Corporate due diligence laws and legislative proposals in Europe
Comparative table | June 2021

<table>
<thead>
<tr>
<th>EURPEAN PARLIAMENT DUE DILIGENCE RESOLUTION</th>
<th>FRENCH DUTY OF VIGILANCE LAW</th>
<th>GERMAN SUPPLY CHAIN LAW</th>
<th>NORWEGIAN TRANSPARENCY LAW</th>
<th>DUTCH RESPONSIBLE BUSINESS CONDUCT BILL</th>
<th>AUSTRIAN SUPPLY CHAIN BILL</th>
<th>BELGIAN DUTY OF VIGILANCE BILL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Status</td>
<td>Proposal (European Parliament)</td>
<td>In force</td>
<td>Adopted but not yet in force (2023)</td>
<td>Proposal (political parties)</td>
<td>Proposal (political party)</td>
<td>Proposal (political parties)</td>
</tr>
<tr>
<td>Nature</td>
<td>Company law</td>
<td>Company law</td>
<td>Company law</td>
<td>Company law</td>
<td>Company law</td>
<td>Company law</td>
</tr>
<tr>
<td></td>
<td>Civil law</td>
<td>Civil law</td>
<td>Administrative law; with implications for</td>
<td>Civil law</td>
<td>Civil law</td>
<td>Civil law</td>
</tr>
<tr>
<td></td>
<td>International private law</td>
<td></td>
<td>Company law</td>
<td>Consumer law</td>
<td>Criminal law</td>
<td>Civil law</td>
</tr>
<tr>
<td>Scope</td>
<td>Large companies, listed SMEs and SMEs in high-risk sector, domiciled or delivering products or services in the EU</td>
<td>Large companies based in FR (&gt;5,000 employees)</td>
<td>Large companies (incl. foreign ones with a DE office) based in DE (&gt;3,000 employees; thereafter from 2024, &gt;1,000 employees)</td>
<td>All companies with &gt;50 employees domiciled or delivering products or services in NO</td>
<td>All companies with &gt;250 employees domiciled in or operating in NL (general duty of care for all firms operating in NL)</td>
<td>All companies domiciled or operating in BE</td>
</tr>
<tr>
<td>Standards</td>
<td>Human rights</td>
<td>Human rights</td>
<td>Human rights</td>
<td>Human rights</td>
<td>Human rights</td>
<td>Human rights</td>
</tr>
<tr>
<td></td>
<td>Environment</td>
<td>Environment</td>
<td>Environment (Stockholm, Minamata and Basel conventions)</td>
<td>Environment (incl. climate)</td>
<td>Environment</td>
<td>Environment</td>
</tr>
<tr>
<td></td>
<td>Governance</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Due Diligence Obligations</td>
<td>Due diligence (DD) (UNGP/OECD-based)</td>
<td>Due vigilance (DV): establish and implement an annual vigilance plan (UNGP-based)</td>
<td>Due diligence (DD) (partially UNGP/OECD-based)</td>
<td>Due diligence (DD) (OECD-based)</td>
<td>Duty to know of salient risks (all companies)</td>
<td>Due diligence (DD) (UNGP/OECD-based)</td>
</tr>
<tr>
<td>Transparency Obligations</td>
<td>Publish DD strategy on company’s website and upload it on EU platform</td>
<td>Publish a vigilance plan in the annual report</td>
<td>Publish annual reports on company’s website and submit them to the competent authority</td>
<td>Publish annual reports in line with the OECD DD Guidance.</td>
<td>Published annual reports and submit them to the competent authority (reports are accessible on the authority’s register)</td>
<td>Publish an annual vigilance plan (only large companies (≥ 250 employees))</td>
</tr>
</tbody>
</table>
### 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"
- DD obligations only apply in full to own operations (incl. subsidiaries) and direct suppliers
- Companies are required to identify risks linked to indirect suppliers and prevent and mitigate if they obtain "substantiated knowledge" of abuses
- Own operations and whole value chain (supply chain and non-supply chain business partners)
- 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)

### 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 new civil cause of action created
- However, law enables injured parties to authorize DE trade unions and NGOs to conduct civil proceedings in DE on their behalf
- No explicit provision
- Fault-based liability for harms suffered as a result of a violation of the law
- 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

### 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
- 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 2% of annual turnover) for failure to conduct DD (incl. exclusion from public procurement)
- 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
- 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
- State authority with a civil society advisory board has the power to monitor compliance
- 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 for serious offenses
- State authority has the power to monitor compliance with DD 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

*In addition to those reflected in this table, other laws establishing due diligence requirements with regard to specific issues have been recently adopted. In 2016, the EU passed the Conflict Minerals Regulation, which establish supply chain due diligence obligations for EU importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas. In 2019, the Netherlands passed the Child Labour Due Diligence Law, which will require companies to determine whether child labour occurs in their supply chains and set out a plan of action on how to combat it. In 2020, Switzerland passed a law that will introduce due diligence requirements for conflict minerals and child labour.*