



AWARDS FOR BEST BELGIAN SUSTAINABILITY REPORTS 2021

EDITION 2022

Corporate Due Diligence in the Supply Chain

Setting the scene: legislative and regulatory framework

Guido De Clercq – Transparency International Belgium

*These slides do not take into account developments
after November 15, 2022*

Workshop 13 December 2022



WITH THE SUPPORT OF



International legal framework

United Nations

UN Guiding Principles on Business and Human Rights

Universal Declaration of Human Rights

UN Convention of the Rights of the Child

UN Global Compact - Good Practice Notes

International Nations

ILO core labour standards

OECD

OECD Due Diligence Guidance for Responsible Business Conduct

OECD Guidelines for Multinational Enterprises

ISO

ISO 26000 – Guidance on Social Responsibility

European Union – legal and regulatory framework

Directive on Corporate Sustainability Due Diligence (Proposal) - I

Proposal initially published on 23 February 2022

Requires EU-based companies with more than 1,000 employees and a turnover of more than EUR 300 million in the EU to

- (1) to integrate due diligence into policies;
- (2) to identify actual or potential adverse human rights and environmental impacts;
- (3) to prevent or mitigate potential adverse impacts;
- (4) to bring to an end or minimize actual adverse impacts;
- (5) to establish and maintain a complaints procedure;
- (6) to monitor the effectiveness of the due diligence policy and measures, and
- (7) to report publicly once a year on the due diligence.

European Union – legal and regulatory framework

Directive on Corporate Sustainability Due Diligence (Proposal) - II

The scope relates to human rights and environmental impacts by their subsidiaries and by chain of activities (covering established business relationships, activities of commercial partners upstream (suppliers) and, to a limited extent, downstream (customers), excluding the phase of use of the company’s products or the provision of services.)

It is based on a risk-based approach and on the principle of prioritization of negative impact to ensure that the due diligence is possible for companies.

The Member States are free to choose whether to include or exclude “regulated financial companies” from the scope of the texts relating to the duty of diligence.

European Union – legal and regulatory framework

Directive on Corporate Sustainability Due Diligence (Proposal) - III

Human rights and environmental **due diligence** to be conducted based on existing international soft law standards.

In-scope companies (with limited exceptions) must adopt a plan ensuring their business model and strategy are compatible with **a transition to a sustainable economy**, including limiting **global warming** to 1.5°C. They should further identify the extent of risk or impact of **climate change** on operations and include emission reduction objectives where relevant.

Directors of the in-scope EU companies are responsible for putting in place and overseeing companies' due diligence actions. They must take sustainability and non-financial issues into account under their duty to act in the best interest of the company. Hence, they are required to adapt corporate strategy to take into account impacts and prevention or remediation measures. The Member States have to ensure that the breach of the above duty is considered a breach of the directors' duties under domestic law.

European Union – legal and regulatory framework

Directive on Corporate Sustainability Due Diligence (Proposal) - IV

Will apply in a second phase to companies with more than 250 employees and a turnover of more than EUR 40 million, in certain sectors identified as being particularly at risk, such as textiles, agri-food or the extraction of mineral resources.

Requires Member States to designate national administrative authorities to monitor compliance and, where appropriate, order cessation of infringement, impose fines and adopt interim measures to avoid the risk of severe and irreparable harm.

European Union – legal and regulatory framework

Directive on Corporate Sustainability Reporting (CSRD) (Proposal) - I

Adopted by the European Parliament on 10 November 2022.

Will enter into force 20 days after its publication and the Member States will need to transpose this Directive into their national laws 18 months after that.

Establishes a mandatory non-financial reporting regime, aiming (a) at improving disclosure of climate and environmental data by companies to better inform investors about the sustainability of their investments, and (b) give effect to changes required by the new Disclosure Regulation and the Taxonomy Regulation

Obliges companies to collect and regularly publish detailed information on their environmental, social and human rights impacts throughout their global supply chain.

European Union – legal and regulatory framework

Directive on Corporate Sustainability Reporting (CSRD) (Proposal) - II

Collection and reporting will be based on European Sustainability Reporting Standards (ESRS) which are standardized criteria at EU level to be prepared by the European Financial Reporting Advisory Group (EFRAG)

Reporting will cover full range of ESG issues relevant to the business, with double materiality:

- (1) risks to the company arising from sustainability issues, and
- (2) company's impact on people and the environment.

The company needs to obtain a **limited external assurance report** on the reported information, making it mandatory for this sustainable reporting to be certified by an external auditor.

European Union – legal and regulatory framework

Directive on Corporate Sustainability Reporting (CSRD) (Proposal) - III

These data are directly accessible online, meaning they need to be provided in digital format.

Targets all companies with more than 500 employees and non-European companies with a turnover of more than EUR 150 million in the EU and with at least one subsidiary or branch in the EU. These rules will also apply to listed SME's, taking into account their specific characteristics. An opt-out will be possible for SMEs during the transition period, meaning that they will be exempted from the application of the directive until 2028.

Will be applied progressively between 2024 and 2028, depending on the type and size of the companies.

European Union – legal and regulatory framework

Regulation on Making available on the Union Market as well as Export from the Union of certain Commodities and Products associated with Deforestation and Forest Degradation and Repealing (Proposal)

Will impose a new duty of care on companies to ensure that identified products and goods sold on the territory of the European Union do not come from deforested or degraded land.

Duty of care will take the form of an obligation of means for the companies to implement reasonable due diligence to assess and prevent risks in their supply chain.

European Union – legal and regulatory framework

BELGIUM

Bill tabled by members of the Belgian House of Representatives on 2 April 2021.

Aims at introducing a duty of care, a duty of repair and a duty of responsibility on the part of companies throughout their value chains.

Legislative preparatory works still ongoing in the Committee on the Economy, Consumer Protection and Digital Agenda of the Belgian House of Representatives

Issues of contention:

- extension of the law's scope to the entire supply chain;
- thresholds for the application of the law that will bring small and medium-sized companies within its scope;
- nature of the duty of care obligation (result or means)

European Union – legal and regulatory framework

NETHERLANDS

Proposal of Dutch law on “Due Diligence in Value Chains to Combat Human Rights and Environmental Violations in the Conduct of International Business”. Could be adopted as early as January 2023

New law will introduce a duty of care to Dutch and foreign companies operating or trading in the Netherlands and replace the Dutch Child Labor Due Diligence Act.

The Dutch bill – as it reads now- would apply to companies with a turnover of EUR 40 million and more than 250 employees (compared to Germany – 3,000 employees and to France – 5,000 employees)

The bill would specifically designate the ten activities and elements considered to have a negative impact on human rights and the environment that should be subject to the duty of vigilance, such as restrictions on freedom of association and collective bargaining, forced labor and child labor and discrimination.

European Union – legal and regulatory framework

FRANCE

Law n° 2017 - 399 on the Duty of Care of Parent Companies and Contractors

Entered into force on 27 March 2017

Applicable to companies operating in France based on employee headcount.

Imposes new obligations of vigilance for companies and their direct and indirect subsidiaries

They must establish and implement (and report on) a vigilance plan that identifies risks and prevents serious violations of human rights and fundamental freedoms, human health and safety and the environment.

Sanctions: Financial penalties can apply in case of breach. Moreover, public purchasers will be able to exclude from the procurement procedure entities subject to the duty of care, which do not meet the obligation to establish a plan of care (Decree n° 2022 – 767 of May 3, 2022, which entered into force on May 4, 2022)

European Union – legal and regulatory framework

GERMANY

Act on Corporate Due Diligence Obligations for the Prevention of Human rights Violations in Supply Chains

Published 16 July 2021

Enters into force 1 January 2023 – companies with 3,000 or more employees

Enters into force 1 January 2024 – companies with 1,000 employees and more

Applies also to branches of foreign companies, meeting these thresholds

Requires the implementation of a risk management system with regard to the risks of human and environmental rights

Exercise due diligence in addressing human rights abuses throughout their supply chain, including environmental obligations

Applies to company's own business and its direct suppliers

Applies to indirect suppliers as soon company has “proven knowledge” of human rights violations

Sanctions: administrative fine; exclusion from government contracts

European Union – legal and regulatory framework

NORWAY

Act relating to Enterprises' Transparency on Fundamental Human Rights and Decent Working Conditions

Entered into force on 1 July 2021

Applies to companies that are resident in Norway and to foreign companies that provide goods and services in Norway and meet certain criteria (turnover; balance sheet; number of employees)

Includes obligation for companies

- (a) to perform reasonable due diligence in order to notably “identify and assess actual and potential impacts on fundamental human rights and decent working conditions that the enterprise has either caused or contribute toward”;
- (b) to publish an account on due diligence initiated, and
- (c) to provide information in response to requests for information from stakeholders.

Non-compliance may result in a fine by the Consumer Authority

European Union – legal and regulatory framework

UNITED KINGDOM

Modern Slavery Act of 2015

Bill, introduced in the House of Lords on 15 June 2021, to amend the Modern Slavery Act.

The bill seeks to “strengthen the protection and support for victims of human trafficking and modern slavery and increase accountability of companies and other organizations to drive out modern slavery from their supply chains”

Modern slavery – focused reporting obligations applicable to companies carrying on business in the UK who meet certain threshold.



AWARDS FOR BEST BELGIAN
**SUSTAINABILITY
 REPORTS 2021**

EDITION 2022

Thank you for your attention



WITH THE SUPPORT OF

