

Mandatory Human Rights Due Diligence Legislation in Europe and the Identification of Rural Victims of Modern Slavery and Forced Labour within the Agri-horticultural Supply Chain

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Abstract

Since 2017, Germany, Norway and France all passed or began to implement some form of Mandatory Human Rights Due Diligence (mHRDD) reporting for businesses. MHRDD legislation intends to hold businesses accountable for failing to identify and act upon actual and potential risks to workers within their own operation and within their supply chains. These developments are signs of progress to hold businesses more accountable in tackling modern slavery, but it is unclear what, if any, impact this will have on victims of Modern Slavery and Human Trafficking (MSHT) in the agricultural sector. Modern slavery within the European Agri-horticultural supply chain is usually mediated via organised crime, or involves vulnerable migrants recruited through informal labour intermediaries. The bottleneck structure of the Agri-horticultural supply chain in Europe means that the last business step of the food supply chain prior to consumers (food retailers) are usually several steps removed from the rural producers of agricultural products themselves. This study compared the three laws by identifying the food retailers with the top 90% of market share in each country, identifying if they are subject to reporting requirements under the applicable mHRDD law, analysing if the mHRDD reports produced by the food retailers address the risk of MSHT in their agri-horticultural supply chain, and analyses if rural victims of MSHT in their agri-horticultural supply chain would have any legal recourse to compensation under the applicable laws. The findings here suggest that mHRDD can theoretically positively impact the lives of rural victims of MSHT in the long term, especially since the relatively small number of end retailers compared to farms creates a streamlined checkpoint through which most agri-horticultural products flow. However, the laws are not likely to be effective in aiding current rural victims of MSHT in the agricultural sector to accessing remedy for abuses, nor will they address the downward pressure on the supply chain created by food retailers.

Keywords: modern slavery; human trafficking; human rights due diligence; organized crime; agri-horticultural supply chain

Introduction

In the last decade, Europe has seen an increased legislative focus on holding business accountable not only for actual human rights violations and risks to directly employed workers and those within their own operations, but also for identifying and preventing risks to workers within their supply chains through Mandatory Human Rights Due Diligence (mHRDD). In the past, voluntary Human Rights Due Diligence (HRDD) was the standard for business to avoid human rights abuses, however, it has been becoming increasingly apparent that voluntary due diligence is not enough to avoid human rights abuses. The primary source for HRDD standards for corporations are the United Nations Guiding Principles on Business and Human Rights (UNGPs) (United Nations, 2011). MHRDD in Europe was ushered in by the UK Modern Slavery Act of 2015 and, at the European level, the Non-Financial Reporting Directive of 2014 (European Union, 2014). However, voluntary HRDD had been largely ineffective in quelling business-related human rights abuses (United Nations, 2021). These “soft law” pieces of legislation have been criticised for having disclosure-based strategies that make no difference in actual corporate behaviour, because there are no sanctions or penalties for insufficient due diligence (Islam & Van Staden, 2021).

As Special Representative of the UN Secretary-General on Business and Human Rights, Professor John Ruggie (2008) drafted the framework “Protect, Respect, and Remedy” (PRR), which rests on three pillars: (1) the state duty to protect against human rights abuses by third parties, including business; (2) the corporate responsibility to respect human rights; and (3) greater access by victims to effective remedy. Although the framework did receive criticism from Human Rights organisations campaigning for a more stringent, legally binding framework (Lafarre & Rombouts, 2022), the accompanying UNGPs were unanimously adopted by the UN Human Rights Council in 2011. Human rights due diligence is the central concept in the PRR framework and the UNGPs. Current UNGPs recommend a “smart mix” of national, international, public, private, voluntary and obligatory measures that include mHRDD legislation to promote human rights respect in the private sector (Lafarre & Rombouts, 2022).

A new wave of “hard law” European legislation has introduced some legal or financial consequences for failing to meet mHRDD obligations. Already in force are the Corporate Duty Of Vigilance Law (*Loi au devoir de Vigilance, LdV*) in France, The Act on Corporate Due Diligence Obligations in Supply Chains (*Lieferkettensorgfaltspflichtengesetz, LkSG*) in Germany, and the Act relating to enterprises' transparency and work on fundamental human rights and decent working conditions (Transparency Act) (*Lov om virksomheters åpenhet og arbeid med grunnleggende menneskerettigheter og anstendige arbeidsforhold (åpenhetsloven), TA*) in Norway. In addition to these pieces of legislation which are already in force, In March 2024, the EU member states approved Directive on Corporate Sustainability Due Diligence (CSRD) (European Parliament, 2024). The CSRD introduces rules for companies regarding Human Rights and Environmental Due Diligence. Each member state will have two years to transpose the directive into national law. The directive will then start to apply to companies from 2027 and onwards, starting with the largest

companies. Because all member states will be required to enact mHRDD, analysing already enacted mHRDD in the EU will aid in identifying which legislative features are effective in combating Modern Slavery and Human Trafficking (MSHT) in the European Agri-horticultural supply chain.

The International Labour Organization (ILO) defines forced labour as “...all work or service which is exacted from any person under the threat of a penalty and for which the person has not offered himself or herself voluntarily.” The United Nations defines human trafficking as “...the recruitment, transportation, transfer, harbouring or receipt of people through force, fraud or deception.” (United Nations Office on Drugs and Crime, n.d.). Because these actions are an integral part of labour exploitation, MSHT is used here to describe all types of labour exploitation. In 1998, the ILO Declaration on Fundamental Principles and Rights at Work was adopted, which identified four areas of special importance in protecting human rights at work worldwide (International Labour Organization, 2022). These four areas are: (a) the effective abolition of child labour; (b) the elimination of all forms of forced or compulsory labour; (c) freedom of association and the effective recognition of the right to collective bargaining; and (d) the elimination of discrimination in respect of employment and occupation. Although all these areas of utmost human rights importance, this paper focuses on the effectiveness of mHRDD legislation only in regard to MSHT within the agri-horticultural supply chain.

Rural victims of MSHT are often employed in the agricultural sector, comprising 2.1 million victims of MSHT worldwide (International Labour Organization et al., 2022). Particularly at risk are seasonal migrant workers recruited through informal labour intermediaries. Media reports and victim accounts corroborate that modern slavery is sometimes conducted or facilitated by organised crime gangs in the European agri-horticultural supply chain (Jones & Awokoya, 2019; Rizzuti, 2021; Smith, 2024; Muti, 2022). Agriculture is also the sector with the biggest difference in the distribution of the labour force as a whole compared to those working in agriculture as a result of labour exploitation. That is to say, 12.3% of the global adult labour force is employed in agriculture, but 27.4% of adults in forced labour exploitation are in the agricultural sector (International Labour Organization et al., 2022), which shows that labourers in the agricultural sector are at particular risk for human rights violations.

In 2023, Famakan Dembele, a tomato picker from Mali, died of heat exhaustion while working in southern Italy. Exhaustion is a common risk for laborers in the area whose earnings depend on the number of tomatoes they pick. Dembele had been living in a ghetto near Foggia where around 2,000 farm workers live without running water, electricity, or proper sanitation (Freedom United, 2024). Undocumented labourers across Italy are often subject to a system known as “caporalato” – a gangmaster system where middlemen illegally hire labourers and provide them to farms seasonally for illegally low wages. Workers are often housed in remote shanty towns, and are then forced to pay the gangmasters the cost of transportation to and from remote fields. In 2018, 16 such labourers in the tomato industry were killed in lorry crashes as they were being transported home after a day’s work in tomato

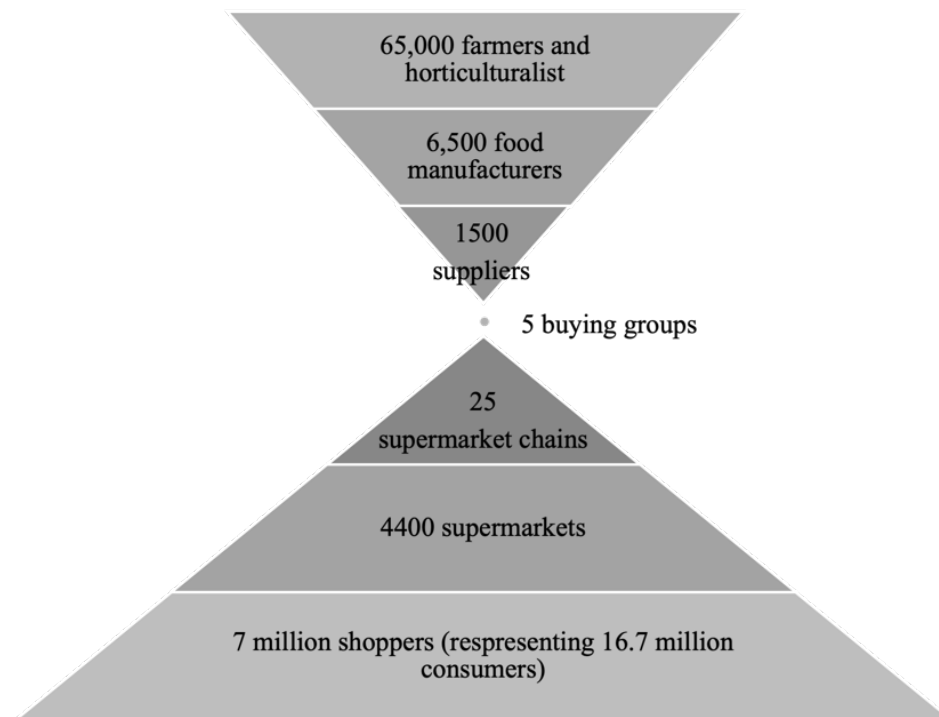
fields (Gozzi, 2024). The human rights abuses are not limited to Italy, though. The tomato industry in general has well documented human rights violations via labour exploitation (Portugal et al., 2006; Faleschini Lerner & Past, 2020; Gagnon, 2023; Corrado, 2017). The top exporters of tomatoes to European countries are Spain, the Netherlands and Morocco (World Integrated Trade Solution, n.d.), and these countries are not an exception. In 2022, the Spanish government sponsored a report explicitly outlining the presence of labour exploitation in the Almería region, where most Spanish tomatoes are produced, calling labour exploitation the “secret ingredient” in the success of the Almerian greenhouses (García & Guzmán, 2022). In the Netherlands, agricultural work is carried out primarily by migrants that regularly face “lack of guarantees of a regular and sufficient income, wage discrimination, withheld wages and overtime payments as well as unlawful fees or fines are often used to discipline the workforce” (Siegmann et al., 2022, p.226). In Morocco, Medland (2021) found it difficult to conduct interviews with migrant workers in tomato greenhouses because visits “were cancelled by managers upon the realisation that I was a British researcher. The concern.... [was] primarily worried about my potential connection to a growing UK market in which Moroccan produce has a little-blemished reputation.” (p.4). However, in the interviews that were carried out, it is apparent that workers are subjected to extremely low wages, long hours, extreme temperatures and no job security.

MSHT has gained momentum in recent years (European Commission, 2022), however, research about MSHT in business and management remains undeveloped (Caruana et al., 2020) and there is a lack of socio-economic theoretical basis about supply chain management in general (Halldorsson et al., 2007) as well as a lack of information about MSHT in supply chains (Crane, 2013). Labour intensity, value distribution, elasticity of demand, legitimacy, and regional clustering are some of the factors that make a particular sector or chain more appealing for slavery practices (Crane, 2013). This describes the agri-horticultural sector well; it has high, seasonal manual labour requirements, demand and value distribution can be very elastic as the sector is at the mercy of climate, weather, and disease, there are known illegitimate actors in labour procurement (Abbasciano, 2021), and the sector is necessarily regionally clustered. Commodity chains are often highly centralised, with only a few companies dominating the world market (Bridge & LeBillon, 2017; Clapp, 2018). This is especially true of the Agri-horticultural supply chain, which has an extreme bottle-neck structure: many, many farms are eventually represented by very few food retailers, who are in turn represented by even fewer buying groups. For example, as you can see in Figure 1, in the Netherlands, the products of 65,000 farmers are funnelled through 5 International Buying Groups (IBGs) in order to reach 16.7 million consumers. All major food retailers in Europe participate in IBGs, which allow them to coordinate procurement across borders to obtain the lowest possible prices (Ten Kate & van der Wal, 2017). IBGs wield so much power that it enables them to impose practices that “grossly deviate from good commercial conduct, good faith and fair dealing”, such as delisting of suppliers unless they offer price discounts. (Siegmann et al., 2022, p. 234). This results in an unprofitable price paid to producers, who are unable to compensate for their productive inputs (Mariani & Viganò, 2013). The downward pressure of farms from retailers via IBGs and, in turn, suppliers, means that farms will employ any cost saving measures in order to survive. Workers are seen only as a cost,

(Siegmann et al., 2022) and farmers become dependent on low wages and insecure contracts for migrant workers (Franck & Nemes, 2018) which in turn makes MSHT of people in rural agricultural areas an integral part of the European agri-horticultural supply chain.

Figure 1

Concentrations within the Dutch food chain



Note. Adapted from PBL: Netherlands Environmental Assessment Agency

Within a supply chain, a direct supplier is referred to as a tier-1 one supplier. An indirect supplier is a tier-n supplier. For example, a cocoa farmer in West Africa, where 65% of the world's cocoa beans are produced, might be a tier- 5 supplier to a food retailer in Germany (Kraft et al., 2024). The cocoa famer sells their cocoa beans to an agent, who then supply the beans from many farms to a cocoa processor, who when supply the processed cocoa to a chocolate producer, who when supplies chocolate to a food retailer.

Although it is estimated that the most serious environmental and social breaches are caused by tier-n suppliers rather than tier-1 suppliers (Villena & Gioia, 2018; Tachizawa & Wong, 2014; Plambeck, 2012), the food retailers that account for most of the market share often enjoy relatively limited legal liability for abuses at the beginning of their supply chains (LeBaron et al., 2017). Large transnational corporations that sell end products to consumers usually have complex structures, which include subsidiary companies, tier-1 suppliers and tier-n suppliers spanning across international borders (Mosley, 2011, p.17). Tier-n supplier are often small and medium-sized enterprises that are sheltered from media pressure, NGOs and other stakeholders (Grimm et al., 2016; Tachizawa & Wong, 2014), so they are less exposed to institutional pressures, especially considering that regulatory frameworks and

guidelines usually originate from the buying company (Tachizawa & Wong, 2014). These complex business structures create the social problem that is unclear to what extent large corporation can be held liable for human rights violations in the production process leading to the goods they sell. Transnational corporations have gained focus for liability because the countries where tier-n supplier are located are often developing countries with either weak laws and/or weak law enforcement mechanisms, compared to the countries where the products are ultimately sold. This situation is often referred to as the ‘governance gap.’ Although these complex business structures are organized around the legal concepts of ownership, limited liability, and contracts, they have allowed corporations to use the governance gap to outsource not just production, but also liability (Rühmkorf, 2020, p.119). The large majority of transnational corporations now include “sustainability terms,” which cover issues such as human right, labour standards and environmental protections in their contracts with suppliers (McCall-Smith & Rühmkorf, 2019; Ulfbeck, et al., 2019, p.15).

Even though the conditions of the contract are intended to benefit the employees of the supplier or sub suppliers, as third parties who were not a party to the contract itself, contract law does not provide an avenue to sue for breach of contract (Rühmkorf, 2015, p. 98–101). Similarly, under tort law, a duty of care does not usually arise to control of third parties (Goudkamp, 2017, p. 205–211). This latest wave of “hard law” mHRDD is in part an attempt to respond to the complexity of multi-tier supply chains via national legislation, the idea being that such laws could overcome the structural complexities of business organization a look at them holistically (Rühmkorf, 2020).

The current paper assesses if the mHRDD legislation already enacted in France, Germany and Norway will aid in the identification, mitigation and compensation of current MSHT abuses of rural victims in the agri-horticultural supply chain. Prior to the adoption of these new mHRDD laws, literature about corporate accountability usually focused on the implications for entities required to do HRDD, such as the drafting, output, and monitoring of due diligence regulations, rather than clarifying explicit connections to the victims of human rights violations (Schilling-Vacaflor, 2021). The effectiveness the laws in identification, mitigation and compensation of current MSHT abuses of rural victims is evaluated by comparing and contrasting the acts, analysing what portion of food retailers have due diligence obligations, what responsibility, if any, food retailers will have to prevent human rights abuses at the beginning of their supply chain as results of applicable acts, and what recourse victims of MSHT in these supply chains have for remediation. Because the risk of MSHT within the agri-horticultural supply chain is well documented (Di Marzio, 2017; Migrazione, 2014; Rizzotto & Cgil, 2020; Zawojkska, 2016), it is expected that this will be reflected in the risk analysis in mHRDD reports produced by food retailers with due diligence obligations.

Methods

Countries in the EU which had active Mandatory Human Rights Due Diligence legislation were identified: Germany, Norway and France. Although there have been campaigns in over ten European countries to implement mHRDD (Evans, 2019) only these

three have mHRDD legislation already in force. To compare and contrast the similarities and differences of the acts, the thresholds for application, due diligence requirements and liability provisions were summarised and compiled into a table. The laws were then comparatively analysed by looking at three aspects: the effectiveness of the threshold for application to an entity, the effectiveness of the due diligence obligations required of the entities, and the effectiveness of enforcement and recourse for victims provided for in the acts.

The threshold for application to an entity was analysed using a list of the food retailers comprising the top 90% of market share in each country. The food retailers accounting for the top 90% of the market share in each country was identified via Statista. To assess whether or not these food retailers are subject to their respective due diligence laws, the headquarters location, legal type, numbers of employees, and turnover or revenue was identified for each food retailer.

A logic model using fresh tomatoes as a case study was employed to evaluate the effectiveness of the due diligence obligations required of the entities that were identified as having mHRDD obligations under the acts. Logic models can be used for assessing the potential effects of new programs (Ebrahim & Rangan, 2014; Barnett et al., 2020; Truong et al., 2021;). Fresh tomatoes were used as a case study because the presence of MSHT in the tomato industry of the top export countries (Spain, the Netherlands and Morocco) supplying tomatoes to EU countries is well documented (Portugal et al, 2006; Faleschini Lerner & Past, 2020; Gagnon, 2023, Corrado, 2017). These three countries also represent the top exporters of tomatoes to the countries with mHRDD acts being evaluated in this paper, Germany, France and Norway (World Integrated Trade Solution, n.d.). Although Germany, France and Norway do not grow many of their own tomatoes, as a fresh product with no processing, tomatoes still represent a relatively simpler, shorter supply chain from raw material to food retailer compared to other more processed goods. Although tomato farmers themselves are rarely direct suppliers (tier-1) to major food retailers, their distance from the food retailer as indirect suppliers (tier-n) can vary substantially depending on the specific tomato product, from whole tomatoes to tomato sauce, to the sauce on a frozen pizza (Anastasiadis et al., 2020; Saralegui-Díez et al., 2023).

For simplicity, this logic model assumes that the fresh tomato farmer is a tier-2 supplier to a food retailer, the closest possible position without being a direct supplier, as farmers rarely sell directly to food retailers. Because the risk of human rights violations within the tomato industry is well documented, and the current standard of mHRDD is risk-based assessment (UNGPs, United Nations, 2011), it was expected that the mHRDD report published by the entities would address the risk of human rights violations in their tomato supply chain.

For each of the food retailers in the top 90% of market share identified that was subject to mHRDD, their most recently published mHRDD report was located. The reports were analysed for mentions of risk identification and mitigation in agri-horticultural product acquisition, specifically by searching for mentions of modern slavery and forced labour in the agricultural supply chain (either in general or in regard to specific commodities), and also by

specifically searching for tomatoes. The mentions are then used in a logic model to study the effectiveness of the due diligence obligations required of the entities by the relevant Act.

The tomato case study logic model was also used to evaluate the effectiveness of enforcement and recourse for victims established by the acts. This is done by analysing if there was a breach of due diligence identified, does a victim of MSHT labouring in the tomato industry have recourse for compensation under these acts.

Results and Analysis

Top 90% of market share and threshold for application to an entity

The top 90% of food retail in France, Norway and Germany is accounted for by nine, four and ten food retail entities, respectively (tables 1, 2 and 3). Eighty-seven percent (all but there was a breach of due diligence identified, does a victim of MSHT labouring in the tomato industry have recourse for compensation either under these acts.

Table 1

Top food retailers in France by market share

Company	Headquarters location	Number of employees	Market share
E. Leclerc	Ivry-sur-Seine, France	133,000	22.1%
Carrefour	Massy, Essonne, France	319,565	20.1%
Les Mousquetaires	Bondoufle, France	112000	15.8%
Système U	Rungis, France	73,000	11.9%
Auchan	Croix, Lille Métropole, France	179,590	9.2%
Casino	Saint-Étienne, France	196,307	7.1%
Lidl (Schwarz group)	Neckarsulm, Baden-Württemberg, Germany	360,000	7.6%
Delhaize group	Zaandam, Netherlands	414,000 worldwide	2.3%
Aldi Nord Group	Essen, Germany	72,811	2.8%

Note. Statista Search Department, 2024.

Three of the twenty-three) food retailers comprising the top 90% of market share are subject to the mHRDD legislation of their respective country. The three acts have very different thresholds for application in regards to legal type, employee threshold and geographic

location (table 6). In the LkSG and TA, the type of legal entity is not considered. While in the LdV, only two types of legal entities are subject to the law: *sociétés anonymes* and *sociétés par actions simplifiées*. (Jault-Seseke, 2024). Even before considering the employee threshold in each law, this difference alone has a large impact on how the law will be applied to food retailers in the three countries. E. leclerc, the top food retailer in France with 22.1% of the market share and an annual turnover of more than 40 billion euros (Statista Search Department, 2024; Retail Index, n.d.), is registered as a *Société en nom collectif (SIREN)*, and is therefore not subject to the LdV. Two of the other food retailers in the top 90% of French food retail market share, Delhaize and Aldi, are also not subject to the LdV due to their legal type. These food retailers are not legally required to produce mHRDD reports under the LdV and also did not voluntarily produce a HRDD report in line with the LdV, although Delhaize and Aldi did provide a general human rights statement. E. leclerc does not provide a human rights statement, and is widely known to refuse to cooperate with NGOs (Bloom Association, 2023).

Table 2

Top food retailers in Norway by market share

Food retailer	Headquarter Location	Turnover	Number of Employees	Market Share
Norgesgruppen	Oslo, Norway	7.2 billion euros (2019)	28,000 (2018) (40 000 associated employees)	44%
Coop Norway	Oslo, Norway	4.70 billion euros (2019)	2,564	29.7%
Reitangruppen (REMA 1000)	Oslo, Norway	3.9 billion euros (2019)	20,252 (2016)	22.9%
Bunnpris	Trondheim, Norway	563.7 million euros (2019)	510	3.4%

Note. Adapted from Statista Search Department, 2023.

Table 3*Top food retailers in Germany by market share*

Food Retailer	Headquarter location	Number of Employees	Market Share
Edeka Group	Hamburg, Germany	381,000	25.3%
Rewe	Cologne, Germany	363,633	21.2%
Schwarz Group	Neckarsulm, Baden-Württemberg, Germany	360,000	18.3%
Aldi Nord	Essen, Germany	72,811	6.4% (2018)
Metro Group		91,201	1.9%
Aldi Sud	Essen, Germany	201,361	5.6% (2018)
Dm	Karlsruhe, Germany	79,745	3.5%
Rossmann	Burgwedel, Germany	56,500	2.9%
Globus	Sankt Wendel, Germany	44,900	2%
Bartels-Langness Group	Kiel, Germany	18,000	2.1%

Note. Statista Search Department, 2023

Considering the legal type of the entity when applying mHRDD obligations ultimately appears to have a negative impact on HRDD within the European agri-horticultural supply chain. In France, considering legal type means that food retailers comprising at least 27.2% of the market share have no due diligence obligations. Although E. leclerc is technically a cooperative of many small grocers, it still leverages tremendous power over the European supply chain by participating in IBGS with other European food retailers. Together with REWE Group, E. leclerc set up the buying group Eurelec, which is headquartered in Belgium (Eurelec Trading SC, n.d.). The buying group now includes Delhaize, and has an annual turnover of over 11 billion (Das, 2023; Companyweb, n.d.). Of the acts, the LdV also has the highest employee threshold, requiring 5,000 to 10,000 employees (depending on the headquarters location) before a legal obligation for mHRDD is triggered. In the LkSG, an entity must have 1,000 employees in Germany to have mHRDD obligations.

Table 4

Comparison of mHRDD in Germany, France and Norway

Country	Germany	France	Norway
Title of legislation	The Act on Corporate Due Diligence Obligations in Supply Chains (Lieferkettensorgfaltspflichtengesetz)	French Corporate Duty Of Vigilance Law (Loi 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre)	The Norwegian Transparency Act (Lov om virksomheters åpenhet og arbeid med grunnleggende menneskerettigheter og anstendige arbeidsforhold (åpenhetsloven))
Effective Date	January 1, 2023	27 March 2017	July 1st, 2022
What are the geographic, financial and employee count thresholds required for the act to apply to an entity?	<ul style="list-style-type: none"> • Legal form of entity not considered • Central administration, principal place of business, administrative headquarters, statutory seat or branch office in Germany • 1,000 employees or more in Germany 	<ul style="list-style-type: none"> • Applies to entities with the following legal forms: <i>sociétés anonymes sociétés par actions simplifiées</i> That meet one of these two conditions: • 5000 employees within the company and its direct and indirect subsidiaries, Head office located on French territory • 10,000 employees and head office located in French territory or abroad 	<ul style="list-style-type: none"> • Entities resident in Norway and foreign entities liable to tax to Norway who meet two of the following three conditions: • A balance sheet total of at least NOK 35 million at fiscal year end (approximately US \$4 million); • Sales revenue of at least NOK 70 million (approximately US \$8 million). • At least an average of 50 full-time employees during the fiscal year

In the TA, a combination of financial thresholds and 50 employees is used. Because of the bottleneck structure of the food retail supply chain, if only the employee thresholds of each act were considered, the food retailers accounting for the top 90% of market share in the three countries all surpass the thresholds laid out by their respective countries for mHRDD obligations. Although these differences in employee thresholds do not affect mHRDD obligations for food retailers, this does not mean that the thresholds have no impact on rural victims. Many food processors do not meet the employee threshold. For example, Kraft et al. (2024)'s analysis of the impact the LkSG will have on small Cocoa farmers in West Africa points out that of the sweet industry companies in Germany, only 18 have over 500 employees. Considering the high employee threshold in the LkSG, few German companies in the chocolate sector will be required to apply LkSG due diligence. In contrast, the TA, with its lower employee threshold, may trigger mHRDD obligations for some of these same companies. Even without employees in Norway, a foreign chocolate company that sells chocolate in Norway and surpasses the two financial thresholds laid out would have mHRDD under the NTA (Section 2, Section 3a).

Due Diligence Obligations

The legally required mHRDD disclosure was found for all food retail entities in the top 90% of market share that had due diligence obligations under the acts. In general, the plans published by the food retailers were so vague it was impossible to use a logic model to review the risks identified. Although all three countries import tomatoes from countries with known human rights abuses in the tomato industry (table 6), no food retailer identified in the top 90% of market share mentioned the tomato supply chain in any context.

While HRDD is a core of all three laws, the specific obligations laid out in the laws differ greatly (table 5). The LkSG includes an annex which includes two UN Human Rights Covenants and the eight ILO Core Labor Conventions, as well as a specific catalogue of human rights-related risks to provide clarification on what is meant by HRDD. However, the due diligence obligations that must be carried out every year only apply to the company's own operations and tier-1 suppliers. The act requires that due diligence be done in an "appropriate manner" (Section 2(3)), which for the purposes of the act means considering the nature and extent of the business activities, the risk to human rights or environment-related risk, the severity and reversibility of the violation that can typically be expected, the probability of the occurrence, and the nature of the causal contribution of the enterprise to the risk to human rights or environment-related risk. However, the act explicitly clarifies that risk management can be limited to risks identified in its own operations and tier-suppliers (Section 2(5)). Food retailers in Germany must ensure that their tier-1 suppliers are complying with the human rights standards expected of them, but they are not required to perform any risk analysis on tier-n suppliers unless they have a "substantiated knowledge" that a violation of a human rights is likely. The LkSG does require that a reporting mechanism be set up that allows direct victims and those with information about victims to report the violations (Section 8).

Table 5

Comparison of mHRDD in Germany, France and Norway

Country	Germany	France	Norway
What is the act asking of commercial entities?	Enterprises must comply with due diligence obligations concerning human rights and environment-related issues in their supply chains in appropriate fashion. To comply with due diligence obligations, enterprises must implement appropriate and effective risk management systems. They must establish responsibilities within the enterprise for monitoring compliance with due diligence obligations.	The companies covered by the law must establish, publish and implement a vigilance plan. The vigilance plan must include appropriate measures to identify and prevent risks of serious infringements to human rights and fundamental freedoms, serious bodily injury, health risks or environmental damage, resulting directly and indirectly from a company's activities and those of its business relations (as defined by the French Commercial Code).	The Act shall promote enterprises' respect for fundamental human rights and decent working conditions in connection with the production of goods and the provision of services and ensure the general public access to information regarding how enterprises address adverse impacts on fundamental human rights and decent working conditions.
What are the Due Diligence requirements laid out in the act?	<ul style="list-style-type: none"> • Establish complaint mechanism that allows both direct victims and those with information about potential or actual violations to point out risks and violations <p>In addition, the following Due Diligence must be carried out every financial year:</p> <ul style="list-style-type: none"> • Carry out a risk analysis in its own business area as well at its direct suppliers • Communicate results of risk analysis to relevant internal decision-makers • Immediately implement preventive measures by issuing a policy statement on its human rights strategy • Take immediate remedial action for actual or 	<p>A plan must be drafted in conjunction with stakeholders and relevant multiparty initiatives that includes:</p> <ul style="list-style-type: none"> • A mapping that identifies, analyses and ranks risks • Procedures to regularly assess the identified risks in subsidiaries, subcontractors or suppliers • Appropriate actions to mitigate risks or prevent serious violations • An alert mechanism that collects potential or actual risks in conjunction with the trade union organisation • A monitoring scheme to follow up on the measures implemented and assess their efficiency 	<p>The following Due Diligence must be carried out regularly, in proportion to the size and nature of the enterprise and the severity and probability of adverse impacts on Human Rights:</p> <ul style="list-style-type: none"> • Embed responsible business conduct into the enterprise's policies • Identify and assess actual and potential risks to human rights and decent working conditions that the enterprise has either caused or contributed toward, or that are directly linked with the enterprise's operations, products or services via the supply chain or business partners • Implement suitable measures to cease, prevent or mitigate adverse impacts based on the enterprise's risk assessment • Track the implementation and results of

	<p>imminent violation of a human rights identified in risks analysis</p> <ul style="list-style-type: none"> • Review the effectiveness of the preventive and remedial measures taken as well as the complaints procedure and adjust them if necessary • Ensure that senior management seeks information on a regular basis about the work of the human rights officer • Continuously document the fulfilment of the due diligence obligations. 		<p>mitigation and prevention measures</p> <ul style="list-style-type: none"> • Communicate with affected stakeholders and rights-holders regarding how adverse impacts are addressed • Provide for or co-operate in remediation and compensation where this is required • Duty to provide general information and information relating to a specific product or service offered by the enterprise in asked by written request
What portion of the supply chain is covered by the risk identification and mitigation requirements?	<ul style="list-style-type: none"> • Risk analysis obligation only applies to an enterprise's own business area and those of its Tier 1 suppliers • Risk analysis is only obligatory for indirect suppliers if the enterprise has "substantiated knowledge" that suggest that a violation of a human rights-related obligation 	<ul style="list-style-type: none"> • Parent company itself • Companies it controls directly or indirectly, as defined by the French Code of Commerce Article L 233-16 II • Subcontractors and suppliers with whom it maintains an 'established business relationship'. 	Any party in the chain of suppliers and subcontractors that supplies or produces goods, services or other input factors included in an enterprise's delivery of services or production of goods from the raw material stage to a finished product.
Are there additional specific requirements of the published due diligence disclosure report?	<p>The report must include:</p> <ul style="list-style-type: none"> • Whether the enterprise has identified any human rights and environment-related risks and if so, which ones. • What the enterprise has done to fulfil its due diligence obligations. • How the enterprise assesses the impact and effectiveness of the measures. • What conclusions it draws from the assessment for future measures 	Additional requirements for the published report beyond those described as creation of the vigilance plan are not specified in the legislation.	<p>The report must include:</p> <ul style="list-style-type: none"> • A general description of the enterprise's structure, area of operations, guidelines and procedures for handling actual and potential adverse impacts on fundamental human rights and decent working conditions • Actual adverse impacts and significant risks of adverse impacts that the enterprise has identified through its due diligence • Measures the enterprise has implemented or plans to implement to cease actual adverse impact or mitigate risk of adverse impacts and the results of these measures.

Table 6*Fresh and chilled tomato imports in kilograms*

Importer	Exporter	Imports in kg
Germany	Netherlands	86,854,000
	Spain	164,937,000
	Belgium	69,722,800
	Morocco	54,695,700
France	Morocco	393,488,000
	Spain	75,636,200
	Belgium	27,087,400
	Italy	8,504,700
Norway	Spain	9,439,260
	Morocco	4,368,990
	Netherlands	4,611,480
	Belgium	1,005,870

Note. Data is from 2023, with the exception of Germany, where 2021 was the last available data (World Integrated Trade Solution,n.d.).

Using the case study, for a labourer in the tomato industry, German food retailers have no obligation to specifically assess or address risk of human rights violations without the “substantiated knowledge” that the violation may have happened in their own specific supply chain. Although the top tier-n tomato exporter locations to Germany have documented risk of human rights violations, as farms in those locations are not tier-1 suppliers, they are not covered in the mandatory risk analysis. Despite the fact that fresh foods have a relatively short supply chain, even in the shortest possible supply chain (farm > supplier > food retailer) the labourer would still not be directly represented in the risk analysis that only covers tier-1 suppliers. In the more common food retail supply chains (farm > supplier > processor > contract negotiation by IBG > food retailer), even suppliers would not be included in the mandatory risk analysis.

In contrast to both the LkSG and NTA, The LdV does not include any mention of established conventions on Human Rights as the basis for mHRDD, and only mentions serious violations of human rights and human health, the implication being that the nature of “serious” would be left up to a judge to decide (Jault-Seseke, 2024). Similar to the LkSG, the LdV only requires mHRDD for subcontractors and suppliers with whom it maintains an “established business relationship.” (Article 1, section 1) In the LdV due diligence means a “vigilance plan” to identify risks and prevent and mitigate serious violations is to be completed (Article 1, section 1). Limiting the plan to “established business relationships” allows food retailers to avoid breaching their duty of vigilance by not establishing a business relationship with producers. For example, although Casino Group do not mention tomatoes in

their due diligence plan, they do specially mention there is a known risk of child labour and forced labour with their beef suppliers in Brazil (Groupe Casino, 2022, p 20). Some risk reduction measures are outlined in the plan, However, the plan also specifically states that, as distributors, they do not have a direct relationship with the farms, and the compliance of these farms is verified by the suppliers only.

The NTA defines Fundamental human rights in line with the UNGPs and the OECD Guidelines for Multinational Enterprises (Section 3(b)). In contrast to the LkSG and LdV, the first due diligence obligation under the NTA is to embed responsible business practices in the company's policies. MHRDD under the NTA covers the entire supply chain, which is clarified in the act as any party in the chain of suppliers and subcontractors that supplies or produces goods, services or other input factors included in an enterprise's delivery of services or production of goods from the raw material stage to a finished product. In this case, the risk of MSHT at the raw material stage of the food supply chain would be specifically included in due diligence obligations, so a tomato labourer would be included in the required due diligence assessments. This interpretation of HRDD with penetration through to the furthest tier-n raw material stage of the supply chain is in line with UNGPs and also aligns with due diligence standards set forth in the CSDD, which EU member states will need to implement by 2027.

Table 7

Comparison of mHRDD in Germany, France and Norway

Country	Germany	France	Norway
Who is the authority responsible for enforcement of the act?	Federal Office for Economic Affairs and Export Control (Bundesamt für Wirtschaft und Ausfuhrkontrolle)	On 15 January 2024, the Paris Court of Appeal announced the creation of a chamber dedicated to litigation regarding duty of vigilance and environmental liability cases.	The Consumer Authority (Forbrukertilsynet)
Does the act allow for civil liability?	No	Yes	No

Enforcement and Recourse for victims of MSHT

Two of the largest differences between these three laws are how they are enforced, and if the law establishes civil liability (table 7). For rural victims of MSHT and the organisations representing them, whether there is actual recourse for compensation in the case of due diligence failure resulting in abuses is probably of the most interest.

The 2017 LdV was the first European mHRDD legislation with consequences for failing to meet due diligence obligations, passed more than five years before the NTA in 2022. Enforcement of the law has been extremely weak, with the first and only conviction of a company (la Poste) (Annat, 2024) to date coming a full six years after the law came into effect. The French government does not provide any formal list of companies who have mHRDD obligations. As there is no way to verify which entities are subject to the law, this puts the onus on NGOs to compile publicly available data and compile non-exhaustive lists (for example, Duty of Vigilance Radar). The LdV establishes civil liability under which any stakeholder (such as an NGO) may sue companies for damages in the event of non-compliance. Enforcement of the LdV is left up to the courts, however, enforcement seems to only come into effect after an interested party sues. The interested party must first give the entity three months formal notice that they have breached their duty of vigilance, after which the civil lawsuit can be filed (article 1, section II). For example, due to Casino Group's "patently lacking" vigilance plan regarding its beef supply in Brazil, on the third of March, 2021 a group of NGOs filed a civil suit against Casino Group under the LdV (Patentreger & Chatelain, n.d.).

It remains to be seen how the French Court will interpret Casino's due diligence obligations under the LdV. The LdV only obliges companies to take all steps in their power to reach a certain result [*obligation de moyens*] rather than to guarantee the actual attainment of that result [*obligation de résultat*]. As a result, a breach of that obligation cannot be inferred merely because damage has been caused (Brabant & Savourey, 2017). Even if a company was found liable for failing to complete its duty of vigilance, and even if fines are imposed, this would not provide any compensation for victims, as fines are not given to victims as compensation under the LdV. Plaintiffs could also bring a civil lawsuit under French tort law for compensation, however, it remains unclear if French tort law would apply if the damages occurred outside of France (Savourey & Brabant, 2021). Even if a breach of the LdV was confirmed via a conviction under the LdV, proving causation in civil court would be difficult. In long supply chains involving multiple players, there are many different ways that damage could theoretically arise, even if the system as whole creates extreme downward pressure on the farmers and suppliers. The court would need to assess whether a breach of the Vigilance Obligations caused the damage. As the Law currently stands, if rural victims of MSHT abuses are working abroad (for example, using the case study, a tomato labourer in Morocco) for an entity that is a tier-n supplier of a Food retailer within the scope of the LdV, they have very little chance of being able to bring a civil liability action before the courts in France (Brabant & Savourey, 2017). In the case of food retailers, remediation is unlikely, since suppliers involved in adverse human rights impacts are not necessarily within

the scope of the vigilance plan if they have no established commercial relationship with the French company.

In contrast to the LdV, The LkSG explicitly does not allow for civil liability under the act. Proposals by the Green Party to broaden the scope of the law and to include a specific section on civil liability were rejected (Krajewski et al., 2021) Compliance with the LkSG is monitored by an existing administrative authority, the Federal Office for Economic Affairs and Export Control. (Bundesamt für Wirtschaft und Ausfuhrkontrolle, BAFA). BAFA will audit company reports, investigate violations and can issue administrative fines of up to EUR 8 million or 2 % of the yearly company revenue. (Act on Corporate Due Diligence Obligations in supply chain § 24) However, because the law has just come into force, it is impossible to see how effective this monitoring will be in mitigating human rights abuses. If a victim wants to sue for compensation for abuses, it would need to sue under existing German tort law. Although the LkSG does not provide a new way to sue under tort law, it does allow for affected persons to authorise domestic NGOs and trade unions to sue on their behalf under existing tort law. However, under existing German tort law, the law of the place damages occurred would apply (Csr- FAQ, section XV, question 3). Similar to France, it would likely be extremely difficult for a rural victim working for a tier-n supplier to prove causation under tort law in Germany as it currently stands.

The NTA is also enforced by an existing administrative authority. The Consumer Authority is charged with providing guidance, monitoring and enforcing the law (Sections 8–11). It may impose fines for breaches of the duties enshrined in the Act. Violations of the due diligence duty and duties to disclose information may result in prohibitions and injunction orders, including enforcement penalties (Sections 12 and 13). The law has not been in effect long enough to see any enforcement yet. Although the NTA does not establish civil liability, it is the only act out of the three to consider victim compensation as part of due diligence (section 4). Like in Germany, to access compensation, a victim would have to sue under general Norwegian tort law. Because the NTA is wider in scope than the LdV and the LkSG, under Norwegian tort law, rural victims of MSHT working with tier-n suppliers to food retailers subject to the NTA might have more ability to prove a breach of due diligence. However, as Norwegian private international law stands how, like in France and Germany, it is the tort law of the country the damage in occurred that would be applied. In the case of the tomato industry, as most tomatoes are imported, it is unlikely that abuse of a victim of MSHT would have occurred in Norway. In the Oslo law review, Cordero-Moss (2023) proposed that the solution to this is a special conflict rule that allows the victim to choose between the law of the place of damage and the law of the place where the event which gave rise to the damage took place, similar to the conflict rule already existing in Norwegian law and in EU law for liability relating to environmental damage. While this is a solution that would give rural victims of MSHT significantly more recourse for compensation, the Socialist Left Party received little support for a proposal for an evaluation of how the due diligence duty relates to parent company liability (Cordero-Moss, 2023).

Discussion

The unique nature of the food supply chain created by the extreme labour intensity required for the raw materials combined with food perishability makes the agri-horticultural supply chain very appealing for slavery practices (Crane, 2012). The presence of IBGs complicates this further, because they promote unfair trading practices (European Commission, 2014).

With the exception of the TA, the acts do not require risk identification and mitigation beyond tier-1 suppliers, which means that rural victims are not covered by the Due Diligence obligations. Rural victims of MSHT, like a tomato industry labourer, are almost exclusively in higher tiers of agricultural supply chain. Although the LkSG does require a reporting mechanism that could trigger due diligence obligations beyond tier- 1, practically, for rural victims, this would likely mean that first, local communities would need to spend time and resources compiling proof of human rights abuses and liaising with NGOs or trade organisations that have access to resources in Germany. Then, with specific knowledge of the violation, the authorised party could report it via the company's internal reporting mechanism. Then the company itself would need to perform an investigation to see if a breach of duty had occurred, and even then, after the human rights violations were confirmed and mitigated, there is still no clear, concrete way to access compensation for victims.

Similarly, the requirement of an “established business relationship” in the LvD also proves problematic for rural victims in the agri-horticultural supply chain, because food retailers usually do not have an established relationship with individual farms. IBGs negotiate umbrella contracts that each food retailer then enters with a supplier or processor directly, which means that IBGs are not subject to mHRDD because they are not direct suppliers, however, it also allows food retailers to circumvent an “established relationship” with the suppliers and processors, as the established relationship is with the IBG. Suppliers and food processors face extreme downward pressures from the IBGs (Ten Kate & van der Wal, 2017), who in turn pass the pressure on to farmers. Food processors are often forced to sell at a loss in order to keep their clients (De Jong, K. 2015).

Although the EU has attempted to strengthen the position of agricultural producers with the EU through its 2021 Directive (EU) 2019/633 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain, the directive does not directly deal with unfair trading, it intends to protect weaker suppliers from stronger buyers by creating a “black list” of practices that cannot be present in contracts, like late payments or short-notice cancellations of perishable agri-food products. In the commission's latest report, 30% of respondents still said that they did not report unfair practices due to fear of buyer retaliation. (European Commission, 2024). The directive also only applies if both the buyer and seller are within the EU. Research has already shown that the downward pressure from food retailers in Europe impacts working conditions in the developing world (Humbert & Braßel, 2016).

Casino Group is being sued via the LdV for its role in the human rights abuses in Brazil (Sabin Center for Climate Change Law, 2024). It remains to be seen if stating that there is no established relationship, as Casino explicitly did in their latest mHRDD report (Groupe Casino, 2022, p.24) will protect Casino from being found guilty of a breach of their duty of vigilance. By requiring an “established business relationship” in order to trigger mHRDD obligations, the LdV could even discourage food retailers from creating an established business relationship, in order to avoid additional mHRDD obligations. Contracts with producers in the agri-horticultural supply chain allow producers to increase their competitiveness (Filippi & Chapdaniel, 2021) and can guarantee farms fairer and more remunerative raw material purchase prices (Mariani & Viganò, 2013).

Food retailers know that providing direct, long-term contracts is an effective way to reduce the risk of human rights violations. This is evidenced by the fact that in Carrefour’s Duty of Vigilance plan (p. 161), under the “risk of human rights violations”, specifically mentions providing three to five year contracts as a way to combat “lack of supply chain resilience.” The plan states that “under these deals, Carrefour commits to guarantees on volume over several years and fairer compensation through a jointly agreed purchase price that takes into account three key factors: production costs, the fluctuating market prices of agricultural products, and the technical aspects involved in meeting the higher quality standards.” The plan did not state which human rights were at risk, but it did say that the plan applied to some of their own brand products. Own brand products are one of the areas that IBGs have the most influence (Ten Kate & van der Wal, 2017) The mHRDD mechanisms in these acts do not address the influence of actors outside the physical supply chain, such as IBGs, in causing human rights violations in the agricultural supply chain.

Conclusion

There is evidence that mHRDD does encourage additional corporate respect for Human rights (Lafarre & Rombouts, 2022) and these acts will likely have positive long term impacts on human rights within the agri-horticultural supply chain. This analysis suggests that these acts will do little in the short term to aid rural victims of MSHT, and they are unlikely to aid in identification or mitigation for specific victims. The focus on risk analysis and mitigation without an actual requirement to prevent human rights abuses means the acts are centred on the goal of prevention rather than remedy. The acts are in line with the first two pillars of the PRR framework: the state duty to protect against human rights abuses and the corporate responsibility to respect human rights; however, the third pillar, greater access by victims to effective remedy, has largely been ignored. Based on this analysis, none of the acts adequately address the governance gap that allows large corporations, like food retailers, to outsource liability to tier-n suppliers. These acts are ambitious, and while they will certainly bring more corporate accountability for Human Rights abuses in the EU, they do not, and can not in their current form, fully address the MSHT risks in the European food supply chain.

We recommend that as the EU moves into the next phase of mHRDD by applying the CSRD throughout the member states, it is important that the legal form of the entity not be

considered in the threshold for mHRDD obligation. In addition, the entire supply chain should be included in mHRDD. Limiting mHRDD obligations to tier-1 suppliers or “established relationships” could discourage long term, stable contracts that encourage stability in the agri-horticultural supply chain. Requiring due diligence through the entire supply chain regardless of the relationship with the food retailer could encourage a shorter, simpler supply chain. We recommend that in order for mHRDD to be effective in preventing MSHT in the agricultural supply chain, victims must have easier access to remedy, via special conflict rules for multi-tier supply chains. Creating HRDD regulations that account for actors such as IBGs, who are outside of the physical supply chain and act at an international level, would be extremely difficult. However, if special conflict rules for multi-tier supply chains allowed food retailers could be liable under their own tort law, this could close the governance gap, as the risk of facing liability itself could provide food retailers motivation to reduce the risk of MSHT that is created by downward pressure in their supply chains.

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