



SCHOOL OF  
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MANAGEMENT

# **Corporate Due Diligence in the European Union**

Analysis of its Extraterritorial Effect in Global Supply Chains

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# Abstract

This thesis explores the implications of the European Union's (EU) mandatory Human Rights Due Diligence (mHRDD) regime for global supply chains, focusing on the research question: What are the implications of the EU's mandatory HRDD regime concerning global supply chains? The study conducts a thorough analysis of both international HRDD soft laws and EU-level mandatory HRDD laws, examining their scope, implementation, and limitations in relation to supply chains. It reveals that while the EU has made significant strides in developing HRDD legislation, including specific and cross-sectoral laws like the Corporate Sustainability Due Diligence Directive (CSDDD), these laws also have limitations such as narrow personal scope, compliance-focused approach and constraints in stakeholder engagement. The study discusses how these limitations may affect the effectiveness of HRDD laws on supply chains. Overall, it highlights the potential of the EU HRDD regime to promote responsible business conduct globally but underscores the need to address identified limitations. The thesis concludes by emphasizing the importance of ongoing discussions on the necessity of international laws directly addressing human rights violations by companies, offering insights into challenges and opportunities in this critical area and providing a foundation for further research and policy development.

**Keywords:** Human Rights Due Diligence, Mandatory Human Rights Due Diligence , United Nations Guiding Principles, Corporate Sustainability Due Diligence, Global Supply Chains, European Union

# Abbreviations

CSDDD	Corporate Sustainability Due Diligence Directive
CSR	Corporate Social Responsibility
EU	European Union
EUDR	European Union Deforestation Regulation
EUTR	European Union Timber Regulation
ILO	International Labor Organization
HRDD	Human Rights Due Diligence
mHRDD	Mandatory Human Rights Due Diligence
MNE	Multinational Enterprise
OECD	Organization for Economic Cooperation and Development
UN	United Nations
UNGPs	United Nations Guiding Principles

# 1 Introduction

## 1.1 Background

Under international law, human rights obligations have traditionally been associated with states, as major human rights treaties impose legal duties on states to safeguard human rights, including protection from non-state actors, such as business enterprises, albeit without directly imposing obligations on these entities. The rise of the private sector and increased transnational economic activity in the 1990s elevated the issue of business and human rights globally, prompting heightened social awareness on the impact of business on human rights.<sup>1</sup> Global supply chains have, over the past years, faced scrutiny due to frequent labor violations and severe human rights abuses occurring at supplier factories and sourcing points, often situated in developing countries with inadequate laws and enforcement mechanisms.<sup>2</sup> Despite multinational companies' efforts to tackle detrimental business practices through voluntary corporate social responsibility (CSR) initiatives, reports of human rights violations and other concerns persistently arise.<sup>3</sup> Consequently, discussions at both international and national levels are increasingly centering on legislative approaches to supply chain due diligence as a means of fostering responsible behavior and ensuring accountability.<sup>4</sup>

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<sup>1</sup> Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' A/HRC/17/31 (21 March 2011), para 1.(hereafter referred to as "Guiding Principles").

<sup>2</sup> Kasey McCall-Smith and Andreas Rühmkorf, 'Sustainable Global Supply Chains: From Transparency to Due Diligence', in Clair Gammage and Tonia Novitz (eds), *Sustainable Trade, Investment and Finance: Toward Responsible and Coherent Regulatory Frameworks* (Edward Elgar Publishing Ltd, 2019) 110.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

Following several attempts to establish guidelines for corporate responsibilities since the 1970s<sup>5</sup>, the Human Rights Council unanimously endorsed, in 2011, the Guiding Principles on business and human rights (UNGPs).<sup>6</sup> An essential contribution of the UNGPs is the introduction of Human Rights Due Diligence (HRDD) serving as a soft law regulatory tool to mitigate adverse human rights impacts caused by businesses. This principle outlines four key elements of the HRDD process: assessing both actual and potential human rights impacts, integrating and acting on the findings, tracking responses, and transparently communicating how impacts are addressed.<sup>7</sup>

In addition to the UNGPs, human rights due diligence has also been incorporated in other global soft law instruments including the ILO MNE Declaration<sup>8</sup> and the OECD MNE Guidelines<sup>9</sup>. In a recent development signaling a departure from soft law mechanisms, the UN is currently drafting the Business and Human Rights Treaty, representing the latest endeavor at the global level to establish legally binding obligations regarding HRDD.<sup>10</sup>

At the regional level, the European Union has been actively pursuing the development of a legal framework integrating transparency and mandatory due diligence. For instance, the EU Timber Regulation (2010)<sup>11</sup> and The

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<sup>5</sup> Prior attempts at norm setting include: United Nations General Assembly, Programme of Action on the Establishment of a New International Economic Order, G.A. Res. 3202 (S-VI), (May 1, 1974); United Nations, Sub-Commission on the Promotion & Protection of Human Rights, Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises With Regard to Human Rights, E/CN.4/Sub.2/2003/12/Rev.2 (2003).

<sup>6</sup> Guiding Principles (n 1)

<sup>7</sup> Ibid, Guiding Principle 17.

<sup>8</sup> Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration).

<sup>9</sup> OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (2023 Update). The OECD has also developed the OECD Due Diligence Guidance for Responsible Business Conduct, and a Recommendation on the Guidance was adopted in 2018. Guidance on specific sectors and supply chains have also been developed, namely: minerals; agriculture; garment and footwear; extractives; and finance.

<sup>10</sup> Updated draft legally binding instrument (clean version) to regulate, in international human rights law, the activities of transnational corporations and other business enterprises, July 2023 ( hereafter referred to as Business and Human Rights Treaty).

<sup>11</sup> 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 (Text with EEA relevance)(hereafter referred to as EUTR).



Conflict Minerals Regulation (2017)<sup>12</sup> stand as two of the Union's initial implementations of a hard law mandate for compulsory due diligence. The latest legislations mandating due diligence requirements, such as the Deforestation Regulation (2023)<sup>13</sup>, the Corporate Sustainability Reporting Directive (CSRD) enforced in 2023<sup>14</sup>, and the Corporate Sustainability Due Diligence Directive (CSDDD) of 2024<sup>15</sup>, further establish the achievements of EU in mandatory due diligence practices. The successful enforcement of these broad and sector-specific (including product-specific) hard law mechanisms would significantly aid in mitigating and preventing the negative business repercussions on human rights, while also setting a precedent for other regions to emulate.

At the national level, there has been a notable shift towards transitioning from voluntary initiatives to mandatory due diligence requirements in recent years. These national legislations include the Corporate Duty of Vigilance Law of 2017 in France, the Child Labour Due Diligence Law of 2019 in the Netherlands, the Child Labor and Conflict Minerals Due Diligence Law of 2021 in Switzerland, the Act on Corporate Due Diligence Obligations in Supply Chains of 2021 in Germany, and the Transparency Act of 2022 in Norway.

This paper will emphasize corporate responsibility for respecting human rights through mHRDD in the European Union. Business enterprises can contribute to adverse human rights impacts either directly through their own

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<sup>12</sup> 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 (hereafter referred to as Conflict Minerals Regulation).

<sup>13</sup> 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 (Text with EEA relevance) (hereafter referred to as EUDR).

<sup>14</sup> Directive of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting (hereafter referred to as CSRD).

<sup>15</sup> European Parliament legislative resolution of 24 April 2024 on the proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 (hereafter referred to as CSDDD).

actions or indirectly through their business relationships.<sup>16</sup> While both of these aspects are addressed in the thesis, the primary focus is on the implications of mHRDD for their global business relationships.

## **1.2 Purpose and research questions**

As briefly discussed above, over the past decade, the European Union has significantly intensified its efforts to strengthen corporate accountability through the introduction of mandatory transparency and due diligence legislation. Similar initiatives to reinforce corporate social responsibility (CSR) laws are underway at the national level across Europe and elsewhere. Although there efforts are underway to come up with a binding law with similar effects at the global level, the realization is yet to be seen. This raises the intriguing question of how national and regional advancements might compensate for the absence of hard law CSR mechanisms on a global scale.

The purpose of this paper is to delve into the topic of mandatory human rights due diligence (mHRDD) within the EU and evaluate its implications for combating human rights abuses in global supply chains. The study will analyze both the strengths and weaknesses of the EU's mandatory HRDD regime in addressing global supply chain issues and explore potential pathways for more effective solutions. Therefore, the primary research question guiding this inquiry is: What are the implications of EU's mandatory HRDD regime concerning global supply chains? In other words, the research shall attempt to explore the extraterritorial reach of EU's mandatory corporate due diligence laws. The following sub questions shall be addressed within the paper:

- What are the legal foundations of HRDD within international soft laws?
- How is mandatory HRDD manifested in the EU?

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<sup>16</sup> Guiding Principle 13 (n 1).

- What is the implication of EU's mandatory HRDD regime on global supply chains, and what are its limitations in this context?

### **1.3 Delimitations**

This thesis focuses on exploring mandatory Human Rights Due Diligence (HRDD) within the European Union (EU) and its relevance to global supply chains. The study confines its attention primarily to the concept of mandatory HRDD within the EU framework, excluding broader discussions of corporate due diligence and specific areas like environmental and climate due diligence.

Following Guiding Principle 17 of the UNGPs (which is a focal point of reference to other HRDD legislations), the definition of HRDD, for the purpose of this thesis, constitutes a process that includes “assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed”.<sup>17</sup> The Interpretive Guide to the UNGPs by the Office of the High Commissioner for Human Rights (‘OHCHR’) elaborates the UNGPs’ HRDD concept as comprising “an ongoing management process that a reasonable and prudent enterprise needs to undertake, in the light of its circumstances (including sector, operating context, size and similar factors) to meet its responsibility to respect human rights”.<sup>18</sup> It's important to highlight that Human Rights Due Diligence diverges from traditional corporate risk management practices as it is not confined to transactional events like new acquisitions, partnerships, or investments; instead, it's an ongoing and evolving process looking beyond the company itself.<sup>19</sup> This is because human rights risks associated with a company's operations and value chain are continuously shifting. Moreover, while business risk management primarily addresses

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<sup>17</sup> Guiding Principle 17 (n 1).

<sup>18</sup> OHCHR, "The Corporate Responsibility to Respect Human Rights: An Interpretive Guide", [https://www.ohchr.org/sites/default/files/Documents/Publications/HR.PUB.12.2\\_En.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/HR.PUB.12.2_En.pdf), p.6 (hereafter referred to as “Interpretive Guide”).

<sup>19</sup> John Gerard Ruggie, Caroline Rees, and Rachel Davis, "Ten Years After: From UN Guiding Principles to Multi-Fiduciary Obligations," *Business and Human Rights Journal* 6 (2021): 186.

risks to the corporation, HRDD focuses on identifying and mitigating risks to potentially impacted stakeholders or third parties.<sup>20</sup>

Global supply chains are characterized by various terms, depending upon the academic disciplines they originate from with slight variations in perspective<sup>21</sup>. World Investment Report 2013 by United Nations Conference on Trade and Development (UNCTAD) describes Global value chains (GVCs) as those entities that involve fragmented and globally distributed production processes for intermediate goods and services, managed by Transnational Corporations (TNCs), facilitating cross-border trade among their affiliates, contractual partners, and suppliers.<sup>22</sup> The International Labour Office provides a more or less similar definition of global supply chains: “the cross-border organization of the activities required to produce goods or services and bring them to consumers through inputs and various phases of development, production and delivery.”<sup>23</sup> The terms "global supply chains" and "GVCs" are used interchangeably in this thesis, and the aforementioned definitions apply. In Chapter 3 and 4, the term ‘business partner’ is introduced based on the Corporate Sustainability Due Diligence Directive(CSDDD)<sup>24</sup>. CSDDD uses the term ‘business partner’ with qualifications of ‘direct business partner’, ‘indirect business partner’, ‘upstream business partner’ and ‘downstream business partner’ all of which appear to fall within the the broader definition of global supply chains.<sup>25</sup>

The terms “regime” and “framework” are interchangeably employed in connection with mandatory HRDD to denote the collective framework of

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<sup>20</sup> Ibid.

<sup>21</sup> Albert Park, Gaurav Nayyar, and Patrick Low, *Supply Chain Perspectives and Issues: A Literature Review*, Fung Global Institute and World Trade Organization (2013), 41.

<sup>22</sup> UNCTAD, *World Investment Report 2013: Global Value Chains: Investment and Trade for Development*, United Nations Publication (2013), x.

<sup>23</sup> This definition encompasses foreign direct investment (FDI) by multinational enterprises (MNEs) either in wholly owned subsidiaries or in joint ventures where the MNE maintains direct control over employment relations. It also incorporates the prevailing trend of international sourcing, characterized by lead firms engaging with suppliers and subcontractors based on contractual or implicit agreements for particular goods, inputs, and services. International Labour Office, *Decent Work in Global Supply Chains*, Report IV, 105th Session (2016), 1, ¶ 5.

<sup>24</sup> CSDD, (n 15), art. 3(f) and (g).

<sup>25</sup> Ibid, art. 3(f) and (g).

EU laws containing mandatory HRDD requirements, which are comprehensively analyzed within the EU context. The analysis remains centered on the EU context, assessing the mandatory HRDD regime established by EU laws and regulations. Examination of HRDD practices beyond the EU or in non-EU countries is beyond the study's scope. Consequently, the primary sources of analysis are EU laws and regulations mandating HRDD requirements. While member states' legislation related to HRDD may provide additional insights, they are not the primary focus. Similarly, international HRDD standards such as the UNGPs and OECD MNE Guidelines are utilized to clarify the concept of HRDD and contribute to the discussion of mandatory HRDD at the EU level.

The temporal scope of the study extends over the past decade, encompassing up to the present day. This time frame aligns with the emergence and evolution of mandatory due diligence requirements within the EU, offering a comprehensive overview of recent developments in this field.

#### **1.4 Method and materials**

Motivated by the research objectives and inquiries of this study, the thesis will be guided by a legal dogmatic research method<sup>26</sup>. This method seeks to provide a structured presentation of the principles, regulations, and concepts that govern a specific legal domain<sup>27</sup>. One of the objectives of the legal doctrine method is to present the current law (known as the *lex lata*) within a specific domain or pertaining to a particular institution in a manner that is coherent, aiming to accurately convey how the law is formulated<sup>28</sup>. In order to explore and understand pertinent issues within the area of the EU legal framework on mandatory HRDD, this thesis mainly focuses on conducting a legal dogmatic analysis.

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<sup>26</sup> Among the common terms used to refer to this method are: legal doctrine, black letter law, formalism, doctrinalism and legal-dogmatic research. See Jan M. Smits, "What is Legal Doctrine: On the Aims and Methods of Legal-Dogmatic Research," in Rob van Gestel, Hans W. Micklitz, and Edward L. Rubin (eds), *Rethinking Legal Scholarship: A Transatlantic Dialogue* (Cambridge University Press, 2017), 210.

<sup>27</sup> *Ibid*, 210.

<sup>28</sup> *Ibid*, 213-214.

In this regard, since the major task at hand - pursuant to the legal dogmatic method - is “to investigate and systematize the applicable law”<sup>29</sup> which is the research material, the thesis will accordingly analyze relevant primary and mainly secondary laws. This involves a contextual analysis of relevant international, regional, and national statutes, both hard and soft, to comprehend the legal framework surrounding HRDD and connected issues. For this purpose, international soft laws from organizations such as the UN, OECD, and ILO, as well as EU-level regulations like the CSDDD will be studied in a systematic manner. The purpose of employing laws from different tiers and regions is not to delve into a comparative legal method but solely to use them as instruments to gain a deeper understanding of primarily the EU mandatory HRDD regime. This is done by examining the latter in light of international standards and legislations of EU member states. Thus, the descriptive purpose of the legal dogmatic method shall be particularly relevant while addressing the first two research questions namely; what are the legal foundations of HRDDD/mHRDD, and how does mHRDD regime of the EU align with global supply chains.

Legal doctrine extends beyond simply describing and comprehending existing laws as it also involves a prescriptive aspect aimed at guiding legal decision-makers and others.<sup>30</sup> It is the aim of this thesis to provide valuable insights into the effectiveness, strengths, and potential shortcomings of the EU mandatory HRDD framework, allowing for a comprehensive assessment of its alignment with international norms and domestic legal contexts. Thus, the prescriptive aspect of the legal doctrine method shall be helpful in the attempt to discuss the way forward with regards to mandatory HRDD and global supply chains. In particular this appears relevant in addressing the last research question: What are the primary challenges faced by mandatory HRDD in addressing global supply chains, and what supplementary approaches can be considered to enhance their effectiveness?

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<sup>29</sup> Peter Wahlgren, "On the Future of Legal Science," (1957) Stockholm Institute for Scandinavian Law, 516, published in *Legal Theory*, April 2000, 515–525.

<sup>30</sup> *Ibid*, 217.

In addition to the analysis of texts of the law, this traditional legal analysis approach shall be supplemented by the scrutiny of scholarly books, academic journals, reports, and a diverse range of legislative materials in order to analyze the implications of mandatory HRDD on global supply chains. Through this comprehensive examination, the study aims to provide a nuanced understanding of how corporate due diligence practices impact global supply chains, considering various perspectives and insights offered by academic research and legal analyses.

Given that the paper is mainly dealing with European secondary laws, it employs, as necessary, a textual (grammatical), contextual (systematic), historical, and teleological (that is, based on the purposes or objectives of the law) analysis of relevant laws<sup>31</sup> (Chapter 3 and 4 in particular). In addition to literal interpretation<sup>32</sup>, a contextual<sup>33</sup> approach is used to systematically understand the interpretation of HRDD related directives and regulations within the legal system as a whole.

Contextual interpretation also scrutinizes the legislative decision-making or historical process behind the enactment of the EU law provisions.<sup>34</sup> Thus, preparatory documents (some times referred to as travaux préparatoires) are used to understand the legislative process and shed light on the context of some of the laws discussed in the thesis. These include: Council common positions; European Parliament legislative resolutions and initiatives; opinions of European Economic and Social Committee opinions and Committee of the Regions, Green and White papers (Open Public Consultations); Amendments by European Parliament, Common position of the Council; the position of the Commission.

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<sup>31</sup> For a detailed explanation of elements of interpretation of European secondary laws, see Karl Riesenhuber (ed.), *European Legal Methodology*, Intersentia 2017, 237-260.

<sup>32</sup> Literal interpretation, or textualism, can be defined as the practice of elucidating the message conveyed by a normative text through an examination of the ordinary meanings of the words it contains. Koen Lenaerts and José A. Gutiérrez-Fons, *To Say What the Law of the EU Is: Methods of Interpretation and the European Court of Justice*, EUI Working Paper AEL 2013/9, 6.

<sup>33</sup> Contextual interpretation centers on the normative environment surrounding the EU law provision, emphasizing its functional interconnection within the broader normative framework. *Ibid*, 11.

<sup>34</sup> *Ibid*, 13.

In addition, trialogues<sup>35</sup>, legislative proposals and draft laws are used to support discussions in the thesis. Since these documents do not constitute adopted legislative acts and are not part of the actual legal system yet, they “cannot change or otherwise influence interpretation of the existing legal system.”<sup>36</sup> Instead of being considered as part of a systematic interpretation of the law, regulative proposals and drafts legislations will contribute to this paper by providing an understanding of the law in a “different and less stringent way”.<sup>37</sup>

Finally, it is important to point out two issues. First, while traditional legal doctrine typically involves the interpretation, systematization, and application of existing legal norms and relies on precedent, this thesis takes into account the fact that laws like the CSDDD are new with prospective implications. Hence, a modified approach is necessary, which not only encompasses the conventional interpretation and analysis of the legal text but also extends to assessing the potential future implications and effectiveness of such laws. By integrating forward-looking considerations and evaluating how the CSDDD aligns with existing legal frameworks, this methodology provides a comprehensive understanding of the directive’s anticipated impact on the regulatory landscape and its stakeholders. Second, it is noteworthy that the texts of certain legislations, particularly the CSDDD and the Forced Labor Regulation discussed in chapter three, have been adopted by the EU Parliament and are awaiting formal approval by the Council at the time of writing. The texts used in this thesis are these adopted versions.

## 1.5 Outline

The thesis is structured into three main chapters, each focusing on a distinct aspect of the research topic. Chapter 2 provides an overview of the Human

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<sup>35</sup> Trialogues are Informal negotiations among representatives from the European Parliament, the Council of the European Union, and the European Commission. See EUR-LEX, “Trialogue,” available at <https://eur-lex.europa.eu/EN/legal-content/glossary/trilogue.html>, accessed April 20, 2024.

<sup>36</sup> Karl Riesenhuber (ed.), (n 31), 244.

<sup>37</sup> Ibid.



Rights Due Diligence (HRDD) from an international soft law perspective. Chapter 3 delves into the examination of mandatory HRDD within the European Union (EU). This chapter aims to provide insights into the substantive scope of mandatory HRDD within the EU. In Chapter 4, the focus shifts to assessing the efficacy of the EU's mandatory HRDD regime in addressing human rights issues in global supply chains. Through an analysis of limitations and potential implications, this chapter aims to offer insights into the implications of EU mandatory HRDD requirements on a global scale. The thesis ends with chapter 5 which will present a brief conclusion based on the discussion in the three main chapters.

## 2 Human Rights Due Diligence: International Soft Law Perspective

### 2.1 Introduction

Derived from international human rights standards<sup>38</sup>, The Global Compact (UNGC), as the broadest voluntary international CSR initiative, establishes minimum standards for business conduct through its Ten Principles.<sup>39</sup> These Principles state that businesses should uphold and respect human rights and should not be complicit in their violation.<sup>40</sup> Drawing upon the adherence to these principles throughout the entire value chain, the UNGC Guide to Corporate Sustainability puts forward elements that serve as the foundation for a comprehensive due diligence policy.<sup>41</sup> Radu Mares notes that the UNGC, via its materials, has enhanced the comprehension of due diligence content by mapping corporate impacts, employing different categorizations, and providing examples of appropriate managerial actions.<sup>42</sup> The UNGC also made coverage of supply chain issues primarily through the concepts of sphere of influence and complicity.<sup>43</sup> Therefore, it is

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<sup>38</sup> Source Instruments to the Principles are : the Universal Declaration of Human Rights, the International Labour Organization's Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development, and the United Nations Convention Against Corruption. See "The Ten Principles of the Global Compact," available at <https://unglobalcompact.org/what-is-gc/mission/principles>, accessed April 30, 2024.

<sup>39</sup> The Global Compact is currently applicable in currently 167 countries and has over 24,000 business and non-business participants. United Nations Global Compact, <https://unglobalcompact.org/>, accessed April 30, 2024.

<sup>40</sup> The Ten Principles of the Global Compact, (n 34)

<sup>41</sup> Kasey McCall-Smith and Andreas Rühmkorf , Sustainable global supply chains: from transparency to due diligence, in Gammage, Clair/Novitz, Tonia (eds). Sustainable Trade, Investment and Finance.Toward Responsible and Coherent Regulatory Frameworks,Edward Elgar Publishing Ltd, 2019 , 110. See also United Nations Global Compact, *Guide to Corporate Sustainability: Shaping a Sustainable Future* (2015), available at: [https://d306pr3pise04h.cloudfront.net/docs/publications%2FUN\\_Global\\_Compact\\_Guide\\_to\\_Corporate\\_Sustainability.pdf](https://d306pr3pise04h.cloudfront.net/docs/publications%2FUN_Global_Compact_Guide_to_Corporate_Sustainability.pdf), accessed April 30, 2024 .

<sup>42</sup> Radu Mares, "The Limits of Supply Chain Responsibility – A Critical Analysis of CSR Instruments," *Nordic Journal of International Law* 79, no. 2 (2010): 205.

<sup>43</sup> Ibid.

reasonable to consider that the UNGC forms the initial components of HRDD as a voluntary global standard.

in 2004, the UN Commission on Human Rights drafted norms with the aim of imposing legally binding human rights obligations on transnational corporations (TNCs) and other business enterprises.<sup>44</sup> These norms delineated the responsibility of such entities to promote, secure, respect, and ensure the fulfillment of human rights, as recognized by both international and national law, within their respective spheres of activity and influence.<sup>45</sup> The draft norms stipulated that TNCs have the responsibility to exercise due diligence to ensure that their activities do not directly or indirectly contribute to human rights abuses, and that they do not ‘benefit from abuses of which they were aware or ought to have been aware.’<sup>46</sup>

Despite the UN Commission's decision not to act on the proposal due to a highly contentious debate between the business community and human rights advocacy groups, as well as a lack of support from governments, significant developments have ensued.<sup>47</sup> One notable outcome is the establishment of a mandate for a Special Representative of the Secretary-General on the issue of human rights and TNCs who later developed the “Protect, Respect and Remedy” Framework.<sup>48</sup> The Framework, introduced in 2008 by UN Special Representative John Ruggie, is founded on the three pillars of the State duty to protect ; the corporate responsibility to respect; and access to remedy<sup>49</sup>. Of particular relevance to the discussion in this paper is the second pillar: the corporate responsibility to respect human rights which implies that business enterprises must exercise due diligence to prevent infringements on the rights of others and to address any adverse

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<sup>44</sup> Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, E/CN.4/Sub.2/2003/12/Rev.2, August 26, 2003.

<sup>45</sup> Ibid, ¶ A(1).

<sup>46</sup> Commentary on the Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with regard to Human Rights, E/CN.4/Sub.2/2003/38/Rev.2 26 August 2003, Commentary on ¶ A(1)(b).

<sup>47</sup> Guiding Principles, (n 1), ¶ 3.

<sup>48</sup> Ibid, ¶ 3 and 5.

<sup>49</sup> "Protect, Respect and Remedy: A Framework for Business and Human Rights," Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, John Ruggie, A/HRC/8/5, April 7, 2008.

impacts in which they are involved.<sup>50</sup> With the aim of offering tangible and actionable guidance for implementing the Framework, the UNGPs were unveiled in 2011.<sup>51</sup> Serving as a cornerstone for various international standards on human rights due diligence, the UNGPs will serve as a pivotal reference point for the discussion on the concept of HRDD in this chapter.

## **2.2 International Standards on HRDD**

Beginning with the UNGPs, following is a brief discussion of HRDD as outlined in OECD Guidelines for Multinational Enterprises, and ILO MNE Declaration (2017). The draft UN Binding Treaty on Business and Human Rights, which is yet to be adopted, is also briefly discussed at the end of the section. In the following section, the thesis will emphasize on the place of HRDD in these laws and what legal relevance they have.

### **2.2.1 Human Rights Due Diligence in the UNGPs**

The purpose of the UNGPs, according to John Ruggie, is to create a shared global platform for action, facilitating incremental progress while keeping avenues open for potential longer-term advancements.<sup>52</sup> Thus, many of the major relevant international standards have incorporated the concept of HRDD as introduced in the UNGPs. Some of these instruments include: OECD Guidelines for Multinational Enterprises, ILO MNE Declaration (2017), the International Finance Corporation's Performance Standards, and the Equator Principles.<sup>53</sup>

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<sup>50</sup> Guiding Principles, (n 1), ¶ 6.

<sup>51</sup> Ibid, ¶ 9.

<sup>52</sup> Ibid, ¶ 13.

<sup>53</sup> OECD Guidelines for Multinational Enterprises 1976, amended in 2011, ('OECD Guidelines'); ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy 2017; International Finance Organisation (IFC), Environmental and Social Performance Standards 2012; The Equator Principles 2013.

UNGPs are also increasingly being referenced in national judicial bodies, and in international tribunals and treaty bodies.<sup>54</sup> A prominent case in point is the decision, in 2021, of a Dutch court whose verdict relied on the UNGPs and the OECD MNE Guidelines for the definition of ‘standard of care’.<sup>55</sup> The Court noted that, although the UNGPs do not constitute legally binding obligations, they are “authoritative and internationally endorsed ‘soft law’ instrument”.<sup>56</sup> The Court underlined that the responsibility of business enterprises to respect human rights, as outlined in the UNGPs, constitutes a universal standard of expected conduct regardless of states’ capacity or willingness to fulfill their own human rights duties.<sup>57</sup> Relying on the UNGPs, the court further recognized the accountability of parent companies (Shell headquarters in this instance), for their subsidiaries and actors throughout the global value chain.<sup>58</sup> The ruling paves the way for other national courts to enforce HRDD obligations on companies based on the UNGPs, including extraterritorial responsibilities.

While not legally binding, the UNGPs are regarded as the "global authoritative standard on business and human rights"<sup>59</sup> encompassing the concept of HRDD within its framework. Although "due diligence" had been utilized in certain national instruments before the UNGPs, and it aligns with established standards of duty of care in tort law, it had not been applied in the context of human rights impacts and business activities until its introduction in the UNGPs.<sup>60</sup>

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<sup>54</sup> Debevoise & Plimpton (2021), "UN Guiding Principles on Business and Human Rights at 10," available at: <https://www.debevoise.com/-/media/files/insights/publications/2021/06/full-report.pdf>, accessed May 1, 2024.

<sup>55</sup> Milieudefensie et al v. Royal Dutch Shell PLC, Judgment of May 26, 2021, C/09/571932 / HA ZA 19-379 (English Version).

<sup>56</sup> Ibid, ¶ 4.4.11.

<sup>57</sup> Ibid, ¶ 4.4.13.

<sup>58</sup> Ibid, ¶ 4.4.17 and 4.4.18

<sup>59</sup> International Bar Association, *IBA Practical Guide on Business and Human Rights for Business Lawyers* (May 28, 2016), 13, available at: <https://www.ibanet.org/MediaHandler?id=d6306c84-e2f8-4c82-a86f-93940d6736c4>, accessed May 01, 2024.

<sup>60</sup> McCorquodale, Robert, and Aoife Nolan, "The Effectiveness of Human Rights Due Diligence for Preventing Business Human Rights Abuses," *Netherlands International Law Review* 68 (2021): 455–478, 459.

As previously mentioned, the framework delineates three complementary pillars: the state's duty to protect human rights from abuses by third parties, including businesses; the corporate responsibility to respect human rights; and access to effective remedies for victims of human rights violations. Guiding Principle 13 (and its Commentary) articulates two levels of corporate responsibility. Firstly, it mandates businesses to refrain from causing or contributing to adverse human rights impacts through their actions or in-actions and to address such impacts whenever they arise. Secondly, it requires businesses to endeavor to prevent or mitigate adverse human rights impacts directly linked to their operations, products, or services, as well as those arising from their business relationships, including business partners, entities in the value chain, and other actors, even if they did not directly contribute to those adverse human rights impacts made by their business partners.<sup>61</sup> It is noteworthy that the UNGPs use the term "value chain" rather than "supply chain," which encompasses the entire life cycle of a product or service and includes a broader spectrum of business partners beyond suppliers.

HRDD is integral to the corporate responsibility to respect human rights. Within the Guiding Principles, five out of the 31 are categorized under the heading of 'Human Rights Due Diligence' (Principles 17 through 21), in addition to Guiding Principle 15 which also pertains to due diligence. The UNGPs define HRDD as a "process to identify, prevent, mitigate, and account for how they address impacts on human rights."<sup>62</sup> Thus, the UNGPs outline four fundamental elements of due diligence: firstly, the identification and evaluation of both existing and potential human rights impacts; secondly, the integration and implementation of the findings into business practices; thirdly, the monitoring of the effectiveness of the measures taken; and finally, the communication of how these impacts are addressed.<sup>63</sup>

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<sup>61</sup> Guiding Principle 13 , (n 1).

<sup>62</sup> Ibid, Guiding Principle 15.

<sup>63</sup> Ibid, Guiding Principle 17.

The UNGPs define HRDD as a process that involves evaluating both “actual and potential human rights impacts”<sup>64</sup>. According to OHCHR’s Interpretative Guide on Responsibility to Respect (RtR) , human rights risks encompass any factors that could result in a negative effect on human rights, including both current and future adverse impacts.<sup>65</sup> An actual adverse impact is one that has already taken place or is currently occurring, whereas a potential impact refers to one that could occur in the future but has not yet materialized.<sup>66</sup> In any case, risk assessment under HRDD prioritizes the risks faced by rights-holders unlike risk assessment in the business sphere which typically concentrates on the company's own risks.

In conventional risk assessment, factors such as the severity and probability of an event are considered although severity tends to be more significant when assessing human rights risks.<sup>67</sup> While probability may aid in prioritizing potential impacts in certain cases, the primary focus remains on the severity of the impact.<sup>68</sup> The Commentary for Guiding Principle 17 acknowledges that while businesses are expected to reasonably address all human rights risks, priority should be given to the most severe risks, referred to as “salient human rights issues,” within their operations and relationships.<sup>69</sup>

The first stage of HRDD involves identifying and evaluating both current and potential adverse human rights impacts to comprehend their specific nature and context within a business's operations.<sup>70</sup> In essence, HRDD involves evaluating the human rights landscape before undertaking business ventures, identifying potentially affected parties, documenting relevant standards and concerns, and foreseeing any adverse impacts on those involved.<sup>71</sup> In this regard, the UNGPs lay particular attention to vulnerable

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<sup>64</sup> Ibid.

<sup>65</sup> Interpretative Guide, 7.

<sup>66</sup> Ibid, 5.

<sup>67</sup> Ibid, 7.

<sup>68</sup> Ibid.

<sup>69</sup> Guiding Principle, (n 1), Commentary on the Guiding Principle 17.

<sup>70</sup> Ibid, Commentary on the Guiding Principle 18.

<sup>71</sup> Ibid.

or marginalized groups, considering distinct risks faced by, for example, women and men.<sup>72</sup>

Assessment of human rights impacts, which should adhere to all pertinent international human rights standards, is meant to be ongoing and inclusive of consultations.<sup>73</sup> Due to the dynamic nature of human rights contexts, assessments of human rights impacts should occur regularly: before initiating new activities or relationships, and periodically throughout the duration of activities or relationships.<sup>74</sup> In addition, business enterprises must engage directly with potentially affected stakeholders to accurately assess human rights impacts, considering language and other barriers.<sup>75</sup>

The second element of the HRDD process, as mentioned above, is Integrating and acting upon the findings of the assessment. This element marks the positive responsibility of companies to undertake human rights due diligence to become aware of, prevent and address adverse human rights impacts based on their findings.<sup>76</sup> An aspect of this second element of HRDD concerns the capacity of a company to conduct an effective HRDD. Effective horizontal integration of human rights impact assessments across the business enterprise depends on the embedding of human rights policy commitments into all relevant business functions, ensuring proper understanding, consideration, and action based on assessment findings.<sup>77</sup> This action primarily concerns the prevention or mitigation of potential impacts, which can be achieved through horizontally integrating findings across the entire business enterprise.<sup>78</sup>

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<sup>72</sup> Ibid.

<sup>73</sup> Ibid.

<sup>74</sup> Ibid.

<sup>75</sup> Ibid.

<sup>76</sup> Human Rights Council, *Business and Human Rights: Towards Operationalizing the "Protect, Respect and Remedy" Framework*, Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, April 22, 2009, A/HRC/11/13, ¶ 59.

<sup>77</sup> Guiding Principle, ( n 1)Commentary to Guiding Principle 19.

<sup>78</sup> Ibid. Actual impacts, on the other hand, are to be a subject for remediation as indicated on Guiding Principle 22.



The other part in the second element concerns the actual measure required of companies to address the adverse impact. The UNPGs make it clear that if a business enterprise contributes to or may contribute to a negative human rights impact, it must take steps to halt or prevent its contribution and leverage its influence to minimize any residual impact as much as possible.<sup>79</sup> A problem arises in the complex situation where a business enterprise has not itself contributed to an adverse human rights impact and the impact is linked to its business partners. The Commentary on Guiding Principle 19 suggests that if a business enterprise possesses the leverage<sup>80</sup> to prevent or alleviate adverse impacts, it should exert it; however, if lacking such leverage and unable to enhance it, terminating the relationship should be considered.<sup>81</sup>

The third element in the HRDD process is tracking the effectiveness of a company's measures and actions taken in response to the adverse human rights impact. Guiding Principle 20 provides that the tracking process should "be based on appropriate qualitative and quantitative indicators" and that it should "draw on feedback from both internal and external sources including affected stakeholders".<sup>82</sup>

The purpose of tracking is for the enterprise to gauge the optimal implementation of its human rights policies, evaluate its effective response to identified human rights impacts, and foster ongoing improvement.<sup>83</sup> In addition tracking is essential for the enterprise to enhance internal accountability and establish the foundation for any necessary external communication.<sup>84</sup> Tracking also aids in recognizing trends and patterns,

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<sup>79</sup> Ibid, Commentary on Guiding Principle 19.

<sup>80</sup> "leverage", in this context, refers to "the ability to effect change in the wrongful practices of the party that is causing or contributing to the impact". Interpretive Guide, (n 18), 49.

<sup>81</sup> Ibid.

<sup>82</sup> Guiding Principle 20 (a) and (b) (n 1)

<sup>83</sup> Guiding Principle, (n 1), Commentary on Guiding Principle 20

<sup>84</sup> Interpretive Guide, (n 18), 53

highlighting recurrent issues that may necessitate systemic changes to policies or processes.<sup>85</sup>

The fourth and last element of the HRDD process concerns public accountability, which flows from the internal accountability established through the earlier elements, and implies the publicizing of company efforts to respect human rights. The communication responsibility under Guiding Principle 21 primarily involves communicating general approaches to addressing human rights risks and, in some cases, specific responses to particular human rights impacts.<sup>86</sup> Depending on the circumstances, communications regarding human rights may encompass both general approaches to addressing potential impacts on significant rights and specific responses to individual impacts.<sup>87</sup> Guiding Principle 21 emphasizes that enterprises facing a risk of severe human rights impacts in their operations or contexts should formally report on their mitigation efforts, especially when the risk involves significant or irreparable human rights impacts of broader public concern.<sup>88</sup> Readiness on the part of enterprises to be transparent, in a principled<sup>89</sup> manner, about how they address their human rights impact to stakeholders and the public is thus an important part of the HRDD process.

## **2.2.2 Human Rights Due Diligence in OECD Guidelines for Multinational Enterprises on Responsible Business Conduct**

The OECD Guidelines for Multinational Enterprises, updated in 2011 to conform with the UNGPs, and its guidance on Responsible Business

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<sup>85</sup> Ibid.

<sup>86</sup> Ibid, 58.

<sup>87</sup> Ibid.

<sup>88</sup> Guiding Principle 21, see also Guiding Principle 14 (n 1).

<sup>89</sup> Companies could, for example, use the principles of UNGPs Reporting Framework which include: setting human rights reporting in a business context, meeting a minimum threshold of information, demonstrating ongoing improvement, focusing on respecting human rights, addressing the most severe human rights impacts, providing balanced examples from relevant geographic areas and explaining any omission of important information. "UNGP Reporting Framework With Implementation Guidance" (2015), p. 25, available at: [https://www.ungpreporting.org/wpcontent/uploads/UNGPREportingFramework\\_withguidance2017.pdf](https://www.ungpreporting.org/wpcontent/uploads/UNGPREportingFramework_withguidance2017.pdf), accessed May 01, 2024.

Conduct integrate a comparable standard of due diligence as outlined in the UNGPs.<sup>90</sup>

The OECD Guidelines for Multinational Enterprises on Responsible Business Conduct(2023 Update) stipulates that enterprises shall carry out HRDD but also do so in a manner commensurate to ‘their size, the nature and context of operations and the severity of the risks of adverse human rights impacts’<sup>91</sup>.The HRDD process outlined in the OECD Guidelines involves evaluating actual and potential human rights impacts, incorporating and acting on the findings, monitoring responses, and communicating how impacts are handled.<sup>92</sup> The Commentary on the Human Rights section (IV) of the OECD Guidelines emphasizes that HRDD can be integrated into broader enterprise risk management systems, provided it extends beyond merely identifying and managing risks to the enterprise itself to also include risks to rights-holders.<sup>93</sup> Additionally, the Commentary highlights that HRDD is a continuous endeavor, acknowledging that human rights risks may evolve over time as the enterprise's operations and operating environment change.<sup>94</sup>

### **2.2.3 Human Rights Due Diligence in ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (ILO MNE Declaration)**

ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (ILO MNE Declaration), adopted by the ILO's Governing Body in 1977 and subsequently amended, stands as the only global instrument in its field, jointly developed and adopted by governments,

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<sup>90</sup> John Gerard Ruggie et al, (n 19), and John Ruggie and Tamaryn Nelson, "Human Rights and the OECD Guidelines for Multinational Enterprises: Normative Innovations and Implementation Challenges," *Corporate Social Responsibility Initiative Working Paper* No. 66 (May 2015), 13.

<sup>91</sup> OECD Guidelines(2023 Update) ( n 9), Chapter IV, ¶ 4.

<sup>92</sup> Ibid, ¶ 50.

<sup>93</sup> Ibid.

<sup>94</sup> Ibid.

employers, and workers worldwide.<sup>95</sup>The MNE Declaration provides guidance to multinational enterprises, governments, employers' and workers' organizations on various aspects drawing significantly from principles outlined in international labor Conventions and Recommendations.<sup>96</sup> The MNE Declaration urges enterprises to conduct thorough due diligence processes to detect, prevent, alleviate, and address any current or potential negative impacts on internationally recognized human rights.<sup>97</sup> These rights, outlined within the International Bill of Human Rights and the fundamental rights outlined in the ILO Declaration on Fundamental Principles and Rights at Work, encompass a broad range of human rights standards and principles. By adhering to these guidelines, enterprises are expected to proactively manage their activities and relationships to ensure compliance with human rights standards and prevent any harm to individuals or communities.<sup>98</sup>

Moreover, enterprises, including multinational entities, are encouraged to identify and evaluate any potential adverse human rights consequences arising from their operations or business connections.<sup>99</sup> This assessment process should entail meaningful engagement with affected groups and relevant stakeholders, such as workers' organizations, tailored to the scale and context of the enterprise's operations.<sup>100</sup> This approach seeks to foster a culture of respect for human rights within enterprises and promote transparent and collaborative efforts to address human rights concerns.

#### **2.2.4 Human Rights Due Diligence in in the Draft UN Business and Human Rights Treaty**

The UN Human Rights Council passed a resolution on 26 June 2014, creating an open-ended intergovernmental working group (OEIGWG) focused on transnational corporations and other business entities with the objective of developing a legally binding international instrument aimed at regulating the actions of such entities

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<sup>95</sup>ILO, "What is the ILO MNE Declaration," available at: [https://www.ilo.org/empent/areas/mnedeclaration/WCMS\\_570332/lang--en/index.htm](https://www.ilo.org/empent/areas/mnedeclaration/WCMS_570332/lang--en/index.htm), accessed May 03.

<sup>96</sup> MNE Declaration, (n 8), 5.

<sup>97</sup> Ibid, ¶ 10(d).

<sup>98</sup> Ibid.

<sup>99</sup> Ibid, ¶ 10(e).

<sup>100</sup> Ibid.

within the framework of international human rights law.<sup>101</sup> The initial official draft, referred to as the "Zero Draft," of the legally binding instrument concerning business and human rights was unveiled on 16 July 2018 which was succeeded by the publication of a Revised Draft of the business and human rights Treaty in 2019.<sup>102</sup> The working group released an updated third version of the Draft Treaty in July 2023 following its ninth session discussions.<sup>103</sup> The Draft Treaty recognizes the UNGPs by affirming that all business enterprises, are obligated to uphold internationally recognized human rights which includes refraining from causing or aiding human rights violations through their activities and taking corrective action if such violations occur.<sup>104</sup> Additionally, businesses must work to prevent or lessen human rights abuses associated with their operations, products, or services, as well as those arising from their business relationships.<sup>105</sup>

The definition of HRDD employed by the Draft Treaty is in the same line with UNGPs: "...the processes by which business enterprises identify, prevent, mitigate and account for how they address their adverse human rights impacts."<sup>106</sup> Following from this definition, it can be noted that the same four elements as in the UNGPs are mirrored : identifying and assessing any adverse human rights impacts;taking appropriate measures; monitoring the effectiveness of such measures; and regular communication of measures to stakeholders.<sup>107</sup>

Under Paragraph 6.2(c), State Parties are required to adopt necessary measures (legislative, regulatory, and other measures) to 'ensure the practice of human rights due diligence by business enterprises'. In addition to introducing mandatory HRDD, the Draft requires States to enact laws and regulations to prevent businesses from engaging in human rights abuses, ensure that businesses respect internationally recognized human rights, and encourage the involvement of individuals and groups in creating measures to prevent business-related human rights abuses.<sup>108</sup> Although negotiations are still ongoing, the adoption of such appropriate measures by states would mean that enterprises shall be legally liable for failing to carry out HRDD in their operation.

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<sup>101</sup> UN 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 June 2014).

<sup>102</sup> OEIGWG, "Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises," July 16, 2019, ("Revised Draft"), available at: [https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/OEIGWG\\_RevisedDraft\\_LBI.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/OEIGWG_RevisedDraft_LBI.pdf), accessed May 04, 2024.

<sup>103</sup> Business and Human Rights Treaty, (n 10).

<sup>104</sup> Ibid, Preamble ¶ 12.

<sup>105</sup> Ibid.

<sup>106</sup> Ibid, ¶ 1.8.

<sup>107</sup> Ibid.

<sup>108</sup> Ibid, ¶ 6.2 (a-d).

## 3 Mandatory Human Rights Due Diligence in the EU

### 3.1 Introduction

Businesses have for years engaged in promoting responsible conduct based on voluntary corporate initiatives and soft laws described in the earlier chapter. Voluntary initiatives, however, have not led to significant sector-wide improvements, resulting in observed negative impacts from EU production and consumption both domestically and internationally.<sup>109</sup> In addition, processes which are based on voluntary standards do not result in legal certainty for neither companies nor victims in case harm occurs.<sup>110</sup>

Over the past decade, the European Union has taken the lead in introducing several legislations containing HRDD requirements which has been globally recognized as a “historic leadership by the EU” in the area of business and human rights.<sup>111</sup> This section will focus on existing or proposed sectoral / product-related value chain due diligence legislations. The following discussion focuses exclusively on the scope and substantive content of the laws. The extraterritorial aspect of EU HRDD laws will be addressed in Chapter 4, which will concentrate on the CSDDD - a general and cross-sectoral HRDD legislation.

### 3.2 Product-based mHRDD legislations

One of the product-related EU due diligence legislations is the EU Timber Regulation (EUTR)<sup>112</sup> which entered into force on 3 March 2013 and will be

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<sup>109</sup> Explanatory Memorandum to the Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937, Brussels, 23.2.2022, COM(2022) 71 final, 2022/0051(COD).

<sup>110</sup> Ibid.

<sup>111</sup> See comments by UN High Commissioner for Human Rights Volker Türk. UN Human Rights Chief urges EU leaders to approve key business and human rights legislation. Available at: <https://www.ohchr.org/en/press-releases/2024/02/un-human-rights-chief-urges-eu-leaders-approve-key-business-and-human-rights>, accessed 13 May 2024.

<sup>112</sup> EUTR, (n 11). The EUTR is one of the two major legislations which resulted following the adoption of the FLEGT Action Plan in 2003 (the FLEGT Regulation being the other).

repealed when the Regulation on deforestation-free products (EUDR)<sup>113</sup> enters into application on 30 December 2024. EUTR is one of EU's earliest introductions of a mandatory due diligence. Operators placing timber and timber products on the internal market are required by the legislation to exercise due diligence through a combination of three elements: access to information, risk assessment, and mitigation of the risk identified<sup>114</sup>. The obligation of traceability means that businesses are required to be able to identify operators who have supplied and to whom they have supplied the timber products throughout the supply chain.<sup>115</sup> In addition to availing detailed information on the products and their origin, a description regarding compliance of those products with the applicable legislation is required.<sup>116</sup> EUTR incorporates risk assessment criteria to analyze and evaluate the risk of illegally harvested timber, including ensuring compliance with relevant laws<sup>117</sup>, assessing the prevalence of illegal practices in the harvest country, and considering the complexity of timber and timber product supply chains.<sup>118</sup> Unless the identified risk is negligible<sup>119</sup>, appropriate risk mitigation procedures, comprising measures proportionate to effectively minimize the risk, should be implemented.<sup>120</sup>

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European Commission, "EU rules against illegal logging," available at: [https://environment.ec.europa.eu/topics/forests/deforestation/eu-rules-against-illegal-logging\\_en?prefLang=et](https://environment.ec.europa.eu/topics/forests/deforestation/eu-rules-against-illegal-logging_en?prefLang=et), accessed 13 May 2024.

<sup>113</sup> EUDR, (n 13).

<sup>114</sup> Ibid, art.4 and 5.

<sup>115</sup> EUTR, (n 11), art. 5.

<sup>116</sup> Ibid, art. 6.

<sup>117</sup> Assurance of compliance may involve certification or third-party-verified schemes ensuring adherence to relevant legislation. These schemes should enable timber tracing throughout the supply chain and prevent the inclusion of non-compliant products. See Commission Implementing Regulation (EU) No 607/2012 of 6 July 2012 on the detailed rules concerning the due diligence system and the frequency and nature of the checks on monitoring organisations as provided for in Regulation (EU) No 995/2010 of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the market, art. 4.

<sup>118</sup> Ibid.

<sup>119</sup> If a comprehensive assessment of both product-specific and general information reveals no cause for concern, negligible risk is applicable to timber supply. However, if the risk cannot be reduced to a negligible level, the operator should refrain from placing the timber on the EU market. European Commission, *Guidance Document for the EU Timber Regulation* of February 12, 2016, p. 5. See also Expert Group on the EU Timber Regulation and the Forest Law Enforcement, Governance and Trade (FLEGT) Regulation Guidance Document - Due Diligence, p. 1, available at: [file:///C:/Users/yodah/Downloads/28\\_02\\_2020\\_Guidance\\_on\\_Due\\_Diligence.pdf](file:///C:/Users/yodah/Downloads/28_02_2020_Guidance_on_Due_Diligence.pdf).

<sup>120</sup> Ibid.

Competent authorities are tasked with conducting checks to ensure operators' compliance with due diligence requirements under the EUTR, and may issue notices of remedial actions in cases of identified shortcomings.<sup>121</sup> Additional interim measures, such as product seizure and marketing prohibition, may be implemented by authorities.<sup>122</sup> Penalties must be effective, proportionate, and deterrent to deprive offenders of economic gains from serious infringements, possibly including immediate suspension of trading authorization.<sup>123</sup>

The EUTR does not explicitly mention HRDD or human rights within its provisions. Instead, its due diligence system primarily focuses on compliance with "applicable legislation," as defined under article 2(h). Notably, human rights are not explicitly listed among these legislative references. Moreover, the EUTR predates the introduction of the UN Guiding Principles on Business and Human Rights (UNGPs), thus making no direct reference to them. Consequently, the due diligence framework outlined in the EUTR differs from that prescribed by the UNGPs, lacking some elements and depth present in the latter.

However, the inclusion, under article 2(h), of environmental laws and legal rights of third parties affected by timber harvesting can potentially be interpreted to encompass human rights concerns. Despite the absence of explicit mention of HRDD, the EUTR's due diligence system shares similarities with the UNGPs HRDD, as it shifts the focus from solely business risk to risks faced by stakeholders. This suggests an expectation of a certain standard of conduct from businesses concerning a broad spectrum of applicable legislation. Furthermore, the EU had begun integrating business and human rights issues since 2010, followed by the design of a Corporate Social Responsibility (CSR) strategy in 2011 partly aimed at implementing the UNGPs.<sup>124</sup> Hence, while not explicitly articulated, it can

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<sup>121</sup> EUTR, (n 11) art. 10.

<sup>122</sup> Ibid.

<sup>123</sup> Ibid, art. 19.

<sup>124</sup> Communication from the Commission, *A Renewed EU Strategy 2011-14 for Corporate Social Responsibility* (COM/2011/0681 final), p. 14. See also European Parliament Resolution of July 5, 2016 on implementation of the 2010 recommendations of Parliament



be inferred that the EUTR implicitly encourages elements of HRDD by establishing a standard of care.

The EUDR, another product-related EU legislation mandating due diligence, and which is to replace the EUTR, makes explicit mention of human rights. The primary motive behind replacing the EUTR with the EUDR is its failure to directly tackle deforestation and the inability to achieve its set objectives.<sup>125</sup> Following a Fitness Check, it was determined that solely emphasizing the legality of timber was inadequate for meeting these objectives and that a revised due diligence system with new features is necessary to increase effectiveness.<sup>126</sup> The scope was expanded to encompass the introduction of relevant products onto the Union market, as well as their export from the Union, including those containing or derived from cattle, cocoa, coffee, oil palm, rubber, soy, and wood.<sup>127</sup> In addition to effectively combating deforestation, an important objective of the EUDR is to “promote deforestation-free supply chains, while taking into account the protection of human rights and the rights of indigenous peoples and local communities, both in the Union and in third countries.”<sup>128</sup> The placing or making available of relevant products is contingent upon their adherence to the following conditions: being deforestation-free, produced in compliance with the applicable legislation of the production country, and accompanied by a due diligence statement.<sup>129</sup>

When placing relevant products in the market, operators are required to implement a due diligence system which consists of information requirements, risk assessment and risk mitigation measures, complemented

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on social and environmental standards, human rights and corporate responsibility (2015/2038(INI)), (2018/C 101/02), ¶ 30.

<sup>125</sup> EUDR, (n 11), Preamble ¶ 32.

<sup>126</sup> Ibid. See also Commission Staff Working Document Impact Assessment, *Minimising the Risk of Deforestation and Forest Degradation Associated with Products Placed on the EU Market*, Accompanying the document Proposal for a Regulation of the European Parliament and of the Council on the Making Available on the Union Market as well as Export from the Union of Certain Commodities and Products Associated with Deforestation and Forest Degradation and Repealing Regulation (EU) No 995/2010 (SWD/2021/326 final), ¶ 5.3.1.

<sup>127</sup> Ibid, EUDR, art. 1.

<sup>128</sup> Ibid, Preamble ¶ 41.

<sup>129</sup> Ibid, art. 3.

by reporting obligations.<sup>130</sup> New aspects of the EUDR's due diligence system comprise enhanced traceability requirements, mandatory declaration of conformity with the regulation, and the establishment of a comprehensive inspection protocol.<sup>131</sup> Operators must obtain pertinent information regarding the country of production for the commodities they plan to introduce to the EU market, as effective traceability is essential to fully leverage remote monitoring capabilities.<sup>132</sup> Article 4(3) of the EUDR states that by providing the due diligence statement to competent authorities. This helps authorities to identify operators and can also serve as valuable evidence in building robust court cases in instances of non-compliance.<sup>133</sup> The operator accepts responsibility for the compliance of the relevant product. The requirement for competent authorities to conduct checks under Article 16 of the EUDR counterbalances deficiencies in certification or third-party verification mechanisms, which may include governance issues, lack of transparency, unclear standards, and unreliability of monitoring systems.<sup>134</sup>

The communication element which is missing in the EUTR is included in the EUDR due diligence system. Operators (excluding SMEs, micro-enterprises and natural persons) are required to annually publicize a report on their due diligence system as widely as possible.<sup>135</sup> Operators subject to additional Union legal acts prescribing value chain due diligence requirements may fulfill their reporting obligations under this provision by incorporating the necessary information into their reports submitted in accordance with those other Union legal acts.<sup>136</sup>

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<sup>130</sup> Ibid, Preamble ¶ 49, and art. 8-11

<sup>131</sup> Ibid, art. 4,9,13,16,18 and 19.

<sup>132</sup> Commission Staff Working Document, n 124, ¶ 5.3.1.

<sup>133</sup> Ibid.

<sup>134</sup> During the law making process, the European Parliament and most NGOs favored inspection, whereas businesses advocated for certification and verification schemes. Ibid.

<sup>135</sup> Ibid, art.12 and 22.

<sup>136</sup> Ibid.

Risk assessment should take in to account, among others, the presence of indigenous peoples in the country of production, the consultation with and existence of claims by indigenous peoples in the country of production, and concerns of violations of international human rights.<sup>137</sup> This aligns with the material scope of the UNGPs, which require businesses to uphold internationally recognized human rights and, when appropriate, to take into account additional standards, such as those pertaining to the rights of indigenous peoples.<sup>138</sup> While the EUDR does not directly reference the UNGPs, OECD MNE Guidelines, or HRDD, it implicitly acknowledges international human rights standards as guiding the due diligence process.

In cases of non-compliance with the regulation, authorities mandate operators to implement suitable and proportionate corrective measures to rectify the violation.<sup>139</sup> While the list of corrective actions includes lenient measures such as rectifying formal non-compliance, there is no specified order of priority.<sup>140</sup> This means that operators can opt for the option of immediate withdrawal under article 24(2) before a proper engagement with suppliers. The UNGPs, in contrast, prioritize businesses using their leverage to engage with suppliers to prevent or mitigate or cease human rights impacts before considering terminating a business relationship.<sup>141</sup> Requiring immediate disengagement from production sites could potentially harm human rights and hinder access to remedies for affected indigenous peoples, local communities, or workers.<sup>142</sup> Following disengagement, impacted communities often find themselves in a more vulnerable position, continuing to face ongoing human rights impacts.<sup>143</sup>

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<sup>137</sup> Ibid, art.10 c,d,e, and h.

<sup>138</sup> Guiding Principle 12 and Commentary, (n 1)

<sup>139</sup> EUDR , n 13, art. 24.

<sup>140</sup> Ibid.

<sup>141</sup> Guiding Principle 19 and commentary, (n 1)

<sup>142</sup> Anouska Perram and Norman Jiwan, ‘Human Rights Violations Connected with Deforestation – Emerging and Diverging Approaches to Human Rights Due Diligence’ (2023) 8 Business and Human Rights Journal 112-13.

<sup>143</sup> Ibid.

Another important product-related legislation is the regulation prohibiting products made with forced labour on the Union market which prohibits economic operators from placing or exporting products made with forced labour in the EU market (Forced Labour Regulation).<sup>144</sup> This Regulation aims to support and strengthen the implementation of the initiatives outlined in this section, ensuring they are applied in a consistent and complementary manner.<sup>145</sup> The Regulation defines due diligence as “efforts by economic operator to implement mandatory requirements, voluntary guidelines, recommendations or practices to identify, prevent, mitigate or bring to an end the use of forced labour...”.<sup>146</sup>

Prior to commencing investigations on the products and economic operators in question, competent authorities are to be provided with information regarding actions taken by operators based on relevant Union or Member State legislation outlining due diligence requirements, as well as standards from organizations such as the UN, ILO, OECD, among others.<sup>147</sup>

Competent authorities may conduct field inspections outside the EU territory, upon the consent of the economic operators involved and the absence of objections from the government of the third country, depending on the location of the forced labor risk.<sup>148</sup> The legislation thus not only regulates extraterritorial human rights violations but also provides consent based investigative mandates to EU authorities.

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<sup>144</sup> European Parliament legislative resolution of 23 April 2024 on the proposal for a regulation of the European Parliament and of the Council on prohibiting products made with forced labour on the Union market (COM(2022)0453 – C9-0307/2022 – 2022/0269(COD)), Adopted on April 23, 2024, art. 1 and 3 (hereafter referred to as Forced Labor Regulation).

<sup>145</sup> Commission Staff Working Document Prohibiting products made with forced labour on the Union market SWD/2022/0439 final, section 3.2.

<sup>146</sup> Forced Labor Regulation, (n 144), art. 2(c).

<sup>147</sup> Ibid, art. 18(1).

<sup>148</sup> Ibid, art. 19.

Although no new due diligence obligations are created by the Forced Labour Regulation besides those present in existing Union or national law<sup>149</sup>, the legislation imposes specific sanctions in case of non-compliance. Products falling under this category will either be prohibited from being introduced or made available on the Union market, or withdrawn and disposed of if they have already entered the market.<sup>150</sup> In cases of operator non-cooperation with investigating authorities, decisions may be made based on available alternative information.<sup>151</sup> As long as operators consistently conduct thorough HRDD pertinent to forced labor risks according to relevant national, EU, or international standards, they are likely to avoid the additional product based sanctions of the the Regulation.

The Forced Labor Regulation, unlike the EUTR and EUDR, makes an explicit reference to the UNPGS and all relevant standards there by extending its material scope to international human rights standards in general including more relevant ILO standards. In addition, the Regulation's scope in terms of affected businesses is not limited as in the CSDD(to be discussed below). Not only does article 2, the paragraph defining the Regulations scope, stipulates such limitation, but also definitions of the terms used to refer to relevant businesses like 'economic operator', 'manufacturer' 'importer' or 'exporter' extend to 'any' relevant business.<sup>152</sup> However, the Regulation does not extend to the withdrawal of products that have reached end-users<sup>153</sup>, and the definition of 'supply chain' is restricted to upstream actors, thus excluding downstream actors.<sup>154</sup>

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<sup>149</sup> Ibid, art.1(3).

<sup>150</sup> Ibid, art. 20(2)

<sup>151</sup> Ibid, art. 20(4)

<sup>152</sup> Ibid, art. 2(i),(j),(n),(o). There were various options considered during the drafting process which included approaches covering only some products, sectors, regions or operators or introducing thresholds for volumes of products. However, all these options were discarded and the scope of the Regulation was made to include all products, sectors and regions and all economic operators irrespective of size. See COMMISSION STAFF WORKING DOCUMENT, (n 145), section 5.1.1.

<sup>153</sup> Ibid, EUDR, art. 1(2)

<sup>154</sup> Upstream activities, processes and actors refer to "extraction, harvesting, production and manufacturing of a product in whole or in part, including working or processing related to the product at any of those stages". Ibid, art. 2(h).

It is a noteworthy that the inclusion of both diligence and investigation elements enhances the effectiveness of the Forced Labor Regulation. During the drafting process, one legislative option considered was to use due diligence under EU and national legislation as the sole tool to address concerns about forced labor while investigations would only target products from companies failing to conduct proper due diligence.<sup>155</sup> However, this option was left aside because existing EU and national due diligence laws do not cover SMEs and certain large companies.<sup>156</sup> It follows that products from these companies could still be tainted with forced labor, undermining the Regulation's effectiveness. In addition, while due diligence can identify and address forced labor in supply chains, it is insufficient to prevent tainted products from entering the market if not properly implemented, hence the inclusion of the investigation element.<sup>157</sup>

### **3.3 Sector-based mHRDD legislations**

In addition to the product/related due diligence instruments, the EU has introduced (and is in the process in some cases) legislations of similar nature targeting various sectors such as the Conflict Minerals Regulation<sup>158</sup>, Batteries Regulation<sup>159</sup> and European Critical Raw Material Act (proposal). The following is a brief discussion will focus on the HRDD element of the Conflict Mineral Regulation which was passed in 2017 and has come into full force since January 2021.

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<sup>155</sup> Commission Staff Working Document, (n 145), section 5.1.1.

<sup>156</sup> Ibid.

<sup>157</sup> Ibid.

<sup>158</sup> Conflict Minerals Regulation, (n 12).

<sup>159</sup> Regulation (EU) 2023/1542 of the European Parliament and of the Council of 12 July 2023 concerning batteries and waste batteries, amending Directive 2008/98/EC and Regulation (EU) 2019/1020 and repealing Directive 2006/66/EC (Text with EEA relevance).

The Conflict Mineral Regulation lays down the supply chain due diligence obligations of Union importers of minerals containing tin, tantalum, tungsten or gold above a given volume threshold.<sup>160</sup> Following the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals(OECD Guidance)<sup>161</sup> , the Regulation defines supply chains in a manner that includes both upstream (from the extraction sites to the smelters and refiners) and the down stream (the stage following the smelters and refiners to the final product)<sup>162</sup>. The due diligence mandated by the Regulation is based on the OECD Guidance which follows a five-step framework including: establishing strong management systems, identifying and assessing risk in the supply chain, designing and implementing a response strategy , carrying out independent third-party audit of supply chain due diligence, and reporting on the process.<sup>163</sup> The Regulation, under articles 4 through 7, mirrors these elements.

In response to identified risks in the supply chain, EU importers are required to either continue or temporarily suspend trade while pursuing ongoing risk mitigation efforts, including consultation with suppliers and concerned stakeholders.<sup>164</sup> If these risk mitigation efforts fail, importers must eventually disengage from the suppliers.<sup>165</sup> To aid in this process, the Commission publishes and constantly updates a list of global responsible smelters and refiners, removing those who are no longer deemed responsible.<sup>166</sup> This specific contribution of the Commission, realized in cooperation with supply chain due diligence schemes<sup>167</sup>, is unique compared

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<sup>160</sup> Conflict Minerals Regulation, (n 158), art. 1(2),1(3) and Annex I of the Regulation. Volume thresholds vary among mineral types and they are set at a level that ensures a minimum of 95 %, of the total volumes imported into the Union fall within the Regulation's ambit.

<sup>161</sup> OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, Third Edition, 2016, p.14

<sup>162</sup> Conflict Minerals Regulation, (n 158), art. 2(c),(j),(k).

<sup>163</sup> OECD , n 161, Annex I, p.17-19

<sup>164</sup> Conflict Minerals Regulation, (n 1589, art. 5(1)(b)

<sup>165</sup> Ibid.

<sup>166</sup> Ibid, art. 9(1),(4).

<sup>167</sup> These schemes, developed and overseen by government or non-government bodies, may be recognized as adequate for enabling mineral importers to comply with the Regulation. If

to other EU due diligence instruments.

Competent member state authorities are required to conduct 'ex-post checks,' including the examination of importers' implementation of supply chain due diligence obligations.<sup>168</sup> While detailed rules concerning infringement are to be laid down by member states, competent authorities must issue a notice of remedial action to non-compliant importers.<sup>169</sup> The enforcement mechanism of the Regulation is not strong enough as member states are not yet authorized to impose penalties on importers in cases of non-compliance.<sup>170</sup>

The thematic scope of the Regulation relates to conflict related risks and adverse impacts, and “other supply chain risks” listed in the OECD Guidance.<sup>171</sup> The OECD Guidance defines “risks” in relation to the potentially adverse impacts of a company’s operations which includes harm to people.<sup>172</sup> In addition, ‘conflict-affected and high-risk areas’(CAHRA), which are the target of the Regulation, include those areas of human rights abuses.<sup>173</sup> Although it seems to follow from this that all human rights fall within the scope of the Regulation, this does not appear to be the case. The Regulation refers, under article 5, to Annex II of the OECD Guidance as a standard of reference which lays down a narrower scope.<sup>174</sup> It appears that the identification and assessment of risk, as mandated by the Regulation, is

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deemed sufficient enable importers to comply with the Regulation, the Commission shall grant the scheme recognition of equivalence with the Regulation's requirements. Ibid, art. 8.

<sup>168</sup> Ibid, art. 11.

<sup>169</sup> Ibid, art. 16.

<sup>170</sup> The Regulation provides that the Commission would consider allowing member states to penalize persistent infringers after reviewing the functioning and effectiveness of the Regulation. Ibid, art.17(3).

<sup>171</sup> Ibid, art. 4(f) (v) and art. 5.

<sup>172</sup> OECD Guidance, Note at 160, p.13

<sup>173</sup> Conflict Minerals Regulation, (n 158), article 2(h). The Regulation's focus on CAHRAs and the inclusion of African, Asian, South American, and European (Ukraine) countries in the indicative list of CAHRAs (as it stands at the time of writing) highlight the Regulation's global geographic scope.

<sup>174</sup> Ibid, Annex II, Model Supply Chain Policy for a Responsible Global Supply Chain of Minerals from Conflict-Affected and High-Risk Areas, p 20-24.



to be conducted against the standard of the OECD guidance which makes an exhaustive list of human rights violations relevant to conflict-affected and high-risk areas.<sup>175</sup> Thus, the thematic scope is not as broad as the UNGPs or the OECD MNE Guidelines, which is expected given that this is only a sectoral due diligence instrument. Consequently, HRDD is incorporated into the Regulation specifically based on the listed forms of human rights violations.

### **3.4 CSDDD: A general and cross - sectoral mHRDD legislation**

Although businesses have been increasingly conducting due diligence processes based on voluntary standards, such voluntary actions may not result in legal certainty for stakeholders<sup>176</sup>. The CSDDD aims to address this gap through a mandatory mechanism which integrates risk management and mitigation processes of human rights and environmental risks and impacts<sup>177</sup>. It aspires to: avoid fragmentation of due diligence requirements ; create legal certainty ; increase corporate accountability for negative impacts ; and improve access to remedies<sup>178</sup>. The Directive shall complement other legislations of similar nature, more particularly the Corporate Sustainability Reporting Directive (CSRD)<sup>179</sup>. These two cross-sectoral initiatives create synergies: the CSDDD's due diligence process facilitates proper information collection for latter's reporting requirements, and the CSRD covers the final step of due diligence—reporting—for companies falling within its scope.<sup>180</sup>

The Directive will apply to EU companies with more than 1,000 employees on average and a net worldwide turnover exceeding EUR 450 million.<sup>181</sup> It

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<sup>175</sup> The violations listed are: any forms of torture; cruel, inhuman and degrading treatment; any forms of forced labour ; the worst forms of child labour; gross human rights violations and abuses ; war crimes ; and crimes against humanity or genocide.

<sup>176</sup> Explanatory Memorandum , (n 109)

<sup>177</sup> Ibid.

<sup>178</sup> Ibid.

<sup>179</sup> CSRD, (n 14)

<sup>180</sup> Explanatory Memmorandum, (n 109)

<sup>181</sup> CSDDD, (n 15), art. 2(1)(a). This sharply contrasts with the Commission's Proposal, which included companies averaging more than 500 employees and having a net worldwide

also applies to a company if it is the ultimate parent company of a group that collectively meets these thresholds or if it is the ultimate parent company of a group engaged in franchising or licensing agreements within the EU, generating royalties exceeding EUR 22.5 million.<sup>182</sup> Additionally, the company or its group must have a net worldwide turnover of more than EUR 80 million.<sup>183</sup> In addition, companies formed under the legislation of a third country that meet any of the aforementioned conditions are also subject to the Directive.<sup>184</sup> This means the Directive not only indirectly affects subsidiaries and business partners within the value chain but also directly exerts extraterritorial influence on non-EU companies with substantial activities in the Union.

The substantive provisions on due diligence in the CSDDD stipulate six key elements. First, companies must integrate due diligence into their policies and risk management systems (Article 7). Second, they must identify and assess adverse impacts (Article 8). Third, they are required to prevent and mitigate potential adverse impacts, as well as address and minimize actual adverse impacts (Articles 10 and 11). Fourth, companies must monitor the effectiveness of their due diligence policies and measures (Article 15). Fifth, they are obligated to publicly communicate on their due diligence activities (Article 16). Additionally, the provision of remedy and actions relevant to this are included as part of the HRDD process under Article 5. These actions involve providing remediation for actual adverse impacts, engaging meaningfully with stakeholders, and establishing a notification mechanism and complaints procedure.<sup>185</sup> (These elements and issues related to enforcement and civil liability will be discussed in Chapter 4, with a focus on global value chains).

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turnover of over EUR 150 million within its scope. Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 COM/2022/71 final, art 2(1)(a)(hereafter referred to as CSDDD Commission's Proposal).

<sup>182</sup> Ibid, CSDDD, art. 2(b) and (c).

<sup>183</sup> Ibid.

<sup>184</sup> Ibid, art. 2(2).

<sup>185</sup> Ibid, art. 12,13 and 14.

These key elements are similar to earlier international soft law standards such as the UNGPs and more particularly the OECD Guidance for Responsible Business Conduct which lays down six due diligence steps and upon which the Directive is modeled after.<sup>186</sup> Due diligence as mandated by the CSDDD must address adverse human rights impacts<sup>187</sup> resulting from violations of a comprehensive list of international human rights and prohibitions, based on a wide range of human rights and freedoms instruments.<sup>188</sup> The Directive further advises companies to consider additional standards, taking into account specific contextual factors such as gender, ethnicity, and other statuses.<sup>189</sup> Recognizing that human rights issues can be intertwined with corruption, the Directive also includes relevant corruption and bribery standards within its scope.<sup>190</sup> The CSDDD can thus be considered the most comprehensive in terms of material scope for human rights standards compared to other EU due diligence instruments. Although not defined under article 3 (“Definitions” section), the Directive also employs the term HRDD in line with the UNGPs.<sup>191</sup>

## 4 Extraterritorial aspect of EU mHRDD

Over the past decade, there has been a growing trend of companies voluntarily conducting due diligence across their value chains. The

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<sup>186</sup> CSDDD clearly mentions the OECD Guidelines as defining the Regulation’s due diligence process. See *ibid*, Preamble ¶ 20 .

<sup>187</sup> In addition to the human rights specifically listed in Part I, Section 1, of the Directive's Annex, adverse human rights impacts also include abuses of any human right enshrined in the instruments listed in Part I, Section 2, of the Annex. This applies if the human right can be abused by a company or legal entity, the abuse directly impairs a legal interest protected by the listed human rights instruments, and the company could have reasonably foreseen the risk of such an impact. *Ibid*, art. 3(c).

<sup>188</sup> *Ibid*, Preamble ¶ 32-37, and Annex to *Ibid*, Part I sections 1 and 2.

<sup>189</sup> *Ibid*, Preamble ¶ 33.

<sup>190</sup> *Ibid*, preamble ¶ 37.

<sup>191</sup> See for example *ibid*, preamble ¶ 36.

possibility of mandatory due diligence legislation has further energized the global discussion on supply chain due diligence. Building on the earlier section, this part of the essay will focus on the scope and extent of the CSDDD and , to a limited extent, some of the above mentioned product-related/ sector-based laws concerning global supply chains.

#### **4.1 The HRDD process in Value Chains: Overview of the extraterritorial scope**

As mentioned earlier, CSDD, under article 6, outlines six elements of the due diligence process<sup>192</sup>. The CSDDD emphasizes that for due diligence to be effective, it should address human rights impacts throughout most of a product's life cycle, including the operations of the company itself, its subsidiaries, and its business partners within their activity chains.<sup>193</sup> Below is a brief discussion on how the HRDD elements under the CSDDD are implemented within value chains, including a concise analysis of enforcement and civil liability aspects.

The first step of the risk-based HRDD, as listed under article 6, is the integration of due diligence into a company's policies and risk management systems. An important part of this element is the preparation of a due diligence policy including inputs from employee consultations.<sup>194</sup> In addition to detailing the processes for integrating and implementing due diligence within the company's relevant policies, the due diligence policy must also specify how the company's code of conduct will be extended to business partners or value chains.<sup>195</sup> Although the Directive does not outline the process for extending this code to supply chains, insights can be drawn

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<sup>192</sup> The CSDDD, under art. 6, sanctions human rights and environmental due diligence. For the purpose of this thesis the focus will be on HRDD.

<sup>193</sup> Ibid, preamble ¶ 24. "Chain of activities" refers to the activities of a company's upstream business partners involved in the production of goods or the provision of services, as well as the activities of downstream business partners related to the distribution, transport, and storage of the company's products. Ibid, art. 3(g).

<sup>194</sup> Ibid, art. 7 (1) and (2).

<sup>195</sup> Ibid, art. 7(2). Business partners are entities with which the company has a commercial agreement related to its operations, products, or services, as well as those performing related business operations even if they are not direct partners. Ibid, article 3(f).

from the OECD Guidance, which is explicitly referenced as defining the Directive’s due diligence process.<sup>196</sup> The strategies for engaging the value chain involve communicating policies , including HRDD expectations in contracts, and implementing per-qualification processes for suppliers and other business relationships.<sup>197</sup>

Measures to be taken by companies with regards to the identification and assessment of adverse impacts shall also consider those impacts arising from their business partners where related to their chains of activities.<sup>198</sup> Companies should map the operations of their business partners to identify potential areas of adverse impacts, and subsequently, conduct in-depth assessments based on these findings.<sup>199</sup> To inform this process, companies should rely on independent reports, notifications, and complaints they have received, and, where possible, on information provided by the concerned business partners themselves.<sup>200</sup> When assessing adverse human rights impacts, the Preamble<sup>201</sup> refers companies to receive guidance from ,among others, OHCHR’s Interpretive Guide on the corporate responsibility to respect human rights which includes value chains in the risk assessment process.<sup>202</sup>

In response to identified adverse impacts, companies must then take appropriate measures to prevent or adequately mitigate these impacts.<sup>203</sup> Companies are, for example, required to get contractual assurances from business partners to ensure compliance with the company’s code of conduct, and establish corresponding assurances from their partners(referred to as “contractual cascading” in the Commission's Proposal).<sup>204</sup> Compliance with these assurances may be verified through independent third-party

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<sup>196</sup> See *ibid*, Preamble ¶ 20.

<sup>197</sup> OECD (2018), (n 9), Section 1.3, p. 24.

<sup>198</sup> CSDD, (n 15), art. 8(1).

<sup>199</sup> *Ibid*, art. 8(2).

<sup>200</sup> *Ibid*, art. 8(4) and(4).

<sup>201</sup> *Ibid*, Preamble ¶ 37.

<sup>202</sup> Interpretive Guide, (n 18), 41.

<sup>203</sup> CSDDD, (n 15), article 10(1).

<sup>204</sup> *Ibid*, art.10(2)(b), and (10(4)). To facilitate this process, the Commission shall adopt voluntary model contractual clauses in consultation with Member States and stakeholders. *Ibid*, art. 18.

verification.<sup>205</sup> If adverse impacts cannot be prevented or adequately mitigated, companies have the option to refrain from entering into new contracts and, as a last resort, terminate business relationships.<sup>206</sup> In such cases, companies are expected to take steps to alleviate the impacts of the termination.<sup>207</sup> This process, in addition to the requirement of stakeholder consultation under article 13 of CSDDD, aligns with the UNGPs as the well-being of value chains and affected stakeholders is taken into consideration.

Regarding remedial actions for adverse impacts caused by business partners, companies are expected to either provide voluntary remediation or leverage their influence to encourage the responsible business partner to take action.<sup>208</sup> A company is required to provide a remedy only if it has caused or jointly caused an actual adverse impact.<sup>209</sup> This means that when adverse impacts are caused within value chains without the company's direct involvement, there is no mandatory mechanism to enforce remediation. In this case, consultation with stakeholders during the remediation process is rendered less fruitful since neither the company nor the business partner can be compelled to provide a remedy following these consultations.<sup>210</sup> The same can be concluded regarding Article 14, which permits concerned entities or individuals to submit complaints regarding the operations of a company's business partners within their activity chains. While well-founded complaints should be addressed with measures such as suspension or termination of business relationships and remediation<sup>211</sup>, it follows that the latter does not necessarily apply to parties affected solely by the activities of business partners.

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<sup>205</sup> Ibid, art. 10(5).

<sup>206</sup> Ibid, art. 10(6).

<sup>207</sup> Ibid, art. 10(7).

<sup>208</sup> Ibid, art. 12(2).

<sup>209</sup> Ibid, art. 10(1).

<sup>210</sup> Consultation with stakeholders, as provided under article 13 of CSDDD, is inclusive of business partners and representatives of affected persons pursuant to the definition of "stakeholders" under article 3(n) of the same. Ibid, article 13(d) and 3(n).

<sup>211</sup> Ibid, art. 14(3).

Enforcement of the due diligence obligations under the Directive will be carried out by supervisory authorities established by member states.<sup>212</sup> These authorities have the mandate to order companies to cease or refrain from infringing on their due diligence obligations ; order them to provide remediation, or impose penalties on them.<sup>213</sup> The primary type of penalties are pecuniary penalties which should be proportionate and dissuasive amounting to not less than 5 % of the company’s net worldwide turnover.<sup>214</sup> If companies do not comply with imposed pecuniary penalties, supervisory authorities will issue a public statement detailing the type of infringement and the name of the involved company.<sup>215</sup> The Directive mandates that all decisions, regardless of compliance, must be made publicly available and disseminated to the European Network of Supervisory Authorities.<sup>216</sup> However, the Directive does not mention any further enforcement mechanisms for companies unwilling to pay pecuniary penalties beyond what appears to be a naming and shaming strategy.

Regarding civil liability and compensation for infringements, the Directive adopts a similar approach to remediation.<sup>217</sup> A company cannot be held liable for damages caused solely by its business partners within its value chain.<sup>218</sup> However, if the damage was jointly caused by the company and its business partner, they are jointly and severally liable.<sup>219</sup> Additionally, the Directive states that the civil liability rules are “without prejudice to Union or national rules on civil liability related to adverse human rights impacts,” allowing for potential liability in cases of damages caused by business partners in value chains.<sup>220</sup> This indicates that, the Directive leaves some room for civil liability in such cases.

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<sup>212</sup> Ibid, art. 24 and 25.

<sup>213</sup> Ibid, art. 25(a).

<sup>214</sup> Ibid, art. 27(3),(4).

<sup>215</sup> Ibid, art. 27(b).

<sup>216</sup> Ibid, art. 27(5).

<sup>217</sup> Ibid, art. 29

<sup>218</sup> Ibid, art. 29(1)(b)

<sup>219</sup> Ibid, art. 29(5)

<sup>220</sup> Ibid, art. 29(6).

## **4.2 Limits of mHRDD: A critical look at EU mHRDD**

In this section, the focus will be on analyzing the limitations of EU mandatory Human Rights Due Diligence (mHRDD) as delineated by, to a larger extent, the CSDDD. Given the EU's prominent role and its comparatively advanced and comprehensive regime in this field, it is essential to highlight the inherent limitations and challenges of mHRDD based on the existing EU due diligence laws. By doing so, a better understanding of the gaps and potential areas for improvement in the global application of mHRDD principles can be achieved.

### **4.2.1 Implications of the Scope of application of mHRDD legislation on value chains**

The CSDDD, which has a broader scope of all the mHRDD legislations, has a very narrow coverage when it comes to in-scope companies. As mentioned above, the final (adopted) text of the Directive states that it applies to companies that have an average of more than 1000 employees and a net worldwide turnover of more than EUR 450 million<sup>221</sup> which is a significant difference with the initial proposal<sup>222</sup> of the Commission. By some estimates, this figure represents only about 0.05% of EU companies, which amounts to approximately 5,500 companies<sup>223</sup>. This suggests that only a small number of companies are required to address human rights abuses in their value chains through HRDD processes.

The other mHRDD laws discussed above, while potentially broader in terms of the number of companies included, are limited in applicability to specific sectors or products. In some instances, such as the Forced Labor Regulation,

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<sup>221</sup> Ibid, art. 2(1)

<sup>222</sup> Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 COM/2022/71 final, art. 2(1).

<sup>223</sup> European Coalition for Corporate Justice. "'CSDDD endorsement brings us 0.05% closer to corporate justice'." <https://corporatejustice.org/news/reaction-csddd-endorsement-brings-us-0-05-closer-to-corporate-justice/>. Accessed April 15, 2024.



they need to be complemented by the CSDDD for concerned companies to effectively conduct mHRDD. Consequently, these limitations in scope exclude many companies from the obligation to prevent or mitigate adverse human rights impacts.

Similarly, when it comes to the coverage of value chains, although the CSDDD applies to the entire upstream chain of activities, downstream activities are not fully covered.<sup>224</sup> The Directive does not encompass the disposal of products in general.<sup>225</sup> It also excludes the distribution, transport, storage, and disposal of products subject to export control by a Member State or the export control of weaponry under national export controls.<sup>226</sup> Export controls, unlike HRDD, do not consist of a process to identify and prevent adverse human rights impacts. The export of arms into areas of severe human rights violations results from factors including a lack of HRDD conducted by arms companies and the failure of states to require HRDD.<sup>227</sup> Consequently, the exclusion of product disposal from the scope leaves out significant parts of the downstream chain, while the exclusion of the arms sector has adverse implications for the protection of human rights in value chains.

Regarding regulated financial undertakings, CSDDD does not apply to their downstream business partners that receive their services and products but only covers their upstream activities.<sup>228</sup> Instead, the Directive advises financial undertakings to use the MNE Guidelines to conduct due diligence and leverage their influence over companies, for example, by exercising shareholders' rights.<sup>229</sup> Thus, undertakings such as credit institutions are not obligated to conduct mHRDD even when they fund projects that may have adverse human rights impacts.

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<sup>224</sup> See CSDDD, (n 15) Preamble ¶ 25 and 26.

<sup>225</sup> Ibid.

<sup>226</sup> Ibid.

<sup>227</sup> UN Working Group on Business and Human Rights, Responsible business conduct in the arms sector: Ensuring business practice in line with the UN Guiding Principles on Business and Human Rights, p.1. Available at: <https://www.ohchr.org/sites/default/files/2022-08/BHR-Arms-sector-info-note.pdf>. Accessed on 12 May, 2024.

<sup>228</sup> CSDDD, (n 15), preamble ¶ 26.

<sup>229</sup> Ibid, preamble ¶ 51.

The OHCHR noted that the omission in the CSDDD falls short of the standard set by the UNGPs, which emphasize that the activities of a business enterprise should encompass relations across the entire range of entities in its value chain.<sup>230</sup> Since the responsibility to respect human rights involves the full range of downstream adverse impacts, it is important to align this aspect of the CSDDD and other mHRDD legislations with international standards.

#### **4.2.2 The implication of compliance-focused approach on value chains**

There have been concerns, based on previous versions of the CSDD, that the flexible, risk-based approach to human rights impacts advocated by international standards may be replaced by a “checkbox compliance” approach in the CSDDD.<sup>231</sup> A compliance-based approach could lead businesses to focus solely on meeting legal requirements, paying less attention to the specific context of their operations, and thus potentially being less effective in addressing adverse impacts.<sup>232</sup>

Some suggestions to address this concern included adopting a clear definition of ‘appropriate measures’, and ensuring that the list of actions to be taken by businesses to conduct due diligence is non-exhaustive.<sup>233</sup> The first seems to have been rectified as the adopted text of the CSDDD defines ‘appropriate measures’ as “measures that are capable of achieving the objectives of due diligence by effectively addressing adverse impacts in a manner commensurate to the degree of severity and the likelihood of the

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<sup>230</sup> This is a comment made in relation to the Commission’s proposal but holds true also for the adopted text of CSDD and other mHRDD laws such as the Conflict Minerals Regulation. OHCHR. 2022. "Mandating Downstream Human Rights Due Diligence." September 13. Available at: <https://www.ohchr.org/sites/default/files/documents/issues/business/2022-09-13/mandating-downstream-hrdd.pdf>. Accessed April 15, 2024.

<sup>231</sup> See ENNHRI. 2023. "ENNHRI Statement in the Context of the EU Trilogue Concerning the EU Corporate Sustainability Due Diligence Directive." p.4.

<sup>232</sup> The Danish Institute for Human Rights, State of play on the EU’s Corporate Sustainability Due Diligence Directive. July 2023, P.2.

<sup>233</sup> Ibid.

adverse impact”.<sup>234</sup> Regarding the due diligence measures required of business entities to prevent and address potential and actual impacts, the adopted text of CSDDD also provides an exhaustive list of actions under Articles 10(2) and 11(3). To balance legal certainty with flexibility, it is suggested for this list to remain non-exhaustive to avoid a compliance-focused approach.<sup>235</sup> Allowing companies to take context-specific and risk-based measures is crucial for effective due diligence.

Another limitation of the CSDDD that may encourage a compliance-based approach regarding value chains is the provision that companies cannot be held liable or required to provide remediation if the damage or adverse impact is caused solely by the company’s business partner.<sup>236</sup> This could allow companies to easily bypass their obligations under the Directive by obtaining contractual assurances, and relying on third-party verification to confirm compliance of company policies.<sup>237</sup>

There is concern that companies are relying primarily on verification schemes to address human rights impacts in their supply chains, rather than undertaking comprehensive HRDD.<sup>238</sup> Several tragic accidents have demonstrated that social auditing has limitations, delivering only superficial outcomes and proving inadequate for detecting and addressing human rights violations.<sup>239</sup> Thus, in addition to mandating third-party verification, it would be beneficial to provide guidance for its proper implementation with a view to minimizing check-box tendencies.

Furthermore, it is crucial to ensure that verification schemes or contractual clauses are not assumed to transfer legal liability away from companies. By performing superficial and checkbox requirements such as third-party audits

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<sup>234</sup> CSDDD, (n 15), art. 3(o).

<sup>235</sup> See The Danish Institute for Human Rights. 2023. "State of play on the EU’s Corporate Sustainability Due Diligence Directive." p.2.

<sup>236</sup> CSDDD, (n 15), art. 12(2) and 29 (1)(b).

<sup>237</sup> Ibid, art. 10(2)(5) and 11 (3)(6).

<sup>238</sup> Nolan, Justine, and Nana Frishling. 2020. "Human rights due diligence and the (over) reliance on social auditing in supply chains." In *Research Handbook on Human Rights and Business*, edited by Surya Deva and David Birchall, 119. Edward Elgar Publishing Limited

<sup>239</sup> Ibid, p.121.

and contractual cascading, it becomes challenging to hold companies accountable. Proving intentionality and negligence — conditions necessary to hold companies liable for damages — can be particularly difficult under these circumstances. Hence, the CSDDD, along with its significant revisions throughout the law-making process, and other mHRDD laws must consider the aforementioned factors to ensure that companies can implement comprehensive and effective HRDD processes.

### **4.2.3 The implication of limited stakeholder engagement on value chains**

Understanding the viewpoints and concerns of individuals and groups that are affected by a company’s operations (stakeholders) through meaningful consultation is a crucial aspect of impact management.<sup>240</sup> The CSDDD broadly defines ‘stakeholders’ to include a “company’s employees, the employees of its subsidiaries, trade unions and workers’ representatives, consumers and other individuals, groupings, communities or entities whose rights or interests are or could be affected by the products, services and operations” of a company and its business partners in the value chain.<sup>241</sup> This definition has evolved significantly from the Commission’s initial proposal<sup>242</sup>, which, unlike the final version, did not specifically name, among others, consumers, national human rights institutions, civil society organizations, and trade unions.

However, the adopted version appears to have departed from the Parliament’s version which helpfully differentiated between ‘affected stakeholders’ and ‘vulnerable stakeholders’.<sup>243</sup> Affected stakeholders include individuals, groups and communities whose rights or legitimate interests are ‘affected or could be affected by adverse impacts’ .<sup>244</sup>

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<sup>240</sup> SHIFT, *Aligning the EU Due Diligence Directive with the International Standards: Key Issues in the Negotiations*, SHIFT’S Analysis (October 2023) p. 21.

<sup>241</sup> CSDDD, (n 15) , art. 3(n).

<sup>242</sup> CSDD, Commission’s Proposal, art. 3(n).

<sup>243</sup> Amendments adopted by the European Parliament on 1 June 2023 on the proposal for a directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 (COM(2022)0071 – C9-0050/2022 – 2022/0051(COD)), art. 3(1)(n)(a).

<sup>244</sup> Ibid

‘Vulnerable stakeholders’ refers to those affected stakeholders who are in marginalized or vulnerable situations due to specific contexts or intersecting factors.<sup>245</sup> These factors can include, but are not limited to, sex, gender, age, race, ethnicity, class, caste, education, indigenous status, migration status, disability, and social and economic status. Additionally, it encompasses stakeholders residing in conflict-affected and high-risk areas. Therefore, it would be beneficial to distinctly define vulnerable stakeholders whose interests require particular attention in the stakeholder engagement processes outlined in Article 13.

The HRDD process in the CSDDD mandates effective, transparent, and meaningful engagement with stakeholders throughout the due diligence process under Article 13. However, the first stage of the HRDD process, mentioned in Article 6, which involves integrating due diligence into company policies and risk management systems, is missing from Article 13, the provision mandating stakeholder engagement. Given the important role of contractual assurances through which due diligence obligations are cascaded throughout value chains, omitting stakeholder consultation at this stage is inappropriate. Company policies and codes of conduct sanctioning due diligence in value chains should also be developed with input from affected and vulnerable stakeholders, as these policies are crucial, and often the only, mechanisms to hold business partners accountable. Since remediation and civil liability provisions can only be invoked when companies are direct perpetrators (or jointly with business partners), it is the contractual obligations based on these codes of conduct that will serve as the basis for suspending or terminating business contracts. Therefore, input from stakeholders down the value chain is crucial to achieving meaningful stakeholder engagement in the HRDD process.

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<sup>245</sup> Ibid

## 5 Conclusion

This paper embarked on an exploration of the overarching question posed by the thesis: What are the implications of the EU's mandatory Human Rights Due Diligence (HRDD) regime concerning global supply chains? The preceding chapters conducted an in-depth analysis of international HRDD soft laws, followed by an examination of various EU-level mandatory HRDD laws. This analysis encompassed a detailed description of these laws and their implications for value chains, along with a discussion of the limitations inherent in EU HRDD laws concerning supply chains.

As delineated, the EU has made notable strides in developing mandatory HRDD legislation, ranging from specific (product or sector-related) laws to more general, cross-sectoral laws like the CSDDD. While the implementation of these laws is still in its nascent stages, they represent a significant advancement in formalizing HRDD obligations for both EU and certain non-EU companies.

The CSDDD served as the primary framework for delving into the implications of mandatory HRDD on global supply chains due to its comprehensive and expansive scope. Designed to complement other EU HRDD legislation, it allows member states, under Article 4, to introduce more stringent and specific laws, thereby fostering synergies that could bolster the robustness and efficacy of the HRDD regime. Moreover, the latitude afforded to member states could address some of the shortcomings inherent in EU-level legislation, such as facilitating remediation for affected individuals within value chains and ensuring civil liability benefits.

However, limitations such as the narrow personal scope, sectoral restrictions, and the partial coverage of the value chain, as well as the risk of legislation becoming overly compliance-focused, may potentially impede the effectiveness of these laws on supply chains. The objective of the CSDDD to prevent fragmentation of laws and establish a level playing field may not be fully realized in light of these limitations. Although legislations like the

Forced Labor Regulation and the EU Critical Raw Material Act do not mandate HRDD obligations and rely on the CSDDD for the due diligence aspect, the latter has a limited personal scope, applying obligations to only a small fraction of large companies. Additionally, other legislations such as the Conflict Minerals Regulation, EUDR, and Batteries Regulation apply to all range of concerned companies but are restricted to operators dealing with specific sectors. National HRDD laws are also constrained to companies operating within their respective borders, and in some cases, these laws are confined to certain sectors.<sup>246</sup>

In addition to scope-related limitations, constraints in stakeholder engagement could diminish the impact of EU mandatory HRDD laws on global supply chains. Meaningful involvement of stakeholders across the value chain in the development of codes of conduct is an essential aspect that requires attention. Moreover, apart from involving stakeholders in the company policy drafting process, legislations with extraterritorial effects might need to consider involving relevant stakeholders in the law-making process as well. Attempts to induce extraterritorial changes through business relations may raise legitimacy and accountability issues, as democratic participatory processes are integral to realizing sustainability.<sup>247</sup>

Despite these limitations and their consequent implications for the reach of the EU HRDD regime concerning global supply chains, it holds significant potential for promoting responsible business conduct. While it is acknowledged that mandatory HRDD should not be viewed as a panacea<sup>248</sup>, it presents substantial prospects if the aforementioned limitations are progressively addressed. Furthermore, the EU's efforts in the realm of HRDD can potentially pave the way for other parts of the world to follow suit, thereby filling, to some extent, the void resulting from the absence of a

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<sup>246</sup> At the time of writing, only the Corporate Duty of Vigilance Law of 2017 in France, the Act on Corporate Due Diligence Obligations in Supply Chains of 2021 in Germany, and the Transparency Act of 2022 in Norway are cross-sectoral / general laws in EU while the others currently existing are sectoral or product related.

<sup>247</sup> See Gammage, Clair / Novitz, Tonia (eds), *Sustainable Trade, Investment and Finance. Toward Responsible and Coherent Regulatory Frameworks*, Edward Elgar Publishing Ltd, 2019, 20.

<sup>248</sup> See for example Surya Deva, *Mandatory human rights due diligence laws in Europe: A mirage for rightsholders?* *Leiden Journal of International Law* (2023), 36, 389–414

global hard law in this area. Such actions by the EU could also galvanize the ongoing efforts of the UN in developing a binding international treaty on business and human rights. The limitations of mandatory HRDD outlined in this thesis, along with other shortcomings, could serve as catalysts for further discussions on the necessity of an international law directly applying to companies (in addition to states) for human rights violations.



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