

Chapter 3

Human rights due diligence in the fight against labour exploitation and human trafficking¹⁸¹

It was long common belief that companies had little or no social responsibility. This view has changed over the past few decades, and there have been significant developments regarding the role and responsibilities of companies within society. There is a growing consensus that the protection of human rights is a duty of both government and businesses. With globalisation and the growing weight and impact of large companies and complex production chains, the principle of corporate social responsibility (CSR) with regard to human rights, the environment and the climate is gaining in importance worldwide. International organisations such as the Organisation for Economic Cooperation and Development (OECD), the United Nations (UN) and the International Labour Organization (ILO) consider 'human rights due diligence' to be a key element of corporate social responsibility.

In this chapter, Myria takes a closer look at the principle of human rights due diligence. In addition to the current international regulatory framework, it examines existing initiatives in Europe, in our neighbouring countries and the state of play in Belgium. Insofar as it is possible, a link is made with human trafficking and labour exploitation, and there is an analysis of how this principle could also be used in Belgium to combat these phenomena.

Corporate social responsibility: term used to indicate that companies consciously pay attention to social and environmental issues in the context of their activities and their relations with other parties.¹⁸²

Environmental, Social and Governance (ESG) criteria or objectives are used to measure a company's sustainability policy.

Due diligence: a process that organisations must follow to identify the current and potential future negative human rights impacts of their own activities, those of their supply chain and other business relationships, and the means to prevent and mitigate them. They must also report on how they manage all this.

¹⁸¹ In this chapter, Myria discusses the notions of human trafficking and labour exploitation. Human trafficking is the act of recruiting, transporting, harbouring or receiving a person over whom control is exercised with the intention of making that person perform a job or provide services in conditions contrary to human dignity. Labour exploitation refers to 'aggravated labour exploitation', which is broader than human trafficking. It includes social dumping, illegal employment and other social criminal law offences. See Part 1, Chapter 1, point 1.

¹⁸² As defined by the European Commission in *A renewed EU strategy 2011-2014 for Corporate Social Responsibility*.

1. International initiatives on business and human rights and the principle of human rights due diligence

There are many CSR and due diligence initiatives at international level. They are non-binding (soft law) but are often of great importance, such as the initiatives of the United Nations and the OECD.

The OECD already adopted its **Guidelines for Multinational Enterprises** as far back as 1976¹⁸³, which contain recommendations on corporate social responsibility in the areas of human rights, labour relations, the environments, taxation, etc.

Within the **United Nations**, the debate on socially sustainable entrepreneurship gained momentum in the mid-2000s. In 2011, the Human Rights Council unanimously adopted the **United Nations Guiding Principles on Business and Human Rights (UNGPs)**¹⁸⁴, a set of 31 principles on business and human rights.

Within the context of their own activities and their supply chain, companies must identify negative impacts on human rights and take measures to combat them.

These guidelines are based on three pillars (Protect, Respect and Remedy):

1. **State duty** to protect people from human rights abuses committed by third parties, including companies and the people behind them;
2. **Corporate responsibility to respect human rights**;
3. **Access to effective remedy for victims** of human rights abuses.

To comply with the second pillar of responsibility, companies must demonstrate due diligence with regard to human rights. This is known as **Human rights due diligence (HRDD)**. In French, the terms **due diligence obligation, due diligence or supply chain responsibility** are also used.

Due diligence is the process by which companies must identify, prevent or mitigate the current and potential future negative impacts of their activities on human rights and report on how these negative impacts are addressed. This effort must be continuous. Its application depends on the context, the size and nature of the company's activities, the complexity of the chain and the relationships with other players.

Due diligence must be applied in the context of their own activities, but also within their subsidiaries and their supply chain (subcontractors). This includes the regular reporting of financial and non-financial information by companies.¹⁸⁶

Figure 1¹⁸⁵

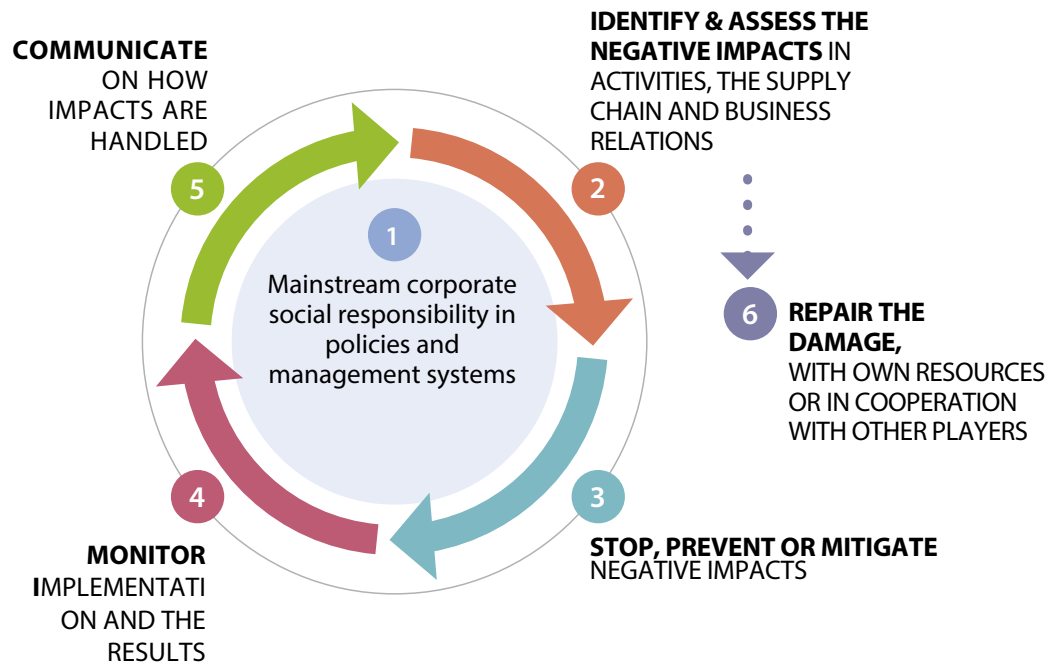
Pillar 1	Pillar 2	Pillar 3
The state duty to protect	Corporate responsibility to respect human rights	Access to an effective remedy for victims
Policy, legislation, regulation	Due diligence to safeguard human rights	Access to judicial and non-judicial remedies

183 OECD, [Guidelines for multinational enterprises](#). The guidelines have already been updated several times, the last time being June 2023.

184 [United Nations Guiding Principles on Business and Human Rights \(UNGPs\)](#).

185 Source of the figure: European Parliament, DG External Policies, [Implementation of the UN Guiding Principles on Business and Human Rights](#), 2017.

186 UNGP 17.



Due diligence is a continuous process consisting of six stages, as illustrated above¹⁸⁷.

The United Nations Human Rights Council has set up a working group on business and human rights within the context of the UNGPs. This working group monitors the application of the UNGPs and launched the idea of **National Action Plans (NAP)**. Belgium adopted its first **National Action Plan (NAP) Business and Human Rights** in July 2017¹⁸⁸.

The United Nations has been working on a legally binding instrument on business and human rights since 2014. A third draft of this instrument was proposed in 2021¹⁸⁹.

The principle of due diligence is also included in the recommendations of the International Labour Organisation (ILO): ‘The Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy’ of 2017¹⁹⁰. This declaration provides guidance to multinationals, governments, employer and employee organisations on the principles contained in international labour conventions. Among other things, it refers to the ban on forced and compulsory labour, respect for working and living conditions, and compliance with health and safety standards.

2. European initiatives: sustainability reporting and human rights due diligence

The focus has also shifted to CSR and due diligence at European level. Major tragedies involving European companies, such as the Rana Plaza disaster in Bangladesh in 2013 and the ensuing outcry, have accelerated this process.

Over the last decade, the EU has adopted regulations, sometimes binding, to ensure that European companies do not (indirectly) contribute to human rights or environmental violations.

A 2017 study by the Fundamental Rights Agency (FRA)¹⁹¹ examined incidents of human rights abuses by European companies.

¹⁸⁷ This illustration is taken from the OECD *Due Diligence Guidance for Responsible Business Conduct*, published on 6 June 2019. This document provides practical support to enterprises on how to implement social corporate responsibility.

¹⁸⁸ See below for more information.

¹⁸⁹ See *United Nations draft*. Negotiations on a fourth project are currently underway.

¹⁹⁰ ILO, *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy*.

¹⁹¹ FRA study of 2017 requested by the European Commission: *Business-related human rights abuse reported in the EU and available remedies*

The data collected in this context showed that poor working conditions were the second most frequent type of offence. Workers represent one of the three categories of victims most affected by violations, whether they are employed directly by companies or are part of the subcontracting chain.

Transparency and the dissemination of information are essential to prevent and reduce the risk of violations and are one of the basic principles of CSR. **The Non Financial Reporting Directive 2014/95 (NFRD)**¹⁹² requires certain large companies to provide information on the impact of their activities on the environment, social and labour issues, respect for human rights and the fight against corruption, and on their related policies, including due diligence procedures. They must also indicate the results of their policies and the risks associated with these issues¹⁹³. This can help investors, consumers, policy-makers and other stakeholders to assess the non-financial performance of large companies. This measure should ensure ongoing monitoring and encourage corporate social responsibility. Belgium has transposed this directive¹⁹⁴.

This directive was still very much optional, leaving companies a great deal of freedom in the way they reported. It was revised in 2022 and gave rise to **the Corporate Sustainability Reporting Directive (CSRD)**¹⁹⁵. Under this new directive, large companies¹⁹⁶ and certain small and medium-sized companies (except for micro-enterprises) must report. This concerns the 50,000 largest companies in the EU. Essentially, they must report on certain social factors and those relating to human rights, such as working conditions and respect for human rights in the framework of numerous human rights treaties. This information should cover the company's impact on people, including workers and, where relevant, on forced labour and child labour in its value chain.

The added value of the new directive is that it introduces a standardised measurement tool based on new European Sustainability Reporting Standards (ESRS). These are the technical requirements that sustainability reports must meet, and consist of 12 standards. These provide a guide for companies on how to report on their activities. One of these standards also covers the working conditions of directly employed workers and those who contribute to the supply chain¹⁹⁸.

The Commission and the European External Action Service (EEAS) published guidance on appropriate due diligence in July 2021 to help EU companies address the risk of forced labour in their own operations and supply chains, in line with international standards¹⁹⁹.

A study carried out by the European Commission in 2020 showed that self-regulation and voluntary initiatives, such as codes of conduct on due diligence in the business world, were not sufficient measures. Scarcely a third of companies voluntarily comply with human rights due diligence²⁰⁰.

Large companies must report on social factors related to human rights in accordance with new European standards.

In addition, the EU wants to ensure harmonisation, as more and more Member States are introducing their own due diligence legislation, which can lead to a

fragmented market and an uneven playing field for companies within the European single market²⁰¹.

192 Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups.

193 Art. 1 Directive 2014/95/EU.

194 See below.

195 Directive (EU) 2022/2464 of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU as regards corporate sustainability reporting. Member States must have transposed it before 6 July 2024.

196 More than 250 employees, sales of over EUR 40 million and profits of over EUR 20 million.

197 If they have 1) more than 10 employees, 2) a turnover of more than EUR 700,000, 3) a profit of more than EUR 350,000.

198 The ESRS were adopted by the European Commission on 31 July 2023. See EFRAG, Draft ESRS social standards S1: own workers and Draft ESRS social standards S2: workers in the value chain; EFRAG, *First Set of draft ESRS*.

199 European Commission, *New EU guidance helps companies to combat forced labour in supply chains*.

200 Barely 37 % of them voluntarily comply with due diligence, see *Study on due diligence requirements through the supply chain. Part I. Synthesis report*. This is also the conclusion of KnowTheChain, *Closing the gap, evidence for effective human rights due diligence from five years measuring company efforts to address forced labour*, 2022.

201 The French law on *devoir de vigilance* and the German law *Sorgfaltspflichtengesetz* differ considerably in terms of personal scope, material requirements and the rules governing their application.

This is why the EU is currently negotiating a **Corporate Sustainability Due Diligence Directive** (CSDDD)²⁰². The European Commission presented a proposal in February 2022, on which the Council and, more recently in June 2023, the Parliament have taken a stance²⁰³. The three proposals currently on the table differ in many respects²⁰⁴. At the time of writing this chapter²⁰⁵, trilogue negotiations on the directive were still in progress. The final version of the directive is expected in spring 2024²⁰⁶.

The directive would require large and certain medium-sized companies to exercise due diligence in relation to human rights and the environment by:

- 1) establishing a human rights and environment policy framework,
- 2) identifying potential negative impacts and taking appropriate measures to prevent or mitigate them,
- 3) monitoring the effectiveness of their policies and measures,
- 4) setting up an internal complaints procedure, and
- 5) making information on due diligence measures publicly available.

This particularly concerns the negative impact on human rights and the environment of their own activities or those of their subsidiaries, as well as the business relationships established within their value chain. Due diligence would apply to all internationally recognised human rights²⁰⁷. The directive can also have an impact outside the EU, because non-European companies wishing to access the EU market will also have to make adjustments. Several players claim that this directive has the potential to be a global game-changer²⁰⁸.

The text also provides for one or more national supervisory authorities to be designated to monitor companies' compliance with their due diligence obligations. These authorities could carry out inspections, launch investigations and, if necessary, implement appropriate measures and impose administrative fines. Companies could be held liable if they fail to exercise due diligence.

The EU also introduced **Socially Responsible Public Procurement (SRPP)** into its public procurement regulations in 2014²⁰⁹. The key principle is that authorities should not just buy at the lowest price or the best value for money, but should also take into account environmental and social criteria, such as respect for social and labour rights²¹⁰.

Many other initiatives also exist, such as those aimed at controlling the trade and imports of certain goods by introducing due diligence, such as the European Commission's proposal to ban products derived from forced labour²¹¹ or the regulations on mineral extraction²¹², the chemical sector²¹³ and deforestation²¹⁴. Other initiatives focus more on due diligence with regard to financial aspects, such as the EU regulation on sustainability-related disclosures in the financial services sector.²¹⁵

202 This directive is part of the European Green Deal, through which the EU is aiming for a sustainable future. See [Just and sustainable economy: Commission lays down rules for companies to respect human rights and environment in global value chains](#).

203 The European Commission organised a consultation with a view to drafting the text, which closed on 8 February 2021. Belgium contributed and supported the introduction of such a European framework.

204 In particular, which companies (large and small) must comply with this obligation or not, whether the financial sector is covered, a different interpretation of 'appropriate measures', the extent to which companies can be prosecuted, the different degree of recourse and financial or non-financial redress for victims, the extent to which company directors and management are co-responsible, etc. August 2023.

205 Proposal for a Directive of the European Parliament and of the Council of 23 February 2022 on Corporate Sustainability Due Diligence and amending Directive

206 (EU) 2019/1937; also see the Council's stance, November 2022 and the European Parliament's stance, 1 June 2023.

207 In particular, it is seen as a complement to the directive on preventing and combating trafficking in human beings and the 'sanctions' directive. See explanation of the proposal, p. 7. The directive is also seen as a complement to Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims in that it provides for the liability and sanctions of legal persons for offences committed for their benefit by any person who has a leading position within the legal person, or for offences made possible by a lack of supervision or control, and complements the 'sanctions' directive, which prohibits the employment of illegally staying third-country nationals, including victims of human trafficking, and provides for sanctions and measures against employers.

208 See, for instance: KnowTheChain, [Closing the gap. evidence for effective human rights due diligence from five years measuring company efforts to address forced labour](#), 2022.

209 See, for instance, Article 18, paragraph 2, of Directive 2014/24/EU; Article 36, paragraph 2, of Directive 2014/25/EU; and Article 30, paragraph 3, of Directive 2014/23/EU. The Member States were supposed to have transposed it before 18 April 2016. The Directive was transposed into Belgian law by the Public Procurement Act of 17 June 2016.

210 See Communication of the Commission: [Buying social - A guide to taking account of social consideration in public procurement - 2nd edition](#) of 26 May 2021.

211 Proposal of 14 September 2022 for a regulation on prohibiting products made with forced labour on the Union market.

212 Regulation 2017/821 of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores and gold

213 Regulation 2017/821 of 17 May 2017 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.

214 Regulation 1907/2006 of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH).

215 European Commission, [Deforestation-free products](#).

216 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.

3. Existing due diligence regulations in other countries

While in most countries due diligence initiatives were mainly based on self-regulation and voluntary actions by the business community, there has been a trend towards the adoption of more binding regulations. Some countries have introduced a general due diligence obligation for companies (France, Germany, Norway²¹⁶), while in others, regulations have more been limited to a particular sector or issue (Netherlands, United Kingdom, California²¹⁷)²¹⁸.

The Modern Slavery Act²¹⁹ was passed in the UK in 2015. It requires UK companies to produce a statement explaining the measures they have taken to ensure that human trafficking does not occur in their production and supply chains. If a company fails to file a slavery and human trafficking statement, there is in theory a procedure that can lead to the company being fined. Statements are published in an online Slavery Statement Registry.²²⁰

In **France**, the Due Diligence was passed in 2017²²¹. French companies with more than 5,000 employees on national territory or more than 10,000 employees worldwide are bound by a due diligence within this framework. They must draw up an annual due diligence plan describing the measures they are taking to identify risks and prevent serious infringements of fundamental rights and freedoms, personal health and safety, and the environment.

This concerns their own activities and those of companies under their direct or indirect control, their subcontractors and all companies with which they have business relations. Anyone with a justified interest can take a company to court so that it respects its obligations. Any NGO can also take legal action in its own name to defend its interests²²².

In **Germany**, due diligence has applied since 1 January 2023²²³ to German companies employing more than 3,000 people on national territory (and also to companies employing more than 1,000 people as of 2024), as well as to certain foreign companies with a branch in Germany. These companies must implement a form of risk management, apply appropriate and continuous risk monitoring and take appropriate preventive measures against certain environmental and human rights violations (such as child and forced labour, discrimination, violations of labour and health rights or the right to a fair wage, etc.). These include risks associated with their own activities, those of their business partners and those of direct and indirect subcontractors. Companies must disclose their efforts every year on their website and inform the competent authority. No new civil liability mechanism has been introduced, but a new supervisory body has been created to monitor compliance with the obligations. This body can impose sanctions if necessary.

In the **Netherlands**, a Child Labour Due Diligence Act has been in force since 2019²²⁴. Any company established in the Netherlands that sells or provides goods or services to Dutch end-consumers declares, under this law, that it is exercising due diligence to prevent these goods or services from being produced using child labour. A body is responsible for monitoring compliance. Any person with a justified interest may lodge a complaint with this supervisory authority. The supervisory authority publishes the declarations in a public register on its website and may also impose a fine. In addition, a more general draft bill on due diligence is currently being negotiated²²⁵.

²¹⁶ Haavind, 16 March 2022, *The new Norwegian Transparency Act enters into force on 1 July 2022*.

²¹⁷ In California, the *Transparency in Supply Chains Act* was adopted in 2011. It requires certain companies to be transparent about their efforts to ban human trafficking from their supply chains.

²¹⁸ For a global overview, see Boris Verbrugge, *Overview of legislative developments in the field of sustainability due diligence*, December 2022.

²¹⁹ *Modern Slavery Act*, 2015. Discussions are underway to reform the law and increase corporate responsibility. See Modern Slavery Bill in the Queen's Speech 2022.

²²⁰ *Slavery Statement Registry*.

²²¹ *Act 2017-399 of 27 March 2017 on due diligence of parent companies and ordering companies*.

²²² For an evaluation of the law, see *Evaluation of the implementation of Law 2017-399 of 27 March 2017 on due diligence by parent companies and originator companies*.

²²³ *Gesetz über die unternehmerischen Sorgfaltspflichten zur Vermeidung von Menschenrechtsverletzungen in Lieferketten (Lieferkettensorgfaltspflichtengesetz)* of 16 July 2021

²²⁴ The Act only entered into force on 1 January 2022.

²²⁵ Draft law of 1 November 2022 on responsible and sustainable international trade.

4. Belgium and due diligence: current situation

Belgium is also paying an increasing amount of attention to CSR, and more specifically to ESG criteria. Although Belgium does not yet have a binding law on due diligence, civil society and part of the business world are beginning to debate this issue publicly. Initiatives have also already been taken at a political level.

In the context of the UNGPs, Belgium adopted its first **National Action Plan on Business and Human Rights** (NAP) in July 2017. It includes 33 actions²²⁶. Since then, an evaluation²²⁷ of the progress made by the Belgian authorities and companies took place in 2021. This evaluation serves as a basis for the current negotiation of a second NAP. During this evaluation, the National Baseline Assessment (NBA) examined the extent to which Belgium complies with the three pillars of the UNGPs and concluded that the implementation of the UNGPs by the authorities and companies is too limited and not sufficiently binding.

The NBA has noted that few companies comply their human rights due diligence obligation²²⁸. This is partly because Belgium has many small and medium-sized companies that find it more difficult to do so, and partly because the government does not impose a mandatory due diligence test. The Belgian regulatory framework does not provide sufficient incentives for companies to carry out due diligence. Belgium needs to review the balance between voluntary actions and compulsory measures. There should also be more tools to help businesses. In addition, Belgium should do more to ensure that victims have effective access to redress²²⁹.

The NBA also calls on public authorities, employers' organisations, trade unions and civil society to pay more attention to and raise awareness of CSR and due diligence.

In 2017²³⁰, Belgium transposed the European Corporate **Sustainability Reporting Directive**²³¹. As a result, some large companies²³² are required to report annually, through a **Non-Financial Information** (NFI) statement, on how they manage environmental, social and human resources issues, respect for human rights and the fight against corruption.

This NFI statement should include the following elements:

- 1) a description of the company's activities,
- 2) the policy and due diligence procedures applied,
- 3) the results of this policy and
- 4) the risks associated with these matters, and
- 5) non-financial key performance indicators relevant to the business activities.

Information on due diligence procedures should also cover the company's supply and subcontracting chain²³³. The statement should be included in the company's annual report or in a separate report.

226 These include strengthening and monitoring respect for human rights in public procurement, evaluating the Belgian socially responsible production label, integrating human rights due diligence into management bodies, promoting social reporting on human rights, promoting socially responsible public companies, stimulating responsible management of supply chains with a sectoral approach, etc.

227 [National Baseline Assessment \(NBA\): National Baseline Assessment Business and Human Rights in Belgium, main report 2.0.](#)

228 NBA, Analytical synthesis, pp. 7 ff.

229 That said, the brochure [Access to Remedy in Belgium. The United Nations Guiding Principles on Business and Human Rights \(UNGP\) in Belgium: State-based judicial and non-judicial mechanisms that provide access to a remedy](#) is considered a good practice by the FRA.

230 Act of 3 September 2017 on the disclosure of non-financial and diversity information by certain large undertakings and groups.

231 Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups. As mentioned above, this directive was recently amended by a new Directive (EU) 2022/2464 of 14 December 2022 amending Regulation (EU) No. 537/2014 and Directives 2004/109/EC, 2006/43/EC and 2013/34/EU, as regards corporate sustainability reporting. Member States must have transposed it before 6 July 2024.

232 Art. 3, 4°. A company incorporated under Belgian law is required to make an NFI declaration if it is a public interest body, if it employs on average more than 500 people and if its balance sheet total exceeds EUR 17,000,000 or if its turnover exceeds EUR 34,000,000. The parent company of a group of companies is also required to make an NFI declaration if it has more than 500 employees.

233 Explanatory memorandum to the draft bill on the disclosure of non-financial and diversity information by certain large undertakings and groups, Parl. Doc., Chamber, S.O. 2016-2017, Doc. 54 2564/001, p. 4.

The National Action Plan to Combat Trafficking in Human Beings 2021-2025 states that the law should be amended so that trafficking is explicitly included among the issues on which companies must give account²³⁴. A recent draft law provides for an explicit report on the risks associated with human trafficking and the publication of the NFI statement on the company's website²³⁵.

According to the NBA, this obligation to publish sustainability information does not yet seem to be having the desired effect, partly because the Belgian transposition is not entirely in line with international standards²³⁶. Several Belgian companies²³⁷, trade unions and civil society want to go further and are in favour of a national legal framework for due diligence²³⁸. In the government agreement of 30 September 2020²³⁹, the federal government also committed to playing a key role in this domain on an international level²⁴⁰.

The current National Action Plan to Combat Trafficking in Human Beings 2021-2025 states that Belgium supports European regulations which ensure that companies implement a due diligence process, helping to prevent labour exploitation and increase the accountability of principals (in the context of supply chains)²⁴¹. The Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) also encourages this approach in its latest 2022 report on Belgium²⁴².

The recent recommendations of Special Parliamentary Commission on Trafficking and Smuggling²⁴³, call on large companies to pay attention to the phenomena of human trafficking and smuggling, exploitation and social dumping among their subcontractors.

A **draft law introducing a due diligence and liability obligation for companies** throughout their value chains was presented in 2021²⁴⁴. There is no certainty this law will be adopted, as Belgium is waiting for a European directive. It is important that binding regulations establish qualitative and effective due diligence, accompanied by the necessary guarantees.

For due diligence to be effective and not turn into whitewashing, it must be accompanied by several guarantees. One of these is that not only very large companies have a due diligence obligation, but also smaller ones, in proportion to their capabilities. In addition, the government should monitor compliance with the legislation through constant checks and ensure that, where necessary, there are consequences, such as fines²⁴⁵. Some players also argue that companies should be required to be transparent and publish lists of their subcontractors throughout the subcontracting chain²⁴⁶.

It is essential that the regulations establish effective and qualitative due diligence, accompanied by the necessary guarantees.

Access to an effective remedy for victims is also essential. The European Union Agency for Fundamental Rights (FRA), among others, has confirmed this in a detailed report. An effective remedy must be

available through judicial channels, i.e. civil and criminal proceedings, or through administrative procedures, or through non-judicial mechanisms which can be used in the first instance to ensure respect for victims' rights, and which are often quicker, less costly and easier to access. In some cases, the FRA also advocates reversing the burden of proof in cases where there is already prima facie evidence that a company has violated human rights. This would put the onus on the company to prove that there has been no violation. Moreover, it remains very difficult for victims to prove a violation, because it is precisely the company that holds all the information. Some of the information should be disclosed as part of the reporting obligation.

234 Criminal Policy Department, *Action Plan to Combat Trafficking in Human Beings 2021-2025*, p. 34.

235 See the draft bill amending the Companies and Associations Code on the disclosure of non-financial information by certain large undertakings and groups, Parl. Doc., Chamber, S.O. 2022-2023, Doc. 55 2977/001.

236 *Belgian National Baseline Assessment (NBA) on Business and Human Rights*, 2021, p. 27.

237 Sixty Belgian companies have sent a letter to the relevant ministers calling for legislation on due diligence.

238 *Memorandum - Essential foundations for a Belgian law on due diligence*, October 2020.

239 See government agreement 2020, p. 89.

240 Resolution of 14 January 2021 in support of a binding United Nations Treaty on 'Business and Human Rights' and a European initiative on due diligence, Parl. Doc., Chamber, S.O. 2020-2021, Doc. 55 0524/005.

241 Criminal Policy Department, *Action Plan to Combat Trafficking in Human Beings 2021-2025*, p. 32.

242 GRETA, *Evaluation Report Belgium - Access to justice and effective remedies for victims of trafficking in human beings, 20 October 2022*, p. 40.

243 See *recommendation 69.1*. See Part 2, Chapter 1, point 2.

244 Draft law of 2 April 2021 introducing due diligence and due diligence for companies throughout the value chain.

245 This is also the conclusion reached by the specialised NGO KnowTheChain following a benchmark study of major multinationals over a five-year period, see KnowTheChain, *Closing the gap - Evidence for effective human rights due diligence from five years measuring company efforts to address forced labour*, 2022.

246 *Ibid.*, p. 19. See "Filing a complaint with the National Contact Point (NCP) for the OECD Guidelines".

However, the FRA also advocates an obligation to ‘disclose’ all company documents that are relevant to a particular violation. There should also be the possibility of collective redress or representative actions for victims of corporate offences. In addition, it is preferable for a company's due diligence plan to be drawn up with the participation of all stakeholders (stakeholder engagement), such as civil society and trade unions. Some organisations also advocate the duty of directors²⁴⁷.

In response to a number of major cases²⁴⁸ of labour exploitation, Flanders is currently taking the first steps to introduce, within the scope of its powers, a **minimum due diligence** for the (main) contractor with regard to the illegal employment of workers²⁴⁹. This minimum due diligence means that the (main) contractor must request certain information from their direct subcontractors to prove that they are complying with legal requirements. If this information reveals illegal employment, or if the data are insufficient, the (main) contractor will be required to call the direct subcontractor to order. If the sub-contractor does not comply with this request, the (main) contractor is obliged to inform the Flemish social inspectorate.

The question of whether the (main) contractor is jointly liable for offences will always be assessed on a case-by-case basis by the social inspectorate on the basis of a number of factors.

The aim is not for companies to take on the inspection role themselves, but rather for them to be able to detect unscrupulous subcontractors more easily thanks to the built-in due diligence test. Currently, the principal or main contractor can be prosecuted for illegal employment offences committed on the building site by the subcontractor, but this possibility has been undermined by the current provision which allows the contractor or principal to exclude liability for illegal employment by the direct contractor by means of a simple contractual clause²⁵⁰.

5. Other corporate social responsibility initiatives in Belgium

Within the framework of the OECD guidelines, it was decided that each country would set up a **National Contact Point (NCP) for Responsible Business Conduct** to implement the guidelines. The Belgian NCP²⁵¹ was set up within FPS Economy and is made up of delegates from the federal and regional governments, employers' organisations and trade unions. The NCP has two main missions: 1) to raise awareness of the guidelines and promote compliance with them and 2) to guarantee an out-of-court mechanism for the impartial resolution of disputes between parties in the event that a Belgian company does not comply with the guidelines. Any organisation or individual may lodge a complaint with the NCP about an alleged violation of the OECD guidelines by a company or organisation. The NCP offers mediation between the parties²⁵².

Belgium had already introduced a **product label aimed at promoting socially responsible production**²⁵³ in 2002, awarded by the Minister of the Economy to companies that can demonstrate that their products and services comply with the core ILO conventions throughout their production chain. The label is based on a chain approach: core labour standards must be respected throughout the production chain. Companies are then authorised to display the ‘Belgian social label’ on their products and services. The label is inspected by a certified inspection body. However, the label has never really taken off. Only about 10 companies have applied for it.

247 In particular, see FRA, *Business-related human rights abuse reported in the EU and available remedies* and *Business and human rights – access to remedy*, as well as ENNHRI, *Statement on the proposal for a Corporate Sustainability Due Diligence Directive*.

248 The press release of 20 January 2023 refers to the Borealis case and irregularities identified at *Antwerp Container Transport International* (ACT) and BASF.

249 Draft decree amending the Act of 30 April 1999 on the employment of foreign workers, the Decree of 30 April 2004 standardising control provisions in the regulation of matters of social legislation and the Decree of 22 December 2017 on a premium to stimulate the transition of jobseekers to entrepreneurship, Parl. Doc., Fl. Parl. 2022-23, No. 1.1805/1. The decree was adopted on 25 October 2023.

250 Art. 23 of the Act of 11 February 2013 providing for sanctions and measures against employers of illegally staying third-country nationals and Art. 12/4, § 1 of the act on the employment of foreign workers.

251 *National Contact Point (NCP) for Responsible Business Conduct*.

252 See “*Filing a complaint with the National Contact Point (NCP) for the OECD Guidelines*”.

253 Act of 27 February 2002 to promote socially responsible production.

There are a number of **multi-stakeholder initiatives**, such as ‘pacts’ in which business, government, trade unions and civil society work together to prevent abuses such as human rights violations²⁵⁴.

Belgium has also developed a **Human Rights Toolbox**²⁵⁵ which includes various instruments designed to help companies meet their human rights obligations.

The authorities and state-owned companies are major customers of goods and services. In this respect, the government has a role to play in setting an example when it comes to respecting and protecting human rights, both with regard to its own public companies and when awarding public procurement contracts and granting aid to companies. The **Act on Public Procurement** of 17 June 2016²⁵⁶ pays particular attention to the issues of labour exploitation and social dumping. It stipulates that contractors are required to observe and enforce all applicable obligations in the field of environmental, social and labour law by any person acting as a subcontractor at any stage, and by any person employing staff for the execution of the contract²⁵⁷.

In addition, any tenderer who has already been convicted in the past for acts such as child labour and other forms of human trafficking or the employment of illegally staying nationals should be excluded from the procedure at any time²⁵⁸. However, Belgium could develop an even more ambitious and effective policy framework on public procurement and human rights²⁵⁹. All too often, these obligations are only checked at a given point in the award procedure, which does not have the desired effect of ensuring that sustainable development obligations actually become an integral part of the corporate culture of the company concerned.

6. Is due diligence a tool in the fight against human trafficking and labour exploitation?

Below, Myria examines the extent to which due diligence could be used to combat human trafficking and labour exploitation.

Several major cases of labour exploitation have come to light in Belgium in recent years. Investigations into social dumping and human trafficking often go hand in hand. Larger, decent companies are regularly involved, mainly in labour-intensive sectors²⁶⁰. They knowingly or unknowingly use subcontractors committing labour exploitation.

In this respect, subcontracting is often no longer used to entrust specific tasks to another contractor, but as a revenue model by dishonest employers who practise social dumping and exploitation by cutting labour costs as far as possible. Subcontracting allows companies to separate profits from risks and responsibilities, and to circumvent labour rights and social security contributions²⁶¹.

Criminal groups are also taking advantage of the growing demand for cheap labour in several Member States and are abusing differences in labour legislation to exploit victims in the grey area between legal employment and labour exploitation. In light of the experience of the Financial Intelligence Processing Unit (CTIF), there are links with social fraud, which consists of setting up fraudulent systems to disguise exploitation.

254 Examples: [TruStone](#) and [Beyond chocolate](#).

255 <https://entreprises-droitshomme.be>.

256 The act came into force on 30 June 2017 and transposes the European directives (see above).

257 Art. 7 of the Act of 17 June 2016 on public procurement.

258 Art. 67.

259 B. Verbrugge, *Mensenrechten in overheidsaanbestedingen: opportuniteiten in regelgeving botsen op realiteiten in de aankooppraktijk*.

260 See Part 1, Chapter 4, point 6.

261 The Left, *Subcontracting: exploitation by design – Tackling the business model for social dumping*, 2022.

As a result, links with organised crime are increasingly being established²⁶². A tangle of subcontractors and schemes is created through various companies in the country and sometimes abroad.

Using this system, they attempt to hide or even legitimise certain situations of human trafficking and labour exploitation, whether through illegal employment, fictitious self-employment, abusive postings, 'letterbox' companies in other Member States, etc. In practice, it is difficult to prove that the principal or main contractor was aware of this. Sometimes, principals or contractors are acting in good faith and are unaware of the labour exploitation down the chain. In other cases, they are aware or deliberately keep themselves in the dark because it is often better not to know certain things.

And in other cases, they indirectly contribute to unscrupulous practices by charging such competitive prices. Thus, the principals remain out of reach. The presumption of innocence applies, and it is up to the government or the victims to prove that the principal was aware, which is extremely difficult and time-consuming in practice.

These unscrupulous practices are not only disastrous for the victims who are exploited. They also distort the market and lead to unfair competition with companies acting in good faith²⁶³.

6.1. | Due diligence, a preventive measure above all

Due diligence would above all play a **preventive role** in companies.

Companies are obliged to carry out their own risk assessment (of human trafficking and labour exploitation) of their activities and those of their subcontractors (or business relations), to mitigate any risks and to act accordingly. This means that companies can no longer feign ignorance. They must demonstrate that they have done everything in their power in terms of control and prevention. This helps to raise awareness and make companies act responsibly, especially if they are acting in good faith.

Due diligence can help to raise awareness in companies and make them act responsibly.

If this is the case, these companies will make an informed choice to work with subcontractors who fulfil their obligations.

Making due diligence procedures public also has an awareness-raising effect on consumers and investors. Non-compliance with due diligence can seriously damage a company's reputation.

The effect of raising awareness can be even greater if companies have to publish this information on their website and if the information is collected in an online register (cf. Modern slavery statement registry in the United Kingdom).

In order to have an overview of their chain, the main contractor will also have to call on external (independent and certified) services for controls, in addition to their own internal audits. This means that it is not just the authorities who are responsible for monitoring the chain, but also the companies themselves, through a kind of self-regulation system²⁶⁴.

²⁶² Financial Intelligence Processing Unit (CTIF), Activity Report 2018, p. 14; See Part 1, Chapter 1, point 1.

²⁶³ See Part 1, Chapter 4, point 6.

²⁶⁴ *Ibid.*

During the informal discussions Myria had with various players involved in the fight against human trafficking for the purpose of labour exploitation as part of the preparation of the annual report, one labour prosecutor suggested that some sort of independent external service could be set up to oversee the obligation of due diligence. They likened it to an external service for prevention and protection in the workplace. A similar external service could be set up for due diligence, to help companies monitor compliance with this duty. If the obligations are not respected in the subcontracting chain, the service would inform the contractor or the principal concerned. In this way, principals can no longer feign ignorance. GRETA also seemed to be suggesting something similar²⁶⁵, notably independent audits in the contractor chain and monitoring of the workplace.

Another labour prosecutor suggested that due diligence could also be useful for social secretariats. If they observe irregularities, they can report them to the relevant services.

In order to facilitate collaboration and communication with supervisory authorities and other external players, large and medium-sized companies could designate a due diligence policy contact point or competent contact person. This department or person could centralise all the information relating to the company's due diligence measures and act as the contact point in this respect, both internally and externally.

However, it is essential that the obligation of due diligence is effectively integrated into company policy. This obligation will not achieve the desired result if companies consider it only as a one shot, as a condition that they have to fulfil annually at a certain moment of the controls. The impact will only be real if due diligence is truly part of the corporate culture.

Due diligence can help to raise awareness in companies and make them act responsibly.

6.2. | The role of due diligence in a law enforcement approach and the gathering of evidence

Due diligence could be an additional tool in the existing systems for detecting and punishing trafficking and labour exploitation.

a. | Linking due diligence to a chain of responsibility in the fight against human trafficking

The due diligence and sustainability reporting obligation could be combined with a chain approach in order to trace things back to those responsible.

In practice, magistrates are especially faced with the heavy burden of proof, which consists of demonstrating that more senior people were aware of the wrongdoing.

In some situations, the law already provides for a **chain of responsibility**, such as joint and several liability for all wage debts in certain sectors²⁶⁶ or joint and several liability for the illegal employment of foreign workers²⁶⁷.

However, even in this case, responsibility upstream in the chain is often limited in practice, or principals can be exonerated if they have a written declaration in which the direct subcontractor confirms that they do not and will not employ illegally staying third-country nationals²⁶⁸. The current rules on the joint and several liability of the main contractor are often insufficient to hold them liable²⁶⁹. Several voices are calling for a tightening of the chain of responsibility²⁷⁰.

265 GRETA, *Guidance note on preventing and combating trafficking in human beings for the purpose of labour exploitation*, September 2021, p. 18: Conduct or require independent supply chain audits and workplace monitoring, and ensure that companies are held accountable in case of human rights abuses.

266 The Programme Act of 29 March 2012 introduced the chain of responsibility into the law concerning the protection of workers' pay for certain sectors: cleaning, security, construction, transport, electricians, metalwork, upholstery and joinery, agriculture and horticulture and certain types of work in the food industry and trade.

267 See the Act of 11 February 2013 providing for sanctions and measures against employers of illegally staying third-country nationals ('Sanctions' act).

268 The National Action Plan to Combat Trafficking in Human Beings 2015-2019 referred to a draft bill on the joint and several liability of principals who use intermediaries who engage in human trafficking. The law provides for penalties in terms of civil and criminal liability when the principal knew or should have known that their intermediary was exploiting people in working conditions contrary to human dignity. The draft bill was never passed owing to a lack of political agreement. See the Criminal Policy Department, *Action Plan to Combat Trafficking in Human Beings 2015-2019*, pp. 11 ff. Also see Myria, *Annual Report 2010, Trafficking and smuggling of human beings. Combating social fraud to prevent trafficking in human beings*, pp. 98 ff.

270 See Part 1, Chapter 4, point 6.

See the recent question of labour prosecutor Filip De Ketelaere and the mayor of Ghent following the labour exploitation of Bulgarian workers in Ghent. VRT NWS, *Gent draaischijf voor sociale uitbuiting van Bulgaren: "Echte maffiapraktijken, ik kreeg 50 euro per week"* en VRT NWS, *Gent vraagt regering om bedrijven die meedoen aan sociale uitbuiting via onderaannemers harder aan te pakken*. Also see Report of the Special Commission responsible for evaluating legislation and policy on human trafficking and smuggling, 12 June 2023, Parl. Doc., Chamber, DOC 55 2530/002, recommendation 67.

Establishing a link between due diligence and joint and several liability throughout the subcontracting chain could, however, be an interesting additional tool to trace things back along the chain.

Thanks to due diligence and the reporting obligation, a principal can no longer feign ignorance. They must monitor their own activities and those of their chain. They are aware, or should have been aware, of problematic working conditions. Hence, the 'knowingly and intentionally' aspect could be proven and they could be prosecuted for the offence of human trafficking or for other acts of labour exploitation. It would then be up to the principal to prove that they were unaware of the exploitative situation²⁷¹.

Informal discussions with the various players conducted to prepare the annual report highlighted the little-known nature of this concept. Nevertheless, some magistrates considered it to be an additional tool. Some labour prosecutors suggested that smaller companies, particularly those closest to the workers actually employed, should also comply with due diligence and sustainability reporting obligations. In practice, it has been observed that it is mainly small companies that pay little attention to working conditions.

The proposed Belgian law on due diligence, unlike the proposed European directive, stipulates that all companies established or operating in Belgium are bound by due diligence. Small and medium-sized enterprises also have due diligence obligation. However, the extent of the obligations must be proportionate to the size of the company, its resources, its ability to be aware of the risks and to take effective measures, as well as the company's potential negative impact. Hence, companies active in high-risk sectors or regions are required to make a greater effort with regard to due diligence. That said, the proportionality of the obligations does not affect responsibility for the impact of business activities²⁷².

b. | Due diligence in gathering evidence

The information communicated within the context of the due diligence and reporting obligation may also be useful during the investigation carried out by inspectorates, public prosecutors and labour prosecutors within the framework of **gathering evidence** during an investigation²⁷³.

In the road transport case in Bruges, also discussed in this annual report, Myria found that the client had asked a consultancy firm to carry out an audit. This audit revealed serious anomalies, following which corrective measures were requested and implemented²⁷⁴.

Finally, reporting of qualitative information on sustainability could also prove useful in providing victims with an effective remedy. The information can help victims as evidence to obtain redress and recovery in judicial or extra-judicial proceedings.

c. | Due diligence obligation to detect problematic situations

The information provided in sustainability reporting can also be used to **identify problematic situations**. Principals who discover non-compliance with certain rules and problems with subcontractors during checks, could report them to the competent authorities, a situation similar to the obligation to report to inspection services, included in the draft Flemish decree on the minimum due diligence with regard to illegal employment.

In addition, a **supervisory authority** (currently provided for in the European directive and implemented in Germany) could be responsible for the final control of the due diligence process. In the event of non-compliance, this authority could impose fines or other measures (injunctions or exclusion from public procurement). If the supervisory authority finds irregularities, it can report them to the competent authorities, such as inspectorates, for further investigation.

271 See Part 1, Chapter 4, point 6.

272 Bill of 2 April 2021 introducing due diligence and liability for companies throughout the value chain and Memorandum - Essential foundations for a Belgian law on due diligence, October 2020.

273 One of the labour prosecutors interviewed considered it useful.

274 See Part 1, Chapter 2 and Part 1, Chapter 4, point 6.

d. | Due diligence in the context of administrative measures

According to another labour prosecutor, due diligence could also be of interest in the context of an **administrative approach**. For example, a town or municipality could make its policy on granting business permits subject to compliance with due diligence²⁷⁵. Trade federations could also make their policy, and the criteria which companies must meet, subject to compliance with due diligence in order to be authorised to exercise a particular activity.

Conclusions

In this analysis, Myria has sought to give an initial impetus to the issue of knowing to what extent due diligence for Belgian companies could contribute to the fight against human trafficking, since this will happen in the short to medium term as a result of the transposition of the European directive. Although this remedy is not applicable to all situations of human trafficking and labour exploitation, Myria nevertheless believes that it could be a useful means of raising awareness.

For instance, for companies who act in good faith who need to keep an eye on their own activities and those of their chain. This would allow them to select their contractors in a critical manner and encourage them to comply with the rules on proper working conditions. If a supervisory authority imposes fines and other measures for non-compliance with obligations, other companies will also be encouraged to guarantee proper working conditions.

As for the awareness-raising aspect, this has an effect on investors, consumers and the general public by enabling them to make informed choices about the companies with which they wish to engage on the basis of the information provided. From this point of view, companies that fail to meet their obligations can suffer serious reputational damage.

Although this remains highly theoretical, Myria firmly believes that due diligence could be an interesting tool in the fight against human trafficking, even in a repressive context, insofar as it would be linked to the joint and several liability of the principal. The onus is on companies to prove that they were not aware or could not have been aware of working conditions contrary to human dignity within their chain. The information they must disclose in this respect may be useful in investigations into human trafficking.

If due diligence is to contribute to the fight against human trafficking, Myria believes that it must not become a simple 'tick box' for companies. Due diligence must be accompanied by certain necessary guarantees, and above all by an effective remedy for victims. With this in mind, it would be worthwhile for the Belgian authorities, when transposing such an obligation, to check its effectiveness in other countries that already have such legislation.

²⁷⁵ Also see Part 1, Chapter 4, point 3.

Based on this analysis, Myria makes the following recommendations:

- Belgium needs to review the balance between voluntary actions and mandatory measures.
- Belgium needs binding due diligence regulation, in addition to other voluntary initiatives.
- Belgium can play a pioneering role in the negotiations on the European directive and argue for the safeguards needed for an effective directive to prevent greenwashing and whitewashing.
- When transposing the directive, it should be ensured that controls are designed in such a way that companies' due diligence does not just become a 'tick box' that they have to comply with every year during audits, but actually becomes part of their corporate culture.
- In preparing its own regulations, Belgium could analyse the effectiveness of other countries' systems in order to choose the best system.
- When transposing the Sustainability Reporting Directive, explicit reference should be made to human trafficking in Belgian legislation as provided for by the National Action Plan to Combat Trafficking in Human Beings. It should also be stipulated that NFI statements be published online on the company's website.
- The Belgian authorities must support companies and provide them with tools to help them comply with their due diligence obligations.
- Magistrates should be made aware of the concept of due diligence and encouraged to use companies' NFI statements in their criminal investigations.
- The due diligence requirement could apply in an administrative context and when awarding public contracts.
- The due diligence requirement could also be applied by trade federations when issuing permits.