

Edition 7 | September 2024 | France

REVIEWS LEGAL INDUSTRY



Marina Thomas, Head of Legal at **Groupe COURIR**, describes the IP rights protection challenges at the Olympics.

Anna Klein, French and New York attorney, delves into AI Law within the cinema industry.

Commercial Litigation

The Dawn of a New Era in the French Duty of Vigilance's Litigation Scene?

A few years after the adoption of French Corporate Duty of Vigilance law in 2017, the long-awaited Corporate Sustainability Due Diligence directive n°2024/1760 ("CSDDD") was published on July 5, 2024, and entered into force on July 25.

After more than two years-long legislative journey, the CSDDD introduces human rights and environmental due diligence obligations for in-scope companies aiming to prevent, identify and end the negative impact their activity has on human rights and the environment.

Chances are this directive will shake up the French litigation scene since it incorporates the key elements of the 2017 French law on Duty of Vigilance whilst broadening its scope of application and introducing new features like the appointment of supervisory authorities.

First, the CSDDD directive's scope of application will be broader than that of French law.

While the 2017 French law on Duty of Vigilance applies to French registered companies with at least 5,000 employees, the threshold for the companies concerned by the CSDDD will be divided by five, applying to European companies of more than 1,000 employees and 450 EUR millions worldwide turnover.

In addition, the CSDDD will also apply to companies registered in non-EU countries if they operate in the EU and generate more than EUR 450 million net turnover in the EU.

Therefore, the threshold for the in-scope companies in the CSDDD will be wider, which augurs a higher potential for future litigation.

Second, the introduction of supervisory authorities appointed by Member states will undoubtedly add a new layer of litigation before courts.

Not only will these authorities have a supervisory role, but they will also be able to investigate a company's compliance with its obligations and render decisions of injunction, sanctions or order interim measures against companies when seized by any legal or natural person.

Decisions rendered by such national supervisory authorities will be subject to appeal to the courts for a review.

In addition, the litigation volume is likely to increase considerably since the CSDDD expressly provides that a company's civil liability can also be raised before courts while referring the matter to supervisory authorities in parallel.

However, companies can rest assured, the directive provides for several safeguards.



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The main obligations provided for under the CSDD are "obligations of means" and not "obligations of results" meaning that companies are not required to guarantee that adverse impacts will never occur. Instead, they will have to take the appropriate measures which can reasonably be expected to prevent or minimize the adverse impact under the circumstances of the specific case.

Besides, the CSDDD specifically excludes a company's liability if the damage was caused only by its business partners in the company's chain of activities.

What concrete impacts will the CSDDD have on the companies operating in France in the future? The first concrete consequences will be seen once the CSDDD will be transposed into French law by July 26, 2026.

In the meantime, the introduction of such a directive follows closely on the first procedural decisions rendered in 2024 based on the 2017 French law on Duty of Vigilance, decisions which paves the way for the first trials on the merits on the basis of the duty of vigilance.





Practice Area News

Towards the Regulation of Third-Party Litigation Funding. In September 2022, the European Parliament adopted a resolution requesting the European Commission to submit a proposal for a Directive to establish common minimum standards at the European Union level on commercial third-party litigation funding.

Since then, the European Commission has started in mid-June 2024 an open consultation that ended on September 3, 2024, in order to gather information on existing practices and legal framework on that subject to prepare a possible legislative proposal.

In France, there is currently no legislation regulating the question of litigation funding.

If the financing of legal actions by a third party has been more prevalent in common law countries, the subject has become increasingly relevant in France in the past years.

For its part, the Paris Bar Council has previously expressed several observations regarding the relationship between the attorneys, the funded party and the third-party funder.

It has been specified that the recourse to third-party funding should not contravene the Bar's ethical rules, in particular professional secrecy and the independence of attorneys.

In other words, the third-party funder should not interfere in the defense strategy, and there should be no communication between the lawyer and the third party on the content of the case.

The European Commission's forthcoming legislative proposal will be a much-appreciated step forward, as it will bring greater legal certainty and will certainly foster the growth and development of third-party financing in France.

In the Firm

• Jeantet Dispute Resolution Team – A 360° Approach.

Created in 1924, Jeantet is a leading full-service law firm, with more than 200 experts.

Our team is recognized for mastering all dispute resolution methods and offering the most appropriate solution for each case's challenges.

The team is ranked in all major leading international rankings such as Chambers, Legal 500, Best Lawyers and French rankings, Option Droit & Affaires, Décideurs Magazine etc.

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