global witness

Why the EU needs to act to ensure companies are not harming people and planet

Global Witness

Global Witness is an international NGO with offices in Brussels, London and Washington DC. It investigates and campaigns to break the links between natural resources, corruption, conflict and associated environmental and human rights violations. We are currently campaigning for mandatory ESG requirements for EU-based companies, including finance.

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The devastating Amazon fires and the more recent Australian fires are a stark reminder of the immediate environmental and human rights threats the planet is facing. These events highlight once again the urgent need to tackle and halt this irreparable destruction and the negative impacts that environmental and human rights abuses have on our planet.

To arrest this ongoing destruction, Global Witness calls on the European Commission to introduce effective and robust legislation that establishes cross-sector mandatory human rights, environmental and governance due diligence obligations for all companies, including finance, operating in the EU.

Such legislation must require companies and financial institutions to identify, prevent, mitigate and account for human rights abuses and environmental damage in their operations, subsidiaries and value chains, including access to remedy for victims of corporate abuse and effective sanctions.

Global Witness is part of a coalition of 100+ international and European civil society organisations, including NGOs and trade unions, who have issued a united call to action to the Commission to bring forward corporate accountability legislation in the EU[1].

We believe that there is now the potential for significant movement on this issue at EU level as the findings of the European Commission study on 'due diligence requirements through the supply chain' clearly shows how current voluntary guidelines and standards have failed to achieve the wide ranging and meaningful change in corporate behaviour that is needed[2].

This study demonstrates why the European Commission must act to introduce impactful legislation.

Why do we need mandatory due diligence for human rights, environmental and governance impacts?

1. The EU must deliver on its international commitments to fulfil its global leadership role on tackling climate change.

The European Union has committed to the UN 2030 agenda[3], the Paris climate agreement[4], and to becoming the world's first climate-neutral continent by 2050[5]. However, there is a risk that the EU will define the concept of 'sustainability' too narrowly – by ignoring the negative human rights and environmental impacts that companies, including finance, and their global value chains can have around the world**.** A low-carbon, resource efficient Europe cannot be sustainable if its investments and value chains profit from slavery, corruption, or environmental destruction, whether at home or abroad.

Human rights — and related environmental and corruption impacts — should be at the heart of the EU's sustainability agenda. The EU is founded on a strong commitment to promote and protect human rights, democracy and the rule of law worldwide. Human rights are the basis of the 2030 Agenda, which "is premised and founded upon universal human rights … If SDG implementation fails to uphold human rights, then progress will ultimately prove illusory"[6].

The EU has agreed to implement key international standards by endorsing the United Nations Guiding Principles on Business and Human Rights (UNGPs) and the internationally agreed due diligence standards for responsible business set by the Organisation for Economic Cooperation and Development (OECD)—the Guidelines for Multi-National Enterprises (MNE Guidelines) and the Guidance on Responsible Business Conduct (RBC Guidance)[7]. These standards set the framework to build effective and robust responsible business conduct (RBC) due diligence legislation in the EU.

2. The EU must tackle human rights abuses and environmental degradation

As the race for land and natural resources intensifies, environmental destruction and human rights abuses are becoming increasingly intertwined — from violent land grabs for rapid deforestation, to drought forcing displacement across borders. Local communities on the frontline of efforts to fight climate breakdown and preserve ecosystems are under increasing attack from irresponsible industries trying to meet this consumer demand. These communities need to be able to hold companies, including finance, to account for any harm caused to their families, livelihoods and environment.

Global Witness' reports show that **around the world more than three people were murdered each week in 2018, with countless more criminalised, for defending their land and our environmen**t. Women, children, indigenous peoples, workers and their unions, human rights and environmental and land defenders as well as marginalised groups are often the most negatively impacted by industries like mining, logging and agribusiness as this race for resources intensifies[8].

Isela Gonzalez Diaz in the pine forests outside Creel, Chihuahua, Mexico. © Thom Pierce/The Guardian.

Corruption accelerates these trends. Systemic and endemic corruption violates core human rights principles of transparency, accountability and non-discrimination, and steals funds away from the public purse, reducing governments' capacity to mitigate environmental impacts, and protect fundamental rights like housing and clean water[9]. It contributes to an environment in which other human rights abuses can occur with impunity: mass arrests and detention, degrading treatment or torture of suspects.

Global Witness investigations revealed that **oil giants Shell and Eni's deal for a Nigerian oil licence** included terms, which funded an alleged bribery scheme. Both companies and senior executives are currently standing trial on bribery charges in Italy, and Shell has announced that it expects to face criminal charges in the Netherlands[10].

Gas or flare burn on an offshore oil-rig. © claffra/istockphoto.

EU companies and financial flows, which could be part of the solution, are instead part of the problem.

Global Witness has highlighted the role that companies can play in contributing to corruption, human rights abuses and environmental destruction—whether, through their own operations and investments, or via subsidiaries, subcontractors and other business partners.

Our recent analysis[11] has revealed how **EU-based investors have played a key role in funding projects linked to human rights abuses, land grabs and large-scale environmental destruction**. These include oil exploration in Africa's oldest national park, a mining project in India, which sparked violent protests, and deforestation, and land grabbing in Asia and Africa.

Furthermore, between 2013-2019, financing from EU registered banks — like **BNP Paribas[12] , Deutsche Bank, and Santander[13]** — provided approximately €7 billion in financing to companies deforesting the largest rainforests in the world .

As the world's largest trading bloc, the EU has significant economic and political influence and a critical role to play. The EU imports by volume raw materials and semi-finished products, and exports finished products of much higher value[14]. These imports, required for products like car engines, wind turbines, furniture and solar panels, rely on resource extraction in third countries, frequently in fragile and high-risk environments.

The European Commission's own study found that EU imports were responsible for over a third of all deforestation embodied in crop and livestock products traded between regions over the period 1990-2008[15]. In 2019, the European Parliament also requested that the Commission assess relevant court cases of alleged human rights abuses by EU multi-national companies in third countries (35 in total[16]).

Many more allegations of direct and indirect corporate abuse exist that have not made it to court.

Such examples include those provided by Global Witnesses' own investigative work, as well as the following highlighted by reports from other organisations which also focus on the costs of irresponsible business**:**

- According to the Business & Human Rights Resource Centre (BHRRC), **87% of the 23 largest companies mining cobalt, copper, lithium, manganese, nickel and zinc** – the six minerals essential to the renewable energy industry – have faced allegations of abuse including land rights infringements, corruption, violence or death over the past 10 years[17].

- **Global retailers, including H&M, Esprit and Adidas**, are facing scrutiny over cotton supplies allegedly sourced from Xinjiang, a Chinese region plagued by allegations of human rights abuses**.** Many big brands are thought to indirectly source cotton products from the region[18].

- The **French company Renault Trucks** (now Arquus) allegedly exported more than 200 armoured vehicles to Egyptian security forces throughout the bloodiest period of the country's recent upheavals[19]. Evidence analysed by Amnesty International reportedly shows these vehicles were being used by security forces to violently disperse protests and crush dissent[20]. Friends of the Earth France and Oxfam France have published a report, which reveals that the four largest French banking groups' ongoing financing and facilitating of activities in a fossil fuel sector that emitted 4.5 times more greenhouse gases in 2018 than France. These key financial players still direct 70% of their energy financing towards fossil fuels, moving us further away from the objectives of the Paris Agreement.

- The European Coalition for Corporate Justice (ECCJ) reported on how a fire in a Pakistani factory that supplied European textile companies - German KiK and Italian RINA - killed over 260 people. The high number of casualties was determined to have been caused by very low work-place health and safety standards.

3. Voluntary approaches have failed: the EU must introduce new rules

It is clear that the EU's predominately voluntary approach is not working to change the way companies and financial institutions manage Environmental, Social and Governance (ESG) impacts, or provide remedy to victims. Many EU member states have introduced National Action Plans (NAPs)[21], which are policy strategies developed to protect against adverse human rights impacts by companies in conformity with the UNGPs. However, NAPs have long been widely criticised as ineffective[22], and self-regulation has failed to ensure that EU-based companies, including finance, have appropriate systems in place to identify, prevent and mitigate these risks in accordance with international standards.

According to the Corporate Human Rights Benchmark, a collaboration of investors and civil society organisations, there is clear evidence that more than half of major companies in the garments, food and beverage, extractive and tech manufacture sectors are failing to meet basic human rights expectations[23].

Despite a trend towards hard law at the Member State level, to date there is no cross-sectoral legislation at an EU level requiring companies, including finance, to identify, prevent, mitigate and publicly account for the risk of human rights abuses, corruption and environmental damage along value chains in accordance with international standards. As a result, companies are able to act with impunity when they neglect their responsibility to respect human rights and the environment, and victims of these abuses do not have means of access to remedy.

New European Commission must act on its commitments on corporate due diligence

The Commission President, Ursula Von Der Leyen, has publicly stated[24] that any business operating in the EU must have "the highest standards of climate, environmental and labour protection". The Commissioner for Justice, Didier Reynders, has stated "on corporate social responsibility and respect for ESG principles, it will be important to encourage businesses to apply the existing international guidelines and principles" [25] and has committed to introduce "new requirements into company law, including mandatory due diligence obligations for companies in their entire supply chains"[26].

This work has already begun with the European Commission commissioning a survey and study to examine regulatory options **to require businesses to undertake Responsible Business Conduct (RBC) due diligence** for human rights and environmental impacts, including broad governance issues such as corruption, in their own operations and supply chains[27].

Given the clear commitment of the Commission, it must now act swiftly to introduce an effective legislative proposal on mandatory RBC due diligence.

Requiring all companies operating in the EU to carry out RBC due diligence along their value chains, in line with existing international standards, would ensure standards are harmonised between Member States and across business sectors and would ensure that all companies, including finance, better manage their global social, environmental and governance impacts. It would also build on the important work of the Commission's Action Plan on Financing Sustainable Growth[28].

Mandatory legislation, including requirements for mandatory public reporting, in line with the OECD's core obligations and standards, combined with robust enforcement measures would ensure that businesses provide investors and other stakeholders with meaningful information on the risks in their value chains. As part of a legislative approach to greater corporate responsibility, there is also a need to separately review and strengthen the reporting standards currently required in the EU Directive on Disclosure of Non-Financial Information[29].

New EU due diligence legislation must align with internationally agreed standards

Responsible Business Conduct (RBC) Due Diligence — the process of identifying, preventing, mitigating and accounting for human rights, environmental and governance impacts in the value chain — is

a concept familiar to companies and governments.

It is at the core of the UNGPs and the internationally agreed standards for responsible business: the OECD's GMNE Guidelines and OECD RBC Guidance.

The OECD's due diligence standards provide the only multilaterally agreed and comprehensive due diligence framework for responsible business conduct that governments have committed to promoting. Forty-eight OECD and developing economies have endorsed the OECD RBC Guidance, including the EU and nearly all EU Member States[30]. Importantly, they were also drafted and agreed in collaboration with civil society, industry and companies across multiple sectors.

Any over-arching, cross-sectoral EU law should align its RBC due diligence obligations with the OECD's RBC Guidance. These set out obligations that are fundamental to effective RBC due diligence on ESG impacts, as well as a flexible, 6-step practical implementation framework for businesses along the entire value chain. The OECD RBC Guidance is also already aligned with the UNGPs[1] and the ILO standards[31].

What is Responsible Business Conduct Due Diligence

1. Process of Responsible Business Conduct Due Diligence

Due diligence according to the OECD standards and UNGPs is **understood as a flexible, ongoing process through which companies along the entire value chain can identify, prevent, mitigate and account for how they address actual and potential adverse impacts**. Responsible business conduct (RBC) due diligence is about the risks and impacts of an enterprise's operations, supply chains and business relationships on people and planet—not the risks to the business itself. Once identified, these risks and impacts could expose companies to legal, financial or reputational risks but **it is the potential and actual risks to *others*, and to the environment, that drives and shapes the RBC due diligence process.**

Due diligence under the OECD RBC Guidance is pro-active and forward-looking, as well as reactive. It **expects companies to identify potential risks and impacts to anticipate and respond to them. For example, when considering entering into new business relationships**. It is a flexible, ongoing, evolving process which takes place throughout the life-cycle of the project, investment or business relationship. Not intended to be a static, one-size-fits-all approach or a simple box-ticking compliance exercise but a dynamic process where businesses are required to track and monitor progress, and learn from what worked and what did not work.

[1] According to the UN Guiding Principles Reporting Framework, human rights due diligence is: *"An ongoing risk management process…in order to identify, prevent, mitigate and account for how [a company] addresses its adverse human rights impacts. It includes four key steps: assessing actual and potential human rights impacts; integrating and acting on the findings; tracking responses; and communicating about how impacts are addressed."*

Due diligence is also proportionate in that it should be appropriate to the risk and the specific circumstances and context of the business. Measures should be *risk-based* or "commensurate to the severity and likelihood of the adverse impact on people or planet.

When the likelihood and severity of an adverse impact is high, then due diligence should be more extensive. Measures should also be appropriate to the business entity's own circumstances, such as its size, industry sector, the nature and context of operations and supply chains, and its leverage over suppliers or other business partners. Detailed and specific public reporting on individual risks identified, and how they are being tracked and managed, is also a critical part of the due diligence process.

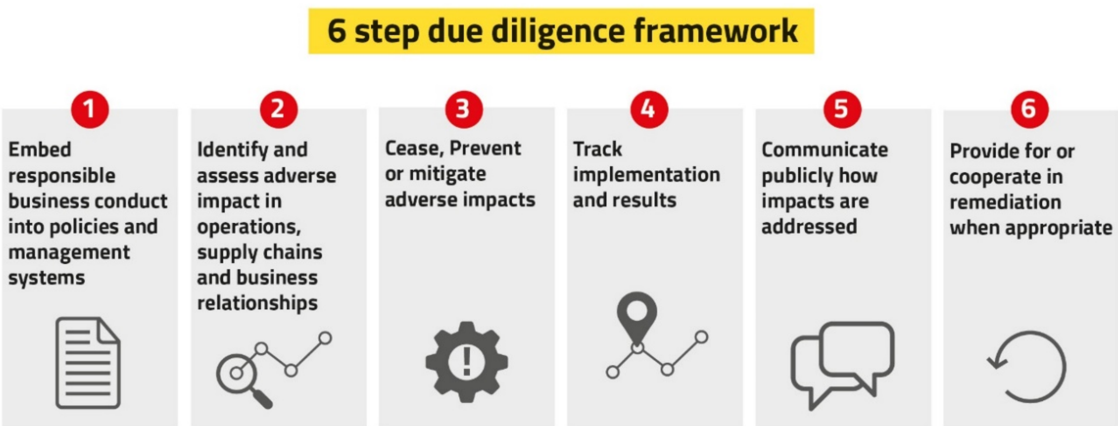
The OECD RBC Guidance sets out these and other core characteristics of RBC due diligence. In order to create an EU due diligence law that is effective and proportionate—tailored to the specificities of individual actors, industries, supply chains and risks, and a particular entity's leverage—any future law must incorporate these obligations.

2. The six step due diligence framework

As set out by the OECD and taken up by the European Commission, 'due diligence' means acting with reasonable care and investigating an issue before making a decision. In other words, it is an on-going, proactive and reactive process through which companies put in place systems and processes to make sure they are able to identify, manage and report on risks in their supply chain'.

The key steps of an effective due diligence process are, in summary:

1. **Embed responsible business conduct** into polices and management systems
2. **Identify and asses adverse impact** in operations, supply chains and business relationships
3. **Cease, prevent or mitigate** adverse impacts
4. **Track** implementation and result
5. **Communicate publicly** how impacts are addressed
6. **Provide for or cooperate in** remediation when appropriate



Strong EU legislation with meaningful scope and sanctions is vital to building a fairer and more sustainable planet

Effective EU legislation would send a clear signal of the EU's global leadership on tackling the current urgent sustainability and human rights challenges the world faces. Across Europe and beyond, there is a growing trend towards introducing mandatory human rights and environmental due diligence at the national level, based on the UNGPs and OECD framework. By implementing legislation, the EU would truly be a global leader on sustainability and is uniquely placed to introduce a set of harmonised rules across all its member states.

EU rules would provide regulatory clarity on what responsible business conduct due diligence means in practice, and stimulate the shift we need towards a more sustainable, just, transparent and fair level playing field. Due diligence obligations would provide all companies, including finance, operating in the EU with the confidence that their business partners are being held to the same high standard. All companies registered or operating in the EU must be within the scope of legislation, regardless of their size.

Responsible and ethical business practice is critical if the new European Commission is to meet the stated ambitions of its President[32].

Without effective RBC due diligence legislation, together with robust enforcement mechanisms and a liability regime for harms caused, the EU risks failing to meet its sustainability goals and to deliver on its climate change and human rights commitments. **The EU would miss a unique opportunity to ensure that its economy and value chains are a force for good, and not a route to harm.**

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[4] Paris Agreement – United Nations 2015
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[6] Human rights and the SDGs – Pursuing Synergies
[7] Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework
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[8] ENEMIES OF THE STATE? How governments and businesses silence land and environmental defenders
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Shell & ENI trial – Decision to open trial 2017
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[13] Why EU action to tackle deforestation should not let finance off the hook
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[18] BBC News - Xinjiang cotton sparks concern over 'forced labour' claims
[19] EGYPT: How French arms were used to crush dissent
[20] Arms companies must be held accountable
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[22] ICAR (International Corporate Accountability Roundtable), ECCJ and Dejusticia joint report providing a cross-country overview and an individual assessment of the existing National Action Plans (NAPs) on business and human rights
[23] Corporate Human Rights Benchmark
[24] A Union that strives for more: My agenda for Europe by candidate for President of the European Commission Ursula von der Leyen
[25] Answers to the European Parliament Questionnaire to the Commissioner-designate Didier Reynders, Commissioner-designate Justice
[26] Page 7/9: JURI Committee evaluation letter to Commissioner-designate Didier Reynders
[27] Directorate General for Justice and Consumers – Study for the European Commission on due diligence requirements through the supply chain
[28] Action Plan: Financing Sustainable Growth, action 10.
[29] Non-financial reporting - EU rules require large companies to publish regular reports on the social and environmental impacts of their activities
[30] OECD, 'Countries commit to step up efforts to drive more responsible business conduct through new OECD instrument'
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[31] International Labour Organisation Standards: Conventions & Recommendations
[32] A Union that strives for more: My agenda for Europe By candidate for President of the European Commission Ursula von der Leyen & What is the European Green Deal?