

Modern Slavery  
**Research Brief**

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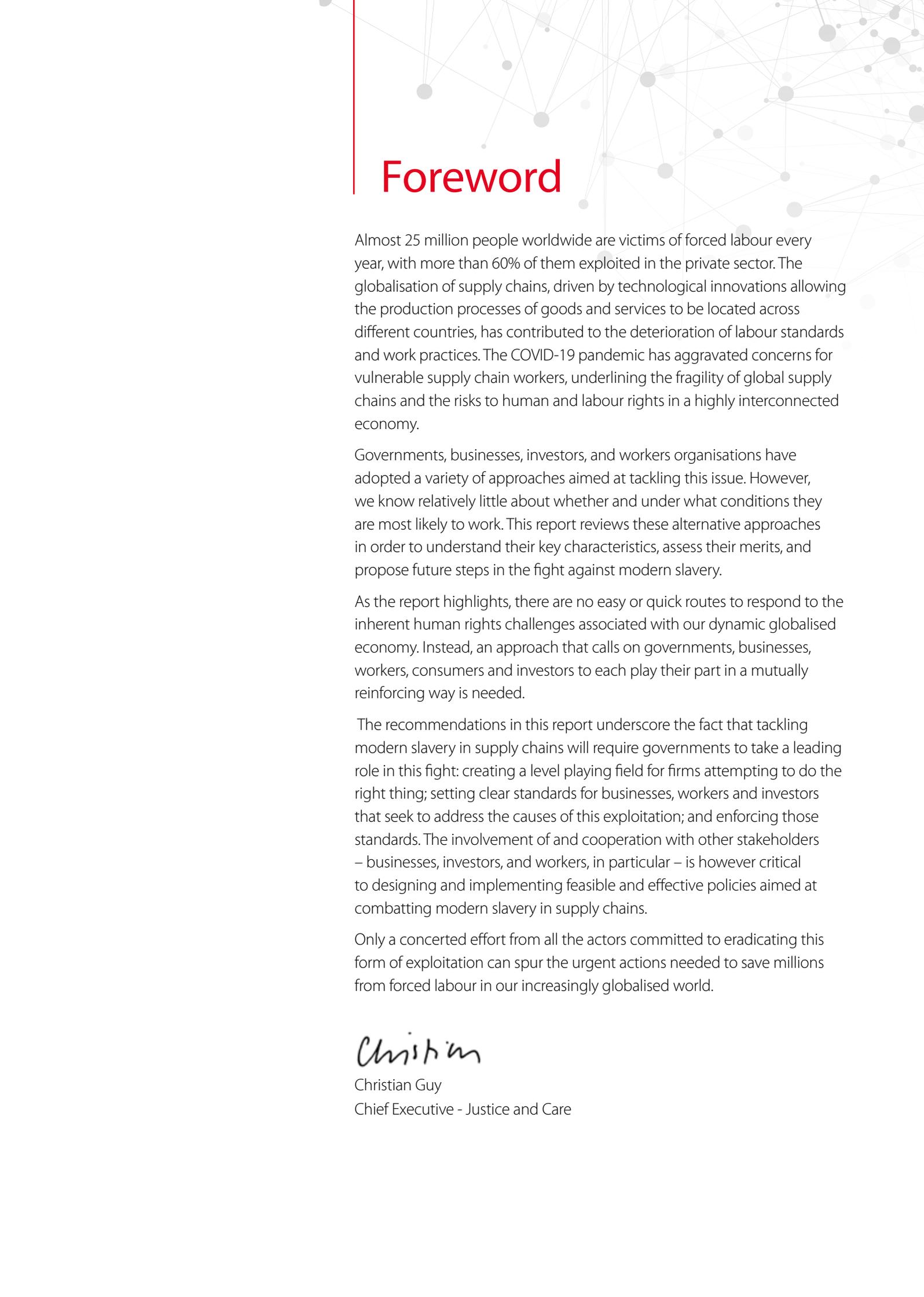


## **Modern Slavery in Global Supply Chains:**

The state of evidence for key government and private approaches.







# Foreword

Almost 25 million people worldwide are victims of forced labour every year, with more than 60% of them exploited in the private sector. The globalisation of supply chains, driven by technological innovations allowing the production processes of goods and services to be located across different countries, has contributed to the deterioration of labour standards and work practices. The COVID-19 pandemic has aggravated concerns for vulnerable supply chain workers, underlining the fragility of global supply chains and the risks to human and labour rights in a highly interconnected economy.

Governments, businesses, investors, and workers organisations have adopted a variety of approaches aimed at tackling this issue. However, we know relatively little about whether and under what conditions they are most likely to work. This report reviews these alternative approaches in order to understand their key characteristics, assess their merits, and propose future steps in the fight against modern slavery.

As the report highlights, there are no easy or quick routes to respond to the inherent human rights challenges associated with our dynamic globalised economy. Instead, an approach that calls on governments, businesses, workers, consumers and investors to each play their part in a mutually reinforcing way is needed.

The recommendations in this report underscore the fact that tackling modern slavery in supply chains will require governments to take a leading role in this fight: creating a level playing field for firms attempting to do the right thing; setting clear standards for businesses, workers and investors that seek to address the causes of this exploitation; and enforcing those standards. The involvement of and cooperation with other stakeholders – businesses, investors, and workers, in particular – is however critical to designing and implementing feasible and effective policies aimed at combatting modern slavery in supply chains.

Only a concerted effort from all the actors committed to eradicating this form of exploitation can spur the urgent actions needed to save millions from forced labour in our increasingly globalised world.



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# 1 Executive Summary

The globalisation of supply chains, facilitated by technological developments and spurred by firm's attempts to maximise profits through lower labour costs, shorter lead times and weaker labour protections in developing countries, has contributed to a deterioration of labour standards and work practices. The inherent difficulties involved in monitoring extremely fragmented production processes also render workers – mostly in and from developing countries - vulnerable to exploitation. The COVID-19 pandemic has exacerbated concerns for vulnerable supply chain workers, exposing the enormous risks to human and labour rights in a highly interconnected global economy.

Governments, firms, civil society organisations, academics, investors, shareholders, workers and trade unions have become increasingly aware of the risks of serious human rights abuses occurring within global supply chains, and have proposed or implemented a wide array of approaches aimed at tackling this issue.

However, we know relatively little about the effectiveness of these various “solutions”. Despite a large body of work examining modern slavery in supply chains, many of the policies and strategies aimed at fighting modern slavery in supply chains are quite novel and still at a “developmental stage”. Therefore, the available evidence is scarce and scattered, with most studies focusing on specific approaches and providing at best anecdotal evidence on their impact.

This report reviews the breadth of approaches to combatting modern slavery in supply chains with the goal of understanding their key characteristics and assumptions, assessing their effectiveness, identifying the most promising tools and strategies, and discussing further considerations aimed at enhancing collective efforts to tackle this phenomenon.

## Methodology

We conducted an extensive review of the literature on existing approaches to combat modern slavery in supply chains, in order to synthesise the main findings and summarise the available evidence on their effectiveness. Our assessment of effectiveness was made according

to whether these approaches improved the identification, remediation and reduction in prevalence of modern slavery in supply chains; in practice, these different dimensions are typically bundled together in extant empirical studies. Our online desk-based review examined more than 150 journal articles, books, reports and policy-briefs, and was complemented with more than 15 interviews with practitioners, NGOs and coalitions focused on this area.

Based on this assessment of extant research, we identified three broad approaches: i) government-led strategies, comprising (disclosure and human rights due diligence) legislative interventions, the use of public procurement schemes and public funding bodies, and import bans on goods suspected of being produced with forced labour; and private mechanisms, including ii) corporate and investor-led schemes (e.g., corporate social responsibility initiatives, responsible purchasing practices, ESG investing, direct investor engagement); and iii) worker-centred initiatives such as worker voice technologies, worker-driven social responsibility initiatives and ethical recruitment practices.

## Key Findings

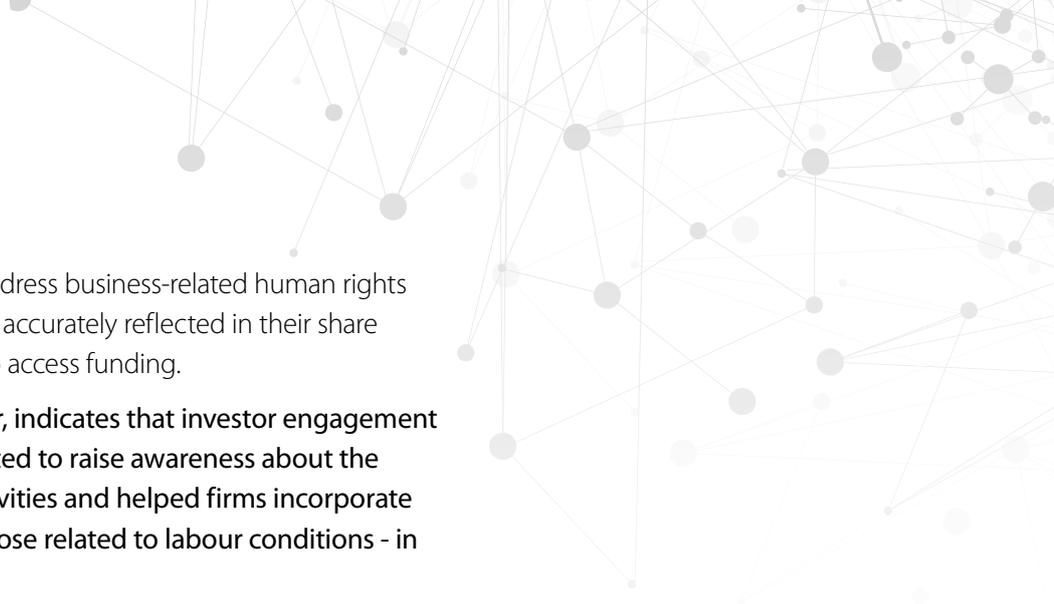
### Government-led approaches

- **Our review reveals that while disclosure legislation has contributed to increased transparency and greater corporate and public awareness of modern slavery in supply chains, its effectiveness - in terms of changing the behaviour of firms or suppliers and actually bolstering labour conditions - has been quite limited.**
  - The key assumption underlying this legislative framework - that consumers, investors, shareholders and civil society as a whole will use information disclosed by companies to hold them accountable – finds little support in the data.
  - This, coupled with the absence of a clear role for the state in the monitoring and enforcement of reporting requirements, contributes to the limited impact of this type of legislative initiative.
- **By contrast, available evidence suggests that mandatory human rights due diligence (mHRDD) legislation holds greater promise of catalysing comprehensive and effective change in corporate practices.**
  - The data shows that the costs of adopting due diligence procedures in businesses' daily operations are quite small on average, and the benefits – e.g, reducing worker turnover, increasing the sustainability and minimizing the disruption of supply chains - are potentially high, especially if government-led strategies succeed at creating a level playing field in which firms that engage in exploitative labour practices face civil liability.

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- It is important to recognise, however, that the most advanced mHRDD laws have only been recently adopted, and that there are large variations both in the scope, enforcement and legal consequences of the HRDD laws in place in different countries.
  - Moreover, this type of legislative framework is not immune to some of the implementation and legal compliance challenges faced by disclosure legislation.
  - If due diligence legislation is to have the desired effect, it must be accompanied by mechanisms for the engagement of stakeholders and backed by a strong oversight and enforcement framework.
  - **Our review found evidence that import bans may help change corporate behaviour and improve working conditions in supply chains over the short run - particularly in industries that rely on just- in-time supply, for whom the loss of market access as a result of the bans has immediate and far reaching economic consequences. There is however considerable uncertainty about the broad, long-term impact of import bans.**
  - Particular attention must be devoted to the design and implementation of these instruments in view of their potentially devastating effects on workers and communities tied to companies losing market access due to the bans.
  - In order to enhance their effectiveness, import bans should not only seek to stop goods on entry, but also emphasise the remediation of victims and take a more transparent and coordinated approach to maximise effectiveness and reduce costs and resources associated with implementation.
  - Transparency and consistent application of the conditions that trigger an import ban, and the criteria that must be met in order for goods to be released would enhance the efficacy of this approach.
  - More research is needed to better assess the efficacy of import bans as a policy tool.
  - **As for the other stated-led initiatives, public procurement remains largely under-utilised as an instrument to promote corporate human rights awareness and prevent abuse, and thus its effectiveness is still difficult to gauge.**
  - In many cases, failure to use public procurement procedures to combat modern slavery takes place despite governments already having the necessary legal tools at their disposal.
  - **Similarly, while public finance institutions like sovereign wealth investors, public pension funds, export credit agencies and development agencies could potentially leverage their position to actively support the enforcement of anti-slavery and anti-trafficking norms, efforts in this direction remain rather limited.**

## Private mechanisms

- **Our research reveals that modern slavery presents distinct characteristics that set it apart from other aspects of supply chain ethics. As a result, monitoring and identifying forced labour requires a level of alertness and engagement that is at odds with the bureaucratised administration of conventional assurance and certification schemes.**
- Standard CSR tools like social audits and ethical certification are found, by themselves, to be incapable of tackling modern slavery in supply chains.
- **Responsible purchasing practices, as a voluntary mechanism, are also likely to be ineffective in improving working conditions in supply chains.**
- The adoption of such practices depends entirely on lead firms' commitment to improving working conditions or reputational concerns.
- Additionally, the short-term costs that lead firms would face in order to adopt such practices are bound to be rather high, while the benefits are uncertain and long-term at best.
- The extent to which responsible purchasing practices are likely to be effectively adopted is thus likely to vary across buyers and industries.
- Nonetheless, recent legislative initiatives - e.g., the EU's Unfair Trading Practices Directive 2019 and the UK's Agriculture Act 2020 - show that governments are increasingly attempting to encourage the adoption of responsible purchasing practices - or at least to ban unfair practices - in supply chains.
- While these legislative efforts have so far focused on "high-risk" supply chains (e.g., in the agri-food sector), they can be valuable tools to promote the adoption of responsible purchasing practices and contribute to their generalisation in other economic sectors.
- **The evidence on investor-led initiatives is less conclusive. On the one hand, socially responsible investment strategies do not seem to bring about significant, measurable improvements in firms' conduct.**
- This is partly due to the methodological flaws underlying ESG ratings institutional investors rely on: these indices aggregate performance indicators along a wide array of dimensions and their scores vary markedly across different rating agencies, so that their value as an instrument to measure modern slavery risks is limited.
- However, as the market for ESG investments evolves and consolidates, it is reasonable to expect that these methodological shortcomings can be overcome, and that ESG scores are eventually going to be capable of conveying useful information to guide socially responsible investors' decisions. This in turn should encourage firms to adopt



measures to prevent and/or address business-related human rights risks, as these measures will be accurately reflected in their share prices and affect their ability to access funding.

- **Anecdotal evidence, however, indicates that investor engagement initiatives may have contributed to raise awareness about the social impact of business activities and helped firms incorporate social concerns - including those related to labour conditions - in corporate decision-making.**
- Nonetheless, the success of these initiatives is highly contingent on firm-specific characteristics - including their motivation to address these risks - and are thus not necessarily generalisable.

### Worker-centred approaches

- **Worker Voice approaches offer in principle a cost-effective and scalable way for lead firms to reach workers, and a mechanism for anonymously raising concerns and disclosing sensitive information.**
- While these approaches are relatively novel and thus still evolving, in order for them to succeed careful attention must be given to: how questions are framed; inclusion of the most vulnerable workers; the integrity, privacy and security of data collected; ownership and compensation for the data; and access to remediation.
- Unless worker voice approaches are designed to address the inherent power imbalances that prevail in supply chains, they may face many of the problems that undermine the effectiveness of CSR approaches.
- **By involving workers in the creation, monitoring and enforcement of human rights standards, Worker-driven Social Responsibility (WSR) initiatives show more promise as a tool to fight modern slavery in supply chains.**
- Such initiatives can be especially successful when their design includes legally binding and enforceable contracts, financial incentives for compliance with labour standards, well specified complaints mechanisms, and regular audits run by independent and well trained monitoring bodies.
- However, the particular features of WSR initiatives vary across contexts, and questions remain about their replicability, transferability and generalisability.
- Extant research suggests that WSR initiatives can be a useful tool when used in combination with HRDD processes embedded in a state-mandated enforcement framework, rather than as a stand-alone approach.
- **Anecdotal evidence indicates that recruitment initiatives aimed at addressing unethical labour recruitment practices in supply chains can positively affect labour standards.**

- However, in a context in which most states have failed to limit or eliminate some of the most pernicious recruitment practices (above all, the charging of recruitment fees that throw workers into debt bondage and restrict their ability to challenge or leave exploitative jobs), such initiatives depend on the good will – or the reputational concerns – of businesses and recruitment agencies.
- As already mentioned in the discussion of transparency legislation, this reliance on businesses' good will and/or reputational concerns mechanism does not seem to be particularly effective, particularly in terms of having a long-term effect on corporate practices.

### Further considerations and policy recommendations

- Our review recognises that there is no silver bullet when responding to the inherent human rights challenges associated with our dynamic globalised economy. Instead, an approach that calls on governments, businesses, workers, consumers and investors to play their part in a mutually reinforcing way is needed.
- Our analysis suggests that the most effective strategy to combat modern slavery in supply chains would require governments to take a leading role in this fight - creating a level playing field for businesses genuinely attempting to do the right thing; setting clear standards for businesses, workers and investors that seek to address the root causes of this exploitation; but also - and equally important - enforcing those standards.
- Based on our reading of the literature and the evidence, the most promising government-led approach to achieve these goals would involve a combination of:
  - I. an - internationally harmonised- legislative framework imposing mandatory due diligence on firms (and investment portfolios) - accompanied by the imposition of legal liability on companies and company directors who fail to prevent these abuses, as well as the engagement of workers and trade unions in designing and monitoring reporting and redress mechanisms;
  - II. the application of such a legislative framework to public procurement and finance; and
  - III. transparent and coordinated imposition of import bans targeting specific companies and prioritising the remediation of victims rather than simply preventing goods from entering particular markets. As noted above, though, more research is needed to enhance the efficacy of import bans as a policy tool - paying attention to potential unintended consequences and their longer term impact.
- These government policies should be accompanied by industry - and sector-specific guidelines – jointly developed by government

agencies, firms, industry experts and sector-specific government organisations - aimed at allowing businesses to clearly understand:

- what modern slavery typically “looks like” in their particular area of activity, so they can better identify, prevent and/or address human rights risk in their particular operational context and
  - how government-led approaches should be practically implemented in such a context.
- From investors’ perspective, the development of international reporting standards - providing consistency and clarity about company performance - is critical to effectively identifying, addressing and preventing modern slavery in global supply chains
  - Such standards should be based on a set of high-quality, enforceable and globally accepted accounting and sustainability disclosure criteria which would inform a harmonised rating system
  - An important step in this direction has in fact already been taken by the IFRS Foundation, which in November 2021 announced the formation of a new International Sustainability Standards Board (ISSB) aimed at developing a comprehensive global baseline of high-quality sustainability disclosure standards to meet investors’ information needs.
  - The development of the ISSB is expected to help bring internationally comparable reporting standards on sustainability matters to the financial markets, and should in due time inform ESG ratings
- ESG ratings would be further strengthened by the disaggregation of E, S and G ratings, so that transparency and value are given to each important but inherently distinct sustainability criteria, and the establishment of global or internationally harmonised guidelines and terminology regulating ESG ratings.
  - More research is also needed to address knowledge gaps about the effectiveness of alternative government, corporate, investor and worker-centred strategies and to identify complementarities between these approaches.
  - Some of these gaps are likely to be filled thanks to ongoing evaluation studies on promising corporate-led and worker-centred studies. In particular, a series of rigorous evaluation studies on worker-voice technologies are expected to lead to relevant inferences that will allow researchers, practitioners and policy-makers better understand:
    - The conditions and context in which worker-voice technologies are more likely to work
    - As well as test the limits of these approaches in terms of their ability to help identify, prevent, reduce and redress labour exploitation in global supply chains

- Beyond these ongoing studies, possible avenues for future work include:
  - Designing new methodological approaches and implementing more systematic data collection efforts in order to identify and measure the prevalence of modern slavery in global supply chains and, more generally, to provide policy-makers, firms, investors, workers and consumers with better information about this phenomenon.
  - Conducting (and updating) systematic meta-analyses of existing evidence on the effectiveness of existing approaches, complementing and expanding on the work in this policy research in order to help better illustrate whether and under what conditions these different approaches are most/least effective, ultimately drawing more rigorous and generalisable policy recommendations.
  - Building a research network to periodically bring together key stakeholders - including governments, business, investors, workers, NGOs, academics and practitioners - in order to exchange ideas, data sources, and methodological insights, discuss future research projects, and share information that will enable these relevant actors to collaboratively design better policies aimed at combatting modern slavery in supply chains.

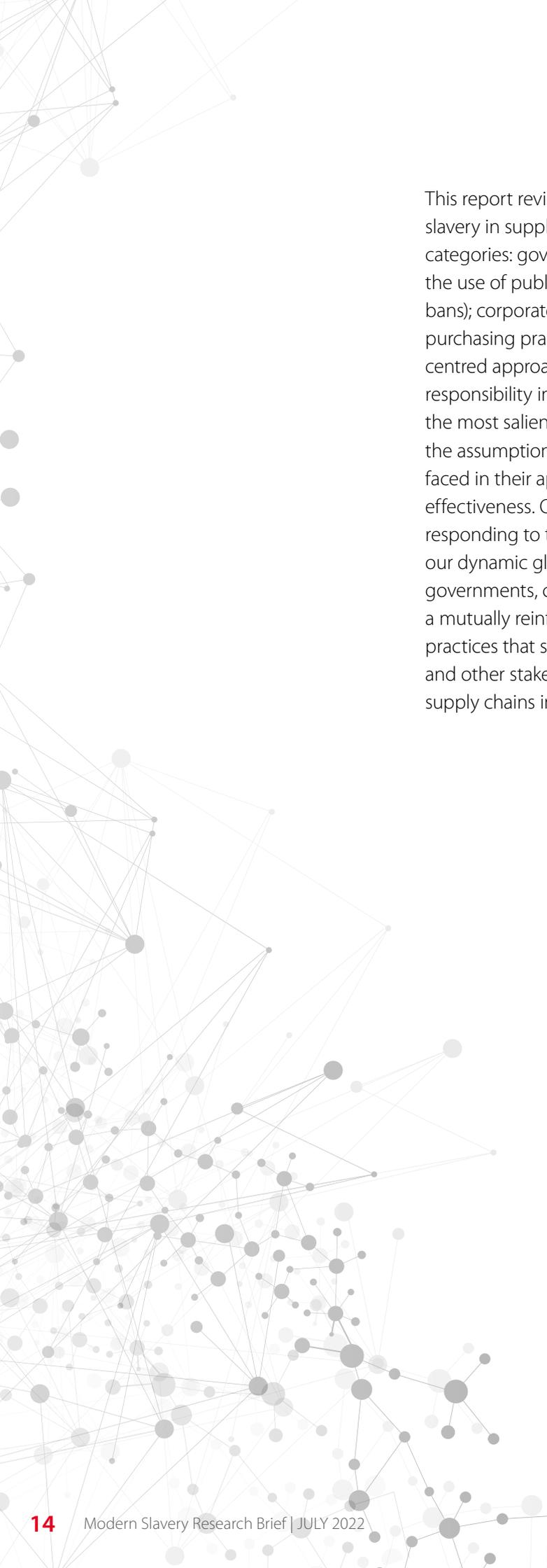
## 2 Introduction: Premise for the evidence review

It is estimated that almost 25 million people worldwide are victims of forced labour (including trafficking) every year [1], with more than 60% of them exploited in the private sector.

The globalisation of supply chains - facilitated by technological developments allowing the production processes of any given good or service to be located in different countries, and spurred by firms intent on maximising profits, reducing production costs (particularly labour costs) and limiting legal liability [2],[3] - has contributed to the deterioration of labour standards and work practices.

Governments, firms, civil society organisations, academics investors and other stakeholders have become increasingly aware of the risks of serious human rights abuses occurring within global supply chains. Business operations seeking to maximise profits at the expense of ever-lower labour costs and shorter lead times, weak and heterogeneous legal frameworks that fail to uphold labour standards, and the inherent difficulties involved in monitoring extremely fragmented production processes render workers – mostly in and from developing countries - vulnerable to exploitation. The COVID-19 pandemic has exacerbated concerns for vulnerable supply chain workers, exposing the “fragility of global supply chains and the enormous risks to human and labour rights in a highly interconnected global economy that is not governed by the rule of law” [4].

Most of the efforts aimed at tackling modern slavery in supply chains since the 1990s have placed the emphasis on corporate social responsibility (CSR) and other private governance mechanisms of voluntary nature [5]. In view of the rather limited achievements of such strategies, the last two decades have witnessed a rise in the number of legislative interventions on the part of regional and national states, as well as the emergence of alternative approaches such as public procurement schemes and worker-driven social responsibility initiatives - aimed at engaging governments, business, workers and other relevant stakeholders in anti-slavery efforts.



This report reviews the breadth of approaches to combatting modern slavery in supply chains. These can be broadly classified into three categories: government-led initiatives (including legislative interventions, the use of public procurement and finance schemes, and import bans); corporate and investor-led approaches (CSR, responsible purchasing practices, and ethical investment schemes); and worker-centred approaches (worker voice technologies, worker-driven social responsibility initiatives, and ethical recruitment practices). We describe the most salient characteristics of each of these approaches, discuss the assumptions underlying their design and the practical challenges faced in their application, and review the available evidence on their effectiveness. Our review recognises that there is no silver bullet when responding to the inherent human rights challenges associated with our dynamic globalised economy. Instead, an approach that calls on governments, companies and other stakeholders to play their part in a mutually reinforcing way is needed. We end by pointing to certain practices that show some promise of helping governments, companies and other stakeholders more effectively tackle human trafficking within supply chains in the future.



## 3 Government-led initiatives

The UN Guiding Principles on Business and Human Rights (UNGPs), also known as the “Ruggie Framework”, are grounded in the recognition that governments have an obligation to respect, protect and fulfil human rights and fundamental freedoms against abuses by third parties, including business enterprises. Although states may not be responsible per se for abuse by private actors, they may be in a breach of their obligations where they fail to prevent, investigate, punish and redress such abuses through effective policies, legislation, regulations and adjudications [6].

Over the last decade, states have resorted to three main types of policy instruments in their attempt to tackle modern slavery in supply chains: i) the adoption of legislative initiatives imposing mandatory requirements onto companies to disclose information about labour issues and – more recently – to identify, prevent, mitigate and communicate risks to human rights; ii) the application of these laws to public procurement and public finance schemes; and iii) the introduction of import bans for goods suspected of being produced with forced labour.

### 3.1. Legislative Interventions

Legislative interventions aimed at increasing the obligation of firms regarding their social and labour standards can be grouped in two main categories: those focusing on labour-related disclosure requirements, and those that emphasise the implementation of human rights due diligence measures (HRDD) as part of a comprehensive and recurrent exercise aimed at identifying, preventing and/or mitigating potential human rights risks in their supply chains.<sup>1</sup>

#### Disclosure legislation

Legislative efforts to tackle modern slavery in supply chains focused initially on increasing transparency in parent or lead companies - i.e.,

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<sup>1</sup> The notion of HRDD as the principal method by which companies would discharge their responsibility with respect to human rights was prominently established in the 2011 United Nations Guiding Principles on Business and Human Rights [6].

those at the top of the supply chain - through disclosure or reporting laws [7]. Disclosure legislative frameworks - prime examples of which are the California Transparency in Supply Chains Act of 2010, the United Kingdom Modern Slavery Act of 2015 or Australia's Modern Slavery Act 2018 - are eminently declaratory in nature: they essentially require companies to report on policies and activities related to the assessment and monitoring of human rights risks and the improvement of labour standards in their supply chains. This legislation falls short of demanding that firms implement such measures, or to prove that they are effective in enhancing labour conditions within their supply chains. Some disclosure legislative initiatives implicitly assume the adoption of HRDD measures, but none explicitly require their actual implementation.

### Key characteristics and underlying assumptions

As shown in Table 1, the characteristics and stringency of reporting laws vary considerably in terms of auditing requirements, the details of the disclosure statements, and the severity of fines for non-compliance with reporting requirements.<sup>2</sup>

Nonetheless, there are two key features common to virtually all these legislative schemes: i) they rely on the economic leverage (e.g., purchasing and market power) of the businesses at the top of the chain (typically located in developed countries) to impact labour rights and working conditions throughout their supply chains (especially in developing countries); and ii) they rely on the pressure of public opinion as the main or only source of behavioural change.

The fundamental assumption underlying transparency legislation is therefore that consumers, investors, shareholders and the civil society as a whole will use the information disclosed by companies to hold them accountable. Firms competing for investor and consumer support would be pressured to demonstrate greater compliance with labour standards by adopting internal processes aimed at incorporating modern slavery risks in their corporate decision-making and company culture [8].

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<sup>2</sup> Table 1 summarises the key characteristics of three of the most prominent disclosure laws currently in place: the California Transparency in Supply Chains Act 2010, the UK Modern Slavery Act 2015, and the Australian Modern Slavery Act 2018. Table A.1 in the Appendix provides a more comprehensive list of disclosure laws and outlines their core features.

Table 1. Prominent examples of disclosure legislation

Legislation	California Transparency in Supply Chains Act, 2010	UK Modern Slavery Act, 2015	Australia Modern Slavery Act, 2018
Coverage	Firms operating in California with worldwide annual revenues of US\$100 million and above.	Commercial organisations operating in the UK with a turnover of more than £36 million.	Businesses and entities in Australia with consolidated annual revenue of at least AUD\$100 million
Disclosure and Auditing requirements	Efforts related to verification, audit, certification, accountability and training. Firms should also disclose whether audits were conducted, and whether a third party conducted them.	Organisational structure and supply chains, policies, due diligence processes and their effectiveness, risk mapping, staff training. Disclosure on audits is optional.	Organisational structure and supply chains, risk mapping, actions taken (including due diligence processes and remediation), effectiveness, stakeholder consultations, any other relevant information. Disclosure on audits is not specified.
Penalties for non-compliance	No direct penalties for non-disclosure. The Attorney General can bring action for a violation of the law.	The Secretary of State may apply to the High Court for an injunction against any company that fails to comply, failure to comply with the injunction can lead to an unlimited fine.	Government can publicly name entities that fail to comply. The Government can also require non-compliant entities to take remedial action (including providing or revising a statement).



Source: Based on Phillips, Lebaron and Wallin (2018 {5}).

Proponents of this approach argue this type of non-state, stakeholder-driven enforcement mechanism is potentially easier to implement and more cost-effective than direct regulatory intervention, especially in complex settings - like global supply chains - into which governments have limited insight or know-how and where unintended consequences of government intervention can thus be quite harmful.<sup>3</sup>

### How effective is this approach?

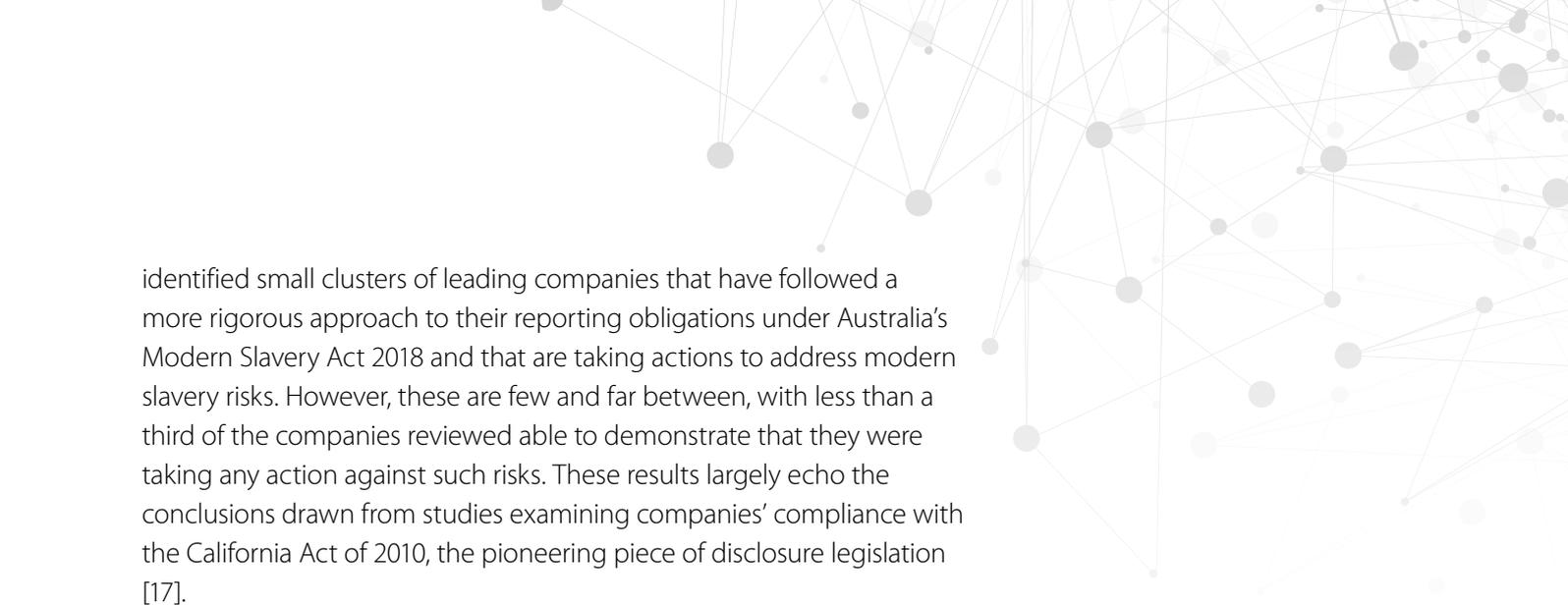
There is some indication that disclosure legislation has contributed to enhanced transparency regarding labour practices in global supply chains, as well as raised corporate and public awareness of labour standards [10]-[11]. However, available evidence suggests that the effectiveness of this kind of legislative intervention - in terms of changing the behaviour of firms or suppliers and actually bolstering labour conditions - has been quite limited [5], [12].

There are several reasons for this. First, since many of the disclosure laws in force do not impose sanctions for failing to comply with reporting standards (or such sanctions are not enforced in practice), a significant proportion of the companies covered in the legislation simply do not make the required information publicly available. For instance, by 2021, six years after the passage of the United Kingdom Modern Slavery Act of 2015 (MSA 2015), the rate of non-compliance among companies covered under the law was 40%. Despite this, no injunctions or penalties were applied in the first six years after the MSA 2015 came into effect [13].

Additionally, the lack of clarity and precision about specific reporting requirements usually present in disclosure laws means that even statements that do get submitted exhibit substantive gaps and issues around the quality of the information being disclosed. It is estimated that roughly a third of the statements submitted by UK companies covered in the MSA 2015 provide no information about their risk assessment processes, and two-thirds of them do not identify any priority risks [14]-[15]. Similar findings hold regarding other national disclosure legislations. A recent Australian analysis of modern slavery statements made in high risk sectors found that more than half (52%) of the 102 companies reviewed failed to identify and disclose salient risks in their operations and supply chains - despite operating in sectors that have been repeatedly identified as exhibiting systemic abuses, like the garment, seafood, gloves and horticulture industries [16]. The analysis

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<sup>3</sup> A common concern voiced by companies - both at the top but also further down in the supply chain - is that direct - and presumably stricter and more onerous - regulatory interventions by governments with limited knowledge of the specific sector in which supply chains operate may end up placing firms at a competitive disadvantage internationally, negatively affecting domestic employment and economic growth [8]-[9].

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identified small clusters of leading companies that have followed a more rigorous approach to their reporting obligations under Australia's Modern Slavery Act 2018 and that are taking actions to address modern slavery risks. However, these are few and far between, with less than a third of the companies reviewed able to demonstrate that they were taking any action against such risks. These results largely echo the conclusions drawn from studies examining companies' compliance with the California Act of 2010, the pioneering piece of disclosure legislation [17].

The lack of clarity of reporting requirements and the rather lax enforcement mechanisms means that firms can ultimately decide on the extent to which they engage with the legislation. Most companies that do decide to comply with disclosure laws tend to take the reporting procedure as a box-ticking or cosmetic exercise [17]. This often leads businesses to limit the disclosure of information to what is minimally required by law, focusing on broad, self-legitimising commitments serving public relations purposes rather than disclosing information that accurately reveals or addresses modern slavery risks [8].

Furthermore, most transparency laws fail to establish specific benchmarks and targets that companies need to include in their disclosure statements, as well as to stipulate consistent public or commonly accepted baseline standards to which companies should adhere or aspire. The lack of standardised sets of indicators and mechanisms for measuring performance, coupled with the fact that businesses simply need to disclose any efforts they make to prevent and address labour exploitation within their supply chains - but not the outcomes of such efforts - makes it virtually impossible for consumers, investors or civil society organisations to use the data generated by firms to assess their progress towards key objectives and pressure businesses to improve labour standards [5].

More fundamentally, a key reason for the limited success of disclosure legislation in transforming corporate behaviour is its heavy reliance on the pressure of external stakeholders - consumers, investors, and shareholders - as the main enforcement mechanism. This unique characteristic of disclosure legislation sets it apart from other regulatory models used to prevent, address or bring about accountability for corporate harms. The vast majority of these other models provide for some role of the state in monitoring, enforcing and implementing them.

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**The lack of clarity of reporting requirements and the rather lax enforcement mechanisms means that firms can ultimately decide on the extent to which they engage with the legislation**

**A key reason for the limited success of disclosure legislation in transforming corporate behaviour is its heavy reliance on the pressure of external stakeholders as the main enforcement mechanism**

The absence of this role is arguably the main factor hampering disclosure legislation's effectiveness.<sup>4</sup> There is no systematic evidence that consumer or investor concerns about labour standards necessarily fosters corporate action and drive tangible change regarding business-related human rights risks [19]-[20]. There have been isolated instances where public disclosure has been used effectively as a tool to shape corporate behaviour [18]. On the whole, however, disclosure legislation's reliance on public scrutiny as the sole enforcement mechanism has not proven to significantly affect labour standards or human rights risks in supply chains. In this direction, the available evidence and academic literature clearly indicates that reliance on public scrutiny cannot substitute for state enforcement or worker organising as a means to improve working conditions in supply chains [19].

### **Human Rights Due Diligence Legislation**

In view of these challenges, more recent legislative initiatives have increasingly required regulated firms to actually implement supply chain human rights due diligence measures, which – under the UNGPs – comprise essentially four steps: “assessing actual and potential human rights impacts; integrating and acting on the findings; tracking responses; and communicating about how impacts are addressed” [6].

In addition to these national-level initiatives, the European Commission (EC) published a draft Directive in February 2022 setting out mandatory human rights and environmental due diligence obligations for corporations, together with a civil liability regime to enforce compliance with the obligations to prevent, mitigate and bring adverse impacts to an end. The Directive will now undergo further review and debate, but it is anticipated that it will be adopted by the European Parliament and subsequently implemented into domestic legal systems by 2027. Given the significance of the EU as a market, this proposal has the potential to be a “global game-changer” [21].<sup>5</sup>

Table 2 summarises the main features of some of the most prominent HRDD laws in force: the French “Vigilance Law” enacted in 2017, the Dutch Child Labour Due Diligence Act 2019, Germany's Supply Chain Due Diligence Act and the Norwegian Transparency Act, both adopted in 2021.

<sup>4</sup> For example, in the UK, all such regulatory models - like Consumer Protection Act 1987, the Company Act 2006, Bribery Act 2010, the Equality Act 2010 and the Health and Safety regulation, among others - ascribe a clear and important role to the state (encompassing administrative functions, investigations, inspections, civil and criminal sanctions) that has been found to enhance their effectiveness [18].

<sup>5</sup> Table A.2 in the Appendix summarises the key characteristics of the EU draft directive on mandatory human rights and environmental due diligence, as well as of the Swiss Conflict Minerals and Child Labour Due Diligence legislation, which entered into force on January 1, 2022.

Table 2. Prominent examples of HRDD legislation

<b>Legislation</b>	<b>France Corporate Duty of Vigilance Law 2017</b>	<b>Netherlands Child Labour Due Diligence Law 2019</b>
<b>Coverage</b>	Companies with more than 5000 employees in French-based subsidiaries or more than 10,000 employees including global subsidiaries	Companies of any legal form or size that sell and/or supply goods or services to Dutch consumers, no matter where they are based or registered
<b>Due Diligence procedures</b>	Implementation of vigilance plan	Companies must investigate whether there is a reasonable suspicion that a product or service in its supply chain has been produced with child labour
<b>Redressal mechanisms</b>	Civil liability for harmed individuals	Criminal liability; responsible company director can face up to two years of prison
<b>Penalties for non-compliance</b>	Formal notice, penalty for each day of non-compliance.	Fines starting from EUR 4,350 up to EUR 870,000 or 10% of total worldwide revenue for non-compliance

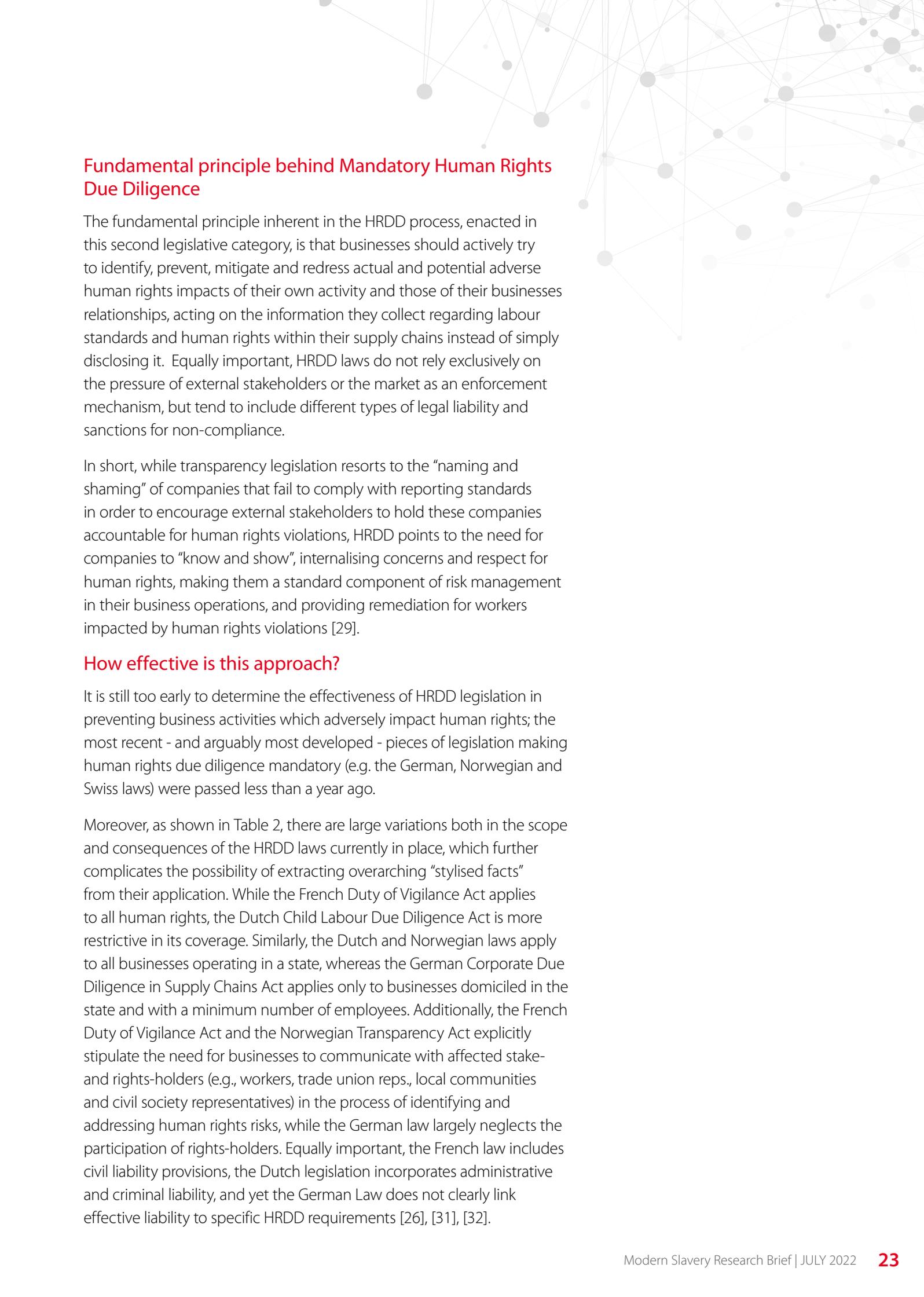


Netherlands  
France

<b>Legislation</b>	<b>Germany Supply Chain Due Diligence Act 2021</b>	<b>Norway Transparency Act 2021</b>
<b>Coverage</b>	Companies with at least 1,000 employees with head office, administrative seat or statutory seat in Germany OR companies with a branch in Germany and employ at least 1,000 employees in this branch	Companies resident in Norway and foreign companies operating in Norway, that meet at least two of three criteria: <ol style="list-style-type: none"> <li>1. At least 50 full-time employees (or equivalent annual man-hours)</li> <li>2. Annual turnover of at least NOK 70 million (£5.9 million)</li> <li>3. A balance sheet sum of at least NOK 35 million (£2.95 million)</li> </ol>
<b>Due Diligence procedures</b>	Processes to identify, assess, prevent and remedy human rights risks and impacts in their supply chains, and provide ways for employees of indirect suppliers to file a complaint alerting the company to human rights violations	Due diligence activities in proportion to the size of a business and the severity and likelihood of violations; companies must report on these activities and make this information available on their corporate websites
<b>Redressal mechanisms</b>	Federal Office for Economic Affairs and Export Control can impose measures to ensure compliance; trade unions and NGOs can conduct litigation on behalf of affected parties	Not specified
<b>Penalties for non-compliance</b>	Fines for violations of due diligence and reporting obligations of up to EUR 8 million; exclusion from public tenders for up to 3 years	Fines and injunctions (not specified yet)



Source: Based on Allen & Overy (2020 [22]), Business and Human Rights Resource Centre (2021 [23]), Ropes and Gray (2021 [24], 2022 [25]), Savourey and Brabant (2021 [26]), Thomson (2021 [27]), Office of the United Nations High Commissioner for Human Rights (2021 [28]).



## Fundamental principle behind Mandatory Human Rights Due Diligence

The fundamental principle inherent in the HRDD process, enacted in this second legislative category, is that businesses should actively try to identify, prevent, mitigate and redress actual and potential adverse human rights impacts of their own activity and those of their businesses relationships, acting on the information they collect regarding labour standards and human rights within their supply chains instead of simply disclosing it. Equally important, HRDD laws do not rely exclusively on the pressure of external stakeholders or the market as an enforcement mechanism, but tend to include different types of legal liability and sanctions for non-compliance.

In short, while transparency legislation resorts to the “naming and shaming” of companies that fail to comply with reporting standards in order to encourage external stakeholders to hold these companies accountable for human rights violations, HRDD points to the need for companies to “know and show”, internalising concerns and respect for human rights, making them a standard component of risk management in their business operations, and providing remediation for workers impacted by human rights violations [29].

### How effective is this approach?

It is still too early to determine the effectiveness of HRDD legislation in preventing business activities which adversely impact human rights; the most recent - and arguably most developed - pieces of legislation making human rights due diligence mandatory (e.g. the German, Norwegian and Swiss laws) were passed less than a year ago.

Moreover, as shown in Table 2, there are large variations both in the scope and consequences of the HRDD laws currently in place, which further complicates the possibility of extracting overarching “stylised facts” from their application. While the French Duty of Vigilance Act applies to all human rights, the Dutch Child Labour Due Diligence Act is more restrictive in its coverage. Similarly, the Dutch and Norwegian laws apply to all businesses operating in a state, whereas the German Corporate Due Diligence in Supply Chains Act applies only to businesses domiciled in the state and with a minimum number of employees. Additionally, the French Duty of Vigilance Act and the Norwegian Transparency Act explicitly stipulate the need for businesses to communicate with affected stake- and rights-holders (e.g., workers, trade union reps., local communities and civil society representatives) in the process of identifying and addressing human rights risks, while the German law largely neglects the participation of rights-holders. Equally important, the French law includes civil liability provisions, the Dutch legislation incorporates administrative and criminal liability, and yet the German Law does not clearly link effective liability to specific HRDD requirements [26], [31], [32].

## Lessons from due diligence obligations in other fields

Despite the challenge of drawing lessons directly from these approaches, extant evidence suggest that voluntary implementation of human rights due diligence measures by companies is likely to be low [33], and thus the most promising legislative efforts for tackling modern slavery in supply chains are those that incorporate HRDD procedures backed by strong regulatory penalties for non-compliance. This is a critical element that is also present in the application of HRDD measures in other fields of domestic and international law. The UK Bribery Act 2010, for instance - which not only establishes due diligence procedures for companies to implement mechanisms aimed at preventing harms, but also individual and corporate criminal liability alongside stringent sanctions for non-compliance - has been able to spur much deeper changes in corporate behaviour than the MSA 2015.<sup>6</sup> A comparative analysis of the impact of these two pieces of legislation on twenty-five of the largest UK companies across different economic sectors reveals that, by coupling due diligence with binding public standards, the Bribery Act has more effectively steered corporate strategies - leading firms to adopt clear and strict policies on bribery which they communicate to their suppliers. Compared to the issue of modern slavery, bribery is given a more central role within company reporting, figures more prominently in buyer-supplier documents, and occupies a more important place in companies' policies and codes of conduct [35].

There is also evidence that requiring rights holders to be part of any process aimed at providing an effective remedy for corporate human rights abuses is likely to enhance the effectiveness of HRDD legislation [36]. One study points to the lack of a "comprehensive and accountable means of engaging workers as well as their unions" as a significant impediment to improving workplace conditions [37]. While the involvement of stakeholders has been characterised by some authors as a defining trait of human rights due diligence,<sup>7</sup> some HRDD pieces of legislation (e.g. the German Germany's Supply Chain Due Diligence Act 2019) have failed to explicitly acknowledge the importance of this element into the text of the law. The same holds for the EC draft Directive, which largely neglects the importance of workers, trade unions and communities in the due diligence process [38]. The available evidence indicates that incorporating rights holders in the design and implementation of HRDD processes, and institutionalising mechanisms by which they may meaningfully challenge

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<sup>6</sup> The UK Criminal Finances Act 2017 is another example of how the use of legal liabilities and sanctions can more effectively shape corporate behaviour - in this case, preventing tax evasion. Both the Bribery Act 2010 and the Criminal Finances Act 2017 have been identified as relevant "models" that could provide relevant guidance for the strengthening of modern slavery legislation in the UK [33].

<sup>7</sup> In fact, this is a central feature that distinguishes human rights risk management from commercial, technical or political risk management [29].

corporate practices, is key to ensuring the effective identification and remediation of business human rights abuses.

## Practical challenges

HRDD legislation is not immune to some of the implementation and legal compliance problems faced by disclosure legislation. In this direction, a report by the Duty of Vigilance Radar found in 2021 that 44 out of 263 companies covered in the French “Vigilance Law” had still not published their vigilance plans (see Table 2) [39]. This is partly due to the absence of a formal, publicly available list of businesses covered by the law (a common feature of several reporting and HRDD laws),<sup>8</sup> but also to the fact that, as is the case for disclosure legislation, most HRDD laws do not contain adequate safeguards to ensure that duties are carried out properly and in accordance with the relevant legislation, and largely rely on “non-coercive” enforcement [7], [33].

Additionally, while remediation for workers impacted by human rights violations should be an integral part of human rights due diligence [40], effective grievance and remediation systems are not always necessarily incorporated in HRDD legislative initiatives. For instance, as shown in Table A.2, the recent EC proposal for a Directive on Corporate Sustainability Due Diligence a rather vague and lightly worded provision on “complaints mechanisms” that – according to some analyses - falls short of facilitating meaningful access to remedy, especially for the more vulnerable workers [38],[41].

Another challenge faced by HRDD legislation is that it imposes additional responsibilities and burdens on the businesses vis-à-vis disclosure legislation, which would in principle make it costly for businesses. However, a study conducted by the British Institute of International and Comparative Law, Civic Consulting and the London School of Economics for the European Commission indicates that costs associated with the implementation of mandatory due diligence procedures estimated that the recurrent costs of carrying out due diligence procedure throughout a company’s supply chain amounts to less than 0.14% of the revenue of small and medium-sized enterprises on average, and less than 0.01% of the revenue of large companies [30]. Hence, the evidence indicates that economic considerations should not be a major deterrent to the adoption of mandatory HRDD legislation.

Altogether, despite these difficulties, our review of the evidence indicates

**Due diligence procedures must be accompanied by mechanisms for stakeholder engagement and backed by a strong oversight and enforcement framework**

<sup>8</sup> The Australian Modern Slavery Act 2018 is an exception in this regard. There have been calls for a similar registry in the UK (see Independent Review of the Modern Slavery Act 2015), although no formal list exists. The UK government did launch a modern slavery statement registry online in 2021 (<https://modern-slavery-statement-registry.service.gov.uk/>), encouraging organisations to share the positive steps they have taken to tackle and prevent modern slavery through this platform.

that HRDD legislation holds the promise of catalysing comprehensive and effective change in corporate practices. To that end, however, due diligence procedures must be accompanied by mechanisms for stakeholder engagement and backed by a strong oversight and enforcement framework that acts as a deterrent but also encourages businesses to comply with HRDD.<sup>9</sup>

A step in this direction would be the creation of a regulatory body in charge of overseeing the implementation of the HRDD legislation. Among other tasks, this regulatory body would be responsible for: keeping an annually-updated list of companies covered by human rights due diligence requirements; investigating the accuracy of - at least a sample of - the reports submitted by companies covered in the law; compelling businesses to correct and complement the disclosure, receiving complaints from stakeholders regarding discrepancies and inaccuracies in the reports; imposing penalties for non-compliance; and submitting reports to the relevant - civil, penal, and/or administrative - court [7].

### 3.2 Public Procurement Schemes

Another avenue through which government bodies can play a role in the fight against modern slavery is by deploying the power of the public purse - using public procurement to influence demand for goods and services suspected of involving modern slavery and human trafficking..

#### Principles underlying this approach

Public procurement globally accounts for more than £6 trillion; in the UK, the government awards £274 billion - almost 15% of the country's GDP - worth of central government contracts to private firms [42]-[43]. Given the scale of public spending in the global economy, public procurement provides governments with a potentially powerful tool for shifting corporate behaviour, leading by example - i.e., implementing the actions and behaviour change they demand of companies - and extending reach beyond the large companies typically covered in anti-slavery legislation to include small and medium-sized companies often excluded from disclosure and due diligence requirements.<sup>10</sup>

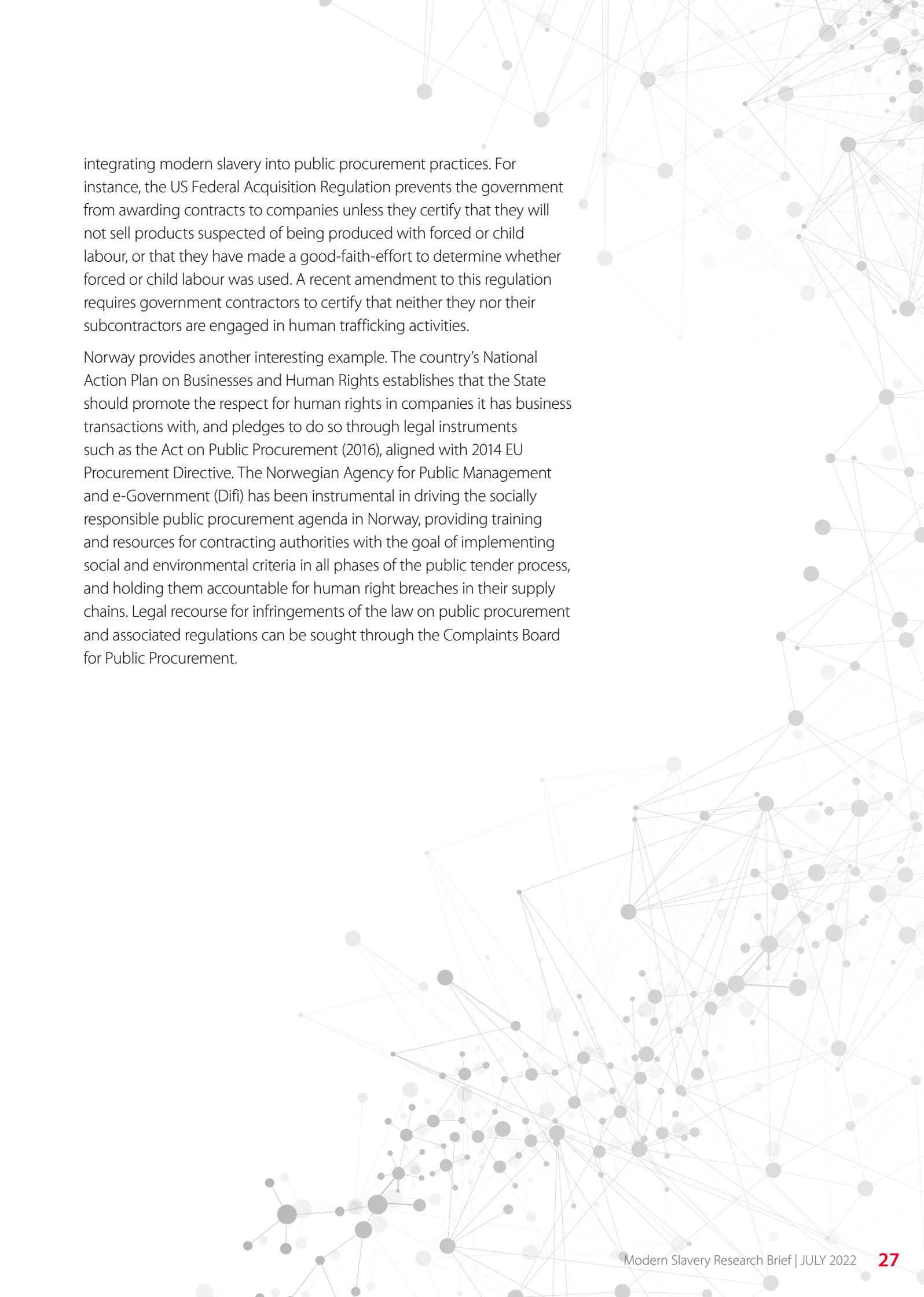
#### How effective is this approach?

As seen in Table 3, some countries are already attempting to leverage their economic influence to combat business human rights abuses,

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<sup>9</sup> In this respect, the new EU proposal falls short again, as workers, trade unions and other stakeholders are not effectively involved in the design, implementation and monitoring of grievance mechanisms [41].

<sup>10</sup> For instance, the UK government has announced that 33% of the central government procurement spend should go to small and medium-sized enterprises (SMEs) by 2022. Over half of the SMEs are not covered by the MSA 2015 (i.e., they fall under the reported threshold displayed in Table 1), but could be encouraged to comply with it through the use of public procurement procedures [44]-[45].

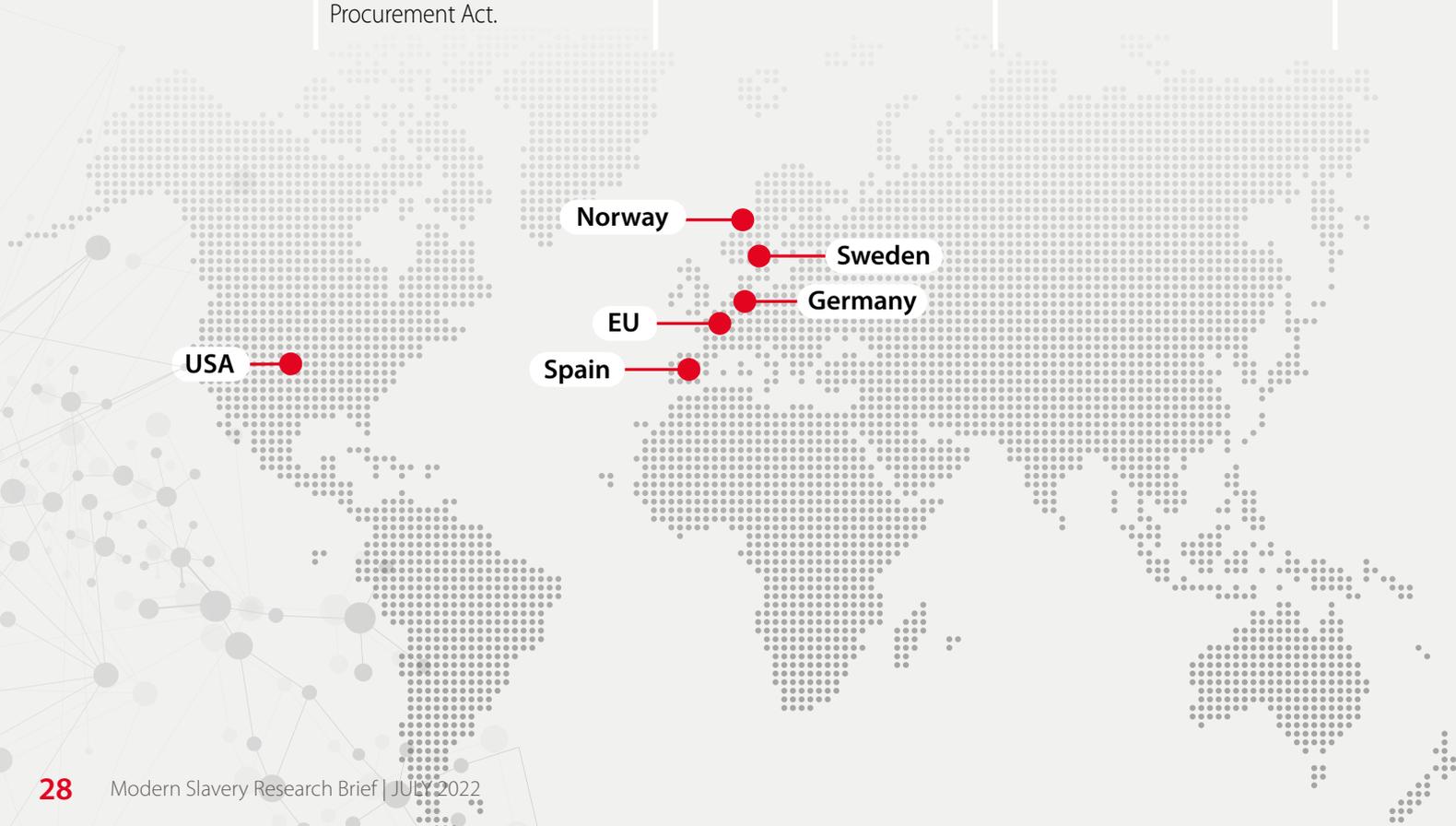


integrating modern slavery into public procurement practices. For instance, the US Federal Acquisition Regulation prevents the government from awarding contracts to companies unless they certify that they will not sell products suspected of being produced with forced or child labour, or that they have made a good-faith-effort to determine whether forced or child labour was used. A recent amendment to this regulation requires government contractors to certify that neither they nor their subcontractors are engaged in human trafficking activities.

Norway provides another interesting example. The country's National Action Plan on Businesses and Human Rights establishes that the State should promote the respect for human rights in companies it has business transactions with, and pledges to do so through legal instruments such as the Act on Public Procurement (2016), aligned with 2014 EU Procurement Directive. The Norwegian Agency for Public Management and e-Government (Difi) has been instrumental in driving the socially responsible public procurement agenda in Norway, providing training and resources for contracting authorities with the goal of implementing social and environmental criteria in all phases of the public tender process, and holding them accountable for human right breaches in their supply chains. Legal recourse for infringements of the law on public procurement and associated regulations can be sought through the Complaints Board for Public Procurement.

Table 3. Prominent examples of disclosure legislation

Country/Region	Coverage	Procedure	Legal Recourse
<b>US Federal Acquisition Regulation.</b>	Government contractors and subcontractors (including contracts performed outside the US), with values above US\$500,000	Requires the US Department of Labor to prepare a list of products requiring contractor certification regarding the use of forced or indentured child labour.  The Federal Government will not award a contract unless the company certifies that they will not sell a product on the list, or that they have made a good-faith effort to determine whether forced child labour was used.	Contractors are obliged to terminate sub-contractors that engage in trafficking, and protect employees who are harmed by trafficking.
<b>Norway Act on Public Procurement 2016.</b>	Applies to purchases of goods and services across a wide arrange of projects (from major construction projects to the purchase of specialized healthcare equipment). Each public enterprise is responsible for its own procurement, in line with the National Public Procurement Act.	Requires public authorities to have appropriate measures, procedures and routines to promote the respect of fundamental rights through public procurement when there is a risk of violation of such rights.	Not explicitly defined.



Country/Region	Coverage	Procedure	Legal Recourse
<b>German Federal Government Sustainability Compass, in partnership with the Swiss Federal Procurement Conference.</b>	Contracting authorities in Germany and Switzerland.	Provides contracting authorities and socially responsible suppliers with information and facilities on socially responsible public procurement practices, on specific labour standards risks, labelling schemes, guidelines for procurement criteria and practical examples from other local contracting authorities.	Not explicitly defined.
<b>Spanish Law of Public Contracts.</b>	Local contracting authorities.	Public authorities can include social conditions in contracts in order to foster respect for basic labour rights in the supply chain, in compliance with the ILO Conventions.	Not explicitly defined.
<b>EU Public Procurement Directive 2014/24/EC.</b>	EU member states.	Requires EU member states to adopt measures to ensure that, in the performance of public contracts, suppliers comply with applicable obligations in the fields of environmental, social, and labour law established by the EU, national law, collective agreements, or international labour law provisions (including the ILO Core Conventions).	Remedies available will be inherent in the laws of the state liable for damages for breach of EU law.
<b>Sweden Central Purchasing Bodies.</b>	Individual contracting authorities are responsible for their procurement activities.	The Swedish National Agency for Public Procurement lists all procurement goods on their website, as well as possible labour standards risks that may arise. On their website they have a procurement tool plan and manage responses to various labour standards risks.	Not explicitly defined.

Source: Based on Business and Human Rights Resource Centre (2017 [36]), National Agency for Public Procurement (2017 [46]), Conlon (2019 [47]), and UK Civil Service (2019 [48]).

## Practical challenges

Even though these are promising developments, the role of public procurement as an instrument to promote corporate human rights awareness and prevent abuse remains largely under-utilised, and thus its effectiveness is still difficult to gauge [22]. A survey of 20 jurisdictions conducted in 2016 by the International Learning Lab on Public Procurement and Human Rights found that, while the UNGPs highlight that states need to avoid involvement in human rights abuses through their purchasing practices, public bodies had still not taken this responsibility into consideration in their public procurement procedures [39]. In many cases, failure to use public procurement procedures to combat modern slavery in supply tools takes place even when governments already have the necessary legal tools at their disposal.<sup>11</sup>

For instance, while the MSA 2015 requires companies to disclose their efforts to eradicate modern slavery from their supply chains, the UK government only published guidance notes on tackling modern slavery in its own supply chains in 2019, and it was not until 2021 when it issued the first modern slavery statement aimed at identifying, mitigating and managing the risks in the contracts held across the Cabinet Office and its agencies [51]-[52].<sup>12</sup> While these are undoubtedly steps in the right direction, the government has awarded millions of pounds in contracts to businesses that fail to comply with the MSA 2015: a report by Sancroft and Tussell indicates that, by 2018, 40% of the UK government's top 100 contractors had failed to meet the basic requirements of Section 54 of the MSA 2015 [54]. There is also evidence that, during the COVID-19 pandemic, the UK government sourced personal protective equipment (gloves, in particular) for NHS workers from Malaysian companies facing modern slavery allegations - despite internal warnings over the prevalence of human trafficking in the Malaysian glove industry [55]-[56].<sup>13</sup>

Similarly, while the Walsh-Healey Public Contracts Act of 1936 prohibits US federal agencies from purchasing sweatshop goods in contracts of more than US\$ 10,000 of value, the US Secretary of Labour has exempted imported goods or services from this provision, so in practice protections do not extend to government supply chains abroad [36].

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<sup>11</sup> One of the explanations for this – in addition to office-holders' potential lack of political will to implement the anti-slavery legislation in force or the fact that such legislation is sometimes passed and used by governments as a "public relations" device - is the lack of clarity in the public procurement guidelines and regulations [50].

<sup>12</sup> Additionally, from 2021, ministerial government departments are scheduled to publish individual statements to provide greater transparency on the steps they are taking, and the Home Secretary committed to extend the Modern Slavery Acts' reporting requirements to large public bodies too [53].

<sup>13</sup> The UK government is currently facing legal action over its decision to use the UK subsidiary of a Malaysian company accused of relying on forced labour (Supermax) as one of the approved suppliers for disposable gloves for NHS workers [57].

## Further considerations

Despite these problems, national and sub-national governments are increasingly acknowledging that procurement procedures offer them the opportunity to exert leadership in combatting modern slavery. In the UK, Baroness Young of Hornsey's Modern Slavery (Transparency in Supply Chains) Bill has called for the remit of Section 54 of the MSA 2015 to apply to public bodies (i.e., requiring the government to do what is already required of businesses), while the Welsh government has produced a code of practice encouraging public buying authorities to ensure that employment practices are considered as part of the procurement process and to ask bidders in tenders to consider the impact that low quotes may have on their workers [58]. In Norway, the government has introduced regulations which limit the number of layers in supply chains for its cleaning and construction contracts, removing an enabling factor of forced labour [59].

It is however necessary to adopt broader regulatory changes in order to unlock the potential of public procurement as a tool to shape private sector behaviours and incentives. Establishing mandatory due diligence reporting obligations for relevant public bodies, including modern slavery provisions in social clauses of public procurement, engaging with companies involved in modern slavery violations or that fail to report under mandatory reporting provisions in order to help them change their practices, and setting harmonised international standards for public procurement, are key for governments to help improve businesses practices to reduce modern slavery [36], [50].

In addition to these types of regulatory changes, other “pragmatic” measures that public entities could adopt to help better monitor, mitigate and address human rights risks in their supply chains include: consolidating suppliers (especially in sectors in which the risk of modern slavery is higher, like cleaning services and construction); moving to longer-term contracts (which should reduce the uncertainty and short-term pressures faced by businesses, which often drives them to adopt questionable work practices); increasing the granularity of purchasing data (which could facilitate risk identification); and merging procurement needs across different purchasing agencies (e.g., local governments) in order to further leverage the economic weight of – small and medium - public entities [60].

Obviously, implementing measures aimed at enhancing the power of public procurements as a tool to combat modern slavery in supply chains requires not only political will, but also devoting resources and training to

enable civil servants and public procurement professionals to carry out these measures and carefully considering their potentially unintended consequences.<sup>14</sup>

### 3.3 Public Finance

Beyond the inclusion of public sector bodies in mandatory due diligence and transparency legislation and the leverage that could be garnered through public procurement, public bodies have an important role to play as equity and debt investors. In particular, sovereign investors, public pension funds and public bodies such as export credit agencies, development agencies, and multi-lateral development finance institutions, can actively support the enforcement of anti-slavery and anti-trafficking norms, regulations and good practices [33]. In this direction, the Liechtenstein Initiative for Finance Against Slavery and Trafficking (FAST) explicitly calls for public financial actors to “nudge demand” towards businesses that work to prevent modern slavery and human trafficking, and away from those generating risks.<sup>15</sup>

Public funding bodies and institutions, and in particular multilateral development agencies, have extensive experience in assessing, mitigating and addressing a range of project-related harms in connection with labour rights. Development finance institutions were in fact early leaders in setting up mechanisms to address complaints of project related harms. Public and multilateral funding agencies can thus build upon, and extend, their accumulated expertise in order to align their policies and practices with UNGPs, using their vast financial resources to support their private sector clients in respecting human rights [62].

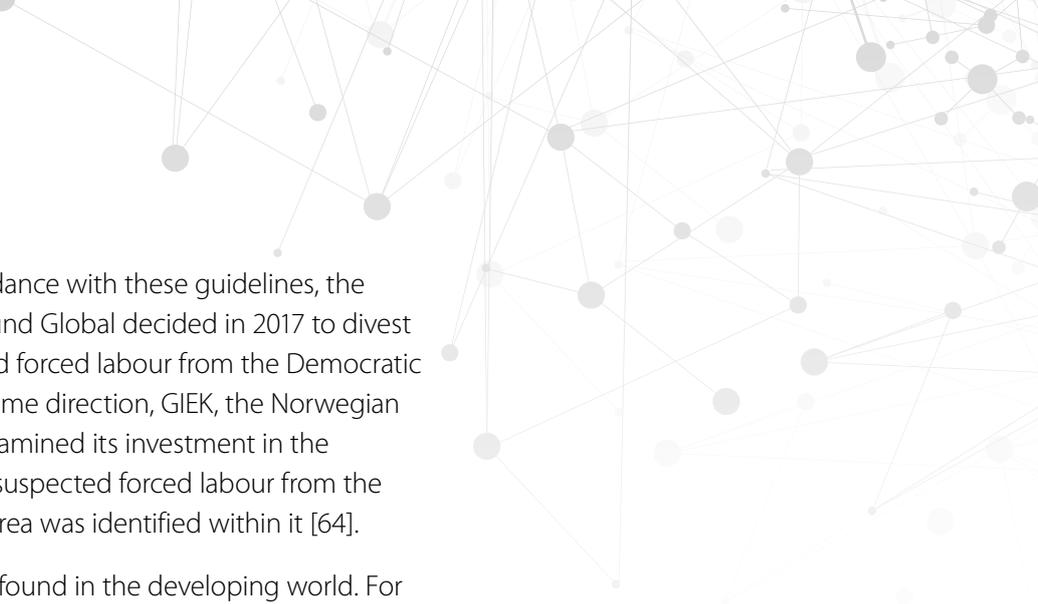
#### Promising practices

Some public finance actors are already playing an important part in the fight against modern slavery in supply chains. In Norway for example, a Council on Ethics administers the guidelines for the observation and exclusion of companies from the Government Pension Fund Global, the largest sovereign wealth fund in the world. The guidelines require observation or exclusion of companies if there is an unacceptable risk that the company contributes to or is responsible for “serious or systemic human rights violations such as forced labour and the worst

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<sup>14</sup> For instance, consolidating suppliers and extending contracts in order to increase the financial incentives of state suppliers and encourage them to take action against modern slavery can lead to unfair or discriminatory market practices (e.g., against smaller businesses unable to provide a range of different goods and services required by the public sector) that must be accounted for and mitigated.

<sup>15</sup> FAST was a multi-stakeholder initiative based at United Nations University and led by the governments of Liechtenstein, the Netherlands, and Australia between 2018 and 2019 [61].



forms of child labour” [63]. In accordance with these guidelines, the Norwegian Government Pension Fund Global decided in 2017 to divest from a company found to have used forced labour from the Democratic People’s Republic of Korea. In the same direction, GIEK, the Norwegian export credit agency, has closely examined its investment in the ship construction value chain after suspected forced labour from the Democratic People’s Republic of Korea was identified within it [64].

Examples of good practice are also found in the developing world. For example, the Brazilian Development Bank (BNDES) – the second largest in the world after its counterpart in China – stopped doing business with companies found to have imposed slavery-like conditions on workers [64]. The BNDES - alongside other public and private financial institutions - has also refused credit to companies included in Brazil’s “Dirty List”, a national publicly available register of companies which have been found to use forced labour in their supply chains.<sup>16</sup> Government officials have noted that this is in fact the biggest penalty faced by companies using forced labour, and arguably the most effective weapon to ensure forced-labour-free supply chains in Brazil [65].

Some multilateral financial institutions have also committed to upholding the human rights affected by its investment projects. For instance, the International Finance Corporation (IFC), the World Bank’s private lending arm, launched in 2012 its updated Performance Standards on Environmental and Social Sustainability, which explicitly mention the protection of fundamental workers’ rights as one of the objectives to be promoted in IFC’s business activities and investments [68].

### How effective is this approach?

Data on the actual - rather than potential - impact of public finance in reducing modern slavery in supply chains is scarce. Nonetheless, there is some evidence that the BNDES’ role in promoting anti-slavery action has been one of the factors contributing to the rescue of 55,000 people from slavery-like conditions in Brazil since 1995.

Coordinated action by publicly-funded development agencies has also helped reduce modern slavery risks in the Thai fishing sector, global garments sector, palm oil industry and large-scale infrastructure and construction development [69].

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<sup>16</sup> The “Dirty List” was introduced in a 2004 decree in an attempt to “name and shame” companies caught benefiting from slave labour. The list is established, updated and enforced via governmental act. Corporations placed on the list are monitored for two years, and can only be removed from the list once they repay their debts to workers and the state and if they refrain from recidivism. Despite its contribution in the fight against forced labour in Brazil, the Dirty List has faced increasing opposition from businesses and industries, which have taken legal action to challenge the list and ultimately end it [65]-[66]. President Bolsonaro also repeatedly criticised the publication of the list during his electoral campaign [67].

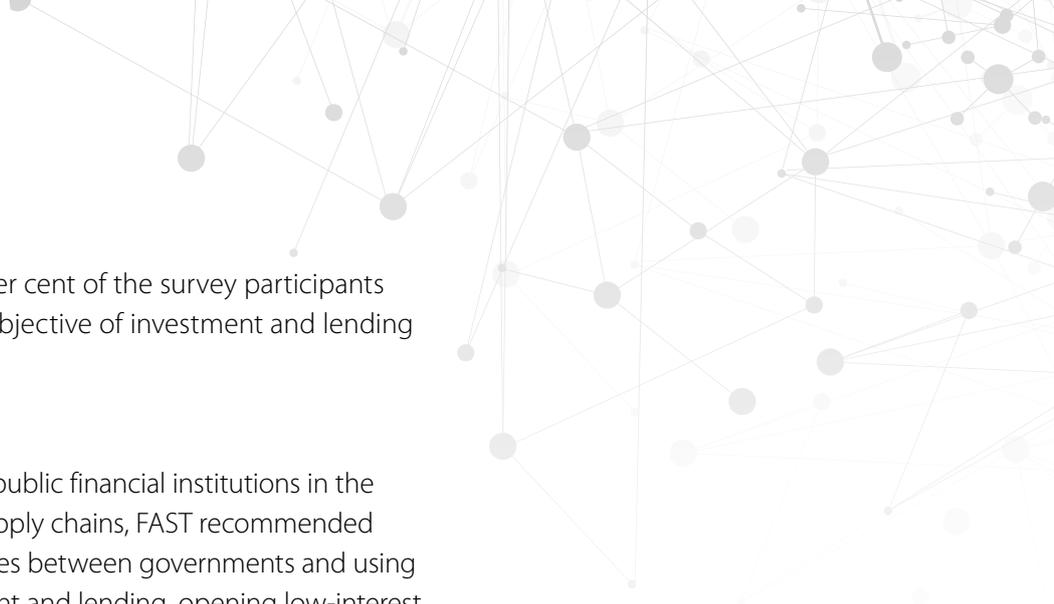
## Challenges

Despite the IFC's formal commitment to upholding the human rights affected by its investment projects, a recent study reveals systematic evidence of significant IFC investments in the Xinjiang Uyghur Autonomous Region of China, where the indigenous Uyghur population and other ethnic minorities have been subject to human rights violations (including forced labour, forced displacement and genocidal practices). Several IFC investees have been found to be active participants in the Chinese regime's human rights violations in Xinjiang, indicating that the IFC has failed to adequately uphold the human rights of ethnic minorities in this region [70].

In other cases, public financial agencies are focused on issuing recommendations for private sector actors, rather than on leading by example. For instance, in the UK, the CDC Group Plc (the UK development finance agency) and the UK Department for International Development (DFID) published in 2018 – together with IFC and the European Bank for Reconstruction and Development - a Good Practice Note to “increase the private sector's ability to identify and assess modern slavery risks, and to implement appropriate controls and solutions” [71]. Anti-Slavery International has called for a more active and direct involvement of UK public funding bodies in the fight against modern slavery in supply chains [34].

More generally, many public financial agencies - especially those guided by a “market-based logic”, like public pension funds, but also development agencies and multilateral development finance institutions - have not yet explicitly incorporated human rights normative standards in their safeguards, strategy and operations. A recent review of the coverage of human rights assessments and management in projects funded by multilateral development agencies revealed that there is still a long way to go to sufficiently account for the potentially adverse impacts on human rights of these projects [72]. In particular, the study highlighted that funding agencies often conduct due diligence procedures under the “assumption” that the potential impact of investees' activities on human rights ends at the “factory gate”, with limited scope of due diligence around the investee's production and service operations.

Similarly, a recent survey of practitioners from bilateral development agencies, multilateral development banks, export credit agencies, and development finance institutions conducted by the United Nations University indicates that most of these publicly funded agencies still treat modern slavery risks as an unintended outcome of poor project management, rather than as a key human rights risk that needs to



be considered upfront. Only 21 per cent of the survey participants said that slavery reduction is an objective of investment and lending decisions [73].

### Further considerations

In order to strengthen the role of public financial institutions in the fight against modern slavery in supply chains, FAST recommended pooling information from databases between governments and using it to inform decisions on investment and lending, opening low-interest public credit lines for businesses that exhibit good performance on anti-slavery indicators, and adopting mutual enforcement of cross-debarment decisions. Additionally, FAST called for discussions on the role of public financial institutions to occupy a more prominent place in the agenda of forums like the Bali Process, the G20, Alliance 8.7, the Call to Action on Forced Labour, Modern Slavery and Human Trafficking, and Principles for Responsible Investment (PRI), as this topic would be a natural extension to debates on procurement rules already held in these multi-stakeholder initiatives [64].

The United Nations has also emphasised the need to reinforce public funding agencies' mandate to support private companies in their commitment to human rights due diligence, including specific references to the UNGPS in its relationships with private businesses and supporting private clients in meeting their corporate responsibility to respect human rights through a clearer articulation of responsibilities and expectations [72].

However, in the absence of clearly articulated and enforced government directives and corresponding legal liabilities, these recommendations risk falling short of shifting public funding agencies' practices. In this sense, a 2019 US Supreme Court decision may accelerate attention to these issues amongst multilateral financial institutions, especially those focused on commercial investment. In *Jam v. IFC*, the US Supreme Court held that the IFC is not immune to suit over harms arising from such investments. This decision opens up another avenue for human rights-based litigation that can be used to encourage development finance institutions funded with public money to proactively identify and manage modern slavery and human trafficking risks [74].

## 3.4 Import Bans

The growing integration of domestic markets into a global economic system in recent decades makes it increasingly likely that the products and proceeds of modern slavery flow across national borders. Due to the expansion of international trade, goods at risk of being produced with forced labour in developing countries, where modern slavery is more

prevalent, end up being sold and consumed in the developed world, with G20 countries collectively importing at least US\$354 billion worth of such products annually [75].<sup>17</sup>

In view of the weight of goods produced with forced labour in international trade flows, import bans on products related to severe human rights violations in supply chains have been proposed as additional state-driven measures aimed at fighting modern slavery. Such forced labour import bans comprise actions incorporated in the legislation and enforced by government authorities (mainly in developed nations, given their disproportionate influence in world commerce) that stop goods suspected to have been manufactured or produced with forced labour at the port of entry [76]. The rationale underlying the application of import bans to mitigate business human rights risks is that losing access to profitable markets will encourage producers and importers to take steps to address forced labour in their operations. Additionally, businesses not directly affected by a ban but operating in a sector or location affected by it may attempt to improve their labour standards to avoid being themselves subject to the ban [77].

Regulatory initiatives enabling the imposition of human rights-based import bans are already in place in various countries, although only recently have such tools been systematically considered by policy-makers and stakeholders, as governments and civil society organisations become increasingly aware of and concerned about human right risks in supply chains.

### Promising practices

The most comprehensive instrument providing for forced labour-related import bans is the US Tariff Act of 1930. Section 307 of the Act prohibits the importation of all goods produced or manufactured in any foreign country by forced (including child), convict or indentured labour. The agency in charge of implementing the law (US Customs and Border Protection), however, rarely enforced the ban until recently, partly due to the “consumptive demand loophole” included in the law, which allowed goods produced with forced labour to be imported if domestic production was not sufficient to meet the demand. Instances of enforcement of the law have grown considerably since 2016, when the US Congress closed this loophole [76].

Canada has also adopted legislation allowing custom authorities to block goods manufactured by prison or child labour since 2018 [78],

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<sup>17</sup> Note that this is quite a conservative estimate, as it is based on the “top 5” products at risk of being produced by forced labour imported by each G20 country (comprising goods such as laptops, computers, mobile phones, apparel, accessories, fish, cocoa and timber). The total value of imports of “at risk” products by high-GDP economies is in all likelihood considerably higher.



while Mexico is also expected to ensure appropriate regulatory and administrative infrastructure to enforce the import ban on goods produced with forced or compulsory labour in accordance with the 2018 United States-Mexico-Canada Agreement. Other countries have resorted to more specific bans related to particular instances in which concerns have been raised around the use of forced labour. For instance, in Australia, Customs Amendment (Banning Goods Produced by Uyghur Forced Labour) Bill 2020 – a private senator’s bill - proposed to ban the import of goods produced by Uyghur forced labour transferred out of the Xinjiang region in China. Britain’s Foreign Affairs Committee called for a similar ban in 2021, and the UK government introduced a package of measures to help ensure that British organisations (public and private) are not “complicit in” or “profiting from” the human rights violations in Xinjiang, although imports from the region have so far not been banned [79]-[80].<sup>18</sup>

The European Union, by contrast, has not yet adopted a similar general instrument banning imports linked to forced or child labour. Although the EU has occasionally implemented specific regimes that enable banning the import of particular goods produced in facilities or territories or carried by vessels not conforming to specific standards,<sup>19</sup> the scope and breadth of such import bans fall short of those incorporated in the US Tariff Act. However, the European Parliament has increasingly drawn attention – and called for action – regarding the need for EU instruments allowing for import bans in the spirit of the US Tariff Act [76], and the European Commission has recently proposed to adopt a forced labour import ban targeting products and businesses commercially connected to the alleged system of forced labour in the Xinjiang Uyghur Autonomous Region in China [83]. Additionally, the EU can resort to the Generalised System of Preferences (GSP) as another trade instrument that can be applied to tackle modern slavery in third countries, rewarding countries that uphold labour standards by granting them preferential access to EU markets and punishing those where substantial human rights abuses persist by withdrawing preferential treatment [84].

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<sup>18</sup> A recent petition by civil society requested to apply the UK Foreign Prison-Made Goods Act 1897, which prohibits the importation of goods produced in foreign prisons, for the purpose of suspending the imports of cotton goods produced with forced labour in China. However, the UK Government has never enforced this Act [81].

<sup>19</sup> An example is the European Union’s imposition of the “Status of IUU Nations Carded” on Thailand. In 2015, the European Union announced that Thailand was in breach of its illegal, unreported, and unregulated (IUU) fishing regulation, which seeks to preserve fish stock but also to guarantee humane working conditions in the fishing industry. The EU imposed an IUU yellow card on the Thai government, which – among other sanctions – carried the threat of prohibiting Thailand from exporting fishery products to EU countries. Thailand was removed from the list of the “Status of IUU Nations Carded” countries in 2019 as a result of improvements in labour conditions in its fishery industry. The evidence suggests that as a result the number of human trafficking and slave labour cases in Thailand’s fishery industry has dropped considerably [82].

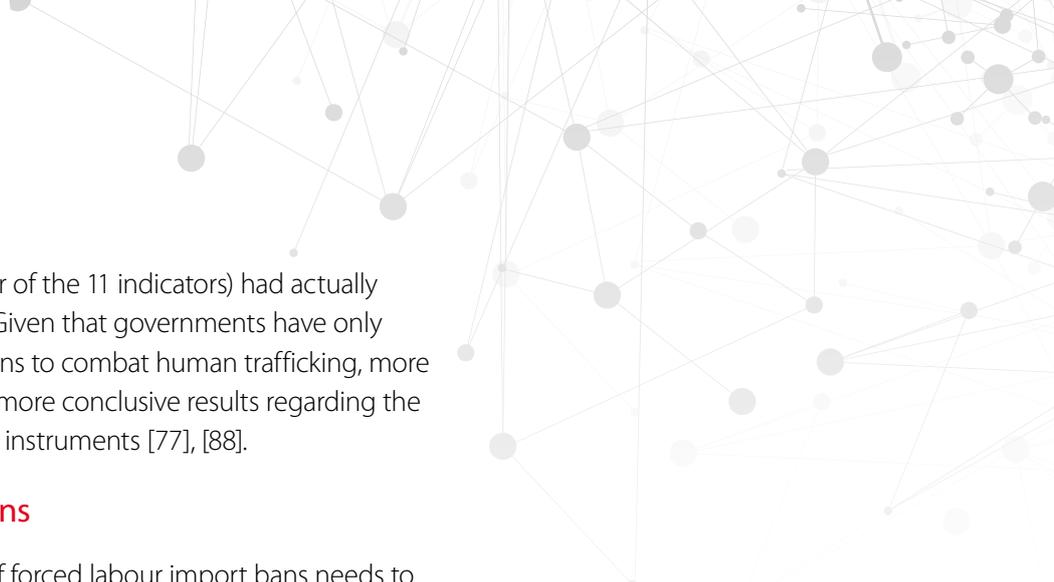
## How effective is this approach?

Despite the growing interest from governments, academics and practitioners about the potential role of import bans as a tool in the fight against modern slavery in supply chains, there is still limited evidence regarding this instrument's effectiveness. The scant evidence available suggests that import bans may change corporate behaviour in the short run if the economic losses stemming from such measures are potentially significant. This is especially the case for industries - like apparel and footwear - that rely on just-in-time supply [85], for whom the loss of market access stemming from the bans has immediate and far-reaching economic repercussions.

As an example, in July 2020 US Customs and Border Protection (CBP) issued a Withhold Release Order (WRO) – a key mechanism within the US Tariff Act – against two subsidiaries of Top Glove in Malaysia, the world's largest rubber glove company. The WRO, which was based on reasonable belief that the two subsidiaries were using debt bondage to produce rubber gloves, restricted their access to the US market. Just two weeks after the WRO had been issued, Top Glove agreed to refund foreign workers who had paid recruitment fees to agents (as much as \$34 million to be paid to 10,000 workers) and to improve workers' accommodation. The celerity of Top Glove's response was in all likelihood related to the large volume of sales the company was at risk of losing, as shipments from the two subsidiaries constituted 12.5% of the group's total sales. In fact, Top Glove's North America sales volume declined by 68% in the third quarter of 2020, which was attributed by the company to the import ban [77].

However, there is considerable uncertainty about the broad, long-term impact of import bans on business action [86]-[87]. On the one hand, the US import ban on the two Top Glove's subsidiaries seems to have had sector-wide effects, promoting wider commitment to reimbursement of recruitment fees among major glove manufacturers in Malaysia. After Top Glove agreed to refund foreign workers, the other top three manufacturers - Kossan, Hartalega, and Supermax – followed suit, announcing repayments of \$12.5 million, \$9.5 million, and \$5.5 million, respectively [77]. These unprecedented repayments to over 20,000 workers in the sector attest to the potentially encompassing effects of import bans.

On the other hand, in March 2021, the CBP reported evidence of the continued use of forced labour in the production of disposable gloves by Top Glove, suggesting that the issues initially identified had not been fully remedied. In the same direction, a study conducted by the MSPEC using the International Labour Organization (ILO)'s indicators of forced labour as a framework concluded that all the indicators were still present and prevalent in the Malaysian medical gloves supply chain between August



2020 and April 2021, and some (four of the 11 indicators) had actually worsened during that period [87]. Given that governments have only recently begun applying import bans to combat human trafficking, more robust research is needed to draw more conclusive results regarding the general, long-term impact of these instruments [77], [88].

### Some practical considerations

Additionally, the implementation of forced labour import bans needs to take into consideration issues around: the scope of the bans (i.e., linked to specific companies or broadly targeting a sector, a country, a region); the evidentiary threshold for introducing the ban (What is the quality and quantity of evidence needed for the ban to be implemented? Who is responsible for providing the evidence? Who should be in charge of submitting a request? What actions are required in order for goods to be released?) and the extent to which bans can be appealed or challenged (by individuals, businesses, or even governments) [77]. Given the lack of a harmonized international approach to using import bans as a tool in the fight against modern slavery in supply chains, there is still considerable ambiguity around all these issues.

Possible abuses in the application of import bans must also be taken into consideration in order to ensure that they are not simply used as a hidden protectionist tool or as an instrument responding to geo-political interests. Of the 54 WROs currently active, almost two thirds (35) were issued by CBP on goods made in China in the context of a trade war ongoing between the US and China since 2018 [89]-[90]. In order to enhance transparency and accountability, the US Congress has recently called for an annual report by the commissioner of the CBP, and human rights groups have proposed additional measures aimed at achieving greater oversight and impact [91]. Without transparency concerning the basis on which the ban is imposed and in the absence of specific information regarding the actions that need to be taken for goods to be released, there is a risk that WROs may be misused as a policy tool, which would undermine their ability to help improve working conditions.

Furthermore, WROs are simply aimed at stopping goods at the border, and once they are issued the goods are denied entry or seized until the importer is able to affirmatively show that the goods were not, in fact, produced with forced labour. While the costs associated with the loss of access to profitable markets may well lead companies to take action to remediate harm, there is no formal requirement to improve the working conditions of the workers of businesses involved in these cases. In fact, WROs may have negative consequences for these workers, their communities and local economy, as companies that see their profits drop

due to the bans may reduce workers' wages or be forced to shut down and lay off their staff, instead of addressing the underlying human rights risks [92]-[93].<sup>20</sup>

In sum, while the possibility of using forced labour import bans as an instrument in the fight against modern slavery in supply chains is gaining traction among practitioners and policy-makers, the design and implementation of these instruments must be carefully considered and transparently applied, as they may entail unforeseen and potentially devastating impacts for workers and communities affected by business human rights risks [77]. Consultations with potentially affected workers and their representatives, and the establishment of grace periods prior to issuing import controls (e.g., imposing a specific time frame to allow for the adoption of prevention, mitigation and remediation measures) can help minimise the negative impact of the application of these instruments on vulnerable workers and communities [81].

Besides careful planning and design, monitoring the application of a ban and enforcing the implementation of any breaches will also require considerable resources (both in terms of time and funds). In general, the most effective import bans are likely to be: those that target individual companies and specific sectors where human rights abuses have been verified, rather than entire sectors or countries (which might have unintended consequences);<sup>21</sup> those that prioritise the remediation of victims (as was the case of the WRO issued against Top Glove) instead of simply seeking to stop goods at the port of entry; and those that involve a coordinated effort from several countries and international organisations, which would impose higher economic costs for firms and sectors using forced labour by raising the number of markets that infractors would be banned from while simultaneously reducing the costs and resources required to effectively implement the ban.

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<sup>20</sup> Moreover, when import bans - and trade bans more generally - are used in a non-targeted manner, their unintended harmful consequences can have devastating economic and health consequences for the communities that experience income losses due to the bans [92].

<sup>21</sup> Except, of course, in cases of systemic exploitation in an environment of state-sponsored forced labour, which prevents company-by-company investigation. In such cases - an example of which is the alleged system of Xinjiang forced labour - broad import bans on all goods from a certain region or activity sector seem to be the only feasible approach [81].

# 4 Private Governance Mechanisms

Private actors – most notably, companies, shareholders and investors - are also becoming progressively aware of the critical role they need to play in the fight against human trafficking in supply chains. The UN Guiding Principles on Businesses and Human Rights places a clear responsibility on businesses to respect human rights and to adopt due diligence measures aimed at identifying, preventing, mitigating and accounting for how they address any adverse human rights impact [6]. In recent years, growing consumer concerns about the issue, fears of reputational damage, and increasing government regulation have further forced and/or incentivised companies to take action on modern slavery in their supply chains.

In this section, we review the most prominent approaches implemented by corporations and institutional investors aimed at leveraging their influence in order to promote the respect and protection of human and labour rights in supply chains and prevent or mitigate the impact of potential violations.

## 4.1. Corporate Social Responsibility and other corporate-led approaches

As mentioned in the Introduction, early debates around the role of firms in tackling modern slavery in their supply chains placed particular emphasis on the notion of corporate social responsibility (CSR) [5],[94].

The ILO defines corporate social responsibility as “a way in which enterprises give consideration to the impact of their operations on society and affirm their principles and values both in their own internal methods and processes and in their interaction with other actors. CSR is a voluntary, enterprise-driven initiative and refers to activities that are considered to exceed compliance with the law” [95]. CSR is thus a far-reaching concept not limited to supply chains, but encompassing corporations’ approaches to addressing the broader social and ethical implications of their business practices, including their treatment of human beings (their workers), the environment, and the society at large. Importantly, a key defining characteristic of CSR is the voluntary nature of the activities companies undertake in the area of environmental and social issues [96].

When applied to supply chain management, CSR initiatives adopted by firms at the top of the chain essentially focus on two main approaches: assessment (i.e., seeking information from suppliers and setting standards through processes of certification and auditing), and supplier engagement (e.g., implementing supplier development programs and working on plans to bring non-compliance up to standard) [94], [97]. These types of “routinised” CSR mechanisms and procedures tend to be applied by lead firms in essentially the same way as when attempting to maintain ethical and environmental standards in their chain.

### **Distinct challenges associated with CSR approaches to Modern Slavery**

Several authors have noted that modern slavery presents distinct characteristics that sets it apart from other aspects of supply chain ethics, and that there is little reason to assume that conventional corporate social responsibility methods will work in the fight against forced labour in supply chains. Forced labour is arguably very difficult to detect, as the lead firm is likely to encounter significant levels of deceit and denial from any subcontractor or supplier involved in such practices, and victims tend to have considerable incentives to avoid contact with authorities themselves (e.g., because of fears about deportation or retribution). Hence, monitoring and identifying forced labour requires a level of alertness and engagement that is at odds with the routine, bureaucratised administration of conventional CSR assurance and certification schemes [94].

Moreover, firms at the top of the supply chain often resort to CSR tools as a public relations strategy aimed at preventing pressure from stakeholder groups or deflecting attention from the underlying causes of modern slavery, rather than at actually addressing these issues. For instance, the last 30 years have seen a proliferation of corporate codes of conduct introduced in contracts between lead companies and their suppliers that are little more than public statements of lofty intent and purpose without specific content beyond a general pledge to prevent exploitation and abuse of workers [98]. These codes of conduct are rarely drafted in response to the actual needs of the employees of the companies they are directed towards, they cannot be enforced in the same way as legal requirements, and in fact companies issuing them often do very little to implement or enforce the codes [96], [99].

### **Social Audits and Ethical Certification**

CSR assessment approaches such as social audits - adopted by lead companies in order to check working conditions in production facilities within their supply chains – however can be “easily subject to manipulation” (e.g., announcing visits in advance, giving factory

**Monitoring and identifying forced labour requires a level of alertness and engagement that is at odds with the routine, bureaucratised administration of conventional CSR assurance and certification schemes**



managers time to prepare for audits and to coach workers, etc.) [99]-[101]. Such audits are typically quite short and arguably too superficial to identify human rights violations, and are rarely followed by effective remediation. Workers and their representatives are rarely meaningfully engaged in auditing procedures, and when they are in fact interviewed, time pressures placed on the auditors typically determine that only surface-level feedback is gathered. Even when audits genuinely attempt to conscientiously record working conditions in supply chains, worksites at the third, fourth or fifth tier of a globalised supply chain (where poorest labour conditions typically exist) are notoriously difficult to reach [102]. Hence, social audits have at best little impact on working conditions, and frequently they are simply a tool used by companies to receive positive evaluations that make it easier to report to customers and stakeholders that they are meeting labour standards [99].<sup>22</sup> In fact, some of the worst industrial accidents in supply chains over the past decade, like the 2013 Rana Plaza building collapse that killed more than 1,100 garment workers in Bangladesh, occurred in factories that had been recently audited [103].

The same holds true for ethical certification schemes. These schemes, which set standards regarding workers' rights, wages, health and safety and fair treatment, can be as ineffective as social audits. This is because, like social audits, ethical certification schemes are not enforced by government inspectors but by private auditors, and are plagued by audit fraud and deception. For instance, a study conducted by the Global Business of Forced Labour project in agricultural (cacao and tea) supply chains feeding UK markets found that workers are typically told to alter their working practices (for instance, in relation to safety equipment) to meet the required standards during the annual audits carried out by certifiers, only to be asked to revert to breaking the standards the very next day [104]. Additionally, ethical certification schemes usually contain loopholes that create exceptions related to the most vulnerable workers in an industry; for instance, the certification process may exclude workers hired on a seasonal, contract or daily basis - precisely the type of informal and/or precarious workers most likely to face exploitative labour conditions. The study concluded that certification had little to no impact on labour standards, and that some of the worst cases of exploitation occurred precisely on ethical certified plantations. Similar failures of ethical certification process have been documented by Anti-Slavery



**Social audits and ethical certification schemes by themselves do not seem capable of addressing the problem of modern slavery in supply chains**

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<sup>22</sup> The Clean Clothes Campaign describes inspections conducted by Walmart in its factories in China as an example of the type of tick-box exercise characterising social audits. A source notes that the inspection team tends to spend only about three hours at the factory, checking personnel records and meeting a few of the workers in the company's reception room, after which the inspections end.

International and the Ethical Trading Initiative [105].<sup>23</sup> To paraphrase one of the leading researchers on modern slavery and human trafficking in global supply chains, ethical certification programs are at best badly managed and executed, and at worst a PR scheme appeasing consumers and protecting corporate profits [106].

The available evidence and extant research thus clearly indicates that conventional CSR approaches by themselves do not seem to be capable of addressing the problem of modern slavery in supply chains [107], and should be combined with other tools – such as state regulation and enforcement – to address and remediate violations of workers’ rights [94], [99].

### Responsible Purchasing Practices

Power asymmetries within supply chains determine that lead firms can dictate the prices they pay to suppliers as well as other terms of production contracts (e.g., production times and lead times, order magnitudes, product specifications, etc.). Aggressive price negotiation aimed at cutting costs and raising profit margins, short lead times, inaccurate technical specifications, last minute changes to order volumes, product specifications and cancellations are “conventional” purchasing practices in supply chains that put suppliers under intense pressure,<sup>24</sup> and ultimately lead to poor working conditions and low pay for workers [109]-[110]. In fact, conventional purchasing practices from retailers, brands and lead firms more generally have been identified as one of the significant factors at the root of labour rights violations [111]. Even when lead firms require suppliers to respect their codes of conduct and monitor labour rights, their buying practices may be at odds with these initiatives.

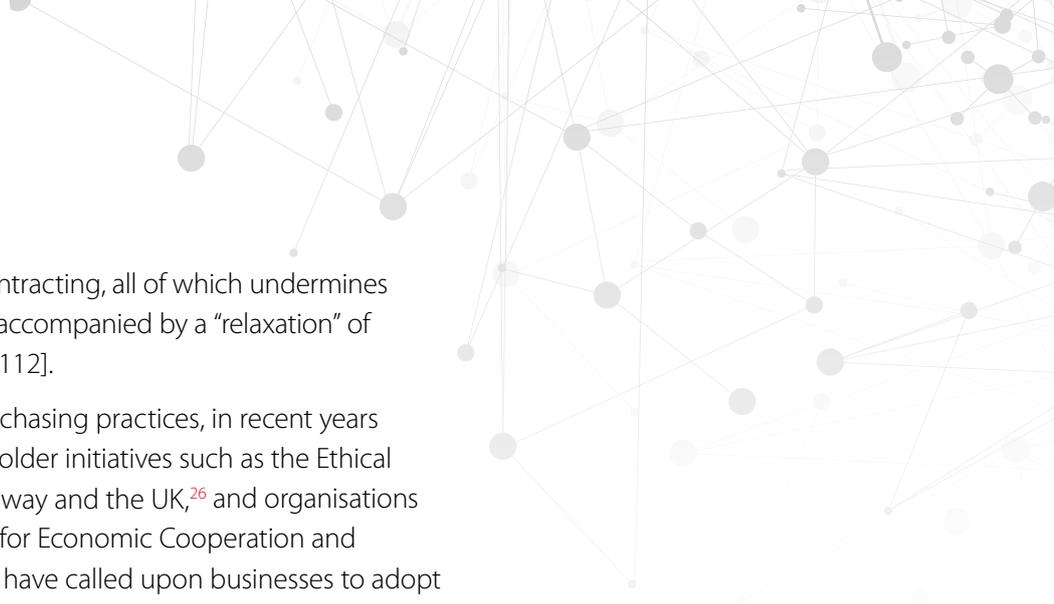
As an example, competition for lead firms’ business in an increasingly globalised marketplace often pushes suppliers to engage in a “race to the bottom” on price, accepting orders below the cost of production in order to secure orders and future contracts with the lead firm.<sup>25</sup> This usually means that suppliers struggle to pay workers, are unable to cover minimum wage increases, or reduce wages in order to cut costs. Similarly, insufficient lead times, late ordering and last minute changes in product specifications do not allow suppliers to plan production effectively, the consequence often being an increase in work intensity or overtime,

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<sup>23</sup> For instance, in 2017, reports emerged about serious labour rights abuses on coffee plantations in Brazil certified by UTZ and the Rainforest Alliance [105].

<sup>24</sup> For instance, in the European agriculture and food supply chain alone, these practices are estimated to induce overall costs of £25-35 billion year for food suppliers [108].

<sup>25</sup> A global study on purchasing practices and working conditions conducted in 2016 among 1,454 suppliers of companies based in the UK, Denmark and Norway across multiple sectors revealed that 39% of the (1,500) suppliers surveyed accepted orders below the cost of production. The main reasons for this are pressures from customers and competition with other suppliers [110], [112].



irregular working hours and subcontracting, all of which undermines workers well-beings and is usually accompanied by a “relaxation” of health and safety measures [109], [112].

To counter these conventional purchasing practices, in recent years industry associations, multi-stakeholder initiatives such as the Ethical Trading Initiatives in Denmark, Norway and the UK,<sup>26</sup> and organisations like the International Organisation for Economic Cooperation and Development (OECD) and the ILO, have called upon businesses to adopt responsible purchasing practices, i.e., a purchasing model that implies “purchasing in a way that enables positive change at the supplier level, so that every part of the supply chain benefits” [113].

### Key characteristics

Although the notion of responsible purchasing practice is quite broad, a core aspect of this approach is that the purchasing model linking lead firms and its suppliers should shift from one in which negotiations are based primarily on low order prices to one encompassing not only commercial but also ethical performance standards. In particular, the protection of worker rights and compliance with minimum labour standards should be a core part of purchasing negotiations,<sup>27</sup> as well as the establishment of fair prices ensuring that suppliers can pay workers a living wage [112].

While not focused on labour standards, other changes in conventional purchasing practices followed by lead firms would also have an indirect beneficial impact on working conditions down the supply chain. For instance, improving planning and forecasting, and giving suppliers advance notice of upcoming production plans would enable them to offer workers longer term contracts and job security [109]. Similarly, reducing the number of samples requested from suppliers and sharing the cost of shipping those samples would help reduce the costs suppliers incur upfront and thus the pressures they face to cut wages or evade social security contributions in order to remain in business [112].

In the process of adopting such purchasing practices, lead firms should provide suppliers with technical and financial support so as to enable them to meet these ethical criteria; sharing the costs of making improvements to working conditions; helping suppliers build capacity to drive positive change; rewarding them - e.g., through “supplier awards” or conferring “preferred supplier” status - for good ethical performance and punishing them otherwise (e.g., terminating their

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<sup>26</sup> The Ethical Trading Initiative (<https://www.ethicaltrade.org/>) is a leading alliance of companies, trade unions and NGOs that promotes respect for workers’ rights around the globe. National Ethical Trading Initiatives exist in Denmark, Norway, the UK and the Netherlands (<https://www.dieh.dk/about-dieh/ethical-trade/national-ethical-trading-initiatives/>).

<sup>27</sup> The global survey on purchasing practices (see footnote 21) also found that only 41% of purchasing contracts specified minimum standards on working conditions [110]-[111].

business relationship); and creating mechanisms for suppliers to voice their concerns and needs about the proposed changes without fear of losing future orders [112].

### Principles underlying this approach

The fundamental assumption underlying this approach is that adopting responsible purchasing practices will help catalyse organisational and behavioural change in lead firms as well as in business down the supply chain, leading to mutually beneficial commercial partnerships and underpinning sustainable business while simultaneously improving working conditions. Retailers and brands may adopt such practices out of their own commitment to improving working conditions or, more likely, due to reputational concerns and “pressures” from consumers increasingly concerned about sustainability and stakeholders vocal about the plight of workers.

Beyond reputational considerations, the adoption of responsible purchasing practices could in theory be financially beneficial for lead firms. Conventional purchasing practices typically result in high worker turnover and lower productivity, which in turn lead to poor quality products, delayed delivery and additional production costs, - ultimately undermining the long-term security of supply. Hence, lead firms adopting responsible purchasing practices would themselves benefit from a stable, motivated and more productive workforce in their supply chains and from the reduction in the operational and financial risks they face [112].

### Promising practices

There are several examples of business- and stakeholder-led initiatives aimed at promoting the implementation of responsible purchasing practices in supply chains.

German multinational corporation Adidas, for instance, not only obliges its suppliers to pay legal minimum wages or compensations that have been freely negotiated through collective bargaining processes, but also increasingly sources from suppliers who progressively raise employee living standards through improved wage systems, benefits and welfare programs. In order to encourage its suppliers to adopt these remuneration schemes, Adidas adjusts its purchase price to reflect suppliers' costs and monitors whether the suppliers pay wages and benefits on time and in full [112].

Another successful example of the adoption of responsible purchasing practices is that of Norwegian apparel retailer Voice, which is integrating these practices into its overall ethical trading strategy. Voice commissioned an independent study to assess how its purchasing practices affected its suppliers' ability to provide adequate working conditions. The company also invited Norway's Ethical Trading Initiative to deliver workshops for its senior management and buyers to help them better understand



the direct connection between their purchasing practices and labour conditions in Voice's supply chain. As a result of these workshops, Voice created a manual on responsible production with new policies and procedures and a dedicated section for buyers, as well as a new corporate responsibility document for potential new suppliers [112].

In addition to corporate-specific initiatives, several organisations are actively promoting the development and implementation of responsible purchasing practices across industries. Some prominent examples include: the Ethical Trading Initiative, which has developed a Guide to Buying Responsibly, and delivers courses exploring best practice for buyers; and Better Buying, which operates a ratings and evaluation platform that provides buyers and the public with information about best purchasing practices and delivers projects and training on supply chain industry practices to support innovation and promote change [111].

### Challenges and further considerations

Despite these examples of good practices, there is virtually no rigorous research examining the overall impact that the adoption of responsible purchasing practices has had or can have on working conditions in supply chains. Besides the lack of systematic evidence, other difficulties in evaluating the effectiveness of this approach is that purchasing practices vary significantly between industries, and their characteristics are highly contingent on the nature and dynamics of the relationship between buyers and suppliers. Hence, purchasing practices that may be detrimental to workers' rights in some settings may not be harmful in other contexts [111]. More generally, as mentioned before, the notion of responsible purchasing practices is quite broad, and thus the key features of initiatives aimed at implementing such practices can vary dramatically across countries, industries and buyers.

Nevertheless, a fundamental problem with this approach lies - again - in its voluntary nature. Proponents of responsible purchasing practices typically appeal to firms' commitment to supporting human rights or to their reputational concerns to encourage the adoption of such practices. As we mentioned above when discussing CSR initiatives,<sup>28</sup> while reputation-based enforcement mechanisms may work in some instances, there is little evidence to support the claim that they have a systematic effect on corporate behaviour. Moreover, the short-term costs that lead firms would incur in adopting responsible purchasing practices - e.g., paying higher prices so that suppliers can afford wage increases, sharing the costs of improvements in labour conditions - are likely to be quite high, while the benefits (e.g., increased demand from socially responsible customers, better quality products due to a more sustainable and resilient supply chain) are uncertain and long-term at best. Hence, the incentives

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<sup>28</sup> In fact, some authors see responsible purchasing practices as part of CSR initiatives [112].

to adopt this approach will likely depend on firm- and sector-specific characteristics. While it may be economically viable for some firms that manage to create market differentiation by changing their buying and sourcing model, it might not be for others.

As a result, some legislative initiatives have emerged in the past few years aimed at proscribing some of the most harmful conventional purchasing practices in specific supply chains - and thus, indirectly, encouraging the adoption of responsible purchasing practices in particular sectors. For instance, the EU adopted the Unfair Trading Practices Directive (UTPD) in 2019,<sup>29</sup> banning practices such as: late payments, short-notice order cancellations, making unilateral changes to supply agreements in the agri-food supply chain, requiring payments from the supplier that are not related to the product or to pay for the deterioration or loss of a product once it has passed into the buyers' ownership, or refusing to provide a written supply agreement.<sup>30</sup>

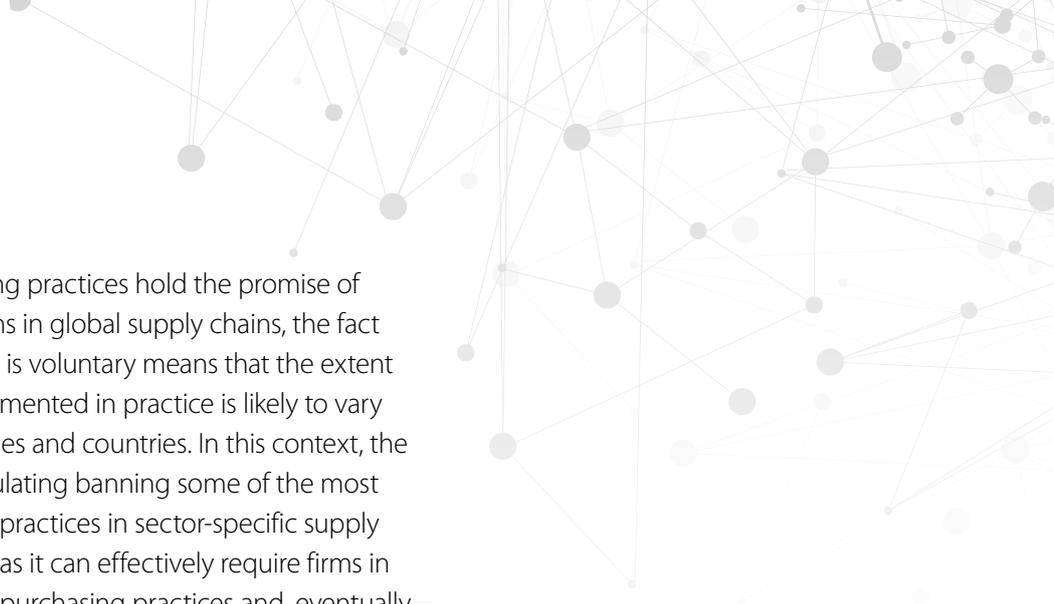
In the same direction, the UK's Agriculture Act 2020 includes a provision (Clause 27) aimed at addressing unfair trading practices in agrifood supply chains (including the requirement of a written contract between a producer and purchaser). Although the government's powers to tackle unfair purchasing practices under Clause 27 are less comprehensive than those included in the EU's Unfair Trading Practices Directive [115], these legislative initiatives illustrates that (national and supra-national) governments are increasingly invested in encouraging the adoption of responsible purchasing practices - or at least banning unfair practices - in high risk supply chains like those in the agri-food sector. In the same direction, the Environmental and Audit Committee of the UK Parliament has called the government to explore the introduction of a Garment Trade Adjudicator - arguably following the Groceries Code Adjudicator "model" - to help ensure that the purchasing practices of brands and retailers do not result in undue economic pressure on suppliers to "cut corners on pay and conditions" [107].<sup>31</sup>

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<sup>29</sup> Footnote: Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain

<sup>30</sup> The Directive covers buying practices of businesses - including retailers, brands, processors - and even public bodies based in the EU or that purchase agri-food products from EU suppliers, as long as they have a larger annual turnover than their suppliers. It is expected that the UTPD will be incorporated into the national legislation of the 28 EU Member States in the next couple of years. The States will also be required to designate an "enforcement authority" - i.e., a public body with the power of investigating suspected incidents of unfair trading practices and to punish (levy fines against) buyers which are found guilty; complaints to the enforcement authority may be raised not only by suppliers in the agri-food chain, but also by NGOs, produce organisations and unions. See [108], [114] for additional details on the practices banned and the conditions for such bans.

<sup>31</sup> The Groceries Code Adjudicator, established in 2013, is the UK's independent adjudicator overseeing the relationship between large retailers and their suppliers in the groceries market. Its role is to ensure that large retailers treat their direct suppliers lawfully and fairly, to investigate suspected breaches of the Groceries Supply Code of Practice, and to arbitrate disputes. The UK Groceries Code Adjudicator performs a similar - although more restricted - function to the national enforcement authorities proposed in the EU's Unfair Trading Practices Directive [115].



In sum, while responsible purchasing practices hold the promise of helping improve working conditions in global supply chains, the fact that the adoption of such practices is voluntary means that the extent to which they are likely to be implemented in practice is likely to vary considerably across buyers, industries and countries. In this context, the passing of legislative initiatives regulating banning some of the most harmful “conventional” purchasing practices in sector-specific supply chains is a welcome development, as it can effectively require firms in these sectors to adopt responsible purchasing practices and, eventually – if more encompassing Directives or national laws follow suit - contribute to their generalisation towards other economic sectors.

## 4.2. Investor-led Approaches

Financial sector actors - including institutional investors - also have a role to play in the fight against modern slavery in supply chains. In accordance with the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises [6], when an investor is connected to modern slavery and human trafficking through its investments, it is expected to build and use its leverage to prevent, mitigate and remedy harm [117]. More generally, “stewardship” rules and expectations increasingly require investors to consider the sustainability and (environmental and societal) impacts of their investment decisions. This is attested - for instance - by the EU Framework to Facilitate Sustainable Investment (EU Regulation 2020/852), which came into force in July 2020,<sup>32</sup> and explicitly incorporated in the Australia’s Modern Slavery Act 2018, which includes investment and lending among the activities covered in the legislation - extending its reporting requirements to institutional investors such as superannuation funds [117]. Together with growing investor ethical or social concerns, this has led to the emergence of several investor-led strategies aimed at tackling modern slavery in supply chains over the last decade [118]-[120].

These investor-led strategies can be broadly classified into two categories: i) ESG investing, an approach that seeks to incorporate Environmental, Social and Governance factors into asset allocation and investment decisions with the goal of allocating capital towards sustainable economic activities and projects, divesting away from those deemed to be unsustainable according to ESG criteria; and ii) investor engagement with

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<sup>32</sup> While Regulation (EU) 2020/852, known as the Taxonomy Regulation, sets out an EU-wide framework according to which investors and businesses can assess whether certain economic activities are environmentally “sustainable”, the extension of its scope to cover other sustainability objectives - such as social objectives - is under study of the European Commission. In this spirit, in recent years complaints for insufficient human rights due diligence have been brought against prominent European investment funds that owned shares in companies involved in human rights violations in their supply chains (like the South Korean steel company POSCO). The OECD has also published guidelines clarifying the responsibility of investors and confirming that such guidelines apply even to minority shareholders

companies, which aims at directly leveraging the influence of investment funds to push for corporate action against human trafficking.

## ESG Investing

In the past few years, academics have documented an increase in investor demands for socially responsible funds. In a context in which institutional investors are increasingly aware of business-related human rights risks and are expected - by clients, beneficiaries, and the wider society - to contribute to tackling modern slavery, ESG investing offers in principle a market-based mechanism to help investors better align their portfolio with their social concerns. In fact, to the extent that societal values are expected to increasingly influence consumer choices, ESG strategies may enhance the long-term sustainability of financial returns as well as side-step the reputational, legal and financial costs institutional investors may face for financially supporting companies involved in human rights violations.<sup>33</sup>

In view of the financial and ethical appeal of ESG investing, the number of ESG equity and fixed income funds have grown exponentially over the last decade, and are now in the many hundreds. Large financial institutions like Blackrock and Vanguard have launched a large array of ESG funds managing trillions of dollars, and the OECD estimates indicate that professionally managed portfolios that integrate key elements of ESG assessments exceed US\$ 17.5 trillion under management globally [121]-[122]. At the same time, a new industry of ESG rating providers has emerged to match the growing demand of institutional investors.

The proliferation of ESG disclosure, ratings and ESG-related funds, however, has led to greater scrutiny from market practitioners, experts and academics, underscoring the need to address several issues that undermine the effectiveness of ESG investing as an instrument to foster social change - in particular, to combat modern slavery in supply chains.

## Methodological Challenges with ESG Ratings

A fundamental challenge faced by ESG investing initiatives is that socially responsible management funds and institutional investors rely, at least in part, on ESG scores offered by rating providers to decide whether or not to purchase a company's shares. However, the approach used by most rating providers is to quantify the risk posed by ESG factors to a firm's economic value, rather than the impact of the firm's activity on environmental, labour and social issues [122]-[123]. In other words, a company could be a significant source of pollution or could engage in

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<sup>29</sup> For instance, human rights violations can affect companies' valuation - e.g., through loss of their market share, and reduced brand value - and thus the profitability of funds investing in such companies.

exploitative labour practices and still get a reasonably high ESG rating if rating agencies consider that such practices are being “managed well” or that they do not threaten the company’s financial value.

Additionally, rating providers typically score companies’ performance on a variety of criteria - climate change issues, pollution and waste production, human capital issues, product liability, community relations, corporate governance, tax transparency, etc. - and weight these criterion- specific scores to reach an aggregate ESG value. Consequently, a company may adopt deplorable labour practices, engage in predatory pricing or manufacture harmful or addictive products and still receive a high ESG score as long as it promises to meet future environmental targets or performs very well in - say - the executive compensation or accounting practices dimensions.

Moreover, different rating providers use different metrics, indicators and weighting criteria, which means that ESG ratings vary greatly from one provider to another, and thus the inputs that investors rely on to select the shares and securities in their portfolio is highly contingent on the providers they use [121], [124]. In fact, a recent empirical study showed that there is only a moderate correlation between the ESG ratings computed from six different - prominent - rating providers, which means that the information that investors receive from such ratings is quite noisy and thus not especially useful for assessing companies’ ESG performance [124]. Moreover, the divergence of ESG ratings across providers also undermines companies’ efforts to improve their performance, as companies receive mixed signals from rating agencies and thus face considerable uncertainty regarding which actions they should undertake to improve their ESG scores and whether these actions will be valued by the market, since their share price is neither rewarded nor penalised for good or bad ESG performance.

Although there is little data available, the problems inherent in the methodology used to calculate ESG ratings seem to be particularly challenging with respect to societal issues. Recent reports indicate that most ESG ratings don’t have anything to do with corporate responsibility as it relates to societal factors [124], and that there are many companies that mistreat workers and still garner top ESG ratings. Given that the criteria incorporated in ESG ratings are primarily compliance-driven and aimed at demonstrating “procedures” rather than genuine improvements in companies’ governance, firms with a well-written diversity policy or a workplace safety council can obtain a favourable ESG score even when no data from employees is gathered to assess the real impact of those policies in the workplace [125]-[126].

**The ability of investors to assess and prioritise human rights risks connected with their investments has been hampered by the inconsistent integration of the Guiding Principles across the myriad reporting frameworks, benchmarks and data used by investors to assess companies**

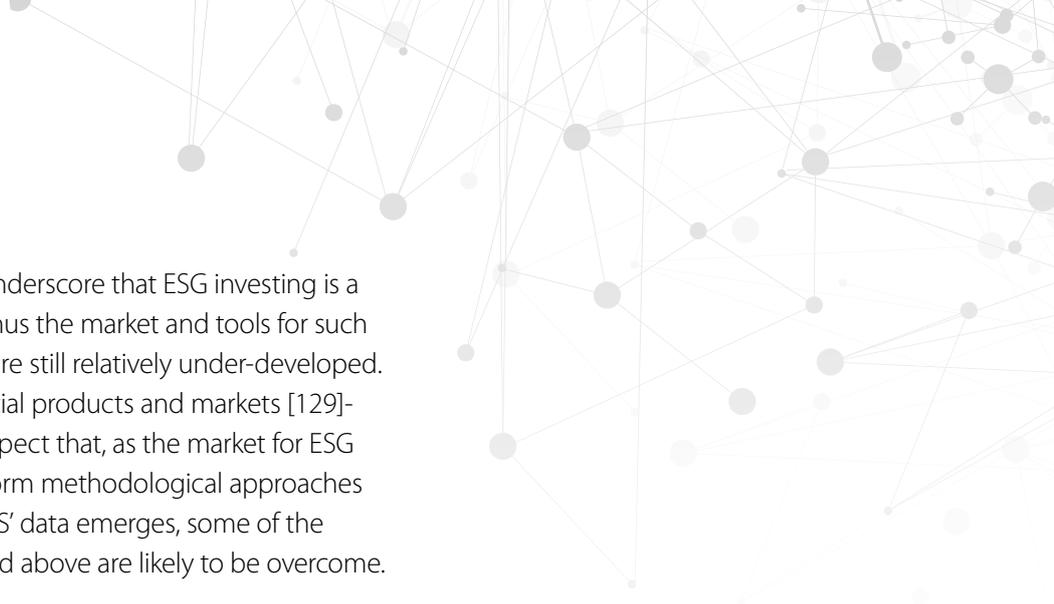
## How effective is ESG investing?

Underlining the limitations inherent in the rating methodology, the available evidence suggests that socially responsible funds that invest in companies with high ESG ratings do not actually lead to significant, measurable improvements in firms' conduct [118], [126]. At best, ESG investing avoids harm (i.e., by not funding companies with demonstrably poor records in terms of their environmental, societal and labour practices), rather than actively supporting positive transformations in corporate behaviour. Given the problems with ESG ratings and methodology highlighted above, though, even this rather modest goal is unlikely to be achieved.

Hence, while the emergence and growing importance of ESG investing could in principle help foster sustainable investing, there are in practice a number of intrinsic issues that currently hamper its effectiveness. The ability of investors to meaningfully assess and prioritise human rights risks connected with their investment activities has been hindered by the lack of meaningful corporate human rights disclosure and inconsistent integration of due diligence principles across benchmarks and other data and research products used by investors to assess companies [127].

If ESG investing is to more effectively drive corporate behaviour that addresses modern slavery, the current system needs to be strengthened. In particular governments, regulators, standard-setting bodies and private sector participants must work towards: i) establishing clear standards and benchmarks by which corporate behaviour should be assessed - aided, for example, by the adoption of mandatory due diligence procedures; ii) ensuring that ESG scores are aligned with reliable standards and thus actually measure firms' performance along relevant societal dimensions; iii) the disaggregation of 'E', 'S' and 'G' ratings, so that transparency and value are given to each important but inherently distinct sustainability criteria; iv) guaranteeing the comparability and consistency of ESG ratings across providers; and v) issuing global or internationally harmonised guidelines and terminology regulating how ESG ratings should be used and aimed at preserving market integrity and transparency.

An important step in this direction has been taken by the IFRS Foundation, a not-for-profit, public interest organisation established to develop a single set of high-quality, enforceable and globally accepted accounting and sustainability disclosure standards. In November 2021, the IFRS Foundation announced the formation of a new International Sustainability Standards Board aimed at developing a comprehensive global baseline of high-quality sustainability disclosure standards to meet investors' information needs and bring internationally comparable reporting on sustainability matters to the financial markets [128].



More generally, it is important to underscore that ESG investing is a relatively new development, and thus the market and tools for such responsible investment strategies are still relatively under-developed. As has happened with other financial products and markets [129]-[130], though, it is reasonable to expect that, as the market for ESG investing develops, and more uniform methodological approaches and standardised and meaningful ‘S’ data emerges, some of the methodological challenges outlined above are likely to be overcome.

As a result, as the market evolves, ESG scores will likely convey to investors more accurate information about firms’ “human-rights performance”, which will in turn be reflected in share prices. This transmission mechanism will help companies better assess which ESG related actions will be rewarded by the market, which we expect will ultimately help prevent and/or address business-related human rights risks.

### **Investor engagement**

Investors can also engage directly with companies on modern slavery risks in their operations and supply chains, using the leverage of the investment relationship and the powers exercised under it to influence the behaviour of the investee. The aim is to incentivise investee companies - especially those in high risk sectors like domestic work, agriculture, construction, manufacturing, hospitality and entertainment - to identify, reduce and address modern slavery risks and harms in their own value chains, setting clear expectations and working with investees over time to ensure they meet those expectations [116]. Direct engagement with investees is typically complemented by system-level strategies aimed at addressing regulation, market access and market expectations to better tackle human rights risks in companies’ supply chains [116], [131].

### **Promising Practices**

An example of this type of engagement is the “Find It, Fix It, Prevent It” initiative, launched by CCLA Investment Management at the London Stock Exchange in 2019 and supported by a coalition of investor bodies, academics and NGOs, with a total of £7 trillion in assets under management or advice. The program comprises three basic pillars: i) promoting a meaningful regulatory environment to extend firms’ obligations under the MSA 2015; ii) aiding companies in developing and implementing better processes for identifying, fixing and preventing modern slavery; and iii) developing better data to inform and assist in the fight against modern slavery [119]. A similar engagement initiative, grounded on the “Find It, Fix It, Prevent It”, is the Investors Against Slavery and Trafficking Asia Pacific (IAST APAC), which seeks to build an alliance of investors to promote more effective action against modern slavery among companies in the Asia-Pacific region.

Votes Against Slavery (VAS) is another example of a UK-based initiative focusing on investor engagement. Set up in 2020 under the stewardship of Rathbones, VAS is an investor collaboration project with £7.8 trillion in assets under management aimed at coordinating the response of the investment community to the Modern Slavery Act 2015. VAS engaged with 61 FTSE350 companies that had failed to meet the reporting requirements of Section 54 of the MSA 2015 in order to drive rapid compliance, sending engagement letters to their boards and threatening to abstain on the approval of the companies' annual reports and accounts. As a result of VAS' engagement, all the companies became compliant by January 2022 [121].

### How effective is this approach?

The academic literature suggests that, unlike ESG investing as it currently stands, investor engagement may have a significant and positive influence on corporate practices and, in particular, on the extent to which businesses incorporate environmental and social concerns in their behaviour [133]-[135]. Although data on the specific impact of this type of investor-led strategy for addressing modern slavery in supply chains is quite scarce, anecdotal evidence from CCLA's "Find It, Fix It, Prevent It", VAS and IAST APAC indicates that these initiatives have raised awareness and corporate practices regarding human rights risks in supply chains among firms in high risk sectors. Nonetheless, there seems to be considerable variation in the success of these approaches, which is highly contingent on firm-specific characteristics and motivation to address these risks. The effectiveness of investor engagement is likely to be enhanced when accompanied by the adoption of mandatory human rights due diligence procedures and clear enforcement mechanisms.

# 5 Worker-centred Approaches

Due in part to the failings of social auditing and the inability of CSR initiatives to meaningfully engage workers, new worker-centred approaches have emerged in recent years in an attempt to protect workers' rights in supply chains.

Traditional worker advocacy institutions and mechanisms - such as trade unions and collective bargaining agreements - have not kept pace with the impact of outsourcing, subcontracting and offshoring of work brought about by the globalisation of supply chains. The demand for lower costs, tighter delivery deadlines, fluctuating order volumes and shorter supply contracts has changed the structure of work itself - complicating trade union's ability to organise workers and collectively bargain.

Instead of dealing with one large employer with direct control over and responsibility for workers' pay and conditions, unions must now negotiate with multiple, small-scale employers who resort to part-time, temporary, casual and other precarious work arrangements - made possible by increasingly de-regulated or informal labour markets. Workers subject to such job insecurity typically refrain from unionising or from bargaining with their employers due to fear of retaliation [136]-[138].

Further frustrating the role played by these traditional institutions are restrictions on freedom of association, poor resourcing of labour inspectorates, a predominance of national labour laws designed to regulate direct employment relationships (not the multi-tiered labour supply chains created by outsourcing and subcontracting), and specific challenges associated with regulating companies across borders and jurisdictions brought about by offshoring [137].

In view of these challenges, new tools such as worker voice technologies, worker-driven social responsibility initiatives and ethical recruitment practices offer potentially more effective means of improving working conditions and mitigating power imbalances, not only between workers and their direct employers (the suppliers), but also between suppliers and lead companies within the chain.

**New tools such as worker voice technologies, worker-driven social responsibility initiatives and ethical recruitment practices offer a promising means of improving working conditions and mitigating power imbalances**

These three approaches complement each other: while worker voice and worker-driven social responsibility initiatives essentially aim at identifying, supporting and protecting individuals who have fallen victims of modern slavery, ethical recruitment practices seek primarily to address one of the fundamental causes that drives workers to accept difficult or exploitative working conditions and traps them in modern slavery, namely, the charging of exorbitant recruitment fees.<sup>34</sup>

## 5.1. Worker Voice

Partly due to the failings and shortcomings of social auditing, worker voice tools have emerged in recent years to amplify the voices of workers in supply chains. The notion of “worker voice” has a long tradition in industrial relations, encompassing the “various institutionalised forms of communication between workers and managers to address collective problems” [136]. In the context of supply chains, though, where restrictions to worker representation and unionisation undermine the effectiveness of such institutionalised forms of dialogue, the term “worker voice” has become increasingly associated with technology-enabled approaches aimed at collecting more and better data for due diligence and worker empowerment [139].

The proliferation of digital reporting technologies in the last few years offers companies the opportunity to detect labour violations in their supply chains by engaging directly with workers through mobile-phone applications, SMS, hotlines, and social media platforms - allowing workers to confidentially communicate their needs, report on their working conditions and share their experiences. Worker voice tools generally operate either as a one-way model, collecting data and responses from workers through surveys, or as a two-way channel of communication where didactic information on occupational health and safety or labour rights is also shared, and grievance mechanisms are supported.

Among the key benefits of worker voice approaches are: the possibility of collecting data from workers in a cost-effective, efficient and scalable way, resulting in large datasets that can provide a more comprehensive understanding of the problems present in supply chains; the ability for lead firms to reach workers in remote locations or in lower tiers of the chain; the potential for rapidly and continuously monitoring acute situations; and the possibility of anonymously raising concerns or queries and disclosing sensitive information (like sexual or physical abuse in the work-place) that can help enhance the inclusivity of marginalised workers.

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<sup>34</sup> As stated in a report by the non-profit organisation Verité [138], “without these fees, much of modern day slavery would be eliminated because it is the crucial factor of bondage to that debt that tips a difficult, poorly paid job over the edge into a job from which the workers cannot leave.”

## Inherent Challenges that need to be addressed

Despite these advantages, worker voice technologies are relatively novel, and thus their use as a means to fight modern slavery in supply chains is not without difficulties. The extent to which data collected through worker voice technologies accurately reflects working conditions of vulnerable workers depends on a range of choices made by the data collector [140]-[141]. These include issues such as: which workers' input is sought; whether individual answers are kept anonymous; whether workers receive compensation for their engagement; how topics are framed; the design and implementation of the digital tool; who gathers the data; and how the data is analysed and presented. Some companies may use worker voice tools much in the same way as social audits, i.e., in order to demonstrate action on a narrow, manageable set of issues, deciding therefore not to collect information that may reveal the true depth and extent of problematic labour practices, framing questions to elicit benign responses, or avoiding questions about especially sensitive areas altogether.

The use of worker voice technologies also raises questions around data integrity, privacy and security: if not properly anonymised, data could potentially reveal workers' identity or location, putting them at risk of retaliation [140]. Furthermore, the data gathered through these tools may also inadvertently exclude the most vulnerable to trafficking, due to worker characteristics - such as age, education, gender and migration status - which may limit their access to these tools. For instance, less educated and/or migrant workers may have limited literacy in their own language or the language of their country of employment [141].

More fundamentally, worker voice approaches are by themselves unlikely to help empower workers or combat modern slavery in supply chains, as they are unable to break the inherent power imbalances that prevail in supply chains. Engaging with workers is not equivalent to truly empowering worker voice: the potential of digital worker reporting tools can only be fully realised when these technologies are adopted by businesses with a genuine interest in and leverage to address worker exploitation. In this sense, worker voice approaches can face some of the same criticisms levelled against social audits [141]: in the absence of access to remediation and without linking these tools with clear accountability mechanisms, the information shared through social media platforms will not lead to improvements in workers' rights and working conditions. In some instances, the use of digital worker reporting tools may even undermine worker power - for instance, if companies justify avoidance of collective bargaining and engagement with unions on the basis that they have already heard "worker voices" [141].

**The potential of digital worker reporting tools can only be fully realised when these technologies are adopted by businesses with a genuine interest in and leverage to address worker exploitation**

For these tools to be successful, workers must feel they can speak openly (i.e., anonymously) about their experiences and voice concerns without repercussions [142], consideration should be given to ownership and compensation for the information they provide, and businesses must ensure that a direct, easy-to-use communication channel between workers and managers is established, so that effective action can be taken by the latter based upon the information shared by the former [140]-[142]. The most promising examples of the application of worker voice approaches are those in which industry guidelines are established alongside these new tools to clearly specify how the data shared will drive decision-making and support the development of solutions to mitigate risks and deliver benefits to workers. An example is the Worker Engagement Supported by Technology (WEST) Principles, developed to maximise the impact of technology-driven efforts to engage workers in global supply chains, which give guidance on how to design and implement technological solutions that identify and address worker abuse and exploitation. Even in those cases in which worker voice approaches can arguably be most effective, though, preliminary evidence indicates that they can at best be complementary rather than substitutes for other worker-centred approaches like worker-driven social responsibility initiatives [139]-[141]. Nonetheless, more systematic evaluations of these technologies are needed to better understand the circumstances in which they work best.

## 5.2. Worker-driven Social Responsibility Initiatives

The principle that worker participation is key in order to more effectively address human rights and labour conditions in supply chains has not only been acknowledged in due diligence legislative initiatives such as the Norwegian Transparency Act 2021, but is also at the core of private initiatives such as worker-driven social responsibility (WSR) schemes. WSRs are an innovative practice that involve workers in the creation, monitoring and enforcement of human rights standards. WSR initiatives can enhance the effectiveness of HRDD processes by ensuring that rights holders play a central role in identifying business and human rights risks and in designing mechanisms for redressing them [31].

### Key characteristics

Although the specific characteristics of worker-driven social responsibility initiatives vary considerably across industries and firms, a common feature of most WSR initiatives is the existence of a legally binding contract between workers' organisations and the firm at the top of the supply chain - obliging the company to buy only from suppliers

**Worker - driven social responsibility initiatives are an innovative practice that involve workers in the creation, monitoring and enforcement of human rights standards**



or contractors compliant with agreed labour standards (usually defined with the involvement of workers and their representatives).

Contracts typically stipulate tangible economic consequences for non-compliant suppliers (e.g., the lead firm commits to stop buying from these suppliers that fail to meet the agreed labour standards) as well as some sort of support to suppliers from the lead company. This support typically takes the form of financial incentives or better purchasing terms, to help suppliers comply with the standards [137].

Effective WSR schemes also tend to include some type of - peer-to-peer - education component for workers aimed at acquainting them with their rights and at informing them about the procedures to follow if their employer is in violation of the agreed standards, so that every worker becomes a potential enforcer of the agreement. Linked to this component is the establishment of a complaints mechanism run by an independent monitoring body so that workers can report violations without fears of retaliation. The independent body is in charge of carrying out regular inspections of working conditions, of responding to workers complaints and of determining whether suppliers have breached standards (and thus, whether firms at the top of the supply chain should stop sourcing from them).

The final - though fundamental - component of most WSR schemes is consumer pressure. It is consumer pressure - alongside worker-led actions such as boycotts, strikes and similar campaigns - and the associated threats of reputational and revenue costs that, according to proponents of WSR initiatives, ultimately leads companies to sign a legally binding agreement with workers [137], [143].

Consumer pressure thus plays a critical role in worker-driven social responsibility schemes, since the signature of a legally binding agreement between the lead company and worker organisations is what distinguishes WSR programs from other CSR initiatives. Virtually all CSR schemes lack effective enforcement mechanisms: participation is entirely voluntary and non-compliance has few - if any - meaningful economic consequences. By contrast, lead companies that sign a legally binding contract with workers cannot simply quit the programme, as worker representatives can use legal mechanisms - such as national or international judiciary systems or private arbitration - to force companies to comply with the agreement and remedy violations. Similarly, because lead companies have legal and financial incentives to enforce the agreed labour standard across their supply chains, suppliers know that abusive labour practices will likely mean the loss of their business. As lead firms involved in WSR schemes are legally required to support their suppliers in the implementation of improved work standards (e.g., through higher prices or up-front payments for goods, direct payments for the costs of

**The most promising types of audits are those that:**

- Are frequent yet un-announced
- Are run by independent and well-trained investigators who are aware of the power dynamics within the workplace
- Interview workers outside the workplace and without managers present
- Specify clear outcome-related accountability mechanisms

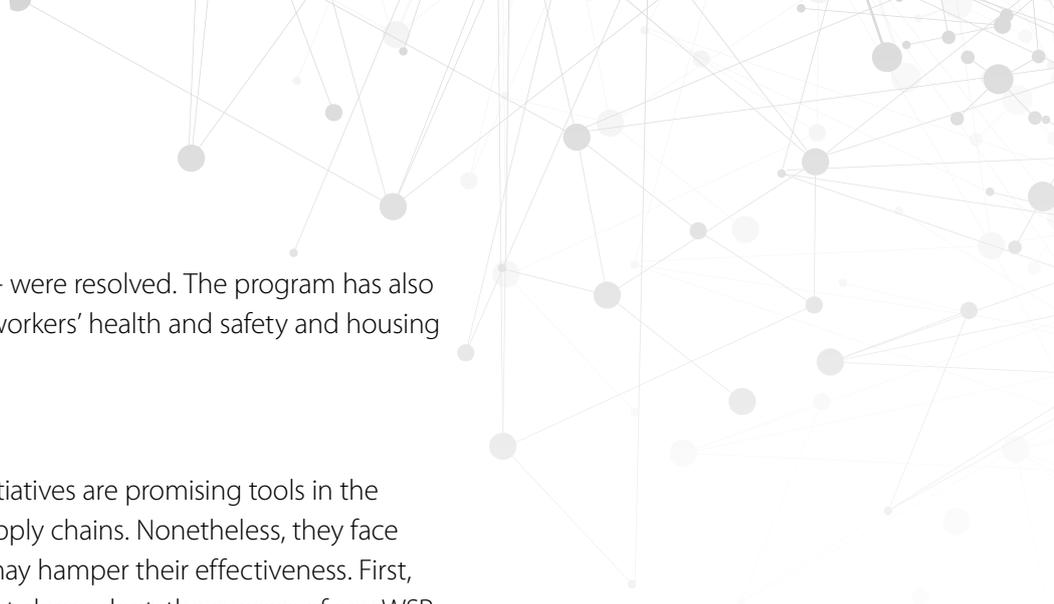
the improvements, or low cost loans), the costs of non-compliance for suppliers typically outweigh the potential gains [137].

The fact that work inspections within WSR schemes are conducted by an independent body (as opposed to by inspectors that are part of, or hired by, the firm at the top of the supply chain) further contributes to differentiate this type of initiative from - and increase their efficiency vis-à-vis - CSR programs. Under WSR, inspections tend to be conducted by well-trained investigators who operate independently of the lead firm and who are aware of the power dynamics within the workplace. Workers are interviewed without managers present and, when possible, outside the workplace.

### **Promising practices**

Examples of successful WSR initiatives can be found in different industry sectors in developed countries, including two US-based programs (the Fair Food Program and Milk with Dignity), and a recent Australian initiative (the Cleaning Accountability Framework). The Fair Food Program, for instance, is a legally binding agreement between the Florida Tomato Growers and the Coalition of Immokalee Workers - a human rights organisation founded by farmworkers in southwest Florida - established in 2010. The program involves six key elements: a pay increase for farmworkers supported by the premium paid by participating buyers such as Taco Bell, Whole Foods, and Walmart; ii) compliance with the program's code of conduct; iii) worker-to-worker education sessions carried out by the CIW on the farms and on company time to insure workers understand their new rights and responsibilities; iv) a worker-triggered complaint resolution mechanism (including a 24 - hour hotline) leading to complaint investigation, corrective action plans, and, eventually, suspension of a farm's Participating Grower status and its ability to sell to participating buyers; v) health and safety committees on every farm to give workers a structured voice in the shape of their work environment; and vi) ongoing auditing of the farms to insure compliance with each element of the FFP [144].

The achievements of the Fair Food Program have been impressive. It has received and processed almost 3,000 worker complaints in the last 10 years, with 82% of those resolved in less than a month. The program recovered almost \$500,000 in lost wages via the complaint process, and has seen a 10% wage increase among participating employees, relative to non-participating farmworkers. Additionally, 42 supervisors have been disciplined for sexual harassment as a result of complaint resolutions or corrective actions that addressed the program's audit findings, and 43 cases of discrimination - stemming from the conduct of supervisors,



co-workers or company practices - were resolved. The program has also seen notorious improvements in workers' health and safety and housing conditions [144].

## Practical challenges

These results indicate that WSR initiatives are promising tools in the fight against modern slavery in supply chains. Nonetheless, they face some important challenges that may hamper their effectiveness. First, WSR agreements are highly context-dependent: the success of any WSR initiative is contingent on the concessions workers are able to extract from employers, which in turn is related to the particular supply chain, industry and country in which workers are located. Getting lead firms to agree to sign a binding and legally enforceable agreement designed to actually enhance labour standards within their supply chains - instead of being simply a convenient tick-boxing exercise aimed at improving the firm's public image - is not necessarily easy. The chances of success of WSR initiatives are higher where businesses at the top of the supply chain are able to absorb the higher costs associated with improved labour standards and exert their leverage across the chain. By contrast, more symmetrical supply chains in which the lead company will not be in a position to fully absorb the costs of improving labour conditions - meaning that these would need to be shared by the firms throughout the chain - offer fewer opportunities to leverage lead firm power into improvement for workers [143].

The heavy reliance of WSR initiatives on consumer pressure to force lead companies is also potentially problematic. As we noted when discussing the limitations of disclosure legislation, there is no clear evidence that consumer pressure can be leveraged as a blanket tool to shape corporate behaviour: this type of pressure may well work in specific sectors or industries while being largely ineffective in other settings.

In sum, questions remain about the replicability, transferability and generalisability of WSR initiatives. Extant research suggests that they can be a useful tool when used in combination with HRDD processes embedded in a state-mandated enforcement framework, rather than as a stand-alone approach.

### 5.3. Ethical Recruitment Practices

Recruitment practices have received increasing attention from individuals and organisations involved in the fight against modern slavery in supply chains. Despite the existence of international labour standards relating to recruitment, national laws often fail to protect vulnerable (typically migrant) workers from abusive recruitment practices in globalised supply chains.

One of the most pernicious practices affecting workers in supply chains is the charging of recruitment fees by recruitment agencies before they have even begun working [145]. These fees are typically much higher than the actual cost of recruitment.<sup>35</sup> Workers unable to face the costs need to obtain a loan (either from the recruitment agency, the labour contractor or even a private lender) or get a wage advance, and are unable to freely leave their job until the debt is paid in full. As a result, recruitment fees frequently leave workers in situations of debt or bonded labour. According to the ILO, 51% of workers in situations of forced labour - roughly 8 million people worldwide - experience debt bondage [147]. Despite the prevalence of this practice, only a minority of states have introduced any laws to ensure that workers are not charged recruitment fees. In fact, as shown in Table 4, only half of the G20 countries have legally banned the charging of recruitment fees [75].<sup>36</sup>

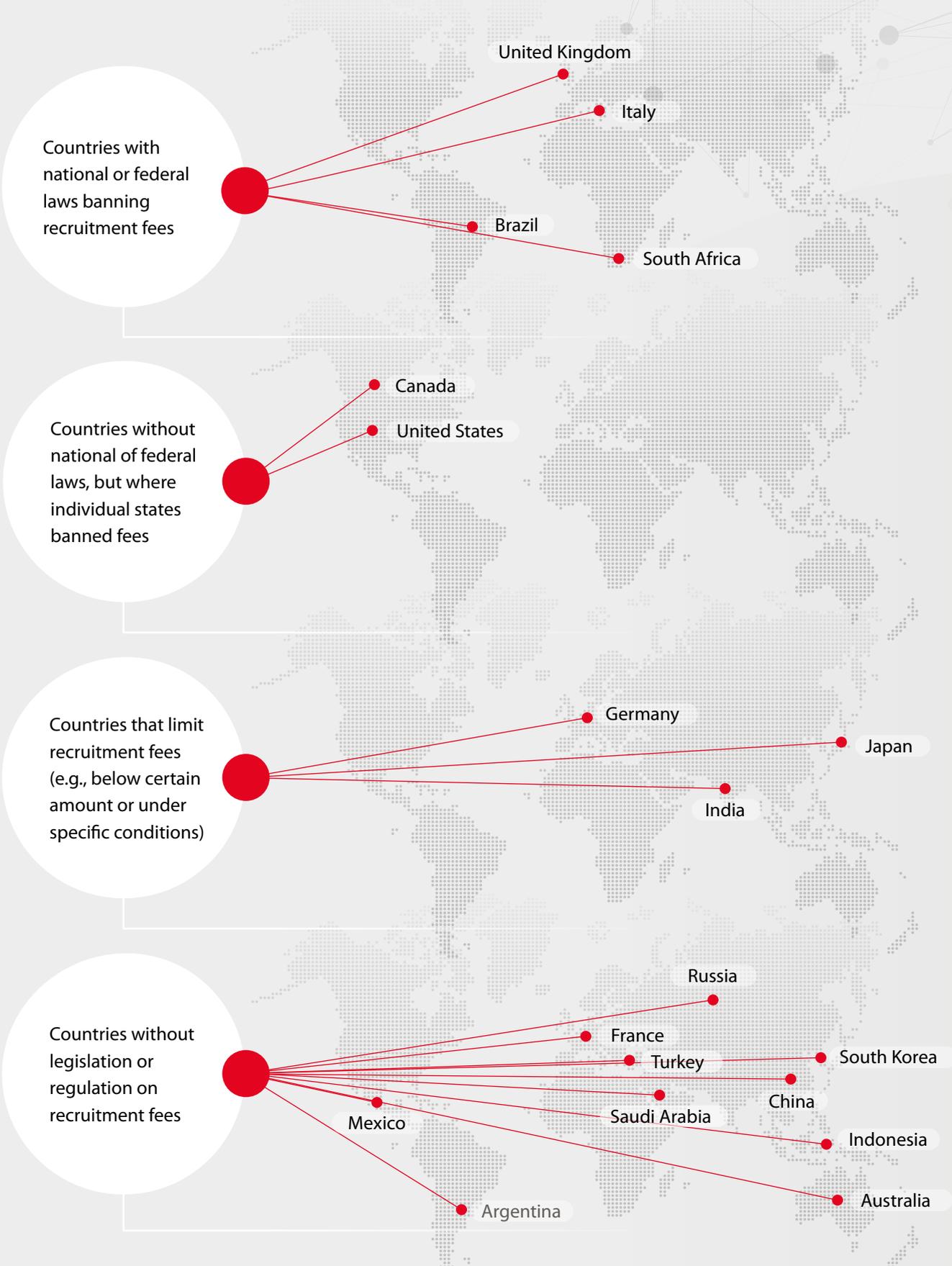
Besides recruitment fees, workers are usually charged for transportation or accommodation, which adds to their debt. Furthermore, employers or labour agencies may confiscate workers' passports, restricting their freedom of movement. These factors may be compounded by a lack of clarity about who their employer is, as multiple agencies may be involved in the employment of workers within one factory, creating further barriers to workers' ability to exercise their rights [148].

**51% of workers in situations of forced labour – roughly 8 million people worldwide – experience debt bondage, primarily due to the charging of recruitment fees**

<sup>35</sup> For example, Verité found that, already a decade ago, workers from Latin America and Asia were charged between \$3,000 and \$27,000 to secure visas and jobs on farms in the USA, with some reporting signing over the deeds to their own land in order to obtain the loans and then losing their land when they could not make repayments because their wages were lower than those promised by the recruiters [146].

<sup>36</sup> As seen in Table 4, the UK is one of the few G20 countries that explicitly prohibits recruitment fees charged to employees. Such prohibition has been in effect since the passage of the Employment Agencies Act 1973, and has been complemented in 2005 by the introduction of a licensing scheme to regulate businesses that provide workers to high sectors like agriculture, horticulture, shellfish gathering, and processing and packaging industries. Additionally, the competencies of the Gangmasters and Labour Abuse Authority, a non-departmental public body overseeing third-party employment agencies, were broadened in 2017 to more effectively combat modern slavery.

Table 3. G20 government responses regarding recruitment fees



Source: Based on Walk Free Foundation (2018 [75]).

## Promising Initiatives

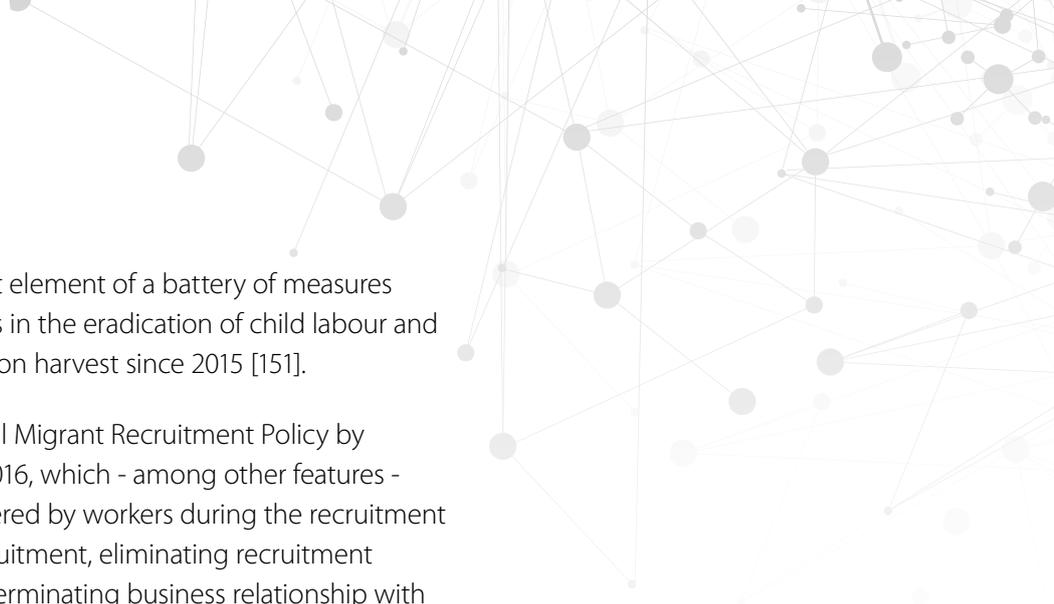
In view of many states' inability or unwillingness to take decisive steps to end abusive recruitment practices in supply chains, several multi-stakeholder initiatives have emerged. Initiatives such as ILO's Fair Recruitment Initiative, the International Organization for Migration (IOM)'s International Recruitment Integrity System, or the World Health Organization's Global Code of Practice on the International Recruitment of Health Personnel seek to: enhance global knowledge on national and international recruitment practices; encourage the development and enforcement of laws and policies promoting fair recruitment; advocate for fair business practices; and support the protection of workers' rights [149]. Additionally, organisations like the Leadership Group for Responsible Recruitment, the Interfaith Center on Corporate Responsibility [147], and some individual companies have increasingly taken steps to address these issues.

While the focus and policy emphasis of these various initiatives vary, they all tend to agree on the need to implement a broad set of measures aimed at improving prevailing recruitment practices, such as: banning or limiting recruitment fees; preventing recruitment agencies from requiring workers to post a bond for reimbursement at the end of their contract and from retaining workers' personal documents like passports or visas; ensuring that employment contracts are provided in a language understandable to workers; that workers receive wage statements accurately reflecting their pay; and allowing workers to choose their own housing [148]-[149].

Beyond these general principles, organisations like the ILO and IOM have endorsed the use of new technologies as a means of promoting fair and ethical recruitment practices. These include an easy-to-use online portal to help stake-holders access international standards, practical tools, innovative research and good recruiting practices, and the development of an online certification system which will provide a list of "bona fide" recruitment agencies and allow recruiters to demonstrate their commitment to the fair treatment of jobseekers and workers. A joint report by the ILO and IOM also makes the case for the adoption of online recruitment technology platforms as a way of making the recruitment process and costs more transparent and lowering the costs associated with job-matching procedures [150].

## How effective is this approach?

In recent years, there have been a number of case studies that illustrate how the move towards fair recruitment practices can help improve labour standards in supply chains. According to the ILO Third Party Monitoring Project, fair recruitment of seasonal agricultural workers in



Uzbekistan has been an important element of a battery of measures that contributed to major progress in the eradication of child labour and forced labour in the country's cotton harvest since 2015 [151].

Similarly, the adoption of an Ethical Migrant Recruitment Policy by seafood producer Thai Union in 2016, which - among other features - aims to reduce the costs encountered by workers during the recruitment process by directly managing recruitment, eliminating recruitment service fees paid by workers and terminating business relationship with agencies found charging workers illegal and/or irregular fees, led to increased job satisfaction and perceived safety among workers as well as to higher business benefits for the company [152].

A more systematic review of the effectiveness of ethical recruitment practices was conducted by the ILO in 2020, in the context of a comprehensive assessment of the results of the Fair Recruitment Initiative five years after its launch [153]. ILO's study documents the success of business-led ethical recruitment practice programs in settings as diverse as Mexico, the Philippines, Guatemala and Jordan. In Mexico, for instance, non-for-profit recruitment agency CIERTO, which provides agricultural labourers to the US agricultural sector, not only does not charge recruitment fees but, during the Coronavirus pandemic, provided workers with free COVID-19 tests as well as with health coverage both in Mexico and the US. Workers recruited by CIERTO do not have any debt as a result of their recruitment, and have reported being safe from practices such as retention of documents, non-payment of salary, contract substitution and deceitful and fraudulent job offers. Moreover, none of the workers recruited by CIERTO in 2020 got COVID-19 while working in the USA. CIERTO has seen an increase in the number of employers requesting their services, while US consulates in Mexico are prioritising CIERTO's visa renewal requests because they trust that the recruitment agency follows USA's sanitary measures and requirements. In Jordan, in turn, a zero-fee recruitment policy for workers in the textile industry was adopted in 2019 following consultations between the Ministry of Labour, ILO, employers in the garment sector and their trade union. The vast majority (75%) of the (81) Jordanian garment factories surveyed in ILO's 2020 study were found to be compliant with the zero-fee policy, and 85% of them were found to have taken steps to ensure that workers do not pay any recruitment fees.

Codes of conduct are another way in which ethical recruitment practices are implemented in practice. Since 2015, the Responsible Business Alliance, which includes 164 companies employing 3.5 million workers, holds its members accountable to a common Code of Conduct including the requirement of no payment of recruitment fees by workers alongside a range of training and assessment tools to support

the adoption of responsible recruitment practices by its members and their suppliers. The introduction of this Code of Conduct has enhanced the transparency of recruitment processes, lowered recruitment costs, led to the elimination of excessive recruitment fees and resulted in the reimbursement of millions of dollars to thousands of workers employed in RBA companies and their suppliers. Similar codes of conduct have been signed by recruitment agencies operating in the Philippines-Hong Kong corridor in 2019, as well as by Ethiopian Overseas Private Employment Agencies in 2021 [153].

### Challenges and further considerations

While these cases are encouraging, voluntary ethical recruitment initiatives alone are unable to address the structural conditions faced by vulnerable workers in global supply chains. Since most states have failed to ban or limit recruitment fees and do not have the resources to effectively monitor recruitment practices, unscrupulous recruitment agencies operate with impunity, and in many cases are the only alternative for job-seekers in the developing world. Although the involvement of trade unions and civil society organisations may help remedy these shortcomings, this has remained a “blind spot” for many states [147]. Fortunately, in the last few years several governments started to align their laws and or policies with the ethical recruitment initiatives championed by non-state actors. In this direction, Thailand and Vietnam have introduced law reforms removing the obligation of workers to pay brokerage commissions and/or explicitly banning recruitment agencies to pass these costs to workers; Tunisia has created an inspectorate dedicated to monitoring recruitment agencies that place Tunisians abroad with a view to ensuring fair recruitment; and Nepal and Jordan negotiated a bilateral labour agreement that includes provisions related to fair recruitment [153]. However, as seen in Table 4, most of the more developed nations have yet to adopt legislation limiting or banning recruitment fees.

In the absence of such legislation, the only costs businesses face for relying on “unscrupulous” recruitment agencies are reputational, tied to public opinion’s and consumer’s response. As we noted before, while reputation-based enforcement mechanisms may “matter” for particular firms or sectors, there is no evidence that they systematically shape corporate behaviour. Hence, in a context in which recruiters do not face legal liabilities and most firms are unlikely to come under public scrutiny, ethical recruitment initiatives can at best complement, but not replace, state-led approaches such as mandatory human rights due diligence laws - which insist on careful due diligence of recruitment practices used in supply chains.

## 6 Conclusion

In response to intense civil society pressure and increasing public awareness of exploitation in global supply chains, governments, businesses, investors and worker organisations have adopted a variety of approaches aimed at tackling modern slavery. These approaches have helped raise public awareness about modern slavery in global supply chains and put this issue on the radar of (and even made it a priority for some) policy-makers, private actors and the civil society.

Nevertheless, given the myriad of approaches taken, and in view of the considerable resources devoted to making progress in this direction, it is important to ask what works, i.e., what are the most effective and/or promising initiatives to eradicate modern slavery in supply chains. Answering this question is far from straightforward,<sup>37</sup> and our extensive review of the literature and of the empirical evidence indicates that no single or simple “solution” is available.

Our analysis, however, suggests that the most effective strategy to combat modern slavery in supply chains would require governments to take a leading role in this fight. While voluntary approaches like the adoption of responsible purchasing practices, investor engagement, worker-driven social responsibility initiatives and ethical recruitment schemes can undoubtedly help improve working conditions in global supply chain, their success ultimately depends on business’ willingness to implement them - be it because of their commitment to upholding workers’ rights or due to reputational concerns. These mechanisms are in all likelihood insufficient to prevent a race to the bottom in pursuit of maximising profits at the expense of labour standards.

Governments have a key role to play in this respect, creating a level playing field for businesses genuinely attempting to

**Governments have a key role to play in the fight against modern slavery in supply chains - creating a level playing field for businesses, setting clear standards for firms, workers and investors that seek to address the root causes of this exploitation, and enforcing those standards**

<sup>37</sup> Some scholars reject the idea that modern slavery can be “fought” through particular interventions or initiatives, underscoring instead the need for profound transformations addressing its structural socio-economic causes. Similarly, other authors note that it is rather naive to expect the same actors that create the conditions for labour exploitation and human rights violations to exist in supply chains - mainly governments and corporations - to come up with “solutions” [154]. While we do not necessarily disagree with some of these arguments, we believe that targeted and discrete interventions aimed at curbing modern slavery in supply chains should accompany more structural transformations, and that simply neglecting the former because they distract from structural changes carries unbearable costs for the millions of vulnerable people living under exploitative labour conditions or at risk of becoming victims of modern slavery.

do the right thing; setting clear standards for businesses, workers and investors that seek to address the root causes of this exploitation; but also - and equally important - enforcing those standards. Public authorities should not only lead by example and provide the conditions to incentivise businesses and investors to make ethical choices, but also penalise those who benefit from exploitative labour practices through effective - and effectively enforced - legislation, civil remedies and criminal proceedings.

Based on our reading of the literature and the evidence, the most promising government-led approach to achieve these goals would involve a combination of: i) an - internationally harmonised- legislative framework imposing mandatory due diligence on firms (and investment portfolios) - accompanied by the imposition of legal liability on companies that fail to prevent these abuses, and the engagement of workers and trade unions in designing and monitoring reporting and redress mechanisms; ii) the application of such a legislative framework to public procurement and finance; and iii) transparent and coordinated imposition of import bans targeting specific companies and prioritising the remediation of victims rather than simply preventing goods from entering particular markets. The elimination of recruitment fees - particularly if established in enforceable legislation preventing companies and recruitment agencies from charging workers, rather than being left to the “good will” of recruiters and/or businesses - would also be a critical step in the fight against modern slavery.

These government policies should be accompanied by industry- and sector-specific guidelines – jointly developed by government agencies, firms, industry experts and sector-specific government organisations - allowing businesses to clearly understand what modern slavery typically “looks like” in their particular area of activity, and how these government-led approaches should be practically implemented in their specific operational context.

From investors’ perspective, the development of international reporting standards providing consistency and clarity about company performance – along the lines of the new International Sustainability Standards Board announced by the IFRS Foundation - is critical to effectively identifying, addressing and preventing modern slavery in global supply chains. Such standards should be based on a set of high-quality, enforceable and globally accepted accounting and sustainability disclosure criteria, which would in time help inform a harmonised ESG rating system. ESG ratings should also be further strengthened by the disaggregation of E, S and G ratings, so that transparency and value are given to each important but inherently distinct sustainability criteria.



In addition, more research is needed to address knowledge gaps regarding the effectiveness of alternative government, private- and worker-led strategies and to identify promising synergies and complementarities between these approaches. Possible avenues for future work include:

- Designing new empirical and data collection tools to evaluate the effectiveness of alternative measures aimed at tackling modern slavery in supply chains. In particular, these methodological efforts should focus on disentangling the effect of these approaches on the identification, prevention, reduction and redressing of modern slavery. More nuanced analyses that clearly define and operationalise these different dimensions, and evaluate the effectiveness of alternative policies along each of them are required in order to make more specific policy recommendations.
- Conducting quantitative meta-analyses of the extant research on the effectiveness of alternative strategies to tackle modern slavery in global supply chain. The available evidence is largely anecdotal and case-specific, which undermines its external validity. Rigorously assessing and integrating these findings and drawing systematic conclusions from extant research would help better understand whether and under what conditions these different approaches are most/least effective, helping to formulate more generalisable policy recommendations.
- Building a research network to periodically bring together key stakeholders - including governments, business, investors, workers, NGOs, academics and practitioners - to exchange ideas, data sources, and methodological insights, discuss future research projects, and share information in order to design better policies aimed at combatting modern slavery in supply chains.

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# Appendix

Table A.1. Additional examples of disclosure legislation

Legislation	Coverage	Disclosure and Auditing requirements	Penalties for non-compliance
<b>Article 74 of the Indonesian Limited Liability Company Law, 2007</b>	All companies conducting business in natural resources	CSR activities. No auditing requirements specified.	Reporting on a “comply or explain” basis. Failure to carry CSR activities may carry penalties like restriction, suspension or revocation of business activities.
<b>Swedish state Guidelines for External Reporting by State-owned Companies, 2007</b>	All Swedish state owned companies.	Ethical guidelines, behavioural codes and equal opportunities policy, as well as sustainability reporting in accordance with the Global Reporting Initiative (GRI).	“Comply or explain”.
<b>Buenos Aires (Argentina) CSR Law 2594, 2008</b>	All companies that employ over 300 people and whose main business has resided in the city for over a year	Relationship between organizations and their employees, the community in which they operate, its customers, suppliers and other community organizations.  Audits conducted by the Buenos Aires City Government.	Criminal liability.
<b>Danish Financial Statements Act, 2001 (amended in 2009 to include CSR reporting)</b>	State-owned companies and companies with total assets of more than €19 million, revenues more than €38 million, and more than 250 employees.	CSR policies, procedures and actions relating to human rights. CSR audits.	“Comply or explain”.

Legislation	Coverage	Disclosure and Auditing requirements	Penalties for non-compliance
<b>Government Resolution on State Ownership Policy, Finland, 2011</b>	Publicly-owned companies, including subsidiaries and subgroups	Statements on supply policies, procedures, instructions sent to suppliers, methods of monitoring and selecting subcontractors, measures taken for non-compliance, audits, policies for suppliers.  Audits not required, but results from audits must be included in the disclosure.	Reporting on a “comply or explain” basis.
<b>Spanish Sustainable Economy Law, 2011</b>	Government-sponsored commercial or state-owned companies and those with more than 1000 employees	Respect for human rights. Disclosure should include whether audits were conducted by a third party.	Not specified
<b>United States Executive Order - Strengthening Protections Against Trafficking In Persons In Federal Contracts, 2012</b>	US federal contractors and subcontractors.	Awareness programmes for employees about policies and actions, process for employees to report trafficking, recruitment, wage and housing plans action plans to ensure subcontractors do not engage in trafficking. Social audits.	Subcontractor removal, contract termination and debarment from bidding on future federal contracts, in some cases criminal sanctions.
<b>Grenelle II Law, France, 2012</b>	Companies listed in France with more than 500 employees and total assets or net annual sales of €100 million.	Steps taken to eliminate child or forced labour, percentage of outsourced work, inclusion of social responsibility in conversations with suppliers and subcontractors. Third party auditing is required.	“Comply or explain”. If companies fail to disclose the reasons for non-disclosure, they may be taken to court and forced to disclose.

Legislation	Coverage	Disclosure and Auditing requirements	Penalties for non-compliance
<b>State of São Paulo (Brazil) Legislature law 14,946, 2013</b>	All companies registered to operate in São Paulo.	Information is disclosed through mandatory public inspection, conducted jointly with private sector CSR auditing.	License to operate can be suspended for 10 years if slave labour is identified in the supply chain.
<b>Indian Companies Act, 2013</b>	Companies doing business in India with net annual worth of Rs. 500 crore or above, or turnover of Rs. 1,000 crore or above, or a net profit of Rs. 5 crore or above	CSR policy, activities, the amount spent and the composition of the CSR Committee, disclosures on material risks in the Board of Directors Report.  Disclosure on audits is not specified. CSR policy will be monitored “from time to time” by a committee.	Non-reporting punishable with fine of INR 50,000. Company officers found guilty can be imprisoned for up to 3 years.
<b>European Union Directive (2014/95), 2014</b>	Companies incorporated into EU member states, listed on an EU exchange, and with more than 500 employees and a net turnover of at least €40 million.	Business model, policies and outcomes, due diligence processes, operational risks.  Audits should use international standards such as UN Global Compact, OECD Guidelines, ISO 2600 or GRI.	No specific penalties for non-compliance. “Comply or explain”: companies can justify/explain non-compliance in their annual report.

Source: Based on Phillips, Lebaron and Wallin (2018 [5]).

Table A.2. Additional examples of HRDD legislation

Legislation	Coverage	Due Diligence procedures	Redressal mechanisms	Penalties for non-compliance
<b>Switzerland Conflict Minerals and Child Labour due diligence, 2022</b>	Companies with registered office, central administration or principal place of business in Switzerland that: (1) have minerals or metals originating from conflict-affected or high-risk areas in their custody and are involved in their movement, preparation and processing in the final product; or (2) offer products or services that were produced using child labour	Risk-based due diligence relating to child labour and/or conflict minerals, establishing a supply chain policy, traceability system, grievance mechanism and risk mitigation	Criminal liability	Fine of up to SFr 100,000 for intentionally providing a false statement, intentionally failing to comply with the reporting obligation or failing with the traceability documentation obligations. In case of negligence, the maximum fine is reduced to SFr 50,000
<b>EC draft Directive on Corporate Sustainability Due Diligence</b>	Large EU and third-country companies, and smaller companies in "high-risk" sectors	Integrate due diligence into their policies, prevent, mitigate and end adverse impacts, complaints procedure, monitor effectiveness of policies, and publicly communicate on their due diligence	Civil liability regime, allowing victims to sue companies for damages	Fines for non-compliance and specific directors' duties in relation to human rights and environmental law

Source: Based on Allen & Overy (2020 [22]), Business and Human Rights Resource Centre (2021 [23]), Ropes and Gray (2021 [24], 2022 [25]), Savourey and Brabant (2021 [26]), Thomson (2021 [27]), Office of the United Nations High Commissioner for Human Rights (2021 [28]).



Public authorities should not only lead by example and provide the conditions to incentivise businesses and investors to make ethical choices, but also penalise those who benefit from exploitative labour practices through effective - and enforced - legislation, civil remedies and criminal proceedings

