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KNOWLEDGE FOR ACTION

Company “Due Diligence”
and non-financial information:
threats or new leverages
for workers' representatives?

A WORKERS' REPRESENTATIVE TOOLKIT

Lessons learned and possible ways forward in due diligence



About Syndex

Syndex is a European consultancy firm (45 years of experience) with more than 400 specialized consultants, providing assistance to social partners on a wide range of economic and social issues. It places its expertise at the service of European and national social partners, sectoral social partner committees and European and national public institutions, with the aim of fostering social dialogue and contributing to the promotion of a social Europe. Syndex has its headquarters in Paris and has offices in Bucharest, Brussels, Dublin, London, Madrid, and Warsaw. It also has a network of local experts in many other EU countries. Wmp Consult is the partner of Syndex in Germany.



With the support of
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FOREWORD

The last 10 years have been very active ones over the evolution of business accountability. The UN, the ILO and OECD have revised their instruments for (multinational) companies to better prevent, mitigate and eliminate negative impact directly or indirectly linked to their operations. In Europe, the 2014 directive on mandatory reporting of non-financial information by companies and several national legislative initiatives, particularly the French one in 2017 setting up vigilance plans, are opening the door to a new important area of strategic company decisions, which is very relevant also for workers and their representatives. At sector level, new rules are being set up, like the adopted Directive on Unfair Trading Practices in the Food supply chain that favours better purchasing practices by large customers in a disproportionate bargaining position vs. weaker suppliers.

This toolkit is based on two years of work under a project called "*Company "Due Diligence" and non-financial information: threats or new leverages for workers' representatives?*" financed by the EU Commission, with the contribution of the European Industry Federations EFBWW, EFFAT, ETF, IndustriAll Europe and UNI Europa, as well as the cross-industry organisations ETUC, ITUC and TUAC. It aimed at improving the knowledge of workers' representatives regarding these recent developments and to facilitate initiatives by workers and their representatives, as well as consistent and comprehensive workers' involvement in companies' decision-making processes on these issues.

This toolkit is intended as a learning tool and reference for the analysis of corporate public reporting and to influence it in the interest of workers and civil society.

It will not only help the user to know which documents published by the company are relevant to consult but also teach how to read them. Beware that the public reporting analyses contained here are based on annually published documents which implies that the information is evolving.

The document that you are reading was written by Syndex and its German partner WMP Consult, consulting firms specialized in the support and advice of workers' representatives and their trade unions. It draws upon case studies analysed by Syndex and webinars conducted by Syndex and the European Trade Union Federations with trade union representatives in a selection of multinational companies from different sectors (EDF, McDonald's, G4S, Repsol, Scania, Volkswagen, Unilever, Danone, Nestlé, Carrefour...). In complement to this guide is a video documentary called "*if companies are accountable*", co-produced by Syndex and Centre Vidéo de Bruxelles, with the participation of trade union leaders and officers active in promoting due diligence in Europe and beyond.

This guide must now be widely disseminated so that workers' representatives demands to participate in the due diligence processes be heard, as too often management adopts unilateral policies or market documents unilaterally. It is also a useful tool for intervening in the European and national legislative processes underway.

Another document, that is an annex to this toolkit, presents company cases like Nestlé, Inditex, Scania and Unilever and many others was drafted to better understand why trade unionists should pay attention to public company reporting.



CHAPTER 1:

NON-FINANCIAL INFORMATION AND DUE DILIGENCE: WHAT ARE YOUR RIGHTS TODAY?



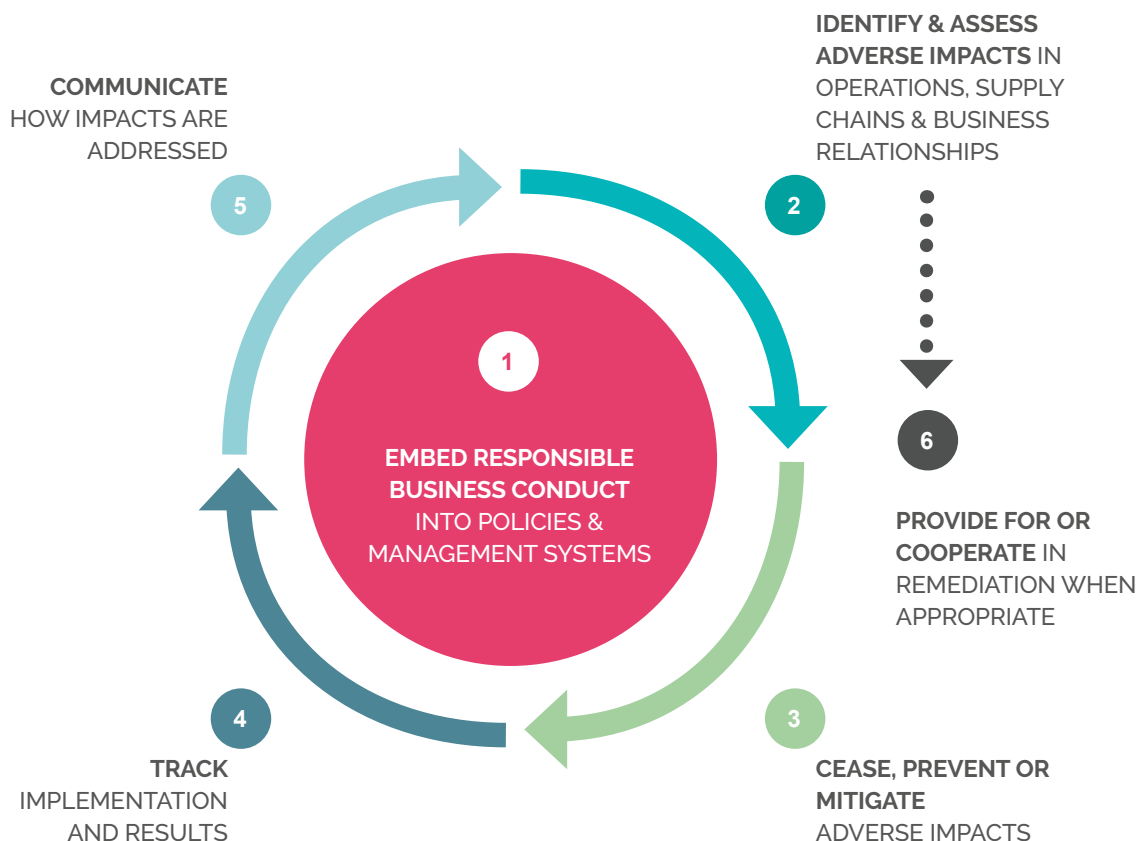
1. WHAT IS DUE DILIGENCE?

- » **Think of buying a car...** What are the risks to consider when buying a car? For you? For the environment, for the society? For the workers in the industry including the supply chain ...
- » **The term due diligence:** Due diligence means "due or necessary care". It is a process about risks. It includes an analysis of risks (also called risk assessment) carried out with appropriate care with the aim of identifying as many relevant risks as possible, in relation to the company activities.

DEFINITION:

According to the OECD (Organisation for Economic Cooperation and Development), due diligence is to be used by enterprises to avoid and address adverse impacts in their operations, supply chains and business relationships (see figure below). The main purpose of due diligence is to prevent negative impacts on human rights, including workers and industrial relations, environment, bribery and corruption¹. When adverse impacts occur, companies should provide remedy, where they have caused or contributed to those impacts.

THE OECD PRESENTS DUE DILIGENCE AS A PROCESS IN 6 STEPS:



¹ In France, the 2017 legislation has extended its scope to the health and security of individuals (see below for more information on the French legislation)



2. HOW IS IT DONE? A HANDS-ON APPROACH...

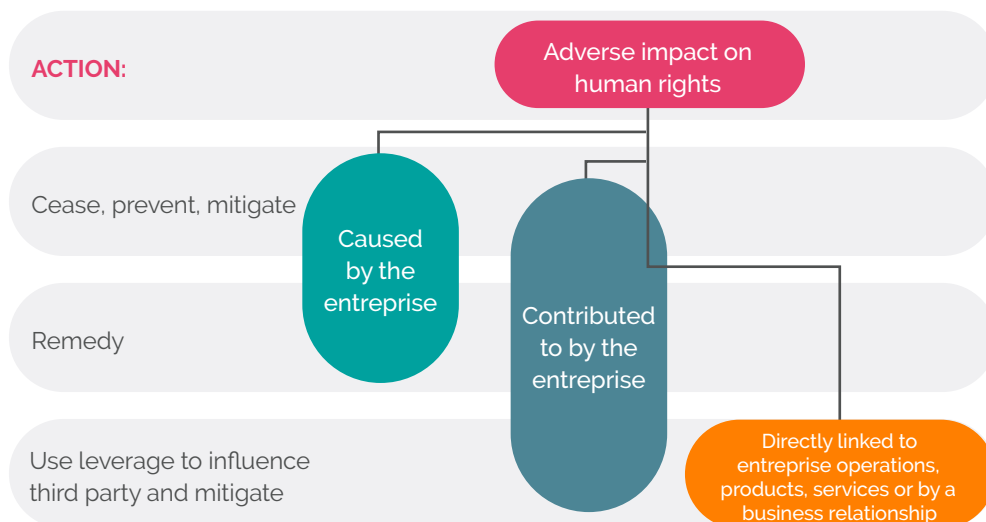
HUMAN RIGHTS DUE DILIGENCE ACCORDING TO THE UNITED NATIONS GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

- » This concept of due diligence has been introduced in various international instruments and standards (ILO's Tripartite declaration of principles concerning multinational enterprises and social policy; ISO's 26000, UN Global Compact, OECD Guidelines, National Action Plans in the EU)
- » In order to fulfill their responsibility to respect human rights, business enterprises should carry out human rights due diligence. This should "identify, prevent, mitigate and account for" actual or potential adverse human rights impacts a company may be involved in through its own activities or business relationships.

CORE ELEMENTS OF HUMAN RIGHTS DUE DILIGENCE



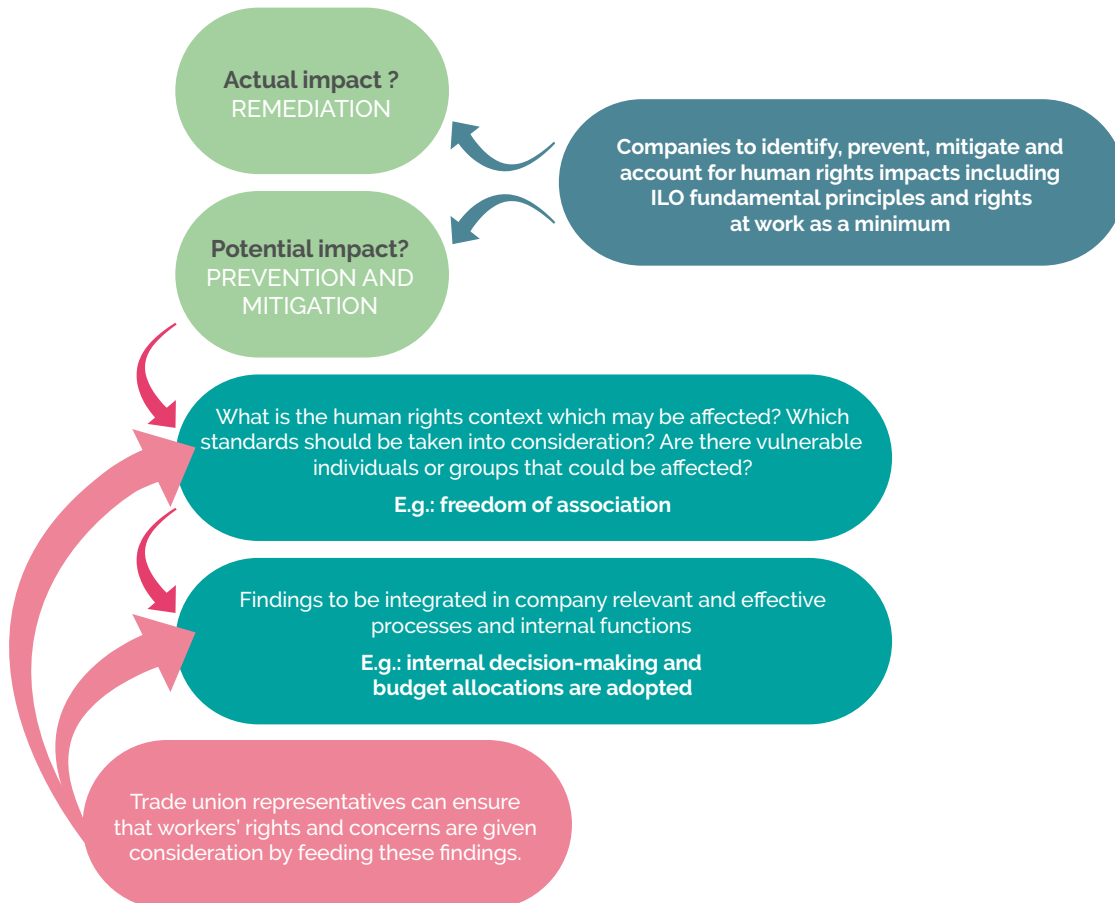
The table below shows that a company is accountable in different ways and must act even if a human rights breach may happen or is actually happening because of one of its business relations.



3. THE PROCESS



QUESTION 1: ARE YOU DEALING WITH AN ACTUAL NEGATIVE IMPACT OR A POTENTIAL ONE?



» How does this matter to you and other workers' representatives?

Due diligence is a transversal policy and a process that should be followed or taken on board by every business unit or department of the company.

This should not be a marketing department thing, nor purchasing department one only.

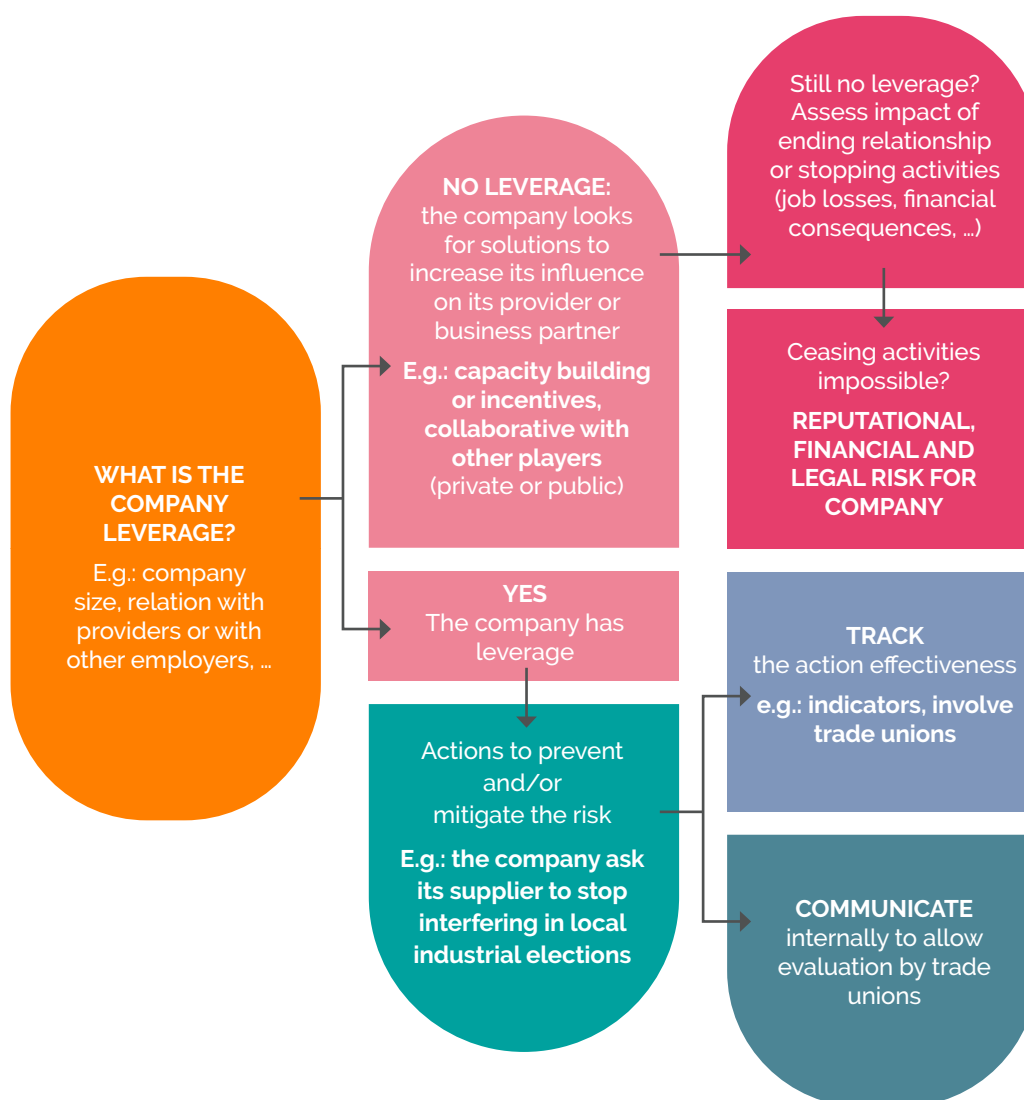
Many companies have created risk assessment teams: HR + Legal Department + purchasing (services and goods) department + CSR department. But regrettably, most of the time, trade unions and workers' representatives are not invited to participate.



QUESTION 2: HOW CAN THE COMPANY INFLUENCE ITS BUSINESS PARTNERS AND ITS ENVIRONMENT?

A company that has leverage over a subcontractor or supplier is the one that will be able to get results if it asks that an infringement or risk be stopped. For example, a principal asks that union discrimination be stopped, and it happens. A company that does not have this leverage, should cease its business relationship with the supplier. There is also the possibility for the company to accompany its supplier to make it progress (training, contractual obligations, controls, etc.) or to seek allies to influence its business partner.

- » **Trade union representatives** can provide important advice and information from the workforce.
- » **Trade union representatives** are the most relevant contact point for infringements and remedial claims for workers in the company and in the supply chain



4. WHY IS IT DONE? EUROPEAN NON-FINANCIAL REPORTING REQUIREMENTS

- » **The European Directive 2014/95/EU** on disclosure of non-financial and diversity information applies to public-interest undertakings of **over 500 employees**, which covers approximately 6,000 companies across the EU including listed companies, banks, insurance companies and other companies designated by national authorities as public-interest entities.
- » It helps investors, consumers, policy makers and other stakeholders to evaluate the non-financial performance of large companies and encourages these companies to develop a responsible approach to business.
- » An enterprise must disclose a brief description of its business model and, for each of the above matters, the following information:
 - › A description of policies, including towards suppliers and providers and **including due diligence** processes implemented.
 - › Outcomes of these policies.
 - › The risks relating to those matters and how the company manages those risks.
 - › Non-financial key performance indicators relevant for the particular business.

TO BE USED BY EWC MEMBERS!



5. NATIONAL EXAMPLES

In recent years, national legislation has been tentatively emerging in the EU. Here are some examples that show the great disparity of solutions found in several countries. You can use them as inspiration for your trade union work to push for legislation in your country if you do not have any. The work done by the trade union movement for European legislation and a global treaty also needs the support of all trade unions.

THE FRENCH LEGISLATION ON THE DUTY OF VIGILANCE (2017)

In addition to their classical public reporting on non-financial information, big companies operating in France have the obligation to establish and update each year a "*vigilance plan*".

The vigilance plan shall include :

- » Risk mapping and assessment processes
- » Alerting and reporting mechanism on the existence or occurrence of risks
- » A mechanism to monitor the company measures implemented and to evaluate their effectiveness

Rights and risks covered:

- » All human rights and fundamental freedoms (therefore including ILO core conventions)
- » The health and safety of persons
- » The environment

Scope:

- » The companies concerned are:
 - › Companies with more than 5,000 employees at the mother company and in their French subsidiaries or
 - › Companies with more than 10,000 employees at the mother company and in their French and foreign subsidiaries
- » A company whose parent company is subject to publication is exempt from publishing vigilance plan. Its vigilance plan is integrated with that of its parent company.
- » Parent company + subsidiaries + providers / business partners: the plan should cover **activities of subcontractors or suppliers** with whom an "**established commercial relationship**" is maintained when these activities are linked to this relationship.

POSITIVE POINTS

Influencing the process is possible:

- Stakeholders (NGOs, TU,...) should be consulted by Management for the elaboration of the plan
- Trade unions from the company shall be involved in the elaboration of an alerting and reporting mechanism on the existence or occurrence of risks.

Going to Court is possible:

- Stakeholders from all countries can file a complaint in a French court for complaints linked to risks or damages based outside France
- In the event of failure to publish a vigilance plan: The court in France can give notice to the company to publish its plan, with financial penalties imposed for each day of delay.
- In case of damage: the company may be ordered by the court to compensate the damage in question (including damages outside France).

NEGATIVE POINTS

- The law does not apply to some company statutes
- The law does not fix amounts for financial penalties
- The law may be limited to tier one subcontractors.



THE GERMAN LEGISLATION (2021)

The German legislation (called "*Corporate due diligence obligations for the prevention of human rights violations in supply chains Act*") shall enter into force on 1st January 2023 although the public authorities can already check and assess if and what enterprises have initiated towards the adoption of a corporate risk management policy.

What should employers do? The German legislation is very descriptive and lists all the steps to be taken, in close relation to the UN Guiding Principles for Business and Human Rights: **Conduct a risk analysis every year as regards the enterprise activities and direct business relations.**

On the basis of the analysis outcomes, adopt preventive measures that cover: a) a policy statement from the enterprise top management, b) a strategy identifying priorities, c) the procurement and purchasing process and the obligations put on providers / suppliers and workers, d) designate one or several responsible persons within the enterprise for the due diligence management, e) training provision to enterprise workers and suppliers, f) taking remedial action when needed and g) establish a complaint procedure.

When prevention is no longer possible, remedial action shall be taken. The law requests an enterprise to use its influence, alone or with other enterprises, towards a supplier that would breach human rights or to terminate the business relationship when the situation continues.

Rights and freedoms covered:

- » **Human rights risks:** forced labour and slavery, child labour, breach of freedom of association and of the right to collective bargaining, including the right to strike, discrimination as enacted in the Core ILO Labour Standards. Additionally, the German law covers health and safety at the workplace and the right to adequate wage according to the national laws in place where the production or service activity takes place.
- » **Environment-related human rights:** soil degradation, water and air pollution, excessive water consumption, hazardous wastes, ...

Scope:

- » The enterprises covered are those registered in Germany and whose headquarters and branches are based in and outside Germany if they employ at least 3,000 workers in Germany (including agency workers employed for at least 6 months and workers posted abroad). This threshold will be downsized to 1,000 workers only as from January 2024.
- » However, the law does not only apply to these companies but also to their direct and indirect suppliers.



POSITIVE POINTS

- Thresholds in terms of employee numbers are low, hence a good number of enterprises are obliged to comply with this legislation.
- Direct suppliers are covered by the legislation, not only the enterprise itself. When the possibility of a violation of human rights by indirect suppliers in lower tiers of supply chains exists and the enterprise has knowledge of this, the analysis and the enterprise prevention or remediation policy must also be extended to indirect suppliers.
- German works councils are informed and consulted on matters related to due diligence of the enterprise and its supply chain.
- High fines can be imposed by public authorities. Public authorities have a strong position as regards assessment and control.
- Trade unions and NGOs can take legal action on behalf of victims that wish so, even for victims outside Germany.

NEGATIVE POINTS

- Although German works council members, who are often trade unionists, shall be involved in the due diligence process, this is not the case of stakeholders like NGO or local communities.
- The law lacks a clear civil liability provision. In principle, German Court hearings will continue to be conducted according to the rules of the applicable foreign law, thus leading to legal uncertainty.

UK MODERN SLAVERY ACT (MSA) 2015

In 2015, the UK Modern Slavery Act (MSA) entered into force: it is a legal tool to combat forced labour in the UK but also in the supply chains of UK-based enterprises.

Each year, British enterprises with an annual turnover exceeding £36 million should publish a **report** on the steps adopted to avoid human trafficking and slavery.

Such reports, adopted by top management, should disclose information on labour supply chain policies.

Although this law is a step in the right direction, it remains limited according to the ITUC: it does not foresee any kind of **sanctions**.

CHILD PROTECTION AND DUE DILIGENCE IN THE NETHERLANDS

Since 2019, the "*Child Labour Due Diligence Law*" requires companies selling goods and services to Dutch end-users to determine whether child labour occurs in their supply chains. If so, companies must set out a plan of action on how to combat it and issue a due diligence statement on their investigation and plan of action.

- » That statement would be recorded in a public register by a yet to be designated public authority.
- » The law introduces criminal sanctions for failure to exercise human rights due diligence.



6. TOWARDS MANDATORY DUE DILIGENCE!

THE ETUC CALL:

The ETUC calls for a European directive on mandatory human rights due diligence and responsible business conduct.

According to the ETUC, such directive "should establish mandatory and effective due diligence mechanisms covering companies' activities and their business relationships, including their supply and subcontracting chains. The directive would constitute an important step forward to ensure the respect and enforcement of human rights with trade unions' and workers' rights as main components. A directive should empower workers to fight against violations of human rights. It should ensure the full involvement of trade unions and workers' representatives in the whole due diligence process. Effective remedies and access to justice should be available for victims, including trade unions. Companies should be accountable for the impacts of their operations. Liability must be introduced for cases where companies fail to respect their due diligence obligations, without prejudice to joint and several liability frameworks."

- » **The ITUC guide "Towards mandatory due diligence in global supply chains"**² suggests an important analysis of the current debates at stake and a comparative overview of national initiatives and recommendations. TUAC, ETUC and several European Trade Union Federations have also adopted their respective position paper and recommendations.
- » **The OECD due diligence guidance for responsible business conduct**³ is not a trade union tool but contains very useful information to understand the large scope of due diligence in relation to the OECD guidelines for multinational enterprises.



WHAT COMPLAINT MECHANISMS?

- » **SOCIAL DIALOGUE, COLLECTIVE BARGAINING AND RESPONSIBLE BUSINESS CONDUCT: Promoting the strategic use of International Instruments for trade unions' action.**⁴ This ILO publication suggests several ways to combine legal and paralegal means with trade union action to elaborate the most efficient strategy to defend human rights at work
- » **MONITORING AND APPLICATION OF LABOUR RULES AND SOCIAL PROTECTION IN THE SUPPLY CHAINS OF CONSTRUCTION COMPANIES: An EFBWW toolkit to empower European Works Council representatives.**⁵ This toolkit explains to EWC members and trade unionists how to analyse the supply chain from a sectoral point of view and how to influence management purchasing policies, including via due diligence processes.



² Available in five languages: https://www.ituc-csi.org/towards_mandatory_due_diligence?lang=en

³ The OECD Guidelines are available in 13 languages here: <https://www.oecd.org/fr/investissement/due-diligence-guidance-for-responsible-business-conduct.htm>

⁴ Available in English and Spanish: https://www.ilo.org/wcmsp5/groups/public/---ed_dialogue/---actrav/documents/publication/wcms_722744.pdf

⁵ Available in 9 languages here: <https://www.efbww.eu/publications-and-downloads/reports-and-studies/monitoring-and-enforcement-of-labour-and-social-considerations-i/1409-a>



CHAPTER 2:

CORPORATE SOCIAL
RESPONSIBILITY (CSR)
AND DUE DILIGENCE



Are the days when companies publicly committed themselves to being exemplary through charters or codes of conduct (without ever respecting them) over?

Will corporate social responsibility, based on altruistic but small-scale initiatives, give way to a duty of care, opening the door to accountability or even a binding obligation?

- » Some countries seem to be going in the right direction. The paradigm is changing, and trade unions should seize the opportunity.

A) CSR : THE LONG WAY FROM COMPLIANCE TO LIABILITY

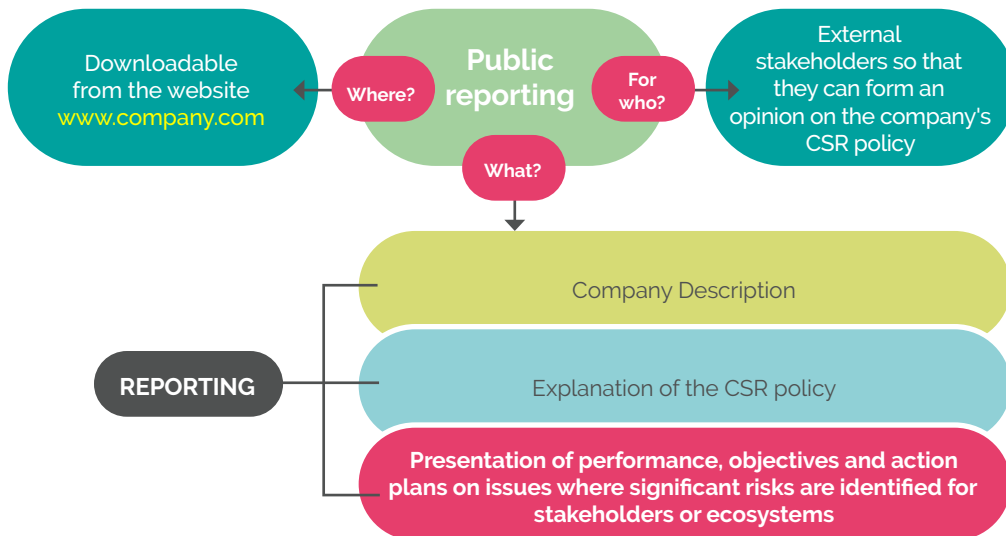
The current European definition of Corporate Social Responsibility (2011) is: « *The responsibility of enterprises for their impacts on society* »



B) INSTRUMENTS AND METHODS FOR USE BY THE STAKEHOLDERS



C) PUBLIC REPORTING: THE BASIC SOURCE OF INFORMATION



Example: A map of the stakeholders presented in the public reporting of EDF (electricity sector)



D) WHAT MAKES A "GOOD REPORTING"?

- » Corresponding to the actual circumstances, balanced (positive and negative aspects should be equally important)
- » Comprehensive but concise (links to other information)
- » Strategic and future-oriented (short-, medium- and long-term consequences of the information disclosed, including strategy and objectives)
- » Effective inclusion of stakeholders
- » Methods of measurement of indicators (KPIs), objectives and progress
- » Information about the scope and limitations of coverage, especially when certain information relates to one division only or if certain business sectors are excluded



EXAMPLE: MCDONALDS (CATERING SECTOR)

Reporting on CSR-aspects includes the general relevance of the topic, the company's approach and actions, goals and progress. However, CSR-performance indicators are only given regarding emissions and sustainable sourcing/de-forestation. For many other aspects, key figures are missing and concrete CSR objectives are not published. Concerning franchised restaurants McDonalds emphasizes that "*Franchisees [...] are independent business owners*" and "*[McDonalds] cannot prescribe social responsibility and environmental solutions for [...] independent Franchisees.*"

- » Key performance indicators (KPIs) are a measurement tool used to assess an aspect of a company's qualitative or quantitative performance.
- » Key figures should be available in a time series in order to map past and present changes.
- » Performance indicators with regard to employees are for e.g.: total women quota, quota of women in management positions, turnover rate, share of employees under collective agreements, training - hours, basic salary ratio of men to women, proportion of employees with disabilities

E) HOW THE TOPICS SHOULD BE CHOSEN AND PRIORITISED FOR ACTION PLANS BY A COMPANY?

To identify the sustainability issues relevant to a company's activities, the standard procedure in a corporate social responsibility management system is to survey internal and external stakeholders, ask them to indicate which issues they think are relevant and ask them to rank them in terms of relative importance.

- » **This type of survey generally leads to a list of between 100 and 200 issues or concerns.**

To identify the key issues or priority issues to be addressed by the company, it is customary to present the issues in a table that will show a gradation of the relevance of these issues according to stakeholder families. This notion of relevance is called "materiality".

In general, a company will select between 5 and 20 priority issues for which it will make specific progress commitments explicit and will develop action plans relative to these key-issues.

EXAMPLE: G4S

The example of G4S (private security sector): According to the company's CSR policy on suppliers, "*where their performance does not meet the required levels, a corrective action plan must be submitted to G4S to address any issues raised.*" It has been implemented across G4S "*businesses in Hong Kong, Saudi Arabia, UAE and the UK, where around 5% of suppliers have been categorised as potentially high-risk, including manufacturers of electronics and uniforms, cleaning and temporary labour.*" 1541 Ecovadis assessments have been completed with a "*93% of supplier's scorecards have achieved a satisfactory rating.*" ECOVADIS, an independent consulting firm is at the centre of all external auditing processes: assessing providers/ suppliers. Important points to be followed up: G4S has launched a "supply chain social principles' guidance and due diligence toolkit" about social standards expected from suppliers and provides training to face modern slavery.

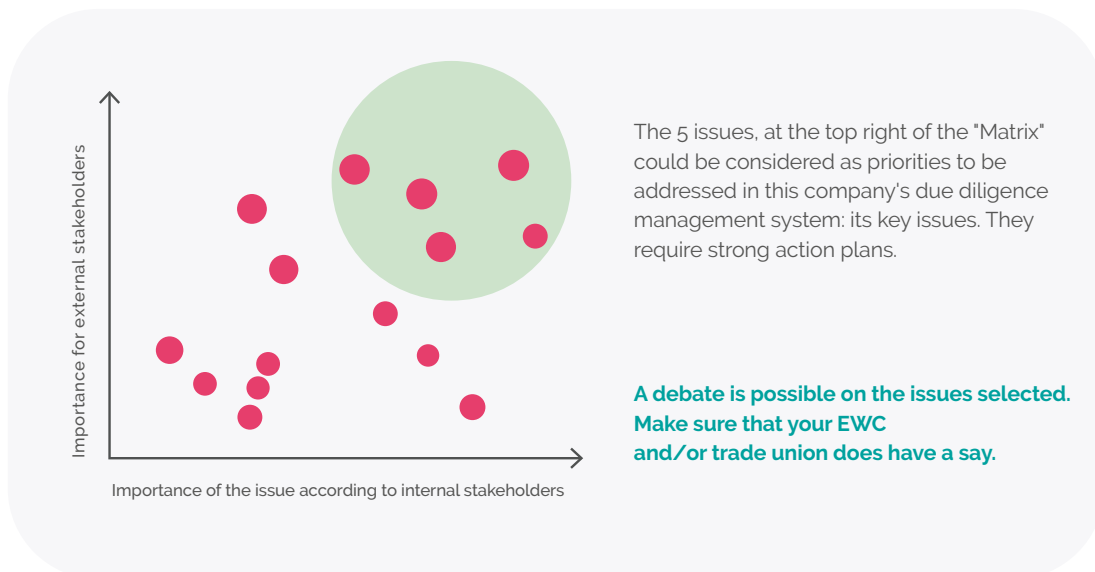
EXAMPLE: SCANIA

Scania's public reporting (automotive sector) does not provide information on any monitoring that may have been set up in the supply chains, except for mining activities involving certain raw materials such as cobalt or tin.

Performance indicators (KPIs) are presented on certain corporate social responsibility topics, including the percentage of employees covered by a collective bargaining agreement (73% in 2019). An objective of 100% is provided for this indicator, although the report does not specify how the company will achieve this objective.

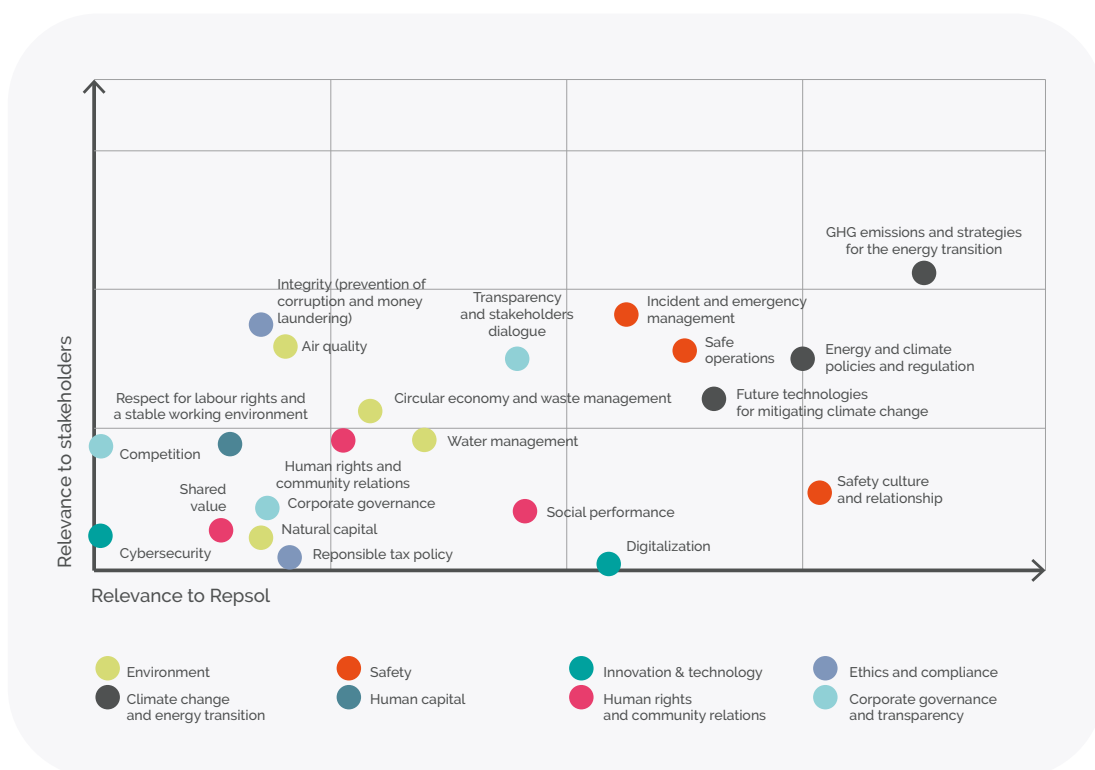


Examples of issues: Respect for freedom of association, fight against climate change ...



EXAMPLE: REPSOL (OIL AND ENERGY SECTORS) MATERIALITY ANALYSIS

At Repsol, the workers' representatives have participated in the identification of the risks: because the company is moving from oil distribution to become a multi-energy player, the top topics are linked to climate and energy issues.



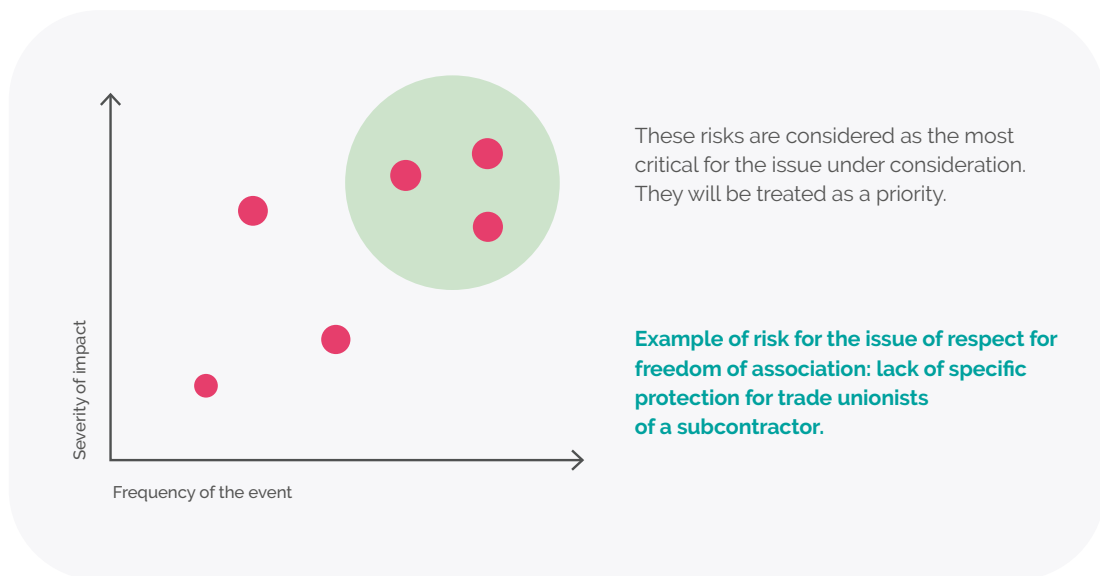
WHAT IS A RISK?

It is an event or a problematic situation, with unintended consequences, that is likely to occur.

F) RISK MAPPING IN ADDITION TO THE ANALYSIS OF THE RELEVANCE OF THE ISSUES

- » Each issue must be the subject of a risk mapping related to the activity and
- » Mapping the risks helps the organisation to prioritize its action plans and allocate the proper resources based on the criticality of the risks

Identified risk for an issue



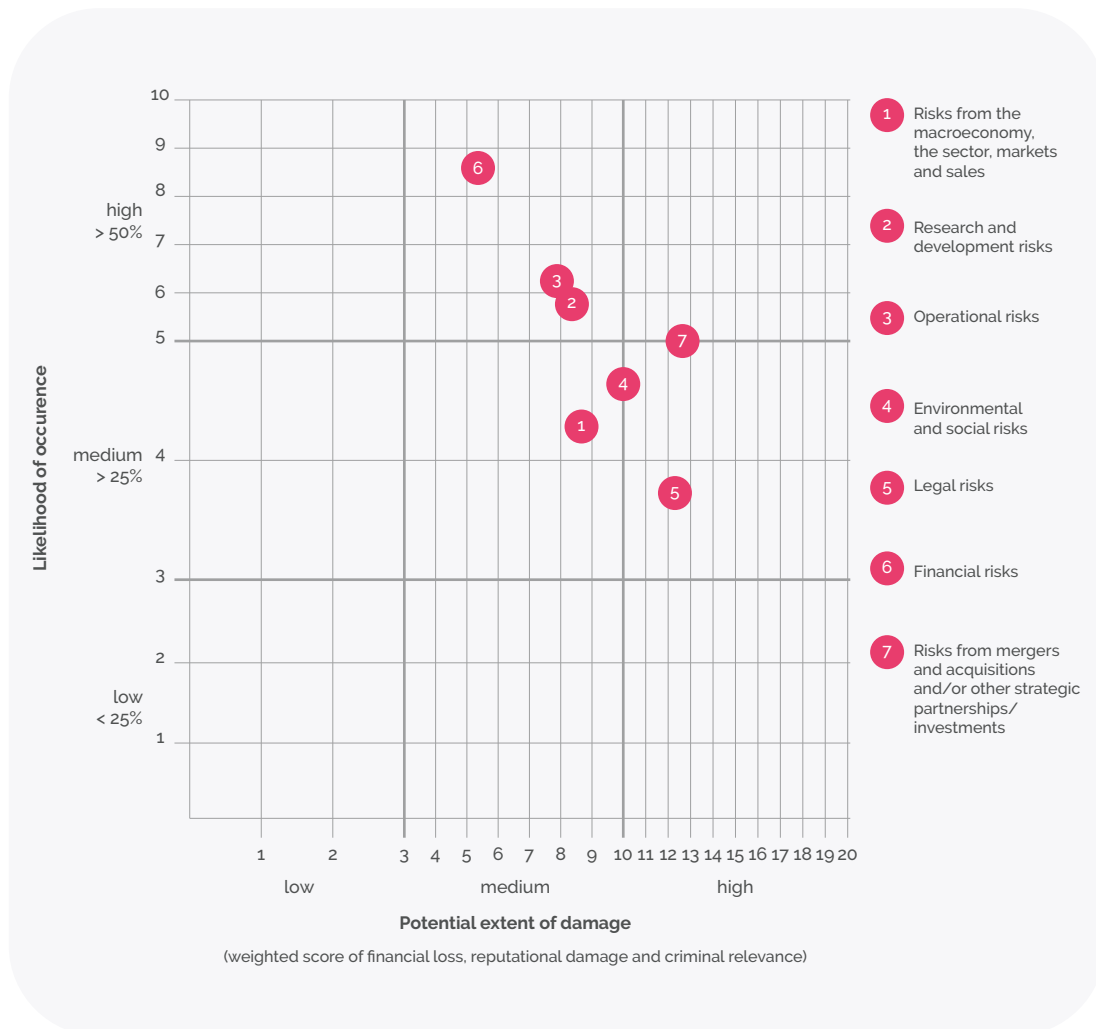
Criticality / importance of the risk =
Severity of the consequences X Frequency of occurrence of the triggering event



EXAMPLE: VW (AUTOMOTIVE SECTOR) MATRIX OF THE RISKS

Identification of the risk of excessive working hours at XPO (logistics sector).

Average scores of the risk categories



Proposed solutions:

On-board tachographs and time clocks on site. Health and safety issues are led by the European Environment, Health and Safety (EHS) Manager with the support of national and business unit EHS managers as well as regional and site EHS managers. The objective is to improve the safety performance by 15%. "In 2019, a new escalation procedure has been introduced to ensure that all serious incidents are reported to senior management across Europe in a consistent and timely manner." Three indicators are used: frequency rate, severity rate and crash rate.



G) PARTICIPATIVE PROCESS

Stakeholders (interest groups) are legal or natural persons who can be assumed to be significantly affected by the company's activities, products or services.

(Company-)internal and (company-)external stakeholders: Internal stakeholders are management, employees, employee representatives and trade unions; external stakeholders are trade unions too in certain countries, investors, consumers, suppliers, non-governmental organisations (NGOs), local communities, public authorities, etc.

Different stakeholder groups may have different requirements for the company's sustainability performance. Moreover, the interests of stakeholders may well differ from those of the company's management. If stakeholders are included, their expectations and their interests and needs can be better understood. The dialogue with stakeholders thus has the primary task of bringing together different, sometimes contradictory expectations and facts into a due diligence policy by the company.

An important contribution of stakeholder participation is thus also to legitimise the due diligence policy and to lead to a greater overall contribution of the company to sustainable development.

In larger companies, stakeholders are often involved in stakeholder forums. In addition to stakeholder forums, a dedicated dialogue on due diligence with trade unions and employee representatives is set up in many multinational companies. In so doing, multinational companies acknowledge that employees are not just one stakeholder out of many, but hold **a priority status** for bearing specific risks, since their health, income and employability are at stake and highly dependent on the way companies and their supply chain are managed.

UNILEVER (FOOD INDUSTRY) FOR INSTANCE, INVOLVES THE WORKERS' REPRESENTATIVES AND TRADE UNIONS AS FOLLOWS:

- » From occasional to more institutionalized cooperation with global unions: Memorandum of Understanding with IUF and IndustriAll Global, 2018, recognizing them as the internationally representative bodies of unionized workers within Unilever worldwide
- » Transnational framework agreements Framework for Fair Compensation (2015), Joint Commitment with IUF and IndustriAll Global on preventing sexual harassment at Unilever workplaces (2017) and Joint Commitment on Sustainable Employment (2019)
- » More recently project-related cooperation with ITF, IUF and FNV on truckdrivers, 2018
- » Europe: strong role of the EWC as a partner of European and global management (Future of Work Agreement 2019)

DANONE (FOOD INDUSTRY) SAYS THAT IT INVOLVES THE WORKERS' REPRESENTATIVES AND TRADE UNIONS AS FOLLOWS:

- » In the company: Danone reports on the many agreements signed with the IUF to regulate working conditions and social dialogue in its companies around the world.
- » Supply chain and/or business relations: Supplier Code of Conduct, which makes social dialogue an integral part of the Group's supplier selection process.

NESTLE REGARDING THE SUPPLY CHAIN LEVEL:

- » *"Trade unions on the ground can be an important resource both to help to identify issues and potential solutions. We will therefore work with suppliers to build relations with unions in high risk countries and crops." and "We will work with suppliers to promote the right for their workers to establish and join organisations of their choosing and engage in constructive negotiations."*

AT CARREFOUR (RETAIL SECTOR), A GLOBAL FRAMEWORK AGREEMENT SIGNED WITH UNI GLOBAL UNION PROMOTES DIALOGUE WITH TRADE UNIONS ON DIVERSITY.

- » In this context, the vigilance plan and the risk mapping concerning human rights, and workers' health and safety are co-constructed and regularly presented to the European Information and Consultation Committee (CICE), which brings together the main European trade union organisations.



H) ALERT SYSTEMS

Having a system for communicating alerts within the company is a first step, but it is better to have a process open to third parties. The UN Guiding Principles on Business and Human Rights ask for non-state extra-judicial grievance mechanisms in companies.

To ensure their effectiveness, non-state extra-judicial grievance mechanisms should meet several criteria: e. g. accessibility: known to all groups for which they are intended and provide sufficient support to those who may face particular barriers to accessing them; be predictable: provide a clear, known process with a predictable timeframe for each stage of the process, as well as clear statements of the types of processes, outputs and means available to monitor implementation; should be based on exchange and dialogue with stakeholders for which they are intended and rely on dialogue as a means to address and resolve grievances.

All the companies studied have grievance mechanisms in place. In most cases, alert procedures are attached to the companies' codes of conduct, which are intended to give all employees the opportunity to report compliance violations against the contents of the codes or any kind of risks.

In addition, companies provide telephone hotlines in various languages, e-mail addresses for submitting anonymous complaints.

Procedures for the submission of complaints by persons external to the company, such as the employees of suppliers, are less frequent, although they have an important function as regards respect for human rights in the supply chain.

GRIEVANCE MECHANISM AND WHISTLEBLOWING

Danone's alert system is enabled to prevent breaches of its Ethical Principles and to take the necessary measures in the event of a proven breach.

1. In the company: the Danone Ethics Line is an online and telephone system that Danone makes available to its employees to report violations of its Ethical Principles. Employees may also contact their line managers or the Human Resources Department.
2. Supply chain and/or business relations: The Danone Ethics line is also open to reports from suppliers and service providers.
3. Accessible 24/7, by internet, in 15 languages.
4. Use the BKMS solution, provided by the tiers company Business Keeper. This solution is certified to comply with European data protection legislation.
5. Attention: the Danone ethics line website does not appear in Google search results.

McDONALD'S

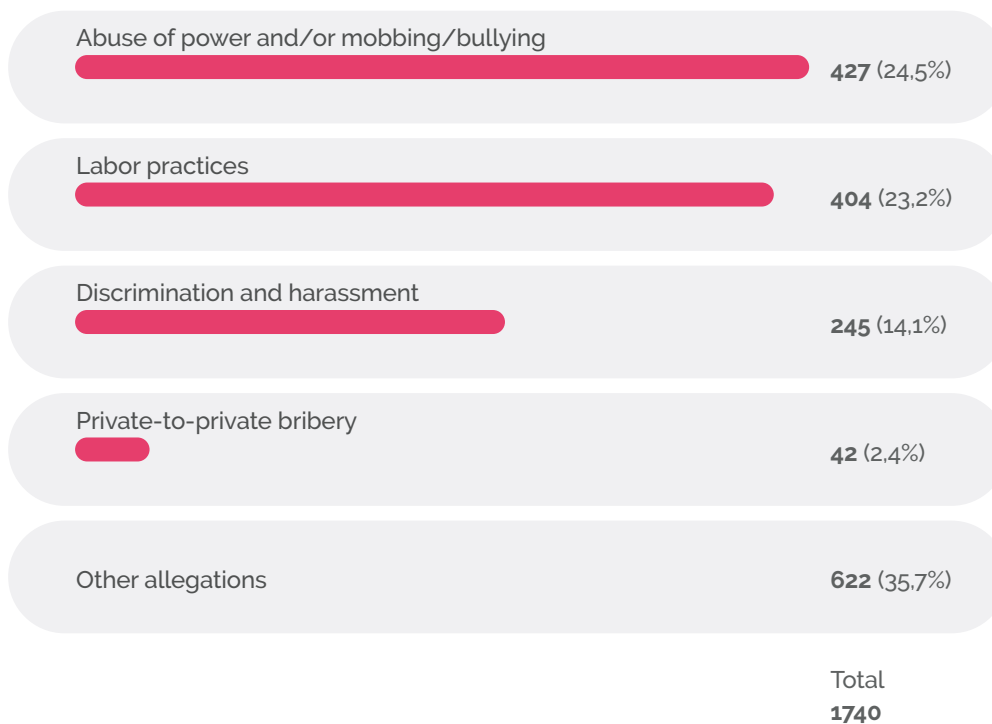
McDonald's has a Standards of Business Conduct for its employees that mainly focuses on human rights, data protection, diversity, and the prevention of anti-corruption. Regarding breaches of the code, employees can submit anonymous complaints to a third-party Business Integrity Line (24h, 365 days a year, interpreters are available). Reports can also be submitted online. Reports or phone calls are coded with a reference number that can be used to check on the status of the report/call or to provide additional information. Regarding whistle-blower protection the company states that *"McDonald's strictly prohibits retaliation of any kind directed against an employee who has, in good faith, reported a possible violation."* The protection of whistle-blowers is also part of the McDonald's Supplier Code of Conduct.



NESTLÉ INTEGRITY REPORTING SYSTEM (NIRS)

- » "Our robust system means that 1496 (86%) cases were closed and 474 (31%) substantiated. As a result, 135 employees left the company, there were 19 written warnings, and 17 suppliers' services were terminated. Where appropriate, other measures, such as internal process improvement and reinforcement, were carried out."
- » Good description of the process of the complaint / concern report mechanism
- » No-retaliation commitment
- » Available in all languages

Number of messages received through our
Nestlé Integrity Reporting System in 2019, by issue type (% of total)



HOW WILL THE ALERT BE HANDLED, HOW WILL THE PROBLEM BE SOLVED?

This is an important challenge to which the Global Union Federations have found solutions through international framework agreements.



CHAPTER 3:

LESSONS LEARNED FROM THE PROJECT

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/*-PlaceFerB9**H
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LESSONS LEARNED FROM THE PROJECT

- a) **The concept of corporate due diligence on sustainability risks is fairly well known among the European and international trade union federations that participated in the project.**
- » However, most company trade unionists have little knowledge of this concept and experience of its use in social dialogue. They are seldom involved by company management, who rarely consider them as a partner in due diligence processes. A majority would need training on this relatively new subject.
- b) **The appropriation of the concept of due diligence with regard to sustainability risks varies greatly from company to company.**
- » The publications issued by companies on this subject range from total silence to annual descriptions of their vigilance system on a few dozen pages.
 - » When the information provided is too light, it may also show an approach limited to business risks rather than sustainability risks, and often amounts to greenwashing.
- c) **Corporate communications on risk management for sustainability issues is generally more relevant when the company's international headquarters are in a country that has deployed a robust transposition of the Non-Financial Reporting Directive 2014/95.**
- d) **The information published by companies whose international headquarters are located in a country that has adopted a specific law relating to the due diligence is in fact more detailed and more precise than that emanating from companies subject only to the general obligation of non-financial information.**
- » Companies subject to the French Duty of vigilance Act 2017 have clearly made progress on this issue since the implementation of this law.
 - » However, national legislative initiatives are rather uneven in their content, and several are weakly binding. This diversity of legal frameworks in Europe makes the appropriation of due diligence concepts more complex for stakeholders.
- e) **Companies subject to the French Duty of Vigilance Act have improved their communication and probably also their risk management practices with regard to the risks concerned by this law (risks to human rights, to the health and safety of people, and to the environment).**
- » However, this law has not yet had much effect in terms of integrating these issues into the social dialogue items.
- f) **Companies with a global social dialogue committee and/or a European works council have started to use these spaces to dialogue on due diligence issues with their staff representatives. However, dialogue on these issues is still at its beginning.**
- g) **Legal action and threats of legal action by Global and national trade unions against companies subject to French law led to improvements by these companies in the months following the public controversies over their duty of vigilance.**
- h) **Many whistleblowing and reporting mechanisms have been created or modified in recent years by companies, taking a potential complementary place in the due diligence systems of companies in Europe. However, these mechanisms are not yet followed up in depth in the social dialogue.**
- i) **The due diligence plans and systems published annually by companies are often only available on company websites in one or two languages. Many workers who do not speak these languages find it difficult to read or use these public documents.**
- j) **Liability must be introduced for cases where companies fail to respect their due diligence obligations, without prejudice to joint and several liability frameworks.**

Exercise sheets >>

CHAPTER 4: EXERCISES

The subject of due diligence may seem technical or complex when approached solely from a theoretical perspective. For this reason, we propose examples of exercises that can inspire trade union trainers and workers' representatives to take ownership of important concepts underlying corporate reporting. It is also recommended to "get the hang of it" by reading and comparing some corporate due diligence reports and vigilance plans in order to analyse them, as proposed in the annex to this brochure.



EXERCISE 1

OBJECTIVE: IDENTIFICATION OF THE PROS & CONS OF DUE DILIGENCE AND SYNTHESIS.

Participants: to be divided into three "worker" groups.

The members of the following groups are members of the EWC and/or trade union officers of Peoplefirst Industries.

The blue group: The blue group is in favour of using due diligence as a lever for trade union action. They will use all possible means to ensure that their company takes concrete action to prevent, mitigate or eliminate the risks associated with its business operations.

The Orange Group: The orange group believes that due diligence is unnecessary, even dangerous. For them, labour law and criminal law offer sufficient protection.

The Green group: The green group believes that due diligence has advantages and disadvantages. They will seek to combine the different levers of action to be as effective as possible.

Case study:

In 2019, an American global company called Peoplefirst Industries drafted its Sustainable Development (SD) report. They currently employ about 28,000 workers in several European countries.

To do so, the European management set up a 'Dialogue and Ethics Committee' in which 3 EWC representatives did participate together with the management (HR Department, purchasing department, legal department, CSR department). Together they examined:

- » the risks related to the company's activities
- » the risks related to its business relations (providers, suppliers, joint ventures, banks, major clients, ...)
- » and they identified communication channels to pass on possible alerts from workers and third parties to the company management.

In addition, an interview with the head of the IUF is included in the 2020 SD report to show the quality of the dialogue at the global level. In Europe, Peoplefirst Industries has a positive attitude towards the trade union organisations already established in the company.

In 2021, the company is going through deep financial difficulties because of the corona crisis. Several EWC members find out from the press that Peoplefirst Industries is getting ready, in a few weeks at most, to sign three key commercial partnerships with McDonald's, Ryanair and Amazon to strengthen its multimodal transport offer and global sales. These contracts are strategic for the company's new business model, says Management in a press release.

Question: Each group must explain what measures/actions need to be taken regarding the strategic partnership with the other three multinational companies.



EXERCISE 2

NON-FINANCIAL COMPANY REPORTING AND TRADE UNION ACTION

CASE #1: [NAME OF THE SELECTED COMPANY]

Working time: 60 minutes

Among the members of your working group, appoint a spokesperson who will report back your recommendations to the plenary session, in max. 10 minutes.

Objective of the working group

The objectives of the working group are to exchange concrete experiences and propose ideas to improve:

- » The non-financial and due diligence information which can be found in the public reporting of a company
- » The (good and not-so-good) company practices regarding non-financial reporting and due diligence policies
- » How trade union representatives in multinational companies, including members of European Works Councils, can use non-financial reporting and due diligence policies to defend workers' rights all along the supply chain and abroad

Background

The public reporting practices and the actions of trade union representatives/EWC members in one specific company will be introduced. The introduction will serve as a basis to launch a broader discussion during which you will exchange ideas and proposals to improve due diligence and non-financial reporting in companies.

The specific company case your working group will start looking at in introduction is [name of the selected company].

A moderator coming from the organising team will guide the discussion and make sure that all opinions can be taken into consideration.

Task of the working group

- 1. The moderator introduces Syndex analysis of [name of the selected company] non-financial reporting and due diligence policies (10 min.)**

A Syndex expert looked at the public reporting of [name of the selected company] and analysed how the company reports non-financial and due diligence information. The moderator will introduce the Syndex expert analysis.

- 2. The trade union representative(s) and/or EWC member(s) at [name of the selected company] will share their experience (10 min.)**

Trade union representatives and/or EWC members from [name of the selected company] will share their own experience. They will explain how they use non-financial reporting and due diligence policies to discuss with management how to respect and promote workers' rights in the company, its subcontractors, and its suppliers, both in Europe and abroad.



3. All the working group members will then discuss (20 min.)

Based on the experience at [name of the selected company], and based on your own experience as EWC member or trade union representative in a company, discuss:

- › **Company reporting:** what are the good practices of public reporting at [name of the selected company] which should serve as an example to follow by other companies? On the contrary, which are the reporting practices at [name of the selected company] which should not be seen as a good example?
- › **The role of trade union representatives and EWC members:** what are the good practices of social dialogue between trade union representatives/EWC members and the management at [name of the selected company] which should serve as an example to follow in other companies? On the contrary, which are the practices at [name of the selected company] which are not a good example?

4. All the working group members will list the conclusions of the discussion (20 min.)

Focus on the good practices you discussed and list:

- › **Three recommendations of what companies must do** for a quality non-financial reporting and due diligence policy (content and process wise)
- › **Three recommendations of what trade union representatives and EWC members should do** to engage dialogue with management on workers' rights in the supply chain
- › **Three recommendations of action needed from European policymakers to improve the quality of public reporting and social dialogue on due diligence in companies.**





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