UPPING THE ANTE ON HUMAN RIGHTS DUE DILIGENCE

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The question of how companies carry out due diligence to ensure that human rights abuses are not taking place in their supply chains, is becoming increasingly prominent. The EU has a patchwork of laws promoting transparency and supply chain due diligence in some sectors, and is under increasing pressure to table new legislation to protect human rights.

The ‘Gearing up EU action in Responsible Business Conduct’ event, including the presentation of a shadow EU action plan for Responsible Business Conduct by MEPs, examines how such legislation should be shaped, what tools are needed by civil society, and how company sentiment towards such initiatives has evolved.
Companies will support EU law on due diligence, but need assurances on liability

Gearing up for fair globalisation and accountable business

Table human rights due diligence law, MEPs tell Commission
Companies will support EU law on due diligence, but need assurances on liability

By Benjamin Fox | EURACTIV.com

Companies will support EU law on human rights due diligence, but want assurances that it will not expose them to increased risk of lawsuits, argues Virginie Mahin.

Virginie Mahin is the global social sustainability & human rights lead for Mondelez International.

She spoke with EURACTIV’s Benjamin Fox.

What particular elements of a human rights due diligence (HRDD) law are most important to reaching your aim of eradicating forced labour and deforestation from supply chains?

Many companies like ours are already implementing due diligence measures and we want to avoid a patchwork of legislation at national level…it’s important to have a level playing field.

It’s important to have an HRDD law that from the beginning recognises that those issues need collective and pre-competitive action…and need to involve local officials and civil society.

But there is no quick and easy fix. Due diligence is about finding about what is going on in supply chains. Finding about it doesn’t necessarily mean that we can quickly fix it.

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But it’s not only governments of consuming countries but also producing country governments that have a duty to protect human rights. That is laid down in the UN guiding principles on business and human rights.

**What do we need from an HRDD law to ensure that it is implementable and effective?**

Companies need to have confidence they can be transparent about risks in their supply chains without fearing that they will be exposed to increased risk of litigation. We need to make sure that when we are transparent we are not exposed.

For a law to be really effective we need to have some kind of enforcement mechanism. It’s not enough for companies to say that they are doing something about human rights in their supply chains. As a company, you should be rewarded for having strong due diligence systems and preventing abuses.

**What about precise sanctions for companies that breach due diligence requirements? Would you support them?**

Our thinking is still quite theoretical on this. What’s important is to create incentives for businesses to do their due diligence and take action. We are still looking for policymakers to look at how they frame this.

**Some business leaders will argue that supply chain transparency and duty of care is simply not possible to implement in practice. How would you respond to that?**

I wouldn’t deny that it’s difficult… and I wouldn’t say that our systems are perfect. But the argument that it is too complicated to do just doesn’t cut it any more. What we see in the UN GPs (guiding principles) is a step by step approach that makes it possible for businesses at levels of maturity to take a risk-based approach, prioritise and get on a journey of continuous improvement.

**Would a mandatory HRDD law not mean a loss of competitive advantage for European companies?**

It should apply to European companies and companies like Mondelez, which is US-based, that operate in Europe. Companies aren’t going to stop wanting to sell and do business in Europe, so that feels like a bit of a cop out of an argument to me. These conversations aren’t just happening in Europe.

If Europe were to move ahead and gets its businesses future ready then maybe it could be a competitive advantage in the longer term. It’s not just the business environment that is changing. Consumers and investors want to know that we are sustainable and transparent.

**There is a lot of rhetoric about sustainable business but are we really seeing changes in mindset among businesses?**

I think so. I think there’s a genuine change in mindset. It takes time for things to move but it’s definitely happening. In cocoa, for example on child labour, we have multi-stakeholder industry initiatives. We have the International Cocoa Initiative where we work collectively on tackling child labour issues in the West African supply chain.

The risks are well known in the cocoa supply chain both on the human rights side with child labour and the environmental side with deforestation. We address these issues with our sustainability Cocoa Life programme which was launched in 2012, backed by a $400m of investment, which goes to show how the business itself recognises those risks as challenges that we need to address to strengthen our supply chain.

So it is there – it is coming both from within and from consumers demand.

But while there are a lot of good voluntary initiatives we still think it would be beneficial to have a binding law at EU level to provide a level playing field, and bring along companies upstream in the supply chain, which may not be under the same consumer-facing pressure. And the law should provide that safe harbour we are talking about. That is essential to us.

**Is there demand from your customers and investors for increased transparency on due diligence?**

Consumers are definitely showing that they care about where their products come from. In terms of chocolate, people want to know what is happening in the cocoa supply chain. Investors are also being active – there are an increasing number of investors who pay attention to sustainability performance and use benchmarks to rank and compare companies.

**So you are looking for the EU to take a coordinating approach to ensure that national and European laws do not contradict each other?**

Absolutely, that’s exactly what we are looking for – a harmonised EU approach. We need to make sure that at EU level there is policy coherence across policy sectors from trade to foreign aid, with a smart mix of measures including supply chain due diligence.
Every day goods produced by European companies abroad enter the internal market, tainted by serious human rights violations. Be it child labour in cocoa supply chains, chemical poisoning in the electronics sector, or forced evictions and environmental devastation from mining. Rights violations stemming from EU business operations abroad impact millions.

Heidi Hautala is Vice President of the European Parliament, Chair of the European Parliament’s working group on Responsible Business Conduct.

Jude Kirton-Darling is Member of the European Parliament, Member of the International Trade Committee.

In Pakistan, Saeeda Khatoon’s teenage son, Aijaz Ahmed, was...

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producing jeans for a German textile brand when the Karachi textile factory caught fire. The utter lack of fire safety measures together with barred windows and locked gates, meant that he and roughly 260 other workers were burnt alive at their machines. Just twenty days before, the factory had been certified fire safe by an Italian auditing company.

As the past decades have unfolded, stories like Saeeda’s have become routine, almost to the point of tedium. The weekly incidents of persons killed, harmed or displaced by European business operations go unreported. They continue because the current rules for corporate accountability do not match the current reality of the global economy. Rules for business accountability and responsibility have not kept pace with the rights and freedoms legally granted to business by globalisation. The accountability gap persists in spite of the modern European citizens’ understanding that to profit from the misery and harm of others is both inhumane and unconscionable.

We know, for instance, that forced labour in global supply chains is generating $150 billion a year in profits whilst delivering goods for sale to EU consumers. These massive profits are going to businesses not undertaking human rights due diligence; who do not afford the time and effort to ensure their supply chains are free from human rights violations.

Efforts of a small group of responsible business front-runners are thereby undermined. They are left at a competitive disadvantage. Responsible business is currently even dis-incentivised by market forces. Systemic progress remains hamstrung.

Today’s rules continue to facilitate a race to the bottom when what we desperately need – if we are to have any realistic hope of delivering on the Sustainable Development Goals – is a business race to the top. To its discredit, the EU has waited in order to be proven the hard way that regulation is, necessary for ensuring that change really takes places.

Last week the cross-party European Parliament Working Group on Responsible Business Conduct invited Saeeda Khatoon to share with us the reality inside factories that produce for European businesses and consumers. In return, we put forward a comprehensive plan for the EU to drive a truly responsible and accountable European business sector.

There needs to be a certainty that rules are equal, and outcomes for victims and responsible businesses are fair. EU needs to ensure an effective legal right of redress, whilst levelling-up the responsible business playing field.

A centrepiece is a corporate duty to undertake human rights due diligence, and a right of remedy for those harmed by the failure of doing so. Such laws have already been passed, enshrining the internationally recognised corporate responsibility to “do no harm”, and future laws are currently being debated by parliaments around Europe and the world.

Our Shadow EU Action Plan on Responsible Business Conduct outlines the regulatory measures to be taken by putting the “do no harm” and remedy principles into law. The time is now for the European Commission to progress this legislative agenda. Passed in 2011, the United Nation Guiding Principles on Business & Human Rights require state regulation as an essential means to achieving responsible business conduct and overcoming victims’ barriers to redress.

Enabling re-location and outsourcing of operations abroad, needs to be paralleled by updated corporate accountability rules. A continuing accountability gap will keep on delivering unethical profits, such as the $150 billion a year from forced labour, while leaving a systemic change paralysed. Things will not change unless Europe moves to change them.
MEPs have launched ambitious plans for an EU law requiring companies to carry out human rights due diligence in their supply chains.

The demand of the next European Commission is at the heart of the shadow EU Action plan launched on 19 March by the European Parliament’s Responsible Business Conduct Working Group which covers the five-year term of the next EU executive.

Such a law would require companies to carry out checks on their supply chains and look at risks that their activities may be harming human rights. By publicly reporting on these risks, and on what they have done to deal with them, companies can show investors, consumers and local communities that they are committed to responsible and sustainable business.


Almost half of all major EU companies have been the subject of documented accusations of human rights violations.

However, lawmakers believe that the attitude of companies is shifting both in terms of business practice and due diligence law.

“There are more and more companies who say ‘we want to be responsible but we don’t want irresponsible to reap the profits. We want a level playing field,’” said Green MEP Heidi Hautala, a member of the Parliament Working Group.

Hautala added that modern patterns of trade mean that corporate due diligence is the best way to

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monitor supply chains.

“We cannot trace international trade between states and regions any more, it is between companies in very long and complex supply chains. The groundwork that has been laid...will lead to the adoption of an EU-wide law on human rights accountability and due diligence,” added Hautala.

Virginie Mahin, global social sustainability and human rights lead for Mondelez International, said it would be “beneficial to have a binding law at EU level to provide a level field. Businesses stress the need for a level playing field and a harmonised approach to avoid overlapping EU and national laws.

The European Commission has welcomed the Action Plan but has so far refused to commit to tabling new legislation.

On 20 March, the Commission published its own Staff Working Document assessing progress towards meeting the UNGPs. The EU executive had been “encouraging companies to carry out appropriate due diligence, including with respect to human rights protection along their supply chains”, the paper argues.

A 2011 commitment from the European Commission to develop an Action Plan on responsible business conduct has been left unfulfilled for almost a decade and is likely to lapse yet again with the outgoing Commission.

In the meantime, fourteen member states have developed their own National Action Plans, triggering national processes on the establishment of safeguards for human rights against business-related abuse.

France’s ‘duty of vigilance’ law and the Netherlands’ Child Labour Due Diligence bill require companies to show a ‘duty of care’ in their operations, investments and supply chains.

MEPs say it is time for the EU executive to stop dragging its feet, although both they and activists are keen to stress that they are not ‘castigating’ companies.

“It is not about castigating companies but unless you have binding regulation, companies will not change their habits,” said Hannah Mowat, campaigns coordinator of FERN, an environmental and social justice NGO.

“We’ve been doing a lot of finger-wagging at companies but actually we need to take responsibility...they are part of the solution but they cannot carry the entire solution. That’s why we believe it’s so important for the EU to take action,” Mowat said.

However, civil society activists and companies are also anxious to ensure that any new due diligence regulation is not just based on ‘knowing and showing’, and that there are sanctions for non-compliance.

Campagners also say it is important to improve access to remedy for victims, alongside increased protection for human rights defenders.

“One crucial part of the Action Plan is a call for collective redress. For a form of class action mechanism that should be available to all victims of corporate abuse,” says Filip Gregor, head of the responsible companies section at lawyers Frank Bold.
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