



# EU Model Legislation on Corporate Responsibility to Respect Human Rights and the Environment

**ECCJ Legal Brief**

February 2020

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ECCJ has long been calling for EU legislation on mandatory Human Rights Due Diligence and corporate liability, requiring companies to identify, prevent, mitigate and account for human rights abuses and environmental damage in their global value chains.

ECCJ has now identified and detailed a set of minimum provisions that such legislation should include to ensure an effective and comprehensive EU regulatory framework for the above purposes.

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## **About ECCJ**

ECCJ is the only European coalition bringing together European campaigns and national platforms of NGOs, trade unions, consumer organisations and academics to promote corporate accountability.

## Key legislative recommendations

For ECCJ, an EU mandatory Human Rights Due Diligence (HRDD) regulatory framework should:

- 1) Apply to all undertakings, including financial institutions, **domiciled in a Member State or placing products on or providing services in the internal market.**
- 2) Require undertakings to **respect all internationally recognized human and labour rights, and environmental standards** in their own activities, and to ensure respect and compliance with those rights and standards throughout their global value chain.
- 3) Require undertakings to **take all necessary measures in the exercise of due diligence**, to meaningfully **consult stakeholders** for the purpose of defining and implementing due diligence, and to **publicly report on these processes and their results.**
- 4) Require that **due diligence extend to the undertakings' entire global value chains.**
- 5) Compel Member States to provide for **penalties and sanctions**, to designate **competent investigating and enforcement authorities**, and to **allow members of the public to challenge non-compliance.**
- 6) Compel Member States to provide for **civil liability of undertakings for harm** arising out of human rights and environmental abuses caused or contributed to **by controlled or economically dependend entities.**
- 7) Compel Member States to provide for **civil liability of undertakings for human rights and environmental abuses directly linked to their products, services or operations** through a business relationship, **unless they can prove they acted with due care and took all reasonable measures** that could have prevented the harm.
- 8) Ensure a **fair distribution of the burden of proof**, with the defendant corporation having to prove its relationship with the business entity involved in the harm and whether the former acted with due care.
- 9) **Harmonise time limits to take legal action** by setting a minimum limitation period of five years, and **ensure EU courts' jurisdiction** regardless of related proceedings or rulings against subsidiaries, suppliers or subcontractors outside of the EU.
- 10) Be qualified as **overriding mandatory law**, thus applying irrespective of the law otherwise applicable under private international law.

## Background

### International standards

The law should cover:

- International **human and labour rights**<sup>1</sup>.
- International **environmental standards**<sup>2</sup>.
- Other international standards for the protection of the rights of particularly vulnerable groups or individuals<sup>3</sup>.

### EU competence

The EU has the **duty to promote respect for human rights and the environment** when it adopts and implements legislation as well as in its relations to the wider world<sup>4</sup>.

The EU has the **competence to harmonise national company laws** to attain freedom of establishment<sup>5</sup>, and approximate legislation to ensure the proper functioning of the internal market<sup>6</sup>.

### Grounds for legislation

EU-wide mandatory HRDD legislation would:

- Enable the EU to fulfil its international duties under the UNGPs<sup>7</sup>.
- **Prevent human rights abuses** in global business operations.
- Ensure a **level playing field** and a **coherent legal framework** for all EU companies.
- Promote **responsible business conduct, including by foreign undertakings**, which would be required to implement HRDD measures to operate in the single market.
- Ensure respect for core labour rights world-wide and **reverse the current trend towards a race to the bottom** in terms of social standards.
- Preserve the **EU's reputation as a global champion for human rights**.
- Give **consumers** the **confidence** that the goods and services they buy are produced and provided responsibly.

<sup>1</sup> At a minimum, those set out in the International Bill of Human Rights, the International Labour Organisation's Declaration on Fundamental Principles and Rights at Work and the EU Charter of Fundamental Rights.

<sup>2</sup> Including norms adopted in the framework of the UN (e.g., the Montreal Protocol on Substances that deplete the Ozone Layer) and standards developed by international organisations (e.g., the Environmental and Social Standards of the International Finance Corporation).

### Institutional support

Several EU and international institutions have long acknowledged the need for HRDD legislation:

European Parliament

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- [Resolution on sustainable finance](#) (2018).
- [Resolution on the impact of international trade and the EU's trade policies on global value chains](#) (2017).
- [Resolution on corporate liability for serious human rights abuses in third countries](#) (2016).

Council of the European Union

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- [Conclusions on EU Priorities in UN Human Rights Fora](#) (2019, 2020).
- [Conclusions on Business and Human Rights](#) (2016).
- [Conclusions on the EU and Responsible Global Value Chains](#) (2016).

Fundamental Rights Agency

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- [Opinion on improving access to remedy in the area of business and human rights at the EU level](#) (2017).

Council of Europe

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- [Recommendation on Human Rights and Business](#) (2016).

Office of the High Commissioner for Human Rights

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- [Improving accountability and access to remedy for victims of business-related human rights abuse](#) (2016).

Green Card initiative

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- [MPs in eight Member States call for an EU duty of care legislation to ensure corporate accountability for human rights abuses](#) (2016).

<sup>3</sup> E.g., indigenous peoples, migrants or women.

<sup>4</sup> Articles 2, 3.5, 21 of the Treaty of the European Union.

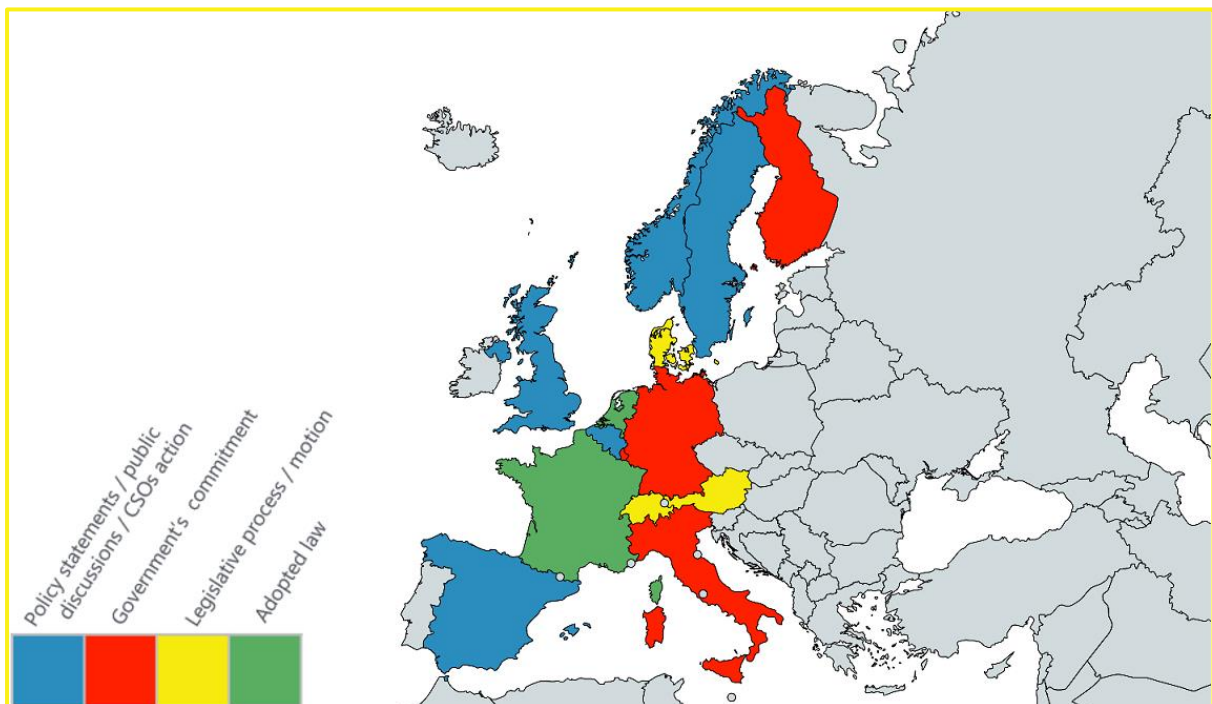
<sup>5</sup> Article 50 of the Treaty on the Functioning of the European Union.

<sup>6</sup> Article 114 of the Treaty on the Functioning of the European Union.

<sup>7</sup> The EU and all its Member States signed endorsed the UN Guiding Principles on Business and Human Rights in 2011.

## National precedents<sup>8</sup>

- **AT** | In 2018, the Social Democratic Party introduced a draft for a Social Responsibility Law in the garment sector, specifying HRDD requirements for companies.
- **DE** | In 2019, the German Ministers for Labour and Development jointly committed to developing a national supply chain due diligence law whilst expressing support for binding legislation at EU level.
- **DK** | In 2019, three political parties put forward a parliamentary motion requesting the government to develop a legislative proposal on HRDD and corporate liability.
- **FI** | In 2019, the Finnish government committed to mandatory HRDD legislation at national and EU levels.
- **FR** | In 2017, France adopted the Duty of Vigilance Law obliging the largest French companies to identify and address adverse human rights and environmental impacts linked to their global operations, whilst enhancing access to judicial remedy for victims in global supply chains.
- **IT** | The National Action Plan (2016) set the Government's commitment to evaluate the integration of more human rights offences into law, and to consider legislative reforms requiring corporate respect for human rights.
- **LX** | In 2018, Luxembourg's government committed to explore national HRDD legislation and to support EU legislation.
- **NL** | In 2019, the Netherlands approved the Child Labour Due Diligence Law, obliging companies that deliver products or services to the Dutch market to declare that they have carried out supply chain due diligence relating to child labour. Failing to follow the law can lead to severe fines. The law is under government review.



<sup>8</sup> More information is available on [Business & Human Rights in Law](#) and [Evidence for mandatory HRDD legislation](#).

### 1) Scope

Undertakings, including financial institutions, should be within the scope of this law if:

- a) they are **domiciled in a Member State**; or
- b) they **place products on or provide services in the internal market** -only with respect to the human rights and environmental impacts within the global value chains of those products or services.

### 2) General obligation

Undertakings should:

- a) Respect, **in their own activities**, international human rights and environmental standards.
  - b) Ensure that these standards are respected **by companies under their control**.
  - c) Take appropriate measures to ensure that these standards are respected **throughout their global value chain**.
- These obligations should be applicable to business operations **inside and outside of the EU**.

### 3) Duty to identify, prevent and mitigate harm in global value chains

#### Duty of due diligence

Undertakings should take all necessary measures to respect and ensure respect for human rights and the environment throughout their entire value chain<sup>9</sup>, including by adequately and effectively:

- a) **Identifying and assessing real and potential impacts**.
- b) **Ceasing and remedying existing abuses**.
- c) **Preventing and mitigating risks of abuse**.
- d) **Monitoring the implementation and effectiveness of the adopted measures**.

Undertakings should continuously evaluate and improve the effectiveness of their due diligence.

#### Duty of consultation

Undertakings should:

- a) Adequately, timely and directly **consult** impacted and potentially impacted **stakeholders**.
- b) **Properly take into account stakeholders' perspectives** in the definition and implementation of the due diligence measures.

- c) Ensure that representative **trade unions and workers' representatives** are **involved** in the definition and implementation of the due diligence measures.

#### Duty of reporting

Undertakings should publicly report on their due diligence and consultation processes and their results **in a public, accessible and appropriate manner**.

In particular, they should report on the identified impacts; the actions taken to cease and remedy existing abuses and to prevent and mitigate risks of abuse, as well as their outcomes; and the measures and results of monitoring the implementation and effectiveness of such actions.

#### Duty of documentation

Undertakings should maintain a **written record of all due diligence actions and their results**, and make them available to the competent authorities on request.

<sup>9</sup> Including all types of business relationships of the undertaking with business partners and entities along its entire value chain (suppliers, franchisees, licensees, joint ventures, investors, clients,

contractors, customers, consultants, financial, legal and other advisers), and any other non-State or State entity directly linked to its business operations, products or services.

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## 4) Enforcement and access to justice

### Public enforcement

Member States should ensure, in accordance with their national law and practice, the enforcement of the above duties by:

- a) Providing for **proportionate, effective and dissuasive penalties and sanctions**<sup>1011</sup> where non-compliance contributes to, or aggravates, abuses or the risk of abuse.
- b) Designating **competent investigating and enforcement authorities**.
- c) Ensuring that **members of the public**<sup>12</sup> **may challenge non-compliance before the judicial or administrative authorities**.

### Civil liability and access to remedy

#### Civil liability

Undertakings should be:

- a) Jointly and severally liable for harm arising out of human rights and environmental abuses **caused or contributed to by controlled**<sup>13</sup> **or economically dependent entities**.<sup>14</sup>
- b) Liable for harm arising out of human rights and environmental abuses **directly linked to their products, services or operations** through a business relationship, **unless they can prove they acted with due care and took all reasonable measures that could have prevented the harm**.<sup>15</sup>

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<sup>10</sup> Including exclusion from public procurement and public funding.

<sup>11</sup> Member States could likewise provide for positive incentives to encourage compliance.

<sup>12</sup> Including any individuals or groups whose rights and obligations or interests are affected, directly or indirectly, by the undertaking's total or partial failure to perform its duties, including employees, customers, consumers and end-users, trade unions, transnational trade union federations, local communities, national or local governments or institutions, journalists, NGOs and local civil society organisations.

<sup>13</sup> A legal person should be deemed under the control of an undertaking where the latter has the possibility of exercising, or actually exercises, control or decisive influence over the legal person or over its human rights, labour, environmental or health and safety policies or practices, on the basis of rights, contracts or any other

#### Disclosure of evidence

Where a plaintiff has presented reasonably available facts and evidence sufficient to support their action, the defendant should bear the burden of proving:

- a) The nature of its relationship with the entities involved in the harm.
- b) Whether it acted with due care and took all reasonable measures to prevent the harm from occurring.

#### Statute of limitations

Member States should ensure that any limitation period for bringing legal actions under this law is reasonable and sufficient, taking into special account the particularities of transnational litigation<sup>16</sup>.

The limitation period for bringing legal actions under this law should be **no less than five years**.

#### Parallel litigation

EU courts should have **jurisdiction** over legal actions under this law, **regardless of** whether related **proceedings against the subsidiary, supplier or subcontractor** are brought in the courts of a third state.

#### No claim preclusion

A foreign ruling against the liability of a subsidiary, supplier or subcontractor should not prevent EU courts from determining the liability of an undertaking for the same harm.

means, either separately or in combination, and having regard to the considerations of fact and law involved.

<sup>14</sup> A legal person should be deemed economically dependent on an undertaking where, as supplier or purchaser of a certain type of goods or services, the former depends on the latter in such a way that sufficient and reasonable possibilities of switching to other undertaking(s) do not exist.

<sup>15</sup> Undertakings may therefore discharge their liability if they can prove that they took all due care to identify and avoid the damage.

<sup>16</sup> Limitation periods should not begin to run before the human rights or environmental abuse has ceased and the plaintiff knows, or can reasonably be expected to know: a) of the behaviour and the fact that it constitutes a human rights or environmental abuse; b) of the fact that the abuse caused or contributed to the harm; and c) of the identity of the undertaking potentially liable for the harm.

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## 5) Final provisions

### Overriding mandatory provisions

All provisions in this law, procedural and substantial, should be considered as overriding mandatory<sup>17</sup> and therefore **apply irrespective of the law otherwise applicable to the non-contractual obligation.**

### Non-regression

The implementation of this law should in no way constitute grounds for justifying a reduction in the general level of protection of human rights and the environment<sup>18</sup>.

### More favourable provisions

Member States may introduce or maintain provisions that are more favourable to the protection of human rights and the environment.

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<sup>17</sup> Within the meaning of Article 16 of the Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II).

<sup>18</sup> In particular, it should not impact on other existing subcontracting and supply chain liability frameworks.

# EU Model Legislation on Corporate Responsibility to Respect Human Rights and the Environment | SUMMARY

## SCOPE

- Companies domiciled in an EU Member State
- Companies placing products on or providing services in the internal market

## STANDARDS

- Internationally recognized human rights
- Internationally recognized labour rights
- International environmental standards


- Identify and assess impacts
- Cease and remedy abuses
- Prevent and mitigate risks
- Monitor implementation

## REQUIREMENTS

### Respect and ensure respect of STANDARDS


- In their own activities
- Throughout their global value chain

### Conduct DUE DILIGENCE

- Take all necessary measures to 
- Consult stakeholders
- Report on due diligence actions and results
- Document all due diligence actions and results

## ENFORCEMENT

### JUDICIAL REMEDY

- **CIVIL LIABILITY**
  - For harm caused or contributed to by controlled or dependent entities
  - For harm linked to their products, services or operations through a business relationship  **unless the company acted with DUE CARE**
- **Facilitating access to remedy**
  - Fair distribution of the burden of proof
  - Reasonable statute of limitations (5 years)
  - EU jurisdiction regardless of parallel litigation

### PUBLIC ENFORCEMENT

- Proportionate, effective and dissuasive penalties and sanctions:
- On the initiative of investigating / enforcement authorities
  - On the complaint of members of the public



Overriding mandatory provisions







## Contact

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