

Finance & human rights: regulatory overview¹

This short paper is intended as a general overview of the development of different legislations and frameworks that apply in the area of finance and human rights, underlining key aspects. It comprises **EU regulation** (in force and upcoming); **national regulations and developments in Europe** and, finally, **voluntary frameworks**.

About Finance & Human Rights (FaHR)

Finance & Human Rights (FaHR) is a non-profit organisation created in 2019. It serves as a knowledge hub that brings together strong expertise on business & human rights with extensive experience in the financial sector. For more information, please visit our [website](#).

1. EU regulation in force

- EU Directive 2014/95 regarding the disclosure of non-financial information and diversity information by certain large undertakings and groups [\[link\]](#) [\[link to guidelines\]](#)

To whom does the regulation apply? All public-interest entities (listed companies, banks and insurance companies) must produce a non-financial report if they have more than 500 employees during the financial year.

What does the regulation require? Companies must include in the management report a non-financial statement containing information to the extent necessary for an understanding of the undertaking's development, performance, position and impact of its activity, relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters.

Latest update. The Directive 2014/95 is currently under revision. In February 2020, public consultation on the review of the Directive was launched by the European Commission. See more [here](#).

- EU Regulation 2019/2088 on sustainability-related disclosures in the financial services sector [\[link\]](#)

To whom does the regulation apply? This regulation applies to all financial market participants including banks, insurance companies, AIFMs², UCITS³ management companies, investment firms as well as financial advisers. It also applies to their products, including managed portfolios, UCITS, AIFs, PEPPs⁴, pension schemes and products.

¹ DISCLAIMER – This paper is intended as a general overview of the development of different legislations and frameworks in the area of finance and human rights, underlining key aspects. It is not intended to be, and should not be used as, a substitute for taking legal advice in any specific situation.

² See also [Alternative investment fund managers \(AIFM\) - Directive 2011/61/EU](#)

³ See also [Undertakings for the collective investment in transferable securities \(UCITS\) - Directive 2009/65/EC](#)

⁴ European Commission. [The pan-European personal pension product \(PEPP\)](#)

What does the regulation require? Financial market participants and advisers shall make public on their websites information about their policies on the integration of sustainability risks in their investment decision-making process. They shall also publish on their websites where they consider principal adverse impacts of investment decisions on sustainability factors, and a statement on due diligence policies with respect to those impacts. For their products, they shall include a clear and reasoned explanation of whether, and, if so, how a financial product considers principal adverse impacts on sustainability factors.

2. Upcoming EU regulation

- EU Taxonomy – Proposal for a Regulation on the establishment of a framework to facilitate sustainable investment [\[link\]](#)

To whom does the regulation apply? The regulation will apply to “financial market participants” who offer “financial products”; financial and non-financial companies falling under the scope of the Non-Financial Reporting Directive (see above) and individual Member States and the EU with regard to existing or potentially new eco-labelling or other legislative measures.

The Taxonomy Regulation establishes an EU-wide classification system (a taxonomy) intended to provide firms and investors with a common framework for identifying to what degree economic activities can be considered as "environmentally sustainable". The regulation recognises six different types of activities qualified as environmentally sustainable activities. In addition to contributing to one of the six objectives described, the activity must do no significant harm; comply with technical screening criteria; and comply

with minimum social and governance safeguards (i.e. UN Guiding Principles on Business and Human Rights (see below); the OECD Guidelines for Multinational Enterprises (see below); the International Labour Organization

Relevant development in the EU on business & human rights.

In February 2020, the EU Commission published a [study](#) on regulatory options for broad due diligence through the supply chain legislation at EU level. The research highlights that “the **current legal landscape** [in view of survey respondents] **does not provide companies with legal certainty** about their human rights and environmental due diligence obligations, and is not perceived as efficient, coherent and effective” and that “[t]he majority of stakeholders indicated that **mandatory due diligence** as a legal standard of care **may provide potential benefits to business** relating to **harmonization, legal certainty, a level playing field**, and increasing leverage in their business relationships throughout the supply chain through a non-negotiable standard”. (See page 16 of the [study](#)).

(ILO)'s Declaration on Fundamental Rights and Principles at Work⁵, the eight ILO core conventions⁶ and the International Bill of Human Rights.⁷

What does the regulation require? The financial market participants falling under the scope of this law should disclose on how and to what extent the investments that underlie their financial product support “environmentally sustainable” activities pursuant to the regulation. In the case of products that do not invest in taxonomy-compliant activities, the financial market participant will need to make a statement, saying that the relevant investments do not align with the definition of environmentally sustainable activities of the EU Taxonomy Regulation. The financial and non-financial companies that fall within the scope of Directive 2014/95 will have to disclose information on how and to what extent the company's activities are related to environmentally sustainable economic activities as defined by the EU Taxonomy Regulation.

Latest update. The EU reached an agreement on the final text of the EU Taxonomy Regulation in December 2019. Now, the agreement needs to be approved by the Environment Committee and Economic Affairs Committee and will then be put to a plenary vote. The EU Taxonomy Regulation will then be published in the Official Journal and become effective 20 days after its publication but will only apply once all of the delegated acts explaining the technical screening criteria for each environmental objective have become effective. This is expected to happen, for the first two climate-related environmental objectives, on 31 December 2021, and for the four remaining objectives, on December 31, 2022.

In March 2020, the Technical Expert Group (TEG) on Sustainable Finance issued its final report setting out its final recommendations to the European Commission providing more guidance about the design of the Taxonomy, as well as guidance on how those using the Taxonomy can develop Taxonomy disclosures.⁸

- EU Regulation 2017/821 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas (endorsed 2017, in force 2021) [\[link\]](#)

To whom does the regulation apply? EU importers (only for those reaching the volume-thresholds set out in the [Annex I](#) of the regulation) of tin, tantalum, tungsten, their ores and gold from conflict-affected areas.

What does the regulation require? EU importers need to comply with, and report on, supply chain due diligence obligations if the minerals originate (even potentially) from conflict-affected and high-risk areas. The obligations

⁵ The Declaration covered what are considered to be the fundamental principles and right at work: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation. See <https://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm>

⁶ ILO, [Fundamental Conventions](#)

⁷ The International Bill of Human Rights consists of the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and its two Optional Protocols, and International Covenant on Economic, Social and Cultural Rights. See <https://www.ohchr.org/documents/publications/factsheet2rev.1en.pdf>

⁸ [Taxonomy: Final report of the Technical Expert Group on Sustainable Finance \(2020\)](#)

include conflict minerals supply chain due diligence and annual disclosure. It might also require third-party audit of the supply chain due diligence (as to the latter, Article 6.2 provides for an exemption).

3. National regulations in force on disclosure of specific human rights-related information or requiring human rights due diligence

- UK Modern Slavery Act (MSA) (adopted in 2015 – in force) [\[link\]](#) [\[link to guidelines\]](#)

To whom does the law apply? Companies with a global turnover of more than 36 million GBP and carrying on a business, or part of it, in the UK fall within the scope of the regulation. They do not need to be headquartered in the UK.

What does the law require? Companies are required to make an annual statement on their steps taken to address modern slavery and human trafficking in their operations, business relationships and supply chains.

Latest update. In 2018 an [independent review](#) of the Modern Slavery Act commissioned by the UK Government took place. The review concluded with the need of imposing stricter reporting requirements for companies falling within the scope of the UK Modern Slavery Act. The aim of the review was to see “how to ensure compliance and improve the quality of the annual statements produced by eligible companies”.⁹

The [final report](#) of this review process was submitted to the Home Secretary on 29 March 2019 and was laid in Parliament on 22 May 2019. The report contained a number of recommendations aimed at strengthening the effectiveness of Section 54 of the Act (transparency in supply chain). The UK Government considered the independent review’s recommendations and published its [response](#) in July 2019, together with a [consultation paper](#) on proposed changes concerning the statement on transparency in supply chains required under Section 54 of the Modern Slavery Act. The consultation process ended on 17 September 2019. The UK Government is currently revising the public feedback.¹⁰

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- French Corporate Duty of Vigilance Law (adopted in 2017 – in force) [\[link\]](#)

To whom does the law apply? The law applies to companies that employ, for a period of two consecutive financial years, at least 5.000 employees itself and in its direct or indirect subsidiaries, whose registered office is in French territory, or companies that employ at least 10.000 employees itself and in its direct and indirect subsidiaries, whose registered office is in France or abroad.

What does the law require? The law obliges companies meeting the above-mentioned requirements to identify and prevent adverse human rights and environmental impacts from their own activities, from the activities of companies that the parent companies control as well as the activities of their suppliers/subcontractors, with

⁹ [Independent Review of the Modern Slavery Act 2015: Final Report \(2019\)](#) para 16, page 14

¹⁰ See [Transparency in supply chains consultation](#)

whom they have established a commercial relationship. Companies must set up a due diligence plan (*plan de vigilance*); effectively implement it (*mise en oeuvre effective*) and publish the plan and its implementation report in their annual management report (*rapport de gestion*).

The *plan de vigilance* must include: 1) a map of identified, analysed and prioritised risks; 2) a procedure in place to assess on the identified risks, including the situation of subcontractors/suppliers; 3) appropriate actions to mitigate risks or prevent serious harm ; 4) an alert mechanism which collects potential or actual risks and 5) a follow-up and monitoring process on the measures adopted.

- Dutch Child Labour Due Diligence Law (approved in May 2019 – initially scheduled to enter into force in 2020)¹¹ [\[link\]](#)

To whom does the law apply? The law applies to companies registered in the Netherlands, but also to companies from anywhere in the world that sell or supply goods or services to the Dutch end-users twice or more a year.

What does the law require? The law requires companies to submit a declaration to the competent regulatory authorities, stating that they exercise due diligence to prevent child labour from being used in the products or services they sell or supply to Dutch end-users. The declaration needs to be submitted within six months after the Act is in force.

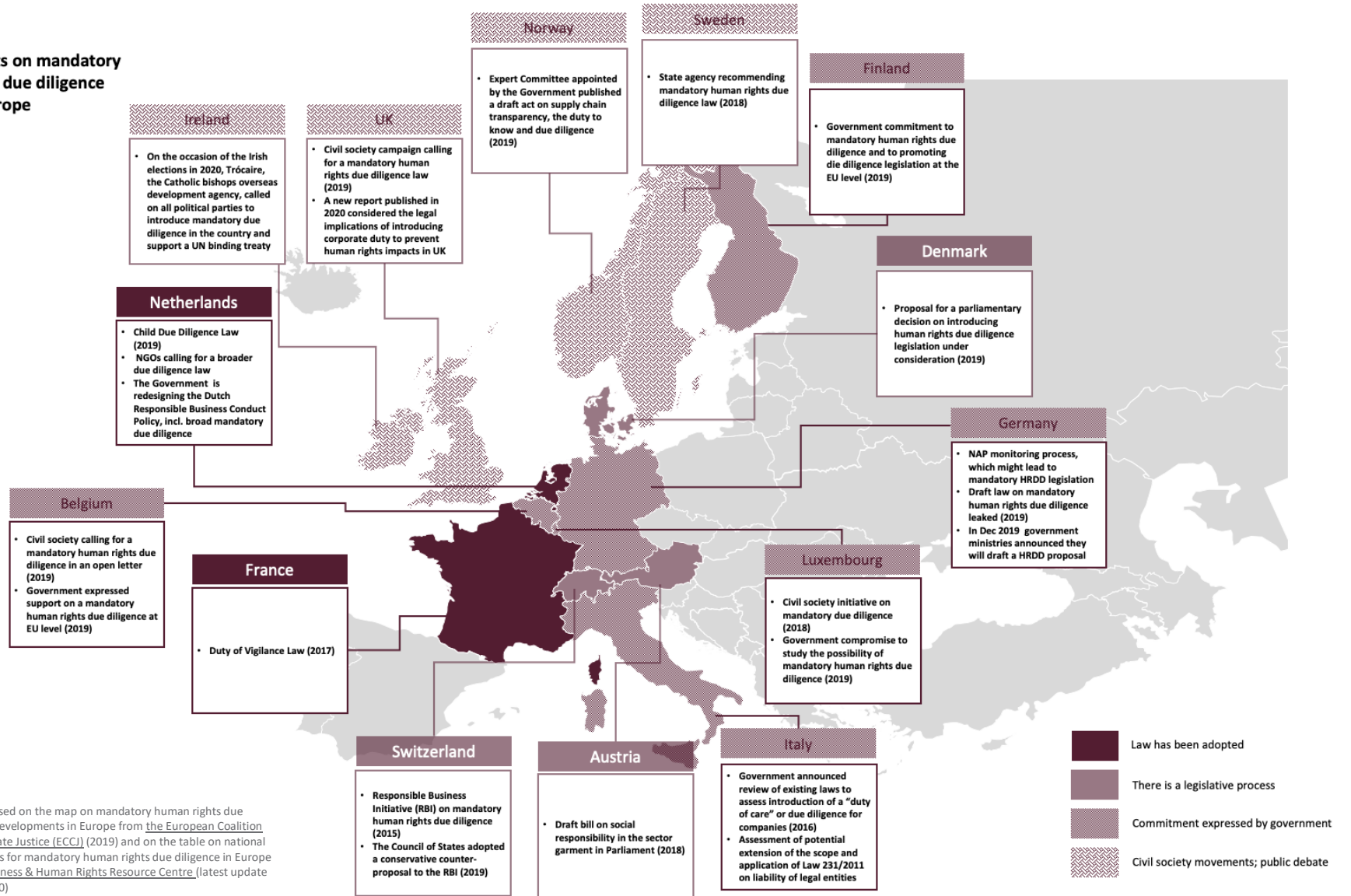
In order to exercise due diligence, the company has to investigate whether there is a reasonable suspicion that a product or service to be supplied involves child labour. The investigation shall focus on sources that are “reasonably known and accessible” to the enterprise. If reasonable suspicion of child labour is found, the company is expected to adopt and develop an action plan (*see art. 4 and 5 of the Act [unofficial translation]*).

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¹¹ Some aspects of the law concerning its interpretation and implementation are still yet to be determined through a “General Administrative Order” to be issued by the Government. Therefore, the new date on which the law will enter into force is yet to be determined. The expectation is that the Act will become effective somewhere in 2022.

4. National developments requiring mandatory human rights due diligence in Europe (overview not exhaustive).

Developments on mandatory human rights due diligence (HRDD) in Europe



Credits: based on the map on mandatory human rights due diligence developments in Europe from the [European Coalition for Corporate Justice \(ECCJ\)](#) (2019) and on the table on national movements for mandatory human rights due diligence in Europe by the [Business & Human Rights Resource Centre](#) (latest update March 2020)

5. Voluntary frameworks

- United Nations Guiding Principles on Business and Human Rights (UNGPs) [\[link\]](#)

Scope. Applicable to business enterprises worldwide.

Short description of the content. These voluntary principles, endorsed by the UN in 2011, constitute the authoritative global standard on business and human rights. The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. For that, the UNGPs provide a blueprint (principle 15) which entails (a) a policy commitment to meet their responsibility to respect human rights; (b) an ongoing process of human rights due diligence (HRDD) to identify, prevent, mitigate and account for how they address their impacts on human rights; and finally, (c) processes to enable remediation of any adverse human rights impacts they cause or to which they contribute.

Although not legally-binding, the UNGPs are the most important point of reference for national legislation and other frameworks like the OECD guidelines. The UNGPs have been implemented at the national level in many countries through the adoption of National Action Plans (NAP) on Business and Human Rights.¹² For instance, the [German NAP](#) spells out the concept of HRDD in line with the UNGPs by defining 5 core elements of HRDD, which are 1) a policy statement; 2) procedures for the identification of actual and potential adverse impacts on human rights; 3) measures to ward off potentially adverse impacts and review of the effectiveness of these measures; 4) reporting; and 5) a grievance mechanism.

- Principles for Responsible Investment (PRI) [\[link\]](#)

Scope. The PRI are applicable to all investors globally.

Short description of the content. Voluntary set of six investment principles that offer a menu of possible actions for incorporating ESG issues into investment practice.

- Principles for Responsible Banking (PRB) [\[link\]](#)

Scope. This framework is open to any bank that wants to be a signatory of the PRB.

Short description of the content. The Principles for Responsible Banking are six principles that help banks align their strategy to be consistent with society's goals: 1) alignment; 2) impact & target setting; 3) clients & customers; 4) stakeholders; 5) governance & culture; and finally, 6) transparency & accountability. In

¹² For detailed information on the implementation of the UNGPs in different countries, please visit: [National Action Plans on Business and Human Rights](#)

order to ensure effective implementation, PRB provides the key steps needed concerning impact analysis, target setting and implementation, and accountability.

- **Equator Principles (EPs) [\[link\]](#)**

Scope. The EPs apply to specific financial products globally and across all industries, including project finance advisory services, project finance, project-related corporate loans, bridge loans and project-related refinance and acquisition financing. The fourth iteration of the EPs (EP4) has expanded the scope of Equator Principles 3 (EP3) to include these last two financial products: acquisition financings were explicitly excluded from EP3's mandate.

Short description of the content. The EPs are a voluntary risk management framework adopted by 105¹³ financial institutions across 38 jurisdictions to assist them in determining, assessing and managing environmental and social risk. An adopting bank is required to assess and monitor how their "client" – i.e. the sponsor entity implementing a project for which the adopting bank is providing a relevant financial product – is managing the environmental and social risk inherent to that project. Any relevant project must be assessed against the "common baseline" of good environmental and social governance set out by the EPs. The effective date for EP4 on all mandated transactions will be 1 July 2020.

On the review of EP4, see also our paper [Equator Principles 4 - Bringing the "S" into focus.](#)

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- **OECD Guidelines for Institutional Investors [\[link\]](#)**

Scope. These guidelines apply to all institutional investors (institutional investment managers as well as asset owners).

Short description of the content. The OECD Guidelines for Institutional Investors are a framework to implement the OECD Guidelines for Multinational Enterprises¹⁴, i.e. to conduct human rights due diligence along the investment value chain.

- **Draft EU Ecolabel on Financial Products**

Scope. This is a proposal for a voluntary label for funds complying with the EU Taxonomy (above). The scheme should follow the procedure already in existence for other Ecolabels on goods. For more information, please visit this [link](#).

¹³ As of 20 April 2020 See <https://equator-principles.com/members-reporting/>

¹⁴ [OECD Guidelines for Multinational Enterprises \(2011\)](#)