

Human Rights Due Diligence: International Regulatory Developments

ECOFACT AG

Stampfenbachstrasse 42
8006 Zurich / Switzerland

T +41 44 350 60 60
E info@ecofact.com
W ecofact.com

ECO:FACT

Welcome and introduction

- Welcome and introduction
- About the ECOFACT Policy Outlook research and methodology
- The corporate responsibility regulatory landscape
- Zooming in on human rights due diligence
 - Key triggers and drivers
 - Mapping initiatives around the world
- Where do we stand?
 - Key characteristics/trends of regulatory initiatives
 - What are key stakeholders saying?
- Regulatory outlook
- Q&A

Speakers



Antonio Hautle

Executive Director

antonio.hautle@globalcompact.ch



Olivier Jaeggi

Managing Director

olivier.jaeggi@ecofact.com

[About Olivier](#)



Dr. Gabriel Webber Ziero, LL.M.

Head of Policy Outlook

gabriel.ziero@ecofact.com

[About Gabriel](#)

About the ECOFACT Policy Outlook research and methodology

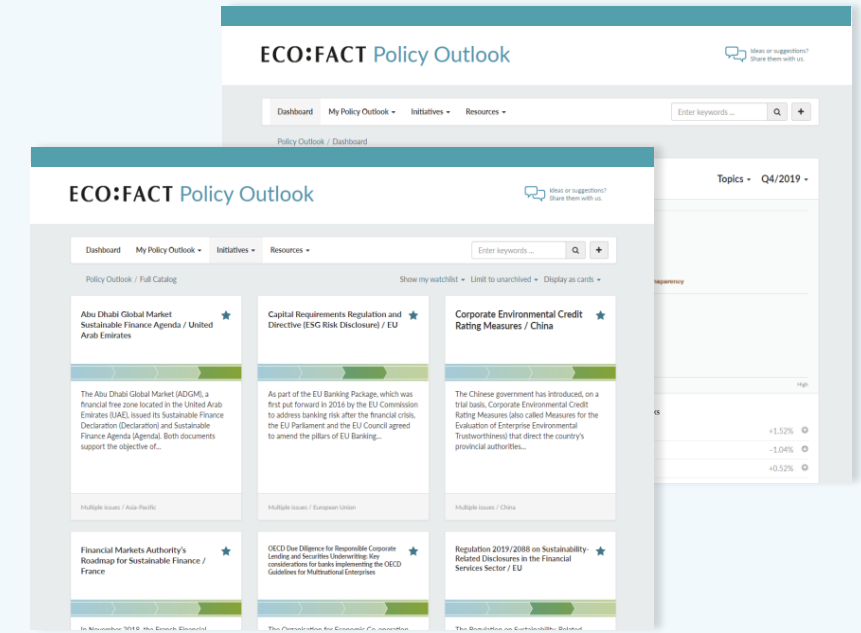
This webinar provides an overview of the international regulatory landscape related to human rights due diligence. It builds on the research that informs the ECOFACT Policy Outlook.

About Policy Outlook

The Policy Outlook is the world's largest and most comprehensive research package focusing on hard and soft law initiatives pertaining to sustainable finance and corporate responsibility across the globe.

The Policy Outlook monitors more than 30 regulatory topics in over 45 countries and the European Union, representing more than 85% of global GDP.

To learn more, see [our webpage](#) and contact us.



The corporate responsibility regulatory landscape

Regulatory developments related to corporate responsibility issues have reached a record high. These issues include, among other topics: environmental, social, and employee matters; respect for human rights; and governance topics.

Regulatory developments in 2020

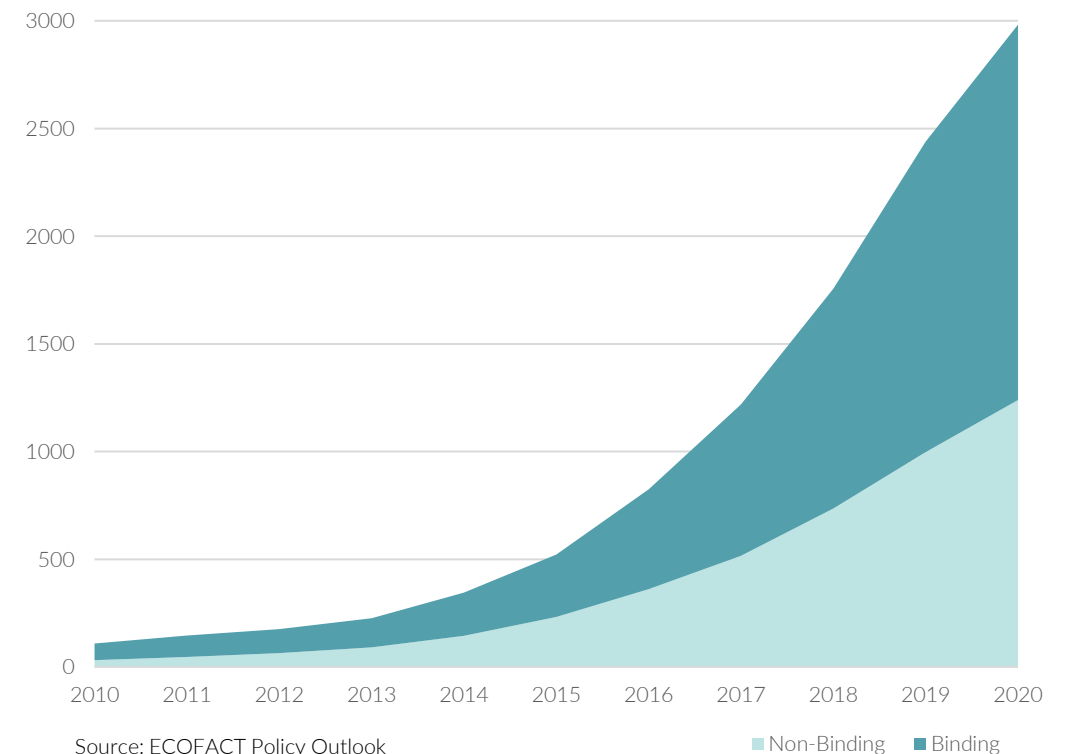
550+ 

Since 2015, the number of regulatory developments increased by

210% 

➔ The ILO, OECD, OHCHR, IACHR, UNICEF, UN Global Compact and its local networks, and the UN Working Group on Business and Human Rights called for promotion of and compliance with corporate responsibility standards throughout the COVID-19 pandemic as well as in the subsequent recovery (including in recovery plans).

Regulatory developments related to corporate responsibility



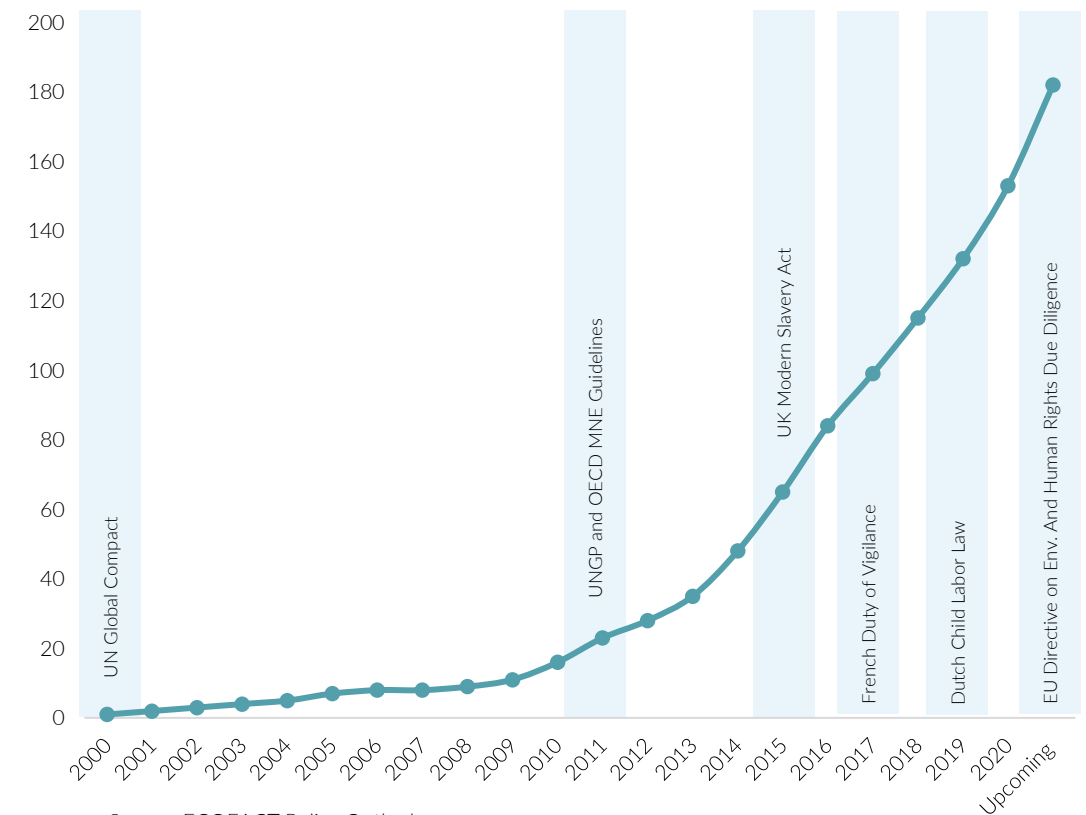
Zooming in on human rights due diligence

The number of regulatory frameworks addressing human rights due diligence has been growing steadily since 2011.

There were several triggers of this regulatory wave, including:

- Adoption of widely recognized international frameworks, such as the UN Guiding Principles on Business and Human Rights, and the revision of major standards, like the OECD MNE Guidelines.
- Government action via the publication of National Action Plans on Business and Human Rights, and the adoption of laws addressing sustainability-related disclosures.
- Industry sectors' actions seeking to translate widely recognized international frameworks to their specific realities.
- Civil society campaigns based on widely recognized international frameworks.

Number of initiatives related to human rights due diligence

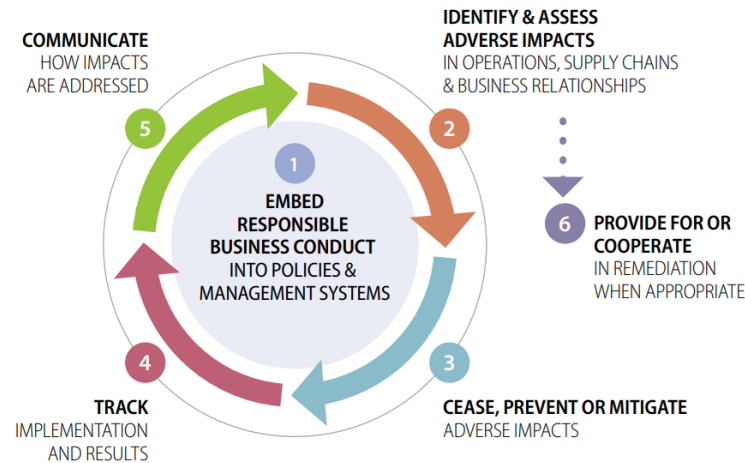


Source: ECOFACT Policy Outlook

Zooming in on human rights due diligence

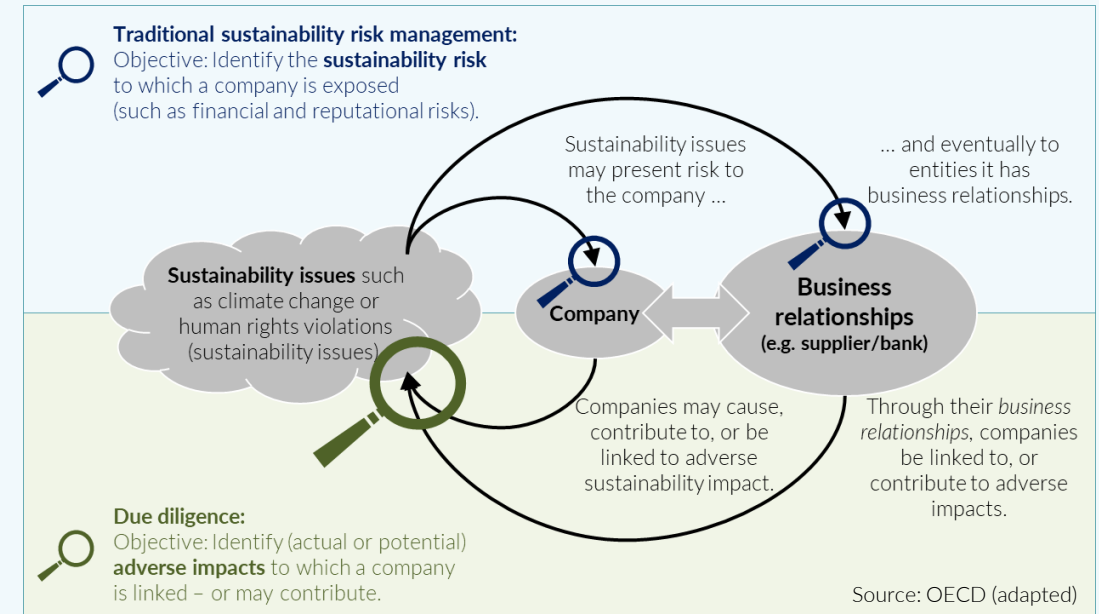
But what does due diligence mean?

According to the OECD, due diligence is “an ongoing process and focuses on the management of actual or potential adverse impacts on the environment and/or the labor and human rights of affected parties, with the objective of preventing and mitigating the risk of these impacts occurring”.



Important to keep in mind

The concept of adverse impacts emphasizes a stakeholder-centric (people and planet) feature of due diligence, which is also embraced by mandatory financial regulations.



Zooming in on human rights due diligence

Key actions (I/II)

1. Embed responsible business conduct into policies and management systems

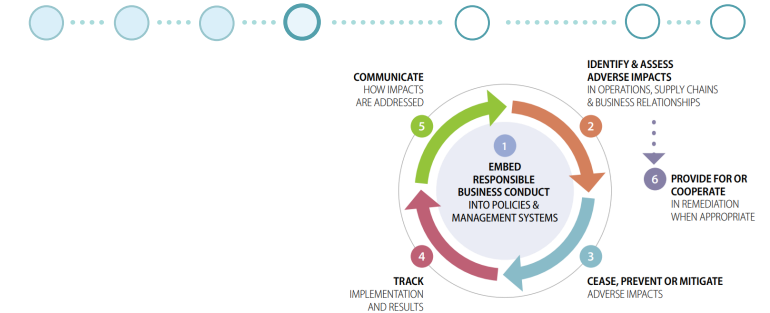
- Devise, adopt, and disseminate a combination of policies that articulate the enterprise's commitments and its plans for implementing due diligence that will be relevant for the enterprise's own operations, its supply chain, and other business relationships.
- Seek to embed the enterprise's policies on RBC issues into the enterprise's oversight bodies and key processes.
- Incorporate RBC expectations and policies into engagement with suppliers and other business relationships.

2. Identify and assess actual and potential adverse impacts associated with the enterprise's operations, products, or services

- Carry out a broad scoping exercise to identify all areas of the business across its operations and relationships, including in its supply chains, where risks are most likely to be present and most significant.
- Carry out iterative and increasingly in-depth assessments of prioritized operations, suppliers, and other business relationships to identify and assess specific actual and potential adverse RBC impacts.
- Determine appropriate responses.

3. Cease, prevent, and mitigate adverse impacts

- Stop activities that are causing or contributing to adverse impacts based on the enterprise's assessment of its involvement.
- Develop and implement plans that are fit-for-purpose to prevent and mitigate potential (future) adverse impacts.
- These plans should detail the actions the enterprise will take, as well as its expectations of its suppliers, buyers, and other business relationships.



Source: OECD (adapted)

Zooming in on human rights due diligence

Key actions (II/II)

4. Track implementation and results

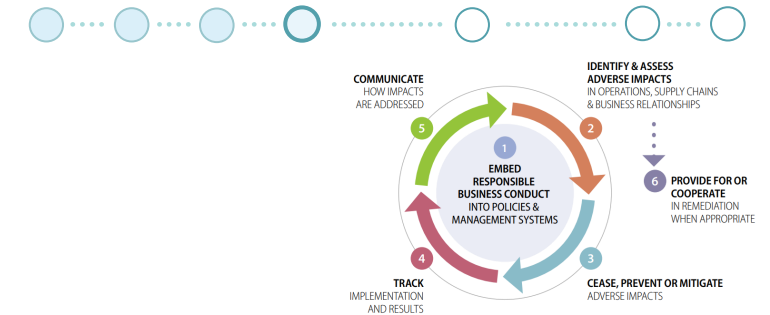
- Set a suite of measures to identify, prevent, mitigate and, where appropriate, support remediation of impacts, including with business relationships.
- Use the lessons learned from tracking to improve these processes in the future.

5. Communicate how impacts are addressed

- Communicate externally relevant information on due diligence policies, processes, and activities conducted to identify and address actual or potential adverse impacts.
- Communicate about the findings and outcomes of those activities.

6. Provide for or cooperate in remediation when appropriate

- When the enterprise identifies that it has caused or contributed to actual adverse impacts, address such impacts by providing for or cooperating in their remediation.
- When appropriate, provide for or cooperate with legitimate remediation mechanisms through which impacted stakeholders and rightsholders can raise complaints and seek to have them addressed by the enterprise.



Source: OECD (adapted)

Mapping initiatives around the world



Where do we stand

When assessing the more than 190 regulatory frameworks related to human rights due diligence that are relevant for corporate actors, we identified three key features:



Stakeholder centric: These laws demand that companies place individuals, society, and the environment at the center of their due diligence processes. This means that when conducting due diligence, companies are expected to assess the actual and potential adverse impacts related to their activities and of those actors it has business relationships with.



Know and show approach: Coined by the UN Guiding Principles on Business and Human Rights, this approach consists of companies demonstrating their knowledge on the impacts related to their activities and taking necessary steps to mitigate/remediate negative impacts as well as to communicate on both aspects.



Imprecise language: Lawmakers rely on vague terms when framing due diligence expectations, such as *reasonable and appropriate measures* or *adverse sustainability impacts*. Sector-specific initiatives and soft law documents can be of great value in identifying their meaning.

Where do we stand

What are key stakeholders saying?



The UN Working Group on Business and Human Rights chairperson mentioned during a speech that the WGBHR “considers that human rights due diligence is a key tool in the global efforts to build forward better in the wake of the COVID-19 pandemic”. On the same occasion, and in relation to legislative action on due diligence, she mentioned that “our future is one now of mandatory measures.”



The UN Global Compact CEO and Executive Director Sanda Ojiambo announced the UN Global Compact’s support for mandatory human rights due diligence.



Implementing due diligence obligations can significantly contribute to addressing environmental damage and human rights violations, thus supporting the EU’s commitment to respect human rights and environmental protection.

“Mandatory legislation can contribute to a competitive level-playing field, increase legal certainty about the standards expected from companies to respect human rights and the environment, clarify legal consequences for when responsibilities are not met, promote engagement and impactful actions between supply chain partners and, above all, trigger and incentivize impactful and effective actions on the ground.” [Statement of a group of companies in support of upcoming EU rules](#)

Regulatory outlook

Q2 2021 Debate in the German Parliament on the draft Act on Mandatory Human Rights and Environmental Due Diligence

Q2 2021 EU Commission will unveil its proposal for a directive on corporate due diligence and corporate accountability

Q2/Q3 2021 Expected publication of the Swiss counterproposal to the Responsible Business Initiative in the Federal Gazette

Q2/Q3 2021 Expected publication of the Ordinance related to the due diligence obligations for Swiss companies involved in the raw materials sector

Q3 2021 Seventh session of negotiations on the UN Business and Human Rights Treaty

