenders, in accordance with particular specifications, or during discussions covering these common requirements.

Following Covéa's lead, suppliers and subcontractors are required to respect human and social rights and prevent environmental risks.

Examples:

- **hygiene conditions at work,**
- **assessment of occupational risks,**
- **absence of undeclared labour,**
- **no anti-union discrimination,**
- **appropriate measures to manage waste and chemicals.**

A "duty of vigilance" clause is included in framework agreements: Covéa requires that the service provider implement all measures to prevent any violations of human rights and fundamental freedoms or the health and safety of individuals and any environmental damage that may result from the activity it carries out on the company's behalf.

As it does with its own subsidiaries, Covéa must regularly assess its suppliers and subcontractors, taking into account existing risks. Assessments are formalised in the form of questionnaires and controls adjusted in accordance with the risks identified, as well as obligations specific to the insurance sector (Solvency 2 Directive).

WHAT ARE THE UNIVERSAL VALUES REFERRED TO?

The duty of vigilance refers to universal values, together with principles that already form part of the French legislative and regulatory framework. These values and principles are broadly developed by international texts (UN, OECD).

Human rights: “protect, respect and remedy”⁵

The International Bill of Human Rights⁶ is the reference base for companies, given the extraterritorial scope of the duty of vigilance. Human rights are based on **respect for the dignity and worth of human beings**. They are designed as universal legal guarantees protecting individuals and groups against actions and omissions that go against fundamental freedoms.

Fundamental labour rights: “ensure the link between social progress and economic growth”⁷

In 1998, the member states of the International Labour Organization (ILO) adopted the “Declaration on Fundamental Principles and Rights at Work”. These principles and rights are classified into four categories: freedom of association and the effective recognition of the right to collective bargaining, the elimination of all forms of forced or compulsory labour, the effective abolition of child labour, and the elimination of discrimination in respect of employment and occupation.

In France, the Labour Code refers to “respect for the fundamental rights and freedoms of workers and human persons”⁸. The employer is “tasked with ensuring that all fundamental rights and freedoms of each employee are respected within the labour community”⁹.

In countries with a very low level of social protection, the duty of vigilance exercised by the parent company over its subsidiaries and business partners must make it possible to raise employee protection standards.

5. “Protect, respect and remedy: a framework for business and human rights” Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, Mr John Ruggie, 2008.

6. The International Bill of Human Rights consists of five texts: the Universal Declaration of Human Rights of 1948, two International Covenants of 1966 (the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights), and two optional protocols supplementing the International Covenant on Civil and Political Rights: the first allows individual claims (and came into force on 23-03-1976) and the second is for the abolition of the death penalty (and came into force on 11-09-1991).

7. ILO declaration on fundamental principles and rights at work and the monitoring thereof. Adopted by the International Labour Conference at its 86th Session, Geneva, 18 June 1998 (Annex revised on 15 June 2010).

8. Article R8124-3, French Labour Code.

9. Decree no. 2484 of 22 November 2017 (13-19.855) - Court of Cassation - Labour Chamber.

Environmental protection: “Everyone has a duty to take part in preserving and improving the environment.”¹⁰

Any activity whatsoever is likely to cause damage to the environment, although exposure to environmental risks varies depending on the type of activity concerned (the extractive and agricultural sectors are particularly affected, for example)¹¹. In addition, the 2005 Environmental Charter, referred to in the preamble to the Constitution of the Fifth Republic, introduces the principle of **prevention**, the principle of **precaution** and the principle of **polluter pays**. Ecological harm and damage to the environment are defined by French law¹². In France, any person who causes ecological harm is required to compensate for it¹³. A judge may intervene upstream to avoid ecological harm being done¹⁴.

At the international level, through its guidelines, the OECD encourages companies to improve their environmental management and implement better emergency planning for cases of environmental damage.

Waste management, sustainable management of natural resources, the fight against global warming and the safeguarding of biodiversity are the main sustainable development issues reaffirmed in the 1992 Rio Declaration.

WHISTLEBLOWING AND REPORTING SYSTEM

A whistleblowing mechanism and collection of reports relating to the existence or realization of risks, established in consultation with the representative trade union organizations in the said company, must be put in place.

10. Article 2 of the Environmental Charter (adopted by the French Parliament on 28 February 2005).

11. See the guide issued by the *Fédération Française de l'Assurance* (French Insurance Federation): “*Maîtriser les risques environnementaux de votre entreprise. Artisans, professionnels, PME, TPE, collectivité, vous êtes concernés !*” (“Managing your company’s environmental risks. Tradespeople, professionals, SMEs, VSEs and local authorities: this applies to you!”)

12. Ecological harm is defined in Article 1247 of the French Civil Code as “material damage to the elements or functions of ecosystems or to collective benefits drawn by human beings from the environment”. Environmental damage is defined in Article L.161-1 of the French Environmental Code.

13. Three French laws deal with compensation for environmental damage: the 2008 law on environmental liability (transposed into French law and introduced into the Environmental Code); the law of 8 August 2016 for the restoration of biodiversity, which introduced action for compensation for ecological damage into the Civil Code; and the law of 18 November 2016 on the modernisation of justice in the 21st century, which introduced class action in the event of environmental damage.

14. Article 1252 of the Civil Code: “Irrespective of compensation for the ecological damage, a judge who is requested to do so by a person mentioned in Article 1248 may require that reasonable measures be taken to prevent or put an end to the damage”.

In application of the duty of vigilance law, the Covéa whistleblowing system enables Group employees as well as third parties to report a risk of serious harm associated with the activities of the Covéa Group as well as those of its subcontractors and suppliers which covers :

- 1. Human rights and fundamental freedoms;**
- 2. The health and safety of people;**
- 3. The environment**

The alert system is hosted on a platform accessible in France and around the world in three languages : French, English and Italian.

This dedicated platform is secure (encrypted exchanges on an external server unrelated to the Covéa Group's information systems) in order to ensure the protection of whistleblowers as provided for by the Sapin 2¹⁵ law, as long as it is found to apply.

All reports collected are treated confidentially by the Compliance Director, the Group's Alerts officer.

The Covéa Professional Whistleblower Procedure and the Practical Guide for Whistleblowers are available on www.covea.com.

Link to access the Covéa alert system about the duty of vigilance:
<https://report.whistleb.com/fr/covea-vigilance>.

TO FIND OUT MORE

French Law no. 2017-399 of 27 March 2017 on the duty of vigilance of parent and contracting companies, promulgated on 27 March 2017.

<https://www.legifrance.gouv.fr/eli/loi/2017/3/27/ECFX1509096L/jo/texte>

Constitutional law no. 2005-205 of 1 March 2005 on the Environmental Charter.

<https://www.legifrance.gouv.fr/Droit-francais/Constitution/Charte-de-l-environnement-de-2004>

Guiding Principles on Business and Human Rights (United Nations Human Rights Council).

https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_fr.pdf

ILO Declaration on Fundamental Principles and Rights at Work and the monitoring thereof.

<https://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--fr/index.htm>

Environment and the OECD Guidelines for Multinational Enterprises. <https://www.oecd.org/fr/env/34992981.pdf>

15. Articles 6 et seq. Of Law No. 2016-1691 of December 9, 2016 relating to transparency, the fight against corruption and the modernization of economic life



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