



# Let's talk Mandatory Measures

SUPPORTING A MEANINGFUL DISCUSSION AMONG ALL STAKEHOLDERS

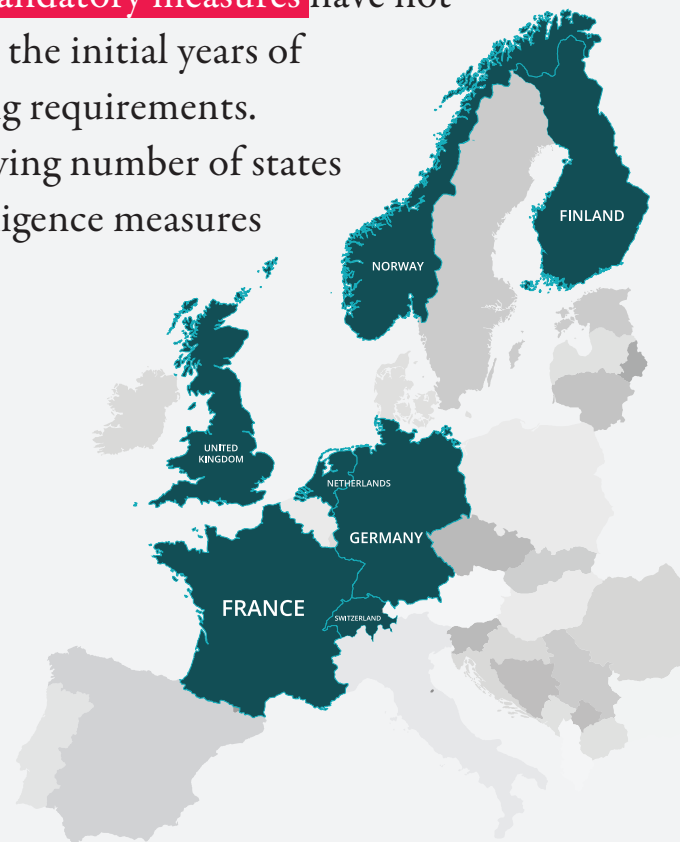
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Under **Pillar 1 of the UN Guiding Principles**, all states “must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises”. To do so, states “should consider a **smart mix** of measures – national and international, mandatory and voluntary – to foster business respect for human rights.”

Yet despite this encouragement to consider them, **mandatory measures** have not been a central part of the mix considered by states in the initial years of UNGPs implementation, outside of certain reporting requirements. That is now changing, particularly in Europe. A growing number of states are actively considering the use of mandatory due diligence measures to advance **business respect for human rights**.

In France, the Netherlands, Germany, Finland, the UK, Norway and Switzerland, we see governments and legislatures adopting or exploring mandatory measures **as part of a mix of policy tools** to incentivise business respect for human rights.

In a growing number of cases, these measures go beyond reporting obligations to encompass **comprehensive human rights due diligence**. ➡➡



# Growing interest in mandatory measures



Civil society organizations have been advocating for greater consideration of mandatory measures for some time. However, we are increasingly hearing businesses across diverse sectors and geographies start to urge consideration of a level playing field, particularly at EU level. Investors have also entered the debate in the national and regional spheres. As engagement increases, the discussion is starting to move beyond whether these measures are necessary, towards what shape regulation can take to be most effective in fostering rights-respecting business practice.

## BEING CLEAR ABOUT THE AIMS

New regulatory proposals and legislative measures may have various aims. For example, they may seek:

- To enable engagement by investors and stakeholders that are interested in corporate human rights performance;
- Better prevention of impacts by companies, by extending an obligation to carry out human rights due diligence into value chain relationships;
- To tackle the ongoing need for greater access to remedy for those who are harmed.

# Creating the space for meaningful discussion

At Shift, we are interested in the dynamics that can help or hinder debates to advance towards effective mandatory measures. We believe that listening in good faith to the views of all stakeholders is essential to a better process that is much more likely to result in better outputs.

## UNPACKING CONCERNS

This requires that space be made for a diversity of business voices. That includes companies that are positive about new mandatory measures but also others who are committed to the UN Guiding Principles, but may be cautious about legislation.

To inform the design of any future measures, we need to unpack their concerns, whether they are about legislation setting up perverse incentives to game the system, or legislation that might lead to bureaucratic compliance but not necessarily to better outcomes for people.

PEPSICO

“ We are proud of our work on human rights at PepsiCo, but recognize that, as with all companies, challenges remain when it comes to respect for human rights across our entire value chain. So, naturally, as we’ve seen a proliferation of regulatory initiatives on modern slavery, child labor, or human rights due diligence, there has been some apprehension among businesses about what this may mean in terms of liability for potential impacts occurring deep in the supply chain. But it’s clear that the time has now come to embrace this conversation and, in good faith, to discuss the opportunities and potential drawbacks of different types of mandatory measures as we try to further scale the implementation and impact of the UN Guiding Principles. ”

MICHELE THATCHER  
SENIOR VP, CHIEF COUNSEL GLOBAL HUMAN RESOURCES  
& CHIEF HUMAN RIGHTS OFFICER, PEPSICO





At the same time, business needs to listen to civil society advocates and human rights defenders who insist on the need to explore appropriate modes of liability and accountability for certain harms. From their perspective, legislation that addresses prevention, but which doesn't speak to the challenges in accessing remedy faced by people who have suffered harm, misses a critical part of the picture

## IDENTIFYING EVIDENCE OF WHAT WORKS

Governments of course have a key role to play both in creating space for dialogue among stakeholders and in crafting thoughtful legislative proposals grounded in a solid evidence base of what works.

A "smart mix" also means looking at all the different levers the state has - including public financing for private sector investment abroad and its own procurement practices - in order to make sure the state is sending a coherent message to business.

*“For a long time, civil society has argued that mandatory measures are vital if people who’ve experienced abuse by businesses are ever to receive meaningful remedy. We also underline that such measures actually level the playing field for leading companies that already address human rights in a serious way. So, it’s exciting to see important businesses and investors stepping forward to argue for this advance in respect for human rights. I’m sure this is the pre-cursor to a constructive discussion of the most effective forms of regulatory and legislative measures to ensure rights-respecting business practice.”*

**PHIL BLOOMER**  
EXECUTIVE DIRECTOR  
BUSINESS AND HUMAN RIGHTS RESOURCE CENTER

BHRC

## H&M GROUP

*“At H&M Group we are committed to respecting human rights. As part of that commitment, we undertake human rights due diligence, in line with the UNGPs, in order to identify, prevent and address risks to people. We want to see others doing the same. That’s why we’re comfortable when we see more and more governments around the world proposing mandatory measures that can help crystallize the expectations on human rights due diligence into laws, but we recognize the urgent need for alignment of these various mandatory measures, for example at EU level. We welcome discussions amongst all stakeholders – governments, civil society and businesses – as to the shape that these laws should take and how they can best align with the UNGPs.”*

**CECILIA TIBLAD BERTSSON**  
SOCIAL SUSTAINABILITY MANAGER, H&M GROUP

## Shift’s commitment

At Shift, we are committed to helping support constructive discussion among all stakeholders on what reasonable and effective legislation could look like. And we are committed to helping build the evidence base about how mandatory measures can drive the types of business practices that are most likely to lead to better outcomes for people.





“ In Finland, we have had the unique experience of companies and NGOs coming together to argue for mandatory human rights due diligence. The Finnish Government is looking seriously at what can be done to foster greater respect for human rights on the part of Finnish businesses, both at home and abroad. We welcome constructive debate among all stakeholders about what appropriate measures could look like at both member-state and European level. ”

JOHANNA SUMUVUORI

STATE SECRETARY, MINISTRY OF FOREIGN AFFAIRS OF FINLAND

GOVERNMENT OF FINLAND

SHIFT

## ABOUT SHIFT

Shift is the leading center of expertise on the UN Guiding Principles on Business and Human Rights. Shift's global team of experts works across all continents and sectors to challenge assumptions, push boundaries, and redefine corporate practice, in order to build a world where business gets done with respect for people's dignity. We are a non-profit, mission-driven organization, headquartered in New York City.

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“ The UNGPs always envisaged that states would adopt a smart mix of measures – voluntary and mandatory – to ensure that businesses respect human rights. We've heard the phrase a lot over the last eight years, but it's mostly been used to describe voluntary measures and states have generally been less willing to explore the mandatory part of the picture. That is now starting to change. As the company, government and civil society voices highlighted here show, there is a growing consensus that we need to get better at talking about what mandatory measures could look like. At Shift, we have made it a priority to support this conversation. ”

RACHEL DAVIS

VICE PRESIDENT, SHIFT



## ALSO READ

### Fulfilling the State Duty to Protect:

*The Role of Mandatory Measures in a “Smart Mix” when implementing the UN Guiding Principles*

Available at: [shiftproject.org/smartmix](https://shiftproject.org/smartmix)

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