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France

ENVIRONMENTAL, SOCIAL AND GOVERNANCE

Contributor

Signature Litigation AARPI



Sylvie Gallage-Alwis

Partner | sylvie.gallage-alwis@signaturelitigation.com

Gaëtan de Robillard

Associate | gaetan.derobillard@signaturelitigation.com

This country-specific Q&A provides an overview of environmental, social and governance laws and regulations applicable in France.

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FRANCE

ENVIRONMENTAL, SOCIAL AND GOVERNANCE



1. Climate - the law governing operations that emit Greenhouse Gases (e.g. carbon trading) is addressed by Environment and Climate Change international guides, in respect of ESG: a. Is there any statutory duty to implement net zero business strategies; b. Is the use of carbon offsets to meet net zero or carbon neutral commitments regulated; c. Have there been any test cases brought against companies for undeliverable net zero strategies; d. Have there been any test cases brought against companies for their proportionate contribution to global levels of greenhouse gases (GHGs)?

Pursuant to Article L. 225-102-1 of the French Commercial Code, companies reaching certain thresholds must include a declaration of non-financial performance in their management report. This declaration must *inter alia* include information on the significant greenhouse gas emissions generated by the company's activity, the reduction targets set for greenhouse gas emissions and the means implemented to achieve them (Article R. 225-105 of the French Commercial Code).

These provisions result from the implementation into French law of Directive 2014/95/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups (NFRD) by Ministerial Order No. 2017-1180 of 19 July 2017. NFRD was however replaced by the 2022/2464 Corporate Sustainability Reporting Directive (CSRD).

CSRD was transposed into French law by Ministerial Order No. 2023-1142 of 6 December 2023. A Decree No. 2023-1394 was also published on 30 December 2023, with the aim of specifying the information to be included in the management report. This information covers, in particular, the company's time-bound sustainability

objectives and the progress made to achieve them, including, where appropriate, greenhouse gas emission reduction targets for at least 2030 and 2050 (Article R. 232-8-4 of Ministerial Decree No. 2023-1394).

The 2020/852 Taxonomy Regulation of 18 June 2020, which is part of the goal of carbon neutrality by 2050 set out in the European Green Deal, naturally also applies in France.

Furthermore, companies with at least 500 employees are required to draw up a balance sheet of their greenhouse gas emissions (Articles L. 229-25 and R. 229-46 to R. 229-550-1 of the French Environmental Code).

Carbon offsetting in France is mainly regulated by EU Law, in particular by the EU Emissions Trading Scheme ("EU ETS"). The EU ETS was established under the Kyoto Protocol and is governed by Directives 2003/87/EC and 2004/101/EC, supplemented by Directives 2008/101/EC, 2009/29/EC and Regulation 1031/2010. As a result of these pieces of legislation, a carbon market has been created within the EU for a large number of activities listed in Article L. 229-15 of the French Environmental Code. Allowances are distributed partly free of charge and partly by auction.

To our knowledge, no test case has yet been brought against companies for undeliverable net zero strategies. There are, however, some pending cases brought before the French Courts on the ground of French Law No. 2017-399 of 27 March 2017 on the duty of vigilance. Since Signature Litigation is involved in one of these cases, it is unable to make any comment on them.

To date, there has been no case law nor action to hold French companies liable on the grounds of their proportional contribution to global levels of greenhouse gas emissions. This can be explained by the fact that claimants would eventually have to rely either on strict liability regime or on a tort liability regime, for which causation must be established, which would be rather difficult.

2. Biodiversity - are new projects required to demonstrate biodiversity net gain to receive development consent?

Article R. 122-2 of the French Environmental Code and its attached table, which transposes Directive 2011/92/EU into French law, lists the projects subject to a systematic prior environmental study and those that may be subject to a case-by-case study upon decision of the administrative authority pursuant to Article R. 122-3 of the French Environmental Code. The content of the study is defined by Article R. 122-5 of the French Environmental Code and includes a comprehensive analysis of the project's impact on biodiversity. This study is the responsibility of the project owner.

In addition, the non-financial performance declaration resulting from Articles L. 225-102-1 and R. 225-105 of the French Commercial Code, further developed in question 1, shall include information on the environmental impact of the company's activity.

3. Water - are companies required to report on water usage?

Pursuant to Article R. 225-105 of the French Commercial Code, the non-financial performance declaration addressed in question 1 shall include information on water consumption and supply depending on local constraint.

4. Forever chemicals - have there been any test cases brought against companies for product liability or pollution of the environment related to forever chemicals such as Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS)?

In 2023, a group of environmental associations and individuals initiated environmental summary proceedings (*référé pénal environnemental*) against Arkema France, because of the alleged contamination of the Rhône area with Perfluoroalkyl and Polyfluoroalkyl Substances (PFAS). The summary proceedings, which sought the immediate limitation of PFAS discharges and the launch of an analysis campaign to assess the extent of the contamination, was dismissed by the Court in first instance and appeal. The plaintiff associations and victims have however already announced their intention to appeal the decision to the French Supreme Court.

To date, 6 criminal complaints against an unknown person have also been filed by some French municipalities, environmental associations, and

individuals, the purpose of which is to investigate and identify the industrials that are liable for PFAS-related pollution.

In addition, in January 2023, the French Government unveiled its new Action Plan on PFAS, aimed at strengthening the protection of citizens and the environment against the risks associated with these substances by accelerating the production of scientific knowledge and facilitating access to information for citizens. In February 2023, the European Chemicals Agency published a proposal submitted by five national authorities to restrict the manufacture, the placement on the market and the use of PFAS under the European Union's Regulation (EC) No 1907/2006 of 18 December 2006. These latest developments will undoubtedly lead to new legal actions against companies for PFAS-related environmental pollution.

5. Circularity - the law governing the waste hierarchy is addressed by the Environment international guide, in respect of ESG are any duties placed on producers, distributors or retailers of products to ensure levels of recycling and / or incorporate a proportionate amount of recycled materials in product construction?

Articles L. 541-10 et seq. of the French Environmental Code creates the extended producer responsibility scheme, which is based upon the "polluter pays" principle and is applicable to specific sectors. Companies falling under that scheme are responsible for the disposal of waste generated by the products they placed on the French market. In practice, the responsibility is passed on to eco-organisations to which companies pay a contribution so that they can handle waste management and organize its recycling.

Law No. 2020-105 of 10 February 2020 introduced a number of measures to promote a circular economy based on recycling channels and extending product lifespans. To this end, producers falling under the extended producer responsibility scheme are required to develop and implement a prevention and eco-design plan with the objective of reducing the use of non-renewable resources, increasing the use of recycled materials and increasing the recyclability of its products.

6. Plastics - what laws are in place to deter and punish plastic pollution (e.g. producer responsibility, plastic tax or bans on

certain plastic uses)?

Law No. 2020-105 of 10 February 2020 provides for a total halt to single-use plastics in France by 2040. Reduction, reuse, and recycling objectives will be set and updated every five years to reach this goal.

In the meantime, certain products have been banned from sale, such as straws, disposable cutlery and all oxo degradable plastic objects. In addition, Law No. 2020-105 No. also set a goal of reducing the number of single-use plastic beverage bottles placed on the market by 50% by 2030. This law also provides that producers of plastic packaging that cannot be recycled at the end of its life are subject to penalties.

7. Equality Diversity and Inclusion (EDI) - what legal obligations are placed on an employer to ensure equality, diversity and inclusion in the workplace?

Pursuant to Article L. 1132-1 of the French Labor Code, all forms of discrimination based on origin, race, sex, sexual orientation, gender identity, age, family and pregnancy status, genetics, political opinions, trade union activity, religion, name and surname, place of residence, state of health, and disability are prohibited.

In addition, the French Labor Code contains a specific section dedicated to professional equality between men and women. This section provides for several requirements, such as:

- The prohibition of any sexist behavior that may create a hostile environment (Article L. 1142-2 of the French Labor Code);
- The consideration by the employer of the objective of eliminating gender pay gap (Article L. 1142-7 of the same Code);
- In companies with more than 50 employees, the obligation of the employer to publish a set of indicators annually relating to gender pay gaps, and the measures implemented to eliminate them (Article L. 1142-8 of the same Code, as amended by Law No. 2021-1774 of 24 December 2021 on the acceleration of economic and professional equality, known as the "Rixain Law");
- In companies employing at least 1,000 employees for the third year running, the obligation for the employer to publish an annual report on any gaps in the representation of women and men among executives and management bodies (Article L. 1142-11 of the same Code, as amended by

the "Rixain Law")

In addition to the provisions relating to professional equality between men and women, specific provisions are also in place for disabled workers. For instance, pursuant to Article L. 5212-2 of the French Labor Code, disabled employees must represent at least 6% of the workforce of companies with more than 20 employees. Such companies have 5 years to comply with this requirement once the threshold is met.

8. Workplace welfare - the law governing health and safety at work is addressed in the Health and Safety international guide, in respect of ESG are there any legal duties on employers to treat employees fairly and with respect?

Pursuant to Article L. 4121-1 of the French Labor Code, employers shall take the necessary measures to ensure the safety and protect the physical and mental health of their employees.

The Labor Code also recognises the right to dignity in the workplace and prohibits harassment. According to its Article L. 1121-1, no one may restrict the rights of individuals or individual and collective freedoms which are not justified by the nature of the task to be performed or proportionate to the aim sought.

In addition, Article L. 1142-2-1 of the French Labor Code prohibits behaviours related to a person's sex that may lead to the creation of an intimidating, hostile, degrading, humiliating or offensive environment.

9. Living wage - the law governing employment rights is addressed in the Employment and Labour international guide, in respect of ESG is there a legal requirement to pay a wage that is high enough to maintain a normal standard of living?

Pursuant to Articles L. 3231-2 et seq. of the French Labor Code, employees must be paid a minimum hourly wage called the minimum interprofessional growth wage ("SMIC"). This wage is indexed to inflation and is revised automatically on January 1 of each year. It is also automatically revised during the year if inflation exceeds 2% since the last revision and upon discretionary decision of the French authorities.

In companies with more than 50 employees, a general

negotiation on wages must be undertaken at least every 4 years as part of the “compulsory annual negotiations”.

In each sector of activity, trade unions negotiate with employers a “collective agreement” (*convention collective*), a sector-specific agreement that may include more advantageous pay conditions than those granted by national law. A similar agreement may be concluded within a company and will prevail, with the exception of compulsory provisions and exclusion clauses, over the collective agreement.

10. Human rights in the supply chain - in relation to adverse impact on human rights or the environment in the supply chain: a. Are there any statutory duties to perform due diligence; b. Have there been any test cases brought against companies?

Law No. 2017-399 of 27 March 2017 on the duty of vigilance of parent companies and ordering companies introduced due diligence obligations in the French Commercial Code for certain large companies, which must draw up and effectively implement a vigilance plan. This plan must include reasonable due diligence measures to identify risks and prevent human rights and environmental abuses, including those committed by direct or indirect subsidiaries, in France or abroad.

Law No. 2017-399 applies to certain types of public limited companies established in France with at least 5,000 employees within the company head office and its direct and indirect subsidiaries, whose head office is located in France, or at least 10,000 employees within the company and its direct and indirect subsidiaries, whose head office is located in France or abroad.

Companies falling under the scope of the Law may be held liable in the event of failure to comply with these due diligence obligations.

Around twenty cases have been brought before the French Courts on the ground of French Law No. 2017-399 of 27 March 2017 on the duty of vigilance. Since Signature Litigation is involved in one of these cases, it is unable to make any comment on them.

11. Responsibility for host communities, environment and indigenous populations - in relation to adverse impact on human rights or the environment in host communities: a. Are there any statutory

duties to perform due diligence; b. Have there been any test cases brought against companies?

As further developed in question 10. a), companies subject to the Law No. 2017-399 of 27 March 2017 on the duty of vigilance must establish a vigilance plan, which aims to identify and prevent risks associated with their activities or those of their foreign subsidiaries, such as risks of human rights or environmental impacts in host communities.

Around twenty cases have been brought before the French Courts on the grounds of French Law No. 2017-399 of 27 March 2017 on the duty of vigilance. Since Signature Litigation is involved in one of these cases, it is unable to make any comment on them. No.

12. Have the Advertising authorities required any businesses to remove adverts for unsubstantiated sustainability claims?

Under French law, advertising authorities have no power to impose sanctions for unsubstantiated sustainability claims.

This being said, some soft law sources publish recommendations on misleading advertising and commercial practices.

The French National Consumer Council (*Conseil National de la Consommation*), for instance, published the 2023 edition of its guide on environmental claims, in which it provides guidance on the criteria used to determine whether a claim is misleading.

In addition, in April 28, 2020, the Professional Advertising Regulation Authority (*Autorité de Régulation Professionnelle de la Publicité “ARPP”*) issued a new recommendation on sustainable development advertising which prohibits misleading, deceptive or non-conforming advertising regarding the advertiser’s sustainable actions or on the properties of the advertised product. According to this recommendation, an advertiser must always be able to justify its environmental claims and its impact on sustainable development. In its 2021 report, the ARPP analyzed 1,269 advertisements on sustainable development and noted 85 non-compliant advertisements.

13. Have the Competition and Markets authorities taken action, fined or prosecuted any businesses for

unsubstantiated sustainability claims relating to products or services?

Claims against companies for unsubstantiated claims concerning products or services fall within the scope of Article L. 121-2 of the French Consumer Code, which prohibits misleading commercial practices. On this ground, the General Directorate for Competition, Consumption and Fraud Control (*Direction Générale de la concurrence, de la consommation et de la répression des frauds* "DGCCRF") has the power to impose sanctions on companies making false or misleading claims in favour of sustainable development. These sanctions may include warnings, injunctions to cease and withdraw the unsubstantiated claim, infringement reports, etc. Sanctions may also take the form of penalties of up to 80% of the turnover over the last three years (Article L. 132-2 of the French Consumer Code).

Although the authority has a power of Name & Shame, most of these decisions remain confidential. In its 2023 report, the DGCCRF revealed that out of 1,100 establishments inspected, a quarter were found to be non-compliant, such as claims that were unjustified, imprecise, ambiguous, or even contrary to legal provisions. The DGCCRF therefore issued 141 warnings, 114 injunctions and filed 18 criminal or administrative proceedings to put an end to practices that were misleading for consumers. The most serious practices were reported and referred to the courts.

14. Have there been any test cases brought against businesses for unsubstantiated enterprise wide sustainability commitments?

In recent years, there has been an increase in the number of cases brought by non-governmental organisations (NGOs) against French companies on the grounds of misleading commercial practices, prohibited by Article L. 121-2 of the French Consumer Code. These companies include, *inter alia*, TotalEnergie, Adidas and New Balance.

In addition, in March 2023, the European Commission issued a proposal for a Directive on substantiation and communication of explicit environmental claims (Green Claims Directive) which, if adopted, would create a legal framework for environmental claims and would certainly increase the number of court claims on this ground. t

15. Is there a statutory duty on directors to oversee environmental and social impacts?

Article 1833 of the French Civil Code requires directors to consider the impact of social and environmental issues in the decision-making process. They must encourage the company and its executives to pay a fair and reasonable attention to these issues, in relation to the other considerations that must be taken into account in the management of the business. This is however a mere best effort obligation as non-compliance with this requirement cannot lead to the nullity of the acts or deliberations of the bodies of the company.

For limited companies, the board of directors determines the ESG strategy of the company and the means to implement such a strategy. In practice, the board of directors now makes sure that ESG issues are at the heart of the company's strategy and will usually appoint a specialised board committee dedicated to monitoring ESG issues.

Even if to date the audit committee is the only specialised committee of the board of directors whose tasks are regulated by the law, French companies tend to increase the number of specialised board committees. In practice, on top of the audit committee, remuneration and appointment committees are also widespread, especially in listed companies. Strategic and ethics committees dedicated to ESG issues are also increasingly common.

The board of directors has to make sure that the management board is fully involved in ESG issues. As for the management board, it makes sure that the company is able to comply with the relevant ESG regulations.

If a company has adopted a *raison d'être* in its bylaws, the board of directors is required, in performing its duties, to take into account such *raison d'être*. The *raison d'être* grasps the values of the company, the social and environmental impacts of its activity and more generally the responsibility that the company intends to carry in the future. As such, it results from Articles 1850 of the French Civil Code and L. 225-251 of the French Commercial Code that directors may be held liable towards the company and its shareholders for instance by taking insufficient account of the *raison d'être*, by failing to pursue the social and environmental objectives of the company, or by acting in contradiction with them, they cause damage to the company.

16. Have there been any test cases brought against directors for presenting misleading information on environmental and social impact?

We are not aware of any test case brought against

directors for presenting misleading information on environmental and social impact before French Courts.

17. Are financial institutions and large or listed corporates required to report against sustainable investment criteria?

EU Regulations No. 2019/2088 of 27 November 2019 ("SFDR") and No. 2020/852 of 18 June 2020 ("Taxonomy Regulation") impose obligations applicable to certain economic operators carrying out financial activities, such as investment managers or investment funds, to provide transparent information on the environmental impact of their financial investments.

In this respect, Article 3 of the SFDR requires financial market participants and financial advisers to publish on their website information about their policies on the integration of sustainability risks in their investment decision-making process or investment or insurance advice. Likewise, Article 5 of the Taxonomy Regulation also obliges financial actors to disclose, in the pre-contractual documentation, the information considered to assess the sustainability criterion of the financial investment presented as favorable to sustainable development. The Taxonomy Regulation also specifies in Article 8 that the non-financial performance declaration to which companies are subject shall mention the way in which the financial activities carried out by the company, and the investments it makes, are taken into account to reduce the impact of these investments on climate change.

It ought to be noted that Article L. 533-22-1 of the French Monetary and Financial Code provides that portfolio management companies must include, in their sustainability risk policy, information on the risks related to climate change and the damage to biodiversity caused by their investments. Portfolio management companies must also make available to their subscribers and to the public a document setting out their policy on the inclusion in their investment strategy of ESG criteria and the means implemented to contribute to the energy and ecological transition, as well as a strategy for implementing this policy.

In addition, Ministerial Decree No. 2023-1394 of 30 December 2023, which specifies certain details of Order No. 2023-1142 of 6 December 2023 transposing CSRD into French law, introduced Article R. 232-8-4 in the French Commercial Code. This Article provides that the sustainability information that the companies must disclose shall describe the company's plan, including actions taken or envisaged and related financial and investment plans, to ensure the compatibility of its

business model and strategy with the transition to a sustainable economy, the limitation of global warming and the objective of climate neutrality.

18. Is there a statutory responsibility on businesses to report on managing climate related financial risks?

As further developed in Question 1, Article L. 225-102-1 of the French Commercial Code introduces the obligation to make a non-financial performance declaration, the objective of which is to assess the impact of the company's activities on the environment, social and governance issues, as well as the actions implemented by the company.

Article L. 225-102-1 of the French Commercial Code stipulates that the non-financial performance declaration must include "*information on the consequences on climate change of the company's activity and the use of the goods and services it produces*". Article R. 225-105 of the French Commercial Code further indicates that the non-financial performance declaration must describe "*the measures taken to adapt to the consequences of climate change*". Accordingly, information on climate-related financial risks must be included in the non-financial performance declaration.

19. Is there a statutory responsibility on businesses to report on energy consumption?

As explained above, the non-financial performance declaration must include "*information on the consequences on climate change of the company's activity and the use of the goods and services it produces, and its social commitments in favor of sustainable development*". To comply with this requirement, companies shall refer to key performance indicators that make it possible to measure the impact of the company's activity, and of the commitments made, regarding climate change.

In its Guidelines on Non-Financial Reporting No. 2019/C 209/01, the European Commission provides for measuring the impact of the company's activities by measuring the greenhouse gases emitted by its activity. This indicator is also taken into by Article R. 225-105 of the French Commercial Code.

To obtain the greenhouse gas result, it is necessary to consider the amount of energy consumed by the company in its operations and production activities. As a consequence, the energy consumption level may be

referenced by a company in the non-financial performance declaration, either implicitly through the greenhouse gas emission, or on a voluntary basis to demonstrate the impact of its activity on climate change.

20. Is there a statutory responsibility on businesses to report on EDI and / or gender pay gaps?

According to Article L. 225-102-1 of the French Commercial Code, the non-financial performance declaration shall describe the actions implemented by the company to “*prevent discrimination and promote diversity*” as well as the measures taken “*in favor of the disabled people*”.

Article R. 225-105 of the same Code further specifies that the non-financial performance declaration must mention the total number of employees and the breakdown of employees by gender; the measures taken in favor of equality between men and women; those in favor of the integration and employment of people with disabilities; and the policies to combat discrimination.

Moreover, Article L. 1142-8 of the French Labor Code requires companies with at least 50 employees to

publish a Professional Equality Index. This index is calculated on the basis of several criteria, including the average pay gap between men and women. Depending on the criteria met, the company obtains a score that must be communicated each year to the Labor Inspectorate. The result is published on the Ministry of Labor website. Depending on the score obtained, the company may be asked to take certain measures in favor of EDI and equal wage.

21. Is there a statutory responsibility to report on modern day slavery in the supply chain?

According to Article L. 225-102-1 of the French Commercial Code, the non-financial performance declaration shall contain additional information about compliance of the supply chain with human rights. Pursuant to Article R. 225-105 of the same Code, such declaration shall contain, for certain companies, “*information relating to actions in favor of human rights*” such as actions in favor of “*the elimination of forced or compulsory labor*” and “*the effective abolition of child labor*”. This information can be completed by the “*other actions in favor of human rights*” carried out by the company.

Contributors

Sylvie Gallage-Alwis
Partner

sylvie.gallage-alwis@signaturelitigation.com



Gaëtan de Robillard
Associate

gaetan.derobillard@signaturelitigation.com

