



Corporate sustainability due diligence policies and sustainability reporting

A state-of-play report by the GRI Policy team

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Background

In 2011, the United Nations Guiding Principles on Business and Human Rights (UNGPs) stating that all companies have a responsibility to conduct human rights due diligence, were adopted by the Human Rights Council. Subsequently, the Organisation for Economic Cooperation and Development (OECD) included the definition of due diligence into the OECD Guidelines for Multinational Enterprises (OECD Guidelines) and extended its application to other areas beyond human rights. The International Labour Organization (ILO) Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy was also updated in 2017 to incorporate the UNGPs. Since the revision of GRI's Universal Standards, effective 1 January 2023, due diligence reporting has been built into the GRI Standards based on these intergovernmental authoritative instruments.

Based on the OECD definition, due diligence is the process through which an organization identifies, prevents, mitigates, and accounts for how it addresses its actual and potential adverse impacts which can be related to employment, human rights, the environment, bribery, and consumers. The emergence of national and regional due diligence policies is linked to increased societal expectations for companies to take responsibility for their impacts, not only occurring in their own operations, but also in supply chain and other business relationships.

Initially, due diligence policies were largely focused on addressing negative impacts on human rights. However, this is increasingly being extended to environmental impacts as well - with the environment being gradually entrenched in human rights at the international level. The UN Human Rights Council in October 2021 recognized that a clean, healthy and sustainable environment is a human right. In July 2022, this was confirmed by the United Nations General Assembly adopting a [resolution \(A/76/L.75\)](#) which recognizes the right to a clean, healthy, and sustainable environment as a human right.

Around the globe, legislators and regulators are considering how to embed and operationalize due diligence expectations. This paper examines the current state-of-play on due diligence, such as national and international due diligence policies, their scope, and the role of reporting in the due diligence process, supporting the need for global harmonization of due diligence policies.

Overview of types of due diligence policies and their elements

Due diligence policies can be general and topic-specific. General policies set out the requirement to identify and account for all negative impacts, while topic-specific policies focus on managing individual issues, such as deforestation or forced labor. Due diligence policies can also be sector-specific. For example, high-impact sectors such as extractives (mining in particular) are often covered by sectoral obligations. In addition, extractive sectors are frequently subject to due diligence policies for operating in conflict situations.

The due diligence process consists of these commonly identified steps:

- Embedding responsible business conduct into policies and management systems;
- Identifying and assessing actual and potential adverse impacts associated with the enterprise's operations, products or services;
- Ceasing, preventing or mitigating negative impacts;
- Tracking implementation and results;
- Communicating how impacts are addressed;
- Providing for or cooperating in remediation when appropriate

It is common that there are some deviations on terminology and how requirements are formulated across due diligence policies. For example, some do not prescribe publicly communicating the outcomes of the due diligence process to stakeholders. The step to communicate how impacts are addressed may be absorbed within the other steps. At the same time, the central concepts and principles remain the same, as illustrated below in *Figure 1*.

Figure 1. A simplified overview of steps embedded in international due diligence policies

International policy framework for due diligence		
OECD Guidelines for Multinational Enterprises (draft under revision) and OECD Due Diligence Guidance for Responsible Business Conduct	United Nations Guiding Principles on Business and Human Rights (UNGPs) 2011	International Labour Organization Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy 2017
<p>The OECD Due Diligence Guidance for Responsible Business Conduct sets out a due diligence framework, which outlines the following measures: (1) integrating due diligence into policies and management systems, (2) identifying and assessing adverse human rights and environmental impacts, (3) preventing, ceasing or minimizing actual and potential adverse human rights and environmental impacts, (4) assessing the effectiveness of measures, (5) communicating, (6) providing remediation.</p>	<p>In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including: (a) A policy commitment to meet their responsibility to respect human rights; (b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;* (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.</p> <p><i>* this step is further subdivided into additional steps, including tracking effectiveness. Communication is also included across the steps.</i></p>	<p>Enterprises, including multinational enterprises, should carry out due diligence to identify, prevent, mitigate and account for how they address their actual and potential adverse impacts that relate to internationally recognized human rights, understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the ILO Declaration on Fundamental Principles and Rights at Work.</p> <p>For the purpose of the MNE Declaration, this process should take account of the central role of freedom of association and collective bargaining as well as industrial relations and social dialogue as an ongoing process.</p>

All three policies prescribe that the due diligence process should involve ‘meaningful stakeholder engagement’ or ‘meaningful consultation’ with affected and potentially affected stakeholders. For example, when a company’s activity impacts or could impact workers, it should engage with workers (worker representatives and trade unions) in relation to these impacts (see also a clarification on *Engagement with Trade Unions in Due Diligence Processes Conducted by Industry-led or Multi-Stakeholder Initiatives* in the context of the OECD Guidelines).

The OECD has also issued specific guidance on due diligence in the agriculture, minerals, and garment and footwear sectors, building from the obligations contained in the OECD Due Diligence Guidance for Responsible Business Conduct.

Policy development on due diligence

International developments

At the international level, there is an increased recognition of the adverse impacts of climate change and environmental degradation on human rights. The recognition of the right to a clean, healthy and sustainable environment as a human right was supplemented by the call for 'states, international organizations, businesses and other relevant stakeholders to adopt policies, enhance international cooperation, strengthen capacity building, and share good practices to ensure a clean, healthy and sustainable environment for all'. It can be expected that such developments open the possibility for more action at international and national levels, in cases when sustainability impacts are not adequately addressed. For example, in September 2022, the UN Human Rights Committee has put a spotlight on [a groundbreaking decision that Australia had failed to adequately protect Indigenous Torres Strait Islanders](#) from the adverse impacts of climate change.

The draft [UN Binding Treaty on Business and Human Rights](#) also broadens the scope of due diligence by stating that due diligence measures must include human rights, labor rights as well as environmental and climate change impact assessments.

Whilst there is increased acceptance of the fact that impacts on the environment are interconnected with impacts on human rights, there is very limited recognition of the human rights impacts that come from adverse economic impacts. Notably this is stipulated in the OECD Due Diligence Guidance for Responsible Business Conduct as a factor to be considered, but specifically in the context of the decision to disengage, for example when a company is assessing the potential risks and impacts of ceasing operations in a conflict affected area, they must include consideration of economic impacts, as well as human rights and environmental impacts.

The OECD is currently revising the [OECD Guidelines for Multinational Enterprises](#). The scope of revisions is contained to a targeted update to take account of key developments, achievements and challenges related to responsible business conduct. In parallel, there is an ongoing review to update the [G20/OECD Principles of Corporate Governance](#), in light of recent evolutions in capital markets and corporate governance policies and practices. These revisions are aimed to further strengthen common approaches for due diligence.

In June 2022, the United Nations Development Programme (UNDP) published [Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts: A Guide](#), which provides further guidance for businesses operating in conflict affected areas, directly or through their supply chains.

Regional developments

At the regional level, the European Union, for example, is currently developing the [Corporate Sustainability Due Diligence directive](#). This process has demonstrated the difficulties related to developing effective policies around due diligence. There are still important decisions to be agreed on surrounding its contents, such as the scope, the extent of duties that should apply to company directors, and the inclusion of obligations around indirect business relationships. The due diligence process set out in the EU Corporate Sustainability Due Diligence directive proposal is aligned with the six steps set out in the OECD Due Diligence Guidance for Responsible Business Conduct. There is also [a list of high-risk sectors for the purposes of the EU CSDDD](#), which includes food and agriculture, textiles, mining, and other sectors (intersecting with the OECD sectoral guidance documents).

At the same time, there are open questions on how this regulation will be interoperable with the various other legislative initiatives of the EU, both national and regional. One particular issue in contention is whether national legislation on due diligence in the EU countries should go beyond the requirements set out in the developing directive, which could potentially impact existing and developing legislation in the EU.

National developments

At the national level, over the last few years, there has been an increase in measures to mandate due diligence obligations on companies. There have been various models of policies emerging, as highlighted in the Chapter 'Overview of types of due diligence policies and their elements' above. Those policies that have been developing at a national level largely reflect the international developments. For example, the United Arab Emirates Due Diligence *Regulation for Responsible Sourcing of Gold* and the German *Supply Chain Due Diligence Act* include environmental impacts among the risks that must be covered by due diligence. In Brazil, the *Supreme Court* recognized the Paris Agreement as a human rights treaty in July 2022. Another example in Brazil is the developing *Bill 572/22*, which encompasses environmental rights within the human rights violations that companies must account for.

At the reporting and disclosure level, requirements vary in frequency of reporting, whether the reporting must be provided publicly, and also what must be reported. There is also a varying level of how descriptive the disclosed information must be. Many policies require descriptions of due diligence policies and implementing measures of specified impacts, with a small number requiring information as specific disclosures. There are laws that do require information to be reported on organizational structure, supply chains and activities and operations, such as the *Norwegian Transparency Act* or the *Australian Modern Slavery Act*.

Given that some policies are topic-specific, such as those addressing risks of modern slavery and forced labor, and others cover wider human rights and/or environmental impacts, there is also divergence in the information requested across national laws. Existing and developing policies addressing specific impacts such as forced labor and child labor include Australia, the Netherlands, New Zealand, Canada, Switzerland, and the UK. However, even with these specific impacts there are varying requirements, such as responsibility over direct and indirect impacts, but also reporting. For example, whilst primarily a human rights-focused policy, reports produced under the *Swiss Conflict Minerals and Child Labour Due Diligence* law must also include information on emissions and corruption.

There are also overlaps among topics in these policies, which could potentially create the issue of double reporting and divergence in terminology, key concepts, definitions, and disclosure format. As well as increasing the burden on companies, this can also impact comparability of information, which may create difficulties for decision-making and action.

The connection between corporate sustainability due diligence and corporate sustainability reporting

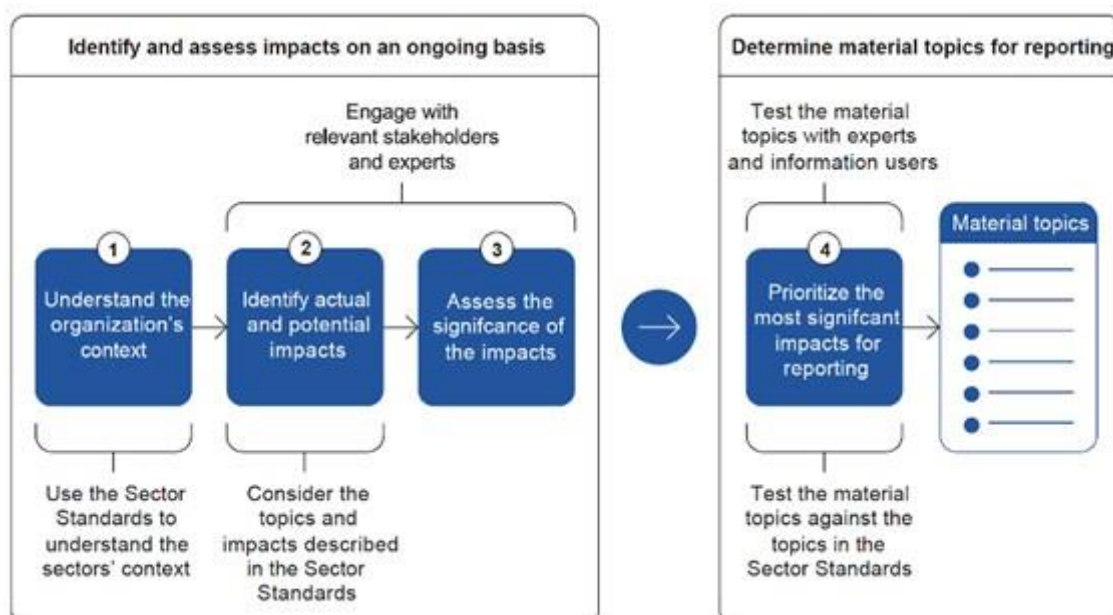
The link between companies conducting due diligence and (public) reporting on it is not always clearly articulated. Conceptually, reporting directly supports all of the steps of due diligence as it enables communicating what the organizations' impacts are; who their stakeholders are and how they are engaged; how impacts are identified and managed, etc. It provides evidence that steps of the due diligence have been effectively followed. Communication is also one of the steps of due diligence in itself, meaning complying with due diligence requirements is not possible without communication.

In the EU regulatory system, the *Corporate Sustainability Due Diligence directive (CSDDD)* and *Corporate Sustainability Reporting Directive (CSRD)* have been linked and the reporting on due diligence is incorporated into the draft *European Sustainability Reporting Standards (ESRS)*. However, the CSDD is still going through its legislative process and there are outstanding questions on the interaction of the two directives.

The 2021 updates to the GRI Standards – which are the global sustainability reporting standards most widely used by companies¹ – gives full effect to the due diligence process as articulated in the OECD Guidelines for Multinational Enterprises and the UNGPs. Moreover, there is a clear connection between the due diligence process and the materiality assessment – the key process for the reporting, through which material topics are identified by a company.

Material topics represent the topics which cover the most significant impacts a company has on the economy, environment, and people, including on their human rights, with due diligence being the process of identifying and addressing such impacts. Material topics can often represent human rights topics (such as child labor or forced labor), and they also represent environmental and economic topics, with topic-specific disclosure requirements that help stakeholders understand impacts and how they are managed.

Figure 2. Process to determine material topics in the GRI Standards



Due diligence in the GRI Standards

Due diligence reporting has been built into the modular structure of the GRI Standards and the operated terminology has been aligned with intergovernmental authoritative instruments. For example, this is the case for 'impact', 'significance', 'stakeholder', 'meaningful stakeholder engagement' and other definitions.

The *GRI Universal Standards* embed disclosures on due diligence across *GRI 2: General Disclosures 2021* and *GRI 3: Material Topics 2021*.

Reporting of general policies and processes for due diligence

GRI 2 contains disclosures that the organization uses to provide information about its reporting practices and other organizational details, such as its wider activities, governance, and policies. The general disclosures apply to all companies and specifically call out due diligence.

When reporting on governance, companies are required to describe the role of the highest governance body in overseeing the company's due diligence and other processes to identify and manage the company's impacts on the economy, environment, and people under disclosure *GRI 2-12 Role of the highest governance body in overseeing the management of impacts*.

Furthermore, companies are required to report policy commitments regarding responsible business conduct (RBC), including respect for human rights, and how they are embedded in the company under disclosures *GRI 2-23 Policy commitments* and *GRI 2-24 Embedding policy commitments*.

The disclosure *GRI 2-29 Approach to stakeholder engagement* asks to report categories of stakeholders a company has engaged with; how they were identified; and how it was ensured that this engagement was meaningful.

Companies are also required to describe processes to remediate negative impacts that the company has caused or contributed to under *Disclosure 2-25 Processes to remediate negative impacts*.

Communicating on how impacts have been identified and addressed – reporting on material topics

Companies report on how they identify and address specific impacts when reporting on material topics. Due diligence outcomes are reflected in the list of material topics reported using disclosure *GRI 3-2 List of material topics* in *GRI 3: Material Topics 2021*. The disclosure *GRI 3-1 Process to determine material topics* asks companies to report how they identify actual and potential, negative and positive impacts on the economy, environment, and people, including impacts on their human rights, across their activities and business relationships; how they prioritized the impacts for reporting based on their significance; and the stakeholders consulted. The result of this process is the list of material topics selected. The significance of a potential negative impact is determined by the severity and likelihood of the impact.

Further to each material topic, companies are required to describe their actual and potential negative impacts and whether they are involved with these impacts through their activities or as a result of their business relationships. Companies are also required to report

actions to prevent or mitigate potential negative impacts, as well as actions to provide for or cooperate in the remediation of actual negative impacts, as well as the effectiveness of these actions using disclosure *GRI 3-3 Management of material topics*.

Figure 3. GRI Disclosure 3-3 Management of material topics

REQUIREMENTS	For each material topic reported under Disclosure 3-2 , the organization shall:
	<ol style="list-style-type: none"> a. describe the actual and potential, negative and positive impacts on the economy, environment, and people, including impacts on their human rights; b. report whether the organization is involved with the negative impacts through its activities or as a result of its business relationships, and describe the activities or business relationships; c. describe its policies or commitments regarding the material topic; d. describe actions taken to manage the topic and related impacts, including: <ol style="list-style-type: none"> i. actions to prevent or mitigate potential negative impacts; ii. actions to address actual negative impacts, including actions to provide for or cooperate in their remediation; iii. actions to manage actual and potential positive impacts; e. report the following information about tracking the effectiveness of the actions taken: <ol style="list-style-type: none"> i. processes used to track the effectiveness of the actions; ii. goals, targets, and indicators used to evaluate progress; iii. the effectiveness of the actions, including progress toward the goals and targets; iv. lessons learned and how these have been incorporated into the organization's operational policies and procedures; f. describe how engagement with stakeholders has informed the actions taken (3-3-d) and how it has informed whether the actions have been effective (3-3-e).

When the list of material topics is identified, individual GRI Topic Standards, (for example *GRI 408: Child labor 2016*, *GRI 409: Forced or Compulsory Labor 2016* etc.) are used to provide further information in relation to particular topics. Currently, there are 31 topics covered in the GRI Standards, which include not only environmental and social topics, but also economic.

In addition, the GRI Sector Standards, for sectors where they exist, play a role in the due diligence process by listing topics representing the most significant impacts from a sectoral perspective and listing additional information to report on these. This, however, does not spare companies from the responsibility to conduct their own impact assessment due to unique circumstances in which every company operates.

Conclusions and observations

Due diligence laws set expectations for all corporate behavior, not just around human rights.

There is a clear trend towards increased legislation mandating due diligence as set out in the UNGPs and OECD MNE Guidelines. To comply with the laws across different jurisdictions, companies may need to conduct several due diligence processes in parallel (for example, on human rights, on operating in conflict areas, and/or on how vulnerable groups are impacted) with misaligned requirements across legislation. To avoid fragmentation, this will likely require changes to how a company's governance bodies are set up, their role and responsibilities with regards to the due diligence process, and information provided to stakeholders.

The relationship between human rights and environmental and economic impacts is not always clarified in due diligence policies. Going forward, it may be expected that topics such as tax, procurement practices and corruption, which can create or exacerbate human rights violations, will be included in the due diligence laws.

Public reporting is important for the effective implementation of due diligence.

Due diligence laws include requirements to report companies' policies in place, and to communicate how impacts are addressed. At the same time, there are broader needs for information supporting the due diligence process which may not be explicitly articulated – such as information on corporate governance, supply chain, description and location of operations, workers, business activities, etc. Another challenge is that the reporting requirements in due diligence laws generally lack precision on which information should be reported, which can impact comparability of reported information and create difficulties for companies to measure their impact and progress over time. To address this issue, there should be a widely adopted reporting regime.

Due diligence considerations have a growing impact on financial decision making.

Due diligence developments go in parallel with increasing demands for information on financially-material sustainability risks. Many outward impacts of a company's activities and business relationships on the economy, environment, and people will eventually become financially material issues. Therefore, the assessment of impacts under due diligence can be included within broader enterprise risk management systems and serve as input for identifying related financial risks and opportunities – the concept referred to as 'double materiality', which is getting more and more recognition in the global debate (see, for example, the ESRS).

The push for environmental and human rights due diligence is transversal. Capital markets actors, including banks, stock exchanges, rankers and raters, are also developing evaluation and reporting criteria that have broad sustainability information requirements, which intersect with the due diligence outcomes.

Cross-border implications of due diligence laws require global harmonization.

For example, in case of the EU due diligence, companies outside the EU will need to adapt to the European requirements, for which they may not instantly have adequate data and capacity. This is why it is crucial to consider the representation of parties from around the globe in the decision-making for policies by which they are affected.

This especially concerns small businesses selling goods into global supply chains or companies facing direct or indirect requirements from multiple jurisdictions. To ensure interoperability, the alignment with widely adopted standards and international due diligence policies is crucial.

Due diligence requires meaningful stakeholder engagement.

Meaningful stakeholder engagement is a key element for the due diligence process. At the same time, what it means to engage 'meaningfully' is not always clearly defined and in due diligence policies, there are many parameters around this process. To make due diligence outcomes credible, clarity is needed on categories of stakeholders engaged and frequency and purpose of engagement, creating an imperative for this information to be public.

Due diligence is not possible without supply chain mapping.

To be able to assess potential negative impacts linked to a company's products and raw materials they are made of as well as the production conditions, supply chains must be traceable. To date, supply chain traceability poses challenges for many companies, particularly when there is a wide variety of sectors up and down stream and across multiple jurisdictions. The scope of supply chain assessment may also differ, including tier 1 suppliers or suppliers further upstream. Doing supply chain mapping and disclosing information on actors in the value chain provides context for understanding a company's impacts.

To conclude, applying a risk-based due diligence approach to all key areas of business, not only in relation to human rights but also to environmental and economic impacts, allows companies to identify, avoid and address impacts effectively. Public reporting with the GRI Standards puts impact information on an equal footing with financial reporting, thus enabling critical alignment of a company's due diligence process with international standards, all the while responding to transparency requirements embedded in the due diligence process.