

New Sustainability Reporting Obligations in France: What's New?

Directive (EU) 2022/2464, known as the CSRD or Corporate Sustainability Reporting Directive, introduced an obligation for certain companies to disclose sustainability information. It replaces Directive 2014/95/EU related to the extra-financial performance statement (DPEF) and was transposed in France on 6 December 2023 by the Order n°2023-1142, which introduces new sustainability reporting obligations (I) and a new audit system (II).

I. Many French companies will have to comply with new reporting obligations in the near future, particularly regarding sustainability

The Order harmonized CSR reporting obligations within the French Commercial Code, particularly regarding (i) the general reporting in the management report (*rapport de gestion*) by listing the information it must contain, such as key performance indicators of a financial and non-financial nature, and (ii) specific reporting for companies operating Seveso "high-threshold" facilities on their risk management, as well as for companies operating in the extractive and primary forest exploitation sectors on some payments made to Countries or territories above €100,000.

Above all, the main innovation introduced by the Order is the requirement for large companies, small and medium listed companies as well as for certain companies established outside the European Union or the European Economic Area which have a branch in France, to disclose sustainability information. Such information is defined as information that "*makes it possible to understand the impact of the company's activity on sustainability issues, as well as the way in which these issues influence the development of its business, performance, and position*", it being specified that "*sustainability issues include environmental, social, governance, and employee matters*".

II. Audit of sustainability reporting will be open to a wider range of auditors, under the supervision of the Haute autorité de l'audit

The Order provides that sustainability information disclosed by large companies and listed small and medium companies will be audited by a statutory auditor or an independent third-party. It adds that information disclosed by foreign companies with a branch in France will be subject to a report by persons or firms authorized under the law applicable to the company, a statutory auditor or an independent third-party, expressing their opinion on the compliance of the information provided.



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As a result, rules governing the profession of statutory auditors have been amended to reflect this new mission of auditing sustainability information, and new rules have been introduced for "sustainability information auditors" (which may include lawyers) working within independent third parties.

These new rules are based on the principle of identical rules, which means that rules applicable to sustainability information auditors are the same as those applicable to statutory auditors, with only limited exceptions, to ensure fair competition, to enable them to work together, to offer stakeholders the certainty of the same requirements for each of them, and to enable a homogeneous presentation of their reports.

Finally, the Order provides that statutory auditors and sustainability information auditors working for independent third parties will operate under the supervision of an authority named the *Haute autorité de l'audit (H2A)*, which will register the latter, keep the list of registrants, monitor statutory auditors, independent third parties and sustainability information auditors as well as to impose penalties.





Practice Area News

First Decision on the Substance of the Duty of Vigilance in France. On 5 December of 2023, the Paris judicial court issued its first decision on the substance of the duty of vigilance. The clarifications focused in particular on risk mapping, which is fundamental as its results are the basis for other measures of the due diligence plan. They also point out that actions to mitigate risks must be specific and tailored to the risks identified in the risk mapping.

Digital Markets Act's First Effects on EU Companies. On 6 September of 2023, almost a year after the adoption of the Digital Markets Act, the European Commission published the list of companies subject to the gatekeeper status. These companies, placed under the control of the European Commission which has powers of investigation, control, and sanction, have obligations to improve competition between their digital platforms and protect end users.

The French Supreme Court Confirms the Charge of Complicity of Crimes Against Humanity Against Lafarge for its Activities in Syria. The French Supreme Court confirmed on 16 January of 2024 of the prosecution of cement company Lafarge for complicity of crimes against humanity, related to accusations of having paid jihadi groups in Syria, including ISIS, in exchange for protection. However, the court annulled the charge of "endangerment of others" relating to Syrian workers, considering that Syrian courts had sole jurisdiction on this matter.

EU Agrees on Corporate Due Diligence Rules to Safeguard Human Rights and Environment. The European Union Council and Parliament adopted a directive on 14 December of 2023, whereby companies will be required to take action to prevent their negative impact on human rights and the environment, notably on issues such as child labor, slavery, pollution, or deforestation. For that purpose, they will be required to incorporate due diligence into their ESG policies and monitor their effectiveness, under the control of national authorities.

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