



# DIRECTIVE DEVOIR DE VIGILANCE DES ENTREPRISES

Retour sur les négociations



# VERS UNE DIRECTIVE EUROPÉENNE



2020

L'annonce d'une  
Directive par le  
Commissaire  
européen à la Justice

2022

Une proposition de la  
Commission  
européenne

2022-2023

Le Conseil de l'UE et  
le Parlement  
européen adoptent  
leurs positions

ÉTÉ 2023

Début des Trilogues  
en vue de l'adoption  
de la Directive

# ARTICLE 1 Objet de la Directive

## Commission européenne

## Parlement européen

## Conseil de l'Union européenne

(a) on obligations for companies regarding actual and potential human rights adverse impacts and environmental adverse impacts, with respect to their own operations, the operations of their subsidiaries, and the value chain operations carried out by entities with whom the company has an established business relationship and	(a) on obligations for companies regarding actual and potential human rights adverse impacts and environmental adverse impacts <u>that they caused, contributed to or are directly linked to</u> , with respect to their own operations, <del>the operations</del> <u>and those</u> of their subsidiaries, and the <del>value chain</del> operations carried out by entities <u>in their value chain</u> with whom the company has <del>an established</del> business relationship and	(a) <del>on</del> obligations for companies regarding actual and potential human rights adverse impacts and environmental adverse impacts, with respect to their own operations, the operations of their subsidiaries, and the <del>value chain</del> operations carried out by <del>entities with whom the company has an established business relationship and</del> <b>their business partners in companies' chains of activities;</b>
1), first subparagraph, point (b)		
(b) on liability for violations of the obligations mentioned above.	(b) on liability for violations of the obligations mentioned above- <u>which led to damage;</u>	(b) <del>on</del> liability for violations of the obligations mentioned above-; <b>and</b>
1), first subparagraph, point (ba)		
		(c) <b>obligation to adopt a plan to ensure compatibility of business model and strategy of the company with the transition to a sustainable economy and with the limiting of global warming to 1.5 °C.</b>



# ARTICLE 2 Champ de la Directive

<p>1. This Directive shall apply to companies which are formed in accordance with the legislation of a Member State and which fulfil one of the following conditions:</p>	<p>1. This Directive shall apply to companies which are formed in accordance with the legislation of a Member State and which fulfil one of the following conditions:</p>	<p>1. This Directive shall apply to companies which are formed in accordance with the legislation of a Member State and which fulfil one of the following conditions:</p>
<p>(1), point (a)</p>		
<p>(a) the company had more than 500 employees on average and had a net worldwide turnover of more than EUR 150 million in the last financial year for which annual financial statements have been prepared;</p>	<p>(a) The company had more than <del>500</del><u>250</u> employees on average and had a net worldwide turnover of more than EUR <del>150</del><u>40</u> million in the last financial year for which annual financial statements have been prepared;</p>	<p>(a) the company had more than 500 employees on average and had a net worldwide turnover of more than EUR 150 million in the last financial year for which annual financial statements have been <del>prepared</del><b>or should have been adopted</b>;</p>
<p>(b) the company did not reach the thresholds under point (a), but had more than 250 employees on average and had a net worldwide turnover of more than EUR 40 million in the last financial year for which annual financial statements have been prepared, provided that at least 50% of this net turnover was generated in one or more of the following sectors:</p>	<p>(b) the company did not reach the thresholds under <del>point (a), but had more than 250 employees on average and had</del><u>(a) but is the ultimate parent company of a group that had 500 employees and</u> a net worldwide turnover of more than <del>EUR 40</del><u>150</u> million in the last financial year for which annual financial statements have been prepared; <del>provided that at least 50% of this net turnover was generated in one or more of the following sectors:</del></p>	<p>(b) the company did not reach the thresholds under point (a), but had more than 250 employees on average and had a net worldwide turnover of more than EUR 40 million in the last financial year for which annual financial statements have been <del>prepared</del><b>or should have been adopted</b>, provided that at least <del>50% of this net turnover</del><b>EUR 20 million</b> was generated in one or more of the following sectors <b>associated with the applicable statistical classification of economic activities established by Regulation (EC) No 1893/2006 and listed in Annex II</b>:</p>

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2. This Directive shall also apply to companies which are formed in accordance with the legislation of a third country, and fulfil one of the following conditions:	2. This Directive shall also apply to companies which are formed in accordance with the legislation of a third country, and fulfil one of the following conditions:	2. This Directive shall also apply to companies which are formed in accordance with the legislation of a third country, and fulfil one of the following conditions:
(2), point (a)		
(a) generated a net turnover of more than EUR 150 million in the Union in the financial year preceding the	(a) <u>the company</u> generated a net <u>worldwide</u> turnover of more than EUR 150 million, <u>provided that at</u>	(a) generated a net turnover of more than EUR 150 million in the Union in the financial year preceding the
last financial year;	<u>least EUR 40 million was generated</u> in the Union in the financial year preceding the last financial year, <u>including turnover generated by third party companies with whom the company and/or its subsidiaries has entered into a vertical agreement in the Union in return for royalties</u> ;	last financial year; <b>or</b>

	preceding the last financial year, <u>including turnover generated by third party companies with whom the company and/or its subsidiaries has entered into a vertical agreement in the Union in return for royalties;</u>	
2), point (b)		
(b) generated a net turnover of more than EUR 40 million but not more than EUR 150 million in the Union in the financial year preceding the last financial year, provided that at least 50% of its net worldwide turnover was generated in one or more of the sectors listed in paragraph 1, point (b).	(b) <del>generated</del> <u>the company did not reach the thresholds under (a) but is the ultimate parent company of a group that had 500 employees and</u> a net <u>worldwide</u> turnover of more than <del>EUR 40</del> <u>150</u> million <del>but not more than EUR 150 million</del> <u>and at least 40 million was generated</u> in the Union in the <u>last</u> financial year <del>preceding the last</del> <u>for which annual</u> financial year, provided that at least 50% of its net worldwide turnover was generated in one or more of the sectors listed in paragraph 1, point (b) <del>statements have been prepared, including turnover generated by third party companies with whom the company and/or its subsidiaries has entered into a vertical agreement in the Union in return for royalties.</del>	(b) generated a net turnover of more than EUR 40 million but not more than EUR 150 million in the Union in the financial year preceding the last financial year, provided that at least 50% of its net worldwide turnover <del>was</del> <b>EUR 20 million</b> was generated in one or more of the sectors listed in paragraph 1, point (b).



# ARTICLE 2 : Quid du secteur financier ?

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		European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ L 284, 30.10.2009, p. 1).
		<p><b>7. This Directive shall not apply to financial products listed in points (b) and (f) of point (12) of Article 2 of Regulation (EU) 2019/2088 of the European Parliament and of the Council<sup>1</sup>.</b></p> <p><b>1. Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector (OJ L 317, 9.12.2019, p. 1).</b></p>
		<p><b>8. Member States may decide to apply this Directive to regulated financial undertakings within the meaning of Article 3, point (a)(iv), also with respect to their business partners to which such regulated financial undertakings provide the services referred to in Article 3,</b></p>

# ARTICLE 3: Définitions LES IMPACTS

(b) 'adverse environmental impact' means an adverse impact on the environment resulting from the violation of one of the prohibitions and obligations pursuant to the international environmental conventions listed in the Annex, Part II;	(b) 'adverse environmental impact' means an adverse impact on the environment resulting from the <del>violation of one</del> <u>failure to comply with obligations in line with the relevant provisions of the instruments listed in Part I, points 18 and 19, of the prohibitions and obligations pursuant Annex and Part II of the Annex, taking into account, where available, the national legislation and measures linked to those provisions related</u> to the international <del>environmental conventions</del> <u>texts</u> listed in <u>Part I, points 18 and 19, of the Annex, and</u> Part II <u>of the Annex</u> ;	(b) 'adverse environmental impact' means an <del>adverse</del> -impact on the environment resulting from <del>the</del> violation of one of the prohibitions and obligations pursuant to the <del>international environmental conventions</del> listed in the Annex I, Part II;
first paragraph, point (c)		
(c) 'adverse human rights impact' means an adverse impact on protected persons resulting from the	(c) 'adverse human rights impact' means an adverse impact on <del>protected</del> -persons resulting from <del>the</del>	(c) 'adverse human rights impact' means an <del>adverse</del> -impact on <del>protected</del> -persons resulting from the
violation of one of the rights or prohibitions listed in the Annex, Part I Section 1, as enshrined in the international conventions listed in	<del>violation of one of the rights or prohibitions listed in the Annex, Part I Section 1, as</del> <u>any action which removes or reduces the ability of an</u>	violation of one of the rights or prohibitions listed in the Annex, Part I Section 1, as enshrined in the international conventions listed in



<p>(c) ‘adverse human rights impact’ means an adverse impact on protected persons resulting from the</p>	<p>(c) ‘adverse human rights impact’ means an adverse impact on <del>protected</del> persons resulting from <del>the</del></p>	<p>(c) ‘adverse human rights impact’ means an adverse impact on <del>protected</del> persons resulting from <del>the</del></p>
<p>violation of one of the rights or prohibitions listed in the Annex, Part I Section 1, as enshrined in the international conventions listed in the Annex, Part I Section 2;</p>	<p><del>violation of one of the rights or prohibitions listed in the Annex, Part I Section 1, as</del><u>any action which removes or reduces the ability of an individual or group to enjoy the rights or to be protected by prohibitions</u> enshrined in <del>the</del> international conventions <u>and instruments</u> listed in the Annex, Part I, <u>Section 1 and Annex, Part I,</u> Section 2;</p>	<p><del>violation of one of the rights or prohibitions listed in the Annex, Part I Section 1, as enshrined in the international conventions listed in the Annex, Part I Section 2;</del></p>
<p>, first paragraph, point (c)(i)</p>		
		<p><b>(i) an abuse of one of the human rights listed in the Annex I, Part I Section 1, as those human rights are enshrined in the international instruments listed in the Annex I, Part I Section 2;</b></p>

# ARTICLE 3: Définitions Chaine de valeur

<p>(g) ‘value chain’ means activities related to the production of goods or the provision of services by a company, including the development of the product or the service and the use and disposal of the product as</p>	<p>(g) ‘value chain’ means <del>activities related to the production of goods or the provision of services by a company, including the development of the product or the service and the use and disposal of the product as</del></p>	<p>(g) ‘value chain’ means activities related to the production of goods or the provision of services by a company, including the development of the product or the service and the use and disposal of the product as</p>
<p>well as the related activities of upstream and downstream established business relationships of the company. As regards companies within the meaning of point (a)(iv), ‘value chain’ with respect to the provision of these specific services shall only include the activities of the clients receiving such loan, credit, and other financial services and of other companies belonging to the same group whose activities are linked to the contract in question. The value chain of such regulated financial undertakings does not cover SMEs receiving loan, credit, financing, insurance or reinsurance of such entities;</p>	<p><del>well as the related activities of upstream and downstream established business relationships of the company. As regards companies within the meaning of point (a)(iv), ‘value chain’ with respect to the provision of these specific services shall only include the activities of the clients receiving such loan, credit, and other financial services and of other companies belonging to the same group whose activities are linked to the contract in question. The value chain of such regulated financial undertakings does not cover SMEs receiving loan, credit, financing, insurance or reinsurance of such entities;</del></p>	<p>well as the related <del>of</del> activities of upstream and downstream established business relationships of the company. As regards companies within the meaning of point (a)(iv), ‘value chain’ with respect to the provision of these specific services shall only include the activities of the clients receiving such loan, credit, and other financial services and of other companies belonging to the same group whose activities are linked to the contract in question. The value chain of such regulated financial undertakings does not cover SMEs receiving loan, credit, financing, insurance or reinsurance of such entities;’ <b>means:</b></p>



	<u>(i) activities related to, and entities involved in, the production, design, sourcing, extraction, manufacture, transport, storage and supply of raw materials, products or parts of a company's product and the development of a company's product or the development or provision of a service, and</u>	(i) activities of a company's upstream business partners related to the production of goods or the provision of services by the company, including the design, extraction, manufacture, transport, storage and supply of raw materials, products or parts of the products and development of the product or the service, and
first paragraph, point (fa), first subparagraph, point (ii)		
	<u>(ii) activities related to, and entities involved in, the sale, distribution, transport, storage, and waste management of a company's products or the provision of services, and excluding the waste management of the product by individual consumers.</u>	(ii) activities of a company's downstream business partners related to the distribution, transport, storage and disposal of the product, including the dismantling, recycling, composting or landfilling, where the business partners carry out those activities for the company or on behalf of the company, excluding the disposal of the product by consumers and distribution, transport, storage and disposal of the product being subject to the export control under the Regulation (EU) 2021/821 of the European Parliament and of the Council or the export control relating to weapons, munition or war materials, after the export of the product is authorised.

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As regards companies within the meaning of point (a)(iv), 'value chain' with respect to the provision of these specific services shall include the activities of the clients directly receiving such financial services provided by financial undertakings pursuant to point (iv) and of other companies belonging to the same group whose activities are linked to the contract in question. The value chain of regulated financial undertakings

Subject to Article 2(8), as regards regulated financial undertakings within the meaning of point (a)(iv), the term 'chain of activities' shall also include the activities of:



# ARTICLE 4: OBLIGATION DU DEVOIR DE VIGILANCE

Article 4 Due diligence	Article 4 Due diligence	Article 4 Due diligence
1)		
1. Member States shall ensure that companies conduct human rights and environmental due diligence as laid down in Articles 5 to 11 ('due diligence') by carrying out the following actions:	1. Member States shall ensure that companies conduct <u>risk-based</u> human rights and environmental due diligence as laid down in Articles 5 to 11 ('due diligence') by carrying out the following actions:	1. Member States shall ensure that companies conduct human rights and environmental due diligence as laid down in Articles 5 to 11 ('due diligence') by carrying out the following actions:
1), point (a)		
(a) integrating due diligence into their policies in accordance with Article 5;	(a) integrating due diligence into their policies in accordance with Article 5;	(a) integrating due diligence into their policies <b>and risk management systems</b> in accordance with Article 5;
1), point (b)		
(b) identifying actual or potential adverse impacts in accordance with Article 6;	(b) identifying actual or potential adverse impacts in accordance with Article 6;	(b) identifying actual or potential adverse impacts in accordance with Article 6;
(c) preventing and mitigating potential adverse impacts, and bringing actual adverse impacts to an end and minimising their extent in accordance with Articles 7 and 8;	(c) preventing and mitigating potential adverse impacts, and bringing actual adverse impacts to an end and minimising their extent in accordance with Articles 7 and 8;	(c) preventing and mitigating potential adverse impacts, and bringing actual adverse impacts to an end and minimising their extent in accordance with Articles 7 and 8;

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(c) preventing and mitigating potential adverse impacts, and bringing actual adverse impacts to an end and minimising their extent in accordance with Articles 7 and 8;	(c) preventing and mitigating potential adverse impacts, and bringing actual adverse impacts to an end and minimising their extent in accordance with Articles 7 and 8;	(c) preventing and mitigating potential adverse impacts, and bringing actual adverse impacts to an end and minimising their extent in accordance with Articles 7 and 8;
	<i>(ca) where necessary, prioritising potential and actual adverse impacts in accordance with Article 8b;</i>	
	<i>(cb) remedying actual adverse impacts in accordance with Article 8c;</i>	
(1), point (d)		
(d) establishing and maintaining a complaints procedure in accordance with Article 9;	(d) establishing <del>and maintaining a complaints procedure</del> <i>or participating in a notification and non-judicial grievance mechanism</i> in accordance with Article 9;	(d) establishing and maintaining a complaints procedure in accordance with Article 9;
(1), point (e)		
(e) monitoring the effectiveness of their due diligence policy and measures in accordance with Article	(e) monitoring <i>and verifying</i> the effectiveness of their due diligence policy and measures in accordance	(e) monitoring the effectiveness of their due diligence policy and measures in accordance with Article



# ARTICLE 15 Combattre le changement climatique

Article 15 Combating climate change	Article 15 Combating climate change	Article 15 Combating climate change
1. Member States shall ensure that companies referred to in Article 2(1), point (a), and Article 2(2), point (a), shall adopt a plan to ensure that the business model and strategy of the company are compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5 °C in line with the Paris Agreement. This plan shall, in particular, identify, on the basis of information reasonably available to the company, the extent to which climate change is a risk for, or an impact of, the company's operations.	1. Member States shall ensure that companies referred to in Article <del>2(1), point (a), and</del> <u>2 develop and implement a transition plan in line with the reporting requirements in Article 2(2), point (a), shall adopt a plan</u> <u>19a of Regulation (EU) 2021/0104 (CSRD)</u> , to ensure that the business model and strategy of the company are <del>compatible</del> <u>aligned</u> with the <u>objectives of the</u> transition to a sustainable economy and with the limiting of global warming to 1.5 °C in line with the Paris Agreement. <del>This plan shall, in particular, identify, on the basis of information reasonably available to the company, the extent to which and</del> <u>the objective of achieving climate neutrality as established in Regulation (EU) 2021/1119 (European Climate Law) as regards its operations in the Union, including its 2050 climate change is a risk for, or an impact of, the company's operations: neutrality target and the 2030 climate target.</u> <u>This plan shall include a</u>	1. Member States shall ensure that companies referred to in Article 2(1), point (a), and Article 2(2), point (a), shall adopt a plan, <b>including implementing actions and related financial and investments plans</b> , to ensure that the business model and strategy of the company are compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5 °C in line with the Paris Agreement <b>and the objective of achieving climate neutrality by 2050 as established in Regulation (EU) 2021/1119</b> , and where relevant, the exposure of the undertaking to coal-, oil- and gas-related activities, as referred to in Articles 19a(2), point (a)(iii), and 29a(2), point (a)(iii), of Directive 2013/34/EU. This plan shall, in particular, identify, on the basis of information reasonably available to the company, the extent to which climate change is a risk for, or an impact of, the company's operations.

# ARTICLE 22 : Responsabilité civile

2		
Article 22 Civil liability	Article 22 Civil liability	Article 22 Civil liability of companies and a right to full compensation
2(-1), first subparagraph		
1. Member States shall ensure that companies are liable for damages if:	1. Member States shall ensure that companies are liable for damages if:	-1. Member States shall ensure that <del>companies are</del> <b>a company can be held liable for damages if a damage</b>
		<b>caused to a natural or legal person, provided that:</b>
2(-1), first subparagraph, point (a)		
(a) they failed to comply with the obligations laid down in Articles 7 and 8 and;	(a) they failed to comply with the obligations laid down in <del>Articles 7 and 8</del> <b>this Directive</b> and;	(a) <del>they</del> <b>the company intentionally or negligently</b> failed to comply with the obligations laid down in Articles 7 and 8, <b>when the right, prohibition or obligation listed in Annex I is aimed to protect the natural or legal person</b> and; and
2(-1), first subparagraph, point (b)		
(b) as a result of this failure an adverse impact that should have been identified, prevented, mitigated, brought to an end or its extent minimised through the appropriate measures laid down in Articles 7 and 8 occurred and led to damages;	(b) as a result of this failure <b>the company caused or contributed to an actual</b> <del>an</del> adverse impact that should have been identified, <b>prioritised</b> , prevented, mitigated, brought to an end, <b>remediated</b> or its extent minimised through the appropriate measures laid down in	(b) as a result of <del>this</del> <b>a</b> failure <del>an</del> adverse impact that should have been identified, prevented, mitigated, brought to an end or its extent minimised through the appropriate measures laid down in Articles 7 and 8 occurred and led to damages referred to in point (a);



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		When the damage was caused jointly by the company and its subsidiary, direct or indirect business partner , they shall be liable jointly and severally, without prejudice to the provisions of national law concerning the conditions of joint and several liability and the rights of recourse.
4. The civil liability rules under this Directive shall be without prejudice to Union or national rules on civil liability related to adverse human rights impacts or to adverse environmental impacts that provide for liability in situations not covered by or providing for stricter liability than this Directive.	4. The civil liability rules under this Directive shall <del>be without prejudice to Union or national rules on civil</del> <b>not limit companies'</b> liability <del>related to adverse human rights impacts or to adverse environmental impacts that provide for liability in situations not covered by or providing for stricter</del> <b>under Union or national legal systems, including rules on joint and several</b> liability <del>than this Directive.</del>	4. The civil liability rules under this Directive shall be without prejudice to Union or national rules on civil liability related to adverse human rights impacts or to adverse environmental impacts that provide for liability in situations not covered by or providing for stricter liability than this Directive.
2(5)		
5. Member States shall ensure that the liability provided for in provisions of national law transposing this Article is of overriding mandatory application in cases where the law applicable to claims to that effect is not the law of a Member State.	5. Member States shall ensure that the liability provided for in provisions of national law transposing this Article is of overriding mandatory application in cases where the law applicable to claims to that effect is not the law of a Member State.	5. Member States shall ensure that the <del>liability provided for in</del> provisions of national law transposing this Article <del>is</del> <b>are</b> of overriding mandatory application in cases where the law applicable to claims to that effect is not the law of a Member State.

# Des lacunes ; nos recommandations

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MAI 2023

## DIRECTIVE DEVOIR DE VIGILANCE :

Quels sont les enseignements  
à tirer des contentieux  
en cours devant les tribunaux  
français ?