

DUTY OF VIGILANCE

94 Stakeholders and the Duty of Vigilance



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The law No. 2017-399 of 27 March 2017 on the corporate duty of vigilance for parent and instructing companies¹ ("the Law") sought to reflect in law the political, social and economic importance of multinational companies, and strengthen the accountability of parent companies. It is a legislative innovation, building on both the existing soft and hard legal frameworks, thus challenging its observers on their conceptions of law and legal theory. In particular, the Law introduces into substantive law some apparently unidentified legal objects, which can be new to lawyers.

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It appears to be the case for the "stakeholders", which are mentioned in Article 1 of the Law, in the paragraphs regarding the establishment of the vigilance plan.² While this concept seems rather new to lawyers, it is not completely foreign. Stemming from British theories on corporate governance³, the notion can be found in soft law instruments of Corporate Social Responsibility (CSR). These instruments almost always include the concept of stakeholders or propose a definition. For instance, in the OECD

Guidelines for Multinational Enterprises⁴ ("OECD Guidelines"), the United Nations Guiding Principles on Business and Human Rights⁵ ("Guiding Principles"), ISO 26000 Guidance on Social Responsibility, or the AA1000 Stakeholder Engagement Standard.⁶

1 JO March 28, 2017, text no.1.

2 L. no. 2017-399, 27 March 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre, art. 1: "The plan shall be drafted in association with the company's stakeholders, and where appropriate, within multiparty initiatives that exist in the subsidiaries or at a territorial level".

3 See N. Cuzacq, « Quelle place peut-on octroyer aux parties prenantes dans le puzzle de la gouvernance de la société ? », *D.z.*, 2017, p.1844. – M.C. Caillet, « Du devoir de vigilance aux plans de vigilance; quelle mise en œuvre ? », *D. soc.*, 2017, p.828, referring to R. Edward Freeman's work on stakeholders' theory: R.E. Freeman and D.L. Reed, "Stockholders and Stakeholders: A new perspective on Corporate Governance", *California Management Review*, Vol.25, 1983, p.91. – See also R.E. Freeman, *Strategic Management: A Stakeholder Approach*, Boston, Pitman, 1984, p.46.

4 See OECD, *Guidelines for Multinational Enterprises*, 2011, p.13: "Enterprises should fully take into account established policies in the countries in which they operate, and consider the views of other stakeholders".

5 See UN, *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, principle 18: "To enable business enterprises to assess their human rights impacts accurately, they should seek to understand the concerns of potentially affected stakeholders by consulting them directly in a manner that takes into account language and other potential barriers to effective engagement".

6 Definitions of ISO and AA standards are inserted in *Comité 21*, « *Guide Responsabilité Sociétale des associations. Méthodes, outils et pratiques* », Ed. 2015. A generic definition taken from AA1000SE standard is the following: "Stakeholders are those groups who affect and/or could be affected by an organisation's activities, products or services and associated performance". This definition emphasises the reciprocal influence of stakeholders and enterprises, unlike the definition chosen in ISO 26000, more sibylline and literal: "individual or group that has an interest in any decision or activity of an organisation". The aim of a dialogue between the organisation and one or more of its stakeholders is to "provid[e] an informed basis for the organisation's decisions", according to ISO 26000. It can take the form of multiparty panels, surveys, forums, blogs, etc.

Recently, the occurrences of the notion of stakeholders in national law have increased, in particular in legislation linked to CSR issues.⁷ Though the concept of stakeholders is not defined in the Law⁸, the explanatory memorandum [*exposé des motifs*] of the draft law of February 2015 referred to the definition given in the law of December 31, 2012 on the creation of the Public Investment Bank [*Banque publique d'investissement*], pursuant to which a vigilance plan "must undergo a consultation between the company and its stakeholders, defined as all individuals who participate in its economic life and actors of the civil society influenced, directly or indirectly, by its activities [...]".⁹

The elaboration of a vigilance plan in association with the stakeholders within multiparty sectoral initiatives or at the territorial level is not presented as a duty in itself, but rather as an incentive. It actually appears that the French Constitutional Court [*Conseil constitutionnel*] approved the mention of stakeholders in the Law because it was not made mandatory.¹⁰

The eminently elastic and multi-faceted nature of stakeholders does not, *prima facie*, satisfy the requirements of legal certainty, thereby making it difficult to impose a legal obligation based on this notion. The soft and hard legislations mentioned above are evidence of the very diverse and unsettled nature of stakeholders. The concept is seldom used in the singular. In some cases, the suggested definition comes with an indicative but not exhaustive list of individuals or groups, internal or external to the company, which can enter the scope of the definition.¹¹ Such a list may include subsidiaries, subcontractors, suppliers, trade unions, non-governmental organisations (NGO), local residents, governments, investors, consumers...

Despite this diverse nature, stakeholders all share a common feature, which is to have their rights and obligations affected directly or

indirectly by a given company's activities. In particular, for the law on the corporate duty of vigilance, these rights and obligations will be affected by the execution or the failure to comply with the duty of vigilance. Thus, although stakeholders are not exhaustively targeted by the Law, they can be perfectly identified by each company in the process of establishing and implementing its vigilance plan.

It actually seems that the voluntary nature of the provision on stakeholders as well as the interpretation given by the Constitutional Court fall within the logic of compromise sought by the Law, between soft and hard law, self-regulation and regulation. Beyond the consideration of constitutional law, the idea was to prevent the Law from over-defining a soft legal concept. Its main interest is precisely to preserve the self-regulation capacity of companies, which they were very keen to lobby for during the past decades, calling for CSR to be maintained in the realm of soft law. The diversity of stakeholders requires each company to identify them and operate a deliberate choice, in the spirit of self-regulation, between possibly conflicting interests.¹²

Moreover, because it is a voluntary feature, it avoids any risk of diluting responsibility for damages linked to a flawed vigilance plan onto other stakeholders, rather than the parent company itself. This is also why proponents of the Law were very leery of a mandatory integration of stakeholders and their precise definition in the Law. They aimed first and foremost at holding parent companies accountable and did not want companies, under the cover of consultation, to obtain the endorsement of other actors and displace their responsibility for the establishment and implementation of the vigilance plan.

Therefore, the provision regarding stakeholders appears as a reminder of the adoption context, of the preexistence of a soft legal framework; it should inform companies on the practices of their respective industry and on what could reasonably be expected from them if their self-regulation process was assessed.¹³

But one shall not be mistaken: stakeholders are anything but accessory to the Law. They are essential in many ways.

7 L. no. 2010-788, 12 July 2010 portant engagement national pour l'environnement, art. L. 566-11: "Preliminary flood risk assessments, flood maps, flood risk maps and flood risk management plans are developed and updated with stakeholders identified by the administrative authority, foremost of which are the local authorities and their relevant groups in the field of urban planning and spatial planning, as well as the "basin committee" [*Comité de bassin*] and the territorial public institutions of the basin and the territorial collectivity of Corsica for its part". - L. no. 2015-992, 17 August 2015 relative à la transition énergétique pour la croissance verte, art. 88: "Depending on the industry, the statement of work may provide for the setting up by the eco-organisation of financial incentives defined in consultation with the stakeholders, for waste prevention and management near the production points", art. 92 and 100. - L. no. 2014-856, 31 July 2014 relative à l'Économie Sociale et Solidaire (ESS), art. 1, I, al. 2 defining Social Solidarity Economy [*l'Économie Sociale et Solidaire*]: "Democratic governance, defined and organised by the Articles of Association, provide for information and participation, whose expression is not only linked to the capital contribution or the amount of the financial contribution of partners, employees and stakeholders in the company's achievements".

8 L. no. 2017-399, 27 March 2017, *supra*, art. 1.

9 AN, report no. 2578 [*exposé des motifs de la proposition de loi*] (explanatory memorandum of the draft law).

10 Const. court., Dec. no. 2017-750 DC, 23 March 2017, §22: "[t]he provisions according to which the vigilance plan should be developed with the 'company's stakeholders' are intended to encourage such an outcome. Under these circumstances, the legislator did not violate the constitutional objective of accessibility and intelligibility of the law".

11 See T. Sachs, « La loi sur le devoir de vigilance des sociétés mères et sociétés donneuses d'ordre: les ingrédients d'une corégulation », *RDJ* 2017, p.380, it would be different types of interlocutors "which are all actors whose interests or those they represent may be affected by the execution or the failure to comply with the duty of vigilance: subsidiaries, subcontractors, suppliers, non-governmental organisations, consumer associations, etc."

12 See N. Cuzacq, « Quelle place peut-on octroyer aux parties prenantes dans le processus de la gouvernance des sociétés ? », *prec.*, "even if they adopt a collaborative logic, the sum of the rational choices of each stakeholder does not necessarily lead to a rational collective choice. The diversity of stakeholder interests reinforces the hypothesis of this impossibility theorem".

13 *Observations du gouvernement sur la loi relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre*: "The law-maker wanted to indicate that the plan was intended to be drawn up in association with the stakeholders within subsidiaries or at a territorial level. These provisions do not aim to be mandatory, but they underline the interesting process of relying on the initiatives already carried out by various actors who set up agreements for certain industries or certain countries, pulling together not only subcontractors and suppliers, but also non-governmental organisations and representatives of civil society".

1. Stakeholders' Role in the Adoption of the Law on the Corporate Duty of Vigilance

The advocacy and the adoption process of the Law involved an unprecedented coalition of NGOs, academics, Members of Parliament and trade unions, from all sides of the political spectrum. It sought to reflect in law the political, social and economic importance of multinational corporations and strengthen accountability of parent companies.

Sherpa and other members of the Citizens' Forum for Corporate Social Responsibility [*Forum Citoyen pour la Responsabilité Sociale des Entreprises*] participated in the drafting of the first bill introduced by green MPs in 2013. It set forth an accountability trypic for parent and instructing companies, when they failed to exercise vigilance over their subsidiaries, suppliers, and foreign subcontractors. The bill aimed at introducing a new liability regime in the French Civil Code, (Civ. Code, Art. 1386-19) with a presumption of liability on the company, as well as modifying the French Commercial Code (Comm. Code, Art. L-233-41) and the French Criminal Code (Crim. Code, Art. 121-3).

Though this draft law did not pass the National Assembly's vote¹⁴, the organisations involved in this advocacy process developed considerable expertise and comprehensive knowledge of CSR issues that are recognised today.¹⁵

2. The Notion of Stakeholders Essential to the Purpose of the Vigilance Plan and its Content

As mentioned above, *in fine*, the exhaustive identification of all stakeholders and the choice of relevant information and measures to be provided in the plan shall be conducted by the company. First, this is because the company is the debtor of the duty of vigilance, which opens the door to self-regulation and accountability. Second, the company itself is in the best position to gather the necessary means to fulfill the duty of vigilance.

The individualised identification of stakeholders is a crucial preliminary step in the Law because the company has the duty to identify and prevent adverse impacts on human rights and on the environment through its vigilance plan. Without identifying its potential stakeholders and the ones effectively affected, the company will not be able to determine its impact. Therefore, the purpose of the Law itself, as well as the ambit and the mandatory content of the vigilance plan, must guide the company's choice of its stakeholders.¹⁶ The ambit of the vigilance plan must cover

subsidiaries, suppliers and subcontractors as does the scope of assessment procedures.¹⁷ Impact mapping cannot be established without taking into account the stakeholders.¹⁸ They also have a major role to play in the development and the implementation of the alert and complaint mechanism required by the Law.¹⁹

A. - Stakeholders and Impact Mapping

The identification of stakeholders is inherent to the impact mapping specific to each company and appears as one of the first steps that ought to be carried out by the debtors the vigilance plans.

In a related matter, the French Anti-Corruption Agency (FAA) recently opened for consultation its draft recommendations on the prevention and detection of breaches of the duty of probity.²⁰ Amongst the first published elements are the recommendations on corruption risk mapping. According to this document, risk mapping requires first and foremost to identify internal stakeholders that should be mobilised.²¹ The FAA project then recommends identifying the inherent risks of the activities and "in this context, risk mapping must take into account the intervention, in all the processes, of third parties to the organisation concerned, when the intervention may expose the party to corruption (risk factor). This verification involves the implementation of third-party assessment procedures ("due diligence")".

It is therefore up to each company to identify its most relevant stakeholders for its risk mapping, based on its activity, its structure, and its locations. The same applies to any new investment or infrastructure project which ought to be subjected to a prior impact study, including a mapping of stakeholders. Beside "good practices" that companies are fond of, both international law and national law alike are innervated with principles such as the free prior and informed consent of affected parties, which should inform companies on these types of development projects.²²

It will be necessary to include both internal stakeholders, with whom the company has usually already started a dialogue, and external stakeholders, with whom companies might be less comfortable. Among the internal stakeholders, we think in particular of, but

14 AN, draft law no. 1519, 6 November 2013.

15 See M. A Moreau, « L'originalité de la loi française du 27 mars 2017 relative au devoir de vigilance dans les chaînes d'approvisionnement mondiales », D. soc. 2017, p.792.

16 See M.C. Caillet, « Du devoir de vigilance aux plans de vigilance ; quelle mise en œuvre ? », *prec.*

17 L. no. 2017-399, 27 March 2017, *prec.*, art. 1, al. 2: "Procédures régulièrement évaluant la situation de filiales, sous-traitants ou fournisseurs avec lesquels une relation commerciale établie existe, avec regard sur la cartographie".

18 L. no. 2017-399, 27 March 2017, *prec.*, art. 1, al. 1: "A risk mapping intended for their identification, analysis and hierarchy".

19 L. no. 2017-399, 27 March 2017, *prec.*, art. 1, al. 4: "An alert mechanism and a collection of reports relating to the existence or the realisation of risks, established in consultation with the representative trade union organisations in the said company".

20 L. no. 2016-1691, 9 December 2016 relative à la transparence, à la lutte contre la corruption et à la modernisation de la vie économique, art. 3-2°: the FAA [AFA] "develops recommendations to help public and private law legal entities prevent and detect acts of corruption, influence-peddling, extortion, illegal conflicts of interest, misappropriation of public funds, and favouritism".

21 AFA, *La cartographie des risques*, 4 October 2017: <https://www.economie.gouv.fr/lutte-contre-corruption-consultation-agence-francaise-anticorruption>

22 See M.C. Caillet, « Du devoir de vigilance aux plans de vigilance ; quelle mise en œuvre ? », *prec.*

not exclusively, the different departments such as CSR, legal, purchasing, audit, but also financial, lobbying and public affairs, of the subsidiaries, employees, trade unions, ... External stakeholders may include subcontractors, suppliers, NGOs, associations, international organisations, consumers, local residents and governments...

The ISO 26000 standard suggests ways to navigate the diversity of stakeholders: what matters is that they are representative and credible.²³ We would gladly include criteria of independence for external stakeholders as well, so as to ensure a plurality of opinions, which implies in particular not to rely on stakeholders merely because we count on their complacency.²⁴

Specifically, with regard to NGOs, which often crystallise the companies' concerns because of their growing reputational and legal impact, it is important to remember that they represent a wide variety of opinions and modes of action. Thus, NGOs close to parent companies cannot and do not want to play the same role in vigilance plans as NGOs located near subcontractors or suppliers in third countries.

For example, Sherpa, in order to protect its mandate, does not wish to respond to individual company's requests for the establishment of vigilance plans. The organisation is not meant to assess the complexity of the value chain of each company in each industry, or to validate *ex ante* the relevance of each impact and stakeholders mapping. In addition, the association is committed to maintaining its margin of action against companies subjected to the duty of vigilance. It considers that maintaining a watchdog status is important to act effectively and impartially in the event of violations of human rights by a company.

In terms of prevention and the establishment of vigilance plans, companies should identify relevant stakeholders in order to obtain essential operational information on their human rights impacts, which is the very purpose of vigilance plans. If Sherpa, as a French NGO, is aware of situations of human rights violations or needs of remediation at various levels of the supply chain, it is often because this information is collected or transmitted, as a matter of last resort, by those directly affected. It is primarily towards these stakeholders that companies should make an effort of identification, dialoguing and integration.²⁵

Finally, companies should publish the list of identified stakeholders as comprehensively as possible and justify the choices made.²⁶ Indeed, stakeholders have divergent interests because of their great diversity, and the sum of their interests does not necessarily lead to a rational or optimal choice. It is therefore necessary that the company make an explicit choice between conflicting positions and then upholds the consequences in terms of responsibility.²⁷ In addition, because the Law emphasises the prevention and the means implemented by the company, it is the work of identification and of integration of the impacts that will be scrutinised, and the company will sometimes be asked to justify itself. A proper level of transparency will also allow "forgotten" stakeholders to come forward, particularly through the alert mechanisms and thus ensure an effective update of the impact mapping.

B. - Stakeholders and Alert Mechanisms

The integration of stakeholders is not a one-off exercise, but rather a constantly renewed, iterative process, particularly through the development and management of alerts, complaints and reporting. The alert mechanism should also be the focus of attention when it comes to determining which stakeholders should be involved in its development, have access to it, and the way one should deal with the information. Once again, the parent company should put some efforts to identify relevant, representative, diverse and credible stakeholders.

Alert mechanisms require looking more specifically at the company's historical stakeholders: trade unions.²⁸ They have a very specific role in the Law because of both the purpose of the plan and of the prerogatives that are explicitly and imperatively given to them, namely the participation in the development of the alert mechanism.²⁹

The company will then need to choose, depending on its stakeholders, its activities and its impacts, different methods of alerting and reporting: for example they may promote feedback through subsidiaries, subcontractors and suppliers, or provide a centralised alert mechanism at the level of the parent company. They will also have to decide which tools to set up (texting, platform, email, referee) and a regulatory framework to control the veracity of the information given, manage advertising, prevent retaliations, comply with the requirements in terms of personal data management or international standards, such as the Guiding Principles, which offer very interesting guidelines on this subject.

23 See ISO 26 000, art. 5.3.2: "An organisation should examine whether groups claiming to speak on behalf of specific stakeholders or advocating specific causes are representative and credible".

24 See N. Cuzacq, « *Quelle place peut-on octroyer aux parties-prenantes dans le puzzle de la gouvernance des sociétés?* », *prec.*, who encourages not to choose stakeholders for their pusillanimity and reminds us that "a stakeholder must remain a master of his voice and not be the voice of a master".

25 See T. Sachs, « *La loi sur le devoir de vigilance des sociétés mères et sociétés donneuses d'ordre: les ingrédients d'une corégulation* », *prec.*, esp. p. 380: "Given the content of the vigilance plan, it is difficult to imagine that the dominant society can deprive itself of the help of local actors, where the different activities are located".

26 See N. Cuzacq, « *Quelle place peut-on octroyer aux parties-prenantes dans le puzzle de la gouvernance des sociétés?* », *prec.*, who suggests that "it would be legitimate for companies, debtors of the obligation, to justify on their websites the choice of stakeholders that they associate with the development of vigilance plans".

27 *Ibid.*, "even if they adopt a collaborative logic, the sum of the rational choices of each stakeholder does not necessarily lead to a rational collective choice. The diversity of stakeholder interests reinforces the hypothesis of this impossibility theorem".

28 See T. Sachs, « *La loi sur le devoir de vigilance des sociétés mères et sociétés donneuses d'ordre: les ingrédients d'une corégulation* », *prec.*

29 *L. no. 2017-399, 27 March 2017, prec., art. 1, al. 4.*

Retaliation risks must be given heightened attention, as evidenced by the increased scrutiny over topics such as whistleblowing or Strategic Lawsuit Against Public Participation (SLAPPs) in France, but also at the UN level within bodies mandated on the issue of Business and Human Rights³⁰. Therefore, companies must ensure that the alert and complaint procedures they set up are compatible with freedom of expression and information and that they do not expose their users to a heightened risk of lawsuits and other retaliation practices.

3. Stakeholders' Essential Role in the Control of the Effective Implementation of the Law on the Corporate Duty of Vigilance

The Law provides three judicial mechanisms to ensure and control the effective implementation of the duty of vigilance: a formal notice to comply [*mise en demeure*], an injunction with periodic penalty payments [*astreintes*] [Translator Note: periodic penalty payments are injunctive fines payable on a daily or per-event basis until the defendant satisfies a given obligation], and a civil liability action in case of a damage. These mechanisms are available to any party with standing, which includes, *ipso facto*, stakeholders whose rights and obligations are affected by the execution or the failure to comply with the duty of vigilance, for example local communities, employees, consumers, trade unions, associations or NGOs.³¹

NGOs have recently benefited from a broader understanding of their *locus standi*, which reflects the imperatives of access to justice and is perfectly justified with regard to the mandate, the social interest and the expertise developed by these entities.³²

Debates over *locus standi* occurred throughout the parliamentary debates on the Law³³ and before the Constitutional Court. These debates highlighted the emerging role of non-profits and NGOs in the field of strategic litigation on business and human rights in France, and the reluctance of the private sector which was worried that the Law was a covert attempt to introduce some sort of class-action for human rights violations.

As far as the civil liability action is concerned, it must be reminded that the Law emphasises the means used by the company to self-regulate and carry out its duty of vigilance, rather than the outcome. Furthermore, as evidenced by the reference to the common system of liability, it will be up to the claimants to prove a company's breach – a lack of reasonable vigilance –, damage and a causal link. If the vigilance plan is thoroughly established, published and implemented, the company should not be held liable. If not, NGOs, which are more and more experienced in litigation, could play a major role in securing the gathering of evidence on the ground through their networks, or in analysing the vigilance plans. They will support direct victims, and alleviate the burden of proof that currently weighs on them, which can discourage victims from acting. In addition, these stakeholders will make sure to send alerts and notices to comply, as these elements can constitute evidence of the lack of vigilance of the parent company and of the reasonable character, or not, of the measures employed to fulfil their duty of vigilance.

Finally, the potential publication of a court decision on liability provided for in the Law³⁴ also calls for control by stakeholders, including consumers and investors, of the effectiveness of the plan, by playing on the reputational risks of the company.³⁵

30 Sherpa, « *Quand les multinationales réduisent les défenseurs des droits humains au silence* », *La Tribune*, 23 mars 2017. See also S. Fontaine, S. Savry-Cattan et C. Villette, research report, « *Les poursuites stratégiques altérant le débat public* », 2017: <http://www.sciencespo.fr/ecole-de-droit/sites/sciencespo.fr/ecole-de-droit/files/rapport-final-slapp.pdf> - UN Working Group on Business and Human Rights, *Human rights defenders and civic space: the business and human rights dimension*, 2017: http://www.ohchr.org/Documents/Issues/Business/ForumSession6/UNWG_ProjectHRDsBackgroundNote12052017.pdf

31 See A. Danis-Fatôme et G. Viney, « *La responsabilité civile dans la loi relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre* », *D.2017*, p. 1617.

32 *Ibid.*, "We know that the evolution of French substantive law has led to progressively broaden the conditions of action for associations defending a collective interest. The role played by several NGOs - and several trade unions - in the adoption of the law on the duty of vigilance showed that these legal entities were well aware of the sometimes unorthodox behaviour adopted by certain companies whose subsidiaries or subcontractors develop their activities abroad. It therefore seems fairly coherent to consider them to be in a good position to take legal action when they raise doubts as to whether the plan of vigilance adopted is sufficient and effective. The growing role of associations as actors of the civil society is a reality which can inspire reservations, but it seems that their independence regarding companies put them in a different situation than the unions. The trade unions, because they defend an identified interest, that of the employees, were quicker than the association in using legal actions to defend the collective interest of the employees."

However, this particular mission of defence of a category of victims is likely to complicate their legal actions in some cases. The actions of trade unions and associations could thus appear to be complementary".

33 *Ibid.*, "In this regard, one can note that the restriction set forth in the draft bill, pursuant to which "any association recognised as acting for the public good, any association that has been approved or regularly registered for at least five years, whose statutory purpose includes the defence of interests" mentioned by the text 'can take legal action' has been deleted. This being deleted, and considering the conception of *locus standi* in French law, it is only logical that the articles of association of each organisation will enable to determine if it has, or not, a *locus standi*".

34 *L. no. 2017-399, 27 March 2017, prec., art. 2.* "The court may order the publication, dissemination or display of its decision or an extract thereof, according to the terms it specifies. The costs shall be paid by the convicted person".

35 See N. Cuzacq, « *Le mécanisme du Name and Shame ou la sanction médiatique comme mode de régulation des entreprises* », *RTD com. 2017*, p. 473 ; See also X. Boucobza & Y.M. Serinet, « *Loi 'Sapin 2' et devoir de vigilance : l'entreprise face aux nouveaux défis de la compliance* », *D. 2017*, p. 1622: "[...]The commitment of CSR actors to an outstanding behaviour drew its efficiency on the threat of reputational or financial damages triggered by angry NGOs, unions, consumers, or shareholders rather than on the sanction of the law. From now on, they will do it under the threat of an effective legal constraint".

4. Conclusion

Many companies and their advisors will see the paradox of the law, which encourages the association of stakeholders without making it imperative and without defining them, even though the identification, the inclusion and the contribution of these stakeholders seems to be a prerequisite for the proper execution of the duty of vigilance.

This is because the Law uniquely combines mechanisms stemming from soft and hard law and aims to strengthen the accountability

of parent companies in allowing them to self-regulate, under the control of both the judge and stakeholders.

Thus, the implication of stakeholders is anything but trivial and remains the responsibility of the companies. It cannot dissipate the liability of the parent companies towards public interest issues, which is at the heart of the law on the corporate duty of vigilance.³⁶ Companies will have to identify various stakeholders and develop numerous modes of association, consultation, contribution and information.

36 N. Cuzacq, « *Quelle place peut-on octroyer aux parties-prenantes dans le puzzle de la gouvernance des sociétés?* », *prec.*, "It seems to us that the approach with stakeholders must be complementary, and not substitute, state, interstate or supra-state regulation. This reduces its scope but makes it more realistic. The idea of a spontaneous adjustment of the interests of the stakeholders, isolated from an institutional logic, seems a delusion to us [...]. The corporate duty of vigilance law is in line with this approach because the legislator links the power of parent and instructing companies to legal liability, and suggests an additional role for stakeholders in the development of the vigilance plan".