

**Insights****ESG CONTINUES TO FACE COURTS IN FRANCE**

Jun 25, 2024

The CSDD Directive thus adopted goes well beyond the obligations under the French corporate law on duty of care: it widens the scope of the companies concerned and imposes heavy penalties. Its adoption at a time when the European promotion of ESG is proceeding apace in France (transposition into French law of the EU CSRD, first decision on the merits on the basis of the French corporate law on duty of care) necessarily raises questions about the impact that the CSDD may have on the judicialization of ESG in France.

France has long been a forerunner in the field of ESG: it has adopted a succession of laws (NRE law, Sapin II law, French corporate law on duty of care, Pacte law, Climate and Resilience law) that have helped to encourage companies to pay greater attention to their social environment. In particular, the French corporate law on duty of care imposes a duty of care on large companies headquartered in France with regard to a wide range of risks relating to human rights and environmental damage that their activity may generate via their subsidiaries and suppliers and subcontractors with whom a commercial relationship is established, in France or abroad. 7 years after the adoption of French corporate law on duty of care, more and more multinationals in all sectors - energy, water, banking, distribution, services, transport and cosmetics - are being targeted by actions brought by NGOs, local authorities and trade unions. A first judgment on the merits was handed down on 5 December 2023 by the Paris Court of First Instance, in which the Court emphasised the degree of precision expected of the risk mapping, which must make it possible to identify the risk factors in concrete terms in order to determine all the due diligence measures to be implemented. The Court also emphasised the importance of dialogue with stakeholders in the due diligence process. Finally, the Court clarified the role of the judge: it is the judge's responsibility to check that the plan includes concrete, appropriate and effective measures that are consistent with the risk map, it being specified that the judge has the power to order the company to draw up such a map, within the framework of the self-regulation process, safeguard measures that the company must define in association with the stakeholders, as well as more concrete and effective complementary actions linked, where appropriate, to an identified risk, but he cannot substitute himself for the company and the stakeholders in requiring them to introduce precise and detailed measures.

On 18 June 2024, the Environmental Litigation Division of the Paris Court of Appeal, which was set up in January 2024, handed down its first rulings on the admissibility of appeals against orders

issued by the Pre-Trial Judge of the Paris Court of First Instance ruling that injunction proceedings brought against companies in the energy sector on the basis of French duty of care legislation were inadmissible.

Under the terms of these decisions :

- The Court ruled that it is not necessary for the summons and the prior formal notice required by the French corporate law on duty of care to refer to the same vigilance plan: in practical terms, it does not matter whether the associations referred to a 2018 or 2022 vigilance plan as long as they referred in their prior formal notice and summons to the same obligations on the basis of the French corporate law on duty of care.
- The Court also recognised the right of any person with an interest in bringing an action before a court after a formal notice has been issued, regardless of whether that person is the author of the formal notice.
- The Court ruled that local authorities can only act if they can demonstrate a specific local public interest, and not a global one, especially in the case of damage affecting the entire planet: in concrete terms, the Court requires local authorities to demonstrate "a specific damage or a particular repercussion of the risk on their territory".
- The Court confirmed the inadmissibility of an action brought against the subsidiary of the company that owed the duty of care.

Discussions on the merits will now continue before the Paris Court, which will have to rule on the merits of the measures requested by the plaintiff NGOs.

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