

From rushed reactions to proper preparedness

# Corporate due diligence in times of armed conflict

**European Coalition for Corporate Justice (ECCJ) and Frank Bold**

Developed by Ihor Konopka, Julia Otten and Christopher Patz with thanks for the helpful review provided by Olena Uvarova, Beata Faracik and Filip Gregor.

Design and layout by © Familia and Iva Petkovic

Brussels, June 2022

# Introduction

The Russian invasion of Ukraine has highlighted the need for corporate human rights and environmental due diligence legislation. Future private sector preparedness requires a harmonised standard of responsible business conduct.

The Russian war in Ukraine has, in addition to the COVID-19 global pandemic, once again highlighted the need for corporate human rights and environmental due diligence (HREDD) regulation, such as the proposed EU Corporate Sustainability Due Diligence Directive (CSDDD). Future **private sector preparedness in the face of such crises requires a harmonised standard of responsible business conduct in order to help direct corporate behaviour and to ensure companies do not contribute to armed conflict, or otherwise exacerbate crises.**

After the start of the Russian invasion, many European companies struggled with the challenges of conducting business in the region responsibly. Issues arose in relation to the provision of essential services to affected people; engagement with employees on safety, protective measures, salaries and relocations; alongside highly-publicised questions over whether, when and how to responsibly exit the Russian and Belarussian markets. (As of early June 2022, almost 1000 companies have announced their withdrawal from Russia).<sup>1</sup>

Lviv, Ukraine, on 2 April, 2022.  
Refugees fleeing to Europe at the  
Lviv Railway Station. Photo by Sodel  
Vladyslav / Shutterstock.



The type of business relationships European companies maintained in Russia prior to the war (the provision of technology services to the Russian military, for example); how companies reacted immediately after the invasion; and how they continue to react is significant and, in many cases, has been costly to affected persons as well as companies themselves.

The scale and divergent nature of these reactions show<sup>2</sup> the urgent need for cross-sectoral HREDD obligations in order to ensure common standards of responsible business conduct and private sector preparedness in the face of future crises.

This briefing:

- addresses the urgent need for HREDD statutory obligations to foster preventive action and decision-making in order to ensure that companies do not contribute to armed conflict, whilst empowering them to respond better to future situations of crisis;
- proposes recommendations for the EU Corporate Sustainability Due Diligence Directive (CSDDD) in this regard.

Empty shelves in a grocery store in Kiev, Ukraine, on 28 February, 2022. Photo by Drop of Light / Shutterstock.



<sup>1</sup>As of June 2022. See: Yale School of Management, CELI list of companies: <https://som.yale.edu/story/2022/over-750-companies-have-curtailed-operations-russia-some-remain>

<sup>2</sup> See, Business and Human Rights Resource Centre briefing: Russian invasion of Ukraine: Analysis of companies' human rights due diligence, 24 May 2022: <https://www.business-humanrights.org/en/from-us/briefings/business-response-to-the-russian-invasion-of-ukraine/>

# Preparedness and prevention: the difference due diligence makes in a crisis

Situations of crisis, such as armed conflict or global pandemics, demand rapid and comprehensive decision-making and action on behalf of the private sector as well as governments. **Embodying a standard of responsible business conduct and effective decision-making enables companies to respond appropriately to situations of significantly heightened risk, in order to safeguard human rights (including the right to life) and the environment.** Due diligence introduces human rights and environmental protection as an ongoing, cross-cutting element in business decision-making. This means that in times of conflict or crises, business decisions are not simply made according to the minimisation of economic losses, but also according to their protective potential for employees, affected persons and the environment. **With such procedures and processes in place, companies are better prepared to take decisive and protective action when it matters most.**

HREDD is a purpose-built corporate risk-management process internationally recognized and promoted by States, civil society and businesses [since 2011](#). As opposed to traditional corporate 'due diligence' that focusses on addressing external risks to the company, HREDD outlines how companies can ensure that their own operations and those of their value chain partners do not generate (cause, or otherwise contribute to) risks to human rights and the environment. According to UN and OECD international standards, companies must conduct ongoing due diligence in order to identify, prevent, mitigate, remediate and account for how they address their adverse

Humanitarian aid organized by civil society in Poland after the Russian invasion of Ukraine in 2022. Photo by monticello / Shutterstock.



impacts on human rights, the environment and, increasingly, the climate.<sup>3</sup> **According to international standards, HREDD in times of armed conflict must be heightened in response to the heightened risk that a company may be contributing or otherwise exacerbating adverse impacts.**<sup>4</sup>

The varied private sector responses to the ongoing COVID-19 pandemic and the Russian war in Ukraine both show that it is possible for companies to react responsibly or irresponsibly during a crisis.<sup>5</sup> In the case of Russia's war in Ukraine, companies may, for example, indirectly and inadvertently be contributing to the ongoing crisis by supplying goods and services up the value chain that can be used to sustain the Russian invasion and occupation of Ukraine. Reactions to the Russian war also indicate that companies are unsure of how to act responsibly and that there is a need to clarify what heightened due diligence means in times of ongoing inter-state armed conflict.

# Heightened due diligence in times of armed conflict

The UN Working Group on Business and Human Rights' Report 'Business, human rights and conflict-affected regions: towards heightened action' highlights that "because the risk of gross human rights abuses is heightened in conflict-affected areas [...] due diligence by business should be heightened accordingly" and that **businesses "are not neutral actors; their presence is not without impact. Even if [they do] not take a side in the conflict, the impact of their operations will necessarily influence conflict dynamics."**<sup>6</sup> This means that:

- Businesses must conduct human rights due diligence that is "finely tuned and sensitive"<sup>7</sup> to higher levels of risk of being involved in gross human rights abuses, in particular, in conflict-affected areas, and in countries that are under sanctions by the UN or regional intergovernmental organisations. In order to effectively heighten due diligence, businesses need to gain "a sound understanding of the two-way interaction between activities and context and act to minimise negative impacts."<sup>8</sup>

---

<sup>3</sup> UN Guiding Principles on Business and Human Rights, 2011: [https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf); OECD Due Diligence Guidance for Responsible Business Conduct, 2018: <https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf>; UN Working Group on Business and Human Rights, Climate change and the UNGPs: <https://www.ohchr.org/en/special-procedures/wg-business/climate-change-and-ungps>.

<sup>4</sup> UNDP: [https://www.undp.org/sites/g/files/zskgke326/files/2022-06/UNDP\\_Heightened\\_Human\\_Rights\\_Due\\_Diligence\\_for\\_Business\\_in\\_Conflict-Affected\\_Contexts\\_V2.pdf](https://www.undp.org/sites/g/files/zskgke326/files/2022-06/UNDP_Heightened_Human_Rights_Due_Diligence_for_Business_in_Conflict-Affected_Contexts_V2.pdf)

<sup>5</sup> ECCJ, From impossible to inevitable – Corporate Justice in times of COVID-19, 2020: <https://corporatejustice.org/publications/from-impossible-to-inevitable-corporate-justice-in-times-of-covid-19/>.

<sup>6</sup> UN Doc A/75/212, Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises "Business, human rights and conflict-affected regions: towards heightened action", 2020, p. 5, no. 13 and p. 10, no. 43.

<sup>7</sup> OHCHR Interpretative Guide to the Corporate Responsibility to Respect Human Rights (UN Interpretive Guide), p.80.

<sup>8</sup> Conflict Sensitivity Community Hub: <https://conflictsensitivity.org/conflict-sensitivity/what-is-conflict-sensitivity/>.

In other words, **companies have to incorporate a conflict analysis into their ongoing human rights due diligence risk assessments and decision-making, and demonstrate their actions.** According to the UN Working Group Report this analysis should include identification of 1) the root causes and triggers; 2) a mapping of the “main actors in the conflict and their motives, capacities and opportunities to inflict violence”; and 3) business impacts upon the tensions through their operations, products and services, as well as the impact on their own staff operating in a conflict area.<sup>9</sup>

- A **vulnerability lens should be applied** to this analysis by addressing aspects such as gender and disabilities, due to the differentiated impact of violence on certain groups (including on women, girls and persons with disabilities).
- Heightened due diligence should include **active and meaningful stakeholder engagement**, respect and protection for **human rights defenders**, in order to inform the company’s due diligence assessments and decision-making. This engagement needs to be ongoing, secure and safe for stakeholders.
- Companies should also develop, maintain and update a contingency plan including a context-dependent and industry-specific **responsible exit strategy**.

Elaborated and helpful guidance on heightened human rights due diligence for business in conflict-affected contexts has also recently been published by UN agencies, the OHCHR and UNDP.<sup>10</sup>

Heightened HREDD is required in situations of conventional armed conflict; military occupation; mass atrocities (including allegations), such as genocide or gross human rights violations; as well as widespread violence by non-state armed groups.<sup>11, 12</sup> It is also important to note that **in times of armed conflict companies also have a long-standing obligation to comply with international humanitarian law.**

### What does international humanitarian law say about companies’ responsibilities?

International humanitarian law obliges businesses as well as individual managers and staff whose activities are closely linked to an armed conflict to not directly support the conflict (including logistically or financially). This obligation also covers unintentional support and does not necessarily need to be linked to actual fighting on the physical battlefield. In order to comply with the Geneva Conventions, businesses need to ensure that they refrain from activities such as forcibly displacing peoples; acquiring questionable assets through pillage; forcing people to work; using abusive security forces or allowing the use of business assets for gross abuses. Companies must allocate resources and attention to ensure they are contributing to said war crimes. Compliance with international humanitarian law is therefore related to heightened due diligence in times of conflict, and the latter will undoubtedly assist companies with conforming to the former.<sup>13</sup> Due diligence would also mean that companies are better placed and equipped to comply with the requirements of international humanitarian law in conflict scenarios.

---

<sup>9</sup> UN Doc A/75/212, no. 46-49, p. 10f.

<sup>10</sup> United Nations Development Programme (2022). Heightened Human Rights Due Diligence for business in conflict-affected contexts; A Guide. New York. Available at: [https://www.undp.org/sites/g/files/zskgke326/files/2022-06/UNDP\\_Heightened\\_Human\\_Rights\\_Due\\_Diligence\\_for\\_Business\\_in\\_Conflict-Affected\\_Contexts\\_V2.pdf](https://www.undp.org/sites/g/files/zskgke326/files/2022-06/UNDP_Heightened_Human_Rights_Due_Diligence_for_Business_in_Conflict-Affected_Contexts_V2.pdf)

<sup>11</sup> Ibid, p.17-19.

<sup>12</sup> UN Doc A/75/212, Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises “Business, human rights and conflict-affected regions: towards heightened action”, 2020, p. 5, no.16.

## When and how should companies disengage responsibly?

The heightened risk of armed conflict will present companies with the dilemma of whether to remain or to disengage. According to international standards, in situations **where a company lacks the leverage to prevent or mitigate adverse impacts and is unable to increase its leverage, it should consider disengaging, taking into account credible assessments of potential adverse human rights impacts of its own disengagement and addressing those adverse impacts accordingly.**<sup>14</sup> In conflict scenarios, this general principle is complex to assess and apply, and will always be based on specific circumstances.



In the case of the Russian war in Ukraine, the dilemma over whether to disengage has surfaced in relation to both the Ukraine and Russian markets, which are two distinct albeit connected contexts. With regards to Ukraine, the decision to disengage is likely to primarily be in response to the direct impacts of the armed conflict on worker safety, but would also include important factors such as whether disengagement would result in the loss of essential goods or services like food, medicines or transport for victims of the war. In contrast, a decision concerning disengagement from the Russian market is likely to primarily be made in reference to what degree their operations in the Russian market are contributing (directly or indirectly) to supporting the aggressive military invasion of, and occupation by, the Russian State in Ukraine, but ought to also include consideration of the adverse impacts of disengagement on the human rights of Russian citizens. These are complex scenarios.

A closed Zara in a shopping mall in St. Petersburg, Russia. Photo by vittoria\_vittoria / Shutterstock.

<sup>13</sup> For further guidance on international humanitarian law, see:

- Business and Human Rights Resource Centre: <https://www.business-humanrights.org/en/blog/operating-in-conflict-affected-contexts-an-introduction-to-good-practice/>
- Australian Red Cross: <https://www.redcross.org.au/ihl/business-and-ihl/>
- [https://www.securityhumanrightshub.org/ICRC: Business and International Humanitarian Law, 2006: https://www.icrc.org/en/doc/assets/files/other/icrc\\_002\\_0882.pdf](https://www.securityhumanrightshub.org/ICRC: Business and International Humanitarian Law, 2006: https://www.icrc.org/en/doc/assets/files/other/icrc_002_0882.pdf)

<sup>14</sup> UN Guiding Principles on Business and Human Rights, 2011, commentary to no 19.



A hasty exit can be as damaging as a late exit. Therefore, in all scenarios, and by virtue of previous due diligence practice, companies ought to have had a planned and updated **exit strategy** formulated in consultation with stakeholders (employees and other affected groups). Such an exit strategy would have already taken into account the assessed adverse impacts generated by leaving and included specific measures to address those adverse impacts. Such measures would have included, for example: providing sufficient advance notice to communities, suppliers, workers and other partners of the pending disengagement; ensuring that staff continue to receive income for the duration of the crisis (either through direct payments or contractual assurances from overtaking businesses in agreements of sale); as well capacity-building to mitigate the loss of employment; and ensuring the security of remaining staff who cannot be evacuated.<sup>15</sup>

In general, businesses should follow the principle from international guidance that “at all times, enterprises need to be aware of any risks that a particular course of action may pose to **affected stakeholders** and take these into account in their decisions.”<sup>16</sup>

Odessa, Ukraine on 18 April, 2022.  
Photo by VyacheslavOnishchenko / Shutterstock.



<sup>15</sup> UN Working Group on Business and Human Rights, Report on “Business, human rights and conflict-affected regions - towards heightened action”, 2020: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N20/190/21/PDF/N2019021.pdf?OpenElement>, p.14.

<sup>16</sup> The Corporate Responsibility to Respect Human Rights: an Interpretative Guide (United Nations publication, Sales No.HR/PUB/12/02), p. 79.

## Heightened due diligence in the case of the ongoing Russian war in Ukraine

Responding to Russia's invasion of Ukraine, many companies only first took action as a result of the economic sanctions imposed by States. It is important to note that compliance with sanctions does not equal heightened due diligence. Moreover, due diligence cannot and is not meant to replace State actions or UN Security Council resolutions. For companies, State sanctions should be just one of many indicators of heightened risk triggering their heightened due diligence.

Russia's full-scale invasion of Ukraine on 24 February 2022 was not the first time it has attacked Ukraine. Since the Russian annexation of the Crimean Peninsula in 2014, as well as its occupation of parts of Luhansk and Donetsk regions, Ukraine has been at war with Russia. Moreover, by the end of 2021, Russia was concentrating hundreds of thousand troops and accompanying military equipment all along the border with Ukraine. **These clear and mounting security risks ought to have triggered heightened due diligence from companies operating in the region long before February 2022, the effect of which would have been better company preparedness and ultimately reduced (prevented, mitigated and redressed) adverse human rights impacts.**

**A pre-existing corporate due diligence regime for companies operating in the EU market would have required companies, from this earlier stage, to scrutinise their Russian and Ukrainian operations and business relationships from a human rights and environmental perspective.**

As a result:

- Companies would have been obligated to **periodically risk-assess their business relations** in Russia to ensure they were not causing, contributing or otherwise linked to actual or potential adverse human rights and environmental impacts. It is quite possible, indeed likely, that as a result, EU companies would have avoided particularly problematic business partnerships, especially with Russian **state-controlled companies** from an early stage – either because of the close involvement with the State or because of the environmental harm caused by those companies – thus avoiding early financing of the Russian war machine in the first place. Early indicators such as the Russian occupation of Crimea and parts of Georgia, as well as the recent troop build-up on the Ukrainian border, would have instigated such risk assessments of potential adverse human rights impacts.
- Companies would have mapped their Russian suppliers and business partners and made sure that they are not linked to, for example, the maintenance of the military and security apparatus; the production of weapons or military equipment, or other conflict-related products and services. **Supply and value chain mapping** is also an integral part of the due diligence process. This would have helped companies to avoid finding themselves in a situation where they are (in)directly supplying or financing a Russian war of aggression; or providing essential products and services through the value chain. Moreover, enforceable due diligence rules would also have prevented companies from circumventing sanctions via, for example, the provision of licenses to the Russian military industry for the use of technological services.
- Companies would have **maximised their leverage** in Russia, for example, by joining and coordinating collective market power, which would have allowed them to exercise more influence in the current war and/or make their exit from the Russian market more impactful.



Garment factory workers sewing jeans in Odessa, Ukraine, in 2017. Photo by Richard Panasevich / Shutterstock.

- They would have established **safe and secure channels for stakeholder communication** and consultation with Ukrainian stakeholders such as employees and affected communities, as well as Russian human rights defenders, as a means to gathering essential information for planning their responses and exit plans (e.g. whether to evacuate and how).
- They would have conducted **rapid human rights impact assessments** to inform their decisions on stopping production and delivery of essential goods and services such as food, medicines and transport for the local populations.

Various companies in the Russian market are now at **risk of complicity in gross human rights violations such as war crimes**. This risk is particularly relevant for companies having been involved in joint ventures with the Russian State or Russian companies subject to sanctions. In the context of the war in Syria, charges against the French company Lafarge have been upheld in relation to its complicity in crimes against humanity, after having entered into agreements with the Islamic State and several other armed groups to keep its cement plant in the region operational.<sup>17</sup> **Such situations also underscore the importance of improved civil liability rules in order to ensure that corporate involvement in conflict scenarios leading to harm can be effectively remedied.**

The effect of mandatory EU-wide HREDD legislation in the context of the ongoing Russian war in Ukraine would have been to foster quicker and more effective prevention, mitigation and remediation of adverse impacts of the war derived from business operations and relationships. **Similar to the case of human rights and environmental due diligence generally - it would have saved lives.** Looking forward, mandatory HREDD would lead to better preparedness on behalf of the private sector in times of crises, thereby assisting States in their duty to protect human rights.

<sup>17</sup> Business & Human Rights Resource Centre: <https://www.business-humanrights.org/en/latest-news/lafarge-law-suit-re-complicity-in-crimes-against-humanity-in-syria/>

# Recommendations for policy-makers

Since the risk of gross human rights abuses is heightened in situations of armed conflict, the UN Guiding Principles on Business and Human Rights explicitly require States to help ensure that business enterprises operating in those contexts are not involved with abuses and that they do not exacerbate the situation of conflict. **States are obliged to ensure that their policies, regulations and enforcement measures effectively address this heightened risk by requiring that businesses undertake due diligence.**<sup>18</sup>

The EU Commissions' proposal for a Corporate Sustainability Due Diligence Directive sets out to lay the foundation for responsible business conduct in Europe. The proposal spells out the due diligence obligations, including regarding disengagement. However, it does not provide further details on a conflict-sensitive approach. **There are several ways to address these shortcomings in general terms without referring to a specific conflict.**

Kyiv, Ukraine, on 2 March, 2022. People line up in front of a supermarket as Russia's invasion of Ukraine continues. Photo by Review News / Shutterstock.



<sup>18</sup> Compare: UN Guiding Principles on Business and Human Rights, 2011, Principle 7.

- With regard to the **scope** of the future directive, it should be taken into consideration that the severity of potential adverse impacts of a company in situations of (armed) conflict does not depend on the size of companies. Even smaller IT providers or providers of vital components for weaponry can contribute to significant potential negative impacts that exacerbate the conflict.
- In order to spell out the obligation to conduct heightened due diligence when companies are linked to a conflict-affected context, the Directive should clarify that any business activity linked to a context of conflict or military occupation is part of the **definition of high-risk sectors**; and specify that in such contexts a conflict analysis and a conflict-sensitive approach form part of the due diligence obligations in Article 6 to 11, as per recommendations from the International Committee of the Red Cross.<sup>19</sup> The proposal could also follow an approach offered in the OHCHR response to the Commission's proposal to provide a mechanism for rapid designation of future 'high-impact' sectors or companies in response to emerging crises, risks and protections needs.<sup>20</sup>
- The **guidance** to be issued by the Commission as per Article 13 should include guidance on "specific issues", including guidance on heightened due diligence and responsible exit strategies based on international standards. Such guidance should be developed in consultation with affected stakeholders and build on the work of the UN Working Group on Business and Human Rights and the OECD.
- In order to ensure the European financial sector does not maintain financial support that fuels future conflicts, the **finance sector must be subject to ongoing due diligence** and not a 'one off' requirement at the point of an initial loan or credit, as is currently limited by the Commission's proposal in defiance of international due diligence standards.
- **Value chain as well as supply chain coverage must be maintained** in order to ensure that due diligence is conducted on goods and services destined "downstream" to aggressor States, and not only "upstream" in production countries.
- **Civil liability rules must be improved** in order to ensure that victims of adverse corporate involvement in conflict scenarios can obtain an effective and efficient remedy.

---

<sup>19</sup> International Committee of the Red Cross, Feedback to the EU Commission Consultation, 22 May 2022: [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance/F3262458\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12548-Sustainable-corporate-governance/F3262458_en).

<sup>20</sup> Office High Commissioner for Human Rights, Feedback on Proposed Directive on Corporate Sustainability Due Diligence, 23 May 2022: [https://www.ohchr.org/sites/default/files/2022-05/eu-csddd-feedback-ohchr\\_0.pdf](https://www.ohchr.org/sites/default/files/2022-05/eu-csddd-feedback-ohchr_0.pdf)



**European Coalition for Corporate Justice**

Avenue des Arts 7/8  
1210 Brussels  
Belgium

Visit our website to find out more about us:

**[corporatejustice.org](http://corporatejustice.org)**

Follow our social media to stay informed about our latest activities and resources:

Twitter: @ECCJorg

LinkedIn: European Coalition for Corporate Justice



**Frank Bold**

Rue d'Edimbourg 26  
1050 Brussels  
Belgium

Údolní 33  
602 00 Brno  
Czech Republic

Visit our website to find out more about us:

**[en.frankbold.org](http://en.frankbold.org)**

Follow our social media to stay informed about our latest activities and resources:

Twitter: @Frank\_Bold