

# Debating mandatory Human Rights Due Diligence legislation

↪ *AND CORPORATE LIABILITY*

## A Reality Check



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# Glossary

<b>Box-ticking</b>	The fact of doing something just because there is a rule that says that you must do it. A box-ticking approach to corporate due diligence means not fully engaging in preventing and mitigating harm, rather just formally satisfying the requirements of the relevant legal act.
<b>Business relationship<sup>1</sup></b>	All types of relationships of a company with business partners and entities all along its entire value chain (suppliers in all tiers of the supply chain, franchisees, licensees, joint ventures, investors, clients, contractors, customers, consultants, financial, legal and other advisers), and any other non-State or State entity directly linked to its business operations, products or services. <sup>2</sup>
<b>Civil liability</b>	The legal responsibility of paying money for damage to another person's health, business, or property, or to follow other court-enforcements in a lawsuit. Different from criminal liability, civil liability is usually brought by a private party to sue for damages or injunctions. <sup>3</sup>
<b>Due care</b>	The standard of conduct required by law of any natural person or any legal entity to act with such reasonable judgment, care, prudence, determination, and activity as is properly to be expected from, and ordinarily exercised by, a reasonable and prudent person under the particular circumstances, depending on the relative facts of the special case. <sup>4</sup>
<b>Due diligence</b>	The process of identifying and assessing; ceasing, mitigating and preventing; tracking and monitoring; communicating and accounting for environmental and human rights risks and impacts.
<b>Level playing field</b>	A set of common rules and standards that are used primarily to prevent businesses in one country undercutting their rivals in other countries, in areas such as workers' rights and environmental protections. <sup>5</sup>
<b>Leverage</b>	The ability of a business enterprise to effect change in the wrongful practices of another party that is causing or contributing to an adverse human rights or environmental impact. <sup>6</sup>
<b>Member State</b>	A state that is member of the EU.
<b>Mitigation</b>	Actions taken to reduce the extent of adverse human rights and environmental impacts or the likelihood of a certain adverse impact occurring. <sup>7</sup>
<b>Prevention</b>	Actions taken to ensure that a human rights and environmental impact does not occur. <sup>8</sup>
<b>Remedy</b>	The processes of providing remediation for an adverse human rights or environmental impact. <sup>9</sup> Remedy may include, but is not limited to, financial or non-financial compensation, reinstatement, apologies, restitution, rehabilitation, contribution to investigation as well as the prevention of additional harm through, for example, guarantees of non-repetition.
<b>Stakeholder</b>	Any individual or group whose human rights may be affected by a company's operations, products or services, <sup>10</sup> including but not limited to communities, workers, trade unions, civil society organisations, human rights defenders and indigenous peoples.
<b>Subcontractor</b>	Any natural person or any legal entity, irrespective of their place of establishment, to whom the execution of all or part of the obligations of a prior contract with a company is assigned. <sup>11</sup>
<b>Subsidiary</b>	Any company, irrespective of its place of establishment, that is wholly or partially owned by another company (the parent company). <sup>12</sup>
<b>Supplier</b>	Any natural person or any legal entity, irrespective of their place of establishment, who sells products or provides services to another natural person or legal entity throughout the global value chain of a company. <sup>13</sup>
<b>Supply chain</b>	See definition of 'value chain'.

<b>UN treaty</b>	International legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises. The treaty is being elaborated by the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, established by the UN Human Rights Council. <sup>14</sup>
<b>Value chain</b>	<p>A company's value chain encompasses the activities - from processing raw materials to end-user products - that convert input into output by adding value. It includes entities with which it has a direct or indirect business relationship and which either (a) supply products or services that contribute to the company's own products or services, or (b) receive products or services from the company.<sup>15</sup></p> <p>Depending on the context, the term <i>supply chain</i> may be used to specifically refer to the process of all parties involved in the production and distribution of a commodity and the term <i>value chain</i> to the set of interrelated activities by which a company adds value to an article.<sup>16</sup></p>

## Abbreviations

<b>COVID-19</b>	Coronavirus disease 2019.
<b>CSR</b>	Corporate Social Responsibility.
<b>EC</b>	European Commission.
<b>EU</b>	European Union.
<b>(m)HRDD</b>	(Mandatory) Human Rights Due Diligence.
<b>ILO</b>	International Labour Organization.
<b>OECD</b>	OECD
<b>SME</b>	Small and medium-sized enterprise.
<b>UN</b>	United Nations.
<b>UNGPs</b>	UN Guiding Principles on Business and Human Rights.

# Introduction

## Background

HRDD was established in the UNGPs as the procedure enabling companies to put their responsibility to respect human rights into practice. HRDD has the potential to prevent human rights abuses in global business operations provided that it is correctly implemented, and appropriate liability and enforcement mechanisms are established.

However, since the adoption of the UNGPs in 2011, full implementation of such corporate responsibility has remained marginal. The **lack of legally binding and enforceable standards of corporate due diligence** and the **obstacles to justice faced by victims of corporate abuse** have allowed corporations to continue to disregard appalling human rights abuses and environmental harm taking place throughout their global value chains, and to continue to profit from them by keeping their costs as low as possible.

There is already strong recognition of the need for change. Many EU and non-EU countries are already adopting or considering their own mHRDD legislation. In April 2020, the EU Commissioner for Justice committed to an EU-wide initiative on corporate due diligence, to be presented in 2021.

These developments represent solid steps in the right direction, and they show a growing acceptance by decision-makers of the **absolute failure of voluntary and incentive-driven measures** and the **consequent need for mHRDD legislation**. A number of leading businesses and business associations have likewise supported calls for such legislation, arguing for the need to level the playing field.

## Purpose

Progress towards mHRDD legislation is facing, however, a **significant reaction** from certain business and political circles, often **on the basis of false assumptions and misleading arguments** rather than facts and evidence.

This document aims to **counter those flawed or inaccurate claims** and to prevent them from dominating the public and political debate around this topic. Its goal is to serve as a useful resource for policymakers, civil society organisations, trade unions and activists to rebut those arguments and to **bring into the conversation the interests of people and nature along global value chains**, as well as the point of view of responsible businesses, currently facing unfair disadvantages as competitors profit from lower costs gained through exploitation and disregard for human rights and the environment.

# Chapter 1 | About the need for mHRDD legislation



## Claim 1 | Voluntary measures are enough.

CSR voluntary measures are already addressing the issue. We do not need binding legislation.



## Reality | Voluntary guidelines inherently lack any kind of enforcement mechanism and rely on a company's willingness to respect human rights.

While **voluntary initiatives** can play a part in improving standards of business conduct, they are **insufficient on their own to address widespread human rights and environmental abuses** linked to global business operations because companies are not legally required to prevent harm and face little or **no consequences when harm occurs**.

Voluntary guidelines inherently lack any kind of enforcement mechanism and rely on a company's willingness to comply and respect human rights duties.<sup>17</sup> They therefore lack the pressure necessary to incentivise compliance.

In the absence of a legally binding requirement, **only a minority of well-intended companies or those facing consumer scrutiny** decide to invest in improving their performance. These companies have to compete with other businesses that prioritise short-term profit over respect for human rights and the environment.

A **recent survey<sup>18</sup> conducted by the German government** shows that where no mandatory obligations exist, it is only a small minority of companies that address human rights and environmental abuses linked to their global business operations. The government's coalition agreement states that the government will consider introducing supply chain due diligence legislation if, by 2020, less than half of German companies with over 500 employees had HRDD processes in place.

Of the 3,300 companies contacted, only 460 answered the first round of the survey (2019). Of these, **only between 17% and 19%<sup>19</sup> were able to document that they are adequately conducting HRDD**. A second round of the survey was conducted from March to May 2020. Of the 2,200 companies contacted, only 455 answered. Of these, **only 22%<sup>20</sup> were found to comply with HRDD requirements**.

A **recent assessment report<sup>21</sup> by the Danish Institute for Human Rights**, 20 of the biggest Danish companies are not demonstrating full alignment with the responsibility to respect human rights, as defined by the UNGPs, and almost three quarters (14/20) score below 50%.

The **2019 Research Report<sup>22</sup> by the Alliance for Corporate Transparency**, an analysis of the sustainability reports of 1,000 companies drew a similar conclusion. **Only 22.2% of the companies analysed report on human rights due diligence processes** (which gives an indication of the number of companies actually undertaking HRDD measures) and only 6.9% refer to their commitment to provide remedy for harmed people.

The **EC study on due diligence requirements through the supply chain<sup>23</sup>** points in the same direction. Of the businesses surveyed, **only 37% stated that they currently undertake some form of due diligence** covering human rights and environmental impacts, but **only about 16% cover the entire value chain**. This number is likely to be even lower if businesses already subject to human rights due diligence legislation (for instance, French businesses) are excluded. Moreover, most respondents (52%) only address first-tier suppliers and not the whole supply chain, while only 16% cover the entire value chain.



As the EC study shows, a **broad majority** of consulted stakeholders (68%) consider that **voluntary measures have failed** to significantly change the way companies manage their social, environmental and governance impacts, and provide remedy to victims. An identical majority agree that voluntary guidelines would be the **least effective regulatory option** for protecting people and the planet of the six options proposed in the study.

Since voluntary **CSR commitments by companies are not legally enforceable**, it is often difficult to assess whether they are actually being implemented in practise and whether they are effective. The aforementioned EC study acknowledges that voluntary guidelines, without mandatory requirements, are expected to have “**very small or no social impacts [...] as they lack enforcement mechanisms and are dependent on company willingness to comply and transparently share procedural details**”.

Moreover, voluntary CSR frameworks do not provide victims of **corporate misconduct with remedy**, resulting in a denial of their human right to access justice.

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**This gap can only be addressed with mHRDD legislation**, which would contribute to the “smart mix” of mandatory and voluntary measures **by legally requiring companies to identify and address human rights and environmental risks**.

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## Claim 2 | Mandatory legislation would lead to a risk-averse, box-ticking approach.

Making social responsibility legally binding diverts the discussion from the search for constructive solutions and encourages companies to take a compliance-orientated, risk-averse approach that limits creative partnerships and transformative impact.<sup>24</sup>



## Reality | A box-ticking approach is at odds with the spirit of HRDD, which requires companies to take proactive action to address human rights and environmental risks.

A box-ticking approach is at odds with the spirit of **HRDD**, which **requires companies to take effective action** to identify, prevent, mitigate and account for human rights and environmental risks and impacts linked to their business operations.

The UNGPs clearly state that **the duty of care a company owes** to those who may be affected by its activities, including indirectly (through the acts of its subsidiaries or business partners), is **not absorbed by a company discharging its due diligence obligations**.

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**HRDD is defined not as a narrow compliance-orientated process but rather as a standard of expected conduct.**

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The **Commentary to Principle 17 of the UNGPs** states that “Conducting appropriate human rights due diligence should help business enterprises address the risk of legal claims against them by showing that they took every reasonable step to avoid involvement with an alleged human rights abuse. However, **business enterprises conducting such due diligence should not assume that, by itself, this will automatically and fully absolve them from liability** for causing or contributing to human rights abuses.”

When designing a regulatory framework, this fundamental distinction must be upheld in order to ensure that HRDD cannot be interpreted as a mere box-ticking exercise, and that **the appropriateness of the HRDD that is conducted is taken into account in considerations of liability**.

If a minimum effort of procedural rather than substantial compliance sufficed to ensure immunity from liability, companies would rarely move beyond that and legislation would have little, if any, positive effect on the ground.

mHRDD legislation should not allow a company to argue that it had formally complied with its due diligence obligation by simply having a process in place. Instead, they should need to prove whether the harm would have resulted even if the company had exercised appropriate HRDD.





### Claim 3 | National legislation is pointless without an EU framework.

National law must wait for the EU to agree on common standards.



### Reality | National action increases momentum and prepares countries for EU legislation and puts them in a frontrunner position.

Progress at national, regional and international level is complementary. **National, EU and UN levels complement and reinforce each other** and are all needed to close the current global governance gap on Business & Human Rights.

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#### **National-level action increases momentum for robust EU and UN action.**

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The more national-level initiatives there are, the more pressure there is on the EU to advance robust harmonised framework, since a patchwork of different due diligence requirements in each Member State would constitute an unwanted burden for economic operators in the single market.

Even if this scenario of potential fragmentation of the single market does not play out, progress at national level (in the way of open discussions, commitments or support from policy-makers) sends a clear message to the EU that Member States are ready to discuss legally binding rules at EU level.

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#### **National-level action prepares countries for EU legislation.**

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With national legislation in place or in the process of being adopted, governments are already doing part of the work to implement future EU requirements.

Moreover, there is no reason why countries should refrain from legislating before EU rules are in place, as an EU framework will only establish minimum standards. Countries are free to set requirements more stringent than and/or additional to the ones at EU level. Therefore, national legislation would normally not be overridden by future EU rules.

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#### **National-level action puts countries in a frontrunner position.**

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Countries with national legislation in place or in the process of being adopted are viewed as frontrunners in the EU. They demonstrate that they are serious about promoting a more responsible and sustainable economy. Their governments are perceived as an authoritative voice in the field.

**Countries with national legislation in place or in the process of being adopted are better placed to influence discussions on EU rules**, based on their own experience and lessons learned, and may become a source of inspiration for policy-makers at EU and UN level (e.g., the French law is already shaping EU and UN level discussions).

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**National-level legislation and the evaluation of its implementation will help advance the quality and effectiveness of EU and international legislation.**

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Each new initiative builds on the lessons learned from existing developments. mHRDD legislation has evolved<sup>25</sup> from first-generation laws, focusing on transparency and reporting, to second-generation laws, focusing on specific risks or sectors and lacking civil liability provisions, to third-generation laws, linking broad due diligence obligations to civil liability. The development of solid national legislation helps to set the bar higher and therefore to secure robust and effective EU rules.

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**Member States should advance their own processes and not use EU developments as an excuse to delay national action, as the EU will only set a framework of minimum requirements and this process may take long.**

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EU legislation may ensure a level playing field and a minimum common regulatory framework, probably in line with existing international standards, but it will be in the remit of Member States to decide how due diligence obligations shall be specifically implemented and enforced in practice, having regard to the distinctive characteristics of their legal contexts.

Particularly, public and private enforcement mechanisms will likely differ from country to country, to a greater or lesser extent. **There is no reason to delay the improvement of corporate accountability and access to remedy for victims of business-related human rights abuses under national law.**

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**Waiting passively for EU action entails prolonging a situation of unfair competition within each Member State, where responsible businesses continue to find themselves outcompeted by irresponsible ones.**

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Responsible businesses are being outcompeted by both foreign and domestic irresponsible companies. It is urgent to create a level playing field not only among countries across Europe, but also among businesses within each country. **There is no reason not to start ensuring fair competition conditions for those that are already voluntarily undertaking HRDD measures, while the EU works on the wider framework.** Moreover, advances in EU-level legislation should ease the concerns of countries that refuse to adopt national legislation out of fear of a competitive disadvantage vis-à-vis other countries.





## Claim 4 | Companies oppose HRDD legislation.

Companies will never support this legislation, making it difficult for lawmakers to act.



**Reality | A growing number of big and small companies are calling for mHRDD legislation to prevent unfair competition from irresponsible business.**

It is a misconception that businesses would always oppose higher standards of responsible business conduct. **More and more companies are supporting mHRDD legislation, both at EU and national level:**<sup>26</sup>

**Finland** | Half of the 140 members of the campaign<sup>27</sup> for national mHRDD legislation were companies. Two industry associations (Sailab – MedTech Finland, representing the medical industry, and The Family Business Network Finland, representing family-owned enterprises) supported the campaign too.

**France** | The Forum pour l'Investissement Responsable (FIR), representing 65 investors, insurance companies, banks, advisors and other stakeholders, expressed their support for the French Duty of Vigilance Law in 2015.<sup>28</sup>

**Germany** | 70 companies from or with business in Germany, including Hapag-Lloyd, KiK, Nestlé, Primark or Symrise, and two investor groups have expressed their support for a supply chain due diligence law in Germany that paves the way for ambitious regulation at the European level.<sup>29</sup>

**The Netherlands** | 29 Dutch companies, including well-known brands such as Nestlé, Heineken or G-Star, expressed their support for child labour due diligence legislation.<sup>30</sup> The Dutch business network MVO Nederland, representing over 2,000 companies, called upon the Dutch government to implement mHRDD legislation.<sup>31</sup> 50 Dutch companies recently called for a legal framework for due diligence that moves from children's rights to human rights.<sup>32</sup>

**Switzerland** | A large number of companies and business associations, including GEM (the major multinationals association in French-speaking Switzerland), Geneva's Chamber of Commerce; ICT, food and textile industry associations; trade associations; major Swiss retailers; and a group of 27 global institutional investors expressed their support for a Swiss legislative proposal on corporate due diligence that included civil liability for harm.

**EU** | 79% of the EU companies and business associations who participated in the recent EC public consultation on the renewed sustainable finance strategy<sup>33</sup> responded in favour of an EU framework for supply chain due diligence.

Some of the world's largest companies in the garment (Adidas, H&M, Inditex, Primark), telecommunications (Ericsson, Telia Company), transport (Hapag-Lloyd), food (Mondelēz,<sup>34</sup> Nestlé, Unilever), coffee (Paulig, Tchibo) and cocoa industries (Tony's Chocolonely, Ferrero,<sup>35</sup> Barry Callebaut AG,<sup>36</sup> Mars,<sup>37</sup> Ritter Sport), and large business associations (European Brands Association,<sup>38</sup> FoodDrinkEurope,<sup>39</sup> Amfori,<sup>40</sup> European Cocoa Association<sup>41</sup>) have publicly expressed their support for a harmonized mHRDD framework at EU level, some of them explicitly calling for civil liability for harm.<sup>42</sup>

**International** | A group of 105 international investors representing US\$5 trillion in assets under management, coordinated by the Investor Alliance for Human Rights, published a statement<sup>43</sup> calling on all governments to develop, implement, and enforce mandatory HRDD requirements for companies or, where appropriate, to further strengthen these regulatory regimes where they already exist.

These companies want to place themselves at the forefront of this movement. They understand that society does not accept the old business model that only prioritises short-term profits with total disregard for respect of human rights and the environment. They also understand that **HRDD rules will help them ensure business sustainability** in the middle and long-term.

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Many of these companies are already implementing due diligence on a voluntary basis. **They want the playing field to be levelled to ensure fair competition** conditions for businesses that are already acting responsibly.

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Additionally, when facing this argument, it must also be considered that the conservative approach to mHRDD legislation taken by many major business associations does not adequately represent the views and sensitivities of their members. As shown by the **EC study on due diligence requirements through the supply chain<sup>44</sup>**, **individual companies are often much more positive and constructive than their business associations**. While more and more transnational corporations are now calling for mHRDD rules, many business associations continue to misrepresent a large number of their members by positioning themselves against any kind of enforcement mechanisms.



## Chapter 2 | About the consequences for business



### Claim 5 | mHRDD legislation would be overly burdensome for SMEs.

SMEs have less capacity and more informal processes and management structures than larger companies, so they lack the resources and expertise to undertake HRDD measures. SMEs don't have any leverage vis-à-vis their global value chain.



### Reality | Due diligence requirements would be proportional to the size of businesses. Cost studies do not show a disproportionate economic burden.

All business enterprises, regardless of size, should conduct human rights and environmental due diligence. **SMEs, too, can cause, contribute to and be directly linked to severe human rights and environmental impacts.**

While their operations are smaller, SMEs also have a direct responsibility to respect human rights. However, SMEs can be reassured that the means through which they will be expected to meet their responsibility to respect human rights will be **proportional to, among other factors, their size.**

For SMEs, the type of policies and processes expected would be **according to their capacity**, following the [Commentary to Principle 14 of the UNGPs](#). Their degree of **leverage** over their business relationships would also be considered in determining their responsibility (although it would not be relevant to considering whether they should identify all risks, carry out due diligence and exercise any leverage they may have).<sup>45</sup>

Studies of the compliance costs of a variety of due diligence regimes **do not identify a disproportionate economic burden for SMEs**. Rather the cost of compliance is typically related to the size of the enterprise.<sup>46</sup>

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In fact, the [EC study on due diligence requirements through the supply chain](#)<sup>47</sup> shows that, even for SMEs, the costs of carrying out mandatory supply chain due diligence appears to be relatively low compared to the company's revenue. **The additional recurrent company-level costs, as percentages of companies' revenues, amount to less than 0.14% for SMEs.**<sup>48</sup>

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Moreover, **SMEs tend to have fewer suppliers and customers**, which enables deeper and better-quality relationships. As concluded by Shift<sup>49</sup> on the basis of its work with leading SMEs, not only is it more feasible for SMEs to map the businesses in their supply chains, it is also easier and more desirable to get to know them.

SMEs also tend to spend more time selecting business partners that share their values and match their standards, and have a preference for longer-term relationships. These **stronger relationships allow greater scope to integrate human rights issues**.

While it is true that SMEs often lack the hard leverage of larger transnational corporations, small and medium-sized businesses can still take a **partnership approach in supply chains** and engage with their suppliers and subcontractors in more creative ways to effect change.

Ensuring respect for human rights and the environment throughout global value chains is a complex exercise for companies of any size. However, all of them must conduct appropriate due diligence to the extent and in the ways that their size and resources allow.

Such scope – i.e. covering all business enterprises regardless of size – is consistent with the UNGPs, which expressly state that SMEs should also be covered by due diligence obligations. Even **the EC and Member States themselves argued that companies of all sizes should be included in the scope of the UN treaty**. In fact, the first<sup>50</sup> and second<sup>51</sup> revised drafts of the UN treaty encompass all business activities, generally regardless of size,<sup>52</sup> on the basis of EU recommendations.





## Claim 6 | mHRDD legislation would impose a heavy economic burden on companies.

Compliance with mandatory due diligence requirements would be extremely onerous for businesses.



## Reality | HRRD is not disproportionately expensive and would help companies get ahead of potential risks that can have serious legal, financial and reputational implications.

Compliance cost studies of a variety of due diligence regimes confirm a typical pattern: **a high one-off instigation cost, which reduces over time as experience and expertise develop.** These studies **do not identify a disproportionate economic burden for SMEs**, since the cost of compliance is typically related to the size of the enterprise.

The **EC study on due diligence requirements through the supply chain<sup>53</sup>** shows that any increase in **financial costs for carrying out due diligence in the supply chain would remain relatively low compared to the company's revenue**: for SMEs, the additional recurrent company-level costs would be around 0.14% of their revenue, and, for larger companies, only around 0.009%. Concretely, this would amount to an additional cost of 740 EUR/year for companies with a revenue under €1,000,000.

**0.14%**

of the revenue is the estimate cost for SMEs to carryout HRDD

**0.009%**

of the revenue is the estimate cost for large companies to carry out HRDD

For businesses that are already taking steps to prevent abuses and provide remedy, mHRDD legislation would not represent a significant additional burden and would have the advantage of providing legal clarity on necessary action to meet international standards and level the playing field.

Moreover, **HRDD has the potential to accrue a range of economic benefits to businesses.** As the EC study finds, HRRD would help companies **get ahead of potential risks**, which can have serious legal, financial and reputational implications.

Empirical studies<sup>54</sup> on a large sample of 2,000 companies confirmed that **companies undertaking due diligence outperform their peers** and are more competitive.

The **OECD study “Quantifying the Costs, Benefits and Risks of Due Diligence for Responsible Business Conduct”<sup>55</sup>** (June 2016), which analyses the compliance cost of a variety of due diligence mechanisms and the economic benefits of due diligence for businesses, found that comprehensive HRDD correlates to **many positive key findings in terms of stock price,<sup>56</sup> cost of capital,<sup>57</sup> reputation and brand image,<sup>58</sup> human resources,<sup>59</sup> environmental performance,<sup>60</sup> and risk management.** While these benefits are difficult to quantify, they might even outweigh the economic costs of undertaking HRDD measures.

The **European Added Value Assessment<sup>61</sup>** on corporate due diligence by the European Parliamentary Research Service also found a positive correlation between the extent to which companies implement environmental and social policies and their economic performance. **In terms of profitability, the increase could range between 1 % in the least ambitious scenario and 3.05 % in the most ambitious one.**

Furthermore, mHRDD legislation would open new opportunities for collaboration across businesses and with other stakeholders, which can also reduce due diligence costs.

Importantly, **discussions about costs tend to overlook the costs of irresponsible business** for the environment and society as a whole. Such costs are not borne by companies themselves, but are **externalised to individuals, society and the environment.** These externalised costs are incalculable in strict monetary terms but must nonetheless be afforded priority in policy discussions over costs and benefits.

Any attempt to quantify corporate abuse in monetary terms will always result in an inaccurate and incomplete exercise. **Not all social and environmental impacts can be quantified. The death of a worker, the loss of a cultural identity or environmental devastation cannot be replaced by monetary compensation.** Nevertheless, some studies have tried to measure the economic impacts of irresponsible business operations.<sup>62</sup>

For instance, a consortium of scientific experts including Nigeria’s Ministry of Environment assessed the financial cost of environmental damage caused by over 50 years of reckless oil and gas extraction in the Niger Delta into the tens of billions of dollars.<sup>63</sup>

The ILO has estimated the global value of forced labour in terms of profits for businesses at \$150 billion per annum.<sup>64</sup> The cost to the estimated 21 million people who lives of forced labour is incalculable; freedom and dignity do not have a price.





## Claim 7 | mHRDD legislation must wait until we have overcome the COVID-19 crisis.

The world economy has entered an unprecedented crisis caused by the COVID-19 pandemic. mHRDD legislation would add an extraordinary burden on companies who are only trying to recover from this crisis. Companies should be given the chance to decide whether their financial health after the COVID-19 crisis allows them to undertake HRDD or not.



## Reality | A truly robust and sustainable economic recovery must be based on international standards for responsible business conduct, which are essential to preventing and reacting to future crises.

The COVID-19 crisis has laid bare the dire need for better regulating economic globalization to **protect human rights and the environment** and to **strengthen the sustainability of global value chains**.

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### **Unsustainable global business conduct has been linked to the outbreak of pandemics.**

Although the exact origin of the current pandemic still requires further study, research continues to confirm a worrying link between **zoonotic diseases, such as COVID-19, and deforestation, climate change and biodiversity loss**.<sup>6566</sup> These environmental impacts, typically business-driven, generate the conditions for viruses and diseases to arise and spread.

Rampant deforestation continues to **reduce the natural barriers between wild animals and humans**, increasing the likelihood of virus transmission (e.g., AIDS and Ebola).<sup>6768</sup> Modern **agribusiness practices** have likewise been proved to contribute to the emergence of zoonotic diseases.<sup>69</sup>

**Global warming is also expected to accelerate the emergence of new viruses<sup>70</sup> and climate change** has already altered and accelerated the transmission patterns of infectious diseases.<sup>7172</sup> Moreover, research has found a **strong correlation between air pollution and higher mortality rates** for coronavirus SARS, illustrating the harmful compound effects of irresponsible business conduct.<sup>73</sup>

Businesses must ensure that they are not contributing to the conditions favourable for the outbreak of future diseases or the renewed outbreak of existing ones.

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### **European economies are suffering the consequences of unregulated global value chains.**

The spread of COVID-19 has led to **the breakdown of global value chains**: first, the sudden closure of factories in China led to a shortage of raw materials; later, the sharp drop in market demand in the EU led to the closure of factories and the mass laying-off of workers in production countries.

This ripple effect has exposed the **lack of preparedness and resilience** of the globalised economy.<sup>74,75</sup> Businesses have lost oversight of their **increasingly complex and intertwined** value chains.<sup>76</sup> There is an urgent need for **better overall due diligence, and better value chain mapping and risk management**, in order to build more resilient global value chains.<sup>77</sup>

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### **Disregard for global value chains has put vulnerable workers at extreme health and financial risk.**<sup>78</sup>

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The crisis has had **devastating impacts on millions of value-chain workers**, revealing the human rights risks of cheap global outsourcing<sup>79</sup> and the joint responsibility of states and businesses in addressing those impacts.

Millions of value-chain workers have been laid off without a social safety net.<sup>80,81</sup> Brands and retailers are not only cancelling future orders, but also **refusing to pay for already produced goods**, which has left factories unable to pay the wages of desperate production workers.<sup>82</sup>

Where businesses have continued to operate, **health and safety risks have worsened** for lower-tier workers, who continue to face unsanitary working conditions and the lack of personal protective equipment. Workers in essential sectors, such as health, food and transport<sup>83</sup>, risk their lives and endure untold hardship, such as forced labour (e.g., Top Glove Corporation<sup>84</sup> and the production of medical gloves), to produce the essential goods needed to protect the lives of end users.

Despite all this, there are also positive examples of responsible business conduct: companies securing salaries, donating personal protective equipment,<sup>85</sup> taking delivery of orders<sup>86</sup> or granting aid to their global suppliers.<sup>87</sup> It is now time to mainstream such behaviour by legislating corporate due diligence.

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### **The lack of corporate accountability has put European people's rights to food, water and health at risk.**

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As warned by the FAO, **some businesses have jeopardised EU citizens' access to basic food and medical supplies**, thus threatening their human rights. This has occurred through direct actions of businesses engaging in<sup>88</sup> or facilitating<sup>89</sup> the hoarding of goods or price-gouging,<sup>90</sup> as well as indirectly, as businesses disregard health risks in their global value chains.

**mHRDD legislation would significantly help the prevention of future pandemics by tackling their environment-related causes, and enable us to better react to them by detecting and responding to the many human rights challenges that present in a crisis.** Businesses must conduct HRDD as part of the overall process of building resilience into currently vulnerable global value chains, and to ensure that they do not contribute to environmental drivers of infectious disease outbreaks.

**Improved access to remedy for victims of corporate abuse must be ensured for victims of corporate abuse in global value chains**, particularly those exposed to the kind of health and financial risks stemming from this crisis. Remedy is even more needed under the current circumstances.

The OECD itself has stressed<sup>91</sup> the need for an RBC response to the COVID-19 crisis that helps to identify the environmental, social and governance risks and vulnerabilities in supply chains. It says this would contribute to “a faster and stronger recovery while making the economy more resilient to future crises”, as well as enable access to remedy if companies or government responses fail to meet RBC standards.

The OECD has highlighted<sup>92</sup> that companies with social and environmental sustainability policies are performing better in the COVID-19 crisis and improve their viability in the short-term and their prospects for recovery in the medium and long term. Further research<sup>93</sup> has confirmed that companies with better social and environmental performance have been more resilient throughout the crisis.



## Claim 8 | Companies would move their headquarters to improve their competitiveness.

mHRDD legislation will put companies at a competitive disadvantage and they will move to more business-friendly legal environments.



## Reality | Differences in the regulatory burden very rarely cause businesses to migrate, a decision that may entail significant reputational risks.

Contrary to this argument, the **EC study on due diligence requirements through the supply chain<sup>94</sup>** shows that **mHRDD laws could lead to increased competitiveness and increased demand for labour.**

mHRDD legislation's **reputational effects may lead to increased demand** for products and services in compliance with human rights and environmental standards, **and increased competitiveness.** Moreover, the increased demand for staff with specialised expertise resulting from due diligence activities may also have positive effects on employment.

The threat to leave a particular jurisdiction and take business elsewhere, as a result of alleged competitive disadvantages and consequent lost jobs as a result of stringent HRDD requirements is, however, a common argument from the corporate lobby.

Alarmism is unjustified not only because the competitive disadvantage is a fallacy, but also because, when making location decisions, companies take into account many other considerations of equal or higher relevance (for example, political stability, quality of infrastructures, the education of its employees, etc.).

The fear of companies fleeing the country is often cited by political and interest groups seeking to block more stringent business regulations, higher social and environmental standards or tax rises. However, **the risk of offshoring is widely exaggerated and evidence of it is hard to find.**

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Businesses are socially and economically embedded in their states. **Differences in the regulatory burden very rarely cause businesses to migrate to jurisdictions with lower standards.<sup>95</sup> Such a decision may also entail significant reputational risks.**

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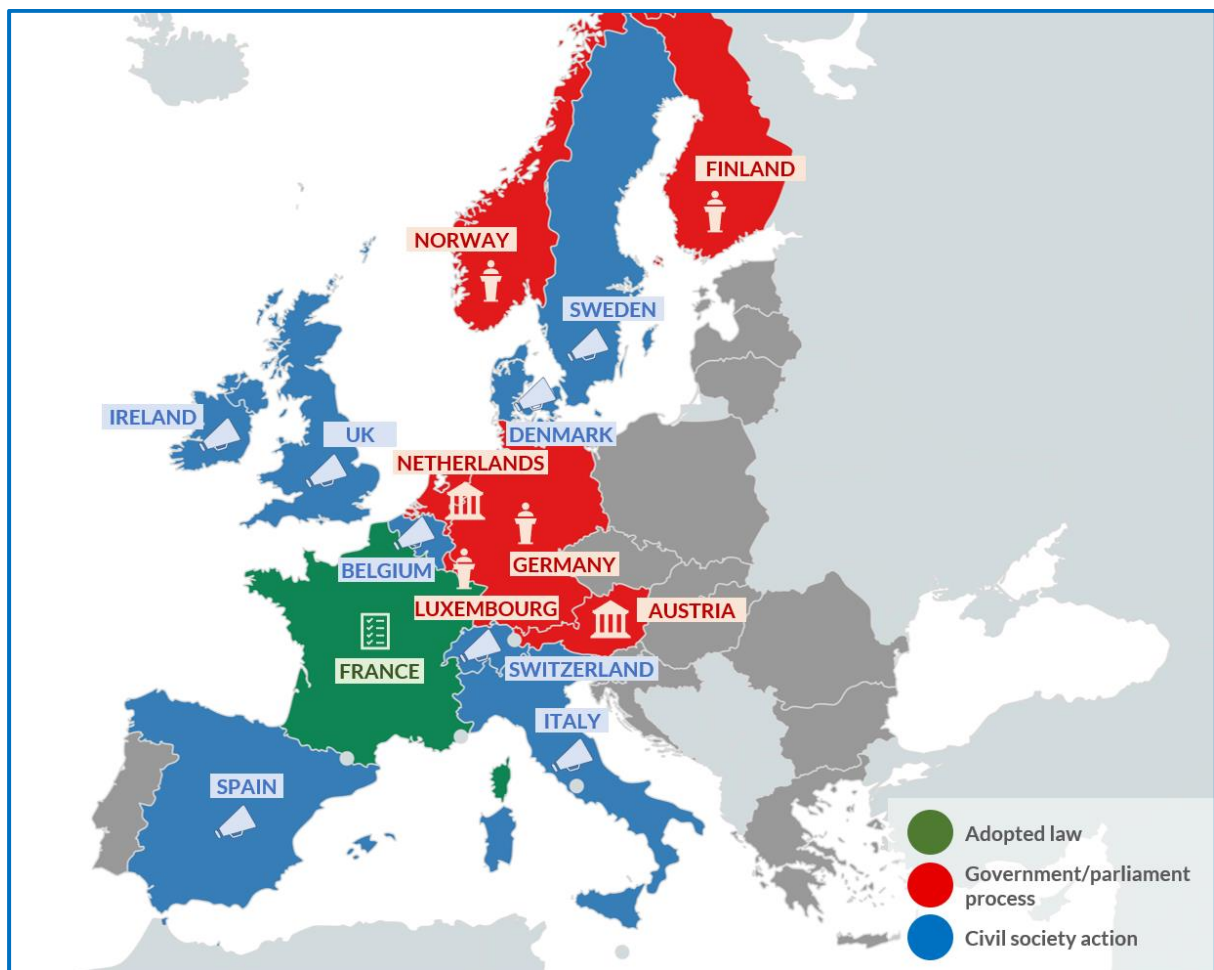
In 2017, France, the 2nd largest economy in the EU after Germany, adopted the landmark Duty of Vigilance Law.<sup>96</sup> **Despite similar threats by the corporate lobby throughout the legislative process<sup>97</sup>, corporations have not left the country.** On the contrary, even SMEs not covered by the law have shown interest in adopting vigilance plans.

Other national governments have committed to or are already exploring mHRDD legislation (e.g., Finland,<sup>98</sup> Germany,<sup>99</sup> Luxembourg,<sup>100</sup> the Netherlands,<sup>101</sup> or Norway<sup>102</sup>) and several national parliaments are considering relevant initiatives (e.g., Austria<sup>103</sup> or the United Kingdom<sup>104</sup>). An EU legislative proposal is expected in 2021.<sup>105</sup>

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**The foreseeable developments at national, EU and international levels will help create a level playing field for all businesses, particularly ensuring fair competition conditions for those that are already voluntarily undertaking HRDD measures, and further reduce the already unlikely risk of offshoring.**

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European map of mHRDD developments (November 2020). Source: ECCJ.



## Claim 9 | It would be unfair to hold companies liable for harm caused by others in their value chain.

Holding parent or lead companies accountable for harm occurring through their global value chains disregards the fundamental principle of the separate legal personalities of companies. Companies should only respond for the harm they directly and intentionally cause.



## Reality | Civil liability would be reasonable and respectful of the principle of limited liability, as it would only apply for the parent or lead company's own breach of the duty of care owed under HRDD standards.

Civil liability for harm in a company's value chain would only apply if there was a link between the harm and the company's actions or omissions, and **if the company could not prove that it acted with due care** (i.e., if it had not taken all reasonable measures that could have prevented the harm).

Liability would be determined in accordance with the level of control or influence of the company over the relevant link in the value chain, and the means the company had to exercise its due diligence, as a link between the company's omission and the damage would be required. This means the scope of impacts that could trigger potential civil liability for a company may be narrower than the range of impacts it should carry out due diligence over.<sup>106</sup>

Civil liability for harm in global value chains would respect the principle of the separate legal personalities of companies. Rather than for the abuses by the business partner involved in the harm, **civil liability would apply for the breach of the duty, owed by the parent or lead company, to effectively identify, prevent and mitigate such abuses.** Therefore, the failure that would give rise to liability would only be attributable to the parent or lead company, thus fully respecting its limited liability.

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Civil liability is needed to deliver redress for victims of human rights abuses. **Victims must have the opportunity to seek remedy before the courts of the home country of the parent or lead company** that negligently failed to prevent the harm and benefited at the expense of it.<sup>107108</sup>

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On their own, administrative sanctions for failure to conduct due diligence do not address this challenge.<sup>109</sup> Without civil liability, sanctions would mean states gaining revenue from harms taking place in the global value chains of their companies, whilst victims would remain without an effective judicial right to remedy.

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**Civil liability for harm caused by third entities that the company should, however, have prevented** is not a wild idea. It is neither unrealistic nor unreasonable. In fact, it is **well-established in existing company, labour, competition and anticorruption laws and legislative initiatives.**

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Under the **French Duty of Vigilance Law**,<sup>110</sup> where a company fails to adopt a vigilance plan, and a risk that the plan might have prevented from occurring materializes, companies may be held liable.<sup>111</sup>

The **key points of the draft law on supply chain due diligence** prepared by the **German Ministries of Labour and Social Affairs and Economic Cooperation and Development** were leaked<sup>112</sup> in June 2020. They include civil liability for an impairment that was foreseeable and avoidable when fulfilling the due diligence obligation.

In the **UK, courts** have established that a duty of care may be owed by the parent company not only to a subsidiary's employees, but also to other persons affected by its operations; that a parent company could therefore be civilly liable for the operations of its overseas subsidiaries; and that overseas claimants may be allowed to bring claims through the UK courts.<sup>113</sup>

Corporate liability in the subcontracting chain is common in **EU Labour Law**, including the **Enforcement of Posting of Workers Directive**,<sup>114</sup> the **Sanctions Directive**<sup>115</sup> and the **Seasonal Workers Directive**.<sup>116</sup> Likewise, under **EU Competition Law**, it is well-established that EU parent companies can be held liable for anticompetitive infringements of their subsidiaries.<sup>117</sup>

The **European Parliament's report on an EU legal framework to halt and reverse EU-driven global deforestation**,<sup>118</sup> recently adopted by the ENVI committee, includes civil liability provisions for harm in global supply chains.

The **second revised version of the draft UN treaty**<sup>119</sup> proposed by the UN open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, includes civil liability for harm in global value chains.

In the framework of the EU initiative on sustainable corporate governance, **relevant institutional statements and reports have called for corporate civil liability for harm in global value chains.** In particular, the EU Commissioner for Justice, Didier Reynders, have repeatedly affirmed that civil liability is likely to be an element of the EC's legislative proposal.<sup>120</sup> A representative from the EC at a parliamentary hearing<sup>121</sup> in October 2020, reiterated that the EC "would like to impose mandatory duties with quite strong enforcement mechanisms, including civil liability [...] so that it is efficient and we do see impact on the ground." In September 2020, the European Economic and Social Committee adopted an **opinion on Mandatory Due Diligence**,<sup>122</sup> requested by the European Parliament, which called on the EC to propose a specific liability framework resulting in effective remedies for people affected by corporate misconduct.

Moreover, some **European companies and business associations have also spoke out in favour of civil liability** for harm in global value chains.<sup>123,124,125,126,127</sup>



## Claim 10 | Civil liability would expose companies to increased risk of litigation.

Civil liability mechanisms to implement mHRDD would open the floodgates for lawsuits against companies and result in abusive litigation. Companies will be compelled to shift resources from HRDD to litigation defence.



**Reality | Litigation is a last resort,<sup>128</sup> yet without the possibility of seeking damages before the courts, there is little impetus for corporations to prevent abuses and provide remedy.**

**mHRDD legislation has a mainly preventative approach.** Its goal is to ensure that companies take adequate measures to identify, prevent and mitigate adverse human rights and environmental impacts.

In order to enable victims to obtain effective remedy and compensation, companies must be held liable for human rights abuses in the context of their business activities. Civil liability would only apply if there was a link between the harm and the company's actions or omissions, and if the company could not prove that it acted with due care (i.e., if it had not taken reasonable measures that could have foreseen the risk and prevented the harm).

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The **EC study on due diligence requirements through the supply chain<sup>129</sup>** concludes that **if judicial or non-judicial mechanisms of redress** for those affected by the company's failure to exercise due diligence **existed, compliance with HRDD requirements would increase** and the expected positive social impacts would be more likely to materialise.

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Legal liability will not lead to a wave of civil claims. Judicial proceedings often take a long time and entail high costs for the plaintiffs, and particularly so in the case of transnational litigation and the need to source evidence and documentation from third countries.

In fact, since the early 1990s until today there have been just 40 foreign direct liability cases brought before European courts against EU companies for alleged harms committed abroad.<sup>130</sup> Of 35 cases studied, 20 were civil claims for damages, whilst 15 alleged corporate criminal conduct.<sup>131,132</sup>

**Transnational human rights litigation is incredibly costly.** The severe high costs of bringing such cases (translation, travel, expert testimony, scientific studies, etc.), combined with the uncertainty regarding quantification of damages, make these claims too financially risky and unattractive to litigation funders.



Moreover, this argument **ignores the loser-pays principle** in European legal systems, which requires the losing party to cover not only its own costs, but also those of the winning party. Under this principle, no sensible plaintiff or lawyer would bring a costly case that has little chance of winning, **ensuring frivolous claims become effectively dis-incentivised.**

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**Litigation is therefore only seen as a last resort. However, without the possibility of going to court to assert one's legal right to a proper remedy, there is little impetus for corporations to provide proper remedy.**<sup>133</sup>

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Ultimately, by reducing the overall harm taking place in global value chains, **HRDD would actually limit the risk of lawsuits**, and proof of adequate due diligence might act as a (partial or full) defence to legal claims.<sup>134</sup>

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Furthermore, **HRDD may even protect companies from consumer protection litigation** based on human rights or environmental issues. Customers rely upon companies' public statements about their impacts on human rights and the environment. Inconsistencies between companies' public commitments and evidence of human rights violations or environmental damage in their supply chains have brought them to face lawsuits alleging misleading advertising.<sup>135,136</sup>

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**Due diligence would allow companies to limit the risk of such suits by making accurate and demonstrable statements** regarding their human rights and environmental performance, based on what the company learns from due diligence processes.

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## Claim 11 | Civil liability would create perverse incentives for companies not to exercise HRDD.

Civil liability provisions disincentivise HRDD compliance. If the fact of exercising supervision and control over their global value chains gives rise to a duty of care, exposing companies to legal liability may prompt them to distance themselves from their subsidiaries and business partners. Regulatory requirements must not lead inadvertently to situations where companies are held liable precisely because they took due diligence measures.



## Reality | The adoption of mHRDD legislation with an associated civil liability regime would mitigate this risk.

The imposition of the duty to exercise HRDD would alleviate the existing legal uncertainty. **Companies would have no incentives to distance themselves from their subsidiaries and business partners, but rather would be encouraged to exert control, supervision and leverage, where applicable, in order to ensure respect for human rights and the environment and, by doing so, avoid legal liability.**

Domestic case law on parent company liability (particularly, in the UK<sup>137,138</sup>) has sometimes made the existence of a duty of care (and therefore liability) dependent on the degree of control exercised by the parent company over the decisions of a subsidiary, or the degree of control that should have been exercised given the relationship between the parties or the policies in place.<sup>139</sup>

Indeed, this may discourage companies from conducting HRDD, as it would expose them to the risk of legal liability, and rather encourage them to distance themselves from their subsidiaries and business partners.

However, **the adoption of mHRDD legislation with an associated civil liability regime would counteract this risk.** By mandating corporate due diligence in both parent company–subsidiary and lead company–supplier/subcontractor relationships, the suggested disincentive would disappear. Companies would be compelled to exert control, supervision and leverage, where applicable, in order to ensure respect for human rights and the environment throughout their supply chains and, by doing so, avoid legal liability for the harms taking place.

## Chapter 3 | About the effects in the Global South



### Claim 12 | mHRDD legislation would discourage investment in Southern countries.

Laws can represent a “de facto” embargo and undermine business engagement in regions in need of investment. They can have a chilling effect on foreign direct investment and discourage companies from engaging in challenging environments, while being simultaneously unlikely to address deep-rooted and complex human rights challenges.



### Reality | mHRDD legislation would strengthen the bargaining position of Southern countries without necessarily undermining foreign direct investment.

First and foremost, investors seek a stable investment framework, a sound business climate, and the right macro-economic conditions. The establishment of **a fair, stable and sustainable legal environment is a better way to attract investment** than exempting investors from having to comply with human rights, social and environmental standards.<sup>140</sup>

In fact, contrary to a widely held assumption, research studies reveal that **stronger human rights and environmental protections can benefit countries in the form of increased foreign direct investment flows**, whereas weaker standards can detract investment.

Several studies show that Western firms are often more likely to enter foreign countries with increased respect for human rights, as it fosters a **skilled and healthy labour force** and reduces the risk of reputational damage; as well as with more stringent environmental regulations, as a clean environment is **good for the health of their workers**’ and the local population and because of the **decreased reputational risk** of exposure to environmental scandals.<sup>141</sup>

mHRDD laws can encourage host countries to strengthen their governance systems. When companies must undertake HRDD measures, countries that do their part more efficiently may become more attractive.

Far from harming Southern countries seeking to attract investment, **mHRDD legislation would strengthen the bargaining position of these countries.** It would **support them in making the choices that should benefit their populations and the environment most**, when these countries could otherwise be tempted to signal their willingness to attract investors by lowering or keeping their standards low.

**The rule of law, far from undermining foreign direct investment, actually underpins it.** Companies would not be able to operate anywhere in the world without a framework of laws to protect their assets and investments.

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**mHRDD laws would create a better balance of interests that would give greater legitimacy to foreign direct investment** by ensuring basic protection for those affected by business activities.

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Business operations that harm human rights and the environment rarely lead to sustainable development. mHRDD laws require that companies respect these basic norms wherever they operate. If a company leaves a country because compliance with human rights and environmental standards makes its investment unprofitable in the short-term, it means that abusing human rights and the environment is essential to its business model. **Nobody can openly defend such a business model.**





## Claim 13 | Companies would disengage after harm occurs.

A law risks encouraging companies to adopt a “hands off” or “cut and run” approach (i.e., disengaging or terminating business relationships with local suppliers after abuses are identified). This harms local economies and discourages companies from using their leverage to prevent and address human rights impacts linked to their business relationships.



**Reality | As per HRDD standards, disengagement should only be considered as a last resort after all other steps have been exhausted. Evidence shows that disengagement is rare.**

The fear of European companies withdrawing from Southern countries, rather than addressing adverse impacts, is unjustified. As stated in the **EC study on due diligence requirements through the supply chain<sup>142</sup>**, in practice, it is unlikely that companies would be in a position to restructure their global business model in such a significant way for this purpose.

Similarly, the literature<sup>143</sup> has shown that **companies very rarely terminate their business relationships** (which includes exiting certain jurisdictions) **based exclusively on social or human rights-related concerns**.

The reality is that, while taking a **hands-off approach** may reduce the theoretical probability of a legal risk, it **would expose companies to a host of other legal and non-legal risks** that are more likely to occur in practice and can cause greater damage to their business.

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Importantly, **a hands-off approach** where a company simply disengages without taking further measures **would not be in line with HRDD standards**.

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The **OECD Due Diligence Guidance<sup>144</sup>** stipulate that **disengagement from the supplier or other business relationship should only be considered as a last resort** after failed attempts at preventing or mitigating severe impacts; when adverse impacts are irremediable; where there is no reasonable prospect of change; or when severe adverse impacts or risks are identified and the entity causing the impact does not take immediate action to prevent or mitigate them.

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**Any plans for disengagement should take into account how disengagement might change impacts on the ground, and its potential social and economic adverse impacts.**

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Potential adverse impacts that any plans for disengagement should take into account include<sup>145,146</sup> loss of jobs and income for workers, and the consequences of this in terms of resources, health and education for workers' families and communities, in light of the availability of health services and social protection coverage and the prospects of alternative employment; the loss of tax revenues and its consequences in terms of the financing of public services; or even the potential sale of an operation to a less responsible company, and its consequences for workers, their families and communities, or the environment.

According to the UNGPs, **before considering disengagement, companies should use their leverage to mitigate any adverse impact** caused by their suppliers and subcontractors, where they have the ability to effect change in their wrongful practices. Leverage can be exerted through attempts of mitigation, the threat of disengagement or the temporary suspension of the relationship.

If the company lacks leverage, there may be ways to increase it (for instance, by offering capacity-building or other incentives to the related entity, or collaborating with other actors). **Only if the company lacks the leverage to prevent or mitigate adverse impacts and is unable to increase it, should it consider ending the relationship.**

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**mHRDD legislation would therefore, prevent irresponsible disengagement from happening** by compelling companies to evaluate all possible options for alternatives to disengagement to consider the potential adverse impact associated with a decision to disengage.

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mHRDD legislation would also require companies to prevent harm from occurring in their global value chains by sourcing responsibly and putting in place responsible purchasing practices.





## Claim 14 | mHRDD legislation would have a very limited positive impact on the ground.

mHRDD legislation will not have an impact on human rights and labour and social standards in third countries, as the link between the parent company and workers and communities down the supply chain is too weak.



## Reality | Due diligence by EU companies would support better compliance by companies in global value chains with labour and social standards.

Following existing corporate due diligence international standards, **HRDD obligations should cover the company's entire global value chain and, therefore, ultimately reach the people linked to the companies' global operations**, wherever they are.

In order to respect human rights and the environment, companies must map their value chains and know where their products are sourced from, the conditions in which they are manufactured or extracted, and the impact these processes have on the ground.

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**Corporate due diligence would support better compliance by companies in global value chains with labour and social standards.** Moreover, mHRDD requirements would **make it easier for host countries to implement labour standards in practice** and thus support creating a level-playing field in host countries.

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Since the few legislative initiatives at national level have only been recently implemented, **no comprehensive studies on their implementation and possible social impacts exist yet.**

However, the **EC study on due diligence requirements through the supply chain<sup>147</sup>** concluded that although enforcement of labour rights and working conditions is problematic in supply chains and third countries, insofar as mandatory due diligence regulation would add a legally binding dimension to these existing expectations, **it is likely to increase the practical uptake of those existing standards, thereby improving the labour conditions** in third countries.

In fact, the study shows that more than two-thirds (67.65%) of business survey respondents believed that new mHRDD rules would have impacts on human rights (only 9.8% disagreed), **a large majority (65.69%) agreed that they would have social impacts<sup>148</sup> (only 11.76% disagreed)**, and more than half of them (52.94%) believed that they would have impacts on the environment.

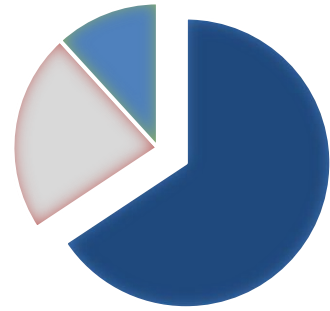
Both stakeholders and companies believe mHRDD to be more likely to have positive human rights, social and environmental impacts than voluntary measures or reporting requirements.

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of consulted **businesses** agree that mHRDD rules would have positive impacts on human rights and positive social impacts.

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That being said, **mHRDD is not a silver bullet**. It cannot solve all the problems caused by economic globalisation. As in every other regulatory area, **multi-faceted problems require a combination of legal tools**, of which mHRDD is one.

Nevertheless, mHRDD legislation would address at least two major gaps in corporate accountability: the lack of a business obligation to respect human rights and the environment, and the obstacles for victims to access justice and obtain remedy.







## Claim 15 | Ensuring access to justice for overseas victims calls into question state sovereignty.

Courts of European countries will hear legal cases which should instead be heard in countries in which the corporate abuse occurred. This is a new form of imperialism in judicial litigation which calls into question the sovereignty of other states.



## Reality | Victims of corporate abuse face major obstacles to obtain remedy in the host country. They must have the opportunity to seek remedy where European companies are domiciled.

Where there is corporate harm to an individual in a third country (the “host country”) linked to a European company’s negligence, the courts of the State where the company is domiciled (the “home country”) should hear the case.

This is not interference in the sovereignty of a foreign country, since **it is the responsibility of states to regulate their companies’ operations and hold them to high standards of conduct**, wherever they operate in the world.

**Victims of corporate abuse** in foreign countries where European companies operate, or where European companies source products from suppliers which are committing human rights or environmental abuses, often **face huge obstacles to hold companies to account and obtain remedy in their home jurisdiction. This leads to a situation of denial of justice.**

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Host states (particularly, developing countries) are frequently **unwilling or unable to hold companies accountable** for their human rights and environmental impacts and to provide adequate remedies for victims.<sup>149</sup>

States' motivation and ability to regulate can sometimes be constrained by international investment agreements, which, through **investor-state dispute settlement (ISDS) provisions, enable companies to sue states for lost earnings** caused by the introduction of laws intended to improve protection of the environment and human rights.

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Sometimes victims simply cannot bring a claim in their own country because **there is no legal basis to do so and no effective mechanisms to seek or obtain redress foreseen**, often due to the power of influence of multinational companies. Underdeveloped, ineffectual and corrupt judicial systems and the lack of judicial independence contribute to this denial of justice.<sup>150</sup>

Even if a legal basis exists, victims have to overcome numerous hurdles to even reach the stage of bringing a claim, from the difficulties of accessing relevant information and gathering the necessary evidence to support their claim, securing sufficient financial resources and finding a lawyer in the host country to bring a lawsuit.

Even if victims manage to bring a lawsuit and finally win a case and gain a positive verdict, it might be that damages cannot then be recovered from the local company because it is bankrupt, underfunded or ceased to exist.

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In this context, **victims must have the opportunity to seek remedy before the courts of the home country of the European company** that caused or contributed to the human rights or environmental impact, or is directly linked to it.

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Western-based companies' attempts to blame human rights and environmental impacts on host states' weak governance systems is flawed and hypocritical. It hides the fact that **many companies actually take advantage of such governance systems in order to minimise their cost of production and maximise their profits.**

Moreover, a company's responsibility to respect human rights exists **independently of states' abilities or willingness to fulfil their own human rights obligations** (Principle 11 of the UNGPs).

A number of companies have been brought to court in Europe to account for human rights abuses in third countries, often on the basis of private law (civil liability) and, to a lesser extent, of criminal law. The **European Parliament's study on Access to legal remedies for victims of corporate human rights abuses in third countries<sup>151</sup>** maps out all relevant cases (35) filed in Member States of the EU on the basis of alleged corporate human rights abuses in third countries and provides an in-depth analysis of 12 of them.

On top of the abovementioned practical obstacles (identifying the defendant, and securing evidence, financial resources and legal representation), evidence shows that **victims face other major procedural legal barriers, such as an insufficient statute of limitations and an unfair distribution of the burden of proof** of the elements constitutive of civil liability, which usually falls on the claimant; **as well as substantive legal ones, namely, the absence of a duty of care owed to them by the defendant company.**

mHRDD legislation should establish such duty of care and tackle the aforementioned hurdles.



## Chapter 4 | About the implementation of HRDD



**Claim 16 | International human rights and environmental standards are ill-defined.**

International human rights and environmental standards are vaguely defined. When addressed to companies, they are often framed as recommendations, thus lacking legal clarity.



**Reality | A rich body of legally binding international human rights standards has long been developed, and environmental damage is a long-established concept in liability law.**

Arguments on the lack of legal clarity are often aimed at diverting the focus from the need for binding rules towards complex technical discussions. Many lawmakers around the world have previously regulated more complex legal issues related to corporate conduct (e.g., anti-corruption laws, consumer laws, labour laws).

**International Human Rights Law is a solid and consolidated body of international law.** Since 1945, a series of international human rights treaties and other instruments have been adopted, conferring legal form on inherent human rights and further developing the body of international human rights. In addition to the International Bill of Human Rights and the core human rights treaties, many other universal instruments relate to human rights.<sup>152</sup>

Basic human rights include, for instance, the right to freedom of expression, the right to life and to physical integrity, the right not to be discriminated against at the workplace, or the prohibition of forced and of child labour.

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**The OECD Guidelines<sup>153</sup> expect HRDD to cover all human rights and environmental impacts, while the UNGPs specifically refer to the International Bill of Human Rights, which comprises the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights (ICESCR), and the International Covenant on Civil and Political Rights (ICCPR) and its two Optional Protocols; and the eight ILO core conventions.<sup>154</sup>**

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However, **the UNGPs should not be read as limiting the list of rights to these instruments.**<sup>155</sup> In fact, the **Commentary to Principle 14 of the UNGPs** clarifies that “depending on circumstances, business enterprises may need to consider additional standards”, including group-specific or issue-specific instruments, as well as the standards of international humanitarian law. These additional standards include, as suggested in the UNGPs Interpretive guide<sup>156</sup> (p. 12):

- the International Convention on the Elimination of All Forms of Racial Discrimination (ICEAFRD),
- the Convention on Elimination of All forms of Discrimination Against Women (CEDAW),
- the Convention on the Rights of the Child (CRC),
- the Convention on the Rights of Persons with Disabilities (CRPD),
- the International Convention on All Migrant Workers and Members of Their Families (ICRMW),
- the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), and
- the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (DRPBNERLM).

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**Internationally recognised human rights are therefore well-established, leaving no room for legal uncertainties.**

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Unlike in the field of human rights, no comprehensive and conclusive body of internationally recognised environmental standards exists, although there are **a number of well-established UN issue-specific norms** (e.g., Montreal Protocol on Substances that deplete the Ozone Layer). Although not as straight-forward as human rights standards, which protect individual rights, **environmental standards, often addressed to states, can also be translated into concrete obligations for companies.** as a recent final statement<sup>157</sup> by the Dutch National Contact Point for the OECD shows with regard to a bank’s duties under the Paris Agreement.

Therefore, when laying down due diligence requirements to identify, prevent, mitigate and account for environmental risks and impacts, and stipulating corporate liability for harm, **mHRDD legislation would need to specify the protected environmental goods and the expected standard of business conduct.**<sup>158</sup> This would guide companies when they conduct due diligence, and administrative and judicial authorities when determining liability. Existing **international due diligence standards already constitute a useful reference** in this regard.<sup>159</sup>

Regarding remediation of environmental impacts - that is, any action or actions taken to restore, rehabilitate, or replace damaged natural resources and the services they provide -which constitutes an essential element of the due diligence process, **the EU Environmental Liability Directive already provides a robust framework** to deal with it through the restoration of the environment to its ‘baseline condition’.



## Claim 17 | Companies lack adequate implementation tools.

Companies need specific tools to be able to implement HRDD. Legislation would not provide them.

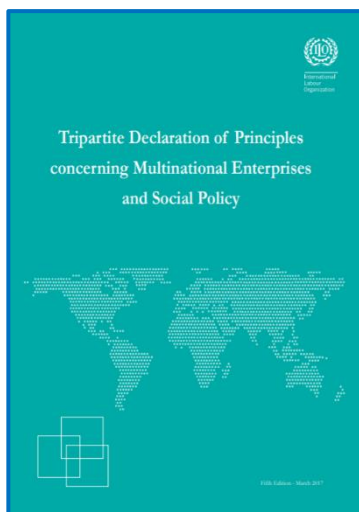
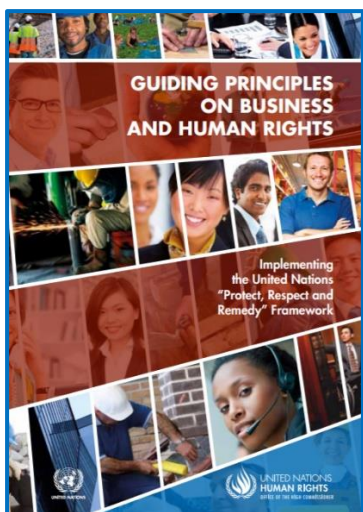


**Reality | Corporate due diligence international standards have already been developed in collaboration with companies, governments and civil society, and translated into practical due diligence frameworks.**

**mHRDD legislation would give legal force to the company’s responsibility to identify, prevent, mitigate and account for human rights and environmental impacts. There are already a number of guidance documents that inform how companies can implement HRDD in practice.**

These include general standards such as the **UNGPs** (2011), the **ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy** (2017) and the **OECD Due Diligence Guidance for Responsible Business Conduct** (2018), as well as sector-specific guidelines (e.g., minerals, agriculture, garment and footwear supply chains).<sup>160</sup>

Unless otherwise specified by the law, companies can build upon any of the already existing guidelines in order to carry out their due diligence processes, as long as they comply with their duty to identify, prevent, mitigate and account for human rights and environmental impacts in a substantial and effective manner.<sup>161</sup>





## Claim 18 | It is practically impossible for companies to conduct HRDD.

mHRDD legislation misunderstands the nature of global business. It is often impossible and impractical for companies to control all suppliers and subcontractors - a company's leverage over another entity down the supply chain can be limited by legal, practical and financial constraints.



## Reality | Companies, particularly transnational corporations, do possess the economic and technical resources to identify and oversee their suppliers and subcontractors.

When it comes to exercising quality control over their supply chains, **companies have sophisticated systems in place to identify defective products and hold their suppliers accountable** wherever in the chain the defect has occurred.

A product that has human rights abuses in its production process should be viewed as defective just as much as if a technical defect was found. Companies should treat this as a quality control issue and be just as willing to use their leverage in these cases. **Contractual mechanisms can be used to monitor and exert leverage over suppliers and subcontractors** with regard to human rights and environmental risks and impacts.

**Transnational corporations often hide behind complex global value chains in order to elude responsibility** for abuses linked to their business operations. They should not be allowed to reap the economic profits this system provides them while externalizing the social and environmental costs of their activities to local communities. mHRDD legislation aims to tackle this.

Large transnational corporations make huge profits every year. They do not lack the economic and technical resources to identify and oversee their suppliers and subcontractors, and the capacity to act upon the identified risks and impacts. **For SMEs, the type of policies and processes expected would be proportionate to their size**, following the UNGPs. Their degree of leverage over their business relationships would also be considered in determining their responsibility.<sup>162</sup>

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**Supply chain due diligence is by no means unfeasible. In fact, a number of responsible businesses are already undertaking HRDD<sup>163</sup> and cost compliance studies show that it is easily affordable.<sup>164</sup>**

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It is true that companies with a very large number of suppliers might find it more challenging to conduct due diligence across such a wide range of actors. These companies might have to **reshuffle their old supply chain structures in order to upgrade them to higher human rights and environmental due diligence requirements. They could do this by consolidating the number of suppliers** as far as is possible and reasonable in order to increase control over the supply chain and reduce the cost of due diligence, as recommended by the OECD.<sup>165</sup>

Many companies are already undertaking consolidation as a way to reduce the number of links in the chain and their risk exposure, to enhance their capability to conduct due diligence and their leverage over suppliers' behaviour.



# Useful resources

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<sup>12</sup> According to Article 3 of Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States, 'subsidiary' means a company the capital of which includes a minimum holding of 10% by the parent company.

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<sup>115</sup> Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0052&from=EN>.

<sup>116</sup> Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0036&from=en>.

<sup>117</sup> In a landmark judgment of 10 September 2009 [[https://ec.europa.eu/competition/publications/cpn/2010\\_1\\_9.pdf](https://ec.europa.eu/competition/publications/cpn/2010_1_9.pdf)], the Court of Justice of the European Union endorsed the attribution of liability to Akzo Nobel for the conduct of its fully owned subsidiary.

<sup>118</sup> Report with recommendations to the Commission on an EU legal framework to halt and reverse EU-driven global deforestation (2020/2006(INL)), [https://www.europarl.europa.eu/doceo/document/A-9-2020-0179\\_EN.html](https://www.europarl.europa.eu/doceo/document/A-9-2020-0179_EN.html). See Article 5.2.

<sup>119</sup> OEIGWG Chairmanship second revised draft of the legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises, 6 August 2020, [https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/OEIGWG\\_Chair-Rapporteur\\_second\\_revised\\_draft\\_LBI\\_on\\_TNCs\\_and\\_OBEs\\_with\\_respect\\_to\\_Human\\_Rights.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session6/OEIGWG_Chair-Rapporteur_second_revised_draft_LBI_on_TNCs_and_OBEs_with_respect_to_Human_Rights.pdf). See Article 8.

<sup>120</sup> For instance, at the German Presidency event on 6 October 2020 [<https://www.bmas.de/EN/EU-Presidency/GlobalSupplyChains-Conference/livestream-global-supply-chains.html>] and at the RBC Working Group webinar on 29 April 2020 [<https://corporatejustice.org/news/16806-commissioner-reynders-announces-eu-corporate-due-diligence-legislation>].

<sup>121</sup> The video of the European Parliament DROI subcommittee hearing (14:23:00-14:25:30) is available at [https://multimedia.europarl.europa.eu/en/committee-on-human-rights\\_20201015-1345-COMMITTEE-DROI\\_vd](https://multimedia.europarl.europa.eu/en/committee-on-human-rights_20201015-1345-COMMITTEE-DROI_vd).

<sup>122</sup> European Economic and Social Committee, "Mandatory due diligence", opinion adopted on 18 September 2020, <https://www.eesc.europa.eu/en/our-work/opinions-information-reports/opinions/mandatory-due-diligence>.

<sup>123</sup> During a hearing of the European Parliament's DROI subcommittee, a representative from Ericsson, Theo Jaekel, stated, "any liability provisions need to both ensure effective deterrent for companies but also adequate remedy for impacted stakeholders" (9:25:37-9:31:07), [https://multimedia.europarl.europa.eu/en/committee-on-human-rights\\_20200907-0900-COMMITTEE-DROI\\_vd](https://multimedia.europarl.europa.eu/en/committee-on-human-rights_20200907-0900-COMMITTEE-DROI_vd).

<sup>124</sup> During a webinar organised by the ECCJ in June 2020, a representative from Mondelez, Francesco Tramontin, stated, "a good framework in case of litigation is what we need to create, because as has been said before: we need to be held liable" (3:37), <https://www.youtube.com/watch?v=545wBLiYFow>.

<sup>125</sup> In their feedback on the EC's inception impact assessment of the Sustainable Corporate Governance initiative, several European companies and business associations, rather than opposing liability, assumed and accepted (with reservations) that it would come naturally attached to a new corporate due diligence framework. For instance, H&M highlighted that "it is important all business actors throughout the value chain are kept accountable for respective activities and impact"; DigitalEurope, the digital technology industry association, suggested that "sanctions for noncompliance should primarily be civil/administrative"; and CLEPA, the European Association of Automotive Suppliers, or the Danish Chamber of Commerce argued that liability should be limited to companies' "span of control" or sphere of "influence."

<sup>126</sup> In a recent opinion on the EC's initiative, AIM, the European Brands Association, representing 2,500 European brands including Barilla, Ferrero (IT), Bic, Chanel, Danone, L'Oréal, LVMH, Sanofi (FR), Heineken, Philips, Unilever (NL), Dr. Oetker, Henkel, Puma, Vileda (DE) or LEGO (DK), stressed that "companies should be held liable for failure to establish and maintain a reasonable HRDD process" and agree that if the legislation were to include liability for harms, "that liability should be clearly framed as civil liability", yet limited to harms caused by controlled companies.

<sup>127</sup> In Switzerland, a large number of companies and business associations, including GEM (the major multinationals association in French-speaking Switzerland); Geneva's Chamber of Commerce; ICT, food and textile industry associations; trade associations; and major Swiss retailers expressed their support for a parliamentary proposal on corporate due diligence that included civil liability for harm caused by subsidiaries and controlled business partners.



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<sup>128</sup> See Claim 6.

<sup>129</sup> EC, “Study on due diligence requirements through the supply chain”, January 2020, <https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en>.

<sup>130</sup> L.F.H. Enneking, “Judicial remedies: The issue of applicable law”, *Rights in Business* (Routledge, 2017), 38, pp. 40–41. See also: Zerk, Jenifer (2014), “Corporate liability for gross human rights abuses. Towards a fairer and more effective system of domestic law remedies”.

<sup>131</sup> European Parliament's Sub-Committee on Human Rights, “Access to legal remedies for victims of corporate human rights abuses in third countries”, February 2019, [https://www.europarl.europa.eu/thinktank/en/document.html?reference=EXPO\\_STU\(2019\)603475](https://www.europarl.europa.eu/thinktank/en/document.html?reference=EXPO_STU(2019)603475).

<sup>132</sup> Parent company liability has been established in Common Law jurisprudence, without a noteworthy economic impact on UK, Canadian or Australian companies which are subject to the jurisprudence. See Claim 11.

<sup>133</sup> Christopher Patz, “The misuse of abuse: fears of potentially abusive litigation are overriding the reality of abusive companies in Europe”, *Open Democracy*, 15 April 2018, <https://www.opendemocracy.net/en/can-europe-make-it/misuse-of-abuse-fears-of-potentially-abusive-litigation-are-over>.

<sup>134</sup> The Commentary to Guiding Principle 17 of the UNGPs [[https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf)] makes clear that the robustness of a company's due diligence should have an effect on future civil liability: “Conducting appropriate human rights due diligence should help business enterprises address the risk of legal claims against them by showing that they took every reasonable step to avoid involvement with an alleged human rights abuse”. However, “business enterprises conducting such due diligence should not assume that, by itself, this will automatically and fully absolve them from liability for causing or contributing to human rights abuses.”

<sup>135</sup> Business & Human Rights Resource Centre, “Samsung lawsuit (re. misleading advertising & labour rights abuses)”, <https://www.business-humanrights.org/en/samsung-lawsuit-re-misleading-advertising-labour-rights-abuses>.

<sup>136</sup> Nike faced a well-known claim for exaggerating its success in ending labour abuses in its supply chain under the California consumer protection statute, resulting in a \$1.5 million settlement. [John F. Sherman, III and Amy K. Lehr, “Human Rights Due Diligence: Is It Too Risky?”, [https://ccl.yale.edu/sites/default/files/files/CSRJournalJanuary2010-Human\\_Rights\\_Due\\_Diligence.pdf](https://ccl.yale.edu/sites/default/files/files/CSRJournalJanuary2010-Human_Rights_Due_Diligence.pdf).]

<sup>137</sup> *Chandler v Cape* [2012] EWCA Civ 525, <http://www.bailii.org/ew/cases/EWCA/Civ/2012/525.html>.

<sup>138</sup> *Lungowe v Vedanta Resources plc* [2019] UKSC 20, Judgment, 10 April 2019, <https://www.supremecourt.uk/cases/docs/uksc-2017-0185-judgment.pdf>.

<sup>139</sup> Bueno, N. and Bright, C., “Implementing Human Rights Due Diligence Through Corporate Civil Liability”, 2020, <https://www.cambridge.org/core/journals/international-and-comparative-law-quarterly/article/implementing-human-rights-due-diligence-through-corporate-civil-liability/89B854AAA7F3ED5AC841DF266E567498>.

<sup>140</sup> De Schutter, Wouters, Swinnen, “Introduction: Liberalization of Investment and Human Development”, 2013, <https://sites.uclouvain.be/cridho/documents/Working.Papers/CRIDHO-WP-2012-4-DeSchutter-Wouters-Swinnen.pdf>. [This paper appeared as chapter 1 (pp. 1-24) of 4. *Foreign Direct Investment and Human Development*, Routledge, London, 2012, 350 pages (with Jan Wouters and Johan F. Swinnen, coeditors).]

<sup>141</sup> Cassandra Melton, “The effects of international business and human rights standards on investment trends and economic growth”, [https://www.business-humanrights.org/sites/default/files/media/documents/the\\_effect\\_of\\_business\\_human\\_rights\\_standards\\_on\\_investment.pdf](https://www.business-humanrights.org/sites/default/files/media/documents/the_effect_of_business_human_rights_standards_on_investment.pdf).

<sup>142</sup> EC, “Study on due diligence requirements through the supply chain”, January 2020, <https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en>.

<sup>143</sup> R. McCorquodale, L. Smit, S. Neely, R. Brooks, “Human Rights Due Diligence in Law and Practice: Good Practices and Challenges for Business Enterprises”, *Business and Human Rights Journal*, 2(2), 195-224, 2017, <https://www.cambridge.org/core/journals/business-and-human-rights-journal/article/human-rights-due-diligence-in-law-and-practice-good-practices-and-challenges-for-business-enterprises/0306945323DD6F6C9392C5DBDE167001>.

<sup>144</sup> OECD, “OECD Due Diligence Guidance for Responsible Business Conduct”, 2018, <http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>.

<sup>145</sup> Centre for Research on Multinational Corporations (SOMO), “Should I stay or should I go? Exploring the role of disengagement in human rights due diligence”, April 2016, <https://www.somo.nl/wp-content/uploads/2016/04/Should-I-stay-or-should-I-go-4.pdf>.

<sup>146</sup> SOMO, European Center for Constitutional and Human Rights (ECCHR), PAX, “Responsible disengagement in the time of corona”, April 2020, <https://www.somo.nl/wp-content/uploads/2020/04/Time-of-corona.pdf>.

<sup>147</sup> EC, “Study on due diligence requirements through the supply chain”, January 2020, <https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en>.

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<sup>148</sup> Business and stakeholder respondents expect positive impacts on the elimination of forced labour (78% and 85%), child labour (77% and 85%) and discrimination in respect of employment (74% and 79%); the quality of jobs (67% of business respondents); wages (78% of stakeholders); and the freedom of association and effective recognition of the right to collective bargaining (67% and 83%).

<sup>149</sup> Gwynne Skinner, "Rethinking Limited Liability of Parent Corporations for Foreign Subsidiaries' Violations of International Human Rights Law", 72 Wash. & Lee L. Rev. 1769, 2015, <https://pdfs.semanticscholar.org/a55a/c136b01c7f28d2cbfab62da71a0083d6e267.pdf>.

<sup>150</sup> European Parliament's Sub-Committee on Human Rights, "Access to legal remedies for victims of corporate human rights abuses in third countries", February 2019, [https://www.europarl.europa.eu/thinktank/en/document.html?reference=EXPO\\_STU\(2019\)603475](https://www.europarl.europa.eu/thinktank/en/document.html?reference=EXPO_STU(2019)603475).

<sup>151</sup> European Parliament's Sub-Committee on Human Rights, "[Access to legal remedies for victims of corporate human rights abuses in third countries](#)", February 2019.

<sup>152</sup> A non-exhaustive selection is available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/UniversalHumanRightsInstruments.aspx>.

<sup>153</sup> OECD, "OECD Guidelines for Multinational Enterprises", 2011, <http://www.oecd.org/daf/inv/mne/48004323.pdf>.

<sup>154</sup> So far, 146 countries, including all EU Member States, have ratified all of the eight ILO core conventions.

<sup>155</sup> European Parliament's Sub-Committee on Human Rights, "Human Rights Due Diligence Legislation - Options for the EU", June 2020, [https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/603495/EXPO\\_BRI\(2020\)603495\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/603495/EXPO_BRI(2020)603495_EN.pdf).

<sup>156</sup> OHCHR, "The Corporate Responsibility to Respect Human Rights - An Interpretive Guide", 2012, [https://www.ohchr.org/Documents/publications/hr.puB.12.2\\_en.pdf](https://www.ohchr.org/Documents/publications/hr.puB.12.2_en.pdf).

<sup>157</sup> Dutch National Contact Point for the OECD Guidelines for Multinational Enterprises, Oxfam Novib, Greenpeace Netherlands, BankTrack and Friends of the Earth Netherlands (Milieudefensie) versus ING, Final Statement, 19 April 2019, <https://www.oecdguidelines.nl/documents/publication/2019/04/19/ncp-final-statement-4-ngos-vs-ing>.

<sup>158</sup> Umweltbundesamt, "Umweltbezogene und menschenrechtliche Sorgfaltspflichten als Ansatz zur Stärkung einer nachhaltigen Unternehmensführung", July 2020, <https://www.umweltbundesamt.de/publikationen/sorgfaltspflichten-nachhaltige-unternehmensfuehrung>.

<sup>159</sup> The environment chapter of the OECD Due Diligence Guidance for Responsible Business Conduct [<http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>] broadly reflects the principles and objectives of the Rio Declaration on Environment and Development [<https://www.jus.uio.no/lm/environmental.development.rio.declaration.1992/portrait.a4.pdf>], which proclaims 27 principles intended to guide countries in future sustainable development, including the precautionary principle.

<sup>160</sup> OCDE sectoral guidance, <https://mneguidelines.oecd.org/sectors>.

<sup>161</sup> To avoid a box-ticking approach, the appropriateness and effectiveness of the prevention and mitigation measures must be emphasised over the formal compliance with a predefined due diligence procedure.

<sup>162</sup> See Claim 5.

<sup>163</sup> See Claim 1.

<sup>164</sup> See Claim 6.

<sup>165</sup> OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector, <https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-Garment-Footwear.pdf>.



With 20 member groups from 17 countries, the European Coalition for Corporate Justice (ECCJ) brings together campaigns and national platforms of NGOs, trade unions, consumer organisations and academics to promote European laws that guarantee corporate accountability and transparency, and ensure justice for victims of corporate malpractice.

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ECCJ is a member of Mind the Gap, a consortium of civil society organisations, supported financially by the Dutch Ministry of Foreign Affairs, conducting research and raising awareness on harmful corporate strategies to avoid responsibility for human rights abuses.

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CORE is the UK civil society coalition on corporate accountability. We aim to advance the protection of human rights with regards to UK companies' global operations, by promoting a stronger regulatory framework, higher standards of conduct, compliance with the law and improved access to remedy for people harmed by UK-linked business activities.

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