

ICC Finland and Sweden Discussion

Mandatory Human Rights Due Diligence as part of the Smart Mix

18 September, 10.30-12.00 CET (11.30-13.00 Finnish Time)

Background

A growing number of states, particularly in Europe, are actively considering mandatory measures to advance business respect for human rights. In France, the Netherlands, Germany, Finland, the UK, Norway, Sweden and Switzerland, for example, we see governments adopting or exploring mandatory measures as part of a 'smart mix' of policy tools to incentivize business respect for human rights. We are also seeing enhanced use of customs controls to tackle human rights risks in global value chains, in the US with respect to forced labor and at the EU level on conflict minerals. Many of these actual and proposed measures go beyond reporting obligations to encompass comprehensive human rights due diligence, and they are beginning to receive support from an increasingly diverse cross-section of businesses and investors, as well as from civil society.

On top of individual states' efforts, the debate on the role of comprehensive human rights due diligence regulation at the EU-level was recently invigorated when Commissioner Reynders (DG Justice) announced a process towards introducing a legislative proposal for mandatory human rights due diligence in 2021, which would potentially create a harmonized framework across Europe. There is cautious support among some companies for such a legislative due diligence framework that would move beyond national patchwork approaches. However, there is no consensus yet on what type of framework would both meet the expectations of the UN Guiding Principles on Business and Human Rights and incentivize and/or require the rights kinds of behaviors by business to make implementation meaningful in practice.

This virtual roundtable is an opportunity for ICC Finland and Sweden member companies to hear an update on recent regulatory developments across Europe and to discuss what a 'smart mix' of measures could look like in practice as part of ICC's efforts to build an organizational view of the strengths and weaknesses of different approaches to regulation in the business and human rights space. A 'smart mix' in this context refers to the text of the UN Guiding Principles where (in the commentary to Guiding Principle 3) it says that states, "should consider a smart mix of measures – national and international, mandatory and voluntary – to foster business respect for human rights."

Key questions to be explored during the Roundtable are:

- What are the different models of legislation we are seeing emerging across Europe that are requiring companies to prevent and address negative human rights impacts and how are they aligned with the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises?
- How do we start to think about the 'accountability gap' between the corporate responsibility to respect human rights and the potential scope of liability under new mandatory measures?
- What could a compelling 'smart mix' of policy measures look like in practice?

The roundtable will be facilitated by Shift, the leading center of expertise on the UN Guiding Principles on Business and Human Rights. Shift provides formal and informal advice to various governments across Europe, works with individual businesses and groups of business to facilitate discussion of their policy positions relating to mandatory measures on human rights and engages civil society and standard setters on their approach to mandatory human rights due diligence (for more about Shift, see below).

Agenda

Objectives: <ul style="list-style-type: none"> To provide an overview of the evolving landscape on mandatory human rights due diligence, specifically in Europe To unpack questions about how new legal obligations fit into a smart mix of measures in support of implementation of the UN Guiding Principles 	
10:30 – 10:40	Welcome & Introductions
10:40 – 10:50	A brief re-cap of the relevant aspects of the UN Guiding Principles on Business and Human Rights <ul style="list-style-type: none"> The Corporate Responsibility to Respect human rights The Human Rights Due Diligence process What the UN Guiding Principles state about Mandatory Measures and the State Duty to Protect human rights
10:50 – 11:05	The evolving landscape of mandatory measures on business and human rights, with a spotlight on Europe <ul style="list-style-type: none"> A review of the various measures in place or in discussion in different European countries The common rationale used by businesses supportive of mandatory measures The common challenges and concerns with legislating on business and human rights
11:05 – 11:15	Considering mandatory human rights due diligence in the context of a ‘Smart Mix’ <ul style="list-style-type: none"> Exploring the ‘accountability gap’ between the responsibility to respect and liability How can we address the accountability gap through a smart mix?
11.15-11.55	Roundtable Discussion: <ul style="list-style-type: none"> <i>What are the key considerations when defining mandatory measures as part of a smart mix?</i> <ul style="list-style-type: none"> Issue/sector vs broad due diligence legislation What type of legislation is effective? How should value chain responsibility factor into legislation? How should environmental impacts be considered? <i>What role should liability play within any legislation at the EU-level?</i>

	<ul style="list-style-type: none">• <i>What measures are needed to ensure companies carry out HRDD beyond the likely narrow scope of liability?</i>
11:55 – 12:00	Closing

About Shift

Shift is the leading center of expertise on the UN Guiding Principles on Business and Human Rights. Shift's global team of experts works across all continents and sectors to challenge assumptions, push boundaries and redefine corporate practice in order to build a world where business gets done with respect for people's fundamental welfare and dignity. Shift is a non-profit, mission-driven organization, headquartered in New York City. Visit www.shiftproject.org and follow us at [@shiftproject](https://twitter.com/shiftproject)

See also: <https://www.shiftproject.org/news/fulfilling-the-state-duty-to-protect-mandatory-measures-smart-mix/>