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THE AIRE CENTRE
Advice on Individual Rights in Europe

Business, Human Rights, and the Environment

The Future of
Sustainable Business
in the Western Balkans







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We are also grateful to **Katie Scarlett-Wetherall** and
Nevena Kostić for their contributions to the publication.

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Print run 800

This original English version has also been translated into Bosnian/
Croatian/Montenegrin/Serbian, Albanian and Macedonian

Design by Kliker Dizajn

Printed by Savart M

Business, Human Rights, and the Environment — The Future of Sustainable Business in the Western Balkans

Executive Summary

Recent decades mark a significant shift in perceptions of the role and responsibilities of businesses in securing human rights and environmental standards. ‘Soft’ law mechanisms such as the United Nations Guiding Principles on Business and Human Rights (UNGPs) are now an essential component, not only of companies’ corporate social responsibilities, but of the legal landscape. They affect supply chains, procurement, financial compliance, and investment strategies, in every commercial sector. At the same time, there is a growing recognition by many corporates of the ‘value added’ by leading in this budding area. The benefits to be gained in terms of the profitability, resilience, and long-term viability of global value chains offer ample opportunity for businesses both to do and be ‘better’.

This paper outlines that shift. It provides a broad overview of the business and human rights regulatory landscape – on an international, national, and Western Balkans regional level – and presents the business case for better compliance with human rights and environmental standards of corporate actors. It aims to broach this important subject with governments, businesses, and civil society in the Western Balkans region, in light of the pressing need to engage with international sustainable business standards. Greater awareness and engagement will be essential to increase trade, reduce unemployment, and enable participation in the global and EU economies.

This outline paper is the first in a series; thematic papers addressing specific issues from the business, human rights, and the environment agenda (BHRE) will follow. It is hoped the series will lay the groundwork for a more thorough assessment of the legal, policy, and institutional frameworks and relevant practice in six Western Balkans jurisdictions (WB6). It is hoped this will help them navigate an intricate and fast-emerging legal and regulatory field, explore strategic partnerships, and reap the available benefits.

International and domestic regulation

International human rights instruments traditionally only bind states and only within their territorial jurisdictions. However, this traditional view has been challenged by an accelerating trend towards recognising the role played by business in fulfilling their obligations contained in such agreements. Additionally, human rights obligations are beginning to be extended to corporate nationals' activities extraterritorially.

Domestic legislative initiatives complement such international trends, creating an increasingly more complex regulatory environment for corporate actors. Legislation imposing binding obligations on corporate actors pertaining to human rights and environmental standards in their value chains has already been adopted in the United Kingdom, Australia, France, the Netherlands, Germany and Norway. Upcoming EU directive on the environmental and human rights due diligence (HRDD) is expected to bring together this patchwork of domestic laws into a more coherent, region-wide standard. The proposed directive requires member states to enforce 'effective due diligence' by firms, including obligations to identify, prevent, mitigate and remedy human rights harms throughout their value chains. The impacts will therefore be felt far beyond the borders of legislating jurisdictions. Any entity doing business, or hoping to do business, with companies domiciled in the EU will find their human rights and sustainability practices exposed to increased scrutiny.

Litigation trends

Domestic and international courts are increasingly willing to hold both corporations and states accountable for human rights violations and environmental degradation. Notably, many originally non-binding ‘soft’ obligations applying directly to businesses, such as UNGPs, are effectively hardening through growing litigations before domestic courts, with real-world implications for business accountability.

In Europe in particular, a tide of litigation is underway which seeks to clarify the shared responsibility of both states and businesses to mitigate against human rights harms, and, additionally, the connection between human rights and climate change. In two separate cases in the Netherlands, the courts first found the Dutch state (*Urgenda Foundation v State of the Netherlands*) and then Royal Dutch Shell (*Milieudefensie et al. v Royal Dutch Shell*) liable for failing to act on climate change. Relying on the Paris Agreement, the former was the first decision by any court in the world to order a state to limit its greenhouse gas emissions for reasons other than statutory mandates. The latter concluded that pursuant to the UNGPs and the OECD Guidelines for Multinational Enterprises, corporations have a responsibility to respect human rights, regardless of whether states take action. In *Chowdury and Others v. Greece*, the European Court of Human Rights (ECtHR) held the Greek state responsible for violations of the prohibition of forced labour imposed by private-sector actors. A fourth case being brought by six Portuguese children and young people against 33 Council of Europe Member States will be the first explicitly climate change related case to be brought case before the ECtHR. If successful, states’ duty of care to protect life will extend to reducing emissions. This will have significant indirect ramifications for businesses.

The ‘business case’ for increased standards on human rights due diligence

The commercial incentives for businesses to implement improved standards on human rights due diligence are positive and negative. Negative, or sanction-based factors include avoidance of legal,

reputational, and financial risks. As described, new domestic and EU-level rules in Europe apply extraterritorially across value chains. For firms in the Western Balkans who provide goods and services to EU consumers and commercial customers, and their downstream supply chains, this is an increasingly significant driver towards improved standards. For example, the German Act on Corporate Due Diligence in Supply Chains applies to the provision of both products and services, in any location, for any company employing 3,000 staff in Germany. Positive, or incentive-based, factors include opportunities to establish or improve reputation both regionally and globally, gain new business, secure loans and investment, increase productivity and long-term profits, and attract and retain committed employees. Mounting evidence of the link between good working conditions, productivity, and profitability shows that businesses pursuing an agenda of ‘enlightened self-interest’ stand to gain substantial benefits from implementing more sustainable business practices. They also benefit from greater access to investment. Research by Bloomberg found that in the first quarter of 2020, sustainable investment products performed better than products that did not incorporate Environmental, Social and Governance (ESG) standards. Clearly, such investments are considered resilient enough to weather periods of grave economic uncertainty: they strengthen the fundamentals of supply chain operations, factor in, and mitigate against exposure to climate risk, and favour a longer-term view.

Increasingly, ESG investing is also the law. The most prominent emerging rulebook is the EU’s Sustainable Finance Disclosure Regulation (SFDR). This requires financial advisers, asset managers, banks, and other market participants to disclose relevant ESG-related information about firms. Yet thousands of investors have also signed up to voluntary standards too. The Principles for Responsible Investment (PRI) and the Taskforce on Climate-Related Financial Disclosures (TCFD) Guidelines are just two of the most influential. Again, this is enlightened self-interest. Financial institutions have begun to acknowledge that ‘climate risk is business risk’, and that the reputational risks of making investments that harm people, planet, and reputations are simply not worth taking.

An overview of the Western Balkans' context

There is an urgent need to examine how the standards discussed above are operationalised in the Western Balkans' jurisdictions. These jurisdictions face ongoing pressure to harmonise their respective legislation with EU *acquis*. In addition, the recently adopted Green Agenda for the Western Balkans and the Carbon Border Adjustment Mechanism will have a significant impact on businesses in the region. Due to high unemployment levels in the region, attracting foreign investment has been prioritised as a matter of state policy. As a result, firms in the region stand to gain a lot from incorporating the BHRE agenda into their commercial planning to continue attracting foreign investment. Finally, the numerous examples of public scandals and challenges made on environmental and human rights grounds in the region serve as a stark reminder that insufficient attention to the potential human rights and environmental impacts of businesses endeavours can result in social upheaval and political instability. At the same time, the presence of major multinational investors in the region who voluntarily subscribe to best practices, and further EU conditioned investment in the region, opens the space for wider integration and implementation of human rights and environmental standards.

Conclusions and the way forward

The connection between the need to preserve and promote human rights and the environment, on one hand, and the current global commercial environment, on the other, is becoming clearer. It is both a demand of consumers and investors and a way of de-risking supply chains and investments in an era of major uncertainty from geopolitical threats, climate change, and Covid-19. There is a fast-growing movement underway that sees the protection of human rights and the environment as compatible with, and even a requirement of, commercial success.

Ample evidence from business practice demonstrates that sustainably led commercial approach is certainly possible and represents the future of global commerce. It is clear is that the train towards mandatory and more

widespread protection has left the station. Whether businesses benefit or lose out from this fact will be determined by what moment they choose to come aboard. Those that embed good practices early and voluntarily will find the transition less costly and will enjoy multiple competitive advantages and opportunities. Firms and states that continue to ignore the trend do so at their peril.

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1. Introduction

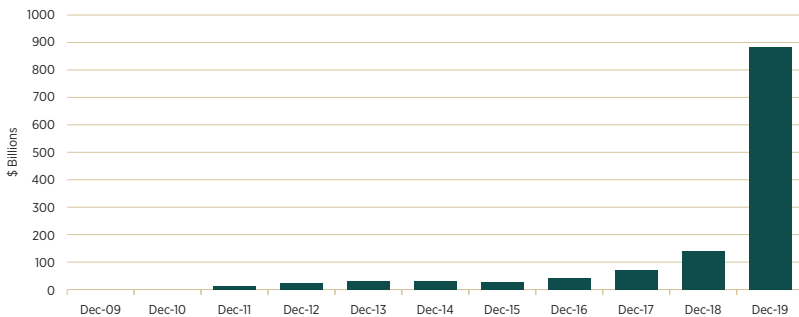
‘Sustainable development’ has become a buzzword which increasingly permeates and shapes institutional and corporate culture and decision-making. The 17 Sustainable Development Goals (SDGs), articulated by all United Nations (UN) Member States in 2015, establish a set of common objectives intended to be achieved by 2030. The successful implementation of these targets relies on countries’ own sustainable development policies and national frameworks, with all stakeholders including the private sector and civil society expected to contribute to the realisation of the sustainable development agenda.

Business and human rights, including environmental protection (BHRE), has thus become a budding field, with new legislation and court rulings emerging rapidly. On the international level, initiatives to adopt the UN Business and Human Rights Treaty^[1] and the European Union (EU) Corporate Due Diligence Directive^[2] are underway. Domestically, legislation establishing binding obligations on corporate actors concerning human rights violations in their value chains has been adopted in the United Kingdom, Australia, France, the Netherlands, and most recently in Germany, and Norway. Notably, of the thirteen states which have either discussed or adopted mandatory due diligence legislation, ten are EU members^[3]. In addition to these legislative initiatives, domestic and international courts have been increasingly willing to hold both corporations and states accountable for human rights violations and environmental degradation resulting from corporate activities. Again, domestic courts in European states are leading this trend. Most recently, the Dutch High Court has found Royal Dutch Shell’s sustainability policy to be insufficiently ‘concrete’ and ordered that the emission reductions of Shell and its suppliers and buyers should be brought into line with the Paris climate

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- 1 The third Revised Draft of the Treaty has just been released and will serve as the basis for State-led direct substantive intergovernmental negotiations during the seventh session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, which took place in October 2021.
 - 2 European Parliament adopted text (P9TA(2021)0073), 10 March 2021.
 - 3 Eleven, including the UK.

agreement.^[4] In the United Kingdom (UK), the Supreme Court has decided that a claim against Shell brought by two Nigerian communities affected by oil pollution can proceed in English courts.^[5]

Alongside these regulatory and jurisprudential trends, safeguarding human rights and the environment has rapidly risen up the agenda of businesses and investors globally. Environmental, Social and Governance (ESG) based investment has grown at an exponential pace since 2011 (see Figure 1). By 2025, sustainably-rated asset-holdings that comply with emerging environmental, social and governance norms will make up one third of *all asset holdings globally* – about \$50 trillion.^[6] Sustainable business practices have clearly rapidly moved from the UN’s Sustainable Development Goals to become a crucial part of the contemporary business landscape.



Notes on Explanation: Based on mutual fund share classes intended for institutional investors. Data sources: STEELE Mutual Fund Export, Morningstar data, supplemented by research and analysis conducted by Sustainable Research and Analysis LLC; fund prospectuses and related offering documents.

Figure 1. Source: Sustainableinvest.com^[7]

4 *Milieudefensie et al. v Royal Dutch Shell* [2021] C/09/571932 / HA ZA 19-379.
 5 *Okpabi and others v Royal Dutch Shell Plc and another* [2021] UKSC3.
 6 Blackrock, ‘Sustainable investing: resilience amid uncertainty’ (March 2020).
 7 Sustainableinvest.com, A Decade of Sustainable Funds Investing: 10 Years/10 Charts <https://www.sustainableinvest.com/sustainable-investing-decade/>

Accordingly, the last couple of decades have brought a significant shift in perceptions of the role and responsibility of different actors for securing human rights. International human rights instruments, largely established from the 1950s onwards, imposed obligations squarely upon states. Yet, while states are still ultimately accountable for compliance with such instruments, it has been increasingly recognised that respecting human rights is not the exclusive responsibility of states.^[8]

Moreover, internationally agreed mechanisms such as the UN Guiding Principles for Business and Human Rights and the UN Sustainable Development Goals now shape the business practices of major multinational corporations and increasingly, their commercial partners, subcontractors, and subsidiaries in the global value chain. While these mechanisms represent non-binding ‘soft-law’, they are gradually being strengthened through litigation and legislative reforms to incorporate them into domestic law. Thus, in the above-mentioned decision of the Dutch High Court against Shell, the court concluded that pursuant to the UNGPs and Organisation for Economic Co-operation and Development (OECD) Guidelines, corporations have responsibility to respect human rights regardless of whether states take action.

Shifting perceptions about the role and responsibility of businesses for securing human rights have therefore taken place not only in Strasbourg, New York and Geneva, but in boardrooms, supermarkets and workplaces across the world. Respect for human rights has become as integral to consumers, producers, suppliers, shareholders and directors as it has to policymakers and legislators. It signals an incremental but irreversible shift towards a demand for socially and environmentally responsible global economic development.

Notwithstanding these global developments, the BHRE agenda has to date received less attention in the Western Balkans, both from the governments and the private sector. Initiatives in the region that seek to

8 See below for a summary of domestic legislative frameworks.

address the issue of sustainable business practices in a comprehensive and meaningful way are few and far between. Yet there is a pressing need to engage in this conversation, given the increased awareness of the impact of businesses on communities, and the responsibility of both governments and businesses to manage and control such an impact. In light of the global trends in the field of business, human rights, and the environment, addressed in this paper, and the increasing number of businesses that have been championing this agenda – whether due to growing regulatory pressure, ‘peer pressure’ or perceived self-interest – it is an imperative for the Western Balkan region to stay abreast of such global developments. That these trends are gathering momentum in EU states in particular creates an additional incentive, as the region seeks to maximise its opportunities for EU trade and accession.

With the idea of broaching this important subject with governments, business actors, and civil society, a range of thematic papers that tackle discrete issues concerning business, human rights, and the environment will be produced in collaboration between the organisations and experts involved in this present study. The thematic papers will focus on issues such as labour standards, environmental protection, gender equality, privacy, the right to health, and more. These thematic studies will present and explain the relevant international standards, comparative practice, and emerging trends pertaining to the specific subject matter. The studies will seek to identify key challenges and provide a groundwork for a more thorough assessment of the legal, policy, and institutional frameworks and relevant practice in six Western Balkans jurisdictions (WB6) to help them navigate this intricate and fast-emerging legal and regulatory field.^[9]

Given the fast pace of developments in this field, each thematic study will be produced in collaboration with a range of stakeholders in the Western Balkans region, with the intention of introducing business leaders and policymakers to this salient global issue, and its increasing importance to contemporary business practice and policy making. It is hoped that

9 Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia, and Serbia.

the work on thematic studies and activities to promote them will initiate partnerships between relevant international and domestic actors to bring this issue to the forefront of public attention and explore the potential for collaboration on specific initiatives in the future. The present paper is the first in a series and provides an overview of the business and human rights agenda, key developments and relevant frameworks, and the business case for human rights compliance.

In the rest of this paper, we provide an overview of the business and human rights regulatory landscape – including international legal instruments, soft law, and litigation trends – before examining the ‘business case’ for increased standards on human rights due diligence, along with a summary of the Western Balkans regional context.

2. Business and Human Rights Regulatory Landscape

The significant increase in legislative activity in the realm of business and human rights, including sustainable/ESG investing, corporate disclosure, and supply chain liability, is a powerful sign of the increased interest in the area from governments and society more broadly. For firms, these issues have developed significantly from corporate social responsibility issues into regulatory compliance issues and become fundamental to firms’ corporate identity and reputation.

International Law

International human rights treaties primarily oblige *states*, rather than *businesses or organisations* to secure individual human rights of persons within their jurisdiction. Under the International Covenant on Civil and Political Rights (ICCPR), member states must, for example, prohibit slavery/forced labour (Article 8) and enshrine the right to freedom of association (Article 22), but the treaty does not bind companies domiciled within states *per se*.

The International Covenant on Economic, Social and Cultural Rights (ICESCR), which sets out fundamental economic, social and cultural rights, regulates such rights as work (Article 6), just and favourable working conditions (Article 7), forming trade unions and the labour strikes (Article 8), as well as rights to an adequate standard of living, to the highest attainable standards of physical and mental health, and to education and to enjoyment of the benefits of cultural freedom and scientific progress.

Still, the Committee on Economic, Social and Cultural Rights (CESCR) – a body of independent experts charged with monitoring the implementation of the ICESCR – has expressly acknowledged ‘responsibilities’ of private enterprises for the realization of the rights to work and just and favourable conditions of work.^[10] Accordingly, General Comment No 18 on the right to work claims that ‘private enterprises – national and multinational – while not bound by the Covenant, have a particular role to play in job creation, hiring policies and non-discriminatory access to work’,^[11] while General Comment No 23 on the right to just and favourable conditions of work similarly notes that ‘business enterprises ... have a responsibility to respect the right

10 CESCR, ‘General Comment No. 18: The Right to Work (Art. 6 of the Covenant)’, UN Doc E/C.12/GC/18, (6 February 2006) para. 52; CESCR, ‘General comment No. 23 (2016) on the Right to Just and Favourable Conditions of Work’, UN Doc E/C.12/GC/23 (27 April 2016) paras. 74–75. See also See UN Guiding Principles on Business and Human Rights, principles 11, 12, 22 and 23. The CESCR recently issued ‘General Comment No. 24 (2017) on State obligations under ICESCR in the context of business activities’, UN Doc. E/C.12/GC/24 (10 August 2017), where it reinforced its earlier position that ‘[t]he present general comment addresses the States parties to the Covenant, and in that context it only deals with the conduct of private actors – including business entities – indirectly’. Yet the same document also states that ‘under international standards, business entities are expected to respect Covenant rights regardless of whether domestic laws exist or are fully enforced in practice’.

11 CESCR, ‘General Comment No. 18: The Right to Work (Art. 6 of the Covenant)’, UN Doc E/C.12/GC/18, (6 February 2006) para. 52.

to just and favourable conditions of work, avoiding any infringements and addressing any abuse of the right as a result of their actions’.^[12] Furthermore, the CESCR has emphasized that the obligations of states to give effect to the rights to work and just and favourable conditions of work in domestic law encompass a duty to ensure that their corporate nationals respect these rights in their extraterritorial activities.^[13] This signals a shift away from the traditional view that international obligations of states apply only within their territorial jurisdiction. Similar reasoning is deployed with respect to other ICESCR rights, such as the right to food, right to health, or right to water,^[14] as well as by other UN treaty bodies.^[15]

Beyond the general human rights instruments, a wide range of instruments address specific issues relevant to businesses across various thematic areas. These include conventions drawn up by the International Labour Organisation (ILO), which are relevant to regulating labour relations, a key area for commercial human rights compliance,^[16] the International

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- 12 CESCR, ‘General comment No. 23: The Right to Just and Favourable Conditions of Work’, UN Doc E/C.12/GC/23 (27 April 2016) para. 75.
- 13 CESCR, ‘General Comment No. 18: The Right to Work (Art. 6 of the Covenant)’, UN Doc E/C.12/GC/18, (6 February 2006) para. 30; CESCR, ‘General comment No. 23 (2016) on the Right to Just and Favourable Conditions of Work’, UN Doc E/C.12/GC/23 (27 April 2016) para. 70.
- 14 See CESCR, ‘General Comment No. 24 (2017) on State Obligations under ICESCR in the Context of Business Activities’, UN Doc. E/C.12/GC/24 (10 August 2017) paras. 25–37.
- 15 CRC Committee, ‘General Comment No. 16 (2013) on State Obligations Regarding the Impact of the Business Sector on Children’s Rights’, UN Doc. CRC/C/GC/16 (17 April 2013) paras. 38–46.
- 16 The ILO’s eight core labour conventions are: Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87); Right to Organise and Collective Bargaining Convention, 1949 (No. 98); Forced Labour Convention, 1930 (No. 29) (and its 2014 Protocol); Abolition of Forced Labour Convention, 1957 (No. 105); Minimum Age Convention, 1973 (No. 138); Worst Forms of Child Labour Convention, 1999 (No. 182); Equal Remuneration Convention, 1951 (No. 100); Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and more.

The draft UN Business and Human Rights Treaty and the forthcoming EU Environmental and Human Rights Due Diligence Directive

Since 2014, negotiations have been ongoing regarding the UN Human Rights Council's Business and Human Rights Treaty, the third draft of which was published in 2021.^[17] The Treaty would require mandatory human rights due diligence at the international level, strengthen victims' redress mechanisms and set the UNGPs on a firmer legislative footing – another sign of the trend globally from 'soft law' frameworks to 'hard law' instruments governing the activities of private enterprise in respect of human rights. However, numerous states including the USA, EU, and UK have withdrawn from the negotiation process citing fundamental flaws in the approach, meaning that there remains a risk that the Treaty may never be finalised. Nevertheless, the negotiations signal the degree of interest globally in regulating business conduct with respect to human rights, although it is now likely that more legislative progress will be made at domestic and regional levels.

For example, the EU has been developing specific legislation in this area. Alongside the EU's legislative programme with respect to sustainable finance outlined in section 3 below, there are movements at EU-level towards a set of rules on environmental and human rights due diligence. The text of a draft directive has now been adopted by the European Parliament for a law that would require 'effective due diligence' by firms in respect of human rights, the environment and good governance. Under the draft law, firms would be required to implement internal grievance mechanisms and a due diligence strategy addressing the following issues: specifying actual or potential adverse human rights impacts; mapping the value chain and disclosing relevant information

17 The third revised draft of the Treaty was published in August 2021.

(names, locations, products, suppliers, subsidiaries, business partners); adopting and indicating policies and measures to prevent or mitigate human rights impacts; setting up a prioritisation strategy where adverse impacts cannot all be addressed simultaneously; and putting in place appropriate policies, framework agreements, contractual clauses, codes of conduct and audits.^[18] The high degree of public support for such legislation should act as an incentive for businesses to integrate such practices sooner, rather than later.^[19]

Soft Law

Most international legal instruments regulate the activity of states, which can lead to a significant gap between the obligations of states under international human rights law on the one hand, and the obligation of businesses operating in such territories on the other hand. In the absence of domestic legislation, soft law mechanisms seek to bridge this gap by laying down standards that companies should respect and uphold regardless of where they operate.

The most significant of these are the UN Guiding Principles on Business and Human Rights (UNGPs), endorsed in 2011 by the UN Human Rights Council, which remain the gold standard for determining firms' human rights responsibilities. The UNGPs are built upon three pillars: the 'Protect, Respect and Remedy Framework'.

18 European Parliament adopted text (P9_TA(2021)0073), 10 March 2021.

19 European Coalition for Corporate Justice, 'Overwhelming public support for EU law to hold companies liable for human rights violations and environmental harms' (13 October 2021) available at: <https://corporatejustice.org/news/poll-shows-overwhelming-public-support-for-eu-law-to-hold-companies-liable/>.

The Protect, Respect and Remedy Framework 2008

- States have the responsibility to **protect** human rights against abuse by third parties, including business, through appropriate policies, legislation, regulations and adjudication.
- Corporates must **respect** human rights, which means acting with due diligence to avoid infringing on the rights of others and addressing adverse impacts with which they are involved.
- Victims of business-related human rights abuse must have access to effective **remedy**, both judicial and non-judicial.

Notably, the second pillar of the UNGPs obliges companies to respect human rights wherever they operate. According to this pillar, where national laws fall below the standard of internationally recognized human rights, companies should respect the higher standard. Where those higher standards conflict with national laws, companies should seek ways to still honour the principles of those standards within the bounds of national law.

The operational principles of the UNGPs detail the practical steps businesses must take to fulfil their obligation to respect human rights. First, companies are required to implement to institute a policy commitment (Principle 16) in this regard. Second, they must undertake ongoing human rights due diligence to identify, prevent, mitigate and account for their human rights impacts (Principles 17 – 21). Third, they must have processes in place to enable remediation for any adverse human rights impacts they cause or contribute to (Principle 22). The UNGPs therefore provide a guide as to how businesses can act in a way that respects human rights, by adhering to the relevant foundational and operational principles.

Despite their ‘soft law’ nature, the widespread acceptance and adoption of the UNGPs by states and businesses as a globally recognised benchmark, and the inevitable global ‘direction of travel’ towards a more robust regulatory environment for businesses in respect of human rights, should not be underestimated. One way in which their impact can be seen is in EU-level and domestic

Soft law develops teeth: Milieudefensie v Royal Dutch Shell [2021]

The Dutch courts drew on the UNGPs to find mandatory obligations for Shell in respect of the Paris Agreement.

Soft law obligations still impose concrete responsibilities on businesses.

legislation, both of which increasingly draw on the principles of the UNGPs with respect to businesses obligations to protect, respect and remedy human rights abuses. In one significant recent example, the Dutch courts have taken the step of reading the principles of the UNGPs into domestic case law, which goes some way to ‘hardening’ these soft law principles into more mandatory binding obligations on private companies.^[20] Elsewhere, the Inter-American Court of Human Rights (IACHR) has recently endorsed the UNGPs in a case brought by indigenous groups against the state of Suriname in relation to the grant of mining licences to various private firms.^[21] These cases do not merely show the relevance of soft law in driving expectation and awareness. They are a demonstration that the expectations society has from businesses are increasingly being approached as a matter of law. Indeed, the term ‘Social License to Operate’ has been integrated into various recent United Nations Instruments on business and human rights, including the UNGPs. This endows the dynamic concept of corporate social responsibility with a legal framing.^[22]

20 *Milieudefensie et al. v Royal Dutch Shell* C/09/571932 / HA ZA 19-379.

21 *Case of the Kaliña and Lokono Peoples v Suriname*, IACHR, 25 November 2015.

22 Karin Buhman, ‘Public Regulators and CSR: The “Social Licence to Operate” in Recent United Nations Instruments on Business and Human Rights and the Juridification of CSR’ (2016) 136 (4) *Journal of Business Ethics* 699.

The other key soft law mechanism is the OECD Guidelines for Multinational Enterprises. First adopted in 1976, the OECD Guidelines are recommendations for multinational enterprises (MNEs) on responsible business conduct. While OECD Guidelines are not legally binding on companies, they are binding on signatory governments, which are required to ensure the Guidelines are implemented and observed. Forty-nine countries worldwide adhere to the Guidelines, including most EU/EEA states, the USA, UK, Canada, Brazil, Turkey and South Korea. Part I of the OECD Guidelines outlines recommendations for businesses domiciled in an adhering state on labour rights, human rights, environment, information disclosure, combating bribery, consumer interests, competition, taxation, and intellectual property rights. Part II of the OECD Guidelines sets out procedural guidance to implement the recommendations contained in Part I.

The OECD Guidelines also require adhering states to establish a domestic, government-backed grievance mechanism in the form of National Contact Points (NCPs). Under the OECD Guidelines, every adhering government is required to establish an NCP to promote the OECD Guidelines and handle complaints against companies that are alleged to have failed to comply with the Guidelines' standards. NCPs can handle complaints that allege breaches of the NCPs guidelines occurring either inside the NCP's country by a MNE headquartered anywhere in the world, or anywhere in the world by a multinational enterprise headquartered in the NCP's country.

*Soft law guidelines have influence outside the courtroom:
BP OECD complaint*

NGO ClientEarth filed a complaint via the NCPs that BP's advertising campaign breached OECD guidelines by misleading the public about the size of its renewables business.

Before the complaint was assessed, BP pulled its multi-million dollar campaign, and pledged to halt all reputational advertising in future.

Overall, the OECD Guidelines constitute an important tool for civil society to engage with multinationals and expose malpractice in a mediated quasi-legal setting. They can also have significant impact. In 2020, NGO

ClientEarth filed a complaint via the NCPs that a BP advertising campaign breached OECD guidelines by misleading the public as to the size of its renewables business. Months after the complaint was filed, and before it was assessed, BP pre-emptively pulled the multi-million dollar campaign, and pledged to halt all reputational advertising in future.^[23]

The case demonstrates the ability of soft law, non-binding legal instruments to influence corporate actors by attacking their social license to operate. The unusual blend of reputational risk mitigation by BP, conducted in a quasi-legal setting, illustrates how social expectations are increasingly acquiring a legal framing. The complaint has inspired a slew of further ‘greenwashing’ cases against oil majors globally.^[24] The direction of travel is clear: undefined social responsibility and expectations become incorporated into international soft law instruments, first enabling quasi-legal arguments, and eventually legal ones.

In this same vein, the OECD Guidelines, along with soft law in the area more broadly, are increasingly also informing domestic legislative agendas. For example, European Parliament’s draft law on human rights due diligence explicitly refers to the OECD Guidelines in its recitals. Of course, unlike international law duties, domestic law is both directly applicable and binding on businesses. The process is one of soft law hardening into very real and tangible outcomes for businesses on the ground.

Beyond these mechanisms, there is a wide range of other soft law mechanisms and agreements in existence which will be explored in more detail in the thematic papers that follow, including the UN Global Compact, the Sustainable Development Goals, OECD Due Diligence

23 ClientEarth, ‘BP pulls latest advertising campaign just months after our legal complaint’ (14 February 2020) available at: <https://www.clientearth.org/latest/latest-updates/news/bp-pulls-advertising-campaign-just-months-after-our-legal-complaint/>.

24 Chris Morris & Merlyn Thomas, ‘The US state taking on an oil giant for greenwashing’ (BBC News, 6 November 2021) available at: <https://www.bbc.co.uk/news/blogs-trending-59070451>.

Guidance for Responsible Business Conduct, the Equator Principles, and the UN Principles for Responsible Contracts. In addition, the UN Human Rights Commission is increasingly focused on ensuring that bilateral trade agreements and particularly international investor agreements preserve business' obligations to respect human rights, which can be affected by constraints on the legal or policy space available to states to regulate the conduct of investors, and on affected communities' right to seek effective remedies against investors for project-related human rights abuses.^[25]

Domestic Legislation in Europe

Recent years have seen the emergence of new domestic legislation regulating the actions of businesses with respect to human rights, particularly in relation to infringements within the complex value chains of multinational enterprises. This trend accords with the direction of travel laid down by soft law mechanisms in bridging the gap between the obligations of states under human rights law, and the obligation of businesses operating in such territories. The need for such legislation has become particularly relevant where European multinational businesses have long and complex value chains starting overseas and ending with the domestic consumer. New legislation includes the section 54 (*Transparency in Supply Chains*) of the UK Modern Slavery Act 2015, France's Duty of Vigilance Law 2017, the Netherlands' Child Labour Due Diligence Law 2020, and Germany's Supply Chain Act 2021.

For the most part, the new legislation on responsible business conduct with respect to human rights is focused on setting minimum standards for value chain transparency, risk analysis, due diligence, mitigation, and reporting, introducing civil (and in the case of the Netherlands – criminal) penalties for companies that do not take active steps to investigate, disclose and tackle environmental and human rights abuses in their own operations and crucially within their value chain.

25 OHCHR, International Investment Agreements and Human Rights, A/76/238, 27 July 2021.

However, the new domestic legislation appears largely uncoordinated, creating uncertainty for businesses operating across various jurisdictions when it comes to their obligations to respect fundamental rights. In addition, these laws still largely rely on civil society to report on corporate malpractice, to ‘name-and-shame’ companies into acting, rather than fully equipping domestic regulators to investigate and punish malpractice. In addition, civil tort litigation is at present the primary way that domestic legislation envisages victims achieving redress – a procedure limited by procedural obstacles for claimants who experience harm in a third country, such as standing to bring the claim, jurisdiction and evidential issues, and access to litigation funding. Some of the notable domestic cases are further discussed below.

Business and Human Rights Litigation

Courts in many domestic jurisdictions are increasingly willing to hold businesses accountable for human rights violations that occur within their value chains, particularly in relation to environmental degradation and climate change. In the Netherlands, two key cases have found both the Dutch state and Shell, a major energy corporation, liable for failing to act on climate change.^[26] In Canada, a mining company is being sued for labour abuses suffered by workers employed by a subcontractor company in Eritrea, East Africa.^[27] In the UK, a series of Supreme Court decisions have opened the door to UK-domiciled parent companies being found liable for human rights abuses committed by subsidiaries and subcontractors abroad.^[28]

At the international level, the European Court of Human Rights (ECtHR) is also continuing to develop and expand its jurisprudence concerning States’ obligations to protect against human rights violations

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- 26 *Urgenda Foundation v State of the Netherlands* [2015] HAZA C/09/00456689; *Milieudefensie et al. v Royal Dutch Shell* [2021] C/09/571932 / HA ZA 19-379.
- 27 *Nevsun Resources Ltd v Araya*, [2020] SCC 5.
- 28 *Vedanta Resources Plc and another v Lungowe and others* [2019] UKSC 20; *Okpabi and others v Royal Dutch Shell Plc and another* [2021] UKSC 3.

that stem from corporate activities both within the State's territory^[29] and in the context of State-owned enterprises abroad.^[30] In the areas of environmental degradation and climate change, a recent application by a group of six Portuguese children and young people against 33 Council of Europe Member States, if successful, will have significant ramifications for businesses. The application involves allegations that the 33 Member States were violating their positive obligations under European Convention on Human Rights (ECHR) Articles 2 (right to life), 8 (right to private and family life), and 14 (non-discrimination in enjoyment of rights) in relation to climate change.^[31] Central to the applicants' argument is that Articles 2 and 8 ought to be read in light of various international instruments such as the Paris Agreement and the UN Convention on the Rights of the Child. If the case succeeds, this is likely to have a knock-on effect on states' domestic policy on greenhouse gas emissions, which will in turn impact businesses, particularly in high-emission industries such as construction, manufacturing and energy generation. While such an *actio popularis* is unprecedented, the case is part of a tide of litigation seeking to clarify the connection between human rights and climate change.^[32]

29 *Lopez Ostra v Spain* (Judgement of 9 December 1994); *Guerra and Others v Italy* (Judgement of 19 February 1998); *Oneryildiz v Turkey* (Judgement of 30 November 2004); *Fadeyeva v Russia* (Judgement of 9 June 2005); *Tatar v Romania* (Judgement of 27 January 2009). Similarly, in the case of *Socio-Economic Rights Action Centre v Nigeria*, the African Commission on Human and People's Rights found that the Nigerian state had a duty to protect its citizens against violations of their rights by private parties. Communication 155/96, African Commission on Human and Peoples' Rights (2001) *African Human Rights Law Reports* 60.

30 *Kovacic and Others v Slovenia* (Admissibility decision of 1 April 2004).

31 *Duarte Agostinho and Others v. Portugal and 32 Other States* (no. 39371/20).

32 Similarly, a group of elderly Swiss women filed an application against Switzerland in March 2021 alleging that health conditions they suffered as a result of heatwaves were due to the state's failure to take steps to prevent climate change in breach of Articles 2 and 8 ECHR (*Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* (no. 53600/20)). The applicants also claimed that there had been a breach of Articles 6 (right to a fair trial – access to a court) and 13 (right to an effective remedy). The Court of Justice of

In relation to labour exploitation, the ECtHR has been prepared to hold states responsible for violations of the prohibition of forced labour imposed by private-sector actors. In the notable case of *Chowdury and Others v. Greece*, the ECtHR found that 42 Bangladeshi nationals working in inadequate and exploitative conditions on a strawberry farm were subjected to forced labour and human trafficking and that Greece has failed to provide effective protection, which constituted a violation of Article 4 ECHR by Greece.^[33] Notably, in one of the largest cases of labour exploitation before the ECtHR, involving around 700 workers from Bosnia and Herzegovina, Serbia and Northern Macedonia who alleged to have been exploited working on construction facilities in Baku (Azerbaijan), the Strasbourg Court ruled in favour of the applicants.^[34] The Court noted that Azerbaijan was aware that workers had been potential victims of human trafficking and forced labour based on several reports of the civil society organisations as well as the European Commission and the Council of Europe, but despite that failed to comply with its procedural obligation to institute and conduct an effective investigation of the applicants' claims. While ECtHR decisions bind only states, they provide an impetus for regulatory action and a more thorough implementation of domestic standards on businesses and other private actors.

While a more detailed analysis of the relevant litigation will form part of each thematic study in the series, this short overview illustrates a notable rise in legal claims seeking to hold both states and companies accountable for breaches of environmental standards and human rights occurring in the context of the commercial activity, in keeping with the increasing legislative activity in this area.

the European Union has also been hearing climate-change related cases. In March 2021 it dismissed an appeal by ten families seeking to compel the EU itself to take more stringent emissions-reduction measures in relation to greenhouse gases (*Armando Ferrão Carvalho and Others v. The European Parliament and the Council* ('The People's Climate Case') Case C-565/19 P).

33 *Chowdury and Others v. Greece*, Application No. 21884/15, 30 March 2017.

34 *Seudin Zoletic and Others v. Azerbaijan*, Application No. 20116/12, 7 October 2021.

3. The Business Case for Human Rights Compliance

Drivers of commercial change

There are both positive and negative drivers for firms in adopting a sustainable, human rights-led commercial strategy across the value chain, implementing just and favourable working conditions, respect for human rights and ESG-linked practices more broadly. Such positive and negative drivers of change and good commercial behaviour may also be thought of as ‘incentive-based’ and ‘sanction-based’ factors (or, in less formal language, ‘carrot’ and ‘stick’). Measures adopted by firms include: implementing human rights due diligence (HRDD); prevention measures, impact assessments and training across the entire value-chain; and ensuring regulatory compliance within their own business and that of partners and suppliers.

In essence, it increasingly makes good business sense for business to respect and protect human rights, implement good governance and operate sustainably. Companies will lose out if they do not fulfil their obligations under international law, under domestic legislation and to their consumers, purchasers, suppliers, employees, shareholders, lenders and insurers.

Negative/‘sanction-based’ drivers

The avoidance of legal, reputational, and financial risks are key drivers of improving commercial behaviour, decision-making and oversight with respect to human rights and ESG-based business practice.

First, as section 2 above explained, there has been a significant increase in legislative activity at international, EU and domestic levels that seeks to regulate commercial activity in this regard. Similarly, states’ ‘voluntary’ commitments, such as ‘Net Zero’ commitments arising from the Paris Agreement, usually get translated into mandatory regulations for

businesses.^[35] Moreover, trends in civil litigation suggest that companies will be increasingly held to the standard of international legal instruments originally envisaged to bind states alone.^[36] In Europe, domestic and EU-level rules are increasingly having an extra-territorial effect, requiring EU-domiciled firms to map out human rights compliance by their partners and suppliers outside the bloc and demand improvement. For firms in the Western Balkans who provide goods and services to EU consumers and commercial customers, this is an increasingly significant driver: failure to stay up-to-speed with the demands of the regulatory environment may expose firms to regulatory enforcement risk as well as competition risk – being dropped as an EU firm’s regional supplier of choice in favour of a direct competitor.

A second sanctions-based driver of change is reputational risk arising from non-compliance. Much emerging domestic legislation in Europe on the issue acknowledges the role of civil society in ‘naming-and-shaming’ non-compliant firms, including from human rights NGOs, investigative journalists and labour organisations.^[37] For example, an in-depth expose by The New York Times^[38] into human rights abuses in Apple’s Chinese manufacturing suppliers led to calls for boycotts of the company’s products in the US, causing Apple to publish its supplier list and join the Fair Labor Association in 2012.^[39]

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- 35 UK Government, ‘Press release: UK to enshrine mandatory climate disclosures for largest companies in law’ (29 October 2021) available at <https://www.gov.uk/government/news/uk-to-enshrine-mandatory-climate-disclosures-for-largest-companies-in-law>.
- 36 See in particular the Dutch case of *Milieudefensie et al. v Royal Dutch Shell* [2021] C/09/571932 / HA ZA 19-379 decided in May 2021.
- 37 Both the Dutch Child Labour Due Diligence Act, and the UK Modern Slavery Act UK, rely on civil society to bring non-compliance to the attention of regulators.
- 38 Charles Duhigg and David Barboza, ‘In China, Human Costs Are Built Into an iPad’ (New York Times, 25 January 2012) available at: <https://www.nytimes.com/2012/01/26/business/ieconomy-apples-ipad-and-the-human-costs-for-workers-in-china.html>.
- 39 Business and Human Rights Resource Centre, ‘Latest concerns re Apple supply chain Jan-Feb 2012’ (13 January 2012) available at <https://www.business-humanrights.org/en/latest-news/latest-concerns-re-apple-supply-chain-jan-feb-2012/>.

Third, for regional firms looking to attract investors from a global pool, human rights compliance is also increasingly a crucial prerequisite of obtaining funding. The growth of ESG Investing (i.e. incorporating Environmental, Sustainable and Governance criteria) over the last few years has been astronomical. Bloomberg predicts that ESG assets under management will be one third of all asset holdings globally by 2025 – around \$50 trillion.^[40] In this emerging investment environment, the potential costs for firms who lag behind on human rights compliance could be significant, with investors demanding an improvement in standards as a condition of investment. Recent years have also seen an increasing role played from within organisations by ‘activist shareholders’. One notable example is the US oil company ExxonMobil: three new activist shareholders were successfully elected onto the board in 2021 by shareholders with a mandate to radically shift the firm’s goals in accordance with climate change targets and broader ESG concerns.^[41] It is noteworthy that the board election campaign was run on strategic, rather than ideological, grounds, arguing that the company’s returns have been consistently disappointing shareholders over the last 10 years, and that it needs fresh direction in a rapidly decarbonizing world.^[42] As Blackrock CEO Larry

Financial risk of lagging behind: shareholders take action

Three new activist shareholders were successfully elected onto ExxonMobil’s board in 2021 by shareholders with a mandate to radically shift the firm’s goals in accordance with climate change targets and broader ESG concerns.

- 40 ‘ESG assets may hit \$53 trillion by 2025, a third of global AUM’ (Bloomberg 23 February 2021) available at <https://www.bloomberg.com/professional/blog/esg-assets-may-hit-53-trillion-by-2025-a-third-of-global-aum/>.
- 41 Derek Brower and Ortenca Aliaj, ‘Engine No 1, the giant-killing hedge fund’ (Financial Times, 3 June 2021) available at <https://www.ft.com/content/ebfdf67d-cbce-40a5-bb29-d361377dea7a>.
- 42 Samantha Subramanian, ‘The little hedge fund that shook ExxonMobil’ (Quartz, 28 May 2021), available at: <https://qz.com/2014413/engine-no-1-the-little-hedge-fund-that-shook-exxonmobil/>.

Fink wrote in 2020: ‘the evidence on climate risk is compelling investors to reassess core assumptions about modern finance ... climate risk is investment risk’.^[43] As the effects of climate change on business become more tangible, climate risk is hitting bottom lines, providing a pure business case for corporate action.

Positive/‘incentive-based’ drivers

Conversely, there are significant incentive-based drivers that push firms to raise standards and regulatory compliance, with positive effects on profitability, customer-base and investment opportunities. Putting human rights compliance at the centre of a firm’s operational strategy and philosophy presents significant business opportunities to establish or improve reputation both regionally and globally, gain new business, secure loans and investment, increase productivity and profits (particularly on a long-term basis), and attract and retain committed employees. Moreover, companies that undertake due diligence with respect to their supply chains benefit from improved risk management with less chance of business disruption and litigation, and unlike their competitors, they have a greater ability to preserve their reputation when negative impacts do occur, given their own and the public’s better understanding of their overall efforts to avoid such incidents.

A few key incentive-based drivers stand out. First, the link between good working conditions, productivity and profitability is starting to become clear. A study of the apparel industry in Vietnam by the International Labour Organisation (ILO) concluded that factories in Vietnam that improved their working conditions increased their revenue-cost ratio by 25 per cent over four years, were up to 8% more profitable than competitors due to increased productivity, and, by taking proactive steps to empower shop-floor supervisors, enjoyed a 22% increase in

43 Larry Fink, ‘A Fundamental Reshaping of Finance’ (Blackrock, 16 January 2020) <https://www.blackrock.com/uk/individual/larry-fink-ceo-letter>.

productivity, lower employee injury rates and lower ‘churn’ of employees.^[44] Accordingly, companies that uphold just and favourable conditions of work can expect improved relationships with workers, communities and other stakeholders in societies, resulting in greater trust and a stronger social licence to operate.

Better work conditions boost factory’s bottom line:

Factories in Vietnam that improved their working conditions increased their revenue-cost ratio by 25%, were up to 8% more profitable than competitors, and enjoyed a 22% increase in productivity, a study found.

Second, the link between sound sustainability standards and the cost of capital, operational and stock price performance is now well-established. A meta-study of over 200 academic studies and industry reports by Oxford University concluded that ESG-

ESG improves stock performance:

ESG-compliant commercial practices result in better operational performance, a study by Oxford University found.

compliant commercial practices resulted in better operational performance for firms, and that stock price performance of companies can be positively influenced by good sustainability practices.^[45] In addition, firms’ enhanced reputation affords them greater access to business opportunities with governments, investors and purchasers, who increasingly recognize the reduced risk to themselves when working with a company that effectively manages risks to human rights.

44 International Labour Organization (ILO) and International Finance Corporation (IFC), ‘Progress and Potential: How Better Work is improving garment workers’ lives and boosting factory competitiveness. A summary of an independent assessment of the Better Work programme’ (2016).

45 Gordon Clark, Andreas Feiner, Michael Viehs, ‘From the Stockholder to the Stakeholder: How sustainability can drive financial outperformance’ (22 October 2014) available at SSRN: <https://ssrn.com/abstract=2508281>.

Third, the momentum among firms for driving up human-rights compliance and sustainable commercial practices is now driving a significant commercial trend across the market, with ‘enlightened self-interest’ now guiding philosophy for commercial practice. A wide range of multinationals and investors have come forward with public statements and endorsements in support of mandatory HRDD as part of a wider trend towards human rights-compliant commercial practices, including plenty of firms that purchase from suppliers in the Western Balkans region.^[46]

One example is Waitrose, a major British supermarket chain, which has received praise for its strong sustainability, ESG and human rights policies and purchases products from suppliers in North Macedonia.^[47] Unilever offers an example on a global scale. It has headed the UN’s Sustainability Index since 2015 and can still boast climbing profits and shareholder value. In 2019 it announced that its brands taking action for people and the planet grew 69% faster than the rest of its business and represented 75% of its overall growth.^[48] In 2018, Unilever partnered with UN Women and 22 other companies on a ‘Global Innovation

*‘Enlightened self-interest’
– companies capitalising
on global trends*

Unilever has headed the UN’s Sustainability Index since 2015 and can still boast climbing profits and shareholder value. Its brands taking action for people and the planet grew 69% faster than the rest of its business and represented 75% of its overall growth in 2019.

- 46 Business and Human Rights Resource Centre, ‘List of large businesses, associations & investors with public statements & endorsements in support of mandatory due diligence regulation’ (6 June 2019) available at <https://www.business-humanrights.org/en/latest-news/list-of-large-businesses-associations-investors-with-public-statements-endorsements-in-support-of-mandatory-due-diligence-regulation/>.
- 47 See <https://pelagonia.co.uk/where-to-buy/>.
- 48 Unilever, ‘Brands with purpose grow – and here’s the proof’ (11 June 2019) available at <https://www.unilever.com/news/news-and-features/Feature-article/2019/brands-with-purpose-grow-and-here-is-the-proof.html>.

Coalition for Change’, making a global commitment for half of all start-ups it partners with to be female-founded by 2023, and calling its commitment to gender diversity ‘business critical’.^[49]

These ‘enlightened’ businesses, such as Unilever and Waitrose, are therefore recognising the direction of travel, and capitalising on it with ‘first mover’ advantage. The potential rewards of getting ahead of the curve are clear. Yet, for less brave or innovative businesses, the changing landscape is confusing: as business, human rights and environment obligations shift gradually and in piecemeal fashion from voluntary to mandatory. When UK online clothing retailer Boohoo was subject to a damning review of its supply chain in 2020, it responded decisively, banning subcontracting and consolidating its supplier network from nearly 500 to 78. In spite of this, Tesco, John Lewis, Primark, Asos and the Co-op called on the UK government to introduce mandatory due diligence legislation which would have found Boohoo legally liable. Ultimately, businesses desire certainty, enabled by a clear regulatory environment. In a recent study concerning the EU’s draft due diligence legislation, almost all interviewees were in principle in favour of a policy chance to introduce a general due diligence obligation at EU level in order to create a level playing field.^[50] This avoids the pitfalls of businesses attempting to ‘do the right thing’ by publicly assuming voluntary obligations and being held liable for failing to meet them.

Financial Services

Investors globally are increasingly demanding that firms improve standards on human rights compliance, due diligence and sustainability measurement and disclosure as prerequisites for continued investment, along with a more ‘active ownership’ stance that promotes a ‘stewardship’

49 Unilever Foundry, Scaling up diversity: Unilever Foundry makes a commitment to gender equality (2018) available at <https://www.theunileverfoundry.com/highlights/gender-equality-at-startups-case-study.html>.

50 Lise Smit et al., Study on due diligence requirements through the supply chain: Final report’ (European Commission, 2020).

policy approach. This trend is being driven both by a major market trend in this direction as well as by the patchwork of investor regulation that is increasingly moving from voluntary to mandatory status.

In terms of the financial services perspective, it is clear from the massive growth of ESG investing that investors are taking ESG issues seriously and making significant demands on firms they invest in or lend to, at risk of losing investment. However, it is worth also noting that this shift towards sustainable investment makes financial sense. Through the turbulent economic shock of Covid-19, ESG investments have fared particularly well. Bloomberg's research found that in the first quarter of 2020, sustainable investment products performed better than non-ESG products, with 94% of a globally representative selection of widely analysed sustainable indices outperforming their parent benchmarks.^[51] Through the pandemic, investors have continued to prefer sustainable assets, with global sustainable open-ended funds seeing a 41% year-on-year rise in Q1 2020. These trends upend an oft-cited adage, pre-Covid crisis, that during sharp market downturns investors will de-prioritize sustainability and flee to safe investments. However, the data shows that ESG investing is clearly the future of investment practice, through both good times and bad.^[52] Clearly, such investments are considered to be sufficiently resilient to weather a period of grave economic uncertainty such as the Covid-19 pandemic, by strengthening the fundamentals of supply chain operations, by factoring in and mitigating exposure to climate risk, and by promoting a more sustainable and productive business ethos that favours a long-term growth outlook.

Increasingly, ESG investing is also the law. In terms of the regulatory framework driving ESG investment, the most prominent emerging rule-book is at present the EU's Sustainable Finance Disclosure Regulation (SFDR), which came into effect in 2021 as part of the EU's Action Plan on Sustainable Finance, a package of EU measures driving sustainable financial

51 Blackrock, 'Sustainable investing: resilience amid uncertainty' (March 2020).

52 Larry Fink, 'A Fundamental Reshaping of Finance' (Blackrock, 16 January 2020) <https://www.blackrock.com/uk/individual/larry-fink-ceo-letter>.

practices and reporting requirements.^[53] The SFDR aims to create a level playing field on transparency and information-provision in relation to sustainability/ESG risks, requiring financial advisers, asset managers, banks and other market participants to disclose relevant ESG-related information about firms. This means that firms receiving investment from EU-based market participants will therefore be pushed to make increasingly detailed disclosures about their sustainability risks and policies as part of investors' pre-acquisition due diligence, or as a requirement for continued investment. Similar developments can also be seen in North American and Asian investment communities, driven by global trends and frameworks.

EU's Sustainable Finance Disclosure Regulation (SFDR):

Firms receiving investment from EU-based market participants will be required to make increasingly detailed disclosures about their sustainability risks and policies as a requirement for continued investment.

The SFDR also builds upon the EU's 2014 Non-Financial Reporting Directive (NFRD) 2014, which requires certain large companies to disclose information on the way they operate and manage social and environmental challenges. Companies in scope are required to publish information on environmental matters; social matters and treatment of employees; respect for human rights; anti-corruption and bribery; and diversity on company boards. In addition, the NFRD includes a 'comply or explain' mechanism whereby companies may choose not to report by explaining why they are not reporting: while this mechanism seemingly offers a way to avoid disclosure, firms adopting a minimal, closed approach to disclosure are likely to find their clients and investors will likely scrutinise in detail reasons put forward for non-compliance as part of their own due diligence, and require improvement if found wanting. Since 2014, the

53 Note that the SFDR is not fully in operation yet. Other measures introduced as part of the European Commission's Action Plan on Sustainable Finance include the Taxonomy Regulation, which introduces an EU-wide classification scheme for sustainable activities, and the Low Carbon Benchmarks Regulation.

European Commission has published further climate-reporting guidelines in 2017 and 2019 that provide guidance for companies on how to report on the impacts of their business on the climate and on the impacts of climate change on their business.^[54]

Alongside mandatory rules, there are a plethora of other more voluntary standards that have emerged as best-practice for investment management. This includes the Principles for Responsible Investment (PRI), a voluntary set of investment principles that provide approaches to incorporating ESG issues into investment practice, such as pursuing active ownership policies and seeking appropriate ESG disclosure by firms receiving investment. Some 4,000 investment managers and investors globally have signed up to the PRI since they launched in 2004. While it is a voluntary system, it has become a sufficiently established responsible investment framework to act as a gatekeeper for asset managers undertaking ESG screening of businesses, and accordingly is driving up standards for investors which are then passed on to firms in terms of investors' requirements for investment performance.

The PRI suggest that ESG issues can be incorporated into existing investment practices using a combination of three approaches: integration – explicitly including ESG issues in investment risk analysis and decision-making; screening – applying filters to potential investments based on preferences, values or ethics; and thematic approaches – seeking to combine attractive risk return profiles with an intention to contribute to a specific environmental or social outcome. In addition, the PRI take the view that the ESG performance of existing investment portfolios can be improved via active ownership practices such as engagement – discussing ESG issues with companies to improve their handling, including disclosure, of such issues; and by proxy voting – formally expressing approval or disapproval through voting on resolutions and proposing shareholder resolutions on specific ESG issues.

54 European Commission, 'Guidelines on non-financial reporting: Supplement on reporting climate-related information' (2019/C 209/01), OJ C 209, 20 June 2019.

The PRI is just one of a number of influential frameworks increasingly guiding investor practice in this area. Another key framework is the Taskforce on Climate-Related Financial Disclosures (TCFD) Guidelines, which are tightly focused on environmental risks, but have had a major impact on the finance industry as a whole and have been integrated into the PRI and increasingly into EU reporting rules. The TCFD Guidelines are designed to promote climate-related financial disclosures allowing stakeholders to better understand financial exposure to climate-related risks and have been adopted by a significant range of pension funds, banks and insurers globally, who are increasingly requiring environmental disclosure from firms receiving financing. The UK has also pledged to make TCFD-aligned disclosures mandatory across the economy by 2025.^[55] The UK and Japan both also have a ‘Stewardship Code’, which sets high standards for investment managers and comprises a set of ‘apply and explain’ principles for demonstrating best practice in sustainable investment.^[56]

As frameworks around ESG investment develop and cross-implement, new trends in practice are emerging. One is the ‘Do No Significant Harm’ principle, whereby a firm actively pursuing sustainable objectives (e.g. climate change mitigation/adaptation) cannot qualify as sustainable under relevant criteria if it causes significant harm to another sustainable objective. For example, if a factory in the Western Balkans producing photovoltaic solar panels – certainly deemed a sustainable business operation – is found to be breaching health and safety conditions, polluting the surrounding environment, or sourcing the raw materials to manufacture cells from unsustainable sources (say, using trafficked or child labour in another country), it may not satisfy investors’ ESG requirements for continued investment. This is particularly important in the rush towards a low carbon economy: in a recent human rights benchmark of the largest

55 UK Government, ‘UK joint regulator and government TCFD Taskforce: Interim Report and Roadmap’ (9 November 2020).

56 The UK Stewardship Code 2020; Japanese Financial Services Agency, Finalization of Japan’s Stewardship Code (Second revised edition).

renewable energy companies, it was suggested that none of the companies analysed were fully meeting their responsibilities to protect human rights as defined by the UNGPs. Companies which can meet both social and environmental targets, considering human rights and environment issues jointly and holistically, will therefore have a clear competitive advantage when it comes to attracting investment.^[57]

Exclusion Lists

Moreover, the fact that some of the frameworks cited above are voluntary does not mean that they can simply be ignored. Investors are increasingly taking a hard line on non-compliance by firms receiving investment, including by active management, voting against board-decisions and even by divesting. Investors' exclusion lists are now published, with potentially significant reputational issues for firms. Research published in the International Journal of Human Rights and based on interviews with business executives noted that increasingly, financial institutions are looking at human rights through the same lens as financial crime risk when onboarding clients.^[58]

For example, the Dutch insurer and asset manager Aegon now excludes firms from potential investment on the basis of exclusionary categories including climate change, biodiversity and health/wellbeing, as well as insufficient firm engagement following non-compliance with global standards. Aegon's 2021 list excludes various firms in the Western Balkans region, including Badeco-Adria d.d. (BiH – tobacco), Čoka Duvanska Industrija A.D. (Serbia – tobacco), Holding Korporacija Krušik AD Valjevo (Serbia – weapons), ITC d.o.o. (BiH – chemicals), Stari Graničar d.o.o.

57 Business & Human Rights Resource Centre, 'Renewable Energy & Human Rights Benchmark' (29 June 2020) available at <https://www.business-humanrights.org/en/from-us/briefings/renewable-energy-human-rights-benchmark/>

58 Lise Smit et al. 'Human rights due diligence in global supply chains: evidence of corporate practices to inform a legal standard' (2021) 25 (6) The International Journal of Human Rights 945-973, 966.

(Croatia – weapons), and Tutunski Kombinat A.D. Prilep (North Macedonia – tobacco).^[59]

Aegon’s approach is becoming widespread in the industry: Danish bank Nordea’s exclusion list cites a variety of reasons for exclusion, including violation of human rights related norms,^[60] while Dutch insurer NN Group’s asset-management arm, NN Investment Partners, specifically excludes firms on the basis of ‘violations of

Exclusion Lists: Aegon

Dutch insurer and asset manager Aegon now excludes firms from potential investment on the basis of exclusionary categories.

Aegon’s 2021 list excludes various firms in the Western Balkans region.

international standards of business conduct’.^[61] Most recently, a number of Dutch pension funds have divested from several Chinese companies after details emerged of their involvement in the oppression of Uighurs in China’s Xinjiang province.^[62] Clearly, non-compliance with human rights obligations and emerging best practice on supply chain due diligence can have tangible impacts on firms’ ability to attract and retain investment.

59 Aegon Nederland N.V., ‘Responsible Investing Exclusion List’ (1 January 2021).

60 Nordea, ‘Exclusion List’ (October 2021) available at: <https://www.nordea.com/en/sustainability/exclusion>.

61 NN Investment Partners, ‘NN Group’s Exclusion List’ (November 2021) available at <https://bit.ly/35PuNv6>.

62 Frank Van Alphen, ‘Dutch pension funds exit Chinese companies over Uyghur concerns’ (21 May 2021) available at <https://www.ipe.com/news/dutch-pension-funds-exit-chinese-companies-over-uyghur-concerns/10052947.article>.

4. Regional Context: Business, Human Rights, and the environment in the Western Balkans

Many pressing issues in the region, such as discrimination at work and the insufficient protection of whistle-blowers,^[63] inadequate implementation of health and safety standards,^[64] widespread informal work,^[65] and other practices that can lead to grave human rights violations, have a business and human rights dimension. Accordingly, there is an urgent need to examine how the relevant standards set by the above discussed instruments could be operationalised in the Western Balkans jurisdictions in order to develop a comprehensive and proactive approach to business and human rights.

To date, companies in the region have mostly managed their impact on human rights through corporate social responsibility (CSR) frameworks, focusing on voluntary actions that contribute to their business plan.^[66] Although these practices are commendable, developments in the BHRE agenda outlined above show that CSR initiatives can no longer be a substitute for the corporate responsibility to respect human rights and environmental standards.

- 63 European Commission, Communication on EU enlargement policy COM(2020) 660 final (6 October 2020); S. Bradaš, M. Reljanović, I. Sekulović, 'Uticaj epidemije COVID-19 na položaj i prava radnica i radnika u Srbiji' (Fondacija Centar za demokratiju i Kancelarija za ljudska prava Ujedinjenih nacija, 2020) 46; M. Reljanović, 'Study on implementation of anti-discrimination law in Serbia' (Yucom 2018) 16; A. Papa, Z. Kongoli, 'Labour Standards in Albania' (2016).
- 64 Balcanosh, 'Occupational Safety and Health – Study of Montenegro' (16 November 2018); European Commission, Communication on EU enlargement policy COM (2020) 660 final (6 October 2020), European Commission, 'Serbia 2020 Report', SWD (2020) 352 final (6 October 2020) 95; Petar Bulat, Kenichi Hirose, Jovan Protic, 'Occupational Safety and Health in the Construction Sector in Serbia' (ILO 2018).
- 65 The World Bank, 'Western Balkans Labor Market Trends: 2019' (19 March 2019); Unija Podslodovaca Crne Gore, 'Informal Economy in Montenegro' (2020).
- 66 Jernej Letnar Čeranič, 'Mapping Business and Human Rights in Central and Eastern Europe' (Cambridge Core Blog, 2021)

In addition, parallel regulatory and investment developments in the Western Balkans amplify the need to incorporate the fast-evolving BHRE agenda. Thus, the Western Balkans jurisdictions face an ongoing pressure to continue harmonising their respective legislation with EU *acquis* including in relation to business and human rights. An example of this trend are the emerging EU and domestic policies in the area of green development and climate change, including the Green Agenda for the Western Balkans and the Carbon Border Adjustment Mechanism, which will have a significant impact on businesses in the region.^[67]

Moreover, given high unemployment levels in the Western Balkans region – the highest in Europe^[68] – attracting foreign investment has been prioritised as a matter of state policy, because of its contribution to regional development. As the Western Balkans are gradually becoming an alternative location for firms to base their commercial operations, there is a proportionately wider pool of foreign direct investment for regional states and firms to compete for.^[69] But attracting investment increasingly goes hand in hand with demonstrable respect for human rights and environmental standards. Thus, regional firms will benefit from incorporating a business and human rights agenda into their commercial planning in order to continue attracting foreign investment – which remains a top priority for regional governments.^[70]

In addition to attracting investment, corporations have an interest in improving their human rights performance for reputational reasons. There

67 See Sofia Declaration on the Green Agenda for the Western Balkans (10 November 2020); European Commission, Carbon Border Adjustment Mechanism (14 July 2021).

68 World Bank, Western Balkans Regular Economic Report, No. 19, Spring 2021 Subdued Recovery.

69 Zoran Nechev, Marie Jelenka Kirchner, 'Time to move to the Western Balkans: How diversification of global supply chains can benefit EU resilience' Policy Paper No.9/2021 (April 2021).

70 Darko Marjanovic, Mihajlo Djukic, 'Western Balkan countries as an attractive investment destination', (2020) 53 (2) Economic Analysis: Applied Research in Emerging Markets.

is ample evidence of government policy in the region prioritising investment over human rights and environmental standards, which has led to public scandals and challenges on environmental and human rights grounds, such as at the Yura factory in Serbia;^[71] the Kruščica River hydroelectric dams in Bosnia and Herzegovina; the Buk Bijela dam on the river Drina^[72] in Bosnia and Herzegovina; violation of human rights by Teleperformance in Albania;^[73] informal and child labour in waste management industry in Kosovo;^[74] and Geox factory in North Macedonia, which is accused of poor and exploitative labour conditions.^[75] In October 2019 the European Investment Bank confirmed that it had decided not to go ahead with direct financing for a 340,000 tonnes per year Vinča municipal waste incinerator in Serbia, after its own due diligence confirmed that the project would likely interfere with Serbia's ability to meet EU circular economy targets for recycling.^[76]

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- 71 Business and Human Rights Resource Centre, 'Serbia: YURA Corp.'s factory workers complain about alleged abuses including beatings, sexual harassment, non-payment of wages & denial of freedom of association', (4 July 2016) available at <https://www.business-humanrights.org/en/latest-news/serbia-yura-corps-factory-workers-complain-about-alleged-abuses-including-beatings-sexual-harassment-non-payment-of-wages-denial-of-freedom-of-association/>.
 - 72 Pippa Gallop, 'Drina dam "ground-breaking" event met by scepticism and protests' (BankWatch Network, 17 May 2021) available at <https://bankwatch.org/blog/drina-dam-groundbreaking-event-met-by-scepticism-and-protests>.
 - 73 'French OECD contact point calls on Teleperformance to strengthen efforts to ensure respect for human rights, worker safety' (Uni Global Union, 2 August 2021) available at <https://uniglobalunion.org/news/french-oecd-contact-point-calls-teleperformance-strengthen-efforts-ensure-respect-human-rights>.
 - 74 Stuart Greer, "'A dire need to survive" drives Kosovo Roma to risky recycling' (RFERL, 9 October 2019) available at <https://www.rferl.org/a/a-dire-need-to-survive-drives-kosovo-roma-to-risky-recycling/30207749.html>.
 - 75 Business and Human Rights Resource Centre, 'Reports allege poor working conditions in shoe supply chains in Eastern Europe; company responses included' (2016) available at <https://www.business-humanrights.org/en/latest-news/reports-allege-poor-working-conditions-in-shoe-supply-chains-in-eastern-europe-company-responses-included/>.
 - 76 Business and Human Rights Resource Centre, 'A third of European Investment Bank

Finally, recent controversy arising out of the presence of the international mining company Rio Tinto in Serbia serves as a stark reminder that insufficient attention to potential human rights and environmental implications of businesses endeavours could result in social upheaval, undermining political stability and security in the region.

Despite these negative examples, it is important to note that several major investors in the region, including Telenor,^[77] Coca Cola,^[78] Delhaize,^[79] Ball,^[80] Henkel,^[81] and Michelin^[82] appear to subscribe to best practices in human rights standards in their policies, emphasising the UNGPs and the use of HRDD to identify and address human rights challenges. Their presence in the Western Balkans opens the space for a wider integration and implementation of human rights and environmental standards throughout the region and a shift of long-term priorities towards emphasizing the importance and sustainability of investments.

Overall, although regional governments have not yet addressed in full the impact of business operations on human rights and the environment, recent initiatives illustrate their sharper focus on the area. Numerous reform

lending evades environmental and social rules' (2021) available at <https://www.business-humanrights.org/en/latest-news/a-third-of-european-investment-bank-lending-evades-environmental-and-social-rules-report-alleges/>

77 Telenor Group, 'Managing Human Rights', available at <https://www.telenor.com/sustainability/responsible-business/human-rights/mitigate/>

78 Coca Cola Company, 'Human Rights Policies' available at <https://www.coca-colacompany.com/policies-and-practices/human-rights-principles>

79 Jon Springer, 'Ahold Delhaize identifies human rights priorities' (Winsight Grocery Business, 16 June 2020) available at <https://www.winsightgrocerybusiness.com/retailers/ahold-delhaize-identifies-human-rights-priorities>.

80 Ball, 'Human Rights' available at <https://www.ball.com/human-rights>.

81 Henkel, 'Human Rights and Social Standards' available at <https://www.henkel.com/sustainability/positions/human-rights>.

82 Michelin, 'Respecting Human Rights', available at <https://www.michelin.com/en/sustainable-development-mobility/for-people/respecting-human-rights/>.

processes are currently underway in the region, aimed at adapting legal frameworks in accordance with EU standards in this area. For example, the region has started engaging with this issue through the introduction of non-financial corporate reporting^[83] and by taking into account social and environmental criteria when conducting public procurement exercises.^[84] Still, significantly more needs to be done to achieve a business and investment environment in which ‘do no harm’ will be a baseline standard. This will, in part, involve focusing on spheres of legal regulation that are traditionally perceived as neutral in matters of human rights protection, like public procurement, investment, tax law and corporate/company law.^[85]

As recognised by a recent report on the potential benefits to the EU of relocating supply chains to the Western Balkans, the region ultimately desires EU membership. However, the EU’s value-based approach to foreign policy demands it meets its human rights and environmental targets as well as its EU enlargement and economic independence objectives. This has been made particularly clear in the EU’s recent announcement of its ‘Global Gateway’ infrastructure push, whose ‘values-based cooperation’ is being pitched as an attractive counter to the Chinese ‘Belt and Road’ initiative.^[86]

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- 83 For example in Serbia, non-financial corporate reporting was introduced through the Law on Accounting (Official Gazette of Republic of Serbia No. 73/2019 and 44/2021). In Montenegro draft amendments to the Law on Accounting (currently in procedure) include those on non-financial reporting.
- 84 Serbia’s newly adopted Programme for Development of Public Procurement (2019-2023) sets as one of the strategic goals the promotion and encouragement of the environmental and social aspect in public procurement, and its 2019 Public Procurement Law contains human rights-related provisions, including an option of using environmental and social considerations in all stages of the public procurement procedure.
- 85 B Sjøfjell, ‘How Company Law has Failed Human Rights – and What to Do About It’ 2020 5 (2) Business and Human Rights Journal 179-199.
- 86 Jorge Vallero, John Follain, ‘EU’s “Global Gateway” Infrastructure Push Offers Counter to China’s “Belt and Road”’ (Bloomberg, 30 November 2021), available at <https://www.bloomberg.com/news/articles/2021-11-30/eu-eyes-300-billion-euro-infrastructure-push-to-challenge-china>.

EU (conditioned) investment in the Western Balkans, therefore, is ‘an investment in the shared, value-oriented future of Europe as a whole’.^[87] Businesses have an important role to play in assisting the region to meet the EU halfway.

5. Conclusions

Reconciling firms’ growing obligations to secure human rights with commercial pressures is likely to be a source of tension, particularly in a region where the BHRE agenda must acknowledge existing practices and local priorities. It is often suggested that developing countries need to prioritise rapid economic growth over the BHRE standards, which usually take a central stage only after a country has attained certain level socio-economic development. Also, while it is true that a growing number of multinational corporations are subscribing to the BHRE agenda, many are not genuinely committed to promoting these standards in their business practices and readily exploit loose regulatory frameworks in host countries. One study by the Joint Ethical Trading Initiative of over 1,500 suppliers acknowledged this: buyers often contradict their own HRDD requirements with their purchasing practices, such as lead times, prices and technical specifications, requiring suppliers to frequently accept orders below production costs, which in turns leaves them unable to pay living wages, or even minimum wages.^[88]

It is evident that it would take considerable efforts to ensure that firms can keep up with commercial pressures while protecting human rights, preserving existing development goals, and improving their own reputation and long-term profitability. However, the connection between the need to preserve and promote human rights and the environment, on one hand, and the current global commercial environment, on the other, is becoming

87 Zoran Nechev, Marie Jelenka Kirchner, ‘Time to move to the Western Balkans: How diversification of global supply chains can benefit EU resilience’ Policy Paper No. 9/2021 (April 2021).

88 Lise Smit et al., Study on due diligence requirements through the supply chain: Final report’ (European Commission, 2020) 964.

clearer; it is both a demand of consumers and investors and a way of de-risking supply chains and investments in an era of major uncertainty from geopolitical threats, climate change, and Covid-19.^[89]

The impact of the ongoing Covid-19 pandemic on the BHRE agenda is hard to estimate. The pandemic has exposed gaping inequalities within and between states, including in the EU. It has demonstrated how far thriving businesses rely on healthy workforces and joined-up supply chains, and conversely how vulnerable those business environments are when workers are not supported. By laying bare these inequalities and systemic issues, the pandemic has only strengthened the case for adopting sustainable business practices, accelerating the shift towards, and increasing the value of ESG asset-holdings in the process.

This paper has sought to provide a broad-brush picture of the fast-growing movement that sees the protection of human rights and the environment as compatible with commercial success. Ample evidence from business practice demonstrates that sustainably led commercial approach is certainly possible and represents the future of global commerce. It is clear is that the train towards mandatory and more widespread protection has left the station. Whether businesses benefit or lose out from this fact will be determined by what moment they choose to come aboard. Those that embed good practices early and voluntarily will find the transition less costly and will enjoy multiple competitive advantages and opportunities. Firms and states that continue to ignore the trend do so at their peril.

89 There are also labour-related risks arising from China's presence in the Western Balkans, impacting local employees and communities as well as Chinese migrant workers in the region. One feature of China's presence in the region has been the use of bilateral agreements such as Serbia's 'Law on Confirmation of Agreement on Social Security with China', under which Chinese labour law applies to Chinese migrant workers in Serbia for the first five years of their stay. Although bilateral agreements of this kind are common, this is the only one with such a restriction. Sasa Dragojlo "'Like Prisoners': Chinese Workers in Serbia Complain of Exploitation' (Balkans Insight, 26 January 2021) available at <https://balkaninsight.com/2021/01/26/like-prisoners-chinese-workers-in-serbia-complain-of-exploitation/>.

List of Acronyms

BHRE	Business and human rights, including environmental protection
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CESCR	Committee on Economic, Social and Cultural Rights
CSR	corporate social responsibility
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ESG	Environmental, Social, Governance
EU	European Union
HRDD	human rights due diligence
IACHR	Inter-American Commission on Human Rights
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ILO	International Labour Organisation
MNE	Multinational Enterprise
NCP	National Contact Point
NFRD	Non-Financial Reporting Directive
OECD	Organisation for Economic Cooperation and Development
PRI	Principles for Responsible Investment
SFDR	Sustainable Finance Disclosure Regulation
TCFD	Taskforce on Climate Related Financial Disclosures
UK	United Kingdom
UN	United Nations
UNGPs	United Nations Guiding Principles on Business and Human Rights

Sustineri Partners

Sustineri Partners was founded by a group of experts who believe in the power and obligation of companies to deliver positive outcomes for society. The company provides strategic advice to private and public organisations on how to incorporate sustainability standards in their decisions, practices, and partnerships. Sustineri Partners' work in supporting companies, investors, and other organisations encompasses environmental, social, and governance issues, with particular expertise in matters such as modern slavery, gender equality, environmental standards, anti-corruption, and good governance.

The AIRE Centre

The AIRE Centre is a specialist non-governmental organisation that provides expertise and practical advice on European Union and Council of Europe legal standards and has particular experience in litigation before the European Court of Human Rights, where it has participated in over 150 cases. For twenty years now, the AIRE Centre has built an unparalleled reputation in the Western Balkans, operating at all levels of the region's justice systems. It works in close cooperation with ministries of justice, judicial training centres and constitutional and supreme courts to lead, support and assist long term rule of law development and reform projects. The AIRE Centre also cooperates with the NGO sector across the region to help foster legal reform and respect for fundamental rights.

