



Remarks by

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“Towards a Common Approach to Sustainable Supply Chains and Due Diligence”
(Contribution of the German Federal Ministry for Economic Cooperation and
Development (BMZ) to the German Council Presidency of the European Union)

Panel discussion: “Policy perspectives on due diligence: discussion on the options of
mandatory due diligence obligations and the improvement of working and living
conditions along global supply and value chains”, 24 November, 2020

Thank you for the invitation. The UN Working Group on Business and Human Rights that I
represent has a mandate from the UN Human Rights Council to promote global
implementation of the UN Guiding Principles on Business and Human Rights – the UNGPs.

Under the UNGPs, all business enterprises have a responsibility to respect human rights, and
the process of continuously conducting human rights due diligence (HRDD) is a core
requirement for businesses in fulfilling that responsibility.

The Working Group also considers that HRDD is a key tool in the global efforts to build
forward better in the wake of the COVID-19 pandemic.

It enables companies to focus their attention on the most severe human rights risks and
identify actual or potential risks to people as part of any response to the pandemic.

Since the endorsement of the UNGPs by the UN in 2011, corporate HRDD has become a norm of expected conduct. The concept was fully integrated into the OECD Guidelines for Multinational Enterprises.

The UNGPs also set out the legal and policy implications for how to operationalize the State duty protect through a “smart mix” of measures that **include** legally binding measures, particularly where voluntary measures continue to leave significant gaps in human rights protections. Indeed, the UNGPs anticipated the development of mandatory measures that codify the expectations of the UNGPs into hard law.

The Working Group is encouraged by the current momentum toward mandatory human rights due diligence (mHRDD) regimes across a growing number of jurisdictions, particularly in the EU context.

The consensus among participants across all sectors and all geographies at last week’s UN Forum on Business and Human Rights is that laws are coming. Our future is one of mandatory measures. We now have a strong evidence-base that voluntary measures aren’t getting us where we need to be. There is broad agreement that mandatory measures should be based on the UNGPs and rights-holders should have seats at the table as measures are developed.

It is encouraging to note that increasingly, businesses and investors, alongside civil society organizations, are calling for effective mHRDD legislation. A number of company speakers at the Forum generally welcomed mHRDD. Multinational enterprises want consistency and policy coherence across the many jurisdictions where they operate; small and medium enterprises are looking for structure and guidance on how to effectively prioritise and integrate respect for human rights; and every business wants to level the playing field.

Legislative initiatives like the one proposed at the EU level are critical for speeding and scaling up business respect for human rights.

The Working Group has issued recommendations to the EU in this context of the legislative proposal. Let me highlight some key points. It is critical for mandatory measures to:

- Drive coherence across efforts. It is essential that legal developments are based on the key expectations set out in the UNGPs, and align with the DD guidance in the UNGPs, the

OECD and ILO. Do not reinvent the wheel, but also be clear that you are using globally accepted standards.

- Be based on meaningful and inclusive stakeholder consultations, including with stakeholders affected by and involved with the full value chain. There is a need to consult with other governments, exporters' associations and local stakeholders. You can raise awareness in the context of ongoing political dialogue and connect with regional platforms that have been put in place. There is a need to actively avoid the potential misperception of Western cultural imposition or a new form of protectionism.
- Cover all internationally recognized human rights and all types of adverse human rights impacts.
- Apply across value chains, not just within supply chains.
- Cover all companies and other forms of business enterprises incorporated or domiciled in the relevant jurisdiction and all foreign business enterprises which sell goods or services in the relevant jurisdiction, and apply to both groups' extraterritorial operations and business relationships.
- Apply to the government as an economic actor as part of both vertical and horizontal policy coherence, including procurement and state-owned enterprises. On policy coherence, you have many tools to harmonize first and use it as leverage later, such as in trade and commerce and in development cooperation.
- Facilitate both vertical and horizontal policy coherence.
- Go beyond reporting regimes and require meaningful processes and outcomes.
- Require businesses to take measures that facilitate access to effective justice and remedy.
- Set out clear compliance monitoring and enforcement structures and procedures that facilitate access to effective justice and remedy.

Building out regulatory responses is a key issue for the Working Group's ongoing efforts to develop a roadmap to advance implementation of the UNGPs in the next decade, through our "UNGP10+" project.

We look forward to continued engagement with the German Council Presidency and other stakeholders to envision a coherent and effective way forward.

Links

- [Recommendations](#) from the Working Group on Business and Human Rights regarding a legislative proposal on human rights and environmental due diligence in Europe – Letter to European Commissioner for Justice, Didier Reynders.
- UN Working Group's [thematic page on mHRDD](#).
- [UNGPs10+/NextDecadeBHR](#)