

Corporate due diligence laws and legislative proposals in Europe

Comparative table | March 2022



EU COMMISSION PROPOSAL FOR A DIRECTIVE ON DUE DILIGENCE

EU PARLIAMENT RESOLUTION ON CORPORATE DUE DILIGENCE

FRENCH LAW ON DUTY OF VIGILANCE

GERMAN LAW ON SUPPLY CHAIN

NORWEGIAN LAW ON TRANSPARENCY

DUTCH PROPOSAL ON RESPONSIBLE BUSINESS CONDUCT

AUSTRIAN MOTION FOR A RESOLUTION ON SUPPLY CHAIN

BELGIAN PROPOSAL ON DUTY OF VIGILANCE

	<u>EU COMMISSION PROPOSAL FOR A DIRECTIVE ON DUE DILIGENCE</u>	<u>EU PARLIAMENT RESOLUTION ON CORPORATE DUE DILIGENCE</u>	<u>FRENCH LAW ON DUTY OF VIGILANCE</u>	<u>GERMAN LAW ON SUPPLY CHAIN</u>	<u>NORWEGIAN LAW ON TRANSPARENCY</u>	<u>DUTCH PROPOSAL ON RESPONSIBLE BUSINESS CONDUCT</u>	<u>AUSTRIAN MOTION FOR A RESOLUTION ON SUPPLY CHAIN</u>	<u>BELGIAN PROPOSAL ON DUTY OF VIGILANCE</u>
STATUS	<ul style="list-style-type: none"> Proposal by the European Commission 	<ul style="list-style-type: none"> Recommendation by the European Parliament 	<ul style="list-style-type: none"> In force 	<ul style="list-style-type: none"> Adopted but not yet in force (2023) 	<ul style="list-style-type: none"> In force 	<ul style="list-style-type: none"> Proposal by political parties in Parliament 	<ul style="list-style-type: none"> Motion by political party in Parliament 	<ul style="list-style-type: none"> Proposal by political parties in Parliament
COMPANY SCOPE	<ul style="list-style-type: none"> Very large EU companies (>500 employees and >€150m turnover worldwide) Very large non-EU companies operating in the EU (>€150m turnover in the EU) Large EU companies in high-risk sectors: agriculture, garment and minerals (>250 employees and >€40m turnover worldwide) Large non-EU companies in high-risk sectors: agriculture, garment and minerals (>€40m turnover in the EU) 	<ul style="list-style-type: none"> Large EU companies, listed SMEs and SMEs in high-risk sectors Large non-EU companies, listed SMEs and SMEs in high-risk sectors operating in the EU 	<ul style="list-style-type: none"> Very large French companies (≥5,000 employees worldwide) Very large non-French companies operating in France (≥10,000 employees worldwide) 	<ul style="list-style-type: none"> Very large German companies (≥3,000 employees in Germany; thereafter from 2024, ≥1,000 employees) Very large non-German companies operating in Germany (≥3,000 employees in Germany; thereafter from 2024, ≥1,000 employees) 	<ul style="list-style-type: none"> Medium-sized and large Norwegian companies (exceeding two of these three thresholds: NOK 70m turnover, NOK 35m balance sheet, 50 employees) Medium-sized and large non-Norwegian companies operating in Norway (exceeding two of these three thresholds: NOK 70m turnover, NOK 35m balance sheet, 50 employees) 	<ul style="list-style-type: none"> Large Dutch companies (exceeding two of these three thresholds: €20m balance sheet; €40m turnover; 250 employees) Large non-Dutch companies operating in the Netherlands (exceeding two of these three thresholds: €20m balance sheet; €40m turnover; 250 employees) (General duty of care for all companies operating in the Netherlands) 	<ul style="list-style-type: none"> All Austrian companies (above a certain turnover to be defined) All non-Austrian companies operating in Austria (above a certain turnover to be defined) 	<ul style="list-style-type: none"> Large Belgian companies (≥250 employees and either >€43m balance sheet or >€50m turnover) Large non-Belgian companies operating in Belgium (≥250 employees and either >€43m balance sheet or >€50m turnover) SMEs operating in high-risk sectors (including conflict minerals, agriculture, garment, minerals, extractive industry and finance) and regions (General due diligence duty for all companies established or active in Belgium)
MATERIAL SCOPE	<ul style="list-style-type: none"> Human rights Labour rights Environment (narrow list of standards, excl. climate) 	<ul style="list-style-type: none"> Human rights Labour rights Environment (incl. climate) Governance 	<ul style="list-style-type: none"> Human rights Health and safety Environment (broadly defined) 	<ul style="list-style-type: none"> Human rights Labour rights Environment (narrow list of standards: Stockholm, Minamata and Basel conventions only) 	<ul style="list-style-type: none"> Human rights Labour rights 	<ul style="list-style-type: none"> Human rights Labour rights Environment (broadly defined) 	<ul style="list-style-type: none"> Human rights Labour rights Environment (all internationally recognised environmental and climate standards) 	<ul style="list-style-type: none"> Human rights Labour rights Environment (broadly defined)
VALUE CHAIN SCOPE	<ul style="list-style-type: none"> Own operations and subsidiaries 'Established business relationships' (direct and indirect relationships that are or are expected to be lasting, not negligible and not merely ancillary) in all tiers of the global value chain, upstream and downstream SME clients are excluded from financial institutions' due diligence 	<ul style="list-style-type: none"> Own operations and subsidiaries All business relationships in all tiers of the global value chain, upstream and downstream 	<ul style="list-style-type: none"> Own operations and subsidiaries 'Established business relationships' with suppliers and subcontractors in the global supply chain 	<ul style="list-style-type: none"> Own operations and subsidiaries (full obligations) Direct suppliers (full obligations) Indirect suppliers (companies are required to identify, prevent and mitigate impacts only if they obtain "substantiated knowledge" of abuses) 	<ul style="list-style-type: none"> Own operations and subsidiaries All suppliers and subcontractors in the entire global supply chain All other business partners supplying goods or services directly to the company 	<ul style="list-style-type: none"> Own operations and subsidiaries All business relationships in the entire global value chain 	<ul style="list-style-type: none"> Own operations and subsidiaries All suppliers and subcontractors in the entire global supply chain 	<ul style="list-style-type: none"> Own operations and subsidiaries All business relationships in the entire global value chain, upstream and downstream

<p>DUE DILIGENCE OBLIGATIONS</p>	<ul style="list-style-type: none"> ▪ Obligation to integrate due diligence into the company's policy, including a code of conduct; identify potential and actual impacts (only severe impacts for not very large companies in high-risk sectors); prevent impacts via prevention plans, contractual assurances, third-party audits, investments and SME support; the possibility to suspend contractual relations; cease or minimize impacts via corrective plans, contractual assurances, third-party audits, investments and SME support; and establish a complaints mechanism ▪ No climate due diligence requirements, but an obligation to adopt a climate transition plan ▪ Financial institutions' due diligence need only be conducted before providing the service ▪ Company directors have a duty to put in place and oversee due diligence 	<ul style="list-style-type: none"> ▪ Obligation to integrate due diligence into the company's policy and strategy; identify and assess impacts; specify them, their severity, likelihood and urgency and relevant data; adopt and indicate all proportionate and commensurate measures to cease, prevent or mitigate impacts; set up a prioritisation strategy; ensure that business relationships implement policies in line with due diligence strategy, including via framework agreements, contractual clauses, codes of conduct or audits; verify compliance therewith; and set up a grievance mechanism ▪ Large companies with all their direct partners in the EU, and SMEs may conclude the absence of risks, and simply publish a no-risk statement 	<ul style="list-style-type: none"> ▪ Obligation to establish and effectively implement a vigilance plan which shall include a mapping assessment to identify and rank risks; set out procedures to assess subsidiaries, subcontractors and suppliers; establish appropriate action to mitigate risks and prevent violations; create an alert mechanism, and a monitoring scheme to assess the efficiency of the measures implemented 	<ul style="list-style-type: none"> ▪ Obligation to establish a risk management system; designate a responsible person within the company; perform regular risk analyses; issue a policy statement; lay down preventive measures in own operations, subsidiaries and vis-à-vis direct suppliers; take remedial action; establish a complaints mechanism; implement due diligence obligations with regard to risks at indirect suppliers in case of "substantiated knowledge" of abuses; and document and report 	<ul style="list-style-type: none"> ▪ Obligation to embed responsible business conduct into the company's policies; identify and assess actual and potential impacts; implement measures to cease, prevent or mitigate impacts based on prioritisations; track implementation and results; communicate with affected stakeholders how impacts are addressed; provide for or co-operate in remediation and compensation 	<ul style="list-style-type: none"> ▪ Obligation to integrate due diligence into the company's policies, management systems and business processes; identify and analyse potential and actual impacts; draw up and carry out an action plan to prevent and mitigate impacts; prioritisation; monitor the application and effectiveness of measures; set up remediation mechanism or cooperate with an existing one; offer to enable remediation or contribute to it 	<ul style="list-style-type: none"> ▪ Obligation to conduct risk analysis, implement follow-up measures (prevention and mitigation), carry out effectiveness reviews on the measures taken, involve stakeholders, and establish an early warning system 	<ul style="list-style-type: none"> ▪ Obligation to establish and effectively implement a vigilance plan which shall include a description of the value chain; a map of risks; set out procedures to assess subsidiaries, subcontractors and suppliers; establish appropriate action to mitigate risks and prevent violations; create an alert mechanism; an effective remediation mechanism; and a monitoring scheme to assess the measures implemented
<p>REPORTING OBLIGATIONS</p>	<ul style="list-style-type: none"> ▪ Publish annual due diligence strategy (as per EU CSRD) ▪ Publish an annual statement (companies not subject to EU CSRD) 	<ul style="list-style-type: none"> ▪ Publish due diligence strategy on company's website and upload it on EU platform ▪ Inform strategy to workers' reps, unions, business partners ▪ Disclose relevant info about the global value chain 	<ul style="list-style-type: none"> ▪ Publish annual vigilance plan 	<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"> ▪ Publish annual reports on company's website and update them in case of significant changes 	<ul style="list-style-type: none"> ▪ Publish annual reports on due diligence policy and measures, including findings and results 	<ul style="list-style-type: none"> ▪ Publish annual reports and submit them to the competent authority 	<ul style="list-style-type: none"> ▪ Publish annual vigilance plan (only large companies and SMEs operating in high-risk sectors or regions)
<p>CIVIL LIABILITY AND ACCESS TO JUSTICE</p>	<ul style="list-style-type: none"> ▪ Liability for harms by "established business relationships" due diligence should have prevented ▪ No liability for harms caused by indirect partners if the company (1) sought contractual assurances, (2) verified compliance therewith and (3) it was reasonable to expect these measures would be adequate to prevent the harm ▪ EU law is overriding mandatory (applies even if the harm occurred abroad) 	<ul style="list-style-type: none"> ▪ Liability for harms caused or contributed to by own company and controlled entities that due diligence should have prevented ▪ Presumption of liability and control / reversal of the burden of proof (companies must prove they took all reasonable preventive measures) ▪ EU law is overriding mandatory (applies even if the harm occurred abroad) ▪ Reasonable time limitation periods for bringing a civil lawsuit abroad 	<ul style="list-style-type: none"> ▪ Liability for harms due diligence should have prevented ▪ No presumption of liability / reversal of the burden of proof 	<ul style="list-style-type: none"> ▪ No new civil cause of action created (explicitly states that a breach of due diligence obligations does not lead to civil liability) ▪ Enables injured parties to authorize German trade unions and NGOs to bring civil proceedings in Germany on their behalf 	<ul style="list-style-type: none"> ▪ No explicit provision 	<ul style="list-style-type: none"> ▪ Liability for harms due diligence should have prevented ▪ No presumption of liability / reversal of the burden of proof ▪ Existing Dutch tort law for the general duty of care is expected to apply 	<ul style="list-style-type: none"> ▪ Liability for harms due diligence should have prevented ▪ Guaranteed access of victims to Austrian courts ▪ Generous time limitation periods for bringing a civil lawsuit ▪ Financial support for claimants, incl. costs for lawyers, evidence, travel, opinions and interpreters 	<ul style="list-style-type: none"> ▪ Liability for harms due diligence should have prevented ▪ Presumption of liability / reversal of the burden of proof (companies must prove they conducted due diligence) ▪ Belgian law is overriding mandatory (applies even if the harm occurred abroad) unless claimant chooses otherwise ▪ Includes provisions on collective redress and injunctive measures

PUBLIC ENFORCEMENT	<ul style="list-style-type: none"> ▪ National supervisory authorities may initiate investigations at their own initiative or following substantiated concerns by third parties ▪ National supervisory authorities may <ul style="list-style-type: none"> - order the cessation of infringements - abstention from repetition, remedial action - impose fines (incl. exclusion from public support) - adopt interim measures ▪ European Network of Supervisory Authorities 	<ul style="list-style-type: none"> ▪ National supervisory authorities may initiate investigations at their own initiative or following substantiated concerns by third parties ▪ National supervisory authorities may <ul style="list-style-type: none"> - order injunctive action - compel remediation ▪ issue fines (incl. exclusion from public procurement and confiscation of commodities) 	<ul style="list-style-type: none"> ▪ Any concerned party can file a complaint for non-compliance before the judge ▪ The judge may <ul style="list-style-type: none"> - 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 	<ul style="list-style-type: none"> ▪ 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 <ul style="list-style-type: none"> - 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) 	<ul style="list-style-type: none"> ▪ 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 <ul style="list-style-type: none"> - request confirmation that a relationship has ceased - issue prohibitions or injunctions - issue fines 	<ul style="list-style-type: none"> ▪ 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 	<ul style="list-style-type: none"> ▪ State authority with a civil society advisory board ▪ State authority may impose proportionate, effective and dissuasive sanctions including fines, exclusion from public procurement procedures and prohibition from placing goods on the market or offering services ▪ Criminal liability in certain cases 	<ul style="list-style-type: none"> ▪ State authority has the power to monitor compliance with DV obligations ▪ State authority may <ul style="list-style-type: none"> - 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
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* 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 established 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](#), not yet in force, 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.