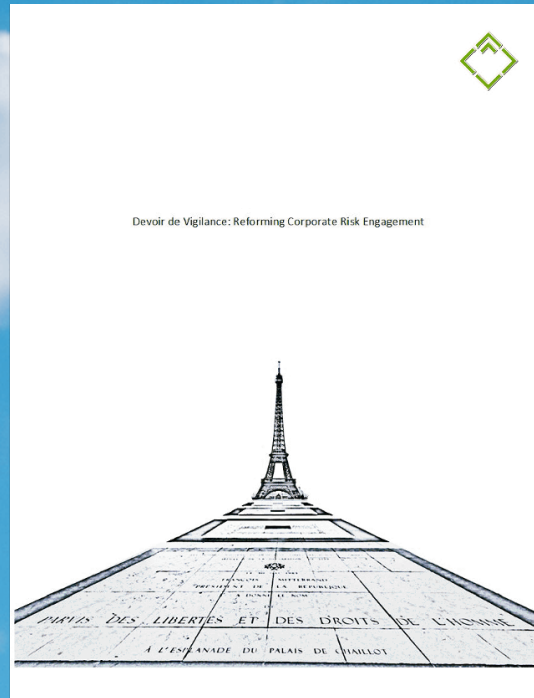


The Role of the Devoir de Vigilance Law in Reforming Corporate Risk Engagement

October 15, 2020



Your Speakers



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Development International



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1. Devoir de Vigilance

- Legal Background
- The Study
 - Architecture of the Study
 - Findings
 - Key Takeaways

2. The Wider Context

3. Developments at the EU Level

4. Q&A

Chris N. Bayer, PhD



- Devoir de Vigilance
- Architecture of the Study

Devoir de Vigilance: Reforming Corporate Risk Engagement



www.ipoint-systems.com/ddv-report-2020/



Features

- Imposes a duty of vigilance (devoir de vigilance) which consists of a substantial standard of care and mandatory due diligence, as such distinct from a reporting requirement;
- Sets a public reporting requirement for the vigilance plan and implementation report (compte rendu) on top of the substantial duty of vigilance;
- Strengthens the accountability of parent companies for the actions of subsidiaries;
- Prompts subject companies to develop their vigilance plan in association with stakeholders in society;
- Imposes civil liability in case of non-compliance;
- Allows stakeholders with a legitimate interest to seek injunctive relief in the case of a violation of the law.

Architecture of the study

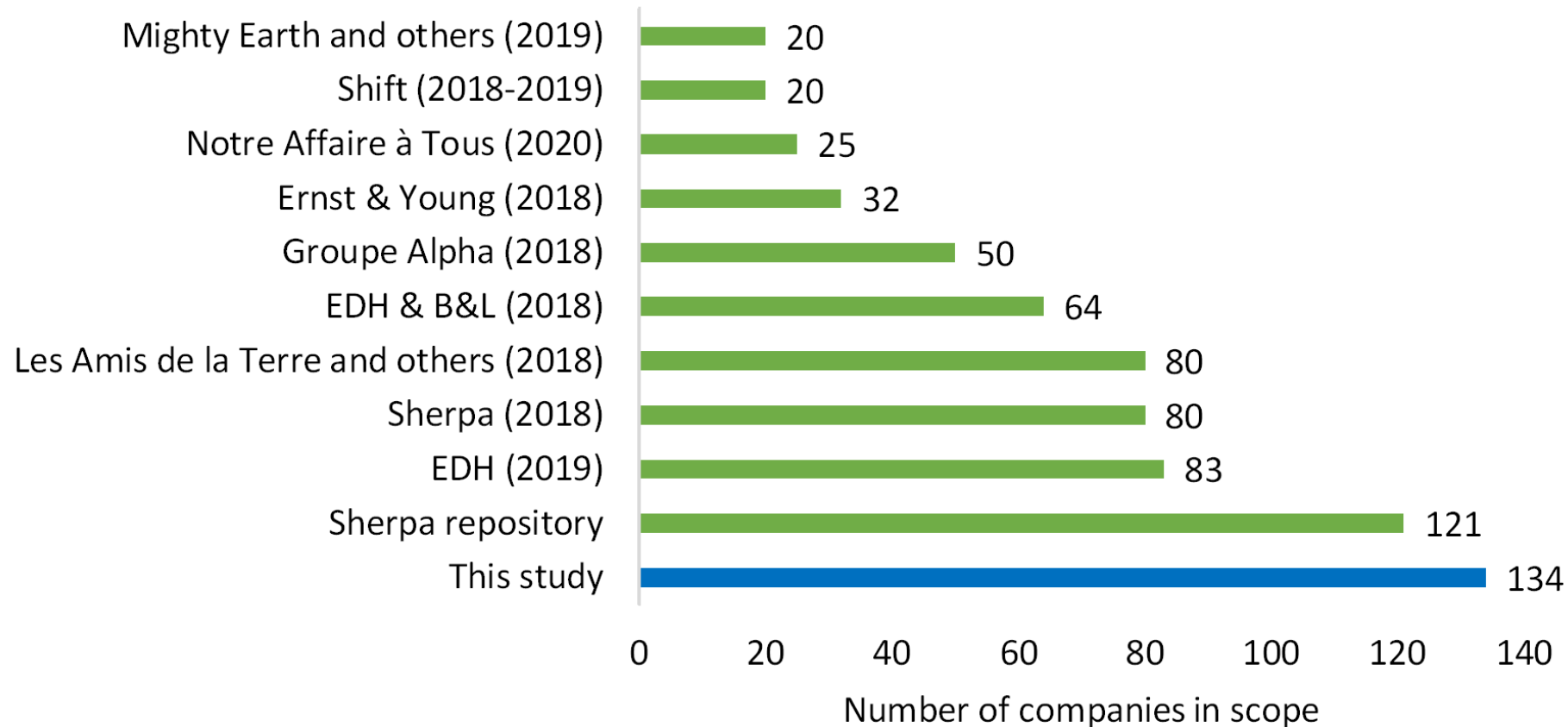
Research team



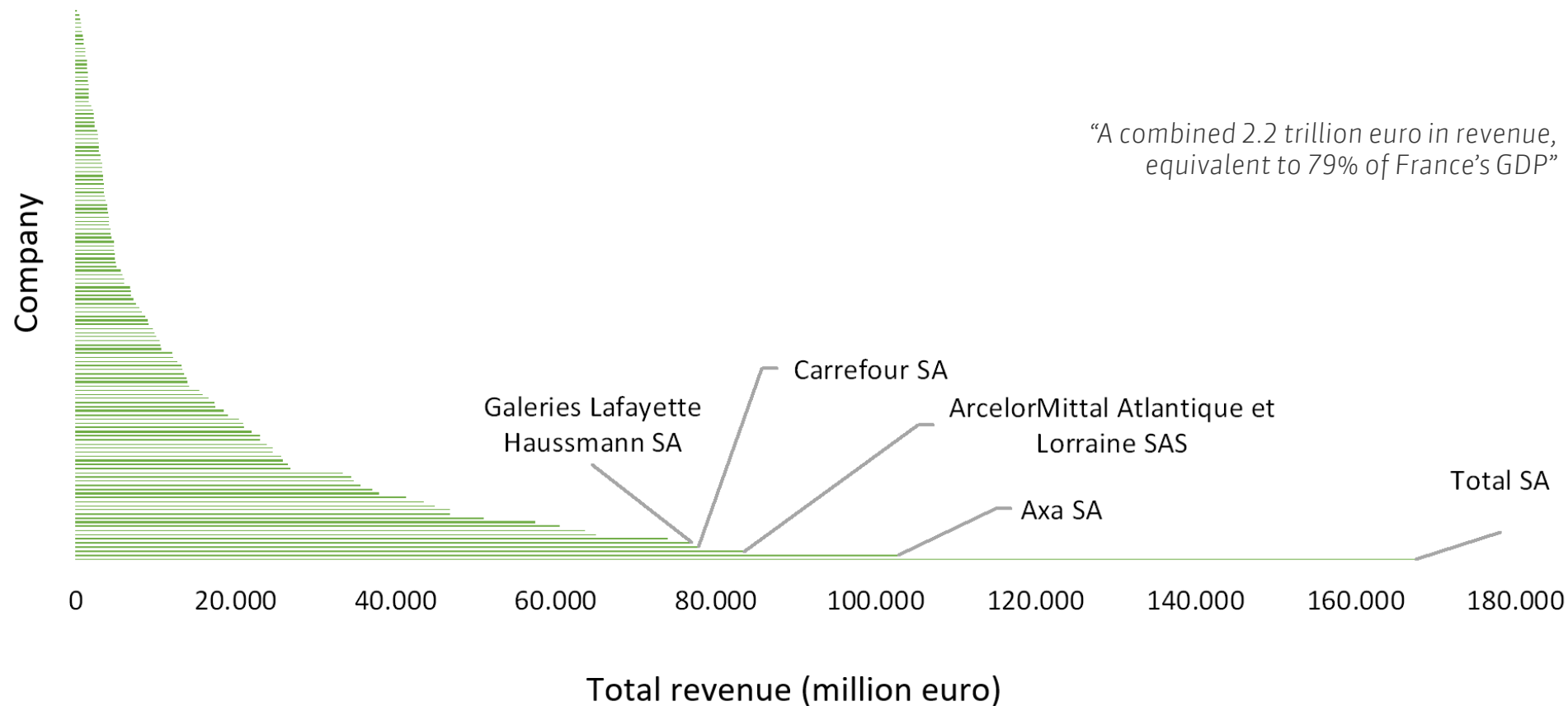
Peer review

Reviewer	Affiliation	Phase 1	Phase 2
Siham Belhadj	Mazars		✓
Katie Böhme, PhD	iPoint-systems		✓
Adèle Bourgin	Hughes Hubbard & Reed		✓
Claire Bright, PhD	Nova School of Law in Lisbon, BIICL		✓
Elise Groulx-Diggs	Georgetown University, Doughty Street Chambers	✓	✓
Michelle Langlois	Shift	✓	✓
Lise Smit	BIICL		✓

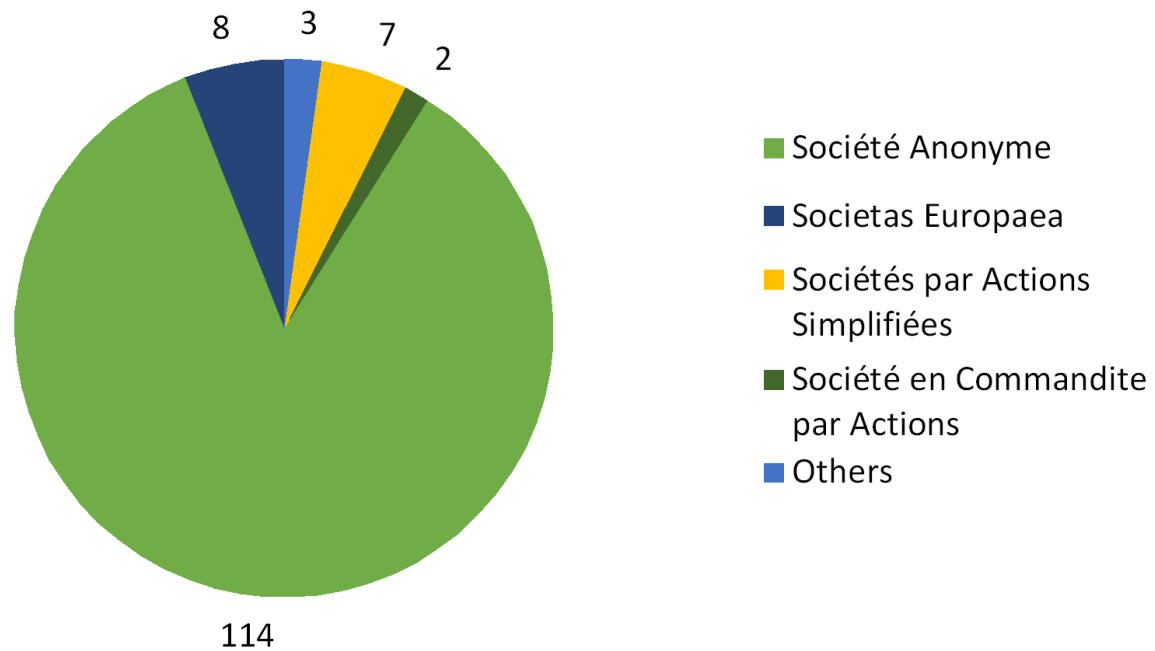
Subject companies



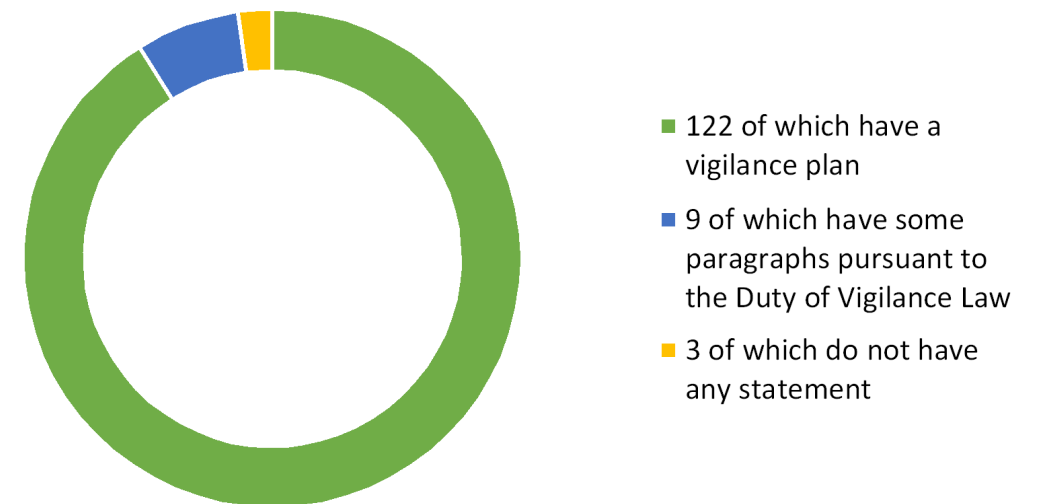
Subject companies



Subject companies



134 companies report being subject to the Duty of Vigilance Law



Indicators: 3 dimensions

Compliance with the Devoir de Vigilance law

1. Vigilance plan established
6. Risk mapping and analysis undertaken
9. Risk mapping in the perspective of potential victims
10. Risk prioritization within risk mapping
11. Discussion of suppliers within risk mapping
12. Discussion of subcontractors within risk mapping
13. Discussion of subsidiaries within risk mapping
14. Discussion of labor rights within risk mapping
18. Discussion of environmental harm in risk mapping
19. Environmental rights or harms at issue specified
21. Partner / subsidiary risk assessment procedure
24. Affirmative steps to address negative impacts
28. Structure for an alert mechanism included
29. Specify of what the alert system entails
32. Monitoring scheme to review action efficacy
39. Vigilance plan within the management report
40. Compte rendu or discussion of findings published

Conformance with the UN Guiding Principles

4. Stakeholder input in vigilance plan
5. Local community input in vigilance plan
7. Stakeholder input in risk map
8. Local community input in risk map

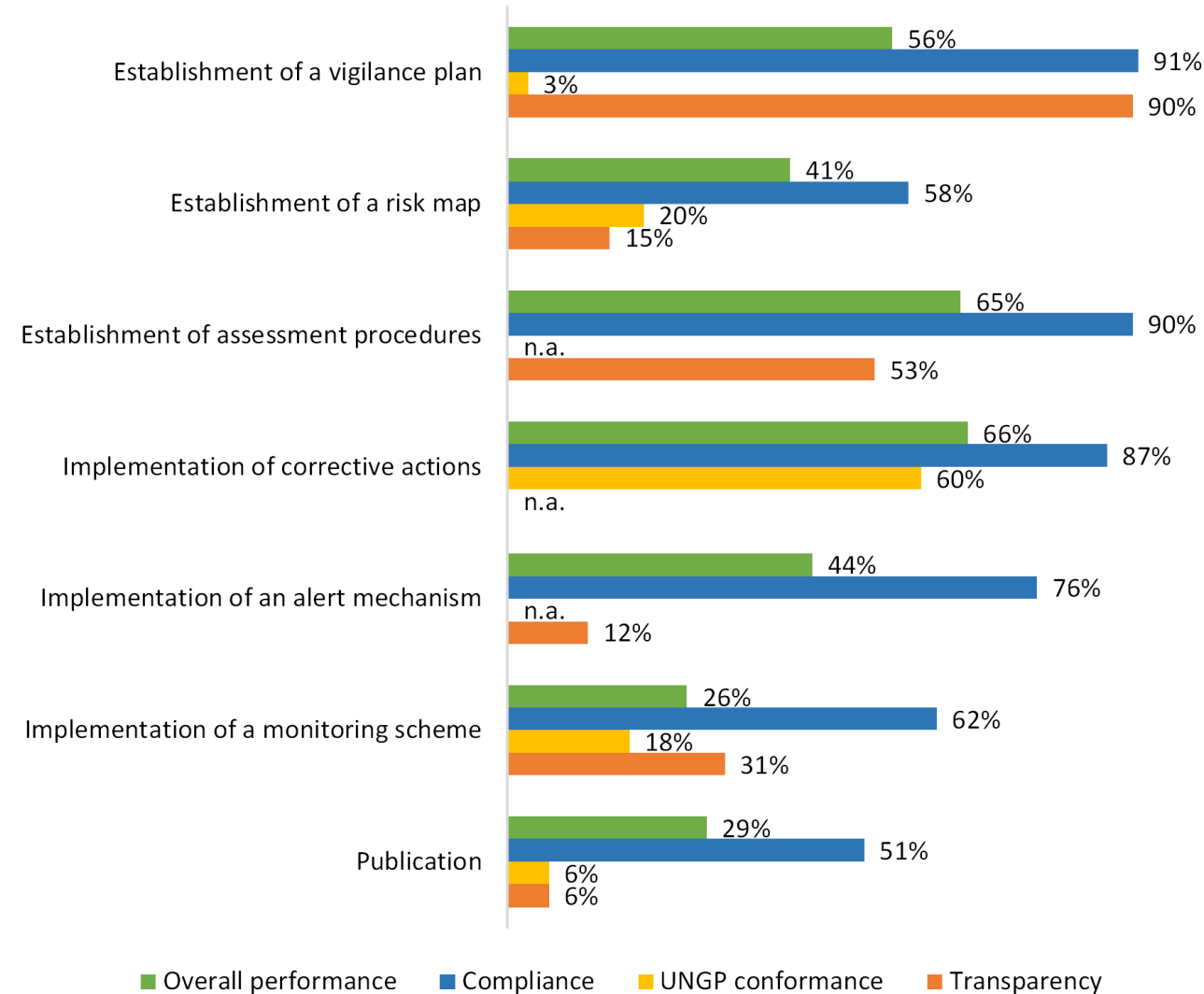
15. Discussion of nondiscrimination within risk map
25. Office tasked with implementing mitigating action
26. Office requires upper management sign off
27. Follow up process to embed mitigation steps
33. Monitoring scheme by independent third party
34. Independent audit of subsidiaries and partners
35. Monitoring scheme includes alert system audit
36. KPIs for at least one subject matter of the law
37. KPIs for all four subject matters of the law
42. Human rights violations published

Transparency

2. Vigilance plan readily accessible within website
3. Vigilance plan mentions the Devoir de Vigilance law
16. Forms of discrimination specified in risk mapping
17. Discriminated groups specified in risk mapping
20. Specific location of risks provided
22. Frequency of risk mapping update stated
23. Frequency of vigilance plan update stated
30. Alert system managed by a third party
31. Alert system outcomes published
38. KPIs used to report on due diligence outcomes
41. Lessons learned in first year reported in detail

Architecture of the study

Devoir steps



Juan I. Ibañez, JD



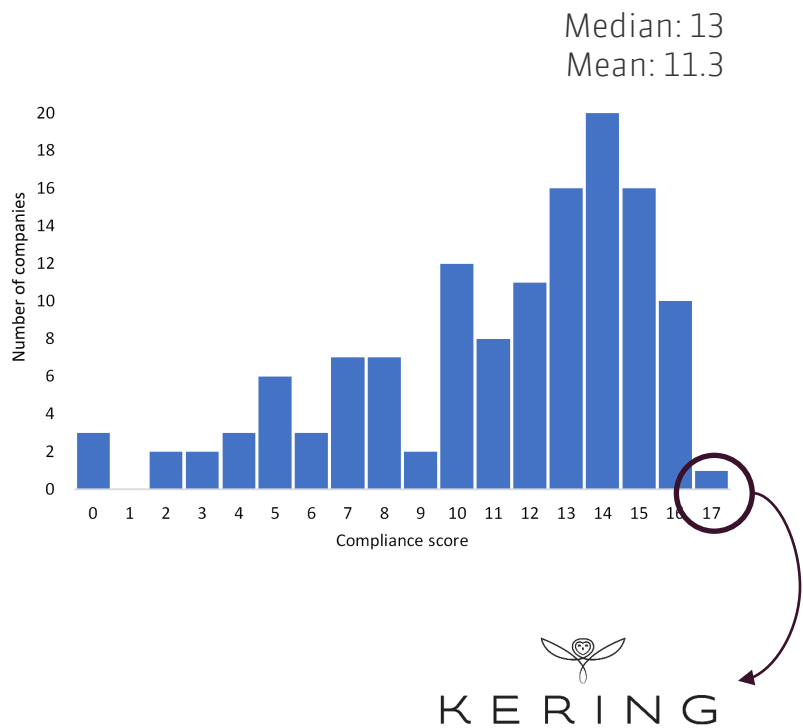
- Findings
- Key Takeaways

Findings

Legal compliance – 17 indicators



Distribution of scores



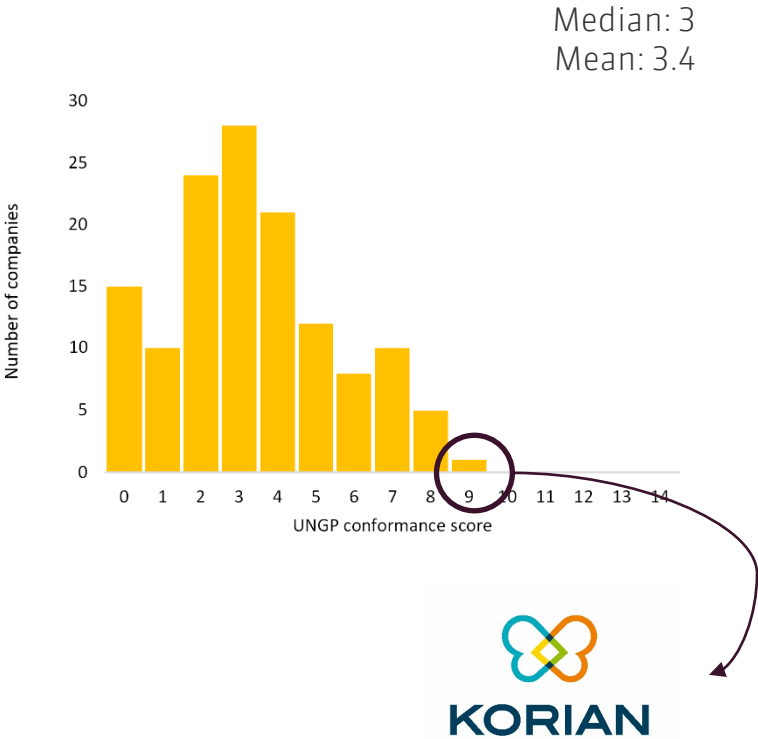
Breakdown



Findings

Conformance with the UNGP – 14 indicators

Distribution of scores



Breakdown

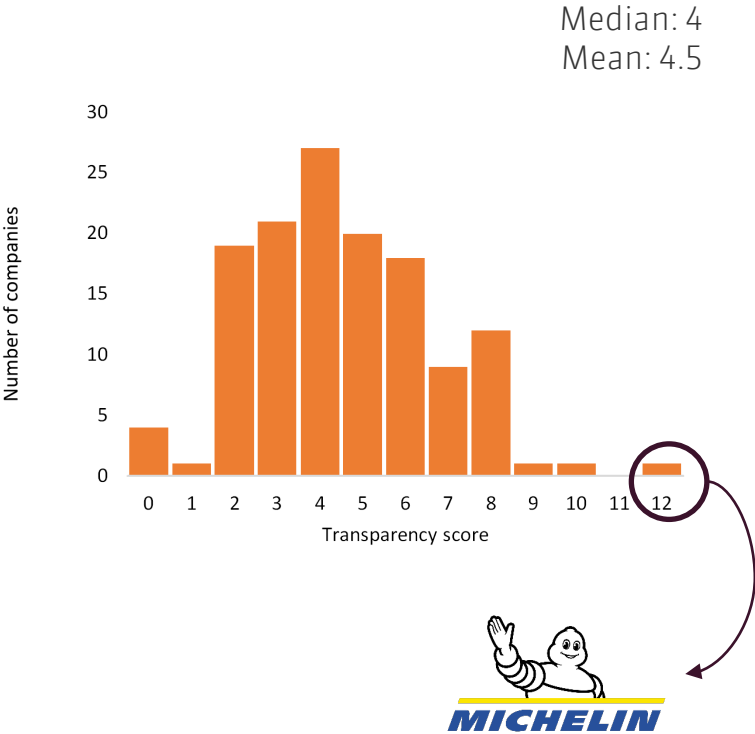


Findings

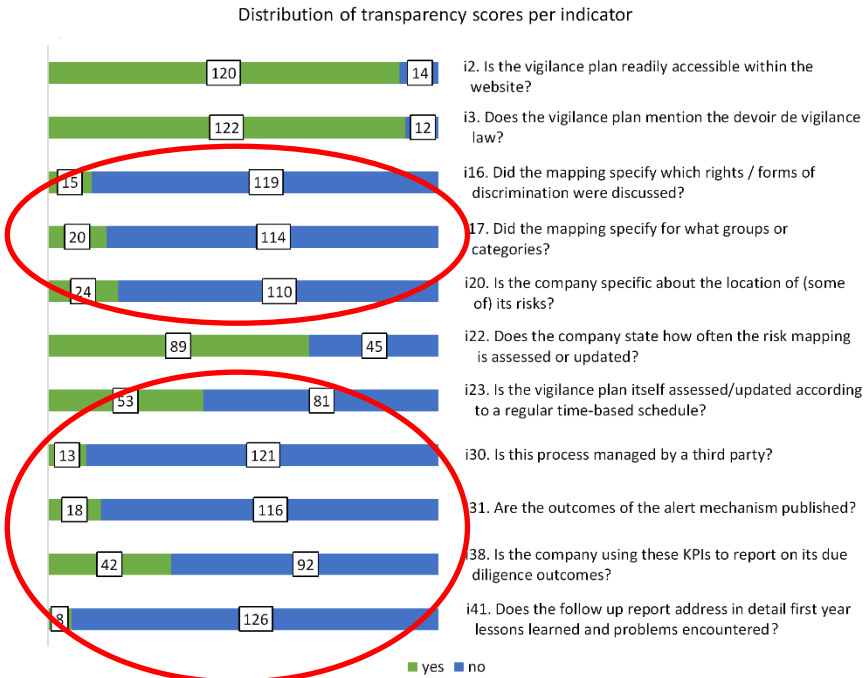
Transparency --12 indicators



Distribution of scores



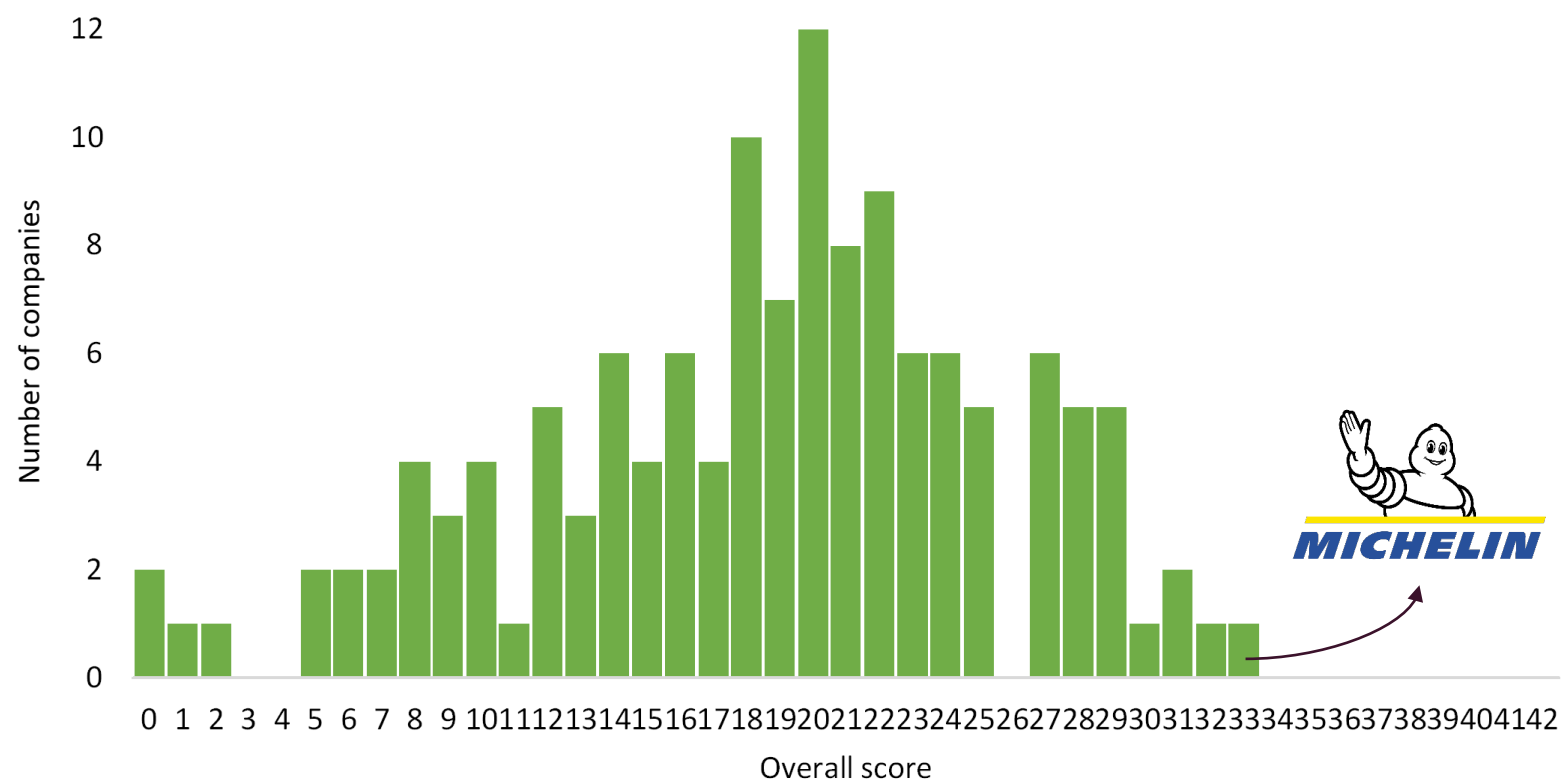
Breakdown



Findings

Overall performance

Distribution of scores

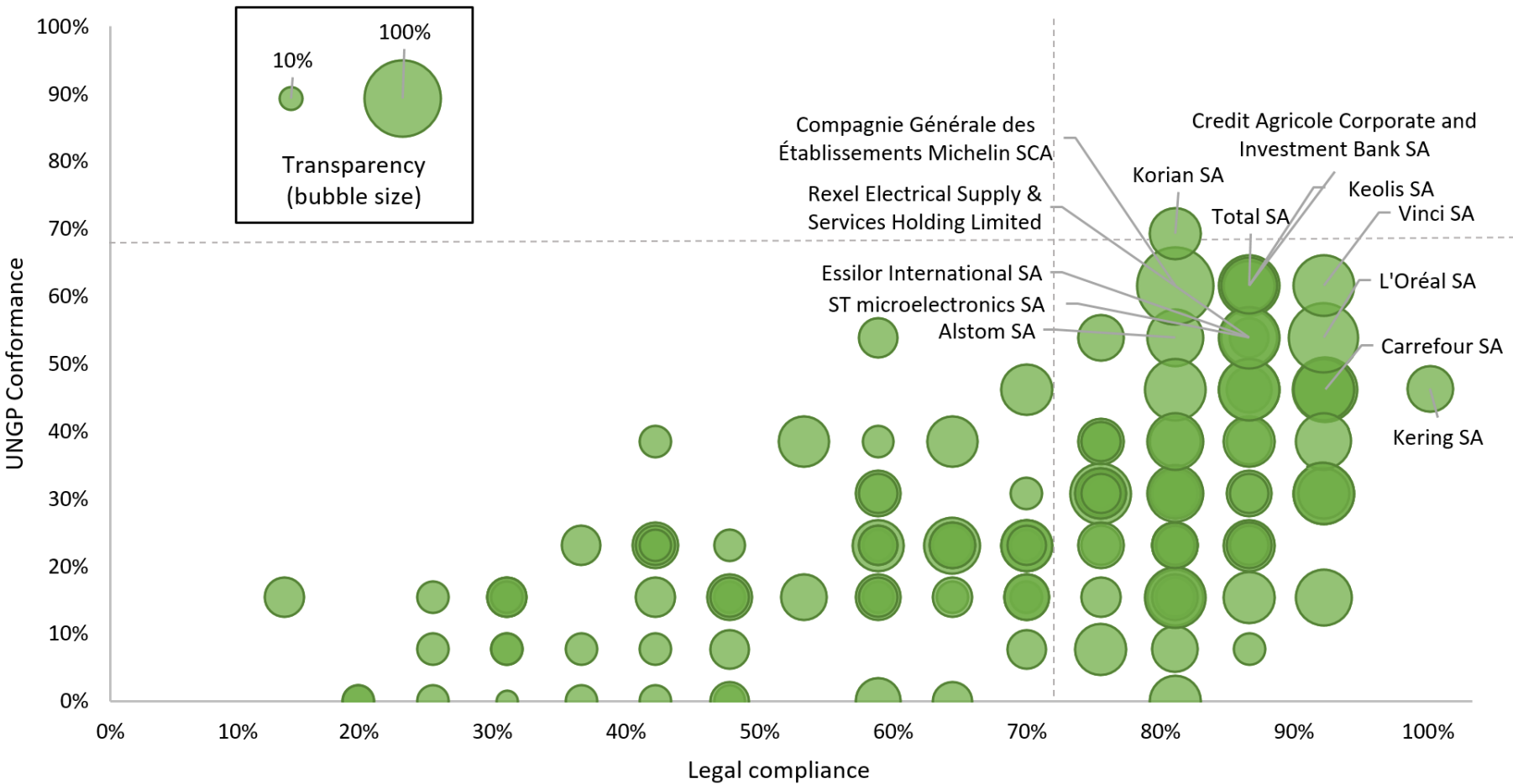


Findings

Overall performance

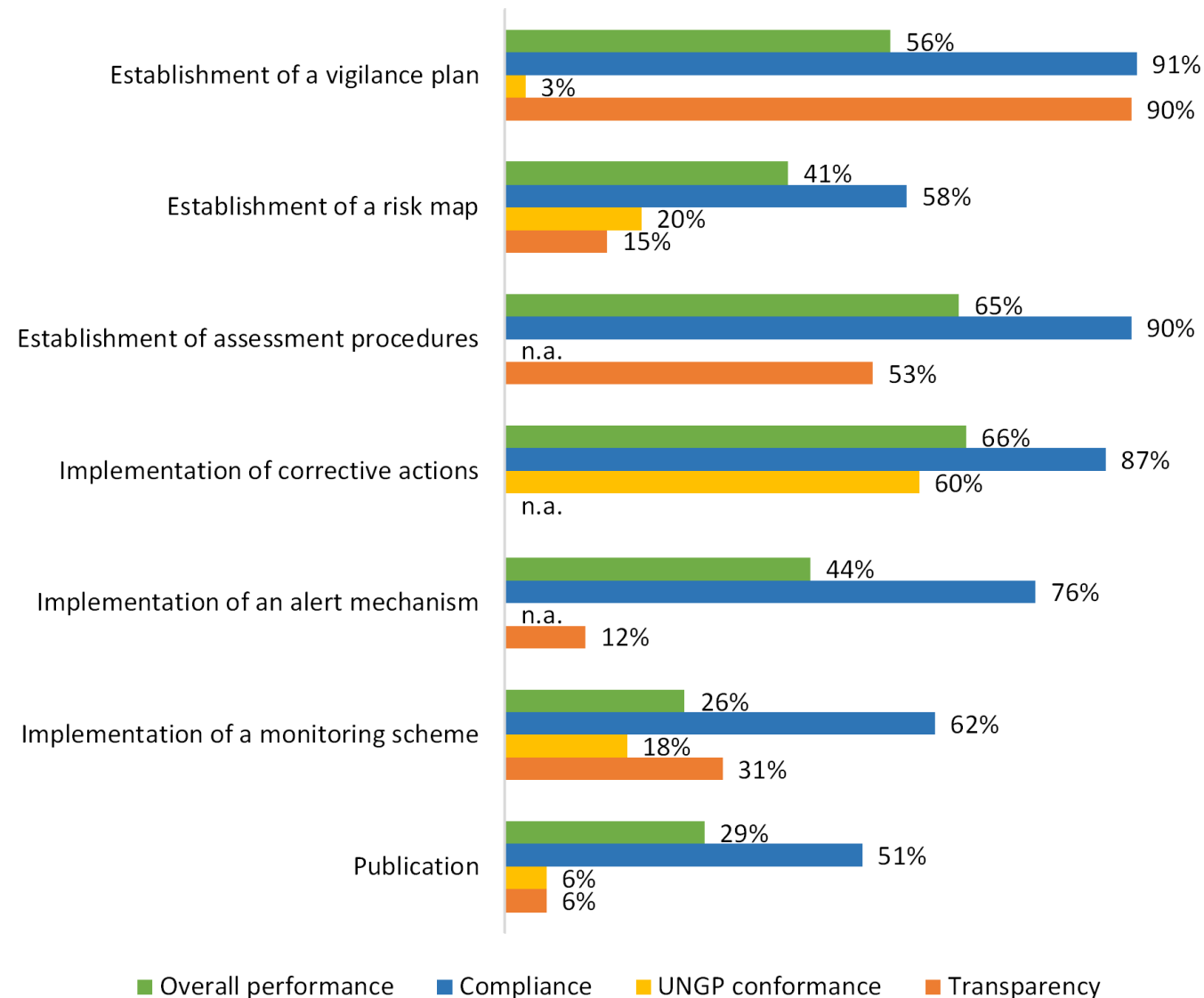


Distribution of scores



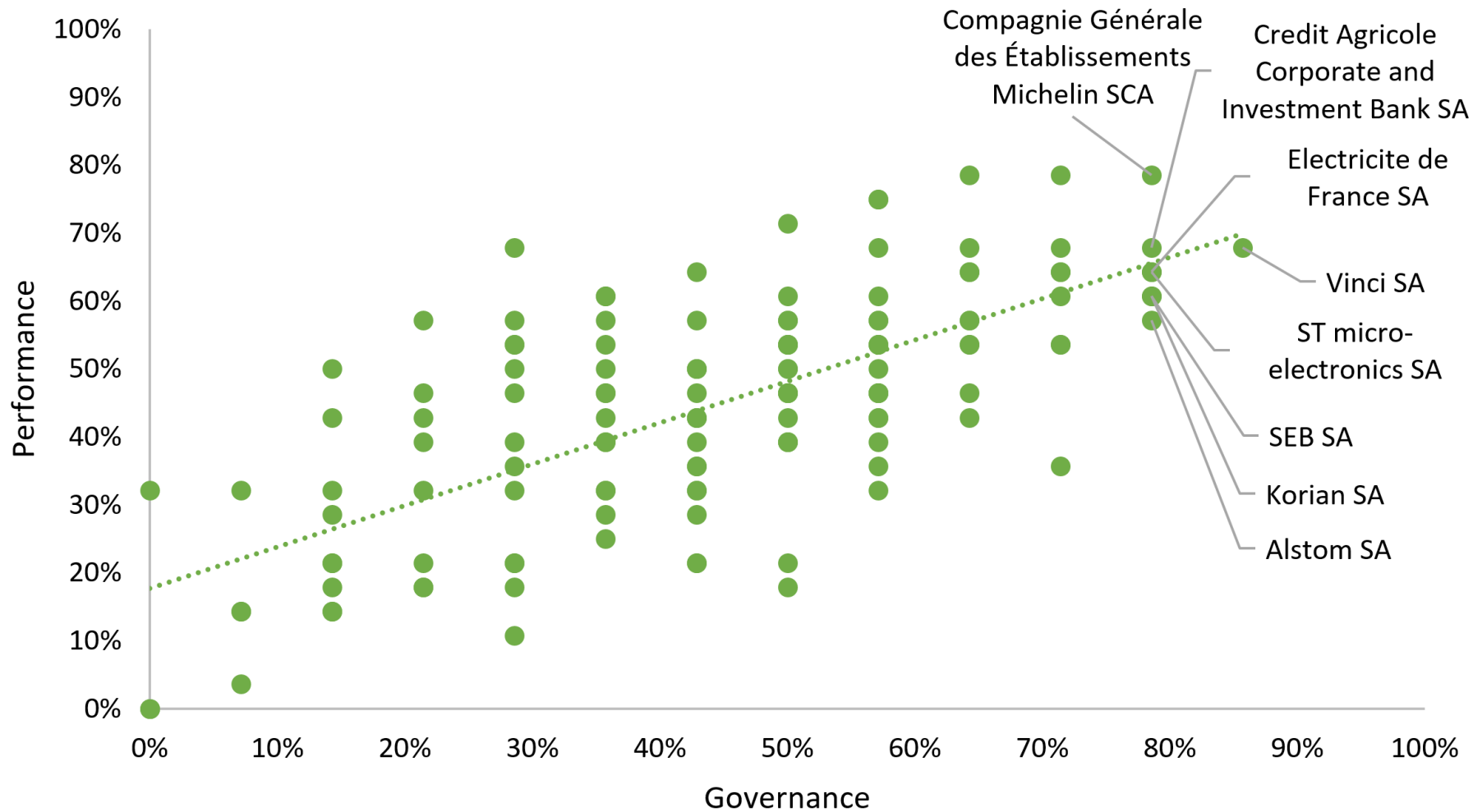
Findings

Overall performance



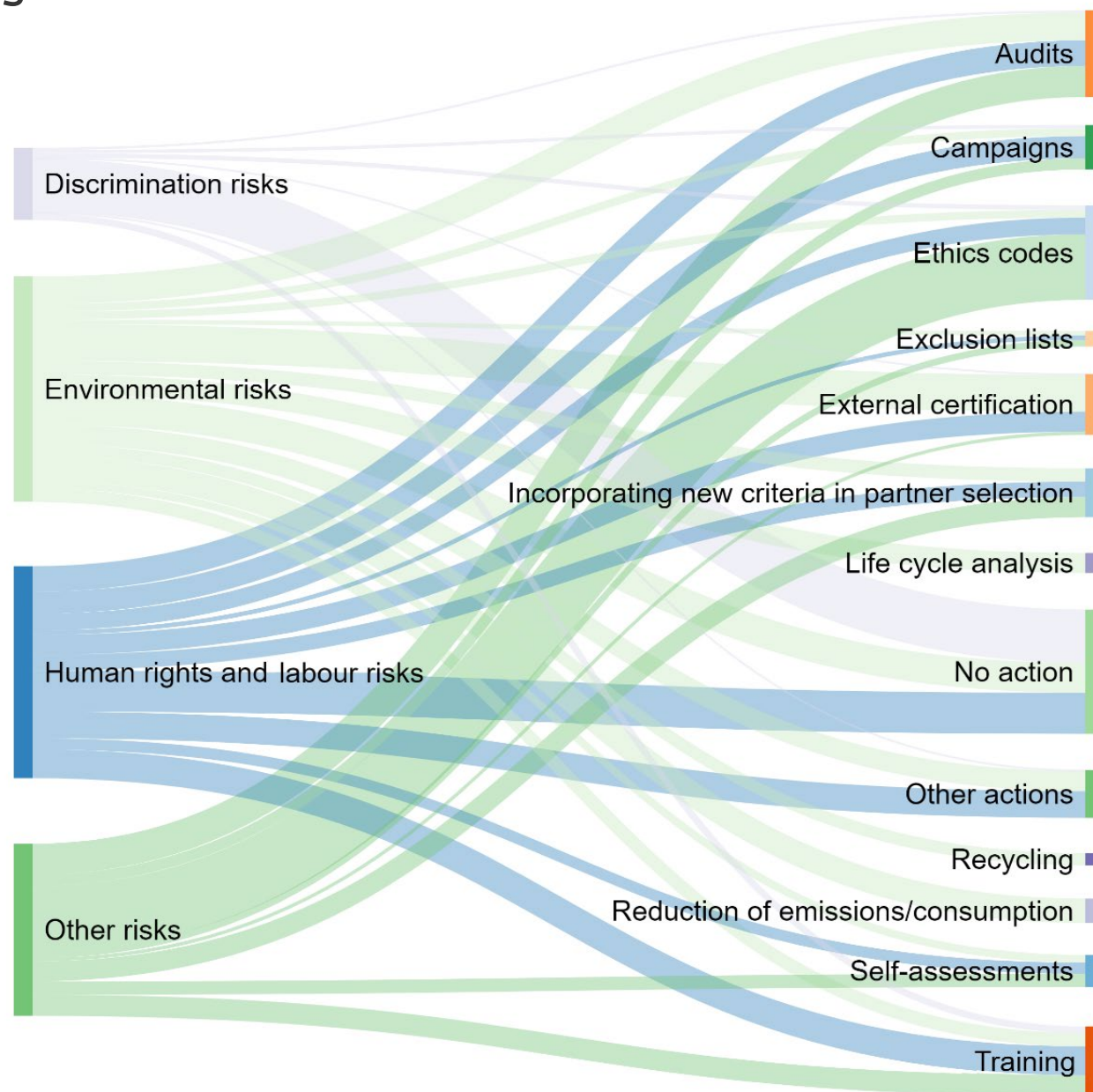
Key Takeaways

Stronger governance is associated with more robust mitigation measures.



Key Takeaways

Risks



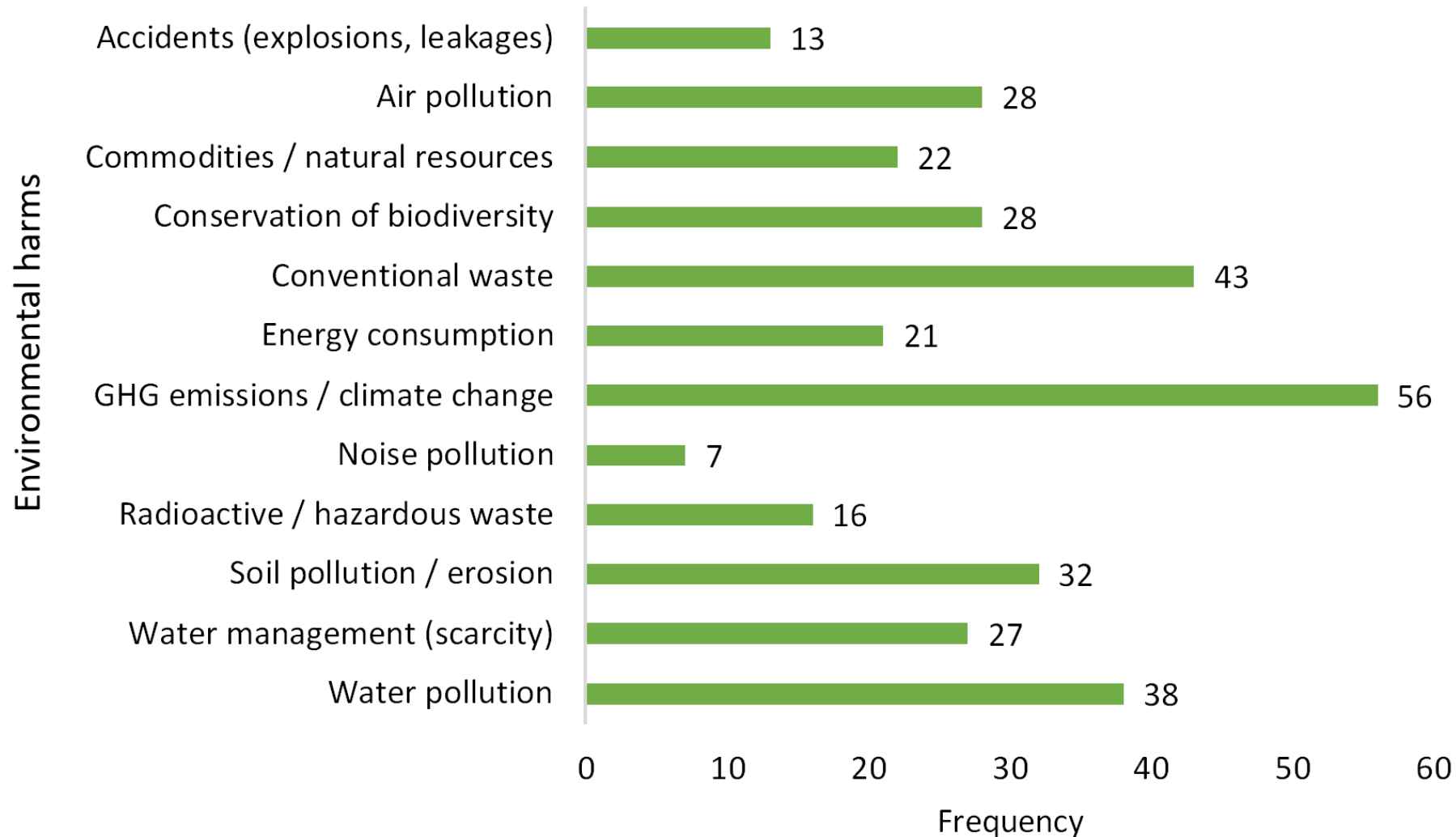
Key Takeaways

KPI heterogeneity



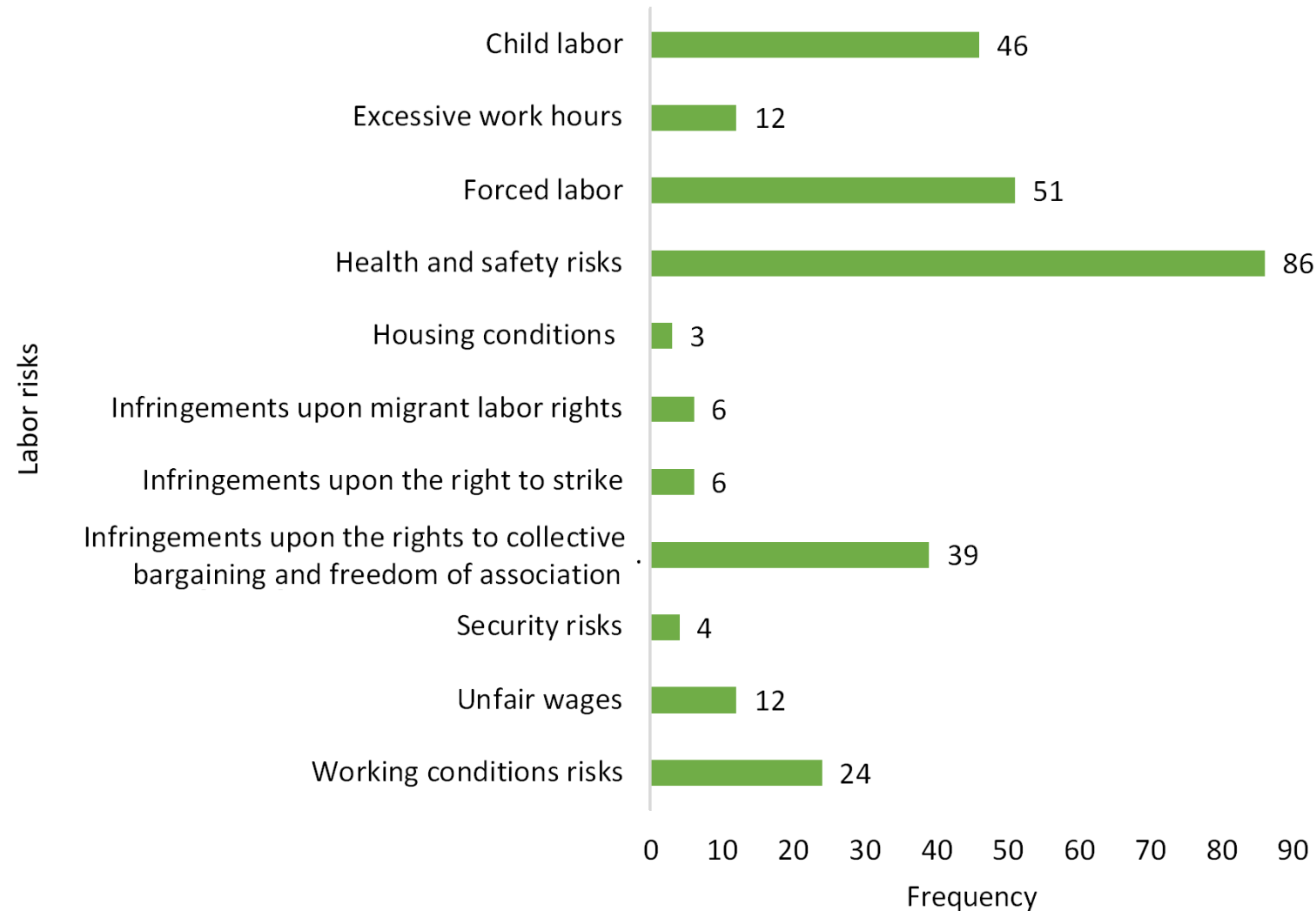
Key Takeaways

Environmental impacts



Key Takeaways

Labor impacts



Claire Bright, PhD



- The Wider Context
- Developments at the EU Level

Devoir de Vigilance

The wider context



- **Rana Plaza** building collapse in 2013
 - 1134 workers died, thousands were injured
 - Public outcry
- Devoir de Vigilance Law developed with a **twofold objective**:
 - **Enhance corporate accountability** in order to prevent business-related human rights or environmental harms
 - **Improve access to remedy** for the victims

- French Devoir de Vigilance Law paved the way for the recognition of an overarching corporate duty to exercise due diligence at the domestic, European and international level.
- Growing awareness of the limitation of voluntary approaches and soft law regulation
 - 2019 Corporate Human Rights Benchmark assessment of 200 of the largest companies in the world: nearly half (49%) of companies scoring zero against every human rights due diligence indicator
 - Study for the European Commission on ‘Due Diligence Requirements Through the Supply Chains’: just over one-third of business respondents indicated that their companies undertake due diligence which takes into account all human rights and environmental impacts.

- Wide spectrum of measures implementing the UNGP's human rights due diligence requirements in Europe:
 - E.g. Regulations imposing **reporting requirements**:
 - › The UK Modern Slavery Act 2015
 - Regulations imposing **issue-specific mandatory due diligence**:
 - › E.g. The Dutch Child Labour Due Diligence Act 2019
 - Regulations imposing **general mandatory human rights and environmental due diligence**:
 - › The French Duty of Vigilance Law 2017

- Momentum for an **overarching mandatory due diligence regulation**
 - Campaigns throughout Europe and at the EU level
 - Growing number of legislative initiatives; e.g.
 - **The Swiss Responsible Business Initiative** launched in 2016 – popular vote on 29 November 2020.
 - **The Norwegian Draft Act** published in November 2019
 - **German ‘draft key points’** of a Federal law on strengthening corporate due diligence to prevent human rights violations in global value chains released in July 2020.

Devoir de Vigilance

Developments at the EU level

- Study for the European Commission



Study for the European Commission on Due Diligence Requirements Through the Supply Chains



Regulatory Option

Option 1: No policy change (baseline scenario)

Option 2: New voluntary guidelines / guidance

Option 3: New regulation requiring due diligence reporting

Option 4: New regulation requiring mandatory due diligence as a legal duty of care

Sub-option 4.1: New regulation applying to a narrow category of business (limited by sector)

Sub-option 4.2: New regulation applying horizontally across sectors:

Sub-option 4.2(a): applying only to a defined set of large companies

Sub-option 4.2(b): applying to all business, including SMEs

Sub-option 4.2(c): general duty applying to all business plus specific additional obligations only applying to large companies

Sub-option 4.3: Sub-options 4.1 and 4.2 accompanied by a statutory oversight and/or enforcement mechanism:

Sub-option 4.3(a): mechanisms for judicial or non-judicial remedies

Sub-option 4.3(b): State-based oversight body and sanction for non-compliance

Study for the European Commission on Due Diligence Requirements Through the Supply Chains

- Key takeaways:
 - The majority of the stakeholders supported the introduction of a general requirement at EU level which would mandate companies to undertake human rights and environmental due diligence in their own operations and throughout their supply chains.
 - Regulatory option which would yield the greatest positive social, environmental and human rights impacts
 - nearly 70% of companies surveyed anticipated that mandatory human rights and environmental due diligence legislation would benefit business

Devoir de Vigilance

Developments at the EU level



- 29 April 2020: announcement of the commitment of the European Commission to **introduce a legislative initiative** on mandatory human rights and environmental due diligence in 2021
 - **Human Rights** and a **just transition to a low-carbon economy** must be at the heart of the recovery plans post COVID-19.
 - Idea of a **new social contract**
- Text for a **Draft Directive on Corporate Due Diligence and Corporate Accountability** released on 11 September 2020 by the European Parliament's Committee on Legal Affairs

Devoir de Vigilance

Developments at the EU level



- Importance of the lessons learnt from the French experience as outlined in the *Devoir de Vigilance* study
 - Relatively higher levels of compliance
- However, key weaknesses identified
 - Low conformance with the human rights due diligence expectations set forth in the UNGPs.
 - Lack of input from local community and engagement with relevant stakeholders.
- Need for companies to go beyond the letter of the law and fully embrace the objectives that the law seeks to achieve

Thank you very much!



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