Policy Trends in Environmental Due Diligence

Strengthening the integration of environmental - in addition to human rights - supply chain due diligence into various voluntary and mandatory regulations and policy initiatives is on the rise. These efforts also point to a growing global recognition of Responsible Business Conduct (RBC) standards and OECD guidance on supply chain due diligence in addressing environmental threats, dependencies and adverse impacts.

The OECD Guidelines for Multinational Enterprises (OECD Guidelines) and related OECD Due Diligence Guidance for Responsible Business Conduct lay out the expectation that business contribute to sustainable development, while avoiding and addressing adverse impacts of their activities, including throughout their supply chains. The OECD Guidelines and due diligence guidance complement and underpin key international policy initiatives in driving business action on the environment.

This briefing note outlines key examples of recent policy initiatives promoting RBC and environmental due diligence considerations:[1]

a) **EU Mandatory Due Diligence rules**: The EU Commission has announced plans to introduce mandatory rules requiring companies to carry out environmental and human rights due diligence.[2] The proposal was first announced by the EU Justice Commissioner in April 2020 and is being closely linked to the European Green Deal.[3] The European Commission, Parliament and Council have all noted that future rules will be rooted in the OECD Guidelines and recommendations of OECD due diligence guidance. The European Parliament adopted a legislative report on mandatory due diligence in March 2021, which

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[1] Briefing note prepared by the OECD Centre for RBC, May 2021. This list is not intended to be exhaustive.

[2] Towards a mandatory EU system of due diligence for supply chains. European Parliamentary Research Service. 2020. See: https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/659299/EPRS_BRI(2020)659299_EN.pdf

[3] A number of the objectives under the European Green Deal and the OECD instruments and standards on RBC are mutually reinforcing. Both encompass strategies that hinge on private sector and policy action across a number of public policy portfolios and areas of business risk and responsibility. In addition, RBC instruments are already integrated into a number of EU Directives, as well as legislation and initiatives of EU member states. https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1588580774040&uri=CELEX:52019DC0640

includes strong alignment with and references to the OECD MNE Guidelines and OECD RBC Due Diligence Guidance.[4]

b) The **EU Non-Financial Reporting Directive (NFRD), together with the Sustainable Finance Disclosure Regulation (SFDR) and the Taxonomy Regulation**, are the central components of the sustainability reporting requirements underpinning the EU's sustainable finance strategy. Each of these are outlined below.

   I. **EU Sustainable Finance Disclosure Regulation (SFDR):** In April 2019, the European Parliament adopted an EU Regulation for Sustainability-related Disclosures in the Financial Services Sector.[5] The regulation entered into force on 29 December 2019 and became applicable as of March 2021. In calling on financial institutions to disclose sustainability risks and impacts, the Regulation represents a milestone in efforts to encourage financial institutions to take into account impacts to both society and the environment.[6] Specifically, the regulation introduces transparency rules for financial institutions on the integration of sustainability risks and impacts in their processes and financial products, including reporting on adherence to internationally recognised standards for due diligence. It also notes that when reporting on due diligence, practitioners "should consider the due diligence guidance for responsible business conduct developed by the OECD."

   II. The European Supervisory Authorities (ESAs) have also developed draft Regulatory Technical Standards (RTS) with regard to the content, methodologies and presentation of **sustainability-related disclosures under the Sustainable Finance Disclosure Regulation (SFDR)**.[7] The draft RTS relates to several environmental and social disclosure obligations under the SFDR including:[8]

      - In addition to disclosing how the financial market participant has taken into account indicators for adverse impacts, 'do not significantly harm' reporting, as set out in Article 2 of the SFDR, must also show whether investments are aligned with the OECD Guidelines.
      - Pre-contractual information on how a product with environmental characteristics meets those characteristics; and information describing the environmental characteristics of financial products or the sustainable investment, and the methodologies used.

[4] European Parliament resolution of 10 March 2021 with recommendations to the Commission on corporate due diligence and corporate accountability. See: https://www.europarl.europa.eu/doceo/document/TA-9-2021-0073_EN.html

[5] Regulation of the European Parliament and of the Council on sustainability-related disclosures in the financial services sector, https://data.consilium.europa.eu/doc/document/ST-7571-2019-ADD-1/en/pdf)

[6] See also Session Note on Enhancing Disclosure and Due diligence for Climate-related Risks: http://www.oecd.org/cgfi/forum/Disclosure-and-Due-diligence-for-Climate-related-Risks-background-session-note-CGFI-Forum-2019.pdf

[7] 11(4) of Regulation (EU) 2019/2088 (Sustainable Finance Disclosure Regulation).

[8] The examples cited are examples and do not serve as an exhaustive list of standards included. See Final Report on draft Regulatory Technical Standards with regard to the content, methodologies and presentation of disclosures pursuant to Article 2a(3), Article 4(6) and (7), Article 8(3), Article 9(5), Article 10(2) and Article 11(4) of Regulation (EU) 2019/2088. Available here: https://www.eiopa.europa.eu/content/final-report-draft-regulatory-technical-standards_en

- A statement on an entity's website describing its due diligence policy in respect of the adverse impact of investment decisions on sustainability factors in relation to climate and other environment-related impacts.

III. In December 2019, a political agreement was also reached on the EU Regulation on the Establishment of a Framework to Facilitate Sustainable Investment, also known as the '**Taxonomy regulation'**. The Taxonomy regulation articulates environmental objectives and standards that should be met when evaluating how sustainable an economic activity is. Additionally, it notes that "economic activities should only qualify as environmentally sustainable where they are carried out in alignment with the OECD Guidelines [...]" [9]

IV. **Revised EU Non-Financial Reporting Directive:** The European Commission committed itself to proposing a revision of the Non-Financial Reporting Directive in the European Green Deal and its 2020 Work Programme.[10] Proposals published by the European Commission in April 2021 seek to revise sustainability reporting requirements set out in the NFRD, in order to make sustainability reporting requirements more consistent with the broader sustainable finance legal framework, including the SFDR and the Taxonomy Regulation, and to tie in with the objectives of the European Green Deal.[11] The proposals aim to ensure that there is adequate publicly available information about the risks that sustainability issues present for companies, and the impacts of companies themselves on people and the environment.

The proposals set out that sustainability reporting standards should take account of internationally recognised principles and frameworks on responsible business conduct including the OECD Guidelines, the OECD Due Diligence Guidance for Responsible Business Conduct and related sectoral guidance. The proposals recommend that to ensure consistency with international instruments such as the OECD Due Diligence Guidance for Responsible Business Conduct, due diligence disclosure requirements should be specified in greater detail than is currently the case under Directive 2013/34/EU ("the Accounting Directive").

c) **EU initiative on deforestation:** The European Commission has indicated that it will 'take measures, both regulatory and otherwise, to promote imported products and value chains that do not involve deforestation and forest degradation'.[12] A legislative-initiative report

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[9] See Article 13, Regulation of the European Parliament and of the Council on the establishment of a framework to facilitate sustainable investment https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32020R0852

[10] See Communication from the Commission on the European Green Deal, COM (2019) 640 final. Adjusted Commission Work Programme 2020 COM (2020) 440 final.

[11] Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting. See: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0189

[12] An EU Legal Framework To Halt And Reverse EU-Driven Global Deforestation. February 2021. See: https://www.europarl.europa.eu/legislative-train/theme-environment-public-health-and-food-safety-envi/file-eu-driven-global-deforestation. In its work programme for 2021, the European Commission stated that a legislative proposal aimed at minimising the risk of deforestation and forest degradation associated with products placed on the EU market is foreseen for the second quarter of 2021.

adopted by the EU Committee on Environment, Public Health and Food Safety (ENVI) and the European Parliament, calls on the Commission to propose an EU legal framework based on mandatory requirements for due diligence, reporting, disclosure and third-party involvement for companies placing forest and ecosystem-risk commodities and derived products on the EU market.[13]

d) **French "Duty of Vigilance Law":** France's 2017 law on the duty of vigilance requires large companies to develop and publish a due diligence plan. The plan must outline measures the company is taking related to both human rights and environmental risks and adverse impacts. [14]

e) **French Anti-Wastage & Circular Economy Law**: Law no. 2020-105 on combating wastage and on the circular economy ("Anti-Wastage & Circular Economy Law" 2020) aims to transform certain production and consumption habits. The law includes new obligations on companies to inform consumers about the environmental characteristics of products and recyclability, and new measures on producer responsibilities, prohibitions on single-use plastics and food waste, and tools to support companies in eco-design initiatives.[15]

f) **German Due Diligence Act**: On March 3, 2021, a new draft "Act on Corporate Due Diligence in Supply Chains" was adopted by the German cabinet and submitted to the German Federal Parliament.[16] The draft law introduces requirements for German companies to conduct due diligence to address human rights issues in global supply chains and requires preventive measures in business operations and in relation to direct suppliers. These expectations extend to related environmental impacts where they intersect with human right issues, as well as implementing environment-related obligations under the Stockholm Convention on Persistent Organic Pollutants[17] and the Minamata Convention on Mercury.[18]

g) **Dutch Bill on Responsible and Sustainable International Business Conduct:** On 11 March 2021, four political parties submitted a bill on Responsible and Sustainable International Business Conduct to the Dutch Parliament. The bill proposes a duty of care including to

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[13] Binding legislation needed to stop EU-driven global deforestation, say MEPs. European Parliament. 2020. See: https://www.europarl.europa.eu/news/en/press-room/20201001IPR88302/binding-legislation-needed-to-stop-eu-driven-global-deforestation-say-meps

[14] France, Duty of Vigilance Law. See: https://www.legifrance.gouv.fr/eli/loi/2017/3/27/2017-399/jo/texte. The French Government also introduced the 2019 French PACTE Act no. 2019-486 (the Action Plan for Business Growth and Transformation): The PACTE Act includes the addition of provisions tthe French Civil Code that allow for the integration of social and environmental objectives in corporate by-laws. The PACTE Act creates "mission businesses" (entreprises à mission) which are required to pursue social and environmental objectives. It also introduces new measures that support employee participation in corporate decision-making through labour representation and social dialogue; https://www.gouvernement.fr/en/pacte-the-action-plan-for-business-growth-and-transformation.

[15] LOI n° 2020-105 du 10 Février 2020 relative à la lutte contre le gaspillage et à l'économie circulaire. See: https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000041553759?r=er7iciZI1M

[16] German Federal Ministry of Labor and Social Affairs. Due Diligence Act 2021: https://www.bmas.de/DE/Service/Gesetze-und-Gesetzesvorhaben/gesetz-unternehmerische-sorgfaltspflichten-lieferketten.html;jsessionid=878067A82BD1DBE8E31E9E46425B4EE1.delivery2-replication

[17] The Stockholm Convention on Persistent Organic Pollutants (2001). See: http://www.pops.int/TheConvention/Overview/tabid/3351/Default.aspx

[18] The Minamata Convention on Mercury. 2013: https://www.mercuryconvention.org/Convention/Text/tabid/3426/language/en-US/Default.aspx

prevent negative impacts on the environment – including climate change - in all economic sectors and with all companies registered in the Netherlands or who sell products or services on the Dutch market,[19] and proposes an obligation to conduct due diligence in accordance with the OECD Guidelines for all enterprises with more than 250 employees.

h) **Japan guide for environmental due diligence:** In August 2020, the Japan Ministry of the Environment published an 'Introductory Guide on Environmental Due Diligence along the Value Chain – Referring to the OECD Due Diligence Guidance for Responsible Business Conduct', which seeks to align with the OECD Due Diligence Guidance for Responsible Business Conduct. The Guide builds on the Ministry's commitment to promoting environmentally-conscious activities by Japanese businesses across value chains.[20]

i) **UK Proposal on due diligence on forest risk commodities (currently under consultation)**: The UK government is introducing legislation through the Environment Bill to tackle illegal deforestation in UK supply chains.[21] The proposed approach looks to prohibit larger businesses from using "forest risk" commodities or commodities that cause wide-scale deforestation. It would mandate supply chain due diligence and public reporting on risks of illegal deforestation in supply chains. The UK Government is fast-tracking legislation through amendments to the Environment Bill 2019-21, which is expected to pass in mid-2021.[22] The necessary secondary legislation is due to be adopted in early 2022 after the November COP26 Climate conference.

j) **Dutch National Plan on Socially Responsible Procurement**: In January 2021, the Dutch Government published the National Plan on Socially Responsible Procurement 2021-2025: "Commissioning with ambition, purchasing with impact". The Plan aims to stimulate all Dutch authorities to use their purchasing power to achieve an inclusive labour market and to tackle abuses for people and the environment in international supply chains.

k) **Swiss Supply Chain Studies:** The Swiss Federal Office for the Environment, working closely with the private sector, has carried out a series of studies to identify environmental hotspots in the supply chains of eight key Swiss industries. An Environmental Atlas of Swiss Supply Chains (Umweltatlas Lieferketten Schweiz) was published in 2019 setting out the study's findings and proposing steps that could be taken to design and optimise more sustainable supply chains.[23]

l) **German Raw Materials Strategy:** Under the new Federal Government's 2020 Raw Materials Strategy, the German Federal Ministry for Environment, Nature Conservation and Nuclear

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[19] Responsible and Sustainable International Business Act 2021. House of Representatives of The Netherlands.https://www.tweedekamer.nl/kamerstukken/wetsvoorstellen/detail?id=2021Z04465&dossier=35761

[20] "Introductory Guide on Environmental Due Diligence along the Value Chain – Referring to the OECD Due Diligence Guidance for Responsible Business Conduct. Japan Ministry of the Environment. 2020. See: https://www.env.go.jp/press/108293.html; https://www.env.go.jp/press/files/jp/114470.pdf: https://www.env.go.jp/press/files/jp/114470.pdf

[21] Due diligence on forest risk commodities. UK Department for Environment, Food and Rural Affairs. 2020. See: https://consult.defra.gov.uk/eu/due-diligence-on-forest-risk-commodities/

[22] UK Environment Bill. 2021. See: https://bills.parliament.uk/bills/2593

[23] Environmental hotspots in the supply chain of Swiss companies. Swiss Federal Office for the Environment. 2019. https://www.bafu.admin.ch/bafu/en/home/topics/economy-consumption/info-specialists/resource-consumption.html#-2099368005

Safety committed to initiate an international process to develop international guidance on environmental due diligence in mineral supply chains.[24] The German Environment Agency (UBA) and the Federal Institute for Geosciences and Natural Resources (BGR) are supporting the Ministry of Environment in initiating this global process to develop an OECD Practical Tool on Environmental Due Diligence in Mineral Supply Chains.[25]

The OECD Centre for RBC continues to support policy-makers and businesses in strengthening the integration of the OECD Guidelines and related OECD due diligence guidance in the context of environmental policy objectives as well as supporting business in implementation. In particular, the Centre for Responsible Business Conduct is developing practical tools demonstrating the application of the OECD Guidelines and OECD due diligence guidance to addressing environment-related threats, dependencies, risks and adverse impacts through companies' supply chains.[26]

Promoting responsible supply chains in Asia

This publication is supported by the Responsible Supply Chains in Asia (RSCA) programme[27] which is implemented by the International Labour Organization (ILO) and the Organisation for Economic Co-operation and Development (OECD) with funding from the European Union. The RSCA programme aims to promote respect for human rights, including labour rights, and responsible business standards in global supply chains.

This programme is carried out in partnership with Japan (an OECD member) and five partner economies, namely China, Thailand, Viet Nam, Philippines, and Myanmar.

[24] Rohstoffstrategie der Bundesregierung. Raw Materials Strategy. The German Federal Ministry for Environment, Nature Conservation and Nuclear Safety. 2020. https://www.bmwi.de/Redaktion/DE/Publikationen/Industrie/rohstoffstrategie-der-bundesregierung.html

[25] German Resource Efficiency Programme (ProgRess). See https://www.bmu.de/en/topics/economy-products-resources-tourism/resource-efficiency/overview-of-german-resource-efficiency-programme-progress/

[26] The OECD RBC Centre is developing a number of tools to support the implementation of OECD due diligence recommendations in the context of environmental considerations with a focus on climate change. This includes a dedicated tool for investors, in addition to the textile and garments sector, the minerals sector and a tool on deforestation in the agriculture sector (forthcoming, 2021). The OECD is also developing new case studies on environmental due diligence which will provide examples of salient environmental risks and how they are being mitigated through supply chain due diligence.

[27] The Responsible Supply Chains in Asia programme. OECD. http://mneguidelines.oecd.org/globalpartnerships/responsible-supply-chains-asia