

# Corporate due diligence laws and legislative proposals in Europe

Comparative table | June 2021

							
	<u>EUROPEAN PARLIAMENT DUE DILIGENCE RESOLUTION</u>	<u>FRENCH DUTY OF VIGILANCE LAW</u>	<u>GERMAN SUPPLY CHAIN LAW</u>	<u>NORWEGIAN TRANSPARENCY LAW</u>	<u>DUTCH RESPONSIBLE BUSINESS CONDUCT BILL</u>	<u>AUSTRIAN SUPPLY CHAIN BILL</u>	<u>BELGIAN DUTY OF VIGILANCE BILL</u>
STATUS	<ul style="list-style-type: none"> <li>Proposal (European Parliament)</li> </ul>	<ul style="list-style-type: none"> <li>In force</li> </ul>	<ul style="list-style-type: none"> <li>Adopted but not yet in force (2023)</li> </ul>	<ul style="list-style-type: none"> <li>Adopted but not yet in force</li> </ul>	<ul style="list-style-type: none"> <li>Proposal (political parties)</li> </ul>	<ul style="list-style-type: none"> <li>Proposal (political party)</li> </ul>	<ul style="list-style-type: none"> <li>Proposal (political parties)</li> </ul>
NATURE	<ul style="list-style-type: none"> <li>Company law</li> <li>Civil law</li> <li>International private law</li> </ul>	<ul style="list-style-type: none"> <li>Company law</li> <li>Civil law</li> </ul>	<ul style="list-style-type: none"> <li>Administrative law; with implications for</li> <li>Company law</li> <li>Civil law</li> </ul>	<ul style="list-style-type: none"> <li>Company law</li> <li>Consumer law</li> </ul>	<ul style="list-style-type: none"> <li>Company law</li> <li>Civil law</li> <li>Criminal law</li> </ul>	<ul style="list-style-type: none"> <li>Company law</li> <li>Civil law</li> <li>Criminal law</li> </ul>	<ul style="list-style-type: none"> <li>Company law</li> <li>Civil law</li> <li>Criminal law</li> <li>International private law</li> </ul>
SCOPE	<ul style="list-style-type: none"> <li>Large companies, listed SMEs and SMEs in high-risk sector, domiciled or delivering products or services in the EU</li> </ul>	<ul style="list-style-type: none"> <li>Large companies based in FR (&gt;5,000 employees)</li> </ul>	<ul style="list-style-type: none"> <li>Large companies (incl. foreign ones with a DE office) based in DE (&gt;3,000 employees; thereafter from 2024, &gt;1,000 employees)</li> </ul>	<ul style="list-style-type: none"> <li>All companies with &gt;50 employees domiciled or delivering products or services in NO</li> </ul>	<ul style="list-style-type: none"> <li>All companies with &gt;250 employees domiciled in or operating in NL (general duty of care for all firms operating in NL)</li> </ul>	<ul style="list-style-type: none"> <li>All companies delivering products or services in AT (above a certain turnover to be defined)</li> </ul>	<ul style="list-style-type: none"> <li>All companies domiciled or operating in BE</li> <li>Only large companies (≥ 250 employees) are subject to certain obligations</li> </ul>
STANDARDS	<ul style="list-style-type: none"> <li>Human rights</li> <li>Environment</li> <li>Governance</li> </ul>	<ul style="list-style-type: none"> <li>Human rights</li> <li>Health and safety</li> <li>Environment (FR international commitments)</li> </ul>	<ul style="list-style-type: none"> <li>Human rights</li> <li>Environment (Stockholm, Minamata and Basel conventions)</li> </ul>	<ul style="list-style-type: none"> <li>Human rights</li> <li>Working conditions</li> </ul>	<ul style="list-style-type: none"> <li>Human rights</li> <li>Environment (incl. climate)</li> </ul>	<ul style="list-style-type: none"> <li>Human rights</li> <li>Environment</li> </ul>	<ul style="list-style-type: none"> <li>Human rights</li> <li>Labour rights</li> <li>Environment</li> </ul>
DUE DILIGENCE OBLIGATIONS	<ul style="list-style-type: none"> <li>Due diligence (DD) (UNGP/OECD-based)</li> </ul>	<ul style="list-style-type: none"> <li>Due vigilance (DV): establish and implement an annual vigilance plan (UNGP-based)</li> </ul>	<ul style="list-style-type: none"> <li>Due diligence (DD) (partially UNGP/OECD-based)</li> </ul>	<ul style="list-style-type: none"> <li>Due diligence (DD) (OECD-based)</li> <li>Duty to know of salient risks (all companies)</li> </ul>	<ul style="list-style-type: none"> <li>Due diligence (DD) (OECD-based)</li> </ul>	<ul style="list-style-type: none"> <li>Due diligence (DD) (UNGP/OECD-based)</li> </ul>	<ul style="list-style-type: none"> <li>Due diligence (DD): all companies must conduct DD</li> <li>Due vigilance (DV): large companies must establish and implement an annual vigilance plan</li> </ul>
TRANSPARENCY OBLIGATIONS	<ul style="list-style-type: none"> <li>Publish DD strategy on company's website and upload it on EU platform</li> <li>Inform DD strategy to workers' reps, unions, business partners</li> </ul>	<ul style="list-style-type: none"> <li>Publish a vigilance plan in the annual report</li> </ul>	<ul style="list-style-type: none"> <li>Publish annual reports on company's website and submit them to the competent authority</li> </ul>	<ul style="list-style-type: none"> <li>Publish annual reports on company's website and update them in case of significant changes</li> </ul>	<ul style="list-style-type: none"> <li>Publish annual reports in line with the OECD DD Guidance.</li> </ul>	<ul style="list-style-type: none"> <li>Published annual reports and submit them to the competent authority (reports are accessible on the authority's register)</li> </ul>	<ul style="list-style-type: none"> <li>Publish an annual vigilance plan (only large companies (≥ 250 employees))</li> </ul>

REACH OF DUE DILIGENCE	<ul style="list-style-type: none"> <li>Own operations (via subsidiaries) and whole value chain (all direct and indirect business relationships, upstream and downstream)</li> </ul>	<ul style="list-style-type: none"> <li>Own operations (via subsidiaries) and part of the supply chain:               <ul style="list-style-type: none"> <li>directly/indirectly controlled companies</li> <li>subcontractors and suppliers with an "established commercial relationship"</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>DD obligations only apply in full to own operations (incl. subsidiaries) and direct suppliers</li> <li>Companies are required to identify risks linked to indirect suppliers and prevent and mitigate if they obtain "substantiated knowledge" of abuses</li> </ul>	<ul style="list-style-type: none"> <li>Own operations and whole value chain (supply chain and non-supply chain business partners)</li> </ul>	<ul style="list-style-type: none"> <li>Own operations (via subsidiaries) and whole value chain</li> </ul>	<ul style="list-style-type: none"> <li>Own operations (via subsidiaries) and whole supply chain (suppliers and subcontractors)</li> </ul>	<ul style="list-style-type: none"> <li>Own operations (via subsidiaries) and whole value chain (all business relationships, upstream and downstream)</li> </ul>
CIVIL LIABILITY	<ul style="list-style-type: none"> <li>Strict liability for harms caused or contributed to by entities under their control</li> <li>Liability is presumed. Companies must prove they took all due care</li> <li>Joint and several liability</li> <li>EU law applies irrespective of the place of harm</li> </ul>	<ul style="list-style-type: none"> <li>Fault-based liability for harms DV could have prevented, caused by controlled companies (directly/indirectly), and subcontractors and suppliers with "established commercial relationship"</li> <li>Liability is not presumed. Victims must prove the harm, the breach and the causal link</li> </ul>	<ul style="list-style-type: none"> <li>No new civil cause of action created</li> <li>However, law enables injured parties to authorize DE trade unions and NGOs to conduct civil proceedings in DE on their behalf</li> </ul>	<ul style="list-style-type: none"> <li>No explicit provision</li> </ul>	<ul style="list-style-type: none"> <li>Fault-based liability for harms suffered as a result of a violation of the law</li> </ul>	<ul style="list-style-type: none"> <li>Liability for harms caused by subsidiaries and business partners (if direct connection to own goods or activities)</li> <li>Guaranteed access of victims to AT courts</li> <li>Generous limitation periods</li> <li>Financial support for claimants, incl. costs for lawyers, evidence, travel, opinions and interpreters</li> </ul>	<ul style="list-style-type: none"> <li>Strict liability for harms that DD / DV could have prevented</li> <li>The ability to control or influence the relevant subsidiary or value chain partner is considered</li> <li>Liability is presumed. Companies must prove they took all reasonable preventive measures</li> <li>Joint and several liability</li> <li>BE law applies irrespective of the place of harm, unless claimant chooses otherwise</li> </ul>
PUBLIC ENFORCEMENT	<ul style="list-style-type: none"> <li>State authorities have the power to investigate failures to conduct DD and act on concerns raised by third parties</li> <li>State authorities may               <ul style="list-style-type: none"> <li>order injunctive action</li> <li>compel remediation</li> <li>issue fines (incl. exclusion from public procurement and confiscation of commodities)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Any concerned party can file a complaint for non-compliance before the judge</li> <li>The judge may               <ul style="list-style-type: none"> <li>give formal notice to comply in a three-month period</li> <li>if non-compliance persists, the judge may oblige the company to publish a plan and impose periodic penalty payments</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>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</li> <li>Public regulator may               <ul style="list-style-type: none"> <li>order the company to comply within a specific timeline</li> <li>issue fines (up to 2% of annual turnover) for failure to conduct DD (incl. exclusion from public procurement)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Any person can file a request for information about a company's DD before the company</li> <li>The company must answer within three weeks or two months, depending on the request</li> <li>The Consumer Agency has the power to monitor compliance and may               <ul style="list-style-type: none"> <li>request confirmation that a relationship has ceased</li> <li>issue prohibitions or injunctions</li> <li>issue fines</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>Public regulator with 10 FTE staff has the power to investigate failures and act on complaints filed by stakeholders</li> <li>Public regulator may issue fines</li> <li>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</li> </ul>	<ul style="list-style-type: none"> <li>State authority with a civil society advisory board has the power to monitor compliance</li> <li>State authority may               <ul style="list-style-type: none"> <li>order injunctive action</li> <li>issue fines (up to 10% of annual turnover) (incl. exclusion from public procurement and confiscation of commodities)</li> </ul> </li> <li>Criminal liability for serious offenses</li> </ul>	<ul style="list-style-type: none"> <li>State authority has the power to monitor compliance with DV obligations</li> <li>State authority may               <ul style="list-style-type: none"> <li>order injunctive action</li> <li>issue fines (up to €100,000 and incl. exclusion from public procurement)</li> <li>establish guidelines for businesses</li> <li>engage in dialogue with stakeholders</li> <li>publish useful data</li> </ul> </li> <li>Criminal liability of the responsible director</li> </ul>

\* 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.