

# BELGIUM AND THE SUSTAINABLE SUPPLY CHAIN AGENDA: LEADER OR LAGGARD?

Review of human right due diligence initiatives in the Netherlands, Germany, France and EU, and implications for policy work by Belgian civil society

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*“In a world in which 69 of the world’s 100 largest economic entities are corporations rather than countries, responsible supply chains are a moral imperative. ... No more excuses. It is time to embrace the necessity of, and business opportunities presented by, responsible supply chains.”*

*(The Economist, No More Excuses: Responsible supply chains in a globalised world, A report from The Economist Intelligence Unit, August 2017)*



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# List of abbreviations

<b>ACTRAV</b>	Bureau for Workers 'Activities, ILO
<b>ACV</b>	Algemeen Christelijk Vakverbond
<b>AGM</b>	Annual general meeting
<b>CSO</b>	Civil society organisation
<b>CSR</b>	Corporate social responsibility
<b>ECCJ</b>	European Coalition for Corporate Justice
<b>EU</b>	European Union
<b>FIDO</b>	Federal Institute for Sustainable Development
<b>G7</b>	Group of Seven (Canada, France, Germany, Italy, Japan, United Kingdom, United States)
<b>GIZ</b>	German Corporation for International Cooperation GmbH
<b>HR</b>	Human rights
<b>HRDD</b>	Human rights due diligence
<b>ICDO</b>	Interdepartementale Commissie voor Duurzame Ontwikkeling
<b>ICSR</b>	International corporate social sustainability
<b>ICT</b>	Information and communication technology
<b>IFA</b>	International framework agreement
<b>IFC</b>	International Finance Corporation (World Bank Group)
<b>ILO</b>	International Labour organisation
<b>IOB</b>	Policy and Operations Evaluation Department
<b>ISO</b>	International Organization for Standardization
<b>MNE</b>	Multinational Enterprise
<b>NAP</b>	National Action Plan
<b>NCP</b>	National Contact Point (OECD Guidelines for MNEs)
<b>NFP</b>	National Focal Point (ILO MNE Declaration)
<b>NGO</b>	Non-Governmental Organisation
<b>OECD</b>	Organisation of Economic Cooperation and Development
<b>PSD</b>	Private sector development
<b>RBC</b>	Responsible business conduct
<b>RVO</b>	Netherlands Enterprise Agency
<b>SDG</b>	Sustainable Development Goals
<b>SER</b>	Sociaal-Economische Raad (the Netherlands)
<b>SERV</b>	Sociaal-Economische Raad Vlaanderen
<b>SME</b>	Small and Medium Enterprise
<b>TfS</b>	Together for Sustainability
<b>UN</b>	United Nations
<b>UNGP</b>	United Nations Guiding Principles on Business and Human Rights
<b>WPSP</b>	World Ports Sustainability Program

# Executive summary

This report assesses **a new generation of business and human rights initiatives** by the Netherlands, Germany and France and **compares this with Belgium’s agenda for sustainable supply chains**. This analysis serves as an input for future policy influencing work by Belgian civil society organizations.

The report starts from the observation that, aside from their contribution to economic development and job creation, **serious negative social and environmental impacts of global supply chains** continue to emerge, for example in the garment sector, electronics, minerals or banking. For several decades, efforts for social and environmental upgrading of supply chains were geared towards supporting voluntary corporate social responsibility initiatives (CSR), such as codes of conduct, charity-based community projects, and strengthening self-regulation, such as through social audits. In response to critical studies and new revelations about the continued presence of significant violations in many sectors, OECD countries such as the Netherlands, Germany, France, UK, US, and the Nordic countries embarked on new initiatives to improve business’ contribution to development. At the international level, new normative frameworks and guidelines have been developed, such as the United Nations Guiding Principles for Business and Human Rights (UNGP, 2011), and existing frameworks were updated, such as Declarations on MNEs by OECD and ILO.

Within the debates about business and human rights, the concept of **human rights due diligence (HRDD) has gained a lot of traction** recently in international policy debates because it manages to capture a complex debate in a limited number of principles, and offers at the same time an operational framework that can be translated into concrete guidelines for specific sectors of the economy.

**Due diligence** is understood “as the process through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts as an integral part of business decision-making and risk management systems.” (UNGP, 2011). HRDD focuses on protecting actual or potential victims from harm by adverse human rights impacts produced by the firm or its suppliers. At the company level, the UNGP framework expects companies to translate due diligence into concrete policies, structures and processes. It builds on the idea of **shared responsibility between the state and business** for the social and environmental impact of business activities. **Even if states are negligent**, companies need to compensate for that negligence and still respect human rights. The responsibility for human rights is **valid for the whole supply chain of a company**, independent of where the violations take place (own factory, direct suppliers, sub-contractors, etc.).

Because of the broad international recognition of the UNGP framework, **National Action Plans on business and human rights (NAPs) have become a key policy instrument** to give structure and content to HRDD efforts at national level. When comparing the NAPs of Germany, France and the Netherlands, we observe that they share a preference for self-regulation and voluntary action, although the German and especially the French NAP also contain explicit clauses about binding regulatory measures. The capacity of the NAPs to bring clarity about the governments’ intentions



and provide guidance for companies about their future HRDD obligations, differs substantially. The Dutch ‘first generation’ NAP in particular lacks specific policy goals and targets. However, all three NAPs are still missing crucial elements to serve as effective action plans, for example, in terms of providing an operational definition of HRDD, and stating clear expectations towards different types of firms. When looking beyond the NAPs, the debate about business and human rights in the three countries has shifted gradually, although in differing degrees and forms, from an assumption that business can play its role through voluntary CSR activities, to one where the core operations of firms and their suppliers are the subject of the debate.

At the level of **instruments**, especially Germany and the Netherlands are experimenting with hybrid HRDD initiatives, which have at their core a voluntary approach, but combine this with some binding features. Both **countries have invested substantially in new high-profile multi-stakeholder initiatives** which bring together business and CSOs in a collaborative spirit. The government puts itself in the role of convener, funder, and acts as an independent referee (e.g. to assess the merit of action plans and monitoring reports, or to support transparency objectives of the partnership by managing a large database of suppliers). A partnership agreement typically has the following characteristics: (1) a sectoral agreement between companies, their federations, and civil society actors; (2) companies participate on a voluntary basis, but once they participate they are expected to comply with the mandatory stipulations in the agreement, with the risk of being expelled if there is non-compliance.; (3) while the content of the agreements differs between sectors, there are minimal requirements that need to be incorporated in each sectoral agreement.; and (4) each participating company is expected to do a due diligence assessment of its supply chain, develop an action plan to address problems, report on progress made, and participate in collective activities on key HRDD themes.

From a HRDD perspective, the Dutch and German initiatives are a step forward as they add binding features to a largely voluntary set-up. It can be seen as a first step towards a more balanced regulatory mix, with the aim of creating a multi-sided incentive-system for business to improve compliance with social and environmental standards. However, **while it is still too early to assess the effectiveness of these approaches, the absence of explicit long-term HRDD goals or targets raises questions about the final aims** of many existing multi-stakeholder initiatives. This issue, together with HRDD governance gaps at the EU level, tends to create confusion amongst stakeholders about what exactly is expected from them.

The study brings together material that illustrates the **growing attention for ‘harder’ regulatory measures**. For now this is still an unstructured and uneven process, but several experts conclude that there is a gradual evolution from soft law to hard law. Existing legal initiatives; such as the EU Conflict Minerals Directive and the French Law on Duty of Care differ in terms of their scope (sectors and risks covered), their understanding of HRDD, and the ways in which they are embedded in different bodies of law. At the national level, France is clearly a frontrunner through its comprehensive law on duty of care, which has the most comprehensive sectoral scope and far reaching HRDD responsibilities for multinational enterprises (MNE). At the same time, most legal initiatives are only targeting the largest MNEs, while (for now) paying less attention to small and medium enterprises. As most laws have only emerged recently, it is still too early to assess their effectiveness. There are **indications that they are most effective when combined in hybrid combinations with softer measures**.

In this study we have paid particular attention to new, high profile initiatives in three neighboring countries, more specifically, multi-stakeholder initiatives and the new law on duty of care. Yet the study, from a HRDD perspective, acknowledges the **critical importance of other instruments**, such as labour rights clauses in international trade agreements and international framework

agreements (between MNEs and global unions), the potential of the updated ILO MNE Declaration, sustainable sourcing by the governments and as a condition for investments from investment funds and pension funds; and raising HRDD issues in social dialogue structures at different levels.

*Belgium lagging behind on the sustainable supply chain agenda*

The Belgian National Action Plan (NAP) is perhaps best seen as a first stock-taking of what Belgium is already doing on business and human rights. It also includes broad policy areas and actions it intends to focus on in the future, but it **is not a plan that is actionable** for different reasons. Compared with the German and the French NAP, the Belgian NAP lacks an overall theory of change with a long-term logic and explicit strategies on how different stakeholders will be supported to get there. It is not comprehensive in its approach, and with its focus on voluntary action, it pays **limited attention to a balanced regulatory mix**. Several stakeholders complained that the **political will is missing** to push the HRDD agenda. For example, a major weakness of the NAP is that the stakeholders involved are basically expected to implement the measures with their own available resources. In addition, there is no funding for coordination or secretarial support, nor for convening multi-stakeholder dialogues, or for monitoring of the NAP.

The Belgian institutional map of actors involved in (aspects of) HRDD is **complex and quite fragmented**. As there is no clustering of key components of the NAP agenda within specific institutions, nor a comprehensive mandate to implement or monitor the NAP for any of the actors involved, it is fragmented picture.

In addition, the **HRDD capacity and expertise of different Belgian stakeholders is still limited**. For example in business, while there is engagement with the sustainable development goals (SDGs) in several sectors, the focus is mostly on environmental and climate-related issues. Decent work only features as a topic for the Belgian side of the supply chain. The topic of HRDD is largely absent from the agenda of Belgian sector federations. In a small number of sectors there are first engagements with a more ambitious sustainable supply chain agenda, such as the chemical industry, the diamond sector, and to a lesser extent also food and retail and natural stone. In most cases, however, these SDG initiatives are an add-on to normal business practices and are not addressing critical problems in the global supply chain, leaving workers exposed to potential labour rights violations.

Overall, a picture emerges of a **Belgian debate that remains stuck in the mainstream CSR agenda**, for example collaborating with service-delivery NGOs and doing social audits. Compared to the Netherlands, France and Germany, the topic of business and human rights receive relatively little attention in public debates (with the exception of the clean clothes campaign and ad-hoc journalistic reporting), and is much lower on the political agenda. Also, the Rana Plaza disaster in 2013 failed to push the debate towards a more comprehensive HRDD reform agenda as it did in other countries. At least in part, this failure was due to a lack of capacity, knowledge, and readiness on the part of business, governmental actors, and civil society.

*What can Belgian civil society do to push the sustainable supply chain agenda to a higher level?*

The final part of the report reflects on future policy influencing work of Belgian civil society actors around HRDD based on the findings of the comparative country analysis. **Eight guiding principles** for policy influencing work on HRRD are forwarded, stressing the importance of

1. following a sectoral- approach, but at the same time safe-guarding a cross-sector logic
2. building on existing initiatives (regional, international) and supporting existing structures
3. supporting initiatives with an active role for the state and/or international orgs
4. considering the purchasing practices of MNEs (price squeeze and time squeeze)

5. moving beyond social audits as an instrument for social upgrading
6. approaching civil society as an eco-system, avoiding conflict and incoherence
7. working on HRDD with an evidence-based policy vision and theory of change
8. building on the strengths of the Belgian context

**Possible action points** for future policy influencing work are clustered in four areas, together with suggestions for activities that can contribute to achieving these targets. The report emphasizes the importance of (1) shifting the debate in Belgium from CSR to HRDD; (2) building more national and regional HRDD governance capacity; (3) strengthening existing dynamics at EU and UN level, and/or supporting global sectoral initiatives; and (4) unlocking the potential of existing high-impact HRDD measures with a 'hybrid' character.







**- PART 1 REVIEW OF HRDD INITIATIVES IN  
3 COUNTRIES AND EU -**

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# 1 | Sustainable supply chains high-up on the international agenda

*“We live in a world shaped by supply chains that link thousands of firms, large and small, across cultural and political boundaries. ... At the same time, however, the social and environmental consequences of this particular pattern of development have provoked significant controversies over the role of global brands and their local suppliers, often seen as exploiting developing countries’ low wages and weak social and environmental regulations to produce low-cost goods at the expense of local workers’ welfare.” (Richard M. Locke, No More Excuses, The Economist Intelligence Unit, 2017)*

## 1.1 Human rights due diligence: Setting the scene

The final balance sheet of who wins and who loses through the expansion of the scope and influence of markets and global firms is hard to make. However, over the last decades considerable concerns have grown about the **social and environmental impacts of the current business models and practices** (Reed et al., 2013)<sup>1</sup>. This is especially the case because the globalization of business did not go hand in hand with an equal expansion of frameworks to make sure that global supply chains are regulated or regulate themselves.

More recently, we have witnessed a **boost of new initiatives across the globe** aiming at the social and environmental upgrading<sup>2</sup> of global supply chains. There is an enormous variation in the levels at which these initiatives are taken, their scope, the underlying incentive systems, the types of stakeholders involved, and whether it is done on a voluntary basis or it is mandatory (or a mix of both). For outsiders, it is **increasingly difficult to judge where this crucial debate is heading**, who wins and who loses, and if at the end of the day, there is a prospect for workers to start enjoying more benefits than pains from their position in the supply chain.

Within the debates about business and human rights, the concept of **human rights due diligence (HRDD)** has gained a lot of traction recently in international policy debates because it manages to capture a complex debate in a limited number of principles, and offers at the same time an operational framework that can be translated in concrete guidelines for specific sectors.

This report assesses **recent HRDD-related efforts of three European countries**<sup>3</sup> -the Netherlands, Germany and France-, with a specific focus on the policy frameworks that are used, and new multi-stakeholder initiatives and regulatory measures that are taken. This comparative analysis is then used to **assess Belgium’s efforts** on contributing to sustainable supply chains. The findings of the research also serve as an **input for future policy influencing work** by Belgian civil society organisations (CSO), which are active on the topic of business and human rights.

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<sup>1</sup> Reed, D., Utting, P., Mukherjee-Reed, A. (2013). Business Regulation and Non-State-Actors, Routledge.

<sup>2</sup> In the study we will use different terms to refer to similar topics, such as ‘business and human rights’, ‘sustainable supply chains’, ‘responsible supply chains’, ‘social and environmental upgrading’, and ‘responsible business conduct’. While there are clearly some conceptual differences (also in the way different people define them), they are less the topic of controversy than some of the other concepts, such as ‘corporate social responsibility’ and ‘corporate accountability’, which we will use only in specific contexts.

<sup>3</sup> Where relevant, the study also discusses HRDD initiatives at EU-level.

## **Business and human rights: no longer business-as-usual**

Almost every day new reports emerge on the impact of global business on workers in producing countries, ranging from problems in the textile and garment sector, to the mining of MICA or cobalt, the production and recycling of electronic appliances, and so on.

This continued stream of examples of negative externalities of the way our production systems and global services are organized, has triggered a number of international policy initiatives with a key role for OECD, UN, ILO and to a lesser extent the EU. The main international frameworks that currently provide guidance on the issue of business and human rights are the OECD Guidelines for Multinational Enterprises (2011), the United Nations Guiding Principles on Business and Human Rights (2011), and ILO's Tripartite Declaration of Principles concerning MNEs and Social Policy (2017).

*UNGP on Business and Human Rights (2011)* – This is the youngest framework of the three, but is discussed first because the concept of HRDD emerged from the UNGP conception process. Prof. John Ruggie was the lead expert in a global consultation process with government, business and civil society in the period 2005-2007, which culminated in the introduction of the concept of due diligence, underpinned by the principles of 'protect', 'respect' and 'remedy'. The framework is operationalized through 32 guiding principles. It was finally adopted in 2011 by the UN council and all stakeholders, including business, and has become one of the leading framework in debates about responsible supply chains.

*OECD Guidelines for MNEs (2011)* – The OECD guidelines should be seen as detailed recommendations on responsible business conduct by governments towards their own MNEs. The guidelines date back from 1976, but the last revision was done in 2011 in order to bring them in line with changes in the global landscape. They are non-binding principles and standards, and cover the following topics: employment and industrial relations, human rights, environment, information disclosure, combating bribery, consumer interests, science and technology, competition, and taxation. At the national level, the OECD guidelines are made operational through the structure of National Contact points (NCP), which have a role in promoting the guidelines, as well as act as a conflict resolution forum. The latest version of the guidelines gives a prominent place to the UNGPs, the concept of due diligence, and the upgrading of the role of the NCPs.

*ILO Declaration on MNEs (2017)* – The MNE Declaration was adopted more than 40 years ago, but had several revisions, the last one in March 2017. It is also non-binding, but universally applicable to all members' states of the ILO and all enterprises. It is based on ILO's core labour standards and provides guidance on issues of employment, training, conditions of work and life, industrial relations as well as general policies. The last version has more attention for global supply chains, and is explicit about the obligation of MNEs to carry out HRDD, ensure freedom of association, and support social dialogue.

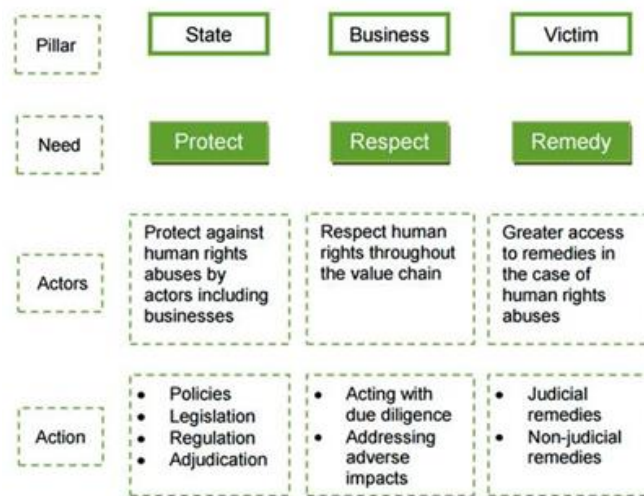
## **Human rights due diligence: a framework taking the CSR field by storm**

According to the 2011 OECD guidelines for MNEs **due diligence** “is understood as the process through which enterprises can identify, prevent, mitigate and account for how they address their actual and potential adverse impacts as an integral part of business decision-making and risk management systems.” (p23)

HRDD is fundamentally different from how traditional due diligence is conceptualized in business. Traditional due diligence aims at protecting firms themselves from different types of risks in their operations. HRDD on the other hand focuses on protecting actual or potential victims from harm by adverse human rights impacts produced by the firm or its suppliers. The OECD specifies that due diligence should be “ongoing, proactive and reactive and applied with flexibility and should not lead to a ‘tick the box’ approach” by economic actors.

Figure 1 gives a schematic overview of the overall UNGP framework with three pillars, including the needs that are covered, the responsibility of the different actors (states, business), and the actions to be taken.

Figure 1: The three pillars of due diligence according to the UNGP framework (Oxfam, 2013)<sup>4</sup>



At the company level, the UNGP framework expects companies to translate due diligence into concrete policies, structures and processes. Figure 2 provides an overview of the four steps which each company is expected to run through, supported by the necessary systems and policies. The latter includes developing a policy on HRDD, creating the necessary management systems, and the provision of remediation if needed.

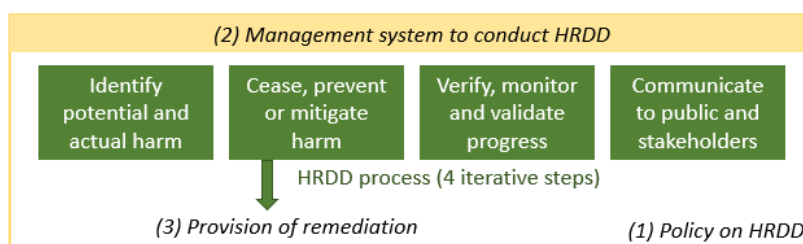
Up to now, OECD has developed **DD Guidance notes** for companies for five sectors and one thematic area: minerals, extractive, agriculture, institutional investors, on the topic of child labour, and for the garment and footwear sector. These notes are influential according to experts because they provide detailed, sector-specific instructions on the steps to be taken and serve as a **key reference** for new HRDD policy initiatives in those sectors. In March 2018, an agreement was reached by 48 OECD countries **to develop DD Guidance notes for all sectors** (see box).

**Box: Tweeting on the expansion of HRDD**



<sup>4</sup> Oxfam (2013). Business and Human Rights: An Oxfam perspective on the UN Guiding Principles. <https://policy-practice.oxfam.org.uk/publications/business-and-human-rights-an-oxfam-perspective-on-the-un-guiding-principles-293857>

Figure 2: Four iterative steps and three supportive measures (adapted from IOB, 2018)<sup>5</sup>



The UNGP framework builds on the idea of **shared responsibility** between the state and business for the social and environmental impact of business activities. In the area of wages this implies that the state is responsible for defining minimum wages which provide the necessary resources to cover basic needs of the workers and their families. Companies are asked to respect the right of workers for a living wage.

The responsibility of companies to respect human rights **does not depend on the capacity or will of states** to respect their basic human rights responsibilities. Even if states are negligent, companies need to compensate for that negligence and still respect human rights. The responsibility for human rights is **valid for the whole supply chain** of a company, independent of where the violations take place (own factory, direct suppliers, sub-contractors, etc.). When violations of labour rights are identified in the supply chain, it is the **shared responsibility of the international company and the supplier** to solve the problems. This is why those labels and social audit systems which put the responsibility only with the supplier, are not in line with international guidelines. HRDD guidelines are clear about the responsibility of companies to make sure that their **purchasing practices** do not cause labour violations, for example through time squeeze (last-minute orders), and price squeeze (extreme pressure on prices).

### From CSR to HRDD and responsible business conduct

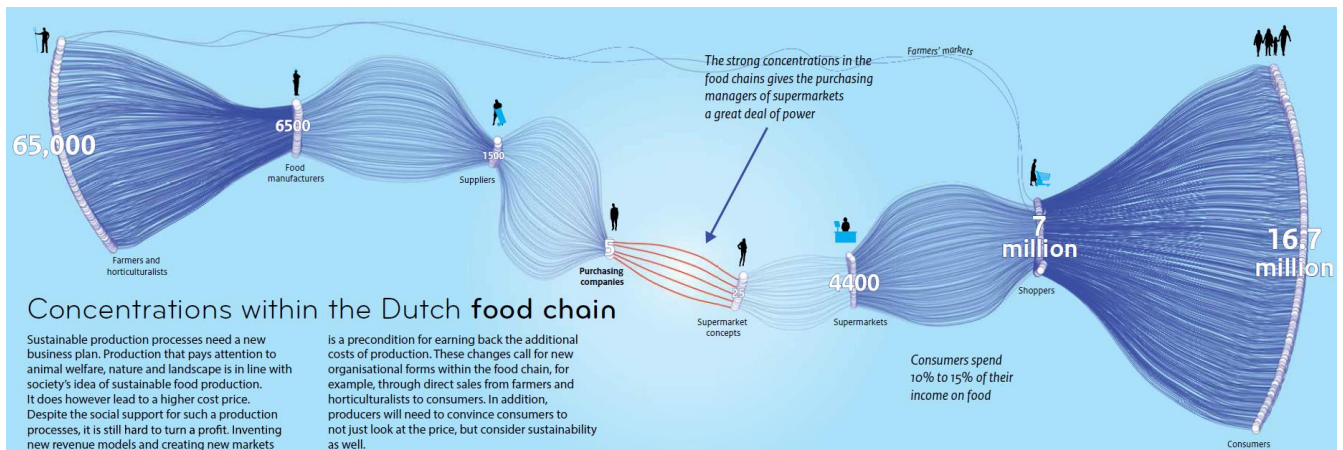
From a long-term perspective, different waves can be identified in how government, business and civil society have engaged with the governance of labour and environmental rights in global chains.

Leading scholars<sup>6</sup> have connected the rise of multi-stakeholder regulation with **changes in the relative power and influence of states, business and civil society** over the last decades. While states and trade unions have lost considerable power, MNEs have gradually expanded their reach and power within global supply chains. The international food chain is an extreme example of this. One of the best visualisations of this concentration of power has been produced by the Netherlands Environmental Assessment Agency PBL in 2014 (figure 3). It shows that the Dutch food chain consists of 65.000 suppliers, but the large majority of their produce is purchased by only five purchasing companies who do this for a limited number of super markets. This strong concentration gives the purchasing managers of supermarkets a lot of power over the suppliers, food manufacturers and farmers.

<sup>5</sup> IOB Netherlands (2018). Evaluation of the Dutch ICSR policy Terms of reference, 2 January 2018

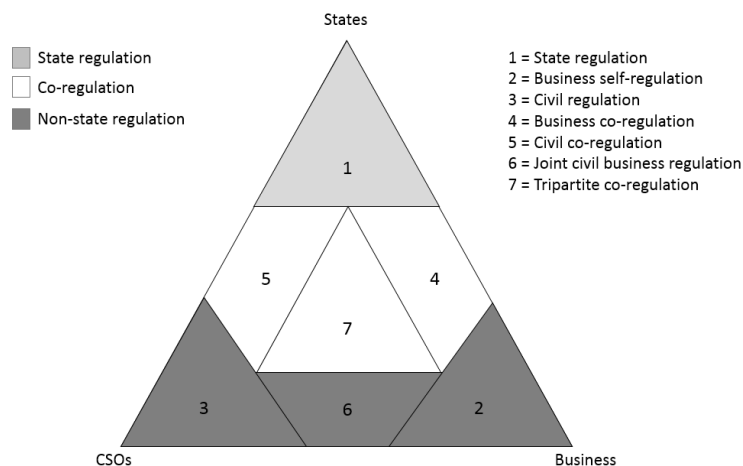
<sup>6</sup> Reed, D., Utting, P., Mukherjee-Reed, A. (2013). *Business Regulation and Non-State-Actors*, Routledge.

Figure 3: Visualisation of hyper concentration of purchasing companies in the Dutch food chain (PBL, 2014)<sup>7</sup>



Different waves can be described by looking at the constellations of who was regulating whom in what way. The governance triangle<sup>8</sup> visualizes these different combinations (Figure 4). Early efforts to manage social and environmental risks in supply chains in the 1980s and 1990s were primarily focused on self-regulation. Yet by the end of the 1990s, a substantial volume of studies concluded that mainstream CSR-approaches that focus on self-regulation by firms (without the involvement of state or civil society actors) did not deliver as promised. This led to new responses to deal with the loss of influence and power over business activities, with a prominent role for multi-stakeholder initiatives, which were generally interpreted as a **shift from 'confrontation' to 'collaboration'**. Most of these 'first generation' multi-stakeholder initiatives still took self-regulation as their starting point, with civil society roles being confined to participating in dialogues on good practices, providing technical expertise, participation in the governance of social and environmental upgrading, and assessing company policy and performance through rankings.

Figure 4: Three types of regulatory standards-setting initiatives (source: Reed, 2014, p22)<sup>10</sup>



<sup>7</sup> PBL (2014). Sustainability of International Dutch Supply Chains: Progress, effects and perspectives. PBL The Hague

<sup>8</sup> Abbott and Snidal (2009). The governance triangle: Regulatory standards institutions and the shadow of the state, The Politics of Global Regulation, Princeton University

<sup>9</sup> Reed, D., Utting, P., Mukherjee-Reed, A. (2013). *Business Regulation and Non-State-Actors*, Routledge.

<sup>10</sup> Ibid

Along side the establishment of new and updated normative frameworks (eg. UNGPs, OECD Guidelines for MNEs, ..), a growing group of **CSOs became increasingly skeptical** about these first generation multi-stakeholder initiatives. Instead, they started advocating for business regulation with a **hybrid character**, i.e., combining both ‘soft’ and ‘hard’ variants of regulation<sup>11</sup>. This is going hand in hand with new tactics and strategies on the part of international NGOs, new social movements, and trade unions, giving rise to what has been dubbed the ‘**corporate accountability movement**’<sup>12</sup>, which aims to fill in observed institutional deficits and governance gaps.

To conclude, the last decade has seen a shift, although at different speeds and forms in different countries, from sustainable supply chain initiatives that are primarily based on self-regulation (zone 2 in the triangle) to a diverse mix of regulatory set-ups. The study looks at the state of this debate in four European countries.

## 1.2 Methodology

This comparative study on HRDD has two main objectives. A first objective relates to the mapping of existing and emerging HRDD initiatives in Belgium, including an initial assessment of their scope and traction. The second objective, the bulk of the study, involves the documentation of existing experiences with HRDD initiatives in the Netherlands, Germany and France. This comparative analysis is expected to support ACV, the commissioner of this study, World Solidarity and other Belgian CSOs, in shaping future policy work in this domain.

The study is based on the review of a large body of secondary material, interviews, and active participation to specialized workshops and conferences in the period 2017-2018. We did interviews<sup>13</sup> and had exchanges with 22 key informants in the four countries, including CSO representatives (10), government representatives and experts (7), academics and consultants (3), and business representatives (2). In addition, the researchers participated in workshops and conferences on business and human rights and global supply chains, including the following workshops and conferences:

- On HRDD initiatives in the Netherlands and France in Brussels organized by ACV Belgium in the context of the Belgian sub-commission on business and human rights in April 2017;
- On business and HR, organized by the Belgian ministry of foreign affairs in Brussels in October 2017;
- Same topic, organized by the Dutch government in Brussels in December 2017;
- OECD Forum on due diligence in the garment and footwear sector in Paris in January 2018, including participation to a special event on the new agreement between the Dutch and German multi-stakeholder initiative in the garment sector;
- On business and human rights in the ICT supply chain in Brussels in March 2018.

Finally, one of the researchers was coordinating between September 2017 and March 2018, the evaluation of the ILO-IFC Better Work programme, the largest ILO social upgrading programme in the garment sector. This assignment provided further opportunities to gain insights into the opportunities and challenges regarding due diligence in the global garment and textile supply chain.

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<sup>11</sup> Ibid.

<sup>12</sup> Ibid.

<sup>13</sup> A list with the people interviewed and consulted can be found in annex.

## 2 | Cross-country findings

*"The central concept of supply chain due diligence is a process which can be regulated, whether it is on process, substance or simply reporting."*

Roel Nieuwenkamp, Chair of the OECD Working Party on Responsible Business Conduct

### 2.1 Policy frameworks for HRDD: the role of National Action Plans

#### Highlights

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- National Action Plans (NAPs) are the main policy instrument in the three countries to map existing initiatives related to HRDD and to provide indications of future policy directions.
  - While the three NAPs share a preference for self-regulation and voluntary action, the German and especially the French NAP also contain explicit clauses about binding regulatory measures.
  - The capacity of the NAPs to bring clarity about the governments' intentions in the domain of HRDD, and the extent to which they provide guidance for companies about their future HRDD obligations, differs substantially. However, all three NAPs are still missing crucial elements to serve as effective action plans, for example, in terms of providing an operational definition of HRDD, and stating clear expectations towards different types of firms. The Dutch NAP in particular is lacking specific policy goals and targets.
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To facilitate the implementation of the UN Guiding Principles on Business and Human Rights (UNGPs), in June 2014 the UN Human Rights Council called on all Member States to develop **National Action Plans (NAPs)**. To date<sup>14</sup>, 19 countries have published a NAP, while 22 additional countries (including a growing number of countries from the Global South) are in the process of developing one, or have committed themselves to doing so. In what follows, we will zoom in on the NAPs of the Netherlands, Germany, and France, to assess their respective approaches to HRDD. Before doing so, however, we have a look at some of the more general features of the NAPs<sup>15</sup>.

#### *How were the NAPs established?*

The three NAPs contain a fairly detailed description of the NAP **drafting process**. In all three cases, the **government** (in the form of an inter-ministerial or inter-departmental working group) was clearly in the driver's seat. Still, efforts were made to involve **other stakeholders**, such as business players and civil society organizations (CSOs). Germany has probably gone the furthest in this respect, by consulting a broad range of CSOs during thematic hearings and plenary conferences. Nonetheless,

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<sup>14</sup> In March 2018, for an overview see <http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>

<sup>15</sup> This evaluation is based on our own reading of the NAPs, interviews with key informants, and reviews of NAPs by academic sources and NGOs. Of particular relevance is the website <https://globalnaps.org/> (managed by the Danish Institute for Human Rights), and the website of the Business and Human Rights Resource Center: <https://business-humanrights.org/en/un-guiding-principles/implementation-tools-examples/implementation-by-governments/by-type-of-initiative/national-action-plans>.

in both Germany<sup>16</sup>, and France<sup>17</sup>, the government eventually faced criticism from CSOs, who felt that their concerns were inadequately reflected in the final version of the NAP. The exclusion of CSOs from the eventual NAP drafting process is reported to have resulted in part from a deliberate government strategy to achieve greater consensus among different stakeholders<sup>18</sup>.

Aside from the Dutch NAP (a first-generation NAP), both the German and the French NAP contain mechanisms and procedures for **monitoring, reporting and review**. In France, the implementation of the NAP is overseen by a national human rights commission; whereas in Germany, implementation is overseen by a permanent inter-ministerial committee, which can bank on the support of a multi-stakeholder working group with civil society in the form of the CSR-forum, a network of experts from business, trade unions, NGOs, academia, and government. This working group is chaired by the National Human Rights Institution.

In terms of overall **structure and outlook**, while the German and French NAP are explicitly structured around the three pillars of the UNGP-approach; the Dutch NAP has a more haphazard structure, which seems to be informed primarily by the different areas of action that were identified by stakeholders during the drafting process.

### ***What do they share, what differentiates them?***

The NAPs differ significantly in terms of their **overall scope and objectives**. In general, the German and to a lesser extent the French NAP are framed as roadmaps for the practical implementation of the UNGPs, and contain a number of specific action points with tangible outputs. The Dutch<sup>19</sup> NAP, meanwhile, reads more like a backward-looking document with limited commitment to future action. Where future action is discussed, it is mostly in the framework of existing initiatives, and remains ill-specified.

The three NAPs repeatedly refer to **existing initiatives** at the national, regional, and international level. Prime examples include the UN global compact, the ISO standards, ILO conventions and recommendations, and the OECD-guidelines for multinational enterprises. Two observations are particularly noteworthy:

- All three NAPs call for a reinforcement of the **national contact point (NCP)** as part of the national structures to promote and implement the OECD-guidelines for MNEs. The guidelines have integrated key elements of the UNGPs in their Human Rights Chapter in 2011. Ever since, the NCPs are one of the key (potential) mechanisms for handling (alleged) human rights impacts caused by companies. Yet, experiences to date have been mixed, and NCPs in various countries continue to face important challenges<sup>20</sup>. While attempts to reinforce the NCPs are thus welcome, the NAPs differ in the extent to which these attempts are operationalized through specific actions, and are supported with matching funding.
- The NAPs contain a number of other (existing and/or future) actions to reinforce the role **national governments can play to champion new business and human rights initiatives at the international level**. The French NAP probably goes furthest in this regard: not only does it call for greater international attention for the human rights impacts of international trade

16 Cora, Forum Menschenrechte, VENRO, Amnesty International, Brot für die Welt, Germanwatch, and Misereor (2017). *No courage to commit: Comments of German non-governmental organizations on the German government's National Action Plan on Business and Human Rights*. <https://germanwatch.org/en/download/17767.pdf>

17 Sherpa (2017). *Public Response by Sherpa to the National Action Plan for the Implementation of UN Guiding Principles on Business and Human Rights*. <https://www.asso-sherpa.org/public-response-by-sherpa-to-the-national-action-plan-for-the-implementation-of-guiding-principles-on-business-and-human-rights>

18 See sections on Germany, the Netherlands, and France in <https://globalnaps.org>

19 International Corporate Accountability Roundtable, European Coalition for Corporate Justice, and Dejusticia (2017). *Assessments of existing National Action Plans (NAPs) on Business and Human Rights*. <https://static1.squarespace.com/static/583f3fca725e25fcd45aa446/t/599c543ae9bdf40b5b6f055/1503417406364/NAP+Assessment+Aug+2017+FINAL.pdf>

20 <http://mneguidelines.oecd.org/OECD-report-15-years-National-Contact-Points.pdf>



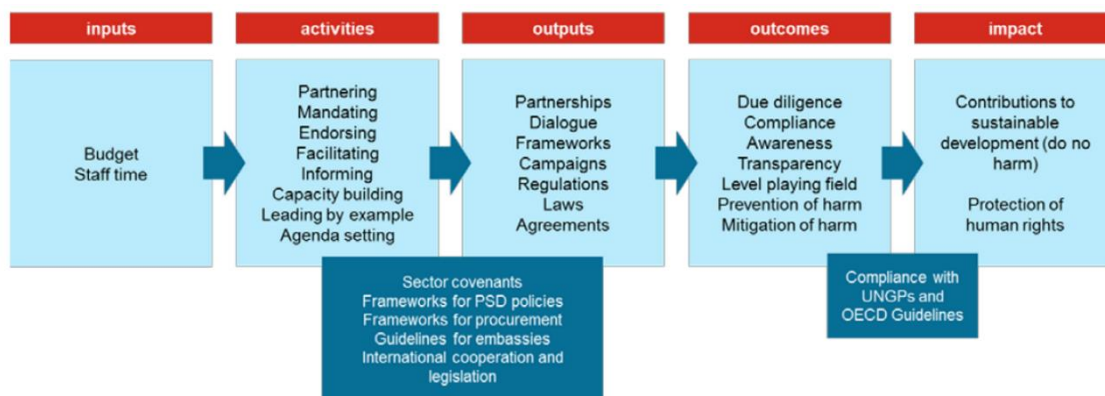
agreements, it also aims for a binding European framework on the ‘duty of vigilance’ that is modeled after existing French legislation.

To varying extents, the NAPs discuss **sector-specific concerns and -initiatives**. The French NAP in particular contains an elaborate discussion of ‘high-risk’ sectors such as garment, extractives, and the financial sector. It also identifies a number of measures to reinforce action in these sectors – although mostly in the context of existing commitments– and refers to best practices from other countries. This focus on high-risk sectors is also one of the few noteworthy features of the Dutch NAP, which devotes a fair amount of attention to an extensive sector risk analysis mapping project, whereby the government identifies high risk sectors, and strives for agreements on due diligence with these sectors.

## Netherlands

There is no common framework underpinning the intervention logic of the different Dutch initiatives on international CSR and HRDD. Interestingly, the Dutch Policy and Operations Evaluation Department (IOB<sup>21</sup>) has recently ‘re-constructed’ the **implicit intervention logic** based on a review of relevant Dutch policy documents and literature as well as interviews with representatives of the ministry of foreign affairs, and advisory and executing bodies such as the SER and RVO. Figure 4 provides insights in the intervention logic of the various policy instruments and how they interact with one another. The main instruments are the (1) multi-stakeholder initiatives (sector covenants); (2) various private-sector development policies (related to trade missions, export credit insurance, and a long list of private-sector instruments); (3) procurement policies; (4) embassy guidelines; and (5) international cooperation and legislation. At the outcome level, **due diligence is identified as key-outcome** to be achieved.

Figure 5: Re-constructed intervention logic for the Dutch international CSR policy (IOB, Jan 2018)



Source: IOB.

The Dutch NAP already dates back from 2014 and can be considered a ‘first-generation’ NAP<sup>22</sup>. It attempts to clarify what the government expects from companies in terms of HRDD, in the framework of the UNGPs. It mainly **encourages voluntary action**, and contains no action points that require HRDD as a legal obligation. However, the government does commit itself to establishing a committee to evaluate if regulatory measures should be taken. According to the Dutch CSR-platform, the NAP is also based on a **narrow definition of due diligence**, which boils down to little more than risk assessment by companies<sup>23</sup>.

21 Evaluation of the Dutch ICSR policy Terms of reference, IOB Netherlands, 2 January 2018: the intervention logic will be refined and tested during the evaluation process.

22 Meaning that it was developed with limited guidance and without other international examples to build on.

23 MVO-platform (2014). *Dutch National Action Plan on Business and Human Rights*. <https://www.mvoplatform.nl/news-en/dutch-national-action-plan-on-business-and-human-rights>

The government commits itself to **minimizing the administrative burden** for companies, and pledges **support** to companies that *wish* to perform HRDD. In this context, the Dutch NAP refers to a range of initiatives (e.g. OECD-guidelines, CSR risk check tool, workshops) that can provide companies with guidance.

While the Dutch NAP refers to the importance of **HRDD in supply chains from which the Dutch government is sourcing**, it remains inconclusive in terms of goals and actions. On the one hand, the NAP emphasizes that companies which apply for government support are *required* to perform HRDD. On the other hand, it states that participation in *voluntary* agreements can help companies that seek government support.

The Dutch business and human rights landscape is characterized by a **strong and active CSO community**, with NGOs and trade unions playing complementary roles, from watchdog to broker of multi-stakeholder processes, and bridge builder. A CSR platform (MVO platform) facilitates coordination and harmonization in the work of CSOs in this area. **At government level, critical capacity** has been built inside the ministry of foreign affairs and the ministry of economic affairs. On the business side, several **sector federations have been actively engaging with CSR issues** and more recently with HRDD. Finally, a secretariat hosted by the Social Economic Council (**SER**) **is playing an important intermediary role** as convener of multi-stakeholder dialogue, as independent referee to assess action plans and monitoring reports, and as a host for managing transparency-related data on suppliers in the garment sector. Over the years, the **government has invested substantially** in international CSR initiatives and platforms, and provided resources for different stakeholders to play their role in the debate.

There is an **active debate in the media on business and human rights**, often triggered by CSO research reports and campaigns. The public debate regularly spills-over into parliament. The debate is evolving gradually **from mainstream CSR as the norm to a corporate accountability perspective**. The population has grown more skeptical about CSR initiatives that lack any binding measures. Increasingly, official policy documents are making reference to relevant international frameworks on HRDD, including by OECD, ILO, and the UN. An illustration for this shift in discourse is, for example, the recent public support from the Dutch government for a binding UN treaty on business and human rights<sup>24</sup>.

## Germany

The German NAP devotes an entire section to clarifying government expectations with regards to HRDD. Overall, the government **expects companies to conduct HRDD** (see box for details). While this is an important signal, it falls short of legally obliging companies to perform HRDD<sup>25</sup>. Moreover, smaller companies are simply ‘encouraged’ to perform HRDD.

The NAP indicates that **access to foreign trade promotion instruments** (export credit and investment guarantees) will depend on the companies’ level of participation in grievance proceedings (if these would be initiated before the National Contact Point). Considering the limited number of cases brought before the NCP annually (in average less than 20/year), the effect of this measure is likely to be limited.

In addition, the NAP stipulates that companies, in order to fulfil their HRDD-requirements, should establish an adequate **grievance mechanism**. Companies’ efforts for grievance mechanisms may

<sup>24</sup> <http://www.sdgnerland.nl/nieuws/rechtsorde-loopt-op-economische-realiteit/>

<sup>25</sup> Cora, Forum Menschenrechte, VENRO, Amnesty International, Brot für die Welt, Germanwatch, and Misereor (2017). *No courage to commit: Comments of German non-governmental organizations on the German government's National Action Plan on Business and Human Rights*. <https://germanwatch.org/en/download/17767.pdf>

include establishing their own grievance procedures, or playing an active part in external procedures, or procedures established by sectoral associations<sup>26</sup>.

Like the Netherlands, Germany has an **active CSO community** on business and human rights. Yet unlike the Netherlands, it is mainly NGOs that are working on HRDD issues, for example in the context of multi-stakeholder initiatives, but also in their role as watchdog or to trigger a public debate. The government sees a role for trade unions in promoting HRDD through the existing mechanism of sectorial dialogues between business and workers' organisations. Sectoral guidelines could, for example, offer common approaches on corporate grievance mechanisms for a given sector (see also above).

When adding-up all the policy initiatives and instruments, it can be argued that the **German government has been at the forefront** of the CSR debate in Europe over the last decade, and is quite active on HRDD in global supply chains. Substantial investments are being made in building institutional structures, funding CSOs, and setting-up new initiatives. **Key intermediary actors** are the national Human Rights Institute and GIZ, the development cooperation agency which is hosting the multi-stakeholder initiative in the garment sector.

**Sector federations are participating** in HRDD initiatives by the government, but not wholeheartedly. Several CSOs are frustrated that sector federations are systematically following the logic of the slowest mover in the business community, rather than being inspired by frontrunners. German sector federations are also reported to lobby intensively at the European level against harder regulatory measures.

## France

Of the three NAPs, the French NAP undoubtedly goes the furthest in interpreting the concept of HRDD. More precisely, it contains numerous references to the **duty of care law** that was promulgated by the French parliament in 2017. Under this law, large companies<sup>27</sup> are legally obliged to perform HRDD, or face legal sanctions (see also section 2.3). Companies that are not covered by this law are simply **encouraged to develop and implement due diligence, in accordance with their size** (proposed action 7).

Proposed actions 1 and 2 deal with France's role in **international initiatives**, respectively with regards to due diligence at the OECD-level, and with duty of care at the EU-level.

Proposed action number 5 deals with **HRDD by the government**. It proposes that the financing of companies by the French development agency be made conditional upon the existence of-, or at least a commitment to implementing, a due diligence plan for projects.

Finally, like the other NAPs, the French NAP contains a number of references to HRDD as part of **sector-specific initiatives**. Proposed action 7 aims to "enhance vigilance" in sectors and countries

### Box: About carrots and sticks... - The underlying HRDD logic of the German NAP

While most of the German HRDD-initiatives discussed in the NAP are voluntary, the expectation of the government towards companies is connected with a clear target: by 2020, half of all companies with more than 500 employees should have integrated HRDD into their management practices. In case this target is not reached, the government will consider **regulatory interventions**. An interesting feature of the German NAP is the commitment to carry out an **annual survey of the implementation** status of HRDD undertaken by companies. This survey will be done on the basis of a representative sample of companies that perform HRDD, and a qualitative survey of the content and challenges involved in this performance. Key informants indicate that the response of business to this policy objective is very diverse: while some are taking it very seriously, others are ignoring it, and seem to assume that in the end, it will not be implemented.

<sup>26</sup> <http://www.ohchr.org/Documents/Issues/Business/ForumSession6/Germany.pdf>

<sup>27</sup> Companies employing at least 5000 individuals on the national territory, and at least 10000 in France and abroad.

with high human rights risks. Moreover, the French NAP contains a (short) list of successful examples from other countries.

The **important role of civil society** in making France a frontrunner on hard regulation is widely acknowledged (see box). The same CSOs are now also pushing the same agenda at the European and UN level. An **important intermediary actor** in many HRDD initiatives has been the French Human Rights Institute. Their expertise, reputation and convening power were critical throughout the law-making process. Although the position of the Macron government is not fully clear yet, and previous governments differed in their active support for hard regulation, there has been **some continuity in investing in structures and processes** to work on CSR, and business and human rights. **The role of sector federations has shifted over time**, initially resisting fiercely the law-making initiative, but gradually a larger part of the business community also saw its relevance and need.

**Box: A broad CSO coalition on the barricades for a law on sustainable supply chains**

In France, a broad coalition of CSOs, academics and experts came together to rally for binding regulation (see also section 2.3). Under CSO pressure, a system of roundtables ('cercles') was established where CSOs, parliamentarians and experts discussed different aspects of the future law. The campaign was **unique in the sense that it managed to mobilize high levels of expertise** to build an informed case for a law on duty of care. An unusual collaboration was established with high-profile lawyers. For many CSO members this was out of their comfort zone, but trust grew over time. The lawyers' expertise and support was key for the credibility of the campaign.. **Existing divides within the CSO community were largely overcome** and successful grassroots mobilization contributed to keep the issue on the political agenda. The support and expertise from trade unions was essential to move forward, together with a group of parliamentarians. The Rana Plaza drama finally created sufficient momentum to conclude the process. The law was finally adopted by parliament in February 2017. (Source: interview and public presentation by CSO representatives)

***Taking stock – NAPs as a policy framework for HRDD implementation?***

The NAPs are clearly embedded within a broader governance context, and contain numerous references to existing initiatives at the national, regional, and international level. At the same time, they **differ in terms of their ability to transcend** these initiatives, by offering pathways for future action. Overall, while the German and French NAP contain a fair amount of future-oriented and specific actions, the Dutch NAP<sup>28</sup> is little more than an anthology of existing commitments.

When it comes to HRDD, the emphasis in all NAPs lies **primarily on encouraging voluntary action**, rather than putting in place harder regulatory measures that require companies to establish sound HRDD processes and outcomes. Even where it comes to HRDD performed by governments and public companies, commitments remain surprisingly thin. However, the **distinction between soft and hard regulatory measures is not binary**. For example, the multi-stakeholder initiatives announced in the Dutch and German NAP have some aspects of hybrid regulation (see also section 2.2). They have less mandatory features than the Bangladesh Accord, for example, but clearly more than the Global Compact initiative. The French NAP does provide for hard regulatory action –albeit under existing laws– while the German NAP holds the option of regulatory intervention on the table.

<sup>28</sup> Dutch governmental stakeholders are aware of some of the gaps in their NAP, but explain that it was a 'first generation' NAP, with limited examples or guidance of what the document should/could look like. The idea of reviewing the NAP at some stage is on the table, but no timeline has been agreed upon yet.

Arguably most importantly, there is **clear scope for mutual learning and sharing of best practices**. Overall, the NAPs make surprisingly little reference to experiences in other countries, neither with regards to the drafting process, nor with regards to contents and specific actions in the field of HRDD.

From an institutional perspective, the three cases illustrate the **importance of a vibrant CSO community**, ideally with a CSO eco-system that takes up different roles, from contestation to bridge building and brokering. Secondly, **intermediary actors** linked to the government, such as human rights institutes, social-economic councils or others, can act as independent mediators, conveners and referees to build trust amongst the different stakeholders.

When looking beyond the NAPs, in the three countries, the **debate has shifted gradually**, although in differing degrees and forms, from an assumption that business can play its role through voluntary CSR activities, to one where the core operations of firms and their suppliers are the subject of the debate. In this vision, HRDD is anchored in the core-business of firms and governed via a balanced regulatory mix, with both binding and non-binding measures.

## 2.2 Voluntary and hybrid initiatives

### Highlights

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- The Netherlands and Germany have invested substantially in new high-profile multi-stakeholder initiatives which bring together business and CSOs in a collaborative spirit
  - The government puts itself in the role of convener, funder, and acts as an independent referee (eg. to assess the merit of action plans and monitoring reports, or to support transparency objectives of the partnership by managing a large database of suppliers).
  - While it is still too early to assess the effectiveness of these approaches, the absence of long-term HRDD goals or targets tends to create confusion amongst stakeholders about what exactly is expected from them.
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This section covers a diverse set of **predominantly voluntary mechanisms**, which are known under the broad banner of multi-stakeholder initiatives. While the emphasis lies on voluntarism, we nonetheless observe increased attention for ‘harder’ regulatory components, which are interacting with- or even integrated in multi-stakeholder initiatives. More often than not, this is the result of pressures from CSOs. In this way, some of the multi-stakeholder initiatives are **gradually evolving into hybrids**, which build on the combined logic of ‘soft’ and ‘hard’ regulation.

Multi-stakeholder initiatives are observed in **all possible constellations** of two or three actors of the governance triangle<sup>29</sup> (Figure 3). The examples in Germany and the Netherlands bring together business and different types of civil society actors, with the government mainly in a brokering and resourcing role. In the classification of Reed<sup>30</sup>, these initiatives should be seen as examples of joint civil-business regulation (6)<sup>31</sup>, with the government stepping back from complete control over the regulatory process, but rather ‘orchestrating’ the activities of other actors.

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29 Abbott and Snidal (2009). The governance triangle: Regulatory standards institutions and the shadow of the state, *The Politics of Global Regulation*, Princeton University

30 Reed, D., Utting, P., Mukherjee-Reed, A. (2013). *Business Regulation and Non-State-Actors*, Routledge.

31 The two cases have some characteristics of tripartite co-regulation (7), as well, for example, for those aspects where government agencies assess the effectiveness of the HRDD approach and the quality of the monitoring reports.

In the Netherlands and Germany, most attention and resources have been devoted to a range of new multi-stakeholder initiatives with a light hybrid character, called **sectoral partnership agreements**, which will be discussed in more detail below. The NAPs also refer to other ongoing or new voluntary initiatives at the national level, such as the inclusion of awareness-raising sessions on due diligence during trade missions; the strengthening of the National Contact Points in line with OECD guidelines; or exchanging good practices on HRDD. These initiatives were shortly discussed in section 2.1, and will not be analyzed further in this report due to their limited scope in comparison with the sectoral partnership agreements.

In this section, we limit ourselves to Germany and the Netherlands because both countries have been international proponents in the area of multi-stakeholder initiatives. In France, the operations of ongoing multi-stakeholder initiatives have been over-shadowed by the dynamics around the new law on the duty of care (2017). As a consequence, several French CSOs stopped their participation in these initiatives based on the conviction that self-regulation would not work. At the EU level, no substantial multi-stakeholder initiatives have been launched over the last few years.

## The Netherlands

The idea of setting-up sectoral multi-stakeholder initiatives on sustainable supply chains had been around for some time, but only turned into reality after the societal outcry about the **Rana Plaza tragedy** in April 2013. It was the final trigger, re-enforcing changing views about international CSR in the Netherlands. An **active civil society** had grown frustrated over the years with the slow pace of change and with the limited impact of existing CSR initiatives, but also amongst **several sector federations** in the garment sector the idea took root that there was a **need for a more comprehensive, more collaborative initiative** involving as many firms as possible. In the run-up to the Rana Plaza disaster, the then minister of development cooperation had announced new plans to promote and strengthen the role of the private sector in development, in line with the overall policy agenda of the liberal government. The minister, herself from a leftist party, wanted to give a clear signal to her own constituency and the general public that private sector-oriented policies would go hand in hand with new and ambitious initiatives to reduce the social and ecological footprint of business. The underpinning assumptions<sup>32</sup> of these multi-stakeholder partnerships are that **knowledge pooling, spillovers of good practices and increased mutual trust** will generate substantial benefits.

An initial scoping study (KPMG, 2014) commissioned by the government identified **13 high risk sectors** with the highest social and ecological risks in their supply chains. The idea was that ‘sector covenants’, or sectoral partnership agreements, would be negotiated between a majority of companies in a sector. Subsequently, negotiations were first launched in those sectors where there was already some support within the sector federations to engage in a sector-wide partnership process. The Sociaal-Economische Raad (SER) was appointed as an independent intermediary to convene these negotiations, and was further supported by experienced consultants. The textile and garment sector was the first sector to arrive at a partnership agreement in July 2016.

### Box: First annual report on progress made

In December 2017 the first annual report of the textile and garment sector partnership agreement was launched. It showed that 65 companies had joined, representing 37% of the total sector. A large majority had done the self-assessment and had come up with a plan of action. 58 companies shared their lists of suppliers, leading to the identification of 2800 suppliers in 49 countries. In 2017 only six cases were brought to the newly installed dispute and complaint mechanism.

<sup>32</sup> Evaluation of the Dutch ICSR policy Terms of reference, IOB Netherlands, 2 January 2018

A partnership agreement typically has the **following characteristics**:

- It is an agreement between companies, their federations, and civil society actors
- Companies participate on a **voluntary basis**, but once they participate they are expected to comply with the mandatory stipulations in the agreement, with the risk of being expelled if there is non-compliance.
- While the content of the agreements differs between sectors, there are a number of **minimal requirements** that need to be incorporated in each sectoral agreement.
- **Each participating company** is expected to do (1) a due diligence assessment of its supply chain, (2) develop an action plan to address problems, (3) report on progress made, and (4) participate in collective activities.
- **Collective activities** are centered around four thematic areas: child labour, living wage, human rights violations and freedom of association, and environment.
- Companies and their suppliers can participate in **training activities and workshops** to address specific supply chain problems. Dutch CSOs and their partners in the production countries can provide CSO contacts, advice and training.
- A **dispute and complaints mechanism** is developed to provide victims of violations with access to remediation. It is the responsibility of individual companies to ensure that workers are informed about and have access to this mechanism.
- In the textile and garment sector, participating companies are expected to provide full **transparency** about their suppliers, but this information is only accessible by the SER secretariat. The SER provides aggregated overviews to the broader public, and identifies regional patterns in order to prioritize future social and environmental upgrading efforts.

By the beginning of 2018, six partnership agreements (sector covenants) have been concluded: coal<sup>33</sup>, garments and textile, banking, gold, forestry, and vegetable protein (Table 1). Five more were in the process of negotiation: natural stone, insurance, food, metallurgy, and horticulture.

**Table 1: Status of partnership agreements in the Netherlands on 1<sup>st</sup> of Dec 2017 (from Evaluation of the Dutch ICSR policy Terms of reference, IOB Netherlands, 2 January 2018)**

Sector	Signed	Duration	Facilitated by	# of companies at the start
Coal	Nov 2014	5 years	N.A.	5
Garments and Textile	Jul 2016	5 years	SER	50
Banking	Oct 2016	3 years	SER	13
Gold	Jun 2017	5 years	SER	10
Forestry	Mar 2017	3,5 years	Schuttelaar & Partners	N.A. (Companies represented by branch orgs.)
Vegetable Protein	Mar 2017	5 years	CSR Netherlands	4

## Germany

<sup>33</sup> "The coal covenant is a frontrunner agreement settled in 2014 between MFA and five Dutch energy firms on how to improve social and environmental conditions in the international coal chain. The agreement differs from the other covenants (e.g. NGOs are not involved as contract partners) and is not listed on the website [www.internationalrbc.org](http://www.internationalrbc.org)". (Evaluation of the Dutch ICSR policy Terms of reference, IOB Netherlands, 2 January 2018)

Germany has been a **frontrunner** within Europe on the issue of sustainable supply chains. It was the first European country to come up with a CSR action plan in 2010 in response to the European CSR Strategy paper. It also organized large-scale training programmes for SMEs on business and human rights, and used its political clout to bring in the issue of business and human rights at the G7 level. Germany has been supporting multi-stakeholder initiatives since 2014, with initiatives on cocoa, palm oil, bananas, tourism, and through the Partnership for Sustainable Textiles.

The **Partnership for Sustainable Textiles** shares many features of the Dutch partnership agreements, but **differs in four main areas**:

- Transparency:
  - Suppliers: there is no obligation to share information on suppliers.
  - Action plans: public in Germany, while in the Netherlands only in year 3.
- Evaluation of action plans: in Germany, this is done by a third party (consultants), while in the Netherlands, it is a government body (the secretariat hosted by the SER).
- Dispute and complaints mechanism: does not yet exist in Germany.
- The intermediary structure managing the partnership is not the social-economical council, like in the Netherlands (SER), but the German development cooperation agency, GIZ.
- In the Netherlands, companies can only withdraw after two years from the signing date.

**Box: Cooperation between Netherlands and Germany on HRDD in the garment sector**

In January 2018, the German and Dutch multi-stakeholder initiatives in the garment sector signed a cooperation agreement. The core objective is to support companies in implementing due diligence, by harmonizing sustainability requirements. Through an **associated membership**, member companies can participate in both initiatives under simplified conditions. In addition, member companies will work on joint projects to improve working conditions in risk areas, and will benefit from shared knowledge and support by both secretariats. Cooperation in working with local stakeholders such as producers, governments, trade unions and NGOs is expected to increase the joint leverage. Over time, both parties expect the EU to play a role in **mainstreaming this approach at the EU level**. This should also be seen from the perspective of economic diplomacy with the aim of creating a level playing field. The gradual internalisation of negative externalities through HRDD initiatives, otherwise risks raising the prices of Dutch and German products or services, while competitors can keep their prices low.

(Sources: presentation of partnership agreement in Paris, January 2018)

The German Partnership has 150 partners, of which 98 are companies, together representing around 50% of the German textile market. In 2017, 40 partners published their roadmaps, indicating points of action for the coming years.

***Taking stock: does a partnership approach work?***

It is still **too early to evaluate** the experiences with multi-stakeholder initiatives in Germany and the Netherlands. Both are still in the early stages of implementation, and there has not yet been a comprehensive assessment of their work. Based on interviews with key informant and a review of existing data sources, the following observations can be made:

On the **positive side**, most stakeholders seem to consider these initiatives as rather safe laboratories where trust can be built around sensitive topics, and where improved dialogue may lead to collaboration on the ground. The fact that it follows a tripartite-plus<sup>34</sup> logic increases the chance that there is broad societal support for the outcomes. A positive side-effect is the capacity development

<sup>34</sup> However, within the group of civil society stakeholders, trade unions are much less involved in the German partnership compared to the Netherlands. This is also the case for international trade union development cooperation in general. One of the leading NGOs initiatives, the Clean Clothes Campaign, is not part of the Dutch partnership agreement.



that happens at the meso-level. The partnership secretariats which are hosted by intermediary structures such as the SER and GIZ, are getting unique insights into the complexities of social and environmental upgrading of global supply chains. The potential of improved transparency in the garment sector is another strong point, although the operating space of the SER-based secretariat to use the full data-set of suppliers of Dutch companies is not fully clear, and other sectors have not yet followed this transparency initiative.

**Main critiques** relate to the following issues:

- The **resource intensity** of this approach, which requires substantive investments from the government and time from other stakeholders. Several observers wondered whether this approach could realistically be applied to other -more low profile- sectors.
- While these initiatives were actually launched to address **collective action problems** and create a level playing field for business, both initiatives have not yet reached a critical mass to make this happen. In the absence of a European wide initiative, Dutch and German companies are worried that they might have a comparative disadvantage over time.
- This touches upon the critique that **structural solutions** on HRDD need to come from the European or the international level (for specific sectors) to avoid further fragmentation.
- Coming back to the two multi-stakeholder initiatives, **many CSOs remain critical** (1) whether there is a genuine intention by business to take this serious; (2) point at the lack of smart targets; and (3) complain about the difficulty of assessing progress on the basis of the monitoring reports submitted.
- In addition, the **dispute and complaints mechanism** still needs to prove its added value. In particular, if access to this mechanism it is not guaranteed, its effectiveness may be jeopardized. It can only serve its purpose if the people it is intended to serve know about it, trust it and are able to use it<sup>35</sup>.
- A final point relates to the **lack of cross-sectoral benchmarking** in sectoral negotiations. Given that some of the moderators are the same, there are learning points on how to do the negotiations, but there is no ‘rising tide’ idea in the content of the agreements. For example, the agreement to work on living wage in the partnership for the garment sector is not used as a reference or something to aspire in other sectoral negotiations.

**Box: Binding measures in the 2018 Bangladesh Accord**

The 2018 Bangladesh Accord is probably the **best example of a hybrid multi-stakeholder initiative** with increasingly ‘hard’ regulatory dimensions. The Accord, signed in 2013 after the Rana Plaza industrial disaster, covers 2.5 million workers in Bangladesh’s ready-made garment factories. It is the first agreement with a legally-binding mandate requiring fashion brands to help their contractors eliminate fire and structural safety issues. So far, the Accord’s inspectors have completed fire and building safety reviews at 1,800 facilities which supply more than 200 signatory brands. Accord engineers have identified over 118,500 fire, electrical and structural hazards at these factories. Nearly 80 per cent of workplace dangers discovered in the Accord’s original round of inspections have been remediated, and 500 Accord factories have completed 90 percent or more of the necessary fixes. In October 2017, a **precedent ruling** by an arbitral tribunal in The Hague bolstered the legally-binding enforcement mechanisms of the Bangladesh Accord against two leading fashion brands, after they failed to require suppliers to remediate facilities within the mandatory deadlines.

A follow-up Accord was signed in June 2017, and extends the Accord’s protections until 2021. The **new Accord model** puts even greater emphasis on the right of workers to organize and join a union, recognizing worker empowerment is fundamental to assuring workplace safety. It includes enhanced protections for workers whose factories are closed or relocated due to the implementation of the agreement. It also presents the possibility to expand the Accord to sectors other than the readymade garment industry. (Sources: [www.industrial-union.org](http://www.industrial-union.org))

<sup>35</sup> <http://blog.journals.cambridge.org/2017/11/28/the-national-contact-point-ncp-system-aligning-ncp-processes-with-the-un-guiding-principles-on-business-and-human-rights/>

To conclude, and without minimizing the critiques, **from a HRDD perspective the Dutch and German initiatives are a step forward** and can be considered as **hybrid initiatives**, pre-dominantly voluntary but also combining mandatory measures. The partnerships are voluntary in terms of entering, but once a company participates there is a set of expectations and regulations to follow. Compared with for example, the Global Compact initiative, these Dutch and German initiatives are more demanding and strict. On the other hand, multi-stakeholder initiatives such as the Bangladesh Accord (see box) in the garment sector have a considerably stronger governance, monitoring and enforcement framework, and easily accessible safety complaints mechanisms, compared to the German and Dutch initiatives.

Critical questions remain with regards to the **high expectations** set by high profile multi-stakeholder initiatives. Both participating companies and CSOs seem to be satisfied with some of the achievements until now, but at the same time **frustrations seem to be growing**<sup>36</sup>. CSOs in particular are unsatisfied with the regulatory framework that is emerging around the annual plans and monitoring reports that each company is expected to produce, especially because of the lack of clear indicators and targets. Business, on the other hand, feels as if CSOs keep on changing the goal posts. This indicates **a broader problem with regards to confusion about the mid-term and long-term goals** of the partnerships. A notable exception is the partnership agreement in the gold sector, which is working towards the 2021 implementation date of the EU minerals directive. This specific partnership agreement was brought forward by some stakeholders as more coherent and goal-oriented, and may be seen as an argument for hybrid approaches that combine soft regulation with harder regulatory measures.

### 2.3 Binding regulatory initiatives

*"A very fragmented transition is underway from soft law to hard law in the field of corporate supply chain responsibility at different speeds and different tracks.."*

Roel Nieuwenkamp, Chair of the OECD Working Party on Responsible Business Conduct

#### Highlights

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- There is a rather chaotic but systematic evolution from soft law to hard law in the area of HRDD
  - Laws differ in terms of their scope (sectors and risks covered), their understanding of HRDD, and the ways in which they are embedded in different bodies of law.
  - France is a frontrunner through its 2017 law on duty of care.
  - Most laws are targeting large MNEs, while (for now) paying less attention to small and medium enterprises (SMEs).
  - It is still too early to assess the effectiveness of hard regulatory measures, but there are indications that they are most effective when combined in hybrid combinations with softer measures.
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The UNGPs and OECD-guidelines<sup>37</sup> can be classified as ‘soft law’, as they emphasize self-regulation and voluntary action by companies. Yet in recent years, there is a clear (but geographically unequal) **trend towards mandatory HRDD**. Already in 2012, a study revealed over 100 instances in over 20

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<sup>36</sup> In Germany, 44 companies left the partnership in 2017 after failing to submit a roadmap (actionplan). In the Netherlands, several CSOs were at the point of withdrawing from some of the negotiation processes because of a lack of progress in specific sectors.

<sup>37</sup> Voluntary for companies but the implementation is binding on OECD states

countries whereby elements of HRDD were incorporated into ‘hard law’<sup>38</sup>. Ever since, this trend has become increasingly outspoken. In table 2, we have listed the key regulatory initiatives that exist in Europe and the United States. In addition to these existing laws and regulations, political debates, and in some cases even legislative processes, are currently underway in a number of other European countries, including Switzerland, Italy, Spain, and Austria<sup>39</sup>.

**Table 2: overview of key regulation in the United States and Europe**<sup>40</sup>

Country	Law / regulation	Applicable to
United States (2010)	<b>Dodd Frank Act, Sec. 1502:</b> mandatory DD and reporting on whether sourcing of minerals (tin, tungsten, tantalum, gold) is supporting armed groups in DRC and neighboring countries.	US and foreign companies with reporting obligation to financial supervisory authorities
European Union (2014)	<b>Directive on Non-Financial Information Disclosure (2014/95/EU)</b> <sup>41</sup> : mandatory reporting on sustainability performance, including HR and approaches to DD	Large public interest entities with >500 employees
United Kingdom (2015)	<b>UK Modern Slavery Act:</b> mandatory statement disclosing steps that companies have taken to ensure that slavery and human trafficking is not taking place in their supply chain	Companies operating within the UK with turnover of at least £36 million
European Union (2017, applicable from 2021)	<b>Conflict Minerals Regulation:</b> mandatory DD for mineral-importing firms	EU firms importing tin, tungsten, tantalum and gold from conflict and high-risk areas
France (2016)	<b>Duty of care law:</b> mandatory publication and implementation of vigilance plan, including HRDD	French companies with >5000 employees; foreign companies with >10000 employees
Netherlands (2017 – pending approval of the senate, applicable from 2020)	<b>Child Labour Due Diligence Law:</b> mandatory statement declaring that companies have carried out DD related to child labour in full supply chains	Dutch companies and foreign companies delivering products or services in the Netherlands

The examples listed above already indicate that there is no uniform way in which (elements of) HRDD can be translated into hard law. Instead, **regulation can vary on a number of dimensions**<sup>42</sup>:

- Regulation may be sector-specific (e.g. conflict minerals regulation) or cross-sectoral (duty of care law);
- Regulations may apply to specific risks (e.g. child labour, conflict, slavery) or incorporate different risks (duty of care law);
- Regulations may be based on a broader or a more narrow definition of HRDD. In the former case, companies may be required to design broad due diligence-plans to proactively prevent and address potential human rights impacts. In the latter case, they may target only certain elements of HRDD, most commonly reporting as part of transparency demands;

<sup>38</sup> De Schutter, O., Ramasastry, A., Taylor, M.B., and Thompson, R.C. (2012). *Human Rights Due Diligence: The Role of States*. Retrieved from <http://corporatejustice.org/hrdd-role-of-states-3-dec-2012.pdf>

<sup>39</sup> Sources: <https://business-humanrights.org/en/examples-of-government-regulations-on-human-rights-reporting-due-diligence-for-companies>; and Change in Context (2018). Government policy to stimulate international responsible business conduct, study commissioned by the Dutch government.

<sup>40</sup> Ibid.

<sup>41</sup> This directive only sets standards for corporate reporting, not for corporate behaviour (due diligence).

<sup>42</sup> Ibid.

- Regulations may be embedded in different bodies of law, including administrative law, corporate law, consumer law, and criminal law. The extent to which companies are liable for human rights impacts also varies considerably across different regulations.

In the remainder of this section, we will take a closer look at the situation in the three countries under review and at the level of the European Union, before moving on to a more general discussion of the potential and pitfalls of regulation.

### *Germany*

Aside from the national translation of EU-directives and –guidelines, **Germany currently lacks binding legislation** that would require companies to perform HRDD. Still, it is important to repeat that the German national action plan (NAP) (see section 2.1) leave the option of regulatory action on the table. In the case of Germany, the drafting of the NAP has apparently stimulated a more profound debate on the need for binding legislation. The final version of the NAP seems to take the middle ground: if more than half of all companies with over 500 employees fail to incorporate elements of HRDD into their management practices by 2020, the government will consider further action, which *may* culminate in legislative action.

### *The Netherlands<sup>43</sup>*

In a 2016 study<sup>44</sup> commissioned by the Dutch ministry of justice, it was reconfirmed that Dutch companies need to **respect the Dutch law, also when they operate abroad**. The study acknowledges that the UNGPs and the OECD Guidelines are not legally binding, but concludes that victims can bring Dutch businesses to court under the Dutch general civil liability law. However, the study warns that ‘civil liability law has rarely been used for this purpose, mainly due to practical obstacles such as high costs of prosecution and lack of evidence’<sup>45</sup>.

In February 2017, the lower house of the Dutch Parliament adopted the **Dutch Child Labour Due Diligence Law (*wet zorgplicht kinderarbeid*)**. This move was quite extraordinary when considering the political situation in the Netherlands, where a right-wing coalition is generally in favor of self-regulation. The approval of the law was finally put on hold in the senate in December 2017. While many details still have to be worked out, it would require companies to determine if child labour exists in their supply chains, and design action plans to prevent it.

If the law is eventually approved, there will likely be restrictions on the sectors and companies that would be covered. Still, the law would apply to all Dutch companies as well as foreign companies that deliver products or services to the Dutch market. Specifically, these companies would be required to **submit a statement** declaring that they have performed HRDD on their full supply chains. More precisely, they have to (1) assess if there is a reasonable presumption that goods and services are supplied that have been produced with child labour; and (2) draw up an **action plan** to prevent child labour. This statement will have to be submitted to regulatory authorities once, and will have a long-term validity. In theory, if companies fail to submit a statement, or if child labour is still found in their supply chains, they may face fines. In practice, however, enforcement will only be triggered by third party complaints.

Compared to other regulatory initiatives, the Dutch law puts far less emphasis on reporting and transparency, and instead focuses on HRDD practices, with the aim of preventing child labour. Still,

43 MVO-platform (2017). *Frequently asked questions about the new Dutch Child Labour Due Diligence Law*. <https://www.mvoplatform.nl/bestanden/FAQChildLabourDueDiligenceLaw.pdf>

44 Enneking, L., Kristen, F., Pijl, K., Waterbolk, T., Emaus, J., Hiel, M., ... Giesen, I. (2015). *Zorgplichten van Nederlandse ondernemingen inzake internationaal maatschappelijk verantwoord ondernemen*. Utrecht: Universiteit Utrecht -Utrecht Centre for Accountability and Liability Law (Ucall), cited in ‘Evaluation of the Dutch ICSR policy Terms of reference’, IOB Netherlands, 2 January 2018

45 Ibid.

it is important to note that companies are not required to guarantee that child labour does not take place in their supply chains, but only have to prove that they have done everything possible to prevent it.

### ***The French revolution?***

Undoubtedly the most far-reaching attempt to translate HRDD into hard law is the **duty of care (*devoir de vigilance*) law**. Promulgated by the French parliament in February 2017, it imposes a ‘duty of care’ on large parent companies for all activities carried out by its subsidiaries, subcontractors, and suppliers. The law applies to all sectors and all types of risks, but only for companies based in France with at least 5000 employees; and for foreign companies with a subsidiary in France with at least 10000 employees. In practice, approximately 200 companies are affected by the law. Specifically, these companies are obliged to design a **HRDD plan**, make it public, and regularly **report** on its implementation. This HRDD plan needs to contain a number of elements:

- (1) Procedures to identify and analyze risks of human rights violations or environmental harm;
- (2) Procedures to regularly assess risks associated with subsidiaries, subcontractors, and suppliers;
- (3) Actions to mitigate risks and to prevent violations;
- (4) Mechanisms to alert the company to risks, and to collect signals of potential or actual risk;
- (5) Mechanisms to assess measures that have been implemented as part of the plan.

#### **Box: ‘Due diligence’ versus ‘duty of care’?**

Some French CSOs are critical about the term due diligence:

*“Duty of vigilance/care, it is not due diligence, it is very different: due diligence is mainly about making sure that you have the necessary procedures in place as a company, it relates to intentions, things you are committing to do. In the French law there is a legal responsibility attached to the vigilance plan, that’s why we also want to have something like that in the UN treaty. Of course, a vigilance plan alone is useless, it is the legal obligations that are connected to violations and the responses that make the difference.” (from interview with CSO representative involved in advocacy work on the French law)*

Other observers recognize that the original use of the concept of due diligence in the business sector was often limited to having the necessary procedures in place, but argue that the concept has been expanded to include a responsibility on the side of companies to identify, prevent, remedy, and report on risks in their supply chains.

The French law goes further than any of the other regulatory initiatives listed in table 2 in at least two respects<sup>46,47</sup>. Firstly, while the other initiatives (with the exception of the Dutch law) focus primarily on transparency and reporting, the duty of care law requires companies to **proactively address these risks**. Secondly, **liability applies** when companies default on their obligations. This means that interested parties can ask judicial authorities to order a company to design a plan (or account for its absence). Moreover, they can demand compensation if a company’s failure to meet its obligations has caused damage. Judges may apply fines of up to € 10 million when companies fail to publish plans, and up to € 30 million if this failure results in damages that would otherwise have been preventable.

#### **Box: First application of new French law on Samsung’s operations in China**

In January 2018, two French NGOs brought the South-Korean tech giant Samsung before the courts because of alleged labour violations amongst some of its Chinese suppliers. Based on reports by China Labor Watch, children below the age of 16 would be employed in these factories, obliged to work sometimes more than 11 hours per day. Samsung responds that the allegations are not correct. It is the first time that the new French law on duty of care is activated, and will therefore be a test case for its scope and effectiveness.

The French law has faced criticism from CSOs, who deplore that it only applies to a limited number of very large companies; that it still puts the burden of proof

46 Poitevin, A. (2015). *The rise of mandatory human rights due diligence: New regulations extend corporate liability across groups and their supply chain*. Ecovadis white paper. <http://www.ecovadis.com/library/human-rights-due-diligence/>

47 European Coalition for Corporate Justice (2017). *French Corporate Duty of Vigilance Law: Frequently Asked Questions*. <http://corporatejustice.org/documents/publications/french-corporate-duty-of-vigilance-law-faq.pdf>

on victims; and that companies cannot simply be held accountable for human rights violations, but only need to prove that they have done everything they reasonably can to prevent them<sup>48</sup>. Still, the French law is widely seen as a game-changer, and has become a rallying point to push for binding legislation at the European and at the international level.

### ***European Union***

At the EU-level, while the European Commission is generally in favor of self-regulation, the European Parliament has repeatedly spoken out and acted in favor of binding regulation<sup>49</sup>.

- In 2014, the parliament issued **directive 2014/95/EU on non-financial reporting**, which called on member states to design legislation that requires large companies to disclose relevant information in relation to their respect for human rights.
- Between 2013 and 2017, the parliament played a key role in the process leading up to the **EU conflict minerals regulation (2017/821)**. It essentially succeeded in transforming a Commission proposal that emphasized voluntary action into regulation that contains at least some elements of mandatory HRDD<sup>50</sup>. Specifically, from 2021 onwards, importers of tin, tungsten, tantalum and gold must perform HRDD on their supply chains, in order to make sure that the minerals they are sourcing do not fund conflict or other illegal practices<sup>51</sup>.
- In 2017, by a massive 505 votes to 49 (57 abstentions), the parliament adopted a **non-binding resolution that calls on the Commission to adopt binding legislation covering textile imports**<sup>52</sup>. Among other things, this legislation should require importers to perform HRDD on their supply chains, to ensure that they do not violate the rights of workers.

Since the enactment of the French duty of care law, pressure on the EU to undertake regulatory action is mounting. For example, in its briefing in November 2017, the European Coalition for Corporate Justice (ECCJ) called on EU institutions to “*adopt mandatory HRDD-legislation, in order to substantially reduce corporate human rights violations*”<sup>53</sup>. More precisely, it discerns a need for an EU harmonization initiative based on the French law, in order to reduce fragmentation between different member states, and to create a level playing field for companies. In May 2016, eight national parliaments launched a *green card initiative* to push the Commission in the direction of mandatory HRDD, modeled after French legislation<sup>54</sup>. So far, however, there is little indication that the Commission will heed this call.

### ***Why have laws at all?***

Of course, an important question remains as to whether it is a good idea to translate (elements of) HRDD into hard law altogether. The key argument in favor of binding legislation is that the current emphasis on **voluntary initiative is not working**. Despite years of awareness-raising, and numerous initiatives taken by a wide range of stakeholders at different levels, many companies remain

48 European Coalition for Corporate Justice (2017). *France adopts corporate duty of vigilance law: a first historic step towards better human rights and environmental protection*. <http://corporatejustice.org/news/393-france-adopts-corporate-duty-of-vigilance-law-a-first-historic-step-towards-better-human-rights-and-environmental-protection>

49 Poitevin, A. (2015). *The rise of mandatory human rights due diligence: New regulations extend corporate liability across groups and their supply chain*. Ecovadis white paper. <http://www.ecovadis.com/library/human-rights-due-diligence/>

50 Cuvelier, J. (2017). *Leaving the beaten track? The EU regulation on conflict minerals*. Egmont institute: Africa Policy Brief (20). <http://www.egmontinstitute.be/content/uploads/2017/04/APB20.pdf?type=pdf>

51 <http://ec.europa.eu/trade/policy/in-focus/conflict-minerals-regulation/>

52 Barbière, C. (2017). *MEPs demand tough rules for textiles importers*. <https://www.euractiv.com/section/global-europe/news/meps-demand-tough-rules-for-textiles-importers/>

53 European Coalition for Corporate Justice (2017). *ECCJ-briefing – November 2017*. [https://business-humanrights.org/sites/default/files/documents/Brief\\_The%20EU%20competence%20and%20duty%20to%20legislate\\_BLayout.pdf](https://business-humanrights.org/sites/default/files/documents/Brief_The%20EU%20competence%20and%20duty%20to%20legislate_BLayout.pdf)

54 Green card initiatives are a mechanism through which national parliaments can jointly propose regulatory actions to the European Commission. See European Coalition for Corporate Justice (2016). *Members of 8 European Parliaments support duty of care legislation for EU corporations*. <http://corporatejustice.org/news/132-members-of-8-european-parliaments-support-duty-of-care-legislation-for-eu-corporations>

complacent when it comes to identifying and addressing potential human rights risks in their supply chains<sup>55,56</sup>.

At the same time, there are a number of important **pitfalls** that have to be taken into consideration:

- There are important challenges related to designing regulation that applies to different sectors and different types of risk. There is a genuine concern that the end result will be generic laws that lead to nothing more than box-ticking and empty reports<sup>57</sup>. The fact that many regulations remain rather vague when it comes to outlining expectations towards companies does not help<sup>58</sup>.
- Existing regulatory initiatives mostly focus on large companies (e.g. the French duty of care law, the European directive on non-financial reporting), or on a specific segment of a sector (e.g. importers in the European Conflict Minerals Regulation). While this specificity need not be problematic, and may even be an advantage, the extent of the coverage gaps raises concerns.
- While mandatory HRDD is a fairly recent phenomenon, initial evidence raises questions with regards to effectiveness of some instruments if applied without compensating measures to avoid companies just moving to another supplier or region when problems emerge. The Dodd Frank Act is a case in point. Rather than engendering active efforts to address human rights concerns in mineral-producing regions, companies instead move to other regions, with detrimental consequences for local livelihoods<sup>59</sup>.

The experiences with the Dodd Frank Act provide an indication that in most cases a regulatory mix will need to be in place, with ‘harder’ measures accompanied by ‘softer’ measures to make sure that their combined effects creates the right incentives for business to pay more attention to the social and ecological risks in their supply chains.

## 2.4 Other issues to consider

In this study we have paid particular attention to new, high profile initiatives in three neighboring countries. In this way, we ended up focusing on multi-stakeholder initiatives and the new law on duty of care. Yet in our review of the literature, and during interviews, other mechanisms were repeatedly mentioned as being (or having the potential to be) highly effective ways to promote HRDD in a direct or indirect way. More specifically, the following instruments were mentioned:

**International trade agreements** - Labour provisions can be integrated into free trade agreements through five main policy mechanisms<sup>60</sup>: (i) pre-ratification measures, meaning that the parties agree to make certain legal and/or institutional changes before the agreement enters into force; (ii) technical cooperation, providing resources and training; (iii) monitoring, which can be directed towards commitments of public authorities or firms. While the main focus of monitoring here is on the role of stakeholders, it may also include monitoring by state parties, for instance through a Sustainable Development Committee; (iv) dispute settlement; and (v) economic (dis)incentives, for instance in the form of quota increases in exchange for social performance.

**International framework agreements (IFA)** – The main aim of IFAs is to create norms for the application of social and labour-policy standards in MNEs. They are mostly initiated by global and

55 Nieuwenkamp, R. (2017). *Impatient governments push corporate supply chain due diligence*. <https://friendsoftheoeecdguidelines.wordpress.com/2017/11/27/impatient-governments-push-corporate-supply-chain-due-diligence/?platform=hootsuite>

56 The Economist, No More Excuses: Responsible supply chains in a globalised world, A report from The Economist Intelligence Unit, August 2017

57 Ibid.

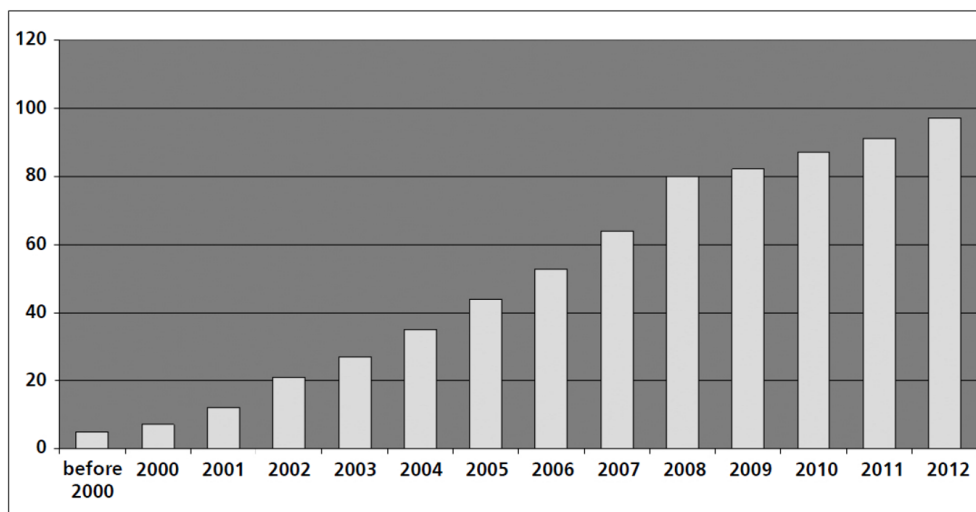
58 Zijlstra, S. (2017). *Een convenant of toch beter een wet?* <http://hetnieuwe.viceversaonline.nl/hulp-handel/convenant-toch-beter-wet/>

59 Cuvelier, J., Van Bockstael, S., Vlassenroot, K., & Iguma, C. (2014). *Analyzing the impact of the Dodd-Frank Act on Congolese Livelihoods*. New York: Social Science Research Council.

60 [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms\\_564702.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---inst/documents/publication/wcms_564702.pdf)

sectoral trade union federations with the aim of covering labour governance gaps in global supply chains by negotiating agreements with MNEs. They typically refer to ILO’s normative framework, but also ‘include procedural rules for monitoring and oversight of the agreements and for mediating conflicts that might arise during the application and implementation’<sup>61</sup>. Since 2000, while the number of framework agreements has gradually increased (figure 6), they still cover only a small portion of MNEs. However, it needs to be taken into account that IFAs are still a relatively new instrument, and “it would appear likely that the developmental potential and the potential capacities of IFAs are in many ways far from fully evolved or exhausted.”<sup>62</sup>

**Figure 6: Evolution in number of framework agreements signed (Platzer and Rüb, 2014)**



Source: Hessler 2012: 326ff., diagram 9 plus own update

***ILO MNE Declaration*** – In the updated version of this declaration (March 2017), global supply chains take a prominent role. Reference is also made to the UNGPs and to the concept of HRDD. A recent study identifies how the declaration has at least four points of entry for trade unions to work on HRDD in OECD countries and in producing countries<sup>63</sup>. A first entry point is by using the declaration to advocate for the set-up of tripartite National Focal Points (NFP), which can then serve as platforms for a more ‘inclusive and meaningful dialogue’ on serious issues of concern to social partners. A second way is by using the declaration to strengthen the enforcement of framework agreements between global unions and MNEs. The third entry point relates to the social audits connected to HRDD processes. The declaration can be used to pressure MNEs into adopting a more critical stance vis-à-vis their suppliers in those cases where social audits take a purely managerial approach that excludes workers and unions. A final application is by using the declaration to combat precarious work when this is in contradiction of the MNE declaration and the underlying ILO conventions.

61 FES (2014), International Framework Agreements: An Instrument for Enforcing Social Human Rights? <http://library.fes.de/pdf-files/iez/10474.pdf>

62 Ibid.

63 ILO-ACTRAV (2018), The ILO MNE Declaration: What's in it for Workers?



In addition to these three main mechanisms described above, the **following measures<sup>64</sup>** are often quoted: (1) clauses in governments' purchasing practices (sustainable sourcing); (2) HRDD criteria for investments by large investors and pension funds; and (3) raising HRDD issues in social dialogue structures at the sectoral level and the European level; and in corporate governance bodies ('ondernemingsraden').

Aside from discussions about exact mechanisms, a more fundamental discussion relates to the **orientation of many HRDD initiatives**. The debate on HRDD has hitherto been centered around how MNEs can and should use their influence to make suppliers respect domestic and international labour standards. Until now, international **debates have paid far less attention to sourcing practices, and how these contribute to 'price squeeze' and 'time squeeze'**. For example, a recent ILO study<sup>65</sup> on the garment sector concluded that 39% of the suppliers had indicated that they had received orders which were below their cost of production. At the same time, it seems we are confronted with a collective action problem: while 75% of buyers stated that they are willing to shoulder the cost of minimum wage increases, hardly anything is changing in practice.

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<sup>64</sup> The EU system of Generalised Scheme of Preferences through which countries get market access at lower tariffs, also has the potential to contribute to responsible supply chains. However, currently the monitoring and enforcement of the UN and ILO conventions is problematic. This year a debate will start on the reform of the EU GSP system, with the aim of strengthening the compliance with human and labour rights commitments. (based on presentation by Dr. Axel Marx, Leuven Centre for Global Governance, Leuven, 23 March 2018)

<sup>65</sup> [http://www.ilo.org/wcmsp5/groups/public/---ed\\_protect/---protrav/---travail/documents/publication/wcms\\_556336.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_protect/---protrav/---travail/documents/publication/wcms_556336.pdf)

## - PART 2 BELGIUM & THE SUSTAINABLE SUPPLY CHAIN AGENDA -

## 3 | Belgium's HRDD initiatives compared

### 3.1 National Action Plan (NAP)

#### *The consultation process and the design of the NAP*

In Belgium, the government initiated a multi-stakeholder consultation process on the NAP as early as 2013. This process was facilitated by FIDO, the Federal Institute for Sustainable Development, together with the ministry of foreign affairs. Due to the **complex institutional set-up of Belgium**, the consultation process was perceived by many observers as difficult. It was further complicated by the **limited knowledge and interest** of different stakeholders about HRDD, on the side of business, government but also amongst the CSOs. It finally resulted in a first draft NAP by 2014, but the process then **halted due to the upcoming elections**. With the new government leaning more to the right of the political spectrum, the consultation process had to be started **from scratch again**, this time business stakeholders got a more prominent role, while CSO concerns and interests moved to the background. Only by December 2017, the government formally announced the publication of the NAP. The fact that the consultation and negotiation phase **took another two to three years** to complete is an indication of the limited political interest in this topic. In the end, the government faced criticism from CSOs<sup>66,67</sup>, who felt that their concerns were inadequately reflected in the NAP's final version.

As is the case for the Dutch NAP, the Belgian NAP has a more haphazard structure, which seems to be informed primarily by the different areas of action that were identified during the drafting process. The main body of the NAP is **a list of 33 actions, without any thematic clustering or meta-structure**. As a result, the report jumps between small activities (eg. producing a leaflet) and very broad goals (eg. supporting international framework agreements), and back again. Overall, it reads like a backward-looking document with limited commitment to future action<sup>68</sup>. For example, of the 33 actions included in the Belgian NAP, only a few should lead to tangible outputs<sup>69</sup> (in the form of a toolbox and a brochure), and even in these cases there is little room for evaluation and/or monitoring. As such, the **Belgian NAP is less ambitious** than the other NAPs in this study, and focuses primarily on awareness-raising and honoring existing commitments.

#### *Highlights of the NAP*

In the absence of a clear structure and a guiding narrative on policy priorities, it is **difficult to identify the NAP's highlights**. This was also reflected in the interviews with key informants, all of which had trouble picking out two or three main action points or realizations of the NAP. In terms of *awareness-raising*, the following activities are illustrative:

- Action point 1 aims to minimize administrative burden for enterprises, and wants to provide support to companies that wish to perform HRDD, including through a human rights 'toolkit'.

<sup>66</sup> This question of limited stakeholder involvement in Belgium was raised in a (draft) analysis of the Belgian NAP by WSM and ACV-CSC, which the authors were able to consult.

<sup>67</sup> 'Nationaal Actieplan Bedrijven en Mensenrechten is te vrijblijvend' (2017). <http://www.broederlijkdelen.be/nl/nieuws/nationaal-actieplan-bedrijven-mensenrechten-te-vrijblijvend>

<sup>68</sup> This was further re-enforced by the last-minute decision to not include an overview table with targets and timelines. In initial communication, the government indicated the NAP would contain such a table, but later on argued that this was not necessary given the fact that the deadline for all the action points was 2021, when the NAP would be reviewed.

<sup>69</sup> Some of the outputs were already completed by the time the NAP was made public.

- Action point 15 calls for the integration of due diligence into the management practices of big companies that fall under EU directive 2014/95/EU on non-financial reporting. The emphasis clearly lies on awareness-raising and on encouraging –rather than forcing– companies to perform HRDD. Moreover, it is not specified what the government expects from companies that do not fall under the EU-directive.
- Action point 20 also discusses HRDD by the government as one possible mechanism to achieve more socially responsible public enterprises. Here, the creation of a learning network can assist public companies with performing HRDD (as one amongst other possible instruments).
- Action point 22, which discusses responsible supply chain management, also mentions HRDD in relation to a number of existing OECD-initiatives in garments, agricultural-, and extractives sector. Yet again, the focus lies on awareness-raising and international cooperation.

Other areas that are noteworthy, are the following:

- Action 8, which aims to increase attention for human rights in international framework agreements between big companies and international trade unions. However, this action point remains rather vague, and it is unclear how exactly this is going to be achieved.
- Action 7 - Integration of business and human rights sensitization during trade missions
- Action 13 – Increasing the respect for human rights in public purchasing practices
- Action 15 – Integration of HRDD in the governance structures of international companies via the corporate governance codes
- Action 17 – Advocating for a strong integration of human rights in free trade agreements
- Action 23, which calls for the strengthening of the NCP, but without references to resources.

### *Is the NAP actionable?*

The NAP is perhaps best seen as a first stock-taking of what Belgium is already doing on business and human rights, and a discussion of broad policy areas it wants to focus on in the future. **It is not a plan that is actionable** for different reasons. Compared with the German and the French NAP, the Belgian NAP lacks an overall theory of change with long-term targets and explicit strategies on how different stakeholders will be supported to get there. It is not comprehensive in its approach, with **limited attention for a balanced regulatory mix**. Another major weakness of the NAP is that **no specific resources** were allocated for its implementation. The stakeholders mentioned for each activity as the responsible and competent authority, are basically expected to implement the measures with their own available resources. In addition, there is no funding for coordination or secretarial support, nor for convening multi-stakeholder dialogues, or for monitoring of the NAP. Several stakeholders complained that the **political will is missing** to push the HRDD agenda.

## **3.2 The Belgian HRDD landscape**

The Belgian institutional map of actors involved in (aspects of) HRDD is **complex and quite fragmented** (figure 7). This is partially explained by the Belgian institutional structure in which multiple government levels and policy actors are involved in different policy domains. A second reason relates to the fact that there are **no clustering of key components of the NAP agenda within specific institutions, nor a comprehensive mandate to implement or monitor the NAP for any of the actors involved**. While FIDO plays a facilitating role, it has limited power and resources to steer the HRDD-agenda, or to implement and monitor HRDD-measures. There is no human rights body which feeds the regulatory dimension of the HRDD agenda. The social-economic councils are positioned at the regional level, and until now they have not been engaging substantially with HRDD-issues.

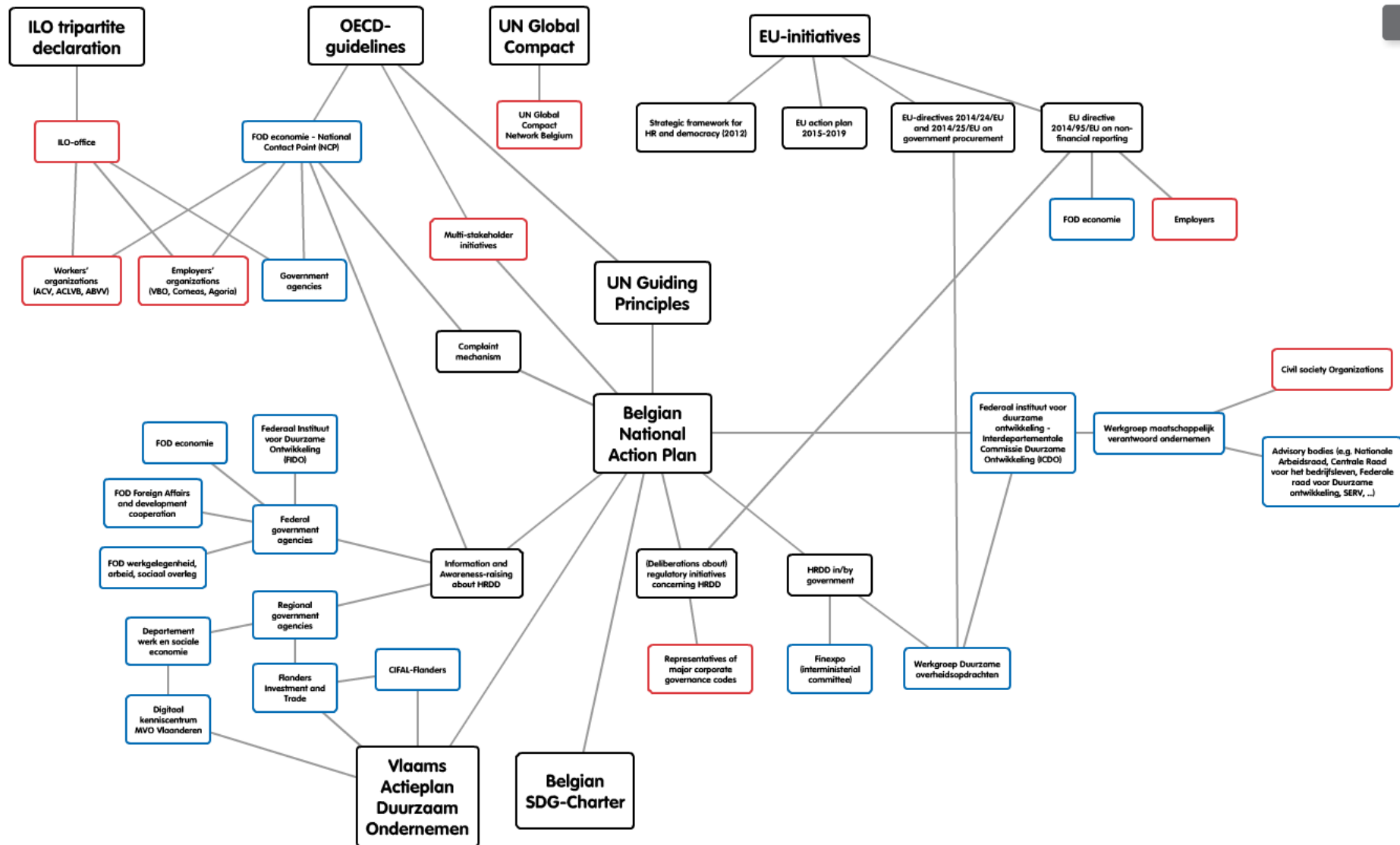


Figure 7: Institutional picture of Belgian agencies and actors involved in HRDD (not comprehensive)

More broadly, the **capacity of different Belgian stakeholders to work on HRDD is still limited**. At the federal level, the ministry of foreign affairs has one or two diplomats that work partially on HRDD-related topics, but hardly any resources to facilitate the implementation of the NAP agenda. At the Flemish level, there is experience with regards to the integration of sustainability criteria in the purchasing practices of the government, and a number of pilots have been set up in this area with Flemish cities, although these are still limited in scope. An international CSR policy was developed some years ago, but aside from the adoption of this agenda by a few frontrunners, no comprehensive initiatives were taken. More recently, a study was commissioned by the Flemish government to identify the most critical sectors from a HRDD perspective, with outcomes expected by the end of 2018.

While there is **engagement with the sustainable development goals (SDGs) in several sectors**, the focus is **mostly on environmental and climate-related issues**, decent work practices inside Belgium, and mainstream CSR-based initiatives (working with NGOs or foundations). The topic of **HRDD is largely absent from the agenda of Belgian sector federations**, with the exception of a small number of sectors where it is gradually gaining importance (the chemical industry, the diamond sector, and to a lesser extent also food and retail, and the sector of natural stone). Section 3.3 concludes that, from an HRDD perspective, a large majority of these SDG initiatives are an add-on to normal business practices and are not addressing critical problems in the global supply chain, leaving workers exposed to labour rights violations.

Within **civil society**, there is an active chapter of the Clean Clothes Campaign, which is working on HRDD related themes in the garment sector. A number of NGOs are active in a sub-commission on Business & Human Rights as part of the Federal Advisory Board on Policy Coherence for Development. In this context, a policy advice on HRDD is currently being drafted for consideration by the minister of development cooperation. The trade union ACV, the commissioner of this study, and the NGO World Solidarity, are taking a leading role in pushing HRDD higher-up the political agenda. All in all, this remains **a new area of work and the capacity to do lobby and advocacy work remains limited**.

### 3.3 Initiatives on HRDD

There are currently no major ongoing HRDD-initiatives in Belgium. Still, we were able to identify a number of initiatives that are indirectly touching upon the issue of HRDD:

- *Translation of EU directive on non-financial reporting* – This has been ratified through an amendment of the Companies Code in July 2017. Belgium has chosen for a conservative translation of the directive (no gold-plating) which means that the directive will only apply to around 200 companies. The ‘comply or explain’ principles, as well the ‘safe harbor’ principle will allow companies to limit their obligations under the directive.
- *Participation to Dutch sectoral partnership agreement for natural stone* – after a scandal related to child labour for the stones used by two Flemish cities, negotiations have been ongoing to join the Dutch partnerships agreement (covenants) for natural stone. If this is concluded, it would be a test case for more extensive collaboration with the Dutch system.
- *Diamond sector* – With Antwerp being a leading center for the trade of diamonds, Belgium has been engaged in several sectoral initiatives around CSR and HRDD. However, as the Dodd-Frank episode in the US has clearly demonstrated, sectoral initiatives in extractive industries raise a number of practical difficulties, and may have unintended consequences on the ground.

- *Chemical sector* – The Belgian chemical industry is the first sector to launch a more comprehensive programme on sustainable sourcing. ‘Together for Sustainability’ refers explicitly to the importance of HRDD. The goal of TFS is the global standardization of supplier evaluations and auditing, including developing and implementing a global supplier engagement program that assesses and improves sustainability sourcing practices. In 2015 the initiative’s members conducted a total of around 5,000 sustainability assessments and audits<sup>70</sup>. We couldn’t identify independent evaluations or research-based assessments of the TFS initiative.
- *Ports and shipping* – On the 22<sup>nd</sup> of March 2018, the first International Maritime Charter for sustainable ports worldwide was signed in the city of Antwerp, Belgium. The initiative is embedded in the World Ports Sustainability Program (WPSP, June 2017), which ‘wants to enhance and coordinate future sustainability efforts of port community actors worldwide and foster international cooperation with partners in the supply chain, governments and societal stakeholders’<sup>71</sup>. The charter asks participating ports to endorse the UN2030 agenda and the SDGs, and commit to supporting the goals and activities of the WPSP in four areas<sup>72</sup>:
  - establish and maintain a global library of best practices;
  - provide a portal for projects and initiatives of international port-related organisations that joined the program as partners;
  - function as a think-tank and breeding ground for new collaborative projects;
  - report regularly about the sustainability performance of the global ports sector.

Through the charter the sustainability debate in the sector is expanding from an exclusive focus on climate issues (2008 World Port Climate Initiative) to a CSR-based approach focused on supporting the 17 SDGs. A review of the WPSP charter and the programme of a two-day conference (22-23 March 2018) shows that the topic of ‘responsible supply chains’ emerges on the agenda of the WPSP, as one of the many topics, but no concrete targets and timelines have been communicated up to now.

- *Food and retail* – The Belgian food and retail sector has been engaging on the topic of sustainable supply chains for some time, also facilitated by the NGO RICOLTO (former Vredeseilanden). The focus has been on showcasing good practices, piloting it for individual products, and facilitating round-tables at the sectoral level. In a recent RICOLTO newsletter a synthesis is made of their work with supermarkets and food companies in Belgium since 2015. The analysis<sup>73</sup> is very critical: there is no indication of structural change in the sector, with most industry players caught in a prisoners’ dilemma due to existing pricing mechanisms.
- *Belgian SDG Charter for International Development* – More than 100 companies, NGOs and public authorities signed the Belgian SDG Charter for International Development. The organisations commit to contributing to more sustainable and inclusive economic growth in Belgium and the partner countries. Four ‘change labs were initiated to exchange good practices on the SDGs. The charter or related documents do not contain specific timelines or targets, and the topic of responsible supply chains does not feature strongly.

70 <https://www.basf.com/en/company/about-us/suppliers-and-partners/sustainability-in-procurement/together-for-sustainability.html>

71 <https://sustainableworldports.org/reference-documents/>

72 <https://sustainableworldports.org/about/>

73. “We finalised our nine to-do’s in collaboration with experts from supermarkets and the food industry. The aim was to engage people at the sectoral level. So far that has not been successful. If just one player starts having doubts, nobody takes the plunge. It’s very frustrating.....Supermarkets have many advantages when it comes to improving sustainability in the food chain. In my view, however, you need pre-competitive agreements at the sectoral level, because otherwise the pressure of competition will make any new initiative impossible before you start.”: “The greatest blind spot in the shift towards sustainability is pricing mechanisms that achieve viable prices in the longer term but without distorting the market. You could certainly see that as an ambition.” (RICOLTO - Sustainability policy in practice in supermarkets and food companies in Belgium: is progress being made?, Newsletter, March 2018)

Overall, a picture emerges of a **Belgian debate that remains stuck in the mainstream CSR agenda**. Compared to the Netherlands, France and Germany, the topic of business and human rights does not receive much attention in public debates (with the exception of the clean clothes campaign and ad-hoc journalistic reporting), and is much lower on the political agenda. Also, the Rana Plaza disaster in 2013 failed to push the debate towards a more comprehensive HRDD reform agenda. At least in part, this failure was related to a lack of capacity, knowledge, and readiness on the part of civil society, business and governmental actors.



## 4 | HRDD and Belgian civil society: pushing the boundaries

*"When we approach a market system, we should not think that we are bringing change to an otherwise static system. In reality, we are joining a system in motion, at a point on its journey, and with a range of possible future paths and outcomes." (Harvey et al., 2017, p26)<sup>74</sup>*

From the study a number of proposals emerge for future advocacy work for Belgian civil society actors. They are presented as policy options for civil society to get due diligence higher on the policy agenda in Belgium and at the European level. Before doing so, the next section presents eight guiding principles that should underpin future policy work on HRDD.

### 4.1 Guiding principles

Contributing to social upgrading of supply chains is a complex endeavor, with many pitfalls and risks. A number of guiding principles (Figure 8) can be taken into account that increase the chance of developing a systemic and coherent approach. The principles are inspired by a critical review of the literature, and by advice from experts consulted throughout the course of this research.

Figure 8: Eight guiding principles for HRDD policy work



### 8 principles for the policy work (points of departure)

1. *Aiming for a sectoral approach, supported by insights into sector-specific HRDD problems , but with due attention for the integration of cross-sectoral principles and -standards across different initiatives – The*

<sup>74</sup> 2017: Shaping Inclusive Markets: How Funders and Intermediaries can Help Markets Move toward Greater Economic Inclusion; Harvey Koh, Samantha King, Ahmed Irfan, Rishi Agarwal, Ashvin Dayal, Anna Brown; FSG report

sector-specific nature of risks and solutions, as well as incentives for companies to engage in HRDD, implies that generic, one-size-fits-all approaches are less likely to be effective than sector-specific regulation. At the same time, in order to avoid confusion and fragmentation, the coherence of HRDD-regulation needs to be guaranteed across sectors..

2. *Making sure that new HRDD initiatives build-on, align with and strengthen as much as possible existing international initiatives* – The HRDD landscape is in a transition phase, and is currently characterized by fragmentation, with different initiatives that remain poorly aligned and are too small to bring about structural change. Belgium should not contribute further to this fragmentation, but should instead try to reinforce existing international initiatives, and invest in the development of new intermediary structures in Belgium, so as to gradually build government capacity, and institutionalize the implementation of new regulations and other HRDD-mechanisms (NCP, SERV, human rights institute, ..).
3. *Support initiatives with an active role for states and/or international organizations* – Research shows that the potential of multi-stakeholder initiatives and other HRDD initiatives can be enhanced if they involve an active role for states and intergovernmental organizations. In order to facilitate a transition towards harder regulation, it is important that state actors do more than simply financing HRDD-initiatives.
4. *Avoiding a situation where the responsibility for better working conditions and protecting the environment is shifted solely on the producers/suppliers* – Research is increasingly confirmative that the current purchasing practices by international buyers and large intermediary vendors negatively impact on the practices by suppliers, especially through the problem of ‘time squeeze’ (just-in-time delivery, fast fashion, e-commerce..) and ‘price squeeze’ (the extreme pressure exerted on suppliers to produce at the lowest costs to avoid losing the order to competitors). This implies that policy work should have more attention for the role and responsibility of MNEs.
5. *Moving beyond social audits* - Social audits vary strongly in terms of quality and enforcement, and are only one amongst a broad range of softer and harder measures to improve HRDD. Principle 4 already referred to the responsibility of MNEs, the most powerful actors in the supply chain, especially with regards to their purchasing practices. In addition, programmes such as ILO Better Work have demonstrated that audits should always go hand in hand with capacity development and advisory services tailored for the factory management, workers’ organizations, the inspectorate and other governmental services. Typical themes to be addressed are social dialogue, freedom of association, professional human resources management, empowerment of women workers, etc.
6. *Civil society as an eco-system: strengthening civil society in her roles as watchdog, policy influencing, information provision, broker and bridge builder* – Civil society will only manage to fulfill its role when it acts as an eco-system in which different players assume different roles: pressuring the poor performing parts of the market, engaging in policy influencing, focusing on deepening understanding of HRDD problems and possible solutions for specific sectors, and brokering multi-stakeholder initiatives. This combined set of civil society roles should not be concentrated in one or two organizations, nor should it be fully developed at the Belgian level. Instead, it can also be achieved through formal and informal alliances with other CSOs, both in Belgium and abroad.
7. *Framing the policy influencing work in a coherent and explicit vision and strategy for HRDD* – This framework describes the objectives and priorities, the underlying theory of change with corresponding assumptions, and contains a multi-annual action plan. Ideally, the policy work should be based on an evidence-based vision of policy change<sup>75</sup> in the domain of HRDD. Several stakeholders propose a model for social upgrading in which the weakest performing

75 For example, a business case can be made for investments in HRDD as independent impact research in the context of the ILO Better Work programme, shows that investing in better working conditions also improves productivity and profits (<https://betterwork.org/blog/portfolio/impact-assessment/>).

part of the market is pushed to clean-up their act through national and international HRDD regulation, the middle section is nudged towards improved HRDD practices by a mixture of regulatory and voluntary initiatives, and the frontrunners are financially encouraged to implement new innovations in HRDD. In addition, working with long term targets is important for continuity and to allow the market to prepare itself. Studies<sup>76</sup> show that companies evaluate four factors before supporting progressive change: protecting the reputation of their brand (especially valid for consumer goods companies); the economic cost of the required change; the likelihood that government will change its policy in a given direction; and whether the company is likely to improve its competitive position by endorsing the change. Each of the four factors provide different entry points for policy work on HRDD.

8. *Building on institutional opportunities within the Belgian context* – Important entry points to work on HRDD in the Belgian context are (1) using the Belgian tradition of social dialogue to put HRDD on the agenda of relevant structures as ICDO, advisory boards, and various intermediary and regional structures; (2) using the gaps in the Belgian NAP to pro-actively launch new policy proposals (e.g. the lobby trajectory for a new policy advice on HRDD in the framework of the advisory commission on policy coherence); (3) using civil society and trade union networks at the international and European level to launch new collaborations with strategic partners in neighboring countries and within the Global Unions; and (4) linking with ILO initiatives on global supply chains.

## 4.2 Policy options for a coordinated approach

Four different targets for policy work are described in this section, together with suggestions for activities that can contribute to achieving these targets.

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### Target 1: Shifting the debate in Belgium from CSR to HRDD

*“What I’ve learned is this: build the case for why this particular change is inevitable. Make corporates worry that they’re on the wrong side of history. We alone don’t have the gravitas to do this. So we try to make sure companies hear from pension fund managers and industry peers, from shareholders at their AGMs, and hundreds of thousands of their consumers....” (Erin Saban, quoted in How Change Happens, 2016, Duncan Green)*

Shifting the debate about business and human rights is difficult but possible. Aside from mobilizing actors that MNEs and SMEs listen to, as suggested in the quote above, it is also the broader ‘web of regulation, relationships and responsibilities in which MNEs are immersed’<sup>77</sup> on which pressure can be exercised.

The idea that MNEs should take responsibility for risks in their international supply chains has not yet taken root amongst most Belgian sector federations, policy makers and the broader public. Aside from mostly isolated initiatives in the garment sector, diamond sector, natural stone, and the work of individual frontrunners (eg. UMICORE), most initiatives are still in the mainstream CSR sphere. They are failing to address the problem in a structural and comprehensive way, and often lack quantifiable and enforceable targets. While stakeholders have championed different instruments and frameworks to advocate for a more ambitious agenda, the debate remains largely stuck in ad-hoc and isolated initiatives. Changing the narrative from CSR to HRDD and corporate accountability, requires

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<sup>76</sup> Levitt cited in How Change Happens (Duncan Green, 2016)

<sup>77</sup> Green, D. (2016) How Change Happens, Oxford University press

a coordinated approach which re-enforces existing initiatives, while at the same time involves preparing for a more ambitious HRDD agenda as soon as there is a ‘window of opportunity’.

#### **Options for action**

- Pooling the different CSO capacities at the Belgian level to work towards a multi-pronged approach to sensitize sector federations, the broader public and policy makers through the initiation of new activities. For example, to (1) map and communicate about HRDD violations by Belgian companies in different sectors (name and shame); (2) showcase good HRDD practices by Belgian companies (avoiding purely CSR-based or small-scale initiatives); (3) invite representatives of pension funds, influential investors, industrial peers, or consumer groups to speak at events in Belgium; (4) initiate dialogue with those actors in business and government to move forward in a structural way; (5) encourage the government to set-up training programmes for SMEs on HRDD (for example, via ESF funds); and (6) build a ‘business case’ for a balanced regulatory mix for HRDD in Belgium and the EU.
- The Flemish government has initiated new research (in March 2018) to map the sectors in Flanders with the highest HRDD risks, similarly to the 2014 KPMG study in the Netherlands. Civil society should be prepared to contribute both to the content of the study (by pooling existing evidence on sectors), but also to use the outcomes of the study for further policy work. This Flemish study can be a strategic resource for future HRDD work in the areas mentioned above.

### **Target 2: Building national and regional HRDD governance capacity**

The three case study countries have clearly demonstrated the importance of institutional capacity and resources within government, civil society and industry. This capacity is something that can be built up gradually, but needs to be developed in order to avoid a situation where gains in policy work cannot be absorbed or maintained by relevant actors.

#### **Options for action**

- Identifying the (potential) actors and/or structures that are best placed to take on a leading role in the governance and implementation of HRDD measures in Belgium.
- Starting to engage with core ministries (economic affairs, ministry of labour, Flanders Investment and Trade, ..) and relevant intermediary structures (SERV, ..) on HRDD
- Lobbying for resources to develop a policy framework for a more structural approach towards HRDD, in which resources are dedicated to a balanced regulatory mix, and where long term goals and targets are developed.
- Reminding the government about relevant policy intentions in the NAP, such as the strengthening of the National Contact Point.

### **Target 3: Strengthening existing dynamics at EU and UN level, and/or supporting global sectoral initiatives**

Rather than contributing to a further fragmentation by initiating new multi-stakeholder initiatives at the national or regional level, Belgium can leverage its position at the international level to support international initiatives on social upgrading in global supply chains. There is a lot of potential for a more ambitious role played by Europe. However, the European Commission is currently holding back initiatives that go beyond the mainstream CSR agenda. The entry points to gain leverage within the EC to put HRDD higher on the agenda are not clear and require further study. At the UN level, while negotiations on a binding treaty are promising, progress is slowed down by the fact that more

progressive EU countries, such as France, are sticking to common positions at the EU level. In some sectors, existing sectoral HRDD initiatives at the global level have potential and could be strengthened by Belgian actors.

#### Options for action

- Working with other European CSOs to prepare for a lobby campaign for binding HRDD measures when a pro-HRDD country has the EU presidency. This can go hand in hand with a policy influencing campaign at the Belgian level to demand the Belgian council of ministers to support a call for binding HRDD regulation at the European level (eg. Tobin Tax) and/or for a binding UN treaty. Another possible area is pushing the activation of the 2016 green card initiative in the garment sector.
- Supporting existing multi-stakeholder initiatives which meet the necessary quality criteria. It is too early to assess their effectiveness, but most potential lies with those initiatives that combine voluntary and binding measures, and that are guided by long-term policy frameworks and targets (eg. through the EU conflict mineral directive). For example, Belgium could support efforts to upscale the work of the Netherlands and Germany. A first step towards harmonization and upscaling was taken through the recent partnership agreement (January 2018) between the Dutch and German partnerships in the garment and textiles sector.
- The updated ILO MNE declaration (Feb 2017) also provides new entry points in OECD countries as well as producing countries, to work on HRDD<sup>78</sup> (see also section 2.4).
- Exploring which sectors have the most advanced HRDD frameworks at the global level, and encouraging Belgian actors to join them.
- In view of the Belgian landscape, supporting efforts specifically targeted at improving HRDD practices by SMEs would be highly relevant.
- Several experts also highlight the potential of initiatives which focus on cross-sectoral learning about good practices in developing a balanced regulatory mix for HRDD<sup>79</sup>.

#### Target 4: Other high-impact measures with a ‘hybrid’ character should not be overlooked

While the focus in this report has been largely on multi-stakeholder initiatives and hard regulatory measures, throughout the literature as well as in key informant interviews the importance of five other types of measures were mentioned. Many of these measures are hybrids, combining soft and harder regulatory measures. The following measures were seen to have a (potential) high-impact: (1) labour clauses in international trade agreements; (2) international framework agreements<sup>80</sup> between global unions and MNEs; (3) HRDD clauses in governments’ purchasing practices (sustainable sourcing); (4) HRDD criteria for investments by large investors and pension funds; and (5) raising HRDD issues in social dialogue structures at the sectoral level and the European level; and in ‘ondernemingsraden’.

#### Options for action

Discussing the actions points for all these measures goes beyond the scope of this study. The HRDD potential of international trade agreements, international framework agreements and sustainable sourcing are quite well documented. The other measures are much less documented and require further study.

<sup>78</sup> ILO-ACTRAV (2018), The ILO MNE Declaration: What’s in it for Workers?

<sup>79</sup> Interviews with key informants

<sup>80</sup> During the OECD forum on Due Diligence in the Garment and Footwear Sector (30-31 January 2018) separate sessions were organised with concrete examples of the implementation of two GFA’s between the Global Union IndustriAll and respectively Inditex and H&M in Turkey and Bangladesh. These experiences could serve as good practice of how social dialogue can benefit all the social partners.



**- APPENDICES -**





## appendix 1 - People interviewed and consulted

### Belgium

- Saartje Boutsen, Advisor Environment and Sustainable business, Flanders' Chamber of Commerce and Industry, VOKA
- Dr. Jan Tytgat, Director Government Affairs EU-Benelux, Umicore
- David Leyssens, Director, The Shift
- Dieter Vander Beke, Director a.i., Federaal Instituut voor Duurzame Ontwikkeling, FIDO
- Hélène De Bock, Deputy Director Human Rights and Democracy, Belgian Ministry of Foreign Affairs (consultation during Q&A session after workshop presentations)
- Frederik Claerbout, departement Kanselarij en Bestuur, Flanders
- Gert Van Eeckhout, Beleidsondersteuner MVO en coöperatie, Afdeling Sociale Economie en Duurzaam Ondernemen, Flanders
- Koen Detavernier, politiek medewerker Azië en België, Wereldsolidariteit
- Annelies De Gendt - diensthoofd Noorddienst, Wereldsolidariteit
- Jessie Van Couwenberghe, advocacy officer, Clean Clothes Campaign, ACV-CSC
- Alfons De Potter, chair of Wereldsolidariteit

### Netherlands

- Kristina Ullrich, lobby & advocacy officer Women@Work (HIVOS), responsible for follow-up food and flower covenant negotiations
- Joost Vos, International CSR Unit, Directorate General International Economic Relations, Department for Economic Governance and Trade Policy, Ministry of Foreign Affairs, The Netherlands
- Iona Ebben, Senior Policy Officer Business & Human Rights, Ministry of Foreign Affairs, Netherlands
- Alina van Veen, International CSR Unit, Directorate General International Economic Relations, Department for Economic Governance and Trade Policy, Ministry of Foreign Affairs, The Netherlands
- Marjolein Baghuis, consultant, Change In Context, Netherlands
- MVO Platform (email exchanges)

### Germany

- Tim Zahn, Coordinator for civil society organizations in the German Partnership for Sustainable Textiles.
- Yacin Bessas, expert supply chain management, former Ulm University,
- Friedel Hütz-Adams, Senior Researcher, Südwind

### France

- Juliette Renaud, Extractive industries and Corporate accountability campaigner, Les Amis de la Terre France

### EU

- Ben Vanpeperstraete, Lobby and Advocacy Coordinator, Clean Clothes Campaign, International Office

#### **Other**

- 26 January 2018: interactive workshop with ACV-CSC and World Solidarity staff (around 30 participants) to present and review preliminary findings of the HIVA study
- Participation to conferences and workshops:
  - On HRDD initiatives in the Netherlands and France in Brussels organized by ACV Belgium in the context of the Belgian sub-commission on business and human rights in April 2017;
  - On business and HR, organised by the Belgian ministry of foreign affairs in Brussels in October 2017;
  - Same topic, organized by the Dutch government in Brussels in December 2017;
  - OECD Forum on due diligence in the garment and footwear sector in Paris in January 2018, including participation to a special event on the new agreement between the Dutch and German multi-stakeholder initiative in the garment sector;
  - On business and human rights in the ICT supply chain in Brussels in March 2018.

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