



## Policy Brief Update:

# Effectiveness of mandatory human rights and environmental due diligence legislation in addressing modern slavery in business value chains

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Modern Slavery PEC Policy Brief 2024-1

## Overview

This is an updated version of the [Policy Brief](#) first published in May 2022 which was the second<sup>2</sup> in a series of Policy Briefs to assess the evidence base on the effectiveness of different regulatory interventions to address modern slavery in global supply chains, a key research priority for the Modern Slavery PEC, as set out in [our Strategy](#). This Policy Brief assesses the evidence base on the effectiveness of mandatory Human Rights and Environmental Due Diligence (mHREDD) legislation. That is, regulatory instruments somewhat based on international normative frameworks such as the [UN Guiding Principles on Business and Human Rights](#) (UNGPs)<sup>3</sup> and the [OECD Guidelines for Multinational Enterprises](#) (OECD guidelines),<sup>4</sup> that require businesses<sup>5</sup> to undertake due diligence to identify, prevent, mitigate, and account for actual or potential human rights and environmental adverse impacts related to businesses' own operations and their value chains.<sup>6</sup>

This assessment was undertaken in light of the global uptake of the concept of Human Rights Due Diligence (HRDD)<sup>7</sup> by businesses, investors, governments and civil society, and the momentum towards establishing mandatory HREDD legislation across the world,<sup>8</sup> including calls from Parliamentarians and civil society organisations in the UK.<sup>9</sup> Earlier this month, the European Council approved<sup>10</sup>

1. With thanks to Owain Johnstone and Olivia Hesketh, authors of the first version of this Policy Brief and who reviewed this update. Thanks also to Dr Victoria Tecca and Dr Irene Pietropaoli for reviewing this brief.

2. The first Policy Brief in the series focused on the [effectiveness of forced labour import bans](#).

3. The UNGPs are the global standard and internationally accepted framework for preventing and addressing the risk of adverse impacts on human rights involving business activity.

4. The OECD guidelines were updated in 2023 and renamed "[OECD Guidelines for Multinational Enterprises on Responsible Business Conduct](#)".

5. The laws are generally aimed at businesses and do not generally impose duties on public bodies. This is discussed in [section 5](#).

6. The term value chains is used here in line with the UNGPs, to encompass both upstream (supply chain) and downstream (clients, customers, buyers) activities in which businesses are involved. When required, the term supply chain will be used to refer exclusively to the upstream part of the value chain.

7. Human Rights Due Diligence is a core concept in the UNGPs, and as it will be discussed in [section 1](#) does not include environmental aspects. Therefore, this Brief will refer to HRDD when in reference to the process outlined by the UNGPs and to HREDD to refer to the legislation that mandates human and environmental due diligence.

8. Civil society actors, MPs, businesses, investors, and other actors worldwide are calling for mHREDD legislation. For an overview of Europe see [National & regional movements for mandatory human rights & environmental due diligence in Europe](#).

9. On November 28th, 2023, Baroness Young of Hornsey introduced a Private Members' Bill focused on human rights and the environment, named the [Commercial Organisations and Public Authorities Duty \(Human Rights and Environment\) Bill](#).

10. The European Parliament will vote by the end of April. The Directive is thus not yet been adopted and a final text is pending.

a watered-down version<sup>11</sup> of the European Commission's initial proposal for a [Corporate Sustainability Due Diligence Directive](#) (CSDDD) which aims to increase the protection of environmental and human rights. The CSDDD is preceded by national legislative developments, namely in France,<sup>12</sup> Germany,<sup>13</sup> Norway,<sup>14</sup> Switzerland,<sup>15</sup> and the Netherlands,<sup>16</sup> that mandate different forms of human rights and environmental due diligence to businesses.

This Policy Brief is based on an [evidence review](#) of mHREDD legislation developed and in force,<sup>17</sup> which considered English-language publicly available academic literature and reports produced by NGOs, governments, and international organisations.<sup>18</sup> Since the first publication of this brief, all the above mentioned national mHREDD laws have entered into force,<sup>19</sup> the number of complaints and judgements against businesses in relation to these has increased,<sup>20</sup> and numerous organisations have provided legal analyses on the positions of the European Council and Parliament<sup>21</sup> during the trialogue discussions on the CSDDD. However, the general quality of the evidence is relatively low due to a lack of empirical studies assessing the effectiveness of mHREDD laws. The evidence presented here is mostly based on legal analyses, conceptual or theoretical academic papers, and stand-alone reports produced by CSOs and industry actors.

The remainder of this Policy Brief is structured around seven thematical sections preceded by a discussion of key findings and research methods.

1. **The concept of mHREDD legislation and its relevance to modern slavery;**
2. **The development and implementation of mHREDD laws;**
3. **The effectiveness of mHREDD laws;**
4. **The practical impacts of mHREDD legislation for businesses;**
5. **The connections between mHREDD laws with other related policy areas;**
6. **Actual or potential wider consequences of mHREDD laws;**
7. **Priorities for future research.**

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11. The approved version by the European Council in March 2024 is a limited version of the [provisional agreement](#) reached by the European Council and the European Parliament in December 2023.

12. [The Duty of Vigilance Law](#) (English Translation).

13. [Lieferkettensorgfaltspflichtengesetz - LkSG](#).

14. [Norwegian Transparency Act](#).

15. In the form of a modification of the [Swiss Code of Obligations](#) and of the Swiss Criminal Code with the [Federal Due Diligence and Transparency Ordinance 2022](#) containing implementing provisions.

16. [Child Labour Due Diligence Law](#).

17. Upcoming legislation or under policy discussions is not included in this Policy Brief.

18. With thanks to Lise Smit and Dr Irene Pietropaoli for carrying out the evidence review underpinning the initial Policy Brief. The evidence review was peer reviewed by an independent expert.

19. Only the French Law was covered in the previous Policy Brief as the Dutch, German and Norwegian Acts had been passed but were not yet in force.

20. Albeit mostly in relation to the French Duty of Vigilance Law.

21. The European Council made its position public in December 2022 and the Parliament on June 1st, 2023. See [Press Release](#).

## Key Findings

- MHREDD laws are increasingly being developed and implemented in Europe but they are not homogenous (see [Annex 1](#)).
  - Generally, they apply to certain large companies, attach some form of legal liability for failure to meet HRDD requirements, and are, to some extent, based on the UNGPs and the OECD guidelines.
  - MHREDD laws differ in several ways, including the actors, and human rights they cover, whether they extend the responsibility to supply or value chains, their liability provisions, and their oversight and enforcement mechanisms.
  - Most mHREDD laws have not been developed in meaningful consultation with rightsholders,<sup>22</sup> vulnerable communities,<sup>23</sup> and people with lived experience of human rights abuses such as modern slavery.
- MHREDD laws may play a role in increasing awareness of HREDD,<sup>24</sup> improving corporate disclosure of human rights risks,<sup>25</sup> encouraging businesses to implement HRDD processes,<sup>26</sup> including increasing human rights risk management,<sup>27</sup> and increasing corporate human rights practices, especially of those falling behind in the voluntary adoption of human rights due diligence.<sup>28</sup> However:
  - There is very little empirical evidence in English on the effectiveness of mHREDD laws, especially in preventing, mitigating, and remediating human rights abuses, including in relation to impacts in the Global South. This is potentially due to the recent implementation of these laws, a lack of investment in monitoring and evaluation of these laws, and the complexities of measuring outcomes.
  - mHREDD laws should be considered as part of a “smart mix” of policy measures to address business-related human rights abuses.

22. That is, the employees, customers, users, supply chain workers, and community members whose rights are impacted by company decisions, products, and operations.

23. Such as women, indigenous groups, migrants, who are also rightsholders (see definition above).

24. SAVOUREY, E., & BRABANT, S. (2021). The French Law on the Duty of Vigilance: Theoretical and Practical Challenges Since its Adoption. *Business and Human Rights Journal*, 6(1), 141-152. doi:10.1017/bhj.2020.30

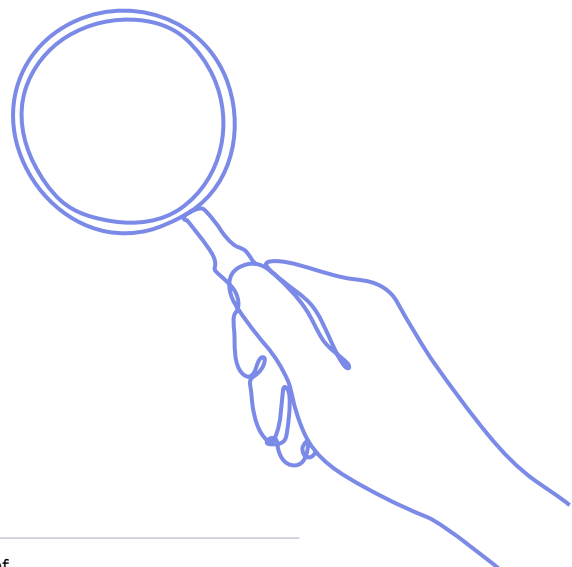
25. Shift (2019) 'Human Rights reporting in France, Two years In: Has the Duty of Vigilance Law led to more Meaningful Disclosure'.

26. See *Enterprises pour les droits de l'Homme (2019) 'Application de la loi sur le devoir de vigilance: Plans de vigilance 2018-2019'*

27. See joint press release by CorA Network for Corporate Accountability, Clean Clothes Campaign Germany and Supply Chain Act Initiative: 'One year of German Supply Chain Act: Civil society sees first positive effects'. 2023

28. Lafarre A, Rombouts B. Towards Mandatory Human Rights Due Diligence: Assessing Its Impact on Fundamental Labour Standards in Global Value Chains. *European Journal of Risk Regulation*. 2022;13(4):567-583. doi:10.1017/err.2022.23

- Policymakers should consider several factors that may influence the effectiveness<sup>29</sup> of mHREDD legislation (see [section 3](#)):
  - State-based monitoring and enforcement, liability provisions, and incentives may influence business compliance with mHREDD laws (**effectiveness type 1: Compliance**).
  - Legal clarity and specificity, detailed disclosure requirements, a balanced approach between contractual assurances, leverage and purchasing practices, and resources and capabilities, may influence the extent to which mHREDD laws change corporate behaviour (**effectiveness type 2: Changing business behaviour**).
  - The extent to which mHREDD laws are part of a wider and coherent policy approach, include international recognised human rights, cover a diverse range of entities, focus on impacts for rightsholders, and address power imbalances may influence their effectiveness in preventing, mitigating, and remediating for human rights abuses (**effectiveness type 3: Addressing modern slavery**).
- MHREDD laws can complement other legislative efforts to address human rights abuses including supply chain transparency legislation, public procurement laws, and forced labour import bans. However, there is little English-language evidence on how this might operate in practice, as most of the analysed legislation only recently came into force. See [section 5](#).
- The risk of divestment and divergence are some wider potential consequences of mHREDD legislation to consider that may influence their effectiveness in addressing actual prevalence and incidence of modern slavery as discussed in [section 6](#).



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29. See the Effectiveness Framework in the [Methodology](#) section of this Brief.

## Methodology

This policy brief is based on an evidence review and responds to the following questions, rating the quality of the evidence base according to the criteria in Box 1:

1. What is mandatory human rights and environmental due diligence (mHREDD), and how is it relevant to modern slavery?
2. How has existing and emerging mHREDD legislation been *developed* and *implemented* globally?
3. What does the evidence show about the effectiveness of mHREDD legislation for addressing modern slavery?
4. What does the evidence show about the practical impacts of mHREDD legislation for businesses?
5. What does the evidence show about any connections between mHREDD and related policy areas, such as responses to state-sponsored forced labour or emerging legislation prohibiting the import of goods produced using forced labour?
6. What does the evidence show about any actual or potential wider consequences of mHREDD?
7. Priorities for further research.

To answer these questions, publicly available evidence in English was reviewed in relation to five mHREDD laws currently in force: the [French Duty of Vigilance Law 2017](#), the [Dutch Child Labour Due Diligence Act 2019](#), the [German Supply Chain Due Act 2021](#), the [Norwegian Transparency Act 2021](#), and the [Swiss Code of Obligations and Due Diligence and Transparency Ordinance 2022](#), with some reference to the EU proposed Directive on [Corporate Sustainability Due Diligence \(CSDDD\)](#) (see [Annex 1](#)).

There are two main limitations of the evidence underpinning this policy brief. First, only publicly available evidence in English was collected and analysed, and therefore does not include the evidence base produced in the language of the specific mHREDD laws, such as German or French. Second, most evidence informing this brief is in reference to the French Duty of Vigilance due to the disproportionate amount of evidence on it compared to other mHREDD laws, having been in force the longest.

### Box 1: Evidence quality assessment – description of ratings

#### Green

There is a well-established body of evidence on this issue; the overall landscape and evidence gaps are well understood; evidence is grounded in rigorous and peer reviewed research.

#### Amber

There are some rigorous and peer reviewed research studies on this issue; evidence base is growing but there remain gaps in understanding.

#### Red

There are no or very few rigorous research studies on this issue; evidence base is anecdotal; data sources are very limited.

## Effectiveness

To understand the effectiveness of mHREDD laws in addressing modern slavery, this Policy Brief uses an effectiveness framework previously developed by a Modern Slavery PEC-funded study<sup>30</sup> and used in other funded research projects.<sup>31</sup> Effectiveness in this framework is understood in three different ways:

**Type 1: Business compliance with the law:** Effectiveness of the law at achieving *compliance* with its minimum requirements, including the proportion of businesses in scope that comply with the law.

**Type 2: Changing business behaviour:** Effectiveness of the law at *changing* business behaviour. Particularly in relation to the implementation of HRDD processes.<sup>32</sup>

**Type 3: Addressing Modern Slavery (outcome):** Effectiveness of the law at *addressing* modern slavery. That is, the extent to which businesses that comply with mHREDD legislation prevent, mitigate, and remediate for human rights abuses, including modern slavery.

### A note on effectiveness

- This Policy Brief is based on a review of existing literature and empirical evidence and therefore does not measure effectiveness. Rather, it *identifies* factors that *may* influence effectiveness. These are not exclusive, and other factors may also influence effectiveness but were not captured by this evidence review.
- The analysis on effectiveness presented here should also be read with the following caveats:
  - There is generally a lack of English-language empirical studies assessing the effectiveness of these laws.
  - There are not yet established and standardised metrics to measure the effectiveness of mHREDD laws. This gap is suggested for further research in [section 7](#).
  - As acknowledged by the authors of the effectiveness framework used here, evidence for effectiveness type 3 (outcomes) is difficult to obtain as it requires consistent and intentional monitoring and evaluation.<sup>33</sup>

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30. See Hsin, New, Pietropaoli and Smit (2021) 'Effectiveness of Section 54 of the Modern Slavery Act Evidence and comparative analysis', Modern Slavery and Human Rights Policy and Evidence Centre.

31. See the [effectiveness of section 54 of the Modern Slavery Act, effectiveness of mandatory human rights due diligence \(mHRDD\), and public procurement measures to address modern slavery](#).

32. While different mHREDD laws may have different requirements, they all require companies to undertake HRDD. Therefore, the analysis of effectiveness type 2 focuses on business changes as they relate to HRDD.

33. See Hsin LKE, New S, Pietropaoli I, Smit L (2021) [Effectiveness of Section 54 of the Modern Slavery Act](#).

# 1. What is mandatory human rights and environmental due diligence (mHREDD) and how is it relevant to modern slavery?

What is mHREDD: **Green**<sup>34</sup>

Relevance to Modern Slavery: **Amber**<sup>35</sup>

In general, mHREDD laws impose a duty on certain large companies to undertake human rights due diligence and report on their efforts and impose sanctions for non-compliance. In 2011, the UN Guiding Principles on Business and Human Rights (UNGPs)<sup>36</sup> referred for the first time to Human Rights Due Diligence<sup>37</sup> (HRDD) as a method for businesses to address human rights abuses. The UNGPs defined HRDD as a process to identify, prevent, mitigate, and account for adverse human rights impacts in businesses' own operations and their value chains<sup>38</sup> and differentiated it from conventional corporate due diligence by focusing on risks to people as opposed to risk to businesses.<sup>39</sup> In the same year, the OECD Guidelines for Multinational Enterprises (OECD guidelines) incorporated this concept and extended it to include environmental impacts (i.e., HREDD). Both the UNGPs and OECD frameworks refer to HRDD and HREDD respectively as a *voluntary* process and was arguably envisaged to work as a standard expectation of responsible business conduct worldwide.<sup>40</sup>

HREDD is increasingly becoming a legal obligation due to a growing sense that voluntary mechanisms are insufficient to address human rights abuses, as evidenced by an increase of modern slavery in the world<sup>41</sup> poor compliance with modern slavery transparency legislation<sup>42</sup> and slow implementation of HRDD processes by companies.<sup>43</sup> In recent years, as part of their duty to protect<sup>44</sup> and under the assumption that HRDD is an effective method for businesses to address human rights harms, States have developed mandatory HREDD laws. Namely, France, Germany, the Netherlands, Norway, and Switzerland<sup>45</sup> and a Directive is currently pending approval at the European level.

34. No change in evidence rating from the previous policy brief.

35. The previous policy brief did not provide a separate rating for this, but this policy brief finds that the evidence base explicitly linking mHREDD and modern slavery in practice is limited.

36. The global standard for preventing and addressing the risk of adverse impacts on human rights involving business activity. The UNGPs provide the internationally accepted framework for enhancing standards and practices with regard to business and human rights. See UN Office of the High Commissioner for Human Rights 'Guiding Principles on Business and Human Rights: Implementing the "Protect, Respect and Remedy" Framework' (UNGPs), HR/PUB/11/04, 2011.

37. The term due diligence had already been used in law and business practices but not until the UNGPs was it used in relation to human rights impacts. See McCorquodale and Nolan (2021) 'The Effectiveness of Human Rights Due Diligence for Preventing Business Human Rights Abuses', *Netherlands International Law Review*.

38. UNGPs 13.

39. Human Rights Council 2011: Principle 17(a).

40. Deva S (2023). Mandatory human rights due diligence laws in Europe: A mirage for rightsholders? *Leiden Journal of International Law* 36, 389–414. <https://doi.org/10.1017/S09222156522000802>

41. In relation to an increase of modern slavery see International Labour Organization (ILO), Walk Free, and International Organization for Migration (IOM) (2022) *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*.

42. See *Walk Free Beyond Compliance Resources for the renewable energies sector, garment sector, and finance sector*. For the agricultural sector see Independent Anti-Slavery Commissioner & University of Nottingham: Rights Lab. (2018). *Agriculture and Modern Slavery act reporting: Poor performance despite high risks: A research report from the office of the Independent Anti-Slavery Commissioner and the University of Nottingham's Rights Lab*.

43. The World Benchmarking Alliance's *Corporate Human Rights Benchmark 2023 report*

44. As outlined in the UNGPs.

45. For an comparative overviews of these laws, see European Coalition for Corporate Justice, 'Comparative Table: Corporate due diligence laws and legislative proposals in Europe', (14 June 2021); Business and Human Rights Resource Centre, 'National & regional movements for mandatory human rights & environmental due diligence in Europe'.

**There are at least two ways in which HREDD laws are relevant for modern slavery.** First, modern slavery is a human rights violation. Businesses have reported that modern slavery is one of their main human rights concerns<sup>46</sup> and it is increasingly recognised that labour exploitation usually occurs in a continuum from decent work to different forms of modern slavery (such as forced labour) in which vulnerable people can experience a range of different human rights abuses before, after and during experiences of modern slavery.<sup>47</sup> Second, the UNGPs state that HRDD should cover 'all internationally recognised human rights,' including 'at a minimum' various listed international human rights instruments such as the ILO fundamental conventions which expressly refer to forced labour. Thus, modern slavery is covered by mHREDD laws. For instance, the CSDDD and the German law expressly prohibit all forms of slavery and forced labour, the Dutch law focuses on child labour, and the Norwegian Transparency Act refers to decent working conditions.

**However, mHREDD laws should not be confused with supply chain transparency legislation<sup>48</sup> which has, so far, been the focus of legislation concerning modern slavery and business.<sup>49</sup>** While all mHREDD laws contain reporting requirements, not all transparency obligations impose additional legal duties that require companies to undertake human rights due diligence. For example, section 54 of the UK Modern Slavery Act is a reporting requirement that, while encourages HRDD, does not mandate it. Transparency legislation has also tended to not include financial penalties or corporate liability.<sup>50</sup> Some scholars and practitioners refer to these transparency laws as part of "a first wave of HREDD legislation", but in this brief these are considered separately from mHREDD laws to account for their differences. Their connections are discussed in [section 5](#).

**mHREDD legislation also differs from legislative trade instruments related to forced labour that contain an obligation to undertake some level of due diligence but that are focused on controlling trade (e.g., the importing of goods) by prohibiting the placing of certain products into a market.** These tend to be product, issue, or high-risk area specific, rather than targeted to companies, and may include whitelisting or blacklisting of entities. Some examples are the EU [conflict minerals regulation](#),<sup>51</sup> the [EU batteries regulation proposal](#),<sup>52</sup> and the US [Uyghur Forced Labor Prevention Act \(UFLPA\)](#).<sup>53</sup> Sometimes these trade instruments are discussed in tandem with mHREDD legislation but, in this brief, they are discussed separately to account for these nuances and to narrow down the scope of the analysis. The connections of these trade instruments with mHREDD laws are discussed in [section 5](#) of this Brief.

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46. Smit, Holly, McCorquodale and Neely, 'Human rights due diligence in global supply chains: evidence of corporate practices to inform a legal standard' *IJHR* Vol 25 Issue 6 (2021), Section IV.2 'Overview of affected rights'.

47. Skirvankova (2010) *Between decent work and forced labour: examining the continuum of exploitation*.

48. According to Bright (2021) this category incorporates national legislations that aim to *encourage* the exercise of human rights due diligence through reporting requirements.

49. For example, the California Transparency in Supply Chains Act (2010), the Modern Slavery Act 2015 (UK) and the Australian Modern Slavery Act 2018 (Cth).

50. An exception to this is the recently passed Canadian Modern Slavery Act which introduces financial sanctions for non-compliance. See [Public Bill \(Senate\) S-211 \(44-1\) - Royal Assent - Fighting Against Forced Labour and Child Labour in Supply Chains Act - Parliament of Canada](#).

51. It requires importers of unprocessed minerals to ensure they import critical minerals and metals into the EU market only from responsible and conflict-free sources. It provides a "whitelist" of global smelters and refiners that source these minerals responsibly.

52. Requires supply chain due diligence policies for placing batteries into the EU market to reduce environmental and social impacts.

53. Establishes a rebuttable presumption that products mined, produced, or manufactured wholly or in part in Xinjiang by an entity in the UFLPA entity list are prohibited from importation.



## 2. How has existing and emerging mHREDD legislation been developed and implemented globally?

Development: **Green**<sup>54</sup>

Implementation: **Amber**<sup>55</sup>

### Development

**mHREDD legislation has largely been developed at the national level in Europe.** The first mHREDD law was the [French Duty of Vigilance law](#) developed in France in 2017. Since then, five more mHREDD laws have been developed. Namely, the [Dutch Child Labour Due Diligence Act in 2019](#), the [German Supply Chain Due Act in 2021](#), the [Norwegian Transparency Act in 2021](#), and the [Swiss Code of Obligations and Due Diligence and Transparency Ordinance Act in 2022](#). Other mHREDD laws are currently under development such as the Dutch bill on [Responsible and Sustainable Business Conduct](#), while others have been rejected during the policy process.<sup>56</sup> The only mHREDD legislation developed at the supranational level (albeit not yet approved) is the European Commission's [Corporate Sustainability Due Diligence Directive](#) (CSDDD).

**mHREDD laws are not homogenous as they are not fully aligned to the UNGPs and the OECD guidelines and have adopted different legal models.** While mHREDD laws tend to apply only to certain large companies, exclude small- and medium-sized enterprises (SMEs), the financial sector, and public procurement bodies, and impose corporate liability, they differ in their content including companies in scope, human rights covered, whether they extend the responsibility to supply or value chains, their liability provisions, and their oversight and enforcement mechanisms (see [Annex 1](#)). They also differ in their legal models as 'there is not one, single model for mandatory human rights due diligence regimes' but 'a wide range of legal and regulatory possibilities'.<sup>57</sup>

**While mHREDD laws have been framed differently and developed under different circumstances, they have generally been the result of long and highly contested political processes that lack meaningful engagement with those who they aim to protect.** The French Duty of Vigilance Law was informed by the Rana Plaza disaster and the German law by low levels of voluntary adoption of HRDD as required by their National Action Plan (NAP).<sup>58</sup> The Norwegian law has been framed in terms of transparency

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54. No change in evidence rating from the previous policy brief.

55. Change from Red to Amber as more evidence is available on the implementation of mHREDD laws.

56. The Swiss Responsible Business Initiative Rejected in November 2020 for failing to get double majority.

57. OHCHR, "UN Human Rights "Issues Paper" on Legislative Proposals for Mandatory Human Rights Due Diligence by Companies", June 2020, 1.

58. As found by the surveys carried out by the German Foreign Ministry in 2019 and 2020 that showed that only a small percentage of companies complied with NAP requirements on due diligence. See <https://www.business-humanrights.org/en/latest-news/germany-only-13-17-of-firms-meet-nap-requirements-on-due-diligence-according-to-govt-survey/>. Also see <https://www.csr-in-deutschland.de/EN/Business-Human-Rights/Supply-Chain-Act/Background-and-development/background-and-development.html>

while the Dutch law in terms of consumer protection (Dutch Law). The French<sup>59</sup> and Swiss<sup>60</sup> laws, and now the CSDDD,<sup>61</sup> are the result of a political compromise in which the final texts are a limited or lightened version of their initial proposals. To develop and design these laws, policy makers have generally not engaged in meaningful consultation with rightsholders and people with lived experience.<sup>62</sup>

## Implementation

**In 2017, the French Duty of Vigilance was the first ever mHREDD law in force, followed by the Dutch and Norwegian laws in 2022 and the Swiss law in 2023.** The reporting obligations have tended to take effect a year after the laws enter into force, thus for some mHREDD laws, such as the Norwegian and the Swiss, it is yet too early to provide any conclusions on their implementation by businesses.<sup>63</sup> For the French Duty of Vigilance, what effective implementation of the law means in practice is determined by case law (i.e., depends on the Courts).<sup>64</sup>

**Most legal claims under mHREDD laws have been filed by CSOs with no evidence of public authorities asking a court to order a company to fulfil its obligations.** The first case under the French Law took place in 2019<sup>65</sup> and, since then, most cases have largely been brought by civil society actors seeking an injunction against individual companies for alleged non-compliance with their obligations under the law,<sup>66</sup> have mostly been issued on environmental and climate grounds (suggesting the use of mHREDD laws as a ground for climate change litigation)<sup>67</sup> and do not tend to include human rights considerations,<sup>68</sup> albeit a few exceptions.<sup>69</sup> Under the Supply Chain Due Diligence Act in Germany complaints have been brought against businesses since 2023, including against the garments industry for failing to comply with HRDD obligations,<sup>70</sup> supermarket chains for human rights abuses in the Latin American

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59. See Aissi E (2018) The French duty of vigilance law: a new legal instrument for a fairer globalization. *Global Labour Column* 311

60. See BUENO N, KAUFMANN C. The Swiss Human Rights Due Diligence Legislation: Between Law and Politics. *Business and Human Rights Journal*. 2021;6(3):542-549. doi:10.1017/bhj.2021.42.

61. The approved version by the European Council in March 2024 is a limited version of the [provisional agreement](#) reached by the European Council and the European Parliament in December 2023. In particular, the scope has been reduced by approximately 70%.

62. There was a public consultation for the CSDDD that included a broad range of stakeholders including NGOs and trade unions, but it is unclear if survivors or people with lived experience also participated and whether such participation was meaningful. See [Sustainable corporate governance \(europa.eu\)](#)

63. The first corporate due diligence reports under the Norwegian law were first due in mid-2023 and under the Swiss law in 2024.

64. Latham & Watkins (2022) [French Parliament Publishes Evaluation Report on Corporate Duty of Vigilance Law](#).

65. Against the oil Company Total. See Chambers, Rachel and Vastardis, Anil Yilmaz (2021) "Human Rights Disclosure and Due Diligence Laws: The Role of Regulatory Oversight in Ensuring Corporate Accountability," *Chicago Journal of International Law*: Vol. 21: No. 2, Article 4. Available at <https://chicagounbound.uchicago.edu/cjil/vol21/iss2/4>

66. See for example the case of Yves Rocher [facing court proceedings for failure to ensure workers' rights \(specifically women's rights\) and trade union rights](#), and the case of McDonald's on [workers' rights](#) in Brazil and France among others which can be consulted in the [Duty of Vigilance Radar](#).

67. See Rajavuori, M., Savaresi, A. and van Asselt, H. (2023), Mandatory due diligence laws and climate change litigation: Bridging the corporate climate accountability gap? *Regulation & Governance*, 17, 944-953. <https://doi.org/10.1111/rego.12518>

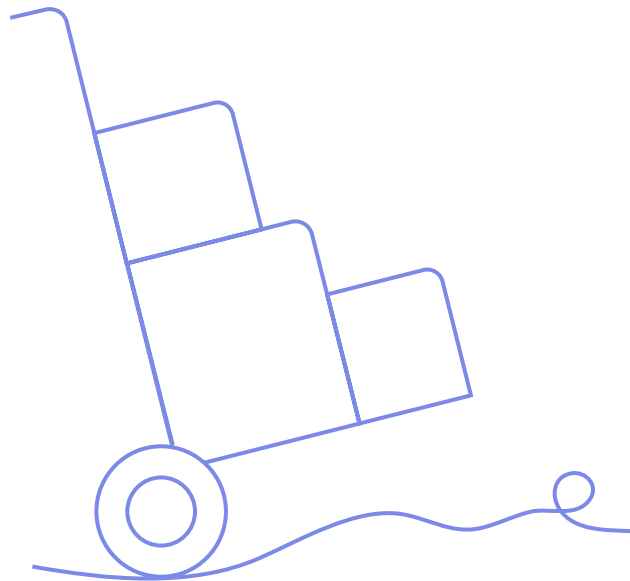
68. See [Formal notice delivered in September 2022 to multiple food and retail companies](#) (Auchan, Casino, Carrefour, Danone, Lactalis, McDonald's France, Les Mousquetaires, Nestlé France, and Picard Surgelés) in relation to their plastic use throughout their value chains, and the case of [Danone 2023](#), and [BNP Paribas 2023](#).

69. Such as the Casino case in 2021: an [international coalition of eleven NGOs sued the French supermarket chain Casino for its involvement in the cattle industry in Brazil and Colombia](#), which plaintiffs allege cause environmental and human rights harms.

70. European Centre for Constitutional and Human Rights (ECCHR) 2023: [First Complaint Case Filed Under German Supply Chain Act](#).

fruit supply chains,<sup>71</sup> and automobile companies with supply chains in Xinjiang.<sup>72</sup> Affected people and organisations from German CSOs have also recently submitted initial complaints to the supervisory authority,<sup>73</sup> albeit it is unclear how these have proceeded. After more than a year in force there is no evidence of claims brought under the Norwegian Transparency Act.

**There is less evidence of court judgements under mHREDD laws as most cases have not yet reached this stage.** Under the French law, only a limited number of judgements have been provided<sup>74</sup> with most claims being declared inadmissible, mostly on procedural grounds, including the case of TotalEnergies.<sup>75</sup> The first decision under the French Duty of Vigilance law was made by the Paris Court in 2023.<sup>76</sup> Under the German law, no court judgements have been issued yet.



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71. Complaints were filed against Rewe and Edka on the basis of low wages, poor working conditions, and lack of trade unions. See BNN, 2023: [Germany: NGOs file complaint under Supply Chain Act against two supermarket chains over alleged labour rights abuses on plantations in Ecuador and Costa-Rica.](#)

72. Complaints against Volkswagen, BMW, and Mercedes-Benz for providing insufficient evidence of their efforts to address forced labour across their Xinjian supply chain. See Routers (2023), [VW audits Xinjiang plant as rights group pressures car makers.](#)

73. See joint press release by CorA Network for Corporate Accountability, Clean Clothes Campaign Germany and Supply Chain Act Initiative: ['One year of German Supply Chain Act: Civil society sees first positive effects'](#). 2023

74. Judgements provided to date include the EDG case, Total Energies Case, and Suez Case.

75. TotalEnergies was sued by CSOs for not complying with its legal obligations under the Duty of Vigilance Law to prevent human rights and environmental damage. For more details see <https://www.simmons-simmons.com/en/publications/cif2ktvec022iu7100mypgri/latest-news-regarding-the-french-corporate-duty-of-vigilance-law>.

76. Analysis by Navacelle 2023, [La Poste case: first decision on the substance of the duty of diligence.](#)

### 3. What does the evidence show about the effectiveness of mHREDD legislation for addressing modern slavery?<sup>77</sup>

Legal Compliance: **Amber**

Changing Business Behaviour: **Amber**

Addressing Modern Slavery: **Red**

Empirical evidence on the effectiveness of mHREDD laws remains largely limited, with some governments planning to undertake a formal evaluation of the effectiveness of these laws in the coming years.<sup>78</sup> The previous policy brief focused on the *anticipated impacts* of mHREDD laws as only the French Duty of Vigilance was in force and there was little post-implementation evidence. While there are now more mHREDD laws in force, these limitations persist likely due to their recent implementation. However, the literature suggests that policy makers should consider the following factors when developing mHREDD laws as these *may* influence their effectiveness:

- State-based monitoring and enforcement, liability provisions, and incentives may influence corporate compliance with mHREDD laws (**effectiveness type 1: Legal compliance**).
- Legal clarity and specificity, detailed disclosure requirements, a balanced approach between contractual assurances and leverage requirements, and resources and capabilities may influence the extent to which mHREDD laws influence corporate changes (**effectiveness type 2: Changing business behaviour**).
- The extent to which mHREDD laws are part of a wider and coherent policy approach, include internationally recognised human rights, cover a diverse range of entities, include outcomes for rightsholders, and address power imbalances may influence the extent to which mHREDD laws effectively address human rights abuses including modern slavery (**effectiveness type 3: Addressing modern slavery**).

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77. The previous policy brief rated the quality of the evidence on effectiveness as Amber/Red, but this brief goes further by specifying the quality of the evidence for each type of effectiveness.

78. For instance, the German government plans to carry out an evaluation of the Act's effectiveness in 2026. See <https://www.csr-in-deutschland.de/EN/Business-Human-Rights/Supply-Chain-Act/Background-and-development/background-and-development.html>

## Effectiveness type 1: Compliance with the Law

What factors may influence whether and to what extent businesses comply with mHREDD laws? **Amber**

There are limited empirical studies exploring when and under which circumstances businesses comply with mHREDD laws. A study looking at business compliance with the French Duty of Vigilance Law in 2021 found that some companies falling within the scope of the law have not yet produced a vigilance plan since the law came into force.<sup>79</sup> Other studies assessed vigilance plans against legal requirements and found that they do not sufficiently meet the requirements of the law<sup>80</sup> mainly in relation to consultation with stakeholders and the assessment and disclosure of the adequacy of the plans to address human rights risks.<sup>81</sup> According to existing reports and legal analyses, state-based monitoring and enforcement, liability provisions, and incentives may influence compliance with mHREDD laws.

### State-based monitoring and enforcement

**State-based monitoring and enforcement mechanisms may be more effective.**

Relying on CSOs to undertake monitoring activities without establishing a regulatory body to oversee compliance and provide stakeholders with regulatory tools to enable them to support authorities in their monitoring, may not be effective at ensuring corporate accountability.<sup>82</sup> For instance, in the absence of a state monitoring mechanism and access to a list of companies subject to the French Duty of Vigilance Law, the CCFD-Terre Solidaire and Sherpa, who have acted as watchdogs of its implementation through the Duty of Vigilance Radar, have reported difficulties in identifying companies that fall under the scope of the law and have argued that this lack of transparency contributes to companies' lack of reporting.<sup>83</sup>

Providing a public repository of companies falling within the scope of these laws has been recommended by the EU parliament<sup>84</sup> and could help CSOs to identify companies and monitor compliance. However, regulatory authorities should be primarily responsible for monitoring compliance as there are other barriers to CSOs' monitoring, including inconsistencies between companies' reports,<sup>85</sup> resource constraints to undertake oversight in a consistent and regular basis, and that CSOs may put little focus on punishable offenses.<sup>86</sup> Relying on CSOs for monitoring compliance can also pose risks to human rights and environmental defenders.<sup>87</sup> Establishing an administrative authority to monitor and enforce compliance has already been

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79. *Duty of Vigilance Radar* (2021). The report found that out of 263 companies identified as falling within the vigilance law criteria, 17% (across sectors) had not produced a vigilance plan within the last three years.

80. See *The law on duty of vigilance of parent and outsourcing companies Year 1: Companies must do better* (2019)

81. Development International e.V., (2020) *Devoir de Vigilance: Reforming Corporate Risk Engagement*.

82. R. Chambers and A. Yilmaz Vastardis, 'Human Rights Disclosure and Due Diligence Laws: The Role of Regulatory Oversight in Ensuring Corporate Accountability', (2021) 21(2) *Chicago Journal of International Law* 323, at 333

83. See <https://vigilance-plan.org/>.

84. See Shift (2023) *Aligning the EU Due Diligence Directive with the International Standards: Key Issues in the Negotiations*.

85. Which has been noted as a difficulty in assessing vigilance plans under the French Law. See note 90 and 91.

86. As showed by research looking at transparency legislation. See [Effectiveness of section 54 of the UK Modern Slavery Act](#)

87. See SAVOUREY, E., & BRABANT, S. (2021). The French Law on the Duty of Vigilance: Theoretical and Practical Challenges Since its Adoption. *Business and Human Rights Journal*, 6(1), 141-152. doi:10.1017/bhj.2020.30

recommended in relation to the French Duty of Vigilance<sup>88</sup> and the UK Modern Slavery Act's transparency provisions<sup>89</sup> which have, so far, relied on CSOs' monitoring.<sup>90</sup>

**Overreliance on market-based mechanisms to monitor compliance and act against non-compliant companies (e.g., consumers' activism or boycotting) may also be ineffective.** Research has shown that consumers' lack of action on modern slavery may not be grounded on lack of information but moral indifference<sup>91</sup> with consumers neutralising the sense of guilt or responsibility for modern slavery and legitimising inaction.<sup>92</sup>

## Liability provisions

mHREDD laws include sanctions for non-compliance, such as financial penalties and administrative fines,<sup>93</sup> mostly in relation to disclosure but also to the required exercise of human rights due diligence.<sup>94</sup> Including these sanctions for non-compliance has been recommended to increase compliance with transparency legislation<sup>95</sup> but authorities must also impose these sanctions as prescribed in the law<sup>96</sup> which does not always occur.<sup>97</sup> Scholars suggest that a mix of civil, administrative, and criminal liabilities provisions may be most effective as they serve different but complementary purposes.<sup>98</sup> Moreover, legal experts have recommended establishing strict liability<sup>99</sup> whereby no fault on the part of the defendant would be needed.<sup>100</sup> However, none of the current mHREDD laws include the full range of liabilities<sup>101</sup> or have established strict liability.<sup>102</sup>

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88. The French Parliament recommended the establishment of an administrative authority to monitor compliance with the French Duty of Vigilance in an [evaluation report](#) by the French Parliament in 2022 but has not yet been put in place.

89. The [2019 Independent Review of the UK Modern Slavery Act](#) recommended active monitoring from a Single Enforcement Body.

90. Before that it was unclear if the commercial or civil court was competent for enforcement.

91. Smith A., Johns J. (2019). Historicizing modern slavery: free-grown sugar as an ethics-driven market category in nineteenth-century Britain. *Journal of Business Ethics*. <https://doi.org/10.1007/s10551-10019-04318-10551>.

92. Carrington M., Chatzidakis A., Shaw D. (2018). [Consuming modern slavery](#)

93. See [Annex 1](#).

94. For instance, the Dutch law establishes different penalties according to whether non-compliance is in reference to disclosure or due diligence requirements (See [Annex 1](#)).

95. For instance, the [2019 Independent Review of the UK Modern Slavery Act](#) recommended that the Government introduced sanctions such as financial penalties for non-compliance to increase compliance.

96. Chambers, Rachel and Vastardis, Anil Yilmaz (2021) "Human Rights Disclosure and Due Diligence Laws: The Role of Regulatory Oversight in Ensuring Corporate Accountability," *Chicago Journal of International Law*: Vol. 21: No. 2, Article 4.

97. See the case of La Poste. The judicial court decided not to impose the penalties provided by the law on the grounds that the company had made considerable efforts to improve its due diligence plan. See Analysis by Navacelle 2023, [La Poste case: first decision on the substance of the duty of diligence](#).

98. Deva S (2023). Mandatory human rights due diligence laws in Europe: A mirage for rightsholders? *Leiden Journal of International Law* 36, 389–414. <https://doi.org/10.1017/S0922156522000802>

99. Here the role of a causal link (whether through sole causation by the company or a form of contribution) between a company's due diligence failure and a harm is key. Requiring a causal link between a fault and harm is common to many national systems. See Shift (2023) [Aligning the EU Due Diligence Directive with the International Standards: Key Issues in the Negotiations](#).

100. See Pietropaoli, Smit, Hughes-Jennett and Hood (2020) [A UK Failure to Prevent Mechanism for Corporate Human Rights Harms](#).

101. See [Annex 1](#).

102. The Swiss RBI proposal would have introduced a due diligence defence to strict liability of a controlling company for harm caused by entities under its control, but this was not passed. See The Danish Institute for Human Rights (2021) [Human Right Due Diligence Laws: Key considerations](#).

## Incentives

In the EC study,<sup>103</sup> businesses identified several anticipated benefits of mHREDD legislation, including levelling the playing field, facilitating leverage with third party business partners, improving legal certainty, and improving regulatory harmonisation. However, little is known if these are crystallising in practice and whether they are driving business compliance, and, if so, under which conditions.

Specific policy incentives such as those in relation to public procurement or tax rebates may also drive business compliance with mHREDD laws<sup>104</sup> but, so far, these laws have focused on ensuring compliance through “sticks” as opposed to “carrots” with only some of them, such as the German Law<sup>105</sup> and the CSDDD<sup>106</sup> having public procurement implications. Financial incentives to directors in relation to climate transition plans was initially proposed in the CSDDD but this was not approved in the latest agreed text.<sup>107</sup>

## Effectiveness type 2: Changing Business Behaviour

What factors may influence whether and to what extent mHREDD laws are effective at changing company behaviour? **Amber**

**It is expected mHREDD laws will make HREDD a standard business practice.** So far, business adoption of HRDD is generally occurring at a low pace (albeit there has been some progress over the years)<sup>108</sup>, it is often disconnected from other companies’ processes<sup>109</sup>, and often businesses cover some but not all HRDD steps.<sup>110</sup> mHREDD laws are a promising tool to drive HREDD but there is still limited evidence on the impact of mHREDD on corporate behaviour. The ongoing study being carried out by the British Institute of International and Comparative Law (BIICL) looking at the impact of mHREDD legislation on internal corporate practice, including managerial practices may shed some light on this.<sup>111</sup>

**There is mixed evidence on corporate behavioural changes related to mHREDD laws.** Scholars suggest that mHREDD laws have increased business awareness of the importance of HREDD<sup>112</sup> and there is anecdotal evidence suggesting that these laws have increased company’s human rights management practices.<sup>113</sup> Empirical studies have shown that these laws contribute to improving the maturity of business

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103. Smit, et al. (2020) *Study on due diligence requirements through the supply chain: Final Report* (‘the EC study’).

104. Deva S (2023). Mandatory human rights due diligence laws in Europe: A mirage for rightsholders? *Leiden Journal of International Law* 36, 389–414. <https://doi.org/10.1017/S0922156522000802>

105. See the Modern Slavery PEC Policy Brief on [Public Procurement measures to address modern slavery 2022](#).

106. See [Corporate sustainability due diligence: Council and Parliament strike deal to protect environment and human rights - Consilium \(europa.eu\)](#)

107. See endorsed text in COREPER meeting March 15h, 2024. <https://www.consilium.europa.eu/en/press/press-releases/2023/12/14/corporate-sustainability-due-diligence-council-and-parliament-strike-deal-to-protect-environment-and-human-rights/>

108. See The World Benchmarking Alliance’s [Corporate Human Rights Benchmark 2023 report](#) (covering the extractives and apparel sectors) and The [2022 report](#) (covering the food and agriculture, ICT and automotive sectors).

109. The World Benchmarking Alliance’s [Corporate Human Rights Benchmark 2022 report](#).

110. According to the world Benchmarking Alliance’s [Corporate Human Rights Benchmark 2023 report](#).

111. See [Identifying and comparing impacts of mHREDD legal models on internal corporate practice](#).

112. In reference to the French Duty of Law see SAVOUREY, E., & BRABANT, S. (2021). The French Law on the Duty of Vigilance: Theoretical and Practical Challenges Since its Adoption. *Business and Human Rights Journal*, 6(1), 141-152. doi:10.1017/bhj.2020.30

113. According to a 2023 assessment of the German Supply Chain 2023 by civil society. See joint press release by CorA Network for Corporate Accountability, Clean Clothes Campaign Germany and Supply Chain Act Initiative: [‘One year of German Supply Chain Act: Civil society sees first positive effects’](#). 2023

disclosure,<sup>114</sup> increasing business implementation of HRDD,<sup>115</sup> and increasing corporate human rights practices, especially in companies falling behind the voluntary adoption of such practices.<sup>116</sup> However, studies show that mHREDD laws are not driving stakeholder engagement<sup>117</sup> and there is little evidence of companies addressing human rights and environmental issues in tandem as a result of these laws. Moreover, a study looking at vigilance plans required by the French Law, found that companies scored lower when assessed against the UNGPs' requirements on HRDD than when assessed against the legal requirements of the law.<sup>118</sup>

**There is also a high risk of companies taking a compliance-centred approach.**

This means companies may focus on complying with the letter of the law to avoid legal liability but not necessarily focus on tackling human rights abuses.<sup>119</sup> The risk of companies taking mHREDD laws as checkbox exercise may be reduced if the laws are clear and specific on what is required, include detailed disclosure requirements, and require a balanced approach between contractual assurances, leverage, and responsible purchasing practices. Having the necessary resources and capabilities may also influence the extent to which businesses change their practices.

## Legal clarity and specificity

**In general, mHREDD legislation is unclear regarding what specific actions are required to comply with the HRDD duty<sup>120</sup> and tends to use ambiguous and imprecise language that can lead to confusion as to how to comply.** For instance, the duty is met if the company has undertaken 'appropriate measures' in the case of the German Law<sup>121</sup> or 'reasonable vigilance measures'<sup>122</sup> in the French Law, or when there is 'reasonable suspicion' of child labour in the case of the Dutch Law. According to one study, if the legislation is unclear, vague and lacks specificity, it can lead to HREDD laws becoming a tick-box exercise whereby companies formally comply with their legal obligations but do not substantially change their business practices.<sup>123</sup>

**Governments may increase legal clarity by issuing guidance to business<sup>124</sup> in which**

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114. In relation to the French Duty of Vigilance companies improved reporting across areas including policy commitment, governance, risk assessments, integration and acting, tracking and remediation, with policy commitment being the most mature area of reporting according to Shift (2019) 'Human Rights reporting in France, Two years In: Has the Duty of Vigilance Law led to more Meaningful Disclosure'.

115. For instance, early evidence in relation to the French law, indicated that in the financial year after its introduction in 2017 70% of companies started or revised their human rights and environmental risk mapping, and 65% of companies had dedicated human rights impacts identification processes (compared to 30% before the law). See Enterprises pour les droits de l'Homme (EDH), 'Application de la loi sur le devoir de vigilance: Plans de vigilance 2018-2019', (14 June 2019).

116. Lafarre A, Rombouts B. Towards Mandatory Human Rights Due Diligence: Assessing Its Impact on Fundamental Labour Standards in Global Value Chains. *European Journal of Risk Regulation*. 2022;13(4):567-583. doi:10.1017/err.2022.23

117. For instance, according to Development International e.V. (2020) *Devoir de Vigilance: Reforming Corporate Risk Engagement* only 5% of companies had engaged with stakeholders in the development of their vigilance plan. According to Shift (2019) *Human Rights reporting in France, Two years In: Has the Duty of Vigilance Law led to more Meaningful Disclosure* 'stakeholder engagement disclosure has weakened. And according to a French Government report 2020 DE JOUVENEL *Mission to monitor the implementation of the Duty of Vigilance Act* there is very little engagement with CSOs and trade unions in the implementation of the law.

118. Development International e.V., (2020) *Devoir de Vigilance: Reforming Corporate Risk Engagement*.

119. Deva S (2023). Mandatory human rights due diligence laws in Europe: A mirage for rightsholders? *Leiden Journal of International Law* 36, 389-414. <https://doi.org/10.1017/S0922156522000802>

120. Nolan J (2022) Chasing the next shiny thing: Can human rights due diligence effectively address labour exploitation in global fashion supply chains? *International Journal for Crime, Justice and Social Democracy*. 11(2): 1-14. <https://doi.org/10.5204/ijcsd.2398>

121. EC Draft Directive Articles 2(q), 6(1), 7(1) and 8(1), German Due Diligence Law.

122. Article 1 of the French Duty of Vigilance law.

123. Landau, I. (2019). Human rights due diligence and the risk of cosmetic compliance. *Melb. J. Int'l L.*, 20, 221.

124. See European Union (2022) *Making Mandatory Human Rights and Environmental Due Diligence Work for All. Guidance on designing effective and inclusive accompanying support to due diligence legislation*.



they elaborate on the meaning of the language used, clarify that HRDD is not a tick-box exercise or a safe harbour,<sup>125</sup> and that undertaking social audits does not represent a proxy for due diligence.<sup>126</sup> However, not all governments have issued such guidance. Regarding the French law for instance, the courts are meant to clarify what effective implementation of a vigilance plan means<sup>127</sup> as there is no standard of a 'normally' vigilant company<sup>128</sup> but what the duty of vigilance means in practice remains vague<sup>129</sup> and unevenly understood.<sup>130</sup> The courts have started to provide further clarity as to how businesses can demonstrate compliance, but this depends on claims reaching court judgments.

### Detailed disclosure requirements

While most mHREDD laws do not require detailed disclosure,<sup>131</sup> one study<sup>132</sup> indicates that mandating detailed disclosure is a key factor to ensure mHREDD regulation enables businesses to implement HRDD significantly rather than cosmetically. The study argues that disclosure legislation that provides businesses with substantial discretion over the detail of their reporting may be less likely to contribute to changing or improving corporate practice. Regarding modern slavery supply chain transparency legislation, it has been argued that the preference for a lenient reporting requirement over more stringent models may have undermined the effectiveness of section 54 of the UK's Modern Slavery Act in 'steering' corporate behaviour.<sup>133</sup> However, empirical evidence is needed to confirm this.

### Balanced approach between contractual assurances, leverage and purchasing practices

mHREDD laws tend to rely on contractual assurances to change business behaviour. However, while these are important to assess compliance, they may not be sufficient to change the practices of suppliers or business partners as businesses may pass liability along the value chain without providing the required support (financial or otherwise) to facilitate change. Such a hands-off approach has been reported in the food, ICT, and automobile sectors<sup>134</sup> and in the implementation of

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125. See Pietropaoli, Smit, Hughes-Jennett and Hood, (2020) *A UK Failure to Prevent Mechanism for Corporate Human Rights Harms*.

126. Nolan J (2022) Chasing the next shiny thing: Can human rights due diligence effectively address labour exploitation in global fashion supply chains? *International Journal for Crime, Justice and Social Democracy*. 11(2): 1-14. <https://doi.org/10.5204/ijcsjd.2398>

127. SAVOUREY, E., & BRABANT, S. (2021). The French Law on the Duty of Vigilance: Theoretical and Practical Challenges Since its Adoption. *Business and Human Rights Journal*, 6(1), 141-152. doi:10.1017/bhj.2020.30. See also <https://ohrh.law.ox.ac.uk/lessons-from-the-french-vigilance-law-for-the-eus-corporate-sustainability-due-diligence-directive/>.

128. Expanded upon in these articles: Simmons + Simmons, Hogan Lovells, Mondaq, Morgan Lewis.

129. E. Savourey and S. Brabant, 'The French Law on the Duty of Vigilance: Theoretical and Practical Challenges Since its Adoption', (2021) 6 *Business and Human Rights Journal* 141, at 147.

130. See Bright (2021) 'Mapping human rights due diligence regulations and evaluating their contribution in upholding labour standards in global supply chains' in Delautre, Echeverria Manrique and Fenwick (Eds.), *Decent work in globalised economy: Lessons from public and private initiatives*, ILO.

131. For instance, the French law lacks clarity regarding the level of detail expected in the vigilance plans as it is expected courts will clarify this. See SAVOUREY, E., & BRABANT, S. (2021). The French Law on the Duty of Vigilance: Theoretical and Practical Challenges Since its Adoption. *Business and Human Rights Journal*, 6(1), 141-152. doi:10.1017/bhj.2020.30

132. Landau, I. (2019). Human rights due diligence and the risk of cosmetic compliance. *Melb. J. Int'l L.*, 20, 221.

133. LeBaron, G., & Rühmkorf, A. (2017). *Steering CSR through home state regulation: A comparison of the impact of the UK bribery act and modern slavery act on global supply chain governance*. *Global policy*, 8, 15-28.

134. Businesses are placing child and forced labour and living wages expectations on their suppliers, through supplier codes of conduct and contractual agreements, but are not monitoring their progress or providing them with the necessary support to make changes. World Benchmarking Alliance (2022) *Corporate Human Rights Benchmark 2022*.

the French Duty of Vigilance Law.<sup>135</sup> The CSDDD aims to tackle this by requiring large companies to provide 'targeted and proportionate support' to their suppliers. Requiring businesses to undertake responsible purchasing practices and exercising leverage<sup>136</sup> may also facilitate change in business behaviour,<sup>137</sup> especially in the lower tiers of the supply chain, but only a few companies are undertaking responsible purchasing practices<sup>138</sup> and more evidence is needed to support this.

## Resources and Capabilities

**The resources and capabilities that businesses have at their disposal may influence whether businesses change their behaviour as these may enable or support such changes.** For instance, a well-documented difficulty that large businesses face when implementing HREDD is gathering data from suppliers, especially from low tiers and in sectors characterised by long and complex supply chains partially due to a lack of visibility.<sup>139</sup> These challenges are likely to persist whether HREDD is voluntary or obligatory unless other measures are implemented, for instance funding research and technology.<sup>140</sup>

## Effectiveness type 3: Addressing modern slavery

**What factors may influence whether and to what extent mHREDD laws are effective at preventing, mitigating, and remediating human rights abuses such as modern slavery?** **Red**

There are limited studies that have examined the effectiveness of mHREDD laws in preventing, mitigating, and remediating human rights abuses, possibly due to the relatively recent implementation of these laws, the lack of established indicators to measure such outcomes, and the lack of investment in the evaluation of these laws.

**The effectiveness of mHREDD laws may depend, to some extent, on the effectiveness of the HRDD process itself to address human rights abuses.** HRDD is a promising tool for identifying and assessing human rights impacts<sup>141</sup> but there has been limited systematic evaluation of its effectiveness in relation to the achievement of specific outcomes such as the prevention of human rights abuses by businesses.<sup>142</sup>

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135. 80% of SMEs were being required by large companies in their value chains to comply with human rights obligations without receiving accompanying support according to PWC (2020) 'Résultats de l'enquête "RSE: La parole aux fournisseurs!".

136. Leverage refers to the ability of companies to influence behaviour in their value chain and is emphasised in the UNGPs as a means to change supplier behaviour.

137. Shift (2022) *The EU Commission's Proposal for a Corporate Sustainability Due Diligence Directive*.

138. In the apparel sector, only a minority of companies undertake responsible purchasing practices to enable suppliers to meet their human rights requirements while meeting their commercial demands. World Benchmarking Alliance (2023) *Corporate Human Rights Benchmark 2023. Insights Report*.

139. See Trautrimis et al. (2022) *Addressing modern slavery in long and complex supply chains*.

140. European Union (2022) *Making Mandatory Human Rights and Environmental Due Diligence Work for All. Guidance on designing effective and inclusive accompanying support to due diligence legislation*.

141. See McCORQUODALE R, SMIT L, NEELY S, BROOKS R. Human Rights Due Diligence in Law and Practice: Good Practices and Challenges for Business Enterprises. *Business and Human Rights Journal*. 2017;2(2):195-224. doi:10.1017/bhj.2017.2 See also human rights due diligence examples <https://www.business-humanrights.org/en/big-issues/un-guiding-principles-on-business-human-rights/due-diligence-examples-case-studies-incl-hria/>

142. See McCorquodale, R., Nolan, J. The Effectiveness of Human Rights Due Diligence for Preventing Business Human Rights Abuses. *Neth Int Law Rev* 68, 455-478 (2021). <https://doi.org/10.1007/s40802-021-00201-x>

Based on the available literature, the factors which may influence the effectiveness of mHREDD legislation in addressing human rights abuses are the extent to which mHREDD laws: are part of a wider and coherent policy approach; include international recognised human rights; cover a diverse range of entities; focus on outcomes for rightsholders; and address power imbalances (for example by developing these laws in consultation with rightsholders and people with lived experience, requiring businesses to consult with these groups as part of their HRDD, and placing remediation at the heart of these laws). These factors are discussed below under four categories: the development of mHREDD laws, their design, their requirements, and their coverage.

## Development

**The extent to which mHREDD are developed in consultation with rightsholders and people with lived experience:** While most mHREDD laws are being developed without such consultative processes, having in-built consultation mechanisms that consider rightsholders and people with lived experience in the design and implementation of mHREDD laws may increase their effectiveness in addressing human rights abuses. For instance, a recent study demonstrated that meaningful engagement with people with lived experience improves policies and programmes aiming to tackle modern slavery.<sup>143</sup>

**The extent to which mHREDD laws are developed as part of a wider and coherent policy approach to addressing human rights abuses in supply chains:** According to the UNGPs, the State should protect against human rights abuses in business through a smart mix of measures, including national and international, and mandatory and voluntary.<sup>144</sup> mHREDD laws may be more effective when these are reinforced by complementary measures given that mHREDD laws may not be able to fully address some of the root causes of human rights abuses, such as inequality, and the process of human rights due diligence may not sufficiently address human rights abuses in some situations, such as in conflict or where there is state-sponsored human rights abuses.<sup>145</sup> Having supporting measures to mHREDD laws such as those targeting producers, suppliers, workers, government organisations and CSOs, may also mitigate the unintended consequences of mHREDD laws.<sup>146</sup> However, empirical evidence on what an effective “smart mix” looks like is needed. Some of these measures are discussed in [section 5](#).

## Design

**Whether mHREDD laws impose a duty to prevent human rights harms:** One way of designing this could be by incorporating a ‘failure to prevent model’ as recommended in 2017 by the UK Joint Committee on Human Rights<sup>147</sup> based on evidence of its

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143. Albeit most engagement is done in implementation and evaluation with less evidence on engagement in policy design. See Asquith, Wendy et al. (2022) *A review of current promising practices in the engagement of people with lived experience to address modern slavery and human trafficking*. <https://modernslaverypec.org/resources/best-practice-engagement-lived-experience>

144. UNGP 3 Commentary.

145. For a discussion of the limitations of the human rights due diligence process and how mHREDD laws should address them to be effective at protecting people and the environment see Deva S (2023). *Mandatory human rights due diligence laws in Europe: A mirage for rightsholders?* *Leiden Journal of International Law* 36, 389–414. <https://doi.org/10.1017/S0922156522000802>

146. European Union (2022) *Making Mandatory Human Rights and Environmental Due Diligence Work for All. Guidance on designing effective and inclusive accompanying support to due diligence legislation*.

147. See *Human Rights and Business 2017. Promoting responsibility and ensuring accountability, Sixth Report of Session 2016-17, (5 April 2017)*.

success and effectiveness in the UK Bribery Act.<sup>148</sup> Under this model companies have a *duty to prevent* human rights harms coupled with a 'due diligence defence' which would allow companies to avoid liability when they can show that they had in place a robust system of human rights due diligence.<sup>149</sup> This model would ideally establish civil liabilities for those affected.<sup>150</sup>

**The extent to which mHREDD laws connect the process of HRDD with outcomes for rightsholders:** Scholars are suggesting that for mHREDD laws to be effective at protecting rightsholders they need to go beyond processes.<sup>151</sup> Most mHREDD laws focus on the process of due diligence,<sup>152</sup> but without considering outcomes, this may pose the risk of companies seeing HRDD as an end in itself and focus on risks to business as opposed to risks to people.<sup>153</sup> It may also pose the risk of mHREDD laws prioritising consumer awareness or over-emphasising reporting, as opposed to protecting vulnerable groups, which may occur when framing these laws in terms of consumer protection or transparency.<sup>154</sup> The process of HRDD is not disconnected from the impacts of those efforts on people and these can be used to assess the "reasonableness" or "appropriateness" of the HRDD process in any particular case or in a company's efforts over time.<sup>155</sup> While it would be highly contextual, the criteria about what constitutes "reasonable" can be elaborated on accompanying guidance.<sup>156</sup>

**The extent to which remediation is placed at the heart of mHREDD laws:** One way to address the existing power asymmetries between business and rightsholders is for mHREDD laws to facilitate access to remedy to affected individuals through strong access to justice provisions, such as civil liability<sup>157</sup> and to address any potential barriers for accessing justice, such as placing the burden of proof on the affected individuals and communities. For example, the burden of proof and contestations over what constitutes valid evidence and how to prove causality between harms and business practices have been found to be significant obstacles for rightsholders in the Global South when trying to establish legal liability of multinational companies under the French Duty of Vigilance.<sup>158</sup>

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148. House of Lords Select Committee, *The Bribery Act 2010: post-legislative scrutiny*, (14 March 2019), at p.3. Neely 'UK Country Report' in EC Study: Part III Country Reports at p.319.

149. Pietropaoli, Smit, Hughes-Jennett and Hood (2020) *A UK Failure to Prevent Mechanism for Corporate Human Rights Harms*.

150. Ibid.

151. For example, Deva S (2023). Mandatory human rights due diligence laws in Europe: A mirage for rightsholders? *Leiden Journal of International Law* 36, 389–414. <https://doi.org/10.1017/S0922156522000802> and Landau, 'Human Rights Due Diligence and the Risk of Cosmetic Compliance', (2019) *Melbourne Journal of International Law* 221.

152. For instance, the German Law states that HRDD is not an 'obligation to obtain a successful result' (for example the elimination of all human rights harms or ensuring that HRDD processes have a positive effect on rightsholders) but rather an 'obligation to make an effort'. See EC study Final Report at p.260 on 'Due diligence as a legal standard of care: Clarification of a few common questions.' And *Erfolgspflicht* and 'Bemühungspflicht' (2020) *German Draft key points of a Federal law on strengthening corporate due diligence to prevent human rights violations in global value chains (Due Diligence Act)*.

153. For instance, a report on the vigilance plans of companies under compliance with the French Duty of Vigilance revealed that the majority tended to focus on the risks to the business itself. See ActionAid et al. 2019, and Bright (2021) 'Mapping human rights due diligence regulations and evaluating their contribution in upholding labour standards in global supply chains' in Delautre, Echeverría Manrique and Fenwick (Eds), *Decent work in globalised economy: Lessons from public and private initiatives*, ILO, (2021).

154. Nolan J (2022) Chasing the next shiny thing: Can human rights due diligence effectively address labour exploitation in global fashion supply chains? *International Journal for Crime, Justice and Social Democracy*, 11(2): 1-14. <https://doi.org/10.5204/ijcsjd.2398>

155. Davis, Rachel (2021) *Legislating for Human Rights Due Diligence: How Outcomes for People Connect to the Standard of Conduct*

156. Pietropaoli, Smit, Hughes-Jennett and Hood (2020) *A UK Failure to Prevent Mechanism for Corporate Human Rights Harms*.

157. Civil liability can improve access to justice for victims of corporate human rights abuses, especially when human rights harms occur in third countries. See Axel Marx, Claire Bright and Jan Wouters (2019) *Access to Legal Remedies for Victims of Corporate Human Rights Abuses in Third Countries*

158. Schilling-Vacaflor, A. Putting the French Duty of Vigilance Law in Context: Towards Corporate Accountability for Human Rights Violations in the Global South? *Hum Rights Rev* 22, 109-127 (2021). <https://doi.org/10.1007/s12142-020-00607-9>

## Requirements

**Whether mHREDD laws require businesses to meaningfully engage<sup>159</sup> with rightsholders and affected communities:** The UNGPs<sup>160</sup> and the OECD guidelines<sup>161</sup> recommend this approach and many CSOs support it.<sup>162</sup> Scholars suggest that engagement with rightsholders and people with lived experience throughout the HRDD process could reduce the existing power imbalances between companies and workers,<sup>163</sup> especially when it comes to prevention and remediation of human right abuses,<sup>164</sup> for instance by enabling victim-centric remediation.<sup>165</sup> However, in practice, studies show that most companies are not engaging with affected stakeholders on the design and implementation of HRDD processes,<sup>166</sup> albeit there has been some progress over the years.<sup>167</sup> This may be related to the fact that most mHREDD laws do not require companies to consult with rightsholders and people with lived experience throughout their HRDD processes.<sup>168</sup>

**The extent to which mHREDD laws integrate specific requirements related to business models:** Some business models pose heightened risks to people<sup>169</sup> and may therefore require governance and systemic changes, including in the way they do business, their sales and purchasing practices. Some human rights due diligence frameworks already recommend companies to review their business model and that of their suppliers as part of their due diligence process.<sup>170</sup> mHREDD laws could require companies to tailor their policies considering the risks embedded in their business model and for them to disclose how they address the relationship between material impacts on people and their business models, which the [Corporate Sustainability Reporting Directive \(CSRD\)](#) and the new [European Sustainability Reporting Standards \(ESRS\)](#) already require, and which was proposed by the European Parliament during the CSDDD negotiations.<sup>171</sup>

159. The Parliament adopted the concept of "meaningful engagement" including ensuring engagement is safe for stakeholders and recognizing the role of credible proxies where needed (e.g., legitimate representatives such as NGOs).

160. UNGPs principle 18 state that the HRDD process should be informed by meaningful stakeholder engagement, in particular with affected stakeholders, human rights defenders, trade unions and grassroots organizations.

161. The updated [OECD guidelines](#) ask businesses to engage meaningfully with relevant stakeholders in their due diligence.

162. See for example Business & Human Rights Resource Centre et al. (2021) [Hearing the human ENSURING DUE DILIGENCE LEGISLATION EFFECTIVELY AMPLIFIES THE VOICES OF THOSE AFFECTED BY IRRESPONSIBLE BUSINESS](#).

163. Deva S (2023). Mandatory human rights due diligence laws in Europe: A mirage for rightsholders? *Leiden Journal of International Law* 36, 389–414. <https://doi.org/10.1017/S0922156522000802>

164. McCorquodale and Nolan 'The Effectiveness of Human Rights Due Diligence for Preventing Business Human Rights Abuses', *Netherlands International Law Review* (9 November 2021).

165. Nolan J (2022) Chasing the next shiny thing: Can human rights due diligence effectively address labour exploitation in global fashion supply chains? *International Journal for Crime, Justice and Social Democracy*, 11(2): 1–14. <https://doi.org/10.5204/ijcsd.2398>

166. In selected sectors. See World Benchmarking Alliance (2022) [Corporate Human Rights Benchmark Insights report](#) <https://www.worldbenchmarkingalliance.org/research/2022-corporate-human-rights-benchmark-insights-report/>.

167. World Benchmarking Alliance (2023) [Corporate Human Rights Benchmark 2023. Insights Report](#). <https://www.worldbenchmarkingalliance.org/corporate-human-rights-benchmark/>

168. For instance, the French law only mandates consultation with stakeholders in the development of grievance mechanisms. The German law does not mandate stakeholder engagement.

169. For a discussion on the role of business models at enabling modern slavery. See Crane, A., LeBaron, G., Phung, K., Behbahani, L., & Allain, J. (2022). Confronting the Business Models of Modern Slavery. *Journal of Management Inquiry*, 31(3), 264–285. See also [Shift's Business Model Red Flags](#).

170. See [Human rights due diligence framework | Ethical Trading Initiative \(ethicaltrade.org\)](#)

171. Shift (2023) [Aligning the EU Due Diligence Directive with the International Standards: Key Issues in the Negotiations](#).

## Coverage

**The extent to which mHREDD laws cover internationally recognised human rights:** The UNGPs<sup>172</sup> and legal experts<sup>173</sup> recommend mHREDD laws to include *all* internationally recognised human rights, including those related to the environment as highlighted by the OECD. While some mHREDD laws cover only a list of specific conventions and others exclude climate change impacts,<sup>174</sup> the danger of focusing only on certain human rights is that mHREDD laws may leave many rightsholders vulnerable to corporate abuses,<sup>175</sup> prioritise specific human rights risks at the expense of others (including climate change and environmental impacts),<sup>176</sup> and reduce legal certainty for companies in regard to human rights not covered by these laws.<sup>177</sup> While there is not yet empirical evidence showing that such a scope is more effective, businesses have expressed preference for a regulation that applies to all human rights to allow them to prioritise and respond to the most severe risks.<sup>178</sup> Moreover, the increasing evidence demonstrating the bi-directional<sup>179</sup> and cyclical<sup>180</sup> relationship between human rights violations and climate change suggests that addressing environmental and human rights abuses in tandem is necessary, as both are rooted in unsustainable production and consumption practices that exacerbate existing and overlapping systemic vulnerabilities (such as poverty and inequality), disproportionately impacting the poorest and most vulnerable.

**The extent to which mHREDD laws cover, directly and indirectly, a wide range of actors, including some SMEs, finance sector actors, and public buyers:**

The UNGPs and the OECD guidelines state that all companies have HRDD obligations regardless of their characteristics<sup>181</sup> and scholars suggest that capturing a wide range of actors may reduce the risk of people being left vulnerable to human rights abuses.<sup>182</sup> However, mHREDD laws tend to limit the scope of actors covered by setting thresholds regarding size, geographical location, place of operations, legal form, place in the value chain, and largely excluding public procurement bodies or the finance sector (see [Annex 1](#)).

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172. Explicit reference is made to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the Declaration on Fundamental Principles and Rights at Work.

173. See Pietropaoli, Smit, Hughes-Jennett and Hood, *A UK Failure to Prevent Mechanism for Corporate Human Rights Harms*, (11 February 2020), <https://www.biicl.org/publications/a-uk-failure-to-prevent-mechanism-for-corporate-human-rights-harms>

174. See [Annex 1](#).

175. Deva S (2023). Mandatory human rights due diligence laws in Europe: A mirage for rightsholders? *Leiden Journal of International Law* 36, 389-414. <https://doi.org/10.1017/S0922156522000802>

176. Pietropaoli, Smit, Hughes-Jennett and Hood, *A UK Failure to Prevent Mechanism for Corporate Human Rights Harms*, (11 February 2020), <https://www.biicl.org/publications/a-uk-failure-to-prevent-mechanism-for-corporate-human-rights-harms>

177. *Ibid*

178. EC study *Final Report* (above n 13) at p. 127. See also European Commission '[Impact Assessment Report](#)' accompanying the proposal for the EC Directive, SWD (2022) 42 final, (23 February 2022).

179. It is bidirectional in the sense that environmental degradation and climate change can contribute to modern slavery and that modern slavery can contribute to environmental degradation and climate change. For an example of how climate-induced migration can contribute to modern slavery see Bharadwaj et al. 2021 Climate-induced migration and modern slavery [https://www.antislavery.org/wp-content/uploads/2021/09/ClimateMigrationReportSep2021\\_low\\_res.pdf](https://www.antislavery.org/wp-content/uploads/2021/09/ClimateMigrationReportSep2021_low_res.pdf). For an example of how modern slavery can contribute to environmental degradation see Boyd, D, Brickell, K, Brown, D, Ives, C, Natarajan, N & Parsons, L 2018, *Modern Slavery, Environmental Destruction and Climate Change: Fisheries, Field, Forests and Factories*, University of Nottingham Rights Lab, p. 20.

180. It is cyclical as they continually shape one another in a "vicious cycle". For a case study see the [Blood Bricks study \(2018\)](#).

181. The UNGPs which state that *all* companies regardless of size have HRDD responsibilities and that States have due diligence responsibilities through their procurement function. The OECD guidelines which apply to *all* companies with international operations, business partners, or value chains, irrespective of their size, sector, location, ownership, or structure.

182. Deva S (2023). Mandatory human rights due diligence laws in Europe: A mirage for rightsholders? *Leiden Journal of International Law* 36, 389-414. <https://doi.org/10.1017/S0922156522000802>

**mHREDD could cover at least some SMEs.** SMEs have largely been excluded from mHREDD laws<sup>183</sup> mostly on the basis of lack of resources, but the costs of carrying out mandatory supply chain due diligence is likely to be relatively low compared to their revenue,<sup>184</sup> HRDD requirements should be proportionate to the size of the company,<sup>185</sup> and assistance, if required, should be provided.<sup>186</sup> The European Parliament for example has proposed for publicly listed SMEs and those operating in high-risk sectors to be covered by mHREDD laws.<sup>187</sup>

Financial sector actors such as pension funds, banks, insurance companies and investment managers, have also been largely excluded from mHREDD laws or excepted from certain obligations<sup>188</sup> despite that they also have a duty to address human rights issues,<sup>189</sup> have been found to have significant leverage power over their investees with the potential to lead to changes in corporate behaviour,<sup>190</sup> and the need for these actors to increase HREDD practices in their investment, lending, and insurance activities.<sup>191</sup>

**Including obligations for businesses to cover the entire value chain, as recommended by the UNGPs, should also be considered.** Especially, as scholars and practitioners agree that most human rights risks, including modern slavery, are located in the lowest tiers of the supply chain. Moreover, negative impacts in the downstream part of the value chain can also be high for some businesses.<sup>192</sup> Focusing on the entire value chain would also help to increase policy coherence as the CSRD<sup>193</sup> and the ESRS<sup>194</sup> refer to both the upstream and downstream parts of the value chain.<sup>195</sup>

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183. Albeit many SMEs are indirectly covered through a cascading effect.

184. See EC study: Smit et al. (2020), *Study on due diligence requirements through the supply chain: Final Report* ('the EC study').

185. Pietropaoli, Smit, Hughes-Jennett and Hood, *A UK Failure to Prevent Mechanism for Corporate Human Rights Harms*, (11 February 2020), <https://www.biiicl.org/publications/a-uk-failure-to-prevent-mechanism-for-corporate-human-rights-harms> at p. 52

186. European Parliament resolution of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability (2020/2129(INL)). See [TA \(europa.eu\)](https://eur-lex.europa.eu/lexuris/ui/ta)

187. *Ibid.*

188. The recently agreed provisional deal of the CSDDD temporarily excludes financial actors' downstream activities (customers) from due diligence requirements.

189. United Nations Working Group on Business and Human Rights (2023) *Statement-Financial-Sector-WG-business-12July2023.pdf* (ohchr.org)

190. See Maha Khan, Dr Sofia Gonzalez de Aguinaga, and Deborah Drake, "Accelerating Change: The Potential of Capital Market Actors in Addressing Modern Slavery," UNU-CPR Insight Briefing (New York: United Nations University, 2023).

191. World Benchmarking Alliance, Press Release (2023). [Multiple benchmarks show financial institutions struggling to demonstrate respect for human rights.](#)

192. Danish Institute for Human Rights (2023) [Due diligence in the downstream value chain: case studies of current company practice](#)

193. "The principal actual or potential adverse impacts connected with the undertaking's own operations and with its value chain, including its products and services, its business relationships and its supply chain" as well as actions taken to address those impacts". <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022L2464>

194. The ESRS define the value chain as, "the full range of activities, resources and relationships related to the undertaking's business model and the external environment in which it operates".

195. See Shift (2023) [Aligning the EU Due Diligence Directive with the International Standards: Key Issues in the Negotiations.](#)

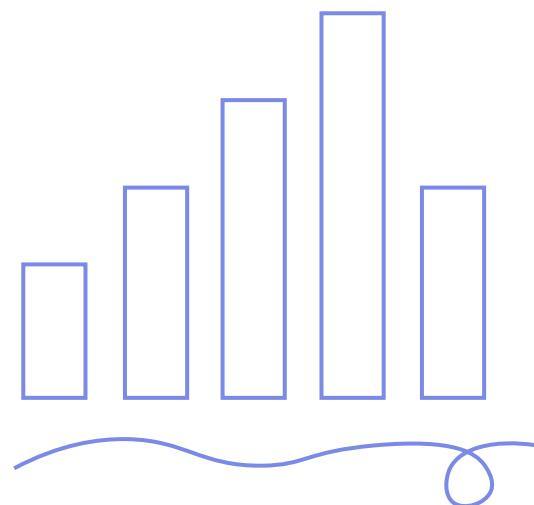
## 4. What does the evidence show about the practical impacts of mHREDD legislation for businesses?

Amber<sup>196</sup>

The previous policy brief discussed anticipated business impacts in relation to costs, competitiveness, reputation, and leverage, based on the EC study<sup>197</sup>, but empirical evidence on the actual impacts on business in relation to these areas remains limited. It is expected that mHREDD laws will also benefit investors in that it could complement their leverage with companies and better inform their investment decisions,<sup>198</sup> but empirical evidence of this is needed.

Many businesses, especially multinational enterprises (MNEs), are likely to fall within the scope of more than one law, but as there is no standard for mHREDD laws so far, they may struggle to comply with divergent requirements or choose to comply with international standards to ensure compliance across jurisdictions.<sup>199</sup> This divergence is further discussed in [section 6](#).

If the CSDDD is approved, businesses doing business in Europe, directly or indirectly, including UK and US companies, are likely to feel its impact. EU member States that already have national mHREDD laws such as France, Germany, and the Netherlands, will have up to two years to transpose it to their national regulations which may involve changes to the current mHREDD laws in Europe.



196. No changes to previous rating.

197. Smit et al (2020), *Study on due diligence requirements through the supply chain: Final Report* ('the EC study').

198. See Investor Alliance for Human Rights, [The Investor Case for Mandatory Human Rights Due Diligence](#)

199. Krajewski et al. (2021) *Mandatory Human Rights Due Diligence in Germany and Norway: Stepping, or Striding, in the Same Direction?* Business and Human Rights Journal, 6 (2021), pp. 550–558. Cambridge University Press.



## 5. What does the evidence show about any connections between mHREDD and related policy areas, such as responses to state-sponsored forced labour or emerging legislation prohibiting the import of goods produced using forced labour?

Amber<sup>200</sup>

Since the last policy brief, empirical evidence on how mHREDD legislation interacts with related policy areas remains limited, possibly due to the relatively recent implementation of mHREDD laws. The available literature continues to highlight the importance of designing a “smart mix” of regulatory tools that relate to human rights and that these must be aligned to avoid contradictions or overlapping, albeit it is unclear what mixes have worked and which have not in different parts of the world. Aligning legislative developments to the UNGPs and OECD Guidelines is a practical way to enable policy coherence but, as discussed earlier, mHREDD laws are not fully aligned to these international frameworks, neither are many other related instruments that would interact with mHREDD legislation. However, mHREDD laws could complement supply chain transparency legislation, public procurement legislation, and forced labour import bans and other trade instruments.

### Transparency/reporting legislation

mHREDD laws complement supply chain transparency legislation as they require companies to undertake HRDD, establish penalties and legal liability for non-compliance and include provisions for victims to access justice and remediation. However, they both require reporting obligations and misalignments in those across instruments may increase the reporting burden for companies. For instance, while the CSRD and associated ESRS require companies to disclose impacts across the full value chain, including those on consumers and end users,<sup>201</sup> many mHREDD laws only cover supply chains. The CSDDD aims to reduce duplication by not requiring additional reporting from companies that already fall within existing transparency legislation such as CSRD. However, it is unclear how obligations to report under the CSRD will interact with the liability mechanism of the CSDDD if this is approved.<sup>202</sup>

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200. Change from Red in the previous policy brief as more is known about these potential connections.

201. The Danish Institute for Human Rights (2023) [How do the pieces fit in the puzzle? Making sense of EU regulatory initiatives related to business and human rights.](#)

202. The Danish Institute for Human Rights (2023) [How do the pieces fit in the puzzle? Making sense of EU regulatory initiatives related to business and human rights.](#)

## Public procurement legislation

mHREDD laws can have significant implications for public procurement.<sup>203</sup> Mainly, companies may be excluded from public procurement in the EU if they fail to comply with mHREDD legislation,<sup>204</sup> or excluded within a country for several years if an administrative fine is imposed above a certain minimum level<sup>205</sup> or for violations of HREDD obligations.<sup>206</sup> However, there is limited empirical evidence of these interactions in practice.

## Forced labour import bans and related trade instruments.

There is little empirical evidence on the effectiveness of forced labour import bans<sup>207</sup> and on how mHREDD laws could complement these instruments, such as the US [Uyghur Forced Labor Prevention Act \(UFLPA\)](#) and the European Parliament proposal for a new [trade instrument to ban products made by forced labour](#) (for which a provisional agreement was reached in early March)<sup>208</sup> especially when mHREDD laws and forced labour import bans are likely to be supervised and enforced by different authorities.<sup>209</sup> However, mHREDD laws and forced labour import bans may complement each other. Mainly, as mHREDD laws are, so far, an obligation of means while forced labour import bans an obligation of result. In particular, they could complement each other in at least the following ways.

**When import ban regimes may be tackling only part of the problem:** A recent study found that forced labour in agri-food supply chains in the U.S. is most prevalent in the domestic system, as opposed to coming from imported food products from low-income countries, suggesting that the import ban regime was insufficient to address modern slavery in this context.<sup>210</sup>

**In situations of state-imposed forced labour:**<sup>211</sup> An import ban regime could complement mHREDD laws when businesses' efforts are ineffective in the short term, either because the harms are several tiers away in their value chains or in situations of state-imposed forced labour<sup>212</sup> where HRDD may be insufficient where HRDD is insufficient, forced labour import bans and related trade instruments could complement mHREDD laws.

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203. See Modern Slavery PEC [Policy Brief on Public Procurement role in addressing modern slavery](#) (2022).

204. Such as CSDDD, the French and the Dutch laws. See [Corporate sustainability due diligence: Council and Parliament strike deal to protect environment and human rights - Consilium \(europa.eu\)](#), and European Commission. (2021). *Buying Social - A guide to taking account of social considerations in public procurement (2nd edition)*.

205. Such as German Due Diligence Supply Chain Act.

206. Proposed mHREDD legislation in Austria, Lieferkettengesetz See Clifford Chance. (2022). *BUSINESS AND HUMAN RIGHTS NAVIGATING A CHANGING LEGAL LANDSCAPE* (Issue January).

207. See Modern Slavery PEC [Policy Brief on Effectiveness of Forced Labour Import Bans](#).

208. Not yet adopted.

209. Ibid.

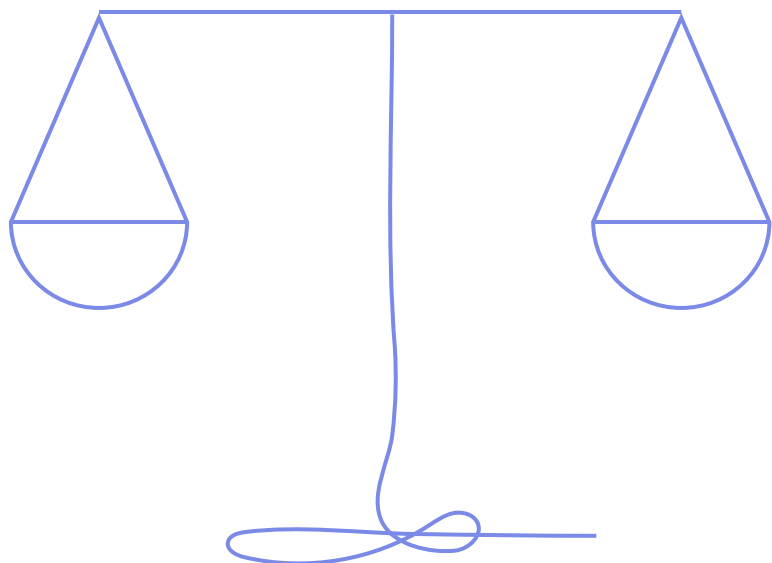
210. Blackstone, N.T., Rodríguez-Huerta, E., Battaglia, K. et al. Forced labour risk is pervasive in the US land-based food supply. *Nat Food* 4, 596-606 (2023). <https://doi.org/10.1038/s43016-023-00794-x>

211. See Shift (2023) [Aligning the EU Due Diligence Directive with the International Standards: Key Issues in the Negotiations](#).

212. See Shift (2023) [Aligning the EU Due Diligence Directive with the International Standards: Key Issues in the Negotiations](#).

**In relation to outcomes for affected rightsholders:** Forced labour import bans, for example, may focus on outcomes by ensuring that victims have been remediated in full before a ban is lifted or by reversing the burden of proof (both of which were proposed by the European Parliament in a new draft of the EC proposal for a forced labour import ban).<sup>213</sup>

**mHREDD laws may also complement other trade instruments such as those that require some degree of due diligence but that are focused on specific sectors or products.** For instance, the CSDDD aims to complement existing European legislation and many businesses may already be undertaking the due diligence that the EU has required on a piecemeal basis through sector specific legislation such as the [EU Batteries Regulation](#) and may already be reporting under the CSRD. However, it remains unclear on how these instruments would complement one another in practice if the CSDDD is approved.



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213. The new draft includes a reverse of the burden of proof in high-risk cases based on a list of high-risk geographical areas and economic sectors that would mean the burden of proof would fall on companies. See [Towards an EU ban on products made with forced labour | News | European Parliament \(europa.eu\)](#), and <https://www.antislavery.org/latest/addressing-forced-labour-in-supply-chains/>

## 6. What does the evidence show about any actual or potential wider consequences of mHREDD?

Amber<sup>214</sup>

### Divestment and disengagement

Concerns have been raised around the risk that mHREDD might incentivise companies to terminate risky relationships (i.e., disengagement) and exit (i.e., divest) from high-risk regions, thereby leading to divestment from regions that most need economic development or negatively impacting rightsholders. However, there is little empirical evidence linking divestment to mHREDD laws. Evidence from the EC study showed that in practice, HRDD processes rarely lead to divestment and that it is in fact the least frequently utilised action by companies.<sup>215</sup> This may be related to the UNGPs emphasising that HRDD requires companies to first exercise and increase leverage, and only terminate relationships as a last resort, recognising the potential human rights harms of doing so.<sup>216</sup> In this regard, it has been recommended that mHREDD laws include a requirement for businesses to consult with rightsholders and people with lived experience prior to making a divestment decision.<sup>217</sup> The EC study also found that, while mHREDD laws may drive businesses to seek more sustainable business partners, this is not expected to lead to a reduction of EU business investment in non-EU countries, but rather to promote more sustainable relationships. However, empirical evidence post-implementation of mHREDD laws is needed.

### Divergence

If mHREDD laws are not harmonised there is a risk of fragmentation, legal uncertainty and lack of a level playing field, and they may generate potential distortion of trade. For instance, some MNEs may have obligations in some countries where they operate but not in others due to the absence of national mHREDD laws in some jurisdictions. In this regard, the EC study showed that UK multinational entities that do business in the European market are concerned about this as the CSDDD would go beyond the national regulations in the UK, creating a stark contrast between the legal obligations applicable to UK companies with EU relationships, and those that are only subject to the transparency provisions of the UK Modern Slavery Act. Similarly, a recent legal analysis<sup>218</sup> suggests that the divergences between the EU and US legal regimes (if the CSDDD is approved) may mean that US firms would need to follow different and likely more stringent European rules which will threaten the level playing field in the US.

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214. The rating did not change from the previous policy brief.

215. Smit et al (2020) *Study on due diligence requirements through the supply chain: Final Report* ('the EC study').

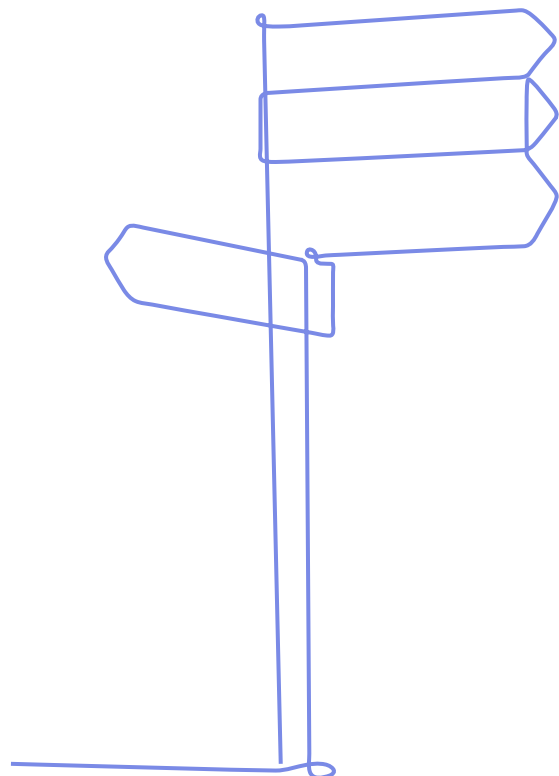
216. Commentary to UNGPs 19.

217. See Shift (2023) *Aligning the EU Due Diligence Directive with the International Standards: Key Issues in the Negotiations*.

218. Rachel Chambers and David Birchall (2024) *How European Human Rights Law Will Reshape U.S. Business*

## 7. Priorities for further research

- Research to establish indicators to measure the effectiveness of mHREDD laws, especially in relation to addressing human rights abuses (effectiveness type 3). This should account for the perspectives of rightsholders themselves.
- Empirical research looking at the actual impact of different mHREDD laws directly on businesses in scope and indirectly on their value chains on internal corporate practice (effectiveness type 2).
- Research exploring the conditions under which mHREDD laws can lead to concrete corporate changes across sectors, geographies, and contexts, including for example during the COVID-19 pandemic, conflict, or state-sponsored forced labour.
- Empirical research looking at how mHREDD laws interact in practice with instruments in related policy areas and what “smart mixes” are more effective than others.
- Empirical studies looking at drivers and barriers for business compliance with mHREDD laws.
- Research exploring how to measure the effectiveness of the HRDD process and to what extent mHREDD laws capitalise and add value to it.



## Annex 1: mHREDD laws developed and implemented worldwide<sup>219</sup>

HREDD law	Country/ jurisdiction	Entered into force	Human Rights Scope	Companies in Scope	Value Chain coverage	Sectors	Liability/access to remedies	Oversight/ enforcement	Disclosure requirement	Fines and Penalties
<a href="#">French Duty of Vigilance Law 2017</a>	France	2017	Human rights, health and safety and the environment.	Large companies <sup>220</sup> registered in France as sociétés anonymes, sociétés en commandite par actions and European companies.	Value chain <sup>221</sup>	Across sectors	Civil liability. Injunction and damages.	Judicial oversight <sup>222</sup>	Yes. A Vigilance Plan.	A court may impose a penalty for each day of non-compliance.
<a href="#">Dutch Child Labour Due Diligence Act 2019</a>	Netherlands	Mid 2022	Child labour only.	all business supplying goods or services to the end-users in the Netherlands <sup>223</sup>	Supply chain (limited to Tier 1)	Cross-sector	Administrative and criminal liability (to directors). No new civil liability.	State based enforcement: Superintendent	Yes. A declaration that they exercise HRDD <sup>224</sup>	Administrative fines <sup>225</sup>

219. Compiled by the author based on multiple sources.

220. Large French companies with at least 5,000 employees in France or 10,000 employees worldwide.

221. Own corporation, its controlled subsidiaries, and partners with which the corporation maintains "an established commercial relationship".

222. Two step enforcement mechanism consisting of (i) a formal notice to comply and then (ii) a request asking the competent court to order an injunction with a potential periodic penalty payment.

223. No restrictions in terms of size, turnover, or legal form. See Bright (2021) 'Mapping human rights due diligence regulations and evaluating their contribution in upholding labour standards in global supply chains' in Delautre, Echeverría Manrique and Fenwick (Eds), *Decent work in globalised economy: Lessons from public and private initiatives*, ILO.

224. One off as opposed to yearly See Bright (2021) 'Mapping human rights due diligence regulations and evaluating their contribution in upholding labour standards in global supply chains' in Delautre, Echeverría Manrique and Fenwick (Eds), *Decent work in globalised economy: Lessons from public and private initiatives*, ILO.

225. The fine can be up to €8,200 for not submitting the declaration, whereas the fine can be up to ten per cent of the worldwide annual turnover of the enterprise for failing to carry out HRDD.

HREDD law	Country/ jurisdiction	Entered into force	Human Rights Scope	Companies in Scope	Value Chain coverage	Sectors	Liability/access to remedies	Oversight/ enforcement	Disclosure requirement	Fines and Penalties
<a href="#">German Due Diligence in Supply Chain Act 2021</a>	Germany	1 January 2023	International human rights, labour rights and the environment.	Large <sup>226</sup> companies with central administration, headquarters, or registered office (or branch office) in Germany.	Supply chain. But focused on Tier 1 suppliers <sup>227</sup>	Cross-sector	No new civil <sup>228</sup> or criminal liability.	state-based administrative oversight: the German Federal Office for Economic Affairs and Export Control.	Yes. Publish annual reports on the fulfilment of the due diligence obligations company's website and submit them to the competent authority <sup>229</sup> .	Yes, financial penalty and administrative fines.  Companies can also be excluded from public procurement for up to three years if an administrative fine is imposed above a certain minimum level.
<a href="#">Norwegian Transparency Act 2021</a>	Norway	1 July 2022	Fundamental human rights and decent work (including health and safety and living wages) and partially environmental harms <sup>230</sup> .	large companies <sup>231</sup> that are resident in Norway or offer goods and services in Norway (and are liable for Norwegian tax)	Their own operations and their entire supply chain, including business partners.	Cross-sector	no express provisions for civil or criminal liability of enterprises for not conducting HRDD at all or conducting it inadequately. No strict liability. It includes the right to request information (from consumers, organisations, trade unions, general public).	The Norwegian Consumer Authority and the Market Council.	Yes. Companies must report and have information readily available digitally on the company's websites <sup>232</sup> .	Yes. Penalties.

226. Companies with central administration, headquarters, or registered office (or branch office) in Germany, with as of 1 January 2023 over 3,000 employees in Germany, and as of 1 January 2024 over 1,000 employees in Germany.

227. Second tier suppliers and above are only included 'if there is a specific reason'.

228. Independent civil liability remains unaffected.

229. First reports to be submitted in June 2024.

230. In the Norwegian law only those environmental harms that 'simultaneously represent an infringement of human rights' are included within scope. Section 3(e) defines 'decent work' as 'work that respects fundamental human rights, protects health, safety and the environment in the workplace and provides a living wage'.

231. Defined in accounting terms. Revenues above MNOK 70, balance sheet of more than MNOK 35 and an average of 50 full time employees in a financial year.

232. First corporate reports for compliance with the Norwegian Act were first due in mid-2023.

HREDD law	Country/ jurisdiction	Entered into force	Human Rights Scope	Companies in Scope	Value Chain coverage	Sectors	Liability/access to remedies	Oversight/ enforcement	Disclosure requirement	Fines and Penalties
<a href="#">Swiss Code of Obligations and the Due Diligence and Transparency Ordinance (Ordinance) 2022</a>	Switzerland	2023	Human rights, environment <sup>233</sup> , Child labour. <sup>234</sup>	Large <sup>235</sup> Swiss companies with their registered office, central administration, or principal place of business in Switzerland that import or process conflict minerals above a certain threshold.	Supply chain.	Conflict minerals. <sup>236</sup>	Criminal liability to directors (for reporting). <sup>237</sup>	No clear enforcement mechanism beyond auditing companies authorised by the government to verify compliance.	Yes. First reports to be published in 2024.	Yes, criminal fine. but only in relation to reporting. Subject to the Swiss Criminal Code (CP). criminal fine of up to CHF100,000.
<a href="#">CSDDD March 2024 agreement</a> <sup>238</sup>	European Member States.	<a href="#">Proposed</a> in February 2022 <sup>239</sup> , <a href="#">Provisional deal</a> reached in December 2023. Compromised version approved by Council in 2024.	Human rights, environment (including climate change). <sup>240</sup>	Reduced scope to companies with more than 1,000 employees and 450M EUR turnover. <sup>241</sup>	Value Chain. Mostly upstream activities. Limited downstream. <sup>242</sup>	Cross-sectorial	Civil liability. <sup>243</sup>	State-based oversight by designated supervisory authorities <sup>244</sup>	Annual statement if not covered under existing reporting regulation <sup>245</sup>	Non-compliant companies may be excluded from public procurement and face pecuniary penalties. <sup>246</sup>

233. Only for reporting.

234. Exceptions apply, including SMEs.

235. Swiss companies with at least 500 employees and a minimum turnover of CHF20 million, or a minimum turnover of CHF40 million) are required to report on environmental, social and human rights issues. Corporations are required to conduct HRDD in two situations: (i) if they import or process above a certain threshold 'minerals or metals in Switzerland, containing tin, tantalum, tungsten, or gold originating from conflict affected and high-risk areas'; (ii) if they sell goods or services in Switzerland with 'reasonable grounds to suspect that they were produced with child labour'.

236. Minerals or metals in Switzerland, containing tin, tantalum, tungsten, or gold originating from conflict affected and high-risk areas.

237. Limited in comparison to the Swiss Responsible Business Initiative rejected in November 2020 for failing to get double majority. The associated liability provision creating a strict liability regime constituted one of the strongest points of the draft text. See Bright (2021) 'Mapping human rights due diligence regulations and evaluating their contribution in upholding labour standards in global supply chains' in Delautre, Echeverría Manrique and Fenwick (Eds), *Decent work in globalised economy: Lessons from public and private initiatives*, ILO.

238. Compromised version approved by European Council in March 2024.

239. European Commission, *Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and Amending Directive (EU) 2019/1937*, (23 February 2022) ('EC Draft Directive'), and its Annex.

240. It requires companies to adopt a plan ensuring that their business model and strategy are compatible with the Paris agreement on climate change. See [Corporate sustainability due diligence: Council and Parliament strike deal to protect environment and human rights - Consilium \(europa.eu\)](#)

241. Companies with more than 5,000 employees and 1500 million turnover will have 3 years to comply with the Directive, those with more than 3,000 employees and 900 million turnover will have 4 years, and companies with more than 1,000 employees and 450 million turnover will have a 5-year application period. See endorsed text in COREPER meeting March 15h, 2024. <https://www.consilium.europa.eu/en/press/press-releases/2023/12/14/corporate-sustainability-due-diligence-council-and-parliament-strike-deal-to-protect-environment-and-human-rights/>

242. Ibid

243. The 15 March text has adapted the possibility for CSOs to bring actions to court and has limited to national rules of civil procedure.

244. Article 17.

245. See endorsed text in COREPER meeting March 15h, 2024. <https://www.consilium.europa.eu/en/press/press-releases/2023/12/14/corporate-sustainability-due-diligence-council-and-parliament-strike-deal-to-protect-environment-and-human-rights/>

246. Ibid



# MODERN SLAVERY & HUMAN RIGHTS

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