

Strategies for Responsible Business Conduct

December 2018

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Executive Summary

The aim of the research is to learn from other instruments and strategies that promote RBC

The Dutch Ministry of Foreign Affairs (MFA) commissioned this research with the aim to identify government-led instruments and strategies that encourage, promote and enforce Responsible Business Conduct (RBC). The main purpose of the report is for it to serve as a source of policy learning. Its main research question is *'In what ways can governments ensure businesses to comply with the OECD Guidelines for Multinational Enterprises?'*

We applied five steps in answering the research questions

This report answers the research questions by applying a structured methodology composed of five steps.

Step 1: We selected thirteen instruments and strategies in target countries for research.

Step 2: For each of these thirteen instruments and strategies, we developed descriptive fiches.

Step 3: We mapped the instruments and strategies in terms of coverage, focus and underlying mechanisms.

Step 4: The reference group selected seven instruments and strategies for further research based on their potential relevance in the Dutch context, their characteristics and the availability of information.

Step 5: We conducted seven in-depth case studies looking at the aim, the strategy, monitoring and evaluation plans, effectiveness and implementation experience of the selected instruments and strategies.

Limitations to this study relate to the document analysis, representativeness of the case studies and varying levels of data availability

This research provides learnings from a diverse set of instruments and strategies from varying OECD countries. We aimed to show the breadth of types of instruments and strategies available and not to provide an overview of all countries and all their existing instruments and strategies that encourage, promote and enforce RBC. The amount of available data per case study differs. This has to do with the implementation cycle of the initiative itself and the amount of research into certain instruments and strategies as opposed to others. We also concluded that certain data was not available to the researchers that could have been relevant for this study such as data on implementation costs of the different instruments and strategies.

In light of the purpose of policy learning, we implemented an approach based on literature review and interviews with a select number of individuals from different stakeholder groups (NGOs, government and the corporate sector). As the aim was not to conduct evaluative research ourselves, we did not intend to select a representative group of interviewees. We used the interviews to illustrate different viewpoints on the selected instruments and strategies. These viewpoints are, however, not representative for the entire stakeholder groups, nor are they exhaustive. In addition to identifying relevant documentation ourselves, interviewees provided suggestions on relevant documentation to include in this research. These documents were selected with due care based on their relevance in this context, but we did not validate the findings from these documents.

We identified six main takeaways relevant for the development of new instruments or strategies

This research analysed thirteen different instruments and strategies that encourage, promote or enforce RBC and conducted seven in-depth case studies that formed the basis for answering the research questions. The focus (on a single or all OECD risks) and sectoral coverage of the analysed instruments and strategies differ, as does their underlying mechanism for the implementation. Some are voluntary and depend on stakeholder (such as NGOs or other companies) or consumer pressure for enforcement, while others have a mandatory nature and include a threat of litigation or fines.

Specifically about coverage, some of the instruments included focus on a single risk (e.g. modern slavery, conflict financing) while others have a broad scope. The latter category instruments leave it to the companies affected to carry out their own risk assessment, identify the actual and potential human rights risks that are salient to their business and act on these. This is an important difference and it can be argued that broad-scoped instruments are therefore more in line with the notion of human rights due diligence as outlined in the UNGPs.

Instrument or strategy	Country
Modern Slavery Act (New South Wales)	Australia
Canadian Ombudsperson for Responsible Enterprise	Canada
CSR requirement in the Danish Financial Statements Act	Denmark
Law on Duty of Vigilance	France
National Action Plan for Business and Human Rights	Germany
Partnership for Sustainable Textiles	Germany
National Action Plan for Business and Human Rights	Italy
Statement of Corporate Social Responsibility	Norway
Global Deal Partnership	Sweden
Responsible Business Initiative	Switzerland
Modern Slavery Act, Section 54	United Kingdom
California Transparency in Supply Chains Act	United States
Dodd-Frank Act Section 1502	United States

Table 1: Thirteen instruments and strategies researched in this study (in-depth case studies are in bold)

We selected the instruments and strategies based on their expected relevance in the Dutch context and analysed the transferability of the instruments and strategies in the second step of this research. The institutional and contextual framework in a country plays a role in determining the transferability of RBC instruments or strategies. These can include the presence of active or conscious consumers, a baseline level of reporting integrity and overall maturity of non-financial reporting among targeted companies. Other components that we identified as relevant for the transferability are well-embedded practice of stakeholder coordination, consultation and social dialogue. We did not find any initial barriers for the replication of the researched strategies or instruments in the Dutch context.

We have identified five key takeaways from our study:

1. The way in which governments present the aims of the various instruments and strategies differs substantially. In some cases, governments formulated the aims at an impact level (e.g. decreasing human rights violations) whereas others focus more on an output level (e.g. improve company-level reporting). For new instruments and strategies, we recommend defining a clear Theory of Change including envisioned short-term results and longer-term

impacts as well as underlying assumptions. This enhances the understanding of the purpose of an instrument or strategy and forms the basis of all monitoring and evaluation efforts.

2. A variety of stakeholders played a role in the development of the instruments and strategies that are part of this research. In some cases, key political figures drove the development of the instrument or strategy, while in other cases investors played an important role. Finally, civil society and NGOs have been important drivers in initiating the development of many instruments or strategies. By actively campaigning for sustainable business practices and due diligence, NGOs encouraged governments to take action in this domain. We therefore conclude that it is important to have consultations or dialogue with a variety of stakeholders in the development of new instruments and strategies.
3. We concluded that not all stakeholders always interpret the instruments or strategies in the same way. Company interviewees are not always clear about what government expects from them, and in a number of cases it is not clear how many companies actually are obliged to report. Company representatives spoken to in this research indicated that additional guidelines (for instance those drafted by NGOs) are valuable and help in building a common understanding around expectations and guidelines. Therefore, we recommend providing clear guidelines and step-by-step approaches on instruments or strategies initiated.
4. We observed that even though the general idea of the RBC instruments and strategies is to conduct due diligence to reduce human rights violations and environmental harm, companies still often treat instruments or strategies as a reporting requirement. Stakeholders we talked to indicated that a number of companies do not really focus on identifying, prioritizing and managing risks, but rather treat due diligence as a 'check the box' exercise. In other words, companies seem to be acting in line with the 'letter' of the law rather than acting in the 'spirit' of the law and incorporating due diligence in all aspects of business. We therefore recommend that new instruments and strategies should encourage, promote and enforce the implementation of all steps of the due diligence cycle, as opposed to focusing solely on reporting.
5. Limited formal monitoring and evaluating take place on the workings of RBC strategies and instruments. In some cases, informal monitoring is conducted (e.g. by NGOs), and mostly on output level. As a result, there is hardly any evidence on the effectiveness of RBC instruments and strategies. This makes it hard to answer very important questions as to how to generate tangible impact on RBC through public policy. We recommend developing a monitoring and evaluation plan for any new instrument or strategy. Only by measuring outputs, outcomes and impact from the start of an instrument or strategy, it becomes possible to determine actual effectiveness.

Other recommendations for further research include analysis of the effectiveness of mandatory versus voluntary initiatives, the role of enforcement in the effectiveness of an instrument or strategy and the validation of underlying assumptions of the theory of change.

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1. Introduction

The aim of the research is to learn from other instruments and strategies that promote RBC

The Dutch Ministry of Foreign Affairs (MFA) commissioned this research with the aim to identify instruments and strategies that other OECD governments implement to encourage, promote and/or enforce Responsible Business Conduct (RBC) and fulfil their international obligation under the OECD guidelines for Multinational Enterprises (MNEs) and UN Guiding Principles on Business and Human Rights (UNGPs).

The main purpose of the report is for it to provide policy learning. The report provides information about when other governments use certain RBC-strategies or instruments, why governments choose a certain strategy, whether there are data on their effectiveness and impact or – if no evaluation is available yet – about intended monitoring and evaluation exercises.

The research aims to answer the main research question through four sub-questions

This report answers the following question: *In what ways can governments ensure businesses to comply with the OECD Guidelines for Multinational Enterprises?*

The MFA divided this main question in the following sub-questions:

1. What policy instruments and strategies are used by governments to encourage, promote or enforce responsible business and ensure companies conduct due diligence in line with the OECD Guidelines and UNGPs?
2. What is the specific goal that these strategies and instruments envision to achieve? What is the evidence and/or rationale for governments to select a certain RBC strategy or instrument?
3. What are the experiences of companies, governments (including supervisory authorities), CSO's and sustainability initiatives with the policy instruments? What works well, and what could be improved?
4. What is already known on the effectiveness of the policy instruments, and/or how is or will the effectiveness be monitored and evaluated?

We applied five steps in answering the research questions

This report answers the research questions by applying a structured methodology. The steps in figure 1 structure the research process and are further explained in chapter two. The reference group, consisting of experts in the field of RBC, took an important role in shaping the selection of the cases (step 4) and reviewing the content of the case studies and main conclusions (step 5).

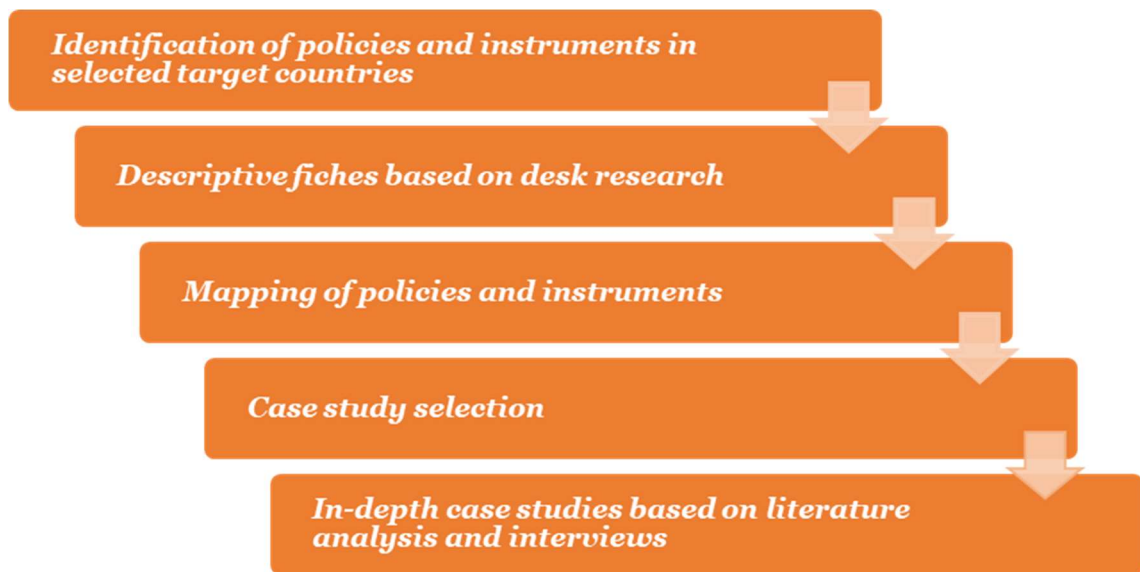


Figure 1: Research approach

Limitations to this study relate to the document analysis, representativeness of the case studies and varying levels of data availability

This research provides learnings from a diverse set of instruments and strategies from varying OECD countries. We selected these countries, as they all have to fulfil their international obligation under the OECD guidelines and UNGPs and potentially have interesting RBC strategies and instruments. Together with experts from these countries, we selected those instruments and strategies that portray diverse characteristics. We aimed to show the breadth of types of instruments and strategies available and not to provide an overview of all countries and all their existing instruments and strategies that encourage, promote and enforce RBC.

In light of the purpose of policy learning, we implemented an approach based on literature review and interviews with a select number of individuals from different stakeholder groups (NGOs, government and the corporate sector). As the aim was not to conduct evaluative research ourselves, we did not intend to select a representative group of interviewees. We used the interviews to illustrate different viewpoints on the selected instruments and strategies asking the interviewee to share his or her own experience with the design, implementation or monitoring of an RBC instrument. These viewpoints are therefore not representative for the entire stakeholder groups, nor are they exhaustive.

In addition to identifying relevant documentation ourselves, interviewees provided suggestions on relevant documentation to include in this research. This includes official government documents, monitoring reports, websites, research papers, news articles and position papers that provide perspectives from different stakeholders. These documents were selected with due care based on their relevance in this context, but we did not validate the findings from these documents.

The amount of available data per case study differs. This has to do with the implementation cycle of the initiative itself: while some (like the US Dodd Frank 1502) have been in place for nearly a decade, others (like the Swiss RBI) are still discussed in Parliament and have not been implemented yet. In addition, more research has been conducted into certain instruments and strategies as opposed to others that result in varying levels of availability of information.

We also concluded that certain data was not available to the researchers such as data on implementation costs of the different instruments and strategies. This could have been valuable information that influences the extent to which an instrument or strategy is relevant for the Dutch

context, including the extent to which a given RBC instrument or strategy can feasibly be replicated in the Netherlands. However, this was unfortunately unavailable or insufficiently reliable to include in this research.

Chapter 2 covers methodology, chapter 3 covers the case studies and chapter 4 provides answers to the research questions

Chapter 2 provides more explanation on the methodology and chapter 3 provides in-depth case studies of seven selected instruments and strategies. Chapter 4 concludes by summarizing the findings of the different case studies. It answers the sub-questions and thereby provides insight into the ways in which governments can encourage, promote and/or enforce businesses to comply with the OECD Guidelines for MNEs and the UNGPs.

2. Methodology

The research commenced with the selection of target countries and relevant instruments and strategies in these countries

In consultation with the MFA, we selected twelve target countries as they all have to fulfil their international obligation under the OECD guidelines and UNGPs and potentially have interesting RBC strategies and instruments:

Australia	Canada	Denmark	France
Germany	Italy	Japan	Norway
Sweden	Switzerland	United Kingdom	United States

Interviews with RBC professionals in these countries determined if relevant RBC strategies and instruments are present in these countries. We selected thirteen instruments and strategies based on expert opinions and the following criteria:

- Encouraging and/or enforcing sustainable behaviour and RBC in the value chain in line with the OECD Guidelines for MNEs and the UNGPs;
- Either new, ongoing or completed in the last three years;
- Prioritising strategies and instruments with:
 - a substantive size; and/or
 - a large (potential) impact; and/or
 - an innovative approach.

The selected strategies and instruments are (those in bold were selected for the case study phase):

Instrument or strategy	Country
Modern Slavery Act (New South Wales)	Australia
Canadian Ombudsperson for Responsible Enterprise	Canada
CSR requirement in the Danish Financial Statements Act	Denmark
Law on Duty of Vigilance	France
National Action Plan for Business and Human Rights	Germany
Partnership for Sustainable Textiles	Germany
National Action Plan for Business and Human Rights	Italy
Statement of Corporate Social Responsibility	Norway
Global Deal Partnership	Sweden
Responsible Business Initiative	Switzerland
Modern Slavery Act, Section 54	United Kingdom
California Transparency in Supply Chains Act	United States
Dodd-Frank Act Section 1502	United States

Table 2: Thirteen instruments and strategies researched in this study

We developed descriptive fiches and mapped the thirteen selected instruments and strategies

The descriptive fiches contain a concise summary of the specific policy fundamentals and describe these strategies and instruments. We used mainly desk research to complete the fiches, and mapped the instruments and strategies into four quadrants¹ based on three criteria (figure 2):

- **Coverage:** whether the instrument or strategy focuses on a specific sector (such as the Partnership for Responsible Textiles) or covers the whole economy (such as the Swiss Responsible Business Initiative);
- **Focus:** whether the instrument or strategy focuses on one specific risk (such as the UK Modern Slavery Act) or covers all OECD risks (such as the French Duty of Vigilance law)²;
- **Underlying mechanisms to ensure companies adhere to the instrument or strategy:** Whether the enforcement of the instrument or strategy is dependent mainly on 1. stakeholder pressure, on 2. stakeholder and consumer pressure or on 3. the threat of litigation/fines in combination with stakeholder and consumer pressure. These underlying mechanisms build on each other (are cumulative) assuming that stakeholder pressure is always present and consumer pressure is always present where the threat of litigation or fines exist.

The six descriptive fiches of instruments and strategies that were not included in the case studies are included in Annex A.

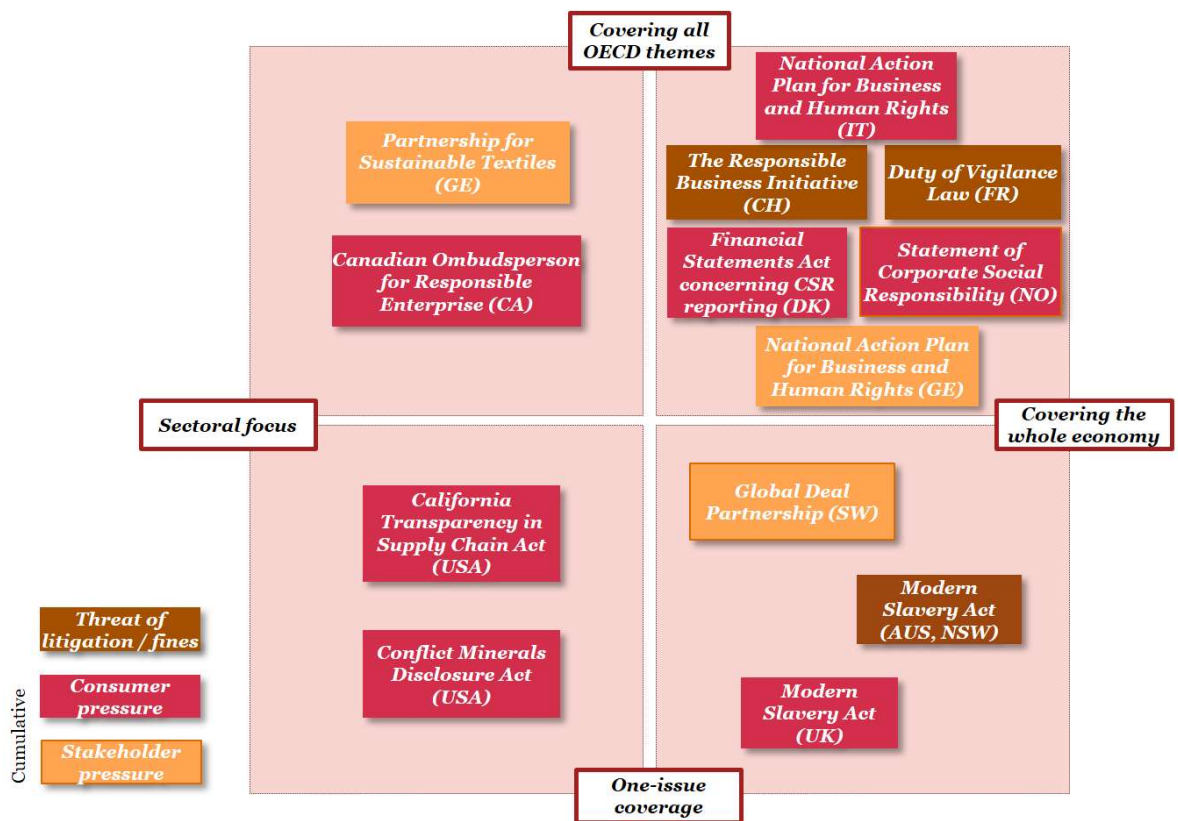


Figure 2: Mapping framework of the thirteen fiches³

¹ Within the quadrants we did not make a distinction along the lines of the axes providing a more gradual view of the extent to which an initiative is purely sectoral or one risk focused versus a broad focus or coverage.

² Disclosure, Human Rights, Employment and Industrial Relations, Environment, Combating Bribery, Bribe Solicitation and Extortion, Consumer Interests, Science and Technology, Competition and Taxation.

³ Inspired by Change in Context, 2018, Government policy to stimulate international RBC 2018-0911/AK/mp/vd

Selection and implementation of case study research

The fiches and mapping served as important sources for the reference group to select seven cases for in-depth research. The reference group applied the following reasoning in selecting these seven case studies:

- An instrument or strategy from each quadrant in the mapping;
- At least one instrument or strategy that is based mainly on stakeholder pressure, at least one other that is based on consumer pressure in combination with stakeholder pressure and at least one that also applies the threat of fines or litigation;
- Prioritising those instruments and strategies for which more information exists.

Although the Canadian and Swiss initiatives are not yet operational, the reference group decided to include them as well due to their distinct nature and innovative approaches. Due to their implementation status, these case studies are light versions of the full case studies that we conducted for the remaining five initiatives.

Full case studies	
CSR Requirements in the Danish Financial Statements Act	Denmark
Duty of Vigilance Law	France
Partnership for Sustainable Textiles	Germany
Modern Slavery Act, Section 54	United Kingdom
Dodd-Frank Act, Section 1502	United States
Light case studies	
Canadian Ombudsperson for Responsible Enterprise	Canada
Responsible Business Initiative	Switzerland

The level of detail differs between the cases due to different stages of implementation of the instruments and strategies as well as the amount of the available information. The cases cover different areas:

1. Aim: the aim of the instrument or strategy as it is formulated in official documentation.
2. Strategy: strategic drivers and choices for designing the strategy or instrument as well as the link to the components of the due diligence cycle. Specifically with regards to the due diligence cycle, we used a five-step model based on the UN Guiding Principles on Business and Human Rights (UNGPs). The steps are defined in accordance with the UNGPs and with guidance provided by the non-profit center for business and human rights Shift.
3. Theory of Change: the (assumed) causal pathway that leads to long-term impact.
4. Monitoring and Evaluation: indicators, frequency and content of monitoring and evaluation.
5. Effectiveness: the actual and perceived effectiveness of the strategy or instrument.
6. Implementation experience: experience of companies with implementation of the instrument or strategy.

We note that the way in which governments present the aims of the various instruments and strategies differs substantially. In some cases governments formulated the aims at an impact level, such as is the case with the Dodd Frank Act on conflict minerals disclosure that aims to promote peace and security in the DRC, whereas others focus more on an output level. The latter for instance is the case for the French Law on Duty of Vigilance which aims to ensure companies conduct due diligence to identify and prevent risks of adverse impacts on human rights and fundamental freedoms, health and safety of persons and the environment. We chose to stay close to the aims mentioned in the official documentation while elaborating on effects on the different levels of the Theory of Change.

Interviews and literature analysis provide the information used in the case studies. We conducted interviews with stakeholders of three different stakeholder groups: government, companies, and civil society. The Canadian and Swiss cases only cover the first three of the abovementioned areas, as no information on monitoring, evaluation, effectiveness, and implementation experience is available yet due to their implementation status.

3. Case studies

CSR requirement in the Danish Financial Statements Act

Country	Denmark	Scope, focus and enforcement	<ul style="list-style-type: none"> • Whole economy • All sectors • Mandatory
First year of implementation	2008 (with revisions in 2016 and 2018)	Sector(s)	All
Types of companies targeted	<p>Companies that meet the following criteria:</p> <ul style="list-style-type: none"> • Listed companies and state owned enterprises • Companies that exceeds at least two of the three size limits in two consequent years: <ol style="list-style-type: none"> 1) Balance sum of 156 million. Kr.; 2) Revenue of 313 million. Kr.; 3) An average number of 250 employees (full-time). 	Number of companies covered	Approximately 1,100 Danish companies

Aim

The aim of the CSR reporting requirement is to improve the extent to which companies report on CSR

Corporate Social Responsibility (CSR) pushes companies to act responsible concerning their impact on society.⁴ It is to identify, prevent and mitigate any adverse impacts. CSR is about maximising companies' positive value creation, as well as minimising current and potential negative impacts stemming from the business activities. The aim of the CSR requirement in the Danish Financial Statements act is to enhance the active position of businesses on social responsibility and communicate this on a global level.⁵ Although the law refers to CSR, it is in line with the OECD's use of the term Responsible Business Conduct.

Strategy

Political commitment is the main strategic driver to design the CSR reporting requirement

The Danish authorities have given high priority to supporting corporate social responsibility initiatives. As stated by one interviewee with a Danish business representative, the Danish Government wanted to be the first one in Europe to have a CSR-reporting requirement in place and stimulate other

⁴ Danish Business Authority, [Implementation in Denmark of EU Directive 2014/95/EU on the disclosure of non-financial information](#), Danish Business Authority, 2014.

⁵ Danish Business Authority, [Implementation in Denmark of EU Directive 2014/95/EU on the disclosure of non-financial information](#), Danish Business Authority, 2014.

countries to implement similar requirements. Starting in 2009, large Danish companies have had a legal obligation on CSR reporting. This obligation works through a comply-or-explain mode, meaning that companies either have to comply with the CSR reporting requirements or explain why they are not complying.

When looking back at the negotiations around the CSR reporting requirement, NGO representatives we spoke to had the impression that there was a pushback from companies to implement the new requirement, but the companies interviewed did not share this point of view.

None of the European or international guidelines inspired the CSR reporting requirement

The Danish Government became active in the CSR field at an early stage. In 2008, the Danish Government created a strategy (Action Plan) to promote CSR. The Government stressed that CSR should be approached using the framework provided by the UN Global Compact, the 'principle-based approach' in particular.⁶ One of the key action areas following the Action Plan is promoting businesses' social responsibility through government activities. The Government made it mandatory for public limited companies to report on CSR in the management's review of the annual report by passing the CSR reporting requirement in 2008.⁷

The Danish CSR reporting requirement also served as an inspiration to European law. In 2013, the Commission started adopting proposals to enhance business and used the Danish CSR reporting requirement as an inspiration for art. 19 of the EU Directive 2014/95/EU.⁸ In 2015, the Danish Parliament revised the regulations due to the new EU-directive on non-financial reporting adopted in 2014,⁹ with enforced stricter requirements.

Flexibility of the law and assisting companies with compliance were the strategic choices made in designing the CSR reporting requirement

The Danish Government supports Danish companies to fulfil their social responsibility while also running a profitable business. To increase the number of companies reporting, the Government was involved in the development of a number of guidelines and web-based tools, which make it easier for companies, suppliers and buyers to engage in CSR. CSR reporting requirement is based on flexibility and has a "comply or explain" approach, in which businesses have the option of either complying with the CSR reporting requirement or explaining why the company does not comply with the CSR reporting requirement.

The steps of due diligence are not in particular relevant for the CSR reporting requirement

In the CSR reporting requirement, due diligence is not a mandatory area to be disclosed. It is expected that due diligence procedures are described for each action under the mandatory topics. However, if due diligence processes have not been undertaken, the company is not required to disclose them.

⁶ UN Global Compact, [Guidelines on a principle-based approach to the Cooperation between the United Nations and the business sector](#), 2015.

⁷ The Danish Government, [Action Plan for Corporate Social Responsibility](#), 2008.

⁸ [Directive 2014/95/EU](#) of the European Parliament and the Council, [disclosure of non-financial and diversity information by certain large undertakings and groups](#), 2014.

⁹ [Idem](#).

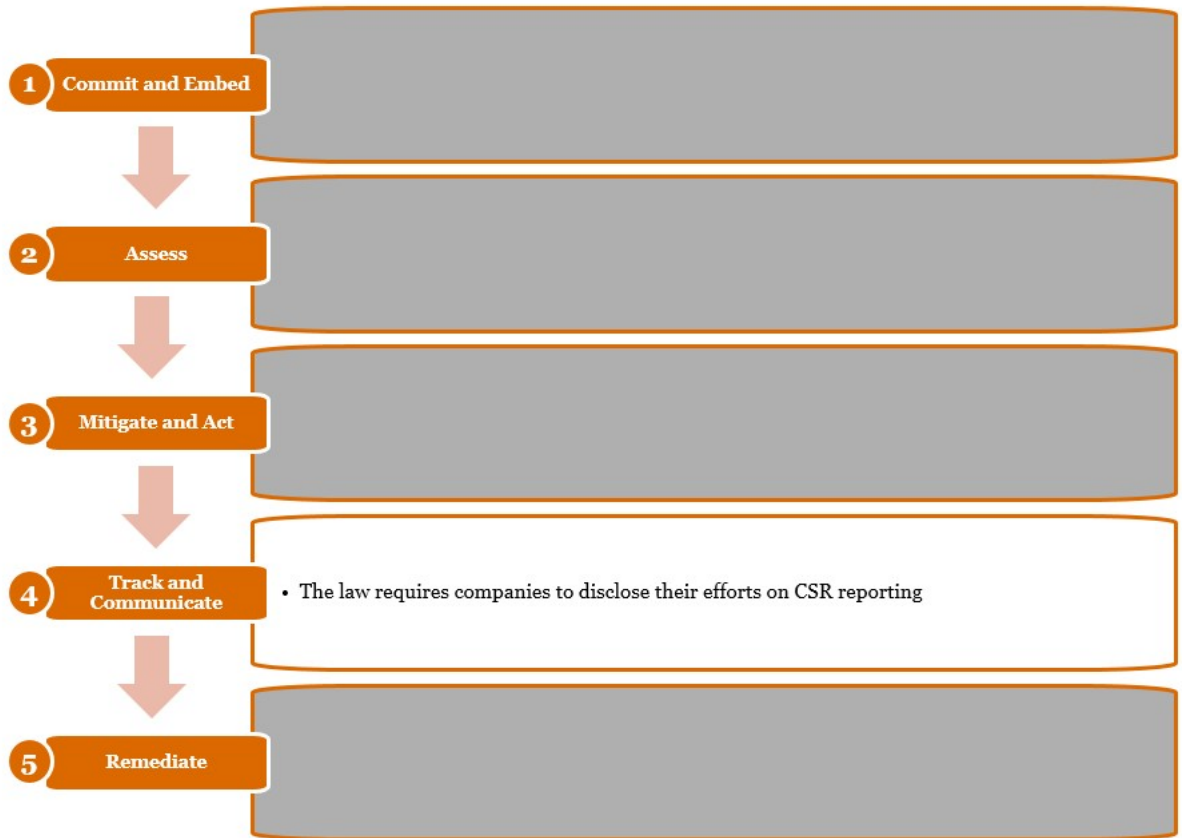


Figure 3: Due diligence steps for targeted Danish companies

Theory of Change

In this section, we analyse and reconstruct the Theory of Change that underpins the CSR reporting requirement. Figure 4 shows the chain of results that, in theory, leads the activities of the reporting requirement to bringing about less violations with regard to human rights, social conditions, environmental and climate issues, as well as anti-corruption measures.

CSR being an integral part of the overall business is an assumption that is underlying the Theory of Change

First, the law has a comply or explain approach, meaning that companies have the choice to either report on the CSR requirement, or explain why there is no CSR policy in place. The assumption is that companies will choose to comply rather than explain. Only when companies choose to “comply” and not choose to “explain” why they do not have a CSR policy, companies can improve their CSR efforts. Finally, this should lead to less violation with regard to human rights, social conditions, environmental and climate issues and anti-corruption measures.



Figure 4: Reconstruction of the Theory of Change of the CSR requirement

Monitoring and Evaluation

Monitoring efforts used to take place on a yearly basis but have ceased

The Government does not have an official monitoring scheme. The Danish Business Authority (DBA) noted that they used to monitor on a yearly basis. However, they stopped doing this five years ago, because it is a costly and time-consuming procedure. Also, since the scope of the CSR reporting requirement changed in 2016, the reporting burden has become bigger for companies. Instead, in 2013 the DBA has analysed 24 of the larger companies and described five best-practice cases.¹⁰ In theory, everyone can monitor the implementation of the act by accessing financial statements of the companies and analysing the CSR sections of these reports.

Previous monitoring activities

Several companies and organisations have been involved in publishing reports on the CSR reporting progress over the last years. The Danish Business Authority¹¹ for example has published an overview of experiences and key results of compliance with Danish CSR reporting after three years of mandatory CSR reporting for the years of 2009, 2010 and 2011.¹² In 2017, FSR – Danish Auditors, a

¹⁰ Global CSR for the Danish Business Authority, [Pioneering CSR – An analysis of Danish frontrunners in Corporate Social Responsibility](#), 2013.

¹¹ The [Danish Business Authority](#) is responsible for the main business in Denmark. The goal is to improve the competitiveness of Denmark and to make it more attractive to run a business in the country.

¹² Danish Business Authority, [Danish CSR Reporting](#), 2012.

trade organisation of auditors, commissioned an analysis of the 2016 CSR reporting of Danish listed companies with more than 500 employees and headquarters in Denmark.¹³

Public reports show that, in the past, six broad indicators have been used to monitor performance and mainly focused on the output level.^{14 15}

1. Whether CSR reporting has been done by companies and whether reporting continues the years after;
2. Whether CSR reporting has been reviewed by the management of the company;
3. Whether the main discussed issues are in the reports;
4. The number of companies reporting on policies, execution and results;
5. Whether an international framework of reference is applied;
6. Degree of consistency of the information.

Reports that used these indicators describe the extent to which companies comply with the legal requirement and their reporting practice. These reports do not go into the extent to which the reporting efforts actually lead to better business practices.

No formal evaluation has been planned

As stated in the interviews with both NGO and business representatives, no formal evaluation of the CSR reporting requirement is scheduled yet.

Effectiveness

It is not clear what the effectiveness of the enforcement of the CSR reporting requirement is

The CSR reporting requirement in the Financial Statement Act states that “the reporting requirement in the Danish Financial Statements Act only applies to businesses that have CSR policies. If a business neither has, nor wishes to establish, social or environmental policies beyond what the legislation requires, they must state that in their management review that they have no CSR policies.”¹⁶ According to the business stakeholders we have spoken to, it is not clear if, and what measurements the Government takes in a case that a company does not comply, neither explains.

Defined targets at an output level relate to total coverage

The Danish Business Authority published a report, which shows reporting results of the 1,000 companies that were required to report on CSR in 2009. About 97% of the companies reporting in 2009 actually “complied”, rather than “explained”.¹⁷ In 2016, Denmark changed the scope of the targeted companies leading to 1,100 companies that are obliged to report.¹⁸ We did not find figures showing the amount of companies that have been reporting since then.

A corporate sector interviewee noted that large companies that were already doing CSR reporting did not need encouragement from the Government. However, this group of large companies consists of 30-50 companies only, which is far from the 1,100 companies targeted by the CSR reporting

¹³ FSR Danish Auditors, [Listed Companies' Reporting on Corporate Social Responsibility, Analysis](#), 2017.

¹⁴ Danish Business Authority, [Danish CSR Reporting](#), 2012.

¹⁵ Danish Business Authority and Copenhagen Business School, [Corporate Social Responsibility and Reporting in Denmark, Impact of the third year subject to the legal requirements for reporting on CSR in the Danish Financial Statements Act](#), 2012.

¹⁶ Danish Business Authority, [Implementation in Denmark of EU Directive 2014/95/EU on the disclosure of non-financial information](#), 2014.

¹⁷ Danish Business Authority and Copenhagen Business School, [Corporate Social Responsibility and Reporting in Denmark, Impact of the legal requirement for reporting on CSR in the Danish Financial Statements Act, 2010](#).

¹⁸ Danish Business Authority, [Implementation in Denmark of EU Directive 2014/95/EU on the disclosure of non-financial information](#), Danish Business Authority, 2014.

requirement. Especially the comparatively smaller companies out of this group of 30 – 50 large companies needed some encouragement to embark on more systematic CSR reporting. Therefore, the CSR reporting requirement imposed by the government did lead to CSR reporting by a larger number of companies.

Some companies have an independent auditor reviewing their CSR report within the financial report. According to one of the interviewees, this is an effective method of stimulating companies to comply with the CSR reporting requirement and in addition ensures compliance of CSR reporting. However, companies are not required by law to have an independent auditor. Also, auditors are not required to look at the content of the reports. Subsequently, their influence is limited to compliance with the requirement and does not extend to actual business conduct.

Effects on outcome and impact level are unknown

The CSR reporting requirement originally aimed at stimulating organisational change. However, it has been argued that monitoring has focused solely on compliance in the sense of submitting reports, partly due to a failure by the authorities to effectively explain the importance of the learning objective to companies, media, scholars and NGOs. Academic research on corporate engagement with the directive suggests that whereas firms that engaged in voluntary CSR reporting prior to reporting becoming mandatory did so with a learning objective, while those that did not previously develop CSR reports mainly focused on compliance.¹⁹

Several strengths and weaknesses influence the effectiveness of the Danish CSR requirement

Strengths:

- A business representative stated during an interview that the requirement has led to improvements, awareness and understanding in the transparency of Danish companies working on sustainability and CSR.
- CSR reporting has confronted companies and forced them to take responsibility.
- CSR has become a topic discussed in the top management of the companies.

Weaknesses:

- Denmark kept its comply or explain model with regard to risk reporting, whereas the EU Directive does not give the opportunity but obliges companies to report on risks²⁰.
- An civil society interviewee stated that the focus is still too much on ticking the boxes of reporting, rather than actually working towards solving human rights issues and environmental issues. Non-financial reporting information is framed in the paradigm of company interests, and not in terms of potential victims or damage to the environment.
- The interviewee also mentioned that Denmark is considering including the Safe Harbour clause at the moment, which gives companies the opportunity to opt-out from reporting in case of trade related confidential information. This gives the companies freedom in the consideration whether they should report or not.

¹⁹ K. Buhmann, [Neglecting the Proactive Aspect of Human Rights Due Diligence? A Critical Appraisal of the EU's Non-Financial Reporting Directive as a Pillar One Avenue for Promoting Pillar Two Action](#), 2017.

²⁰ Danish Business Authority, [Implementation in Denmark of EU Directive 2014/95/EU on the disclosure of non-financial information](#), Danish Business Authority, 2014.

Implementation experience

The experience with implementing the CSR reporting requirement has both positive and negative aspects

Business representatives mentioned several aspects with regard to positive implementation experiences during the interviews. First, tools such as guidelines, conferences, web-materials covering reporting principles, guidelines and standards help companies with their CSR reporting. As a result, many companies have become better at reporting over the last years. Also, companies learn from each other's CSR reports. Finally, CSR is more and more rooted in the top management of companies, which is where the strategy of the companies is determined.

Some negative implementation experiences were also mentioned during these interviews. First, the administrative burdens for the companies increased. Companies have been searching for the right way to comply and report in the best possible way, which is costly and time consuming. Second, requirements of the law are not specific enough according to NGOs. It is unclear for NGOs how companies can prove effective compliance with the CSR reporting requirement.

Unforeseen difficulties arise from the collaboration between departments within a company

One business representative stated in an interview that it is difficult to be in a function having responsibility over CSR reporting. First, there is the dependency of other colleagues from other departments to gather relevant information in order to do CSR reporting. This is more difficult than expected, because not all departments are making time to cooperate on CSR reporting. Second, there is a certain standard of quality, which has to be met, which takes time and effort. This may indicate a gap between the overall goal of the instrument, which appears to strive for a holistic approach to RBC within companies, and the perception of the instrument by private-sector actors that would like to fulfil this reporting requirement with high levels of efficiency.

German Partnership for Sustainable Textiles

Country	Germany	Scope, focus, and enforcement	<ul style="list-style-type: none"> • Sectoral • Covering all OECD themes • Voluntary
Year of implementation	2014	Sector(s)	Textiles
Types of companies targeted	<p>Companies active in the textile industry:</p> <ul style="list-style-type: none"> • Brands and retailers • Manufacturers <p>But also other types of organisations:</p> <ul style="list-style-type: none"> • German Government • NGOs • Trade associations, cotton exchange, network platforms and advocate groups • Sustainability standards and certification organisations • Trade unions 	Number of companies covered	Approximately 300 companies active in the German textile industry that could potentially be covered by the Partnership. ²¹ Actual membership is estimated at least 25% lower.

Aim

The aim of the German Partnership for Sustainable Textiles is to improve environmental, social and economic sustainability along the global textile supply chain²²

The Partnership seeks to bring strengths and expertise together of its voluntarily participating members. This should result in achieving a critical mass to improve social, environmental and economic sustainability throughout the textile value chain. The Partnership consists of three pillars:

- **Individual responsibility:** All members of the Partnership are required to implement a roadmap along a predefined template including individual targets on how they will enhance sustainability along supply chains;²³
- **Collective engagement:** Members participate in initiatives in the textile producing countries to improve conditions on the ground; and
- **Mutual support:** the Partnership serves as a learning and dialogue platform.²⁴

²¹ Textilbündnis, [Annual Report](#), 2017.

²² Federal Ministry for Economic Cooperation and Development, [The Partnership for Sustainable Textiles](#), 2014.

²³ Textilbündnis, [The Review Process](#), 2017

²⁴ [German Partnership for Sustainable Textiles website](#)

Political commitment, public attention for the issue, and multi-stakeholder engagement were the main strategic drivers to design this instrument

Serving as an unfortunate catalyst, the Rana Plaza incident in Bangladesh brought the issue of social and environmental standards in global textile production to the forefront.²⁵ This received a lot of media coverage and raised public awareness of the topic in the South-Asian region and the Western World. In addition, political commitment of Gerd Müller, Minister of Economic Cooperation and Development, is one of the main drivers behind this instrument. The Minister initiated the Partnership as one of the first steps towards compliance to sustainability standards and fair trade, topics that are on top of his agenda.²⁶

Moreover, different types of organisations (companies, trade unions, NGOs) were not able to solve the complex issues along the global textile supply chain by themselves. Among these were large companies, who were front-runners and had been investing in projects and activities to address these issues. They felt the need for a more level playing field and for more cooperation. Together with other organisations, including NGOs and trade unions, they opted for this multi-stakeholder initiative with requirements that all organisations could agree on.

The OECD Guidelines, UN Guiding Principles, and ILO's core labour standards were important in shaping the Partnership

The standards of the Partnership are based on OECD Guidelines for MNEs, the UNGPs, and ILO's core labour standards. The Partnership's standards are also influenced by existing systems of standards (e.g. for organic textiles and fair trade), technical industry standards, and voluntary commitments. In addition, given the sectoral focus, it is worth noting that the Partnership's activities and guidelines for reporting are also in line with the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector. However, the partnership does not cover all issues of the Guidance, as freedom of association and discrimination topics are lacking attention.

Creating a partnership instead of regulation, and harmonization with international initiatives were strategic choices made in designing this instrument

According to an interview with a German government official, it was concluded in multi-stakeholder meetings organized by the Ministry of Economic Cooperation and Development that in order to cope with the complex issues along the supply chain, an alliance was needed of stakeholder groups working together to address these issues. That interviewee stated that the choice for a partnership rather than regulation was made during these multi-stakeholder meetings, because implementation time for a partnership would be significantly less. Another reason mentioned in the interviews is that the parties involved believed that through a multi-stakeholder initiative it would be easier to address relevant issues. They believed that regulations would define minimum standards that do not cover all different aspects of issues along the supply chain. Moreover, through a partnership, standards and requirements are more easily amended, expanded and intensified as insights and understanding developed and matured.

Experts indicate that one of the arguments was that there was no majority in the German government to implement a mandatory law, which provides important background. The Partnership was a type of instrument that the Ministry of Economic Cooperation and Development could develop on its own. Finally, these experts explain it is important to note that the German government, beyond the

²⁵ Textilbündnis, [Plan of Action Partnership for Sustainable Textiles](#), 2014.

²⁶ OECD, [Memorandum for the DAC Peer Review of Germany, 2015](#).
2018-0911/AK/mp/vd

Partnership, uses the threat of legislation as a stick for the entire business sector. This stimulates companies to take part in voluntary initiatives such as the Partnership.

One of the goals of policymakers with the Partnership was to align with due diligence processes of different international initiatives. Their idea was to first establish this Partnership at national level, and in a later stage expand it to an international initiative. This international partnership would then be instrumental in creating an international level playing field for companies operating internationally. In 2018, an important step was taken in this regard when the Dutch and German Partnership announced their strategic cooperation.²⁷

The instrument aims to be relevant at all steps of the due diligence process

The Partnership’s guidance on setting individual members’ targets (referred to as the question grid) is based on the UNGPs and the OECD Guidelines for MNEs. It covers all steps of the due diligence cycle, including policy, risk analysis, business practices and supply chain management, monitoring, remedies and complaints mechanisms, communication, and sector wide activities. Figure 5 illustrates the steps across the due diligence process in line with the UNGPs and OECD Guidelines for MNEs. The white boxes echo text from the Partnership’s question grid, which indicates that the Partnership aligns with the standard due diligence process.²⁸

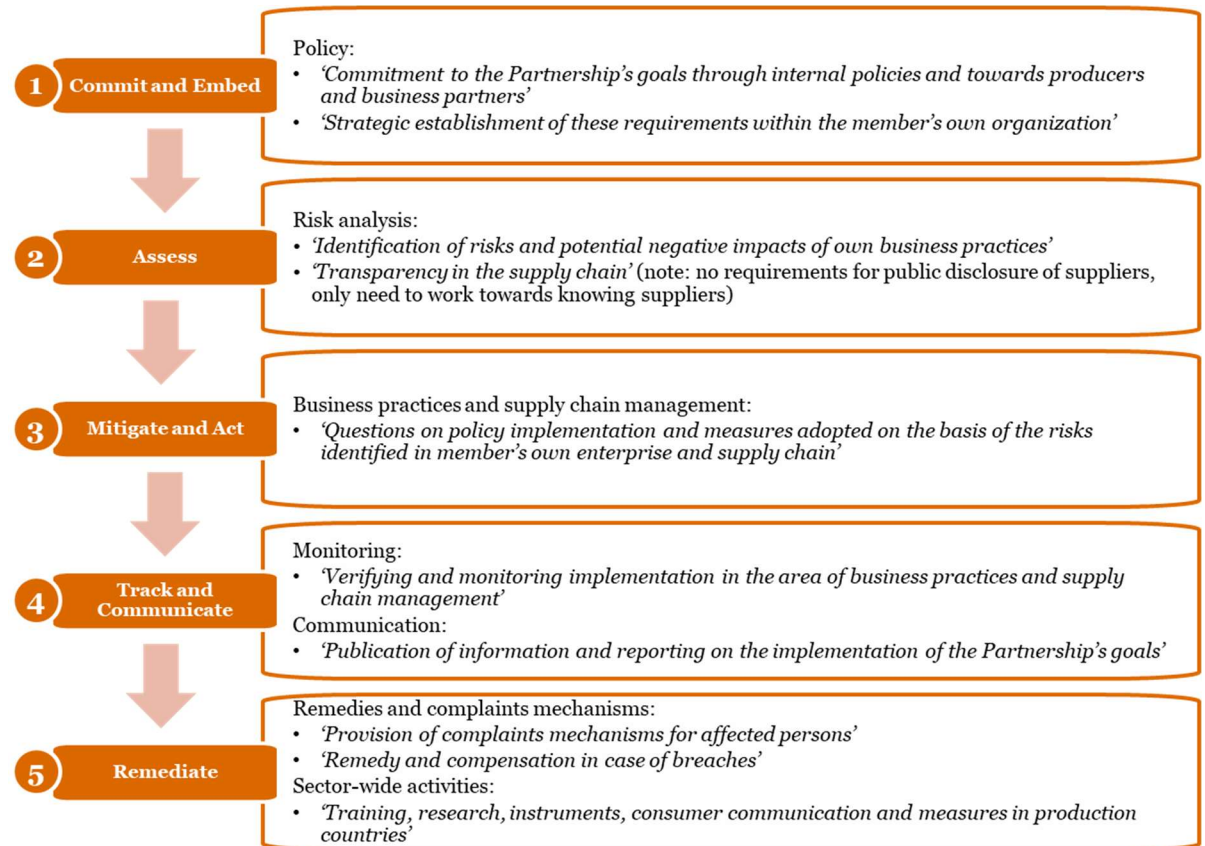


Figure 5: Due diligence steps that are relevant to the Partnership

²⁷ Textilbündnis, [German-Dutch cooperation takes sustainability in the textile sector](#), 2018.

²⁸ Textilbündnis, [The Review Process](#), 2017.

Theory of Change

In this section, we analyse and reconstruct the Theory of Change that underpins the Partnership. Figure 6 shows the chain of results that, in theory, leads the activities of the Partnership to bringing about social, environmental and economic improvements along the global supply chains in the textile sector.

Several assumptions underlie the Theory of Change, including consumer interest and stakeholder pressure, knowledge spill over, commitment of resources, and Partnership leverage

The Roadmaps and Progress Reports of member companies are publicly available. The Theory of Change assumes that this public reporting by private-sector members of the Partnerships motivates them to improve on a yearly basis, while at the same time it positions other stakeholders (e.g. NGOs) to apply pressure on these companies. Together this should help create commitment among company members of the Partnership to achieve their sustainability goals.

In addition, the Theory of Change assumes that different members are eager to teach each other and eager to learn from each other. Part of the value in this multi-stakeholder initiative lies in company front-runners and experienced stakeholders sharing tips and best practices to other participants on relevant matters.

Finally, the instrument is based on the assumption that members will work together in the working groups and ultimately use the Partnership to encourage other parties involved in the supply chain to commit to sustainability goals. It also assumes that the reach of the parties involved is high enough to spur change in global supply chains.

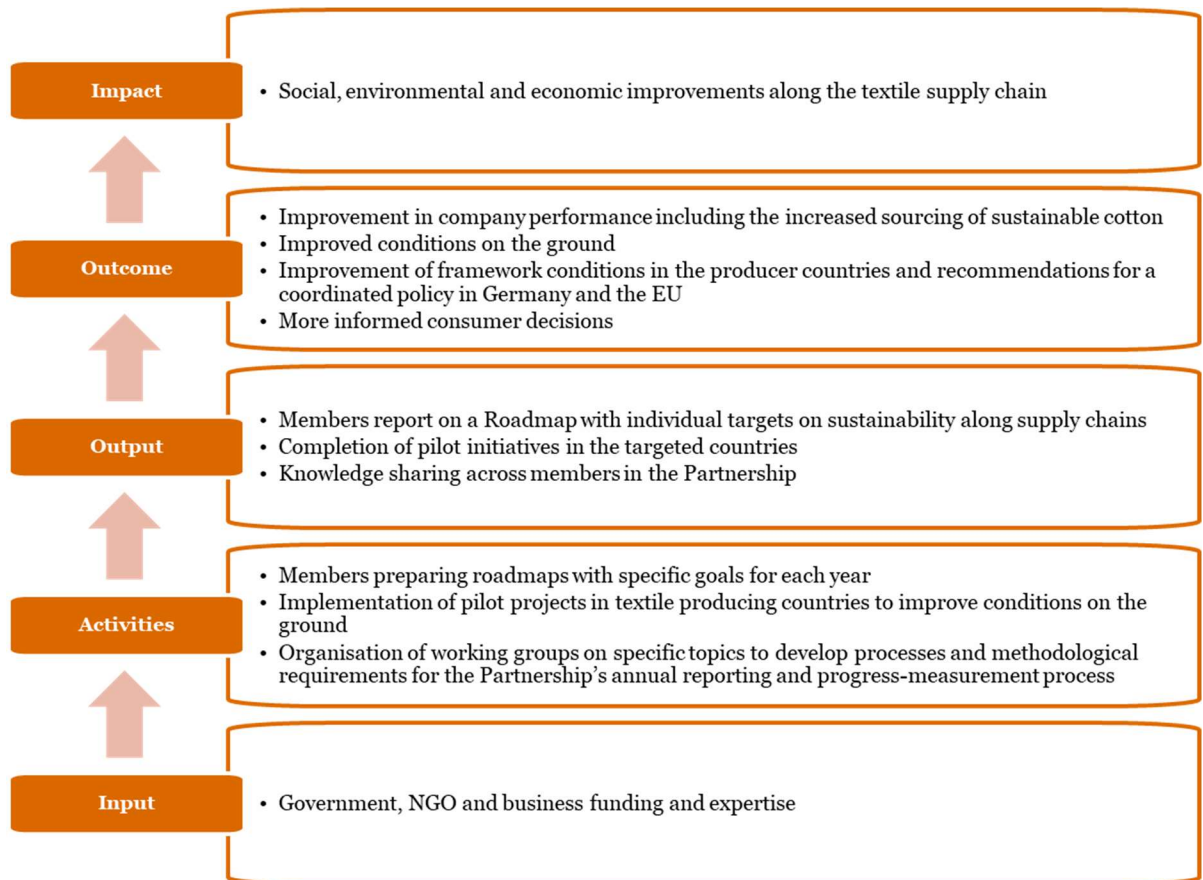


Figure 6: Reconstruction of the Theory of Change underpinning the Partnership

Monitoring and Evaluation

Progress is monitored by looking at performance of the members of the Partnership in the so-called Review Process²⁹

Members publish a yearly Roadmap with targets and planned activities to reach these targets. In their yearly Progress Reports, members show to what extent they realized their plans and achieved their targets. These reports are publicly available. The indicators on which the companies report differ per company, and are based on the key questions and indicators that have been defined by the Partnership through three Specialist Working Groups on Social Standards and Living Wages, Chemicals and Environmental Management, and Natural Fibres. In these topic areas, they cover six different areas related to due diligence:

- Policy;
- Risk analysis;
- Business practices and supply chain management;
- Remedies and complaints mechanisms;
- Communication;
- Sector-wide activities.

²⁹ Textilbündnis, [The Review Process](#), 2017. 2018-0911/AK/mp/vd

An independent service provider reviews these reports. This independent review is valued differently across members of the Partnership. Some members consider the independent review valuable, as it provides an unbiased view of someone not working in their organisation. Others think the independent reviewers do not have enough detailed insights in the challenges member companies are facing in their daily operations. The independent reviewers do not have a mandate to evaluate the quality of the implemented processes or set targets. Subsequently, experts indicate this fuels scepticism towards these reviewers. Next to these progress reports, progress of the Partnership as a whole is covered by monitoring three indicators: the percentage of German textile companies in the Partnership; the number of Roadmaps submitted; and the percentage of sustainable and organic cotton used by the members.³⁰ Information on companies' progress is also aggregated on a Partnership level in the annual report.¹⁰ This discusses general trends on reporting, targets and activities as part of the Partnership.

No formal public evaluation has been planned

As indicated during the interviews, no formal public evaluation of the instrument has been conducted or planned. However, an official of the German government indicated that individual members evaluate their own experiences after each review process. These member evaluations are not publicly available.

Effectiveness

Effectiveness of enforcement depends on the value members and other stakeholders give to staying the Partnership

The sanction of the Partnership is to exclude companies if they fail to comply. As mentioned in an interview with a government official, this means that members could face public scrutiny if they are not reporting about the progress they are making on different indicators. So far, certain members have been excluded for that reason, about which the public has been informed. However, up until now the excluded members are smaller companies that did not receive a lot of public attention after being excluded. Larger companies may face more scrutiny when they would leave the Partnership.

An interviewed NGO representative stated it would be helpful to incentivise companies that positively engage the Partnership (e.g. through tax credits). They did not see penalising as beneficial. A company interviewee indicated that if this type of instrument would be mandatory, it would take responsibility away from sustainability experts and this entire issue could end up in the legal department. That would make this matter less about transparency and more about compliance, which would reduce incentives for more responsible business conduct beyond what the law prescribes.

The output target to cover 75 percent of textile companies by the end of 2018 has not been reached, outcomes are unknown

In 2017, the Partnership covered about 50 percent of the textile companies in Germany.³¹ The aim on an output level was to cover 75 percent of all German textile companies by the end of 2018. However, there is a decline in members from 2017 (190)³² to now (130)³³, which can possibly be explained by some of the bottlenecks mentioned below. Another target is for the members to jointly aim to increase their use of sustainable and organic cotton to 35 percent by 2020.³⁴ Nothing was reported on the progress towards this target at an outcome level. There is uncertainty about the size

³⁰ Textilbündnis, [Annual Report](#), 2017.

³¹ Textilbündnis, [Annual Report](#), 2017.

³² C. Bleiker, [Partnership for Sustainable Textiles unraveling](#), 2017.

³³ [German Partnership for Sustainable Textiles Website](#), 2018.

³⁴ Textilbündnis, [Press release: Textile Partnership put their cards on the table](#), 2018.

of the impact in the chain, as it seems to be mostly pilot projects according to interviewees from an NGO and a company.

Several strengths and weaknesses influence the effectiveness of the Partnership

Strengths:

- Success of the Partnership is driven by the fact that the German instrument is joining forces with multiple strategic partners. This is important for international alignment and harmonisation and is something internationally operating companies claim to need in order to keep their workload on this topic balanced.
- Many stakeholders are present to provide a wide range of tools and knowledge for company policies. All interviewees argues that the multi-stakeholder aspect increases the legitimacy of the outcomes.
- According to corporate and civil society interviewees, it creates awareness among companies that never really considered their supply chain's sustainability and is moving them forward. The Roadmap forces them to look what is going on in their supply chain: finding out where their products are being made and asking more probing questions.
- For a larger company, one benefit is aligning smaller German companies on the goals they are aiming for on an international level.
- Companies are publishing their action plans: civil society interviewees indicated that it is interesting to see what actions companies want to take on, as they can act upon that information.

Weaknesses:

- Some companies consider the costs of participating to be too high, which could decrease the number of participants in the Partnership.³⁵
- Companies are at different levels of engagement with the topic, where most large brands are very engaged and many small brands are currently less engaged in sustainability in the global supply chain. It is a challenge to come up with a program that is meaningful for lower capacity companies while not placing an unhelpful burden on the others that are already doing a lot, as stated during an interview with a company representative.
- A multi-stakeholder initiative with many different perspectives makes the process of decision-making long, as it always needs negotiations.
- Companies need to check many different boxes in their reports, which may become a goal in itself. An NGO representative stated in an interview it is difficult for companies to set up their individual strong policies, when the approach is in a set format.
- Although the partnership aims to create a level playing field this is not created as still approximately 50% of the sector has not signed up to it.
- The programme has been developed for the entire industry. In order to be workable for all brands, it must aim at a relatively low level, below the level of the leaders in industry. The worst performing companies have to improve, but for the best companies, the instrument provides no motivation to continue improving, as stated during an interview with a company representative.

³⁵ C. Bleiker, [Partnership for Sustainable Textiles unraveling](#), 2017.
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Implementation experience

Members experience implementation of the Partnership as time consuming and costly

In the eyes of company and civil society interviewees, the creation of the Roadmaps requires a lot of work, as they consider templates to be highly complex to complete. For some smaller companies, complying to the Partnership requirements is too much of an effort and costs too many resources. They claim to already have good insight into their supply chains³⁶, and think this costly exercise does not have added a value. Larger companies state reporting is duplicative, as some are already widely engaged on the issues that the Roadmap requires companies to engage on. They consider it a real burden that they need to do the same thing twice at different international initiatives (e.g. the Higg index).

Unforeseen opportunities and difficulties arisen from the Partnership relate to engagement of smaller members in international negotiations, language barriers and involvement of larger companies

An interviewed company representative considered the engagement of smaller companies in international negotiations as an unforeseen opportunity for large companies. Thanks to the Partnership, these smaller companies were convinced to join international negotiations with the large companies, which increased leverage down the global supply chain.

Multiple interviewees stated that in the beginning language has proven a real barrier. German was the main language, which was an unforeseen difficulty for the English-speaking stakeholders and strongly affected their participation in the Partnership. In addition, the size of Germany and the geographical spread of involved members across the country makes it difficult to physically sit together, discuss the way forward and come to solutions.

Lastly, interviewees from civil society and business indicated that an unforeseen difficulty was the involvement of larger, high-capacity companies. They can provide experience, knowledge and a market push, but there is no incentive for them to be strongly involved in the Partnership. An outstanding question for these companies is how they can be engaged in a way that benefits them as well.

³⁶ C. Bleiker, [Partnership for Sustainable Textiles unraveling](#), 2017. 2018-0911/AK/mp/vd

The French Law on Duty of Vigilance

Country	France	Scope, focus and enforcement	<ul style="list-style-type: none"> • Whole economy • Multi- issue coverage • Mandatory
Year of first implementation	2017	Sector(s)	All business sectors
Types of companies targeted	<p>The law covers any company established in France with:</p> <ul style="list-style-type: none"> • At least 5,000 staff in France, or • 10,000 staff within their combined French and foreign offices over two consecutive years 	Number of companies covered	Estimates shared by interviewees during our research point to a figure of around 170 companies. The official total number is not known.

Aim

The aim of the French Law on Duty of Vigilance is to ensure companies conduct due diligence

The French Law on Duty of Vigilance aims to ensure companies conduct due diligence to identify and prevent risks of adverse impacts on human rights and fundamental freedoms, health and safety of persons and the environment.³⁷ It requires the targeted French companies to establish, publish and implement a vigilance plan that covers the activities of the company, of the subsidiaries that it controls and of the subcontractors and suppliers with whom the company has established commercial relationships.

Strategy

The Rana plaza tragedy and following pressure from NGOs were the initial strategic drivers for this instrument

Back in 2001, France was the first EU country to introduce non-financial reporting when passing the New Economic Regulations Act. It required listed companies to disclose information on the social and environmental consequences of their activity in their annual reports. In 2010, the Grenelle II Act reinforced existing provisions by widening the scope of the law in terms of companies covered and subjects included in the reporting requirement. Companies were required to report according to the “comply or explain” approach.³⁸

Following the Rana Plaza tragedy of 2013, France committed to a legislative process strengthening controls on production chains, including with stricter requirements and legal sanctions. NGOs and trade unions campaigned for four years for the adoption of a French due diligence law, eventually

³⁷ Conseil Constitutionnel, [Décision no 2017-750 DC du 23 mars 2017](#), 2017

³⁸ Ministère de l'Europe et des Affaires étrangères, [France and Corporate Social Responsibility](#), 2018. 2018-0911/AK/mp/vd

leading to the adoption of current duty of vigilance text in March 2017. The French Parliament took the lead in the process, and drafted the text of the law in close collaboration with French civil society. In an Advisory Opinion to the French Government, the commission tasked with drafting the text recalled that the State has a duty to increase its ability to address business-related human rights abuse. This duty exists under Pillar I and III of the UNGPs and may include legally imposing human rights due diligence on businesses, their subsidiaries and commercial partners.³⁹

While the original bill included financial sanctions, the final law does not

The bill initially included a maximum fine of €30 million in the event of damage due to failure to publish or implement a plan, but the French Constitutional Court ruled that such fine was unconstitutional on grounds that the wording of the law is vague,⁴⁰ and many lawmakers feared it would harm the competitiveness of French companies. Therefore, this passage on financial sanctions was removed. The sanction mechanism in place now is of non-financial nature. Interested parties (such as affected individuals or communities) can require judicial authorities to order a company to establish, publish and implement a vigilance plan, or account for its absence.

After receiving formal notice to comply with the law, a company has a three-month period to meet its obligations. When ordering a company to comply, the court may include periodic penalty payments (calculated on daily/ weekly/ monthly basis, as long as the company fails to comply with the court's order). If the company still fails to meet its obligations, a judge could oblige the company to publish a plan. Interested parties may also engage the company's liability through civil action and ask for compensation if the violation of the legal obligation has caused damages.⁴¹ It is worth noting that such mechanisms have not been used in practice yet.

The UNGPs and the OECD Guidelines are a source of inspiration for the law

The explanatory memorandum of the draft law contains a reference to international standards such as the UNGPs and the OECD Guidelines for MNEs as a source of inspiration for the Law.⁴² In particular, the understanding of the notion of due diligence is in line with the UNGPs.

Key strategic choices include the mandatory nature and broad scope of the instrument

NGOs and trade unions pushed for hard law instead of voluntary measures or soft guidance. Also, both Parliament and civil society strived to stretch the scope of the law beyond single issues – in contrast with other comparable due diligence instruments such as the UK Modern Slavery Act or the Dodd Frank Section 1502.

³⁹ S. Brabant and E. Savourey, [French Law on the Corporate Duty of Vigilance, A Practical and Multidimensional Perspective](#), 2017.

⁴⁰ Business and Human Rights Center, [Modern Slavery in Company Operation and Supply Chains: Mandatory Transparency, mandatory due diligence and public procurement due diligence](#), 2017.

⁴¹ European Coalition for Corporate Justice, [French Corporate Duty of Vigilance Law, Frequently asked questions](#), 2017.

⁴² M. Langlois, [Human Rights Reporting in France, A Baseline for Assessing the Impact of the Duty of Vigilance Law](#), 2018.

The law aims to be relevant at all stages of the due diligence process

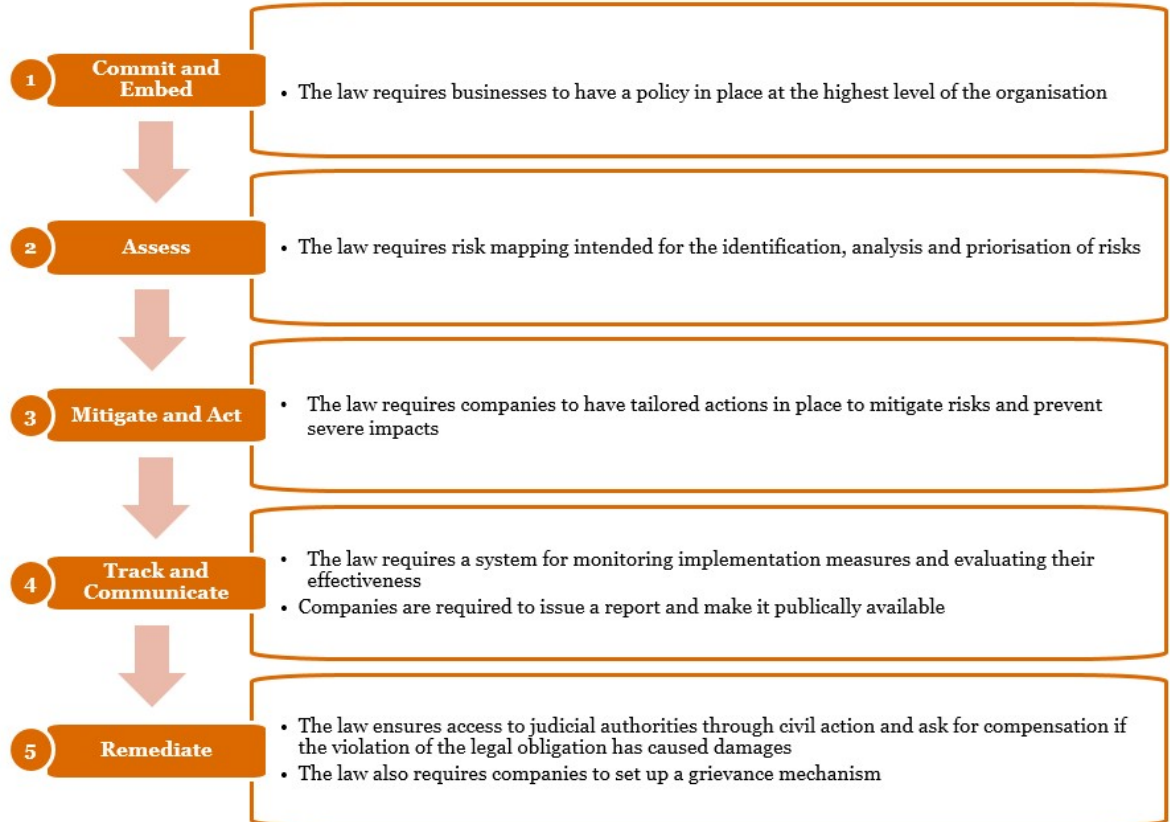


Figure 7: Due diligence steps for targeted French companies

Theory of Change

In this section, we analyze and reconstruct the Theory of Change that underpins the Duty of Vigilance law. Figure 8 shows the chain of results that, in theory, leads the activities of the Act to bringing about reductions of violations on human rights and fundamental freedoms, health and safety of persons and the environment.

Assumptions related to the process of risk mitigation and the difference between the scope of the law on paper and in practice are underlying the Theory of Change

One of the assumptions underlying the Theory of Change is that despite the relatively limited scope of the law (covering around 170 companies according to estimates shared by business and human rights practitioners in France), the actual reach of the instrument is larger. Subsidiaries, subcontractors and suppliers are in scope because they all have established business relations with the company required to design implement and publish a vigilance plan. In the case of subsidiaries, specifically, these are technically part of the parent companies, and therefore are in scope of the law. According to one civil society interviewee, this has led lawmakers and NGOs to speak of a “scope on paper” and a “scope in practice”, assuming a far-reaching impact for the law.

Secondly, another key assumption lies in the link between risk mapping & reporting and the actual mitigation of risks. It is assumed that companies that map and report on the risks they face will also be inclined to address those risks in the way they do business – hence going one step forward than simply disclosing a pre-mapped risk pattern.

In addition, if penalty payments were to become part of the tools used by courts to order compliance (in theory this is already possible, but has not been used yet), then another assumption would be that companies will actually comply because they want to avoid potential fines.

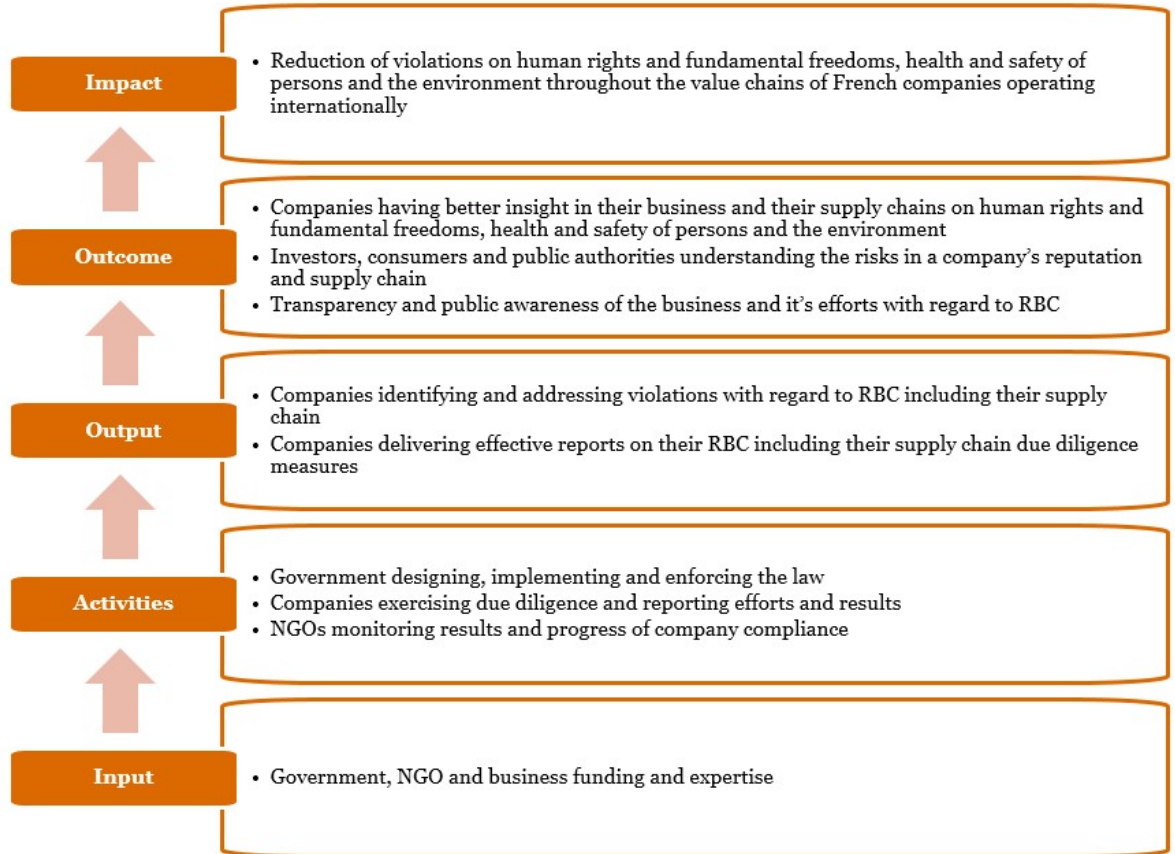


Figure 8: Reconstruction of the Theory of Change of the Duty of Vigilance law

Monitoring and Evaluation

There is no formal plan yet for monitoring or timeline to carry out a government evaluation

The French government does not directly monitor progress in the application of the Law. We have not found an official evaluation date set by the government. However, as of next year, companies will have to issue yearly reports showing how they are progressing in the implementation of their plans. So far, non-profit organization Shift and business association Entreprises Pour Les Droits de L'Homme have taken the lead in monitoring progress and quality of the plans and due diligence information disclosed.

Shift plans to map and analyse the disclosure of the top 20 companies

Shift analyzed the disclosure of the top 20 companies listed on the Euronext Paris CAC 40 index, all companies covered by the Duty of Vigilance law. The first phase of the analysis sets a "pre-vigilance plan" baseline against which the Shift team plans to evaluate improvement (or the absence of) later this year. The first part of the analysis focuses on disclosure released in 2017 or early 2018, before the publication of the first vigilance plans. This fall, Shift plans to map and analyze the disclosure of the same companies, including their vigilance plans this time. The aim of the research is to see

whether the duty of vigilance law had any positive effect on the way companies understand and manage human rights risk.

Effectiveness

It is still early to measure effectiveness, but there is a perception that the law helped in putting human rights on the companies' radar

The Law has only been in place since 2017 and it is too early to measure actual effectiveness. However, one of the corporate interviewees mentioned that while large businesses already had measures in place on health & safety or labor, the law helped in putting the UNGPs and the notion of due diligence on the radar.

Early results of studies carried out by non-profit organizations show patchy progress

Initial findings show that the majority of the companies surveyed are active on the first step of the due diligence process (Commit & Embed) but do not provide much detail around the way human rights risks are identified and addressed. Even some of the front running French companies analyzed run a risk of not meeting the requirements of the Duty of Vigilance. First, because they do not provide information on all of the elements of the responsibility to respect human rights, and/or the provided information is incomplete, or because they fail to explicitly point out which human rights have been identified as key areas of risks.⁴³

Several strengths and weaknesses influence the effectiveness of the French Law on Duty of Vigilance

Strengths:

- One of the corporate interviewees mentioned that while large businesses already had measures in place on health & safety or labor, the law helped in putting the UNGPs and the notion of due diligence on the radar.
- Due to stakeholder pressure and expectations, companies are making progress in developing their approaches. Some companies understand that progress is linked to obtaining and communicating information about their operational responses to identified challenges as well as measurement and monitoring systems.⁴⁴

Weaknesses:

- Interviewees from civil society and business indicated judges, who are tasked with enforcing the law, often lack training on human rights law and specifically in human rights & business.
- Some companies have complained about the scope of the law, considering it too broad and, therefore, too costly. One corporate interviewee pointed at perception of high cost of implementation as one of the potential bottleneck for long-term success.

⁴³ As listed in the CAS 40 index, both before and after the law came into force. The 20 companies analyzed are: Airbus, Air Liquide, AXA, BNP Paribas, Danone, Engie, Essilor, Kering, L'Oréal, LVMH, Orange, Pernod Ricard, Safran, Saint-Gobain, Sanofi, Schneider Electric, Société Générale, Total, Vinci and Vivendi. These companies are all required to publish a vigilance plan under the Duty of Vigilance law.

⁴⁴ C. Michon & S. Boucherand, [Application of the Law on the Corporate Duty of Vigilance. Analysis of the first published plans](#), 2018.

A key implementation challenge lies in the governance of human rights issues within companies

Most interviewees (from business and civil society alike) noted that roles and responsibilities in the human rights & business arena are often fragmented. Most large businesses in France rely on a mix of input provided by the CSR team, the compliance team, and the legal team. Besides, other departments including operations, procurement and local/ overseas offices might also play a role and add to the overall complexity of human rights governance. In most cases, the compliance team is responsible for the implementation of the Duty of vigilance law. Corporate interviewees reported a struggle in getting compliance teams to work with CSR teams and human rights specialists, as they see the duty of vigilance as a norm to be addressed in order to meet basic, bare minimum requirements rather than an opportunity to conduct thorough human rights due diligence.

Some companies complain that the scope of the law is too broad, but others welcome the law as being in line with the UNGPs

All interviewees stated that some businesses have complained about the broad scope of the law and have requested additional guidance on how to actually map and address all human rights and environmental issues arising in their supply chains. One corporate interviewee made a comparison between the French law and the UK Modern Slavery Act, implying that single-issue provisions are somehow easier to comply with because they put one issue on the map. However, other interviewees (representing civil society stakeholders) praise the broad scope of the law because it mirrors the steps and approach of the UNGPs – the authoritative guidance on responsible business conduct.

Enforcement is dependent on judges, but many did not access any training on human rights or environmental matters

Judges have the task of securing enforcement of the law. One of the civil society interviewees mentioned that judges need more training on human rights and environmental matters to be able to effectively play a role. The interviewee pointed out that the first judicial decision is likely to be crucial in setting a standard for enforcement, and it is therefore urgent for judges to access training. Another civil society interviewee commented that some legal bodies such as the Court of Cassation have taken up the task of designing and conducting such training.

UK Modern Slavery Act, Section 54

Country	The United Kingdom	Scope, focus, and enforcement	<ul style="list-style-type: none"> • Whole economy • One-issue focus • Mandatory
Year of implementation	2015	Sector(s)	All sectors
Types of companies targeted	<p>Any business that meets the following 2 criteria:</p> <ul style="list-style-type: none"> • Global turnover of over £36mn • Carries on a business, or part of a business, in any part of the United Kingdom <p>The law applies to public and private companies, and partnerships, wherever they are incorporated or formed.</p>	Number of companies covered	Approximately 18,720 UK companies ⁴⁵

Aim

The aim of Section 54 of the UK Modern Slavery Act is to eradicate modern slavery in supply chains⁴⁶

The Modern Slavery Act sets out a range of measures on how to address modern slavery and human trafficking. While the full text of the Act is not directly relevant for business, Section 54 ('Transparency in supply chains') impacts the corporate sector. The Transparency in Supply Chains provision aims to protect workers from being abused or exploited in organizations and global supply chains.⁴⁷

Strategy

Civil society pressure, political commitment, media attention and support from engaged businesses and investors were the main strategic drivers for Section 54

Initially, the Modern Slavery Bill was tabled as a piece of legislation considering criminal offences relating to forced labor, but it did not cover instances of modern slavery occurring in companies' supply chains. Civil society mobilized and worked together with responsible businesses, investors and politicians in order to include a provision that could address this issue.⁴⁸

Several high profile officials including Theresa May, Home Secretary at the time, and the Minister for Modern Slavery Karen Bradley, were in favor of the supply chain clause.⁴⁹ Media attention also played a role. The Guardian's exposé of the Thai prawn-fishing industry revealed that kidnapping,

⁴⁵ TISCreport Modern Slavery Act Compliance Tracker: <https://tiscreport.org/>

⁴⁶ Home Office, [Transparency in Supply Chains etc. A practical guide, 2017.](#)

⁴⁷ Modern Slavery is a term used to encapsulate both offences in the Modern Slavery Act: slavery, servitude and forced or compulsory labour; and human trafficking.

⁴⁸ R. Chambers, [Briefing for Second Reading of the Modern Slavery Bill Transparency in the Supply Chain](#), 2014.

⁴⁹ M. Pollitt, [Unfinished abolitionists: Britain returns to the frontline of the war on slavery](#), 2014.

corporal punishment and summary execution were taking place in the upstream portion of supply chains leading to UK businesses Tesco, Morrisons and the Co-operative.⁵⁰

Lastly, investors supported the inclusion of supply chain reporting requirements in the Modern Slavery Bill, because they acknowledged that failure to manage human rights issues in increasingly complex supply chains could bring significant risks to business and in investment portfolios.⁵¹ Corporate interviewees mentioned that progressive UK companies also backed the clause and welcomed it as an opportunity to level the playing field, especially since some of them had already invested significant budgets in mapping supply chains and working on transparency.

The EU Directive on Non-Financial Reporting, the UNGPs and the California Transparency in Supply Chains Act inspired the instrument

Section 54 was in the making at the same time of the EU Directive on Non-Financial Reporting, and some government and corporate interviewees argued that the two reinforced each other. The due diligence process mentioned in Section 54 echoes the UN Guiding Principles on Business and Human Rights (UNGPs), but emphasizes one issue: modern slavery.⁵² One of the civil society interviewees noted that civil society acted with a certain degree of pragmatism and accepted a single-issue provision rather than striving for a broader scope. In particular, when looking for similar single-issue provisions that could serve as inspiration of benchmark, the interviewee mentioned that several civil society stakeholders looked at the California Transparency in Supply Chains Act.

Drafting recommendations and preventing a “feeling of burden” were strategic choices made in designing the instrument

The Act provides some suggestions on what to include in a modern slavery statement.⁵³ These suggested recommendations are in line with international due diligence standards (UNGPs, OECD Guidelines for MNEs) and were designed to avoid that companies would feel at a loss in terms of identifying what information they need to report. Overall, the government made an effort in ensuring that the instrument would not create a feeling of burden for business, and that the new legislation would not add tension in the relations between the public and private sectors. As a result, light (voluntary) supply chain requirements were included in Section 54.

While the mandatory part of the instrument only focuses on one step of the due diligence process, the recommended suggestions cover the largest part of the due diligence steps

According to Section 54 of the Modern Slavery Act, companies are legally required to prepare a modern slavery statement along these lines: either saying that they took steps to ensure that there is no modern slavery in their supply chains or saying that they did not take any steps. The Board needs to approve the statement and the company needs to publish it on a prominent place, e.g. on the website’s homepage. As such, the requirement relates to the communication aspect of the due diligence process. However, Section 54 also suggest that companies disclose information on the details of the whole due diligence process they undertook to determine the conclusion in their statement. However, no reference is made to the remediation step (grievance mechanisms for victims/stakeholders).

⁵⁰ Idem.

⁵¹ Multiple investors, [Statement supporting the inclusion of proportionate supply chain reporting requirements in the Modern Slavery Bill](#), 2014.

⁵² Shift, [Mapping the Provisions of the Modern Slavery Act Against the Expectations of the UN Guiding Principles on Business and Human Rights](#), 2015.

⁵³ [Modern Slavery Act 2015](#)

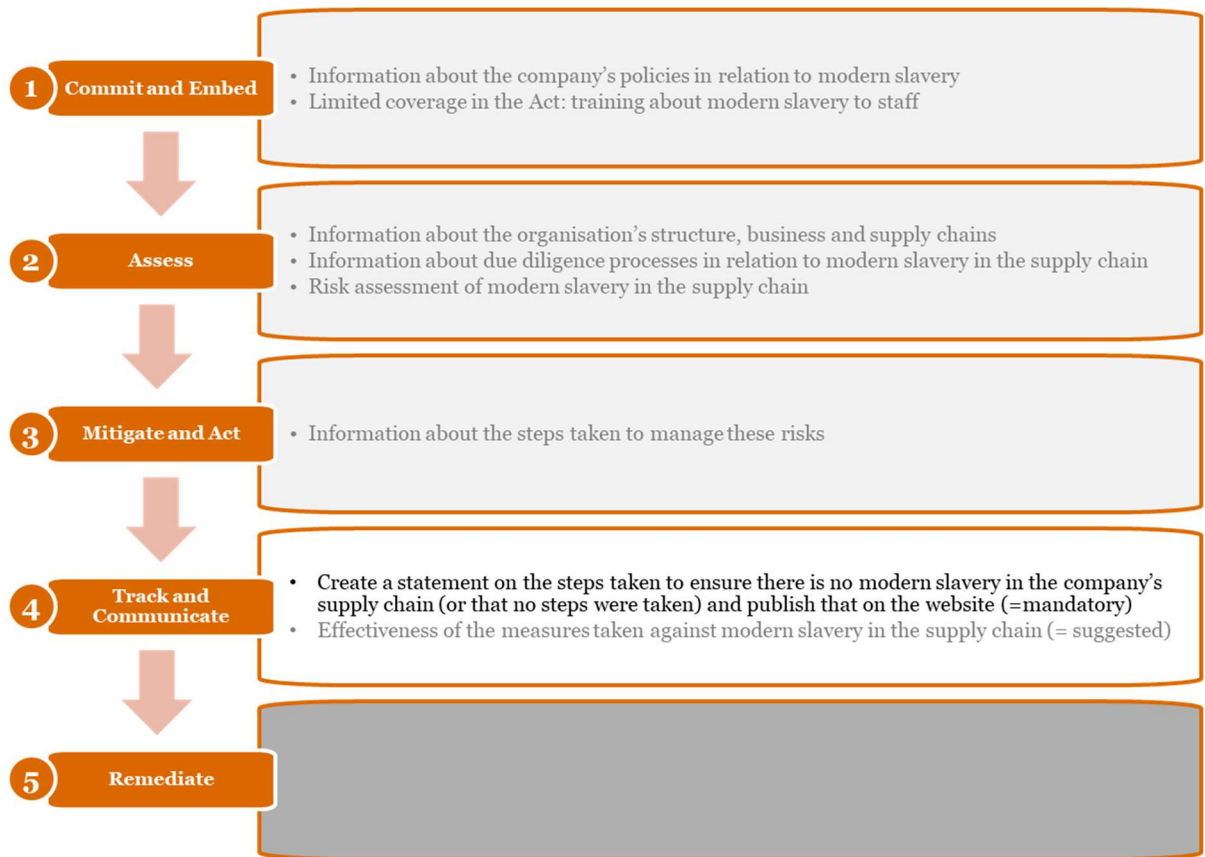


Figure 9: Due diligence steps for targeted UK companies

Theory of Change

In this section, we analyze and reconstruct the Theory of Change that underpins Modern Slavery Act Section 54. Figure 10 shows the chain of results that, in theory, leads the activities of Section 54 to eradicate modern slavery in global supply chains.

A key assumption on the need for enforcement underlies the theory of change

One government interviewee pointed out that government officials assumed that there was no explicit need to push for enforcement, as businesses would be eager to comply due to the pressure they face from civil society, consumers and investors. However, most of the companies affected by Section 54 are not public facing companies, which means that they do not experience consumer pressure and are less visible to watchdogs and NGOs.

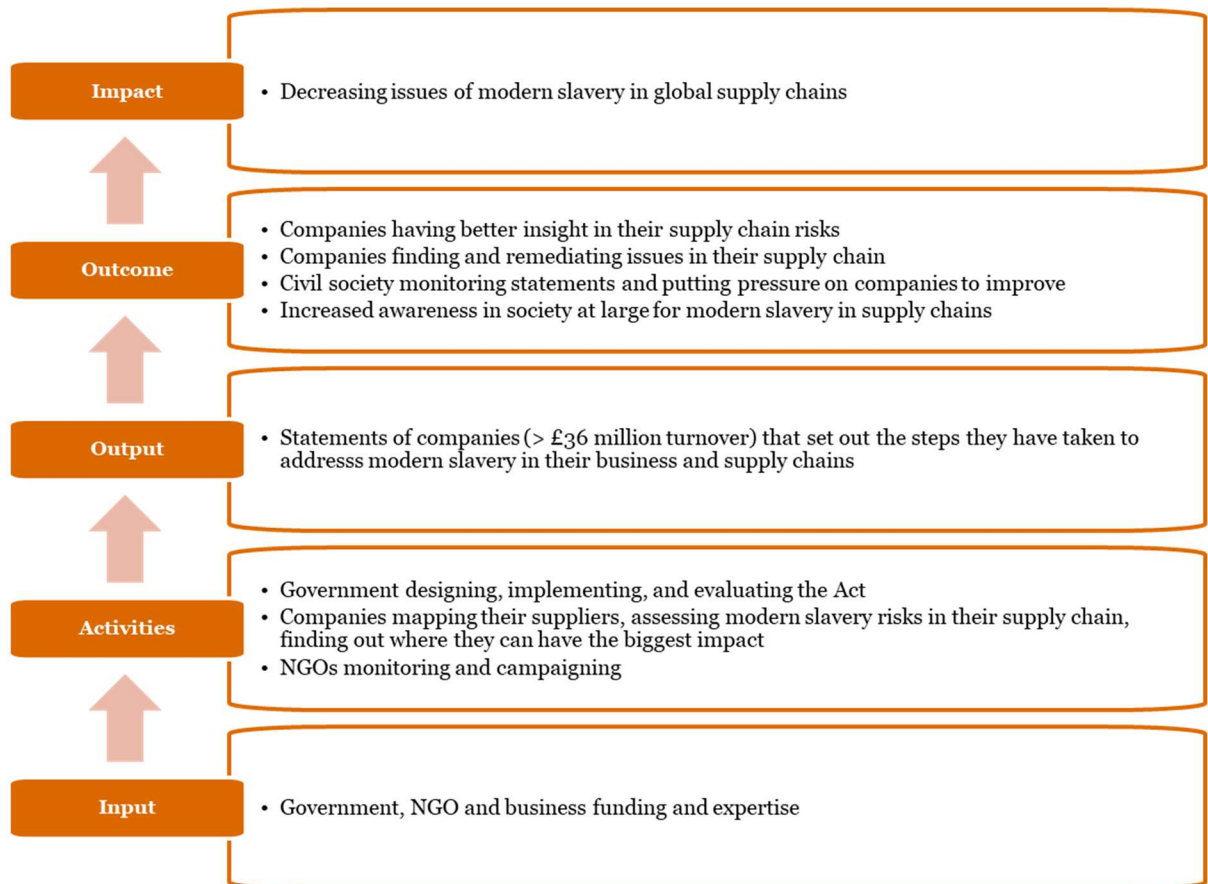


Figure 10: Reconstruction of the Theory of Change for Section 54 of the Modern Slavery Act

Monitoring and Evaluation

Civil society monitors the number of companies that reported but there is little investigation into the quality of the reports filed

NGOs such as Tiscreport.org monitor compliance by looking at the number of companies that published modern slavery statements and comparing it to the number of companies that are required to comply. The Modern Slavery Registry shows percentages about the number of companies that comply with the minimum requirements of Section 54: statements published on the website with a link on the home page, signed by director or equivalent, and explicit approval by the Board in the statement.⁵⁴ Both Tiscreport.org numbers and the Modern Slavery Registry continuously update their numbers. Most monitoring focuses on the output, i.e. how many reports are produced and filed and little overarching research is done addressing reporting quality. Several interviewees (from corporations and civil society alike) pointed out that some companies are either copying each other's statements or simply reproducing the exact same statement every year.

A formal evaluation of Section 54 of the Modern Slavery Act is currently underway

An independent review into the effectiveness of the Modern Slavery Act was presented in 2016, but this review did not cover the supply chain section.⁵⁵ Section 54 is currently under review for the first

⁵⁴ [The Modern Slavery Registry website](#)

⁵⁵ Home Office, [Modern Slavery Act 2015 review: one year on](#), 2016. 2018-0911/AK/mp/vd

time as part of a larger review of the Modern Slavery Act. The Home Office expects the final report by the end of March 2019.⁵⁶

The guidance for the independent review includes the following question: How can we ensure compliance and drive up the quality of statements produced by eligible companies? It is unclear if the planned evaluation will dive into the question of whether Section 54 actually fosters improvements in supply chains.

Effectiveness

Approximately 50% of estimated output targets have been reached

While there are no formal targets in terms of coverage or quality, interviewees assumed that the Home Office would like to see a 100% coverage and stakeholders expect high quality statements that they can rely on. Tiscreport.org tracks a 50-55 percent coverage of a total number of 18,720 UK companies that are required to comply. Other NGO sources, such as CORE, report different numbers: 5,600 out of 9,000-11,000 companies⁵⁷. The difference between these number show that unclarity exists about the coverage of the Act and what companies should comply.

On an outcome and impact level limited information is available and goals are set to a high bar

For some, it is a matter of trust (e.g. consumers), for others it is a matter of Environmental, Social, and Governance (ESG) risk management and understanding the risks in a company's business relations (e.g. investors). On an outcome level, Ergon reports that companies' reports are becoming slightly more detailed and longer, but there is not much improvement in reporting of due diligence processes and outcomes.⁵⁸

In terms of the actual goal of the instrument, i.e. the eradication of slavery from supply chains, all interviewees agree that while the issue is definitely on Boards' agendas, it is far from solved. Some civil society interviewees also mentioned that a gradual path to the actual goal is undermined by the fact that the only mandatory provision revolves around reporting rather than the actual tackling of instances of modern slavery in supply chains.

Several strengths and weaknesses influence the effectiveness of the Modern Slavery Act Section 54

Strengths:

- Interviewees from the government, corporate and NGO sectors recognized as a success driver that Section 54 is not an isolated provision. Many stakeholders want to access the same information, or broader (human rights due diligence, or specific information on modern slavery in some cases). Examples mentioned in the interviews include the EU Directive on non-financial reporting, the Corporate Human Rights Benchmark, and the Ethical Trade Initiative.
- Section 54 is regarded as the first of a wave of legislative measures that normalize human rights due diligence and expect companies to conduct supply chain assessments. The fact that Section 54 is seen as a factor mobilizing stakeholders in other jurisdictions (such as Australia, where a similar provision is currently being developed) also resonates at home, with UK companies being somehow forced to reckon with it.

⁵⁶ Home Office, [Independent review of the Modern Slavery Act: process for evidence collection](#), 2018.

⁵⁷ CORE, [Modern Slavery in Supply Chains](#), 2018.

⁵⁸ Ergon, [Modern slavery statements: One year on](#), 2017
2018-0911/AK/mp/vd

- It put human rights and specifically modern slavery on Boards' agendas. Twice as many CEOs and other senior executives are actively involved in addressing modern slavery since the Modern Slavery Act came into force.⁵⁹
- According to civil society and corporate interviewees, Section 54 has led business to abandon the idea that something that happens in the supply chains does not fall under the company's responsibility.
- It encouraged some companies to rethink their business models and question whether certain operational demands (e.g. tight delivery times for suppliers, a race to the bottom on final product prices etc.) might be directly causing modern slavery.

Weaknesses:

- The UK government announced only recently that they would consider modern slavery requirements in their own procurement. Both corporate and public sector interviewees mentioned that the government could have "led by example" by adhering to modern slavery requirements from the beginning.
- Enforcement is weak, with no penalty in case companies do not file their statements or fail to comply. In addition, companies are not explicitly required to keep their statements of previous years available and accessible. This makes it difficult to compare developments over time.
- Many companies fail to address the modern slavery risks in the supply chain and spend most of their resources on reporting and communication.
- Only public-facing companies and big brands seem to be engaged in moving the conversation from the margins to the core of their business model. Others remain out of reach – partially because of the lack of proper quality checks on the statements produced and partially because of overall lack of enforcement.
- The mandatory nature of the disclosure and the required Board approval led to a split between the way human rights governance is organized, with legal and CSR team struggling to work together and strike a balance between liability and transparency.

Implementation experience

Companies experience implementation of Section 54 as a complex process for which they depend on suppliers and business partners who are not always willing to engage

Global supply chains are complex and instances of modern slavery are often hidden at sub-supplier or contractor level.⁶⁰ As a result, companies are often dependent on other stakeholders when working on Section 54.⁶¹ Corporate interviewees pointed out that many suppliers do not want to engage on this issue and simply deny the existence of slavery or exploitation in their factories. Companies, on the other hand, do not always have the financial means to go beyond auditing to verify the suppliers' claim.

Companies fear legal and reputational repercussions for being transparent

One corporate interviewee pointed out that there is a risk that greater transparency will lead to increased NGO pressure and media scrutiny, bringing back a "naming and shaming" narrative that is counter-productive and does not fully align with the UNGPs' approach of "knowing and showing". According to some corporate interviewees, being publicly target by a media expose or an NGO campaign is a concrete risk and a reason to be more conservative when drafting the modern slavery

⁵⁹ Hult research & ETI, [Corporate Leadership on Modern Slavery](#), 2016.

⁶⁰ Hult research & ETI, [Corporate Leadership on Modern Slavery](#), 2016.

⁶¹ Idem.

statements. Legal departments also reinforce this perception, often making it difficult to walk the fine line that separates transparency from liability.

Section 54 opened up opportunities for collaborative approaches and increased leverage

All interviewees agreed that Section 54 is an opportunity to convince the company's Board to engage more in supply chain transparency across the business, including asking for resources to be allocated to designing collaborative approaches with peers and suppliers. Section 54 spurred new approaches including multi-stakeholder collaboration, with some NGOs reaching out to businesses to work together in high-risk sectors or countries. It also spurred peer-led supply chain initiatives that eventually led to increased leverage on suppliers and contractors. As several interviewees across all sectors (government, corporate and NGOs) pointed out, one retailer may not influence a garment manufacturer that supplies for multiple retailers, but together a group of three to five large retailers has more bargaining power and can bring about tangible improvements.

Dodd-Frank Act, Section 1502

Country	United States	Scope, focus, and enforcement	<ul style="list-style-type: none"> • Sectoral • One-issue coverage • Mandatory
Year of implementation	Adopted in 2010, it became fully effective in 2012, upon release of the final SEC Conflict Minerals Rule	Sector(s)	Any listed companies that manufacture or contract to manufacture products containing so-called conflict minerals. In practice, sectors that have been most closely involved with implementing Dodd Frank 1502 include electronics and communications, aerospace, automotive, jewelry and industrial products
Types of companies targeted	Publicly traded U.S. Companies that use conflict minerals – these are defined as tin, tantalum, tungsten and gold originating from the Democratic Republic of Congo (DRC) or adjoining countries (Covered Countries). ⁶²	Number of companies covered	Approximately 6,000 companies ⁶³

Aim

The aim of Section 1502 of the Dodd-Frank Act is to promote peace and security in the DRC, by requiring publicly traded companies to ensure that the raw materials they use to make their products are not tied to the conflict in Congo⁶⁴

The instrument official aim is to promote peace and stability in the DRC and to some extent the broader Great Lakes region by severing the links between the mining and exporting of selected mineral resources (tin, tantalum, tungsten and gold, also known as 3TG) and conflict financing. Even though the stated aim talks about peace and security, a clear definition is lacking in Section 1502. Section 1502 of the Act requires publicly traded U.S. companies that produce goods containing the minerals in scope and that source from the DRC or any adjoining country to report on supply chain due diligence measures and show that their sourcing process is in no way linked to mines or processing facilities that benefit armed groups. By doing this, the law aims to encourage companies to look into their upstream supply chains and cut all ties with upstream entities that might be involved in the conflict or complicit in egregious human rights abuses. In all other cases, companies are not asked to cut ties but rather to design and implement mitigation measures.

⁶² The rule only applies to companies that file reports with the SEC under Sections 13(a) or 15(d) of the Exchange Act.

⁶³ S. Shirodkar, A. Ledbetter, D. Rein, S. Ritter, [Conflict mineral reporting rules impact many public companies: new supply chain requirements and new Form SD](#), 2012.

⁶⁴ U.S. Congress, Dodd-Frank Wall Street Reform and Consumer Protection Act Section 1502, 2010 2018-0911/AK/mp/vd

Political commitment, NGO pressure, and engaged investors were the main strategic drivers for this instrument

The Congo conflict has been an issue of interest to Congress for many years. Among others, then-Senator Barack Obama co-sponsored the Democratic Republic of Congo Relief, Security, and Democracy Promotion Act of 2006, which recognizes Congress commitment to help promote peace and security in the Congo.⁶⁵ Some of the stakeholders interviewed (both from the corporate and government sectors) pointed out that the 2006 Act paved the way for later developments, and that during the Obama administration the political leadership was willing to drive what would later become Section 1502 of the Dodd-Frank Act. All interviewees also indicated another key driver: pressure from NGOs that focus on the links between conflict, human rights abuse and natural resource exploitation, such as Global Witness and the Enough Project.⁶⁶

Finally, investors played a role in shaping Section 1502 since its inception in 2010, and openly called on the SEC to design robust enforcement measures to achieve maximum impact. The rationale for investor engagement lies in the fact that good quality reporting on supply chain risks improves investors' ability to assess environmental, social and governance (ESG) issues such as reputation and general liability risks, as well as other long-term risks related to the supply of minerals.⁶⁷ Proper management of ESG issues results in lower risks for investors and therefore increases long-term stability of the investment value.

The SEC recognized the OECD DD Guidance as the leading international framework for due diligence

According to the SEC rule that guides the implementation of Section 1502 of the Act, the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas⁶⁸ (from now on: OECD DD Guidance) and its 3TG (tin, tantalum, tungsten, gold) supplement satisfies the criteria for due diligence. The SEC rule clearly mentions that the OECD DD Guidance may be used as a framework to exercise due diligence. A significant difference between Dodd-Frank Section 1502 and the OECD DD Guidance is that Section 1502 is very specific on geographic coverage (i.e. covered countries) whereas the OECD DD Guidance has a global scope.

The instrument aims to be relevant for two steps of the due diligence process (at a minimum)

Steps 2 and 4 are the minimum requirement to comply with Section 1502, but overall the SEC rule encourages companies to make use of all 5 steps defined in the OECD DD Guidance.

⁶⁵ Securities and Exchange Commission, [Conflict Minerals Final Rule](#), 2012.

⁶⁶ Global Witness, [Dodd Frank Act's Section 1502 on Conflict Minerals](#), 2011.

⁶⁷ Securities and Exchange Commission, [Conflict Minerals Final Rule](#), 2012.

⁶⁸ Not to be confused with the OECD Guidelines for Multinational Enterprises. 2018-0911/AK/mp/vd

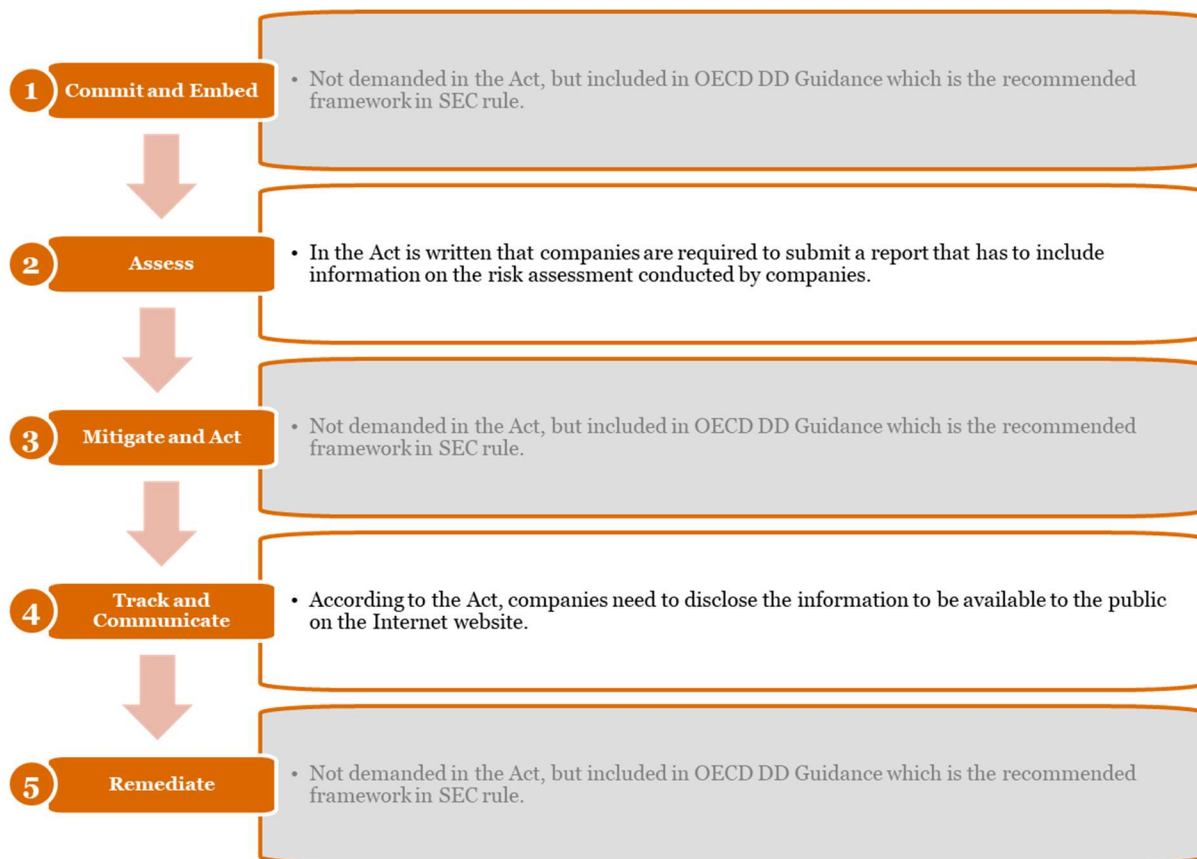


Figure 11: Due diligence steps for targeted US companies

Theory of Change

In this section, we analyze and reconstruct the Theory of Change that underpins Section 1502 of the Dodd Frank Act. Figure 12 shows the chain of results that, in theory, leads the activities of the Act to bringing about peace and security in the DRC.

Several assumptions concerning reporting and compliance mechanisms, the necessity of incentives, collaboration of local stakeholders, and contextual factors underlie the Theory of Change

Interviewees from both civil society and reporting companies agreed that one of the assumptions that underlies the Theory of Change has to do with the way reporting and compliance mechanisms can have an impact on security and stability in the DRC and adjoining countries. The assumption is that once downstream companies start looking into their supply chains and disclosing information on the use of conflict minerals, they will be in a position to put pressure on the upstream portion of the chain. Eventually, this pressure is supposed to lead to improved practices in the Congolese artisanal and small-scale mining sector, i.e. a total severance of the ties between in-region mining/ processing/ exporting entities and conflict financing.

A second assumption, mentioned by corporate interviewees, relates to the lack of incentives. It is assumed that the instrument works without a proper support and reward system benefiting those who are willing to cooperate, conduct due diligence and trade legally. Incentives were not included in the design of Section 1502, nor in the following SEC rule.

Interviewees also shared some assumptions regarding local stakeholder engagement and support. One civil society interviewee argued that the US government expected local governments would collaborate in “cleaning up their mining sectors”. However, research conducted by the UN Group of Experts on the DRC show that many in-region mining and processing entities still smuggle minerals across the DRC border or illegally trade minerals (especially gold), and that local authorities do not have the financial means to combat this illegal behavior.⁶⁹ The International Conference of the Great Lakes Region (ICGLR), who has a role in certifying mines and exporters, has a weak mandate and relatively small budget and staffing to actually foster on the ground change and drive commitment at regional level.

A final assumption related to the specifics of the Congolese economy. One civil society interviewee mentioned that when drafting the Act, Congress compared the DRC to any other context and assumed that supply chain due diligence could work in the Congolese mining sector. The interviewee argued that this assumption ignores the fact that the DRC is a war economy and that the dynamics at play between the central government, the governments of the mining provinces and the local mining and exporting companies are different from what could be observed in politically stable countries. To some extent, the potential risk of overlooking the conflict dynamics has been mitigated by the SEC Rule, which explicitly refers to the OECD DD Guidance as a valid standard for conflict-minerals due diligence. The Guidance has been designed specifically for conflict-affected and high-risk areas.

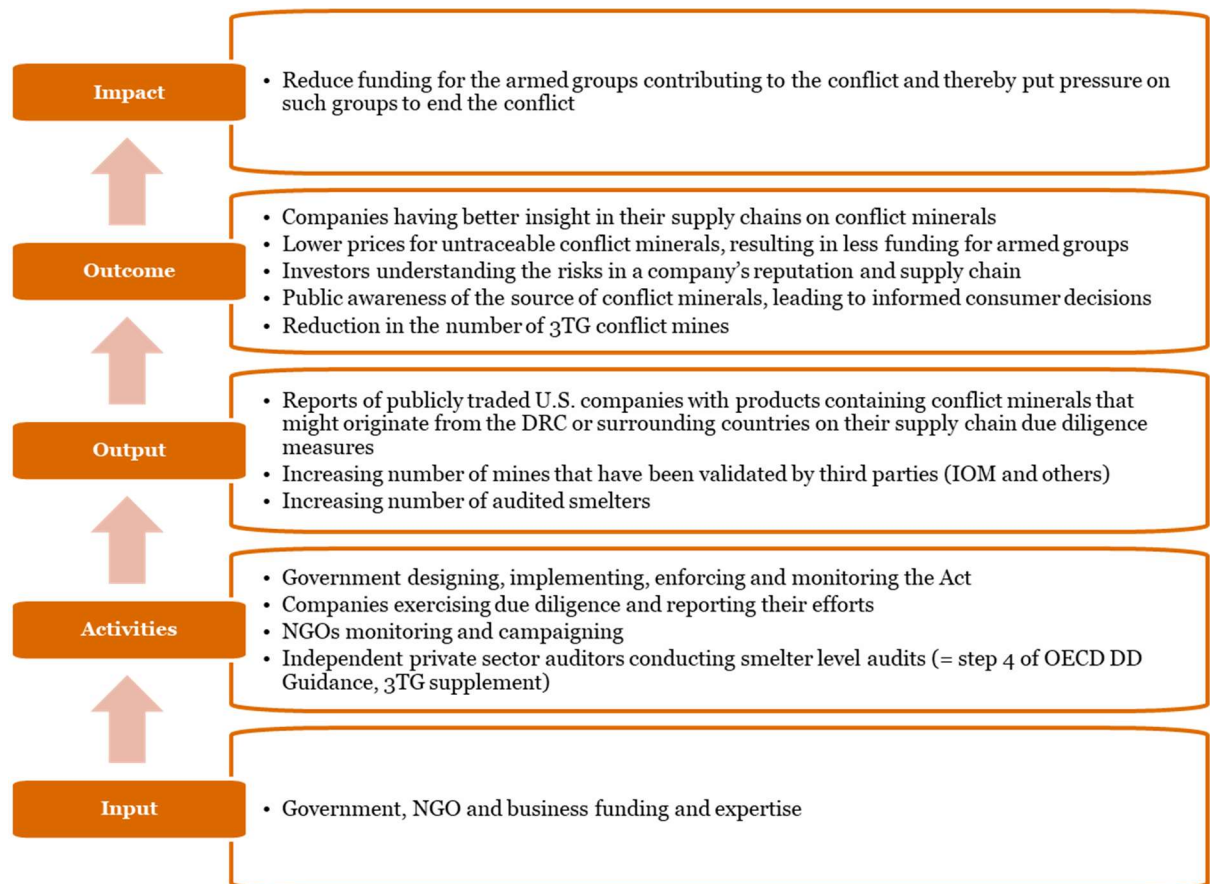


Figure 12: Reconstruction of the Theory of Change for Section 1502 of the Dodd Frank Act

⁶⁹ UN Group of Experts, [Final report of the Group of Experts on the Democratic Republic of the Congo](#), 2017. 2018-0911/AK/mp/vd

Monitoring and Evaluation

GAO reports on trends of company disclosures, but reporting on peace and security is still challenging

The Government Accountability Office (GAO) has a twofold mandate as part of Section 1502. First, GAO should report on the role of the SEC rule in promoting peace and security in the covered countries. Secondly, it should report on sexual violence in the covered countries. The UN Group of Experts and NGOs have identified sexual violence as a major problem in Congo's mining provinces and within artisanal mining communities – hence the focus on this issue in the GAO mandate.

In order to report on peace and security, every year the GAO engages with other state agencies involved in the region (USAID, US Department of State) to define what definitions and criteria should be used for peace and security. To this day, clear definitions and robust indicators to measure progress on peace and security are still lacking. In previous years, the GAO reported on three aspects:

- First, trends in company disclosures (e.g. how many companies are filing reports, are they conducting due diligence, do they know the country of origin, do they share challenges in data collection efforts?);
- Second, an overview of the data available on sexual violence;
- Last, specific information that GAO believes can contribute to uncover patterns related to peace and security. For example, one year the GAO focused on analyzing the supply chain of tantalum, in an effort to see whether any valuable information on security could be found there.

Even though no end date is foreseen for Section 1502, the GAO's mandate states that 2024 is the GAO's last reporting year. The expectation is that by 2024 there will be enough data to publish a statement on peace and security.

There are no plans to officially evaluate the instrument, and the SEC rule is currently under political scrutiny

The SEC Chairman indicated the SEC should reconsider the rule to see whether any relief is appropriate.⁷⁰ He stated that the disclosure requirements in reality may have resulted in a boycott of minerals from the covered countries.⁷¹ He also made a remark on costs, stating that it is unclear whether the implementing costs of the rule have led to the desired outcomes. According to both corporate and government interviewees, this is a concern of companies and politicians alike. Government and corporate interviewees also recognized that the debate in Washington D.C. has become very polarized and that the SEC rule and Section 1502 are currently under scrutiny. The current administration is considering an executive order to suspend Dodd-Frank Section 1502.⁷²

Unofficial evaluation questions focus on the costs associated with implementation of the rule

Answers seem to differ, and as stated before, all stakeholders interviewed pointed out that some companies have complained about Section 1502 being too costly to implement and would rather see it being repealed. No data was found on the exact costs of implementation of Section 1502 for government and companies, neither were interviewees able to provide estimations on the costs. Research has been conducted to learn more about the costs, especially in the early stages of

⁷⁰ M.S. Piwowar (SEC Chairman), [Statement on the Commission's Conflict Minerals Rule](#), 2017.

⁷¹ M.S. Piwowar (SEC Chairman), [Reconsideration of Conflict Minerals Rule Implementation](#), 2017

⁷² E. Pilkington, [Proposed Trump executive order would allow US firms to sell 'conflict minerals'](#), 2017.

implementation. This research shows that stakeholders such as industry lobby groups and the National Association of Manufacturers (NAM) claimed that costs are much higher than the costs presented by consulting firms such as Claijan Environmental or others.⁷³ The debate on costs had an impact on the overall implementation experience, as discussed further in this report.

Effectiveness

Lack of enforcement is a shared concern among stakeholders interviewed

Corporate interviewees have described Section 1502 as a provision “with no carrot and no stick”, referring to both the lack of incentives and the lack of enforcement. In April 2017, the SEC’s Division of Corporation Finance issued revised guidance indicating that it would not recommend enforcement action if companies did not report on specified due diligence disclosure requirements.⁷⁴

On an output and outcome level results have been achieved

Monitoring efforts have shown that results have been achieved on an output and outcome level.

Effects on the outputs and outcomes are:

- 1,165 companies filed conflict mineral disclosures⁷⁵, out of the estimated 6,000 companies required to report.⁷⁶
- Section 1502 was a catalyst for action on responsible supply chains of minerals. Supply chain due diligence laws in Congo, Rwanda and the EU, and voluntary due diligence guidelines in China all came after Section 1502 brought the issue on the global agenda.⁷⁷
- Price for untraceable 3T conflict minerals is significantly lower, making trade in these minerals less lucrative for armed groups.⁷⁸
- Major reduction in the number of 3TG conflict mines, thanks to on-the-ground mine validation schemes and inspections.⁷⁹
- More than 75% of the world’s smelter and refiners for 3TG have now passed third party audits.

Section 1502 is very ambitious in its stated aim of promoting peace and security to the region

When assessing whether the stated aim of the Act’s Section 1502 had been reached, corporate and civil society interviewees agreed that the overall aim of the provision was too ambitious and it has not been reached yet. There is no “end point” to the law itself, meaning that progress can still be made. In terms of exploring whether the goal can be reached in the near future, all interviewees agreed that this is also dependent on the future of Section 1502 itself, especially since the current administration is considering repealing or suspending the reporting obligation.

Several strengths and weaknesses influence the effectiveness of Section 1502

Strengths:

⁷³ https://site-media.globalwitness.org/archive/files/the_cost_of_business_as_usual.pdf

⁷⁴ Government Accountability Office, [Company Reports on Mineral Sources in 2017 Are Similar to Prior Years and New Data on Sexual Violence Are Available](#), 2018.

⁷⁵ Idem.

⁷⁶ S. Shirodkar, A. Ledbetter, D. Rein, S. Ritter, [Conflict mineral reporting rules impact many public companies: new supply chain requirements and new Form SD](#), 2012.

⁷⁷ Global Witness, [Implementation and Impacts of the Conflict Minerals Provision](#), 2017.

⁷⁸ F. Bafilemba, T. Mueller, and S. Lezhnev, [The Impact of Dodd-Frank and Conflict Minerals Reforms on Eastern Congo’s Conflict](#), 2014

⁷⁹ Idem.

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- There have been improvements in data collection processes among companies to gather data about their supply chain.⁸⁰
- According to a company interviewee, NGO pressure on companies is stronger thanks to Section 1502.
- Consumers now expect technology firms to mind their supply chain.⁸¹

Weaknesses:

- A withdrawal (at least temporary) from the region as companies want to ensure that the minerals they use in their products are 100% conflict-free⁸². Downstream companies wanting to avoid the compliance and reporting burden imposed by Dodd Frank 1502 were a key driver of what became a decision to shy away from the region – at least in the early days of implementation.

Negative impacts on livelihood of local artisanal mining communities, including increased unemployment and loss of revenues – as a result of the decision of some companies to stop sourcing from the region. Again, some of these impacts have been temporary and the NGO Global Witness has recently found that mining and exports are picking up again in the region.⁸³

Implementation experience

Implementation is compliance-driven and costly, with few companies looking into actual impacts on the ground.

Most listed companies file conflict minerals reports, creating a level playing field. One corporate interviewee has mentioned how the reporting exercise, if taken seriously, involves a delicate balance of compliance and tracking of the human rights impacts/ changes on the ground. The same interviewee also mentioned how proper supply chain investigation and reporting might open up new opportunities for companies, in terms of doing business in a sustainable way and eventually cutting operational and other costs linked to unmapped or unreliable supply chains.

Still, most companies are purely compliance-driven and aim at meeting the minimum requirements for their reports. Many have complained about the implementation costs, suggesting that costs incurred are too high and hinder competitiveness of US businesses. However, research conducted by Elm Sustainability Partners estimates the cost for US businesses to comply with the Rule has been 74 to 85 % less than the original SEC estimate of \$3-4 billion for the first year.⁸⁴ Interviewees, including government stakeholders, could not estimate the costs incurred by the US government.

⁸⁰ Government Accountability Office, [Company Reports on Mineral Sources in 2017 Are Similar to Prior Years and New Data on Sexual Violence Are Available](#), 2018.

⁸¹ M. P. Dizolele, [Testimony by Mvemba Phezo Dizolele](#), 2017.

⁸² M. P. Dizolele, [Testimony by Mvemba Phezo Dizolele](#), 2017.

⁸³ Idem.

⁸⁴ L. Heim, [Comments on Reconsideration of Conflict Minerals Rule Implementation](#), 2017.

Canadian Ombudsperson for Responsible Enterprises

Country	Canada	Scope, focus and enforcement	Proposed: <ul style="list-style-type: none"> • Whole economy • Multi-issue coverage • Mandatory
Year of first implementation	2018	Sector	Initial focus on textiles and the extractive sector
Types of companies targeted	All Canadian companies operating abroad	Number of companies covered	Depending on the exact scope of the Canadian Ombudsman.

Aim

The initiative aims to address complaints on alleged human rights abuses arising from activities of Canadian companies operating abroad

The Canadian Ombudsperson for Responsible Enterprises (CORE) aims to address complaints on alleged human rights abuses arising from activities of Canadian companies operating abroad.⁸⁵ Through independent investigation of these complaints, public reporting of the outcomes of the investigation, and publication of written opinions from the Ombudsperson, this initiative attempts to offer remedy to victims and damaged parties. Ultimately, this should contribute to a reduction of human rights violations and environmental damages throughout the value chains of Canadian companies operating internationally.

Strategy

The creation of the CORE has been in the making for several years

The concept has been part of social and political discourse for more than a decade. NGOs that have been campaigning for such an Ombudsperson include Amnesty and the Canadian Council for International Cooperation, pressing the government to create a transparent and independent accountability office.⁸⁶

In the Canadian press, critics referred to CSR policies aimed at the extractive sector as toothless dialogues and consider it ineffective and inefficient^{87 88 89}. Following several high-profile incidents and (denied) allegations, NGOs have been calling for greater oversight for years.⁹⁰

⁸⁵ Government of Canada, [The Government of Canada brings leadership to responsible business conduct abroad](#), 2018

⁸⁶ Amnesty Canada, [Canada creates world's first ombudsperson for responsible business](#), 2018.

⁸⁷ H. Lazenby, [Canadian miners welcome new federal business ethics ombudsman](#), 2018.

⁸⁸ M. Chown Oved, [Ottawa creates office to investigate human rights abuses linked to Canadian companies abroad](#), 2018.

⁸⁹ N. Mordant, [Canada creates watchdog to oversee companies' conduct abroad](#), 2018.

⁹⁰ Idem.

Canada is home to about 60% of the world's mining companies.⁹¹ According to NGOs, the CORE will help reduce linguistic, legal, political and institutional barriers that damaged or victimised parties face when attempting to seek justice.⁹² In addition, NGOs expect that the CORE will provide remedy to a greater extent than other non-judicial mechanisms present in Canada.⁹³

The Canadian government expects that any success of the CORE will also strengthen the global brand of Canada as a country that is ahead of the curve in terms of social and environmental justice.⁹⁴ This should improve the image of Canadian companies, help in economic diplomacy and increase trust among clients, consumers and the public in the business practices of Canadian businesses in textiles and the extractive sector.⁹⁵ This implies an impetus for the Canadian government to make the CORE a success. Additionally, politicians now will expect internationally operating Canadian companies to adhere to the high ethical standards with which Canada as a brand associated itself.^{96 97}

The CORE is expected to work alongside a multi-stakeholder advisory body, which includes both industrial stakeholders and groups from civil society. Also, the CORE might refer cases to the NCP for formal mediation where appropriate. Interviewees from the non-profit sector indicate that NGOs have expressed their hopes that the CORE will have more impact than the Canadian NCP has had over the years, and it may also occur that the CORE picks up cases from the NCP.

The OECD Guidelines for MNEs and the UNGPs will guide the work of the CORE⁹⁸

The Canadian government already expects all Canadian companies that operate abroad to respect human rights and all applicable international standards. It expects companies to work in a manner that is socially and environmentally responsible, consistent with recognized business and human rights standards including the UNGPs and the OECD Guidelines for Multinational Enterprises.⁹⁹

Some strategic choices still need to be made on the exact design and implementation of the CORE

Government has already made a number of strategic choices. An example is the term of appointment for the CORE that has been set to five years, to allow for more independency of the Ombudsperson and for more consistency in how the Ombudsperson will work. Also, government has made certain choices in relation to the CORE's power to investigate, report and provide recommendations to different stakeholders (as included in the Theory of Change). CORE also can initiate investigations on its own initiative. Any Standard Operating Procedures (SOPs) are to be established together with lawyers and parts of government affected by the CORE's work. The SOPs will be made public for reasons of clarity, predictability and transparency.¹⁰⁰

Since the decision to establish the CORE, its implementation has not yet been completed. For instance, the exact mandate and associated responsibilities are yet to be outlined through an Order in Council,¹⁰¹ and interviewees from the NGO sector mentioned it is not yet clear how access to the

⁹¹ M. Chown Oved, [Ottawa creates office to investigate human rights abuses linked to Canadian companies abroad](#), 2018.

⁹² Amnesty Canada, [Canada creates world's first ombudsperson for responsible business](#), 2018.

⁹³ Idem.

⁹⁴ Global Affairs Canada, [The Government of Canada brings leadership to responsible business conduct abroad](#), 2018.

⁹⁵ Global Affairs Canada, [The Government of Canada brings leadership to responsible business conduct abroad](#), 2018.

⁹⁶ N. Mordant, [Canada creates watchdog to oversee companies' conduct abroad](#), 2018.

⁹⁷ Global Affairs Canada, [Responsible business conduct abroad – Questions and answers](#), 2018.

⁹⁸ J. Hendry, [Analysis: A New Scheme For Canadian Corporate Responsibility Operating Abroad](#), 2018.

⁹⁹ Global Affairs Canada, [Responsible business conduct abroad – Questions and answers](#), 2018.

¹⁰⁰ Global Affairs Canada, [Responsible business conduct abroad – Questions and answers](#), 2018.

¹⁰¹ Government of Canada, [Privy Council Office](#), 2018.

CORE will be ensured for distant communities and indigenous people – an important aspect specifically for this instrument, as the ombudsperson may need to work in tandem with victimised parties among these communities.

When looking at the due diligence process outlined in the UNGPs and OECD Guidelines for MNEs, the CORE instrument aims to be relevant at the remediation stage

The instrument aims to ensure access to adequate grievance mechanisms for victims and affected stakeholders. Please see figure 13.

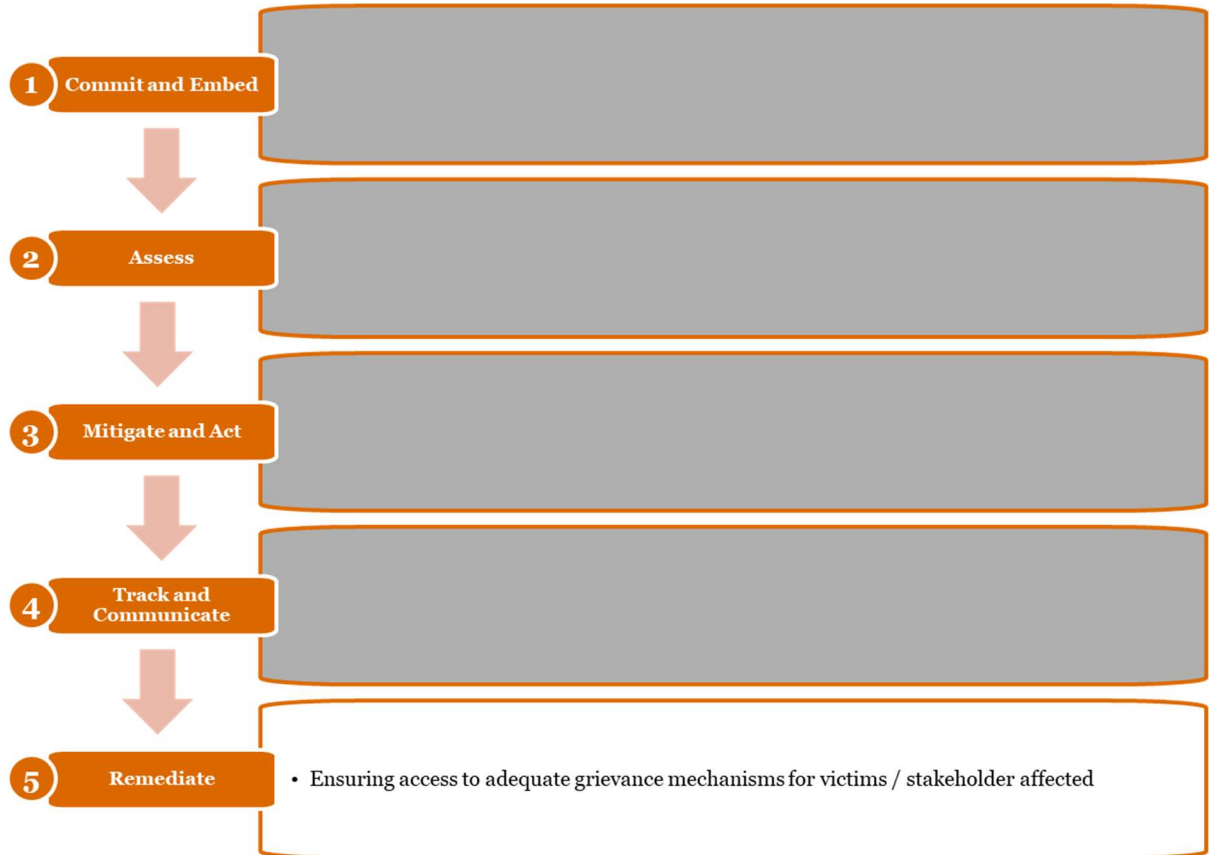


Figure 13: Due diligence steps that are relevant to the CORE

Theory of Change

In this section, we analyse and reconstruct the Theory of Change that underpins the CORE. Figure 4 shows the chain of results that, in theory, leads the activities of the CORE to bringing about a reduction of human rights violations and environmental damages throughout the value chains of Canadian companies operating internationally.

The Theory of Change features several specific assumptions. Here the Theory of Change assumes that stakeholder pressure and potential reputational damage are mechanisms that can effectively stimulate companies to conduct business abroad more responsibly.

The CORE can recommend sanctions for companies that are abusing human rights. Sanctions include the withdrawal of certain Government services, such as trade advocacy and future Export

Development Canada support, for companies found to be involved in wrongdoing.^{102 103} The assumption here is that multinationals value this advocacy and support high enough to make changes to their business conduct.

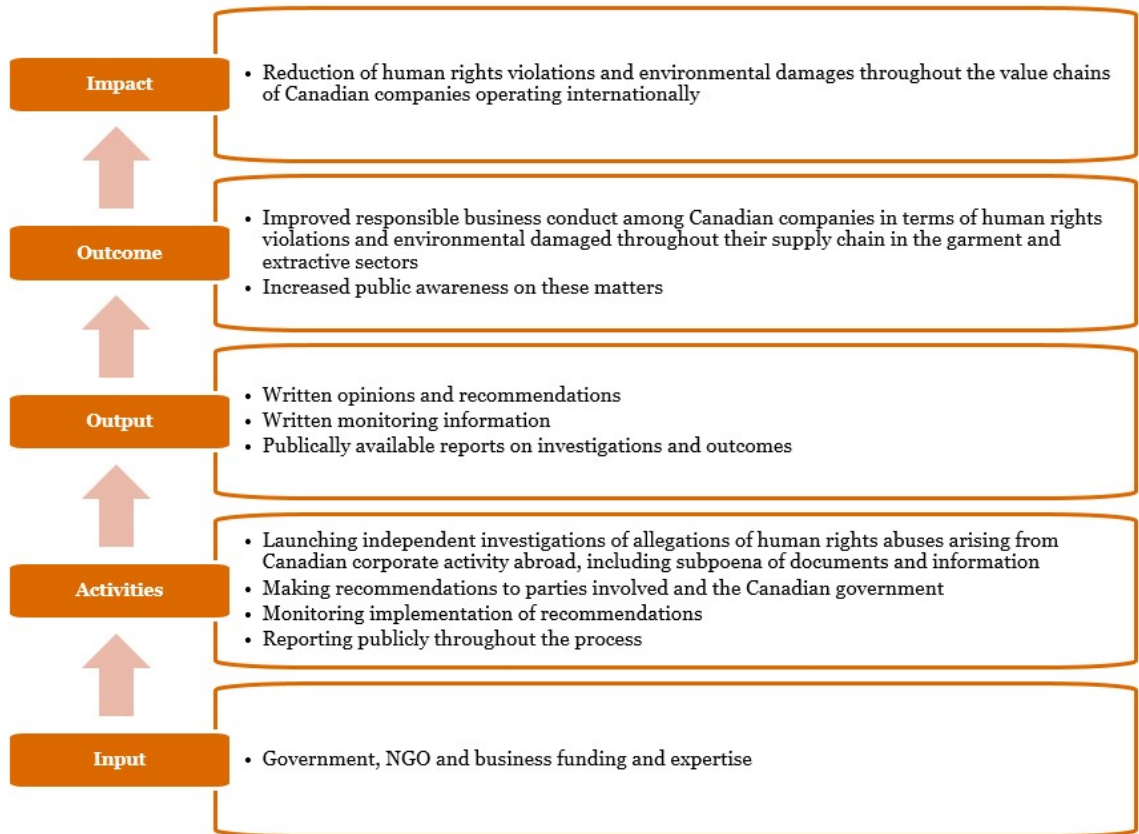


Figure 14: Reconstruction of the Theory of Change of the CORE

¹⁰² Global Affairs Canada, [Responsible business conduct abroad – Questions and answers](#), 2018.

¹⁰³ S. Natrass, [Governmental watchdog soon to investigate Canadian companies abroad](#), 2018. 2018-0911/AK/mp/vd

Swiss Responsible Business Initiative

Country	Switzerland	Scope, focus and enforcement	Proposed in the initiative: <ul style="list-style-type: none"> • Whole economy • Multi- issue coverage • Mandatory
Year of first implementation	<p>In April 2015, a coalition of Swiss civil society organizations launched a public initiative to hold Swiss companies to account for human rights abuses committed abroad. The initiative seeks mandatory human rights due diligence requirements for all Swiss companies.</p> <p>The Federal Council of the Government of Switzerland rejected to recommend the initiative for adoption and did not issue a counter-proposal. In November 2017, the Legal Affairs Committee of the Council of States, the Swiss Parliamentary upper house, decided to issue a counter-proposal. In December 2017, the Legal Affairs Committee of the National Council (lower house) decided not to support the counter-proposal of its sister committee. On 2 May 2018, the Legal Affairs Committee of the National Council revised its position and put forward a concrete legal proposal to the National Council. On 14 June 2018, the plenary of the National Council adopted the bill. The Council of States must still vote on it¹⁰⁴.</p>	Sector(s)	No specific sector
Types of companies targeted	<p>According to the counter-proposal, companies exceeding two of three thresholds:</p> <ol style="list-style-type: none"> 1. Balance sheet total of 40 million CHF 2. Turnover of 80 million CHF 3. 500 full-time employees <p>According to original RBI text: the RBI only includes a clause to exempt low-risk SMEs.</p>	Number of companies covered	Expected reach of 1,500 companies ¹⁰⁵

¹⁰⁴ Swiss Coalition for Corporate Justice, [Another step towards the adoption of a mandatory HRDD bill in Switzerland](#), 2018.

¹⁰⁵ Konzernverantwortungsinitiative, [Initiative erklärart](#), 2015.
2018-0911/AK/mp/vd

Aim

The aim of the Responsible Business Initiative is to mandate human rights due diligence and environmental due diligence

The aim of the Responsible Business Initiative (RBI) is to mandate environmental and human rights due diligence in all business dealings undertaken by Swiss companies exceeding a certain threshold. Companies will have to report on their due diligence.¹⁰⁶ The proposed scope includes operations carried out in Switzerland as well as in global supply chains of Swiss companies. To secure the mandatory element of the initiative, the current proposal states: “the Government shall be empowered and entrusted with taking measures in all legal fields, so that companies respect human rights and the environment”.¹⁰⁷

Strategy

NGO pressure and political commitment are the main strategic drivers for the Responsible Business Initiative

A group of 80 NGOs was the catalyst for the project, putting together a draft plan for the RBI.¹⁰⁸ NGO pressure was the essential drive behind the draft. The former President of the International Committee of the Red Cross (who is a member of the committee sponsoring the RBI) stressed that Switzerland holds a clear responsibility in fostering responsible business, given its role as host state of various humanitarian organizations as well as home to many transnational companies. In the interest of the reputation of Switzerland, he urged companies to step up and grapple with the complex challenges of operating responsibly at home and abroad.¹⁰⁹ The head of Amnesty International Switzerland added that an effective implementation of the UN Guiding Principles on Business and Human Rights (UNGPs) does not only depend on promoting voluntary initiatives but also on backing hard law when needed.¹¹⁰ Echoing Professor Ruggie, she points out that the UNGPs call for a smart mix of voluntary and legally binding measures to improve companies’ behavior.¹¹¹

The UNGPs and the OECD Guidelines are the reference framework underpinning the RBI

To determine which fundamental rights companies must respect abroad, the initiative relies primarily on the UNGPs. While all interviewees acknowledged a full alignment between the UNGPs and the RBI on content (i.e. the same understanding of due diligence for instance), some corporate interviewees are concerned about the misalignment between the two in terms of method- saying that the demands of the RBI (in particular, parent company liability) do not necessarily encourage gradual improvements and collaborative approaches. In this, the corporate interviewees see a discrepancy between the “knowing & showing” narrative of the UNGPs and a potential return of a naming and shaming narrative.¹¹²

Several strategic choices related to sanctions and control over foreign activities have already been made

According to both corporate and civil society interviewees, the RBI requires companies to know all human rights and environmental risks in their supply chain, even the risks that many claim are

¹⁰⁶ Swiss Coalition for Corporate Justice, [The initiative text with explanations](#), 2018.

¹⁰⁷ Swiss Coalition for Corporate Justice, [The initiative text with explanations](#), 2018.

¹⁰⁸ A. Mombelli, [Swiss firms could be held to account for actions abroad](#), 2016.

¹⁰⁹ Konzernverantwortungsinitiative, [Globale Geschäfte, globale Verantwortung](#), 2015.

¹¹⁰ Idem.

¹¹¹ Idem.

¹¹² Swiss Coalition for Corporate Justice, [The initiative text with explanations](#), 2018.

beyond companies' control (e.g. beyond Tier-1, or involving sub-suppliers, contractors or other business partners that contribute to the company's supply chain). While this is not necessarily different from the demands put forth by the OECD Guidelines and the UNGPs, corporate interviewees still voiced their concerns in terms of actual implementation and potential consequences. According to them, a considerable number of Swiss companies consider the RBI too far-reaching and are concerned about losing competitiveness, running into high operational costs and even then not being able to secure compliance. On the other hand, the RBI also gathered support in (part of) the Swiss business community, e.g. by a group of 90 MNEs organized in the GEM (Groupement des Entreprises Multinationales) business association¹¹³ among others. One of the issues mentioned by interviewees also refers to potential judicial measures that the RBI might include, such as the fact that victims could be able to bring cases against companies without the "burden of proof". Contrary to the French law on duty of vigilance, the Swiss RBI seems to be heading toward the direction of placing the burden of proof on the companies rather than on the plaintiffs.

The Initiative aims to be relevant at all stages of the due diligence process

The introduction of mandatory due diligence is the heart of the Responsible Business Initiative, inspired by the UNGPs and the OECD Guidelines for MNEs.¹¹⁴ Companies are required to carry out appropriate due diligence according to the UNGPs, as outlined in figure 15:

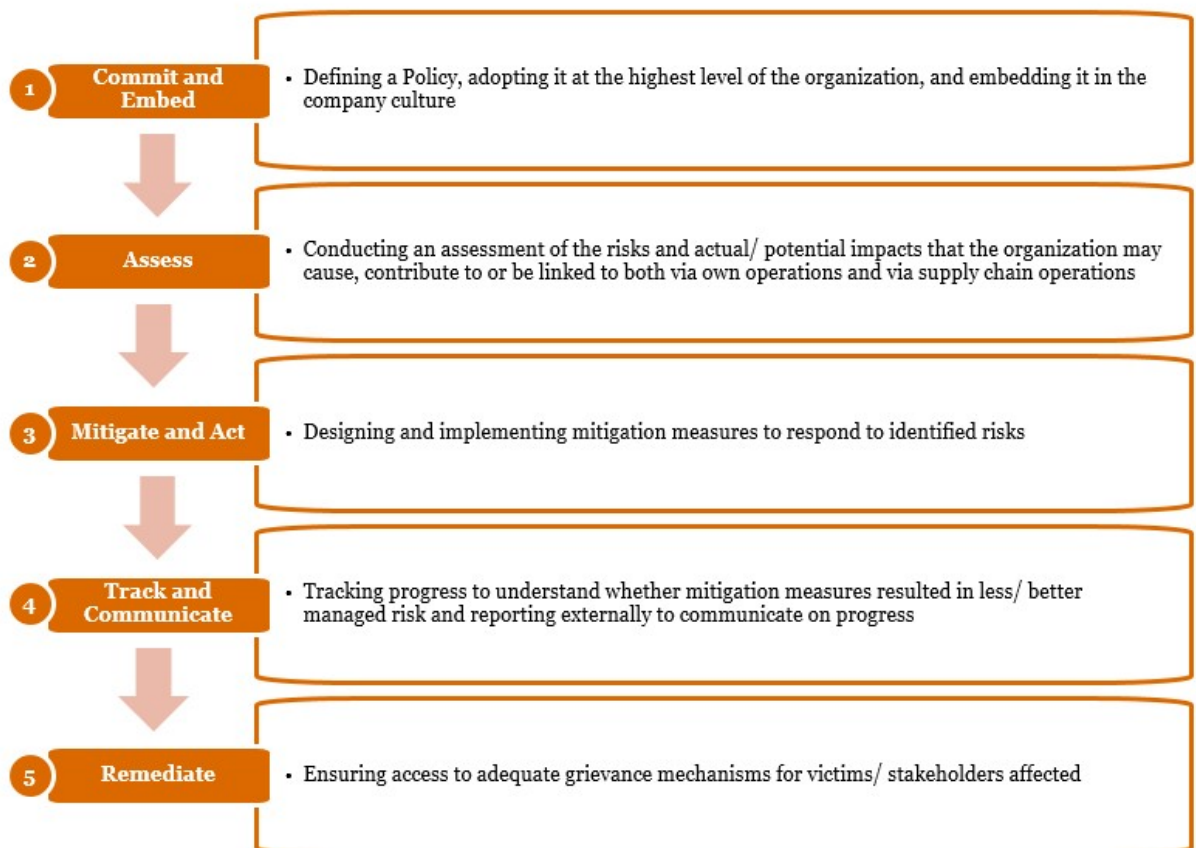


Figure 15: Due diligence steps for targeted Swiss companies

¹¹³ Statement of GEM Association:

https://www.gemonline.ch/uploads/Files/documents_publics/Communiqu%C3%A9s_de_presse/2018/2018.04.20_Communic%C3%A9_IP%20entreprises%20responsables%20CAJ-N.pdf

¹¹⁴ Idem.

2018-0911/AK/mp/vd

Theory of Change

In this section, we analyze and reconstruct the Theory of Change that underpins RBI. Figure 16 shows the chain of results that, in theory, leads the activities of the RBI to bringing about an improvement in the way human rights and environmental risks are identified and handled.

A strong link between corporate liability and behavior change underlies the Theory of Change

The Swiss initiative goes further than other RBC initiatives taken by OECD governments so far – certainly in terms of scope of the environmental and human rights due diligence to be undertaken (throughout the supply chain and in line with UNGPs) as well as on number of companies.

Also, while environmental and human rights due diligence and reporting are becoming common practice among large companies globally, Switzerland might be taking this a step further by introducing a corporate liability requirement (at parent company level, although this is still being debated¹¹⁵). Company interviewees pointed at this requirement as a key element underpinning the theory of change of the instrument, and argued that stakeholders behind the initiative see liability as the trigger to push companies towards more responsible business practices.



Figure 16: Reconstruction of the Theory of Change of the RBI

¹¹⁵ For an overview of the RBI, including liability requirements, see: <http://www.bhrinlaw.org/key-developments/64-switzerland>
2018-0911/AK/mp/vd

4. Conclusions

This chapter provides answers to the main evaluation questions that the MFA posed in the beginning of the research.

What policy instruments and strategies are used by governments to encourage, promote or enforce responsible business and ensure companies conduct due diligence in line with the OECD Guidelines and UNGPs?

We analysed thirteen different instruments and strategies that encourage, promote or enforce responsible business. The focus and coverage of the analysed instruments and strategies differs and therefore we have placed them in four quadrants¹¹⁶ based on three criteria (figure 17):

- **Coverage:** whether the instrument or strategy focuses on a specific sector (such as the Partnership for Responsible Textiles) or covers the whole economy (such as the Swiss Responsible Business Initiative).
- **Focus:** whether the instrument or strategy focuses on one specific risk (such as the UK Modern Slavery Act) or covers all OECD risks (such as the French Duty of Vigilance law)¹¹⁷.
- **Underlying mechanisms to ensure companies adhere to the strategy/instrument:** Whether the enforcement of the instrument or strategy is dependent mainly on 1. stakeholder pressure (such as NGOs or other companies), on 2. stakeholder and consumer pressure or on 3. the threat of litigation/fines in combination with stakeholder and consumer pressure. These underlying mechanisms build on each other (are cumulative) assuming that stakeholder pressure is always present and consumer pressure is always present where the threat of litigation or fines exist. This often goes hand in hand with the voluntary versus mandatory nature of the instruments or strategies. Those that depend on stakeholder pressure tend to be of a voluntary nature than those that provide the possibility for litigation and/or fines.

¹¹⁶ Within the quadrants we did not make a distinction along the lines of the axes providing a more gradual view of the extent to which an initiative is purely sectoral or one risk focused versus a broad focus or coverage.

¹¹⁷ Disclosure, Human Rights, Employment and Industrial Relations, Environment, Combating Bribery, Bribe Solicitation and Extortion, Consumer Interests, Science and Technology, Competition and Taxation.

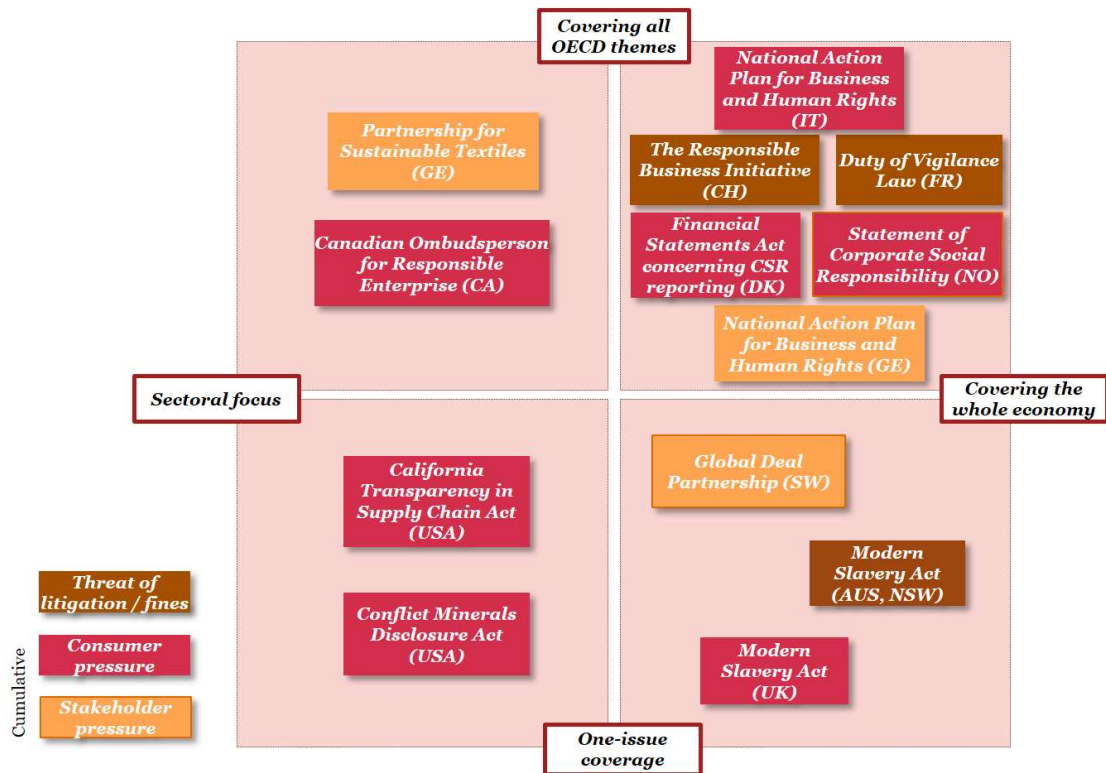


Figure 17: Mapping framework of the thirteen fiches¹¹⁸

The instruments and strategies included in the mapping differ in terms of levels of maturity. Some have been in place for over a decade (e.g. the CSR requirement in the Danish Financial Statements Act), whereas others have not been implemented yet (such as the Swiss Responsible Business initiative).

Selected cases	First year of implementation
CSR requirement in the Danish Financial Statements act	2008
German Partnership for Sustainable Textiles	2014
French Law on Duty of Vigilance	2017
Section 54 of the UK Modern Slavery Act	2015
Section 1502 of the Dodd-Frank Act	2012
Canadian Ombudsperson for Responsible Enterprises	Not implemented yet
Swiss Responsible Business Initiative	Not implemented yet

Table 3: Year of implementation of the strategies and instruments included in the case studies

¹¹⁸ [Inspired by Change in Context, 2018, Government policy to stimulate international RBC 2018-0911/AK/mp/vd](#)

What is the specific goal that these strategies and instruments envision to achieve? What is the evidence and/or rationale of governments to select a certain RBC strategy or instrument?

For each of the instruments and strategies included in the case study phase, we have defined a high-level Theory of Change, showing in what way the instruments and strategies aim to achieve their ultimate goals. In general, the outputs tend to focus on reporting by companies, which should lead to changes in the business practices at an outcome level. Ultimately, the instruments and strategies aim to decrease negative environmental impacts and human rights violations.

The way in which governments present the aims of the various instruments and strategies differs substantially (table 4). In some cases governments formulated the aims at an impact level, such as is the case with the Dodd Frank Act on conflict minerals disclosure that aims to promote peace and security in the DRC, whereas others focus more on an output level. The latter for instance is the case for the French Law on Duty of Vigilance which aims to ensure companies conduct due diligence to identify and prevent risks of adverse impacts on human rights and fundamental freedoms, health and safety of persons and the environment.

Selected cases	Aim
CSR requirement in the Danish Financial Statements act	to enhance the active position of businesses on social responsibility and communicate this on a global level ¹¹⁹
German Partnership for Sustainable Textiles	to improve environmental, social and economic sustainability along the global textile supply chain ¹²⁰
French Law on Duty of Vigilance	to ensure companies conduct due diligence to identify and prevent risks of adverse impacts on human rights and fundamental freedoms, health and safety of persons and the environment ¹²¹
Section 54 of the UK Modern Slavery Act	to eradicate modern slavery in supply chains ¹²²
Section 1502 of the Dodd-Frank Act	to promote peace and security in the DRC, by requiring publicly traded companies to ensure that the raw materials they use to make their products are not tied to the conflict in Congo ¹²³ .
Canadian Ombudsperson for Responsible Enterprises (CORE)	to address complaints on alleged human rights abuses arising from activities of Canadian companies operating abroad ¹²⁴
Swiss Responsible Business Initiative (RBI)	to mandate environmental and human rights due diligence in all business dealings

Table 4: Aims of selected instruments and strategies

We noticed that several assumptions underlie the Theories of Change for the selected instruments and strategies. An important assumption that we see across the majority of cases is that when companies report on their actions, consumers and investors will make conscious decisions and apply pressure to businesses. It assumes that businesses will be eager to comply due to this pressure faced from civil society, consumers and investors. This is however, not confirmed by evaluative research.

¹¹⁹ Danish Business Authority, [Implementation in Denmark of EU Directive 2014/95/EU on the disclosure of non-financial information](#), Danish Business Authority, 2014.

¹²⁰ Federal Ministry for Economic Cooperation and Development, [The Partnership for Sustainable Textiles](#), 2014.

¹²¹ Conseil Constitutionnel, [Décision no 2017-750 DC du 23 mars 2017](#), 2017

¹²² Home Office, [Transparency in Supply Chains etc. A practical guide](#), 2017.

¹²³ U.S. Congress, [Dodd-Frank Wall Street Reform and Consumer Protection Act Section 1502](#), 2010

¹²⁴ Government of Canada, [The Government of Canada brings leadership to responsible business conduct abroad](#), 2018

Another assumption is that the actual reach of the instrument is larger than the scope on paper because regulators and stakeholders expect the instrument or strategy to have an effect not only on the direct target group, but also on other companies and business partners that are part of the target group's value chains. This is an assumption in the French Law on Duty of Vigilance and Section 1502 of the Dodd Frank Act. The French Law on the Duty of Vigilance also includes an assumption on the link between risk mapping & reporting and the actual mitigation of risks. It is assumed that companies that map and report on the risks they face will also be inclined to address those risks in the way they do business – hence going one-step further than simply disclosing a pre-mapped risk pattern.

The German Partnership for Sustainable Textiles includes a relatively distinct assumption on the element of learning. It assumes that different members are eager to teach each other and eager to learn from each other. Part of the value in this multi-stakeholder initiative lies in company front-runners and experienced stakeholders sharing tips and best practices to other participants on relevant matters.

We did not find a clear rationale of governments to select a specific RBC strategy or instrument over another instrument. Newer strategies and instruments take the OECD guidelines and the UNGPs as a starting point, whereas older initiatives do not. This is as expected as the UNGPs came in place in 2011. While the OECD guidelines and UNGPs have led to a more common understanding and language in the instruments and strategies initiated, a concern still exists amongst especially company interviewees about each country defining their own instrument and strategy. Differences exist in what exactly is asked from businesses and as such, businesses that operate in multiple countries are confronted with differing sets of requirements.

We see a variety of strategic drivers that were relevant in the development of the instruments and policies that are part of this research. Political commitment was a main driver in a number of cases, such as for Section 1502 of the Dodd-Frank Act, the UK Modern Slavery Act and the Danish CSR requirements. Human rights incidents, such as the Rana Plaza incident in Bangladesh also proved catalyzing factors in developing instruments and strategies. Interviewees mentioned this specifically in relationship to the French Duty of Vigilance Law and the German Partnership for Sustainable Textiles. In the UK, the Guardian's exposé of the Thai prawn fishing industry played an important role.

Investors played a role specifically in the Dodd-Frank Act where they openly called on the SEC to design robust enforcement measures to achieve maximum impact. This was also the case for the UK modern Slavery Act where investors acknowledged that failure to manage human rights issues in increasingly complex supply chains could bring significant risks to business and in investment portfolios. Finally, civil society and NGOs are an important key driver to initiate the instruments. By actively campaigning for sustainable business practices and due diligence, NGOs encouraged governments to take action in this domain. NGOs also play an important role in setting up the initiatives by participating in the consultation rounds to draft the legal texts.

Based on these findings, we recommend defining a clear Theory of Change including envisioned short-term results and longer-term impacts as well as underlying assumptions for new instruments or strategies. This enhances the understanding of the purpose of an instrument or strategy and forms the basis of all monitoring and evaluation efforts. We also conclude that it is important to have consultations with a variety of stakeholders in the development of new instruments and strategies.

What is the experience of companies, governments, CSOs and sustainability initiatives with policy instruments? What works well, what could be improved?

From the interviews, we noticed that not all stakeholders always interpret the instruments or strategies in the same way. Consequently, some NGOs took up the task of clarifying what a given instrument expects by publishing detailed implementation guidelines. Interviews with company representatives confirmed that such guidelines are valuable and help in building a common understanding around expectations and requirements. The French Duty of Vigilance Law is a good example of this, because the accompanying Guidelines published by Shift and Enterprises Pour Les Droits de L'Homme effectively support companies in their reporting efforts.

Furthermore, we noticed that stakeholders often interpret the notion of due diligence in different ways. Several interviewees admitted that the concept and process of due diligence is new for them and there is not much information available on what the steps entail and how to concretely translate each step into an action at company level. Several company interviewees also experience several instruments and strategies as being a complex process for which they depend on suppliers and business partners who are not always willing to engage.

We observed that even though the general idea of the RBC instruments is to conduct environmental and human rights due diligence, companies still often treat initiatives as a reporting requirement (focusing on only one component of the due diligence cycle: track and communicate). Stakeholders we talked to indicated that a number of companies focus on producing public statements/ public reports in order to 'check the compliance box' with a given instrument, rather than spending time and resources on identifying, prioritizing and managing risks. In other words, companies seem to be acting in line with the 'letter' of the law rather than acting in the 'spirit' of the law and incorporating due diligence in all aspects of business.

This doesn't mean that reporting in itself will not have certain effects. Many instruments and strategies assume that when reporting takes place, consumers and stakeholders will be able to apply pressure on companies to change. Stakeholders indicated that responsible investors may increasingly use these reports to make investment decisions and to place pressure on companies to act more responsibly. At the same time, experts argue that when companies are aware of the outside world having access and reading their report, this in itself will have a self-cleansing effect.

Certain instruments and strategies have also led to cross learning and collaborative approaches, such as is the case with the German Partnership for Sustainable Textiles and the UK Modern Slavery Act. In the German Partnership for Sustainable Textiles we also came across certain practical opportunities and difficulties including the engagement of smaller members in international negotiations and language barriers.

Based on the above we recommend that for any new instrument or strategy it is important to provide clear guidelines and step-by-step approaches on instruments or strategies initiated. We also recommend that new instruments and strategies should encourage, promote and enforce the implementation or all steps of the due diligence cycle, as opposed to focusing solely on reporting.

What is already known on the effectiveness of the policy instruments, and/or how is or will the effectiveness be monitored and evaluated?

Because of the varying stages of implementation of the instruments and strategies, the extent to which we can draw conclusions on their effectiveness differs. Also, instruments or strategies that

have not been implemented yet generally don't have any monitoring and evaluation mechanisms in place. They have therefore not be included in this part of our analysis.

From our research, it appears that formal monitoring and evaluation efforts are limited. This makes it difficult to determine actual effectiveness. Formal monitoring and evaluation efforts that do take place mostly tend to focus on the output level rather than on outcome and impact level – focusing on number of companies involved and number of companies reporting in line with requirements. In some cases, governments decided to commission a specific organisation with the monitoring function. For example, the German Partnership for Sustainable Textiles commissioned an independent third party to conduct monitoring efforts. In other cases, we see that NGOs play a role in informal monitoring on the implementation and quality of reporting by businesses, such as is the case for the UK Modern Slavery Act.

NGO sources report about 50% coverage of all UK companies that are required to comply to the UK Modern Slavery Act and the German Partnership for Sustainable Textiles covers approximately 45% of all textiles companies in the country. The Danish Business Authority monitored the number of companies reporting in line with the Danish Financial Statement act, showing that 97% companies complied rather than explained. However this reporting stopped after 2009, and no figures were found on how many companies report under the revised scope. The reporting on Section 1502 of the Dodd Frank Act goes one step further than solely output level reporting. We found information on the results of this Act on various levels including the number companies that filed conflict mineral disclosures, the catalysing effects of the Act on laws in Congo, Rwanda and the EU, and reductions in the number of 3TG conflict mines.

In order to determine the likeliness of achieving outcome and impact level results it is important to assess whether the underlying assumptions of the Theories of Change are validated. However, we did not find any information of this kind. Based on the above analysis it is not possible to draw hard conclusions on whether certain types of instruments or strategies actually contribute or are expected to contribute to improved RBC and a decrease in human rights violations and environmental harm.

Interviewees explained that mandatory instruments with stronger enforcement mechanisms (such as the threat of litigation or fines) bring the importance of RBC to the attention of the management board. If the management board signs off on a specific disclosure or statement, that statement's relevance increases and the issues covered in there become material to investors. This may increase the readiness and commitment of companies to implement RBC strategies. However, evaluative research is needed to validate this view.

Based on our research we can conclude that no single best type of instrument or strategy exists that reaches all desired results. It will always be necessary to make choices between elements such as coverage, specificity of the requirements and costs. From this analysis, we recommend that for the development of any new instrument or strategy a monitoring and evaluation plan needs to be developed. Only by measuring outputs, outcomes and impact from the start of an instrument or strategy, it becomes possible to determine actual effectiveness.

Annex A – descriptive fiches for instruments and strategies not included in case studies

Australia

Modern Slavery Act 2018, New South Wales, Australia			
Country	Australia	World region	Australia and Oceania
Year of implementation	Passed in June 2018, no reporting/ implementation yet (date of entry into force and date of first reporting deadline unknown)	Duration	No end date foreseen
Types of companies targeted	Any commercial organisation that meets the following 2 criteria: <ul style="list-style-type: none"> At least one employee works in NSW total annual turnover of at least A\$50m (€31.6m) 	Sector(s)	All sectors
Aim	<p>The main objectives of the Act are:</p> <ul style="list-style-type: none"> To combat modern slavery: slavery-like practices and human trafficking; To provide assistance and support for victims of modern slavery; To provide for an Anti-slavery Commissioner; To raise community awareness of, and provide for education and training about, modern slavery; To provide for mandatory reporting of risks of modern slavery occurring in the supply chains of government agencies and commercial organisations. 		
Scope, coverage, and focus	<p>Targeted companies are required to produce a statement setting out the steps they have taken to ensure there is no modern slavery in their own business and in their supply chains. These steps are commonly referred to as “supply chain due diligence”.</p> <p>The specific information that organisations will be required to report on will be outlined in detail in the Regulations accompanying the NSW Act (the NSW Regulations). The Regulations have not been drafted yet. The Act provides that the Regulations may require that an annual modern slavery statement should cover, at a minimum, their:</p> <ul style="list-style-type: none"> Structure, business and supply chains; Internal policies, due diligence and remediation processes relating to modern slavery; Key risk areas for potential modern slavery malpractice and any steps undertaken to assess and manage those risks; and Training about slavery and human trafficking that may be available to the organisation’s staff. <p>Even though the supply chain due diligence approach is comparable to the OECD Due Diligence Guidance for Responsible Supply Chains, there is no reference in the NSW Act to the OECD Guidance. Possibly this is going to be part of the upcoming Regulations, but there is no indication in that direction yet.</p>		
Relevant mechanisms	<p>Companies need to prepare a slavery and human trafficking statement for each financial year. Companies also need to publish the statement on their website with a prominent link to it on their homepage, such that consumers and the general public have access to this information. This instrument assumes that this access will motivate companies to improve their business conduct, and that consumer and the general public will act if business conduct does not improve.</p> <p>A company might face a fine of up to A\$1.1 million (approximately EUR 680,000) if it:</p> <ul style="list-style-type: none"> Fails to prepare a modern slavery statement; Fails to publish that statement publicly in accordance with the Regulations; and 		

	<ul style="list-style-type: none"> • Knowingly provides false and misleading information in a modern slavery statement. <p>A state-level independent Anti-Slavery Commissioner will be appointed and will have the mandate to focus on public awareness, advocacy and advice. The electronic register kept by the NSW Anti-Slavery Commissioner will identify government agencies that are failing to comply with the directions of the Procurement Board relating to modern slavery.</p> <p>The NSW Act provides powers for the NSW Procurement Board to direct government agencies to carry out steps that ensure that goods and services procured by, and for, government agencies are not the product of modern slavery. This is accompanied by an audit mechanism, which provides for the Auditor-General to conduct audits to determine whether government agencies are complying with their procurement obligations.</p>
Effectiveness	The Act was adopted in June 2018, and no actual implementation has taken place yet. As such, no hard or soft data on its effectiveness is available.
Evaluation date	An official evaluation date has not been set yet.
Manner in which the institutional and regulatory framework promotes or hinders RBC	The working of this instrument does not rely on specific institutions or regulations typical for Australia. It does rely on active and conscious consumerism, which according to informal sources is on the rise in Australia. ^{125 126}
Scalability	<p>The Modern Slavery Act could be scaled up from the New South Wales level to the federal level. The federal government of Australia is currently discussing legislation that targets companies with a total annual turnover of at least A\$100m, double than the threshold set for the NSW instrument.</p> <p>This threshold could be lowered to include more companies, although it remains to be seen whether the resulting benefits outweigh the associated costs, as many smaller companies might already be part of the value chain of larger companies that are already subject to the Act.</p>
Transferability	<p>The Modern Slavery Act could be implemented in other countries. Australia itself crafted this instrument on the basis of the UK Modern Slavery Act. Important considerations for the successful implementation of this instrument include the role of active/ conscious consumers, and a base-line level of reporting integrity and overall maturity of non-financial reporting among targeted companies.</p> <p>Both appear to be present in the Dutch context.</p>
Web links	<p>https://www.legislation.nsw.gov.au/#/view/act/2018/30/full</p> <p>https://www.herbertsmithfreehills.com/latest-thinking/modern-slavery-update-first-australian-modern-slavery-legislation-passes-in-nsw</p>

¹²⁵ <https://www.cmo.com.au/blog/data-driven-marketing/2017/06/27/the-rise-of-the-conscious-consumer/>

¹²⁶ <http://www.abc.net.au/news/2018-04-06/more-businesses-being-socially-responsible-to-attract-consumers/9622668>
2018-0911/AK/mp/vd

Germany

National Action Plan for Business and Human Rights			
Country	Germany	World region	Europe
Year of implementation	2016	Duration	2016-2020 (4 years)
Types of companies targeted	All German companies	Sector(s)	No specific sector
Aim	<p>The aims of the National Action Plan (NAP) are:</p> <ol style="list-style-type: none"> 1. To make the UN Guiding Principles on Business and Human Rights applicable in practice for all actors involved; 2. To highlight duties and responsibilities of the state and business respectively; 3. To guarantee policy coherence; 4. To ensure that German business remains sustainable and competitive. 		
Scope, Coverage and focus	<p>The NAP launches a process of creating a road map for the practical implementation of the UNGPs. It aims to pool the capacities of actors from government, business, civil society and trade unions, particularly with a view to contributing actively to improving the human rights situation throughout supply and value chains in Germany and worldwide.</p> <p>Through the establishment of reliable basic conditions for German enterprises, the Federal Government wishes to work towards a global level playing field. A common understanding by all players worldwide of due diligence as described in the UNGPs is an indispensable means to this end.</p> <p>The responsibility to exercise due diligence applies in principle to all enterprises, regardless of their size, the sector in which they operate, or their operational context within a supply or value chain with an international dimension. The nature and exercise of due diligence for any given enterprise should be commensurate with these factors; it should be possible for the enterprise to incorporate its due diligence obligations into its existing processes in an appropriate manner without the creation of undue bureaucratic burdens.</p> <p>Core elements of due diligence that need to be implemented in the field of human rights:</p> <ol style="list-style-type: none"> 1. A human rights policy statement; 2. Procedures for the identification of actual or potential adverse impact on human rights; 3. Measures to ward off potentially adverse impacts and review of the effectiveness of these measures; 4. Reporting; 5. A grievance mechanism. 		
Relevant mechanisms	<p>The NAP marks the starting point of a process that will be continuously updated and developed. The implementation will be monitored by a comprehensive procedure of these measures by all players.</p> <p>Subsequent to the NAP, private-sector actors and stakeholder from civil society are expected to, together with the public sector, develop and implement initiatives, projects, programmes and instruments to encourage and improve adherence to the UNGPs.</p> <p>Moreover, stakeholders report that the process through which the National Action Plan is developed itself helps private sector actors understand more about their roles and responsibilities in this area. Multiple rounds of coordination, consultation, conversation and dialogue generate encouragement and insights that help companies shape ideas, plans and procedures and put them in practice.</p>		
Effectiveness	At the moment it is not clear what the effectiveness is of the action plan is.		

Evaluation date	An independent consultant will evaluate the action plan. Their evaluation reports will be made available starting early 2019 and until the end of 2020.
Manner in which the institutional and regulatory framework promotes or hinders RBC	The working of this instrument does not appear to rely on specific regulations typical for Germany. It does appear to rely heavily on institutional embeddedness of social dialogue and stakeholder consultation in the German model of corporate governance and public administration. It also appears to rely on the good faith of participating private sector stakeholders to actively engage with the outcomes of consultations and coordination efforts in their day-to-day business practices.
Scalability	As long as no specific instruments have been developed, scalability remains hard to analyse. Consultation and coordination efforts, however, do not specifically scale cost-efficiently, unless online platforms can be leveraged in very effective ways.
Transferability	A NAP also exists in the Netherlands, and was adopted shortly after the UNGPs became the authoritative standards on human rights & business. Transferability of the coordination and consultation activities that underpin the development of this NAP can be emulated in countries or regions that feature a similarly well-embedded practice of stakeholder coordination and consultation, and social dialogue.
Web links	https://www.auswaertigesamt.de/blob/297434/8d6ab29982767d5a31d2e85464461565/nap-wirtschaft-menschenrechte-data.pdf https://www.business-humanrights.org/sites/default/files/documents/NAP%20Business%20Human%20Rights_English%281%29.pdf

Italy

National Action Plan 2016-2021, Italy			
Country	Italy	World region	Europe
Year of implementation	2016	Duration	2021 ¹²⁷
Types of companies targeted	Any commercial organisation with operations in Italy, regardless of size/ number of employees and turnover.	Sector(s)	All sectors
Aim	<p>National Action Plans are policy instruments meant to support, coherently organize and prioritize government action on the implementation of the UNGPs. A number of OECD and non-OECD countries have developed a National Action Plan on Business and Human Rights¹²⁸. NAPs vary considerably in scope, depth and goals.</p> <p>The Italian NAP recognizes the need to work on UNGP implementation on many levels, but has also set some main objectives to be reached by 2021:</p> <ul style="list-style-type: none"> • Promoting due diligence across all sectors and value chains, including at SME level; • Combating human trafficking, forced labour and modern slavery, in an effort to protect the most vulnerable segments of the population, i.e. migrants and refugees; • Combating gender-based discrimination and ensuring equal opportunities in hiring practices and at the workplace in general. 		
Scope, coverage, and focus	<p>In terms of scope/ coverage, the NAP applies to all companies. However, the NAP explicitly recognizes the need to engage SMEs. While it is applicable to all sectors, the NAP catalysed internal debate in the agribusiness and construction sectors (where migrant/ refugee workers are often employed), and has often been taken as a reference point by ethical and responsible investors.</p> <p>The NAP is drafted in line with the UNGPs and the OECD Guidelines, in particular in terms of promoting a common understanding of the notion of due diligence. The NAP seeks to achieve the following:</p> <ul style="list-style-type: none"> • Promoting them among businesses with a focus on the Human Rights chapter of the OECD Guidelines and the “Respect” and “Remedy” pillars of the UNGPs • Promoting common understanding of due diligence and encouraging companies to engage in human rights policy and due diligence processes • Engaging directly with business associations, business and business leaders to convey the governments’ expectations on Human Rights • Producing effective guidance for companies and disseminating Guidance tools • Promoting and encouraging leading multi-stakeholder initiatives involving companies for exchange and common action on Human Rights; • Promoting the international framework agreements developed by the International Trade Unions; • Promoting the culture of Human Rights protection in business action through analysis, cooperation with universities, training activities, etc; • Participating in initiatives in the context of the OECD, EU and other international fora on sustainable supply chains, human rights and due diligence. 		

¹²⁷ After this date the Plan will be updated to reflect progress made and needs identified in the 2016-2021 period

¹²⁸ For an overview of NAPs completed and NAPs in progress, see: <https://www.business-humanrights.org/en/un-guiding-principles/implementation-tools-examples/implementation-by-governments/by-type-of-initiative/national-action-plans>

Relevant mechanisms	<p>The NAP provides a roadmap for Italian companies to address issues relating to RBC. Companies are expected to:</p> <ul style="list-style-type: none"> i) establish a human rights policy; ii) set up and implement due diligence processes to identify, assess and prevent any potential human rights risks which could be incurred in across their operations and activities (or business partners or suppliers’); iii) provide for mechanisms of grievance allowing reparation to victims of abuses they may have caused or contributed to, or with which they are directly linked to. <p>While the NAP in itself is not legally binding, the work of the CIDU and pressure from other agencies and branches of government (including in the discussions leading to the NAP) helped in building the necessary common ground needed to table few pieces of legislation tied to modern slavery and trafficking. These include the Law n. 199 of 29.10.2016, which introduces stricter criteria for the criminal prosecution of those exploiting workers in the agriculture and construction sectors, with “exploitation” including forced labour and human trafficking of migrant/ refugee workers.</p>
Effectiveness	<p>The NAP spurred corporate transparency on RBC and in non-financial reporting. PwC Italy has reviewed a number of sustainability/ RBC statements issued by Italian companies and found that depth and quality of the information reported on due diligence has considerably improved in the past couple of years. Commentators have argued that this may be a combined effect of the NAP, the EU Directive on Non-Financial Reporting and the harsh media coverage received by a few large brands in the food/ agri sector.</p>
Evaluation date	<p>An official evaluation date has not been set yet. It can be assumed that an evaluation will be conducted in 2021, prior to updating/ extending the NAP.</p>
Manner in which the institutional and regulatory framework promotes or hinders RBC	<p>The working of this instrument does not rely on specific institutions or regulations typical for Italy. It does rely on active and conscious consumerism, as well as on the role of NGOs and the media in denouncing business misconduct. Local ethical investors (Etica Sgr, Banca Etica etc.) are particularly vocal on the role of the financial sector in the space of active ownership and ESG engagement in case companies fail to deliver on environmental and human rights commitments, and have often joined the NGOs and media in criticizing laggard companies.</p>
Scalability	<p>The NAP is implemented at national level. No further options for scalability exist.</p>
Transferability	<p>A NAP also exists in the Netherlands, and was adopted shortly after the UNGPs became the authoritative standards on human rights & business. Elements that appear to be transferable include the Italian NAP’s focus on RBC issues that are salient for the country and that affect the most vulnerable segments of the population. Important considerations for the successful implementation of a detailed NAP include the role of active/ conscious consumers, and a base-line level of reporting integrity and overall maturity of non-financial reporting among targeted companies. Both appear to be present in the Dutch context.</p>
Web link	<p>http://cidu.esteri.it/resource/2016/07/48255_f_PANBHRITAConsultpubblica.pdf</p>

Norway

Norwegian Accounting Act - Statement of Corporate Social Responsibility			
Country	Norway	World region	Europe
Year of implementation	1998/1999	Duration	Indefinitely
Types of companies targeted	Large enterprises are obliged to report. Public limited companies and listed enterprises are considered large enterprises according to the Act. Others businesses which are required to prepare accounts can also be considered to be large enterprises under special provisions. ¹²⁹	Sector(s)	No specific sector
Aims/targets	Transparency and disclosure are key to the development of corporate social responsibility. Large enterprises are required under Section 3-3c of the Accounting Act to report on their ESG and human rights policies and due diligence efforts.		
Scope, coverage and focus	<p>Large enterprises should explain what the enterprise does to integrate human rights, labour rights and social conditions, the external environment and the fight against corruption in its business strategies, in its daily operations and in the relationship with its stakeholders.</p> <p>The statement shall contain at least information on the guidelines, principles, procedures and standards used by the entity to integrate the aforementioned considerations into its business strategies, in its daily operations and in relation to its stakeholders.</p> <p>Companies that have guidelines, principles, procedures and standards as mentioned shall also provide information on:</p> <ol style="list-style-type: none"> 1. How the enterprise works to translate these into action; 2. Assessing the results achieved as a result of the integration of the considerations mentioned in the first sentence of their business strategies, in their daily operations and in relation to their stakeholders 3. And about expectations for this work in the future. <p>The Act expects companies to act in line with the UNGPs¹³⁰, but makes no mention of the OECD Guidelines.</p> <p>As an exception, the Ministry of Finance may by regulation determine that a public progress report pursuant to the United Nations Global Compact or a Public Report made within the framework of the Global Reporting Initiative, may replace the requirements above (first sentence in this box). The Ministry of Finance may in regulations also lay down further requirements for such reporting, including requirements that additional information must be provided in the Board of Directors report. This exception has been regulated, but for the accounts started 1st of January 2018, this has expired. There is unknown whether the Ministry of Finance will issue a new regulation giving exception.</p> <p>This may raise questions on the scope of the information that needs to be reported, since the perspective and level of granularity required to show that a company is acting in line with the UNGPs is different than what would be expected under broader reference frameworks such as the UN Global Compact.</p> <p>Organisations in the public sector are not subject to the Act and are under no legal obligation to report on the abovementioned areas.</p>		

¹²⁹ <https://lovdata.no/dokument/NL/lov/1998-07-17-56>

¹³⁰ https://www.regjeringen.no/globalassets/departementene/ud/vedlegg/mr/business_hr_b.pdf

Relevant mechanisms	<p>All Norwegian-registered companies are legally bound to keep accounting records and publish their financial statements. This addition requires them to report on their sustainability policy and due diligence efforts in their annual report or in any other publicly available document. If they opt for a document which is not the annual report, then they still need to include a link to said document in their annual report/ financial statements.</p> <p>While there are no sanctions for companies that fail to publish such information¹³¹, the expectation is that the push to publish sustainability statements as part of the annual reports will generate peer pressure among companies or pressure from responsible investors that use this information for their investment, engagement or divestment decisions. Intermediary organisation such as NGOs or trade unions are also expected to play a role in this mechanism, e.g. Changemakers, Innwegian and Belona, as watchdogs or simply as encouraging parties fostering transparency in business and investment. e</p>
Effectiveness	<p>As there is no sanctions not complying with the law, it seems that the law is not as effective as intended. In 2017 when researched the 100 largest companies in Norway, 9 percent of the companies which the law applied, did not comply fully with the law. All of the ones who did comply, did so using the exception in the law for reporting to the UN Global Compact or according to GRI.</p>
Evaluation date	<p>The Act has been in place for a long time, and no formal independent evaluation has been conducted since 2005.¹³² At that time the Statement of Corporate Social Responsibility was not yet part of the Norway Accounting Act. There are no evaluations of this portion of the Act.</p>
Manner in which the institutional and regulatory framework promotes or hinders RBC	<p>The working of this instrument does not rely on specific institutions or regulations typical for Norway. Besides, Norway does not have any other hard law/ mandatory provisions covering RBC. The Act seems to rely on active and conscious consumers and investors, and on NGOs acting as watchdogs. To strengthen the case for RBC, the Norwegian government actively convenes moments of multi-stakeholder dialogue/ exchange of knowledge to improve RBC practices with Norwegian companies and NGOs.</p>
Scalability	<p>The Norwegian Accounting Act is focused on listed (large) companies. The Act could be scaled up to medium and smaller companies. However, a good portion of SMEs in Norway are already reached through the Act's stakeholder and value-chain perspective.</p>
Transferability	<p>The Act could be replicated in other countries, although further investigation is necessary to check whether the CSR statements in scope for the Act fully overlap/ partially overlap/ differ from the non-financial disclosures mandated by the EU Directive on Non-Financial Reporting and by sector specific Covenants in place for some segments of the Dutch economy.</p>
Web link	<p>https://lovdata.no/dokument/NL/lov/1998-07-17-56#KAPITTEL_1</p>

¹³¹ https://www.interregeurope.eu/fileadmin/user_upload/tx_tevprojects/library/file_1523529564.pdf

¹³² <https://www.regjeringen.no/no/dokumenter/otprp-nr-39-2004-2005-/id395712/sec3>

Sweden

The Global Deal partnership - Sweden			
Country	Sweden (one of the partner countries of the Global Deal)	World region	Europe (however, the Global Deal initiative is global)
Year of first implementation	September 2016	Duration	No end date foreseen
Types of companies targeted	The Global Deal partnership welcomes a variety of different stakeholders: governments (including regional bodies), businesses (employers' organizations and individual companies), trade unions, civil society, and other organisations– local, national, regional or global.	Sector(s)	All sectors.
Aim	The Global Deal is a global multi-stakeholder partnership with the objective of jointly addressing the challenges in the global labour market and enabling all people to benefit from globalisation. The Global Deal is a concrete input to the sustainable development goals (SDGs), especially SDG 8 on decent work and economic growth, but also other goals including SDG 10 on reducing inequality within and among countries. As such, this instrument is not directly tied to the OECD guidelines in a legal sense.		
Outline of the scope, coverage and focus	<p>The Global Deal has three key elements 1) accelerate action through voluntary commitments and advocacy, 2) increase the knowledge base through capacity building and research and 3) provide platforms for sharing of experiences and good practices.</p> <p>A Declaration of Support forms the basis of the Global Deal. There is nothing in the Global Deal that is legally binding. Stakeholders are asked to associate themselves with the declaration and make real commitments. To join the Global Deal, stakeholders need to take the following actions:</p> <ul style="list-style-type: none"> • Submit a written letter to the Global Deal Support Unit; • Identify their own commitments based on their specific context and starting point; • Undertake individual activities or activities in partnership with others; • Follow up on commitments. <p>The Global Deal will entail exchanges of ideas, joint projects, solutions, experiences, challenges, lessons learned and policy advice. It will promote concrete initiatives and voluntary commitments. The Global Deal Support Unit will facilitate sharing of experience and peer learning, and provide a coordinated follow-up structure.</p>		
Relevant mechanisms/operations	<p>The Global Deal aims to encourage governments, businesses, unions and other organisations to make commitments to enhance social dialogue. Social dialogue includes all types of negotiation, consultation or exchange of information between or among representatives of governments, employers and workers on issues of common interest relating to economic and social policy. Effective social dialogue can contribute to decent work, quality jobs and increased productivity and by extension to greater equality and inclusive growth.</p> <p>Social dialogue takes many different forms. It can exist as a tripartite process, with the government as an official party to the dialogue or it may consist of bipartite relations only between labour and management (or trade unions and employers' organisations), with or without indirect government involvement. Concerted search for a consensus can be informal or institutionalised, and often it is a combination of the two. It can be inter-sectoral, sectoral or at enterprise level.</p>		

	The Global Deal aims to unleash the full potential of social dialogue and sound industrial relations as instruments for fostering greater levels of trust and cooperation, motivation and skills among workers, as well as strengthening the capacity of firms to adapt to new technologies and achieve higher productivity.
Effectiveness	<p>The Flagship report 2018 concludes the following¹³³:</p> <ul style="list-style-type: none"> • Social dialogue can play an important role in advancing decent work and inclusive labour protection, but there is a need to strengthen representative organisations (trade unions and employers' organisations) and ensure their independence. • Enhanced social dialogue is a key element for responsible business conduct. It can do so by promoting stability both in the workplace and society at large, by increasing ownership and inclusion and facilitating the resolution of disputes and remediation of grievances. Social dialogue can also trigger broader processes of dialogue involving other stakeholders, thereby deepening democratic participation and facilitating peaceful transitions. • Social dialogue provides an opportunity for companies to improve their due diligence activities by engaging with workers' organisations. This can be broadened to involve other actors in multi-stakeholder dialogue. The implications are significant as better due diligence can help companies in their efforts to manage the risk of business interruption, as well as facilitating compliance with national laws and respect for the principles established in international labour standards across supply chains. • Collective bargaining¹³⁴ can reduce inequalities in labour markets, improve their functioning and deliver sound and productive labour relations.
Evaluation date	The main follow-up tool to the Global Deal is a recurring flagship report published under the responsibility of the Secretary- General of the OECD and the Director-General of the ILO. The first one published in May 2018. Reports are scheduled to be published every other year. Reports will look at trends and developments in social dialogue, specific themes and highlight commitments and good practices. Reports will not assess commitments made by partners, but rather highlight good practices and innovative solutions.
Description institutional and regulatory framework	<ul style="list-style-type: none"> • Ensuring the effective recognition of and respect for the fundamental rights that provide the foundations for social dialogue is critical to the successful delivery of decent work, quality jobs and inclusive growth. Ratification of the fundamental ILO Conventions, which underpin these principles and rights, lags behind that of the other fundamental Conventions, and renewed efforts to promote ratification have been called for. • Creating an enabling legal and institutional framework for – and promoting – all forms of social dialogue includes setting up effective mechanisms for preventing and resolving labour disputes. Effective social dialogue requires that social partners and businesses engage in dialogue in good faith, which is the case in Sweden. • After many years of decline, trade unions are engaging in various efforts to renew their structures and increase membership, with promising signs, and the organised representation of business interests is being strengthened. • It appears that countries with coordinated collective bargaining systems consistently outperform fully decentralised systems in terms of unemployment, employment and the integration of vulnerable groups such as youth, women and low-skilled workers.¹³⁵ Centralised systems without co-ordination hold an intermediate position in terms of labour market performance: they are associated with similar unemployment outcomes as fully decentralised systems, but perform better in terms of employment, possibly reflecting make-work-pay effects.

¹³³ <http://www.theglobaldeal.com/app/uploads/2018/05/GLOBAL-DEAL-FLAGSHIP-REPORT-2018.pdf>

¹³⁴ Collective bargaining is a key pillar of social dialogue to promote equity and efficiency.

¹³⁵ The Global Deal for Decent Work and Inclusive Growth Flagship Report 2018: Building Trust in a Changing World of Work

	<ul style="list-style-type: none"> Collective bargaining can be used as a regulatory tool to provide inclusive labour protection to workers in non-standard forms of employment (including in de gig economy) and facilitate their transition to more secure forms of work. In emerging economies, social dialogue can be part of a broader strategy to facilitate the transition from the informal to the formal economy and improve job quality.
Scalability	<p>This multi-stakeholder platform has a high scalability. There are a variety of tools which could help the Global Deal and its partners in their efforts to meet current and future commitments:</p> <ul style="list-style-type: none"> Accelerating action by raising awareness about the role of social dialogue through advocacy, thereby reinforcing action and contributing to further enhance social dialogue and sound industrial relations. The Global Deal can play an important role in facilitating knowledge development and research. The partnership can also provide a forum for the exchange of information and communication in support of commitments.
Transferability	<p>The Global Deal is already implemented in a variety of countries. However, a (country-specific) key ingredient of successful social dialogue is the ability for all labour market actors to exercise their voice and be heard, together with the mutual respect and trust that create favourable conditions for collaboration between employers, workers and governments. Trust, co-operation, and other social norms conducive to the delivery of social justice and good economic outcomes for all cannot be built in the space of a few years; they are shaped by decades of history and social change (path dependency). However, governments can do a lot to ensure the effective recognition of freedom of association and of the right to collective bargaining, to encourage cooperation between social partners and to promote social dialogue in a way that allows labour relations to adapt to emerging challenges.</p>
Web links	<p>Website The Global Deal: http://www.theglobaldeal.com/</p> <p>Flagship report 2018: http://www.theglobaldeal.com/app/uploads/2018/05/GLOBAL-DEAL-FLAGSHIP-REPORT-2018.pdf</p>

United States

California Transparency in Supply Chain Act (SB 657)			
Country	United States	World region	North America
Year of implementation	2011/2012	Duration	Indefinitely
Types of companies targeted	<p>Companies that fulfil the following criteria:</p> <ul style="list-style-type: none"> • Either retail sellers or manufacturers; • that do business in California; • and have over 100 million dollar in gross annual receipts. 	Sector(s)	Retail
Aim	<p>The goal of the Act is to provide consumers with supply chain information that enables them to take more educated purchasing decisions. The underlying belief is that the simple act of disclosure will compel corporations to investigate whether any human rights violations (and precisely instances of slavery and human trafficking) have taken place in their supply chains.</p>		
Scope, coverage, and focus	<p>The Act requires that targeted businesses disclose information about their efforts to eradicate slavery and human trafficking from their supply chains.</p> <p>By its terms, the Act does not require manufacturers and retailers to take affirmative action to detect or prevent slavery or human trafficking in their supply chains. It requires only that the company make the mandated disclosures. Nevertheless, manufacturers and retailers should be aware of the potential for attorney general enforcement actions, as well as enterprising litigation by consumers, based on violations of the statute.</p> <p>Companies subject to the Act must disclose information as to whether the company:</p> <ol style="list-style-type: none"> 1. Engages in verification of product supply chains to evaluate and address risks of human trafficking and slavery. The disclosure shall specify if the verification was not conducted by a third party; 2. Conducts audits of suppliers to evaluate supplier compliance with company standards for trafficking and slavery in supply chains. The disclosure shall specify if the verification was not an independent, unannounced audit; 3. Requires direct suppliers to certify that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business; 4. Maintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking; 5. Provides company employees and management, who have direct responsibility for supply chain management, training on human trafficking and slavery, particularly with respect to mitigating risks within the supply chains of products. <p>The Act offers companies discretion in how to disclose information in these disclosure categories. The California Transparency in Supply Chains Act does not require that businesses implement new measures to ensure that their product supply chains are free from human trafficking and slavery.</p> <p>Important to note is that the Act does not mention the OECD Guidelines. However, when disclosing information about supply chains, companies often do refer to the OECD Guidelines</p>		

	^{136,137,138} . This indicates that companies recognize the OECD Guidelines as an authoritative due diligence framework that can be used to meet the requirements of the Act.
Relevant mechanisms	<ul style="list-style-type: none"> • Companies in scope are obliged to disclose on their websites their efforts to eradicate slavery and human trafficking from their direct supply chain for tangible goods offered for sale. For its impact, the Act assumes that consumers will access these websites and will make their own judgement on whether the efforts of the company match with their values with regard to slavery and human trafficking, and adapt their purchasing behaviour accordingly. • Most American companies do business in California, and California is the largest economy in the United States. By implementing a law at state level in California, the government reaches a large number of companies and effectively manages to have national reach.¹³⁹ • A company subject to the Act that provides no human trafficking disclosures on its website is in violation of the law. The exclusive remedy for a violation of the law will be legal action brought by the Attorney General for injunctive relief.
Effectiveness	It is hard to determine the actual effectiveness of the Act because no formal independent evaluation has been carried out to date. In 2014, KnowTheChain ¹⁴⁰ and the Business & Human Rights Resource Centre ¹⁴¹ published basic information concerning the number of companies that complied with the Act, the number of those that did not, and the number of those that had indicated that they are not/ should not be subject to the Act. Their research found that only 14% of Californian companies complied with the Act. Human rights advocacy groups say more needs to be done. ¹⁴²
Evaluation date	At the moment there is no set date for a formal evaluation of the law.
Manner in which the institutional and regulatory framework promotes or hinders RBC	The working of this instrument does not rely on specific institutions or regulations typical for California or the United States. It does rely on active and conscious consumerism, and assumes an active role from NGOs, who should be operating as watchdogs and push companies to engage with the challenges posed by the risk of trafficking and modern slavery. Conscious consumerism is particularly manifest in two major cities in California: San Francisco and Los Angeles. San Francisco, a city renowned for its active environmental and social justice community, is home to prominent CSR consulting firms and pressure groups that help push the RBC agenda ¹⁴³ . Research and academic institutions, such as Berkeley University and Haas School of Business, have also played a role in advancing sustainable business solutions.
Scalability	<ul style="list-style-type: none"> • The California Transparency in Supply Chain Act requires companies to disclose information on five topics. The nature of the topics (verification, audits, certification, internal accountability and training) are general and could be applied to all large businesses in the retail & consumer sector. Therefore, the law can be replicated on a larger scale, e.g. on a federal level in the US to reach an even larger pool of companies and consumers. • The law could also be scaled up to targeting companies with less than 100 million dollar in gross annual receipts • The law could also be scaled up to targeting companies that are active in other (non-retail) sectors, such as food/ agribusiness but also those that appear to be lagging behind on RBC such as telecommunications or pharma.

¹³⁶ <https://multimedia.3m.com/mws/media/7386170/california-transparency-in-supply-chains-act-disclosure.pdf>

¹³⁷ <https://www.tesla.com/sites/default/files/about/legal/tesla-supplier-code-of-conduct.pdf>

¹³⁸ <https://www.hcstarck.com/en/sustainability/california-transparency-in-supply-chains-act.html>

¹³⁹ CEO Daily is the Fortune's daily newsletter: <https://www.ceo.com/miscellaneous/states-with-the-most-fortune-500-companies>

¹⁴⁰ <https://knowthechain.org/>

¹⁴¹ <https://www.business-humanrights.org/en>

¹⁴² <https://www.theguardian.com/sustainable-business/2016/jan/22/california-anti-slavery-law-development-international-sun-maid-asia-human-trafficking>

¹⁴³ Among others: BSR (<https://www.bsr.org/>) and Amnesty International USA, which operates two branches out of San Francisco and focuses on responsible business among other topics.

Transferability	<p>Other countries could implement this instrument without considerable structural difficulties. Important considerations for the successful implementation of this instrument include the role of active/ conscious consumers, and a base-line level of reporting integrity and overall maturity of non-financial reporting among targeted companies. Both appear to be present in the Dutch context.</p> <p>The above-mentioned categories are similar to the disclosures outlined in the GRI Standards. Many Dutch companies issue sustainability (or integrated) reports that comply with the GRI standards already.</p>
Web link	<p>https://oag.ca.gov/sites/all/files/agweb/pdfs/sb657/resource-guide.pdf</p>

