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French Climate and Resilience Law: What impact on corporate law?

Law No. 2021-1104 of August 22, 2021 on combating climate change and strengthening resilience to its effects (the "Climate and Resilience Law"), adopted on July 20, 2021, was promulgated on August 24, 2021. Its provisions are inspired by the proposals of the Citizens' Climate Convention. The final text includes 305 Articles in 8 Titles. Some provisions came into force as soon as the Climate and Resilience Law was promulgated, while other measures will apply in 2022, 2023, 2025, up to 2034.

The article provides a focus on the new developments in corporate law.

Articles 138 and 273 of the Climate and Resilience Law relate to corporate law: Article 138 completes the extra-financial performance declaration that certain companies must include in their annual management report while Article 273 sets up a contribution by large companies to imported deforestation.

Extra-financial performance declaration

As a reminder, Article L. 225-102-1 of the French Commercial Code requires companies whose turnover and number of employees exceed a certain threshold to include a so-called extra-financial performance declaration "EFPD") in their management report.

Pursuant to Articles R. 225-104 and R. 22-10-29 of the French Commercial Code, the EFPD must be prepared by a company when its total balance sheet or its turnover and number of employees exceed the following thresholds:

- For companies, the securities of which are admitted to trading on a regulated market: €20 million for the balance sheet total, €40 million for total net turnover and 500 for the average number of permanent

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employees employed during the financial year;

- For companies, the securities of which are not admitted to trading on a regulated market: €100 million for the balance sheet total and total net turnover, and 500 for the average number of permanent employees employed during the financial year.

This declaration includes "*in particular information on the consequences on climate change of the company's activity and the use of the goods and services it produces, its social commitments in favor of sustainable development, the circular economy, the fight against food waste, the fight against food insecurity, respect for animal welfare and responsible, fair and sustainable food, collective agreements concluded within the company and their impact on the company's economic performance as well as on employees' working conditions, actions aimed at combating discrimination and promoting diversity, and measures taken in favor of the disabled*".

Article 138 of the Climate and Resilience Law specifies what the "information on the consequences on climate change" must include. Specifically, it "*includes the direct and indirect greenhouse gas emissions related to transport activities upstream and downstream of the activity and is accompanied by an action plan to reduce these emissions, in particular through the use of rail and waterway modes as well as biofuels with a virtuous energy and carbon balance and electromobility.*"

Also, said Article 138 adds a new Article L. 229-25-1 to the French Environmental Code; this new Article requires that a national report on action plans to reduce greenhouse gas emissions from transport activities be made public each year by the Government. This report analyzes the expected overall effectiveness of these action plans, particularly with respect to the low-carbon strategy objectives mentioned in Article L. 222-1 B of the French Environmental Code.

Article 138 of the Climate and Resilience Law applies to EFPDs relating to accounting periods beginning on or after July 1, 2022.

Contribution of large companies to imported deforestation

It should be recalled that, in accordance with Article L. 225-10-4 of the French Commercial Code, "*any company that employs, at the close of two consecutive financial years, at least five thousand employees within its own company and in its direct or indirect subsidiaries the registered office of which is located on French territory, or at least ten thousand employees within its own company and in its direct or indirect subsidiaries the registered office of which is located on French territory or abroad*", must draw up and implement a vigilance plan.

The vigilance plan must include reasonable measures to identify risks and prevent serious violations of human rights and fundamental freedoms, human health and safety and the environment resulting from the activities of the company and those of the companies it controls, as well as from the activities of subcontractors or suppliers with whom there is an established business relationship, whenever these activities are linked to this relationship.

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The logic of the “duty of vigilance” is to make large companies accountable for the actions of their subsidiaries or subcontractors, when the latter do not respect human rights, fundamental freedoms, health and safety of people and the environment, regardless of the laws of the country where such actions take place.

Article 273 of the Climate and Resilience Law added a new paragraph to Article L. 225-102-4 of the French Commercial Code that relates the vigilance plan that must be established by large companies.

From now on, it is also foreseen that “*for companies that produce or market products resulting from agricultural or forestry activities, this plan includes in particular reasonable vigilance measures to identify the risks and prevent deforestation associated with the production and transport to France of imported goods and services*”.

A Decree will define the categories of companies that will be subject to this new obligation.

This provision will come into force on **January 1, 2024**.

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