



**British Institute of
International and
Comparative Law**

Towards New Human Rights and Environment Due Diligence Laws: Reflections on Changes in Corporate Practice

Dr Irene Pietropaoli | Dr Jasmine Elliott | Dr Sofia Gonzalez de Aguinaga





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List of abbreviations

BAFA – German Federal Office for Economic Affairs and Export Control
CSDDD – Corporate Sustainability Due Diligence Directive
CSOs – civil society organisations
CSRD – Corporate Sustainability Reporting Directive
DVL – French Duty of Vigilance Law
EC – European Commission
HREDD – human rights and environmental due diligence
LkSG - German Act on Corporate Due Diligence Obligations for the Prevention of Human Rights
Violations in Supply Chains
OHCHR - UN Office of the High Commissioner for Human Rights
UNGPs – UN Guiding Principles on Business and Human Rights

Executive summary

HREDD laws – i.e. laws that require companies to carry out a HREDD process - are already in place or in development across a growing number of countries, particularly in Europe. Alongside CSOs, increasingly, businesses are calling for ‘[effective’ HREDD legislation](#). In 2017, France adopted the [duty of vigilance law \(DVL\)](#), the first HREDD law, and in 2023 the German Supply Chain Due Diligence Act (LkSG) came into force. During the research for this project, in June 2024, after more than two years of legislative journey, the EU adopted the [Corporate Sustainability Due Diligence Directive \(CSDDD\)](#), which will introduce HREDD requirements for large companies operating in the EU. Hundreds of businesses [have supported](#) the adoption of the CSDDD. As HREDD is moving from voluntary expectation of business responsibility to mandatory requirement, businesses have continued advancing their HREDD process and related corporate practice. Companies and their legal advisers are already taking steps towards implementation of upcoming requirements under the CSDDD. This report provides reflections on changes in corporate practice resulting from the implementation of HREDD laws, namely the French DVL and German LkSG, and a comparative analysis of these legal models. It provides recommendations for policy makers for the design of upcoming legislation, or amendment of existing ones, resulting from the CSDDD transposition.

[Harmonisation of regulation and alignment with the UNGPs](#)

While the French and German HREDD laws mandate processes that are based on international standards they are not fully aligned with the [UN Guiding Principles on Business and Human Rights \(UNGPs\)](#), they use different legal models and impose different requirements. For example, the LkSG focuses on the enterprise’s own area of business and direct suppliers (unless there is ‘substantiated knowledge’ of a risk), whereas the UNGPs includes the entire value chain. The adoption of the CSDDD is an important step forward in developing harmonised HREDD requirements in line with the UNGPs – although the CSDDD has some shortcomings in relation to the limited personal and material scope, the value chain not including all downstream activities, and some loopholes in stakeholder engagement provision. We find that companies with more mature programmes use international standards – the UNGPs and the OECD Guidelines - to develop their HREDD. For example, even if HREDD regulations are not explicitly requiring the inclusion of downstream aspects, some companies are already acting on these risks.

[Policy makers should see the UNGPs as the standard reference to follow to ensure policy coherence, avoid fragmentation and design an effective ‘smart mix’ of policy and regulation. Alignment with the UNGPs should be at the heart of HREDD regulation. Policy maker should consider broadening the personal – by lowering the thresholds and including all corporate forms - and material scope of HREDD laws - by including all human and environmental rights - and include downstream value chain in the definition of ‘chain of activities’.](#)

[More mature risk-based HREDD process over time](#)

The adoption of HREDD laws has accelerate the implementation of risk-based HREDD processes, which many large companies were already implementing based on UNGPs expectations. We find positive changes at the level of policy, integration and management. This is evident especially when changes are assessed over time, for example comparing company processes the first year the French DVL was in place with current practice. Legislation is also having a positive impact on companies that are not directly covered by the French and German laws. Many are already anticipating CSDDD requirements. And in general, we find that large multinational companies are not able to ignore the stream of various HREDD legal requirements in Europe, even if technically they are not in-scope. As more competitor companies become in-scope and more countries adopt HREDD laws, some companies are trying to foresee future HREDD developments and take a highest standards approach when developing internal compliance frameworks.

Gaps still existing, however, especially in relation to measures for the identification, assessment and prioritisation of risks, tracking performance and measuring effectiveness, as well as in relation to meaningful stakeholder engagement and grievance mechanisms. Some companies still approach HREDD as another risk management process. As the CSDDD embraces a risk-based approach it is anticipated that the Directive will push for a more integrated approach to human rights and the environment and more holistic HREDD process.

Policy makers should clarify the definition of ‘appropriate measures’ and the concept of ‘effectiveness’, which should be always part of business measures to address actual and potential impacts, and require an expansive holistic, risk-based approach to HREDD in line with the expectations of the UNGPs.

Balance between flexibility in the implementation of HREDD processes and legal specificity

There is a tension between an open flexible approach to HREDD – i.e. UNGPs and OECD Guidelines ‘soft law’ standards - and the prescriptive approach in hard laws. A flexible risk-based approach can be more adaptable and commensurate but may give too much discretion to companies and do not provide enough legal certainty. Yet HREDD obligations mandated in hard laws risk a ‘tick-box compliance’ approach replacing more innovative processes. There is a balance to be struck between the prescriptive elements of HREDD laws and their flexibility to allow companies to approach HREDD in a way that is reflective of their own risk areas and processes. Hard laws, enforced by national authorities (as opposed to ‘voluntary’ international standards) are needed but not too overly prescriptive closed list of actions allow companies to still be flexible as to how implement HREDD and adapt it to their own businesses.

The CSDDD made the right level of compromise by listing mandatory ‘appropriate measures’ companies ‘shall’ take, supplemented by additional measures they ‘may’ take. With proper guidance this should provide a balance between legal clarity and certainty about corporate obligations with the possibility of a flexible risk-based approach based on appropriate measures, which include transformative business strategies and purchasing practice changes. As such, there is the recognition that companies have agency in the implementation of HREDD requirements. The guidance to be developed by the European Commission, as well as the accompanying measures by Member States, are going to be crucial especially as company measures are relevant not only for companies in scope but also for suppliers and SMEs affected as a part of the value chain.

The German LkSG was complemented by substantive guidance provided by the BAFA, which clarified new terminology, like ‘substantiated knowledge’. While there are some mixed views on the BAFA guidance, including the critique of deviation from the UNGPs, overall companies find it helpful to guide compliance. In relation to the French DVL, a certain amount of clarification is still called for given that case law is still in its infancy, but increasingly judicial interpretation is clarifying details of the required vigilance plans - which did not have sufficient level of precision in the law. For example, the DVL had left some confusion about the level of involvement needed to trigger civil liability. The CSDDD has adapted the level of involvement framework - still based on UNGPs but adapted to provide additional clarity. The CSDDD concepts of ‘cause’, ‘jointly cause’ and ‘caused only by a business partner’ are based on the UNGPs approach to involvement – i.e. involvement as a spectrum rather than set categories. The language of involvement was reframed to separate categories of causation to better clarify the link with the civil liability regime.

Policy makers should clarify that minimum ‘tick-box’ compliance is not embedded in HREDD laws – while companies are required to comply with appropriate measures, they should be encouraged to develop transformative internal and commercial business strategies following a risk-based and shared responsibility approach. National accompanying measures and other guidance should be developed in consultation with CSOs, trade unions and national human rights institutions.

Engagement with suppliers and shared responsibility

Visibility of the full value chain and gathering supplier data remains one of the more difficult and resource intensive exercises for companies, especially from low tiers and in sectors characterised by long and complex supply chain. We find that despite difficulties in obtaining full and continually updated visibility into their entire supply chain, stringent regulatory obligations for HREDD risk assessment – and the risk of liability - are forcing companies to find innovative ways to overcome these challenges. We find that while still not a common practice, some large companies are improving their engagement with suppliers and SMEs.

We find, however, notable gaps. In general, companies in Europe continue to rely on social audits, third party certifications and contractual clauses, not yet implementing a shared responsibility approach. Audits and certifications have already shown to not be effective in identifying and assessing adverse impacts in value chains and to be inconsistent with the UNGPs. Buyer's requests for information do not often further a real dialogue between the supplier and the buyer in relation to what the actual risks are. Suppliers spend considerable resources to comply with requests, with little support, and have yet to see the connection between these activities and addressing relevant human rights impacts. Buyer companies in turn gain little insight into key issues. Several companies are strengthening their contractual obligations to suppliers – the CSDDD will require companies to seek contractual assurances from a direct business partner; the German LkSG already requires contractual assurances from a direct supplier. Contracts are useful to make HREDD standards enforceable, but they often lack effectiveness if only suppliers are obliged, and the buyer's role is ignored. In addition, EU companies often do not reflect on the ways that their purchasing practices can impact suppliers and SMEs.

The CSDDD embraces a shared responsibility approach by requiring large companies to enter into 'fair, reasonable and non-discriminatory' contracts with their business partners, and provide 'targeted and proportionate support', and bear the cost of independent third-party verifications, and it clarifies the importance of addressing the impact of the company's purchasing practices. It also states that the use of contractual assurance and third-party verification does not equate to the fulfilment of due diligence obligations, nor preclude liability.

Policy makers should require companies to approach the use of contractual leverage as a shared responsibility practice providing support and capacity-building measures to suppliers, and to conduct thorough analyses of their purchasing practices, to identify areas for improvement and gather feedback from suppliers.

Responsible disengagement

Both the UNGPs and the OECD Guidelines outline the decision-making process for business disengagement, based on the concept of leverage. When considering ending the relationship, the UNGPs elaborate on the business responsibility to engage with a business partner and use its leverage to address adverse impact; the OECD Guidelines refer to disengagement as a measure of 'last resort'. The UNGPs recognise situations where termination is appropriate, due to severity of the abuse and the inability to exert leverage to change the situation. The CSDDD also clarifies that disengagement from suppliers should only happen in a responsible manner when there is no reasonable expectation that leverage efforts would succeed. It recognises the need for immediate disengagement in cases of state-imposed forced labour.

Despite fears of HREDD laws' 'unintended consequences' such as promoting business termination (without responsible engagement) or even complete divestment from certain countries, we did not find evidence of such practice. Withdrawal from specific countries or regions cannot be directly linked with the implementation of the French or German laws. Evidence related to companies divesting from high-risk countries, and conflict-affected areas show that reasons like legal and reputational risks and operational issues play the most significant role.

Policy makers should reflect the responsible disengagement requirements of the CSDDD and the expectations of the UNGPs by ensuring that disengaging is an option of last resort. They should require companies to consult with stakeholders, invest in time-bound responsible exit strategy, consider in their assessment that disengagement can lead to a worse situation for rightsholders and the environment, while also recognizing when there are no reasonable prospects that their use of leverage can be effective, and finally adopt remediation measures.

Changes in internal corporate HREDD governance

The LkSG is the only HREDD law that explicitly require companies to change their governance structure. For example, the risk analysis requires input and knowledge from different departments. This law as well as requirements anticipated under the CSDDD, are driving significant changes in how corporations govern and oversee their HREDD obligations. Regulatory development – from voluntary to mandatory requirements - have led companies to escalate human rights issue to senior level, establish specialized committees, integrate human rights into board governance, and implement internal mechanisms to ensure compliance.

We find however, still important gaps in internal HREDD corporate governance practices, particularly in the allocation of responsibility for overseeing and implementing day to day HREDD and real agency of directors. This may represent a missed opportunity for the CSDDD, which dropped some elements related to corporate governance – including directors’ duty of care, directors’ responsibility for overseeing the due diligence policy and process, and requirements that directors report to the board. While there is a trend towards companies taking a more cross-functional and holistic approach to HREDD process, there is still some lack of a share implementation of HREDD between the various company departments (from CSO/sustainability and legal to supply chain, risk management, and procurement) that still tend to work in silo.

Policy makers should require companies to put in place adequate governance structures and assign directors’ and board’s responsibility for oversight of HREDD requirements. They should encourage companies to approach HREDD requirements holistically and drive internal capability.

Stakeholder engagement

The French DVL does encourages the consultation of stakeholders by affirming that the vigilance plan is ‘meant to be drawn up in association with the company’s stakeholders’ but does not make it compulsory. The lack of meaningful stakeholder engagement as a legal requirement in the DVL is resulting in an overall deprioritising of this aspect of HREDD. While progress has been made over the years, large companies that have processes for stakeholder engagement in place, were already doing so in accordance with the UNGPs and OECD Guidelines. There is no evidence of clear improvement in consistent approaches to meaningful stakeholder engagement directly because of French DVL- and not enough evidence yet in relation to the German LkSG. Many companies still approach stakeholder engagement as a sort of ‘add-on’ instead than a core step of the HREDD process. The CSDDD requires companies to engage ‘meaningfully’ with stakeholders but with some loopholes. In line with international standards, such as the OECD Guidelines, meaningful engagement with stakeholders is required throughout the entire HREDD process. The CSDDD limits stakeholder engagement to specified stages of the HREDD process.

Policy makers should require meaningful stakeholder engagement throughout the entire HREDD process and clarify that multi-stakeholder or industry initiatives are not a substitute for such engagement.

Grievance mechanisms

While some larger companies are developing grievance mechanisms in consultation with stakeholders – both in response to HREDD laws and because UNGPs expectations – this is an area where most progress still needs to be made. Companies are still to embrace the role that grievance mechanism can play as a human rights risk prevention tool - helping the company to become aware of issues as early as possible. Operational-level alert and grievance mechanisms can play an important role in identifying adverse human rights impacts arising out of corporate activities, tracking the effectiveness of the HREDD processes in place, but also in enabling remediation for those who have been impacted (and preventing a possible worsening of the situation). Setting up grievance mechanism is also one of the HREDD requirements that can be implemented and monitored from the beginning (as the focus is not on the process of the other HREDD steps).

Policy makers should require companies to engage stakeholders in setting up grievance mechanisms - such as notification mechanisms and complaints procedures - that accessible, effective, and trusted by the communities they impact. They should include a monitoring and disclosure requirement regarding their impact and effectiveness based on the UNGPs criteria.

Communicating

A key step in the HREDD process, and that is mandated by all HREDD laws, is to report on the measures taken to identify, prevent, mitigate and remediate for human rights abuses. Publicly communicating on due diligence by publishing on their website an annual statement is also required by the CSDDD. Both the French DVL and the German LkSG are contributing to improved business disclosure and in the recognition that communication is important in fostering credibility in the company's implementation of its HREDD programme. Yet, detailed disclosure is not yet a common corporate practice. There is still resistance to full transparency, often because fear of litigation, leading to vague reporting on abstract risks.

Policy makers should clarify that companies are required to report based on a thorough understanding of their risks and the actions they are taking to address them.

This report is published on 15th October 2024 during a [launch event](#) at BIICL, attended by over 100 stakeholders, where experts provide reflections.

Introduction

Under the UN Guiding Principles on Business and Human Rights (UNGPs),¹ all businesses have a responsibility to respect human rights, and the process of conducting human rights due diligence (HRDD) is a core requirement for fulfilling such responsibility.² HREDD laws – i.e. laws that require companies to carry out a HREDD process - are already in place or in development across a growing number of countries, particularly in Europe.³ Alongside civil society organisations (CSOs), increasingly, businesses are calling for ‘effective’ HREDD legislation.⁴ In 2017, France adopted the Duty of Vigilance law (DVL),⁵ the first HREDD law, and in 2023 the German Act on Corporate Due Diligence Obligations for the Prevention of Human Rights Violations in Supply Chains (LkSG) came into force.⁶ The Norwegian Transparency Act came into effect in 2022,⁷ also requiring HREDD based on the OECD Guidelines for Multinational Enterprises.⁸ During this project, in July 2024 after more than two years of legislative journey, the Corporate Sustainability Due Diligence Directive (CSDDD) went into force in the EU,⁹ which will introduce HREDD requirements for large companies operating in the EU. Hundreds of businesses have supported the adoption of the CSDDD.¹⁰ As HREDD is moving from a voluntary expectation of business responsibility to a mandatory requirement, businesses have continued advancing their HREDD process and related corporate practice. Companies and their legal advisers are already taking steps towards implementation of upcoming requirements under the CSDDD.

While existing HREDD laws are all based on international standards – the UNGPs and the OECD Guidelines - they use different legal models and impose different obligations, which may impact required corporate practices. This report provides reflections on changes in corporate practice resulting from the implementation of HREDD laws, namely the French DVL and German LkSG, and a comparative analysis of these legal models.¹¹ Furthermore, it provides recommendations for policy makers for the design of upcoming legislation, or amendment of existing ones, resulting from the CSDDD transposition.

¹ Office of UN High Commissioner for Human Rights, ‘[Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework](#)’ (2011).

² United Nations Human Rights Office of the High Commissioner, ‘[The Corporate Responsibility to Respect Human Rights: An Interpretive Guide](#)’ (2012) HR/PUB/12/02.

³ focusright, ‘[Regulatory Developments](#)’ (2024).

⁴ UN Working Group on Business and Human Rights, ‘[Mandatory Human Rights Due Diligence \(mHRDD\)](#)’.

⁵ [Loi no. 2017-399 du 27 Mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d’ordre](#) (JORF n°0074).

⁶ [Gesetz über die unternehmerischen Sorgfaltspflichten zur Vermeidung von Menschenrechtsverletzungen in Lieferketten 2021](#); Mansur Pour Rafsendjani and Michael Schäfer, ‘Das Lieferkettensorgfaltspflichtengesetz Und Seine Umsetzung in Der Praxis’ [2023] RFamU - Recht der Familienunternehmen 299.

⁷ [Act relating to enterprises’ transparency and work on fundamental human rights and decent working conditions 2021](#) (2021-06-18-99).

⁸ OECD, ‘[OECD Guidelines for Multinational Enterprises on Responsible Business Conduct](#)’ (OECD Publishing 2023).

⁹ [Directive \(EU\) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive \(EU\) 2019/1937 and Regulation \(EU\) 2023/2859 2024 \(2024/1760\)](#).

¹⁰ IDVO - Initiative for Sustainable & Responsible Business Conduct, ‘[Most Recent Business Statements in Support of Mandatory Due Diligence & the CSDDD](#)’ (Business and Human Rights Resource Centre 2024); IDVO - Initiative for Sustainable & Responsible Business Conduct, ‘[Broad Support for the CSDDD](#)’.

¹¹ This [project](#) was developed with a grant from the Laudes Foundation.

Methodology

This research has focused on the French DVL and the German LkSG as those laws have already been in force and thus are more likely to have resulted in changes in corporate practice. It has also considered the anticipated impact of the CSDDD, which was adopted during the timeframe of this project. The study took a qualitative methodology over a one-year period (September 2023-September 2024) consisting of:

- A desk-based literature review of the existing empirical studies and evidence on the business implementation of the French and German laws.
- Legal opinions by external consultants who are experts on the French and German legal systems.¹²
- Empirical research through 21 anonymised semi-structured interviews with 25 individuals working in large multinational companies across different countries and sectors, consultants and corporate legal advisors (working both in-house within individual companies and in law firms that advise multiple companies) with experience on how companies are responding to HREDD laws in their global operations and value chains. Interviewees were asked questions about internal practices and policies of companies (including corporate governance changes, resource allocation, new or updated policies and procedures, stakeholder engagement, training and updated grievance mechanisms) as well as broader observations in implementing HREDD processes 'before and after' relevant laws were introduced.
- Four roundtable discussions with multiple stakeholders: three roundtables in London (one with a small group of large UK multinational companies, one with a small group of international law firms and one with over 80 CSOs and other stakeholders) and one roundtable in Stockholm with an established network of Nordic businesses.
- A qualitative analysis of both the desk-based review of evidence and the empirical data gathered through interviews and roundtables.
- A peer review process with internal and external business and human rights experts.¹³

Table 1: Interviews and stakeholder engagement

Engagement	Number of people	Date
Businesses 1-1 interview	9	Sept 2023-March 2024
Legal practitioners 1-1 interview	8	Sept 2023-March 2024
Consultants 1-1 interview	8	Sept 2023-March 2024
UK business roundtable (London)	10	March 2024
Law firm roundtable (London)	10	March 2024
Multi-stakeholder (businesses, lawyers, consultants, CSOs) roundtable (London)	80	March 2024
Nordic business roundtable (Stockholm)	30	June 2024

¹² We would like to acknowledge our consultants, Claire Bright and Andreas Rühmkorf. We also give thanks to Monica Dey, our intern who contributed to the report's literature review.

¹³ We greatly appreciate the comments and feedback given by our internal reviewers, Julinda Beqiraj and Jean-Pierre Gauci, and external reviewers, including from the Laudes Foundation and other leading experts in business and human rights from several organisations.

We acknowledge several limitations of our research:

- This study does not intend to establish a direct causal relationship. The findings show changes associated with HREDD laws, but these cannot be directly or solely attributed to them. We do not aim to measure the ‘effectiveness’ of HREDD laws, and we did not gather evidence on the impacts of these laws on rightsholders.¹⁴
- The evidence gathered of business implementation of the French DVL and the German LkSG is mostly based on analysis of empirical studies by CSOs and the expert legal opinions of French and German consultants – acknowledging that there is a higher number of evaluations and academic studies of the DVL, which has been implemented the longest. We complemented the literature review with interviews with businesses, lawyers and consultants (25 people in total). Discussion with corporate legal practitioners and consultants provided additional insights into the comparative approach used within companies across different jurisdictions. Discussions with large multinational companies were based on our existing established network – many of which are not directly in-scope of the French DVL and only a limited number of which are covered by the German LkSG. Such discussions tended to cover corporate changes in general as they relate to the broad swath of HREDD laws as well as ‘voluntary’ implementation of HREDD process under the UNGPs. As we conducted a relatively small number of interviews, we do not aim to present these views as evidence of general business sentiment or overall concrete impacts of all existing HREDD laws. As interviews are anonymized, we never refer to names of specific companies in examples.
- We planned and conducted most of this study before the final text of the CSDDD was adopted, during a time when there was a general pessimism over the outcome of the negotiations and lack of clarity about the final text of the directive. After the approval of the final text of the Directive, we conducted one roundtable (in Sweden with over 30 Nordic businesses which will be in scope of future transposition laws) where we discussed future potential impacts of the CSDDD. Findings related to the CSDDD are referred to as anticipated changes – i.e. from 2027 onwards.
- We offer reflections on the different perspectives discussed by others and different viewpoints indicative of current or anticipated corporate changes, acknowledging that the nature of the discussion covers different views depending also on the type and ‘maturity’ of companies – e.g. their level of understanding of the international framework and investment in HREDD implementation – and the function of the individual – e.g. legal or sustainability functions. We interviewed large multinational companies and legal practitioners and consultants that advice multinational companies that are already at a relatively advanced stage of HREDD implementation. At times in this report, to simplify the narrative, we say ‘our study finds / we find...’ which is a combination of our research and interviews, but we cannot offer an exact percentage of companies that share the same practice.
- Companies are rarely able to react to individual domestic laws in isolation – rather they need to operate within the general legal landscape. As such, the material we have gathered from interviews and roundtables at times express a general view of HREDD laws – and occasionally of related legal developments around business supply chains e.g. reporting requirements or forced labour import bans - despite these laws not sharing similar characteristics. While general discussion covered the entire business ‘supply chain sustainability landscape’, we did not consider as evidence of change the impact of other laws that have a limited HREDD focus such as the Swiss Ordinance on Due Diligence and Transparency in relation to Minerals and Metals from Conflict-Affected Areas and Child Labour,¹⁵ the Dutch Child Labor Due Diligence Act (which was on hold during this research pending the outcome of

¹⁴ This report will contribute to a study that BIICL is currently conducting looking at how to [measure the effectiveness of home state regulatory models on corporate behaviour](#).

¹⁵ [Ordinance on Due Diligence and Transparency in relation to Minerals and Metals from Conflict-Affected Areas and Child Labour](#) (221.433) 2021.

the CSDDD and never entered into force),¹⁶ or reporting regulation – although the UK Modern Slavery Act did come up in discussions during this project often in terms of the lack of effectiveness of transparency and reporting requirements if not linked to HREDD obligations.¹⁷ The Norwegian Transparency Act¹⁸ was at times discussed in this study but largely outside the scope of our empirical research.

This report is structured as follows:

1. Summary of HREDD legal models considered for this study: France’s Duty of Vigilance Law (DVL), Germany’s Act on Corporate Due Diligence Obligations in Supply Chains (LkSG), and – in terms of anticipated changes - the EU Corporate Sustainability Due Diligence Directive (CSDDD).
2. Reflections on the impacts on internal corporate practice resulting from the implementation of existing HREDD legal models and anticipated changes resulting from the CSDDD.
3. Conclusion and recommendations for policymakers on the design of HREDD legal models.

¹⁶ De Minister voor Buitenlandse Handel en Ontwikkelingssamenwerking, [Voorstel van wet van het lid Van Laar houdende de invoering van een zorgplicht ter voorkoming van de levering van goederen en diensten die met behulp van kinderarbeid tot stand zijn gekomen](#) (Wet zorgplicht kinderarbeid) 2017.

¹⁷ [UK Modern Slavery Act](#) (2015 c30); Modern Slavery & Human Rights Policy and Evidence Centre, ‘[Effectiveness of Section 54 of the Modern Slavery Act: Evidence and Comparative Analysis](#)’ (2021).

¹⁸ Act relating to enterprises’ transparency and work on fundamental human rights and decent working conditions (n 7).

Comparison of HREDD legal models

French Duty of Vigilance Law

In 2017, France adopted the *loi de vigilance* (Duty of Vigilance Law).¹⁹ The DVL focuses on the duty of care on the part of parent companies and their subsidiaries, subcontractors and suppliers. The DVL was the first national legislation worldwide to require companies to exercise HREDD. The first draft of the law was originally tabled in the wake of the Rana Plaza building collapse in Bangladesh in which over 1,100 garment workers died and thousands more were injured producing clothes for international brands (including French brands) in hazardous conditions. This tragedy generated a public outcry in France which gave a decisive push to the law. The DVL was therefore elaborated with the double objective of (i) prevention – i.e. preventing the occurrence of adverse human rights impacts linked to the activities of French companies and their business relationships throughout their supply chains – and (ii) remediation – i.e. providing access to remedy to victims when such harms do occur.²⁰

The DVL applies to large French companies with at least 5,000 employees in France (within the company itself and its subsidiaries) or 10,000 worldwide for two consecutive fiscal years. It is estimated that between 200 and 250 companies fall under the scope of the law.²¹ The law requires companies in scope to establish, implement and publish a ‘vigilance plan’ which must include reasonable measures to identify risks and prevent serious infringements of human rights and fundamental freedoms, personal health and safety, and the environment resulting from their activities, activities of their subsidiaries, as well as the activities of their subcontractors and suppliers with whom they have an established business relationship.²² The vigilance plan must encompass a thorough mapping of these risks and assessment procedures, outline appropriate mitigation actions to prevent severe harm, and establish a mechanism for issuing warnings and reporting issues.²³

The law establishes a dual enforcement mechanism:²⁴ the first provides the possibility for any interested party to serve a formal notice (*mise en demeure*) to a company failing to comply with its obligations under the law. After three months of continued non-compliance or unsatisfactory compliance, an injunction can be sought to order the company to fulfil its obligations under the law, with penalty payments for each day of non-compliance.²⁵ The second enforcement mechanism is a civil liability provision under which a company incurs liability whenever its failure to comply with its vigilance obligations under the law gives rise to a damage.²⁶

¹⁹ Loi no. 2017-399 du 27 Mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d’ordre (n 5).

²⁰ Claire Bright, ‘[Mapping Human Rights Due Diligence Regulations and Evaluating Their Contribution in Upholding Labour Standards in Global Supply Chains](#)’ in Guillaume Delautre, Elizabeth Echeverría Manrique and Colin Fenwick (eds), *Decent work in a globalized economy: lessons from public and private initiatives* (International Labour Organization 2021).

²¹ Conseil Général de l’Économie, ‘[Évaluation de La Mise En Oeuvre de La Loi N° 2017-399 Du 27 Mars 2017 Relative Au Devoir de Vigilance Des Sociétés Mères et Des Entreprises Donneuses d’ordre](#)’ (2020).

²² Loi no. 2017-399 du 27 Mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d’ordre (n 5) art 1.

²³ *ibid.*

²⁴ Bright (n 20) 89.

²⁵ Loi no. 2017-399 du 27 Mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d’ordre (n 5) art 1.

²⁶ *ibid* 2.

Litigation relating to the DVL is still in its early stages. Several cases are currently pending before the court²⁷ - a few of these proceedings have been considered inadmissible on procedural grounds, and only one has led to an injunction.²⁸ The first claims brought under the DVL by several NGOs against the energy company, TotalÉnergies, in relation to two major oil projects in Uganda were ruled inadmissible in February 2023, based on procedural issues.²⁹ In December 2023, the Paris court of first instance assessed for the first time the compliance of the measures implemented by a company – the French public company, La Poste – under the DVL.³⁰ The key issue lied with the inadequacy of La Poste’s risk mapping, from which the other measures in the diligence measures were derived ([see below](#)). The court evaluated the effectiveness and efficiency of the measures in place finding that La Poste’s vigilance plan was insufficient and ordered the company to complete its vigilance plan to include subcontractors in its risk mapping and include procedures for assessing them as issues concerning the working conditions of undocumented workers in its parcel subcontracting chain had emerged. This case marked an acceleration in the judicial handling of HREDD-related litigation and, considering the lack clarity and specificity of the DVL, is instructive.³¹

German Supply Chain Due Diligence Act

In 2021, Germany passed the Act on Corporate Due Diligence Obligations for the Prevention of Human Rights Violations in Supply Chains (*Lieferkettensorgfaltspflichtengesetz*),³² which came into force in January 2023.³³ The Act, which was a political compromise, is part of a wave of national laws aimed at improving the human rights conditions along global supply chains.³⁴ The Act places obligations on certain German companies- and foreign companies with German branches - to implement due diligence measures for human rights and environmental protection. As of 1st January 2024, the scope of the Act covers enterprises³⁵ that normally have over 1,000 employees (for the first year, as of 1st

²⁷ including against TotalÉnergies, BNP Paribas, EDF, Danone and others, for summaries see Business and Human Rights Resource Centre, [‘France’s Duty of Vigilance Law’](#) (2024); Simmons & Simmons, [‘French Duty of Vigilance: Litigation Tracker’](#); Sherpa, CCFD Terre Solidaire, and Business and Human Rights Resource Centre, [‘Cases’](#) (Duty of vigilance radar); Pierre Deroudilhe and Sabrina Dourlens, [‘Devoir de vigilance : Le Point Sur Les Procédures En Cours Se Fondant Sur La Loi de 2017’](#) AEF.Info (2023).

²⁸ Linklaters, [‘France: Two Claims Based on the Duty of Vigilance Declared Admissible’](#) (2024); Linklaters, [‘French Duty of Vigilance Law: First Decision on the Merits Rendered by a French Court’](#) (2023).

²⁹ The courts found the claims inadmissible on the basis that they had not been subject to prior formal notice as required under the DVL. [Les Amis de la Terre France, The National Association of Professional Environmentalists \(NAPE\) and Africa Institute for Energy Governance \(AFIEGO\) v TotalEnergies](#) [2023]; [Survie, Civic Response to Environment and Development \(CRED\) and Navigators of Development Association \(NAVODA\) v TotalEnergies](#) [2023].

³⁰ [Fédération des Syndicats solidaires, Unitaires et Démocratiques des Activités Postales et de Telecommunications \(SUD PTT\) v SA La Poste](#) [2023].

³¹ Latham & Watkins, [‘French Court Reaches Precedent Decision on the Duty of Vigilance Law’](#) (2024).

³² Gesetz über die unternehmerischen Sorgfaltspflichten zur Vermeidung von Menschenrechtsverletzungen in Lieferketten 2021 (n 6).

³³ Pour Rafsendjani and Schäfer (n 6).

³⁴ Peter Thalhauser, ‘Commentary of §8 Sorgfaltspflichten in Ausländischen Rechtsordnungen’ in Robert Grabosch (ed), *Das neue Lieferkettensorgfaltspflichtengesetz* (Nomos 2021).

³⁵ The Act refers to the term ‘Unternehmen’ which is ‘enterprise’ in English. This term covers a broader range of forms of business organisation than ‘company’. This report follows the terminology that is used by the Act.

January 2023, the threshold was 3,000 employees) regardless of their legal form.³⁶ The inclusion of all forms of business organisation is particularly relevant in Germany where private and public limited companies only account for a part of all enterprises.

Enterprises that fall within the scope of the LkSG are under an obligation to undertake certain HREDD obligations with the aim of preventing or minimising any risks to human rights or the environment.³⁷ These obligations encompass establishing a risk management system to identify, prevent or mitigate the risks of human rights violations and environmental harm. The Act also mandates complaint procedures and regular reporting. The basis for the risks is 'protected legal positions' within the meaning of the Act³⁸ which arise from international conventions, listed in the Annex of the LkSG. A human rights risk under the Act is a condition in which, 'on the basis of factual circumstances, there is a sufficient probability that a violation of one of a number of prohibitions is imminent'.³⁹

These obligations extend from an enterprise's own operations to include those of contractual partners and other indirect suppliers throughout the supply chain. The Act defines the term 'supply chain' as referring to 'all steps in Germany and abroad that are necessary to produce the products and provide the services, starting from the extraction of raw materials to delivery to the end customer'.⁴⁰ It differentiates between three different levels: i) the enterprise's own area of business, ii) the actions of direct suppliers and iii) the actions of indirect suppliers. The distinction between these different levels is significant in terms of HREDD obligations, which are i) establishing a risk management system; ii) designating a responsible person or persons within the enterprise; iii) performing regular risk analysis; iv) issuing a policy statement; v) laying down preventive measures in its own area of business and vis-à-vis direct suppliers; vi) taking remedial action; vii) establishing a complaints procedure; viii) implementing due diligence obligations with regard to risks at indirect suppliers; and ix) documenting and reporting.⁴¹

The risk analysis forms the basis of the other subsequent due diligence activities, in particular the preventive measures and the remedial action undertaken by the enterprise.⁴² Enterprises must apply an 'appropriate manner of acting in accordance with the due diligence obligations'.⁴³ The 'appropriate

³⁶ Gesetz über die unternehmerischen Sorgfaltspflichten zur Vermeidung von Menschenrechtsverletzungen in Lieferketten (n 6) s 1(1); For comments see also Norton Rose Fulbright, '[The German Supply Chain Act: Overview and the Practical Challenges for Companies](#)' (2024).

³⁷ Gesetz über die unternehmerischen Sorgfaltspflichten zur Vermeidung von Menschenrechtsverletzungen in Lieferketten (n 6) s 3(1).

³⁸ *ibid* 2(1).

³⁹ *ibid* 2(2). The list of prohibitions in the LkSG include amongst others: The prohibition of the employment of a child under the age at which compulsory schooling ends according to the law of the place of the employment, provided that the age of employment is not less than 15 years; the prohibition of the worst forms of child labour; the prohibition of the employment of persons in forced labour; and the prohibition of disregarding the occupational safety and health obligations applicable under the law of the place of employment. The definition of an environment-related risk includes the danger of a violation of the prohibition of the manufacture of mercury-added products or the prohibition of the use of mercury.

⁴⁰ *ibid* 2(5).

⁴¹ *ibid* 3(1); Andreas Rühmkorf, '[The German Supply Chain Law: A First Step Towards More Corporate Sustainability](#)' (2023) 20 European Company Law 6.

⁴² Gesetz über die unternehmerischen Sorgfaltspflichten zur Vermeidung von Menschenrechtsverletzungen in Lieferketten (n 6) s 5(4). The risk analysis must be carried out annually as well as on an ad hoc basis if the enterprise expects a significantly changed situation such as in the event of a new product being introduced.

⁴³ *ibid* 3(2).

manner of acting' is determined by factors such as the nature and extent of the enterprise's business activities, the ability of the enterprise to influence the party directly responsible for a human rights or environment-related risk or a violation of a human rights-related or environment-related obligation.⁴⁴ Given its aim to prevent or minimise risks or to cease existing violations, the Act imposes an obligation of means, not an obligation of result.⁴⁵ Consequently, there is no liability for the violation of human rights in the enterprise's supply chain per se, but liability for the violation of the due diligence obligations in the Act (such as not undertaking a risk analysis).⁴⁶

The LkSG follows a public enforcement approach. The competent authority for monitoring compliance with the Act and for its enforcement is the Federal Office for Economic Affairs and Export Control (BAFA).⁴⁷ Enterprises must submit their annual report about how they have complied with the Act to BAFA,⁴⁸ which will then check that the report meets the legal requirements.⁴⁹ In the event that the report does not meet the minimum legal requirements, BAFA can require an enterprise to rectify its report.⁵⁰ BAFA also has the power to monitor compliance with the obligations under the Act. The powers of BAFA include making orders and taking measures to detect, end and prevent violations, accessing the enterprise's premises and requesting the enterprise to provide information and to surrender documents.⁵¹ Non-compliance with legal obligations can lead to administrative fines - up to 2% of the average annual turnover - with the possibility of exclusion from public contracts for severe violations.⁵² Following much political discussion, the Act does not contain a civil liability.⁵³

EU Corporate Sustainability Due Diligence Directive

In July 2024, after more than two years of legislative journey, the EU Corporate Sustainability Due Diligence Directive came into force.⁵⁴ The CSDDD, which must be transposed by Member States into national law by July 2026, will introduce HREDD requirements for large EU and non-EU companies

⁴⁴ *ibid.*

⁴⁵ Gerhard Wagner, 'Haftung Für Menschenrechtsverletzungen in Der Lieferkette' (2021) 42 ZIP: Zeitschrift für Wirtschaftsrecht 1095, 1099.

⁴⁶ Lothar Harings and Max Jürgens, 'Die Auswirkungen Des Lieferkettensorgfaltspflichtengesetz Auf Die Transportwirtschaft' [2021] Rech der Transportwirtschaft 297.

⁴⁷ Gesetz über die unternehmerischen Sorgfaltspflichten zur Vermeidung von Menschenrechtsverletzungen in Lieferketten (n 6) s 19(1).

⁴⁸ *ibid* 12(1).

⁴⁹ *ibid* 13(1).

⁵⁰ *ibid* 13(2).

⁵¹ *ibid* 15–17.

⁵² *ibid* 24(3).

⁵³ *ibid* 3(3).

⁵⁴ Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 (n 9); European Coalition for Corporate Justice, '[Overview of the Corporate Sustainability Due Diligence Directive: Advancing Corporate Responsibility](#)' (2024).

operating in the EU.⁵⁵ In addition to CSOs, hundreds of large companies across Europe supported the CSDDD adoption.⁵⁶

The Directive applies to large EU and non-EU companies with significant turnover, including specific provisions for financial undertakings and franchisors. The final compromise has a much narrower scope than what was initially proposed, with a five-year phase-in approach that will have the CSDDD eventually cover companies of 1,000 employees and a turnover of 450 million EUR.⁵⁷ This is approximately 0.05% of EU companies and business activities.⁵⁸ Companies are responsible not only for their direct activities but also those of their suppliers and subcontractors. SMEs are not directly covered but may be indirectly affected through their business relationships (i.e. subcontracting) with larger companies.

In-scope companies will have to take various steps to manage actual and potential adverse impacts of their activities on human rights and environmental matters, arising from their own operations, the operations of their subsidiaries, and their business partners in its 'chain of activities'.⁵⁹ Companies will have to conduct risk-based HREDD by carrying out the following actions: i) integrating due diligence into corporate policies and risk management; ii) identifying and assessing actual and potential adverse impacts; iii) preventing such impacts; iv) providing remediation; v) meaningfully engaging with stakeholders; vi) establishing a notification mechanism; vii) monitoring the effectiveness of due diligence measures; and publicly communicating.⁶⁰ The main due diligence obligations under the CSDDD are 'obligations of means', not 'obligations of result' – as such companies are not expected to guarantee that adverse impacts will not occur, nor that they will always be prevented. But they are expected to take 'appropriate measures' (measures that can achieve the objectives of due diligence).⁶¹ Enforcement includes administrative enforcement (injunctions and sanctions) and civil liability (damages). Member States are required to establish national supervisory authorities responsible for enforcement. These authorities have the power to impose fines and sanctions on companies that fail to meet their due diligence obligations. Additionally, the Directive provides affected individuals and communities with access to legal remedies, including the ability to seek compensation for damages caused by corporate activities.

⁵⁵ ERM International, '[Policy Alert: Corporate Sustainability Due Diligence Directive \(CSDDD\)](#)' (2024); European Commission, '[Directive on Corporate Sustainability Due Diligence: Frequently Asked Questions](#)' (2024); Danish Institute for Human Rights, '[The EU Corporate Sustainability Due Diligence Directive: Maximising Impact through Transposition and Implementation](#)' (2024).

⁵⁶ IDVO - Initiative for Sustainable & Responsible Business Conduct, 'Most Recent Business Statements in Support of Mandatory Due Diligence & the CSDDD' (n 10); IDVO - Initiative for Sustainable & Responsible Business Conduct, 'Broad Support for the CSDDD' (n 10).

⁵⁷ Danish Institute for Human Rights, 'The EU Corporate Sustainability Due Diligence Directive: Maximising Impact through Transposition and Implementation' (n 55).

⁵⁸ European Coalition for Corporate Justice (n 54).

⁵⁹ Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 (n 9) art 1(a).

⁶⁰ *ibid* 5(1). As laid down in Articles 7 to 16.

⁶¹ Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 (n 9) para 19.

The CSDDD introduces minimum harmonization, meaning that the Directive sets a threshold national legislation will have to meet. Member States cannot lower the level of protection when transposing the CSDDD into national law.⁶² Except for the due diligence provisions relating to the identification, prevention and termination of adverse impacts, Member States are free to go beyond the CSDDD and introduce stricter obligations or a wider scope.⁶³ It is expected that existing laws such as the LkSG and DVL will be affected by the national implementation of the CSDDD.⁶⁴ Obligations under the CSDDD will apply in addition to other more specific obligations under other EU due diligence (and reporting) regulation - including the EU Corporate Sustainability Reporting Directive (CSRD),⁶⁵ the EU Deforestation Regulation,⁶⁶ the EU Conflict Minerals Regulation - ⁶⁷ and will also be complementary to the EU Forced Labour Import Ban Regulation.⁶⁸

⁶² *ibid* 1(2). Equally, the CSDDD may not serve as grounds for Member States to reduce the level of protection already afforded under national laws to human, employment and social rights, or protection of the environment or climate.

⁶³ *ibid* 4.

⁶⁴ White & Case, '[Time to Get to Know Your Supply Chain: EU Adopts Corporate Sustainability Due Diligence Directive](#)' (2024).

⁶⁵ [Directive \(EU\) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation \(EU\) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting](#) (2022).

⁶⁶ [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 r](#)(2023).

⁶⁷ [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](#) (2020).

⁶⁸ [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](#) (P9_TA(2024)0309).

Table 2: Summary of comparison of legal models

HREDD legal model	HREDD Obligation	Scope	Value chain coverage	Enforcement	Corporate liability	Disclosure
France Duty of Vigilance Law 2017	Implement a vigilance plan that includes risk mapping, assessment and prioritization, assessment procedures, appropriate actions to mitigate risks or prevent serious harm, an alert and complaint mechanism, and a monitoring mechanism.	Companies registered in France with more than 5,000 employees in France or more than 10,000 employees worldwide.	Subsidiaries, subcontractors or suppliers with whom the company has an established business relationship.	Judicial oversight. Two step enforcement mechanism consisting of a formal notice to comply and) a request asking the competent court to order an injunction with potential periodic penalty payment.	Civil liability, injunctions and damages. A court may impose a penalty for each day of non-compliance.	Publish a Vigilance Plan.
Germany Supply Chain Due Diligence Act 2021	Due diligence obligations including establishing a risk management system, performing regular risk analysis, laying down preventive measures, taking remedial action, establishing a complaints procedure.	As of January 2023, large companies with over 3,000 employees and as of January 2024 companies with over 1,000 employees.	Contractual partners and other indirect suppliers throughout the supply chain.	state-based administrative oversight by the German Federal Office for Economic Affairs and Export Control (BAFA).	No new civil liability. Administrative fines and possibility to be excluded from public procurement.	Publish annual statements.
EU Corporate Sustainability Due Diligence Directive 2024	Companies must integrate due diligence into policies and risk management systems, identify and address adverse impacts, meaningfully engage with stakeholders, communicate publicly on due diligence, and adopt climate change plans.	European companies with more than 1 thousand employees and 450 million Euros turnover and non-European companies with more than 450 million Euros turnover in the EU.	"Chain of activities" Mostly upstream value chain with limited downstream.	Member states must designate a public supervisory authority.	Civil liability, injunctions and penalties of up to 5% of their global turnover. Companies may also be excluded from public procurement.	Reporting through CSRD. If not covered under CSRD then publish an annual statement.

Comparison of HREDD regulation and reflections on corporate practice changes

In this section, we offer comparative analysis and reflections on some reported changes in corporate practice associated with the French and German HREDD laws and anticipated action due to the CSDDD. We cover several aspects related to: i) [the harmonisation of different regulation and alignment with the UNGPs](#); ii) [progress over time towards more 'mature' risk-based HREDD process](#); iii) [engagement with suppliers and shared responsibility approach](#); iv) [balance between flexibility in the 'voluntary' implementation of HREDD processes and legal specificity](#); v) [changes in internal corporate HREDD governance](#); vi) [stakeholder engagement](#); vii) [grievance mechanisms](#); viii) [responsible disengagement](#); and ix) [public communication](#).

Harmonisation of regulation and alignment with the UNGPs

While the French and German HREDD laws mandate processes that are based on international standards, they are not fully aligned with the UNGPs.⁶⁹ Misalignment between HREDD laws and the UNGPs means that compliance with the laws do not necessarily equate with meeting the expectations under international standards. A study looking at vigilance plans required by the DVL found that companies scored lower when assessed against the UNGPs' requirements than when assessed against the legal requirements of the law.⁷⁰ Similarly, companies that comply with the obligations of the LkSG do not automatically carry out a HREDD process in line with the UNGPs.⁷¹ The key difference is that the LkSG focuses on the enterprise's own area of business and direct suppliers (unless there is 'substantiated knowledge' of a risk), whereas the UNGPs include the entire value chain.⁷² It is expected that, over time, this difference is likely to diminish as and when German enterprises gain substantiated knowledge of human rights risks in their supply chain.⁷³ The main points of deviation between the two instruments are:

- i) scope: the UNGPs generally apply to all enterprises, whereas the LkSG encompasses all enterprises over the threshold of 1,000 employees (3,000 from 01/01/23 – 31/12/23);
- ii) protected legal positions: the protected legal positions in the LkSG and UNGPs are broadly derived from the same international documents. Both are based on the ILO Core Conventions, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights; yet, the protected legal positions in the UNGPs are also based on the Universal Declaration of Human Rights whereas they are not in the LkSG;
- iii) reach into the chain: by default, the due diligence obligations in the LkSG cover the enterprise's own area of business and its direct (first tier) suppliers, but only indirect suppliers where the

⁶⁹ Surya Deva, '[Mandatory Human Rights Due Diligence Laws in Europe: A Mirage for Rightsholders?](#)' (2023) 36 *Leiden Journal of International Law* 389.

⁷⁰ Development International e.V., '[Devoir de Vigilance: Reforming Corporate Risk Engagement](#)' (Development International eV 2020).

⁷¹ Robert Grabosch, 'Commentary of §2 Grundlagen, Prinzipien Und Begriffe' in Robert Grabosch (ed), *Das neue Lieferkettensorgfaltspflichtengesetz* (Nomos 2021) para 16; Markus Krajewski, Kristel Tonstad and Franziska Wohltmann, '[Mandatory Human Rights Due Diligence in Germany and Norway: Stepping, or Striding, in the Same Direction?](#)' (2021) 6 *Business and Human Rights Journal* 550.

⁷² Office of UN High Commissioner for Human Rights (n 1), principle 18.

⁷³ Grabosch (n 71) para 16.

enterprise has ‘substantiated knowledge’ of a risk to human rights. In contrast, the UNGPs cover the entire chain, with the nature of the enterprise’s contribution to a human rights violation determining what due diligence obligations needs to be undertaken;

- iv) HREDD obligations: These are broadly similar with the nuanced difference that the UNGPs also include the duty to remediate where an enterprise identifies that it has caused or contributed to adverse impacts;⁷⁴ in contrast, in the LkSG, remediation is voluntary and only factored in when determining the amount of the fine;⁷⁵ and
- v) terminology: the UNGPs do not use the terms ‘risk’ and ‘violation of a human rights-related risk’ but refers to ‘actual or potential adverse human rights impacts.’

A key selling point for the CSDDD, since the beginning of negotiations, was its promise of harmonisation. In the 2020 BIICL-led study for the European Commission which formed the basis of the CSDDD, over 75% of business respondents said that an EU-wide HREDD regulation would benefit business by creating one EU-level standard.⁷⁶ These business and general survey respondents (most of which were from Germany) indicated that the introduction of HREDD legislation at the EU level would bring the following benefits: a single harmonised EU-level standard (rather than a mosaic of domestic and industry level standards), levelling of the playing field, legal certainty and leverage with third parties through a non-negotiable standard.⁷⁷

The adoption of the CSDDD is an important step forward in developing harmonised HREDD requirements but it is not fully aligned with the UNGPs and the OECD Guidelines.⁷⁸ For example,

- i) Personal scope: the limited scope of companies under the CSDDD is not aligned with UNGPs expectation that all companies implement HREDD in a proportionate manner. This may also deter from the effect of levelling the playing field.⁷⁹
- ii) Material scope: the limited and complex definition of ‘adverse human rights impacts’ departs from the UNGPs broad definition of all human rights that can be impacted by a company. In

⁷⁴ Office of UN High Commissioner for Human Rights (n 1). Principle 22.

⁷⁵ Gesetz über die unternehmerischen Sorgfaltspflichten zur Vermeidung von Menschenrechtsverletzungen in Lieferketten (n 6) s 24(4) No 7.

⁷⁶ British Institute of International and Comparative Law, ‘[Study on Due Diligence Requirements through the Supply Chain](#)’ (2020). The majority of business respondents were based in Germany (39.09%), followed by France (10.75%), Sweden (8.79%), the Netherlands (6.51%), the UK (5.54%), Spain (4.56%), Finland (4.23%) and Italy (4.23%).

⁷⁷ *ibid.*

⁷⁸ Danish Institute for Human Rights, ‘The EU Corporate Sustainability Due Diligence Directive: Maximising Impact through Transposition and Implementation’ (n 55).

⁷⁹ British Institute of International and Comparative Law, ‘Study on Due Diligence Requirements through the Supply Chain’ (n 76); British Institute of International and Comparative Law, ‘[A UK Failure to Prevent Mechanism for Corporate Human Rights Harms](#)’ (2020); [European Parliament resolution of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability](#) (P9_TA(2021)0073). SMEs have largely been excluded from HREDD laws obligations - albeit many SMEs are indirectly covered through a cascading effect - mostly arguing lack of resources – despite the costs of carrying out mandatory supply chain due diligence is likely to be relatively low compared to their revenue, HRDD requirements should be proportionate to the size of the company, and assistance, if required, should be provided. The European Parliament had proposed for publicly listed SMEs and those operating in high-risk sectors to be covered by HREDD laws.

the list of human rights instruments, European human rights frameworks and other UN and ILO conventions are omitted.⁸⁰

- iii) Value chain: the CSDDD introduces the new concept of 'chain of activities', which includes activities of downstream business partners - distribution, transport and storage of products – but not all downstream activities. This approach departs from international standards that expect that companies should take a full value chain approach to HREDD.⁸¹ Downstream human rights due diligence is included as an expectation in the UNGPs and in the 2023 update of the OECD Guidelines.
- iv) Stakeholder engagement: the requirement of meaningful engagement with stakeholders at specific certain points in the HREDD process [as discussed below](#) instead that throughout the entire process.

International standards, namely the UNGPs and the OECD Guidelines, and their guidance should be seen as the destination of HREDD. We find that companies with more mature programmes have used these international standards to develop their HREDD. For example, even if HREDD regulations are not explicitly requiring the inclusion of downstream aspects, some companies are already acting on these risks and following the approach expected in the UNGPs. They recognise that there are salient human rights risks in downstream activities and failing to include the downstream aspect in due diligence – including use of products and services - can result in significant blind spots.⁸² Recognizing that companies are at different points on a journey towards the destination of fulfilling the UNGP's expectations, regulations should have the goal of alignment with international standards at the heart of the regulation. Some related EU regulation, including for example the EU Deforestation Regulation, the CSRD and the Forced Labour Regulation, which have different purposes and requirements, are not creating contradicting or competing obligations, but will be able to complement and reinforce each other and foster business respect for human rights and the environment.⁸³

A UK Business Human Rights and Environmental Act

In 2017, a report by the UK Joint Committee on Human Rights proposed that a failure to prevent mechanism, modelled on section 7 of the UK Bribery Act, may be 'an appropriate one to apply to business and human rights'.⁸⁴ A 2020 study by BIICL considered the legal feasibility of introducing such a mechanism in the UK.⁸⁵ The study included a survey with businesses: most of them indicated that additional regulation may provide benefits to business through providing legal certainty (82%), through levelling the playing field, insofar as it will hold competitors and suppliers to the same standards (74%), and by facilitating leverage with third parties, including in the supply chain (75%).⁸⁶ Since then, CSOs have been calling for the introduction of a UK Business, Human Rights and Environment Act to create a corporate duty to prevent negative human rights and environmental impacts by conducting HREDD.⁸⁷

The UNGPs still need to be seen as the standard reference to follow to ensure policy coherence, avoid fragmentation and design an effective 'smart mix' of regulatory tools of mutually reinforcing

⁸⁴ UK Joint Committee on Human Rights, '[Human Rights and Business 2017: Promoting Responsibility and Ensuring Accountability](#)' (2017) 57.

⁸⁵ British Institute of International and Comparative Law, 'A UK Failure to Prevent Mechanism for Corporate Human Rights Harms' (n 79).

initiatives.⁸⁸ For full alignment with the UNGPs, regulators should consider broadening the personal and material scope of HREDD by including all human and environmental rights, lowering the company thresholds, and including all corporate forms – this is the case under the LkSG but not under the DVL – and include downstream value chain in the definition of ‘chain of activities’.⁸⁹

More mature risk-based HREDD process over time

The adoption of HREDD laws has accelerated the implementation of risk-based HREDD processes, which many large companies were already implementing based on UNGPs expectations. HREDD regulation is driving positive changes at the level of policy, integration and management, especially when changes are assessed over time. Gaps still exist, however, especially for measures in relation to identification, assessment and prioritisation of risk and measuring their effectiveness, measuring their effectiveness and tracking performance⁹⁰ – as well as in relation to [stakeholder engagement](#) and [grievance mechanisms](#), as discussed below.

Corporate awareness and prioritization of the importance of human rights issues is increasing, partially related to HREDD laws. This was reported even by some companies not directly covered by existing laws, as they are anticipating CSDDD requirements. Legal requirements are driving a more mature, risk-based HREDD process. Some companies are at the beginning of a learning process, which started with compliance with the French and German laws. Many others already had experience with HREDD principles, based on ‘voluntary’ implementation of the UNGPs and the OECD Guidelines.⁹¹ Companies with more advanced HREDD processes are making some adjustments to comply with the DVL and the LkSG – but implementation of the UNGPs allowed them to already comply with HREDD requirements. Even for companies already familiar with HREDD expectations, legal requirements seem to have forced them to improve their visibility of their entire value chain and remediate impacts.

⁸² Benn F Hogan and Joanna Reyes, ‘[Downstream Human Rights Due Diligence: Informing Debate Through Insights from Business Practice](#)’ (2023) 8 Business and Human Rights Journal 434.

⁸³ Danish Institute for Human Rights, ‘[How Do the Pieces Fit in the Puzzle? Making Sense of EU Regulatory Initiatives Related to Business and Human Rights](#)’ (2024).

⁸⁴ UK Joint Committee on Human Rights, ‘[Human Rights and Business 2017: Promoting Responsibility and Ensuring Accountability](#)’ (2017) 57.

⁸⁵ British Institute of International and Comparative Law, ‘A UK Failure to Prevent Mechanism for Corporate Human Rights Harms’ (n 79).

⁸⁶ *ibid.*

⁸⁷ See for example Anti-Slavery International, ‘[A Call for a UK Business, Human Rights and Environment Act](#)’ (2022).

⁸⁸ Danish Institute for Human Rights, ‘The EU Corporate Sustainability Due Diligence Directive: Maximising Impact through Transposition and Implementation’ (n 55); Office of UN High Commissioner for Human Rights, ‘[UN Human Rights “Issues Paper” on Legislative Proposals for Mandatory Human Rights Due Diligence by Companies](#)’ (2020). The UN Office of the High Commissioner for Human Rights (OHCHR) noted that policy makers should review the wider ‘regulatory ecosystem’ in which the HREDD regime will sit so that the regime can take advantage of existing regimes, smoothly interact with other regimes, and ensure policy coherence.

⁸⁹ Danish Institute for Human Rights, ‘The EU Corporate Sustainability Due Diligence Directive: Maximising Impact through Transposition and Implementation’ (n 55); ClientEarth and Frank Bold (n 80).

⁹⁰ World Benchmarking Alliance, ‘[Social Benchmark Insights Report](#)’ (2024). The World Benchmarking Alliance’s 2024 Social Benchmark Report found that only 6% of the 2,000 most influential companies have fully implemented human rights due diligence.

⁹¹ ClientEarth and Frank Bold (n 80).

In relation to the DVL, because of corporate culture and the pressure from NGOs and public opinion, many companies had already started to put in place HREDD processes prior to the adoption of the law.⁹² Early evidence about the DVL also indicated that in the financial year after its introduction in 2017, 70% of companies started or revised their human rights and environmental risk mapping, and 65% of companies had dedicated human rights impacts identification processes (compared to 30% before the law).⁹³ La Poste's decision is significant as it provides an articulate criticism of risk assessment methodology.

La Poste judgment on the issue of risk mapping

Risk mapping is the first stage in drawing up a vigilance plan under the DVL. Its role is of fundamental importance, as the Paris Court reminds in the La Poste case, 'its results determine the subsequent stages and therefore the effectiveness' of the entire vigilance plan.⁹⁴ The court found that La Poste's risk assessment lacked precision – it remained at a high level of generality and did not specifically identify top-priority risks. As such, the court set high standards in terms of identification and assessment of risks (for example it criticized La Poste's 'gross risk' / 'net risk' methodology stating that net risks as presented in the vigilance plan were all too low). Since the risk mapping did not specify the risk factors or its ranking, the vigilance plan did not measure whether the assessment strategy defined by La Poste was in line with the seriousness of the damage. As such, the court ordered La Poste to establish procedures for assessing subcontractors based on the specific risks identified by the mapping. Underestimating risks is not going to protect companies against potential claims.⁹⁵ Legal advice to companies recommends reviewing the level of detail of the risk mapping and whether the criteria used to rank risks are sufficiently substantiated, ensuring that the risk mapping expressly identifies priority areas for HREDD and monitors the consistency of risk mitigation and prevention actions accordingly, and tracking the improvements made.⁹⁶

We find that some companies are incorporating HREDD considerations into existing processes and procedures. Companies complying with the LkSG are also looking into ways to effectively integrate human rights and environmental issues into existing processes.⁹⁷ Looking at an example summarized by the Danish Institute for Human Rights, a company in-scope of the German law, for example, expanded their third-party risk management system and process, which was in place for anti-bribery and corruption, to include human rights.⁹⁸ Now that these issues are no longer 'voluntary', departments will have to work together (i.e. at least, the sustainability, compliance and purchase departments).⁹⁹ While low risk areas may be able to be managed with more basic processes, more

⁹² Conseil Général de l'Économie (n 21) 31.

⁹³ Entreprises pour les droits de l'Homme, '[Application de La Loi Sur Le Devoir de Vigilance: Plans de Vigilance 2018-2019](#)' (2019) 7; B&L Évolution & entreprises pour le droits de l'Homme, '[Application de La Loi Sur Le Devoir de Vigilance: Analyse de Premiers Plans Publiés](#)' (2018) 13.

⁹⁴ *Fédération des Syndicats solidaires, Unitaires et Démocratiques des Activités Postales et de Telecommunications (SUD PTT) v. S.A. La Poste* (n 30); Latham & Watkins (n 31).

⁹⁵ Clifford Chance, '[French Court Orders the First Injunction to Improve a Vigilance Plan](#)' (2023).

⁹⁶ Latham & Watkins (n 31).

⁹⁷ Lothar Harings and Max Jürgens, *Das Lieferkettensorgfaltspflichtengesetz Umsetzung Und Auswirkungen Des LkSG in Der Praxis* (Reguvis 2022).

⁹⁸ Danish Institute for Human Rights, '[Due Diligence in the Downstream Value Chain: Case Studies of Current Company Practice](#)' (2024).

⁹⁹ Marc Ruttloff, Eric Wagner and Matthias Hahn, 'Der Menschenrechtsbeauftragte' [2022] CCZ Corporate Compliance Zeitschrift 20.

high-risk areas require a more comprehensive approach and innovative ideas to try and address the systemic issues at hand. Integration of HREDD into other processes may reduce some burden on the suppliers, but there are important considerations to make that are particular to human rights and are potentially lost in the integration if not carefully done. HREDD legislation is helping to prioritise human rights and further embed respect for human rights in internal corporate processes.¹⁰⁰ Legal requirements are drivers for developing a risk-based approach to HREDD in a way that is unique to the local context.¹⁰¹ Companies with ‘a more mature approach’ to engaging with HREDD have adopted strategies to address root causes of human rights impacts and work with stakeholders – including for example by carrying out human rights impacts assessments, empowering trade unions and civil society, and addressing human rights within their business model.¹⁰² The World Benchmarking Alliance’s 2024 Social Benchmark Report found that companies that implement HREDD are often from jurisdictions that have issued guidance or implemented regulatory frameworks on human rights.¹⁰³

Legislation is also having a positive impact on companies that are not in-scope of the French and German laws – even UK companies that will not be in-scope of the CSDDD either. We found that large multinational companies are not able to ignore the stream of various HREDD legal requirements in Europe, even if technically they are not in-scope. As more competitor companies become in-scope and more countries pass HREDD laws, some companies are trying to foresee future HREDD developments and take a ‘highest standards approach’ when developing internal compliance frameworks. As the CSDDD embraces a risk-based approach,¹⁰⁴ although with some gaps in relation to downstream impacts and not including certain human rights as discussed above – it is anticipated that it will push for a more integrated approach to human rights and the environment and a more holistic HREDD process.

A report on behalf of the German government, before the LkSG started to be implemented, discussed how companies recognise that implementing HREDD is an ongoing process of continuous development.¹⁰⁵ Companies reviewed saw a clear added value in implementing HREDD. Different motivations for companies implementing more comprehensive HREDD processes included increased regulation but also increased public attention, increased expectations from investors and shareholders, and ability to protect their brand and license to operate. Companies reviewed were also increasingly incorporating and connecting human rights to other issues like the environment, progress on the Sustainable Development Goals, and potential ethical impacts of new business models.

¹⁰⁰ Lise Smit and others, ‘[Human Rights Due Diligence in Global Supply Chains: Evidence of Corporate Practices to Inform a Legal Standard](#)’ (2020) 25 The International Journal of Human Rights 945.

¹⁰¹ Accenture and twentyfifty, ‘[Moving with Responsibility towards Success: Practical Implementation of Human Rights Due Diligence in 10 Companies](#)’ (Federal Ministry for Economic Cooperation and Development (BMZ) & Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH 2021).

¹⁰² *ibid.*

¹⁰³ World Benchmarking Alliance, ‘Social Benchmark Insights Report’ (n 90). They also find that ‘companies headquartered in countries with human rights legislation score nearly 60% higher on average than those in countries without such legislation.’

¹⁰⁴ Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 (n 9) arts 5, 7–16.

¹⁰⁵ Accenture and twentyfifty (n 101).

The LkSG requires all affected enterprises, as part of their preventive measures, to issue a policy statement on its human rights strategy which senior management must adopt.¹⁰⁶ This declaration is an important document that is adopted as part of the due diligence obligations of the LkSG.¹⁰⁷ Drafting this policy statement requires enterprises to reflect on their approach towards preventing human rights asks in their own area of business as well as their suppliers. Following the introduction of the LkSG, these policies are no longer a voluntary undertaking, but rather a key part of complying with the obligation to lay down preventive measures.¹⁰⁸

Best practices of ten German companies implementing HREDD show a variety of ways in approaching policy commitments, be it as a standalone document or integrated into existing guidelines.¹⁰⁹ Those companies recognised that the policies must be continuously developed based on internal and external feedback and the further development of their human rights risk approach, companies gave thought to how to make sure that the policy was communicated and integrated into businesses processes and decision-making.

Labour rights violations in German companies' supply chains in China

A China Labour Bulletin (CLB) report, released in September 2024, examines labour rights violations within the Chinese supply chains of multinational companies, with a focus on German companies in scope of the LkSG.¹¹⁰ CLB recognises that the German LkSG 'represents a groundbreaking shift in corporate responsibility, setting a new standard for global business practices'.¹¹¹ It points to the significant gaps that remain in ensuring corporate accountability, and protecting labour rights in global supply chains and calls for similar legislation in other countries: the LkSG 'has raised the bar...demonstrating that robust national legislation can make an impact on global supply chains'.¹¹²

Some companies, however, are not implementing HREDD with a human rights risk approach. CSO analysis of 80 vigilance plans published over the course of the first year of the application of the DVL showed that most of the plans were 'inward-looking' as they were still focusing on the risks to the

¹⁰⁶ Gesetz über die unternehmerischen Sorgfaltspflichten zur Vermeidung von Menschenrechtsverletzungen in Lieferketten (n 6) s 6(2). The policy statement must contain at least the following elements: i) a description of the procedure by which the enterprise fulfils its obligation to have a risk management system, to conduct a risk analysis and to lay down preventive measures; ii) the enterprise's priority human rights and environment-related risks identified on the basis of the risk analysis; iii) the definition, based on the risk analysis, of the human rights-related and environment-related expectations placed by the enterprise on its employees and suppliers in the supply chain.

¹⁰⁷ Daniel Augenstein and Franziska Wohltmann, 'Commentary of § 6 Präventionsmaßnahmen' in Markus Kaltenborn and others (eds), *Lieferkettensorgfaltspflichtenrecht* (CH Beck 2023) para 29.

¹⁰⁸ Gesetz über die unternehmerischen Sorgfaltspflichten zur Vermeidung von Menschenrechtsverletzungen in Lieferketten (n 6) s 6(4); Andreas Rühmkorf, *Corporate Social Responsibility, Private Law and Global Supply Chains* (Edward Elgar 2015); Harings and Jürgens (n 97); Christian Pelz and Jürgen Krais, *Lieferketten in Der Unternehmenspraxis Lieferkettensorgfaltspflichtengesetz – Best Practice* (CF Müller 2023) ch 2.

¹⁰⁹ Accenture and twentyfifty (n 101).

¹¹⁰ China Labour Bulletin, '[Breaking the Mould: Germany's Supply Chain Act as a New Approach to Global Labour Rights Accountability](#)' (2024). This report examines nine recent case studies from China's manufacturing sector, Some German firms, such as Volkswagen, have responded to CLB's inquiries by acknowledging violations and committing to improvements, Others, however, have been reluctant to engage, and acknowledge the rights abuses occurring in their supply chains.

¹¹¹ *ibid.*

¹¹² *ibid.*

company.¹¹³ Over time, some vigilance plans are shifting the focus to the rightsholders.¹¹⁴ A 2020 CSO study of 134 DVL in-scope companies showed a high level of compliance with the minimum requirements of the DVL to establish and publish a vigilance plan, with 91% of the companies having established a vigilance plan, and 90% having published it in a readily accessible manner.¹¹⁵ The results, however, were much lower in relation to conformance to the UNGPs - i.e. to what extent the vigilance plans aligned with the requirements set out in the UNGPs - with the average company respectively scoring only 24%.¹¹⁶ While the more advanced companies seem to show specific actions in relation to identified risks, companies with a less developed HREDD approach seem to 'have compiled under their vigilance plans existing policies and processes, not fully engaging or understanding the objectives (and spirit) of either the vigilance plan or the Law'.¹¹⁷

We find that some companies still approach HREDD as another risk management process without fully recognizing the different perspective that is needed in terms of evaluating impacts to people rather than impacts to the business. Not all companies are able to clearly differentiate the risk to business (the focus of traditional risk management) as opposed to the risk to rightsholders. Under international standards, HREDD needs to be approached through the perspective of those affected. As stated in the UNGPs, the corporate responsibility to respect human rights is a 'standard of conduct' - a behaviour that companies are expected to meet.¹¹⁸ The 'intent of this standard is to prevent and address harms to people' and HREDD is the 'means' through which companies are expected to achieve such objective.¹¹⁹

There is still 'a large gap between businesses who are supportive of HRDD and those which put HRDD into action in a substantive way'.¹²⁰ It is 'essential that business accepts HREDD as a mechanism that demands a change in decision-making approaches and substantive compliance with human rights standards, rather than merely symbolic compliance'.¹²¹ Companies have not invested enough on the issue of tracking performance and understanding effectiveness based on a risk-based approach. The way forward, considering the upcoming HREDD legislation, is the implementation of the international standards – UNGPs and OECD Guidelines – which will also allow compliance with specific laws. Companies need to engage with the process of risk-based HREDD within the spirit of the UNGPs.¹²²

¹¹³ ActionAid and others, '[The Law on Duty of Vigilance of Parent and Outsourcing Companies- Year 1: Companies Must Do Better](#)' (2019) 10.

¹¹⁴ Bright (n 20) 90.

¹¹⁵ Development International e.V. (n 70) 3.

¹¹⁶ *ibid* 4.

¹¹⁷ Elsa Savourey and Stéphane Brabent, '[The French Law on the Duty of Vigilance: Theoretical and Practical Challenges Since Its Adoption](#)' (2021) 6 Business and Human Rights Journal 141, 147.

¹¹⁸ Shift, '[Legislating for Human Rights Due Diligence: How Outcomes for People Connect to the Standard of Conduct](#)' (2021).

¹¹⁹ *ibid*; Office of UN High Commissioner for Human Rights (n 1), principle 15.

¹²⁰ Robert McCorquodale and Justine Nolan, '[The Effectiveness of Human Rights Due Diligence for Preventing Business Human Rights Abuses](#)' (2021) 68 Netherlands International Law Review 455, 468. See also suggestions of a meta-regulation approach for better human rights due diligence - Ingrid Landau, '[Human Rights Due Diligence and the Risk of Cosmetic Compliance](#)' (2019) 20 Melbourne Journal of International Law; Christine Parker, '[Meta-Regulation: Legal Accountability for Corporate Social Responsibility?](#)' in Doreen McBarnet, Aurora Voiculescu and Tom Campbell (eds), *The New Corporate Accountability: Corporate Social Responsibility and the Law* (Cambridge University Press 2007); Christine Parker, '[Meta-Regulation: The Regulation of Self-Regulation](#)', *The Open Corporation: Effective Self-regulation and Democracy* (Cambridge University Press 2014).

¹²¹ McCorquodale and Nolan (n 120) 468.

¹²² Danish Institute for Human Rights, 'The EU Corporate Sustainability Due Diligence Directive: Maximising Impact through Transposition and Implementation' (n 55).

Often the risk of ‘cosmetic compliance’ and companies approaching HREDD as tick-box exercises is mentioned.¹²³ But there should be a differentiation between a minimal compliance approach and the risk-based approach of the UNGPs and OECD (and now CSDDD). ‘Compliance-based approach’ is not bad per se – as of course companies are required to comply under HREDD laws. It all depends on what they comply with – if this is only a reporting requirement, e.g. under the Modern Slavery Act, then this can be perceived as a risk management tool rather than a substantive mechanism for preventing and remedying corporate human rights abuses.¹²⁴ Yet, if compliance is to the HREDD standard of conduct under the UNGPs, then compliance is welcomed. Companies should take an expansive, holistic, risk-based approach to HREDD in line with the expectations of the UNGPs. Regulators should clarify accordingly the definition of ‘appropriate measures’ and the concept of ‘effectiveness’, which should be always part of business measures to address actual and potential impacts.¹²⁵

Measuring the effectiveness of HREDD laws

Experts and companies agree that it is key to measure the effectiveness of HREDD on outcomes or impacts to rightsholders.¹²⁶ While evidence on the practical impacts of HREDD legal models on corporate practice is increasing as more companies are being covered by these laws, little is known about their effectiveness in terms of impacts on rightsholders. This may partially be explained by poor corporate practice on evaluation and tracking performance, by HREDD laws not being implemented long enough to gather evidence on effectiveness, and by a lack of an agreed conceptual and practical framework to understand and measure the effectiveness of HREDD legal models.¹²⁷

A research project funded by the Modern Slavery and Human Rights Policy and Evidence Centre (Modern Slavery PEC) explored the effectiveness of section 54 of the UK Modern Slavery Act and conceptualised effectiveness in three ways: compliance with the requirements of the law, changes in corporate behaviour, and outcomes.¹²⁸ A further brief for the Modern Slavery PEC used this framework to analyse the existing evidence on the effectiveness of HREDD laws - mainly the French and German laws - and noted that there is not a well-established evidence base to show effectiveness in any of the types in the framework, especially in relation to their impact on preventing and mitigating human rights abuses.¹²⁹ What effectiveness means and how its elements can be measured qualitatively or quantitatively is not yet clear.

¹²³ Landau (n 120).

¹²⁴ Justine Nolan, [‘Chasing the Next Shiny Thing: Can Human Rights Due Diligence Effectively Address Labour Exploitation in Global Fashion Supply Chains?’](#) (2022) 11 International Journal for Crime, Justice and Social Democracy 1, 9–10.

¹²⁵ Danish Institute for Human Rights, [‘Transposition of the Corporate Sustainability Due Diligence Directive: A Practical Guide for National Human Rights Institutions’](#) (2024).

¹²⁶ Landau (n 120); Deva (n 69); Shift, ‘Legislating for Human Rights Due Diligence: How Outcomes for People Connect to the Standard of Conduct’ (n 118); Shift, [‘FAQs: On the EU Corporate Sustainability Due Diligence Directive \(CS3D\)’](#) (2024).

¹²⁷ Accenture and twentyfifty (n 101); Modern Slavery & Human Rights Policy and Evidence Centre, [‘Policy Brief Update: Effectiveness of Mandatory Human Rights and Environmental Due Diligence Legislation in Addressing Modern Slavery in Business Value Chains’](#) (2024). BIICL is currently undertaking a 3-year research project to [develop indicators and measure the effectiveness of HREDD legal models](#).

¹²⁸ Modern Slavery & Human Rights Policy and Evidence Centre, ‘Effectiveness of Section 54 of the Modern Slavery Act: Evidence and Comparative Analysis’ (n 17).

¹²⁹ Modern Slavery & Human Rights Policy and Evidence Centre, ‘Policy Brief Update: Effectiveness of Mandatory Human Rights and Environmental Due Diligence Legislation in Addressing Modern Slavery in Business Value Chains’ (n 127).

Engagement with suppliers and shared responsibility

Visibility of the full value chain and gathering supplier data remains one of the more difficult and resource intensive exercises for companies, especially from low tiers and in sectors characterised by long and complex supply chains.¹³⁰ The Federal Association of Materials Management, Purchasing and Logistics surveyed 242 member enterprises in 2022, i.e. during the phase of planning and implementation of the LkSG. Responding enterprises identified as key challenges ‘collecting and analysing the supply chain data’ and ‘data quality and reliability’.¹³¹ In the La Poste case, discussed above, the trade union had also requested the publication of the list of all subcontractors and suppliers. The court dismissed this request based on the protection of trade secrets.¹³² It considered that it was not essential to identify all suppliers and subcontractors and noted the practical difficulty of drawing up such a list of partners, since it ‘can cover thousands of companies and fluctuate over time’.¹³³

We find that despite difficulties in obtaining full and continually updated visibility into their entire supply chain, stringent regulatory obligations for HREDD risk assessment – and the risk of liability – are forcing companies to find innovative ways to overcome these challenges. Many have responded to HREDD regulation by developing as a first step a comprehensive mapping of their supply chain. As relying on a manual assessment seems practically impossible, companies and their legal advisors are increasingly looking at the use of new technology, including AI systems, to carry out more automated risk analysis. The use of these tools is going to be an important factor in complying with HREDD requirements. There are, however, important legal and ethical considerations in relation to the use of AI systems, which are still largely not regulated.¹³⁴

In relation to the prevention of potential adverse impacts, the CSDDD states that companies shall be required to seek contractual assurances from a direct business partner.¹³⁵ The LkSG also requires contractual assurances from a direct supplier that it will comply with human-rights related expectations. Several companies covered by the German law are indeed strengthening their contractual obligations to suppliers following the spirit of the law and adhering to the BAFA guidance on shared responsibility. BAFA emphasises the need for enterprises to collaborate with third parties instead of purely passing on their own due diligence obligations to suppliers.¹³⁶ Where human rights violations have occurred at a direct supplier, an enterprise may only terminate its business relationship with this supplier as a last resort ([see below on responsible disengagement](#)).¹³⁷ This provision reinforces the LkSG’s aim that enterprises collaborate and engage with third parties. BAFA names some possible implementation tools

¹³⁰ Modern Slavery & Human Rights Policy and Evidence Centre, ‘[Addressing Modern Slavery in Long and Complex Supply Chains: Research Assessing Understandings of Effective Supply Chain Governance](#)’ (2022); Smit and others (n 100).

¹³¹ Federal Association of Materials Management, Purchasing and Logistics, ‘[Wo Sehen Sie Die Größten Herausforderungen Für Ihr Unternehmen Bei Der Umsetzung?\(2 Nennungen\)](#)’ (2023).

¹³² *Fédération des Syndicats solidaires, Unitaires et Démocratiques des Activités Postales et de Télécommunications (SUD PTT) v. S.A. La Poste* (n 30); Clifford Chance (n 95).

¹³³ *Fédération des Syndicats solidaires, Unitaires et Démocratiques des Activités Postales et de Télécommunications (SUD PTT) v. S.A. La Poste* (n 30); Clifford Chance (n 95).

¹³⁴ British Institute of International and Comparative Law, ‘[Use of Artificial Intelligence in Legal Practice](#)’ (2023).

¹³⁵ Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 (n 9) art 10.

¹³⁶ See for the passing of obligations through contractual clauses: Pour Rafsendjani and Schäfer (n 6) 300.

¹³⁷ Gesetz über die unternehmerischen Sorgfaltspflichten zur Vermeidung von Menschenrechtsverletzungen in Lieferketten (n 6) s 7(3).

that can be used to gain data for the risk analysis websites and reports from CSOs.¹³⁸ It emphasises the importance of collaboration between affected enterprises and their suppliers in the supply chain.¹³⁹ For the concrete assessment, enterprises can use their own information, audits, certifications, self-assessment of suppliers as well as multi-stakeholder and industry initiatives or dialogues with those affected from conditions in the supply chain.¹⁴⁰ In regard to indirect suppliers, BAFA states that information from multi-stakeholder or industry initiatives can constitute ‘substantiated knowledge’ of human rights or environmental risks.¹⁴¹

Audits and certifications have already shown to not be effective in identifying and assessing adverse impacts in value chains and to be inconsistent with the UNGPs.¹⁴² These tools do not engage in the systemic issues faced by large companies or allow stakeholders to give their perspectives as to where the impacts to prioritise are.¹⁴³ Already in 2021, the Business and Human Rights Resource Centre discussed how ‘businesses often rely on social audits to manage human rights issues in their supply chains, despite evidence the model and its underlying logic are not fit for the purpose of improving outcomes for people and planet.’¹⁴⁴ Social audits are fundamentally different than HREDD in their ‘approach, scope, and ambition.’¹⁴⁵ Audits are often a snapshot of time where a list of compliance statements are ticked for a subset of suppliers, while HREDD requires ongoing review and substantive engagement with stakeholders.¹⁴⁶ Investigations also show that at times auditors may be pressured by their clients to change or minimize their findings.¹⁴⁷ Research has criticized multistakeholder initiatives in that they ‘are not effective tools for holding corporations accountable for abuses, protecting rights holders against human rights violations, or providing survivors and victims with access to remedy.’¹⁴⁸

¹³⁸ e.g. website of Business and Human Rights Resource Centre; country reports from multi-stakeholder initiatives; country reports from the US State Department; indices and rankings such as the Modern Slavery Index or the Human Development Index. Bundesamt für Wirtschaft und Ausfuhrkontrolle, ‘[Risiken Ermitteln, Gewichten Und Priorisieren: Handreichung Zur Umsetzung von Risikoanalysen Nach Den Vorgaben Des Lieferkettensorgfaltspflichtengesetzes](#)’ (2022) 20.

¹³⁹ Bundesamt für Wirtschaft und Ausfuhrkontrolle, ‘[Handreichung: Zusammenarbeit in Der Lieferkette Zwischen Verpflichteten Unternehmen Und Ihren Zulieferern](#)’ (2023); Christiane Ecker, ‘Die Publikationen Des BAFA Zur Zusammenarbeit in Der Lieferkette Und Die Frage Nach Der Umsetzbarkeit’ [2023] ESG - Zeitschrift für nachhaltige 254.

¹⁴⁰ Bundesamt für Wirtschaft und Ausfuhrkontrolle, ‘Handreichung: Zusammenarbeit in Der Lieferkette Zwischen Verpflichteten Unternehmen Und Ihren Zulieferern’ (n 139) 11.

¹⁴¹ Gesetz über die unternehmerischen Sorgfaltspflichten zur Vermeidung von Menschenrechtsverletzungen in Lieferketten (n 6) s 9(3); Bundesamt für Wirtschaft und Ausfuhrkontrolle, ‘Handreichung: Zusammenarbeit in Der Lieferkette Zwischen Verpflichteten Unternehmen Und Ihren Zulieferern’ (n 139) 4.

¹⁴² Nolan (n 124) 7.

¹⁴³ Shift, ‘[From Policing to Partnership: Designing an EU Due Diligence Duty That Delivers Better Outcomes](#)’ (Shift 2023).

¹⁴⁴ Business and Human Rights Resource Centre, ‘[Beyond Social Auditing: Key Considerations for Mandating Effective Due Diligence](#)’ (2021).

¹⁴⁵ Business and Human Rights Resource Centre, ‘[Social Audit Liability: Hard Law Strategies to Redress Weak Social Assurances](#)’ (2021) 6.

¹⁴⁶ *ibid.*

¹⁴⁷ Abigail Higgins, ‘[Corporations Are Paying for Worker Abuse Audits That Are “Designed to Fail”, Say Insiders](#)’ *The Guardian* (2023).

¹⁴⁸ MSI Integrity, ‘[Not Fit-for-Purpose: The Grand Experiment of Multi-Stakeholder Initiatives in Corporate Accountability, Human Rights and Global Governance](#)’ (2020) 4; Business and Human Rights Resource Centre and Enact Sustainable Strategies, ‘[Respecting Human Rights: Why the CSDDD Needs to Go beyond Social Auditing](#)’ (2023).

An assessment of the implementation of the LkSG concluded that the 'first year of the Supply Chain Act has shown that it is working... companies are also clearly showing that they are working on their supply chains and paying more attention to the issue.'¹⁴⁹ Yet there are some concerns that other companies are focusing on developing contractual clauses to meet the requirement of addressing direct suppliers but are not undertaking substantive risk-based HREDD processes. Contracts are useful - they make HREDD enforceable, they set rules on the roles and responsibilities of both parties and build a framework that can be improved. But they often lack effectiveness if only suppliers are obliged, the buyer's role is ignored, perfection is prescribed or immediate termination is threatened.¹⁵⁰

Model Contract Clauses

The Responsible Contracting Project, an organisation that develops tools and examples of model clauses and codes of conduct to integrate HREDD into commercial contracts, analysed the requirements of the CSDDD in relation to what will be expected of companies' contracts.¹⁵¹ Highlighting Articles 3, 10, 11 and 15 in the CSDDD, they argue that contracts in compliance with the CSDDD 'must be designed to support a broader, context-specific, and dynamic process for identifying, preventing, mitigating potential adverse impacts and for correcting and remediating actual adverse impacts'.¹⁵² For contracts to align with the CSDDD, they recommend shared responsibility in due diligence obligations between buyer and supplier, the buyer recognizing potential purchasing practices that could exacerbate human rights risks, and avoiding one-sided guarantees and strict liability clauses or immediate terminations that could inhibit suppliers from honestly sharing problems.

In October 2024, a group of business and human rights practitioners published the European Model Clauses (EMCs) for responsible contracting under the CSDDD, currently under consultation.¹⁵³ The EMCs are a set of clauses based on the CSDDD and the shared responsibility approach to avoid risk and responsibility shifting to suppliers. The EMCs aim to build on alignment with the CSDDD by promoting shared responsibility and cooperation, establish HREDD obligations for both parties, make clear that this includes buyers' obligations to responsible purchasing and foresee a cooperative procedure of dealing with identified and prioritized risks and violations.¹⁵⁴

In general, companies in Europe continue to rely on social audits, third party certifications and contractual clauses, not yet implementing a shared responsibility approach.¹⁵⁵ A Shift report showed that in 2023, contract clauses and commitments to codes of conduct were still an important aspect of companies' HREDD, but these clauses did not recognise a shared responsibility of the process.¹⁵⁶ The World Benchmarking Alliance highlights proactively engaging suppliers as an important aspect to build

¹⁴⁹ CorA-Netzwerk, Kampagne für Saubere Kleidung, and Initiative Lieferkettengesetz, '[The German Supply Chain Act 1 Year on: Civil Society Networks See Initial Positive Impacts](#)' (2023); Stefanie Lorenzen, 'Commentary of § 4 Risikomanagement' in Markus Kaltenborn and others (eds), *Lieferkettensorgfaltspflichtenrecht* (CH Beck 2023).

¹⁵⁰ Responsible Contracting Project, '[RCP Brief - What the EU Corporate Sustainability Due Diligence Says about Contracts](#)' (2024).

¹⁵¹ *ibid.*

¹⁵² *ibid.* 4.

¹⁵³ Responsible Contracting Project, '[Consultation Version of the European Model Clauses \(EMCs\) Is Launched](#)'.

¹⁵⁴ *ibid.*; Responsible Contracting Project (n 150).

¹⁵⁵ Shift, 'From Policing to Partnership: Designing an EU Due Diligence Duty That Delivers Better Outcomes' (n 143).

¹⁵⁶ *ibid.*

a holistic HREDD process, but companies across different sectors are passing liability along the value chain without providing the required support.¹⁵⁷

We find that, while still not a common practice, some large companies are improving their approach to share responsibility with suppliers and SMEs. For several years already, companies have been 'increasingly noting the shortcomings of traditional code of conduct and audit processes and are exploring more innovative and context-sensitive approaches.'¹⁵⁸ The Ethical Trade Initiative gives examples of how members of their Learning and Implementation Community are integrating better purchasing practices in the apparel industry.¹⁵⁹ KnowTheChain also provides examples of good practices in companies on purchasing practices, living wages, recruitment, freedom of association and other indicators.¹⁶⁰

We find, however, notable gaps in commercial practices changes – i.e. changes of sourcing practice and purchasing practices (e.g. delivery times, payment terms), engagement with suppliers and use of contractual leverage, providing financial or training support to SMEs and suppliers and the full understanding that HREDD does not equate to policing suppliers. EU companies often do not reflect on the ways that their purchasing practices can facilitate human rights impacts, and suppliers do not have enough bargaining power to challenge these practices.¹⁶¹ The World Benchmarking Alliance highlights how most companies do not have responsible purchasing practices.¹⁶² For instance, only 27% of apparel companies in the 2023 Corporate Human Rights Benchmark disclosed evidence of undertaking responsible purchasing practices.¹⁶³ A 2020 study by PWC and others on the DVL found that 80% of SMEs were being required by large companies in their value chains to comply with human rights obligations without receiving accompanying support (financial or otherwise).¹⁶⁴ The Chamber of Commerce in Düsseldorf undertook a survey of 180 German enterprises in July 2023, i.e. half a year after the LkSG came into force. Only 10% of the surveyed enterprises stated that they knew the working and production conditions at all their suppliers, i.e. along their entire supply chain; 40% know these at their direct suppliers; 7% stated that they have no knowledge of these at all.¹⁶⁵

Some companies are simplifying questionnaires they send to suppliers; to comply to the LkSG - for example, they are trying to make one comprehensive, simpler set of questions to avoid overburdening suppliers with several similar questions they use for other processes. But a reliance on questionnaires and reporting alone risks making suppliers feeling policed in a one-sided relationship with large buyer companies and fearing their answers are not what the buyer 'wants to know'. Buyer's requests for information do not often further a real dialogue between the supplier and the buyer in relation to what the actual risks are. Suppliers note spending considerable resources to comply with these requests, with

¹⁵⁷ World Benchmarking Alliance, '[Corporate Human Rights Benchmarking Insights Report](#)' (2022).

¹⁵⁸ Smit and others (n 100) 960.

¹⁵⁹ Ethical Trading Initiative, '[TFG London: Strengthening Supplier Partnerships](#)' (2024).

¹⁶⁰ KnowTheChain, '[2024 Good Practice Guide](#)' (2024).

¹⁶¹ Shift, 'From Policing to Partnership: Designing an EU Due Diligence Duty That Delivers Better Outcomes' (n 143).

¹⁶² Ardea International, 'Webinar: CS3D and Mandatory Human Rights Due Diligence - Challenges and Opportunities for Business' (2024).

¹⁶³ World Benchmarking Alliance, '[Corporate Human Rights Benchmark](#)' (2023).

¹⁶⁴ PWC, BPIFRANCE, and l'ORSE, '[Résultats de l'enquête "RSE: La Parole Aux Fournisseurs!"](#)' (2020).

¹⁶⁵ IHK Düsseldorf, '[Das Lieferkettengesetz - Ergebnisse Einer IHK-Umfrage](#)' (2023). The surveyed enterprises were both those that fall into the Act's scope and those who are indirectly affected as a supplier.

little support, and have yet to see the connection between these activities and addressing relevant human rights impacts.¹⁶⁶ Buyer companies in turn gain little insight into key issues through these processes. European companies 'continue to ask suppliers to focus on tracking quantitative data only, which often provides insufficient evidence of the effectiveness of measure.'¹⁶⁷ Following from the CSDDD, Shift recommends business should ensure 'that the use of contractual leverage is accompanied by broader capacity-building measures to support due diligence through a partnership rather than 'policing' approach'.¹⁶⁸ Suppliers are 'actively interested in receiving guidance and tools to help them identify and prevent human rights impacts,' and those that received support and investment from their buyers feel 'well-equipped to meet these expectations.'¹⁶⁹ A European Commission (EC) publication states 'many of the actors will need training, tools, technology or financial support to play their roles effectively.'¹⁷⁰

Training is expressly mentioned in the LkSG in relation to direct suppliers. The enterprise must lay down appropriate preventive measures vis-à-vis direct suppliers, including 'the implementation of initial and further training measures to implement the contractual assurances made by the direct supplier...'.¹⁷¹ Some German companies are starting to provide training to some of their Tier 1 suppliers and implementing a dialogue-based approach to training and communication internally and with their value chain to further integrate the values of HREDD into the business relationship.¹⁷²

The concern about who bears the costs of HREDD regulation is often discussed also in connection to other related initiatives. For instance, the EU Deforestation Regulation imposes obligations onto producers and traders to trace their products and show they are 'deforestation-free'. This could end up burdening producers in the Global South with significant costs to upgrade their systems and the risk that smaller producers could be driven out of the market.¹⁷³ A survey of the effects of the LkSG on German companies showed that many SMEs¹⁷⁴ are indirectly affected by the German Act, either because they must report to their customers who fall under the laws or because their suppliers are directly affected.¹⁷⁵ The EC noted that accompanying measures, as discussed below, 'will have to respond in particular to the challenges faced by MSMEs, smallholder farmers, artisanal miners and producers/suppliers operating in areas of informality and weak governance.'¹⁷⁶

¹⁶⁶ Shift, 'From Policing to Partnership: Designing an EU Due Diligence Duty That Delivers Better Outcomes' (n 143).

¹⁶⁷ *ibid* 6.

¹⁶⁸ Shift, '[Shift Welcomes Substantial Alignment of the Political Agreement on the EU Corporate Sustainability Due Diligence Directive with the UNGPs](#)' (2023).

¹⁶⁹ Shift, 'From Policing to Partnership: Designing an EU Due Diligence Duty That Delivers Better Outcomes' (n 143) 6.

¹⁷⁰ Directorate-General for International Partnerships and International Trade Centre, '[Making Mandatory Human Rights and Environmental Due Diligence Work for All: Guidance on Designing Effective and Inclusive Accompanying Support to Due Diligence Legislation](#)' (European Commission 2022) 27.

¹⁷¹ Gesetz über die unternehmerischen Sorgfaltspflichten zur Vermeidung von Menschenrechtsverletzungen in Lieferketten (n 6) s 6(4) No.3.

¹⁷² Accenture and twentyfifty (n 101).

¹⁷³ James Harrison, '[Will the New Wave of Trade and Sustainability Initiatives Succeed in Protecting Rights?](#)' (Business and Human Rights Resource Centre 2023).

¹⁷⁴ Enterprises with up to 49 employees.

¹⁷⁵ Institut der Deutschen Wirtschaft, '[Due Diligence - Effect of Supply Chain Regulation: Data-Based Results on the Effects of the German Supply Chain Act](#)' (2024) IW-Report 8/2024.

¹⁷⁶ Directorate-General for International Partnerships and International Trade Centre (n 170) 33.

It is priority of the CSDDD to not cause an undue cascading burden on SMEs and advance the engagement with suppliers and shared responsibility approach. The Directive addresses this by requiring large companies to enter into ‘fair, reasonable and non-discriminatory’ contracts with their business partners,¹⁷⁷ provide ‘targeted and proportionate support’,¹⁷⁸ and bear the cost of independent third-party verifications.¹⁷⁹ It also states that the use of contractual assurance and third- party verification does not equate to the fulfilment of due diligence obligations, nor preclude liability.¹⁸⁰ Another key element of the CSDDD is the clarification of the importance of addressing the impact of the company’s purchasing practices.¹⁸¹ For example, the CSDDD states that companies should be required to ‘make necessary modifications of, or improvements to, the company’s own business plan, overall strategies and operations, including purchasing practices, design and distribution practices’.¹⁸²

Regulators need to ensure that the use of contractual assurances does not lead to large companies offloading their HREDD obligations onto other companies that are not in the scope of CSDDD, especially SMEs.¹⁸³ They should be required to approach the use of contractual leverage as a shared responsibility practice, providing support and capacity-building measures to suppliers. Companies should also be required to conduct thorough analyses of their purchasing practices to identify areas for improvement and gather feedback from suppliers and develop and use purchasing policies that contribute to living wages and incomes for their suppliers.¹⁸⁴ Policymaking needs to be transparent and inclusive to avoid speculations like the disproportionate impact of CSDDD on SMEs without recognizing measures that are in place to mitigate this.¹⁸⁵

¹⁷⁷ Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 (n 9) art 7(4), 8(5). In reference to SMEs in particular.

¹⁷⁸ *ibid* 7(2)(d), 8(3)(e).

¹⁷⁹ *ibid* 7(4), 8(5).

¹⁸⁰ *ibid* 29.

¹⁸¹ Fairtrade International, ‘[EU Corporate Sustainability Due Diligence Directive Is Key to Tackle Human Rights and Environmental Impacts, but Support for Implementation Is Needed](#)’ (2024).

¹⁸² Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 (n 9) art 10(d).

¹⁸³ Danish Institute for Human Rights, ‘Transposition of the Corporate Sustainability Due Diligence Directive: A Practical Guide for National Human Rights Institutions’ (n 125).

¹⁸⁴ Ethical Trading Initiative, ‘[The Role of Responsible Purchasing Practices in Human Rights Due Diligence](#)’ (2024).

¹⁸⁵ Rebalance Project, ‘[Towards Effective Implementation of the Corporate Sustainability Due Diligence Directive](#)’ (2024).

‘Extraterritorial’ effect of the CSDDD

The CSDDD will have extraterritorial implications, an impact beyond the companies in scope on companies outside of the EU that want to be a part of the EU market.¹⁸⁶ An estimated 10,000 businesses outside of the EU will be affected by the CSDDD.¹⁸⁷ These are positive implications, including prompting changes in the policies and practises of companies along value chains. To keep and further develop their business relationships with companies falling within the scope of the Directive, foreign companies will have to adapt to the new human rights and environmental standards.¹⁸⁸ The CSDDD could prompt further legislation in other countries, as it already has done in South Korea and Switzerland, which would further level the playing field globally for companies.¹⁸⁹

A study commissioned by the Greens/EFA Group in the European Parliament on spillover effects of EU legislation like the CSDDD on countries in the Global South noted that, while it is too early to see any concrete effects, the CSDDD has prompted several countries to assess their HREDD domestic legislation.¹⁹⁰ The EU is a significant trading partner of many countries in the Global South, which would likely encourage other countries to align their laws to maintain access to the EU market. For example, there are public intentions to develop legislation in Brazil and Chile that address HREDD, aligning with the ‘international and EU movement advocating for such laws.’¹⁹¹ While the reaction from private sector in the Global South is still mixed, highlighting the need for guidelines and support from the national governments, overall, the EU CSDDD was seen as a tool to further ‘enhance transparency, protect human rights and improve labour conditions.’¹⁹²

Balance between flexibility in the implementation of HREDD processes and legal specificity

There is a tension between an open, flexible approach to HREDD – i.e. UNGPs and OECD Guidelines ‘soft law’ standards and laws like the DVL – and a more prescriptive approach, for example in the LkSG. A flexible risk-based approach can be more adaptable and commensurate but may give too much discretion to companies and not provide enough legal certainty. The need for legal clarity and certainty resonates with a previous BIICL study which identified these as key drivers for business support for due diligence regulation.¹⁹³ Yet HREDD obligations mandated in hard laws risk a ‘tick-box compliance’ approach replacing more innovative processes. The DIHR explains, a ‘closed list of measures has the potential to stifle innovation and to encourage a compliance rather than a risk-based approach to due diligence’.¹⁹⁴ There is a balance to be struck between the prescriptive elements of

¹⁸⁶ Nicolas Bueno and others, [‘The EU Directive on Corporate Sustainability Due Diligence \(CSDDD\): The Final Political Compromise’](#) [2024] Business and Human Rights Journal.

¹⁸⁷ Rachel Chambers and David Birchall, [‘How European Human Rights Law Will Reshape U.S. Business’](#) (2024) 20 UC Law Business Journal.

¹⁸⁸ *ibid.*

¹⁸⁹ Ardea International, [‘Legal Insight: Mandatory HRDD in South Korea’](#) (2024); Baker McKenzie, [‘Switzerland: Update for Switzerland-Based Businesses on the Practical Implications of Swiss and EU Regulations on Supply Chain Due Diligence’](#) (2024).

¹⁹⁰ The Greens/EFA in the European Parliament, [‘Spillover Effects of the EU Supply Chain Legislations’](#) (2023).

¹⁹¹ *ibid.* 22. It was also noted that previous EU legislation has had positive effects on the agriculture sector in Kenya.

¹⁹² *ibid.* 38.

¹⁹³ British Institute of International and Comparative Law, ‘Study on Due Diligence Requirements through the Supply Chain’ (n 76).

¹⁹⁴ Danish Institute for Human Rights, [‘State of Play on the EU’s Corporate Sustainability Due Diligence Directive: Five Key Takeaways’](#) (2023) 3.

HREDD laws and their flexibility to allow companies to approach HREDD in a way that is reflective of their own risk areas and processes.

Hard laws, enforced by national authorities (as opposed to ‘voluntary’ international standards) are needed, but a not too overly prescriptive closed list of actions allow companies to still be flexible as to how implement HREDD and adapt it to their own businesses. As [noted above](#), the more experienced and advanced a company is in their HREDD journey and in complying with the international standards of the UNGPs, the less they are likely to find HREDD laws overly prescriptive. The CSDDD seems to have made the right level of compromise by listing mandatory measures companies ‘shall’ take, supplemented by voluntary measures they ‘may’ take – with proper guidance this should provide a balance between legal certainty for companies about their obligations with the possibility of a flexible, risk-based approach. This should provide needed legal clarity and certainty without dismissing the value of a ‘closed list’, which is not too prescriptive but rather includes categories of appropriate measures, and includes references to transformative business strategy and purchasing practices.

Under the CSDDD, companies are required to take ‘appropriate measures to identify and address their impacts’ - defined as ‘measures that are capable of achieving the objectives of due diligence, and effectively addressing the adverse impact identified’.¹⁹⁵ The Directive includes a list of ‘appropriate measures’ that companies ‘shall’ take and additional measures that companies ‘may’ adopt. For example, companies ‘may take’ appropriate measures related to engaging with business partners, or providing capacity-building, guidance, administrative and financial support such as loans or financing.¹⁹⁶ As such, there is the recognition that companies have agency in the implementation of HREDD requirements. Minimum ‘tick-box’ compliance is not embedded in the law. Companies can also ‘box-tick’ voluntary commitments or can ambitiously implement hard law. Companies could in fact even go beyond the non-mandatory appropriate measures and envision new areas to better implement risk-based HREDD based on their experience and context. Companies cannot be fully compliant without any indication of effectiveness. Various elements in the CSDDD are based on an indication of effectiveness - e.g. the definition of appropriate measures, the explicit mentioning of purchasing practices, and the obligations to track performance.

The LkSG was complemented by substantive guidance provided by the BAFA, which clarified new terminology, like ‘substantiated knowledge’.¹⁹⁷ While there are some mixed views on the BAFA guidance, including the critique of deviation from the UNGPs, overall we find that companies consider BAFA guidance helpful to guide compliance and the German HelpDesk as an important system of support. The German government has also published guidance on collaboration in supply chains,

¹⁹⁵ Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 (n 9) art 3(1)(o).

¹⁹⁶ *ibid* 10(3), 11(4).

¹⁹⁷ CSR in Deutschland, ‘[Supply Chain Act: Frequently Asked Questions](#)’ (*Business and Human Rights*, 2024), questions 6.13 and 6.14. On substantiated knowledge see ‘It is important that this term is practically applied to uphold the spirit of the law and is not artificially narrowed... ‘substantiated knowledge’ should be broadly interpreted and companies are advised to identify and manage their human rights risks in an ‘integrated and proactive manner...to maximize efficiency, prevention and positive impact.’ Business and Human Rights Resource Centre, ‘[Beyond Tier 1: Exploring “Substantiated Knowledge” in the German Supply Chain Act](#)’ (2024).

which provides recommendations for collaboration between companies and their suppliers which does not rely on cascading responsibility down the supply chain or put undue burdens on the supplier.¹⁹⁸

While authoritative guidance has been issued to clarify terms under the LkSG, interpretation has been left to judicial decisions in relation to the DVL. In an initial phase of implementation of the DVL, companies considered terms like ‘serious’ impacts, and ‘adequateness’ of the vigilance plan too vague. An issue of the DVL is that (unlike the CSDDD) some of the language is built on concepts that are not grounded in the international standards. Years after the DVL came into force, a certain amount of hindsight is still called for, given that case law is still in its infancy, but increasingly judicial interpretation is clarifying details of the required vigilance plans, which did not have sufficient level of precision in the law.¹⁹⁹ We note also that companies must deal with similar issues in other fields. For example, ‘adequate measures’ is a term that is used in anti-corruption or occupational health & safety to define a standard of processes and procedures. ‘Adequate’ may be ambiguous, but it is not a new concept.

The DVL left some confusion about the level of involvement needed to trigger civil liability - as to when a company would be ‘linked to’ rather than ‘contributing’ to a human rights impact as defined in the UNGPs. This may result in some companies trying to understand how to be ‘linked to’ rather than ‘contributing’ to a human rights impact via a sort of tick-box approach to avoid a potential remediation claim. Now, for companies that have not internalised the UNGPs involvement framework, this ‘checklist’ approach will not work under the CSDDD because there will be administrative supervision to scrutinise this and attached accountability. The CSDDD has adapted the involvement framework – while still based on the UNGPs - to provide additional clarity. The language of involvement was reframed to separate categories of causation to better clarify the link with the civil liability regime. The CSDDD’s concepts of ‘cause’, ‘jointly cause’ and ‘caused only by a business partner’ are based on the UNGPs’ approach to involvement – i.e. involvement as a spectrum rather than set categories.²⁰⁰ Policy makers should also clarify the civil liability regime in an expansive approach that focuses on the UNGP’s pillar III access to justice.²⁰¹

The EC will issue guidelines (general and sector-specific) on several due diligence aspects of the CSDDD – including on meaningful stakeholder engagement, responsible disengagement and fair purchasing practices. These guidelines should take the perspective of going beyond outlining relevant processes and instead focus on expected outcomes and effectiveness in relation to appropriate measures.²⁰² To prepare these guidelines, which need to be finalised by 2027, there will be public consultations as well as targeted outreach to ensure all sectors, groups, CSOs, regional voices are listened to and can input.

Aside from EC guidance, Member States will develop accompanying measures – such as dedicated websites, platforms or portals – giving special consideration to the SMEs that are present in the chains

¹⁹⁸ Bundesamt für Wirtschaft und Ausfuhrkontrolle, ‘Handreichung: Zusammenarbeit in Der Lieferkette Zwischen Verpflichteten Unternehmen Und Ihren Zulieferern’ (n 139).

¹⁹⁹ Latham & Watkins (n 31); Savourey and Brabent (n 117).

²⁰⁰ Danish Institute for Human Rights, ‘Transposition of the Corporate Sustainability Due Diligence Directive: A Practical Guide for National Human Rights Institutions’ (n 125) 7.

²⁰¹ Danish Institute for Human Rights, ‘Transposition of the Corporate Sustainability Due Diligence Directive: A Practical Guide for National Human Rights Institutions’ (n 125).

²⁰² Bueno and others (n 186).

of activities of companies.²⁰³ Such accompanying measures are crucial for a successful implementation of the Directive and a core idea of UNGPs Pillar I, which clarifies that home states should provide guidance and technical and financial assistance to companies to facilitate implementation.²⁰⁴ It is key that accompanying measures are developed in a coherent approach that aligns with international standards, especially as these measures are relevant not only for companies in scope of the regulations but also for companies affected as a part of the value chain. These measures should be developed in consultation with CSOs, trade unions and national human rights institutions.

The specific guidance that will be issued by the EC and accompanying measures by Member States ‘for the effective and inclusive implementation of due diligence are as important as the underlying legislation itself’.²⁰⁵ Yet reflection should be also given on the extent to which companies have already tried to implement the international standards, and that in case of misalignment between national HREDD, [as discussed above](#), existing UNGPs and OECD guidance and good practice already may already fill the perceived ‘guidance gap’. The field of HREDD has developed considerably since 2011 and ample guidance has been issued already – therefore, while additional authoritative guidance is welcomed, the focus now should be on hard law with proper enforcement mechanisms. The transition from voluntary to regulatory and enforcement measures needs to be mirroring the UNGPs spirit. The objective of HREDD laws is generally to codify UNGPs, and therefore businesses could look to UNGPs for guidance and accordingly would be compliant across the board of HREDD requirements.

Changes in internal corporate HREDD governance

The introduction of HREDD laws in Europe has spurred significant changes in how corporations govern and oversee their HREDD obligations. These legislative frameworks have led companies to establish specialized committees, integrate human rights into board governance, and implement robust internal mechanisms to ensure compliance. We find some progress in terms of escalating human rights issues to senior level people within the company and regularly updating senior board members on their progress. In general, however, there are still important gaps in internal HREDD corporate governance practices, in particular the allocation of responsibility for overseeing and implementing day to day HREDD. This may represent a missed opportunity for the CSDDD, which does not clarify expectations on management and boards in relation to responsibility for HREDD. In the design of new transposition laws, regulators should encourage companies to put in place adequate governance structures and assign directors’ responsibility for oversight of HREDD requirements.

One of the key challenges identified in the implementation of the DVL by a 2019 study was ‘ensuring that the highest levels of the parent company send a strong signal about implementation and monitoring across the entire group’.²⁰⁶ A 2018 Shift report highlighted that, before the DVL, the average company offered scant information regarding its organizational structure related to human

²⁰³ Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 (n 9) art 20.

²⁰⁴ Caroline Omari Lichuma, ‘(Laws) Made in the “First World”: A TWAIL Critique of the Use of Domestic Legislation to Extraterritorially Regulate Global Value Chains’ (2021) 81 Heidelberg Journal of International Law 497; Signe Andreasen Lysgaard and Gabrielle Holly, ‘Regulating Business and Human Rights in the EU: The Need for a Continued Interplay Between Soft and Hard Law’.

²⁰⁵ Directorate-General for International Partnerships and International Trade Centre (n 170) 27.

²⁰⁶ Entreprises pour les droits de l’Homme (n 93) 8.

rights, with the average company scoring only 2/5 on a 'maturity' scale.²⁰⁷ A 2019 follow-up report revealed an improvement in the average score regarding the issue of governance, which went up slightly to 2.63/5.²⁰⁸ The report affirmed that 'more than half of companies now identify more or less clearly who is responsible for human rights risks' within the companies, often through the creation of dedicated working groups.²⁰⁹

According to another 2019 CSO report, 70% of DVL in-scope companies mentioned in their vigilance plan the internal stakeholders involved in drawing up and implementing it (i.e. purchasing, CSR, sustainability, legal, audit and internal risks, and human resources).²¹⁰ The study, however, noted that, in the majority of cases, the more operationalisation-focused departments were not involved in drawing up and monitoring the company's compliance with the plan.²¹¹ Only 25% of companies had steering committees dedicated to monitoring compliance, and only 35% had their vigilance plan reviewed at the most senior level.²¹² Environmental and climate change risks seem to not be integrated in vigilance plans as well. A 2018 CSO report found that only 14% of companies incorporated environmental indicators in their vigilance plan, and a 2022 study which analysed the vigilance plans of 25 companies with a focus on climate change (selected for their elevated carbon footprint) - revealed that 10 out of 25 companies failed to include climate change-related impacts as part of their vigilance plans.²¹³

The LkSG is the only HREDD law that explicitly require companies to change their governance structure (see text box below). It requires companies to allocate the responsibility to monitor risk management and implement the company's obligations under this law to a person or a team, and the government recommends companies to create responsibilities in all relevant parts of the company - including at the board level, compliance department and purchase department. Trainings are also mentioned expressly in the LkSG in relation to the duty to undertake preventive measures. Regarding the enterprise's own area of business, the LkSG requires, amongst other measures, 'the delivery of training in the relevant business area'.²¹⁴ A review of German companies in scope of the LkSG before the Act came into force, found that all had a small central unit that drove HREDD but had a decentralized approach to implementation.²¹⁵ The companies reviewed in the report often had a committee linked to the board of directors and had strong, regular dialogue with the board and executive management.

The analysis of the implementation of HREDD obligations under the LkSG demonstrates that enterprises need to ensure that the LkSG is approached holistically. For example, the risk analysis requires input and knowledge from different departments. The risk analysis principally covers the enterprise's own area of business and its first tier (direct) suppliers. In relation to the own area of business, the enterprise should consider whether any of its own activities constitute a risk to its human-rights related or

²⁰⁷ Shift, ['Human Rights Reporting in France: A Baseline for Assessing the Impact of the Duty of Vigilance Law'](#) (2018) 22.

²⁰⁸ Shift, ['Human Rights Reporting in France, Two Years In: Has the Duty of Vigilance Law Led to More Meaningful Disclosure'](#) (2019) 6.

²⁰⁹ *ibid* 5–6.

²¹⁰ Entreprises pour les droits de l'Homme (n 93) 7.

²¹¹ *ibid* 14.

²¹² *ibid* 8.

²¹³ B&L Évolution & entreprises pour le droits de l'Homme (n 93); Notre Affaire à Tous, ['Benchmark de La Vigilance Climatique de Multinationals'](#) (2022) 11.

²¹⁴ Gesetz über die unternehmerischen Sorgfaltspflichten zur Vermeidung von Menschenrechtsverletzungen in Lieferketten (n 6) s 6(3).

²¹⁵ Accenture and twentyfifty (n 101).

environment-related obligations. Identifying potential risks to human rights in its own area of business, by definition, necessitates assessing different departments. Also, the LkSG stipulates that the results of the risk assessment must be communicated internally to the relevant decision-makers such as the board of directors or the purchase department.²¹⁶

In terms of primary responsibility for implementing the LkSG, there is a tendency to shift human rights issues in supply chains from the sustainability department to the compliance department. This department must then, as part of the due diligence obligations, communicate with relevant departments across the enterprise with the purchase department being mentioned in the law, for example, by stating that, as part of its preventive measures, an enterprise must lay down, the 'development and implementation of appropriate procurement strategies and purchasing practices that prevent or minimise risks'.²¹⁷ Companies have increased human and financial resources to implement HREDD processes because of legal requirements. Evidence about German LkSG shows that most companies have recruited additional staff members. A study on the impact of the LkSG on 2,000 enterprises in Germany found that about 1/3 of the surveyed enterprises stated that they need one full-time member of staff to comply with the LkSG.²¹⁸ Another third of the enterprises said that they would require up to three full-time members of staff, 17% need up to six full-time members of staff and 10% need more than six. There is also a rising trend in designating a Head of Human Rights position in companies with the LkSG as a driver for this appointment, as it is a requirement for compliance.²¹⁹

Corporate change requirements in the LkSG

Public limited companies in Germany (Aktiengesellschaft, AG) have a two-tier board which divides responsibilities between the management board (which manages the company day-to-day) and the supervisory board (which supervises the management board).²²⁰ In principle, the management board is responsible for the enterprise's compliance. This includes compliance with the LkSG as well as other laws.²²¹ This compliance duty is part of its central managerial tasks. The board cannot delegate its responsibility for compliance to individual board members nor to subordinate levels of hierarchy in the enterprise.²²² It follows from the board's general responsibility for compliance that the whole board is, in principle, also responsible for complying with and implementing the HREDD obligations of the LkSG in the enterprise's compliance structure.²²³ Irrespective of its overall superior responsibility, the board may delegate the operational implementation of the compliance tasks, and it can decide how it exactly organises its compliance structure. It can either divide the compliance workload between individual members of the board (horizontal delegation) or delegate it to subordinate levels of management in the

²¹⁶ Gesetz über die unternehmerischen Sorgfaltspflichten zur Vermeidung von Menschenrechtsverletzungen in Lieferketten (n 6) s 5(3).

²¹⁷ *ibid* 6(3).

²¹⁸ Anja Müller, Florian Kolf and Katrin Terpitz, '[Große Mehrheit Für Lieferkettengesetz](#)' *Handelsblatt* (2024).

²¹⁹ Leonid Group, '[A Guide to Human Rights Due Diligence and Recruitment](#)' (2023).

²²⁰ Andreas Rühmkorf, '[Stakeholder Value versus Corporate Sustainability: Company Law and Corporate Governance in Germany](#)' in Beate Sjøfjell and Bruner Christopher M. (eds), *The Cambridge Handbook of Corporate Law, Corporate Governance and Sustainability* (Cambridge University Press 2019).

²²¹ Eike Bicker and Marcus Reischl, *Das Lieferkettensorgfaltspflichtengesetz in Der Unternehmenspraxis* (Eric Wagner, Marc Ruttloff and Simon Wagner eds, CH Beck 2022) para 874.

²²² Thomas Kremer, *Deutscher Corporate Governance Kodex* (Thomas Kremer and others eds, 9th edn, CH Beck 2023) paras 29–30.

²²³ Bicker and Reischl (n 221) paras 873–874.

hierarchy of the enterprise (vertical delegation). In both cases, the establishment of clear organisational responsibilities is a central part of an effective compliance organisation.²²⁴

The different due diligence obligations of the LkSG must be delegated as the board of a large enterprise cannot undertake these obligations itself. The situation is comparable with other compliance duties such as in relation to bribery or data protection. Regarding these areas, enterprises often employ Compliance Officers. The LkSG obliges enterprises to establish an 'appropriate and effective risk management system' to comply with due diligence obligations.²²⁵ Moreover, the LkSG stipulates that the enterprise must ensure that it is determined who within the enterprise is responsible for monitoring risk management, for example, by appointing a human rights officer.²²⁶ A human rights officer is just mentioned as an example of this person. Enterprises can assign the function to a different person.²²⁷ Given the oversight that the responsible person has for risk management in relation to human rights and environment-related obligations, it is important that the person has the necessary independence and expertise and is in direct contact with the management board.²²⁸ Whilst the person must be internally employed, this person must undertake the function independently to ensure an effective monitoring of the risk management system. For some time, there were divergent views about the question of whether the person responsible for monitoring the risk management system in the enterprise could be a person external to the enterprise. The FAQ from BAFA has now clarified this in the way that responsibility should be assigned internally, but that the internally responsible person may seek external support.²²⁹ This approach is in line with the fact that, in business practice, individual parts of the governance system can be supported by external expertise.²³⁰

Dealing with HREDD processes is a cross-departmental issue. Determining the person that is responsible for the supervision of the risk management system is a due diligence obligation of the enterprise. The intention of the legislator is that, due to its monitoring function, the responsible person should not be involved in the implementation of the risk management system.²³¹ The government's justification for the LkSG notes that it is a cross-departmental task to supervise the enterprise's compliance with the due diligence obligations. This should involve creating responsibilities in all relevant parts of the enterprise such as at board level and in the compliance department as well as the purchase department.²³² It is the board's duty to ensure compliance with legal obligations, including the LkSG.²³³ The requirement in section 4(3) that 'senior management must seek information on a regular basis, at least once a year, about the work of the responsible person or persons' further emphasises the board's overall responsibility. Also, the Act expressly stipulates the duty of senior management to adopt a policy statement on the human rights policy that the enterprise must issue.²³⁴

²²⁴ *ibid* 875–876.

²²⁵ Gesetz über die unternehmerischen Sorgfaltspflichten zur Vermeidung von Menschenrechtsverletzungen in Lieferketten s 4(1).

²²⁶ *ibid* 4(3).

²²⁷ Lorenzen (n 149) para 111.

²²⁸ Burkard Göpfert and Steffen Jacobs, 'Der Menschenrechtsbeauftragte – Das (Noch) Unbekannte Wesen?' [2023] NZA - Neue Zeitschrift für Arbeitsrecht 144.

²²⁹ Bundesamt für Wirtschaft und Ausfuhrkontrolle, '[Fragen Und Antworten Zum Lieferkettengesetz](#)' (2023), question 7.1.

²³⁰ Nima Ghassemi-Tabar, 'Commentary of §4 Risikomanagement' in Nima Ghassemi-Tabar (ed), *Lieferkettensorgfaltspflichtengesetz: LkSG* (CH Beck 2024) paras 67–68.

²³¹ Göpfert and Jacobs (n 228) 145.

²³² [Gesetzentwurf der Bundesregierung: Entwurf eines Gesetzes über die unternehmerischen Sorgfaltspflichten in Lieferketten](#) 2021 43.

²³³ Daniel Walden, 'Commentary of §4 Risikomanagement' in André Depping and Daniel Walden (eds), *Lieferkettensorgfaltspflichtengesetz: LkSG* (CH Beck 2022) paras 26–31.

²³⁴ Gesetz über die unternehmerischen Sorgfaltspflichten zur Vermeidung von Menschenrechtsverletzungen in Lieferketten (n 6) s 6(1).

HREDD laws are triggering internal discussions among different departments, from CSO/sustainability and legal to supply chain, risk management, and procurement. A 2020 study on corporate due diligence practices found that companies wanted to simplify internal processes in incorporating HREDD.²³⁵ A company in this study, for example, noted that they have centralized their operating systems, tools and processes and integrated HREDD into these processes.²³⁶ Furthermore, some companies are forming cross-functional teams or committees to respond to HREDD laws (with representation from sustainability, legal, compliance, and procurement). It is necessary to involve also the more operationalization-focused departments and ensure that these departments have a shared understanding of HREDD to ensure that HREDD measures are effectively implemented.

Our study found that there are still important gaps in HREDD corporate governance practices, and in particular the allocation of responsibility for overseeing and implementing day to day HREDD.²³⁷ According to the 2023 Corporate Human Rights Benchmark, only 27% of companies allocate clear day to day responsibility for a company's HREDD processes.²³⁸ The assignment of responsibility within the company is a key element to ensure corporate respect for human rights.²³⁹ It requires clearly identifying who is responsible for human rights and environmental risks in its daily management.²⁴⁰

HREDD legislation could be used to drive up capability within an organisation. Compliance with hard laws alone should have directors assessing its requirements as part of risk mitigation. Boards are starting to take notice of HREDD laws and are taking HREDD as a serious consideration – rather than a 'voluntary' matter. Obtaining senior level buy is crucial for effective implementation of HREDD laws as this secures provision of resources and training needed and may facilitate coordination between different departments for implementation. Engagement by executive management and boards is necessary to ensure a meaningful HREDD process and to make this a matter of strategic priority.²⁴¹

Consultation on the CSDDD indicated support from individual companies and business associations (over 70% of 211 respondents) for the integration of sustainability risks, impacts and opportunities into the company's strategy, decisions and oversight.²⁴² The CSDDD, however, dropped some elements related to corporate governance included in the previous proposal – including directors' duty of care, directors' responsibility for overseeing the due diligence policy and process, and requirements that directors report to the board.²⁴³ The CSDDD's references to business strategy will, however, need to necessarily involve the board. For example, in relation to combating climate change, the CSDDD states that 'the business model and strategy of the company' are compatible with the transition to a

²³⁵ Smit and others (n 100).

²³⁶ *ibid* 966.

²³⁷ Danish Institute for Human Rights, 'The EU Corporate Sustainability Due Diligence Directive: Maximising Impact through Transposition and Implementation' (n 55).

²³⁸ World Benchmarking Alliance, 'Corporate Human Rights Benchmark' (n 163).

²³⁹ Shift, 'Human Rights Reporting in France: A Baseline for Assessing the Impact of the Duty of Vigilance Law' (n 207) 22.

²⁴⁰ *ibid*.

²⁴¹ Danish Institute for Human Rights, 'The EU Corporate Sustainability Due Diligence Directive: Maximising Impact through Transposition and Implementation' (n 55).

²⁴² European Commission, '[Sustainable Corporate Governance Initiative: Summary Report – Public Consultation](#)' (2021).

²⁴³ European Commission, '[Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive \(EU\) 2019/1937](#)' 2022.

sustainable economy and the Paris Agreement.²⁴⁴ Regulators should require companies to put in place adequate governance structures and assign directors' responsibility for oversight of HREDD requirements.

Stakeholder engagement

Under the DVL, there is no obligation to meaningfully engage with stakeholders. The DVL does encourage the consultation of stakeholders by affirming that the vigilance plan is 'meant to be drawn up in association with the company's stakeholders' but does not make it compulsory.²⁴⁵ It only requires consultation with trade unions in relation to setting up the whistleblowing mechanism.²⁴⁶ The French Constitutional Council highlighted that the reference in the law to the involvement of stakeholders in the drafting of the vigilance plan merely serves as an incentive.²⁴⁷ It is, however, key to involve stakeholders in the development of the vigilance plan to that it does not become a form of internal audit.²⁴⁸ The lack of meaningful stakeholder engagement as a legal requirement in the DVL is resulting in an overall deprioritising of this aspect of HREDD.²⁴⁹ Various reports have shown that consultation with external stakeholders has remained very limited following the adoption of the DVL.²⁵⁰

A 2020 report for the French government on the DVL highlighted that insufficient dialogue with relevant stakeholders, and more specifically with NGOs, constituted one of the main pitfalls of the implementation of the law.²⁵¹ A 2019 Shift report found a decrease of reporting on stakeholder engagement after the DVL was adopted and affirmed that 'stakeholder engagement appears to be the area where disclosure has actually become weaker, with four companies having slightly regressed, and an average score going down to 2.2 from 2.5/5 before the duty of vigilance law.'²⁵² The report noted that stakeholder engagement is hardly mentioned in most vigilance plans and implementation reports, and, where mentioned, it is normally done through vague statements such as 'in constant dialogue with stakeholders'.²⁵³ Another CSO report found in 2020 that only 5% of companies had a vigilance plan in which stakeholders had meaningfully provided inputs.²⁵⁴ Amongst these companies, only one of them reported to have consulted local communities as part of stakeholders involved for the design of the vigilance plan.²⁵⁵ The decision in La Poste clarifies the importance of stakeholder engagement. The trade union had, among other things, asked that La Poste adopt several measures - for example, in the

²⁴⁴ Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 (n 9) art 22.

²⁴⁵ Loi no. 2017-399 du 27 Mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre (n 5) – 'le plan a vocation à être élaboré en association avec les parties prenantes de la société, le cas échéant dans le cadre d'initiatives pluripartites au sein de filières ou à l'échelle territoriale'.

²⁴⁶ Ibid – 'un mécanisme d'alerte et de recueil des signalements relatifs à l'existence ou à la réalisation des risques, établi en concertation avec les organisations syndicales représentatives dans ladite société'.

²⁴⁷ Conseil Constitutionnel, '[Décision N° 2017-750 DC Du 23 Mars 2017: Loi Relative Au Devoir de Vigilance Des Sociétés Mères et Des Entreprises Donneuses d'ordre](#)' (2017).

²⁴⁸ Béatrice Parance, Elise Groulx and Victoire Chatelin, '[Regards Croisés Sur Le Devoir de Vigilance et Le Duty of Care](#)' (2018) 145 Journal de droit international (Clunet) 21.

²⁴⁹ Bright (n 20).

²⁵⁰ Entreprises pour les droits de l'Homme (n 93); Bright (n 20).

²⁵¹ Conseil Général de l'Économie (n 21) 37.

²⁵² Shift, 'Human Rights Reporting in France, Two Years In: Has the Duty of Vigilance Law Led to More Meaningful Disclosure' (n 208) 8.

²⁵³ Ibid.

²⁵⁴ Development International e.V. (n 70) 56.

²⁵⁵ Ibid 58.

areas of subcontracting and harassment. The Court rejected these requests, holding that they went beyond the powers conferred to the judge as the judge could not substitute to the company and its stakeholders in requiring the introduction of precise and detailed measures. It is up to the company, in association with its stakeholders, to 'carry out an analysis of the risk factors...in order to reasonably develop an effective measure to avoid or limit the risk'.²⁵⁶ This decision is important, and it should push companies to reassess the level of consultation with stakeholders in the development and implementation of the vigilance plan, ensuring that consultation is documented.

The LkSG requires enterprises to consult stakeholders and to cooperate with stakeholders in several ways.²⁵⁷ First, stakeholders are relevant for the risk analysis according to section 6. The LkSG pursues a risk-based approach, and it does not allow enterprises to simply pass on its own due diligence obligations to its suppliers.²⁵⁸ The risk analysis is divided into an abstract and a concrete assessment. Stakeholders are relevant for the risk analysis, both regarding direct suppliers and regarding gaining substantiated knowledge that necessitates a risk analysis of an indirect supplier, as also discussed above.²⁵⁹ Stakeholder engagement is also significant in relation to the grievance mechanism required by the LkSG ([see also below](#)).

Pakistani trade union engaging with German textile company

The European Centre for Constitutional and Human Rights (ECCHR) highlights an example of stakeholder engagement where trade unionists from Pakistan were able to sit down with a large German textile company. At first, in February 2024, they credited the German LkSG for encouraging companies to talk to trade unions to better understand their working conditions, and the trade unionists discussed how the Act helps to protect the rights of textile factory workers.²⁶⁰ A representative of the Pakistani trade union said that the textile company supplier 'was finally willing to sit down with us as a local trade union to discuss solutions for improving working conditions ... the German Supply Chain Act could indeed function as a catalyst for better working conditions in Pakistani textile factories'.²⁶¹ An ECCHR update in June 2024, however, shows that the agreement reached in negotiations with the supplier and the trade union was not upheld by the supplier and 'repeated attempts to involve the company 'to persuade their supplier to adhere to the agreement failed'.²⁶²

While progress has been made over the years,²⁶³ large companies that have processes for stakeholder engagement in place were already doing so in accordance with the UNGPs and OECD Guidelines. There is no evidence of clear improvement in consistent approaches to meaningful stakeholder

²⁵⁶ Latham & Watkins (n 31).

²⁵⁷ Initiative Lieferkettengesetz, '[What the New Supply Chain Act Delivers – and What It Doesn't](#)' (2021).

²⁵⁸ Augenstein and Wohltmann (n 107) para 67.

²⁵⁹ Gesetz über die unternehmerischen Sorgfaltspflichten zur Vermeidung von Menschenrechtsverletzungen in Lieferketten (n 6) s 5,9.

²⁶⁰ European Center for Constitutional and Human Rights, '[Pakistani Trade Unionists Take Stock: The Supply Chain Act Protects Workers and Trade Unions on the Ground!](#)' (2024).

²⁶¹ European Center for Constitutional and Human Rights, '[Missed Opportunity: No Improvements in Sight for Labor and Union Rights at KiK Supplier in Pakistan](#)' (2024).

²⁶² *ibid.*

²⁶³ In selected sectors. World Benchmarking Alliance, 'Corporate Human Rights Benchmarking Insights Report' (n 157); World Benchmarking Alliance, 'Corporate Human Rights Benchmark' (n 163).

engagement directly because of the DVL, which does not mandate it, and not enough evidence yet in relation to the LkSG. Companies generally did not have a systematic approach to involving rightsholders.²⁶⁴ Many still approach it as an ‘add-on’ instead of core to the HREDD process. There is still a reliance on multi-stakeholder or industry initiatives, sometimes seen as a substitute for meaningful stakeholder engagement. World Benchmarking Alliance highlights engaging with stakeholders as an important aspect to build a holistic due diligence process under the CSDDD framework and noted that only 27% of the companies they evaluate involve rightsholders in due diligence processes.²⁶⁵ They also note in their 2024 Social Benchmark report that only 9% communicate examples of engaging with stakeholders.²⁶⁶ Business and Human Rights Resource Centre highlights that most companies do not engage with rightsholders, and those that do have some forms of engagement do not properly consider the safety risks of relevant stakeholders, which leads to division, exclusion and intimidation in the relevant communities.²⁶⁷

The CSDDD requires companies to engage ‘meaningfully’ with stakeholders but with some loopholes.²⁶⁸ In line with international standards, such as the OECD Guidelines, meaningful engagement with stakeholders is required throughout the entire HREDD process. The CSDDD limits stakeholder engagement to specified stages of the HREDD process - including when gathering information, developing correction plans, making the decision to terminate or suspend a business relationship or developing remediation.²⁶⁹ Stakeholder engagement is not required in the design of actual engagement framework, nor is it required in a company establishing and maintaining a notification mechanism and complaints procedure.²⁷⁰ Meaningful consultation with relevant stakeholders is a cornerstone of the whole HREDD process). The UNGPs and the OECD Guidelines need to be the authoritative standards to follow to ensure engagement through the entire HREDD process. Another problem is that engagement with affected and potentially affected stakeholders is not separated from the different engagement companies have with various stakeholders. The CSDDD includes in the definition of ‘stakeholders’ workers and trade unions, consumers and other potentially affected individuals or communities – and more broadly CSOs and national human rights institutions.²⁷¹

Grievance mechanisms

The DVL requires companies to include in their vigilance plan an alert mechanism collecting reports of potential and actual adverse impacts, which must be drawn up in consultation with the company’s

²⁶⁴ Accenture and twentyfifty (n 101).

²⁶⁵ Ardea International (n 162).

²⁶⁶ World Benchmarking Alliance, ‘Social Benchmark Insights Report’ (n 90).

²⁶⁷ Business and Human Rights Resource Centre and others, ‘[Hearing the Human: Ensuring Due Diligence Legislation Effectively Amplifies the Voices of Those Affected by Irresponsible Business](#)’ (2021).

²⁶⁸ Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 (n 9) art 13(1). Consultation of stakeholders shall take place at the following stages of the due diligence process: (a) when gathering the necessary information on actual or potential adverse impacts..; (b) when developing prevention and corrective action plans..; (c) when deciding to terminate or suspend a business relationship..; (d) when adopting appropriate measures to remediate adverse impacts.

²⁶⁹ *ibid* 13(3).

²⁷⁰ Danish Institute for Human Rights, ‘The EU Corporate Sustainability Due Diligence Directive: Maximising Impact through Transposition and Implementation’ (n 55).

²⁷¹ Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 (n 9) art 3(1)(n).

trade unions. The DVL, however, does not specify whom the alert mechanism should be available to - international standards like the UNGPs clarify that they should be accessible to all individuals and communities who may be adversely impacted by the activities of the company.²⁷²

A 2019 Shift report on the level of company disclosure, noted a slight improvement in 35% of the companies reviewed the year following the adoption of the DVL regarding reporting on grievance mechanisms.²⁷³ Yet, the report noted that grievance mechanisms and remediation were areas where reporting was still at a basic level.²⁷⁴ The report highlighted that 'half the companies reviewed describe a generic hotline available to employees only'.²⁷⁵ Another CSO report found that 78% of companies included a description of an alert system within their vigilance plan, and 75% of them provided a description of what the mechanism consisted of.²⁷⁶ The study found that the majority of the alert systems relied on an online platform or an email address, only few relied on verbal communication, and only 13% of companies published the outcomes of the alert mechanisms in their vigilance statements.²⁷⁷

The requirement for grievance mechanisms in the LkSG has had some reported positive effect in strengthening the view of affected communities and civil society (see e.g. report from CLB above).²⁷⁸ The LkSG requires the establishment of a 'complaints procedure' as one of the due diligence obligations.²⁷⁹ The enterprise must ensure that an 'appropriate internal compliance procedure is in place' which should enable persons to report human rights and environment-related problems.²⁸⁰ The LkSG lays down procedural requirements for the internal complaints system. Alternatively, instead of an internal procedure, the enterprises can participate in appropriate external complaint procedures.²⁸¹ The complaints procedure must be accessible to potential parties involved and maintain confidentiality. The effectiveness of the complaints system must be reviewed at least once a year. It was the intention of the legislator that the target groups of the complaint procedure in the LkSG should be consulted in the development of the grievance mechanism so that they can raise points of accessibility and functionality for their specific needs (another example of stakeholder engagement as BAFA guidelines note an expectation for focus on stakeholder engagement in the complaint procedure).²⁸² Companies reviewed in a report for the German government often had multiple grievance mechanisms targeting accessibility for different groups; some of them were using feedback data from the grievance mechanisms to

²⁷² Development International e.V. (n 70) 8.

²⁷³ Shift, 'Human Rights Reporting in France, Two Years In: Has the Duty of Vigilance Law Led to More Meaningful Disclosure' (n 208) 8.

²⁷⁴ *ibid.*

²⁷⁵ *ibid.*

²⁷⁶ Development International e.V. (n 70) 96.

²⁷⁷ *ibid.* 100–101.

²⁷⁸ CorA-Netzwerk, Kampagne für Saubere Kleidung, and Initiative Lieferkettengesetz (n 149); China Labour Bulletin (n 110).

²⁷⁹ Gesetz über die unternehmerischen Sorgfaltspflichten zur Vermeidung von Menschenrechtsverletzungen in Lieferketten (n 6) s 8.

²⁸⁰ *ibid.* 8(1).

²⁸¹ If it meets the criteria set out in section 6(2) – (5). These criteria for an external complaint procedure include that the enterprise must, *inter alia*, provide clear and comprehensible information on the accessibility and the implementation of the procedure and ensure that the persons in charge of the complaint procedure are independent and bound to secrecy, but not bound by instructions.

²⁸² Gesetzentwurf der Bundesregierung: Entwurf eines Gesetzes über die unternehmerischen Sorgfaltspflichten in Lieferketten (n 232) 33,49.

develop their risk assessments and due diligence measures.²⁸³ A large German retail company, for example, states that in line with the LkSG it implemented a grievance procedure and that it has received positive feedback on the clarity and ease of use of the mechanism.

When integrated with other types of alert mechanisms as part of other compliance processes, companies need to ensure that the specific nature of HREDD risks are taken into account. A 2022 report on the DVL noted that companies are merging HREDD grievance mechanisms with their obligations under Sapin II regarding corruption.²⁸⁴ This approach should be avoided due to the different ways these two mechanisms should be set up as defined in the laws. Synergies between the EU Whistleblowing Directive,²⁸⁵ which requires companies to provide internal mechanisms for whistleblowing, and corporate human rights grievance mechanisms have also been discussed, pointing out that workers may be more confident filing complaints under whistleblowing mechanisms.²⁸⁶ The objective of the Whistleblowing Directive - to protect against retaliation of a person with a work-based relationship to a company reporting unlawful conduct – is however different from HREDD-mandated grievance mechanisms. The UN Working Group on Business and Human Rights say that ‘companies have adopted good practices to reduce human rights and corruption risks by aligning their implementation of anti-corruption compliance programmes and human rights due diligence processes’, but it notes that there is ‘no one-size-fits-all approach’ that could integrate both anti-corruption and human rights, recognizing that ‘fully integrating anti-corruption and human rights due diligence could risk watering down core commitments to respect human rights’.²⁸⁷

While some larger companies are developing grievance mechanisms in consultation with stakeholders – both in response to HREDD laws and because of UNGPs expectations – this is an area where most progress still needs to be made. At the same time, this is one of the HREDD duties that can be implemented and monitored from the beginning, other than the iterative and process-oriented rest of HREDD duties. Operational-level alert and grievance mechanisms can play an important role in identifying adverse human rights impacts arising out of corporate activities, tracking the effectiveness of the HREDD processes in place and in enabling remediation for those who have been impacted. The World Benchmarking Alliance highlights the remedy aspect of operational grievance mechanisms as a key aspect to build a holistic due diligence process under the CSDDD framework and noted that while 91% of the companies have a grievance mechanism, only 5% of companies ensure transparency and

²⁸³ Accenture and twentyfifty (n 101).

²⁸⁴ Latham & Watkins, ‘[French Parliament Publishes Evaluation Report on Corporate Duty of Vigilance Law](#)’ (2022).

²⁸⁵ James Harrison, Mark Wielga and Margarita Parejo, ‘[In Search of Effective Corporate Grievance Mechanisms: Can Mandatory Due Diligence Laws Be a Progressive Force?](#)’ [2024] Journal of Human Rights Practice. The EU Whistleblowing Directive requires companies to i) provide internal mechanisms for whistleblowing, ii) educate employees and others about their whistleblowing options, iii) protect whistleblowers who report breaches of EU law, and iv) prevent them from being retaliated against. The EU Whistleblowing Directive is not aligned to the UNGPs (for instance with the UNGP Principle 31 on the effectiveness of grievance mechanisms) and it is not focused on human rights issues. For instance, unlike some HREDD laws, the EU Whistleblowing directive does not require companies to develop grievance mechanisms in consultation with stakeholders. Whistleblower systems and hotlines are not comprehensive human rights complaint mechanisms.

²⁸⁶ Juho Saloranta, ‘[The EU Whistleblowing Directive: An Opportunity for \(Operationalizing\) Corporate Human Rights Grievance Mechanisms?](#)’ (2021) 22 European Business Organization Law Review.

²⁸⁷ UN Working Group on Business and Human Rights, ‘[Connecting the Business and Human Rights and the Anticorruption Agendas: Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises](#)’ (UN Human Rights Council 2020) A/HRC/44/43 15–16.

predictability as a part of the grievance mechanism process.²⁸⁸ Companies are still to embrace the role that grievance mechanisms can play as a human rights risk prevention tool (helping the company to become aware of issues as early as possible and preventing a possible worsening of the situation).²⁸⁹ Companies need to communicate appropriately with all potential users (internal and external) and instil trust in the mechanism, as well as to ensure that all stakeholders are able to alert the company.²⁹⁰ HREDD processes could reduce the existing power imbalances between companies and workers, especially when it comes to prevention and remediation of human right abuses, for instance by enabling victim-centric remediation.²⁹¹

The CSDDD requires a notification mechanism and complaints procedure, as well as remediation of actual adverse impacts.²⁹² Regulators should stress how grievance mechanisms such as notification mechanisms and complaints procedures are essential tools for companies to prevent, address and resolve human rights impacts within their operations and supply chains. By engaging stakeholders, companies can enhance the effective implementation of grievance mechanisms and ensure that these mechanisms are accessible, effective and trusted by the communities they impact, following the effectiveness criteria for grievance mechanisms in the UNGPs. Regulators should include a monitoring and disclosure requirement regarding their impact and effectiveness that includes more substantive disclosure of 'accessibility of the complaints system, the way complaints are handled, and the outcomes produced for rightsholders'.²⁹³

Responsible disengagement

Both the UNGPs and the OECD Guidelines outline the decision-making process for business disengagement, based on the concept of leverage. When considering ending the relationship, the UNGPs elaborate on the business responsibility to engage with a business partner and use its leverage to address adverse impact; the OECD Guidelines refer to disengagement as a measure of 'last resort'.²⁹⁴ The UNGPs recognise situations where termination is appropriate, due to severity of the abuse and the inability to exert leverage to change the situation, also in line with the latest briefing from the OHCHR on difficult contexts (see more below).

The CSDDD also clarify that disengagement from suppliers should only happen as a last resort and in a responsible manner.²⁹⁵ Under the CSDDD, terminating business relationships should only happen

²⁸⁸ Ardea International (n 162).

²⁸⁹ Shift, 'Human Rights Reporting in France, Two Years In: Has the Duty of Vigilance Law Led to More Meaningful Disclosure' (n 208) 10.

²⁹⁰ *ibid.*

²⁹¹ Deva (n 69); McCorquodale and Nolan (n 120); Nolan (n 124).

²⁹² Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 (n 9) art 12, 14.

²⁹³ Harrison, Wielga and Parejo (n 285) 14.

²⁹⁴ Office of UN High Commissioner for Human Rights (n 1); OECD (n 8).

²⁹⁵ Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 (n 9) art 10(6), 11(7). in relation potential and actual adverse impacts respectively - "refrain from entering into new or extending existing relations with a business partner in connection with which, or in the chain of activities of which, the impact has arisen and shall, where the law governing their relations so entitles them, take the following actions, as a last resort". Both articles also mention preliminary steps before deciding to suspend or terminate business relationships, including i) assess the adverse impacts from doing so and ii) taking steps to prevent,

when there is no reasonable expectation that leverage efforts including temporary suspension of business relationships would succeed or the prevention action plan has failed.²⁹⁶ The CSDDD also recognises the need for immediate disengagement in cases of state-imposed forced labour.²⁹⁷ Other points in the CSDDD such as consideration of purchasing practices and living wages and the additional provisions that should be afforded to SMEs in supply chains are also based on discouraging disengagement.

Despite fears of HREDD ‘unintended consequences’ such as promoting business termination (without responsible engagement) or even complete divestment from certain countries, our study did not find evidence of irresponsible disengagement or divestment because of HREDD laws. A survey by the Chamber of Commerce in Dusseldorf indicates that most enterprises (60%) do not plan to terminate their business relationships with their direct suppliers, but that about 20% consider restructuring their supply chain, and a minority of German companies (8%) has divested from countries with low human rights standards.²⁹⁸ After one year of implementation of the German law, a survey of German companies showed that some companies had partially withdrawn from countries with weak governance or were planning to do so.²⁹⁹ A slightly higher proportion of companies were using more suppliers from countries with high standards for human rights protection.³⁰⁰ The exit from specific countries or regions cannot, however, be directly linked with the implementation of the French or German laws. The survey on the German law for example says that the analysis is ‘not conclusive but rather indicative for observed adverse effects due to increased requirements’.³⁰¹ Evidence related to companies divesting from high-risk countries, and conflict-affected areas (see also text box below) show that reasons like legal and reputational risks and operational issues play the most significant role. For example, a BIICL report about investment in Ukraine concluded that ‘from a business perspective factors impeding the investment attractiveness of Ukraine include concerns about the safety of physical infrastructure, judicial capacity and capability, inefficiency of court administration, corruption and the undue influence of law enforcement bodies’.³⁰²

An apparent tension is noted between HREDD standards requiring companies to engage with business relationships and use their leverage to try and improve the situation and regulation like the EU Deforestation Directive, which prohibits market access for commodities if they are linked to

mitigate or end the impacts of such suspension or termination providing notice to the business partner. See International Peace Information Service and Solidaridad, [‘Due Diligence and the Risk of Disengagement: Experiences from the Mineral Sector and a Way Forward for the CSDDD’](#) (2023); Rainforest Alliance and others, [‘Supporting the Implementation of the EU Corporate Sustainability Due Diligence Directive in Global Supply Chains Involving Smallholders and Their Communities’](#) (2024).

²⁹⁶ Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 (n 9) art 10(6)(b).

²⁹⁷ *ibid* para 50. ‘Companies should suspend their business relationships with the business partner, thereby increasing their leverage and increasing the chances that the impact is addressed. Where there is no reasonable expectation that these efforts would succeed, for instance, in situations of state-imposed forced labour, or where the implementation of the enhanced prevention action plan failed to prevent or mitigate the adverse impact, the company should be required to terminate the business relationship with respect to the activities concerned if the potential adverse impact is severe’.

²⁹⁸ IHK Düsseldorf (n 165).

²⁹⁹ Institut der Deutschen Wirtschaft (n 175).

³⁰⁰ *ibid*.

³⁰¹ *ibid* 9.

³⁰² British Institute of International and Comparative Law, [‘Unlocking Investment in Ukraine’](#) (2024) 5.

deforestation.³⁰³ No-deforestation policies risk resulting in companies disengaging without considering the human rights implications and leaving affected communities in a more vulnerable position. CSOs looked at unintended consequences in relation to divestment reported after the addition of a provision on conflict minerals from the Democratic Republic of Congo in the US Dodd Frank Act and the adoption of the EU Conflict Minerals Regulation.³⁰⁴ Such legislations were narrowly scoped to conflict minerals primarily from specific geographic areas which ultimately led to companies divesting or de-risking from those high-risk areas. Instead, the CSDDD mandates an overall risk-based approach not limited to certain areas or sectors, and it is not anticipated that implementation of HREDD measures by companies will result in divestment.

Divestment, de-risking or withdrawal without an attempt to use leverage and change practices would be misaligned with the spirit of HREDD. But considering disengagement after companies have tried to address impacts is legitimate, as the UNGPs and now the CSDDD clarify. De-risking is part of sourcing strategy to avoid current or future sourcing from a high-risk area, sector or type of supplier; disengagement is only in relation to a single business relationship. The extent to which companies are likely to disengage depends on several factors including the nature of the commodity, its availability elsewhere and whether it requires long-term relationships with suppliers. In line with international standards, there is evidence that companies are considering human rights issues when deciding to engage or terminate business relationships.³⁰⁵ Following international standards means only disengaging as a last resort and, before cutting ties with a business partner, taking into consideration its potential impact on rightsholders.³⁰⁶ Businesses are recommended not to not disengage but engage in long-term relationships with suppliers and provide support to SMEs.³⁰⁷ Regulators should reflect the requirements of the CSDDD and the expectations of the UNGPs by ensuring that companies must take this into account in their assessment, consult with stakeholders, and consider remediation obligations in the context of decisions to disengage from a context or business relationship, recognising that disengaging can lead to a worse situation for rightsholders and the environment.³⁰⁸ In line with the UNGPs and the CSDDD, companies 'should invest in time-bound plans to increase leverage – while also recognizing when there are no reasonable prospects that their use of leverage can be effective'.³⁰⁹

³⁰³ 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 110.

³⁰⁴ International Peace Information Service and Solidaridad (n 295).

³⁰⁵ World Benchmarking Alliance, 'Corporate Human Rights Benchmark' (n 163).

³⁰⁶ Rainforest Alliance and others (n 295). The report highlights four types of accompanying measures relevant for smallholders: 1) information and guidance on due diligence process and legal requirements; 2) industry collaboration and stakeholder engagement, 3) producer/supplier capacity building and empowerment and 4) regulatory environment and support ecosystem in partner countries

³⁰⁷ University of Greenwich, Natural Resources Institute, and BHRE Research Group, '[Making Human Rights Due Diligence Work for Small Farmers and Workers in Global Supply Chains](#)' (2020).

³⁰⁸ Danish Institute for Human Rights, 'Transposition of the Corporate Sustainability Due Diligence Directive: A Practical Guide for National Human Rights Institutions' (n 125).

³⁰⁹ Shift, 'Shift Welcomes Substantial Alignment of the Political Agreement on the EU Corporate Sustainability Due Diligence Directive with the UNGPs' (n 168).

Heightened HREDD and responsible exit in conflict-affected contexts

Business with operations or business relationships in conflict-affected regions should address a range of complex impacts related to the conflict, its root causes and their impact on the wider economy. The UN Working Group on business and human rights clarifies that a conflict situation requires heightened HREDD that considers the impact of business on the conflict itself as well as on human rights.³¹⁰ Companies need to weigh the implications - on human rights and on the armed conflict - of withdrawing from a conflict-area and the implications of staying. If a company's operations exacerbate the conflict or cause or contribute to human rights harms, it may be necessary to withdraw.³¹¹ In situations of armed conflicts, additional international humanitarian and international criminal law standards apply to companies and their directors who must consider whether their operations contribute to gross human rights violations or international crimes. Companies investing in or partnering with a state responsible for violations of international law have a particularly salient risk of aiding, abetting, or facilitating the government's violations.³¹² Companies must conduct heightened HREDD regarding both their operations and their whole supply chain to identify risks of where they may be contributing to human rights violations. For responsible disengagement, businesses need to anticipate and plan a clear exit strategy in advance to identify and assess the impact of disengagement on all stakeholders.³¹³ Generally, under the UNGPs and OECD Guidelines, before considering ending relationships, companies should seek to be part of the solution by addressing adverse impacts through exercising leverage. There are, however, special considerations in cases of possible complicity in gross human rights abuses. Where business enterprises lack the leverage to prevent or mitigate adverse impact, they should consider ending any existing relationships.³¹⁴ Businesses should also develop effective mechanisms to provide remedy to rights holders in conflict-affected areas that have been affected by their operations.

Communicating

Empirical studies show that the DVL contributed to improved business disclosure.³¹⁵ A 2020 study on the DVL found that in 90% of the cases, companies report on the existence of a process for regular risks assessment in the supply chain, particularly because it is a specific requirement of the DVL.³¹⁶ A 2019 Shift report, which analysed whether the DVL had any influence on companies' public disclosure as measured against the expectations of the UNGPs, found that the requirements of the DVL 'have pushed

³¹⁰ UN Working Group on Business and Human Rights, '[Issue of Human Rights and Transnational Corporations and Other Business Enterprises: Note by the Secretary General](#)' (2020) A/75/212; Daniel Aguirre and Irene Pietropaoli, '[Heightened Human Rights Due Diligence in Practice: Prohibiting or Facilitating Investment in Conflict Affected Areas?](#)' (2023) 15 Journal of Human Rights Practice.

³¹¹ Irene Pietropaoli, '[Part 1: Do Foreign Companies Have a Responsibility under International Law to Leave Russia?](#)' (14 March 2022).

³¹² International Federation for Human Rights, '[Companies Operating in Belarus and Russia Must Avoid Contributing to Violations of International Law](#)' (2022).

³¹³ Pietropaoli, 'Part 1: Do Foreign Companies Have a Responsibility under International Law to Leave Russia?' (n 311).

³¹⁴ Irene Pietropaoli, '[Corporate Responsibility to Avoid Complicity in Genocide in Gaza](#)' (Business and Human Rights Resource Centre 2024); Irene Pietropaoli, '[Obligations of Third States and Corporations to Prevent and Punish Genocide in Gaza](#)' (Al-Haq Europe and SOMO 2024).

³¹⁵ Shift, 'Human Rights Reporting in France: A Baseline for Assessing the Impact of the Duty of Vigilance Law' (n 207); Shift, 'Human Rights Reporting in France, Two Years In: Has the Duty of Vigilance Law Led to More Meaningful Disclosure' (n 208).

³¹⁶ Development International e.V. (n 70) 84.

companies to improve their reporting'.³¹⁷ Overall, 55% of companies slightly improved the maturity of their disclosure two years after the entry into force of the DVL.³¹⁸ Companies went from 'reporting mainly about its commitment to respect human rights and processes to manage health and safety risks and diversity, to reporting some level of action to identify broader human rights impacts and mitigate them'.³¹⁹

The Shift report found that the most mature area of disclosure was the 'policy commitment' with 70% the companies who commit to respect all internationally recognized human rights and extend the commitment to their business relationships.³²⁰ Performance tracking remained 'one of the most poorly reported areas', with most companies continuing to rely primarily on traditional indicators like the proportion of women in the workplace, fatalities and accidents, and the number of supplier audits.³²¹ The report concluded that 'meaningful tracking should especially look at the effectiveness of the company's actions to manage its salient human rights issues'.³²² Another review of companies in scope of the DVL noted that information about where the risks are located within the supply chain remains scarce, with 82% of DVL in-scope companies failing to identify specifically the location of the risks detected in the supply chain when doing the mapping process.³²³

In 2018, a previous Shift report on the reporting of the 20 largest companies in France as baseline before they were required to comply with the DVL, found that French companies' levels of reporting were already slightly more mature than those of other companies analysed (which included over 130 of the largest companies around the world).³²⁴ This was possibly due to France being one of the first countries to introduce specific reporting requirements on non-financial information, thereby having levelled the playing field in terms of reporting.³²⁵ Despite the slight maturity advantage, however, the average French company did not meet the expectations of the UNGPs.³²⁶ A large majority of the French companies failed to provide information on all elements of the responsibility to respect human rights, the information provided was incomplete and the language used was generic and vague.³²⁷ It was highlighted that 18 out of 20 companies did not identify their salient human rights issues.³²⁸ In addition, the report underlined that most of the French companies reviewed failed to share the challenges they faced when trying to implement their responsibility to respect human rights.³²⁹

An NGO press release on the implementation of the LkSG in 2023 highlights the importance of reporting obligations under the Act, saying that reporting is 'not useless bureaucracy, but essential for

³¹⁷ Shift, 'Human Rights Reporting in France, Two Years In: Has the Duty of Vigilance Law Led to More Meaningful Disclosure' (n 208) 7.

³¹⁸ *ibid* 5.

³¹⁹ *ibid*.

³²⁰ *ibid* 6.

³²¹ *ibid* 8.

³²² *ibid*.

³²³ Development International e.V. (n 70).

³²⁴ Shift, 'Human Rights Reporting in France: A Baseline for Assessing the Impact of the Duty of Vigilance Law' (n 207) 6.

³²⁵ *ibid* 7.

³²⁶ *ibid* 8.

³²⁷ *ibid*.

³²⁸ *ibid*.

³²⁹ *ibid*.

checking whether companies are adequately fulfilling their due diligence obligations'.³³⁰ A report on the implementation of HREDD in German companies notes that most of the companies integrated their human rights disclosures into existing reporting formats, for example their sustainability reports, modern slavery statements or reporting to various initiatives.³³¹ The focus of their reporting was to meet legislative requirements. The report continues by noting that only some of the companies at times communicate about their challenges, missed targets, and needed adjustments to their programmes.³³² Some companies are still concerned that the way the German questionnaire (the answers to which make up the report) is framed may lead to liability. Therefore, companies are being careful as to what to report, which is leading to vague reporting and reporting on abstract risks.

A key step in the HREDD process, which is mandated by all HREDD laws, is to report on the measures taken to identify, prevent, mitigate and remediate human rights abuses. Publicly communicating on due diligence by publishing on their website an annual statement is also required by the CSDDD.³³³ Reporting is important in fostering credibility in the company's implementation of its HREDD programme, but still transparency is not yet a common corporate practice. With the mandatory reporting laws there was an assumption that making relevant information available to stakeholders like investors, civil society and consumers would lead to public pressure and scrutiny.³³⁴ Reporting requirements in HREDD legislation is placing human rights on the agenda for discussion at high levels within companies, even if the leap towards a risk-based approach is not yet complete.³³⁵ Reporting requirements should ensure that companies are reporting based on a thorough understanding of their risks and the actions they are taking to address them and consider what information a company is expected to disclose as reporting must also be respectful of the relevant context and recognize that disclosing certain information may put affected communities or those who complained at risk.

³³⁰ CorA-Netzwerk, Kampagne für Saubere Kleidung, and Initiative Lieferkettengesetz (n 149).

³³¹ Accenture and twentyfifty (n 101).

³³² *ibid.*

³³³ Directive (EU) 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859 (n 9) art 16.

³³⁴ Bright (n 20).

³³⁵ Rachel Chambers and Anil Yilmaz Vastardis, '[Human Rights Disclosure and Due Diligence Laws: The Role of Regulatory Oversight in Ensuring Corporate Accountability](#)' (2021) 21 Chicago Journal of International Law.

Conclusion and recommendations for HREDD design and implementation

We find that the French DVL law has had positive impacts in prompting companies to put in place human rights and environmental due diligence processes and/or improve the existing ones. Overall, a large majority of in-scope companies have now adopted policy commitments and are complying with the formal requirements of the law in terms of HREDD processes. Since the adoption of the DVL, in-scope companies have improved on almost all the key elements of the UNGPs (policy commitment, governance, risk assessment, integration and action, tracking and remediation). The most progress has notably been made in relation to the identification and prioritization of risks (first step of the due diligence process) and in relation to the reporting (last stage of the due diligence process).

The LkSG has been in force for a limited time and there is, so far, only limited data available on the practical impacts of the law. Still, our study, based on expert reports and our empirical research, indicate some clear effects of the law. First, the German LkSG is a step forward to promoting greater corporate responsibility for human rights and environment-related issues in global supply chains. It is a significant move away from the previous transparency-based soft law approach. Enterprises are now given several due diligence duties, backed up by public monitoring and possible fines. The competent authority BAFA has got stringent powers which alone will inevitably drive change in boardrooms towards taking human rights in supply chains more seriously. Second, since boards have overall responsibility for legal compliance, the introduction of the LkSG has led to the issue of human rights in supply chains becoming a cross-departmental issue with significant involvement and, in many cases, oversight by the compliance department. Third, surveys indicate that, prior to the introduction of the LkSG, many enterprises only had limited knowledge about working conditions in their supply chain; the risk analysis that is required by the LkSG will inevitably change this situation. Finally, the nature of the due diligence duties requires additional staffing, which in-scope companies have recruited because of the LkSG, but, in many instances, also three or more. The LkSG is being and will continue to be a driver of behavioural change.

Yet, we find a need of continuous improvement and better alignment with the UNGPs spirit in HREDD processes. Still many companies tend to adopt a narrow minimum compliance approach. To align with international standards and achieve better outcomes, companies need to go beyond the letter of the law to fully embrace the spirit of the UNGPs (and now the CSDDD), which were developed with a dual objective of prevention and remediation of corporate-related adverse human rights impacts. Some HREDD processes – particularly some vigilance plans of DVL in-scope companies – have not yet fully shifted the focus on rightsholders. Many companies have yet to adopt a holistic approach covering both human rights and environmental issues (rather than approaching them in silos). Meaningful stakeholder engagement is still poor in corporate practices despite being the cornerstone of the whole HREDD process under international standards. This has been particularly a problem under the DVL, which merely incentivized stakeholder engagement, but does not require it. Finally, the role of leadership at the highest level of the company is key to ensure the deployment and monitoring throughout the corporate group and the need for departments within the companies to work together and not in silo for a better implementation of HREDD practices.

Policy makers should

- See the UNGPs as the standard reference at the hearth of HREDD regulation to ensure policy coherence, avoid fragmentation and design an effective ‘smart mix’ of policy and regulation.

- Consider broadening the personal – by lowering the thresholds and including all corporate forms - and material scope of HREDD laws - by including all human and environmental rights - and include downstream value chain in the definition of ‘chain of activities’.
- Clarify the definition of ‘appropriate measures’ and the concept of ‘effectiveness’, which should be always part of business measures to address actual and potential impacts, and require an expansive holistic, risk-based approach to HREDD in line with the expectations of the UNGPs.
- Clarify that minimum ‘tick-box’ compliance is not embedded in HREDD laws – while companies are required to comply with appropriate measures, they should be encouraged to develop transformative internal and commercial business strategies following a risk-based and shared responsibility approach.
- Develop national accompanying measures and other guidance in consultation with CSOs, trade unions and national human rights institutions.
- Require companies to approach the use of contractual leverage as a shared responsibility practice providing support and capacity-building measures to suppliers, and to conduct thorough analyses of their purchasing practices, to identify areas for improvement and gather feedback from suppliers.
- Provide support, information and capacity building for SMEs in third countries that are part of EU companies’ value chains and are likely to face increased contractual demands
- Reflect the responsible disengagement requirements of the CSDDD and the expectations of the UNGPs by ensuring that disengaging is an option of last resort.
- Require companies to consult with stakeholders, invest in time-bound responsible exit strategy, consider in their assessment that disengagement can lead to a worse situation for rightsholders and the environment, while also recognizing when there are no reasonable prospects that their use of leverage can be effective, and finally adopt remediation measures.
- Require companies to put in place adequate governance structures and assign directors’ and board’s responsibility for oversight of HREDD requirements.
- Encourage companies to approach HREDD requirements holistically and drive internal capability.
- Require meaningful stakeholder engagement throughout the entire HREDD process and clarify that multi-stakeholder or industry initiatives are not a substitute for such engagement.
- Require companies to engage stakeholders in setting up grievance mechanisms - such as notification mechanisms and complaints procedures - that accessible, effective, and trusted by the communities they impact.
- Include a monitoring and disclosure requirement regarding their impact and effectiveness based on the UNGPs criteria.
- Clarify that companies are required to report based on a thorough understanding of their risks and the actions they are taking to address them.

Charles Clore House
17 Russell Square
London WC1B 5JP

T 020 7862 5151
F 020 7862 5152
E info@biicl.org

www.biicl.org

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