Mandatory Human Rights Due Diligence: An Opportunity for Workers or Big Business?

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A new legal regime of mandatory human rights due diligence is emerging in Europe and in many other locations around the world. These laws include the French Duty of Vigilance Law, the EU Corporate Sustainability Due Diligence Directive (henceforth, the Due Diligence Directive), the Corporate Sustainability Reporting Directive (henceforth, the Reporting Directive), and the German Act on Corporate Due Diligence Obligations in Supply Chains (henceforth, the German Supply Chain Act). These laws have come about because policymakers understood that decades of voluntary Corporate Social Responsibility schemes have largely failed to limit harms to workers, communities, and environments in global supply chains.

This new generation of regulations can now catalyse a sorely needed paradigm shift for workers. This would be a shift from company-controlled systems to investigate and address harms to workers in global supply chains to systems where workers' rights, needs and perspectives are paramount. The objective of these new models would not be to protect brands against reputational risk, but to protect workers from harm. The core activities, currently controlled by corporate actors every step of the way, would be supplemented with a process where workers have equal voice, supported by trade unions, worker representatives

and human rights defenders. The outcomes would include remedy for workers based on workers' rights and reflecting their needs, expectations, and perspectives.

These worker-oriented outcomes of the new human rights due diligence regulatory regimes are not inevitable. Another possible outcome is a market opportunity for a rapidly growing "business of worker rights" designed to assure regulators, buyers, investors, and consumers that companies are, in fact, adequately addressing supply chain risks. The actual beneficiaries might be a new breed of business that offers volumes of data at the click of a button and seductive software and AI tools that appear to solve regulatory requirements.

The risk is that the failures of the voluntary schemes will be submerged in a flood of non-transparent data. In this context any dedicated buyer or investor, seeking to ensure their procurement or investment does no harm, will be inundated with misleading or false information. The risk to workers is that they are simply further marginalised by this deluge of new information.

Fortunately, the new laws demand a worker-centred approach incompatible with the commercialization of worker rights. Such an approach shuns technological quick fixes and embraces what workers everywhere have known to be the only way forward: hard work and human engagement particular to each context.

The business of worker rights[1]

The business of worker rights can be defined as that subset of the commercialized solutions and services that help organisations manage and report on their Environmental, Social and Governance (ESG) performance focusing on human rights in global supply chains. This includes businesses that provide ESG assurance services, ESG rating services, ESG intelligence platforms, and ESG consultancy services. Many firms provide overlapping sets of services. For example, the largest ESG assurance service companies include the big four accounting firms—Deloitte, PwC, EY and KPMG—as companies often use firms that audits their financial statements to also provide ESG assurance. One of the larger companies providing ESG rating services is Moody's, the credit rating company. Others include S&P Global, Sustainalytics and EcoVadis. Companies providing ESG intelligence platforms include some that provide ESG assurance services, such as PwC and UL Solutions. Finally, top companies in the ESG consulting services market include the big four accounting firms, but also a couple of large IT companies, IBM and Schneider Electric.

Growing markets and key drivers

According to the research firm, Verdantix, the global ESG assurance services market was worth $1.54 billion in 2022 and will expand annually at 27% to reach $5.89 billion by 2028. At the same time, Verdantix expects global market spending on supply chain sustainability software

[1] Please see the Annex for a more detailed view of this industry.

to grow from $1.7 billion in 2023 to more than $7 billion in 2029. Mordor Intelligence estimates the market size for ESG rating services at $10.37 billion in 2024 and expects it to reach $15.42 billion by 2029, growing at an annual rate of 8.25%. According Growth Market Reports, the global market for ESG consulting services was valued at close to $8 billion in 2002 and was expected to reach more than $30 billion by 2031, growing at an annual rate of 16.5%.[2]

In general, market analysts believe the "growing scrutiny of human rights in supply chains" is one of the drivers for demand of ESG related services. They refer to "the adoption of the EU's [Due Diligence Directive], the enforcement of the German Supply Chain Act, the UK government's intent to tighten the reporting requirements under the Modern Slavery Act, and…Canada's modern slavery bill." According to another analysis, the main driver for increased spend on supply chain sustainability software is "the raft of upcoming reporting requirements, particularly in Europe, with a growing emphasis on social-related disclosures, broader due diligence legislation, industry-specific requirements and mandatory product-level reporting." This analysis specifically refers to the EU Forced Labour Regulation banning products made with forced labour from the EU market and similar bans in North America.

Many companies in the ESG service industry develop products geared to meet company compliance with specific regulatory measures. For example, in June 2024, Infor Nexus, an "intelligent supply chain network platform," announced a new application to help companies "map their multi-tier supply chains and provide evidence to support compliance with regulations such as the German Supply Chain Due Diligence Act and Uyghur Forced Labor Prevention Act (UFLPA) and the French AGEC Law [Anti-Waste for a Circular Economy Law], and to document substantiation for product claims." The same month EcoOnline, a software company, announced a new ESG software solution helping organisations confidently comply with the EU's Reporting Directive. Some smaller businesses have sprung up specifically to meet the demands of legislation. For example, Fairsupply has its origin in the Australia Modern Slavery Act while TISC Report was designed in 2016 to help monitor compliance with the UK Modern Slavery Act.

The EU's Reporting Directive may be a key driver of the ESG service industry. As of 2024, the Reporting Directive requires more than 50,000 firms to report their sustainability impacts. The Reporting Directive mandates disclosure based on the European Sustainability Reporting

[2] The leading companies in this growing market appear to be doing very well. Although financial figures for the large audit firms are linked to many other parts of their businesses and may not be indicative of the ESG service market, it is notable that Deloitte had record revenue in 2023 and PwC in 2022, while EY recorded the highest growth in two decades and record global revenue in 2022. More telling may be the performance of companies in the social auditing industry. Bureau Veritas and TÜV SÜD both recorded record earnings in 2023, while Intertek had the highest earning in 10 years. Both BSI and SGS also saw strong growth in 2023. Companies specializing in ESG services also appear to be growing though they do not always disclose profitability figures. For example, over the 12 months leading up to 2023, EcoVadis' revenue grew by 50% as it secured a $500 million investment. FairSupply secured a $4 million investment in 2022, which, although modest by comparison, also suggests the company is positioned for growth. Meanwhile, LRQA, which used to be the Business Assurance & Inspection Services arm of Lloyds Register and which acquired social auditing firm, Elevate, has, in turn, been acquired by Goldman Sachs, one of the world's leading asset managers, another signal if the potential for growth in the ESG service industry.

Standards concept of "double materiality"; that is, companies must report both on their impacts on people and the environment and on how social and environmental issues create financial risks and opportunities for the companies. The Reporting Directive requires disclosure of a full range of sustainability issues including worker rights issues in the value chain. Companies must obtain independent assurance of sustainability disclosures, beginning with "limited assurance" and moving to "reasonable assurance." The Reporting Directive borrows these terms from the assurance profession and explains that limited assurance is provided in negative form—nothing indicates that disclosures are materially misleading—while reasonable assurance must be positively proven and requires a higher degree of verification. The European Commission is expected to adopt standards for reasonable assurance of sustainability reporting by October 2028. Nevertheless, already in 2024, the Reporting Directive is generating a massive influx of sustainability data requiring limited assurance within a tight timeframe.

While the Reporting Directive requires companies to report on their sustainability impacts, the EU's Due Diligence Directive requires companies to conduct human rights and environmental due diligence to identify and assess those impacts, and, as necessary, prevent, mitigate, and remedy them. It also requires companies to report annually on their implementation of human rights and environmental due diligence. The Due Diligence Directive compliance obligations will start in 2027 and will apply to approximately 6,000 large EU companies and 900 non-EU companies. These companies will need to collect supply chain sustainability information and improve data quality across multiple tiers of their supply chains.

Finally, investor demand for ESG compliance is another driver of the ESG service industry. Bloomberg expects ESG assets—that is, investments evaluated with Environmental, Social, and Governance criteria—to surpass $50 trillion by 2025. That is more than one third of all assets that an individual or financial institution manages on behalf of clients.

Escalating demand and a growing skills gap

The ESG service industry will need to collect, review, and assess an overwhelming amount of sustainability data in time for the first Reporting Directive based on the "limited assurance" standard. Already in 2022 CSRHub reported that they "ingested 49 million ESG data items from the hundreds of ratings groups" it worked with that year. Social auditors—already stretched to the limit having to conduct broad scope and complex reviews of labour standards and management systems in large factories in a few short days—will be under even more pressure to deliver results for companies. According to one market analysis, "ESG assurance providers will struggle to scale up capacity."

Compounding the time pressure "is an emerging skills gap," with a scarcity of experts able to meet escalating demands. The skills gap is particularly evident in the area of human rights in global supply chains. This is ironic as the global crackdown on human rights abuses is one of the key drivers of growth of the ESG industry. The United Nations Working Group on Business and Human Rights has recently raised concern that "ESG rating methodologies lack transparency and consistency, and do not include sufficient human rights data." This is not strange as none of the firms leading this industry was founded to promote or defend human rights in global supply chains. The social audit firms arguably have one type of expertise in

researching rights violations in global supply chains, although this industry has, at best, an uneven record identifying and addressing core labour rights violations. They lack expertise in the broader human rights due diligence process: to identify, assess, prevent, mitigate and remedy harm to workers and communities in global supply chains. The UN Working Group suggests that the quality of human rights data would improve through collaboration with civil society organisations, trade unions, and rightsholders. But trade unions and other labour rights civil society organisations are not part of the ESG service industry. In a sign of trade union concern, a network of labour activists, the Global Unions' Committee on Workers' Capital, has launched a research project to assess how ten of the world's largest ESG rating agencies incorporate labour rights into their company ratings.

Where does the data come from?

Companies, buyers, investors, and other consumers of the ESG service industry would do well to question the data they rely on to address human rights risks in their supply chains. Where does the data—such as CSRHub's 49 million ESG data items—come from?

The short answer is it seems hard to know. According to one study, users of ESG intelligence platforms often do not know how data is collected, what methods and sources are used, or how they are verified and analysed. Similarly, analyses of modern slavery statements provided to the UK Government have found they often lack detailed information of the steps taken to identify or address modern slavery risks.

ESG data is, in part, self-reported. It can be culled from company websites, annual reports, or ESG reports. There are also many external sources of data, such as media, NGOs, governments, and social media. There is an overwhelming quantity of data and data sources. EcoVadis, for example, uses no less than 100,000 sources of data to produce their "360° Watch Findings." The assumption is that more information equals better information. More information gets us closer to truth. Indeed, ESG intelligence platforms such as PwC's ESG Intelligence tool promises to integrate information from multiple sources in a "single source of truth."

> ***Big numbers are impressive, and it is tempting to think that so much data must be right. But consider for a moment, information from workers about their own working conditions. A worker's direct report is but one of many thousands of data items. Its importance is diminished by the overabundance of other information points. Moreover, workers who are most at risk of rights abuse are the least likely to make their voices heard; their abuse is unlikely to trigger even a single data point.***

Such workers will nearly always fear reprisals from their employer or state authorities for speaking truthfully with social auditors or any external monitor or reporter. Understanding workers' perspectives on their own working conditions requires the hard work of engaging with trade unions, civil society organisations and workers themselves, as the UN Working Group suggests. But even if we could turn the switch to scale up this type of first-hand

engagement, this would not necessarily yield the kinds of data that ESG tools can readily mine to produce their "truths."

More data sources and more information are not the same as better transparency and do not alone get us closer to any meaningful truth. They do not help to buttress the rights of workers in global supply chains.

Workers twice exploited

The provision of a massive amount of ESG related services, including assurance services, based on weak standards, in a short period of time, is a recipe for misleading or false assertions of environmental and social responsibility. According to one prediction, the winners in the ESG service industry will be those who make regulatory compliance quick and easy. That means software vendors and others that provide "automated solutions to manage the growing complexity and scope of product sustainability disclosures." These quick and simple solutions will not leave much room for collaboration with trade unions, civil society and workers, a collaboration that is essential for credible human rights data.

The risk is that the ESG service industry is purely a business of worker rights, allowing big corporations to profit twice from the same worker. First, they profit through exploitation of labour and, second, from the commercialisation of data about the risks that the worker faces at work.

Where will this double-dipping into rights violations leave human rights due diligence? The short answer: with a poverty of meaningful data that will fail workers once again. The risks that come to light will, at best, be those regularly reported in most mainstream social audits. These reports mainly cover violations that are visible to the naked eye such as working hours violations detectable through a review of records or health and safety violations apparent on the shop floor. They will rarely include violations that only come to light through ongoing, trust-based engagement with workers or trade unions, such as discrimination and gender-based violence, various forms of forced labour, violations of the freedom of association, or health and safety issues not visible on the shop floor. There is a very real risk that workers will be no better off than under the voluntary CSR schemes that have largely failed them for decades.

Towards real human rights due diligence

It is not the intent of the legislators of mandatory human rights due diligence to foster a new business of worker rights at the expense of the workers. This is not the objective of any of the new generation of forced labour prohibitions, transparency and reporting requirements, and human rights due diligence mandates.

These regulations all demand a worker-centred approach. Regulators should now be clear that "quick and simple" regulatory compliance through the ESG service industry is a

misguided approach, potentially undermining the purpose of the regulations.

The only way forward is what workers everywhere have known to be the only way: hard work and human engagement particular to each context.

To take one example, the EU's Due Diligence Directive is clear that human rights due diligence cannot be outsourced to ESG service providers but requires engagement at site level where workers face risk of rights violations and harm.

The Due Diligence Directive calls for companies to establish "fair, publicly available, accessible, predictable and transparent" complaints procedures for workers, trade unions and other worker representatives. To do that they cannot simply ask their suppliers to set up a hotline and be done with it. They must seek out and establish dialogue with trade unions, discuss the most effective approach with both the supplier and worker representatives, and monitor use of the complaints channel to see who uses it, how often, and what issues are addressed. This requires companies to be open to different perspectives and maintain ongoing commitment to grievance channels that are demonstrably effective.

The Due Diligence Directive requires companies to have meaningful engagement with stakeholders, including workers and trade unions, to "gather the necessary information on actual or potential adverse impacts… identify, assess and prioritise adverse impacts…[develop] prevention and corrective action plans…[decide] to terminate or suspend a business relationship…and [adopt] appropriate measures to remediate adverse impacts…"

This means that the automated data collection and analysis companies may get from an ESG service provider can only be an initial step in a human rights due diligence process that must involve meaningful engagement with rights holders on key decisions every step of the way. The text between the lines here is clear: companies must commit to collaboration and joint decisions.

The Due Diligence Directive requires remediation, defined as "restitution of the affected person or persons, communities or environment to a situation equivalent or as close as possible to the situation they would be in had the actual adverse impact not occurred…" Remediation itself is a process requiring meaningful engagement with those who have been harmed or their representatives. Most social audit firms have no or limited experience to offer companies in this level of engagement and could never be a substitute for companies' own involvement.

The Due Diligence Directive also calls for companies to "tackle harmful purchasing practices" and, to mitigate and prevent harm, "make necessary modifications of…the company's own business plan, overall strategies and operations, including purchasing practices, design and distribution practices." This provision reaches far into corporate board rooms, questioning

core parts of the business model. At best, an ESG service provider could provide guidance but ultimately, tackling harmful purchasing and business practices is up to the companies themselves.

Real human rights due diligence is painstaking hard work.

> ***This new regulatory regime cannot be reduced to yet another market opportunity. It requires companies to broaden their perspectives beyond reputational risk and engage with the risks that workers face every day.***

It requires them to build new relations with trade unions and civil society organisations that interact with workers. It requires them to participate in processes where workers or their representatives have equal voice. It may require them to question their own business model. Initially, this is not easy for any company. But those who do undertake such a journey should be those who are rewarded by investors, buyers, and, yes, ESG rating providers.

Annex: Some of the main players in the ESG Services Industry

The largest ESG assurance service companies include the big four accounting firms as companies often use firms that audits their financial statements to also provide ESG assurance. Deloitte, a 175-year-old financial audit firm, now boast an Audit & Assurance Sustainability and ESG Services team and an "award-winning ESG solution." PwC trumpets "world class assurance skills" as they bring together "capabilities and wide experience as financial auditors, with specialist subject matter expertise in ESG/sustainability assurance." EY Climate Change and Sustainability Services professionals can conduct "independent assurance procedures over nonfinancial and other ESG disclosures, metrics and reporting," offering "reasonable or limited assurance in accordance with global or local standards." KPMG proclaims that they are "experts at delivering high quality assurance over ESG and other non-financial information," offering either limited or reasonable level of assurance, like EY.

Companies better known in the social audit world now also provide ESG assurance services. BSI offers Sustainability Report Assurance, "bringing transparency and accountability to ESG strategy and reporting." Bureau Veritas "can help businesses prove that information shared about their sustainability performance is accurate and bias-free," helping to protect their clients' brands and reputation. Intertek provides ESG assurance, "independent verification of sustainability disclosures and reporting," as part of their Total Sustainability Assurance initiative, which also includes sustainability testing, inspection and certification. LRQA, which acquired one of the world's largest social audit firms, Elevate, in 2022 to meet the fast-growing need for ESG due diligence and assurance solutions, in 2024 announced "a new era in risk management," which they labelled "Assurance 4.0." SGS offers multiple ESG assurance service packets, such as ESG Disclosures & Sustainability Report Assurance and ESG KPI verification and assurance. TÜV Rhineland offers a comprehensive Sustainability and ESG Assurance Service that includes independent third-party assurance and verification services for sustainability reporting and ESG claims. Finally, UL, formerly known as Underwriters Laboratories, has developed a division, UL Solutions, which aspires to be a "trusted partner for independent verification" of ESG performance.

One of the larger companies providing ESG rating services is Moody's, the credit rating company, which has formed an ESG Solutions Group to provide ESG risk scores and analytics. In doing so, the company claims to leverage "more than a century of trusted credit insights and analytics" as well as ESG expertise. S&P Global, formerly McGraw Hill Financial, is another credit rating company that now provides companies with ESG ratings. Bloomberg, best known as a media company, provides "ESG scores that investors can use to assess company or government…performance on a wide range of ESG…issues" based on a database that covers 15,000 companies in over 100 countries. MSCI offers ESG ratings for investors, classifying companies as leaders, average, or laggards. Sustainalytics has specialized in managing ESG risks and opportunities for institutional investors for 30 years and provides ESG risk ratings that cover more than 14,000 companies across 42 industries. Sustainalytics was acquired by Morning Star, a global financial services firm, in 2022. EcoVadis, with a mission to provide the world's most trusted business sustainability ratings, claims to be "the world's largest and most trusted provider of business sustainability ratings" with more than 130,000 rated companies. Finally, CSRHub aggregates data from multiple sources to offer "consensus ESG ratings."

Companies providing ESG intelligence platforms include some that provide ESG assurance services, such as PwC and UL Solutions. For example, PwC provides an ESG Intelligence tool to "collect ESG related information from multiple sources, integrate it in a single source of truth and enable live performance monitoring for critical KPIs." ESG risk rating suppliers, such as Bloomberg, MSCI, Morningstar Sustainalytics, and CSRHub also provide ESG intelligence platforms. Altana, with a vision of collaborative, resilient, secure and sustainable global value chains, promises "The World's Most Comprehensive Map of the Global Supply Chain — a Shared Source of Truth for Business and Government." Their intelligence platform can, they say, "automatically screen shipments and products for connections to forced labor." Another company in this field, Fairsupply, is an ESG technology and data business specialising in identifying supply chain ESG risk. They aspire to provide "unrivalled global supply chain transparency and intelligence" to ethical investors and purchasers. TISC Report, which is operated by Semantrica Ltd, a "profit-with-purpose social enterprise," provides a "Transparency in Supply Chains platform."

Finally, top companies in the ESG consulting services market includes some that are listed above, including the big four accounting firms, PwC, KPMG, Deloitte, and EY. Notably, this field also includes two large IT companies. IBM offers a solution to organisations "under pressure to demonstrate their commitment to sustainability and social responsibility." IBM promises to use their technology and expertise "to enable organizations to streamline their reporting processes, reduce risks tied to ESG performance, and improve operational efficiencies." Schneider Electric promises to be "your partner in ESG strategy and reporting." They can do everything from identifying top ESG topics for a company, comparing company disclosures to ESG ratings and rankings, and writing ESG reports for companies.