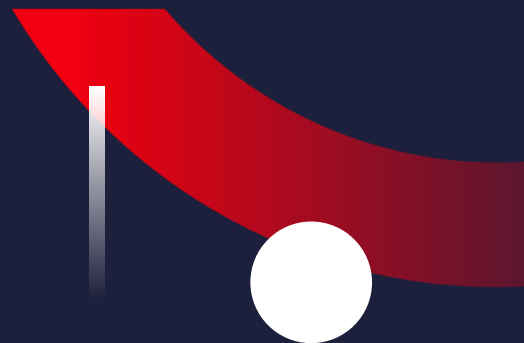


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Business & Human Rights



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Editorial

One year and more into one of the worst public health and economic crises since the 1918 influenza pandemic, and as the global vaccination campaign progresses, the world is still struggling to adjust to the “new normal”.



The Covid-19 pandemic has taught us many lessons, one of which is that crises can offer opportunities. Now we have the chance to address the flaws in human-rights policies that have been evident for a long time, but never fully addressed. Now we have the chance to address the underlying root causes of so many human-rights challenges, most evidently good governance and rule of law deficits, and lack of access to social protection, education, gender equality and decent work. All the initiatives launched by the private sector - to help citizens receive medical care during the pandemic or support the recovery phase – are testament to the fact that business does not want to revert to “business as usual”, but to play its full role in “building a better future”.

In this issue of our Newsletter we feature several developments, at the international, regional and national levels.

June 2021 marks the tenth anniversary of the unanimous endorsement by the Human Rights Council of the United Nations Guiding Principles on Business and Human Rights (UNGPs). We present here the UNGP10+1 project, the goal of which is to chart a course for the “next decade of action on business and human rights”. 2021 also marks the International Year for the Elimination of Child Labour. The International Organisation of Employers is directly contributing to both landmark anniversaries.

In other developments, work on a binding treaty on business and human rights continues; the majority of ISO members voted in favour of confirming ISO 26000; and the private sector was consulted by the UN Working Group on Business and Human Rights on the topic of human-rights compatible International Investment Agreements, and by the UN High Commissioner for Human Rights on business initiatives to fight systemic racism.

But attention focused mainly on the new pieces of European Union legislation: one on sustainable corporate governance and due diligence, and the second on the amendment to the non-financial reporting directive, renamed Corporate Sustainability Reporting Directive (CSRD). Since these will have important repercussions on European and third country companies and their supply chains, it is key for business to convey the right messages to the European Commission during the public consultations. A lot remains to be determined prior to the publication of the EU Corporate Due Diligence and Corporate Accountability Directive in June 2021, including the exact scope of the new obligations, ways to ensure legal certainty, the level of adequateness of accountability, means of assessing responsibilities within companies and supply chains, the difference between public and private companies, etc. Clearly, any future rules must be clear and applicable in practice.

On national developments, the German Supply Chain Act and the Swiss Due Diligence Law are on their way and currently being discussed in the respective Parliaments. It is likely that the German legislative procedure

will be completed by September 2021 and the Swiss will enter into force in 2022. The German Supply Chain Law is highly demanding for businesses as it creates new legally binding due diligence obligations for companies, which apply for their own business activities, their first-tier suppliers and to a certain extent to all tiers of the supply chain. The Swiss legislation is more in line with the UNGPs, OECD Guidelines for Multinational Enterprises and other international instruments: companies must first identify the potential risks throughout their business relationships and activities. On that basis they must take effective measures to address the potentially negative impacts.

We will certainly report further on these national developments in the next Newsletter.

Mthunzi Mdwaba – Chair of the IOE Human Rights & Responsible Business Conduct Policy Working Group

International news

United Nations: UNGPs+10 Project

June 2021 marks the tenth anniversary of the unanimous endorsement by the Human Rights Council of the United Nations Guiding Principles on Business and Human Rights (UNGPs). Time to take stock of achievements and prepare for the next ten years.

Context

The UNGPs have become the authoritative framework on business and human rights and clarify the respective roles and responsibilities of governments and companies. Businesses, NGOs, and trade unions have endorsed the UNGPs as an effective framework for responsible business conduct. Many governments around the world have launched national action plans (NAPs) for the implementation of the UNGPs. Over the past ten years, IOE has prioritised the uptake of the UNGPs by the business community and actively promoted the UNGPs in policy debates at national, regional, and international level.

The UN Working Group on Business and Human Rights is undertaking a project referred to as UNGP10+1, which aims to chart a course for the “next decade of action on business and human rights”. The project, informed by wide-ranging stakeholder consultations, includes:

- i. stocktaking of achievements;
- ii. assessing remaining gaps and challenges; and
- iii. developing a vision and roadmap for implementing the UNGPs more widely and more broadly between 2021 (most likely the end of 2021) and 2030. See timeframe below.

To date, the UN Working Group on Business and Human Rights has collected around 250 written contributions from stakeholders. It has emerged from these that governments lag behind in executing the proper implementation of their “State duty to protect human rights”.

The Working Group has also intensified collaboration with the Organisation for Economic Cooperation and Development (OECD) on to their work related to the [OECD Guidelines for Multinational Enterprises](#).

IOE flagship report

In February 2021, the International Organisation of Employers (IOE) released a flagship report on [*“Achievements, challenges, and the way forward in the uptake and implementation of the UN Guiding Principles on Business and Human Rights”*](#). Through this publication IOE aims to support the Working Group’s UNGPs10+ Project by analysing:

- i. progress and good practices to date;
- ii. gaps and challenges and the key obstacles in the way of full implementation of the UNGPs; and
- iii. what should be done, and how, to speed up the implementation of the UNGPs considering the present and future challenges.

Progress and good practices to date

When looking at the progress, the IOE report highlights:

- How “*the UNGPs have been explicitly integrated into the main internationally recognised principles and standards on responsible business conduct, such as the ILO MNE Declaration, OECD MNE Guidelines and ISO 26000. This integration has strengthened coherence, facilitated the positioning of the UNGPs in the global public and business agenda and supported their adoption by the business sector*”.
- That there is increased awareness, as “*more than 50% of the EBMOs surveyed by IOE singled out increased consumer awareness as a key driver in accelerating the implementation of the UNGPs. Highly engaged trade unions and civil society have also contributed to corporate uptake of human rights standards*”.
- That “*the UNGPs have found their way into the boardroom and have become a leadership issue*”(for 87% of the enterprises surveyed).
- The good progress on the implementation of due diligence, particularly in large and multinational enterprises (93% of the enterprises surveyed).
- The advancements on access to remedy: “*67% of the enterprises surveyed now have operational-level grievance mechanisms that are accessible to individuals and communities who may be adversely impacted. In addition, 70% of the enterprises surveyed have processes in place to provide remediation and/or cooperation in situations of recognised impacts on human rights*”.

Gaps, challenges and key obstacles in the way of full implementation of the UNGPs

The IOE publication confirms that a lack of government leadership in addressing governance gaps remains the biggest challenge to full implementation of the UNGPs.

Other challenges are:

- High levels of informality: “*more than 60% of workers globally operate in the informal economy; in some countries and sectors, this percentage rises to 80 – 90%. It is in the informal economy that decent-work deficits and human-rights risks are at their most prevalent*”.
- Systemic challenges, such as poverty and/or the lack of access to quality education that increases the probability of the incidence of child labour in business value chains, environmental degradation, corruption, and lack of application of the rule of law.
- Difficulties in dealing with multiple standards, tools, and certifications which address different areas of human rights (labour, environmental, business relationships). Confusion among different standards relates also to the implementation of the business and human rights agenda and how this articulates with the 2030 Agenda for Sustainable Development. Initiatives, such as that of the Intergovernmental Working Group on a binding Treaty on Business and Human Rights, create divergence with the UNGPs and divert resources away from current implementation efforts.
- Investing in data collection and human resources to respond to the requirements of investors, which requires substantial resourcing and presents a challenge for companies.
- Lack of government engagement through the National Action Plans NAPs (plans that have to be established to implement the UNGPs); only 25 out of 193 countries have NAPs.
- Difficulties accessing effective remedy for victims of adverse human-rights impacts due to reasons such as weak and/or corrupt judicial systems, low levels of awareness about rights, linguistic barriers, high cost of litigation, limited civic space to organise protests collectively, fear of intimidation and others.

- Understanding how to proceed with the implementation of the UNGPs, especially when it comes to Small and Medium Size Enterprises (SMEs).
- Lack of proper preparation by national employer and business membership organisations (EBMO) in supporting their member companies with the implementation of UNGPs.

The way forward

The paper underlines how Covid-19 has been highly disruptive for economies and societies. It underlines that *“...crises can offer opportunities. Now we have the chance to address the flaws in human rights policies that have been evident for a long time, but never fully addressed. Now we have the chance to address the underlying root causes of so many human-rights challenges, most evidently good governance and rule of law deficits, and lack of access to social protection, education, gender equality and decent work”* and that *“Business does not want to revert to “business as usual” but to play its full role”* in building a better future.

On this basis, proposed solutions are:

- Address the root cause of systemic challenges (such as poverty, informality, corruption, weak governance, etc) with a more systemic approach.
- Improve the connection between the business and human rights and the sustainable development agendas.
- Reinforce the role of States when it comes to the implementation of the UNGPs, supported and guided by their own NAPs.
- Require States to lead by example on how they deal with human rights in State-owned companies.
- Strengthen the judicial system and improve access to remedies.
- Favour trust and collaboration between the relevant and legitimate actors involved in the business and human rights agenda, for instance by building spaces for dialogue at the regional and local level and for different sectors.
- Promote local action.

In addition, IOE highlights the role that employer and business membership organisations (EBMOs) play in continuing awareness-raising and capacity building, in facilitating peer-learning among the business community and in coordinating collective action. *“EBMOs will not only need to continue supporting businesses to respect human rights, but also support them in navigating the fast-changing legal environments around the world”*, and in discussions with policymakers and all relevant stakeholders.

Timeframe:

- **16 June:** Digital launch of the stocktaking report and roadmap outline by the UN Working Group
- **21 June:** IOE digital conference on the stocktaking Report and roadmap outline
- **28/29 June:** Presentation of the stocktaking report and presentation of the roadmap outline to the UN HRC and OHCHR digital conference
- **1 December:** Launch of the roadmap at the UN Forum on Business and Human Rights

IOE contribution to the UN Working Group on Business and Human Rights consultation on human-rights compatible international investment agreements (IIAs)

The consultation aimed at informing the Working Group's understanding of the business perspective and providing suggestions for practical guidance that States would need on this matter.

In April 2021 the International Organisation of Employers (IOE) and its members were consulted on the topic of international investment agreements and human rights by the UN Working Group on Business and Human Rights (officially the 'Working Group on the issue of human rights and transnational corporations and other business enterprises', that is the working group mandated by the Human Rights Council to disseminate information on the implementation of the UNGPs, among other tasks).

The consultation aimed at informing the Working Group's understanding of the business perspective on the matter, prior to the drafting of their forthcoming report to the 2021 UN General Assembly. The report aims at providing "practical guidance to States on negotiating human rights-compatible International Investment Agreements (IIAs)".

In IOE's [written contribution](#) on this topic, IOE "welcomes policy alignment of IIAs to the international recognized human rights. The State duty to protect human rights is the overarching and cornerstone responsibility for the realization of human rights and is fundamental to ensuring business and other actors in society can respect them".

It adds, "*moving forward, we do need to create an IIAs approach that gives clarity, certainty and consistency to the international investment regime. Uncertainty is the last thing anyone wants. Investment cannot be at the cost of human rights, labour rights and environmental protection, nor can those rights be diluted or suspended by IIAs. Similarly, in these negotiations between States, no one party should seek to gain an investment advantage by requiring human, labour and environmental rights to be restricted or excluded in the host country. The fundamental duty on both States that are party to an IIA is to protect human rights*".

IOE recommendations on how guidance to States should be drafted to support governments include:

- Striking a balance between promoting and protecting foreign investment on the one hand and the protection of their society, human rights and environment on the other;
- Improving the rule of law and good governance;
- Elaborating IIAs through wider consultation and based on an extended scope (including human rights and environmental protection); and
- Collecting data on the exact impact of investment treaties.

Regarding access to remedy and arbitration procedure, IOE suggests that "*Remedy considerations need to be part of the initial thinking and construct of IIAs, as concrete steps that prevent harm occurring are better than drawn out remedy processes after harm has occurred*" and that "*this may require a rethink about how remedy*

is provided in this new environment, be it through legal disputes, arbitration, or alternative dispute resolution (ADR) mechanisms”.

Finally, IOE urges governments to embrace the guidance and calls on them to engage with representative employer and business organisations in their national discussion on this and other social, economic, or environmental debates. It reaffirms its commitment to contribute to constructive dialogue and to promoting the measures necessary to improve the content and impact of IIAs going forward.

United Nations: Human Rights Council Resolution against systemic racism

The UN High Commissioner for Human Rights held consultations with the business community on 27 April 2021 that focussed on the role to be played by the private sector in addressing systemic racism, and violations of international human rights law against Africans and people of African descent, within and beyond the boundaries of the UN Guiding Principles on Business and Human Rights (UNGPs).



On 19 June 2020, the Human Rights Council adopted [Resolution No. 43/1](#) on “*Promotion and protection of the human rights and fundamental freedoms of Africans and of people of African descent against excessive use of force and other human rights violations by law enforcement officers*”.

In this Resolution, the Human Rights Council:

- “*Strongly condemns the continuing racially discriminatory and violent practices perpetrated by law enforcement agencies against Africans and people of African descent, in particular which led to the death of George Floyd on 25 May 2020 in Minnesota, [...] and the deaths of other people of African descent, and also condemns the structural racism in the criminal justice system*”;
- “*Deplores the recent incidents of excessive use of force and other human rights violations by law enforcement officers against peaceful demonstrators defending the rights of Africans and of people of African descent*”;
- It requested the United Nations High Commissioner for Human Rights to:
prepare a comprehensive report on “*systemic racism, violations of international human rights law against Africans and people of African descent by law enforcement agencies, especially those incidents that resulted in the death of George Floyd and other Africans and of people of African descent, to contribute to accountability and redress for victims*”; and
examine “*government responses to anti-racism peaceful protests, including the alleged use of excessive force against protesters, bystanders and journalists*”.

Within the scope of her mandate, the UN High Commissioner for Human Rights held consultations with the business community on 27 April 2021 that focussed on the role to be played by the private sector in addressing systemic racism, and violations of international human rights law against Africans and people of African descent, within and beyond the boundaries of the UNGPs.

The following emerged from the interventions of businesses and employers’ organisations:

- There is an undeniable private sector contribution to the fight against discrimination and racism.

- Diversity and inclusion policies are well recognised as being [beneficial for businesses](#) in terms of productivity, creativity, improved cultural awareness, increased outreach in the quest for talent, and increasing the company's reputation.
- Within the UNGPs, and in addition to corporate policies, companies have developed all sorts of initiatives to fight against discrimination and racism, including campaigns in favour of diversity, identity groups, employee training, building grievance mechanisms, internal surveys, and the creation of senior Diversity & Inclusion positions within companies.
- Business initiatives cover the headquarters and their supply chain, for instance supporting black-owned businesses or facilitating access to capital for black communities.
- In terms of challenges, employers often face systemic issues that are exacerbated by and deeply rooted in cultural heritage.
- Lack of information can be also challenging when it comes to understanding the extent of the matter. Clear, transparent and authoritative data could be helpful. It was underlined that in some countries data collection by companies is unlawful.
- In some cases companies have joined forces with employers' organisations or public institutions (for instance, through a coalition on businesses and academics focused on driving action).

Beyond the UNGPs, the business community is contributing to improve situations of discrimination and racism, but this is still insufficient, especially when these issues are deeply rooted in society. In this case, it is important to strike a balance between what can be done by companies and what should be done by governments, regions and local communities. Public-led initiatives can comprise training, awareness-raising in schools, a policy of zero tolerance, strict policies for law enforcement officers etc.

The report will be released in June 2021, when the High Commissioner will present it before the 47th regular session of the Human Rights Council.

IOE Leaders' initiative to end child labour



2021 marks the International Year for the Elimination of Child Labour. The International Organisation of Employers (IOE) is running a major campaign this year as part of this worldwide effort - **IOE Leaders' Initiative to End Child Labour**. The campaign aims to bring the power of the private sector to global initiatives to eliminate child labour in all its forms by 2025.

IOE has been deeply engaged in the fight to eradicate forced and child labour for a long time, working closely with its membership and [Alliance 8.7](#), an inclusive global partnership to achieve Target 8.7 of the 2030 UN Sustainable Development Goals (*"Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms"*).

The IOE Leaders' Initiative to End Child Labour focuses on three strategic commitments:

- Engage and collaborate with IOE Members from the Alliance 8.7 *pathfinder countries* to accelerate further efforts (the *pathfinder countries* commit to do more to achieve Target 8.7).
- Showcase innovative private sector approaches for eradicating child labour.
- Strengthen peer learning and capacity building among IOE pathfinder countries and IOE partner companies.

As part of this initiative, IOE is organising digital conferences, group sessions and an award initiative, called International Elimination of Child Labour Changemaker. The Award recognises exceptional efforts by an IOE member organisation to eliminate child labour, as well as its capacity to innovate, to have an impact, and to foster sustainability.

The winner will be announced on 10 June 2021.

A [Conference](#) was held on 30 March 2021 on "The role of innovation and digital tools in addressing child labour and promoting decent work in global supply chains".

Throughout the year, IOE will be more widely disseminating a guide it elaborated with ILO, the “[ILO-IOE child labour guidance tool for business](#) – how to do business with respect for children’s right to be free from child labour”.

This is a key resource for companies to meet the due diligence requirements laid out in the UNGPs as they pertain to child labour. It also contains a Chapter on practical steps for companies to take when “Preventing and addressing child labour impacts”.

ILO report on the technical meeting on achieving decent work in global supply chains

During its March 2021 session, the Governing Body of the International Labour Organisation (ILO) discussed the [report of the technical meeting on “achieving decent work in global supply chains”](#) that took place in Geneva from 25 to 28 February 2020, to determine future action for the ILO. Here are the outcomes.

The February 2020 technical meeting on achieving decent work in global supply chains did not adopt any conclusions, meaning that there was no tripartite consensus at that time on future ILO action on this topic.

This was one of three technical meetings organised in follow-up to the discussion and [resolution concerning decent work in global supply chains](#) adopted during the International Labour Conference (ILC) of the ILO in 2016. The two previous meetings dealt with export processing zones (EPZs) (November 2017) and cross-border social dialogue (February 2019).

The March 2021 session of the Governing Body discussed possible future ILO action on this topic, with the idea of creating a tripartite working group and developing a “*comprehensive strategy on achieving decent work in global supply chain*”. Previous sources of disagreement revolved around:

- i. “the respective roles of the Office and a tripartite working group in carrying out the work;
- ii. whether the work to be done should address domestic supply chains;
- iii. and whether the work to be done should address the roles of employers’ and workers’ organizations, as well as of governments, in addressing decent work deficits in supply chains”.

For the Employers’ Group, it was important to ensure that any possible follow-up to this technical meeting in February 2020 would take an inclusive and consensus-driven approach as well as focussing on all supply chains – domestic as well as global.

After long exchanges, the Workers’ and Governments’ Groups of the ILO Governing Body presented the following joint proposal to the Governing Body, which it unanimously adopted:

1. “The [International Labour Office] Office will be tasked to conduct an in-depth review to clearly identify if there are any gaps in the current body of normative and non-normative measures, including means of implementation and other measures, to facilitate a discussion on options to ensure decent work in supply chains, including at sectoral level, where appropriate. The review to be delivered and shared with the constituents by November 2021 should provide the basis for a review by a tripartite working group of a manageable size and observing regional balance, to be established by November 2021.
2. “This working group will further develop, with the support of the Office, the building blocks for a comprehensive strategy on achieving decent work in supply chains, [...]”
3. “Decisions of the working group shall be taken by consensus. [...]”

UNDP Guide on business and human rights due diligence and Covid-19

In light of the economic and social consequences of Covid-19, UNDP has designed a simple and accessible tool: “Human Rights Due Diligence and COVID-19: Rapid Self-Assessment for Business”.

The short guide is intended to help businesses to consider and manage the human-rights impacts of their operations by means of a list of actions for self-assessment.

This assessment relates to performance with regard to:

4. Occupational Safety & Health (OSH);
5. Labour Rights;
6. Environmental and Community Impacts;
7. Safeguarding Privacy;
8. Preventing Stigma and Discrimination;
9. Corporate Policy and Management Considerations;

It is organized to present key actions or considerations along three stages of the COVID-19 crisis period: Prepare, Respond and Recover.

For more information [see here](#).

ISO 26000 is confirmed

As announced in an ISO [press release](#) of 17 March 2021, [ISO 26000 on social responsibility](#) was confirmed by the majority of ISO members who decided that this guidance standard to ensure that “*the user/organisation behave in a more socially responsible way and thereby contribute more to sustainable environmental, social and economic development*”, shall not be amended.

This is a good result after the International Organisation of Employers (IOE), together with the International Trade Union Confederation (ITUC), [publicly called](#) for confirming, not revising, ISO 26000. The rationale for this was:

- A revision of ISO 26000:2010 risked having a broader impact than intended, including diverting efforts from universally accepted and carefully negotiated international labour standards and policies.
- A revision was expected to follow the regular ISO committee model, which does not permit effective participation of relevant stakeholders. ISO membership is not appropriate for addressing larger social issues, including on human rights, which require truly representative processes that can balance the competing interests of different stakeholders.
- A revision could undermine ISO 26000:2010 as a guidance document by focusing on turning it into a management standard. This would be contrary to the consensus that exists on not certifying companies' human-rights performance.

Rather than revising ISO 26000:2010, priority should be given to making ISO 26000:2010 a public good that can be obtained for free. This would certainly make an important impact on the uptake of ISO 26000:2010 and also help particularly smaller organizations in implementing social responsibility.

Responsible business conduct project in Latin America and the Caribbean



The International Labour Organization (ILO), the Organization for Economic Cooperation and Development (OECD) and the Office of the UN High Commissioner for Human Rights (OHCHR) are implementing the Responsible Business Conduct [project](#) in Latin America and the Caribbean (RBCLAC), funded by the European Union (EU) for a period of four years.

The project, which started in 2019, aims to “promote smart, sustainable and inclusive growth in the EU and in Latin America and the Caribbean, by supporting responsible business conduct practices, in line with the UN, ILO and OECD instruments”.

The project is based on the three pillars:



The project is being carried out in nine countries in the Latin America and Caribbean Region, namely Argentina, Brazil, Chile, Colombia, Costa Rica, Ecuador, Mexico, Panama and Peru.

The activities under the project range from discussing the development of National Action Plans on Business and Human Rights with stakeholders, to elaborating guidance tools, as well as capacity building.

As part of this project, the ILO launched an [interactive tool](#) intended to help employers with concrete recommendations on how to develop and manage responsible business conduct.

The Project has also implemented the [RBCLAC Fund](#), which provides direct financing opportunities for initiatives in the region that contribute to the promotion and implementation of responsible business conduct practices. So far, two calls for proposals have been launched with more than 300 applicants in total from within the Latin America and Caribbean region and EU countries, and six projects have been awarded.

More information can be found [here](#) and [here](#).

World Benchmarking Alliance adopts indicators for social benchmarking

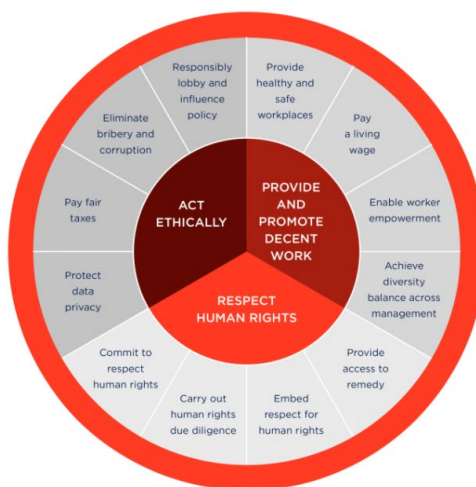
The World Benchmarking Alliance has recently adopted indicators for social transformation, with the goal of assessing and incentivising companies to achieve “*universal human development by respecting human rights, promoting equality and empowering people to pursue the choices they value*”.

The World Benchmarking Alliance (WBA) is an initiative started in 2018 that aims at developing benchmarks to compare the [world's largest 2000 companies'](#) performance on the [UN Sustainable Development Goals](#) (SDGs).

Such benchmarks relate to areas such as financial, decarbonisation and energy, food and agriculture, digital, social, urban and the circular economy (the so-called [seven systems transformations](#)).

Indicators for social transformation

The [Social Transformation Framework](#) is based on 12 high-level social expectations grouped around human rights, decent work and ethical conduct, that are considered the enablers for social transformation (see image below). “*By respecting human rights, providing and promoting decent work, and acting ethically, companies can support the SDGs, address inequalities and contribute to a sustainable future for all*”. Adherence to the social transformation framework will be evaluated alone and as part of other frameworks (food, climate, urban, circular, digital and finance transformation benchmarks). Over time, it will be an integral part of the frameworks.



Source: [Social Transformation Framework](#), WBA Website.

The assessment on how companies meet the 12 social expectations shown above is based on a set of 18 core social indicators (CSIs), which will make up at least 20% of the final ranking of each benchmark: “*the CSIs*”

represent a line, below which we question both a company's ability to contribute to the SDG transformations as well as whether the company can be seen as a responsible actor”.

This number has increased from the initial proposal of 15 CSIs that was subject to consultation and mentioned in our July 2020 issue of the Newsletter.

FIGURE 5: CORE SOCIAL INDICATORS WITHIN THE FRAMEWORK

Enablers for social transformation	...demonstrated by meeting expectations...	...that are signposted by Core Social Indicators (CSI):
Respect human rights	Commit to respect human rights	CSI 1 Commitment to respect human rights CSI 2 Commitment to respect the human rights of workers
	Carry out human rights due diligence	CSI 3 Identifying human rights risks and impacts CSI 4 Assessing human rights risks and impacts CSI 5 Integrating and acting on human rights risks and impacts
	Embed respect for human rights	CSI 6 Engaging with affected and potentially affected stakeholders
	Provide access to remedy	CSI 7 Grievance mechanisms for workers CSI 8 Grievance mechanisms for external individuals and communities
Provide and promote decent work	Provide healthy and safe workplaces	CSI 9 Health and safety fundamentals CSI 11 Working hours fundamentals
	Pay a living wage	CSI 10 Living wage fundamentals CSI 11 Working hours fundamentals CSI 12 Collective bargaining fundamentals
	Enable worker empowerment	CSI 12 Collective bargaining fundamentals
	Achieve diversity balance across management	CSI 13 Workforce diversity disclosure fundamentals CSI 14 Gender equality and women's empowerment fundamentals
Act ethically	Protect data privacy	CSI 15 Personal data protection fundamentals
	Pay fair taxes	CSI 16 Responsible tax fundamentals
	Eliminate bribery and corruption	CSI 17 Anti-bribery and anti-corruption fundamentals
	Responsibly lobby and influence policy	CSI 18 Responsible lobbying and political engagement fundamentals

How are indicators scored?

“Each core social indicator will be scored on a scale of 0 to 1. The scale will be represented by three levels:

1. Fully met: a company meets all of the elements for a particular indicator (1 point).
2. Partially met: a company meets some of the elements for a particular indicator (0.5 points)
3. Not met: a company meets none of the elements for a particular indicator (0 points).

[...]

Indicators will be scored on publicly available information. [...]”.

With the above methodology in place, BWA will start assessing 1,000 companies' adherence to social transformation in 2021, and the remaining 1,000 companies in 2022, before starting assessment of the 2,000 companies on a rolling basis.

Additional social benchmarks

In addition to this, companies will be assessed for respect of three “social spotlights benchmarks”, namely the **Corporate Human Rights Benchmark**, the **Gender Benchmark**, the **Living Wage Benchmark**. These benchmarks will be considered as a support to social transformation.

The first benchmark is based on the work done by the “Corporate Human Rights Benchmark (CHRB)” launched in 2013 by investors and civil society organisations as a publicly available ranking of **corporate human rights** performance. In 2019 the CHRB was merged into the WBA, so that CHRB will continue to produce

stand-alone benchmarks of "high-human-rights-risk sectors" and, in addition, it will work with the WBA team to support assessments of all 2,000 companies against key human rights criteria, drawing on the existing CHRB methodologies.

The 2020 human-rights benchmark assessed 230 companies "across five sectors identified as presenting a high risk of negative human rights impacts. These sectors are agricultural products, apparel, extractives, ICT manufacturing and, for the first time, automotive manufacturing".

The full [CHRB Methodology](#) covers six themes, is grounded in the key three areas of high level commitments, human-rights due diligence and access to remedy of the UNGPs and has 13 core indicators on the themes of "Governance and Policy Commitment, Embedding respect and Human Rights Due Diligence, Remedies and Grievance Mechanisms".

For the 2020 report, *"The results show that there has been progress on previous years. A number of companies are meeting the fundamental expectations of the United Nations Guiding Principles on Business and Human Rights (UNGPs), with strong commitments and rigorous procedures in place. However, two significant challenges have emerged. The first is that only a minority of companies demonstrate the willingness and commitment to take human rights seriously. The second challenge is arguably more pernicious and relates to the disconnect between commitments and processes on the one hand and actual performance and results on the other. If we are to achieve the SDGs by 2030, we need to ensure that strong commitments and management systems deliver their intended effects. Additionally, we need all companies to participate in this effort and to place people and planet above the pursuit of profit at all cost."*

The **Gender Benchmark** will consider how companies drive and promote gender equality and women's empowerment. Based on the [methodology](#) adopted in 2020, the benchmark will be fully operational as of June 2021.

Finally, for the **Living Wage Benchmark**, WBA is considering *"benchmarking companies on how they address living wages, or the living wage gap"* and the methodology needed to measure it.

Regional news

European Union Directive on Sustainable Corporate Governance and Due Diligence

The European Commission (Directorate General (DG) Justice) is leading a [sustainable corporate governance and due diligence initiative](#) with the aim of releasing a proposal for a Directive.

Context

The goal of this initiative is to “*improve the EU regulatory framework on company law and corporate governance. It would enable companies to focus on long-term sustainable value creation rather than short-term benefits. It aims to better align the interests of companies, their shareholders, managers, stakeholders and society. It would help companies to better manage sustainability-related matters in their own operations and value chains as regards social and human rights, climate change, environment, etc*”.

Also, “*it would create legal certainty and level playing field as to the necessary measures to be taken by companies to identify, assess and mitigate adverse impacts in the value chain*”.

In short, the initiative seeks to:

1. [Introduce a new corporate duty for human rights and environmental due diligence](#), meaning that companies must take measures to address their adverse sustainability impacts, such as “*harm in their own operations and in their value chain by identifying and preventing relevant risks and mitigating negative impacts (due diligence duty)*. Such duty could be designed by building on existing authoritative guidelines using well-established definitions as developed by the UN and later expanded by the OECD”. Remedy would also be part of this duty.
2. [Reform directors’ duties, to include sustainability matters in directors’ acts](#) that “*take into account all stakeholders’ interests which are relevant for the long-term sustainability of the firm or which belong to those affected by it (employees, environment, other stakeholders affected by the business, etc.)*” and integrate stakeholders’ interests into the corporate strategy (also with measurable targets).
3. [Enforce the rules by means of public but also private enforcement](#). The intention would be to [grant stakeholders’ representatives legal \(judicial\) standing to take companies and their directors to court for failure to meet the obligations in the future proposal](#). Trade unions, NGOs and others would likely [be enabled to pursue these legal actions in European courts](#).

This initiative is connected to another EU Commission initiative, that is about revising the Directive on Non-Financial Reporting (reported below). Indeed, while the first is about introducing a corporate obligation to carry out due diligence, including mitigation of adverse impact, the latter will clarify the requirements to report on due diligence processes.

It is also directly interacting with the European Parliament Resolution mentioned below that was adopted with a large majority on 10 March 2021.

Legal basis and Timeline

The legal basis for proposing a new Directive is to be found in Article 50(1) and (2)(g) TFEU, which gives “*EU competence to coordinate safeguards for the protection of interests of companies’ members and other stakeholders in order to attain freedom of establishment*” and in Article 114 TFEU, which allows the “*EU to approximate legislation with the object of ensuring the proper functioning of the internal market*”.

The [public consultation](#) for this initiative closed in February 2021.

The European Commission proposal is scheduled for publication in June 2021, but it is likely to be postponed for a couple of months.

The debate on the proposal will take place in 2021 and could extend to 2022.

Business reaction and others

In its [reply](#) to the public consultation, BusinessEurope (the organisation representing businesses at the European level) split the focus on the two main elements of the legislative framework under discussion, namely the sustainable corporate governance and the due diligence mandatory process.

- On the sustainable corporate governance, BusinessEurope underlined how “*the Commission Roadmap and the current consultation point to a radical rather than an evolutionary approach (as it was so far) to European corporate governance. Call for action is based on a widely criticised Commission study with wrong assumptions and a flawed methodology leading to a misleading (short-termism) picture of European companies*”.
- “*Far-reaching (and unjustified) legislative intervention around directors’ duties and company stakeholders would negatively affect the very core of how companies operate (anchored in our market economy model), would be conducive of deadlocks in decisions-making and foster endless litigation. Companies would become more risk-averse and less entrepreneurial, and ultimately less attractive to capital*”. On this point BusinessEurope added that “*any EU legislative initiative on corporate governance should not lead to personal legal liability for directors with respect to company’s impacts on stakeholders. Directors only owe fiduciary duties to the company itself and not to third parties, such as external stakeholders. Consequently, external stakeholders cannot be given a role in the enforcement of the fiduciary duties of directors. Any liabilities for failures in relation to a company’s activities should be borne by the company itself and not by its directors. As for companies’ liability towards stakeholders, the latter already have mechanisms of protection and can claim company’s liability through traditional mechanisms such as through tort law and contract law*”.
- On the due diligence mandatory process, BusinessEurope argued that “*for a large majority of EU companies, from all sectors and sizes, any future EU legislative framework should be workable, proportionate and effective. It should not be a way to simply transfer state responsibilities on to companies. It needs to take account of the needs of Small and medium-sized companies (SMEs)*”.

- *Companies understand the importance of preventing and mitigating risks that can occur in the supply chains but cannot be made responsible for any impacts/harm in the supply chain that are completely out of their control (or for acts of other autonomous entities).*
- BusinessEurope raised a number of questions related to a new legislative framework, such as the scope, ways to ensure legal certainty, level of adequateness of accountability, means of assessing responsibilities within companies and supply chains, difference between public and private companies, etc.
- It concluded: “Any future rules must be clear, applicable in practice and should not lead to a legal patchwork of possibly incompatible with or duplicating national legislative initiatives (adding layers of rules on top of European obligations). Inspiration should be drawn from internationally recognised standards such as the UN Guiding Principles and the OECD Guiding Principles and applicable in practice”.

The United Nations Working Group on the issue of human rights and transnational corporations and other business enterprises (“Working Group”) appointed and mandated by the Human Rights Council to promote dissemination and implementation of the UN Guiding Principles on Business and Human Rights (UNGPs) shared with the EU DG Justice Commissioner, Mr. Reynders, [ten recommendations on this possible EU due diligence legislation](#). Among these recommendations, worth noting are:

1. *The Directive should apply across value chains, not just within supply chains.*
2. *The Directive should cover all EU undertakings [...] and non-EU (i.e. foreign) business enterprises which sell goods or services in the EU, and it should apply to both groups’ extraterritorial operations and business relationships.*
3. *The Directive should apply to government as an economic actor.*
4. *The Directive should go beyond reporting regimes and require meaningful processes and outcomes.*
5. *The Directive should set out clear compliance monitoring and enforcement structures and procedures that facilitate access to effective justice and remedy.*

Additional source [here](#).

European Union Resolution with recommendations to the Commission on corporate due diligence and corporate accountability

A second initiative at the EU level is driven by the European Parliament. With this initiative, the Parliament is encouraging the European Commission to adopt a Directive that would include a new corporate duty to due diligence on human rights, environmental and governance issues, in line with the United Nations Guiding Principles (UNGPs).

The [Resolution](#) on due diligence (based on the report prepared by Rapporteur MEP Lara Wolters (S&D)) was adopted with a strong majority of Parliament in March 2021. It received 504 votes in favour, 79 votes against and 112 abstentions. Thus, the European Parliament is already ready for a discussion on the upcoming European Commission proposal for a Directive on sustainable corporate governance and due diligence.

Content

The Resolution was prepared based on the so-called Wolters [report](#). In its proposal for a Directive contained in Annex I, the Wolters report refers to binding due diligence duty for companies that have to identify, address and remedy situations in the value chain that could cause or contribute to human rights, environmental or good governance harm. These include social, trade unions and labour rights, contribution to climate change, and bribery, for instance.

The value chain (wider than the supply chain) includes all operations, for direct business partners, but also with the indirect business relations and investment chains.

The obligation to make efforts to prevent adverse impact on human rights is based on the likelihood and severity of the impact, the sector of activity, size, size and length of the value chain. The draft proposal for a Directive *“lays down the value chain due diligence obligations of undertakings under its scope, namely, to take all proportionate and commensurate measures and make efforts within their means to prevent adverse impacts on human rights, the environment and good governance from occurring in their value chains, and to properly address such adverse impacts when they occur”*.

The Wolters Report is also calling for civil liability for companies for harms they have directly caused or contributed to or that companies that it directly controls cause or contribute to, unless they can prove that they have acted in line with due diligence obligations and taken measures to prevent such harm. Fines should be determined by Member States (*“the sanctions provided for shall be effective, proportionate and dissuasive and shall take into account the severity of the infringements committed and whether or not the infringement has taken place repeatedly”*) and could include excluding undertakings from public procurement, state aid, public support schemes and loans.

It covers large companies and small businesses listed in regulated markets, as well as small businesses operating in high-risk sectors and foreign companies active in the internal market.

European Commission revision of the Non-Financial Reporting Directive, renamed Corporate Sustainability Reporting Directive

On 21 April 2021, the European Commission (led by Directorate General FISMA) published a proposal to amend the Non-Financial Reporting Directive (NFRD) ([2014/95/EU Directive](#)), renamed the '[Corporate Sustainability Reporting Directive](#)' (CSRD).

According to the EU Commission, the existing Directive needed to be amended because the sustainability information that companies were reporting annually was insufficient to investors and other stakeholders or of a limited quality.

The proposed Directive will be sent back to the European Parliament and the Council for agreement.

There is no fixed timeline, however, it is expected that companies apply the new standards in 2024, covering financial year 2023.

Content

The CSRD proposal:

- Extends the scope of reporting to all large companies (not only large companies listed on regulated markets with more than 500 employees, but all those exceeding 2 of the following criteria: (a) balance sheet total: EUR 20 000 000; (b) net turnover: EUR 40 000 000; (c) number of employees: 250; and (d) listed SMEs (albeit with simpler standards of reporting);
- Introduces an obligation to report on how business models and strategies take account of the stakeholders' interests, to describe the principal adverse impacts connected to the company and supply chain, and to include quantitative, qualitative, retrospective and forward-looking information;
- Introduces a mandatory assurance of the sustainability report;
- Introduces specific reporting requirements based on mandatory new EU sustainability reporting standards (to be developed afterwards);
- Takes away the possibility for companies to report separately to their management report;
- Requires companies to report digitally so that data can be more easily accessed and used;
- Allows to omit certain information, where there could be repercussions on the commercial position of the company, albeit after justification of the company's board.
- Clarifies on the content of "double materiality" that had been considered unclear by stakeholders participating in the public consultation prior to the launch of the new proposed Directive. The NFRD introduced a requirement for companies to report both on how sustainability issues affect their performance, position and development (the 'outside-in' perspective), and on their impact on people and the environment (the 'inside-out' perspective).

Concerning the matters for reporting, these remain broadly the same and refer to social matters, respect for human rights, environmental matters, anti-corruption and anti-bribery issues.

The new sustainability reporting standards (to be drafted in the second half of 2021) should “*aim to incorporate the essential elements of globally accepted standards currently being developed. EU standards should go further where necessary to meet the EU's own ambitions and be consistent with the EU's legal framework*”. The European Financial Reporting Advisory Group (EFRAG) will be in charge of the elaboration of these draft standards. EFRAG is a private association established in 2001, working on a public-private partnership model and fulfilling the role of advisor for the Commission on the adoption of international financial reporting standards into EU law.

These standards will be aligned with other initiatives on sustainable finance, including the Taxonomy Regulation.

Business reaction

BusinessEurope has already raised concerns over:

- The mandatory auditing;
- The fact that the future EU standards for sustainability reporting will be mandatory;
- The extended coverage of companies compared to the current directive;
- Obligation for the sustainability report to be part of the management report, so diminishing companies' flexibility on how to report.

Additional sources [here](#) and [here](#).

National news

German Corporate Due Diligence in the Supply Chain Law: start of the Parliamentary process

The German proposed Supply Chain Law creates new legally binding due diligence obligations for companies, which apply for their own business activities, their first-tier suppliers and to a certain extent to all tiers of the supply chain.

On 3 March 2021, the Federal Cabinet adopted the draft Bill on the Supply Chain Act ([*Gesetz über die unternehmerischen Sorgfaltspflichten in Lieferketten*](#) in German). On 22 April 2021 the first reading in the German Federal Parliament took place. It is likely that the legislative procedure will be completed before the end of this legislative term, that is prior to the Federal elections on 26 September 2021.

The Act will enter into force gradually: on 1 January 2023 some 600 German-based companies with more than 3,000 employees will have to abide by this new law. On 1 January 2024 the scope will extend to German-based companies with 1,000 employees, which is currently approximately 2,900 companies.

For the purpose of determining the company's size in terms of employees, temporary workers with fixed-term contracts shorter than six months shall not be considered.

Content: new duty of care

The new duty of care covers human rights as expressed in the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Labour Organization's eight core labour conventions and two international environmental standards (Minamata Convention on Mercury and Stockholm Convention on Persistent Organic Pollutants).

These cover issues such as integrity of life, protection from torture, prohibition of child and forced labour, protection of freedom of association and the effective recognition of the right to collective bargaining, protection against discrimination in respect of employment and occupation. In addition, the new duty of care covers occupational health and safety standards according to national laws and "fair wage" based on the regulations applicable at the place of employment.

Environmental rights refer to the prohibition of "*unlawful withdrawal of land, forests and water*" and "*the prohibition of causing harmful soil change, water pollution, air pollution, harmful noise emission or excessive water consumption*".

This new due diligence duty obliges companies to:

- Set up a risk management system
- Publish a basic declaration on their human-rights strategy;
- Regularly perform a risk analysis;
- Implement preventative measures;

- Take remedial action;
- Document their processes and reporting; and
- Implement a complaints mechanism.

Definition of Supply Chain

The supply chain is understood to cover all the way from the raw material to the final product and to include services. A company will (1) always have to include in its due diligence all of its own business activity and that of its direct suppliers, i.e. a contractual partner, and (2) exercise due diligence with regard to the rest of the supply chain if “prompted by circumstance”. Thus far, it appears that a well substantiated complaint and general aspects of a company’s business, such as particular raw materials or geographic regions of sourcing, will prompt the duty of care.

Enforcement and Fines

The German Federal Office for Economic Affairs and Export Control (BAFA) will enforce the Act. Companies will have to submit a report annually about the fulfilment of their due diligence obligations to this agency. The Agency can claim access to documentation and will be entitled to access company premises, collect evidence, and issue fines.

Fines can be really high, up to a maximum of EUR 800,000, and for companies with annual revenue over EUR 400 million, up to 2% of their annual turnover for specific violations of the law. Moreover, a company receiving a fine of over EUR 175,000 would be excluded from public procurement for up to three years.

Lawsuits

The Act did not introduce a new legal basis for bringing a claim for damages in German courts. However, through a “derivative right of action”, victims will be able to provide German NGOs and trade unions with power of attorney, so that they may formally represent them in court (“Prozessstandschaft”).

Employers’ views

The business community stressed that human rights, sustainability and Corporate Social Responsibility (CSR) are of paramount importance. In addition to the many sectoral initiatives – including Amfori, Together for Sustainability (TfS), Chemie or Bettercoal – many companies have taken concrete measures to implement their tailor-made CSR/sustainability strategy. They enjoy a very good reputation for their commitment beyond national borders. In a joint statement, the Confederation of German Employers’ Associations (BDA) alongside 27 other leading business organisations criticised the proposed draft law and asked for specific changes. They stressed that the debate on business and human rights should focus on the practicability for companies and the consequences for local partners on the ground and called for a “stay and behave” instead of a “cut and run” approach and mindset. A far-reaching and overly bureaucratic regulation on due diligence and supply chain responsibility – which is not in line the UN Guiding Principles on Business and Human Rights (UNGPs) – could lead to counterproductive consequences. Companies would have to withdraw from countries with a difficult human rights situation if they were to be held responsible for adverse effects on the ground.

Renate Hornung-Draus, Managing Director Economic and International Affairs, BDA, commented the draft law as follows: *“from a business point of view, it is indisputable that the business community is responsible for respecting human rights. Alongside many sectoral initiatives, many companies individually are also taking*

other measures to implement the UNGP. As a result, German companies have a very good reputation with customers and workers around the world.

However, the draft law is far reaching and challenging for companies, despite the positive message introduced in the first discussions of the law.

BDA advocates for a law that is as practicable and as reasonable as possible for companies”.

Further sources of information:

<https://www.bmas.de/DE/Service/Gesetze-und-Gesetzesvorhaben/gesetz-unternehmerische-sorgfaltspflichten-lieferketten.html>

<https://www.addleshawgoddard.com/en/insights/insights-briefings/2021/commercial-services/new-german-supply-chain-act/>

http://knowledge.freshfields.com/en/Global/r/4415/regierungsentwurf_zum_gesetz_ber_die_unternehmen_erischen

https://www.haufe.de/compliance/recht-politik/lieferkettengesetz-arbeitsbedingungen-in-der-lieferkette-pruefen_230132_506326.html

Netherlands draft bill for responsible and sustainable international business conduct

In March 2021, four political parties officially submitted a draft [Bill for Responsible and Sustainable International Business Conduct](#) to the Dutch Parliament calling for comprehensive human rights and environmental due diligence throughout the supply chain, in line with the OECD Guidelines for Multinational Enterprises.

The draft bill includes administrative enforcement but also civil and criminal liability for repeated failure to stop harmful activities.

It would apply to companies with two of the following conditions: employing more than 250 employees during the financial year, with a balance sheet of EUR 20 million, a net revenue of EUR 40 million.

Value chain is defined in the draft bill as “*the entirety of an enterprise’s activities, products, production lines, supply chain and business relationships*”.

Concerning the content of the due diligence duty: “*Human rights, labour rights or the environment are negatively affected if the value chain involves, for example:*

- a. the restriction of freedom of association and collective bargaining;*
- b. discrimination;*
- c. forced labour;*
- d. child labour;*
- e. unsafe working conditions;*
- f. slavery;*
- g. exploitation; or*
- h. environmental damage”.*

This initiative, if finalised, will repeal the existing Child Labour Due Diligence Act that we described [here](#) in April 2019. This legislation has not yet entered into force.

In addition, the Government is also developing legislation based on building blocks for mandatory human rights and environmental due diligence, to be implemented in case the EU Directive on sustainable corporate governance and due diligence does not materialise. Those building blocks are not public yet.

Additional sources [here](#) and [here](#).

Company updates

New Sustainability Roadmap of Deutsche Post DHL Group

In March 2021 Deutsche Post DHL Group introduced its new Sustainability Roadmap which sets out the Group's ESG goals for the next years, in line with Strategy 2025.

As part of this renewed framework, sustainability becomes part of all corporate strategic dimensions, its purpose, vision, value, mission and business focus.

The Group also sets itself within this framework even stricter rules with regard to good corporate governance. For example, the Code of Conduct for Suppliers has been updated. The rules and standards described in it have been aligned even more closely with sustainability criteria. In addition, a new policy statement on human rights has been introduced. As a market leader, the company sees itself as a role model for responsible and ethical business practices and fair behaviour.

The Group focusses its Human Rights measures on:

- Governance: Accountability for execution of our principles and guidelines overseen by the Corporate Board
- Trainings: Through our Building Great Employee Relations training program we create awareness for human rights aspects in our daily business. Since its rollout, around 12,000 employees and managers across the Group have completed this training
- Due diligence: Risk assessment, mitigation via on-site reviews and grievance mechanisms & remedies
- Stakeholders: Engagement with employees and partners

The Groups's new Human Rights Policy Statement is based on five pillars:



For more information see here:

<https://www.dpdhl.com/en/media-relations/press-releases/2021/dpdhl-accelerated-roadmap-to-decarbonization.html>

<https://www.dpdhl.com/content/dam/dpdhl/en/media-center/investors/documents/presentations/2021/DPDHL-ESG-Presentation-Q1-2021.pdf>

Upcoming event

2021 United Nations Responsible Business and Human Rights Forum for the Asia-Pacific Region

The annual UN Asia-Pacific Responsible Business and Human Rights Forum will take place online, from 1-4 June 2021, to discuss good practices, raise awareness on socially responsible labour practices in global supply chains and assess the impacts of Covid-19 pandemic on stakeholders in global supply chains and their support in the recovery phase.

The Forum convenes regional governments, civil society organizations, trade unions, academia, national human rights institutions, business and employers' organisations for constructive dialogue and peer-learning on how to strengthen responsible business and human rights in the region.

The IOE will organise a session on the topic of *Equality, Diversity and Inclusion – what is needed to accelerate progress towards SDGs 5, 8 and 10 in the Asia and Pacific region?*, on 4 June, 11:00h-12:30 BKK.

More information on the Forum and its programme, here: <https://www.rbhrforum.com/>