IN THE FACE OF CORPORATE IMPUNITY PROGRESS IN EUROPE
Providing a regulatory framework for multinationals by means of binding rules is essential. Even if companies contribute to the economy, their activities may also result in fundamental human rights violations and environmental damages that voluntary initiatives alone cannot prevent effectively.

Since 2011, the United Nations Guiding Principles on Business and Human Rights require companies to respect human rights through the implementation of “due diligence”. These monitoring systems aim to identify and prevent risks, while establishing redress mechanisms and providing access to justice for victims. The UN is also preparing a binding treaty on transnational corporations and other business enterprises with respect to human rights, however this will take a long time to be established. The OECD and the European Commission have taken measures on, but without creating a binding framework. The Commission has also encouraged EU Member States to implement the principles of the United Nations in their own internal law.

Since the enforcement of these declarations relies on the political will of each State, it is high time for them to take action.

France is preparing a bill relating to the duty of care incumbent upon parent and subcontracting companies, which is struggling to be definitively adopted. Yet this bill would finally make it possible to tackle the human rights violations and corruption taking place in French companies’ supply and production chains.

France is not the only European country working towards this objective. Here is the proof.¹

¹ This document was produced in October 2016. It only shows European initiatives although regulations also exist on other continents.
AT THE NATIONAL LEVEL
FRANCE
BILL ON DUTY OF CARE FOR PARENT AND SUBCONTRACTING COMPANIES.

Goal of the measure: Mandatory publishing and implementing a vigilance plan
Human rights covered: All human and environmental rights.
Sectors covered: All.
Companies covered: French companies having at least 5,000 employees (headquarters and subsidiary companies) and French and foreign companies having at least 10,000 employees (headquarters and subsidiary companies).

Scope of the measure: Subsidiary companies, subcontractors and suppliers within the company “sphere of influence”.

Penalty planned: A maximum fine of 10 million Euros.
Stage of the measure: Bill passed a first time in the National Assembly (31/03/2015), rejected by the Senate (18/11/2015), passed a second time in the National Assembly (23/03/2016). Final approval planned in 2016, followed by a decree in 2017.

More information:
French National Assembly http://bit.ly/1AX7Fmu

GBERMAN
HUMAN RIGHTS DUE DILIGENCE PROCESSES WITHIN THE NATIONAL ACTION PLAN FOR BUSINESS AND HUMAN RIGHTS.

Goal of the measure: Experiment a due diligence process for state-owned companies and big companies within the National Action Plan (NAP) on Business and Human Rights.
Human rights covered: All of them (subject to NAP’s publication).
Sectors covered: All.
Companies covered: At first state-owned companies (binding) and private companies having more than 5,000 employees (voluntary).
Scope of the measure: Subsidiary companies, subcontractors and suppliers within the “sphere of influence” (subject to the definition of Human Rights Due Diligence which will be adopted).

Penalty planned: If 50% of private companies covered have not implemented voluntarily Human Rights Due Diligence processes planned in the NAP by 2020, the government will consider a binding regulation.
Stage of the measure: NAP’s release planned in June 2016.

More information:
UNITED KINGDOM

MODERN SLAVERY ACT 2015
(SECTION 54 - TRANSPARENCY IN SUPPLY CHAINS).

Goal of the measure:
Preparing and publishing a slavery and human trafficking statement, disclosing the steps that commercial organizations have taken during the financial year to ensure that slavery and human trafficking is not taking place in any of their supply chains, and in any part of their own business, or a statement that they have taken no such steps.

Human rights covered:
Slavery and human trafficking.

Sectors covered:
All.

Companies covered:
A body corporate or a partnership, wherever incorporated, which carries out business activities, or part of a business, in any part of the United Kingdom, which supplies goods or services, and has a total turnover of not less than 36 million pounds.

Scope of the measure:
Statements may cover the supply chains and any part of the commercial organization's own business.

Penalty planned:
To be defined by the law.

Stage of the measure:
The popular initiative has been accepted by the Swiss Federal Chancellery (07/04/2015), 140,000 signatures have been gathered in April 2016 (40,000 more than necessary and 6 months before the deadline), official submission on October 10th 2016.

More information:
The Responsible Business Initiative.
http://bit.ly/1R18ZMA

SWEDEN

MANDATORY DUE DILIGENCE FOR SWEDISH STATE-OWNED BUSINESSES AND OTHER BUSINESSES WORKING IN HIGH RISK SECTORS AND COUNTRIES.

Initiative:
6 NGOs (Amnesty International Sweden, “Svenska kyrkan” the Swedish church, Latinamericagruppen, Diakonia, Swedwatch and FIAN-for the right to adequate food) organised a meeting in May 2016 gathering civil society, government and Parliamentarians in order to discuss the possibility of setting up a due diligence for Swedish state-owned businesses and other businesses working in high risk countries and sectors (as extractive sector and telecoms).

Calendar:

SWITZERLAND

RESPONSIBLE BUSINESS INITIATIVE - PROTECTING HUMAN RIGHTS AND THE ENVIRONMENT.

Goal of the measure:
Writing down in the Swiss legislation a mandatory due diligence for Swiss businesses having activities abroad

Human rights covered:
All internationally recognized human rights (as defined in the UN Guiding Principles on Business and Human Rights) and the environment (defined by International Law, international organisations and non-governmental standards).

Sector covered:
All.

Companies covered:
Companies that have their registered office, central administration, or principal place of business in Switzerland.

Scope of the measure:
Companies controlled by Swiss based companies and their business relationships (subsidiaries of companies, joint ventures, multiple-delivery contracts, distribution agreements or subcontracting contracts).

Penalty planned:
To be defined by the law.

Stage of the measure:
The popular initiative has been accepted by the Swiss Federal Chancellery (07/04/2015), 140,000 signatures have been gathered in April 2016 (40,000 more than necessary and 6 months before the deadline), official submission on October 10th 2016.

More information:
The Responsible Business Initiative.
http://bit.ly/1R18ZMA
SEVERAL MEMBER STATES ASK THE EUROPEAN UNION TO GO FURTHER.

In May 2016, the French National Assembly and seven other European parliaments launched a “Green Card” initiative in order to ask the European Commission to legislate on a duty of care for European companies. Such a duty of care should prevent and repair abuses towards peoples and communities, whose rights and environment are impacted by European companies’ activities.

The parliaments involved are the ones of Estonia, Lithuania, Slovakia and Portugal, the UK House of Lords, the House of Representatives in the Netherlands, the Senate of the Republic in Italy, and the National Assembly in France (recently joined by Greece). On the 18th of May 2016, during an inter-parliamentarian conference with representatives of 22 EU member states, Members of the Parliament from Germany, Greece, Romania, Czech Republic and Denmark signed a common statement supporting this action at the EU level.

THE COUNCIL OF EUROPE IS REQUESTING ITS 47 MEMBER STATES TO GO EVEN FURTHER.

In March 2016, the Council of Europe’s decision-making body, the Committee of Ministers, adopted a recommendation encouraging Member States to legislate on the effective implementation of companies’ due diligence requirement as regards any of their business activities that have an impact on human rights.

This recommendation stipulates that this due diligence requirement must reflect the UN Guiding Principles on Business and Human Rights.
The “Forum Citoyen pour la RSE” thanks the organisations above mentioned and the European Coalition for Corporate Justice for their help.