

The Human Rights Due Diligence (HRDD) Landscape

Existing approaches, frameworks and drivers; what they mean for amfori's members and where amfori can support

The human rights due diligence (HRDD) landscape

1. Existing approaches, frameworks and drivers talking HRDD

The first globally accepted standard holding both businesses and governments accountable for adverse human rights impacts is the UN Guiding Principles on Business and Human Rights (“UNGP”). Endorsed by the international community in 2011, the UNGP is regarded as the most widely accepted framework for responsible business conduct along with the OECD recommendations¹. Therein, due diligence features as essential for a company to exercise its responsibility to respect human rights and thus, among other things, to also remediate adverse impacts².

The political momentum generated by the UNGP has led to the progressive integration of elements of corporate human rights due diligence in policy and legal frameworks for responsible business. Notably governments (both within and outside of the EU) have started to introduce laws to regulate responsible business conduct due diligence, both through reporting requirements and obligations to conduct due diligence (section 1.1. “regulatory landscape”)³. Similarly, public buyers have started to more systematically add social and environmental considerations to their purchasing contracts (section 1.2 “public buyers’ demand”). In the same spirit, investors have also stepped up their leverage to ensure that companies they invest in are meaningfully addressing human rights issues (section 1.3 “investors’ leverage”).

1.1 Regulatory landscape

Mandatory disclosure and due diligence laws are one of the tools at the disposal of governments to promote corporate human rights due diligence and responsible business conduct more broadly. From 2010 to 2019 there has been a growing number of legal initiatives being passed across Europe and beyond, supported by international normative frameworks⁴.

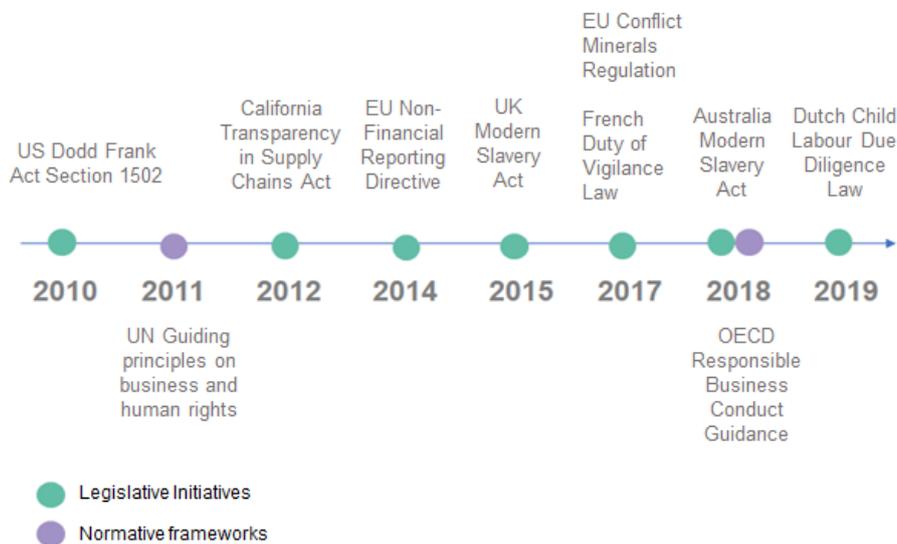


Fig 1: Non-exhaustive overview of responsible business conduct due diligence legislation and normative frameworks.

¹ The OECD [Guidelines for Multinational Enterprises](https://mneguidelines.oecd.org/Brochure-responsible-business-key-messages-from-international-instruments.pdf) revised in 2011, the [Responsible Business Conduct Guidance](https://mneguidelines.oecd.org/Brochure-responsible-business-key-messages-from-international-instruments.pdf) from 2018 and the sectorial Guidance Documents which address sector-specific risks. Those instruments plus the ILO Tripartite Declaration of Principles concerning Multinational Enterprises are aligned with and complement each other. See at <https://mneguidelines.oecd.org/Brochure-responsible-business-key-messages-from-international-instruments.pdf>.

² Human rights due diligence is the process that should be conducted by business enterprises in order to **identify, prevent, mitigate and account for** how they address their impacts. It should cover the adverse human rights impact that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships.

³ Laws vary depending on whether they take a holistic vs. issue-specific approach (e.g. modern slavery vs. a more generic obligation to conduct due diligence). The laws also vary in terms of affected business organisations (any organisations operating in a country, specific sectors or businesses of a certain size) and scope of the reporting requirements (e.g. a statement in the case of the UK Modern Slavery Act, versus a due diligence plan for the French law).

⁴ Bills are being drafted and/or discussions are being held also in other countries e.g. Switzerland, Finland, Norway, Germany, Austria, Canada.

Mandatory Reporting

One way of enshrining responsible business conduct due diligence into law is via **mandatory reporting requirements**, i.e. via legislation mandating the disclosure and transparency of certain information. Under the [EU Non-Financial Reporting Directive](#) for instance, certain large publicly listed entities are required to report annually on their main impacts and risks regarding human rights, environmental, social, bribery and anti-corruption issues, including the due diligence processes implemented to address them.

At the national level, the [Modern Slavery Act](#) adopted by the UK in 2015, under section 54 “transparency in Supply Chain” stipulates that UK companies or companies operating in the UK have to report on an annual basis on the measures they adopt to prevent slavery or human trafficking from occurring in their supply chains. Companies can choose to do nothing but must report that publicly.

Similarly, the Australian [Modern Slavery Act](#) requires entities based or operating in Australia, which have an annual consolidated revenue of AUD100 million, to lodge an annual statement to report on the risks of modern slavery in their operations and supply chains, including actions to address those risks.

Mandatory Due Diligence

Another way of strengthening the corporate responsibility to respect human rights is requiring the conduct of **due diligence for specific issues or sectors**. This approach usually entails an obligation to take steps to address certain adverse responsible business conduct impacts next to an obligation to report / disclose.

The French [Duty of Vigilance Law](#) for instance, requires affected companies to publish and implement a “vigilance” plan in relation to human rights and fundamental freedoms, health, security and protection of environment. The vigilance plan, which must be publicly available and published annually, needs to provide an overview of how the companies conduct their risk assessment and how they account for the impacts in their operations.

Another example is the [Child Labour Due Diligence Act](#) adopted by the Dutch Senate in 2019. The law, which is not yet enforced, will require companies registered in the Netherlands and foreign companies selling goods and delivering services to Dutch customers to identify whether there is a reasonable suspicion that child labour is present in their supply chains and to develop a plan of action to address it, in line with the OECD Guidelines and the UNGP, should that be the case.

At EU level, the [Conflict Minerals Regulation](#) will require European importers of Tin, Tungsten, Tantalum and Gold (3TG) to conduct due diligence to ensure their trade of minerals from conflict-affected and high-risk areas is not linked with human rights abuses.

Country / year	Law	Scope	Requirements	Type of requirement	Enforcement
California / 2010	Transparency in Supply Chain Act	Manufacturers or retailers, as identified on Californian state tax returns, doing business in California and with annual worldwide gross receipts exceeding \$100m.	Disclosure for a financial year should be conspicuous and easily understood with a link on the company homepage. If the company has no website, disclosure must be provided within 30 days of being requested. Efforts to eradicate slavery and human trafficking from the direct supply chain must be described. Companies must also disclose steps taken in the areas of verification, training certification, auditing and internal accountability.	Mandatory transparency / reporting	The Attorney General has exclusive authority to enforce the Transparency in Supply Chains Act and may file a civil action for injunctive relief for non-compliance, false or misleading declarations.

EU / 2014	Non-Financial Reporting Directive	Certain public interest entities with more than 500 employees or who are parent companies of a corporate group with more than 500 employees.	Annual disclosure of their policies pertaining to non-financial matters including environmental protection, social responsibility and treatment of employees, respect for human rights, anti-corruption and bribery, diversity on company boards. The Directive gives companies ample flexibility when it comes to the way in which the relevant information can be disclosed.	Mandatory transparency / reporting	Will be exercised at Member State level.
UK / 2015	Modern Slavery Act	Entities carrying on a business, or a part of a business, in the United Kingdom, with a total turnover of over £36 million.	Annually publish a statement signed by a director (or equivalent) on their website which describes the actions taken to ensure that slavery and human trafficking is not taking place in their business / supply chains, OR State that no steps have been taken.	Mandatory transparency / reporting	The law has been designed so that pressure comes from NGOs and stakeholders. The Independent Review flagged this as one area for improvement, requesting at least the publication of the statements on a central register to ease comparison.
EU / 2017	Responsible Sourcing of Minerals Regulation	Entities importing tin, tungsten, tantalum and gold (3TG) from Conflict-Affected and High-Risk Areas (CAHRAs) into the EU above certain thresholds must conduct due diligence and report on it starting from 1 January 2021.	OECD Due diligence guidance for responsible supply chains of minerals is the 5-step framework for companies in the scope to carry out supply chain due diligence.	Mandatory due diligence	Member State competent authorities will be responsible for ensuring compliance (ex-post checks). In case of an infringement, Member State competent authorities shall issue a notice of remedial action.
France / 2017	Duty of Vigilance Law	Companies headquartered in France with more than 5000 employees (including direct and indirect subsidiaries) or all companies of more than 10 000 employees (including direct or indirect affiliated companies) operating in France.	Provide an overview of measures taken based on a "vigilance" plan in relation to human rights and fundamental freedoms, health and security and protection of environment. The vigilance plan must be publicly available, published on an annual basis; it must provide an overview of the risk mapping and evaluation procedures and explain any actions taken to mitigate risks.	Mandatory due diligence	Sanctions are contemplated in case of e.g. faults in the plan, or if companies fail to produce a plan. The company can be held liable in case of harm. However, the burden of proof is on the victims who will need to prove a causal link between the fault of the company and the damage they have suffered.
Australia / 2018	Modern Slavery Act	Australian entities or entities carrying on business in Australia with an annual consolidated revenue of AUD100 million.	The statement, approved by the principal governing body of the entity and signed by a responsible member of the entity, must identify the reporting entity; describe the reporting entity's structure, operations and supply chains; describe the risks of modern slavery practices in the operations and supply chains of the reporting entity and any entities it owns or controls; describe the actions taken by the reporting entity and any entities it owns or controls to assess and address these risks; describe how the reporting entity assesses the effectiveness of these actions; describe the process of consultation with any entities the reporting entity owns or controls and providing any other relevant information.	Mandatory transparency / reporting	At present no financial penalties foreseen in case of companies failing to provide the statement. However, possibility to review this point during the Act's review. In any event, the statements will be made publicly available by the AU authorities on a central register.

			Statements must be submitted within six months of the end of the reporting period to the government for publication on an internet-based register.		
The Netherlands / 2019	Child Labour Due Diligence Law	Companies registered in the Netherlands and companies from abroad selling goods and delivering services to Dutch customers.	Statement to a supervising authority declaring that they have investigated risks of child labour in their activities and supply chains. If a company identifies a "reasonable suspicion" of child labour, it is required to develop an action plan in line with international guidelines such as the UN Guiding Principles or OECD Guidelines for Multinational Enterprises.	Mandatory due diligence	Companies' statements will be made publicly available by the national competent authority. Complaints regarding non-compliance may be submitted to the company. If there is no corrective action taken by the company, the competent authorities could issue an order to require compliance with the law.

Fig 2: Non-exhaustive comparison of some of the existing responsible business conduct due diligence laws from across the world

1.2 Public buyers' demand

Testament to the increasing relevance of responsible business conduct is also the growing awareness by public buyers of their role in creating demand for sustainable goods and services.

The nexus between purchasing by public authorities and the leverage effect it creates is well documented in the UN 2030 Agenda for Sustainable Development where States are encouraged to implement action plans for "sustainable public procurement". Similarly, the UNGP list public procurement as one of the tools at the disposal of States to create an environment that leads to business respect for human rights. Lastly, the [EU Public Procurement Directive](#) from 2014 strengthens the integration of **social and environmental considerations** into public procurement and requires Member States to adopt measures to ensure that suppliers comply with applicable obligations in the field of environmental, social and labour laws established by the EU, national law or international conventions.

The Organisation for Economic Cooperation and Development (OECD) has recently launched a [programme](#) to advance the integration of responsible business conduct considerations and supply chain due diligence into public procurement policies and processes.

As public purchasing represents a significant share of the total economy⁵, **sustainable public procurement** - if properly taken up - has the potential to advance responsible business conduct and thus contribute to meeting the United Nations Sustainable Development Goals (UN SDGs).

1.3. Investors' leverage

Investors are increasingly monitoring how businesses manage their risks to human rights and are progressively factoring environmental, social and governance (ESG) considerations into their decision-making.

While they may be many tiers away from where human rights violations occur, investors have come to realise that their investment decisions may cause or contribute to adverse impacts and that therefore their leverage should be used to prevent and mitigate those. In fact, recommendations under the OECD Guidelines for Multinational Enterprises also apply to the financial sector.

In this spirit, and to overcome constraints with data quality and accessibility, investors have started to call on governments to adopt mandatory human rights due diligence legislation for companies. In the publication "[The Investor Case for Mandatory Human Rights Due Diligence](#)", the Investor Alliance for Human Rights puts forward a series of arguments explaining the reasons why there should be mandatory human rights due diligence and disclosure by companies.

⁵ Public authorities in the EU spend around 14% of GDP (around €2 trillion per year) on the purchase of services, works and supplies. See at https://ec.europa.eu/growth/single-market/public-procurement_en.

2. Human rights due diligence and the Sustainable Agenda 2030

Respecting human rights has been acknowledged as key to achieving the United Nations Sustainable Development Goals (UN SDGs)⁶. By taking action to tackle some of today's challenges, including adverse human rights impacts, responsible businesses can demonstrate their commitment to generating a positive societal impact. By placing responsible practices at the heart of their business models, companies can not only better manage reputational risks and improve stakeholder relations; they can also become an engine of sustainable development.

The SDGs compass has been designed to help companies report on their positive contribution towards the social and environmental challenges for our global economy as identified in the Sustainable Agenda 2030 and to show progress towards them.

As a business organization, amfori has [mapped](#) our current approaches, tools and services against the SDGs. Going forward, we will continue to measure and increase the relevance of our work on the SDGs to ensure our services and tools support our members to contribute towards sustainable development.

3. How amfori's tools and services support members to advance on their human rights due diligence journey

Ever since the endorsement of the UNGP, expecting companies to conduct business responsibly has become the new normal. Various standards, codes, initiatives, multi-stakeholder collaborative efforts and monitoring frameworks have been put in place to respond to this growing societal expectation⁷.

Regulators, public buyers, stakeholders and, ultimately, consumers have growing expectations regarding corporate's responsibility to respect human rights and remediate adverse impacts. Meeting these expectations helps companies to successfully manage compliance and reputational risks and to improve stakeholders' relations.

amfori's Mission is to enable each of its members to enhance human prosperity, use natural resources responsibly and drive open trade globally.

To achieve this, we provide services and tools to our member companies to tackle sustainability challenges in global supply chains. We believe that by addressing those challenges, business can be an engine of sustainable development and therefore bring about positive societal changes. The below overview depicts which amfori services and tools are available to support members at which step of a typical due diligence process⁸.

⁶ See https://www.ohchr.org/Documents/Issues/Business/Session18/InfoNoteWGBHR_SDGRecommendations.pdf .

⁷ The desire of companies to address responsible business conduct related topics in their supply chains already led e.g. in 2003 to the launch of (amfori) BSCI.

⁸ The stepwise due diligence process referred to is the one put forward by the OECD. The recommendations developed by the OECD (Guidelines for Multinational Enterprises revised in 2011, the Responsible Business Conduct Guidance from 2018 and the sectorial Guidance Documents which address sector-specific risks), represent the global expectations for responsible business conduct, along with the United Nations Guiding Principles on Business and Human Rights (UNGPR). The list of amfori's services and tools is non-exhaustive.

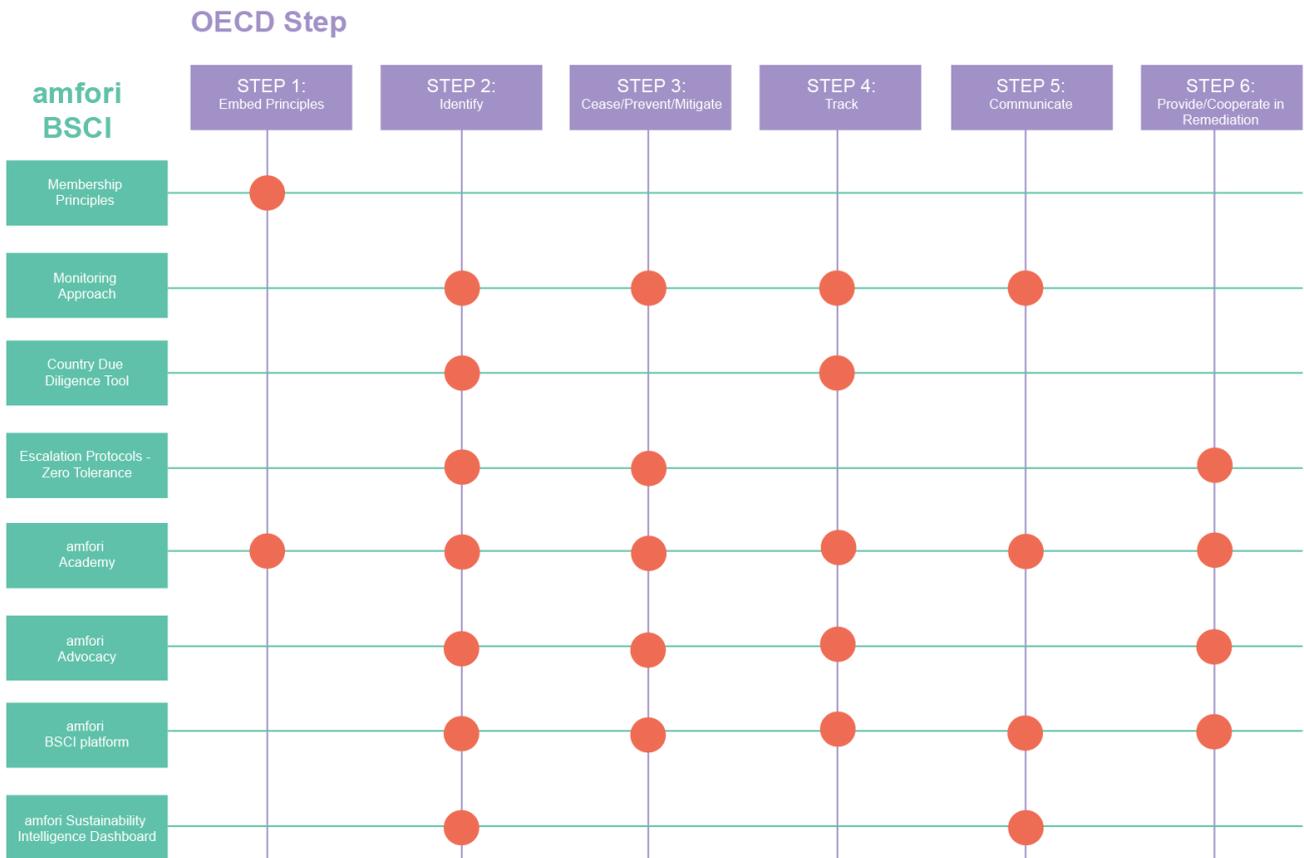


Fig. 3: Overview of OECD stepwise framework for due diligence against amfori's services / tools

3.1 amfori's holistic approach to human rights due diligence: an overview of amfori's services and tools

amfori Membership and amfori BSCI Principles⁹ → amfori BSCI provides one common Code of Conduct, outlining the values and principles that members participating in amfori BSCI commit to and strive to implement with their business partners across their supply chains.

The amfori BSCI Code of Conduct draws on important international labour standards protecting workers' rights such as International Labour Organization (ILO) Conventions and Declarations, the United Nations (UN) Guiding Principles on Business and Human Rights as well as guidelines for multinational enterprises of the Organization for Economic Cooperation and Development (OECD).

Contributes to step 1

amfori BSCI Monitoring Approach → Monitoring in the context of amfori BSCI must be understood as part of both a step-by-step and continuous improvement process that enables business enterprises to analyse social performance across their supply chains. Monitoring helps businesses to proactively identify critical problems and enables them to take decisions that will improve the quality and effectiveness of their human rights commitments and to take corrective actions.

amfori BSCI provides its members with both voluntary preparatory tools (including **self-assessment questionnaire**, **pre-qualification assessment**, **buyers' checklist**, Country Due Diligence tool) and **amfori BSCI 2.0 audits**, depending on the

⁹ Simply signing the amfori BSCI CoC does not suffice for a company to embed responsible business conduct in its policy and operations. See Sections 1 and 2 of the amfori BSCI System Manual.

selected monitoring strategy. amfori BSCI 2.0 audits provide a snapshot of the situation at a factory, farm or production site at a specific point in time. When conducting an amfori BSCI audit, the auditors use their professional judgment to complete a comprehensive assessment of how the 13 interconnected Performance Areas and the amfori BSCI Code of Conduct values are implemented by the business partner.

amfori BSCI audits' quality is controlled through the 360° [Audit Integrity Programme](#) which regularly verifies the following criteria:

- Implementation of amfori BSCI methodology and principles in audits
- Independence of auditing companies
- Integrity of auditing processes
- Consistency of auditing processes
- Expertise of auditors.

The audit quality programme sets, maintains and raises the quality standards for auditing companies to conduct amfori BSCI audits.

Contributes to step 2,3,4,5

amfori Country Due Diligence Tool (CDDT) → The amfori CDDT supports members to determine the level of risk related to a country's governance and gives them an overview of its trade and sustainability situation, thus supporting their supply chain mapping and early detection. This tool complements audits as it offers a perspective of supply chain risks.

Contributes to step 2,4

amfori Platforms → amfori's BSCI platform provides members with a single interactive access point to monitor social performance of their business partners. All amfori BSCI members linked to the same business partner have online access to the audit data, auditors' professional judgement and related remediation plans. The collaborative approach avoids duplication of audits, facilitates trust and transparent dialogue between peers and enhances synergies in remediation. Members also receive timely auditors' alert in case of flagrant human right violations (see Zero Tolerance Protocol).

Contributes to step 2,3,4,5,6

amfori Zero Tolerance Protocol → The amfori Zero Tolerance Protocol serves as a rapid response process for auditors to alert members of flagrant human right violations discovered during amfori BSCI audits. This allows amfori members to rapidly respond in a timely and coordinated manner, where immediate and time-bound collaborative remediation is needed. The protocol applies when an auditor is confronted with factual and flagrant violations in the areas of child and forced labour, inhuman treatment, occupational health and safety, and unethical business behaviour. In the updated System Manual guidance ([Annex 5](#)), the application of the precautionary principle is also contemplated.

Access to remedy → The amfori External Grievance Mechanism (EGM) is a non-judicial mechanism which aims to ensure fair, timely and objective resolution to a grievance. It provides a platform for individuals and organisations to submit a grievance if they deem to have been negatively affected by amfori's activities. amfori is also committed to support all its members in fulfilling their 'access to remedy' expectations. We do, however, acknowledge this is an effort which is best handled through collaboration with other organisations and Multi-Stakeholder Initiatives, to ensure an effective and widely available worker grievance mechanism is available for workers who have exhausted all other means. Our intention is to make sure we address the needs of workers across a variety of industry sectors around the world. We would seek alignment with the various sectoral OECD Guidelines, in addition to the OECD Guidance for responsible supply chains for the garment and footwear sector.

Contributes to step 2,3,6

amfori Academy → The amfori Academy is a digital platform for developing skills in sustainable supply chain management for buyers and business partners and for supporting their continuous improvement. It offers trainings, workshops and e-learning across an array of areas in over 10 languages.

Contributes to step 1,2,3,4,5,6

amfori Advocacy → The amfori advocacy team is committed to supporting members' efforts by liaising with governments, by building coalitions with other organisations and by leveraging collaboration with EU governmental actors. amfori also engages in close dialogue with NGOs and grassroots organizations as a means of complementing members' monitoring activities, early detection and, overall, their due diligence journey. amfori advocacy further keeps abreast of legislative/policy developments and provides political intelligence to its members on strategic issues.

Contributes to step 2,3,4,6

amfori Sustainability Dashboard → The amfori Sustainability Intelligence Dashboard offers companies an online platform providing a single access point to all their supply chain performance information. Connecting amfori members' supply chain information, the dashboard provides a 360-degree view of their business partners' performance through interactive data visualisation by country, sector, industry and audit results.

Contributes to step 2,5

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