



FRANCE AND ENVIRONMENTAL LAW

LEGAL GUIDE



French Ministry for Europe
and Foreign Affairs

French environmental law does not apply to companies based outside the French territory. However, as a result of environmental damage, lawmakers have developed legal mechanisms with extraterritorial scope. This helps economic stakeholders shoulder their responsibilities and prevent environmental harm caused as part of global trade.

The precautionary principle

“Businesses should support a precautionary approach to environmental challenges.

Precaution involves the systematic application of risk assessment, risk management and risk communication. When there is reasonable suspicion of harm, decision-makers need to apply precaution and consider the degree of uncertainty that appears from scientific evaluation.” |

Principle Seven, United Nations Global Compact, 2000. This principle has now become a French constitutional principle.

1 150

This is the number of French companies and organizations that were taking part in the United Nations Global Compact in 2017, making it the country with the second-highest number of participants in the world. |

The national scope of French environmental law

French environmental regulations are based on European regulations. They aim to prevent industrial risks, manage waste, water and polluted soil, prevent adverse environmental impacts and protect biodiversity.

The obligations created by these regulations do not have extraterritorial scope. They only apply to businesses present in France. As such, if a French company or one of its subsidiaries harms the environment abroad, it is not liable under French law, but under local law, if such law exists.

However, the precautionary approach in the United Nations’ Rio Declaration applies to French businesses regardless of their location. They must therefore adopt an approach that involves assessing risks and preventing environmental damage in all circumstances.

Consequently, many French companies have used the tools created as part of voluntary international initiatives such as the Global Compact (including indicators and audits) to voluntarily take steps towards protecting the environment abroad, in order to prevent harm to their reputation.

New obligations with extraterritorial scope

Following the 1976 Guidelines for Multinational Enterprises, published by the Organisation for Economic Co-operation and Development (OECD), and initiatives undertaken by multinationals to implement the principles of the Global Compact, many countries have adopted compulsory legislation for businesses in the fields of environmental protection, human rights and corruption.

France, which plays an important international role, has strengthened its legal framework to ensure that certain companies are required to exercise due diligence with respect to their subsidiaries, suppliers and subcontractors, both in France and abroad. The goal is to prevent subsidiaries of French companies from contributing to environmental damage abroad, which could considerably harm their reputation at the national and international levels.

New texts with extraterritorial scope now require French companies to take steps to protect the environment outside of France.

US\$258 billion

This is the value of the natural resources affected by environmental crimes every year, according to 2016 estimates, an increase of 26% compared to estimates from 2014. |

The Sapin II Act

The Act of 9 December 2016 on transparency, combating corruption and modernizing the economy, also known as the Sapin II Act, helps fight crime and environmental harm, such as poaching, in France and abroad.

Under this Act, the French Anti-Corruption Agency is responsible for ensuring that certain companies comply with the duty to implement preventative measures, failing which they may be subject to financial penalties, in addition to the criminal penalties applicable to corruption offences. |

Enhanced CSR for businesses

France was one of the first countries to adopt legislative measures in the corporate social responsibility (CSR) field. It has just strengthened these measures pursuant to the European Directive of 2014 on the reporting of non-financial information.

Following the French Order of 19 July 2017 and the implementing decree of 9 August 2017, some businesses must now publish an annual non-financial performance statement.

In addition to reporting on their actions in the social, societal and environmental fields (wage policy, sustainable development, etc.), businesses must now map the risks created by their activity in these fields, for all countries where they are present. They must also implement policies to mitigate these risks and report on the results obtained by these policies. Furthermore, listed companies must include the protection of human rights and fight against corruption in these measures.

Under the “comply or explain” obligation, companies that do not implement risk mitigation policies must justify this decision in their statements.

If companies do not publish annual statements, they can be requested to do so by a judge and, if necessary, fined.

The new duty of vigilance to protect the environment

The Potier Act of 27 March 2017 created a corporate duty of vigilance for parent and contracting companies with respect to their supply chains.

The French corporate groups that meet certain criteria must establish, publish and effectively implement a vigilance plan to identify risks and prevent serious harm to the environment, health and safety, human rights and fundamental freedoms. This harm may result from the activities of the company, from the activities of the companies it directly or indirectly controls, or from the activities of subcontractors or suppliers with which it has an established commercial relationship.

If these French companies cause harm in France or abroad, and have not established, published or implemented a vigilance plan, they may be found civilly liable and ordered to remedy the harm that could have been avoided had these duties been fulfilled.

These French companies must also implement an internal alert mechanism to collect warnings. Like the Sapin II Act, the Potier Act offers protection to whistleblowers, particularly employees, in order to encourage a compliance culture.

Raising environmental awareness at the international level

French businesses are encouraged to step up their voluntary actions to protect the environment, in all the countries where they are present. However, they are only subject to French environmental law in France.

Nevertheless, French companies operating abroad may be environmentally liable pursuant to the new extraterritorial duties introduced by the Potier Act, the French Order on non-financial performance statements and, to some extent, the Sapin II Act. With these new texts, France is progressing towards a better appreciation of environmental risks at the international level, and ensuring that French businesses anticipate and mitigate these risks.

TO FIND OUT MORE

- **Ministry for Europe and Foreign Affairs**
www.diplomatie.gouv.fr
- **Ministry for the Ecological and Inclusive Transition**
www.ecologique-solidaire.gouv.fr/
- **JUSCOOP**
A digital platform showcasing French cooperation activities in the legal and judicial fields
www.juscoop.org/
- **Global Compact**
A voluntary initiative launched by the United Nations in 2000 to encourage businesses worldwide to implement sustainable development principles
www.globalcompact-france.org/

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