

Report from the Norwegian Ethics Information Committee

November 2019

## **Supply Chain Transparency**

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

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

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

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# *Part I*

## *Recommendations*

### **1 Summary**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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