Setting Higher Standards:

How Governments Can Regulate Corporate Human Rights Performance

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Executive Summary

In recent years, we have seen a wave of new regulatory frameworks, including legislation seeking to regulate businesses for their human rights impacts.

Starting with voluntary initiatives like the UN's Guiding Principles on Business and Human Rights and more recently with the European Union's Corporate Sustainability Due Diligence Directive (CSDDD), this report assesses the rise and key tenets of business and human rights regulation. It then provides recommendations to governments and companies on how to maximize the effectiveness of the legislation. Much of the regulatory activity has occurred in Europe, but this report argues for enhanced US government engagement.

Central to our prescription is the idea that governments need to develop and enforce performance standards and metrics by which corporate compliance can be assessed and companies held accountable. Regulation is important, but without more data and means for assessing compliance and progress, regulation will not achieve its potential. Below is a summary of recommendations for governments and companies.

Recommendations In Brief

To Governments

1 **Consult and engage**
Governments should consult and engage with international organizations, companies and civil society to address both business needs and the broader human rights interests of society. Each of these key stakeholders has important experience and expertise needed to ensure a robust legislative framework.

2 **Build capacity**
Governments should start building capacity now for the implementation and enforcement of regulatory frameworks, including the new EU-wide legislation, CSDDD. This is best achieved with the creation of national administrative bodies with the expertise, resources and capabilities to define and assess company conduct.

3 **Prioritize the greatest risks**
Governments should first address the most significant risk categories in their primary industrial sectors. This includes collaborating with companies, focusing enforcement efforts on these industries and hiring staff members with subject-matter expertise in these fields.

4 Share information, knowledge, guidance and support
EU governments should collaborate to create consistent and mutually reinforcing national laws. Governments should also work together and with companies to produce guidance, risk assessments and recommendations on how to address risks in key sectors.

5 Develop substantive standards and performance indicators
Governments should work together with other stakeholders to develop substantive standards and metrics to measure progress in company compliance. This should be tailored to each specific industry.

6 Incentivize and sanction
If companies demonstrate progress, governments should reward them for doing so. Companies that fail over time to comply with these standards should be held legally accountable for their non-compliance.

To Companies

7 Start preparing now
All companies should start acting now, including companies that are not directly covered by incoming legislation. Companies should gather as much data as possible on their business operations, their suppliers (Tier 1 and beyond) and their existing systems and processes to determine what is and is not working.

8 Build robust internal systems
Companies should invest the time and resources to build the capacity to integrate human rights into hiring and training of staff and those in their value chain. They also should improve collaboration among legal, human rights, sourcing and procurement teams.

9 Prioritize risks and focus on outcomes
Companies do not need to solve all human rights issues in their supply chains, and they will need time to build serious performance-based models. They should focus on this objective now and prioritize the most serious risks by looking at their entire supply chains (not only Tier 1). Companies also should concentrate on reforms that are most likely to result in improved outcomes.

10 Engage openly with government
Since addressing human rights challenges responsibly will take time, companies should be transparent and candid with regulators about the risks they are facing and the steps they are taking to address them.

11 Engage meaningfully with stakeholders
Companies should develop meaningful stakeholder engagement plans, engage with stakeholders substantively and use this engagement to inform their human rights approaches going forward.

1. Introduction

For the last 50 years, the demand that global businesses respect human rights has largely focused on promoting voluntary efforts by companies. Initiatives like the UN's 2011 Guiding Principles on Business and Human Rights have helped to normalize the idea that global businesses have some responsibility for addressing human rights challenges linked to their business operations. But overall, these voluntary initiatives have not had a sufficient impact.[1]

It is now clear that, absent government regulation, most companies will not take sufficient steps to prioritize needed reforms of their business models.

As a result, governments, especially in Europe, have begun to set mandatory obligations. Although still in its early stages, this more formal regulatory model appears in many forms: import controls on goods made with forced and child labor, regulations requiring companies to identify and address human rights and environmental problems throughout their supply chains and disclosure requirements for companies covering their efforts to address these issues. This report examines the emerging regulatory landscape and assesses what governments and companies need to do to maximize the effectiveness of these legislative initiatives.

Central to our prescription for the future is the idea that governments need to develop and enforce substantive performance standards and metrics by which corporate compliance can be assessed and companies held accountable. It is likely that governments will need to craft industry-specific standards and metrics because each sector faces such different challenges. While the introduction of new regulation is important, government expertise and resources also will be critical to support remedial actions that individual companies will need to take. This report makes targeted recommendations for legislators, government officials and companies aimed at driving tangible progress.

We focus primarily on the human rights impacts of the new wave of legislation introduced in Western Europe and North America. Some critics have raised concerns about the potential imperialist dynamics this legislative framework preserves—countries that developed industrial bases more than a century ago are now seeking to impose burdensome social and environmental conditions on less developed states. Local regulation would indeed be best, but the governance gap in many countries means their governments are unwilling or unable to protect their own people. More ambitious regulation of global companies is the best way forward. As these new environmental and social regulations are put in place, it is imperative that rights holders—the people who are most affected by corporate behavior —are meaningfully involved in the legislative and implementation processes. Through our recommendations, we have sought to make this clear.

The dichotomy between mandatory and voluntary regulation can be reductive. It fails to capture the role of other governance models, such as multi-stakeholder initiatives, under which companies sign-up voluntarily but then submit to mandatory standards, which are actively enforced. We seek to highlight the importance of multistakeholder initiatives in our recommendations and encourage governments to see them as a model for future government efforts or strong complements to legislative regimes.

Finally, one of the major advances of the emerging regulatory framework is its focus on human rights *and* the environment. This report recognizes the interplay of these two issues, and the importance of this development, but places its main focus on the human rights impacts of this new regulatory order.

2. What Do We Mean by Standards?

At a national level, government regulations relating to business and human rights are well defined, and routinely applied. In developed economies national regulations set specific standards and metrics relating to workplace health and safety.[2]

> **A standard creates a rule that allows the appropriate authority to assess performance. Process-oriented exercises like the HRDD often conducted under the UNGPs, which focus solely on company policies and internal processes, do not meet this test.**

Companies with manufacturing operations in those jurisdictions know what they must do to meet the standards. They know that governments will collect data on air quality or water purity, for example. If a company falls short of those specific standards and metrics, they will face fines and perhaps restrictions on business operations until they address areas of non-compliance with those standards. Government regulators may examine internal company policies and processes for tackling these violations, but the ultimate test of whether a company complies with the law will be measured in terms of its performance against defined standards and metrics.

As the EU and other governments develop and apply global human rights protections, it is critical that they build the same standards-based model. Tracking the safety of workers in factories in Vietnam or Honduras will require added time and resources to gather and record adequate data. But once the data is collected, the assessment process should be the same as the regulatory model outlined above.

The advantage of this rigorous process is that it will measure corporate performance and the impact of corporate actions on workers themselves.

This will require a paradigm shift. Current thinking has been shaped by the 2011 UN Guiding Principles on Business and Human Rights (UNGPs), which asked companies to undertake an internal human rights due diligence (HRDD) review. While HRDD is a useful tool of assessment, it is not a standard —"something set up or established by an authority as a rule for the measure of quantity, weight, extent, value, or quality." A standard creates a rule that allows the appropriate authority to assess performance. Process-oriented exercises like the HRDD often conducted under the UNGPs, which focus solely on company policies and internal processes, do not meet this test.

The UN Guiding Principles simply urge businesses to respect internationally recognized human rights, including the International Bill of Human Rights and the ILO's Declaration on Fundamental Principles and Rights at Work. These

instruments define human rights and fundamental freedoms globally and establish the obligations of governments to promote and protect these rights. This system is based on a recognition that all governments have the same broad set of responsibilities to protect their people. This is not the case for businesses. Businesses are not responsible for administering criminal justice or overseeing broad social service programs. While a number of specific provisions in these instruments can be applied to companies, the same provisions cannot be applied to all companies.

The first challenge for governments will be to apply the international human rights framework to businesses. This will not be simple or easy. The central human rights issues affecting Exxon are very different from those facing Amazon, Nestle, Meta or Volkswagen. Because of these differences, it is necessary for governments to develop standards, derived from the broader human rights framework, that are tailored to specific industries and sectors. These industry specific standards and metrics should prioritize areas where the potential harms are the greatest (i.e. where businesses are most likely to cause, contribute or are directly linked to the harm). This will require companies to invest additional time and resources to seriously address the problems. In the first instance this will require governments, in consultation with the private sector and civil society, to develop different standards and metrics for each industry.

While the UN has issued guidance seeking to apply international human rights frameworks to businesses, what it has outlined to date is too vague and anecdotal for companies to apply in practice. More prescriptive standards and metrics are needed both for companies and governments. Companies need to know what their rights-respecting obligations are (standards) and how their actions to meet these standards will be evaluated (metrics). Governments need to develop the expertise and capacity to effectively evaluate company compliance and hold non-compliant companies to account. The international human rights framework provides the broad basis for doing this. Now it is up to governments to apply this broad canvas to different companies, industries, sectors and across global supply chains. This is where governments need to devote their attention if mandatory HRDD laws are going to be effective.

A second challenge will be in defining the scope of responsibility of global companies for actions throughout their global supply chains. There is currently no consensus on the level of responsibility global buyers bear for the actions of their suppliers, much less how this responsibility varies depending on how deeply down the supply chain you go. A further complication is that in many supply chains, multiple global brands share the same local supplier, diluting each company's influence. This reality speaks to the need for greater collaboration among competitors around these issues.

A third challenge relates to gaps in reliable data. While reliable workplace health and safety data does exist in Western Europe and North America, it is not being collected in many other parts of the world. Data on issues like harassment or discrimination is much harder to compile, in part because it requires personal interviews rather than simply numbers on a machine. It will take time to build consensus on the industry standards and metrics, and, after that, much more time to build meaningful databases on actual company performance.

Though daunting, these challenges are not insurmountable. Successful examples of this standards-based approach exist. One example is the Fair Labor Association (FLA), a 25-year-old multistakeholder initiative committed to improving the human rights of workers in global supply chains of apparel and agricultural companies. Member companies join the FLA voluntarily, but agree to obey a series of standards in their supply chains known as the Fair Labor Code. Examples include a workweek that is no longer than 48 hours, the right to compensation that is sufficient to meet a workers' basic needs and respect for employees' right to freedom of association and collective bargaining. The Code is supplemented by a series of sector-specific metrics, which the FLA uses to monitor company compliance with the standards. Public reports are then published highlighting any gaps companies have in meeting the standards. Individual companies are continuously assessed in an independent process to ensure that they live up to the organization's standards. Companies are also subject to fair labor investigations in situations of persistent or serious noncompliance. This is a standards-based approach.

There are, of course, differences between the FLA's work and the needs of a government-wide initiative (time, resources and scale). Even if government regulation is adopted incrementally, as inevitably it will be, there is no substitute for building a standards-based approach to these issues. The new regulatory era of corporate human rights has been marked with the introduction of the EU's new Corporate Sustainability Due Diligence Directive. Its requirement that HRDD must be "adequate" is an important departure from the process-oriented HRDD under the UNGPs. But the test of adequacy will not be met until governments set substantive standards for companies in each industry through which they can assess actual performance.

Below are examples of standards and corresponding metrics using the Fair Labor Code of Conduct and Compliance Benchmarks. These examples are for illustration purposes and do not reflect the full set of standards or metrics as required by the FLA.

Standard	Metric
 **Nondiscrimination** No person shall be subject to any discrimination in employment, including … on the basis of gender.	▸ Employers shall not require pregnancy testing of workers. ▸ All employment decisions shall be made on the basis of a person's qualifications as they relate to the inherent requirements of a particular job. ▸ Employers may not request the disclosure of any personal, non-job related information during the application, recruitment, or hiring process.
 **Child Labor** No person shall be employed under the age of 15 or under the age for completion of compulsory education, whichever is higher.	▸ Employers shall collect and maintain all documentation necessary to confirm and verify the date of birth of all workers. ▸ Employers shall comply with all relevant laws that apply to young workers (e.g. those between the minimum working age and the age of 18).
 **Health, Safety and Environmental issues** Employers shall provide a safe and healthy workplace setting to prevent accidents and injury to health arising out of, linked with, or occurring in the course of work or as a result of the operation of employers' facilities.	▸ Employers shall at all times be in possession of all legally required and valid permits and certificates related to health, safety and environmental issues. ▸ Workers shall be provided, at no cost, with all the appropriate and necessary personal protective equipment to effectively prevent unsafe exposure to health and safety hazards, including medical waste. ▸ All chemicals and hazardous substances shall be properly labeled and stored in secure and ventilated areas and disposed of in a safe and legal manner, in accordance with applicable laws and international standards.

3. The UN Guiding Principles and Other Regulatory Efforts

For over a decade, the business and human rights regulatory universe has revolved around the voluntary UN Guiding Principles. In the past few years, however, several regulatory initiatives have appeared seeking to impose more demanding requirements on companies to take human rights seriously. Particularly ambitious efforts have appeared in the EU context. In the next two sections, we examine these legislative developments in turn to demonstrate the background against which regulators and companies will need to operate going forward.

> "[W]hile the UNGPs have prompted a number of companies to acknowledge the importance of human rights relating to their businesses, and some have started to take steps to integrate human rights safeguards in their business operations, much more needs to be done."

UN Guiding Principles on Business and Human Rights

Efforts to regulate multinational corporations began over 50 years ago. International organizations like the United Nations, the Organization of Economic Cooperation and Development (OECD) and the International Labor Organization (ILO) led the way in seeking to create a rubric for corporate human rights responsibility. While some of these efforts were unsuccessful,[3] several of these instruments contributed to the growing understanding of corporate social responsibility and provide helpful frameworks through which corporate human rights responsibility is monitored to this day.[4]

By the early 2000s, Milton Friedman's often-cited 1970 proclamation that corporations exist solely to increase shareholder value seemed out of date. Increasingly, many corporate leaders came to understand that they needed to accept some level of responsibility for human rights. But how should companies go about this?

In 2004, the UN Secretary-General Kofi Annan appointed Professor John Ruggie to be the Special Representative of the Secretary General on Human Rights and Transnational Corporations and Other Business Enterprises. Over the course of two mandates from 2005 to 2011, Ruggie concluded that "[while] there were many initiatives, public and private, which touched on business and human rights…none had reached sufficient scale to truly move markets."[5] To address this failure, he introduced the United Nations Guiding Principles on Business and Human Rights (UNGPs) in 2011.

Ruggie did not seek to create new standards of international law. He wanted to overcome the resistance of global companies to a formal regulatory model that, in his words, "had paralyzed creative thinking… for too long" to find a compromise that companies would accept.[6] In proposing the UNGPs, Ruggie sought to clarify *existing* expectations of states and businesses in relation to human rights and to integrate them into a single broad framework. The UNGP

framework is based on a three-pillar system, also known as the "Protect, Respect and Remedy" framework.

The UNGPs helped give formal governmental recognition to the idea that businesses have a responsibility to respect human rights. They urge companies to exercise HRDD to determine whether they have accomplished this objective. But HRDD is only an assessment tool. The UNGPs did not create substantive human rights standards for each industry or metrics to help evaluate whether companies comply with those standards. They did not settle questions relating to how governments or other independent actors should measure compliance with these standards, or how they should hold companies accountable if they fail to comply.

Without such substantive standards for measuring progress, most companies focus instead on the much easier task of issuing statements of policy and establishing internal procedures and processes for addressing human rights challenges that they deem important. And all too often there is a disconnect between these policy commitments and internal procedural changes and a company's actual impact.[7]

Thirteen years after the adoption of the UNGPs, there is insufficient evidence that the wellbeing of most workers has improved, even for companies that have formally embraced the framework.[8] To the contrary there is significant evidence that labor conditions continue to be very poor and are not improving in many of the countries where global companies are sourcing their products.[9] Therefore, while the UNGPs have prompted a number of companies to acknowledge the importance of human rights relating to their businesses, and some have started to take steps to integrate human rights safeguards in their business operations, much more needs to be done.[10] Most importantly, it is now crystal clear that governments need to play a more direct role in regulating business conduct.

National Regulatory Efforts

The voluntary nature of the UNGPs has proven insufficient to radically change company behavior. Moreover, the UNGPs always envisaged the voluntary framework would be complemented by mandatory measures. The EU and several European states, therefore, have introduced their own legislation mandating companies take human rights into account.

This report examines three categories of legislation: (i) forced- and child labor import bans, (ii) mandatory due diligence laws and (iii) disclosure requirements. There is significant overlap among these categories; forced-labor import bans, for example, may require companies to conduct HRDD and disclose their findings. We highlight the most relevant laws to demonstrate some of the key strengths and weaknesses of the distinct approaches to regulation.

The UNGP Framework: Protect, Respect and Remedy

Protect	Respect	Remedy
States have a duty to **protect** against human rights abuses by third parties, including businesses, through appropriate policies, regulation and adjudication. States may do so by adopting a "smart mix of measures," including national, international, mandatory and voluntary measures.	Corporations have a responsibility to **respect** human rights, including by undertaking due diligence to identify, prevent and mitigate human rights risks associated with their operations.	Even where states and business uphold their respective duties and responsibilities, human rights may be adversely affected, and there must be avenues of **redress** for affected persons. There is a need for greater access by victims to effective remedy.

Import Bans for Products Made with Forced or Child Labor

Governments are increasingly exercising bans on the import of goods made with forced or child labor. These laws typically give an enforcing authority, usually a customs agency, the power to stop, withhold and potentially dispose of goods where there is sufficient evidence that they have been produced using forced or child labor.

The United States first banned the importation of products made with forced labor and child labor in 1930 under Section 307 of the Tariff Act. The ban was introduced primarily to protect domestic producers from competing with products made with forced labor. Although the ban has been in place for nearly 100 years, for most of this time enforcement has been limited.[11] For many years enforcement efforts were hampered by the "consumptive demand" loophole, which allowed entry for products made with forced labor where comparable US products were unavailable or domestic production failed to meet demand. This exemption was removed in 2015, however, which has resulted in more robust enforcement of this ban.[12]

In 2021, the US enacted the Uyghur Forced Labor Prevention Act, creating a rebuttable presumption that all goods (or components thereof) that have a connection to Xinjiang, China, or are linked to entities with ties to the region, are made with forced labor and barred from entering the US market. The UFLPA reverses the burden of proof and places it on the importer, who must demonstrate with "clear and convincing" evidence that the supply chain of the imported product is free of forced labor if the good is to be eligible for importation to the US. Since the law came into effect, more than 9000 shipments, valued at $3.5 billion have been detained.[13] Nonetheless, enforcement remains resource intensive, and this new law has placed further strain on the already limited resources for Customs and Border Protection enforcement efforts.[14] Despite these legislative interventions, the US remains one the world's largest importers of products at risk of being produced with forced labor.[15] Too many products made with forced labor still make their way into the country.

For import bans to have real impact, there needs to be a consistent global approach. Otherwise, there is a risk that importers will simply redirect their at-risk products to other locations where regulation is weaker. The UFLPA recognized this risk and mandated that the Executive Branch develop and provide to Congress a diplomatic strategy for addressing it. In April 2024, the US Select Committee on the Chinese Communist Party sent a letter urging the State Department to increase diplomacy to ensure companies profiting from China's forced labor regime in Xinjiang are not able to access other global markets. Lawmakers expressed concern that these other markets would become "dumping grounds" for goods made by Uyghur forced labor.

Other countries have introduced legislation similar to the UFLPA. Under the United States-Mexico-Canada Agreement, Mexico and Canada are required to take measures to prohibit the importation of goods produced by forced labor; both countries have introduced or amended laws accordingly.[16] Recent reporting indicates, however, that there have been only a few examples of the Canadian Border Force enforcing its ban.[17]

Spotlight on Solar

The UFLPA, which came into effect in June 2022, had no phase-in or transition period. While the law's intentions are admirable, there are consequential side-effects to the black and white approach adopted by the US government. The Uyghur region is where one third to one half of the world's polysilicon, the product used to create solar panels, is produced.[1] This places tremendous pressure on the solar industry. The law has led to an increase in polysilicon production in the US[2] and elsewhere, but given the time it takes to develop such production, polysilicon produced in China continues to dominate the market. It would have been more realistic and fairer on companies if the US Government had allowed for a transition period to provide importers with the time to diversify their supply chain and transition out of China.

[1] Alan Crawford & Laura T. Murphy, Over-Exposed: Uyghur Region Exposure Assessment for Solar Industry Sourcing, Helena Kennedy Centre for International Justice, Sheffield Hallam University, 2023

[2] Department of Homeland Security, Fact Sheet: In Just Two Years, Forced Labor Enforcement Task Force and the Uyghur Forced Labor Prevention Act Have Significantly Enhanced Our Ability to Keep Forced Labor Out of US Supply Chains, 2024

> **Import bans are an important lever as part of a package of legislative mechanisms, but on their own they do not go far enough in addressing corporate human rights responsibility.**

In April 2024, the EU Parliament gave its final approval for a regulation that bans products made with forced labor from being sold in, and exported from, the Union. The EU law is broad reaching, applying to all sectors and covering all products and companies. Competent authorities are empowered with investigation responsibilities and the right to take goods off shelves in the domestic market where they have been made with forced labor. The EU law does not establish a rebuttable presumption like the UFLPA, but still represents a landmark step forward in the fight against forced labor. Its success will ultimately hinge upon the willingness and ability of competent EU national authorities to enforce the law in each of the EU Member States.

While these laws reflect progress, in 2023 it was estimated that at-risk products imported by G20 countries totaled US $468 billion.[18] Several of these countries have yet to pass any legislation of this type. The UK, for example, is estimated to have imported at risk-products totaling US $26.1 billion in 2023, but its proposed import ban, introduced in May 2022, did not become law.

Forced labor bans operate on a strict liability framework, which means governments need not prove knowledge or fault on the part of the company from where the product originates. These laws can be effective incentives for companies to take action because there are no defenses to liability. Forced labor bans therefore may encourage companies to investigate their supply chains, identify connections to known human rights risks and provide enforcing authorities with significant amounts of disclosure. Their scope of application is also broader than other types of business and human rights legislation applying to all importing (or exporting) companies, regardless of their size.

Nonetheless, the bans introduced in the US, Mexico, Canada and the EU are narrow in their focus, prioritizing one human rights issue (forced labor) over other human rights risks. They can be difficult to enforce, placing significant pressure on custom agents often without the resources and funding needed to do so effectively. Moreover, they do not directly address the human rights abuse. There have been some studies examining the potential to leverage import bans for the provision of remedies (for example, reimbursement of recruitment fees for migrant workers) but in practice, this may be difficult to facilitate, in part because much of the legislation does not mandate remediation in the first place.

Import bans are an important lever as part of a package of legislative mechanisms, but on their own they do not go far enough in addressing corporate human rights responsibility.

4. Human Rights Due Diligence and Disclosure Laws

As governments have sought to extend their regulatory reach beyond forced and child labor, they have begun to adopt national laws that require companies to exercise mandatory HRDD. This requires companies to identify, prevent, mitigate and account for human rights abuses. This section examines HRDD and disclosure legislation and how these new laws are likely to influence corporate behavior going forward.

> "Germany and France, the two largest economies in the EU, have adopted national laws that have paved the way for the introduction of EU-wide mandatory HRDD legislation which finally was passed in May 2024."

Issue-specific Human Rights Due Diligence Legislation

Several of the early HRDD laws were limited to specific human rights issues that generally had broad political appeal, such as combatting child labor or preventing income from mineral production being used to fund armed conflicts. Several of the laws were framed as consumer protection measures, rather than human rights mandates, in hopes of making them more broadly appealing.[19]

The US was an early mover in addressing conflict minerals issues. In 2010, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act. Section 1502 requires companies purchasing certain minerals (tin, tantalum, tungsten and gold) to conduct due diligence to determine if they are purchasing those minerals from groups engaged in armed conflict. In 2014, in a case called *National Association of Manufacturers v. Securities and Exchange Commission*, a US federal court invalidated part of this legislation on First Amendment grounds, which in effect, removed the HRDD requirement from the rule.[20]

Eleven years later, in 2021, the EU introduced its own broader Conflict Mineral Regulation. The EU Regulation applies to all companies that import minerals into the EU and covers any sourcing country that may be affected by a conflict. It is broader than the US law, but it has no sanctions for non-compliance. Thus a 2023 study of the law concluded that "the Regulation has not achieved any notable impact along supply chains, let alone in producing countries."[21]

In 2019, the Netherlands introduced the Child Labor Due Diligence Act. It was intended to require businesses to develop due diligence plans if there is a "reasonable suspicion" of child labor within their supply chains. However, the legislation never entered into force and now has been superseded by proposals for broader HRDD legislation.[22] In Switzerland, an effort to include a general HRDD obligation as an amendment to the constitution failed to win adoption. Instead, the country passed a more targeted child labor law as well as a conflict minerals due diligence provision.[23]

Broad-reaching Human Rights Due Diligence Legislation

As public pressure to address these issues has grown, European governments have introduced broader HRDD legislation. Germany and France, the two largest economies in the EU, have adopted national laws that have paved the way for the introduction of EU-wide mandatory HRDD legislation which finally was passed in May 2024.

German Supply Chain Due Diligence Act 2021

The German Supply Chain Due Diligence Act *(Lieferkettensorgfaltspflichtengesetz)*, which came into effect in January 2023, is the most ambitious and consequential of these national laws. It imposes extensive due diligence and reporting obligations on companies regarding human rights and environmental protection. It builds on a 2017 French law (discussed below), but its scope is significantly broader. Where less than 200 companies are covered by the French law, it is estimated that the German law covers more than 2,900 businesses. Although this is subject to change according to a recent announcement by the German government.

The law contains clear requirements as to a company's due diligence obligations identifying nine due diligence measures companies need to adopt and including definitions of what makes a measure "effective."[24] Measures are to be conducted in relation to 11 human rights risks, which are clearly defined, rooted in international law and translated into a business context.[25] It is backed-up by a sanctions regime that includes real fines that could bite —up to EUR 8 million or 2% of annual revenue where a company has annual revenue of more than EUR 400 million. It also provides for a competent authority, the Federal Office for Economic and Export Control (BAFA), to monitor and enforce compliance.

Several interviewees expressed positive impressions of BAFA so far and praised BAFA's approach to enforcement. Janina Lukas, Head of Ethics & Social Impact at Bayer, commended the federal authority for "trying to understand the challenges [companies are facing] and trying to really be a partner. They are very transparent about when they will approach companies and with what questions… [BAFA] is not looking to blame companies but actually improve the situation of people somewhere in our international supply chains." Similarly, Diana Sanabria, a BHR expert based in Germany, lauded BAFA for not seeking to be punitive in this phase of enforcement. Rather, the agency is focusing its energy on building relationships with companies, developing guidance and thinking about how to ensure companies carry out their obligations meaningfully.

BAFA representatives told us in an interview that they recognized that the legislation is a "work in progress." When asked about how they will make sure the law will not just become another box-ticking exercise, the BAFA staff members said: "We will not just accept a company's answer as it is… If a report is not addressing something we expect it to address, we will come back to the company and say we are concerned. If this is not achieved, we can rely on the sanctions regime in the act." This is the right enforcement mentality. Governments need to work

Human Rights Due Diligence (HRDD)

Businesses typically use the term "due diligence" to refer to the process of gathering and analyzing information to assess risk to a company related to a business or investment decision. In a human rights context, due diligence is meant to focus on risks to outsourced workers or others who are affected by the company's business practices. The incentives are very different. If a company is buying another company, it conducts due diligence to make sure there is no pending litigation or other undisclosed business risks. Conducting due diligence is in the company's economic self-interest. By contrast, when a company conducts human rights due diligence, it is likely to uncover problems that will require it to invest added resources—both time and money—to address. This discourages many companies from pursuing thorough and ambitious human rights due diligence reviews.

Corporate human rights due diligence was introduced by the UNGPs as the method through which companies are expected to "identify, prevent, mitigate and account for how they address their adverse human rights impacts."

While this framework is appealing in theory, in practice it has left much to be desired in terms of its scope and effectiveness. As a result, a number of governments, and the EU, are moving to make these due diligence requirements mandatory and to exercise regulatory oversight of them, treating them as legally binding obligations.

together with companies to help them build the tools and strategies to comply, but when companies fail to do so then sanctions should be used.

Beyond BAFA's enforcement strategy, "[it] is too early to really assess the effectiveness of the [German] legislation," according to Markus Löning, Managing Director and Senior Strategy Adviser of the German business and human rights consultancy, Löning. "But what can be assessed," he continued, "is that the overall level of attention given to [human rights by companies] has really changed. I see the legislation as a driver for that."

Despite these initial positive impressions, there are some aspects of the law that, if not addressed, could undermine its effectiveness going forward:

• **Scope of HRDD obligations:** The law only mandates HRDD be carried out beyond a company's "own business area" and that of its "direct suppliers" (also known as "Tier 1" of a company's supply chain) where a company has "substantiated knowledge" of a potential human rights or environmental violation. Markus Krajewski, Professor of Human Rights at the University of Erlangen-Nuremburg, criticized the law for this artificial distinction between direct and indirect suppliers. "It is a deviation from the UNGPs, but also is not reflective of what companies do in practice," he said. Moreover, many companies are choosing to interpret the "substantiated knowledge" requirement narrowly to limit their due diligence obligations only to Tier 1. This has led to what Daniel Schönfelder, German BHR lawyer and Lead European Legal Advisor at the Responsible Contracting Project, describes as "superficial compliance-driven bureaucracy...[with] a large number of Tier 1 suppliers [being] assessed with superficial questionnaires and then…firms find[ing] that they only have a small number of risks in Tier 1…Meanwhile the #realproblems in Tier n [anything beyond Tier 1] are ignored."

• **Stakeholder engagement:** Under Section 4, companies are required to give "due consideration to the interests" of stakeholders. Diana Sanabria warned that many companies are currently treating stakeholder engagement as a peripheral compliance exercise. Companies consider it sufficient to merely consider stakeholder interests, rather than engage substantively, she added. Many companies are currently interpreting this obligation by sending out email questionnaires seeking supplier opinions on their HRDD processes, preventive measures and supplier codes of conduct. "This is not meaningful stakeholder engagement," according to Janina Lukas of Bayer. In Lukas' experience, "stakeholder engagement is [most useful] when it is hyper-localized on a very specific topic."

• **No civil liability:** The German law does not provide for civil liability for breach of obligations. Existing bases for damages claims under foreign or general German tort law still apply, however. Rights holders are also entitled to bring complaints through a company's grievance mechanism or to the competent authority.[26] Nonetheless, civil liability can be a powerful tool to encourage corporate compliance, according to Ron Popper former head of corporate responsibility at ABB Group and now Chief Executive Officer of the Global Business Initiative on Human Rights, a network of major multinationals seeking to build corporate respect for human rights. It "is likely to encourage defensiveness [on the part of many companies], but it is still extremely useful in terms of getting managements and boards to sit up and take notice. And nothing happens on human rights in a company unless it comes from the top."

French Duty of Vigilance Law 2017 [27]

France was the first country to introduce a national human rights due diligence law. In 2017, it introduced the Duty of Vigilance Law. It was a response to public outrage following the collapse four years earlier of the Rana Plaza apparel factory in Bangladesh, where over 1,100 workers were killed. As the clothes of several global apparel brands were found in the rubble, the tragedy drew the world's attention to corporate disregard for human rights in supply chains.

The Duty of Vigilance Law requires companies to establish, implement and publish a "vigilance plan"—a human rights and environmental due diligence (HREDD) plan identifying risks and severe impacts on human rights and the environment resulting from a company's own activities as well as those of its direct and indirect subsidiaries, subcontractors and suppliers.

In an interview, Lucie Chatelain, Advocacy and Litigation Manager for Sherpa, a French NGO involved in the negotiation and implementation of the law, observed that at the time the law was introduced, it was "unprecedented…to recognize that a company had obligations regarding the impacts of its activities on human rights and the environment, and the activities of its suppliers etc. abroad." It "shift[ed] the legal traditional concept of what a corporation is and the limitation of corporate responsibility." One of the law's strengths, Chatelain continued, is the "explicit recognition that…failure to respect these obligations could have legal effect, including the possibility for any impacted person to resort to a judge to compel the company to respect its obligations or to seek damages."

In the seven years since its adoption, the Duty of Vigilance Law has yielded some modest success. In 2023, Le Club des juristes, a French think tank, published a report concluding that the law has had a "generally positive effect on the conduct of companies," including systematizing human rights processes, mobilizing stakeholders and raising awareness of HRDD among small-to-medium enterprises not captured by its requirements.[28]

Nonetheless, the Duty of Vigilance Law suffers from several serious weaknesses:

• **Limited scope:** By capturing companies based exclusively on their number of employees, the law overlooks several successful companies that have significant revenue but do not necessarily have many employees on their books. Similarly, by requiring companies have a seat in France, the law fails to capture several foreign companies that do business in the country.

• **Focus on a vigilance "plan":** The need for a written document has "created a lot of confusion," according to Chatelain. "[S]ome companies consider that as soon as they establish and publish a vigilance plan, they have met their obligation." But this is not the case; companies also have a substantive obligation to adopt and implement vigilance measures adequately and effectively.

• **Difficulty obtaining remedies:** In order to obtain a remedy, a claimant must prove a link between the harm they have suffered and the company's failure to comply with the vigilance obligation. This is not easy under French law. Original drafts of the law placed the burden of proof on the company, though this was removed in the negotiation process.

• **Vague requirements:** As Virginie Rouas, policy officer at the European Coalition for Corporate Justice, described on Twitter, the law's provisions are "ambitious," but also "very vague." The burden falls on courts to interpret because there is a lack of official guidance detailing the content of HREDD measures or how they are to be designed or implemented.[29]

The internal corporate struggle

With the move from voluntary to legislative regulation, companies now face the challenge of reconciling corporate legal compliance obligations with the BHR field. "There is something of a battle going on between the legal and compliance teams and the human rights teams in some companies," observed Ron Popper of the Global Business Initiative.

Legal teams work to comply with the letter of the law and traditionally report to an executive committee. In Popper's experience, their aim is to minimize risk to the corporation and "avoid liability at all costs." This is a different mindset from those in the human rights function who work in their companies to minimize risks to others in operations and the value chain. Popper says that one of the biggest challenges facing corporations is trying to get these two departments to find a workable "modus operandi."

In a number of companies, those with the human rights portfolio have sought to engage directly with their legal and compliance counterparts. "I took legal on board from day one, so even before discussion regarding legislation began, we had had time to find a common language," Janina Lukas of Bayer, the German pharmaceutical company, told us. Legal and human rights teams in companies need to work together to determine how the law applies in their day-to-day business. Such discussions are crucial.

In an interview, Stéphane Brabant, Senior Partner at the law firm Trinity International, concurred with Rouas: "the French law is very short and very much subject to interpretation by judges." This vagueness has undermined implementation and has led to courts weakening it. The original law contained a provision allowing courts to impose a fine of up to EUR 10 million for non-compliance. The French Constitutional Court invalidated this provision because, it said, the obligations imposed on companies under the law were not sufficiently clear and precise.[30]

• **Focus on procedure:** To date, the majority of cases under the law have been dismissed on procedural grounds.[31] As Brabant lamented: "The problem is we are seven years in, and we are mostly still discussing procedure." However, a series of recent rulings suggest the tides are beginning to change. In December 2023, a Paris court rendered the first ruling on the merits under the law. The court found the French postal service, La Poste, to be in violation of the law and ordered it to strengthen its vigilance plan. In June 2024, the Paris Court of Appeals handed down rulings clarifying the requirements for claimants to obtain vigilance injunctions in French courts, ultimately making it easier for these sorts of injunctions to be sought.[32] If parties do not appeal further, two of these cases will proceed to a decision on the merits.

Corporate Sustainability Due Diligence Directive

Building on the human rights regulatory models developed in Germany and France, the European Union has undertaken an ambitious effort to extend mandatory HRDD to all 27 Member States. After more than two years of difficult negotiations the EU Council finally approved its Corporate Sustainability Due Diligence Directive (CSDDD) on 24 May 2024. This Directive requires each EU Member State to enact national HRDD laws by 2026.

These national laws will apply to major companies doing business in the EU, both EU companies and large foreign companies that are operating there, that meet minimum thresholds for the number of employees and income generated in Europe.[33] The scope of coverage was one of the most intensely debated issues in the lead up to the adoption of the Directive. Last-minute negotiations resulted in reduced coverage from 0.16% of companies in the EU to 0.05%, or approximately 5,300 companies. Despite the reduction in the number of companies that fall within the CSDDD ambit, the law still applies to companies that will have the greatest economic impact globally.

According to the World Benchmarking Alliance, which publishes a list of the world's 2,000 most influential companies, over 50% of those companies will fall under the scope of the CSDDD. The CSDDD's ripple effects will be felt far beyond the scope of the companies that are formally covered. Several companies will be caught indirectly as part of the value chains of large companies. In addition, companies not covered by the CSDDD may fall within the scope of a companion law, the Corporate Sustainability Reporting Directive (CSRD) which carries a similar expectation that companies carry-out HRDD (see Sidebar: *CSRD vs. CSDDD* for more).

The new CSDDD laws will require all in-scope companies to identify, and where necessary, prevent, mitigate, and remediate potential and actual adverse human rights and environmental impacts relating to their business operations and those of their suppliers. Like both the French and German law, companies are required to ensure their due diligence is "adequate" and not just procedural. Companies that are subject to CSDDD regulation will be expected to update their assessments annually and to publish an annual statement.

What will be the impact of CSDDD on existing legislation?

The CSDDD is a Directive. A "Directive" is a type of EU legislative act which points to a desired result but leaves Member States' national authorities the choice of how to achieve the goal.

Unlike Regulations and Decisions, Directives are not "directly applicable" in EU Member States. This means they need to be "transposed" into national law. Member States therefore have a degree of flexibility when incorporating the provisions of a Directive into their national legal system. The Directive sets certain minimum requirements, but States are generally free to set higher standards.

For countries like France and Germany that already have HRDD laws in place, the CSDDD means these States need to amend their existing legislation to ensure, at a minimum, that their current laws comply with the Directive's requirements.

These requirements cover a company's own operations, the operations of its subsidiaries and operations carried out by direct and indirect business partners in their "chain of activities." The CSDDD does not distinguish between direct and indirect suppliers and imposes obligations that go beyond Tier 1. The CSDDD also mandates that companies carry out "meaningful" engagement with affected stakeholders both as part of both their HREDD process and in the act of carrying out HREDD itself. Both of these provisions address some of the perceived weaknesses of the German law.

Compliance under the CSDDD will be monitored by each Member State's supervisory authority. These authorities will have the power to require companies to provide information, conduct investigations and impose certain penalties. These include pecuniary fines of up to 5% of the company's worldwide revenue—a significant increase from the fines under the German law, which were capped at 2% of revenue.

The CSDDD combines administrative sanctions with a civil liability regime. Member States are required to ensure that a company can be held liable for damage caused to a person where the company has intentionally or negligently failed to comply with its due diligence obligations and as a result, damage was caused to that person's rights. There are some limitations on this liability; a company is not liable for damage caused only by a business partner in its chain of activities and there is a five-year limitation period for claims. Member States have the option to decide conditions under which trade unions, NGOs or national human rights institutions could commence actions on behalf of victims, which has the potential to increase victims' access to justice.

The CSDDD represents a significant step forward in the regulation of business and human rights. It brings corporate human rights responsibility to the fore, captures many of the world's largest businesses and applies to all 27 Member States of the EU.

The Financial Services Industry: A Major Loophole

One of the most hotly debated topics in the negotiation of the CSDDD was the treatment of the financial sector. The European Parliament pushed for full inclusion. The Council of Europe, after intense infighting and lobbying by the finance industry, opposed inclusion. The final text reflects a compromise: Financial firms are covered by the law, but their obligations are limited. They are only required to conduct HREDD on their own operations and their upstream supply chains (e.g. procurement of external services like IT or human resources). Downstream operations, including their core investing and lending activities, are excluded.

In benchmarking assessments, financial institutions have been shown to lack respect for human rights in their core business activities.[1] Failure to include these activities in the due diligence obligations of the CSDDD is a missed opportunity. As Markus Löning observes "Financial institutions really move things. While the scope of laws will likely influence and reach more companies, pressure from financial institutions is often taken more seriously by companies." The UN Working Group on Business and Human Rights has emphasized the importance of the inclusion of the financial sector in the CSDDD and the exclusion's inconsistency with existing international standards, including under the UNGPs and the OECD Guidelines.

Financial institutions are required to report on their HRDD efforts pursuant to other EU regulatory initiatives like the EU Sustainable Finance Disclosure Regulation. But these are disclosure laws, and they do not impose the same substantive obligations as an HRDD law of this nature. The French and German due diligence laws do apply to financial institutions (although the scope of the obligation under the German law has been interpreted narrowly). France, nonetheless, was one of the leading advocates for excluding the financial sector from the scope of the Directive. It was reported that the French government was lobbied heavily by the French banking industry.[2] This reaction may be related to the significant exposure faced by one of the country's leading banks, BNP Paribas, which is a defendant in two legal actions under the French law.

The CSDDD does contain a review clause for possible future inclusion of the financial sector based on a sufficient impact assessment by the European Commission. But it will require a concerted effort to require the inclusion of this important sector, and most investment firms are likely to oppose this action.

[1] Multiple benchmarks show financial institutions struggling to demonstrate respect for human rights, World Benchmarking Alliance, 2023

[2] Philippa Nuttall, French banks lead opposition to finance sector's inclusion in EU CSDDD, Business & Human Rights Resource Centre, 2023

The CSDD also avoids the potential EU market fragmentation that might have occurred if each Member State had sought to create its own regime. It eases the burden for companies, which have to come to terms with only one piece of legislation. It also levels the playing field, ensuring all covered companies are held to the same standard. As Daniel Schönfelder observed: "CSDDD is the missing piece of the puzzle."

However, it is no silver bullet. It still needs to be translated by Member States into national legislation and, as with any Directive, it is all but certain that there will be variation among the 27 EU States. The spirit of the law is clear. It is now up to the EU Member States to ensure that the ideas behind this legislation are put into practice with the creation of substantive standards and metrics for assessment of company progress.

Disclosure Laws

The third and most popular category of new laws are provisions requiring greater disclosure of corporate actions. Initially, these laws were introduced to address specific human rights issues like modern slavery. Recently, however, more generic disclosure legislation is being adopted and it complements evolving HRDD requirements.

In theory, increased transparency allows consumers, investors and other external stakeholders to make informed decisions about companies with whom they interact. Disclosure laws are a useful tool to enhance transparency, requiring companies to gather and publicly report on their efforts to address human rights risks. Such disclosure should inform consumers in their purchasing decisions or investors in shaping their portfolios. If meaningful data is collected and made public, this also will enhance news coverage and inform government decision-making. As companies gather this data, they should obtain new information about human rights challenges related to their business operations that should encour-

age them to make needed changes to address the harmful impact.[34]

Despite this logic, studies indicate that disclosure laws have limited success in improving the human rights record of companies.[35] This is in part due to the weakness of the laws themselves, many of which are not sufficiently ambitious. It is also due to the substantive focus of these laws which focuses primarily on company promises and policies and not on actual performance. There is too little reliable data on company performance throughout global supply chains. Until that deficiency is addressed, reporting requirements will have limited impact.

Issue-specific Disclosure Legislation

Early disclosure legislation focused on the topic of modern slavery. These include the UK Modern Slavery Act 2015, the Australian Modern Slavery Act 2018 and, more recently, the Canadian Modern Slavery Act 2023.[36]

Regulating the Growing Technology Sector: Striking the Right Balance

The technology industry is highly concentrated. An estimated 70% of the world's operating systems are controlled by Microsoft; 92% of all search queries are performed on Google, and 77% of global internet users use at least 1 Meta product.[1] Despite its influence, the tech industry historically has been subjected to only limited regulation, but this has begun to change.

In the US, most regulatory activity has been at the state level.[2] Several states have successfully passed legislation regarding issues like data privacy and antitrust. There have also been efforts to regulate content moderation, but most of this legislation is tied up in the courts on freedom of speech challenges (a constitutionality question which has not been so present in the European regulatory context). At the federal level, Congress has been less successful. More recently, there was an attempt to regulate platforms' harms on society by targeting their design elements, but it remains to be seen if this will pass.[3]

The EU has therefore taken the lead on regulation of this sector. In 2018, the EU adopted the Global Data Protection Regulation (GDPR), which is widely considered the global standard for data privacy. More recently, the rise in misinformation and harmful content online has led to an increase in online safety regulation. Germany enacted the draconian Net Enforcement Act, which required social media companies to remove any illegal content within 24 hours or face penalties of EUR 50 million. This law has been superseded by the EU-wide Digital Services Act, which takes a more systemic approach to harmful online content, requiring companies to carry out risk assessments, take mitigation measures and produce disclosure reports on their content moderation policies and algorithms. The DSA forms part of a broader EU legislative package that seeks to set the standards for the new digital regulatory era. This legislative initiative has already seen Big Tech facing more scrutiny for their online practices.

These legislative developments are significant and place important guardrails on this previously lightly regulated sector. Nonetheless, regulators are still working to strike the right balance between building a regulatory framework that preserves important state interests (e.g. online safety) and protecting fundamental rights (e.g. privacy and freedom of speech). Overly stringent regulation of social media and technology companies can lead to overly zealous content moderation efforts, which can have chilling effects on free speech online. Similarly, overly rigorous privacy legislation can make tech companies hesitant to take steps to deal with dangerous content. Regulators are still working on their enforcement efforts to strike the right balance between these three competing interests.

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1 Evan Harris, Big Tech Regulations: Efforts to Regulate Big Tech, Plural, 2024

2 J. Scott Babwah Brennen & Matt Perault, The State of State Platform Regulation, UNC Center on Technology Policy, 2022

3 Adi Robertson, House committee advances Kids Online Safety Act, The Verge, 2024

> **Disclosure legislation to date has not produced a high standard of reporting on the actual performance of companies. This is in part due to the legislation itself, which has not been rigorous or clear in mandating the substance of what companies need to report.**

In 2017, California passed the California Transparency in Supply Chain Act (CTSCA), which requires sellers and manufacturers with revenue over a certain threshold to publicly disclose their efforts, if any, to eradicate slavery and human trafficking from their supply chains.

While these early laws did raise public awareness of modern slavery, their shortcomings severely hampered their effectiveness. These include:

- **Reporting focused on process and procedures:** The CTSCA only requires companies to disclose their "efforts" to eliminate slavery and trafficking, and not whether a company actually identified these issues in their supply chains. In effect, this means a company can comply by disclosing that it has made no effort at all. The same is true under the UK Modern Slavery Act. The Australian Modern Slavery Act does require companies to report on efforts to address risks of modern slavery, but does not mandate that any specific action be taken.

- **Weak mandatory content requirements for disclosure:** The UK Modern Slavery Act does not mandate specific information companies should report on in their disclosures. The legislation contains some recommended areas, but in reality, the decision as to what to report is left to each company's discretion. When a disclosure obligation is not accompanied by a specific obligation to meet a substantive standard, companies are disincentivized from learning about their human rights risks.

- **No sanctions for non-compliance:** None of these early disclosure laws—CTSCA, UK Modern Slavery Act or the Australian Modern Slavery Act—contain sanctions for a company's failure to report. The California and UK laws provide for injunctive relief, but to date no companies have been held to account for failing to submit these reports. The absence of sanctions underscored the weakness of these reporting initiatives. Studies indicate that companies have sought to provide the bare minimum information and approach their obligations as a mere box-ticking exercise. In many cases, companies have failed to comply with these reporting requirements altogether.[37]

An independent review of the UK Modern Slavery Act made a series of recommendations to improve its effectiveness, but virtually none of these recommendations have been adopted.[38] A similar review was commissioned for the Australian law and, as a result, a new Anti-Slavery Commissioner was established, responsible for administration and oversight of the legislation. The more recent Canadian Modern Slavery Act, which came into effect in 2024, addresses some of the weaknesses of the earlier legislation by mandating specific content for disclosure and carrying penalties for non-compliance. The guidance to the legislation advises companies that activities and supply chains are not expected to be "risk-free," and they will not be penalized for identifying these risks in their reporting.

Broad-Reaching Disclosure Legislation

The Non-Financial Reporting Directive

The EU has had a generic human rights disclosure law in place for a decade, but recently this was amended to improve the standard of reporting and the expectations of companies.[39] In 2014, the EU adopted the Non-Financial Reporting Directive (NFRD), requiring covered companies to publish reports describing their policies relating to certain environmental, social and human rights issues.

The NFRD suffered from many of the same shortcomings as the issue-specific legislation described above, including placing significant focus on process over results. A 2019 study by the Alliance for Corporate Transparency, a group of leading civil society organizations working to improve EU corporate sustainability reporting, surveyed the information disclosed by 10,000 European companies under the NFRD. They found that more than 80% focused disclosures on human rights policies and a much smaller share focused their reporting on the actual outcomes of these policies (less than 40%) or actions taken to address these risks (19.4%).[40]

While the NFRD appeared on its face to be a human rights disclosure legislation, it was introduced with one audience in mind: investors. As Richard Gardiner, Head of EU Public Policy at the World Benchmarking Alliance, described in an interview, the NFRD grew out of "investor pressure to have better, more standardized sustainability information that could inform financial decision-making. That was its whole logic." The NFRD disappointed from this perspective, with many investors describing reporting as unsatisfactory.[41]

The Corporate Sustainability Reporting Directive (CSRD)

In January 2023, the European Union undertook to revise the NFRD and introduced the Corporate Sustainability Reporting Directive (CSRD). The CSRD is the most far-reaching and extensive BHR reporting obligation to date, addressing several of

the weaknesses of the NFRD. It expands the scope of included companies from 11,000 to 49,000[42] and extends the intended audience beyond investors to other stakeholders, including consumers, governments and civil society.

Companies must report in line with the European Sustainability Reporting Standards (ESRS), which prescribe clear requirements in terms of content and form of reporting. The Commission is also planning to adopt sector-specific standards.

The CSRD embraces the "double materiality" assessment. Under this formulation, materiality is both financial—a matter that affects a company's financial performance and position—as well as related to the social or environmental impact of a company's activities and business relationships. Companies are expected to start with the impact materiality assessment. "Double materiality is the game changer," according to Gardiner, "it requires companies to consider why they are analyzing and publishing this information in the first place."

Despite these improvements, the CSRD and ESRS continue to place significant focus on process over substance. Just under half of the 32 ESRS social standards require companies to report on their "processes" and "policies."[43] The ESRS require companies to report on any targets they may have set and the metrics they use to measure progress in achieving these targets. By failing to create standardized targets and metrics, the ESRS leaves it to companies to define what a successful measure is and how human rights issues can be addressed. This leaves companies with significant discretion and fails to standardize reporting in a way that can be easily tracked and/or compared to reporting by other companies.[44]

Disclosure legislation to date has not produced a high standard of reporting on the actual performance of companies. This is in part due to the legislation itself, which has not been rigorous or clear in mandating the substance of what companies need to report. Current reporting requirements continue to focus too much on processes and procedures rather than the effectiveness of these processes on real world outcomes. EU Member States need to develop more ambitious systems for measuring corporate performance according to substantive standards. Disclosure requirements need to compel companies to gather and disclose relevant data that will enable governments to evaluate corporate actions and hold non-compliant companies to account.

CSRD versus CSDDD

The acronyms in the BHR space can be confusing and are often very similar at first glance. There are two which are often seen together: CSRD and CSDDD. But how do they relate to each other?

The CSRD, the Corporate Sustainability Reporting Directive, is the EU's new disclosure legislation requiring companies to report on their social and environmental impacts in accordance with the EU's sustainability standards. The CSDDD is the Corporate Sustainability Due Diligence Directive, the EU's new HRDD legislation, which requires companies to carry out HRDD into their supply chain. These two laws may be different in nature, but together they complement and reinforce each other.

The CSRD is at its heart a disclosure mandate, but it carries an implication that companies will carry out HRDD into their sustainability matters and determine where they affect people or the planet. As the UNGPs have demonstrated, an "expectation" is not sufficient to bring about change in company behavior, but the CSRD is complemented by the CSDDD, which requires companies to carry out HRDD. The scope of the CSRD is broader than the CSDDD, so it remains to be seen whether companies falling within the ambit of the former, but not the latter, will also undertake HRDD as part of their CSRD reporting obligations. Richard Gardiner of the World Benchmarking Alliance sees this as a likely development. "For companies covered by both [CSRD and CSDDD], CSDDD is your double materiality assessment… For companies covered only by CSRD, if they want their reporting to be rock solid, they will see what the CSDDD-covered companies are doing and will recognize that they should be doing due diligence." It is on European Member States to spell-out this expectation when enforcing the law.

5. What Are the Key Tenets of Effective Legislation?

As this report has demonstrated, there have been a range of legislative interventions seeking to regulate corporations with varying degrees of success. This section distills our critiques of this legislation into seven key criteria we consider necessary elements for effective BHR legislation.

Criteria	Reasoning
1. Legislation should cover the largest companies, both national and non-national, doing business in the country	In the short-term it is most important that the largest companies, with the resources and means to comply, are caught. These companies can then pave the way for the rest of the market and create a global understanding of what best practice looks like.
2. Phase-in period for compliance	A law is more realistic and more likely to encourage compliance when it gives companies time to get up to speed and prepare to comply.
3. Broad scope of clearly identifiable rights	The broader the scope of rights, the more rights holders are offered protection. Nonetheless, the law needs to define which rights are covered so companies understand the extent of their obligations and rights holders know the extent of protections.
4. Clearly identifiable obligations for companies that have substantive, measurable results	Companies should be provided with a clear roadmap of their obligations under the legislation, including minimum requirements for compliance so that rights holders, civil society and the government can hold them to account where they fail to comply. A key aspect is creating substantive standards that companies should comply with, including measurable indicators of success. This is the only way in which company compliance can be effectively assessed and rewarded or sanctioned (as needed).
5. Consistent global approach	Legislators should consider the global legislative approach. For a law like a forced labor ban to work, it is important that other laws of this nature are introduced across global markets to avoid diversion of goods. Similarly, any new disclosure and HRDD legislation introduced outside of the EU should be careful to align with the European legislation where possible to ensure companies are able to comply to the best of their ability, without expending too many resources in trying to bifurcate supply chains in order to comply.
6. Creation of a supervisory authority with sufficient funds and resources to successfully implement and enforce	Many of the legislative initiatives to date have introduced obligations, but failed to enforce or monitor them effectively. Legislators should appoint a supervisory body responsible for monitoring compliance under legislation. This body needs to be given sufficient resources to be able to effectively carry out their job.
7. Sanctions that are actually enforced	Inclusion of sanctions is an important component of legislation. Nonetheless, sanctions that are never used are redundant. Governments should ensure non-compliance will lead to penalties if companies do not pursue meaningful remedial actions or if there are recurring violations.

6. A Case for Enhanced US Engagement

The US generates more than 20% of the world's total income. Eight of the top 10 world's largest companies are American. The US and the EU share the largest bilateral trade and investment relationship and the most integrated economic relationship in the world.[45] Given its size and importance, the US should not be a passive observer as a new global regulatory system takes shape with its main trading partner at the helm.

> **"European and other countries are now leading the way by expanding their legislative frameworks to mandate corporate accountability for human rights. The US has not maintained its leadership position."**

The US was an early mover in adopting BHR legislation. From The Tariff Act, the Dodd-Frank Wall Street Reform Act, the California Transparency in Supply Chain Act to the UFLPA, each served as models for other national legislative efforts. In 2024, the US Government articulated its expectation that US business undertake HRDD in the revitalized US National Action Plan on Responsible Business Conduct. However, this remains an "expectation" and not a "requirement". European and other countries[46] are now leading the way by expanding their legislative frameworks to mandate corporate accountability for human rights. The US has not maintained its leadership position.

Until recently, US courts provided jurisdiction for some human rights issues involving the global operations of businesses. Under its Alien Tort Statute (ATS), foreign victims of human rights abuses tied to multinational companies had access to US courts to sue companies for their complicity in serious human rights violations committed outside the US. However, after a series of Supreme Court decisions significantly narrowed its applicability, the ATS no longer provides a reliable route for transnational corporate accountability.[47] Access to US courts is now much more limited.[48]

In sharp contrast, BHR enforcement through the courts has expanded in other jurisdictions. In recent years courts in Canada, the UK and the Netherlands have extended jurisdiction to allow parent companies to be sued for violations of international human rights law committed through their subsidiaries abroad.[49]

Clearly the US is not keeping pace. The US needs to develop its own legislative approach. Here are several reasons why:

1. Wave of change

Pursuant to the CSDDD, the EU's 27 countries will begin introducing their own HRDD legislation in the next 2 years. The direction has been set;

there is no turning back. According to the World Benchmarking Alliance, US companies are already lagging in the development of their internal HRDD processes.[50] Without legislation in the US context, this gap between US and foreign companies will only grow.

2. US Companies will be subject to foreign laws

All large US companies operate in the EU or benefit from supply chains of companies that operate there. As various EU states start to develop and enforce new global human rights laws, US corporations doing business in Europe will be regulated under the terms of this new European legislation. The EU will effectively be setting the standards under which the biggest, most influential US-based companies are operating. Household names such as Coca-Cola, Amazon, Johnson & Johnson and ExxonMobil will all be required to conduct HRDD in accordance with the EU legislation. As US companies, it is in their interest to be governed by US law. Further, if only companies operating in the EU are required to carry-out HRDD processes, these companies may be placed at a competitive disadvantage against their US counterparts who do not need to comply.[51] The EU will be defining the rules of the game as the US is watching from the sidelines.

3. FCPA as a blueprint for US regulation

There is a 45-year-old model for global regulation of corporations, one enacted by the US. In 1977, the US government adopted the Foreign Corrupt Practices Act (FCPA). It prohibited any companies doing business in the US from bribing any foreign government officials. The FCPA has extensive reach. It prohibits US based and foreign companies, from engaging in bribes and applies to their officers, directors, employees, stockholders and agents. The law was the first of its kind and made the US a global leader in the fight against corruption. The legislation carries heavy fines for violation and potential criminal liability. The successful enforcement of the FCPA provides a blueprint for how to mandate corporate compliance with human rights standards.[52]

4. American values

The protection of human rights and fundamental freedoms was foundational to the establishment of the US over 200 years ago and has been enshrined in the US constitution. These values underpinned the work of Eleanor Roosevelt and the UN Human Rights Commission and are echoed in the Universal Declaration of Human Rights. Nonetheless, stories of human rights abuses perpetrated by US companies at home and abroad continue to fill our newsfeeds. The US government should therefore seek to provide an avenue of redress for affected rights holders in a manner that is consistent with this constitutional culture.

“US companies are already lagging in the development of their internal HRDD processes. Without legislation in the US context, this gap between US and foreign companies will only grow.”

7. Conclusions and Recommendations

In the next decade, governments, especially in Europe, will begin to build a system focused on the regulation of global businesses relating to human rights.

They will take a number of steps, as they should, to support companies that are committed to building strong human rights programs internally and willing to undertake remedial actions when they discover abuses—for example, protecting workers in their global supply chains.

On a parallel track, these governments are crafting laws and adapting regulatory agencies and judicial processes to hold non-compliant companies legally accountable. This multi-year, multifaceted process will help to address a governance gap that now exists in countries where national governments are unable or unwilling to protect the rights of their own people. This new regulatory system will strengthen the rules of the road for an increasingly globalized economy.

Recommendations

For Governments

1 Consult and engage

In the EU, the new Corporate Sustainability Due Diligence Directive (CSDDD) requires meaningful engagement with stakeholders at every step of the process. In shaping this ambitious new system, European governments will need to build a regulatory order that will address both business needs and the broader human rights interests of society.

Governments should convene key stakeholders, including the following actors:

- *International organizations:* International organizations such as the OECD and ILO have relevant experience, knowledge and expertise that will help EU governments develop standards, metrics and tools to help assess corporate compliance in countries around the world.
- *Companies:* Companies have a stake in the development of standards and metrics that are clear, practical and that can be implemented in practice. Companies cannot set these standards alone, but should be centrally involved in the rulemaking process. Governments need to work with companies to enable them to understand what measures already are in place and to help bring them into compliance with new provisions and regulatory systems. Companies will need clarity as to what these new rules require and how they will be applied in practice. They will need to work with governments to make this system work. Common standards will help companies by creating a level playing field.
- *Civil society:* Civil society advocates represent the interests of rights holders, the main beneficiaries of this new legislation. It is therefore essential that representatives of these communities are involved at every stage of the legislative process right through to enforcement. This is easier said than done and it will only be achieved through meaningful consultation and engagement (as is required by the UNGPs), not the type of ritualistic check-the-box consultation that too often prevails. It is incumbent on legislators and regulators to understand the intersecting needs and differences among various rights holders.[53] Civil society groups will also have an especially important role to play in the implementation stage by helping governments assess company conduct and by serving as trusted intermediaries between workers and companies.

2 Build capacity

EU governments should set up administrative bodies, like Germany's BAFA, to support in the implementation and enforcement of CSDDD. Staff with subject-matter expertise should be hired and training should be provided.

Countries where regulation of this type does not yet exist should also start building the knowledge and capacity within their administrations to ensure these issues are being discussed and engaged with at a policy level.

Government assessments must go beyond examining company policies and internal procedures. The real test of compliance is whether corporate performance meets substantive human rights standards. In order to make these assessments, governments will need to build the capacity to monitor and assess company conduct.

3 Prioritize the greatest risks

Governments should address the most significant risk categories in the largest industries in their national economy first and make sure that the companies in these affected industries are addressing these risks. This includes liaising with companies in these industries, focusing enforcement efforts on these industries and hiring staff members with subject-matter expertise in these fields. Each EU Member State should have staff responsible for managing CSDDD implementation and enforcement in these industries.

4 Share information, knowledge, guidance and support

Over the next two years each of the 27 EU Member States will be developing national mandatory human rights due diligence laws. This offers an opportunity for these governments to exchange information and aim to adopt a common language and mutually reenforcing approaches in their national laws. It will be mutually beneficial to governments, companies and civil society for these laws to be consistent and complimentary.

These governments also should work together and with companies to develop sector and country-specific guidance and risk assessments with recommendations for how best to address these risks. These assessments should be shared with other governments and companies to help address sector-wide risks. In countries where these types of risk assessments are not possible, governments should create avenues to support companies who seek specific guidance on how to operate responsibly.

Governments should create specific guidance on fair treatment for suppliers, especially for SMEs. According to Daniel Schönfelder, practice in Germany has shown companies have overwhelmingly passed obligations down the supply chain rather than engaged substantively with issues. The team at the Responsible Contracting Project have created useful guidance on these issues, which can serve as a starting point for governments.

5 Develop substantive standards performance indicators

Governments should work collaboratively with other stakeholders to develop substantive standards and metrics to measure progress in achieving company compliance. These should be tailored to specific industries, and governments should prioritize the main industries in their country where human rights risks are most significant. Governments should draw on the OECD's sector specific guidance to inform this process.

The Global Labor Institute (GLI) based at Cornell University has developed a new set of 25 quantitative metrics to measure labor outcomes for workers. They serve as a useful example of the sort of tangible, quantifiable metrics which companies can track and report. These metrics seek to help companies prepare human rights reports that are the equivalent of 10-K financial reports to the US Security Exchange Commission. The goal should be for social reporting to be on par with financial reporting and, as GLI advocates, to focus on results that can be compared between companies and their supply chains over time.

Once developed, governments should require companies to carry out baseline assessments of their human rights against these standards and metrics, and then submit to periodic independent assessments. These assessments should be disclosed, and governments should prescribe the format and content of disclosures to ensure they are easily accessible, readable and comparable.

6 Incentivize and sanction

Companies will need time, technical support and a great deal of encouragement to get up to speed. The CSDDD does not require that companies have "risk-free" activities or supply chains, but rather to take measures to identify, mitigate and prevent these risks. Enforcing authorities should ensure companies are given an "on-ramp" to get to the place they need to be and that they will not be sanctioned for acknowledging human rights risks in their supply chains.

If companies demonstrate progress using standardized indicators, governments should reward them for doing so. This could include priority access to procurement tenders, tax rebates or preferential loans. Companies progressing well could also be awarded a "grade" for compliance based on their progress. This would give interested consumers and investors a reliable way to track the performance of global companies.

Corporate non-compliance needs to be sanctioned (as is set out in the CSDDD). Companies that fail to take their obligations seriously, and who do not show evidence of improved performance, or who are unwilling to develop open and transparent systems to measure their performance, should be subject to civil penalties including fines and other sanctions on their business operations.

For Companies

7 Start preparing now

Companies need to start acting now including those who are not directly covered by proposed legislation. Many companies will find themselves included indirectly as part of the supply chain of a larger company that is within the scope of new legislation. Even more importantly, the world is changing and in all likelihood companies who are not yet required to comply with this legislation now are likely to be brought within its scope in the foreseeable future.

Companies should start by assessing their business models, mapping their supply chains and identifying gaps in their knowledge of their business operations and those of their core business partners. They should gather as much data as possible on their suppliers and assess their existing data-collection systems and processes. Where possible, they should identify the information that is currently missing in order to assess what is working and what is not. This mapping must extend beyond Tier 1.

8 Build robust internal systems

Companies should invest the time, money and resources to build the capacity necessary to integrate human rights into their corporate framework. A representative from the human rights team of a large food and beverage company told us how legislation provided an opportunity to improve their internal governance. The legislation enabled those already working on human rights within the company to get buy-in on human rights issues at a senior level of the company.

Companies should hire personnel with human rights knowledge and expertise to help inform company decision making. They should have access to senior company executives to ensure that human rights challenges get the attention they deserve. Work on human rights needs to be integrated into all relevant parts of the business to ensure that human rights issues are not siloed. Particular attention should be given to improving collaboration and coordination between legal and compliance, supply chain sourcing, sustainability and human rights teams.

Capacity building means training staff on the meaning of corporate human rights responsibility, including the specific human rights risks to a company in a particular industry. Training should extend to those in a company's value chain (especially those throughout its core supply chain). By building the knowledge, expertise and capacity internally within a company, human rights will become part of the fabric of corporate decision-making going forward.

9 Prioritize risks and focus on outcomes

Companies cannot be expected to solve all human rights issues in their supply chains as there are no "risk-free" supply chains. What the CSDDD and other new regulatory provisions do require is for companies to take measures to identify, mitigate and prevent these risks. Companies often feel they need to do everything all at once, but this is not the best way forward. Companies can and should prioritize risks (and the UNGPs allow this). Companies should identify those risks looking at their entire supply chains, not only Tier 1 suppliers.

After choosing where to focus, companies should focus on reforms that are likely to result in improved outcomes which they themselves measure. All these processes should be examined through the lens of performance. Merely having a "process" often does not correlate with improved outcomes.

10 Engage openly with government.

Companies should engage with appropriate government officials. Where their obligations are unclear, government representatives often can clarify expectations. Companies should seek to maintain an open and candid dialogue with regulators. Addressing human rights risks will often be complicated. Addressing these challenges responsibly and appropriately will take time. Therefore, it is necessary for companies to be transparent and frank with regulators about the risks they face and the steps they are taking to address them.

11 Engage meaningfully with stakeholders

Companies should take the time to develop a meaningful stakeholder engagement plan. This starts by determining who are the relevant stakeholders. Stakeholders can take a range of different forms—suppliers, workers, trade union leaders, community organizers, academic experts and religious leaders. This engagement should be undertaken before big decisions are made.

Companies should seek to engage with stakeholders substantively, including by asking specific and targeted questions. Generic questionnaires on human rights will not suffice. Companies should work with suppliers with a view toward pursuing a model of shared responsibility, where buyers, suppliers, governments, intergovernmental agencies and philanthropic agencies work together to fund needed changes. Companies should consider supplier capacity and adopt responsible purchasing practices.[54]

For engagement to be meaningful, findings from stakeholder consultation should inform a company's human rights approach and lead to change. Benchmarking organizations have shown that in the past this often has not been the case.[55]

Endnotes

1 See René Wolfsteller & Yingru Li, Business and Human Rights Regulation After the UN Guiding Principles: Accountability, Governance, Effectiveness, Human Rights Review Vol. 23, 2022; Surya Deva, Business and Human Rights: Alternative Approaches to Transnational Regulation, Annual Review of Law and Social Sciences Vol. 17, 2021; UN Working Group on Business and Human Rights, Guiding Principles On Business and Human Rights At 10: Taking Stock of the First Decade, A/HRC/47/39, 2021

2 In the US the Occupational Safety and Health Administration (OSHA) have responsibility for regulating safety and health conditions in most private industries. Examples include requiring employers to provide personnel protective equipment to employees where necessary, ensure that all walking-working surfaces are strong enough to support the combined weight of workers, equipment and machinery in that area, keep walking-working surfaces free of hazards and provide safe entry and exit points for walking-working areas. OSHA uses metrics to evaluate and quantify a company's safety performance.

3 For example, in 1974, the United Nations created a Commission on Transnational Corporations to define relations between governments and multinational corporations. Negotiators were unable to agree on much, including whether the Commission's code would even refer to human rights. After more than 15 years of negotiations, the initiative was suspended in 1992. Similarly in 2003, the UN Working Group on Transnational Corporations introduced draft Norms that attempted to impose binding human rights obligations on companies– a departure from the traditional international law framework which applied only to state actors. Several Western states and the business community resisted. Ultimately, the UN Commission on Human Rights declined to adopt them.

4 The OECD's Guidelines for Multinational Enterprises, adopted in 1976, provide recommendations to governments and multinational corporations on responsible business conduct. Later updates included human rights and climate change. The ILO's 1977 Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy contains comprehensive guidelines on employment and labor-related issues based on international labor standards.

5 John Ruggie, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, United Nations, A/HRC/17/31, 2011

6 John Ruggie, Life in the Global Public Domain: Response to Commentaries, James G Stewart Blog, 2015

7 Submission to UNGP10+ / Next Decade BHR Project, World Benchmarking Alliance, 2021

8 UN Working Group on Business and Human Rights, Guiding Principles On Business and Human Rights At 10: Taking Stock of the First Decade, A/HRC/47/39, 2021: "[T]he past decade has highlighted the need to develop clearer data to assess the actual state of play of the corporate responsibility to respect human rights in two different directions. Firstly, there is a need to get a more granular picture of corporate uptake of the Guiding Principles at the national level… Secondly, and more fundamentally, there are still no clear data to assess the human rights performance of businesses."

9 See our Center's previous reports on (i) factory safety for workers in Bangladesh (ii) artisanal mining in the DRC (iii) migrant workers in Qatar and (iv) the garment industry in Ethiopia.

10 Supra note 8.

11 Section 307 and Imports Produced by Forced Labor, Congressional Research Service, 2023

12 Other regulatory initiatives also exist in the US context. In 2012, Obama introduced an Executive Order prohibiting trafficking and trafficking related activities in federal supply chains to identify and prevent human trafficking in global supply chains. Although not legislation, it essentially functions as such, requiring suppliers and contractors to engage in due diligence to determine and address any trafficking in persons in their operations or supply chains. Given the bipartisan support for anti-trafficking legislation, executive orders of this type could be precedent for legislative action by US Congress on these issues. For more details on how the US Government can use federal procurement to uphold human rights, see here.

13 Uyghur Forced Labor Prevention Act Statistics, US Customs and Border Protection, 2024

14 Matthew M. Higgins, Closed Loophole, Open Ports: Section 307 of the Tariff Act and the Ongoing Importation of Goods Made Using Forced Labor, Stanford Law Review, 2023

15 It is estimated that in 2023 the US imported at-risk products totaling US $169.6 billion: Walk Free, The Global Slavery Index 2023, 2023.

16 Canada amended the Custom's Tariff in July 2020 to reflect its obligations under USMCA. Mexico introduced a new regulation in February 2023, prohibiting the importation of goods produced with forced labor.

17 David E. Bond, Jessica Lynd & Ian Saccomanno, Preparing for Canada's New Anti-Forced Labour Supply Chain Law, White & Case, 2023

18 Walk Free, The Global Slavery Index 2023, 2023.

19 The Dutch Child Labor Due Diligence Act and the Dodd-Frank Wall Street Reform and Consumer Protection Act were both pitched as consumer protection legislation first and foremost.

20 National Association of Manufacturers. v. Securities & Exchange Commission, 800 F.3d 518, 530 (D.C. Cir. 2015); Keth F Higgins, Statement on the Effect of the Recent Court of Appeals Decision on the Conflict Minerals Rule, US Securities and Exchange Commission, 2014

21 Lotte Hoex, Jean-Sébastien Sépulchre & Marianne Moor, The EU Conflict Minerals Regulation: High Stakes, Disappointing Results, International Peace Information Service, PAX, 2023

22 Gijs Smit & Bass van Nieker, The Netherlands: A Dutch initiative for a value chain due diligence, Linklaters, 2023

23 The Ordinance on Due Diligence and Transparency in relation to Minerals and Metals from Conflict-Affected Areas and Child Labour, 2021.

24 See, for example, Section 4(2) defining what an effective risk management system looks like.

25 A human rights risk is defined as a condition in which there is a "sufficient probability" on the basis of certain factual circumstances that a violation of one of eleven human rights prohibitions is "imminent". Examples of these prohibitions include: (i) the prohibition on employment of children in accordance with the ILO convention No. 138 and (ii) the prohibition on forced labor in accordance with ILO Convention No. 29 and Article 8 of the International Covenant on Civil and Political Rights.

26 German Supply Chain Act: Implementation from below, European Center for Constitutional and Human Rights, 2023

27 Loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre

28 Le Club des Juristes, Due Diligence: What's the outlook for Europe?, 2023

29 Not everyone agrees with the view that the law is too vague. Lucie Chatelain from Sherpa advised *"many legal commentators do not consider the obligation to adopt and implement adequate and effective measures as 'vague': it is a legal standard which can be applied in different situations, and which should avoid a cosmetic, tick-the-box approach to due diligence."*

30 Decision no. 2017-750 DC of 23 March 2017

31 Supply Chain Due Diligence Obligations in Germany, France, and the EU: An Overview, Cleary Gottlieb, 2024

32 French Vigilance Law – Paris Courts Provide Clarifications, Debevoise & Plimpton, 2024

33 The law applies to EU companies with over 1,000 employees and a global turnover of EUR 450 million and non-EU companies with EU turnover of EUR 450 million.

34 Jolyon Ford & Justine Nolan, Regulating transparency on human rights and modern slavery in corporate supply chains: the discrepancy between human rights due diligence and the social audit, Australian Journal of Human Rights Vol. 26, 2020

35 David Hess, The Transparency Trap: Non-Financial Disclosure and the Responsibility of Business to Respect Human Rights, American Business Law Journal vol. 56, 2019; Rachel Chambers & Anil Yilmaz Vastardis, Human Rights Disclosure and Due Diligence Laws: The Role of Regulatory Oversight in Ensuring Corporate Accountability, Chicago Journal of International Law Vol. 21, 2021; Nicola Phillips, Genevieve Lebaron & Sara Wallin, Mapping and measuring the effectiveness of labour-related disclosure requirements for global supply chains, International Labour Office, 2018.

36 Full title is: "An Act to Enact the Fighting Against Forced Labour and Child Labor in Supply Chains Act and to Amend the Customs Tariff" (Bill S-211)

37 *Reporting under the CTSCA:* Adam Chilton and Galit Sarfaty, The Limitations of Supply Chain Disclosure Regimes, Standard Journal of International Law Vol. 53, 2017; Rachel N. Birkey, Ronald P. Guidry, Mohammad Azizul Islam & Dennis M. Patten, Mandated Social Disclosure: An Analysis of the Response to the California Transparency in Supply Chains Act of 2010, Journal of Business Ethics Vol. 152, 2016. *Reporting under UK Modern Slavery Act:* Independent Review of the Modern Slavery Act 2015: Final Report, Secretary of State for Home Department, 2019. *Reporting under Australian Modern Slavery Act:* Amy Sinclair & Freya Dinshaw, Paper Promises? Evaluating the early impact of Australia's Modern Slavery Act, Human Rights Law Centre, 2022; Freya DInshaw, Justine Nolan, Amy Sinclair et al., Broken Promises: Two years of corporate reporting under Australia's Modern Slavery Act, Human Rights Law Centre, 2022

38 An additional review is currently underway and expected to provide its findings in November 2024.

39 Norway also introduced its own disclosure and due diligence legislation. The Norwegian Transparency Act came into force in 2022, and it requires companies to carry out due diligence in accordance with the OECD Guidelines and publish an accessible statement on their website describing these processes. The innovation of the Norwegian act lies in Section 6 and the "right to information" provision, which entitles any person to request information from a covered enterprise regarding how it addresses their adverse effects on human rights and decent working conditions. There is limited reporting to date on the standard of disclosure or compliance under this act. There has been examination of a similar right to information under the Norwegian Environmental Information Act, where researchers have noted some of the limitations of this type of disclosure. They note that "the questions received can be difficult and resource-demanding to answer due to the broad scope of the information requested, and…the responses are not always specific or comprehensive enough."

40 2019 Research Report: An analysis of the sustainability reports of 1000 companies pursuant to the EU Non-Financial Reporting Directive, Alliance for Corporate Transparency & Frank Bold, 2019

41 Non-financial Reporting Directive, European Parliament Briefing, 2021

42 Greg Norman, Simon Toms, Adam M. Howard, Kathryn Gamble, Q&A: The EU Corporate Sustainability Reporting Directive – To Whom Does It Apply and What should EU and Non-EU Companies Consider?, Skadden, 2023

43 See: ESRS S1-1, ESRS S1-2, ESRS S1-3, ESRS S2-1, ESRS S2-2, ESRS S2-3, ESRS S3-1, ESRS S3-2, ESRS S3-3 and ESRS S4-1, ESRS S4-2, ESRS S4-3.

44 There are some quantifiable social matters companies are asked to report on in ESRS S1, but this is limited to a company's own workforce and does not extend to workers in value chains, affected communities or consumers and end-users.

45 EU trade relations with the United States, European Commission.

46 South Korea, Brazil and Mexico have taken steps in the same direction.

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48 Although a recent Florida verdict against the company, Chiquita, for its complicity in the murder of eight Columbians by a paramilitary group (Autodefensas Unidas de Colombia) suggests there may be other routes of potential litigation to hold corporates to account in the US context. Read more here.

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51 Rachel Chambers & David Birchall, How European Human Rights Law Will Reshape US Business, UC Law Business Journal Vol. 20, 2024

52 Keith Slack, The Foreign Corrupt Practices Act Should be a Model for Human Rights, EarthRights International, 2020; David Hess, Aligning Business Efforts to Combat Corruption and Respect Human Rights, 2023

53 See the Fourth Pillar Initiative for more details on centering communities in BHR engagement: https://fourthpillarinitiative.com/

54 Refer to the Responsible Contracting Project Toolkit for further guidance.

55 Corporate Human Rights Benchmark 2022, World Benchmarking Alliance, 2022

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