

# PELS RIJCKEN



## Responsible contracting and European model clauses

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# Existing and emerging legislation

## Existing Laws – Modern Slavery

- **California Transparency in Supply Chains Act 2010:** Certain companies required to report on their specific actions to eradicate slavery and human trafficking in their supply chains.
- **UK Modern Slavery Act 2015:** Companies carrying on business in the UK (with turnover of £36 million) obliged to publish statements regarding steps to address modern slavery.
- **New South Wales Modern Slavery Act 2018:** Organisations with 1 employee in NSW and a turnover of AUD 50 million. Implementing regulations will set out statement content requirements and will clarify “extra-territoriality”. Fine: up to AUD1.1 million for non-compliance.
- **Australian Modern Slavery Act 2018:** Includes mandatory reporting criteria (e.g. on slavery risks and mitigations steps) for companies based in/operating in Australia with a turnover of AUD100 million or more.

## Emerging and New Laws – Modern Slavery

- **Hong Kong:** Modern Slavery Bill with MSA style reporting requirements, and new offences and a provision enabling victims to bring civil claims against perpetrators or others who received anything of value through involvement in a venture that they knew / should have known involved slavery. The Bill was debated in June; draft under discussion.
- **Netherlands:** Child Labour Due Diligence Law; companies providing goods/services to Dutch consumers will have to conduct child labour due diligence in their operations and supply chains. Passed in May 2019, will come into force in 2022.
- **Austria:** Proposed law on child and forced labour due diligence.
- **Norway:** Reporting on BHR issues by oil companies.
- **Canada:** A newly introduced Bill requires Canadian businesses and businesses that import into Canada to report annually on the risks of forced/child labour in their supply chains. Under the Bill businesses found to import goods produced using force/child labour may be prohibited from importing into Canada. To be tabled in the Senate.
- **US:** Ban on goods made with child labour, seizure by customs possible and ULC is discussing federal legislation on human trafficking.

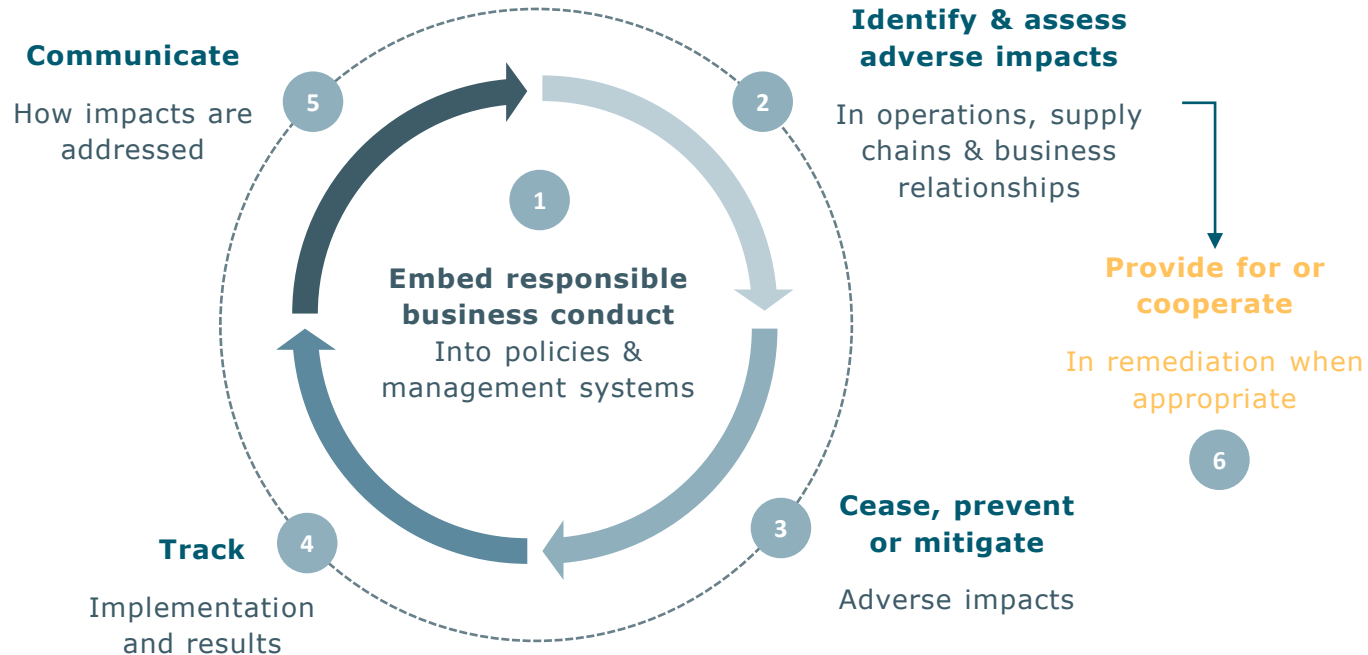
## Existing Laws – Human Rights

- **French Duty of Vigilance Law 2017:** Large French companies are obliged to publish and implement a vigilance / due diligence plan which considers human rights (which extends to “controlled” subsidiaries).
- **Directive 2014/95/EU Articles 19a / 29a:** EU headquartered large public interest entities including listed companies and banks with over 500 employees) need to report on issues including their human rights impacts. Currently under revision.
- **Section 172 of the UK Companies Act 2006:** Duty to promote success of the company including taking into account of employee welfare and impacts on communities and environment.
- **EU conflict minerals regulation:** has come into force as of January 1 2021.

## Emerging Laws – Human Rights

- **EU proposal general due diligence:** proposal Directive published February 23, currently revised, EP resolution has urged EC to propose legislation, draft text in annex.
- **EU proposal for expelling goods on European markets made with forced labour**
- **Germany,** due diligence law in supply chains
- **Norway,** reporting and due diligence legislation.
- **Switzerland:** Legislation on reporting on child labour.
- **Netherlands:** Child labour law, Parliamentary initiative for general human rights due diligence law, government announced to implement legislation this October.
- **UN Business and Human Rights Treaty:** Internationally legally binding instrument to regulate activities of transnational corporations and other business enterprises. Revised draft published in 2020.
- **Other:** Political discussions on human rights due diligence are underway in the US, Luxembourg, Finland and Sweden.

# Human rights and environmental due diligence



## CSDDD Directive EU and contracting

- \* **limited to supply chains, distribution, transport and waste management (art. 3 g), option for prioritization (art. 6 sec. 1a and thorough assessment after first mapping)**
- \* **contractual assurances from business partners and contractual cascading in supply chain (art. 7 (sec. 2(b)), art. 8 (sec. 3(c))**
- \* **conclude contract with indirect business partner (e.g. remediation plan, art. 7 (sec. 3) and art. 8 (sec. 4))**
- \* **contractual assurances should be accompanied by measures to verify (art. 7 (sec. 4) and art. 8 (sec. 5), with SME buyer bears cost of audits)**
- \* **termination as last resort (art. 7 (sec. 5 and 7 (termination exacerbates situation or no alternative, obligation to monitor situation) and art. 8 (sec. 6 and 8), no new relationships)**
- \* **art. 12 guidance of European Commission for model clauses**

## Current contractual practices

- \* **Current contractual strategies often worsen situation because of sourcing practices (assurance is given, but e.g. price pressure, last moment alteration of specifications, no guarantee of subsequent orders etc.)**
- \* **CSDDD: provide support to SME's (art. 7 (sec. 2d) and art. 8 (sec. 3e)), buyer bears cost of audits with SME's (art. 7 (sec. 4) and 8 (sec. 5))**
- \* **More generally speaking, more responsible contracting practices in supply chain required with emphasis on collaboration and shared responsibility instead of risk shifting and termination**

## European model clauses

- \* **Build on model developed by American Bar Association working group, [https://www.americanbar.org/content/dam/aba/administrative/human\\_rights/contractual-clauses-project/mccs-full-report.pdf](https://www.americanbar.org/content/dam/aba/administrative/human_rights/contractual-clauses-project/mccs-full-report.pdf)**
- \* **Aligned with CSDDD and European contract law**
- \* **Provides practical guidance and guidance for specifics of contract law in member states**
- \* **Elaboration of ABA model, e.g. living wage and several other features**