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Internationale Transportarbeiter-Föderation  
Международная федерация транспортников  
الاتحاد الدولي لعمال النقل

Mr Malcolm Wilson  
Chief Executive Officer  
XPO Logistics Eue



*Via email*

Our ref: OGS/SMC/RS/jm

01 October 2019

**XPO Logistics Europe - Formal Notice to Comply with the French Corporate Duty of Vigilance Law – Article L. 225-102-4.-I and II of the French Commercial Code**

Dear Mr Wilson,

We write as a coalition of interested unions, which represent, and are otherwise concerned for the labour conditions and protections of, workers directly employed by XPO as well as those working along the company's international supply chains. As set out in detail in this letter, this includes those employed by XPO's suppliers, subsidiaries, and subcontractors as covered by the French law n ° 2017-399, *loi de devoir de vigilance* (often termed the French Corporate Duty of Vigilance Law, hereafter "the Law"). With our mandate to ensure the utmost protection for workers around the world, we are compelled to write in relation to XPO actions, or lack thereof, in response to this Law, which came into force in March 2017.

***Coverage***

As you will be aware, the Law requires certain actions on the part of limited liability multinational companies that have more than 5,000 employees in France or more than 10,000 employees worldwide. XPO Logistics Europe, with its headquarters in Lyon, France and with more than 13,000 employees in France and upwards of 56,200 across Europe, clearly comes within this legislation, independently of its parent company XPO Logistics headquartered in the United States. Our unions represent XPO Logistics Europe workers across France, the UK, Spain, Belgium and in at least one of its subsidiaries in the United States.

We note that XPO Logistics Europe does not dispute that it comes within the ambit of the Law and references it in its Annual Report of 2018. We simply make note here that we consider that the XPO parent company based in the United States, with more than 50% capital in a French subsidiary, may itself be held to obligations under this law.

## **Requirements of the Law**

As XPO will be aware, the Law requires all affected companies to establish, effectively implement and publish a “Vigilance Plan”. It is expected that the Plan published by XPO Logistics Europe:

*“shall include the reasonable vigilance measures to allow for risk identification and for the prevention of severe violations of human rights and fundamental freedoms, serious bodily injury or environmental damage or health risks resulting directly or indirectly from the operations of the company and of the companies it controls... as well as from the operations of the subcontractors or suppliers with whom it maintains an established commercial relationship, when such operations derive from this relationship.”*

The Law protects the whole range of human rights and fundamental freedoms, and this includes core labour standards, such as the right to organise in full freedom and to be free from gender-based discrimination.

The Law, therefore, requires XPO to carry out a due diligence assessment and a measured and methodological prevention and mitigation of risks that are thus identified throughout its operations, **including** those of XPO’s subsidiaries, its suppliers and subcontractors.

Five particular aspects of an *adequate* Vigilance Plan are clearly set out in the text of the Law itself:

1. *A mapping that identifies, analyses and ranks risk;*
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 action to mitigate risks or prevent serious violations;*
4. *An alert mechanism that collects reporting of existing or actual risks, developed in working partnership with the trade union organisations representatives of the company concerned; and*
5. *A monitoring scheme to follow up on the measures implemented and assess their efficiency.*

Clearly, the **first step** XPO Logistics Europe must take is the **mapping of its supply chain**. A risk assessment and ranking of risk to follow can mean nothing without this clear map - the company cannot honestly and accurately attempt to assess and rank risks without knowing exactly where to look. As the company states that 54.8% of XPO Logistics Europe transport operations in 2018 were subcontracted, this is particularly urgent.

The company states that it “conducts the majority of its European operations through its subsidiary XPO Logistics Europe”. Furthermore, we understand that subsidiaries of XPO Logistics Europe include Jacobson Holding Company, operating as far afield as Des Moines, Iowa in the United States and that employees of XPO Logistics Europe work across the continent and further afield in locations such as Morocco, Russia, China and Hong Kong. Such a complex network requires additional efforts to thoroughly map a complete and transparent supply chain.

## **XPO Logistics Europe Compliance**

We note references to a “Vigilance Plan” in the latest XPO Logistics Europe annual report published in 2019 (a two page ‘*Business Ethics*’ section of the *XPO Logistics Europe [Corporate Social Responsibility Report 2018](#)*, equivalent to pages 60-1 of the French version of [2018 XPO Logistics Europe Annual report](#)). We have approached this information provided with the aim of learning more about where the company is directing its best efforts to avoid breaching human rights, particularly the labour rights of its workers, in its operations.

We consider that this two-page section is an **entirely inadequate** attempt to fulfil the requirements and does not comply with the Law. The limited few paragraphs included are severely lacking and we are disappointed

at the lack of XPO transparency. It is abundantly clear to us that this meagre attempt cannot begin to fulfil the requirements of this innovative law that intends to hold businesses to account for activities along their international supply chains.

It is clear that XPO either has not fully appreciated the extent of the demands of the Law when preparing its Vigilance Plan, has not shared it publicly as required, or, as seems most likely considering the entirely inadequate information shared in the “Plan”, that this was not even a genuine attempt and the company does not intend to comply.

We have been unable to locate any further information on XPO’s Vigilance Plan. If a more full and adequate Vigilance Plan has, in fact, been prepared by the company but has not been shared, we call upon the public sharing of this document in a way that complies with the Law. We remind XPO that if stakeholders are unable to easily locate and retrieve a Vigilance Plan its obligations under the Law remain unfulfilled.

Much information that we would expect to see in XPO’s Vigilance Plan is missing from the information shared and we have extensive concerns in relation to **all** of the five requirements specified in the law itself. We do not consider that the Vigilance Plan shared by XPO provides the information demanded by **any** of these five points of the Law.

We refer the company to the extensive and detailed [Vigilance Plans Reference Guide](#) recently published by the French NGO Sherpa in February 2019.<sup>1</sup> As an authority on international legal responses to corporate human rights abuses and the advancement of ethical globalisation, we call upon XPO to follow Sherpa’s guidance and to amend its Plan accordingly. We have carried out our own preliminary assessment of XPO Logistics Europe’s publicly available “Vigilance Plan” as against this Guidance and find it lacking in every aspect. Please see the **Annex** to this letter for some further indication of the Plan’s inadequacies. We would welcome an invitation to engage with XPO in order to discuss the Plan’s inadequacies in detail and work together to try to remedy this.

### ***Action Requested***

In the absence of any public document close to the level of detail required for an *adequate* Vigilance Plan, we are forced to challenge the existence of an XPO Vigilance Plan. If XPO is unable to share a more detailed plan that already exists, in accordance with the Law we, as concerned trade union parties, call on XPO to fulfil its obligations to establish and implement a full and adequate Vigilance Plan. The regular evaluation, action and monitoring required of a Vigilance Plan show that the Plan is intended as a ‘living’, evolving document. XPO must act immediately to improve the poor transparency, very limited content, lack of justified actions and evaluations of outcomes of its Vigilance Plan.

As stated above, the very first step for a company must be to **map its entire supply chain** – including **all suppliers, subcontractors and subsidiaries** - and to **publish this as part of the Plan**. The company cannot fairly and genuinely rank risks within its operations without having a clear map of all of its operations. Even more importantly, other XPO stakeholders cannot follow, utilise and respond to the company Plan – including its ranking of risk - without this initial level of transparency. If a company cannot be held accountable to its Plan, the Law is meaningless.

Furthermore, the law clearly states that the Plan should include the mapping, procedures, monitoring and mechanisms, which lead to the ranking, decisions and outcomes. It is, therefore, insufficient to present one or two examples of what a company considers to be a risk area as a token solitary gesture of the outcome of

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<sup>1</sup> The Sherpa Vigilance Guidance, 1st Edition, February 2019. Available in French at [https://www.asso-sherpa.org/wp-content/uploads/2018/12/Sherpa\\_VPRG\\_web\\_pagepage-min.pdf](https://www.asso-sherpa.org/wp-content/uploads/2018/12/Sherpa_VPRG_web_pagepage-min.pdf)

“ranking of risk”. This does not comply with the Law. As such, we call upon XPO to make **extensive** changes and publish a full and *adequate* Plan in line with the Sherpa Guidance, which must first include the publication of a thorough mapping of its supply chain, the methods used thereafter to assess and rank the risks throughout and the outcomes of this assessment.

Transparency is a prerequisite of every aspect; without sharing the mapping, methodology and considerations taken into account at every stage of the process, the assessment, and justifications for the ranking of risk and decisions taken, as well as the evaluation of anonymised outcomes of grievances, stakeholders are uninformed. Again, the Law would be meaningless in such a situation.

XPO’s Slavery and Human Trafficking statement of actions taken against modern slavery, in accordance with the UK Modern Slavery Act 2015, offers a limited but useful comparison. Since its first report in 2016, XPO has annually identified that the “main area where there is a risk that human trafficking and modern slavery could occur is sub-contract labour and agency workers”. This is clear ranking of a top risk, which is not clearly set apart or explained in XPO’s French Vigilance Plan. This is despite recruitment agencies being key suppliers. Agency workers are also not included in XPO’s general employee figures.

Due diligence stemming from this UK-based analysis “resulted in a reduction in the number of recruitment agencies that [XPO] work with” by the time of its 2017 statement, presumably because others did not pass the increased screening introduced. By the end of 2018, XPO claimed to work with only two main recruitment agencies.

If the risk of such serious human rights violations as trafficking and modern slavery was consistently identified in the UK, it is difficult to comprehend why this risk is not tackled in detail in the Vigilance Plan under the French law, particularly as all European operations are managed through XPO Europe based in France. Though the company Plan states that it “pays particular attention to [XPO] transport subcontractors and to the agency partners who supply some of [XPO’s] workers”, there is no systematic approach and ranking of risk related to recruiters set out. It does reference a due diligence process in UK operations (only) for new suppliers that includes prevention of slavery and human trafficking. (There is no express mention of XPO’s Anti-Slavery and Human Trafficking Policy).

Have greater risks of slavery than in other XPO operations been found in the UK? We demand reassurances that XPO is carrying out the necessary due diligence throughout its supply chain wherever there are risks of egregious human rights breaches, and further justification of any ranking of risk by country, business partner or otherwise. This is just one example of an omission we can identify because of the company’s public response under other reporting requirements. The French law should cover all human rights risks and justify the ranking of them.

As discussed above, a full mapping of the supply chain and gauging of risk is vital in a situation where a huge 54.8% of labour is subcontracted. This is even more pressing where subcontracted labour has been consistently identified as a high-risk area. It also becomes important to map and distinguish between where XPO claims to use subcontract-labour as opposed to bona fide subcontractors and that this difference be explained and justified.

The objectives of the French law are clear. As such, in accordance with article L 225-102-4-I and II of the French commercial code, as interested trade union organisations, we hereby effect our right to demand that the company fully comply with its obligations to map its supply chains and publish a new and comprehensive Vigilance Plan **within three months from the date of this letter**. If XPO is incapable of completing this in such a time, we request immediate communication of this fact, production of the work-in-progress mapping

completed so far in addition to a detailed plan for its completion followed by production of the final information within a clear, fixed and prompt deadline thereafter.

Otherwise, we would be forced to request the competent jurisdiction to order you, if necessary under periodic penalty payments, to bring you into compliance with the legal requirements.

***Preliminary Queries for XPO Immediate Response:***

In addition, we set out below particular queries we have in relation to XPO's Vigilance Plan, which the company should be equipped to respond to in the immediate term:

1. As a US company with a large French subsidiary qualifying under the French Duty of Vigilance Law, has the parent XPO established its own Vigilance Plan, in parallel to any XPO Logistics Europe Vigilance Plan?
2. Does a detailed XPO Logistics Europe Vigilance Plan exist (*beyond the references to it in the 2-page 'Business Ethics' section of the XPO Logistics Europe [Corporate Social Responsibility Report 2018](#) (equivalent to pp60-1 of the French version of [2018 XPO Logistics Europe Annual report](#))*)?
3. If it exists, where is this detailed Vigilance Plan publicly available?
4. This coalition of unions representing XPO workers around the world is not aware of any XPO Vigilance Plan having been shared with any XPO worker or their representatives at any of its locations. Please provide details to remedy any misunderstanding of this fact.
5. This coalition of unions representing XPO workers around the world, is not aware of any workers or their union representatives (as clear company stakeholders explicitly required to be involved in this process by the text of the Law), having been consulted in the development of:
  - i) The Vigilance Plan in general, or
  - ii) The establishment of an alert mechanism.Please provide details to remedy any misunderstanding of this fact.
6. How does the company propose to involve workers and their representatives in the further development and amendment of the Plan (in accordance with the Sherpa guidance), its monitoring and the evaluation of the mechanisms?
7. As in 2018 54.8% of XPO Logistics Europe transport operations were subcontracted, has there been a **detailed mapping of these subcontractors, as well as suppliers and subsidiaries**, for the purposes of the risk mapping? Where can the results of this mapping be found?

We invite XPO to also consider its responses to the above when overhauling its Plan and the procedures it puts in place, and to pay particular attention to the requirement for the consultation and long-term involvement of trade union representatives in all processes.

For the avoidance of doubt, it is clear that the requisite union involvement in this process of negotiating Vigilance Plans includes **all** trade unions of **each** parent, subsidiary, supplier and subcontractor company, included by virtue of this Law, across the supply chain network. As XPO's supply chain and corresponding obligations are international, the relevant Global Union Federations (GUFs), such as the ITF, should be involved and, indeed, are best placed to assist the company in fulfilling its obligations.

Since 2015, the unions in this coalition have consistently approached XPO internationally, nationally and locally in order to encourage the multinational to engage with its workers and their union representatives on pertinent labour rights issues, including the right to organise freely, misclassification of its workers and gender-discrimination and harassment at XPO sites. We are disappointed that the company has ignored repeated written calls to urgently sit down with the ITF and affiliated unions to address legitimate global concerns of its workers. Furthermore, it has failed to formally acknowledge serious accusations, dismissed them by requesting detailed evidence from the unions in place of carrying out its own thorough investigations

and has typically responded with a bare minimum of policy changes in response. In short, the company has failed to engage in a meaningful way. As such, we find ourselves compelled to take action under this French legislation in order to bring XPO to recognise its duty of vigilance and human rights obligations to its workers in France and across the globe.

We trust that XPO Logistics Europe will now rise to these standards expected of a large multinational operating in France and we look forward to the global unions' invitation to engage in the development of a comprehensive and adequate Vigilance Plan within the three-month deadline initiated by this letter of formal notice.



Stephen Cotton  
ITF General Secretary



Livia Spera  
ETF Acting General Secretary



Ruwan Subasinghe  
ITF Legal Director

The **XPO Global Union Family** is currently made up of trade unions from France, the UK, Spain, Belgium, the USA and Italy. Their goal is to get XPO to engage in dialogue at a global level to achieve decent standards, including good industrial relations, in all countries of operations.

All of the below unions are united in their endorsement of this letter and demand that XPO Logistics Europe provide within three months a full, adequate and public vigilance plan that is fit for purpose under the French law as set out in more detail in this letter:



## Annex

Preliminary Evaluation of XPO Logistics Europe's limited information discussing a 'Vigilance Plan' published in their 2018 annual report (above) in the framework of the [Sherpa NGO](#)

The French NGO Sherpa has established a framework to assess the adequacy of Vigilance Plans (VP). It deliberately does not talk about "best practices", which will depend on each company's operating procedures.

The Guidance is divided into two areas, concerning general points of the Law, and the five specific (but non-exhaustive nor exclusive) requests of companies in the law. Points in black are requirements in the general Guidance, while preliminary assessment of the relevant VP is in blue.

**I. General points:**

**1. Content of the Duty:**

- Formalised, accessible, transparent, exhaustive and sincere plan available visibly on XPO website.
- Both the plan and the implementation analysis report (considering the effectiveness of the measures in place) should be updated each year and both included in the annual report and compare progress each year.
- Difficult to find the referred to Plan (2017-2019). It is not easily accessible/searchable online or via the website directly.
- It does not offer any transparency. The only concrete items refer to other documents, some of which do not appear to be public.
- It is not full and exhaustive. It sets more general intentions but not specific details. It consists of a small number of paragraphs in the 2017 annual report only. It should be retrievable as a clearly labelled section of the annual report.
- In the 2018 report there is only *reference* to the VP 2017-2019. It is not restated nor apparently amended or updated. The document states that the Plan “lists the measures we have already implemented, and those we intend to implement”, but where is it?
- There is no assessment of effectiveness or efficiency of measures. It states simply that they provide safe working conditions. An example of providing training to their drivers on how to react in the context of the migrant crisis is mentioned, but neither the justification nor content is elaborated nor its impact explained.
- There is no mention of change or progress as a result of any action taken. Indicators need to be put in place and used to show what has improved as a result of any actions.

**2. Companies liable for the obligation of vigilance:**

- Should contain information about the company’s own determination that the company is within the scope of the Vigilance Law.
- Numbers of employees are presented in the CSR report – 50,301 employees (not including agency workers), which clearly brings its operations under the Law but the link is not made to the law. It is accepted as fact that the company is covered.
- The above figure is presented as the “total headcount”, without explanation as to whether these are direct or indirectly employed through subsidiaries. The numbers of employees by location must be shared.
- It should be clearly set out as to whether any XPO Europe subsidiaries included in the company totals, themselves, reach the levels to require their own vigilance plan under the law.

**3. Organisational Perimeter:**

**a. Controlled companies**

- The Plan should present information of the group’s controlled companies, whether each of them is included (or not) in the parent company’s Plan and why (not)?
- The XPO Subcontracting Charter, which the company declares forms a part of the due diligence approach and was updated in 2018, it claims is shared on the homepage of the Transport Subcontractors database. This is not accessible/retrievable externally.

**b. Supplier and subcontractors:**

- A list of suppliers and subcontractors with an established commercial relationship covered by the Plan should be provided. These should give precise details of addresses, employee numbers etc.
- If businesses are unable to identify these, even partially, they should reorganise in order to be able to do so, with timelines and intermediate objectives in place.
  - The XPO Logistics Europe CSR report discloses that 54.8% transport operations were subcontracted in 2018. These companies are not listed and no further information is provided. This information is particularly important where the company notes that a very large majority of the company's operations are via subcontractors.
  - French subsidiaries that exceed the numbers threshold are also independently covered by the Law and should be identified, but are not.

#### 4. Substantial Perimeter:

- The company should list the rights it should respect.
- Human rights, health and safety and environmental are interdependent and indivisible.
- Conflicts between French, local and international law should be identified and how the company will solve this.
  - The Report does not mention in any detail the rights it must respect.
  - The only cursory mention, in very generic terms, is that it “pay[s] particular attention to the human rights of all employees” and “the human rights of other”, that “health and safety is already a core pillar of [its] CSR approach” and that it “is aware” of its main environmental risks and responsibilities, without setting out how it reached the decision about what these were (see below).

#### 5. Temporal Perimeter – When to be vigilant

- Vigilance must be consistent.
- The Report must be public and regularly updated – a ‘living’ document.
  - The original Plan, though referred to, is not re-shared or even re-stated.
  - The Plan is titled as the Plan for 2017-19 so the company seems to have no intention of revising the Plan until after 2019.
  - The Risk Committee overseeing the implementation and effectiveness of measures taken meets quarterly. The Compliance department is only mentioned in the context of the Whistleblowing line and subsequent investigations; but the procedure for this is unclear; e.g. whether the Compliance department has a mandate independently or takes direction from the Risk Committee; whether the department has any other roles or duties in this framework, etc.

#### 6. Interpersonal perimeter – who is acting?

- Stakeholder engagement should be visible in the Plan – and how they are selected; the methods of interactions and results.
- Any multistakeholder initiatives used at local, regional, international levels must be published.
- Governance methods should be included.
  - There is no mention of any other stakeholder involved or multistakeholder initiatives used. Union involvement is not mentioned in relation to the elaboration of the Plan, or at all.

## II. Specific 5 points:

### 1. Risk Mapping

- a. Risk identification
  - Plan should contain the *methodologies and tools* for identification



- Comprehensive disclosure required.
- Each region, sector, product, entity, activity should be considered.
  - The information given in relation to the risk mapping, is largely some (extremely limited) *results* of the risk mapping – i.e. that they have updated their safety manual; that they have identified drivers at risk in relation to the migrant crisis and provided training.
  - There is little information as to how risks have been identified.
  - One token example is given of the Our Transport Subcontractors database to track the performance of suppliers and subcontractors, “blacklisting unsafe partners”.

b. Analysis and prioritisation:

- Prioritise not exclude – no risks should be ignored.
- According to severity → according to scale, extent, reversibility of damage, probability of aggravation of the damage.
- The prioritisation itself should be accessible, comprehensive, sincere and mapped.
  - There is no information at all as to factors considered in decisions about priorities.
  - ALL risks should be systemically mapped, and ranked according to severity, not just a token one or two.

**2. Regular Evaluation procedures regarding the situation of subsidiaries, subcontractors or suppliers with whom there is an established commercial relationship, in line with the risk mapping.**

- Tools, methodology, objectives and timetable for assessing the situation of subsidiaries, suppliers and subcontractors must be published.
- Measures must be multiple.
- The results of the evaluation and the indicators should be published.
- Corrective measures should be published with a timeline for achieving them.
- These other entities (suppliers, subsidiaries, subcontractors) have not even been identified. Therefore all of the requirements depending on this first step have also not been fulfilled.

**3. Appropriate actions to mitigate risks or prevent severe impacts**

- XPO must set up preventive, mitigation and remediation measures, based on priority and resources.
- For each risk the company should set out a summary of the measures, timeline and indicators (and the methodology for selecting these).
- “Various initiatives” are mentioned. No information is provided to show what has been done.
- One example of the “Subcontracting charter” is noted, as a way of ensuring that suppliers and subcontractors are aware of XPO expectations in relation to rights protection. This document does not appear to be externally accessible.
- No further measures are discussed.
- Preventive and mitigation measures should be based on risk and resources channelled to where needed. It is not sufficient to only expect certain behaviour of subcontractors and suppliers. What has the company done to ensure these expectations are communicated and enforced?
- NB: this requirement 3 of the Law is distinct from requirement 2.

**4. An alert mechanism relating to the existence and realisation of risk:**

- a. Various tools to be established to form the alert and complaint mechanism
  - These should be decentralised.

- But also mechanisms should report at a global level.
- It is particularly important that information on these mechanisms be widely disseminated, including their accessibility, adaptability, security and confidentiality.
- This should include the **publication** of processed and anonymised **cases**.
- The report notes that XPO has a whistle blowers' hotline, for reporting issues to the Compliance department.
- Information evaluating this mechanism according to the criteria of accessibility, security etc., is not forthcoming.
- There is no information on whether this is being used by stakeholders, how anonymity is ensured, and no report of the processes followed to investigate, or any outcomes.
- There is no sharing of any cases, or indeed any usage of the mechanism.

b. This in collaboration with the trade unions:

- There is **no mention** in the CSR report of trade unions or their consultation, cooperation or involvement in the methodology. This absence can be assumed to be indicative of non-involvement.

**5. A system monitoring implementation measures and evaluating their effectiveness.**

- There must be monitoring of each risk and globally.
- *Indicators* for means and results must be established and used to assess effectiveness.
- There should be a way of representing follow-up graphically.
- The governance of the monitoring should be indicated.
- The "Risk Committee has the mission to oversee the implementation and effectiveness of measures taken" but there is **no publication** of outcomes of measures taken, the methods of the risk committee's assessment nor evaluation as to impact or effectiveness.