



A call for European Union legislation on mandatory human rights and environmental due diligence, to prevent forced and child labour in global supply chains



Summary

The complex nature of global supply chains brings an increased risk of human rights violations, with forced and child labour amongst the most severe. Voluntary corporate social responsibility initiatives have failed to protect people from modern slavery.

Anti-Slavery International, along with a large coalition of NGOs and trade unions, is calling on the European Commission to introduce EU-wide human rights and environmental due diligence legislation.¹ This law would require companies and financial institutions to identify, prevent, mitigate and account for human rights abuses and environmental damage caused by their operations, subsidiaries and value chains. Over 25 million people are estimated to be in forced labour globally, of which 16 million are exploited in the private sector. The legislation we are asking for would require companies to identify the risk of forced and child labour in their supply chains, and proactively take action to prevent the risk, including by addressing the impact of their own business models.

The Covid-19 crisis has underscored the urgent need for legislation that makes businesses legally responsible for respecting the rights of workers in their supply chains. In industries and services such as food, PPE production, and delivery, there are reports of workers facing heightened risk of labour exploitation, including forced labour. Further, in industries with disrupted demand, many global businesses have taken knee-jerk reactions and cancelled orders with suppliers, putting the workers in these supply chains at risk. In garment manufacturing in South and South East Asia, this has led to mass layoffs of workers without adequate state safety nets to protect them. Mass unemployment, even if temporary, means that major sections of the global population are at greater risk of exploitation in forced labour and other modern forms of slavery.

Yet, at the same time, many businesses have taken positive action to mitigate the risks Covid-19 poses for workers in their supply chains, including through health initiatives and support to suppliers. Mandatory human rights and environmental due diligence would level the playing field and require all companies to meet the same standards of responsible business.

Before Covid-19, the tide was already turning in support of binding legislation on business. EU member states such as France, the Netherlands, Germany and Finland have introduced, or are considering introducing, regulation on business and human rights. European parliamentarians have been at the forefront of calls for binding EU-wide legislation. Civil society movements have now formed in at least 13 EU member states.² A number of leading companies and investors are also speaking out in support of national and/or EU-wide legislation.

A European Commission study on due diligence requirements through supply chains, published in February 2020, affirmed the need for regulatory action at EU level.³ The study showed that only one in three businesses in the EU is currently undertaking due diligence on human rights and environmental impacts. On the 29th April 2020, the European Commissioner for Justice, Didier Reynders, committed to introducing new mandatory human rights and environmental due diligence legislation and a legislative initiative is expected in 2021.⁴

EU-wide due diligence legislation must clearly set out the responsibilities of businesses in line with the UN Guiding Principles on Business and Human Rights (UNGPs) and the OECD Guidelines for Multinational Enterprises. The measures should require companies and financial institutions to proactively prevent risks linked to their operations and supply chains, and should provide improved access to remedy for victims. As the world's largest trading bloc, founded on the principles of democracy, human rights and the rule of law, it's vital that the EU takes the lead in and develops a clear and comprehensive economy-wide legislation.

A call for EU human rights and environmental due diligence legislation, (2019). Retrieved from https://www.antislavery.org/wp-content/uploads/2019/12/cso_eu_ due_diligence_statement_2.12.19.pdf

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² Business & Human Rights Resource Centre, National mandatory human rights due diligence in European countries, (2019). Retrieved from https://www.businesshumanrights.org/en/national-movements-for-mandatory-human-rights-duediligence-in-european-countries

³ British Institute of International and Comparative Law; Civic Consulting; Directorate-General for Justice and Consumers (European Commission); LSE. Study on due diligence requirements through the supply chain, (2020). Retrieved from https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en#

⁴ European Commission promises mandatory due diligence legislation in 2021 – RBC. (2020). Retrieved 7 May 2020, from https://responsiblebusinessconduct. eu/wp/2020/04/30/european-commission-promises-mandatory-due-diligencelegislation-in-2021/



Introduction

In 2017 the International Labour Organization (ILO) estimated that 25 million people are in forced labour across the world.⁵ Of them, over 60% are exploited in the private sector, likely linked to the supply chains of international businesses providing goods to the markets of the northern hemisphere, including the EU. Forced labour is the most extreme form of labour exploitation. It is sometimes associated with physical violence, but often occurs through more insidious means such as deception, coercion and debt bondage. Socially excluded groups such as minorities, migrants, women and girls are often at greater risk of forced labour. Furthermore, one in four victims of modern slavery are children under the age of 18, numbering 10 million. In total, 152 million children globally (about 1 in 10) are victims of child labour, with almost half of them working in hazardous conditions, endangering their health, and many are outside education systems.⁶

Many of the root causes of forced and child labour are systemic – linked to poverty, discrimination, social exclusion and weak rule of law. Corporate practices and business operations act as a catalyst to the problem, creating the demand for forced labour. The constant search for low prices and high profits, the drive for ever quicker turnaround of products, the move to sub-contracted rather than directly employed labour, coupled with ongoing restrictions to freedom of association, all increase the risk of worker exploitation and modern slavery. Businesses taking appropriate steps to respect the human rights of their workers face considerable disadvantages if their competitors profit from lower costs gained through the exploitation of workers. To redress such a systemic problem we need transnational regulation that establishes basic standards for all businesses, as required by the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises.

6 Child labour, the worst forms of child labour and child slavery can be defined as follows. Child labour is not slavery, but nevertheless hinders children's education and development. Child labour tends to be undertaken when the child is in the care of their parents. "Hazardous work" is the worst form of child labour. It irreversibly damages children's health and development through, for example, exposure to dangerous machinery or toxic substances, and may even endanger their lives. In turn child slavery is the enforced exploitation of a child for someone else's gain, meaning the child will have no way to leave the situation or person exploiting them. See https://www.antislavery.org/slavery-today/child-slavery/

⁵ ILO, Modern slavery and child labour, (2017). Retrieved from https://www.ilo.org/ global/about-the-ilo/newsroom/news/WCMS_574717/lang--en/index.htm



Recent developments

UNGP 2 outlines that "states should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations".⁷ The commentary further states that "there are strong policy reasons for home states to set out clearly the expectation that businesses respect human rights abroad, especially where the state itself is involved in or supports those businesses".⁸ State responsibilities cannot be met without extra-territorial legislation to uphold human rights principles, including in relation to their corporate citizens. Recent years have seen a number of significant national and extra-territorial initiatives in this direction.

Recent initiatives

Examples of national legislation:





Examples of national policy initiatives under discussion:

Austria: The Austrian parliament is considering a <u>bill</u> on social responsibility in the garment sector. Canada: In May 2019 the Canadian government launched an <u>online consultation</u> on possible ways to address labour exploitation in global supply chains, including supply chain legislation. Denmark: In January 2019 three political parties put forward a parliamentary motion that calls on the government to introduce a bill on human rights due diligence and corporate liability. Finland: The 2019 Finnish coalition government programme committed to pursuing mandatory human rights due diligence at the national level and promoting legislation at the EU level. In December 2019 the Finnish EU Presidency launched its Agenda for Action for the EU on Business and Human Rights, which notes the need for EU-wide mandatory human rights due diligence. Germany: The Federal Minister for Economic Cooperation and Development and the Federal Minister for Labour and Social Affairs <u>announced</u> in December 2019 they will draft a human rights due diligence proposal, linked to Germany's 2016 National Action Plan on Business and Human Rights commitments. Italy: The 2016 National Action Plan announces a comprehensive review of the existing law to assess and evaluate legislative reform, introducing provisions such as the 'duty of care' or due diligence for companies. Luxembourg: The 2018 coalition agreement commits the government to supporting binding legislation at the European level to strengthen social and environmental responsibilities of transnational companies. Sweden: The 2018 UNGP baseline assessment of the National Action Plan, commissioned by the Minister for Trade, recommends the government to look into mandatory human rights due diligence legislation. Switzerland: Proposed <u>amendments</u> to the Swiss constitution are currently under discussion to require mandatory human rights due diligence for companies based in Switzerland.



Examples of EU initiatives:





Towards a new generation of global supply chain regulation

Tackling forced and child labour in global supply chains requires more than an individual country's efforts, efforts limited to a single sector, or generic human rights reporting. Sector regulation and generic reporting legislation, such as the Non-Financial Disclosure Directive and Conflict Mineral and Timber Regulations, provide a solid base, but are on their own not enough to enable the EU to address the challenge of ending forced and child labour.

For instance, the Non-Financial Disclosure Directive requires 'large' businesses to make statements in their management reports on their performance on a range of social, legal and environmental issues. This is a useful law; however, it is left to individual companies to identify the issues they feel are the greatest risks. Therefore, it is more likely to dilute attention and action across a range of issues that vary from business to business depending on the whims of executives, the company's level of knowledge about the issue and their sense of risk. The Directive is likely to facilitate information gathering, rather than providing leadership to resolve and address fundamental human rights abuses. A new generation of global supply chain regulation requires both mandatory transparency and due diligence. This would ensure that businesses take responsibility for the impact of their actions and channel resources into proactively tackling the root causes of abuses such as forced and child labour throughout their supply chains.

Legislation must cover the wide spectrum of negative human rights and environmental impacts of business operations and value chains. Forced and child labour does not occur in a vacuum, and evidence has shown that the wider impact of many industries, including environmental damage and climate-change impacts⁹, can make people more vulnerable to exploitation and modern slavery.



Supply chain transparency versus due diligence approaches

Supply chain transparency provisions tend to focus on public reporting on the origins of raw materials and goods in business supply chains and operations. It provides stakeholders with an overview of business operations so they can assess the human rights risks in supply chains. While not a panacea, transparency legislation has helped to elevate the issue of human rights within businesses and created a conversation around the issue. Consequently, many consumer-oriented businesses have begun to consider what they can do to address forced and child labour in their supply chains. However, transparency regulations do not usually oblige businesses to take action to address or remedy adverse human rights impacts, or to proactively identify them. They are first and foremost about some measure of disclosure. For example, the UK Modern Slavery Act requires companies only to disclose the steps they are taking to prevent slavery in their supply chains, but does not oblige them to take those steps. While some companies have used transparency measures as an opportunity to advance discussion on human rights due diligence, many have not.

Although mandatory disclosure regulation is a prerequisite for due diligence in value chains, it is insufficient on its own to achieve decent work and prevent forced labour.

Due diligence focuses on businesses taking responsibility for the impact of their actions throughout their operations. The UNGPs set out businesses' responsibilities to respect human rights, requiring both policy commitment and due diligence "in order to identify, prevent, mitigate and account for how they address their adverse human rights impacts," including "assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed." In practice for forced and child labour this means, for example, examining the impacts of purchasing practices on the wages of workers, or the effect of subcontracting on reduced control over the working conditions of individual workers.



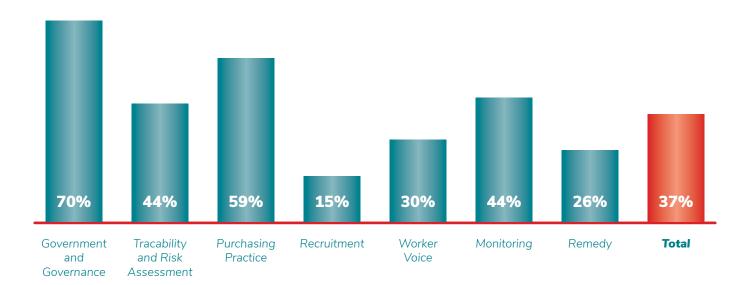
The role of the EU

The EU has sought to build a single market that upholds social standards – including the rights of workers. However, the pressure to secure competitive advantage, particularly in manufacturing and commodities, leads European businesses to search for reduced costs that are often based on extreme levels of exploitation. Given that forced and child labour affect so many parts of supply chains, the failure to develop robust and effective measures to eliminate these abuses means it is difficult, if not impossible, for European consumers to ensure they are purchasing slavery-free products.

For example, the fisheries supply chains of Thailand are rife with forced labour of migrant workers,¹⁰ and young children are forced to work in mines in Congo to produce the cobalt used in our mobile phones.¹¹ Forced labour is also present in the EU's own backyard, with reports of Bulgarian migrants trapped in slavery in French vineyards a recent example.¹²

According to KnowTheChain,¹³ an initiative to benchmark corporate practices to prevent forced labour in supply chains, over 60% of leading EU-headquartered companies¹⁴ are failing to take adequate steps to address forced labour. Furthermore, almost three-quarters of EUheadquartered companies fail to provide adequate remedy to victims of forced labour.

Percentage of EU companies scoring over 50/100 against KnowTheChain criteria on steps taken to address forced labour (2018)



11 Kara, S. Is your phone tainted by the misery of 35,000 children in Congo's mines?, (2018). Retrieved from https://www.theguardian.com/global-development/2018/ oct/12/phone-misery-children-congo-cobalt-mines-drc

12 Euronews with AFP, Reuters. Busts at French vineyards find over 165 suspected slaves from Bulgaria, (2019). Retrieved from https://www.euronews. com/2019/09/24/busts-at-french-vineyards-uncover-over-165-suspected-slavesfrom-bulgaria

- 13 KnowTheChain. Retrieved from https://knowthechain.org/
- 14 Including seven companies identified by KnowTheChain as headquartered in the UK at the time of assessment. This includes Primark, Unilever, Tesco, Coca-Cola, Associated British Foods, Burberry, and Michael Kors.
- 10 Hodal, K, Lawrence, F, & Kelly, C. Revealed: Asian slave labour producing prawns for supermarkets in US, UK, (2014). Retrieved from https://www.theguardian.com/ global-development/2014/jun/10/supermarket-prawns-thailand-produced-slavelabour



A European Commission study published in February 2020 further affirmed the failure of voluntary corporate social responsibility initiatives. According to the survey, only one-third of EU businesses undertake due diligence that takes into account all human rights and environmental impacts.¹⁵ However, the majority of businesses only undertake due diligence of first tier suppliers,¹⁶ thus failing to identify and address risks in lower tiers of supply chains, where forced and child labour risks are the highest. The majority of the 334 business survey respondents agreed that EU due diligence regulation could provide positive social, human rights and environmental impacts and benefit for business.¹⁷ Business respondents noted the benefits of effective harmonisation, legal certainty, a level playing field, and allowing for a non-negotiable standard for business relationships throughout the supply chain.¹⁸

Businesses are also increasingly speaking out publicly in favour of mandatory due diligence to foster responsible business practice. For example, a number of Dutch businesses publicly supported proposed Dutch child labour legislation.¹⁹ In Germany 50 companies, including Nestle, Tchibo and Primark, recently called for mandatory human rights and environmental due diligence legislation nationally, which would pave the way for regulation at the European level.²⁰ Leading global brands such as Mars and Mondelez have also publicly called for EU-wide legislation.²¹ Amfori, a leading global business association advocating for open and sustainable trade, has also supported the call for EU-wide legislation.²²

- 19 Tony's Chocolonely (2019). Retrieved from https://tonyschocolonely.com/storage/ configurations/tonyschocolonelycom.app/files/wetzorgplichtkinderarbeid/een_wet_ zorgplicht_pakt_kinderarbeid_serieus_aan.pdf
- 20 Business & Human Rights Resource Centre, A call for mandatory human rights and environmental due diligence legislation (2019). Retrieved from: https:// www.business-humanrights.org/en/statement-für-eine-gesetzliche-regelungmenschenrechtlicher-und-umweltbezogener-sorgfaltspflichten
- 21 VOICE Network, Cocoa companies call for human rights and environmental due diligence requirements (2019). Retrieved from: https://www.voicenetwork. eu/2019/12/cocoa-companies-call-for-human-rights-and-environmental-duediligence-requirements/
- 22 Amfori, Human rights due diligence: recommendations for a European approach, taking into account key principles of due diligence (2020). Retrieved from: https:// www.amfori.org/sites/default/files/amfori-2020-12-02-Position-Paper-Human-Rights-Due-Diligence.pdf

15 British Institute of International and Comparative Law et al, op cit, page 151. Retrieved from https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en

16 Ibid, page 151.

- 17 Ibid, page 105.
- 18 Ibid, page 17.



Recommendation for the European Union on a legislative framework for mandatory human rights and environmental due diligence

The EU and its member states are in a unique position to assume global leadership on law and policy to reduce forced and child labour in international supply chains, and set standards that have a wide-ranging impact. As the world's largest single market, founded on the principles of democracy, human rights and rule of law, the EU has considerable potential to transform the current political economy by the enactment of EU-wide legislation.

We call upon the EU to introduce legislation that establishes a mandatory human rights and environmental due diligence framework, including a specific focus on forced and child labour.

This legislation should require businesses, companies and financial institutions domiciled in the EU, or that provide goods or services in the EU with respect to impacts of those products or services, to:

- a) Respect, in their own activities, international human rights and environmental standards and seek to ensure that these standards are respected throughout their global value chain.
- b) Map and identify how the business activities or business relationships, throughout its value chain and operations, pose the risk of actual and potential negative human rights and environmental impacts, including forced and child labour. Business relationships should include suppliers, (sub-)contractors, joint venture partners, franchises, business customers etc.
- c) Assess why those risks exist, including in terms of government policy, business practices and models, including purchasing practices and value distribution etc.
- d) Act on the findings to cease, prevent and mitigate potential risks and negative impacts on human rights and the environment in their activities and business relationships. This must include a consideration of the business's leverage over third parties, including business relationships, and an outline of the system of industrial relations adopted by the business in its operations and supply chain, including policies and practices on freedom of association and collective bargaining.

- e) Track and monitor the effectiveness of the due diligence process to prevent and mitigate negative impacts, including by monitoring the performance of third parties to which the business is linked through its business relationships, and periodically review the findings and learning of the monitoring for integration into the due diligence plan.
- f) Establish effective grievance mechanisms to remedy negative human rights or environmental impacts, and integrate the findings from grievance reporting into the due diligence plan. Operational-level grievance mechanisms should not be used as a replacement for proper industrial relations, freedom of association and collective bargaining.
- g) In all steps above, ensure meaningful and timely consultations with impacted and potentially impacted stakeholders. Rights holders, particularly workers, their unions and affected communities should be involved in the definition and implementation of due diligence plans.
- h) Publish an annual report on their plans for due diligence in line with the steps above, the implementation of their plans, the action taken to comply with their plans including the effectiveness of the actions, and the commitments for the forthcoming year.



Principles for an EU binding framework on mandatory human rights and environmental due diligence

- The legislation should cover all internationally recognised human rights, labour and environmental standards.
- The legislation should apply to all businesses, rather than being confined to specific sectors, since underlying causes of forced and child labour risks in a specific economy will affect all businesses working in that economy, and individual business supply chains span multiple sectors.
- The legislation should cover businesses, companies and financial institutions of all sizes. Exclusions based on the size of the business could exclude many companies that pose severe risks to human rights through their activities and/or business relationships. The extent of reporting requirements may be proportionate to the level of risk posed; however the level of risk must be established through the due diligence process.
- The legislation must establish the following: public investigation and enforcement mechanisms and competent authorities; proportionate and dissuasive financial sanctions and exclusion from EU and member states' public procurement, funding and credit systems; and the possibility for members of the public to challenge non-compliance before judicial or administrative authorities.
- The legislation must provide for joint liability for harms caused or contributed to by entities under their control or economically dependent, as well as liability for harms directly linked to their products, services or operations through a business relationship, unless they can prove they took all reasonable measures to prevent the harm and ensure effective access to remedy for victims, including adequate support mechanisms.
- In line with UNGP17, conducting due diligence must not automatically absolve a company under the scope of the legislation from liability where adverse impacts have materialised through the business activities or business relationships: "business enterprises conducting such due diligence should not assume that, by itself, this will automatically and fully absolve them from liability for causing or contributing to human rights abuses".
- The burden of proof must rest with the company not the victim(s), and the limitation period for bringing legal actions under this law should be reasonable and sufficient and, in any case, no less than five years.
- All provisions in this legislation should be considered as overriding mandatory and apply irrespective of the law otherwise applicable to the resolution of the conflict, as described in Article 16 of Regulation (EC) No 864/2007 (Rome II). Moreover, they should in no way justify reducing the current level of protection of human rights and the environment, or negatively impact on already existing liability frameworks.

In addition and complementary to an EU-wide mandatory human rights and environmental due diligence framework, the EU must ensure that the advancement of human rights and environmental protections, including the prevention of forced and child labour, are at the centre of all trade, development and foreign policies and agreements and their implementation. Finally, we urge the EU to consult with civil society and trade unions on the legislation. In particular, the EU should consult with organisations based in the global south, and ensure that the voices, knowledge and perspective of survivors of slavery and people vulnerable to slavery are central to the design and implementation of the legislation.



Conclusion

Anti-Slavery's analysis shows that cases of forced and child labour occur across supply chains of all goods and services. Current EU policy and legislation is insufficient to adequately tackle this problem. Therefore, new legislation should be introduced to establish clear human rights and environmental due diligence requirements in supply chains, and effective access to remedy. Such legislation would also:

- contribute to the Sustainable Development Goals by making human rights and responsible business practice central to broader business and trade policies;
- expand the availability of decent work and directly contribute to the reduction of poverty;
- position the EU as a world leader in preventing forced and child labour in global supply chains.

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Anti-Slavery International works in the UK and around the world to help provide freedom from slavery for everyone, everywhere.

The world's oldest human rights organisation, Anti-Slavery International works with people affected by slavery, governments, civil society and business to find and implement sustainable solutions to ensure people's freedom.

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