

# ETI position on mandatory Human Rights and Environmental Due Diligence Regulation

This document sets out the Ethical Trading Initiative's (ETI) position on the human rights elements that should be embedded in any regulation on mandatory Human Rights and Environmental Due Diligence (mHREDD) in the UK, and where relevant, in other countries. ETI is calling for a new legislative instrument that addresses both human rights (including labour rights) and environmental risks in supply chains.

Whilst ETI's expertise and influence lies primarily in human rights, and this paper therefore focuses mainly on HRDD requirements, we recognise the importance of integrating environmental due diligence alongside them.

The document first explains why mHREDD is needed, then sets out proposed principles that should inform its design and operation, covering requirements, scope, transparency and enforcement. See Appendix for a glossary of key terms.

## CONTEXT

### Why is mandatory Human Rights and Environmental Due Diligence regulation needed?

International trade and global value chains can deliver significant benefits to workers and communities. Yet, poor working conditions, exploitation, and environmental degradation remain widespread in many supply and value chains. The problem is not a lack of knowledge about what should be done — it is ensuring effective, consistent implementation.

The [UN Guiding Principles on Business and Human Rights \(UN Guiding Principles\)](#), endorsed in 2011, set out the corporate responsibility to respect human rights and the state's duty to protect them. In 2018, the [Organisation for Economic Co-operation and Development \(OECD\)](#) issued [guidelines](#), including specific sector advice, to help enterprises to operationalise these principles through HREDD.<sup>1</sup>

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<sup>1</sup> The International Labour Organization's (ILO) [Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy \(MNE Declaration\)](#) further sets out the central role of freedom of association and collective bargaining as well as industrial relations and social dialogue as an ongoing process in the HREDD process.

HREDD involves a continuous cycle of risk assessment, prevention and mitigation, with remediation where necessary. It should be accompanied by regular reporting and ongoing learning. Conducted effectively, with [meaningful stakeholder engagement](#), HREDD can address human rights abuses and improve conditions. It is a proven step forward from limited approaches, such as those based predominantly on social audits and purely voluntary initiatives.

Globally, much of this framework still sits within the realm of ‘soft law’. However, several jurisdictions, including France, Germany, Norway and the EU, have adopted binding requirements. While there is contention around some of the details still to be finalised in these requirements, the overall direction is clear.

The EU’s Corporate Social Due Diligence Directive (CSDDD) will directly cover only a small number of large non-EU enterprises, based on their operations and turnover within the Union. For most, whether an enterprise adopts and acts on this framework remains voluntary. While some take responsibility, many more do not. Reliance on a few proactive enterprises in a handful of high-profile sectors is entirely insufficient to prevent abuse or realise the potential contribution to the [Sustainable Development Goals](#).

ETI is advocating for a law that mandates HREDD in the UK and other countries. Such legislation would:

- Better protect workers, communities and the environment.
- Strengthen supply chains by making them more productive, resilient and better equipped to manage risks and disruptions.
- Level the playing field for responsible enterprises, ensuring that investment in HREDD does not become a ‘first-mover penalty’.
- Prevent the endorsement of inaction, as more peer economies move toward binding rules.
- Ensure a consistent standard across all sectors, including the public sector, for addressing human rights and environmental risks in supply chains.

ETI’s company, trade union, and NGO members already commit to implementing HREDD across their supply chains. But legislation such as the [UK Modern Slavery Act](#), while a step forward, has proven inadequate in enforcement and scope. The UK now has an opportunity to introduce legislation that delivers measurable impact for workers, communities, and the environment, while providing enterprises with clarity and certainty. ETI would also support the adoption of similar mandatory measures in other countries, recognising that global value chains require global responsibility.

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## REQUIREMENTS

### **Principle 1: HREDD laws should be consistent with the UN Guiding Principles and OECD Guidelines**

- In 2011 the UN Guiding Principles (UNGPs) were unanimously endorsed by the Human Rights Council, providing a framework for responsible business action. This has been widely acknowledged by many other leading organisations and standard setters such as the OECD and ILO, making the UNGPs the internationally accepted standard on business and human rights
- The OECD has provided guidelines and specific sector advice for companies to help them adopt the UNGPs and undertake HREDD.
- Together these efforts provide a widely accepted standard against which any legislation should be developed. Doing so drives alignment of different countries' legislation and supports both rightsholders and organisations affected by ensuring a common and consistent approach.

### **Principle 2: HREDD laws should ensure enterprises understand and prioritise salient risks within their operations and value chains, and set out expectations of how to do this**

- In line with the UNGPs, the responsibility for any enterprise should be based on the extent to which they have caused, contributed or are directly linked to the risk of harm to people, whether workers, a community or a specific group of affected rightsholders. Enterprises should prioritise their salient risks – that is the human rights that are at risk of the most severe negative impact from an enterprise's activities or relationships.
- These risks can exist across the enterprise's own operations, its supply chain (including lower tiers), its broader value chain (including e.g. impacts on end users and the environment), its subsidiaries and its relationships with business partners.
- The approach to salient risk prioritisation should be based on the type of risk (i.e. severity): scale, scope and remediability of the harm (though the UNGPs make clear that that this does not mean that enterprises should then ignore other risks or breaches of human rights).<sup>2</sup>

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<sup>2</sup> The Corporate Responsibility to Protect: An Interpretative Guide (OHCHR, 2012), p.8.

- Salient risks should be identified with an ‘intersectional’ lens, recognising how gender, race, class, caste, disability and migration status shape people’s exposure to harm and access to remedy.
- The UNGPs state that, “Where business enterprises have large numbers of entities in their value chains it may be unreasonably difficult to conduct due diligence for adverse human rights impacts across them of all. If so, business enterprises should identify general areas where the risk of adverse human rights impacts is most significant .... and prioritise these for human rights due diligence”. In keeping with this, it is not expected that all groups everywhere can or should be identified and engaged, but the onus should be on the organisation, whether alone or with others, to identify and prioritise salient risks.

### **Principle 3: HREDD laws should set out expectations of what constitutes effective prevention, mitigation and remediation**

- A primary aim of legislation should be to ensure that taking mitigatory action becomes a clear part of organisational strategy and wider risk management, with shared responsibility for implementation across the organisation. As is well documented in the UNGPs and OECD Guidelines, this includes changes to such issues as sourcing strategy, purchasing practices, supplier selection and product/service specifications.
- If the action or inaction of an enterprise has directly caused, contributed to, or is directly linked to, harm to rightsholders, then the enterprise must be directly involved in ensuring an appropriate form of remediation. This will vary by circumstance, and may involve a direct or indirect role, but the important test is that remediation is affected.
- Critically, the requirement for effective and meaningful remediation should be written into any regulation. Guidance should be provided that focuses on the rightsholders’ role and the requirement that any enterprise causing, contributing or directly linked to harm can demonstrate what action they have taken to ensure or co-operate on remediation.
- Where an individual enterprise may lack the leverage to ensure indirect human rights impacts can be effectively mitigated, for example in lower tiers of supply chains, then the enterprise should explore ways to increase it. This includes engaging in collective action, such as with other enterprises acting within in the same supply chains and other stakeholders. Ending business relationships should be a last resort, undertaken responsibly and only after genuine attempts to increase leverage and mitigate negative impacts have failed.

## Principle 4: HREDD laws should require meaningful stakeholder engagement

- For HREDD activity to be effective and meaningful, relevant stakeholders must be engaged throughout each stage of the HREDD cycle, with rightsholders prioritised in this engagement (particularly those from marginalised and at-risk groups, and those experiencing intersecting inequalities related to gender, race, class, caste, disability, migration status). Such engagement should be two-way, undertaken in good faith and result in action. This means dialogue and consultation with rightsholders and their representatives as part of risk assessment, mitigation and remediation, including with workers, trade unions, other democratically elected, legitimate worker representatives (for non-unionised workplaces) and community groups.<sup>3</sup>
- Specifically in the case of remediation, rightsholders must be involved in the decision, design and implementation of the remediation — as this will give it the best chance of successful impact. This may require engagement with workers, trade unions, community representatives or the help of relevant civil-society organisations to ensure rightsholders are able to fully contribute.
- Enterprises in turn should be able to demonstrate that the rightsholders concerned have been meaningfully involved in each of these steps — and similarly in any responsible disengagement planned as a last resort.
- The legislation should emphasise that many aspects of the HREDD cycle can most effectively be conducted through collective action with other enterprises, trade unions and NGOs, and note that enterprises should consider participating in credible multi-stakeholder initiatives to enable this.

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<sup>3</sup> For further information on meaningful stakeholder engagement and the role of legitimate representatives in engaging rightsholders see: <https://www.ethicaltrade.org/insights/resources/meaningful-stakeholder-engagement-mse-hrdd-eti-position-statement>.

## TRANSPARENCY

### Principle 5: Enterprises should publish an HREDD plan and an assessment of impact

- Enterprises should be required to publish a HREDD plan and assessment of impact at least every four years, with updates including assessments of progress provided at least on an annual basis. The annual update should also include a requirement for disclosure of companies' supply chain partners and suppliers (at a minimum tier 1).
- The plan should be forward looking, describing the procedures to be adopted in the forthcoming period.
- The assessment of impact should address the effectiveness of actions taken in the previous period and include actions to ensure meaningful stakeholder engagement.
- Guidance should be provided on the key areas of content that these documents should cover. However, to avoid duplication and minimise the burden of additional reporting requirements, enterprises should be free to align, combine or integrate these documents with other existing reporting requirements, such as EU Corporate Sustainability Reporting Directive (CSRD) or UK Modern Slavery Statements, provided the relevant content is adequately addressed.

## SCOPE

### Principle 6: Enterprises in all sectors should be in scope of legislation, including private and public sectors, and the service sector.

- The UNGPs were developed to apply to enterprises operating in all sectors, whether privately or publicly owned. Breaches of human rights can occur because of action or inaction in any enterprise, and there is fundamentally no difference whether the enterprise involved is private or public sector. As an example, risks in the surgical instrument supply chain exist regardless of whether the procuring enterprise is public or private sector. If the aim of regulation is to address human rights abuses, harness business and other institutions to be vehicles of change, then there is no logic to exclude any such institutions.
- Human rights abuses also do not only occur in traditional physical trade and are not only influenced by vertical contractual relationships. Organisations have a duty to prevent adverse human rights impacts whether in their domestic or international operations, whether in products or services, and whether in their supply or wider value chains. This includes within lower tiers of value chains, and within in any subsidiaries.
- Particular attention should be paid to ensure that 'marketplace' businesses selling to a country's customers, but not based in that country, are in scope for the legislation to ensure a level-playing field.

- The duty also includes the scrutiny, or lack of, undertaken by bankers, or investors, or development finance institutions relating to the activities their investment supports.

### **Principle 7: Expectations should reflect the size of enterprises**

- Size in and of itself is not a factor in whether human rights risks exist; any small organisation can, for example, fail to pay minimum wages or operate in poor conditions of health and safety.
- However, the UNGPs accept and allow that HREDD, “will vary in complexity with the size of the business enterprise”, and smaller organisations will often have lower ability to influence issues within their supply chains. Therefore ‘the means through which a business enterprise meets its responsibility to respect human rights will be proportional to, among other factors, its size’. So, whilst the regulation should apply to all, the scale and scope of HREDD expected from an enterprise should be proportionate to their size, influence and leverage.
- Guidance should also make clear that larger enterprises should not just push down HREDD requirements on to smaller supply chain, value chain and other partners, especially where they may have less leverage to mitigate and remediate human rights impacts. Larger businesses should also be required to understand how their purchasing practices and wider strategic decision making can impact the ability of partners to ensure human rights are respected.

## **ENFORCEMENT**

### **Principle 8: Enforcement measures should encourage improvement in the first instance.**

- Accountability is essential and sanctions should be tiered, with the aim of incentivising enterprises to improve and demonstrate they have addressed concerns in the first instance, within a reasonable time frame.
- For effective enforcement, there is a need for a competent regulatory authority or monitoring body to be established, or designated, with powers to receive complaints, investigate, and issue civil penalties. The body should be required to consult with trade unions, NGOs, enterprises and other stakeholders on a regular basis.

## **Principle 9: Sanctions should be linked to the severity of non-compliance with requirements and the size and influence of the enterprise.**

- Enterprises should be liable for harm, loss and damage arising from their failure to prevent adverse human rights and environmental impacts, in line with reasonable expectations of HREDD being conducted.
- An enterprise should be able to mount a defence against liability by proving that they acted with due care and reasonable effort to prevent human rights and environmental harm from occurring, by undertaking meaningful HREDD.<sup>4</sup>
- Allowance should be made for the fact that large and diverse enterprises may not be able to identify all potential risks at a given time and, in line with the UNGPs, should therefore be able to demonstrate a meaningful prioritisation approach to risk prevention and mitigation. In addition, the size, leverage and influence of the enterprise should be taken into consideration and the relative HREDD expectations based on these factors, as well as the principle of continuous improvement. Enterprises should, however, always act once they are aware of issues.
- Enterprises should further be liable for civil penalties if they fail to publish a plan and assessment of impact in line with transparency requirements.
- Any individual or organisation with a legitimate interest in the matter should be able to take civil action regarding an enterprise, operating in or from the country of the legislation, which has allegedly not observed the legislation and there should be a robust mechanism in place that enables this.
- Sanctions should be fines based on a schedule reflecting turnover. This would ensure proportionality and harness public, customer and shareholder/investor scrutiny.
- Criminal penalties should be reserved for the most serious of cases, for example fraudulent reporting or clearly negligent failure to mitigate severe human rights impacts (e.g. when enterprises were clearly aware at senior levels and decided not to act).

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<sup>4</sup> In cases where a company is alleged to have caused or contributed to adverse human rights or environmental impacts, the burden of proof should be reversed — requiring the company to demonstrate that it took all reasonable and proportionate measures to prevent and mitigate such harm. This reflects the imbalance of power and access to information between companies and affected rightsholders and aligns with the preventative nature of due diligence under the UNGPs and the OECD Guidelines for Multinational Enterprises.



## **Principle 10: Detailed implementation guidance and additional services should be provided to support enterprises in their delivery of the legislation**

- The government should develop clear and detailed implementation guidance that enables effective interpretation of the legislation by enterprises, NGOs, trade unions and other key stakeholders. The guidance should be developed in consultation with an advisory group which should be multi-stakeholder in its make-up and include enterprises, trade unions and NGOs.
- The guidance developed should include:
  - Clear and practical guidance on the concept of proportionality and what is expected from enterprises of different sizes, influence and leverage.
  - Guidance on how to identify and prioritise salient risks and what is meant by causing, contributing to, and being directly linked to, human rights impacts. This will improve enterprises' approach to effective risk assessment and enable enterprises to be held to account to a consistent standard.
  - Guidance on meaningful stakeholder engagement and expectations on meaningful collaboration with rightsholders, trade unions and NGOs and what is expected from enterprises of different sizes and maturity.
  - Guidance on how to assess the credibility of multi-stakeholder initiatives, as well as other initiatives such as certification schemes.
  - Guidance on conducting HREDD in “conflict-affected contexts” and “high-risk sectors”, which are identified (using a rigorous methodology) as the industries that are most at risk of negative human rights impacts.<sup>5</sup> Enterprises operating in these sectors should be supported in carrying out heightened human rights due diligence to map and address risks across supply chains.
  - Guidance on the reporting requirements, such as HREDD plans and assessments of impact, and what these should cover. However, as stated in Principle 5 and to avoid duplication and minimise the burden of additional reporting requirements, enterprises should be free to integrate these requirements alongside other existing reporting requirements, such as EU Corporate Sustainability Reporting Directive (CSRD) or UK Modern Slavery statements.
  - In addition, there should be a suite of support available for small and medium-sized enterprises (SMEs) and micro, small, and medium-sized enterprises (MSMEs) including training and advisory services provided by government.

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<sup>5</sup> High risk sectors could include but should not be limited to textiles, agriculture, critical minerals, electronics, construction and services.

## APPENDIX

### Glossary

**Adverse impact** – Negative effect on people’s human rights or on the environment, arising from a company’s own operations, its value chains, or its business relationships.

**Due diligence (Human Rights and Environmental Due Diligence / HREDD)** – A continuous cycle of identifying, preventing, mitigating, and remediating risks to people and the environment connected to a company’s activities, value chains, and business relationships.

**End user / user groups** – Individuals or communities who ultimately use or are affected by a company’s product or service.

**Enterprise** – An enterprise is defined by the OECD as “a legal entity possessing the right to conduct business on its own, for example to enter into contracts, own property, incur liabilities and establish bank accounts”. The term ‘enterprise’ is used in this document in preference to ‘business’ or other terms, to be clear that all relevant organisations should be in scope for mHREDD, not just those in the private sector.

**Leverage** – The ability of an enterprise to influence the behaviour of others with whom it has relationships (e.g. suppliers, contractors, partners) to prevent or mitigate human rights or environmental harms.

**Intersectional lens** – A way of analysing human rights risks and inequalities that recognises how multiple overlapping social identities — such as gender, race, class, caste, disability and migration status — interact to shape people’s exposure to harm and access to remedy. It aims to ensure that due diligence, policies, and remediation efforts account for these intersecting inequalities, rather than treating groups as homogenous, and helps prevent unintended exclusion or reinforcement of existing inequities.

**Multi-stakeholder initiative (MSI)** – A collaborative platform or partnership that brings together diverse groups, including enterprises, trade unions, NGOs, governments, academia and other relevant actors to jointly address complex societal challenges.

**Proportionality** – The principle that due diligence expectations should vary according to, or in proportion to, a company’s size, sector, leverage, and risk exposure, while still applying to all companies.

**Remediation** – Actions taken to make good or compensate for harm caused to rightsholders, which may include restitution, rehabilitation, financial compensation, or other forms of redress.

**Rightsholder** – Any individual or group whose human rights may be affected by an enterprise’s operations or business relationships (e.g. workers, communities, Indigenous Peoples, consumers).

**Salient risks** – The most prominent or severe risks to human rights within a broader set of potential risks, that an enterprise is connected to, based on the scale, scope, and remediability of potential harm.

**Schedule (of fines)** – A structured scale or framework used by regulators to determine financial penalties, often linked to a company’s turnover or revenue.

**Soft law** – International norms or standards that are not legally binding but create expectations of behaviour (e.g. UNGPs, OECD Guidelines).

**Stakeholder engagement** – Ongoing, two-way dialogue with affected stakeholders (especially rightsholders) and their representatives, to enable risk assessment, decision-making, mitigation, and remediation.

**Supply chain / value chain** –

- **Supply chain:** The network of direct and indirect suppliers involved in producing a company's goods or services.
- **Value chain:** A broader concept that includes the entire lifecycle of a product or service, from design and production through use and disposal, including downstream impacts on end users.