Strategies for responsible business conduct

Supplementary research on specific government measures

CHANGE IN CONTEXT

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Table of contents

1. Introduction

Background and objectives

In 2018, PwC conducted research for the Dutch Ministry of Foreign Affairs, Strategies for Responsible Business Conduct[1]. This research covers various instruments used by governments to stimulate international responsible business conduct.

Following the release of this report, the Committee for Foreign Trade and Development Cooperation of the Dutch House of Parliament raised several questions with the Minister for Foreign Trade and Development Cooperation. The Dutch Ministry of Foreign Affairs has asked Change in Context to conduct research to supplement the PwC research to provide an update about recent developments and to deepen the understanding on how the different instruments are monitored. This research is focused on seven specific instruments from Denmark, Germany, France, the United Kingdom, Switzerland, Canada and the United States of America.

Organisation of this report

Each chapter in this report focuses on one specific responsible business measure or initiative in one country. Each chapter starts with a brief introduction to the specific measure or initiative researched, and where relevant with the additional changes in the context additional to the report of PwC. Subsequent sections of each chapter focus on monitoring, sanctions, and the current results of the measure or initiative. A brief overview of the initiatives is provided in Table 1 on the next page.

Methodology and disclaimer

Research was conducted in several phases:

1. Desk research on publicly available resources such as websites and publications by governments, NGOs, business associations and general media;
2. Telephonic interviews with relevant civil servants, supplemented by interviews with experts and representatives of NGOs and or business associations as relevant (the list of people interviewed is provided in Appendix 2);
3. A second round of desk research on materials provided by the interviewees;
4. Reporting to capture the findings, including a content check on the draft chapters by the interviewed civil servants.

This inventory research was conducted by independent consultants, Marjolein Baghuis and Eva Schouten of Change in Context in May 2019. This report is not an in-depth academic study or analysis. It is a supplementary report with a limited scope in the instruments and initiatives researched.

[1] PwC (2018) Strategies for Responsible Business Conduct

Table 1: Overview of researched initiatives

Country	Initiative	Monitoring	Sanctions	Results
Denmark	CSR reporting requirement in Financial Statement Act	By the Danish Business Authority, previously by a third party commissioned by DBA	Conditional fines until order is complied with. In severe cases police will be notified.	Increased awareness on environmental and social issues and increased reporting rates.
France	Law on duty of care (Loi sur le devoir de vigilance)	No formal monitoring by the Government, yet by independent other parties	Periodic penalty payments and civil liability action No court cases so far.	In 2018, at least 80 of around 200 companies published a plan. Not all of them meet requirements of law. No impact measurement.
Germany	Partnership for Sustainable Textiles (Textilbündnis)	Yes, monitoring of the reporting of members by a third party currently paid by the government	Exclusion from the Textiles Partnership. In 2018, 8 companies were excluded.	In 2018, 112 members reported. Concept for impact measurement was adopted in 2018.
Switzerland	Popular initiative on responsible business conduct (not in effect)	Not foreseen	Under civil law No court cases so far	Higher awareness of due diligence in Swiss business community
United Kingdom	Modern Slavery Act (MSA)	Monitoring by independent NGOs Home Office currently carrying out first audit of compliance	High court case No court cases to date	Estimated 70% of companies publish a MSA, but not all are compliant. No impact measurement.
Canada	The Canadian Ombudsperson for Responsible Enterprises (CORE, appointed as of May 2019)	Civil society will likely monitor the activities of the CORE	Non-binding recommendations can include exclusion to some economic diplomacy and future financial support No cases yet	No results measured yet
United States of America	Dodd Frank Act Section 1502 on Conflict Minerals	The SEC is the regulatory agency for this law. The Government Accountability Office evaluates the implementation of the law annually.	Civil sanctions, at the discretion of the SEC. No cases to date	3T mines are increasingly free of armed groups. Certification schemes have been established in the region and in the supply chains. Reporting rate stable in past years.

2. Denmark: Non-Financial Reporting Requirements in the Financial Statement Act

Initiative	Monitoring	Sanctions	Results
Non-financial reporting requirements in the Financial Statement Act	By the Danish Business Authority and previously by a third party commissioned by DBA	Conditional fines until order is complied with. In severe cases police will be notified.	Increased awareness about due environmental and social issues and increased reporting rates.

Denmark was the first country in Europe to mandate CSR reporting. In 2008, the Danish Parliament adopted an act to amend the Danish Financial Statement Act (FSA) with section 99a requiring large undertakings (then approximately 1,100) to publish a CSR policy, action plans, and an annual evaluation of what has been achieved and expectations for the future. The law has been amended several times since 2008. Today, if a company chooses not to have a CSR policy, the company is required to disclose that the do not have a CSR policy and they have to explain why not; the so called "comply or explain" principle.

In 2012, the Danish parliament passed an act to amend the Financial Statement Act expressly requiring businesses to account for policies on respect of human rights and policies on reducing the climate impact, if they have any. If the company does not have policies on these matters, the company must disclose that they do not have such policy. In 2015, the Danish Parliament amended the Act again and included new requirements for the disclosure of non-financial information. The 2015 amendments to section 99a stemmed from the transposition of EU Directive 2014/95/EU on Non-Financial Reporting. Section 99a outlines the minimum requirements for non-financial reporting, in line with the EU Directive[2]. The Danish Financial Statements Act and its section 99a cover more undertakings than what is required by the EU directive.

The CSR reporting requirement in section 99a applies to companies meeting the following criteria:

- Listed companies and state-owned enterprises
- Companies that exceeds at least two of the three size limits in two consecutive years:
  1. Balance sum of 156 million. Kr.;
  2. Revenue of 313 million. Kr.;
  3. An average number of 250 employees (fulltime).

In 2018, the Financial Statement Act was amended again. Amongst other amendments to section 99a the so-called " Safe Harbour Principle" was introduced. According to section 99a(4) a company may, in exceptional cases, refrain from providing information in the corporate social responsibility statement if disclosure of this particular information is likely to cause significant damage to the business in the course of ongoing negotiations or litigation.

[2] Danish Business Authority (2015) Implementation in Denmark of EU Directive 2014/95/EU on the disclosure of non-financial information

Directive 2014/95/EU provides for Member States to introduce this Safe Harbour option. As several Member States, including Germany, England, Ireland and Sweden, chose to implement this option when transposing the EU Directive into national legislation, Denmark has introduced the option as well – hereby ensuring that Danish companies have the same conditions as their foreign competitors.

The provision can only be used in special cases where the management, on the basis of a concrete assessment, considers it necessary to omit specific information in the CSR report because disclosure of the information in question can be expected to cause significant damage to the company in the course of ongoing negotiations or litigation. In line with the EU Directive, an omission should not prevent a fair and balanced understanding of the company's development, performance and position and of the impact of its activity. A company must disclose in the CSR report if certain information has been omitted with reference to section 99a(4). The omission must be approved by the members of the company's management.

The amending act from 2018 comes into effect for annual reports covering financial years beginning January 2020 or later, but companies can voluntarily choose to use it for reports covering the financial year 2018.

Relevant Context

In January 2019, three Danish political parties put forward a parliamentary motion that calls on the Government to introduce a bill on human rights due diligence for all large Danish companies, as well as small and medium sized Danish enterprises in high-risk sectors. The motion asked for legislation requiring companies to identify, prevent and mitigate potential and actual negative human rights impacts, as well as reports on these efforts and their outcomes. It should also ensure victims of human rights abuses involving businesses have access to effective remedies. The motion was supported by NGOs, the Danish Trade Union Confederation, the Danish Consumer Council as well as the Danish pharmaceutical company Novo Nordisk.

In March 2019, the Danish Parliament discussed this proposal. It is unclear whether this discussion will continue after the general elections in June 2019.

Monitoring of compliance

The Danish Business Authority is responsible for the enforcement of the provisions in the Financial Statement Act, including the non-financial (CSR) reporting requirements. The CSR disclosures are part of the management report, that businesses prepare and submit to the Danish Business Authority as part of their Annual Financial Statements.

A business's management report is subject to a "consistency check" by the auditor. A consistency check means that the auditor must examine whether the information in the management report is consistent with information in the annual financial statements and other factors of which the auditor is aware. This consistency check does not mean that the auditor has to take special action to obtain further information. The auditor bases the check purely on information the auditor has become aware of while auditing the annual financial statements.

Information on CSR is subject to the same type of auditing as the other information in the management report, which means that CSR disclosures are subject to a consistency check by an auditor. According to section 99a, the company can choose to place the CSR information in the management report of the annual report, on the company website or in a separate report supplementing the annual report. Regardless of where the information is disclosed the information is subject to a consistency check by an auditor. The auditor's responsibilities and duties are neither increased nor diminished in case the information is published on a website or in a supplementary report.

Since the legal requirements in section 99a of the Financial Statement Act became effective in 2009, the Danish Business Authority has commissioned the Copenhagen Business School to do research on the compliance of the companies covered by this provision. The research was based on a sample of the CSR-reports on financial years 2010, 2011 and 2013.[3] The scope of the research focused on the reporting requirements and did not go into the impact on the ground within supply chains.

After 2013 this broader research on the companies' compliance was no longer conducted. After the amendment of the Act in 2015, however, an analysis of the CSR statements was financed by the Danish Business Authority, focusing on the 24 largest companies covered by section 99a[4]. The study was made to take a look at how the largest companies are adjusting to the new requirements and to share guidance and best practice to the other companies that have to report according to the new rules in 2019. The Danish government does not finance NGOs to monitor compliance with any of the responsible business conduct initiatives.

Sanctions

The Danish Business Authority has a few different sanctions which can be applied in case of non-compliance with the Danish Financial Statements Act. The main objective of the Danish Business Authority is not to apply sanctions, yet to ensure that annual reports published by the Authority, including the CSR-reports, provide stakeholders with information complying with the FSA.

If the CSR information provided in an annual report does not meet the reporting requirements in section 99a and it is a case of significant non-compliance, the Danish Business Authority can order the company to correct and/or supplement the information and resubmit the annual report. The Danish Business Authority can also order the company to correct the information in the annual report for the following financial year which could be the adequate reaction in a situation where the following financial year has expired.

If the company does not respond to such an order, the Danish Business Authority can issue a conditional fine. If the company responds within the given deadline the fine lapses. A conditional fine is not a punitive sanction – merely a sanction to urge the company to fulfil its duty to act. This tool has never been applied in cases of non-compliance with section 99a of the FSA.

[3] Copenhagen Business School (2013) Executive Summary survey of CSR reporting by large companies in Denmark
[4] CARVE (2018) CSR reporting by 24 Danish companies (in Danish)

In severe cases of non-compliance with provisions in the Financial Statement Act, the Danish Business Authority can report the incident to the police and ask for the police to consider bringing a charge against the undertaking. The Danish Business Authority will only notify the police in very severe cases where several provisions of the Financial Statement Act have been violated and/or where the company has repeatedly violated the law. This tool has never been applied in cases of non-compliance with [only] section 99a of the FSA.

Results of the initiative

The reporting requirements in the Danish FSA have raised awareness of environmental and human rights issues within companies. The research conducted on the CSR reporting requirements in the Financial Statement Act has been focused on compliance with the reporting requirements. The proportion of companies meeting the reporting requirements has grown over time.

By 2013 the results showed that 96% of the companies covered by the CSR disclosure requirements disclosed whether they had a policy for CSR or not. Of these, 77% of the companies disclosed that they had a policy for CSR, while 23% informed that they did not have a policy for CSR. Of the 77% of companies that disclosed having a policy for CSR, 97% specify their approach to the policy. 90% account for how they translate their policy into action and 83% evaluate and follow up on the effect of this[5].

More recent third-party research covering the 24 biggest companies covered by section 99a of the FSA shows that in 2017, 15 of these companies complied with all the requirements in section 99a, the remaining nine companies complied with part of the requirements[6]. 22 companies reported their business model, however, only 14 companies explained the link between their core business and corporate social responsibility. All companies provided information on policies in at least one of the four required areas. There were 23 companies which stated how policies are translated into action. All companies used key performance indicators within one or more of the policy areas. 23 companies accounted for the results achieved within the four policy areas and 18 companies provided information about the expectations for the future. Environmental topics are mentioned more frequently than human rights topics.

No research results have been found on the outcomes or impacts on responsible business conduct within supply chains due to the increase in reporting.

[5] Copenhagen Business School (2013) Executive Summary survey of CSR reporting by large companies in Denmark
[6] CARVE (2018) CSR reporting by 24 Danish companies (in Danish)

3. France: Law on duty of care

Initiative	Monitoring	Sanctions	Results
Law on Duty of Care *(Loi sur le devoir de Vigilance)*	No formal monitoring by the Government, yet by independent other parties	Periodic penalty payments and civil liability action No court cases so far.	In 2018, at least 80 of around 200 companies publish a plan . Not all of them meet the requirements of the law. No impact measurement.

In 2017, France became the first country in Europe to adopt binding legislation on respect for human rights and the environment by multinationals. With the *Loi sur le devoir de Vigilance,* The Law on Duty of Care or Due Diligence Law, companies have a legal obligation to identify and prevent human rights and environmental abuses that result not only from their own activities, but also from those of their subsidiaries, subcontractors and suppliers with whom they have an established commercial relationship in France and around the world.

The French Parliament took the lead in the process and drafted the text of the law in close collaboration with French civil society. The law brings a duty of vigilance in the French Commercial Code, i.e. a legal obligation of prudent and diligent conduct, owed by the parent companies of groups that employ at least 5,000 employees in France or 10,000 employees worldwide. For these approximately 180 companies, this duty of vigilance consists in establishing, implementing and publishing "reasonable vigilance measures adequate to identify risks and to prevent severe impacts on human rights and fundamental freedoms, on the health and safety of individuals and on the environment".[7] These measures must be formalized in a vigilance Plan, made public and included in the annual report, as well as in a annual report on its implementation. Vigilance measures include, but are not limited to risk mapping, value chain assessment processes, mitigation and preventive actions, alert mechanisms and monitoring systems on the effective and efficient implementation of measures.[8]

Relevant Context

In addition to the *Loi sur le devoir de Vigilance*, the PACTE law (Action Plan for Business Growth and Transformation), also referred to as the Macron law, was adopted by the French Parliament in April 2019. This bill is meant to give companies the means to innovate, grow and create jobs. The PACTE includes a centralized register of businesses and will modify the Civil Code and the Commercial Code in order to assert the social and environmental role of companies.[9] It does not add any additional requirements for companies under the *Loi sur le devoir de Vigilance*.

Monitoring

The Law relies on companies to self-regulate and carry out its duty of vigilance. There is not a formal monitoring body that checks the compliance as of yet. Also, the government has not published a list of the companies to which the law applies. The applicability of the Law to a given company is therefore hard to define, resulting in questions by companies and civil society. Furthermore, as the law calls for "reasonable" and "adequate" measures, the level of information for a company to disclose is also hard to define.

[7] French Commercial Code, art. L. 225-102-4, resulting from LAW No. 2017-399 of 27 March 2017 on the Duty of Vigilance, art. 1.
[8] Sherpa (2018) Vigilance Plans Reference Guidance
[9] République Française website: PACTE, the Action Plan for Business Growth and Transformation

On June 6, 2019, the French Ministry for the Economy and Finance announced that the General Council of the Economy will evaluate the implementation of the law on the duty of care.[10] They will also establish the list of companies subject to this law.

NGOs are not funded by the government to monitor compliance. However, several independent parties are reporting on companies and their compliance to the Law. NGOs are getting more experienced in litigation and could play a role in gathering of evidence on the ground through their networks, or in analysing the vigilance plans. NGOs can also support direct victims and alleviate the burden of proof that currently weighs on them, which can discourage victims from acting.[11] One such NGO is Sherpa, which published a critical review of the 2018 Due Diligence plans.[12] NGOs also support companies by publishing guidance on the implementation of the law. There are also a limited number of partnerships between NGOs and companies.

Sanctions

The *Loi sur le devoir de Vigilance* in France is described by attorneys Brabant and Savourney as the "soft law with hard sanctions".[13] As evidenced by the reference of the Law to the common system of liability, it will be up to claimants to prove a company's breach –a lack of reasonable vigilance–, damage and a causal link.

The Law provides for two different implementation mechanisms. One concerns compliance with the Law as a preventive measure, with recourse to the judge. The other refers to the common civil liability law, in the event of damage resulting from a lack of vigilance.[14] Stringent penalties were included in the proposed law but were singled out by the French Constitutional Court during its review of the Law; and the civil fine was held unconstitutional. The law does include periodic penalty payments (*astreintes)* and civil liability action (*responsabilité civile*). Periodic penalty payments are injunctive fines payable on a daily or per-event basis until the defendant satisfies a given obligation. The interviewees of this study do not expect that the law will be adjusted to include further financial fines.

[10] AEF Info (2019) *Devoir de vigilance : Bercy lance une mission chargée d'établir la liste des entreprises soumises à la loi*
[11] S. Brabant and E. Savourey (2017) French Law on the Corporate Duty of Vigilance, A Practical and Multidimensional Perspective
[12] Sherpa (2018) Vigilance Plans Reference Guidance
[13] S. Brabant and E. Savourey, French Law on the Corporate Duty of Vigilance, A Practical and Multidimensional Perspective, 2017.
[14] Sherpa (2018) Vigilance Plans Reference Guidance

There have not been any cases against companies so far as 2018 was the first year of publication for the Vigilance action plans. In 2019, the companies are meant to publish a progress report and explain how they have implemented the plan and further refine the approach. This could lead to official cases in the year to come, but the interviewees did not share specific upcoming cases. There have been multiple warnings of NGOs towards companies, threatening to take companies to court regarding their non-compliance to the Loi de Vigilance. One such example is the informal letter shared with Total.[15]

Results

There is no formal approach to measuring impact of the *Loi sur le devoir de Vigilance*, but multiple organisations do research on the topic. Accountancy firm EY published a report in September 2018 with an analysis of 32 companies[16] and human rights expertise centre SHIFT published a baseline report on 20 companies specifically focused on human rights.[17]

In April 2019, a coalition of companies dedicated to the topic of human rights *(Entreprises pour les Droit de l'Homme)* launched a report on the *Loi sur le devoir de Vigilance*.[18] The report analyses 64 due diligence plans. Only 14% of the companies studied specify the integration of environmental indicators in their monitoring performance of the vigilance plan and about one third of the companies report having reviewed the identification of their human rights issues related to their internal activities. When companies do report, there is little mention of new actions related to the identification of human rights risks. The main issues related to human rights are not always mentioned and when they are, they remain fairly general without specifying the part of the supply chain and sourcing location most connected to this issue.

In February 2019, a coalition of NGOs published a report mentioning that the first vigilance plans that companies presented in 2018 are mostly incomplete and sometimes non-existent[19]. Of the 80 vigilance plans analysed, most only partially meet the requirements of the law, particularly in terms of identifying the risks of violations, their location and the measures implemented to prevent them. They state that some companies, such as Lactalis, Credit Agricole, Zara or H&M still have not published a plan of vigilance, despite the legal obligation.

[15] Business and Human Rights (2018) France: NGOs & local authorities threaten to sue Total if it fails to adequately address climate change crisis
[16] EY (2018) *Loi sur le devoir de vigilance : analyse des premiers plans de vigilance par EY*
[17] SHIFT (2018) Human Rights reporting in France
[18] Entreprises pour les droits de l'Homme (2019) *Application de la loi sur le devoir de vigilance, analyse des premiers plan publiés*
[19] Amis de La Terre (2019) Loi sur le devoir de vigilance des sociétés mères et entreprises donneuses d'ordre - Année 1 : les entreprises doivent mieux

4. Germany: Partnership for Sustainable Textiles

Initiative	Monitoring	Sanctions	Results
German Partnership for Sustainable Textiles	Yes, monitoring of the reporting of members by a third party currently paid by the government	Exclusion from the Textiles Partnership. In 2018, 8 companies were excluded.	In 2018, 112 members reported. Concept for impact measurement was adopted in 2018.

The Partnership for Sustainable Textiles was initiated by the German Ministry for Economic Cooperation and Development (BMZ) in 2014, after four years of consultation and awareness building of many stakeholders in the sector. The voluntary multi-stakeholder initiative convenes representatives from government, business, NGOs, unions and standard setting organisations to achieve social, ecological and economic improvements along the textile supply chain. Companies are stimulated to join the Textile Partnership by building on the strengths and expertise of its members and the mutual support among members through learning and dialogue.[20] Both BMZ and the Partnership Secretariat approach potential new member brands and retailers to inform them about the Partnership and encourage them to join.

The Partnership for Sustainable Textiles has a governance structure that consists of a secretariat currently financed by BMZ that supports the members and a steering committee for decision-making, in which all stakeholder groups are represented. In addition, there are several expert groups composed of selected members of all stakeholder groups working on specific topics (e.g. grievance mechanisms, wastewater, fibres).

The Textiles Partnership started with approximately 30 organisations and it grew to around 150 organisations, covering around 50% of the German textile and garment retail turnover. Since the due diligence reporting mechanism (review process) became mandatory, approximately 30 organisations left the Partnership. The Textiles Partnership takes a quality over quantity approach for its members. It strives to work only with members that are really dedicated to social and environmental change and therefore does not shy away from removing members from the Textiles Partnership.

Membership of the Partnership for Sustainable Textiles is voluntary, yet members commit to a binding process beyond legal obligations. Based on jointly defined goals, as of 2017, all members commit to individual and verifiable targets. All members begin by recording their own starting point in the baseline assessment. They then set goals for the coming year, record these in their annual roadmap, and report on progress towards achieving them. The progress reports have been mandatory for all members since 2018. As of 2019, these progress reports are required to be publicly available. The reporting framework includes social and environmental objectives based on international frameworks, such as the United Nations Guiding Principles on Business and Human Rights, the ILO core conventions and the OECD MNE Guidelines. These frameworks include the freedom of association by trade unions and acting against workplace discrimination.

In addition, since 2018, all members have binding deadlines and volume targets. [21] An example of such a common target is using at least 35% sustainable cotton by 2020, with 10% of the total volume organic cotton.

Relevant Context

[20] German Partnership for Sustainable Textiles website
[21] Partnership for Sustainable Textiles (2017) Overview of Targets

Germany's National Action Plan for Business and Human Rights, which was approved in 2016, has set as a target that at least half of all German companies with more than 500 employees will have integrated the core elements of human rights due diligence into their business processes by 2020 If this target is not fulfilled, the German government will consider further action, which may culminate in legislative measures.

To be prepared for potential legislative measures, preliminary actions are underway, such as the initial drafting of key points for a potential supply chain legislation. This BMZ document has not been published but after it was leaked, it has been covered in German media in February 2019.[22] The published key points for a potential supply chain legislation lay out the human rights and environmental responsibilities of German companies with regards to subsidiaries and contractors. Interviewees felt that this potential legislation provides an incentive for companies to join the Partnership for Sustainable Textiles, as the initiative functions as a supporting measure for companies to be prepared for such legislation.

Besides the Partnership for Sustainable Textiles, the German government takes many initiatives to encourage responsible business conduct by textile brands and retailers. There are projects in production countries and a "Green Button" label for textiles produced under fair working conditions and with respect for the environment. Sustainable public procurement also plays a role.

The German government is keen to align the textile initiatives across the OECD countries. This is especially important for international companies, for which it can be very challenging to meet different requirements in different countries. The Textiles Partnership is therefore working to achieve stronger alignment with the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector.[23] It is also partnering with other initiatives in the sector, in particular with the Dutch Agreement on Sustainable Garments and Textile[24] and the Sustainable Apparel Coalition (SAC), as well as connecting with other countries to foster action at the European level. Due diligence will also have a prominent role on the agenda for Germany's 2020 European Council Presidency.

[22] Business & Human Rights Resource Centre (2019) German Development Ministry drafts law on mandatory human rights due diligence for German companies
[23] OECD (2017) Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector
[24] SER (2018) German-Dutch cooperation takes sustainability in the textile sector to the next level

Monitoring

The German government does not fund NGOs to monitor compliance of the Textiles Partnership members. A third party is in charge of the monitoring within the Partnership for Sustainable Textiles. To ensure that measurement of progress by members of the Textiles Partnership is credible, all baseline assessments, roadmaps and progress reports are checked.[25] The secretariat of the Textiles Partnership shares a Call for Tender every year, so that the third-party auditing role is open to various potential auditors.

Sanctions

No financial sanctions are applied within the Textiles Partnership. However, a member can be excluded from the Textiles Partnership by means of a Steering Committee resolution when the organization violates the interests of the Partnership for Sustainable Textiles or fails to uphold its individual commitments. Before exclusion, the member in question is informed about the reasons and given a chance to submit a written defence. The Steering Committee is the body that decides on exclusion from the Textiles Partnership.

In 2018, 8 members were removed from the Partnership because they did not meet the requirements of developing the roadmap and progress reports. As there were mostly smaller companies, less visible to the public eye, the interviewees felt this most likely did not have many consequences for these companies.

The potential supply chain legislation would most likely have civil law sanctions, as the German law is focused on people.

Results

In 2018, 112 members fulfilled the reporting requirements and set over 1,300 individual targets with regard to the implementation of due diligence. There are three Partnership Initiatives addressing issues related to chemical management, labour conditions and living wages.

In May 2017, BMZ published a report on the joint achievements in the textile sector.[26] It was too early to include actual outcomes and impact on the ground by the Textiles Partnership.

Within the Partnership for Sustainable Textiles, an expert group developed a concept for impact measurement. This was adopted in November 2018. The initial focus is on chemical/ environmental management and living wages. The implementation of the concept starts with the reporting cycle in 2019.

In 2019, the Textiles Partnership published its 2018 Annual Report[27]. The report does not include aggregated results. Also, organizations within the Partnership all have a different starting point, ranging from sustainability frontrunners to beginners, making aggregation of progress difficult.

[25] Partnership for Sustainable Textiles website
[26] Ministry for Economic Cooperation and Development (BMZ) (2017) Joint achievements in the textile sector
[27] Partnership for Sustainable Textiles (2019): We're on the right track Annual Report 2018

5. Switzerland: Responsible Business Initiative

Initiative	Monitoring	Sanctions	Results
Responsible Business Initiative (not in effect)	Not foreseen	Under civil law No court cases so far	Higher awareness of due diligence in the Swiss business community

In April 2015, a coalition of Swiss civil society organizations launched a federal popular initiative, the so-called Responsible Business Initiative28 to introduce a mandatory human rights and environmental due diligence obligation and to hold Swiss companies accountable for human rights abuses and environmental violations caused abroad by companies under their control. The initiative was filed in 2016.

In 2017, the Federal Council recognised the core concern of the popular initiative but rejected it without a counter-proposal because it deems the required liability provisions to go too far and because there is no international agreement. The Federal Council relies on internationally agreed CSR standards and the implementation of the three national action plans on Corporate Social Responsibility (2015), on the Implementation of the United Nations Guiding Principles for Business and Human Rights (2016) and on the Green Economy (2013 and 2016).

In the context of the succeeding discussions of the initiative by the Parliament, the Legal Affairs Committee of the Upper House committee called for a counter-proposal which was in a first phase not supported by its sister committee in the Lower House in 2017. Later, the Lower House Legal Affairs Committee revised its position and put forward a counter-proposal to the Lower House which was adopted in June 2018. In contrast to the initiative, the counter-proposal has a stronger focus on the human rights due diligence and on large companies and their legally controlled subsidiaries.[29]

In March 2019, the Upper House rejected the counter-proposal. In April 2019, the Lower House Legal Affairs Committee decided to stick to the counterproposal. On June 13 2019, the Lower House will have to decide on whether they continue to support the counter proposal. If so, then the counter proposal will again be taken to the Upper House for adoption in both chambers. . If the Lower House does not continue to support the counter-proposal, the popular initiative will be subject to a referendum by the Swiss population in 2020.

[28] Swiss Coalition for Corporate Justice website, details about the initiative
[29] Swiss Coalition for Corporate Justice (2018) How does the parliamentary counter-proposal differ from the popular initiative?

Relevant context

The Action Plan on Corporate Social Responsibility 2015-2019, the National Action Plan on Business and Human Rights 2016-2019 and the Action plan on Green Economy are currently undergoing revision. Thereby the action plans will further be aligned with each other. Furthermore, the revised action plans will have an even stronger focus on due diligence guidance for companies and possibly include certain activities to monitor the implementation of international standards on responsible business conduct by companies.

Monitoring

Monitoring is not foreseen, neither in the popular initiative, nor in the counter-proposal. However, the role of the National Contact Point (NCP) might be expanded to include a role in ensuring Swiss companies comply.

Sanctions

In order to ensure that all companies carry out their due diligence obligations, the initiative and the counter-proposals contain a clause to hold Swiss based firms liable in any case for human rights abuses caused abroad by companies under their control. This provision will enable victims of possible human rights violations and environmental damage to seek redress in Switzerland.

Results

Even though the Responsible Business Initiative is still dealt with by the Parliament at the time of publication of this report, interviewees feel it is already raising the awareness at Swiss companies with regard to conducting due diligence as the debate on the initiative is covered in the media. Various stakeholder interested in furthering responsible business conduct (such as the government, business associations and trade unions) are raising the awareness of companies' responsibilities with regard to carry out a risk-based due diligence to avoid and address possible adverse impacts associated with their operations, their supply chains and other business relationships.

At least two business associations explicitly support mandatory due diligence requirements: the Business Committee for Responsible Business[30] and the Group of Multinational Enterprises.[31]

[30] Wirtschaftskomitee für verantwortingsvolle Unternehemen website
[31] Groupement des Entreprises Multinationales (GEM 2018) press release

6. United Kingdom: Modern Slavery Act

Initiative	Monitoring	Sanctions	Results
Modern Slavery Act	Monitoring by independent NGOs Home Office currently carrying out first audit of compliance	High court case No court cases to date	Estimated 70% of companies publish a Modern Slavery Statement, but not all are compliant. No impact measurement.

The UK Government published a Modern Slavery Strategy in 2014 and in 2015, the UK adopted the Modern Slavery Act.[32] Section 54 of this Act applies to public and private companies, and partnerships, wherever they are incorporated or formed, that offer goods and services on the UK market that meet the following criteria:

- Global turnover of over £36 million;
- Carries on a business, or part of a business, in any part of the United Kingdom.

The Act applies to approximately 17,000 UK companies. These companies are legally required to prepare an annual modern slavery statement, which must include "the steps the organisation has taken during the financial year to ensure that slavery and human trafficking is not taking place in any of its supply chains, and in any part of its own business. When the Act refers to ensuring that slavery and human trafficking is not taking part in any part of its supply chain, this does not mean that the organisation in question must guarantee that the entire supply chain is slavery free. Instead, it means an organisation must set out the steps it has taken in relation to any part of the supply chain."[33] Alternatively, a company can disclose that it chose not to take any steps. The statement must be approved by the board, signed by a director, and published in a prominent place on their website. The Act suggests that companies also disclose details on the due diligence process undertaken by the company, but this is not mandatory.

The level of scrutiny of the MSA reports by civil society and the interest by consumers has been lower than expected, even for publicly facing companies like consumer brands. To increase compliance, in October 2018 and March 2019, the UK government wrote letters to the CEOs of all companies within the scope of the modern slavery act, hoping to engage especially those companies that had not yet published statements on Modern Slavery. The letters set out the minimum legal requirements for compliance and notified companies of the Home Office's intention to carry out audit of compliance. They also provided further guidance about what a good statement looks like and signposted to further guidance and resources.

As the government does not have a list of the companies that have published a statement, the letters were sent to all CEOs, not just those that had not yet published a modern slavery statement. Other drivers of compliance include efforts by industry associations in high risk sectors, large companies requiring their key suppliers to report and MSA requirements in public tenders.

[32] Legislation Gov UK website, Modern Slavery Act 2015
[33] Home Office (2015, updated 2018) Slavery and human trafficking in supply chains: guidance for businesses

The legislation does not apply to the public sector. Yet the UK Government has committed to voluntarily publish a transparency in supply chains statement covering central Government procurement in 2019. A significant number of public sector organisations, including over 90 Local Authorities have voluntarily published statements.

The Home Office has launched a Modern Slavery Assessment Tool to support public bodies assess their own supply base for modern slavery risks and provide tailored recommendations to suppliers on how to improve their anti-slavery processes. The Cabinet Office will be publishing a Policy Procurement Note and a detailed guidance document for commercial and procurement staff, which sets out a risk-based approach to addressing modern slavery and specific measures to be adopted at each stage of a procurement. In June 2018, the Cabinet Office announced that the Government's biggest suppliers will be required to provide data and action plans for how they plan to address key issues such as modern slavery.

An independent review of the Modern Slavery Act was completed in March 2019.[34] It was conducted by three members of parliament and focused on four areas: transparency in supply chains, the role of the Independent Anti-Slavery Commissioner, the Act's legal application, and the safeguarding of child victims of Modern Slavery.

Key conclusions on section 54 (transparency in supply chains) include:

- The Modern Slavery Act is an innovative piece of legislation that has influenced parliaments across the world in efforts to combat modern slavery;
- The Act has contributed to greater awareness of modern slavery in companies' supply chains, a number of companies are approaching their obligations as a tick-box exercise and at estimated 40% of eligible companies are not complying at all;
- After four years, there have been no penalties for non-compliant companies;
- The impact of section 54 has been limited to date. A lack of enforcement and penalties, as well as confusion surrounding reporting obligations are reasons for poor-quality statements and the estimated lack of compliance from over a third of eligible firms.

Key recommendations around transparency in supply chains include:

- Companies should not be able to state they have taken no steps to address modern slavery in their supply chains;
- The six areas of reporting recommended in the guidance should become mandatory, reporting should also include steps companies intend to take in the future;
- The legislation should be amended to require companies to consider the entirety of their supply chains. If a company has not done so, it should be required to explain why not and what steps it is going to take in the future;
- Government should establish a list of companies in scope;
- Government should set up a central repository for statements;
- The Independent Anti-Slavery Commissioner should monitor transparency;
- Sanctions for non-compliance should be strengthened;
- Government should install an enforcement body to enforce sanctions against non-compliant companies;
- Section 54 should be extended to the public sector and government should strengthen its public procurement processes to make sure that non-compliant companies are not eligible for public contracts;

The Home Office has committed to respond to the recommendations in the summer of 2019.[35]

[34] (2019) Independent Review of the Modern Slavery Act 2015: Final Report
[35] Home Office (2019) Modern Slavery Written Statement

Relevant context

In the UK, companies have many reporting requirements. The level of compliance with the Modern Slavery Act is lower than that of other responsible business topics, such as the Gender Pay Gap, for which 100% of companies comply. Interviewees attribute the high compliance on the Gender Pay Gap to the establishment of a central registry and an authority checking compliance. As this is not in place for the Modern Slavery Act, this may cause companies to place a lower priority on compliance to the Modern Slavery Act.

Monitoring

The Home Office has the enforcement power for the Modern Slavery Act. It is currently commencing an audit of compliance to check that companies in scope have published a statement and that it meets the minimum requirements. The Home Office is starting the first stage of this audit in-house and will be seeking an external provider to support with the second stage of the audit. After the audit, the Home Office may publish the names of companies with non-compliant statements. Companies would be given the opportunity to remedy their non-compliance before the list is published.

The Independent Review has recommended that the Government set up or assign an enforcement body to impose sanctions on non-compliant organisations. The future approach to monitoring compliance against the act will be determined by the Government's response to the Review of the Modern Slavery Act.

The Act did establish the role of an Independent Anti-Slavery Commissioner, but this is not a monitoring role. The Commissioner's statutory function is to encourage good practice in tackling slavery and human trafficking offences, as well as in the identification of victims. Furthermore, there are concerns that the role's independence is currently constrained by Government influence.[36]

Currently several NGOs are monitoring the compliance of companies, without government funding. Two NGOs have set up repositories listing all statements they can find. One is the Modern Slavery registry,[37] powered by the Business & Human Rights Resource Centre, and the other is TISCReport.[38] In addition, several academic articles have been published on the content of the Modern Slavery statements, as well as benchmarking reports such as KnowtheChain.[39]

[36] Independent Review of the Modern Slavery Act 2015: Final Report
[37] Modern Slavery Registry website
[38] TISC Report website
[39] KnowTheChain website

Sanctions

In case of non-compliance, the Act gives the Home Secretary the power to bring civil injunction proceedings requiring a business to comply. In theory, anyone could report a company to the Secretary of State. While it has been four years since the Act went into effect, this has not yet happened.

After the audit, the Home Office may publish the list of non-compliant companies. It is not foreseen that all those companies will also be taken to the high court at that point in time.

Results

The Home Office reports that thousands of businesses are stepping up to the challenge and have published statements detailing the action they are taking to tackle modern slavery in their supply chains. Many are demonstrating their commitment by partnering with experts, identifying high-risk areas and introducing tailored steps to support vulnerable workers. This legislation has engaged many senior business leaders on this issue, with reputational risk as a key driver of action.[40] There is also an increasing number of business-led initiatives.

The Home Office estimates that 70% of companies issued a statement in 2018, up from an estimated 50% in 2017. Other organizations report different percentages, mostly due to the lack of a clear list of companies to which the Modern Slavery Act applies.

Analysis by the Business and Human Rights Centre on over 7000 statements available in their Modern Slavery Registry shows that only 21% of the statements meet all minimum requirements set out in the Modern Slavery Act.[41]

The Business and Human Rights Resource Centre publishes an annual assessment of the transparency statements by the FTSE100. The 2018 report is critical of the results "our findings show that the MSA has failed to deliver the transformational change many hoped for. Three years on, most companies still publish generic statements committing to fight modern slavery, without explaining how. Sadly, only a handful of leading companies have demonstrated a genuine effort in their reporting to identify and mitigate risks." [42] The report highlights that the action of companies varies greatly, with only a small cluster of leaders standing out. Among the FTSE 100 companies, compliance with the minimum requirements increased to 93 companies, compared to only 47 of the companies in 2017. However, the quality of the statements was found to be limited and showed little change from the 2017 report. According to the Business and Human Rights Centre, the weakest reporting area is measuring effectiveness of efforts to address modern slavery.

Sancroft and Tussell examined the Modern Slavery reporting of the central government's top 100 suppliers. The 2019 edition of the Sancroft-Tussell report[43] shows that almost a third of the modern slavery statements produced by the top 100 suppliers to central government were not legally compliant.

Interviewees do feel the Modern Slavery Act has placed the topic of human rights due diligence within companies higher on the corporate agendas. Because of the need for companies to comply with the Act, the board and the legal department have had to become involved.

[40] Ethical Trade Initiatie and Ashridge HULT (2016) Corporate Leadership on Modern Slavery
[41] Modern Slavery Registry website (consulted on May 27, 2019)
[42] Business & Human Rights Resource Centre (2018) FTSE100 & the UK Modern Slavery Act, From Disclosure to Action
[43] Sancroft and Tussell (2019) The Sancroft-Tussell Report, Eliminating modern slavery in public procurement

While investors are increasingly engaging on Environmental, Social and Governance (ESG) topics, interviewees were unaware of investors acting specifically on Modern Slavery statements (or the lack thereof) in the UK. One interviewee pointed out that the lack of data on modern slavery limits investor engagement. Furthermore, interviewees perceived there was more investor focus on environmental topics, as these are easier to track quantitatively.

No research results have been found on the outcomes or impact on responsible business conduct within supply chains due to the increase in reporting.

7. Canada: The Canadian Ombudsperson for Responsible Enterprises (CORE)

Initiative	Monitoring	Sanctions	Results
The Canadian Ombudsperson for Responsible Enterprises (CORE)	Civil society will likely monitor the activities of the CORE	Non-binding recommendations can include exclusion to some economic diplomacy and future financial support No cases yet	No results measured yet

On May 1, 2019, Sheri Meyerhoffer took office as the first Canadian Ombudsperson for Responsible Enterprises (CORE). The mandate of the CORE was established in an Order in Council in April 2019.[44] The mandate is to review allegations of human rights abuses arising from the operations of Canadian companies operating abroad. Independent review process of these complaints, public reporting of the outcomes of the review, and publication of recommendations from the Ombudsperson may suggest remedy to victims. The standard operating procedures for the Ombudsperson are still in development. Once the Office of the Ombudsperson is fully functional, a web portal will enable public submissions. Ultimately, this should contribute to minimize any incidence of human rights abuses arising from the operations of Canadian companies internationally in select sectors.

The Ombudsperson is one of Canada's two voluntary dispute resolution mechanisms. It complements Canada's National Contact Point for the OECD Guidelines for Multinational Enterprises (NCP). In addition to promoting the OECD Guidelines on Multinational Enterprises, the Canadian NCP focuses on facilitating dialogue between parties and assisting the business community, employee organisations and other concerned parties, to resolve issues that arise relating to the implementation of the Guidelines.

The CORE replaces the CSR Counsellor in Canada, a function which ended in May 2018. Compared to the CSR Counsellor, the CORE has the ability to independently initiate a review of companies. The Ombudsperson will be appointed for a term of up to five years where the CSR Counsellor served a three-year term. While the CSR Counsellor focused on the oil and gas and mining sectors, the CORE's focus also includes the garment sector. To improve transparency, the Ombudsperson will publicly report at various stages of a review process and on the follow-up to the recommendations. The Minister of International Trade will table the Ombudsperson's annual reports in Parliament. Before being published, all reports will be shared with the Minister and the parties to ensure procedural fairness, but the Minister will not be able to change the content of the report.[45] The Ombudsperson will have an office with its own dedicated resources, both in terms of staff and funding. Initially the office will include four people and will be able to engage external experts and consultants for further research as needed.

[44] Government of Canada (2019) Order in Council 2019-0299
[45] Canada Government website CORE Q&A

It is expected that the CORE will complement the multi-stakeholder advisory body, which includes both industrial stakeholders and groups from civil society. Where needed the CORE might refer cases to the NCP for formal mediation. The CORE role will complement civil society as the Ombudsperson will also promote responsible business conduct and give advice to companies on best practices and helps avoid and mitigate risks early on.

Monitoring

The mandate of the CORE will include the reviewing of complaints related to allegations of human rights abuses and she may also initiate a review process, within the scope of her mandate. In general, the international supply chains are outside of the mandate of the Ombudsperson and Global Affairs. The focus lies on allegations arising from the company's operations themselves.

On a case-by-case basis the CORE may monitor the implementation of case-specific recommendations by companies and government. Civil society organisations will likely monitor the effectiveness of the CORE.

Sanctions

Recommendations made by the Ombudsperson will be reported publicly and companies that do not cooperate in good faith could face trade measures, including the withdrawal of trade advocacy services and future Export Development Canada support.

The sanctions, named "trade measures", against companies that can be recommended by the CORE are related to economic diplomacy and include the denial or withdrawal of trade advocacy support (such as government services such as the issuance of letters of support, advocacy efforts in foreign markets and participation in Government of Canada trade missions) as well as future Export Development Canada financing. Canadian companies who refuse to participate in good faith with Canada's dispute resolution processes contained in the CSR Strategy, may no longer benefit from economic diplomacy. Furthermore, such a designation will be taken into account in the CSR-related evaluation and due diligence conducted by Export Development Canada (EDC), in its consideration of the availability of financing or other support.[46]

In instances of criminal evidence, the CORE can recommend referral to a formal investigation body such as the Royal Canadian Mounted Police (RCMP).

Results

As the Ombudsperson has only been in office since May 2019, it is too early to report results.

[46] Canada Government website CORE Q&A

8. United States of America: Dodd Frank Act Section 1502

Initiative	Monitoring	Sanctions	Results
Dodd Frank Act Section 1502	The SEC is the regulatory agency for this law. The Government Accountability Office evaluates the implementation of the law annually.	Civil sanctions, at the discretion of the SEC. No cases to date.	Reports show that 3T mines are increasingly free of armed groups. Certification schemes have been established in the region and in the supply chains. Reporting rate stable in past years.

Section 1502 of the 2010 Wall Street Reform and Consumer Protection Act (Dodd Frank Act) and Securities and Exchange Commission (SEC) Final Rule on Conflict Minerals directs the SEC to issue rules requiring certain companies to disclose their use of conflict minerals if those minerals are "necessary to the functionality or production of a product" manufactured by those companies. Und the Act, those minerals include tantalum, tin, tungsten, tantalum, and gold (3TG). Congress enacted Section 1502 because of concerns that the exploitation and trade of conflict minerals by armed groups helps finance conflict in the Democratic Republic of Congo and the surrounding countries and contributes to an emergency humanitarian crisis. Initially, the estimate was that 6,000 companies were directly affected by the act, and many others indirectly as suppliers to listed companies.[47] However, based on how companies file, this number is likely to be lower.

Under the SEC final rule, publicly traded companies that are required to file a Conflict Minerals Report must exercise due diligence on the source and chain of custody of their conflict minerals. The due diligence measures must conform to a nationally or internationally recognized due diligence framework, such as the due diligence guidance approved by the OECD. The companies are required to publicly disclose whether they may have sourced from the region and to carry out due diligence in their supply chains to determine whether their minerals purchases have benefited armed groups. Companies must file a conflict mineral report (CMR) to the U.S. regulator, the Security and Exchange Commission (SEC).

Starting in 2014, companies must file Conflict Mineral Disclosures (CMR) to the SEC by June 1 of every year for the previous calendar year. The SEC granted companies a transitionary period of two years (four years for small companies with market capitalization) during which companies can classify minerals as 'DRC conflict undeterminable' and audits of CMDs by external parties were not required.[48]

[47] United States Government Accountability Office (GAO) (2015) Report to Congressional Committees: initial disclosures indicate most companies were unable to determine the source of their conflict minerals.
[48] United States Government Accountability Office (GAO) (2015) Report to Congressional Committees: initial disclosures indicate most companies were unable to determine the source of their conflict minerals.

Soon after the SEC issued regulations to implement this provision, the National Association of Manufacturers and other plaintiffs challenged the rules on the bases of several arguments, two of which claimed that the SEC did not conduct an appropriate cost-benefit analysis before promulgating the rule and that the rules violated the Constitution's First Amendment freedom of speech guarantee. In 2015, the Court of Appeals for the D.C Circuit largely upheld the SEC's authority to implement the rules but struck down the portion of the rules requiring the listed companies to describe certain products as having been "not found to be DRC conflict free. [49] On April 3, 2017, the U.S. District Court for the District of Columbia entered final judgment in the case and remanded to the SEC.[50] The then Acting SEC Chairman Mike Piwowar replied with a statement that failure to file a Conflict Minerals Report describing due diligence efforts is not likely to lead to enforcement action.[51]

Relevant context

Several states and cities are introducing bills with due diligence requirements for public procurement. In the 2019 session of the Oregon State Legislative Assembly, lawmakers introduced Senate Bill 471. If passed, this bill would institute responsible electronic purchasing through the enactment of a state procurement policy to require that all state-level purchases take into consideration the presence of conflict minerals and comply with OECD's Due Diligence Guidance when purchasing electronics. In the 2019 session of the Minnesota Legislative Assembly, the House introduced HF 1861 and in the Senate SF 1132. The identical bills prohibit state agencies from procuring supplies or services from persons that fail to disclose federally required information about conflict minerals originating in the DRC or neighbouring countries.

Approximately 350 companies are members of the Responsible Minerals Initiative (RMI), part of the Responsible Business Alliance.[52] Membership is not limited to US companies. The flagship programme of the RMI, the Responsible Minerals Assurance Process (RMAP) helps companies make informed choices about responsibly sourced minerals in their supply chains. The assessment employs a risk-based approach to validate smelters' company level management processes for responsible mineral procurement. Companies can then use this information to inform their sourcing choices. The audit standards are developed according to global standards including the Dodd-Frank Act, the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk.[53]

Monitoring

U.S. federal securities laws authorizes the SEC, or any officer designated by the SEC, to monitor the compliance of companies and issue subpoenas requiring a witness to provide documents and testimony under oath, but as yet this has not happened. Interviewees indicated that it is likely that the SEC has not investigated nor enforced the due diligence requirements since the statement made by the then Acting SEC Chairman in 2017.

The Government Accountability Office (GAO), an independent nonpartisan agency that works for Congress, investigates and provides annual reports to Congress on the implementation of the law and the progress made by companies. There are multiple NGOs that conduct research on the reporting activities of companies including Global Witness, Amnesty International, The International Peace Information Service, Development international and The Responsible Sourcing Initiative.

[49] Michael V. Seitzinger & Kathleen Ann Ruane (2015): Conflict Minerals and Resource Extraction: Dodd-Frank, SEC Regulations, and Legal Challenges
[50] SEC (2017) Updated Statement on the Effect of the Court of Appeals Decision on the Conflict Minerals Rule
[51] SEC (2017) Statement of Acting Chairman Piwowar on the Court of Appeals Decision on the Conflict Minerals Rule
[52] Responsible Business Alliance (2019) RBA Annual Report 2018
[53] Responsible Minerals Initiative website

Sanctions

Rather than simply prohibiting the sourcing of conflict minerals from countries involved in civil wars, Section 1502 forces companies to conduct due diligence along their supply chain to determine whether they may have sourced from a country covered by the law. It also works as a 'name and shame' mechanism that relies on increased public scrutiny by key stakeholders to induce compliance and sourcing changes in firms' supply chains. The SEC thus expects listed firms to proactively manage their global supply chains as part of their value proposition and inherent disclosure strategy. SEC regulations allow for enforcement or fines for non-compliance.

Results

Section 1502 was successful in getting more U.S. and other companies to recognize the risks of sourcing these minerals, including the funding of conflict, and human rights abuses that may exist in their supply chains.

Media and academic reports and business examples infer that Section 1502 has been effective in stemming the flow to some armed groups in the DRC, while increasing public consciousness of the issue.[54] IPIS research shows a decrease in armed presence on 3T sites from 30% to 16% of miners affected in 2013/14 and 2015 respectively. In their 2019/10 survey, 56% of the mining sites for tin, tungsten and tantalum were under the influence of armed actors. For gold, the presence of at least one armed actor has gone up from 57% in 2013/14 to 78% in 2015.[55]

In 2015, Global Witness and Amnesty International analysed 100 of the first filings. Of the companies surveyed, only 21% met the minimum requirements of the law.[56] In 2018, GAO published a report which showed that in 2017, 1,165 companies filed conflict minerals disclosures—about the same as in 2016 and 2015. Percentages of companies reporting country-of-origin inquiries in 2017 were similar to the percentages from the two prior years. An estimated 53% of companies reported in 2017 whether the conflict minerals in their products came from the Democratic Republic of the Congo (DRC) and adjoining countries—similar to the estimated 49% in 2016 and 2015 but significantly higher than the estimated 30% in 2014.[57]

In 2017, a draft Executive Order to suspend Section 1502 of the Dodd-Frank Act by the White House was leaked.[58] Multiple companies, NGOs, and Congolese organisations made statements supporting Section 1502 and companies like Apple and Intel stated that they would continue to conform to the OECD due diligence guidance regardless of the law's status. Congo's Chamber of Mines also stated that "Congolese exporters will continue to track minerals from mines to buyers even if the U.S. legislation is repealed. [59]" However, to date Section 1502 was not suspended nor has it been repealed by Congress.

[54] Supply Chain Dive (2017) SEC suspends conflict mineral rule enforcement
[55] International Peace Information Service IPIS (2016) Analysis of the interactive map of artisinal mining areas in eastern DR Congo.
[56] Global Witness & Amnesty International (2015) Digging for Transparency How U.S. companies are only scratching the surface of conflict minerals reporting
[57] GAO (2018) Company Reports on Mineral Sources in 2017 Are Similar to Prior Years and New Data on Sexual Violence Are Available
[58] Guardian (2017) Proposed Trump executive order would allow US firms to sell 'conflict minerals'
[59] Bloomberg (2018) Congo Sees Trump Roll-Back of Dodd-Frank Stoking Insecurity

Appendices

1. Glossary of terms and abbreviations

- ***3TG***: tin, tungsten, tantalum and gold or their derivatives, the minerals in scope of the EU Conflict Mineral Regulation
- ***CORE***: Canadian Ombudsperson for Responsible Enterprises
- ***CSO***: Civil Society Organisation
- ***CSR***: Corporate Social Responsibility (*MVO*)
- ***DRC***: Democratic Republic of Congo
- ***EU***: European Union
- ***GAO***: Government Accountability Office (US)
- ***ILO***: International Labour Organisation
- ***MNE***: Multinational Enterprise
- ***NGO***: Non-Governmental Organisation
- ***OECD***: Organisation for Economic Cooperation and Development
- ***OECD MNE Guidelines***: OECD Guidelines for Multinational Enterprises, also referred to as the OECD Guidelines
- ***RBA***: Responsible Business Alliance
- ***RBC***: Responsible Business Conduct
- ***RMAP***: Responsible Minerals Assurance Process
- ***RMI***: Responsible Minerals Initiative
- ***SDGs***: Sustainable Development Goals
- ***SEC***: Securities Exchange Commission
- ***SME***: Small and Medium-sized Enterprise
- ***UN***: United Nations
- ***UNGPs***: United Nations Guiding Principles on Business and Human Rights

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