



HUMAN RIGHTS DUE DILIGENCE

A TRADE UNION TOOLKIT

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with the support of



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TABLE OF CONTENTS

ASSESSING HUMAN RIGHTS DUE DILIGENCE – A TRADE UNION CHECKLIST	3
I. COMPANY POLICY FOR RESPONSIBLE BUSINESS CONDUCT	3
II. RISK MAPPING – TRANSPARENT VALUE CHAINS	4
III. RISK MAPPING – IDENTIFICATION OF RISKS TO WORKERS' RIGHTS	4
IV. ADDRESSING THE RISKS	5
V. TRACKING IMPLEMENTATION AND RESULTS	6
VI. GRIEVANCE MECHANISMS	6
 INTRODUCTION	 7
 SECTION I: UNDERSTANDING HUMAN RIGHTS DUE DILIGENCE	 8
1.1 HRDD in a nutshell	8
1.2 Why HRDD? The rise of global value chains and the responsible business conduct agenda ..	8
1.3 Key concepts	9
 SECTION II: WHY IS HRDD IMPORTANT FOR WORKERS?	 11
2.1 The opportunities: better enforcement of trade union rights	11
2.2 The risks: a process led by and for businesses	12
2.3 How HRDD is currently applied – practices in the services sector	12
 SECTION III: A STEP-BY-STEP GUIDE TO HRDD	 14
Where to look to identify existing practices	14
Step 1: Embed responsible business conduct into policies and management systems	14
Step 2: Identify and assess adverse impacts in operations, supply chains and business relationships	15
Scope of the risk mapping	15
Trade union rights as salient human rights	17
Identifying the risks	19
What to look for in a due diligence plan	19
What to do in the absence of due diligence	20
Step 3: Cease, prevent or mitigate adverse impacts	24
Trade union rights as enabling rights	24
What to look for in a due diligence plan	24
What to do in case of an incomplete action plan	26
Step 4: Track implementation and results	26
Step 5: Communicate how impacts are addressed	27
Step 6: Provide for, or cooperate in, remediation when appropriate	28

SECTION IV: SOURCES OF LEVERAGE IN CASE OF ABSENT OR POOR HRDD PRACTICES . . .	29
CONCLUSION	30
ANNEX – OVERVIEW OF MAIN HRDD INSTRUMENTS	31
A menu to pick and choose from	31
Mandatory vs voluntary	31
The forthcoming EU Directive	32
The United Nations Guiding Principles on Business and Human Rights	32
The OECD Guidelines for Multinational Enterprises	32
ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. . .	33
EU sectoral Regulations	33
EU Non-Financial Reporting	34
National initiatives	34
Stakeholder initiatives	35
Multi-stakeholder initiatives	35
Worker-driven initiatives	36
Box 1: Engagement with trade unions – examples of practices	15
Box 2: Mapping of the value chain – examples of practices	16
Box 2: Mapping of the value chain – examples of practices	17
Box 3: Examples of saliency and materiality assessments	18
Box 4: Examples of risks in information, communications, technology and related services ('ICTS')	20
Box 5: Examples of risks in the Finance sector	21
Box 6: Examples of risks in the Commerce sector	22
Box 7: Examples of risks in the Graphical and Packaging sector	22
Box 8: Examples of risks in the Property Services and Care sector	23
Box 9: Example of a weak action plan	24
Box 10: Examples of Global Framework Agreements for the implementation of workers' rights	25
Box 11: Monitoring HRDD – examples of practices	27
Box 12: Trade union involvement in HRDD – a to-do list	30
Figure 1: Due diligence process and supporting measures	8
Figure 2: Embedded responsible business conduct – what to look for	14
Figure 3: Risk mapping – what to look for	15
Figure 4: Action plans – what to look for	24
Figure 5: Monitoring/Audits – what to look for	26
Figure 6: Communications – what to look for	27
Figure 7: Remediation – what to look for	28
Table 1: Main sources of HRDD – a recap	10

ASSESSING HUMAN RIGHTS DUE DILIGENCE – A TRADE UNION CHECKLIST

This checklist has been drafted for the attention of workers' representatives in trade union alliances and European Work Councils ('EWCs') who wish to assess the quality and the relevance of existing Human Rights Due Diligence ('HRDD') processes. It follows the recommendations of the trade union toolkit published by UNI for effective processes to address violations of workers' rights in value chains.

The checklist addresses the following topics:

1. Company policy for responsible business conduct
2. Risk mapping – transparent value chains
3. Risk mapping – identification of risks to workers' rights
4. Addressing the risks
5. Tracking implementation and results
6. Grievance mechanisms

Green flags  indicate good practices that can help secure effective outcomes. Red flags  highlight potential violation of HRDD duties. Further explanation and examples on each of the topics can be found in the corresponding sections of the trade union toolkit.

Workers' representatives will often find answers to their questions in their company's annual reporting. This checklist can also serve as a guide for EWCs and trade union alliances to requesting relevant information from management.

We recommend workers' representatives coordinate with UNI for the following steps in particular: cross-checking of identified risks in the whole value chain, existence of Global Framework Agreements, and appropriate remediation in case of violation of HRDD duties.

I. COMPANY POLICY FOR RESPONSIBLE BUSINESS CONDUCT

HRDD should be a permanent, ongoing process, mainstreamed in all business operations. Companies should ensure active trade union involvement. Whilst conducting HRDD is the responsibility of management, meaningful impact on workers' rights can only occur with full trade union engagement.

Q1.
Has the company set up a department dedicated to HRDD?

- | | |
|---|---------------------------|
|  | a. Yes |
| | b. No |
|  | c. Other (please specify) |

Q2.
How does the company engage with trade unions when conducting HRDD?

- | | |
|---|---|
|  | a. Global Framework Agreement |
|  | b. Permanent point on the agenda of the EWC/trade union alliance |
| | c. Social audit conducted by CSR industry |
|  | d. Employees' survey (replacing consultation of workers' representatives) |
| | e. Multi-stakeholder initiative |
|  | f. The company does not engage with trade unions |

Note: Social audit and multi-stakeholder initiatives that do not engage with workers' representatives

and/or trade unions should be considered potential violations of HRDD duties.

II. RISK MAPPING – TRANSPARENT VALUE CHAINS

Companies should provide sufficient information on their business operations to enable workers' representatives to gauge the nature and scale of risks to human rights.

Q3.
Does the company share information on its suppliers (e.g. production by subsidiaries, intermediaries, first-tier suppliers)?

-  a. Yes, the company provides information on suppliers: type, number and percentage of total supplies
- b. The company only provides broad information on suppliers
- c. The company does not provide any information on suppliers

Q4.
Aside from suppliers, does the company share information on regular business partners (e.g. subsidiaries, franchises, licences, subcontractors, temporary work agencies)?

-  a. Yes, the company provides detailed information on business partners: type, number and volume of operations
- b. The company only provides broad information on business partners
-  c. The company does not provide any information on business partners

Q5.
Can the company share a list of all business partners?

-  a. Yes, this list is public
-  b. Yes, to the workers' representatives
- c. No

Q6.
Do you have a detailed breakdown of countries in which regular business partners are established?

-  a. Yes, the company provides a list of business partners per country and the respective volume of operations
- b. The company provides a list of business partners per country but does not indicate the volume of operations
- c. No, the company does not provide details on regular business partners

Q7.
Does the company provide information on all the countries in which it employs workers?

-  a. Yes, the company provides a breakdown of the workforce on a country-per-country basis
- b. The company provides a breakdown of the workforce but only on a regional basis
-  c. No, the company does not provide details on the number and location of workers

III. RISK MAPPING – IDENTIFICATION OF RISKS TO WORKERS' RIGHTS

Violations of workers' rights should rank high on company risk mapping. Again, workers' representatives should be consulted to ensure that potentially significant risks to workers' rights are not neglected early in the risk mapping process.

Q8.
Are trade union rights identified as salient human rights?

Freedom of association, the right to organize and the right to collective bargaining are fundamental workers' rights, guaranteed by international standards.

Salient human rights always stand out in risk mapping because they are at risk of the most severe negative impact throughout the company's activities. In contrast, a materiality analysis involves a subjective assessment by internal and external stakeholders (e.g. investors, shareholders, workers).

-  a. Yes, trade union rights are identified as salient human rights
-  b. The company identifies risks to trade union rights, but these are not prioritized
-  c. The company does not identify trade union rights as possible risks

Q9.
How has the company involved workers' representatives in risk mapping?

-  a. Through consultation of workers' representatives
-  b. Through employee surveys only
-  c. The company has not engaged with workers' representatives in the risk mapping

Q10.
Have risks to workers' rights been identified?

-  a. Yes
-  b. No, the company does not identify any risks to workers' rights

Q11.
Does the company report on situations which may heighten the risks to workers?

The following situations in particular may heighten the risks to workers:

- Operations in countries at risk, as documented by the ITUC Global Rights Index
- Outsourcing of labour-intensive activities (e.g. to subcontractors or temporary work agencies)
- Work carried by a vulnerable category of workers (e.g. migrant workers)
- Significant risks to health and safety (e.g. use of chemicals, hazardous maintenance work)

-  a. Yes
-  b. No
-  c. The company does not address workers' rights

Q12.
Does the list of risks to workers' rights address your concerns?

-  a. Yes, the mapping is sufficiently detailed and complete
-  b. Partially: the mapping is too vague
-  c. Partially: some risks are missing
-  d. The company does not address workers' rights

IV. ADDRESSING THE RISKS

On the basis of the identified risks, the company should stop activities that cause an adverse impact on human rights. The company should also develop a plan to prevent or at least mitigate potential future impact.

Q13.
Does the company commit to ensuring that trade union rights are respected in its own operations and global value chain?

-  a. Yes
-  b. No

Q14.
Has the company signed a Global Framework Agreement?

-  a. Yes
-  b. No

Q15.
Does the company action plan contain one or several of the following measures?

-  a. Training and capacity building for the advancement of decent work and trade union rights
-  b. Action to tackle health and safety issues, including election of health and safety committees on all sites
-  c. Reviewing risky business models (e.g. outsourcing, temporary agency work)

	d. Reviewing operations in high-risk countries
	e. Supplier/business partner codes of conduct
	f. Divestment/cessation of business relationships
	g. Other: please specify
	h. No, the action plan does not contain concrete measures to address the risks to workers' rights

Q16.
Does the action plan respond to the risks listed in the mapping (see above Q10)?

	a. Yes
	b. No, but the most important risks are addressed
	c. No

V. TRACKING IMPLEMENTATION AND RESULTS

Companies should report on the way they are addressing human and workers' rights. The goal for workers' representatives is to ensure constant improvement of the due diligence process through permanent and joint monitoring.

Q17.
Has the company set up a permanent monitoring mechanism?

	a. Yes
	b. No

Q18.
Are workers' representatives involved in the monitoring of risks to workers' rights?

	a. Yes
	b. No

Q19.
Has the company provided one or several of the following indicators to measure progress?

	a. Detailed breakdown of the workforce and evolution of operations in high-risk countries
	b. Collective bargaining coverage globally and per country
	c. Number of meetings with EWC/trade union alliances/UNI
	d. Presence of elected health and safety committees
	e. Evolution of staff turnover
	f. Number of work-related accidents
	g. Corporate tax information, in line with GRI Standard 207
	h. Other (please specify)
	i. The company does not provide any objective indicators

VI. GRIEVANCE MECHANISMS

If an adverse impact on human rights occurs in spite of due diligence, remediation should be made available. This step is particularly relevant for voluntary frameworks where the legal consequences for absent or weak due diligence are unclear. Depending on the instruments, remediation procedures can sometimes be available through an independent mechanism, external to the company.

Q20.
Has the company set up a mechanism for workers to raise grievances?

	a. Yes
	b. No

Q21.
Are trade unions involved in the grievance mechanism?

	a. Yes. Please specify:
	b. No

INTRODUCTION

Due diligence is a standard of care which aims at analysing and mitigating the risks arising from a business or investment decision. Human rights due diligence is recognized in a number of global authoritative instruments and is now widely regarded as an essential tool to enable multinational enterprises to live up to their responsibilities towards people and the planet. As countries around the world are now introducing due diligence frameworks into their domestic legal orders, and as the European Union is expected to soon enact its own binding standard, a momentum around mandatory human rights due diligence is now building.

The labour movement takes a close interest in due diligence. Concerns about continuous violations of human and workers' rights in value chains, including freedom of association and the right to collective bargaining, are indeed multiplying. The COVID-19 pandemic has created even further concerns, with trade unions reporting cases of non-payment of wages and harsh dismissals in disrupted supply chains, violations of front-line workers' health and safety, and an increase in surveillance devices, for instance for remote workers. For these reasons, the trade union movement has joined civil society organisations in calling for mandatory due diligence frameworks.

Beyond the legal aspects of due diligence frameworks, a fundamental aspect of robust processes is the close involvement of workers' representatives. In 2021, UNI Europa launched a two-year project to empower workers' representatives and trade union networks for robust and effective due diligence processes. Among other training initiatives, the project

proposes to create a trade union toolkit on human rights due diligence as a resource for UNI Europa affiliates and beyond.

This toolkit pursues a double objective:

- 1. To increase awareness of the importance of human rights due diligence for workers, its opportunities and risks to it**
- 2. To provide practical guidance on the steps that workers' representatives should take in order to secure meaningful processes**

It builds on desktop research, interviews with UNI Europa and UNI Global representatives and training sessions with members of European Works Councils and trade union alliances. The targeted audience includes European Works Councils and trade union alliances, in five UNI Europa sectors in particular: Finance, Commerce, Graphical/Printing, Property Services and UNICARE, and Information and Communication Technology Services (ICTS).

Section 1 describes the concept of human rights due diligence and provides first recommendations for a trade union strategy. Section 2 draws on current practices to illustrate the importance of robust processes for workers. Section 3 provides step-by-step guidance, suggesting concrete actions that could be taken by trade unions and workers' representatives. Section 4 reviews possible sources of leverage in case of poor or absent due diligence. A detailed overview of existing human rights due diligence instruments can be found in the Annex.

SECTION I: UNDERSTANDING HUMAN RIGHTS DUE DILIGENCE

This section provides contextual information about human rights due diligence (hereafter 'HRDD'): definition (1.1), objectives (1.2) and key notions (1.3).

1.1 HRDD IN A NUTSHELL

2011 saw the emergence of HRDD as a new standard of care. Beyond financial risks, businesses are now expected to also investigate potential abuse of human rights in their activities. More specifically, the United Nations has defined HRDD as **the process through which business enterprises 'identify, prevent, mitigate and account for how they address their adverse human rights impacts'**¹. According to the OECD, HRDD should be an integral part of business decision-making and risk management systems. Unlike other forms of duty of care, HRDD is not about managing material risks to the business; it is meant to deal with impacts to the human rights of stakeholders, including workers and communities.²

Thus, HRDD advances a stakeholder approach to capitalism, according to which companies are oriented to serve the interests of all their stakeholders and not just their shareholders.

HRDD seeks to mainstream human rights issues across the whole of the business value chain. It in-

volves several steps, ranging from formally integrating responsible business conduct into corporate risks management systems to reporting how the risks have been addressed. Section 3 of this toolkit provides a step-by-step guide to HRDD in line with the process described in figure 1 below.

1.2 WHY HRDD? THE RISE OF GLOBAL VALUE CHAINS AND THE RESPONSIBLE BUSINESS CONDUCT AGENDA

HRDD has to be seen as an effort to restore responsible business conduct in global markets. Countries around the world have pledged to guarantee human rights in line with international standards enacted in particular by the United Nations ('the UN'), the International Labour Organization ('the ILO'), the Council of Europe and the European Union ('the EU'). Yet, there are serious weaknesses in their implementation.

Figure 1: Due diligence process and supporting measures



(Source: OECD, 2018)

1 UNGPs, Principle 17

2 OECD (2011), *Guidelines for multinational enterprises*, p.23

According to the ILO, 152 million children were still in child labour in 2016. In that year, twenty-five million men, women and children were subjected to forms of forced labour. Much discussion on human rights violation focusses on these challenges. The critical impact of trade union rights on unacceptable employment practices is less frequently raised. Yet, more than 40% of the world's population lives in countries that do not commit to freedom of association and the right to collective bargaining. In many countries that have ratified the core ILO Conventions, violations of these rights persist in law and practice³. In the past nine years, the annual ITUC Global Rights Index has recorded unprecedented attacks on free speech and assembly, from 26% of countries in 2014 to 41% of countries in 2022. According to the latest edition of the Index, *'the systematic dismantling of the building blocks of freedom and democracy is taking place through sustained attacks on workers' rights and workplace democracy through restrictions on the right to strike, free speech and assembly'*⁴.

Authoritarian regimes and the lack of solid enforcement mechanisms and adequately funded inspectorates explain the problematic implementation of human rights standards. International instruments often have limited impact in the regions where they are most needed.

The weaknesses of international human rights instruments have been exacerbated by the rise of global value chains. Today, large enterprises account for a major share of the global economy. Business activities are increasingly organized within global value chains where goods and services are sourced from different countries⁵. In practice, this means that multinational enterprises are powerful private actors able to structure their operations across the globe. The subsidiaries of a company group are subject to the laws of the countries in which they respectively operate but **the multinational enterprise as a global entity implements an overall business strategy that cannot be captured by national regulations.** Through artificial group structures and complex business relationships, multinationals set countries in competition with each other and minimize their tax and legal liabilities.

In sum, the principle of limited liability within a corporate group, whereby a parent entity may not be held responsible for the failures of a subsidiary, coupled with the quest for the cheapest cost of production and service delivery, has given rise to substantial

concerns about large multinationals routinely conducting business in violation of international human rights standards⁶.

It is in this context that the notion of responsible business conduct arises. **Whilst states are the main duty bearers under human rights instruments, responsible business conduct focuses on the responsibility of private actors.** Responsible business conduct is understood as *the expectation that businesses can play a major role in contributing to economic, environmental and social progress, especially when they minimise the adverse impacts of their operations, supply chains and other business relationships*⁷.

1.3 KEY CONCEPTS

The close involvement of trade unions is critical to effective HRDD. Many instruments stress that, to be effective, HRDD should not be a solitary exercise unilaterally conducted by the company. The importance of engaging with stakeholders through interactive processes is often raised, which confirms that HRDD really is a process of mitigating adverse impact on third parties, not the business itself. However, the notion of stakeholders sometimes remains undefined, and some instruments can overlook the specific role of trade unions and employees.

There are several tools, at international and at national level, with which trade unions can engage. Table 1 recapitulates key elements of existing instruments, their legal effects and their relevance for labour. A more detailed overview of existing sources of HRDD can be found in the Annex.

The notion of human rights varies from one instrument to another, but most norms will reference international standards⁸. In particular, the ILO Declaration on Fundamental Principles and Rights at Work contains detailed benchmarks to interpret the extent of a company's duties towards workers.

This trade union toolkit focuses on freedom of association and collective bargaining. Social dialogue mitigates downwards pressure on labour costs and the related riskiest business models. Furthermore, the right to join a trade union and the right to collective bargaining are enabling rights: respecting these rights will allow the fulfilment of other rights in terms of fair employment practices and quality jobs.

The main duty bearer of HRDD is the controlling company in a company group, i.e. the company

3 ILO (2020), *Issue paper on COVID-19 and fundamental principles and rights at work*

4 *Democracy in crisis – ITUC GRI* (globalrightsindex.org) The ITUC Global Rights Index rates countries according to their compliance in law and in practice with internationally recognized collective labour rights, in particular freedom of association, the right to collective bargaining and the right to strike.

5 OECD (2019), *Multinational enterprises in domestic value chains*

6 European Commission (2020), *Study on due diligence requirements through the supply chain*

7 OECD (2018), *OECD due diligence guidance for responsible business conduct*

8 A description of relevant standards can be found in the Annex

which has economic and organizing power over the business activities of the group. In practice, parent companies are usually considered controlling undertakings.

In some cases, the parent company will in reality have little influence on the day-to-day activities of the business. In particular, letterbox companies may be formally considered parent entities, even though they are artificial constructs established for the purpose of tax avoidance. Other legal arrangements may also be used to minimize or shift corporate responsibility. Such would be the case for franchising and outsourcing models, where effective power lies with the franchisor/contractor. It is however important to look beyond formal legal constructs and to identify the company which owns effective control over the business activities.

It should also be noted that subsidiaries and non-controlling entities might become duty bearers if the national law of the country in which they are established requires them to also undertake due diligence processes.

The scope of HRDD must be large. Failing a wide scope of application, HRDD frameworks may act as a

further incentive for multinationals to contract out their riskiest operations with a view to minimizing their own liability. Businesses are therefore expected to verify activities within their own company groups but also those of business partners. The HRDD instruments described in detail in the Annex of this toolkit apply to at least supply chains, i.e. all the steps required to provide a product or service (e.g. sourcing, procurement, assembly, logistics). But this is not enough. Trade unions need to ensure as wide a scope as possible for HRDD. For this reason, **HRDD should apply to all business activities in a value chain. This would cover all the steps, from manufacturing a product or designing a service to selling it to the final consumer**, including, for instance, marketing, sales, customer support and in general any activity designed to add value to the product or service. Ancillary services such as cleaning and provision of private security should also be included in the HRDD process. Current HRDD practices are often limited to risks in the upstream of the value chain, i.e. with regard to suppliers, leaving aside the risks in the downstream markets. Yet, subcontracting processes also create significant concerns.

Table 1: Main sources of HRDD – a recap

Norms	Mandatory	Remedies	Reference to freedom of association, right to organize and collective bargaining	Reference to stakeholders' involvement	Foresees a dedicated role for trade unions/workers' representatives
UNGPs			✓	✓	
OECD Guidelines		✓ (mediation through NCPs)	✓	✓	✓
ILO Tripartite Declaration		Neutral ground for discussion with qualified facilitators	✓	✓	✓
EU sectoral Regulations	✓	✓			
EU proposal	✓	✓	✓	Modest involvement of stakeholders	Modest role
French law	✓	✓	✓	✓	✓
German law	✓	✓	✓	✓	✓
Proposed Dutch Bill	✓	✓	✓	✓	✓
The Fair Wear Foundation		✓	✓	✓	✓
The TruStone Initiative		✓	✓	✓	✓
Bangladesh Accord	✓ (upon signature)	✓	✓		✓
GFA		Depending on the GFA	✓		✓

SECTION II:

WHY IS HRDD IMPORTANT FOR WORKERS?

This section explains the importance of active involvement of workers' representatives and trade unions in due diligence. It stresses the opportunities for the respect of trade union rights but also the risks of processes left mostly to management. The final subsection draws on case studies conducted with UNI affiliates to shed light on current practices.

2.1 THE OPPORTUNITIES: BETTER ENFORCEMENT OF TRADE UNION RIGHTS

HRDD has the potential to bring some social up-grading in global value chains. If implemented with the active involvement of trade unions, HRDD will contribute to the respect of workers' rights globally. The creation of a level playing field for businesses constitutes an important step forward to eradicate competition on low labour costs and to promote decent work.

The notion of 'human rights' is understood in the broadest sense, and civil society organisations will build alliances to ensure proper oversight of all the risks involved. **For workers, essential aspects of human rights include the fundamental right to join a trade union (usually referred to as freedom of association), the right to organize and the right to collective bargaining.** These rights are guaranteed by ILO Core Conventions C87 and C98 and are frequently referred to in HRDD instruments (see Table 1).

Trade unions will use HRDD to seek better application of workers' fundamental rights. Trade union concerns about continuous violations in supply and subcontracting chains are indeed multiplying. In 2022, the ITUC reported that violations of workers' rights are 'at a nine-year high'. Violations by governments and employers are taking place worldwide, outside but also within Europe⁹.

HRDD complements necessary government action by offering an operational framework to address the violation of trade union rights. As outlined in Section 3 of this toolkit, there are specific risks to every sector that require targeted measures. Tailor-made solutions can be negotiated, specifically adapted to company-level realities.

Furthermore, due diligence is not only about ceasing detrimental behaviour. It is also about prevention and mitigating its potential impact. HRDD can, as a result, help develop a culture of anticipation of risks, as opposed to dealing with consequences.

Because such an anticipative approach is the raison d'être of workers' representation at company level, HRDD can become an additional leverage for trade union influence. For instance, EWCs struggling to have access to timely and meaningful information and consultation is an increasingly reported issue. Due diligence obligations, if channelled through trade union alliances and EWCs, could considerably strengthen information rights. The risk mapping exercise, a fundamental element of HRDD processes, indeed offers potential for more transparency on business operations, business partners and key data on the workforce. As far as consultation is concerned, HRDD requires companies to implement due diligence in close cooperation with trade unions and stakeholders. Trade union alliances and EWCs should therefore use the entry point offered by HRDD duties to increase their influence on business practices.

Further, as HRDD increasingly relies on mandatory frameworks, some companies may also realize that involving workers and their representatives is the most effective way to address human rights impact, and therefore to minimize potential risks of liability.

Finally, **HRDD fosters transnational trade union solidarity.** For HRDD to function, workers' representatives need to collect information about labour rights violations in other countries. Indeed, HRDD offers the possibility to raise questions and be consulted on topics which management often deems nation specific.

Trade unions and workers' representatives will also use their leverage in countries with high labour standards to work towards a better approach to workers' rights in countries without a strong trade union presence. As many large multinationals are headquartered in Europe, trade unions benefitting from comparatively stronger legislative frameworks will have greater ability to influence corporate behaviour globally. Through dialogue with trade unions, management may also realise that risks to human rights outside Europe create reputational and legal risks to the European parent company.

Trade union solidarity is indispensable to limit the ability of multinational enterprises to put workers in competition with each other. For this reason, business operations located outside the EU should raise the interest of EWCs. At the same time, it should not be assumed that the EU itself is immune from trade union rights violations.

Overall, the role of Global Union Federations is key to facilitate and coordinate the exchange of information between all levels of workers' representation.

2.2 THE RISKS: A PROCESS LED BY AND FOR BUSINESSES

As part of their strategy to minimize reputational risks, HRDD is often presented by companies as one element of broader corporate social responsibility efforts. Human rights impacts tend to be addressed to the extent that they cause a risk to the company and its shareholders, not as a social impact per se. Yet, international legal standards clearly stipulate that HRDD is designed to deal with impacts to human rights of stakeholders.

HRDD outcomes are not always satisfactory from a trade union perspective. As illustrated by the following Section 2.3, current practices are not robust enough to tackle violations of trade union rights in the value chains where corrective action is the most needed. Mandatory frameworks may also lack concrete outcomes if the law does not provide sufficient guarantees for trade union involvement in the HRDD process.

In addition to ineffectiveness, there is a risk that a corporate-led HRDD undermines existing channels for social dialogue. Some companies may, for instance, attempt to replace information and consultation procedures with weaker due diligence, arguing that both fill similar purposes. Worker involvement would then take the form of employees' surveys or social audits. Section 3 of this toolkit raises red flags on such methods when they constitute the sole or main evaluation by the company of its compliance with labour standards (see Section 3, step 2).

A similar risk arises in the context of separate liability frameworks, in particular in subcontracting chains. On this, the ETUC wrote: **'companies shall not be able to escape liability established in other legal instruments by arguing that they have respected the due diligence obligations'**¹⁰.

Finally, in the fight against climate change, we should expect that the impact on the environment will be increasingly taken into account by companies. According to an EU Commission study, the vast major-

ity of business stakeholders said they already include environmental impacts in their due diligence¹¹. **If environmental due diligence further develops without addressing the social impact, trade union calls for a just transition will be undermined.** Indeed, just transition requires that companies accompany their action on climate change with the protection of workers' rights and livelihoods.

In order to address those pitfalls, trade unions and workers' representatives should increase their understanding of due diligence with a view to taking ownership of upcoming processes.

2.3 HOW HRDD IS CURRENTLY APPLIED – PRACTICES IN THE SERVICES SECTOR

According to a European Commission publication dated January 2020, just over one-third of surveyed businesses indicated that they are undertaking HRDD. The majority of these respondents indicated that third-party impacts are included for the first-tier suppliers only and that current due diligence practices beyond the first tier and for the downstream value chain are significantly fewer by comparison¹².

French multinationals are a notable exception because of the legal obligation introduced in 2017. However, where the company has carried out HRDD, trade unions are generally not involved. French law provides for alert mechanisms in agreement with trade unions. Stakeholder engagement is also encouraged throughout the HRDD process. These obligations are not always respected in practice, with companies instead unilaterally deciding how to deal with a grievance.

As part of this UNI project, a series of trade union training sessions was conducted between January and May 2022 in four services sectors: Finance; Information and Communications, Technology and Related Services ('ICTS'); Commerce; and Graphical and Packaging. UNI affiliates in these sectors assessed HRDD practices in eight multinational enterprises, confronting public corporate reporting with their own internal experience. **These exercises highlighted trade unions' overall dissatisfaction with current due diligence practices.**

In some instances, in particular for non-EU multinational enterprises ('MNEs') in the Graphical and Printing sector, HRDD is not carried out at all.

For EU MNEs that did carry out due diligence, we noted large variations in the reporting. These inconsistencies are presumably caused by the lack of a common legal framework and unclear taxonomy.

¹⁰ ETUC (2019), *ETUC position for a European Directive on mandatory human rights due diligence and responsible business conduct*

¹¹ See below note 26, p.15

¹² European Commission (2020), *Study on due diligence requirements through the supply chain: final report*, p.14–15

Human rights standards are widely recognized, and companies frequently refer to ILO Core Conventions, and UN and OECD guidelines. However, the methodology and disclosure topics for due diligence processes vary significantly from one report to another. As a result, it can be difficult and always very time consuming for worker representatives to extract relevant information from public reporting. **A central finding of our assessment is that, out of eight case studies, five companies did not involve trade unions in their due diligence processes.** To mask the lack of meaningful engagement with trade unions, MNEs tend to list existing worker representation bodies, often a legal obligation in any case. **In one instance where the company did engage with its EWC, that involvement remained superficial.** Information was provided to the EWC after the due diligence process was finalized and on the occasion of one meeting only.

This does not mean that MNEs do not engage with employees during their due diligence processes. They frequently do so through employee surveys, certification schemes and auditing, either internal or external to the company, thus bypassing worker representation bodies. Section III of this toolkit underlines that the CSR initiatives led unilaterally by management are now very common and can be a direct cause for inefficient or even counterproductive HRDD practices.

In two cases, the company appeared to engage meaningfully with trade unions. In at least one of these MNEs, a Global Framework Agreement is in place, with detailed provisions on the involvement of UNI in the due diligence process.

All eight case studies have incomplete risk mapping. Either the due diligence process covers only the supply chain, leaving aside the company's own operations, or – conversely – a breakdown of employment information is provided for the company group with only vague references to the value chain. The latter is particularly worrying for companies that outsource labour-intensive activities to business partners established in countries that are considered high risk for workers' rights.

UNI affiliates in all four workshops concluded that management needed to provide substantial additional information in order to complete the risk mapping. However, UNI affiliates have so far not sought active engagement in due diligence processes. This is often due to a lack of awareness. Furthermore, in the absence of a mandatory framework, questions were raised as to the type of leverage that could be exercised on reluctant management.

As a logical continuation of incomplete risk mapping, **the measures designed to address risks of adverse impact on human rights often lack substance.** Only one case study provided a detailed action plan to address risks to workers' rights in the supply chain. In three cases, the mitigation measures only partially addressed the risks. Four MNEs did

not provide any concrete measures; their action plan merely consisting in a description of codes of conduct and internal management policies.

In light of these poor practices, the following section provides guidance as to how EWCs and trade unions can take a more active role in HRDD.

SECTION III: A STEP-BY-STEP GUIDE TO HRDD

This section provides guidance for each phase of the HRDD process, in line with the OECD process described in Figure 1. The following paragraphs will outline trade unions' objectives and concrete actions to achieve them. These actions can be taken either reactively (when workers' representatives are faced with existing due diligence) or proactively (in the absence of a due diligence plan, or where there are major gaps in the existing process).

WHERE TO LOOK TO IDENTIFY EXISTING PRACTICES

Information about a company's due diligence practices is primarily to be found in annual non-financial reporting. Non-financial information relates to a company's social, environmental and human rights information. This information is publicly disclosed by the company on its website. References to human rights due diligence processes can be found in 'universal registration documents' and/or sustainability reports. Companies registered in countries with mandatory frameworks often release a separate document, entirely dedicated to due diligence.

Corporate reporting often consists of lengthy documents. Workers' representatives may refer to the checklist provided at the beginning of this toolkit to quickly identify the most relevant elements of company information.

Whilst an essential source of information, company reporting needs to be approached with appropriate caution. Trade unions and workers' representatives will often find that the information is incomplete and sometimes misleading. As further described in this section, additional sources of information therefore need to be investigated, including questions to management and independent, worker-led, assessment.

STEP 1: EMBED RESPONSIBLE BUSINESS CONDUCT INTO POLICIES AND MANAGEMENT SYSTEMS

Figure 2: Embedded responsible business conduct – what to look for



According to the OECD guidance¹³, this step requires the company to adopt policies that articulate their business commitment to standards of responsible business conduct and plans for the implementation of due diligence. These company policies need to be implemented as part of regular business processes.

From a trade union perspective, **the goal** is to ensure that HRDD is a permanent, ongoing process mainstreamed in all business operations, and not a one-off exercise. Above all, companies must ensure trade union involvement in the development and implementation of HRDD. Whilst HRDD lies within management responsibilities, meaningful impact on workers' rights can only occur with full trade union engagement.

Step 1 therefore involves at least the following:

- **The responsibility for overseeing the due diligence process must be assigned to the senior level of management through a dedicated and cross-functional business unit.** In addition, board-level supervision would be particularly beneficial if workers are represented there.
- **HRDD must become a permanent point on the agenda of workers' representation bodies at national and transnational level, including national, European and SE works councils, as well as trade union alliances.** This means that a continuous dialogue should be put in place and that management will be expected to regularly report and seek feedback on due diligence outcomes.
- **Trade unions and workers' representatives are the main counterparts for dialogue on employment-related issues.** Management engaging the workforce through annual surveys or ad hoc employees' committees should be treated with great caution if this is the exclusive channel of communication. Multi-stakeholder initiatives also deserve attention when there is a risk of undermining trade unions and workers' representation bodies. In the absence of robust trade union engagement, such initiatives are indeed likely to be company-led and put in place to bypass stronger

employee representation. On this, the OECD has clarified that companies should prioritize engagement with representative trade unions¹⁴.

- **Global Framework Agreements negotiated between the company and the competent trade union federations provide the opportunity to formally put in place dedicated and permanent processes for due diligence dialogue.**

Box 1: Engagement with trade unions – examples of practices

The first example is not good practice as the company did not engage with trade unions nor worker representation bodies. In contrast, the company in the second example is formally committing to closely involve trade unions in the drawing up of the due diligence plan.

EXAMPLE 1:

(Source: anonymized extract from a universal registration document)

Specific assessment procedures with regard to human rights and fundamental freedoms:

- **“Chats with CEO” and focus groups are organized and conducted at each site by local management;**
- **Employee Satisfaction Survey**
- **HR Assessments: when the Group identifies a decrease in employee satisfaction or in overall performance;**
- **Security & Compliance Audits: the Group has established an internal compliance audit function.**

EXAMPLE 2:

(Source: extract from Global Agreement on Fundamental Rights, Société Générale – UNI Global, 4.02.2019)

This global agreement is part of the company's commitment to exercise due diligence to identify, prevent, mitigate and remedy human rights violations wherever they might occur in the company.

Through this agreement, UNI is a “stakeholder” for purposes of the “due diligence” plan required under French law of the duty of vigilance and recommended by the OECD Guidelines for multinationals.

UNI will be consulted on the duty of vigilance plan as part of the measures implemented to identify and prevent serious breaches in respect of human rights, fundamental freedom, safety and security of workers in order to propose, where appropriate, remedies when breaches have been observed.

STEP 2: IDENTIFY AND ASSESS ADVERSE IMPACTS IN OPERATIONS, SUPPLY CHAINS AND BUSINESS RELATION- SHIPS

Figure 3: Risk mapping – what to look for



This step requires that the company map its business operations with a view to gauging the nature and scale of risks to human rights. This scoping exercise is a fundamental element of HRDD. Risk mapping is indeed an essential prerequisite for the company to be able to minimize risks to workers' rights.

For trade unions, the **goal** is to have mapping of business operations that is as exhaustive as possible, and to identify the threats to employment and especially to workers' fundamental rights. Other impacts, for instance on the local population, may require partnership between workers' representatives and other stakeholders.

Scope of the risk mapping

Companies may decide to carry out risk mapping as part of an internal process, or they may rely on external resources. In both cases, it is essential that workers be identified as a group at risk and that **trade unions and EWCs, where they are effective, take an active part in the drawing up of the risk mapping.** All international norms are clear on that point: companies are required to engage with stakeholders. The ILO and the OECD are even more specific, expressly pointing at workers' representatives and trade unions.

According to international and most national norms, **the mapping must have a wide coverage.** This entails:

- Full transparency over the company's value chain: its own operations but also suppliers, subcontractors, franchisees, licensees, clients and more generally any regular business partners.

- No geographical limitations. Workers' representatives should ascertain whether the mapping covers operations within and outside the EU equally. It should not be assumed that EU operations are protected from violations of workers' rights. Likewise, an EU-based multinational should not escape or minimize its liability towards its non-EU operations.

Box 2: Mapping of the value chain – examples of practices

EXAMPLE 1

(Source: anonymized extract from an annual and sustainability report)

The following table provides useful employment information: exact numbers on a country-per-country basis and development over four years. It should be noted that information on employment by suppliers and other contractors is not provided in this table. If this information is not provided in other sections of the company report, it will not be possible to assess potential risks in the value chain. Depending on the focus of risks for this sector and/or employer, trade unions and workers' representatives will therefore need to request from management a breakdown of information for the value chain.

DISTRIBUTION BY MARKET

EUROPE (EX-SPAIN)

	2021	2020	2019	2018
Albania	249	221	243	263
Germany	4,684	4,753	5,531	5,874
Austria	1,334	1,253	1,455	1,477
Belgium	2,929	2,562	2,945	2,818
Belarus	350	278	290	298
Bosnia-Herzegovina	369	314	424	360
Bulgaria	663	600	716	733
Croatia	1,041	923	1,160	1,078
Denmark	309	292	329	335
Slovakia	443	305	359	302
Slovenia	235	235	276	267
Finland	240	249	260	269
France	10,315	8,729	10,030	9,414
Greece	4,004	3,639	4,278	4,014
Hungary	1,116	818	1,126	1,067
Ireland	958	743	854	882
Italy	8,794	6,890	8,626	8,600
Kosovo	245	215	211	157
Luxembourg	325	300	318	179
North Macedonia	289	132	154	155
Monaco	39	39	39	36
Montenegro	143	99	128	123
Norway	392	363	386	383
Netherlands	2,701	2,536	3,018	2,856
Poland	4,239	4,040	4,679	4,617
Portugal	6,572	5,050	7,247	7,001
United Kingdom	6,547	4,398	5,429	5,486
Czech Republic	605	505	700	643
Romania	2,532	2,238	3,027	2,864
Russia	10,148	9,119	10,696	10,365
Serbia	894	656	736	742
Sweden	754	736	844	833
Switzerland	1,479	1,478	1,564	1,506
Turkey	5,258	3,956	5,166	4,896
Ukraine	1,424	1,170	1,390	1,326
Total	82,619	69,834	84,634	82,219

ASIA AND REST OF THE WORLD

	2021	2020	2019	2018
Australia	1,763	1,501	1,636	1,504
Bangladesh	71	62	59	57
Cambodia	4	4	6	4
Mainland China	5,838	7,113	11,169	11,680
Hong Kong SAR	627	558	1,020	1,252
Macao SAR	75	105	170	181
Taiwan, China	447	498	626	649
South Korea	1,438	1,269	1,673	1,514
India	1,300	1,173	1,294	1,227
Japan	3,247	3,488	4,314	3,979
Kazakhstan	989	746	779	723
Morocco	38	34	26	16
New Zealand	112	119	115	99
Pakistan	3	2	2	2
Singapore	4	4	4	4
South Africa	490	524	633	548
Vietnam	14	15	15	13
Total	16,460	17,215	23,541	23,452

SPAIN

Spain	46,075	40,279	48,687	47,930
Spain—workforce, permanent contracts	37,657	36,627	36,632	35,745

AMERICAS

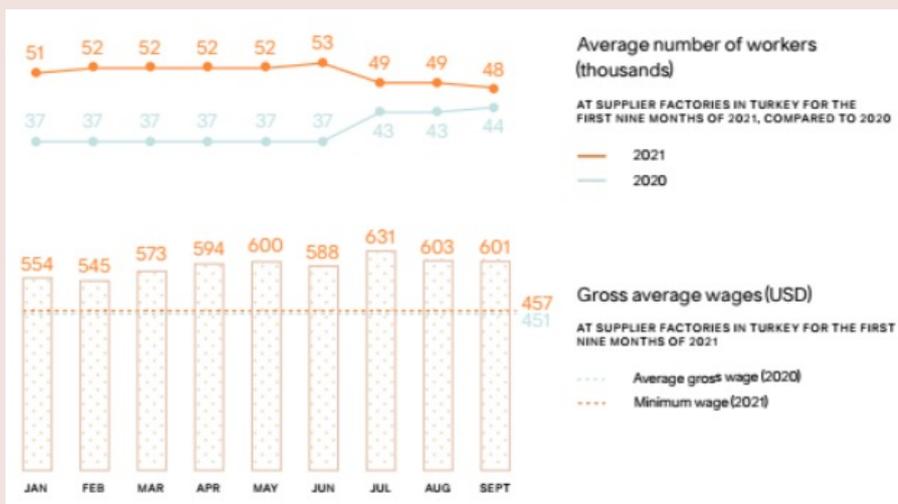
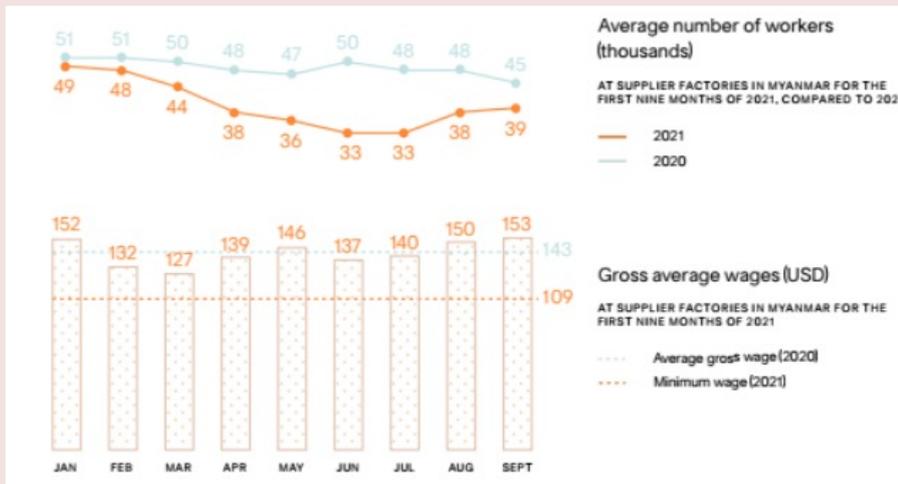
Argentina	795	848	872	885
Brazil	2,219	2,418	2,849	2,810
Canada	2,564	2,077	2,595	2,466
Chile	1,018	726	871	878
United States	6,897	5,080	6,310	6,267
Mexico	6,081	5,334	5,897	7,137
Uruguay	314	305	355	342
Total	19,888	16,788	19,749	20,785

EXAMPLE 2:

(Source: anonymized extracts from an annual and sustainability report)

In this example, the company provides detailed information on employment by its suppliers.

As illustrated below, the report provides a country breakdown of major suppliers, number of workers and average wage. This is a good starting point for workers' representatives to identify situations of high risk. In the two figures below, we can see for instance that the company relies on suppliers established in Myanmar and Turkey, which are among the ten worst countries for working people according to the 2021 ITUC Global Rights Index.



Trade union rights as salient human rights

Faced with a series of risks, a multinational enterprise will establish some priorities. In this process, it is important for trade unions to ensure that workers' fundamental rights rank high. In this regard, a key distinction has to be established between 'materiality' and 'saliency'.

A materiality analysis identifies the subject areas that are significant to the company's stakeholders. The materiality methodology involves identifying internal and external stakeholders (e.g. investors,

shareholders, workers) and having them judge the topics as more or less important according to their own priorities. EWCs can be asked by management to take part in materiality assessments, alongside other stakeholders.

Saliency does not define risks in reference to any audience. The focus is on topics which are consistently important. Salient human rights stand out because they are at risk of the most severe negative impact throughout the company's activities. Importantly, these risks are assessed by reference to impact on affected parties and not solely on the business interests¹⁵.

Independently from the materiality test, workers’ representatives and trade unions should always ascertain whether workers’ fundamental rights are being identified as salient human rights issues. Relying solely on a materiality assessment may lead the company to take into account the risks to the company but not the risks to society in general, and to workers in particular.

Where a company feels it cannot address all identified risks at the same time, further prioritization will take place, taking into account the scale and the severity of the impact, as well as the potential for remediation. Here again, **trade unions and workers’ representatives should be consulted to ensure that potentially significant risks to workers’ rights are not left aside too early in the risk mapping process.**

Box 3: Examples of saliency and materiality assessments

EXAMPLE 1:

(Source: anonymized extract from a human rights report)

In example 1, trade union rights are considered salient in the supply chain, in the company’s activities as ‘investment services provider’, and as ‘lender’. Trade union rights, however, are not assessed in relation to the company’s own operations (‘employer’) and activities as ‘service provider’.



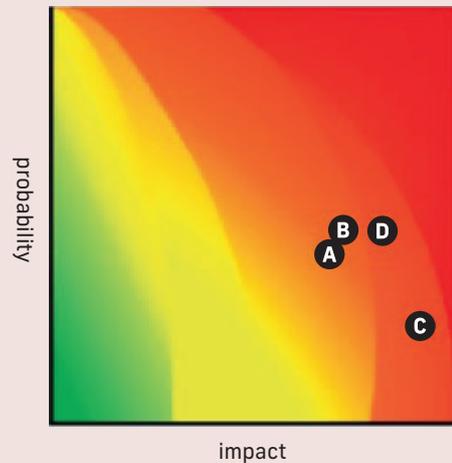
EXAMPLE 2:

(Source: anonymized extract from a public vigilance plan)

In example 2, human rights and fundamental freedoms (which include trade union rights) only emerge as part of a materiality test. These risks are considered to have a high impact on the company but with low likelihood of occurring. Risks to health and safety are considered more probable. The fact that labour rights rank low in probability is a possible indicator of ‘light’ risk mapping and mitigation measures.

Risks matrix (alphabetical order)

- A Lack of or faulty vigilance plan
- B Environmental damage
- C Abuses of human rights and fundamental freedoms
- D Health, safety and security of people



Identifying the risks

Overall, the following situations will heighten the risks to workers:

- Business operations are carried out in countries at risk, as documented by the annual ITUC Global Rights Index. The ITUC Index rates countries according to their compliance in law and in practice with internationally recognized collective labour rights, in particular freedom of association, the right to collective bargaining and the right to strike. Countries are rated in clusters 1–5+. A high-rated cluster means that the country does not guarantee collective rights.
- Labour-intensive activities are being outsourced, for instance to subcontractors or temporary work agencies. Such business models often increase downwards pressure on labour costs.
- Work is carried out by a vulnerable category of workers (e.g. migrant workers).
- The nature of the work entails significant risks to health and safety (e.g. use of chemicals, hazardous maintenance work, psychosocial risks).

Boxes 4–8 describe some of the specific risks inherent to the sectors covered by this toolkit.

What to look for in a due diligence plan

As HRDD is becoming mandatory in a growing number of countries, and with the prospect of an EU Directive, workers' representatives and trade unions will increasingly have to assess the strengths of due diligence plans. For many of these plans, there will not have been early and meaningful engagement with workers' representatives.

When screening the due diligence plans, in particular the non-financial information published annually by the company, workers' representatives should carry out the following analysis. In doing so, specific information may have to be requested from management.

i. Assess the extent to which workers and their representatives have been involved in the risk mapping.

Self-regulation practices such as company audits, employee surveys or certification schemes, which have now become very common, should raise red flags as signals of potentially unilateral initiatives by management. In any case, they do not constitute an adequate substitute for meaningful consultation with

trade union alliances and workers' representatives. They can, however, constitute facade exercises and be a direct cause for inefficient or even counterproductive HRDD practices. The American trade union federation AFL-CIO has for instance published a report describing how two major industry-backed initiatives, the Fair Labor Association and Social Accountability International, have delivered for management and corporations but failed to protect workers they claimed to benefit. The report also revealed how the CSR industry has withheld information on unsafe working conditions from workers and governments, or has supported employers against workers' claims¹⁶.

As far as EWCs are concerned, it should be recalled that a meaningful consultation involves the provision of relevant and early information. Overwhelming workers' representatives with voluminous and unrelated data, or presenting a finalized risk mapping, cannot be considered meaningful consultation¹⁷.

ii. Extract from company information the risks that have been specifically identified in the due diligence process.

This may be an arduous exercise as the list of risks is often lost in lengthy corporate social responsibility considerations not always relevant to the due diligence process. In looking for these risks, workers' representatives may seek inspiration from the broad trends identified in boxes 4–8. **A superficial risk mapping would identify risks in such broad terms that they could be applicable to any multinational enterprise.** Such would be the case for instance of a mapping that does not provide detailed information on the evolution of collective bargaining coverage, staff turnover or the geographical location of the workforce.

iii. With the support of the competent trade union federation, seek coordination with all relevant levels of trade union representation in the multinational and its business partners.

This is an important step to verify the soundness of the mapping. Through this coordination process, trade unions and workers' representatives will be able to compare the information provided by the company with practical realities.

iv. In light of the above steps i. to iii., assess whether additional action is required¹⁸.

An incomplete or superficial risk mapping warrants a trade union response. Additional action may be to **negotiate with the company an additional joint identification of risks**, as described under v. and vi.

¹⁶ AFL-CIO (2013), *Responsibility outsourced: social audits, workplace certification and twenty years of failure to protect worker rights*

¹⁷ Picard (2010), *European Works Councils: a trade union guide to directive 2009/38/EC*

¹⁸ For further details, see UNI risks analysis guidance

below. It may also be necessary to apply leverage and seek remedies as part of a concerted strategy with the trade union federation (see below, step 6).

What to do in the absence of due diligence

In the case that the company has not carried out HRDD, or when faced with a superficial risk mapping, workers' representatives and trade unions can envisage proactive steps in a bid to try to trigger a positive process. These steps may include:

i. A worker-led risk assessment

Workers' representatives should, in full coordination with UNI, envisage carrying out their own human rights impact assessment, either internally or relying on external expertise. Tools can include strategic corporate research, which is a way for trade unions to develop an objective assessment of the company's structure, prospects and strategies. Such an exercise will lead to more transparency about the business model of their company as well as the broader value chain context. Above all, it will allow workers' representatives to **forge independent expertise on the risks to workers' rights**.

As a response to tick-box social audits, the NGO Oxfam is carrying out human rights impact assessments in various economic sectors. Drawing on this experience, Oxfam learns useful lessons, which can easily be transferred to a trade union context¹⁹:

- The approach must be kept scalable. Focusing on the supplier level of the chain in the highest risk regions may be a good start.
- Access to trade unions at all levels of the value chain is critical. Limiting the interviews to EWC members will in most cases not provide a sufficiently complete picture of risks to workers' rights throughout business operations.
- Although a worker-led risk assessment is independent from management, it should be possible for the company to share key information on operations and suppliers. This could help assess, for instance, the impact of pricing and purchasing practices on labour rights.
- The assessment should not only identify adverse impacts on workers' rights but also explore their root causes, i.e. the drivers of violations, such as the political and socio-economic context.

ii. Negotiation with management

Drawing on the knowledge as well as the leverage that an independent human rights impact assessment may bring, trade unions could seek to negotiate with management a joint identification of risks to workers' rights. Such a joint exercise is likely to contribute significantly to the effectiveness of mitigation measures.

In doing so, workers' representatives and trade unions must be cautious about the possible substitution of management liability with their own. The responsibility for conducting HRDD remains with the company. This is especially important in the context of mandatory legislation, which may minimize penalties or even impose sanctions in case of a damage linked to an unsatisfactory due diligence process.

Box 4: Examples of risks in information, communications, technology and related services ('ICTS')

ICTS is a large sector with a variety of business models. Some multinationals, in particular telecom companies, rely on their own infrastructures. Others are more recent but fast-growing, and they rely on outsourcing services in order to compensate for their lack of existing networks. Most companies in ICTS operate at a multinational level. Some are particularly present on the European markets (telecoms), whilst others have a more global outreach (tech companies).

Key factors of risks in the ICTS sector include:

- **Outsourcing of labour-intensive activities.** Outsourcing of manpower is a key feature of fast-growing companies in the digital sector. Older telecom undertakings tend to rely on their historical networks, although outsourcing does exist for some activities. Outsourced companies are often contact centres and providers of business services.
- **Operations in high-risk countries with a poor record for the protection of workers' fundamental rights.** This can be a business model for the outsourced companies providing manpower to the extent that cutting down on labour costs is a key feature of their business model. As evidenced by the ITUC Global Rights Index, threats can be present within and outside Europe.
- **Employee surveillance.** Companies producing employee surveillance systems are often tempted to test them on their own workforce. Surveillance is particularly acute in call centres, where employees working remotely from their own homes can be policed through cameras and data collection. Productivity watching, secret monitoring and breaches of privacy rights have a mental and physical impact upon workers. →

- **Algorithmic management.**
Technological devices are used to rank and classify workers without recourse to human control. Lack of transparency means that workers do not know which and when information is collected. They are also unable to address incorrect or unfairly collected data. This is particularly problematic when workers are scored by applications. Workers do not always know how they score and have no recourse to challenge their rankings. There is also potential for bias and discrimination, with white men with a given national/regional accent usually getting higher scores.
- **Health and safety issues.**
This risk is particularly relevant for maintenance operations in telecoms. Long working hours are a concern in the video game sector. Specific risks have also arisen in the context of the pandemic, such as the lack of protective personal equipment and an inability to maintain social distancing due to crowded contact centres. Overall, generalization of remote working has raised issues of unsuitable equipment, increased workload and lack of work-life balance. There has, as a result, been an increase in stress and psychosocial concerns.
- **Sexual harassment.**
Whilst sexual harassment is an increasingly reported concern across sectors, a particular intensity is noted in the gaming industry. When combined with toxic internal culture, the vast under-representation of women in the industry makes it likelier for women to experience proportionally larger incidents of sexual harassment and discrimination.

Box 5: Examples of risks in the Finance sector

Workers in the Finance sector are expected to go through significant and yet unpredictable organizational changes in the short term. Some restructuring will be carried out due to genuine economic difficulties. Other companies may also be using the Covid-19 crisis as an excuse to fast-track cost-cutting measures, which they would not have normally been able to implement in such a short amount of time. Another source of uncertainty for the Finance sector is the future of employer-owned workplaces, as companies increasingly use the excuse of remote work and digitalisation to cut costs and to offshore jobs. Finally, the rise of Fintech might change the market landscape. This new technology, aiming to automate the use and delivery of some financial services, is so far benefitting from light regulation regimes and lower operational costs. These services can therefore offer very competitive prices, which in turn will exercise significant pressure to cut down on costs. →

In these uncertain times, key risk factors in the Finance sector include:

- **Attacks on trade union rights.**
Company policies on trade union rights are very dependent on geographical context. European banks in particular do not always guarantee the respect of freedom of association in their branches or establishments situated outside Europe.
- **Restructuring.**
This usually leads to collective redundancies. Restructuring can also take the form of a change of operations, with impact on employment. Mergers and acquisitions are an acute source of risk. In companies with poor recognition of trade union rights, these restructurings take place without worker involvement.
- **Psychosocial risks.**
Work-related stress, burnout and depression are a regular feature in the Finance sector due to excessive sales pressure by banks intent on exceeding performance targets²⁰. An increasingly complex EU regulatory framework is an additional source of psychosocial risk when mounting responsibilities are not accompanied by sufficient time and training²¹.
- **Outsourcing of back-office services, cleaning and IT.**
The trend is to outsource these labour-intensive activities to providers established in countries with a poorer record for the protection of workers' rights.
- **Automation of jobs and employee surveillance.**
The introduction of new technologies in the sector generates significant impact on employment organization as well as new and increased forms of employee surveillance, which themselves raise questions on invasion of privacy and can be the source of psychosocial risk.
In addition, the rise of Fintech raises significant organizing challenges as the workforce consists of a mix of self-employed workers and workers recruited through hiring agencies.
- **Corporate tax avoidance.**
Corporate tax avoidance in the Finance sector is now well reported²². This entails severe reputational and financial risk to companies, which affects their financial health and has a potentially severe impact on jobs. In addition, companies shifting corporate profits to tax havens do not have sufficient liquidity to invest in employment and better working conditions. →

²⁰ UNI Europa Finance & European banks commit to end sales pressure on employees – UNI Europa (uni-europa.org)

²¹ Joint approaches through European Social Dialogue: the impact of banking regulation on employment – UNI Europa (uni-europa.org)

²² Reiter, Langenmayr, Holtmann (2020), *Avoiding taxes: banks' use of internal debt*

- **Unethical investments.**

The Finance sector presents specific risks linked to unethical investments, in particular in high-risk industries or companies situated in countries with a bad human rights record. For instance, UNI calls on multinational banks with investments linked to the military junta in Myanmar to urgently divest their shareholdings in the country²³.

Box 6: Examples of risks in the Commerce sector

Commerce is a diversified sector, covering retail and wholesale activities. The risks will vary depending on market sectors. In the aftermath of the pandemic, the economic context is favourable to the food sector, whilst fashion is experiencing difficulties because of lockdowns. Another difference is geographical location: a company operating in a country with a high level of employment regulation may have good working conditions. The same company may at the same time rely excessively on precarious work in a country with lower standards.

Human rights violations in the Commerce sector may occur at several levels. Products may be supplied by companies which themselves engage in human rights violations. Commerce businesses have a responsibility for the human rights impact of the products they sell. HRDD also has vocation to apply to own-employees. The latter aspect is less frequently addressed in existing HRDD processes.

The risks to workers in the Commerce sector include:

- **Violations of freedom of association and collective bargaining rights.**

Our interview with UNI officials has evidenced increasing concerns about violations of trade union rights. Multinationals in the Commerce sector can be so large that the parent company often seems to be losing track of workers' rights records, not only in the supply chain but also in its own operations.

- **Precarious contracts.**

Atypical forms of work are imposed, particularly in the food retail sector, with a view to maximizing flexibility of working arrangements. Workers can face irregular scheduling, which they have no control over, that is subject to last-minute changes. The contracts include unchosen part-time work, zero-hours contracts, short-term contracts, and outsourcing of manpower through temporary agency work.

- **Risks to health and safety.**

These risks are difficult to precisely assess due to the chronic lack of health and safety committees with elected workers' representatives. During the pandemic, the lack of personal protective equipment and close proximity in call centres was a source of

concern. Across all market sectors, pace of work has significantly increased, in particular as a result of e-commerce activities.

- **Harassment and violence.**

Harassment and violence constitute a major issue in stores. This is the result of high productivity requirements but also third-party violence. Women working in retail are particularly exposed to that risk.

- **Automation and digitalization.**

The pandemic – and the sudden growth of online shopping – has accelerated the trend in automation, digitalization and the use of artificial intelligence and robotics in the retail sector. Threats to workers come in many forms, including displacement, intensification of work, and increased surveillance and monitoring²⁴.

- **Reliance on just-in-time logistics.**

Just-in-time logistics seeks to lower operational costs by delivering products just before they are needed and on the basis of projected demand²⁵. The objective is to reduce costs linked to storage and managing inventories, with a direct impact on employment.

Box 7: Examples of risks in the Graphical and Packaging sector

The Graphical and Packaging sector covers several subsectors with different characteristics. Packaging and tissue are growing sectors with large multinational enterprises. In some cases, the value chain is completely integrated within one company. A company would own the forest, the paper mills and the transformation machinery. In those cases, employment relationships tend to be permanent and collective bargaining well developed.

Multinationals also represent a substantial part of the publishing sector. There, trade union density tends to be weak and atypical contracts seem to form a large part of employment patterns.

Overall, European-based operations have better employment conditions than the rest of the world. Outside the EU, precarious contracts are a recurrent feature.

The rapid growth of e-commerce is having a huge impact on market competition. For some services, growing dependency on major online platforms is becoming a concern. Dominant players can be in a position to force costs down. When the supplier is no longer in good financial health due to diminishing profitability, it is vulnerable to acquisition.

Risks to workers in the Graphical and Packaging sector include: →

²³ UNI calls on multinational banks to divest from Myanmar – UNI Global Union

²⁴ Hunt and Rolf (2022), *Artificial intelligence and automation in retail: benefits, challenges and implications (a union perspective)*

²⁵ *The Supply Chain Disruption Arrives 'Just in Time'* – Labor Notes (labornotes.org)

- **Violations of freedom of association and collective bargaining rights.**

Unlike other sectors covered by this toolkit, subcontracting and outsourcing are not major drivers for these risks. Violations tend to take place in a company's own operations. Peru and Colombia are particularly exposed countries.

- **Monopsonies.**

Dependency upon a unique customer, often an ultra-dominant online platform, leads to downward pressure on labour costs. Digitalization also has an adverse effect on market growth in the printing sector.

- **Health and safety.**

Exposure to chemical products, heavy loads, noise and lack of air conditioning create a major risk of illness and injury.

Box 8: Examples of risks in the Property Services and Care sector

The cleaning sector is dominated by SMEs, but a few large global players account for the majority of employment. Private and public companies outsource cleaning services. Productivity gains are difficult to achieve in this sector, and outsourcing companies seek to gain competitive advantage by allocating cheap labour. Furthermore, as multinationals apply for several bids at the same time in order to achieve economy of scale, they often resort to subcontracting to provide labour. This further accentuates downward pressure on labour costs because of relatively low profitability rates.

The cleaning sector is characterized by considerable staff turnover (above 25% a year) and the predominance of part-time work. Undeclared work is also a major issue.

The care industry has different characteristics from one country to another. In most Member States, a significant amount of funding comes from public budgets. In some countries, non-profit organizations also provide care services. Overall, entities that are purely for profit are growing.

Organizing is a major challenge for unions in the care sector because access to the workplace is difficult. The difficulty is particularly acute when work is performed in individual households.

There are a handful of large multinationals in security services. These large firms rely on an array of subcontractors, which are mostly SMEs. Because the workplace is on clients' sites, trade unions have no or difficult access.

Labour turnover is very high (at least 30% per year), which can be both a sign of difficult working conditions and a deliberate employer strategy, as a stable workforce would negotiate better working conditions and higher wages. →

Although different sectors, cleaning, care and security services are all labour-intensive and have some risks in common, including:

- **Understaffing.**

Understaffing can be the result of a cost-cutting strategy and/or of severe labour turnover. It is associated with increased work stress and decreased quality in service provision.

- **Outsourcing.**

Outsourcing to smaller subcontractors and temporary work agencies is a recurrent practice in all three sectors. In security, subcontracting can take place along a long chain, with very small entities winning contracts.

- **Undeclared and irregular work.**

Workers in the three sectors suffer from insufficient social protection due to undeclared work or irregular employment status. In security, workers can get paid cash in hand at evening events or for overtime work. Undeclared work is also found in care and cleaning workers in individual homes. These two sectors also employ a large migrant workforce through irregular employment schemes.

- **Low wages, atypical contracts.**

High work flexibility applies to the three sectors, with heavy reliance on short-term contracts. Part-time contracts tend to be disproportionately high in the cleaning sector. Low wages, often below living wages, are also endemic.

- **Health and safety, third-party violence.**

Workplace injuries caused by slips and falls are frequent for cleaning work. Cleaning in risky workplaces (e.g. nuclear plants, hospitals) is also a source of health hazards. Third-party violence is a particularly acute risk for security services and care. Musculoskeletal risks are also high for all three categories of workers.

- **Far-right activities.**

Risks of far-right activity in the workplace have been documented in security and cleaning.

STEP 3: CEASE, PREVENT OR MITIGATE ADVERSE IMPACTS

Figure 4: Action plans – what to look for



This step is the logical continuation of the risk mapping exercise. On the basis of the identified risks, the company should stop activities that cause an adverse impact on human rights. The company should also develop a plan to prevent or at least mitigate potential future impacts. This plan will usually establish priorities, taking into account the likelihood and the severity of the risks.

In this phase, the **goal** for trade unions is to ensure that the company devises an effective strategy to address adverse impacts on employment and workers' rights.

Trade union rights as enabling rights

Guaranteeing the respect of freedom of association, the right to organize and the right to collective bargaining is the most important measure to put in place. These are enabling rights, meaning that they will generate broad mitigation effects. Worker involvement and collective bargaining bring solutions to several of the employment risks identified above: precarious working arrangements, wages, workload, election of health and safety committees, worker involvement in cases of restructuring, access

to workers' data, limitation of employee surveillance, etc.

The effective exercise of workers' collective rights requires at least the following:

- **The company must seriously commit to the principles of neutrality and access throughout its own operations, as well as in relationships with business partners.** Under a neutrality principle, management agrees not to oppose trade union efforts to organize the workforce. Access means that workers can talk to unions – and vice-versa – without fear of retaliation measures. Neutrality and access are particularly important commitments in countries with less protective labour laws.
- **Transnational trade union solidarity plays a strong role in securing effective collective rights in all parts of the world.** Trade unions, trade union alliances and EWCs should use the leverage they enjoy in their Member States to promote neutrality and access across the value chain. Global Framework Agreements allow the setting of standards throughout business operations and reaching out to countries with a poor employment protection record.

What to look for in a due diligence plan

Workers' representatives and trade unions should extract from non-financial information the list of measures that have been put in place by the company to address the problems identified in the risks assessment phase. An artificial or incomplete risk mapping (step 2) is likely to lead to insufficient outcomes in this phase.

As for step 2, extracting this information may be an arduous task if the relevant material is lost in voluminous corporate social responsibility reports. Company information may also create confusion by mixing information on concrete measures and action

Box 9: Example of a weak action plan

The company in this example has extensive own-operations in countries that rank high on the ITUC Global Index because there is either 'no guarantee' or 'systematic violations' of labour rights. Remedying measures essentially consist in internal management policies and do not offer engagement with trade unions. There is no review of countries and contractors at risk. This action plan therefore requires strengthening.

Mitigating risks and preventing serious harm

The company has developed global standards and processes to ensure the Group complies with the ten principles of the UN Global Compact and with international labor standards in all its subsidiaries. These consist primarily of the following codes and policies:

- *Code of Ethics*
- *Code of Conduct, including anti-corruption and anti-influence peddling, which was launched in May 2018, replacing the previous Anti-Corruption Policy*
- *Human Rights Statement*
- *Diversity & Inclusion Policy launched in March 2019, replacing the previous Equal Opportunity Policy*
- *Privacy Policy*
- *Global Essential Compliance and Security Policies, updated in May 2018*
- *Health and Safety Policy, updated in August 2019*
- *Environmental Policy*
- *Supplier Code of Conduct launched in Fall 2019, replacing and enhancing the previous Supplier Policy.*

Box 10: Examples of Global Framework Agreements for the implementation of workers' rights

Inditex, a group of companies associated with the manufacture, distribution and sale of clothing, shoes and accessories, signed in 2009 a GFA with UNI Global. Through this agreement, Inditex recognizes UNI as a trade union interlocutor and agrees to establish regular channels of communication.

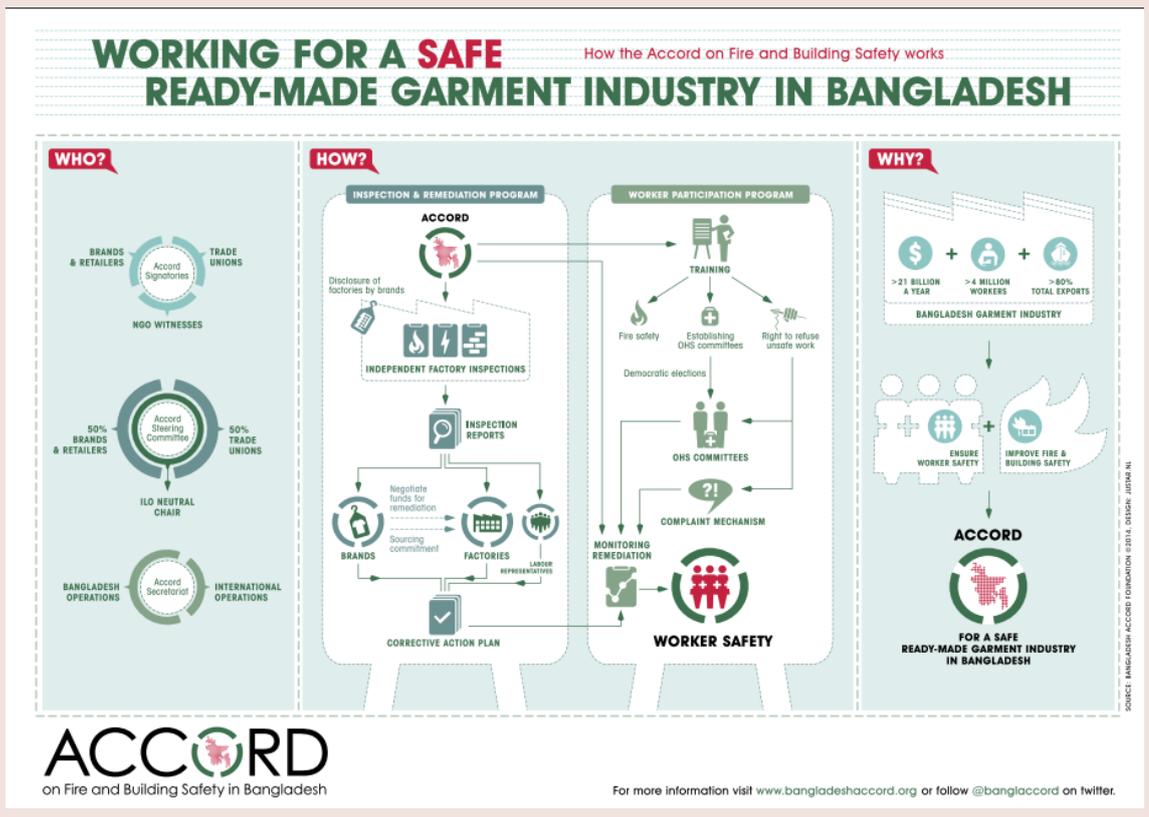
The Inditex GFA lists a series of fundamental rights protected by the ILO, including non-discrimination in employment, the prohibition of child and forced labour, trade union rights, working hours and occupational health and safety. Both parties agreed to inform each other in cases of non-respect in order to allow the adoption of a rapid action plan. Inditex further commits to grant UNI access to the workplace and to not use for its commercial networks the services of third parties that violate the principles of the agreement.

The British multinational private security firm **G4S**, recently acquired by Allied Universal, signed a GFA with the GMB and UNI Global Union in 2008. In this GFA, G4S acknowledges its responsibility for the observance of ILO core labour conventions and the guidelines of the OECD. G4S, UNI and the GMB commit to engage in regular, meaningful dialogue to support the development

of a constructive working relationship and the achievement of their shared aim, including through two formal review meetings per year. The agreement provides for protections to freedom of association, including through enabling access arrangements so that local unions can explain the benefits of joining and supporting the union. It also outlines how disputes can be raised and resolved. Through this agreement, thousands of workers in high-risk countries for labour rights were able to exercise their rights to freedom of association and collective bargaining, including through forming unions in the US, South Africa, India, Colombia, Paraguay, Nicaragua, El Salvador and Peru²⁶.

The International **Accord** is an agreement signed between global brands and retailers (so far 180 companies) and trade unions (UNI Global, IndustriAll Global and Bangladeshi-affiliated unions).

The Accord foresees independent inspections and remediation programmes. Transparency, and therefore leverage, is ensured through the disclosure of inspection reports and corrective action plans. The Accord also seeks to protect workers' rights to refuse unsafe work, as well as freedom of association.



plans with reporting and social audits. These are distinct steps: to cease, prevent or mitigate adverse impact requires action-oriented measures. Certifications, labels and, more broadly, social achievements would be outcomes of the reporting phase, which can only be subsequent (see the following step 4).

Workers' representatives may refer to the checklist provided at the beginning of this toolkit to quickly

identify the most relevant elements of company information.

Incomplete or insufficiently concrete mitigation measures warrant a proactive trade union response. Depending on the health of the company social dialogue, it may also be necessary to apply leverage and seek remedies as part of a concerted strategy with the relevant trade union federation (see step 6).

The checklist provided at the beginning of this toolkit indicates a number of green flags to help gauge the quality of a company's action plan. If the company's action plan is broadly satisfactory, workers' representatives and trade unions should then discuss joint monitoring and reporting mechanisms to ensure long-lasting processes (see step 4).

What to do in case of an incomplete action plan

If more effective measures need to be added to the company's action plan, trade unions and workers' representatives should seek to pursue the proactive approach already initiated during the risk assessment phase.

As discussed in several places in this toolkit, the guaranteed respect of freedom of association and collective bargaining must be at the forefront of any action plan. **Employment conditions throughout the value chain should be covered by a collective agreement, and workers' representatives and trade union alliances must be informed and consulted ahead of any decision that might impact work organizations.**

Workers' representatives and trade unions should also envisage negotiating with management additional measures to address specific concerns. Such jointly agreed measures may, for instance, be:

- Training and local capacity building for the advancement of decent work and trade union rights.
- Action to tackle specific health and safety issues, including the election of health and safety committees at all sites.
- Reviewing business models that create risks to employment (outsourcing, temporary agency work, operations in high-risk countries). The use of such business relationships may for instance be restricted to pre-defined circumstances, such as seasonal peaks or entry into a new market. Particular attention should also be paid to the conditions in which the outsourcing of cleaning and other property services is taking place.
- Criteria for the selection of business partners, including a proven employment record and a ban on the cheapest-cost option.
- Standard clauses to be inserted in all business contracts, requesting commitment to neutrality and access principles.
- Facilitation of trade union coordination throughout the value chain (including through access).
- In extreme cases, divestment from operations in high-risk countries; cessation of business relationships in the absence of insufficient commitment to workers' rights.

STEP 4: TRACK IMPLEMENTATION AND RESULTS

Figure 5: Monitoring/Audits – what to look for



This step seeks to ensure that companies report on the way they are addressing human and workers' rights. Monitoring HRDD is important to ensure that there is a follow-up to company commitments and that lessons are learned from possible shortcomings. It must indeed be recalled that HRDD is not a one-off exercise but a permanent, constantly evolving process.

The **goal** for workers' representatives and trade unions is to ensure constant improvement of the due diligence process through permanent and joint monitoring.

Here again, the importance of the close involvement of workers' representatives and trade unions must be emphasized. In particular, **GFAs offer room for joint audits and grievance mechanisms.**

On the other hand, non-inclusive certification schemes and social performance audits raise questions as to their ability to provide an independent oversight of the respect of workers' rights. For instance, certification schemes may simply defer to local laws and not to universally recognized international standards. Social audits may consist in a single visit or survey, without the involvement of affected workers. Companies also increasingly rely on external consultants to evaluate their corporate social responsibility performance. Trade unions should pay attention to the methodology applied by these firms and assess the quality and frequency of workers' involvement in the auditing process.

Workers' representatives may wish to **rely on objective indicators to assess the impact of HRDD.** These indicators would have to be linked to the topics identified under the risk assessment exercise described in the above step 2. A breakdown per country should be provided so that the outcomes for high-risk locations appear clearly. Relevant indicators would include:

- Detailed breakdown of the workforce and evolution of operations in high-risk countries
- Policies of the company and business partners on neutrality and access principles
- Collective bargaining coverage globally and per country
- Number of dedicated meetings with workers' representatives and trade unions
- Presence of an elected health and safety committee
- Evolution of staff turnover; number of work-related accidents
- Corporate tax information, in line with the Global Reporting Initiative Standard²⁷

Box 11: Monitoring HRDD – examples of practices

ALKO, an alcohol retailer headquartered in Finland, signed in 2020 a memorandum of understanding with Finnish Union PAM and the International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association ('the IUF').

Through this GFA, the company recognizes the IUF as a trade union interlocutor. Regular meetings and continuous channels of communication are foreseen between senior management, the IUF and PAM. The agreement further provides for an in-depth coordination between all levels of trade union representation.

A detailed mechanism for the investigation of incidents is put in place, with the close involvement of trade unions at local, national and global level. The local union is responsible for collecting complaints about potential breach of national law and international standards. Complaints are transmitted to the IUF, which will ensure that all required information is provided and will seek feedback from PAM. The complaint is then forwarded to ALKO, which will trigger an investigation. During that phase, contacts are established between all actors in the supply chain and a remediation plan is drawn up, in full consultation with the unions.

The **Forest Stewardship Council** ('the FSC') is a multi-stakeholder initiative that promotes responsible management of forests. Member companies use the FSC logo as evidence that their products come from responsible sources, managed in an economically, socially and environmentally friendly way. This is a major initiative, as around 40 000 companies routinely use the FSC logo.

The FSC structure includes representatives from companies, community associations and trade unions, and environmental organisations. The standards governing social performance are of high quality and in theory could help secure quality jobs, living wages, equal treatment and priority to local employment.

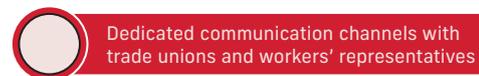
In practice, however, the reliability of the FSC certification scheme is increasingly criticized by some of its member trade unions. The internal supervisory process is viewed as slow, overly technical and not inclusive of trade union interests. Unlike the procedure

foreseen in the ALKO GFA, complaints about potential violations of workers' rights do not seem to be systematically investigated by the FSC. When there is an investigation, a trade union official reported that he is not involved in the process because of confidentiality requirements.

The de facto lack of joint monitoring processes means that the FSC logo may be inappropriately used as a commercial brand by large corporations. As an illustration, the 2020 sustainability report for Ikea highlights that more than 98% of the wood used for Ikea products is from sustainable sources (FSC-certified or recycled wood). The same document also reports that 7% of wood sources come from Belarus. Another 6% of timber comes from China and 23% from other, unspecified, countries²⁸. Both Belarus and China have long been raising international concerns about human rights violations. They were rated by the 2020 ITUC Global Rights Index as the worst countries in the world to work in.

STEP 5: COMMUNICATE HOW IMPACTS ARE ADDRESSED

Figure 6: Communications – what to look for



The OECD and the UN encourage companies to communicate externally how they address impacts on human rights.

From a trade union perspective, communication channels with EWCs and trade unions should be put in place at the very beginning of the due diligence process (see above step 1). Company communication to the public must therefore come as an addition, and not a replacement, to the specific involvement of workers' representatives.

External communication can be useful to increase leverage on the company, for instance through the influence of investors over their investee companies.

²⁷ [gri-207-tax-standard-2019-factsheet.pdf \(globalreporting.org\)](https://www.globalreporting.org/standards/gri-207-tax-standard-2019-factsheet.pdf)

²⁸ IKEA (2021), *IKEA sustainability report FY20*, at p.44–45

STEP 6: PROVIDE FOR, OR COOPERATE IN, REMEDiation WHEN APPROPRIATE

Figure 7: Remediation – what to look for



If an adverse impact on human rights occurs in spite of due diligence, remediation should be made available. Depending on the instruments, remediation procedures can be internal to the company or through a mechanism, external to the company and involving third parties.

For trade unions, the **goal** is to ensure that harms to workers are addressed through an independent procedure and with full involvement of trade unions.

Instances of remediation include:

- Grievance mechanisms established through GFAs
- Discussion facilitated by ILO experts
- A mechanism for the investigation of incidents and drawing up of remediation plans

An example of good practice is provided in the memorandum of understanding in place in ALKO (see box 11).

Workers' representatives should implement this step in close cooperation with the competent trade union federations. **They are indeed likely to follow an escalation process allowing local issues to be brought to the attention of global actors.**

SECTION IV: SOURCES OF LEVERAGE IN CASE OF ABSENT OR POOR HRDD PRACTICES

Section 2.3 has evidenced that in practice the risk of window dressing or even unwillingness from companies to engage in due diligence processes is not uncommon. It is for this reason that the trade union movement is unanimous in calling for mandatory due diligence, with a strong enforcement mechanism²⁹. The European Union is likely to issue such an instrument in the next couple of years. This does not mean, however, that trade unions are powerless to drive change.

The first and most important point is to recognize that, **for any multinational company, trade unions and workers' representatives must be coordinated across the value chain**. And so, before taking any steps to pressure the company, communication and coordination with the relevant international trade union federation is a prerequisite.

The labour movement can envisage various channels to drive improvements, depending on the state of social dialogue and the applicable legal frameworks. The step-by-step guidance contained in Section III has laid down several options to **incorporate HRDD into consultation and negotiations**, including:

- Requesting from management targeted information on the global value chain and risk mapping
- A worker-led risk assessment in order to forge independent expertise on existing risks
- Negotiation of measures to address specific concerns
- Joint monitoring mechanisms

Several sources of leverage are available, including organizational and structural power (trade unions at different points in the value chain), symbolic power (risk to company reputation and brand) and institutional power (legal provisions).

In concrete terms, some example sources of leverage include:

- Trade union campaigns – The labour movement can use its leverage in various points of the value chain to work towards a better approach to workers' rights in countries without a strong trade union presence. Transnational solidarity and the potential for global coordination constitute union strength.
- Reaching out to investors for responsible investment stewardship – By connecting with asset owners and asset managers over human rights due diligence practices, trade unions can help amplify their calls for the fostering of responsible behaviour by companies through their shareholders³⁰.
- Reputational risks caused by the removal of ethical labels or certification schemes. Multi-stakeholder initiatives are numerous and sought after by brands in order to address their reputational risk. These initiatives are partnerships between businesses, civil society, trade unions, and sometimes government representatives, seeking to work together to address common challenges to responsible business conduct. Multi-stakeholder initiatives can be helpful to engage with companies but only to the extent that trade unions can play an influential role in standard-setting and monitoring mechanisms³¹. Filing a complaint or raising a concern through other channels (public or private) on poor practices of human rights due diligence by companies can provide a channel to escalate these issues.
- Bringing a specific instance of poor practice to the offices of the OECD National Contact Points³².
- Civil law litigation.
This option may be the one that presents the most challenges. It presupposes that at least one company in the multinational enterprise is bound by

²⁹ Joint statement on sustainable corporate governance – UNI Europa (uni-europa.org)

³⁰ On this, see the work of the [Committee on Workers' Capital](#)

³¹ The Annex lists some examples

³² The OECD Guidelines on responsible business conduct are supplemented by a unique implementation mechanism of National Contact Points (the 'NCPs'). NCPs are agencies established by governments to promote and implement the Guidelines. In particular, NCPs provide mediation services to stakeholders in case of disagreement. See the Annex for further details.

a mandatory HRDD framework. Faced with management that refuses to initiate a due diligence process, trade unions should check if HRDD can be initiated under a mandatory framework. A subsidiary established in a country with such regulation can help generate positive impact throughout the company group.

Mandatory initiatives rely on sanctions, which can be imposed if a company fails to introduce due diligence or if the process does not respect the required quality standards. Furthermore, in case of damage, a company's responsibility can be aggravated by the lack of appropriate due diligence process.

All these options are not always compatible. For instance, a case pending in front of a National Contact Point implies a level of confidentiality, which may preclude trade union campaigning. Bringing legal proceedings before a judge is a powerful incentive for companies to carry out HRDD. As for every legal proceeding, however, the chances of success must be carefully estimated.

In sum, **a strategy has to be put in place, balancing the risks and opportunities of campaigning, mediation and/or litigation.**

Box 12: Trade union involvement in HRDD – a to-do list

1. Have HRDD as a permanent point of agenda.
2. Seek counterparts at senior management level, with cross-functional influence.
3. Liaise with competent trade union federations, which will in turn ensure coordination with all levels of trade union representation.
4. Ensure that freedom of association and collective bargaining are identified as salient human rights.
5. Ask questions on:
 - Detailed breakdown of the workforce.
 - Evolution of operations in countries at risk.
 - Policies of the company and business partners on neutrality and access.
 - Collective bargaining coverage, per country and main topics.
 - Presence of elected health and safety committees.
 - Staff turnover, number of work-related accidents.
 - Corporate tax information, in line with the reporting template provided by GRI Standard 207.
 - Company's action plan to address risks to workers' rights.
6. Assess the need for a trade-union-led human rights impact assessment.
7. Negotiate effective mitigation measures. Use leverage to influence company policies across the value chain, inside and outside the EU.
8. Find out about joint grievance mechanisms.

CONCLUSION

If effectively put into practice, the current momentum for HRDD has the potential to accelerate the shift from a shareholders' value towards a stakeholders' value model, whereby the performance of a company should not be judged solely on short-term profitability prospects but also on its impact on society. Above all, HRDD with effective involvement of trade unions can put industrial relations at the core of corporate governance.

The growing interest in due diligence is generating a series of instruments, either mandatory or voluntary, as well as stakeholder initiatives. This plurality of instruments may at first puzzle, as several due diligence regimes potentially apply to the same company group. The first section of this toolkit has however argued that well-informed trade unions will build on the respective strengths of all available instruments to put in place a coherent strategy.

Trade unions and workers' representatives need to ensure that they are closely involved with the whole HRDD process. Due diligence carried out unilaterally by management presents a number of risks. It is unlikely to effectively address violations of workers' rights in a value chain. It may also be misused to undermine or even bypass existing channels for information, consultation and social dialogue. Today, many EWCs struggle to defend their prerogatives in spite of clear legal obligations. Trade union networks and workers' representatives should make the most of HRDD entry points to strengthen their own influence over business practices and ultimately to extend their leverage to the whole value chain, especially in countries and/or subcontractors without strong trade union presence. A multinational's responsibility towards its workers should be defended equally within and outside the EU.

The third section of this toolkit has issued practical recommendations for early worker involvement in the identification of risks and in the elaboration of an action plan, its implementation and overall monitoring. As always, social dialogue will bring win-win solutions. Negotiating practical approaches to due diligence with management is key to address common challenges and meet global expectations. Faced with reluctant management, different sources of leverage may be relied upon even in the absence of a mandatory framework.

ANNEX – OVERVIEW OF MAIN HRDD INSTRUMENTS

A MENU TO PICK AND CHOOSE FROM

This annex lists the main standards laying down HRDD duties. Several frameworks may apply to the same multinational at the same time. Workers' representatives and trade unions should build on the strengths of several sources to devise a comprehensive strategy.

Mandatory provisions, often provided for in national law, have a direct influence on corporate behaviour. Trade unions should always check if HRDD can be initiated under a mandatory framework. A subsidiary established in a country with such regulation can help generate a positive impact throughout the company group.

When it comes to interpreting the extent of a company's duties towards workers, trade unions should always use the detailed benchmarks provided by the OECD Guidelines and the ILO Declaration. These instruments also give indispensable recommendations on the importance of sustained engagement with trade unions when conducting HRDD. They should be referred to whenever other frameworks are silent on that point, or when the role of trade unions is lost among the prerogatives of broader civil society organisations.

Alongside public action, worker-driven initiatives negotiated between lead companies and Global Union Federations through Global Framework Agreements are very important tools for trade unions to engage with companies. This toolkit provides in boxes 1, 10 and 11 illustrations of negotiated procedures.

Multi-stakeholder initiatives such as The Fair Wear Foundation or The TruStone Initiative are numerous – although not a frequent practice in the services sector. These initiatives are partnerships between businesses, civil society, trade unions, and sometimes government representatives, seeking to work together to address common challenges to responsible business conduct. Multi-stakeholder initiatives can be helpful to engage with companies but only to the extent that trade unions can play an influential role in standard-setting and monitoring mechanisms.

MANDATORY VS VOLUNTARY

Historically, HRDD instruments have been conceived as voluntary instruments. Under a voluntary initiative, it is up to the company to do what is necessary to fulfil its responsibility towards respect of human rights. More than a decade ago, John Ruggie – the father of the UNGPs – anticipated that legally binding norms would not gather consensus among countries. Ruggie chose to emphasize the societal expectations of corporate behaviour rather than run the risk of blocking overall progress on the responsible business conduct agenda. Similarly, whilst OECD countries made a binding commitment to implement the OECD Guidelines for multinational enterprises, the due diligence principle and standards remain voluntary for companies.

Lately, the appetite for mandatory regulations with legal enforcement mechanisms has been increasing. There is indeed a growing recognition that voluntary frameworks are not enough. According to a survey carried out by the European Commission in January 2020, *just over one-third of business respondents indicated undertaking due diligence which takes into account all human rights and environmental impacts, and a further one-third undertake due diligence limited to certain areas*³³.

Mandatory initiatives rely on sanctions, which to be effective need to be dissuasive.

Mandatory human rights due diligence must be distinguished from joint and several liability in subcontracting chains. Joint and several liability means that any actor in a subcontracting chain can be held liable for a contractor's unpaid claims. These claims are specifically defined: for instance, non-payment of social security contributions. Thus, joint and several liability has a narrower scope of application than due diligence, both geographically and on the topics covered, but seeks to put in place a more stringent liability. It is important not to confuse the two notions, as due diligence obligations should not be used to minimize or escape liability established in separate legal frameworks.

THE FORTHCOMING EU DIRECTIVE

The European Commission published on 23 February 2022 a proposal for mandatory corporate sustainability due diligence, covering both EU and non-EU multinationals with economic activity in Europe. Under the proposal, companies with more than 500 employees and a global turnover of EUR 150 million would be requested to carry out environmental and human rights due diligence for the whole value chain. Companies with 250 employees and a EUR 40 million turnover would be required to carry out a lighter form of due diligence if they are operating in sensitive sectors such as garment, agriculture or extractive industries.

The introduction of mandatory due diligence for all corporations operating in Europe would constitute a big step towards a global level playing field. The Commission's proposal, however, contains important gaps that could undermine its practical effectiveness for workers. In particular, the role of trade unions would remain limited: management could consult, if this is deemed relevant, for the identification of risks but not for the drawing up of an action plan. Trade unions could also submit a complaint in case of concerns regarding human rights impacts. They would, however, not be involved in the complaint process nor to any monitoring mechanism.

At the time of writing, the Commission's proposal is being examined by the EU institutions and substantial amendments should be expected from the inter-institutional process.

THE UNITED NATIONS GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

The United Nations Guiding Principles on Business and Human Rights ('the UNGPs') were unanimously endorsed by the Human Rights Council in 2011. The UNGPs are built around three pillars: the state duty to protect human rights, the corporate responsibility to respect human rights, and access to remedy.

The objective of the second pillar is to address the governance gaps described in Section 1.2 of this toolkit and to restore supervision in global markets. As such, it introduces the notion of HRDD, presented as an ongoing process to identify, prevent, mitigate and account for how business enterprises address their impacts on human rights, and provide remediation³⁴.

The UNGPs are widely regarded as an authoritative framework on HRDD. A major limitation, however, is that they are non-binding; companies are expected to comply with the UNGPs as part of their self-regulation.

The scope of application is large: all business enterprises, wherever they operate, should introduce HRDD. This responsibility exists independently from national regulations. Nevertheless, the UNGPs consider that the scale and the complexity of the HRDD process can vary according to the size of the enterprise and the severity of impact on human rights. The whole value chain is concerned: HRDD should cover business enterprises' own activities and products or services by their business relationships.

HRDD process should involve meaningful consultation with potentially affected groups and other relevant stakeholders³⁵. Verification of the human rights impact should also draw on feedback from affected stakeholders³⁶. The Principles do not define the term 'stakeholders', although the commentaries make two brief references to trade unions.

Benchmarks against which to measure human rights include 'at minimum' the Universal Declaration of Human Rights and the ILO Declaration on Fundamental Principles and Rights at Work.

The UN is now engaged in in-depth discussions to develop a business and human rights treaty which, upon ratification by countries, would create an HRDD framework that is binding on multinationals³⁷.

THE OECD GUIDELINES FOR MULTINATIONAL ENTERPRISES

The OECD detailed benchmarks for employment rights and industrial relations and their accompanying mediation mechanism offer interesting leverage potential for trade unions.

The revised version of the OECD Guidelines for Multinational Enterprises was adopted in 2011 by 42 OECD and non-OECD countries. General and sector-specific guidance is frequently published by the OECD³⁸.

The Guidelines are presented as a companion to the OECD free trade and investment agenda. As countries commit to an open environment for international investment, they also undertake to secure more responsible business conduct from their multinational enterprises.

The OECD due diligence provisions are not binding upon businesses, although governments did commit

³⁴ Principle 15

³⁵ Principle 18

³⁶ Principle 20

³⁷ ITUC statement (2021), UN Treaty on Business and Human Rights – US and EU Must Step Up – International Trade Union Confederation ([ituc-csi.org](https://www.ituc-csi.org))

³⁸ OECD (2018), *OECD due diligence guidance for responsible business conduct*

to implement them. That said, the OECD Guidelines are supplemented by a unique implementation mechanism of National Contact Points ('the NCPs'). NCPs are agencies established by governments to promote and implement the Guidelines. In particular, NCPs provide mediation services to stakeholders in case of disagreement.

According to the Trade Union Advisory Committee to the OECD ('the TUAC'), this mechanism is a serious resource for workers, unions and global unions. It is also a serious benchmark for investors. At the same time, trade unions have expressed dissatisfaction with the functioning of the NCPs in some countries. The TUAC measures the effectiveness of these national mechanisms by reference to their inclusive structure (i.e. whether they include trade unions in their institutional arrangement) and their ability to exercise sufficient pressure on multinationals to find an agreement with complainants³⁹. It appears that 78% of cases concluded in 2019 did not resolve the issues raised by the filing party⁴⁰.

The OECD Guidelines target multinational enterprises that operate in or from adhering countries' territories. Due diligence should cover own operations and products, and services provided through business relationships. The term 'business relationship' includes *business partners, entities in the supply chain and any other non-State or State entities directly linked to [a company's] business operations, products or services*⁴¹.

Numerous references are made to the need for stakeholder engagement, which is defined as *interactive processes through for example meetings, hearings or consultation proceedings*⁴². Throughout OECD literature, workers' representatives and trade unions are recognized as important stakeholders.

The Guidelines develop their own benchmarks for responsible business conduct, including in particular a chapter on human rights and another one on employment and industrial relations. The Guidelines draw upon international standards such as the UN Guiding Principles on Business and Human Rights, as well as the ILO Declaration on Fundamental Principles and Rights at Work. The chapters protect, among other rights, the freedom to join a trade union, the right to collective bargaining and the rights to information and consultation.

ILO TRIPARTITE DECLARATION OF PRINCIPLES CONCERNING MULTI-NATIONAL ENTERPRISES AND SOCIAL POLICY

The ILO Tripartite Declaration and supporting Conventions offer trade unions a detailed benchmark to interpret the extent of a company's duties towards workers. These prove helpful instruments to frame HRDD questions to management.

The ILO Declaration on Multinational Enterprises and Social Policy was amended in 2011 and 2017 by the Governing Body of the ILO to include, in particular, express references to due diligence. The Declaration is the only tripartite instrument dealing with due diligence, that is to say that it was drawn up by governments and also employers and workers from around the world.

The ILO Declaration has a specific objective to ensure positive social and labour effects and to promote decent work. It is a worker-centric instrument covering employment, training, conditions of work and life (including wages and health and safety) and industrial relations.

The Declaration offers guidelines, which are not binding upon businesses. The ILO Office provides space for dialogue for companies and trade unions in the form of a 'neutral ground for discussion of issues of mutual concern' with 'qualified facilitators'.

In terms of benchmarks, the ILO Declaration refers to the established duties of the UNGPs. The key added value of the Declaration is the references to ILO standards for the protection of workers' rights. The Declaration also makes multiple mentions of continuous consultation between the three parties, including consultation of workers' organizations in the course of the due diligence process.

EU SECTORAL REGULATIONS

Due to their very specific scope of application, the EU sectoral Regulations currently offer limited prospects for trade unions active in the services sector. However, they constitute a useful precedent of mandatory HRDD in EU law. One could imagine that in future a similar sectoral approach could help raise labour standards in the riskiest services sectors.

In sectors that are seen as being the worst affected by human rights and environmental violations, the European Union has adopted sectoral Regulations. The Conflict Minerals Regulation, which came into force in January 2021, laid down due diligence obliga-

³⁹ TUAC (2021), *Implementing the OECD Guidelines Part II for constructive NCP trade union relations*

⁴⁰ TUAC statement (2020), *TUAC proposes verifiable due diligence policy – TUAC (tuac.org)*

⁴¹ Commentary 14 at p.23

⁴² OECD Guidelines, p.25

tions for European Union importers of minerals and metals originating from conflict-affected and high-risk areas. Importing businesses must check that the goods they buy do not contribute to conflict, forced labour or other illicit activities⁴³. Under the Timber Regulation, which came into effect in 2013, EU traders are required to carry out due diligence to minimize the risk of placing illegally harvested timber and timber products on the market⁴⁴. That Regulation is set to be repealed by a new Regulation to curb deforestation and forest degradation proposed by the European Commission in November 2021. This new instrument is expected to introduce mandatory due diligence for a broader range of commodities (ranging from cattle to coffee to wood). Companies will be required to ensure that only compliant commodities and products enter the EU market, or are exported from it. As part of their due diligence, operators would have to be able to demonstrate that the relevant goods have been produced according to the applicable legislation⁴⁵.

These EU Regulations have the force of law. This means that Member States are required to introduce penalties in the case that a company does not fulfil its due diligence obligations.

The Conflict Mineral Regulation makes one reference to child labour in its Recital. There is no other reference to workers' rights nor to trade union involvement in these two Regulations.

EU NON-FINANCIAL REPORTING

As companies are concerned about risks to their reputation, annual reporting constitutes a significant source of leverage for trade unions. By connecting with asset owners and asset managers, trade unions can help build pressure for change and foster responsible investment⁴⁶.

The European Union has also included a 'comply or explain' approach to due diligence in its Non-Financial Reporting Directive⁴⁷. The Directive introduces reporting obligations for companies employing more than 500 employees or with a turnover above 40 million euros. Under this instrument, businesses are not compelled to introduce (human rights) due diligence. But if they do, they are required to provide

information and, if they do not, to provide the reasons why they did not undertake it.

In April 2021, the European Commission published a proposal for a Corporate Sustainability Reporting Directive ('the CSRD'), which seeks to extend the existing reporting requirements of the Non-Financial Reporting Directive. All companies employing more than 250 workers would have to provide non-financial information on their environmental, social and governance performance. With a view to ensuring some consistency between annual reports, reporting standards are expected to be developed by an Advisory Group (the EFRAG)⁴⁸.

NATIONAL INITIATIVES

Building on these international norms, an increasing number of countries are issuing due diligence obligations. To name just a few⁴⁹:

In 2017, **France** enacted a Duty of Vigilance law famous for being the first instrument imposing broad human rights due diligence on companies across all sectors. The law requires French companies employing at least 5000 employees, as well any other large multinational operating in France and employing 10 000 employees globally, to implement a 'vigilance plan' identifying risks to human rights and the environment and to prevent their violation. This plan should cover the business' own operations as well as those of its subcontractors and suppliers. Legal remedies and financial sanctions are foreseen in case of non-implementation of the vigilance plan. In addition, the civil liability of the company can be engaged in case of an adverse impact that could have been avoided through an effective vigilance plan. The law foresees a specific role for trade unions: they are stakeholders that must be involved in the implementation of the vigilance plan. The company must also put in place an alert mechanism and a reporting system, in consultation with trade unions.

In July 2021, **Germany** introduced a law on corporate due diligence in supply chains, set to enter into force in 2023. The law introduces human rights and environment due diligence obligations. In addition to concerning themselves with their own economic risks, companies must act upon human rights and

⁴³ Regulation 2017/821 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

⁴⁴ Regulation 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market

⁴⁵ Proposal for a Regulation on the making available on the Union market, as well as export from the Union, of certain commodities and products associated with deforestation and forest degradation, and repealing Regulation EU 995/2010, COM (2021)706

⁴⁶ On this, see the work of the [Committee on Workers' Capital](#)

⁴⁷ Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups

⁴⁸ Proposal for a Directive as regards corporate sustainability reporting (COM/2018/189 final)

⁴⁹ This website is regularly updated with national initiatives: [Mandatory Due Diligence – Business & Human Rights Resource Centre \(business-humanrights.org\)](#)

environmental risks along their value chains. The law specifically protects the rights contained in the core ILO Conventions and the UN covenant on human rights. The law will apply to companies which have their head office, branch office or registered office in Germany and which employ more than 3000 employees in the territory. From 2024, the obligation will extend to companies with more than 1000 employees. The due diligence plan should cover all activities in the supply chain. A number of express references are made to the close involvement of works councils in the management of human rights risks. Financial sanctions are foreseen in case of non-compliance, including exclusion from public procurement procedures. The German Trade Union Confederation (the ‘DGB’) welcomed the law as a ‘tremendous success’, as it moves away from voluntary self-commitment to a legal obligation. The challenge now lies in the concrete implementation of the law. The DGB will look into increasing information about human and labour rights situations, as well as further developing Global Framework Agreements⁵⁰.

In 2020, the **Netherlands** introduced the Child Labour Due Diligence Act to address child labour. The law applies to all business-to-consumer Dutch companies, regardless of their size, requiring them to conduct due diligence to investigate whether a product or service in the supply chain has been produced with child labour. Remedies in case of non-implementation are available, starting with a mediation mechanism and escalating to legal liability and financial penalties. Upon pressure from civil society organisations and trade unions, a new Bill for Responsible and Sustainable International Business Conduct is currently under examination by the Dutch government. This Bill proposes to replace the Child Labour Due Diligence Act with a wider one, encompassing duty of care to prevent negative impacts on human rights and the environment in global value chains. Under this Bill, trade unions would have a standing to file claims against the company. Fully fledged administrative, civil and criminal liability would be introduced⁵¹.

STAKEHOLDER INITIATIVES

In parallel or as a result of institutional frameworks, there are numerous instances of collaboration between global brands and stakeholders. These stakeholder initiatives are always voluntary, although

they might contain mandatory provisions once the company has signed up to them. They therefore rely on the goodwill of companies. Companies would usually carry out a cost-benefit analysis of engaging in such initiatives, taking into account in particular the reputational risks caused by potential violations of human rights.

As illustrated in the following paragraphs, stakeholder initiatives may be multi-stakeholder or worker driven.

Multi-stakeholder initiatives

Multi-stakeholder initiatives are partnerships between businesses, civil society, trade unions, and sometimes government representatives, seeking to work together to address common challenges to responsible business conduct. Multi-stakeholder initiatives can sometimes undermine inclusive HRDD when they are set up and entirely controlled by management⁵².

In July 2020, The Institute for Multi-Stakeholder Initiative Integrity (‘MSI Integrity’) published a report analysing 40 international multi-stakeholder initiatives. This report recognizes that these initiatives are tools to engage companies but are not on their own sufficient to hold companies effectively accountable. Points of concern include, in particular, insufficient stakeholder participation, a too-narrow understanding of human rights, and lack of monitoring, compliance and remedy⁵³.

Multi-stakeholder initiatives do not appear to be widely relied upon in the services sector. In other sectors, numerous multi-stakeholder initiatives have emerged in the past two decades, covering many global brands and sectors of industry. For instance:

The TruStone Initiative⁵⁴ was set up in 2019. It is a multi-stakeholder initiative composed of state representatives from Belgium’s Flemish region and the Dutch government, non-governmental organisations, trade unions and around 40 natural stone companies. The objective of this tripartite initiative is to increase business adherence to the UNGPs, the OECD Guidelines for multinational enterprises and the ILO fundamental labour standards. Participating companies are expected to perform due diligence in line with the guidelines drawn up by the Initiative, to present detailed annual action plans and to report on progress made. Cooperation with civil society and trade unions is put in place, as well as complaint

⁵⁰ Friedrich Ebert Stiftung, DGB *The German Supply Chain Law – Responsibility and respect for human rights in global value chains*

⁵¹ [The Next Step for Corporate Accountability in the Netherlands: The New Bill for Responsible and Sustainable International Business Conduct – Business & Human Rights Resource Centre \(business-humanrights.org\)](https://www.business-humanrights.org/en/latest/news-and-events/press-releases/2020/11/2020-11-19-the-next-step-for-corporate-accountability-in-the-netherlands-the-new-bill-for-responsible-and-sustainable-international-business-conduct/)

⁵² On this, see OECD (2021), *Engagement with trade unions in due diligence processes conducted by industry-led or multi-stakeholder initiatives*

⁵³ [MSI_SUMMARY_REPORT.FORWEBSITE.FINAL_.pdf \(msi-integrity.org\)](https://www.msi-integrity.org/MSI_SUMMARY_REPORT.FORWEBSITE.FINAL_.pdf)

⁵⁴ [TruStone Initiative | IRBC Agreements \(imvoconvenanten.nl\)](https://www.imvoconvenanten.nl/)

mechanisms. The role of trade unions consists of, inter alia, providing their knowledge and expertise about labour rights and sharing company-level information about risk management. Public authorities commit to considering participation in the Initiative in their public procurement procedures.

Worker-driven initiatives

Worker-driven initiatives are agreements between companies and trade unions.

The most famous instance is the *International Accord*⁵⁵, formerly the Bangladesh Accord, set up in 2013 in response to the collapse of the Rana Plaza factory building, which killed more than a thousand workers and seriously injured thousands more. The new International Accord came into force on 1 September 2021 and includes a commitment to expand the work to other countries. The Accord is an agreement between global brands and retailers (so far 220 companies) and trade unions (UNI Global, IndustriAll Global and Bangladeshi-affiliated unions). Upon signature, the agreement becomes legally binding on the parties.

As it currently stands, the Accord foresees independent inspections and remediation programmes. Transparency, and therefore leverage, is ensured through the disclosure of inspection reports and corrective action plans. Training programmes are put in place. The Accord also seeks to protect workers' rights to refuse unsafe work and to freedom of association. The new 2021 agreement seeks to go further and opens the potential to expand the scope of the agreement to address human rights due diligence.

Numerous worker-driven initiatives are negotiated between lead companies and Global Union Federations through *Global Framework Agreements* ('GFAs'). A GFA commits the company to respect freedom of association and the right to collective bargaining. Various GFAs establish communication channels between senior management and trade unions, as well as oversight mechanisms designed to give workers an active role in the enforcement of responsible business conduct. The third section of this toolkit provides several illustrations of GFAs in Box 10: Examples of Global Framework Agreements for the implementation of workers' rights.

END.