

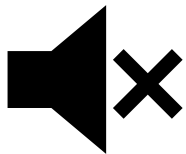


**HUMAN RIGHTS DUE DILIGENCE -
CHANGING LEGISLATION AND
EXPECTATIONS**

July 2021



HOUSEKEEPING



Competition Law Statement: Today we are meeting to discuss gender, diversity and inclusion in food businesses and supply chains.

We take competition compliance seriously. Whilst discussions can cover matters of interest to our industry, we cannot discuss or exchange sensitive commercial information.

If at any time during this meeting, you think our discussions may be in breach of competition rules, please inform the Chair. The Chair may close the meeting at any time if they believe that discussions are in breach of competition law.

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AGENDA

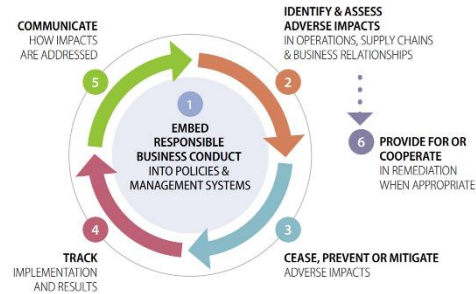
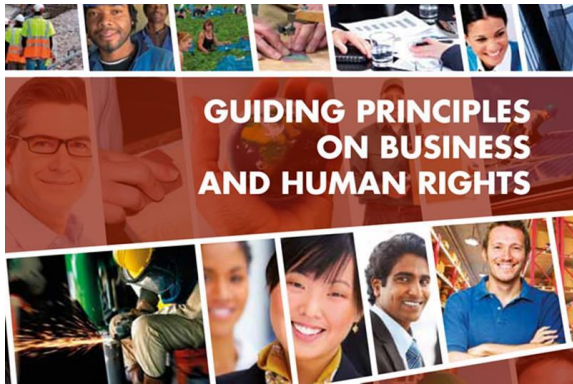
What is human rights due diligence?

How are legal requirements changing?

What expectations are there of business?

Q&A

I. WHAT IS HUMAN RIGHTS DUE DILIGENCE?



DEFINITIONS: HRDD

- Human rights due diligence (HRDD) defined by the Ethical Trading Initiative as “**the action taken by a company to both identify and act upon actual and potential risks for workers in its operations, supply chains and the services it uses**”
- Concept comes primarily from the **United Nations Guiding Principles on Business and Human Rights (UNGPs)**, set of guidelines launched in 2011 for countries and companies to prevent, address and remedy human rights abuses committed in business operations,
- Also, growing legislative requirements, investor and customer expectations.
- Human rights due diligence is about more than compliance – **WHAT human rights** your company is responsible for, **HOW you identify and manage** your human rights impacts **and HOW you address adverse human rights impacts. Remedy is separate but linked.**

The three pillars of the UN Guiding Principles



EVOLUTION OF HRDD

Legislation & International “documents”



The California Transparency in Supply Chains Act



LE DEVOIR DE VIGILANCE POUR LES MULTINATIONALES

Australian Modern Slavery Law

Dutch Child Labour Law

US Department of Homeland Security – new strategy and increased use of Withhold Release Orders

Qatar – end of kafala system

EU Mandatory HR Due Diligence Legislation

Norwegian Modern Slavery Law

German Supply Chain Law

Canadian Modern Slavery Law

New Zealand MS Act

1950

2000

2011

2015

2018

2020

2021

Guidelines and frameworks

The three pillars of the UN Guiding Principles



Benchmarks



Organisations



QUESTIONS



II. HOW ARE LEGAL REQUIREMENTS CHANGING?



Procedure: [2020/2129\(INL\)](#)
 Document selected: [A9-0018/2021](#)

Debate: [PV 08/03/2021 - 22](#) [CRE 08/03/2021 - 22](#)
 Vote: [PV 09/03/2021 - 17](#) [PV 10/03/2021 - 14](#)

Texts adopted: [P9_TA\(2021\)0073](#)

Document stages in plenary

2016 II Commercial Code

Texts adopted 20K 104K
 Wednesday, 10 March 2021 - Brussels
 Corporate due diligence and corporate accountability [P9_TA\(2021\)0073](#) [A9-0018/2021](#)

- Resolution
- Annex

European Parliament resolution of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability (2020/2129(INL))

The European Parliament,

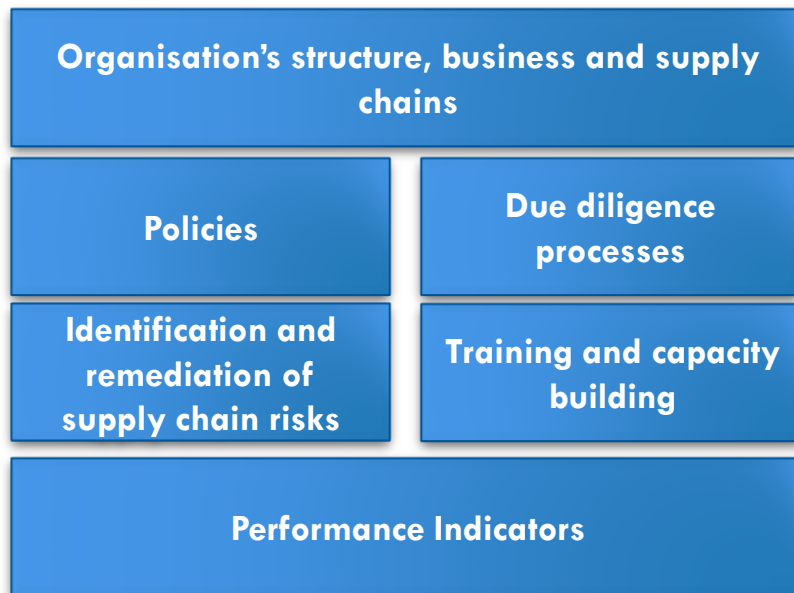
- having regard to Article 225 of the Treaty on the Functioning of the European Union,
- having regard to the Charter of Fundamental Rights of the European Union (‘the Charter’),
- having regard to Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market⁽¹⁾ (‘the Timber Regulation’),
- having regard to Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/909/EEC and 83/349/EEC⁽²⁾ (‘the Accounting Directive’),
- having regard to 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⁽³⁾ (‘the Non-Financial Reporting Directive’),
- having regard to the 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⁽⁴⁾ (‘the Conflict Minerals Regulation’),



UK: MODERN SLAVERY ACT - LEGISLATION

- Every commercial organisation which supplies goods or services, and has a **total annual turnover of not less than £36 million must produce a statement** of the **steps the organisation has taken to ensure that slavery and human trafficking** is not taking place
 - i. in any of its **supply chains**, and
 - ii. in any part of its **own business**, or
- Publicly stated on its website with a link to the statement in a prominent place on the homepage
- Approved by the board of directors (or equivalent management body) and signed by a director (or equivalent)

Modern Slavery Act (Section 54) states that an organisation's statement must include information about:



UK: MODERN SLAVERY ACT - AMENDMENTS

New requirements (September 2020):

- **Mandating** the areas that statements must cover
- **Mandating** that organisations publish statements on a Government run reporting service
- Introduction of **single reporting deadline of 30th September** and **period April-March**
- Require modern slavery statements to state the **date of Board (or equivalent) approval** and **Director (or equivalent) sign off**
- **Section 54 extended to cover public bodies.**
- **Penalties for non-submission remain under review**

Private members bill introduced to House of Lords in June 2021. **Must go through Lords and Commons.**
Progress as yet undetermined. Would create:

- **New offence** - criminal offense to supply a **false modern slavery & human trafficking statement**
- **New offence** - for company to **continue to source from suppliers/ sub-suppliers that fail to demonstrate “minimum standards of transparency“** after having been issued formal warning by independent Anti-Slavery Commissioner
- **New requirements for disclosure – publishing and verifying** information about country of origin of sourcing inputs, arranging for **credible external inspections** and spot checks & reporting on use of employment agents acting on behalf of overseas governments

FRENCH DUTY OF VIGILANCE LAW — *BROADER SCOPE*

- Establishes legally binding obligation for parent companies to identify and prevent **adverse human rights and environmental impacts** resulting from own activities, from activities of companies they control, and from activities of their subcontractors and suppliers, with whom they have an established commercial relationship
- Only applies to largest companies established in France (100-200) with >5,000 employees in own operations in France or >10,000 employees in own operations in France and abroad
- Companies covered by the law must establish, publish and implement a vigilance plan which must include: **mapping** that identifies, analyses and ranks risks, **procedures** to assess subsidiaries, subcontractors or suppliers, **actions** to mitigate risks or prevent serious violations, **alert** mechanisms to collect potential or actual risks in partnership with trade unions and a monitoring scheme
- French companies can be obliged to meet requirements of law if they do not do so. Law also states that in the event of a breach of the obligations laid down in Article 1 when harm occurs, the company can be held liable, and will have to compensate for the harm that proper fulfilment of the obligations – however burden of proof lies with claimants

GERMAN SUPPLY CHAIN LAW – *MORE TEETH*

- The “**Act on Corporate Due Diligence in Supply Chains**” will enter into force in 2023. Applies to companies with registered office or principal place of business in Germany, as well as to foreign companies that have a branch office in Germany.
- From 2023 covers companies with 3,000 or + employees. From 2024, with 1,000 or + employees
- Companies must establish a risk management system (annual, comprehensive risk analysis), appoint business Human Rights Officer, establish complaints procedure, keep records of compliance for 7 years, report externally each year
- Companies must **identify** risks of human rights violations and environmental destruction at direct suppliers and, *if necessary*, also at indirect suppliers.
- **Must take countermeasures (remedy) & document** them to the Federal Office for Economic Affairs and Export Control (BAFA), **which can issue fines if companies violate due diligence obligations of up to EUR 8,000,000 or in certain cases 2% of annual turnover & up to 3 years’ exclusion from public contracts if certain level of fine imposed.**
- Affected parties can demand BAFA takes action. **In the future, affected parties can authorize NGOs & Tus to raise claims on behalf before German courts**
- Works councils will be entitled to info and consultation on issues of supply chain due diligence
- **Criticisms** - legislation does **NOT** sufficiently cover indirect suppliers, create civil law action holding companies liable and covers too few companies.

EU MANDATORY HR DD LEGISLATION - BACKGROUND

- European Commission currently preparing proposal for a **European Directive on Sustainable Corporate Governance**
- Aim is to introduce new rules incorporating sustainability into long-term business strategies – expected to be published later this year
- European Parliament supports European Commissions' initiative – EP voted in March 2021 by large majority for a resolution **requesting that the European Commission (Commission) submit without undue delay a legislative proposal on mandatory supply chain due diligence, to be based upon a proposed directive (Directive) annexed to the Parliament resolution**
- The key aim of the Directive, according to Article 1, is to ensure that businesses “operating in the [EU] internal market fulfil their duty to respect human rights, the environment and good governance and do not cause or contribute to potential or actual adverse impacts [...] through their own activities or those directly linked to their **operations, products or services by a business relationship or in their value chains.**”
- The European Commission will present its legislative proposal for a European Directive on mandatory due diligence later this year that would require EU Member States to transpose such new legislation into national law.

EU MANDATORY HR DD DIRECTIVE - SCOPE

- Draft Directive from European Parliament to Commission on mandatory human rights due diligence
- Will apply to any company doing business in EU – size and form restrictions not known

Will require companies to:

- Identify, assess, prevent, cease, mitigate, monitor, communicate, account for, address & remediate potential and/or actual adverse impacts on human rights, that may arise from own activities, **value chains & business relationships**;
- Undertake a **risk assessment** and effectively implement a due diligence strategy (to be published on the company's website)
- Engage with stakeholders, including trade unions

- Conduct **ongoing monitoring**, review the risk assessment and evaluate if the due diligence strategy is still working, at least once a year and revise it accordingly; and
- **Provide grievance mechanism and remediation** process for potential or actual adverse impacts on human rights, the environment and good governance.
- **Companies must also report on substantiated concerns raised through their grievance mechanisms** and regularly report on the progress made in these cases
- Liabilities included in proposal.

[Texts adopted - Corporate due diligence and corporate accountability - Wednesday, 10 March 2021 \(europa.eu\)](#)

[Human Rights Due Diligence Legislation in Europe – Implications for Supply Chains to India and South Asia | Insights | DLA Piper Global Law Firm](#)

EU MANDATORY HR DD LEGISLATION - ENFORCEMENT

EU Member States would be required to:

- Implement rules to ensure companies carry out effective due diligence;
- Designate **independent national authorities responsible for the monitoring of the application of the Draft Directive** – including investigations – and for disseminating best due diligence practices
- Establish **an effective civil liability regime under which companies can be held liable** for any harm arising from adverse impacts on human rights, the environment and good governance
- Implement a **penalty regime, including regulatory sanctions and administrative fines**. Sanctions should include temporary or indefinite exclusion of companies from public procurement or state aid.
- In the context of the other national European legislation on supply chain liability it is probable that a future EU instrument will also impose **a financial penalty of up to 10% of the company's worldwide revenue**.
- **If an EU Corporate Due Diligence and Corporate Accountability Directive is adopted by the EU, it would then have to be transposed into the national laws of the EU Member States, making existing national regulations on supply chains with a lower level of protection obsolete.**

[Human Rights Due Diligence Legislation in Europe – Implications for Supply Chains to India and South Asia | Insights | DLA Piper Global Law Firm](#)

OTHER EU LEGISLATION

EU Non-Financial Reporting Directive

- Applies to large public-interest companies with >500 employees. This covers approximately 11 700 large companies and groups across the EU, including listed companies, banks, insurance companies and other companies designated by national authorities as public-interest entities
- Large companies have to publish information about: environmental matters, social matters and treatment of employees, respect for human rights, anti-corruption and bribery, diversity on company boards (in terms of age, gender, educational and professional background)

[Corporate sustainability reporting | European Commission \(europa.eu\)](#)

Dutch Child Labour Due Diligence Bill

- Introduced in 2014 & adopted by Dutch Senate in May 2019. Expected to enter into force mid-2022, to give companies time to investigate supply chains
- Covers worst forms of child labour
- Applies to all companies that sell or supply goods/ services to Dutch consumers, no matter where company is based/ registered, no exemptions
- Requires companies to report on steps taken to identify whether child labour is present in global value chains. If child labour is found, requires companies to develop a plan of action to combat this
- **Penalties for failing to file and for having weak due diligence. Mediation for evidence of child labour presented by victims/ other stakeholders**

[Mandatory human rights due diligence laws: the Netherlands led the way in addressing child labour and contemplates broader action - Allen & Overy \(allenoverly.com\)](#)

EU WHISTLEBLOWING DIRECTIVE

- **Entered** into force in December 2019 – there is a December 2021 date by which point EU nation states will be required to implement the directive into national law – by implication some countries will not yet have done that
- Summary of implementation (transposition) of the Directive across Europe is [here](#) Latvia, Slovakia and Lithuania have aligned legislation already, Czech Republic, Denmark and Germany are in progress. Transparency International have [published a report stating concerns that the legislation is not being taken seriously](#) Spain is listed as having made limited progress at the start of 2021
- **Requirements for companies** - any company with >50 employees will be obliged to set up suitable internal reporting channels for employees, job applicants, former employees, supporters of the whistleblower and journalists. Adoption required within 2 years of adoption of the Directive for anyone with >250 employees (i.e. end of 2021) and within 2 years of the “transposition” for anyone with 50-250 employees (assuming all EU nation states need to put directive into law by end of 2021 this would be by end of 2023)
- **What will companies need to provide** – Whistleblowers should be able to writing via an online system, a mailbox or by post and/or orally via a telephone hotline or answering machine system/ Companies are also obliged to offer a personal meeting should the whistleblower request it/ Companies must ensure that the identity of the whistleblower is kept confidential regardless of which reporting channel is used
- **Who should deal with the complaints** – EU has laid out that a “suitable person” should be identified to deal with whistleblowers and that that should be one of Compliance officer/ Head of HR/ Legal counsel/ Chief Financial Officer (CFO)/ Executive board member or management/ Companies can also outsource the processing of reports, for example to an external ombudsman.
- **Sanctions** - Companies that obstruct the reporting of concerns or attempt to obstruct them will face penalties. The same applies if companies fail to keep the identity of the whistleblower confidential. Retaliatory measures against whistleblowers will also be punished. It is the job of national legislators to determine the severity of these sanctions.

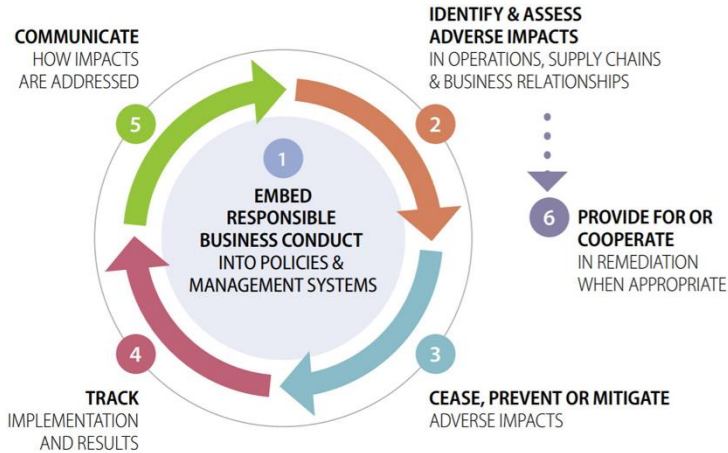
IMPLICATIONS OF LEGISLATION

- **Consistency of requirements** around HRDD
- Likely to **implicate any business operating in Europe**
- New acts across Europe and globally have **more mandatory requirements and more penalties** – **what does this mean for evolution of UK Modern Slavery Act?**
- **Key requirements:**
 - Risk Assessments
 - Response to violations
 - Whistleblowing and grievance mechanisms
 - Engagement with stakeholders
 - Clear reporting and documentation of evidence

QUESTIONS



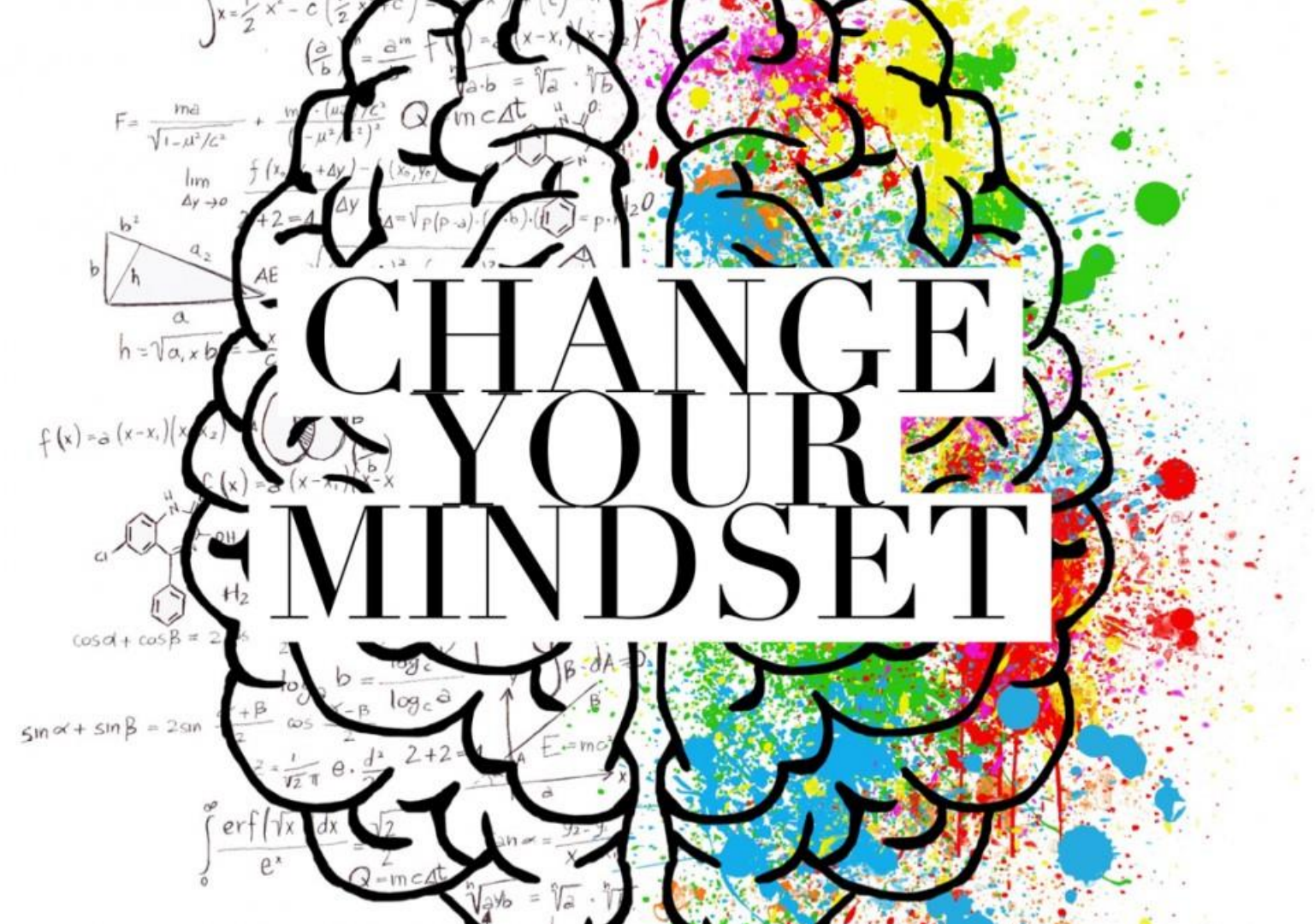
III. IMPLICATIONS FOR BUSINESS



[OECD Due Diligence Guidance for Responsible Business Conduct - OECD](#)

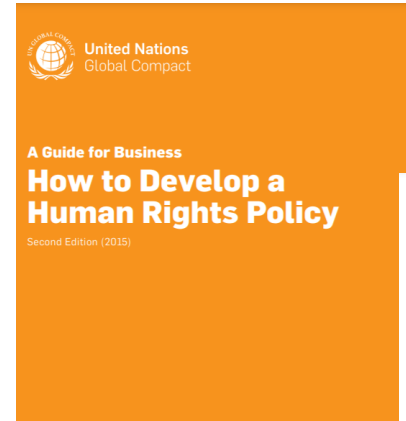
[Human rights due diligence framework | Ethical Trading Initiative \(ethicaltrade.org\)](#)

CHANGE YOUR MINDSET

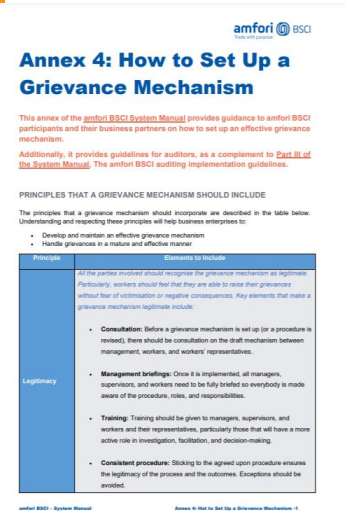


HRDD IN PRACTICE

- Public **commitments** at senior level
- **Training** for staff, agency workers & sub-contractors
- Establishing **broad, cross-functional team** to manage ethical
- Thorough, regularly updated **risk assessment**
- **Embed** ethical trade in policies and procedures
- Effective **worker representation**
- Working with suppliers, workers, governments, trade unions and NGOs to **address the risks**
- Effective **grievance mechanisms & whistle-blowing**
- Monitor progress and review



[How to Develop a Human Rights Policy; 20151013.indd \(d306pr3pise04h.cloudfront.net\)](#)



[Annex 4 How to set up an operational grievance mechanism.pdf \(amfori.org\)](#)

WHERE TO FIND MORE SUPPORT

Due Diligence Step	FNET resource	Details	Link to resource	Last updated	Creation date	Link to FNET Workstream
1. Commitment - governance	FNET Ethical Trade Governance Report	Report on FNET members' governance of ethical trade and key conclusions for the future of ethical trade resourcing	https://foodnetworkforethicaltrade.com/mdocs-posts/draft-fnet-ethical-governance-guidance/	Apr-19	Mar-19	1 - Risk Assessment & Mitigation
1. Commitment - policy	Remediation and Grievance Policy template	Template for development of remediation and grievance policies	https://foodnetworkforethicaltrade.com/mdocs-posts/draft-remediation-and-grievance-policy/	Sep-19	Sep-19	None
1. Commitment - training	Director Human Rights Training	1 to 1.5 hour training session on human rights and forced labour for Company Directors	https://foodnetworkforethicaltrade.com/mdocs-posts/fnet-directors-ethical-trade-human-rights-training-status-11-2020/	Nov-20	Mid-late 2018	3 - Ethical Engagement
	Technical Human Rights Training	1 to 1.5 hour training session on human rights and forced labour for Technical staff	https://foodnetworkforethicaltrade.com/mdocs-posts/fnet-technical-ethical-trade-intro-status-11-2020/	Nov-20	Jan-20	3 - Ethical Engagement
	Buyers Ethical Trade Training	1 to 1.5 hour training session on ethical trade and modern slavery for purchasing or sourcing teams	https://foodnetworkforethicaltrade.com/mdocs-posts/fnet-buyer-ethical-trade-intro-status-11-2020/	Nov-20	Jan-20	3 - Ethical Engagement
	Modern Slavery briefing	1 hour training session on modern slavery for technical and purchasing teams/ Can also be circulated as a briefing	https://foodnetworkforethicaltrade.com/mdocs-posts/fnet-modern-slavery-briefing-status-11-2020/	Nov-20	Jan-20	None
	Recruitment fees Training	1 hour training session on recruitment fees for technical and purchasing teams/ Can also be circulated as a briefing	https://foodnetworkforethicaltrade.com/mdocs-posts/fnet-recruitment-fees-training-status-11-2020/	Nov-20	Jan-20	3 - Recruitment Fees
	Ethical trade terminology dictionary	Dictionary in English explaining common ethical trade terms	https://www.ethicaltrade.com/ethical-trade-terminology-dictionary/			
2. Risk Assessment	FNET Risk Assessment Tool - offline	FNET Human Rights Risk Assessment tool designed to help determine their ethical trade priorities based on country, product, industry risks and labour types				
	FNET Risk Assessment Tool - online	Online version of the Risk Assessment tool				
	FNET Risk Rating information - online	Details of and scores from the individual indices which are produced by the country risk ratings in the FNET Tool				
	FNET Known Human Rights Risks information - online	Details of and scores of the Known Human Rights risk information included in the FNET Tool - product/ country combinations				
	FNET Country Risk Profiles	Country profiles for Thailand, Turkey, Spain, Morocco, South Africa, Indonesia, Italy, India, Egypt, Ethiopia, Greece, China, Brazil				
	Supply chain mapping comparison	Guidance for members on the tools and processes which can be used for supply chain mapping				

Due Diligence Step	External resource	Details	Link to resource	Last updated	Creation date
Developing a strategy	UN Guiding Principles - the corporate responsibility to respect human rights	The Guiding Principles reflect and build on the three-pillar structure of the "Protect, Respect and Remedy" Framework. They comprise 31 principles, each followed by a brief commentary. Together, the Guiding Principles outline steps for States to foster business respect for human rights; provide a blueprint for companies to manage the risk of having an adverse impact on human rights; and offer a set of benchmarks for stakeholders to assess business respect for human rights	https://www.ohchr.org/Documents/Issues/Business/2011InterpretiveGuide.pdf		2012
	A Covid-19: Business and Human Rights	How to take advantage of the due diligence framework to manage the crisis	https://media.business-humanrights.org/media/documents/files/Documents/COVID_19_business_and_human_rights.pdf		2020
	UN SDG's	The SDG Compass provides guidance for companies on how they can align their strategies as well as measure and manage their contribution to the realization of the SDGs.	https://sdgcompass.org/		
1. Commitment - governance	Country policy responses to Covid-19	The ILO has published a series of documents outlining policies implemented by governments, employers' and workers' organizations, and the ILO in 188 countries and territories. Country policy responses are presented within the four pillars of action defined by the ILO to lessen the impact of COVID-19 on businesses, jobs and the most vulnerable members of society	https://www.ilo.org/ctbpa/topics/coronavirus/regional/country/country-responses/lang-en/index.htm#9		
1. Commitment - policy	Example remediation policies	Provided for child labour (Clarks) and forced labour and trafficking (Patagonia).	https://www.patagonia.com/static/zip/demandware.static/.library/Sites/PatagoniaShared/default/dfs-BB6802/PDF-US/human_trafficking_child_labor.pdf		
			https://www.clarks.com/made-to-last/media/ClarksChildLabourRemediationGuidance2017Issued1_11.pdf		
1. Commitment - training	Farm Work Welfare App	An app for employers and workers to encourage awareness raising about labour exploitation and the reporting of concerns related to modern slavery.	https://www.theleverinitiative.org/farmworkwelfare		2020
	Free Just Good Work Interactive app	This app helps all jobseekers and workers understand their UK employment rights, recognise poor treatment at work and access remedy.	https://labourproviders.org.uk/just-good-work/		2020
	Verité introductory Courses on Forced	Free	https://www.verite.org/services/training/forced-labor-e-learning-course/		

FNET and External HRDD Tools and Resources Log 24022020 – FNET (foodnetworkforethicaltrade.com)

IV. Q&A



