

Report from the Norwegian Ethics Information Committee

November 2019

Supply Chain Transparency

Proposal for an Act regulating Enterprises' transparency about supply chains, duty to know and due diligence

Report of the Ethics Information Committee, appointed by the Norwegian government on 1 June 2018, to assess the adoption of an ethics information law.

Recommendations delivered to the Ministry of Children and Families on 28 November 2019.

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Part I

Recommendations

1 Summary

The Committee hereby recommends an Act on transparency with respect to fundamental human rights and decent work in business enterprises and supply chains.

The purpose of the Act is twofold. Firstly, the aim is to provide consumers, trade unions, civil society organisations and others the right to information on enterprises impact on fundamental human rights and working conditions. The aim with this right is to enable consumers to make informed choices and question responsible business conduct. Secondly, through duties to know and to disclose information, it aims to advance respect for fundamental human rights and decent work in enterprises and supply chains. Potentially, this can improve working conditions for people who are involved in global supply chains, within and outside Norway.

The draft Act builds on international consensus about the requirements for responsible business conduct and Norwegian traditions of transparency and access to information. It takes as a starting point that the government currently expects all Norwegian companies to act responsibly and to know and follow the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises.

The expectations build on adopted principles and guidelines from the UN, the OECD and the ILO, and more recently, the UN Sustainable Development Goals (SDGs). Several enterprises have pursued these expectations. Experience nevertheless show that voluntary compliance is not sufficient to raise corporate accountability to the required level: Mandatory legislation is necessary.

This coincides with experiences in other countries, such as in the United Kingdom with its Modern Slavery Act of 2015, and France with its *Devoir de Vigilance* Law (Duty of Vigilance Law) of 2017, and legislation in other countries such as Australia and the Netherlands. EU directives and regulations and various legislative initiatives in the EU relating to transparency and human rights due diligence in global supply chains also evidence this.

Whereas the government's and the international bodies' expectations and requirements apply in general to all enterprises, the Committee has found it useful to distinguish between small and large enterprises in the draft Act.

For all enterprises, the Committee proposes an obligation to respond to specific enquiries for information. To increase awareness of the status of fundamental human rights, and to be able to reply to enquiries, all enterprises will have a *duty to know* about human rights issues in the company and in the supply chain. This duty will vary depending on the size and activities of the enterprise, among other factors.

For large enterprises, the draft Act requires due diligence with respect to human rights and decent work, and requirements to disclose the key findings thereof. This comes in addition to the duty to respond to specific enquiries.

The Act will apply to goods and services. Moreover, for enterprises that sell goods to consumers, the Act proposes a duty to disclose publicly the manufacturing sites of such goods. Exceptions from this disclosure duty may be laid down by regulations, as it is not equally suited to all sectors or business types.

To ensure the competitiveness of Norwegian enterprises, it is crucial that the duties are harmonised with requirements imposed internationally. The due diligence standard reflects the agreed standards as set out in the UN Guiding Principles on Business and Human Rights, and the OECD Guidelines for Multinational Enterprises. Due to the delimitation in the Committee's mandate, corruption and impacts on the external environment are not included in the proposed due diligence duty, provided they do not simultaneously represent an infringement of human rights.

The draft Act also springs from Norwegian traditions of access to information and experiences with the Environmental Information Act (2003). The proposed law aligns with the requirements in Norway's Public Procurement Act when it comes to suitable procedures to promote respect for fundamental human rights in government tenders, where there is a risk of infringements. The draft Act systematises the expectations and requirements that enterprises already face from the public sector and other parties, and may thus promote simplification to business.

The Committee has consulted with more than 40 companies in preparing the report. We have received signals from many parties that legislation may promote more fair competition for companies that are engaged in systematic improvements. The signals also cautioned that the Act must be fit for purpose and feasible in practice. Several companies have highlighted a risk-based approach as suitable for mapping and addressing human rights impacts in the supply chain.

Combined with other measures, the draft Act may advance Norway's efforts to meet the UN Sustainable Development Goals, especially no. 8 on Decent Work and Economic Growth, and no. 12 on Responsible Consumption and Production. Also through these goals, governments, the business community and civil society organisations have committed to take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking, end child labour in all its forms and promote safe and secure working environments for all workers, including migrant workers.

The economic and administrative consequences of implementing the Act will depend on the work that is already being done in the individual enterprise, the size of the enterprise, its ownership, structure, and other factors. The Committee has especially considered implications for small businesses. It will be necessary for the government to allocate resources for guidance and oversight to ensure compliance. Extensive guidance will reduce the resources expended by each enterprise and ensure more consistent implementation. Such guidance will also constitute a key component of the efforts to equip enterprises to fulfil requirements that are evolving in the field internationally, and contribute to the efforts towards the UN Sustainable Development Goals.

This Report consists of two parts. Part I is the Committee's recommendations, including assessments and a draft Act with a commentary. The recommendations are unanimous on most points but contains two dissenting views and special comments, see subsections 8.4.6 and 8.4.10. Part II provides a comprehensive review of market developments, challenges in

supply chains, global norms and requirements, relevant legislation in other countries and relevant legislation in Norway.¹ This constitutes the basis for the recommendations in Part I.

2 Introduction – the value of transparency

Throughout the past half-century, and particularly during the past 30 years, the production of goods and services in the world has changed fundamentally. There have been tendencies both towards larger western corporations establishing themselves in multiple countries, including low-cost countries, and periods where corporate groups have constructed complex supply chains with numerous tiers. There have also been combinations of these trends. The process has led to limited knowledge about, and insight regarding, the conditions under which goods and services that consumers in Norway purchase are produced. At the same time, the power of businesses has increased because markets have been liberalised and the entities involved are far more expansive.

Today, goods and input factors are produced and sold in supply chains that extend to multiple countries. Supply chains often comprise numerous tiers of production, with procurements from wholesalers, agents, and contractual partners in a range of countries, selling to customers all over the world. Ever cheaper products and production methods place pressure on working conditions in global supply chains. The challenges extend across borders, and slavery-like practices and other exploitation of workers occur in most countries.

Global supply chains have created new interfaces between consumers, workers, local communities, businesses, and investors. However, knowledge and access to information about the social impact of an enterprise, remains limited. Today's patterns of production and trade make it difficult for governments, industry, consumers and civic organisations to obtain information and an overview of the production of goods and services. Access to information is necessary in order to enable informed decisions about purchases and investments, and other decisions and efforts that take into account the social impact of businesses.

A natural response to these challenges is to provide citizens with a right to access information about how the production of goods and services takes place in the modern world. A right to information about human rights and working conditions can provide consumers and civil society organisations with the power to influence enterprises and public authorities. For the numerous companies that are serious about their own activities and those of their suppliers, transparency will lead to more fair competition. Enterprises that do not have knowledge and systems in place, will need to take steps to improve.

Internationally we see that similar answers are being sought in many countries and international organisations. In the EU, regulations are being refined to meet the information needs of investors and other interested parties, and grant consumers access to information about a company's social impact. Climate change accentuates the need for improved risk assessment and access to information about global supply chains. To an increasing extent, there is a recognition that businesses have a broader societal mission than simply to maximise shareholder value. Employees, customers and others that are impacted by business activities are increasingly being considered as equally important stakeholders.

Several countries have adopted transparency requirements in seeking to counter modern slavery in supply chains. To combat the worst forms of child exploitation in mineral

¹ Part II is not included in this translation

extraction, among other goals, the EU and the USA have passed regulations requiring due diligence in the supply chain for businesses that use minerals for instance in the production of mobile phones, laptop computers, and other goods.

The draft Act builds on a basic understanding that transparency is a key asset in our society. Transparency builds trust between authorities and citizens, and is the cornerstone of a democracy. In our time, we see that this trust is fragile. Information is held back, manipulated, or used to influence political processes. This results in an imbalance of power, thus hindering public participation. States driven by goals that do not align with the public interest often fail to disclose their activities. Corruption finds fertile ground in societies where transparency is lacking.

Transparency and public disclosure have long traditions within the government apparatus and public administration in Norway. In 1814, the National Assembly at Eidsvoll ruled that the Parliament's meetings would be open to all, and that deliberations would be published. Through the previous century, the public sector in numerous countries has opened due to legislation granting freedom of information to interested parties who have dealings with the government, and due to freedom of information laws. This has been justified as providing an additional means to provide information about the public administration and a basis for raising concerns about inappropriate actions. Moreover, it has helped empower citizens who thereby have a better basis for participating in political processes. The foundation for these efforts is the recognition that the government exerts power, and that such power must be checked, both for democratic reasons, and in the interest of the rule of law.

Likewise, the private sector, and particularly limited companies, have become subject to regulations mandating public access. Already with the first Norwegian Companies Act in 1874, the publication of certain information was a statutory requirement. This developed further through trade registers and later, regulation of limited companies and accounting rules. The details on record were the identities of those behind the business, the asset capital, board members, and how the business was faring in financial terms. The rules were expanded through international cooperation. For Norway's part, most production at the time was national. More recently, working conditions have been subject to extensive regulation, as the review in Part II will show, both due to the efforts of the labour movement, and international cooperation to develop legally binding commitments in the UN and the ILO.

Transparency can serve as a competitive advantage. Benefits may include enhanced reputation, motivated employees, greater efficiency, legal compliance, and improved access to capital. Investors increasingly emphasise the human rights and sustainability performance of companies, and view transparency as a key metric in investment decisions. Socially responsible investments have grown significantly. The Corporate Human Rights Benchmark has indicators tracking transparency in supply chains, and is consulted by investors managing roughly USD 5.3 trillion in asset portfolios. Transparency and social considerations are key parameters in public procurement and in other responsible purchasing practices.

Today, enterprises increasingly recognise the need for transparency about the production of goods and services, and their responsibilities also when it comes to the supply chain. Companies in some sectors now increasingly publish information on production sites and working conditions on website, information which in the past was hidden from public view. This development has been rapid. Some production and retail categories, such as textiles and clothing, publish factory lists, and have signed binding agreements to regulate working conditions, including safety, salaries and working hours. An example of this is the Accord on Fire and Building Safety in Bangladesh ("the Accord") which was signed by leading brands, civil society organisations, trade unions and others in the wake of the Rana Plaza tragedy in

2013. A building containing several textile factories collapsed and more than 1100 persons were killed and at least 2500 were injured.

An Act regulating transparency about supply chains and due diligence with respect to human rights and decent work is an appropriate answer to some of the most crucial challenges of our time. Disclosure and access to information from enterprises are key to building trust between industries and the government, between management and workers, and between companies, owners and investors. It is also key to building trust between enterprises, local communities and customers – both within Norway and beyond.

3 The Committee's mandate and work

3.1 Background

In February 2016, representatives of the Christian Democratic Party, the Green Party and the Centre Party submitted a motion to the Storting, on a “law on ethics information” (Document 8:58 S (2015-2016)). The motion refers to how low wages, overtime pressure, poor health and safety and a lack of respect for rights to organise characterise significant parts of the production of goods for global markets. The motion points out that Norwegian consumers have little information and knowledge and limited rights to access information about how goods are produced. The motion refers to how some clothing companies having opted to disclose information about their suppliers and subcontractors.

The representatives find that consideration should be given to impose a duty on companies to disclose where they produce their goods. They point out that access to information about production conditions is crucial, if companies are to display the due diligence expected under the UN Guiding Principles on Business and Human Rights (UNGP) and thereby prevent adverse human rights impacts. The representatives refer to the impact of the Environmental Information Act when it comes to the environment, and consider that corresponding legislation should be enacted regarding ethical production of goods.

In Recommendation 384 S (2015 – 2016) the Standing Committee on Family and Cultural Affairs makes the following recommendation, which later unanimously was adopted as Resolution No. 890 (2015-2016):

“The Storting asks the Government to investigate and consider proposing a law requiring disclosure of production sites and ethics information to consumers and organisations.”

In the recommendation, the Standing Committee emphasises the value of transparency and refers to the UN Guiding Principles for Business and Human Rights. The Committee writes:

“To ensure that national and international companies do not violate human rights, this approach allows for verifying what is happening in several tiers of production, without requiring companies to reveal commercial secrets. The Committee wishes to promote increased transparency and increased access to information about ethical aspects regarding the production of goods and services. The Committee considers that if the ethics information requirement is to have a real impact on producers and consumers, the disclosure requirement must apply to the entire chain of production, not just one tier down, and the information must entail fulfilling certain minimum standards.”

The Ministry of Children and Equality² commissioned law firm Simonsen Vogt Wiig (SVW) to examine whether national regulations, or Norway's international obligations, would impede introduction of a law on ethics information or would necessitate adjustments in a potential law. The aim was to examine whether the Norwegian government has legal scope to impose rules requiring a duty to disclose:

- The production sites/factories that are used for production of goods sold to consumers in Norway.
- How the companies define and seek to ensure responsible conduct in their supply chains.

The report by SVW, which was submitted on 3 July 2017, concludes that neither national regulations nor international obligations constitute obstacles to a law on ethics information.

The Storting later passed Petition Resolution No, 200 (2017-2018) in which it asks the Government to appoint a committee to examine adopting a law governing ethics information.

3.2 The Committee's mandate

The Ethics Information Committee was appointed on 1 June 2018 with a mandate to examine and report on whether it is possible and practicable to impose a duty on enterprises to provide information to consumers and organisations about their production sites, and how they exercise responsible conduct and manage their supply chains. Any consequences of such legislation were also to be identified. The original mandate is included below.

On 27 August 2019, the committee received instructions from the Ministry, which extended the mandate. The Ministry's letter stated:

“Having considered the matter in greater depth, the Ministry has concluded that the Committee ought nevertheless to formulate a draft Act. A draft Act will make it easier to follow the Committee's deliberations. It is up to the Committee to decide whether new duties should be the subject of a new law, or be incorporated in existing legislation. Other aspects of the mandate and the budget and schedule for the work remain unchanged.”

The wording of the original mandate is as follows:

I. Introduction

The Government has decided to appoint a committee to assess whether Norway should adopt an ethics information law. The committee shall examine whether it is possible and advisable to require businesses to disclose information to consumers and organisations about production sites used in manufacturing, responsible business conduct and supply chain management. The committee shall also assess the consequences of a potential disclosure requirement. If the committee finds that such regulation is feasible and advisable, the committee shall propose its scope and how the duty to disclose information should be enforced.

The background to the appointment of the committee is two petition resolutions where the Parliament asks the Government to examine such a law:

² Currently, the Ministry of Children and Families.

1. *Petition Resolution No. 890 (2015-2016) of 13 June 2016: “The Storting asks the Government to investigate, report on and submit proposals for draft legislation requiring transparency, for consumers and organisations, of ethics information about production sites and manufacturing.”*
2. *Petition Resolution No. 200 (2017-2018) of 12 December 2017: “Parliament asks the Government to appoint a committee with broad representation to assess a possible law on ethics information, its scope, what the law should include and to whom it should apply. The Committee should also consider how a law on ethics information might safeguard consumers’ and organisations’ right to information beyond existing legislation and tools.”*

In 2017, as part of the work on the first petition resolution, the Ministry of Children and Equality (BLD) commissioned law firm Simonsen Vogt Wiig (SVW) to investigate the possibility for Norwegian authorities to introduce legislation requiring disclosure of ethics information from businesses. SVW assessed whether national regulations, EEA legal obligations or bilateral/multilateral agreements (including WTO agreements) would impede, or require specific adjustments to, an ethics information obligation. SVW delivered its report in the summer of 2017, concluding that there is a certain scope for action within existing obligations that may allow for imposing an information duty on businesses.

II. The purpose of an ethics information obligation

In the global trade of commodities, many consumer goods are produced in countries where employee protection is weaker than in Norway. The lack of living wages, the use of child labour, excessive working hours and the absence of freedom of association are among the challenges in global supply chains.

The Government takes as a point of departure that the purpose of an ethics information obligation would be that consumers and organisations have access to information about how businesses work to safeguard basic rights and decent working conditions in their supply chains. Consumers will therefore be able to make better informed purchasing decisions. The duty of disclosure should also contribute to increasing the efforts of companies to ensure decent working conditions in their supply chains. Thus, the duty to disclose information may be said to have a dual purpose.

III. Assessment

a. The possibility for, and advisability of, introducing an ethics information obligation

The Ethics Information Committee shall examine whether it is possible and advisable to require businesses to disclose information to consumers and organisations about production sites used in manufacturing, responsible business conduct and supply chain management. The consequences shall also be identified.

The committee shall assess the usefulness of such an obligation, i.e. the extent to which such a disclosure obligation will i) provide consumers with better opportunities to make informed purchasing decisions beyond existing legislation and tools (brand schemes, etc.) ii) affect businesses’ efforts to safeguard fundamental rights and decent working conditions in supply chains, and iii) will help to improve working conditions in supply chains.

The committee shall furthermore address any potential competitive, economic and administrative consequences of such a disclosure requirement.

In order to assess the merits and consequences of an obligation to disclose information, it will to a certain extent be necessary to address the questions under point b. below.

b. Alternatively: Regulation

If the committee finds that such legislation is possible and advisable, the committee shall propose its scope and how the disclosure obligation should be enforced. The assessment must be viewed in the light of relevant national regulations, EEA law, Norway's WTO obligations and other international regulations by which Norway is bound, cf. SVW's assessment of the legal scope of action. The committee may recommend that any future duty of disclosure should be included in existing regulations; proposals need not necessarily include a new law. The committee is not required to formulate specific draft legislation.

The committee shall in particular assess:

- Which sectors and businesses should be covered by the obligation to provide information, and if certain sectors or businesses should be exempted from such a duty.*
- What type of information should be covered by the duty of disclosure and how far back in the supply chain the duty to disclose information should apply. It may also be relevant to address what type of information should be exempted, including how the information obligation should be weighed against other considerations, inter alia, business interests, trade secrets, copyright and competition considerations.*
- How and when such information should be made available; whether the information should be publicly available without a request from a consumer or an organisation (e.g. publishing or labelling requirements) or whether the disclosure obligation should apply only at the request of the consumer or an organization (e.g. information requests).*
- How a potential regulation should be enforced, including who should supervise the regulation, and what sanctions should apply if the duty of disclosure is infringed.*
- What appeal possibilities consumers and organisations should have in the case of a violation of the duty of disclosure.*
- Economic and administrative consequences of the committee's proposal, cf. Instructions for Official Studies and Reports, Chapter 2.*

3.3 Composition and work of the Committee

The Committee was appointed with broad representation from the Confederation of Norwegian Enterprises (NHO), the Norwegian Confederation of Trade Unions (LO), the Enterprise Federation of Norway (Virke), the Consumer Authority (Forbrukertilsynet), Ethical Trade Norway, researchers from the University of Oslo, the Norwegian School of Economics (NHH), the Norwegian school of Business Administration (BI) and a representative from an enterprise. The Chair of the Committee, Ola Mestad, is Professor at the Faculty of Law at the University of Oslo.

The Committee has based its work on the *Instructions for Official Studies and Reports* and guidance for evaluating the consequences for business. The committee has strived to involve stakeholders at the earliest possible stage, as instructed in para 3-1 of the *Instructions for Official Studies and Reports*. The recommendations in Part I are based on the broad mapping in Part II, which includes international trends and frameworks, efforts by the business community and relevant legislation in other countries and in Norway.

Fifteen Committee meetings have been held. Invitees have contributed to Committee meetings, presenting research, work in their own enterprises/organisations and experience with existing guidelines and statutory requirements. This has contributed to increased

knowledge and discussion of topics including consumer behaviour, global production of goods and services, important frameworks, efforts in the UN and the OECD and business initiatives.

The Committee has invited all stakeholders to submit written inputs. Ten have been received and these are published on the Committee's website.

The Committee has held three consultative meetings, including one open meeting and two meetings with members of NHO, Virke and Ethical Trade Norway respectively. The Committee has also held in-depth seminars on selected topics and has had meetings with actors from business, organisations, international labour organisations, academia and public administration. One of the Committee meetings was held in Bergen, where the Committee sought input from local business representatives, researchers and organisations.

In the autumn of 2018, the committee travelled to the UK and France to learn from experiences with the UK Modern Slavery Act (2015) and the French Duty of Vigilance Law (2017). The Committee met representatives from government and organisations as well as enterprises that are subject to the respective laws. The secretariat participated in the UN Forum for Business and Human Rights in Geneva in the autumn of 2018. In February 2019, the secretariat met with relevant bodies in the EU and participated in a seminar on the EU directive on disclosure of non-financial information and diversity information. The Committee travelled to China in March 2019 (Beijing, Shanghai and Ningbo) to study global supply chains, production, purchasing practices and factors that contribute to improvements.

Developments in this field are dynamic. At the time of drafting this report, various countries are evaluating legal requirements and other initiatives. There have also been new legislative initiatives in Norway. The Granavolden platform of 17 January 2019 and a member of parliament's legislative motion submitted on 15 November 2018 concern evaluating the need for a law against modern slavery. Several civil society organisations have started a campaign for a human rights law for business ("I want to shop ethically").

The Committee submitted an interim report to the Ministry on 31 May 2019, which provisionally concluded that a statutory duty of disclosure is possible, advisable and would contribute to greater transparency and access to information about global value chains. In the longer term, the report found, it can contribute to improved safeguarding of fundamental rights and working conditions in supply chains. Following this, the Committee's mandate was expanded to include preparing a draft Act, as mentioned above.

The Committee's recommendation is unanimous, with the exception of dissent by Committee Members Gramstad and Ditlev-Simonsen to Section 6 in the draft Act, Ditlev-Simonsen to Section 7 third paragraph and special remarks by Ditlev-Simonsen on certain Sections of the draft Act. These appear in paras 8.4.6 and 8.4.10 below.

3.4 Interpretation of mandate and delimitation of scope

The Committee's mandate encompasses a wide range of issues relating to national and international regulations and involves a broad group of stakeholders. The Committee finds it necessary to briefly address its interpretation of the mandate, and to delimit its scope.

The mandate emphasises fundamental rights and work-related conditions such as wages, working hours and safety. The Committee's interpretation is that the focal point of any new duty of disclosure shall be fundamental human rights and decent work. At the same time, these rights are closely linked to challenges when it comes to climate-related risk, environmental impact and corruption.

Environmental impact and corruption are not dealt with at length as they at the outset are beyond the scope of the mandate. They are also to a great extent covered by existing legislation. The Environmental Information Act and the Product Control Act confer rights to information about environmental impact and are addressed in greater detail in Chapter 19. Corruption and trading in influence are criminal offences and provisions in the Penal Code can also apply to acts that take place outside Norway. A separate report on corporate liability and provisions on corruption in the Penal Code, is due to be completed by 31 January 2020.³

The present report concerns a duty of disclosure for enterprises. It is important that the requirements imposed on enterprises from various entities are coordinated. Therefore, we also address the requirements imposed on suppliers in the Procurement Act section 5. A duty of disclosure that is in line with these requirements will improve the potential impact of the regulation and lessen the administrative burdens for suppliers to the public sector.

3.5 Structure of the report

The report is divided in two parts: Part I (Recommendations) and Part II (Mapping).

Part I first deals with the Committee's mandate and work, terminology and the scope of the report (Chapters 3 and 4). In Chapter 5, we review drivers for improvement. Chapter 6 summarises key development trends in, *inter alia*, the UN, ILO, OECD, EU and relevant legislative developments in selected countries. In Chapter 7 we address the legal parameters for the Committee's work, and relevant Norwegian legislation. Chapter 8 summarises the Committee's deliberations and explains the Committee's regulatory proposal pursuant to Part III, point a and b of the mandate.

The draft Act and commentary on the individual Sections are found in Chapters 9 and 10. Chapter 11 considers the economic and administrative consequences of the draft Act.

The mapping in Part II forms the basis for the recommendations in Part I. Here we review key trends in the global production of goods and services; Norwegian businesses and trade; human rights and working conditions in global supply chains; consumer interests; responsible business conduct and supply chain management; international frameworks and efforts in the UN, ILO, OECD and EU; relevant legislative developments and initiatives in other countries; current Norwegian legislation and finally, the Norwegian government's expectations and requirements when it comes to responsible business conduct.

4 Key terminology and framework

The starting point for the report and draft Act is that all human beings are entitled to respect for certain fundamental rights. Ethical theories contend that we have certain common obligations to one another. This also applies to enterprises. Human rights are an expression of such common obligations. This foundation also underpinned the ethical guidelines for the Norwegian Government pension fund, as they were formulated in 2002.⁴

Fundamental human rights and decent work

³ Ministry of Justice and Public Security, "Mandat for utredning av reglene om foretaksstraff og korrupsjon" ("Mandate for a study of the rules relating to corporate penalties and corruption"), 31.5.2018.

⁴ NOU (Norwegian Official Reports) 2002: 22, p. 12.

Fundamental human rights and decent work have been on the agenda in international fora for a long time. UN Member States adopted the Universal Declaration of Human Rights in 1948. It sets forth the prohibition against slavery and slave trade, the right to work and to just and favourable conditions of work, non-discrimination and equal pay for equal work, the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay. The International Covenant on Civil and Political Rights (1966) and the International Covenant on Economic, Social and Cultural Rights (1966) expand on the rights in the Universal Declaration of Human Rights and make them legally binding.

ILO's eight core conventions are generally considered to constitute fundamental human rights at work. The core conventions concern the elimination of all forms of forced or obligatory labour, the effective abolition of child labour, the elimination of discrimination in employment and occupation and finally, the freedom of association and effective recognition of the right to collective bargaining.

Human rights conventions are binding for states. They set the minimum standards of fundamental human rights, which businesses are expected to respect. They form the foundation for the UN Guiding Principles on Business and Human Rights and the human rights chapter in the OECD Guidelines for Multinational Enterprises.

Decent work is work that safeguards fundamental rights and principles at work as laid down in the ILO core conventions. It also involves respect for employees' rights to safety and remuneration, enabling workers to provide for themselves and their families, and respects workers' physical and mental well-being when carrying out their work.⁵

Responsible business conduct and sustainability

When discussing enterprises responsibilities towards people, society and the environment in this report, the primary term used is responsible business conduct. This is in line with international frameworks for responsible business conduct in the UN and the OECD. The UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises set the framework for this report and the draft Act, and are discussed more comprehensively in Chapter 17.

Business ethics is often related to responsible business conduct, and concerns the ethical dilemmas that arise in enterprises. Dilemmas, and conflicts between competing interests and aims, may arise in efforts relating to responsible business conduct. Still, the basic principle is that businesses have an independent responsibility to respect human rights.

The Norwegian government first formulated a policy on corporate social responsibility in the Report to the Storting No. 10 (2008-2009) *Corporate social responsibility in a global economy*. The report expressed the governments' expectations of Norwegian enterprises when it comes to human rights, labour standards, the environment and anti-corruption in line with the categorisation of principles in the UN Global Compact. The report defined corporate social responsibility as beyond simply complying with legal obligations. In parallel, the Confederation of Norwegian Trade Unions (LO) and the Confederation of Norwegian

⁵ The International Covenant on Economic, Social and Cultural Rights recognises the right to work and the right to just and favourable working conditions in Articles 6 and 7. This means remuneration which as a minimum shall give all workers fair wages and equal remuneration for work of equal value without discrimination of any kind and a decent living for themselves and their families, safe and healthy working conditions as well as rest, leisure and a reasonable limitation of working hours and periodic holidays with pay as well as remuneration for public holidays. The UN Committee on Economic, Social and Cultural Rights has expanded on this in a comment to Article 6 of the International Covenant on Economic, Social and Cultural Rights. See the UN Committee for economic, social and cultural rights, "The Right to Work. General Comment No. 18". Adopted on 24 November 2005.

Enterprises (NHO) negotiated changes to their Basic Agreement. There, they encourage enterprises to use the OECD Guidelines for Multinational Enterprises and the UN Global Compact as the basis for their national and international activities.⁶

More recently, Norwegian authorities have been moving away from an interpretation where social responsibility only relates to what the company does voluntarily. In the State Ownership Report (2013-2014) corporate social responsibility was defined as covering “fields relating to how companies’ activities impact people, society and the environment including human rights, labour rights, anti-corruption and transparency.”⁷ The Government’s national action plan for following up the UN Guiding Principles for business and human rights (2015) defines corporate social responsibility as the responsibility assumed by companies for people, society and the environment on which their activities have an impact.⁸

Although some of the responsibility for people, society and the environment often is subject to regulation, there is still much that is not regulated or enforced. Therefore, responsible enterprises do not just abide by the law. They conduct themselves according to global norms for responsible business conduct, as defined in the UN Guiding Principles for Business and Human Rights (UNGP) and the OECD Guidelines for Multinational Enterprises. According to these frameworks, companies are to comply with applicable laws and regulations and respect human rights in all their activities. This applies irrespective of size and where they operate.

Responsible enterprises strive to ensure that they do not have an adverse impact on people, society or the environment through their own business nor their business relationships. This includes the enterprise’s employees, the suppliers’ employees, customers, local communities and the environment around the production, including health, safety and environment at the workplace. As well as focusing on human rights, a responsible enterprise is aware of its potential impact on the climate and how to avoid bribery and corruption. By contrast, adverse impact on society means that an enterprise’s activities, or lack of activities, involves disregarding human rights, environmental standards or anti-corruption standards.⁹

The OECD Guidelines for Multinational Enterprises are recommendations from governments to multinational enterprises operating in or from territories in states that have endorsed the guidelines. Thirty-six OECD countries and twelve other countries have committed to promoting the guidelines. This business activity represents 85 percent of foreign direct investments. The guidelines include chapters on human rights, employment and industrial relations, environment, consumer interests and disclosure, see para 17.3.1.

The UN Guiding Principles on Business and Human Rights (UNGP) is the internationally recognised standard on how business is expected to respect human rights, cf. para 17.3.2. UNGP reflects the responsibility of the state to protect human rights through, *inter alia*, legislation and guidance. Business has an independent responsibility to respect human rights. This means that companies shall avoid infringing the human rights of others and mitigate any adverse impact they are involved in. To this end, companies are to carry out due diligence. Due diligence involves identifying, preventing, mitigating and accounting for how they

⁶ NHO and LO, "Hovedavtalen ('the Basic Agreement'), LO-NHO 2018-2021", 06.11.19.

⁷ Report to the Storting Meld. St. No. 27 (2013-2014). "Et mangfoldig og verdiskapende eierskap ('Diverse and value-creating ownership')," p. 73.

⁸ Ministry of Foreign Affairs, "Næringsliv og menneskerettigheter" ('Business and Human Rights'), 2015: 14.

⁹ The Danish Mediation and Complaints-Handling Institution for Responsible Business Conduct, "Samfundsansvar – vejledning til små og mellemstore virksomheder i mode- og tekstilbranchen ('Responsible Business Conduct - Guidance for small and medium-sized enterprises in the fashion and textiles industries')", 2019: 4.

address any adverse impact on human rights. The OECD Guidelines for Multinational Enterprises were aligned with UNGP with respect to human rights and due diligence in 2011.

UNGP and the OECD Guidelines for MNEs are negotiated by states and are therefore the most recognised guidelines for responsible business conduct. The Norwegian government has endorsed these frameworks and expects all Norwegian enterprises to know and to follow them. This applies irrespective of whether they are publicly or privately owned, and irrespective of whether their activities are in Norway or abroad.¹⁰ The Minister of Foreign Affairs, the Minister of Development and the Minister of Trade and Industry set out their expectations in the foreword to the Norwegian OECD Contact Point's short guidance document on due diligence:

“The Norwegian authorities expect Norwegian companies that operate internationally to know and to follow the OECDs guidance for responsible business conduct. A key element in the OECD Guidelines is the expectation that the companies conduct due diligence to prevent adverse impacts on people, society and the environment.”¹¹

The OECD Guidelines for Multinational Enterprises recommend that companies contribute to sustainable development,¹² thus combining the expectations in the guidelines with sustainable development. Responsible business conduct is critical to attaining the UN Sustainable Development Goals (SDGs) and due diligence can contribute to enterprises' efforts towards the goals and towards avoiding greenwashing in relation to the SDGs.¹³

The UN Sustainable Development Goals provide a foundation for the Committee's report and draft Act. Many of the goals and targets are relevant. Child labour is to be eradicated by 2025 and states are to take immediate and effective measures to eradicate forced labour and end modern slavery. States, businesses and organisations have set themselves the target of promoting a safe and secure working environment for all workers, and ensuring that patterns of production and consumption are responsible, within the planetary boundaries. The most relevant goals for this report are reproduced below and discussed in chapter 16.

Sustainable development goal 8: Decent work and economic growth

8.7. Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms.

8.8. Protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment.

Sustainable development goal 12: Ensure sustainable consumption and production patterns

12.4. By 2020, achieve the environmentally sound management of chemicals and all wastes throughout their life cycle, within agreed international parameters, and significantly reduce their release to air, water and soil in order to minimize their adverse impacts on human health and the environment.

¹⁰ Norwegian Government, "Responsible Business Conduct", 13.03.2019.

¹¹ Norway's OECD Contact Point, "OECD's Due Diligence Guidance for Responsible Business Conduct - an Introduction", 2019: 4.

¹² OECD Guidelines for Multinational Enterprises, General Policies, para 1.

¹³ Nieuwenkamp, "Ever heard of SDG washing? The urgency of SDG Due Diligence", 25.9.2017.

12.6. Encourage companies, especially large and transnational companies, to adopt sustainable practices and to integrate sustainability information into their reporting cycle.

Supply chains and business relationships

The requirement to respect human rights in the UNGP and OECD Guidelines applies both to the enterprise itself and business relationships in the supply chain. The OECD Guidelines for Multinational Enterprises define business relationships as “relationships with business partners, entities in the supply chain and any other non-State or State entity directly linked to its business operations, products or services.”¹⁴

Based on the EU and OECD terminology, we define the supply chain as all enterprises supplying goods and services who deliver input factors to a company and are directly linked to the company’s business activity, products or services. The supply chain includes the activities, organisations, actors, technology, information, resources and services that are involved in the process of transporting and processing a product from the raw material stage to finished product, see similarly the EU regulation on conflict minerals, (EU) 2017/821, Article 2.¹⁵ This includes transport, agents and other intermediaries.

In the modern economy, return schemes and other disposal of purchased goods from the seller is part of the supply chain. Including these stages is appropriate with a view to EU and Norwegian policies for a circular economy and sustainable business models. An example of this is after-sales services in relation to recycling an object or part of an object.

There is a difference between responsibility an enterprise has within the company and in the supply chain. The enterprise itself can exercise internal control, make changes and prevent adverse impacts. How much real influence an enterprise can exert on its contractual partners will depend on factors such as the size of the order, and the collaborative relationship. The OECD Guidelines for Multinational Enterprises recognise that there may be practical limits to enterprises’ ability to change the behaviour of their suppliers. This is due to factors such as product characteristics, the number of suppliers, the structure and complexity of the supply chain, and the company’s market position relative to the suppliers or other entities in the supply chain. This is dealt with in greater detail in para 17.3.1.1.

Enterprises may still seek to influence suppliers through contracts and other incentives, for instance by establishing long-term business relationships. They may also attempt to improve conditions in collaboration with others through sector-based or other initiatives. The OECD Guidelines for Multinational Enterprises underline that this is not intended to shift the responsibility from the entity causing adverse impacts to the enterprise with which it has a business relationship in the supply chain.¹⁶

5 Drivers for improvement

Many individuals and organisations seek to promote respect for fundamental human rights and decent work in businesses and supply chains. Many enterprises work systematically to

¹⁴ UNGP Principle 13 *Commentary* uses the same definition.

¹⁵ According to the OECD sector guidance for Conflict Minerals, a supply chain includes all activities, organisations, technology, information resources and services involved, from the raw material stage through to the end user. OECD, "OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas", 2016: 14.

¹⁶ OECD Guidelines for Multinational Enterprises, Chapter II, para 12. See also OECD, "OECD Due Diligence Guidance", 2018: 77. Norwegian translation.

achieve improvements. States bear the responsibility for protecting human rights and set requirements and express expectations for enterprises to this end. Politicians put poor working conditions on the political agenda. The media, consumers, organisations and trade unions direct attention to human rights violations and often engage in dialogue with enterprises.

Transparency and access to relevant and reliable information are crucial to enable various actors to contribute to improvements in global supply chains. Transparency is also the key to improved understanding, and thereby better regulation, of how goods and services are produced.

5.1 Consumers, organisations and collective engagement

Consumer interests and collective engagement are discussed in chapter 14 of the report. Ethical and political consumers influence both governments and business. Many businesses report that consumers are an increasingly important pressure group. A survey carried out by the Enterprise Federation of Norway (Virke) in 2013 shows that Norwegian trade and service firms believe that their customers are the greatest drivers for ethical trade and sustainable products. Similar results are found in international studies.¹⁷

Organisations play an important role in shedding light on poor working conditions by informing and influencing consumers, businesses and the media. Working conditions in the textile and clothing industry have attracted significant attention, especially following the Rana Plaza tragedy in Bangladesh in 2013. The tragedy brought the debate about the need for better access to information and regulation to ensure respect for human rights in multinational enterprises and their supply chains to the forefront both in Norway and other countries. Norwegian consumers and organisations mobilised. More than 30,000 people signed the ‘I want to know’ petition initiated by the organisation “Future in our hands” which called for better access to information about ethics in manufacturing and a law on ethics information.

The Committee has met various organisations that are engaged in gathering information about working conditions in supply chains and influencing business and government. The Rafto Foundation has organised a campaign to promote a modern slavery act in Norway. Recently, Amnesty International Norway and several other organisations started the campaign “I want to shop ethically”, advocating for a human rights law for business. Amnesty International has documented use of forced labour in cobalt extraction in the mines in the Democratic Republic of Congo. Ethical and political consumers and civil society organisations demand not only more information about the ethical aspects of manufacturing, but changes in practice.

Several Norwegian enterprises have a constructive dialogue and cooperate with civil society organisations. Interaction between consumers, organisations, politicians and business has been important in countries that have adopted legislation requiring enterprises to report on efforts to combat modern slavery in the supply chain, or requiring human rights due diligence.

5.2 Efforts in business enterprises

The efforts of business enterprises are vital to improving working conditions in supply chains, and many have worked constructively to this end for a long time. Chapter 15 of the report addresses responsible business conduct and supply chain management.

¹⁷ Kiron et al. "Sustainability nears a tipping point", 2012.

Enterprises that act responsibly may have a competitive advantage. Many find that responsible conduct enhances their reputation and profitability. Employees become more motivated, suppliers more loyal, consumers more satisfied and the enterprise also becomes better equipped to meet future regulation and challenges.¹⁸ Manufacturing companies with poor working conditions find it more challenging to attract and retain qualified labour, also in low-cost countries. The Committee's study tour to China showed that workers there, too, increasingly demand decent work and in some places this has helped to bring about changes.

There have been significant developments since the 1990s, when many enterprises first introduced ethical Codes of Conduct. Especially larger enterprises conduct human rights due diligence in line with international guidelines for responsible business conduct. This provides a basis for communicating challenges and improvements. Experience shows that management needs to be fully engaged and ensure that the efforts are anchored throughout the enterprise. There are many good examples of due diligence in practice, and tools and guidance can contribute to improvements.

The Committee has met many enterprises that have complex supply chains. Some have thousands of suppliers in the first tier. This must be multiplied several times in the next tier of the supply chain. Some of the suppliers are large, and the companies may then have more limited influence. The way in which companies manage their supply chains impacts what they know about and exert control over. With direct contact and dialog with suppliers, the opportunity to influence and improve working conditions improves. With indirect and short-term contracts and the use of intermediaries, the opportunities to exert influence in the supply chain is reduced.

Many enterprises realise that the opportunities to influence the supply chain independently is limited, and that they therefore often must focus their efforts on particular areas and suppliers. Some participate in industry-wide projects and efforts to improve their impact. Multi-stakeholder initiatives such as Ethical Trade Norway¹⁹ and industry initiatives promoting transparency and systematic efforts are examples of this.

The UN Sustainable Development Goals can provide a new impetus towards decent work, cf. chapter 16. In meetings with the Committee, both large and small enterprises have described the goals as a foundation for their work. Some enterprises construct their business models in a way that is aligned with the UN Sustainable Development Goals. Globally, more than 30 senior executives in major enterprises have recently committed to respecting human rights in their own business and set clear requirements and expectations for their suppliers and other business partners. They urge the wider business community to follow suit.²⁰

Investors increasingly seek systematic information about companies' societal impact and risk factors, not least in view of climate change. Studies show that enterprises that prioritise knowledge about their supply chains often have better financial results. Some have gone as far as to say that enterprises that do not adjust their business models to take people, society and the environment into account no longer will exist in the future. The Committee is not passing judgement on the probability of this happening.²¹

¹⁸ See for example Hedblom et. al., "Toward an Understanding of Corporate Social Responsibility: Theory and Field Experimental Evidence", 9.9.2019.

¹⁹ The multi-stakeholder initiative the Ethical Trading Initiative - Norway was founded in 2000 and changed its name to Ethical Trade Norway in 2019.

²⁰ World Sustainable Development Business Council, "CEO Guide to Human Rights", June 2019.

²¹ For example, see Eccles et al., "The impact of corporate sustainability on organizational processes and performance", 2014 and Khan et al., "Corporate sustainability: First evidence on materiality", 2016.

Technology facilitates an improved overview of supply chains through tracking systems and block chain technology. Technological development has led to some enterprises having significant amounts of data about customers and transactions. Block chain technology is still in its early days, but may have a role to play in tracking, following up and providing information about the supply chain. The adoption of such technology by some enterprises may give them a competitive advantage, thus influencing others to improve efforts to monitor their supply chains.

5.3 Workers and trade unions

Trade unions nationally and internationally work for the right to establish and join trade unions and engage in collective bargaining in order to improve wages and working conditions in various industries. In the aftermath of the Rana Plaza tragedy, international and local unions, organisations, government counterparts and business negotiated a comprehensive agreement that included health and safety measures and inspections in Bangladesh.

Trade unions play an important role in shedding light on poor working conditions and thereby achieving improvements. Labour organisations and others have drawn attention to the perilous working conditions for migrant workers in Qatar, especially in the construction sector, in preparation for the World Cup in 2022. The international labour organisation, ITUC, estimates that 7,000 people will have perished before the World Cup kicks off. Many countries do not permit workers to establish or join trade unions. Nevertheless, workers risk their lives in the struggle for improved conditions.

Often, even employee representatives in enterprises that permit trade unions are unable to obtain access to information about the supply chain in the corporate group. The global labour organisation, IndustriAll Global Union, emphasizes that respect for the rights to establish and join trade unions and engage in collective bargaining, as expressed in ILO Conventions no. 87 and no. 98, are the keys to achieving decent work in supply chains. These rights allow workers and their unions to exert pressure on the government and enterprises and thereby achieve better protection of other labour rights.

5.4 Political initiatives and the role of government

The Norwegian government expects Norwegian companies, regardless of their size and where they operate, to follow the UN Guiding Principles for Business and Human Rights and the OECD Guidelines for Multinational Enterprises. Pursuant to the Procurement Act section 5, public procurement shall entail suitable procedures for promoting respect for fundamental human rights, where there is a risk that these rights might be violated, cf. para 19.6. The government's requirements and expectations are addressed in chapter 20. It is important that the government itself upholds the requirements and expectations that are set for enterprises.

The Committee has met with various stakeholders in the public sector that engage in this area. The Ministry of Trade, Industry and Fisheries and the Ministry of Foreign Affairs provide discussion fora as well as guidance. Norway's OECD Contact Point for responsible business conduct contributes with guidance on due diligence, cf. para 17.3.1.6. The Ministry of Trade, Industry and Fisheries facilitates a meeting place ('expertise forum') between civil society organisations and ministries that are charged with exercising state ownership of certain commercial undertakings. Norwegian embassies and Innovation Norway can serve as a

discussion partner on conditions in countries and industries. The Ministry of Foreign Affairs recently completed a mapping on modern slavery, including recommendations for Norwegian efforts to combat modern slavery through development cooperation. The Ministry has also commissioned a draft development program geared towards combating modern slavery.²²

5.5 Media

Both internationally and locally, the media plays a role in shedding light on incidents, either by acting as a mouthpiece for politicians and civil society organisations, or through their own investigative journalism. Norwegian journalists have reported on subjects such as working conditions in supply chains and shedding light on poor conditions, and can constitute a force for improvements. An independent press in manufacturing countries can lend a voice to those who often are not heard, and may exert influence and provide information about indecent working conditions and violations of fundamental human rights.²³

6 Key developments

The organisation of production of goods and services in our time poses challenges when it comes to regulating enterprises. Multinational enterprises often spread their activities and place them in the most cost-efficient locations in value chains at home and abroad. Spreading risks through corporate structures and by outsourcing work creates fragmented production networks. Chapter 13 of the report addresses global production of goods and services in greater detail.

Violations of fundamental human rights and poor working conditions are found across sectors and national borders. The ILO points out how in efforts addressing supply chains, the main focus is often on the working conditions at production sites. However, preparing and processing raw materials also presents significant challenges. The fragmentation of supply chains increases the risk of companies being linked to human rights violations in their business relationships. According to an ILO resolution on decent work in global supply chains (2016), the presence of child labour and forced labour in some global supply chains is acute in the lower segments of the chain.

Lack of accessible and reliable information remains a challenge in seeking to improve working conditions in global supply chains. ILO stresses that its calculations are most likely conservative estimates due to the limitations in available data.

The ILO estimates that 25 million people are victims of forced labour on a global basis, of which 16 million are working in the private sector. The nature of forced labour has changed. The UN Special Rapporteur on contemporary forms of slavery points out that refugees, migrants and young adults are more exposed to modern slavery than others.²⁴ The ILO estimates that there are around 164 million migrant workers globally. About 8,000 people die every day due to accidents at work or work-related illness, according to the ILO. Human

²² NORAD, "Mapping of modern slavery and recommendations for the Norwegian Government's development programme to combat modern slavery", 26.6.2019, also see NORAD, "Development programme to combat modern slavery", 26.9.2019.

²³ UNDP and UNESCO, "Entry points for media development to support peaceful, just and inclusive societies and Agenda 2030 – a background discussion note", 2017.

²⁴ OHCHR, "Current and emerging forms of slavery. Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences" 26.07.2019: 4.

rights and working conditions in global supply chains are addressed in para 13.4 in the report. In Norway, enterprises in some industries have contributed to social dumping and in some instances, work-related crime, cf. para 13.6.

The challenges are complex. A labour market that is constantly changing poses significant challenges on a global basis. Strong, independent employee and employer organisations are crucial to ensuring an efficient labour market. Freedom to join a union and the right to engage in collective bargaining are under pressure in many countries. The number of countries where those who join unions are threatened, assaulted, tortured or killed is increasing.²⁵

International bodies and businesses increasingly acknowledge the connection between climate change and human rights. In 2018, a unanimous resolution from the UN Human Rights Council stated that climate change is one of the greatest threats to human rights in the 21st century.²⁶ The UN Special Rapporteur on contemporary forms of slavery stresses that migration will likely continue due to climate change, increased conflict, the lack of economic opportunities and the demand for labour in recipient countries.²⁷

6.1 International frameworks in the UN, ILO and OECD

It was a breakthrough when the UN Human Rights Council unanimously adopted the UN Guiding Principles on Business and Human Rights (UNGPs) in 2011. The framework has three pillars: 1) The State duty to protect human rights (“protect”); 2) The corporate responsibility to respect human rights (“respect”), and 3) Access to effective complaint and remedy mechanisms (“access to remedy”). Chapter 17 of the report deals with the relevant frameworks in the UN, the ILO and the OECD.

States commit to protecting human rights by ratifying conventions. The International Covenant on Civil and Political Rights (1996) and the International Covenant on Economic, Social and Cultural Rights (1966) are fundamental. The ILO Core Conventions have been ratified by most states and comprise the basic human rights that at a minimum shall be respected in working life. These conventions may be divided in four main categories: 1) effective abolition of child labour, 2) elimination of all forms of forced or obligatory labour, 3) elimination of discrimination in employment and occupation and 4) freedom of association and effective recognition of the right to collective bargaining.

However, international human rights obligations are not always translated to national legislation. In many countries, enforcement is lacking or inadequate. Many countries do not permit trade unions and collective bargaining. The goal of eradicating forced labour and other forms of modern slavery in supply chains is still far off. Free Trade Zones (FTZ) provide tax exemptions and other conditions for businesses, while at the same time making exceptions to labour law, including trade union rights.

These are some of the reasons for why the ILO adopted a Protocol to the Forced Labour Convention (1930, Convention No. 29) in 2014. The aim of the protocol is to reinforce labour legislation and supervision in more countries. The Protocol asserts that states shall take measures to combat forced labour, including *supporting due diligence by both the public and private sectors to prevent and respond to risks of forced or compulsory labour*. Norway is one of the 40 countries that have endorsed the protocol.²⁸

²⁵ ITUC, "2018 ITUC Global Rights Index" and "2019 ITUC Global Rights Index".

²⁶ United Nations Human Rights Council, "Human rights and climate change (Resolution 38/4)", 5.07.2018.

²⁷ OHCHR, "Current and emerging forms of slavery. Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences", 26.07.2019: 4.

²⁸ ILO, "P029 - Protocol of 2014 to the Forced Labour Convention, 1930", 1930, Article 2 e.

Unlike states, enterprises are not directly bound by human rights obligations. Enterprises are required to follow legislation in the countries where they operate. The ground-breaking aspect of the UNGP in 2011, was the recognition that enterprises have an independent responsibility to respect human rights. According to the UNGP, businesses are required to conduct due diligence to identify, prevent, mitigate and account for how they address human rights impact.

The OECD Guidelines for Multinational Enterprises were updated in line with UNGP when it comes to human rights and due diligence in 2011. The OECD Guidelines are supported by National Contact Points – a unique mechanism charged with promoting and providing guidance, cooperating internationally and handling complaints of alleged breaches of the Guidelines. The OECD Working Party on Responsible Business Conduct has prepared various guidance documents. A key feature of this guidance is due diligence as a method for preventing and mitigating adverse impacts on people, society and the environment.

Due diligence is becoming more common in large enterprises, but the practice is still not widespread. Many consider that risk assessment applies primarily to their own enterprise and does not necessarily extend to adverse impacts on workers and local communities. According to the UN Working Group on Business and Human Rights, a lack of focus on risk when reporting on responsible business conduct is a sign of this. The working group points out that many enterprises focus on risks that receive a great deal of attention, such as modern slavery, instead of conducting an objective review of the most salient and probable risks of adverse human rights impacts in different business relationships. The due diligence is furthermore often limited to the first tier in the supply chain.²⁹

The third pillar of the UN Guiding Principles on Business and Human Rights often attracts less attention than the other two. Access to grievance mechanisms shall provide remedy for workers and others subject to human rights violations. Studies show that workers often experience barriers to access to grievance mechanisms, such as not knowing where to obtain redress, lack of information and fear of reprisals.³⁰ The UN Working Group on Business and Human Rights points out that grievance mechanisms often are inaccessible, lack legitimacy and can be expensive. Studies supported by the UN and by the European Parliament look at how access to legal remedy can be improved.³¹

6.2 Responsible business conduct – efforts in the EU

The corporate responsibility to respect human rights, and transparency requirements in the financial sector, have been important issues on the political agenda in the EU in recent years. Current efforts in the EU are described in paras 18.1 and 18.2 of the report.

The European Parliament has adopted several resolutions on responsible business conduct with recommendations for regulatory measures to ensure responsible conduct. The resolutions

²⁹ OHCHR, "Working Group on the issue of human rights and transnational corporations and other business enterprises, Note by the Secretary-General", 73rd session, A/73/163, 16.7.2018: 8-9.

³⁰ Rees, "Grievance Mechanisms for Business and Human Rights: Strengths, Weaknesses and Gaps." Corporate Social Responsibility Initiative, Working paper No. 40. Cambridge, MA: Harvard University, 2008.

³¹ See for instance study requested by the European Parliament's Sub-Committee on Human Rights, "Access to legal remedies for corporate human rights abuses in third countries", 2019. See also Zerk, "Corporate liability for gross human rights abuses. Towards a fairer and more effective system of domestic law remedies. A report prepared for the Office of the UN High Commissioner for Human Rights", 2013.

are not legally binding, but some of the recommendations are followed up in the European Commission's legislative proposals, which have since been adopted or are under discussion.

Directive 2014/95/EU of the European Parliament and of the Council amending Directive 2013/34/EU on disclosure of non-financial and diversity information by certain large undertakings and groups, sets requirements for information relating to respect for human rights, social and employee-related matters and the due diligence processes implemented. However, studies show that at present the information disclosed by companies in jurisdictions that have implemented the Directive remains inadequate, particularly when it comes to risks of adverse human rights impacts and working conditions in the supply chain.³²

A group of institutional investors, representing USD 1.9 trillion in assets under management, recently appealed to the EU and other international bodies calling for better regulation and due diligence requirements to address environmental, social and governance (ESG) factors throughout the investment lifecycle.³³

Certain EU regulations apply to high-risk supply chains, and require due diligence throughout the supply chain. The conflict minerals regulation, (EU) 2017/821, is important normatively and practically and is set to enter into force in 2021. Companies importing tin, tantalum, tungsten and gold sourced from conflict-affected and high-risk areas are required to carry out due diligence to identify and assess the risks of adverse impacts in the supply chain. They are then required to implement measures to prevent or mitigate these risks.

The timber regulation (EU) 995/2010 requires importers of timber and timber products to have systems in place and to exercise due diligence to prevent illegal logging. The regulation has a traceability requirement aimed enabling the enterprises to identify companies or traders who have supplied timber and timber products, and to whom they have supplied them, throughout the supply chain. The regulation was enacted in Norway in 2015 in two regulations relating to timber and timber products. This is addressed in para 18.1.1.3 in the report.

In follow-up to the UN Sustainable Development Goals and the Paris Agreement, the EU Commission has developed an action plan on sustainable finance (2018). The action plan contains several measures to promote transparency and sustainability in the financial sector. The Commission recently issued Guidelines on disclosing climate-related information.³⁴

The EU Commission's work on a possible requirement for due diligence in the supply chain is especially relevant to the Committee's report. This entails making the board responsible for developing a sustainability strategy, which would include human rights due diligence throughout the supply chain. The Commission is supporting studies and undertaking reports assessing the potential impact of different approaches, including a possible directive. This is discussed in greater detail in para 18.1.3.

The European Commission has an active policy for sustainable production and consumption. Measures in the EU and on the national level are to contribute to effective use of resources, environmentally friendly products and increased consumer awareness. The European Green Deal and efforts to promote a circular economy, keeping consumption and production within planetary boundaries, are central features of the present Commission's efforts.

³² Shift, "Evidence of Corporate Disclosure relevant to the UN Guiding Principles on Business and Human Rights", June 2014; OECD/FAO, "OECD-FAO Pilot project on the implementation of the OECD-FAO Guidance for Responsible Agricultural Supply Chains: Baseline Report", OECD Publishing, Paris, 2018.

³³ Investor Alliance for Human Rights, "Making Finance Work for People and Planet", 2019.

³⁴ These guidelines supplement the European Commission's Guidelines on non-financial reporting from 2017. See Guidelines on non-financial reporting 2017/C 215/01.

6.3 Legislation relating to modern slavery and human rights due diligence

In recent years, several European countries have adopted legislation that in some cases go beyond the regulations on the EU level. Some countries have adopted legislation requiring information from companies about risks and measures to combat modern slavery and other human rights violations in the supply chain. Other countries have enacted, or are considering, mandatory due diligence on human rights and environmental impact and in some instances, the possibility of liability in cases where due diligence has not been exercised. The report addresses this in greater detail in para 18.3.

These developments must be seen in the context of increased awareness among various stakeholders when it comes to poor working conditions in supply chains. Legislative initiatives are mainly driven by politicians, and/or campaigns in civil society and trade unions. Enterprises have played a key role in driving several campaigns. The regulations are based in part on the UN and OECD frameworks for responsible business conduct.

The legislation and legislative initiatives mainly reflect one of two models. The *UK Modern Slavery Act (2015)*, Section 54, requires commercial organisations carrying out business in the UK, with a turnover of at least GBP 36 million, to prepare and publish an annual statement about their efforts to combat modern slavery. This was inspired by similar regulation in California, the *Transparency In Supply Chains Act (2010)*. Australia's *Modern Slavery Act* ("An Act to require some entities to report on the risks of modern slavery in their operations and supply chains and actions to address those risks, and for related purposes") from 2018 is along similar lines. Consumers' need for information has been a central concern in driving legislation seeking to combat modern slavery.

The modern slavery laws do not give consumers and organisations a particular right to request information, but require companies to produce publicly available statements. Enterprises, and in some cases other entities, are required to report on how they manage the risk of modern slavery in the enterprise and in the supply chain. The requirements concern gross human rights violations designated as "modern slavery". This is not a legal term, but is an umbrella term used to apply to criminal offences such as forced labour, human trafficking and the worst forms of child labour.

The other legislative model is mandatory human rights due diligence, where business enterprises are required to identify risks and prevent severe human rights violations, health and safety breaches and environmental damage, in the enterprise and its business relationships. In some countries, this model entails the possibility of liability for companies that have not exercised due diligence. The *French Duty of Vigilance Law (2017)*, and newer initiatives in Switzerland follow this model.

The French Duty of Vigilance Law imposes a duty on large enterprises to prepare, implement and disclose a due diligence plan. The due diligence plan shall describe the measures implemented to identify and prevent severe violations of human rights, health, safety and damage to the environment. The plan shall cover the parent company, its subsidiaries, and suppliers or subcontractors with whom the company has an established commercial relationship. The enterprises are required to report regularly on implementation of the plan.

The Netherlands recently (2019) adopted a due diligence law that only applies to the risk of child labour. Companies are required to disclose statements describing due diligence to ensure

that child labour does not occur in the supply chain. The law will apply to all companies that offer goods and services in the Netherlands and provides mechanisms for monitoring and enforcement. It has not been determined when the law will come into force.

6.4 The Committee's assessment

The Committee has followed the dynamic development of regulation in other countries. The common denominator for all the new laws and legislative initiatives is that they are intended to promote increased transparency about human rights conditions in the supply chain. Disclosure of information through published statements or reporting is an important element in all the regulations. The legislation mainly applies to large enterprises, based on turnover and/or number of employees and is normally not directed at specific high-risk activities, industries or products. The regulations often affect smaller companies that are suppliers to larger partners, when the latter demand information from them to fulfil the requirements.

The enforcement mechanisms are limited. A belief in consumer power, and the goal of enabling consumers to make informed choices, have been key drivers behind the reporting requirements on efforts to counter modern slavery. The British Modern Slavery Act requires the companies to publish their statements on a website, or provide them on request. The Australian law provides for a Modern Slavery Statements Register. A Modern Slavery Business Engagement Unit is to help Australian enterprises fulfil the reporting requirements. The responsibility for enforcing the law is mainly left to market mechanisms. A premise for ensuring that this works effectively, is that information about enterprises' efforts to combat forced labour and other violations has an impact on purchasing choices, campaigns and investment decisions, thereby contributing to more responsible conduct.

A mapping of various transparency requirements conducted by the ILO research department concludes that more companies are now reporting on their supply chains, but the quality of reporting varies. The companies themselves decide what they want to report, making it difficult to compare reports. None of the disclosure requirements contain mechanisms for measuring the impact for workers. The study finds that more specific reporting requirements leads to better results. The ILO mapping recommends standardised criteria for disclosure requirements about risks relating to labour rights in the supply chain. They also conclude that there should be sanctions for companies that do not comply with the requirements.³⁵

The Committee is aware that there are objections to mandatory human rights due diligence. The International Organisation of Employers (IOE) give an account of such objections in a report from 2018.³⁶ The IOE points out that even if such requirements often are imposed on larger companies, the responsibility will frequently be pushed backwards in the supply chain, which may result in additional administrative burdens for suppliers. Another argument is that such regulation may lead enterprises to avoid high-risk areas instead of "staying and improving" conditions where they are operating. Still, in some countries, companies are participating in campaigns for mandatory human rights due diligence and argue that this will provide for more fair competition.

The Committee finds that mandatory due diligence is an appropriate way of achieving improvements. It is important that the requirements imposed in various countries are based on

³⁵ ILO Research Department, Philips, Lebaron and Wallin, "Mapping and measuring the effectiveness of labour-related disclosure requirements for global supply chains. Working Paper no. 32", 2018.

³⁶ International Organisation of Employers, "IOE paper on State policy responses on human rights due diligence", May 2018.

international frameworks, and thereby contribute to predictability and fair competition. It is also important to learn from legislative developments in other countries and in the EU.

The Committee does not consider it advisable to restrict the requirement for transparency about conditions in the supply chain to certain types of human rights violations, such as modern slavery. Studies show that emphasising modern slavery may lead to other violations not being reported.³⁷ When managing suppliers, different human rights will be salient depending on the sector, geography and other factors. A risk-based approach entails that the enterprise continually gains knowledge to identify risks and prioritises measures based on the severity and probability that the adverse impact may be mitigated, among other things.

The Committee finds that international frameworks for responsible business conduct and Norwegian traditions with industrial relations provide a broad approach to efforts to promote responsible conduct in supply chains. A statutory duty to disclose information will contribute to good follow-up nationally of the UN Guiding Principles on Business and Human Rights, and better implementation of the OECD Guidelines for Multinational Enterprises.

At the same time, it is important to stress that duties to disclose information must be shaped in an appropriate manner to avoid burdensome reporting requirements. Reporting requirements are most effective when combined with other legislative measures, such as non-discrimination and mandatory human rights due diligence. Furthermore, requirements to publicise information on websites or similar seems to be an appropriate means of ensuring that the information is readily available to various users.

7 Legal framework for the Committee's work

7.1 Scope for legislative development – trade law

The law firm Simonsen Vogt Wiig AS ("SVW") was commissioned by the then Ministry of Children and Equality to assess the legislative scope for a law on ethics information. They submitted their report in July 2017. The law firm assessed whether national regulations, EEA legal obligations or bilateral/multilateral agreements (including WTO agreements) would impede, or require specific adjustments to, a possible duty to disclose ethics information. A summary of the report, "Investigation of the legislative scope for a law on ethics information", follows in the annex to the Ethics Information Committee's report.

The report from SVW concludes that there is some scope to impose a duty for enterprises to disclose ethics information without impinging on Norway's EEA and WTO obligations. Still, the final assessment would depend on the nature of the legislation. The SVW report does not identify national regulations that would conflict with a law on ethics information.

Simonsen Vogt Wiig's basic assumption is that a duty to disclose information must apply to both to companies that produce goods in Norway and/or import goods into Norway. They presume that a disclosure requirement would apply to consumer goods. They envisage a new law being product-based and consider the high-risk list of the Agency for Public Management

³⁷ Landau and Marshall, "Should Australia be Embracing the Modern Slavery Model of Regulation", 2018: 315, pp. 322 - 325.

and eGovernment (Difi) to be a natural basis for a duty to disclose information.³⁸ SVW also postulates that a requirement to disclose information may take three possible shapes: on request; publication; or labelling.

SVW underlines that a duty of disclosure must be compatible with the following secondary legislation,³⁹ which is incorporated in the EEA Agreement:

- The Unfair Commercial Practices Directive, which lays down the extent to which marketing of products may be restricted by legal regulation;⁴⁰
- The consolidated financial statements directive (Directive 2013/34/EU), which sets limits on requirements to report on corporate social responsibility in annual financial statements;
- The Directive on Electronic Commerce, which sets limits on whether information can be required in the actual sales situation;⁴¹
- Directive 94/11/EC, which lays down the rules for labelling footwear which is enforced by a prohibition on sales and marketing.
- Regulation on the provision of food information to consumers, which lays down labelling requirements for country of origin or place of provenance for food products.⁴²

The Committee finds that a duty to disclose information must apply to companies that produce goods in Norway and/or import goods into Norway. A duty of disclosure should not be limited to specific consumer goods or be tied to individual products. The Committee hereby refers to the proposed Act. The duty of disclosure can furthermore be applied at the enterprise level, as is the case in the Environmental Information Act.⁴³

The Committee proposes a duty of disclosure with general requirements that are in line with Norway's international obligations. A requirement to provide the information during the actual sales situation is not proposed, and the proposal thus does not conflict with the directives on electronic commerce or footwear labelling. According to SVW, the scope for adopting a statutory duty of disclosure will depend on how the requirement is formulated. The Committee's mapping of regulations adopted in the EU and in various countries in recent years, further clarifies the scope for a statutory duty of disclosure.

SVW's report points out that a question that will have to be decided when formulating the legislation is whether, and if so how, it should apply to e-commerce. The law firm does not go into greater detail on this except when it comes to the EEA law. WTO-rules include e-

³⁸ High-risk product means that there is extensive documentation of systematic violations of human rights and working conditions in the product's supply chain. The following products are on Difi's high risk list in 2019: cut flowers; electronics and ICT; building materials (natural stone and timber), medical consumer materials/equipment; office supplies; games and sports equipment; furniture and textiles, work clothes and footwear.

³⁹ Such regulations and directives are normally incorporated into Norwegian law as Acts of Parliament or regulations. They take precedence, if conflicts with other Norwegian legislation should arise cf. the EEA Act section 2.

⁴⁰ Directive 2005/29/EC.

⁴¹ Directive 2000/31/EC.

⁴² Regulation (EU) 1169/2011.

⁴³ The Environmental Information Committee considered that a duty to provide information to the authorities "would be unlikely to conflict with provisions in the main body of the EEA Agreement". As regards information to the public, the Committee similarly thought that this "would not normally conflict with the EEA Agreement either". In respect of WTO law, it was established that "... neither will WTO rules be a significant obstacle to the design of Norwegian rules on environmental information, as long as they are formulated and applied in a non-discriminatory manner." See Norwegian Public Reports NOU 2001: 2, "The right to Environmental Information - the Public's right to receive environmental information from the public sector and private actors and the right to participate in public decision-making processes", pp. 38-40.

commerce, but there are questions regarding how well these rules are adapted to e-commerce.⁴⁴ The draft law proposed in this report also applies to e-commerce. This is addressed in the commentary on Section 2 of the draft Act.

7.2 Relevant Norwegian legislation

A statutory duty of disclosure will apply to enterprises that produce and/or offer goods and services in Norway. Enterprises in Norway are subject to various regulations that are relevant to this report and the draft Act. A brief overview and assessment of these follows. A more detailed summary is included in Chapter 19 of the report. A duty of disclosure must be harmonised with other requirements under Norwegian law.

Human rights and labour law etc.

Norway's most important human rights obligations follow from UN conventions, ILO conventions and European Council conventions. Human rights are established in Norwegian law through the Constitution, the Human Rights Act and other legislation. The Constitution and the Human Rights Act are not specifically discussed in this report. The prohibition of slavery and forced labour follows from the Constitution, the Penal Code and the Human Rights Act. Slavery, forced labour and human trafficking are criminal offences. Certain gross violations of human rights committed abroad may be subject to criminal prosecution in Norway, when the conditions in the Penal Code are fulfilled, cf. para 19.2 in this report.

Employers in Norway must ensure systematic Health, Safety and Environmental (HSE) work to be carried out at all levels in the enterprise, including internal control, safety representatives, special local or regional representatives, and a working environment committee. Detailed rules are stipulated in the Regulations relating to Systematic Health, Environment and Safety Activities in Enterprises (Internal Control Regulations) and other regulations. The duty of documentation is adapted to the nature, activities, risks and size of the enterprise. The Norwegian Labour Inspection Authority and other supervisory bodies provide guidance on possible adaptation of the regulations and monitor practice. Organised employers are generally bound by collective agreements that require establishing collaborative arrangements and conducting wage negotiations locally. In some industries, the collective agreements have been applied to the sector at large in order to prevent social dumping. This is discussed further in para 19.3 in the report.

Public procurement

The Public Procurement Act establishes rules with which enterprises at present must comply. Pursuant to the Procurement Act section 5 on human rights, environment and other social considerations, contracting authorities shall, *inter alia*, have appropriate procedures in place to promote respect for basic human rights in procurements where there is a risk that such rights may be violated. This requirement is discussed in more detail in para 19.6.1.

In the preparatory works for the Public Procurement Act, the Ministry of Trade, Industry and Fisheries refers to Principle 6 in UNGP, which establishes that the State should promote respect for human rights by business enterprises with which they conduct commercial transactions. The purpose of the provision in section 5 is to prevent that suppliers who squeeze production prices by violating fundamental human rights win tenders for public contracts. The Ministry points out that there are some good examples of contracting

⁴⁴ OECD, "Trade Policy Brief. Digital Trade", January 2019.

authorities in the public sector who invest resources in pioneering ethically responsible procurement. However, many do not have such procedures. The Ministry elaborates:

“The procedures shall primarily help to prevent violations of fundamental human rights, when purchasing from countries where national legislation and/or national control mechanisms are inadequate in protecting workers from poor working conditions”.⁴⁵

The Ministry of Trade, Industry and Fisheries point out in the preparatory works that the monitoring procedures of contracting authorities must reflect the risk of violations. Large, professional purchasers are expected to take a significant responsibility. Equally comprehensive efforts are not expected of smaller contracting authorities.

The Regulation on Pay and Working Conditions in Public Contracts is stipulated in the Procurement Act, Section 6. The regulation is intended ensure that employees in enterprises that provide services and building and construction contracts for public contracting authorities do not have worse wages and working conditions than what is prescribed by the current General Application Regulations of the collective agreements or nationwide collective agreements.

Duties of disclosure etc.

There is often made a distinction between what is termed passive and active duties of disclosure. A passive duty requires disclosure of information upon request, while an active duty requires an enterprise to publish information on its own initiative. Disclosure requirements are discussed in greater detail in para 19.4 in the report.

The Environmental Information Act (2003) regulates the duties of both public authorities and enterprises to hold and disclose environmental information.⁴⁶ Administrative agencies shall hold general environmental information relevant to their areas of responsibility and functions, and make this information accessible to the public. Undertakings are required to disclose environmental information upon request (passive duty). The Environmental Information Act section 16 sub-section 1 concerns the right to receive information from an undertaking. Section 16, sub-section 1 and 2 read as follows:

“Any person is entitled to receive environmental information from undertakings such as are mentioned in section 5, sub-section 2, concerning factors related to the undertaking, including factor inputs and products, which may have an appreciable effect on the environment.

The right to environmental information pursuant to sub-section 1 also applies to information about effects on the environment resulting from production or distribution of a product outside Norway’s borders, insofar as such information is available. An undertaking shall request such information from the previous link in the supply chain if this is necessary to enable it to answer the request for information.”

The right to information about conditions outside Norway’s borders applies to the extent that such information is available. “Available” means that the enterprise “either holds the environmental information itself or can obtain it without unreasonable exertion”.⁴⁷ The duty to hold information in the Environmental Information Act section 9 provides the basis for the right to receive environmental information. The provision is worded as follows:

⁴⁵ Proposition to the Storting Prop. 51 L (2015-2016) "Act relating to Public Procurements (the Procurement Act)", p. 52.

⁴⁶ The Environmental Information Act implements the Århus Convention and EU Environmental Directive 2003/4/EC.

⁴⁷ Proposition to the Odelsting (Ot.prp.) No. 116 (2001-2002), p. 261.

“Any enterprise to which chapter 3 or 4 applies shall hold information about factors relating to the enterprise’s operations, including factor inputs and products, which may have an appreciable effect on the environment.”

The duty to hold information also applies to potential or possible environmental impact caused by the enterprise.⁴⁸ The Environmental Information Committee presumed at the time that a duty to provide information would be illusory without any duty to gather information. The duty to hold information applies to information about the undertaking itself, including its factor inputs and products. Information about environmental impact outside Norway’s borders does not rest on a duty to hold information.⁴⁹ The Product Control Act section 3 imposes a duty on producers and importers to “obtain such knowledge as is necessary to evaluate whether the products can cause such effects as are mentioned in section 1.”⁵⁰

Like the Environmental Information Act, the draft Act in this report contains a duty to hold information, referred to in the draft Act as a “duty to know”. This provides the basis for the passive duty of disclosure. The Committee has at the same time considered it expedient to propose an active duty of disclosure for larger enterprises. This may strengthen the impact of the legislation and is also in line with current practice in many enterprises.

Reporting duties in the Accounting Act

Experiences with the requirement to report on corporate social responsibility in the Act relating to Annual Accounts etc. (the Accounting Act) section 3-3 c, and other reporting duties, has informed the Committee’s work, cf. para 19.5. The Committee does not propose new reporting duties in annual financial statements. The proposal for larger enterprises to be subject to a duty of due diligence, with accompanying disclosure requirements, complements and should be seen in the context of the requirement for larger enterprises to report on corporate social responsibility according to the Accounting Act section 3-3 c.

The Accounting Act section 3-3 c, sub-section 1 requires large enterprises to report on efforts to integrate considerations of human rights, labour standards and social conditions, the external environment and anti-corruption into its daily operations and relationships with stakeholders. At present the requirement has not been revised to align with Directive 2014/95/EU on Disclosure of Non-financial and Diversity Information.⁵¹

The definition of corporate social responsibility in the Accounting Act section 3-3 c diverges to some extent from frameworks for responsible business conduct in the UN and OECD. Section 3-3 c refers to the “consideration” of human rights, while the UN Guiding Principles for Business and Human Rights refer to the responsibility of enterprises to “respect” human rights. The Accounting Act section 3-3 c furthermore does not require information about adverse impact on human rights and working conditions in the supply chain, the risk of adverse impact or specific incidents.

The Accounting Act section 3-3 a *Content of financial statements for enterprises that are not small* requires, *inter alia*, reporting on working environment, equal opportunities, planned and implemented measures to promote the objectives of the Equality and Anti-Discrimination Act

⁴⁸ Proposition to the Odelsting (Ot.prp.) No. 116 (2001-2002), p. 99.

⁴⁹ NOU (Norwegian Official Reports) 2001: 2, p. 39.

⁵⁰ This means “having an overview of existing knowledge, but also obtaining information and reviewing sources with a critical eye to relevance and reliability” cf. Proposition to the Odelsting (Ot.prp.) No. 116 (2001-2002), p. 260.

⁵¹ Directive 2013/34/EU, amended by Directive 2014/95/EU Article 19a, regulates requirements for non-financial reporting. The directive has been made part of the EEA Agreement, but has not yet been incorporated into Norwegian law. In the Accounting Act Committee’s most recent report a new provision (section 9-6) is proposed, in order to implement the provision in the directive. NOU (Norwegian Official Report) 2016: 11, “Accounting Act provisions on annual financial statements etc.”

as well as factors related to the undertaking, including factor inputs and products, which may have an appreciable effect on the external environment. The reporting requirement in the Accounting Act section 3-3 a twelfth paragraph must be seen in the context of the right to information about environmental impact in the Environmental Information Act.

Information and documentation requirements relating to purchases

Certain requirements regarding information and documentation in legislation relating to purchasing and marketing are relevant to the Committee's work. The Committee has considered whether information duties in the Consumer Purchases Act, Consumer Purchases Information Act and Marketing Control Act might include information required pursuant to the draft Act. This is discussed in para 19.5.

The documentation requirement in the Marketing Control Act may be relevant in cases where a business makes claims about ethical merits when marketing its products or services. An Act relating to enterprises' transparency regarding supply chains, duty to know and due diligence will interact with the Marketing Control Act. For example, if the information disclosed is misleading, it may be impacted by the prohibition against misleading marketing.

The Consumer Purchases Act contains two types of information duties: firstly, when a seller has omitted to provide information that should have been provided, and secondly, when a seller or affiliate provides information that is false or misleading.

Pursuant to the Consumer Purchases Act section 16 first paragraph letter b, the item is deemed to be defective if the seller failed to disclose, at the time of purchase, matters relating to the item or its use which the seller should have known about, and the consumer had grounds to expect to be provided.

At present, it appears such that a purchaser generally has no grounds to expect to be provided unsolicited information about conditions in the supply chain. But circumstances might arise where the lack of such information constitutes a defect, for example when a shop advertises fair trade, but has had problems with certain products without mentioning this.

The Consumer Purchases Act section 16 first paragraph letter c provides that the item is defective if it "does not correspond to the information which the seller, in its *marketing or otherwise*, has provided about the item or its use." This applies correspondingly to information anyone other than the seller has provided on the item's packaging, in adverts or other marketing communications on behalf of the seller or previous intermediaries in the supply chain, cf. section 16 second paragraph. The provision includes cases where the seller has provided incorrect information about the item's attributes or use. The preparatory works make it clear that the provision includes information given in general marketing, as well as information provided in relation to the individual purchase. The information must be reasonably factual and specific. Entirely vague statements in marketing will not lead to liability for defects.⁵²

When it comes to the Committee's draft Act, a question will be whether a consumer can claim a defect when the seller or importer or others have given positive but incorrect information about conditions in the supply chain, for example by saying that no forced labour has been used when cultivating the cocoa, or that a textile manufacturer satisfies the local minimum wage conditions. If the information has caused the consumer to buy a product that he or she would not have bought if the correct information had been provided, it may be possible for the consumer to claim that this constitutes a defect.

⁵² NOU (Norwegian Official Reports) 1993: 27, p. 125.

The Consumer Purchases Act chapter 6 sets out the remedies to which a consumer may be entitled as a result of defects in the item sold. The specific sanctions are listed in section 26 first paragraph, and the detailed rules are in sections 29 to 33. These provisions entitle the purchaser to withhold the purchase price, choose between rectification and redelivery, demand a price reduction, cancellation, or claim compensation. In practice, the most realistic solution will normally be cancellation of the purchase. This means that the consumer can return the item and claim a refund. In a situation of this kind, it would normally not be reasonable for the consumer to be required to accept a price reduction due to the value gained from using the item.

8 The Committee's deliberations

8.1 Why is regulation appropriate?

The draft Act regulating transparency on human rights and decent work in enterprises and supply chains builds on international consensus regarding the requirements for responsible business conduct as well as Norwegian traditions of access to information.

The government has expressed its expectations regarding responsible business conduct for many years. It is more than ten years since Norwegian authorities expressed expectations of Norwegian businesses to adhere to the OECD Guidelines for Multinational Enterprises and the principles set out in the UN Global Compact in their operations.⁵³

Today, the government expects all Norwegian enterprises to act responsibly, and to know and to follow the UN Guiding Principles on Business and Human Rights (UNGP) and the OECD Guidelines for Multinational Enterprises, regardless of whether they are privately or publicly owned, and irrespective of whether their activities are in Norway or other countries.⁵⁴

The expectations have built on adopted principles and guidelines from the UN, the OECD and the ILO. Many businesses have pursued this. Particularly, many large and internationally oriented companies have done so, but also some smaller companies have followed suit. Yet experience still shows that a voluntary approach is not sufficient to raise responsibility in business to the required level: Binding legislation is needed.

Legislation can help create the conditions for fair competition, so that systematic work on improvements will be a competitive advantage. There are clear parallels with developments in the anti-corruption field, where the initial focus was on voluntary efforts. It turned out to be necessary with regulation to prevent that businesses offering bribes in the form of money, gifts or services win contracts and secure other benefits. Legislation has resulted in improvements in anti-corruption efforts both in Norway and internationally.

The need for legislation is also the experience in other countries, such as in the United Kingdom with its Modern Slavery Act (2015), France with its Duty of Vigilance Law (2017), the Netherlands with its Child Labour Due Diligence Law (2019), and several others mentioned in subsection 5.4, and reviewed in detail in Chapter 18. Adopted EU directives and regulations, and various legislative initiatives in the EU, point to the same conclusion.

⁵³ Storting Report no. 10 (2008- 2009). *Næringslivets samfunnsansvar i en global økonomi* (Corporate social responsibility in a global economy).

⁵⁴ Government, *Næringslivets samfunnsansvar* (The social responsibility of business), 13 March 2019.

Although human rights are universal, it remains difficult in general terms to enact legislation that sets out in detail to what requirements businesses must adhere to ensure responsible conduct. Businesses and markets are too diverse for that. Enforcement of such legislation would face demanding or even impossible challenges, not least when it comes to jurisdiction.

For these reasons, the draft Act sets out mandatory duties only when it comes to knowledge, access to information, due diligence and disclosure requirements. These duties must be seen in the context in which the legislation will operate. The mandatory measures are intended to work in conjunction with a combination of voluntary measures by the businesses themselves, and involvement of consumers, non-governmental and civil society organisations and trade unions, and guidance and scrutiny by a supervisory authority. The right to information is what will allow consumers, civil society organisations and unions to hold businesses accountable.

Although the expectations of the international organisations apply in general to all businesses, the Committee has found it expedient to distinguish between them and large undertakings in the draft Act due particularly to the situation of small and medium-sized businesses. For small and medium-sized businesses, we have not proposed any *reporting requirements* for the efforts made to advance responsible business conduct, but instead a duty to respond to specific information requests. This sits well with the Norwegian tradition of access to information as expressed in the Environmental Information Act (2003). To be able to respond to enquiries, all businesses have a *duty to know*. This duty will vary according to the size and activities of the business, among other factors.

In addition, for businesses that sell retail to consumers, the Committee proposes a *duty to disclose* manufacturing sites. The draft Act envisages that regulations may permit exemptions for specific sectors or types of enterprises, as the requirement is not equally suitable to all.

For large undertakings, the draft Act sets out a *due diligence* duty and a requirement to publish key aspects of these. This goes beyond the *duty to know* to which also smaller enterprises are subject. The duty to respond to specific enquiries will apply to all enterprises. Undertakings that sell retail to consumers will also be subject to a *duty to disclose* production sites.

The *due diligence* requirement builds on the internationally adopted guidelines. These are set out in the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises, and provide the foundation for instance for the French Duty of Vigilance Act. Due to the delimitation of the Committee's mandate, corruption and impacts on the external environment lie beyond the scope of the proposed Act, unless they at the same time violate human rights.

For business, it is vital that various legislative requirements are harmonised. The Committee has therefore sought to align the draft Act with Section 5 in the Public Procurement Act.

The Committee has engaged in dialogue with more than 40 companies when preparing this report. We have received signals from many that regulation may lead to more fair competition. The proposed legislation can raise standards in entire sectors, particularly those that did not prioritise these efforts on a voluntary basis. At the same time, companies underlined that the law must be fit for purpose and feasible in practice. Enterprises, particularly large undertakings, have emphasised a risk-based approach as being a suitable way of addressing human rights impacts in the supply chain. Certain Norwegian enterprises are already subject to such requirements in the UK Modern Slavery Act and/or the French Duty of Vigilance Law, and report accordingly.

Increasing numbers of enterprises in Norway publish reports on responsible business conduct and sustainability. Some companies go beyond the regulatory requirements and adhere to

standards like the Global Reporting Initiative (GRI) and the Task Force on Climate-related Financial Disclosures (TCFD). Others publish manufacturing sites and supplier lists. However, studies indicate a persisting lack of publicly available information about the impacts of businesses on human rights, especially when it comes to business relationships in the supply chain. This also applies to businesses that are required to report in line with Directive 2014/95/EU on Disclosure of Non-financial and Diversity Information by certain large undertakings and groups.⁵⁵

The Committee proposes an Act that cements existing expectations and requirements, and thereby helps streamline these and bring predictability to businesses. An Act can motivate business that already work to ensure responsible supply chains. Businesses that conduct *due diligence* in line with international frameworks for responsible business conduct will be well equipped to fulfil the requirements in the draft Act. For many, the proposed legislation will thus not entail significant additional work.

Legislation and legislative initiatives in several countries are an affirmation of the need for more binding commitments for responsible business conduct, especially when it comes to the businesses' societal impact in the supply chain. Realising the efforts in practice calls for a beneficial combination of legislative requirements and guidance from regulatory authorities. Experience from the introduction of the EU General Data Protection Regulation (GDPR) shows that improvements can be achieved rapidly when the regulations are fit for purpose, and the legislation is combined with guidance on how information can be obtained and disclosed, and other measures. This is addressed in subsection 8.4.8.

8.2 Benefits obtained

The Committee is required under its mandate to account for the usefulness of the proposed legislation for the various target groups ie. to what extent a duty of disclosure:

- i) may offer consumers improved opportunities to make informed purchasing choices, beyond pre-existing legislation and other tools (such as labelling, etc),
- ii) may influence the efforts of businesses to respect fundamental human rights and to ensure decent work for workers in their supply chains, and
- iii) may contribute to improved working conditions for workers in the supply chains.

We propose a duty to know and a passive *duty to disclose information* for all businesses in response to direct enquiries. The proposed active *duty to disclose information* applies to large undertakings, and concerns their impact on fundamental human rights and working conditions. A combination of active and passive duties can be mutually reinforcing, and may thus result in improved recognition of the values that human rights represent.

The combination of these duties may provide access to the information that is necessary to deem whether the expectations and requirements for responsible business conduct are upheld. A combination of passive and active duties may also result in improved access to the information that is sought in Directive 2014/95/EU on Disclosure of Non-financial and Diversity Information. This is addressed in greater detail in subsection 18.1.1.1.

⁵⁵ The Alliance for Corporate Transparency Project, "2018 Research Report, The state of corporate sustainability disclosure under the EU-Non-Financial Reporting Directive", 2019. The experiences with the Directive are reviewed further in subsection 18.1.1.1.

8.2.1 Information for consumers

Consumers participate in global production networks through purchases and consumption, and there is a general expectation that goods are produced in a responsible manner. However, it is currently extremely difficult for consumers and others to know how the goods and services that they buy and use are produced. Consumers indicate in studies that they are concerned about ethical trade and decent work in the production of goods. At the same time, consumption in Norway has increased markedly and Norwegian consumers score high internationally when it comes to discarding both clothing and food.

It must be recognised that individual consumers often are not able to or sometimes even do not desire to seek or access information relating to ethical aspects of the production of goods. Part of the reason for consumer behaviour may be ascribed to the lack of, or incomplete, information about working conditions in the supply chain. Chapter 14 of this report addresses consumer interests and behaviour and collective engagement in greater detail.

The Committee proposes a right to information about fundamental human rights and working conditions in businesses and supply chains – a so-called passive duty. Notwithstanding that ethical and political consumers in Norway remain a minority, there are indications that consumers will be able to influence market behaviour in certain cases.

Most likely, however, civil society organisations will benefit the most from the right to information under this draft Act. The right to information under the Environmental Information Act (2003) is mainly used by organisations, and only occasionally by individuals (see subsection 19.4.1.1). Organisations will be able to use the right to information, and thereby be better able to help consumers make more informed choices. Organisations may be well suited to obtain information and make it more accessible and comprehensible to consumers. This may also lead to less work for enterprises, as they may to a greater extent engage with more professional actors.⁵⁶

An overriding purpose of the draft Act is to promote respect for fundamental human rights and decent work in businesses and supply chains. The right to information will be most effective in conjunction with other legal requirements. Therefore, we propose a *duty to know* for all business enterprises, and a *duty to conduct due diligence* for large undertakings, which – jointly with the transparency requirements – can help to achieve this overriding purpose.

8.2.1.1 Assessment of labelling requirements

Labelling schemes on ethical trade and similar may be particularly useful when it comes to information to consumers. The information is readily accessible at the moment of purchase. In spite of this, the Committee has not recommended mandatory labelling. A requirement to label the country of origin would represent a restriction of free movement of goods in the EU/EEA, according to the jurisprudence of the Court of Justice of the European Union.⁵⁷

The law firm Simonsen Vogt Wiig address this in the report they drafted prior to the work of the Committee. They note that labelling requires physical changes to the products. For that reason, it is likely to be more costly for businesses than other measures. That is true irrespective of whether the labelling requirement is such that the information must be displayed on, or enclosed with, the product, or whether a stamp of approval is sufficient.⁵⁸

⁵⁶ Simonsen Vogt Wiig, "Utredning av juridisk handlingsrom for en lov om etikkinformasjon" (Investigation of the legislative scope for a law on ethics information), 2017: 49.

⁵⁷ Simonsen Vogt Wiig, p. 36.

⁵⁸ Simonsen Vogt Wiig, p. 51.

The question of origin labels has been subject to disagreement in the EU. On 13 February 2013, the European Commission proposed new rules relating to Consumer Product Safety and Market Surveillance. There was internal disagreement among the EU Member States, for instance when it comes to whether there should be a requirement to indicate the country of origin on products. A contentious provision in the proposal was an article concerning "indication of origin". The first paragraph in the proposed Article 7 reads:

"Manufacturers and importers shall ensure that products bear an indication of the country of origin of the product or, where the size or nature of the product does not allow it, that indication is to be provided on the packaging or in a document accompanying the product."⁵⁹

The EU Product Safety and Market Surveillance Package was intended to promote consumer, labour and environmental protection, as well as fair competition for business. The Commission's proposal was to be fully considered by the Council and the European Parliament in spring 2014, and was to enter into force on 1 January 2015. The package is still under consideration in the European Council. It has been generally accepted that the scheme could result in increased costs for businesses, for instance due to imposing country-of-origin labelling of goods. Yet the Commission did not deem this to be an undue burden given the other concerns it sought to protect.⁶⁰

A Consultancy Report from 2015 addresses the possible impacts of a harmonised requirement for country-of-origin labelling in the EU. The report examines potential impacts of such labelling on toys, household appliances, electronics, textiles, footwear and ceramics. It finds that consumers are generally interested in the country of origin of products, but to a lesser extent take origin labelling into account at the moment of purchase. The conclusion was that the proposed Article 7 would be useful for those consumers who are interested in the country of origin. However, an origin label would not necessarily provide an accurate representation to consumers – especially when it came to complex products that were produced in several countries. Most national Market Surveillance bodies consulted found that such a rule would have limited effects on traceability and product safety.⁶¹

The package containing the Commission's proposal was released for consultation in Norway on 22 June 2013. The government updated its provisional position paper in 2016. Here it says that the negotiations had broken down, primarily due to a basic disagreement among EU Member States regarding whether to introduce a mandatory country-of-origin labelling scheme.⁶²

This Committee finds that it would generate costs for the government to develop a labelling scheme for different goods and services, administer such a scheme, and supervise it. Labelling schemes should be developed in, and harmonised with, the EU/EEA. In this connection, we note the disagreement as to the proposal for a requirement to indicate the country of origin in the EU, and experiences with the harmonised, European environmental labelling scheme, EU *Ecolabel* (see subsections 18.2.1 and 19.5.1). Furthermore, there is no comprehensive labelling scheme that encompasses the breadth and complexity of business impacts on human

⁵⁹ European Commission, "Product safety and surveillance package. Proposal for a regulation of the European Parliament and of the Council on consumer product safety", COM(2013), 2013/0049(COD), 3.2.2013: 15.

⁶⁰ SVW, p. 54.

⁶¹ VVA Europe, *"Implementation of the new regulation on market surveillance: indication of origin. Final Report."* 6 May 2015. See: https://ec.europa.eu/info/sites/info/files/indication_origin_study_2015_en.pdf. The study is based on consultations with European stakeholders, governments and corporate representatives, among others. It examines six groups of consumer goods: toys, household appliances, consumer electronics, textiles, footwear and ceramics.

⁶² Government, *"Markedsobserv kning av varer. Forel pig posisjonsnotat"* (Market surveillance of goods. Provisional position paper), 9 March 2016.

rights and working conditions in supply chains, and there would be challenges when it comes to verifying such information. In the worst case, it might result in an inaccurate representation of the company's performance when it comes to responsible conduct.

For these reasons, we find that labelling is best developed as a potential response to disclosure requirements, and not as a general requirement. Businesses can still demonstrate their compliance with certain requirements in the proposed legislation by making the information readily available, also through labelling.

8.2.2 Business efforts

Societal expectations of transparency in enterprises are growing, and many enterprises take this task seriously. Still, significant segments of the business community are not involved.

An Act regulating enterprises' transparency about supply chains may raise awareness and bring human rights issues into boardrooms. This is a documented positive effect of the UK Modern Slavery Act. As is indicated in the draft Act, it will encompass all the areas that Section 54 in the UK law covers, but in a broader approach. In France, too, the Duty of Vigilance Law (2017) has brought human rights into boardroom discussions, and has been important in political debates. The Australian Modern Slavery Act (2018), which instituted a new reporting requirement for large companies, has generated public discourse, and mobilised a series of concerned parties, not least business, to engage in efforts to combat modern slavery.

At the same time, the Committee holds the view that transparency is not in itself sufficient to secure improvements in supply chains. We therefore propose requirements that may lead to greater knowledge of enterprises' impact on fundamental human rights. This provides a basis for companies' efforts to improve conditions. The Act may lead to that enterprises that already engage with the supply chain exert pressure on other enterprises to follow suit.

Due diligence, which in the draft Act is required from larger undertakings, may promote awareness of human rights and opportunities for impact. It may pave the way for enterprises to prevent, mitigate and remedy adverse human rights impacts. The requirement to disclose information about *due diligence* will be especially useful for investors, sector-wide organisations, and others that need information to be accessible and comparable. This can influence undertakings and constitute a driving force for improvements.

Regulation can, however, become a passive “tick-box” exercise, with reporting in standard phrases.⁶³ Accordingly, the Committee has not proposed administrative reporting requirements, and emphasised that information be made easily accessible on webpages and similar, see sections 6 and 10 in the draft Act.

Developments are moving towards mandatory requirements in various countries and at the EU level. An Act, in combination with guidance, will equip Norwegian businesses more fully to meet the requirements and expectations of governments and others in Norway and beyond. This is particularly the case for small and medium-sized enterprises.

8.2.3 Improvements in working conditions

The combination of the *duty to know* and *duty to disclose information*, may increase awareness of human rights and decent working conditions in enterprises. This may provide the basis for companies' efforts to improve conditions. It is already well-known how

⁶³ International Organisation of Employers, “IOE paper on State policy responses on human rights due diligence”, May 2018.

knowledge has led to action in a range of contexts, typically in the textile and clothing industry, where labour conditions often have been poor. The requirement for large enterprises to conduct *due diligence* to prevent and mitigate potential adverse impacts on human rights and decent work, may in particular lead to improvements.

The right to information brings added opportunities for access to information, and may help to shed light on best practices, challenges and specific incidents. That enables initiatives and demands to be made by consumers, unions, civil society organisations, and others. Workers and unions often do not have access to information in the companies in which they work. An Act that requires all businesses to respond to information requests will facilitate their efforts. The role of special interest organisations, unions and journalists in international and national efforts to influence improvements may thereby be strengthened. These stakeholders will most likely benefit the most from a right to information, since they may request information on specific incidents and risks. Information in annual reports and similar usually does not include sufficient information about risks when it comes to human rights.

Improvements in working conditions can be achieved on the basis of knowledge and *due diligence*, as well as publicly accessible information. But to this end, several other efforts are also needed. Requirements to "*know and show*" are among many instruments that can help promote decent work in enterprises and supply chains. International efforts to further decent work are addressed in subsection 17.2 in the report.

8.3 The need for a separate Act

The Committee has considered whether it would be appropriate to include the proposed requirements in existing legislation, but has found it necessary to draft a separate Act. A separate Act will clearly signal the importance of the work, thus providing a stronger impetus for change and greater penetration than if the rules are incorporated in existing legislation. A *duty to disclose information* furthermore would not be easily incorporated into other legislation, since the purpose is both to offer consumers and others access to information about enterprises and supply chains, as well as simultaneously promote corporate respect for human rights and decent work.

The Committee has examined several alternatives to a separate Act. The subject matter does not fit directly into existing consumer regulation. The Committee's mandate is not aimed at consumer protection, but a right to information about fundamental rights and working conditions in enterprises and supply chains. The object of interest thus diverges from consumer protection laws. The documentation principle that applies to marketing claims is important for a *duty to disclose information*. Still, the Consumer Purchases Act and Marketing Control Act are not suited as vehicles to impose a general disclosure duty on businesses.

Significant differences speak against including a *duty to disclose information* on fundamental human rights and labour issues in the Environmental Information Act (2003). The latter implements the Århus Convention on Access to Information in Environmental Matters, and Directive 2003/4/EC on Public Access to Environmental Information, in Norwegian law. The Environmental Information Act regulates the right to environmental information and public participation in decision-making in environmental matters. The Committee's mandate is restricted to evaluating duties for private enterprises, and does not include potential duties for the public sector. Furthermore, there have been significant advances in the field of responsible business conduct since the law on environmental information was adopted. The Environmental Information Act is reviewed more fully in subsection 19.4.1.

The Committee has also examined the option to incorporate a *duty to disclose information* in the Accounting Act. Reports of non-financial matters in financial statements and annual reports, however, do not necessarily satisfy the needs of various key stakeholders, notably consumers and civil society organisations. Moreover, experiences with today's non-financial reporting requirements shows that additional reporting obligations would not necessarily result in attaining the Act's goals. It is also a weakness of the requirements in the Accounting Act, and reporting rules in the EU, that it is up to the discretion of business to determine what information is disclosed. Existing obligations do not necessarily provide access to information about salient human rights impacts. This is part of the reason for why several countries have adopted legislation in this field that go beyond the non-financial reporting requirements, cf. subsection 6.5 and Chapter 18 in the Report.

8.4 The proposed regulation

8.4.1 Purpose of the Act

The purpose of the Act is to ensure that consumers, civil society organisations, trade unions and others can access information on impacts on fundamental human rights and decent work in enterprises and their supply chains, and to promote respect for fundamental human rights and decent work in enterprises and their supply chains.

These aims are connected. Access to information can provide various stakeholders with a better basis for making purchasing and investment decisions, and other measures that take the social impact of business activities into account. The requirement that an enterprise must know, and provide access to such information ("*know and show*"), has the potential to advance respect for human rights in enterprises and their business relationships in the supply chain.

Access to information about the social impacts of enterprises aligns well with international developments, both in the EU and otherwise. It is set out already in the preamble to Directive 2014/95/EU on Disclosure of Non-financial and Diversity Information by certain large undertakings and groups, which emphasises "a sufficient level of comparability to meet the needs of investors and other stakeholders as well as the need to provide consumers with easy access to information on the impact of businesses on society."⁶⁴

Public reporting is also emphasised in the preamble to Regulation EU 2017/821 on Conflict Minerals – Supply Chain Due Diligence in Conflict-Affected Areas. The OECD Guidelines for Multinational Enterprises also highlight that clear and complete information on enterprises is important to a variety of users ranging from shareholders and the financial community to workers, local communities, special interest groups, governments and society at large.

The purpose of advancing respect for fundamental human rights is a follow-up of the internationally recognised responsibility that States have to foster business respect for human rights throughout their operations. Where appropriate, the State may require that businesses disclose how they address their human rights impacts. This is set out in the UN Guiding Principles on Business and Human Rights, Principles 1, 2 and 3.

⁶⁴ It was decided to incorporate the EU Directive on Disclosure of Non-financial Information within the EEA agreement by EEA Committee Resolution no. 39/2016 of 5 February 2016. In the proposal for a new Accounting Act in NOU 2016:11, the Accounting Act Committee proposes a new provision to implement the Directive's Article 19-a in Norwegian legislation.

According to the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises, enterprises shall respect human rights, including labour rights. That means not infringing the human rights of others, and addressing actual and potential adverse human rights impacts in which they are involved.

In Norway, there are comprehensive regulations for the protection of fundamental human rights at work. The parts of the regulations that are particularly relevant to this report and the draft Act are discussed in subsection 19.2. The aim of the draft Act is to secure access to information about such matters, also when it comes to business activity and supply chains outside Norway, to the extent that they offer goods and services for sale in Norway.

The draft Act proposes a *duty to know* about matters that entail a significant risk of adverse impact on fundamental human rights and working conditions for all enterprises, and an additional *duty to conduct due diligence* for large undertakings. Both duties seek to advance the purpose of the Act, see in particular sections 5 and 10 in the draft Act.

8.4.2 Application of the Act

The Committee considers it in line with the purpose of the Act that it applies both to enterprises that sell goods, and to those that sell services. Trade in goods and services are tightly wound together, and both in industrialised and in developing countries, the production of services makes up an increasing share of the gross national product. Much of the value created in a value chain is associated with services such as transportation, logistics and marketing.

Technological advancements have led to an increasing fluidity between goods and services. This is due not least to ever more things being sold as services in so-called "*Product-as-a-service*" or "*Product-service-system*" business models. For example, consumers are leasing items instead of owning them. That means that the product lifecycle likely extends through several transactions with different customers, and the value chain thus extends beyond the first customer's use and return of the product. This has become increasingly widespread, both in "*business-to-business*" transactions, and in transactions between businesses and private customers.

It is proposed that the Act shall apply to all enterprises offering goods and services in Norway. The Committee finds that it would not be reasonable to distinguish between goods in the consumer and business markets due to the need for equal treatment. There are significant challenges regarding human rights and decent work also in the production of industrial goods. A significant part of Norwegian imports go to the corporate market. Furthermore, goods that are traded business-to-business often become components or are used in the production of what ultimately becomes a consumer good.

The draft Act applies to information about enterprises and supply chains, regardless of whether they take place in Norway or in other countries. The application of the Act is determined based on whether the enterprise offers goods and services in Norway. It would be cumbersome and impracticable to simply require the final tier in the supply chain to have a *duty to disclose* information. For example, where a large wholesaler or importer is involved, it is likely that they have more knowledge about production conditions and it is easier for them to obtain information from abroad.

So that the Act shall be delimited in a fair and just manner, internet trade from abroad is also included. Questions may arise as to whether the Act applies to foreign online retailers. The Marketing Council's practices under the Marketing Control Act, section 4, may offer guidance. Under that rule, the webpage will typically be examined to see if it is aimed at

Norwegian consumers, whether the text is in the Norwegian language, whether Norwegian currency is provided, and whether the firm organises delivery to Norwegian consumers. In some contexts, it will be difficult to enforce the law fully in the case of foreign online stores due to jurisdiction. The remarks in section 2 address this in greater detail.

Notwithstanding that complete enforcement in the case of failure to reply to an information request by businesses domiciled abroad will be difficult, guidance for firms that engage in extensive marketing towards Norwegian consumers may often have a positive effect. Furthermore, consumer information that the retailer does not respect the law can potentially have an impact.

Most new laws requiring transparency about supply chains, with the exception of the Dutch Child Labour Due Diligence Act, have a relatively high threshold for which enterprises are included. The reasoning is often that large undertakings have a more extensive operations, spanning multiple countries, and more complex supply chains. Large undertakings may also have more resources and expertise to fulfil statutory duties, and greater leverage. The statutory requirements for large undertakings can still affect small businesses through supply chains, so that also these regulations affect smaller businesses.

The Committee proposes that the Act shall apply to all businesses.⁶⁵ The rationale is that there is not necessarily a relationship between the size of the company and the risk of adverse impacts on human rights and working conditions. Some small and medium-sized enterprises operate in high-risk sectors and locations. Still, no reporting duty for small businesses is proposed, except for a disclosure requirement regarding production sites for businesses that retail to consumers. Exemptions are permitted for certain sectors and groups of enterprises.

The Committee proposes more extensive obligations for larger enterprises. These are defined in the draft Act as large undertakings and other enterprises that are not small according to the definition in the Accounting Act (see section 3. b in the draft Act). According to figures from the Register of Company Accounts, Brønnøysund, there were roughly 11,600 enterprises that stated that they did not follow the simplified accounting rules for small businesses in 2018.⁶⁶ These will therefore fall within the definition of "larger undertakings" in the draft Act. According to the Accounting Act, section 3-3. a, they must provide information in the annual report on working environment, equality, and other aspects of the company, including input factors and products, which may have a potential significant impact on the external environment.

Some larger enterprises are large undertakings, see Accounting Act, section 1-5. These are subject to a requirement to report annually on social responsibility under the Accounting Act section 3-3 c, and may include the information required in this draft Act in their reporting on social responsibility. Large undertakings include public limited companies (an estimated 213 companies), and those that are required to file accounts "whose shares, units, core capital or bonds are listed on the stock exchange, authorised marketplace or equivalent regulated market abroad" cf. the Accounting Act section 1-5. There are also certain financial firms which are classified as large undertakings in other legislation which also fall within the scope of the proposed Act.

⁶⁵ As of 1 January 2019 a total of 581,956 enterprises were registered in Norway. Most are small. Around 65 percent have no employees. Only 0.1 percent have 250 or more personnel (814 enterprises). Statistics Norway (SSB), "*Virksomheter*" (Enterprises), 25 January 2019.

⁶⁶ Table for 2018 provided by Brønnøysund Register Centre, Register of Company Accounts, 8 October 2019.

8.4.3 Interface with other legislation

Enterprises that fall within the scope of the Accounting Act, section 3-3 c may include information on due diligence under this draft Act in their reporting to fulfil the requirements in section 3-3 c. This reporting should be provided in the annual report or in another document accessible to the public, see Accounting Act, section 3-3 c, fifth paragraph.

The draft Act does not restrict information and documentation requirements under the Sale of Goods Act, Consumer Purchases Act, or Marketing Control Act. The general documentation requirements in the Marketing Control Act, regarding truth in advertising, follow from section 3, second paragraph. Under this rule, the requirement is that:

"claims in marketing about actual circumstances, including the properties or effects of performance, shall be documented. Documentation shall be in the possession of the advertiser when marketing occurs."

The documentation duty is limited to requiring the enterprise to have the necessary documentation at the time of marketing. There is no requirement for the information to be made generally accessible to consumers. Enterprises are required under the Marketing Control Act, section 34, to hold documentation and as necessary produce it on an order from the regulator. The scope of the documentation duty varies depending on the claims made, and the complexity of the product being marketed, but in general the documentation requirement is that it has adequate evidential force, including endorsement in statements or assessments by independent agencies with recognised technical expertise.⁶⁷ Retail and marketing legislation is dealt with more fully in subsection 19.5.

The right to information may come into conflict with intellectual property rights. In that event, the Intellectual Property Act takes precedence. The information covered by this draft Act will rarely be protected by copyright. The same rule follows from the Environmental Information Act, section 3, second paragraph.

There is at the outset no evidence that the manufacturer's or importer's information about human rights and decent work in the enterprise and supply chain will constitute intellectual property. Therefore, this provision should not be understood to particularly weaken the rights set out in the draft Act.

8.4.4 Duty to know and passive information duty

There is a general expectation that businesses should have knowledge about their own operations and their business relationships. The *duty to know* that the Committee proposes in the draft Act, is an expression of this expectation in so far as concerns salient risk of adverse impacts on fundamental human rights and working conditions that the enterprise may be linked to. It must be noted that the *duty to know* does not impose duties on suppliers in other jurisdictions to respond or take action.

The purpose of the *duty to know* is to seek to ensure that the firm has knowledge of any salient risks of adverse impacts of its own business and its supply chains. A *duty to know* about areas at risk can enhance awareness and improve risk management in relation to societal impact – both when it comes to human rights and decent work. Such knowledge may enable the enterprise to prevent and mitigate adverse impacts.

⁶⁷ See Odelsting Proposition no. 55 (2007–2008), p. 27 and the European Commission's Guidelines to the Unfair Commercial Practices Directive, 2005/29/EC, p. 106.

The UN Guiding Principles require all businesses to respect human rights. That means they should avoid infringing on the rights of others, and address adverse impacts they are involved in with respect to human rights. Companies are required to "*know and show*" whether and how they respect human rights in their own enterprise and in business relationships.

The *duty to know* can help the enterprises to predict and prevent, or mitigate, harmful impacts. This may also result in the enterprise having a more positive societal impact, better relationships and a better reputation. This can contribute to value creation, for instance by reducing costs, improving understanding of markets and suppliers, and strengthening risk management. A *duty to know* will also give the right to information tangible content and impact, and renders the business capable of responding to specific information requests.

The *duty to know* must be seen in conjunction with the proposal for a passive *duty to disclose information*. The aim is to provide the general public with a right to request information on the impacts of the enterprise on human rights and working conditions. The right to information may enable stakeholders to assess whether and how the company respects human rights, if working conditions are decent, and what is done to improve conditions, where necessary.

An enterprises' *duty to know* as set out in the draft Act depends among other factors on the size, ownership, structure, activities and sector in which the company operates. Small enterprises and large undertakings have different starting points, and different levels of competence and opportunities to assess risks and leverage in the supply chain. To secure knowledge about risks in the supply chain, a first step is often to obtain an overview of the supply chain, including production sites. This may be difficult to do for all suppliers. In that case, the enterprise may seek to identify areas where the risk is considered salient, based on factors such as product category, country of origin, and area of operation. The risk for adverse impact will for instance most often be higher when it comes to suppliers the business is not familiar with or suppliers with production in the informal sector.

When it comes to ownership and structure, the G20/OECD Principles for Corporate Governance provide detailed guidance. The principles recommend boards of directors in the parent company to provide strategic guidance to the company, conduct effective supervision of management, and be accountable to the company and its shareholders, while protecting the interests of the stakeholders. The board of directors plays a key supervisory role, see Chapter VI *The responsibilities of the board*. This entails ongoing review of internal structures to ensure clear lines of responsibility throughout the group. The Norwegian Corporate Governance Board (NUES) has drawn up a Recommendation on Corporate Governance for companies required to file accounts under section 3-3 b in the Accounting Act.

8.4.4.1 Which human rights and working conditions are encompassed?

The *duty to know*, and the *duty to disclose information*, are not restricted to specific human rights. The draft Act is based on the same instruments as the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises: namely the internationally recognised human rights that, based on the Universal Declaration of Human Rights (1948) are expressed in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights (1966), and the ILO's Core Conventions on Fundamental Principles and Rights at Work.

In addition to the Fundamental Principles and Rights at Work, the duties in the draft Act also concern other aspects of decent work. Routines to protect health, safety and the environment are key. When it comes to employment, the UN Global Compact and UN Sustainable

Development Goal no. 8.7 and no. 8.8 largely encompass the same areas as follow from this draft Act. See also the commentary to section 3 in the draft Act.

8.4.4.2 How far down in the supply chain?

The draft Act does not indicate how far down the supply chain the business is expected to have knowledge and to disclose information. Related legislation, with the exception of the Environmental Information Act, do not either limit similar obligations to specific tiers in the supply chain. In the Public Procurement Act section 5, there is no delimitation as to how far down the supply chain the duties apply. The Ministry states in the preparatory work that the efforts must be practically manageable, and that the key issue is the risk mapping. The Ministry writes:

"No contracting authority will be able to obtain a complete overview of all tiers in the production chain for all components that make up the product on order. In other words, no contracting authority will be able to guarantee against irregularities in the production. However, all procurers can take steps in order to contribute to reducing the risk of such human rights violations."⁶⁸

The same goes for the duties that are proposed under this draft Act. There is no expectation that an enterprise must have detailed information on all suppliers and subcontractors.

8.4.5 Due diligence and disclosure requirements

For large undertakings, the Committee proposes a duty to conduct *due diligence* with respect to fundamental human rights and decent work, and an *active duty to disclose information*. This is in harmony with developments in regulatory regimes in other countries and in the EU. The Committee finds it inadequate simply to have duties to disclose information. To contribute to improvements in the supply chain, there must be a duty to *conduct* due diligence.

An *active duty to disclose information*, based on the companies' *due diligence*, provides investors, trade organisations, and other stakeholders, with information that is publicly available and comparable. Such active disclosure may also give the public access to information that merits further investigation, for example by filing a request for specific information under the passive disclosure option, cf. subsection 8.4.4.

Due diligence is about identifying, preventing, mitigating and accounting for how the enterprise addresses actual and potential adverse impacts of its own activities and its supply chain. *Due diligence* is preventive, risk-based and often involves prioritisation. Businesses can prioritise measures on the basis of severity and scope, and the probability that harmful impact may be remedied.

In practice, certain human rights will be at greater risk than others in certain industries and contexts. For example, enterprises may be at risk of causing adverse impacts for persons belonging to specific groups or segments of the population. This may be indigenous peoples; persons belonging to national or ethnic, religious and linguistic minorities; women; children; persons with disabilities; and migrant workers and their families. This is addressed in the comments on Chapter IV – Human Rights, in the OECD Guidelines for Multinational Enterprises.

The risk of harmful impacts may in particular arise in enterprises and among business relationships in conflict-affected and high-risk areas. Regulation EU 2017/821 on Conflict

⁶⁸ Proposition no. 51 L (2015-2016), p. 52.

Minerals – Supply Chain Due Diligence in Conflict-Affected Areas and High-Risk Areas, Article 2, defines such areas as:

"(f) ... areas in a state of armed conflict or fragile post-conflict as well as areas witnessing weak or non-existent governance and security, such as failed states, and widespread and systematic violations of international law, including human rights abuses;"

Enterprises that have a large number of suppliers should identify areas where the risk of harmful impact is most significant, and then prioritise suppliers for more thorough mapping and measures. Chapter II, paragraph 16, in the OECD Guidelines for Multinational Enterprises, emphasises this point. For example, a car dealer may determine through *due diligence* that there is a greater risk of harmful impact on human rights in the production of car batteries than other components. The company may then obtain information about where the batteries are made, and request further information. A shoe manufacturer, having reviewed the production lines, may find that leather preparation entails significant risk of poor working conditions and hazardous environment, and therefore demands more thorough mapping, cf. OECD General Guidance on Due Diligence for Responsible Business Conduct.

In the event that the *due diligence* reveals harms that already have occurred, the enterprise should take steps, as encouraged in the OECD Guidelines for Multinational Enterprises, to mitigate serious risk or damage, and remedy harmful impacts where necessary. Remedy might entail reparation or compensation, or a public apology.

The European Commission has prepared non-binding guidelines on reporting to accompany Directive 2014/95/EU on Disclosure of Non-financial and Diversity Information by certain large undertakings and groups.⁶⁹ The guidelines are developed with a view to facilitating relevant, useful and comparable disclosure of non-financial information by undertakings, see Article 2 – Guidance on reporting. The guidelines may be useful also for companies required to publish information according to the Committee's draft Act.

The requirement to publish information in the Committee's draft Act includes, among other things, a description of the structure of the business, its operating area and supply chains, including management systems and early warning channels to prevent or mitigate adverse impacts on fundamental human rights and decent work.

Similar requirements are found in other countries. Under the Australian Modern Slavery Act (2018), entities must report annually on the enterprises' structure, operating area and supply chains. The French Duty of Vigilance Law (2017) requires businesses to develop *due diligence* plans that include whistle-blower mechanisms drawn up in cooperation with representative trade unions in the company. Directive 2014/95/EU on Disclosure of Non-financial and Diversity Information by certain large undertakings and groups requires information about the "business model".

A firm footing of the enterprise's *due diligence* and risk factors within management and among directors is a vital aspect of corporate governance. This is also emphasised in the EU's work on a possible requirement for boards of directors to draw up a sustainability strategy including human rights due diligence throughout the supply chain. This possible requirement is a follow-up of Action 10: Fostering Sustainable Corporate Governance in the European

⁶⁹ The Directive 2014/95/EU on Disclosure of Non-financial and Diversity Information by certain large undertakings and groups, which is pending implementation in Norway, requires large enterprises in the public interest to report information about environmental, social and working conditions, respect for human rights, anti-corruption and bribery issues, as necessary to understand the development, results, position and influence of the undertaking. In these spheres, undertakings shall provide information on due diligence conducted, and the most important risks associated with the various areas, including business relationships, products and services that may cause harm, and how the enterprise is addressing these risks. See more in subsection 18.1.1.1.

Commission's Action Plan: Financing Sustainable Growth (2018), and the European Parliament's recommendation to the Commission in Resolution 2018/2007(INI) on Sustainable Finance. This is addressed in greater detail in subsection 18.1.3 in the Report.

The *due diligence* requirement in the draft Act is not limited to specific tiers in the supply chain. The same follows from the current EU regulations. The Timber Regulation (EU) 995/2010 prohibits the sale of "*illegally harvested timber or timber products*" and enjoins operators to "*exercise due diligence when placing timber or timber products on the market*".⁷⁰ The regulation sets out obligations for operators that place timber or timber products on the market. It does not limit the *due diligence* to particular tiers in the supply chain. A similar approach is applied in Regulation EU 2017/821 on Conflict Minerals – Supply Chain Due Diligence in Conflict-Affected Areas. The UN Guiding Principles for Business and Human Rights and the OECD Guidelines for Multinational Enterprises do not either restrict due diligence requirements to apply to a specific number of tiers in the supply chain. It is the risk of harmful impact that determines the scope of *due diligence*.

8.4.6 Transparency regarding production sites

One question in the Committee's mandate is whether it is possible and useful to require businesses to provide information to consumers and civil society organisations regarding where the goods were produced.

Neither the UN Guiding Principles nor the OECD Guidelines for Multinational Enterprises provide any recommendations about disclosure of place of manufacture, or for enterprises to publish supplier lists. The principle of transparency is nevertheless important, and also applies in relation to consumers.

Transparency was a objective in the Storting debates leading up to the Committee's mandate. In the Recommendation to the Storting no. 384 (2015-2016), the Committee on Family and Culture writes as follows in its remarks on a member's proposal for a new Act relating to ethics information and responsible business conduct:

"The Committee finds that if the requirement for ethics information is to have a tangible effect on manufacturers and consumers, the transparency requirements must apply to the entire production chain, not simply one tier backwards in the chain, and the information must fulfil certain minimum requirements."

Many enterprises, in Norway and internationally, currently pursue a policy of transparency regarding production sites. That is to say that they disclose details of where the product was mainly assembled – the final production site. These enterprises generally sell consumer goods. An example of an initiative that has promoted such transparency is the "Apparel and Footwear Supply Chain Transparency Pledge", which obliges members to publish the names of all production units, addresses, parent companies, product types and size of workforce. Other organisations, like the Clean Clothes Campaign, work across national borders for greater transparency about production sites and improvements in working conditions.⁷¹ Some

⁷⁰ The EU's Timber Regulation was implemented in Norway in 2015 in two regulations, one for imported timber and timber products, the other for domestic production. These are discussed further in subsection 18.1.1.3.

⁷¹ The Future in Our Hands (Norwegian NGO), "*Merkene som har åpne fabrikklistor*" (The brand names that have public factory lists), 25.1.19. Ethical Trade Norway reports that 56 percent of their members have public supplier lists. See more in "*Status etisk handel 2018*" (status ethical trade), 2018.

organisations have worked for the publication of supplier lists for clothing, footwear and consumer electronics sold in Norway.⁷²

In their report, the law firm Simonsen Vogt Wiig explains that such initiatives seem to have motivated some suppliers to publish more information than hitherto. Nevertheless, it has not resulted in all importers publishing such information. They point out that the reason for this is not immediately clear from transparency reports in some sectors. Possible reasons may be costs or competitive concerns.⁷³

The value of information about production sites is contested. The rationale for such transparency is that it provides organisations, trade unions and journalists the opportunity to scrutinise the company's activities. This makes it easier to hold the right entity responsible, and secure compensation, for instance if there are accidents at the factories.⁷⁴

Information about production sites in general terms does not directly provide information about social conditions at factories. The greatest challenges are often at the subcontractor level, for instance in the production of raw materials. A focus on production sites may in fact draw attention away from the challenges in the supply chain. Many businesses typically have a mix of self-manufactured goods, suppliers, and batch purchases, and significant resources would have to be invested to be able to provide production sites for all goods purchased.

Another concern is that information about production sites in some cases may be sensitive in terms of competition, and might be considered a trade secret. Information on production sites may enable competitors to identify factories employed by the enterprise that it took significant efforts to find in the first place. Even details that are not secret on their own, may furthermore constitute a trade secret due to the way they are put together. The Ministry of Justice and Public Security makes this point in the public consultation regarding a new Act relating to protection of trade secrets (case no. 18/6167):

"information that is not necessarily secret on its own, can nevertheless constitute a trade secret by virtue of how it is comprised or organised. A practical example might be lists of customers or suppliers, or details of ingredients or their relative compositions etc. This broad appreciation of what may constitute a trade secret seems congruent with what is relied on in jurisprudence under the Marketing Control Act, section 28."

The issue of country-of-origin labelling and indication of production sites is discussed in the EU, see subsection 18.2.1. The proposal for a new Product Safety and Market Surveillance Package includes a provision whereby market operators shall be able to identify from whom they purchased a product, and to whom they have sold it (one tier up, one tier down).⁷⁵ The proposed Article 14 reads as follows:

"Identification of economic operators

1. Economic operators shall, on request, identify the following to the market surveillance authorities:

- (a) any economic operators who have supplied them with the product;
- (b) any economic operator to whom they have supplied the product.

⁷² The Future in Our Hands, "*Med døren på gløtt?*" (The door slightly open?), 2011.

⁷³ Simonsen Vogt Wiig, pp. 48-49.

⁷⁴ Ethics Information Committee. Open meeting, December 13, 2018. Mr Atle Høie, IndustriALL Global Union. See also The Future in Our Hands, "*Hvorfor åpne leverandørlistene?*" (Why public supplier lists?), 14 May 2019.

⁷⁵ "*Product safety and market surveillance package.*" Proposal for a regulation of the European parliament and of the council on consumer product safety and repealing Council Directive 87/357/EEC and Directive 2001/95/EC, 13 February 2013.

2. Economic operators shall be able to present the information referred to in the first paragraph for a period of 10 years after they have been supplied with the product and for a period of 10 years after they have supplied the product."

When addressing the requirement for country-of-origin labelling, the preamble to the draft Product Safety Regulation highlights the consumers' need for knowledge about the actual production site. The preamble stresses that products should carry information making it possible to identify the producer, and where relevant, also the importer. An indication of country of origin may, according to section 20 and 21 in the preamble, make it possible to identify the production site:

"(20) Ensuring product identification and the traceability of products throughout the entire supply chain helps to identify economic operators and to take effective corrective measures against unsafe products, such as targeted recalls. Product identification and traceability thus ensure that consumers and economic operators obtain accurate information regarding unsafe products which enhances confidence in the market and avoids unnecessary disruption of trade. Products should therefore bear information allowing their identification and the identification of the manufacturer and, if applicable, of the importer [...].

(21) The indication of origin supplements the basic traceability requirements concerning the name and address of the manufacturer. In particular, the indication of the country of origin helps to identify the actual place of manufacture in all those cases where the manufacturer cannot be contacted or its given address is different from the actual place of manufacture [...]."

The *Majority* in the Committee proposes that enterprises that engage in retail trade to consumers should be required to disclose production sites, and that more detailed regulations may make an exception for certain sectors and categories of business – for instance those below a minimum threshold. The concerns about trade secrets are protected in Section 8 of the draft Act. The duty to publish the production site does not entail a requirement for information about subcontractors, as that would place an undue burden on many enterprises.

Although disclosure of production sites does not directly provide information regarding respect for human rights and working conditions, transparency is nonetheless a key driver for change. Information about production sites also provides interested parties, notably trade unions and civil society organisations, with information they can use to further investigate conditions, and thereby lead to greater impact. In many situations, this can prove vital. The supervisory authorities and others may offer guidance on how the information can be obtained and published.

The public disclosure of information about the production site, not simply in response to a specific enquiry, will make the information more accessible, and can also protect the identity of the person seeking the information. That may be particularly imperative for employees who work actively within a trade union or other capacities and fear reprisals.

A *Minority* in the Committee (Gramstad) finds that *Section 6 Transparency regarding Production Sites* would in practice represent a new reporting duty, that is not sufficiently justified by the stated purpose and a cost-benefit analysis. This Committee Member finds that the purpose may in fact be achieved through *Section 7 Right to Information*, which represents a disclosure duty that hitherto did not exist.

Neither the UN Guiding Principles nor the OECD Guidelines for Multinational Enterprises make any explicit recommendation as to whether the production site should be disclosed, or whether businesses should publish supplier lists. The Committee Member finds that Section

6 runs counter to the principles underlying a risk-based approach that provides the foundation for Sections 5 and 7.

Section 6 does not require publication of supplier lists, but the production site. "*Production site*" is to be understood as the factory where the bulk of the good – meaning the end-product – is assembled prior to sale. Details about the production site can be provided by indicating where production takes place, for example the name and address of the factory. In many cases, these will be details about factories in Norway and neighbouring countries, which provides not information about the risk of, or actual, adverse impacts. The Committee Member finds it impossible to justify why this is a useful way to report, when the remaining paragraphs in the Act propose a risk-based approach. It is not at all certain that the production site will correlate with the location where the risk of violations of human rights and labour rights is most significant. In many sectors, there are also global commodities exchanges, agents, wholesalers, and other operative stages, rendering it impossible to report on the production site.

The Committee Member finds that such reporting would place an undue burden on businesses of different sizes. A requirement that all businesses shall actively publish information on production sites for retail goods, for example on a dedicated website, would impose an undue burden, given the resources expended and the benefits obtained. Neither does the Committee Member agree that only consumer-facing sectors, and not business-to-business operations, should be subject to such a reporting duty, if it is introduced, and believes that a reporting duty on production sites may prove problematic in relation to other regulation addressing trade secrets.

The Committee Member reaffirms her support for the goal of transparency, and refers to the *duty to disclose information* set out in Section 7.

Committee Member Ditlev-Simonsen joins the dissent regarding Section 6 by Committee Member Gramstad. The views of Member Ditlev-Simonsen are set out further in subsection 8.4.10.

8.4.7 Exemptions for certain types of information

When it comes to the potential exemptions from the *duty to disclose information*, there can never be any basis for secrecy about violations of fundamental human rights. But in other respects, concerns about trade secrets may be appropriate, and an exemption clause is necessary. In cases where there are trade secrets, it is possible to consider whether the information in the documents shall be released in redacted form.

Under the Public Administration Act, section 13, first paragraph, no. 2, information on "technical devices and procedures, as well as operational or business matters which for competition reasons it is important to keep secret in the interests of the person whom the information concerns" is subject to non-disclosure.

The preparatory works to the proposed new Public Administration Act (NOU 2019:5) review the experiences with this provision. A number of concerns suggest that certain internal matters within a business should be subject to a non-disclosure rule. For example, this may apply to information that may have financial repercussions for the enterprise if released. Other concerns point in the opposite direction. The preamble to the current Public Administration

Act emphasises that there may be powerful public interests at stake in commercial matters, and that the motives for desiring secrecy may be more or less worthy of protection.⁷⁶

The Committee drawing up the proposal for a new Public Administration Act believes a non-disclosure rule only should apply to operational and trade secrets. The Committee therefore proposes to delete "for competition reasons" and reference to "technical devices and procedures" in the current Act.⁷⁷ The Committee points out that it will be possible to draw on practice and theory developed in relation to other statutes, where equivalent concerns are relatively well embedded.⁷⁸ The Public Administration Act Committee proposes as follows:

"Section 34. The duty of non-disclosure regarding operational or trade secrets

(1) Information about operational or trade secrets are subject to a duty of non-disclosure.

(2) Operational or trade secrets means information about operational or commercial matters that deserve protection, which may include, among other things

a) commercial strategies

b) business ideas

c) recipes or production methods.

(3) The duty of non-disclosure does not apply to information about the business's administrative set-up or general financial issues. The same is true for information on administrative decisions that affect the business."

The proposal for a new Act on the Protection of Trade Secrets seeks to implement Directive (EU) 2016/943 on the Protection of Undisclosed Know-how and Business Information (trade secrets) in Norwegian legislation. The Ministry of Justice and Public Security writes as follows in Proposition no. 5 LS (2019-2020):

"The proposition entails a strengthening of the protection of trade secrets, and should make it easier for the proprietor of the secret to enforce his rights. Protection of trade secrets is of significant importance for the competitiveness of businesses, either as a supplement to, or alternative to, industrial property rights. By providing businesses with the grounds to protect the results of innovation, and thus the opportunity to get a return on investments in research and development, the foundation is laid for healthy competition and increased innovation."⁷⁹

Trade secrets are defined in the proposed section 2 as follows:

"Trade secrets shall mean information

a) that is secret in the sense that the information, either as a whole or in the way it is comprised or arranged, is not generally known or readily accessible

b) that has commercial value because it is secret

⁷⁶ See Odelsting Proposition no. 3 (1976–77), p. 16.

⁷⁷ The condition "competitively important" has been found difficult to employ in practice. In some cases, the assessment presupposes legal and financial acumen, besides knowledge of the market situation in a range of markets. This makes it difficult for the administrative authority to determine if the condition is met.

⁷⁸ Cf. the Dispute Act, section 22-10. A "trade secret" is often "information of significance for sales", see Rt 1997- 964. For example, see Rt 2009-1103, cf. Jens Edvin A. Skoghøy, *Tvisteløsning* (Dispute Resolution), 3rd Ed., Oslo 2017, p. 811. The Marketing Control Act, section 28, prohibits unlawful exploitation of a "trade secret". The Penal Code, section 207, prohibits infringement of "trade secrets", whilst section 208 deals with unlawful acquisition of a "trade secret". See Odelsting Proposition no. 22 (2008–2009), p. 405.

⁷⁹ Proposition 5 LS (2019–2020), p. 5.

c) for which the owner has taken reasonable steps to keep secret.

General experience and skills that the employee has acquired during a period of employment, does not constitute a trade secret. The owner of a trade secret means a physical or legal person who rightfully disposes over the trade secret."

In NOU 2019:5, the Public Administration Act Committee examines whether the provision regarding non-disclosure of trade secrets should be formulated in the same way as the proposed new Trade Secrets Act, but has opted for a simpler model. The aspects mentioned in the definition in Directive (EU) 2016/943 will nonetheless be relevant also under the Public Administration Act, and the Committee assumes that they will largely lead to the same results.⁸⁰

In our draft Act, we follow the proposal of the Public Administration Act Committee. If the proposed new Trade Secrets Act is adopted, the Committee writes that the interpretation of trade secrets will be further embedded in Norwegian legislation.⁸¹ This will apply similarly to our draft Act. The exemption rule proposed here, as the proposal in the new Public Administration Act, section 34, is a simplified model compared with what follows from the current Public Administration Act, section 13, second paragraph, and the Environmental Information Act, section 17, first paragraph, letter c. Additionally, we propose a provision to regulate exemption of information about personal affairs.

The Committee proposes moreover that there shall be a provision regulating the information that cannot be exempted. The severity and general public interest call for disclosure in any case of information on violations of fundamental human rights linked to the business and its supply chain that the enterprise knows about. In the human rights sphere, too, the nature of the information and motives for the desire for secrecy, are significant in assessing whether an exemption can be made on the grounds that the matter constitutes a trade secret. This view is apparent, as explained above, already from the preparatory work of the current Public Administration Act:

"The motives for a company's desire to keep matters secret can also be more or less worthy of protection. On the one hand, there may be production methods or similar that a business has developed, which it has a sound reason to conceal from competing businesses. On the other hand, there may be arrangements or circumstances that the business wishes to keep secret because they are unacceptable from a societal viewpoint."⁸²

8.4.8 Guidance and implementation of the Act

There is a need for guidance if the Act is to work as intended, and to ensure compliance. This follows from the general requirement of guidance from the public sector. Some enterprises already meet the active information duties in the Act. But the right to information on the impacts on working conditions and similar in the supply chain remains untested, despite some enterprises already responding to such requests. The enterprises with which the Committee has conferred emphasise the need for guidance, dialogue and cooperation.

⁸⁰ The Directive's definition of "trade secrets" is equivalent to the definition of "confidential information" in the Trade Related Aspects of International Property Rights (TRIPS) Agreement, Article 39, no. 2. It is clear from the Ministry's consultative paper that the proposed legal definition "will in essence give the same limitations to the concept as under current law, but the different elements will receive a rather different linguistic framework than what follows from judicial practice and legal theory", see S no. 18/6167, p. 22.

⁸¹ Norwegian Public Reports, NOU 2019:5, p. 288.

⁸² Odelsting Proposition no. 3 (1976–1977), p. 158.

Experience with the Environmental Information Act shows that it is not well known and therefore used to a limited extent, although in some contexts it has played a seminal role, cf. subsection 19.4.1.1. It is necessary to provide guidance and information to all interested parties, including businesses, the media, trade unions, consumers and others, in order to attain the purpose of the Act. The goal is to create improvements and prevent harmful social impact.

The Committee envisages a transition period for the introduction of the Act, during which guidance is developed and communicated. Seminars, guidance documents and individual follow-up can provide enterprises and others with knowledge of what the Act requires, and what must be done to comply. The guidance, combined with the *duty to know*, will potentially have a preventive effect. It may also lead to more effective supervision and handling of complaints.

The Committee envisages implementation in several stages. Businesses, which in Norway for the most part constitute small and medium-sized enterprises, must be supported during the first couple of years, to learn the standards of responsible business conduct. There will be a need for sectoral guidance for the enterprises that are required to conduct *due diligence*, regarding human rights and working conditions. There will be a particular need for guidance on which enterprises must disclose information on production sites, and how to do so.

The guidance must draw on experience, and be prepared in collaboration with other interested parties with relevant expertise, such as the guidance on human rights in public procurement, issued by the Agency for Public Management and eGovernment (Difi). It will also be possible to draw on the experience of other public agencies. Both employer and employee organisations and sector-based organisations may have an important role to play. Networks like the UN Global Compact and non-governmental organisations, at home and abroad, may contribute to the efforts.

Norway's OECD contact point for responsible business conduct offers particularly relevant guidance and experience. The contact point promotes the OECD Guidelines for Multinational Enterprises, and offers guidance and deals with complaints about alleged breaches of the guidelines. The contact point also arranges training for Norwegian enterprises with regards to *due diligence*. The OECD has published a range of guidance documents for various sectors and supply chains, as well as general guidance for *due diligence*. The Norwegian contact point has communicated much of this guidance in Norwegian. Guidance geared towards small and medium-sized enterprises is also available.

An aim of the Government's Action Plan for Business and Human Rights from 2015 is that companies applying for financial support or assistance from the State shall receive sound and coordinated information and guidance about responsible business conduct, and the Government's expectations regarding human rights. The Action Plan notes that the government is considering setting up a Guidance Centre. Such a centre was intended to secure "uniform guidance and communication of 'best practice', in addition to being a direct resource for businesses."⁸³ This ambition could be realised as part of the efforts to provide guidance on the present Act.

8.4.9 Supervision, enforcement and appeals

There various ways of securing compliance with legislation. Market mechanisms can contribute, and cause no added expenditure. This is the rationale behind the UK and

⁸³ Government, "*Handlingsplan for menneskerettigheter og næringsliv*" (Action Plan for Human Rights and Business), 2015: 20.

Australian requirements for transparency in the supply chain on efforts to combat modern slavery. These requirements emphasise the concern for brand names and corporate reputation, and the belief that scrutiny by civil society, investors, consumers and others, will contribute to ensuring compliance. This is discussed more fully in subsection 18.3.

However, there are weaknesses in this approach. Relatively few organisations have the expertise and resources to monitor corporations and verify information. The focus is likely to be on the major, high-profile corporations, while most businesses are small, medium-sized, or operate as suppliers to other businesses and beyond public scrutiny. Some such businesses may operate with a high risk of adverse human rights impacts. A weakness of recently adopted statutory requirements for transparency and to a certain extent mandatory human rights *due diligence*, is the absence of mechanisms for complaints and sanctions.

The Committee finds there is a need for supervision and a complaints process, to secure compliance with the Act. A supervisory body can ensure that businesses disclose information as required by law. One option for the passive *duty to disclose information*, is to adopt the system in the Environmental Information Act, and establish a dedicated complaints body. The Environmental Complaints Board's secretariat function rests with the Norwegian Environment Agency. Three staffers work part-time dealing with complaints and casework, or one full-time equivalent in total.

Alternatively, a supervision and complaints body can be co-located within an existing supervision and complaints body. This can result in significant savings rather than establishing something new. At the same time, it must be emphasised that even collocation demands resources, particularly in the introductory phase.

Another potential solution is to allocate supervision and complaints to an existing supervisory agency. The Committee believes this may be both expedient and cost-effective. For example, it could be integrated in the Consumer Authority, and charged with both supervising the Act, and dealing with complaints about possible violations. The Consumer Authority has established systems and mechanisms, and developed expertise on claims regarding sustainability, the environment and ethics in advertising. The Consumer Authority is also the contact point for Electronic Commerce. The Consumer Authority currently has authority to prioritise which complaints are addressed. A low threshold for complaints may entail more notifications of possible breaches of the Act, and the supervisory body may quickly obtain an overview of the challenges in a given sector, and can prioritise guidance to that sector.

There may be some overlap between the supervision of a duty to disclose information in the Committee's proposal, and the Consumer Authority's supervision under the Marketing Control Act, sections 3 and 7. It is particularly worth noting section 7, fourth paragraph, in the Committee's proposal, which highlights that information disclosed must be adequate, truthful, and comprehensible.

The Committee has chosen to write the Consumer Authority into the draft Act, to show how supervision and handling of complaints can be organised. It must be stressed that the Consumer Authority already now assesses business conduct, including e-commerce. But resources must be added in order to develop expertise on human rights. A key task of the supervisory body will be to guide enterprises and those seeking information, on the requirements imposed by the law. The body that is assigned to supervise the Act, must draw up a plan for implementation and guidance.

In order for the supervisory body to have robust means to put pressure on businesses that fail to comply with the law, it is natural to stipulate that breaches of the Act will have consequences. The Committee's outline of the Act suggests that the supervisory body should

give guidance and advise those involved, and simultaneously have the authority to impose sanctions for certain violations. It may be reasonable for the Act to be formally implemented in several stages, though this may not be necessary if the implementation is flexible. For example, it may be determined that fines are not applied in an early phase on enterprises that indicate that they do not yet have sufficient routines in place, but are working on it.

The enforcement rules in the Committee's proposal build on the Marketing Control Act, sections 32 to 42. The proposal grants authority to enforce decisions regarding prohibition or injunction in the event of non-compliance. Injunction orders are most likely and the effect may be preventive. The proposal also authorises enforcement fines for breaches of the *duty to disclose information*, until the required information is released. In the Committee's proposal, an infringement penalty will only apply in cases of wilful or negligent recurring breaches of the various duties to disclose information. Here, too, it may be appropriate to begin with an introductory period.

The Committee finds that an infringement penalty, as proposed in the draft Act, will be deemed a penal sanction under the European Convention on Human Rights, and the International Covenant on Civil and Political Rights. Accordingly, the due process rights that protect the accused in criminal cases apply, including protection against self-incrimination, as set out in both Conventions. The Committee has not looked further into the criminal and procedural repercussions this entails.

8.4.10 Comments and dissenting opinion by Committee Member Ditlev-Simonsen

It is important that consumers and organisations can receive information about how businesses work to safeguard fundamental human rights and working conditions in businesses and supply chains. This will promote the business's respect for fundamental human rights and decent work. It will also enable consumers to make more informed purchasing choices. Legally binding regulation in this field is therefore key.

At the same time, it is possible and important that the law is shaped such that whatever businesses are required to do, also is useful and profitable for them in a longer perspective. Moreover, it is important that the legal text is adequately clear so that it is not possible to misuse it. Unlike the Majority in this Committee, this Member finds that certain aspects in the text of the law fail to fully meet the purpose in that sense.

Section 5 Duty to know, first paragraph, requires all businesses offering goods and services in Norway to know "about matters that entail a significant risk of adverse impact on fundamental human rights and decent working conditions for the business and supply chain". In this context, supply chain means, according to the draft Act, section 3, letter c "all businesses supplying goods and services that deliver products or input factors to a business". The draft Act thereby establishes an extremely broad obligation that basically all Norwegian and foreign businesses must comply with, if they offer goods and services in Norway. The draft Act, section 5, second sentence, modifies this *duty to know* as follows: "The scope of the duty to know depends in part on the size of the business, its ownership, and its structure, activities, sector, and types of goods or services." To some degree, this modification is explained in the commentaries. But as the Act imposes broad requirements on businesses, this Committee Member finds that the differentiation of businesses must be clarified and made more precise also in the very text of the Act, and that this differentiation must be taken into account in *Section 7 Right to information from an enterprise*, and in *Section 9 Processing of information requests by the enterprise pursuant to Section 7*.

The former, *Section 7, Right to information from an enterprise*, establishes a broad *duty to disclose information*. Even so, the information, according to the draft Act, section 7, third paragraph, may be demanded through "oral or written request to the business". Oral enquiries to random employees in a business may be unclear and easily misunderstood, particularly if the person asked cannot respond, and has to relay the enquiry within the company. For that reason, this Committee Member finds that Section 7, third paragraph, should be deleted.

This Member concurs otherwise with the Dissent regarding the draft Act, *Section 6 Transparency on production sites*, by Member Gramstad.

9 Draft Act

Act relating to enterprises' transparency regarding supply chains, the duty to know and due diligence

Chapter 1. Introductory provisions

Section 1 *Purpose*

The Act shall ensure that consumers, organisations, trade unions and others have access to information about fundamental human rights and working conditions in enterprises and supply chains and shall contribute to promoting enterprises' respect for fundamental human rights and decent work.

Section 2 *Scope of application*

- (1) The Act applies to enterprises that offer goods and services in Norway.
- (2) The King may by regulation provide that the Act fully or partially shall apply to Svalbard and Jan Mayen.

Section 3 *Definitions*

- a) "Enterprise" means a company, cooperative society, association, sole proprietorship, foundation or other form of organisation. The Act also applies to publicly owned enterprises that offer goods and services.
- b) "Larger enterprises" means businesses covered by the Accounting Act section 1-5, or which exceed the limits for two of the following three conditions on the balance sheet date:
 1. sales income: NOK 70 million,
 2. total assets: NOK 35 million,
 3. average number of employees in the accounting year: 50 full time equivalents.
- c) "Supply chain" means all entities supplying goods and services that deliver products or factor inputs to an enterprise.
- d) "Fundamental human rights" means the internationally recognised human rights as expressed in the International Covenant on Economic, Social and Cultural Rights (1966), the International Covenant on Civil and Political Rights (1966) and the ILO's core conventions on fundamental rights and principles at work.
- e) "Decent work" means work that respects fundamental human rights, protects health, safety and the environment in the workplace and provides a living wage.
- f) "Consumer" means a natural person who is not primarily acting in a commercial capacity.

Section 4 *Relationship with other legislation*

- (1) This Act does not restrict the right to disclosure or information pursuant to other legislation.
- (2) The right to information applies subject to restrictions imposed by the Intellectual Property Rights Act.

Chapter 2. Duty to know, disclosure requirements etc.

Section 5 Duty to know

- (1) All enterprises are required to know of salient risks that may have an adverse impact on fundamental human rights and decent work, both within the enterprise itself and in its supply chains. The scope of the duty to know depends on factors that include the size of the enterprise, its ownership and structure, activities, sector and type of goods or services. For larger enterprises, Section 10 also applies.
- (2) The duty to know applies in all cases where the risk of adverse impact is most severe, such as the risk of forced labour and other slavery-like labour, child labour, discrimination in employment and occupation, lack of respect for the right to establish and join trade unions and engage in collective bargaining and risks to health, safety and the environment in the workplace.

Section 6 Transparency about production sites

- (1) Enterprises that sell goods to consumers are obligated to publish information about the production site.
- (2) The information shall be published on the enterprise's website or otherwise be made easily accessible.
- (3) The King may by regulation determine which sectors and groups of enterprises that shall be exempted from the duty of public disclosure.

Section 7 Right to information from an enterprise

- (1) Any person is entitled to information about how an enterprise conducts itself with regard to fundamental human rights and decent work within the enterprise and its supply chains.
- (2) Requests for information pursuant to Subsection 7 (1) may concern:
 - a) general information about the enterprise's work, systems and the steps taken to prevent or mitigate adverse impact on human rights and working conditions.
 - b) information about adverse impact on human rights and working conditions, salient risks of such impact occurring and how the enterprise manages this risk, including risk linked with a particular product or service.
- (3) Requests for information may be submitted to the enterprise orally or in writing.
- (4) The information shall be adequate, truthful and comprehensible in relation to the request submitted.
- (5) An information request may be dismissed if the request is too broadly formulated or does not provide an adequate basis to identify the information requested.

Section 8 Exemptions for certain types of information

- (1) Requests for information may be rejected if
 - a) the request is apparently unreasonable, or
 - b) it concerns information about an individual's personal affairs, or
 - c) the information requested relates to operational or commercial matters subject to legitimate confidentiality requirements, which may include business strategies, business ideas, industrial designs or production methods.

- (2) Information known to the enterprise about violations of fundamental human rights related to the enterprise and its supply chains may not be treated as exempt pursuant to Subsection 8 (1).

Section 9 *Processing of information requests by the enterprise pursuant to Section 7*

- (1) Within the framework of this provision, the recipient of an information request may disclose the information in the form deemed appropriate by the enterprise.
- (2) If the request can be answered adequately using existing, relevant reports and other published information, the information seeker can be referred to them.
- (3) The recipient of an information request shall consider the request and answer it within a reasonable time and at the latest within three weeks of receipt of the request.
- (4) If the quantity or type of information makes it unreasonably burdensome to provide access to it within three weeks, the information shall reach the information seeker within two months. In this case, the enterprise shall within three weeks of receipt of the request explain the reason for the extension and state when the information seeker should expect to receive the information.
- (5) If a request for information is summarily dismissed or rejected, the enterprise shall refer to the provision justifying the rejection, provide information about the right to and time limit for requesting a more detailed justification for the rejection and explain the appeal process and time limit.
- (6) In the event of dismissal or rejection, the information seeker may within three weeks request a short justification for the rejection. The justification shall be provided as soon as possible and at the latest within three weeks of receipt of the request for more detailed justification. The justification shall be provided in writing if the information seeker so requests.

Section 10 *Due diligence and disclosure requirement for larger enterprises*

- (1) Larger enterprises shall conduct due diligence in order to identify, prevent and mitigate possible adverse impact on fundamental human rights and decent work and account for how they address any adverse impacts.
- (2) The enterprises shall as a minimum publicly disclose information on the following aspects of their own activity and supply chains:
 - a) A description of the enterprise's structure, area of operations and supply chains, including management systems and early warning channels for preventing or mitigating any adverse impact on fundamental human rights and working conditions.
 - b) Due diligence carried out by the enterprise, including information about any actual adverse impact on fundamental human rights and decent work and salient risk of such impact.
 - c) Results of the due diligence, including measures to mitigate severe risk or harm and remedy adverse impact where this is required.
- (3) The disclosure of information pursuant to Subsection 10 (2) shall in all cases include information on risks and measures in relation to forced labour and other slavery-like labour, child labour, discrimination in employment and occupation, lack of respect for the right to establish and join trade unions and engage in collective bargaining, as well as health, safety and the environment.
- (4) The disclosure of information pursuant to Subsection 10 (2) may be included in the report on social responsibility pursuant to the Accounting Act section 3-3 c or publicly

- disclosed in another manner. The information shall be readily accessible. The annual report shall state where the disclosure of information is publicly available.
- (5) The disclosure of information shall be signed by the general manager and the board.

Chapter 3. Guidance, supervision and complaints

Section 11 Guidance

- (1) The Consumer Authority shall provide guidance to enterprises, consumers and others on the implementation of this Act.

Section 12 Appeals

- (1) Dismissal and rejection of information requests may be appealed by way of complaint to the Consumer Authority with a copy to the enterprise. The appeal time limit is three weeks from the time when the rejection reached the information-seeker.
- (2) If an answer to the information request has not arrived within two months of the information request being received by the enterprise, this constitutes a rejection that can be appealed within the following three weeks.
- (3) If the information-seeker has asked for further justification for the rejection pursuant to Section 9 (6), the time limit does not start to run until this justification has been provided.
- (4) The enterprise must provide any response within three weeks of receiving its copy of the appeal.
- (5) After this time, the Consumer Authority will decide on the appeal.

Section 13 Monitoring and enforcement

- (1) The Consumer Authority and the Market Council shall monitor to ensure compliance with the provisions of this Act. The monitoring is performed pursuant to the rules in the Marketing Control Act sections 32 to 42.
- (2) An enforcement fine may only be determined for contravention of the disclosure requirements in Sections 6, 7 and 10.
- (3) For repeated wilful or negligent infringement of Sections 6, 7 and 10, an infringement penalty may be set, to be paid by the infringing party.
- (4) The Ministry may by regulation lay down more detailed rules governing the imposition of enforcement fines and assessment of infringement penalties.

Section 14 Entry into force

The Act enters into force from the time determined by the King.

Chapter 4. Amendment to other legislation

Amendment to the Marketing Control Act

The wording of the Marketing Control Act section 35 second paragraph shall hereafter be: “The Consumer Authority conducts monitoring out of consideration for the consumers. Monitoring pursuant to section 2 second paragraph, however, is conducted out of consideration for equality of the sexes, with particular emphasis on how women are portrayed. Monitoring pursuant to section 10 with regulations is conducted so that consumers can gain

an overview of the market and easily compare prices. *Monitoring pursuant to the Act relating to enterprises' transparency regarding supply chains, duty to know and due diligence is conducted in order to ensure access to information about fundamental human rights and working conditions in enterprises and their supply chains cf. Section 1.*"

10 Comments on the individual provisions

Chapter 1. Introductory provisions

On Section 1 Purpose

Section 1 states the purpose of the Act. Para 8.4.1 of the report explains the general purpose of the Act. It shall ensure that consumers, organisations, trade unions and others have access to information about fundamental human rights and working conditions in enterprises and supply chains and shall contribute to promoting enterprises' respect for fundamental human rights. Taken together, this may contribute to improvements in working conditions.

Achievement of the purpose is sought through the proposed duty to know and disclosure requirements in Sections 5 to 7, and for larger enterprises, a duty of due diligence with respect to fundamental human rights and working conditions and public disclosure of information in Section 10.

It follows from the provision that the Act shall secure access to information for consumers, organisations, trade unions and others. "Others" refers in particular to investors, entities seeking information in order to influence the industry and public sector entities.

On Section 2 Scope of application

The Section specifies the persons to whom the duties in the Act apply and the geographical scope of application. This is discussed in greater detail in para 8.4.2 of the report.

The *first paragraph* establishes that the Act applies to enterprises that sell goods and offer services in Norway. The Act therefore applies without objective and personal restrictions beyond the requirement for the enterprise to offer goods or services in Norway. For example, enterprises selling consumer goods, producing factor inputs for industry or supplying the public sector will all be included.

The Act will apply to online retailers if they offer goods and services in Norway. Questions may arise as to whether the Act will be applicable to foreign online retailers. Sources of guidance in this event may be the interpretive practices of the Consumer Authority and Market Council pursuant to the Marketing Control Act section 4, and the European Court of Justice (ECJ). Under the Marketing Control Act, one typically examines whether a website is directed to and delivers to Norwegian customers and uses the Norwegian language and currency, cf. Proposition to the Odelsting (Ot. prp.) No. 55 (2007-2008), pages 189 - 190.

In its judgement of 7 December 2010 (C-585/08 and C-144/09) the ECJ considered similar questions relating to marketing on the Internet. The question at issue was what constitutes "directed to" in Regulation (EU) No. 44/2001 of 22 December 2000 Art. 15. The ECJ used the same interpretation of the term "directed to" as in Regulation (EU) No. 593/2008 on the law applicable to contractual obligations (Rome I) and established that the trader must have envisaged "doing business with consumers domiciled in one or more Member States, including the Member State of that consumer's domicile, in the sense that it was minded to conclude a contract with them." It went on to identify a number of matters, which individually or collectively would constitute evidence when determining whether the trader's activity is directed to a consumer's domicile. These factors include the international nature of the activity; which language and currency the enterprise operates in; which language can be used for making and confirming orders; whether the site contains descriptions that lead to where

the enterprise is located; whether the business has had expenses for facilitating access to the Internet site in order to reach consumers in other Member States, and the top-level domain name used. The list is not exhaustive.

NKU-2013 – 5 (Babyshop) is an example of what may typically fall within the Act's scope of application. Here the Norwegian Business and Industry Committee found that a Swedish online retailer was directed to the Norwegian market. The website was adapted for Norwegian customers as prices were stated in Norwegian kroner, the delivery was via the Norwegian Postal Service and a Norwegian contact address and telephone number were given. An example that must initially be presumed to lie outside the Act's scope of application will be an English website using the English language, which is not directed to Norwegian customers but allows goods to be sent to Norway.

The second paragraph authorises the King to provide by regulation that the Act also shall apply fully or partially to Svalbard and Jan Mayen.

On Section 3 Definitions

The term "Enterprise" in *letter a* includes a company, cooperative society, association, sole proprietorship, foundation or other form of organisation. Obligations under the Act may be incumbent on all enterprises within a group. Enterprises in a group with a Norwegian parent company can refer to the parent company for fulfilment of the knowledge and disclosure obligations and, for enterprises covered by Section 10 of this draft Act, the duty to conduct due diligence.

"Larger enterprises" under *letter b* are large undertakings and other enterprises that are not defined as small in the Act relating to Annual Accounts etc. (the Accounting Act). Reference is made to para 8.4.2 in the general comments.

"Supply chain" in *letter c* means all enterprises supplying goods and services who deliver factor inputs to an enterprise and that are directly linked to the company's business activity, products or services. This includes transport, as well as agents and other intermediaries. The supply chain includes the activities, organisations, actors, technology, information, resources and services that are involved in the process of transporting and processing a product from the raw material stage to a finished product, see similarly the EU regulation on conflict minerals, (EU) 2017/821, Article 2.

In the modern economy return schemes and other disposals of purchased goods from the seller will be a part of the supply chain. An example of this is after-sales services in conjunction with recycling an item or part of an item cf. chapter 4 of the report.

"Factor inputs" means raw materials, components and services as well as transport etc.

"Fundamental human rights" in *letter d* means the internationally recognised human rights that, stemming from the Universal Declaration of Human Rights (1948), are elaborated in the conventions specified in the provision. The definition corresponds with the one on which the Procurement Act section 5 is based, see Proposition to the Storting Prop. 51 L (2015–2016) page 83:

"The statutory provision does not contain an exhaustive list of the relevant judicial instruments with respect to human rights [...]. However, the Ministry points out that the UN Guiding Principles on Business and Human Rights refer to the UN Declaration of Human Rights 1948, the two UN conventions from 1966 on Civil and Political Rights and

Economic, Social and Cultural Rights respectively, and ILO's core conventions on fundamental rights and principles at work".

Letter e on "decent work" corresponds to fundamental rights at work as they are expressed in the frameworks referred to above, the Decent Work Agenda of the International Labour Organisation (ILO) and UN Sustainable Development Goal No. 8. In addition to the human rights incorporated in ILO's eight core conventions, this encompasses health, safety and the environment in the workplace and wages that enable workers to provide for themselves and their families ("living wage").

The definition of "consumer" in *letter f* corresponds with the Act relating to Consumer Purchases section 1.

On Section 4 Relationship with other legislation

The provision regulates the relationship between the present draft Act and other legislation. Refer to the general comments in chapter 8.4.3.

The *first paragraph* establishes that the Act does not restrict any right to information pursuant to other legislation. This applies, for example, to the general public's right to information under the Freedom of Information Act and the Public Administration Act as well as the Accounting Act. Neither does it impinge on disclosure, information and documentation obligations relating to specified categories of people for instance pursuant to contractual law and the Marketing Control Act. Breaches of this Act may potentially lead, for example, to a claim for cancelling the purchase under the Consumer Purchases Act. Refer to paras 7.2 and 19.5.2 in the report for a more detailed discussion of this.

Information about the impact of enterprises and their products on the external environment is not included in the present Act, but is regulated by, *inter alia*, the Environmental Information Act section 16 and the Product Control Act section 10. To the extent that an enterprise's environmental impact causes any adverse impact on human rights and working conditions, it will also be covered by the present Act.

The Act may also overlap with disclosure requirements in other legislation. For larger enterprises, Section 10 establishes a duty of public disclosure of information about due diligence on human rights and working conditions in the enterprise and supply chains. To the extent that the disclosure duties overlap, the same information may be deemed to satisfy the obligations pursuant to different regulations, cf. Section 10 (4). The Accounting Act section 3-3 c establishes an obligation for large enterprises to report on social responsibility. Large enterprises may include information required by the present Act in this report. See furthermore paras 8.4.3 and 19.4 in the Committee's report.

The *second paragraph* establishes that the Act of 12 May 1961 No. 2 on Intellectual Property Rights to Literary and Artistic Work etc. (the Intellectual Property Act) takes precedence, where the right to information under the present Act conflicts with intellectual property rights. This provision is assumed to have limited application in practice. Reference is made to paragraph 8.4.3 in the general comments.

Chapter 2. Duty to know, disclosure requirements etc.

On Section 5 Duty to know

The provision establishes a duty to know about salient risks of adverse impact on fundamental rights human rights and decent work. Refer to para 8.4.4 of the report for further detail. The purpose of the duty to know is to increase awareness of human rights and working conditions

in all enterprises and provide a basis for answering information requests pursuant to Section 7. Larger enterprises are subject to an additional requirement to conduct due diligence pursuant to Section 10.

The responsibility to respect human rights applies to all companies regardless of size, ownership and structure, activities, sector and types of goods or services. However, the scope of the means employed by enterprises to fulfil this responsibility will vary based on these factors. For many enterprises, there will in practice not be a case of salient adverse impact. Small and medium-sized enterprises will also often have less capacity and fewer formal procedures and management systems than large enterprises.

The *first paragraph* requires all enterprises to know of salient risk of adverse impact on human rights and working conditions to which they may be linked. Such impact may arise when the enterprise's activities or lack of activities have adverse consequences for fundamental human rights and working conditions.

The duty to know entails that the enterprise itself shall assess whether, and if so where, there is a risk of adverse impact. What is salient varies according to factors such as sector, business model, geography and supply chain. This is a question of assessing how severe the consequences are, or could be, for those affected. The probability of any adverse impact may also be an important aspect of the due diligence assessment. Often, there will be no salient risk within the area in which a small enterprise may obtain knowledge.

Salient risk of adverse impact may arise from an enterprise's own activity or from business relationships in the supply chain. The duty is not restricted to specific tiers in the supply chain, cf. para 8.4.4.2. The most significant risk may lie further down in the supply chain. It is the assessment of "salient risk" that determines how far down the supply chain an enterprise must go to fulfil the duty of knowledge. The significance of the particular supplier involved may be important in the due diligence assessment.

Supply chain relationships come in various forms, such as franchising, licensing or outsourcing of work, cf. chapter 4 in the report. An example of how a risk may arise for a supplier is when the enterprise alters a specification requirement at the last minute without increasing the payment, and thereby causes indecent working conditions. Risk may arise when using recruitment agencies, where persons without identity papers are recruited by agents who expose them to human trafficking with the aim of using them in forced labour.

The more precise content of the duty to know will, pursuant to the *first paragraph second sentence*, vary with factors such as the enterprise's "size, ownership and structure, activities, sector and types of goods and services." The list is not exhaustive. Small and medium-sized enterprises cannot be expected to use significant resources on examining supply chains, but they may assume that importers, wholesalers or suppliers do this. An assessment of proportionality must provide the basis here.

A small local electrical firm cannot be expected to have knowledge beyond employment and working conditions in the business itself, and to know which wholesalers are its suppliers. But some small and medium-sized enterprises may be linked to a significant adverse impact on human rights and working conditions. A small metal importing business may for instance be linked with conflict minerals in such a manner that it may be subject to comprehensive international regulation of conflict minerals, such as Regulation (EU) 2017/721 and rules about conflict minerals in the USA (Section 1502 in the Dodd-Frank Wall Street Reform and Consumer Protection Act), see paras 13.4.7 and 18.1.1.2 in the report.

"Ownership and structure" also impacts the extent of the duty to know, cf. para 8.4.4. The duty to know includes corporate groups, cf. the term "enterprise" in Section 3. Risk factors

also vary on the basis of “activities, sector and types of goods or services”. The risks to human rights will be greater in certain industries. OECD sector guidance addresses challenges in various supply chains, such as those in the textiles and footwear and mineral supply chains. The Agency for Public Management and eGovernment (Difi) has developed a list of product categories with a high risk of violation of fundamental human rights in the supply chain. The list is not exhaustive, but can be a good starting point for the assessment, cf. para 19.6.1.2.

The *second paragraph* provides that the duty to know applies in all cases where the risk of adverse impact is highest. Examples in the list in the provision coincide with fundamental rights and principles that shall be respected in working life, as expressed in ILO’s eight core conventions as well as health, safety and the environment. Corresponding areas are included in principles 3 to 6 relating to labour standards in the UN Global Compact, and UN Sustainable Development Goals Nos. 8.7 and 8.8.

Examples of the risk of forced labour may be use of private recruitment agencies that demand payments from job applicants. This can lead to debt slavery for children and adults. Risks of child may be high in the informal sector and are often related to specific functions.

Discrimination occurs for example when women, and religious, ethnic and sexual minorities are paid lower wages and have fewer opportunities for promotion. There is a risk of trade union rights being violated if, for example, management refuses to allow an employee to establish or become a member of a trade union.

The risk of slavery-like work is mentioned specifically in the *second paragraph*. Prohibition of slavery follows from Article 8 in the International Covenant on Civil and Political Rights. Slavery-like work may be forced labour in combination with human trafficking. Risks to health, safety and the environment are also mentioned in the second paragraph. These may comprise extreme use of overtime, deficient procedures and lack of training in the storage, use and handling of chemicals, cf. para 13.4.6. There may also be defective safety procedures or safety equipment, or buildings that are unsafe or unsuitable for the work.

The Section only demands knowledge of salient risks of adverse impact, but such knowledge may provide the basis for an enterprise deciding to work to influence and seek to improve the conditions.

Otherwise, refer to Committee Member Ditlev-Simonsen’s special remarks on this Section in para 8.4.10.

On Section 6 Transparency about production sites

The provision confers a right to information about the production site and shall contribute to furthering the purpose of the Act when it comes to greater access to information about enterprises and supply chains, cf. para 8.4.6. In order to obtain knowledge about risks in the supply chain pursuant to Section 5, a first step is normally to establish an overview of the supply chain, including where production takes place. This will provide knowledge about the production site. Some information may be exempted from public disclosure, cf. Section 8.

“Production site” means the factory or installation where the largest part of the good, i.e. the end product, is assembled prior to sale. Disclosure of the production site can be provided in the form of information about where the production takes place, for example the name and address of the factory. The provision requires public disclosure of production sites, but not of supplier lists.

The requirement for publication of production sites applies to enterprises that sell goods to consumers. In practice, the production site will normally only be relevant when it comes to

the production of goods. Typical sectors where it is appropriate to publish the production site are textiles, footwear, electronics, toys and flowers. For certain categories of goods, it may be less appropriate to publish the production site. The *third paragraph* therefore provides the possibility for the King by regulation to exempt both certain sectors and groups of enterprises.

The *second paragraph* provides that the information shall be published on the enterprise's website or be made easily accessible to the public in some other way. The appropriate frequency of updating information will vary from enterprise to enterprise. For enterprises with stable contracts, the information should normally be updated annually. By way of example, the requirement may be satisfied by providing the information on the packaging, attaching it to the product, or similar.

A *minority* in the Committee (Gramstad and Ditlev-Simonsen) does not endorse the proposal for Section 6 Transparency about production sites. See paras 8.4.6 and 8.4.10.

On Section 7 Right to information

The provision establishes what is known as a passive disclosure requirement; a right to be provided with information on request. It applies to all enterprises, irrespective of size. Another issue is that the scope of the disclosure requirement will vary according to the information request and the size of the enterprise to which the request is directed. Small and medium-sized enterprises cannot be expected to use large resources on examining supply chains, but they will for example be able to refer to importers, wholesalers or suppliers with various questions. A proportionality assessment needs to be made here, cf. the comments on Section 5 first paragraph.

The basis for the disclosure requirement is the duty to know in Section 5, and for larger enterprises also the duty of due diligence in Section 10. The corresponding right to receive information cannot be made dependent on the enquiry being supported by a justification for the request.

The *first paragraph* states the general rule. The provision establishes the right to information about how an enterprise conducts itself with regard to fundamental human rights and decent work. The *second paragraph* gives examples of the two most practical types of information requests.

Under the *second paragraph letter a*, an information request may seek a general account of an enterprise's work, systems and measures to prevent adverse impact on human rights and labour conditions. It might typically be about how the work is organised in the enterprise, guidelines, management systems and procedures, standardization and certification schemes and due diligence systems. Information about the general way in which the company works to prevent adverse impacts on human rights and decent working conditions, how the enterprise sets requirements for and monitors health, safety and the environmental matters, measures for promoting worker representation and early warning channels may all be important in a general account. Efforts to "prevent or mitigate" adverse impact shall be understood in a similar way as in the Accounting Act section 3-3 a twelfth paragraph, on prevention and reduction of adverse environmental impacts.

The *second paragraph letter b* secures the right to information about any adverse impact on fundamental human rights and decent work and significant risk of such impact, cf. the duty to know about such matters in Section 5. Neither is there any restriction here to specific tiers in the supply chain, cf. the comments on Section 5. The right to information also includes information "linked with a particular product or service" pursuant to the *second paragraph*

letter b. Enterprises can take the product-based high-risk list produced by the Agency for Public Management and eGovernment (Difi) as their starting point. The list is not exhaustive, see para 19.6.1.2.

Information on “how the enterprise manages this risk” may depend on the importance of the supplier and the severity of the consequences. An enterprise may forward the request to a supplier, cease or prevent an adverse impact or otherwise use its influence to mitigate the risk to the greatest possible extent. The information may apply to measures implemented or planned to prevent or mitigate any negative impact, and to the results of these efforts.

Requests for information pursuant to the *third paragraph* may be presented to the enterprise orally or in writing. Particularly in a purchase situation, it may be natural to make a request orally. Employees in the enterprise can refer to the general manager or head office to answer the request.

Under the *fourth paragraph* the information shall be adequate, truthful and comprehensible in relation to the request submitted. This applies to both the form and content of the information. It also applies if the enterprise refers to web pages, reports etc. in order to answer the request. The recipient of the information request must respond to it to the best of his/her ability and communicate the information in an adequate, truthful and comprehensible manner. What is needed to satisfy this requirement may vary, depending on the resources and qualifications of both the person requesting and giving out the information. There is a lower expectation for small enterprises, compared with large ones. The amount of work involved must be weighed against the consideration of the public’s need for information, and significant weight must be attached to the purpose of the Act. In any case, the information must provide an adequate and comprehensible response to what is requested. Otherwise see paras 8.4.3 and 19.5.4.

An information request may be dismissed pursuant to the *fifth paragraph* if the request is “too broadly formulated” or “does not provide an adequate basis to identify the information requested”. The grounds for dismissal are organised in the same manner as in the Environmental Information Act section 16 third paragraph. Requests that are “too broadly formulated” may be requests that do not provide an adequate basis for identifying what the request concerns. The latter criterion primarily applies to questions that are broadly formulated and require a great efforts to answer. This is linked to the volume of work required for the person receiving the information request. It must be possible to understand to which matters the question relates. Incomprehensible requests may be dismissed.

Taking into account the purpose of the Act, both grounds for dismissal should be used with caution. Dismissal means that the information request will not be dealt with substantively by the enterprise. The dismissal must be within the grounds for rejection indicated in the Act.

The provision must be seen in the context of the right to reject claims that are deemed “apparently unreasonable” under Section 8 first paragraph letter a.

Otherwise refer to Committee Member Ditlev-Simonsen’s special remarks on this Section and this member’s dissenting opinion on Section 7 third paragraph cf. para 8.4.10.

On Section 8 Exemptions for certain types of information

The provision includes exemptions for certain information that is subject to a duty of confidentiality in other legislation. See furthermore para 8.4.7.

Under the *first paragraph letter a*, a claim may be rejected if it is “apparently unreasonable”. This is a limited exclusionary provision. A similar provision is included in the Environmental

Information Act section 17 first paragraph letter b. The aim in the present provision is to avoid onerous financial and administrative burdens for the enterprises. The assessment of what is apparently unreasonable involves weighing the public interest of access to information in questions covered by the purpose of the Act, against the volume of work for the enterprise. Information requests may for example be refused if they are about immaterial matters, or the enterprises would have to expend disproportionate resources on gathering information and compiling a response to the request. Larger enterprises are expected to have more extensive knowledge and information about conditions in the supply chain.

Letter b exempts information about “personal affairs”. The provision is similar to a proposal for a new section 33 in the Public Administration Act, cf. Norwegian Official Report (NOU) 2019:5 which builds on the current Public Administration Act section 13 first and second paragraphs. “Personal affairs” thus means information about an individual which that person normally would wish to keep to him/herself. Such matters might for example be genetic or other sensitive biometric matters; health status; beliefs; political views and sexual orientation. The duty of confidentiality does not apply to information about national registration number, citizenship, place of residence, marital status, occupation, employer or place of work. Neither does it include information about criminal offences while holding an office of trust or a management position in the public service, see NOU 2019: 5, page 26.

Letter c provides for possible exceptions for operational and commercial secrets. It corresponds to section 34 relating to operational and commercial secrets in the proposal for a new Public Administration Act and is discussed in greater detail in para 8.4.7 in this report. The proposition for a new act relating to protection of commercial secrets mentions that in some circumstances, supplier lists may comprise commercial secrets. See Proposition to the Storting Prop. 5 LS (2019-2020), page 22. Such lists could be exempted pursuant to Section 8. This is discussed in paras 8.4.6 and 8.4.7.

The *second paragraph* specifies cases where information must be disclosed in all cases, cf. para 8.4.7.

On Section 9 Enterprises’ processing of information requests pursuant to Section 7

The provision gives procedural rules for enterprises responding to requests for information. The model for the provision is the Environmental Information Act section 18.

The *first paragraph* entails that there is no set format for providing the information and that in principle the information also can be delivered orally. If an oral reply will make it difficult to deliver the information due to a large volume of information or similar, the information must be provided in writing. The format of the information must not lead in practice to it being incomprehensible or misleading. This must be seen in the context of Section 7 fourth paragraph in the proposed Act.

The *second paragraph* entails that a request for access to information may be answered by referring to web pages, reports or similar if the information is already available there. This could be practical in cases where the information is already written down and can be made accessible, even if the format of the information is not such that it constitutes a specific answer to the information request. This procedure may only be used where the request can be answered satisfactorily in this way. Several enterprises may also respond to information requests jointly. An information request to a small enterprise, in as far as it relates to conditions in the supply chain, may often be referred to an importer or wholesaler established in Norway, so that the information seeker may proceed with them if the information is not provided promptly.

Pursuant to the *third paragraph* enterprises that receive requests for information shall respond within a reasonable time and at latest within three weeks of receipt of the request. In cases where reference can be made to existing information, or where a response can be given without further investigation, the answer must be provided within a few days.

The *fourth paragraph* is an exception rule that in certain instances extends the time limit for providing information to two months. It is applicable, for example, in cases where large quantities of information are to be compiled or provided and where answering the information request will be time-consuming and labour-intensive for the enterprise, beyond what is normally needed to deal with a demand for information. However, this exception rule is narrow. The enterprise is expected to start work on answering the enquiry without undue delay and must provide the information as soon as it is ready. If the enterprise is unable to answer the enquiry within two months, the information seeker shall be notified of this as soon as possible.

The *fifth paragraph* establishes the duty incumbent on an enterprise to make reference to the legal basis for any rejection of an information request. Moreover, the right of appeal and the three-week appeal time limit must be communicated. The enterprise must also inform the information seeker that he/she may request a more detailed justification of the decision and state the time limit for requesting a justification.

The *sixth paragraph* confers on the information seeker a right to request a short justification of the dismissal or rejection. This does not entail a complete or comprehensive recitation of arguments and reasoning, but a short account of the reasons why the enterprise finds legal grounds for making an exception to the information request. The information seeker can ask for the justification to be in writing.

Otherwise, reference is made to Committee Member Ditlev-Simonsen's remarks on this Section in para 8.4.10.

On Section 10 Due diligence and public disclosure duties for larger enterprises

The requirements in this provision applies to "larger enterprises", cf. Section 2. The aim of the requirements is to elicit information about the enterprise's due diligence with respect to fundamental human rights and decent work, also when it comes to business relationships in the supply chain cf. para 8.4.5.

The content of the duty is intended to align with the UN Guiding Principles on Business and Human Rights, but the duty is materially restricted in comparison with the OECD Guidelines for Multinational Companies, which also require due diligence on disclosure, environmental protection, bribery and corruption and consumer interests.

"Due diligence" in the first paragraph is the process that equips companies to identify, prevent, mitigate and account for their management of actual and potential adverse impacts on fundamental human rights and decent work. Due diligence involves both investigating and managing risks in the enterprise itself, and the human rights risks to workers and others who are affected by activities of the enterprise.

"Adverse impacts" are consequences that the enterprise either has caused or contributed to, or which are directly linked to the company's activities, products or services through a business relationship. "Contribute to" is interpreted as an activity that causes, facilitates or encourages another entity to cause an adverse impact. It does not include minor or trivial contributions. This interpretation is established in Chapter II of the OECD Guidelines for Multinational Companies.

Due diligence shall be risk-based, repetitive and preventative. The nature and scope of the due diligence and the measures instigated will depend on factors such as company size, context and the severity of the adverse impact. An overall analysis of the enterprise itself and its business relationships is needed to identify and assess adverse impacts. Important initial assessments may for instance concern whether the range of operations or production process is particularly high-risk, or whether the context creates particular risk. An important part of the activity is to prioritise the risks where closer examination and management is needed. When the risk of adverse impact is probable and severe, more comprehensive assessment and measures will be needed. The assessment and measures should be adapted to the nature of the adverse impact.

More detailed guidance on conducting due diligence can be found in OECD's Due Diligence Guidance and OECD's guidance documents for various sectors and supply chains, see para 17.3. An important task for the supervisory body will be to advise enterprises on conducting due diligence, cf. the remarks on Section 11 and para 8.4.8.

As a minimum, enterprises shall report on the management and due diligence systems as stipulated in the *second paragraph letters a to c*. This requirement must be seen in the context of the right to information pursuant to Section 7. It must also be seen in relation to the requirement to report on social responsibility in the Accounting Act section 3-3 c first paragraph, which requires information on the "guidance, principles, procedures and standards" used by the enterprise for, *inter alia*, human rights considerations. The present Act requires in addition information on due diligence, risk of adverse impact and information on conditions in the supply chain, cf. comments on Section 4. Chapter IV in the OECD Guidelines for Multinational Enterprises (MNEs) recommends that the enterprises incorporate a commitment to respect human rights in their own policies.

The *second paragraph letter a* requires the enterprise to describe its structure, range of operations and supply chains, including management systems and early warning channels for preventing or mitigating adverse impact on human rights and working conditions. Relevant information in this description will include the enterprise's organisation and structure, products and services, markets they operate in, management systems and similar in the area of human rights, as well as information about early warning channels and appeal mechanisms.

The *second paragraph letter b* sets a requirement for information about the enterprises' due diligence. The objective is to provide the public with access to information about any actual adverse impact and salient risk of such impact. In accordance with Principle 21 in the UN Guiding Principles on Business and Human Rights formal reporting is expected especially where there is a risk of severe adverse impact on human rights.

The *second paragraph letter c* requires information on the results of the due diligence, including measures implemented to mitigate severe risk or harm and where necessary, remediate adverse impact. The measures should be consistent with the severity and probability of the adverse impact. This may include information about systems for receiving and managing complaints, and information about how the enterprise provides mitigates adverse impact and provides compensation if human rights have been violated. Other relevant information may include information on any stakeholder dialogue with particularly vulnerable groups, such as indigenous groups. Information on intra-industry collaboration to resolve particular challenges may also be pertinent.

Measures and opportunities for impact will vary, depending on factors such as the structure of the supply chain. Enterprises will often need to direct their efforts towards suppliers with the highest risk profile. If no improvement takes place after some time, the enterprise may as a last resort consider terminating the relationship with the supplier. Terminating the business

relationship with a supplier that has indecent working conditions will not normally lead to improvements for those who work for the enterprise. Terminating the business relationship with a supply that does not have decent working conditions will normally not result in improvements for workers in the enterprise. Termination will normally only be considered after the enterprise has tried to exert influence in some other way. Considering potential adverse social and economic consequences from terminating a business relationship may be an important factor in the enterprise's assessment, cf. chapter II in the OECD Guidelines for Multinational Enterprises.

The *third paragraph* establishes the areas of risk and measures that always must be included in the enterprise's reporting. This includes the areas covered by ILO's eight core conventions, as well risks to health, safety and the environment, cf. Section 3 Definitions. See the corresponding comments on Section 5 second paragraph. Other slavery-like labour is mentioned in addition to forced labour. Relevant information here might be measures to prevent such exploitation.

The *fourth paragraph* provides that the disclosure of information may be included in the report on social responsibility pursuant to the Accounting Act section 3-3 c, or be publicly disclosed in some other way. The duty to report on social responsibility only applies to large enterprises, cf. the Accounting Act section 1-5. The information required here shall be visible on the enterprise's website so that it is easily accessible to various users.

Pursuant to the *fifth paragraph*, the disclosure of information is to be signed by the general manager and the board. For enterprises subject to the Accounting Act section 3-3 c, this will be a natural extension of the current duty for the general manager and board to sign the report on social responsibility, cf. the Accounting Act section 3-5.

Chapter 3. Guidance, supervision and appeals

On Section 11 Guidance

The Committee has chosen to incorporate the Consumer Authority in the draft Act, cf. para 8.4.9. The Consumer Authority (CA)'s duty of guidance follows from the first paragraph. It is based on the authority's general duty to provide guidance, but goes somewhat further with respect to active guidance.

The Authority is required to provide guidance to enterprises, consumers and others on implementing the provisions of the draft Act. This applies particularly to guidance on what must be done to fulfil the duty to know in Section 5, transparency about production sites in Section 6, the right to information in Section 7 and due diligence and public disclosure in Section 10. Refer to para 8.4.8 of the report for more detail.

Industry organisations and actors such as Norway's OECD Contact Point will be able to contribute with guidance on specific challenges faced by individual sectors.

On Section 12 Appeal

The provision provides rules on how to appeal rejections of information requests. Reference is made to the system in the Environmental Information Act section 19.

The *first paragraph* establishes the decisions that can be appealed. Firstly, these are rejections of information requests pursuant to Section 8 in the draft Act. Rejections include rejections with reference to one of the grounds for exception in Section 8, and rejections on the grounds

that the case is not covered by the Act. A request for information that is only partially answered, is deemed to be a partial rejection and may be appealed. The same applies to answers that are clearly lacking. This may for example be if the information is not communicated comprehensibly, or where a generic answer is provided in response to a more comprehensive question. A dismissal on the grounds that a request is too broadly formulated, or does not provide a basis for identifying the information, may also be appealed cf. Section 7 fifth paragraph.

The provision provides rules about submitting the appeal and the appeal time limit. The appeal is submitted to the Consumer Authority, with a copy to the enterprise concerned. The appeal deadline is three weeks, in line with what applies in the Environmental Information Act and for public bodies, cf. the Environmental Information Act section 19 second paragraph and the Public Administration Act section 29 first paragraph.

The *second paragraph* establishes that failure to answer within two months shall be deemed to be a rejection that can be appealed. In this case, the appeal time limit runs from the end of the two-month time limit. If an answer is received after the time limit, a new three-week appeal time limit for any appeal against this late answer applies.

It follows from the *third paragraph* that the appeal time limit is interrupted if the information seeker has asked the enterprise to justify the refusal pursuant to Section 9 sixth paragraph. In this case, the appeal time limit runs from the time such a justification is provided.

Pursuant to the *fourth paragraph* the enterprise has three weeks to respond to the appeal, if it decides to do so.

The *fifth paragraph* provides that the Consumer Authority will decide the appeal.

On Section 13 Monitoring and enforcement

The *first paragraph* provides that the Consumer Authority and the Market Council conduct monitoring to ensure compliance with the provisions of the proposed Act. The monitoring will mainly be exercised in relation to the disclosure requirements in Sections 6, 7 and 10. The provision must be seen in the context of Section 11 on the duty to provide guidance. During the introductory phase, the enterprises must have time to familiarise themselves with the requirements of the Act and establish procedures. See corresponding para 8.4.9.

Monitoring of compliance with other provisions, including the duty to know pursuant to Section 5 and conducting due diligence according to Section 10, will only become relevant after the introductory period. The supervisory body will however be able to express its opinion on the extent to which enterprises are complying with the duties to know and conduct due diligence, in order to provide access to information in line with the purpose of the Act.

Monitoring shall be in accordance with the system in the Marketing Control Act sections 32 - 42. Pursuant to the Marketing Control Act, the Consumer Authority and Market Council may by individual decision impose a prohibition (section 40), order (section 41) or enforcement penalty (section 42).

Cases will be processed using the same system that the Consumer Authority uses for other administrative procedures. One implication will be that appellants will not be deemed to be parties pursuant to the Public Administration Act, cf. the Regulations relating to the Consumer Authority's and Market Council's administrative procedures etc., section 2. The Consumer Authority will be entitled to deprioritise the appeals it receives. The appellant may appeal the decision to deprioritise cases to the Market Council.

The *second paragraph* in the proposed provision restricts enforcement penalties to breaches of the disclosure requirements in Sections 6, 7 and 10. An enforcement penalty may, pursuant to the Marketing Control Act section 42 second paragraph, be established as a running charge or a lump sum. Under the *fourth paragraph*, the Ministry may by regulation lay down more detailed rules governing the imposition of enforcement penalties.

Pursuant to the *third paragraph*, the supervisory body may establish infringement penalties for repeated wilful or negligent infringements of the disclosure requirements in Sections 6, 7 and 10. Under the *fourth paragraph*, the Ministry may also lay down more detailed rules governing the assessment of infringement penalties.

On Section 14 Entry into force

The Act enters into force from the time determined by the King.

Chapter 4. Amendment to other legislation

Amendment to the Marketing Control Act section 35 (2)

The Committee's draft Act involves using the system employed in the Marketing Control Act as a starting point as the basis for enforcement, cf. the Marketing Control Act chapter 7. The proposal is based on a well-proven system and a rich array of sources of law. It requires an amendment to an existing law.

The purpose of the present draft Act must be incorporated in the Marketing Control Act section 35 second paragraph as it differs somewhat from the considerations that are mentioned at present: "The Consumer Authority conducts monitoring out of consideration for the consumers. Monitoring pursuant to section 2 second paragraph, however, is conducted out of consideration for gender equality, with particular emphasis on how women are portrayed. Monitoring pursuant to section 10 with regulations is conducted so that consumers can gain an overview of the market and easily compare prices."

It is proposed that the purpose of monitoring shall be incorporated into the Marketing Control Act section 35 second paragraph, for example by adding the following: "*Monitoring pursuant to the Act relating to enterprises' transparency regarding supply chains, duty to know and due diligence is conducted in order to ensure access to information about fundamental human rights and working conditions in enterprises and supply chains cf. Section 1.*"