



## Evidence Review:

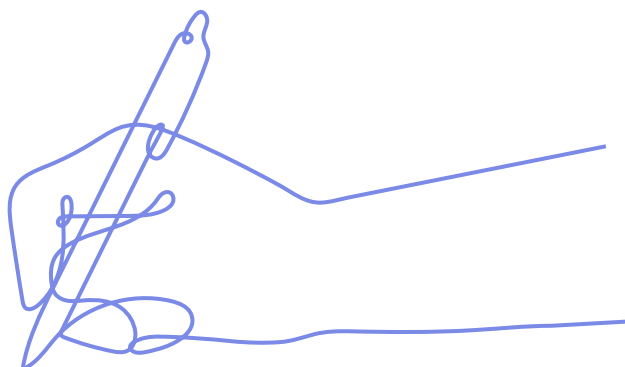
# Effectiveness of mandatory human rights and environmental due diligence legislation in addressing modern slavery in business value chains

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Modern Slavery PEC Policy Brief 2024-1

A review of existing evidence of the effectiveness of mandatory Human Rights and Environmental Due Diligence (mHREDD) legislation in addressing modern slavery in business value chains was undertaken between October and December 2023. mHREDD laws are regulatory instruments somewhat based on international normative frameworks such as the [UN Guiding Principles on Business and Human Rights](#) (UNGPs) and the [OECD Guidelines for Multinational Enterprises](#) (OECD guidelines), that require businesses to undertake Human Rights Due Diligence (HRDD), that is, 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. Overall, there is a lack of empirical studies in English assessing the effectiveness of mHREDD laws in practice, but the evidence suggests mHREDD laws are a promising tool to address modern slavery in global value chains.

This evidence review is aimed at the research community and legal professionals. A briefing for businesses and another one for policymakers has also been produced using this evidence review.



1. With thanks to Dr Victoria Tecca, Dr Irene Pietropaoli, Owain Johnstone and Olivia Hesketh for reviewing this evidence review. The evidence review has also been peer reviewed by an independent expert.

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# 1. Methodology

This evidence review 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, English-language publicly available academic literature and reports produced by CSOs, governments, and international organisations was reviewed between October and December 2023 in relation to five mHREDD laws currently in force<sup>2</sup>: 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 this evidence review. 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.

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2. Upcoming legislation or under policy discussions was not included.

## 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.

## 1.1. Effectiveness

To understand the effectiveness of mHREDD laws in addressing modern slavery, this evidence review uses an effectiveness framework previously developed by a Modern Slavery PEC-funded study<sup>3</sup> and used in other funded research projects.<sup>4</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>5</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.

This is an evidence review of existing literature and empirical evidence and therefore does not measure effectiveness (either qualitatively or quantitatively). Rather, it *identifies* factors that *may* influence effectiveness based on the literature. The identified factors are not exclusive, that is, other factors may also influence effectiveness but were not captured by this evidence review. The term *influence* is purposively used here as opposed to *determine* to convey that, in general, the existing evidence has not established a causal relationship between specific factors and effectiveness of mHREDD laws, mostly due to the lack of robust empirical studies looking at this. For instance, the evidence shows implementation of HREDD processes by businesses and points out at drivers, such reputational risks<sup>6</sup> which in

3. See Hsin, New, Pietropaoli and Smit (2021) 'Effectiveness of Section 54 of the Modern Slavery Act'.

4. 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](#).

5. 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.

6. The EC study found that 'reputational risk' was the top incentive for business survey respondents to undertake due diligence.

some cases are related to pressures from investors or CSOs, but while this can be linked to legislative instruments, it cannot be established that the implementation of HREDD processes are necessarily or exclusively the result of these laws.<sup>7</sup> Further research could for example control for the role of mHREDD laws by exploring business practice before and after these laws came into force, using triangulation data techniques and avoiding relying on business self-reporting. This gap in the evidence is suggested for future research in [section 7](#).

The analysis on effectiveness presented here should also be read with the following caveats:

- There is in general a lack of English-language empirical studies assessing the effectiveness of these laws, especially type 3 effectiveness. In general, most evidence is of conceptual or theoretical nature, including legal analyses, or case-by-case reports as opposed as systematic and empirical evaluations, and there is a lack of studies connecting the implementation of HRDD with the effectiveness of mHREDD laws.
- 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>8</sup>
- There are not yet established and standardised metrics to measure the effectiveness of mHREDD laws. Future research looking at this would better inform policy makers, businesses, CSOs, and other actors. This gap in the evidence is suggested for further research in [section 7](#) of this brief.
- Given that mHREDD laws are heterogenous, some mHREDD laws may be more effective than others. However, this brief is not able to provide such a nuanced analysis as most available English-language evidence currently relates to the French Vigilance law.

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7. In relation to the French Law for example, it was reported many companies were already exercising human rights due diligence prior to the adoption of the French Duty of Vigilance Law (Duthilleul and de Jouvenel 2020, 31 in 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.

8. Hsin et al., (2021) [Effectiveness of Section 54 of the Modern Slavery Act](#).

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

What is mHREDD: **Green**<sup>9</sup>

Relevance to Modern Slavery: **Amber**<sup>10</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>11</sup> referred for the first time to Human Rights Due Diligence<sup>12</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>13</sup> and differentiated it from conventional corporate due diligence by focusing on risks to people as opposed to risk to businesses.<sup>14</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>15</sup>

HREDD is now 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>16</sup> poor compliance with modern slavery transparency legislation<sup>17</sup> and slow implementation of HRDD processes by companies<sup>18</sup>. In recent years, as part of their duty to protect<sup>19</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>20</sup> and a Directive is currently

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

10. 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.

11. 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.

12. 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. McCorquodale & Nolan (2021) 'The Effectiveness of Human Rights Due Diligence for Preventing Business Human Rights Abuses', Netherlands International Law Review.

13. UNGPs 13.

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

15. Deva (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>

16. 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*.

17. 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*.

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

19. As outlined in the UNGPs.

20. 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'.

pending approval at the European level.

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>21</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>22</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>23</sup> which has, so far, been the focus of legislation concerning modern slavery and business.<sup>24</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>25</sup> The connections between transparency legislation and mHREDD are discussed separately 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>26</sup> the [EU batteries regulation proposal](#),<sup>27</sup> and the US [Uyghur Forced Labor Prevention Act \(UFLPA\)](#).<sup>28</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](#).

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21. Smit et al., (2020) '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'.

22. Skrivankova (2010) [Between decent work and forced labour: examining the continuum of exploitation](#).

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

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

25. 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](#).

26. 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.

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

28. 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.

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

Development: **Green**<sup>29</sup>

Implementation: **Amber**<sup>30</sup>

### 3.1. Development

mHREDD legislation has largely been developed at the national level in Europe since 2017 when the [French Duty of Vigilance law](#) was developed in France. 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>31</sup> The only mHREDD legislation developed at the supranational level (albeit not yet approved) is the European Commission's [Corporate Sustainability Due Diligence Directive \(CSDDD\)](#). Calls to adopt mHREDD laws across countries have mostly been driven by Civil Society Organisations (CSOs), but to develop and design these laws, policy makers have generally not engaged in meaningful consultation with rightsholders and people with lived experience.<sup>32</sup>

mHREDD laws are not homogenous as they are not fully aligned to the UNGPs and the OECD guidelines. 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](#)).

In terms of coverage for instance, the French Duty of Vigilance is considered to have high thresholds, especially in terms of legal form<sup>33</sup>, which exclude large French groups in the textile and retail sectors<sup>34</sup> and MNEs, resulting in a limited number of companies falling in scope<sup>35</sup> but it covers the whole value chain and has a trickledown

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

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

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

32. 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 \(europa.eu\)](#)

33. Currently covering SA ("société anonyme") and SAS ("société par actions simplifiée"). See [Annex 1](#).

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

35. See Sherpa (2019).



effect with supply chains<sup>36</sup>. The Norwegian and the Dutch law are limited to businesses *operating* in the State<sup>37</sup> but the Norwegian covers the whole supply chain while the Dutch only Tier 1 suppliers. The German law only covers the supply chain, is limited to businesses *domiciled* in a State, and according to the Lieferkettengesetz<sup>38</sup> initiative, the number of businesses covered is too low. Under the Swiss law, companies are only required to conduct HRDD when they import or process minerals or metals containing specific components above a certain threshold and if they sell them in the country and there are 'reasonable grounds' to suspect they were produced with child labour. Conversely, the Dutch Law has no restrictions in terms of size, turnover, or legal form, but it is limited to end products.<sup>39</sup> The CSDDD is expected to cover EU and non-EU companies and their upstream and (to some extent) downstream activities,<sup>40</sup> and it is estimated to cover more than 17,000 companies in total.<sup>41</sup>

mHREDD laws 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>42</sup> They have also followed distinct policy processes, albeit they have all been characterised as long and contested policy processes. The French law was informed by the Rana Plaza disaster and the German law by low levels of voluntary adoption of HRDD.<sup>43</sup> The French<sup>44</sup> and Swiss<sup>45</sup> laws, and now the CSDDD,<sup>46</sup> are the result of a political compromise in which the final texts are a limited or lightened version of their initial proposals.

mHREDD have also been framed differently, including in terms of transparency and consumer protection. The Dutch law, for instance, is framed in terms of consumer protection<sup>47</sup> and requires HRDD only of Dutch companies that supply goods or services within the Netherlands and not when these are supplied outside the country.<sup>48</sup> The Norwegian law is framed in terms of transparency, is overseen by The Consumer Authority and the Market Council, and it is the only mHREDD law that includes the right to request information from consumers, organisations, trade unions, and the public.

36. 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.

37. The Dutch law (and the Norwegian) does not cover operations of companies outside of the country, but it does cover MNEs operating in the territory. 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.

38. Initiative Lieferkettengesetz (2021) [https://corporatejustice.org/wp-content/uploads/2021/06/Initiative-Lieferkettengesetz\\_Analysis\\_What-the-new-supply-chain-act-delivers.pdf](https://corporatejustice.org/wp-content/uploads/2021/06/Initiative-Lieferkettengesetz_Analysis_What-the-new-supply-chain-act-delivers.pdf)

39. It does not require the exercise of due diligence when goods are introduced into the Dutch market for further processing (See Bright (2021) 'Mapping human rights due diligence regulations and evaluating their contribution in upholding labour standards in global supply chains').

40. Corporate sustainability due diligence: Council and Parliament strike deal to protect environment and human rights - Consilium (europa.eu)

41. Rajavuori et al., (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>

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

43. See *CSR in deutschland*, (n.d.)

44. Aissi E (2018) The French duty of vigilance law: a new legal instrument for a fairer globalization. *Global Labour Column* 311 in Schilling-Vacaflor (2021), *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).

45. Bueno & Kaufmann (2021) The Swiss Human Rights Due Diligence Legislation: Between Law and Politics. *Business and Human Rights Journal*. 6(3):542-549. doi:10.1017/bhj.2021.42.

46. 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.

47. In Bright (2021) 'Mapping human rights due diligence regulations and evaluating their contribution in upholding labour standards in global supply chains'.

48. Bright, C. (2021). Mapping human rights due diligence regulations and evaluating their contribution in upholding labour standards in global supply chains. *Decent Work in Globalised Economy: Lessons from Public and Private Initiatives*; Delautre, G., Manrique, EE, Fenwick, C., Eds, 75-108.

## 3.2. 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>49</sup> Under the French Duty of Vigilance, a 2021 report<sup>50</sup> 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. However, what effective implementation of the law means in practice is determined by case law (i.e., depends on the Courts).<sup>51</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>52</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>53</sup> have mostly been issued on environmental and climate grounds (suggesting the use of mHREDD laws as a ground for climate change litigation)<sup>54</sup> and do not tend to include human rights considerations,<sup>55</sup> albeit a few exceptions.<sup>56</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>57</sup> supermarket chains for human rights abuses in the Latin American fruit supply chains,<sup>58</sup> and automobile companies with supply chains in Xinjiang.<sup>59</sup> German civil society networks such as the CorA Network for Corporate Responsibility, have also recently stated that affected people and organisations from their network have submitted initial complaints to the supervisory authority,<sup>60</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.

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

50. This is the last available report on the [Duty of Vigilance Radar website](#).

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

52. 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>

53. 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 website](#).

54. 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>

55. 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](#).

56. 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.

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

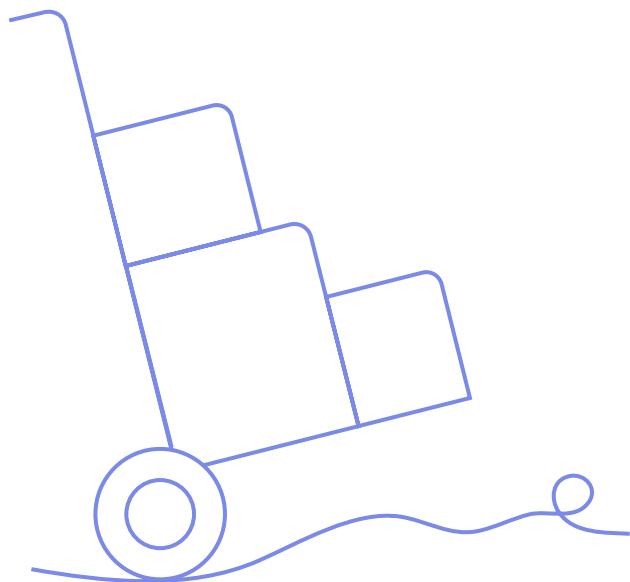
58. Complaints were filed against Rewe and Edka on the basis of low wages, poor working conditions, and lack of trade unions. BNN, (2023) [Germany: NGOs file complaint under Supply Chain Act against two supermarket chains over alleged labour rights abuses on plantations in Ecuador and Costa-Rica](#).

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

60. CorA-Netzwerk et al., (2023) ['One year of German Supply Chain Act: Civil society sees first positive effects'](#).

There is less evidence of court judgements under mHREDD laws as most cases have not yet reached this stage. In relation to the French law, only a limited number of judgements have been provided<sup>61</sup> with most claims being declared inadmissible,<sup>62</sup> mostly on procedural grounds, including the case of TotalEnergies.<sup>63</sup> For instance, in the 2019 case against Total regarding oil wells in Western Uganda, the High Court declared itself incompetent to take a decision and transferred it to the Commercial Court, a decision that was heavily criticized as it was argued that judges in commercial courts were selected by corporations.<sup>64</sup> More recently, in 2023, after more than three years of proceedings, the Paris judicial court issued its decision in the case of La Poste, sued by the SUD PTT trade union for non-compliance with its due diligence plan, and ordered La Poste to complete its due diligence plan and establish procedures for assessing subcontractors.<sup>65</sup> However, 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.<sup>66</sup>

Under the German law, no court judgements have been issued yet. The Federal Office of Economics and Export Control (BAFA) is yet to assess whether it investigates the matter regarding the first claim in 2023 filed by the National Garment Worker's Federation (NGFW)<sup>67</sup> against businesses in the garment industry that failed to meet their HRDD obligations by not signing the Bangladesh Accord.<sup>68</sup>



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

62. See EDF case 2001 in regard to adverse impacts on indigenous peoples' rights.

63. 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/clf2ktvec022iu7100myqqri/latest-news-regarding-the-french-corporate-duty-of-vigilance-law>.

64. Schilling-Vacaflor (2021), 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>

65. Navacelle (2023), *La Poste case: first decision on the substance of the duty of diligence*.

66. *Ibid.*

67. The largest trade union federation in the garment sector in Bangladesh.

68. NGFW found instances of poor health and safety working conditions and lack of freedom of association. See European Centre for Constitutional and Human Rights (ECCHR) 2023: [First Complaint Case Filed Under German Supply Chain Act](#).

## 4. What does the evidence show about the effectiveness of mHREDD legislation for addressing modern slavery?<sup>69</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>70</sup> The previous evidence review 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 international 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 right abuses including modern slavery (**effectiveness type 3: Addressing modern slavery**).

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69. 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.

70. 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>

## 4.1. 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>71</sup> Other studies assessed vigilance plans against legal requirements and found that they do not sufficiently meet the requirements of the law<sup>72</sup> mainly in relation to consultation with stakeholders<sup>73</sup> and the assessment and disclosure of the adequacy of the plans to address human rights risks.<sup>74</sup> A 2020 assessment of the French Duty of Vigilance Law also found that one of the main weaknesses in the implementation of the law was the low levels of corporate dialogue with trade unions and NGOs.<sup>75</sup> According to existing reports and legal analyses, state-based monitoring and enforcement, liability provisions, and incentives may influence compliance with mHREDD laws.

#### 4.1.1. State-based monitoring and enforcement

A key feature of effective mHREDD laws is the inclusion of disclosure requirements as it increases business transparency and allows for monitoring compliance<sup>76</sup>, but it requires State-based monitoring and enforcement mechanisms. 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>77</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>78</sup>

Providing a public repository of companies falling within the scope of these laws has been recommended by the EU parliament<sup>79</sup> and could help CSOs to identify companies and monitor compliance. However, regulatory authorities should be

71. Sherpa & Terra Solidaire (2021) *Duty of Vigilance Radar*. 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.

72. Sherpa et al. (2019) *The law on duty of vigilance of parent and outsourcing companies Year 1: Companies must do better*

73. Shift (2019) *Human Rights Reporting in France: Two Years In: Has the Duty of Vigilance Law led to more Meaningful Disclosure?*

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

75. Anne Duthilleul et Matthias de Jouvenel, "Evaluation de la mise en oeuvre". English summary available on [https://www.economie.gouv.fr/files/files/directions\\_services/cge/Duty-of-Vigilance.pdf](https://www.economie.gouv.fr/files/files/directions_services/cge/Duty-of-Vigilance.pdf)

76. See ECCJ (2018) "Key Features of mandatory human rights due diligence legislation"; and Landau (2019). *Human rights due diligence and the risk of cosmetic compliance*. *Melb. J. Int'l L.*, 20, 221.

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

78. See Sherpa Press Release (2021) *Third edition of the Duty of Vigilance Radar*

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

primarily responsible for monitoring compliance as there are other barriers to CSOs' monitoring, including inconsistencies between companies' reports,<sup>80</sup> that CSOs may not have the necessary resources to undertake oversight in a consistent and regular basis, and that CSOs may put little focus on punishable offenses.<sup>81</sup> Relying on CSOs for monitoring compliance can also pose risks to human rights and environmental defenders.<sup>82</sup> Establishing an administrative authority to monitor and enforce compliance has already been recommended in relation to the French Duty of Vigilance<sup>83</sup> and the UK Modern Slavery Act's transparency provisions<sup>84</sup> which have, so far, relied on CSOs' monitoring.

Legal experts suggest that it should also be clear which is the competent authority to undertake these tasks to avoid delays in their enforcement as was the case of the French Duty of Vigilance<sup>85</sup>. The Judicial system is responsible for enforcement of the French Duty of vigilance law which provides for injunctions as an enforcement mechanism. However, several procedural issues have been noted, including the lack of clarity over which authority, whether the commercial or civil court, was competent for enforcement<sup>86</sup> which can hamper enforcement.<sup>87</sup> It was not until 2021 that the French legislators specified that all actions under the French Duty of Vigilance law should be brought before the Paris Civil Court.<sup>88</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>89</sup> with consumers neutralising the sense of guilt or responsibility for modern slavery and legitimising inaction.<sup>90</sup>

#### 4.1.2. Liability provisions

A key characteristic of mHREDD legislation is that it introduces corporate liability. mHREDD laws include sanctions for non-compliance, such as financial penalties and administrative fines,<sup>91</sup> mostly in relation to disclosure but also to the required exercise

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80. Which has been noted as a difficulty in assessing vigilance plans under the French Law.

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

82. Savourey & Brabant (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

83. 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.

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

85. 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.

86. 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/>.

87. 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>

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

89. Smith & Johns (2020) 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/s10551-019-04318-1>

90. Carrington et al., (2018). [Consuming modern slavery](#)

91. See [Annex 1](#).

of human rights due diligence.<sup>92</sup> Including these sanctions for non-compliance has been recommended to increase compliance with transparency legislation<sup>93</sup> but authorities must also impose these sanctions as prescribed in the law<sup>94</sup> which does not always occur.<sup>95</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>96</sup> For instance, civil liability can improve access to justice for victims of corporate human rights abuses, especially when human rights harms occur in third countries.<sup>97</sup> Moreover, legal experts have recommended establishing strict liability<sup>98</sup> whereby no fault on the part of the defendant would be needed.<sup>99</sup> However, none of the current mHREDD laws include the full range of liabilities<sup>100</sup> or have established strict liability.<sup>101</sup>

### 4.1.3. Incentives

In the EC study,<sup>102</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.<sup>103</sup>

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 draft<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>

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92. 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](#)).

93. 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.

94. 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.

95. 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](#).

96. 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>

97. Marx et al., (2019) “Access to Legal Remedies for Victims of Corporate Human Rights Abuses in Third Countries”.

98. 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](#).

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

100. See [Annex 1](#)

101. 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](#).

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

103. For instance, the laws may not facilitate leverage with supply chain actors in contexts of conflict.

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/>

## 4.2. 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 that mHREDD laws would contribute to making HRDD a standard business practice as, 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> and it is often disconnected from other companies' processes<sup>109</sup> with businesses covering some but not always all HRDD steps.<sup>110</sup> However, there is little empirical evidence on the effect of mHREDD laws on actual corporate practice. 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 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

108. See World Benchmarking Alliance [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 [Corporate Human Rights Benchmark 2022 report](#).

110. 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

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. 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 & Rombouts (2022) [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](#).



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.

#### 4.2.1. 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 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. For instance, in a judgement provided under the French law, the judge interpreted the Act's requirement to involve stakeholders in the development of the vigilance plan as

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. 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.*

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/ijcsd.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, Echeverría Manrique and Fenwick (Eds), *Decent work in globalised economy: Lessons from public and private initiatives*, ILO.

including prior dialogue between the company and the plaintiffs (i.e., CSOs), albeit it is not obligatory in the law and there is not a precise process for this prescribed in the law.<sup>131</sup> This clarification, however, depends on claims reaching court judgments.

#### 4.2.2. Detailed disclosure requirements

While most mHREDD laws do not require detailed disclosure,<sup>132</sup> one study<sup>133</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>134</sup> However, empirical evidence is needed to confirm this.

#### 4.2.3. 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 and may become a box-ticking exercise in which liability is passed along the supply chain. For instance, most businesses in the food, ICT, and automobile sector in scope of mHREDD laws are taking a hands-off approach to HRDD in their supply chains by 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.<sup>135</sup> 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.<sup>136</sup> Similarly, a study by PWC and others on the French Duty of Vigilance Law found that 80% of SMEs were being required by large companies in their value chains to comply with human rights obligations without receiving accompanying support (financial or otherwise).<sup>137</sup>

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131. <https://www.engage.hoganlovells.com/knowledgeservices/news/first-court-decision-interpreting-the-french-duty-of-vigilance-law/>

132. 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

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

134. LeBaron & Rühmkorf (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.

135. World Benchmarking Alliance (2022) *Corporate Human Rights Benchmark 2022*.

136. World Benchmarking Alliance (2023) *Corporate Human Rights Benchmark 2023*. Insights Report.

137. PWC et al., (2020) "Résultats de l'enquête "RSE: La parole aux fournisseurs!", (January 2020).

For mHREDD laws to be effective at changing business behaviour, especially in the lower tiers of the supply chain, they may need to require companies to provide suppliers with sufficient support and facilitate change through responsible purchasing practices<sup>138</sup>. The CSDDD promises to address this by requiring large companies to enter into 'fair, reasonable and non-discriminatory' contracts with their business partners<sup>139</sup>, and provide 'targeted and proportionate support',<sup>140</sup> and bear the cost of independent third-party verifications<sup>141</sup> when these are SMEs.

To change supplier behaviour the UNGPs place emphasis on *leverage*, that is the ability of companies to influence behaviour in their value chain. An analysis of the CSDDD proposal suggests that leverage may be a more effective approach to delivering change,<sup>142</sup> but empirical evidence is needed to support this. Therefore, a more balanced approach between contractual assurance and leverage requirements may be more effective at changing businesses practices, including those of suppliers.

#### 4.2.4. 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>143</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>144</sup>

Businesses' capabilities to meet the requirements of mHREDD laws are also important. For instance, when aiming to meet the requirements of the German Supply Chain Act, businesses may face challenges regarding weighing and prioritising risks, distinguishing when preventive measures or remedial actions are needed, and identifying when suppliers are fully meeting the requirements of the Act through industry schemes due to the lack of an agreed industry standard.<sup>145</sup> Appropriate training and guidance to companies may thus be required for implementing changes.

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138. World Benchmarking Alliance (2023) [Corporate Human Rights Benchmark 2023. Insights Report](#).

139. In reference to SMEs in particular. Art 7(4) and 8(5).

140. Art 7(2)(d) and 8(3)(e).

141. Art 7(4) and 8(5). Art 7(4) and 8(5).

142. Shift (2022) [The EU Commission's Proposal for a Corporate Sustainability Due Diligence Directive](#).

143. Trautrimis et al., (2022) [Addressing modern slavery in long and complex supply chains](#).

144. 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](#).

145. <https://www.nortonrosefulbright.com/en/knowledge/publications/ff7c1d04/the-german-supply-chain-act#section5>

### 4.3. 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>146</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>147</sup>

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.

#### 4.3.1. 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>148</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

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146. See McCORQUODALE et al., (2017) 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/>

147. 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>

148. Albeit most engagement is done in implementation and evaluation with less evidence on engagement in policy design. Asquith et al., (2022) *A review of current promising practices in the engagement of people with lived experience to address modern slavery and human trafficking*.

mandatory and voluntary.<sup>149</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. In this case if root causes of modern slavery are not addressed by the State, the potential of mHREDD laws may be limited. Furthermore, 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>150</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>151</sup> However, empirical evidence on what an effective “smart mix” looks like is needed. Some of these measures are discussed in [section 5](#).

### 4.3.2. 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>152</sup> based on evidence of its success and effectiveness in the UK Bribery Act.<sup>153</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>154</sup> This model would ideally establish civil liabilities for those affected.<sup>155</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>156</sup> Most mHREDD laws focus on the process of due diligence,<sup>157</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>158</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

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149. UNGP 3 Commentary.

150. 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>

151. 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*.

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

153. 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.

154. Pietropaoli et al., (2020) *A UK Failure to Prevent Mechanism for Corporate Human Rights Harms*.

155. *Ibid*.

156. 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.

157. 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)*.

158. 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).

consumer protection or transparency.<sup>159</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>160</sup> While it would be highly contextual, the criteria about what constitutes “reasonable” should be elaborated on accompanying guidance.<sup>161</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>162</sup> and to address any potential barriers for accessing justice, such as placing the burden of proof on the affected individuals and communities, as this process can be complex and resource intensive. 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>163</sup>

However, effective provisions for access to remedy and corporate accountability are overall lacking across most mHREDD laws. In particular, mHREDD laws do not include mechanisms to overcome barriers to access to remedy faced by affected individuals and communities in holding businesses accountable. For instance, most mHREDD laws place the burden of proof on the affected individuals. In the French law, the burden of proof is on the claimants ‘to prove a fault by the company and a causal link between the fault and the damage they have suffered’<sup>164</sup> which could prevent access to remedy to affected individuals<sup>165</sup> given the complexity and resource intensive nature of this process. Similarly, in the Dutch Law, the affected individuals must first approach the enterprise in question to resolve any grievances before issuing a formal complaint as it can only be dealt by the superintendent ‘after it has been dealt with by the company, or six months after the submission of the complaint to the company without it having been addressed’. The German and Norwegian laws are also limited in terms of guarantees for access to remedy.<sup>166</sup> The latest draft of the CSDDD accounts for some of these barriers by giving rightsholders five years to file claims<sup>167</sup> and to be legally represented by CSOs and trade unions.<sup>168</sup>

159. 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>

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

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

162. 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*

163. 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>

164. 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>

165. 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.

166. 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.

167. *Corporate sustainability due diligence: Council and Parliament strike deal to protect environment and human rights - Consilium (europa.eu)*

168. *PRESS RELEASE CSDDD political deal: A pivotal step but a missed opportunity to embrace transformative change - ECCJ (corporatejustice.org)*

### 4.3.3. Requirements

Whether mHREDD laws require businesses to meaningfully engage<sup>169</sup> with rightsholders and affected communities: The UNGPs<sup>170</sup> and the OECD guidelines<sup>171</sup> recommend this approach and many CSOs support it.<sup>172</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>173</sup> especially when it comes to prevention and remediation of human right abuses,<sup>174</sup> for instance by enabling victim-centric remediation.<sup>175</sup> However, in practice, studies show that most companies are not engaging with affected stakeholders on the design and implementation of HRDD processes,<sup>176</sup> albeit there has been some progress over the years.<sup>177</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. For instance, the German Supply Chain Law does not mandate consultation with potentially affected people.<sup>178</sup> The French Duty of Vigilance encourages “stakeholder consultations” for the development of the vigilance plan but it does not mandate it, nor does it explicitly mention people with lived experience, does not specify what type of involvement is expected, and does not require companies to have formal consultation mechanisms in place to enable it. The recent agreement reached on the CSDDD includes an obligation for companies to engage meaningfully, including through dialogue and consultation, with affected stakeholders as part of the due diligence process.<sup>179</sup>

The extent to which mHREDD laws integrate specific requirements related to business models: Some business models pose heightened risks to people<sup>180</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>181</sup> mHREDD laws could for example require companies to tailor their policies considering the risks embedded in their business model and for them to disclose how they address the relationship

169. 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).

170. 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.

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

172. 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.](#)

173. 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>

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

175. 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>

176. In selected sectors. See World Benchmarking Alliance (2022) [Corporate Human Rights Benchmark Insights report 2022](#)

177. World Benchmarking Alliance (2023) [Corporate Human Rights Benchmark 2023. Insights Report.](#)

178. See Initiative Lieferkettengesetz. [https://corporatejustice.org/wp-content/uploads/2021/06/Initiative-Lieferkettengesetz\\_Analysis\\_What-the-new-supply-chain-act-delivers.pdf](https://corporatejustice.org/wp-content/uploads/2021/06/Initiative-Lieferkettengesetz_Analysis_What-the-new-supply-chain-act-delivers.pdf)

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

180. 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.](#)

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

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>182</sup>

#### 4.3.4. Coverage

The extent to which mHREDD laws cover internationally recognised human rights: The UNGPs<sup>183</sup> and legal experts<sup>184</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>185</sup> the danger of focusing only on certain human rights is that mHREDD laws may leave many rightsholders vulnerable to corporate abuses,<sup>186</sup> prioritise specific human rights risks at the expense of others (including climate change and environmental impacts),<sup>187</sup> and reduce legal certainty for companies in regard to human rights not covered by these laws.<sup>188</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>189</sup> Moreover, the increasing evidence demonstrating the bi-directional<sup>190</sup> and cyclical<sup>191</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>192</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>193</sup> However, mHREDD laws tend to limit the scope of actors covered by setting thresholds regarding

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

183. 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.

184. 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>

185. See [Annex 1](#).

186. 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>

187. 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>

188. *Ibid*

189. 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).

190. 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](#). For an example of how modern slavery can contribute to environmental degradation see Boyd et al., (2018) [Modern Slavery, Environmental Destruction and Climate Change: Fisheries, Field, Forests and Factories](#), University of Nottingham Rights Lab

191. It is cyclical as they continually shape one another in a "vicious cycle" (O'Connell, 2021). See Brickell et al., (2018) [Blood Bricks](#).

192. 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.

193. 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>



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](#)).

mHREDD could cover at least some SMEs. SMEs have largely been excluded from mHREDD laws<sup>194</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>195</sup> HRDD requirements should be proportionate to the size of the company,<sup>196</sup> and assistance, if required, should be provided.<sup>197</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>198</sup>

Financial sector actors such as pension funds, banks, insurance companies and investment managers, have also been largely excluded from mHREDD laws despite that they also have a duty to address human rights issues,<sup>199</sup> have been found to have significant leverage power over their investees with the potential to lead to changes in corporate behaviour,<sup>200</sup> and the need for these actors to increase HREDD practices in their investment, lending, and insurance activities.<sup>201</sup> The extent to which the finance sector was to be covered in the CSDDD was a contention point between EU member States for a long time.<sup>202</sup> The latest draft included exceptions for the financial sector, including by restricting HRDD to the pre-investment phase and making the inclusion of investors optional for member states.<sup>203</sup> Despite widespread support for their full inclusion within the scope of CSDDD,<sup>204</sup> the recently agreed provisional deal temporarily excludes financial actors' downstream activities (customers) from due diligence requirements.<sup>205</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>206</sup> Focusing on the entire value chain would also help to increase policy coherence as the CSRD<sup>207</sup> and the ESRS<sup>208</sup> refer to both the upstream and downstream parts of the value chain.<sup>209</sup>

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

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

196. 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> at p. 52

197. European Parliament resolution of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability (2020/2129(INL)). See [TA \(europa.eu\)](#)

198. *Ibid.*

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

200. Khan et al., (2023) "*Accelerating Change: The Potential of Capital Market Actors in Addressing Modern Slavery*," UNU-CPR Insight Briefing (New York: United Nations University, 2023).

201. World Benchmarking Alliance, Press Release (2023). *Multiple benchmarks show financial institutions struggling to demonstrate respect for human rights*.

202. See <https://www.business-humanrights.org/en/latest-news/d%C3%A9j%C3%A0-vu-financial-sector-and-corporate-sustainability-due-diligence-in-or-out/>

203. See ECCJ (2023) *EU Parliament gives green light to corporate due diligence law, but still leaves grave loopholes*

204. *Statements show widespread support for inclusion of financial activities in the Corporate Sustainability Due Diligence Directive - Business & Human Rights Resource Centre* ([business-humanrights.org](#))

205. With an option of a future review for a possible inclusion of the financial downstream sector *Corporate sustainability due diligence: Council and Parliament strike deal to protect environment and human rights - Consilium* ([europa.eu](#)). See also [ShareAction | The EU falls short: Finance granted free pass on...](#)

206. The Danish Institute for Human Rights (2023) *Due diligence in the downstream value chain: case studies of current company practice*

207. "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>

208. 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".

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

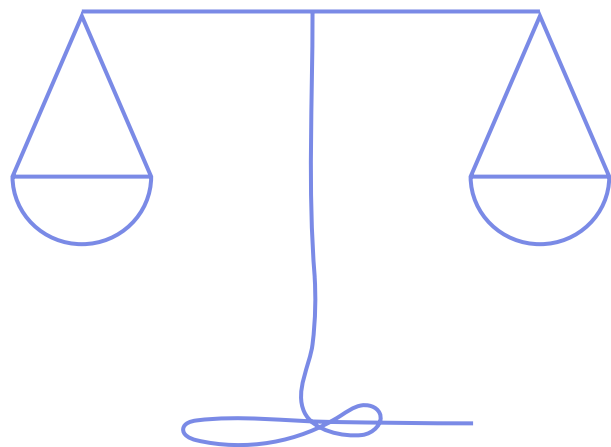
## 5. What does the evidence show about the practical impacts of mHREDD legislation for businesses?

### Amber<sup>210</sup>

The previous evidence review discussed *anticipated* business impacts in relation to costs, competitiveness, reputation, and leverage, based on the EC study,<sup>211</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>212</sup> but empirical evidence of this is needed.

Current mHREDD legislation already covers many businesses in all parts of the world, as many entities within value chains are covered by it, directly or indirectly. 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>213</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.



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210. No changes to previous rating.

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

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

213. 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.

## 6. 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>214</sup>

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.

### 6.1. 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>215</sup> many mHREDD laws only cover supply chains. It is also unclear how obligations to report under the CSRD will interact with the liability mechanism of the CSDDD if this is approved.<sup>216</sup>

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

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

216. Ibid.

## 6.2. Public procurement legislation

mHREDD laws can have significant implications for public procurement.<sup>217</sup> For instance, non-EU companies that fail to comply with the CSDDD could be banned from public procurement in the EU.<sup>218</sup> In Germany, companies can be excluded from public procurement for up to three years if an administrative fine is imposed above a certain minimum level on the basis of the German Due Diligence Supply Chain Act. Similarly, when a company that is bidding for a public contract falls within the French or Dutch mHREDD laws but has not complied with its due diligence obligations, it can be excluded by EU law.<sup>219</sup> Moreover, proposed mHREDD legislation in Austria, Lieferkettengesetz, would introduce penalties and sanctions to companies for violations of human rights and environmental due diligence obligations. One of these penalties, besides fines, would be the exclusion from public procurement processes for up to 3 years.<sup>220</sup> However, there is limited evidence of this interaction in practice.

## 6.3. Forced labour import bans and related trade instruments.

There is little empirical evidence on the effectiveness of forced labour import bans<sup>221</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](#), especially when mHREDD laws and forced labour import bans are likely to be supervised and enforced by different authorities.<sup>222</sup> However, these could complement each other 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 three ways as follows.

First, they could compensate for the limitations of one another. For example, 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>223</sup> Moreover, an import ban regime could complement mHREDD laws when businesses' efforts are ineffective in the short term, especially when the harms are several tiers away in their value chains and in situations of state-imposed forced labour where collective action may be required.<sup>224</sup>

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

218. According to the provisional agreement reached by the EU legislators, the CSDDD could qualify as a criterion for the awarding of public contracts and concessions. [Corporate sustainability due diligence: Council and Parliament strike deal to protect environment and human rights - Consilium \(europa.eu\)](#)

219. European Commission. (2021). *Buying Social - A guide to taking account of social considerations in public procurement (2nd edition)*.

220. See Clifford Chance (2022) *BUSINESS AND HUMAN RIGHTS NAVIGATING A CHANGING LEGAL LANDSCAPE* (Issue January).

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

222. Ibid.

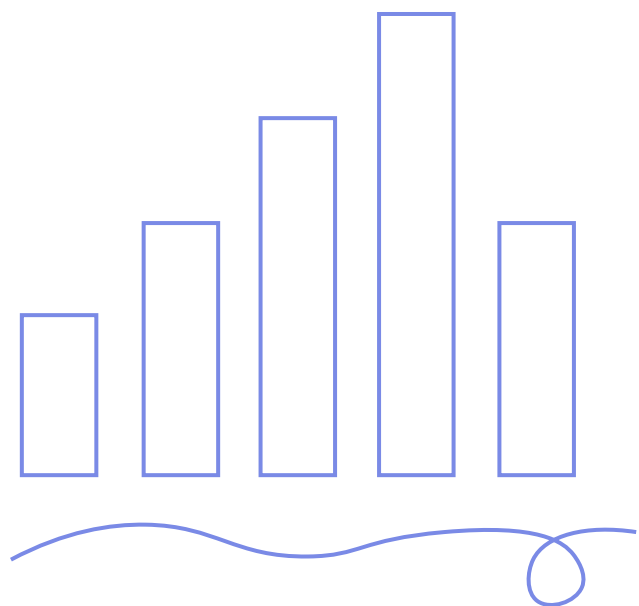
223. Blackstone et al., (2023) Forced labour risk is pervasive in the US land-based food supply. *Nat Food* 4, 596–606 (2023). <https://doi.org/10.1038/s43016-023-00794-x>

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

Second, mHREDD laws and forced labour import bans could be complementary if both are focused on ensuring improved outcomes for affected rightsholders. Forced labour import bans, for example, could 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>225</sup>

Third, mHREDD laws may also complement trade instruments 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.

Trade agreements may play an important role in addressing modern slavery. A research project, led by the Rights Lab, University of Nottingham, is exploring the role of trade and investment in addressing modern slavery risks in the Indo-Pacific region.<sup>226</sup> However, it remains unclear whether and how these agreements could complement mHREDD legislation.



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225. 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/>

226. See [Harnessing UK trade and investment to address modern slavery](#).

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

Amber<sup>227</sup>

### 7.1. 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>228</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. 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. Even when companies decide to end a business relationship, they should exercise HRDD, recognising the potential human rights harms of doing so.<sup>229</sup> Responsible divestment requires business to anticipate and plan a clear exit strategy in advance to identify and assess the impact of disengagement on all stakeholders.<sup>230</sup> Similar requirements are included in model contract clauses for buying companies, such as those published by the American Bar Association.<sup>231</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>232</sup> However, empirical evidence post-implementation of these laws is needed.

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

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

229. Commentary to UNGPs 19.

230. Pietropaoli, (2022) *Part 1: Do foreign companies have a responsibility under international law to leave Russia?*

231. See American Bar Association, RESPONSIBLE PURCHASING CODE OF CONDUCT: SCHEDULE Q Version 1.0, [https://www.americanbar.org/content/dam/aba/administrative/human\\_rights/contractual-clauses-project/scheduleq.pdf](https://www.americanbar.org/content/dam/aba/administrative/human_rights/contractual-clauses-project/scheduleq.pdf).

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

## 7.2. 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>233</sup> suggests that the divergences between the EU and US legal regimes 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.

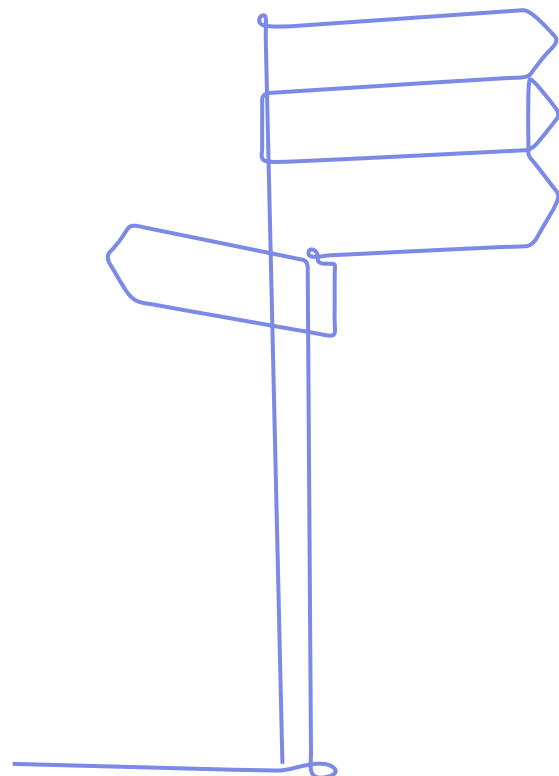


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233. Rachel Chambers and David Birchall (2024) [How European Human Rights Law Will Reshape U.S. Business](#)

## 8. 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.





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## Annex 1: mHREDD laws developed and implemented worldwide<sup>234</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>235</sup> registered in France as sociétés anonymes, sociétés en commandite par actions and European companies.	Value chain <sup>236</sup>	Across sectors	Civil liability. Injunction and damages.	Judicial oversight <sup>237</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>238</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>239</sup>	Administrative fines <sup>240</sup>

234. Compiled by the author based on multiple sources.

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

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

237. 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.

238. 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.

239. 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.

240. 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.

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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>241</sup> companies with central administration, headquarters, or registered office (or branch office) in Germany.	Supply chain. But focused on Tier 1 suppliers <sup>242</sup>	Cross-sector	No new civil <sup>243</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>244</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>245</sup> .	large companies <sup>246</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>247</sup> .	Yes. Penalties.

241. 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.

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

243. Independent civil liability remains unaffected.

244. First reports to be submitted in June 2024.

245. 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'.

246. 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.

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

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

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>248</sup> , Child labour. <sup>249</sup>	Large <sup>250</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>251</sup>	Criminal liability to directors (for reporting). <sup>252</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>253</sup>	European Member States.	<a href="#">Proposed</a> in February 2022 <sup>254</sup> , <a href="#">Provisional deal</a> reached in December 2023. Compromised version approved by Council in 2024.	Human rights, environment (including climate change). <sup>255</sup>	Reduced scope to companies with more than 1,000 employees and 450M EUR turnover. <sup>256</sup>	Value Chain. Mostly upstream activities. Limited downstream. <sup>257</sup>	Cross-sectorial	Civil liability. <sup>258</sup>	State-based oversight by designated supervisory authorities <sup>259</sup>	Annual statement if not covered under existing reporting regulation <sup>260</sup>	Non-compliant companies may be excluded from public procurement and face pecuniary penalties. <sup>261</sup>

248. Only for reporting.

249. Exceptions apply, including SMEs.

250. 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'.

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

252. 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.

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

254. 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.

255. 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 \(europa.eu\)](#)

256. 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/>

257. Ibid

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

259. Article 17.

260. 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>

261. Ibid

# MODERN SLAVERY & HUMAN RIGHTS

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