



Devoir de Vigilance: Reforming Corporate Risk Engagement



Copyright © [Development International e.V.](#), 2020
ISBN: 978-3-9820398-5-5

Authors: Juan Ignacio Ibañez, LL.M.
Chris N. Bayer, PhD
Jiahua Xu, PhD
Anthony Cooper, J.D.

Title: Devoir de Vigilance: Reforming Corporate Risk Engagement

Date published: 9 June 2020

Funded by: iPoint-systems GmbH
www.ipoint-systems.com



“Liberty consists of being able to do anything that does not harm another.”

Article 4,
Declaration of the Rights of the Man and of the Citizen of 1789,
France

Executive Summary

The objective of this systematic investigation is to gain a better understanding of how the 134 confirmed in-scope corporations are complying with – and implementing – France’s progressive *Devoir de Vigilance* law (LOI n° 2017-399 du 27 Mars 2017).¹ We ask, in particular, what subject companies are doing to identify and mitigate social and environmental risk/impact factors in their operations, as well as for their subsidiaries, suppliers, and subcontractors. This investigation also aims to determine practical steps taken regarding the requirements of the law, i.e. *how* the corporations subject to the law are meeting these new requirements.

Devoir de Vigilance is at the legislative forefront of the business and human rights movement. A few particular features of the law are worth highlighting. Notably, it:

- imposes a duty of vigilance (*devoir de vigilance*) which consists of a *substantial* standard of care and mandatory due diligence, as such distinct from a reporting requirement;
- sets a public reporting requirement for the vigilance plan and implementation report (*compte rendu*) on top of the substantial duty of vigilance;
- strengthens the accountability of parent companies for the actions of subsidiaries;
- encourages subject companies to develop their *vigilance plan* in association with stakeholders in society;
- imposes civil liability in case of non-compliance;
- allows stakeholders with a legitimate interest to seek injunctive relief in the case of a violation of the law.

In assessing corporate compliance with the law in its first and second year of reporting, the aim of this investigation is to answer the following:

- 1) To what degree – and in what manner – are companies meeting the compliance demands of the law?
- 2) What good practices are exercised by reporting companies in view of decreasing adverse impacts? Applying the UN Guiding Principles (UNGPs),² which work in a dialectic fashion with the law, we seek to identify good practices and positive deviance in corporate implementation of the law.
- 3) What is the degree of transparency afforded in a company’s reporting?

¹ L. n° 2017-399, (27 March 2017) ‘relative au devoir de vigilance des sociétés mères et des entreprises donneuses d’ordre’ JO 28 March 2017, texte n° 1 [hereinafter *Devoir de Vigilance*].

² UN Human Rights Office of the High Commissioner, ‘Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Respect, Protect, and Remedy’ Framework’ HR/PUB/11/04 (2011) [hereinafter Guiding Principles].

Through this study, we identified 134 companies subject to the law, i.e. had published a *plan de vigilance* statement pursuant to the law. Each statement, published in 2019 and concerning 2018, was subject to rigorous analysis on the basis of 42 key performance indicators and 14 qualitative indicators. Of these 42 indicators, 17 represented proper legal requirements, another 14 indicators dealt with conformance to the United Nations Guiding Principles, and 11 indicators measured transparency performance.

All French companies that self-identified to be subject to *Devoir de Vigilance* were evaluated, and their relative degree of effort systematically assessed.

With room for improvement, we find rather positive levels of compliance: the compliance score average for the 134 companies was 66%, with a median to 76%. However, as is observable in Figure 1, compliance levels and the quality of reporting in general decreases for the latter requisites of the law, namely those concerned with assessing and disclosing the adequacy of the plans to address the risks at issue.

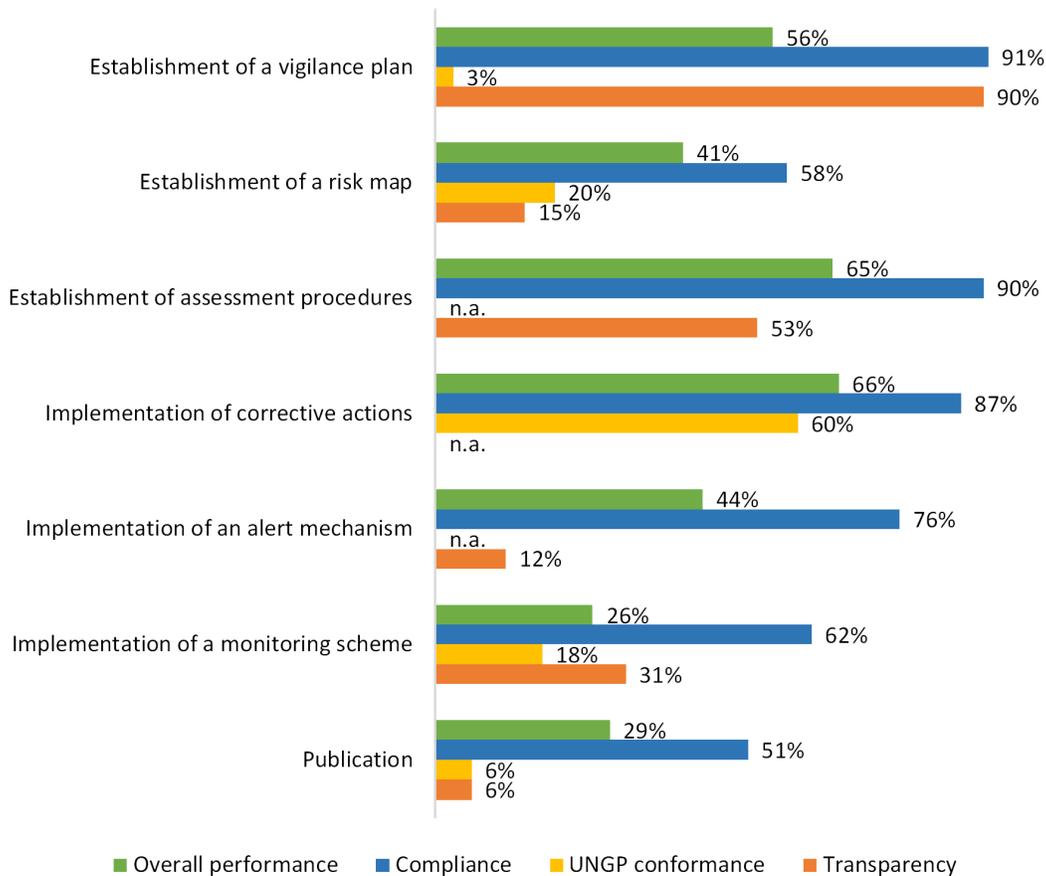


Figure 1: Vigilance plan quality, disaggregated per dimension and legal requisite. N = 134.

Furthermore, the levels of UNGP conformance and transparency were comparatively low, with a conformance average of 24%, and a transparency average of 36%.

Based on the indicators applied, every company evaluated received a score for each of the three dimensions of the study (legal compliance, UNGP conformance, and disclosure transparency) as well as an overall score. The firm that received the most points regarding compliance with the law was Kering (100%). The top scorer concerning conformance with the UN Guiding Principles was Korian (64%). The highest score for disclosure transparency was obtained by Michelin (100%). The highest overall performance scores correspond to Michelin (79%), L'Oréal (76%), Vinci (74%), Carrefour (74%), and Crédit Agricole (71%).

While our analysis identified a few well-performing firms, a significant number of companies under study had yet to adequately respond even just to the legal requirements of *Devoir de Vigilance*. Vigilance plan statements which were in need of significant improvement manifested the following gaps:

- lack of proper stakeholder consultations;
- absence of an adequate prioritisation of risks;
- little specificity in the risks mapped;
- lack of alert systems involving by independent third parties;
- dearth of key performance indicators;
- failure to disclose the results of the actions taken to mitigate risks or remediate violations (publication of a *compte rendu*).

There is room for improvement in many respects: The majority of subject companies had yet to comprehensively address how they are curtailing impact on people and the environment in their daily operations and value chains.

To an extent we detected reforming effects due to the law, and many companies promised to strengthen relevant systems. We anticipate that pressure from stakeholders and the companies' own initiative will work toward improving the quality of vigilance that underpins the statements, as well as reporting performance itself. In sum, it would behove subject undertakings to work on the weaknesses identified in this study.

Foreword

Adopted in the wake of the Rana Plaza building collapse in Bangladesh, the French *Loi n° 2017-399 du 27 Mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre* [hereafter *Devoir de Vigilance* Law] had a twofold objective: to enhance corporate accountability in order to prevent business-related human rights or environmental tragedies from occurring, and to improve access to remedy for victims. The *Devoir de Vigilance* Law was a pioneer legislation in creating an overarching mandatory due diligence framework. It anchored the human rights due diligence requirements, originally introduced by the UN Guiding Principles on Business and Human Rights (UNGPs), into hard law through the establishment of a corporate duty of vigilance requiring eligible companies to devise, effectively implement, and publicly communicate a vigilance plan setting out the steps taken to identify, prevent, mitigate, and account for the adverse human rights and environmental impacts arising out of their activities or the ones of entities within their supply chains.

Prior to its adoption, a number of pieces of legislation seeking to *encourage* companies to undertake human rights due diligence through mandatory reporting had already surfaced. However, the *Devoir de Vigilance* Law marked the beginning of a new approach whereby companies were no longer simply encouraged, but *required* to exercise human rights due diligence.

The *Devoir de Vigilance* Law has been greatly influential. Campaigns and legislative proposals on mandatory due diligence have since spurred in several other jurisdictions. As the momentum is growing, the *Devoir de Vigilance* Law also paved the way for the recognition of an overarching corporate duty to exercise due diligence in relation to adverse human rights and environmental impacts at both the European and the International level.

The present study, undertaken by Development International, is a critical contribution to the English-language literature on the *Devoir de Vigilance* Law. It represents the most comprehensive analysis to date of the quality of the reporting of eligible companies on their implementation of the law. The study assessed 134 companies against a set of established indicators (42 key performance indicators and 14 qualitative indicators) focusing on three dimensions: (1) legal compliance with the minimum requirements of the *Devoir de Vigilance* Law; (2) the extent to which vigilance plans conform with human rights due diligence expectations set forth in the UNGPs; and (3) transparency evaluated in terms of degree of details and accessibility of the vigilance plans.

The findings of the study present a mixed picture, with positive elements but also room for improvement. In relation to the first dimension, the findings indicate high levels of compliance with the *Devoir de Vigilance* Law as 91% of companies were found to have established a vigilance plan. In addition, the levels of compliance of the vigilance plans with the minimum requirements of the law were also high, with the average company scoring 66% of the possible compliance

points. These results are far better than the ones reported in relation to mandatory reporting legislation, which may suggest a correlation with the existence of strong enforcement mechanisms in the *Devoir de Vigilance* Law, which, in turn are lacking in relation to mandatory reporting legislation.

The results of the study are more disappointing in relation to the second and third dimensions, with the average company respectively scoring only 24% of the conformance points, and 36% of the transparency points. Key findings of the study suggest that eligible French companies are still a long way from adequately knowing and showing how they go about implementing the UNGPs' human rights due diligence expectations. Crucially, the study shows that urgent progress is needed in increasing the input from local community and engagement with other stakeholders, as well as involving independent third parties in the management of the alert mechanism and the monitoring scheme to review the efficacy of implemented measures, amongst other things. The study identifies a few leading companies, but overall, a majority of companies seem to have adopted a narrow compliance-orientated approach to the law. To succeed in the realization of the objectives that the law seeks to achieve, companies will need to go beyond the letter of the law to fully embrace the spirit of the *Devoir de Vigilance* Law.

The publication is extremely timely, as it comes after the announcement by European Commissioner for Justice, Didier Reyners, of the European Commission' commitment to introducing a legislative proposal on mandatory corporate human rights and environmental due diligence in 2021. The study is of particular importance in this respect as it will enable policymakers and stakeholders to draw lessons from the French experience in designing an effective EU-level legislation in the field.

Dr. Claire Bright

*Assistant Professor in Private Law,
Nova School of Law, Lisbon*

*Associate Research Fellow in Business and Human Rights,
British Institute of International and Comparative Law, London*

Contents

Executive Summary	3
Foreword	6
I. Introduction	10
A. The birth of a law	10
B. Annotation of the law	12
Article 1	12
Article 2	18
Article 3	19
Article 4	19
C. UNGPs and <i>Devoir de Vigilance</i> in concert	20
1. Interplay	20
2. Thematic overlap	22
D. Legal Landscape – Business and Human Rights	28
E. Prior Works	29
1. Sherpa	29
2. EDH & B&L	29
3. Groupe Alpha	30
4. Shift	30
5. Ernst & Young	31
6. Les Amis de la Terre, et al.	32
7. Mighty Earth, France Nature Environnement, Sherpa	33
8. EDH	34
9. French General Council of Economy	34
10. Notre Affaire à Tous	35
Literature review conclusions	35
II. Methods	36
A. Study subjects	36
B. Unit of analysis	38
C. Data	38
D. Literature review	39
E. Evaluation framework	42
1. Legal compliance	42

2. UN Guiding Principles conformance	43
3. Transparency	43
F. Weighting and scoring	43
G. Data quality control	44
H. Research team, competing interests statement	44
I. Peer review	44
J. Data collection, analysis, and report writing	45
K. Limitations	45
III. Findings	47
A. In-scope organizations	47
B. Profile of assessed organizations	48
C. Reporting modalities	51
D. Establishment of a plan	53
E. Establishment of a risk map	60
F. Establishment of assessment procedures	83
G. Implementation of corrective actions	88
H. Implementation of an alert mechanism	96
I. Implementation of a monitoring scheme	102
J. Publication	115
IV. Discussion	121
A. Review of findings	121
B. Coherence with prior works	123
C. Summary of scores	123
D. Possible reasons for non-compliance	132
E. Added value of <i>Devoir de Vigilance</i>	135
Acknowledgements	138
Appendix A: Acronyms	139
Appendix B: List of companies assessed	142
Appendix C: Evaluation instrument	147
Bibliography	151

I. Introduction

A. The birth of a law

Devoir de Vigilance is the corporate duty of vigilance law of France (n° 2017-399). Initially proposed on November 7, 2013, the law underwent multiple draft iterations before becoming statutory law on March 27th, 2017 (Sherpa, 2018: 9).³

While acknowledging the private sector as a productive engine in society, an earlier draft of *Devoir de Vigilance* presented on February 11th, 2015, squarely addressed the consequences of detrimental corporate practices:

*With increasingly globalized and complex production chains, transnational corporations today play a major role in global economic governance and in the game of international trade. While the development of global trade contributes to the economic influence and development of the countries that participate in it, it is clear that it is sometimes accompanied by certain practices that have negative impacts on human rights and the environment. These practices are a hindrance to economic and human development, as well as a downward pressure on our national standards in terms of social protection, human rights, protection of biodiversity and the environment, and more generally business ethics.*⁴

Whereas the purpose of classic risk management is to protect the company, the purpose of the vigilance approach is to protect individuals and the environment: The vigilance approach does not consist of an assessment of legal, financial, operational, etc. risks for the company, but rather concentrates on the risks (the likelihood) that the activities of the company will have adverse impacts on human rights (Brabant et al., 2017).

To illustrate the severity and acute nature of adverse impacts caused by the private sector, the framers of the law notably recalled that the Rana Plaza disaster claimed 1,138 lives and disabled many more, that the extractive sector alone was responsible for 28% of the human rights violations committed by companies, and that corruption was commonly linked to human rights abuses (ibid.).

France – with a number of legislative precedents under its belt – has not been far from flat-footed with regard to corporate accountability. Notably, the country had issued a corporate reporting

³ Previously, the law had been adopted by the French National Assembly on February 21th, 2017, but was modified through the French Constitutional Court's Decision No. 2017-750 DC of March 23rd, 2017 (Renaud and Bordaçarre, 2017: 5; Sherpa, 2018: 9).

⁴ Assemblée Nationale (2015).

law in 2001 – *Nouvelles Régulations Economiques* (NRE) – requiring listed companies to publish in their annual management report information on the social and environmental consequences of their activities.⁵ This obligation was then further strengthened by *Grenelle II*, adopted by Parliament in 2010 and implemented in 2012,⁶ only to be even further reinforced by the requirement to provide a non-financial declaration under article L225-102-1 of the French Commercial Code (“*déclaration de performance extra-financière*”), following the transposition of Directive 2014/95/EU on non-financial reporting. In 2017, France also implemented a National Action Plan (NAP) with the objective of establishing conformity with the UNGPs.⁷

However, these prior reporting mandates were not accompanied by a mechanism for corporate liability. The UNGPs as well as the NAP remained *soft law*. Given this, NGOs including Sherpa began to push for a disclosure requirement coupled to civil liability in order to allow recourse and remedy against inadequate corporate disclosure.

This call was heard by the law’s framers: In offering a justification for the new law, they indeed pointed to the lack of parent company liability when a subsidiary committed adverse impacts which may in fact have been related to decisions of the parent company:

However, in the eyes of the law, each entity that makes up the group is considered autonomous and without legal ties to the parent company. Today, if the subsidiary of a European transnational corporation located outside European borders does not respect the legislation in force, commits human rights violations, or causes irreversible environmental damage, the legal responsibility of the parent company cannot be engaged. This legal compartmentalization prevents victims from bringing cases before French or European judges, even though it is sometimes the decisions of the parent company or principal that are at the origin of the damage.⁸

In the course of jumping through legislative hurdles, one issue proved particularly contentious: the use of the term *risk* was left undefined by the law. Neither was a definition of “materiality” offered, nor was a normative basis provided for assessing risk. As was to be anticipated, the pro-business elements in parliament argued that the law should set norms from which companies could determine materiality/scope and depth of risk. Indeed, this point came under criticism in parliament, so much so that it was sent to the Constitutional Court prior to the law’s passage.⁹

⁵ Brabant et al. (2017) at note 96, stating in relevant part ‘Since the law called “NRE” (L. n° 2001-420, 15 May 2001 on new economic regulations: OJ 16 May 2001, p. 7776).

⁶ This obligation was strengthened by the “Grenelle II” law (L. n° 2010-788, 12 July 2010 on a national environmental commitment: OJ 13 July 2010, p. 12905).’

⁷ See Ministère des Affaires Étrangères et du Développement International (2017).

⁸ Ibid.

⁹ See Conseil Constitutionnel (2017a).

The court responded, in brief, that the law withstood the intelligibility test, was not overly obscure, and states very little beyond that.¹⁰

If everyone is slightly unhappy you got it just right, the saying goes. Minutes from the following parliamentary meeting indicate the majority of parliament and the government supported the law's compromises:

*Finally, the proposed law is part of this process of continuous progress. If the employers' representatives already consider it excessive and the non-governmental organizations still disappointing, its authors claim its character as a first step. The thresholds of application are certainly high, but they correspond to those retained by the decree n° 2012-557 of April 24th, 2012, relative to the obligations of transparency of the companies in social and environmental matters. They can be lowered afterwards, once the system has proved its effectiveness and dissipated the fears of the companies, either by the future intervention of the national legislator, or as a result of a European initiative in this direction.*¹¹

B. Annotation of the law

The following annotation of the law highlights substantive matters in its four Articles and takes into consideration principal discussions surrounding it. This annotation also forms the basis for the specific questions to be used in the evaluation instrument. While the final text of the law is notably reproduced in *Légifrance*,¹² for this analysis we relied on the translation provided by Sherpa (2018: 80-81). Where appropriate, we juxtaposed the translation with that provided by Respect International (2017).

Article 1

After Article L. 225-102-3 of the Trade and Industry Code, an Article L. 225-102-4 shall be inserted reading as follows:

“Art. L. 225-102-4. – I. – Any company that employs, by the end of two consecutive financial years, at least five thousand employees itself and in its direct or indirect

¹⁰ Ibid. § 21.

¹¹ Assemblée Nationale (2015b), see also Assemblée Nationale (2016).

¹² Journal Officiel de la République Française (2017).

*subsidiaries whose registered office is located within the French territory, or at least ten thousand employees itself and in its direct or indirect subsidiaries whose registered office is located within the French territory or abroad, shall establish and effectively implement a vigilance plan.*¹³

According to these stipulations, a company is subject if it is either (1) “registered in France with at least 5,000 employees within the company itself and in its subsidiaries, but only those subsidiaries whose registered office is in France,” or (2) registered in France with “at least 10,000 employees, including within their subsidiaries whose registered offices are abroad.”¹⁴

However, the determination of a subsidiary is disputed, with some commentators arguing that subsidiaries are only those companies where over half the capital associated with the subsidiary is owned by a parent, or different company. Other commentators suggest that control over the business operations is the determining factor of subsidiary status.¹⁵ Given that for the subsidiary question the law could be interpreted either way, and limited case testing has taken place to date, these questions will be settled in due time by the judiciary or legislature.

A lack of clarity also surrounds the type of employees effectively in-scoped by the law. As noted by Renaud and Bordaçarre (2017: 31), the law “does not mention the question of franchise staff, in particular whether or not these employees are included in the 5,000 or 10,000 employee threshold. If it turns out they are not, there is the concern that major corporations operating in France such as McDonalds, which has 80% of its French restaurants managed by more than 310 franchisees, will be exempt from this law.”

Apart from the number of employees and the geographic location of the head office, the corporate form is a further scoping parameter. By virtue of the “position of the Law’s provisions in the Commercial Code” – in-scope corporate forms comprise public companies that issue stock:

- Société Anonyme (SA) – public (limited) company;
- Société en Commandite par Actions (SCAs) – publicly-traded partnership;
- Societas Europaea (SE) – European Company.

¹³ L. n° 2017-399 at Art I.

¹⁴ Brabant and Savourey (2017d).

¹⁵ On this point, E. Savourey and S. Brabant (2017d) mention in their article *Le champ de la loi – Les sociétés soumises aux obligations de vigilance* that “The OECD Guidelines encourage an extensive interpretation of the notion of control and, as one author notes, ‘in the widest possible manner, at least within the meaning of article L. 233-3 of the Commercial Code which is usually used, in order to satisfy the objectives of the legislation.’ The Guiding Principles also adopt this approach.”

A debate also rages whether Sociétés par Actions Simplifiées (SASs) – simplified joint-stock companies – are also subject to the law.¹⁶ In this study, we detected seven SASs with a *Devoir de Vigilance*-pursuant statement, i.e. seven SASs acknowledged being subject to the law.

Subsidiaries are exempt from submission of a vigilance plan when the parent company publishes one on their behalf:

“Subsidiaries or controlled companies that exceed the thresholds referred to in the first paragraph shall be deemed to satisfy the obligations provided in this article, if the company that controls them, within the meaning of Article L. 233-3 of the French Commercial Code, establishes and implements a vigilance plan covering the activities of the company and of all the subsidiaries or companies it controls.

“The plan shall include reasonable vigilance measures adequate to identify risks and to prevent severe impacts on human rights and fundamental freedoms, on the health and safety of individuals and on the environment, resulting from the activities of the company and of those companies it controls within the meaning of II of article L. 233-16, directly or indirectly, as well as the activities of subcontractors or suppliers with whom they have an established commercial relationship, when these activities are related to this relationship.”¹⁷

More specific requirements for risk identification are purposefully absent so as to avoid diluting the responsibility of companies with regard to the mapping of risk and the assessment of severe impacts. Concepts of human rights and fundamental freedoms were deemed by the Constitutional Court as having a "broad and undefined nature" and remained part of the law to the surprise of certain commentators.¹⁸

Though parliamentary pushback arose in favour of an inclusion of norms from which to base the risk analysis, the French government took the position that this was unnecessary “due to the ‘sufficiently precise and comprehensive’ nature of the international commitments undertaken by France.”¹⁹ As such, further guidance was provided in a report from the parliamentary session on 11 March 2015, stating that: “The notion of a reasonable measure is advanced by the UN's seventeenth guiding principle on business and human rights: ‘In order to identify their impact on human rights, to prevent such impacts and to mitigate the effects, and report on how they address them, companies must exercise due diligence in human rights. This process should consist of assessing the actual and potential human rights impacts, consolidating the findings and

¹⁶ Ibid.

¹⁷ L. n° 2017-399 at Art I.

¹⁸ Brabant et al. (2017: 6).

¹⁹ Assemblée Nationale (2016 in Brabant et al., 2017: 6).

following up on them, monitoring the actions taken and communicating how these impacts are addressed.”²⁰

Risk identification modes aside, the above section underscores the purpose and goal of the vigilance plan. The language of the law indicates that risk identification and prevention are specifically in place for those who may suffer from human rights abuses, and not for the benefit of the company itself (although there should certainly be a benefit to the company in terms of stronger supply chain relations, reputation, public relations, etc.). “Defined as such, the notion of ‘risk’ mentioned by the law is similar to that of ‘potential adverse impacts on human rights,’ defined by international standards and frameworks.”²¹

“The plan is meant to be drawn up in conjunction with the stakeholders of the company, where appropriate as part of multi-stakeholder initiatives within sectors or at territorial level. It includes the following measures:²²

Commentators have noted that “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. 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.”²³ Furthermore, although not a legal requirement, some commentators suggested that “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.”²⁴

“It shall include the following measures:

- 1. “A risk mapping meant for their identification, analysis and prioritisation;²⁵*
- 2. “Regular evaluation procedures regarding the situation of subsidiaries, subcontractors or suppliers with whom there is an established commercial relationship, in line with the risk mapping;*
- 3. “Appropriate actions to mitigate risks or prevent severe impacts;²⁶*

²⁰ See Assemblée Nationale (2015b) at 60.

²¹ Brabant et al. (2017: 9). See also, id; stating “Although the required measures may bring to mind traditional risk management processes found in companies, there is, however, a fundamental difference: the purpose of the vigilance approach is to protect individuals and the environment whereas the purpose of classic risk management processes is to protect the company.”

²² L. n° 2017-399.

²³ Beau de Loménie and Cossart (2017: 2).

²⁴ Id. at 3.

²⁵ Respect International’s translation is: “A mapping that identifies, analyses and ranks risks.”

²⁶ L. n° 2017-399 at Art I.

Per the Constitutional Council ruling, paragraph 9, the “provisions require the companies in question to establish and implement effective ‘measures of reasonable oversight’, which must in particular take the form of ‘actions capable of mitigating risks or of preventing serious breaches’.

Further, according to paragraph 10, “these measures must [...] identify all risks to and prevent all serious breaches of all ‘human rights’ and ‘fundamental freedoms’ resulting from the operations not only of the company that is under an obligation to draw up a plan but also from those of some of its business partners.” In other words, the law is not targeting *all* risks (which could be seen as an unreasonable burden), but only those risks that the company has identified as the most severe, based on the company’s ranking of their risks.

The term “serious violations” could reasonably refer to the concept of salience or salient human rights issues, that is, the company’s most severe (real or potential) negative impacts through its activities or value chain.

4. *“An alert and complaint mechanism relating to the existence or realisation of risks, drawn up in consultation with the representative trade union organisations within the company;”²⁷*

The law requires companies to develop their alert mechanism in working partnership with the company’s trade union representatives. This alert mechanism may be deployed both to collect information on risks and impacts (as part of assessing risks) as well as to function as a grievance mechanism.

5. *“A system monitoring implementation measures and evaluating their effectiveness.”²⁸*

“*Efficacité*,” the term used in the original French text, can be translated to either “effectiveness” or “efficacy.”

“The vigilance plan and the report concerning its effective implementation shall be published and included in the report mentioned in article L. 225-102.”²⁹

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

Article L. 225-102 in turn refers to the “management report mentioned in the second paragraph of article L. 225-100.” According to article L. 225-100, the management report is to be presented yearly by the board of directors or the executive board in the ordinary general meeting, and “to which is attached, where applicable, the report mentioned, as the case may be by article L. 225-37 or L. 225-68.” These articles refer to reports on corporate governance appended to the management report.

This management report forms part of the Registration Document or Reference Document (*Document de référence*). Issuers of “financial instruments admitted for trading on a regulated market or on an organised multilateral trading facility” – which pertain to companies subject to *Devoir de Vigilance* – must file with the French Financial Markets Authority (AMF or *Autorité des Marchés Financiers*) – according to Article L. 212.13 of the AMF’s general regulations – since this document “can take the form of an annual report to shareholders.”³⁰ On July 21, 2019, a new Prospectus Regulation³¹ came into force, replacing the ‘old’ Registration Document with the newer Universal Registration Document. The management report containing the vigilance plan may thus be integrated with the Registration Document or the Universal Registration Document.

Note that, hereby, the law distinguishes two different obligations for the firm. First, the duty to establish and implement a vigilance plan. Second, the reporting requirement or duty to make that vigilance plan public. Much of the novelty and progressiveness of this law lies in the substantive duty of vigilance present in the first obligation. Publication constitutes a key step in setting in motion the process to make firms accountable for the quality of their vigilance plans, but the *Devoir de Vigilance* law does not merely enact a reporting requirement.

“A decree issued by the Conseil d'Etat may expand on the vigilance measures provided for in points 1 to 5 of this article. It may detail the methods for drawing up and implementing the vigilance plan, where appropriate in the context of multi-stakeholder initiatives within sectors or at territorial level.

“When a company receiving a formal notice to comply with the obligations laid down in paragraph I, does not satisfy its obligations within three months of the formal notice, the competent court may, at the request of any party with standing, order the company, including under a periodic penalty payment, to respect them.”³²

³⁰ See article 212-13 of AMF’s general regulations (AMF, 2009). This is furthermore in compliance with the EU Prospectus Regulation, as the registration document is one of the three documents that, together with the securities note and the summary note, comprises a prospectus.

As per (1) COMMISSION REGULATION (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council, and (2) Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003.

³¹ Prospectus Regulation (EU) 2017/1129.

³² L. n° 2017-399.

The Constitutional Court of France, which adjudicated a challenge by a group of French Senators, determined that “the legislator did not violate the objective of the constitutional value of accessibility and comprehensibility of the law” in stipulating that only a person with a legitimate interest may bring forward a formal request to court.

“The case may also be referred for the same purpose to the president of the court in the context of summary proceedings.”³³

Concerning this last subparagraph of Article 1,³⁴ however, in its adjudication of the challenge by various French Senators (“applicant Members of the National Assembly and Senators”), the Constitutional Court of France deemed that it was, in fact, unconstitutional.³⁵

Article 2

“After the same article L. 225-102-3, [...] article L. 225-102-5 [shall be inserted] and reads as follows:

“Art. 225-102-5. – Following the conditions provided in articles 1240 and 1241 of the Civil Code, a breach of the obligations defined in article L. 225-102-4 of this Code, establishes the liability of the offender and requires him to remedy any damage that the execution of these obligations could have prevented.”³⁶

One novelty of the law, as previously mentioned, is that it opens an avenue in civil court for remedying violations. Further, the duty is an obligation to act (*obligation de faire*). A company must have a plan, implement the plan, and make it public. A plaintiff retains the burden of demonstrating causality between the harm and a lack of an effective plan – under the *Devoir de Vigilance* provisions, in order to seek remedy, s/he cannot simply present the damage itself as the claim.³⁷

³³ Ibid.

³⁴ “The judge can sentence the company to pay a civil fine of 10 million euros or less. The judge shall base the amount of this fine on the seriousness of the negligence, the circumstances in which it was committed, and the personality of its author. This fine is not deductible from taxable income.”

³⁵ Conseil Constitutionnel (2017a). “5. Taking account of the general nature of the terms used by it, the broad and indeterminate nature of the reference to ‘human rights’ and ‘fundamental freedoms’ and the perimeter of the companies, enterprises and operations that fall within the scope of the oversight plan established by it, the legislator could not stipulate that any company that has committed a breach defined with such inadequate clarity and precision may be required to pay a fine of up to ten million euros without violating the requirements resulting from Article 8 of the 1789 Declaration, notwithstanding the objective of general interest pursued by the law referred.”

³⁶ L. n° 2017-399 at Art II.

³⁷ Groulx et al. (2019: 349-352).

France' Constitutional Court also deemed unconstitutional the verbatim that followed,³⁸ since it regarded it as "inseparable" from the last subparagraph of Article 1.³⁹ In Paragraph 29, however, it stated that "the remainder of Article 2, which does not violate any other constitutional requirement, is constitutional."

"The civil liability action is brought before the competent court by any person proving standing.

This sentence was translated as "The action to establish liability shall be filed before the relevant jurisdiction by any person *with a legitimate interest* to do so" in the Respect International text (emphasis added).

"The court may order the publication, dissemination or display of its decision or an extract thereof, according to the terms it specifies. The costs are borne by the person found liable.

"The court may order the execution of its decision under a periodic penalty payment."⁴⁰

Article 3

Article 3 was struck down by the constitutional court of France (*la décision du Conseil constitutionnel n° 2017-750 DC du 23 mars 2017*) during the drafting of the legislation.⁴¹

Article 4

Articles L. 225-102-4 and L. 225-102-5 of the Commercial Code apply from the report mentioned in article L. 225-102 of the same code, relating to the first financial year opened after the publication of this Law.⁴²

³⁸ "In which case, the amount of the fine as laid down in Article L. 225-102-4, II can be augmented up to three times, depending on the seriousness and the circumstances of the negligence and the damage caused." L. n° 2017-399 at Art II.

³⁹ Conseil Constitutionnel (2017a).

⁴⁰ The word used in the French original is "astreinte," a legal term meaning a fine which grows with the passage of time.

⁴¹ Conseil Constitutionnel (2017a).

⁴² L. n° 2017-399 at Art IV.

The law then applied to the beginning of the 2018 financial year, given that the law was published in March of 2017.

By way of derogation from the first paragraph of this article, for the financial year during which this Law was published, paragraph I of article L. 225-102-4 of the said Code applies, with the exception of the report in its penultimate paragraph. This Law shall be executed as the law of the State.⁴³

C. UNGPs and *Devoir de Vigilance* in concert

1. Interplay

After years of consultations, in March 2011 Special Representative Ruggie et al. issued the *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework*. Thereafter, in June 2011, the United Nations Human Rights Council unanimously adopted *The United Nations Guiding Principles on Business and Human Rights*.⁴⁴

The framework of the UNGP is predicated upon three pillars, namely:

- 1) the State's obligation to protect against human rights abuses by third parties, including business enterprises,
- 2) the corporate responsibility to respect human rights by not infringing these rights and remedying any adverse impacts which they may have caused or to which they may have contributed, and finally,
- 3) access by victims to effective remedy, judicial and non-judicial.⁴⁵

Indeed, by issuing the *Devoir de Vigilance*, the French state took yet another step to act on its duty to protect human rights. In its *Exposé des Motifs*, the very first sentence of the draft law invokes the Guiding Principles:

In accordance with the United Nations Guiding Principles on Business and Human Rights unanimously adopted by the United Nations Council on Human Rights in June 2011, and in accordance with the OECD Guidelines on Multinational Enterprises, the purpose of this draft law is to introduce vigilance obligations for

⁴³ Ibid.

⁴⁴ United Nations (2011).

⁴⁵ Brabant and Savourey (2017c); Guiding Principles at Introduction.

*parent companies and instructing companies with respect to their subsidiaries, sub-contractors and suppliers. The aim is to make transnational corporations accountable in order to prevent tragedies from occurring in France and abroad and to obtain reparations for victims in the event of damage to human rights and the environment.*⁴⁶

As such, the law acts as an extension of the UNGPs, a “progression of the notion of due diligence from the UN sphere to the French national sphere.”⁴⁷

Furthermore, human-centred due diligence is a concept present in both the law and the UN standard. Respect for human rights, according to the UNGPs, include first, second, and third generation rights, covering everything from fundamental human rights to the right to a clean environment.⁴⁸ Accordingly, in order to respect human rights, companies must be aware of these rights and show that they respect them by having “policies and processes in place.”⁴⁹

Companies, reporting on human rights due diligence through their vigilance plans, communicate their degree of awareness for human rights in their activities and value chains. Especially relevant here is the ‘know and show’ concept in Principle 21:

*The responsibility to respect human rights requires that business enterprises have in place policies and processes through which they can both know and show that they respect human rights in practice. Showing involves communication, providing a measure of transparency and accountability to individuals or groups who may be impacted and to other relevant stakeholders, including investors.*⁵⁰

In sum, the *Devoir de Vigilance* law works dialectically with the UN Guiding Principles on Business and Human Rights (UNGP). The law takes the Principles as a starting point, drawing context from their intent and meaning, while building on them through the normative status as law.⁵¹

⁴⁶ Assemblée Nationale (2015a).

⁴⁷ Ibid.

⁴⁸ Brabant et al. (2017: 7), stating in pertinent part ‘Besides, the legislator seems to adopt a broad view of these rights which bring together “first-generation rights and public liberties (property right, freedom of conscience, political rights, habeas corpus, etc.), second-generation rights (right to work, access to healthcare, education, right to strike, etc.), and third-generation rights (environment, bioethics, etc.)”’ (citing Assemblée Nationale, 2015b: 66).

⁴⁹ Brabant and Savourey (2017c: 4). See also Principle 12 of the UNGPs (United Nations, 2011: 13-14).

⁵⁰ United Nations (2011: 23-24).

⁵¹ Brabant et al. (2017: 7), stating “Whilst it is up to the courts to “assess the circumstances to determine whether the company has correctly satisfied the obligation to reach a certain result [*obligation de moyens*] imposed upon it”, the Guiding Principles may once again provide clarification to both the courts and to the Relevant Undertakings subject to the Vigilance Obligations.”

Furthermore, “the Guiding Principles are highly pertinent as they bring more precision to the elements of due vigilance included in the law and how to interpret it more generally.”⁵²

2. Thematic overlap

Devoir de Vigilance features three overarching *vigilance obligations*:⁵³

- 1) establish a vigilance plan,
- 2) effectively implement it, and
- 3) make this plan public, along with a report on its effective implementation, and include them both in the company’s annual management report.

We apply this framework to the UNGPs in order to identify the thematic overlap and to formulate UNGP conformance indicators.

Establishment of a vigilance plan

The law requires the establishment of a vigilance plan, the creation of which has a number of overlapping requirements with the UNGPs.⁵⁴

i. Adopt a vigilance plan

Principle 16: “Business enterprises should have in place policies and processes appropriate to their size and circumstances, including:

(a) A policy commitment to meet their responsibility to respect human rights;

(b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;

(c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.”⁵⁵

The UNGPs require firms to implement a human rights *policy* which is analogous to the *Devoir de Vigilance* law’s vigilance *plan*. Both instruments require impact identification, prevention, mitigation and remediation. A plan, however, could be seen as a more concrete level of action,

⁵² Langlois (2018).

⁵³ Brabant and Savourey (2017d).

⁵⁴ See also Langlois (2018: 13-15).

⁵⁵ United Nations (2011: 15-16).

laying out specific steps within the more general guidelines established by a policy. Furthermore, the *Devoir de Vigilance* law makes clear that not only traditional human rights matters are included, but also environmental matters and the issues of serious bodily injury and other health risks.

ii. Engage Stakeholders

Principle 18(b): “This process [to gauge human rights risks] should: (b) involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation ...”⁵⁶

The *Devoir de Vigilance* law encourages the consultation of stakeholders for drafting the vigilance plan, whereas the UNGPs require it for risk assessment. While it is true that the law does not explicitly demand stakeholder consultation for the assessment of risks, it is the reliance on stakeholders that allows for the proper prioritisation of salient issues which sets the law apart from other reporting requirements. Therefore, the two requirements are closely interconnected. Nonetheless, we opted to assess corporate behaviour in response to the two requirements separately, thus analysing conformance with the requirement of stakeholder consultation for the elaboration of the vigilance *plan* in indicator #4 and conformance with the requirement of stakeholder consultation for the risk *mapping* process in indicator #7.

Note that the UNGP Interpretative Guide indicates that companies should “look beyond the most obvious groups and not assume, for instance, that the challenges lie in addressing impact on external stakeholders while forgetting direct employees; or assume that those affected are employees alone, ignoring other affected stakeholders beyond the walls of the enterprise.” (United Nations, 2012: 37).

iii. Assess risks

Principle 18: “In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships.”⁵⁷

⁵⁶ United Nations (2011: 18).

⁵⁷ Ibid.

Principle 18 of the UNGPs also overlaps with another requisite of the law, namely regarding risk assessment. In this case, the UNGPs align perfectly with the law, with the former requiring the assessment of any potential impacts (risks) or actual impacts in human rights matters. This aligns with the legal requirement of conducting a risk mapping process, which, according to the UNGP Interpretative Guide, is “the essential first step in human rights risk management,” because risk mitigation is impossible without it (United Nations, 2012: 36). But the law also goes further, specifying the duty to identify risks in more detail as to the means required for this purpose. Hence, it also establishes a duty to implement risk assessment procedures and an alert system. We assess compliance with these duties in indicators #6, #21 and #28, respectively.

iv. Prioritise and identify salient issues

Principle 24: “Where it is necessary to prioritize actions to address actual and potential adverse human rights impacts, business enterprises should first seek to prevent and mitigate those that are most severe or where delayed response would make them irremediable.”⁵⁸

The *Devoir de Vigilance* requirement to “rank” risks in the risk mapping aligns with the UNGPs in their Principle 24, which establish risk prioritisation as a prerequisite for the deployment of corrective actions, such that most urgent responses take place earlier. In other words, the UNGPs spell out the reasons why a prioritisation of risks is necessary and how it should be used. The UNGP Interpretative Guide specifies also guidelines for this prioritisation: notably, *actual* impacts should be prioritised over *potential* impacts (United Nations, 2012: 37), *salient*⁵⁹ impacts should be ranked higher (ibid.: 8). We address this compliance requirement in indicator #10.

Implementation of vigilance plan

v. Integrate and take action

Principle 19: “In order to prevent and mitigate adverse human rights impacts, business enterprises should integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action.”⁶⁰

⁵⁸ Ibid. at 24.

⁵⁹ With severity – defined by scale, scope and the irremediable character of damages – being also a relevant factor (United Nations, 2012: 8).

⁶⁰ United Nations (2011: 19).

Principle 19 of the UNGPs establishes a requirement to integrate risk assessment findings within internal functions so as to take appropriate action, in perfect alignment with the *Devoir de Vigilance* law requirement to take appropriate action to mitigate risks or prevent serious violations. We retrieve corporate compliance with this requisite in indicator #24 (deployment of corrective actions), but also UNGP conformance through indicator #27 which, as explained in the UNGP Interpretative Guide, takes note of the duty of ‘embedding’ the policies across internal functions, that is, “ensuring that all personnel are aware of the enterprise’s (...) commitment, understand its implications for how they conduct their work, are trained, empowered and incentivized to act in ways that support the commitment, and regard it as intrinsic to the core values of the workplace” (United Nations, 2012: 42).

vi. Track Performance

Principle 20 states: “In order to verify whether adverse human rights impacts are being addressed, business enterprises should track the effectiveness of their response. Tracking should:

(a) Be based on appropriate qualitative and quantitative indicators;

(b) Draw on feedback from both internal and external sources, including affected stakeholders.”⁶¹

The law establishes “a monitoring scheme to follow up on the measures implemented and assess their efficiency.”⁶² Principle 20 of the UNGPs further details this obligation, by indicating that firms must track the effectiveness of their response, based on appropriate indicators and on drawing feedback from internal and external sources, including affected stakeholders. As stated by the UNGP Interpretative Guide, “what gets measured gets managed” (United Nations, 2012: 52).

A myriad of obligations is thus here at play. We evaluate corporate performance in relation to this through compliance indicator #32 (existence of a monitoring scheme), #34 (tasking an independent third party with the management of the monitoring scheme, as suggested by the UNGP Interpretative Guide),⁶³ #36, #37 and transparency indicator #38 (usage of KPIs).

⁶¹ Ibid. at 20.

⁶² L. n° 2017-399.

⁶³ United Nations (2012: 56).

vii. *Enable remedy*

Principle 29: “To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.”⁶⁴

The *Devoir de Vigilance* requirement to set up an alert system has its UNGP counterpart in Principle 29, which tasks companies with setting up a grievance mechanism for adversely impacted individuals and communities. In this study, we evaluated compliance with the duty to create an alert mechanism in indicator #28, considering grievance mechanisms, whistleblowing systems and other alert system variants. One should note that “it is certainly not necessary to label every grievance mechanism with this name,” as the term could have negative connotations in certain cultures (United Nations, 2012: 69). However, the UNGP Interpretative Guide also warns that “it is risky to call a grievance mechanism by a name that its potential users may find inappropriate, for instance one that diminishes or glosses over its real purpose. Doing so may make it more palatable for the enterprise but leave those with grievances feeling belittled and disrespected” (ibid.).

Publication of vigilance and implementation plans

viii. *Statement of policy*

Principle 16: “As the basis for embedding their responsibility to respect human rights, business enterprises should express their commitment to meet this responsibility through a statement of policy that:

- (a) Is approved at the most senior level of the business enterprise;*
- (b) Is informed by relevant internal and/or external expertise;*
- (c) Stipulates the enterprise’s human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services;*
- (d) Is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties;*
- (e) Is reflected in operational policies and procedures necessary to embed it throughout the business enterprise.”⁶⁵*

⁶⁴ United Nations (2011: 29).

⁶⁵ Ibid. at 16.

As expressed above, a vigilance plan sets out more concrete actions than a policy, which establishes guidelines. For instance, the statement “we do not tolerate human rights violations” constitutes a policy statement, but does not amount to a plan. Nevertheless, the statement of policy referred to by Principle 16 of the UNGPs dovetails with the vigilance plan of the *Devoir de Vigilance* law.

The law does not require the vigilance plan statement to be approved by the most senior level of the enterprise, but it does state that the vigilance plan statement must be published within the management report, which must be presented by the executive board or the board of directors to the ordinary general meeting of shareholders every year. This study evaluates whether this was the case in indicator #39, and awards points for upper-level involvement through indicator #26.

The UNGPs demand the policy to be informed by internal or external *expertise* (connected to our indicators #25, #30 and #33), a point without a counterpart in the law. The law does call for stakeholder consultations (as does Principle 18 of the UNGPs), yet having stakeholders and having expertise are different matters.

Similarly, *Devoir de Vigilance* does not make it compulsory to state the expectations of business partners and personnel, like the UNGPs do. Nonetheless, this could be seen as implicit in it, since the law does provide for the discussion of risks in suppliers, subsidiaries and subcontractors (indicators #11, #12 and #13 of this study), the establishment procedures for risk assessment therefor (indicator #21) and the remediation of the risks identified (indicator #24).

The requirement to have the statement of policy publicly available (evaluated through indicator #2 of this study) can also be seen as implicit in the law’s stipulation of a duty to publish the vigilance plan statement in the management report (indicator #39). Finally, while having procedures to embed the human rights policy throughout the business enterprise is also a requirement without an obvious counterpart in the law (see indicator #27 of this study), it is indirectly connected to the law’s provision that actions must be “appropriate.”

ix. *Communicate publicly*

Principle 21: “In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally ...”⁶⁶

The *Devoir de Vigilance* law requires not just to design a vigilance plan, which includes a risk map, risk assessment procedures, risk mitigation actions, an alert mechanism and an effectiveness monitoring system. It also demands that this plan is published in the management report, thus

⁶⁶ Ibid. at 21.

making all of the aforementioned items publicly available to external parties. This aligns with the public accounting duty of Principle 21 of the UNGPs. The UNGP Interpretative Guidelines notably state that this external communication should minimally cover the company's "actual and potential human rights impact [...] and [...] how effectively it is responding" (United Nations, 2012: 58), and that it is appropriate to do so in regular "formal public reports" (ibid.: 59). This is evaluated through compliance indicator #39 of this study.

D. Legal Landscape – Business and Human Rights

Business and Human Rights exists as a fairly new subset of International Law. Brought into existence as a necessary response to the increasingly globalized economy and harmful outcomes of multinational corporate practice, norms in this space are still emerging. In their article "Business and Human Rights as a Galaxy of Norms," Elise Groulx-Diggs et al. provide a typology in order to classify relevant laws based on their substance and requirements.⁶⁷

Their conceptual framework contextualizes various legal norms in five rings: The first ring contains laws that include legal responsibility for outcomes (hard law),⁶⁸ while the second ring is concerned with legal responsibility for reporting,⁶⁹ the third addresses legal responsibility for process (including the duty of care),⁷⁰ the fourth concerns private voluntary initiatives (e.g. codes of conduct and contractual clauses),⁷¹ and the fifth pertains to the vast body of international soft law.⁷²

Devoir de Vigilance is especially robust as it fits into rings three, two and one. By creating an obligation to establish a vigilance plan and providing "for mechanisms of civil liability (...) in the event a plan is not adopted," the law falls into ring three.⁷³ By creating a reporting obligation, it falls into ring two. Finally, by creating liability provision linked to insufficient diligence, the law invokes a duty of care, specifically the 'reasonable duty of vigilance,' which targets an obligation to provide means (*obligation de moyens*).⁷⁴ In certain cases where there is failure to act, and a link of causality between the harm suffered and the lack of an effective plan is established, a

⁶⁷ Groulx et al. (2019).

⁶⁸ U.S. Trafficking Victims Protection Reauthorization Act (TVPR) and the U.S. law prohibiting peonage and slavery, (22 USC Chapter 77 (2018)).

⁶⁹ Includes, e.g., the California Transparency in Supply Chains Act, EU Non-Financial Reporting Directive.

⁷⁰ Common law duty of care, *devoir de vigilance*.

⁷¹ Equator principles, IFI standards, Bangladesh accords.

⁷² UDHR, OECD Guidelines, ILO Conventions.

⁷³ Groulx et al. (2019: 319).

⁷⁴ Groulx et al. (2019).

judge could attribute responsibility for outcomes – “a breach (...) establishes the liability of the offender and requires him to remedy any damage,”⁷⁵ – but the responsibility is triggered by the inadequacy of the *process* implemented: the insufficient level of care, diligence or vigilance. This falls into ring one.

E. Prior Works

1. Sherpa

The first – and earliest – report was produced by Sherpa, the French NGO which lobbied for the law. Sherpa’s report, published in April of 2018, was Sherpa’s “Vigilance Plans Reference Guidance” (2018). It focuses on what the law requires, while also analysing 80 vigilance plans published at that time. Sherpa found that the majority of plans were “particularly short,” which contrasted “with the importance of the stakes of the Law on the Duty of Vigilance.” The NGO reported that “most of these Plans do not enable us to understand precisely which risks have been identified by the businesses, their location within the group and even less how companies respond to them” (Sherpa, 2018: 10). Furthermore, the plans were “limited to a few pages, whereas the importance of their activities and risks calls for much more extensive documentation” (ibid.: 24).

2. EDH & B&L

The report published jointly by B&L Evolution and EDH – “Application of the Law on the Corporate Duty of Vigilance: Analysis of the First Published Plans” – with early timing (also April, 2018) analysed 64 vigilance plan statements within registration documents (Michon et al., 2018). The authors restricted themselves to the chapters explicitly identified as complying with French Law. This report *inter alia* discussed the names and frequencies of the reference document sections containing the vigilance plan, the names of the departments involved in drafting the plan, and the types of risks identified. With the study aiming to understand the landscape of reports rather than to measure compliance with the law, conformance with the UNGP, or transparency, companies were not assigned a score.

However, the report did feature some quantitative data. For instance, it was found that “only 14% of companies under review say they have incorporated environmental indicators” (Michon et al., 2018: 33). Other revealing findings include that “alert mechanisms are based on existing ethics alert procedures, which may or may not have been revised” and that “companies rely more extensively on existing procedures to identify challenges, and on global policies already in place”

⁷⁵ L. n° 2017-399.

(Michon et al., 2018: 4). The main risks found to be most frequently mapped included “soil, air and water pollution, threats to biodiversity and waste management. (...) Around 20 companies have already implemented precise and specific mitigation actions” (ibid.: 5).

3. Groupe Alpha

In June 2018, Groupe Alpha analysed 50 vigilance plans and published a study divided in two parts. The report first reviewed compliance with the law and, second, quality: whether the spirit of the law – of multilateralism, responsibility and proactiveness (Hoerner, 2019: 1) – was met.

The group did neither explain its evaluation methodology, nor disaggregated indicators or companies. Rather, it proceeded straight to a general discussion of the findings, based on the author’s qualitative assessment thereof.

With regards to compliance, the group evaluated the reports as “disappointing,” due to:

- the lack of specificity in the risks identified, the incorrect identification of risks – the authors reason that too few companies acknowledge risks, which in their view has to mean that the analysis was poor, the absence of a methodology for risk analysis, and the lack of a prioritisation of risks;
- the little development of regular evaluation procedures for subsidiaries, the abuse of ineffective self-assessment questionnaires, and claiming often that a regular evaluation procedure was established without describing it;
- the infrequency with which companies distinguish risk mitigation measures from risk prevention measures;
- the lack of detail in alert system descriptions – in spite of firms often claiming to have implemented them, as well as the dearth of union consultation.

As for quality, the group also criticizes the vigilance plan statements, for not using the vocabulary of the law e.g. by not differentiating between “risks” and “serious impairments” (“*risqué*” and “*atteinte grave*”; ibid.: 2), substituting the risks to stakeholders (which the law intended for discussion) with risks to the firm, and not consulting stakeholders (let alone regularly). The one positive aspect identified is that most plans do follow the structure of the law in its five points. However, the group also notes that the content under each subsequent point ‘shrinks’ (“*va en s’amenuisant*”; ibid.): companies describe the risks at length, but say less about the alert system and even less about monitoring.

4. Shift

Shift has published two reports, namely “*Human Rights Reporting in France: A Baseline for Assessing the Impact of the Duty of Vigilance Law*” (September, 2018) and “*Human Rights*

Reporting in France – Two Years In: Has the Duty of Vigilance Law led to more Meaningful Disclosure?” (December, 2019).

Analysing the 20 largest companies of the CAC 40 index according to their market capitalization, Shift evaluated 20 reports and assigned them a score from 0 to 5 on a scale based on their assessment of qualitative parameters – e.g. level of commitment, level of detail, comprehensiveness of data – which purports to measure alignment with UNGP principles.⁷⁶

Shift’s study had two stages, as the companies’ reports before and after passage of the law were evaluated in order to compare them and thus determine if the law had any influence in the quality of the reporting.

In the first stage, Shift found that the quality of reporting in “this group of 20 French companies is unusual in its uniformity” (Langlois, 2018). On average, the companies obtained 2.45 points over 5, which Shift considered insufficient alignment with the principles.⁷⁷ The poverty of reporting is more evident when noting that the most positive takeaway from the report was that “all 20 companies analysed commit[ed] to respect human rights” (Langlois, 2018: 7).⁷⁸ However, the majority of the companies had not identified their salient human rights issues, provided incomplete information thereabout, and used vague language.

In the second stage of the study, Shift found that the average score had improved from 2.45 to 2.58. This was due to improved *reporting*, but Shift also concluded that in some cases, the improved quality of reporting may have reflected better underlying *performance* (Langlois, 2019: 5). Reporting worsened in one particular regard, however, namely stakeholder engagement: many companies did “not mention stakeholder engagement at all, or [were] restricted to vague statements about being ‘in constant dialogue with stakeholders’” (ibid.: 8).

5. Ernst & Young

In September 2018, Ernst & Young published the report “*Loi sur le Devoir de Vigilance : Analyse des Premiers Plans de Vigilance par EY Quelles Réponses à la Loi ? Quels Enseignements pour les Entreprises ?*” (Mugnier and Gault, 2018). The authors studied 32 companies of the SBF 120 index, which reportedly constituted roughly half of the companies listed in this index that had submitted a plan.

In a brief document, the plans were classified according to their length, completeness of the risk maps, presence or absence of certain risk typologies, types of audits, types of action plans, names

⁷⁶ It should be noted that Shift developed the UNGP *Reporting Framework* in partnership with Mazars (Shift and Mazars, 2015b).

⁷⁷ However, Shift did point out that French companies were already performing slightly better than their non-French counterparts in the UNGP reporting database, which is based on the Global FT 500 index and other indices.

⁷⁸ Later, however, Shift states that “19 out of 20 companies analyzed commit to respect human rights” (Langlois, 2018: 43).

of overseeing departments. Notably, the four risks mentioned more often were pollution of the water, air, and soil and forced labour.

Among the main findings of the study, reports were found to:

- be heavily cross-referenced (rendering them difficult to read),
- utilize risk assessment tools that predated the *Devoir de Vigilance* law, and
- lack specific monitoring tools for measures related to duty of vigilance.

6. Les Amis de la Terre, et al.

In February 2019, the organisations Les Amis de la Terre, Amnesty International France, CCFD-Terre Solidaire, Collectif Ethique sur l'étiquette, ActionAid France, and Sherpa published "*The Law on Duty of Vigilance of Parent and Outsourcing Companies – Year 1: Companies Must Do Better.*" The authors reviewed 80 vigilance plans and pointed out that a number of companies had "not yet published a vigilance plan regardless of their legal obligation to do so (e.g. Lactalis, Crédit Agricole, Zara or H&M)" (Renaud et al., 2019: 10).

Unlike Shift, who regarded the plans to be unusual in their uniformity, this report states that "the first plans are very heterogeneous, indicating that, faced with this new exercise, each company has applied this law with different stringency levels, with the majority of the plans still focusing on the risks for the companies rather than those for thirds parties or the environment" (ibid.: 10).

In comparison to other reports, this one stands out for its focus in contrasting the quality of reporting against the requirements of the law. The authors considered performance to be lacking, since "the majority of the plans reviewed are only a few pages long (...). Most of them are not full separate plans in themselves, but rather a collection of information making reference to other chapters," which makes assessment difficult (ibid.: 11). Among other issues, the majority of the plans:

- were considered to be vague;
- did not treat – or insufficiently treated – stakeholder consultation;
- lacked indications of resource mobilisation toward action plans;
- had risk mappings that were only reportedly undertaken, as there was no discussion of risks;
- did not feature a method to identify risks, the geographic (or other) location of the risks, nor materiality matrices;
- had little indication on the frequency of risk assessment;
- displayed insufficient action plans with little detail;
- either did not mention a system for monitoring the effectiveness of the measures implemented, or described it poorly.

However, these conclusions were not supported by precise figures and percentages, nor did they constitute the result of itemised indicators established *ex ante*. Rather, they represented the sweeping conclusions that the authors drew from a “holistic” review of the plans.

The report then proceeds to a ‘sectoral analysis,’ reviewing some reports not as self-contained pieces, but contrasting them against the vigilance requirements that emerge from the nature of each industry sector and the challenges surrounding it. The sectors analysed were the ‘extractive industry’ (mining, oil, gas), the arms sector, the agri-food sector, the banking sector, and the garment sector.

7. *Mighty Earth, France Nature Environnement, Sherpa*

In March 2019, Mighty Earth, France Nature Environnement and Sherpa published “Devoir de vigilance et déforestation : le cas oublié du soja” (Mighty Earth et al., 2019). This report, concerned with the deforestation impact of French soybean imports from Latin America, analysed the compliance of 20 corporate groups – including Carrefour, Casino, Danone, and Lactalis – with the *Devoir de Vigilance* law.

The report was based on the information published under the plan, but also on the information sent over email by the companies under study. The authors studied both the quality of the information published and quality of the measures implemented in the light of the problem of “imported deforestation” (ibid.: 31).

To do this, the authors “developed a series of criteria and sub-criteria”⁷⁹ to evaluate “the level of progress of the company in terms of vigilance or due diligence” (ibid.). However, the criteria used were not disclosed in the study itself, though they were reportedly made available on the associations’ websites.⁸⁰ While we could not locate the criteria, the report contained a link to an Excel spreadsheet with all the data collected, summarizing the evaluators’ view of the reports evaluated.

For each of 5 category families – mapping, supply chain, action plans, alert mechanisms and “*suivi*” – the companies were classified into four groups: those showing weak or non-demonstrated vigilance, those reporting the beginning of a vigilance process or its demonstration, those in process of acquiring a vigilance system, and those with satisfactory vigilance.

⁷⁹ “Based on: the measures required by law “due diligence” as well as the OECD and UN Guiding Principles on conduct responsible for companies; the existing literature on due diligence and vigilance and, in particular, Sherpa’s analysis of the measures required by law in its Reference Guide for Vigilance Plans; as well as on the evaluation criteria developed by other initiatives assessing business practices” (Mighty Earth et al., 2019: 31).

⁸⁰ “Le tableau détaillé des critères ainsi que les analyses par entreprise sont disponibles sur les sites des associations.” (Mighty Earth et al., 2019: 31)

The authors found that not all companies had vigilance plans, and when they did, they tended to be very brief and lacking in detail. The plans were also found to be more centred on human rights issues than on environmental issues, which appeared to be secondary and decorrelated from human rights matters. The issue of soybeans in particular was rarely mentioned by companies, unlike more controversial imports, such as cocoa, wood, and oil palm. In the view of the authors, this meant that the companies were not exactly following the spirit of the law but trying to protect their own reputations.

8. EDH

Following the first report published together with B&L, in June, 2019, EDH published a second report on its own: “Application of the Law on the Duty of Vigilance: 2018/2019 Plans” (Michon and Velho, 2019). On this occasion, the authors analysed 83 vigilance plan statements with a methodology similar to the one corresponding to the previous report. They found a higher degree of formalization and comprehensiveness of vigilance plans compared to the previous year.

9. French General Council of Economy

Addressed to the French Minister of Economy and Finance and received on February 21st, 2020, the French General Council of Economy published a report providing legal commentary and an initial assessment of the application of the corporate *Devoir de Vigilance* law (Duthilleul and Jouvenel, 2020). While the report does not feature its own analysis of published vigilance plans, in section 3 there is a discussion of the quality of reporting so far, however based on a meta-analysis of the very reports discussed in this section. In short, the study concluded that the application of *Devoir de Vigilance* was found wanting, and identified ways to raise awareness among companies.

This study also highlighted an active debate concerning whether risk mapping efforts should be limited to tier 1 of subcontracting or be extended to tiers 2 and 3, or even to the raw materials level. According to the authors, one school of thought claims that the spirit of the law is to exceed tier 1, so as to focus efforts and resources on the greatest risks to prevent “serious harm.”⁸¹ This

⁸¹ Quoting: “S’il est donc bien possible de mieux détailler un Plan de vigilance, la Loi ne précise pas le niveau de détail attendu et n’oblige donc pas explicitement publier tout le détail opérationnel et local, par entité ou par projet. Le débat sur la portée de la Loi en matière de cascade de sous-traitance n’est pas clos. La voie ouverte par les entreprises qui ont choisi d’aller loin dans la cascade de sous-traitance devrait l’emporter, mais toujours en fonction des risques identifiés dans la cartographie. Les entreprises en pointe s’intéressent assez largement au rang 2 voire 3 de leur sous-traitance. Ce sont les activités et les filières les plus risquées qui doivent faire l’objet d’un traitement approfondi voire complet, jusqu’à la matière première si nécessaire, par exemple dans l’énergie, l’habillement ou l’alimentation issue de certaines productions agricoles. Dans l’esprit de la Loi, les efforts et les moyens doivent être concentrés sur les risques les plus forts pour prévenir les «atteintes graves». Cette priorisation découlant de la cartographie est cruciale, car il est inenvisageable de redescendre sérieusement toutes les cascades de tous les fournisseurs (auditer

prioritisation deriving from the mapping would be crucial, as a descent through all the supply chain levels auditing all suppliers and subcontractors would be unthinkable (“*inenvisable*”) in practical terms. In sum, any mapping of risks exceeding tier 1 would need to be based on rigorous prioritisation (ibid: 36).

10. Notre Affaire à Tous

In February, 2020, Notre Affaire à Tous published the longest (123 pages long) of the antecedent studies reviewed. This study (Mougeolle and Duthoit, 2020) analysed the vigilance plans of 25 multinationals in detail and evaluated their compliance with the law. The particularity is that this analysis was concerned specifically with the quality of *climate change* vigilance plan statements. The quality of the plans themselves was evaluated – rather than the quality of reporting – by contrasting them with the required policies to meet the objectives set in the Paris Agreement.

The study found that no company fully complied with the legal requirements – with the average degree of compliance being 39.5%, that no company established policies that are in line with a net zero emissions objective for 2050, and that risk maps were characterized by a general poverty in risk map and a failure to recognize the companies' own contribution to global warming. Notre Affaire à Tous also found that these 25 companies' total yearly emissions are 3,549 million tons CO₂e, thus representing almost eight times the French territorial emissions.

Literature review conclusions

Each of the studies reviewed above represent important landmarks in detecting, handling, and assessing the large amounts of information generated by the *Devoir de Vigilance* law, as well as the underlying legal framework. Yet none of these studies attempted to review the entire universe of subject companies. Furthermore, all of them appear to have employed purposive sampling. Moreover, it was not always the case that the studies involved a scoring of the reports. When they did, they did not focus on compliance with the full set of legal requirements. Where non-systematic methods were employed, this left the authors vulnerable to subjectivity in their assessment of any given report's quality.

It is thus clear that a study covering a larger number of vigilance plans, analysing them according to detailed, pre-defined criteria – grounded in the law and informed by the various commentaries thereof, as well as in the UNGPs – assigning them scores broken down per dimension (legal compliance, UNGPs conformance, transparency), would hopefully contribute to the current discourse on the implementation of the law.

des dizaines voire des centaines de milliers de fournisseurs), sans compter les difficultés intrinsèques à influencer une cascade de sous-traitance.” (Duthilleul and Jouvenel, 2020: 36)

II. Methods

A. Study subjects

Ideally, the universe of companies subject to the law would serve as subjects to this study. Yet for practical reasons, we limited our study to the universe of companies *with a vigilance plan or admitting their obligation to publish a vigilance plan*. In other words, our study excludes companies that may be subject to the law, but have not published a vigilance plan nor acknowledge their obligation to do so at present. The study included as many vigilance plan statements as we could locate, thus obtaining the figure of 134 subject companies analysed for the year 2018. This number represents the largest enumeration of subject companies to date. Of these 134 companies, 122 published a vigilance plan, 8 published excerpts pursuant to the law, and 3 did not publish any statement.

As per the law, a company is subject if it has at least 5,000 employees, at the end of two consecutive financial years, in its direct or indirect subsidiaries with a head office in a French territory. Alternatively, if the company has at least 10,000 employees, at the end of two consecutive financial years, in its direct or indirect subsidiaries with a head office established on French territory or abroad, it is also subject to the law. Thus, subsidiaries registered both in France and abroad are included in the ambit of the law.⁸²

Nevertheless, which workers should be counted is not fully clear. For instance, it could be argued that franchise workers might not be in scope of the law. Furthermore, the data on the number of workers may not be fully reliable. Databases do not constitute primary sources, and the numeric data present in annual or financial reports might take into account criteria that do not correspond with legal criteria.

There exists no official list published by the French government, a condition lamented by organisations such as Sherpa (2018: 27). In spite of no list being published, the government's comments to the Constitutional's Court decision of March 23, 2017, state that there are approximately 150 companies subject to the law (Conseil Constitutionnel, 2017b). Other members of the State provided different figures, such as the one of the Senator of Seine-Saint-

⁸² See Brabant and Savourey (2017d: 2), citing in part Conseil Constitutionnel (2017a), and stating "The French Constitutional Court [*Conseil constitutionnel*] by way of reformulation, gave its interpretation of the Law. It held that these two expressions apply to the subsidiaries, while the parent companies are incorporated under French law. This view, which was shared by the Government confirms the analyses of most commentators on the Law who had previously considered this question. It should also be emphasised that it does not matter if "the parent company itself is a subsidiary of a foreign parent company or controlled by one"; provided the company is French and satisfies the conditions of the corporate form and the employee threshold, it will be bound by the Vigilance Obligations, even in the case of companies that are the French subsidiaries of foreign groups."

Denis (Ile-de-France) and Deputy Speaker of the Senate, Mr. Philippe Dallier, who stated that there were 217 companies subject to the law (Dallier in Sénat, 2015).

Thus, the number of eligible companies varies by source. As stated by Sherpa (ibid.), “information to calculate thresholds and verify the applicability of the Law to a given company is difficult to access. The criteria for calculating thresholds are quite complex, and have raised many questions after the adoption of the Law.” The absence thereof introduces uncertainty as to what firms are subject to the requirement to publish a vigilance plan statement. With this in mind, a way to avoid error and not mistakenly call out companies without a vigilance plan – when, in reality, they are in fact not subject to the law in the first place – is to only assess firms *with* a published vigilance plan, which is regarded as an admittance of being subject to the law, unless the company states otherwise.

Sherpa (2018: 27) first estimated that the number in scope was between 100-250, whereas later, their report with Les Amis de la Terre, Amnesty International France, CCFD-Terre Solidaire, Collectif Ethique sur l’étiquette, and ActionAid France (Renaud et al., 2019: 7) estimated the number in 300. More recently, Sherpa set up the website (<https://vigilance-plan.org/>), which provides a list of companies that appear to be subject to the law and as a vigilance plan repository. The number of subject companies is reportedly 237, of which “59 companies did not publish any plan” (Sherpa, 2019). This would mean that Sherpa found 178 vigilance plan statements. However, the number displayed by the website is smaller: 121 (Sherpa et al., 2020).⁸³

The B&L report estimates that the number lies between 150 and 200. Our list of companies features 134 entities confirmed to be in-scope companies.

To arrive at our list of subject companies, we applied the parameters of the law to the Orbis database⁸⁴ and metrics disclosed in individual company reports, and finally compared our list with that of other sources, adding and subtracting individual cases as necessary. Our list thus includes and exceeds the lists of companies evaluated in the prior studies reviewed, except when these studies analysed companies *without* a vigilance plan.

⁸³ A hundred and twenty-three (123) of the companies in Sherpa’s repository have a link to a vigilance plan posted next to their names. However:

- the vigilance plan of Société Française du Radiotéléphone – SFR ([link](#)) is the same as the one posted for Altice France ([link](#)). Both records are hyperlinked to [Altice France](#)’s plan.
- Eurazeo’s ([link](#)) purported vigilance plan is neither a plan, nor a *Devoir de Vigilance*-pursuant statement, nor an admission of being subject to the law. The firm’s registration document only mentions the law as an example of a tendency toward corporate accountability: “À l’instar de la loi récente sur le devoir de vigilance en France (...), on observe une forte tendance à vouloir responsabiliser les sociétés transnationales pour les agissements de leurs filiales, voire de leurs sous-traitants” ([Eurazeo](#), p. 201).

With these two cases subtracted, the actual total of plans in Sherpa’s repository amounts to 121.

⁸⁴ Bureau Van Dijk, *Orbis*, accessed in 2018 and 2019 (Bureau Van Dijk, 2020).

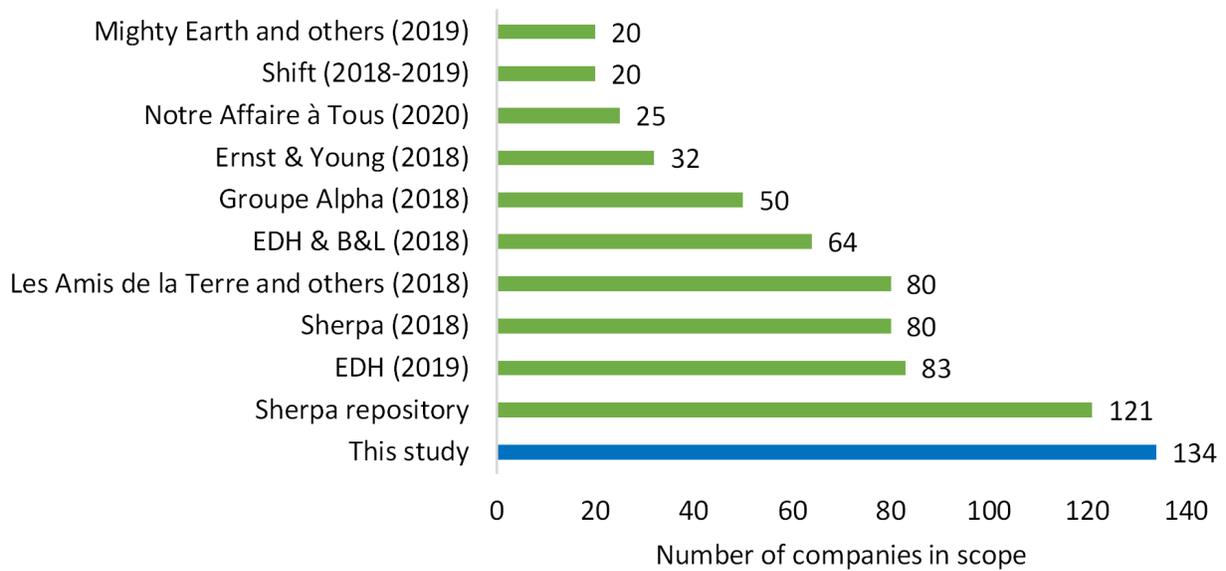


Figure 2: Number of companies in scope identified by each study or repository.

B. Unit of analysis

A company with a vigilance plan forms the unit of analysis. The denominator of observations pursuant to each indicator comprises the number of vigilance plans identified.

C. Data

For evaluation purposes, only the Vigilance Plan section of the registration document (or reference document, “*Document de référence*”) was consulted, matching the methodology of Michon et al. (2018: 3). If the Vigilance Plan contained cross-references to other sections of the same document, those sections were also consulted.⁸⁵

However, cross-references were followed only to an extent:

⁸⁵ However, the consultation of such sections was limited to looking for the information that the cross-reference indicated. That is, if – for example – the vigilance plan stated that a risk map could be found in section “X”, and section “X” also contained a discussion of affirmative action to mitigate negative impacts in non-financial matters. The fact that we consulted section “X” in order to find the risk map does not mean that we reviewed the whole section X. If there was no cross-reference to section “X” within the vigilance plan’s discussion of corrective action, such content of section “X” may have not been consulted.

1. Only one set of cross-references was followed. In other words, if the vigilance plan contains a cross-reference to another section of the document, this section was consulted. However, if this section contained *another* set of cross-references, the second set of cross-references was not followed.
2. Excessively broad-cross references were not followed. For instance, cross-references to full chapters, to sections more than 15 pages long or even to ‘elsewhere in this registration document,’ were omitted.⁸⁶
3. The cross-reference should lead to a section or page *within the same document*. References to other documents were not accepted, let alone references to websites, which are mutable.

This last point is closely related to article 1 of law 2017-399, which states that “the vigilance plan and its effective implementation report shall be publicly disclosed and included in the report mentioned in Article L. 225-102.” This precludes taking references to external documents or websites as a source of data for this study. Furthermore, when two documents comprised a firm’s vigilance plan, and one of them was located within the management report or registration document, the latter was evaluated. Cases in which a vigilance plan was published *outside* of the report as stipulated in Article L. 225-102 were identified, which impacted their transparency score (indicator #39).

D. Literature review

A review of law and surrounding literature, including but not limited to parliamentary reports, the law itself, the commentaries published after the implementation of the law, and any other reports published about the law, will set the precedents and stage for this study. The most relevant literature is summarized in the table below.

Legal Texts	
<i>Source</i>	<i>Citation</i>
Constitutional Court	Conseil Constitutionnel (2017a) “Decision no. 2017-750 DC of 23 March 2017.” Conseil Constitutionnel.

⁸⁶ [Bouygues](#), for instance, indicated that “many factors that may form part of Bouygues SA’s vigilance plan are already discussed in some detail in Chapter 3 of this registration document (Statement on Extra-Financial Performance). Readers should therefore refer to that chapter for further details on certain issues. Furthermore, this text is merely a summary and some existing measures may not be described below” (p. 172). This could not be accepted as a cross-reference, due to being too general: it was a cross-reference to a full chapter and covering all issues.

Devoir de Vigilance	Journal Officiel de la République Française (2017) “Loi no 2017-399 du 27 Mars 2017 Relative au Devoir de Vigilance des Sociétés Mères et des Entreprises Donneuses d’Ordre.” <i>Journal Officiel de la République Française</i> .
Parliamentary Report	Assemblée Nationale (2015a) “Proposition de Loi Relative Au Devoir de Vigilance des Sociétés Mères et des Entreprises Donneuses d’Ordre - Exposé des Motifs.” <i>French National Assembly</i> . Parliamentary Report N° 2578 (11 February 2015).
Parliamentary Report	Assemblée Nationale (2015b) “Rapport Fait au Nom de la Commission des Lois Constitutionnelles, de la Législation et de l’Administration Générale de la République sur la Proposition de Loi (N° 2578), Relative au Devoir de Vigilance des Sociétés Mères et des Entreprises Donneuses d’Ordre.” <i>French National Assembly</i> . Parliamentary Report N° 2628 (11 March 2015).
Parliamentary Report	Assemblée Nationale (2016) “Annexe au Rapport Proposition de Loi Relative au Devoir de Vigilance des Sociétés Mères et des Entreprises Donneuses d’Ordre.” <i>French National Assembly</i> . Parliamentary Report N° 4242 (23 November 2016).
UN Guiding Principles	United Nations (2011) “Guiding Principles on Business and Human Rights – Implementing the United Nations ‘Protect, Respect and Remedy’ Framework.” <i>United Nations Human Rights Office of the High Commissioner</i> .
Articles and Commentaries	
<i>Source</i>	<i>Citation</i>
Business and Human Rights Journal	Cossart, S.; Chaplier, J.; Beau de Loménie, T. (2017) “The French Law on Duty of Care: A Historic Step Towards Making Globalization Work for All.” <i>Business and Human Rights Journal</i> , 2(2), 317-323.
Dossier Thématique	Beau de Loménie, T.; Cossart, S. (2017) “Duty of Vigilance: Stakeholders and the Duty of Vigilance.” <i>Revue Internationale de la Compliance et de l’Éthique des Affaires – Supplément à la Semaine Juridique Entreprise et Affaires</i> , 50(94).
Dossier Thématique	Brabant, S.; Michon, C.; Savourey, E. (2017) “The Vigilance Plan: Cornerstone of the Law on the Corporate Duty of Vigilance.” <i>Revue Internationale de la Compliance et de l’Éthique des Affaires – Supplément à la Semaine Juridique Entreprise et Affaires</i> , 50(93).
Dossier Thématique	Brabant, S.; Savourey, E. (2017a) “France’s Corporate Duty of Vigilance Law, A Closer Look at the Penalties Faced by Companies (A commentary).” <i>Revue Internationale de la Compliance et de l’Éthique des Affaires – Supplément à la Semaine Juridique Entreprise et Affaires</i> , 50.
Dossier Thématique	Brabant, S.; Savourey, E. (2017b) “French Law on the Corporate Duty of Vigilance, A Practical and Multidimensional Perspective.” <i>Revue Internationale de la Compliance et de l’Éthique des Affaires – Supplément à la Semaine Juridique Entreprise et Affaires</i> , 50(90).

Dossier Thématique	Brabant, S.; Savourey, E. (2017c) "Duty of Vigilance: Law on the Corporate Duty of Vigilance, A Contextualised Approach." <i>Revue Internationale de la Compliance et de l'Éthique des Affaires – Supplément à la Semaine Juridique Entreprise et Affaires</i> , 50(91).
Dossier Thématique	Brabant, S.; Savourey, E. (2017d) "Duty of Vigilance: Scope of the Law on the Corporate Duty of Vigilance, Companies Subject to the Vigilance Obligations." <i>Revue Internationale de la Compliance et de l'Éthique des Affaires – Supplément à la Semaine Juridique Entreprise et Affaires</i> , 50(92).
Georgetown Journal of International Law	Groulx, E. D.; Regan, M.; Parance, B. (2019) "Business and Human Rights as a Galaxy of Norms." <i>Georgetown Journal of International Law</i> , 50(2).
Journal du Droit International	Groulx, E. D.; Regan, M.; Parance, B. (2018) "Regards Croisés sur le Devoir de Vigilance et le Duty of Care." <i>Journal du Droit International</i> , 145, 21-23.
Linklaters Report	Jaïs, J. C.; Hannezo, E.; Lignièrès, P.; Frison-Roche, M. (2017) "Client Alert: New French Law on the Corporate Duty of Care." <i>Linklaters</i> (30 March 2017).
Disclosure Reviews / Reports	
<i>Source</i>	<i>Citation</i>
Amis de la Terre France, ActionAidFrance	Renaud, J.; Bordaçarre, A. (2017) "End of the Road for Transnational Corporations? Human Rights and Environment: from a Groundbreaking French Law to a UN Treaty." <i>Amis de la Terre France and ActionAidFrance</i> .
B&L, EDH	Michon, C.; Boucherand, S. (2018) "Application of the Law on the Corporate Duty of Vigilance: Analysis of the First Published Plans." <i>B&L Evolution and EDH (Entreprises pour les Droits de l'Homme)</i> .
CCFD-Terre Solidaire	Burlette, C. (2019) "Vigilance on the Menu: The Risks that Agro-industry Must Identify." <i>CCFD-Terre Solidaire</i> .
Collectif Éthique sur l'Étiquette	Collectif Éthique sur l'Étiquette (2019) "Le Coût du RESPECT Selon Zara." <i>ActionAid France, CCFD-Terre Solidaire, CFDT, CRID, Fédération Artisans du monde, FSGT, FSU, Indecosa CGT, JOC, Léo Lagrange consommation, Ligue de l'enseignement, Oxfam France, Ritimo, Solidarité Laïque, Terre des Hommes France, UFOLEP, Union syndicale Solidaires</i> .
EDH	Michon, C.; Velho, J. (2019) "Application of the Law on the Duty of Vigilance: 2018/2019 Plans." <i>EDH (Entreprises pour les Droits de l'Homme)</i> .
Ernst & Young	Mugnier, E.; Gault, T. (2018) "Loi sur le Devoir de Vigilance: Analyse des Premiers Plans de Vigilance para EY Quelles Réponses à la Loi? Quels Enseignements pour les Entreprises?" <i>Ernst & Young</i> .
French Ministry of Economics	Duthilleul, A.; Jouvenel, M. d. (2020) "Evaluation de la Mise en Œuvre de la Loi n° 2017-399 du 27 Mars 2017 Relative au Devoir de Vigilance des Sociétés Mères et des Entreprises Donneuses d'Ordre." <i>Conseil Général de l'Économie, de l'Énergie et des Technologies. Ministère de l'Économie et des Finances</i> .

Groupe Alpha	Hoerner, P. (2018) “Devoir de vigilance : quel bilan des premiers plans ? Comment se positionnent les parties prenantes ?” La Lettre du Centre Études & Prospective du Groupe Alpha, 34. Groupe Alpha.
Les Amis de la Terre, Amnesty International France, CCFD-Terre Solidaire, Collectif Ethique sur l'Étiquette	Renaud, J.; Quairel, F.; Gagnier, S.; Elluin, A.; Bomnier, S.; Burlet, C.; Ajaltouni, N. (2019) “The Law on Duty of Vigilance of Parent and Outsourcing Companies - Year 1: Companies Must Do Better.” <i>Les Amis de la Terre, Amnesty International France, CCFD-Terre Solidaire, Collectif Ethique sur l'Étiquette</i> .
Mighty Earth, France Nature Environnement, Sherpa	Mighty Earth; France Nature Environnement; Sherpa (2019) “Devoir de Vigilance et Déforestation: Le Cas Oublié du Soja.” <i>Mighty Earth, France Nature Environnement, Sherpa</i> .
Notre Affaire à Tous	Notre Affaire à Tous; Zéa; Nous Sommes les Territoires qui se Defendent; Sherpa; Les Eco Maires (2018) “Press Kit / 23rd October 2018.”
Sherpa, Ritimo, Coredem	Caillet, M. C.; Guislain, M. L.; Malbrand, T. (2016) “La Vigilance Sociétale en Droit Français.” <i>Sherpa, Ritimo and Coredem</i> .
Sherpa	Sherpa (2018) “Vigilance Plans Reference Guidance.” First Edition. <i>Sherpa</i> .
Shift	Langlois, M. (2018) “Human Rights Reporting in France: A Baseline for Assessing the Impact of the Duty of Vigilance Law.” <i>Shift</i> . New York.
Shift	Langlois, N. (2019) “Human Rights Reporting in France - Two Years In: Has the Duty of Vigilance Law led to more Meaningful Disclosure?” <i>Shift</i> . New York.

E. Evaluation framework

The evaluation framework of this study is premised on our interpretation of the context and legislative intent of the law.

As the law is sector agnostic, requiring a vigilance plan irrespective of the sector in which the company operates, the evaluation framework of the study is consequently also sector-agnostic.

We assessed the vigilance plans produced by subject companies through the following three dimensions.

1. Legal compliance

Reading strictly from the law, what do companies need to do at a minimum to comply with the law? Minimum requirements for compliance with the law were established primarily through a careful reading of Article I of the law, in which the requirements for the vigilance plan are

stipulated.⁸⁷ Further guidance was taken from various commentaries that operationalized the provisions of the code. This report features 17 legal compliance indicators.

2. UN Guiding Principles conformance

In addition to assessing legal compliance, this study determines the conformance of (i.e. alignment with) the published vigilance plans vis-a-vis the UNGPs. Due to linkages – and overlap – between the law and the UNGPs (as laid out in section C. *UNGPs and Devoir de Vigilance in concert*), a strong case can be made that the UNGPs would constitute the premier basis a subject company may choose to operationalize the central tenets of the law. While other international standards also inform the responsibilities outlined in *Devoir de Vigilance* – such as the OECD Guidelines for Multinational Enterprises,⁸⁸ the ILO’s Core Conventions,⁸⁹ and the Universal Bill of Human Rights⁹⁰ – the UNGPs serve as the primary point of reference.⁹¹

By establishing criteria for measuring alignment of actions taken in conformance with the UNGPs, it is possible to further differentiate between companies designing and implementing their respective Plan de Vigilance. This report features 14 indicators assessing the conformance to the United Nations Guiding Principles.

3. Transparency

Simply put, this dimension focuses on how forthcoming a given company is with the information provided in its vigilance plan and whether that plan is easily accessible. A company that published the plan on its website in a manner that is clear and easily accessible, and furthermore provided detail and clarity in all of its compliance requirements, received a high transparency score. This report features 11 indicators measuring transparency performance.

For an enumeration of each indicator within each dimension, please see *Appendix C: Evaluation Instrument*.

F. Weighting and scoring

The study’s indicators were designed to collect a binary (“yes/no”) value, a numerical value, or the description of a process or policy. These descriptions were later organised into categories,

⁸⁷ L. n° 2017-399 at Art I.

⁸⁸ In 2011, the Organisation for Economic Co-operation and Development (OECD) incorporated UNGP principles into the human rights chapter of its OECD Guidelines for Multinational Enterprises Guidelines (OECD, 2011).

⁸⁹ See ILO (2010).

⁹⁰ See United Nations (1948).

⁹¹ See United Nations (2011).

thus allowing the creation of typologies. The absence of data was noted, and specific cases of either positive or negative deviance from expected performance were qualitatively highlighted in the report. Indicators were weighted equally, i.e. scored as 1 point per indicator. A dimension-specific score, as well as a summary score, is produced for each company based on the binary indicators applied, and featured in company-specific scorecards (and can be requested on the study's landing page).

While legal compliance is one objective, protecting potential victims of adverse impacts is another. Companies aligning their practices with the UNGPs should see overall higher summary scores.

G. Data quality control

In order to ensure that the researchers had the same level of understanding and consistently applied the evaluation criteria, an orientation session was conducted and frequent meetings were held that featured discussions of individual cases. Upon data verification, in the case of any discrepancy, the point of divergence was resolved. Data collection redundancy was built into the process for quality control purposes. These steps, taken together, ensured that the highest possible data quality was obtained.

H. Research team, competing interests statement

Juan Ignacio Ibañez, Tomas Furfaro, Sofia Orellana, M'Ballou Sanogho, Anthony Cooper, and Nicole Rhim served as the evaluators for the study. Dr. Chris N. Bayer served as the Principal Investigator of the study. Juan Ignacio Ibañez and Anthony Cooper coordinated the study. Juan Ignacio Ibañez and Tomas Furfaro prepared the graphs. Jiahua Xu programmed the study's scorecards. Anthony Cooper, Juan Ignacio Ibañez, and Dr. Chris N. Bayer authored this report.

The Principal Investigator of the study and research team members declare that they have no competing interests, nor conflict of interests, in their execution of this evaluation. They do not knowingly or directly own stocks or other forms of equity in any evaluated company in the entities making up the Stakeholder Forum of the study. Neither DI, nor the project team members, provided services to any of the assessed companies at the time of the study. In sum, they had no known vested interests vis-à-vis the individual scores and findings of this study.

I. Peer review

The study underwent peer review by a number of experts in the business and human rights field at two specific stages: (1) at the protocol stage, and (2) the draft report stage. The following experts reviewed either both or just one of these two documents.

However, peer review participation does not equate to endorsement of the views and findings of this report.

<i>Peer reviewer</i>	<i>Institutional affiliation</i>	<i>phase 1</i>	<i>phase 2</i>
Siham Belhadj	Mazars		✓
Katie Böhme, PhD	iPoint-systems		✓
Adèle Bourgin	Hughes Hubbard & Reed		✓
Claire Bright, PhD	Nova School of Law in Lisbon, British Institute of International and Comparative Law		✓
Elise Groulx-Diggs	Georgetown University, Doughty Street Chambers	✓	✓
Michelle Langlois	Shift	✓	✓ ⁹²
Lise Smit	British Institute of International and Comparative Law		✓

J. Data collection, analysis, and report writing

Upon data collection that applied the evaluation framework, data analysis was performed drawing on the primary data generated through this study. The binary indicators were tallied and graphed, followed by qualitative data analysis that involved coding and quantifying items. Findings were organised according to the three basic themes of this inquiry, and the discussion centred on legal compliance, UNGPs conformance, and the degree of transparency afforded.

K. Limitations

This study is limited in certain aspects by the degree of corporate compliance and transparency. Substandard statements published by some companies lack information on in-scope corporate action. Data, and consequently due credit, will also be lacking for companies that did not publish relevant information in their vigilance plan. While the lack of data presented in the stipulated place and format is – in and of itself – a finding from a scientific perspective, a less complete picture of the particular company emerges.

⁹² Review limited to section I.E.4, the discussion of the concept of impact salience under indicator #10, and Shift's evaluation of the Total case under indicator #19.

This study reviews *reporting* performance only; that is, we only assess a part of the steps that a company may undertake in the light of the *Devoir de Vigilance* law. Moreover, this study aims to constitute a first approximation to company vigilance, but is no substitute for the detailed analysis that each individual case could receive if the reported vigilance plan were contrasted against the firm's specific business context, impacts and risks. An internal or external audit or evaluation would reveal the adequacy of the plan in the light of the conditions that it purportedly would address.

Since we solely deal with the vigilance *statements*, this means that:

1. we do not assess the *truthfulness* of the claims contained within the statements;
2. we do not assess the *adequacy* of the mitigation steps to actually address the risks identified (but only ascertain whether at least *some* measure *exists*);
3. we do not assess the risks that companies refrained from reporting, despite the fact that they should have disclosed them.

Furthermore, we applied the same bar to all reports regardless of each company's individual contexts and 'starting points' with regards to human rights, labour rights, and the environment.

In general, the representation made by companies in their statements were taken at face value. We simply assumed the veracity of the information provided, which represented a necessary methodological step for the purposes of this study: to analyse the quality of the reporting and of the reported efforts. The correspondence of the reported policies with reality is a different matter entirely, which could e.g. be demonstrated through external audits.

By formulating binary indicators such that they retrieved as objective data as possible, and by taking several methodological precautions so as to ensure that subjectivity or evaluator error was corrected, we attempted to make our scoring as free from arbitrariness as only possible. However, the choice to assign equal value ('one point') to each indicator carries in itself some arbitrariness, as does the decision to include or exclude certain indicators.

III. Findings

A. In-scope organizations

The criteria established by the law (number of employees, location of headquarters, corporate form) were used as a tool in the search for statements. However, in order to avoid the uncertainties that come along with interpretation issues and data source accuracy, a company was only regarded to be in-scope if it *admitted* to be so. The following three cases were considered as admissions of being subject to the law:

1. The company published a vigilance plan pursuant to the law. We identified 122 such cases.
2. The company did not publish a vigilance plan, but its registration document or annual report contained sections or paragraphs pursuant to the law (e.g. ‘*Devoir de Vigilance* risk mapping’, ‘*Devoir de Vigilance* alert system’). We identified 9 such cases.
3. The company did not publish a statement pursuant to the law, but acknowledges to be subject in its registration document, annual report, CSR report, or other report. Statements such as ‘we are designing a vigilance plan and will publish in the next year’ were regarded as acknowledgements (as long as the firm did not state that its obligation to publish will only begin to exist in the future).⁹³ We identified 3 such cases.

134 companies report being subject to the
Duty of Vigilance Law

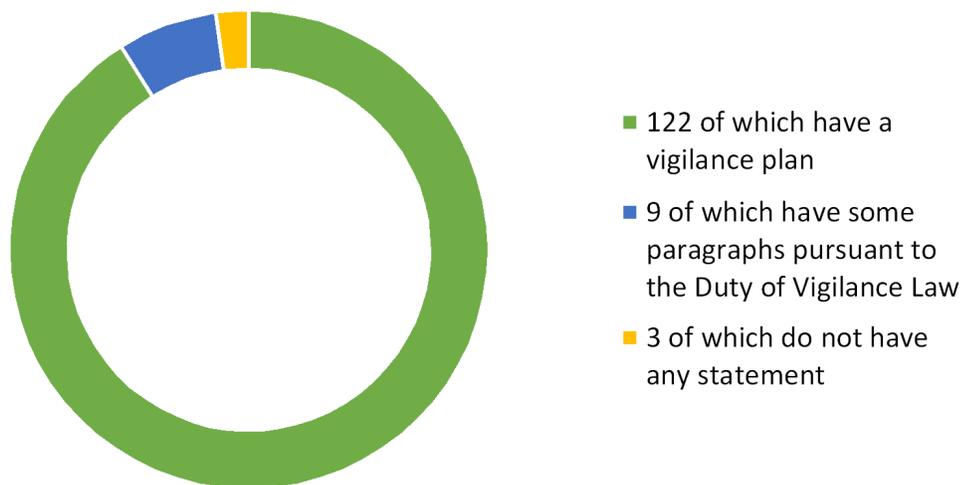


Figure 3: Reporting situation of the companies which self-identified as subject to the law for the reporting year. N = 134.

⁹³ This was the case of [SNCF Mobilites](#): “SNCF Group will come under the scope of the act once we begin trading as a public limited company” (p. 57).

B. Profile of assessed organizations

Of the 134 organizations analysed, 114 were SAs (*Société Anonyme*). Another 8 undertakings were European Companies or SEs (*Societas Europaea*), 7 were SASs (*Sociétés par Actions Simplifiées*) and 2 were SCAs (*Société en Commandite par Actions*). Three of the companies analysed were not registered in France and thus had foreign corporate forms: Constantia Flexibles Group GmbH, Stahl GmbH and Tsebo Solutions Group Proprietary Limited – three subsidiaries of Wendel SA with separate vigilance plans.

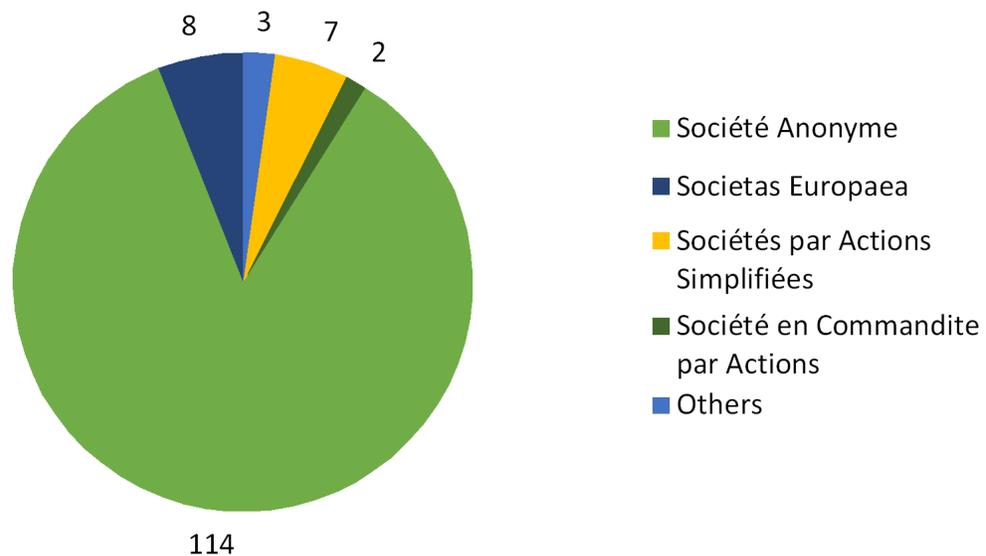


Figure 4: Corporate form of the firms reviewed by this study. N = 134.

Furthermore, the companies studied had a combined 2.2 trillion euro in revenue, equivalent to 79% of France's GDP.⁹⁴ The average firm had an average of 16.43 billion euro in revenue, whereas the median revenue was 6.4 billion euro. The combined total assets of the firms studied amounted to 12.6 trillion euro, with the average being 99.4 billion and the median, 13.4 billion.

Moreover, the undertakings reviewed employed a total of 9.4 million people in the reporting year. The average company had a workforce of 70,041 employees, with a median of 33,837.

The following figures show the distribution of the companies studied according to their total assets (horizontal axis), total revenue (vertical axis) and total workforce (size of bubble). The selected outliers that can be observed are Total SA (233,653 million euro in assets; 167,536 million euro in revenue;⁹⁵ 104,460 employees), AXA SA (930,695 million euro in assets; 102,874 million euro in revenue; 125,934 employees), BNP Paribas SA (2,040,836 million euro in

⁹⁴ Source: World Bank (2019).

⁹⁵ Values originally in USD dollars, converted to euro at a rate of 0.91 euro per dollar.

assets; 33,333 million euro in revenue; 54,299 employees), Crédit Agricole Corporate and Investment Bank SA (1,624,400 million euro in assets; 18,634 million euro in revenue; 142,000 employees), Société Générale SA (1,275,128 million euro in assets; 23,954 million euro in revenue; 147,125 employees), and Groupe BPCE SA (1,273,926 million euro in assets; 3,819 million euro in revenue; 105,000 employees).

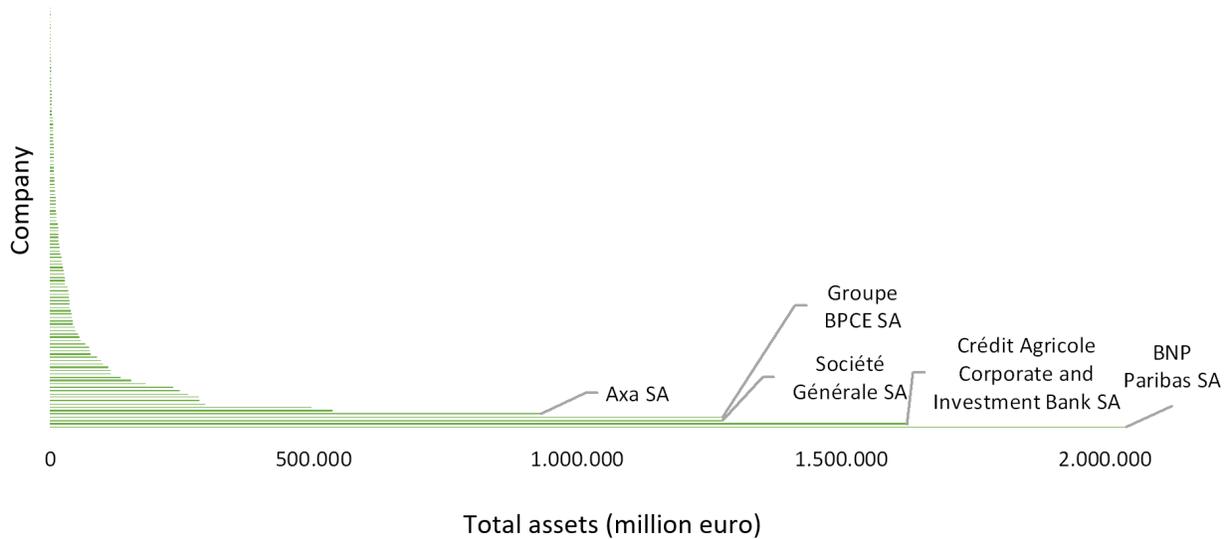


Figure 5: Total assets per company. N = 134.

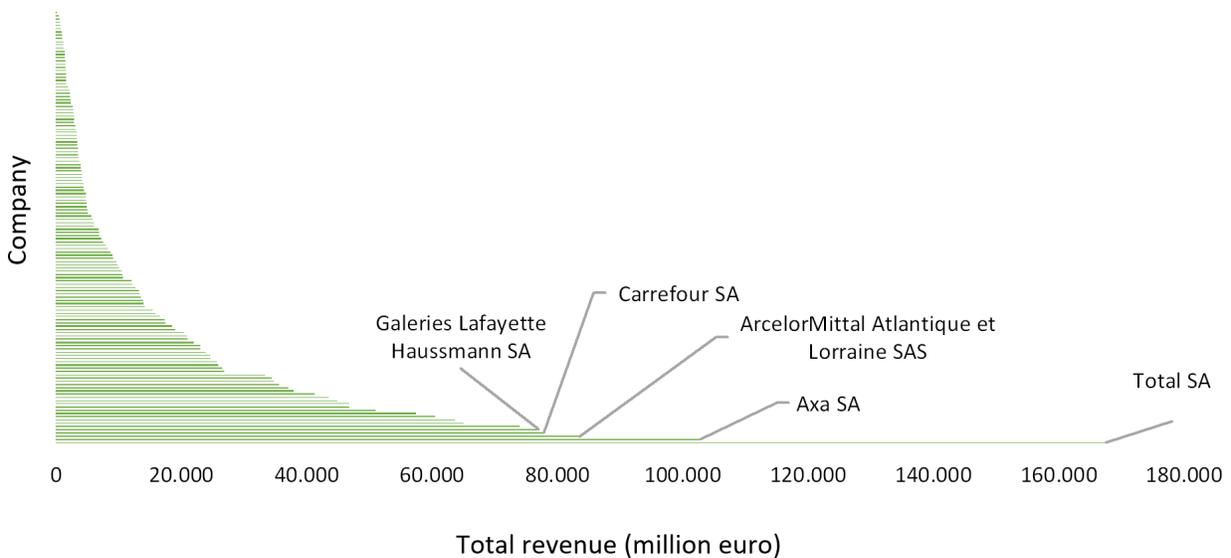


Figure 6: Total revenue per company. N = 134.

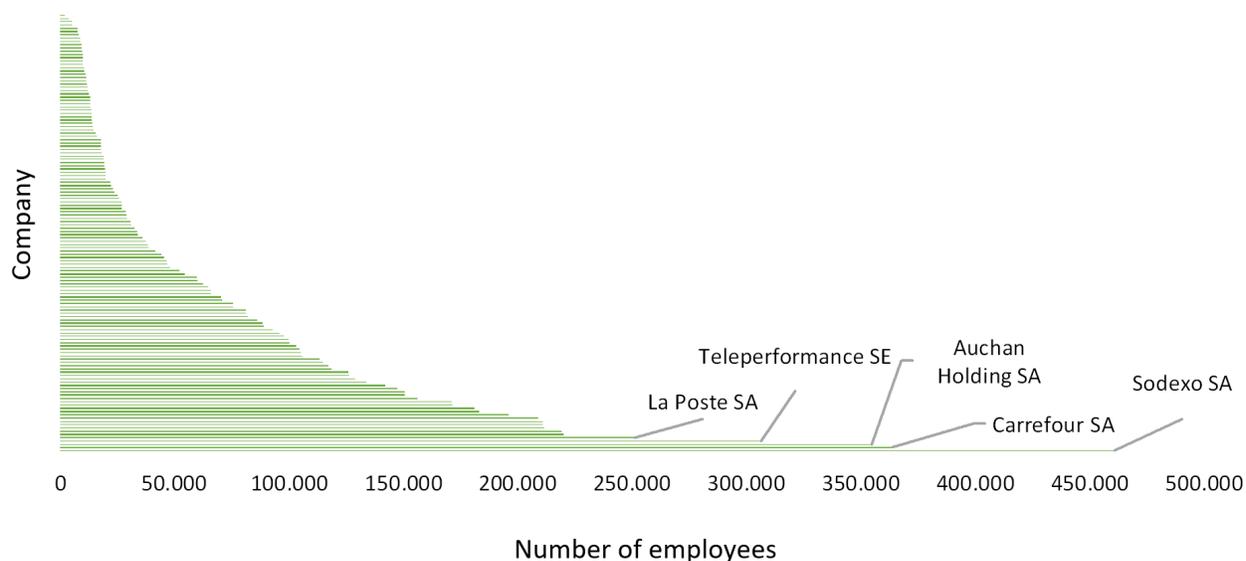


Figure 7: Number of employees per company. N = 134.

The largest and smallest examples of each variable can be observed in the following table:⁹⁶

	Total assets (million euro)	Total revenue (million euro)	Number of employees⁹⁷
Highest	BNP Paribas SA (2,040,836)	Total SA (167,536)	Sodexo SA (460,663)
Second highest	Credit Agricole Corporate and Investment Bank SA (1,624,400)	AXA SA (102,874)	Carrefour SA (363,862)

⁹⁶ The information of total assets, total revenue and number of employees was taken from the firm's registration document. If unavailable, we consulted the firm's financial report and/or website. When both group-level data and company-level data were available, the former were preferred. This was done, firstly, because, on occasions, holding companies do not have employees or activities of their own, which would bias our data. Secondly, because the law is concerned with (risks arising from) the activities of not just parent companies, but also subsidiaries.

⁹⁷ Two of the companies reviewed had less employees than Maisons du Monde and Caisse D'epargne, and went even below the 5,000 employee threshold: Cromology SAS (3,646) and Stahl GmbH (2,010). However, these firms were evaluated, not because they were directly subject to the law, but because their mother company was, namely Wendel SA. Wendel explained that the companies "were not subjected to this regulation outside Wendel's control," but that, since Wendel is a holding company with almost no activity on its own, these firms had to prepare a vigilance plan in their character of Wendel-controlled firms (p. 157). In consequence – as explained below, under indicator #1 – these subsidiaries were separately evaluated, but they are not shown in this table due to their indirect relation to the law.

Second lowest	SOMDIAA SA (400)	SOMDIAA SA (457)	Maisons du Monde SA (7,648)
Lowest	Catering International & Services SA (129)	Catering International & Services SA (226)	Caisse D'epargne et de Prevoyance Ile-de- France SA (5,084)

Figure 8: Companies with the most and with the least total assets, total revenue and number of employees. N = 134

C. Reporting modalities

The *Devoir de Vigilance* statements were published in varying forms. As described by indicator #39 of this study, not all companies published the vigilance plan in the report as required by the law (article L. 225-102), but as a stand-alone report. In some cases, the document only contained a ‘summary’ of the vigilance plan statement, with the full plan being available online. The implementation report (*compte rendu*) required by the law was also often not present, nor merged with the vigilance plan statement itself (see indicator #40).

Moreover, in a number of cases, the vigilance plan statement consisted only of a cross-reference table, or a few paragraphs with cross-references to the rest of the registration document. While we understand that, on occasions, cross-referencing is an inevitable need to avoid duplication of information, resorting to it in excess defeats the purpose of having a vigilance plan statement in the first place, especially if large sections of the registration document have to be consulted in order to retrieve the information demanded by the law.

In this direction, we should note that the report of [Tarkett](#) was a one-page long vigilance plan, consisting mainly of cross-references (p. 106). In some cases, the statement was even shorter. For instance, [Maisons du Monde](#) published a two-paragraph plan (p. 82). In other cases, such as [LVMH](#)’s report, the statement was a few pages long, but also consisted only of a cross-reference table (p. 66-68). [Orano](#)’s statement also consisted exclusively of cross-references (p. 225), as did [Imerys](#)’ (p. 177).

Similarly, [Pernod Ricard](#)’s statement consisted mostly of a cross-reference table. It was also stated that “the Group had already put in place various tools and procedures, while some of the information is contained elsewhere in Section 3, as well as in Section 4” (p. 113). Nevertheless, with this cross-reference being excessively broad, it was not followed, according to the methodology of this study.

[Groupe Renault](#) (p. 135-136) had a statement that was one and a half pages, but whenever a subsection of the registration document was also included within the vigilance plan, it was tagged

as such, with the corresponding legal requirement,⁹⁸ which facilitated the evaluation task. [SEB S.A.](#) structured its statement in a similar manner (p. 117).

In some cases, the plans published did not contain cross-references, but were nonetheless very short. [Publicis Groupe](#)'s statement, for instance, was three paragraphs long (p. 144). [HSBC](#)'s (p. 71), [La Banque Postale](#)'s (p. 349), [Onet](#)'s (p. 49), [Crit](#)'s (p. 120), [Groupe LDC SA](#)'s (p. 39), [Les Mousquetaires](#)' (p. 14), [GFI Informatique](#)'s (p. 68-69) and [Altran](#)'s (p. 49) plans were also less than a page long. [Snef](#)'s vigilance plan (p. 18-19) was a page and a half long, but only due to the font size and amount of spacing, as the content was comparable to the aforementioned companies'. The same was applicable to [XPO Logistics Europe](#) (p. 11-12).

Other companies, such as [Sanofi](#) (p. 377-403), merged the non-financial statement section and the vigilance plan section, which also constituted an obstruction to evaluation. It is one thing to include the vigilance plan statement as a subsection of the non-financial chapter – with cross-references where necessary – and a different thing entirely to state that the full non-financial chapter is also pursuant to the *Devoir de Vigilance* law. [Keolis](#) (p. 7) and [Lisi](#) (p. 100) also merged both statements.

In a similar fashion, [Unibel](#) presented a joint statement for both the requirements of the *Sapin II* law and the *Devoir de Vigilance* law: “The Group has decided to work on the plans simultaneously using a joint methodology” (p. 49).

Furthermore, at times the vigilance plan was not in a section titled as such. [Arkea](#) included its vigilance plan under a section named “Report on implementation of the vigilance plan” (p. 273). However, this section contained a normal vigilance plan statement, rather than a *compte rendu*. Also interestingly, [FNAC Darty](#)'s vigilance plan was contained in a section named “oversight plan” (p. 63).

Finally, two peculiar cases must be highlighted. [Catering International Services](#) only reported the company's health and safety policy – but structured it as a vigilance plan (p. 58-60). [Financière de l'Odet](#)'s vigilance plan (p. 74-80) was an identical copy of its mother company, [Bolloré](#) (p. 74-80). However, since Financière de l'Odet published this statement independently within its own, separate registration document with no cross-reference to Bolloré's statement, it was evaluated separately.

The quality of the reports itself is assessed throughout the next 42 indicators, organised according to the legal requirement under which they fall.

⁹⁸ For example, subsections pertinent to risk mapping were tagged as “DV1a” if they referred to the group itself and as “DV1b” if the subsection pertained to suppliers or subcontractors.

D. Establishment of a plan

The law requires that the in-scope company prepares a vigilance plan statement. Compliance dictates that this statement or report should detail how the company met its duty to prepare a vigilance *plan*.

For the purposes of this study, we take each statement at face value, not judging the adequacy of the plan to the challenges posed by each industry sector, but rather the quality of the *reporting of the plan* on its own terms.

We ascertained the performance of the companies in the light of this requirement through the following indicators.

#	indicator	unit	dimension
1.	Did the Corporation establish a vigilance plan?	yes / no	Compliance

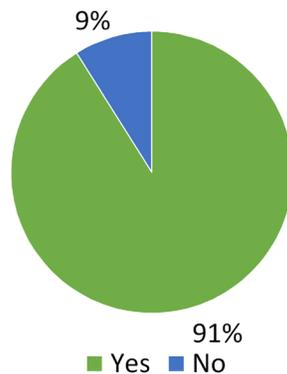


Figure 9: Almost a tenth of the companies under review did not have a proper vigilance plan established. N = 134.

As previously stated, 122 companies published a vigilance plan, whereas nine published *Devoir de Vigilance*-pursuant excerpts that did not amount to a vigilance plan, and three did not publish any statement. In order to distinguish a few paragraphs pursuant to the law from a proper vigilance *plan*, we resorted to the concept present in the law itself: a statement is considered a plan if it contains measures for risk identification and/or for risk prevention.⁹⁹

⁹⁹ “The plan shall include the reasonable measures to allow for risk identification and for the prevention of severe violations of human rights and fundamental freedoms, serious bodily injury or environmental damage or health risks” (L. n° 2017-399 at Art I.).

Wendel's registration document presented a vigilance plan for each of the entities controlled by it: Cromology, Stahl's, Constantia Flexibles Group, Tsebo. However, no vigilance plan was available for the holding company itself, which justified this omission in the following manner: "As Wendel is a holding company made up of a small management team, its duty of care largely relates to its shareholdings and is thus covered in the NFS. Nonetheless Wendel incorporated duty of care into its whistleblowing procedures and began setting up a third-party assessment procedure" (p. 157)

The firm also stated that "the relevant companies completed a questionnaire about their risk environment with respect to the topics covered by the Duty of care regulation. (...) On the basis of this questionnaire, vigilance plans were drawn up by the consolidated companies in accordance with applicable regulations and are published in this registration document. (...) 100% of the companies have implemented a Vigilance Plan on CSR issues in their business and that of their suppliers and/or subcontractors, as part of the regulation on the Duty of Care. Four of them were not subjected to this regulation outside Wendel's control" (p. 157). Hence, the companies controlled by Wendel were evaluated separately from it, and assigned a 'yes' under this indicator. Wendel, however, was awarded a 'no.'

#	indicator	unit	dimension
2.	Is the vigilance plan readily accessible within the website?	yes / no	Transparency

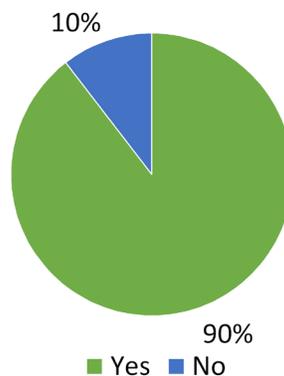


Figure 10: Ninety percent (90%) of the companies under study published their vigilance plan in a readily accessible manner within their website. N = 134.

A vigilance plan was regarded to be "readily accessible" within the evaluated firm's website if at least one of the following requisites was met:

- The vigilance plan was available on the homepage of the company website;

- The vigilance plan was linked to in a popup menu of the homepage;
- The vigilance plan was an immediate result of typing the words “vigilance plan”, “reference document”, “registration document”, “document de référence” in the search box of the website;
- The vigilance plan was found in some other way within one minute by the evaluator.

Under these criteria, 90% of the companies under review were considered to have a readily accessible vigilance plan.

#	indicator	unit	dimension
3.	Does the vigilance plan mention the Devoir de Vigilance law?	yes / no	Transparency

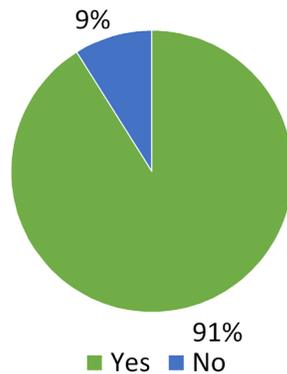


Figure 11: Almost nine tenths of the firms in scope of this study mentioned the law in their vigilance plan statement. N = 134.

Ninety-one percent (91%) of the companies reviewed mentioned the *Devoir de Vigilance* law within its statement. [Kering](#)'s vigilance plan statement comprised a particular case: It mentioned that “Kering falls within the scope of France’s legislation on the duty of care, which applies to French companies of a certain size” (p. 63). While the law itself was not explicitly mentioned, a ‘yes’ was still awarded, as it was unequivocally being referred to.

#	indicator	unit	dimension
4.	Was the plan established with stakeholder input?	yes / no	Conformance

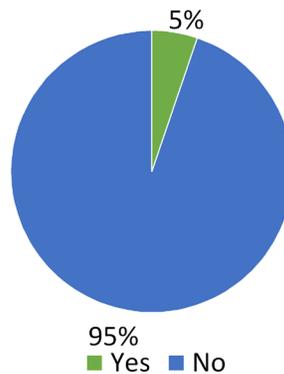


Figure 12: Only 5% of the firms studied conducted stakeholder consultations or other forms of stakeholders input in the design of their vigilance plan. N = 134.

Stakeholder consultations in the drafting of the vigilance plan are encouraged by the law, but not strictly required (*“Le plan a vocation à être élaboré en association avec les parties prenantes de la société”* -- the plan is meant to be drawn up in conjunction with the stakeholders of the company).¹⁰⁰ This indicator concerns a company’s retrieval of input from external stakeholders, such as civil society representatives. Internal stakeholders, such as managers, HR departments or “Executive Committee members” (Vinci, p. 240) were not ordinarily regarded as such. Employee representative bodies that do not constitute a part of the company tree structure were, however, accepted.

Only 5% of the companies under review had a vigilance plan in which stakeholders had inputted. This particularly low number of firms was disappointing but unsurprising, since antecedent research such as Shift’s (Langlois, 2019: 8) had already stated that stakeholder engagement was the one “area where disclosure has actually become weaker (...). Despite the fact that engagement with stakeholders is required by the Law, most vigilance plans and implementation reports do not mention stakeholder engagement at all, or are restricted to vague statements about being ‘in constant dialogue with stakeholders.’” In this study, we also did not accept such vague statements. In order to regard a plan as having received stakeholder input, the vigilance plan section of the registration document must have provided sufficient specificity. Stakeholder input on risk mapping was not considered as stakeholder input for the plan as such, nor was ‘presenting’ the plan to stakeholders regarded as ‘inputting’ in it.

¹⁰⁰ L. n° 2017-399 at Art I.

An example of a statement not awarded a “yes” under this indicator was given by [Vinci](#), whose report indicated that it works “collaboratively with other stakeholders” (p. 238), that it “is in frequent contact with external stakeholders regarding human rights issues, to answer questions and provide further information” (p. 240). However, stakeholder input was reported for the environmental risk map (see indicator #7).

Furthermore, Vinci, just like [BNP Paribas](#) (p. 557), [Total](#) (p. 93),¹⁰¹ [Danone](#) (p. 164) and [Arkema](#) (p. 129) referenced some sort of stakeholder input, but did not specify which stakeholders were involved. Hence, this was not considered under this indicator. Submitting a plan to a Stakeholder Committee ([Michelin](#), p. 272; [Groupe SEB](#), p. 117) was also not considered as sufficient to award a ‘yes’ under this indicator – following the criterion established by Michon et al. (2018: 10), who state that, in spite of companies consulting with pre-existing committees, what they should really do is identify the relevant stakeholders and obtain input from them (see also Langlois, 2018: 29, 51-51; 2019: 8; Sherpa, 2018: 16).

[Financière de l’Odet](#) mentioned stakeholder involvement in certain stages of the vigilance process of certain activities (p. 80), but this was regarded as insufficient to qualify as stakeholder input for the vigilance plan itself. [FNAC Darty](#) claimed that it “organized a consultation with internal stakeholders in order to develop its first oversight plan,” yet we regarded the term ‘internal stakeholders’ as still insufficiently specific. Thus, a ‘no’ was awarded.

A positive example, in turn, is the case of [Bouygues](#). The firm reported that “the 2018 plan was submitted for opinion to a committee of some ten representatives of Bouygues’ stakeholders (NGO, supplier, trade union, social audit and responsible purchasing experts, etc.) in April 2018. Feedback from the committee’s report was used to prepare this second edition of the plan (...). The business segments are gradually defining and implementing additional measures and action plans to strengthen vigilance and take into account the recommendations made by stakeholders” (p. 177).

¹⁰¹ Total did report maintaining regular “dialogue” with “the Group’s employees and their representatives who have a privileged position and role” (p. 93) and that “GoodCorporation, International Alert and Collaborative Learning Project” inputted in the risk map (p. 94). However, Total did not specify that stakeholders provided input into the design of the vigilance plan itself.

#	indicator	unit	dimension
5.	Was the local community counted within those stakeholders?	yes / no	Conformance

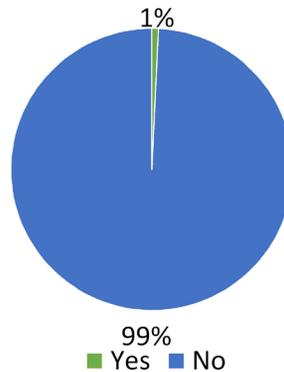


Figure 13: Stef was the only firm that reported having local community input in the establishment of its plan. N = 134.

Only one company reported having conducted consultation with local communities for the design of the vigilance plan: Stef. [Stef](#) explained that its plan relies on a “long-standing process of listening and ongoing dialogue [that] aims to involve all stakeholders in the choice of the actions carried out and their deployment.” A list of the stakeholders consulted was presented, and one of the stakeholders was named “Regions and communities” (p. 56), which led to awarding a ‘yes’ under this indicator. However, we should point out that the company did not specify *how* this consultation was carried out, restricting its description of the “associated issues” to “shar[ing] the challenges and work[ing] together to find appropriate solutions for each situation” (ibid.).

[Total](#) explained that it had set up a system for dialogue with stakeholders that was “supplemented by a network of mediators with local communities” (p. 93). However, it was unclear that this constituted input from the local communities on the plan itself, as well as from other stakeholders, which were not clearly identified.

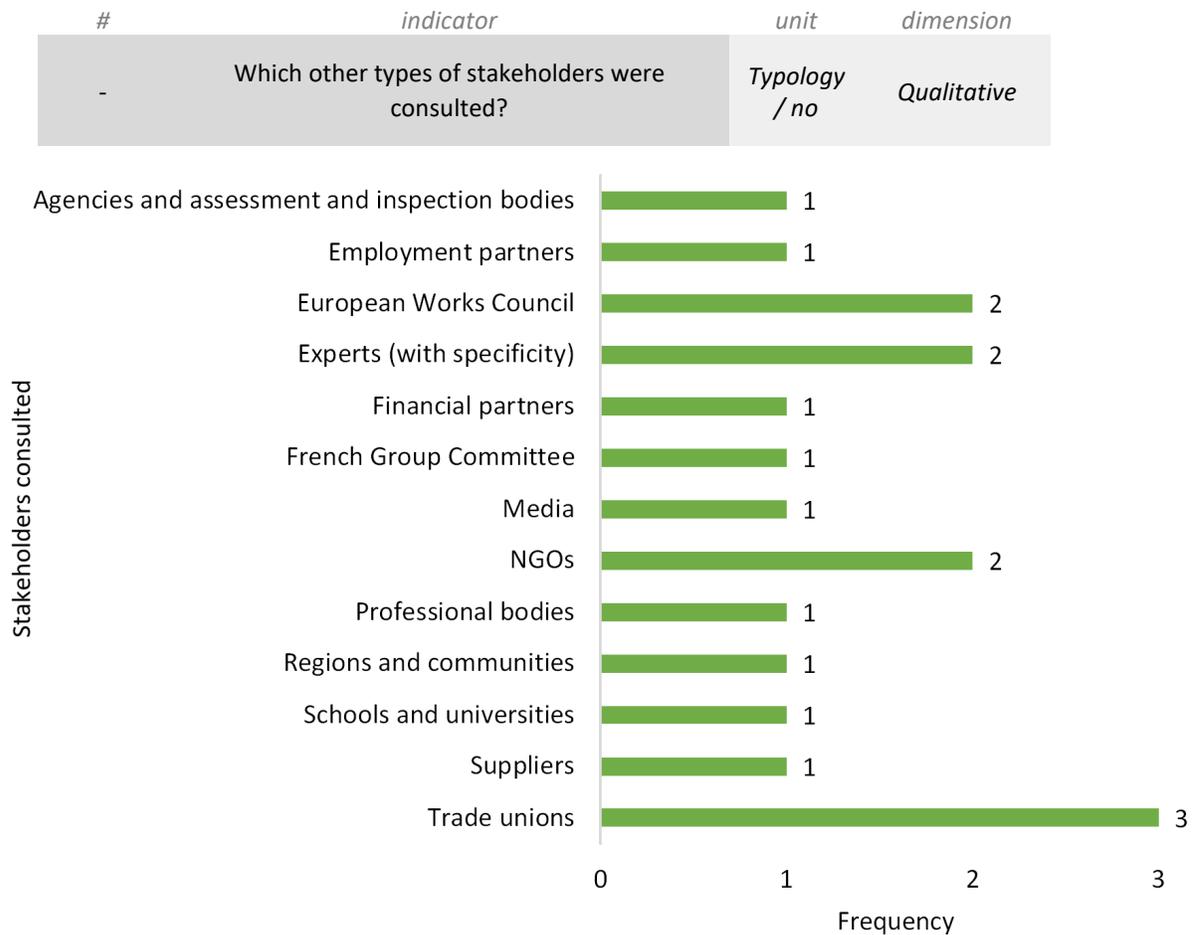


Figure 14: Six companies reported drafting their vigilance plan together with stakeholders. This figure displays the frequency with which each type of stakeholder was consulted. N = 134.

The types of stakeholders consulted most frequently were trade unions and other employee representative bodies, such as those in the European Works Council and in the French Group Committee. [Électricité de France SA](#), for instance, reported that the trade union organizations were involved in preparing the vigilance plan. The firm also indicated that it participated in discussions with “other companies and NGOs” (p. 215), but since these talks were not exclusively vigilance plan-related, they did not suffice to be retrieved by this indicator.

When “experts” were reported as stakeholders, they were only accepted if the specific type of expert was indicated. [Bouygues](#), for instance, reported the involvement of “responsible purchasing experts” (p. 171) – among many other stakeholders – in the crafting of their vigilance plan.

E. Establishment of a risk map

The second legal requirement reviewed is the duty to prepare and report “a mapping that identifies, analyses and ranks risks.” This review was undertaken through the indicators presented in the current section.

Note that:

1. each indicator was evaluated independently from each other;
2. a ‘show and tell’ criterion was applied, as throughout the whole study.

The ‘show and tell’ threshold means that, in spite of us taking the statements at face value, merely *claiming* to have undertaken a certain measure still did not automatically merit the belief that such measures actually took place, unless they were appropriately reported. For example, stating that a risk mapping was undertaken did not suffice to assign a ‘yes’ under indicator #7, unless the risks were actually discussed in the statements.

However, the combination of this criterion with the independent evaluation of each indicator may lead to apparent contradictions. Yet these contradictions are only *apparent*. For instance, it may appear strange that a firm obtains a ‘no’ under indicator #7 (i.e. the firm does not have a risk map) but then obtains a ‘yes’ under indicator #13 (i.e. the firm’s risk map includes a discussion of the firm’s subsidiaries). This might seem contradictory: How could a subsidiary be present in the risk map if there is no risk map in the first place? However, this discrepancy vanishes once we understand, for example, that the firm described in detail its procedure to map risk in subsidiaries, but omitted a discussion of what the risks identified actually were. In this context, the values awarded in the example are the most appropriate for each indicator.

A discussion of the risks identified through a risk mapping process was at least required to award a “yes” under this indicator. Ideally, a risk matrix (‘materiality matrix’) was also included. At least some of the risks discussed must overlap with the issue areas of the law: human rights, environmental impacts, employee health risks, and the risk of bodily injuries. In this context, we found that almost three quarters of the companies reviewed published a risk mapping.

With this clarification in place, we present the indicators for this legal requirement.

#	indicator	unit	dimension
6.	Did the company undertake a risk mapping and analysis?	yes / no	Compliance

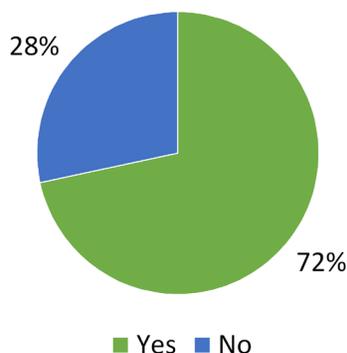


Figure 15: More than a quarter of the companies studied in this report did not conduct a risk mapping. N = 134.

Nonetheless, a few deviant cases ought to be highlighted. The report of [Engie](#) indicated it undertook a risk mapping process. However, such risk mapping was not displayed in the registration document itself. This does not suffice under the criteria of this study, which requires firms to “show and tell” the measures undertaken. For this reason, the firm was awarded a “no” under this indicator.

[Schneider Electric](#) reported that it undertook a risk mapping process (p. 110) and that it “is using several processes of risk assessment, internal control, and internal audits to build a risk matrix” (p. 111). Nonetheless, no risk map or risk matrix was shown in the report, but only a graph with the percentage of risky suppliers per region. While the firm claimed that this was a (perhaps ‘the’) result of the risk mapping process, this was not regarded to be sufficient, as a risk map is supposed to identify the risks at issue, which was not the case, and graphically show how risks compare to each other, which was also not the case. Furthermore, there was no risk analysis section. Only scattered across the prose of the remaining sections could some risks be identified. This discussion was taken into account for subsequent indicators, but did not constitute an operation of risk mapping and analysis as such. Thus, a “no” was awarded for this indicator.

[Le Groupe La Poste](#) reported that “a detailed mapping of the risks associated with its value chain has been created. In view of its business activities, its geographical footprint, and its compliance policies, the Group has a very low exposure to risks associated with human rights and fundamental freedoms” (p. 505). However, the risk mapping or analysis was not shown, and thus a ‘no’ was awarded.

[Atos](#) (p. 105-106) and [Pernod Ricard](#) (p. 115) also claimed to have mapped risks without showing the mapping. [Lisi](#) explained that no risks were presented because “this map did not show any risks which had not already been identified by the Group” (p. 49) yet a ‘no’ was still awarded.

[Vivendi](#)’s vigilance plan has a section on risk mapping, but contains no discussion of risks within it. It only states “for a description of this analysis, see Section 4 of Chapter 1” (p. 110). This section consists of 48 pages – the entire non-financial section – which should be negatively highlighted due to being excessive. Upon searching said section, once we found a discussion of risks, we awarded a ‘yes.’ But only the sub-section with the discussion of risks was consulted. Moreover, following our methodology, we did not follow a second set of cross-references in the non-financial section. Despite having awarded a ‘yes,’ the breadth of the cross-reference ought to be negatively highlighted. Furthermore, the risk discussion at issue had little overlap with the priority issues as per *Devoir de Vigilance*.

[Eiffage](#) was in a similar situation. Its vigilance plan statement did not contain a risk map. The plan did state that “information concerning internal risk mapping with respect to Eiffage parent companies and their subsidiaries is provided in the Directors’ report in the section devoted to the organisation of the internal control and risk management functions” (p. 137). However, this section did not contain a risk map as required by *Devoir de Vigilance*.

A second cross-reference stated “as regards the Group’s subsidiaries, the actions implemented are described in the section of this document containing the non-financial performance statement (information concerning employment, the environment and corporate social responsibility)” (p. 138). The subsection at issue is 60 pages long, which again must be negatively highlighted. The first 15 pages did contain information required by the *Devoir de Vigilance* law, among which was a discussion of risks. Since, however, the quote at issue did not refer to this section for risks, but only to actions implemented by subsidiaries, a ‘no’ was awarded under this indicator – as there was no proper risk map in the vigilance plan as required by the law. In spite of this penalisation, we did consult this section for the subsequent indicators.

[Capgemini](#) stated that the “risk mapping and the materiality assessment, [were] described in Section 4.1.5.2.” (p. 153). However, no Section 4.1.5.2 existed. We assumed this was a typo and that the authors actually referred to Section 4.5.1.2. Hence, we awarded a ‘yes’ for this indicator and did consult this section for other indicators, but we encourage the firm to prevent future mistakes of this nature, which obstruct the assessment of the vigilance plan. However, the cross-references in section 4.5.1.2. were not pursued, according to the methodology of this study.

#	indicator	unit	dimension
7.	Was the risk map established with stakeholder input?	yes / no	Conformance

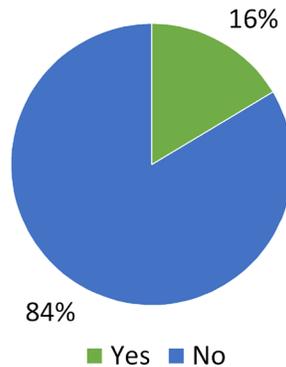


Figure 16: Sixteen percent (16%) of the firms analysed conducted stakeholder consultations for their risk map. N = 134.

Devoir de Vigilance encourages stakeholder input in the vigilance *plan*. But stakeholder input in the risk *map* adds value to a report, and furthermore conforms to the UNGP 18 which requires to resort to “meaningful consultation with potentially affected groups and other relevant stakeholders” to “identify and assess (...) actual or potential (...) impacts (...) either through their own activities or as a result of their business relationships,” as it allows for this identification. In this context, we found that 17% of the companies under review conducted their risk map with stakeholder input. Thus, indicator #7 is an indicator of *conformance*.

For example, [Vinci](#) stated that “the environmental officers of VINCI companies were partners in this initiative, and internal and external stakeholders contributed their input (...). It found approximately 20 environmental risks that were critical for the Group, after interviews with about 40 internal and external stakeholders (Executive Committee members, directors of operations, customers, employees, investors, environmental protection organisations, public institutions, etc.)” (p. 240).

Moreover, [Vinci](#) also reported that “sectoral research was analysed and interviews were held with key VINCI stakeholders, such as the Building and Wood Workers’ International (BWI), the ILO, the International Organisation for Migration (IOM), the French National Consultative Commission on Human Rights (CNCDH), the Danish Institute for Human Rights, and NGOs having worked on human rights issues in that region (Amnesty International, Human Rights Watch, Engineers Against Poverty, Business & Human Rights Resource Centre, etc.)” (p. 234).

However, firms not specifying which stakeholders were consulted were not awarded a ‘yes’ under this indicator, in spite of stating that they did receive stakeholder input. For instance, [Technicolor](#)

stated that “CSR inquiries received from and focus points expressed by external stakeholders to the Group were also integrated” (p. 169) but, since the stakeholders were not specified, this was not considered. Similarly, [PSA Groupe](#) stated that “the findings were submitted to appraisal by the Group stakeholders through interviews conducted with a representative sample” (p. 34). However, since the firm did not specify the stakeholders at issue, a ‘no’ was awarded.

[Rexel](#) indicated that it consulted “internal and external experts,” and that risk-identification meetings included “Representatives of the European Works Council” (p. 216-217).

#	indicator	unit	dimension
8.	Was the local community counted within those stakeholders?	yes / no	Conformance

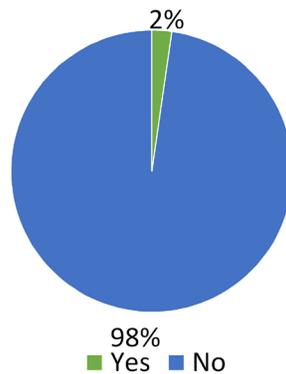


Figure 17: Two percent (2%) of the companies in scope of this report undertook a risk mapping process involving input from local communities. N = 134.

Three companies – Michelin, Bolloré and Financière de l’Odet – used local community input in their risk mapping. For example, according to [Michelin](#), “a complaint hotline for the neighboring communities” was set up for a facility in Thailand, which allows to identify environmental risks (p. 276).

The [PSA Groupe](#) reported being “committed to the local communities where it operates” (p. 39). However, the report does not state that there was input from the local community itself. Firstly, this is merely insinuated, not explicitly reported. Secondly, the relations established were with the “local administration,” which we do not regard to be synonymous with a local community.

#	indicator	unit	dimension
9.	Does the risk mapping address the risks from the perspective and in the context of the potential victims?	yes / no	Compliance

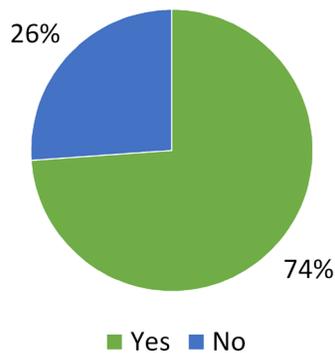


Figure 18: More than a quarter of the firms reviewed did not discuss risks from the perspective of the potential victims. N = 134.

Risk maps are not novel in corporate reporting. Firms often use them to identify and discuss risks that threaten the business position of the company. However, under *Devoir de Vigilance*, firms are expected to discuss risks of impacts caused ‘by’ the firm, rather than ‘to’ it. Therefore, if a firm e.g. discusses how human rights violations could lead to a loss of reputation (and, subsequently revenue) by the firm, it does not suffice to be in compliance with the law. With this in mind, firms were assigned a ‘yes’ when the risk map addressed impacts from the perspective of the potential victims. Seventy-four percent (74%) of the companies assessed were in this situation.

Some firms discussed both types of risks. While they were still awarded a “yes” under this condition, the spirit of the law was probably not to mix their discussion. [Orange](#), for instance, discussed forced labour as a human rights risk (a clear example of impact ‘by’ the firm) but also “failure to adapt to a 2°C world” (as an impact ‘to’ the firm, p. 314).

#	indicator	unit	dimension
10.	Does the mapping rank or prioritise these risks? (Materiality matrix, etc.)	yes / no	Compliance

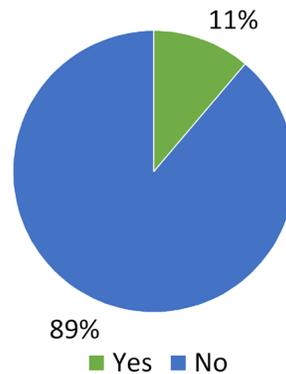


Figure 19: Only 11% of the firms studied conducted a prioritisation of risks. N = 134.

Since the *Devoir de Vigilance* law requires from firms “a risk mapping meant for their identification, analysis and prioritisation,” we assess whether such a ranking was present in the analysed statements. Any form of ordering or clear prioritisation of some risks over others was considered to meet this requisite, including materiality matrices. Indication of ‘material’ or ‘salient’ risks¹⁰² was not regarded to be a form of prioritisation *per se*. Furthermore, firms were expected to display the prioritisation in the statement itself. In other words, stating that a prioritisation process was undertaken, without actually showing such a ranking, resulted in a “no” being awarded.

This was the case with [Engie](#), whose report states that there was a “prioritization” (p. 170) but does not show this ordering (similarly, [Vinci](#), p. 235). The statement also reports that “six purchasing categories were high risk” (p. 170), but these categories are not presented in contraposition with other lower risk categories. Hence, we considered that risks were not mapped or prioritised in this case. A similar case was [Saint Gobain](#), which indicated that “selected salient risks were: forced labor; child labor; freedom of association; the use of recruitment agencies; discrimination” (p. 55). Analogously, [Carrefour](#) claimed that “risk situations and related risks are then ranked in order of importance using a risk classification and ranking grid (minor risks, significant risks or major risks, according to the combination of probability and severity)” (p. 108) but no such ranking was shown. Other firms (e.g. [Bouygues](#), p. 174) also stated they had a ranking, yet did not display same.

¹⁰² While the concept of ‘materiality’ is associated with relevance to a particular audience (usually shareholders or stakeholders), ‘salience’ refers to severity of impact on people (Shift and Mazars, 2015c).

[Sanofi](#) declared “we classified risks relating to the fundamental rights of workers and ranked them by criticality (...) To evaluate the criticality of risks, we determined a number of inherent risk factors: level of qualification, working conditions, potential presence of vulnerable workers, and the characteristics of countries where we operate (such as legislation that is inadequate or contrary to international standards, widespread human rights violations, or a large presence of vulnerable populations in the country)” (p. 39). However, this ranking was not provided.

[Credit Mutuel](#) explained and showed the prioritisation method: a scoring system (p. 460). However, the reader was unable to see which risks were actually prioritised, and thus a ‘no’ was awarded.

In total, 11% of the companies under review included a risk ranking or prioritisation in their mapping.

#	indicator	unit	dimension
-	Which risks are prioritised?	Description / no	Qualitative

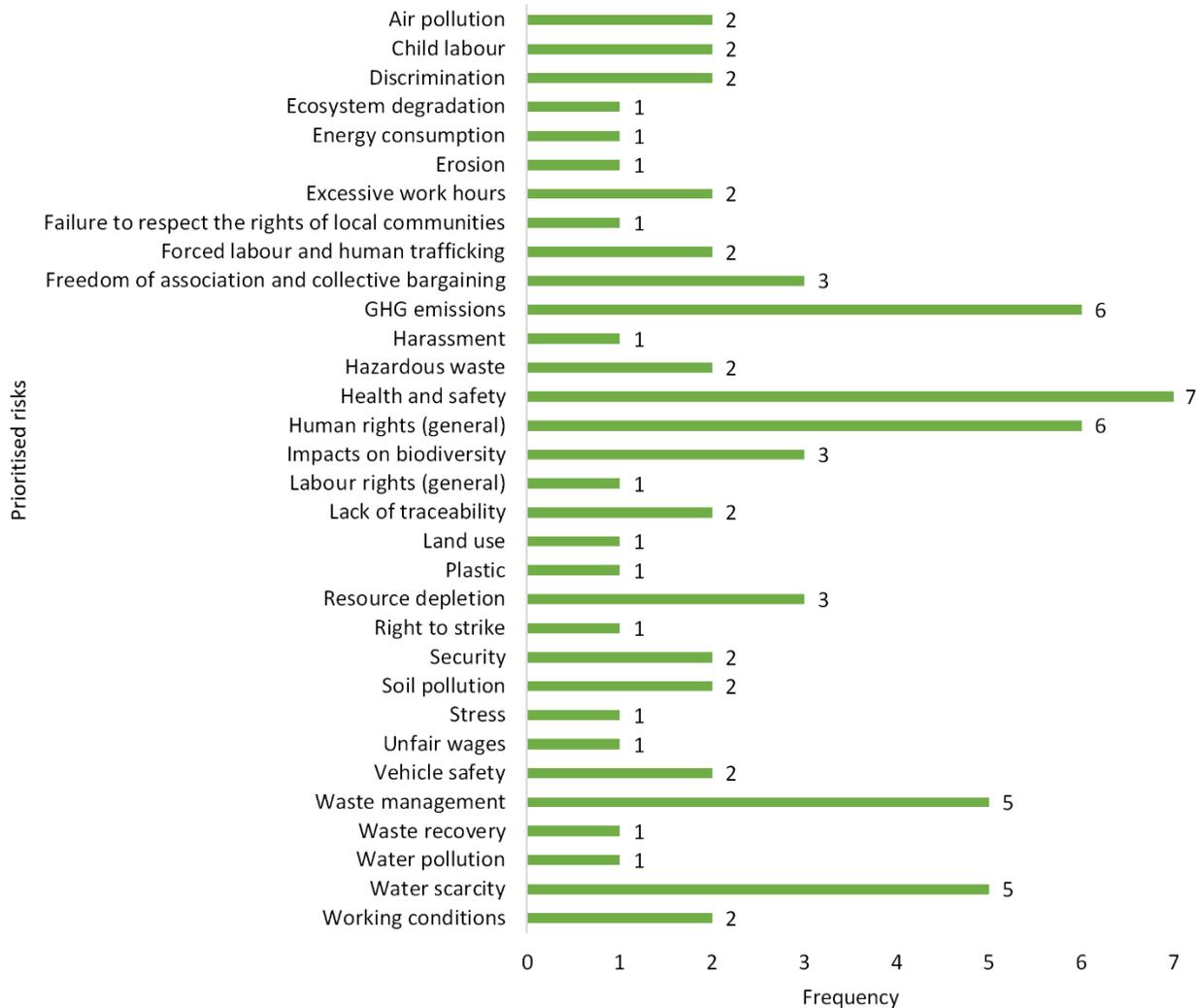


Figure 20: only 11% of the firms under study reported a prioritisation of the risks mapped. We retrieved the risks prioritised. This figure displays the frequency with which each risk was placed in the highest risk category. N = 134.

Figure 20 shows the risk frequently reported as being the highest priority. Where several categories of risks were prioritised by a company, the highest category was taken. If there was more than one criterion for prioritisation, the most relevant to stakeholders was chosen. For instance, the [PSA Groupe](#) presented a materiality matrix with two axes: “importance of the expectations of the stakeholder” and “importance for business performance” (p. 40). Risks were plotted according to their importance, valued with a number from zero to four on each axis. For

this indicator, in this example, all the risks with a value higher than three for the “importance of the expectations of the stakeholder” axis were captured.

Some risks were not included in the graph but were nonetheless awarded a ‘yes’, such as [Ubisoft](#), who did not rank risks, but related purchasing categories according to their risk level (p. 149).

#	indicator	unit	dimension
11.	Were suppliers discussed within the risk mapping?	yes / no	Compliance

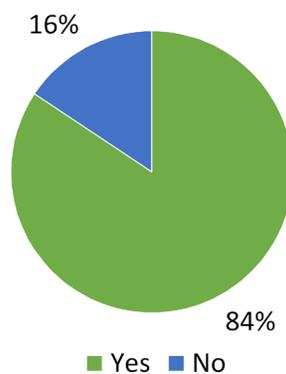


Figure 21: Eighty-four percent (84%) of the firms under review included suppliers in their discussion of risks. N = 134.

We evaluated whether suppliers were in-scope of the risk mapping. While, in some cases, this discussion was more in depth ([Groupe Renault](#), p. 222) than in others in which suppliers were merely mentioned as in scope ([BNP Paribas](#), p. 558), both situations were regarded as sufficient to be awarded a “yes” under this indicator, unless the mention was exceptionally trivial. Overall, 84% of the companies under review included their suppliers in their discussion of risks.

#	indicator	unit	dimension
12.	Were subcontractors discussed within the risk mapping?	yes / no	Compliance

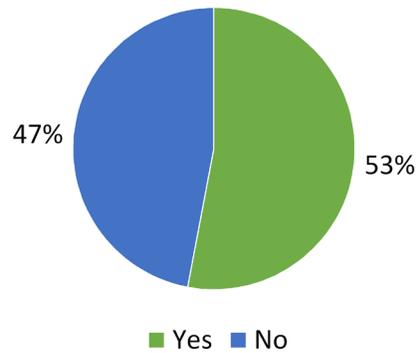


Figure 22: Almost a half of the companies studied did not reference subcontractors in their discussion of risks. N = 134.

We further evaluated whether subcontractors were in scope of the risk mapping. Cases of in-depth discussion ([Casino](#), p. 217, 220-222) and of mere mention ([Groupe Renault](#), p. 155) were also found. In a few cases, the mention of subcontractors was so trivial – e.g. [Atos](#) only made mention of them in subsection titles (p. 106) – that a ‘no’ was awarded. Fifty-three percent (53%) of the companies studied included subcontractors in their discussion of risks.

#	indicator	unit	dimension
13.	Were subsidiaries discussed within the risk mapping?	yes / no	Compliance

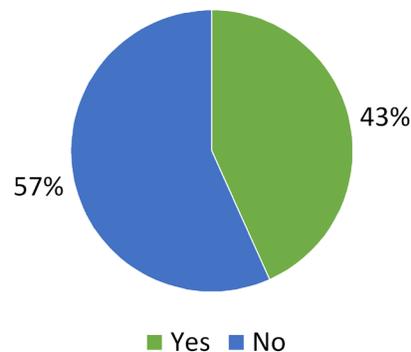


Figure 23: Fifty-seven percent (57%) of the firms analysed did not include subsidiaries in their discussion of risks. N = 134.

As in the case of suppliers and subcontractors, we evaluated whether subsidiaries were in scope of the risk mapping (which is not equal to being in scope of the vigilance plan itself). We found that 43% of the companies reviewed included subsidiaries in their mapping of risks. Cases of in-depth discussion ([Bouygues](#) dedicated a full section to each subsidiary)¹⁰³ and of mere mention ([Vallourec](#), p. 76) were also found. In some cases, there was a mention of subsidiaries, but it was too trivial to be regarded as an inclusion of subsidiaries in the risk map ([Groupe Renault](#), p. 135). In some cases, the mention of subsidiaries was so trivial – e.g. [Atos](#) (p. 106) – that a ‘no’ was awarded.

The case of [Kering](#) is worth highlighting. The firm listed each one of the subsidiaries that were covered by the plan (“Gucci, Saint Laurent, Bottega Veneta, Balenciaga, Alexander McQueen, Brioni, Boucheron, Pomellato, DoDo, Qeelin, Ulysse Nardin, Girard-Perregaux and Kering Eyewear,” p. 63), which was recommended by Sherpa (2018: 14) but was in fact rarely practiced. Kering is furthermore exemplary in this regard as its risk mapping procedure was reportedly undertaken across the aforementioned divisions (ibid.).

#	indicator	unit	dimension
14.	Does the risk mapping contain a discussion on relevant labour rights?	yes / no	Compliance

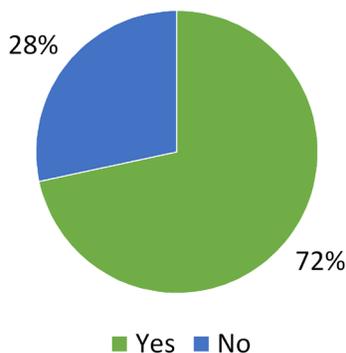


Figure 24: Almost three quarters of the firms under analysis included a discussion of risks to labour rights. N = 134.

Risks to labour rights were discussed in the mappings of 72% of the companies under study. When “challenges,” not risks, were identified (e.g. [Societe Generale](#), which also mentioned “*theoretical risks*”, italics are ours, p. 265-266), the surrounding text was consulted in order to ascertain

¹⁰³ Bouygues Construction, Bouygues Immobilier, Colas, TF1, and Bouygues Telecom (p. 172-176).

whether, from context, these challenges could be regarded as proper risks or, as mere issue areas in the interest of the firm.

#	indicator	unit	dimension
-	What labour rights are mentioned?	Description / no	Qualitative

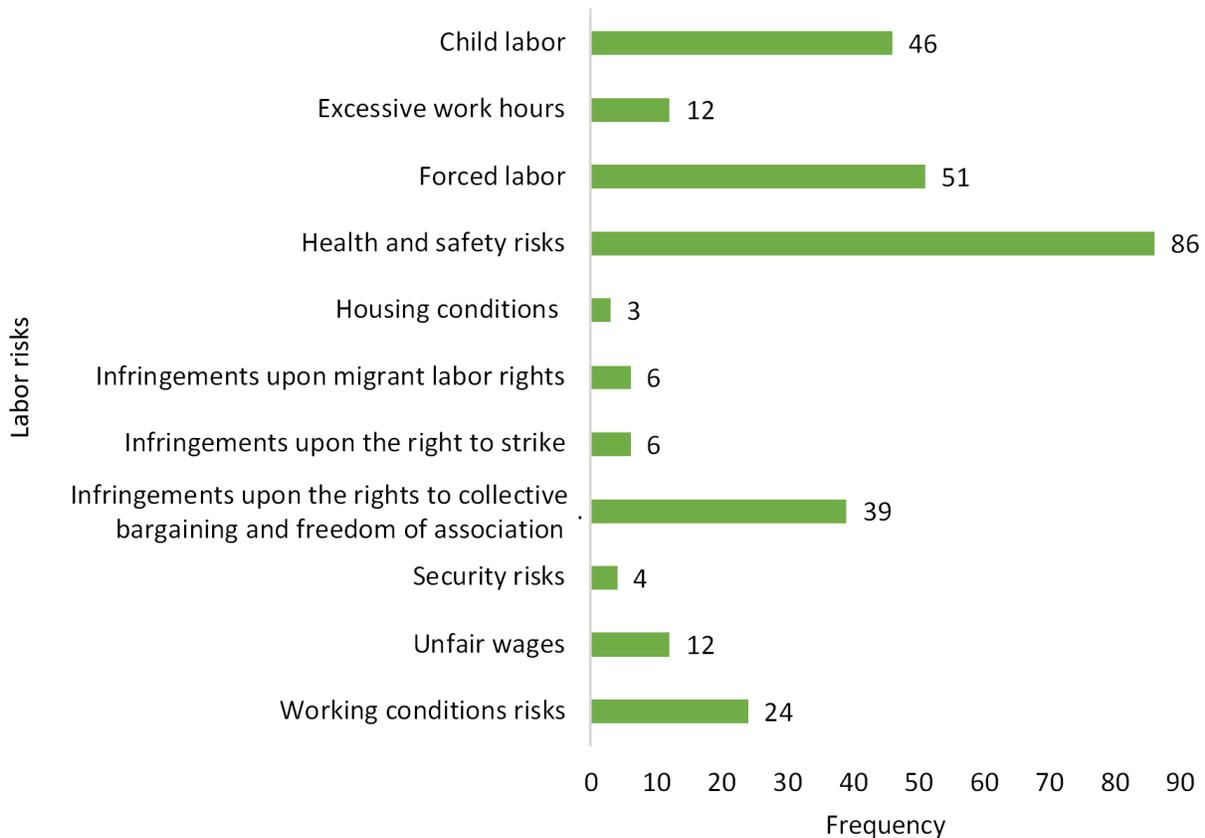


Figure 25: The 96 companies reporting risks of infringements upon labour rights reported mostly health and safety risks, as well as the risks of forced labour and child labour. N = 134.

By a large margin, the labour right discussed most often within the risk mapping was health and safety. For a large number of statements, it constituted the *only* labour right discussed. Other infringements upon labour rights frequently discussed were forced labour, child labour, and undue restrictions of freedom of association. It is interesting to note that [Bouygues](#) (p. 175) counted its anti-terrorist (e.g. anti-ram) infrastructure as part of its health & safety policy.

#	indicator	unit	dimension
15.	Does the mapping analysis discuss equality of rights or non-discrimination?	yes / no	Conformance

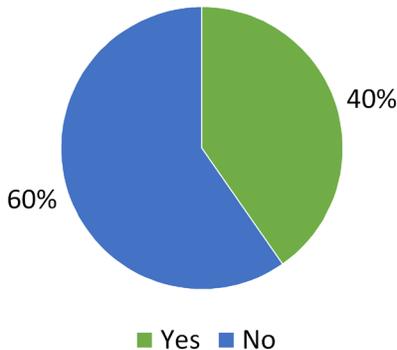


Figure 26: The proportion of firms not including a discussion of risks to equality of rights or risks of discrimination was 60%. N = 134.

Equal rights and/or non-discrimination were discussed in a number of reports: 40% of the total. In some reports, discussion was extensive ([L'Oréal](#), p. 118). In others, it consisted in a mere mention of the issue as in scope of the mapping ([BNP Paribas](#), p. 558). Other firms, such as [PSA Groupe](#), made reference to “equal opportunities” (p. 40) only, which was not regarded as interchangeable with equal rights or non-discrimination. The reason for this was that “equal opportunities” is not a term under the “right to equality before the law, equal protection of the law, and rights of non-discrimination,” but under the “right to enjoy just and favourable conditions of work.”¹⁰⁴

¹⁰⁴ Shift and Mazars (2015a).

#	indicator	unit	dimension
16.	Did the mapping specify which rights / forms of discrimination were discussed?	yes / no	Transparency

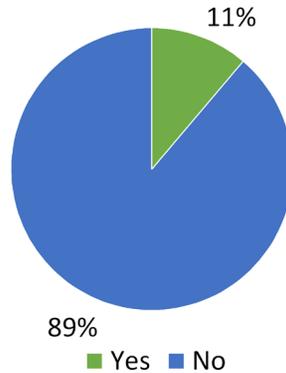


Figure 27: Eleven percent (11%) of the companies studied specified the forms of discrimination at issue in their risk map. N = 134.

Eleven percent (11%) of the companies under study not only included equal rights and/or non-discrimination in their discussion of risks, but also specified exactly what those rights or forms of discrimination were. We identified the following forms of discrimination/infringements upon equality of rights throughout the reports analysed.

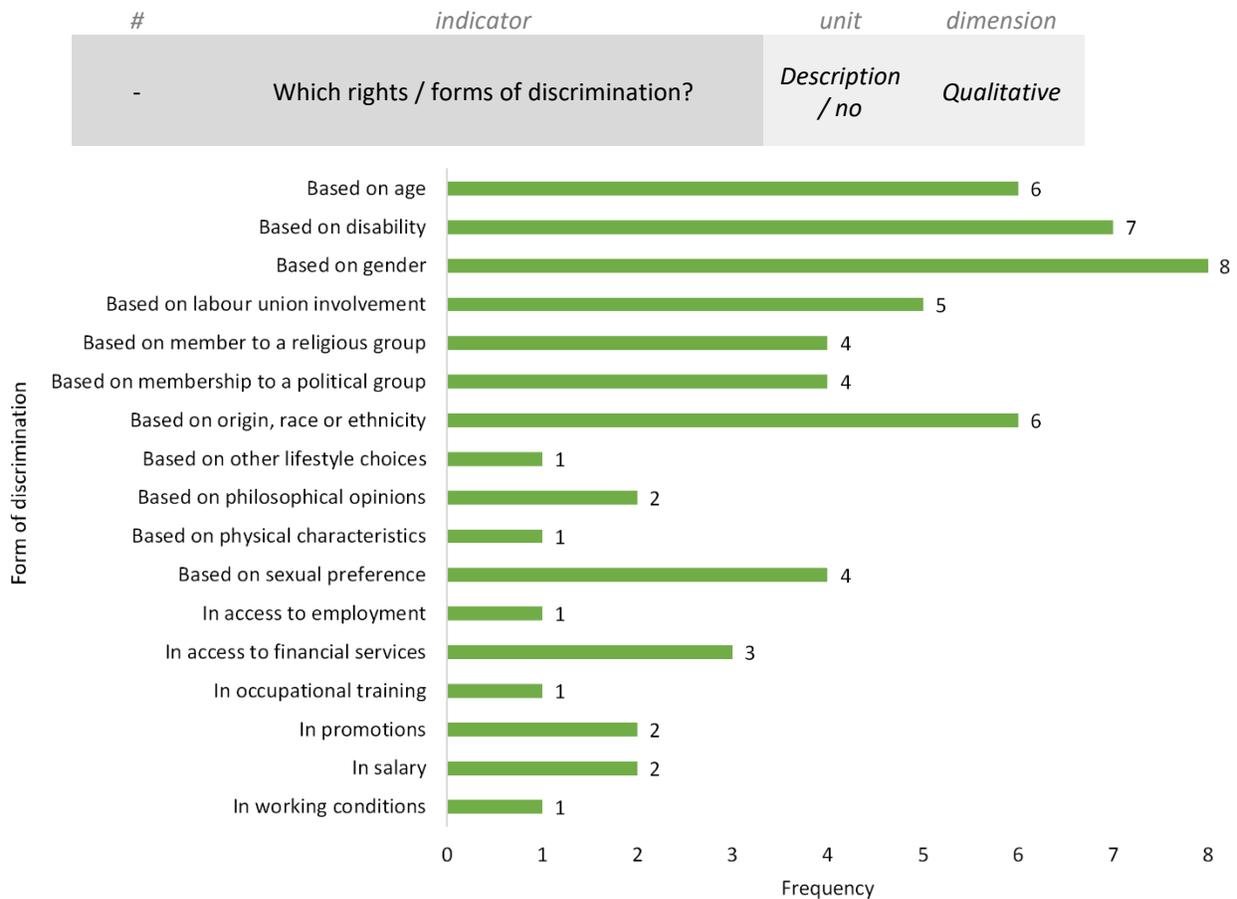


Figure 28: Discrimination on the basis of gender, age, disability and origin, race or ethnicity were the forms of discrimination mentioned most often throughout the vigilance plan statements reviewed. N = 134.

As Figure 28 shows, discrimination on the basis of gender, disability, age, and origin, race or ethnicity constituted the kinds of infringements upon equality of rights that were discussed most frequently throughout the vigilance plan statements under review.

A few hypotheses were not included in this graph due to the lack of specificity, but are worth mentioning. [Capgemini](#), aside from discussing cases of direct discrimination,¹⁰⁵ discussed *indirect* discrimination, which “occurs when a condition or rule is applied which disqualifies a large proportion of one group from an activity and there is no genuine reason for imposing that condition” (p. 133). [L’Oréal](#), in turn, also mentioned “discrimination based on (...) family situation” (p. 118), whereas [JCDecaux SA](#) “non-discriminatory access to (...) work-life balance” (p. 73).

¹⁰⁵ Which Capgemini defined as follows: “Direct discrimination occurs when someone is treated less favorably, for example on grounds of their gender, race, age, disability, religion or sexual orientation” (p. 133).

#	indicator	unit	dimension
17.	Did the mapping specify for what groups or categories?	yes / no	Transparency

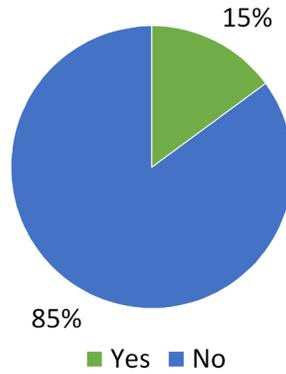


Figure 29: Fifteen percent (15%) of the companies studied specified what groups or categories were subject to discrimination risks. N = 134.

Another 15% of the total companies under study specified exactly what groups or categories the issue of non-discrimination pertained. By a large margin, the groups most frequently discussed in the discrimination section of risk mappings were women and people with disabilities.

#	indicator	unit	dimension
-	For what groups or categories?	Description / no	Qualitative

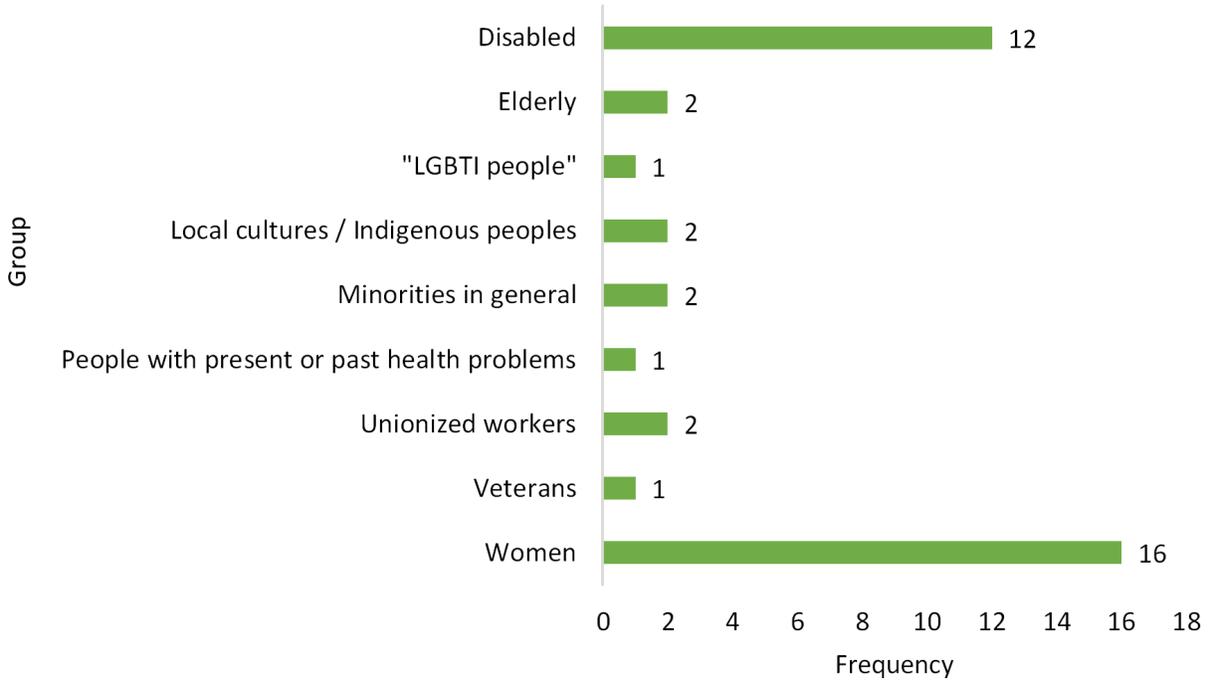


Figure 30: Women and people with disabilities constituted the discriminated group discussed most frequently in risk mappings. N = 134.

#	indicator	unit	dimension
18.	Does the mapping discuss environmental harm and degradation?	yes / no	Compliance

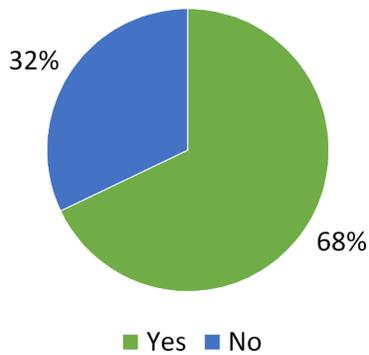


Figure 31: More than two third of the companies under review included a discussion of environmental harm and degradation within their risk mappings. N = 134.

The matters of actual and/or potential environmental impacts were included in 68% of the reports studied. For instance, [BNP Paribas](#) identified the risks of serious harms “to the environment, and the following issues in particular: (...) air pollution, water pollution, soil pollution, scarcity and depletion of commodities, water scarcity, erosion and soil depletion, waste management, greenhouse gas emissions, degradation of ecosystems and biodiversity” (p. 558).

In this context, a particular case was given by [Natixis](#), since the company stated that “the environmental risks associated with Natixis’ operations have been ruled out, as its business is not liable to generate serious adverse impacts on the environment” (p. 482). In a rather contradicting manner, the company also stated that it had “launched several initiatives to limit its impact on the environment” (p. 482). Since the company declared, as well, that it measures environmental “risks” such as the consumption of natural resources, air pollution, water pollution, ground pollution, biodiversity, carbon emissions and waste management (p. 482), a ‘yes’ was awarded nonetheless.

#	indicator	unit	dimension
19.	Does the mapping specify the environmental rights/harms at issue?	yes / no	Compliance

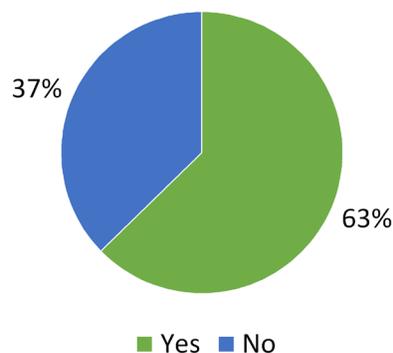


Figure 32: Sixty-three percent (63%) of the firms analysed specified what risks to the environment or environmental rights were detected during their risk mapping process. N = 134.

Under this indicator, a ‘yes’ was awarded if the company – aside from generally pointing to environmental risks or ‘pollution’ in the risk mapping – specified the exact environmental harms that could potentially occur or the precise environmental rights that could potentially be infringed. Sixty-three percent (63%) of the companies identified were in this situation.

For instance, [Michelin](#) specified that the environmental risks at issue were related to the firm’s CO₂ emissions, emissions into soil (Volatile Organic Compounds or VOCs, the risk of accidental

soil spills, urban and suburban air pollution from TRWP (tire and road wear particles), as well as the risk of resource depletion, specifically water, energy and raw materials (p. 272).

If only environmental policies were discussed, but not the environmental rights protected or the environmental harms caused (e.g. [Saint-Gobain](#), p. 56), this was not considered to meet the requirements of this indicator, which demands a clear mention of the environmental rights and harms at issue.

[Sopra Steria](#) stated that “according to the results of the Group’s risk mapping exercise, environmental risks do not constitute a key risk for Sopra Steria” (p. 93). Invoking the Task Force on Climate-related Financial Disclosures (TCFD), the company explains that “some of the Group’s environmental impacts, known by the TCFD as risks associated with the transition to a low-carbon economy, are identified but not considered key risks at Group level. More specifically, these risks, as defined by the TCFD, are political, regulatory or reputational in nature (significant increase in fuel prices, more stringent requirements to disclose non-financial information, increased stakeholder expectations in relation to these changes).” Nonetheless, these are risks “to Sopra Steria (...) risks of heavy flooding, air pollution caused by rising temperatures, and seismic risk in some parts of the world” (*ibid.*, italics are ours). For that reason, while a ‘yes’ was awarded for the previous indicator, it was not awarded for the current one.

As discussed in the limitation sections, the fact that this study is restricted to *reporting* performance – and uses the same bar for all companies, regardless of the actual challenges they face – gives room to possible divergences between reporting performance and actual performance under the obligations of *Devoir de Vigilance*. For instance, it is possible to conceive of a company which reported the existence of environmental risks *in general*, of *some* specific environmental risks, as well as of *some* mitigation steps to address a number of them. If, in this context, the firm *omitted* a particular environmental risk that it should have reported and/or did not report mitigation steps for *that* particular risk, the firm would have nonetheless obtained the corresponding points under each indicator of this study.¹⁰⁶

It is conceivable that this divergence is patent in the case of [Total](#). Total was awarded a ‘yes’ under indicators #18 and #19, as it not only reported environmental risks in general, but also specific environmental risks in particular: worsening climate change through its greenhouse gas emissions, causing environmental harm through various accidents that could happen (explosions, fires, leakages) and augmenting the chances of acid rain through its emissions to air (p. 94). Furthermore, parts of Total’s *Devoir de Vigilance* statement were positively highlighted a number

¹⁰⁶ This is a consequence of the aforementioned limitations of our study, which – like any other study on reporting performance – is limited to assessing the vigilance statements as a self-contained piece.

of times in Shift's study (Langlois, 2018).¹⁰⁷ However, Total was nevertheless accused repeatedly of not having adequately reported its actual environmental human rights *impacts*.¹⁰⁸

According to *Les Amis de la Terre* and *Survie* (2019a; 2019b; 2019c), Total plans to drill 419 oil wells ('*Tilenga*' project) in a natural reserve in Uganda which could affect the area's fragile biodiversity as well as worsen climate change. Two French NGOs and four Ugandan NGOs sent a joint letter to Total, demanding that the firm bring its plan into conformity – and stating that legal action would be pursued if these are not met. Furthermore, five NGOs, together with the Mayors of 13 different localities in France, sent a joint letter to Total as well with similar demands. In this case, the authors claimed that the company's acknowledgment of its own contribution to climate change was not sufficiently explicit¹⁰⁹ and its mitigation steps were insufficient as they were not in line with the Paris Agreement targets (*Notre Affaire à Tous* et al., 2018).¹¹⁰ A second letter was sent (Mabile and Cambiaire, 2019: 2) adding that Total had omitted scope 3 emissions from its statement, as well as “not drawn the consequences of the identification of climate risk and [had] not yet established, effectively implemented or published adapted mitigation actions of risks or prevention of serious harms.”

Both complaints against Total were brought to court.¹¹¹ With regards to the Tilenga case, on January 30, 2020, the *Tribunal de Grande Instance* of Nanterre declared itself incompetent – as

¹⁰⁷ Shift's 2018 report anonymized the scores assigned to each company, thus not being possible to know exactly how the performance was evaluated. However, Total's vigilance plan was highlighted several times throughout the report, hence signaling that, at least in some respects, it was considered a good example. Quoting:

- “Total's Human Rights Guide offers a clear and detailed explanation” (Langlois, 2018: 23);
- “Total does not only name its salient issues, it also offers a brief description on each of them, which enables the reader to better understand the issues chosen. Moreover, the determination process is explained in a concise but precise manner” (ibid.: 25)
- “Total's reporting shows in a concrete manner how the company assesses human rights risks. These detailed explanations of processes and evaluation tools demonstrate a higher level of maturity, especially due to the use of concrete examples, information specific to the company's salient issues like security and the clear overview that is created” (ibid.: 31);
- “Total's reporting on tracking is considered more mature given the fact that the company shares information beyond the most commonly reported indicator” (ibid.: 36);
- “Total shares a lot of information” (ibid.: 38).

¹⁰⁸ “Families are being intimidated and forced to abandon their lands (...) Certain local communities have already lost the right to cultivate their lands (...) They have no means to buy food and can no longer benefit from their harvests (...) Amongst those who have already been evicted, some are still waiting for a new place to live. Those who have received compensation are fiercely contesting the amount, saying that it is not enough to buy land of equivalent value. (...) Children have to drop out of school as parents can no longer afford to pay the fees.” *Les Amis de la Terre* and *Survie* (2019)

¹⁰⁹ This referred to Total's first vigilance plan. Total's second plan, evaluated for this study, did acknowledge the company's contribution to climate change, though not drawing consequences therefrom nor prioritizing this risk (Mabile and Cambiaire, 2019: 2).

¹¹⁰ Note that “30-40% of Total's current assets should be abandoned if a trajectory in line with the objectives of the Paris Agreement is chosen” *Notre Affaire à Tous* (2019).

¹¹¹ In the Ugandan case, the plaintiffs demanded that the firm paid a fine of 50,000 euro per day of delay in correcting its vigilance plan, as well as a payment of 5,000 euro to the plaintiff associations to cover the procedural costs. Total

requested by Total in its defence – and referred the case to the Commercial Court of Nanterre (Tribunal Judiciaire de Nanterre, 2020). On March 25, 2020, the plaintiffs appealed this decision, pointing out that commercial courts are exceptional, professional courts designed to solve disputes among traders only, but not well-suited for issues of human rights matters (Les Amis de la Terre, 2020). There is uncertainty as to the next hearing date, since French courts are closed due to the COVID-19 pandemic, but decide on “essential cases,” a category to which it is unclear whether this case belongs or not. The other lawsuit – led by Notre Affaire à Tous, Sherpa, ZEA, Eco Maires, FNE and 14 local authorities – has been received by the court, but no further updates have since been issued.

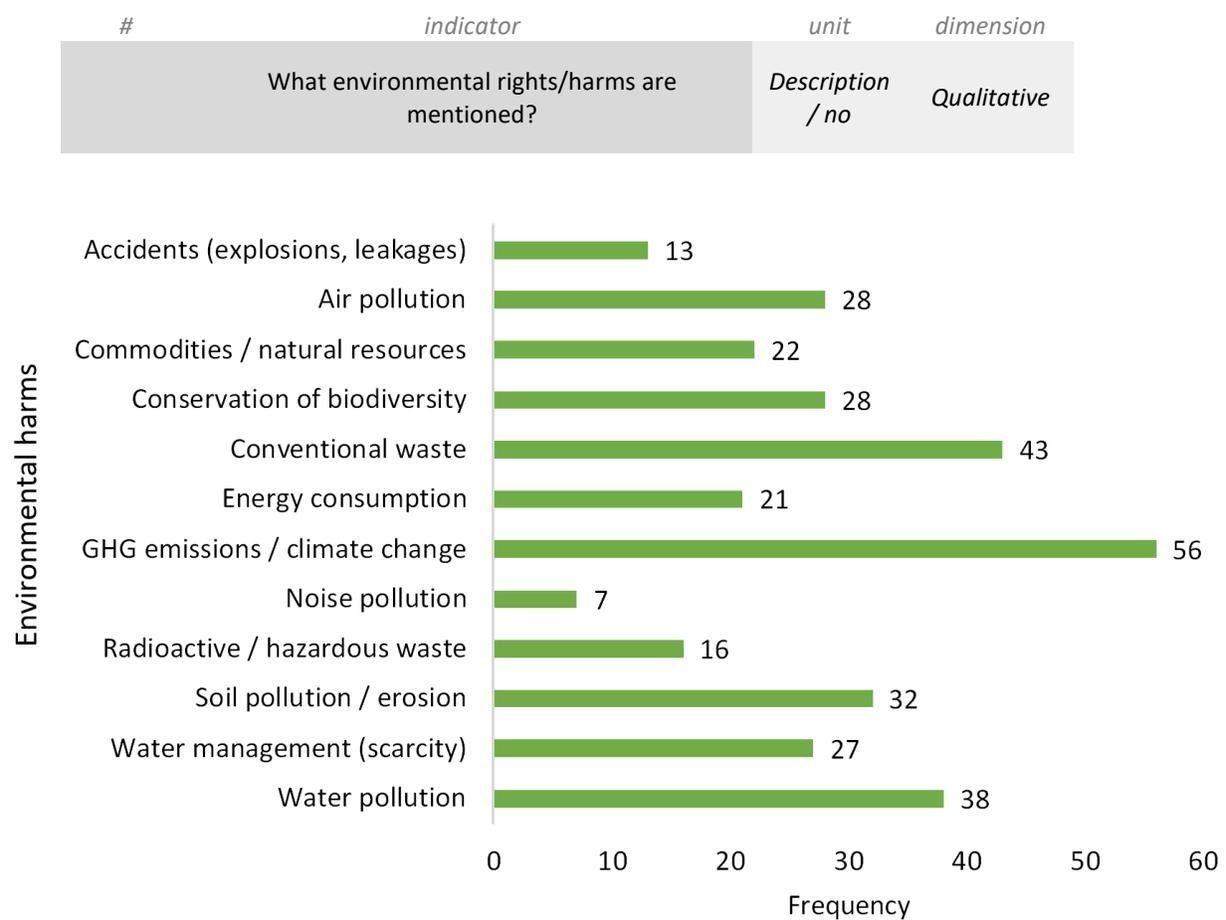


Figure 33: Climate change and/or GHG emissions constituted the environmental harm mentioned most frequently. N = 134.

requested the dismissal of the lawsuit on the grounds of the incompetence of the court and the 5,000 euro cost to be imposed on the plaintiffs.

Overall, the environmental risks discussed most often were those related to GHG emissions and/or climate change, followed by waste management and the pollution of water. Figure 33 depicts the frequency with which each harm was discussed.

#	indicator	unit	dimension
20.	Is the company specific about the geographic or supply chain location of (some of) its risks?	yes / no	Transparency

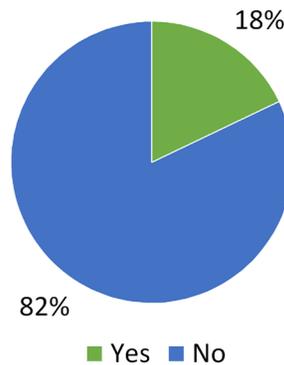


Figure 34: Almost five sixths of the companies reviewed did not identify specifically the location of the risks detected in their risk mapping process. N = 134.

Where risks were discussed, they were often reported as generic statements of concern about general issues. Not so many firms indicated specific risks. Furthermore, not many firms indicated *where* the impacts or risks were located. In a recent statement, for example, Total declared that the accusations against it for not adequately reflecting many of its actual and/or potential impacts in its risk map were misplaced, because “the French Law on Corporate Duty of Care takes a general approach by type of risk. It does not require disclosure of risks specific to individual projects” (Total, 2019).

However, even if this were so, a compliant company with this attitude should be regarded as non-transparent. Hence, this transparency indicator awarded a ‘yes’ to firms stating the geographical location, facility, part of the supply chain, or other form of location of (at least some of) their reported risks: 18% of the firms obtained this value.

A positive case was provided by [Vinci](#) (p. 238), which stated that “recruitment practices in Qatar” were “quickly identified as a major issue” for migrant workers from Bangladesh, India and Nepal. “The conditions in which migration takes place (...) increases risks for workers, particularly to their freedom of movement.”

In response to this issue, Vinci reported having “set up strict procedures to mitigate risks relating to recruitment practices (...) all QDVC employees have a Qatari residence permit, (...) they also have access to a secure safe to store their personal documents (passports, employment contracts). When they wish to leave their job, QDVC delivers an authorization enabling them to change employers (no objection certificate, or NOC). An exit permit is delivered to workers who wish to leave the country [for] any reason (holiday, emergency, etc.)” Furthermore, “staff have travelled to these countries on several occasions to verify agency compliance with rules, spread the information among applicants that recruitment is free, examine the actual working conditions offered and participate directly in recruitment interviews” (p. 238).

[Bouygues](#) reported that it is exposed to the risk of human rights violations “particularly outside France” (p. 172). Furthermore: “In Poland and Belgium, Bouygues Immobilier has strengthened its arrangements to combat undeclared work. Likewise, these contractors may be exposed to the risk of violations of fundamental workers’ rights, mainly due to their use of posted workers” (p. 174). The firm also reported that “countries considered as ‘at risk’ account for 4% of its [subsidiary Colas’] sales and 10% of its headcount” (p. 164).

[L’Oréal](#)’s statement indicated that “a fine of US\$2,000 was imposed in 2018 (USA)” (p. 125) for environmental reasons. It also reported that restrictions to freedom of association (specifically, concerning “the failure to freely elect employee representatives without management interference”) occurred in some “countries where such elections are not legal” (p. 125).

In another case of specific discussion, [Auchan](#) distinguished the risks applicable to China, India, Spain, Bangladesh, and France (p. 21-22).

In some cases, the specific location of the risks identified was not the *geographic* location, but the location *in the supply chain*. If specific enough, this was also considered sufficient to merit a ‘yes’ under this indicator. For instance, [Engie](#) reported that “the social and environmental risks related to the Group’s energy supply (coal, biomass, natural gas and LNG) have been identified as a specific issue of vigilance for the Group.”

F. Establishment of assessment procedures

Devoir de Vigilance also requires firms to report on the “procedures to regularly assess, in accordance with the risk mapping, the situation of subsidiaries, subcontractors or suppliers with whom the company maintains an established commercial relationship” that they prepared. The indicators of this section retrieve the extent to which companies were compliant, conformant and transparent in this regard.

#	indicator	unit	dimension
21.	Is there a process for regular risk assessment in suppliers, subsidiaries and/or subcontractors?	yes / no	Compliance

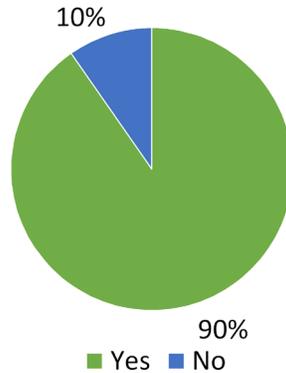


Figure 35: Ninety percent (90%) of the firms in scope of this study established a process for regular risk assessments for suppliers, subsidiaries and/or subcontractors. N = 134.

A large number of firms – 90% – established procedures to regularly assess the situation of their suppliers, subsidiaries, and/or subcontractors. A procedure for at least one of these sufficed to obtain a positive value under this indicator.

A positive case under this indicator was given by the report of [TOTAL S.A.](#) (p. 96), whose report described in detail – and separately – the assessment procedures for both suppliers and subsidiaries.

#	indicator	unit	dimension
22.	Does the company state how often the risk mapping is assessed or updated?	yes / no	Transparency

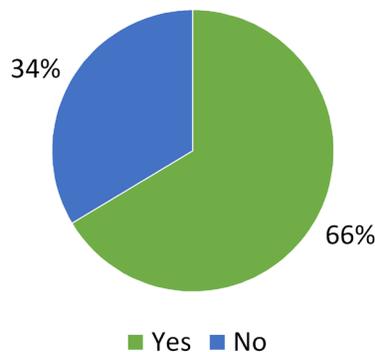


Figure 36: Two third of the vigilance plans under research reported the update frequency of the risk map. N = 134.

Two thirds (66%) of all the firms reported having a process in place to update risk mapping. However, some of them did not explicitly report it as such or provide any details. For instance, the [PSA Groupe](#) stated that “Meetings with suppliers are held once to twice a year,” and that this allows for “alerting and for gathering reports on the existence or materialisation of risks” (p. 35). This was still considered as meriting a ‘yes’ under this indicator.

In case there was not a unique procedure to update risk mapping, but a number of procedures which allow to spot new risks or gather more information about risks, the lowest number was taken.

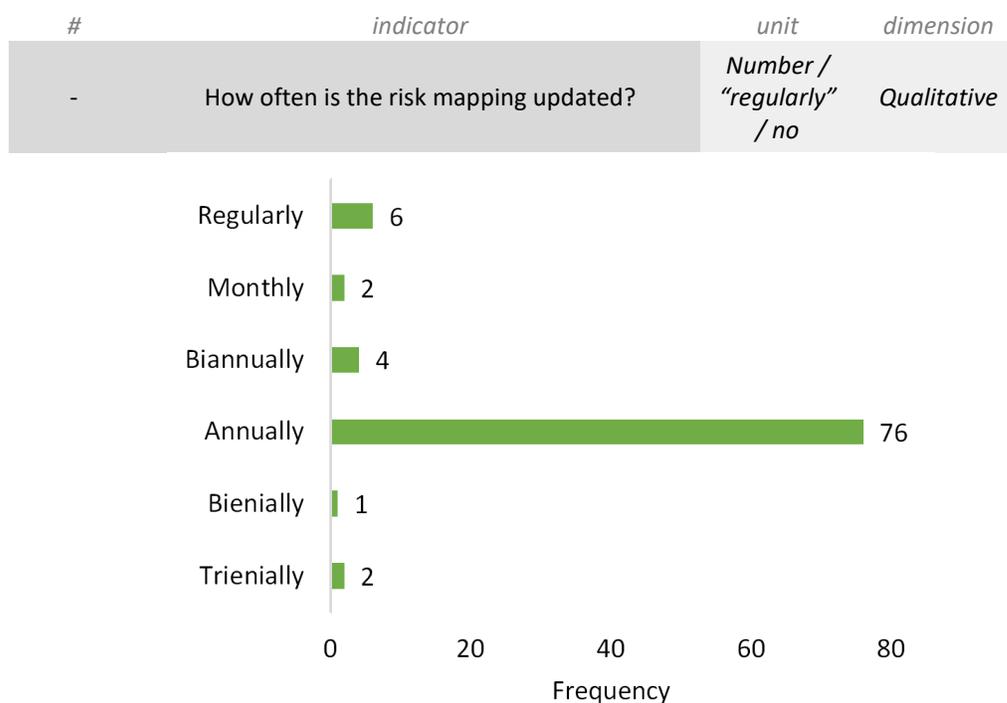


Figure 37: As a rule, risk mappings were updated on a yearly basis. N = 134.

Amongst the companies that did report the frequency of their risk mapping process update, the statistical mode was given by mappings being updated on a yearly basis. Six companies did not specify the exact frequency, but did state that the mapping was updated regularly (e.g. [Banque Fédérative Crédit Mutuel](#), p. 460-461). Note that stating that a mapping is updated regularly does not necessarily mean that it is updated constantly, in an ongoing manner, as it could merely mean that the mapping is updated with an irregular frequency or a frequency that is not disclosed. In this regard, it should be noted that stating the exact update interval constitutes a superior choice.

The highest risk mapping updating frequency was reported by [Bolloré](#) and [Financière de l’Odet](#), who stated that “the Group’s performance in limiting its risks is tracked and assessed in (...) the monthly QHSE reports overseen by the divisions” (p. 77). On the other side of things, two companies reported an update in risk mapping *every three years*: [L’Oréal](#) (p. 123)¹¹² and [STmicroelectronics S.A](#) (p. 3).¹¹³

#	indicator	unit	dimension
23.	Is the vigilance plan itself assessed/updated according to a regular time-based schedule?	yes / no	Transparency

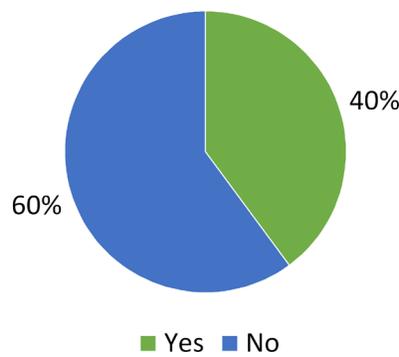


Figure 38: The fraction of vigilance plan statements reporting their frequency of update amounted to 40%. N = 134.

Forty percent (40%) of the cases identified had an explicit schedule for updating the vigilance plan itself. A number of statements stated this only in an indirect manner – e.g. [EDF](#) with reference to an “annual vigilance plan” suggested it is updated yearly, (p. 215); [Engie](#) stated that “implementation is monitored through goals and action plans that are reviewed every year” (p. 170).

As an example, [Vinci](#) reported that “Implementation of the duty of vigilance plan is regularly reviewed by the Ethics and Vigilance Committee, which meets once a month and whose members include members of the Executive Committee” (p. 240). The firm also made reference to “*annual action plans*” (p. 230, italics are ours) and that the “[Ethics and Vigilance] Committee reports annually on its activities to the Strategy and CSR Committee of the Board of Directors and met eight times in 2018” (p. 228). However, when more than one time-based schedule was

¹¹² “Audits take place regularly at all L’Oréal sites: every three years for production sites and every four years for the distribution centres, administrative sites and research centres” (p. 123).

¹¹³ “Nous identifions nos enjeux environnementaux, sociaux et éthiques par le biais d’un exercice de matérialité que nous réalisons tous les 3 à 4 ans” (p. 3).

mentioned, the lowest value was retrieved. Therefore, Vinci’s vigilance plan was regarded to be assessed *monthly*, for the purposes of this indicator.

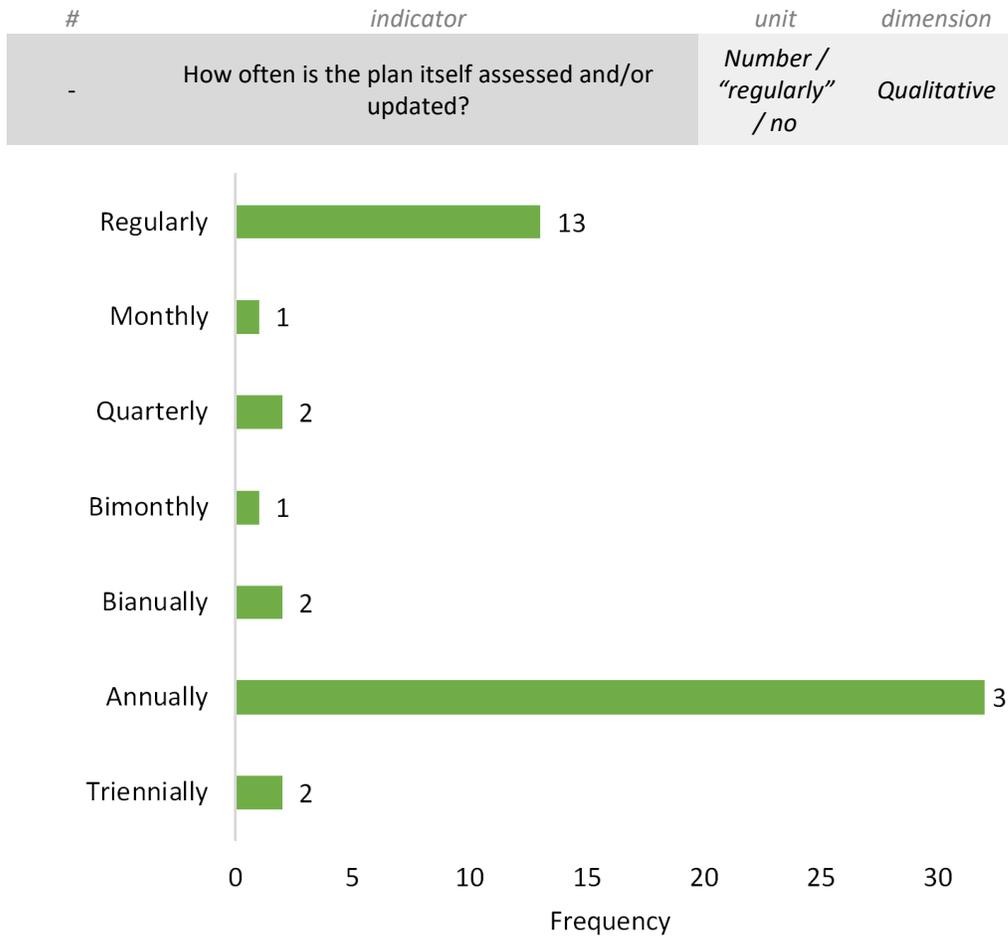


Figure 39: In the cases of vigilance plans with a reported update frequency, it was generally a yearly basis. N = 134.

As Figure 38 shows, the statistical mode was to update the vigilance plan annually, followed by updating it ‘regularly.’ The lowest update frequency was reported by [XPO Logistics](#) (p. 11)¹¹⁴ and [Nexity](#) (p. 99): every three years.¹¹⁵ The highest frequency was reported by [Vinci](#), who stated that “implementation of the duty of vigilance plan is regularly reviewed by the Ethics and Vigilance Committee, which meets once a month”(p. 240).

¹¹⁴ “Our Vigilance Plan [is] for 2017-2019” (p. 11).

¹¹⁵ “The identification of risks and the risk control measures in place undertaken within the framework of the duty of care plan enabled Nexity to identify areas for improvement. The 2018–2020 multi-year internal audit plan provides for verification that action plans have been implemented effectively” (p. 99).

G. Implementation of corrective actions

Devoir de Vigilance requires “appropriate action to mitigate risks or prevent serious violations” in four priority respects: severe violations of human rights and fundamental freedoms, environmental damage, serious bodily injury, and health risks. This section reviews reporting performance in the light of this legal requirement.

#	indicator	unit	dimension
24.	Does the vigilance plan lay out affirmative steps taken to address actual negative impacts, as well as mitigate potential violations? ("severe violations of human rights and fundamental freedoms, serious bodily injury or environmental damage or health risks")	yes / no	Compliance

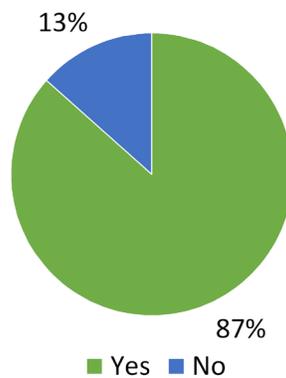


Figure 40: Eighty-seven percent (87%) of the firms studied explained the affirmative steps taken to address negative impacts or risks. N = 134.

A large proportion of the firms studied (87%) included some sort of corrective action for the impacts pertinent to the intent of this law. However, in some cases, the affirmative steps taken were particularly vague. For instance, [Schneider Electric](#) declared that when “non-conformance” by a supplier is identified (it is unclear *with what* the conformance ought to be), the firm requires the supplier to set up a plan, and “monitors” progress until the supplier is “compliant” (p. 110). If risks still remain, “a specific process has also been validated” (p. 110).¹¹⁶ However, the firm also

¹¹⁶ “When non-conformance is identified, appropriate actions to mitigate risks are taken: Schneider Electric requires the supplier to set-up and complete a corrective action plan. A Schneider Electric team monitors implementation progress until the supplier is compliant. A specific process has also been validated for supplier disengagement if unresolved risks remain” (p. 110).

reported a number of more concrete steps, such as awareness campaigns and training sessions (p. 110).

Often, firms reported that affirmative steps taken had preceded the passage of *Devoir de Vigilance*, and the firm merely adapted existing policies to *Devoir de Vigilance* requirements (often only the reporting requirements). [Carrefour](#), for example, indicated that, “the Carrefour Foundation works to combat exclusion at international level” since the year 2000, which includes ‘support’ for “anti-waste projects to upgrade substandard products and make them available to the neediest” (p. 112). In the light of Carrefour having admitted an impact through “food and non-food waste due to the generation and non-recovery of waste in warehouses and stores” (p. 110), we regarded this as an affirmative step taken to address that particular impact. However, pre-existing ‘support’ for unspecified ‘projects’ contrasts with other firms with clearer and more concrete affirmative steps.

In some cases, companies included a section on corrective measures, but the text thereunder contained issues different from corrective measures. For instance, [Le Groupe La Poste](#) (p. 506) included a section named “Measures to prevent and mitigate serious infringements within the Group” which stated “Measures intended for employees of Le Groupe La Poste (...) La Poste has implemented concrete initiatives (...) it continues to be committed to gender equality in the workplace (...) it follows a specific policy for the employment and protection of disabled people.” As can be observed, commitment to gender equality is not a corrective measure in and of itself, and claiming to follow a ‘specific policy’ does not equate to reporting a policy to address impacts.

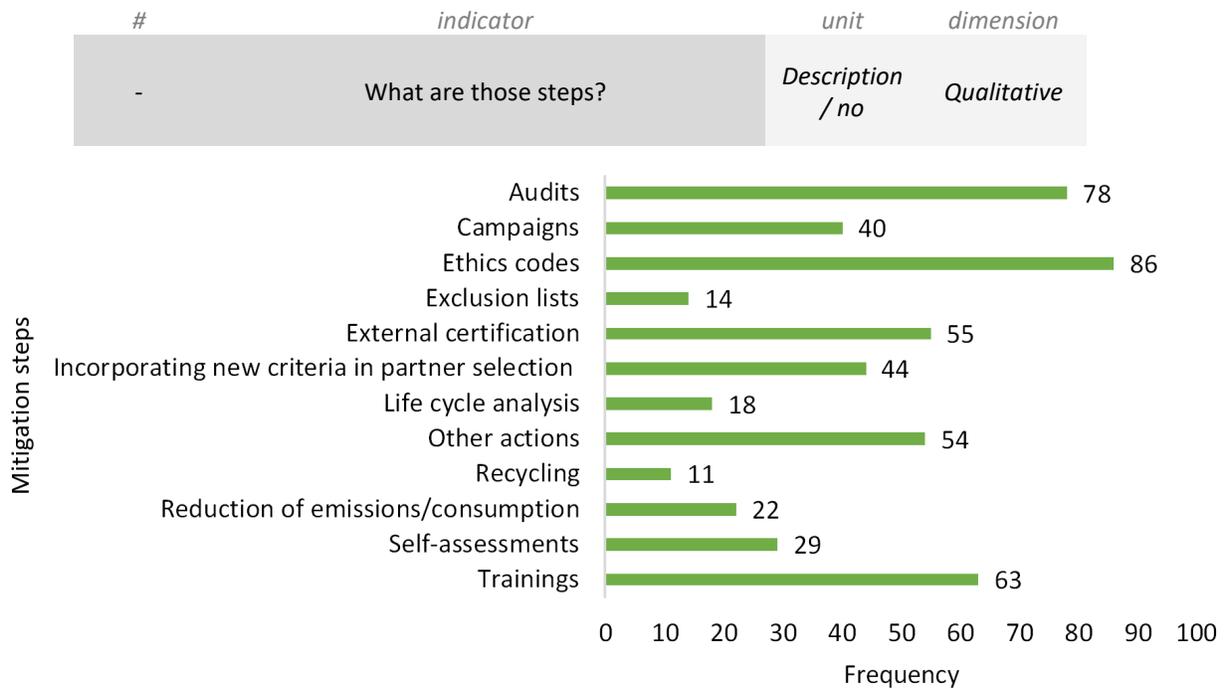


Figure 41: Creating or updating the Ethics Code or Charter was the mitigation step reported most frequently, followed by audits and training. N = 134.

The companies reviewed reported the implementation of a number of mitigation steps, the most frequent being the distribution of an ethics code to employees and/or third parties. Other steps mentioned frequently were audits, training, and external certification, awareness campaigns and introducing new criteria in the partner selection process.

However, these mitigation steps cover various issue areas. Since we asked about particular types of risks in indicators #14 (labour risks), #15 (discrimination risks) and #18 (environmental risks), we furthermore examine the interplay between the reported risks and the reported mitigation steps. Figure 42 shows how often each mitigation step was implemented in response to each particular risk. Moreover, one can also see how often a risk was reported without any particular action plan being implemented to address it.

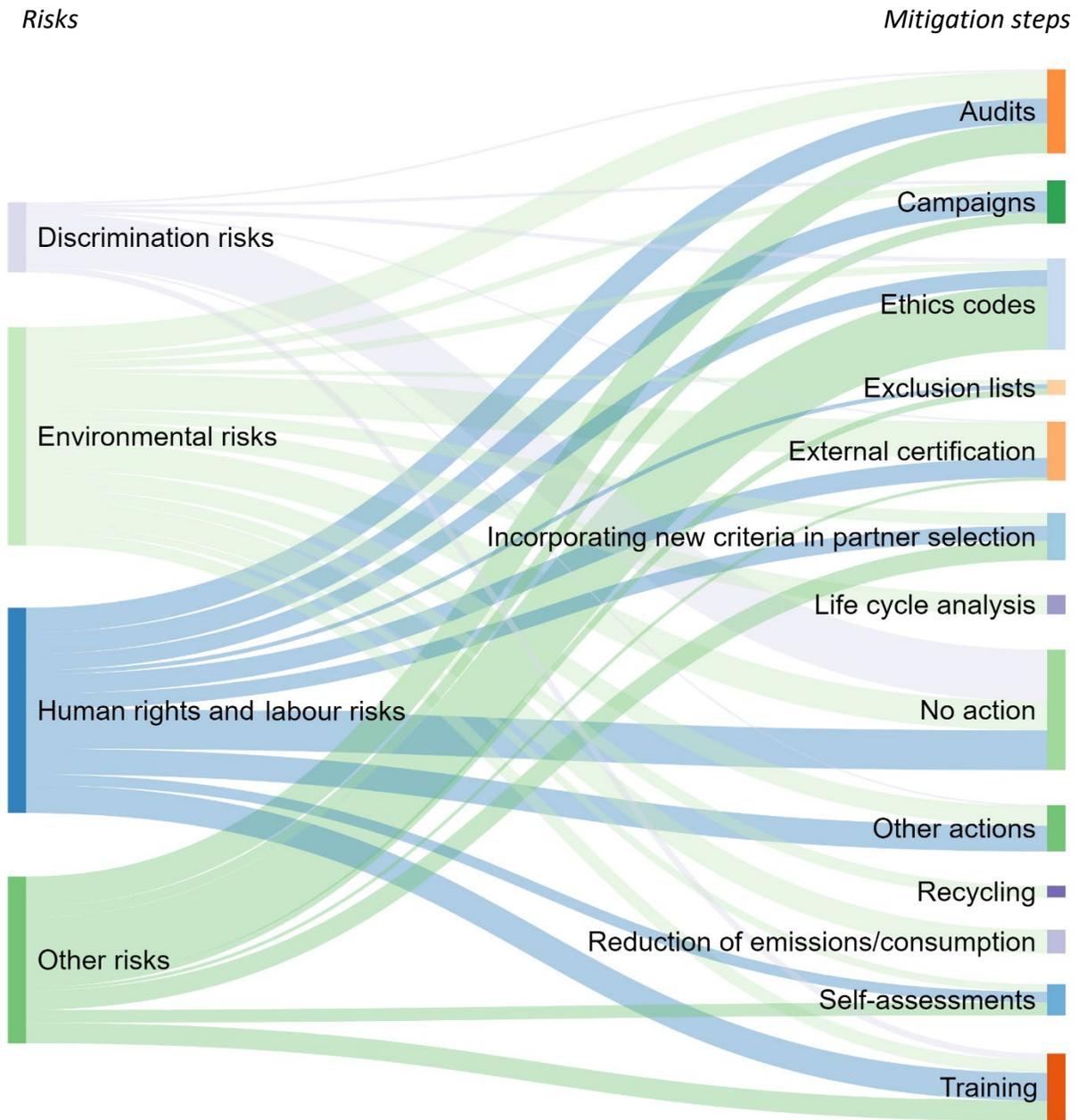


Figure 42: Choice of mitigation steps in response to each general type of risk. N = 134.

Notably, a large number of companies reported discrimination risks without reporting action plans to mitigate them. The share of environmental, human rights and labour risks identified was also rather large and should not be overlooked.

While some mitigation steps were specific to environmental risks only (life cycle analysis, recycling, reduction in emissions, reduction in consumption), the majority of the mitigation steps were common to the three aforementioned types of risks. The main steps identified were audits (both internal and external), awareness campaigns, external certification (mostly – though not entirely – ISO 14001 and OHSAS 18001), the implementation of new criteria in partner selection processes (including compliance requirements in partnership contracts), creating or updating the Code of Ethics (or Code of Conduct, or Ethical Charter), self-assessments and training.

The most proactive mitigation step identified was the drawing of exclusion lists. We identified twelve companies¹¹⁷ that:

- listed certain external entities which they considered them harmful or distant with their ethics principles and thus decided to refuse to purchase and/or collaborate with them,
- decided to terminate a contract with a supplier/subcontractor after noncompliance with (a particular aspect of) the ethics charter.

#	indicator	unit	dimension
25.	Is there an office/department tasked with implementation of mitigating action?	yes / no	Conformance

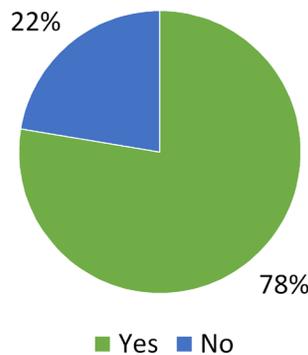


Figure 43: More than three quarters of the companies under study tasked an office or department with the implementation of corrective actions. N = 134.

According to Principle 19 of the UNGPs, “business enterprises should integrate the findings from their impact assessments across relevant internal functions and processes.” With this in mind, we ask whether one or more offices or departments (also teams, committees) were tasked with

¹¹⁷ Two of which had exclusion lists covering both labor risks and environmental risks.

the implementation of the mitigation steps. In total, 78% of the firms studied had an office or department in charge of implementing mitigating action.

Sufficient to award a “yes” under this indicator were the following conditions/measures:

- if there were several offices, rather than just one ([EDF](#), p. 216-219: “International department,” “Group Procurement Department,” “Nuclear Generation Division,” “Strategic Social Responsibility Committee,” etc.); and/or
- if the offices discuss/approve measures ([BNP Paribas](#), p. 557: “vigilance measures were discussed and approved at four meetings of the Group Supervision and Control Committee”); and/or

A point was also considered for companies that discussed monitoring measures, without explicitly mentioning their execution ([XPO Logistics](#), p. 12).

#	indicator	unit	dimension
26.	Does that office imply / require sign off from upper level management and / or the corporate board?	yes / no	Conformance

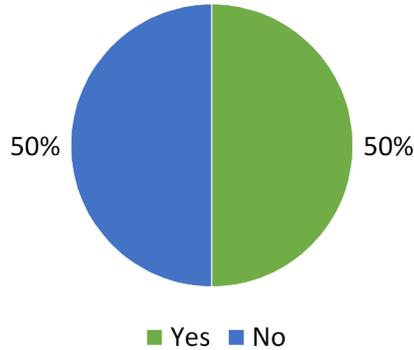


Figure 44: Half of the companies in scope of this study tasked an office or department with implementing mitigating action, and reported that requiring board or upper-level management sign off on that action. N = 134.

A lenient approach was used to establish whether upper level management signoff was required. For instance, [EDF](#)’s “Strategic Social Responsibility Committee” is “chaired by a member of the Executive Committee” (p. 219). Similarly, [Engie](#) “has developed control processes to ensure the implementation of actions and the achievement of objectives and a comprehensive health and safety report is presented annually to the Executive Committee” (p. 169). Both of these were considered as sign-off by upper management.

Under these thresholds, we found that exactly 50% of the companies (67 out of 134) under review had their offices in charge of implementing the mitigating action requiring upper level involvement.

#	indicator	unit	dimension
27.	Is there a follow-up process in place to ensure that mitigation steps are embedded in standard company operations?	yes / no	Conformance

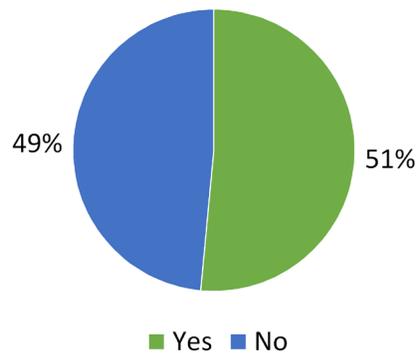


Figure 45: Fifty-one percent (51%) of the firms under our investigation established a follow-up process to ensure the embedding of corrective actions in standard company operations. N = 134.

It is one thing to establish systems to assess *risks*. It is another to establish *action* plans to mitigate risks. It is yet another to establish a monitoring system to assess the *effectiveness* of measures. And it is moreover another one to establish follow-up systems to ensure that the action plans are effectively implemented. This is what this indicator was designed to retrieve. This resulted in the finding that 51% of the companies reported a follow-up process to this end.

#	indicator	unit	dimension
-	What is that process?	Description / no	Qualitative

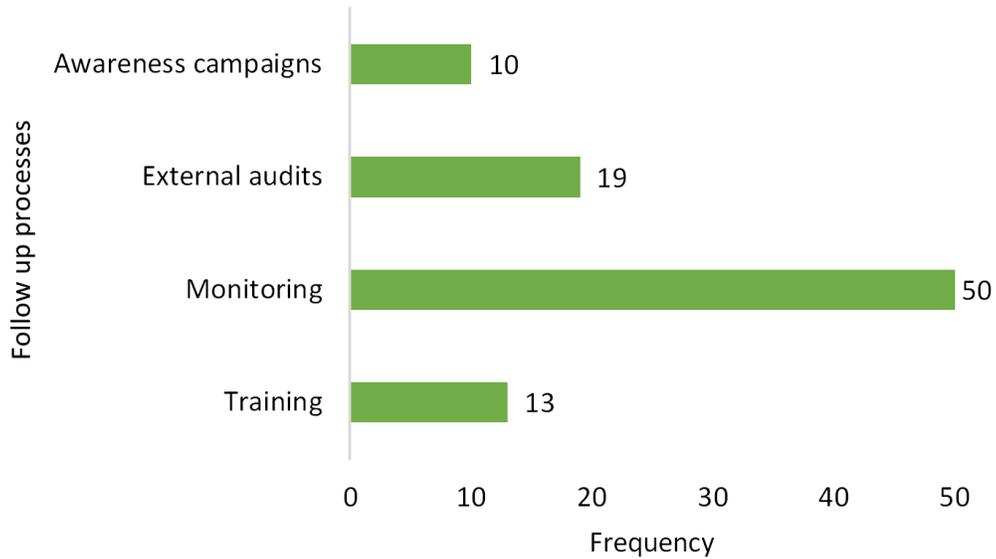


Figure 46: Monitoring was the most frequent choice to embed mitigating actions in standard operations. N = 134.

Four groups of follow-up processes were detected. Monitoring in general (assessments, internal audits, checks, inspections etc.), *external* audits in particular, awareness campaigns, and training. Monitoring systems were the follow-up process that was reported most frequently. [Saint-Gobain](#) reported that “automated tests take place to subsequently check that the procedures are actually being applied” (p. 56).

H. Implementation of an alert mechanism

#	indicator	unit	dimension
28.	Does the plan include a structure for an alert mechanism?	yes / no	Compliance

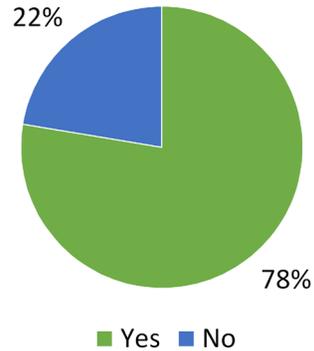


Figure 47: More than a fifth of the companies under study did not report a structure for an alert system. N = 134.

Seventy-eight percent (78%) of the companies reviewed included a description of an alert system within their vigilance plan statement. In order to be awarded a ‘yes’ under this indicator, it should be clear that the system exists in the present and covers issue areas required by the law.

In a few cases, companies whose statements did not meet these requisites were awarded a ‘no.’ For instance, the [Banque Fédérative Crédit Mutuel](#) reported that its vigilance plan consisted of 5 measures, one of which was “an alert system and procedure for reporting the existence or occurrence of risks” (p. 460). Yet, there was no mention of this system afterwards and thus a ‘no’ was awarded.

Also remarkably, [GROUPE LDC SA](#) indicated that the reader should refer to its website for a description of its alert system, which resulted in a ‘no’ being awarded.¹¹⁸

In an ambiguous case, [Mobivia](#) expressed that it was the “desire” of the company to expand its existing whistleblowing system to encompass the environment and human rights. The firm also reported that it “encourages employees and suppliers to express their concerns” on these matters. The rest of the section dealt with corruption alerts. Since an encouragement to speak up does not constitute an alert system, and a desire to set up such a system does not equal to actually having it in place, a ‘no’ was awarded.¹¹⁹

¹¹⁸ Quoting: “Le dispositif d’alerte est le dispositif décrit dans la charte Ethique du Groupe, consultable sur le site internet du Groupe LDC, www.ldc.fr, dans la rubrique « Nos engagements »” (p. 39).

¹¹⁹ Quoting: “Le mécanisme existant repose sur l’adresse de messagerie ethics@mobivia.com, qui avait été mise en place en réponse à la loi Sapin II. Il est de notre volonté de le mutualiser et de l’étendre au dispositif d’alerte relatif à l’environnement et aux droits humains. Ce dispositif encourage les collaborateurs et les fournisseurs à faire part de

Similarly, [GRDF](#) reported having an alert system, but it made no mention of having adapted it to meet the requirements of the law and was awarded a ‘no.’¹²⁰

[Cromology](#) was also awarded a ‘no’, since it only reported that “in 2019, Cromology will extend the scope of this whistle-blowing mechanism to include all potential environmental damage and infringement of human rights” (p. 211).

With regards to an alert system, [ADP](#) statement only reported that “a whistle-blowing platform accessible by suppliers to meet the requirements of the Sapin 2 law. It also includes a hotline for people without access to internet” (p. 146). Since the *Sapin II* law covers topics different from those covered by the *Devoir de Vigilance* law, a ‘no’ was awarded. [Enedis](#) was in a similar situation, reporting a *Sapin II*-compliant alert system. Moreover, the firm stated that extending the system to be *Devoir de Vigilance*-compliant was planned for the future (“*il est prévu d’étendre,*” p. 3). Since this implies that the system does not meet the requirements of the *Devoir de Vigilance* law at present, a ‘no’ was awarded.

#	indicator	unit	dimension
29.	Did the plan specify what the process entails?	yes / no	Compliance

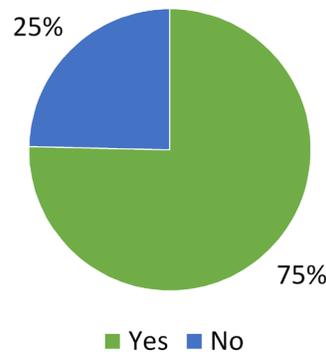


Figure 48: Three quarters of the companies investigated for this report informed having an alert system and specified what it entails. N = 134.

leurs préoccupations quant à tout comportement non éthique, contre les violations aux droits humains et libertés fondamentales, à la santé et la sécurité des personnes, à l’environnement, et dénoncer tout acte de corruption présumé ou avéré” (p. 23).

¹²⁰ Quoting: “Le mécanisme existant repose sur l’adresse de messagerie ethique@grdf.fr dont le Directeur Ethique, Déontologue est le seul utilisateur. On envisage de le fonder avec le dispositif de recueil des signalements des lanceurs d’alerte et le dispositif d’alerte interne destiné à permettre le recueil des signalements relatifs à l’existence de conduites ou de situations contraires au code anticorruption – et, dans ce cadre, de le perfectionner” (p. 4).

Seventy-five percent (75%) of the reports reviewed not only included an alert system, but also explained what the system consisted of. If such a description was present, companies were awarded a 'yes.'

[Thales](#), however, stated that it “reviewed its internal alert system to bring it into compliance with France’s law No. 2016-1691 (...) and law No. 2017- 399 (...) in consultation with Thales’s representative trade unions” (p. 142), but included no description of the system. It was thus awarded a ‘no’ for indicator #29, despite the fact that the company was regarded as having an alert mechanism as per indicator #28.

Other notable cases encompassed [Altran](#)’s vigilance plan, which stated that it had included a vigilance plan, offering little description of it whatsoever:

“The Group’s alert mechanism was adapted to fulfill legal obligations, notably Articles 8 and 17 of the Law of December 9, 2016 on transparency, the fight against corruption and the modernization of economic life, as well as the law of March 27, 2017 on the duty of parent companies and principal companies. The procedure is put in place at the Group level and may be subject to adaptations to ensure its compliance with local legislation” (p. 49).

#	indicator	unit	dimension
-	What does the process entail?	Description / no	Qualitative

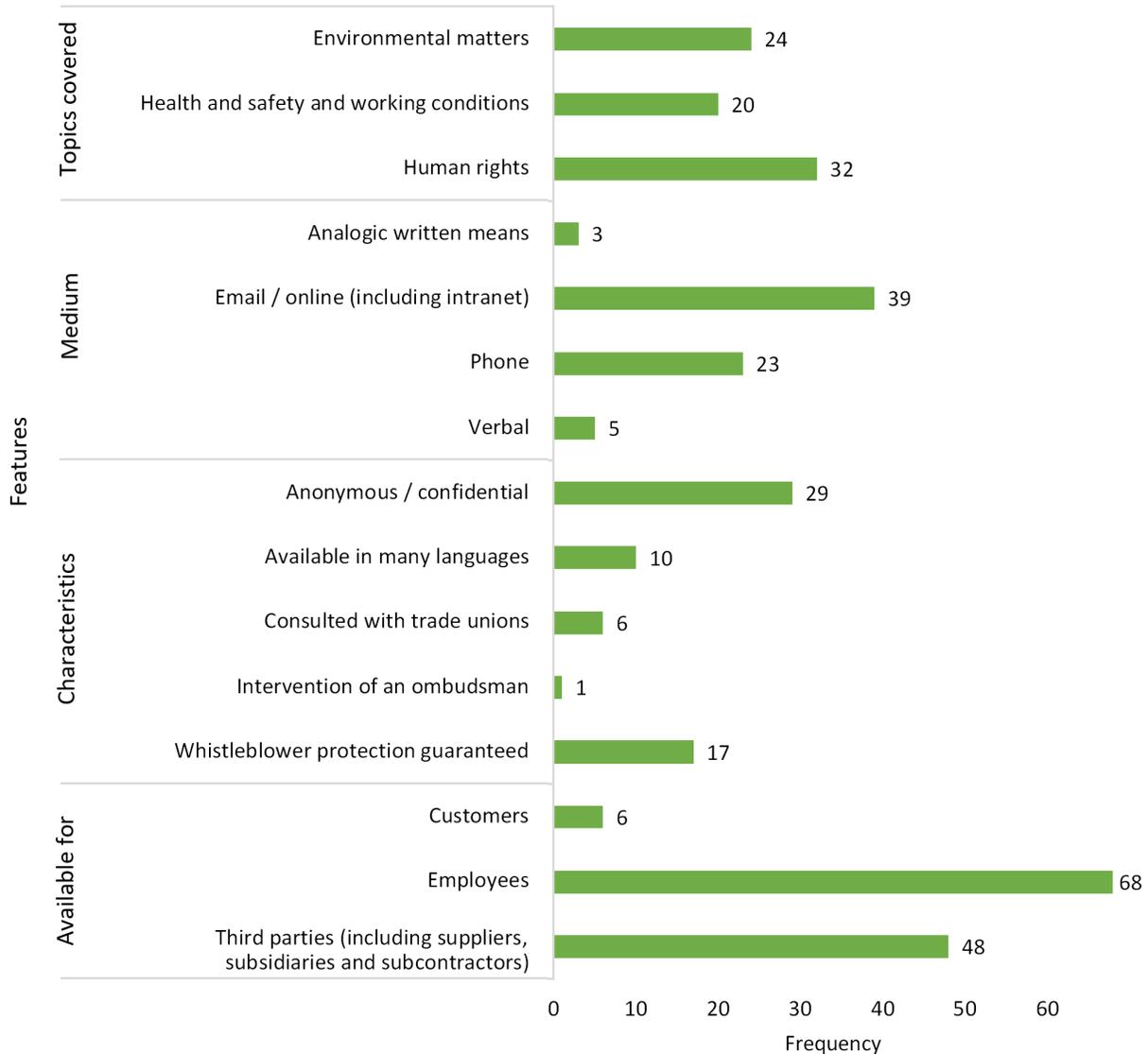


Figure 49: Overview of the main features of the alert systems detected throughout this study. N = 134.

We investigated the description of the alert mechanisms presented in the vigilance plan statements and found that:

- most of the alert systems were designed for the usage of employees and/or third parties (including suppliers, subsidiaries and subcontractors);
- the alert system feature mentioned most often was “anonymity” or “confidentiality” (29 cases). Sixteen (16) companies also specified that their alert system involved protection for whistle-blowers;
- the majority of the alert systems were based on an online platform or consisted of an email address. A few cases were reliant on verbal or even analogic written communication;
- the issue area most frequently covered by alert systems was human rights matters, though environmental issues and health and safety matters were also mentioned with frequency.

#	indicator	unit	dimension
30.	Is this process managed by a third party?	yes / no	Transparency

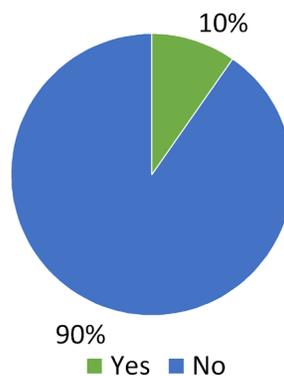


Figure 50: Only 10% of the companies in scope of this study reported that the alert system was managed by an independent third party. N = 134.

Ninety percent (90%) of the companies reviewed either did not report the implementation of an alert system, reported an alert system managed by internal staff, or reported an alert system without specifying who managed it. However, 10% of the firms analysed did specify the presence of an externally managed alert system, and were consequently awarded a point under this indicator. [Ipsos](#), for instance, reported that its whistleblowing system “is managed by an independent external organisation called Expolyнк” (p. 69).

[Vinci](#) reported that its employees and its subcontractors’ employees can “approach the global union federation Building and Wood Workers’ International (BWI), which then informs QDVC or

VINCI. This independent channel has proven effective, since the BWI has already handled complaints from employees, including those of subcontractors” (p. 239).

[Financière de l’Odet](#) stated that “third parties *may* handle the issues reported, provided the whistleblower has previously agreed, particularly if a deeper investigation turns out to be necessary” (italics are ours, p. 77). A ‘yes’ was awarded.

[Groupe Renault](#) stated that its whistleblowing system is “managed by an external service provider” (p. 136), but did not provide the name. A ‘yes’ was still awarded. [Engie](#) (p. 171) was in the exact same situation.

#	Indicator	unit	dimension
31.	Are the outcomes of the alert mechanism published?	yes / no	Transparency

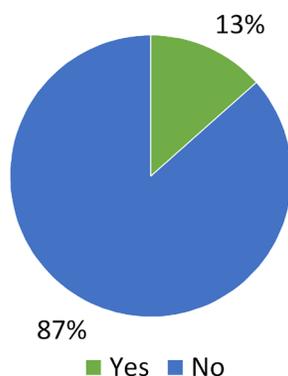


Figure 51: The percentage of companies publishing the outcomes of their alert system was only 13%. N = 134.

Only 18 firms published the outcomes of the alert mechanism in their *Devoir de Vigilance* statement. [EDF](#), for instance, indicated that “no ‘duty of care’ alerts had been recorded” (p. 216). Other firms, such as [Engie](#), reported that “information about this alert system was specifically communicated to all employees via a mailing, videoscribing and poster campaign,” but this was not considered as publication, since the outcomes were not available in the *Devoir de Vigilance* statement itself.

[Thales](#) stated that the modification of its alert system “increased security” and for it to be able to “receive all internal or external alerts falling within the scope of these laws” (p. 142), but this was regarded as insufficient to qualify as publication of outcomes.

I. Implementation of a monitoring scheme

#	indicator	unit	dimension
32.	Is there a monitoring scheme in place to review the efficacy of implemented measures? I.e. supplier implementation of the vigilance plan.	yes / no	Compliance

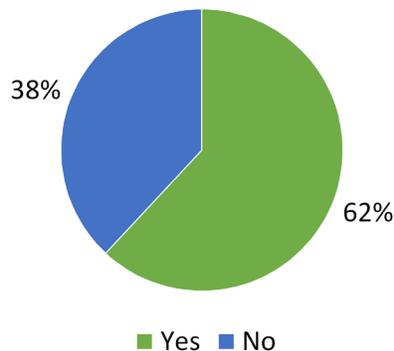


Figure 52: Thirty-eight percent (38%) of the firms analysed did not report having a monitoring scheme to review the efficacy of implemented measures. N = 134.

Under this indicator, a ‘yes’ was awarded if the monitoring system addressed the *effectiveness of implemented measures*. Thus, systems to monitor risks ([BNP Paribas](#), p. 560) or compliance with abstract ‘rules’ that are not mentioned ([Europcar Group](#), p. 303) were not considered.

[Eiffage](#)’s report had a section named “Monitoring of measures and their effectiveness,” which stated that “the system is currently being defined in coordination with the Compliance Committee at Group level” (p. 139). A ‘no’ was awarded, since it implied that a monitoring system was not currently at place.

[Pernod Ricard](#) stated that it “has monitoring procedures and systems in place (...). The results have already been extensively published and audited with complete transparency in this report (see Sections 2,3 and 4 in particular)” (p. 115). This vague description and excessively broad cross-referencing resulted in a ‘no’ being awarded.

[Ipsos](#) reported that its monitoring “mechanism will be completed in 2019.” However, the firm also stated that “in 2018, the first results from this due diligence action plan were positive as they revealed no serious and proven harm to human rights, fundamental freedoms, health, personal safety or the environment” (p. 69-70), suggesting that some monitoring scheme is already in place. However, since this incomplete scheme was not described, a ‘no’ was awarded.

[Mobivia](#) declared that the indicators of its extra-financial performance statement constitute its monitoring system (p. 12). This was regarded as insufficient.

In another case of weak reporting, [XPO Logistics](#) limited itself to state that: “The mission of the Risk Committee is to oversee the implementation and effectiveness of measures taken to ensure human rights and fundamental freedoms, health and safety, and the environment” (p. 12). This was not regarded as sufficient reporting of a monitoring system, and thus a ‘no’ was awarded.

[Faurecia](#) had a section titled “Monitoring system for implemented measures” which stated that “the procedure, officially implemented in November 2018, has already been tested on around 250 of Faurecia’s key suppliers. Deployment is on-going” (p. 274). The lack of detail, however, resulted in a ‘no’ being awarded under this indicator.

Similarly, [Le Groupe La Poste](#) reported that it “monitors the policy to be implemented in terms of the duty of due diligence. Following the risk assessments (...) it decides upon the national actions” (p. 508). This was regarded insufficient to merit a ‘yes.’

#	indicator	unit	dimension
-	Describe	Description / no	Qualitative

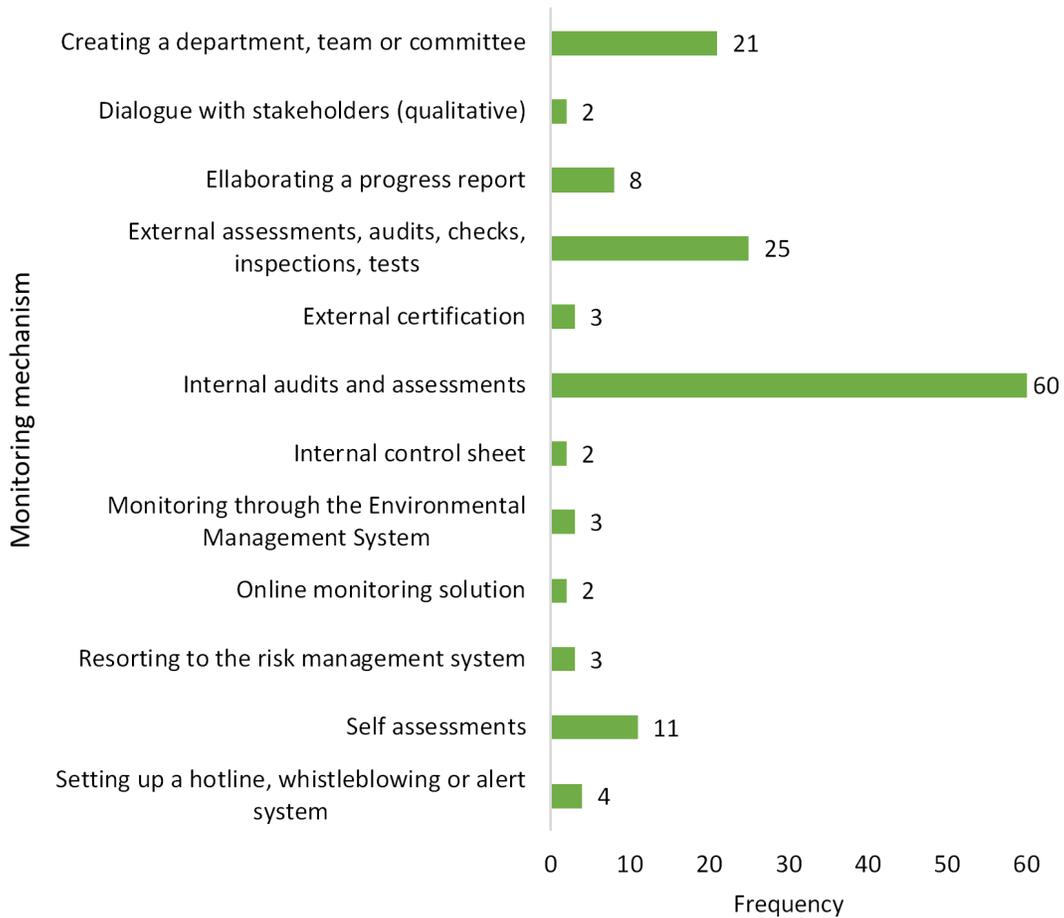


Figure 53: Internal audits and assessment constituted the monitoring mechanism used most often. N = 134.

We assigned the various monitoring schemes reported into categories. This led to the finding that the majority of the systems put in place consisted of internal audits and assessments. Possibly, the most robust monitoring system consists of external assessments, which followed in frequency but were vastly less than internal assessments. The creation of monitoring teams or departments and self-assessments followed in order of frequency.

#	indicator	unit	dimension
33.	Is the monitoring scheme undertaken by an independent third party?	Name of agency / no	Conformance

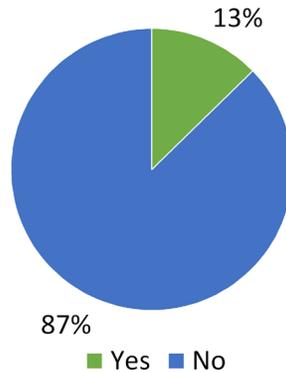


Figure 54: Only 13% of the firms studied tasked an independent third party with managing the monitoring scheme for the efficacy of the measures implemented. N = 134.

Seventeen (17) companies reported that the monitoring of the effectiveness of measures was commissioned to an independent third party *which they identified*. The remaining 116 firms either did not task a third party with this or, like [L'Oréal](#), reported that “specialist external companies” undertake the audits to suppliers and subsidiaries (p. 123). In these cases, since the name of the agency was not provided, a “no” was awarded for this indicator.

Similarly, [Groupe Renault](#) referred to an “external annual audit carried out by an independent accredited body” (p. 156) but, since the name of the body was not provided, a ‘no’ was awarded. [Carrefour](#) also explained that unannounced audits “performed by an independent firm selected by Carrefour” and that “specific audits (...) by an external company or by partners” were undertaken, but no names were provided (p. 111). [Rexel](#) (p. 218), [Kering](#) (p. 64) and [Europcar Group](#) (p. 303) were also awarded a ‘no’ due to not providing the name of the independent third party.

#	indicator	unit	dimension
	What is the name of the independent third party?	Name / no	Qualitative

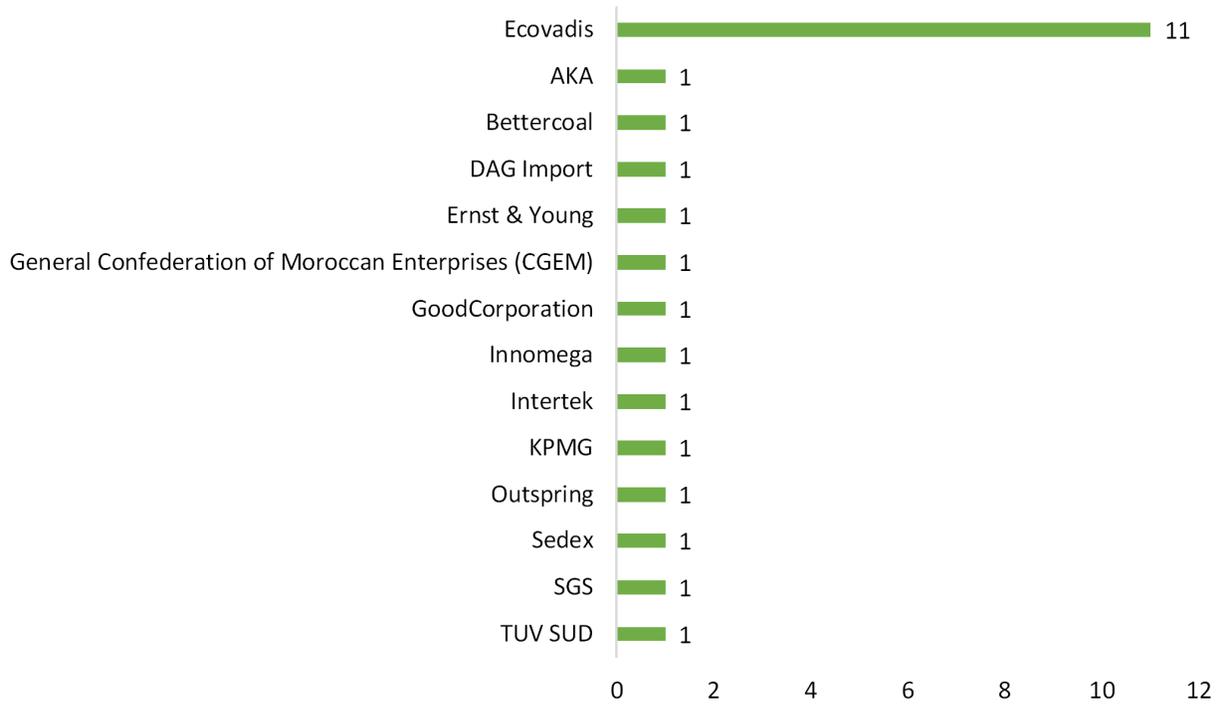


Figure 55: The company tasked most frequently with managing monitoring systems was Ecovadis. N = 134.

As shown by Figure 55, Ecovadis was the firm mentioned most frequently for monitoring the effectiveness of the implemented measure as an independent third party.

#	indicator	unit	dimension
34.	Does the independent third party audit suppliers, subcontractors and/or subsidiaries?	yes / no	Conformance

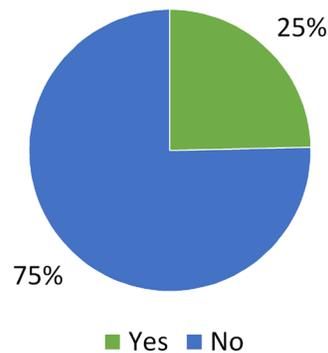


Figure 56: Three quarters of the firms studied tasked an independent third party with auditing suppliers, subcontractors and/or subsidiaries. N = 134.

A quarter of the companies under review noted that an independent third party audited its suppliers, subcontractors and/or subsidiaries. A 'yes' was awarded in these cases even if, like [Rexel](#), they did not specify the name of the independent third party as per indicator #34. Rexel stated that it "reviewed the scope of suppliers and subcontractors' on-site audits, (...) 8 audits or visits including CSR criteria were carried out in 2018 by a third party" (p. 218). This was also the case of [Saint-Gobain](#) mentioned (p. 57) and [Groupe Renault](#) (p. 156).

#	indicator	unit	dimension
35.	Does the monitoring scheme mention a review/audit of the alert mechanism process?	yes / no	Conformance

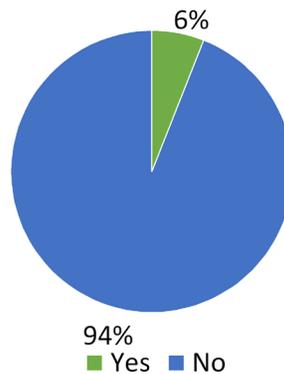


Figure 57: Only 6% of the firms reviewed reported that the monitoring scheme at place also reviewed or audited the alert system itself. N = 134.

Only 6% of the companies studied reported that they had put in place a monitoring system that included a review or audit of the alert system itself. For instance, [Valeo](#) stated that, “for Valeo’s own activities, the Group has implemented monitoring actions: (...) for health and safety, deployment tools, *regular monitoring of alerts and alert mechanisms* (VRI) have been rolled out across all Group sites” (italics are ours, p. 187). [Sanofi](#) also included such an audit (p. 43).

Nonetheless, not all the companies that discussed such a review were assigned a ‘yes’ under this indicator. [Crédit Agricole](#), for instance, reported that monitoring of the alert system will be undertaken in 2019, but it was not explicit on whether such monitoring happened in 2018. For this reason, a “yes” was not awarded, but we decided to highlight the case. Quoting: “As part of our continuous improvement process, the indicators for monitoring the measures implemented as part of the Vigilance plan will be completed and enhanced for financial year 2019, notably with regard to the use of alert reporting” (p. 119).

Similarly, [ID Logistics Group](#) reported that it will soon be “possible to prepare a report on all alerts submitted by employees or third parties. The report will include a description of the alerts submitted, the investigations carried out as well as any findings and actions to be taken. It will be presented at the Group’s Executive Committee meetings every six months” (p. 87). However, since this was intended for the future only, and not currently in place, a ‘no’ was awarded.

#	indicator	unit	dimension
36.	Does the vigilance plan establish a set of KPIs for at least one of these 4 categories: "severe violations of human rights and fundamental freedoms, serious bodily injury or environmental damage or health risks"?	yes / no	Conformance

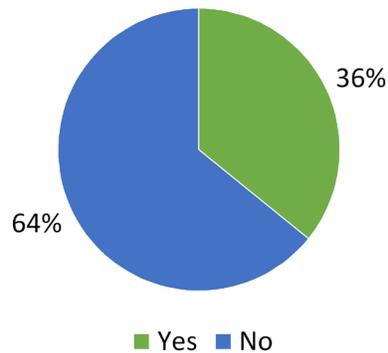


Figure 58: Almost two third of the companies under analysis did not use key performance indicators to assess their performance under any of the risk categories of the law. N = 134.

Principle 20 of the UNGPs states that “business enterprises should track the effectiveness of their response.” With this in mind, we ask whether key performance indicators were established to assess the effectiveness of the measures undertaken, for at least one of the issue areas that concern the *Devoir de Vigilance* law. Thirty-six percent (36%) of the companies reviewed one such indicator – as a minimum – within the vigilance plan statement or the cross-referenced sections. For example, [Rexel](#) reported the percentage of direct purchases evaluated, the annual number of whistleblowing alerts per topic, and the distribution of CSR scores across suppliers (p. 180, 218-219)

However, not all companies claiming to display indicators were considered as such, if the indicators were not present. For instance, [Sanofi](#) included a section within its vigilance plan named “Performance indicators.” However, since it did not contain actual indicators, a ‘no’ was awarded. The following quote corresponds with the totality of the section:

“In ensuring that our human rights policies are implemented across our subsidiaries, we will pay particularly close attention to:

- subsidiaries that have not implemented these policies;
- subsidiaries that have only partially implemented them; and
- policies that are particularly difficult to implement (forced labor, child labor, freedom of association, non-discrimination, etc.).” (p. 40)

#	indicator	unit	dimension
-	What are those KPIs?	Description / no	Qualitative

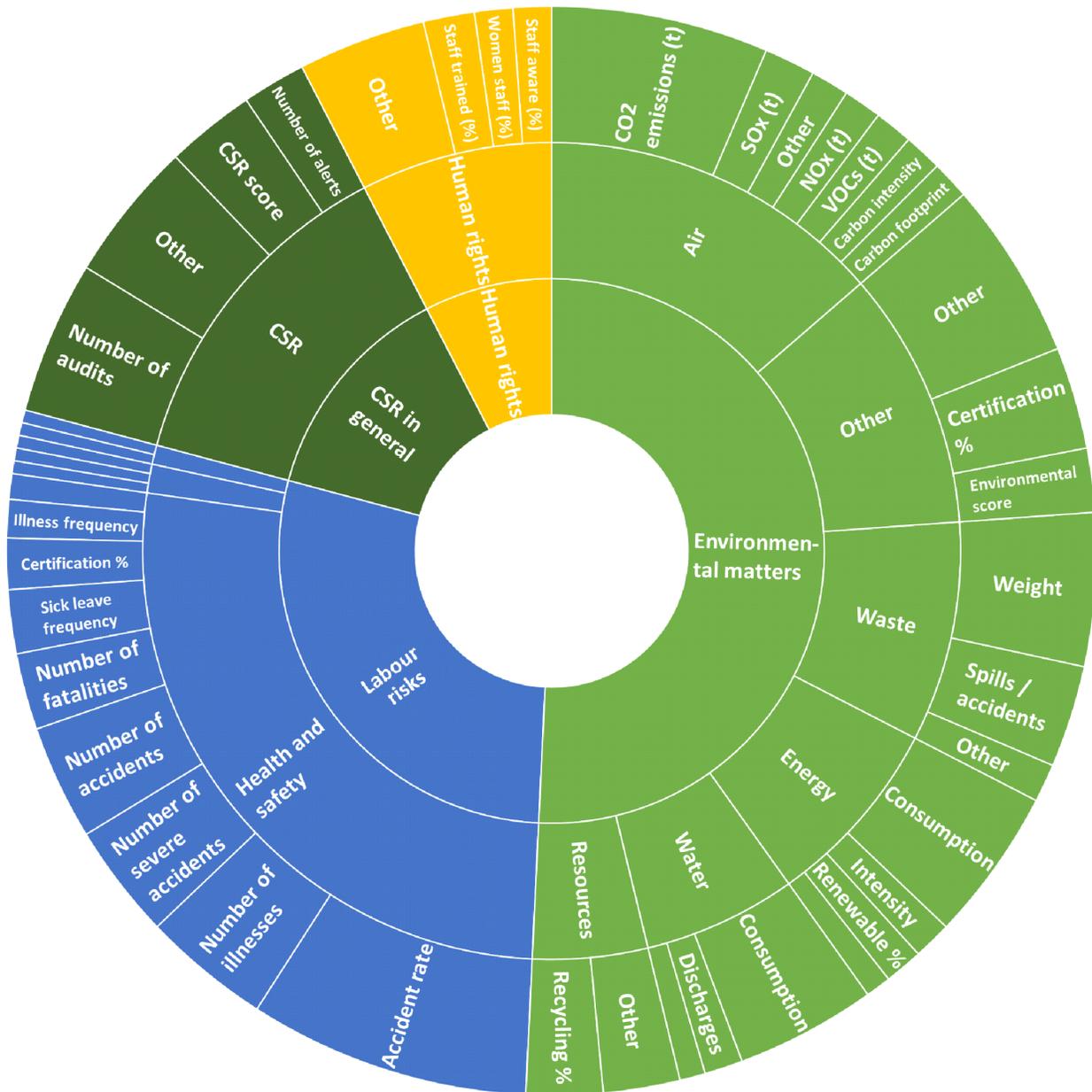


Figure 59: Of the 134 companies reviewed, 48 published performance indicators within their vigilance plans. We identified 263 different indicators within these 48 vigilance plans, which we organised into 84 indicator types, the majority of which are shown in this sunburst diagram. The size of each indicator type indicates the frequency with which it was used. N = 134.

We retrieved each of the performance indicators included within the vigilance plan statements. Thereafter, we classified them into categories. This allowed us to present an overview of the indicators used most frequently within the *Devoir de Vigilance* statements, as Figure 59 displays.

The majority of the indicators presented were concerned with environmental matters, though a large fraction also addressed labour risks and human rights risks. The accident rates and the tons of CO₂ emitted constituted the indicators which were featured most frequently. Other indicators such as the tons of waste generated, the watts-hour of energy consumed, the litres of water consumed, the absolute number of accidents, severe accidents and illnesses were also used frequently.

On a number of occasions, the indicators at issue did not pertain to a particular matter or, if they did, the subject matter was not specified. For instance, some companies presented the number of audits conducted as an indicator, but either they did not specify what matters these audits investigated, or the audits were general CSR audits with a broad scope.

A particular case worth highlighting was given by [Kering](#), which not only presented a large number of indicators within its vigilance plan,¹²¹ but also presented a monetary valuation of its environmental impact (p. 65). This indicator, named Environmental Profit & Loss account or EP&L, “goes beyond the regulatory measurement of its carbon footprint to include an annual analysis of the entire value chain, from cradle to gate,” both upstream and downstream (p. 92).

This measurement tool, which Kering released as open source (Kering, 2015), surveys the impact with regards to greenhouse gases, water consumption, waste generation, water pollution, air pollution and land use across different parts of its supply chain: raw material production, raw material processing, sub-component preparation, assembly, operations and stores ([Kering](#), p. 114). This allowed the firm to present its environmental impact using millions of euro as a common unit, to disaggregate the impact and show where the greatest impacts took place, as well as to present the year-over-year variation.

Aside from Kering, other companies also reported many indicators within its vigilance plan or cross-referenced sections. The companies with the highest number of indicators were [Alstom](#),¹²²

¹²¹ Percentage of employees trained on the Code of Ethics, number of complaints received by Ethics Committees, number of third-party due diligence procedures, percentage of suppliers wholly or partially noncompliant after human rights and health and safety monitoring, frequency and severity of work-related accidents (in percentage), share of renewable energy in total energy consumption and carbon footprint (p. 65).

¹²² Alstom reported its GHG emissions (disaggregating between Scopes 1 and 3), energy consumption and intensity, share of recovered waste, waste intensity, water consumption and intensity, VOC emissions related to activity (intensity), number of health & safety audits, percentage of employees trained, occupational injury rate, lost time injury frequency rate, number of fatalities, number of travel fatalities, number of severe accidents, number of accidents in commuting, number of occupational diseases, number of evaluations on subcontractor living and working conditions, and the number of child labor, forced labor, and freedom of association alerts (p. 225, 243-244, 257-60).

[Total](#),¹²³ [Imerys](#),¹²⁴ [Orange](#)¹²⁵ and [Valeo](#).¹²⁶ It should be noted that the indicators at issue were mostly not in the vigilance plan statement itself but in cross-referenced sections. However, this was not the case for Total and Kering, who did display the indicators within the statement itself.

It should be noted that, even though we identified indicator *types* that were employed with some frequency, the lack of KPI standardization was notorious. No single specific indicator was employed in a majority of the vigilance plans, nor in several of them. It was rare to find plans with the same indicator types, rarer to find plans with the same specific indicators, and even rarer to find plans with the same indicator units. Thus, in spite of individual efforts making serious attempts at disclosing their performance with indicators, comparability is seriously obstructed by the lack of mass adoption and standardization of KPIs.

¹²³ Total reported the number of accident rates, its absolute number of accidents, fatalities and occupational illnesses, the “percentage of employees with specific occupational risks benefiting from regular medical monitoring”, its SO₂ and CO₂ emissions (Scope 1 and 2), the number of loss of primary containment events and accidental spills, the volume of hydrocarbon spills, of freshwater withdrawals and of flared gas, the energy consumption and efficiency, the carbon intensity and water salinity (p. 100-107).

¹²⁴ Imerys reported the number of fatalities, life-changing injuries and occupational illnesses, as well as lost-time accident rates, incident rates and severity rates. It also reported the number of ISO 14001 or EMAS certified operations and of environmental incidents, as well as the waste / turnover ratio and the total, hazardous, non-hazardous, recycled and recovered waste. The firm also indicated its emissions of carbon dioxide, sulfur dioxide and nitrogen oxide to air, its amount of water withdrawn and recycled, the surfaces disturbed by the group's mining activities and its total energy consumption (p. 145-151, 163-165).

¹²⁵ Orange reported the number of hazardous materials checks on suppliers, the battery and rechargeable cells weight, the electronic waste weight, the degree of replacement of noxious substances and CO₂ offset, the number of fatal accidents, days lost to illness and occupational accidents, as well as the accident rate, the number of “limitation orders (disconnections)” and the number of measures against forced labor (p. 314).

¹²⁶ Valeo reported the number of occupational accidents and severe accidents, accident frequency, calendar days lost, percentage of sites reporting significant and non-significant spills, weight of hazardous and non-hazardous waste per million euro in sales revenue, percentage of waste recovered and the percentage of the total workforce who acknowledged receipt of the Code of Ethics and who were trained on its content (p. 221-235).

#	indicator	unit	dimension
37.	Does the vigilance plan establish a set of KPIs for <i>all</i> of these 4 categories: "severe violations of human rights and fundamental freedoms, serious bodily injury or environmental damage or health risks"?	yes / no	Conformance

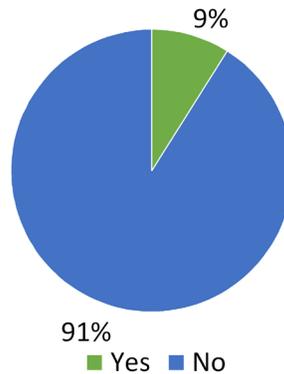


Figure 60: Only 9% of the companies in scope of this study assessed their performance with KPIs for the four categories covered by the law. N = 134.

While some firms reported on select matters, they usually did not establish indicators for *all* four categories: human rights and fundamental freedoms, health injuries, serious bodily injury, and environmental damage.

Nine percent (9%) of the companies reviewed constituted notable exceptions, as was the case of [Orange](#). The firm reported key performance indicators for each category:

- Environmental impact:
 - o "Inadequate treatment of toxic waste." KPIs: "supplier hazardous materials checks," "battery processing," "battery and rechargeable cells weight".
 - o "Ineffective collection of used equipment." KPI: "WEEE weight (network)."
 - o "Circular economy not implemented in business." KPI: "environmental management program".
 - o "Failure to adapt to a 2°C world." KPIs: replacement of noxious substances," "CO2 offset."
- Health and bodily injury. KPIs:
 - o Number of fatal accidents, number of lost days to illness, number of occupational accidents, frequency rate of occupational accidents.
- Human rights and fundamental freedoms. Impacts:
 - o "Breach of the freedom of expression." KPI: "number of limitation orders (disconnections)."

- “Violation of privacy.” KPIs: “customer data protection measures,” “number of lawful interceptions,” “number of customer information requests.”
- “Slavery or forced labor.” KPI: “measures against forced labor.” (p. 314)

While [Sopra Steria](#) did not establish an explicit set of KPIs, they did discuss the Health and Safety situation of the company in a section ‘2018 achievements.’ Within these achievements, there were results that reveal the existence of KPIs. For example, when the company claims “the 2018 workplace accident frequency rate in France came out at 1.91% (vs. 1.68% in 2017 – France)” (p. 86), it is clearly showing that they have the KPI ‘Workplace accident frequency rate.’

#	indicator	unit	dimension
38.	Is the company using these KPIs to report on its due diligence outcomes?	yes / no	Transparency

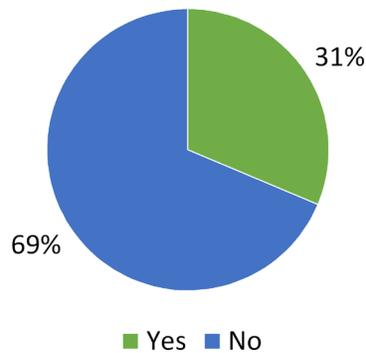


Figure 61: Thirty-one percent (31%) of the firms reviewed used the KPIs at issue to report on their due diligence outcomes. N = 134.

Almost a third of the companies reviewed – such as [Kering](#) (p. 114) and [Sopra Steria](#) (p. 86) – included not just the performance indicators used, but also the values recorded under those indicators for the reporting year. In other words, they not only presented indicators, but used them to inform their due diligence.

This was not the case of some companies, however, such as [Orange](#). This firm reported the usage of a number of indicators, e.g. the number of occupational accidents, fatal accidents and days lost to illness. However, the figures corresponding to those indicators were not presented within the vigilance plan statement.

J. Publication

#	indicator	unit	Dimension
39.	Is the vigilance plan within a management report / registration document?	yes / no	Compliance

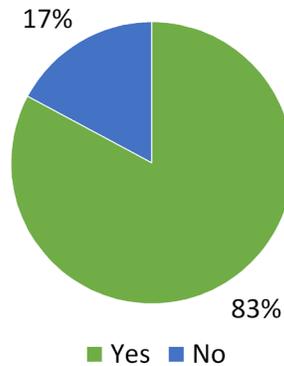


Figure 62: Seventeen percent (17%) of the vigilance plans studied were not located in the management report, as required by the law. $N = 134$.

As per the law, firms are required to publish a vigilance plan and a report on the implementation of the vigilance plan. The law is clear on where the plan and implementation report need to be published:

The vigilance plan and the report concerning its effective implementation shall be published and included in the report mentioned in article L. 225-102.

However, not all companies followed the legal prescriptions. A number of companies published a vigilance plan in a stand-alone report, or as a section in e.g. a CSR report, rather than within the annual report or registration document. The number of companies publishing the vigilance plan statement in the report required by the law ascended to 83%.

Moreover, in some cases, certain companies included only a summary of the vigilance plan in the registration document, with the 'full vigilance plan' in a permanently updated section of their website. As interesting as this approach may be, it does not meet the requirements of the law. Hence, these online statements were not considered for the companies' scores.

[Engie](#), for instance, included only a "summary of the vigilance plan" in the registration document, while having an "online site dedicated to more detailed and regular information about its vigilance plan and its implementation" (p. 169). However, note that Engie's [online vigilance plan](#)

did not comprise one single webpage. Rather, there was a short introductory vigilance plan webpage with a number of hyperlinks to other sections of the website, which undermined the ease with which information could be retrieved, as the possibility of using the search tool was seriously impaired.

Another example is given by [Orange](#), which did not state explicitly that its 3-page vigilance plan section was a summary. However, it effectively constituted one, as the section claimed to present a summary of the risk map (p. 313) and a “summary of the main points” of the implementation report (p. 315). Moreover, there was a full 32-page [report](#) online.

As the following graph illustrates, Orange would have obtained a much higher score, had its vigilance plan statement within the registration document been as complete as its online statement. Interestingly enough, this was not the case for Engie, whose ‘registration document summary’ actually received more points than its online vigilance plan statement.

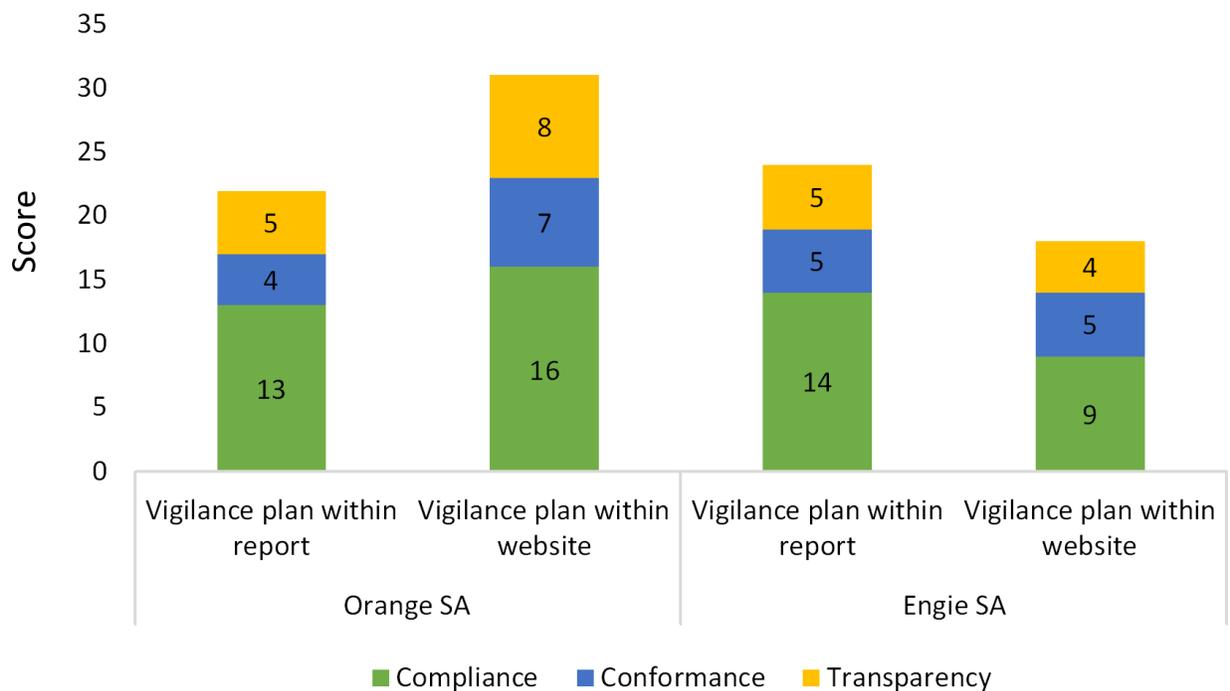


Figure 63: Orange’s and Engie’s vigilance plan statement performance differed across versions of their statements (online and within management report).

#	indicator	unit	dimension
40.	Does the report discuss findings and results of the first-year vigilance plan? (E.g. in the form of a <i>compte rendu</i>)	yes / no	Compliance

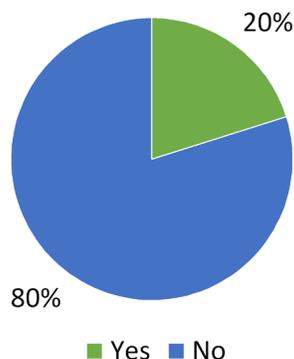


Figure 64: Only 20% of the companies under review published a *compte rendu* or otherwise discussed the findings and results of the vigilance plans of the first year. N = 134.

It emerges from the law that the vigilance plan statement and the implementation statement (*compte rendu*) are two different reports or sections. Some firms merged the two, which ought to be negatively highlighted. A *compte rendu* includes continuous engagement: it not only discusses the success or failures to meet past objectives, but it also sets new goals, both of which are supported with quantitative indicators. A simple presentation of actions taken in the past risks turning the *compte rendu* into a mere legal document to comply with the law, rather than a ‘living’ statement.

As Figure 64 illustrates, the majority of companies did not publish and discuss the findings and results of the implementation of the vigilance plan, as required by the law. A point was awarded for this indicator if a sufficiently substantial discussion of findings and results of the first year vigilance plan was present within the vigilance plan statement – even if it should have been placed within a separate *compte rendu* section or report.

This was the case of [Michelin](#)’s statement for example. The company did not publish a separate section with the report on the implementation of the vigilance plan, as they ideally should. However, since the rest of Michelin’s vigilance plan statement discussed the findings and results of the first year at length (p. 272-280), a ‘yes’ was awarded.

[Orange](#), in turn, published a “summary” (p. 315) of the *compte rendu* only, yet a ‘yes’ was still awarded. Furthermore, [Crédit Agricole](#) stated that “the report on the effective implementation of the vigilance plan is published each year for the financial year ending 31 December” (p. 115). We were unable to locate this section, but nonetheless awarded a ‘yes’ because the section named “Report of the implementation of measures to prevent or mitigate these risks” (p. 116)

met the requisites to qualify under this indicator. Counting these cases, a total of 21% of the companies under review discussed the findings of the first-year vigilance plan.

Note that, while [Engie](#)'s summary of the vigilance plan in the registration document did include a report on the implementation of the first year of the vigilance plan, Engie's [online vigilance plan](#) did include a link for the implementation report. However, when the website was consulted, the link was down because it was "currently being uploaded."¹²⁷ A copy of the website on November 14, 2019, was downloaded to our repository.

Some negative examples were also found. In a case that ought to be called out, [Banque Fédérative Crédit Mutuel](#) reported that "the vigilance plan and its implementation are made public through the non-financial performance statement (NFPS)." This was problematic as the vigilance plan section was already *in* the NFPS, which was confusing.

#	indicator	unit	dimension
41.	Does the follow-up report (<i>compte rendu</i>) address in detail first year lessons learned and problems encountered in implementing the vigilance plan?	yes / no	Compliance

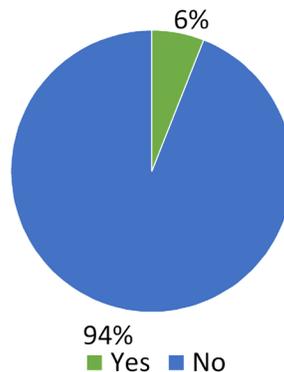


Figure 65: Only 6% of the firms studied explained the lessons and problems encountered in the implementation of the first-year vigilance plan in detail. N = 134.

Not all *compte rendu* statements detailed the lessons and problems encountered in implementing the vigilance plan the previous year. One of the eight exceptions (6% of all companies studied) was [Orange](#), whose summary report of the 2019 vigilance plan had a section on implementation of the 2018 plan. This section "concluded that there was a need for more training on human rights and environmental issues as well as a need to improve post-delivery

¹²⁷ "Téléchargez le compte-rendu de la mise en œuvre opérationnelle (en cours d'actualisation)."

checks on suppliers and local subcontractors” (p. 315).¹²⁸ The firm’s full report ([online](#)) expands on this,¹²⁹ but this was not considered for the purpose of scoring, according to the requirements of the law and the methodology of this study.

#	indicator	unit	dimension
42.	Are human rights violations that occur within the company, its subsidiaries, or its suppliers published?	yes / no	Conformance

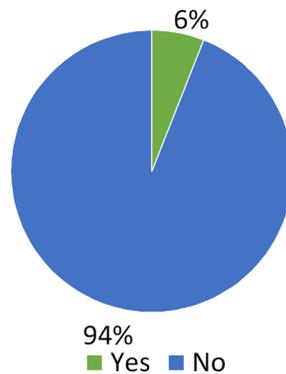


Figure 66: Ninety-four percent (94%) of the firms studied did not report human rights violations nor the number of human rights violations detected (including zero). N = 134.

Steps to map human rights risks involve assessing business partners for human rights risks, establishing mitigation steps, designing monitoring systems to ensure these steps are embedded in standard company operations, and evaluating the effectiveness of those steps. However, these

¹²⁸ [Vinci](#) reported that “Subcontractors, temporary staff and their monitoring (...) [were] included as a priority area for improvement in the duty of vigilance plan in its first year of implementation. (...) Supplier information is provided as a complement to the non-financial performance statement but is not considered to be a priority for the duty of vigilance plan in its first year. *The main issues that have been identified, based on their impact on people and the environment, relate chiefly to projects, worksites and sites under operation*” (p. 229, italics are ours). While this was regarded as following up on implementation as per indicator #40, it did not suffice to be considered a detailed discussion of lessons encountered in the first year of implementation.

Another example of a statement not being awarded a point under this indicator was [Michelin](#). Its statement revealed that “in this second plan, human rights, in particular, were analyzed in more detail than in the first plan” (p. 272), but this was regarded as insufficient to merit a ‘yes’ under this indicator.

¹²⁹ For instance, it states that “obstacles the need to be overcome before reaching a comprehensive and consistent result: the size of the Group and the number of suppliers and subcontractors; [a] ‘standardisation’ of the process, by extension or reconciliation of existing but disjointed processes (...), the creation of recommendations for use or new mechanisms (...); the processes in place are generally useful and effective, but the results obtained are most often only transformed into quantified performance indicators; qualitative data (measures taken, action plans, etc.) exist, but their recovery must be made systematic and a broader analysis organised for greater homogeneity” (p. 30).

are all tools toward a more important ultimate goal: to eliminate (or minimize) human rights violations.¹³⁰ In this direction, this indicator asks whether the firms under review made public (the number of) human rights violations occurred within the firm or its value chains.

We found that 6% of the firms under study did make this disclosure. Only the reporting of actual impacts was accepted for this indicator. In other words, the reporting of mere 'risks' was not considered. In order not to penalize firms without any violations to report, however, we did award a 'yes' to companies explicitly stating that zero human rights violations took place. Hence, 94% of the firms under review did not report the occurrence of human rights violations, but also did not deny it.

An example of a firm assigned a 'yes' under this indicator was [L'Oréal](#), which reported that its human rights audits showed one case of non-compliance with respect to rest days and a number of cases of unsigned work contracts (constituting 0,5% of non-compliance cases) in its subsidiaries (p. 124). With its suppliers, the firm also identified 7 cases of employing children under 16 years of age, as well as a number of other non-conformities, of which:

- 6.7% concerned rules on forced labour (most of them consisting in withholding of identity documents and restrictions to the freedom of employees to end their contracts without a penalty, financial or otherwise),
- 3% concerned freedom of association (mostly restrictions to the free election of representatives);
- 1.7% concerned the rules on non-discrimination (mainly concerning "absence of a clear and uniform policy to ensure the absence of discrimination at recruitment or discrimination in the payment of wages and other costs");
- 22% concerned working hours, and
- 2.5% related to the "absence of a written policy prohibiting moral and sexual harassment or the absence of an internal system allowing the situation to be reported without negative consequences for the concerned employee" (p. 125-126).

[Schneider Electric](#) also declared that, "as a result of the 2018 audit plan, 1,400 non-conformances have been raised. (...) Within the top 10 most common findings, the most frequent are related to Health and Safety (i.e. fire detections alarms, effective emergency, exit signs, etc.), and to Labor (i.e. excessive working hours, number of days off, etc.)."

Similarly, [Carrefour](#) reported: "two major projects that Carrefour has recently been involved with to mitigate or remedy serious violations are the Clean Water Project and the Accord on Fire and Building Safety in Bangladesh (<http://bangladeshaccord.com>)" (p. 112). Since this constitutes an admission of serious violations of human rights (note that "the accord is aimed at preventing

¹³⁰ As well as other negative impacts. However, human rights violations are the ones at the core of the United Nations Guiding Principles on Business and *Human Rights*.

another disaster like last month's factory building collapse that killed more than 1,100 people"),¹³¹ a 'yes' was awarded.

In addition, [Kering](#) indicated that, in 2018, its Ethics Committee received 38 complaints "on all subjects, including human rights and fundamental freedoms." Moreover, 11.3% of its suppliers were regarded as "non-compliant or [with] progress expected" for matters of human rights or fundamental freedoms (p. 65). This was regarded as sufficient disclosure under this indicator.

An example of a firm specifying that *zero* human rights violations took place was provided by [Danone](#). The firm stated: "in 2018, a worldwide total of 12 reports were received in the human rights category. These reports raised routine human resource issues and did not qualify as a [sic] human rights violations in any case" (p. 166). [Alstom](#) (p. 244) presented a similar case.

In turn, [Vinci](#)'s statement reported the existence of a number of "main issues" related to human rights: "potential breaches of fundamental employment rights (...) could result from a lack of vigilance concerning working conditions, such as wages and their payment, number of hours worked, paid holidays and employment benefits, and restrictions to freedom of association" (p. 235). Moreover, "risks of breaching the rights of migrant workers might arise." The firm also identified risks for migrant workers in Qatar. However, since all of these impacts were potential, they were not retrieved for the purposes for this indicator.

IV. Discussion

A. Review of findings

In spite of the limitations discussed in section II. K., the review of the prior 42 performance indicators – in addition to the 14 qualitative indicators that do not award points – provides an overview of the landscape of corporate compliance with the *Devoir de Vigilance* law, as well as conformance to the UNGP and transparency. This allows an assessment of the general quality of corporate reporting under *Devoir de Vigilance*.

Overall, the quality of the plans was found to be particularly lacking in a number of issues.

- Stakeholder input in general and local community consultation in particular: Few companies resorted to stakeholder consultation for their vigilance map and/or their risk map. If they did make such consultations, either they did not report them, they omitted the specific identification of the stakeholders, or the consultations were really 'presentations' without any real input from the stakeholders. At times, the only parties consulted were managers or the HR department, which we did not consider as the stakeholders the law intended firms to consult. Moreover, only two companies reported

¹³¹ Reuters (2013).

having obtained local community input for the design of their vigilance plan, and only three companies reported such input for their identification of risks.

- Risk prioritisation: 119 of the 134 firms reviewed did *not* include a prioritisation of risks in their mapping. A few of them qualified the risks presented as ‘material’ or ‘salient,’ but this does not constitute a ranking.
- Discussion of discrimination: 80 of the 134 companies under study did *not* make any mention of equality of rights or non-discrimination in their discussion of risks.
- Risk mapping specificity: The majority of the risk maps analysed concerned themselves with general categories of risks, not locating the specific risks geographically nor in a precise part of the supply chain.
- Independent management of alert systems: Only 13 companies reported that an independent third party manages the alert or whistleblowing companies. The rest of the companies either had them managed by internal departments or did not specify. Furthermore, only 9 companies had monitoring systems in place that reviewed or audited their alert systems.
- Usage of key performance indicators: Almost two thirds of the companies under review did not quantify their vigilance performance through indicators dealing with at least one of the four areas covered by the law (severe violations of human rights and fundamental freedoms, serious bodily injury, health risks, environmental damage). Only 12 companies used indicators for each of the four categories. Moreover, there was a notable lack of standardization *across firms*, meaning that even when KPIs were used to account for a particular matter, the performance of a company was essentially incomparable to that of its peers’ because they did not use the same units and denominators.
- Publication of actual results: Few companies published the outcomes of the alert system, used key performance indicators for the issue areas required by the law, published an implementation report, indicated an exact number of human rights violations (even zero) or discussed findings and/or challenges encountered during the first year of application of the plan.

B. Coherence with prior works

This study also validated some of the findings of previous reports. The joint study of EDH and B&L, as well as Shift's 2019 study, negatively highlighted the mapping of risks *to* the company rather than risks generated *by* the company, which we also do (Michon et al., 2018: 6; Langlois, 2019: 11; see also Michon and Velho, 2019: 2). Whereas Shift found that only a quarter of firms reviewed mapped the risks in the correct way (Langlois, 2019: 11), we find that amount to be three quarters. We also observe, as Shift et al. (ibid.) and Renaud et al. (2019: 17), a disconnect between the risks mapped and the mitigation actions deployed, which undermines the effectiveness of the latter and thus contradicts the spirit of the law.

Another finding of EDH and B&L that remains true is the notoriously low consultation of external stakeholders (Michon et al., 2018: 10). We also observed the need for “constantly flicking back and forth between documents,” which “therefore makes them hard to read,” as identified by Renaud et al. (2019: 11).

C. Summary of scores

The average company was awarded a point in 18.5 out of 42 indicators (median: 19.5), which signals that there is still much room for improvement. However, a few cases ought to be highlighted for their good performance: Michelin obtained the highest total scores of all firms reviewed: 33 points out of 42. They were closely followed by L'Oréal, which earned 32 points. Next came Vinci and Carrefour, which each had 31 points. The fifth best performing company was Credit Agricole (30 points). The distribution of the total scores was as follows.

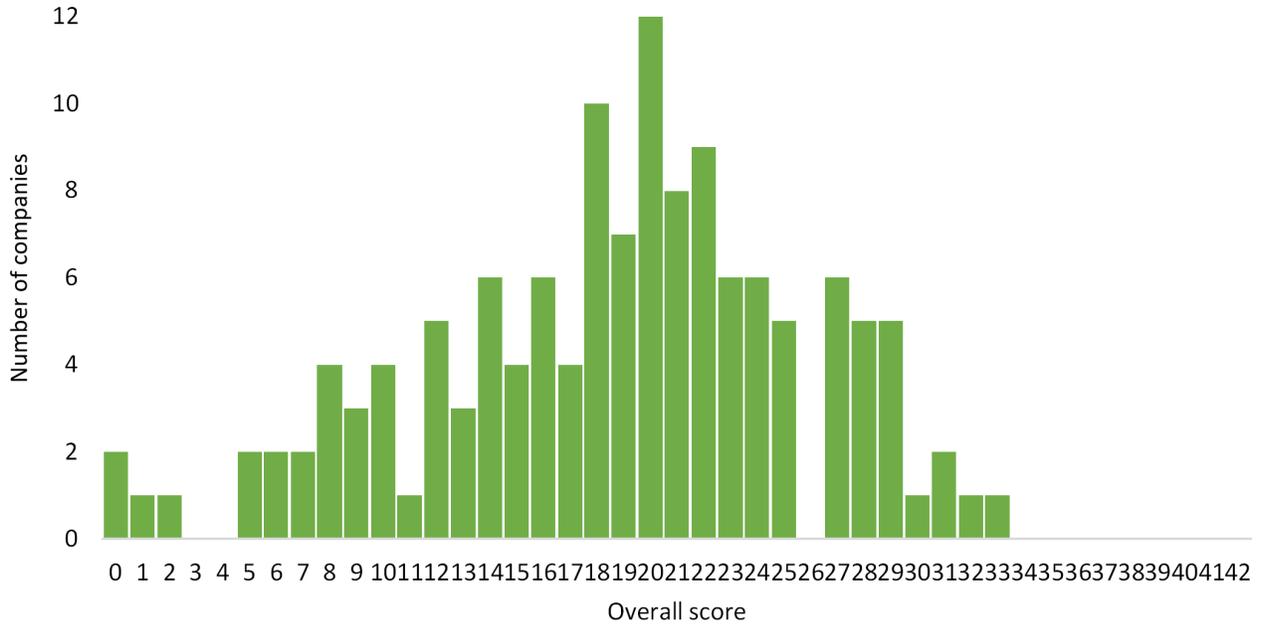


Figure 67: Distribution of overall scores. N = 134.

Of the 42 indicators, 17 represented proper legal requirements. Kering SA (17 out of 17) displayed the highest alignment in this dimension. The distribution of compliance scores was as follows.

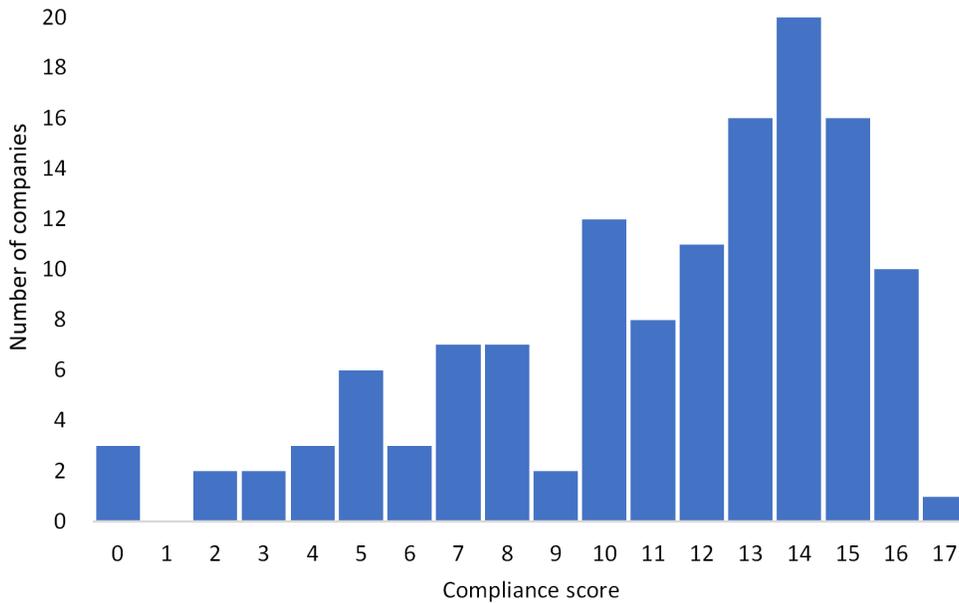


Figure 68: The average compliance score was 11.3 points out of 17, with a median of 13. N = 134.

Figure 68 shows that although there are still numerous 'non-performers' in the market, a sizable number of companies complied with most of the requirements of the law. Nonetheless, room for improvement is evident with four of our compliance indicators mostly receiving 'NOs' upon evaluation. These four indicators correspond with the legal requirements to *draft* the vigilance plan in association with (external) stakeholders – as opposed to merely 'presenting' the plan to the HR department, to *rank and prioritise* risks, and to publish a follow-up report (*compte rendu*). Other compliance indicators reveal that a few more items could also benefit from the firms' effort, such as risk mapping that encompasses subsidiaries. These shortcomings, together with the general level of compliance for each indicator, are depicted in Figure 69.

Distribution of compliance scores per indicator

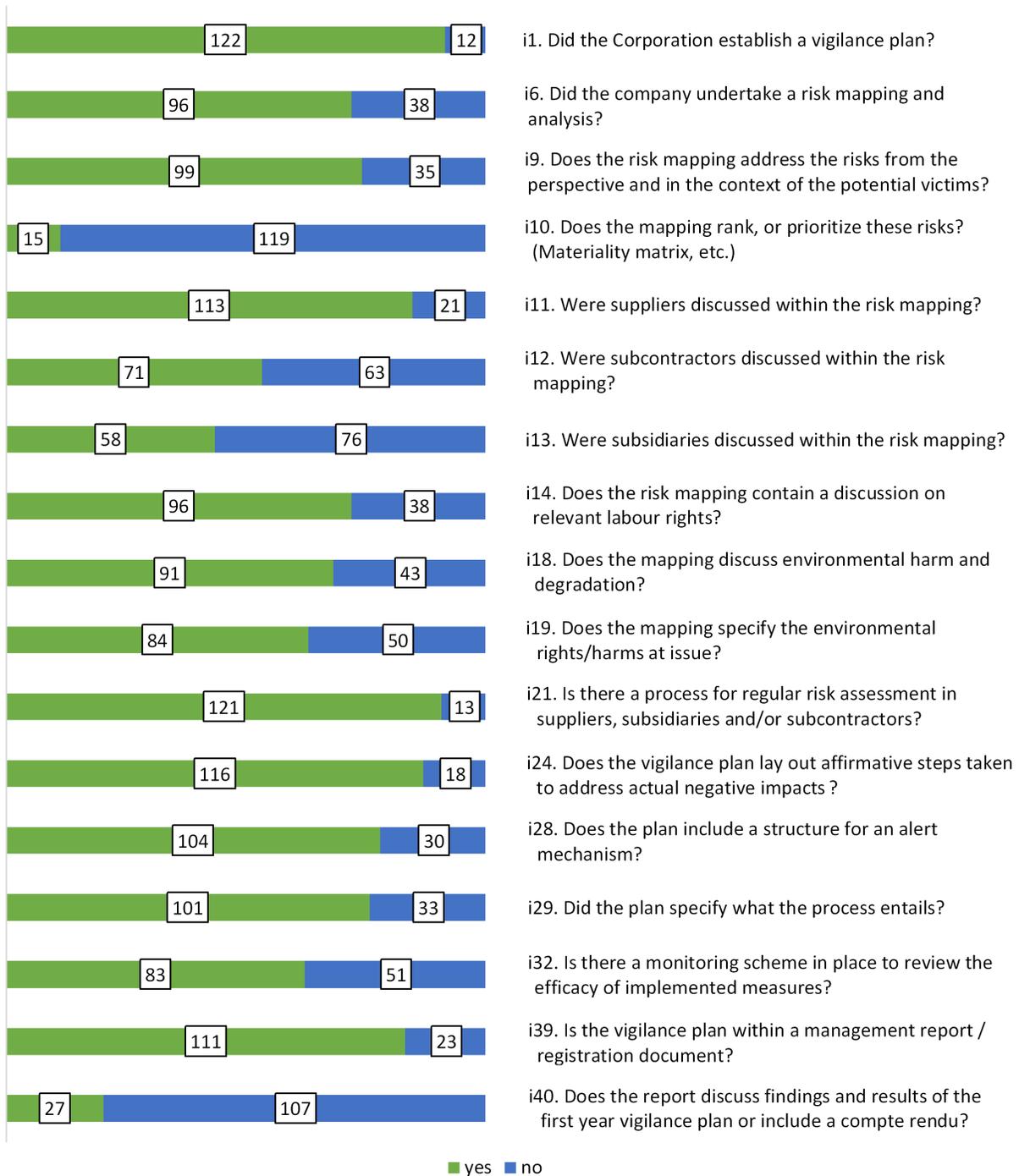


Figure 69: Number of firms fulfilling the requirements of each compliance indicator. N = 134.

Another 14 indicators dealt with conformance to the United Nations Guiding Principles. Korian displayed the highest level of conformance (9 out of 14), leading the ‘pack’ represented in Figure 70.

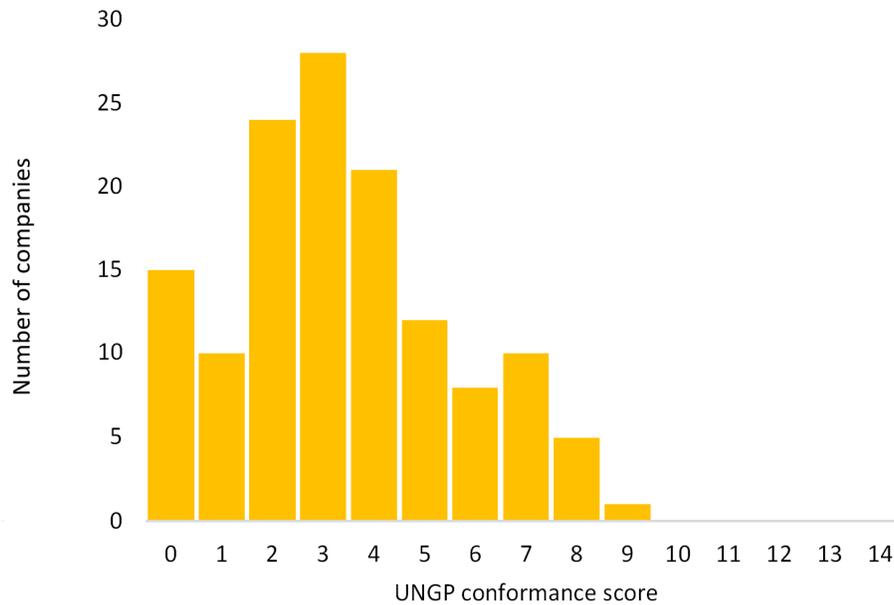


Figure 70: The average UNGP conformance score was 3.4 points out of 14, with a median of 3. N = 134.

We observe that UNGP conformance scores were lower, in general, than compliance scores. This was driven by the low performance of most companies in 9 of the 13 conformance indicators. Almost no companies conducted local community consultations for either the risk map or the vigilance plan itself, the level of stakeholder input in the risk map was very low, there was little discussion of equality of rights or non-discrimination in the risk map, few monitoring schemes included a review of the alert system, few companies tasked an *independent* third party with implementing the monitoring scheme (and identified it), rarely did this third party audit subsidiaries or upstream contracting parties (suppliers, subcontractors), key performance indicators were seldom used within the vigilance plan statement, and human rights violations (or their absence) were hardly ever reported. Figure 71 breaks down the distribution of UNGP conformance scores on an indicator-by-indicator basis.

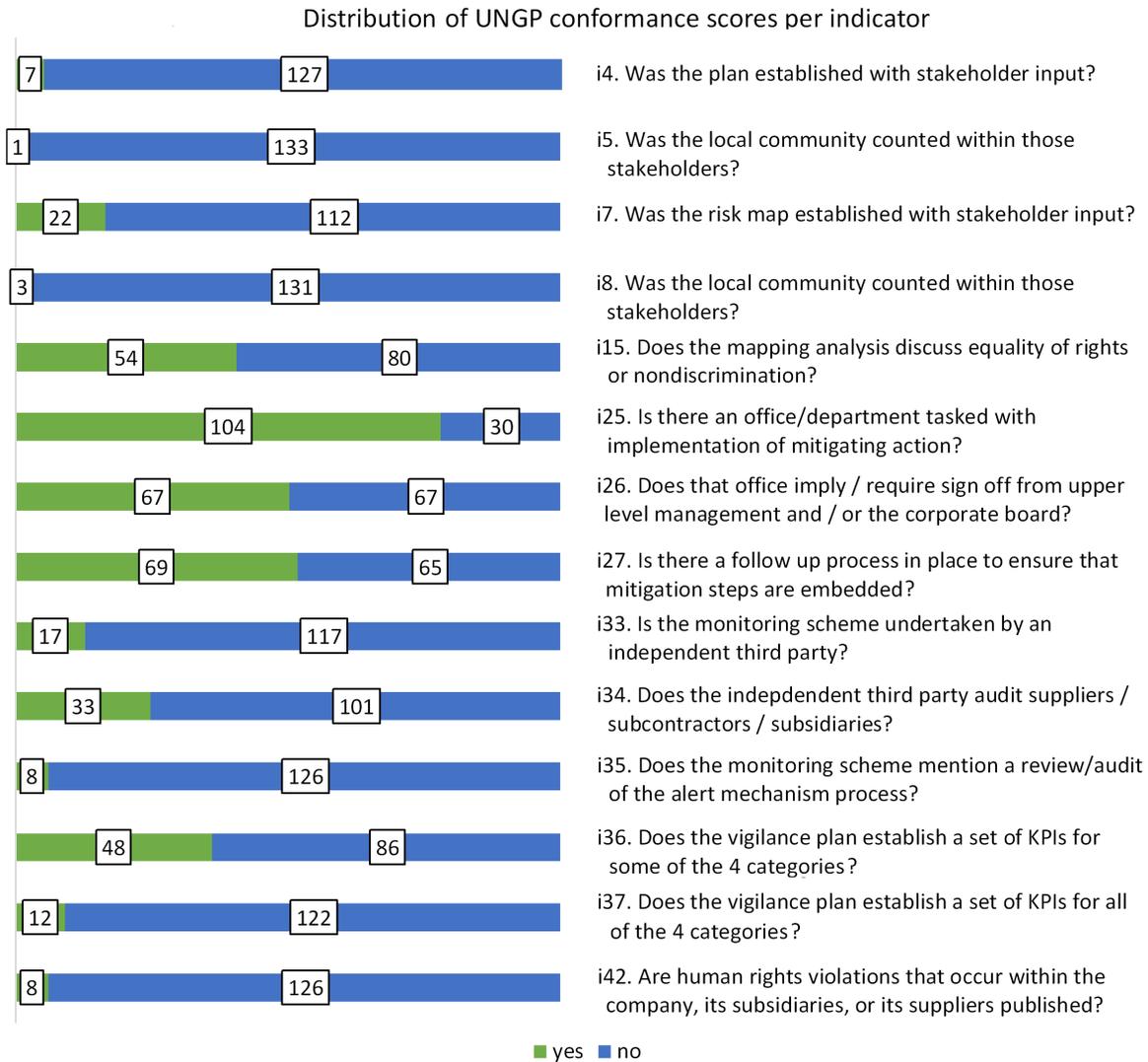


Figure 71: Number of firms fulfilling the requirements of each UNGP conformance indicator. N = 134.

Finally, 11 indicators measured transparency performance. Notably, Michelin was evaluated positively for *each one* of these indicators, thus being the most transparent company as measured by this study. The distribution of transparency scores was as follows:

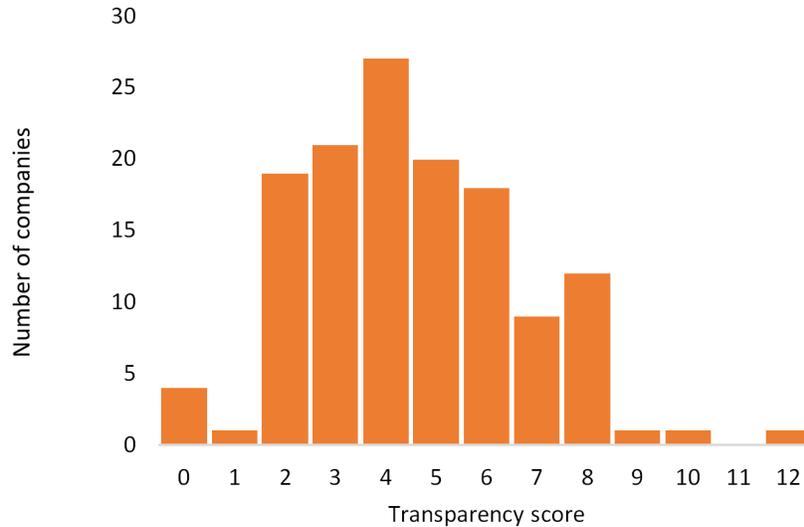


Figure 72: The average transparency score was 4.5 points out of 11 (median: 4). N = 134.

Once again, low scores reflect weak performance in this particular set of indicators. Most companies – even when they included ‘non-discrimination’ or ‘risks to equality of rights’ within their vigilance plans – did not specify what forms of discrimination were at issue, what infringements on equal rights were being mapped, or what groups were at concern. Most of the mapping discussed risks *in general*, not being specific as to the location of the risks, either geographically or in the supply chain. The reporting of alert systems was also not characterized by transparency, as few alert systems were managed by an independent third party and the outcomes of the alert system (e.g. number of alerts, breakdown, aftermath) were rarely published. Finally, even when a *compte rendu* was published (often not the case), it seldom included a detailed discussion of the problems encountered and the lessons learned. Figure 73 breaks down transparency scores per indicator.

Distribution of transparency scores per indicator

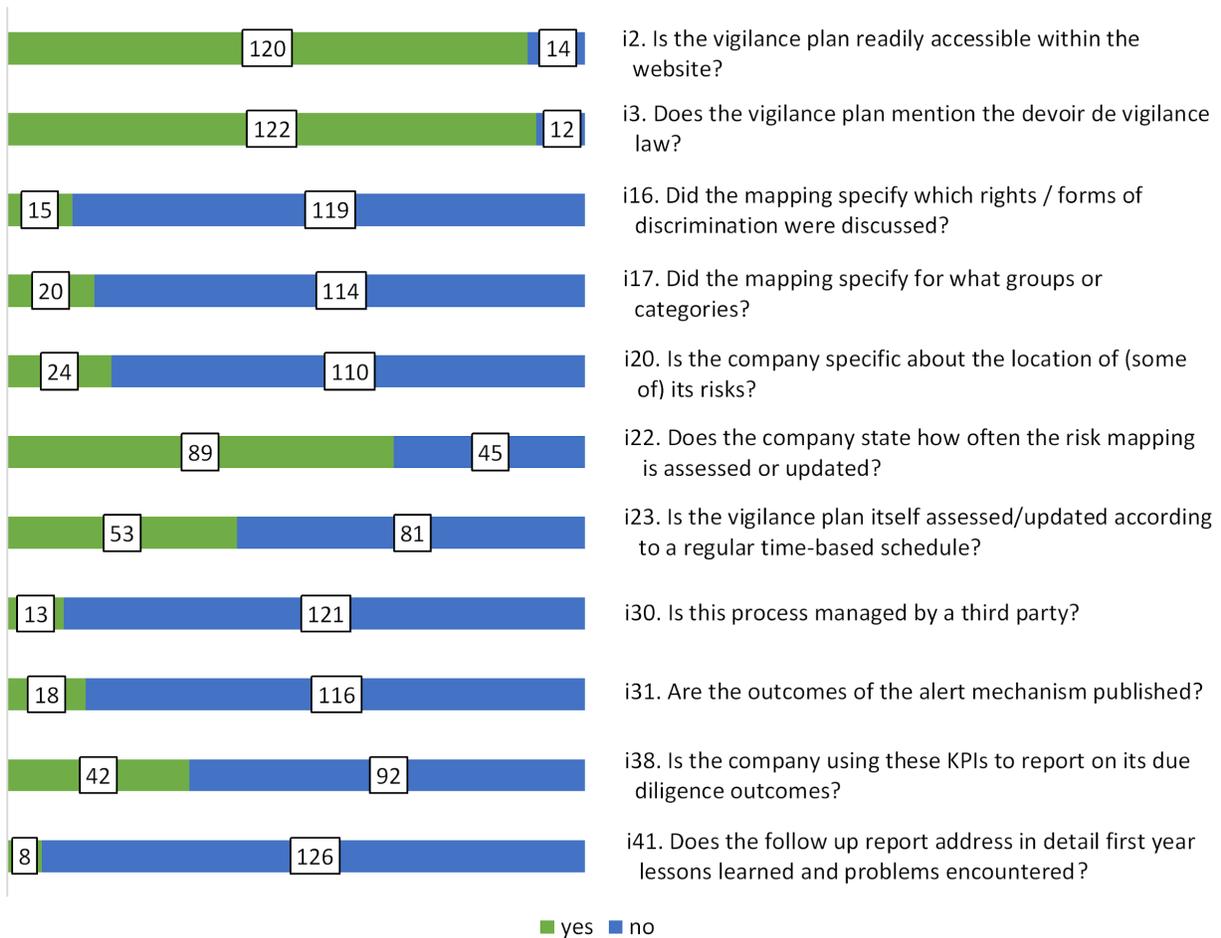


Figure 73: Number of firms fulfilling the requirements of each transparency indicator. N = 134.

While we found that the performance of top-ranked companies varied under each reporting dimension, good reporting performance under one dimension correlated with good performance under the rest. In spite of some variance, overall, higher compliance with the *Devoir de Vigilance* law was associated with higher conformance with the UN Guiding Principles, as well as with higher transparency. This is shown in Figure 74, on a company-per-company basis.

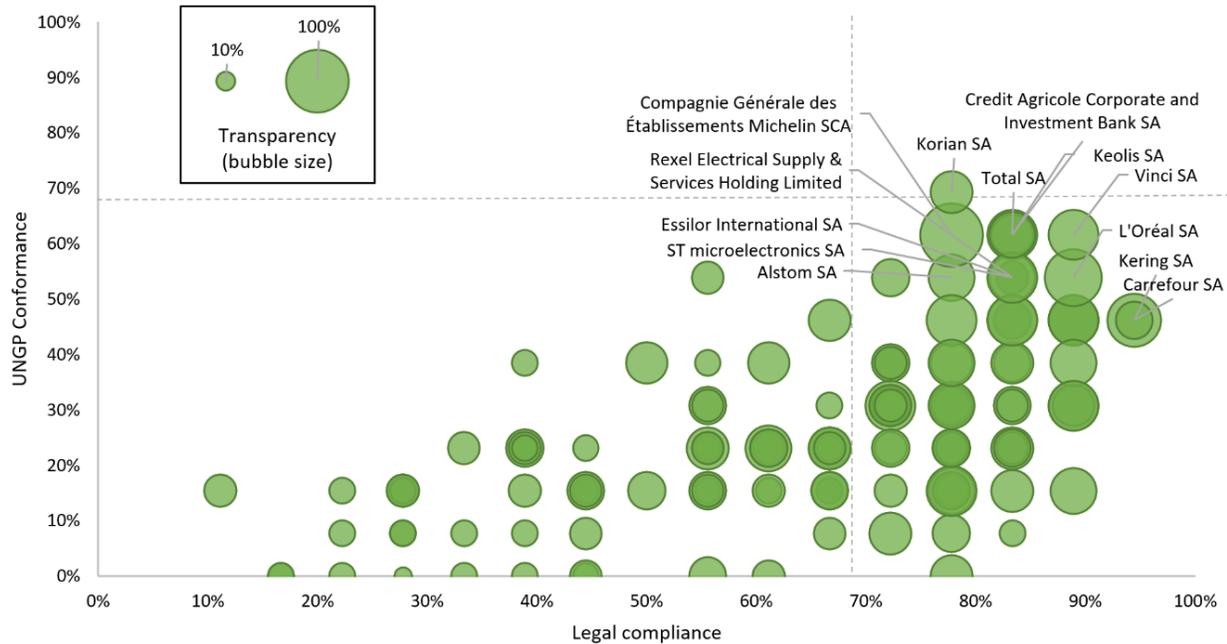


Figure 74: Interplay between compliance with the Devoir de Vigilance law, conformance with the UN Guiding Principles, and reporting transparency, per company. N = 134.

Another interesting fact emerging from our findings is related to one of the previously discussed outcomes of Groupe Alpha’s 2018 study: that the quality of the plans decreased with each additional legal requirement (Hoerner, 2018). In other words, companies were eager to discuss their risks, less eager to discuss corrective actions, even less eager to discuss monitoring schemes, and so on. As shown in Figure 75, our study validates those observations for compliance indicators. For overall performance, however, the ‘peak’ we detected was in the requirements of the ‘middle,’ rather than in the first ones – probably owing heavily to the weak performance as to stakeholder consultation and risk prioritisation that dragged down scores.

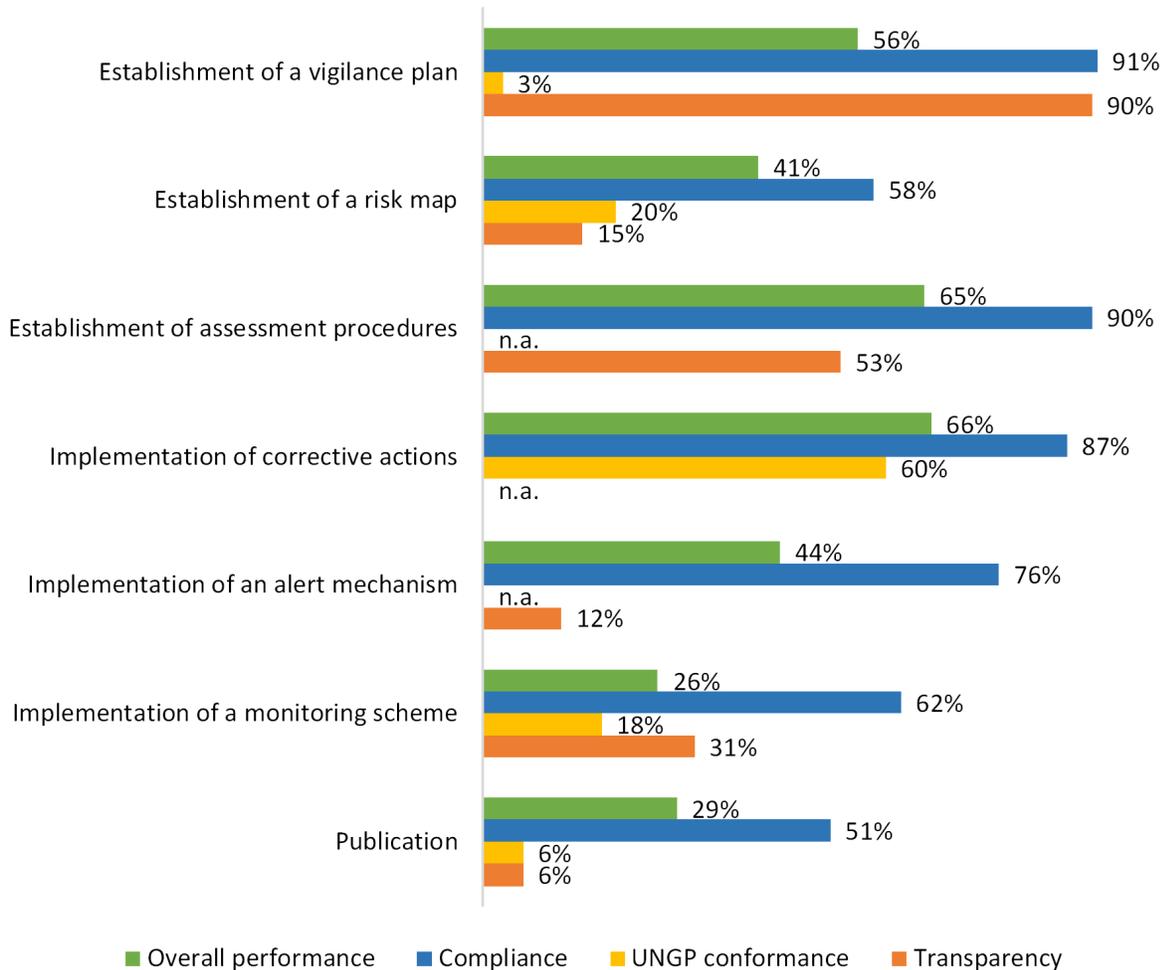


Figure 75: Distribution of points awarded, with and without disaggregation per dimension. N = 134.

Considering the various legal requirements identified in the law, we observe that the quality of the plans peaks at the establishment of assessment procedures and corrective actions, but starts to decline thereafter, with the requirements to implement an alert system, a monitoring scheme, and to publish the outcomes of the plan being the weakest aspects of the *Devoir de Vigilance* statements reviewed.

D. Possible reasons for non-compliance

Where weak performance was observed, the question “*How come?*” arises. A number of hypotheses may be offered. First, one could assume that there is a ‘learning curve’ for companies, such that the quality of the plans would improve over time. And, in that context, companies may

prioritise fulfilling the legal requisites, which they would be in a better position to meet quickly, as well as copying other companies' approaches (which could explain similar patterns across peers).

However, it is also easy to conceive that companies are acting to minimize legal liability as their main priority. In principle, identifying risks, implementing measures to solve them, and then establishing methods to assess their effectiveness should not create additional liability. Nonetheless, in practice, companies might believe they face a strategic choice: if they omit information, they may be held liable thereof, but if they publish it, it may also be used against them – a classic “catch 22.”¹³²

Not surprisingly, the law encountered stakeholders ready to file civil suits against corporations, with four companies having received formal notices.¹³³ As a result, corporations may be hesitant to meet the full disclosure requirements of the law, seeing this risk as a liability. While companies indeed may face liability if they do not map risks adequately, they might ‘prefer’ to publish inferior vigilance plans under certain circumstances. Specifically, discussing a particular risk that has not yet been adequately addressed, as well as publishing performance indicators or revealing the inadequacy of the steps undertaken, might alert potential plaintiffs of their good chances to sue the firm on such grounds. With this in mind, companies might choose to underreport even in the face of the possibility of being held liable, if they judge that putting stakeholders on notice of their poor performance could lead to even worse outcomes for them. This constitutes a second hypothesis.

Nevertheless, this hypothetical strategy might backfire. In other words, by not showing readiness and taking appropriate mitigative action, companies may render themselves more vulnerable. This could be especially true in the longer run. Note that companies face two kinds of liability:

- 1) Liability for the sheer inadequacy of the plan. As per Art. L. 225-102-4. – I, companies whose vigilance plan is inadequately established, implemented or published may be urged under financial compulsion to correct this. The fine requested by the parties in the Total case, for instance, was 50,000 euros *per day* of delay in bringing the plan to compliance (Tribunal Judiciaire de Nanterre, 2020). This does not, in itself, require to prove that a harm has already materialized, nor that it is causally connected with the inadequacy of the plan.
- 2) Liability for a harm *caused* by the inadequacy of the plan. As per Art. 225-102-5, companies must compensate for the harm that an appropriate vigilance plan would have

¹³² As an example, see the case of Total, Les Amis de la Terre and Survie (2019a: 5) argue that each legal instrument to which Total committed in its vigilance plan becomes opposable to Total in court, implying that – in their view – a company that invokes a certain standard thereby generates an obligation to meet it.

¹³³ Total (twice), Teleperformance, EDF, and XPO Logistics Europe (Brabant and Savourey, 2020).

permitted to (partially) avoid. In this case, both the harm and its causal attribution to the inadequacy of the plan have to be demonstrated by the plaintiff.

It is conceivable that the share of lawsuits of the first type may be relatively higher in the short run, but also that it will decrease with the passage of time. Harms need time to materialize, to be documented, and to be studied. Moreover, there may be little clarity how to demonstrate a causal link between the inadequacy of a plan and the harm, especially if judges are thought to be poorly prepared to decide on these cases. Thus, initially, it would be reasonable to expect more lawsuits of the first type. Nevertheless, as companies falling short of the *Devoir de Vigilance* requirements are compelled to correct their plans, the proportion of plans withstanding the judicial test is expected to increase with time. Lawsuits of the first type should consequently decrease and, as harms begin to materialize and accumulate, lawsuits of the second type should increase correspondingly.

Therefore, while perhaps less relevant in the short run, in the long run companies might be more vulnerable to this path of ‘attack.’ This means that sub-standard reporting may constitute a suboptimal strategy: in the short run, reporting little and generic information – while omitting serious risks – may allow one to escape the first type of lawsuits; nonetheless, in the longer run harms will materialize, and these omissions will constitute proof of the unpreparedness of the plan in the face of such harms. Moreover, even if a plan is updated for the next reporting year, its predecessor will constitute indelible documentary evidence of the inadequacy of the plan at a given time. As harms begin to emerge, plaintiffs will be able to look at early, poorly designed vigilance plans and argue that there is a causal link between their inadequacy and the harms at issue. Consequently, while the choice to prepare a low-quality vigilance plan might allow one ‘fly under the radar’ in the short term, it could have long-lasting negative consequences for the firm.

It is also possible that the vagueness of the law is a factor behind weak performance, in conjunction with the dearth of clarity provided by public instances. For example, despite numerous requests, an official list of companies subject to the law has not been provided (Sherpa, 2018:27; Sherpa et al., n.d.b), nor has a non-judicial instance verified the compliance of vigilance plans.

In the context of vague prescriptions, it could moreover be argued that the law represents a formidable obligation: Schneider Electric, for example “has more than 40,000 tier 1 suppliers” (Brabant et al., 2017: 11). That said, companies are not required to undertake an *infinite* vigilance but a *reasonable* vigilance, which would start by investigating the riskier sectors and suppliers in its value chains.

Finally, we observed a positive correlation between appropriate corporate governance structures and the other aspects of *devoir* performance (with a correlation coefficient of 0.7). Companies that established more robust, vigilance-oriented governance performed better than their peers

with respect to their vigilance programme. This finding is illustrated in Figure 76, which groups our indicators into two categories: governance¹³⁴ and performance.¹³⁵

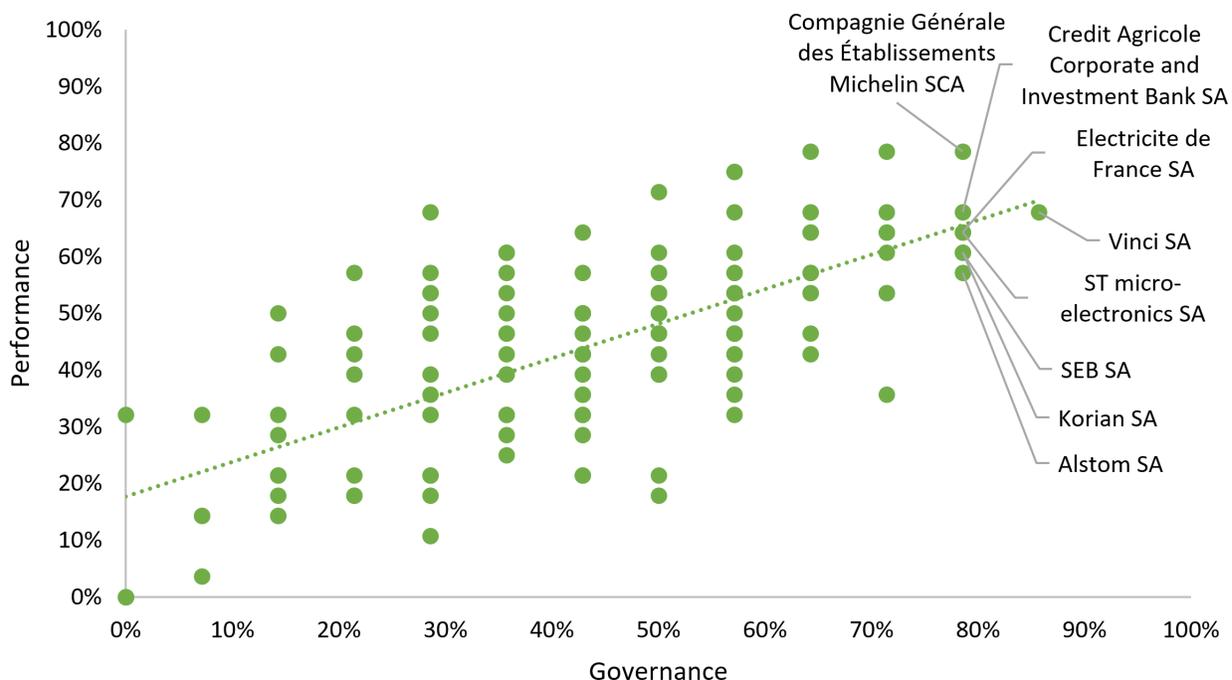


Figure 76: Correlation between points awarded under governance indicators and points awarded under the remaining indicators. N = 134.

E. Added value of *Devoir de Vigilance*

This study seeks to ascertain the quality of corporate reporting in the light of the *Devoir de Vigilance* law. While the methods employed do not allow an identification of the drivers *behind*

¹³⁴ Indicators #21 (regular risk assessment procedure for suppliers, subsidiaries and/or subcontractors), #22 (establishing an update frequency for the risk mapping), #23 (establishing an update frequency for the vigilance plan), #25 (tasking a department with mitigating action), #26 (requiring upper-level management sign off for that department), #27 (establishing a follow-up process to embed mitigation steps in standard operations), #28 (including an alert system), #30 (tasking a third party with the alert system), #32 (putting in place a monitoring scheme for the effectiveness of measures), #33 (including an audit of the alert system within the monitoring scheme), #34 (tasking a third party with the monitoring scheme), #35 (auditing suppliers, subsidiaries and/or subcontractors as a part of the monitoring scheme), #36 (establishing KPIs for at least one of the four legal categories), and #37 (establishing KPIs for the four legal categories).

¹³⁵ The remaining indicators.

corporate behaviour, we ask whether our data identified evidence that the law is acting in a reforming manner. In other words, in what respects has the law “added value” at face value?

As previously noted, the law has brought focus to a particular set of issues, namely the risks to *third parties* (rather than to the company itself), the particular subset of risks comprising human rights risks, the inclusion of suppliers, subsidiaries and subcontractors, and the role of stakeholder consultations. These are some of the reasons why this law is considered to be “pioneering” and “unprecedented” (Sherpa et al., n.d.a), as well as “the most progressive law” of its kind (Simons, 2018).

In a sense, the law may have the effect of ‘piercing the corporate veil.’ The *Devoir de Vigilance* law not only tasks *companies* with a number of duties, but may also affect the *internal* workings of the firms as well. Companies are not monolithic entities nor ‘black boxes’ in a blind pursuit of profits, but complex organizations composed of heterogeneous sets of individuals, many of whom are also responsible for non-financial outcomes. Mandatory public reporting on certain non-financial outcomes also elevates the visibility of these matters *within a firm*, which consequently may incentivise performance.

As this study only covers vigilance plan statements published in the year 2019 (for reporting year 2018), our research only provides a ‘snapshot’ and cannot provide the ‘before and after’ comparison that would reveal year-over-year trends. However, analysing vigilance plan statements as part of this report allowed us to observe patterns between companies. As previously noted, firms often organised a summary or consolidation of existing measures in order to comply with the law, rather than setting up a new governance approach to vigilance. This – of which heavily cross-referenced vigilance plans might constitute a symptom – is an example of the law *not* acting in a reforming manner, as the referenced measures appeared to predate the plan.

Notwithstanding, we did identify cases where the opposite was the case. Rather frequently, vigilance plan statements reported that a pre-existing *Sapin II*-compliant alert system had been expanded or repurposed, so that it would not just cover transparency and anti-corruption matters, but also human rights and environmental issues.

Ironically, part of the evidence in favour of the reforming effect of the law is found in reporting practices that we evaluated negatively in this report. Throughout our study, we found repeated cases of risk maps, mitigation steps, monitoring schemes, alert systems, etc. that were scheduled to be deployed *in the future*. For good reason, we *excluded* these cases from consideration, as we applied a ‘show and tell’ policy: we only awarded points for measures that had already taken place. Nonetheless, plans for new measures itself demonstrates that the measures at issue were not already in place, and only began to exist as a result of this law. This evidences a reforming effect of the law, and was seen particularly often in the sections of the vigilance plans pertaining to mitigation steps and alert systems.

Once again, this could be explained by the fact that it is easier to map risks and/or establish procedures to assess those risks, than it is to actually *address* the risks at issue. In that sense, it is conceivable that the poorer performance in the latter requirements is explained by the sheer relative difficulty of the task. However, it is also conceivable that strategic considerations take primacy here, as e.g. publishing the outcomes of the monitoring system and the numbers of alerts received might facilitate the task for parties looking to prove how the plan is 'inadequate' to deal with the risks at issue – which may put the company in a position of vulnerability before the courts.

Acknowledgements

The authors are exceedingly grateful to the report's seven peer reviewers – Dr. Claire Bright, Lise Smit, Michelle Langlois, Dr. Katie Böhme, Siham Belhadj, Adèle Bourgin, and Elise Groulx-Diggs – for their critical review and the constructive advice.

A big thank you to Dr. Claire Bright, who not only reviewed the report but graciously authored the report's foreword.

We furthermore wish to thank this study's funder, in particular Joerg Walden, CEO and founder of *iPoint-systems*, and Dr. Katie Böhme, Head of Corporate Communications and Sustainability at *iPoint-systems*, for the confidence you invested in us. Thank you for sponsoring research – as a privately held company – which is clearly within the public interest, thus allowing a civil society contribution to the discourse on the subject of due diligence and sustainability in France and beyond.

The study was designed by Anthony Cooper, Juan Ignacio Ibañez, and Dr. Chris N. Bayer. The data collection was performed by the assessor team comprising Juan Ignacio Ibañez, Tomas Furfaro, Sofia Orellana, M'Ballou Sanogho, Anthony Cooper, and Nicole Rhim. Juan Ignacio Ibañez and Anthony Cooper served as the coordinators of the study, overseeing its myriad of parts. Juan Ignacio Ibañez and Tomas Furfaro performed the data-cleaning, data analysis, and prepared the graphs. Jiahua Xu programmed the study's scorecards. Juan Ignacio Ibañez, Anthony Cooper, Jiahua Xu, and Dr. Chris N. Bayer authored this report, the latter also serving as Principal Investigator of the study.

This report is dedicated to Dr. Dauphine Sloan and Robert Sloan for their mentorship and ardour for higher learning.

Appendix A: Acronyms

AMF	French Financial Markets Authority (<i>Autorité des Marchés Financiers</i>)
AN	French National Assembly (<i>Assemblée Nationale</i>)
BWI	Building and Wood Workers' International
CAC 40	Cotation Assistée en Continu 40 Stock Exchange
CCFD	Catholic Committee Against Famine and for Development (<i>Comité Catholique Contre la Faim et pour le Développement</i>)
CEO	Chief Executive Officer
CGEM	General Confederation of Moroccan Enterprises (<i>Confédération Générale des Entreprises du Maroc</i>)
CNCDH	French National Consultative Commission on Human Rights (<i>Commission Nationale Consultative des Droits de l'Homme</i>)
CO ₂	Carbon dioxide
CO ₂ e	Carbon dioxide equivalent
CSR	Corporate Social Responsibility
DAG	DAG Import
DC	Declaration on constitutional conformity (<i>Décisions de Conformité</i>)
DI	Development International e.V.
EDF	<i>Energie de France</i>
EDH	Enterprises for Human Rights (<i>Entreprises pour les Droits de l'Homme</i>)
EP&L	Environmental Profit & Loss accounting
EU	European Union
EY	Ernst & Young
FNAC	National Purchasing Federation for Cadres (<i>Fédération Nationale d'Achats des Cadres</i>)

GDP	Gross Domestic Product
GHG	Greenhouse gas
GmbH	Limited liability company (<i>Gesellschaft mit beschränkter Haftung</i>)
ICCPR	Development International
ICESCR	International Covenant on Economic, Social, and Cultural Rights
ILO	International Labour Organization
IOM	International Organisation for Migration
KPI	Key Performance Indicator
NAP	National Action Plan
NGO	Non-governmental organisation
No.	Number
NOC	No objection certificate
NO _x	Nitrogen oxide
NRE	New economic regulations (<i>Nouvelles Régulations Economiques</i>)
OECD	Organisation for Economic Co-operation and Development
OHSAS	Occupational Health and Safety Assessment Series
p.	page
SA	Joint-stock company (<i>Société Anonyme</i>)
SAS	Simplified joint-stock company (<i>Société par Actions Simplifiée</i>)
SCA	Partnership limited by shares (<i>Société en Commandite par Actions</i>)
SE	European Corporation (<i>Societas Europaea</i>)
SGS	General Society of Surveillance (<i>Société Générale de Surveillance</i>)
SIC	Organization for Economic Cooperation and Development
SNCF	French National Railway Company (<i>Société Nationale des Chemins de Fer Français</i>)
SO _x	Sulfur oxide

TCFD	Task Force on Climate-related Financial Disclosures
TRWP	Tire and road wear particles
UN	United Nations
UNGPs	The United Nations Guiding Principles on Business and Human Rights
VOCs	Volatile Organic Compounds
WEEE	Waste Electrical and Electronic Equipment

Appendix B: List of companies assessed

Click on the URL to access the particular company report assessed.

#	Company	URL
1	Accor SA	URL to report
2	Air France-KLM SA	URL to report
3	Airbus Group SE	URL to report
4	Alstom SA	URL to report
5	Alten SA	URL to report
6	Altice France SA	URL to report
7	Altran Technologies SA	URL to report
8	ArcelorMittal Atlantique et Lorraine SAS	URL to report
9	Arkema SA	URL to report
10	Atos SE	URL to report
11	Auchan Holding SA	URL to report
12	Axa SA	URL to report
13	Banque Fédérative du Crédit Mutuel SA	URL to report
14	bioMérieux SA	URL to report
15	BNP Paribas SA	URL to report
16	Bolloré SA	URL to report
17	Bonduelle SA	URL to report
18	Bouygues SA	URL to report
19	Bureau Veritas SA	URL to report
20	Burelle Participations SA	URL to report
21	Caisse D'epargne et de Prevoyance Ile-de-France SA	URL to report
22	Capgemini SA	URL to report
23	Carrefour SA	URL to report

24	Casino Guichard-Perrachon SA	URL to report
25	Catering International & Services SA	URL to report
26	Christian Dior SA	URL to report
27	Club Med SAS	URL to report
28	Compagnie de Saint-Gobain SA	URL to report
29	Compagnie Générale des Établissements Michelin SCA	URL to report
30	Constantia Flexibles Group GmbH	URL to report
31	Crédit Agricole Corporate and Investment Bank SA	URL to report
32	Crédit Industriel Et Commercial SA - CIC	URL to report
33	Crédit Mutuel Arkéa SA	URL to report
34	Cromology SAS	URL to report
35	Danone SA	URL to report
36	Dassault Aviation SA	URL to report
37	Dassault Systemes SE	URL to report
38	Decathlon SA	URL to report
39	Derichebourg Propreté SA	URL to report
40	EGIS SA	URL to report
41	Eiffage Infrastructures SAS	URL to report
42	Electricite de France SA	URL to report
43	Elior Group SA	URL to report
44	Elis SA	URL to report
45	Enedis SA	URL to report
46	Engie SA	URL to report
47	Eramet SA	URL to report
48	Essilor International SA	URL to report
49	Europcar Group SA	URL to report
50	Faurecia Automotive Holdings SE	URL to report
51	Financière de l'Odet SA	URL to report

52	FNAC Darty SA	URL to report
53	Galeries Lafayette Haussmann SA	URL to report
54	GFI Informatique SA	URL to report
55	GRDF SA	URL to report
56	Groupama Assurances Mutuelles SA	URL to report
57	Group Crit SA	URL to report
58	Groupe ADP SA	URL to report
59	Groupe BPCE SA	URL to report
60	Groupe LDC SA	URL to report
61	Groupe SNEF SA	URL to report
62	Hermès International SA	URL to report
63	HSBC France SA	URL to report
64	ID Logistics Group SA	URL to report
65	Iliad SA	URL to report
66	Imerys SA	URL to report
67	IPSOS Group SA	URL to report
68	JCDecaux SA	URL to report
69	Keolis SA	URL to report
70	Kering SA	URL to report
71	Kiabi Europe SAS	URL to report
72	Korian SA	URL to report
73	La Poste SA	URL to report
74	Lagardere SCA	URL to report
75	L'air Liquide SA	URL to report
76	La Banque Postale SA	URL to report
77	Legrand SA	URL to report
78	Les Mousquetaires SA	URL to report
79	Lisi Aerospace SAS	URL to report

80	L'Oréal SA	URL to report
81	LVMH Moët Hennessy - Louis Vuitton SE	URL to report
82	Maisons du Monde SA	URL to report
83	Mobivia Groupe SA	URL to report
84	Natixis SA	URL to report
85	Naval Group SA	URL to report
86	Nexans SA	URL to report
87	Nexity SA	URL to report
88	Onet SA	URL to report
89	Orange SA	URL to report
90	Orano SA	URL to report
91	Orpea SA	URL to report
92	Pernod Ricard SA	URL to report
93	Pierre & Vacances SA	URL to report
94	Plastic Omnium SA	URL to report
95	PSA Automobiles SA	URL to report
96	Publicis Groupe SA	URL to report
97	Rallye SA	URL to report
98	Régie Autonome des Transports Parisiens SA	URL to report
99	Renault SA	URL to report
100	Rexel Electrical Supply & Services Holding Limited	URL to report
101	RTE Reseau de Transport d'electricité SA	URL to report
102	Safran SA	URL to report
103	Sanofi SA	URL to report
104	Savencia SA	URL to report
105	Schneider Electric SE	URL to report
106	SEB SA	URL to report
107	Société Bic SA	URL to report

108	Société Générale SA	URL to report
109	Sodexo SA	URL to report
110	SOMDIAA SA (Société d'Organisation de Management et de Développement des Industries Alimentaires et Agricoles)	URL to report
111	Sopra Steria Group SA	URL to report
112	Spie Batignolles SA	URL to report
113	STmicroelectronics SA	URL to report
114	Stahl GmbH	URL to report
115	STEF SA	URL to report
116	Suez Water Technologies and Solutions SA	URL to report
117	Tarkett SA	URL to report
118	Technicolor SA	URL to report
119	Teleperformance SE	URL to report
120	Thales SA	URL to report
121	Total SA	URL to report
122	Transdev Group SA	URL to report
123	Tsebo Solutions Group Proprietary Limited	URL to report
124	Ubisoft Entertainment SA	URL to report
125	Unibel SA	URL to report
126	Valeo SA	URL to report
127	Vallourec SA	URL to report
128	Veolia Environnement SA	URL to report
129	Vinci SA	URL to report
130	Vivarte SAS	URL to report
131	Vivendi SA	URL to report
132	Wendel SA	URL to report
133	Worldline SA	URL to report
134	XPO Logistics Europe SADIR	URL to report

Appendix C: Evaluation instrument

Legal requirement: Establishment of a vigilance plan

#	Indicator	Value	Dimension
1.	Did the Corporation establish a vigilance plan?	<i>yes / no</i>	<i>Compliance</i>
2.	Is the vigilance plan readily accessible within the website?	<i>yes / no</i>	<i>Transparency</i>
3.	Does the vigilance plan mention the <i>Devoir de Vigilance</i> law?	<i>yes / no</i>	<i>Transparency</i>
4.	Was the plan established with stakeholder input?	<i>yes / no</i>	<i>Conformance</i>
5.	Was the local community counted within those stakeholders?	<i>yes / no</i>	<i>Conformance</i>
	Which other types of stakeholders were consulted?	<i>Name / no</i>	<i>Qualitative</i>

Legal requirement: Establishment of a risk map

#	Indicator	Value	Dimension
6.	Did the company undertake a risk mapping and analysis?	<i>yes / no</i>	<i>Compliance</i>
7.	Was the risk map established with stakeholder input?	<i>yes / no</i>	<i>Conformance</i>
8.	Was the local community counted within those stakeholders?	<i>yes / no</i>	<i>Conformance</i>
9.	Does the risk mapping address the risks from the perspective and in the context of the potential victims?	<i>yes / no</i>	<i>Compliance</i>
10.	Does the mapping rank or prioritise these risks? (Materiality matrix, etc.)	<i>yes / no</i>	<i>Compliance</i>
	Which risks are prioritised?	<i>Description / no</i>	<i>Qualitative</i>
11.	Were suppliers discussed within the risk mapping?	<i>yes / no</i>	<i>Compliance</i>
12.	Were subcontractors discussed within the risk mapping?	<i>yes / no</i>	<i>Compliance</i>

13.	Were subsidiaries discussed within the risk mapping?	yes / no	Compliance
14.	Does the risk mapping contain a discussion on relevant labour rights?	yes / no	Compliance
	What labour rights are mentioned?	Description / no	Qualitative
15.	Does the mapping analysis discuss equality of rights or non-discrimination?	yes / no	Conformance
16.	Did the mapping specify which rights / forms of discrimination were discussed?	yes / no	Transparency
	Which rights / forms of discrimination?	Description / no	Qualitative
17.	Did the mapping specify for what groups or categories?	yes / no	Transparency
	For what groups of categories?	Description / no	Qualitative
18.	Does the mapping discuss environmental harm and degradation?	yes / no	Compliance
19.	Does the mapping specify the environmental rights/harms at issue?	yes / no	Compliance
	What environmental rights/harms are mentioned? At least 4 if applicable	Description / no	Qualitative
20.	Is the company specific about the geographic or supply chain location of (some of) its risks?	yes / no	Transparency

Legal requirement: Establishment of assessment procedures

#	Indicator	Value	Dimension
21.	Is there a process for regular risk assessment in suppliers, subsidiaries and/or subcontractors?	yes / no	Compliance
22.	Does the company state how often the risk mapping is assessed or updated?	yes / no	Transparency
	How often is the risk mapping updated?	Number / "regularly" / no	Qualitative
23.	Is the vigilance plan itself assessed/updated according to a regular time-based schedule?	yes / no	Transparency
	How often is the plan itself assessed and/or updated?	Number / "regularly" / no	Qualitative

Legal requirement: Implementation of corrective actions

#	Indicator	Value	Dimension
24.	Does the vigilance plan lay out affirmative steps taken to address actual negative impacts, as well as mitigate potential violations? "severe violations of human rights and fundamental freedoms, serious bodily injury or environmental damage or health risks"	<i>yes / no</i>	<i>Compliance</i>
	What are those steps?	<i>Description / no</i>	<i>Qualitative</i>
25.	Is there an office/department tasked with implementation of mitigating action?	<i>yes / no</i>	<i>Conformance</i>
26.	Does that office imply / require sign off from upper level management and / or the corporate board?	<i>yes / no</i>	<i>Conformance</i>
27.	Is there a follow-up process in place to ensure that mitigation steps are embedded in standard company operations?	<i>yes / no</i>	<i>Conformance</i>
	What is that process?	<i>Description / no</i>	<i>Qualitative</i>

Legal requirement: Implementation of an alert mechanism

#	Indicator	Value	Dimension
28.	Does the plan include a structure for an alert mechanism?	<i>yes / no</i>	<i>Compliance</i>
29.	Did the plan specify what the process entails?	<i>yes / no</i>	<i>Compliance</i>
	What does the process entail?	<i>Description / no</i>	<i>Qualitative</i>
30.	Is this process managed by a third party?	<i>yes / no</i>	<i>Transparency</i>
31.	Are the outcomes of the alert mechanism published?	<i>yes / no</i>	<i>Transparency</i>

Legal requirement: Implementation of a monitoring scheme

#	Indicator	Value	Dimension
32.	Is there a monitoring scheme in place to review the efficacy of implemented measures? I.e. supplier implementation of the vigilance plan.	yes / no	Compliance
	Describe	Description / no	Qualitative
33.	Is the monitoring scheme undertaken by an independent third party?	Name of agency / no	Conformance
34.	Does the independent third-party audit suppliers, subcontractors and/or subsidiaries?	yes / no	Conformance
35.	Does the monitoring scheme mention a review/audit of the alert mechanism process?	yes / no	Conformance
36.	Does the vigilance plan establish a set of KPIs for at least one of these 4 categories: "severe violations of human rights and fundamental freedoms, serious bodily injury or environmental damage or health risks"?	yes / no	Conformance
	What are those KPIs?	Description / no	Qualitative
37.	Does the vigilance plan establish a set of KPIs for <i>all</i> these 4 categories: "severe violations of human rights and fundamental freedoms, serious bodily injury or environmental damage or health risks"?	yes / no	Conformance
38.	Is the company using these KPIs to report on its due diligence outcomes?	yes / no	Transparency

Legal requirement: Publication

#	Indicator	Value	Dimension
39.	Is the vigilance plan within a management report / registration document?	yes / no	Compliance
40.	Does the report discuss findings and results of the first-year vigilance plan? (E.g. in the form of a <i>compte rendu</i> .)	yes / no	Compliance
41.	Does the follow-up report address in detail first year lessons learned and problems encountered in implementing the vigilance plan?	yes / no	Transparency
42.	Are human rights violations that occur within the company, its subsidiaries, or its suppliers published?	yes / no	Conformance

Bibliography

- AMF (2009) “General Regulation of the Autorité des Marchés Financiers.” *Autorité des Marchés Financiers*. Available at <https://reglement-general.amf-france.org/eli/fr/aai/amf/rg/20091119/notes/en.pdf> (03/04/2020)
- Assemblée Nationale (2015a) “Proposition de Loi Relative au Devoir de Vigilance des Sociétés Mères et des Entreprises Donneuses d’Ordre - Exposé des Motifs.” *French National Assembly*. Parliamentary Report N° 2578 (11 February 2015).
- Assemblée Nationale (2015b) “Rapport Fait au Nom de la Commission des Lois Constitutionnelles, de la Législation et de l’Administration Générale de la République sur la Proposition de Loi (N° 2578), Relative au Devoir de Vigilance des Sociétés Mères et des Entreprises Donneuses d’Ordre.” *French National Assembly*. Parliamentary Report N° 2628 (11 March 2015).
- Assemblée Nationale (2016) “Annexe au Rapport Proposition de Loi Relative au Devoir de Vigilance des Sociétés Mères et des Entreprises Donneuses d’Ordre.” *French National Assembly*. Parliamentary Report N° 4242 (23 November 2016).
- Beau de Loménie, T.; Cossart, S. (2017) “Duty of Vigilance: Stakeholders and the Duty of Vigilance.” *Revue Internationale de la Compliance et de l’Éthique des Affaires – Supplément à la Semaine Juridique Entreprise et Affaires*, 50(94).
- Brabant, S.; Michon, C.; Savourey, E. (2017) “The Vigilance Plan: Cornerstone of the Law on the Corporate Duty of Vigilance.” *Revue Internationale de la Compliance et de l’Éthique des Affaires – Supplément à la Semaine Juridique Entreprise et Affaires*, 50(93).
- Brabant, S.; Savourey, E. (2017a) “France’s Corporate Duty of Vigilance Law, A Closer Look at the Penalties Faced by Companies (A commentary).” *Revue Internationale de la Compliance et de l’Éthique des Affaires – Supplément à la Semaine Juridique Entreprise et Affaires*, 50.
- Brabant, S.; Savourey, E. (2017b) “French Law on the Corporate Duty of Vigilance, A Practical and Multidimensional Perspective.” *Revue Internationale de la Compliance et de l’Éthique des Affaires – Supplément à la Semaine Juridique Entreprise et Affaires*, 50(90).
- Brabant, S.; Savourey, E. (2017c) “Duty of Vigilance: Law on the Corporate Duty of Vigilance, A Contextualised Approach.” *Revue Internationale de la Compliance et de l’Éthique des Affaires – Supplément à la Semaine Juridique Entreprise et Affaires*, 50(91).
- Brabant, S.; Savourey, E. (2017d) “Duty of Vigilance: Scope of the Law on the Corporate Duty of Vigilance, Companies Subject to the Vigilance Obligations.” *Revue Internationale de la*

Compliance et de l'Éthique des Affaires – Supplément à la Semaine Juridique Entreprise et Affaires, 50(92).

- Brabant, S.; Savourey, E. (2020) "All Eyes on France – French Vigilance Law First Enforcement Cases (1/2) Current Cases and Trends." *Cambridge Core*. Available at https://www.cambridge.org/core/blog/2020/01/24/all-eyes-on-france-french-vigilance-law-first-enforcement-cases-1-2-current-cases-and-trends/#_edn6 (31/03/2020)
- Bureau Van Dijk (2020) "Orbis." *Bureau Van Dijk*. Available at <https://www.bvdinfo.com/en-gb/our-products/data/international/orbis> (03/04/2020)
- Burlette, C. (2019) "Vigilance on the Menu: The Risks that Agro-industry Must Identify." *CCFD-Terre Solidaire*.
- Caillet, M. C.; Guislain, M. L.; Malbrand, T. (2016) "La Vigilance Sociétale en Droit Français." *Sherpa, Ritimo and Coredem*.
- Collectif Éthique sur l'Étiquette (2019) "Le Coût du RESPECT Selon Zara." *ActionAid France, CCFD-Terre Solidaire, CFDT, CRID, Fédération Artisans du monde, FSGT, FSU, Indecosa CGT, JOC, Léo Lagrange consommation, Ligue de l'enseignement, Oxfam France, Ritimo, Solidarité Laïque, Terre des Hommes France, UFOLEP, Union syndicale Solidaires*.
- Conseil Constitutionnel (2017a) "Decision no. 2017-750 DC of 23 March 2017." *Conseil Constitutionnel*. Available at <https://www.conseil-constitutionnel.fr/en/decision/2017/2017750DC.htm> (07/03/2020)
- Conseil Constitutionnel (2017b) "Décision n° 2017-750 DC du 23 mars 2017 - Observations du Gouvernement." *Conseil Constitutionnel*. Available at <https://www.conseil-constitutionnel.fr/les-decisions/decision-n-2017-750-dc-du-23-mars-2017-observations-du-gouvernement> (07/03/2020)
- Cossart, S.; Chaplier, J.; Beau de Loménie, T. (2017) "The French Law on Duty of Care: A Historic Step Towards Making Globalization Work for All." *Business and Human Rights Journal*, 2(2), 317-323.
- Duthilleul, A.; Jouvenel, M. d. (2020) "Evaluation de la Mise en Œuvre de la Loi n° 2017-399 du 27 Mars 2017 Relative au Devoir de Vigilance des Sociétés Mères et des Entreprises Donneuses d'Ordre." *Conseil Général de l'Économie, de l'Énergie et des Technologies. Ministère de l'Économie et des Finances*.
- Groulx, E. D.; Regan, M.; Parance, B. (2018) "Regards Croisés sur le Devoir de Vigilance et le Duty of Care." *Journal du Droit International*, 145, 21-23.
- Groulx, E. D.; Regan, M.; Parance, B. (2019) "Business and Human Rights as a Galaxy of Norms." *Georgetown Journal of International Law*, 50(2).

- Hoerner, P. (2018) “Devoir de vigilance : quel bilan des premiers plans ? Comment se positionnent les parties prenantes ?” *La Lettre du Centre Études & Prospective du Groupe Alpha*, 34. Groupe Alpha.
- ILO (2010) “List of ILO Core Conventions.” *International Labour Organization*. Available at https://www.ilo.org/asia/decentwork/dwcp/WCMS_143046/lang--en/index.htm (03/04/2020)
- Jaïs, J. C.; Hannezo, E.; Lignières, P.; Frison-Roche, M. (2017) “Client Alert: New French Law on the Corporate Duty of Care.” *Linklaters* (30 March 2017).
- Journal Officiel de la République Française (2017) “Loi no 2017-399 du 27 Mars 2017 Relative au Devoir de Vigilance des Sociétés Mères et des Entreprises Donneuses d’Ordre.” *Journal Officiel de la République Française*.
<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000034290626&categorieLien=id>
- Kering (2015) “Kering Open-Sources Environmental Profit and Loss Account Methodology to Catalyse Corporate Natural Capital Accounting.” *CSR News: The Corporate Social Responsibility Newswire*. Available at https://www.csrwire.com/press_releases/37967-Kering-Open-Sources-Environmental-Profit-and-Loss-Account-Methodology-to-Catalyse-Corporate-Natural-Capital-Accounting (26/03/2020)
- Langlois, M. (2018) “Human Rights Reporting in France: A Baseline for Assessing the Impact of the Duty of Vigilance Law.” *Shift*. New York.
- Langlois, M. (2019) “Human Rights Reporting in France - Two Years In: Has the Duty of Vigilance Law led to more Meaningful Disclosure?” *Shift*. New York.
- Les Amis de la Terre France, Survie (2019a) “Devoir de Vigilance – Total : Mise en Demeure Por ses Activités en Ouganda.” Dossier de Presse. *Les Amis de la Terre France and Survie*.
- Les Amis de la Terre; Survie (2019b) “Manquements Graves À La Loi Sur Le Devoir de Vigilance: Le Cas Total en Ouganda.” *Les Amis de la Terre France and Survie*. Available at https://www.totalautribunal.org/wp-content/uploads/2019/12/Rapport_Total-rendez-vous-en-Ouganda_2019.pdf (31/03/2020)
- Les Amis de la Terre; Survie (2019c) “Total: See You in Court”. *Total in Court*. Available at <https://www.totalincourt.org> (27/03/2020)
- Les Amis de la Terre (2020) “Affaire Total Ouganda : Nous Faisons Appel Dans un Contexte de Justice au Ralenti.” *Les Amis de la Terre*. Available at <https://www.amisdelaterre.org/affaire-total-ouganda-une-nouvelle-etape-malgre-une-justice-au-ralenti/> (31/03/2020)

- Mabile, S.; De Cambiaire, F. (2018) "Letter to Total." *Press Kit : Nous sommes les territoires qui se Defendant*, 14-16.
- Mabile, S.; Cambiaire, F. d. (2019) "Formal notice to comply with the Duty of Vigilance Law – article L. 225-102- 4.-I et II of the French Commercial Code." *Seattle Avocats*. Available at https://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/non-us-case-documents/2019/20190719_NA_na-1.pdf (27/03/2020)
- Michon, C.; Berne, S.; Boucherand, S. (2018) "Application of the Law on the Corporate Duty of Vigilance: Analysis of the First Published Plans." *B&L Evolution and EDH (Entreprises pour les Droits de l'Homme)*.
- Michon, C.; Velho, J, (2019) "Application of the Law on the Duty of Vigilance: 2018/2019 Plans." *EDH (Entreprises pour les Droits de l'Homme)*.
- Mighty Earth; France Nature Environnement; Sherpa (2019) "Devoir de vigilance et déforestation : le cas oublié du soja." Mighty Earth, France Nature Environnement, Sherpa.
- Ministère des Affaires Étrangères et du Développement International (2017) "National Action Plan for the Implementation of the United Nations Guiding Principles on Business and Human Rights." *République Française*. Available at <https://mk0globalnapshvllfq4.kinstacdn.com/wp-content/uploads/2017/11/france-nap-english.pdf> (04/01/2020)
- Mougeolle, P.; Duthoit, L. (2020) "Benchmark de la Vigilance Climatique des Multinationales – Rapport Général." *Notre Affaire à Tous*.
- Mugnier, E.; Gault, T. (2018) "Loi sur le Devoir de Vigilance : Analyse des Premiers Plans de Vigilance par EY Quelles Réponses à la Loi ? Quels Enseignements pour les Entreprises ?" *Ernst & Young*.
- Notre Affaire à Tous; Zéa; Nous Sommes les Territoires qui se Defendent; Sherpa; Les Eco Maires (2018) "Press Kit / 23rd October 2018." Available at <https://notreaffaireatous.org/wp-content/uploads/2018/10/DP-english.pdf> (27/03/2020)
- Notre Affaire à Tous (2019) "Total: The Climate Chaos Strategy." *Notre Affaire à Tous*. Available at https://notreaffaireatous.org/wp-content/uploads/2019/05/ResumeTOTAL_A4_ENGLISH.pdf (27/03/2020)
- OECD (2011) "OECD Guidelines for Multinational Enterprises." *Organisation for Economic Co-operation and Development*. OECD Publishing.

- Renaud, J.; Bordaçarre, A. (2017) “End of the Road for Transnational Corporations? Human Rights and Environment: from a Groundbreaking French Law to a UN Treaty.” *Amis de la Terre France and ActionAidFrance*.
- Renaud, J.; Quairel, F.; Gagnier, S.; Elluin, A.; Bommier, S.; Burlet, C.; Ajaltouni, N. (2019) “The Law on Duty of Vigilance of Parent and Outsourcing Companies - Year 1: Companies Must Do Better.” *Les Amis de la Terre, Amnesty International France, CCFD-Terre Solidaire, Collectif Ethique sur l'étiquette*.
- Respect International (2017) “French Corporate Duty of Vigilance Law (English Translation).” *European Coalition of Corporate Justice*. Available at <http://www.respect.international/french-corporate-duty-of-vigilance-law-english-translation/> (04/06/2020)
- Reuters (2013) “Carrefour to Sign Bangladesh Fire and Building Safety Accord.” *Reuters*. Available at <https://www.reuters.com/article/us-carrefour-bangladesh/carrefour-to-sign-bangladesh-fire-and-building-safety-accord-idUSBRE94DOQU20130514> (23/04/2020)
- Savourey, E. (2020) “All Eyes on France – French Vigilance Law First Enforcement Cases (1/2) The Challenges Ahead.” *Cambridge Core*. Available at <https://www.cambridge.org/core/blog/2020/01/24/all-eyes-on-france-french-vigilance-law-first-enforcement-cases-2-2-current-cases-and-trends/> (31/03/2020)
- Sénat (2015) “Séance du 18 Novembre 2015 (Compte Rendu Intégral des Débats).” *Sénat : Un Site au Service des Citoyens*. Available at <https://www.senat.fr/seances/s201511/s20151118/s20151118009.html#section1045> (07/03/2020)
- Sherpa (2018) “Vigilance Plans Reference Guidance.” First Edition. *Sherpa*. Available at https://www.asso-sherpa.org/wp-content/uploads/2019/02/Sherpa_VPRG_EN_WEB-VF-compressed.pdf (07/03/2020)
- Sherpa (2019) “Companies subject to the duty of vigilance under the radar of NGOs.” *Sherpa* (press release). Available at <https://www.asso-sherpa.org/companies-subject-to-the-duty-of-vigilance-under-the-radar-of-ngos> (06/03/2020)
- Sherpa; CCFD-Terre Solidaire; Business & Human Rights Resource Centre (2020) “The List of Companies.” *Duty of Vigilance Radar*. Available at <https://vigilance-plan.org/search/> (06/03/2020)
- Sherpa; CCFD-Terre Solidaire; Business & Human Rights Resource Centre (n.d.a) “The Law and the Duty of Vigilance.” *Duty of Vigilance Radar*. Available at <https://vigilance-plan.org/the-law/> (15/04/2020)

- Sherpa; CCFD-Terre Solidaire; Business & Human Rights Resource Centre (n.d.b) “Our Methodology.” *Duty of Vigilance Radar*. Available at <https://vigilance-plan.org/methodology/> (15/04/2020)
- Shift; Mazars (2015a) “How Can Businesses Impact Human Rights?” *UNGP Reporting Framework*. Available at <https://www.ungpreporting.org/resources/how-businesses-impact-human-rights/> (03/04/2020)
- Shift; Mazars (2015b) “UN Guiding Principles Reporting Framework.” *UNGP Reporting Framework*. Available at <https://www.ungpreporting.org/framework-guidance/> (01/04/2020)
- Shift; Mazars (2015c) “Salient Human Rights Issues.” *UNGP Reporting Framework*, <https://www.ungpreporting.org/resources/salient-human-rights-issues/> (03/04/2020)
- Simons, P. (2018) “Penelope Simons on Getting Companies to Respect Human Rights” (Faguy, Y., interviewer). *Canadian Partnership for International Justice (CPIJ)*. Available at <https://cpjj-pcjj.ca/penelope-simons-on-getting-companies-to-respect-human-rights/> (15/04/2020)
- Total (2019) “Statement - 09/30/2019 - Total Responds to Questions from NGOs About its Projects in Uganda.” *TOTAL*. Available at <https://www.total.com/en/info/statement-09302019> (03/04/2020)
- Tribunal Judiciaire de Nanterre (2020) “Ordonnance de Référé Rendue le 30 Janvier 2020.” *Tribunal Judiciaire de Nanterre*. Available at <https://www.amisdelaterre.org/wp-content/uploads/2020/03/decision-tgi-nanterre-30012020-adt-survie-c-total.pdf> (31/03/2020)
- United Nations (1948) “Universal Declaration of Human Rights.” *United Nations*. Available at <https://www.un.org/en/universal-declaration-human-rights/> (03/04/2020)
- United Nations (2011) “Guiding Principles on Business and Human Rights – Implementing the United Nations ‘Protect, Respect and Remedy’ Framework.” *United Nations Human Rights Office of the High Commissioner*.
- United Nations (2012) “The Corporate Responsibility to Respect Human Rights: An Interpretative Guide.” *United Nations Human Rights Office of the High Commissioner*.
- World Bank (2019) “France.” *The World Bank*. Available at <https://data.worldbank.org/country/france?view=chart> (03/04/2020)