

CSR: The subcontractor's failure to comply with the client's code of ethics justifies the immediate termination of the business relationships with the supplier

Almost ten years after the Rana Plaza scandal and while many voices are being raised about human rights violations in the textile industry, the Paris Court of Appeals has recently issued a particularly interesting ruling combining corporate social responsibility and sudden termination of established business relationships.

Specifically, on March 24, 2021, it held that if a supplier fails to ensure that its subcontractors comply with its client's code of ethics, the immediate termination of the business relationships cannot be considered as sudden within the meaning of Article L. 442-6 I §5 of the French Commercial Code.

In the case at hand, Promod, a company specialized in the manufacture and marketing of fashion clothing and accessories, had been doing business with one of its suppliers, Paris Première, since 2013.

Their business relationship was formalized by the conclusion of a single annual agreement, renewable every year, to which was systematically annexed Promod's code of ethics which set forth the obligations to be complied with by its supplier and the latter's subcontractors.

The code of ethics provided for upstream validation by Promod of its suppliers' subcontractors, particularly with regard to production sites, and for the conduct of control audits.

In this context, after placing an order with its supplier, Promod carried out an audit in one of the production

plants, which revealed non-compliance with labor law provisions.

Promod informed its supplier that it would block all future orders. It also refused to accept the products already manufactured by this production site.

It is within this context that Promod notified its supplier of the termination of their business relationship and requested that the brand on the products already manufactured be removed.

The supplier brought an action against Promod under Article L. 442-6 I §5 of the French Commercial Code (now Article L. 442-1) for sudden termination of established business relationships.

In its decision of March 24, 2021, the Paris Court of Appeals upheld the judgment of the Lille Commercial Court which had dismissed the supplier's claim, holding that non-compliance with Promod's code of ethics was not disputed and that, despite the latter's repeated requests to comply with the code of ethics, the rules of the International Labor Organization and applicable laws, the supplier failed to do so.

Indeed, to justify the termination of the business relationship, Promod blamed its supplier for the existence of problems in the production plant relating, in particular, to health and safety, and remuneration below the legal minimum wage and disconnected from the number of hours actually worked.

Interestingly, in order to exonerate Promod from any liability for the immediate termination of the established business relationship, the Paris Court of Appeals considered that the violation of the client's code of ethics by the supplier's subcontractors made the termination foreseeable:

"As a result, Promod legitimately lost confidence in this supplier, following the latter's inability to integrate and assume the new standards made mandatory under the code of ethics, rightfully deemed essential by Promod, and it must be held that the sudden termination of the established business relationships was foreseeable for Paris Première, which, because of its particularly serious breaches with regard to the framework agreement binding the parties, caused this termination for which Promod is blameless"^[1].

This particularly interesting decision is handed down in a context where companies are called upon to ensure, as a matter of ever-increasing concern, respect for human rights and for the environment.

In this respect, it should be recalled that on March 10, 2021, the European Parliament adopted a resolution in favor of a binding European legislation, in the form of a Directive, on *"Corporate due diligence and corporate accountability"*.^[2]

With this text, the European Parliament wishes, in essence, to make large European companies accountable for all their activities, including those of subcontractors based abroad, by creating a legal liability. The European Commission should give its opinion on this draft directive in the coming months.

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Suppliers, be vigilant!

[1] Paris Court of Appeals, March 24, 2021 - Docket No. 19/15565

[2] https://www.europarl.europa.eu/doceo/document/TA-9-2021-0073_EN.html

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