

		Projet Commission européenne ¹	Contre-projet Conseil fédéral	Contre-projet CN/ CAJ-E (2020)	Initiative multinationales responsables
Entreprises concernées	Grandes entreprises	✓ (>250 employés si secteur à risque ou > 500 employés + 150 mio. € chiffre d'affaires) ²	✓	✓ (>500 employés/ 40 mio/ 80 mio)	✓
	PME actives dans des secteurs à haut risque	✗	✗ (sauf «recours manifeste au travail des enfants»)	✓	✓
Normes concernées	Droits humains	✓ ³	✗ (uniquement le travail des enfants + les minerais des conflits)	✓	✓
	Environnement	✓ ⁴	✗	✓	✓
Devoir de diligence	Etapes selon les normes internationales	✓ ⁵	(✓)	✓	✓
	Toute la chaîne de valeur (en amont et en aval)	(✓) ⁶ (toutes les relations commerciales établies)	✗ (Chaîne d'approvisionnement en amont uniquement)	✓	✓
	Obligation de consulter les personnes concernées	✓ ⁷	✗	✗	(✓)
Autorité de surveillance	Autorité de surveillance avec pouvoir de sanction	✓ ⁸	✗	✗	✗
Responsabilité civile	Responsabilité civile explicite pour les dommages dus à un manque de vigilance	✓ ⁹	✗	✓	✓
	... pour les entreprises contrôlées	✓ ¹⁰	✗	✓ (contrôle juridique)	✓ (contrôle factuel)
	... pour les fournisseurs directs	✓ ¹¹	✗	✗	✗
	... pour les fournisseurs indirects (dans certaines circonstances)	✓ ¹²	✗	✗	✗
	Charge de la preuve en matière de diligence raisonnable à la charge de l'entreprise	non défini (Compétence laissée aux États membres)	La responsabilité civile n'est pas incluse dans la loi, la question de la charge de la preuve ne se pose donc pas	✓	✓

Droit international privé	La réglementation prévaut sur le droit applicable	✓ ¹³	X	✓	✓
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¹ https://ec.europa.eu/commission/presscorner/detail/fr/ip_22_1145

² art. 2 Ch. 1

(...) (a) the company had more than 500 employees on average and had a net worldwide turnover of more than EUR 150 million in the last financial year for which annual financial statements have been prepared;
 (b) the company did not reach the thresholds under point (a), but had more than 250 employees on average and had a net worldwide turnover of more than EUR 40 million in the last financial year for which annual financial statements have been prepared, provided that at least 50% of this net turnover was generated in one or more of the following sectors: (...)

³ art. 3 Let. (c):

‘adverse human rights impact’ means an adverse impact on protected persons resulting from the violation of one of the rights or prohibitions listed in the Annex Part I Section 1, as enshrined in the international conventions listed in the Annex, Part I Section 2;

⁴ art. 3 Let. (b):

‘adverse environmental impact’ means an adverse impact on the environment resulting from the violation of one of the prohibitions and obligations pursuant to the international environmental conventions listed in the Annex, Part II;

⁵ art. 4 Ch. 1:

Member States shall ensure that companies conduct human rights and environmental due diligence as laid down in Articles 5 to 11 (‘due diligence’) by carrying out the following actions:

- (a) integrating due diligence into their **policies** in accordance with Article 5;
- (b) **identifying** actual or potential adverse impacts in accordance with Article 6;
- (c) **preventing** and **mitigating** potential adverse impacts, and bringing actual adverse impacts to an end and **minimising** their extent in accordance with Articles 7 and 8;
- (d) establishing and maintaining a **complaints procedure** in accordance with Article 9;
- (e) **monitoring** the effectiveness of their due diligence policy and measures in accordance with Article 10;
- (f) publicly **communicating** on due diligence in accordance with Article 11.

⁶ art. 3 Let. (g):

‘value chain’ means activities related to the production of goods or the provision of services by a company, including the development of the product or the service and the use and disposal of the product as well as the related activities of **upstream and downstream** established business relationships of the company.

art. 3 Let. (f):

‘**established** business relationship’ means a business relationship, whether direct or indirect, which is, or which is expected to be lasting, in view of its intensity or duration and which does not represent a negligible or merely ancillary part of the value chain.

art. 1

(...) The nature of business relationships as ‘established’ shall be reassessed periodically, and at least every 12 months.

⁷ art. 3 Let. (n):

‘stakeholders’ means the company’s employees, the employees of its subsidiaries, and other individuals, groups, communities or entities whose rights or interests are or could be affected by the products, services and operations of that company, its subsidiaries and its business relationships;

art. 6 Ch. 4:

(...) Companies shall, where relevant, also carry out consultations with potentially affected groups including workers and other relevant stakeholders to gather information on actual or potential adverse impacts.

art. 7 Ch. 2 Let. (a):

(...) The prevention action plan shall be developed in consultation with affected stakeholders;

art. 8 Ch. 3 Let. (b):

(...) Where relevant, the corrective action plan shall be developed in consultation with stakeholders;

art. 25 Ch. 1:

Member States shall ensure that directors of companies referred to in Article 2(1) are responsible for putting in place and overseeing the due diligence actions referred to in Article 4 and in particular the due diligence policy referred to in Article 5, with due consideration for relevant input from stakeholders and civil society organisations. (...)

⁸ Vgl. art. 17-21.

art. 20, Ch. 1:

(...) The sanctions provided for shall be effective, proportionate and dissuasive.

art. 20, Ch. 3:

When pecuniary sanctions are imposed, they shall be based on the company's turnover.

⁹ art. 1, Ch. 1:

This Directive lays down rules

(a) on **obligations** for companies regarding actual and potential human rights adverse impacts and environmental adverse impacts, with respect to their own operations, the operations of their subsidiaries, and the value chain operations carried out by entities with whom the company has an established business relationship and

(b) on **liability** for violations of the obligations mentioned above. (...)

art. 22, Ch. 1:

Member States shall ensure that companies are liable for damages if:

(a) they failed to comply with the obligations laid down in Articles 7 and 8 and;

(b) as a result of this failure an adverse impact that should have been identified, prevented, mitigated, brought to an end or its extent minimised through the appropriate measures laid down in Articles 7 and 8 occurred and led to damage.

¹⁰ voir note finale 8

¹¹ voir note finale 8

¹² art. 22, Ch. 2:

Notwithstanding paragraph 1, Member States shall ensure that where a company has taken the actions referred to in Article 7(2), point (b) and Article 7(4), or Article 8(3), point (c), and Article 8(5), it **shall not be liable** for damages caused by an adverse impact arising as a result of the activities of an **indirect partner** with whom it has an established business relationship, **unless** it was unreasonable, in the circumstances of the case, to expect that the action actually taken, including as regards verifying compliance, would be adequate to prevent, mitigate, bring to an end or minimise the extent of the adverse impact. (...)

¹³ art. 22, Ch. 5

Member States shall ensure that the liability provided for in provisions of national law transposing this Article is of overriding mandatory application in cases where the law applicable to claims to that effect is not the law of a Member State.