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Memorandum on the due diligence obligation –

Review of the national corporate social responsibility act

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Arviomuistio asianmukaisen huolellisuuden velvoitteesta
Kansallisen yritysvastuulain arviointia

Työ- ja elinkeinoministeriön julkaisuja 2022:24		**Teema**	Yritykset
Julkaisija	Työ- ja elinkeinoministeriö		

Tekijä/t	Linda Piirto ja Sami Teräväinen, työ- ja elinkeinoministeriö		

Kieli	Englanti	**Sivumäärä**	172

Tiivistelmä

Pääministeri Sanna Marinin hallitusohjelmassa on tavoite tehdä Suomesta yhteiskuntavastuun edelläkävijämaa. Hallitusohjelma sisältää kirjauksen selvityksen tekemisestä, jonka tavoitteena on yritysvastuulain säätäminen. Yritysvastuuta koskevassa lainsäädännössä säädettäisiin yrityksiä koskevasta asianmukaisen huolellisuuden velvoitteesta yritysten toiminnassa.

Työ- ja elinkeinoministeriön laatima arviomuistio kartoittaa, millainen suomalaisia yrityksiä koskevan asianmukaisen huolellisuuden velvoitteen sisältö voisi olla kansallisessa lainsäädännössä. Arviomuistiossa arvioidaan tarkemmin, millaisia lainsäädännöllisiä vaihtoehtoja velvoitteen toteuttamiseksi olisi, mitkä olisivat velvoitteen vaikutukset ihmisoikeuksiin, ympäristöön sekä yrityksiin ja millaiset edellytykset lainsäädännön toteuttamiseksi olisi. Arviomuistio syventää Ernst & Young Oy:n ministeriölle laatimassa oikeudellisessa selvityksessä aloitettua työtä.

Asianmukaisen huolellisuuden velvoitetta koskevassa lainsäädännössä voitaisiin säätää yrityksiltä edellytettävistä toimenpiteistä, jotka tähtäävät yrityksen toiminnasta aiheutuvien haitallisten ihmisoikeus- ja ympäristövaikutusten tunnistamiseen, ehkäisemiseen, lieventämiseen ja korjaamiseen sekä yritysten toteuttamien toimenpiteiden seurantaan.

Lainsäädännössä velvoite olisi mahdollista toteuttaa monella eri tapaa. Yrityksiltä voidaan edellyttää erilaisten yksityiskohtaisten toimenpiteiden suorittamista. Lain soveltamisalaa voidaan rajata esimerkiksi yritysten kokoluokan tai toimialan perusteella. Myös velvoitteen ulottuvuutta toimitusketjussa voidaan vaihdella sen mukaan, koskisiko se vain yrityksen määräysvallassa olevia yrityksiä tai kuuluisiko siihen myös yritysten toimitusketjut.

Velvoite aiheuttaisi yrityksille kustannuksia ja se voi heikentää kotimaisten yritysten kilpailukykyä suhteessa kilpailijamaiden yrityksiin, jos velvoite toteutettaisiin yksin kansallisena sääntelynä. Velvoitteen myönteisten ihmisoikeus- ja ympäristövaikutusten toteutumiseen liittyy käytettävissä olevan tutkimustiedon puuttuessa epävarmuuksia.

Kevyempi asianmukaisen huolellisuuden velvoitteen sääntely olisi oikeudellisesti yksinkertaisempi toteuttaa, mutta sääntelyn hyödyt voivat jäädä ohuiksi suhteessa sääntelytaakkaan. Tiukemmin yrityksiä sääntelevään velvoitteeseen liittyisi huomattavia jatkoarviointia vaativia kysymyksiä.

Asiasanat Ihmisoikeudet; ympäristö; yritysvastuu; yhteiskuntavastuu; yritykset; sääntely

Presentationsblad
12.4.2021

Bedömningspromemoria om skyldigheten att iaktta tillbörlig aktsamhet – Bedömning av den nationella lagen om företagsansvar

Arbets- och näringsministeriets publikationer 2022:24		**Tema**	Företag
Utgivare	Arbets- och näringsministeriet		

Författare	Linda Piirto och Sami Teräväinen, arbets- och näringsministeriet

Språk	engelska	**Sidantal**	178

Referat

I regeringsprogrammet för statsminister Sanna Marin ingår målet att Finland ska bli ett föregångarland inom samhällsansvar. I regeringsprogrammet står det också att det ska tas fram en utredning med målet att stifta en lag om företagsansvar. Bestämmelserna om företagsansvar ska gälla skyldigheten för företag att iaktta tillbörlig aktsamhet i sin verksamhet.

Arbets- och näringsministeriets bedömningspromemoria innehåller en kartläggning av hur skyldigheten för finländska företag att iaktta tillbörlig aktsamhet ska kunna se ut i den nationella lagstiftningen. Kartläggningen bedömer närmare vilka lagstiftningsalternativ det finns för att fullgöra skyldigheten, vilka konsekvenser skyldigheten har för de mänskliga rättigheterna, miljön och företagen och vilka förutsättningar det finns för att sätta lagstiftningen i kraft. Promemorian fördjupar Ernst & Young Oy:s juridiska utredning till ministeriet.

Bestämmelserna om skyldigheten att iaktta tillbörlig aktsamhet ska kunna gälla åtgärder som företagen förutsätts vidta för att identifiera, förebygga, lindra och avhjälpa de skadliga konsekvenser för de mänskliga rättigheterna och miljön som följer av företagens verksamhet samt att följa upp utfallet av åtgärderna.

I lagstiftningen finns det flera olika sätt att fullgöra skyldigheten. Av företag kan det krävas att de vidtar olika detaljerade åtgärder. Lagens tillämpningsområde kan begränsas till exempel enligt företagens storlek eller bransch. Även omfattningen av skyldigheten i leveranskedjan kan variera beroende på om den gäller endast företag som företaget kontrollerar eller om den också gäller företagens leveranskedjor.

Skyldigheten orsakar företagen kostnader och kan försämra företagens konkurrenskraft i förhållande till konkurrenterna i andra länder om skyldigheten enbart regleras nationellt. På grund av brist på forskningsdata är skyldighetens positiva konsekvenser för de mänskliga rättigheterna och miljön osäkra.

En lättare reglering av skyldigheten att iaktta tillbörlig aktsamhet är juridiskt enklare, men regleringens fördelar kan vara obetydliga jämfört med regleringsbördan. Att utfärda bestämmelser om en skyldighet som reglerar företagen strängare har stora öppna frågor som kräver fortsatt bedömning.

Nyckelord	mänskliga rättigheter, miljö, företagsansvar, samhällsansvar, företag, reglering

Description sheet
12 April 2022

Memorandum on the due diligence obligation – Review of the national corporate social responsibility act

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Abstract

The Government Programme of Prime Minister Sanna Marin's Government includes the aim to make Finland a leading country in social responsibility. The Government Programme includes an entry on preparation of a report with the purpose to enact a law on corporate social responsibility. The legislation on corporate social responsibility would lay down provisions on companies' due diligence obligation with regard to their business operations.

A memorandum prepared by the Ministry of Economic Affairs and Employment investigates the options for the content of due diligence obligation in national legislation that would apply to Finnish companies. The memorandum assesses in more detail the legislative alternatives for meeting the obligation; the effect of the obligation on human rights, the environment and companies; and the conditions for implementing the legislation. The memorandum expands on the Judicial Analysis that Ernst & Young Oy prepared for the Ministry of Economic Affairs and Employment.

The due diligence legislation could lay down provisions on the measures required of companies to identify, prevent, mitigate and remedy the adverse effects to human rights and the environment caused by the companies' operations and to monitor the measures implemented by them.

The legislation would provide for many different ways to meet the obligation. Companies may be required to carry out various detailed measures. The scope of application of the act may be narrowed, for example, on the basis of the company's size or sector. Extending the scope of the act to supply chain may also vary depending on whether the obligation would only apply to enterprises controlled by the company or whether it would also include the companies' supply chains.

The obligation would incur costs for companies and it could undermine the competitiveness of domestic companies in relation to companies in competitor countries if the obligation were implemented as national regulation alone. In the absence of available research data, it is also uncertain whether the obligation would result in positive impacts for human rights and the environment.

Lighter regulation of due diligence would be easier to implement legally, but the benefits of such regulation may be limited in relation to the regulatory burden. Regulation that imposed stricter due diligence obligation on companies would involve significant questions requiring further assessment.

Keywords Human rights; environment; corporate responsibility; social responsibility; companies; regulation

Contents

1. Background

The Programme of Prime Minister Sanna Marin's Government includes the aim to make Finland a leading country in social responsibility. The Government Programme includes an entry on preparation of a report with the purpose to enact a law on corporate social responsibility.

This assessment memorandum prepared by the Ministry of Economic Affairs and Employment explores the options for the content of the due diligence obligation in national legislation that would apply to Finnish companies. The memorandum assesses in more detail the legislative alternatives for meeting the obligation; the effect of the obligation on human rights, the environment and companies; and the conditions for implementing the legislation. This memorandum expands on the Judicial Analysis that Ernst & Young Oy prepared for the Ministry of Economic Affairs and Employment in summer 2020.[1]

According to the analysis, business operations are already subject to various due diligence obligations, which require companies to assess and prevent risks associated with their operations. It would be possible to impose a due diligence obligation on companies regarding the environment and human rights within the framework of the national legal system. However, there are a number of issues to consider in relation to the legislation.

After the publication of the Judicial Analysis, the Ministry of Economic Affairs and Employment circulated it for public comments.[2] Those providing comments submitted their observations regarding the analysis and requested clarifications and elaborations regarding its observations. This assessment memorandum elaborates on the possible ways of enacting legislation and assesses these further. In addition, the memorandum addresses the changes taking place in corporate responsibility regulation in the European Union and in France, Germany, Norway and the Netherlands.

[1] Ernst & Young Oy: Helminen Sakari & al. (Ministry of Economic Affairs and Employment, 2020): Judicial Analysis of the Corporate Social Responsibility Act, http://urn.fi/URN:ISBN:978-952-327-553-9. Accessed on 24 November 2021.

[2] Lausuntopalvelu.fi (service for online consultation): Oikeudellinen selvitys yritysvastuulaista [Judicial Analysis on the Corporate Social Responsibility Act] (VN/16185/2020), https://www.lausuntopalvelu.fi/FI/Proposal/Participation?proposalId=2e845697-d3c6-4154-af2a-ed371cafa1ce. Accessed on 7 December 2021.

Support in the preparation of the memorandum was prepared by a working group consisting of stakeholder representatives.[3] The group was appointed for a term running from 15 February 2021 to 1 February 2022. It was chaired by Commercial Counsellor Kent Wilska of the Ministry for Foreign Affairs with Liisa Huhtala, Government Counsellor at the Ministry of Economic Affairs and Employment as deputy chair. The members of the group were Pia Björkbacka, Adviser for International Affairs, Central Organisation of Finnish Trade Unions SAK; Sonja Finér, Executive Director, Finnwatch; Elena Gorschkow, Head Of Public Affairs, Finnish Confederation of Professionals STTK; Jyrki Jauhiainen, Senior Ministerial Adviser, Ministry of Justice; Johanna Järvelä, PhD candidate, Hanken School of Economics; Timo Kaisanlahti, Chief Specialist, Ministry of Economic Affairs and Employment; Karoliina Katila, Senior Adviser, Federation of Finnish Enterprises; Matti Kattainen, environmental lawyer, Finnish Association for Nature Conservation; Tia Laine-Ylijoki-Laakso, Senior Ministerial Adviser, Ministry of the Environment; Tytti Nahi, Vice-Chair of the Board of Directors, Fingo; Linda Piirto, Senior Adviser, Ministry of Economic Affairs and Employment; Sami Teräväinen, Senior Officer for Legal Affairs, Ministry of Economic Affairs and Employment; Simo Tiainen, Director, Central Union of Agricultural Producers and Forest Owners MTK; Anu Tuovinen, Chief Adviser, Confederation of Unions for Professional and Managerial Staff in Finland Akava; Antti Turunen, lawyer, Central Chamber of Commerce; and Hannu Ylänen, Senior Adviser, Confederation of Finnish Industries EK.

During its term, the working group convened for eight meetings, on 10 March, 27 April, 24 May, 8 June, 13 September, 11 October, 2 December 2021 and 26 January 2022. All meetings took place virtually because of the Covid pandemic. In spring 2021, the working group discussed the objectives of the preparations relating to the assessment memorandum. In the autumn, the working group was supplied with the draft memorandum for their comments, which could be provided both in writing and at meetings. Before the final meeting of 26 January 2022, the working group was supplied with the memorandum's sections on conclusions and proposals for further action. The views expressed in the assessment memorandum are those of the Ministry of Economic Affairs and Employment, however.

At the outset of the preparatory work, the assessment memorandum was intended to examine corporate social responsibility regulation at both the national and EU levels. It was known that the European Commission was preparing an initiative on

[3] Ministry of Economic Affairs and Employment: Ministry of Economic Affairs and Employment to appoint a working group to support the drafting of legislation on responsible business conduct (9 December 2020), https://tem.fi/en/-/ministry-of-economic-affairs-and-employment-to-appoint-a-working-group-to-support-the-drafting-of-legislation-on-responsible-business-conduct. Accessed on 27 January 2022.

sustainable corporate governance regulation. The publication of the Commission's initiative was delayed on three occasions, however: first in summer, then in autumn and finally towards the very end of 2021. The Commission ultimately published its proposal for a Directive on corporate sustainability due diligence on 23 February 2022. The proposal includes a human rights and environment due diligence obligation to be imposed on companies. Since the Commission proposal was only made public at the very last moments available for the drafting of this assessment memorandum, it was possible to take only limited account of its substance in the memorandum.

2. Objectives of the assessment memorandum

The legislation on corporate social responsibility would lay down provisions on companies' due diligence obligation with regard to human rights and the environment in their operations.

In this context, due diligence means the process by which companies identify, prevent and mitigate actual and potential adverse impacts in their own operations, their supply chain and other business relationships and account for how they address these, take remedial action and engage in cooperation as necessary. The legislation would lay down further provisions on the contents of this process and on the measures required of companies.

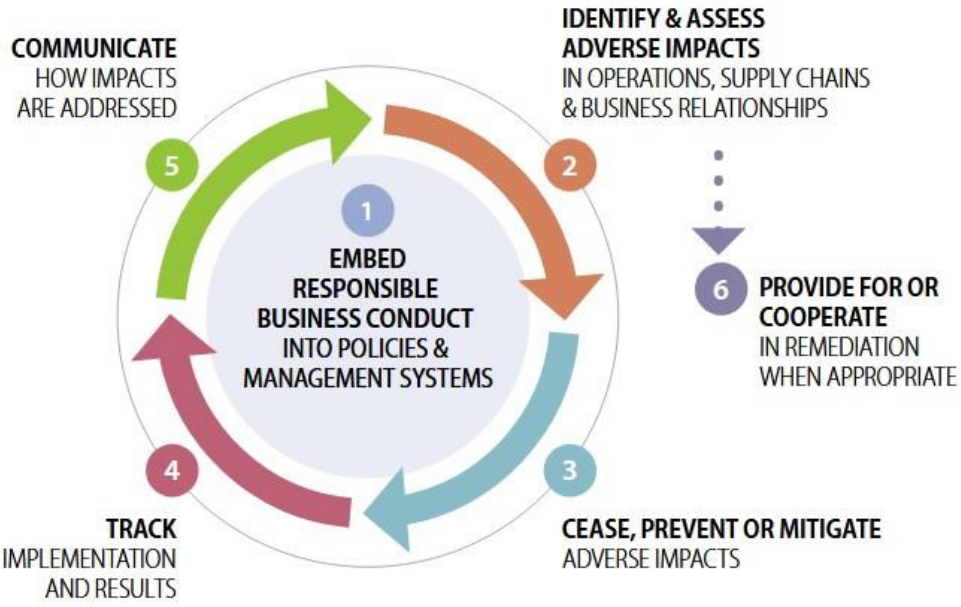

Figure 1. Due diligence process and supporting measures (source: OECD Due Diligence Guidance for Responsible Business Conduct (2019).

With regard to human rights, adverse impact occurs when action or inaction removes or reduces the ability of an individual to enjoy his or her human rights[4]. Adverse environmental impact, meanwhile, may refer to e.g. ecosystem degradation, unsafe levels of biological, chemical or physical hazards in products or services, or water pollution.[5] Due diligence also covers tracking implementation and results, communicating how impacts are addressed, and providing for or cooperating in remediation when appropriate. The memorandum assesses how these elements of the obligation could be accomplished through legislation.

Traditionally, human rights duties and obligations are seen as the duty of States, since they are the parties to human rights instruments. While such human rights obligations do not apply directly to companies, they share in the responsibility for the realisation of human rights.[6] Corporate due diligence legislation would involve a new type of legislation, in other words. The Judicial Analysis was the first legal assessment carried out in Finland on the possible content of a due diligence obligation imposed on companies by law.

Based on the Judicial Analysis and the comments submitted on it[7], several matters are perceived as remaining unresolved with regard to possible new corporate responsibility regulation:

- How would human rights, the environment, or high-impact operations be defined in the legislation;

- What would be the relationship between regulation on the one hand and the Constitution and international law on the other;

[44] OHCHR (United Nations 2012): The Corporate Responsibility to Respect Human Rights. An Interpretive Guide, https://www.ohchr.org/documents/publications/hr.pub.12.2_en.pdf. Accessed on 14 December 2021.

[5] OECD: OECD Due Diligence Guidance for Responsible Business Conduct (2019), http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf Accessed on 14 December 2021.

[6] See e.g. OHCHR (United Nations 2012): The Corporate Responsibility to Respect Human Rights. An Interpretive Guide, https://www.ohchr.org/documents/publications/hr.pub.12.2_en.pdf, p. 10–11. Accessed on 14 December 2021.

[7] Lausuntopalvelu.fi (service for online consultation): Judicial Analysis on the Corporate Social Responsibility Act, https://www.lausuntopalvelu.fi/FI/Proposal/Participation?proposalId=2e845697-d3c6-4154-af2a-ed371cafa1ce. Accessed on 7 December 2021.

- The scope of application of the legislation: would it be determined on the basis of company size, business sector, area of operations or group structure, and how would the limitations be determined;

- What kind of activities would fulfil the due diligence requirements and who would make this determination; what would be the relationship of the obligation to the awareness obligation under the Environmental Protection Act, pollution of the environment and the obligation to tolerate, and the manner in which due diligence is defined with regard to the environment;

- Consultation of stakeholders; who would be the rights holders, vulnerable parties, employee organisations, indigenous peoples; what would be the role of employee organisations;

- Supervision and sanctions; supervision of adverse impacts and examination of damages in cross-border situations, mechanism by which sanctions are imposed, criteria for assessing negligence, party on whom sanctions for negligence are imposed, relationship of liability for damages to Finland's general tort liability principles, effect of sanctions on legal protection and legal certainty, right to bring class actions;

- Specification of impact assessment with regard to protected human rights and rights to the environment, business impacts, other social impacts, impact on sustainable development, more comprehensive assessment of economic impacts, impact on competition environment;

- International benchmarking: assessment of impacts of regulation in other States;

- Self-regulation mechanisms.

The assessment memorandum seeks to further build on the preliminary analysis necessitated by the drafting of new legislation. It seeks to provide a more in-depth review of the objectives of the due diligence obligation and the underlying issues which such regulation would address. The assessment is intended to elaborate on the principal questions in the matter and the alternative solutions to these questions, and to identify the most significant impacts of the various alternatives. In addition, it will be necessary to assess the relationship of any potential regulation to the legal system.

The memorandum thus seeks to find answers to the questions left open by the Judicial Analysis and to use the analysis as a basis for outlining possible regulatory

approaches and avenues for advancement in the matter. It is essential that the impacts of any potential regulation are assessed both from the viewpoint of implementing regulation as an independent national project prior to the enforcement of the EU proposal on regulation and from the viewpoint of implementing regulation in tandem with other Member States once EU regulation has been adopted. The impacts of regulation should be assessed with regard to impacts on human rights, the environment and companies, taking into account the different types of company.

The memorandum explores both human rights due diligence and environmental due diligence. In recent years, increasing attention has been paid to the links between human rights and the environment. The UN Human Rights Council has recognised the right to have a clean, healthy and sustainable environment as a human right. Climate change, pollution and loss of biodiversity interfere with the enjoyment of this right.[8] Acknowledging a clean, healthy and sustainable environment to be a human right is one way of promoting action to combat climate change and declining biodiversity. Climate change threatens the effective enjoyment of other human rights as well, including those to life, food, self-determination, culture and development.[9]

Corporate due diligence on human rights and the environment can be promoted by applying a range of different regulatory solutions. The options assessed in the report for the Commission on EU regulation were: 1) no policy change; 2) new voluntary guidelines/guidance; 3) new regulation requiring due diligence reporting; or 4) new regulation requiring mandatory due diligence as a legal duty of care.[10] This memorandum assesses how the obligation could be nationally implemented by means of regulation (options 3 and 4). The option of no policy change has been excluded from this memorandum. Any law-drafting would need to assess also the option of no policy change relative to the objectives and impacts of proposed regulation.

One of the principal topics of the assessment memorandum is to outline alternative regulatory approaches for implementing the due diligence obligation. No separate assessment is performed of possible new self-regulatory tools that would not need to be supported by legislation. Possible law-drafting should include an assessment of the reasons why the matter would expressly require new regulation and why self-

[8] Human Rights Council: resolution on the Human right to a clean, healthy and sustainable environment (A/HRC/48/L.23/Rev.1) 5 October 2021, https://digitallibrary.un.org/record/3945636/files/A_HRC_RES_48_13-EN.pdf. Accessed on 17 December 2021.

[9] OHCHR Office of the United Nations High Commissioner for Human Rights OHCHR and climate change, https://www.ohchr.org/en/issues/hrandclimatechange/pages/hrclimatechangeindex.aspx. Accessed on 17 January 2022.

[10] Smit, Lise & al. (European Commission, 2020): Study on due diligence requirements through the supply chain. Final Report, https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en, p. 298. Accessed on 1 December 2021.

regulatory tools, for example, would not be sufficient to achieve the desired objectives.

The assessment memorandum examines the due diligence obligation from the viewpoint of its application to the cross-border operations of Finnish companies and companies established in Finland. Owing to the difference in the regulatory basis of domestic and cross-border operations, any obligation applying to operations limited solely to Finland has been excluded from the memorandum. The adverse human rights and environmental impacts occurring abroad are also more likely and on a different scale than ones in domestic operations, which are already subject to extensive national regulation.[11] If a due diligence obligation applicable to domestic operations were to be assessed, this would first require an extensive study on topics including the effectiveness of existing national legislation and its shortcomings relative to the new due diligence obligation in sectors such as working life regulation, environmental regulation and human trafficking regulation. A study of this scope covering multiple sectors of society, however, cannot be performed even on a cursory basis within the context of this assessment memorandum. If eventual national legislation were to arrive at the same solution, the relationship of the limitation to barriers to trade should be subjected to separate assessment.

The memorandum also seeks to assess the potential for issuing a law-drafting mandate. This involves aspects such as assessing the adequacy of the knowledge base on the impacts of the potential regulation as well as assessing the various alternative regulatory approaches and their impacts.

[11] OHCHR (2011): UN Guiding Principles on Business and Human Rights Implementing the United Nations “Protect, Respect and Remedy” Framework, https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf. Accessed on 16 November 2021. See Principles 14 and 17 of the UN Guiding Principles. The UN Guiding Principles also emphasise primary focus on the most severe cases.

3. Examining the need for due diligence regulation

3.1 Terminology as an initial issue: value chain or supply chain

The UN Guiding Principles on Business and Human Rights (hereinafter the UN Principles or the UN Guiding Principles) use the term 'value chain' to refer to operations that convert inputs into outputs by adding value.[12] The value chain of a company also comprises the operators with which the company does business either directly or indirectly and which either (a) supply products or services that make up a part of the company's own products or services or (b) receive products or services from the company.[13] Although there are differences between the definitions of value chain and supply chain, in practice the terms are used interchangeably when discussing business and human rights. The national action plan on the UN Principles, for example, uses the term supply chain.[14] The same term is used in the OECD Guidelines for Multinational Enterprises and the associated due diligence guidance.[15] Clearly, the term refers to a definition broader than merely the sourcing of outputs. The OECD Due Diligence Guidance for Responsible Business Conduct, for example, states that the scoping exercise carried out by a company shall involve both the company's own operations and its business relationships, all parts of its supply chain or value chain included.[16]

Supply chain would appear to be the more established term in due diligence regulation (see e.g. section of this memorandum entitled Legislative tools introduced in other States). This memorandum uses the term 'supply chain' to refer broadly to the

[12] OHCHR (2011): UN Guiding Principles on Business and Human Rights. Implementing the United Nations "Protect, Respect and Remedy" Framework.

[13] OHCHR (United Nations 2012): The Corporate Responsibility to Respect Human Rights. An Interpretive Guide, p. 8.

[14] The Danish Institute for Human Rights: National Action Plans on Business and Human Rights. Supply Chains, https://globalnaps.org/issue/supply-chains/. Accessed on 15 December 2021.

[15] OECD Guidelines for Multinational Enterprises (2011), https://bit.ly/2ToA9RY Accessed on 28 January 2022.

[16] OECD Due Diligence Guidance for Responsible Business Conduct, p. 61.

business partners of a company. Possible legislation should include a separate definition of supply chain for the purposes of the relevant Act.

3.2 Why is national regulation under consideration?

3.2.1 Global human rights and environmental situation

An examination of the global human rights situation reveals advances achieved in many sectors. Nonetheless, 160 million children were in child labour globally at the beginning of 2020, accounting for almost one in ten of all children worldwide. Around 79 million children were in hazardous work that directly endangers their health, safety and moral development. Global progress against child labour has stagnated since 2016 for the first time in the two decades that it has been monitored.[17] On average, women are paid 23% less than their male counterparts for equal work. Hundreds of millions of people suffer from discrimination in the world of work because of the colour of their skin, their ethnicity or social origin, their religion or political beliefs, their age, gender, sexual identity or orientation, illness or disability.

More than 40% of the world's population live in countries that have not ratified the core ILO Conventions on freedom of association and the right to collective bargaining.[18] 266 million wage earners around the world (15% of all wage-earners) earn less than existing hourly minimum wages, either because they are not legally covered or because of non-compliance.[19] Each year, 1.9 million people die from work-related causes. The greatest individual reason for the deaths is exposure to long working hours. Occupational injuries cause 360,000 deaths annually. Although work-related deaths decreased by 14% in 2000–2016, over the same period deaths from heart disease and stroke associated with exposure to long working hours rose by 41%

[17] ILO & Unicef (2020): Child labour. Global Estimates 2020, trends and the road forward, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/wcms_797515.pdf. Accessed on 9 December 2021.

[18] ILO: Principles and Rights at Work Branch, https://www.ilo.org/global/about-the-ilo/how-the-ilo-works/departments-and-offices/governance/fprw/lang--en/index.htm. Accessed on 9 December 2021.

[19] ILO: Global Wage Report 2020–21. Wages and minimum wages in the time of Covid-19 (2020), https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_762534.pdf, s. 90–91. Accessed on 9 December 2021.

and 19%, respectively.[20] So, while on the one hand, occupational safety and health has improved in some respects, new work-related risks have also emerged. Each year, there are also 360 million non-fatal occupational injuries.[21] There are estimated to be around 20.9 million victims of forced labour globally. Of them, 14.2 million are victims of forced labour exploitation in economic activities, such as agriculture, construction, domestic work or manufacturing.[22]

Emissions generated by human activity continue to alter the composition of the atmosphere. Air pollution is the main environmental contributor to the global burden of disease, leading to between 6 million and 7 million premature deaths. Globally, decreasing emission trends from local air pollutants in certain sectors and regions have been offset by larger increases in others, including some rapidly developing countries and areas of rapid urbanisation. Global increases in anthropogenic greenhouse gas emissions and climate impacts have occurred, even while mitigation activities have taken place in many parts of the world. Species extinction is widespread. At present, 42% of terrestrial invertebrates, 34% of freshwater invertebrates and 25% of marine invertebrates are considered at risk of extinction. Between 1970 and 2014, global vertebrate species population abundances declined by on average 60%. Pollinator abundance has declined sharply. Environmental and human health are intricately intertwined. Changes to the landscape can facilitate the emergence of e.g. zoonoses. Genetic diversity is declining, threatening food security and the resilience of ecosystems. Biodiversity loss disproportionately affects poorer people, women and children. The critical pressures on biodiversity are habitat change, loss and degradation; unsustainable agricultural practices; the spread of invasive species; pollution, including microplastics; and overexploitation.[23]

[20] ILO: WHO/ILO: Almost 2 million people die from work-related causes each year (17 September 2021), https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_819705/lang--en/index.htm. Accessed on 9 December 2021.

[21] ILO: Safety and Health at Work, https://www.ilo.org/global/topics/safety-and-health-at-work/lang--en/index.htm. Accessed on 9 December 2021.

[22] ILO: ILO 2012 Global estimate of forced labour Executive summary, https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_181953.pdf. Accessed on 9 December 2021.

[23] UN Environment (2019). Global Environment Outlook – GEO-6: Summary for Policymakers. Nairobi. DOI 10.1017/9781108639217, https://www.unep.org/resources/assessment/global-environment-outlook-6-summary-policymakers. Accessed on 16 November 2021.

3.2.2 UN Guiding Principles on Business and Human Rights

The UN Human Rights Council approved the Guiding Principles on Business and Human rights in 2011[24]. In his final report to the Council, Professor John Ruggie, Special Representative of the Secretary General, describes the process of 2005–2011 by which the Principles came to be[25]. Ruggie says that the issue of business and human rights became permanently implanted on the global policy agenda in the 1990s, reflecting the dramatic worldwide expansion of the private sector at the time, coupled with a corresponding rise in transnational economic activity. At the same time, the UN began to pay attention to businesses' impact on human rights. An expert subsidiary body under the auspices of the UN proposed a new instrument under international law that sought to impose on companies the same range of human rights duties that States have accepted for themselves under treaties they have ratified. This proposal triggered a deeply divisive debate between the business community and human rights advocacy groups while evoking little support from Governments. Instead of acting on the proposal, the UN appointed Professor Ruggie to identify and clarify existing standards and practices and to submit recommendations.

Six years of work and several thousand pages of documentation culminated in the UN Principles, under which States have the duty to protect and promote human rights, companies have a responsibility independent of States and other actors to respect human rights, and both should provide adequate remedial measures. Beyond the Human Rights Council, the UN Principles have been endorsed by individual Governments, business enterprises and associations, civil society and workers' organisations, national human rights institutions, and investors[26]. The Guiding Principles apply to all States and to all business enterprises regardless of their size, sector, location, ownership and structure. The central notion of the Principles is due diligence, which refers to the process by which companies identify, prevent and mitigate their actual and potential adverse impacts, communicate how impacts are

[24] OHCHR (2011): UN Guiding Principles on Business and Human Rights Implementing the United Nations "Protect, Respect and Remedy" Framework.

[25] UN Human Rights Council (A/HRC/17/31): Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie. UN Guiding Principles on Business and Human Rights Implementing the United Nations "Protect, Respect and Remedy" Framework, https://www.ohchr.org/documents/issues/business/a-hrc-17-31_aev.pdf. Accessed on 16 November 2021.

[26] Ibid. p. 4.

addressed, and provide for or cooperate in remediation when necessary. The process covers the companies' own operations, value chains and other business relations.

The concept of due diligence has since been incorporated into the OECD Guidance for Multinational Enterprises, the ISO 26000 social responsibility standard and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy revised in 2017.[27] In ILO standards, due diligence has been added to the Protocol No. 29 of 2014 to the Forced Labour Convention and to Recommendation No. 205 on Employment and Decent Work for Peace and Resilience, 2017.[28] Reference to due diligence is also made in the UN Global Compact initiative which requires its participants to implement equivalent policy and practices to ensure that they follow the Global Compact Principles.[29] Many international banks and lenders refer to due diligence in their operational policies[30].

The development of national action plans on business and human rights has been one of the most visible signs of uptake of the Guiding Principles by States. At the start of 2021, 25 States had issued an action plan (Finland being the fourth State to do so), two had made reference to the Principles in their wider human rights strategy, and 18 States were in the process of developing an action plan.[31] In order to implement the UN Principles in Finland, the Government has commissioned studies, implemented training and built dialogue between the various actors.[32] Besides enhancing the competence of the various actors, the UN Principles also call for policy coherence when implementing the Principles, especially in economic relations between the State and companies. In Finland, as laid out in a Government resolution, the State as a shareholder expects companies to act responsibly and obligates boards of directors to assume liability and report to the annual general meetings of shareholders. In addition, the State requires State-owned companies to consider human rights issues

[27] UN Human Rights Council (A/HRC/47/39): UN Guiding Principles on Business and Human Rights at 10: taking stock of the first decade. Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, https://undocs.org/A/HRC/47/39. Accessed on 16 November 2021.

[28] ILO (International Labour Organisation 2021): Gap analysis of ILO normative and non-normative measures to ensure decent work in supply chains, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---ddg_p/documents/meetingdocument/wcms_829895.pdf. Accessed on 16 December 2021.

[29] UN Human Rights Council (A/KRC/47/39):

[30] Ibid., 6.

[31] Ibid., 10.

[32] Ministry of Economic Affairs and Employment: Enterprises and human rights, https://tem.fi/en/enterprises-and-human-rights. Accessed on 16 November 2021.

transparently in both in-house activities and across supplier chains in accordance with the UN Principles.[33]

In relation to public procurement, the Programme of Prime Minister Sanna Marin's Government includes the aim of emphasising the responsibility aspects of procurement. The Act on Public Procurement and Concession Contracts is to be amended so that carbon and environmental footprints will be included as criteria for procurements with significant environmental impacts. The Government has issued a report on the carbon and environmental footprint of public procurement[34]. The Ministry of Economic Affairs and Employment is assessing the needs to amend the Act on Public Procurement on the basis of the findings and recommendations of this report.[35] One of the objectives of the National Public Procurement Strategy issued by the Ministry of Finance is to promote respect for human rights and fundamental rights at work in public procurement.[36] The social sustainability theme group appointed by the Ministry is tasked with designing and launching concrete measures to support the implementation of the strategy objectives. A Code of Conduct specifying the minimum requirements regarding responsibility has been drawn up by central purchasing body Hansel. The Code of Conduct is to be included in procurement contracts, meaning that commitment to ensuring working conditions that comply with the ethical guidelines will be required of suppliers.[37] Guidelines and reports are available on the topic of taking human rights into account in public procurement[38]. Among the State

[33] Prime Minister's Office (2020): Revenue through responsible ownership Government Resolution on the State Ownership Policy, 8 April 2020 https://vnk.fi/documents/10616/1221497/State+Ownership+Policy_08042020.pdf/581f2a9c-ca52-83ac-44e6-0d6684950125/State+Ownership+Policy_08042020.pdf. Accessed on 16 November 2021.

[34] Kalimo, Harri & al. (Government 2021): Hiili- ja ympäristöjalanjälki hankinnoissa – lainsäädäntö ja mittaaminen (HILMI). [Carbon and Environmental Footprint in Procurement – Legislation and Measurement (HILMI)]. https://tietokayttoon.fi/-/hiili-ja-ymparistojalanjalki-hankinnoissa-lainsaadanto-ja-mittaaminen-hilmi- Accessed on 14 December 2021.

[35] Ministry of Economic Affairs and Employment: Hankintalain kehittämistyö etenee [Development of Procurement Act progresses] (3 June 2021), https://valtioneuvosto.fi/-//1410877/hankintalain-kehittamistyo-etenee. Accessed on 14 December 2021.

[36] Ministry of Finance: Sosiaalinen kestävyys [Social sustainability], https://vm.fi/hankinnat-sosiaalinen-kestavyys. Accessed on 16 November 2021.

[37] Ministry of Finance: Sosiaalinen kestävyys. Tavoitteita edistävät toimenpiteet [Social sustainability. Measures to promote objectives], https://vm.fi/hankinnat-sosiaalinen-kestavyys. Accessed on 16 December 2021.

[38] Ministry of Economic Affairs and Employment: Enterprises and human rights, https://tem.fi/en/enterprises-and-human-rights. Accessed on 16 November 2021; Lietonen Anni & Ollus Natalia (European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI) 2021): Työperäinen hyväksikäyttö ja julkiset hankinnat. Opas riskien huomioimiseen Suomessa [Labour exploitation and public procurement. Guide to cater for risks in Finland], https://heuni.fi/-/hankinta-opas. Accessed on 16 December 2021.

financing agencies, both Finnfund[39] and Finnvera[40] have incorporated the UN Principles in their policies. A project to provide business and human rights capacity-building support to State financing agencies was moreover implemented in 2018–2021 by non-profit organisation Shift.[41]

3.2.3 What is the human rights and environmental performance of companies in Finland?

The Government commissioned a study benchmarking the human rights performance of Finnish companies against the expectations set out in the UN Principles. The study, known in Finnish as SIHTI, was carried out using the methodology developed by the Corporate Human Rights Benchmark (CHRB). The study indicates that the majority of Finnish companies are generally committed to respecting human rights, and the majority are also committed to respecting the ILO Fundamental Principles and Rights at Work. However, there are also companies in Finland that have not publicly endorsed human rights. The results of the study show that for the majority of Finnish companies, this process has not yet been started at all and that for many it is at a very initial stage. The SIHTI study indicates that only few Finnish companies have regularly identified the key human rights risks and impacts of their activities, carried out the related human rights impact assessment and integrated the results of the assessment into their internal functions and processes. It should also be noted that only a small proportion of Finnish companies are publicly committed to remedial action if they find that they have caused or contributed to negative human rights impacts. Approaches relating to remedies are also yet to be put on an established footing. The results of the SIHTI study show that Finnish companies publish relatively little information on the realisation of their human rights responsibilities. The state of human rights

[39] Finnfund (14 January 2019): Finnfund's human rights statement is ready, https://www.finnfund.fi/en/news/finnfunds-human-rights-statement-is-ready/. Accessed on 16 November 2021.

[40] Finnvera (17 December 2019): Being responsible is part of our clients' success – Finnvera reforms the environmental and social risk management of the financing operations, https://www.finnvera.fi/eng/finnvera/newsroom/news/being-responsible-is-part-of-our-clients-success-finnvera-reforms-the-environmental-and-social-risk. Accessed on 16 November 2021.

[41] Shift (Ministry for Foreign Affairs & Ministry of Economic Affairs and Employment 2019): Aligning Finland's State Financing for Private Sector Activity Abroad with the UN Guiding Principles on Business and Human Rights. A Program Report, https://bit.ly/3cjw25Q. Accessed on 16 November 2021.

responsibility of Finnish companies is largely at the same level as the results in the global assessments of the CHRB.[42];[43]

Non-profit organisation CDP collects company-specific information on preparedness for climate change risks, water security and deforestation, and forest degradation. CDP classifies each company reporting to it on the basis of the quality and comprehensiveness of the data disclosed. Currently, CDP receives annual disclosures of environmental data from over 13,000 companies worldwide,[44] including 51 Finnish companies that provide CDP with data on their preparedness for climate change risks. In 2021, CDP placed the majority of the Finnish companies (24) on its second-best B List. Five Finnish companies made the CDP A List with regard to their climate action. To date, only few Finnish companies disclose to CDP data on the more recent reporting categories of water security and forests.[45] The status of corporate water stewardship in Finland was examined in the Water Responsible Finland 2030 project commissioned by the Government. The project examined water responsibility assessment and development in Finnish companies' value chains. The

[42] Tran-Nguyen, Elina & al. (Prime Minister's Office 2021): Human rights performance status of Finnish companies (SIHTI) project. Report on the status of human rights performance of Finnish companies http://urn.fi/URN:ISBN:978-952-327-737-3, p. 92–94. Accessed on 16 November 2021.

[43] A total of 78 Finnish companies were included, 29 of which were assessed using CHRB's sectoral methodology and 49 with key UNGP indicators. While companies with their head office in Finland were considered as Finnish companies, three foreign companies with significant mining activities in Finland were also included in the sectoral assessment of the extractive sector. SMEs were excluded from the sample because the CHRB methodology has been developed in particular for the assessment of larger companies. The TE500 list, published annually by Talouselämä magazine, comprising 500 companies with the largest turnover in Finland, was used to determine the sample. In accordance with the CHRB methodology, the 29 companies involved in the sectoral assessment were able to publish documents related to their human rights performance at the beginning of the evaluation process and at the data completion stage, either on their own website or on the SIHTI project website. This additional information that could be published either on the company's own website or on the SIHTI project website was also taken into account in the assessment. The companies involved in the sector-specific assessment could also discuss their tentative assessment results with a member of the research team. The Core UNGP Indicators were used to assess 49 companies on the basis of their publicly available information. The methodology assumes that, since these indicators measure the fundamentals of the implementation of UN guiding principles in business processes and transactions, the data should be available in public materials.

[44] CDP: 2% of companies worldwide worth $12 trillion named on CDP's A List of environmental leaders (7 December 2021), https://www.cdp.net/en/articles/media/2-percent-of-companies-worldwide-worth-12-trillion-named-on-cdps-a-list-of-environmental-leaders. Accessed on 7 December 2021.

[45] CDP: The A List 2021, https://www.cdp.net/en/companies/companies-scores. Accessed on 7 December 2021.

sample size for the examination was small, however: only 29 companies responding to the project's online survey.[46]

The Government Report on Human Rights Policy was adopted in December 2021[47]. The Report addressed topics including the significance of companies' human rights responsibility and states that Finland will promote sustainable business and the obligation of States to protect human rights in enterprise activity and the obligation of enterprises to respect human rights both nationally and internationally. The Report likewise deals with human rights perspectives relating to the environment.

Laying down provisions in law on the due diligence obligation has been made a topic of national discussion owing to the developments reported above. A decade has passed since the adoption of the UN Principles and to date, there is no research to demonstrate that their implementation and the human rights performance envisioned by them would have been mainstreamed by Finnish companies. Not all Finnish companies are subject to State ownership steering, take part in public procurement or make use of public funding instruments. In other words, it is impossible for the State to reach all companies by means of economic relations, or even all those companies whose operations involve human rights or environmental risks. The mainstreaming of the due diligence obligation appears to progress slowly in Finnish companies with the tools and training currently available. The issue of the European Commission's proposal on corporate due diligence regulation was also delayed until February 2022 and the negotiations on the content of regulation may prove protracted (for more information, see the section entitled EU regulation of due diligence). For these reasons, it is necessary to consider also at the national level whether a corporate due diligence obligation should be imposed at the level of law.

3.3 Objectives of the due diligence obligation

The central question in drafting legislation on the due diligence obligation is to determine the situations in which national legislation would be needed as well as the concrete problems that such legislation would seek to resolve. Relative to the EU legislative proposal on the due diligence obligation, it would be essential to assess

[46] Sojamo, Suvi & al. (Prime Minister's Office 2021): Vesivastuullinen Suomi 2030 – parhaat käytänteet, ohjauskeinot ja toimintamallit [Water responsible Finland 2030 – best practices, steering methods and stewardship approaches] https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/163047/VNTEAS_2021_26.pdf Accessed on 19 January 2022.

[47] Publications of the Finnish Government 2021:92 Government Report on Human Rights Policy, https://julkaisut.valtioneuvosto.fi/handle/10024/163838. Accessed on 13 December 2021.

whether the objectives set for corporate responsibility legislation could be achieved through national legislation alone. Law-drafting at the national level should also involve a separate assessment of whether the same objectives could be reached by means other than legislative ones.

The key objective of the due diligence regulation assessed in this memorandum would be to decrease the adverse human rights and environmental impacts of Finnish companies' international business operations. The overall purpose of regulation would thus be to ensure that companies respect human rights and the environment and do not cause or contribute to adverse human rights or environmental impacts through their own operations, their supply chains or their business partners. The objective would also be for companies to prevent and mitigate actual or potential adverse impacts arising from their operations and to bring to an end any actual adverse impacts. A further objective of the legislation could be to promote the legal protection of victims of adverse human rights impacts of business operations and to enhance the potential of stakeholders relating to the realisation of human rights and environmental responsibility to wield influence in international business operations.

The due diligence obligation *per se* would not be about a direct duty to promote the realisation of human rights or environmental rights but rather about a duty to strive to identify adverse impacts caused by one's own operations and those of business partners and to take action when necessary. Regulation would pursue such effects on the operations, supply chain and business partners of a company that would allow increasing the awareness of companies of the human rights or environmental risks relating to their operations and, through increased awareness, would allow such risks to be prevented. Finnish legislation can be used to directly affect the operations of Finnish companies within Finland's jurisdiction. Regulation would seek to impose on companies obligations that would affect how they act in international supply chains, where human rights and environmental risks are most likely to be materialised. On the one hand, the objective of regulation can be seen as setting out for companies clear procedures by which they can identify the risks relating to their operations and be aware of the human rights and environmental impacts of their operations, and through this step up the degree of due diligence in their operations.

3.4 Human rights and the environment as objects of protection by regulation

Human rights refer to the rights (of a fundamental nature) of the individual guaranteed in international human rights documents in general. Human rights instruments are binding agreements between States. They oblige the State party to respect and

guarantee the human rights under the instruments primarily to all persons within the jurisdiction of that State regardless of whether those persons are nationals of the State or whether the State of which the persons are nationals has itself acceded to the agreement.[48] Finland has ratified all major human rights instruments and harmonised its national legislation with the requirements laid down in them and in the Charter of Fundamental Rights of the European Union[49].

Fundamental rights refer to the rights of the individual laid down in the Constitution. It is the general rule that fundamental rights protect every individual within Finland's jurisdiction. The premise is for fundamental rights to protect the individual regardless of aspects such as age, gender or nationality. Fundamental rights provide indirect protection to legal persons, as interference with the standing of a legal person may be equivalent to interference with the rights of the individual behind the legal person.[50]

Fundamental rights are binding and obligating primarily on public authority. The traditional premise in fundamental rights regulation has been to protect the freedoms of the individual against interference from the government. Fundamental rights impact on law-drafting in many ways. While they limit the powers of Parliament as a legislator, obligations to actively take measures may also be derived from them. A fundamental rights provision may provide overall guidance and direction to law-drafting or it may contain an express mandate to create certain legislation.[51]

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[48] Government proposal HE 309/1993, https://www.finlex.fi/fi/esitykset/he/1993/19930309. Accessed on 25 January 2022.

[49] See Hallberg &. al. Perusoikeudet, osa II luku 4 jakso ihmisoikeussopimukset ja Suomen valtiosääntö [Fundamental rights, Part II chapter 4 section Human rights instruments and Finland's constitution]. The solution of Finland's constitution to the relationship between international and domestic law in its essence represents a dualistic approach, which is nonetheless informed by monistic features arising from several constitutional procedures in adopting and enforcing treaties and conventions. Separate provisions in individual sections of the Constitution are laid down on the acceptance of international obligations and their denouncement (section 94) and on the bringing into force of international obligations (section 95). Contextually, the term "international obligation" refers above all to treaties and conventions concluded with other States, yet it also covers the decisions of e.g. the UN Security Council or other international organisations that are binding on States. It follows from the dualistic approach of the constitution that a human rights instrument that has not been brought into force within the State is not a part of Finland's legal system. The same also applies to human rights documents prepared in a form other than international instrument, such as declarations, resolutions and recommendations. Instruments and other human rights documents that are not a part of Finland's legal system or that otherwise are legally non-binding may still have legal effects. Courts and authorities, for example, may rely on them for assistance in interpreting law and thus give such "non-binding" human rights instruments legal relevance in individual decision-making settings.

[50] Government proposal HE 309/1993

[51] Government proposal HE 309/1993, Constitutional Law Committee report PeVM 25/1994

Under section 22 of the Constitution, the public authorities shall guarantee the observance of basic and human rights. This frequently requires active measures of the Government, for example in order to protect the rights against violations by any third parties or in order to create factual preconditions for exercise of the rights. Tools for securing these rights also include the creation of legislation that safeguards and specifies exercise of a fundamental rights.[52]

The duty to safeguard applies to all fundamental and human rights. In addition to the general provision, there are also more specific special provisions on safeguarding or promoting fundamental rights. Some oblige the legislator specifically. This is a constitutional mandate on the legislator, i.e. a positive obligation on the legislator to act.[53] Section 22 of the Constitution does not refer only to human rights instruments brought into force within the State by means of law but instead uses the concept of human rights in its general meaning[54].

In terms of substance, Finland's system of fundamental rights is closely linked to the provisions of international human rights instruments. A restriction in violation of an international human rights instrument binding on Finland would thus also be in conflict with fundamental rights regulation under the Constitution. It is for these reasons that harmonising the interpretation of fundamental and human rights is considered important. However, the system of fundamental rights may result in requirements that go beyond the human rights instruments.[55]

Fundamental rights regulation in respect of the environment is enshrined in section 20 of the Constitution. It lays down provisions on responsibility for the environment (subsection 1) and imposes constitutional obligations on the public authorities regarding right to the environment (subsection 2). Under section 20, subsection 1 of the Constitution, nature and its biodiversity, the environment and the national heritage are the responsibility of everyone. The responsibility covers both the public authorities and persons natural and legal. The provision in the subsection seeks to emphasise that the protection of nature and environment involves also values that cannot be traced back to the rights of individuals. In this respect, the obligations of everyone towards nature can be understood as either arising from the intrinsic value of nature

[52] Ibid.

[53] Government proposal HE 309/1993

[54] Hallberg & al. Perusoikeudet, osa II luku 4 jakso Perustuslain 22 § ihmisoikeusvelvoitteiden erityisaseman perustana [Fundamental rights, part II chapter 4 section "Section 22 of the Constitution as the basis for the special status of human rights obligations"].

[55] Lainkirjoittajan opas, luku 4.1.21 [Law Drafter's Guide, chapter 4.1.21]. http://lainkirjoittaja.finlex.fi/4-perusoikeudet/4-1/#jakso-4-1-21. Accessed on 8 December 2021.

or as an expression of an indivisible right belonging to all people. Future generations may also be taken to be subjects of such a human right. Enacting legislation to confer the responsibility on everyone seeks to emphasise that environmental protection calls for broad-based cooperation among various parties.[56]

Under section 20, subsection 2 of the Constitution, the public authorities shall endeavour to guarantee for everyone the right to a healthy environment and for everyone the possibility to influence decisions that concern their own living environment. The requirement of a healthy environment shall be understood broadly. The living environment of people shall be viable so that the state of the environment poses no direct or indirect risk of illness to people. On the other hand, also further-ranging requirements are to be imposed on the state of the environment. Healthiness, for example, involves a dimension of the environment having also a certain degree of enjoyability. The provision primarily impacts on the activities of the legislator and other issuers of norms. The protection of the environment and nature in their various sectors are governed by many laws. The provision also translates into a constitutional mandate to develop environmental legislation in a direction that allows expanding the possibility of people to influence decision-making concerning their own living environment.[57]

There are international instruments regulating environmental rights as well. Finland is party to more than one hundred environmental instruments that oblige countries to reduce greenhouse gas emissions, ensure environmental safety and health, and preserve biodiversity.[58] Environmental rights are often closely linked with human rights.

3.5 Relationship to other legislation

Human rights are broadly subject to the obligation of States to safeguard. Environmental regulation has a powerful fundamental rights dimension that is realised through the setting of fairly detailed environmental norms. Environmental regulation

[56] Government proposal HE 309/1993

[57] Government proposal HE 309/1993

[58] See Ministry of the Environment: Kansainväliset ympäristösopimukset ja Suomi. Sopimuksen kansainvälisen ympäristöyhteistyön edistäjinä [International environmental agreements and Finland – the role of agreements in promoting international environmental cooperation], Helsinki 2018. http://urn.fi/URN:ISBN:978-952-11-4810-1. Accessed on 8 December 2021.

seeks to generally regulate the environmental risks of various kinds of activities and govern which risks are deemed allowed and which are prohibited.

Finland's national legislation already contains human rights and environmental obligations that obligate companies operating in Finland. Correspondingly, Finnish companies operating abroad are obligated by local legislation. Finnish legislation, for example, imposes many express obligations to act on companies with regard to human rights as well as the environment. These obligations may require e.g. decisions by the authorities or permits by which compliance is ensured. Business operations are currently subject to various due diligence obligations, which require companies to assess and prevent risks associated with their operations. The management of a limited liability company is required to act with due care and promote the interests of the company[59]. The duty of care means that company management must base their business decisions on due care and accurate information[60].

Alongside their statutory obligations, companies may also on their own initiative and as part of the organisation of their business activities perform various kinds of risk assessments regarding the impacts of their operations on e.g. human rights or the environment, or on company stakeholders. In these voluntary risk assessments, companies are free to choose for themselves the kinds of impacts they identify and the measures they undertake on the basis of their assessments.

The due diligence obligation would impose on companies the duty to be aware of the human rights and environmental impacts associated with their operations. Further provisions would be laid down in law on the manner in which companies must act in order to address the adverse human rights and environmental impacts of their operations and in what manner remedies should be undertaken when necessary.

Due diligence regulation would not replace existing sector-specific regulation relating to e.g. working or the environment. Going forward, such regulation would continue to apply alongside the new obligation. The due diligence obligation would involve assessment of the impacts of operations and the prevention of unwanted impacts, yet it could not alone fill in the gaps caused by shortcomings – possibly in third countries – that relate to legislation and compliance with it. As stated above, the premise in the due diligence obligation assessed in this memorandum is that the obligation would not

[59] Limited Liability Companies Act (624/2006), chapter 1, section 8.

[60] Government proposal HE 109/2005

apply to operations of companies taking place within the territory of Finland, as these are already extensively regulated through their own specific legislation.

In any national law, it would be essential for its relationship to existing regulation to be made clear also in the provisions themselves and in the rationale of the legislative proposal.

The object of the corporate due diligence obligation would be determined on the basis of international instruments on human rights and the environment. In the context of deliberations on the regulation, the manner in which obligations under international instruments between States could be made binding on companies, by law, would need to be assessed. A mere general reference to obligations under international human rights instruments lacks the precision required of legislation.[61] Consequently, any law would additionally need to lay down provisions as to which specific human rights and environmental instruments or parts thereof the obligation would apply to.

3.4. Cross-border nature of regulation

As a rule, the jurisdiction of a State does not extend to operations beyond its national borders. The regulatory project concerning multinational companies examined in the memorandum seeks tools to influence the cross-border activities of companies[62].

The legislation on due diligence would pursue impacts beyond Finland's fundamental rights-protected jurisdiction where companies are subject to the legislation of their country of operations and its permit systems, if any. Companies would be obliged to take into account the impacts of their operations relative to international human rights and environmental obligations, for example ones that have been ratified by Finland, that would be specified in more detail, regardless of whether the relevant instruments had been ratified by the country of operations or whether its legislation had been adapted to comply with the said instruments. Regulation would be a set of provisions

[61] Cf. Principle 12 of the UN Guiding Principles stating that the responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International labour Organization's Declaration on Fundamental Principles and Rights at Work.

[62] Heasman, Lia (University of Helsinki 2018): The Corporate Responsibility to protect Human Rights. The Evolution from Voluntarism to Mandatory Human Rights Due Diligence, http://urn.fi/URN:ISBN:978-951-51-4240-5, p. 167. Accessed on 14 December 2021.

separate from the human rights obligations of States and the extraterritorial responsibility of States.

Regulation would apply to companies that either are Finnish or operate from Finland and are subject to Finland's legislation. However, the impacts of regulation would largely be intended to materialise in the countries outside Finland's jurisdiction where these Finnish companies engage in operations. Regulation would thus seek to implement the duty of the State, referred to in section 22 of the Constitution, to promote the realisation of fundamental and human rights broadly in all areas where companies subject to Finland's jurisdiction operate.

A body of independent experts under the auspices of the UN, the Committee on Economic, Social and Cultural Rights, has held that States parties should take steps to prevent human rights contraventions abroad by corporations which have their main offices under their jurisdiction[63]. This has further been held to mean that States should be obliged to extraterritorially hold multinational companies accountable also outside their respective jurisdictions[64].

Finland has no previous experience of regulatory undertakings of this kind. Under section 74 of the Constitution, the Constitutional Law Committee of Parliament shall issue statements on the constitutionality of legislative proposals and other matters brought for its consideration, as well as on their relation to international human rights treaties. It seems a foregone conclusion that the possibility of imposing the kind of regulation now under assessment, striving for extraterritorial impacts, would ultimately come under assessment by the Constitutional Law Committee of Parliament.

Owing to the cross-border nature of the regulation, its effectiveness could also be influenced by international choice of law rules[65] based on international law, which could be relevant especially to any regulation on remedies when the situation to be remedied has occurred outside Finland's jurisdiction. Before a possible infringement

[63] Committee on Economic, Social and Cultural Rights, Statement on the Obligations of States Parties regarding the Corporate Sector and Economic, Social and Cultural rights' E/C.12/2011/1 (2011) 5.

[64] Heasman, Lia (University of Helsinki), p. 167.

[65] Besides general international law, applicable provisions may also be found in specific regulation: The UN is currently in negotiations on a legally binding instrument on human rights in the operations of multinational enterprises and in other business operations. The draft instrument under consideration has contained provisions on matters including choice of law and legal venue (https://www.ohchr.org/en/hrbodies/hrc/wgtranscorp/pages/igwgontnc.aspx. Accessed on 13 December 2021).

taking place in the territory of another country is brought before a court, issues concerning jurisdiction and applicable laws must be addressed.

Under the general rule of the Rome II Regulation (Regulation (EC) No 864/2007 of the European Parliament and of the Council on the law applicable to non-contractual obligations (Rome II)), the law applicable to a non-contractual obligation arising out of a tort/delict shall be 1) the law of the country in which the damage occurs; 2) the law of the country where the person claimed to be liable and the person sustaining damage both have their habitual residence; 3) when the tort/delict is manifestly more closely connected with a country other than the aforementioned, the law of that country. In the case of environmental damage, the injured party may base their action on the law of the country in which the event giving rise to the damage has occurred.

The Brussels I Regulation (Regulation (EU) No 1215/2012 of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters) governs the competence of courts in the fields of civil and commercial law in the European Union. Under the Regulation, persons domiciled in a Member State shall be sued in the courts of that Member State. The Regulation also applies to legal persons such as companies, the domicile of which is determined on the basis of the place where they have their statutory seat, central administration, or principal place of business.

In other respects, questions relating to international choice of laws and legal venue have been assessed earlier in a report commissioned by the Ministry of Economic Affairs and Employment on Finnish legislation, international business and human rights[66]. Under the Brussels I Regulation, an action for damages against a Finnish company could be brought in Finland. Based on the Rome II Regulation, Finnish law as a rule would not apply to matters occurring in another State. However, the Rome II Regulation permits derogation from the general rule on the basis of overriding mandatory provisions. As a rule, such an overriding mandatory provision could be applied instead of the national regulation of the relevant country that would otherwise be applicable. It has been suggested in legal literature that the statutory due diligence obligation and the conflict of laws provision that might be incorporated into it could allow derogation from the general rule of the Rome II Regulation.[67] However, there are no experiences available of situations of such derogation.

[66] Valleala, Aija (Ministry of Economic Affairs and Employment 2015): Suomen lainsäädäntö, kansainvälinen liiketoiminta ja ihmisoikeudet [Finnish legislation, international business and human rights, https://bit.ly/3FZxtCA, p. 28 pp. Accessed on 14 December 2021.

[67] Ibid.; Judicial Analysis, p. 89 and references therein.

4. EU regulation of due diligence

4.1 Proposal for a Directive on corporate sustainability due diligence

4.1.1 Objectives of the proposal

The European Commission published its proposal for a Directive on corporate sustainability due diligence on 23 February 2022[68]. The issue of the proposal was delayed on three occasions: in summer, autumn and December 2021. The objective of EU-wide corporate responsibility regulation is to advance respect for human rights and environmental protection. A further objective is to create a level playing field for companies within the Union. EU-wide regulation also avoids the fragmentation of regulatory frameworks resulting from Member States acting on their own. According to the Commission, voluntary action does not appear to have resulted in large scale improvement with regard to the adverse human rights and environmental impacts of companies. Before issuing its proposal, the Commission held two open stakeholder consultations on the initiative's inception impact assessment and on the need and objectives for EU intervention, the costs and benefits of different policy options, and national frameworks, enforcement mechanisms and current jurisprudence.[69]

4.1.2 Main features

Content of regulation (Articles 1, 3)

The Directive lays down rules on obligations of due diligence by companies regarding actual and potential human rights and environmental adverse impacts, with respect to their own operations, the operations of their subsidiaries, and the value chain

[68] European Commission: Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 (COM/2022/71 final), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52022PC0071. Accessed on 13 December 2021.

[69] European Commission: Sustainable corporate governance. About this initiative, https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance_en. Accessed on 10 December 2021.

operations carried out by established business relationships. In addition, it establishes rules on liability for violations of the due diligence obligation. Established business relationship refers to a business relationship, whether direct or indirect, which is, or which is expected to be lasting, in view of its intensity or duration and which does not represent a negligible or merely ancillary part of the value chain

Scope of application (Article 2)

The Directive applies to companies which are formed in accordance with the legislation of a Member State and which fulfil one of the following conditions:

a) the company had more than 500 employees on average and had a net worldwide turnover of more than EUR 150 million in the last financial year for which annual financial statements have been prepared;
b) the company did not reach the thresholds under point (a), but had more than 250 employees on average and had a net worldwide turnover of more than EUR 40 million in the last financial year for which annual financial statements have been prepared, provided that at least 50% of this net turnover was generated in one or more of the following sectors:
    a. the manufacture of textiles, leather and related products (including footwear), and the wholesale trade of textiles, clothing and footwear;
    b. agriculture, forestry, fisheries (including aquaculture), the manufacture of food products, and the wholesale trade of agricultural raw materials, live animals, wood, food, and beverages
    c. the extraction of mineral resources regardless from where they are extracted (including crude petroleum, natural gas, coal, lignite, metals and metal ores, as well as all other, non-metallic minerals and quarry products), the manufacture of basic metal products, other non-metallic mineral products and fabricated metal products (except machinery and equipment), and the wholesale trade of mineral resources, basic and intermediate mineral products (including metals and metal ores, construction materials, fuels, chemicals and other intermediate products).

The Directive also applies to companies which are formed in accordance with the legislation of a third country, and fulfil one of the following conditions:

a) generated a net turnover of more than EUR 150 million in the Union in the financial year preceding the last financial year;
b) generated a net turnover of more than EUR 40 million but not more than EUR 150 million in the Union in the financial year preceding the last financial year, provided that at least 50% of its net worldwide turnover was generated in one or more of the sectors listed in the Directive.

The Commission estimates that the Directive will cover about 13,000 EU companies and about 4,000 third-country companies.

Due diligence (Articles 4–8)

Member States shall ensure that companies conduct human rights and environmental due diligence by carrying out the following actions:

a) integrating due diligence into their policies;
b) identifying actual or potential adverse impacts;
c) preventing and mitigating potential adverse impacts, and bringing actual adverse impacts to an end and minimising their extent;
d) establishing and maintaining a complaints procedure;
e) monitoring the effectiveness of their due diligence policy and measures;
f) publicly communicating on due diligence.

Member States shall ensure that, for the purposes of due diligence, companies are entitled to share resources and information within their respective groups of companies and with other legal entities in compliance with applicable competition law.

Member States shall ensure that companies integrate due diligence into all their corporate policies and have in place a due diligence policy, which shall contain a description of the company's approach, including in the long term, to due diligence; a code of conduct describing rules and principles to be followed by the company's employees and subsidiaries; and a description of the processes put in place to implement due diligence, including the measures taken to verify compliance with the code of conduct and to extend its application to established business relationships. The due diligence policy shall be updated on a regular basis.

Companies shall appropriate measures to identify actual and potential adverse human rights impacts and adverse environmental impacts arising from their own operations or those of their subsidiaries and, where related to their value chains, from their established business relationships Companies shall, where relevant, carry out consultations with potentially affected groups including workers and other relevant stakeholders to gather information on actual or potential adverse impacts

Companies shall take appropriate measures to prevent, or where prevention is not possible or not immediately possible, adequately mitigate potential adverse human rights impacts and adverse environmental impacts that have been, or should have been, identified. Companies shall be required to take the following actions, where relevant:

a) where necessary due to the nature or complexity of the measures required for prevention, develop and implement a prevention action plan, with reasonable and clearly defined timelines for action and qualitative and quantitative indicators for measuring improvement. The prevention action plan shall be developed in consultation with affected stakeholders.

b) seek contractual assurances from a business partner with whom it has a direct business relationship that it will ensure compliance with the company's code of conduct and, as necessary, a prevention action plan, including by seeking corresponding contractual assurances from its partners, to the extent that their activities are part of the company's value chain (contractual cascading);
c) make necessary investments, such as into management or production processes and infrastructures;
d) provide targeted and proportionate support for an SME with which the company has an established business relationship, where compliance with the code of conduct or the prevention action plan would jeopardise the viability of the SME;
e) in compliance with Union law including competition law, collaborate with other entities, including, where relevant, to increase the company's ability to bring the adverse impact to an end, in particular where no other action is suitable or effective.

A company may seek to conclude a contract with a partner with whom it has an indirect relationship, with a view to achieving compliance with the company's code of conduct or a prevention action plan.

The contractual assurances or the contract shall be accompanied by the appropriate measures to verify compliance. For the purposes of verifying compliance, the company may refer to suitable industry initiatives or independent third-party verification. When contractual assurances are obtained from, or a contract is entered into, with an SME, the terms used shall be fair, reasonable and non-discriminatory. Where measures to verify compliance are carried out in relation to SMEs, the company shall bear the cost of the independent third-party verification.

As regards potential adverse impacts that could not be prevented or adequately mitigated by the aforementioned measures, the company shall be required to refrain from entering into new or extending existing relations with the partner in connection with or in the value chain of which the impact has arisen. Where the law governing their relations so entitles them to, the company shall temporarily suspend commercial relations with the partner in question, while pursuing prevention and minimisation efforts, or terminate the business relationship with respect to the activities concerned if the potential adverse impact is severe. Member States shall provide for the availability of an option to terminate the business relationship in contracts governed by their laws. In the case of credit, loan or other financial services, companies shall not be required to terminate the credit, loan or other financial service contract when this can be reasonably expected to cause substantial prejudice to the entity to whom that service is being provided.

Member States shall ensure that companies take appropriate measures to bring actual adverse impacts that have been, or should have been, identified, to an end. Where the adverse impact cannot be brought to an end, Member States shall ensure

that companies minimise the extent of such an impact. Companies shall be required to take the following actions, where relevant:

a) neutralise the adverse impact or minimise its extent, including by the payment of damages to the affected persons and of financial compensation to the affected communities. The action shall be proportionate to the significance and scale of the adverse impact and to the contribution of the company's conduct to the adverse impact;
b) where necessary due to the fact that the adverse impact cannot be immediately brought to an end, develop and implement a corrective action plan with reasonable and clearly defined timelines for action and qualitative and quantitative indicators for measuring improvement. Where relevant, the corrective action plan shall be developed in consultation with stakeholders;
c) seek contractual assurances from a direct partner with whom it has an established business relationship that it will ensure compliance with the code of conduct and, as necessary, a corrective action plan. Corresponding contractual assurances shall also be sought from partners to the extent that they are part of the value chain;
d) make necessary investments, such as into management or production processes and infrastructures;
e) provide targeted and proportionate support for an SME with which the company has an established business relationship, where compliance with the code of conduct or the corrective action plan would jeopardise the viability of the SME;
f) in compliance with Union law including competition law, collaborate with other entities, including, where relevant, to increase the company's ability to bring the adverse impact to an end, in particular where no other action is suitable or effective.

The contractual assurances or the contract shall be accompanied by the appropriate measures to verify compliance. For the purposes of verifying compliance, the company may refer to suitable industry initiatives or independent third-party verification. When contractual assurances are obtained from, or a contract is entered into, with an SME, the terms used shall be fair, reasonable and non-discriminatory. Where measures to verify compliance are carried out in relation to SMEs, the company shall bear the cost of the independent third-party verification. The same obligations as in Article 7 on preventing potential adverse impacts, to refrain from entering into new business relations or extending existing ones, apply to bringing actual adverse impacts to an end. In the case of credit, loan or other financial services, companies shall not be required to terminate the credit, loan or other financial service contract when this can be reasonably expected to cause substantial prejudice to the entity to whom that service is being provided.

Complaints procedure (Article 9)

Member States shall ensure that companies provide the possibility for persons and organisations to submit complaints to them where they have legitimate concerns regarding actual or potential adverse human rights impacts and adverse environmental impacts with respect to their own operations, the operations of their subsidiaries and their value chains. Complaints may be submitted by (a) persons who are affected or have reasonable grounds to believe that they might be affected by an adverse impact, (b) trade unions and other workers' representatives representing individuals working in the value chain concerned, (c) civil society organisations active in the areas related to the value chain concerned.

Companies shall have in place a procedure for dealing with complaints, including a procedure when the company considers the complaint to be unfounded. Companies shall inform the relevant workers and trade unions of these procedures. Complainants shall be entitled to request appropriate follow-up on the complaint from the company with which they have filed a complaint and to meet with the company's representatives at an appropriate level to discuss potential or actual severe adverse impacts that are the subject matter of the complaint.

Monitoring, communicating, model contractual clause, guidelines and accompanying measures (Articles 10–14)

Member States shall ensure that companies carry out periodic assessments of their own operations and measures, those of their subsidiaries and, where related to the value chains of the company, those of their established business relationships, to monitor the effectiveness of the identification, prevention, mitigation, bringing to an end and minimisation of the extent of human rights and environmental adverse impacts. Such assessments shall be based, where appropriate, on qualitative and quantitative indicators and be carried out at least every 12 months and whenever there are reasonable grounds to believe that significant new risks of the occurrence of those adverse impacts may arise. The due diligence policy shall be updated in accordance with the outcome of those assessments.

Companies that are not subject to reporting requirements under Directive 2013/34/EU shall report on the matters covered by this Directive by publishing on their website an annual statement in a language customary in the sphere of international business

The Commission shall adopt guidance about voluntary model contract clauses relating to contractual assurances from partners with which there is a direct relationship and contracts concluded with partners with which there is an indirect relationship. The

Commission may also issue guidelines for specific sectors or specific adverse impacts.

Member States shall set up and operate websites to provide information and support to companies and their partners. Specific consideration shall be given to SMEs. Without prejudice to applicable State aid rules, Member States may financially support SMEs. The Commission may complement Member States' support measures in different ways. Companies may rely on industry schemes and multi-stakeholder initiatives to support the implementation of their obligations under the Directive.

Combating climate change (Article 15)

Member States shall ensure that the companies covered by the Directive, those having more than 500 employees and third-country companies having a net turnover of more than EUR 150 million in the Union, shall adopt a plan to ensure that the business model and strategy of the company are compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5°C in line with the Paris Agreement. This plan shall, in particular, identify, on the basis of information reasonably available to the company, the extent to which climate change is a risk for, or an impact of, the company's operations. In case climate change is or should have been identified as a principal risk for, or a principal impact of, the company's operations, the company shall include emission reduction objectives in its plan. Companies shall duly take into account the fulfilment of the obligations relating to climate change when setting variable remuneration, if variable remuneration is linked to the contribution of a director to the company's business strategy and long-term interests and sustainability.

Authorised representative (Article 16)

Member States shall ensure that companies designate a legal or natural person as their authorised representative.

Supervisory authorities (Articles 17–21)

Each Member State shall designate one or more supervisory authorities to supervise compliance with the obligations. Where a Member State designates more than one supervisory authority, it shall ensure that the respective competences of those authorities are clearly defined and that they cooperate closely and effectively with each other. The Commission shall make publicly available, including on its website, a list of the supervisory authorities. Member States shall guarantee the independence of

the supervisory authorities and shall ensure that they exercise their powers impartially, transparently and with due respect for obligations of professional secrecy.

The supervisory authorities shall have adequate powers and resources to carry out the tasks assigned to them under the Directive. A supervisory authority may initiate an investigation on its own motion or as a result of substantiated concerns communicated to it where it considers that it has sufficient information indicating a possible breach by a company of the obligations.

Inspections shall be conducted in compliance with the national law of the Member State in which the inspection is carried out and with prior warning to the company, except where prior notification hinders the effectiveness of the inspection. Where, as part of its investigation, a supervisory authority wishes to carry out an inspection on the territory of a Member State other than its own, it shall seek assistance from the supervisory authority in that Member State. If, as a result of its inspections, a supervisory authority identifies a failure to comply with national provisions adopted pursuant to the Directive, it shall grant the company concerned an appropriate period of time to take remedial action, if such action is possible. Taking remedial action does not preclude the imposition of administrative sanctions or the triggering of civil liability in case of damages.

Supervisory authorities shall have at least the following powers:

a) to order the cessation of infringements of the obligations, abstention from any repetition of the relevant conduct and, where appropriate, remedial action;
b) to impose pecuniary sanctions;
c) to adopt interim measures to avoid the risk of severe and irreparable harm.

Member States shall ensure that each natural or legal person has the right to an effective judicial remedy against a legally binding decision by a supervisory authority concerning them.

Natural and legal persons shall be entitled to submit substantiated concerns to any supervisory authority when they have reasons to believe, on the basis of objective circumstances, that a company is failing to comply with its obligations. Supervisory authorities shall assess the substantiated concerns and, where appropriate, exercise their powers. The supervisory authority shall, as soon as possible and in accordance with the relevant provisions of national law and in compliance with Union law, inform the submitting person of the result of the assessment of their substantiated concern and shall provide the reasoning for it. The persons submitting the substantiated concern shall have access to a court or other independent and impartial public body

competent to review the procedural and substantive legality of the decisions, acts or failure to act of the supervisory authority.

Member States shall lay down the rules on sanctions applicable to infringements of obligations. The sanctions provided for shall be effective, proportionate and dissuasive. In deciding whether to impose sanctions and, if so, in determining their nature and appropriate level, due account shall be taken of the company's efforts to comply with any remedial action required of them by a supervisory authority, any investments made and any targeted support provided, as well as collaboration with other entities to address adverse impacts in its value chains, as the case may be. When pecuniary sanctions are imposed, they shall be based on the company's turnover. Decisions of the supervisory authorities containing sanctions related to the breach of the provisions of this directive shall be published.

The Commission shall set up a European Network of Supervisory Authorities. The Network shall facilitate the cooperation of the supervisory authorities and the coordination and alignment of regulatory, investigative, sanctioning and supervisory practices of the supervisory authorities and, as appropriate, sharing of information among them. The Article also defines the specifics of the cooperation of the supervisory authorities.

Civil liability (Article 22)

Member States shall ensure that companies are liable for damages if:

a) they failed to comply with the obligations laid down in Articles 7 and 8 (preventing potential adverse impacts and bringing actual adverse impacts to an end, respectively); and
b) as a result of this failure an adverse impact that should have been identified, prevented, mitigated, brought to an end or its extent minimised through the appropriate measures laid down in Articles 7 and 8 occurred and led to damage.

Member States shall nonetheless ensure that where a company has complied with the obligations under Articles 7 and 8, it shall not be liable for damages caused by an adverse impact arising as a result of the activities of an indirect partner with whom it has an established business relationship, unless it was unreasonable, in the circumstances of the case, to expect that the action actually taken, including as regards verifying compliance, would be adequate to prevent, mitigate, bring to an end or minimise the extent of the adverse impact.

In the assessment of the existence and extent of liability under this paragraph, due account shall be taken of the company's efforts, insofar as they relate directly to the

damage in question, to comply with any remedial action required of them by a supervisory authority, any investments made and any targeted support provided pursuant to Articles 7 and 8, as well as any collaboration with other entities to address adverse impacts in its value chains.

The civil liability of a company for damages shall be without prejudice to the civil liability of its subsidiaries or of any direct and indirect business partners in the value chain. The civil liability rules under the Directive shall be without prejudice to Union or national rules on civil liability related to adverse human rights impacts or to adverse environmental impacts that provide for liability in situations not covered by or providing for stricter liability than the Directive.

Member States shall ensure that the liability provided for in provisions of national law transposing civil liability under the Article is of overriding mandatory application in cases where the law applicable to claims to that effect is not the law of a Member State

It should be noted that in its recital 58, the Commission states that the liability regime does not regulate who should prove that the company's action was reasonably adequate under the circumstances of the case. The question of burden of proof would thus be left to national law.

Reporting of breaches and protection of reporting persons (Article 23)

Directive (EU) 2019/1937 (Whistleblowing Directive) shall apply to the reporting of all breaches of this Directive and the protection of persons reporting such breaches.

Public support (Article 24)

Member States shall ensure that companies applying for public support certify that no sanctions have been imposed on them for a failure to comply with the obligations of this Directive.

Directors' duties (Articles 25 and 26)

Member States shall ensure that, when fulfilling their duty to act in the best interest of the company, directors of companies take into account the consequences of their decisions for sustainability matters, including, where applicable, human rights, climate change and environmental consequences, including in the short, medium and long term Member States shall ensure that their laws, regulations and administrative

provisions providing for a breach of directors' duties apply also to the provisions of this Article.

Directors of companies shall be responsible for putting in place and overseeing the due diligence actions referred to in Article 4 and in particular the due diligence policy referred to in Article 5, with due consideration for relevant input from stakeholders and civil society organisations. The directors shall report to the board of directors in that respect. Member States shall ensure that directors take steps to adapt the corporate strategy to take into account the actual and potential adverse impacts identified pursuant to Article 6 and any measures taken pursuant to Articles 7 to 9.

Annexes to the proposal for a Directive

The Annex to the proposal for a Directive lists the international instruments on the basis of which adverse environmental and human rights impacts are determined.[70]

4.2 Corporate sustainability reporting

An amendment of the Accounting Act, based on an EU Directive, requires sustainability reporting from large-cap listed companies as well as credit institutions and insurance companies on topics including environmental and human rights issues[71]. In April 2021, the European Commission issued its proposal for a corporate sustainability reporting Directive to replace earlier EU law. Under the proposal, the scope of the reporting requirements would extend to all large companies and listed companies (except listed micro-companies), assurance of sustainability information would be required of the reporting parties, the information that companies should report would be specified in line with mandatory EU sustainability reporting standards, and all information would need to be to disclosed in a digital, machine-readable format.[72] The Commission and the Member States are currently in negotiation on the proposal. As the proposal states, the environmental and human rights reporting

[70] European Commission: Annex to the Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and Amending Directive (EU) 2019/1937 (COM(2022) 71 final – annex), https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CONSIL:ST_6533_2022_ADD_1&from=EN. Accessed on 13 December 2021.

[71] Ministry of Economic Affairs and Employment: Corporate sustainability reporting, https://tem.fi/en/csr-reporting. Accessed on 17 November 2021.

[72] European Commission: Corporate sustainability reporting, https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en. Accessed on 17 November 2021.

requirements are to be specified in the drafting of the EU sustainability reporting standards The Commission has appointed European Financial Reporting Advisory Group to prepare the draft standards.[73]

4.3 Other EU regulation relating to due diligence

The aim of EU sustainable finance regulation is to channel private investment towards making the economy climate-neutral. The EU taxonomy is a classification system establishing a list of environmentally sustainable economic activities.[74] The taxonomy (Regulation (EU) 2020/852 of the European Parliament and of the Council on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088) establishes the minimum safeguards that are a condition for economic activities to qualify as environmentally sustainable. The minimum safeguards determined in the taxonomy are compliance with the OECD Guidelines for Multinational Enterprises and UN Guiding Principles on Business and Human Rights, including the declaration on Fundamental Principles and Rights at Work of the International Labour Organisation (ILO), the eight fundamental conventions of the ILO and the International Bill of Human Rights.[75]

Under the disclosure obligations of financial market participants (Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability- related disclosures in the financial services sector), financial market participants shall publish and maintain on their websites a statement on due diligence policies with respect to adverse impacts on sustainability factors. They shall include in this information at least information about their policies on the identification and prioritisation of principal adverse sustainability impacts and indicators, a description of the principal adverse sustainability impacts and of any actions in relation thereto taken or, where relevant, planned, brief summaries of engagement policies in accordance with Article 3g of Directive 2007/36/EC, where applicable, and a reference to their adherence to responsible business conduct codes and internationally recognised

[73] EFRAG: EFRAG invited to contribute immediately to the elaboration of draft EU sustainability reporting standards (ESRS), https://www.efrag.org/News/Project-515/EFRAG-invited-to-contribute-immediately-to-the-elaboration-of-draft-EU-sustainability-reporting-standards-ESRS. Accessed on 17 November 2021.

[74] European Commission: Sustainable Finance, https://ec.europa.eu/info/business-economy-euro/banking-and-finance/sustainable-finance. Accessed on 10 December 2021.

[75] Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (Text with EEA relevance), https://eur-lex.europa.eu/legal-content/FI/TXT/?qid=1593772710189&uri=CELEX:32020R0852. Accessed on 10 December 2021.

standards for due diligence and reporting and, where relevant, the degree of their alignment with the objectives of the Paris Agreement. Where financial market participants do not consider adverse impacts of investment decisions on sustainability factors, they shall disclose on their websites clear reasons for why they do not do so, including, where relevant, information as to whether and when they intend to consider such adverse impacts.[76]

Based on EU regulation, the Import of Conflict Minerals Act (Act on the Placing on the Market of Conflict Minerals and Their Ores, 1196/2020) imposes a due diligence obligation on the importers of the minerals and ores defined in the Act.[77] These obligations concern the importer's governance systems, risk management, audits by independent third parties, and disclosures. The Finnish Safety and Chemicals Agency (Tukes) is the competent authority in Finland for conflict minerals legislation. The Act entered into force on 30 December 2020.

On 10 December 2020, the Commission issued a proposal to reform battery regulation. According to the proposal, an obligation to establish supply chain due diligence policies would be imposed on economic operators that place industrial batteries and electric-vehicle batteries with a capacity above 2 kWh on the market. Economic operators would be required to adopt, and clearly communicate to suppliers and the public a company policy for the supply chain of batteries; incorporate in their supply chains policy standards consistent with the OECD Due Diligence Guidance; structure their internal management systems to assign clear responsibilities and ensure that records are maintained for a minimum of five years; establish and operate a system of controls and transparency over the supply chain; incorporate its supply chain policy into contracts and agreements with suppliers; and establish a grievance mechanism or provide such mechanism in cooperation with other operators.[78] The Commission is in negotiations on the proposal with the Member States.

[76] Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability- related disclosures in the financial services sector, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32019R2088. Accessed on 10 December 2021.

[77] Laki konfliktimineraalien ja niiden malmien markkinoille saattamisesta [Act on the Placing on the Market of Conflict Minerals and Their Ores] (1196/2020), https://finlex.fi/fi/laki/alkup/2020/20201196. Accessed on 10 December 2021.

[78] Proposal for a Regulation of the European Parliament and of the Council concerning batteries and waste batteries, repealing Directive 2006/66/EC and amending Regulation (EU) No 2019/1020 (COM(2020) 798 final), https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020PC0798&from=EN. Accessed on 10 December 2021.

On 17 November 2021, the Commission issued a proposal for a Regulation on forest degradation and combating deforestation.[79] The proposal aims to reduce greenhouse gas emissions and biodiversity loss. It would impose due diligence obligations on operators who place soy, beef, palm oil, wood, cocoa and coffee on the EU market. According to the proposal, operators would be required to ascertain the geographic origin of these products to ensure that their production is not associated with deforestation or forest degradation.[80] The Commission is in negotiations on the proposal with the Member States.

[79] Proposal for a regulation of the European Parliament and of the Council 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) No 995/2010 (COM(2021) 706 final), https://ec.europa.eu/environment/publications/proposal-regulation-deforestation-free-products_en. Accessed on 10 December 2021.

[80] European Commission: Questions and Answers on new rules for deforestation-free products, https://ec.europa.eu/commission/presscorner/detail/en/qanda_21_5919. Accessed on 10 December 2021.

5. Legislative instruments introduced in other States

The Judicial Analysis includes a review of due diligence legislation in the United States, UK, Australia, France and the Netherlands.[81] The following sections review the legislation implemented in France, Germany and Norway. The section on France also includes a brief report on the experiences obtained in applying the legislation while the section on the Netherlands also covers a recent entry in the Dutch Government Programme.

5.1 Corporate due diligence law in France

A law on the corporate due diligence obligation was enacted in France in 2017. Under the law, large companies must exercise due diligence in human rights and environmental matters, and the obligation applies to the companies themselves and the enterprises that they control. The law applies to companies registered in France 1) with a workforce of at least 5,000 employees in the company itself or in its French-registered subsidiaries for two successive financial years; or 2) with a workforce of at least 10,000 employees in the company itself or in its subsidiaries registered in France or in other countries for a similar period.[82]

The due diligence obligation requires companies to prepare and implement a due diligence plan setting out measures that allow them to identify and prevent human rights violations and environmental damage directly or indirectly caused by their operations. The measures must apply to enterprises controlled by the company as well as its subcontractors and suppliers.[83]

The plan should be prepared in cooperation with the company's stakeholders and it should cover reasonable measures to identify risks and prevent serious infringements of fundamental and human rights, serious injury, environmental damage and health risks. The measures required are the following: 1) identification, analysis and prioritisation of the risks; 2) regular evaluation of the operations of subsidiaries, subcontractors and suppliers; 3) measures to prevent adverse impacts; 4) a

[81] Judicial Analysis, p. 32–39.

[82] Code du commerce, Article L. 225-102-4.-I.

[83] Idem. Article L. 225-102-4. -I, par. 4.

mechanism for collecting risk-related observations; and 5) a system for monitoring the implementation of the plan and its effectiveness.[84] The plan and the report on its implementation must be made publicly accessible as part of the company's annual reporting. The due diligence obligation laid down in the law can be considered to cover three areas: 1) preparation of the plan; 2) implementation of the plan; 3) publication of the plan and a report on its implementation.

Legal action can be taken against a company that fails to meet its due diligence obligation. The company is given three months to meet its obligation. After this period, a court may order the company to publish the due diligence plan on pain of a fine. Furthermore, a failure to comply with the obligations laid down in the law may result in liability for damage with respect to the losses that could have been avoided if the company had fulfilled its statutory requirements.[85]

In January 2020, the French Ministry of Economy and Finance issued a report on the implementation of the law. The report proposes the designation of an authority to support companies in complying with the law. Since at present it is difficult to ascertain which companies are covered by the law, the authority could specify the forms and sizes of company that fall within the law's scope of application. The report also finds that in order to ensure a level playing field, equivalent regulation should be put in place also at the EU level. According to the report, familiarity with the law is at a low level and there is no single clear-cut way of implementing the law. Accomplishment of the aims of the law is also hampered by companies' continued perception of due diligence as a tool for protecting their own interests and reputation rather than as a way of respecting human rights and the environment. Sustained provision of information and training is required in order for the spirit of the law to become reality.[86]

[84] Idem. Article L. 225-102-4. -I, par. 5.

[85] Idem. Article L. 225-102-5.

[86] Evaluation de la mise en œuvre de la loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre, (Ministère de l'Économie et des Finances 2020), https://www.economie.gouv.fr/files/files/directions_services/cge/devoirs-vigilances-entreprises.pdf. Accessed on 3 December 2021.

5.2 Corporate due diligence law in Germany

A law on corporate due diligence was enacted in Germany in summer 2021.[87] The law applies to enterprises that have their central administration, their principal place of business, their administrative headquarters or their statutory seat in Germany and normally have at least 3,000 employees in Germany; employees posted abroad are included. The law also applies to enterprises that have a domestic branch office pursuant to the German Commercial Code and normally have at least 3,000 employees in Germany. As of 1 January 2024, the law will apply to all enterprises that normally have at least 1,000 employees in Germany.[88]

The German law imposes on enterprises an obligation to exercise due regard for the human rights and environment-related due diligence obligations in their supply chains with the aim of preventing or minimising any risks to human rights or environment-related risks or of ending the violation of human rights-related or environment-related obligations The law aims to prevent and minimise risks to human rights and environmental risks and to bring violations of human rights and environmental obligations to an end. The due diligence obligation comprises:

1. establishing a risk management system;
2. designating a responsible person or persons within the enterprise;
3. performing regular risk analyses;
4. issuing a policy statement;
5. laying down preventive measures in its own area of business and vis-à-vis direct suppliers;
6. taking remedial action;

[87] Federal Ministry of Labour and Social Affairs: Act on Corporate Due Diligence in Supply Chains, https://www.bmas.de/EN/Services/Press/recent-publications/2021/act-on-corporate-due-diligence-in-supply-chains.html. Accessed on 18 November 2021.

[88] Act on Corporate Due Diligence Obligations for the Prevention of Human Rights Violations in Supply Chains, Section 1 Scope of application, https://www.bmas.de/SharedDocs/Downloads/DE/Internationales/act-corporate-due-diligence-obligations-supply-chains.pdf;jsessionid=22F16C5217CC3AAB13034E3AE1580176.delivery1-replication?__blob=publicationFile&v=3. Accessed on 18 November 2021.

7. establishing a complaints procedure;

8. implementing due diligence obligations with regard to risks at indirect suppliers; and

9. documenting and reporting.

The appropriate manner of acting in accordance with the due diligence obligations is determined according to the following:

1. the nature and extent of the enterprise's business activities;
2. the ability of the enterprise to influence the party directly responsible for a risk to human rights or environment-related risk or the violation of a human rights-related or environment- related obligation;
3. the severity of the violation that can typically be expected, the reversibility of the violation, and the probability of the occurrence of a violation of a human rights-related or an environment-related obligation; and
4. the nature of the causal contribution of the enterprise to the risk to human rights or environment-related risk or to the violation of a human rights-related or environment-related obligation.

While the law does not create any new civil liability, it is also without prejudice to liability defined elsewhere.[89] The legal rights protected by the law are determined in the Annex to the law, which lists them as:

- the following Conventions of the International Labour Organization ILO: No. 29 concerning Forced or Compulsory Labour, including the Protocol to the Convention), No. 87 concerning Freedom of Association and Protection of the Right to Organise, No. 98 concerning the Application of the Principles of the Right to Organise and to Bargain Collectively No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, No. 105 concerning the Abolition of Forced Labour, No. 111 concerning Discrimination in Respect of Employment and Occupation, No. 138 concerning the Minimum Age for Admission to Employment, and No. 182 concerning the Prohibition

[89] Ibid., Section 3, Due Diligence Obligations.

and Immediate Action for the Elimination of the Worst Forms of Child Labour[90];

- UN International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights;
- Minamata Convention on Mercury[91];
- Stockholm Convention on Persistent Organic Pollutants[92] and
- Basel Convention on the Control of Transboundary Movements of hazardous Wastes and Their Disposal[93].[94]

The German law requires enterprises to establish an appropriate and effective risk management system to comply with the obligations laid down in the law. Risk management must be enshrined in all relevant business processes through appropriate measures.[95] As part of risk management, the enterprise must conduct an appropriate risk analysis to identify the human rights and environment-related risks in its own business area and at its direct suppliers. In cases where an enterprise has structured a direct supplier relationship in an improper manner or has engaged in a transaction in order to circumvent the due diligence obligations with regard to the direct supplier, an indirect supplier is deemed to be a direct supplier. The identified human rights and environment-related risks must be weighted and prioritised using, among others, the criteria defined in the law (see under appropriateness of due diligence obligation). The results of the risk analysis must be communicated internally

[90] Sandell Toni, Ed. (Ministry of Employment, ILO Committee): Kansainvälisen työjärjestön ILO:n yleissopimukset [Conventions of the International Labour Organization ILO], https://tem.fi/documents/1410877/2971009/ilo_yleissopimukset.pdf/995fef91-ccf5-4a3e-ada1-82c836cd347f. Accessed on 19 November 2021.

[91] Minamata Convention on Mercury, https://treaties.un.org/doc/Treaties/2013/10/20131010%2011-16%20AM/CTC-XXVII-17.pdf. Accessed on 19 November 2021.

[92] Tasavallan presidentin asetus pysyviä orgaanisia yhdisteitä koskevan Tukholman yleissopimuksen voimaansaattamisesta [Decree of the President of the Republic on enforcing the Stockholm Convention on Persistent Organic Pollutants] (16 April 2004), https://finlex.fi/fi/sopimukset/sopsteksti/2004/20040034. Accessed on 19 November 2021.

[93] Basel Convention on the Control of Transboundary Movements of hazardous Wastes and Their Disposal. http://www.basel.int/TheConvention/Overview/TextoftheConvention/tabid/1275/Default.aspx. Accessed on 19 November 2021.

[94] Act on Corporate Due Diligence Obligations for the Prevention of Human Rights Violations in Supply Chains, Annex, Conventions.

[95] Ibid., Section 4, Risk Management.

to the relevant decision-makers. The risk analysis must be carried out once a year as well as on an ad hoc basis in the event of changes in the supply chain, for example.[96]

If an enterprise identifies a risk in the course of a risk analysis, it must take appropriate preventive measures without undue delay. It must also issue a policy statement on its human rights strategy. The policy statement must contain at least the following elements:

- the description of the procedure by which the enterprise fulfils its obligations under the law;
- the enterprise's priority human rights and environment-related risks identified on the basis of the risk analysis and
- the definition, based on the risk analysis, of the human rights-related and environment- related expectations placed by the enterprise on its employees and suppliers in the supply chain.

The enterprise must lay down appropriate preventive measures vis-à-vis its direct suppliers. This means the consideration of human rights-related and environment-related expectations when selecting a direct supplier, the incorporation of expectations in contracts concluded with direct suppliers, training suppliers in the implementation of contractual obligations, and contractual control. The effectiveness of the preventive measures must be reviewed once a year and on an ad hoc basis in the event of changes in risks.[97]

If the enterprise discovers that a violation of a human rights-related or an environment-related obligation has already occurred or is imminent in its own business area or at a direct supplier, it must, without undue delay, take appropriate remedial action to prevent, end or minimise the extent of this violation. In the enterprise's own business area in Germany, the remedial action must bring the violation to an end. If the violation of a human rights-related or an environment-related obligation at a direct supplier is such that the enterprise cannot end it in the foreseeable future, it must draw up and implement a concept for ending or minimising the violation without undue delay. The concept must contain a concrete timetable. The termination of a business relationship is only required if the violation is assessed as very serious, the measures taken do not remedy the situation within the specified timetable, the enterprise has no other less severe means at its disposal and

[96] Ibid., Section 5, Risk Analysis.

[97] Ibid., Section 6, Preventive measures.

increasing the ability to exert influence has no prospect of success. The mere fact that a State has not ratified one of the conventions listed in the Annex or has not implemented it into its national law does not result in an obligation to terminate the business relationship. The effectiveness of the remedial action must be reviewed once a year and on an ad hoc basis in the event of significant change in circumstances.[98]

The German law requires enterprises to have in place an appropriate internal complaints procedure. Alternatively, enterprises may participate in an appropriate external complaints procedure, provided that the criteria laid down in the law for such a procedure are met.[99] Enterprises shall also introduce a complaints procedure that enables the reporting of risks to human rights or environment-related risks as well as violations of obligations on the part of an indirect supplier. If an enterprise has actual indications that suggest that a violation of a human rights-related or an environment-related obligation at indirect suppliers may be possible, it must without undue delay carry out a risk analysis, lay down appropriate preventive measures vis-à-vis the party responsible, draw up and implement a prevention, cessation or minimisation concept, and update its policy statement if necessary.[100]

Enterprises shall document the fulfilment of the due diligence obligations and keep the documentation for seven years from its creation. Enterprises must also prepare an annual report on the fulfilment of due diligence obligations and make it publicly available on their website no later than four months after the end of the financial year. The report must at least state in a comprehensible manner whether the enterprise has identified any human rights and environment-related risks or violations of a human rights-related or environment-related obligation, and if so, which ones; what the enterprise has done to fulfil its due diligence obligations; how the enterprise assesses the impact and effectiveness of the measures; and what conclusions it draws from the assessment for future measures. If an enterprise plausibly explains that it has not identified any risks or violations, it need not report on the further of the above. Due consideration is to be given to the protection of business and trade secrets.[101]

The competent authority checks whether enterprises have provided the required report and whether the report meets the criteria laid down in the law. Where the requirements are not met, the authority may demand that the enterprise rectify the

[98] Ibid., Section 7, Remedial action.

[99] Ibid., Section 8, Complaints procedure.

[100] Ibid., Section 9, Indirect suppliers; authorisation to issue statutory instruments.

[101] Ibid., Section 10, Documentation and reporting obligation.

report within a reasonable period of time.[102] The competent authority may take action *ex officio* to monitor compliance with the human rights- related or environment-related obligations laid down in the law and to detect, end and prevent violations of aforementioned obligations. The authority may also take the above action upon a person's request subject to certain conditions.[103] The competent authority makes the appropriate and necessary orders and takes the appropriate and necessary measures to detect, end and prevent violations of the obligations defined in the law. In particular, the authority may summon people, order the enterprise to submit, within three months, a corrective action plan including clear timelines, and require the enterprise to take specific action to fulfil its obligations.[104]

The competent authority is authorised to enter and inspect the enterprise's premises during normal business or operating hours and to inspect and examine the enterprise's documentation with regard to due diligence obligations.[105] Enterprises and persons are obliged to provide the competent authority with the information and documents requested, taking into account the German Code of Criminal Procedure.[106] The law designates the Federal Office for Economic Affairs and Export Control as the competent authority. In the performance of its tasks, the competent authority takes a risk-based approach.[107]

Violation of the obligations laid down in the law may result in exclusion from the award of public contracts.[108] The German law also lays down pecuniary sanctions for violations.[109]

5.3 Corporate due diligence law in Norway

In April 2021, the Norwegian Government submitted to parliament a legislative proposal on the due diligence obligation. The proposal passed in June and it enters

[102] Ibid., Section 13, Report audit by authorities; authorisation to issue statutory instruments.

[103] Ibid., Section 14, Action taken by the authorities; authorisation to issue statutory instruments.

[104] Ibid., Section 15, Orders and measures.

[105] Ibid., Section 16, Access rights.

[106] Ibid., Section 17, Obligation to provide information and surrender documents.

[107] Ibid., Section 19, Competent authority.

[108] Ibid., Section 22, Exclusion from the award of public contracts.

[109] Ibid., Section 23, Financial penalty; Section 24, Provisions on administrative fees.

into force on 1 July 2022.[110];[111] The purpose of the Act is to promote enterprises' respect for fundamental human rights and decent working conditions and to ensure the general public access to information regarding how enterprises address adverse impacts on fundamental human rights and decent working conditions. In other words, environmental matters are excluded from the scope of the Act.

The Act applies to larger enterprises that are resident in Norway and that offer goods and services in or outside Norway. “Larger enterprises” refers to certain enterprises determined in the Norwegian Accounting Act or enterprises that meet two of the following conditions: sales revenues NOK 70 million, balance sheet total NOK 35 million, or average number of employees 50 full-time equivalent. The Act also applies to major foreign enterprises that are liable to tax in Norway. In the Norwegian Act, human rights means the internationally recognised human rights that are enshrined, among other places, in the International Covenant on Economic, Social and Cultural Rights of 1966, the International Covenant on Civil and Political Rights of 1966 and the ILO's core Conventions on fundamental principles and rights at work. Decent working conditions means work that safeguards fundamental human rights pursuant to (b) and health, safety and environment in the workplace, and that provides a living wage.[112]

The Norwegian Act imposes on enterprises an obligation to carry out due diligence in accordance with the OECD Guidelines for Multinational Enterprises. For the purposes of the Act, due diligence is defined to mean that enterprises must:

- embed responsible business conduct into the enterprise's policies
- identify and assess actual and potential adverse impacts on fundamental human rights and decent working conditions that the enterprise has either caused or contributed toward, or that are directly linked with the enterprise's operations, products or services via the supply chain or business partners

[110] Krajewski, Markus & al. (Cambridge University Press 2021): Mandatory Human Rights Due Diligence in Germany and Norway: Stepping, or Striding, in the Same Direction?, https://www.cambridge.org/core/journals/business-and-human-rights-journal/article/mandatory-human-rights-due-diligence-in-germany-and-norway-stepping-or-striding-in-the-same-direction/85815FE5F1D1F64208B0068B7FBBECF8. Accessed on 17 November 2021.

[111] Lovdata: Act relating to enterprises' transparency and work on fundamental human rights and decent working conditions (Transparency Act), https://lovdata.no/dokument/NLE/lov/2021-06-18-99. Accessed on 17 November 2021.

[112] Ibid., Section 3. Definitions.

- implement suitable measures to cease, prevent or mitigate adverse impacts based on the enterprise's prioritisations and assessments pursuant to the above.

- track the implementation and results of measures pursuant to the above.

- communicate with affected stakeholders and rights-holders regarding how adverse impacts are addressed.

- provide for or co-operate in remediation and compensation where this is required.

In addition, due diligence shall be carried out regularly and in proportion to the size of the enterprise, the nature of the enterprise, the context of its operations, and the severity and probability of adverse impacts on fundamental human rights and decent working conditions. The Ministry responsible for the legislation may also issue additional legislation regarding the duty to carry out due diligence.[113]

The enterprises shall also publish an account of due diligence. The account shall at least include a description of the enterprise's structure, area of operations, guidelines and procedures for handling actual and potential adverse impacts on fundamental human rights and decent working conditions. The account shall also include information regarding actual adverse impacts and significant risks of adverse impacts that the enterprise has identified through its due diligence. In addition, the enterprise shall provide information regarding measures it has implemented or plans to implement to cease actual adverse impacts or mitigate significant risks of adverse impacts, and the results or expected results of these measures. The account shall be made easily accessible on the enterprise’s website and it shall be published no later than on 30 June of each year and otherwise in case of significant changes to the enterprise’s risk assessments. The enterprise’s annual report shall inform of where the above account can be accessed.[114]

Under the Act, any person has the right to information from an enterprise regarding how the enterprise addresses actual and potential adverse impacts, subject to certain restrictions.[115] This information shall be provided in writing and it shall be adequate and comprehensible. Enterprises shall respond to requests for information within the

[113] Ibid., Section 4. Duty to carry out due diligence.

[114] Ibid., Section 5. Duty to account for due diligence.

[115] Ibid.., Section 6. Right to information.

time limits laid down in the Act.[116] The Norwegian Consumer Authority shall by way of general information, advice and guidance work to ensure that the rules in the Act and decisions pursuant to the Act are observed.[117] It also monitors compliance with the Act. The Consumer Authority shall on its own initiative, or based on a request from others, seek to influence enterprises to comply with the Act, including by conducting negotiations with the enterprises or their organisations. If the Consumer Authority finds that an enterprise is in breach of the Act, the Consumer Authority shall obtain a written confirmation that the illegal conduct will cease, or issue a decision. The Norwegian Market Council processes appeals of decisions made by the Consumer Authority.[118] The Consumer Authority may impose penalty payments for violations of the Act. Sanctions are also laid down in the Act for failure to provide information in respect of both reporting and requests for information.[119]

5.4 Corporate due diligence regulation in the Netherlands

In 2019, the Dutch Senate adopted legislation to combat child labour. The implementation of the legislation, inclusive of specifics, is subject to the issue of an administrative order (”Algemene Maatregel van Bestuur”) which the Dutch Government is preparing.[120] The recently elected Government of the Netherlands states in its Programme that the Netherlands will support EU legislation on corporate social responsibility. The Netherlands will introduce national corporate social responsibility legislation that promotes a level playing field with neighbouring countries and is in line with the implementation of possible EU legislation.[121] In other words, the Netherlands is preparing a broader corporate due diligence obligation than the earlier legislation on combating child labour. The Netherlands has also issued a “non-paper” on how to regulate the human rights and environmental due diligence obligations at

[116] Ibid., Section 7. Enterprises' processing of requests for information.

[117] Ibid., Section 8. Guidance.

[118] Ibid., Section 9. Monitoring and enforcement.

[119] Krajewski, Markus & al. (Cambridge University Press 2021).

[120] MVO Platform: Update: Frequently Asked Questions about the new Dutch Child Labour Due Diligence Law (3.6.2019), https://www.mvoplatform.nl/en/frequently-asked-questions-about-the-new-dutch-child-labour-due-diligence-law/. Accessed on 17 January 2022.

[121] Government of the Netherlands: Coalition agreement 'Looking out for each other, looking ahead to the future'. Coalition agreement between the People’s Party for Freedom and Democracy (VVD), Christian Democratic Alliance (CDA), Democrats ’66 (D66) and Christian Union (CU), https://www.government.nl/documents/publications/2022/01/10/2021-2025-coalition-agreement. Accessed on 17 January 2022.

the EU level in order to generate maximum positive impact in third countries while safeguarding a level playing field for EU companies.[122]

[122] Government of the Netherlands: Non-paper Mandatory due diligence: Building blocks for effective and ambitious European due diligence legislation, https://www.rijksoverheid.nl/documenten/vergaderstukken/2021/11/05/non-paper-mandatory-due-diligence. Accessed on 17 January 2022.

6. Structure of regulation

6.1 Premises

This memorandum assesses the options for imposing on companies a human rights and environmental due diligence obligation. While the Judicial Analysis provides a comprehensive presentation of the elements of which such regulation might be composed, the potential concrete regulatory approaches remain open. Before examining these approaches, this assessment memorandum first reviews, on the basis of the Judicial Analysis, the individual elements which regulation might include.

In order to gain an understanding of the regulatory options, the following pages will examine the due diligence obligation through the prism of (1) the actual content of the obligation, (2) the scope of application of the obligation, and (3) the system of sanctions and the related alternative ways.

Corporate due diligence seeks to prevent the adverse human rights and environmental impacts of companies. The due diligence process should be an ongoing part of a company's operations and its contents may vary depending on the nature and complexity of those operations. In the manner outlined in the Judicial Analysis, this memorandum starts from the premise that corporate due diligence legislation could be built on the pillars adopted in the UN Principles as well as the OECD Guidelines for Multinational Enterprises and the OECD Due Diligence Guidance (in particular chapter II).

The UN Principles and the OECD Guidelines for Multinational Enterprises *per se* are not binding on companies. This international guidance for companies is formulated for ambition and ambiguity and it does not contain any unequivocal rules that could be incorporated 'as is' into any eventual legislation. National legislation would need to be considerably less open to interpretation than the UN Principles and OECD Guidelines and it would need to precisely and clearly express the obligations imposed on companies[123]. However, the basis for this legislation can be derived from the UN Principles and the OECD Guidelines. The due diligence obligation laid down in law could thus in general terms be understood as the duty of companies to identify the

[123] See Lainkirjoittajan opas, 4.1.15 Täsmällisyys- ja tarkkarajaisuusvaatimus [Law Drafter's Guide, Requirement of precision and clear definition], http://lainkirjoittaja.finlex.fi/4-perusoikeudet/4-1/#jakso-4-1-15. Accessed on 11 January 2022.

actual and potential adverse human rights impacts associated with their operations, to prevent, mitigate and bring to an end such impacts by taking measures, track the effectiveness of their measures, and communicate the measures taken[124]. Options concerning remedial action will also be examined.[125] The following pages contain an examination of what these different elements of the obligation could mean from the legislative point of view.

6.2 Content of the due diligence obligation

6.2.1 Determination of adverse human rights and environmental impacts

Corporate due diligence legislation would need to determine the human rights and environmental impacts to which the obligation would apply.

Under the UN Guiding Principles, human rights include at least the rights described in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the ILO Conventions.[126] In legislation already implemented, the rights protected have been defined by means of reference to international human rights instruments.

Legislation is required to be precise and clearly defined. It follows from this requirement that any national law would need to define with greater precision than the UN Principles the types of specific treaties covered by the law. In any eventual legislation, human rights could be defined e.g. by making general references to internationally recognised human rights, the human rights instruments ratified by Finland, or the instruments referred to in the UN Guiding Principles and any other instruments deemed to be relevant.[127] In order for the applicable human rights and

[124] Judicial Analysis, p. 47 and 102

[125] UN Guiding Principles, principles 22 and 25–27.

[126] UN Guiding Principles. Principle 12.

[127] NB. The UN Universal Declaration of Human Rights is not a legally binding instrument. As a rule, no sanctions should follow from breach of an obligation under a legally non-binding document. Since legislation in its entirety is binding, in order to avoid confusion it should include no reference to non-binding documents. This is an issue of the appropriate hierarchical relationships of provisions. The UN Universal Declaration of Human Rights was excluded from both the German

environmental instruments to be determined, they would, at the least, need to be listed. Due to the requirement of precision in legislation, the parts of the instruments that might be amenable to application to companies would moreover need to be distinguished. The list of applicable instruments or specific provisions therein could appear in an Annex to the Act or in a separate Decree issued pursuant to the Act.[128]

In such a situation, compliance with the obligation would require the company to be familiar with the instruments or parts thereof listed in the legislation. It should also be noted that the interpretations of the international human rights instruments are formed in the interpretative practice of the UN expert bodies as they independently interpret the substance of the instruments. Such interpretations may broaden the concept of human rights. In practice, determining the contents of obligations under the instruments could require visiting the UN websites to determine interpretative practice vis-á-vis human rights, as these websites are currently the only place where an up-to-date listing of interpretation of the instruments is available.

This would also represent a new approach to legislative technique in Finland, as it seems that reference to relevant instruments is not used in any existing national legislation[129]. Another option might be to seek to define, in more general terms, the human rights that are relevant to the operations of companies and the purpose of the Act. However, this approach might make it impossible to achieve in the Act the precision in content of obligation that is required of regulation.

In respect of environmental obligations as well, it would be possible firstly to link the obligation to international environmental instruments. In a similar way as human rights instruments, also international environmental instruments are intended to be binding on States parties. Consequently, those instruments and parts thereof that could, by law, be made binding on companies would need to be distinguished from the entire set of environmental instruments.

The Judicial Analysis also examined linking the environmental obligation to environmental impacts. The analysis divided environmental impacts roughly into two groups: 1) impacts producing human rights effects; and 2) impacts that only affect the environment. Thus in regulation, it should be decided which is the object of legal

and the Norwegian corporate due diligence law. See also lainkirjoittajan opas [Law Drafter's Guide] 19.1.2., http://lainkirjoittaja.finlex.fi/19-saadoksiin-ja-maarayksiin-viittaaminen/19-1/#jakso-19-1-2. Accessed on 25 November 2021.

[128] Judicial Analysis, p. 66.

[129] Cf. Criminal Code of Finland, chapter 1, section 7, subsection 1 and the Decree on the application of chapter 1, section 7 of the Criminal Code of Finland (627/1996) issued pursuant to it.

protection in environmental due diligence.[130] The environmental impacts-based approach would require determination of the environmental impacts referred to in regulation. Since a company shall primarily comply with the environmental regulation and any permit procedures in force in its operating area, environmental impacts could be linked mainly to significant environmental damage arising despite compliance with local regulation.

Regulation would furthermore need to define the meaning of adverse impact. According to the Interpretive Guide to the UN Guiding Principles, an adverse human rights impact occurs when an action removes or reduces the ability of an individual to enjoy his or her human rights.[131] According to the OECD Due Diligence Guidance for Responsible Business Conduct, adverse environmental impact may consist of e.g. ecosystem degradation, unsafe levels of environmentally hazardous substances in products or services, or water pollution.[132]

Additional qualifiers can be used to set the protection afforded by the Act at a certain level. Human rights impacts, for example, could be tied to serious adverse human rights impacts. In such a case, the legislation would need to include also a set of criteria for assessing the seriousness of the adverse impact. In the interests of clarity of regulation, the fulfilment of possible additional qualifier requirements should be assessed in a manner consistent with other legislation containing similar additional qualifiers.[133]

The Act should define a sphere of human rights and environmental impacts that materially defines the Act's scope of application. In respect of human rights and the environment, reference could be made to international instruments. Reference to instruments would necessitate an assessment of those instruments and parts thereof that could be deemed to be binding on companies. In addition, consideration should also be given to the manner in which the reference to human rights and environmental instruments could be accomplished. With regard to the environment, there is also the option of linking application of the Act to significant or serious environmental damage.

[130] Idem. p. 70 pp.

[131] OHCHR (United Nations 2012): The Corporate Responsibility to Respect Human Rights. An Interpretive Guide, p. 5.

[132] OECD (2018), OECD Due Diligence Guidance for Responsible Business Conduct, p. 39.

[133] Judicial Analysis, p. 66 pp.

6.2.2 Formulation of obligation in general or specific terms

As a rule, two approaches to enacting due diligence legislation can be identified:

1. a general Act containing a brief overview of the stages of the process and emphasising the appropriateness and proportionality of due diligence (general terms) and

2. an act providing a tighter framework for due diligence and the activities coming under it (specific terms).[134]

An obligation formulated in general terms would emphasise the appropriateness of due diligence in company operations assessed in a context-specific manner. The Judicial Analysis estimated that in the option of general terms formulation, the content of due diligence could be presented fairly briefly, for example, by describing the key elements of the obligation: 1) assessing the impacts of the enterprise's operations; 2) preventing and mitigating the identified adverse impacts; 3) monitoring the effectiveness of the measures; and 4) providing information about the measures.[135]

The obligation formulated in general terms can be specified by listing general factors that should be considered in due diligence, such as the risk-based and proportional nature and regular updating of the assessment, and consultation with stakeholders and/or vulnerable groups during different stages of the process.[136] The content of the due diligence assessment could be affected by country-specific and sectoral risks, likelihood and seriousness of the potential impacts, and the size of the company and its chances of influencing the actor causing the impacts. Companies could also be required to prepare a more in-depth impact assessment in situations in which impacts have been identified.[137]

The content of the obligation in general terms should be clarified, also through provision of examples, in the rationale of the Act and, when necessary, in separate guidelines issued by an authority. Further provisions could also be laid down by Decree, where necessary, or the supervisory authority could be obliged to issue more

[134] Idem, p. 61.

[135] Ibid.

[136] Ibid.

[137] Ibid.

specific instructions on application of the provisions.[138] A general, risk-based obligation might result in the interpretation and application practice of the Act only emerging gradually, through decisions issued by the authorities and courts.

The second option is to lay down detailed provisions on the measures required for due diligence. In this case, the provisions should, among other things, specify the information that companies should collect to assess risks, detail the risks that they should consider in specific situations, describe the measures that they should take to prevent risks or the indicators used to monitor the effectiveness of the measures. For all intents and purposes, a detailed obligation would enshrine in legislation a list of the obligations which a company must attend to.[139]

6.2.3 Identification of impacts

The first step in the due diligence process would be an obligation to identify the actual and potential adverse human rights and environmental impacts of the operations of the company, its suppliers and its business partners. The human rights and environmental impacts identification process may involve different kinds of measures depending on factors such as company size, business sector and operating area.

In practice, companies can identify and manage their adverse human rights and environmental impacts by means of risk assessment, contractual terms and supplier audits, and by requiring suppliers to carry out self-evaluations[140]. In addition, under the UN Principles, companies must consult experts and potentially affected groups as part of their due diligence process.[141] A range of different management systems can be used in the assessment of human rights and environmental impacts, or the company can incorporate the processes into its existing risk assessment procedures.[142] As a rule, in the absence of specific regulation, companies themselves decide the manner in which they identify and prevent adverse impacts related to their operations[143].

[138] Idem., p. 63.

[139] Idem., p. 62–63.

[140] Idem. p. 50 pp.

[141] UN Guiding Principles, Principle 18.

[142] UN Guiding Principles, Principle 17, Commentary.

[143] Idem. p. 50.

The regulatory question is: what kinds of concrete measures would companies be obligated to take? The options are a general context and case-specific duty to know the impacts of operations, along with additional specification of the general obligation with some measures required under law, or then an exhaustive detailed list of obligations laid down by law.

A general duty to know would not impose on the operator a duty to know all the impacts of its operations, supply chains and business partners as well as of the ensuing risks of these; instead, the Act would need to incorporate an element of proportionality and appropriateness into the obligation. Proportionality and the requirement of appropriateness would mean that the content of the duty to know varies depending on factors such as company sector and operating area. Companies should identify the risks that are the most salient to their operations and as necessary, further prioritise their action so that they can prevent and mitigate the most severe risks.[144]

According to the OECD Due Diligence Guidance, companies should prioritise the order in which they take action based on the severity and likelihood of the adverse impact, where it is not feasible to address all identified impacts at once. In this context, severity refers to whether the adverse impact is capable of being remedied – an example of irremediable impact would be permanent impairment or loss of human life. Once the most significant impacts are identified and dealt with, the company should move on to address less significant impacts. The process of prioritisation is ongoing, and in some instances new or emerging adverse impacts may arise and be prioritised before moving on to less significant impacts.[145]

The alternative is to incorporate into the Act provisions on the factors to be taken into account in the risk analysis and on the integration of impact identification into the company's processes. Regulation could impose obligations on companies to introduce certain measures. Identification and prioritisation can be guided through regulation by obliging a company to pay particular attention to particularly vulnerable groups.

[144] Judicial Analysis, p. 51.

[145] OECD (2018), OECD Due Diligence Guidance for Responsible Business Conduct, p. 17.

6.2.4 Prevention of adverse impacts

The corporate due diligence obligation would require companies to take action to prevent, mitigate and bring to an end the identified adverse impacts[146].

Preventing adverse impacts is based on their identification and this should take place in a proactive manner. Companies should also ensure that the impacts are being addressed by tracking the effectiveness of their response. The obligation of companies to prevent, mitigate or bring to an end the adverse impacts of their operations could be laid down in the Act.[147]

The prevention of impacts requires companies to organise their operations in a way that allows impacts to be effectively addressed[148]. Companies can introduce systems that allow impact prevention to be integrated into company processes. With such systems, companies can accumulate data on the impacts of operations and also set targets and monitor their accomplishment. The impacts of operations can be the topic of dialogue with stakeholders, and sufficient information on the impacts of the company's operations and the manner in which human rights impacts are catered for in these can be provided to the public and to employees. The impacts of operations should be assessed and taken into account in decision-making across the entire lifecycle of e.g. goods or services. Where negative impacts cannot be wholly prevented, every effort should be made to mitigate these.[149]

In order to prevent and avoid damage, measures can be taken also in situations in which there is no full scientific certainty of the risks. On the other hand, efforts can also be made to enhance the level of measures by having the tools proved to be effective widened to also other units or functions.[150]

Depending on the nature of their operations, companies can maintain contingency plans for preventing, mitigating, and controlling e.g. serious environmental and health damage, accidents and emergencies arising from their operations.[151]

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[146] UN Guiding Principles, Principles 13 and 19.

[147] Judicial Analysis, p. 54.

[148] Principle 19 of the UN Guiding Principles.

[149] Judicial Analysis, p. 54 pp.

[150] Ibid.

[151] Ibid.

As in respect of identification of impacts, the question must be settled whether detailed regulation of the concrete tools to prevent, mitigate or bring to an end adverse impacts should be included in the Act.

6.2.5 Obligation to report or disclose

Under the UN Guiding Principles, companies should be prepared to communicate externally the impacts of their operations and how they address them.[152] *Provisions on monitoring the effectiveness of implemented measures could be laid down in the Act by means of:*

- *a reporting obligation*
- *a disclosure obligation*
- *stakeholder inclusion[153].*

The deliberations on an obligation to report or disclose involve the question of the manner in which a company would be obliged to communicate the impacts of their operations and the measures taken by the company to address these. The aim of tracking the implemented measures would be to provide company stakeholders or the authorities with an opportunity to assess the actions of the company.

Action reporting would mean reporting the procedures used by the company to a designated party, e.g. an authority, either annually, at regular intervals or in the event of changes in circumstances. The reporting obligation can also be implemented by obliging a company to publish the report, with supervision of reporting then carried out on the basis of the published reports.

The disclosure obligation, meanwhile, would mean that a company would be required to provide certain, specified information upon request or be obligated to keep that information on public display (on an ongoing basis).

Various kinds of more specific obligations could be linked to regulation of the obligation to report or disclose:

[152] Principles 21–29 of the UN Guiding Principles.

[153] Judicial Analysis, p. 58 pp.

- Preparation and publication of a due diligence plan concerning the identification and prevention of impacts
- Provision of various kinds of assurances
- Procedures relating to companies' internal control
- Report on training provided to personnel
- Appointment of compliance officer in the company
- Commissioning of independent third-party audits.[154]

The comparability of the information provided to stakeholders can be influenced by specifying the contents of the reporting obligation. The reporting obligation must be assessed in tandem with whether detailed obligations are to be imposed on companies, which concrete measures companies will be obliged to take, and whether regulation is context-specific by nature.

Current research data suggests that a mere general reporting obligation does not generate positive change in corporate behaviour. One challenge in imposing a general reporting obligation is to determine the appropriate metrics so that the data reported allows stakeholders to obtain a meaningful picture of the company's performance. Further challenges can include selective disclosure, impression management and incomparable disclosures both over time and between companies.[155] Attention must be paid to these factors at the law-drafting stage.

[154] See Ibid. p. 55 pp.

[155] Hess, David (American Business Law Journal (volume 56, issue 1, Spring 2019)): The Transparency Trap: Non-Financial Disclosure and the Responsibility of Business to Respect Human Rights, https://www.researchgate.net/publication/329811362_The_Transparency_Trap_Non-Financial_Disclosure_and_the_Responsibility_of_Business_to_Respect_Human_Rights, s. 26–27. Accessed on 4 February 2022.

6.2.6 Scope of application

Scope based on company size

This assessment memorandum examines regulation from the perspective that it would apply to Finnish companies and subsidiaries of foreign companies active in Finland when they engage in cross-border operations from Finland.

A key limitation with regard to scope of application is the size of the companies to which the Act would apply. Limitation of scope based on company size has a direct impact on the number of companies covered by the Act. The indicators used could be the same as are laid down in the Accounting Act: balance sheet total, turnover and number of employees.[156]

By limiting the due diligence obligation to cover only large enterprises, large and medium-sized enterprises, large enterprises and SMEs, or all enterprises, can have a considerable effect on the number of companies covered by the obligation.[157] Any possible limitation could also apply to only certain elements of the obligation, making some aspects of the obligation applicable to all companies larger than SME while others would only apply to large enterprises.

Different approaches to the corporate due diligence obligation could be constructed based on the size of the companies to which the obligation or an element thereof would apply.

Scope in a company's supply chain

Companies may organise their operations abroad by means of outsourcing or subcontractor chains. Such supply chains may comprise suppliers or subcontractors with a direct contractual relationship with the company (first tier) as well as their suppliers and subcontractors with which the company does not have a direct contractual relationship (second tier). Subcontractors are legal persons independent of the company, and in such a case, the client company itself is under no obligation to

[156] Judicial Analysis, p. 73

[157] Company structure in Finland is examined in more detail in chapter 7.2.

comply with local legislation.[158] The structures can be described by using the terms supply chain or value chain.[159]

In terms of scope of application, a second key question is how far into the company's supply chain the corporate due diligence obligation would extend.

Under the UN Guiding Principles, corporate due diligence covers all operations of a company and the operations to which the company is linked through its business relationships.[160] Due diligence could apply to the entire supply chain or be limited to controlled corporations and business partners.

It may be unreasonably difficult for a company to exercise due diligence throughout its supply chain, and this is also taken into account in the UN Guiding Principles. In such situations, a company could focus its attention on areas, operations or subcontractors involving the highest risks.[161] Due diligence extending far along the supply chain could be limited by requirements emphasising the proportionality of the obligation.

In determining the Act's scope of application, the choice also needs to be made whether to use the term value chain, used in the UN Principles, or the term supply chain, used in national legislation to date.

In the legislation, the options would be to extend the obligation to:

- *only controlled corporations;*
- *to a certain subcontracting tier in the supply chain; or*
- *the entire supply chain.*

In the deliberations, it must be assessed whether it is possible in the first place to lock in the obligation as binding only on certain subcontracting tiers or whether the entire supply chain should be covered by the legislation.

[158] Judicial Analysis, p. 69; Salminen – Rajavuori 2019, p. 392–393.

[159] Judicial Analysis, p. 69; Salminen – Rajavuori 2019, p. 388; see also section 3.1 of this assessment memorandum.

[160] UN Guiding Principles, Principle 17.

[161] UN Guiding Principles, Principle 17, Commentary.

General scope or limited scope based on sector or geographical area

The decision on expressing regulation in general or specific terms also involves an assessment of whether regulation would only apply to a certain sector or whether it would be generally applicable.

The scope of application of legislation can be limited on the basis of company sector or operating area on a risk basis.

Examples of sector-specific limitation are the due diligence obligation proposed by the Commission in the context of the reform of the Batteries Directive (2019/1020)[162] or combating deforestation (2021/0366)[163].

Large companies usually engage in cross-border operations on a considerably greater scale than smaller ones. Nonetheless, depending on e.g. sector and places of operation, even SMEs may have significant human rights and environmental impacts. A risk-based limitation of scope of application could also be combined with one based on company size, for example by imposing the obligation on large companies and all companies operating in a high-impact sector, or to all SMEs exceeding a specified limit in size.

When using limitations relating to high-impact operations, the legislation should strive to define those operations. High-impact operations could be defined in an Act or in a Decree. If it is decided not to define high-impact operations in the Act or in a Decree issued pursuant to it, or in guidelines issued by the authorities, the task would be left to the companies themselves and, if necessary, to the courts.[164] Despite any definition incorporated in the Act, the difficulty in a risk-based scope of application lies in that

[162] Proposal for a Regulation of the European Parliament and of the Counil concerning batteries and waste batteries, repealing Directive 2006/66/EC and amending Regulation (EU) No 2019/1020 (COM/2020/798 final), https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020PC0798&from=EN. Accessed on 24 November 2021.

[163] Proposal for a regulation of the European Parliament and of the Council 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) No 995/2010 (COM 2021/0366 final), https://ec.europa.eu/environment/publications/proposal-regulation-deforestation-free-products_en. Accessed on 24 November 2021.

[164] Judicial Analysis, p. 74 pp.

based on it alone, neither the authorities nor stakeholders would necessarily be able to specify the individual companies within the scope of the Act.[165]

On the other hand, it would be possible to limit the scope of application geographically on the basis of certain conflict areas.

For example, the EU Conflict Minerals Regulation (2017/821)[166] only applies to specific operations (imports of conflict minerals). The definition of conflict minerals derives from the OECD guidance[167], in which conflict minerals are defined as certain minerals obtained from conflict-affected and high-risk areas, i.e. areas identified by the presence of armed conflict or other risks of serious and widespread harm to people.

A risk-based geographic scope of application would also require high-risk areas of operation to be defined.

6.2.7 Stakeholder consultation

As part of the corporate due diligence obligation, provisions may be laid down to oblige companies to consult with stakeholders on the impacts of their operations.

Under the UN Principles, companies should engage in meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the company and the nature and context of the operation[168]. In this consultation, language and other potential barriers to effective engagement should be taken into account. In situations where such consultation is not possible, companies should

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[165] In France, the implementation of the due diligence obligation depends on identification of the companies within the scope of application. Even though companies of a certain size are defined to be covered by the law, information on which companies these actually are is not systematically or easily available from public sources. See e.g. Savourey Elsa & Brabant Stéphane: The French Law on the Duty of Vigilance: Theoretical and Practical Challenges Since its Adoption. Business and Human Rights Journal, 6 (2021), pp. 141–152. Accessed on 17 December 2021.

[166] Regulation (EU) 2017/821 of the European Parliament and of the Council 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 (Conflict Minerals Regulation) https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AL%3A2017%3A130%3ATOC#. Accessed on 24 November 2021.

167 OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, https://www.oecd.org/corporate/mne/mining.htm. Accessed on 24 November 2021.

[168] UN Guiding Principles, Principle 18.

consider e.g. consulting credible, independent expert resources.[169] Further under the UN Principles, when tracking the effectiveness of their response, companies should draw on feedback from parties including affected stakeholders[170].

Under the UN Guiding Principles, companies should establish or participate in grievance mechanisms allowing companies' stakeholders to report to the company on risks or impacts that have already been realised.[171] The EU Whistleblower Directive (Directive (EU) 2019/1937 of the European Parliament and of the Council on the protection of persons who report breaches of Union law) obliges companies with 50 or more employees to establish internal channels for reporting and follow-up.

Under legislation, reporting channels may be geared to company employees and also to external stakeholders of companies.

For small companies, establishing an in-house internal complaints procedure may prove problematic because the small number of employees makes it difficult e.g. to keep reports anonymous. Differences in consultation practices depending on the size of the company and the nature of its operations are also taken into account in the UN Guiding Principles.[172]

A separate obligation on stakeholder consultation should be considered. Such an obligation might be an element of impact identification, prevention and/or tracking. The legislation could impose an obligation to establish a complaints procedure.

6.2.8 Supervision

Official supervision

Enforcement of statutory obligations can be enhanced by means of supervision and sanctions. Supervisory duties could be assigned to a supervisory authority.

Official supervision would require a decision on the powers of the authorities, as provisions on these would need to be laid down in the Act. In the supervision of the corporate due diligence obligation, the authority could firstly organise the collection of

[169] UN Guiding Principles, Principle 18, Commentary.

[170] UN Guiding Principles, Principle 20 (b).

[171] UN Guiding Principles, Principle 29.

[172] UN Guiding Principles, Principle 18.

information relating to the reporting or disclosure obligation, and it might have access to means of enforcement for situations of non-compliance. A second option would be for the authority to hold an active role in the supervision of due diligence, meaning that the authority would have supervisory duties and possibly also the power to impose administrative punitive sanctions.

Instead of supervision *per se*, the tasks of the authority could be limited to providing companies with advice and guidance designed to increase their awareness of the impacts of business operations on human rights and the environment and to promote due diligence in companies.[173]

The legislation on official supervision must be based on there being certain needs and objectives for such supervision. The supervision would entail supervision either of the entire corporate due diligence obligation laid down in law or one or more aspects of it.

Large companies are already subject to stakeholder supervision, which to an increasing extent is also being required by fund providers. Such supervision also extends to the responsibility and sustainability of the company's operations. Where the legislation would apply also to SMEs, the need for their official supervision would have to be assessed separately. Supervision based on the reporting or disclosure obligation would be a financial burden on companies and possibly also on the authorities. In considering the legislation, it should therefore be determined whether supervision of SMEs could produce results that are commensurate with the resources required by the supervision and the achievement of the purpose and objectives of any eventual Act.[174]

The decision on the authority to which responsibility for supervision is to be assigned must also be made when laying down provisions on supervision. Designation of the authority depends, among other things, on the duties that the authority is to carry out. Supervising compliance with the reporting obligation would be easier than active supervision of due diligence, for example.[175]

With regard to supervision, the key issue is to assess whether the legislation requires official supervision and to determine the objects of supervision. Supervision may be limited to apply to only some of the companies covered by the Act, for example large companies. With regard to the powers of the authority, it must be assessed whether these would only extend to verifying compliance with e.g. a reporting obligation or

[173] Judicial Analysis, p. 81–82.

[174] Judicial Analysis, p. 82.

[175] Judicial Analysis, p. 82.

whether the authority might be in possession of tools to compel the company to fulfil its obligations, ultimately by means of administrative sanctions. Separate questions to resolve are which entity would be the suitable supervisory authority, how would it be resourced, and what would its obligations be in terms of guidance and advisory services.

Stakeholder participation in supervision of regulation

The Judicial Analysis sees it as possible to leave the supervision of regulation up to stakeholders or to make it a statutory duty of an authority. If no provisions on official supervision were laid down in the Act, supervision of the Act would be left to the tools provided by law for stakeholders.[176]

Analyses of the UK regulation of modern slavery and the California regulation of transparency in supply chains, for example, indicate that at present, the information provided by companies under legal obligations tends to be more symbolic, lacking any concrete data on company action to manage adverse impacts. One reason for this is perceived to be the reliance of regulation on market pressure from consumers and investors without any means of enforcement provided for the authority.[177] In light of these examples, it would seem that stakeholder supervision in the absence of tools of enforcement on the part of the authority will not alone bring about the desired change in corporate behaviour.

Supervision by stakeholders could be implemented either on the basis that stakeholders, pursuant to a provision incorporated in the Act, would be in a position to obtain information on company procedures while companies, meanwhile, would be subject to an obligation to provide such information. Possible complaints procedures could also be leveraged for stakeholder supervision. The rights of access to information of stakeholders could be enforced in legislation by means of an authority's coercive measures in situations where companies failed to comply with an obligation laid down in law. In such a case, the eventual authority could be given the opportunity to impose administrative sanctions, for example a conditional fine, in order to oblige companies to comply with a request for information submitted by stakeholders as well as with a general obligation of reporting or disclosure.

[176] Judicial Analysis, p. 83.

[177] Harris, Hannah & Nolan, Justine (Cardozo International and Comparative Law Review, vol. 4:2, 2021): Learning from experience: Comparing legal approaches to foreign bribery and modern slavery, http://unsworks.unsw.edu.au/fapi/datastream/unsworks:75112/bin2876c2e3-e7ba-482d-948e-62dbb84195cf?view=true&xy=01, s. 625–628. Accessed on 2 February 2022.

6.2.9 Remedial action

Under the UN Principles, companies should provide access to remedial action in situations in which they have caused or contributed to adverse impacts. Where companies identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.[178]

Further under the UN Principles, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when business-related human rights abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.[179]

This assessment memorandum addresses remedial action in respect of judicial means: damages, administrative sanctions, administrative punitive sanctions and criminal liability.

Administrative sanctions, administrative punitive sanctions and criminal liability

In general, the possible sanctions laid down in law for failure to comply with obligations laid down in law are administrative sanction, administrative punitive sanction, and criminal punishment.

The purpose of administrative sanctions is to establish or restore the legal state of affairs. In corporate social responsibility legislation, this could be in the form of a conditional fine, the aim of which is to ensure that the companies meet their reporting or disclosure obligation. Administrative punitive sanctions, meanwhile, are comparable to criminal sanctions, and might consist of e.g. a penalty fee ordered payable for violation of the law, the amount of which would be determined on the basis of the severity of the violation, as a percentage of company turnover. Administrative punitive sanctions can be imposed on natural and legal persons and the penalty fees can be staggered so that harsher sanctions are imposed on aggravated forms of violations.[180]

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[178] UN Guiding Principles, Principle 22.

[179] UN Guiding Principles, Principle 25.

[180] Judicial Analysis, p. 91; Working group: chair Olli Mäenpää; secretary Marietta Keravuori-Rusanen (Ministry of Justice 2018): Rangaistusluonteisia hallinnollisia seuraamuksia koskevan sääntelyn kehittäminen. Työryhmän mietintö, [Development of legislation on administrative punitive

When punitive sanctions are considered, it should be assessed whether the intended objectives could be achieved by less stringent means or by applying other administrative sanctions. The nature of the act or negligence concerned and the relationship between the proposed sanction and other administrative and criminal sanctions should be examined in the assessment.[181]

The principle of legality under criminal law contains the prohibition to introduce criminalisations that are too extensive and vague in terms of their essential elements. The purpose is to ensure that everybody is in a position to understand what is prohibited under criminal law.

In the context of laying down provisions on the corporate due diligence obligation, it should be considered whether a system of sanctions would be associated with failure to comply with the obligation, and what kinds of sanctions could be imposed. The imposition of sanctions requires provisions that are sufficiently precise and clearly defined in respect of the acts, omission of which would be subject to sanctions. In this consideration, account should also be taken of whether the effectiveness of regulation requires the introduction of a system of sanctions.

Compensation for damage

Under the UN Guiding Principles, companies should provide access to remedial action in situations in which they have caused or contributed to adverse impacts.[182] Offering remedies or participating in them is connected with the obligation of companies to prevent adverse human rights and environmental impacts arising from their operations. The obligations concerning remedial action may involve measures offered by companies on their own initiative or ultimately obligations to compensate ordered by the State (e.g. a court).[183]

Compensation for damage is a key form of compensation and its aim is to share the adverse impacts arising from the damage between the injured party and the party causing the damage. In addition to the compensation effect, liability for damages has a preventive impact: the threat of liability encourages the operator to organise its

sanctions. Working group report] https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/161352/OMML_52_Rangaistusluonteisia_hallinnollisia_seuraamuksia.pdf?sequence=1&isAllowed=y, s. 20-23. Accessed on 17 December 2021.

[181] Judicial Analysis, p. 90; Ministry of Justice 52/2018 p. 24–25.

[182] UN Guiding Principles, Principle 22.

[183] Judicial Analysis, p. 83

business in a manner that allows it to avoid liability.[184] Already under existing legislation, companies may be held liable for damage that they have caused, on the basis of a contractual relationship or on the basis of general non-contractual liability for damage.[185] In Finland, e.g. section 23 of the Non-Discrimination Act provides for compensation payable for unlawful discrimination, the claim for which shall be submitted in district court. The amount of compensation shall be proportionate to the severity of the act. One way to compensate for damage arising could be a restoration obligation on imposed on a company, when e.g. failure to comply with an obligation caused e.g. such environmental damage that could be remedied through restoration.

In respect of corporate due diligence legislation, it could be considered whether such legislation should include regulation of remedial action. The extent of such regulation to violations taking place within the supply chain would also need to be considered. In this consideration, account must be taken of the legal prerequisites for imposing sanctions and regulating damages.

Non-judicial mechanisms for remedial action

Non-judicial mechanisms may serve to supplement the effective judicial remedial action of the State.[186] Another term for these is alternative dispute resolution, ADR. Non-judicial mechanisms may differ from each other in terms of form, mandate and function. They may be divided into five categories: complaint mechanisms, inspectorates, ombudsman service, mediation or conciliation bodies, and arbitration and specialised tribunals. The diversity of these mechanisms highlights their adaptability to different contexts and challenges.[187] Even when effective and adequately resourced, judicial mechanisms are incapable of considering all cases of adverse impacts. Neither is a judicial process always necessary, and in some cases, the complainants may not wish to enter judicial proceedings.[188]

[184] Judicial Analysis, p. 84

[185] Judicial Analysis, p. 85

[186] OHCHR (A/HRC/32/19): Improving accountability and access to remedy for victims of business-related human rights abuse. Report of the United Nations High Commissioner for Human Rights, https://undocs.org/A/HRC/32/19, p. 3. Accessed on 17 December 2021.

[187] OHCHR (A/HRC/38/20): Improving accountability and access to remedy for victims of business-related human rights abuse through State-based non-judicial mechanisms. Report of the United Nations High Commissioner for Human Rights, https://undocs.org/A/HRC/38/20, p. 4. Accessed on 17 December 2021.

[188] UN Principles, p. 30

According to the report of the United Nations High Commissioner for Human Rights, non-judicial mechanisms nonetheless have gaps in the extent to which different human rights are protected through them. The mechanisms also often seem to suffer from under-resourcing and lack of technical capacity. Rights holders lack awareness of their rights, and lack of accessibility to the mechanisms may be a problem, particularly for vulnerable and marginalised people. In complex cases, it can be difficult to identify the right mechanism with a sufficiently broad mandate to address the case. As a result, remedial outcomes may not meet international standards. National non-judicial mechanisms moreover may lack the mandate to respond to cross-border cases.[189]

The UN Principles state that the criteria for the effectiveness of a non-judicial mechanism, whether State-based or not, are that is must be legitimate, accessible, predictable, equitable, transparent, rights-compatible and a source of continuous learning.[190] One example of a non-judicial mechanism already in place in Finland is our OECD National Contact Point (NCP).[191]

6.3 Conclusions on the framework for the national legislation assessed in this memorandum

The previous sections review the structure of possible regulation. In the following sections, certain limitations will be made on the basis that the approaches selected for closer examination might serve as a general corporate due diligence obligation, as outlined in the Government Programme.

The premise for the regulatory approaches assessed below in this memorandum will be the viability of a non-sector specific obligation expressed in general terms. More detailed contents for the obligation could be provided on a sector-specific basis.

The starting point for the obligation would be the approach adopted in the UN Guiding Principles, the OECD Guidelines and the OECD Due Diligence Guidance in which companies would be required to take measures aiming to identify, prevent, mitigate

[189] OHCHR (A/HRC/38/20), p. 4.

[190] UN Principles, p. 33–34.

[191] Ministry of Economic Affairs and Employment: Handling Specific Instances of the OECD Guidelines for Multinational Enterprises, https://tem.fi/en/handling-specific-instances-of-the-oecd-guidelines-for-multinational-enterprises. Accessed on 17 December 2021.

and bring an end to adverse impacts, and to track and communicate the impacts of their measures. Where necessary, in the different regulatory approaches, these general obligations could be supplemented with more specific provisions or sanctions. The premise for the regulatory approaches examined is for the national obligation to be broader than a mere reporting-based one.

The latitude in the regulatory options outlined would in particular concern the scope of application of the legislation, the content of the obligation and its supply chain dimension, and remedial action. The scope of application of the Act or a given aspect of the obligation could be limited according to company size and the obligation's supply chain dimension.

Regulation on how measures taken by companies are to be monitored can be incorporated into the legislation. This may be accomplished through a general reporting obligation or a context-specific disclosure obligation and limitations on these linked to company size. Companies may also be required to establish complaints procedures for stakeholders. Official supervision may moreover be included in the system of corporate due diligence.

The national approach must include an assessment of the potential for liability for damages and the imposition of administrative sanctions. Enforcement of the legislation by the said or other means may also be considered at a later date, once experiences of the application of the legislation have been obtained and it has been possible to evaluate its effectiveness.

An approach to the content of the obligation emphasising only the impacts of operations has also been excluded from examination. An impacts-focused examination would emphasise, *ex post facto*, the concrete damage already caused by operations and the preconditions for compensating for such damage rather than the guiding effect to comply with corporate due diligence in operations. These situations can better be ruled out with sector-specific risk assessments and amendments to substantive legislation.

Based on the foregoing chapters, the regulatory approaches will be examined from the viewpoint that a corporate due diligence obligation expressed in very general terms may require support from separate tracking mechanisms. On the other hand, it might prove challenging to link mechanisms for damages or corresponding compensation to a general obligation, when the legislation could not unequivocally dictate the actions required of a company from time to time. When it is desired that the obligation be extended to apply to a wide range of companies, the starting point in regulation must be a broad obligation expressed in rather general terms so that it may be applied to companies of different types and sizes.

6.4 Outlining potential regulatory options

The following options in terms of regulatory content, scope of application and system of sanctions have been chosen for further examination.

Content of obligation

1. **Content of obligation that emphasises the context-specific appropriateness of operations**

2. **Context-specific appropriateness of operations + more specific obligations in legislation to identify and prevent impacts**

3. **Context-specific appropriateness of operations + obligation to report / disclose**

Scope of application of obligation

1. **Broad scope among companies + broad supply chain dimension**

2. **Broad scope among companies + more limited supply chain dimension**

3. **Limited scope among companies + broader supply chain dimension**

4. **Limited scope among companies + more limited supply chain dimension**

5. **Levels of regulation linked to company sizes**

System of sanctions:

1. **Tracking by stakeholders**

2. **Official supervision (and guidance) and administrative punitive sanctions**

3. **Official supervision (and guidance), administrative punitive sanctions and liability for damages**

4. **Tracking by stakeholders + liability for damages.**

7. Assessment of regulatory options

7.1 Potential regulatory options

7.1.1 Options for content of obligation

In respect of content of obligation, three options have been chosen for examination:

1. **Content of obligation that emphasises the context-specific appropriateness of operations**

The first option would consist of a *general obligation* of due diligence to identify and prevent adverse human rights and environmental impacts. The content of the obligation would be expressed in general terms and would emphasise a context-specific assessment of the conduct that would meet the due diligence requirements. The Act would contain no precise procedural provisions and instead, the general obligation would highlight the context-specificity of due diligence. The objects of legal protection would be based on international human rights and environmental instruments to which reference would be made in the Act or by Decree.

Legislation that imposes obligations requires the provisions and the drafting history of the Act to clearly and precisely describe the actions required on the basis of the obligations. The challenge of regulation expressed in wholly general terms may be seen to be that based on such regulation, companies might find it difficult to comprehend what the corporate due diligence obligation required of them. Regulation expressed in general terms would require extensive reasoning in the legislative proposal as to the procedure by which a company could fulfil the requirements of the obligation. The UN Guiding Principles, the OECD Guidelines and the OECD Due Diligence Guidance could provide assistance in interpreting the measures required for due diligence, yet owing to their general nature, they are poorly suited as interpretative guidance in situations where the adequacy of conduct is assessed in an individual case. Regulation expressed in general terms and emphasising context-specificity would likely require guidelines on procedures alongside the legislation proper.

An obligation emphasising context-specific due diligence would be suited to cover a broad set of companies. Its scope could also be limited. By leaving out micro-

enterprises, the number of companies covered by the obligation could be considerably reduced. Limiting the dimension of the due diligence obligation solely to controlled corporations would in turn focus the obligation to where companies have the greatest say. Excluding adverse impacts occurring in the supply chain beyond a company's control, however, would decrease the influence potential of regulation in situations where adverse human rights or environmental impacts are more likely to arise.

It would be difficult to link sanctions or obligations to compensate with context-specific regulation expressed in general terms. Linking sanctions with obligations expressed in general terms and applying to a large number of companies in a variety of situations involves significant legal issues compared to a situation of failure to comply with concrete obligations precisely provided in law. If the intention was to link a system of sanctions with a context-specific obligation expressed in general terms, this would require consideration as to the supplemental elements with regard to impact identification and prevention.

An obligation expressed in general terms would also entail the question of how and by whom the correct standard of due diligence is determined and how a company could know that it had acted in a manner that fulfils the requirements of the Act. A flexible obligation expressed in general terms would mean that the supervisory authority and/or the courts would play a significant role in interpreting the law and creating case law. However, case law takes a long time to accumulate through the courts. From the perspective of human rights and the environment, the danger is that an obligation that is perceived as ambiguous with regard to its content will not lead to corporate practices that are appropriate in terms of the protection of human rights and the environment.

2. Context-specific appropriateness + more specific obligations in legislation to identify and prevent impacts

The second option would start out from a broad human rights and environmental impacts obligation and the context-specificity of the measures required, as laid out in approach 1. However, the context-specificity would be made more specific by means of further provisions concerning impact identification or prevention.

These further provisions would require the identification of such practices on which provisions are laid down in law that would be suited for all companies covered by the Act. A specific obligation would have the advantage of concrete regulation helping companies comprehend the measures required of them.

By contrast, detailed provisions on the content of the due diligence obligation might narrow the proportionality assessment associated with the appropriateness of the due diligence. A disadvantage may be assessed to arise from the fact that this approach might result in due diligence being reduced to “ticking boxes on a checklist”. It is also possible that such regulation would lead to casuistic legislation, which may prove inappropriate. When a certain “obligation” did not appear on the “checklist,” it would be outside the Act’s scope.

A general obligation could also be complemented by obliging companies to prepare and maintain a due diligence plan in which they would need to recount how they act in order to identify, prevent, mitigate and bring to an end adverse impacts caused by their own operations and the operations of their business partners.

Without a separate obligation to provide information on the measures taken, companies would be subject to no obligation to supply stakeholders with information on their compliance with due diligence. The obligation could be made more effective by means of tracking obligations: reporting, disclosure obligation, inclusion of stakeholders.

3. Context-specific appropriateness + obligation to report / disclose

The third option starts out from the context-specificity of the appropriate measures required as laid out in approach 1. The difference to approach 2 would be that no detailed provisions would be laid down on the content of the obligation (identify, prevent, mitigate, bring to an end). Instead, the obligation would be made more effective by means of an obligation to report / obligation to disclose / other additional regulation that would enable supervision by stakeholders. For example, a company might be subject to an obligation to respond to requests for information from various parties regarding their implementation of their duties laid down in the Act. The disclosure obligations could be based on a separate due diligence plan which companies would have to prepare in respect of measures they have envisioned and implemented.

The effectiveness of these tracking obligations would, as a rule, also require some degree of external supervision. The supervisory party would at the very least need to have the right to oblige a company to provide the information or disclosure required in the Act. Otherwise, the regulation is at risk of becoming a dead letter.

7.1.2 Options for scope of obligation

Four options for the scope of the obligation are examined:

1. **Broad scope among companies – broad supply chain dimension**

In the first option, the obligation would apply to all companies that are small enterprises or larger. There would also be no limit on how far into the supply chain the obligation would extend.

The challenge in option 1 may be seen as the formulation of the criteria by which the appropriateness of a company's operations would be assessed for companies of different sizes, in different sectors, in different operating environments and on different tiers in the supply chain. An obligation based on broad scope and dimension could be one emphasising context-specificity and formulated in more general terms. Corporate due diligence covering the entire supply chain would underscore the importance of attending to due diligence. Due diligence would not be applied in the same way to controlled corporations and to parties farther along the supply chain. A broad scope would highlight the challenges related to determining the sufficient level of context-specific appropriateness in the various situations. The legislation should include an element of proportionality that would allow estimating the level of conduct required with sufficient predictability.

A broad supply chain dimension would allow using regulation to influence the situation in third countries.

Obligations of reporting or disclosure could be attached and these could also be made subject to graduating on the basis of company size.

2. **Broad scope among companies + limited supply chain dimension**

The second option would be for the obligation to apply broadly to companies but to limit the supply chain dimension either to controlled corporations or to a certain tier of the supply chain.

Compared to option 1, limiting the supply chain dimension of regulation would mean that the obligation would focus more precisely on matters which the company can control with its own choices and decisions. A limited supply chain dimension would mean that corporate action could be more cost-effectively oriented to appropriate or required measures, which would be a material consideration especially with regard to the regulatory burden on smaller companies. A key disadvantage of a limited supply

chain dimension is that it cannot be used even to attempt to address third-country situations where the greatest human rights and environmental problems are likely to occur.

A more limited supply chain dimension would make the possible tracking obligations to be linked to regulation easier to implement, especially for small companies.

3. Limited scope among companies – broader supply chain dimension

The third option would be regulation covering only companies of a certain size, for example large enterprises or large enterprises above a certain size, in respect of which the obligation would have a broad supply chain dimension.

Regulation covering a more limited number of companies could enable the obligation to be formulated in more detail, should this be deemed appropriate. It could also be possible to limit certain measures, on which detailed provisions are laid down, to apply only up to a certain tier of the supply chain. The reporting obligation and other tracking obligations would dovetail naturally with an obligation covering larger companies and with a broader supply chain dimension. A higher degree of precision in reporting can also be required of larger companies.

In this option, the Act would apply to a fairly small number of Finnish companies which nonetheless are among the most significant in terms of size. The Act would moreover apply to companies that are already subject to the most obligations.

4. Limited scope among companies – more limited supply chain dimension

The fourth option would be regulation applying only to companies of a certain size, for example large enterprises or large enterprises above a certain size, in addition to which the supply chain dimension of the regulation would be limited either to controlled companies or companies not far along the supply chain. The regulation would correspond to that put forward for option 2 but would concern a more limited number of companies which nonetheless account for the most significant part of Finnish companies' international operations.

This option would have the lowest regulatory burden. Regulation would apply to the situations that can most effectively be influenced through legislation, i.e. the companies with the greatest potential risk of human rights or environmental violations, as well as the elements of business over which the companies have the most direct decision-making power. Limited regulation would enable more detailed regulation of

the content of the obligation and tracking of the measures taken by companies. A weakness of more limited regulation lies in that it cannot be used to address all problems occurring in third countries.

5. Levels of regulation linked to company sizes

A fifth option may be construed as a hybrid of sorts, in which as a rule, regulation would apply to a large number of companies, e.g. SME or larger, yet the content of the obligation would vary depending on company size. Larger companies would be subject to a more detailed obligation and smaller ones to an obligation in more general terms. Larger companies could also be made subject to a broader supply chain dimension and smaller ones to a more narrow dimension. The tracking obligation could be staggered to make larger companies subject to a reporting obligation and smaller ones to a disclosure obligation when necessary.

7.1.3 Options for system of sanctions

The options examined in respect of sanctions are ones in which official supervision, administrative punitive sanctions or liability for damages would be linked to regulation. A further option is to waive provisions on an authority-driven system of sanctions and instead construct regulation on a foundation of companies' disclosure obligation and complaints procedures for stakeholders. Tracking by stakeholders could be also be used to supplement official supervision.

1. Tracking by stakeholders

The first option would be based on a corporate obligation to keep available information on the company's operations, which would allow stakeholders to track companies' implementation of the obligation. Tracking could rely on e.g. an obligation to establish a complaints procedure or another obligation to keep information publicly available, for example on the company's website. The scope of the regulation could be limited to apply only to large enterprises, for example. The regulation might require administrative means of enforcement, such as conditional fine, to ensure that information is made available in situations of non-compliance or deficient information provision.

2. Official supervision (and guidance) and administrative punitive sanctions

The second option would be official supervision linked, when necessary, with administrative means of enforcement. Regulation could be complemented with stakeholder inclusion in the manner set out in the first option. Supervision alone is seldom sufficient, meaning that regulation would require the authority to have access to a set of tools such as admonition, caution, conditional fine, prohibition or penalty payment. Regulation would need to be staggered according to the severity of the breach. The authority could also be subject to obligations relating to guidance and advisory services.

When considering the sanctions for failure to comply with the obligation, attention should be paid both to defining the obligation and defining the sanction provision so as to ensure that it is clear what is required and what kind of negligence may result in a sanction.

3. Official supervision (and guidance), administrative punitive sanctions and liability for damages

The third option would be equivalent to the second but further complemented with a degree of liability for damages.

The viability of liability for damages would be limited by fulfilment of the conditions for liability (causal relationship to breach of regulation, negligence in the operations of the Finnish company) in respect of a consequence escalating in a third country. The liability could extend to the impacts of another company's operations, which would represent a new regulatory approach in tort law. This approach would also entail questions relating to the international law dimension.

4. Tracking by stakeholders + liability for damages

The fourth option would be based on tracking by stakeholders. In departure from option 1, this would involve the possibility to claim damages in court when the operations of a company have consequences. The question of stakeholders' right to bring legal action could also be considered in the context of this option.

7.2 Company structure in Finland

7.2.1 Numbers and sectors of companies

This section examines company structure in Finland to gain an understanding of the corporate population to which eventual regulation would apply. According to the Structural business and financial statement statistics of Statistics Finland[192] there were 368,600 companies active in Finland in 2020. Table 1 illustrates the companies that had been active for more than 6 months in the year for which the statistics were prepared and which had employed more than 0.5 persons or whose balance sheet total exceeded EUR 170,000 or whose turnover exceeded the statistics threshold defined for each year (EUR 11,968 in 2020). The very smallest companies are thus excluded from the Table.

Table 1. Nos. of companies in Finland in 2020 and 2019.[193]

Company size (no.)	2020	2019
company size undefined (no.)	38	302
micro-enterprise	258,279	254,631
small enterprise	15,206	15,185
medium-sized enterprise	5,249	5,276
large enterprise	6,440	6,763
Total	285,212	282,157

[192] Official Statistics of Finland (OSF): Structural business and financial statement statistics [e-publication].
ISSN=2342-6217. 2020. Helsinki: Statistics Finland [referred: 8 February 2022]. Access method: http://www.stat.fi/til/yrti/2020/yrti_2020_2021-12-16_tie_001_en.html.

[193] Statistics Finland: Menetelmäseloste [Methodological description], https://www.stat.fi/til/yrti/yrti_2020-12-17_men_001.pdf. Accessed on 8 February 2022.

Table 2 below describes, by way of example, the numbers of companies active in certain sectors, broken down by number of persons employed.[194]

Table 2. Nos. of companies in certain sectors broken down by no. of persons employed.

Sector	0-4 persons	5-9 persons	10-50 persons	50–250 persons	more than 250 persons	Total no. of companies
Mining and quarrying	704	92	62	6	5	872
Manufacturing	14,183	1957	2,519	757	181	19,597
Manufacture of food products and beverages	1,189	203	255	82	21	1,759
Manufacture of textiles	512	46	40	8		601
Manufacture of wearing apparel	770	24	42	4	2	832
Manufacture of leather and related products	133	9	8	2	1	153
Manufacture of wood and of products of wood and cork, except furniture; manufacture of articles of straw and plaiting materials	1,192	119	173	56	12	1,552
Manufacture of paper and paper products	79	19	38	19	13	168
Manufacture of coke and refined petroleum products	10	1	2			16
Manufacture of chemicals and chemical products	157	36	62	37	9	301
Manufacture of basic pharmaceutical products and pharmaceutical preparations	11	3	6	2	3	31

[194] Official Statistics of Finland (OSF): Structural business and financial statement statistics [e-publication]. ISSN=2342-6233 Helsinki: Statistics Finland [referred: 30 November 2021]. Access method: https://www.stat.fi/til/yrti/index_en.html.

Manufacture of rubber and plastic products	264	65	117	51	7	504
Manufacture of basic metals	62	12	27	16	10	127
Manufacture of fabricated metal products, except machinery and equipment	2,971	511	697	127	12	4,318
Manufacture of computer, electronic and optical products	312	82	106	34	13	547
Manufacture of electrical equipment	210	50	98	40	10	408
Manufacture of machinery and equipment n.e.c.	725	295	189	110	32	1,292
Manufacture of motor vehicles, trailers and semi-trailers	127	55	48	18	7	232
Manufacture of furniture	601	82	99	15	4	801
Wholesale trade, except of motor vehicles and motorcycles	9,814	1,261	1,009	184	25	12,393
Retail trade, except of motor vehicles and motorcycles	13,788	1,561	1,568	108	55	17,079
Telecommunications	307	39	45	16	4	411

Companies with more than 1,000 persons employed can be found in the sectors of manufacture (31), manufacture of food products and beverages (5), manufacture of wood and of products of wood and cork, except furniture; manufacture of articles of straw and plaiting materials (2), manufacture of paper and paper products (4), manufacture of coke and refined petroleum products (1), manufacture of basic pharmaceutical products and pharmaceutical preparations (1), manufacture of basic metals (2), manufacture of computer, electronic and optical products (3), manufacture of electrical products (1), manufacture of machinery and equipment n.e.c. (7), manufacture of motor vehicles, trailers and semi-trailers (1), wholesale trade, except of motor vehicles and motorcycles (4), retail trade, except of motor vehicles and motorcycles (17) and telecommunications (3).

No companies in the sector of manufacture of textiles employed more than 250 persons.

7.2.2 Finnish affiliates abroad

According to the data of Statistics Finland, Finnish enterprises had business activity in 5,390 affiliates located in 135 countries. Affiliates abroad had a combined turnover of nearly EUR 210 billion. Over half of this was generated in EU Member States and 16% in Asia and Oceania. Measured globally, nearly 57% of the turnover of Finnish enterprises abroad was generated in affiliates of manufacturing and nearly one-fifth of total turnover came from wholesale and retail trade. Finnish affiliates abroad employed the largest number of personnel in EU countries, altogether nearly 295,850 persons. Measured by the number of employees, the most significant industries in EU countries were the machinery and metal industries with 53,570 employees and the electrical and electronics industry with a good 42,920 employees. Affiliates in Asia and Oceania were the second most significant employers of personnel with nearly 135,430 employees. In Asia and Oceania, the biggest employers among manufacturing industries were the electrical and electronics industry with good 56,590 persons and the machinery and metal industry with 48,700 persons. Examined globally, the biggest employers were affiliates of the electrical and electronics industry with close on 145,250 employees.[195]

7.2.3 Foreign affiliates in Finland

According to the statistics of Statistics Finland entitled Foreign affiliates in Finland[196], 3,440 foreign affiliates were active in Finland in 2012. The compilation of these statistics is based on Regulation (EC) No. 716/2007 of the European Parliament and of the Council, according to which an enterprise is deemed foreign for the purpose of statistics compilation when the entity exercising ultimate control in it is located outside Finland. In most cases, this entity is an enterprise located abroad that holds more than 50% of the enterprise in Finland.

[195] Official Statistics of Finland (OSF): Finnish affiliates abroad [e-publication]. ISSN=1798-4882. 2019. Helsinki: Statistics Finland [referred: 30 November 2021]. Access method: https://www.stat.fi/til/stu/2019/stu_2019_2021-04-29_tie_001_en.html.

[196] Official Statistics of Finland (OSF): Foreign affiliates in Finland [e-publication]. ISSN=2242-2552. 2019. Helsinki: Statistics Finland [referred: 22 December 2021]. Access method: https://www.stat.fi/til/ulkoy/2019/ulkoy_2019_2020-12-17_tie_001_en.html

In 2019, around 279,000 persons of all persons employed by enterprises were employed by foreign affiliates. This is equal to 18.2% of all persons employed by enterprises active in Finland. Foreign affiliates generated a turnover of EUR 98.3 billion, equal to 22.8% of the turnover generated by all enterprises active in Finland.

1,119 enterprises or 32.5% of all affiliates were under Swedish control. These Swedish-controlled affiliates employed around 75,600 persons and generated turnover of EUR 21.4 billion. US-controlled affiliates numbered 710 (20.6% of all affiliates) and German-controlled ones 379 (11% of all affiliates). The most important seats of control after these three countries were the UK (465 affiliates), Denmark (218), Norway (209), the Netherlands (161), France (143), China (129), Japan (124) and Estonia (122).

The number of persons employed by foreign affiliates was the highest in the sectors of manufacturing (around 79,000 persons) and wholesale and retail trade (around 51,000 persons). The same two sectors were in the lead when measured by turnover: manufacturing generated a turnover of EUR 32.9 billion and wholesale and retail trade a turnover of EUR 31.7 billion.

7.2.4 Finnish import and export companies engaged in international trade

Table 3 illustrates the numbers of import and export companies engaged in international trade in 2019 and 2020 broken down by company size. These figures only include trade in products and thus e.g. trade in services is excluded. The statistics do not indicate the portion of import and export with which a human rights or environmental risk is associated.

Table 3. Nos. of import and export companies engaged in international trade in 2019 and 2020 broken down by company size (national size category definition). Source: Finnish Customs.

	No. of import companies in 2019	No. of import companies in 2020	No. of export companies in 2019	No. of export companies in 2020
Large enterprises (no.)	2,676	2,724	1,404	1,429
SMEs (no.)	80,291	78,745	16,639	16,333

Total (no.)	82,967	81,469	18,043	17,762

7.3 Preliminary assessment of impacts

7.3.1 Impact assessment as an element of corporate due diligence regulation

The main purpose of impact assessment of legislative proposals is to deliver information to the decision-maker on the effects of the various regulatory options at hand. The guidelines on impact assessment in legislative drafting are followed in law-drafting in the Government.[197] The minimum requirement for appropriate law-drafting is that the proposed legislation is necessary, achieves the desired objectives, and is the best way to reach those objectives. The government proposal leading to the enactment of an Act must put forward a justified view on how the proposed Act achieves the objectives set. In addition, the proposal shall make clear the possible advantages and disadvantages as well costs of not only the proposed legislation but also the guiding or regulatory tools that are an alternative to it. Impact assessments enable choosing the option that is best overall for achieving the given objectives from among the various implementation options[198].

Section 3 above describes the objectives of corporate due diligence regulation. In the main, the due diligence obligation seeks better realisation of human rights and environment-related rights in third countries where Finnish companies engage in business operations or to which their supply chains or business relationships extend. Central to the assessment of impacts is thus assessment of how regulation could affect the realisation of human rights and environment-related rights.

[197] Impact assessment in legislative drafting. Guidelines. Ministry of Justice publications 2008:4, https://julkaisut.valtioneuvosto.fi/handle/10024/76118, p. 7. Accessed on 18 November 2021.

[198] Selvitys vaihtoehtojen hyödyntämisestä erityisesti yrityksiin vaikuttavan lainsäädännön valmistelussa [Report on utilisation of alternatives in the drafting of legislation impacting on companies in particular]. Raportti kauppa- ja teollisuusministeriölle lainsäädännön yritysvaikutusten arviointia koskevan hankkeen (SÄVY-hanke) toimeksiannosta [Report to the Ministry of Trade and Industry commissioned by the SÄVY project on assessment of the business impacts of legislation] (record no. 6/685/2007). 11 December 2006, https://bit.ly/3L9wCDj, p. 8. Accessed on 22 November 2021.

The objectives of this regulation challenge the starting position of the regular law-drafting process, which seeks to address a specific domestic issue. This is true especially in cases where the intention is to address an issue beyond Finland's territory by means of purely national regulation. Usually, issues of wider geographical scope are addressed by seeking a solution of wider-ranging impacts through EU legislation or other global solutions. The influence potential of national legislation in these cases is materially lesser than that of e.g. an EU-level solution.

Regulation would seek to influence the realisation of fundamental and human rights by means of obligations imposed on companies. A second central object of impact assessment is therefore the impacts of the regulation on companies. By weighing against each other the positive impacts on the realisation of human rights and the environment, the regulatory burden on companies and, by contrast, the benefits to companies, a reasonably accurate estimate of the overall advantages or disadvantages of regulation can be reached. Business impacts may nonetheless be reflected on consumers as well, meaning that the impacts of regulation on consumers must also be assessed. If the State were to incur costs from regulation due to e.g. establishment of a supervisory authority, these costs would also have to be taken into account in the above assessment.

7.3.2 Observations on human rights impacts

The assessment of the human rights impacts of corporate due diligence regulation should involve an assessment of aspects including the scope and immediacy of the impacts as well as the likelihood of the estimated impacts actually becoming reality.[199]

The human rights impacts of the proposal would be indirect in nature. Finnish companies operate in third countries mostly via a local supply chain and the impacts sought would be largely realised in the tiers of the supply chain in the third countries, farthest from the Finnish company. Regulation seeks to increase awareness among companies of the human rights and environmental impacts of their operations and, when necessary, obliges them to address any adverse impacts identified.

At the time of preparation of this assessment memorandum, no scientific research on the human rights impacts of the corporate due diligence obligation was available.

[199] Oikeusministeriön muistio; perus- ja ihmisoikeudet lainvalmistelussa [Ministry of Justice memorandum; fundamental and human rights in law-drafting], https://bit.ly/32Y21HF, s. 10. Accessed on 18 November 2021.

Without such research findings, the human rights impacts of any eventual regulation are difficult to assess comprehensively *a priori*.

Regulation could have a concrete effect on human rights in situations where a company, when intending to launch or pursuing operations, identifies that the operations have or may have a negative impact locally on the realisation of the population's human rights. In taking measures to prevent, mitigate or bring to an end such impacts, the measures would primarily affect the realisation of human rights in the local community where the operations take place. Identification and prevention of impacts could have effects beyond the local community in situations where issues identified in one location bring about an examination of corresponding situations in other locations. At best, the situation described above could result in a change in the company culture both in its various places of business and in the supply chain.

The human rights impacts of regulation depend firstly on the kinds of corporate functions that regulation can effectively influence and secondly on how well regulation is able to address the situations with the greatest issues. Through its choices, a company can have the most impact in situations involving its own operations or operations under its control. A company may influence supply chains with means such as contractual arrangements or systems of supervision, yet these impacts are indirect and dependent on the actions of the contractual partner. At present, it is unknown how effectively the impacts of the obligation would progress in actual fact. The direct influence of a company nonetheless decrease materially farther along the subcontracting chain, which presumably will reduce the effectiveness of regulation in long supply chains.

Then again, it may be presumed that the most likely situations where Finnish companies experience human rights impact issues arise in supply chains extending to third countries and involving raw material sourcing, primary processing or manufacturing. In these cases, the impacts will often be felt in very local communities, in the territory and residential areas of which the production takes place or the workers of which are used by the companies in the supply chain. The human rights impacts achievable with regulation thus also depend on the obligation's supply chain dimension, i.e. how far along the supply chain it would apply. The farther away from the company the obligation would apply along the supply chain, the better the chances that regulation could address those situations with the highest human rights or environmental risks. It may be estimated that the greatest likelihood of positive development in the realisation of human rights achievable with the legislation would thus arise in situations where corporate supply chains extend to third countries and regulation effectively influences also supply chain operations. The impacts would be felt among those communities into which the operations of a company in the supply chain extend. If regulation did not apply to the entire supply chain but was limited to

e.g. a certain tier of the subcontractor chain, the potential impacts would inevitably be narrower if regulation was unable to have an effect on the local levels where the most positive impacts sought could be achieved.

In its most concrete form, regulation would have direct impacts in a situation where companies were obliged to prevent, mitigate, bring to an end or remedy the adverse impacts observed. The tracking mechanisms to be included in regulation could support impact identification, and these, too, would have indirect effects. Tools aimed at impact identification, such as training and tracking processes, are also indirect by nature – the possible concrete effects would be achieved in the supply chain.

The corporate due diligence obligation would not involve a direct duty to promote the realisation of human rights but rather a duty to seek to identify adverse impacts caused by one's own operations, along the supply chains, for example, and to take measures when necessary. Because of the indirect nature of the impacts of regulation, it follows that uncertainties are unavoidably associated with their realisation.

The positive human rights impacts of regulation require regulation to be able to bring about the kind of change in corporate behaviour from which the desired impacts would flow. The positive impacts achievable through regulation would mean that the operations of the companies regulated or their business partners earlier involved issues relating to adverse human rights or environmental impacts and the new regulation would be capable of addressing and remedying these issues. Realisation of the impacts would also require the obligations provided in law to achieve concrete outcomes. The obligation would have to lead to the concrete identification of high-risk situations, for example, and not merely to the introduction of processes that aim for such identification.

The human rights impacts of regulation could above all be realised in such a manner that in consequence of regulation, companies changed their practices and thus the change gradually had an effect at the local level. The channelling of these impacts would include multiple processes designed to gradually increase awareness, which means that for the large part, impacts could be realised gradually in response to a change in corporate culture progressing over multiple stages. It may be estimated that owing to the stepwise channelling of the impacts, regulation would not deliver any rapid impacts.

The realisation of the impacts of regulation would also be slowed down by the fact that its entry into force would require allowing companies a transitional period during which they could develop and introduce methods for fulfilling the obligations laid down in law. The establishment of any eventual supervisory organisations and the institution

of supervision in general would also take time. However, it may be presumed that awareness of there being new legislation in the pipeline would in and of itself encourage at least some companies to develop and introduce appropriate measures even before regulation actually entered into force. Such advance adjustment to pending obligations could serve to accelerate the realisation of the impacts of regulation.

The regulatory solution regarding the content of the obligation can also be presumed to influence the human rights impacts of regulation. It may be taken as probable that tools expressed in general terms and seeking to identify the highest-risk situations would be more likely to influence the local realisation of human rights impacts than pre-determined and locked-in tools that are less than amenable to context-specificity. Exhaustive obligations laid down in advance would be difficult to formulate in a way that would allow them to influence different kinds of companies in different sectors and different operating areas.

The human rights referred to in the content of the obligation would need to be based on international human rights instruments. The key issues relating to the human rights situation are described earlier in this memorandum. With regard to the content of regulation, the challenge lies in the fact that there are no international instruments covering certain root causes of human rights issues. With regard to a living wage, for example, under the ILO Minimum Wage Fixing Convention (1970), the needs of workers and their families, taking into account the general level of wages in the country, the cost of living, social security benefits, and the relative living standards of other social groups shall be taken into consideration in determining the level of minimum wages, yet the Convention does not contain precise indications on the amount of the minimum wage, or even on the types of needs to be taken into account. This omission reflects the discretionary power granted by the Convention to States to set minimum wage rates, in full consultation with the social partners.[200];[201] As stated earlier, 15% of the world's wage-earners earn less than minimum wage. This may influence their willingness to work excessive hours, which in turn is a major health risk in the long run. While risks to life and health could be effectively addressed by addressing the issue of minimum wage, the current framework of instruments does not render this possible. However, legislation may be used to attempt to address

[200] ILO: General Survey of the reports on the Minimum Wage Fixing Convention, 1970 (No. 131), and the Minimum Wage Fixing Recommendation, 1970 (No. 135). Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution) (International Labour Office Geneva 2014), https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_235287.pdf, s. 27. Accessed on 19 January 2022.

[201] The concept of a living wage refers both to the existence of a minimum level of remuneration and to an acceptable standard of living. Ibid., p. 27.

many other risks, such as forced labour, child labour and discrimination. The international human rights instruments to which reference could be made in any eventual legislation are outlined in Annex 1 to this memorandum.

The scope of application of the legislation would affect the number of companies to which it would apply. Generally speaking, large enterprises engage in more of the kinds of cross-border operations that would be subject to the regulation assessed in this memorandum. Then again, the operations of also small enterprises active in high-impact sectors may entail risks that would be of relevance to the regulation. The challenges relating to the determination of high-impact sectors or operations may result in regulation becoming imprecise and extending it also to small enterprises in respect of which regulation would not be necessary. Likewise, companies for which regulation would be deemed necessary might be excluded from the scope of regulation. As a rule, regulation applicable also to the operations of small enterprises might have positive human rights impacts. If the accuracy of regulation in reaching its mark remained poor and a large number of small enterprises in respect of which human rights impacts cannot be achieved became subject to regulation, it could not be considered any resounding success. In such a situation, regulation could result in considerable excess administrative burden on companies to which regulation need not apply in order for its desired impacts to be achieved.

Regulation might also have adverse impacts in the supply chain. Besides steering companies to use subcontractors which act responsibly and raising the level of responsibility of such subcontractors in the long term, regulation could also lead to a situation where a company would redirect its operations to alternative locations where the obligations of regulation would be easier to fulfil. This ‘cut and run’ solution might ultimately lead to a decrease in the number of jobs available in the local markets where the company originally engaged in business or had considered doing so.[202] It is also possible that certain products or raw materials involve supply chains where the number of alternative suppliers is very low.

All in all, the actual effectiveness of regulation on better realisation of human and environmental rights is very difficult to estimate *a priori*. To date, France is the only country with experiences of the application of similar legislation. However, the studies conducted do not concern the impacts of the legislation on people or the environment,

[202] See e.g. on the unintended consequences of the US Dodd-Frank legislation on conflict minerals in the Great Lakes region of Africa, https://blogs.worldbank.org/impactevaluations/unintended-consequences-regulating-conflict-minerals-africas-great-lakes-region. Accessed on 16 December 2021.

but rather the technical challenges with regard to the content of the legislation[203]. In other words, for the time being there is no comprehensive body of research evidence that could prove the effectiveness of similar regulation on human rights or the environment. A separate extensive study would need to be commissioned to prepare such a comprehensive impact assessment.

Without more precise research data, it may be estimated that Finland's national regulation could deliver results here and there at local levels if the change in corporate culture was successfully cascaded throughout the supply chain. The impacts of regulation would depend on the extent to which the operations of Finnish companies could be changed by regulation in the first place, i.e. what is the extent of shortcomings in the practices of Finnish companies that could be influenced through regulation. The results of the evaluation done using the CHRB methodology show that although Finnish companies have quite broadly, at least on a general level, committed themselves to respecting human rights, the systematic integration of human rights responsibility and its monitoring as part of their core activities is still largely at an early stage. Finnish companies publish relatively little information on the realisation of their human rights responsibilities.[204] Compared to a global solution, or even an EU-level one, a national solution concerning Finnish companies and their supply chains would have only little impact on the global realisation of human rights. Positive human rights impacts would be much more likely to arise if a similar legislative solution applied e.g. to all companies in EU Member States active in the same operating areas.

Owing to the uncertainties relating to impacts, it would be important to assess the human rights impacts achieved also *ex post facto* by means of a post-assessment of legislative impacts. With regard to achievement of the objectives of the legislation, it would be important to create indicators to measure the extent to which objectives have been achieved.[205] In practice, the best such indicators might be various kinds of

[203] See e.g. the report of the French Ministry of the Economy and Finance on the implementation of the French law on corporate due diligence, "Evaluation de la mise en œuvre de la loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre", (Ministère de l'Économie et des Finances 2020), https://www.economie.gouv.fr/files/files/directions_services/cge/devoirs-vigilances-entreprises.pdf; Savourey Elsa & Brabant Stéphane: The French Law on the Duty of Vigilance: Theoretical and Practical Challenges Since its Adoption. Business and Human Rights Journal, 6 (2021), pp. 141–152. Last accessed on 18 January 2022.

[204] Tran-Nguyen, Elina & al. (Prime Minister's Office 2021).

[205] Kiander, Jaakko (Ministry of Trade and Industry 2006): Lainsäädännön yritysvaikutukset ja niiden arviointi [Business impacts of legislation and their assessment], https://bit.ly/35EeRvs, p. 10. Accessed on 22 November 2021.

tracking obligations incorporated into the legislation that would produce public information on any issues observed.

7.3.3 Observations on environmental impacts

The environmental impact assessment of legislative proposals involves assessment of environmental impacts in respect of natural resource consumption, energy consumption, human health, living conditions and comfort, soil and waters, air, climate change along with its mitigation and adaptation to it, flora, fauna and biodiversity, community structure, placement of functions, the built environment, and rural and urban landscapes and cultural heritage.[206]

Regulation would seek to increase the awareness of companies of the environmental impacts of their own operations or those of their supply chains and, when necessary, oblige them to address any adverse impacts observed. The environmental impacts of regulation of the corporate due diligence obligation would be indirect in nature for the most part. The environmental impacts sought with regulation could have to do with e.g. preventing degradation of the environment or reducing emissions. The impacts would be limited by the international instruments or parts thereof that, from a legislative standpoint, could be included in the regulation's scope of application. The set of international instruments with regard to environmental objects of protection is smaller than with regard to human rights. Additionally, a large part of the international environmental instruments does not address the subject of companies, such as the instruments on climate change or biodiversity, for example. A further challenge in issuing guiding legislation in respect of e.g. water lies in that the water consumption and water risks of business depend on the sector, size, value chains and other business features of companies. The environmental, social and economic circumstances of the places where business operations are carried out may vary greatly. Any eventual regulation would need to address issues ranging from poor water quality to fragile administrative structures. Any eventual legislation would need to be able to determine those adverse environmental impacts and environmental damage in the supply chain that a company could face legal liability for causing or contributing to.[207] The international environmental instruments to which reference could be made in any eventual legislation are outlined in Annex 1 to this memorandum.

[206] Ministry of the Environment: Säädösehdotusten ympäristövaikutusten arviointi [Environmental impact assessment of legislative proposals] (2019), https://bit.ly/3GpQY7x.

[207] Sojamo, Suvi & al. (Prime Minister's Office 2021)

The environmental impacts of regulation would come about largely in the same manner as described above in respect of human rights impacts. Direct impacts might come about primarily in situations where the company itself or its subsidiaries engage in cross-border operations directly affected by the regulation. For the most part, however, environmental impacts would consist of impacts channelled through the supply chains, when the sustained implementation of the obligations would gradually begin to have an impact at the local levels of companies' supply chains. It may be considered likely that the sought environmental impacts would largely be realised via those changes impacting on the operations of the final tiers of the supply chain in third countries.

Companies carry out environmental impact assessments that may be based on regulation in place in the area of operation or voluntary measures. With regard to increasing the tracking and effectiveness of the regulation's environmental impacts, it would be essential to have an impact on the kinds of indicators used to assess measures that are relevant to the company operations covered by regulation. The problem with general legislation such as the corporate due diligence obligation lies in correctly dimensioning any indicators based on the regulation and used to assess the activities. There is the risk of increasing the regulatory burden on companies or using indicators that lack relevance. In the worst case, regulation might have the end result of the indicators required by it steering companies to improper action, which may further lead to outcomes that are inconsistent with the objectives of the regulation.

The environmental effectiveness of regulation would also depend on whether it was implemented as a part of regulation at the EU level or as a stand-alone national undertaking. As in respect of human rights impacts, regulation applying only to Finnish companies could have an effect on those specific local situations in which the Finnish companies subject to regulation are involved, either themselves or through their supply chains. It is commonplace for supply chains to include not only Finnish companies but also companies based in other countries. When companies based in other countries were not subject to the same due diligence obligations as Finnish companies, national regulation would have only limited relevance since these other companies could continue to pursue business as usual. It may be estimated that on average, Finnish companies' influence over third-country markets is fairly limited, meaning that any change in Finnish corporate culture might have little effect in the bigger scheme of things. When companies based in other countries could continue to pursue business as usual, the situation might also result in Finnish companies withdrawing from the said operating area, thus robbing regulation of any chance of having positive environmental impacts there.

7.3.4 Observations on business impacts

Basis for assessment

From the business point of view, the impacts of regulation can be deemed to be significant if they pertain to companies at large, to most companies or otherwise to a noteworthy proportion of companies. Business impacts are also significant when they pertain to a more limited set of companies but are of significance in terms of the operations and operating conditions of the target companies, the functioning of the market, or the national economy.[208]

Besides identifying the target businesses and the target sectors of a regulatory proposal, it is necessary to form a view of the current state of the environment and the market where the businesses targeted by regulation operate, as well as of the parameters of their operations (such as customers, suppliers, subcontractors, input costs, technical advances, market access, competitiveness and the nature of the competition). It is likewise important to form a view of the operating environment of the businesses for the reason that, in addition to direct impact on businesses, it is more often than not the case that there is indirect impact and causal chains of impact both as regards the target businesses and as regards other businesses and markets.[209]

The due diligence obligation enacted by law would have significant business impacts. These would vary greatly depending on which regulatory option is chosen in respect of the content of the obligations and their scope. Limiting regulation by company size will have a considerable effect on its nature and business impacts.

Costs of regulation

A key aspect of business impact assessment is assessing the impacts of regulation on the costs and revenues of companies. Adaptation to regulation and compliance give rise to costs of doing business. Such costs can be one-off, such as the necessary investments in production methods, information systems and personnel training, or recurring, such as labour, capital and financing costs. Various regulatory reporting requirements, meanwhile, give rise to administrative costs. These include e.g. costs of notifications and reporting. In practice, administrative costs often fall on

[208] Impact assessment in legislative drafting. Guidelines. Publications of the Ministry of Justice 2008:4, https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/76118/omju_2008_4.pdf?sequence=1&isAllowed=y, p. 18. Accessed on 18 November 2021.

[209] Ibid.

the financial departments of businesses or strain the working hours of entrepreneurs, or require the use of outsourced financial services. Usually, administrative costs are proportionately a greater burden on small businesses and businesses just beginning their operations.[210]

It may be taken as a given that a new corporate due diligence obligation would cause companies to incur costs because of the higher administrative burden and as costs of doing business. Costs could arise from factors including adaptation of operations and processes for compliance, creation of new tracking systems, training provision to staff and labour input required for reporting - all depending on what the regulation would require of companies.

Estimating the costs to companies is made more difficult by the fact that companies find themselves at very different baselines. The impacts of regulation on changing company practices depend on the procedures that a company already has in place to monitor the responsibility of its practices. Companies that would need to engage in significant internal process development because of the new obligations would incur higher costs, while companies whose practices are already more or less aligned with the requirements of the new obligations would incur lower costs.

The earlier chapter on human rights impact assessment estimates that large companies more often than smaller ones engage in the kind of cross-border operations in which the identification of the human rights and environmental impacts referred to in the corporate due diligence obligation assessed in this memorandum would be of relevance. Regulation would give rise to costs also on the part of larger companies. In respect of large companies, however, it may be presumed that in general, they have a higher degree of awareness of the principles of corporate social responsibility. Any new obligations would thus be easier to fit into the framework of large companies' other statutory obligations and related processes, or into voluntary corporate responsibility assessment procedures already in place, meaning that the regulatory burden on large companies relative to that on smaller ones could be presumed to remain materially lesser.

It may be roughly estimated that a broad scope covering also smaller companies would increase the regulatory burden of the Act compared to it applying only to large companies. Expanding the obligation to small companies would put perhaps considerable administrative obligations on them and thus give rise to costs, which could be further heightened by the fact that many of them would be quite unfamiliar

[210] Idem. p. 19.

with the regulation of corporate social responsibility. The costs could also become a barrier to growth, as even relatively low costs for a small company may translate into a high percentage of total turnover[211]. On the other hand, when applied to small companies, regulation could have a greater effect on increasing awareness, as it would then also cover those operators which on average may be estimated to have the most room for improvement.

The consolidated group structure of large companies also enables more efficient supervision of own operations in third countries. International Finnish companies that have subsidiaries in target States are considerably better placed to supervise any adverse human rights or environmental impacts in the third countries than Finnish companies that operate only in Finland and source products via supply chains. These kinds of companies operating solely in Finland, which tend to be SMEs, have much less chance of ensuring the situation vis-à-vis their supply chains than a company that is established on site via a subsidiary.

The regulatory burden will fall especially on operators that will have to undertake new measures because of regulation. Measures which the company would undertake regardless, even in the absence of regulation, do not count towards the regulatory burden. Companies employ different methods of implementing corporate social responsibility voluntarily. These voluntary measures on the part of companies may also be perceived as a factor reducing the regulatory burden. Relatively speaking, the regulatory burden caused by the obligation would be higher on small companies than on large ones.

The studies on costs incurred by companies because of corporate social responsibility regulation, regardless of methodology, have examined the following costs: one-off costs related to changes to corporate compliance policies, one-off costs for the set-up and operation of necessary IT systems, recurrent costs related to audits, recurrent costs for data collection, e.g. verifications that suppliers are providing credible information, recurrent costs of filing necessary forms, total first-year costs and total recurrent costs in the following years.[212] Besides these, companies may be presumed to incur costs from training provided to both their own employees and possibly also suppliers in order to implement the obligations. The following sections will examine these costs in practice for SMEs, large companies and companies active in third countries.

[211] Kiander, Jaakko (Ministry of Trade and Industry 2006): Lainsäädännön yritysvaikutukset ja niiden arviointi [Business impacts of legislation and their assessment,] p. 6.

[212] Smit & al., p. 298. Accessed on 1 December 2021.

Costs to SMEs

For a small company active in Finland and having a limited supply chain, corporate social responsibility legislation may be estimated to give rise to costs from risk analysis and submission of responsibility questionnaires to the supply chain as well as review of responses inclusive of any further investigation. A company may also have to submit responsibility reports on its own operations if it is a part of the supply chain of one or more larger companies. The costs arising from questionnaires depend on the responding party within the company, the time required to complete the assessment, and whether all necessary information is available or which party sends out the questionnaires and reviews the responses. When the necessary information is available, a responsibility questionnaire takes an estimated 2–3 hours to complete. Larger operators may also require a corporate responsibility audit to be performed. The costs incurred by SMEs from reviewing questionnaires sent to their own suppliers vary depending on how well responses are received and how much further investigation the processing of the responses requires.

Both assessment and auditing of own operations may be subject to a charge. Companies can take part in responsibility initiatives where the idea is that a supplier company need not take the same action for multiple suppliers and instead a single assessment or audit is sufficient, often for a given fixed period of time. The results are then made available to customers. Providers of such services include Sedex, Ecovadis, Achilles and amfori BSCI.

Sedex has 60,000 supplier members and its cost of self-assessment is either GBP 100 per site or year. By paying GBP 150 per year, suppliers also receive data on their risks and suggestions for enhancements in responsibility.[213] Ecovadis' assessment is priced according to company size and scope of service: EUR 320–4750 (under 25 persons), EUR 495–4,930 (26–99 persons) and EUR 725–5,145 (100–999 persons) per year. The higher fees buy more in-depth analysis of a company's own corporate responsibility and online training materials, among other things. The fee reduces from those listed above for subscriptions of three years instead of one.[214] Ecovadis' pricing for supplier assessments varies depending on customer turnover. Quotes are available from Ecovadis on request. No public information is available on Achilles' pricing. Amfori BSCI offers its members a

[213] Sedex: Join as a supplier member, https://www.sedex.com/wp-content/uploads/2020/12/Supplier-brochure-EN-1.pdf, haettu 30.11.2021; Sedex: Join as a Supplier, https://www.sedex.com/join-sedex/supplier/. Accessed on 30 November 2021.

[214] Ecovadis: Plans and pricing, https://ecovadis.com/plans-pricing/. Accessed on 30 November 2021.

platform for corporate responsibility information on plants and farms in supply chains. The annual fee for full amfori BSCI membership is EUR 3,000–6,000 depending on turnover (under EUR 20 million – EUR 20–100 million). The fee is lower when a company takes part only in the initiative's environmental or advocacy programme. Companies with a turnover of less than EUR 500,000 are not eligible to become members of amfori BSCI.[215] Auditing by amfori BSCI is subject to a charge for suppliers (see under the heading "Costs to companies in third countries").

An option for wholly domestic operators is the Finnish-language HSEQ supplier assessment covering health safety, environment and quality. HSEQ is based on suppliers' self-assessment and on-site assessment. With the supplier's permission, customers in the system have access to the supplier's results in the system's online portal.[216] The cost of an HSEQ supplier assessment is EUR 2,500 for a supplier company and the assessment remains in effect for three years.[217] At present, the system does not yet cover all human rights risks.

It should be noted, however, that self-assessment and auditing provides insight only into the situation prevailing at the time. In a constantly changing world, they cannot be taken to guarantee that all will remain in order also going forward. Under the UN Principles, assessments of human rights impacts should be undertaken at regular intervals: prior to a new activity or relationship; prior to major decisions or changes in the operation; in response to or anticipation of changes in the operating environment; and periodically throughout the life of an activity or relationship.[218]. In many cases, assessments and audits deliver findings to which companies must respond with the aim of preventing, mitigating and bringing to an end adverse human rights and environmental impacts. Companies must set aside adequate resources for their response. The findings of assessments and audits should never result in a company disengaging from the supplier ('cut and run' solution). Disengagement should only take place when prevention of the adverse impact fails to deliver any results, the company assesses the prevention measures to be unimplementable, or the adverse impacts are extremely serious.[219] Despite international corporate social responsibility principles, it is possible that regulation will lead to business decisions to cut and run. This may occur especially in situations where a company lacks sufficient resources for dialogue with suppliers and there is a high number of alternative suppliers available.

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[215] Amfori BSCI: Membership fees for ordinary members, https://www.amfori.org/sites/default/files/amfori-membership-fees.pdf. Accessed on 30 November 2021.

[216] HSEQ, https://www.hseq.fi/index.php?p=Etusivu. Accessed on 30 November 2021.

[217] HSEQ: Usein kysytyt kysymykset [FAQ], https://www.hseq.fi/index.php?p=Useinkysytytkysymykset#15. Accessed on 30 November 2021.

[218] UN Principles, p. 21

[219] OECD (2018), OECD Due Diligence Guidance for Responsible Business Conduct, p. 31.

Disengagement from a supplier, in the operations of which the company has identified human rights or environmental shortcomings, nonetheless leaves the people dependent on the business ties as well as the environment subject to adverse impacts even worse off than before.

Corporate social responsibility management will in all likelihood require also smaller companies to acquire and maintain an ICT system of some kind. The one-off cost of such a system is estimated at least EUR 10,000, which only buys a very bare-bones solution. The more complex the system, the higher the cost. Annual operating costs also vary depending on system.

Should the legislation require public corporate social responsibility reporting of SMEs, the costs of such reporting would depend on whether the company has any history of corporate social responsibility work. A company that only initiates such efforts due to the legislation will likely first have to engage a consultant in order to launch its corporate social responsibility programme. The costs of this are estimated to come to EUR 10,000–15,000. The SME will further require labour input for establishing indicators and collecting the necessary data for reporting. This is estimated to take up a further two months of work. Commissioning the design and layout of the report from a communications agency would cost around EUR 15,000. Alternatively, the legislation could require that equivalent responsibility information be kept available and up to date on the company's website. In this case, the costs incurred would consist of website adaptation and content management.

Compliance with the obligations under the legislation could also cause an SME to experience training needs. The annual cost of training provision may be estimated at EUR 5,000. Should the legislation require a complaints procedure to be maintained, its annual costs could come to e.g. EUR 1,800–2,160.[220]

Tables 4 and 5 show the costs arising to SMEs from the legislative obligations. For SMEs, there is likely to be greater variance between companies as to the costs incurred from the legislative obligations than for large companies. As stated above, the costs depend on the number of the SME's suppliers or business partners whose operations must be assessed and on the party conducting the assessment, follow-up and responses. In Table 4, it is assumed that this party is the managing director of the SME; in Table 5, an assistant. The calculations are based on the Regulatory Burden Calculator of the Ministry of Economic Affairs and Employment[221]. The calculations

[220] Finland Chamber of Commerce, https://notificationchannel.com/. Accessed on 8 February 2022.

[221] Ministry of Economic Affairs and Employment: One in, one out principle, https://tem.fi/en/one-in-one-out-principle. Accessed on 11 February 2022.

are exclusive of the 'business as usual' percentage, because at present no estimate is available as to what percentage of SMEs already comply with any eventual obligations.

Table 4. Estimated average costs incurred by an SME from corporate social responsibility obligations when the work is performed by the managing director.

Name of obligation	One-off cost (EUR)	Annual recurring costs (EUR)
Policy statement	2,500	490
Planning	2,500	490
Training	2,500	990
Risk assessment	2,500	990
Review of purchases from suppliers	2,500	990
ICT system	11,300	2,300
Reporting	24,900	24,900
Complaints procedure	2,800	2,000
Average total (EUR)	51,300	33,200

Table 5. Estimated average costs incurred by an SME from corporate social responsibility obligations when the work is performed by an assistant.

Name of obligation	One-off cost (EUR)	Annual recurring costs (EUR)
Policy statement	980	250
Planning	910	180
Training	910	370
Risk assessment	910	370
Review of purchases from suppliers	910	370
ICT system	11,000	2,300
Reporting	18,700	19,200

Complaints procedure	2,200	2,000
Average total (EUR)	36,600	25,000

If the number of SMEs covered by the legislation is estimated on the basis of Customs data on the number of import companies (78,000 SMEs), the total one-off costs arising from regulation would come to an estimated EUR 2,851,800,000–4,002,900,000 depending on which person in the SME attends to the duties arising from the obligation. Using the same principle in calculation, total annual recurring costs come to EUR 1,946,900, 000–2,588,100,000.

The costs presented above are based on an estimate by officeholders in government. If law-drafting progresses to the drafting of a government proposal, the cost estimates will be specified e.g. by means of a survey. The cost estimate is based on the assumption that the obligations under legislation will give rise to the highest costs in year 1, when a company either establishes a new management system or adapts existing practices to comply with the new obligation. However, costs in the following years may not fall below those in year 1 (see section below on the costs of reporting).

Costs for large companies

A large Finnish company with international supply chains and possibly also own operations in high-risk countries may be estimated to incur additional costs from the corporate social responsibility legislation due to enhancement of practices, training provision, coordination of risk and impact assessments, ensuring the responsibility of purchasing, and acquiring and maintaining the necessary ICT system. The costs would vary depending on the initial responsibility level of the company, the scope and complexity of its purchasing network, its operations in high-risk countries, the seriousness and scope of human rights and environmental risks associated with its own operations abroad as well as with supply chains and business partners, and the measures with which these risks can be managed,

It is likely that a large company will need to review its policies and update these where necessary so that responsibility aspects with regard to human rights and the environment are taken into account in the company’s various functions. Besides the requisite personnel costs, the company may need to engage an external consultant to support its responsibility efforts. Creating a policy statement and rolling the policy out would likely require the provision of training to personnel and supplier alike. Creating the policy statement also calls for planning. In order to fulfil its obligations, the company must perform a risk and impact assessment with regard to human rights and the environment in relation to its own operations, supply chains and business

partners. The performance, coordination and updating as necessary of these assessments gives rise to costs. Ensuring the responsibility of purchasing requires not only an appropriate policy statement and training provision but also the advance vetting of potential suppliers, determination of contractual obligations and the monitoring of contracts, suppliers' self-assessments and/or audits included.

Large companies may also acquire supplier assessments or audits from various service providers. As stated above, Ecovadis' pricing for supplier assessments varies depending on customer turnover. The annual membership fees of amfori BSCI also vary by turnover: EUR 12,000 (turnover EUR 100–500 million), EUR 18,000 (turnover EUR 500 million – 1 billion), EUR 24,000 (turnover EUR 1–5 billion) or EUR 30,000 (turnover > EUR 5 billion). Practices vary as to whether the client company pays for the suppliers' assessments and audits itself or passes these costs on to the suppliers.

Responsibility management at a large company calls for an ICT system of sufficient sophistication. The cost of acquiring one or updating an existing ICT system is estimated to start at EUR 100,000 and it may be several times higher. The costs of incorporating responsibility aspects into the purchasing information system vary from tens to hundreds of thousands of euro depending on the scope of the system. The costs arising from responsibility obligations vary considerably depending on the extent of the large company's network of suppliers. A company focusing on a limited product portfolio may have a few dozen suppliers while the number of suppliers of one with a broad portfolio may be numbered in the tens of thousands. Not all suppliers are active in a sector of high risk in terms of human rights and the environment, of course, yet in any case the client company must go through its supply chain one supplier at a time in order to detect any risks.

International responsibility standards state that companies should communicate how they address their human rights and environmental impacts.[222] This is of particular importance in cases when concerns are raised by affected stakeholders or their representatives. Under the OECD Due Diligence Guidance, companies should include in their communications their responsible business conduct policies, information on measures taken to embed responsible business conduct into policies and management systems, the enterprise's identified areas of significant risks, the significant adverse impacts or risks identified, prioritised and assessed, as well as the prioritisation criteria, the actions taken to prevent or mitigate those risks, including where possible estimated timelines and benchmarks for improvement and their outcomes, measures to track implementation and results and the enterprise's

[222] UN Principles, p. 23; OECD Guidelines, p. 27; OECD Due Diligence Guidance for Responsible Business Conduct, p. 33

provision of or co-operation in any remediation.[223] Due regard in communications should be had for commercial confidentiality and other competitive or security concerns.

At present, responsibility reporting obligations apply to large-cap listed companies as well as banks and insurance companies. The European Commission has studied the costs incurred by companies from reporting obligations with an eye to reforming the responsibility reporting obligations. First-year reporting costs typically consisted of the following: becoming familiar with the obligations, seeking legal advice, preparing the layout and design of the report, purchasing/developing IT tools (reporting software, data managements systems, databases, etc.), establishing procedures to collect relevant data and information, and training staff. The costs incurred by companies from current reporting obligations averaged EUR 167,000 in the first year and EUR 117,000 in the years following. However, half of the respondents to the Commission's survey experienced no difference between costs across years. The respondents explained that the costs had remained the same because they had strived to improve their reporting performance.[224] The costs may be estimated to increase with the envisioned revisions to report content requirements and above all if third-party assurance comes to be required. Assurance costs for large companies are estimated at EUR 28,000–212,000. They depend on company size and sector as well as level of assurance.[225]

The most typical items that companies seek to verify through an external assurance provider include all or selected KPIs; environmental matters (CO2 and other GHG emissions, water and energy usage, environmental incidents, etc.); social matters (fatality rate, injury rate, labour standards, gender targets, etc.); corporate governance indicators (business model sustainability, industry best practices, anti-corruption and anti-bribery policies, etc.); the company's financials (sustainability of investments, balance sheet climate neutrality, financial contributions to NGOs and charities, etc.); regulatory compliance against national, EU-level and global standards (e.g. local company legislation, GRI Standards, UN Global Compact); materiality analysis (status, process, progress and outlook); data and quantitative analysis (on-site audits, data sources and calculation verification); information consolidation at different levels (subcontractors and suppliers, site-level and group-level); and the business processes

[223] OECD Due Diligence Guidance for Responsible Business Conduct, p. 33

[224] de Groen et al. (European Commission, 2020): Study on the Non-Financial Reporting Directive. Final report, https://op.europa.eu/en/publication-detail/-/publication/1ef8fe0e-98e1-11eb-b85c-01aa75ed71a1/language-en, p. 61–62. Accessed on 30 November 2021.

[225] Idem., p. 95.

in place (interviews and inquiries of personnel, document checks, etc.).[226] Where the national regulation also includes transparency elements, such as the reporting of obligations to provide information, the costs of these must be taken into account in the Act's impact assessment.

If the legislation were to require large companies to maintain a complaints procedure, its annual costs could be EUR 3,600–7,200, for example.[227]

The costs incurred by large companies are estimated in Tables 6 and 7. The calculations are based on the Regulatory Burden Calculator of the Ministry of Economic Affairs and Employment[228]. The first Table is calculated on the basis of a large company with 800 suppliers and the second, a large company with 30,000 suppliers. Based on the findings of the SIHTI study on the human rights performance of Finnish companies, the calculations estimate that 25% of companies are already in compliance. The Tables show both the one-off cost from adapting to obligations as well as the recurring costs arising from the obligations going forward.

The cost estimate is based on the views of officeholders in government. If law-drafting progresses to the drafting of a government proposal, the cost estimates must be specified e.g. by means of a survey.

Table 6. Estimated average costs incurred from responsibility obligations by a large company with 800 suppliers.

Name of obligation	One-off cost (EUR)	Annual recurring costs (EUR)
Policy statement	46,100	2,000
Planning	21,600	21,300
Training	19,800	19,800
Risk assessment	41,100	39,600
Review of purchases from suppliers	21,400	19,900
ICT system	79,000	2,100

[226] Idem., p. 92.

[227] Finland Chamber of Commerce, https://notificationchannel.com/. Accessed on 8 February 2022.

[228] Ministry of Economic Affairs and Employment: One in, one out principle, https://tem.fi/en/one-in-one-out-principle. Accessed on 11 February 2022.

Reporting	156,000	117,000
Average total (EUR)	386,000	221,000

Table 7. Estimated average costs incurred from responsibility obligations by a large company with 30.000 suppliers.

Name of obligation	One-off cost (EUR)	Annual recurring costs (EUR)
Policy statement	49,900	1,600
Planning	29,900	21,300
Training	24,600	19,700
Risk assessment	57,400	52,500
Review of purchases from suppliers	83,700	78,800
ICT system	80,200	9,500
Reporting	126,000	101,000
Complaints procedure	9,100	2,700
Average total (EUR)	461,000	287,000

Calculating the number of companies covered by the legislation on the basis of Customs statistics on large companies engaging in import (2,700 companies), the total one-off cost for large companies comes to EUR 1,041,700,000–1,245,400,000 depending on the companies' numbers of suppliers. Using the same principle in calculation, total annual costs to large companies come to EUR 597,500,000–776,200,000. Some export companies may also fall within the scope of application, yet at this time, it is difficult to estimate from the statistics the number of companies engaging in both import and export. Consequently, only the number of importer companies has been taken as the basis for the calculations.

Costs to companies in third countries

Responsibility legislation would have cost impacts also in third countries where the legislation requires Finnish companies to cascade responsibility obligations into their supply chains. In all likelihood, clients would require suppliers to commit to responsible business conduct and at the very least complete a self-assessment

questionnaire and/or subject their plant to an audit. As stated above, the costs of completing a self-assessment questionnaire depend on who within the company completes it, whether all necessary information is available and how complex the product or production assessed is. The time required also depends on the level of expertise of the person responding. Besides responding to responsibility questionnaires, also audits may cause suppliers to incur costs. An individual audit costs the supplier anywhere from EUR 2,000 upwards depending on the scope of the operations audited and whether the audit also includes visits to e.g. production sites in relation to the origin of raw materials. By enrolling in the responsibility schemes described above, a supplier can forego having to respond to multiple similar assessments and undergo multiple audits. However, the schemes are subject to a charge and client practices vary as to whether they foot the bill for membership and audits or whether these costs are left to the supplier to bear.

When legislation requires product origin to be traceable, it gives rise to costs also on the part of small producers within the supply chain. The size of these costs is relative to the profitability of the said production to the small producer.

Competitive impacts of regulation

Regulatory impact assessment must include the identification of whether the proposal prevents, restricts or distorts competition between businesses. Competition is beneficial to consumers, because it is conducive to lower prices and works as an incentive for businesses to develop new goods and new services. Competition contributes in an essential manner to economic efficiency and productivity. If it is determined in a regulatory project that the reform would prevent or distort competition, an evaluation should be carried out in respect of whether another regulatory alternative, less restrictive on competition, can be chosen and still attain the objectives of the regulation.[229]

It is obvious that any new responsibility regulation would have competitive impacts on Finnish companies active in Finland, the EU and international markets. In the domestic market, national regulation would likely smooth out competitive differences between companies. Very generally, it may be stated that at present, responsibility expectations concern in particular companies active at the consumer interface and companies with a longer history in the arena of environmental issues. In terms of competition, national regulation would put companies active in different sectors on an equal footing since companies would be made subject to the same responsibility

[229] Impact assessment in legislative drafting. Guidelines. Ministry of Justice publications 2008:4, https://julkaisut.valtioneuvosto.fi/handle/10024/76118, p. 21. Accessed on 18 November 2021.

obligations irrespective of sector. In theory, the legislation could also clarify expectations of companies, which would also serve to even out the playing field.

In assessing business impacts, the impacts of regulation on the international competitiveness of companies must be assessed. Regulation may strengthen or weaken the competitive position of Finnish businesses relative to other businesses operating in the global market. In terms of competitiveness, it is necessary to recognise whether the proposal will make Finnish businesses adapt to conditions that do not apply to their most significant competitors. The competitiveness assessment entails also an analysis of whether Finland and the Finnish regulatory environment provide an incentive to establish businesses here.[230]

The Commission's proposal for a Directive would only apply to large companies – initially ones with more than 500 employees and a turnover of more than EUR 150 million, and 2 years after the end of the transposition period of the directive the scope would be expanded to cover companies with more than 250 employees and a turnover of more than EUR 40 million that operate in certain high-impact sectors. As described in section 4.1.2, the content of the obligation would be regulated in great detail, it would cover the entire supply chain, and sanctions would be linked to the regulation. Regulation would require comprehensive contract management on the part of companies. The content and scope of regulation may yet change during the negotiations on it.

To date, the only EU Member State to impose and implement responsibility obligations on companies is France. The French legislation applies only to very large companies and comprehensive data on its application practice is yet to be made available. The German legislation will apply from 1 January 2023 onwards. The Dutch due diligence obligation concerning child labour is yet to be implemented and the Dutch Government states that instead of implementation, it is preparing broader corporate due diligence regulation. In other words, there is little regulation on this topic to date in the EU market and very little comprehensive application practice available on the existing regulation.

National regulation would likely undermine the competitive position of Finnish companies active in the EU market and covered by the legislation if the decision was made to introduce independent national legislation entering into force before any EU regulation on the topic. In this case, the approach of national regulation would mean that Finnish companies would be subject to more stringent obligations than the majority of their competitors in other EU Member States. The competitive position of

[230] Idem. p. 21.

companies active in the international market and covered by the legislation would also deteriorate, as no non-EU States, either, have in place responsibility obligations of equivalent scope.

It is important also to consider the predictability of regulation at the drafting stage, because only in this way can businesses plan their investments and operations with a long enough time horizon[231]. National regulation that would need to be essentially changed once EU legislation enters into force cannot be construed as an advantage to companies. For them, it would translate into an unpredictable regulatory state as well as uncertainty, which would give rise to new administrative costs and adaptation needs. National regulation, too, would require the use of transitional periods, meaning that companies might be faced with a situation where they would need to adapt, to a tight time-frame, to multiple requirements at cross-purposes with each other.

The costs of regulation to companies must be assessed against the benefits accruing to them. National regulation might have positive impacts on the business of companies if it allowed them to better prepare nationally for new harmonised regulation than companies in other countries and thus to gain an advantage over competitors. The resourcing of responsibility matters required by the legislation could, in the long term, increase familiarity with responsible business conduct. Any benefit accruing directly from regulation could nonetheless be overshadowed by the fact that markets to an increasing extent are currently emphasising responsibility and companies, in any case, have to invest in responsibility in order to be competitive.

The EU legislative proposal aims for consistency in Member States' legislation on the topic regulated and e.g. establishing a level playing field for companies. Differing national legislation in individual countries also would not be in line with the principle of the internal market. The scope of application of the Commission proposal for a Directive would impose more consistent requirements on large companies, in addition to which the introduction of their application would be staggered in respect of companies active in high-impact sectors.

Depending on the minimum level of regulation, derogation from it may be possible by national provisions that are more stringent or have a wider scope of application, for example. As a rule, the Finnish companies subject to more stringent regulation or a wider scope of application would incur higher costs in the market than their competitors from countries where equivalent measures are not implemented. Correspondingly, Finnish companies incur costs relative to competitors in other

[231] Idem., p. 22.

countries in a situation where regulation would be based purely on national legislation. Such a situation would underscore the importance of assessing the potential benefits of regulation to companies.

The kind of regulation that would involve a conscious effort to introduce in Finland more stringent tools than in other Member States – provided the future EU regulation allowed for such latitude – cannot be perceived as delivering any significant benefits to companies. Such regulation would also entail the risk of undermining Finland's competitiveness, and it would be capable of reducing Finland's attractiveness as a place to establish a business. The impacts of national regulation may also be eroded by the typical situation where supply chains include companies also from other countries, meaning that national regulation in Finland could only affect the operations of the Finnish company concerned. In such a case, the actual impacts of regulation would depend on the regulation to which companies domiciled in other countries are subject. Since Finland is a small actor in the global market, the national regulation might fall short of delivering the impacts sought with it.

Going forward, responsibility may be considered to be an indicator of increasing importance that is used to measure the value of business from viewpoints including those of investors and consumers. Legislation that makes responsibility-related processes more effective may thus also be capable of enhancing a company's competitive standing. Then, again, since the markets already to an increasing degree require operations to be responsible, the relevance of any eventual legislation to changes in operations may be obscured to some extent. The legislation may also become a burden when it requires companies to take measures that cannot be deemed the most appropriate way to make a difference in whatever operations are at issue. Regulation concerning Finnish companies might prove beneficial to companies if the markets held regulation-based responsibility in higher regard than companies free from such regulation. However, impacts of this kind are very difficult to verify *a priori* and instead, any reliable assessment can only be carried out *ex post facto*.

Under the UN Principles, companies should use their leverage to prevent or mitigate adverse human rights impacts. Where a company lacks sufficient leverage, it can increase it e.g. by collaborating with other actors.[232] The Interpretive Guide to the UN Principles specifies that leverage reflects several factors, one of them being the ability of the enterprise to incentivise other enterprises or organisations to improve their own human rights performance, including through business associations and multi-stakeholder initiatives.[233] There have been discussions in the context of

[232] UN Principles, p. 21–22.

[233] OHCHR (United Nations 2012): The Corporate Responsibility to Respect Human Rights, p. 49.

implementation of the Principles on whether the above policy conflicts with EU competition law if it is taken to mean that a company would seek to influence the operations of another company in collaboration with other companies, for example through a business association. The OECD Due Diligence Guidance states that enterprises and the collaborative initiatives in which they are involved should take proactive steps to understand competition law issues in their jurisdiction and avoid activities which can be seen as breach of competition law.[234]

Impacts on investments and growth

Regulation may become a factor hindering domestic industrial production. Domestic manufacture often depends on raw materials or components imported into Finland. When regulation leads to deterioration in the availability of raw materials or end-product components imported into Finland or a significant increase in their prices, it would materially hit the operations of companies that depend on the importation of these items. A decline in domestic production may be reflected further as a decrease in Finland's exports.

The legislation could be drafted to cover SMEs or SMEs active in certain sectors, for example. This regulatory option necessitates an assessment of its impacts on new business start-up rates and the growth opportunities of businesses. One element of the assessment must be whether the regulatory project promotes entrepreneurship or whether it acts as a barrier to the same, that is, whether the project makes it easier or harder to start up a new business. Regulation may also impact the chances of businesses to grow. It is necessary to assess the impact on "growth entrepreneurship" and on growth businesses, as such businesses play a major role in the creation of new jobs and in the increase of productivity.[235]

In the manner expressed in the above paragraphs, regulation has the potential of increasing the administrative burden on small companies in particular. This may become an obstacle to international expansion if costs deter investment in growth. When international operations are subject to high hurdles, regulation may also prove an obstacle to market entry. This could in particular be the case in sectors where the entire business concept relies on international operations. The impacts reducing the availability of raw materials or components described above would also prove obstacles to growth for companies. For the reasons described, regulation of the

[234] OECD: OECD Due Diligence Guidance for Responsible Business Conduct (2019), p. 53.

[235] Impact assessment in legislative drafting. Guidelines. Government publications 2008:4, p. 22.

corporate due diligence obligation may be perceived to have adverse impacts on companies' growth potential and market access.

In practice, there are a handful of micro-enterprises among Finnish SMEs that owing to the nature of their operations have significant human rights and environmental impacts. Looking at the entire SME environment, the regulatory burden on small companies may be estimated to be fairly heavy relative to the benefits accruing. The further into the supply chain the obligation is extended, the higher the costs may be roughly estimated to rise. Should the obligation be limited only to own operations or controlled corporations, or the tiers of the supply chain closest to the company, companies might possibly better be able to fulfil the obligation using methods they already had in place.

Then again, any investments necessitated by regulation might in some situations turn to the advantage of the company, should the regulation enable innovation. In such a case, regulation could provide the impetus for new methods, which could be perceived as positive by companies. If this development were to come about as a part of responsible business conduct, it would be possible for companies investing in responsibility to gain at least some competitive advantage over others. Companies specialising in the import of ethical food products, for example, might be among those benefitting from the regulation.

7.3.5 Observations on impacts on consumers

The business impact assessment finds that companies will incur costs from regulation. In consumer business, these cost impacts could ultimately be passed on to consumer prices.

Besides prices, there may be impacts on the availability or range of products, should regulation cause the withdrawal of products or market exit of operators. Product availability impacts may be seen to have both positive and negative aspects. In the best-case scenario, regulation would lead to the removal from the Finnish market of products produced in unfavourable conditions in terms of human rights or the environment, for example. However, Finnish legislation would likely only affect products imported into Finland and would thus lack any global impact. The production of the said kinds of products would remain possible even in the absence of Finnish companies from the supply chain and they could continue to be imported into other countries. Consumers may also be affected if regulation enables a widening of e.g. the range of ethically produced products. Regulation may also give consumers a better chance to learn about the origin of products.

On the other hand, regulation could also result in companies being unwilling to invest in foreign operations owing to the regulatory burden. In this case, the availability of products to consumers in Finland would be unnecessarily restricted.

7.3.6 Observations on impacts on activities of the authorities

Effective compliance with regulation advocates associating some kind of supervisory and tracking system with it. The supervisory tools of the authority as well as the sanctions would need to be appropriately proportionate to the obligations imposed and the severity of the breaches of these obligations. The impacts of regulation on the activities of the authorities would depend on the duties assigned to them. The decisions on the sanctions and enforcement of regulation impact materially on the duties of the authorities.

The duties of the authority may vary from supervising compliance with the tracking obligations under the regulation (reporting to the authority / keeping information publicly available) to supervisory tools involving extensive administrative sanctions. The duties of the authority would also depend on whether it carried out supervision also on its own initiative or only on the basis of notifications made to it, for example. Under legislation including a reporting obligation, the authority could supervise reports made publicly available and/or take receipt of reports from companies. Access to compliance information can be boosted by subjecting the authority to an obligation to issue a public report at regular intervals on the observations submitted to it or made on the basis of reported information.

The authority could also be in charge of receiving and investigating notifications of possible breaches. With regard to the investigation of notifications, the Act would likely need to include rules on prioritising investigations so as to allocate the authority’s resources to the most relevant situations. The authority could also be empowered to use coercive measures to order companies to supply information required under the Act or to comply with another procedure laid down in the Act. The authority could further be obliged to provide advice or guidance on the regulation. Such advice or guidance would be especially important if the corporate due diligence obligation laid down in the Act was expressed in general terms. In addition, the duties of the authority could also include promoting knowledge of the regulation, where necessary.

The supervisory duties would represent a wholly new set of official duties. At present, the supervision of the corporate due diligence obligation cannot be seen to fall

organically within the remit of any individual authority. In practice, supervision would require either establishing a new authority or setting up a new unit under the umbrella of an existing authority, the resourcing of which would then need to be revised accordingly. The costs of the official supervision would depend on the scope of the supervisory system. The least costs would be incurred from tools relating to the receipt of reports and implementation of the reporting obligation. The more supervisory action was taken, the more resources and expertise would be required, which would increase the volume of official functions required in the field of the regulation. In practice, the supervisory authority would require resourcing coming to several person-years, yet more accurate estimates can only be provided once the concrete content of the regulation has been decided.

It may prove necessary to make the decisions issued by the authority, in particular ones on administrative sanctions, subject to the right to request an administrative or judicial review of the decision. The review procedure may mean that regulation will have to some extent be taken into account also in the resourcing of the court designated to handle judicial review.

7.4 Outlining an effective regulatory approach

7.4.1 Choice between general or specific regulation

In regulating the corporate due diligence obligation, the central choice between general and specific regulation has a material impact on the nature of the entire obligation. Specific regulation would seek to stake out a framework of procedures for companies by which the end result was sought. A general obligation, meanwhile, would leave companies more leeway in deciding which tools are the most appropriate ones specifically for them and would shift emphasis towards *ex post facto* assessment as to the appropriateness of the measures taken.

The challenge in measures expressed in detail in law would lie in how to define the obligations so that they are suited to different companies' different circumstances while still being specific enough towards the companies. Measures detailed in the regulation would be difficult to dimension to suit companies of different types. This would increase the risk of regulation adding to the administrative burden on some companies, if regulation required companies to take measures that were not appropriate in light of their operations. Correspondingly, for some companies

regulation could steer them towards measures that are undersized or ineffective in light of the risks of their operations.

If an obligation steers companies towards an approach of 'ticking checklist boxes,' there is also the risk that it may de facto undermine due diligence on the part of companies by focusing their attention only on the measures listed. This may end up creating practices that de facto lack effectiveness to promote corporate due diligence.

General regulation would have the advantage of flexibility for different situations. It could also be more easily extended to apply to a broad set of companies. In principle, a corporate due diligence obligation applicable to all companies or a substantial part of them would need to be flexible in content so that in practice, the various sectors and different types of companies may be catered for. An obligation applicable to a large number of companies could utilise a general, risk-based approach.

The disadvantages of general regulation would be its lack of specificity and lack of clarity regarding the content of the obligation. It could be difficult for a company to assess what is expected of it in order to fulfil its due diligence obligation. Interpretations would need to be obtained by means of a judicial process and it would take a long time for case law to accumulate through the courts. A general obligation might hinder the comparability of measures taken by companies e.g. in reporting. It might give rise to uncertainty about the expectations on companies, which may be further underscored by the fact that due diligence in human rights and environmental matters is as yet a fairly new concept to many companies.

7.4.2 Determining the level of appropriate action

National assessment has not brought to light a situation where there would be a clear need for the legislation to include point obligations applicable to all companies and addressing shortcomings in an individual practice. The objectives of the legislation – to identify and prevent human rights and environmental risks arising from business – would rather come down in favour of an obligation of general nature with which to have as comprehensive as possible an impact on different situations. Consequently, a regulatory option including a casuistic listing of measures required of all companies, the performance of which would allow the company formally to fulfil the obligation of identifying or preventing human rights impacts, does not seem fit for the purpose. Detailed legislation would lead to a 'tick checklist boxes' approach and would fail to take into account the appropriateness of the measures or their applicability to a broad set of companies of different sizes and active in different sectors.

The most appropriate approach to creating the corporate due diligence obligation would be to build on a fairly general obligation. This approach would steer companies towards identifying the risks that are the most relevant to their operations and prioritising their action so that they can prevent and mitigate the most severe risks.

A general, risk-based approach comes up against the requirement that legislation must be clear, specific and precise in content. The kinds of measures required of companies should be possible to assess on the basis of the regulation. Even though the obligation would be premised on generality, it would be key to define, with sufficient precision, what appropriate action would consist of and what it would require.

The legislation on a corporate due diligence obligation would at the very least have to indicate, at some level, the means to identify and prevent impacts and to track the effectiveness of measures. Otherwise, it would be impossible to estimate the requirements of context-specific due diligence. The more general the terms in which the obligation is formulated in the Act, the greater the significance of the rationale of the Act providing companies with clear-cut instructions on how to proceed. It is essential that the Act and its drafting history provide the basis for interpreting the action needed on the part of the company in order for it to fulfil the obligation.

7.4.3 Possible means of implementing due diligence to be written into the Act

As stated above, a key step in the corporate due diligence obligation would be to identify the adverse human rights and environmental impacts of a company's business. The most appropriate means for the identification process vary depending on company size, sector and operating area. It would be challenging to assess which of the measures would be such as to lend themselves to different types of companies – especially if the Act aimed for broad coverage of companies of different sizes. A narrower scope of application limited to e.g. only large companies would make it simpler to determine the suitable measures.

A key element of identification is risk assessments of various kinds by which to pinpoint adverse impacts. Audits of the supply chain could also be used to identify risks. Provisions could also be laid down in the Act on obligations to conduct risk assessments and audits. Identification and prioritisation can be guided through regulation by obliging a company to pay particular attention e.g. to certain specific situations or to particularly vulnerable groups. In practice, companies' efforts to implement the obligation could take place within their existing processes and risk

management systems, as a part of them, or by expanding them further. Regulation could further seek to utilise any existing international standards. The obligation of identifying impacts can be made more effective, for example by requiring companies to establish a complaints procedure and by consulting with stakeholders at the various stages of the process.

One possible approach to consider is for the legislation to impose on companies a direct obligation to use contractual terms that would require them to incorporate due diligence provisions in their supplier contracts. These contractual terms would oblige the subcontractors and suppliers of a company to comply with due diligence in human rights and environmental matters in their operations and to require the same also of their own subcontractors, where regulation covered the supply chain as well. In practice, supervising compliance with contractual terms, especially far into the supply chain, is challenging if not impossible.[236] It would also prove challenging to specify in regulation the kinds of contractual terms which expressly would be appropriate to require under the legislation. Requiring certain contractual terms under legislation would also intervene in the contractual freedom of companies, and this restriction should be examined relative to the provisions of the Constitution of Finland on protection of property and freedom to engage in commercial activity.

Companies would be required to take action to bring to an end, prevent, mitigate and remedy any identified adverse impacts. The prevention of impacts requires companies to organise their operations in a way that allows impacts to be effectively addressed and at the very least mitigated. The concrete measures to be taken in each situation in order to prevent identified impacts would be very difficult to define in the Act as tools suited to all the possible situations. Perforce, this definition would remain general in nature. It could be a case of companies being obliged to track and pay attention to the impacts of their operations throughout the lifecycle of an individual product or service and to address the situation when necessary. In terms of concrete measures, companies could be obliged to have various kinds of contingency plans. An obligation to provide employees with sufficient information on the impacts of the company's operations and the manner in which human rights and environmental impacts are taken into account in these could also be considered.

The choice between obligation expressed in very general terms and obligation containing concrete measures must be made on the basis of what kind of legislation is sought. If the objective is a very general obligation involving regulation on tracking the measures taken, in the form of e.g. a reporting obligation, the obligation itself could be formulated in quite general terms. If, by contrast, the objective is regulation involving

[236] Judicial Analysis, p. 53; Smit, Lise & al. (European Commission 2020), p. 217–218.

an external assessment on the adequacy of the measures taken as well as means to enforce compliance with the obligation, this would steer the obligation towards more concrete measures. Concrete measures would allow an *ex post facto* assessment of compliance with a given aspect of the obligation.

Instead of detailed means laid down in law, an obligation to prepare a due diligence plan could also be considered. In this case, provisions could be laid down in the Act on a general level on an obligation to identify, prevent, mitigate and bring to an end adverse impacts, while the company would have to explain in its due diligence plan on the one hand, how it intended to implement the measures required by the general obligation and on the other, how well its plans had been realised. Such a due diligence plan could be required to be subject to ongoing maintenance or updating at regular intervals.

It would be appropriate for regulation to be proportionate in that it would not cause companies to incur extra costs. The proportionality of regulation can be enhanced above all by limiting its scope of application with regard to both set of companies and the supply chain dimension of regulation. When striving for a broader scope of application, regulation could also be staggered so that small companies would not be subject to equally specific obligations as large companies. The proportionality of the due diligence obligation in the supply chain could be provided for in the Act by requiring only severe or very severe impacts to be identified, prevented, mitigated and brought to an end starting from a certain subcontracting tier.

7.4.4 Applicable human rights and environmental impacts

The corporate due diligence obligation would concern adverse human rights and environmental impacts caused by a company's operations. These human rights and environmental impacts would be determined on the basis of international instruments binding on States parties. The content and impacts of the corporate due diligence obligation would thus centrally depend on which international instruments would be included in the regulation. Since international instruments are intended to be binding on States parties, regulation of the corporate due diligence obligation would require an assessment of which instruments of parts thereof could be incorporated into legislation binding on companies. This assessment would involve an examination, within the framework of the various instruments' content and their possible impacts on business, of the extent to which the instruments should be incorporated into the legislation. The review of the various international instruments and assessment of the

extent to which they could be binding on companies would require a determination based on expertise in multiple administrative branches, and such a determination could not be made as part of the drafting of this assessment memorandum.

Catering for human rights and environmental impacts involves the question of defining the degree of adverse impact that would trigger application of the obligations under the legislation. Under the UN Principles, severity of impacts will be judged by their scale, scope and irremediable character.[237] According to the Interpretive Guide to the UN Guiding Principles, an adverse human rights impact occurs when an action removes or reduces the ability of an individual to enjoy his or her human rights. Environmental impacts are not precisely defined in the non-binding instruments of the UN or the OECD. Possible impacts include ecosystem degradation, product and service safety, and pollution of the environment.

The key objective of the legislation should be that companies identify the human right and environmental risks that are most salient to their operations and as necessary, further prioritise their action so that they can prevent and mitigate the most severe impacts. Consequently, it may be appropriate for the legislation to further characterise impacts with qualifiers such as “severe”, “material” or “significant” so that the obligation included in the Act inclusive of possible sanctions would apply specifically to impacts of that kind and would guide companies to focus on the identification and prevention of risks that are the most salient to their operations. For example, companies could be obliged to launch an impact assessment on the human rights impacts that are the most salient to their operations, supply chains and business partners.[238] Linking application to severity of impact would clearly limit application and might lead to failure on the part of companies to identify some other human rights impacts that are central to their particular operations.

On the other hand, in order for a company to identify in practice the most severe risks associated with its activities means that it must nonetheless first map all risks and then separately assess the severity of the risks identified. Qualifiers would enhance the proportionality of the legislation and serve as prioritisation rules for companies. In long supply chains, for example, legislation could guide companies to identify those

[237] UN Guiding Principles, Principle 14, Commentary.

[238] In this context, salient or central human rights refer to those that stand out as being most at risk. Salient risks typically vary by sector and operating area. The UN Principles make clear that companies should not focus exclusively on the most salient human rights issues and ignore others that might arise. Yet the most salient rights will logically be the ones on which companies concentrate their primary efforts. See e.g. OHCHR (United Nations 2012): The Corporate Responsibility to Respect Human Rights. An Interpretive Guide, p. 9; OECD: OECD Due Diligence Guidance for Responsible Business Conduct (2019), p. 42–45.

parts of the supply chain with the highest, i.e. most severe and probable, risk of adverse human rights and environmental impacts, and start their analysis with these.[239]

7.4.5 Supply chain dimension of regulation

Under the UN Principles, the corporate due diligence obligation covers the entire supply chain of a company[240]. It must be considered in the legislation whether the obligation would likewise cover the entire supply chain or whether it would be limited to a certain tier in it, or only to controlled corporations. Limiting the extent of due diligence to controlled corporations focuses the obligation to where companies have the greatest say. However, leaving other adverse impacts occurring elsewhere in the supply chain wholly outside the scope of due diligence would weaken the protection provided by the legislation.[241] Through its own actions and choices, a company can only influence its own operations and, by exercising control, those of its subsidiaries or companies in which it holds a majority of the voting rights[242]. An obligation limited to a company's own operations and those of its subsidiaries would thus involve situations where the outcome can be directly influenced by measures required of the company. As a rule, such regulation would be more effective, as it would allow directly attempting to steer the company's conduct in the desired direction. However, the effectiveness of regulation in this option of more limited scope must be weighed against the potential impacts achievable with regulation. In these situations, the effectiveness of regulation may be reduced by the fact that it does not permit addressing the situations where the highest human rights and environmental risks may be presumed to occur, i.e. in third countries, at the end of supply chains.

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[239] Judicial Analysis, p. 51.

[240] See Principle 17 of the UN Guiding Principles.

[241] Judicial Analysis, p. 106.

[242] See Accounting Act (1336/1997), section 5: A reporting entity is considered to have control over another reporting entity or a comparable foreign undertaking (referred to as an object undertaking), where:

1) the reporting entity controls the majority of the shareholders' or members' voting rights in the object undertaking and where this majority is based on ownership, membership, articles of association, deed of partnership or similar rules or other agreement; or

2) the reporting entity has the right to appoint or remove the majority of the members of the Board of Directors of an object undertaking or of a similar body or of a body with the same right and where the right is based on the same circumstances as the majority of voting rights referred to in paragraph 1;

3) the reporting entity has actual control over the object undertaking in another way.

In the manner referred to in the UN Principles, regulation extending across the entire supply chain would involve an obligation imposed on Finnish companies and compliance with this obligation seeks to influence foreign companies in the Finnish companies' supply chain which, as a rule, are not directly covered by Finnish legislation. Expanding the scope of regulation to supply chains renders regulatory impact assessment considerably more multi-dimensional as it examines not only the operations of the company itself but also the operations of companies in the supply chain. In such a case, regulation aims for chains of impacts that would deliver changes in the operations of the foreign companies in the supply chain. A company is clearly much better placed to obtain information from controlled corporations and direct suppliers than from subcontractors or their subcontractors. Legislation containing a reporting and disclosure obligation and an obligation to prepare a due diligence plan would require companies to describe the processes they use to check their supply or value chains.

The effectiveness of supply chain regulation depends on choosing tools that in reality are capable of generating positive impacts in the supply chain. The effectiveness of the due diligence obligation in the supply chain cannot be verified in a straightforward manner irrespective of whether the obligation extended to operations in the supply chain only partly or throughout the supply chain. In addition, owing to the proportionality required of due diligence, the level of appropriate action would in any case be lower towards the end of the supply chain where Finnish companies have less leverage.

The effectiveness of regulation is thus also impacted by the mechanism by which an obligation imposed on a company may be estimated to pervade the supply chain and generate there the impacts sought with regulation. In practice, this would involve various internal supply chain tracking mechanisms and complaints procedures for external operators as well as training to increase awareness of the impacts of the operations in the supply chain companies and to seek to instil the due diligence principles into the operations of the company concerned[243]. The effectiveness of regulation would consequently also depend on how well these means worked and would furthermore require that companies maintain their business relations in high-risk supply chains also after the regulation takes effect.

To date, there is so little experience and research data available on the effectiveness of various countries' supply chain legislation that in this context, no reliable *a priori*

[243] See Marzano, Karina (2021): The Challenges of Regulating Global Supply Chains, https://www.iass-potsdam.de/en/blog/2021/04/challenges-regulating-global-supply-chains. Accessed on 11 January 2022.

assessment can be made as to the de facto effectiveness of regulation extending broadly into supply chains.

7.4.6 Application to companies of different sizes

It was observed above that by excluding smaller companies from the legislation's scope of application, the content of the obligation could be specified in more detail than if the obligation applied broadly to companies of different sizes. Applying the regulation also to small companies could have the result of it not being possible to impose an obligation with very detailed content without unreasonably increasing the administrative burden on small companies. For the same reason, it could prove challenging to impose on small companies any very broad supply chain obligations. Regulation extending also to supply chains could be better implemented in respect of large companies.

Since obligations of commensurate suitability to all companies would be difficult to impose, in the manner described in the foregoing, one regulatory option would be to apportion the obligation differently to different-sized companies in terms of content. In addition, the obligation on small companies should be considered from the perspective of whether an obligation on them, perhaps expressed only in general terms, could in actual fact deliver results or whether regulation would remain only a formality, albeit one that adds to the administrative burden on companies. Then again, including an element of proportionality relating to sector or nature of operations could serve to raise the standard required of also small companies in higher-risks operations. Defining high-impact operations is not without its difficulties. Companies could find it hard to know if they actually engaged in the high-impact operations regulated. The degree of risk in a company's operations would likely have to be determined on a case by case basis. The Standard Industrial Classification[244] of Statistics Finland is a very generalised way of classifying companies into sectors and unsuited for the supervisory purpose of assessing whether a company engages in the kind of high-impact operations that would be salient to the corporate due diligence obligation.

The decision on applying the legislation to companies of different sizes would depend on what is sought with the regulation. Regulation applying only to large companies would likely be more effective relative to the costs arising from the regulation, as it would with the highest degree of certainty concern those operators whose

[244] Standard Industrial Classification TOL 2008 https://www2.tilastokeskus.fi/en/luokitukset/toimiala/. Accessed on 2 February 2022.

multinational operations may have human rights and environmental impacts. Regulation applying to small companies, meanwhile, would allow a broad scope of application, yet the administrative burden caused by the regulation could push the costs of the regulation clearly higher than the benefits accruing from it.

7.4.7 Obligations relating to the tracking of due diligence implementation

Regardless of the decisions on the content and scope of application of the corporate due diligence obligation, in order to be effective the legislation requires external review by means of either tracking measures taken or supervision. Without tracking mechanisms, regulation is likely to deliver little added value compared to the voluntary instruments of the UN and the OECD.

Measures taken by companies can be tracked on the basis of companies' reports in standard format or by companies keeping the required information publicly available in a format of its choosing. A public due diligence plan, meanwhile, would permit *a priori* tracking of how a company intends to implement its due diligence obligation.

Reporting and keeping information publicly available largely serve the same aims, i.e. access to information on measures taken by companies. However, reporting would be the more burdensome procedure, administratively speaking, for both companies and for any supervisory authority. Regulating the form of reporting and its level of detail would make it possible to influence the regulatory burden. Since the EU is preparing regulation on both sustainability reporting and corporate responsibility standards, a reserved approach should be adopted to imposing any detailed reporting obligations in the context of regulating the corporate due diligence obligation.

The reporting information needs could be met by having the information kept publicly available. However, reporting could deliver added value in the sense that regulating e.g. the machine-readability or external assurance of reported information could impact on the useability, reliability and comparability of the information. Consequently, reporting may be perceived to be subject to better public control. Regulating the details of reporting, however, would add to the administrative burden on companies and as stated above, there is the risk of imposing obligations that overlap or are at cross-purposes with the EU sustainability reporting regulation currently in the pipeline. It would not necessarily serve any appropriate purpose for the reporting obligation to require that reports be submitted to a specific authority supervising their submission.

Instead, it could be more appropriate only to require that reports in standard format be published.

The reporting obligation or the obligation to keep information publicly available could both be linked to regulation in more general terms and to regulation containing more specific obligations. However, the reporting obligation would likely need to be limited by company size, as at least a broad reporting obligation imposed also on small companies would put a considerable administrative burden on them. Smaller companies, at least ones engaging in high-impact operations, could be made subject to an obligation to keep information on their implementation of the due diligence obligation publicly available on their website or by equivalent means. The obligation could possibly also be staggered according to the degree of risk inherent in the operations.

The due diligence plan obligation could also be linked to general regulation as well as specific regulation. Its purpose would be to require companies to prepare in advance a plan on how they intend to implement in their operations the obligations included in regulation to identify, prevent, mitigate and bring to an end adverse impacts and, should regulation so require, how to accomplish this in relations with their business partners. The content, formal requirements and updating frequency of the due diligence plan can, when necessary, be specified in the regulation or left to the discretion of the company.

It would be essential to draw boundaries as to whether external supervision was to be associated with the obligation and the tools of supervision that it would be appropriate to introduce. Among the softer means of tracking, the obligation only to keep information publicly available or supply it to stakeholders upon request might work equally well without any specific supervisory organisation. However, this would leave unanswered the question of what would happen in cases of non-compliance. In practice, also the described regulation concerning only making information publicly available might require additional support from a provision obliging companies e.g. on pain of a fine to make the information publicly available. The reporting obligation, too, would in practice require designating a party that would, when necessary, take receipt of the reports or supervise that they are published in the required manner, and would also assess their adequacy and would have sufficient means of enforcement available to it to compel fulfilment of the reporting obligation.

A complaints procedure could allow stakeholders to report to companies their observations on the impacts of company operations. The obligation to introduce a complaints procedure would support the tracking of measures taken, as it would provide an avenue for making companies aware of adverse impact situations that companies themselves have failed to detect or address. The complaints procedure

obligation could require companies to take measures to investigate at least credible reports and, should the report prove warranted, to go on to take measures to prevent, mitigate or bring to an end the arising of the adverse impacts when this is possible with the measures available to the company. Giving stakeholders the opportunity to request from companies further information on measures taken by them, with due account to trade and business confidentiality, could also be considered. The greater the number of obligations associated with the introduction of a complaints procedure, the higher the requirements on the information systems associated with the procedure. Companies' need for human resources to investigate the reports made via the complaints procedure or respond to requests for information will likewise increase. The extent to which companies could make use of the procedures under upcoming whistleblower protection legislation and the related processes should also be separately assessed in this context. Softer tracking tools – reporting, making information publicly available, due diligence plan and complaints procedure – could work well with an obligation in which no specific requirements are imposed on the company's conduct in each scenario. Tracking would generate information on what companies have interpreted the due diligence obligation to require of them. If it were considered appropriate as part of tracking to also evaluate the adequacy of tools implemented, this would require regulation to directly spell out the sufficient standard of operations. Discretion would be highlighted especially in situations where any negligence would be subject to sanctions.

7.4.8 Official supervision

It may be estimated that in order to be effective, regulation would need to be subject to at least some degree of external supervision. Without supervision, it is likely that regulation would deliver no significant added value over the current soft law instruments. At present, the supervision of the corporate due diligence obligation does not fall organically within the remit of any authority in Finland. Since this regulation would represent a new and broad topic for companies, the authority would likely need to provide advice and guidance, which would increase its resource requirements. In practice, the supervisory duties would require establishing a new authority or assigning the duties to an existing authority. When considering the establishment of a new authority, an ombudsman approach could be considered.

The appropriate means of supervision would depend on the content of regulation. If regulation was very specific, supervision could focus on evaluating whether the measures taken are the right ones relative to the detailed obligations laid down in the Act. With more general regulation, it would better serve the purpose to direct supervision to overseeing that companies implement any means of tracking related to the regulation that are softer than a due diligence plan or reporting obligation. The

effectiveness of supervision could suffer if regulation applied to a very large set of companies.

The provisions on supervision would require rules of prioritisation for the authority regarding the allocation of supervision. If a very large number of small enterprises were subject to the regulation, for example, supervision effectiveness might diminish and the supervision might be very randomly allocated. With regard to supervision, it must also be considered whether the role of the authority was active, taking steps on its own initiative, or whether supervision was based on reports made to the authority.

7.4.9 Administrative punitive sanctions as an enforcement tool

Prerequisites for imposing administrative punitive sanctions

In 2018, the Ministry of Justice prepared a proposal for regulatory principles in administrative sanctions. These have since been incorporated into the Law Drafter's Guide.[245] When considering administrative punitive sanctions as an element in the regulation of the corporate due diligence obligation, this consideration must be informed by the said regulatory principles.

When assessing the prerequisites for the introduction of administrative punitive sanctions, the nature of the act or negligence concerned and the relationship between the proposed sanction and other administrative and criminal sanctions should be taken into account. Legislation shall not include provisions on stronger means of guidance and supervision than absolutely required in light of the severity of the breach and other factors to be taken into consideration in each case. In other words, when considering the introduction of administrative punitive sanctions, it must always be assessed if the aims sought with supervisory action could be achieved through more lenient means or through other administrative sanctions. Regulation must be underpinned by a justified need relating to the efficiency and effectiveness of the

[245] Ministry of Justice 2018, Reports and publications 52. Rangaistusluonteisia hallinnollisia seuraamuksia koskevan sääntelyn kehittäminen. Työryhmän mietintö, [Development of legislation on administrative punitive sanctions. Working group report] https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/161352/OMML_52_Rangaistusluonteisia_hallinnollisia_seuraamuksia.pdf?sequence=1&isAllowed=y, s. 20-23. Accessed on 13 January 2022; Lainkirjoittajan opas. Luku 12.10. Hallinnollisten sanktioiden sääntelyperiaatteet [Law Drafter's Guide, Chapter 12.10. Regulatory principles in administrative punitive sanctions], http://lainkirjoittaja.finlex.fi/12-yleislait-ja-eraat-yleiset-saantelyt/12-10/. Accessed on 13 January 2022.

supervision that expressly favours the introduction of the relevant sanction in order to achieve a social aim underlying the system of supervision.[246]

Administrative punitive sanctions are suited especially to situations that involve breaches of sector-specific legislation whose occurrence can be simply established. Regulation shall to a sufficient degree accomplish the general and special prevention required of the system of sanctions. The requirements of proportionality, meanwhile, necessitates an assessment of whether the imposition of sanctions is absolutely necessary in order to protect the underlying object of legal protection. In this respect, it must be assessed if the corresponding objective can be reached by means that interfere less with a fundamental right than criminalising the act. The starting point shall also be for an administrative punitive sanction to be the measure of last resort relative to other administrative sanctions that may be imposed for the same breach.[247]

In the manner required under the principle of legality expressed in section 2, subsection 3 of the Constitution, the provisions on the general grounds for an administrative punitive sanction shall be laid down by an Act, as the imposition of such sanctions involves the exercise of public powers. The provisions on administrative punitive sanctions shall unequivocally indicate the acts or omissions contrary to legislation that may result in the imposition of the sanction. In addition, the acts and omissions subject to sanction must be characterised in the Act so as to specify them. It is especially important for the provisions to provide those subject to regulation with sufficient predictability regarding the imposition of sanctions.[248]

An administrative punitive sanction imposed in the form of a significant pecuniary sanction may be perceived as considerably harsher than a criminal sanction. In these situations, it may be warranted to forego regulation under criminal law for the same breach. When laying down provisions on administrative punitive sanctions, the general rule is to avoid liability regulation that overlaps with the Criminal Code.[249]

An administrative punitive sanction may also have impacts on the freedom to engage in commercial activity or right to pursue a profession. Fundamental rights and the general prerequisites for restricting them must be taken into account also in regulation concerning administrative punitive sanctions. Such prerequisites include the

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[246] Lainkirjoittajan opas, luku 12.10. [Law Drafter's Guide, chapter 12.10].

[247] Lainkirjoittajan opas. Luku 12.10. Hallinnollisten sanktioiden sääntelyperiaatteet [Law Drafter's Guide, Chapter 12.10. Regulatory principles in administrative punitive sanctions], http://lainkirjoittaja.finlex.fi/12-yleislait-ja-eraat-yleiset-saantelyt/12-10/. Accessed on 19 November 2021.

[248] Ibid.

[249] Ibid.

requirements of the acceptability and proportionality of regulation. Under the acceptability requirement for restricting a fundamental rights, a compelling societal need and grounds acceptable with regard to the system of fundamental rights must be put forward for administrative punitive sanctions.[250]

Administrative punitive sanctions as an element of the corporate due diligence obligation

The legislation on the corporate due diligence obligation would involve obligations relating to identifying, preventing, mitigating and bringing to an end adverse human rights and environmental impacts and tracking measures taken. Any administrative punitive sanctions would apply to negligence taking place in these processes.

The imposition of sanctions would clearly be a measure of last resort and would be subject to the condition that the desired outcome was not reached by any other administrative or supervisory means to guide operators. The administrative punitive sanctions would need to be proportionate to the severity of the breaches taking place in the corporate due diligence obligation processes, which likely would necessitate the staggering of the sanctions. When staggering sanctions, account should be taken of both the material nature of the obligation breached relative to the impacts sought with and the severity of the breach itself.

The threshold for laying down provisions on administrative punitive sanctions is high and there may be reservations as to setting them. The prerequisites for the administrative punitive sanctions relating to the due diligence obligation, including the proportionality and acceptability of the sanctions, may be better assessed only once the final content of any regulatory proposal is better known. In any case, the principles in laying down administrative punitive sanctions require regulation to be specific and precise in such a way that the Act clearly specifies the procedures required of a company and that failure to comply with certain procedures would be subject to a sanction. In practice, administrative punitive sanctions may be considered to be linked mainly in order to enforce clear obligations incorporated into the Act, when this is deemed necessary and the situation cannot be addressed by any other means.

Caution must be exercised in setting administrative punitive sanctions also because the obligation at issue would be a new one for companies and its adoption in the first place will require the legislation to include transitional periods. It would be appropriate to consider adding administrative punitive sanctions to the Act only at a later stage,

[250] Constitutional Law Committee report PeVL 23/1997 p. 2.

when first experiences and assessments of its impacts are available and when companies have had enough time to adapt to the requirements of the new legislation.[251] It would also be possible to better dimension any eventual sanctions once the impacts of the new legislation become visible and the manner of companies' compliance with it becomes evident. It should also be noted that even in the absence of specific sanctions for breaching the corporate due diligence obligation, negligence in business may be subject to the provisions on business prohibitions when certain conditions are met.

Imposing sanctions for breach of the corporate due diligence obligation involves case-specific assessment. Breaches may not necessarily be easy to prove, either. In such a case, it might be justified in terms of investigatory powers and the legal protection of the company for this assessment to be carried out by a court of law.[252]

7.4.9 Criminal liability

Any regulation under criminal law would have to meet the prerequisites of the principle of legality under criminal law following from section 8 of the Constitution. Regulation under criminal law is subject to strict prerequisites relating to aspects such as the nature of the regulation as a measure of last resort as well as the necessity and specificity of the regulation, which have already been explained in the foregoing section concerning administrative punitive sanctions.[253] However, criminal sanctions are nonetheless a more powerful tool than administrative punitive sanctions to address any eventual breaches. It may be considered likely that a higher threshold would apply for laying down provisions on criminal liability than provisions on administrative punitive sanctions. Criminalising negligence of the corporate due diligence obligation would first require experiences to accumulate while the regulation is in force before any scope for criminalisation could be assessed in more detail.

[251] Judicial Analysis, p. 92.

[252] Judicial Analysis, p. 91; Ministry of Justice 2018, p. 25-26.

[253] Lainkirjoittajan opas [Law Drafter's Guide], http://lainkirjoittaja.finlex.fi/4-perusoikeudet/4-2/#jakso-4-2-3 ja http://lainkirjoittaja.finlex.fi/12-yleislait-ja-eraat-yleiset-saantelyt/12-9/#top, Chapter 4.2.3 and Chapter 12.9. Accessed on 13 January 2022.

7.4.10 Damages

Under the UN Guiding Principles, a company must provide access to remedial action when causing adverse impacts or contributing to them.

The liability for damage imposed on companies for failing to exercise due diligence would provide parties suffering damage as a result of the companies' operations a chance to receive compensation. A restoration obligation in respect of damage occurred can also in this context be taken as a form of compensation for damage.

In general, the extent of liability for damages is limited by the general tort law principles. If a company was to be ordered liable to pay compensation for damage occurring in its supply chain, this would require that: 1) damage has occurred, 2) the damage was caused by negligence, 3) the damage suffered resulted from the negligence (causal link), and 4) that the damage could be anticipated.

A company cannot be held liable for damage that is completely unanticipated in relation to its operations. The requirement for a causal link between negligence in the company's operations and the damage caused on the one hand and the predictability of the damage on the other would probably lead to a situation in which the company would not be held liable for damage beyond its control or for unanticipated damage.[254]

Liability for damages linked with the corporate due diligence obligation would translate into going against many interpretations currently observed in tort law.

Imposing any liability for damages concerning the corporate due diligence obligation brings under assessment the question of how far along a company's supply chain the liability would extend. Extending a company's liability for damages to damage occurring in the company's supply chain would expand the liability to which companies are currently subject and represent a departure from the current tort law practice concerning the doctrine of separate legal personality. Under tort law, the injured party must show that damage has been caused, that the party causing the damage has shown negligence and that there is a causal link between the negligence and the damage. The burden of proof imposed on the injured party has been held to hamper access to remedial action. When the reversal of the burden of proof or other ways of easing the burden of proof are weighed, consideration should be given to the consequences of extending the scope of a company's liability and the need of the injured party for legal protection.

[254] Judicial Analysis, p. 84.

When considering the scope of the liability for damages and the sharing of the burden of proof, the doctrine of separate legal personality (a factor favouring a high threshold for compensation) can be set against the need to provide those in a vulnerable position with legal protection (a factor in favour of setting the threshold at relatively low level).

The Judicial Analysis concluded that holding a company liable for damage that is entirely beyond its control and/or damage that is difficult to anticipate would not be justified.[255] One option would be to make the liability to compensate for adverse human rights and environmental impacts more limited than the corporate due diligence obligation imposed. For example, the legislation could limit liability for damages to apply only to a company and its controlled corporations. Holding a company directly liable for the action of the enterprises under its control differs from the principle of separate liability of legal persons and from the principle that the party causing the damage is responsible for the damage it has caused. The OECD Guidelines also draw attention to the fact that even though companies should work to prevent or mitigate the adverse impacts arising from their operations, the aim should not be to shift liability from the parties causing the impact to the companies in a business relationship with them.[256]

In the corporate due diligence obligation, any incidents from which liability for damages arises would, for all intents and purposes, involve situations outside Finland. Because of the Rome II Regulation, Finnish legislation as a rule would not be applicable to damage occurring in a third country. The effectiveness of damages regulation in supply chains would require it to be possible to effectively legislate the application of national law in incidents taking place abroad. At the time of drafting of this memorandum, information was not available as to the conditions on which such a choice of laws provision could be incorporated into the Act on the corporate due diligence obligation. These kinds of situations may be anticipated to be exceptional ones. The conditions for such internationally binding legislation would indeed warrant broader separate assessment.

As is the case with administrative or criminal sanctions, also the incorporation of a dimension of compensation for damage in the regulation would appear to require that the content of the obligation is fairly specifically regulated. Liability for damages could arise from negligent breach of such an obligation expressed in detailed terms. In practice, compensation for damage would thus involve a situation where breach of the corporate due diligence obligation, as it is provided in the Act, gives rise to impacts

[255] Judicial Analysis, p. 85

[256] Judicial Analysis, p. 85; OECD Guidelines, II.A.12.

that could be compensated for through payment of damages. In order for liability for damages to arise, there would need to be a causal link between the negligence and the occurred damage. This would mean that not all incidents adverse to human rights and the environment occurring within the operations of a company or its supply chain could be directly covered by the liability for damages. Instead, there would need to be at the very least negligence on the part of the company, which negligence then further causes the said compensable damage.

For the reasons described above, the effectiveness of compensation for damage regulation involves considerable uncertainties and the bar to accessing damages in cases of negligence with the due diligence obligation would be set high. The Judicial Analysis discussed issues concerning the introduction of remedial and compensation obligations with a focus on their scope and the taking of evidence in connection with them. However, the Analysis ended up stating that if s considered appropriate to hold companies legally liable for failing to exercise due diligence, a more detailed examination of questions related to the formulation and limitation of the liability may be called for.[257] The legal prerequisites for regulating liability for damages could not be examined in more depth than in the Judicial Analysis in the context of this assessment memorandum. In order to better set the boundaries for a legal analysis of liability for damages, it would be appropriate for such an analysis to be carried out in a comprehensive manner only after the decision has been made on the kinds of obligations that the corporate due diligence regulation is to contain.

7.5 Summary

7.5.1 Main findings

The Accounting Act (1336/1997) lays down provisions, in line with the EU Financial Statements Directive (Directive 2013/34/EU of the European Parliament and of the Council on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings), on the thresholds of number of employees, turnover and balance sheet total by which companies are categorised as

large undertakings[258], small undertakings[259] and micro-undertakings. The vast majority of the 368,000 companies in Finland are ones employing 0–4 persons.

According to the Structural business and financial statement statistics of Statistics Finland, in 2020 Finland had just under 700 companies with more than 250 employees and just under 1,000 companies with a turnover of more than EUR 40 million. Around half of the companies in Finland with more than 250 employees operate, in the way illustrated in Table 2, in sectors under the Standard Industrial Classification with which at least potentially operations that are salient to the application of the law may be associated. All told, the companies in the Table number just over 60,000 and one fifth of them are larger than micro-undertakings having 0–4 employees. Companies with more than 1,000 employees number 82 in the Table, while in all sectors companies of this kind number 112. The memorandum does not assess in further detail the criteria by which operating in a high-impact sector might be determined and the figures above should be taken as indicative only with regard to high-impact operations.

According to Table 1, which is based on the EU definition of company size[260], there are well over 6,500 large enterprises, well over 5,000 medium-sized enterprises and well over 15,000 small enterprises in Finland. Where the content of the corporate due diligence obligation was limited to apply, in the manner examined in this memorandum, only to cross-border operations, in practice regulation would only oblige companies engaging in import or export. Customs statistics provide a rough estimate of the numbers of companies that carry out cross-border operations in Finland. Table 3 indicates that based on corresponding EU definitions, the number of large import companies is around 2,700 while large export companies number just over 1,400. Import companies that are SMEs number just under 80,000 and export companies that are SMEs just over 16,000. At the time of drafting of this memorandum, data was not available on the number of companies engaging in both import and export and thus counted twice. Nonetheless, it may be estimated that regulation applying only to large companies, for example, would concern around 4,000 companies at most. Regulation applying also to SMEs would considerably

[258] Under section 4c of the Accounting Act, companies which exceed at least two of the following three thresholds are large undertakings: 1) balance sheet total: EUR 20,000,000; 2) net turnover: EUR 40,000,000; c) average no. of employees in the financial year: 250.
[259] Under section 4a of the Accounting Act, companies which exceed no more than one of the following three thresholds are small undertakings: 1) balance sheet total EUR 6,000,000; 2) net turnover EUR 12,000,000; and 3) an average of 50 employees in the financial year.

[260] Commission Recommendation 2003/261/EC concerning the definition of micro, small and medium-sized enterprises.

expand the number of companies subject to regulation, up to an estimated 90,000 at most.

Based on the figures recounted, it may be tentatively observed that the Act's coverage could vary between around 100 companies (over 1,000 employees) to several tens of thousands of companies (all companies active in potentially high-impact sectors or all companies engaging in cross-border operations). The definition of scope of application consequently carries immense weight with regard to the potential impacts of the Act on companies.

The Commission's regulatory proposal, meanwhile, limits application to companies with an average of more than 500 employees and a global turnover of more than EUR 150 million. In addition, regulation would apply to companies with more than 250 employees and a turnover of more than EUR 40 million when they operate in certain high-impact sectors (manufacture of textiles and clothing, agriculture and the manufacture of food products, extraction of mineral resources and manufacture of basic metals). According to Statistics Finland, there are just under 300 companies in Finland with more than 500 employees. Based on Table 2, it may moreover be estimated that according to the Standard Industrial Classification TOL, around 80 companies with more than 250 employees would operate in the said high-impact sectors, wholesale trade included. However, it is difficult to determine precisely the companies operating in high-impact sectors. Across all of the EU, the number of companies falling within the scope of the proposal for a Directive is estimated at around 13,000.

In this assessment memorandum, the impacts of regulation have been most reliably assessed with regard to business impacts while the assessment of human rights and environmental impacts – in the absence of research data – remains uncertain and is largely based on assumptions. The more uncertain the accomplishment of positive human rights and environmental impacts becomes, the longer the progression away from the company along the supply chain, and besides the companies subject to regulation, the impacts depend also on the willingness and capability of supply chain companies to embrace the procedures required of them by the company that is subject to the obligation. The most problematic situations in third countries from the human rights and environmental perspectives may thus largely remain beyond the impacts of regulation, even though its objective is the exact opposite.

Regulation would impose a considerable administrative burden on small companies. Large companies number no more than 6,500 in Finland and all of these do not engage in cross-border operations, which means that the regulatory burden could be eased considerably by limiting the scope of the Act only to large companies. Even though there are uncertainties associated with the human rights and environmental

impacts of regulation, it may be assumed that the most impacts could be achieved expressly with regulation applicable to large companies. Consequently, it would be in keeping with the principle of proportionality to limit regulation to apply only to large companies.

Domestic companies could possibly also benefit from regulation requiring companies to adopt more responsible procedures and steering them towards such procedures. However, more likely than these positive impacts is the risk that at least heavy regulation imposing a large number of obligations would restrict the competitive potential of domestic companies relative to companies that are not subject to similar regulation.

According to the SIHTI study on the human rights performance of Finnish companies, Finnish companies by and large are committed to respecting human rights, at least on a general level. At the practical level, the systematic integration of human rights responsibility and its monitoring as part of their core activities is still largely at an early stage. Finnish companies also publish relatively little information on the realisation of corporate responsibility.[261] Even though there are uncertainties associated with the impacts of regulation, the regulation might serve to discover tools with which to address the shortcomings observed in the SIHTI study. In this context, legislative tools could first and foremost deal with the processes and procedures of impact identification and prevention and e.g. oblige companies to share information about the means they employ and/or to introduce complaints procedures either internally, for employees, or externally.

The legislation on the corporate due diligence obligation will attempt to steer companies towards operational due diligence and to make a difference in the awareness of companies of the impacts of their operations on human rights and the environment as well as their identification of high-risk situations associated with these. The Act can influence these factors in different ways depending on the degree of specificity employed in regulating business and the sanctions linked to the regulation.

Based on the assessment, there are three possible ways of varying intensity to proceed if preparation was to be undertaken on the national regulation of the corporate due diligence obligation. General and more light-handed regulation would strive for allowing companies to choose the ways to implement due diligence that are most appropriate to their operations and would track the measures planned and implemented by companies on the basis of information published by them. Increasing

[261] Tran-Nguyen, Elina & al. (Prime Minister's Office 2021) pp. 92-93.

the degree of detail and the supply chain dimension of regulation would considerably raise the bar of requirements on companies, which could be construed as heavier regulation of companies. Incorporating various kinds of systems of sanctions can additionally introduce to the specific regulation very stringent supervisory elements in the event of breaches. The lighter regulatory approaches may be considered quicker to implement but sparser in impacts. The heavier regulatory approaches involve several matters requiring further examination and the law-drafting on these would take considerably longer.

The national laws enacted in Europe are largely in line with the light regulatory option outlined in the following, whereas the Commission's proposal for a Directive aligns more with the heavier regulation discussed further below.

7.5.2 Light regulation – planned due diligence obligation

Light regulation of the corporate due diligence obligation would be general with regard to the content of the obligation and would include no specific provisions on procedures. The general regulation could be supplemented with an obligation to prepare and publish a due diligence plan indicating how the company in practice plans to implement due diligence as well the results it has achieved. Provisions on reporting obligation, disclosure obligation and/or complaints procedures could be added to this regulation.

The scope of regulation and consequently its impacts may be adjusted depending on whether it was made applicable to small companies. If it was, it would be inconsistent with the principle of proportionality to require them to maintain a similar level of reporting, for example, as large companies, and instead they could be subject to an obligation to keep information on their actions publicly available or to supply these when necessary. The purpose of the obligation would best be served by limiting it to controlled corporations on companies on the first tiers of the supply chain where regulation could best make a difference in matters within companies' direct sphere of influence.

The general obligation would need to be provided with the support of external supervision. However, the duties of the authority could focus on advisory services and, when necessary, taking receipt of reports and supervising that the information required under the Act is provided in these reports or is kept publicly available. The authority could have access to enforcement means in respect of the provision of the

required information. Regulation could be simplified by omitting the reporting requirement and instead requiring only publication of information on measures and restricting the duties of the authorities to the provision of advice.

Even light regulation of the corporate due diligence obligation would cause companies to incur costs. The administrative burden arising from the obligation would increase considerably if small companies were made subject to regulation. This approach could increase awareness of companies' human rights and environmental performance. By contrast, it is uncertain what the impact of increased reporting or higher volume of published information would be on human rights or the environment in third countries.

7.5.3 Medium-level regulation – detailed corporate due diligence obligation

Medium-level corporate due diligence regulation could involve laying down more specific provisions in the Act on the measures required of companies in respect of identifying, preventing, mitigating and bringing to an end their adverse impacts.

It would be most appropriate to limit the detailed procedural obligations to apply only to large companies. However, extending the coverage of the detailed obligations also to small and/or medium-sized companies active in high-impact sectors could also be considered.

Medium-level regulation could regulate reporting, disclosure obligation or establishment of complaints procedures in the same way as under light regulation.

Regulation would involve supervision which could focus on ensuring that the required measures are actually implemented. After a separate assessment, including administrative sanctions in the regulation could be considered at a later date if non-compliance turned out to be an issue.

Greater specificity would clarify regulation towards the companies while at the same time, it could be addressed with more precision whether the measures required under the Act had in fact been implemented "correctly". Regulation would be more targeted if it, or at least the detailed obligations, was limited to large companies and possibly also small companies engaging in high-impact operations,

More detailed procedural rules would likely cause higher compliance costs to be incurred by companies. The level of requirements under regulation and the costs arising could be influenced by means of the supply chain dimension of regulation.

Medium-level corporate due diligence regulation would involve more matters requiring further examination than the light regulatory option. The detailed measures provided in the Act would necessitate an assessment on which measures are necessary and suited to different kinds of companies. Limiting the Act's scope of application to high-impact operations would require defining both high-impact sectors and the manner of determining when a company is active in a high-impact sector. Such definitions may involve legal issues and the industry classification used by Statistics Finland, for example, is ill suited to this kind of determination.

7.5.4 Heavy regulation – corporate due diligence obligation subject to sanctions

Heavy corporate due diligence regulation would start out from the premise of a wider supply chain dimension and broader coverage of companies of different sizes.

Regulation would be detailed and could possibly include provisions on administrative and/or criminal sanctions and/or liability for damages.

Owing to the administrative burden arising from the regulation, it would be appropriate to stagger the obligation by company size.

An obligation extending farther into the supply chain could be used to seek impacts in the environment where the greatest global human rights and environmental risks are present. Then again, there are uncertainties associated with the effectiveness of the obligation in supply chains and its functioning would depend on the willingness and ability of supply chain companies to embrace and commit to the principles of responsibility. While regulation would cause companies to incur high costs, in the absence of research data the results achievable with the regulation remain uncertain. A broad scope of application covering different companies widely could also extend the scope of regulation to companies for which implementation of the due diligence obligation is less than relevant.

Heavy corporate due diligence regulation would require a careful assessment of human rights and environmental impacts so as to justify the costs of regulation. The

use of systems of sanctions and in particular the regulation of liability for damages involve matters that will require extensive further study and examination.

8. Conclusions

8.1 What impacts could be achieved with national regulation?

The core mission of this assessment memorandum is to put into concrete terms the legislative options concerning the corporate due diligence obligation. Assessments of the potential for implementing national legislation and its impacts are presented in the section on conclusions.

All regulatory approaches assessed in this memorandum would require further assessment. Based on the information available at the time of preparing this memorandum, it remains uncertain whether and how effectively regulation could achieve its objectives – identifying, preventing, mitigating, bringing to an end and remedying adverse human rights and environmental impacts caused by company operations. Even though a few European countries have prepared national laws on the corporate due diligence obligation, research data on the experiences in the application of these laws that could be utilised in any national assessment of human rights and environmental impacts is yet to become available.

It is possible that the effectiveness of corporate due diligence legislation, in the absence of currently available research data, would remain at the level of theory. Regulation would be based on the assumption that the obligations would be passed forward in companies' supply chains by means of contracts and processes designed to supervise the enforcement of such contracts. However, the effectiveness of obligations on such client/customer companies in the supply chain would depend on the willingness and ability of the supply chain companies to implement the processes required under the contracts in third countries with systemic problems. It may indeed be concluded that regulation would be more likely to deliver the desired results when it applied only to a company's own operations or its controlled corporations in which a company exercises direct decision-making authority. A great deal of uncertainty thus attaches to the effectiveness of broad supply chain regulation consistent with the UN Principles.

Legislation can influence the process that companies should have in place in order to assess the human rights and environmental impacts of their operations. By fulfilling their obligations, companies could verify that they had indeed acted with due diligence. However, regulation would cause companies to incur costs and it is likely

that relatively speaking, regulation would undermine the international competitiveness of Finnish companies by more than could be offset by the benefits expected to accrue to companies from the regulation.

Obligations imposed on companies would indirectly seek to improve matters relating to people's freedom of association, right to collective bargaining, forced and child labour, pay equity, discrimination, economic, social and cultural human rights, civil and political rights, and also certain environmental protection matters. The regulation of companies has only limited impact potential, however, and it is capable of remedying problems only to a certain extent. As stated in the foregoing, 15% of the world's wage-earners earn less than minimum wage, which results in them working excessively long hours. Heart disease and stroke caused by excessive hours are the single greatest cause of work-related deaths. Nonetheless, there is no internationally recognised consensus on what constitutes a living wage. In the absence of an international foundation, it would be impossible to nationally aim to determine a living wage separately for each country to which a company's operations extend.

With regard to environmental impacts regulation, the challenge lies in the brevity of international environmental instruments relative to existing environmental challenges, the limited references in these instruments to business, and the deficiency of available information on the due diligence implemented by Finnish companies in their cross-border operations. A clearer situational picture of Finnish companies' environmental performance outside Finland's borders, the international instruments available for regulatory purposes and Finnish companies' links to environmental challenges abroad would be needed in order for environmental due diligence to be regulated.

Lighter regulation could be more simply and quickly implemented than heavy regulation including a system of sanctions. Light regulation, too, could to some extent address the shortcomings in company operations raised in the conclusions of the SIHTI project and relating to the identification of human rights impacts, the provision of information on operations, and the use of complaints procedures. Regulation would make it possible to impose on companies obligations that would require e.g. the introduction of processes relating to human right and environmental impact identification, reporting on measures taken and/or complaints procedures for employees or external stakeholders.

These measures could at least to some extent enhance the human rights performance of individual companies at least. The impacts of regulation in the international operating environment would nonetheless be sparse when similar obligations did not apply to non-Finnish companies. With national legislation, obligations boosting their human rights and environmental performance can be imposed on Finnish companies, yet such obligations only have a marginal impact on

global human rights and environmental issues. The national laws implemented by other EU Member States also qualify as lighter regulatory solutions.

8.2 Relationship of national regulation to EU legislation

The Commission proposal for a Directive on corporate sustainability due diligence was published in February 2022. It would only apply to large companies – initially ones with more than 500 employees and a turnover of more than EUR 150 million, and two years after the end of the transposition period of the Directive the scope would be expanded to cover companies with more than 250 employees and a turnover of more than EUR 40 million that operate in certain high-impact sectors. Under the proposal, companies would be made subject to detailed obligations to attend to due diligence throughout the supply chain. Regulation would include the due diligence elements described in this memorandum, i.e. obligations to identify, prevent and mitigate adverse human rights and environmental impacts and, when necessary, to bring them to an end. The obligations would call for extensive contract management on the part of companies relative to their suppliers and would oblige companies, as a last resort, to disengage from operations that cause severe adverse impacts. Regulation would also include the obligation to prepare a due diligence policy that should be monitored and annually updated. The proposal for a Directive also includes regulation on the responsibility of corporate directors as well as sections on supervisory authorities, liability for damages and sanctions. By nature, the Commission proposal is comparable to the heavier regulatory option inclusive of sanctions assessed in this memorandum.

The final content of the EU legislation will be determined in the negotiations conducted after the publication of the Commission proposal. The negotiations between Member States may be estimated to take at least a year, as the Member States likely hold highly disparate views as to the desirable content of regulation. The negotiations with the European Parliament to be initiated once a general approach has been reached in the Council among Member States may be expected to prove challenging. Seeking to move quickly ahead with national legislation would likely lead to a situation where, at the time of submission of the national legislative proposal, its relationship to final EU legislation would as yet remain a mystery. It is possible that national law-drafting would veer towards a guessing game as to the likely content of the negotiations on the EU legislation. It would be difficult for Parliament to take a stand on the national legislative proposal when an EU proposal on the same topic that is to have a subsequent impact on the content of national legislation was pending. Companies must be able to prepare for regulation and the drafting of national

legislation would require companies to be given a sufficient transitional period for making their processes compliant before the regulation entered into force. During this period, the content of the EU legislation would also be specified in the negotiations, which may end up in an outcome differing from the national regulation. Cross-regulation would likely cause companies to incur extra costs when they had to adjust their operations to alternating requirements. Risks may also be associated with the possibility that the EU negotiations bring about changes in the scope of the regulation or the applicable international instruments that are no longer in line with the national legislation. In such a case, domestic regulation would spell a weaker competitive position for Finnish companies relative to companies in other EU Member States. Regulation that puts a higher regulatory burden on domestic than other companies shall, as a rule, be deemed a competitive disadvantage, and it also reduces Finland's attractiveness as a location for establishing a business.

The transposition period put forward in the Commission proposal for a Directive is two years from the entry into force of the Directive, four years in respect of the companies specified in the Directive active in high-impact sectors. It is likely that any national regulation would be in force for only a very short time before EU legislation necessitated its amendment. If the decision is nonetheless to go with national regulation, it could also be possible that despite the national legislation enacted first, Finnish companies would nonetheless hold out for the EU legislation to be specified and transposed into national legislation. In such a case, the national legislation would not be capable of effectively influencing on company operations and any impacts of the Act would remain limited. Besides the proposal on corporate sustainability due diligence, the Commission, in the context of the European Green Deal, has issued or is in the process of issuing several sector-specific regulatory proposals including a due diligence dimension. These proposals concern batteries, combating deforestation, sustainability reporting and sustainable products. EU legislation covering conflict minerals and the reporting of non-financial information is already in force. Any national corporate due diligence obligation should be assessed also against this evolving regulatory framework. National regulation put in place early on could entail risks of inconsistency with this EU legislation currently under preparation and it would also increase the risk of overlapping regulation as well as the need to reconcile the various nationally implemented obligations.

In terms of number and size, Finnish companies are small players in the international business arena. The volume of orders of many Finnish operators is likely to be low compared to the overall capacity of their foreign suppliers. This will have an effect on how obligations imposed in Finland are passed on in supply chains: with a low volume of orders, it is unlikely that a Finnish customer could have any significant effect on supplier practices. The impacts of regulation of Finnish companies in international

supply chains would be very limited when the point of comparison is obligations applicable to all EU companies.

One of the shared advantages of EU companies is their equal regulatory environment. In terms of the functioning of the internal market, it would be less than appropriate for the different Member States to land down on regulatory approaches of very different content and scope while waiting on EU legislation.

8.3 Key matters calling for further assessment

The preparation of national regulation would require more detailed examination of a number of concepts relating to the corporate due diligence obligation. The key themes would relate to the regulation's human rights and environmental impacts and international instrument foundation as well as the barriers to trade that it may constitute. In addition to the foregoing, the heavier regulatory approaches would also require further assessment of the imposition of administrative sanctions and criminal liability and separate assessment of the special regulation concerning liability for damages. The topics for further examination are much the same regardless of whether the regulation was based on national or EU legislation.

The first priority would be to expand the knowledge base on the regulation. This memorandum finds that especially those impacts sought with regulation remain uncertain. Drafting the legislation would require further assessment of its human rights and environmental impacts in third countries so that the costs arising to companies from regulation could be justified. The heavier the obligation imposed, the more administrative costs it would cause to companies and the greater the degree of detail to which it should be possible to reliably assess the anticipated impacts of regulation. To date, experience with applying the legislation is only available from France and its studies on the legislation have until now mainly concerned the actions of French companies rather than the effects of these actions in third countries. A more detailed assessment of human rights and environmental impacts would most appropriately be carried out as a separate third-party examination, especially when heavier regulation extending broadly into the supply chain is considered. Such an examination might face the challenge of data availability and applicability. It should therefore be carefully designed and commissioned so that its findings could be utilised in law-drafting.

With regard to business impacts, a more in-depth analysis of adverse competitive impacts relative to potential competitive advantages would also be necessary. When

regulation was desired to be limited only to high-impact sectors in respect of e.g. small companies, this would require a justified assessment as to which are the high-impact sectors to be covered and when a company would be deemed to be active in such a sector.

The corporate due diligence legislation would build on individual obligations derived from international instruments that companies would be required to implement in their own operations and in relations with their business partners. Companies would have to identify, prevent, mitigate and bring to an end these adverse human rights and environmental impacts deriving from international instruments and also track the effectiveness of their actions. In practice, such legislation would seem to require that certain international instruments or parts thereof, as applicable, would be incorporated into regulation e.g. by listing the instruments and/or the relevant articles thereof in an Annex to the Act or in a separately issued Decree.

All regulatory options would thus secondly require detailed assessment of which international instruments or parts thereof would be relevant to regulation and which not. Such an assessment could not be carried out in the context of this assessment memorandum. Instead, it would require the formulation of independent views based on expertise in various fields as to the applicability of the international instrument base concerning both human rights and the environment. In respect of environmental instruments in particular, it is challenging to assess the extent to which they are suited to application to business.

A third topic where further assessment would be absolutely necessary would be the barriers to trade possibly arising from regulation. This assessment should arrive at an opinion as to whether the different regulation of cross-border and domestic trade and the higher costs caused by regulation to companies engaging in operations abroad could be considered a barrier to trade or a protectionist and competition-distorting measure when companies active only in the domestic market are exempt from such costs.

As observed in this memorandum, there is a high legal threshold to imposing administrative sanctions and criminal liability, and the requirements for their imposition is tied to clear-cut obligations and failure to comply with them. The due diligence obligation would represent a wholly new statutory obligation on companies. The necessity of system of sanctions and fulfilment of the conditions for imposing one could be assessed with much greater confidence once experiences of application of the regulation had been accumulated. These experiences could provide the foundation for determining, for example, whether the sanctions met the requirements of measure of last resort and proportionality. At least the harshest administrative punitive sanctions involving prohibitions or penalty payments or criminal liability based

on the national regulation would likely require more specific experience of the impacts of the new legislation to have been gathered.

The liability for damages to be linked to the corporate due diligence obligation would likely translate into regulation making a Finnish company liable to compensate for compensable damage caused by action or inaction on the part of another company in a third country. Such regulation would represent a departure from the current practice of business liability for damages where a company is liable only for damage it has itself caused. Going against the doctrine of separate legal personality and expanding Finnish tort law provisions to apply to damage occurring abroad would require an extensive independent analysis of whether such regulation would even be possible in the first place. Such emphasis on the extraterritorial nature of the regulation – impact in third countries – would also increase the need for further assessment of human rights and environmental impacts. Since Finland has no previous experience with extraterritorial regulation of this kind, further assessment should also examine the obligation under section 22 of the Constitution to safeguard fundamental rights relative to cross-border situations and the obligations applicable to them.

The principles observed in tort law, for example the causal connection between the breach of the statutory obligation and the damage as well as the degree of negligence required in order for liability to arise would raise the threshold for imposing liability for damages very high. Requirements concerning any remedial action, for example, could only apply to damage caused by failure to fulfil a due diligence obligation laid down in law (e.g. relating to the identification process). The causal connection to an adverse human rights or environmental impact occurring in the supply chain may remain thin even if the impact had been caused by a company operating in the third country that is a part of the supply chain of a Finnish company. Verifying the appropriateness of liability for damages regulation would indeed require an even more detailed analysis also of the kinds of situations where regulation could make a real difference in addressing the issues.

The official supervision of regulation would require separate deliberations on the range of tools available to the authority, which should be proportionate to the content of regulation. Since the supervision of the corporate due diligence obligation does not fall organically within the remit of any current authority in Finland, either a new authority would need to be established or the duties assigned to an existing authority. The extent of the duties would depend on the content of regulation and the resources required could hence be estimated only once this content had been clarified. Where the legislation assigned supervisory duties to an authority, the associated financial matters should be determined in the context of the law-drafting and the relevant legislation proposal submitted to Parliament as a finance Act. In addition to

consideration of supervisory duties, decisions would also be required on choice of authority and providing budgetary financial resources to the chosen authority.

8.4 Other considerations in law-drafting

The legislation should be required to exhibit such clarity and precision that the measures required of companies can be identified on its basis. The requirements of precision in regulation are underscored in situations where sanctions would be linked to failure to comply with the obligations. Regulation should make it very clear what is expected of companies and conversely, what kind of conduct on the part of companies may lead to sanctions. Then again, as stated in the foregoing, due diligence is materially context-specific and it would be appropriate to incorporate in the due diligence obligation and element of proportionality, meaning that the content of the obligation could vary depending on e.g. supply chain tier and the size of the company subject to the due diligence obligation. It is very difficult to determine obligations suited to all of these differing situations and then lay down provisions in law to cover them in detail.

Compliance costs would increase when the content of the obligation was expressed in more detailed terms. For small companies in particular, the costs relative to turnover may become a substantial consideration. It would be appropriate to include limitations in the regulation so as to prevent unreasonable costs being forced on small companies. A more detailed reporting obligation, for example, would better serve its purpose when applying only to larger companies.

Regardless of the specificity of the provisions laid down on the main obligations under the Act – identifying, preventing, mitigating, bringing to an end and remedying where possible adverse human rights and environmental impacts – the content of the adverse human rights and environmental impacts concerned would be determined on the basis of the international instruments governing these. This means that companies would have to be familiar with both the content and the interpretative practice of these instruments. In practice, it is highly unrealistic to believe that smaller companies in particular would have the capacity to engage in the regular monitoring this would require. Any regulation would therefore require the authorities to provide advice and guidance on the content of the regulation and the relevant procedures.

The UN Principles do not provide an exhaustive list of the relevant human rights instruments ("human rights understood, at a minimum, of those expressed in...")[262]. Such a non-exhaustive approach would require capabilities and time on the part of companies to comprehend and keep up with the websites and decision-making of UN expert bodies. This, in turn, would put a considerable administrative burden on companies and would be inconsistent with the expectations of fluency, specificity and precision in legislation. One alternative would be for an authority to maintain a list of the applicable instruments and their interpretations, yet keeping up even with such a list gives rise to extra administrative burden. A more realistic option could be a clear listing of human rights and environmental instruments in the legislation, for example in such a way that the listing could be updated by Decree when necessary.

Regulatory effectiveness advocates external supervision. When regulation is expressed in very general terms, supervisory practice would come to occupy an important role in determining the content of the obligation. However, a reserved approach should be taken towards e.g. an authority in an advisory capacity being capable of providing guidance, on the basis of very general regulation, as to what kind of conduct fulfilled the requirements under law.

In the negotiations on EU legislation, Member States can be presumed to raise similar questions to those observed in this memorandum. Finding answers to these questions may prove a time-consuming endeavour. Regulation of the liability of corporate directors included in the proposal for a Directive may also be anticipated to become a topic of contention in the negotiations among Member States. Since the instrument is a proposal for a Directive, the legal solutions to the regulatory challenges detected will ultimately have to be discovered in its national transposition. It might be wise to seek to influence the preparations of the EU legislation towards making regulation sufficiently detailed and precise so that e.g. administrative sanctions could be linked to it. Limited reliance may also be placed on the ability of national authorities in an advisory capacity to address ambiguous issues relating to any eventual legislation expressed in general terms. Regulation should moreover ensure that the applicable international instruments or parts thereof are such by nature that they can be legally binding on companies.

[262] UN Principles, Principle II. A 12, p. 14.

9. Possible further measures

Decision-making on further measures must address the question of whether Finland would aim to implement national corporate due diligence regulation even before the EU legislation enters into force. The limited impact potential of national regulation along with the regulatory burden on companies and possible deterioration of companies' competitive standing advocate a measured approach to any rapid drafting of national regulation and proceeding with the regulation only at a later date, in a manner consistent with EU legislation.

National law-drafting on the corporate due diligence obligation involves a number of questions that would require much closer examination and assessment. In particular, it would be necessary to specify the regulatory impact assessment with regard to the likelihood of achievement of the human rights and environmental impacts sought with regulation. This impact assessment could best be specified by means of a separate external study. The basic premise is that the broader the regulation that is to be prepared, the clearer a picture of regulatory impacts is required and the greater the degree of detail to which effectiveness must be assessed.

Owing to the scope of the questions needing more specific assessment it is likely that sufficiently comprehensive answers to these could not be obtained in law-drafting to a swift timeframe. Regardless of regulatory approach, the corporate due diligence obligation involves a number of multidimensional details that it was not possible to address in any great depth in this assessment. The preparation of regulation would require debate on the details of the regulation as well as expert assistance to support preparation. Moreover, national law-drafting would need to examine also sets of matters excluded from the scope of this assessment memorandum, such as the option of no action and its impacts as well as the alternative means of self-regulation. The proposal for a Directive aligns most closely with the heavier regulatory option inclusive of sanctions outlined in this memorandum. Consequently, the proposal for a Directive also involves many similar legal questions as raised in this memorandum in respect of the heavier regulatory approaches. It would be more appropriate to attempt to locate solutions to these legal issues within the framework of EU negotiations on the content of the Directive and further in the context of subsequent national implementation.

Any regulation concerning official supervision would require the legislative proposal to be submitted in synch with the timeframes for finance Acts. This time constraint means there would only be a limited amount of time available for law-drafting in the current Government term and it is possible that owing to the many questions yet

requiring further assessment, the drafting could not in all respects be accomplished in the manner required under proper law-drafting principles.

The drafting of legislation on the heavier option in particular, involving numerous detailed procedural provisions, supply chain liability issues, damages and sanctions, would involve a substantial need for further study and examination, and a law-drafting mandate of this kind could not be expected to move forward with any considerable speed. Since the obligation would be wholly new to companies, the option should be considered that sanctions and the potential for implementing the liability for damages in particular would be assessed separately and that these would be incorporated into the regulation only at a later date, if at all.

When the aim is a swift regulatory solution, it would not be possible to include in the regulation any hard administrative punitive sanctions or liability for damages, and regulation overall would need to be much more general in nature. Lighter regulation could be based on a general obligation to identify, prevent, mitigate and bring to an end adverse human rights impacts, and companies would be obliged to provide information firstly on how they plan to implement the due diligence obligation and secondly on the measures they have actually implemented. The key significance of such lighter regulation would lie in that companies would be obliged to assess the impacts of their operations in more detail than before and that information on measures taken by companies would be better available than earlier. Lighter regulation could be used in an attempt to influence the operations of at least some of the companies where the SIHTI study on the human rights performance of Finnish companies, for example, found there to be shortcomings. Based on the information available, it is uncertain if lighter regulation is effective in actual human rights or environmental issues, and in any case, the impacts would remain quite marginal in the global business environment.

The national regulation of the corporate due diligence obligation could be implemented, yet preparation will involve choices as to the kind of legislation desired and the timeframe to which the relevant government proposal could be prepared. Owing to the requirements applicable to law-drafting, any deficiencies in the preparation of the government proposal could ultimately lead to approval of the proposal in Parliament being uncertain or delayed when the proposal needed to be supplemented. In theory, a legislative proposal on a lighter regulatory approach could be drafted with around six months' preparation, depending on the extent of the impact assessments to be performed. A heavier regulatory approach would require considerably broader further analysis and realistically speaking, preparing a government proposal on such an approach would take around two years at the least. Heavier and more detailed regulation would likely also prove more difficult to reconcile with pending EU legislation concerning corporate sustainability due diligence and

other elements of due diligence. This, in turn, would increase the risk of legislation with inconsistent content.

This assessment memorandum is premised on a national obligation applying to Finnish companies' cross-border operations. If due diligence legislation were made to apply also to operations in Finland, the necessity of the new legislation would have to be evaluated first by determining its relationship with all other regulation of domestic operations that interfaces with human rights and the environment. This would require that the law-drafting mandate build on comprehensive judicial analyses covering the various sectors of legislation. At least 18 months should be set aside for the preparation of such analyses. The analyses would have to be made available before any law-drafting project proper was launched so that the prerequisites for the project could be assessed against an adequate knowledge base.

Annex 1. Possible objects of legal protection

- Conventions of the International Labour Organization ILO:
  - No. 29: Forced Labour Convention (1930)
    - Government proposal HE 63/1934[263], Act 373/1935, Treaty Series 44/1935, ratification registered on 13 January 1936, entry into force 13 January 1937.
  - Protocol of 2014 to Convention No. 29 (Forced Labour)
    - Government proposal HE 69/2016, Act 126/2017, Treaty Series 29/2017[264], ratification registered on 27 January 2017, entry into force 21 January 2018.
  - No. 87: Freedom of Association and Protection of the Right to Organise Convention, 1948

[263] Hallituksen esitys Eduskunnalle eräiden kansainvälisen työkonferenssin vuosina 1930–1933 hyväksymien sopimusten ratifioimisesta [Government proposal to Parliament on the ratification of certain Conventions adopted by the International Labour Conference in 1930–1933], https://www.eduskunta.fi/pdf/HE/HE63-1934.pdf. Accessed on 18 January 2022.

[264] Hallituksen esitys eduskunnalle pakollista työtä koskevaan sopimukseen liittyvän pöytäkirjan hyväksymisestä sekä laiksi pöytäkirjan lainsäädännön alaan kuuluvien määräysten voimaansaattamisesta [Government proposal to Parliament on adopting the Protocol to the Forced Labour Convention and on an Act to implement the provisions of the Protocol in the field of legislation] (HE 69/2016), https://www.eduskunta.fi/FI/vaski/KasittelytiedotValtiopaivaasia/Sivut/HE_69+2016.aspx. Accessed on 18 January 2022.

- Government proposal HE 58/1949[265], Act 858/1949, Treaty Series 45/1949[266], ratification registered on 20 January 1950, entry into force 20 January 1951.

➢ No. 98: Right to Organise and Collective Bargaining Convention, 1949

- Government proposal HE 19/1951[267], Act 627/1951, Treaty Series 32/1951[268], ratification registered on 22 December 1951, entry into force 22 December 1952.

➢ No. 98: Right to Organise and Collective Bargaining Convention, 1949

- Government proposal HE 19/1951[269], Act 627/1951, Treaty Series 32/1951[270], ratification registered on 22 December 1951, entry into force 22 December 1952.

➢ No. 100: Equal Remuneration Convention, 1951

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[265] Hallituksen esitys Eduskunnalle Kansainvälisen työjärjestön yleisen konferenssin kolmannellakymmenelläensimmäisellä istuntokaudellaan vuonna 1948 hyväksymän, ammatillista järjestäytymisvapautta ja ammatillisen järjestäytymisoikeuden suojelua koskevan kansainvälisen sopimuksen hyväksymisestä [Government proposal to Parliament on adopting the international Freedom of Association and Protection of the Right to Organise Convention adopted by the General Conference of the International Labour Organisation in its Thirty-first session in 1948] (HE 58/1949), https://www.eduskunta.fi/pdf/HE/HE58-1949.pdf. Accessed on 18 January 2022.

[266] Freedom of Association and Protection of the Right to Organise Convention, 1948 https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312232. Accessed on 18 January 2022.

[267] Hallituksen esitys Eduskunnalle koskeva Kansainvälisen työkonferenssin kolmannellakymmenellätoisella istuntokaudellaan vuonna 1949 hyväksymiä sopimuksia ja suosituksia [Government proposal to Parliament on Conventions and Recommendations adopted by the International Labour Conference in its Thirty-second session in 1949] (HE 19/1951), https://www.eduskunta.fi/pdf/HE/HE19-1951%20.pdf. Accessed on 18 January 2022.

[268] Right to Organise and Collective Bargaining Convention, 1949 (No. 98), https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C098. Accessed on 18 January 2022.

[269] Hallituksen esitys Eduskunnalle koskeva Kansainvälisen työkonferenssin kolmannellakymmenellätoisella istuntokaudellaan vuonna 1949 hyväksymiä sopimuksia ja suosituksia [Government proposal to Parliament on Conventions and Recommendations adopted by the International Labour Conference in its Thirty-second session in 1949] (HE 19/1951), https://www.eduskunta.fi/pdf/HE/HE19-1951%20.pdf. Accessed on 18 January 2022.

[270] Right to Organise and Collective Bargaining Convention, 1949, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C098. Accessed on 18 January 2022.

- Government proposals HE 104/1952[271], HE 47/1962[272], Act 128/1963, Treaty Series 9/1963[273], ratification registered on 14 January 1963, entry into force 14 January 1964.

➢ No. 105: Abolition of Forced Labour Convention, 1957

- Government proposal HE 39/1959[274], Act 244/1960, Treaty Series 17/1960[275], ratification registered on 27 May 1960, entry into force 27 May 1961.

➢ No. 111: Discrimination (Employment and Occupation) Convention, 1958

[271] Hallituksen esitys Eduskunnalle, joka sisältää tiedonannon niistä sopimuksista ja suosituksista, mitkä Kansainvälinen työkonferenssi hyväksyi 34. istuntokaudellaan vuonna 1951 [Government proposal to Parliament containing a communication on the Conventions and Recommendations adopted by the International Labour Conference in its Thirty-fourth session in 1951] (HE 104/1952), https://www.eduskunta.fi/pdf/HE/HE104-1952.pdf. Accessed on 18 January 2022.

[272] Hallituksen esitys Eduskunnalle Kansainvälisen työkonferenssin 34. istuntokaudellaan vuonna 1951 hyväksymän samapalkkaisuussopimuksen hyväksymisestä [Government proposal to Parliament on adopting the Equal Remuneration Convention adopted by the International Labour Conference in its Thirty-fourth session] (HE 47/1962), https://www.eduskunta.fi/pdf/HE/HE47-1962.pdf. Accessed on 18 January 2022.

[273] Equal Remuneration Convention (1951) No. 100, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_Ilo_Code:C100. Accessed on 18 January 2022.

[274] Hallituksen esitys Eduskunnalle koskeva Kansainvälisen työkonferenssin 40. istuntokaudellaan vuonna 1957 hyväksymiä sopimuksia ja suosituksia [Government proposal to Parliament on Conventions and Recommendations adopted by the International Labour Conference in its Fortieth session in 1957 (HE 39/1959), https://www.eduskunta.fi/pdf/HE/HE39-1959.pdf. Accessed on 18 January 2022.

[275] Abolition of Forced Labour Convention, 1957 (No. 105), https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C105. Accessed on 18 January 2022.

- Government proposals HE 57/1961[276], HE 94/1969[277], year of ratification and Act 831/1970, Treaty Series 63/1970[278], ratification registered on 23 April 1970, entry into force 23 April 1971.

➢ No. 138: Minimum Age Convention, 1973

- Government proposal HE 113/1974[279], year of ratification and Act 1975, 1060/1976, Treaty Series 87/1976[280], ratification registered on 13 January 1976, entry into force 13 January 1977.

➢ No. 182 Worst Forms of Child Labour Convention, 1999

- Government proposal HE 170/1999, year of ratification and Act 1999, 300/2000, Treaty Series 16/2000[281], ratification registered on 17 January 2000, entry into force 17 January 2001.

UN instruments:

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[276] Hallituksen esitys Eduskunnalle koskeva Kansainvälisen työkonferenssin 42. istuntokaudellaan vuonna 1958 hyväksymiä sopimuksia ja suosituksia [Government proposal to Parliament on Conventions and Recommendations adopted by the International Labour Conference in its Forty-second session in 1958 (HE 57/1961), https://www.eduskunta.fi/pdf/HE/HE57-1961.pdf. Accessed on 18 January 2022.

[277] Hallituksen esitys Eduskunnalle Kansainvälisen työkonferenssin vuonna 1958 hyväksymän työmarkkinoilla ja ammatin harjoittamisen yhteydessä tapahtuvaa syrjintää koskevan yleissopimuksen n:o 111 hyväksymisestä [Government proposal to Parliament on adopting the Discrimination (Employment and Occupation) Convention 1958(No. 111) adopted by the International Labour Conference] (HE 94/1969), https://www.eduskunta.fi/pdf/HE/HE94-1969.pdf. Accessed on 18 January 2022.

[278] Discrimination (Employment and Occupation) Convention, 1958, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEX-PUB:12100:0::NO::P12100_ILO_CODE:C111. Accessed on 18 January 2022.

[279] Hallituksen esitys Eduskunnalle koskeva Kansainvälisen työkonferenssin 58. istuntokaudellaan vuonna 1973 hyväksymiä sopimuksia ja suosituksia [Government proposal to Parliament on Conventions and Recommendations adopted by the International Labour Conference in its Fifty-eighth session in 1973] (HE 113/1974), https://www.eduskunta.fi/pdf/HE/HE113-1974.pdf. Accessed on 18 January 2022.

[280] Minimum Age Convention, 1973 (No. 138), https://www.ilo.org/dyn/normlex/en/f?p=normlex-pub:12100:0::no::P12100_ilo_code:C138. Accessed on 18 January 2022.

[281] Hallituksen esitys eduskunnalle 87. Kansainvälisen työkonferenssin hyväksymän lapsityön pahimpien muotojen kieltämistä ja välittömiä toimia niiden poistamiseksi koskevan yleissopimuksen hyväksymisestä [Government proposal to Parliament 87. On adopting the Worst Forms of Child Labour Convention, 1999 adopted by the International Labour Conference] (HE 170/1999), https://www.eduskunta.fi/FI/Vaski/sivut/trip.aspx?triptype=ValtiopaivaAsiat&docid=he+170/1999. Accessed on 18 January 2022.

- International Covenant on Civil and Political Rights (ICCP)[282]
  - The Covenant and the Protocol entered into force in respect of Finland on 23 March 1976: Treaty Series 7/1976[283]
  - Asetus KP-sopimuksen voimaansaattamisesta [Decree on the enactment of ICCP]: Treaty Series 8/1976[284].
- International Covenant on Economic, Social and Cultural Rights (ICESC)[285];
  - Asetus TSS-sopimuksen voimaansaattamisesta [Decree on the enactment of ICESC]: Treaty Series 6/1976[286].

International environmental instruments:

- Minamata Convention on Mercury[287];
- Stockholm Convention on Persistent Organic Pollutants[288]

---

[282] International Covenant on Civil and Political Rights, https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights. Accessed on 18 January 2022.

[283] Laki kansalaisoikeuksia ja poliittisia oikeuksia koskevan kansainvälisen yleissopimuksen eräiden määräysten hyväksymisestä [Act on the adoption of certain provisions of the International Covenant on Civil and Political Rights] (7/1976), https://www.finlex.fi/fi/sopimukset/sopsteksti/1976/19760007/19760007_1. Accessed on 18 January 2022.

[284] Asetus kansalaisoikeuksia ja poliittisia oikeuksia koskevan kansainvälisen yleissopimuksen sekä siihen liittyvän valinnaisen pöytäkirjan voimaansaattamisesta [Decree on the enactment of the International Covenant on Civil and Political Rights and the associated Optional Protocol] (8/1976), https://www.finlex.fi/fi/sopimukset/sopsteksti/1976/19760008. Accessed on 18 January 2022.

[285] International Covenant on Economic, Social and Cultural Rights, https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights. Accessed on 18 January 2022.

[286] Asetus taloudellisia, sosiaalisia ja sivistyksellisiä oikeuksia koskevan kansainvälisen yleissopimuksen voimaansaattamisesta [Decree on the Enactment of the International Covenant on Economic, Social and Cultural Rights] (6/1976), https://www.finlex.fi/fi/sopimukset/sopsteksti/1976/19760006. Accessed on 18 January 2022.

[287] Minamata Convention on Mercury, https://treaties.un.org/doc/Treaties/2013/10/20131010%2011-16%20AM/CTC-XXVII-17.pdf. Accessed on 19 November 2021.

[288] Tasavallan presidentin asetus pysyviä orgaanisia yhdisteitä koskevan Tukholman yleissopimuksen voimaansaattamisesta [Decree of the President of the Republic on enforcing the Stockholm Convention on Persistent Organic Pollutants] (16.4.2004), http://www.pops.int/TheConvention/Overview/TextoftheConvention/tabid/2232/Default.aspx. Accessed on 19 November 2021.

- Basel Convention on the Control of Transboundary Movements of hazardous Wastes and Their Disposal[289].

[289] Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, http://www.basel.int/TheConvention/Overview/TextoftheConvention/tabid/1275/Default.aspx. Accessed on 19 November 2021.

References

Abolition of Forced Labour Convention, 1957, https://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_ILO_CODE:C105. Accessed on 18 January 2022.

Accounting Act (1997/1336)

Act on Corporate Due Diligence Obligations for the Prevention of Human Rights Violations in Supply Chains, Section 1 Scope of application, https://www.bmas.de/SharedDocs/Downloads/DE/Internationales/act-corporate-due-diligence-obligations-supply-chains.pdf;jsessionid=22F16C5217CC3AAB13034E3AE1580176.delivery1-replication?__blob=publicationFile&v=3. Accessed on 18 November 2021.

Amfori BSCI: Membership fees for ordinary members, https://www.amfori.org/sites/default/files/amfori-membership-fees.pdf. Accessed on 30 November 2021.

Asetus kansalaisoikeuksia ja poliittisia oikeuksia koskevan kansainvälisen yleissopimuksen sekä siihen liittyvän valinnaisen pöytäkirjan voimaansaattamisesta [Decree on the enactment of the International Covenant on Civil and Political Rights and the associated Optional Protocol] (8/1976), https://www.finlex.fi/fi/sopimukset/sopsteksti/1976/19760008. Accessed on 18 January 2022.

Asetus taloudellisia, sosiaalisia ja sivistyksellisiä oikeuksia koskevan kansainvälisen yleissopimuksen voimaansaattamisesta [Decree on the Enactment of the International Covenant on Economic, Social and Cultural Rights] (6/1976), https://www.finlex.fi/fi/sopimukset/sopsteksti/1976/19760006. Accessed on 18 January 2022.

Basel Convention on the Control of Transboundary Movements of hazardous Wastes and Their Disposal, http://www.basel.int/TheConvention/Overview/TextoftheConvention/tabid/1275/Default.aspx. Accessed on 19 November 2021.

CDP: 2% of companies worldwide worth $12 trillion named on CDP's A List of environmental leaders (7 December 2021), https://www.cdp.net/en/articles/media/2-percent-of-companies-worldwide-worth-12-trillion-named-on-cdps-a-list-of-environmental-leaders. Accessed on 7 December 2021.

CDP: The A List 2021, https://www.cdp.net/en/companies/companies-scores. Accessed on 7 December 2021.

Commission Recommendation concerning the definition of micro, small and medium-sized enterprises (2003/361(EC).

Committee on Economic, Social and Cultural Rights, Statement on the Obligations of States Parties regarding the Corporate Sector and Economic, Social and Cultural rights' E/C.12/2011/1 (2011) 5.

Constitutional Law Committee of Parliament report PeVL 23/1997, p. 2/II.

Constitutional Law Committee of Parliament report PeVM 25/1994.

de Groen et al. (European Commission, 2020): Study on the Non-Financial Reporting Directive. Final report, https://op.europa.eu/en/publication-detail/-/publication/1ef8fe0e-

98e1-11eb-b85c-01aa75ed71a1/language-en, s. 61–62. Accessed on 30 November 2021.

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C111. Accessed on 18 January 2022.

Ecovadis: Plans and pricing, https://ecovadis.com/plans-pricing/. Accessed on 30 November 2021.

EFRAG: EFRAG invited to contribute immediately to the elaboration of draft EU sustainability reporting standards (ESRS), https://www.efrag.org/News/Project-515/EFRAG-invited-to-contribute-immediately-to-the-elaboration-of-draft-EU-sustainability-reporting-standards-ESRS. Accessed on 17 November 2021.

Equal Remuneration Convention (1951)https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_Ilo_Code:C100. Accessed on 18 January 2022.

Ernst & Young Oy: Helminen Sakari & al. (Ministry of Economic Affairs and Employment, 2020): Legal Analysis on the Corporate Social Responsibility Act, http://urn.fi/URN:ISBN:978-952-327-553-9. Accessed on 24 November 2021.

European Commission: Annex to the Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and Amending Directive (EU) 2019/1937 (COM(2022) 71 final – annex), https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CONSIL:ST_6533_2022_ADD_1&from=EN. Accessed on 28 February 2022.

European Commission: Corporate sustainability reporting, https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en. Accessed on 17 November 2021.

European Commission: Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 (COM/2022/71 final), https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52022PC0071. Accessed on 28 February 2022..

European Commission: Questions and Answers on new rules for deforestation-free products, https://ec.europa.eu/commission/presscorner/detail/en/qanda_21_5919. Accessed on 10 December 2021.

European Commission: Sustainable Finance, https://ec.europa.eu/info/business-economy-euro/banking-and-finance/sustainable-finance_en. Accessed on 10 December 2021.

Evaluation de la mise en œuvre de la loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre, (Ministère de l'Économie et des Finances 2020), https://www.economie.gouv.fr/files/files/directions_services/cge/devoirs-vigilances-entreprises.pdf. Accessed on 3 December 2021.

Federal Ministry of Labour and Social Affairs: Act on Corporate Due Diligence in Supply Chains, https://www.bmas.de/EN/Services/Press/recent-publications/2021/act-on-corporate-due-diligence-in-supply-chains.html. Accessed on 18 November 2021.

Finnfund (14 January 2019): Finnfund's human rights statement is ready, https://www.finnfund.fi/en/news/finnfunds-human-rights-statement-is-ready/. Accessed on 16 November 2021.

Finnvera (17 December 2019): Being responsible is part of our clients' success – Finnvera reforms the environmental and social risk management of the financing operations, https://www.finnvera.fi/eng/finnvera/newsroom/news/being-responsible-is-part-of-our-clients-success-finnvera-reforms-the-environmental-and-social-risk. Accessed on 16 November 2021.

Freedom of Association and Protection of the Right to Organise Convention, 1948 https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312232. Accessed on 18 January 2022.

Government of the Netherlands: Coalition agreement 'Looking out for each other, looking ahead to the future'. Coalition agreement between the People's Party for Freedom and Democracy (VVD), Christian Democratic Alliance (CDA), Democrats '66 (D66) and Christian Union (CU), https://www.government.nl/documents/publications/2022/01/10/2021-2025-coalition-agreement. Accessed on 17 January 2022.

Government of the Netherlands: Non-paper Mandatory due diligence: Building blocks for effective and ambitious European due diligence legislation, https://www.rijksoverheid.nl/documenten/vergaderstukken/2021/11/05/non-paper-mandatory-due-diligence. Accessed on 17 January 2022.

Government proposals HE 109/2005 and HE 309/1993, https://www.finlex.fi/fi/esitykset/he/1993/19930309. Accessed on 25 January 2022.

Hallberg & al. Perusoikeudet, osa II luku 4 jakso Perustuslain 22 § ihmisoikeusvelvoitteiden erityisaseman perustana [Fundamental rights, part II chapter 4 section "Section 22 of the Constitution as the basis for the special status of human rights obligations"].

Hallituksen esitys eduskunnalle 87. Kansainvälisen työkonferenssin hyväksymän lapsityön pahimpien muotojen kieltämistä ja välittömiä toimia niiden poistamiseksi koskevan yleissopimuksen hyväksymisestä [Government proposal to Parliament 87. On adopting the Worst Forms of Child Labour Convention, 1999 adopted by the International Labour Conference] (HE 170/1999), https://www.eduskunta.fi/FI/Vaski/sivut/trip.aspx?triptype=ValtiopaivaAsiat&docid=he+170/1999. Accessed on 18 January 2022.

Hallituksen esitys Eduskunnalle eräiden kansainvälisen työkonferenssin vuosina 1930–1933 hyväksymien sopimusten ratifioimisesta [Government proposal to Parliament on ratifying certain Conventions adopted by the International Labour Conference in 1930–1933], https://www.eduskunta.fi/pdf/HE/HE63-1934.pdf. Accessed on 18 January 2022.

Hallituksen esitys Eduskunnalle Kansainvälisen työjärjestön yleisen konferenssin kolmannellakymmenelläensimmäisellä istuntokaudellaan vuonna 1948 hyväksymän, ammatillista järjestäytymisvapautta ja ammatillisen järjestäytymisoikeuden suojelua koskevan kansainvälisen sopimuksen hyväksymisestä (HE 58/1949), https://www.eduskunta.fi/pdf/HE/HE58-1949.pdf. Accessed on 18 January 2022.

Hallituksen esitys Eduskunnalle Kansainvälisen työkonferenssin 34. istuntokaudellaan vuonna 1951 hyväksymän samapalkkaisuussopimuksen hyväksymisestä [Government proposal to Parliament on adopting the Equal Remuneration Convention adopted by the International Labour Conference in its Thirty-fourth session] (HE 47/1962), https://www.eduskunta.fi/pdf/HE/HE47-1962.pdf. Accessed on 18 January 2022.

Hallituksen esitys Eduskunnalle Kansainvälisen työkonferenssin vuonna 1958 hyväksymän työmarkkinoilla ja ammatin harjoittamisen yhteydessä tapahtuvaa syrjintää koskevan yleissopimuksen n:o 111 hyväksymisestä [Government proposal to Parliament on adopting the Discrimination (Employment and Occupation) Convention

1958(No. 111) adopted by the International Labour Conference] (HE 94/1969), https://www.eduskunta.fi/pdf/HE/HE94-1969.pdf. Accessed on 18 January 2022.

Hallituksen esitys Eduskunnalle koskeva Kansainvälisen työkonferenssin 42. istuntokaudellaan vuonna 1958 hyväksymiä sopimuksia ja suosituksia [Government proposal to Parliament on Conventions and Recommendations adopted by the International Labour Conference in its Forty-second session in 1958 (HE 57/1961), https://www.eduskunta.fi/pdf/HE/HE57-1961.pdf. Accessed on 18 January 2022.

Hallituksen esitys Eduskunnalle koskeva Kansainvälisen työkonferenssin 58. istuntokaudellaan vuonna 1973 hyväksymiä sopimuksia ja suosituksia [Government proposal to Parliament on Conventions and Recommendations adopted by the International Labour Conference in its Fifty-eighth session in 1973] (HE 113/1974), https://www.eduskunta.fi/pdf/HE/HE113-1974.pdf. Accessed on 18 January 2022.

Hallituksen esitys Eduskunnalle koskeva Kansainvälisen työkonferenssin kolmannellakymmenellätoisella istuntokaudellaan vuonna 1949 hyväksymiä sopimuksia ja suosituksia [Government proposal to Parliament on Conventions and Recommendations adopted by the International Labour Conference in its Thirty-second session in 1949] (HE 19/1951), https://www.eduskunta.fi/pdf/HE/HE19-1951%20.pdf. Accessed on 18 January 2022.

Hallituksen esitys Eduskunnalle koskeva Kansainvälisen työkonferenssin kolmannellakymmenellätoisella istuntokaudellaan vuonna 1949 hyväksymiä sopimuksia ja suosituksia [Government proposal to Parliament on Conventions and Recommendations adopted by the International Labour Conference in its Thirty-second session in 1949] (HE 19/1951), https://www.eduskunta.fi/pdf/HE/HE19-1951%20.pdf. Accessed on 18 January 2022.

Hallituksen esitys Eduskunnalle koskeva Kansainvälisen työkonferenssin 40. istuntokaudellaan vuonna 1957 hyväksymiä sopimuksia ja suosituksia [Government proposal to Parliament on Conventions and Recommendations adopted by the International Labour Conference in its Fortieth session in 1957 (HE 39/1959), https://www.eduskunta.fi/pdf/HE/HE39-1959.pdf. Accessed on 18 January 2022.

Hallituksen esitys eduskunnalle pakollista työtä koskevaan sopimukseen liittyvän pöytäkirjan hyväksymisestä sekä laiksi pöytäkirjan lainsäädännön alaan kuuluvien määräysten voimaansaattamisesta [Government proposal to Parliament on adopting the Protocol to the Forced Labour Convention and on an Act to implement the provisions of the Protocol in the field of legislation] (HE 69/2016), https://www.eduskunta.fi/FI/vaski/KasittelytiedotValtiopaivaasia/Sivut/HE_69+2016.aspx. Accessed on 18 January 2022.

Hallituksen esitys Eduskunnalle, joka sisältää tiedonannon niistä sopimuksista ja suosituksista, mitkä Kansainvälinen työkonferenssi hyväksyi 34. istuntokaudellaan vuonna 1951 [Government proposal to Parliament containing a communication on the Conventions and Recommendations adopted by the International Labour Conference in its Thirty-fourth session in 1951] (HE 104/1952), https://www.eduskunta.fi/pdf/HE/HE104-1952.pdf. Accessed on 18 January 2022.

Harris, Hannah & Nolan, Justine (Cardozo International and Comparative Law Review, vol. 4:2, 2021): Learning from experience: Comparing legal approaches to foreign bribery and modern slavery, http://unsworks.unsw.edu.au/fapi/datastream/unsworks:75112/bin2876c2e3-e7ba-482d-948e-62dbb84195cf?view=true&xy=01, s. 625–628. Accessed on 2 February 2022.

Heasman, Lia (University of Helsinki 2018): The Corporate Responsibility to protect Human Rights. The Evolution from Voluntarism to Mandatory Human Rights Due

Diligence, http://urn.fi/URN:ISBN:978-951-51-4240-5, s. 167. Accessed on 14 December 2021.

Hess, David (American Business Law Journal (volume 56, issue 1, Spring 2019)): The Transparency Trap: Non-Financial Disclosure and the Responsibility of Business to Respect Human Rights, https://www.researchgate.net/publication/329811362_The_Transparency_Trap_Non-Financial_Disclosure_and_the_Responsibility_of_Business_to_Respect_Human_Rights, s. 26–27. Accessed on 4 February 2022.

HSEQ, https://www.hseq.fi/index.php?p=Etusivu. Accessed on 30 November 2021.

HSEQ: Usein kysytyt kysymykset [FAQ], https://www.hseq.fi/index.php?p=Useinkysytytkysymykset#15. Accessed on 30 November 2021.

Human Rights Council: resolution on the Human right to a clean, healthy and sustainable environment (A/HRC/48/L.23/Rev.1) 5 October 2021, https://digitallibrary.un.org/record/3945636/files/A_HRC_RES_48_13-EN.pdf. Accessed on 17 December 2021.

ILO & Unicef (2020): Child labour. Global Estimates 2020, trends and the road forward, https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipec/documents/publication/wcms_797515.pdf. Accessed on 9 December 2021.

ILO (International Labour Organisation 2021): Gap analysis of ILO normative and non-normative measures to ensure decent work in supply chains, https://www.ilo.org/wcmsp5/groups/public/---dgreports/---ddg_p/documents/meetingdocument/wcms_829895.pdf. Accessed on 16 December 2021.

ILO: General Survey of the reports on the Minimum Wage Fixing Convention, 1970 (No. 131), and the Minimum Wage Fixing Recommendation, 1970 (No. 135). Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution) (International Labour Office Geneva 2014), https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_235287.pdf, s. 27. Accessed on 19 January 2022.

ILO: Global Wage Report 2020–21. Wages and minimum wages in the time of Covid-19 (2020), https://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/---publ/documents/publication/wcms_762534.pdf, s. 90–91. Accessed on 9 December 2021.

ILO: ILO 2012 Global estimate of forced labour Executive summary, https://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_181953.pdf. Accessed on 9 December 2021.

ILO: Principles and Rights at Work Branch, https://www.ilo.org/global/about-the-ilo/how-the-ilo-works/departments-and-offices/governance/fprw/lang--en/index.htm. Accessed on 9 December 2021.

ILO: Safety and Health at Work, https://www.ilo.org/global/topics/safety-and-health-at-work/lang--en/index.htm. Accessed on 9 December 2021.

ILO: WHO/ILO: Almost 2 million people die from work-related causes each year (17 September 2021), https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_819705/lang--en/index.htm. Accessed on 9 December 2021.

Impact assessment in legislative drafting. Guidelines. Ministry of Justice publications 2008:4, https://julkaisut.valtioneuvosto.fi/handle/10024/76118, p. 7. Accessed on 18 November 2021.

International Covenant on Civil and Political Rights, https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights. Accessed on 18 January 2022.

International Covenant on Economic, Social and Cultural Rights, https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights. Accessed on 18 January 2022.

Kalimo, Harri & al. (Government 2021): Hiili- ja ympäristöjalanjälki hankinnoissa – lainsäädäntö ja mittaaminen (HILMI). [Carbon and Environmental Footprint in Procurement – Legislation and Measurement (HILMI)]. https://tietokayttoon.fi/-/hiili-ja-ymparistojalanjalki-hankinnoissa-lainsaadanto-ja-mittaaminen-hilmi- Accessed on 14 December 2021.

Kiander, Jaakko (Ministry of Trade and Industry 2006): Lainsäädännön yritysvaikutukset ja niiden arviointi [Business impacts of legislation and their assessment], https://bit.ly/35EeRvs, p. 10. Accessed on 22 November 2021.

Krajewski, Markus & al. (Cambridge University Press 2021): Mandatory Human Rights Due Diligence in Germany and Norway: Stepping, or Striding, in the Same Direction?, https://www.cambridge.org/core/journals/business-and-human-rights-journal/article/mandatory-human-rights-due-diligence-in-germany-and-norway-stepping-or-striding-in-the-same-direction/85815FE5F1D1F64208B0068B7FBBECF8. Accessed on 17 November 2021.

Lainkirjoittajan opas, luku 4.1.21 [Law Drafter's Guide, chapter 4.1.21]. http://lainkirjoittaja.finlex.fi/4-perusoikeudet/4-1/#jakso-4-1-21. Accessed on 8 December 2021.

Laki kansalaisoikeuksia ja poliittisia oikeuksia koskevan kansainvälisen yleissopimuksen eräiden määräysten hyväksymisestä [Act on the adoption of certain provisions of the International Covenant on Civil and Political Rights] (7/1976), https://www.finlex.fi/fi/sopimukset/sopsteksti/1976/19760007/19760007_1. Accessed on 18 January 2022.

Laki konfliktimineraalien ja niiden malmien markkinoille saattamisesta [Act on the placing on the market of conflict minerals and their ores] (1196/2020), https://finlex.fi/fi/laki/alkup/2020/20201196. Accessed on 10 December 2021.

Lausuntopalvelu.fi (service for online consultation): Oikeudellinen selvitys yritysvastuulaista [Judicial Analysis on the Corporate Social Reponsibility Act] (VN/16185/2020), https://www.lausuntopalvelu.fi/FI/Proposal/Participation?proposalId=2e845697-d3c6-4154-af2a-ed371cafa1ce. Accessed on 7 December 2021.

Lietonen Anni & Ollus Natalia (European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI) 2021): Työperäinen hyväksikäyttö ja julkiset hankinnat. Opas riskien huomioimiseen Suomessa [Labour exploitation and public procurement. Guide to cater for risks in Finland], https://heuni.fi/-/hankinta-opas. Accessed on 16 December 2021.

Lovdata: Act relating to enterprises' transparency and work on fundamental human rights and decent working conditions (Transparency Act), https://lovdata.no/dokument/NLE/lov/2021-06-18-99. Accessed on 17 November 2021.

Marzano, Karina (2021): The Challenges of Regulating Global Supply Chains, https://www.iass-potsdam.de/en/blog/2021/04/challenges-regulating-global-supply-chains. Accessed on 11 January 2022.

Minamata Convention on Mercury, https://treaties.un.org/doc/Treaties/2013/10/20131010%2011-16%20AM/CTC-XXVII-17.pdf. Accessed on 19 November 2021.

Minimum Age Convention, 1973 (No. 138), https://www.ilo.org/dyn/normlex/en/f?p=normlexpub:12100:0::no::P12100_ilo_code:C138. Accessed on 18 January 2022.

Ministry of Economic Affairs and Employment: Corporate sustainability reporting, https://tem.fi/en/csr-reporting. Accessed on 17 November 2021.

Ministry of Economic Affairs and Employment: Enterprises and human rights, https://tem.fi/en/enterprises-and-human-rights. Accessed on 16 November 2021.

Ministry of Economic Affairs and Employment: Handling Specific Instances of the OECD Guidelines for Multinational Enterprises, https://tem.fi/en/handling-specific-instances-of-the-oecd-guidelines-for-multinational-enterprises. Accessed on 17 December 2021.

Ministry of Economic Affairs and Employment: Hankintalain kehittämistyö etenee [Development of Procurement Act progresses] (3 June 2021), https://valtioneuvosto.fi/-//1410877/hankintalain-kehittamistyo-etenee. Accessed on 14 December 2021.

Ministry of Economic Affairs and Employment: Ministry of Economic Affairs and Employment to appoint a working group to support the drafting of legislation on responsible business conduct (9 December 2020), https://tem.fi/en/-/ministry-of-economic-affairs-and-employment-to-appoint-a-working-group-to-support-the-drafting-of-legislation-on-responsible-business-conduct. Accessed on 27 January 2022.

Ministry of Economic Affairs and Employment: One in, one out principle, https://tem.fi/en/one-in-one-out-principle. Accessed on 11 February 2022.

Ministry of Finance: Sosiaalinen kestävyys [Social sustainability], https://vm.fi/hankinnat-sosiaalinen-kestavyys. Accessed on 16 November 2021.

Ministry of Finance: Sosiaalinen kestävyys. Tavoitteita edistävät toimenpiteet [Social sustainability. Measures to promote objectives], https://vm.fi/hankinnat-sosiaalinen-kestavyys. Accessed on 16 December 2021.

Ministry of Justice 2018, Reports and Publications 52. Rangaistusluonteisia hallinnollisia seuraamuksia koskevan sääntelyn kehittäminen [Developing regulation on administrative punitive sanctions], https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/161352/OMML_52_Rangaistusluonteisia_hallinnollisia_seuraamuksia.pdf?sequence=1&isAllowed=y. Accessed on 13 January 2022.

Ministry of the Environment: Kansainväliset ympäristösopimukset ja Suomi. Sopimuksen kansainvälisen ympäristöyhteistyön edistäjinä [International environmental agreements and Finland – the role of agreements in promoting international environmental cooperation], Helsinki 2018. http://urn.fi/URN:ISBN:978-952-11-4810-1. Accessed on 8 December 2021.

Ministry of the Environment: Säädösehdotusten ympäristövaikutusten arviointi [Environmental impact assessment of legislative proposals] (2019), https://bit.ly/3GpQY7x.

MVO Platform: Update: Frequently Asked Questions about the new Dutch Child Labour Due Diligence Law (3.6.2019), https://www.mvoplatform.nl/en/frequently-asked-questions-about-the-new-dutch-child-labour-due-diligence-law/. Accessed on 17 January 2022.

OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, https://www.oecd.org/corporate/mne/mining.htm. Accessed on 24 November 2021.

OECD Guidelines for Multinational Enterprises (2011), https://bit.ly/3KPZXlU. Accessed on 28 January 2022.

OECD: OECD Due Diligence Guidance for Responsible Business Conduct (2019), http://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf. Accessed on 14 December 2021.

Official Statistics of Finland (OSF): Finnish affiliates abroad [e-publication]. ISSN=1798-4882. 2019. Helsinki: Statistics Finland [referred: 30 November 2021]. Access method: https://www.stat.fi/til/stu/2019/stu_2019_2021-04-29_tie_001_en.html.

Official Statistics of Finland (OSF): Foreign affiliates in Finland [e-publication]. ISSN=2242-2552. 2019. Helsinki: Statistics Finland [referred: 22 December 2021]. Access method: http://www.stat.fi/til/ulkoy/2019/ulkoy_2019_2020-12-17_tie_001_en.html.

Official Statistics of Finland (OSF): Structural business and financial statement statistics [e-publication].
ISSN=2342-6217. 2020. Helsinki: Statistics Finland [referred: 8 February 2022]. Access method: http://www.stat.fi/til/yrti/2020/yrti_2020_2021-12-16_tie_001_en.html

OHCHR (2011): UN Guiding Principles on Business and Human Rights Implementing the United Nations “Protect, Respect and Remedy” Framework, https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf. Accessed on 16 November 2021.

OHCHR (A/HRC/32/19): Improving accountability and access to remedy for victims of business-related human rights abuse. Report of the United Nations High Commissioner for Human Rights, https://undocs.org/A/HRC/32/19, p. 3. Accessed on 17 December 2021.

OHCHR (A/HRC/38/20): Improving accountability and access to remedy for victims of business-related human rights abuse through State-based non-judicial mechanisms. Report of the United Nations High Commissioner for Human Rights, https://undocs.org/A/HRC/38/20, p. 4. Accessed on 17 December 2021.

OHCHR (United Nations 2012): The Corporate Responsibility to Respect Human Rights. An Interpretive Guide, https://www.ohchr.org/documents/publications/hr.pub.12.2_en.pdf. Accessed on 14 December 2021.

OHCHR (United Nations 2012): The Corporate Responsibility to Respect Human Rights. An Interpretive Guide, https://www.ohchr.org/documents/publications/hr.pub.12.2_en.pdf, p. 10–11. Accessed on 14 December 2021.

OHCHR Office of the United Nations High Commissioner for Human Rights OHCHR and climate change, https://www.ohchr.org/en/issues/hrandclimatechange/pages/hrclimatechangeindex.aspx. Accessed on 17 January 2022.

Oikeusministeriön muistio; perus- ja ihmisoikeudet lainvalmistelussa [Ministry of Justice memorandum: fundamental and human rights in legislative drafting], https://bit.ly/32Y21HF, s. 10. Accessed on 18 November 2021.

Prime Minister's Office (2020): Revenue through responsible ownership Government Resolution on the State Ownership Policy, 8 April 2020 https://vnk.fi/documents/10616/1221497/State+Ownership+Policy_08042020.pdf/581f2a9c-ca52-83ac-44e6-0d6684950125/State+Ownership+Policy_08042020.pdf. Accessed on 16 November 2021.

Proposal for a Regulation of the European Parliament and of the Council concerning batteries and waste batteries, repealing Directive 2006/66/EC and amending Regulation (EU) No 2019/1020 (COM(2020) 798 final), https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020PC0798&from=EN. Accessed on 10 December 2021.

Proposal for a Regulation of the European Parliament and of the Council concerning batteries and waste batteries, repealing Directive 2006/66/EC and amending Regulation (EU) No 2019/1020 (COM(2020) 798 final), https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52020PC0798&from=EN. Accessed on 24 November 2021.

Proposal for a regulation of the European Parliament and of the Council 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) No 995/2010 (COM(2021) 706 final), https://ec.europa.eu/environment/publications/proposal-regulation-deforestation-free-products_en. Accessed on 10 December 2021.

Publications of the Finnish Government 2021:92 Government Report on Human Rights Policy, https://julkaisut.valtioneuvosto.fi/handle/10024/163838. Accessed on 13 December 2021.

Regulation (EU) 2019/2088 of the European Parliament and of the Council on sustainability- related disclosures in the financial services sector, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019R2088. Accessed on 10 December 2021.

Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (Text with EEA relevance) https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1593772710189&uri=CELEX:32020R0852. Accessed on 10 December 2021.

Right to Organise and Collective Bargaining Convention, 1949, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C098. Accessed on 18 January 2022.

Right to Organise and Collective Bargaining Convention, 1949, https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C098. Accessed on 18 January 2022.

Sandell Toni, Ed. (Ministry of Employment, ILO Committee): Kansainvälisen työjärjestön ILO:n yleissopimukset [Conventions of the International Labour Organization ILO], https://tem.fi/documents/1410877/2971009/ilo_yleissopimukset.pdf/995fef91-ccf5-4a3e-ada1-82c836cd347f. Accessed on 19 November 2021.

Savourey Elsa & Brabant Stéphane: The French Law on the Duty of Vigilance: Theoretical and Practical Challenges Since its Adoption. Business and Human Rights Journal, 6 (2021), pp. 141–152. Accessed on 17 December 2021.

Sedex: Join as a supplier member, https://www.sedex.com/wp-content/uploads/2020/12/Supplier-brochure-EN-1.pdf, haettu 30.11.2021; Sedex: Join as a Supplier, https://www.sedex.com/join-sedex/supplier/. Accessed on 30 November 2021.

Selvitys vaihtoehtojen hyödyntämisestä erityisesti yrityksiin vaikuttavan lainsäädännön valmistelussa. Raportti kauppa- ja teollisuusministeriölle lainsäädännön yritysvaikutusten arviointia koskevan hankkeen (SÄVY-hanke) toimeksiannosta [Analysis on utilisation of options especially in the drafting of legislation impacting on businesses. Report to the Ministry of Trade and Industry commissioned by the SÄVY project on assessment of the business impacts of legislation] (record no. 6/685/2007). 11 December 2006, https://bit.ly/3L9wCDj, p. 8. Accessed on 22 November 2021.

Shift (Ministry for Foreign Affairs & Ministry of Economic Affairs and Employment 2019): Aligning Finland's State Financing for Private Sector Activity Abroad with the UN Guiding Principles on Business and Human Rights. A Program Report, https://bit.ly/3cjw25Q. Accessed on 16 November 2021.

Smit, Lise & al. (European Commission, 2020): Study on due diligence requirements through the supply chain. Final Report, https://op.europa.eu/en/publication-detail/-/publication/8ba0a8fd-4c83-11ea-b8b7-01aa75ed71a1/language-en, p. 298. Accessed on 1 December 2021.

Sojamo, Suvi & al. (Prime Minister's Office 2021): Vesivastuullinen Suomi 2030 – parhaat käytänteet, ohjauskeinot ja toimintamallit [Water responsible Finland 2030 – best practices, steering methods and stewardship approaches] https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/163047/VNTEAS_2021_26.pdf. Accessed on 19 January 2022.

Standard Industrial Classification TOL 2008 https://www2.tilastokeskus.fi/en/luokitukset/toimiala/. Accessed on 2 February 2022.

Tasavallan presidentin asetus pysyviä orgaanisia yhdisteitä koskevan Tukholman yleissopimuksen voimaansaattamisesta [Decree of the President of the Republic on enforcing the Stockholm Convention on Persistent Organic Pollutants] (16.4.2004), http://www.pops.int/TheConvention/Overview/TextoftheConvention/tabid/2232/Default.aspx. Accessed on 19 November 2021.

The Danish Institute for Human Rights 2020: National Action Plans on Business and Human Rights. Supply Chains, https://globalnaps.org/issue/supply-chains/. Accessed on 15 December 2021.

Tran-Nguyen, Elina & al. (Prime Minister's Office 2021): Human rights performance status of Finnish companies (SIHTI) project. Report on the status of human rights performance of Finnish companies, http://urn.fi/URN:ISBN:978-952-327-737-3, p. 92–94. Accessed on 16 November 2021.

UN Environment (2019). Global Environment Outlook – GEO-6: Summary for Policymakers. Nairobi. DOI 10.1017/9781108639217, https://www.unep.org/resources/assessment/global-environment-outlook-6-summary-policymakers. Accessed on 16 November 2021.

UN Human Rights Council (A/HRC/17/31): Report of the Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie. UN Guiding Principles on Business and

Human Rights Implementing the United Nations “Protect, Respect and Remedy” Framework, https://www.ohchr.org/documents/issues/business/a-hrc-17-31_aev.pdf. Accessed on 16 November 2021.

UN Human Rights Council (A/HRC/47/39): UN Guiding Principles on Business and Human Rights at 10: taking stock of the first decade. Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, https://undocs.org/A/HRC/47/39. Accessed on 16 November 2021.

Valleala, Aija (Ministry of Economic Affairs and Employment 2015): Suomen lainsäädäntö, kansainvälinen liiketoiminta ja ihmisoikeudet [Finnish legislation, international business and human rights], https://bit.ly/3FZxtCA, p. 28 pp. Accessed on 14 December 2021.

Working group: chair Olli Mäenpää, secretary Marietta Keravuori-Rusainen (Ministy of Justice 2018): Rangaistusluonteisia hallinnollisia seuraamuksia koskevan sääntelyn kehittäminen. Työryhmän mietintö, [Development of legislation on administrative punitive sanctions. Working group report] https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/161352/OMML_52_Rangaistusluonteisia_hallinnollisia_seuraamuksia.pdf?sequence=1&isAllowed=y, s. 20-23. Accessed on 17 December 2021.