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Dutch and French Legislatures Introduce New Human Rights Due Diligence Reporting Requirements

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In February 2017, legislatures in the Netherlands and France took significant steps to implement mandatory due diligence and reporting rules regarding the impact of an employer's operations and supply chains on human rights. Depending on the success of these measures, which are at different stages in the legislative lifecycle, the Netherlands and France may join a growing list of jurisdictions having legally enforceable human-rights-related obligations for private companies seeking to operate in their territories or to access their markets.

The Dutch Bill

On February 7, 2017, the Dutch Parliament adopted a bill that, if enacted, would require covered companies to investigate the existence of child labor within their operations or supply chains.¹ The companies covered by the bill include not only those registered in the Netherlands, but also companies selling products to Dutch consumers—including online retailers. Small businesses are exempted under the bill. The bill provides examples of these exempted businesses, including hairdressers, language-training businesses, and small bookkeeping businesses. The bill relies on the definition of “child labor” as used in International Labour Organisation conventions.

If a company's investigation reveals that child labor may have contributed to its products or services, the company must develop an action plan to address and remedy these labor violations. The action plan must comport with the principles of the UN Guiding Principles on Business and Human Rights (the “UN Guiding Principles”) and the OECD Guidelines for Multinational Enterprises.

¹ See Wet zorgplicht kinderarbeid (“Child Labor Due Diligence Law”), No. 34 506 (2016-2017) *text available at*: https://www.eerstekamer.nl/behandeling/20170207/gewijzigd_voorstel_van_wet/document3/f=/vkbkk8pud2zt.pdf

Further, the company must submit a statement to a “Supervisory Body” within the government declaring that the company undertook the required due diligence. The Supervisory Body will publish these declarations online.

The government can fine companies up to 4,100 euros for failing to make the required declarations. Moreover, if a noncompliant company receives a fine but still fails to submit the declaration within five years of the law’s effective date, the penalty may include imprisonment of the company’s directors for up to six months. Any natural person or corporate entity with a demonstrable interest can file complaints with the Supervisory Body when a covered business fails to make the required declaration or when a stakeholder has proof a business did not, in fact, comply with the required due diligence.

If enacted, the bill would become effective in January 2020. Importantly, many of the law’s specifics – such as whether some companies would be exempt from the law’s requirements—are yet to be clarified and are expected to be codified through a General Administrative Order. The bill is now set for consideration by the Dutch Senate.

The French Law

On February 21, 2017, the French Parliament adopted into law a new due diligence measure requiring large French companies to create and implement a “vigilance plan” aimed at identifying and preventing potential human rights violations—including those associated with subsidiaries and supply chain members.² The law applies to any company headquartered in France that has: (a) 5,000 or more employees, including employees of any French subsidiaries; or (b) 10,000 or more employees, including French and foreign subsidiaries.

Although the French government has authority to augment the required elements, at a basic level, each vigilance plan must include:

- a method for identifying, analyzing, and prioritizing the different risk areas;
- procedures for regularly evaluating subsidiaries, subcontractors, and suppliers;
- actions to mitigate identified risks;
- mechanisms for reporting and receiving alerts about violations; and
- methods for tracking the plan’s efficacy.

The law requires that the vigilance plan address activities by the company’s subcontractors and suppliers (“supply chain entities”), where the company maintains an on-going business relationship with the supply chain entities and the activities at issue involve its business relationship. The vigilance plan, as well as the minutes related to its implementation, must be made available to the public.

The law contains stringent enforcement mechanisms. Any person with a demonstrable interest may demand that a company comply with the due diligence requirements (i.e., creating and implementing a vigilance plan), and, if the company fails to comply, a court may fine the offending company up to 10 million euros, depending on the severity of the breach and other attendant circumstances. Further, if a company’s activities—or the activities of its supply chain entities—cause harm that could have been avoided by implementing its vigilance plan, the size of the fine can be trebled (up to 30 million euros), depending on the severity and circumstances of the breach and the damage caused, and the company can be ordered to pay damages to the victims.

² Proposition de loi relative au devoir de vigilance des sociétés mères et des entreprises donneuses d’ordre (Texte Adopté no. 924). Available at: <http://www.assemblee-nationale.fr/14/ta/ta0924.asp>. See also *Proposed French Law Would Impose New Due Diligence Obligations on Certain Employers and Their Supply Chains*, Littler ASAP (Dec. 12, 2016), discussing the bill that led to this law.

Although covered French companies should be cognizant of these new developments, the new law is already facing a constitutional challenge, and France's Constitutional Council has until March 23, 2017, to render a decision with respect to its constitutionality.

The Dutch bill and the French law follow the model of mandatory disclosures in the UK Modern Slavery Act and the California Transparency in Supply Chains Act.³ These laws all compel employers to publicly disclose compliance efforts relating to human trafficking, forced labor, and other human rights issues, thus significantly impacting corporate reputations, and ultimately affecting consumer choices. These legislative attempts also reinforce continuing and recent efforts, at the sub-national, national, and supra-national level, to codify non-binding international norms—like the UN Guiding Principles, which promote corporate respect for human rights—into enforceable “hard law” obligations.

Littler will continue to monitor these developments and report on any significant developments.

³ See John C. Kloosterman, [California Employers Have Another Notice Posting Obligation – Have You Posted Your Human Trafficking Notice?](#), Littler Insight (Apr. 3, 2013); see also Tahl Tyson, [United Kingdom: New Law to Combat Supply Chain Slavery and Human Trafficking](#), Littler ASAP (July 14, 2015).