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Due Diligence Law

A long story ...

SINCE MORE THAN 10 YEARS, CFDT HAS BEEN WORKING TO OBTAIN WHISTLEBLOWERS RIGHTS AND PROTECTION. RIGHT TO WHISTLEBLOWING GOES WITH FREEDOM OF EXPRESSION AND DEMOCRACY NEEDED FOR SUSTAINABLE COMPANIES IN A GLOBAL WORLD.



On the 28th March 2017, the French Parliament has adopted a long awaited law establishing a due diligence obligation for companies, and their subsidiaries and subcontractors.

A first historic step towards better human rights and environmental protection.

[5th UNI world congress 2018/Liverpool](#)

In 2001, at UNI P&M conference in Singapore, CFDT Cadres took a first and strong initiative by signing ethical, deontology and professional responsibility code for engineers and managers. For the first time, the necessity of whistleblowers rights and protection at both national and international level was acted. During UNI Europa Congress in Paris in 2012, a Symposium “for an ethical management in times of crisis” was adopted. In 2016, at the International Labour Organization’s annual conference, whistleblowers were recognized as actors in CSR in the supply chains. In 2017, this request for a European legislation was supported by a Eurocadres platform where more than 81 000 European citizens’ signatures were collected.

Recognizing freedom of speech of workers is not only a matter of democracy in organizations but also a matter related to the professionals and managers responsibility in their daily work.

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WHICH COMPANIES ARE CONCERNED ?

The law concerns companies established in France that, at the end of 2 consecutive years :

- Employ at least 5.000 employees including subsidiaries , whose head office is located in the French territory.

Or

- Employ at least 10.000 employees including subsidiaries whose head office is located either on French territory or abroad.

All business sectors are covered.

WHAT'S THE LAW ASKING FROM COMPANIES ?

Companies must establish and implement a **due diligence Plan**. This plan

- must include appropriate measures to « *identify risks and prevent serious infringements to human rights, fundamental freedoms, health, people safety and environmental damage*, resulting directly or indirectly from the company 'own activities, and from those of its companies under their control and from activities of their subcontractors and suppliers.
- has to be public and included in the company's annual report.

In case of fails to establish the plan, any concerned parties can file a complaint that can lead to a civil fine up to 10 million euros. When the risks identified in the plan materialize and they result in damage, the judge could impose a higher fine, up to 30 million euros.



WHAT'S A DUE DILIGENCE PLAN ?

1. A mapping that identifies, analyses and ranks risks;
2. 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;
3. Appropriate actions to mitigate risks or prevent serious violations;
4. An alert mechanism that collects potential or actual risks and discussed with, representative trade unions qualified as representatives in the company;
5. A monitoring scheme to follow up the measures implemented and assess their efficiency.

Trade UNIONS INVOLVEMENT

1. Direct participation of unions in defining and establishing Plans

Unions have to contribute by requesting from corporate management to take part to preliminary discussions to define and establish plans.

2. Due diligence : a topic for transnational agreements

Due Diligence Plan is a privileged topic to produce transnational agreements, involving international Union Federations and affiliates. It is clearly a tool to support development of union activities at European and global scale. Creating Permanent Monitoring Committees will allow development of unions in countries where multinational have activities. It is also a good way to make more effective plans, by involving union actors in Monitoring Committees.

3. Workers representatives acting in Corporate Governing bodies

Workers representatives in Governing Corporate Bodies must be involved in Corporate Social Responsibility (CSR) policy process. Executive management and Board members have to be alerted and made aware of this due diligence and not only in French Companies. All European and Global companies could establish such a plan in a volunteer way as an innovative and strong firm behavior in CSR dimension.



4. Involvement of European Work Councils and European Society Councils

By their European and global scale, European Work Councils are fit to take up this issue. They should be involved in information and consultation processes during the plan elaboration. They have also to organize their own involvement on the follow up process.

Towards a global protection for whistleblowers in Europe

The European Commission has recently introduced a project of directive on whistleblower protection, safeguarding cross border workers. Lot of companies are active beyond national borders and this European protection will enable to avoid workers risks, due to fragmented legislations. This proposal covers self-employed, consultants and volunteers. That is a great step forward for freedom of expression, more democracy in companies and for defense of public interest.

Best Practices

The French Telecom global company Orange whose presence is particular strong in the African continent, is submitted to the due diligence law.

Uni Global wrote to the management board asking for the involvement of unions in the elaboration of the plan.

UNI Orange Global Alliance and the World Council Committee were able to contribute and discuss the plan.

French unions, were also invited to formulate their proposals. Process is still going on and Orange plan has already been enriched with these proposals. A new version is being awaited from management.