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No way around due diligence

Overview of human rights due diligence frameworks and legislation

Introduction

Since the adoption of the UN Guiding Principles on Business and Human Rights (UNGPs) in 2011, **human rights due diligence** has become a universally accepted standard for the identification and management of corporate impacts on people.

Today, governments, investors, civil society and consumers expect companies to proactively practice due diligence to ensure they prevent, mitigate and, where necessary, remediate negative human rights impacts that occur as a result of their own operations or business relationships. The concept of human rights due diligence has been integrated and reinforced in numerous political and legal frameworks such as the OECD Guidelines for Multinational Enterprises, the French Corporate Duty of Vigilance Law and the EU Conflict Minerals Regulation, to name but a few.

This publication provides guidance and structure for the requirements of mandatory and voluntary due diligence frameworks. It analyzes due diligence and provides general information about 10 selected due diligence and specific requirements of UNGPs to identify overlaps and specific requirements of each framework (see opposite graphic for an overview of the framework coverage). The good news is that **not every regulation requires a separate implementation process.** A sound human rights due diligence approach as set out in the UNGPs can provide the information needed to comply with a range of the requirements outlined below.

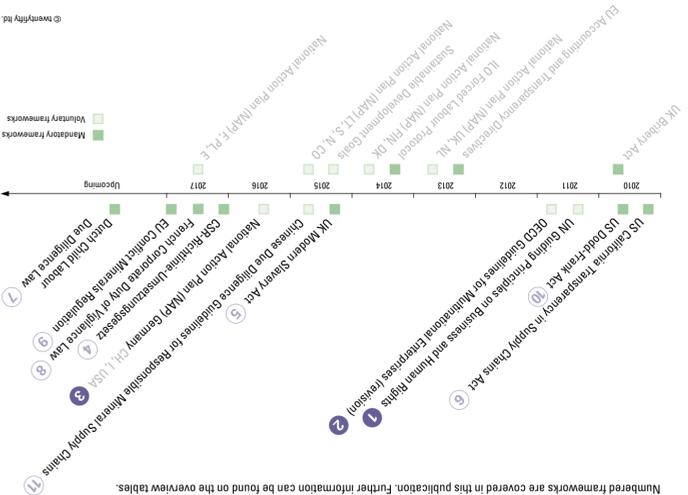
The publication contains summaries key information in two tables (please unfold the publication to view the whole poster). The first table provides a high-level overview of the



- align implementation activities and identify efficiencies across the business, saving resource and costs.
- understand requirements that are passed on by business partners or clients.
- rights due diligence processes as a basis for the fulfillment of current or upcoming legal requirements.
- raise awareness of the importance of sound human rights due diligence processes in the supply chain strategy) can use this overview to:
- Business representatives from various functions (such as compliance, procurement, human resources, sustainability or legal) can use this overview to:
- ensure they prevent, mitigate and, where necessary, remediate negative human rights impacts that occur as a result of their own operations or business relationships. The concept of human rights due diligence has been integrated and reinforced in numerous political and legal frameworks such as the OECD Guidelines for Multinational Enterprises, the French Corporate Duty of Vigilance Law and the EU Conflict Minerals Regulation, to name but a few.

Overview of changing political frameworks and legislation

Numbered frameworks are covered in this publication. Further information can be found on the overview tables.



Analysis summary

Aside from their key commonality – the expectation that companies conduct and report on their due diligence processes – the analysed frameworks differ regarding four key aspects:

Target group	Scope	Focus of mandatory requirements	Sanctions
<ul style="list-style-type: none"> Voluntary requirements (e.g. UNGPs and OECD Guidelines) apply to a wide range of business enterprises in different sectors and geographies 	<ul style="list-style-type: none"> Human rights risks and impacts in general (e.g. UNGPs, OECD Guidelines, German National Action Plan on Business and Human Rights, French Corporate Duty of Vigilance Law) Own business operations and the entire supply chain (e.g. UK Modern Slavery Act) Entire supply chain (draft Dutch Child Labour Due Diligence Law) 	<ul style="list-style-type: none"> Disclosure requirements (all mandatory requirements), some with (regular) reporting requirement, some with an additional focus on third-party audits 	<ul style="list-style-type: none"> Fines (all mandatory requirements) Indirect sanctions such as reputational risk (all mandatory and voluntary requirements)
<ul style="list-style-type: none"> companies doing business in the UK) 	<ul style="list-style-type: none"> Specific topics e.g. child labour (draft Dutch Child Labour Due Diligence Law), modern slavery and human trafficking (e.g. UK Modern Slavery Act) and conflict minerals (e.g. EU Conflict Minerals Regulation) Own operators and tier 1 suppliers (e.g. French Corporate Duty of Vigilance Law) Tier 1 suppliers (direct supply chain) (e.g. US California Transparency in Supply Chains Act) 	<ul style="list-style-type: none"> Discourse and due diligence requirements (French Corporate Duty of Vigilance and draft Dutch Child Labour Due Diligence Law) 	<ul style="list-style-type: none"> Civil liability (French Corporate Duty of Vigilance Law) Prison sentence (draft Dutch Child Labour Due Diligence Law)

Glossary

Chain of custody

The document trail/chronological documentation recording the sequence of companies and individuals which have custody of, for example, minerals as they move through a supply chain.

Comply or explain

Reporting is mandatory but flexibility is given to companies with regard to the content they report on. They must provide a clear and reasoned explanation if they do not meet a requirement or cover a topic explicitly requested.

ILO core labour standards

The International Labour Organization (ILO) core labour standards consist of four standards, laid out in eight ILO conventions:

- Freedom of association and the effective recognition of the right to collective bargaining
- The elimination of all forms of forced and compulsory labour (Convention No. 29 & No. 105)
- The effective abolition of child labour (Convention No. 138 & No. 182)
- The elimination of discrimination in respect of employment and occupation (Convention No. 100 & No. 111)

Injunction

Court order requiring the organisation in question to comply with a legal requirement. Non-compliance in question to injunction or subject to the interpretation of the authors. It is recommended that you verify any information from this publication before relying on it.

Disclaimer

This material is for general information only and does not constitute legal advice. The publication authors have taken all reasonable care to ensure that the information contained in this publication is accurate on the stated date of publication. It is possible that the information may be out of date, incomplete or subject to the interpretation of the authors. It is recommended that you verify any information from this publication before relying on it.

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econsense is an association of leading, globally active companies and organizations of German business specializing in the area of sustainable development and corporate social responsibility (CSR). Founded in 2000 on the initiative of the Federation of German Industries (BDI), the goal of econsense is to provide a dialogue platform and think tank, with the dual objectives of advancing sustainable development in business and assuming social responsibility.

twentyfifty is a management consultancy that builds the capacity of companies to understand and address their impacts, enabling them to lead change that benefits business, and society. twentyfifty has over a decade's experience of helping companies to put their commitments to respect human rights into practice and implement the UN Guiding Principles on Business and Human Rights.

Guideline / law	Human Rights Due Diligence Frameworks			Disclosure Requirements			Specific Due Diligence Requirements		Conflict Minerals Frameworks		
	1 UN Guiding Principles on Business and Human Rights endorsed 2011	2 OECD Guidelines for Multinational Enterprises (human rights chapter) endorsed 2011	3 German National Action Plan on Business and Human Rights endorsed 2016 <small>more info > bottom of page</small>	4 CSR-Richtlinie-Umsetzungsgesetz endorsed 2017 / in force 2017	5 UK Modern Slavery Act endorsed 2015 / in force 2015	6 US California Transparency in Supply Chains Act endorsed 2010 / in force 2012	7 Dutch Child Labour Due Diligence Law upcoming / most probably in force 2020	8 French Corporate Duty of Vigilance Law endorsed 2017 / in force 2017	9 EU Conflict Minerals Regulation endorsed 2017 / in force 2021	10 US Dodd-Frank Act 1502 endorsed 2010 / in force 2012	11 Chinese Due Diligence Guidelines for Responsible Mineral Supply Chains endorsed 2015
Target group	States and business enterprises worldwide	Multinational business enterprises operating in or from OECD-countries or countries adhering voluntarily to the guidelines	Business enterprises operating in Germany	Publicly traded companies, credit institutes and insurance companies operating in Germany with <ul style="list-style-type: none"> more than 500 employees and balance sheet total of more than 20 million Euros or turnover of more than 40 million Euros 	Business enterprises doing any part of their business in the UK with <ul style="list-style-type: none"> global turnover of 36 million GBP and above 	Retailers and manufacturers doing business in the State of California with <ul style="list-style-type: none"> annual global gross receipts of at least 100 million USD 	Business enterprises delivering products or services to the Dutch market twice or more a year (exemptions tbd)	Business enterprises registered in France <ul style="list-style-type: none"> Establishing more than 5'000 employees through its French direct or indirect subsidiaries Employing more than 10'000 employees through its French and foreign direct or indirect subsidiaries 	EU-based business enterprises <ul style="list-style-type: none"> importing tin, tantalum, tungsten, their ores, and gold from conflict-affected areas (except small-scale importers falling below the European Commission's indicated threshold) 	US publicly-traded business enterprises <ul style="list-style-type: none"> manufacturing products with tin, tantalum, tungsten, gold or derivatives from the Democratic Republic of the Congo and/or from adjoining countries 	Chinese business enterprises <ul style="list-style-type: none"> wholly or majority owned/controlled by a Chinese entity or individual extracting, trading, processing, transporting, and/or otherwise using mineral resources and their related products at any point in the mineral resource supply chain
Relevance for German companies	• Directly applies to all German companies	• Directly applies to all German companies	• Directly applies to all German companies	• Directly applies to some German companies (see target group criteria)	• Directly applies to some German companies (see target group criteria)	• Directly applies to some German companies (see target group criteria)	• Directly applies to some German companies (see target group criteria)	• Directly applies to some German companies with French subsidiaries meeting target group criteria	• Directly applies to some German companies (see target group criteria)	• Directly applies to some German companies (see target group criteria)	• Directly applies to some German companies (see target group criteria)
Legal status and requirements	Voluntary <ul style="list-style-type: none"> Human rights due diligence Disclosure (regularly) 	Voluntary <ul style="list-style-type: none"> Human rights due diligence Disclosure (regularly) 	Voluntary <ul style="list-style-type: none"> Human rights due diligence Disclosure (regularly) German Government will consider binding legislation if 50% of all German-based businesses, with over 500 employees, have not implemented human rights due diligence processes until 2020 	Mandatory <ul style="list-style-type: none"> Disclosure (annually) Comply or explain mechanism 	Mandatory <ul style="list-style-type: none"> Disclosure (annually) 	Mandatory <ul style="list-style-type: none"> Disclosure (annually) Third-party audit of supply chain due diligence recommended 	Mandatory <ul style="list-style-type: none"> Child labour due diligence Disclosure (at least one statement) 	Mandatory <ul style="list-style-type: none"> Establish and implement a vigilance plan Disclosure (annually) 	Mandatory <ul style="list-style-type: none"> Conflict minerals supply chain due diligence Disclosure (annually) Third-party audit of supply chain due diligence required 	Mandatory <ul style="list-style-type: none"> Conflict minerals supply chain due diligence Disclosure (annually) Third-party audit of supply chain due diligence required 	Voluntary <ul style="list-style-type: none"> Conflict minerals supply chain due diligence Disclosure Third-party audit of supply chain due diligence recommended
Sanctions	<ul style="list-style-type: none"> No legal sanctions Soft sanctions: Increased reputational risk (e.g. NGO campaigns, low ranking in benchmarks) 	<ul style="list-style-type: none"> No legal sanctions Soft sanctions: Increased reputational risk 	<ul style="list-style-type: none"> No legal sanctions Soft sanctions: Increased reputational risk 	<ul style="list-style-type: none"> Legal sanctions: Fines reaching up to 10 million Euros and/or 5% of the annual turnover Soft sanctions: Increased reputational risk 	<ul style="list-style-type: none"> Legal sanctions: Injunction and potential fines Soft sanctions: Increased reputational risk 	<ul style="list-style-type: none"> Legal sanctions: Injunction and potential fines Soft sanctions: Increased reputational risk 	<ul style="list-style-type: none"> Legal sanctions: Fines and criminal prosecution in the case of repeated non-compliance within five years; prison sentence of up to six months Soft sanctions: Increased reputational risk 	<ul style="list-style-type: none"> Legal sanctions: Court decision with periodic penalty payment for non respect of legal obligations; civil liability if there exists a link between severe human rights impacts and a non-effective vigilance plan; publication of the civil liability decision Soft sanctions: Increased reputational risk 	<ul style="list-style-type: none"> Legal sanctions: Fines and legal prosecution (depending on EU-state implementation) Soft sanctions: Increased reputational risk 	<ul style="list-style-type: none"> Legal sanctions: Fines, and if not conducted in good faith, civil liability Soft sanctions: Increased reputational risk 	<ul style="list-style-type: none"> No legal sanctions Soft sanctions: Increased reputational risk
Normative basis	All internationally recognised human rights	All internationally recognised human rights	All internationally recognised human rights	Refers to the EU Directive on disclosure of non-financial and diversity information (2014/95/EU)	UNGPs, Convention for the Protection of Human Rights and Fundamental Freedoms ECHR (Art. 4), Protection of Children Act 1978, Sexual Offences Act 2003, Human Tissue Act 2004	State, federal and international regulation criminalizing slavery and human trafficking	Refers to the ILO-ILO Child Labour Guidance Tool for Business	All internationally recognised human rights	Refers to the OECD Due Diligence Guidance for Responsible Supply Chains from Conflict-Affected and High-Risk Areas and the UNGPs	US Securities and Exchange Commission (SEC) refers to the OECD Due Diligence Guidance for Responsible Supply Chains from Conflict-Affected and High-Risk Areas	Refers to the OECD Due Diligence Guidance for Responsible Supply Chains from Conflict-Affected and High-Risk Areas and the UNGPs
Scope	<ul style="list-style-type: none"> Human rights, labour standards Own operations, business relationships and entire supply chain 	<ul style="list-style-type: none"> Human rights, labour standards Own operations, business relationships and entire supply chain 	<ul style="list-style-type: none"> Human rights, labour standards Own operations, business relationships and entire supply chain 	<ul style="list-style-type: none"> Human rights, labour standards, environment, anti-corruption and bribery, diversity and corporate governance Own operations, business relationships and relevant supply chains 	<ul style="list-style-type: none"> Modern slavery and human trafficking Own operations, business relationships and entire supply chain 	<ul style="list-style-type: none"> Modern slavery and human trafficking Supply chain (direct suppliers) 	<ul style="list-style-type: none"> Child labour Entire supply chain 	<ul style="list-style-type: none"> Human rights and fundamental freedoms, health and safety of persons, environment Own operations, business relationships and supply chain (direct suppliers) 	<ul style="list-style-type: none"> Human rights, labour standards, conflict minerals / financing conflict Entire supply chain 	<ul style="list-style-type: none"> Human rights, labour standards, conflict minerals / financing conflict Entire supply chain 	<ul style="list-style-type: none"> Human rights, labour standards, environment, conflict minerals / financing conflict Entire supply chain

■ Specific voluntary requirements in addition to the UNGP human rights due diligence elements, as set out on the left hand side
■ Specific mandatory requirements in addition to the UNGP human rights due diligence elements, as set out on the left hand side

Policy commitment	<ul style="list-style-type: none"> Approved at the most senior level of the business enterprise Informed by relevant internal and/or external stakeholders Stipulates human rights expectations of personnel, business partners and other parties Publicly available and communicated internally and externally Reflected in operational policies and procedures 	Not specifically mentioned	<ul style="list-style-type: none"> Covering modern slavery and human trafficking 	Not specifically mentioned	Not specifically mentioned yet (to be defined)	Not specifically mentioned	<ul style="list-style-type: none"> Public supply chain policy covering conflict minerals 	Not specifically mentioned	<ul style="list-style-type: none"> Public supply chain policy covering conflict minerals
Assessing risks and impacts	<ul style="list-style-type: none"> All internationally recognized human rights as a reference point Actual and potential impacts in own operations and through business relationships Draw on internal and/or independent external human rights expertise Iterative and ongoing process Meaningful consultation with potentially affected groups and other relevant stakeholders Prioritise most salient risks Special attention to individuals from groups or populations that may be at heightened risk of vulnerability or marginalization 	<ul style="list-style-type: none"> No additional requirements 	<ul style="list-style-type: none"> Focus: Modern slavery and human trafficking risks in the entire supply chain and own business operations 	<ul style="list-style-type: none"> Focus: Human trafficking and slavery risks related to direct suppliers (applies just to product supply) Product supply verification, third party supplier audits, and tier 1 certifications 	<ul style="list-style-type: none"> Focus: Child labour risks in the entire supply chain (further definition will follow) 	<ul style="list-style-type: none"> Focus: Human rights risks related to companies controlled directly or indirectly (de jure, de facto or contractual exclusive control); and suppliers and contractors with whom there is an established commercial relationship (tier 1) 	<ul style="list-style-type: none"> Risks related to conflict minerals extraction in the mineral supply chain against own supply chain policy, including human rights risks Chain of custody or supply chain traceability system 	<ul style="list-style-type: none"> Risks related to conflict minerals extraction in the mineral supply chain, including human rights risks (focus on the Democratic Republic of the Congo and/or adjoining countries) Supplier audits and verification 	<ul style="list-style-type: none"> Risks related to conflict minerals extraction in the mineral supply chain against own supply chain policy, including human rights risks Chain of custody or supply chain traceability system
Embedding and integration	<ul style="list-style-type: none"> Human rights statement/policy and findings from assessment processes are integrated across business functions and appropriate action is taken Responsibility assigned to the appropriate level and functions Internal decision-making, budget allocations and oversight processes enable effective responses 	<ul style="list-style-type: none"> No additional requirements 	<ul style="list-style-type: none"> Slavery and human trafficking training available to staff Relevant key performance indicators in place 	<ul style="list-style-type: none"> Training available to relevant staff Internal accountability mechanisms for employees and contractors 	<ul style="list-style-type: none"> If reasonable presumption of risk, plan of action on how to combat child labour risk is required To be further defined 	<ul style="list-style-type: none"> Effective implementation of the vigilance plan within 12 months after publication 	<ul style="list-style-type: none"> Assigned senior management responsibility Supply chain policy incorporated into contracts and agreements with suppliers 	Not specifically mentioned	<ul style="list-style-type: none"> Strategy to respond to identified risks Supply chain policy incorporated into contracts and agreements with suppliers
Tracking and communication	<ul style="list-style-type: none"> Track effectiveness of responses based on appropriate and quantitative indicators Draw on feedback from both internal and external sources, including affected stakeholders Report externally on salient risks and how they are addressed Report in a form and frequency that reflect an enterprise's human rights impacts and that are accessible to its intended audiences 	<ul style="list-style-type: none"> Report on material human rights risks and how they are managed Report on relevant non-financial performance indicators 	<ul style="list-style-type: none"> Annual report on modern slavery and trafficking risk management including relevant key performance indicators (recommended), or lack thereof Approved by the company board and signed by a director Posted on the company's homepage If no website: Ensure availability within 30 days upon request 	<ul style="list-style-type: none"> Annual report on implementation measures as mentioned above, including whether verification was conducted by a third party or not Posted on the company's homepage If no website: Ensure availability within 30 days upon request 	<ul style="list-style-type: none"> Statement (at least one statement) on due diligence approach Submit plan of action for publication to the supervising body 	<ul style="list-style-type: none"> Annual report on vigilance plan and implementation Integration in management/board of directors report Evaluation of vigilance plan effectiveness 	<ul style="list-style-type: none"> Annual reporting on supply chain due diligence and results Third party audit of supply chain due diligence required Audit reports must be made available to member state authorities for at least five years Monitoring and tracking performance of risk mitigation efforts 	<ul style="list-style-type: none"> Annual report on due diligence on the source and chain of custody of potential conflict minerals Third party audit of supply chain due diligence required Posted on the company's homepage 	<ul style="list-style-type: none"> Report on supply chain due diligence and results Third party audit of supply chain due diligence Monitoring and tracking performance of risk mitigation efforts
Grievance and remedy	<ul style="list-style-type: none"> Provide for or cooperate in remediation through legitimate processes if impacts were caused by or contributed to by the business enterprise Establish effective operational-level grievance mechanisms according to the UNGP effectiveness criteria 	Not specifically mentioned	<ul style="list-style-type: none"> Business-level grievance mechanisms in place covering modern slavery and human trafficking 	Not specifically mentioned	Not specifically mentioned yet (to be defined)	<ul style="list-style-type: none"> Alert and whistleblowing mechanisms related to existing and potential risks (in collaboration with trade unions) 	<ul style="list-style-type: none"> Early warning risk awareness mechanism allowing any interested party, including whistleblowers, to voice concerns 	Not specifically mentioned	<ul style="list-style-type: none"> Company-level, or industry-wide, grievance mechanism as part of an early-warning risk-awareness system

I. Business and Human Rights – Basics

What are human rights?

Human rights are fundamental freedoms and basic rights, belonging to all human beings without exception, and protecting their inherent dignity. Every individual is entitled to enjoy human rights without discrimination.

What is the responsibility of states and business enterprises?

The United Nations Guiding Principles on Business and Human Rights set the following expectations:

- States must protect against human rights abuses by third parties, including business enterprises;

- Business enterprises must respect human rights and implement effective human rights due diligence processes to this end;
- States and business enterprises must provide victims of business related abuses access to effective remedy through judicial and non-judicial grievance mechanisms.

The responsibility of business enterprises to respect human rights refers to all internationally recognised human rights. These encompass at a minimum those expressed in the International Bill of Human Rights and the ILO core labour standards.

II. Human Rights Due Diligence implementation guidance and tools

- The **Human Rights Due Diligence Info Portal** (<http://mr-sorgfalt.de>) supports companies in setting up and improving their human rights due diligence processes.
- The **Human Rights and Business Dilemmas Forum** (<http://hrbdf.org/>) stimulates discussion and provides case studies about the dilemmas multinational companies may face in their efforts to respect and support human rights when operating in emerging economies.

- The **Business and Human Rights Resource Centre** (<https://www.businesshumanrights.org/>) draws attention to the human rights impacts (positive & negative) of companies worldwide and provides guidance materials, examples of good practice, case law and legal developments on business and human rights.
- The econsense publication **Respecting Human Rights: Tools and Guidance Materials for Business** (<http://www.econsense.de>) provides an overview of human rights due diligence tools and guidance materials.

III. Sustainable Development Goals (SDGs)

What are the SDGs?

The 17 Sustainable Development Goals (SDGs) adopted by the United Nations encompass 169 targets to meet by 2030 that address inequalities, economic growth, decent jobs, cities and human settlements, industrialization, oceans, ecosystems, energy, climate change, sustainable consumption and production, peace and justice.

What is the relationship between SDGs and UN Guiding Principles?

The UNGPs and SDGs complement but do not substitute each other. Fostering respect for human rights may have vast positive impacts on people and contribute to several goals of the SDGs.

Where can I find further guidance?

The SDG Compass (<https://sdgcompass.org/>) provides guidance for companies on how they can align their strategies as well as measure and manage their contribution to the realization of the SDGs.

The Human Rights Guide to the Sustainable Development Goals (<http://sdg.humanrights.dk/>) developed by the Danish Institute for Human Rights provides an overview of the links between the 17 SDGs and 169 targets and the international human rights framework.

IV. Implementation of the German National Action Plan

- A German government website (<http://www.csr-in-deutschland.de/DE/Wirtschaft-Menschenrechte/wirtschaftsmenschenrechte.html>) provides up to date information about the implementation activities of the German government and support offers to German businesses.
- The multi-stakeholder members of the National CSR-Forum have worked on a **"Berlin CSR consensus"** (https://www.bmas.de/SharedDocs/Downloads/DE/Thema-Arbeitsrecht/csr-konsens-liefer-wertschoepfungsketten.pdf?__blob=publicationFile&v=2) to translate the German National Action Plan into practical and actionable language, with a focus on small and medium-sized business enterprises.

- As of 2018, the German government will monitor the implementation of human rights due diligence processes by German companies with more than 500 employees on an annual basis.
- The monitoring process results will inform a decision about whether binding legislation is required (see requirements in the above table).