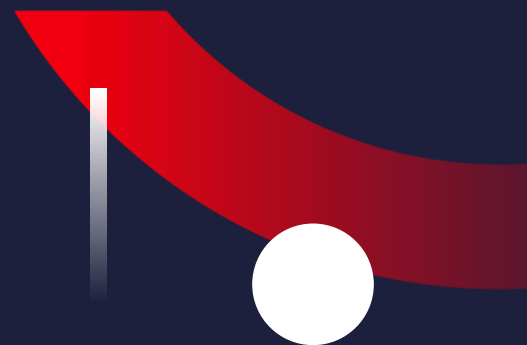


Business and human rights



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With this new edition of the IOE Business and Human Rights Newsletter, I want to first of all seize the opportunity to wish all of you a prosperous and healthy Happy New Year 2022.

The end of a year and the beginning of a new one is always a good time to look back at the major achievements of the past year and the major themes of the year to come. In 2021, topics such as the developments of mandatory human rights due diligence (mHRDD) legislation, COP 26 and the climate change impact on BHR as well as the negotiations on a binding treaty on business and human rights have been at the forefront of the agenda.

This year 2022 promises to be equally dynamic with challenging and vibrant discussions and negotiations, particularly, in the field of Business and Human Rights (BHR). As lead story of this edition, particular focus will be given to the EU Commission's draft supply chain and mHRDD Directive which came out on 23 February 2022. This Directive, originally scheduled to be published in May 2021, will have far-reaching consequences in the field of BHR both at the European level but also globally. Notably, new regulatory developments in Spain and Japan are underway, certainly triggered by the influence of the EU Directive.

Separately, at the International Labour Organisation (ILO), one of the most important negotiations this year will be the upcoming tripartite ILO Working Group Meeting on Decent Work in Supply Chains (ILO TWGSC). The issue of supply chains has been one of the most challenging topics in the ILO, where workers and employers have failed so far to find agreement on the way forward for the ILO. As Employers, we took special note of the ILO's "Gap analysis of ILO normative and non-normative measures to ensure decent work in supply chains" report that confirmed that there are no governance gaps in ILO [and international] norms and standards on Decent work, but rather - as Employers have long argued - there is a persistent implementation gap at national levels

Other key topics included in this edition include updates on the UN Draft Treaty Process; new national developments on mHRDD; IOE's inputs for the High Commissioner's and UNWG's reports to be presented at the 50th session of the Human Rights Council in June 2022 and IOE guidance on climate change and just transition.

Lastly, as we approach a critical moment in the elaboration and implementation of mHRDD regulations, I invite you to take a closer look at the IOE's agenda at the end of this newsletter as **important events** related to these topics will take place throughout the year, including the IOE-BDA-DPDHL International Conference on BHR. You will find more information on these and many other developments within this newsletter.

Gabriella Rigg Herzog, Chair of the IOE Policy Working Group on Human Rights and Responsible Business Conduct

Evolving Laws

International News

The UN Business and Human Rights Treaty Process: an initiative with far-reaching implications

As reported in the [November's edition](#), the Seventh Session of the Open-ended Intergovernmental Working Group (OEIGWG) on a Binding Treaty on Business and Human Rights took place from 25 to 29 October 2021 to discuss a [third revised draft treaty](#) on business activities and human rights.

The third revised draft treaty, and the text proposals made during this last session, continue to be far from being implementable and raise **legal and practical concerns** for state and non-state actors. Among these, the definition of business relationships, the scope, the legal liability, the adjudicative jurisdiction and the applicable law remain major bottlenecks. Most importantly, the current text will not serve to address the main purpose of the treaty in improving the lives of workers in global supply chains (GSC).

Key takeaways from ILO report on gaps in measures to ensure decent work in supply chains

A Tripartite Working Group on options to ensure decent work in supply chains (TWGSC) will discuss at the end of June the ILO Office report, [Gap analysis of ILO normative and non-normative measures to ensure decent work in supply chains](#). This report lays the ground for a review to further develop building blocks for a comprehensive strategy on achieving decent work in supply chains.

The main takeaways from the report are:

- The report confirms the Employers' position that the ILO normative corpus addresses most of the decent work deficits that are associated with supply chains, when measures are ratified, fully implemented, and applied to all relevant segments of the workforce. This represents a major breakthrough, as it recognises that all companies operating in a particular country, whether they produce for the domestic market or for export and regardless of their size, are subject to the laws and regulations of the country, including laws based on ratified ILO Conventions.

- The Office's report rightly recognises that decent work challenges and opportunities vary significantly from supply chain to supply chain and across the sectors and countries that constitute the chain, putting aside fallacious generalisations. By not doing so, this entails for policy-makers a risk of extrapolating from a single, visible model – be it the apparel supply chain, or multinational enterprise (MNE) foreign direct investment in subsidiaries or joint ventures, or an implicit North–South outlook – to the detriment of effective policy.
- The ILO gap analysis also rightly stresses that many ILO interventions take place within supply chains, but as part of ILO's core means of action, rather than specific supply chains interventions. This echoes what Employers have consistently said, namely that addressing the root causes of decent work deficits will address decent work deficits in exporters as well as purely domestic companies.
- Unfortunately, the report still suggests that contractual relationships and global supply chains might be “unregulated”. The report states that “A challenge derives from the situation where goods and materials and services involve several distinct and different employers and also may cross borders, given that labour governance structures are often confined to application to specific employee or worker–employer relationships and are principally restricted to application within the national jurisdiction where the act of work takes place”

The report of the Office highlights many of the shortcomings in the ILO interventions on supply chains, which the Employers have identified for a long time, such as lacking coordination, lacking measurement of impact and lacking follow-up.

As requested by the 341st Session of the International Labour Organisation's (ILO) Governing Body (GB), a Tripartite Working Group on options to ensure decent work in supply chains (TWGSC) was therefore scheduled to be held on 17-19 January and 7-8 February 2022. However, by GB decision, taken on 17 January 2022 by correspondence, the meeting of the TWGSC was deferred, with a later meeting date to be determined by the Governing Body at its 344th Session (March 2022).

More information will be posted on the [ILO web-page](#) for the Tripartite Working Group on Supply Chains which will be updated regularly.

GSC and mHRDD among German priorities for G7 presidency

Germany assumed the presidency of the Group of 7 (G7) on 1 January 2022, taking over the United Kingdom's tenure of the presidency last year. The G7 Summit will be held at Schloss Elmau in the Bavarian Alps from 26 to 28 June 2022. The G7 is an inter-governmental political forum which includes in its ranks the largest

advanced economies of the planet, namely Germany, France, Italy, Canada, Japan, the United Kingdom and the United States and also the EU which gets representation.

The priorities, as set out in [the agenda](#), of the German G7 presidency will be in the following fields of **action: sustainability, economic stability and transformation, health, investment and collective action**. Worth outlining, the German Government recalls the **important role played by GSC for the good functioning of global trade and the economic recovery as well as calls for binding standard on corporate due diligence**:



*“Moreover, **global supply chains** play a key role for **functioning global trade, the global economic recovery and sustainable development** as a whole. We therefore want to work together to address disruptions in supply chains with common action and, by creating suitable conditions, to support international companies in their efforts to make their supply chains even more resilient and sustainable in the future. Rules-based free trade is an important prerequisite in this regard. We want to work to ensure that international environmental, labour and social standards constitute the framework for doing business and discuss requirements with respect to an internationally accepted, **binding standard for corporate due diligence**. Companies should contribute to achieving environmental, social and economic Sustainable Development Goals around the world via their supply chains. Further policy priorities include strengthening sustainable supply chains in agriculture, which make an important contribution to safeguarding the global food supply, as well as promoting deforestation-free supply chains, which play a major role in the area of climate protection and the protection of biodiversity.”*

The German G7 Presidency is organising an international Conference on Responsible Business Conduct in Global Supply Chains on 6 May. The G7 Labour Ministerial, which will deal with the issue of Responsible Business conduct in Global Supply Chains, will take place on 24 May in Wolfsburg.

ILO-IOE self-assessment tool for enterprises based on the principles of the MNE Declaration

IOE and ILO jointly published on 21 February 2022 a [guide](#) for enterprises on assessing their alignment with the MNE Declaration.

The International Organisation of Employers (IOE) and the International Labour Organization (ILO) have together produced a toolkit entitled Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration): a self-assessment tool for enterprises.

The toolkit aims to support enterprises that seek to benchmark their corporate social policies and practices against the guidance provided by the MNE Declaration. The MNE Declaration is the most comprehensive and global guidance tool on labour and employment policy. It is the only global instrument in this area that was negotiated and adopted by governments and representatives of employers' and workers' organisations from around the globe. As such, it provides important guidance for enterprises.

According to **Roberto Suárez Santos**, IOE Secretary-General: "The Employers have always supported the MNE Declaration. It is an important instrument on responsible business conduct for companies and the tripartite constituents of the ILO. This self-assessment tool will support companies in making full use of the Declaration and its guidance. The purpose is not for external validation, benchmarking, or certification of companies, but to enable practitioners in companies to better understand the individual provisions in the Declaration and how it applies to them."



Tripartite Declaration of Principles
concerning Multinational Enterprises and Social Policy
(MNE Declaration)

► A self-assessment tool
for enterprises



ISO 26000 and ESG standards-making

Discussions have recently been held between the International Organization for Standardization's (ISO) 26000 Stakeholders Global Network ([SGN](#)) and the new Strategic Advisory Group (SAG) on Environmental, Social and Governance (ESG) about the relationship between both entities. Notably, the question of whether ISO 26000's value proposition in the ESG ecosystem and possible next steps for ISO have been at the heart of the discussion. As next step, the extent to which a new ISO ESG standard would complement or compete with ISO 26000 as well as the potential of mutual reinforcement of interest in both will need to be assessed.

The main differences between ISO 26000 and ESG include:

- The scope: ESG is narrower in focus than ISO 26000 as it was originally meant for the mobilization of the financial sector to address environmental, social and governance issues in their investment decisions.
- The focus: Contrary to ISO 26000, which can be perceived as more encompassing with social and environment concerns, ESG's focus could be described as a "lens" on "sustainability" or "corporate responsibility" with a strong commercial orientation.

In fall 2021, ISO's Technical Management Board has established a new ISO Strategic Advisory Group ([SAG](#)) on the environmental, social, governance (ESG) ecosystem, with a mandate to crystalize ISO's value in the ESG ecosystem within the next six to nine months. To do so, ISO has started a process of mapping ISO standards

against key ESG frameworks. The overall objective of ISO's SAG is to identify opportunities and develop recommendations and guidance on how to strengthen the linkage between ISO standards and ESG disclosure frameworks for ESG reporting. This will be important to promote ISO standards and ESG frameworks.

The ISO 26000 [SGN](#) was founded in Bali Indonesia, on 28 October 2018 with the aim of increasing awareness of, and to promote the use of, ISO 26000 as an approach toward comprehensive sustainable development to successfully move toward sustainable environmental, social, and economic development. ISO 26000 SGN's first objective is to promote the usage of ISO 26000 as leading standard in regard to Social Responsibility worldwide.

What is ISO 26000?

ISO 26000 is intended to assist organisations in contributing to sustainable development. It encourages them to go beyond legal compliance and the standard seeks to promote a common understanding of social responsibility while complementing – but not replacing – other existing tools and initiatives. ISO 26000 is not a management system standard. Note that, ISO 26000 does not contain requirements and, as such, cannot be used for certification.

What specifically does ISO 26000 contain?

ISO 26000 addresses seven core subjects of social responsibility, please refer to [the brochure](#) for more information. An organization's performance on social responsibility can influence, among other things:

- Competitive advantage
- Reputation
- The ability to attract and retain workers or members, customers, clients and users
- The maintenance of employee morale, commitment and productivity
- The perception of investors, owners, donors, sponsors and the financial community
- Relationships with companies, governments, the media, suppliers, peers, customers and the community in which it operates



IOE joins the Consultative Group of ISO TMB's Strategic Advisory Group on ESG ecosystem

On 14 February 2022, IOE joined the Consultative Group (CG) of ISO Technical Management Board's (TMB) Strategic Advisory Group on ESG ecosystem (SAG-ESG). The ISO Strategic Advisory Group on ESG ecosystem was created by ISO/Technical Management Board (ISO/TMB) decision 59 on 23 June 2021 for a 12-month period. The SAG relies on three Task Groups (TGs) to provide input and recommendations in the areas of mapping (TG 1), stakeholder engagement (TG 2) and user needs (TG 3). The SAG also established a consultative group in which IOE is now engaged to capture the input from a broader set of stakeholder categories.

As primary mandate, the SAG must articulate the value proposition that ISO brings to the ESG ecosystem; identify alignment, gaps, and opportunities for ISO, utilizing the mapping of the current ESG disclosure frameworks, standards, and indicators to ISO standards; develop recommendations and guidance on how to strengthen the linkage between ISO standards and ESG disclosure frameworks for ESG reporting, map stakeholders in the ESG ecosystem and develop a stakeholder engagement strategy to provide a mechanism to effectively collaborate with stakeholders in the ESG ecosystem at the technical and strategic policy level. Based on this mandate, the SAG is due to develop a strategy and final report with recommendations for Technical Management Board (TMB) approval as well as clarify and articulate ISO's value proposition in the ESG ecosystem and propose next steps for ISO.

On 22 February 2022, a Joint Task Group meeting including all the three Task Groups was held to discuss the various threads and ongoing work. As key takeaway, ISO value proposition is still underway. Discussions focused on a tentative working definition of ESG as there is still not yet an official and accepted definition of ESG. The proposal was to define ESG as "priorities for all organisations working towards the SDGs and sustainability, applying to every aspect of their work, impact and outcomes". In addition, mapping key findings also reported clear differences in the purpose and materiality positions between the five ESG Frameworks selected (Value reporting foundation, TCFD, IFRS, EU and GRI) for the inclusion in the mapping exercise. Contrary to these frameworks, the work of ISO aims to serve a broader social purpose which is more closely aligned to the definition and ISO concept of "sustainable development" than the definition and concept of "ESG reporting" or "ESG investment". However, streamlining is underway with ISSB reporting standard expected in 18-24 months, European CSRD under development and taxonomies being developed by EU, China.

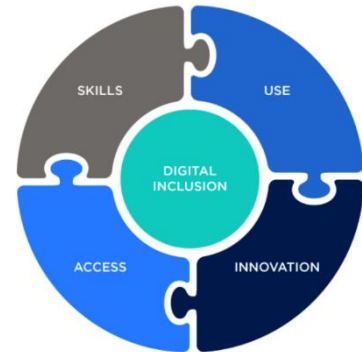
The different Task Groups are expected to meet again individually in March and April

2021 Digital Inclusion Benchmark Report

In December 2021, the World Benchmarking Alliance released the [2021 Digital Inclusion Benchmark](#). It measures and ranks 150 of the world's most influential technology companies on their responsibility to advance a more inclusive digital society.

Themes covered by the benchmark include access, skills, use and innovation and measures what companies are doing to:

- enhance universal access to digital technologies
- improve all levels of digital skills
- foster trustworthy use by mitigating risks and harms
- innovate openly, inclusively, and ethically



The report claims that:

1. **Progress is too slow with regard to digital inclusion.** Some tech companies demonstrate a strong commitment to digital inclusion with efforts in increasing access to digital technologies, teaching digital skills, making the internet a safer and more trustworthy place and innovating diversely and ethically. Around two dozen more companies show good performance. However, whilst there is moderate improvement in comparable metrics from last year's benchmark, progress is too slow to keep up with the growing number of divides and risks in our digital world.
2. **Enthusiastic about AI benefits, the industry is not sufficiently considering the risks:** Whilst many digital companies spent pages citing the benefits and potentials of artificial intelligence (AI), the risks are not enough considered.
3. **Questionable impact of 'technology for good' initiatives:** Companies are proud of their initiatives, which include providing free connectivity for schools, or discounted services to underserved communities. However, many of these initiatives are one-off projects – especially those introduced during the COVID-19 pandemic. Impact assessments can mitigate the risk of impact washing and provide a roadmap for companies to support digital inclusion.
4. **We need more women in tech:** The lack of women engaged in research and development is a global problem as it affects the incorporation of gender perspectives in digital products. On average, women make up just 23% of the technical workforce in the 150 digital companies assessed, highlighting the need for more women in tech roles.

5. **The industry needs to pay attention to its human rights risks and impacts:** It is crucial that tech companies demonstrate their due diligence on their human rights risks and impacts.

According to the report, we are living in an era where digital technology has become essential for everyday life and the Covid-19 pandemic has highlighted the urgency of digital inclusion. If left unaddressed, the current digital gap will further widen and increase existing inequalities.

Regional News - EU

EU Mandatory Human Rights Due Diligence Directive: Overview

On 23 February 2022, the European Commission published its proposed legislation on corporate due diligence in global supply chains. This Directive, which was originally planned to be released in 2021, was delayed twice as the Commission's in-house quality control team was dissatisfied with the proposed draft text. Despite its non-binding aspect, the Resolution on due diligence (based on the report prepared by Rapporteur MEP Lara Wolters (S&D)) adopted with the strong majority of Parliament in March 2021, seems to have largely inspired the draft Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence. As next step, the directive will be discussed and possibly amended by the European Parliament and EU member state governments. After its adoption, EU member states will have two years to transpose the directive into national legislation.

The proposed legislation includes the following elements:

- **Scope of rights and business activities covered (art. 1):** the Directive which includes adverse environmental impacts sets out a **horizontal framework** that applies to all sectors to foster the contribution of businesses operating in the single market to respect human rights and environment in their own operations, the operations of their subsidiaries and the value chain operations carried out by entities with whom the company has an established business relationship.
- **Companies covered:** as regards the scope of the due diligence obligations, article 2 states that the Directive applies to EU Large limited liability companies with a net turnover of EUR 150 million generated worldwide and have to fulfil an employee criterion as well (above 500 employees in group 1 and above 250 employees in group 2). This will apply to 13 000 EU companies. This Directive also covers third-country companies for which, a net turnover threshold is used (EUR 150 million for group 1 and EUR 40 million for group 2), but all of this turnover needs to be generated in the EU. This will apply to approximately 4 000 third-country companies. Worth noting, small and medium sized

enterprises (SMEs) that include micro companies and overall account for around 99 % of all companies in the Union, are excluded from the due diligence duty.

- **Private and public enforcement and civil liability:** The Directive provide a combination of sanctions and civil liability (art. 19 and 21). Liability is limited to harm done in the value chain under specific conditions especially beyond established direct suppliers and concerns only established business relationships with which a company has regular, lasting and frequent cooperation and applies only where the adverse impact could have been foreseen, prevented, ceased or mitigated with appropriate due diligence measures. The Directive will leave it up to the Member States how to organise enforcement. The sanctions which can be pecuniary. As regards private enforcement through civil liability different approach is used for company`s own operation and its subsidiaries and it has been restricted for the business relations with which a company cooperates on a regular and frequent basis, where the harm could have been identified, and prevented or mitigated, with appropriate due diligence measures. Public enforcement must be undertaken by public authorities to supervise and impose proportionate pecuniary sanctions in case of non-compliance
- **Monitoring and supervisory mechanism:** the Directive allows administrative supervision to be carried out by existing national authorities. However, to reduce the costs (for instance when supervising third-country companies active in various Member States) and improve the supervision, coordination, investigation and exchange of information the Commission will set up a European Network of Supervisory Authorities (art. 20). Administrative supervision can be carried out by existing authorities.

More information under the following [link](#).

On 11 March 2022, as part of its **Policy Working Group on Human Rights and Responsible Business Conduct**, IOE will organise a meeting to provide its members and partners with an update on the EU Directive.

EU Commission prepares instrument for a ban on force labour products

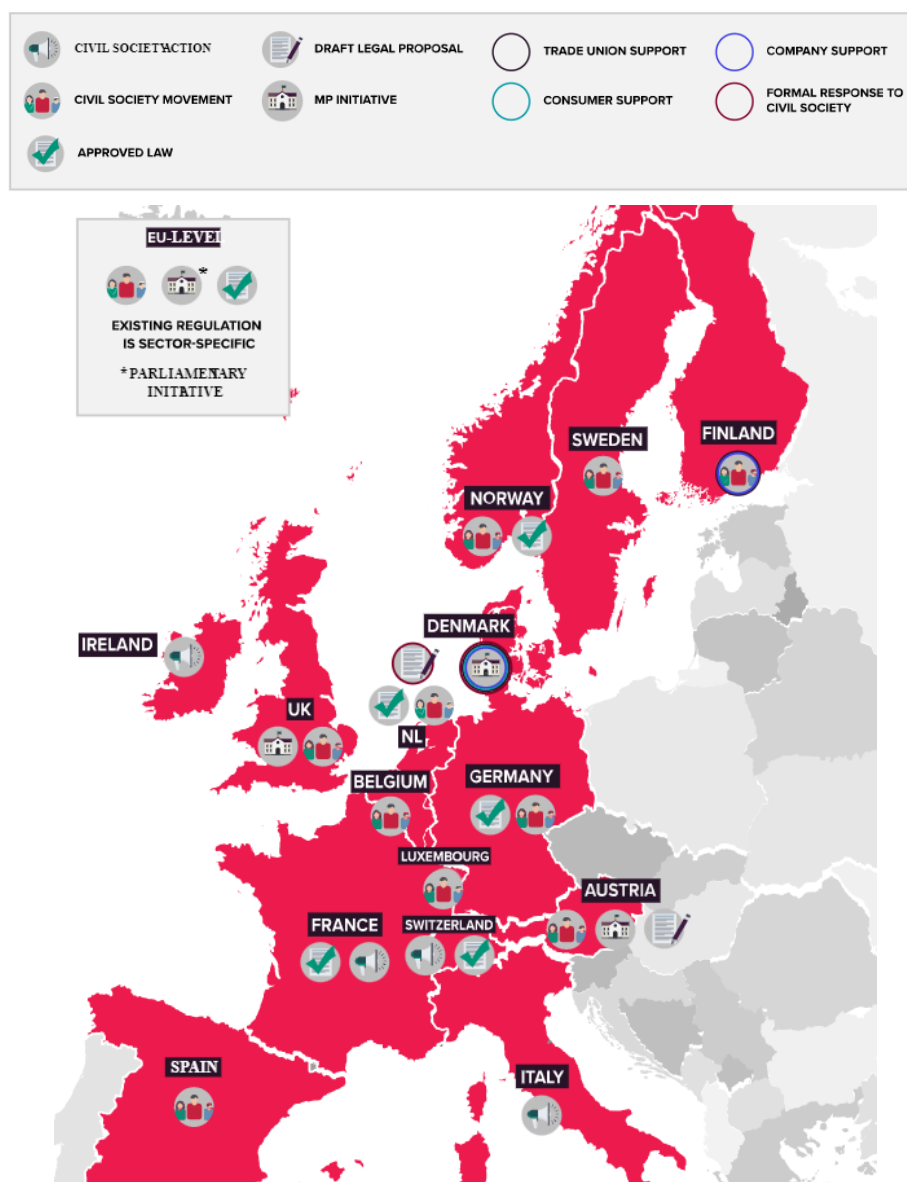
As part of its [communication on Decent Work Worldwide](#) released on 23 February 2022, the Commission is preparing a new legislative instrument to effectively ban products made by forced labour from entering the EU market. According to the EU Commission's press release, this instrument will cover goods produced inside and outside the EU, combining a ban with a robust enforcement framework. This new instrument will build on international standards, notably guided by the four elements of the universal concept of decent work developed by the [International Labour Organisation](#) (ILO), and is due to complement existing horizontal and sectoral EU initiatives, in particular the due diligence and transparency obligations. According to ILO, in the

world, 160 million children are in child labour accounting for almost 1 in 10 of all children worldwide and 24.9 million people are in forced labour.

Mandatory Human Rights Due Diligence Legislation (mHRDD): State of Play in Europe

Following on the late 2021 IOE-KAS' publication that reviewed mandatory human rights due diligence and supply chain laws and provided key considerations for employers, please find below a [map](#) designed by Shiftproject. The map assesses the current state of play of mHRDD in Europe in addition to a [non-exhaustive list](#) of past and current initiatives for mandatory human rights and environmental due diligence in Europe can be found [here](#).

State of play of mHRDD in Europe (Source: [Shift Project](#))



OHCHR report on the practical application of the UNGPs to the activities of technology companies

The Office of the High Commissioner for Human Rights (OHCHR) has sought inputs for the High Commissioner's report on the practical application of the UNGPs to the activities of technology companies to be presented at the 50th session of the Human Rights Council in June 2022. The IOE has drafted a brief response to the [call for input](#) and reaffirmed its commitment to supporting all relevant stakeholders to achieve the objective of the UNGPs 10+ Roadmap.

IOE outlines that technological innovation and evolution have changed our lives, working methods and the way business operates. During this pandemic technology and innovation have allowed for business continuity and resilience. It has helped to save jobs and to maintain productivity. Not only has technological progress positively impacted the right to fair and decent work, reduced global poverty and inequalities, it also has the potential to uphold human rights.

- Tech companies are not a homogenous group but involve very different types of business models and face very different challenges related to human rights. Therefore, awareness raising, and capacity building will remain key to familiarize start-ups and SMEs with the UN Guiding Principles and support them in addressing human rights challenges related to their business model.
- Tech companies share with other sectors many challenges, such as human rights deficits in their supply chains. It will be key to deepen the understanding of downstream human rights risks and possibilities for companies to address these risks, including approaches to increase leverage through collective action.
- States the duty to protect the human rights of their citizens. However, too often governments as end-users of tech companies' products and services are themselves involved in human rights violations and misuse of these services and products. Innovative thinking is required to strengthen accountability on the sides of governments with regard to their own human rights performance and their use of digital tools and AI. The UN supervisory system must play a bigger role in this regard.
- For many tech companies, data privacy is a key issue. Taking a human rights lens to product development and innovation is a key part of the responsibility to respect human rights.
- Online content by end-users of social media platforms creates not only human rights risks, such in the form of hate speech, disinformation, and fake news, but also dilemma situation for these platforms as the boundaries between freedom of expression with other rights and interests can be blurred. Approaches are required which more clearly outline expectations from state and non-state actors on how to handle such dilemma situations.

To advance business and human rights, IOE recalls that key focus areas should be the strengthening of an enabling environment for responsible business practices for tech (and non-tech) companies, the promotion of collective action, particularly related to remedy, the sharing of successful strategies with regard to end-users-related challenges, as well as continuous awareness raising and capacity building

OHCHR Working Group's report on "COVID-19 pandemic: lessons learnt and moving forward"

The Working Group on the issue of human rights and transnational corporations and other business enterprises (UNWG) has sought inputs for the Working Group's report on "COVID-19 pandemic: lessons learnt and moving forward", to be presented to the 50th session of the Human Rights Council, June 2022. The IOE has drafted a brief response to the call for input.

Among the main issues related to human rights companies have faced, IOE highlighted the following main challenges throughout the pandemic.

- In terms of engagement, the difficulty in reaching out to suppliers and to engage with potential affected communities such as migrant workers and other stakeholders as well as difficulty in identifying possible human rights violations due to the temporary suspension of business operations' activity as well difficulty in information sharing. A significant challenge for companies and EBMOs has been to engage with the informal sector, this even more during the pandemic.
- The new developments on mHRDD happening simultaneously with the pandemic made it hard for companies to continuously monitor and remain aware and up to date with new national and local compliance requirements.

Despite these significant challenges and obstacles, the Covid-19 pandemic has also provided important lessons learned:

- Covid-19 has not only disrupted the economy and impacted business through different levels but has also led to the acceleration of the digitalisation of human rights. Digitalisation of human rights tools used by companies such as digital audits due to travel restrictions has provided new avenues of opportunities for companies and allow a greater company's human rights outreach and roll out.
- Companies have needed to find practical ways to adapt to this pandemic. For the majority, this has entailed changes in their internal structures, updates of their Human Rights Policy and supplier Code of Conduct as well as launch of new digital tools to better implement the UNGPs across business operations.

- The Covid-19 pandemic has also shed light on the need to provide employees and suppliers with targeted human rights trainings tailored to specific function and responsibility of the employees. Trainings on human rights remain essential not only to know what it means for the workforce, but also because their understanding, implementation and application are context oriented.
- The pandemic has highlighted the centrality of the trust relationship between companies and their suppliers in implementing human rights. In this regard, digitalisation can help advancing human rights, but this does not replace monitoring the situation on the ground.
- The pandemic has opened-up opportunities, including much stronger focus on addressing underlying root causes, most clearly the importance of good governance and rule of law as well as highlighting the need for greater public-private cooperation in implementing the Business and Human Rights agenda.
- There is also a new openness for collaboration and collective action, such as the Call to Action in the Garment Industry.

National News

Japan: New developments on Human Rights Guidelines

After the launch of a National Action Plan (NAP) on Business and Human Rights (BHR) in October 2020, the Japanese government is expected to continue developing its BHR agenda with draft guidelines for human rights due diligence this summer to help companies detect and prevent human rights violations in their supply chains. The Japanese NAP expressed its expectation that Japanese corporations, regardless of size and industrial sector, should respect internationally recognized human rights, introduce a process of human rights due diligence, resolve issues through effective grievance mechanisms, etc.

The rules which will especially be focusing on tackling issue of forced and child labour are aimed to instruct companies on developing procedures for inspections in their supply chains. In addition, one of the key aspects of the future guidelines will be to establish best practices for investigating potential human rights violations through defined inspection procedures. As foreseen measures, example include interviews of suppliers' employees without the presence of their managers as well as the conduction of unannounced inspections by third parties. The guidelines are also expected to lay out principles for risk assessment.

Separately, **Keidanren**, the Japan Business Federation, has started a process to update and strengthen its human rights guidelines for member companies and developed a handbook for practitioners to encourage them to carry out human rights' due diligence. The objective is to raise awareness of the UNGPs and promote voluntary efforts by companies. As next step and to diffuse these new guidelines, Keidanren will carry out

briefing sessions on the Handbook for Management Respecting Human Rights and promote business and human rights initiatives among member nationwide industrial associations and the regional economic organisations.

Spain: New consultation process on a draft law regarding human rights, sustainable and due diligence for transnational companies

In Spain, the Ministry of Social Rights and Agenda 2030 has published the Public Consultation prior to the Preliminary Draft Law on the Protection of Human Rights, Sustainability and Due Diligence in Transnational Business Activities (see [here](#)), whose deadline for contributions is 3 March 2022. The draft is largely based on the draft EU and it is included in the government's legislative plan for 2022 (Plan Normativo 2022).

The Spanish government proposal requires Spanish transnational companies to undertake human rights and environmental due diligence in their supply chains. This new push for business and human rights comes following the recent approval in December 2021 of a National Action Plan against Forced Labour in Spain as well as the recent ratification of the ILO Violence and Harassment Convention (C190) and the Home Work Convention (C177) in December 2021.

In Spain, there is currently no regulation with the status of law that specifically regulates the obligations of Spanish companies, or those operating in Spain, with regard to respect for domestic and international human rights and environmental law, and which establishes measures to guarantee, where applicable, the right of victims to access to remedy and due reparation. Also, there is no normative framework aimed at regulating in a general and obligatory way due diligence in human rights or environmental matters.

According to the [proposal](#), the draft law would include:

- An obligation on Spanish transnational companies or groups, and those transnational companies that operate in the Spanish market, to respect human rights and environmental issues in all the activities carried out throughout its global value chains, including implementation throughout the chain of due diligence mechanisms, including the adoption and development of due diligence plans that contribute to prevent, eliminate, mitigate and/or remedy such violations. The participation of trade unions and non-profit entities in the development, implementation and supervision of the above measures.
- To bring legal certainty to economic relations between States and to avoid unfair competition practices affecting Spanish companies practices of unfair competition that affect Spanish companies that apply rigorous standards of apply rigorous standards of respect for human and environmental rights.
- A system of sanctions on companies that fail to comply with their obligations.
- A guarantee of access to justice for all people or communities that have been victims of human and environmental rights violations derived from the activities carried out by companies in their supply

chains as a whole. The law also provides that trade unions and non-profit entities can take collective action on behalf of victims.

- A guarantee of the right of rightsholders to be informed by companies about the risks that their activities pose to human rights and the environment and of the actions they are taking to eliminate those risks.
- The appointment of a competent, public and independent authority to monitor compliance with the law.
- Ensure the implementation of the 2030 Agenda and the Sustainable Development Goals, as well as the Development Goals, as well as the achievement of the targets adopted in the 2030 Sustainable Development Strategy Sustainable Development Strategy 2030.

Japan: Parliament adopts resolution on human rights in China

On 1st February 2022, Japan's lower house, passed a resolution on the "grave human rights situation" in China and called on Prime Minister Fumio Kishida's government to take steps to improve the situation. The resolution states that the international community has expressed concern over issues such as internment and the violation of religious freedom in the Xinjiang Uygur Autonomous Region, Tibet and Hong Kong.

Canada: Legislative developments in preventing forced labour in GSC

In Canada, there are currently two Senate bills progressing through the parliamentary system that seek to address modern slavery, forced and child labour by commercial enterprises and their supply chains.

In November 2021, Bill S-211, An Act to enact the Fighting Against Forced Labour and Child Labour in Supply Chains Act and to amend the Customs Tariff ("Fighting Against Forced Labour and Child Labour in Supply Chains Act") was introduced in the Canadian Senate. As of January 2022, this bill has undergone a first and second reading and is being considered in committee in the Senate. If passed, it will enact Canada's first modern slavery disclosure legislation.

Businesses and government institutions subject to the Act would be required to provide the Minister of Public Safety and Emergency Preparedness with an annual report on or before May 31. The report would need to outline the steps the business has taken during its previous financial year to prevent and reduce the risk that forced labour or child labour is being used in the production of goods by the business, or in the production of goods imported into Canada by the business.

In the same month, the complementary Bill S-204, An Act to Amend the Customs Tariff (Goods From Xinjiang) ("Xinjiang Manufactured Goods Importation Prohibition Act") was introduced in the Senate. This act would

prohibit the import of goods produced, wholly or in part, in the Xinjiang Uyghur Autonomous Region of China. As of January 2022, this bill has undergone a first reading and is currently at second reading in the Senate.

The introduction of Bill S-211 and S-204 mirrors legislative developments in the United States, where the U.S. Congress recently enacted legislation to prohibit the import of goods made by forced labour in Xinjiang. More generally, Bill S-211 and S-204 reflect the global efforts by the international human rights community to investigate and ensure human rights compliance in businesses' global supply chains.

Canada is already committed to global standards against forced labour pursuant to its ratification of various international human rights instruments, such as the ILO conventions. Under the Canada-United States-Mexico Agreement, Canada has also banned the importation of goods made in whole or in part with forced labour. The enactment of both Bill S-211 and S-204 would add onto these measures by requiring Canadian businesses to comply with new due diligence obligations with respect to their supply chains.

While the bills are still in the nascent stages of legislative development, businesses should be alert to these potential requirements by reviewing their compliance policies, due diligence mechanisms, and training on forced labour. They should also consider running a diagnostic on their supply chains now to address and remediate human rights risks.

*IOE thanks **Brian Burkett** and **Brenda Chang** of the Canadian Employers' Council for their contribution.*

Switzerland: new ESG and Due Diligence regulation put in place

On 29, November 2020, the Swiss "Responsible Business Initiative" that had been brought forward by a vast alliance of NGOs has been rejected in a popular vote in Switzerland. With this outcome, an intense political discussion in Switzerland around the question whether CSR should be regulated by instruments based on strong civil liability provisions came to a halt.

If the result had been different, Swiss based enterprises would have had to implement extensive mandatory due diligence obligations regarding the observation of human rights and environmental topics in all their business activities not only in Switzerland but also abroad. Secondly, the Initiative would have made it possible for victims of human rights or environmental violations to submit their claims for damages against such Swiss based enterprises before Swiss courts. In practice, this would have mostly been through NGOs as their agents.

The outcome of the vote does not mean that there is no change in Switzerland's regulatory landscape. To the contrary: the [indirect counterproposal](#) that was adopted by the Swiss Parliament in case the initiative is rejected has entered into force on January 1, 2022. An [ordinance](#) by the Swiss Federal Council sets forth detail of the new law. The companies addressed will now have to implement the obligations of the counterproposal into their business processes. The first reporting year with reports to be published in 2024 will be 2023, thus the respective processes have to be ready till the latter year.

This indirect counterproposal which is introduced into the existing company law and further specified in a new ordinance introduces reporting obligations for larger companies on environmental (incl. CO2-targets), social and employee matters, respect for human rights and anti-corruption matters in line with the European Union (EU) Directive 2014/95/EU on nonfinancial reporting (albeit, as it regards CO2-targets, it goes further). The reporting should include a description of the business model, policies and due diligence, outcome of policies, risks, and key performance indicators. The according nonfinancial report will need to be approved and signed by the highest management and administrative body and approved by the body responsible for annual accounts (an audit not being explicitly required).

Companies of a certain public interest which together with their subsidiaries in Switzerland meet the following criteria are obligated to publish such a report on a yearly basis:

- They employ in two successive financial years at least 500 full-time positions on annual average, and
- They exceed at least one of the following thresholds in two successive financial years: i) balance sheet total of 20 million francs and ii) sales revenues of 40 million francs.

Companies which are controlled by a company caught by the above-mentioned obligations as well as companies that have to produce a comparable report pursuant to foreign law are released from the obligation to produce such a report.

Further, the counter-proposal requests new due diligence and reporting obligations for minerals and metals from conflict areas (based on Regulation (EU) 2017/821) and child labour (influenced by the Child Labor Due Diligence Act of the Netherlands). The counterproposal requires companies to adhere to a certain level of due diligence obligations in their supply chain if they are engaged in the import of such minerals or metals into Switzerland or the processing of such minerals or metals in Switzerland; or offer products or services which may have been produced or rendered using child labour. Due diligence on minerals and metals will be subject to review by an independent third party.

Companies that exceed the above thresholds but do not operate in areas where child labour is expected to occur should regularly check for their own compliance whether they are covered by the "low risk" exemption under the new ordinance. The Children's Right in the Workplace Index can be used for this.

Companies that exceed the above thresholds and are not covered by the low-risk exemption must check suspected cases of child labour. They must also organize their supply chain in such a way as to avoid child labour. To this end, it must also be ensured that the company enables tracing of products or services within its supply chain and allows reporting of suspected cases.

In comparison with the preliminary draft, the Federal Council has introduced a tightening up of regulations in the area of child labour with a standard rule for "obvious" cases, which means that Switzerland goes further than the current EU regulation. The abovementioned exemptions for SMEs and for low-risk undertakings do not apply where products or services are obviously produced using child labour. In such cases, the duty of care and reporting shall apply irrespective of the size of the company and other risk weightings.

An important difference to the popular initiative is, that regarding liabilities, under the counterproposal the Swiss law will remain unchanged. Therefore, the NGOs will not get an indirect empowerment to enforce the regulation. Under the counterproposal, the enforcement remains with the authorities: a violation of the newly introduced obligations may result in a criminal fine in the amount of up to CHF 100,000. It comes therefore as no surprise that the counterproposal as well as the ordinance, notwithstanding their far going new rules for Swiss business, have been greatly criticised by the NGOs.

In particular large Swiss companies are already quite advanced as regards the implementation of risk management processes in the supply chain as well as the publication of the respective reports. For all companies it is nevertheless recommendable to use the ongoing year to check to what extent there is still work to be done by the end of this year.

IOE thanks Erich Herzog of Economiesuisse, the federation of Swiss business for his contribution.

Norway: Latest developments on the Norwegian Transparency Act

In June 2021 the Norwegian parliament adopted the Transparency [Act](#). The Government has recently announced that the Act will take effect on 1 July 2022. It is estimated that around 9000 companies in Norway will be affected by the Act. The Act applies to "large companies", and they are defined by three criteria:

- At least an average of 50 full-time employees
- A balance sheet of at least NOK 35 million at fiscal year (approximately euro 3,5 million)
- Sales revenues of at least NOK 70 million (approximately euro 7 million)

If two or more of these criteria are met, the Act will apply for the company. Both companies domiciled in Norway and foreign enterprises that provide services that are taxable in Norway are covered.

The law is intended to promote respect for fundamental human rights and decent working conditions in connection with the production of goods and the provision of services. Fundamental human rights is an expansive concept under the Act and includes the ILO's core conventions. Due diligence is required to be carried out in accordance the OECD Guidelines. That means that a mapping is required of adverse impacts on fundamental human rights and decent working conditions the enterprise has caused, or that are related to its activities, products or services through suppliers or business partners.

According to the Act companies are required to publish a statement annually on the results of their due diligence. The Act also contains detailed requirements of the content of this statement. The statement has to be signed by the members of the board, and it has to be made public on the company's website.

The Act is intended to ensure public access to the information on how the enterprises address adverse impacts. Upon request the enterprise is obliged to provide such information within three weeks. Under certain conditions the company may deny an information request.

As a next step, the Norwegian Consumer Authority is responsible for enforcing the Act. This public body has the power to impose fines, but the principal impact of the new legislation is likely to be reputational. The Consumer Authority will also publish general information, advice, and guidelines on the compliance with the Act. The Authority is currently in the process of establishing a new department that will provide guidance. Also the NCP (The National Contact Point for OECD Guidelines) is preparing to give advice to companies since the due diligence requirements are linked to the Guidelines. Finally, it is likely that also NHO and other business organisations in Norway will be approached by its members on this matter.

*IOE thanks **Henrik Munthe of the Confederation of Norwegian Enterprise (NHO)** for his contribution.*

Climate change / COP 26

IOE Guidance Paper on employment, just transition and climate governance

IOE released a new [guidance report](#) for business on the latest climate change policy developments. The paper provides summaries on the most recent developments in climate change international discussions that impact employers and includes the main outcomes from the COP-26 meeting in Glasgow in December 2021 as well as key recommendations for both governments and employers.

Climate change policies are becoming a priority area for employer organisations. In a 2020 survey with IOE's global network, climate change was identified as one of the most significant areas of concern for employers' organisations. IOE is strengthening its advocacy efforts to ensure members have the necessary tools to bring

the voice of employers to national plans and other policies on climate change, with an employment and skills perspective.

Some of the recommendations for governments include:

- Continuous, coherent, and anticipatory of skills needs, in collaboration with the private sector, based on skills analysis taking into account projected needs, local contexts, and geographical distribution.
- More critical than ever, a proper enabling environment for businesses, particularly SMEs, which facilitates, accelerates, and incentivises the creation of more resilient and sustainable enterprises that can achieve decarbonization objectives while creating quality employment and maintaining business needs; and
- Ensuring targeted funding, also through partnerships, and dedicated frameworks/institutions to support transition planning and implementation to increase resilience and sustainability for viable but also for vulnerable enterprises;
- Developing well-functioning markets and effective regulatory conditions that are clear and stable and incentivise innovation and entrepreneurship.

Additionally, the paper also mentions specific recommendations for employers' organisations and how they can increase capacity to act and impact in this policy area:

- Advocate vis-à-vis governments for just transition strategies which considers business' needs.
- They can provide critical guidance, especially to SMEs, raise awareness, promote innovative approaches but also support governments in developing realistic and impactful policies. One of the main services, particularly relevant in the context of climate action is anticipating and analysing labour market impacts, particularly job losses and job gains, how to adapt to these impacts and what resources and support members can access.
- Analysing skills needs, providing relevant and timely analysis on gaps and ways to improve skills and training systems while bringing attention to government and other stakeholders on sectors in particular need of skills development is also crucial.
- Through their existing networks and also new connections it is important for employers to engage educational institutions and other skills providers and create collaborative approaches in knowledge sharing and capacity building for companies to adapt to the new scenario.
- Climate policy and action is a relatively novel field for many employers' organisations; creating dedicated units and allocating, if possible, resources to this topic could help to provide new services and the needed guidance to their members; where necessary, employers should seek support and partner with the public sector as well as the international community in establishing these services and resources.

Other

Postponement of the ILO TWGSC on options to ensure Decent work in supply chains

As previously reported, the ILO Tripartite Working Group on decent work in supply chains scheduled to be held on 17-19 January and 7-8 February 2022 has been postponed to a later date. Although a new date will be decided by the Governing Body at its 344th Session in March 2022, the meetings will almost certainly take place from Monday 27 June to Friday 1 July 2022.

Activities of the IOE Policy Working Group on Human Rights and Responsible Business Conduct

Since the beginning of the year, the IOE Policy Working Group (PWG) on Human Rights and Responsible Business Conduct has held three meetings, the fourth one to be held on 11 March 2022.

➤ 2022 Update and Catch-up Meeting

On 14 January 2022, as part of IOE Policy Working Group (PWG) on Human Rights and Responsible Business Conduct, IOE provided important information to its Members on the ILO tripartite Working Group on Decent Work in Supply Chains with an update and Employers' position as well as an update on the UN Treaty Process.

➤ IOE-USCIB Informal exchange on internal company human rights governance

On 1 February 2022, as part of IOE Policy Working Group (PWG) on Human Rights and Responsible Business Conduct, IOE together the United States Council for International Business (USCIB) organised a virtual informal exchange to discuss internal company human rights governance. The aim of the meeting was to benefit from the various and different company's experience on internal human rights governance.

Particularly, a tour de table allowed companies to address important issues such as:

- How have companies set up their human rights governance structure?
- How those relate to other relevant internal governance structures (e.g., ESG)?
- How is it influenced by the overall drive on ESG and tightening mHRDD legislation?

During this exchange held under the Chatham House Rule, participants achieved an intensive and productive discussion with companies speaking freely about both their long journey of establishing their different internal human rights structures as well as the impact of current mandatory human rights legislations. A summary report has been produced as follow-up.

➤ **Information on ILO efforts in the cotton sector in Uzbekistan on Eliminating Forced and Child Labour and Improving the World of Work**

On 9th February 2022, IOE organized an informative digital session on ILO efforts in the cotton sector in Uzbekistan on Eliminating Forced and Child Labour and Improving the World of Work. This webinar allowed participants to have an update on the latest developments of ILO efforts in the country as well as having key insights from IOE's Member the Chamber of Commerce and Industry of Uzbekistan.

➤ **Update on the latest developments on BHR**

On 11 March 2022, IOE will organise a meeting to discuss the latest developments on BHR and provide an update to its members and partners on the EU Directive, GSC and national developments in Japan.

Third UN South Asia Forum on Business and Human Rights

Building on [the 2nd UN South Asia Forum on Business and Human Rights](#), the UN Working Group on Business and Human Rights (UNWG) in collaboration with the United Nations Development Programme (UNDP) and the International Labour Organization (ILO) is organizing the 3rd UN South Asia Forum on Business and Human Rights. It will take place in Dhaka, Bangladesh (and virtual) **on 28 -30 March 2022**. The Forum aims to facilitate a robust and multi-stakeholder dialogue that will foster joint action to prevent, mitigate and remediate business-related human rights abuses and advance decent work in South Asia.

Invitation to the IOE-BDA-DPDHL International Conference on Business and Human Rights

IOE-BDA-DPDHL International Conference

From challenges to opportunities: Business and Human Rights within the next decade

Friday 8 April 2022, 13:00 – 16:15 CET

The International Organisation of Employers (IOE) together with the Confederation of German Employers' Associations (BDA) and Deutsche Post DHL Group (DPDHL) are organising an international high-level conference on “From challenges to opportunities: Business and Human Rights within the next decade” which will take place on **8 April 2022 from 13:00 – 16:15**.

The conference topics will cover these following issues:

- The implementation of the roadmap on 10 years UN Guiding Principles on business and human rights
- Decent work in global supply chains: What needs to happen
- The EU Supply Chain Directive: How to make it a success
- Company examples of human rights due diligence and engagement

This event is aimed at company practitioners, business federation representatives and investors. It will provide participants with a safe space to share experiences, learn about new trends and developments, connect and network. Participants will learn about the latest developments and be invited to take part in peer learning and exchange experiences.

The conference is free of charge and registration is opened. **If you are interested in attending this event, please use the following [link](#).**

Annual Engaging Business Forum on Business and Human Rights

The Annual Engaging Business Forum on Business and Human Rights Conference hosted by The Coca-Cola Company will take place on 13 and 14 October 2022 in Atlanta at Coca-Cola's headquarters. This event will be organised by USCIB, the International Organisation of Employers, and the U.S. Chamber of Commerce.

OHCHR Africa Forum of Business and Human Rights

In fall 2022 will take place an OHCHR Africa Forum on Business and Human Rights. Although the dates are yet to be determined, this event is aimed to reinvigorate the BHR agenda into the region. Building on the first Africa Forum on BHR that took place in 2014, the OHCHR is now willing to start having one regional forum each year for Africa, as this continent is now a priority for OHCHR. To revive the BHR issues in this continent, OHCHR decided to partner with UNDP, UNWG on BHR and the African Union to co-organize this forum.

New program on strategic integration of corporate sustainability available in Latin America

The Vincular Center in Chile (Centro Vincular-PUCV) offers diploma courses, awareness-raising workshops and training courses to generate competencies in Corporate Sustainability, which are accredited by the School of Business and Economics of the Pontificia Universidad Católica de Valparaíso. The curriculum is designed to provide solid conceptual foundations around Corporate Sustainability, along with practical tools, its methodology combines the analysis of the state of the art of Sustainability in the academic field, review of case studies and field experience of teachers, complementary views of guests, along with examples of the best global practices in the field. Information request and applications can be sent to diplomado.vincular@pucv.cl.

Contact

If you want to include an article in upcoming editions of the IOE Newsletter on Business and Human Rights or ask a question about this edition, please contact:



Matthias Thorns

Deputy Secretary-General

Email: thorns@ioe-emp.com



Jason Pegat-Toquet

Junior Adviser

Email: pegat-toquet@ioe-emp.com