



MINISTRY OF  
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# PERSPECTIVES ON MANDATORY HUMAN RIGHTS DUE DILIGENCE IN THE NORDICS



The discussion on mandatory human rights due diligence (mHRDD) as a central part of the 'smart mix' has continued to gain momentum across Europe. The event 'Status and Perspectives on Mandatory Human Rights Due Diligence Legislation in the Nordics' (25 March 2021) contributed to this conversation by taking stock of the developments at the national level in Nordic countries and exploring the Nordic perspectives on the potential EU legislation. The event was organised by the Ministry of Foreign Affairs of Denmark, DanChurchAid, Danish Institute of Human Rights and the Nordic Business Network for Human Rights as a follow-up event to a roundtable discussion at the UN Annual Forum on Business and Human Rights in 2019.

## **RESPONSIBLE BUSINESS CONDUCT IN THE NORDICS**

Nordic countries have been frontrunners in responsible business conduct (RBC) developments, adopting National Actions Plans (NAP) already in 2014-2015. Anita Ramasastry, a member of the UN Working Group, commended these early steps in her keynote speech and highlighted that this has provided the Nordic countries with a solid base to move forward with a mHRDD law. She expressed a strong call for the need to advance from voluntary measures guiding RBC to mHRDD regulations to ensure that businesses take actions to adequately identify and act on their human rights risks across value chains. Ramasastry specifically applauded Finland for taking a lead role in the mHRDD legislative advocacy during their presidency of the Council of the EU in 2019, and the other Nordic countries, businesses and other stakeholders for their support.

## **SUPPORT FOR THE DEVELOPMENTS AT THE EU LEVEL**

This support for the potential EU mHRDD measure was reaffirmed in the first panel in which country representatives from Finland, Denmark, Norway and Sweden exchanged views and shared positions on the developments regarding establishing a 'smart mix' of measures. All Nordic EU Member State representatives considered the potential EU legislation to be a major milestone for the protection of human rights. Yet, the panellists voiced some concerns, particularly in relation to the application of the law to Small and Medium-Sized Enterprises (SMEs), and the suggestion to include provisions on directors' duties. They were cautious about overburdening SMEs with requirements that apply equally to companies of all sizes. Also, Sweden and Denmark would prefer keeping the mHRDD regulation and directors' duties separate in order for the latter not to become a deterrent

factor. In the words of Mette Schiøtz Sørensen, Senior Advisor of the Danish Business Authority, companies should be encouraged to work with sustainability, rather than enforcing it by restricting the freedoms of directors.

Heidi Hautala, Vice President of the European Parliament and a member of European Parliament Working Group on Responsible Business Conduct, responded to the positions of the Nordic representatives. Hautala said that the Nordic resistance to the inclusion of directors' duties is worrisome; yet, acknowledged herself that this question will potentially become a stumbling block for the legislative proposal more generally. Another difficulty that will have to be resolved during the process is the question of civil liability since private international law is not currently fit for purpose, as Hautala commented. The EU will have to find creative means, combining different judicial mechanisms, to overcome

that hurdle. Likewise, creative ideas and solutions are required to include SMEs to the scope of the proposal since it would be a pity to exclude them, said Hautala.

### **DIVERGING OPINIONS ON THE PATHWAY FORWARD AT NATIONAL LEVEL**

The first panel also examined the views of Nordic countries on domestic legislative developments. The only Nordic non-EU Member State, Norway, has already taken formal steps towards an adoption of a national RBC law incorporating both mHRDD obligations and transparency regulations. In 2018, the Norwegian government appointed the Ethics Information Committee with a mandate to examine possibilities for adopting an RBC law. The Committee drafted a proposal that was delivered to the government in 2019. The government will present their own proposal this spring, as Marit Gjelten, Deputy Director of the Norwegian Ministry

of Foreign Affairs, explained. The positions towards a domestic law among Nordic EU Member States varied to a certain extent. Finland has had domestic mHRDD discussions since 2014 when the National Action Plan (NAP) was passed. The momentum has been revived in 2018 by a multi-stakeholder campaign calling for a mHRDD law, and a judicial study published in 2020 analysing the potential nature of the legislation. Therefore, according to Kent Wilska, Commercial Counsellor of the Finnish Ministry of Foreign Affairs, Finland is now having very concrete ongoing discussions on the scope of the legislation as well as liability measures. Denmark and Sweden, on the other hand, are more in support of the EU taking a lead and adopting a harmonised rule-based system that would trickle down to Member States. Both Mikael Ståhl, Deputy Director of the Swedish Ministry of Foreign Affairs, and Mette Schiøtz Sørensen, Senior Advisor of the Danish Business Authority, expressed an opinion

that EU level legislation should be the starting point, despite of domestic calls to pursue a national law.

## **NON-STATE STAKEHOLDER PERSPECTIVES AND EXPECTATIONS**

The second panel gave an opportunity for the non-state actors to voice their perspectives. The Cambodian Centre for Human Rights (CCHR) shared their observations from a project that focused on the activities of the European companies involved in agri-business in Cambodia. The project had clearly demonstrated a lack of commitment and transparency from businesses, emphasising the need to impose legal obligations. The Business and Human Rights advisor Vann Sophath said that the responsibility lies on the country's where the businesses are registered. Anu Kultalahti from Finnwatch echoed these expectations that their Global South partners have also been expressing. Although Kultalahti, as well as the CSO

representative from Amnesty Norway Beate Ekeløve-Slydal, supported the developments at the EU level, both of them were wary about the Nordic countries relying on the EU level developments as an excuse not to engage at national level or proactively engage to ensure a robust EU measure.

The CSO representatives also shared learnings from the national initiatives that have aimed to build support for mHRDD legislation. For example, the Finnish multi-stakeholder campaign on mHRDD had engaged around 140 companies, civil society organisations and trade unions. This broad support by businesses had been key to ensure the political space for mHRDD and for the campaign to succeed. However, the business support for the domestic legislation voiced by the Danish Confederation of Industries (DI) was limited. Gry Saul (DI) expressed caution about the fragmented regulatory framework in case all Member States start

regulating their businesses individually and therefore preferred EU level developments over national legislation.

The potential EU mHRDD law has gained more support among the business community. Across the participating countries, the Nordic Business Network on Human Rights (NBNHR) is one of the main private sector actors that have expressed strong support for EU level mHRDD legislation in a statement published in the beginning of 2021. Emily Crawford (Vestas Wind Systems) and Chrisanne Kouzas (Neste Group) from NBNHR shared the Network's motivation to engage in RBC advocacy and re-emphasised the points made in the statement: mHRDD should be grounded in the UNGPs, cover the entire value chain, and include accountability measures. The Network also recommends including positive incentives to foster compliance.

Furthermore, Crawford and Kouzas

highlighted that it is important for bigger corporations that supply chain complexities are considered, whereas the Danish Trade Union Confederation representative Peter Ahrenfeldt Schrøder emphasised the considerations needed in regard to SMEs echoing the concerns of the panellists in the first debate. Therefore, legal clarity will be crucial for companies of all sizes.

Key takeaways

The event successfully highlighted the main questions where stakeholder perspectives differ. All involved stakeholders are supportive of the EU moving forward with mHRDD legislation. Rights-holders and civil society would prefer that the developments at the EU level are accompanied by national discussions and initiatives on how to regulate business conduct. Although the discussions do exist in all Nordic countries, the support for a domestic law varies extensively.

Also, concerns about the burdens put on SMEs and potential directors' duties remain in relation to the EU mHRDD proposal and will have to be followed-up after the Commission publishes their proposal. Yet, it is clear that all stakeholders see the added value of a legislation regulating business conduct in order to ensure respect for human rights.

The [recording](#) of the event is made available.