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Technical Assistance for Strengthening Fundamental Rights Sector Coordination

# COMPARATIVE STUDY ON HORIZONTAL ISSUES (GERMANY-FRANCE)



WEglobal



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ON HORIZONTAL ISSUES  
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## LIST OF ABBREVIATIONS

EU	European Union
EU Conflict Minerals Regulation	Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas
Non-Financial Reporting Directive	Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups
Corporate Sustainability Directive	Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 (Text with EEA relevance).
Deforestation Regulation	Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010
Sustainability Reporting Directive	Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting
Proposal for a Regulation on prohibiting products made with forced labour	Proposal for a Regulation of the European Parliament and of the Council on prohibiting products made with forced labour on the Union market.
German Supply Chain Act	German Supply Chain Corporate Due Diligence Act
BAFA	Federal Office for Economic Affairs and Export Control
ECCHR	European Centre for Constitutional and Human Rights
UN	United Nations
French Duty of Vigilance Law	French Corporate Duty of Vigilance Law
ILO	International Labour Organisation
ILO Declaration	Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy
BHR	Business and Human Rights
BHR Handbook	Business and Human Rights: A Handbook for Legal Practitioners
OECD	Organisation for Economic Co-operation and Development
OECD Guidelines	Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises
Guiding Principles	United Nations Guiding Principles on Business and Human Rights
International Instrument	United Nations Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises
NCP	National Contact Points

# 1. Introduction



International human rights law has traditionally had a state-centred approach, regulating relations between nations and states and suggesting that only states have legal obligations and responsibilities for the implementation of human rights. However, with the increasing power of multinational corporations, which can be as powerful as some states, and their impact on human rights and the environment, it becomes an important area of focus to address the negative effects of companies on human rights and to ensure that companies are accountable for the impact of their actions and activities on human rights and the environment at the national or international level. This transformation resulting in the emergence of the field of Business and Human Rights (BHR) emerged, which focuses on the responsibility of companies to respect human rights.

As a landmark development in the context of BHR, the non-binding UN Guiding Principles on Business and Human Rights (Guiding Principles) were unanimously adopted by the United Nations (UN) Human Rights Council in June 2011.<sup>1</sup> The Guiding Principles, containing 31 principles, are based on a three-pillar structure of ‘*Protect, Respect and Remedy*’: (i) the duty of states to protect human rights, (ii) the responsibility of companies to respect human rights, and (iii) the responsibility of states and companies to provide and effective remedies for rights holders.<sup>2</sup>

The Guiding Principles were adopted following lengthy consultations with a wide range of stakeholders, including company representatives, governments, non-governmental organisations (NGOs) and academics. Various organisations have also used the framework created by the Guiding Principles. For example, the Organisation for Economic Co-operation and Development (OECD) updated the OECD Guidelines for Multinational Enterprises in 2011 and 2023 and established the OECD National Contact Points (NCP) to handle complaints regarding human rights violations related to the commercial activities of companies.<sup>3</sup>

The Guiding Principles require business enterprises to conduct human rights due diligence as an essential requirement to meet their ‘*responsibility to respect human rights*’.<sup>4</sup> To this end, human rights due diligence should be continuously carried out and significant human rights risks posed by the operating context should be taken into account. This process needs to be adapted to the size of the businesses, their human rights impact risks, and the nature and context of their operations so as to cover all human rights.<sup>5</sup> However, especially in the case of multinational companies with many organizations among group companies and in the supply chain, since it may be difficult to conduct due diligence for adverse human rights impacts across the entire supply chain, business enterprises should identify general areas where the risk of adverse human rights is most significant and prioritize these areas for human rights due diligence.<sup>6</sup> Furthermore, as a component of the ‘*protection*’ pillar, the Guiding Principles require states to protect against human rights abuse within their territory and/or jurisdiction by business enterprises through effective policies, legislation, regulations and adjudication. To this end, states need to encourage businesses to implement the Guiding Principles by creating national action plans and taking various policy measures.

At this point, it should be emphasized that there is a trend of moving from non-binding arrangements, pioneered by the Guiding Principles, towards binding legislation. In recent years, there has been an increasing tendency for some states around the world and the European Union (EU) to adopt regulations that provide for the responsibility of respecting human rights in company activities and global supply chains. Important regulations in this regard are French Corporate Duty of Vigilance Law<sup>7</sup>, in force in France as of 2017, the Supply Chain Corporate Due Diligence Act (German Supply Chain Act)<sup>8</sup>, which came into force in Germany in 2023, and Directive (EU)

1 United Nations Human Rights Council, Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, UN Doc. A/ HRC/17/31, (21.03.2011), [https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf).

2 Ibid.

3 OECD, Guidelines for Multinational Enterprises, (2011), <https://www.oecd.org/daf/inv/mne/48004323.pdf>.

4 United Nations Human Rights Council, Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework, UN Doc. A/ HRC/17/31 (21.03.2011), [https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf), Principle 15.

5 Ibid., Principles 12 and 17, and the relevant Commentaries.

6 Ibid., Principle 17 and the relevant Commentary.

7 French Duty of Vigilance Law, (LOI n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d’ordre), (2017), <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000034290626/>.

8 The German Supply Chain Due Diligence Act, (Lieferkettensorgfaltspflichtengesetz - LkSG), (22.07.2021), <https://www.bmas.de/EN/Europe-and-the-World/International/Supply-Chain-Act/supply-chain-act.html>; <https://www.bmz.de/resource/blob/154774/lieferkettengesetz-faktenpapier-partner->

2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 (Text with EEA relevance).

(Corporate Sustainability Directive). Moreover, parliamentary work on legislative acts continues in many EU Member States<sup>9</sup> and although there are differences in terms of scope and scale, these acts essentially require companies to address human rights impacts in their operations and business relationships with suppliers and business partners around the world through human rights due diligence.

On the given background, this study aims to address binding and non-binding legal developments in the field of BHR and to evaluate the approaches to companies' responsibilities to respect human rights in domestic legislation, especially on the basis of the legislation in force in Germany and France, while also discussing the legal developments in some other EU Member States.

The study is based on a systematic desk-based, comparative review of existing relevant national, regional and international legislation. To this end, the study examines international legal documents and internationally accepted human rights standards relevant to the BHR, as well as EU-level regional acts on human rights due diligence.<sup>10</sup> Regarding national legislation, the study includes a comparative analysis of the French Duty of Vigilance Law and the German Supply Chain Act, which came into force in this field.

## 2. Legislative Acts

### 2.1. International and Regional Acts

Various international and regional acts regarding the BHR and the responsibility of companies to respect human rights mainly consist of non-binding 'soft/flexible law' documents of international and regional organisations. Although these documents consist of non-binding guiding rules, they form the basis for national and some regional acts containing binding rules in this field.

This section will focus on acts on responsible business conduct, companies' responsibility to respect human rights, human rights responsibility in supply chains, human rights due diligence and non-financial reporting.

#### 2.1.1. United Nations Guiding Principles on Business and Human Rights

Adopted unanimously by the UN Human Rights Council in June 2011, the Guiding Principles establish a '*globally recognised and authoritative framework*'<sup>11</sup> for preventing and addressing adverse human rights impacts arising from corporate activities, as a result of extensive stakeholder engagement. As a 'soft law' tool, the Guiding Principles are not legally binding. However, "*they [...] derive their normative force through their endorsement by states and support from other key stakeholders [...]*".<sup>12</sup> In the last decade, "*The endorsement of the United Nations Guiding Principles on Business and Human Rights (UNGPs) triggered a remarkable process accelerating the recognition of human rights responsibilities for corporations in law and governance.*"<sup>13</sup>

laender-eng-bf.pdf

9 United Kingdom Modern Slavery Act, which came into force in 2015; Australian Modern Slavery Act, which came into force in 2019; Swiss Due Diligence and Reporting Obligations in Relation to Minerals and Metals from Conflict-Affected Areas and Child Labour, which came into force in 2023; Netherlands Law on Child Labour Due Diligence, adopted in 2019 but not in force; Norway Law on Business Transparency and Human Rights and Decent Working Conditions, adopted in 2021 but not in force; Belgium Parliamentary Proposal on the Corporate Duty of Vigilance and Care in Value Chains, for which the parliamentary procedure is ongoing.

10 Moreover, the study also evaluates United Nations Guiding Principles on Business and Human Rights, the United Nations Draft Treaty on Business and Human Rights, OECD Guidelines for Multinational Enterprises, and ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy. Regarding regional legislation, the study assesses developments in the EU, while examining Non-Financial Reporting Directive, Conflict Minerals Regulation, European Union Deforestation Regulation, Proposal for Regulation on Prohibiting Products Made with Forced Labour, and Corporate Sustainability Due Diligence Directive.

11 European Coalition for Corporate Justice, Justice delayed: 10 years of UN Guiding Principles, (16.06.2021), <https://corporatejustice.org/news/justice-delayed-10-years-of-un-guiding-principles/>.

12 J. G. Ruggie, The social construction of UN Guiding Principles on Business and Human Rights, S. Deva and D. Birchall (eds.), Research Handbook on Human Rights and Business (2020), p. 64.

13 N. Jägers, UN Guiding Principles at 10: Permeating Narratives or Yet Another Silo?, Business and Human Rights Journal, 6 (2021), p. 199.

The Guiding Principles are composed of three pillars which are the duty of states to protect human rights, the responsibility of companies to respect human rights, and providing access to appropriate and effective remedies for victims of business-related human rights violations.<sup>14</sup> The first pillar of the Guiding Principles sets out the responsibility of states to protect individuals against human rights violations by third parties, including business enterprises, within the states' territory and jurisdiction. This responsibility includes *"taking appropriate steps to prevent, investigate, punish and redress"* human rights violations.<sup>15</sup>

The second pillar of the Guiding Principles deals with companies' responsibility to respect human rights. Responsibility to respect human rights means that business enterprises *"should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved."*<sup>16</sup> This responsibility applies not only to the impacts of business enterprises *"directly linked to their operations, products or services"*<sup>17</sup> as well as impact resulting from *"their business relationships"*.<sup>18</sup>

In order to ensure that business enterprises fulfil their responsibilities to respect human rights in line with their responsibility under the Guiding Principles, they are required to adopt a policy commitment and undertake human rights due diligence, which includes *"identify[ing], prevent[ing], mitigat[ing] and account[ing] for"* actual or potential adverse human rights impacts arising through their activities or business relationships.<sup>19</sup> This process should be inclusive of all human rights and should be appropriate to the size of business enterprises, their impact on human rights, and the nature and context of their activities.<sup>20</sup> To this end, human rights due diligence is composed of four steps: (i) assessing actual and potential human rights impacts, (ii) integrating and acting upon the findings, (iii) tracking the effectiveness of measures and actions taken, and (iv) communicating how impacts are addressed.<sup>21</sup>

The third pillar of the Guiding Principles requires states to have both judicial and non-judicial mechanisms in place to ensure that those affected by business-related human rights abuse have access to effective remedy.<sup>22</sup> In addition to states' judicial and non-judicial mechanisms, the Guiding Principles include a broader resolution system supported by operational-level grievance mechanisms and international and regional human rights mechanisms that can provide early stage recourse and resolution by business enterprises.<sup>23</sup>

## 2.1.2. United Nations Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises

As a result of the activities of the Open-Ended Intergovernmental Working Group, established by the UN Human Rights Council in 2014 to elaborate an international legally binding instrument to regulate, in international human rights law,<sup>24</sup> the activities of transnational corporations and other business enterprises, the Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises (International Instrument) was prepared, with the fourth and final revised version being published in June 2023.<sup>25</sup>

The International Instrument mainly aims *"to clarify and facilitate effective implementation of the obligation of States to respect, protect, fulfil and promote human rights in the context of business activities, particularly those of transnational character"* and *"to clarify and ensure respect and fulfilment of the human rights obligations of business enterprises"*.<sup>26</sup> Moreover, the Instrument aims to prevent the occurrence of human rights abuses by

14 United Nations Human Rights Council, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, UN Doc. A/ HRC/17/31 (21.03.2011), [https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf), General Principles

15 Ibid., Principle 11, Principle 1.

16 Ibid., Principle 11.

17 Ibid., Principle 13.

18 Ibid.

19 Ibid., Principle 15.

20 Ibid., Principle 19.

21 Ibid.

22 Ibid., Principle 25.

23 Ibid., Principle 28, Principle 29 and Principle 30, and the relevant Commentaries.

24 United Nations Human Rights Council, Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights, A/HRC/RES/26/9. (26.06.2014), [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/RES/26/9](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/26/9).

25 Open-Ended Intergovernmental Working Group (OEIGWG), Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises, Third Revised Draft, (17.08.2021), <https://www.ohchr.org/sites/default/files/LBI3rd-DRAFT.pdf>.

26 Ibid., Article 2.

effective mechanisms of monitoring and enforceability, and to ensure access to justice and effective, adequate and timely remedy for victims of human rights abuses.<sup>27</sup>

The Instrument emphasizes that business enterprises have a responsibility to respect internationally recognized human rights by preventing or mitigating human rights abuses that are directly related to their business relationships, activities, products or services. This responsibility includes avoiding causing or contributing to human rights abuses through their own activities and addressing such abuses when they occur.<sup>28</sup> Additionally, a system of legal liability is laid down for human rights abuses that may arise from their business activities or business relationships of the business enterprises.<sup>29</sup>

If the International Instrument comes into force, the parties will be states, not business enterprises,<sup>30</sup> and the states will be required to enact binding legislative acts on this issue in their domestic law.<sup>31</sup> It is unclear to what extent which states will want to accept and ratify such an agreement/convention. If adopted, UN Member States will be expected to transpose the commitments and obligations in the Instrument. It can be said that it will take time for the contracting states to review their domestic laws and draft acts in line with the provisions of the Instrument, and since states are given a certain discretion regarding the drafting of such acts, there seems to be a high risk of failing to ensure the uniformity and effectiveness of their implementation, especially if a framework not including a monitoring and complaint mechanism is adopted.

### 2.1.3. Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises

The Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises (OECD Guidelines) include non-binding recommendations addressed by governments to multinational enterprises operating in or from adhering countries.<sup>32</sup> The OECD Guidelines were first published in 1976, followed by various versions. The 2011 revision of the OECD Guidelines includes a human rights chapter, among other revisions. In line with the Guiding Principles, this chapter reiterates states' duty to protect human rights and the responsibility of enterprises to respect human rights and adopts a new, comprehensive approach to human rights due diligence and responsible supply chain management.<sup>33</sup>

The OECD Guidelines also require adhering countries to set up National Contact Points (NCPs) to ensure that the Guidelines are implemented at the local level and the complaints can be made if the Guidelines are violated by enterprises.<sup>34</sup> NCPs have two main functions: 1) to promote the Guidelines among relevant stakeholders and across government agencies, and handle enquiries, and 2) to resolve cases relating to non-observance of the Guidelines.<sup>35</sup>

The updated version of the OECD Guidelines was published in June 2023.<sup>36</sup> Including provisions that may go beyond the scope of the Corporate Sustainability Directive, the updated version covers all multinational enterprises regardless of scale and sector and provides for a comprehensive human rights due diligence. The updated OECD Guidelines provide details on the due diligence obligations expected from enterprises. To this end, it is stated that, adopting a similar approach to other human rights due diligence frameworks such as the Corporate Sustainability Directive, human rights due diligence should be carried out in proportion to the severity of adverse impacts on human rights and the likelihood of their occurrence. Where it is not possible to address all identified impacts simultaneously, enterprises should prioritize the order of action according to the severity and likelihood of the adverse impact. Where enterprises do not cause or directly contribute to an adverse impact, but are directly linked to those impacts through business relationships, enterprises are recommended to use their influence on business partners that cause an adverse impact in order to prevent,

27 Ibid.

28 Ibid.

29 Ibid., Article 8.

30 Tarman, Zeynep, D., Business and Human Rights: Mandatory Human Rights Due Diligence Obligations (İş Dünyası ve İnsan Hakları: Zorunlu İnsan Hakları Durum Tespit Yükümlülükleri), (20.10.2022), p.1197, <https://dergipark.org.tr/tr/download/article-file/2287536>.

31 Ibid., p. 1198.

32 OECD, Guidelines for Multinational Enterprises, (2011), <https://www.oecd.org/daf/inv/mne/48004323.pdf>.

33 Ibid., p.4.

34 Ibid., p. 68.

35 OECD, Annual Report on the OECD Guidelines for Multinational Enterprises 2020 Update on National Contact Point Activity, (2021), p.3, <http://mneguidelines.oecd.org/specificinstances.htm>.

36 OECD, Guidelines for Multinational Enterprises on Responsible Business Conduct, (2023), <https://www.oecd-ilibrary.org/docserver/81f92357-en.pdf?expires=1711429352&id=id&accname=guest&checksum=58F619F0D8B7A27533FD91A1227E49D6>.

mitigate or redress such impact. In the updated OECD Guidelines, the intensity of human rights due diligence is increased for vulnerable groups and a detailed assessment of high-risk impacts is provided for. Regarding climate change and environmental impacts, the updated OECD Guidelines expect enterprises to conduct due diligence to determine potential and current environmental impacts. The updated OECD Guidelines include additional recommendations regarding NCPs. However, the significantly optional nature of the updates related to NCPs led to criticism that the effectiveness of NCPs has not been ensured.<sup>37</sup>

## 2.1.4. Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy

Adopted by the International Labour Organization (ILO) in 1977, the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (ILO Declaration) is a global instrument jointly developed and adopted by governments, employers and workers around the world. The principles set out in the ILO Declaration provide guidance to multinational enterprises, governments, employers' and workers' organizations in areas such as employment, education, working and living conditions, and industrial relations.<sup>38</sup>

The latest amendment of 2017 to the ILO Declaration adopted in 1977 refers to the Guiding Principles and addresses issues such as social security, forced labour, the transition from the informal to the formal economy, remuneration, due diligence processes, grievance mechanisms and access to compensation for victims of business-related human rights abuses.<sup>39</sup> To this end, it is stated that enterprises should carry out due diligence to identify, prevent, mitigate and account for how they address their actual and potential adverse impacts that relate to internationally recognized human rights at a minimum.<sup>40</sup> In this context, responsibilities of businesses are regulated to prevent or mitigate adverse human rights impacts that are directly linked to their activities, products or services through their business relationships, even if they do not contribute to it.<sup>41</sup>

## 2.1.5. Developments at the Level of the Council of Europe

The Committee of Ministers of the Council of Europe published a declaration in 2014 on encouraging Member States to implement the Guiding Principles.<sup>42</sup> In this context, regarding the Guiding Principles, the Declaration expects Member States to:

- i. Take appropriate steps to protect against human rights abuses by business enterprises,
- ii. Formulate and implement policies and measures to promote that all business enterprises respect human rights throughout their operations, within and beyond their national jurisdictions,
- iii. Take appropriate steps to ensure that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy, and
- iv. develop national action plans on the implementation of the UN Guiding Principles.<sup>43</sup>

In 2016, the Committee of Ministers of the Council of Europe published a recommendation to Member States regarding the BHR.<sup>44</sup> This Recommendation aims to promote the effective implementation of the Guiding Principles and provide guidance to this end. The Recommendation recalls the duty of Member States to protect individuals against human rights abuses by third parties and explains in detail various actions to ensure that enterprises respect human rights. The Recommendation also addresses access to both judicial and non-judicial remedies for victims of human rights abuses associated with businesses and highlights additional protection measures for specific groups such as workers, children, indigenous peoples and human rights defenders.<sup>45</sup>

37 Business & Human Rights Resource Centre, What's New?: 'Targeted Update' strengthens OECD Guidelines for Multinational Enterprises, (8.06.2023), <https://www.business-humanrights.org/en/blog/whats-new-targeted-update-strengthens-oecd-guidelines-for-multinational-enterprises/>.

38 ILO, Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, General Policies, para. 10, [https://www.ilo.org/wcms-sp5/groups/public/---ed\\_emp/---emp\\_ent/---multi/documents/publication/wcms\\_094386.pdf](https://www.ilo.org/wcms-sp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf).

39 ILO, the Governing Body of the International Labour Office approved the Declaration at its 204th Session (Geneva November 1977) and subsequently amended it at its 279th Session (November 2000), 295th Session (March 2006) and 329th Session (March 2017). [https://www.ilo.org/wcms-sp5/groups/public/---ed\\_emp/---emp\\_ent/---multi/documents/publication/wcms\\_094386.pdf](https://www.ilo.org/wcms-sp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf).

40 ILO, Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, General Policies, para. 10, [https://www.ilo.org/wcms-sp5/groups/public/---ed\\_emp/---emp\\_ent/---multi/documents/publication/wcms\\_094386.pdf](https://www.ilo.org/wcms-sp5/groups/public/---ed_emp/---emp_ent/---multi/documents/publication/wcms_094386.pdf).

41 Ibid.

42 Council of Europe, Declaration of the Committee of Ministers on the UN Guiding Principles on business and human rights, (16.04.2014), [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016805c6ee3](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805c6ee3).

43 Ibid.

44 Recommendation CM/Rec(2016)3 of the Committee of Ministers to Member States on human rights and business (adopted by the Committee of Ministers at its 1249th meeting of Deputy Ministers on 2 March 2016), <https://rm.coe.int/human-rights-and-business-recommendation-cm-rec-2016-3-of-the-committee/16806f2032>.

45 Ibid.

Business and human rights - A handbook for legal practitioners<sup>46</sup> (BHR Handbook), published in 2019, discusses how enterprises impact human rights and the current legislative acts at international and European levels for the management of these impacts, as well as the positive contributions and possible human rights abuses of enterprises, the measures taken to prevent and compensate for such abuses, and the current legal basis on this issue. Designed as a handbook, the document is intended to serve as a resource for legal practitioners, and others, across government, business, civil society, the media and in independent bodies, such as ombudsmen and national human rights institutions. The BHR Handbook mainly focuses on instruments valid in all Member States of the Council of Europe, including international and other European regional standards

## 2.1.6. Developments at the EU Level

The EU is a pioneer in encouraging enterprises to implement human rights and sustainability standards. As an extension of this role, the EU adopts various mandatory and voluntary legislative acts addressing human rights and environmental impacts in the EU, in parallel with the framework drawn by human rights due diligence in accordance with global acts, and introduces obligations to identify and reduce human rights impacts arising from the activities of enterprises. The 2020-24 Action Plan on Human Rights and Democracy prioritizes strengthening the EU's global leadership in the field of BHR, especially increasing the coordination and consistency of EU actions.<sup>47</sup>

### 2.1.6.1. Proposal for Regulation on the Prohibition of Products Made with Forced Labour on the EU Market

The Proposal for Regulation on the Prohibition of Products Made with Forced Labour on the EU Market<sup>48</sup> proposed on 14 September 2022 (Proposal for Regulation on the Prohibition of Products Made with Forced Labour) prohibits the entry into the EU market of products made with forced labour and their export from EU Member States. The Proposal covers products made within the EU and exported from and imported to the EU. The Proposal's diversity regarding products also applies to enterprises and sectors, and the Proposal introduces no threshold or sector restrictions. In accordance with the Proposal for Regulation on the Prohibition of Products Made with Forced Labour, national authorities have the authority to withdraw products made with forced labour from the EU market after examination, and it is provided for that customs authorities will also have the authority to identify and stop products made with forced labour at EU borders.<sup>49</sup> The European Parliament has presented its position regarding the Proposal, and the tripartite negotiation process will begin following the approval of the Council of the European Union.<sup>50</sup>

### 2.1.6.2. Non-Financial Reporting Directive

Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups<sup>51</sup> (Non-Financial Reporting Directive), adopted in 2014, requires undertakings with more than 500 employees to publish information on non-financial matters, including the principal risks related to adverse human rights and environmental impacts directly linked to the undertaking's operations including, where relevant and proportionate, its business relationships, products or services, and how the undertaking manages those risks. While imposing a reporting obligation on undertakings, the Non-Financial Reporting Directive includes a "comply or explain" mechanism which gives undertakings the option of not reporting by explaining why they are not reporting.

46 Methven O'Brien, C., Business and human rights - A handbook for legal practitioners, Council of Europe, (2019), <https://edoc.coe.int/en/fundamental-freedoms/7785-business-and-human-rights-a-handbook-for-legal-practitioners.html#>.

47 European External Action, the Diplomatic Service of the European Union, Business and Human Rights, (28.09.2021), [https://www.eeas.europa.eu/eeas/business-and-human-rights\\_en](https://www.eeas.europa.eu/eeas/business-and-human-rights_en).

48 European Commission, Proposal for a Regulation of the European Parliament and of the Council on prohibiting products made with forced labour on the Union market, (14.09.2022), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52022PC0453>.

49 Ibid.

50 European Parliament, Proposal for a ban on goods made using forced labour, (11.2023), [https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/739356/EPRS\\_BRI\(2023\)739356\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/739356/EPRS_BRI(2023)739356_EN.pdf).

51 European Parliament and Council, 460 Directive 2014/95/EU, (22.10.2014)

### 2.1.6.3. Corporate Sustainability Reporting Directive

Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting<sup>52</sup> (Sustainability Reporting Directive), entering into force in January 2023, expands the scope of existing non-financial reporting requirements for EU undertakings, including publicly-listed companies and small and medium-sized enterprises.<sup>53</sup> Requiring the reporting of environmental performance as well as social and governance metrics, including employee health, human rights, and the anti-bribery and anti-corruption, the Sustainability Reporting Directive covers more companies than the Non-Financial Reporting Directive and sets out the reporting obligations expected from undertakings in detail. The Sustainability Reporting Directive provides deterrent sanctions compared to the “comply or explain” principle laid down by the Non-Financial Reporting Directive, and requires reporting to be publicly available, as well as independent auditing for undertakings.

The Sustainability Reporting Directive is mandatory for large<sup>54</sup> EU undertakings and companies listed on EU regulated markets, including EU subsidiaries of non-EU parent companies and small and medium-sized businesses, requires undertakings to report on sustainability matters regarding various environmental and social issues and how they will address risks associated with environmental and social issues.<sup>55</sup>

In accordance with the Sustainability Reporting Directive, which will be gradually implemented starting from 2024 in accordance with the domestic laws of Member States, undertakings subject to the Non-Financial Reporting Directive will start making mandatory reporting for the 2025 reporting year as of January 2024. As of January 2025, the reporting obligation of other undertakings that are not subject to the Non-Financial Reporting Directive will begin. Obligations for small and medium-sized enterprises will come into force as of January 2026, and for undertakings in non-EU countries as of January 2028. In accordance with the Sustainability Reporting Directive, which comes into force gradually, the rules introduced by the Non-Financial Reporting Directive will be gradually repealed.

### 2.1.6.4. Conflict Minerals Regulation

Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas<sup>56</sup> (Conflict Minerals Regulation), entering into force in 2021, subjects certain EU importers to comply with and report on supply chain due diligence obligations of products of tin, tantalum, tungsten and gold originating from conflict-affected and high-risk areas.<sup>57</sup> The companies covered by this Regulation must comply with the OECD Due Diligence Guidance for Responsible Supply Chains:<sup>58</sup>

1. Establishing internal management systems to support supply chain due diligence,
2. Identifying and assessing actual and potential risks in their supply chain,
3. Responding to the identified risks,
4. Conducting independent third-party audits, and
5. Reporting on supply chain due diligence policies and practices.<sup>59</sup>

Member States must appoint competent authorities to carry out inspections to check whether companies comply with their obligations.<sup>60</sup>

52 <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32022L2464>

53

54 The Sustainability Reporting Directive applies in particular to undertakings with total assets of more than EUR 20 million, a net turnover of EUR 40 million and/or more than 250 employees. These undertakings are referred to as ‘large undertakings’ under the Sustainability Reporting Directive and include both undertakings in the EU and EU subsidiaries of non-EU undertakings. The Sustainability reporting is also mandatory for third-country undertakings which generate a net turnover of more than EUR 150 million in the Union and which have a subsidiary undertaking or a branch on the territory of the Union.

55 European Parliament and Council, Directive as regards corporate sustainability reporting, (16.11.2022), <https://data.consilium.europa.eu/doc/document/PE-35-2022-INIT/en/pdf>.

56 Official Journal of the European Union, L 130, (19.05.2017), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L:2017:130:TOC>.

57 Regulation (EU) 2017/821 of the European Parliament and of the Council lays down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten and their ores and gold originating from conflict-affected and high-risk areas (EU Conflict Minerals Regulation), (17.05.2017).

58 OECD, OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Third Edition. (2016), <https://www.oecd.org/daf/inv/mne/OECD-Due-Diligence-Guidance-Minerals-Edition3.pdf>.

59 EU Conflict Minerals Regulation, Articles 4 to 7.

60 Ibid., Article 11.

## 2.1.6.5. Deforestation Regulation

Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010<sup>61</sup> (Deforestation Regulation), entering into force in June 2023, requires extensive value chain due diligence for all businesses dealing with products derived from certain products.<sup>62</sup> The Regulation applies to all operators, including EU companies and non-EU companies, who place relevant products on the market, regardless of their legal structure and size.<sup>63</sup>

In accordance with the Deforestation Regulation, which requires certain commodities and certain products made from these commodities<sup>64</sup> to be 'deforestation-free' in order to be sold on the EU market or exported from the EU, a due diligence statement must be issued stating that the relevant products do not cause deforestation and/or forest degradation.<sup>65</sup> To ensure that products do not come from land that has been deforested or subjected to forest degradation, operators are required to collect detailed information showing that products comply with the Deforestation Regulation, conduct a risk assessment in relation to each product to identify risks and mitigate risks by conducting independent surveys/audits or working with suppliers through capacity building and investments.<sup>66</sup> Criteria to be considered during risk assessment also include concerns about human rights violations and risks in conflict-affected areas.<sup>67</sup>

## 2.1.6.6. Corporate Sustainability Due Diligence Directive

In March 2021, the European Parliament adopted Resolution 2020/2129, which provides recommendations to the European Commission on corporate due diligence and corporate accountability and includes an annex on requests for the preparation of a Corporate Sustainability Due Diligence Directive<sup>68</sup>. Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859<sup>69</sup> adopted by the Council and published in the Official Journal of the EU. Directive is an important legal development in terms of corporate accountability and enabling access to redress for communities affected by company activities.

Referring to international standards such as the Guiding Principles, OECD Guidelines and the ILO Declaration, the Directive provides for human rights due diligence obligations for companies operating in the EU internal market. The Directive also covers companies of a certain size as well as all publicly-listed small and medium-sized companies and 'high-risk' small and medium-sized companies, and includes a legal liability system, which should be implemented by Member States, regarding adverse human rights and environmental impacts and good governance issues. To this end, Member States are required to transpose the necessary provisions within two years.

The Directive covers the following within the specified scale:

- 1) EU companies and parent companies over 500 employees and a worldwide turnover higher than 150 million euro,
- 2) companies with over 250 employees and with a turnover of more than 40 million euro if at least 20 million are generated in one of the following sectors: manufacture and wholesale trade of textiles, clothing and footwear, agriculture including forestry and fisheries, manufacture of food and trade of raw agricultural materials, extraction and wholesale trade of mineral resources or manufacture of related products and construction, and

61 Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010, (31.05.2023), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32023R1115&qid=1687867231461>.

62 Council of the EU, Council adopts new rules to cut deforestation worldwide, (16.05.2023), [https://www.consilium.europa.eu/en/press/press-releases/2023/05/16/council-adopts-new-rules-to-cut-deforestation-worldwide/?utm\\_source=dsms-auto&utm\\_medium=email&utm\\_campaign=Council+adopts+new+rules+to+cut+deforestation+worldwide](https://www.consilium.europa.eu/en/press/press-releases/2023/05/16/council-adopts-new-rules-to-cut-deforestation-worldwide/?utm_source=dsms-auto&utm_medium=email&utm_campaign=Council+adopts+new+rules+to+cut+deforestation+worldwide).

63 In accordance with the Regulation, 'operator' means any natural or legal person who, in the course of a commercial activity, places relevant products on the market or exports them.

64 Commodities such as cattle, cocoa, coffee, oil palm, rubber, soya and wood set out in Article 3 of the Regulation.

65 Article 4

66 Article 8

67 Article 10

68 European Parliament resolution of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability (2020/2129(INL)) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52021P0073&qid=1720527207071>

69 Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859Text with EEA relevance. <https://eur-lex.europa.eu/eli/dir/2024/1760/oj>

- 3) non-EU companies and parent companies with a turnover in the EU equivalent to the turnover stated in Group 1 and Group 2.<sup>70</sup>

The Directive also requires companies to identify, assess, prevent, mitigate, bring to an end to and remedy their negative impact and that of their upstream and downstream partners, including production, supply, transport and storage, design and distribution on people and the planet.<sup>71</sup> Directive also aims to change the perspectives of companies on the subject and requires that companies ensure the integrity of their company policies and risk management systems, including their approaches, processes and explanations of the rules of conduct, under the name of 'due diligence'.<sup>72</sup>

The Directive, which covers companies of many sizes and sectors, is also subject to many criticisms from the opposing perspective since there are opinions, especially from civil society, that it is less comprehensive than anticipated and does not include the expected 'transformative change'.<sup>73</sup> One of the main reasons for these opinions is the exclusion of the financial sector, which holds approximately 80% of the financial assets of the private sector in the EU.<sup>74</sup> This is described as a significant shortcoming that will hinder progress towards sustainable economies and responsible investment practices.<sup>75</sup> Although the Directive is a step forward in the fight against climate change by requiring companies to develop climate transition plans that include clear reduction targets, from an environmental perspective, it does not include any emission reduction obligations or responsibilities.<sup>76</sup>

The Directive introduces various methods to monitor the implementation of agreed provisions. The Directive requires Member States to designate a supervisory authority to monitor whether firms comply with these obligations. The designated supervisory authority will be assigned to exchange best practices and cooperate with the European Network of Supervisory Authorities established by the European Commission, in order to promote coordinated learning. Similar to the sanction laid down by the French Corporate Duty of Vigilance Act, the Directive regulates that companies will be liable for breaching their due diligence obligations and their victims will have the right to be compensated for damages in accordance with private law (tort) liability.<sup>77</sup> On the opposite side of sanctions, it is regulated that compliance with the Directive is also considered a positive factor in public and concession contracts, both as an incentive and reward.

## 2.2. National Acts

In recent years, there has been an increase in laws and legislative initiatives aimed at regulating responsible business conduct and the liability of companies for human rights violations, especially among EU Member States and some G7 Member States. Some of these initiatives include introducing reporting obligations on certain human rights, such as modern slavery, forced labour and human trafficking, and aim to raise awareness among the public, employees, consumers and investors. The United Kingdom Modern Slavery Act<sup>78</sup> and the Australian Modern Slavery Act<sup>79</sup> are among the most important of such initiatives. Moreover, more recent examples of legislation go beyond reporting obligations to impose due diligence obligations on companies on human rights and environmental issues and provide for specific consequences if due diligence obligations are breached. France was a pioneer with the French Duty of Vigilance Law, which came into force in 2017. This was followed by the German Supply Chain Law, which came into force in January 2023, laying down detailed human rights due diligence obligations and establishing a competent public authority responsible for the implementation and

70 Ibid.

71 News: European Parliament, Corporate due diligence rules agreed to safeguard human rights and environment, (14.12.2023), <https://www.europarl.europa.eu/news/en/press-room/20231205IPR15689/corporate-due-diligence-rules-agreed-to-safeguard-human-rights-and-environment>.

72 European Council, Council of the European Union, Corporate sustainability due diligence: Council and Parliament strike deal to protect environment and human rights, (14.12.2023), <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/>.

73 SOMO, Breakthrough in EU Corporate Sustainability Due Diligence Directive (CSDDD) Negotiations, (14.12.2023), <https://www.somo.nl/breakthrough-in-csddd-negotiations/>.

74 European Coalition for Corporate Justice, PRESS RELEASE CSDDD political deal: A pivotal step but a missed opportunity to embrace transformative change, (14.12.2023), <https://corporatejustice.org/news/press-release-csddd-political-deal-a-pivotal-step-but-a-missed-opportunity-to-embrace-transformative-change/>.

75 Shift, Shift welcomes substantial alignment of the political agreement on the EU Corporate Sustainability Due Diligence Directive with the UNGPs, (14.12.2023), <https://shiftproject.org/shift-statement-eu-csddd/>.

76 ShareAction, The EU falls short: Finance granted free pass on environmental and human rights accountability, (14.12.2023), <https://shareaction.org/news/the-eu-falls-short-finance-granted-free-pass-on-environmental-and-human-rights-accountability>.

77 Ibid.

78 United Kingdom, Modern Slavery Act, (2015), <https://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>.

79 Australia, Modern Slavery Act 2018 (Cth), (2018), <https://www.legislation.gov.au/Details/C2018A00153>.

supervision of these obligations. On the other hand, Switzerland adopted a supply chain law, which entered into force in 2023 and which does not impose general due diligence obligations, but does provide for due diligence obligations regarding conflict minerals and child labour.<sup>80</sup>

In addition to these acts in force, there are the Dutch Child Labour Due Diligence Act<sup>81</sup>, which is not yet in force but limits its scope to due diligence obligations regarding child labour risks, Norwegian Transparency Act<sup>82</sup>, which imposes due diligence obligations on human rights and decent work, and the Proposal for the Belgian Duty of Vigilance Law<sup>83</sup>.

These various legal acts addressing human rights due diligence obligations largely differ in terms of the substantive scope, the scope of human rights due diligence obligations and the sanctions to be applied in case of non-compliance. The EU Corporate Sustainability Directive, expected to come into force in the near future, aims to create uniformity among the acts regarding human rights due diligence in the EU, since the Directive requires Member States to transpose the necessary provisions within two years at the latest. The entry into force of the EU Corporate Sustainability Directive will be decisive in terms of the course of legislative acts in countries that work on human rights due diligence legislation, such as Belgium and Austria, or countries with government commitment to human rights due diligence legislation, such as Finland, Spain and Luxembourg.

Among the acts in force, two stand out as an example of good practice. The French Duty of Vigilance Law provides victims with access to compensatory solutions with its provisions on private law (tort) liability while the German Supply Chain Law provides for detailed human rights due diligence obligations and an institution with monitoring and auditing authority to effectively implement the requirements of the law. The next section offers detailed and comparative explanations of these two laws, which impose specific human rights due diligence obligations for the relevant companies.

## 2.2.1. French Corporate Duty of Vigilance Law

Came into force in 2017, the French Duty of Vigilance Law was the first legislation that introduced a general human rights and environmental due diligence obligation and included a private law liability for victims to compensate for their damages. The law provides for an obligation for companies to identify and mitigate risks to human rights and the environment, and establishes a human rights due diligence obligation for companies in line with the Guiding Principles, establishing a legal liability system for companies in the event of non-compliance with these obligations.<sup>84</sup>

The French Duty of Vigilance Law introduces the requirement to adopt, make available to the public and implement a 'vigilance plan' for any company (i) that at the end of two consecutive financial years employs at least five thousand employees within the company and its direct and indirect subsidiaries, whose head office is located on French territory, or (ii) that has at least ten thousand employees in its service and in its direct or indirect subsidiaries, whose head office is located on French territory or abroad. The vigilance plan required by law must detail the steps the company will take to identify risks and prevent serious impacts on human rights and the environment resulting from the actions of the company or any of its subsidiaries, subcontractors or suppliers, and address the following.<sup>85</sup>

To this end, the French Duty of Vigilance Law requires companies to take measures to identify human rights risks, take actions to mitigate or prevent impacts on human rights, and establish a monitoring mechanism to monitor the effectiveness of the measures implemented.

One of the important issues within the meaning of the French Duty of Vigilance Law is that in addition to their own activities and the activities of their subsidiaries in France or abroad, companies are required to identify human rights and environmental risks that may arise from the activities of their subcontractors and suppliers

80 Switzerland, Ordinance on Due Diligence and Transparency in relation to Minerals and Metals from Conflict-Affected Areas and Child Labour, (Verordnung über Sorgfaltspflichten und Transparenz bezüglich Mineralien und Metallen aus Konfliktgebieten und Kinderarbeit) (VSoTR), (2023), <https://www.fedlex.admin.ch/eli/cc/2021/847/de>.

81 Netherlands, Child Labour Due Diligence Act, (Wet zorgplicht kinderarbeid), <https://zoek.officielebekendmakingen.nl/stb-2019-401.html>.

82 Norway, Transparency Act, (Forbrukertilsynet), (2022), <https://www.regjeringen.no/contentassets/c33c3faf340441faa7388331a735f9d9/transparency-act-english-translation.pdf>.

83 Belgium, Duty of Vigilance Law, (restaurant un devoir de vigilance et un devoir de responsabilité à charge des entreprises tout au long de leurs chaînes de valeur), (2021), <https://institutfederaldroitshumains.be/sites/default/files/2022-05/vers-l-avis-devoir-de-vigilance.pdf>.

84 Kara, Pinar, Tort Liability in Multinational Corporate Groups (Çok Uluslu İşletme Gruplarında Haksız Fiiil Sorumluluğu), p. 279, <https://doi.org/10.1007/978-3-031-29336-8>.

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

with whom they have a permanent business relationship and to take the necessary precautions. The concept of 'continuous business relationship' is a very broad concept and can be considered to include business relationships, contractual or otherwise, that provide a regular, certain volume of business and lead to the expectation that this will continue.<sup>86</sup>

If companies fail to comply with the obligations laid down by the French Duty of Vigilance Law, precautionary measures, including periodic fines, may be applied. The French Duty of Vigilance Law also introduces a provision regarding the private law (tort) liability of companies.<sup>87</sup> In this context, victims who suffer damage related to serious violations of human rights and fundamental freedoms, risks to health and safety and the environment, and serious bodily harm due to the failure of companies to publish or implement a vigilance plan are allowed to file a lawsuit and claim compensation.<sup>88</sup> Thus, it becomes possible for victims to compensate the damages they suffer in addition to the fines paid to the state, which constitutes an effective solution for corporate human rights victims.

With the entry into force of the French Duty of Vigilance Law, the first examples of cases related to non-compliance with human rights due diligence obligations were brought to the French courts and a number of legal proceedings were initiated against companies on various issues such as climate change, local community rights, workers' rights and environmental impacts.<sup>89</sup> The main claim of these cases is that the relevant companies did not fulfil their human rights due diligence obligations regarding the activities of their group companies, supply chains or business partners.

## 2.2.2. German Supply Chain Corporate Due Diligence Act

Following the German Business and Human Rights Action Plan<sup>90</sup> published in line with the Guiding Principles in 2017, Germany launched a survey for German companies with more than 500 employees between 2018 and 2019, and identified insufficient integration of voluntary work to respect human rights into company activities.<sup>91</sup> As a result of the following work on mandatory human rights due diligence law, the German Supply Chain Act was adopted in 2021.

Providing for human rights due diligence obligations in line with the Guiding Principles, the German Supply Chain Act entered into force in January 2023 for enterprises with at least 3,000 employees in Germany, including those assigned abroad, with a head office, administrative headquarters, legal headquarters or branch being established in Germany.<sup>92</sup> In 2024, the Act will be expanded to enterprises with 1,000 employees.<sup>93</sup> As can be seen from the substantive scope of the Act, the scope of the German Supply Chain Act is broader than its French counterpart, covering a large number of companies.

Regulating the human rights due diligence in a similar way to the French Duty of Vigilance Law, the German Supply Chain Act differs from the French Duty of Vigilance Law in introducing more detailed provisions. Moreover, unlike the French Duty of Vigilance Law, a public institution, the Federal Office for Economic Affairs and Export Control (BAFA), is authorized to supervise the implementation of the human rights due diligence under the German Supply Chain Act. BAFA has important powers and duties arising from this Act, such as conducting unannounced audits, seizing and questioning relevant company documents. Giving such audit authority to a government institution under the German Supply Chain Act can be considered a positive step in terms of ensuring compliance with the Act.

Although the German Supply Chain Act addresses human rights risks regarding the human rights due diligence obligation, including the prohibition of child labour, occupational health and safety, forced labour, slavery,

86 Kara, Pinar, Tort Liability in Multinational Corporate Groups (Çok Uluslu İşletme Gruplarında Haksız Fiil Sorumluluğu), p. 281, <https://doi.org/10.1007/978-3-031-29336-8>.

87 Ibid., p. 280.

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

89 Duty of Vigilance Radar, Cases, <https://vigilance-plan.org/court-cases-under-the-duty-of-vigilance-law/>.

90 Federal Republic of Germany, National Action Plan: Implementation of the UN Guiding Principles on Business and Human Rights, <https://global-naps.org/wp-content/uploads/2018/04/germany-national-action-plan-business-and-human-rights.pdf>.

91 European Parliament, Corporate Sustainability Due Diligence: How to integrate human rights and environmental concerns in value chains, [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/729424/EPRS\\_BRI\(2022\)729424\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/729424/EPRS_BRI(2022)729424_EN.pdf).

92 The German Supply Chain Due Diligence Act (Lieferkettensorgfaltspflichtengesetz) (LkSG), Section 1(1) (Scope of Application).

93 Ibid.

unequal treatment in the workplace, as well as human rights obligations and different types of environmental damage, the Act lays down its scope in detail, but is not limited to only the above-mentioned risks.<sup>94</sup>

Companies covered by the German Supply Chain Act are required to make assessments and identify risks regarding human rights violations and environmental damage in their activities in their own business areas as well as in the direct and indirect supply chain.<sup>95</sup> Accordingly, companies are under the obligation to conduct a due diligence parallel to the human rights due diligence discussed in the Guiding Principles.<sup>96</sup>

### 3. Conclusion



In today's world, multinational companies can have economic and social impacts that compete with states and can have positive or adverse effects on human rights. From the perspective of the EU, in relation to institutions, people and every person in the role of consumer, the EU expects companies operating in its internal market to respect human rights standards in their global operations, regardless of whether they are multinational companies or not. In parallel with this expectation, it is believed that in case of human rights abuses, effective solutions should be offered to the victims in order not to make human rights meaningless.<sup>97</sup> Although access to redress is considered a human right under the Guiding Principles, the exercise of this right is often hindered due to the imbalance of power between large-scale corporations and victims of human rights abuses.

The need for preventing adverse impacts on human rights and the environment, especially along global supply chains and as a result of the activities of multinational companies or any company, and for ensuring that states as well as private actors have responsibilities to compensate for any resulting damages, which constitutes the basis of the field of the BHR can be strengthened by the transition from non-binding acts developed based on the Guiding Principles to binding legal rules currently adopted, especially by EU Member States. Thus, by eliminating the existing power imbalance, a major step will be taken towards preventing violations of the rights of rights holders and/or resolving rights grievances resulting from violations.<sup>98</sup>

These acts, which lay down the responsibility of companies to respect human rights and their obligations regarding human rights due diligence, are one of the most important tools for companies to address human rights abuses and environmental risks in their global supply chains. Various EU Member States, especially France, have been pioneers in drawing up such acts and have introduced human rights due diligence obligations in different scopes and contents that businesses are expected to comply with. Although these legal acts generally provide for the human rights due diligence in the light of the Guiding Principles, they differ in matters such as scope, supervision and sanctions.

Although the French Duty of Vigilance Law is criticized for reasons such as the ambiguity of information that the vigilance plan should cover, of the extent to which companies should take action to mitigate risks or prevent serious damage, and of the level of detail required in the vigilance plan, as well as for reasons such as companies facing uncertainty due to lack of guidance on legislation, it is an act that should be taken as a reference in terms of ensuring the legal liability of business enterprises and victims' access to compensatory solutions by directly referring to the provisions of tort liability. In this regard, the most important issue that should be underlined is the need to prepare human rights due diligence acts by establishing the right to resort to private legal remedies, in parallel with the framework established by France, since acts without such legal remedy will not be sufficient to offer victims the level of compensation required.<sup>99</sup>

94 Ibid., Section 2(2) (Definitions).

95 Ibid., Section 2(5) (Definitions).

96 Ibid., Section 3(1) (Due Diligence Obligations).

97 European Law Institute, Business and Human Rights: Access to Justice and Effective Remedies (with input from the EU Agency for Fundamental Rights, FRA), (2022), [https://www.europeanlawinstitute.eu/fileadmin/user\\_upload/p\\_eli/Publications/ELI\\_Report\\_on\\_Business\\_and\\_Human\\_Rights.pdf](https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI_Report_on_Business_and_Human_Rights.pdf).

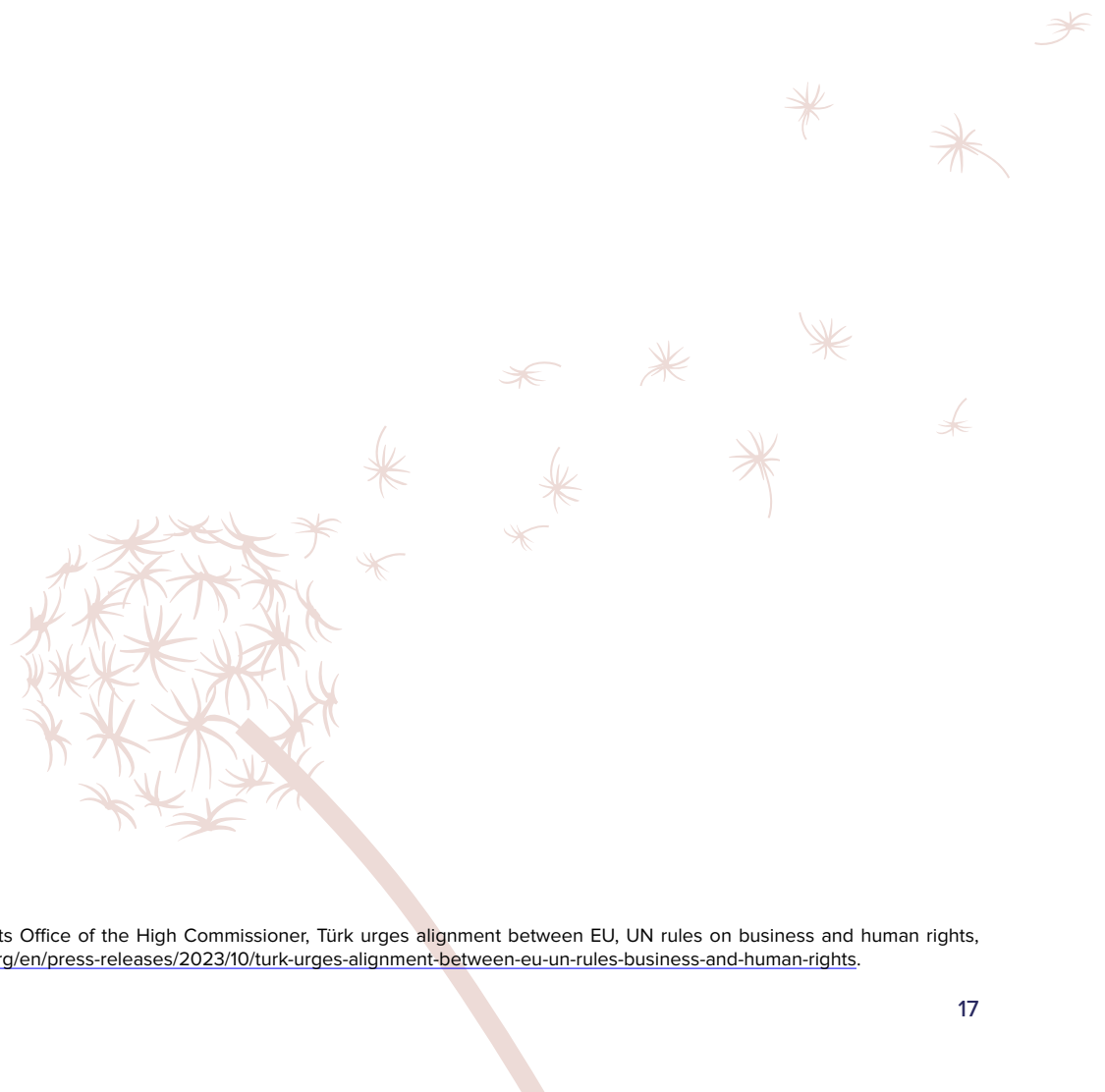
98 European Union Agency for Fundamental Rights, Business and Human Rights - Access to Remedy, (2020), [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2020-business-human-rights\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-business-human-rights_en.pdf).

99 European Law Institute, Business and Human Rights: Access to Justice and Effective Remedies (with input from the EU Agency for Fundamental Rights, FRA), (2022), [https://www.europeanlawinstitute.eu/fileadmin/user\\_upload/p\\_eli/Publications/ELI\\_Report\\_on\\_Business\\_and\\_Human\\_Rights.pdf](https://www.europeanlawinstitute.eu/fileadmin/user_upload/p_eli/Publications/ELI_Report_on_Business_and_Human_Rights.pdf).

The detailed provisions laid down in the German Supply Chain Act constitute a good example in terms of human rights due diligence legal acts. Although the establishment of a body with monitoring and inspection authority, as in the German Supply Chain Law, can be considered a positive step, it will be important how the investigation regarding the complaints is carried out in practice. The legal process under the French Duty of Vigilance Law and the administrative investigation process under the German Supply Chain Act can be compared only after the lawsuits filed and investigations carried out regarding these laws are concluded. Although it is not yet clear how the differences between the two laws will be reflected to the implementation, it is necessary to enable victims to access private law liability/tort solutions in case the decisions of the bodies that will be granted the authority to monitor and supervise by any future legal act are insufficient to compensate the damages suffered by the victims.

In any case, the national laws of the EU Member States will need to be amended in line with the provisions of the EU Corporate Sustainability Directive. Therefore, the differences that currently exist between the French Duty of Vigilance Law and the German Supply Chain Act will have to be largely eliminated. In October 2023, the UN High Commissioner for Human Rights emphasized the importance of intertextual harmony, underlining that the EU is about to finalize a new draft law covering the human rights obligations of companies, and that this Directive should comply with the UN's international standards on business and human rights.<sup>100</sup> Thus, uniform rules will be laid down within the EU for both companies and human rights victims, which will ensure significant convenience and efficiency in practice.

In conclusion, it is very important that the legal acts that are in effect and/or will be put into effect do not just serve as a 'checkbox' and that in line with their purpose of existence, such acts are used to ensure that companies effectively deal with and prevent human rights and environmental rights abuses and compensate for possible rights grievances.



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100 United Nations Human Rights Office of the High Commissioner, Türk urges alignment between EU, UN rules on business and human rights, (27.10.2023), <https://www.ohchr.org/en/press-releases/2023/10/turk-urges-alignment-between-eu-un-rules-business-and-human-rights>.

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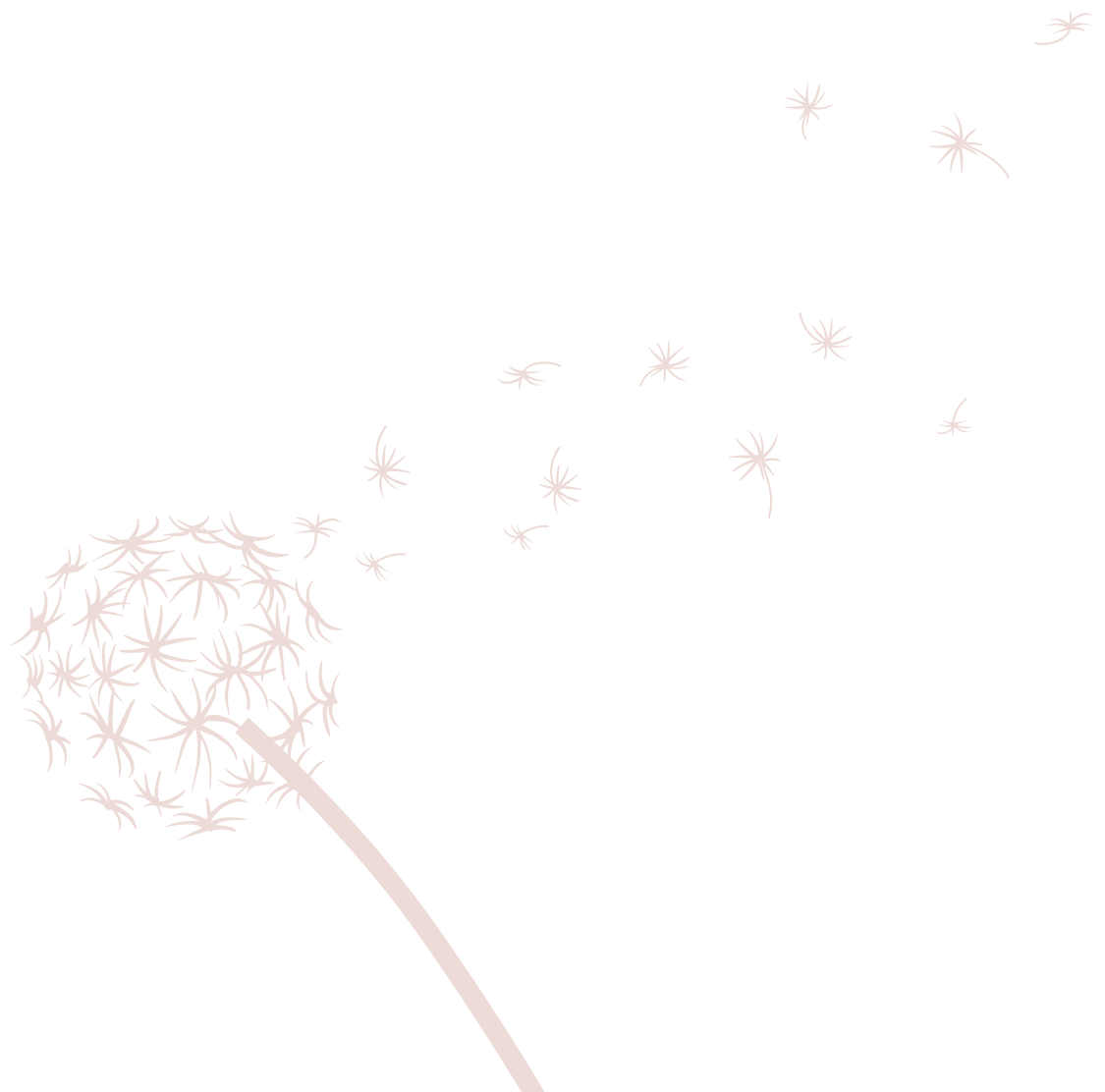
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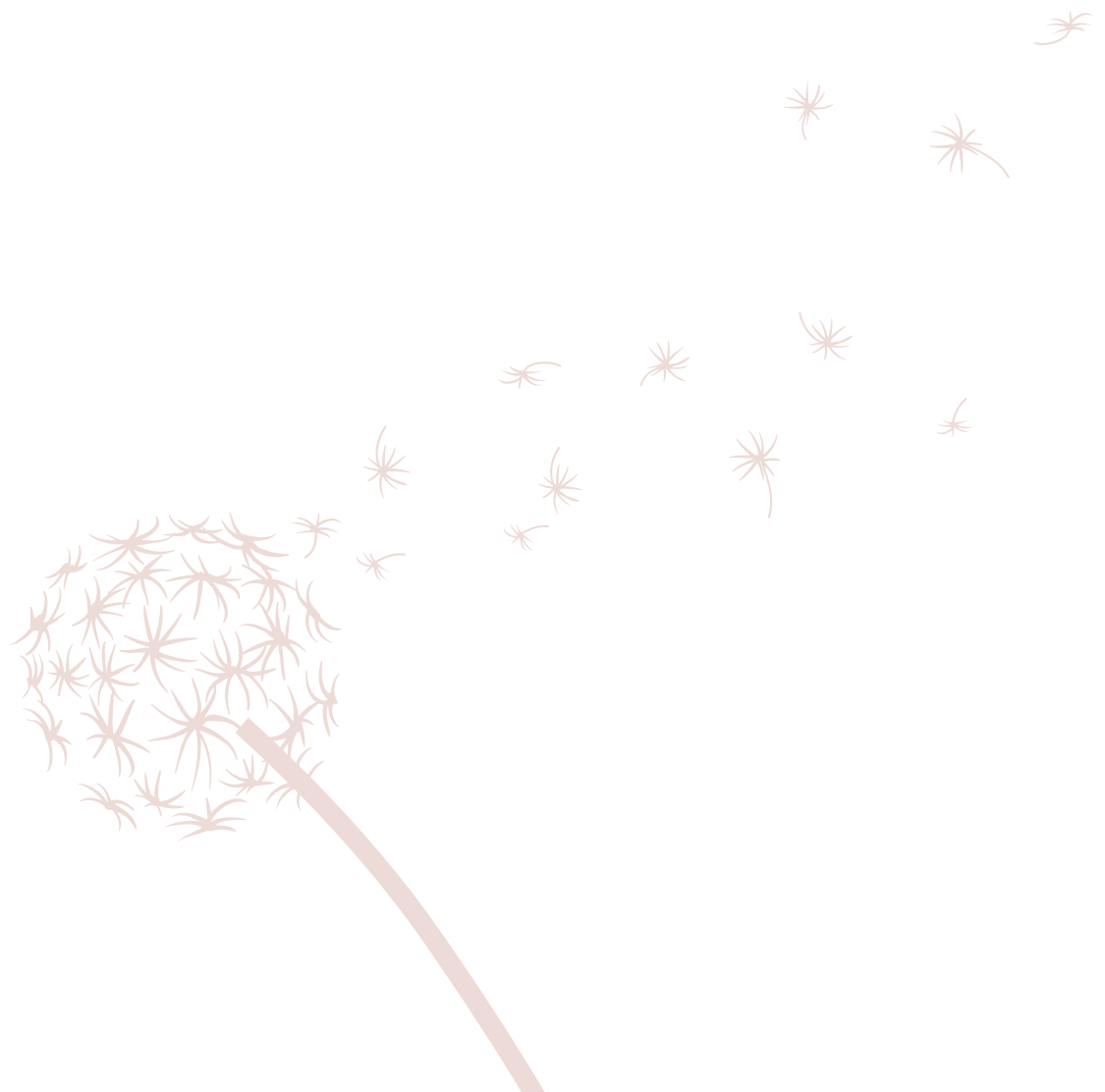
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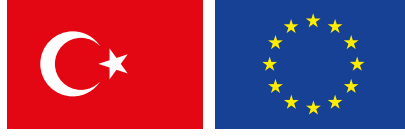
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## Technical Assistance for Strengthening Fundamental Rights Sector Coordination

