

NORDIC BUSINESS NETWORK FOR HUMAN RIGHTS SUPPORTS EU LEGISLATION ON MANDATORY HUMAN RIGHTS DUE DILIGENCE

The undersigned members of the Nordic Business Network for Human Rights (NBNHR) welcome the increasing momentum towards establishing mandatory human rights due diligence (MHRDD) at the EU-level, and view this as a positive step in the ongoing journey to maximize the full potential of the United Nations Guiding Principles on Business and Human Rights (UNGPs).

NBNHR is a professional network of multinational companies who are committed to conducting business in line with the UNGPs. The companies in our network continually work to respect human rights by carrying out human rights due diligence in their operations and value chains. The network has been operating for nearly a decade and is moderated by the Danish Institute for Human Rights (DIHR).

June 2021 marks the tenth anniversary of the unanimous endorsement of the UNGPs by the UN Human Rights Council. Over the past decade, the UNGPs have been integrated into policy and practice by states and companies around the world. While voluntary initiatives have been effective in supporting companies' efforts, a "smart mix" of measures as outlined by the UNGPs is needed in order to drive an increase in business respect for human rights over time. Well-designed MHRDD legislation at the EU-level has the potential to create better outcomes for people by scaling up the implementation of the UNGPs, turning commitments into action, and promoting a human rights culture within companies across the value chain.

The EU has a unique opportunity to develop a MHRDD requirement that is applicable throughout the region and serves as an international benchmark for advancing the implementation of the UNGPs. In the interests of developing a regulatory framework that is effective, efficient and coherent, we call on the EU to strive for maximum harmonization in aligning proposed and existing frameworks and expectations towards companies at the national and EU level. NBNHR would like to put forward the following considerations based on our collective experience, emphasizing, above all, that any MHRDD legislation should fundamentally be grounded in the UNGPs and defer to the guidance and definitions provided therein wherever possible:

1. NBNHR supports EU-wide cross-sectoral MHRDD legislation applicable to all business enterprises located in the EU or selling products or services in the EU, regardless of their size, sector, operational context, ownership or structure. In our experience, there is a need to ensure human rights due diligence covers the entire value chain, not only the supply chain, as impacts can occur both upstream and downstream, in addition to direct operations. An inclusive scope will promote a level playing field and ensure that all actors in the value chain are responsible and accountable.
2. NBNHR supports a scope of human rights covered under EU-level MHRDD legislation which includes all internationally recognized human rights, rather than being issue specific.

We have experienced that issue specific initiatives risk diverting the focus away from activities directed at addressing a company's most salient human rights first.

3. We note that value chain complexity should be taken into account, with the understanding that where business enterprises have large and complex supply chains with multiple tiers, it may be unreasonably difficult to conduct due diligence for adverse human rights impacts across them all. We simultaneously note that the corporate responsibility to respect human rights applies to all companies in a value chain, allowing each to implement adequate human rights due diligence measures throughout its own operations. Any accountability measures included in the legislation need to adequately capture this complexity and take into consideration the different business responsibilities when causing, contributing, or being directly linked to adverse human rights impacts.

4. NBNHR supports the inclusion of accountability measures to bolster the implementation of MHRDD, emphasizing that the legislation should take a holistic view and incorporate a range of measures extending from liability through to positive incentives. Such measures should provide sufficient legal clarity and be designed with due consideration given as to whether a company has taken reasonable steps to conduct human rights due diligence and provide access to remedy.

5. In the interests of promoting accountability, transparency and comparability of information by the public, NBNHR acknowledges the potential inclusion of a reporting requirement in the MHRDD legislation. We emphasize, however, that the focus of the legislation should not be on reporting but on driving corporate action and promoting effective impacts on the ground. In this regard, we call for a creative approach in developing a reporting mechanism that incentivizes adequate implementation of UNGPs pillar two and three, noting the pitfall that reporting can become a "tick-box" exercise, which does not necessarily achieve its intended effect. Furthermore, adhering to multiple national reporting frameworks with different requirements and formats is inefficient. We therefore support a unified and coherent reporting requirement that is aligned with other existing EU frameworks (such as the Non-Financial Reporting Directive and the EU Sustainable Finance Disclosure Regulation), and replaces a patchwork of different rules and requirements.

Looking forward to the next decade, there is an urgent need to harness the transformative power of the UNGPs in the pursuit of recalibrating the relationship between business and society and realizing universal human rights for all. Thus, while we acknowledge the importance of acting swiftly, we recall the need to ensure the design of a meaningful and robust MHRDD measure as a key driver for achieving these goals. We welcome and support the EU MHRDD initiative and process and stand ready to share our experience and considerations through continuous and open dialogue.

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Knowledge grows