

Corporate due diligence laws and legislative proposals in Europe

Comparative table | May 2021



EUROPEAN PARLIAMENT DUE DILIGENCE REPORT

FRENCH DUTY OF VIGILANCE LAW

DUTCH CHILD LABOUR DUE DILIGENCE LAW

DUTCH PARLIAMENTARY RBC BILL

GERMAN GOVERNMENT SUPPLY CHAIN BILL

AUSTRIAN PARLIAMENTARY SUPPLY CHAIN BILL

BELGIAN PARLIAMENTARY DUTY OF VIGILANCE BILL

NORWEGIAN GOVERNMENT TRANSPARENCY BILL

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STATUS	<ul style="list-style-type: none"> Proposal (European Parliament) 	<ul style="list-style-type: none"> In force 	<ul style="list-style-type: none"> Adopted but not in force yet 	<ul style="list-style-type: none"> Proposal (political parties) 	<ul style="list-style-type: none"> Proposal (German government) 	<ul style="list-style-type: none"> Proposal (political party) 	<ul style="list-style-type: none"> Proposal (political parties) 	<ul style="list-style-type: none"> Proposal (Norwegian government)
NATURE	<ul style="list-style-type: none"> Company law Civil law International private law 	<ul style="list-style-type: none"> Company law Civil law 	<ul style="list-style-type: none"> Company law Consumer law 	<ul style="list-style-type: none"> Company law Civil law Criminal law 	<ul style="list-style-type: none"> Company law 	<ul style="list-style-type: none"> Company law Civil law Criminal law 	<ul style="list-style-type: none"> Company law Civil law Criminal law International private law 	<ul style="list-style-type: none"> Company law Consumer law
SCOPE	<ul style="list-style-type: none"> Large companies, listed SMEs and SMEs in high-risk sector, domiciled or delivering products or services in the EU 	<ul style="list-style-type: none"> Large companies based in FR (>5,000 employees) 	<ul style="list-style-type: none"> All companies delivering products or services in NL (whether based or not in NL) 	<ul style="list-style-type: none"> All companies with >250 employees domiciled in or operating in NL (general duty of care for all firms operating in NL) 	<ul style="list-style-type: none"> Large companies based in DE (>3,000 employees; from 2024, >1,000 employees) 	<ul style="list-style-type: none"> All companies delivering products or services in AT (above a certain turnover to be defined) 	<ul style="list-style-type: none"> All companies domiciled or operating in BE Only large companies (≥ 250 employees) are subject to certain obligations 	<ul style="list-style-type: none"> Large companies domiciled or delivering products or services in NO
STANDARDS	<ul style="list-style-type: none"> Human rights Environment Governance 	<ul style="list-style-type: none"> Human rights Health and safety Environment (FR international commitments) 	<ul style="list-style-type: none"> Child labour 	<ul style="list-style-type: none"> Human rights Environment (incl. climate) 	<ul style="list-style-type: none"> Human rights Environment (Stockholm and Minamata conventions) 	<ul style="list-style-type: none"> Human rights Environment 	<ul style="list-style-type: none"> Human rights Labour rights Environment 	<ul style="list-style-type: none"> Human rights Working conditions
DUE DILIGENCE OBLIGATIONS	<ul style="list-style-type: none"> Due diligence (DD) (UNGP/OECD-based) 	<ul style="list-style-type: none"> Due vigilance (DV): establish and implement an annual vigilance plan (UNGP-based) 	<ul style="list-style-type: none"> Due diligence (DD): draw up action plan if there is a suspicion of child labour (UNGP/OECD-based) 	<ul style="list-style-type: none"> Due diligence (DD) (OECD-based) 	<ul style="list-style-type: none"> Due diligence (DD) (partially UNGP/OECD-based) 	<ul style="list-style-type: none"> Due diligence (DD) (UNGP/OECD-based) 	<ul style="list-style-type: none"> Due diligence (DD): all companies must conduct DD Due vigilance (DV): large companies must establish and implement an annual vigilance plan 	<ul style="list-style-type: none"> Due diligence (DD) (OECD-based) Duty to know of salient risks (all companies)
TRANSPARENCY OBLIGATIONS	<ul style="list-style-type: none"> Publish DD strategy on company's website and upload it on EU platform Inform DD strategy to workers' reps, unions, business partners 	<ul style="list-style-type: none"> Publish a vigilance plan in the annual report 	<ul style="list-style-type: none"> Submit a statement declaring that DD was conducted (statements are published on the authority's website) 	<ul style="list-style-type: none"> Publish annual reports in line with the OECD DD Guidance. 	<ul style="list-style-type: none"> Publish annual reports on company's website and submit them to the competent authority 	<ul style="list-style-type: none"> Published annual reports and submit them to the competent authority (reports are accessible on the authority's register) 	<ul style="list-style-type: none"> Publish an annual vigilance plan (only large companies (≥ 250 employees)) 	<ul style="list-style-type: none"> Publish annual reports on company's website and update them in case of significant changes

REACH OF DUE DILIGENCE

- Own operations (via subsidiaries) and whole value chain (all direct and indirect business relationships, upstream and downstream)
- Own operations (via subsidiaries) and part of the supply chain:
 - directly/indirectly controlled companies
 - subcontractors and suppliers with an "established commercial relationship"
- Own operations (via subsidiaries) and whole supply chain (any natural or legal person throughout the supply chain)
- Own operations (via subsidiaries) and whole value chain
- DD obligations only apply in full to own operations (via subsidiaries) and direct suppliers
- Companies are only required to identify risks linked to indirect suppliers and prevent and mitigate if they obtain "substantiated knowledge" of abuses
- Own operations (via subsidiaries) and whole supply chain (suppliers and subcontractors)
- Own operations (via subsidiaries) and whole value chain (all business relationships, upstream and downstream)
- Own operations and whole value chain (supply chain and non-supply chain business partners)

CIVIL LIABILITY

- Strict liability for harms caused or contributed to by entities under their control
- Liability is presumed. Companies must prove they took all due care
- Joint and several liability
- EU law applies irrespective of the place of harm
- Fault-based liability for harms DV could have prevented, caused by controlled companies (directly/indirectly), and subcontractors and suppliers with "established commercial relationship"
- Liability is not presumed. Victims must prove the harm, the breach and the causal link
- No explicit provision (under Dutch law, victims can seek judicial remedy and hold companies liable for harm linked to their failure to conduct DD)
- Fault-based liability for harms suffered as a result of a violation of the law
- No explicit provision
- However, injured parties would be able to authorize DE trade unions and NGOs to conduct civil proceedings in DE on their behalf
- Liability for harms caused by subsidiaries and business partners (if direct connection to own goods or activities)
- Guaranteed access of victims to AT courts
- Generous limitation periods
- Financial support for claimants, incl. costs for lawyers, evidence, travel, opinions and interpreters
- Strict liability for harms that DD / DV could have prevented
- The ability to control or influence the relevant subsidiary or value chain partner is considered
- Liability is presumed. Companies must prove they took all reasonable preventive measures
- Joint and several liability
- BE law applies irrespective of the place of harm, unless claimant chooses otherwise
- No explicit provision

PUBLIC ENFORCEMENT

- State authorities have the power to investigate failures to conduct DD and act on concerns raised by third parties
- State authorities may
 - order injunctive action
 - compel remediation
 - issue fines (incl. exclusion from public procurement and confiscation of commodities)
- Any concerned party can file a complaint for non-compliance before the judge
- The judge may
 - give formal notice to comply in a three-month period
 - if non-compliance persists, the judge may oblige the company to publish a plan and impose periodic penalty payments
- Any person can file a complaint before the company
- If the response is found inadequate, they can file a complaint before the regulator
- The regulator may
 - issue an order to require compliance
 - issue fines (up to €750,000 or 10% of annual turnover)
- Criminal liability of the responsible director in case of repeated non-compliance
- Public regulator with 10 FTE staff has the power to investigate failures and act on complaints filed by stakeholders
- Public regulator may issue fines
- Criminal liability for company directors for repeated failure within 5 years to stop activities that cause or contribute to negative impacts or to provide remedy
- Public regulator with 65 FTE staff has the power to review the reports, to conduct risk-based inspections at its own initiative or on claims raised by affected parties
- Public regulator may
 - order the company to comply within a specific timeline
 - issue fines (up to 10% of annual turnover) for failure to conduct DD (incl. exclusion from public procurement)
- State authority with a civil society advisory board has the power to monitor compliance
- State authority may
 - order injunctive action
 - issue fines (up to 10% of annual turnover) (incl. exclusion from public procurement and confiscation of commodities)
- Criminal liability for serious offenses
- State authority has the power to monitor compliance with DV obligations
- State authority may
 - order injunctive action
 - issue fines (up to €100,000 and incl. exclusion from public procurement)
 - establish guidelines for businesses
 - engage in dialogue with stakeholders
 - publish useful data
- Criminal liability of the responsible director
- Any person can file a request for information about a company's DD before the company
- The company must answer within three weeks or two months, depending on the request
- The Consumer Agency has the power to monitor compliance and may
 - request confirmation that a relationship has ceased
 - issue prohibitions or injunctions
 - issue fines