



## Business Brief:

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

Author: Dr Sofia Gonzalez De Aguinaga<sup>1</sup>

Modern Slavery PEC Policy Brief 2024-1

## 1. Introduction

A review of existing publicly available evidence on 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. This brief is aimed for businesses interested in the impacts of mHREDD legislation on their operations and the impact of these laws on ultimately addressing human rights violations, such as modern slavery, in business value chains. A separate brief for policymakers, was also developed and can be found on the [Modern Slavery PEC website](#), as well as the independently reviewed evidence review underpinning the briefs.

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). 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>2</sup> and differentiated it from conventional corporate due diligence by focusing on risks to people as opposed to risk to businesses.<sup>3</sup> 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<sup>4</sup> respectively as a voluntary process and was arguably envisaged to work as a standard expectation of responsible business conduct worldwide.<sup>5</sup>

1. With thanks to Dr Victoria Tecca, Dr Irene Pietropaoli, Owain Johnstone and Olivia Hesketh for reviewing the evidence review underpinning this brief.

2. UNGPs 13.

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

4. In this brief, HRDD is used to refer to the process described by the UNGPs and HREDD to refer to the laws that mandate human rights and environmental due diligence.

5. 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>

The evidence presented here should be read with the following caveats<sup>6</sup>:

- There is a lack of empirical studies in English assessing the effectiveness of mHREDD laws in practice. Most evidence comes from legal analyses, conceptual or theoretical academic papers, and reports produced by CSOs and industry actors.
- There is a significant disproportionate amount of evidence on the French Duty of Vigilance compared to other mHREDD laws, having been in force the longest.

## 2. Development of mHREDD legislation

**mHREDD legislation has largely been developed at the national level in Europe.**

The first mHREDD law was the [French Duty of Vigilance law](#) developed in France in 2017. Since then, five more mHREDD laws have been developed. Namely, the [Dutch Child Labour Due Diligence Act in 2019](#), the [German Supply Chain Due Act in 2021](#), the [Norwegian Transparency Act in 2021](#), and the [Swiss Code of Obligations and Due Diligence and Transparency Ordinance Act in 2022](#). Other mHREDD laws are currently under development such as the Dutch bill on [Responsible and Sustainable Business Conduct](#), while others have been rejected during the policy process.<sup>7</sup> The only mHREDD legislation developed at the supranational level (albeit not yet approved) is the European Commission's [Corporate Sustainability Due Diligence Directive \(CSDDD\)](#).

**mHREDD laws are not homogenous as they are not fully aligned to the UNGPs and the OECD guidelines and have adopted different legal models.** While mHREDD laws tend to apply only to certain large companies, exclude small- and medium-sized enterprises (SMEs), the financial sector, and public procurement bodies, and impose corporate liability, they differ in their content including companies in scope, human rights covered, whether they extend the responsibility to supply or value chains, their liability provisions, and their oversight and enforcement mechanisms (see [Annex 1](#)). They also differ in their legal models as 'there is not one, single model for mandatory human rights due diligence regimes' but 'a wide range of legal and regulatory possibilities'.<sup>8</sup>

**While mHREDD laws have been framed differently and developed under different circumstances, they have generally been the result of long and highly contested political processes that lack meaningful engagement with those who they aim to protect.** The French Duty of Vigilance Law was informed by the Rana Plaza disaster and the German law by low levels of voluntary adoption of HRDD as required by their National Action Plan (NAP).<sup>9</sup> The Norwegian law has been framed in terms of transparency while the Dutch law in terms of consumer protection (Dutch Law).

---

6. For more details on the methodology of this research and caveats to be aware of please see our Evidence Review underpinning this Brief.

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

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

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

The French<sup>10</sup> and Swiss<sup>11</sup> laws, and now the CSDDD,<sup>12</sup> are the result of a political compromise in which the final texts are a limited or lightened version of their initial proposals. To develop and design these laws, policy makers have generally not engaged in meaningful consultation with rightsholders and people with lived experience.<sup>13</sup>

### 3. Implementation of mHREDD laws

**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>14</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>15</sup> have mostly been issued on environmental and climate grounds (suggesting the use of mHREDD laws as a ground for climate change litigation)<sup>16</sup> and do not tend to include human rights considerations,<sup>17</sup> albeit a few exceptions.<sup>18</sup> What effective implementation of the law means in practice is determined by case law (i.e., depends on the Courts).<sup>19</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>20</sup> supermarket chains for human rights abuses in the Latin American fruit supply chains,<sup>21</sup> and automobile companies with supply chains in Xinjiang.<sup>22</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>23</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.

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

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

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

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

14. 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>

15. 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](#).

16. 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>

17. 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](#).

18. 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](#).

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

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

21. 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](#).

22. 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](#).

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

**Only a limited number of court judgements have been provided as most cases have not yet reached this stage yet.** Under the French law, most claims being declared inadmissible<sup>24</sup> on procedural grounds, including the case of TotalEnergies.<sup>25</sup> In 2023, 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>26</sup> 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>27</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) against businesses in the garment industry that failed to meet their HRDD obligations by not signing the Bangladesh Accord.<sup>28</sup>

## 4. Effectiveness of mHREDD laws<sup>29</sup>

### 4.1. Business compliance with the law

**Effectiveness of the law at achieving compliance with its minimum requirements.**

**It is unclear how many companies fall within the scope of the French Duty of Vigilance Law and vigilance plans produced do not always fully meet the law's requirements.** The State does not yet provide a public repository of companies falling within its scope. However, a study looking at business compliance with the French Duty of Vigilance Law in 2021 found that some companies identified as falling within the scope of the law have not yet produced a vigilance plan since the law came into force.<sup>30</sup> Other studies assessed vigilance plans against legal requirements and found that they do not sufficiently meet the requirements of the law<sup>31</sup> mainly in relation to consultation with stakeholders and the assessment and disclosure of the adequacy of the plans to address human rights risks.<sup>32</sup>

---

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

25. 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/cif2ktvec022iu7100myppgri/latest-news-regarding-the-french-corporate-duty-of-vigilance-law>.

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

27. Ibid.

28. 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](#).

29. According to the effectiveness framework previously developed by a Modern Slavery PEC-funded study by Hsin, New, Pietropaoli and Smit (2021) 'Effectiveness of Section 54 of the Modern Slavery Act'.

30. 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.

31. Sherpa et al., (2019) [The law on duty of vigilance of parent and outsourcing companies Year 1: Companies must do better](#)

32. Development International e.V., (2020) [Devoir de Vigilance: Reforming Corporate Risk Engagement](#).

**State-based monitoring and enforcement, liability provisions, and incentives may influence compliance with mHREDD laws:**

- 1. State-based monitoring and enforcement:** State-based monitoring and enforcement mechanisms may be more effective than relying on CSOs or consumer pressure. CSOs face many barriers to monitor compliance,<sup>33</sup> human rights and environmental defenders may face risks,<sup>34</sup> and consumers generally lack action on modern slavery.<sup>35</sup> Establishing an administrative authority to monitor and enforce compliance has already been recommended in relation to the French Duty of Vigilance<sup>36</sup> and the UK Modern Slavery Act's transparency provisions<sup>37</sup> which have, so far, relied on CSOs' monitoring.<sup>38</sup>
- 2. Liability provisions:** mHREDD laws include sanctions for non-compliance, such as financial penalties and administrative fines,<sup>39</sup> mostly in relation to disclosure but also to the required exercise of HRDD.<sup>40</sup> Including these sanctions for non-compliance has been recommended to increase compliance with transparency legislation.<sup>41</sup>
- 3. Incentives:** In the EC study,<sup>42</sup> businesses identified several anticipated benefits of mHREDD legislation, including levelling the playing field, facilitating leverage with third party business partners, improving legal certainty, improving regulatory harmonisation, increased reputation, and increased competitiveness. However, little is known if these are crystallising in practice and whether they are driving business compliance. Specific policy incentives such as those in relation to public procurement or tax rebates may also drive business compliance with mHREDD laws<sup>43</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>44</sup> and the CSDDD draft<sup>45</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>46</sup>

---

33. Including inconsistencies between companies' reports, which has been noted as a difficulty in assessing vigilance plans under the French Law, 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 (as showed by research looking at transparency legislation. See [Effectiveness of section 54 of the UK Modern Slavery Act](#)).

34. 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

35. [Consumer attitudes towards modern slavery](#) (2021)

36. 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.

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

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

39. See [Annex 1](#).

40. 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](#)).

41. 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.

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

43. 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>

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

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

46. 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. Changing business behaviour

**Effectiveness of the law at changing business behaviour. Particularly in relation to the implementation of HRDD processes.**<sup>47</sup>

**It is expected that mHREDD laws would contribute to making HRDD a standard business practice, but there is little empirical evidence on the effect of mHREDD laws on actual corporate practice.** So far, business adoption of HRDD is generally occurring at a low pace (albeit there has been some progress over the years)<sup>48</sup>, it is often disconnected from other internal companies' processes<sup>49</sup>, and does not always cover all HRDD steps.<sup>50</sup> 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 the challenges business face when implementing mHREDD laws.

**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>51</sup> and there is anecdotal evidence suggesting that these laws have increased company's human rights management practices.<sup>52</sup> Empirical studies have shown that these laws contribute to improving the maturity of business disclosure,<sup>53</sup> increasing business implementation of HRDD,<sup>54</sup> and increasing corporate human rights practices, especially in companies falling behind the voluntary adoption of such practices.<sup>55</sup> However, studies show that mHREDD laws are not driving stakeholder engagement<sup>56</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>57</sup>

---

47. 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.

48. 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).

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

50. The World Benchmarking Alliance's [Corporate Human Rights Benchmark 2023 report](#).

51. 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

52. 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

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

54. 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).

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

56. 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.

57. Development International e.V., (2020) [Devoir de Vigilance: Reforming Corporate Risk Engagement](#).

There is also a high risk of companies taking a compliance-centred approach. This means companies may focus on complying with the letter of the law to avoid legal liability but not necessarily focus on tackling human rights abuses.<sup>58</sup>

The following factors may influence the extent to which companies change their behaviour in relation to mHREDD laws:

- 1. Legal clarity and specificity:** In general, mHREDD legislation is unclear regarding what specific actions are required to comply with the HRDD duty<sup>59</sup> and tends to use ambiguous and imprecise language that can lead to confusion as to how to comply. 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>60</sup> In particular, there is not guidance for businesses on how to comply with the French Duty of Vigilance law, and while the courts have started to provide further clarity as to how businesses can demonstrate compliance,<sup>61</sup> this depends on claims reaching court judgments.
- 2. Detailed disclosure requirements:** One study<sup>62</sup> indicates that mandating detailed disclosure is a key factor to ensure mHREDD regulation enables businesses to implement HRDD significantly rather than cosmetically. In terms of 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>63</sup>
- 3. Balanced approach between contractual requirements, leverage, and responsible purchasing practices:** Contractual assurances are important to assess compliance, but businesses may pass liability along the value chain without providing the required support (financial or otherwise) to facilitate change as reported in the food, ICT, and automobile sectors<sup>64</sup> and in the implementation of the French Duty of Vigilance Law.<sup>65</sup> Requiring businesses to undertake responsible purchasing practices and exercising leverage<sup>66</sup> may facilitate change in business behaviour,<sup>67</sup> especially in the lower tiers of the supply chain, but only a few companies are undertaking responsible purchasing practices.<sup>68</sup>

---

58. 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>

59. 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>

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

61. 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 including prior dialogue between the company and the plaintiffs (i.e., CSOs) See <https://www.engage.hoganlovells.com/knowledgeservices/news/first-court-decision-interpreting-the-french-duty-of-vigilance-law/>

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

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

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

65. 80% of SMEs were being required by large companies in their value chains to comply with human rights obligations without receiving accompanying support according to PWC (2020) "Résultats de l'enquête "RSE: La parole aux fournisseurs!"".

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

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

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

- 4. Resources and capabilities:** Businesses may face challenges when 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>69</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>70</sup>

### 4.3. 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.**

**There are limited studies that have examined the effectiveness of mHREDD laws in preventing, mitigating, and remediating human rights abuses.** This is 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>71</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>72</sup>

Some factors that may influence the effectiveness of mHREDD legislation in addressing human rights abuses are the extent to which they:

- 1. 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.<sup>73</sup> mHREDD laws may be more effective when these are reinforced by complementary measures given that mHREDD laws may not be able to fully address some of the root causes of human rights abuses, such as inequality, and the process of HRDD may not sufficiently address human rights abuses in some situations, such as in conflict or where there is state-sponsored human rights abuses.<sup>74</sup> However, empirical evidence on what an effective “smart mix” looks like is needed.

---

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

70. 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*.

71. See McCORQUODALE R, SMIT L, NEELY S, BROOKS R. Human Rights Due Diligence in Law and Practice: Good Practices and Challenges for Business Enterprises. *Business and Human Rights Journal*. 2017;2(2):195-224. doi:10.1017/bhj.2017.2 See also human rights [due diligence examples](#).

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

73. Including mandatory, voluntary, international, and national. UNGP 3 Commentary.

74. 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>



2. **Include international recognised human rights:** The UNGPs<sup>75</sup> and legal experts<sup>76</sup> recommend mHREDD laws to include *all* internationally recognised human rights, including those related to the environment as highlighted by the OECD. The danger of focusing only on certain human rights is that mHREDD laws may leave many rightsholders vulnerable to corporate abuses,<sup>77</sup> prioritise specific human rights risks at the expense of others (including climate change and environmental impacts),<sup>78</sup> and reduce legal certainty for companies in regard to human rights not covered by these laws.<sup>79</sup> Moreover, 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>80</sup> The increasing evidence demonstrating the bi-directional<sup>81</sup> and cyclical<sup>82</sup> relationship between human rights violations and climate change also suggests that addressing environmental and human rights abuses in tandem is necessary.
3. **Cover a diverse range of entities (directly and indirectly):** The UNGPs and the OECD guidelines state that all companies have HRDD obligations regardless of their characteristics<sup>83</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>84</sup>
  - a. **SMEs:** The costs of carrying out mandatory supply chain due diligence is likely to be relatively low compared to their revenue,<sup>85</sup> HRDD requirements should be proportionate to the size of the company,<sup>86</sup> and assistance, if required, should be provided.<sup>87</sup> Publicly listed SMEs and those operating in high-risk sectors have been suggested to be covered by mHREDD laws.<sup>88</sup>
  - b. **Finance sector:** Financial sector actors such as pension funds, banks, insurance companies and investment managers, have also been largely excluded from mHREDD laws or excepted from certain obligations<sup>89</sup> despite

---

75. 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.

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

77. 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>

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

79. Ibid

80. 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).

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

82. It is cyclical as they continually shape one another in a "vicious cycle". For a case study see the *Blood Bricks study (2018)*.

83. 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.

84. 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>

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

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

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

88. Ibid.

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

that they also have a duty to address human rights issues,<sup>90</sup> have been found to have significant leverage power over their investees with the potential to lead to changes in corporate behaviour,<sup>91</sup> and the need for these actors to increase HREDD practices in their investment, lending, and insurance activities.<sup>92</sup>

- c. Obligations for businesses to cover the entire value chain:** The UNGPs recommend this approach and scholars and practitioners agree that most human rights risks, including modern slavery, are located in the lowest tiers of the supply chain. Focusing on the entire value chain would also help to increase policy coherence as the CSRD<sup>93</sup> and the ESRS<sup>94</sup> refer to both the upstream and downstream parts of the value chain.<sup>95</sup>

- 4. 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>96</sup> based on evidence of its success and effectiveness in the UK Bribery Act.<sup>97</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 HRDD.<sup>98</sup> This model would ideally establish civil liabilities for those affected.<sup>99</sup>

- 5. Connect the HRDD process to outcomes for rightsholders:** Scholars are suggesting that for mHREDD laws to be effective at protecting rightsholders they need to go beyond processes.<sup>100</sup> Most mHREDD laws focus on the process of due diligence,<sup>101</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>102</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

90. United Nations Working Group on Business and Human Rights (2023) [Financial Sector and the European Union Corporate Sustainability Due Diligence Directive](#)

91. See Khan, M. et al. (2023), "[Accelerating Change: The Potential of Capital Market Actors in Addressing Modern Slavery](#)"

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

93. "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>

94. 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".

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

96. See [Human Rights and Business 2017: Promoting responsibility and ensuring accountability, Sixth Report of Session 2016-17, \(5 April 2017\)](#).

97. 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.

98. See Pietropaoli et al. (2020), [A UK Failure to Prevent Mechanism for Corporate Human Rights Harms](#).

99. Ibid.

100. 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.

101. 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 \(Due Diligence Act\)](#).

102. 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).

terms of consumer protection or transparency.<sup>103</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>104</sup> While it would be highly contextual, the criteria about what constitutes “reasonable” can be elaborated on accompanying guidance.<sup>105</sup>

- 6. Integrate specific requirements related to business models:** Some business models pose heightened risks to people<sup>106</sup> and may therefore require governance and systemic changes, including in the way they do business, their sales and purchasing practices. Some HRDD frameworks already recommend companies to review their business model and that of their suppliers as part of their due diligence process.<sup>107</sup> mHREDD laws could require companies to tailor their policies considering the risks embedded in their business model and for them to disclose how they address the relationship between material impacts on people and their business models, which the [Corporate Sustainability Reporting Directive](#) (CSRD) and the new [European Sustainability Reporting Standards](#) (ESRS) already require, and which was proposed by the European Parliament during the CSDDD negotiations.<sup>108</sup>
- 7. Address power imbalances:**
  - a. The extent to which mHREDD are developed in consultation with rightsholders and people with lived experience:** 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>109</sup>
  - b. The extent to which remediation is placed at the heart of mHREDD laws:** mHREDD laws should facilitate access to remedy to affected individuals through strong access to justice provisions, such as civil liability<sup>110</sup> and address any potential barriers for accessing justice, such as placing the burden of proof on the affected individuals and communities. For example, the burden of proof and contestations over what constitutes valid evidence and how to prove causality between harms and business practices have been found to be significant obstacles for rightsholders in the Global South when trying to establish legal liability under the French Duty of Vigilance.<sup>111</sup>

---

103. 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>

104. Davis, Rachel (2021) [Legislating for Human Rights Due Diligence: How Outcomes for People Connect to the Standard of Conduct](#).

105. See Pietropaoli et al. (2020), [A UK Failure to Prevent Mechanism for Corporate Human Rights Harms](#).

106. 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](#).

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

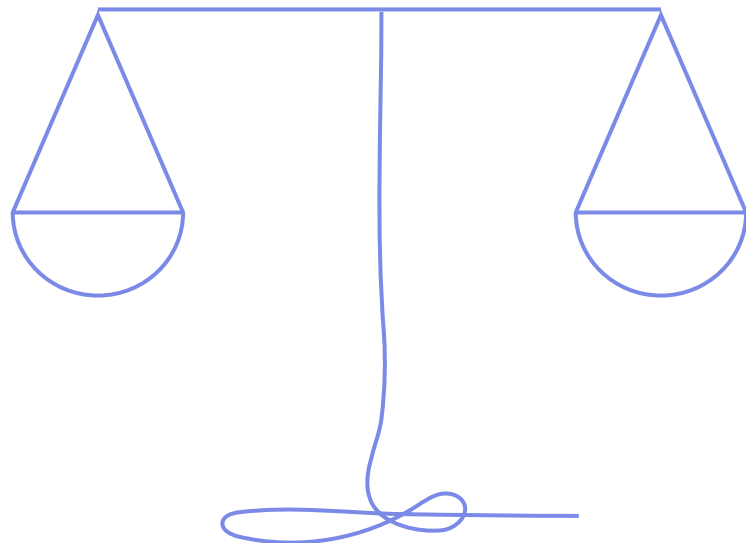
108. Shift (2023) [Aligning the EU Due Diligence Directive with the International Standards: Key Issues in the Negotiations](#).

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

110. 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](#)

111. 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>

- c. **Whether mHREDD laws require businesses to meaningfully engage<sup>112</sup> with rightsholders and affected communities:** The UNGPs<sup>113</sup> and the OECD guidelines<sup>114</sup> recommend this approach. 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>115</sup> especially when it comes to prevention and remediation of human right abuses,<sup>116</sup> for instance by enabling victim-centric remediation.<sup>117</sup> However, in practice, studies show that most companies are not engaging with affected stakeholders on the design and implementation of HRDD processes,<sup>118</sup> albeit there has been some progress over the years.<sup>119</sup> This may be related to the fact that most mHREDD laws do not require companies to consult with rightsholders and people with lived experience throughout their HRDD processes<sup>120</sup>.



---

112. 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).

113. 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.

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

115. 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>

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

117. 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>

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

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

120. For instance, the German Supply Chain Law does not mandate consultation with potentially affected people (See [Initiative Lieferkettengesetz](#)). The French Duty of Vigilance requires “stakeholder consultations” for the development of the vigilance plan but it does not 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 (See [Corporate sustainability due diligence: Council and Parliament strike deal to protect environment and human rights - Consilium \(europa.eu\)](#)).

## 5. Connection to other human rights related instruments

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. However, mHREDD laws could complement supply chain transparency legislation, public procurement legislation, and forced labour import bans and other trade instruments.

- 1. Transparency/reporting legislation:** Given that both require reporting obligations, 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>121</sup> many mHREDD laws only cover supply chains. The CSDDD aims to reduce duplication by not requiring additional reporting from companies that already fall within existing transparency legislation such as CSRD. But 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>122</sup>
- 2. Public procurement legislation:** Companies may be excluded from public procurement in the EU if they fail to comply with mHREDD legislation,<sup>123</sup> or excluded within a country for several years if an administrative fine is imposed above a certain minimum level<sup>124</sup> or for violations of HREDD obligations.<sup>125</sup> However, there is limited empirical evidence of these interactions in practice.
- 3. Forced labour import bans:** There is little empirical evidence on the effectiveness of forced labour import bans<sup>126</sup> (e.g., 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](#)), and of their interaction with mHREDD laws. mHREDD laws and forced labour import bans and related trade instruments are likely to be supervised and enforced by different authorities,<sup>127</sup> but mHREDD laws and forced labour import bans may complement each other. Mainly, as mHREDD laws are, so far, an obligation of means while forced labour import bans an obligation of result. In particular, they could complement each other in at least the following ways.

---

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

122. *Ibid.*

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

124. Such as German Due Diligence Supply Chain Act.

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

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

127. *Ibid.*

4. **When import ban regimes may be tackling only part of the problem:** A recent study found that forced labour in agri-food supply chains in the U.S. is most prevalent in the domestic system, as opposed to coming from imported food products from low-income countries, suggesting that the import ban regime was insufficient to address modern slavery in this context.<sup>128</sup>
5. **In situations of state-imposed forced labour**<sup>129</sup> where HRDD is insufficient, forced labour import bans and related trade instruments could complement mHREDD laws.
6. **In relation to outcomes for affected rightsholders:** Forced labour import bans, for example, may focus on outcomes by ensuring that victims have been remediated in full before a ban is lifted or by reversing the burden of proof (both of which were proposed by the European Parliament in a new draft of the EC proposal for a forced labour import ban).
7. **Other trade instruments:** Such as those that require some degree of due diligence but that are focused on specific sectors or products. For instance, the CSDDD aims to complement existing European legislation and many businesses may already be undertaking the due diligence that the EU has required on a piecemeal basis through sector specific legislation such as the [EU Batteries Regulation](#) and may already be reporting under the CSRD. However, it remains unclear on how these instruments would complement one another in practice if the CSDDD is approved.



---

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

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

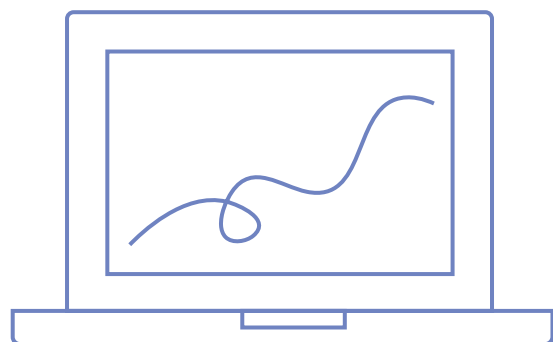
## 6. Unintended consequences

### 6.1. Divestment and disengagement

**There is little empirical evidence linking divestment to mHREDD laws.** 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, 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>130</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.

### 6.2. 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. 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 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>131</sup> suggests that the divergences between the EU and US legal regimes (if the CSDDD is approved) may mean that US firms would need to follow different and likely more stringent European rules which will threaten the level playing field in the US.



---

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

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

## 7. Annex 1: mHREDD laws developed and implemented worldwide.<sup>132</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>133</sup> registered in France as sociétés anonymes, sociétés en commandite par actions and European companies.	Value chain <sup>134</sup>	Across sectors	Civil liability. Injunction and damages.	Judicial oversight <sup>135</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>136</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>137</sup>	Administrative fines <sup>138</sup>

132. Compiled by the author based on multiple sources.

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

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

135. 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.

136. 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.

137. 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.

138. 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.



**Business Brief:** 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="#">German Due Diligence in Supply Chain Act 2021</a>	Germany	1 January 2023	International human rights, labour rights and the environment.	Large <sup>139</sup> companies with central administration, headquarters, or registered office (or branch office) in Germany.	Supply chain. But focused on Tier 1 suppliers <sup>140</sup>	Cross-sector	No new civil <sup>141</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>142</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>143</sup> .	large companies <sup>144</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>145</sup> .	Yes. Penalties.

139. 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.

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

141. Independent civil liability remains unaffected.

142. First reports to be submitted in June 2024.

143. 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'.

144. 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.

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

**Business Brief: 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>146</sup> , Child labour. <sup>147</sup>	Large <sup>148</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>149</sup>	Criminal liability to directors (for reporting). <sup>150</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<sup>151</sup></a>	European Member States.	<a href="#">Proposed</a> in February 2022 <sup>152</sup> , <a href="#">Provisional deal</a> reached in December 2023. Compromised version approved by Council in 2024.	Human rights, environment (including climate change). <sup>153</sup>	Reduced scope to companies with more than 1,000 employees and 450M EUR turnover. <sup>154</sup>	Value Chain. Mostly upstream activities. Limited downstream. <sup>155</sup>	Cross-sectorial	Civil liability. <sup>156</sup>	State-based oversight by designated supervisory authorities <sup>157</sup>	Annual statement if not covered under existing reporting regulation <sup>158</sup>	Non-compliant companies may be excluded from public procurement and face pecuniary penalties. <sup>159</sup>

146. Only for reporting.

147. Exceptions apply, including SMEs.

148. 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'.

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

150. 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.

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

152. 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.

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

154. 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/>

155. Ibid

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

157. Article 17.

158. 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>

159. Ibid

# MODERN SLAVERY & HUMAN RIGHTS

POLICY & EVIDENCE CENTRE

Led by the Bingham Centre

The Modern Slavery and Human Rights Policy and Evidence Centre (Modern Slavery PEC) was created by the investment of public funding to enhance understanding of modern slavery and transform the effectiveness of law and policies designed to address it. The Centre funds and co-creates high quality research with a focus on policy impact, and brings together academics, policymakers, businesses, civil society, survivors and the public on a scale not seen before in the UK to collaborate on solving this global challenge.

The Centre is a consortium of six academic organisations led by the Bingham Centre for the Rule of Law and is funded by the Art and Humanities Research Council on behalf of UK Research and Innovation (UKRI).

Our partners:



The Modern Slavery and Human Rights Policy and Evidence Centre is funded and actively supported by the Arts and Humanities Research Council (AHRC), part of UK Research and Innovation (UKRI), from the Strategic Priorities Fund.

Modern Slavery and Human Rights Policy and Evidence Centre  
c/o British Institute of International and Comparative Law  
Charles Clore House, 17 Russell Square, London, WC1B 5JP

A company limited by guarantee  
Registered in England No. 615025  
Registered Charity No. 209425

[office@modernslaverypec.org](mailto:office@modernslaverypec.org)

[www.modernslaverypec.org](http://www.modernslaverypec.org)