

Mandatory human rights due diligence and corporate disclosure: Lessons from France, Germany and Norway

Abstract

This article investigates corporate disclosure requirements of three mandatory human rights due diligence (mHRDD) laws in France, Germany and Norway. It analyses the corporate reports produced in response to each law by thirty leading companies. It argues that corporate disclosure is critical to the effective operation of mHRDD laws. But only the German law contains reporting requirements which are sufficiently detailed and specific to potentially enhance corporate accountability. The article also identifies three key failings of HRDD practice: (1) the use of troubling investigatory methods in HRDD (2) widespread misunderstanding of the key concept of ‘human rights risk’ and (3) fundamental flaws in corporate grievance mechanisms. The article concludes by contextualising these findings within broader debates about the desirability of mHRDD laws. It calls for disclosure requirements in future HRDD laws which focus on human rights impacts and emphasises the capacity for follow up by supervisory authorities and third parties.

I. Introduction

Transnational corporations can produce negative human rights impacts on workers, communities affected by their operations, and even those who consume their products and services.¹ It has proved difficult to create effective international mechanisms for identifying and addressing many of these human rights violations. Against the background of these struggles, HRDD is now at the vanguard of efforts to make transnational corporations accountable for their human rights impacts on rightsholders.

“Due diligence” is a term that has a long history in corporate law and practice, generally referring to commercial investigations that are undertaken of a target company’s financial situation before important actions such as mergers, acquisitions or new investments.² Building on this concept, HRDD was first introduced through the United Nations Guiding Principles on Business and Human Rights (UNGPs) in 2011. The UNGPs have become the most significant international instrument on business and human rights. HRDD is the most important commitment which the UNGPs create for the business community. HRDD is defined in the UNGPs as a four stage process which requires companies to assess their actual and potential human rights impacts, take

¹ E.g. UN Human Rights Council, *Corporations and human rights: a survey of the scope and patterns of alleged corporate-related human rights abuse* (23 May 2008) A/HRC/8/5/Add.2.

² Tineke Lambooy, ‘Corporate due diligence as a tool to respect human rights’ (2010) 28:3 *Netherlands Quarterly of Human Rights*, 404.

action in relation to the adverse impacts they identify, track the effectiveness of their responses, and communicate how their impacts have been addressed.³ Unlike traditional financial due diligence, the focus here is on the people who are affected by the company's activities (workers, communities etc.) not on financial risks to the company itself.

Over the years since its inception, HRDD has been taken up on a voluntary basis by many leading transnational corporations as a way of demonstrating their respect for human rights in accordance with the UNGPs. It has also been incorporated into a wide range of international 'soft law' instruments, ethical investment indices and international corporate performance standards, which has further promoted its adoption.⁴

Academic commentators as well as campaigning organisations have frequently called for the imposition of legal obligations on companies to undertake human rights due diligence.⁵ So called 'mandatory HRDD laws' (mHRDD), imposed by states through national legislation, are viewed as a critical step in increasing corporate accountability for human rights performance. They ensure that all companies (subject to size thresholds) must undertake HRDD, create oversight of the process by state authorities and/or judicial actors and impose consequences on companies who do not meet legislative requirements. Mandatory HRDD legislation has, over the last few years, been introduced in France, Germany and Norway.⁶ An EU Corporate Sustainability Due Diligence Directive (CSDDD) has also now been enacted.⁷ This will require all EU governments to introduce mHRDD laws within the next few years. Legislative proposals which include mHRDD are also being considered in Brazil, South Korea, Colombia and Thailand and there are campaigns for new laws at earlier stages of discussion in Argentina, Chile, Mexico and Peru.⁸

³ United Nations, Guiding Principles on Business and Human Rights, Principles 28-31 available at https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf (accessed on 15 June 2025), Principles 17-21.

⁴ John Ruggie, Caroline Rees and Rachel Davis, 'Ten Years After: From UN Guiding Principles To Multi-Fiduciary Obligations' (2021) 6:2 *Business and Human Rights Journal* 179; Ingrid Landau, 'Human rights due diligence and the risk of cosmetic compliance' (2019) 20 *Melbourne Journal of International Law* 221.

⁵ Olga Martin-Ortega, 'Human rights due diligence for corporations: from voluntary standards to hard law at last?' (2014) 32 *Netherlands Quarterly of Human Rights* 44; Ruggie, Rees and Davis, above.

⁶ These laws are the German Act on Corporate Due Diligence in Supply Chains, the Norwegian Transparency Act and the French Corporate Duty of Vigilance Law.

⁷ Directive (EU) 2024/1760 of the European Parliament and of the Council on corporate sustainability due diligence (13.06.2024).

⁸ On Brazil's human rights due diligence Bill see Camara Dos Deputados, Projeto de Lei, 572/22, <https://www.camara.leg.br/proposicoesWeb/fichadetramitacao?idProposicao=2317904> (accessed on 1 July 2025). Reports of the Colombian proposals are reported at CERALC Project (No Date) <https://empresasyderechoshumanos.org/colombia/> (accessed on 15 June 2025). On Thailand's proposed law see Business and Human Rights Resource Centre, 'Thailand: Govt. to introduce mandatory human rights and environmental due diligence legislation' (13 March 2015) <https://www.business-humanrights.org/en/latest-news/thailand-govt-to-mandatory-human-rights-and-environmental-due->

While mHRDD is therefore a growing phenomenon, it is also contested. One critique, which emphasises that Europe is in the vanguard of introducing mHRDD laws, has concerned the extra-territorial effects of those laws; They are largely aimed at regulating corporate behaviour beyond the EU, in places with weak governance systems, most often developing countries. Critics have accused EU actors of a neo-colonialist approach for unilaterally imposing regulation that will have impacts beyond its borders without appropriate consultation with affected people and countries.⁹ Meanwhile, in the EU, a new regulatory agenda focusing on reducing the compliance burden on companies while boosting competitiveness, has led, *inter alia*, to proposals to delay and revise the EU CSDDD, and in the view of many commentators, weaken it.¹⁰ In Germany, the new government have announced their intention to repeal Germany's Supply Chain Act, albeit to be replaced by the CSDDD when it comes into force.¹¹

The longer-term trajectory of the mandatory due diligence movement is therefore currently difficult to predict. Will it expand beyond Europe? What will be the effects of proposed changes to European laws? Will (and should) legitimacy and regulatory burden arguments undermine the possibilities of mHRDD laws which hold corporations accountable for their human rights impacts on rightsholders?

Our argument in this article is that an informed understanding of what mHRDD laws actually require in practice is vital to a mature debate about how due diligence laws will and should evolve in the future. Common to all these laws is the idea that it is the responsibility of the corporation itself to undertake HRDD and then to report on its results and the actions they take. Regulators (where mHRDD laws establish them) and interested third parties will normally only learn about a company's HRDD processes and outcomes as a result of the disclosures made by that company. Corporate disclosure is therefore at the heart of effective mHRDD laws.

In this article we learn lessons from three 'early adopter' laws in France, Germany and Norway. These three laws impose very different disclosure requirements on

[diligence-legislation-aiming-to-push-for-responsible-business-practices/](#) (accessed on 15 June 2025). For South Korea's Bill see Business and Human Rights Resource Center, 'S. Korea: Mandatory Human Rights and Environmental Due Diligence bill marks first push under new government' (13 June 2025) <https://www.business-humanrights.org/en/latest-news/s-korea-mandatory-human-rights-and-environmental-due-diligence-bill-marks-first-push-under-new-government/> (accessed on 19 June 2025). We are also aware of discussions about laws in Argentina Chile, Mexico and Peru which are at earlier stages and so there is less public information.

⁹ Summarising some of these critiques see Morgane Thorens, Nadia Bernaz, and Otto Hospes "Advocating for the EU corporate sustainability due diligence directive against the odds: strategies and legitimation." (2025) 63:2 *Journal of Common Market Studies* 606.

¹⁰ European Commission, 'Proposal for a Directive of the European Parliament and of the Council amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760 as regards certain corporate sustainability reporting and due diligence requirement' (26.2.2025).

¹¹ Business and Human Rights Resource Centre, 'Germany's Supply Chain Law at a Crossroads' (April 2025) <https://www.business-humanrights.org/en/latest-news/germanys-supply-chain-law-at-a-crossroads-the-implications-of-the-proposed-shift-to-the-csddd/> (accessed on 15 June 2025).

corporations. We examine these requirements and consider the reporting practice of leading companies from each jurisdiction. As discussed below, these disclosures potentially allow regulators and third parties to scrutinise corporate performance, undertake follow-up inquiries, and ultimately impose sanctions in appropriate circumstances. This disclosure process is therefore vital to ensuring corporate accountability for HRDD. Our study therefore asks the primary question: To what extent do corporate disclosure requirements under different mHRDD laws have the potential to increase corporate human rights accountability? At the same time, our research also provides insights in relation to broader questions about the legitimacy and desirability of mHRDD laws including the regulatory burden which mHRDD entails for companies.

It is important to acknowledge that there are a range of other mechanisms through which mHRDD laws might hold companies accountable for their human rights performance. For instance, legal cases could be brought against companies for failures of HRDD, as is happening under the French Law.¹² Also, supervisory authorities might undertake their own investigations of human rights violations by companies, including when prompted by complaints from third parties, as under the German law.¹³ These accountability mechanisms will be further considered as complements or alternatives to corporate disclosure below. But overall it will be argued that it is only through effective corporate disclosure requirements that timely and widespread human rights accountability through mHRDD laws is possible.

There is a second important reason for studying disclosures produced by companies. Company reports, properly considered, provide us with a rich source of data about corporate HRDD. This is not to say that we view company disclosure as always fulsome and reliable. The richness in the data we explore in this article is more multi-layered: it provides valuable insights into what companies want to expound on and on where they want to remain silent, what they emphasize and de-emphasize, what terminology they use and what words they avoid. This article scrutinises corporate reporting under mHRDD laws, to ascertain whether mandatory reporting provides us with any valuable insights into the corporate practice of HRDD. It identifies three key substantive findings in section 5 below: (1) HRDD is currently over-reliant on potentially flawed investigatory methods such as audits, surveys and use of software programs; (2) there is an over emphasis on human rights risk, an ill-defined and easily-abused concept that allows for vague reporting by companies that does not enhance corporate accountability and (3) reporting on corporate grievance mechanisms reveals fundamental flaws in systems for addressing complaints and in the outcomes produced for complainants.

¹² For details of legal cases see Business and Human Rights Resource Centre, France's Duty of Vigilance Law (no date) <https://www.business-humanrights.org/en/big-issues/corporate-legal-accountability/frances-duty-of-vigilance-law/> (accessed on 15 June 2025).

¹³ German Supply Chain Act, section 14.

The remainder of this article is structured as follows. Section 2 explores the relevant literature on both corporate disclosure and human rights due diligence and situates this study within that literature. Section 3 sets out the corporate disclosure requirements under the French, German and Norwegian mHRDD laws, and explains the methodological approach of this article to investigating the corporate reporting which occurs under those requirements. Section 4 explores the potential and limitations of each disclosure regime for enhancing corporate human rights accountability. Section 5 then identifies three key lessons about the reality of HRDD practice among companies as a result of examination of corporate disclosures. Section 6 provides some thoughts about how both scholarship and future mHRDD laws should respond to the issues identified, in the context of broader debates about the legitimacy of mHRDD laws and the regulatory burdens they impose on companies. Section 7 briefly concludes.

II. Corporate Disclosure and Human Rights Due Diligence

A. Mandatory Disclosure Laws

There is a long history of laws mandating that corporate actors disclose information. From food labelling schemes to terms and conditions of contracts, from interest rates on loans to the release of toxic chemicals into the environment, governments have often required companies to disclose information about their goods, services and activities. The aim is to drive change by allowing public scrutiny, for example empowering consumers to choose healthier foods, pressuring companies to restrict toxic chemical releases, or shaming banks into treating borrowers respectfully.¹⁴

Mandatory disclosure has now become a critical regulatory mechanism for addressing the many complexities of a corporations' social and environmental performance.¹⁵ More specifically, in the human rights field, there are now a significant number of laws requiring corporate disclosure. For instance, the California Transparency in Supply Chains Act requires companies to publicly disclose their efforts to remove forced labour and human trafficking from their supply chains. The UK Modern Slavery Act requires companies to disclose the steps taken by the company to ensure that slavery and human trafficking are not taking place in any of in any part of its own business or its supply chains.

Despite the prevalence of disclosure as a regulatory method, the empirical evidence casts doubt on its efficacy. One meta-study of US mandatory disclosure laws found that “[m]andated disclosure is not doomed to fail, but it rarely succeeds.”¹⁶ Among many reasons for failure is that disclosure requirements are often too vague and/or complex

¹⁴ For a comprehensive review of disclosure laws in the US see Omri Ben-Shahar, and Carl E. Schneider. "The failure of mandated disclosure." (2011) 159 *University of Pennsylvania Law Review* 647-748.

¹⁵ Hess, David. "The transparency trap: Non-financial disclosure and the responsibility of business to respect human rights." *American Business Law Journal* 56.1 (2019): 5-53 at 8

¹⁶ Ben-Shahr and Schneider, above, 679.

for companies to properly perform. Companies then have various ways to resist disclosing information that they do not wish to. When information is disclosed, intended beneficiaries often cannot understand the disclosures or effectively differentiate between the performance of different corporate actors.¹⁷ Additionally, regulators of human rights disclosure laws often have very limited powers and capacity to take action in relation to reports received. So reliance is placed on third parties (investors, consumers, civil society etc.), who have either been unable or unwilling to make effective use of the disclosures provided by companies.¹⁸

B. MHRDD laws and disclosure as a regulatory tool

MHRDD laws represent a new wave of laws that require more than just disclosure. They actually mandate companies to take action.¹⁹ MHRDD laws require companies to undertake human rights (and sometimes environmental) due diligence in relation to their operations and supply chains. They are then required to make disclosures on the due diligence they have undertaken. So while disclosure is not all that is required of companies under mHRDD laws, disclosure is still absolutely vital to the regulatory potential of the laws. Without effective disclosure that allows for external scrutiny, the due diligence that has been undertaken will generally remain a ‘black box’ known only by a company which is in complete control over whether and how that information is released to the public. There are other mechanisms by which companies’ HRDD processes may on occasion become open to scrutiny – for instance as a result of civil litigation, information requests or complaints submitted. But these mechanisms will only ever allow for scrutiny of specific disclosures by a tiny percentage of the companies covered by the mHRDD laws in question. Therefore, disclosure requirements are vital to the effective functioning of mHRDD laws in relation to the vast majority of companies.

It should come as no surprise, given what has been said about disclosure laws more generally, that there is considerable scepticism about the potential of disclosure requirements in relation to mHRDD laws specifically. It is suggested that companies are likely to only engage in ‘cosmetic compliance’ with disclosure requirements of mHRDD laws where they can get away with it.²⁰ They will not generally report on the most serious

¹⁷ Ben-Shahr and Schneider, above.

¹⁸ Identifying a variety of these problems in relation to human rights disclosure laws see Rachel Chambers and Anil Yilmaz Vastardis ‘Human rights disclosure and due diligence laws: the role of regulatory oversight in ensuring corporate accountability’ (2020) 21 *Chicago Journal of International Law* 323, 337f; Marcia Narine ‘Disclosing Disclosure’s Defects: Addressing Corporate Irresponsibility for Human Rights Impacts’ (2015) 47 *Columbia Human Rights Law Review* 84; Adam S. Chilton and Galit A. Sarfaty ‘The Limitation of Supply Chain Disclosure Regimes’ (2017) 53 *Stanford Journal of International Law* 1, 12; Justine Nolan ‘Hardening soft law: Are the emerging corporate social disclosure laws capable of generating substantive compliance with human rights?.’ (2018) 15 *Brazilian Journal of International Law*, 65. In relation to the problems of disclosure laws more generally see Ben-Shahr and Schneider, above.

¹⁹ Nolan, above, 73.

²⁰ Nolan, above, 74.

human rights risks or impacts that their activities create for rightsholders. Rather, their focus will be on the policies they have in place to address human rights and the processes that they have set up to manage human rights issues.²¹ As a result, corporate disclosures under HRDD laws are unlikely to reveal the true state of corporate human rights risks and impacts. This has led commentators to emphasise the importance of the role of regulatory authorities. They need to create detailed guidance about how companies should report, effectively monitor corporate disclosures and take action to make companies address deficiencies, alongside other compliance measures such as civil liability.²²

There are now a number of mHRDD laws in operation which have disclosure requirements. No detailed scholarship has, to date, investigated these reporting requirements or the company reports produced as a result of them. Some Analysis of mHRDD disclosure requirements has been undertaken by third sector organisations. These have tended to find some, albeit limited, value to the reports produced as a result of mHRDD law requirements.²³ But they do not compare and contrast reporting approaches under different mHRDD laws nor ask the more fundamental question which is of central interest in the current study: To what extent do corporate disclosure requirements under mHRDD laws have the potential to increase corporate human rights accountability?

This article presents the first comparative study of reporting requirements under different mHRDD laws – those enacted in France, Germany and Norway. These three laws impose very different disclosure requirements on corporations which we evaluate. We then consider the reporting practice of leading companies from each of our three case study countries. In comparing the reporting requirements and reports produced under the three laws, we were conscious of the lessons learned from the extant literature on corporate disclosure: Because of the scepticism about the value of a disclosure regime, there is a need to carefully scrutinise how such reporting can enhance corporate accountability.

The academic literature identifies several pathways for changing corporate behaviour through disclosures. First, disclosure obligations can stimulate processes of internal change within the company, helping the company “adopt an organizational culture that places intrinsic value on respecting human rights.”²⁴ Second, there are a wide range of

²¹ Chambers and Vastardis, above, 348

²² Nolan, above, 73f and Chambers and Vastardis, above, 355f.

²³ SHIFT ‘Human rights reporting in France’ (2019) available at https://shiftproject.org/wp-content/uploads/2019/11/Shift_HumanRightsReportinginFrance_Nov27-1.pdf; Renee Andersen ‘Assessments and actions in an unstable world - The Norwegian Transparency Act: A study of human rights due diligence reporting in 10 large Norwegian companies’ (Amnesty International Norge, LO and Framtiden i våre hender, 2025) available at https://amnesty.no/sites/default/files/2025-01/Report_assessments_norwegian_transparency_act_2025.pdf

²⁴ Hess, above, 17.

different stakeholders that could potentially take action as a result of disclosure obligations: investors, consumers, campaigners (local and international) and rightsholders themselves. Mandating disclosure potentially allows external stakeholders to compare and contrast corporate responses and identify those that are performing well and badly. Such stakeholders can then name and shame the company (e.g. NGOs, trade unions) or financially (dis)advantage the company (e.g. through ethical investment vehicles, procurement processes etc.).²⁵ Finally, disclosure obligations can have an impact by being the basis for action by regulatory authorities. Corporate disclosure potentially allows authorities to follow up and ultimately enforce sanctions against those where reporting is inaccurate or where negative impacts remain unaddressed.²⁶

These three pathways to improved human rights performance are not mutually exclusive. But it is important to examine carefully whether disclosure requirements under specific mHRDD laws appear likely to create one or more pathways towards meaningful change. Our article therefore contributes to both the literature on HRDD and on corporate disclosure by comparing requirements under three different mHRDD laws and identifying requirements that do and do not lead to increased corporate human rights accountability (section IV).

C. Understanding the reality of HRDD practice by companies

A second contribution of this article to the HRDD literature is to examine mHRDD disclosures by companies to draw lessons about the reality of HRDD practice among companies (section VI). There are divided opinions about how HRDD is being undertaken by companies. On the one hand, more optimistic scholarship has suggested that HRDD has made a real difference to the human rights performance of leading companies.²⁷ On the other, more sceptical scholarship has raised doubts about the quality of HRDD undertaken by companies. Numerous scholars have criticized corporate HRDD as failing to uncover the most serious human rights risks and impacts faced by rightsholders.²⁸ But scrutiny of the actual methods utilised to undertake HRDD by companies and the results it has produced in specific cases is rare.²⁹ This is in large part because of the difficulty of obtaining detailed information about companies' actual

²⁵ Hess, above 16-17.

²⁶ Nolan, above, 73f and Chambers and Vastardis, above and Nolan, above, 355f.

²⁷ Ruggie, Rees and Davis, above. And for a more nuanced study see Robert McCorquodale et al, 'Human Rights Due Diligence in Law and Practice: Good Practices and Challenges for Business Enterprises' (2017) 2:2 *Business and Human Rights Journal* 195.

²⁸ E.g. Landau, above; Björn FASTERLING, 'Human rights due diligence as risk management: social risk versus human rights risk' (2017) 2:2 *Business and Human Rights Journal* 225; Peter Muchlinski, 'Implementing the new UN corporate human rights framework: Implications for corporate law, governance, and regulation' (2012) 22:1 *Business Ethics Quarterly* 145.

²⁹ The scholarship on impact assessment is much more advanced in this respect. E.g. see Nora Nora Götzmann (ed.), *Handbook on Human Rights Impact Assessment* (Cheltenham: Edward Elgar Publishing, 2019)

HRDD processes. As a result, there is limited evidence to support or undermine more optimistic or pessimistic views about how HRDD is being conducted and the results it has achieved.

Our study of corporate reporting in response to the requirements of mHRDD laws provides just the kind of detailed empirical evidence about corporate practice of HRDD that has been largely missing from existing debates. That is not to say that we take company's disclosures under mHRDD laws at face value. Rather, we carefully analyse the content (and omissions) of each corporate disclosure before drawing more generalised conclusions about the state of HRDD practice among companies. We find three particular substantive concerns about that practice; (1) the use of troubling investigatory methods to identify human rights issues (2) widespread misunderstanding by companies of the key concept of human rights risk and (3) fundamental flaws in the grievance mechanisms set up by companies to address rightsholder complaints. We argue that these problems lend support to the more pessimistic view of current HRDD practice. Ultimately, we argue these problems must be addressed, if mHRDD laws are to become regulatory tools with the potential to improve human rights outcomes for rightsholders.

III. Investigating corporate disclosures under mHRDD laws

This article investigates three mHRDD laws that include corporate disclosure requirements, and where corporations have begun reporting. These are the French Duty of Vigilance Act (DVA), the Norwegian Transparency Act (TA) and the German Supply Chain Act (SCA).³⁰ This section will explain the disclosure requirements of each law and the methods utilised in this study to evaluate corporate disclosures under the three laws.

The French DVA has been in force since 2017. It applies to all companies with more than five thousand employees in direct or indirect French-based subsidiaries or with more than ten thousand employees in direct and indirect subsidiaries globally. Companies subject to the law must create a 'Vigilance Plan', as described below. There is no supervisory authority, but a court can order the company to comply with its vigilance obligations, including ordering the company to develop a vigilance plan, or to improve its vigilance measures when these are deemed inadequate. There is also civil liability whereby harmed individuals can bring a claim resulting from a company's

³⁰ Loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre. French Commercial Code Article L. 225-102-4 and Article L. 225-102-5; Act relating to enterprises' transparency and work on fundamental human rights and decent working conditions (Transparency Act) (LOV-2021-06-18-99); Gesetz über die unternehmerischen Sorgfaltspflichten in Lieferketten (2021)

failure to comply with its vigilance obligations, where compliance would have prevented the harm.

The DVA requires the creation and publication of a Vigilance Plan, which includes five elements. First it requires companies to produce a “mapping” of their human rights risks whereby risks are identified, analyzed and ranked. Second, procedures must be established to regularly assess the situation of subsidiaries, subcontractors or suppliers, as identified by that risk mapping. Third, appropriate action to mitigate risks or prevent serious violations must be taken. Fourth there needs to be an ‘alert mechanism’ put in place whereby companies allow stakeholders to report human rights risks. Finally, companies need to have a monitoring system whereby they follow up on measures they have taken and assess their efficiency. The focus is explicitly on risks to human rights.

The Norwegian TA has been in force since 2022. It applies to companies either domiciled in Norway or offering goods/services that are taxable in Norway. Companies must meet at least two of three criteria (50 full-time employees, an annual turnover of NOK 70 million, or a balance sheet sum of NOK 35 million). The TA directs companies to follow the due diligence process in the OECD Guidelines for Multinational Corporations and to report on the HRDD they have undertaken. The Consumer Authority is the supervisory authority responsible for monitoring compliance with the TA. It can require information from companies and ultimately impose various penalties for non-compliance. There is also a provision in the Act that allows individuals to request information about how the company addresses actual and potential adverse impacts.³¹

In terms of reporting requirements, the TA requires the publication of “an account of due diligence” which has some similarities and some differences to the French Vigilance Plan. First it explicitly asks for a description of the company’s procedures for handling actual and potential human rights impacts. Second, it asks not only for the significant risks which companies have identified as a result of their due diligence, but also actual adverse impacts that have been identified as well. Third, it asks for information about the action taken in response to both the risks and impacts identified and what the results or expected results of these measures are. The requirement to report on impacts as well as risks makes the Norwegian TA notably different from the French DVA.

The German SCA has been in force since 2023. The new coalition government in Germany has announced plans to repeal the Act and await the EU CSDDD to regulate this issue, but no actions to do so have yet been taken and it is still in effect.³² The Act applies to companies that have their principal place of business in Germany and that

³¹ Norwegian Transparency Act, Section 10.

³² Michael Littenberg and Samantha Elliott, ‘Germany to Jettison the Supply Chain Due Diligence Act’ (10 April 2025) <https://www.ropesgray.com/en/insights/viewpoints/102k86v/germany-to-jettison-the-supply-chain-due-diligence-act> (accessed on 1 July 2025).

employ at least 3,000 people. Companies must carry out an (at least) annual human rights and environmental risk analyses of their operations and those of their direct suppliers. They must conduct risk analyses for indirect suppliers when there is ‘substantiated knowledge’ that human rights and environmental abuses exist. The Federal Office for Economic Affairs and Export Control (BAFA) is the supervisory authority and can issue fines if companies violate their due diligence obligations. Affected parties can submit complaints to BAFA which BAFA then can investigate and act on.

The reporting process for the SCA is very different from the other two laws. Disclosures are made through a program interface created by BAFA, with a long set of questions and, in some cases, follow-up questions depending on the answers given. Questions cover human rights policies and processes, risks and impacts identified, action taken to address those risks and impacts and the processes and outcomes of grievance mechanisms established by the company or in which it participates. The program then generates a report which sets out the answers provided by the company to each of the questions asked.

When it came to analysing reporting practice, our approach was to construct comparable samples of companies under the three laws. We found lists of the leading publicly traded companies in each country based on revenue in 2023, the last full year available when we began our research and then sought to identify reports by the thirty leading companies by revenue in the three jurisdictions.³³

We located all the reports from the leading thirty companies under both the DVA and TA. The Duty of Vigilance Plans were all available in a single repository.³⁴ In Norway there was no such repository so individual searches for corporate reports were needed. TA reporting was not at all standardized. Some companies had stand-alone documents titled “Transparency Act Report”, others had reported via a chapter of their sustainability report or even annual Financial Report. In other cases, companies would just say the requirements of the Transparency Act were satisfied by their sustainability report as a whole or list a number of sections in that report that address Transparency Act issues. Some form of reporting was eventually located for all thirty companies. For Germany, there was again no public repository. Also, the deadline for reporting under the SCA had been continually extended by BAFA so that the deadline had never arrived by the time we completed our review. Despite that, we discovered that many companies had reported before the deadline and made their disclosures public on their websites. We therefore went down the list of largest companies by revenue until we found thirty that had made their reports public. The thirty companies we identified are all in the top 88

³³ The data came from companiesmarketcap.com (accessed on 15 June 2025).

³⁴ Duty of Vigilance Radar (no date) www.vigilance-plan.org (accessed on 15 June 2025).

companies by revenue in Germany. So they are all large companies (and much larger than most of the companies reporting in Norway).

All of the French reports were available in English. Several Norwegian reports and most of the German reports were not available in English. We used DeepL AI software to translate those reports.³⁵ We tested the software's ability to translate the Norwegian reports by translating some for which we already had English versions published by companies and found that DeepL translations adequately translated the corporate reports. For the German reports, we had a German-speaking research assistant to double check the translations and create an index of terms to ensure consistent translations by DeepL. After this, we again found the translations to be adequate.³⁶

We then considered the disclosures made by companies, categorising them into seven categories as follows. First, what the companies said about the processes and systems they had put in place to perform human rights due diligence. That included the internal and external resources the company used. Second, what companies said about human rights risks. Third, the actions the company took to mitigate and prevent human rights risks. Fourth, the actual human rights impacts or violations the company identified. Fifth, the actions which the company took to cease, prevent, mitigate and remediate those adverse impacts. Sixth, the process and results of monitoring to determine if the human rights situation had changed or if the companies' actions to address risks and impacts were working. Seventh, what the companies said about their human rights grievance mechanisms' process, claims and outcomes.

We created a database for each law which identified key information provided by the company under the above categories.³⁷ At the same time each database also had distinctive elements to pick up interesting aspects of reporting that occurred under one law only. Reporting under the three laws differs in consistency, content, quantity and quality, as the analysis in the next section demonstrates, and so our databases also differed accordingly.

IV. Evaluation of Disclosure Requirements

The three mHRDD laws studied all impose different reporting requirements on companies. However, there are many similarities in the French and Norwegian requirements which mean they produce many of the same reporting outcomes and can be very clearly distinguished from the approach adopted by the German SCA.

A. France

³⁵ DeepL (no date) <https://www.deepl.com/en/translator> (accessed on 16 June 2025).

³⁶ By adequate we mean that they conveyed accurately to us essential information about the company's reporting process. Language was sometimes cumbersome and awkward. But this did not impair our ability to accurately identify and analyse corporate responses.

³⁷ A link will be provided to the databases after peer review.

Vigilance Plans produced by French companies mostly consist of long and detailed descriptions of processes and institutional structures which the company utilises to perform HRDD, risk mitigation, risk reporting and monitoring.³⁸ Making companies describe their processes has a value. In some cases it may well have incentivized the company to put those processes in place. But even if these processes are being implemented as claimed by the companies, it is impossible for outsiders to ascertain their adequacy for actually identifying and acting to address human rights risks and impacts. No information is provided on the cost or staffing of the procedures, or the actual resources that have been put towards addressing human rights issues by each company. Ultimately it is the results achieved by these procedures that matter, and these were never clearly or completely reported.

The DVA requires companies to describe their risk mapping, including the risks they have identified and prioritized and the actions they have taken to mitigate or prevent those risks. Companies appear to have interpreted this to mean they are not required to report on any actual human rights impacts. Only 3% of companies (one company) identify any actual concrete impacts or violations of rights.³⁹ Companies instead report on human rights *risks*.

But when companies report on risks, they only rarely describe risks in specific places or to specific rightsholders. Risks are instead most often presented in a general and abstract sense. It is extremely common for companies to list “rights at risk” or to include them in a risk heat map identifying the most significant risks by showing the severity of each impact on rightsholders if the events occur and the frequency with which impacts are expected to happen.⁴⁰ This then leads to the identification of the highest priority risks, often including issues such as forced labour, inadequate working conditions, discrimination and other labour rights issues. Having identified these generalized and abstractly described risks, companies then identify the action they have taken to address the risks they have prioritized (e.g. training programmes, guidance etc.). But there is generally no way for either the company or external actors to verify if these actions have reduced the risks that have been identified. How can one know if a training programme has reduced child labour if no facts or figures are known about the levels of child labour in a particular setting before and after that training took place?⁴¹ We

³⁸ The longest report is 38,640 words.

³⁹ L’Oreal identifies “non-conformities” in its supplier audits. Most categories had low rates (child labor 1%, sexual harassment and bullying 2.5%), but some were notably widespread (working hours 25%, wages and charges 18.1% and forced labor 5.6%). L’Oreal ‘Vigilance Plan’ (2024), 17.

⁴⁰ See e.g. Carrefour ‘Universal Registration Document’ (2024), 264 <https://www.carrefour.com/en/finance/all-publications> (accessed on 15 June 2025); Renault Group ‘Universal Registration Document’ (2023), 190 https://assets.renaultgroup.com/uploads/2024/09/URD_2023.pdf (accessed on 15 June 2025).

⁴¹ See e.g. Renault Group, above, 191 where e-training is identified as a key action to address child labour along with a range of other human rights issues.

discuss in more depth the problems created by the misunderstood concept of ‘risk’, as revealed by reporting under all three mHRDD laws, in section 5B below.

The “alert mechanism” is the closest the DVA comes to dealing with human rights complaints or grievances, although its definition is unclear.⁴² The reporting under the French Law is uniformly a simple recognition that some form of complaints mechanism actually exists without any description of the type, number or location of claims. So we have no way of knowing whether or not ‘alert mechanisms’ are providing access to remedy for human rights violations. Similarly, monitoring systems are generally noted to exist with no information about outcomes of the monitoring process.

B. Norway

The Norwegian TA is also worded to allow tremendous latitude to companies on how and what to report. This means that, as with the DVA, there is great variety between the longest and shortest reports under the TA.⁴³ As noted above, the TA requires that companies report in relation to impacts as well as risks. But, in reality, this stipulation makes only a marginal difference to reporting practice. Only 7% of companies (two companies) report any actual human rights impacts in their own operations or supply chain.⁴⁴ Much of the reporting is similar to the French DVA in that most of the emphasis is on describing processes and systems. Where risks are mentioned, the vast majority report on general risks rather than specific risks in a particular place to an identified rightsholder group. Where they then identify actions to address those risks there are generally no reliable metrics for determining if those actions had any effects on the risks identified.

Finally, the reporting on human rights complaint mechanisms (which the Norwegian law does not explicitly require but implies⁴⁵) is weak and confused. Most common are mention of ‘whistleblowing/hotline’ type “communication channels” without any explanation of how and why they address significant human rights issues in relation to

⁴² The alert mechanism is only defined as a mechanism that “collects reporting of existing or actual risk”. *Loi de Vigilance* No. 2017-339 of 2017

⁴³ The shortest report is only 1143 words, while the longest is 4805 words. Short, superficial reporting may also be caused by the fact that there are many more smaller companies with less resources than under the German law.

⁴⁴ Equinor, the largest Norwegian company, reported on forced labour, including “payment of recruitment fees, retention of identity papers and lack of freedom of movement ... 61 persons have been identified to be subject to one or more forced labour indicators in contracts in execution in 2022.” Equinor, Human Rights Statement (2022), 14. [a4492b23d0570a9df2efb4011941d87fd8ffae8.pdf](#) (accessed on 1 July 2025).

⁴⁵ The Norwegian Transparency Act makes no direct mention of the term ‘grievance mechanism’. However it does require companies to co-operate in remediation. It also explicitly incorporates the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct which, when referring to remediation, require companies to establish or participate in processes to enable remediation, including internal CGMs of the company and those run in collaboration with other stakeholders.

the company's workforce and affected communities.⁴⁶ We discuss these problems further in section C below.

C. Germany

The German regulator, BAFA, takes a very different approach to reporting. It requires companies to provide answers to a long list of questions which BAFA itself generated, covering all seven of the categories of information identified above. The number of questions companies are required to answer depends on how many follow-up questions are triggered. But the minimum number is 69 and the maximum 166.⁴⁷ Some questions are intentionally open-ended, particularly in relation to issues of process, allowing the company to respond at length if it wishes. Other questions require companies to report on specifics. On risk, companies are required to specify types of risk, and where those risks occur, both in terms of its location in the supply chain (risks to the company, its direct suppliers or indirect suppliers) and the country where those risks occur.⁴⁸ This means that there is much more specificity to the risk reporting than under the DVA or TA. Companies are also asked to identify what action they have taken to prevent or mitigate those much more specified risks, making it more feasible to judge those actions.⁴⁹

Even more importantly, companies are asked questions about their actual human rights impacts, including where those impacts occurred, what action had been taken to address them, and what effect those measures had. Fifty percent (15 of 30) companies report human rights impacts either in their own operations or somewhere in their supply chain. For example, TUI an international travel and tourism company, had reports of child labor at a hotel in Turkey and put processes in place to ensure that the contactor was not permitted to use child labor again.⁵⁰ Companies are also asked a series of

⁴⁶ For examples, see 2023 Transparency Act Reports for Equinor, Hydro, Yara, Telenor, Wilhelmsen, Gjensidige, Kongsberg, Veidekke, Elkem, Leroy Seafood, Norwegian Air Shuttle, Archer, DOF Group, Elopak, and Hoegh Autoliners.

⁴⁷ This is the highest number we found. There are some open-end questions with follow up questions which could produce even higher numbers of questions with no theoretical limit.

⁴⁸ Infineon Technologies 'AG Report on the LkSG (Supply Chain Due Diligence Act)' (2023) 31-32. https://www.infineon.com/dgdl/IFAG_BAFA_Report_2023_German_Supply_Chain_Act.pdf?fileId=8ac78c8b8d2fe1ea018d8d53a8b90042 (accessed on 1 July 2025). "Rights at Risk: Prohibition of forced labour and all forms of slavery. Specific Risk: Recruitment fees constitute a risk for debt-induced labor. Country: Taiwan"

⁴⁹ For each risk identified by right and country, every company is then asked "What preventative measures were implemented for the reporting period to prevent and minimize priority risks at [own operations, direct suppliers and indirect suppliers]?" This is followed by the question: "Describe the extent to which the measures to prevent and minimize the priority risks are appropriate and effective?" BAFA Supply Chain Act Questions Sections B2, B3 and B4. In addition, there is an entire section asking about the company's processes in place to review the appropriateness and effectiveness of human rights risk management. BAFA Supply Chain Act Questions, Section E.

⁵⁰ TUI AG, Report on the German Supply Chain Act 2023, 53-56 <https://cdn.sanity.io/files/b6xulh2p/production/6488bd941370f941907c910ef26e98891481bf7f.pdf> (accessed on 1 July 2025).

specific questions about their grievance mechanisms including the number, content, duration and outcomes produced by them. This again produces much more concrete and specific data. Seventy seven percent (23 of 30) of the companies report on the actual number of complaints they received, which is almost never reported under the French and Norwegian laws.

The German SCA takes reporting control out of the hands of the company by creating a structure for the reporting process and requiring the company to provide answers to focused questions and even more focused follow up questions. The most obvious difference is in relation to impact (50% of German companies report on actual human rights impacts, while only 3% of French and 7% of Norwegian companies do). This clearly demonstrates that companies are only likely to report on actual, concrete impacts when they are pushed to do so by direct questions. But also in relation to risks, actions to address risks and impacts, and grievance mechanisms, the SCA manages to elicit more specific and results-orientated information.

The information elicited by the German law still has many gaps and problems. Some questions are too vague to produce useful information.⁵¹ Some companies give deliberately vague or misleading answers to questions that appear to require specific responses.⁵² Companies cannot be trusted to fully report on their human rights impacts (e.g. is it plausible that fifty percent of the large transnational companies examined had no human rights impacts anywhere in their own operations or those of their direct or indirect suppliers?). While much more robust than those produced by the other two laws, the disclosures required by the German law are not sufficient by themselves to be relied upon to uniformly enhance corporate human rights accountability. The reports produced by companies contain too many gaps and uncertainties to be utilised by regulators or third parties to make conclusive determinations of how companies are actually performing HRDD.

They are, however, an encouraging start that could, if improved and enforced, lead to an actual improvement in human rights accountability. The approach of the German law, utilising a detailed framework of questions, provides useful individual and comparative data about the human rights performance of a wide range of companies. At an

⁵¹ For example, “Did you receive any information about the complaints procedure during the reporting period?” BAFA Supply Chain Act Question, Section D3. A clearer question would ask if any complaints were received. Note that if the answer to this question were “Yes”, There would be specific follow-up questions on the number, type, length of process and outcomes for those claims, which are all specific and important questions.

⁵² For example, Hapag Lloyd ‘Supply Chain Act Report’ (2024) 17 https://www.hapag-lloyd.com/content/dam/website/downloads/pdf/HL_LkSG_report_2024_EN.pdf Question: What is specific first prioritized risk in own business area? Answer: Risk of non-compliance with occupational health and safety due to the exceedance of working hours. The risk occurs in Hapag-Lloyd companies worldwide as well as in companies that were majority-owned by Hapag-Lloyd in 2023. Germany was therefore selected as the company headquarters in the “Where does the risk occur” drop-down menu.

individual level, the fact that companies have reported specific risks, impacts and complaints means that omissions can be identified by the regulator and by other interested parties. A community whose dispute was not mentioned in a company's report now has the basis to query the omission. Similarly, a civil society organisation, or the regulator itself, having identified human rights impacts in its own investigations of a company's operations, can ask why the company has not reported on it. Over time, such prompts could then become a valuable incentive to such companies to fully disclose. Each year, as the company reports again, the data they disclose can then be tracked longitudinally to understand how risks, impacts and complaints are identified and addressed over time.

The data is also potentially valuable for comparisons and benchmarking. For instance, where a number of companies operating in a particular sector and country have all reported specific human rights risks and impacts, enquiries can be made of other companies also operating in the same sector and country who have not reported those same risks and impacts. Similarly, where some companies in a sector are reporting hundreds of complaints and other similar companies are reporting very few or none, inquiries can be made as to the reasons why. Cumulatively, this data then becomes a resource that can then inform regulators and third parties about how companies see the state of human rights in a particular sector or location and this can then be compared with independent information which is acquired from other sources such as investigations by the regulator and reports produced by third parties.

The disclosures produced under the German SCA do therefore provide a potentially useful dataset that can be the basis for critical follow-up work by regulators and third parties. It is at this stage that there is often the greatest opportunity to enhance corporate human rights accountability. This is in stark contrast to the French DVA and Norwegian TA. The reporting requirements under these laws are so vague and open-ended that they only very rarely elicit information of significant value to regulators or third parties. Corporate reports produced under these laws also contain so little specific and comparable data that the kind of follow-up which is possible under the German law framework would be very difficult.

V. Inadequacies in Human Rights Due diligence revealed

Looking beyond the issue of whether disclosure requirements enhance corporate accountability, the corporate reporting we have considered in this article is also valuable to academic and policy discussions about the practice of HRDD. The company reports analysed provide a rich set of data for understanding how HRDD is actually carried out by companies. The reports reveal serious and widespread problems with the HRDD process, as currently practiced by many of the companies who are subject to reporting requirements. Below we discuss three of the most significant issues.

A. Methodological Problems

One of the core rationales for mHRDD is that pre-existing processes for investigating human rights issues had well-recognised flaws. In particular companies were overly reliant on audits that represented ‘snap-shot’ perspectives of corporate activity, were easily ‘gamed’ by poorly performing companies, and marginalised the role of rightsholders in the process of identifying and responding to human rights issues.⁵³

Other methods for understanding a company’s social or human rights impacts, such as surveys and self-assessment questionnaires, have also been criticised for struggling to produce reliable information about where human rights risks and impacts are occurring in the operations and supply chains of complex multinational corporations.⁵⁴

The promise was that mHRDD would require a very different approach. This would involve a much deeper and more holistic investigation of human rights issues where rightsholder concerns would play a much more central role.⁵⁵ But the reports produced by companies raise concerns that this transformation has not happened. Companies were not specifically required under any of the reporting processes studied to specify the methods by which they undertook their due diligence process. Some companies gave little or no detail about their methods. However, it is remarkable how many companies in this context specified audits as a core methodological tool utilised to fulfill HRDD requirements. Under the German SCA alone, 27 companies (90%) explicitly identified audits, with some companies appearing to almost exclusively rely on them to investigate human rights issues in relation to their suppliers.⁵⁶ Other common approaches for companies to take included self-assessment questionnaires (24 companies (80%)) and surveys (10 companies (33%)). While audits, surveys and questionnaires when done well and used correctly can be a reasonable starting point for HRDD, the reporting often focuses on such methods as if they were describing HRDD as a whole. The serious limitations of such approaches for actually identifying human rights abuses are obvious and well-documented.

Company reporting also reveals the widespread use and reliance on third party supply chain software platforms. While not required to do so, 40% of companies reporting under the Norwegian Law mentioned such platforms, presumably to appear serious in their commitment to human rights due diligence. These platforms include, among others, EcoVadis⁵⁷ (“We help companies improve sustainability across their supply

⁵³ Genevieve LeBaron, Jane Lister, and Peter Dauvergne ‘Governing global supply chain sustainability through the ethical audit regime’ (2017) 14:6 *Globalizations* 958.

⁵⁴ Reference removed for peer review.

⁵⁵ Sarianna Lundan and Peter Muchlinski ‘Human rights due diligence in global value chains’ New policy challenges for European multinationals. Emerald Group Publishing Limited, 2012. 181-201. Nolan, above, 75.

⁵⁶ E.g. Traton SE, ‘Supply Chain Act’ (2023), 12: “The specific risks were identified during the audit using a standardized audit protocol.”

⁵⁷ Ecovadis (no date) <https://ecovadis.com/> (accessed on 15 June 2025)

chains and comply with growing global regulations”), Sedex⁵⁸ (“With Sedex, manage global suppliers, align with key regulatory requirements, and drive responsible sourcing”), and Ignite Procurement⁵⁹ (“Get a holistic perspective of your suppliers and evaluate how they perform in emissions and social risks. Collaborate more effectively and report in line with the Corporate Sustainability Reporting Directive (CSRD) and [the Norwegian] Transparency Act.”) These platforms have rapidly become an important, and, in some cases, essential, part of supply chain due diligence. They typically rely on supplier surveys, and self-assessment questionnaires and produce “risk ratings” for individual suppliers. These are for-profit, proprietary, commercial products whose methods are their own intellectual property. As such, they are inherently non-transparent and so cannot be independently judged, validated or certified, and exclude rightsholder perspectives. Their use further complicates objective assessment of HRDD. This is a profoundly important practical issue which will require particular attention and study as mHRDD laws progress.

Overall, reporting by companies under the mHRDD laws we reviewed, demonstrated a range of worrying methodological approaches unlikely to reveal many of the human rights issues most impacting rightsholders affected by corporate activity

B. The Problematic Concept of ‘Risk’

A ‘risk-based approach’ to human rights due diligence is widely advocated.⁶⁰ The review of corporate reporting practice undertaken in section 4 above demonstrated that far more reporting is done on risks than on impacts. Worse, the data consistently demonstrates that company reporting on risks is often vague and inconclusive; it rarely leads to preventative and mitigation efforts that are shown to effectively address human rights issues. Risk reporting is weak partly because of ambiguity in the use of the word ‘risk’ and conflation of a number of different types of issues that companies face which should be discussed separately. This conceptual conflation acts as an impediment to demanding that companies respond appropriately to the risks that have been identified.

“Risks” most usefully describe specific harmful events which may or may not occur, and where actions by the company can potentially reduce or eliminate the chances of those events occurring. For example, under the German SCA, Schaeffler Technologies mentions having private/public security forces with inadequate human rights training in Mexico and the United Arab Emirates that resulted in the risk of human rights violations

⁵⁸ Sedex, (no date) <https://www.sedex.com/> (accessed on 15 June 2025)

⁵⁹ Ignite Procurement (no date) <https://www.ignite.no/> (accessed on 25 June 2025).

⁶⁰ See e.g. OECD ‘Translating a risk-based due diligence approach into law’ (2022) <https://mneguidelines.oecd.org/translating-a-risk-based-due-diligence-approach-into-law.pdf> (accessed on 15 June 2025).

occurring.⁶¹ The mitigation they undertook was the implementation of human rights-respectful training for those security forces. In another case Elopak identified elevated temperatures in manufacturing units in Morocco and Saudi Arabia.⁶² The mitigation was to “rotate work to decrease exposure to heat, regular breaks, cooling clothing and easily available drinking water.” This was monitored with no injuries reported. These are examples of genuine and specific risks where effective mitigation can be designed to address them and monitored to determine if they are actually effective. Unfortunately, such examples are very rare in the reports we examined.

It is much more common for companies to describe issues as ‘risks’ where they are either (a) negative human rights impacts which are already definitely occurring or (b) insufficiently specific as to be actionable. When describing violations that are definitely occurring as ‘risks’, terms like ‘systematic risk’⁶³ or ‘inherent risk’⁶⁴ are often used. For example, many companies note a risk to “freedom of association” in operations in China.⁶⁵ There is no legal right to participate in independent trade unions in China and no such unions exist. Violation of the right to freedom of association there is a certainty, not a risk that may or may not happen. Companies know violations are going to happen when they have operations or suppliers in China. When they report on this type of ‘risk’, companies do not treat them as if they have to take action to address them. They are simply noted background conditions, the human rights “cost of doing business.” Because such risks are not treated separately from other risks that the company can be expected to control, this gives the false impression that mere risk identification, and not reduction of human rights violations, is the end goal of HRDD. Noting an ongoing human rights violation, without more, does nothing to help rightsholders. Yet, company after

⁶¹ Schaeffler Technologies, ‘Supply Chain Act’ (2023) file:///C:/Users/lasgao/AppData/Local/Temp/MicrosoftEdgeDownloads/3653a997-3504-4021-85ee-c20aaac2bbc5/report_lksg_schaeffler_ag_2023_de.pdf (accessed on 1 July 2025) in response to question on first prioritized risk in own business area.

⁶² Elopak, ‘Human Rights and Labor Transparency Statement’ (2023), 7 <https://www.elopak.com/app/uploads/2024/06/Human-and-labor-rights-transparency-statement-2023.pdf> (accessed on 1 July 2025).

⁶³ Equinor ‘Human Rights Statement’ (2023), 12 <https://cdn.equinor.com/files/h61q9gi9/global/abad63a4e316dc251eef1d1eeedbd6407a2c640f.pdf?human-rights-statement-2023-equinor.pdf> (accessed 1 July 2025) “At times, risks of adverse human rights impacts which we encounter are not specific to our supply chains. Rather, they can be more systemic in nature and form an integral part of an economy, a particular sector, or an industry.”

⁶⁴ Aker Transparency Act Report (2022) p. X “there is inherent risk of Adverse Impacts associated with the supply chain of renewable energy, and in particular any exposure to the Xinjiang province in China, but also China in general and other high-risk markets . . .” <file:///C:/Users/lasgao/AppData/Local/Temp/MicrosoftEdgeDownloads/f734a02a-b7f2-42a9-a9e3-5cff3bff3c7f/Aker-ASA-Transparency-Act-Report-2022.pdf> (accessed on 1 July 2025).

⁶⁵ See e.g. Schaeffler Technologies 2023 German Law report, above, response to question on second prioritized risk in for direct suppliers; Volkswagen 2023 German Law Report, response to question on fourth prioritize risk-own business area.

company does exactly this, admitting to current and ongoing negative human rights impacts, calling them “risks,” and acting as if their HRDD work was done.

In other situations, the risks described are too general and diffuse to be actionable. For instance, companies in their reports make statements like “modern slavery is a recognised industry risk.”⁶⁶ The “risk” described here is actually a statement of ignorance: the company is admitting that there may be human rights violations going on connected to its business, it just does not know whether, or where, or how severe they are. Calling this a “risk” is to present ignorance as a form of knowledge. The correct response is to investigate and acquire specific knowledge (e.g. “Is there modern slavery in our operations or supply chain in country X?”). But instead of acquiring the knowledge to translate general risks into specific risks, companies almost always move from generalised risk straight to generalised mitigation. “Training programmes”⁶⁷ or “continuous learning”⁶⁸ may be useful actions, but human rights mitigation does not mean merely taking an action which could perhaps produce a helpful result. It means knowing the specific risks in a business’s operations and then using this knowledge to reduce the number or severity of human rights violations that occur. While reporting on such general mitigation is widespread, it is, extremely rare to see any reporting on actual reduction in human rights impacts as a result of that so-called mitigation.⁶⁹ For the most part, this is because companies do not have enough specific knowledge to be able to undertake any form of meaningful monitoring.

For human rights due diligence to fulfil its intended goal of reducing or even preventing negative human rights impacts, companies need to be encouraged to identify specific and actionable risks and only then develop actions to mitigate those risks and monitor the success of those actions. Current usage of the word ‘risk’ blurs the actionable and the inactionable, the general and the specific, in a way that makes confusion and obfuscation the norm in corporate reporting of human rights risks. As a result, companies report as if their goal is simply to list risks, not to deal with impacts.

C. The Inadequacies of Grievance Mechanisms

⁶⁶ E.g. Vonovia SE, ‘German Law Report’ (2023), above. Response to question on second prioritized risk for direct suppliers.

⁶⁷ Valeo, ‘Universal Registration Document’ (2023), 280. “Valeo has implemented support and prevention tools addressing serious breaches for fundamental rights, prevention tools have been rolled out. They include training in the Code of Business Ethics, and risk mitigation measures.”

⁶⁸ LeRoy Seafood ‘Transparency Act Report’ (2023) https://www.leroyseafood.com/globalassets/02--documents/english/the-transparency-act-report/transparency_act_report_2023/ (accessed on 1 July 2025). Section 3.4 “General measures to halt, prevent or limit harmful impacts to reduce identified risks, Lerøy has implemented the following general measures: Annual revision of its Code of Conduct, Annual revision of its Human Rights policy, Annual revision of its Supplier Code of Conduct . . . Continuous learning and development for managers and employees”

⁶⁹ The exception here is some reporting on reduction in workplace injuries. This is an area where actual rates of impacts (injuries) are regularly reported and action to address injury rates, which appears successful, is regularly reported.

Grievance mechanisms should allow rightsholders to complain about corporate misconduct and, where those complaints are upheld, remedies to be provided, as required by the UNGPs.⁷⁰ Corporate Grievance Mechanisms refer to grievance mechanisms run by the company themselves and those in which multiple companies participate (e.g. those run by multi-stakeholder initiatives). MHRDD laws generally require companies to set up or participate in CGMs. Grievances brought through CGMs should also be used to inform HRDD; putting the issues identified by rightsholders at the centre of the HRDD process, potentially addressing concerns about their marginalization raised above. But reporting by companies raises questions about whether many CGMs are capable of performing any of these functions.

First, many companies do not appear to have the requisite understanding of critical aspects of grievance mechanisms. A significant number of companies discussed their existing ‘hotlines’ or ‘whistleblower’ functions in their reports as if these were performing as human rights grievance mechanisms. Hotline/whistleblower functions have the potential to provide corporate management with valuable knowledge about many significant issues, including in relation to human rights. But they do not normally adopt core procedural elements that are critical to the functioning of human rights grievance mechanisms such as independent investigation and adjudication of grievances. They are instead usually established within existing corporate structures/departments and deal with many issues unrelated to human rights. They typically give significant discretion to corporate management about how to deal with issues raised. Those companies who are confusing whistleblower or hotline functions with human rights CGMs are therefore demonstrating ignorance about how to establish a system for dealing with complaints from rightsholders which conforms with basic expectations.

Second, due diligence reporting under the German SCA, demonstrates that there are problems with the outcomes produced by many grievance mechanisms. The SCA, unlike its French and Norwegian counterparts, requires companies to also report on, *inter alia*, the number of complaints lodged and the outcomes they produce. Across our thirty-company sample, 3045 complaints (a mean of 101 per company) were reported, of which 2076 were investigated, but only ninety-one were found in favour of the complainants. This is a ‘success rate’ for rightsholders of 2.6%. This finding substantiates concerns identified elsewhere in the academic literature about the rarity of grievance mechanisms providing effective remedy for rightsholders.⁷¹ It is an issue that BAFA and other supervisory authorities could and should be following up on to understand why grievance mechanisms are not functioning appropriately. In the

⁷⁰ United Nations, above, Principles 28-31.

⁷¹ Fiona Haines and Kate Macdonald, ‘Nonjudicial Business Regulation and Community Access to Remedy’ (2020) 14 *Regulation & Governance* 840; Reference removed for peer review.

absence of such scrutiny, and given that mHRDD laws often require that companies establish or participate in grievance mechanisms, there is a real danger that mHRDD laws may actually be worsening the situation for rightsholders by encouraging the establishment of meaningless grievance mechanisms that are in fact ‘dead-ends’.

VI. Discussion: The Future of MHRDD laws

This article started by identifying how mHRDD faces an uncertain future. On the one hand, optimists and proponents can point to the fact that mHRDD laws are set to be instituted across Europe and could spread beyond, potentially entrenching important soft law responsibilities in hard law so that the largest companies take responsibility for human rights issues in their operations and supply chains. On the other hand, critics point to the dangers of superficial compliance with mHRDD laws as well as legitimacy problems, because of the failure of lawmakers to fully engage with the perspectives and interests of key stakeholders, primarily in developing countries. At the same time there is a backlash because of the regulatory burdens and costs mHRDD laws impose on business.

In this context, we have argued it is important to scrutinise carefully how existing mHRDD laws operate in practice if we are to come to informed conclusions about whether it is possible for future laws to fulfil their potential and avoid the many pitfalls they face. Corporate disclosure is central to how mHRDD laws function. Without disclosure, the vast majority of corporate practice in relation to HRDD will remain forever hidden and beyond scrutiny. But the broader literature on corporate disclosure as a regulatory mechanism tells us that disclosure is rarely successful. Hypotheses that disclosure might lead to the empowerment of key stakeholders such as supervisory authorities, rightsholders, third parties or even corporate actors themselves need to be carefully examined.

Reporting requirements under the French DVA and Norwegian TA have been shown to be of little value because they are too vague and allow too much discretion to companies on how they report. Supervisory authorities, interested third parties and rightsholder themselves will all struggle to use these reports to hold companies accountable for their human rights performance. The DVA does allow interested third parties to bring cases against companies who fail to comply with their obligations to produce a Vigilance Plan. But it is difficult to envisage how courts will enforce this obligation in a way that mandates companies to undertake and disclose meaningful due diligence when the reporting requirements of the plan are so vague and general standards of reporting by companies so low.⁷²

⁷² Only one case has so far been decided on the merits at first instance under the DVA. *SUD PTT v La Poste*, Paris Judicial Court, n° 21/15827 (December 5, 2023). This is a first instance decision and has been appealed. It found La Poste’s Vigilance Plan to be inadequate and required it be supplemented with a risk

By contrast, the German CSA requires companies to answer detailed and specific questions. Most importantly it requires companies to report on outcomes. Where companies' report on their actual human rights impacts (in specific places in relation to specific rights) and the performance of their grievance mechanisms (including the outcomes produced for rightsholders), then valuable data is elicited. As such, the CSA avoids many of the pitfalls not only of the TA and DVA, but also of many other disclosure laws imposed on companies discussed in section 2 above.

But even under a reporting model such as that found under the CSA, the complexity of human rights due diligence means that disclosure can at best only be a first step towards meaningful action to address human rights issues. There should be scepticism that disclosure requirements under the CSA (or DVA or TA) are leading to internal corporate actors routinely driving change within their own companies, given the substantive problems with the performance of HRDD uncovered in this article. These include troubling methodological approaches, a failure to appropriately interpret key terms such as human rights risk and worrying outcomes such as those produced by the vast majority of grievance mechanisms.

There is also no way that civil society organisations, academic researchers or other actors, can utilise mHRDD reports to distinguish excellent corporate human rights performance from complete failure. We found a myriad of incidences where companies either reported in vague or evasive ways, or the reports raised potentially worrying issues about the systems and processes they had in place to address human rights issues. It is not credible, for instance, that a large multinational company finds no human rights impacts in any of its operations or supply chains or runs a grievance mechanism that produces no substantiated complaints. It is therefore vital that supervisory authorities, or other third parties are empowered to follow up and question companies if and when they identify omissions, evasions or substantive problems with the reporting process. Indeed, the TA explicitly allows third parties to do exactly this.⁷³ The regulator can then play an important role in publicising the totality of disclosure (initial reports and follow up) such that individual and comparative analysis of corporate human rights performance is potentially possible by external stakeholders.

The importance of effective models of reporting is an under-appreciated issue in discussions about future mHRDD laws. For instance, many concerns have been expressed about various aspects of the Omnibus package and how it 'waters down' key

mapping and various other procedural elements. But it is not clear that this would lead to the detailed and specific reporting required under the German CSA.

⁷³ Section 6 of the Transparency Act states "Upon written request, any person has the rights to information from an enterprise regarding how the enterprise addresses actual and potential adverse impacts . . ." This provision, which reportedly has been and is being used, requires companies to respond to and engage with any interested parties. This allows for the creation of a potentially useful feedback loop, allowing for disclosures to be questioned and used by third parties, including affected rightsholders.

elements of the EU CSDDD.⁷⁴ But, despite concerns about reporting burdens on companies being a key driver behind the Omnibus package, there has been very limited discussion of what form reporting will now take in relation to EU CSDD. A failure to implement requirements similar to the CSA could fatally undermine the capacity of EU mHRDD laws to enhance corporate accountability for human rights issues.

There is way of reducing the regulatory burden of reporting without undermining the effectiveness of the disclosure process. Our analysis allows for a consideration of the efficiency of disclosure. To reduce costs and waste, disclosure should be focused on what matters. The most significant and meaningful aspect of reporting is in relation to impacts. This includes both actual adverse human rights impacts and claims made under grievance mechanisms, which are *prima facie* allegations of actual negative impacts. Disclosure requirements in future mHRDD laws should focus on direct questions that require companies to report meaningfully on impacts and corporate action to address them. Current reporting on policies, process and risk is much more extensive than reporting on impacts and at the same time much less valuable. Future mHRDD laws should reduce the requirements for companies to report on policies and processes down to the bare essentials (e.g. what publicly available policies do you have on HRDD? who are the key actors involved in your HRDD process?). Reporting requirements on risk should concentrate on requiring companies to elaborate on specific risks to specific groups in specific geographical locations in relation to specific human rights issues. This would reduce the overall reporting burden on companies while providing external stakeholders with reports that are more useful.

The other key critique of mHRDD laws relates to their legitimacy. Policymakers must in future engage better with key stakeholders in countries likely to be affected by mHRDD laws before those laws are enacted. Once enacted, they should ensure that mHRDD laws put the concerns and interests of key stakeholders at the centre of the HRDD process. One way of doing this is to take seriously the complaints that originate from rightsholders affected by companies and supply chains covered by mHRDD laws. If mHRDD laws can amplify often-ignored complaints of rightsholders, make sure they are properly investigated and ensure that remedy is provided in appropriate cases, then they will be playing this role. But, even based on the companies' own reporting, the grievance mechanisms we have considered in this article appear to very rarely provide any kind of remedy to rightsholders. Supervisory authorities must therefore interrogate the performance of CGMs to ensure they are operating effectively.⁷⁵ Alternatively, they should find other ways to ensure that grievances are effectively investigated, adjudicated upon and appropriate action then taken. The CSA gives BAFA the capacity

⁷⁴ Pinsent Masons, 'EU sustainability rules watered down in omnibus package' (26 February 2025) <https://www.pinsentmasons.com/out-law/news/eu-sustainability-rules-watered-down-in-omnibus-package> (accessed on 1 July 2025).

⁷⁵ Reference removed for peer review

to receive complaints. But much more transparency is needed about how complaints are handled and the results the complaints process produces to give confidence to rightsholder that their complaints will be taken seriously. Only then would the BAFA model be a progressive step in future mHRDD laws.

Another way in which mHRDD laws could address their legitimacy deficit is to recognise the power dynamics of the supply chains they are seeking to regulate. There are well-recognised and longstanding issues with lead companies in global supply chains pushing down costs of social and environmental upgrading to their direct and indirect suppliers, often in developing countries.⁷⁶ Where due diligence uncovers the need to take action to address human rights issues, the cost of that action should be fairly and appropriately shared through the supply chain and not all borne by suppliers or subsidiaries in developing countries. At the moment mHRDD laws are silent on this issue and corporate disclosures under mHRDD laws never report who bears the costs of any action they are taking to address human rights issues. Lawmakers and regulatory agencies need to develop strategies for how to address this issue if they are to avoid reinforcing the troubling power dynamics in many global supply chains.

VII. Conclusion

This article has argued that corporate disclosure is critical to the effective operation of mHRDD laws. But disclosure requirements must prompt companies to report in a meaningful way. Our investigation of reporting practice under the French, German and Norwegian mHRDD laws has revealed the type of directed and outcome-orientated reporting processes that should form the bedrock of future laws. Such reporting processes are necessary but not sufficient for effective regulation. Our scrutiny of corporate reporting has revealed many significant methodological and substantive problems with the current practice of mHRDD by companies. Regulatory authorities must be empowered to scrutinise corporate reports as we have done, and then follow up on issues identified, if mHRDD laws are to enhance corporate accountability for human rights issues in a way that has tangible positive impacts for rightsholders.

⁷⁶ See e.g. Stefano Ponte, *Business, Power and Sustainability in a World of Global Value Chains* (London: Zed Books, 2019).