

# Human Rights Due Diligence

## Recommendations for a European approach, taking into account key principles of due diligence

### Executive summary

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. By doing so, companies will also improve stakeholders' relations and meet consumers' expectations.

Supporting our members in their journey towards advancing human rights due diligence (HRDD) is part of amfori's DNA. In this sphere, our member companies have significantly shaped the principle of voluntary self-commitment in Europe for the past 20 years.

Voluntary initiatives and commitments must continue to be promoted and rewarded. At the same time, a level playing field is needed both to achieve impact and scale and to avoid unfair competition.

amfori believes the EU is best placed to work on a robust, coherent and predictable human rights due diligence framework for businesses operating in the EU<sup>1</sup>.

We also call for a pragmatic approach that takes the reality of global supply chains into account.

### Key Policy Recommendations for EU Institutions

- ✦ Develop an **EU-wide approach** requiring companies that operate in the EU to carry out human rights due diligence (HRDD) proportionate to the size / leverage in the supply chain and commensurate with the nature of the adverse impact.
- ✦ Foresee a **phased approach to implementation** so that companies are given time to adjust their internal systems and processes without rushing into compliance unprepared.
- ✦ Establish a **proper monitoring and enforcement mechanism, while safeguarding a pragmatic approach on due diligence.**
- ✦ Strive for a **smart mix of measures** (voluntary and mandatory), including incentives to reward those companies that go beyond compliance.
- ✦ Make responsible business conduct one of the criteria of the EU Institutions' and Member States' **procurement policies.**
- ✦ Consider the specific risks and differentiated impacts of business activities on **vulnerable groups** such as women, migrant workers and children.
- ✦ Pursue **trade preferences and investment policies** as an important tool to further the protection of human rights in third countries.

<sup>1</sup> We believe that businesses should conduct due diligence encompassing not just the social dimension of human rights but also environmental impacts. amfori

will look into drafting a position paper covering this latter dimension more extensively.

## 1. Human rights due diligence drivers

The first globally accepted standard holding both businesses and governments accountable for adverse human rights impacts is the United Nations 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. 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 impacts<sup>2</sup>.

Ever since the endorsement of the UNGP, expecting companies to conduct business responsibly has become the new normal<sup>3</sup>. Various standards, codes, initiatives, multi-stakeholder collaborative efforts and monitoring frameworks have been put in place to respond to this growing societal expectation<sup>4</sup>.

The political momentum generated by the UNGP has also led to the progressive integration of elements of responsible business conduct 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 corporate human rights due diligence, both through reporting requirements and obligations to conduct due diligence. There are also ongoing discussions at UN level for a binding Treaty on business and human rights.

Respecting human rights has also been acknowledged as key to the achievement of the United Nations Sustainable Development Goals (UN SDGs)<sup>5</sup>. By taking action to tackle some of today's challenges, including adverse human rights impacts, responsible businesses can therefore 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.

<sup>2</sup> 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 impacts 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.

<sup>3</sup> Not only the public interest is high but also the investors community's expectations are rising.

<sup>4</sup> 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.

<sup>5</sup> See [https://www.ohchr.org/Documents/Issues/Business/Session18/InfoNoteWGBHR\\_SDGRecommendations.pdf](https://www.ohchr.org/Documents/Issues/Business/Session18/InfoNoteWGBHR_SDGRecommendations.pdf).

## 2. Existing legislative approaches: the issue at stake<sup>6</sup>

Notwithstanding the positive momentum generated by the UNGP, and their broad international support, governments' human rights due diligence laws have been framed differently over the years and across jurisdictions.

While there are some clear trends and commonalities emerging among the various laws that have been adopted or that are being considered for adoption, the variety of approaches poses a problem<sup>7</sup>. For companies operating in various markets like amfori's members and especially for small and medium-size enterprises (SMEs), the patchwork of initiatives is generating a burden on their business and supply chains. Simply put, it translates into a proliferation of reporting efforts within the same business entity which, in turn, is given no choice but to cascade differing and potentially divergent requirements along its supply chains, including to SMEs.

amfori believes the current approach is not the most effective and practicable way of supporting companies' efforts in mapping potential and actual risks and in addressing adverse human rights impacts resulting from their operations and activities.

What is more, as companies' implementation of human rights due diligence still features gaps and challenges<sup>8</sup>, there appears to be room for a more robust level playing field and a greater leverage.

## 3. amfori's recommendations

### 3.1 The what

To overcome the challenges of the mushrooming of national laws and to achieve impact and scale, amfori takes the view that approaches to framing human rights due diligence should be streamlined.

With the EU being the largest trading zone in the world and given its leading role in advancing the sustainable trade and

<sup>6</sup> EU-wide due diligence legislation does exist (e.g. Timber Regulation, Conflict Minerals Regulation and Non-Financial Reporting Directive). However, it is either commodity-specific or, as it is the case for the Non-Financial Reporting Directive, it did not prove successful in generating the expected behavioural change.

<sup>7</sup> 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).

<sup>8</sup> See report by the Working Group on the issue of human rights and transnational corporations and other business enterprises [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/73/163](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/73/163).

human rights agenda via its trade and investment policy, amfori believes the EU is best placed to work towards **creating a robust, coherent and predictable framework for businesses operating in the EU.**

This would mean, to start with, **requiring companies** operating in the EU<sup>9</sup> **to act diligently** by understanding the human rights risks and impacts they cause, contribute to or may be directly linked to; by managing them and by communicating about their due diligence approach. Conducting human rights due diligence would therefore become the licence to operate in the EU market.

To help address the complexity of the issues at stake, however, the EU should strive for a **smart mix of measures** which blends in various policy tools<sup>10</sup>. Indeed, voluntary and mandatory instruments advancing the respect for human rights can be mutually reinforcing. In this spirit, we believe that next to an EU-wide legislative instrument, the EU should continue to encourage and promote **voluntary initiatives and commitments**. Similarly, **incentives** such as VAT reductions and reduced trade tariffs for sustainable products should be contemplated to reward those companies that go beyond compliance.

What is more, EU Governments and public authorities should lead by example and integrate human rights due diligence in their procurement processes. To this effect, responsible business conduct - which also entails respecting and promoting human rights along supply chains - should become one of the criteria of the EU Institutions and the EU Member States **procurement policies**.

Complementary to any EU-wide legislative systems, amfori firmly believes that **trade preferences and investment policy** should continue to play a role in advancing the protection of human rights both ahead of negotiations of Free-Trade Agreements (e.g. through mandating human rights impact assessments) and after, through ensuring countries abide by their commitments. The EU should continue to work with trade partners to advance sustainable development. Trade and sustainable development chapters are unprecedented tools in ensuring respect for and the advancement of labour standards in third countries<sup>11</sup>.

### 3.2 The how

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<sup>9</sup> I.e. selling products and delivering services, including online sales, regardless of where their legal seat is.

<sup>10</sup> Both mandatory legislation and voluntary approaches such as e.g. voluntary initiatives and commitments by industry.

<sup>11</sup> See amfori's position "[Towards more effective EU Trade and Sustainable Development Chapters](#)".

<sup>12</sup> The Conflict Minerals Regulation provides an interesting example in this regard.

While all businesses bear a responsibility to respect human rights, it is crucial that steps be reasonable and commensurate to the capacity, resources and leverage of a given business. This is particularly the case for SMEs. Any EU-wide legislative system would therefore need to be informed by the principles of proportionality and leverage, thus catering for instance for the nature of the business activities, the number of suppliers, the position in the supply chain, the number of products or product range etc. Due consideration should also be given to "accompanying measures" to the legislation, which might serve the purpose of supporting companies to comply with the requirements, such as training and tools for SMEs<sup>12</sup>. Importantly, throughout the process, we also invite the EU to provide the right level of guidance and support to businesses of all sizes, especially to SMEs.

Giving companies enough time to implement the requirements would enable them to thoroughly undertake supply chain mapping and conduct an impact-oriented assessment without rushing into compliance unprepared<sup>13</sup>. We would therefore recommend a **phased approach** to implementation, though in a time-bound fashion with clear deadlines in place.

If businesses are doing their job thoroughly and have due diligence systems and processes in place, it is likely they will find issues, gaps and shortcomings in their supply chain. This is part of the due diligence journey and the EU should be pragmatic about it. In amfori's view, it then becomes crucial that any EU-wide legislative system supports and encourages **continuous improvement** by allowing companies to be transparent about how they conduct human rights due diligence, without resulting in exposure to increased risk of litigation, consumer retaliation, or reputational damage<sup>14</sup>.

Importantly, a proper **monitoring and enforcement mechanism** should be put in place, so that those not abiding by the law are incentivised to play by the rules.

In amfori's view, any EU legislative system would also need to consider the specific risks and differentiated impacts of business-related activities on **vulnerable groups** such as women, migrant workers and children<sup>15</sup>.

### 3.3 Why does it matter

It would be over simplistic to believe that EU-wide legislation can be the panacea for human rights due diligence<sup>16</sup>. However,

<sup>13</sup> Unintended consequences might include, for instance, cutting business relations with supply chain business partners that represent a risk instead of working towards a holistic approach meant to identify the root-causes of problems and geared towards continuous improvement.

<sup>14</sup> It should not be the lack of risk that is rewarded. Rather, the willingness to improve practices based on continuous risk and impact assessment.

<sup>15</sup> See opening General Principles section of the UNGP.

<sup>16</sup> In fact, amfori believes the EU approach should encompass a smart mix of measures including but not limited to legislation.

provided it is supported by a thorough impact assessment, that it is aimed at harmonising the conditions for operating in the EU market and that it is part of a wider policy framework, legislation could help to:

- ✦ Level the playing field across all sectors and supply chains and raise the bar of minimum corporate behaviour: by undertaking due diligence across the industry board, beyond specific prioritised sectors or issues, the leverage would be greater<sup>17</sup>.
- ✦ Maximise the efforts of all those involved, from duty bearers such as governments and businesses, to right holders such as workers.
- ✦ Streamline approaches, thus cutting down on red tape for business.
- ✦ Disincentivise “forum shopping”, i.e. the practice whereby companies move their headquarters to those jurisdictions where they end up being less regulated.
- ✦ Pave the way towards making it easier for investors to decide in which businesses they wish to invest, or for civil society organisations, workers and trade unions to conduct better monitoring.
- ✦ Enable the EU to make progress towards its international commitments, e.g. the UN 2030 Agenda for Sustainable Development and its 17 SDGs.
- ✦ Contribute to bringing coherence across policy sectors<sup>18</sup>.

In designing its system, we encourage the EU to conduct a thorough impact assessment of existing market practices and laws, consult with key stakeholders, leverage international cooperation and work with local governments to build capacity to improve governance and law enforcement.

#### 4. Conclusions

amfori looks at the EU to take the lead in designing a robust, coherent and predictable human rights due diligence framework for businesses operating in the EU.

Enhancing collaboration along the supply chain and strengthening cooperation with local governments, communities, international counterparts should continue to be

encouraged as part of a wider approach to advancing due diligence.

amfori is eager to play a contributing role to the ongoing debate surrounding this issue at EU level. The recommendations in this paper reflect our initial thinking on the matter.

We look forward to continuing to engage with EU decision-makers and other stakeholders and to lend our expertise and experience from driving supply chain improvements.

#### Key principles for due diligence

For any EU due diligence system to be as effective and practicable as it could be, it would need to be informed by the following principles:

- ✦ HRDD should be based on **international frameworks** like the UNGP, the OECD Guidance on Responsible Business Conduct (RBC) and the ILO Core Conventions.
- ✦ HRDD should be informed by an **ongoing risk-assessment** and **impact-oriented approach** to not only identify risks but also remediate adverse impacts.
- ✦ HRDD should be regarded as a **dynamic process of continuous improvement**.
- ✦ HRDD should be encouraged as part of a **wider collaborative effort** both along the supply chain and with external stakeholders (peers, NGOs, local communities and governments etc.).

#### About amfori

amfori is the leading global business association that promotes open and sustainable trade. We number over 2,400 importers, retailers and brand manufacturers, from over 40 countries and with a combined turnover of more than €1.5 trillion.

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<sup>17</sup> Specific guidance for certain supply chains / sectors could be envisaged. Due consideration should always be given to SMEs and, more broadly, to the company's leverage in the supply chain.

<sup>18</sup> See [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/73/163](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/73/163).