COVID-19: BUSINESS AND HUMAN RIGHTS

How to take advantage of the due diligence framework to manage the crisis

01/04/2020





COVID-19 poses businesses a unique challenge for crisis management, where the main purpose is not only business continuity, but the protection of people's human rights.

This scenario brings along an opportunity to develop differentiated capacities in terms of corporate learning, anticipation and resilience, for those businesses that take advantage of this moment to improve their performance through a people-centered management.

This document puts forward the due diligence framework as a basic guide for companies to manage the crisis in their own business and operating contexts.

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HOW CAN WE HELP YOUR BUSINESS?

About this Guide

The World Health Organization and the International Chamber of Commerce have made an unprecedented call to action to the private sector to confront the threat of the COVID-19 pandemic, highlighting the role that businesses must play in order to tackle the spread of this infectious disease and minimize the impact on society.

The private sector has the dual key role of ensuring business continuity (and employment continuity) and protecting the human rights of workers, people associated with supply chains, customers and society as a whole; considering from the right to health, to economic and social rights.

This guide proposes that businesses use the **human rights due diligence framework** as a starting point to approach the crisis in the context of their business. It is intended to be a practical contribution to illuminate the key concepts and the rationale of the Guiding Principles on Business and Human Rights in the context of the COVID-19 crisis. Businesses that already have a human rights due diligence procedure in place, will have stronger capacity to react in a more effective and faster manner.

Furthermore, we propose the due diligence framework of the Guiding Principles on Business and Human Rights as a methodological structure, oriented not only to the identification of risks and impacts and their management, but also to build differentiated capacities in terms of learning, anticipation and organizational resilience.

From Business & Human Rights (BHR) and Semilla Consultores - after more than 20 years of experience accompanying companies in managing their social, environmental and ethical challenges - we want to remind the business community of the immense opportunity that this situation can mean for leaders that manage the crisis integrating the human rights perspective.

This document is not an exhaustive guide on the subject, nor does it substitute the measures imposed by governments. It is only intended to serve as an orientation for business leaders to help them integrate the human rights the human rights approach into their decision making process and communications, in the context of COVID-19 crisis management.

Keys to apply the due diligence framework to the Covid-19 crisis management

A. Generate a reflection framework based in a due diligence process

Regardless the existence of a previously implemented human rights due diligence process, businesses can generate a framework for reflection aligned with the due diligence cycle set out by the UN Guiding Principles on Business and Human Rights.

Table 1. Human Rights due diligence steps

1)	Commitment to respect Human Rights	Guiding principle 16
2)	Human Rights impact assessment	Guiding principle 18
3)	Integrating findings from impact assessment - quick learning	Guiding principle 19
4)	Grievance mechanisms and remediation	Guiding principle 22
5)	Track effectiveness and assess	Guiding principle 20
6)	Communicaction and reporting	Guiding principle 21

At the beginning of the due diligence process, it will be relevant for the business to look into, at least, the following questions:

1) Commitment (flexible depending on the evolution of the pandemic)

• What public position has the assumed taking in relation to the prevention, mitigation and remediation measures in each phase of the pandemic?

2) Human Rights impact assessment

- What actual or potential adverse human rights impacts can the business cause in the context of the management of COVID-19, by action or omission?
- What are the potential and actual human rights impacts on wokers, the supply chain, customers and users, and society as a whole?
- Do I have access to reliable technical and scientific information that allows me to accurately analyze the adverse impacts?
- Does my crisis committee (formal or informal), integrate sufficient representation regarding the groups of people to which my business may be causing an impact?

- Which of these potential impacts are most likely to become severe, real impacts and under what scenarios and circumstances?
- How will the severity of the impacts evolve and in relation to which stakeholder groups throughout the evolution of the pandemic?
- Which stakeholder groups could be most affected by the termination or modification of my business operations?

3) Integrating findings from impact assessment

- What prevention and mitigation actions /measures should the business implement and when?
- Which responsible /managers have been identified for the definition and implementation of such measures / steps?
- What structures should the business put in place to ensure internal coordination?.
- What lines of defense should the business put in place to ensure the implementation of the measures?

4) Grievance mechanisms and remediation (prioritising understanding and managing health issues)

- What impacts is the business causing or contributing to cause that require remediation actions?
- Are there criteria for remediation in relation to COVID-19 in the short, medium and long term?

5) Tracking and assessing

- · Who is in charge of the documentation and assessment of the process?
- What communication channels are available to maintain contact with each stakeholder, solicit feedback or receive concerns that may be raised in relation to the measures taken in the context of COVID-19?
- What training and capacity building actions should I activate in the different areas of the business to improve monitoring?
- How can I take advantage of this context to build or strengthen differentiated capacities in the field of human rights?

6) Communication

- How is the business communicating, though internal and external reporting processes, the measures taken to prevent, mitigate and remedy human rights impacts in each phase of the pandemic?
- Is the communication done in a form and frequency that is accessible to its intended audiences?

B. Planning due diligence in light of stakeholders groups

For illustrative purposes, this guide provides an example of a due diligence process for the following stakeholders: workers, workers within the supply chain, customers and users.

The diagram below shows examples of human rights impacts and prevention, mitigation and remediation measures for the selected three groups, in order to facilitate understanding of how to activate the due diligence process associated with COVID-19, in relation to each stakeholder group.



Diagram 1. Illustration of the due diligence rationale by stakeholders, impacts and measures

OWN ELABORATION - BHR, SEMILLA.

Following this rationale, the following chapters summarize some of the reflections that business are making and/ or should make, in relation to the management of the COVID-19 crisis, integrating the human rights due diligence approach.

C. Adapt your actions to your context and circumstances

Remember that this guide must be understood within your national regulatory framework. It needs to be adapted and completed depending on the sector of operations, particularities of each stakeholder group, operational contexts, communities where the business operates and evolution of the pandemic, among other factors.

Protecting workers

Due diligence: prioritising health and safety and the employment relationship

In general terms, and as an illustrative example, impacts resulting from the exposure to the virus and the risk of contagion; or impacts resulting from changes in the tasks or jobs can be anticipated; as well as impacts on income and other benefits, resulting from operation restrictions and economic contraction.

The first and most important commitment shall be to understand such risks, and prioritise them, ensuring the health and safety of the workforce across all business operations. This can be achieved by providing workers with the necessary personal protection tools to avoid contagion, while simultaneously getting the workplace ready for COVID-19 by adapting business facilities, and/or enabling remote work.

Adapting to COVID-19 may require adapting or improving a business digital processes, which, in no case, can entail costs for the workers.

Most businesses are following the guidelines for COVID-19 prevention and mitigation established by their national governments. However, businesses need to remain alert to whether these measures are aligned with the recommendations of the national and international scientific committees, the guidelines and declarations of the WHO, and whether these national guidelines may cause or exacerbate other issues any adverse impacts.

The second element, of equal importance for business continuity and for the right to work, is the impact on employment relationships. It shall be key for businesses to consider the different types of labor relations (informal /formal; or within formal, temporary, part-time, etc.) to assess the risk that COVID-19 can pose for individuals working within these categories.

According to the International Labor Organization (ILO), more than 60% of the world's workers do it informally. These people lack social protection and key labour rights in case of inability to work.

Below, we invite you to reflect on some typologies of adverse impacts and on potential prevention, mitigation and remediation measures.

Impacts resulting from exposition to the virus and contagion risk

Risk and impacts to be managed	Possible prevention, mitigation and remediation measures
Impacts on workers' health	Establish all necessary personal prevention measures and provide protection equipment's for workers on duty. You can consult WHO's guide measures addressed to employers in order to protect customers, contractors and workers.
resulting from exposition to the virus and contagion risk.	Asses the presence of which workers is necessary to maintain the operations, and consider their particular vulnerabilities and circumstances. In particular, pay attention to vulnerable groups, and people belonging to risk groups, people with disabilities, etc.
Risky working conditions, in	Adopt the necessary distance and disinfection measures: condition workplaces, dining rooms, regulate the use of elevators, adjust cleaning protocols, etc.
particular, for key services workers	Discourage any non-essential displacements.
and other customer-facing staff.	Ensure that workers and their families have updated and complete information regarding the prevention measures.
Possible barriers to accessing the health system deserving attention.	Review all employment contracts and/ or verify that workers are registered with the Social Security national systems, and that the corresponding contributions have been accurately made. This shall be notably important in companies in which temporary contracts prevail, or with high levels of staff rotation.
Risk of underreporting of COVID-19 positive cases due to fear of discrimination.	Ensure an internal atmosphere of trust and support. Establish an internal protocol of action and communication that facilitates open dialogue, the notification of cases and the guarantee of non- discrimination against ill or foreign workers.

Table 2. Workers: impacts resulting from exposition to the virus and contagion risk.

Impacts resulting from changes in the tasks or job assignments

Tabla 3. Workers: Impacts resulting from changes in the tasks or job assignments

Risk and impacts to be managed	Possible prevention, mitigation and remediation measures
Work overloads, as a consequence of a reduced number of workers present or business reorganization.	Establish reliable systems to control that workers do not exceed the legal working time, undertake consecutive shifts, perform non-voluntary or over- the-limits overtime, do not respect the necessary rest, etc.
Impacts resulting from the sudden change in physical working conditions for remote workers and their families.	Adopt measures aimed at complying with international labour standards, seeking to maintain other labour rights and to avoid exacerbating other issues for the workers (e.g., physical and mental health of remote workers). Ensure that internet costs for remote work are assumed by the business and not by the remote workers. Adopt measures to avoid implications around data security and cyber compliance arising from new remote work systems unfamiliar to workers.
Possible impact on the right to privacy, resulting from the implementation of new technologies in the employer- worker context.	Take measures in order to ensure that any new implemented technologies (e.g., facial recognition cameras, temperature measurements, monitoring of remote workers) do not violate other rights such as the right to privacy, hide undeclared purposes, or are extended in time without justification.

Impacts on salary and maintenance of the labour relationship

Table 4. Workers: impacts on salary and maintenance of the labour relationship

Risk and impacts to be managed	Possible prevention, mitigation and remediation measures
Risk of termination or substantial change in the employment relationship.	Make use of collective bargaining mechanisms.
	Negotiate fair and staggered transitions that prioritise the maintenance /recovery of the employment relationship.
	Develop measures to adjust salaries and develop flexible work formulas and innovative compensation packages.
	Pay special attention to people with informal contracts, self-employed, temporary contracts, etc. the possible impacts on their employment situation as well as the consequences on social protection. Seek to anticipate exacerbated impacts arising from these situations and inequality in access to social protection.

As general principles applicable to the employer - worker relations, remember:

- Appropriately communicate the findings of the impact assessment and the measures adopted. Communication shall be done by adequate channels for each audience, avoiding one-size-fits-all approaches, and using easily and understandable formats that are adapted to people with specific needs (e.g., people with disabilities, foreign workers, etc.), in order to ensure that all workers receive and understand the information.
- Adapt the necessary measures to integrate any changes or new, evolving circumstances that may arise.
- Establish participation mechanisms that allow workers to propose measures and provide input to the measures taken by the company.
- Appoint and train responsible personnel for managing the measures related to the impact of COVID-19 in a transparent and inclusive manner, and build trust with the other workers.
- Dialogue closely with those actors that may shed light on the risks and effectiveness of the measures, especially trade unions, other representatives of the workers, communities' representatives, etc.

Examples

- Danone and L'Oréal will maintain 100% of their workers' salaries during confinement in France (see Coronavirus: L'Oréal n'a pas recours au chomâge partiel en https:// at www.lemonde.fr/economie/article/2020/03/30/ coronavirus-l-oreal-n-aura- pas-recours-au-chomagepartiel_6034930_3234.html).
- Enel subscribes insurance policy to cover more than 68,000 workers across the world in the event of hospitalization due to COVID-19, ensuring all group workers an additional subsidy in case of hospitalization (see ENEL STIPULA POLIZZA PER I PROPRI DIPENDENTI NEL MONDO IN CASO DI COVID-19, at https:// www.enel.com/content/dam/enel-common/press/it/2020-Marzo/ Enel%20assicurazione%20COVID-19.pdf).

Protecting the persons in the supply chain

Due diligence to protect the health and the employment relationships of the supply chain workers

In general terms, and as an illustrative example, impacts resulting from exposure to the virus and the risk of contagion of the supply chain workers can be anticipated, as well as impacts related to late payments to suppliers, the reduction or the termination of the business relationships.

The uncertainty arising from COVID-19 has brought to the table the debate on the need to reorganise and 'humanise' global supply chains, which poses technical, environmental, human and economic challenges.

As with company workers, the priority is to manage and ensure the health of the workers employed in the supply chains. Therefore, special attention should be paid to the establishment of adequate prevention, mitigation and remediation measures, both with regards to workers' personal health and safety and at suppliers facilities or factories. Businesses should step in in first place to protect critical suppliers.

As clients, businesses may be forced to slow down or interrupt orders to suppliers or even incur in non-payments, adding to other impacts that suppliers may be experiencing as a consequence of COVID-19. This can lead to supply chain workers facing destitution as factories are closed, with little or no social protection, or to non-payments to workers, exacerbating their already existing vulnerability, notably in some global supply chains. Full consideration should be given to whether any adjustments are required to avoid causing further impacts to suppliers.

At times, supply contracts allow pulling out, which will probably cause direct impacts to workers along the supply chain (job loss). During past weeks, countries such as Vietnam, Cambodia, the Philippines, Bangladesh or Sri Lanka and other producing countries factories have reduced or ceased altogether operations.

Businesses should seek to identify which suppliers in their supply chain may be most vulnerable in the current situation, in light of the characteristics of the products or services they provide, the country of operations (and its labour framework and social protection systems) or the foreseeable lack of security measures adopted; and concentrate efforts to protect the workers' health and the employment relationships.

Below, we invite you to reflect on some typologies of adverse impacts regarding global supply chains and on potential prevention, mitigation and remediation measures.

Impacts resulting from exposition to the virus and contagion risk

Table 5. Supply chains: impacts resulting from exposition to the virus and contagion risk

Risk and impacts to be managed	Possible prevention, mitigation and remediation measures
	Share with the suppliers the measures adopted for your company workers. Establish communication mechanisms with the suppliers and obtain information to understand their situation and their approach to risk management resulting from COVID-19.
Contagion risk for workers within the supply chain.	Review the measures adopted by the suppliers for the protection of their workers (e.g., compliance with government safety obligations regarding distancing and safety in factories, payment of wages /benefits to sick workers or those who cannot work due to suspension of activities, etc.), and, whenever possible, collaborate closely with them in the improvement.

Impacts resulting from purchase policies and corporate decisions

Table 6. supply chains: Impacts resulting from purchase policies and corporate decisions

Risk and impacts to be managed	Possible prevention, mitigation and remediation measures
Payment retention.	Examine what is at stake for your suppliers and establish a flexible payment schedule to support the supplier / advance payment to suppliers in order to facilitate their cash flow.
Interruption /slowdown / reduction or termination of the commercial relationship with suppliers.	Review, in light of the impact assessment, your purchase policies and practices (in terms of delivery times, prices, tariffs, etc.).
	Eliminate possible contractual penalties applicable to deadlines and other operational issues.
	Adapt orders to allow your suppliers to benefit from some degree of flexibility and avoid risks to their workers' rights (such as unauthorized outsourcing of the production, imposed overtime, etc.).
	Remain flexible regarding previously agreed terms.
	Maintain the commercial relationship with the most vulnerable suppliers.

As general principles applicable to the relations with suppliers along the supply chain, remember:

- Appoint a person responsible for managing the measures related to the impact of COVID-19 along your supply chains.
- Establish active communication mechanisms that tend to favor flexibility, proactive (not reactive) negotiation and the construction of agreements with your suppliers.
- Collaborate closely with industry partners and inter-sector initiatives to develop joint solutions.
- Asses the impacts that the decisions taken as a consequence of COVID-19 may have on your supply chain, and adopt a flexible approach towards the evolution of events and the suppliers' evolving needs that should be fully understood and prioritized.

Examples

- Supermarket chain Morrisons is to pay its small suppliers immediately to help keep them afloat amid coronavirus uncertainty (see Coronavirus: Morrisons to pay small suppliers immediately, at https://www.bbc.com/news/business-51870146).
- Unilever has set early payment and credit system for the most vulnerable small and medium sized suppliers, to help them with financial liquidity (see Helping to protect lives and livelihoods from the Covid-19 pandemic, at https:// www.unilever.com/news/press-releases/2020/helping-to-protect-lives-and- livelihoods-from-the-covid-19-pandemic.html).
- H&M Group is arranging for its supply chain to produce personal protective equipment to be provided to hospitals and health care workers. (see H&M To Leverage Supply Chain For Medical Deliveries, at https://www.reuters.com/ article/health-coronavirus-hm-protective-gear/hm- plans-to-deliver-protectivegear-to-hospitals-idUSFWN2BE064).

Protecting customers and users

Due diligence to face challenges in relation to products and services and access to them.

In general terms, and as an illustrative example, impacts resulting from exposure to the virus and the risk of contagion of customers and users can be anticipated, impacts related to digital services, or in connection with the continuity in the provision of products and services.

In relation to its customers and users, businesses must consider that it may be necessary to adapt products and /or services, as well as the business facilities (physical or virtual) to the risks that COVID-19 poses to customers and users. Furthermore, it may be necessary to take specific measures to avoid impacts on the rights of especially vulnerable groups of customers and users, such as the elderly or other groups at risk.

In general terms, COVID-19 has generated an even greater dependence on digital systems in all sectors. Businesses must pay special attention to the risks that the digital breach can cause upon certain groups, such as the elderly, people with disabilities, etc. in order to ensure access to its services and products.

In relation to ICT companies, some countries are massively developing the use of big data and machine learning strategies to monitor the pandemic in the population. Business need to be vigilant to possible violations of rights, such as the right to privacy, that these strategies may generate.

If the production capacity has been reduced, the company must determine which products it shall prioritize to protect customers' and users' rights in this crisis context.

Businesses may face claims arising out of contract or tort where their acts or omissions cause loss or damage to customers or users, including of mass claims or class actions, depending on the jurisdiction, when a group of individuals is affected.

Below, we invite you to reflect on some typologies of adverse impacts and on potential prevention, mitigation and remediation measures as regards customers and users.

Impacts resulting from exposition to the virus and contagion risk

Risk and impacts to be managed	Possible prevention, mitigation and remediation measures
	Establish an internal protocol to adapt to new requirements, according to national and local operational frameworks.
Risk of contagion to customers related to the distribution, delivery or consumption of products and services.	Take measures to ensure that your business receives regulatory updates that may affect its operational conditions at each stage of the virus containment process, depending on the national and local situation.
	This is especially relevant for businesses that work in the health, care and other essential services sectors, that are authorized to maintain operations.

Table 7. Customers and users: impacts resulting from exposition to the virus and contagion risk

Impacts related to the provision of digital services

Risk and impacts to be managed	Possible prevention, mitigation and remediation measures
Difficulties in accessing new digital mechanisms for customer service due to: • lack of digital connection,	Assess the possible impacts of new products and services created as a result of COVID-19 on the rights of individuals, in particular, of vulnerable groups, analysing who these are in each case and in relation to each product.
lack of digital literacy,disability.	Carry out this impact analysis in each country of operation and taking into account the local risk context.
Risk for data protection (leak/loss risk) and other digital rights of customers and users, resulting	Activate prevention campaigns addressed to workers and customers/users to increase the level of awareness and protection measures.
from prolonged remote work.	Consider investing to access in virtual private networks.
Risk for the protection of customers/users personal data, resulting from the rapid implementation (and sometimes with limited assessment) of new technologies in the context of digital communication.	Undertake vulnerability analysis to ensure that new mobile applications, technologies and digital tools do not violate rights, such as the right to privacy and other digital rights, and do not hide unjustified data capture functionalities.

Table 8. Customers and users: impacts related to the provision of digital services

Impacts resulting from the continuity of the provision of services and products

Table 9. Customers and users: Impacts resulting from the continuity of the provision of services and products

Risk and impacts to be managed	Possible prevention, mitigation and remediation measures
Impact related to continuity in the provision of services.	Beyond the measures taken by governments, businesses may have to readjust the provision of basic services (e.g., gas, water, electricity, internet, food) to allow safe and adequate access for people, notably people at risk or most vulnerable.
Risks arising from active advertising strategies in the media, aimed at specific market segments, especially for cleaning and pharmaceutical products.	Conduct exhaustive marketing review and communicate internally, to ensure that advertising messages and existing commercial material are aligned with national messages and guidelines regarding COVID-19 (e.g., a TV commercial advertising an antibacterial soap that includes images of people sneezing in the hands).

As general principles applicable to the employer – customers/user relations, remember:

- Appoint a person responsible for keeping your business updated in relation to the need to adapt products and services, in accordance with any applicable national and local operational frameworks.
- Assess the impacts on data protection that the adoption of new technologies may have caused /exacerbated.
- Collaborate closely with industry partners and inter-sector initiatives and alliances to respond to the immediate challenges and where your business can contribute.
- Find ways to support your customers with proactive, flexible solutions tailored to their needs, especially vulnerable groups and adopt a flexible approach towards the evolution of events and the customers' evolving needs that should be fully understood and prioritized.
- Asses the impacts that the decisions taken as a consequence of COVID-19 may have on your customers/ users of your products and services.

Examples

- Grocery stores across the country have introduced special shopping hours for seniors, people with disabilities and those with compromised immune systems (see Coronavirus: Grocery stores carve out special shopping hours for seniors, at riskhttps://www.kiro7.com/news/ trending/coronavirusgrocery-stores-carve-out-special-shopping-hours- seniors-those risk/ 53T4D5VZUVB5DDX2ELQXIYWBYU/).
- Orange Tunisia provides free internet access to students which schools are closed in order to allow online education (see Orange Tunisie offre la connexion Internet gratuitement aux étudiants de l'université virtuelle, at https://www.business-humanrights.org/fr/pandémie- de-covid-19coronavirus#c205526.
- Bancolombia has adoptaded diverse mesures, like freezeng client crédits for a 3 moth period (see https://www.grupobancolombia.com/personas/ planapoyo-coronavirus).
- Inditex has proposed to manufacture medical clothing for health professionals in Spain (see Inditex estudia fabricar material sanitario para luchar contra el coronavirus, at https://www.lavanguardia.com/economia/ 20200318/474243638768/inditex-fabricar-material-sanitario-batasmascarillas-coronavirus.html).
- The Barcelona Free Trade Zone Consortium in alliance with various companies, manufactures respirators on 3D printers (see Coronavirus: La Zona Franca fabricará 100 respiradores diarios con impresoras 3D, at https://www.lavanguardia.com/vida/20200322/4830789695/respirador-3d-coronavirus-consorci-de-la-zona-franca.html).

Reflections on the differentiated capacities arising from a due diligence framework approach to the COVID-19 crisis

Organizational learning, anticipation and business resilience

Conducting this process in the form of a due diligence exercise, documenting it and recording the lessons learned, will help to mitigate future operational risks, both internal and external. Doing so will allow your business to:

- Learn from any vulnerabilities revealed and carry out the necessary modifications to your due diligence process and internal policies.
- Review your impact assessment procedures, and incorporate into the risk map risk indicators that could help your business to be prepared to face future crises.
- Evaluate your business capacities to react to new crises regarding the design and implementation of purposeful prevention, mitigation and remediation measures.
- When reactivating or starting relationships with suppliers, thoroughly examine what is at stake for your suppliers, analyze the impact that the crisis may have caused or may still cause in each country or place of operation, and adjust your purchasing policies and contract clauses.
- Activate a remediation plan when the business has caused or contributed to causing negative impacts.

A due diligence exercise should allow to strengthen ties with workers, business partners throughout the supply chain and with customers. In the context of COVID-19. This exercise shall prove a business responsibility, even with relation to a far-reaching crisis with strong consequences on people's human rights. Clear action, policies and processes regarding the challenges that the organization faces, not only shall help containing the pandemic, but also ensuring and showing that the business respects in practice the human rights of all people involved in its activities during a period of extreme vulnerability.

Businesses social responsibility has a great opportunity to make an indelible mark. By acting responsibly, they can help society respond to the economic consequences of the crisis, avoid more damage and contribute to a faster economic recovery.

Paths to innovative finance

It is possible that a due diligence process focused on COVID-19 reveals new investment needs, or even new business models. Businesses can, through their financial capacity, promote new financial models with a focus on the prevention and mitigation of COVID-19 or other global threats.

Businesses have a unique opportunity to purposefully engage with investors and encourage responsible financial flows that are capable of preventing, mitigating and remedying the negative impacts of global-scale challenges, such as COVID-19, climate change effects, etc.

How can we help your business?

Contact us

For more than 20 years, -at BHR and Semilla- we have been assessing business' impacts on human rights in different economic sectors and operational contexts.

If you need professional assessment on designing prevention, mitigation and remediation measures adapted to your business, please contact our team:

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