

**LEGAL BRIEF\***

**HUMAN RIGHTS  
AND ENVIRONMENTAL  
DUE DILIGENCE**

**MARCH 2021**

## **SUMMARY**

**Originally introduced in the UN Guiding Principles on Business and Human Rights, the concept of human rights due diligence has been gaining traction in recent years as an increasing number of stakeholders have been calling for new binding regulation on the subject. This legal brief aims to explain what human rights and environmental due diligence means, and to outline the current legislative developments in the field both at the national and at the European level.**

# BACKGROUND

10 years ago, in June 2011, the Human Rights Council unanimously endorsed the UN Guiding Principles on Business and Human Rights (UNGPs)<sup>1</sup> which represented the **first UN-level guidance** to both States and companies in relation to business and human rights.

The UNGPs are a **soft law instrument** which does not create legally binding obligations on either States nor companies, but merely provides guidelines. However, they have been extremely influential, and many States and companies have committed to their implementation. As such, they represent a **globally recognized and authoritative framework** on Business and Human Rights.<sup>2</sup>

The UNGPs outline differentiated but complementary duties and responsibilities of States and companies which revolve around 3 pillars:

**Pillar 1: The State duty to protect human rights** - which reaffirms the States' existing obligations under international human rights law to protect individuals within their territory or under their jurisdiction against human rights abuse, including by third parties such as companies.

**Pillar 2: The corporate responsibility to respect human rights** - which lays out the expectations for companies to take positive steps to avoid harming people's human rights through their own activities and through their business relationships.

**Pillar 3: Access to remedy** - which clarifies the role of both States and companies in ensuring that those whose human rights have been affected by business activities are able to obtain effective remedy.



The UNGPs highlight that business enterprises can have an impact on virtually the entire spectrum of internationally recognized human rights.<sup>3</sup> The corporate responsibility to respect under Pillar 2 therefore **covers all internationally recognized human rights** 'understood, at a minimum as those expressed in the International Bill of Human Rights<sup>4</sup> and the principles concerning fundamental rights set out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work'.<sup>5</sup> The corporate re-

<sup>1</sup> OHCHR, *Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework (UNGPs)* 2011 at [https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr\\_en.pdf](https://www.ohchr.org/documents/publications/guidingprinciplesbusinessshr_en.pdf)

<sup>2</sup> UN Working Group on Business and Human Rights, Background note "UN Guiding Principles at 10 Business and Human Rights: Towards a Decade of Global Implementation", July 2020 at <https://www.ohchr.org/EN/Issues/Business/Pages/UNGPsBizHRnext10.aspx>

<sup>3</sup> Human rights are basic standards which are inherent to all human beings, regardless of nationality, place of residence, sex, national or ethnic origin, colour, religion, language or any other status. They range from right to life to right to food, and include (but are not limited to) right not to be subjected to slavery, servitude or forced labour, right to privacy, right to freedom of assembly and association, right to education, right work, right to family life, right to an adequate standard of living, and right to health. See United Nations - Human Rights Office of the High Commissioner, *What are human rights?*. Available at: <https://www.ohchr.org/en/issues/pages/whatarehumanrights.aspx>

<sup>4</sup> The Universal Declaration of Human Rights (UDHR) proclaimed by the UN General Assembly on 10 December 1948 was the first legal document to set out a common standard of achievements for all people and all nations. The UDHR, together with the International Covenant for Civil and Political Rights and the International Covenant for Economic, Social and Cultural Rights form the *International Bill of Rights*.

<sup>5</sup> UNGPs, Guiding Principle 12 and Commentary.

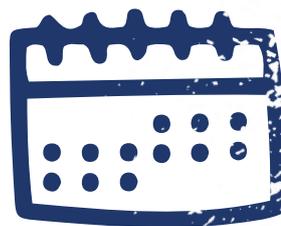
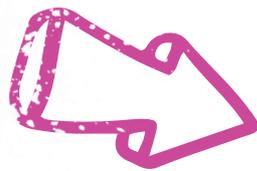


sponsibility to respect human rights exists ‘**over and above compliance with national laws and regulations protecting human rights**’ and is independent from the States’ abilities or willingness to fulfil their own human rights obligations.<sup>6</sup>

In addition, the UNGPs establish that companies may need to consider additional standards, and should also pay particular attention to the human rights of individuals from groups or populations that are particularly vulnerable (e.g. indigenous peoples; women, national or ethnic, religious and linguistic minorities; children; persons with disabilities; and migrant workers and their families) where they may have adverse human rights impacts on them.

The UNGPs clarifies that in order to fulfil this responsibility to respect human rights, companies should have in place policies and processes appropriate to their size and circumstances, including:<sup>7</sup>

- (1) A **policy commitment**;
- (2) A **human rights due diligence process** to identify, prevent, mitigate and account for how they address their impacts on human rights;
- (3) **Processes to enable the remediation** of any adverse human rights impacts they cause or to which they contribute.<sup>8</sup>



<sup>6</sup> Comment to Guiding Principle 11.

<sup>7</sup> UNGPs, Commentary to Guiding Principle 12.

<sup>8</sup> UNGPs, Guiding Principle 15.

# THE CONCEPT OF HUMAN RIGHTS DUE DILIGENCE

Central to the second pillar of the UNGPs, the concept of human rights and environmental due diligence is a **core management tool** for companies to fulfil their responsibility to respect human rights.

## → **What does human rights due diligence refer to?**

**Human rights due diligence** consists in a process - or a set of processes - that all companies should implement in order to **identify, prevent, mitigate** and **account for** how they address potential and actual adverse human rights impacts with which they may be involved.<sup>9</sup>

## → **How may companies become involved with adverse human rights impacts?**

There are several ways in which companies may become involved with adverse human rights impacts, which should all be covered by the human rights due diligence exercise. In particular:

- Companies may **cause** the impact through their own activities.
  - Examples include (amongst others): factory workers being exposed to hazardous conditions without adequate safety equipment, releasing chemical effluents which constitute the main source of pollution of a community's water supply; or routine racial discrimination in the treatment of customers.<sup>10</sup>
- Companies may **contribute to** the impact, either through their own activities **either directly or through a third party** (e.g. another company, a security company, a Government, etc.).
  - Examples include (amongst others): having purchasing practices which are conducive to breach of labour standards by suppliers in order to deliver (e.g. changing product requirements for suppliers at the last minute without any adjustments in terms of production deadlines and prices), providing personal data of Internet users to a Government that uses the data to trace and prosecute political dissidents contrary to human rights; targeting high-sugar food and drinks at children, with an impact on child obesity.<sup>11</sup>



<sup>9</sup> United Nations General Assembly, *Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises: Corporate human rights due diligence – emerging practices, challenges and ways forward*, 16 July 2018, A/73/163, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N18/224/87/PDF/N1822487.pdf?OpenElement>

<sup>10</sup> OHCHR, *The Corporate Responsibility to Respect Human Rights: An Interpretative Guide*, 2012, HR/PUB/12/02, available at: [https://www.ohchr.org/documents/publications/hr.pub.12.2\\_en.pdf](https://www.ohchr.org/documents/publications/hr.pub.12.2_en.pdf)

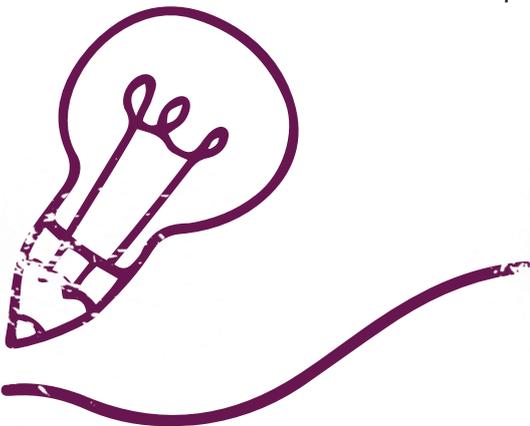
<sup>11</sup> *Ibid.*, at 17.

- The adverse human rights impacts may be caused by entities which whom companies have a business relationship and be **directly linked to their operations, products or services**.<sup>12</sup>
  - Examples include (amongst others): providing financial loans to a company for business activities that, in breach of agreed standards, result in the eviction of communities;<sup>13</sup> the use of child labour by a subcontractor of a supplier of a retail company to embroider clothing products in breach of contractual obligations.

→ **What does exercising human rights due diligence consist of for companies?**

The human rights due diligence processes consist of **4 main steps**<sup>14</sup>:

1. **Identifying and assessing** actual and potential human rights impacts;
  2. **Integrating and acting upon the findings**;
  3. **Tracking responses**;
  4. **External communication and reporting** on how the impacts are addressed.
- The human rights due diligence exercise should be **proportionate** to:
    - the **size of the enterprise** - more complex processes will normally be expected from larger companies than from micro and small enterprises.
    - the **risks of severe human rights impacts** - it allows for prioritisation based on the severity of human rights risks.
    - the **nature and context of its operations** - it should be context-specific.
  - It should be an **ongoing process** (and not a one-off exercise)
  - It should focus on the **risks to the people and the planet**, and not risks to the company.<sup>15</sup>



<sup>12</sup> UNGPs, Guiding Principle 17.

<sup>13</sup> OHCHR, *The Corporate Responsibility to Respect Human Rights: An Interpretative Guide*, op. cit., at 17.

<sup>14</sup> OHCHR, *Frequently asked questions about the guiding principles on business and human rights*, 2014, question 26, available at: [https://www.ohchr.org/documents/publications/faq\\_principlesbusinesshr.pdf](https://www.ohchr.org/documents/publications/faq_principlesbusinesshr.pdf)

<sup>15</sup> United Nations General Assembly, *Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises: Corporate human rights due diligence – emerging practices, challenges and ways forward*, 16 July 2018, A/73/163.



→ **What does environmental due diligence refer to?**

The concept of human rights due diligence has been incorporated to various international standards and instruments such as the OECD Guidelines for Multinational Enterprises and related materials,<sup>16</sup> and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.<sup>17</sup>

In the OECD Guidelines, it was also expanded to cover other areas such as the environment. As a result, companies are also expected to exercise environmental due diligence in order **identify, prevent, mitigate** and **account for** how they address their adverse impacts on the environment, which includes climate change.

In addition, **climate change** and **human rights** are intrinsically interrelated<sup>18</sup> as climate change threatens the effective enjoyment of a range of human rights including the right to life, water and sanitation, food, health, housing, self-determination, culture and development.<sup>19</sup> In a 2019 report, the UN Report of the Special Rapporteur on extreme poverty and human rights highlighted that:<sup>20</sup>

*‘Climate change threatens the future of human rights and risks undoing the last fifty years of progress in development, global health, and poverty reduction’.*

He added that:

*‘Even under the best-case scenario, hundreds of millions will face food insecurity, forced migration, disease, and death.’<sup>21</sup>*

The report emphasised the crucial role to be played by companies in providing and implementing solutions to climate change.<sup>22</sup> It highlights that:

*‘Fossil fuel companies are the main driver of climate change: in 2015, the fossil fuel industry and its products accounted for 91 percent of global industrial greenhouse emissions and 70 percent of all human-made emissions.’<sup>23</sup>*

<sup>16</sup> OECD, OECD Guidelines for Multinational Enterprises (OECD Publishing 2011) 25 May 2011 at <http://www.oecd.org/daf/inv/mne/48004323.pdf> The OECD Guidelines for Multinational Enterprises (OECD Guidelines) are recommendations from adhering governments to multinational enterprises on responsible business conduct. They cover issues such as labour rights, environmental protection, human rights, consumer protection, information disclosure and the fight against corruption. To date, 50 states have adhered to the Guidelines: all 37 OECD Member States and 13 non-OECD members.

<sup>17</sup> ILO, Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy adopted by the Governing Body of the International Labour Office at its 204th Session (Geneva, November 1977) and amended at its 279th (November 2000), 295th (March 2006) and 329th (March 2017) Sessions.

<sup>18</sup> OHCHR, *Understanding human rights and climate change*. Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the parties to the United Nations Framework Convention on Climate Change, June 2012; UN Human Rights Council, Report of the Special Rapporteur on extreme poverty and human rights “Climate change and poverty”, 17 July 2019, A/HRC/41/39, pp. 3-4.

<sup>19</sup> UN Human Rights Council, Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, 1 February 2016, A/HRC/31/52 available at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/31/52](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/31/52) p. 13.

<sup>20</sup> UN Human Rights Council, Report of the Special Rapporteur on extreme poverty and human rights “Climate change and poverty”, 25 June 2019, A/HRC/41/39 available at: <https://www.ohchr.org/EN/Issues/Poverty/Pages/ClimateChange.aspx>

<sup>21</sup> *Ibid.*, at 1.

<sup>22</sup> *Ibid.*, at 13.

<sup>23</sup> *Ibid.*, at 10.

### → **Why is human rights and environmental due diligence important?**

Human rights and environmental due diligence processes have been identified as a core practice of responsible business conduct, **key to the fulfilment of the UN Sustainable Development Goals (SDGs)**.<sup>24</sup>

Human rights and environmental due diligence **aims to protect the people and the planet** by setting out the **proactive steps** that companies must take in order to avoid infringing on the human rights of others and on the environment, and addressing the adverse impacts with which they are involved.

For companies, exercising human rights and environmental due diligence can help manage **reputational risks** as well as emerging **legal risks** and improve their relations with stakeholders, such as **consumers and investors**. In a recent [study for the European Commission](#) which surveyed over 300 companies across Europe, nearly 70% of companies considered that the introduction of an EU-level legislation on mandatory human rights and environmental due diligence legislation would be **beneficial for companies** insofar as it would level the playing field, increase legal certainty by providing a single harmonised standard and facilitate leverage with business partners on human rights issues.<sup>25</sup>

In relation to the COVID-19 pandemic, preliminary studies have suggested that companies who had solid human rights due diligence processes had **more resilient and human-rights compatible responses to the COVID-19 pandemic**, and were more likely to cope better with the long term negative effects of the pandemic.<sup>26</sup>

### → **How has due diligence been implemented by companies in practice?**

A growing number of companies have adopted policies and processes in an attempt to meet their corporate responsibility to respect human rights. However, there is still much room for improvement. The 2020 Corporate Human Rights Benchmark assessment assessed the human rights disclosures of 230 of some of the biggest companies in the world. It revealed that **nearly half of the companies assessed (46.2%) failed to score any points on the human rights due diligence part of the assessment**.

In the [study for the European Commission](#), **only about one-third of companies stated to have due diligence processes in place** taking into account all human rights and environmental impacts, with the majority of those limited to first-tier suppliers.

<sup>24</sup> UN General Assembly, "Transforming our World: the 2030 Agenda for Sustainable Development", Resolution adopted by the General Assembly on 25 September 2015, A/RES/70/1.

<sup>25</sup> Lise Smit, Claire Bright, Robert McCorquodale, Matthias Bauer, Hanna Deringer, Daniela Baeza-Breinbauer, Francisca Torres-Cortés, Frank Alleweldt, Senda Kara and Camille Salinier and Héctor Tejero Tobed for the European Commission DG Justice and Consumers, *Study on due diligence requirements through the supply chain: Final Report*, 24 February 2020, available at: <https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en>.

<sup>26</sup> OECD, 'COVID-19 and responsible business conduct', April 2020, available at: <http://www.oecd.org/coronavirus/policy-responses/covid-19-and-responsible-business-conduct-02150b06/>



In Portugal, the [first National Enquiry on Responsible Business Conduct in Portugal](#) revealed that less than one in five companies had human rights due diligence processes in place, with the percentage falling to 12% for micro and small enterprises of up to 50 employees.<sup>27</sup>

Against the backdrop of these low levels of implementation of human rights due diligence expectations by companies, new laws are being developed in many countries which are turning the expectations for companies to respect human rights in their operations and through their global value chains into a **legal duty**.

### → **Current national and European developments regarding HREDD**

Over the past few years, a shift towards more stringent approaches in relation to human rights and environment due diligence expectations has started to take place.

A first wave of laws have sought to *encourage* companies to exercise human rights due diligence through **reporting requirements**. Examples include:

- The **UK Modern Slavery Act 2015**, according to which large companies carrying on a business or part of a business in the United Kingdom are required to publish a yearly statement on the steps that they are taking, if any, to ensure that slavery and human trafficking is not taking place in any of its supply chains and in any part of its own business.<sup>28</sup>
- The **EU Non-Financial Reporting Directive**,<sup>29</sup> which requires certain large companies to disclose certain information on the way they operate and manage notably ‘environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters’.



<sup>27</sup> Ana Lúcia Romão, Ana Paula Ferreira, Isabel Cabrita, Liliana Soarez and Miguel Vaz, “Resultados do 1º Inquérito Nacional sobre Conduta Empresarial Responsável e Direitos Humanos”, ISCS-ULisboa and DGAE at: <https://media.business-humanrights.org/media/documents/8e883f0e96c104b5feb975b2d44fc47bfd674251.pdf> See also Claire Bright, “Some Concluding Remarks on Business and Human Rights in Portugal”, NOVA BHRE Blog (12 November 2020), available at: <https://novabhre.novalaw.unl.pt/concluding-remarks-business-human-rights-portugal/> and Isabel Cabrita, “Key Findings of the First National Survey in Portugal”, NOVA BHRE Blog (26 October 2020) at <https://novabhre.novalaw.unl.pt/bhr-portugal-key-findings-first-national-survey-in-portugal/>

<sup>28</sup> UK Modern Slavery Act, 2015 at <https://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>

<sup>29</sup> Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0095&from=DE>.

In a second step, a number of jurisdictions have sought to go beyond mere reporting requirements to impose to require (and not merely encourage) companies to exercise human rights due diligence. Examples include:

- The **French Duty of Vigilance law** adopted in 2017, which requires large French companies to establish, effectively implement and disclose a **vigilance plan**<sup>30</sup> setting out the due diligence measures taken to identify and prevent severe violations of human rights and the environment resulting from their operations or the operations of their established business relationships.
- The **Dutch Child Labour Due Diligence Act** of 2019 (which has not yet entered into force),<sup>31</sup> which requires companies that supply goods or services to Dutch end-users to exercise human rights due diligence in relation to the risks of child labour being used in their supply chains. In particular, companies must investigate whether there is a reasonable suspicion that a product or service in its supply chain has been produced with child labour and should that be the case, implement a plan of action. They should also issue a statement declaring that it exercised due diligence.

At the EU level, there are already a number of initiatives which impose certain due diligence obligations to companies in relation to certain sectors or issues such as the EU Timber Regulation<sup>32</sup> and the EU Conflict Minerals Regulation.<sup>33</sup>

In addition, campaigns in support of the adoption of a legislation on mandatory human rights and environmental due diligence have been taking place across Europe and have received increasing support from civil society as well as by a growing number of companies, and business organisations.<sup>34</sup> Draft legislative proposals in that respect have

<sup>30</sup> French Duty of Vigilance Law, 27 March 2017 (LOI n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre), Article 1. Available at: <https://www.legifrance.gouv.fr/loda/id/JORFTEXT000034290626/>

<sup>31</sup> Dutch Child Labour Due Diligence Act, 14 May 2019 ("Wet Zorgplicht Kinderarbeid"). Available at: <https://zoek.officielebekendmakingen.nl/stb-2019-401.html>

<sup>32</sup> Regulation (EU) 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32010R0995&from=EN>.

<sup>33</sup> Regulation (EU) 2917/2017 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R0821&from=DE>.

<sup>34</sup> For instance, see ECCJ, "Over 100 civil society organisations demand human rights and environmental due diligence legislation", 2 December 2019 at <https://corporatejustice.org/news/16800-over-100-civil-society-organisations-demand-human-rights-and-environmental-due-diligence-legislation>. See also, Business & Human Rights Resource Centre, "Big business makes joint call for legal duty of care for human rights and the environment", 2 September 2020 at <https://www.business-humanrights.org/en/latest-news/big-business-makes-joint-call-for-legal-duty-of-care-for-human-rights-and-the-environment/>





already been made public in Switzerland,<sup>35</sup> Norway,<sup>36</sup> in Germany<sup>37</sup> and in the Netherlands.<sup>38</sup>

At the European level, on the 29th of April 2020, on the basis of the findings of the study on due diligence through the supply chains,<sup>39</sup> EU Commissioner for Justice Didier Reynders announced that the European Commission will introduce a **legislative initiative** on mandatory human rights and environmental due diligence at the EU level in 2021. The text of the Commission is expected in June 2021. In the meantime, a **draft report from the European Parliament with recommendations to the European Commission** was made public.<sup>40</sup> On the 10th March 2021, the European Parliament adopted a revised version of the draft report by a very large majority. The report calls on the Commission 'to impose on Member States to ensure that companies exercise effective due diligence 'with respect to potential or actual adverse impacts on human rights, the environment and good governance in their operations and business relationships'.<sup>41</sup>

<sup>35</sup> In Switzerland, the Responsible Business Initiative was launched in 2016 seeking to impose on Swiss companies a duty to respect internationally recognized human rights and environmental standards and to carry out appropriate due diligence. Although the initiative obtained a majority of the popular vote on the 29th of November 2020, it was rejected as it failed to obtain a majority of cantons (12 of 20). As a result, the indirect counter-proposal which was adopted by the Swiss Parliament in June 2020 will most likely enter into force. It provides both reporting obligations for large Swiss companies and due diligence obligations in relation to child labour and conflict minerals. See Robert McCorquodale, "Some Concluding Remarks on Business and Human Rights in Switzerland", NOVA BHRE Blog (01 March 2021) at <https://novabhre.novalaw.unl.pt/concluding-remarks-bhr-switzerland/>; Nicolas Bueno, "Human Rights Due Diligence Legislation in Switzerland: The state-of-play after the Swiss Responsible Business Initiative", NOVA BHRE Blog (01 February 2021) at <https://novabhre.novalaw.unl.pt/human-rights-due-diligence-switzerland/>

<sup>36</sup> In Norway, the Norwegian Draft Law relating to transparency in supply chains, was published in 2019. It encompasses a duty to know of 'salient risks that may have an adverse impact on fundamental human rights and decent work, both within the enterprise itself and in its supply chains', a duty of transparency and a duty to exercise due diligence and to report on the due diligence exercised. See Business & Human Rights Resource Centre, *Norway: Govt.-appointed committee proposes human rights transparency and due diligence regulation*, 3 December 2019, at <https://www.business-humanrights.org/en/latest-news/norway-govt-appointed-committee-proposes-human-rights-transparency-and-due-diligence-regulation/>

<sup>37</sup> On the 12th of February 2021, three German Ministers announced that an agreement had been reached on the details of a due diligence act which would introduce a new duty of care for large German companies to respect human rights and exercise human rights due diligence. See R. Grabosch, "The German Supply Chain Due Diligence Act in the Making – What to Expect", NOVA BHRE Blog (15 February 2021) at <https://novabhre.novalaw.unl.pt/german-supply-chain-due-diligence-act-what-to-expect/>

<sup>38</sup> In March 2021, four Dutch political parties submitted a draft bill to the Dutch parliament entitled Bill for Responsible and Sustainable International Business Conduct. The bill would impose a duty of care on companies to prevent adverse impacts on human rights and the environment, and would mandate larger companies to exercise due diligence. See Unofficial translation of the Bill at <https://www.mvoplatform.nl/en/wp-content/uploads/sites/6/2021/03/Bill-for-Responsible-and-Sustainable-International-Business-Conduct-unofficial-translation-MVO-Platform.pdf> See also Joseph Wilde-Ramsing, Manon Wolfkamp and David Ollivier de Leth "The Next Step for Corporate Accountability in the Netherlands: The New Bill for Responsible and Sustainable International Business Conduct", NOVA BHRE Blog (18 March 2021) available at: <https://novabhre.novalaw.unl.pt/new-bill-for-responsible-sustainable-international-business-conduct-netherlands/>

<sup>39</sup> Lise Smit, Claire Bright, Robert McCorquodale, Matthias Bauer, Hanna Deringer, Daniela Baeza-Breinbauer, Francisca Torres-Cortés, Frank Alleweldt, Senda Kara and Camille Salinier and Héctor Tejero Tobed for the European Commission DG Justice and Consumers, *Study on due diligence requirements through the supply chain: Final Report*, 24 February 2020, available at: <https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en>.

<sup>40</sup> European Parliament, Committee on Legal Affairs, Report with recommendations to the Commission on corporate due diligence and corporate accountability (2020/2129(INL)). Available at: [https://www.europarl.europa.eu/doceo/document/JURI-PR-657191\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/JURI-PR-657191_EN.pdf)

<sup>41</sup> European Parliament, Committee on Legal Affairs, Report with recommendations to the Commission on corporate due diligence and corporate accountability, [https://www.europarl.europa.eu/doceo/document/A-9-2021-0018\\_EN.html](https://www.europarl.europa.eu/doceo/document/A-9-2021-0018_EN.html)

29 APRIL 2020

Announcement by EU Commissioner for Justice of the introduction of an EU-level legislative initiative on mandatory human rights and environmental due diligence in 2021.

1 DECEMBER 2020

The Council of the European Union approved conclusions on Human Rights and decent work in global supply chains calling on member states and the Commission to promote human rights in global supply chains and decent work worldwide and calling on the European Commission to table 'an EU legal framework on sustainable corporate governance, including a cross-sectoral corporate due diligence obligations along global supply chains'

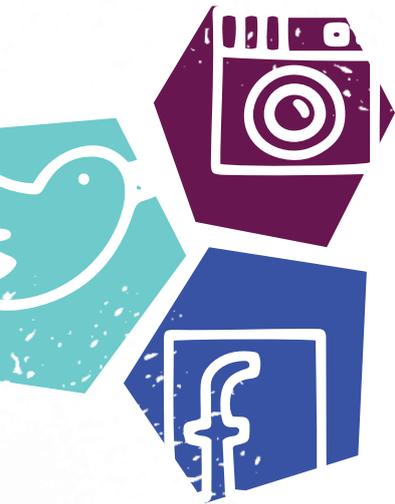
10 MARCH 2020

Adoption of the European Parliament Resolution with recommendations to the Commission on corporate due diligence and corporate accountability (2020/2129(INL) by a vast majority (504 in favour, 79 against).

JUNE 2021

European Commission's text of the Directive expected.





### → *What is the role of the Portuguese Presidency of the Council of the EU?*

In light of the legislative developments on mandatory human rights and environmental due diligence that are currently taking place at the European level, the author of the UNGPs, John Ruggie recently highlighted the crucial role to be played by the Portuguese presidency of the Council of the EU.<sup>42</sup>

The Portuguese Presidency of the Council of the EU emphasized its commitment to work on three major priorities:<sup>43</sup>

- To promote Europe’s recovery, leveraged by the climate and digital transitions.
- To implement the Social Pillar of the European Union as a key element for ensuring a fair and inclusive climate and digital transition.
- To strengthen Europe’s strategic autonomy while keeping it open to the world.

In order to fulfil these priorities, the Portuguese Presidency set out a number of ‘action lines’ which include *inter alia* ‘promoting the EU as a leader in climate action’, and prioritising the implementation of the European Green Deal, with a view of fostering a sustainable economic recovery and supporting all efforts to make Europe the first carbon-neutral continent by 2050,<sup>44</sup> and ‘enhancing and strengthening the European social model’ towards a stronger, fairer and more inclusive social Europe. Mandatory human rights and environmental due diligence is a key element of such a sustainable transition. In its Human Rights Priorities Paper, the Portuguese Presidency highlighted that:

*“Business & human rights” and its relationship with the environment are key issues to achieve a fair and green recovery.*

The Human Rights Priorities Paper further affirms that:

*Human rights will also remain at the centre of our foreign policy during the Portuguese Presidency of the Council of the EU. Under the motto: “**Time to deliver: a fair, green and digital recovery**” we will be actively engaged in the advancement of the human rights agenda, including at the EU level as well as at UN human rights fora, to ensure that we build back better and leave no one behind.*

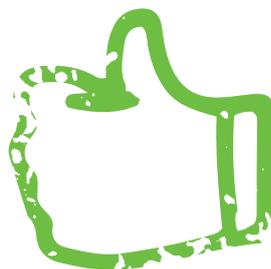
<sup>42</sup> John Ruggie, ‘Transcript of the Keynote Speech delivered at the webinar on Corporate Due Diligence and Civil Liability’, organised by the Nova Centre on Business, Human Rights and the Environment with the support of the Portuguese presidency of the Council of the EU, 28 January 2021, available at: <https://novabhre.novalaw.unl.pt/transcript-keynote-speech-john-ruggie/>

<sup>43</sup> Programme for the Portuguese Presidency of the Council of the European Union, p.5. available at: <https://www.2021portugal.eu/media/rohpiqf/portuguese-presidency-en.pdf>

<sup>44</sup> Programme for the Portuguese Presidency of the Council of the European Union, p.8. available at: <https://www.2021portugal.eu/media/rohpiqf/portuguese-presidency-en.pdf>

The Presidency has been co-hosting, together with the NOVA Centre on Business, Human Rights and the Environment, a cycle of webinars entitled “Business, Human Rights and the Environment in Europe: Connecting the Dots”.<sup>45</sup> In the opening episode, the Portuguese Secretary of State for Internationalisation, Eurico Brilhante Dias, highlighted that the trio of presidencies comprising Germany, Portugal and Slovenia ‘is committed to drive forward efforts to achieve an EU wide implementation of the UNGPs’.<sup>46</sup>

At the domestic level, the Secretary of State for Commerce, Services and Consumer Protection, João Torres, affirmed the commitment of the Portuguese Ministry for the Economy and Digital Transition to implement the UN Guiding Principles of Business and Human Rights through the adoption of the National Action Plan on Business and Human Rights.



<sup>45</sup> <https://novabhre.novalaw.unl.pt/business-and-human-rights-developments-in-europe/>

<sup>46</sup> urico Brilhante Dias, ‘Transcript of the opening speech delivered at the webinar on Corporate Due Diligence and Civil Liability’, organised by the Nova Centre on Business, Human Rights and the Environment with the support of the Portuguese presidency of the Council of the EU, 28 January 2021, available at: <https://novabhre.novalaw.unl.pt/transcript-opening-speech-secretary-of-state-for-internationalisation/>

# OUR FOOD OUR FUTURE

WE ARE HUNGRY FOR JUSTICE

*This legal brief was produced in the framework of the project #GoEATHical – Our Food. Our Future: European youth stand up for sustainable food supply chains that respect migrant workers' rights and reduce climate change, hunger and poverty as key drivers of migration." (CSO-LA/2020/411-443), implemented in Portugal by IMVF, co-funded by the European Union and supported by Camões – Institute for Cooperation and Language, I.PIts contents are the sole responsibility of the authors and do not necessarily reflect the views of the European Union.*

## THE PROJECT

#GoEATHical – Our Food. Our Future

European youth stand up for sustainable food supply chains that respect migrant workers' rights and reduce climate change, hunger and poverty as key drivers of migration.

As global citizens of the EU, it is our responsibility to take on the challenges that the world faces. Migration and climate change are at the top of EU citizens' shared concerns (of development).

Our food system has an enormous influence and impact on climate change and causes of migration (poverty, hunger, etc.). To guarantee a sustainable change in attitudes and behaviours by more than 30 millions young Europeans, we will start from the analysis of food production and consumption systems and show global interconnections, established between themes and that demonstrate, plainly, that we all have a starring role in the promotion of more just, dignified and inclusive world.

## OUR GOALS

In an active and innovative manner, we will seek to commit European youth to European development policies that contribute to the **mitigation of global challenges of migration and climate change and sustainable food production and consumption**. We will strengthen the promotion of fundamental European values of human rights and solidarity, as well as the capacity to analyse interdependent relationships established at a global level.

## OUR IMPACT

To increase the knowledge and engagement of young Europeans in the promotion of values of solidarity and human rights, as well as their ability to face the global challenges of migration, climate change and promote a sustainable food system.

In accordance with the pillars, "People" and "Planet" of the New European Consensus on EU Development and the 2030 Agenda, the #GoEATHical" campaign will mobilize young Europeans to adopt sustainable consumption patterns and actively support **sustainable networks of supply of food products, fair trade chains, respect for human and workers' rights and sustainable development**, through improved institutional and business policies at EU and member states level.

## IMPRINT

### About NOVA BHRE:

The NOVA Centre for Business, Human Rights and the Environment (NOVA BHRE) is an academic centre within the Nova School of Law. The main goal of the centre is to contribute to fostering responsible business conduct that upholds respect for human rights, decent work and environmental standards throughout their entire global value chains, thereby also advancing the UN Sustainable Development Goals.

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*Because we advocate for gender equality as an intrinsic value to Human Rights, any reference to the masculine form shall also include the feminine where applicable, in order to guarantee respect for gender equality also in writing.*

Partner in Portugal



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