

Key takeaways from the French experience to look ahead

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Introduction

Over the past 25 years, BSR has worked with companies to manage human rights risks, including conducting more than 200 human rights impact assessments worldwide and implementation plans. Drawing on these learnings, this blog focuses on the key takeaways from three years' implementation of the French Law on the Corporate Duty of Vigilance law (the French Law) and summarizes in particular some lessons learned from a business perspective.

In 2017, France became the first country to adopt a law imposing mandatory human rights due diligence for large companies to prevent serious human rights abuses in supply chains.

Since then, there have been calls for similar mandatory human rights due diligence laws and business and human rights national developments in Europe. In parallel, we have witnessed a growing support for mandatory due diligence legislation at the EU level from some large multinational corporations. While discussions and public consultations on a possible European Union Directive on mandatory human rights and environmental due diligence (mHRDD) in 2021 are progressing, what lessons can we learn from the French companies' experience to support the development of Business and Human Rights in Portugal?

Establish a clear list of the in-scope companies

In the absence of an official list of companies covered by the French Law, it is often difficult to assess whether a company satisfies the legal criteria. For the past three years, NGOs have called the French government to publish a public list to ensure transparency. By now, civil society has stepped up to address these shortcomings through the launch of

an informal tracking platform. The recent evaluation report on the implementation of the French Law estimated that between 200 and 250 companies are concerned.

Move beyond a tick-box approach

Companies in the scope of the French law, are expected to establish, implement in an effective manner, and publish publicly an annual due diligence plan (Vigilance Plan). This should include the identification of risks and prevention of severe impacts linked to their own activities, those of companies under their control, and those of suppliers and subcontractors, with whom there is an established commercial relationship.

However, after three years of vigilance plans' publication and despite some progress on disclosure of risk mapping methodologies, identification, prevention, and mitigation of risks actions, only a few leading companies are going beyond a box-ticking exercise. Explicit information about operational context and responses to address identified risks, monitoring, and tracking of performance systems as well as companies' approach to stakeholder engagement is still scarcely available. To be impactful and effectively prevent human rights abuses, reporting on due diligence practices across the five legal pillars is not enough and strong alignment with the key principles of the UN Guiding Principles on Business and Human Rights (UNGPs) should be expected.

Avoid a one-size-fits-all approach

The risk mapping exercise, which is the first step in the drafting of the Vigilance Plan for companies, should not be a copy-paste of a generic list of risks identified by competitors. In practice, companies must initially identify the risk factors "intrinsic" to their activities. The operational sector and context in which a company operates are essential to translate in their context how the risk materialize and appreciate the severity of the impacts associated. There is no "one-size-fits-all" approach for companies to draft and implement a Vigilance Plan. In order to be adequate and efficient, the identification of severe risks for human rights and the environment and the related prevention and remediation measures need to be tailored to operational challenges the company face.

Put rightsholders at the core

Human rights due diligence is about preventing, mitigating, and remedying harm to people impacted by business. The Vigilance Plan, cornerstone of the French Law, specifically aims to identify, assess and manage the risks of adverse impacts on individuals' human rights and the environment.

The term "individuals" in the French Law should be interpreted as all rightsholders beyond the walls of the companies and beyond the most obvious affected groups without forgetting direct employees and supply chain workers. Yet, three years after the adoption of the French Law, the main human rights risks identified by companies are still mostly linked to employees' labour rights. Urgent assessment and disclosure efforts are needed regarding the human rights impacts on local communities affected by companies' operations worldwide.

Build on meaningful stakeholder engagement

Early engagement with stakeholders is crucial to better identifying and addressing human rights risks. The French Law provides that the Vigilance Plan shall be drafted in association with the company's stakeholders and in consultation with the trade unions to develop formal grievance mechanisms. However, only a few leading companies are transparent on the methodology for the identification of relevant stakeholders, dialogue with communities

and multi-stakeholder initiatives.

Despite its historic legislation on mHRDD, France and French companies are still on a steep learning curve, but the challenges faced over the last three years should hopefully inspire other countries contemplating the adoption of similar laws in the context of future EU Directive in the field.

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