

CSR & HUMAN RIGHTS NEWSLETTER

MARCH 2016



Editorial

ILO MNE DECLARATION

Dear Reader

On 22 and 23 March the ILO Governing Body discussed the possible review of the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (ILO MNE Declaration).

In the debate, the Employers' Group reaffirmed its support for the ILO MNE Declaration as an important instrument in the international CSR debate; fully acknowledged by the CSR strategy of the EU Commission and many other instruments, such as the OECD Guidelines for Multinational Enterprises, which took many of the Declaration's provisions for its Employment chapter.

This support is crucial. Any ILO text that directly addresses the private sector, but does not enjoy the support of the Employers would lack credibility and be highly ineffective. It is only through close cooperation that we can promote and update the MNE Declaration with any impact.

The Employers' Group recognised that there have been some important developments since the last update in 2006, for instance the adoption of the UN Guiding Principles on Business and Human Rights. The Group agreed that the ILO MNE Declaration could reference the UN Guiding Principles as well as - if necessary - relevant ILO texts and standards that have been adopted since 2006. The Group argued that there was no need for a more comprehensive revision.

However, given the support of the Workers' Group and the vast majority of governments for a review, the ILO Governing Body decided on 23 March to "establish a tripartite ad hoc working group of eight members representing Governments, four members representing Workers and four members representing Employers that will meet twice before March 2017 to review the text of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy including its annex and addenda as well as the interpretation procedure. The recommendations of the working group, arrived at through consensus, will be presented for possible adoption at the 329th session (March 2017) of the Governing Body".

The IOE and the Employers' Group will constructively engage in the ongoing process and ensure that a revised MNE Declaration does not conflict with the global consensus represented in the UN Guiding Principles and the OECD Guidelines. The IOE Secretariat will very closely engage all members in this work and develop further information in due course as developments arise.



Linda Kromjong
Secretary-General

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Draft French due diligence law update

On 16 March, the draft law on due diligence was adopted in a second reading by the Law Committee of France's National Assembly. The draft is identical to the one discussed in March 2015 (first reading) as no amendments were adopted. It is to be discussed in plenary on 23 March.

In his opening remarks, the rapporteur recalled that the goal of the piece of legislation was to regulate globalization; to ensure that the development of globalisation is compliant with the protection of human rights; and to promote core French values. According to the rapporteur, 80% of listed companies are already implementing due diligence measures as part of their CSR policy and many companies were actually open "to enter into dialogue on the draft". He said that the objective was to set up general principles and that enough flexibility was left to companies with regard to implementation.

Is it relevant to have national legislation on this topic, which is in essence global? On that issue, the rapporteur asserted that "history teaches us that it is the national initiatives that lead Europe on the path of progress,". The representative of the right-wing party (minority in the National Assembly) said that his group supported the intention but highlighted the fact that only international action will "move the lines." He claimed that the text will hamper the competitiveness of French companies, as well as the attractiveness of France for foreign investors, and that it could create a competitive disadvantage with the risk of cutting jobs in France. He also pointed to the difficulties of implementation of such measures throughout the supply chain.

For the record:

- What is the intention? The law intends to prevent the damages that may result from business activities in the context of the globalisation of production of goods and services. It puts an obligation on French companies to respect "human rights and fundamental freedoms" along the supply chain in all countries in which the company operates.

- What is the spirit? The draft takes a coercive and punitive approach and totally ignores the reality of the global economy. If adopted, it would heavily penalise French companies but probably not strengthen the principles it targets.

- What is the content? Any company having its head office in France, employing at least 5,000 employees in France, or 10,000 employees in total, has the obligation to set up and to effectively implement a "diligence plan". The plan must contain due diligence measures likely to prevent damages resulting from the company's activities as well as those of its sub-contractors and suppliers. The criteria for deciding whether the company must be accountable for its suppliers' activities is to have an "established business relationship". In the event that the due diligence plan is not set up, any person with a legitimate interest can ask the judge to require the company to set one up. The judge has the possibility to fine the company up to €10 million.

Main dangers:

- An unlimited liability, badly defined: companies are not in a position to know if they comply with the law; that leads to legal uncertainty.
- Consequences on business partners and investors

Garance Pineau, Deputy Director Social Affairs, MEDEF



IOE-Eversheds Business and Human Rights Symposium

The symposium will gather high-level speakers including Karen Bradley MP (UK Minister for Preventing Abuse and Exploitation) and Linda Kromjong (IOE Secretary-General) in a panel format, followed by lively discussions with representatives from employers' organisations, the private sector and international organisations.

The five main panel discussions will be on:

- Implementing the UK Modern-Slavery Act
- The draft UN Human Rights Council recommendations to improve access to remedy
- Beyond "doing no harm" - companies' engagement in the SDGs
- Transparency and Human Rights reporting - from disclosure to performance
- Due diligence requirements (national, European and international experiences)

The UK's Modern Slavery Act: reporting implications for global businesses

Executive summary

The Modern Slavery Act (the Act), agreed by the UK Parliament last year, is focused on clarifying the offences of slavery and trafficking, increasing the maximum penalty for such offences, strengthening enforcement powers and establishing the office of Independent Anti-slavery Commissioner. However, a small part of the Act which requires certain businesses to disclose what activity they are undertaking to eliminate slavery and trafficking from their supply chains and their own business has attracted attention from across the world. By driving up transparency, the expectation is that modern slavery will be tackled with greater urgency by businesses.

The new slavery and trafficking reporting duty applies to companies and partnerships supplying goods or services (wherever incorporated or formed) with global turnovers of £36 million and above, providing they carry on business in the UK. To comply, organisations are expected to report annually, for example, on policies, training, due diligence processes and the effectiveness of any steps taken to combat modern slavery and trafficking. The annual report must be signed and approved at the highest level in the organisation and made accessible on the organisation's homepage on the web.

While penalties for a failure to report under the Act are limited, trade unions and other pressure groups are likely to monitor and test compliance. A failure to report fully, or the discovery in a supply chain of slavery or trafficking contradicting a report, is likely to cause serious reputational and brand damage. It may lead to loss of business, particularly where procurement terms are amended to incorporate new slavery and trafficking requirements.

The duty to report under the Act is not an isolated initiative. Broader human rights risks reporting exists under the UK Companies Act 2006 and this will be strengthened by the EU Directive on Non-Financial Reporting during 2016 (which requires certain large entities to report on their respect for human rights). The Act builds on the existing California supply chain transparency legislation and the United Nations Guiding Principles on Business and Human Rights, and may be reinforced by other jurisdictions, such as France, introducing supply chain transparency legislation. As such, businesses affected should give consideration to broader, global human rights reporting, as well as UK slavery and trafficking disclosure, to ensure a joined-up response.

Understanding the duty to report under the Modern Slavery Act

The Act covers slavery, servitude, forced or compulsory labour and human trafficking, including the provision of work through coercion, exploitation or the deprivation of freedom. Typically, if a worker can leave freely and easily without threat to themselves or their family, it will not amount to an offence.

When assessing whether a business triggers the duty to report under the Act, the £36 million threshold includes global turnover and the turnover of any subsidiaries. With franchisers, only the turnover of the franchiser will be considered.

Where there are group companies, bear in mind that if any single constituent company in the group meets the qualifying requirements (the turnover threshold and the need to carry on business in the UK supplying goods or services), it is legally required to produce a statement – i.e. take a company by company approach to applying the qualifying requirements. It is worth noting that, even where a constituent company does not have a presence in the UK, it may form part of another group company's supply chain which does.

Where there are non-UK parent companies with UK subsidiaries, the Government Guidance states "having a UK subsidiary will not, in itself, mean that a parent company is carrying on a business in the UK, since a subsidiary may act completely independently of its parent or other group companies." In other words, having a UK subsidiary does not automatically require a non-UK parent to report unless it meets the qualifying requirements, although this remains an area of ambiguity in the Act.

Where a parent and one or more subsidiaries in the same group are required to produce a statement, the parent may produce one statement that subsidiaries can use to meet this requirement (provided that the statement fully covers the steps that each of the organisations required to produce a statement have taken in the relevant financial year and is approved and accessible from the relevant homepages of the companies covered).

While the Act requires the publication of an annual statement, it does not prescribe the content and states that the following 'may' be included:

- information about the organisation's structure, its business and supply chains
- the organisation's policies relating to modern slavery
- its due diligence processes in relation to slavery and trafficking in its business and supply chain
- the parts of the organisation where there is a risk of modern slavery and the steps it has taken to assess and manage that risk
- its effectiveness in ensuring that modern slavery is not taking place, measured against appropriate performance indicators
- training available.

The first reports under the Act are due for those businesses with financial year-ends on or after 31 March 2016, with a Government expectation that publication will take place within six months of the year-end. Government guidance suggests that whilst the report should be succinct, it must be comprehensive, possibly with links to relevant policies and documents illustrating the steps taken "to ensure" that there is no slavery or human trafficking in the business's operations or supply chains.

Responding in practice

The typical pathway to compliance comprises:

- securing support from senior management; identifying a cross functional project team and allocating them responsibilities; and identifying stakeholders inside and outside the business, including those in supply chains, to assist;
- deciding whether to deal with the Act's reporting requirements in isolation or to integrate them with wider human rights reporting;
- identifying what constitutes your "supply chain" and conducting risk assessments on how the business may be involved in slavery and trafficking in its operations and supply chain;
- testing the risk assessment results with stakeholders, prioritising severe risks and taking steps to stop, prevent or mitigate harm;
- embedding measures in the organisation to prevent slavery and trafficking, for example, amending policies, procurement procedures, contract terms, codes of conduct, supplier vetting and auditing, whistleblowing mechanisms, incentives, etc;
- devising training, KPIs and monitoring processes; to help staff spot the signs of slavery and trafficking, to check internal staff and external supplier compliance, to enable concerns to be raised and to measure progress; and remediation processes.

The Government has couched its expectations of business in terms of proportionality and that organisations are not expected to guarantee slavery-free supply chains. As such, businesses need to consider what is reasonable and proportionate when preparing to report under the Act; reflecting the severity and likelihood of slavery and trafficking

risks; the size of the business and its resources; the nature and context of its operations; and its capacity (or leverage) to stop harm. Organisations should also familiarise themselves with the Government's Guidance.

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EVERSHEDES EVENT: International labour issues - Human rights: 'soft' law with hard edges. Geneva 21-22 June 2016.
More information under:
http://www.eversheds.com/global/en/what/training/showevent.page?Events=en/International_labour_issues_2016

OECD work on new guidance on cross-sectoral due diligence

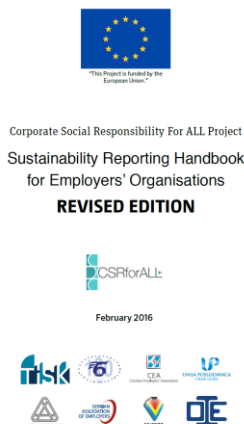
The OECD Guidelines for Multinational Enterprises (OECD Guidelines) call on businesses to conduct due diligence. Enterprises should carry out risk-based due diligence, for example by incorporating it into their enterprise risk management systems, to identify, prevent and mitigate actual and potential adverse impacts and account for how these adverse impacts are addressed (OECD Guidelines, Chapter II, Para. A.10). This language is aligned with that of the UN Guiding Principles on Business and Human Rights. The OECD Guidelines, however, do not include a detailed text on how due diligence should be carried out in practice. Therefore, in October 2015 the OECD under the auspices of the OECD Working Party on Responsible Business Conduct (WPRBC) decided to develop a "General guidance on risk-based due diligence for responsible business conduct". The aim is to develop a cross-sectoral approach in order to provide a common reference point on due diligence for companies and to mainstream due diligence processes across business operations. This initiative has special significance, since the G7 committed to bring an application of a common due diligence understanding into the 2016 ILC discussion. The WPRBC developed a draft which was discussed with BIAC, TUAC and OECD Watch in March 2016. The draft contains a very detailed description of the due diligence components and tries to clarify the steps a company must fulfil in order to implement properly human rights due diligence. The general guidance also includes due diligence modules that address cross-cutting issues, such as wages, forced labour, informal workers, etc.

BDA considers responsible business conduct as promoted by the OECD Guidelines to be an essential part of an open investment environment and in the best interest of business. Extensive progress has been achieved in the field of responsible business conduct over recent years. Many companies already actively assume their corporate responsibility and engage far beyond what is required by law. The numerous activities and initiatives of companies at global, European and national level in the fields of environment, social commitment and economy are a concrete expression of this responsibility awareness. For example, companies in Germany commit 11.2 billion Euros a year in the social sphere alone. There is also substantial progress at company level and within industry initiatives with regard to human rights due diligence. Many business-driven initiatives have been established, for example "Business Social Compliance Initiative (BSCI)", "Better Coal", "Together for Sustainability (TfS)", Chemie³ etc.

Against this background, BDA is concerned about the WPRBC-draft. Discussions on a possible guidance on risk-based due diligence for responsible business conduct have to take place within the framework of the OECD Guidelines. The draft guidance document, however, is obviously not at all in line with the language of the OECD Guidelines and goes far beyond the provisions agreed upon in the Guidelines. The draft text is tackling the problem the wrong way assuming for example that "it may not always be possible for an enterprise to address all adverse impacts in its supply chain." This denies the fact that it is impossible for many companies, including the "frontrunners", to control the whole supply chain "from the cotton field up to the clothes hanger". Many companies even have real problems controlling their tier-1-suppliers sufficiently. It must be recognised that global supply chains are complex arrangements, with some companies having several tens of thousands of suppliers, which might be continually changing. Global supply chains are not like a nice string of pearls easy to oversee and to control, but rather like a big heap of spaghetti. They are diverse, complex and unstable. Bigger companies have thousands of suppliers in many tiers, and these suppliers are also often continually changing. The OECD Guidelines explicitly recognise that there are practical limitations with regard to the ability of enterprises to effect change in the behaviour of suppliers which are related to product characteristics, the number of suppliers, the structure and complexity of the supply chain, the market position of the enterprise vis-à-vis its suppliers or other entities in the supply chain. This should be reflected in the guidance document.

BDA believes that the OECD should work very closely with the business community to ensure that the guidance document is well-elaborated, while remaining practical and realistic for companies around the world.

Paul Noll, Deputy Director, Confederation of German Employers (BDA)



NEW! **Out now:** Revised CSR Handbook, with a particular focus on sustainability reporting!

Free access under: http://www.ioe-emp.org/fileadmin/ioe_documents/publications/Policy%20Areas/csr/EN/_2016-03-10_CSR_for_All_Handbook_for_Employers__Organisations.PDF

Corporate Human Rights Benchmark Project has published its methodology

On 21 March 2016 the Corporate Human Rights Benchmark Project published its methodology, which will now be piloted over the next several months with the top 100 companies from the agricultural products, apparel and extractives industries. The results of this business and human rights pilot benchmark will be published in November 2016.

In the IOE's view, the CHRB project has moved in the right direction, compared to where it was at the outset and thanks to active stakeholder engagement. However, concerns remain, among others, with regard to the risk of proliferation of standards and the administrative burden this would impose on business to comply with divergent and potentially competing directives. The IOE takes the view that the CHRB should be voluntary in nature.

The IOE will discuss the issue of transparency and reporting with high-level experts at the IOE EVERSHEDS Business and Human Rights Symposium on 27 April in London.

2nd FEI & ILO CSR Conference on “Decent work and CSR: linkages and impacts on sustainable development”

On 14 January 2016 the Federation of Egyptian Industries (FEI) and the International Labour Organization (ILO) organized the 2nd Annual CSR Conference on “Decent work and CSR: linkages and impacts on sustainable development”. The event was also supported by the Mansour Development Foundation and the American University in Cairo.

The Conference attracted more than 1,000 participants from the private sector (business associations, large Egyptian companies, multinationals, SMEs) universities, research centres, NGOs, international organisations and senior government officers. It was opened by the Chairman of the FEI, the Director of the ILO Cairo Office and the Minister of Manpower.

The main objectives of the conference were to underline the labour dimension of CSR, highlight the linkages between CSR and decent work and its repercussions on sustainable development and economic growth.

The conference was composed of six different roundtables on:

- CSR and creating new jobs: challenges and opportunities
- Corporate shared values and Sustainable Development Goals
- Role of CSR in enhancing decent work conditions and its impact on economic growth
- CSR: the business contribution to development
- Role of universities and research centres in promoting CSR principles
- Mainstreaming CSR policies in SMEs and its repercussions on value chain management

Speakers presented the opportunities offered by business through its CSR programmes to face the challenges of creating new jobs, clarified the impact of CSR on enhancing decent work conditions, identified the role of universities in promoting CSR principles and explained methods of mainstreaming CSR policies in SMEs. They discussed the main challenges facing the improvement of working conditions through value chain development and the solutions offered by business to have a healthy and well-educated workforce with the knowledge and skills needed for more productive work. Speakers underlined the important role of CSR frameworks in facilitating the practical translation of sustainable development policies into concrete action at national level. During the debates, the work done in Egypt by the ILO and the CSR unit of the FEI was also presented.

The Conference was also the opportunity to present the new publications developed by or with the support of the ILO and the FEI

- IOE handbook on CSR. The handbook developed through the EU-funded project "CSR for All" was translated into Arabic.
- "CSR Industrial Leaders of Egypt". This is the first publication of its kind in Egypt identifying successful company CSR profiles. It aims to document the experience of 15 industrial companies that are considered early leaders in introducing and developing programmes and activities that address various elements of CSR.
- Mapping of the most important 100 CSR initiatives all over Egypt. The objective is to facilitate the coordination between the different CSR stakeholders to maximise the impact of their contributions.
- "Giving Voice to Values: Egyptian GVV cases". Developed by Prof. Mary Gentile, Director of GVV and Senior Research Scholar at Babson College(USA), the GVV case studies show new approaches to preparing business managers and leaders for values-driven decision making.

Eric Oechslin, Senior Specialist Employer Activities, ACT/EMP-ILO

Regional consultation for Latin America and the Caribbean (LAC) on public policy for the implementation of the UN Guiding Principles on Business and Human Rights (UNGP)

In a joint effort led by the UN Working Group on Business and Human Rights and the Regional Office for South America of the UN Office of the High Commissioner for Human Rights, with the collaboration of OECD and the Vincular Centre for Social Responsibility and Sustainable Development of the Pontifical Catholic University of Valparaíso (Chile), the IOE participated in the regional consultation for Latin America and the Caribbean (LAC) on public policy for the implementation of the UN Guiding Principles on Business and Human Rights(UNGP) in the Framework of the 2030 Agenda on Sustainable Development (ASD) in Santiago de Chile on 2-3 March 2016.

The Consultation aimed to facilitate dialogue between representatives of the public sector in the region, international organisations and other relevant stakeholders, to identify progress, share experiences and identify challenges and opportunities in the development of public policies, in particular National Action Plans (NAP) on business and human rights that support States in realising their responsibility to protect and businesses their responsibility to respect human rights in accordance with the UNGP, in the framework of the ASD.

In a panel entitled "Stakeholder expectations regarding the role of the State in the implementation of the Guiding Principles on Business and Human Rights", María Paz Anzorreguy IOE Senior Adviser for Latin America made, among others, the following points in terms of expectations on the role of the State:

- At an international level, Governments should support the promotion of the UNGP by the UNWG and share their experiences and practices concerning the implementation of the UNGP.
- At national level, governments should, among others, reinforce efforts in developing National Action Plans (NAPs) to implement the UNGP. The NAP drafting process raises awareness, brings stakeholder groups together and creates ownership and commitments.
- NAPs should take a positive, constructive and practice-oriented approach and should focus on support for business.
- NAPs should take a "think small first" approach. The provisions in the NAPs must take into account the challenges, limitations and needs of SMEs which in Latin America represent 95 % of the economy.
- The involvement of employers' organisations in the development of NAPs is key to bring the interests of all sizes of businesses to the table.

- Access to remedy and justice at local level needs to be a key issue for the NAPs. Governments should use the NAP process to assess their judicial systems, identify gaps and improve their systems by addressing these gaps.
- In order to improve human rights situations on the ground given the size of the informal economy in Latin America, governments should foster environments which facilitate companies meeting their responsibility to respect human rights. In this regard governments must much more determinedly fulfil their obligation to protect the human rights of all, including companies, by strengthening public governance systems, strengthening the rule of law and institutions. No international treaty on business and human rights, or any other international initiative, can replace good governance and the rule of law.
- National employers' organisations have a key role to play when it comes to raising awareness and building capacity on the UNGP.

As a follow up to the consultations a compendium (in Spanish) of good practice of IOE Member Federations in the region in promoting the implementation of the UN GP was launched in Geneva on 17 March.

Maria Paz Anzorreguy, IOE Senior Adviser for Latin America

2016 Global Supply Chains blog series by Linda Kromjong, Secretary-General

4 March 2016:

"Extraterritorial jurisdiction is the surest means to secure access to remedy for victims of human rights abuse in global supply chains." - true or false?

Linda Kromjong explores the question in the second of her blogs on the topic of supply chains

Access to remedy in cases of human rights violations is not only a human right *per se*, but a prerequisite for the full enjoyment of these human rights. It is only when people have access to justice and remedy that rights become meaningful. Article 8 of the Universal Declaration of Human Rights states that "*everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.*" ... Read the whole blog [here](#).

3 February 2016:

"Companies have total control over their global supply chains" – true or false?

Linda Kromjong explores the question in the first of her blogs on the topic of supply chains

As the pace of globalisation accelerates and new technologies allow companies to easily source products in various locations - assembling, transforming, adding value, distributing and selling them in yet others, it becomes clear that supply chains are increasingly complex webs of interaction, rather than the sequence of elements arranged in a neat line we may once have imagined.....Read the whole blog [here](#).

Margaret Jungk steps down from UN Working Group on Business and Human Rights

Margaret Jungk has stepped down from the UN Working Group on Business and Human Rights to take up a position at Business for Social Responsibility. Margaret Jungk has been a member of the Group since its creation and has been a key figure in the success of its work.

The Office of the UN High Commissioner for Human Rights (OHCHR) has posted a call for candidates to replace her as representative for the Western Europe, North America, Australia and New Zealand. Deadline is 14 April. Organisations which have a proposal are invited to share it with the IOE Secretariat (thorns@ioe-emp.org).

SAVE THE DATE for the 18 April IOE-GBI-QCCI Business & Human Rights Workshop in Doha

The International Organisation of Employers (IOE) and the Global Business Initiative on Human Rights (GBI), kindly hosted by the Qatar Chamber of Commerce & Industry, are jointly organising a workshop on 18 April for representatives of companies and business organisations on the UN Guiding Principles on Business and Human Rights (UNGPs).

The workshop is being held on the day before the first UN Asia Regional Forum on Business and Human Rights. This business-only workshop will prepare business people attending the Forum with a comprehensive understanding of the latest expectations and developments regarding businesses' human rights responsibilities, including the UNGPs. Participants will hear how companies are practically implementing the UNGPs into their businesses and the benefits of doing so.

The objectives of the workshop are to:

- Inform participants on global developments regarding business and human rights;
- Introduce participants to the UN Guiding Principles on Business and Human Rights, and
- Give practical, relevant and "step by step" guidance on implementing the UN Guiding Principles, including human rights due diligence.

Editors' Note:

IOE members and partner companies are invited to contribute articles on CSR and human rights developments in their countries or enterprises, to share information on conferences and publications within the global business community, as well as to use this newsletter to exchange worldwide experience and best practice.

Please contact Matthias Thorns (thorns@ioe-emp.org) with your submissions.



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