

# A DIRECTIVE ON MANDATORY HUMAN RIGHTS AND SUSTAINABLE BUSINESS CONDUCT DUE DILIGENCE



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HUMAN RIGHTS DUE DILIGENCE (HRDD) AND RESPONSIBLE BUSINESS CONDUCT IN THE EU

# STATUS QUO

- ❖ Several **international instruments** deal with the framing of companies' supply chains and provide for definition of due diligence obligations and mechanisms

UN (*UN Guiding Principles on Business and Human Rights* of 2011); ILO (2011 *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy*; 2016 *ILO Resolution concerning decent work in global supply chains*); CoE (*Committee of Ministers Recommendation on Human Rights and Business* of 2016); OECD (*Guidelines for Multinational Enterprises*).

- ❖ **EU level**

- Non-Financial Reporting Directive; Timber Regulation; Conflict Mineral Regulation.
- Several EP resolutions adopted and/or in pipeline calling for adoption of mandatory due diligence requirements covering companies' supply chains at EU level.
- Commissioner Reynders is “looking into the need for mandatory HRDD mechanism”
- In 2019, the European Commission commissioned the British Institute of International and Comparative Law (BIICL) to carry out an external study on due diligence requirements through the supply chain which was published on 24th of February 2020. More an impact assessment but confirms that voluntary approach does not deliver calls for mandatory scheme but does not highlight the role of TUs in the whole DD process.



# STATUS QUO

## ❖ National initiatives

- French - corporate duty of vigilance law of 27 March 2017.
- UK - Transparency in Supply Chain Clause of the Modern Slavery Act.
- Netherlands - Child Labour Due Diligence Bill.
- Several Member States are considering to introduce due diligence obligations and/or there is a governmental commitment to do so.
  - AT: Child and forced labour DD law
  - NO: Ethics Information Committee draft law
  - NL: ChristenUnie legislative proposal
  - Government commitments: DE, FI, LUX,
- In several other Member States there are important civil society calls/joint actions: BE, DK, IRE, IT, ES, Swiss, UK



# STATUS QUO

- ❖ **The *status quo* does not deliver.**
- ❖ **The reliance on a voluntary framework to promote business respect for human rights has proven insufficient and ineffective** for workers, society and businesses.
  - **It does not provide society, workers, citizens, Member States and businesses the robust due diligence framework needed.** It raises public expectation without providing the enabling framework for proper enforcement.
  - Patchwork of measures that do **not provide for legal certainty and legal predictability.**
  - The status quo creates **unfair competition and a race to the bottom** in terms of human rights and environmental and social standards.
  - Furthermore, it provides **no stable grounds for workers, stakeholders and investors to evaluate and to compare companies' sustainability and due diligence processes.**
- ❖ There is a clear need to remedy the absence of legally binding obligations upon businesses to comply with human rights and to overcome the lack of effective oversight and means to properly enforce measures to be implemented by companies in this area. **A European directive establishing mandatory due diligence mechanisms for companies' operations and their supply chains is necessary.**



# ETUC POSITION

- ❖ **ETUC Action Programme 2019-2023** included amongst the objectives of the European trade union movement:
  - an **EU directive on human rights (including labour rights) due diligence**, and
  - a **legally binding treaty on multinational companies and human rights** (currently under negotiation within the UN).

<https://www.etuc.org/sites/default/files/page/file/2019-06/20190621%20Action%20Programme.pdf>

- ❖ After exchanges of views and in-depth discussions, the Executive Committee of the ETUC approved on 17-18 December 2019 the **ETUC Position for a European directive on mandatory Human Rights due diligence and responsible business conduct**

[https://www.etuc.org/sites/default/files/document/file/2019-12/ETUC%20Position%20for%20a%20European%20directive%20on%20mandatory%20Human%20Rights%20due%20diligence%20and%20responsible%20business%20conduct%20adopted\\_0.pdf](https://www.etuc.org/sites/default/files/document/file/2019-12/ETUC%20Position%20for%20a%20European%20directive%20on%20mandatory%20Human%20Rights%20due%20diligence%20and%20responsible%20business%20conduct%20adopted_0.pdf)



# ETUC POSITION

- ❖ The ETUC calls for a **European directive on mandatory human rights due diligence and responsible business conduct**.
  - With the aim to establish ambitious DD obligations in line with the high social and environmental standards and objectives of the EU but also building upon the ambitious elements present in international norms, EU legislative instruments and national frameworks
  - Focus on prevention of human rights violations but also on effective controls, sanctions and remedies
  - A combination of legal bases should be considered but including Article 153(1)(e) (information and consultation) and social partners should be fully involved in line with Article 154 TFEU.
- ❖ **Personal scope:** it should establish mandatory and effective due diligence mechanisms covering
  - All companies' ranging from multinationals to SMEs and irrespective the sector they are active in (so incl. public sector) and which are established and/or active in the EU regardless of their legal form
  - All company activities and their business relationships, including their supply and subcontracting chains.
  - Limitations in the Directive will only lead to emptying the initiative



# ETUC POSITION

## ❖ **Material scope:**

- broad coverage of human rights including **trade unions' and workers' rights** (thereby building amongst others on ILO Conventions, Council of Europe ECHR and ESC and CFREU) including freedom of association, right to collective bargaining and action, information/consultation/BLER, decent working conditions (including fair (minimum) wages), OHS, social security coverage, etc.
- The DD obligations should cover actual and potential social and environmental impacts, as well as anti-corruption, corporate governance and tax matters.

## ❖ An **anticipative DD process** which ensures the **full involvement of trade unions and workers' representatives in the whole due diligence process and** includes amongst others that

- Companies should map, identify and assess actual and potential impacts
- Companies should act upon the findings including (temporarily) ceasing operations which cause or could cause adverse impacts
- Companies develop, publish and implement a DD plan and ensure (assessment of) proper monitoring and control but also provide for necessary budget allocations to ensure the implementation of the DD plan
- DD plans should include early alert mechanism to collect reporting and foresee in the publication of an annual and comprehensive public report on progress made in/by DD plans



# ETUC POSITION

- ❖ **Workers and trade unions as most central actors in the whole process including**
  - In the negotiation in the DD plans, its implementation, enforcement, periodic assessment and review
  - In the identification process of the adverse impacts
  - In the development and management of the early alert mechanism
  - Respect of information and consultation rights (incl. via EVCS)
  - Involvement must also be ensured in the supply and subcontracting chains
- ❖ **Public monitoring:** MS should ensure one or more national public authorities (incl. Labour and H&S inspectorates) have responsibility to monitor the respect of the obligations in the Directive; a role of the European Labour Authority should also be ensured as well as for the OECD contact points.
- ❖ **Effective remedies/sanctions** (e.g. exclusion from public procurement/funding) **and access to justice** (incl. interim proceedings/measures) should be available for victims, including trade unions.
- ❖ Companies should be accountable for the impacts of their operations. **Liability must be introduced** for cases where companies fail to respect their due diligence obligations, **without prejudice to joint and several liability frameworks.**





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## ETUC ACTIONS – OTHER STEPS

- ❖ **Continues pressure on the European Commission** for it to put forward a proposal for a directive which includes our main demands.
- ❖ **Preparation of a template reply to the Commission Consultation for an Initiative on Sustainable Corporate Governance** (<https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance>) (deadline 8 February)
- ❖ **Work with the European Parliament** in order to ensure support for our demands, in particular in the framework of the initiative report(s) of the EP (Rapporteur Lara Wolters) on this issue; vote in JURI committee 27/1, vote in EP plenary in March 2021.
- ❖ **Are in contact**, with the active involvement and support of affiliates, **with Member States**, in particular with the EU Council Presidencies and with the countries which have introduced or are discussing due diligence frameworks at national level.
- ❖ **Important role of national unions** to support at national level and towards the different governments the achievement of the ETUC objectives.



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## ETUC ACTIONS – OTHER STEPS

- ❖ Continue **cooperation with ITUC** to push for the adoption and ratification of a binding **UN Treaty on Business and Human Rights**.
- ❖ While maintaining our approach and objectives, **some joint initiatives with NGOs and other organisations were/are organised** to push for an ambitious European instrument.
  - **A call for human rights and environmental due diligence legislation** - Statement signed by over 80 NGOs and trade unions - <https://www.etuc.org/en/document/call-eu-human-rights-and-environmental-due-diligence-legislation>
  - The ETUC has developed together with ÖGB, Friends of the Earth, the European Coalition for Corporate Justice and AK a website to allow citizens and workers to put forward a reply to the consultation, on the basis of a standard reply developed with the other organisations participating. [www.enforcinghumanrights-duediligence.eu](http://www.enforcinghumanrights-duediligence.eu). Several national affiliates and ETUFs have already joined the initiative supporting organisations.





**THANK YOU!**