1st BILL: initially proposed on November 7th 2013

TITLE I: THE OBLIGATION OF DUE VIGILANCE OF ENTERPRISES IN THEIR ECONOMIC OR COMMERCIAL ACTIVITIES

ARTICLE I

Chapter III of Title III of Book II of the Commercial Code, which is supplemented by Section 6, reads as follows:

"Section 6: Health-related and environmental damages and human rights abuses"

"Art. L. 233-41. - I. - As part of its activities, from those of its subsidiaries to those of its subcontractors, every company has the obligation to prevent damage or proven risks of health or environmental damages. This obligation also applies to damages resulting from a breach of fundamental rights."

"II. - The liability of the company, in the conditions defined above, is valid unless it proves that it was unable, in spite of its vigilance and effort, to prevent damages by managing the risk or preventing its realization given the power and the means at its disposal."

TITLE II: THE RESPONSIBILITY OF ENTERPRISES IN CASE OF A BREACH OF THE OBLIGATION OF DUE VIGILANCE IN THEIR ECONOMIC OR COMMERCIAL ACTIVITIES

ARTICLE II

After Title IV bis of Book III of the Civil Code, a Title IV b is inserted as follows:

TITLE IVB: THE LIABILITY FOR HEALTH-RELATED AND ENVIRONMENTAL DAMAGES AND VIOLATIONS OF FUNDAMENTAL HUMAN RIGHTS

"Art. 1386-19. – Any legal person will be found responsible, who in the course of his or her activities with those of his or her subsidiaries or those of his or her subcontractors, does not demonstrate having taken all necessary and reasonable measures within his or her power to prevent or deter the occurrence of damages or the risk of damages, in particular those health-related, environmental or which constitute a violation of fundamental rights and of which he or she could not have been unaware of the seriousness prior to the fact."

ARTICLE III

The third paragraph of Article 121-3 of the Criminal Code, the words, "of security" are replaced by the words, "of security and vigilance."

IMPORTANT POINTS 1st VERSION

The bill proposes to amend the Commercial Code by adding an article after article L. 233-40 that would encourage companies to manage all of their activities in the context of their economic and
commercial relationships and which could affect fundamental rights. It is understood, in paragraph 2 of this article, that these obligations should apply to companies according to the means at their disposal. SMEs obviously cannot implement the same control procedures as multinational enterprises.

This bill proposes to amend the Civil Code and the Penal Code by creating a liability regime in case of damages occurring in the context of a company’s economic or commercial activities and which are detrimental to human rights.

This presumption of liability is not conclusive and the company may be exempted from liability if it proves that it was not aware of any activity that may have had a potential impact upon fundamental rights or if the company proves that it made every effort to avoid it.

2nd VERSION: A second bill proposal was made by the MPs on February 11th 2015. After 2 years of debate between the National Assembly and the Senate, the text was finally adopted. (see below)

JORF n° 0074 from March 28, 2017 - text n° 1

LAW n° 2017-399 of March 27th, 2017 relating to the duty of vigilance of parent and instructing companies

Article 1

After Article L. 225-102-3 of the Commercial Code [Code de commerce], an article L. 225-102-4 is inserted and reads as follows:

"Art. L. 225-102-4. -I.-Any company that employs, by the end of two consecutive financial years [deux exercices consécutifs], at least five thousand employees itself and in its direct or indirect subsidiaries whose registered office [siège social] is located within the French territory, or at least ten thousand employees itself and in its direct or indirect subsidiaries whose registered office is located within the French territory or abroad, shall establish and effectively implement a vigilance plan.

"Subsidiaries or controlled companies that exceed the thresholds referred to in the first paragraph shall be deemed to satisfy the obligations laid down in this article, if the company that controls them, within the meaning of Article L. 233-3 of the French Commercial Code, establishes and implements a vigilance plan covering the activities of the company and of all the subsidiaries or companies it controls.

"The plan shall include reasonable vigilance measures adequate to identify risks and to prevent serious harms to human rights and fundamental freedoms, to the health and safety of individuals and to the environment, resulting from the activities of the company and of those companies it controls within the meaning of II of Article L. 233-16, directly or indirectly, as well as the activities of subcontractors or suppliers with whom an established commercial relationship [relation commerciale établie] is maintained, when these activities are linked to that relationship.

"The plan is meant to be drawn up in conjunction with the stakeholders [parties prenantes] of the company, where appropriate as part of multi-stakeholder initiatives [initiatives pluripartites] within sectors or at territorial level. It includes the following measures:

"1° A mapping of risks meant for their identification, analysis and prioritization;

"2° Regular evaluation procedures regarding the situation of subsidiaries, subcontractors or suppliers with whom an established commercial relationship is maintained, in line with the risks mapping;
"3° Adapted actions to mitigate risks or prevent serious harms;
"4° An alert and complaint mechanism relating to the existence or realization of risks, drawn up in consultation with the representative trade union organizations within the company;
"5° A scheme for monitoring the implementation of measures and evaluating their effectiveness.

"The vigilance plan and the report concerning its effective implementation must be published and included in the report mentioned in Article L. 225-102.

"A decree issued by the Conseil d'Etat may expand on the vigilance measures provided for in points 1 to 5 of this article. It may detail the methods for drawing up and implementing the vigilance plan, where appropriate in the context of multi-stakeholder initiatives within sectors or at territorial level.

"II.-When a company receives a formal notice to comply [mise en demeure] with the duties laid down in paragraph I, does not satisfy its requirements within three months of the formal notice, the competent court may, at the request of any person with standing [intérêt à agir], order the company, including under a periodic penalty payment [astreinte], to respect them. "The president of the court, ruling under summary proceedings [statuant en référé], may be seized to the same purpose.

**Article 2**

After the same article L. 225-102-3, it is inserted an article L. 225-102-5 and reads as follows:

"Art. 225-102-5.-Following the conditions laid down in articles 1240 and 1241 of the Civil Code [code civil], a breach of the duties defined in Article L. 225-102-4 of this Code, establishes the liability of the offender and requires him to compensate any damage that the performance of those duties would have prevented.

"The claim for tort [l’action en responsabilité] is brought before the competent court by any person proving standing [justifiant d’un intérêt à agir].

"The court may order the publication, dissemination or display of its decision or an extract thereof, according to the terms it specifies. The costs are borne by the convicted person.

"The court may order the execution of its decision under a periodic penalty payment [astreinte]."

**Article 4**

Articles L. 225-102-4 and L. 225-102-5 of the commercial code apply from the report mentioned in Article L. 225-102 of the same code, relating to the first financial year [exercice] opened after the publication of this Act.

By way of derogation from the first paragraph of this article, for the financial year during which this Act was published, paragraph I of Article L. 225-102-4 of the said Code applies, with the exception of the report in its penultimate paragraph. This law shall be executed as the law of the State.