THE DANISH INSTITUTE FOR HUMAN RIGHTS

30 JANUARY 2024

ENGAGING WITH SUPERVISORY AUTHORITIES

WORKSHOP REPORT

The Danish Institute for Human Rights (DIHR) convened a group of EU national human rights institutions (NHRIs) for a workshop focusing on the future supervisory authorities (SA) that will be tasked with monitoring the implementation of and compliance with the upcoming Corporate Sustainability Due Diligence Directive (CSDDD).

The workshop comprised of an information session on what is expected of the SA at the current stage of the negotiations of the CSDDD. This was followed by three concrete examples from jurisdictions which already have due diligence laws in place:

- Norway, with a presentation of the Consumer Protection Authority, the OECD National Contact Point and the Norwegian Institute for Human Rights;
- Germany, with a presentation of the Helpdesk and the German Institute for Human Rights;
- France, with a presentation of CCFD-Terre Solidaire / CSR Forum and the French National Consultative Commission on Human Rights.

The objectives of the workshop were to provide an overview of expectations on the SA in monitoring the implementation of the future CSDDD transposition law in their jurisdictions and take learnings from jurisdictions with due diligence laws to allow NHRIs to have a proactive role in the designation of the SA in their countries.

SECTION 1 – INFORMATION SESSION

1. What is a supervisory authority (SA)?

A Supervisory Authority (SA) is a mechanism of administrative supervision tasked with monitoring the compliance with a specific legal framework. The upcoming Corporate Sustainability Due Diligence Directive (CSDDD) provides that Member States designate one or several SA to monitor the good implementation of the law transposing the CSDDD and that businesses comply with their due diligence obligations.

Administrative supervision is one of several enforcement mechanisms for the CSDDD, and should complement a civil liability mechanism, operational-level grievance mechanisms and other remedy mechanisms set up by companies and business associations, OECD National Contact Points (NCPs), etc.

SA have a different approach in that they entail a proactive, risk-based approach to monitoring and sanctioning.

2. What are the SA's envisaged competences?

According to the political compromise text of CSDDD, which is now available online in the form of a negotiation table, the SA has the following tasks:

- Require companies to provide information.
- Carry out investigations related to compliance with companies' due diligence obligations either on its own motion or upon receipt of substantiated concerns, provided the SA has sufficient information indicating a possible infringement.
- Supervise the adoption and design of climate mitigation plans.
- Conduct inspections with prior warning of the affected company unless a notification hinders the effectiveness of the inspection, including in other Member State, with the assistance of that Member State's SA.
- Grant companies an appropriate period of time to take remedial action upon the finding of a failure to comply, whereby remedial actions taken do not preclude the imposition of penalties or civil liability.
- Impose administrative sanctions or penalties, or trigger civil liability in case of damages.

In order to fulfill their tasks, SA have at least the following powers according to the CSDDD:

- Order a company to cease an infringement by taking an action or by ceasing a conduct.
- Order a company to abstain from the repetition of a conduct.
- Order a company to provide remediation proportionate to the infringement and necessary to bring it to an end.
- Impose penalties.
- Adopt interim measures in case of imminent risk of severe and irreparable harm.

SA shall exercise these power in compliance with national law either directly, in cooperation with other authorities, or by application to the competent judicial authorities. Further, they must keep records of the investigations undertaken as well as records of enforcement action.

It is critical to note that the text of the CSDDD provides prerogatives the SA should have at a minimum; it is therefore possible for Member States to extend the mandate of the SA and ensure that it is adequately equipped to monitor the CSDDD transposition law.

3. Key competences for an effective SA

Recommendations have been made with regard to the type of competences an SA should have to be effective. For example, OHCHR and Shift made specific recommendations on key design considerations for administrative supervision, building around the two main functions an SA should have, education and sanctioning. These two functions should be clearly distinguished, including by possibly splitting these across two different actors or by relying on other actors dispensing the education mandate, for example (e.g., in Germany, the Helpdesk has an educational mandate tailored to business needs while the SA has the sanctioning mandate; NCPs and NHRIs can also take on the educational mandate).

The CSDDD covers a range of issues and areas of law that the SA should be equipped with, including but not limited to, corporate law, trade law, private international law, human rights law, sector and industry-specific challenges, etc. Strong business and human rights knowledge is therefore required for the implementation of the CSDDD transposition law. This will also enable the SA to meaningfully engage with both businesses and civil society, in particular by being able to tailor guidance, capacity-building and other advice to the specific type of actor and/or sustainability issues as needs arise.

Strong business and human rights knowledge is key to ensure that the SA can meaningfully engage and challenge businesses' performance, owing to the expectation on the administrative supervision mechanism to have a transformative, systemic effect on corporate conduct in relation to human rights and the environment. This will ensure administrative supervision contributes to the realisation to the objective of mandatory human rights and environmental due diligence.

Transparency for credibility should be at the centre of the way the SA will carry out its mandate and be organised. As such, mechanisms like an internal appeals procedure, accessibility by a range of stakeholders and a proactive approach to stakeholder engagement should not only be made possible by the SA's organisation, but also contribute to informing the SA's decision-making, including in the prioritisation of sectors or industries. In turn, accessibility to the SA means that it will be able to benefit from stakeholder perspectives necessary to the SA's investigation and monitoring mandate, such as by sharing information, including outside of the SA's jurisdiction.

While the SA is not a pathway to remedy, it should have a complaints-handling mandate and contribute to remediation indirectly, through its relations to the civil liability mechanism and other means of enforcement. In relation to courts, the SA may seek assistance from judicial mechanisms in its own investigations; refer complaints; support the implementation of remedial outcomes (including by playing a monitoring or capacity-building role); have its decisions considered or even used as evidence in court claims. The complaints-handling mandate should make the SA accessible even before the harm has occurred, but where there is a credible risk that a harm is occurring or that the company has breached its due diligence obligations. Reporting to the SA should therefore be confidential and provide appropriate protection for complainants, who will include whistleblowers.

Some stakeholders have made the recommendation to give the SA a mediation mandate for disputes occurring between affected stakeholders and companies. Additionally, it is recommended that the SA be able to adopt interim/safeguarding measures.

In order to fulfil their mandate and apply the many competences expected of them, the SA will need to have sufficient and appropriate financial and human resources. This is a condition for the credibility of the SA.

4. So who can the SA be?

There is currently no clarity as to exactly which actors will take on the role of SA in each Member State. However, both the CSDDD provisional agreement and early talks indicate that some Member States may be inclined to designate the authorities tasked with the supervision of regulated financial undertakings. Other corporate regulators may be designated: in Norway, the Consumer Protection Authority is the SA for the Transparency Act, while in Germany, the Federal Office for Economic Affairs and Export Control supervises the Act on Corporate Due Diligence Obligations in Supply Chains.

The NCP has been brought up in conversations and is anticipated to play a role in relation to the SA. However, NCPs' capacity, mandate and resourcing vary widely between countries. Issues of governance, transparency and effectiveness of NCPs present an obstacle to actually considering them as effective administrative supervision mechanism. Instead, they can be considered as complementary, acting alongside an effective and well-capacitated SA.

Provided the scope of the CSDDD, it is recommended that the task of supervising the implementation of the law is taken on by actors that have knowledge in company and trade law, private international law, human rights law, as well as the capacity to handle complaints and have credibility with both companies and civil society organisations.

5. What else is needed?

The adoption of the administrative supervision approach has not been without criticism, and there is a risk that a poorly designed transposition law and a weak SA transform the due diligence obligation of companies into a meaningless 'tick-box' compliance exercise instead of a transformative process. Similarly, issues of lack of transparency and credibility of the SA have been raised by some actors. To counter such concerns, the CSDDD's administrative supervision should focus on preventing and contributing to remedying actual harms, including by not only looking at the actions taken by companies, but by monitoring the effects of these activities. This requires, among other things, qualitative and quantitative data: there is therefore a role for stakeholder engagement in the data

gathering process. Here, there is a role for a strengthened and empowered civil society (and NHRI!) Moreover, provided the range of the mandate under the CSDDD and the range of competences the SA is expected to have, there is a likelihood that the SA will need to rely on other actors' expertise, including civil society organisations and the NHRIs.

Once again, it must be stressed that administrative supervision can only work as one of several measures for the enforcement of the CSDDD transposition law – it should work in tandem with an accessible and effective civil liability mechanism; a strong and empowered civil society; and a range of accompanying measures creating an enabling environment for the pieces of the enforcement puzzle to function together.

6. What can NHRIs do?

Provided the broad expectations on the SA to deliver its mandate, it is key for human rights actors like NHRIs engage as early as possible on the designation of the SA and the development of its mandate. To do so, NHRIs can follow these first steps:

- Map out potential supervisory authorities in their jurisdiction (e.g., financial sector regulator, Consumer protection authority, corporate regulator, etc.)
- Engage with policymakers, including the relevant ministries that will be tasked with transposing the CSDDD (e.g., Ministry of Justice and Administration; business authority, etc.) to ensure that the actor(s) that will be selected is the most pertinent choice for delivering the extensive mandate under the law and that human rights knowledge and capacity are not relegated to a secondary role (in comparison to business and trade considerations).
- Raise awareness on the CSDDD and its anticipated consequences on human rights and corporate accountability to prepare civil society and rightsholders for the transposition and implementation phases
- Convening and engaging with civil society organisations in a collaborative manner to issue the mandate of an SA jointly and ensure that all relevant disciplines are covered by different actors.
- Engage with fellow NHRIs for cross-border learning.

SECTION 2 - LESSONS FROM THE IMPLEMENTATION OF DUE DILIGENCE LAWS IN SPECIFIC COUNTRIES

1. Lessons from the implementation of the Norwegian Transparency Act

In the first session, representatives of the Norwegian Consumer Authority (NCA) shared their experience on the implementation of the **Norwegian Transparency Act**, together with speakers from the Norwegian National Human Rights Institution (NIM) and the Norwegian National Contact Point (NCP) under the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (OECD Guidelines).

The Norwegian Transparency Act was adopted in 2021 and came into force on 1 July 2022. It aims to promote respect for fundamental human rights and decent working conditions and to ensure public access to information on how companies manage these issues. Under the law, companies are obliged to carry out due diligence processes in line with the OECD Guidelines, to report on the measures taken, and to provide relevant information to any person upon request. The personal scope is defined broadly and covers around 9000 Norwegian and some foreign companies. It accounts for the fact that Norway's business landscape largely features small and medium-sized enterprises (SMEs). In the course of 2024, the Norwegian government plans to review the Transparency Act under consideration of the upcoming CSDDD.

The speakers shared details on the process that led to the decision to assign the **Norwegian Consumer Authority (NCA)** as the responsible authority for the implementation of the Transparency Act. Key considerations for this decision were the experience of NCA in working across sectors and its working methods on issuing guidance and imposing sanctions on businesses. To acquire the necessary expertise to meet this new task, NCA has hired additional staff. Today, the responsible department comprises 8 people with different professional backgrounds, including on human rights, sociology, law, and experiences from public service – the interdisciplinary makeup of the team was saluted as enabling the NCA to better deliver its mandate. The representatives of NCA pointed out the value of having a clear mandate way before a due diligence law comes into force because this allows the relevant institution to build up the necessary internal structures and competences.

A key task of NCA in the implementation of the Transparency Act is the **preparation of relevant guidance** for companies and other stakeholders. The authority fulfils this task by means of publications, meetings, seminars, and courses. Relevant material is available on the website of NCA in Norwegian and, in part, also in English. In addition to this guidance, NCA responds to inquiries via email and phone. The provision of guidance has been a priority in the initial phase of implementation due to the high demand in legal explanations and clarifications, especially on reporting. Moving forward, NCA anticipates that there will be more demand for guidance on how to undertake adequate due diligence. The speakers noted the

importance of working closely with the responsible communications team to reach a wide audience with general guidance.

Aside from issuing guidance, NCA also has the power to order prohibitions, to issue orders, and to impose penalties in the form of a running charge or lump sum. To date, NCA has received 25 complaints. According to the speakers, these submissions relate to information requests that persons have submitted to companies under the Act. The authority has yet assessed due diligence processes on an individual basis. According to NCA, the handling of complaints, especially now in the initial phase, requires considerable resources and is very time consuming – an important observation given that the requirements of the CSDDD will go further than the Transparency Act in certain areas. In this context, the speakers pointed to the value of a cooperative approach as a means of addressing the issue of limited resources.

To account for the challenges of implementing the Transparency Act, NCA favours a **cooperative approach**. As its representatives explained, the authority involves other actors with relevant expertise, including NIM, the NCP, the Norwegian procurement agency, employee and employer organisations, and civil society actors. The representatives also highlighted the value of engagement with companies and civil society actors. The authority has participated, for example, in joint events, company visits, and a study trip to Bangladesh organised with the Ethical Trade Initiative.

Finally, **NIM and the Norwegian NCP** shared their perspective on the cooperation with the NCA. Early on, the organisations have held meetings to discuss their respective roles, responsibilities, and competences. The key role of NIM was hereby to complement the practical experience of the NCA with relevant expertise on business and human rights. It held a human rights due diligence course, facilitated a conference, and shared a table of relevant resources with the NCA. Moreover, NIM offers online material to facilitate the implementation of the Transparency Act, including a recorded discussion of representatives of NIM, NCA and the NCP, a dedicated website with frequently asked questions, and specific guidance, for instance, on climate and human rights. The NCP has also played an important role in the implementation of the Transparency Act, not at least because the Act draws very closely on the OECD Guidelines. The organisation held an introduction course for NCA and continues to run trainings on the Transparency Act together with NIM and NCA. Both, NIM and the Norwegian NCP emphasised the value of a close and ongoing working relationship with the NCA to boost the expertise and capabilities of the supervisory authority and affected businesses for the purpose of implementation.

2. Lessons from the implementation of the German Supply Chain Act

The second session concerned the implementation of the German Supply Chain Act and featured contributions by speakers from the German Helpdesk on Business and Human Rights and the German NHRI.

The German Supply Chain Act was adopted in 2021 and entered into force in 2023. It aims to address human rights and environmental impacts in the operations and supply chains of large companies that are based in Germany or represented by a business branch. Under the Act, companies are required to exercise due diligence with regards to human rights and certain environmental risks concerning their own operations and their direct suppliers. Due diligence on indirect suppliers is only required, where a company gains 'substantiated knowledge' of a violation.

The German Supply Chain Act provides for administrative supervision by an existing public authority, the German Federal Office for Economic Affairs and Export Control (BAFA). BAFA is responsible for monitoring and enforcing the Act and employs 101 employees for that specific purpose, which are divided in 8 departments, 6 of which cover specific sectors. To date, BAFA has issued 6 guidance documents and operates a database for risk indicators.

BAFA investigates **cases of non-compliance** either *ex officio* or following a complaint by a person demonstrating that an instance of non-compliance caused or may cause a violation of its protected legal interests. The authority takes hereby a risk-based approach. It can request information, give orders, and sanction cases of non-compliance. Non-compliant companies can also be fined and excluded from public procurement for up to 3 years. Thus far, BAFA has focused on cooperating with companies to facilitate compliance. It has proactively contacted about 500 companies from high-risk sectors to engage on their due diligence processes in order to establish an ongoing dialogue. To date, no sanctions were imposed.

To receive complaints by affected persons, BAFA has established an online portal for submissions. This mechanism is available in different languages and allows for anonymous submissions. It is not designed as a grievance mechanism to counteract or make good a human rights harm. In this context, the speaker of the German NHRI pointed to the challenges posed by German administrative law to the establishment of a channel that is also capable of facilitating effective remediation.

In addition, the implementation of both, the international standards on business and human rights (especially the UNGPs) and the German Supply Chain Act, is facilitated by the German Helpdesk on Business and Human Rights. This institution provides support for companies and cooperates with BAFA, for instance, on the drafting of guidance. The Helpdesk was established in 2017 in connection with the German National Action Plan on the implementation of the UN Guiding Principles on Business and Human Rights. It serves as a "one-stop-shop" for companies and business associations that seek advice and information on business and human rights. Having grown considerably over the past years, the Helpdesk comprises today of 16 employees with different professional backgrounds that reflect the organisation's interdisciplinary approach. According to the speakers, the Helpdesk serves as a mediator between companies, regulators, and stakeholders and translates the needs of either actor to the others. As such, the Helpdesk regards itself as a neutral actor and does not position itself in political debates.

The adoption of the German Supply Chain Act elevated the role of the Helpdesk, which is now also providing information and input on adequate due diligence measures in view of the new legislation. The speakers explained that the demand for their presentations, events, and advisory services has considerably increased, going from 94 requests by companies in 2017 to 1264 in 2023. Notably, these requests do not only stem from companies that fall directly under the German Supply Chain Act, but also from SMEs which are confronted with requests by their buyers and other business partners. According to the speakers, the Helpdesk offers a range of services, including free-of-charge advice, training programmes, events, and online tools for support. It refers companies to a number of relevant tools and resources, such as CSR Risk Check, an e-learning course, the BHR Navigator, an SME DD Compass, and an SME Standards Compass – two resources that respond specifically to the needs of SMEs which the Helpdesk has identified through its dialogue with relevant actors as part of its advisory work.

The Helpdesk proactively addresses the most common questions raised by businesses, for instance, on how to prioritise risks, how to identify impacts beyond tier 1, or how to exert influence over a supplier. In response to a spike in requests from SMEs, for example, the Helpdesk supported BAFA in the publication of an official Guidance on collaboration in the supply chain between obliged enterprises and their suppliers. The speakers find that this guidance has led to a decrease in requests as the guidance pre-empts many key questions. Finally, the representatives of the Helpdesk emphasised that they take an effectiveness approach rather than a compliance approach to the implementation of due diligence processes. Thus, the Helpdesk supports companies in establishing effective due diligence systems that address adverse impacts on human rights and the environment on an ongoing basis, but it does not support the design of processes that merely aim to comply with the law.

3. Lessons from the implementation of the French Duty of Vigilance Law

The third session focused on the implementation of the French Duty of Vigilance Law and featured a presentation by the French civil society organisation CCFD Terre Solidaire. The particularity of France is that although the country has due diligence regulation in place, namely the French Duty of Vigilance Law, it does not have an administrative authority overseeing compliance and enforcement.

The French Duty of Vigilance Law, enacted in 2017, mandates companies to develop a 'Vigilance Plan' addressing human rights and environmental risks arising from their own activities, subsidiaries and supply chains. The law applies to very large French companies meeting certain employee thresholds, although research shows it indirectly affects about 80% of SMEs. The enforcement of the Law is placed into the hands of natural and legal persons, who must initiate proceedings before French courts. If a company fails to establish, implement, or publish a vigilance plan, any concerned party can file a complaint upon which the company is given a three-month period to comply, failing which a judge can enforce the publication of a plan. If risks materialise into damages, victims can file a civil lawsuit under French tort law, seeking damages for the company's failure to comply with the vigilance plan, provided they prove a causal link

between the damage and the breach of obligation. The upcoming CSDDD, which foresees a supervisory authority, will thus require amendments to the French Duty of Vigilance Law.

The representative of CCFD Terre Solidaire pointed out that in the absence of a public supervisory authority, civil society has assumed the role of facilitating enforcement of the Law. Together with the civil society organisation Sherpa, CCFD Terre Solidaire has set up a website, which provides relevant information on the Law. It offers a non-exhaustive list of companies that fall within scope and displays their vigilance plans. This is necessary because it has been difficult for stakeholders in practice to identify those companies that meet the threshold criteria defined by the Law, which has reportedly hampered enforcement. In addition, the website offers information and updates on cases that are brought before French courts based on the Duty of Vigilance Law, both in French and English. On the subject of French case law, the speaker also referenced an analysis published by several civil society organisations in 2023, which draws conclusions from ongoing cases under the Duty of Vigilance Law for the design of the upcoming CSDDD.

Further, the speaker shared the difficulties of CCFD Terre Solidaire and other civil society actors to cooperate effectively with the French NCP. NCPs under the OECD Guidelines vary considerably in their governance structure and institutional set-up across OECD countries. According to the speaker, French civil society actors have voiced concerns about the impartiality, level of resources, and transparency of the French NCP proposing reforms of the institution based on the model of other countries' NCPs. The representative gave the example of a complaint concerning the company EDF and its operations in Mexico, whose handling by the French NCP was perceived as insufficient in light of continuing human rights impacts.

Finally, the representative shared an analysis by the civil society organisation Sherpa, which critically assesses the discussion on having a supervisory authority to enforce the French Duty of Vigilance Law. The assessment draws inter alia on the experiences with the EU Timber Regulation and the EU Conflict Minerals Regulation and identifies a lack of transparency, especially as enforcement decisions are not made public. Against this background, the speaker argues for full transparency on enforcement decisions and sanctions imposed, also in the implementation of the CSDDD at the Member State level.

4. Final discussion and Q&A

In the final discussion, the participants raised several questions to the speakers to elaborate on their experience in the implementation of due diligence laws in the national context.

Question: Was there ever a discussion in Germany on assigning the role of the German Helpdesk on Business and Human Rights to the German NHRI?

Answer: The representative of the German NHRI pointed to the different mandates of these institutions in the German context. While the NHRI plays a major role in monitoring the implementation of the German Supply Chain Act and in engaging with policymakers and stakeholders, it neither has the mandate or capacity to advise businesses, which is a very specialised and resource-intensive task.

Further, the discussion touched upon the division of roles and responsibilities in the German context. Here, the different speakers highlighted the need to establish complementary rather than double structures. At the same time, it is key to cooperate with all actors at the national level, including not only the Helpdesk, BAFA and the NHRI, but also the responsible ministries and the German NCP. It was reiterated that the Helpdesk filled a gap in the German national context, given that there was no point of contact for companies on how to implement human rights due diligence processes effectively. According to the speakers, the Helpdesk model has also been adopted by the Netherlands with respect to the OECD Guidelines and it is expected to play a role in the implementation of the CSDDD as an accompanying measure.

Question: What role will the Norwegian SA for the Transparency Act (NCA) play in the revision of the Act in response to the CSDDD?

Answer: The representatives of NCA explained that the revision process lies with the responsible ministry. However, NCA plans to actively engage in the process moving forward.

Question: Do you see a need to have functions of the SA embedded in separate institutions? Is there a risk about conflicts if the future supervisory authorities are answering companies' requests for advice *and* deal with complaints?

Answer from the NCA (Norway): In the preparatory work for the Transparency Act it was discussed whether guidance and monitoring regarding the Act should be assigned to one or more bodies. The Ministry of Children and Families (responsible for the Transparency Act) assessed that it would be important for the enterprises to be able to relate to a single body when they are to comply with the new rules, and that this body is able to provide good guidance on how the Act is to be interpreted. You can read more about this in the preparatory works of the Transparency Act (see in particular section 9.1.3).

So far, the Norwegian Consumer Authority (NCA) has not encountered any explicit conflicts as a supervisory authority answering enterprises' request for advice and also dealing with complaints. That being said, it is not unlikely that some enterprises might be hesitant in being transparent with us and asking us for concrete guidance about their identified risks and measures to address them. We are aware of this tension, and we have ongoing discussions about the boundaries and limitations of our role, and how to mitigate potential distrust or scepticism on part of affected enterprises.

Our primary working method is dialogue and guidance, and this is something we have emphasized especially during the initial phase, since the Transparency Act entered into force. However, we can impose penalties in cases of serious/repeated violations of the Act.

Aside from fear of penalties from the NCA, we have the impression that some enterprises are hesitant to be transparent with the general public out of fear of potential reputational losses as a result of negative media coverage. For instance, in the autumn of 2023 we reviewed reporting by 500 enterprises. We found that a great deal of them lack information about the actual and potential negative impacts they have identified, as well as information about measures implemented to case or mitigate risks and (expected) results. This information is required in the reporting.

With these things in mind, it is important that the NCA reiterate to affected enterprises that we, as a supervisory authority, will not 'punish' transparency. On the contrary: we are more likely to react should an enterprise not find any risk at all or make no attempts to act responsibly. This is in line with the purposes of the act to promote enterprise's respect for human rights and decent working conditions and ensure access to information about their work. While media and civil society have the role of watchdogs, we hope that they too will eventually see that transparency should be rewarded, not "punished".

A more general reflection about this topic would be that many businesses are still unfamiliar with the idea of being transparent about potential negative effects of their activities, likely partly stemming from some of the concerns raised above. We certainly hope that increased attention and international legislation will aid in shifting attitudes towards responsible business towards its benefits for people and planet – but also for enterprises in terms of competitive advantages.

Another relevant factor to consider when answering this question is that the NCA cannot fulfil the duty to supervise in relation to the Transparency Act, unless all parties are required to disclose the necessary information which is needed in order to exercise supervision (Section 10 of the Act). This duty applies irrespective of the duty of confidentiality (although there are certain exemptions following the Criminal Procedure Act).

We have a duty in relation to diligent record keeping and possible exceptions in accordance with the Public Administration Act will be evaluated on a case-by-case basis. The NCA is an administrative body, and the ordinary rules regarding freedom of information requests apply.

Answer from the Helpdesk (Germany): In Germany, the approach of a Helpdesk for companies separate from the supervisory body has proven to be very successful. The structure allows for better support for private sector. BAFA is a very responsive body but it is also useful for companies to have the possibility to address questions/concerns about mHREDD to an independent Helpdesk.

Question: Any experience or plans in Norway around evaluation of the supervision efforts or the effectiveness of the approach taken so far - including emphasis in both jurisdictions on guidance, education etc?

Answer from the NCA (Norway): The Transparency Act is still relatively new – it entered into force 1. July 2022. In the preparatory work of the Act, The Ministry of Children and Families recognised that the developments in the EU may require changes to the Transparency Act, and stated they would therefore closely monitor the regulatory developments in the EU. The Ministry has recently started a process to evaluate the Norwegian Transparency Act. The project is in very early stages, and we are not yet familiar with the details of the evaluation. The Acts section 8 and 9 states the NCAs role regarding guidance, monitoring and enforcement, so it is not inconceivable that this will be evaluated.

Question: Are there lists of companies publicly available? In France the NGO publishes that, what about the countries with supervisory authorities?

Answer from the NCA (Norway): There is currently no publicly available list of enterprises caught by the Transparency Act, that we know of. From publicly available accounting information at the company registry in Norway (Brønnøysundregisteret) we can produce a rough estimate at any one point in time, and we of course review whether enterprises are subject to the Act when we handle complaints, undertake controls etc.
In connection with the work on a proposal for the Transparency Act, Oslo Economics and KPMG prepared an impact assessment for the Ministry of Children and Families. This is discussed in the preparatory works of the law, under section 10.2 "Impacts on the business sector":

> *"Oslo Economics and KPMG estimate that 8830 enterprises will be covered by the Transparency Act's definition of "larger enterprises". This includes 270 large enterprises, cf. the definition in Section 1-5 of the Accounting Act, and 8560 medium-sized enterprises that are neither considered large nor small according to the definitions in Section 1-5 and Section 1-6 of the Accounting Act."*

However, the selection included in the impact assessment does not completely correspond to the scope of the enterprises who must comply by the law as it exists today. For instance, The Transparency Act is not limited to commercial activities, but also covers other organizational types, such as non-profit organizations. Furthermore, the number (estimated to be around 9000) will naturally vary from year to year with changes in enterprises' operations and fluctuating revenue, placing them either within or outside the thresholds they need to meet in order to be covered by the Act.

Question: Is it always clear if a complaint by an affected rightsholder falls within the scope of the Norwegian supervisory authority? What happens if there is an overlap with competences of Labour Inspectorates or other institutions?

Answer from the NCA (Norway): The NCA monitors compliance with the provisions of the Transparency Act, which applies to larger enterprises that are resident in Norway and that offer goods or services in or outside

Norway, as well as larger foreign enterprises that offer goods or services in Norway, and that are liable to tax to Norway pursuant to internal Norwegian legislation.

Enterprises that fall under the scope of the Act must: 1) carry out due diligence, 2) account for due diligence and 3) process requests for information regarding how the enterprise addresses actual and potential adverse impacts pursuant to their due diligence duty. Anyone (including affected stakeholders) can send us a complaint/tip if they believe that an enterprise is in breach of one or more of these obligations. The NCA does not however deal with every case we become aware of through tips and complaints. That said, the complaints and tips we receive are always thoroughly assessed. Among other things, we assess the severity of the case, or whether the questions raised may set a precedent for future cases, and therefore will contribute to developing practice for how the Transparency Act should be interpreted. Based on such assessments, we prioritise which cases we follow up.

So far, we have not experienced overlap with other institutions, but we have had and will continue to have dialogue with institutions where this may become the case in the future.

The NCA must not be confused with a typical complaints mechanism, which has the primary purpose of enabling complaints to be submitted and dealt with, so that damage is restored. The NCA, as mentioned, oversees the duties of the Transparency Act. That said, this includes the due diligence duty, which means that topics such as restoration of harm may be of relevance.

Question: Many companies operating in the EU operates in many countries. How will domestic supervisory authorities deal with transnational companies? Will there be a coordinating EU supervisory authority, similar to the data agencies?

Answer from the NCA (Norway): As mentioned above, the NCA supervises the enterprises covered by the Norwegian Transparency Act. Other than that, we are positive to the European Network of Supervisory Authorities, mentioned in the CSDDD. This network will bring together representatives of the national bodies to ensure a coordinated approach, which we believe can be convenient when dealing with transnational enterprises.

Question: Any learnings from BAFA's work in Germany for other countries on monitoring companies' reporting now that the Corporate Sustainability Reporting Directive has been adopted?

Answer from the Helpdesk (Germany): It is too early too answer this question since BAFA has announced that reports due under the Supply Chain Act will not be requested prior to 1 June 2024.

Question: Do you get questions from SMEs from outside Germany too? Do you provide guidance for such SMEs that are established in another country when it concerns due diligence requirements of the large German companies put on such SMEs?

Answer from the Helpdesk (Germany): Our work mainly focusses on advisory services for companies and business associations in Germany. The nature of the Supply Chain Act, however, requires to also consider the implications for (sub)suppliers abroad. We have partnered with Chambers of Commerce and other stakeholders abroad to inform foreign companies comprehensively on the subject of due diligence obligations via webinars or on-site workshops in Vietnam, Serbia and Uzbekistan. In some cases, we have responded to individual requests from foreign companies (e.g., supplier of German brands) and we co-authored the BAFA/Helpdesk guidance that touches upon various issues how to collaborate in global supply chains. The guidance is available in German and English and is currently being translated into several other languages. Besides, all our online-tools are available in English (sometimes even in Spanish) and can be used free-of-charge around the world. In principle, however, our approach is to enable local partners to set-up robust support structures on the ground. This is more effective and allows for better adapting responses to local needs.

ANNEX: LIST OF RELEVANT RESOURCES

Norwegian Consumer Authority	Website with tools and resources on the Norwegian Transparency Act
Norwegian National Human Rights Institutions (NIM)	Website with material on the Norwegian Transparency Act (mostly in Norwegian)
German Federal Office for Economic Affairs and Export Control (BAFA)	Website with guidance on the German Supply Chain Act
German Federal Office for Economic Affairs and Export Control (BAFA)	Online Complaint Mechanism under the German Supply Chain Act
German Helpdesk on Business and Human Rights	Website of the German Helpdesk on Business and Human Rights
MVO Nederland	The CSR Risk Check is a tool aimed at companies that are importing from or have production facilities in foreign countries.
German Helpdesk on Business and Human Rights	Online Course - Business and Human Rights
United Nations Global Compact	Business & Human Rights Navigator
German Helpdesk on Business and Human Rights	SME Compass on due diligence
German Helpdesk on Business and Human Rights	SME Compass on standards
German Federal Office for Economic Affairs and Export Control (BAFA)	Guidance on collaboration in the supply chain between obliged enterprises and their suppliers
Sherpa, CCFD Terre Solidaire, Business & Human Rights Resource Centre	Duty of vigilance radar – website with information on the French Duty of Vigilance Law
French National Contact Point under the OECD Guidelines	Instance: Union Hidalgo Agrarian and Indigenous Sub-Community and ProDESC & EDF, EDF Renewables, and EDF Renewables Mexico
Coalition of French civil society organisations, namely: FIDH, ActionAid, Friends of the Earth France, Amnesty International France, CCFD Terre Solidaire, Confédération générale du travail, Collectif éthique sur l'étiquette, Notre affaire à tous, Oxfam France, Sherpa and the Forum Citoyen pour la RSE	European Directive on Corporate Sustainability Due Diligence and Legal Actions in France: Lessons learned and recommendations
Sherpa	Creating a Public Authority to Enforce the Duty of Vigilance Law: A Step Backward?