

**Environmental, Social  
and Governance  
developments**

**January - March 2022**



**Ana Duarte**  
Research Associate



**Mariana Ferreira**  
Research Associate



**Rafaela Oliveira**  
Research Associate

**JANUARY**

**The Climate Corporate Accountability Act was passed in the California Senate:** [The California Senate passed into law](#) the Climate Corporate Accountability Act, that becomes the first US legislation requiring large companies to disclose greenhouse gas emissions. The new law obliges companies operating in California and with more than \$1 billion in gross annual revenue to disclose annually on their emissions, including direct emissions, emissions from purchase and use of electricity and indirect emissions (including the ones from the supply chain). It is expected that the legislation will apply to most of US largest corporations. The bill still needs to pass the Assembly and only then can the Governor potentially pass it into law.

**FEBRUARY**

**Effective EU corporate accountability legislation urged by companies and investors:** In February 2022, a [joint statement was released](#) by more than 100 large and small companies, investors and business associations calling the European Commission to adopt a legislative proposal on mandatory human rights and environmental due diligence (mHREDD). The statement underlined the concerns raised by the delay of the publication of the EU proposal for a mHREDD legislation and outlined some characteristics that should be included in the mentioned legislation, in order to make it effective, such as: the alignment of the legislation with the UNGPs to cover all businesses operating in the EU; due diligence obligations across the whole supply chain; requirements that go beyond tick boxing and credible accountability mechanisms.

**New report Paper Promises? Evaluating the early impact of Australia's Modern Slavery Act (MSA) shows that companies are non-complaint with the 2018 law:** [The Paper Promises report](#) examined statements submitted by 102 companies to the Australian Government's Modern Slavery Register and evaluated the implementation of

effective measures to address modern slavery. The document reveals that companies are failing to comply with the mandatory reporting requirements, since *“Most companies reviewed demonstrate superficial and incomplete compliance with the reporting requirements of the MSA”*. Apart from this, obvious modern slavery risks are not being identified or disclosed and *“Less than a third of companies reviewed (27%) could demonstrate that they are taking some form of action against modern slavery risk”*.

**European Commission’s Complementary Climate Delegated Act labels gas and nuclear energy as sustainable:** On the 2<sup>nd</sup> of February the Commission adopted the final [Complementary Climate Delegated Act](#) which follows the EU Sustainable Taxonomy, a comprehensive guide for private investors to invest responsibly in the context of achieving climate neutrality and a result of the EU Action Plan on Sustainable Finance. The Delegated Act, which is now subject to a period of 4-to-6 months scrutiny by the European Council and the European Parliament, includes for the first-time fossil gas and nuclear energy into the EU Taxonomy and labels them as sustainable investments. The proposal has been received with opposition from different stakeholders, including the [EU Platform on Sustainable Finance](#), an expert advisory panel of the European Commission tasked with researching on sustainable policies in relation to finance, and [Austria](#) and [Luxembourg](#) have threaten legal action against the commissions act.

**Tony’s Chocolonely identified cases of child labour in their supply chain:** Tony’s Chocolonely published their [annual report](#) for 2020-2021 and reported 1,701 cases of child labor. According with the document, the huge increase between the 387 cases found in 2019/2020 and the present numbers are due to the onboarding of two cooperatives where 1,426 cases were detected. Beside this significant numbers, the company concluded the following - *“We’ve learned that the longer we work with a cooperative (which always involves implementing Tony’s 5 Sourcing Principles and rolling out the CLMRS) the lower the prevalence of child labor”*.

**Japan Government to set up guidelines on business and human rights:** The Japan Government stated its intention to draw up due diligence guidelines for companies in order to identify and prevent human rights abuses across the supply chains. These guidelines are aimed to increase the uptake of human rights due diligence expectations by companies. If they are not sufficient, the government will consider turning them into law.

**The European Commission adopted a proposal for a Directive on Corporate Sustainability Due Diligence:** On the 23<sup>rd</sup> of February 2022, the European Commission released its much awaited [proposal for a Directive on Corporate Sustainability Due Diligence](#). The Directive, which was developed on the basis of the findings of the [Study on due diligence requirements through the supply chain](#), took stock of the limited uptake, by companies, of their human rights and environmental expectations under soft law and the need to move towards more stringent approaches. It aims to impose human rights and environmental due diligence requirements on companies, and in particular to require companies to:

- Integrate due diligence into their policies;
- Identify actual or potential adverse human rights and environmental impacts;
- Prevent or mitigate potential impacts;
- Bring to an end or minimise actual impacts;
- Establish and maintain a complaint procedure;
- Monitor the effectiveness of the due diligence policy and measures; and
- Publicly communicate on their due diligence measure.

These obligations will be applicable to:

- EU companies:
  - Group 1: limited liability companies with more than 500 employees and more than €150 million in net turnover worldwide.
  - Group 2: limited liability companies operating in "high impact sectors" – defined as textile, agriculture and minerals -, with more than 250 employees and a net turnover of €40 million worldwide and more. For Group 2 companies, the rules will only start to apply 2 years later than for the Group 1.
- Non-EU companies with a net turnover threshold aligned with Group 1 and 2, but generated in the EU.

Member States will have to appoint national administrative authorities to supervise the compliance with these obligations and they may impose fines in case of non-compliance. The Draft Directive also contains a civil liability provision, a specific provision on climate change and sets out a duty of care for directors requiring them to take into account the consequences of their decisions for sustainability matters, including human rights, climate change and environmental consequences in the short, medium and long term. You can find our analysis [here](#). The proposal will be presented for approval to the European Parliament and the Council. Once adopted, the Member States will have two years to transpose the Directive into their national laws.

**The European Commission adopted a Communication on decent work worldwide:** On the 23<sup>rd</sup> of February 2022, the European Commission published its [Communication on Decent Work Worldwide](#), with the latest figures on forced labour – which concerns 25 million people - and child labour – which concerns one in ten children worldwide. The Commission also indicated that it is preparing a new legislative instrument to ban products made by forced labour from entering the EU market. The Communication sets out existing and upcoming tools in four areas:

- EU policies and initiatives with outreach beyond the EU:
  - EU policies setting standards that are global frontrunners for corporate responsibility and transparency, such as the proposal for a directive on corporate sustainability due diligence and the forthcoming legislative proposal on forced labour.
  - EU guidance and legal provisions on socially sustainable public procurement will help the public sector lead by example.

- EU sectoral policies, for instance on food, minerals and textiles, strengthen respect for international labour standards.
- EU bilateral and regional relations:
  - EU trade policy, which promotes international labour standards.
  - Respect for labour rights in third countries is an essential part of EU human rights policies.
  - EU enlargement and neighborhood policy, which promotes decent work in neighboring countries.
- The EU in international and multilateral fora:
  - EU support for the implementation of UN instruments on decent work, and the EU's active contribution to setting labour standards through the ILO.
  - EU support for the reform of the World Trade Organisation (WTO) to integrate the social dimension of globalization.
  - In the G20 and G7 formats, the EU works with other global economic powers to promote decent work.
- Engagement with stakeholders and in global partnerships:
  - EU support for social partners to ensure respect of labour rights in supply chains.
  - EU engagement with civil society actors to promote safe and enabling environments for civil society.
  - EU support for global partnerships and multi-stakeholder initiatives on decent work, in areas such as occupational safety and health".

With this initiative the Commission invites the European Parliament and the European Council to support the approach set out the Communication and to work together to implement its measures. The Commission will also report, regularly, on the implementation of the Communication.

**The Platform on Sustainable Finance presented its final report on Social Taxonomy:**

On the 28<sup>th</sup> of February 2022, the Platform on Sustainable Finance published the "[Final Report on Social Taxonomy](#)" which proposes a structure for a social taxonomy based on the EU Environmental Taxonomy. It is envisaged that it will have the following structural aspects: "(i) the development of social objectives; (ii) types of substantial contributions; (iii) 'do no significant harm' (DNSH) criteria; and (iv) minimum safeguards". The Social Taxonomy would build on three proposed objectives:

- Decent work (including for value-chain workers);
- Adequate living standards and wellbeing for end-users; and
- Inclusive and sustainable communities and societies.

It is also suggested for the social taxonomy to contain sub-objectives that elaborate on different aspects of the three social objectives mentioned. The Platform's final report is meant to support the European Commission in its own report on the EU Social Taxonomy, which was planned to be published in 2021.

**International Olympic Committee (IOC) under scrutiny in relation to the productions of materials related to the winter games:** Human Rights Watch and the Coalition to End Forced Labour in the Uyghur Region (EUFL) [criticized](#) the IOC for failure to conduct adequate human rights due diligence to address the risk that Olympic uniforms and other products would be related to human rights violations in China's Uyghur region. The public statement follows a request of additional information in January 31 after IOC disclosed that they had relying on third-parties audits of its supplier's production sites, as the civil society associations raised questions on the credibility of supply chain auditing in the Uyghur region.

### MARCH

**Growing number of companies cutting ties with Russia following its invasion of Ukraine:** Following the invasion of Ukraine by Russia on the 24<sup>th</sup> of February 2022, [over 300 companies](#) have decided to suspend their operations (in total or in part) in Russia. This includes companies such as McDonald's, Universal Music Group, PepsiCo, Adidas, Google, Mastercard and Visa, Volkswagen, Mercedes-Benz, etc. Other companies such as [Auchan](#) that have so far decided against this measures have been under increased scrutiny and calls for boycotts have been issued. These decisions raise some important questions in terms of Business and Human Rights and require enhanced human rights due diligence process in relation to conflict-affected areas. The [BIICL](#) and the [BHRRCL](#) have published important reflections on the requirements for a responsible exit from Russia. In addition, the Yaroslav Mudryi NLU in collaboration with Polish Institute for Human Rights and Business hosted a [webinar](#) on Business conduct in times of war and the Essex Business and Human Rights Project and the Global Business & Human Rights Scholars Association hosted a webinar on Business and Human Rights in Ukraine (the recording is available [here](#)). The NOVA BHRE is also launching a new research project on Corporate Due Diligence in Conflict-Affected areas coordinated by Laura Íñigo Álvarez.

**Democratic Republic of Congo's High Court ordered Panda International Congo Engineering to pay full healthcare costs and lost wages to an injured worker of a cobalt mine:** In August 2021, a worker at a cobalt & copper mine was injured after a truck engine fell on his hand. Panda International Congo Engineering, the employer, refused to assist the worker with the medical costs, even though the incident occurred at the workplace. The High Court in Kolwezi, Democratic Republic of Congo, [ordered Panda International Congo Engineering is to pay the healthcare costs and lost wages to the injured employee](#). Despite the [Congolese Labour Code](#) stipulating that healthcare costs associated to workplace accidents should be covered by the employer, legal actions

are rarely taken by the workers for fear of losing their jobs or for lack of findings. The High Court decision is now an important precedent on the matter and on workers' rights.

**The Inter-American Commission on Human Rights ('IACHR') recognised that climate change is a human rights emergency and calling on States to take action to limit the anthropogenic emission of greenhouse gases:** The IACHR adopted [Resolution No. 3/2021 "Climate Emergency: Scope of Inter-American human rights obligations"](#). The Commission recalled that 'climate change directly affects the right to a healthy environment, which has been recognized as an autonomous and justiciable human right by the jurisprudence of the organs of the InterAmerican Human Rights System.' It also emphasized that climate change is one of the greatest threats to the full enjoyment and exercise of human rights of present and future generations and the health of ecosystems and all species that inhabit the planet. The Resolution was adopted after the IACHR received a mandate from the General Assembly of the Organization of American States and had as an objective to "*systematize the human rights obligations of States in the context of the climate crisis in order for them to make public policy decisions under a rights-based approach*".

**Mexican Supreme Court ordered the cancellation of mining concessions in Tecoltemi, ending two decades of community opposition:** The Nahua community in Tecoltemi, represented by different organizations, [won last month a case](#) against the Secretariat of Economy that put an end to two controversial mining concessions to the Canadian Almaden Minerals. The area was to be exploited for the period of 50 years for its 7 million ounces of gold and 1.4 billion ounces of silver. The decision was grounded on the lack of consultation with the indigenous community. Indeed, the right of indigenous community to prior consultation is not only an obligation under Convention 169 of the ILO, to which Mexico is a party, and is also entrenched in the country's constitution.

### **About the authors**

This newsletter on the ESGs legal developments was prepared by the NOVA BHRE with the support of PLMJ. The authors are Ana Duarte, Mariana Ferreira and Rafaela Oliveira, and the work has been coordinated by Professor Claire Bright.

### **About the NOVA BHRE**

The NOVA BHRE is an academic centre within the NOVA School of Law which seeks to contribute to fostering responsible business conduct that upholds respect for human rights, decent work and environmental standards throughout their global value chains, thereby also advancing the UN Sustainable Development Goals.

### **Contact**

NOVA Centre on Business, Human Rights and the Environment  
NOVA School of Law  
Campus de Campolide, 18  
1099-032 Lisbon, Portugal  
Email: [novabhre@novalaw.unl.pt](mailto:novabhre@novalaw.unl.pt)  
<https://novabhre.novalaw.unl.pt>