



Is CSR making a move from ‘soft law’ to ‘hard law’?

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In a bold and unprecedented move that is set to cause a ripple through the top ranks of the corporate world, the French Parliament has recently passed a law to shift what is broadly termed ‘corporate social responsibility’ onto a firm legislative footing¹. Although it has increased significantly in currency in recent years, with most major companies having some kind of initiative in place, CSR has remained resolutely a voluntary activity, a commitment for companies to sign up to and report on should they so wish; a moral endeavour rather than a legal obligation.

The original legislative proposal cites numerous sources of inspiration for the French CSR law, including the Bribery Act 2010, but appears to be primarily motivated by the UN Guiding Principles for Business and Human Rights², agreed in June 2011, and in which the French played a leading role. The legislative proposal further cites the infamous 2013 Rana Plaza factory collapse in Bangladesh, in which 1,138 people lost their lives. The underlying rationale is that at present, national law does not allow parent companies to be held responsible for the actions of their subsidiaries abroad which, in an era of multinational corporate structures and operations, leads to situations like Rana Plaza in which it is difficult for victims to obtain redress. The legislative proposal states:

“In the eyes of the law, each entity comprising the corporate group is considered to be autonomous, with no link to the parent company. So today, if the subsidiary of a transnational company based in Europe but with operations outside of European borders does not respect the relevant law, commits human rights violations or causes permanent environmental harm, the parent company can escape legal liability. This legal wall prevents victims from seeking redress in front of French or European courts, even when it is the decisions of the parent company which are at the root of the harm caused”.

The new law is short in length but punchy in content. Consisting of only two articles, the first sets out that all companies with at least 5,000 employees and with headquarters in France is subject to the new law, along with companies with headquarters elsewhere in the world but with at least 10,000 employees in France. The obligations placed upon the companies affected are as follows. First, a ‘vigilance plan’ must be put in place, and implemented ‘effectively’. The plans must assess, grade and define measures to prevent and reduce risks to human rights, health and safety and the environment from both the company’s activities, and those of its subsidiaries, wherever they operate. Second, the companies must regularly monitor and evaluate the actions of sub-contractors and even suppliers with regard to the risks their activities pose. Third, each company must evaluate the implementation and effectiveness of the measures it puts in place.

¹ Loi sur le devoir de vigilance des sociétés mères et des entreprises donneuses d’ordre.

² http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

To assist in companies being held to account for their actions with regard to the first article, the vigilance plan and the monitoring of its implementation must be made public. The penalties for non-compliance with the first article, meanwhile, are set out in the second. They are designed to ensure that the first article is taken seriously. A company found to be in breach of its obligations will be sent a notice specifying the actions the company needs to take. Absent compliance with those requirements within a three-month timeframe, the courts will have the power to summons a company representative. A fine can be imposed on the company of up to 10 million euros, depending on the seriousness of the breach.

Perhaps unsurprisingly, the law has taken two years to work its way through both chambers of the French Parliament, and is currently being examined by the French Constitutional Court after several parliamentarians requested it to examine the law's compatibility with the French constitution. It therefore may ultimately take effect in an amended form, or indeed not at all if the court finds it to be incompatible with the principles underpinning the French state. Nevertheless, the move has almost certainly triggered the start of CSR's transition from 'soft law' to something more binding that places significant duties on the largest multinational companies.