

Report from the Ethics Information Committee, appointed by the Norwegian government on June 1, 2018. Report delivered on November 28, 2019.

Part I

Recommendation

1 Summary

The Committee hereby recommends an Act regulating the right to know, enterprises transparency about supply chains and due diligence with respect to human rights and decent work.

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

The draft Act builds on international consensus about the requirements for responsible business conduct and Norwegian traditions of access to information. At the outset, the government currently expects all Norwegian companies to act responsibly, to know and follow the UN Guiding Principles on Business and Human Rights, and the OECD Guidelines for Multinational Enterprises.

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

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

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

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

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

The Act will generally apply to goods and services alike. Moreover, for businesses that sell goods to consumers, the Act proposes a duty to publish the manufacturing sites of such goods. The draft Act

anticipates that exceptions from this disclosure duty may be laid down by regulations, as it is not equally suited to all sectors or business types.

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

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

The Committee has consulted with more than 40 companies in its work on the report. We have received signals from many that legislation may promote fairer competitive terms for those engaged in systematic improvements. The signals also cautioned that the Act must be fit for purpose and feasible in practice. Several undertakings have highlighted a risk-based approach as a suitable method for addressing human rights impacts in the supply chain.

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

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

This Report consists of two parts. Part I is the Committee's recommendation, including assessments and a draft Act with comments. The recommendation is unanimous on most points but contains two dissenting views and special comments, see subsections 8.4.6 and 8.4.10. Part II provides a comprehensive review of market developments, challenges in supply chains, international standards initiatives and requirements, relevant legislative developments in other countries as well as relevant Norwegian legislation. These form the basis for the recommendations in Part I.

2 Introduction – the value of transparency

Throughout the past half-century, and particularly during the past 30 years, the production of goods and services in the world has changed radically. There have been tendencies both towards larger western corporations establishing in multiple countries, including low-cost countries, and periods where corporate groups have constructed complex supply chains with numerous tiers. There have also been combinations of these trends. The process has led to limited knowledge about, and insight regarding, the conditions under which goods and services that consumers in Norway purchase are produced. At the same time, the power of businesses has increased because markets have been liberalised and the parties involved are far more expansive.

Today, goods and input factors are produced and sold in supply chains that extend to multiple countries. Supply chains often comprise numerous tiers of production, with procurements from wholesalers, agents, and contract partners in a range of countries, who sell to customers all over the world. Ever cheaper products and production methods put pressure on working conditions in global supply chains. The challenges extend across borders, and slavery-like practices and other exploitation of workers occur in most countries.

Global supply chains have created new interfaces between consumers, workers, local communities, businesses, and investors. However, knowledge and access to information about the social impacts of a business, remains limited. Today's patterns of production and trade make it difficult for governments, industry, consumers and civic organisations to obtain information on the production of goods and services. Access to information is necessary in order to enable informed decisions about purchases and investments, and other decisions that take into account the social impacts of businesses.

A natural response to these challenges is to provide citizens with a right of access to information on how the production of goods and services takes place in the modern world. The right to access information about human rights and working conditions can provide consumers and civil society organisations with the power to influence businesses and public authorities. For the many businesses that are serious about their own activities and those of their suppliers, knowledge and disclosure will lead to more fair competition. Businesses that are not fully compliant will need to take steps to improve.

Internationally we see that similar answers are being sought in many countries and international organisations. In the EU, regulations are being refined so as to meet the information needs of investors and other interested parties, and grant consumers access to information about a company's societal impact. Climate change accentuates the need for improved risk assessments and access to information about global supply chains. To an increasing extent, there is recognition that businesses have a broader social mission than simply to maximise shareholder value. Employees and customers are increasingly being considered as equally important stakeholders.

Many countries have adopted disclosure requirements in seeking to counter modern slavery in the supply chain. To combat the worst forms of child exploitation in mineral extraction, among other goals, the EU and USA have passed regulations requiring due diligence in the supply chain for businesses that use minerals such as cobalt in the production of mobile phones, laptop computers, and other devices.

The draft Act builds on a basic understanding that transparency is a key asset in our society. Transparency builds trust between authorities and citizens, and is the cornerstone of a democracy. In our time, we see that this trust is fragile. Information is held back, manipulated, or used to influence political processes. This results in an imbalance of power, thus impinging public participation in decision-making and influence. States motivated by goals that do not align with the interests of the citizenry often fail to be transparent about their activities. Corruption finds fertile ground in societies where transparency is lacking.

Transparency and public disclosure have long traditions within the government apparatus and public administration in Norway. In 1814, the precursor National Assembly at Eidsvoll ruled that the Parliament's meetings should be open to all, and that deliberations would be published. Over the previous century, the public sector in numerous countries has opened due to legislation granting freedom of information to interested parties who have dealings with the government, and due to freedom of information laws. This has been justified as providing an additional means to scrutinise the workings of the public sector, and a basis on which to raise concerns about inappropriate actions. Moreover, it has helped empower citizens who thereby have a better basis on which to participate in political processes. Underlying all this is the recognition that the government exerts power, and that such power must be checked, both for democratic reasons, and in the interests of the rule of law.

Likewise, the private sector, and particularly limited companies, have become subject to calls for public access. Already with the first Norwegian Companies Act in 1874, the publication of certain information was a statutory requirement. This developed through membership of trade registers. With time, regulation of limited companies and their accounts were adopted. The details on record were the

identities of those behind the business, the asset capital, board members, and how the business was faring in financial terms. The rules were expanded through international cooperation. For Norway's part, most production was national. More recently, working conditions have been subject to extensive regulation, as the review in Part II will show, both due to the efforts of the labour movement, and binding international commitments in the UN and the ILO.

Transparency can be a competitive advantage. Benefits may include enhanced reputation, motivated workers, greater efficiency, legislative compliance, and improved access to capital. Investors increasingly emphasise the human rights and sustainability performance of companies, and view transparency as a key metric for investment decisions. Socially responsible investments have grown significantly. The Corporate Human Rights Benchmark has indicators tracking transparency in supply chains, and is consulted by investors managing roughly USD 5.3 trillion in asset portfolios. Transparency and social responsibility are key parameters in public procurement processes alongside other responsible purchasing practices.

Today, businesses increasingly recognise the need for transparency in the production of goods and services, and responsibilities in the supply chain. Companies in some sectors now increasingly publish information on production sites, which in the past were hidden from public view. This development has been rapid. Some production and retail categories, such as textiles and clothing, publish factory lists, and have signed binding agreements to regulate working conditions, including safety, salaries and working hours. An example is the Accord on Fire and Building Safety in Bangladesh ("the Accord"), a legally binding, transparent agreement to promote fire and building safety. Leading brands, civil society organisations, trade unions and others signed it in the wake of the Rana Plaza tragedy in Bangladesh in 2013, after a building containing several textile factories collapsed. More than 1100 persons were killed and at least 2500 were injured.

An Act regulating transparency about supply chains and due diligence with respect to human rights and decent work is the appropriate answer to some of the most crucial challenges of our time. Disclosure and access to information are key to building trust between industries and the government, between management and workers, and between companies, owners and investors. Moreover, it is also key to building trust between businesses, local communities and customers – both within Norway and beyond.

[...]

9 Draft legislation

Act relating to transparency regarding supply chains, the duty to know and due diligence

Chapter 1. Introductory provisions

Section 1 *Purpose*

The Act shall ensure that consumers, organisations, trade unions and others have access to information about fundamental human rights and working conditions in enterprises and supply chains and shall contribute to promoting enterprises' respect for fundamental human rights and decent work.

Section 2 *Scope of application*

- (1) The Act applies to enterprises that offer goods and services in Norway.
- (2) The King may by regulation provide whether and to what extent the Act shall apply to Svalbard and Jan Mayen.

Section 3 *Definitions*

- a) "Enterprise" means a company, cooperative society, association, sole proprietorship, foundation or other form of organisation. The Act also applies to publicly owned enterprises offering goods and services.
- b) "Larger enterprises" means enterprises covered by the Accounting Act section 1-5, or which exceed the limits for two of the following three conditions on the balance sheet date:
 1. sales income: NOK 70 million,
 2. total assets: NOK 35 million,
 3. average number of employees in the accounting year: 50 full time equivalents.
- c) "Supply chain" means all entities supplying goods and services that deliver products or factor inputs to an enterprise.
- d) "Fundamental human rights" means the internationally recognised human rights as expressed in the International Covenant on Economic, Social and Cultural Rights (1966), the International Covenant on Civil and Political Rights (1966) and the ILO's fundamental conventions on fundamental rights and principles at work.
- e) "Decent work" means work that respects fundamental human rights, protects health, safety and the environment in the workplace and provides a living wage.

- f) “Consumer” means a natural person who is not primarily acting for commercial purposes.

Section 4 *Relationship with other legislation*

- (1) This Act does not restrict any right to disclosure or information pursuant to other legislation.
- (2) The right to information applies subject to the restrictions that stem from the Intellectual Property Rights Act.

Chapter 2. Duty to know, disclosure requirements etc.

Section 5 *Duty to know*

- (1) All enterprises are obligated to know of salient risks that may have an adverse impact on fundamental human rights and decent work, both within the enterprise itself and in its supply chains. The scope of the duty to know depends on factors that include the size of the enterprise, its ownership and structure, activities, industry and type of goods or services. For larger enterprises, Section 10 also applies.
- (2) The duty to know applies in all cases where the risk of adverse impact is most severe, such as the risk of forced labour and other slavery-like labour, child labour, discrimination in employment and at work, lack of respect for the right to form and join trade unions and undertake collective bargaining and risks to health, safety and the environment in the workplace.

Section 6 *Transparency about production sites*

- (1) Enterprises that distribute goods to consumers are obligated to publish information about the production site.
- (2) The information shall be published on the enterprise’s website or otherwise be made easily accessible.
- (3) The King may by regulation provide the sectors and groups of enterprises that shall be exempted from the duty of public disclosure.

Section 7 *Right to information held by an enterprise*

- (1) Any person is entitled to information about how an enterprise conducts itself with regard to fundamental human rights and decent work within the enterprise and its supply chains.
- (2) Requests for information pursuant to Subsection 7 (1) may concern:
 - a) general information about the enterprise’s work, systems and the steps taken to prevent or reduce adverse impact on human rights and working conditions.
 - b) information about any adverse impact on human rights and working conditions, significant risks of such impact occurring and how the enterprise

manages this risk, including any risk associated with a particular product or service.

- (3) Requests for information may be submitted to the enterprise orally or in writing.
- (4) The information shall be adequate, truthful and comprehensible in relation to the request submitted.
- (5) An information request may be rejected if the request is too broadly formulated or provides an inadequate basis for identifying the information to which the request applies.

Section 8 *Exemptions for certain types of information*

- (1) Requests for information may be refused if
 - a) the request is clearly unreasonable, or
 - b) it concerns information about an individual's personal affairs, or
 - c) the information requested relates to operational or commercial matters subject to legitimate confidentiality requirements, which may include business strategies, business concepts, formulae or production methods.
- (2) Information known to the enterprise about violations of fundamental human rights related to the enterprise and its supply chains cannot be treated as exempt pursuant to Subsection 8 (1).

Section 9 *Processing of information requests by the enterprise pursuant to Section 7*

- (1) Within the framework of this provision, the recipient of an information request may disclose the information in the form deemed appropriate by the enterprise.
- (2) If the request can be answered adequately using existing, relevant reports and other published information, the information seeker can be referred to them.
- (3) The recipient of an information request shall consider the request and answer it within a reasonable time and at the latest within three weeks of receipt of the request.
- (4) If the quantity or type of information makes it unreasonably burdensome to provide access to it within three weeks, the information shall reach the information seeker within two months. In this case, the enterprise shall within three weeks of receipt of the request explain the reason for the extension and state when the information seeker should expect to receive the information.
- (5) If a request for information is rejected or refused, the enterprise shall refer to the provision justifying the refusal, provide information about the right and time limit for requesting more detailed information and explain the appeal process and time limit.
- (6) In the event of rejection or refusal, the information seeker may within three weeks request a short justification for the refusal. The justification shall be provided as soon as possible and at the latest within three weeks of receipt of the request for more

detailed justification. The justification shall be provided in writing if the information seeker so requests.

Section 10 *Duties of due diligence and public disclosure of information for larger enterprises*

- (1) Larger enterprises shall exercise due diligence in order to identify, prevent and mitigate any possible adverse impact on fundamental human rights and decent work and account for how they address any adverse impacts.
- (2) The enterprises shall as a minimum and of their own motion publicly report on the following aspects of their own activity and supply chains:
 - a) A description of the enterprise's structure, area of operations and supply chains, including management systems and early warning channels for preventing or reducing any adverse impact on fundamental human rights and working conditions.
 - b) Due diligence carried out by the enterprise, including information about any actual or potential adverse impact on fundamental human rights and decent work and salient risk of such impact.
 - c) Results of the due diligence, including measures to limit serious risk or injury and mitigate adverse impact where this is required.
- (3) The report pursuant to Subsection 10 (2) shall always include information on risks and measures in relation to forced labour and other slavery-like labour, child labour, discrimination in employment and at work, lack of respect for the right to form and join trade unions and undertake collective bargaining, as well as health, safety and the environment.
- (4) The report pursuant to Subsection 10 (2) may be included in the report on social responsibility pursuant to the Accounting Act section 3-3 c or publicly disclosed in another manner. The information shall be readily accessible. The annual report shall state where the report is publicly available.
- (5) The report shall be signed by the general manager and the board.

Chapter 3. Guidance, supervision and appeal

Section 11 *Guidance*

- (1) The Consumer Authority shall provide guidance to enterprises, consumers and others on the implementation of this Act.

Section 12 *Complaints*

- (1) Rejection and refusal of information requests may be appealed by way of complaint to the Consumer Authority with a copy to the enterprise. The appeal time limit is three weeks from the time when the refusal reached the information-seeker.

- (2) If an answer to the information request has not arrived within two months of the information request being received by the enterprise, this constitutes a refusal that can be appealed within the following three weeks.
- (3) If the information-seeker has asked for further justification for the refusal pursuant to Section 9 (6), the time limit does not start to run until this justification has been provided.
- (4) The enterprise must provide any answer within three weeks of receiving its copy of the appeal.
- (5) After this time, the Consumer Authority will decide the appeal.

Section 13 *Monitoring and enforcement*

- (1) The Consumer Authority and the Market Council conduct monitoring to ensure compliance with the provisions of this Act. The monitoring is performed pursuant to the rules in the Marketing Control Act sections 32 to 42.
- (2) An enforcement penalty may only be determined for contravention of the disclosure requirements in Sections 6, 7 and 10.
- (3) For repeated wilful or negligent infringement of Sections 6, 7 and 10, an infringement penalty may be established, to be paid by the infringing person or entity.
- (4) The Ministry may by regulation lay down more detailed rules governing the imposition of enforcement penalties and assessment of infringement penalties.

Section 14 *Entry into force*

The Act enters into force from the time determined by the King.

Chapter 4. Changes to other legislation

Change to the Marketing Control Act

The future wording of the Marketing Control Act s. 35 second paragraph shall be: “The Consumer Authority conducts monitoring out of consideration for the consumers. Monitoring pursuant to Section 2 second paragraph, however, is conducted out of consideration for equality of the sexes, with particular emphasis on how women are portrayed. Monitoring pursuant to Section 10 with regulations is conducted so that consumers can gain an overview of the market and easily compare prices. *Monitoring pursuant to the Act relating to enterprises’ transparency regarding supply chains, duty to know and due diligence is conducted in order to ensure access to information about fundamental human rights and working conditions in enterprises and their supply chains cf. Section 1.*”

10 Comments on the individual sections

[...]