

The UK Modern Slavery Act and EU Timber Regulation: Synergies and Divergence

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Executive Summary

In recent years, international supply chains for many primary products have come under scrutiny due to increased demands from consumers or regulatory bodies to ensure no negative social or environmental impacts are associated with their production. The impacts in question can arise directly from the production process or be a function of complex phenomena such as corruption, illegality and, in some cases, violent conflict in the areas in which they are made.

The UK Modern Slavery Act (MSA), enacted in 2015, has created new requirements for all industrial sectors. Section 54 of the Act requires any commercial organization which supplies goods or services in the UK associated with global supply chains, and is above £36 million in total annual turnover, to produce a slavery and human trafficking statement for each financial year. The statement must include “the steps the organisation has taken during the financial year to ensure that slavery and human trafficking is not taking place in any of its supply chains, and in any part of its own business,” or a statement that the organization has taken no such steps.

Similarly, given the historical prevalence of illegal and unsustainable logging in many forest-rich countries, supply chains for timber and forest products in the EU, USA, and Australia have been subject to scrutiny for a number of years – initially as a result of NGO investigations, but more recently as a matter of regulatory compliance. In the UK, the Timber and Timber Products (Placing on the Market) Regulation, which incorporates the EU Timber Regulation (EUTR) into UK law, prohibits the placing of illegally sourced timber products on the EU market, and also creates a requirement on companies or individuals first placing timber products on the market to exercise “due diligence” in sourcing, and thereby minimize the chance of their handling illegal products.

Regulatory approaches that seek to restrict trade in products associated with undesirable practices are not common, since most mechanisms tackling trade in products are based on standards that are intrinsic to the product (e.g., either products that are prohibited, such as drugs, or trade is based on safety standards associated with chemical residues in food, or energy efficiency levels in machinery such as fridges). Alternatively, in other legal regimes regulators have made undesirable practices illegal in the importing jurisdiction, but not embedded them in a trade mechanism (e.g., anti bribery legislation which allows for the prosecution of individuals and companies who have offered bribes for contracts, but does not include in its scope anything to control the trade in the oil etc. which was extracted and traded as a result of that bribery).

Given that both the MSA and the EUTR seek to influence corporate buying behavior in global supply chains in order to reduce undesirable practices (forced labor, slavery, and illegal logging), this report analyzes the similarities and differences between the two sets of regulatory requirements, exploring the extent to which there are opportunities to learn from EUTR experiences to inform implementation of the more recently enacted MSA.

The report shows that there are a number of similarities between the MSA and EUTR which include:

- **The aim to create market incentives for producers to comply with local laws and global standards:** Both the EUTR and the MSA aim to limit products associated with undesirable practices (illegal logging and forced labor) from “consumer country” markets.
- **The overarching requirements on companies to act:** The EUTR and the MSA both require companies to document their full supply chains in order to assess the risk of the undesirable practice associated with any stage. The scope of the required public disclosure under Section 54 of the MSA is similar in some respects to the requirements of the EUTR, in the sense that reports should contain information about both the assessment and management of the risk of buying goods produced using slave labor, as well as a report of the efficacy of that management.
- **Implementation and enforcement of the provisions:** Implementation of both pieces of legislation has been criticized for slowness.

However, this report also shows that there are also a number of differences in the way that the MSA and the EUTR seek to limit products associated with undesirable practices. These include:

- **Size of companies:** The MSA applies only to companies above £36 million in annual turnover, while the EU Timber Regulation applies to all companies regardless of size.
- **The way that each defines the products and practices to be excluded from supply chains:** The MSA defines the specific activities that it seeks to exclude from the global supply chains of British companies as those referenced by UK and international law. The EUTR, in contrast, defines “illegal wood” in relation to the laws and regulations of the country of harvest, specifying only the types of applicable producer-country legislation which should be considered in each national context.
- **The full scope of the regulatory requirements on companies to act:** Both the MSA and the EUTR require companies to set out the steps they have taken to assess the risk of the undesirable practice in relation to any part of the supply chain. However, the MSA requires the statement of actions taken to be approved and signed by a director, member, or partner of the organization and to be published on the organization’s website to ensure transparency. This means that the individual who signs the report can be held personally liable for certain lesser offenses like negligence if the information provided in the statement turns out to be false or inaccurate.
- **Enforcement and non-compliance:** In the case of the EUTR, a company’s system of due diligence can be reviewed by the national enforcement agency at any time, but is not required to be published or to be made available on request to any other party. Due Diligence systems which do not include full supply chain documentation, or the adequate assessment and mitigation of the risk of buying illegal wood, are deemed to be non-compliant, and companies can face sanctions. Under MSA section 54 companies are only deemed non-compliant if they have not made a report; the quality of reports, or of actions taken by the company, are not currently judged by regulators.
- **Behavioral change:** Under the terms of the EUTR all companies are required to change supplier or stop placing a given product on the market if they are unable to mitigate the risk of buying illegal wood. Under the MSA, there is no explicit legal responsibility to change buying behavior, but transparency is required, and it is assumed that once information about slavery is in the public domain, reputational and shareholder pressure will force companies to tackle the problem or source products differently. However, this assumption may not hold true if companies do not have brand reputations that they need to protect, are privately owned rather than exposed to shareholder influence, or if their statements are not subject to quality control and/or validation by a regulator or independent body.
- **Penalties for non-compliance:** Penalties associated with Section 54 of the MSA are very light, and it is too early as yet to assess implementation. Breaches of the EUTR, by contrast, carry fairly serious penalties – at least in theory – and enforcement is gathering pace. While criminal penalties are attached to breaches of other provisions of the MSA, this is not the case for Section 54, where the only remedy for non-compliance is the power for the government to bring civil proceedings to require a non-reporting organization to meet its obligations. There is an assumption that if a company were to be so uncooperative as to require such a proceeding, it would suggest that it was also failing to comply with other provisions of the Act, which would then attract more detailed investigation by law enforcement and regulatory bodies.

Notably, a number of UK importers of forest products interviewed for this paper report that they are using the same supply chain Due Diligence systems set up for the EUTR to assess the risk of forced labor in their supply chains and comply with the reporting requirements of the MSA in a cost-effective way.

Acronyms

CPET	Central Point of Expertise on Timber
EU	European Union
EUTR	European Union Timber Regulation
FLEGT	Forest Law Enforcement, Governance and Trade
FSC	Forest Stewardship Council
IFEX	Indonesian International Furniture Exhibition
IFM	Independent Forest Monitor
ILO	International Labour Organization
ILPA	Australian Illegal Logging Prohibition Act
MSA	Modern Slavery Act
NGO	Non-Governmental Organization
PEFC	Programme for the Endorsement of Forest Certification
SVLK	Sistem Informasi Legalitas Kayu
TTF	UK Timber Trade Federation
VLO	Verified Legal Origin
VPAs	Voluntary Partnership Agreements
WTO	World Trade Organization

1. Introduction

In recent years international supply chains for many primary products have increasingly come under scrutiny due to the negative social and environmental impacts often associated with their production, and their complex relationship with corruption, illegality and, in some cases, violent conflict in their source and processing countries. Some of this scrutiny has been initiated by NGO investigations into unethical, illegal, and unsustainable practices in the supply chains of well-known brands, leading to “reputational risk,” and some has been the result of new regulatory requirements for companies to take responsibility for the impacts of their global supply chains.

Given the prevalence of illegal and environmentally unsustainable logging in many forest-rich countries, particularly in the developing world, supply chains for timber and forest products have been subject to this kind of scrutiny for many years – initially as a result of NGO pressure on timber companies, but more recently as a matter of regulatory compliance. In the UK, the Timber and Timber Products (Placing on the Market) Regulation, which incorporates into UK law the EU Timber Regulation, prohibits the placing of illegally sourced timber products on the EU market, and also creates a requirement on companies or individuals first placing timber products on the market to exercise “due diligence,” and thereby minimize the chance of their handling illegal products. It shares elements with the Australian Illegal Logging Prohibition Act and the US Lacey Act.

More recently, supply chains for many different products have come under scrutiny because of their exposure to slavery and human trafficking. In the UK, the Modern Slavery Act, enacted in 2015, has created new requirements for all industrial sectors. The core of the Act relates to the regulation of labor in the UK, but it also places a requirement on larger companies to report on the efforts they have undertaken to reduce the risk of slavery or human trafficking in their supply chains, whether in the UK or abroad.

Both the EU Timber Regulation and the Modern Slavery Act are aimed at excluding products associated with undesirable practices (illegal logging and forced labor) from “consumer country” supply chains, with a view to creating a market incentive for producers to comply with local laws and meet global social and environmental standards. This report analyzes the similarities and differences between the two sets of regulatory requirements to understand how each excludes products associated with undesirable practices. The aim of the paper is to explore the extent to which there are opportunities to learn from EUTR experiences to inform implementation of the MSA.

2. The Modern Slavery Act 2015

“Modern slavery” is an umbrella term encompassing slavery, servitude, forced or compulsory labor, and human trafficking. The common factor is that its victims are unable to leave their situation of exploitation; they are controlled by threats, punishment, violence, coercion, or deception. Estimates of the number in modern slavery range from 27 to 46 million.¹ International Labour Organization (ILO) estimates suggest that out of the total of those in modern slavery in 2016, 25 million people were victims of forced labor, including 16 million in the private sector, particularly domestic work, construction, and agriculture, 5 million in forced sexual exploitation, and 4 million in forced labor imposed by state authorities.² The total illegal profits obtained worldwide from the use of forced labor (excluding state-imposed forced labor) were estimated at some US\$150 billion per year in 2014.³

A 2012 report by the UN Special Rapporteur on trafficking in persons highlighted the potential exposure of businesses with complex supply chains, observing that even if their own workforces were free of modern slavery, they might still be “indirectly associated with the crime of trafficking when their suppliers, subcontractors, or business partners supply goods or services produced or provided by trafficked persons.”⁴ In 2015, a survey of UK companies which were already actively managing labor standards in their supply chains found that 71 percent believed there was a likelihood of modern slavery occurring at some stage in their supply chains; it was perceived to be complex, hidden, and challenging to address.⁵

Against this background, in 2013 the Home Secretary, Theresa May, announced her intention to legislate, and the resulting bill received Royal Assent in March 2015. The Modern Slavery Act consolidated, with some amendments, previous slavery and trafficking offences split over several pieces of legislation. It increased the penalties available, introduced new powers to enable the courts to place restrictions on those convicted (or involved but not yet convicted) of modern slavery offences, established a new post of Anti-Slavery Commissioner to encourage good practice in the prevention, detection, and investigation of offences and identification of victims, and improved the treatment of victims, including a new statutory defense for victims compelled to commit criminal offences, and provision for new child trafficking advocates.

Section 54 of the Act requires any commercial organization which supplies goods or services, carries on a business or part of a business in the UK, and is above a specified total annual turnover (currently £36 million), to produce a slavery and human trafficking statement for each financial year of the organization. The statement must include “the steps the organisation has taken during the financial year to ensure that slavery and human trafficking is not taking place in any of its supply chains, and in any part of its own business,” or a statement that the organization has taken no such steps.⁶ This supply-chain scrutiny provision drew its inspiration from the California Transparency in Supply Chains Act 2010, which contains similar requirements.

The guidance to the Act published in October 2015 makes it clear that the reference to ensuring that slavery and human trafficking is not taking part in any part of a company’s supply chain does not mean that the company must guarantee that its entire supply chain is slavery-free.⁷ Rather, it means that it must set out the steps it has taken in relation to any part of the supply chain; it is a requirement for investment in knowledge and transparency rather than changed

¹ Kevin Bales, “Unlocking the Statistics of Slavery,” *Chance* 30, no. 3 (2017): 4–12, doi:10.1080/09332480.2017.1383105; Global Slavery Index (<https://www.globalslaveryindex.org>).

² International Labour Office, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* (Geneva: International Labour Office, 2017).

³ International Labour Office, *Profits and Poverty: The Economics of Forced Labour* (Geneva: International Labour Office, 2017), 13–15.

⁴ UN Special Rapporteur on trafficking in persons, especially women and children, *The issue of human trafficking in supply chains*, A/67/261, 2012, 5.

⁵ Quintin Lake et al., *Corporate Approaches to Addressing Modern Slavery in Supply Chains: A snapshot of current practice* (Ethical Trading Initiative and Ashridge Centre for Business and Sustainability, 2015).

⁶ Modern Slavery Act 2015, Section 54 (4) (a) and (b).

⁷ Home Office, *Transparency in Supply Chains etc.: A Practical Guide* (29 October 2015).

purchasing behavior.⁸ It is assumed that the requirement to publish the statement will raise the profile of the issue within the company and encourage pressure to improve its performance, for example from campaigning NGOs or shareholders.

The Act requires the statement to be approved and signed by a director, member, or partner of the organization, with the aim of ensuring senior-level accountability. The Act also requires the statement to be published on the organization's website, with a link in a prominent place on the home page, to ensure transparency.

While criminal penalties are attached to breaches of other provisions of the Act, this is not the case for Section 54, where the only remedy for non-compliance is the power for the government to bring civil proceedings to require a non-reporting organization to meet its obligations. There is an assumption that if a company were to be so uncooperative as to require such a proceeding, it would suggest that it was also failing to comply with other provisions of the Act, which would then attract more detailed investigation by law enforcement and regulatory bodies.

⁸ Modern Slavery Act 2015, Section 54 (4) (a) and (b).

3. The EU Timber Regulation

The EU Timber Regulation (EU/995/2010) was agreed in 2010 and entered fully into force in March 2013.⁹ It is implemented in the UK through the Timber and Timber Products (Placing on the Market) Regulations, 2013. Designed to exclude illegally logged timber from the EU market, it has three main obligations:

- It prohibits the placing on the EU market for the first time of illegally harvested timber, and products derived from such timber (whether imported or domestically produced).¹⁰
- It requires EU traders who place timber products on the EU market for the first time to exercise “due diligence.”
- It requires traders selling timber products after they have been first placed on the market to keep records of their suppliers and customers.

The regulation covers a broad range of timber products, including solid wood products, flooring, plywood, and pulp and paper. Several product categories, however, including recycled products, printed papers, musical instruments, and wooden seats, are not covered; the regulation may be amended in future to extend its coverage.

Operators who first place timber products on the market must either devise their own system of due diligence or use one developed by a “monitoring organization.”¹¹ The aim of the due diligence system is to ensure that operators undertake a risk management exercise in order to minimize the risk of placing illegally harvested timber, or timber products containing illegally harvested timber, on the market. Due diligence is described in the legislation as a three-step process: the documentation of supply chains, assessment of the risk of illegal wood entering the supply chain, and mitigation of that risk.

The level of penalties for breaches of the regulation is the responsibility of each EU member state. In the UK, operators placing illegal timber on the market or failing to abide by the due diligence requirements are liable to fines and imprisonment for up to two years; lesser offences, including failures of traceability and record-keeping, are subject to fines of up to £5,000. The UK competent authority (Regulatory Delivery, a directorate of the Department for Business, Energy and Industrial Strategy) may also issue notices of remedial action to operators believed to be in breach of the due diligence obligation.

After an evaluation of the operation of the EU Timber Regulation carried out in 2015–16, the European Commission concluded that the regulation continued “to be highly relevant for tackling illegal logging and related trade by changing market behavior patterns and progressively establishing supply chains free of illegally harvested timber,” although it was still too soon after its entry into force to be able to judge its full effectiveness.¹² Since the evaluation was published, there have been several enforcement actions across the EU, helping to raise the profile of the regulation and encourage timber companies to implement it in full.

⁹ See http://ec.europa.eu/environment/forests/timber_regulation.htm

¹⁰ First placing on the EU market, for timber harvested outside the EU, is defined as the point when the timber is cleared by EU customs authorities for free circulation within the EU. In the majority of cases, the “Operator” responsible for first placement is the importer, as identified as the named or numbered “Consignee” in Box 8 of the customs declaration document (the Single Administrative Document). For further guidance see: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/508342/EUTR_Commission_guidance.pdf

¹¹ By the end of 2016, 13 monitoring organizations had been accredited to operate in one or more EU member states.

¹² European Commission, Commission Staff Working Document, “Evaluation of Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (the EU Timber Regulation), accompanying the document (COM(2016) 74 final) (SWD(2016) 34 final) (SWD(2016) 33 final, 18 February 2016).

3.1 EUTR Policy Context – the EU FLEGT Action Plan

The EU Timber Regulation had its origins in the Forest Law Enforcement, Governance and Trade (FLEGT) initiative of the EU. Agreed in 2003, the aim of the FLEGT Action Plan was to tackle illegal logging and reduce the trade in illegal timber with a view to promoting sustainable governance of the world's forests. It aimed to achieve this by working simultaneously at the producer and consumer ends of forest product supply chains, and included a number of components, including encouragement for private sector initiatives and support for financial institutions to exercise due diligence in their lending policies.

Another component, and one on which member states were able to take action early in the lifetime of the FLEGT Action Plan, was encouragement for EU member states to use their public procurement policies to source timber products identified as legally produced. Public authorities can be substantial purchasers of timber products such as paper, office furniture, and timber for construction and maintenance, and their purchasing policies can accordingly have a significant impact in the market. By 2016, 22 EU member states had incorporated requirements for legal and, sometimes, sustainable, timber in their procurement policies. Although generally these apply to central government, there are also many examples of regional and local governments, and major infrastructure projects, such as the London Olympics in 2012, using similar policies.¹³

The UK was one of the earliest member states to use procurement policy in this way. First introduced in 1997, its timber procurement policy became mandatory from 2000. Central government departments and their agencies are now required to purchase legal and sustainable, or recycled, timber products and these criteria are incorporated in the Government Buying Standards for paper, furniture, and timber for construction which procurement officers must meet. The criteria for “legal” and “sustainable” were drawn up through a multi-stakeholder process involving consultation with the industry and NGOs. In practice, suppliers have found that the easiest (though not the only) way of meeting the criteria has been to supply products certified under the main voluntary timber certification schemes such as the Forest Stewardship Council (FSC) and Programme for the Endorsement of Forest Certification (PEFC). From 2004 to 2016, implementation of the policy was supported by the Central Point of Expertise on Timber (CPET), a government-funded service which provided assistance, evaluated certification schemes and equivalent evidence for their compliance with the criteria, and helped with revisions of the criteria.

The FLEGT Action Plan also included the concept of a series of innovative trade agreements between the EU and timber-producing countries, using access to the EU market as an incentive to tackle illegal logging. These Voluntary Partnership Agreements (VPAs) aim to ensure that only timber products licensed as legally produced are exported from the partner country to the EU; the EU has legislated to close its border to products from those countries not accompanied by a FLEGT license. The timber legality assurance system in each country must demonstrate its ability to verify legal compliance to the satisfaction of an independent auditor and both parties to the VPA. Six VPAs have so far been agreed, and a further nine are in negotiation. The process of establishing the legality assurance systems has been more complex than originally anticipated, however, and only one VPA partner country – Indonesia – is now issuing FLEGT licenses for its imports. In most cases, however, the process of negotiating and implementing the VPAs have led to legal, governance, transparency, and law enforcement improvements, with potentially long-term impacts.

The combination of private-sector initiatives, NGO pressures, and public procurement policies in some EU member states, all stimulated by the FLEGT Action Plan, did appear to have positive impacts (between 2005 and 2008, the penetration of certified products in the UK timber market climbed from an estimated 55 percent to 80 percent of both imports and domestic production).¹⁴ But suppliers sourcing legal and sustainable products were still liable to be undercut by competitors supplying illegally sourced timber, so pressure grew for an EU-wide solution to the problem. The FLEGT Action Plan included proposals to analyze existing EU member state national legislation to discover whether it could be used to prevent imports of illegal timber. However, because illegality generally takes place in the country of

¹³ Duncan Brack, *Promoting Legal and Sustainable Timber: Using Public Procurement Policy* (Chatham House, 2014).

¹⁴ Nick Moore, *UK Timber Industry Certification* (UK Timber Trade Federation, 2009).

origin rather than the EU, this proved a significant obstacle. After considering various options, the Commission published their proposal for new legislation, which became the EU Timber Regulation.

Timber products accompanied by FLEGT licenses are considered to comply with the requirements of the regulation, removing the costs and complexity of the due diligence requirements and verification of legal compliance from individual companies throughout the supply chain, and providing an incentive to producer countries to agree VPAs.

4. Regulatory Requirements and Implementation and Enforcement – the MSA and EUTR Compared

Section 54 of the MSA and the EUTR both aim to exclude undesirable behavior from commercial supply chains: respectively, forced labor and human trafficking, and illegal activity relating to timber production and the timber trade. This section compares aspects of their design and implementation.

There are a number of differences between the two instruments. The penalty for non-compliance with Section 54 of the MSA is very light, and it is too early as yet to assess implementation. Breaches of the EUTR, by contrast, carry fairly serious penalties – at least in theory – and enforcement is gathering pace. The Modern Slavery Act applies only to companies above £36 million in annual turnover; the EU Timber Regulation applies to all operators regardless of size.

4.1 Definition of Products and Practices to be Excluded from Supply Chains

The EUTR aims to exclude illegal timber from the EU market. It defines “illegal” in relation to the laws and regulations of the country of harvest, and specifies the types of applicable legislation which should be considered when judging whether or not timber has been illegally logged; this includes legislation covering the right to harvest timber, payments for harvest rights and timber harvesting, environmental and forest legislation, including forest management and biodiversity conservation, third parties’ legal rights to land use and tenure, and relevant trade and customs legislation. By defining the products in relation to national laws in the country of harvest, it recognizes the primacy of national sovereignty in the absence of any multilateral agreement on forests, and is compliant with World Trade Organization (WTO) rules.¹⁵

By contrast, the MSA defines activities that it seeks to exclude from global supply chains with reference to UK law. Sections 1–4 of the Act define the offences:

(1) A person commits an offence if—

- (a) the person holds another person in slavery or servitude and the circumstances are such that the person knows or ought to know that the other person is held in slavery or servitude, or
- (b) the person requires another person to perform forced or compulsory labour and the circumstances are such that the person knows or ought to know that the other person is being required to perform forced or compulsory labour.

(2) In subsection (1) the references to holding a person in slavery or servitude or requiring a person to perform forced or compulsory labour are to be construed in accordance with Article 4 of the Human Rights Convention.

(3) In determining whether a person is being held in slavery or servitude or required to perform forced or compulsory labour, regard may be had to all the circumstances.

(4) For example, regard may be had—

- (a) to any of the person’s personal circumstances (such as the person being a child, the person’s family relationships, and any mental or physical illness) which may make the person more vulnerable than other persons;
- (b) to any work or services provided by the person, including work or services provided in circumstances which constitute exploitation within section 3(3) to (6).

¹⁵ For a discussion of this point, see Duncan Brack, *Combating Illegal Logging: Interaction with WTO rules* (Chatham House, 2013). https://www.chathamhouse.org/sites/files/chathamhouse/public/Research/Energy%2C%20Environment%20and%20Development/0513bp_brack.pdf

The approach taken in the EUTR has significant implications for compliance, since it requires companies to have knowledge of their full supply chains, and the relevant legislation in all the countries from which the raw material for the products sourced was harvested. This has proved to be particularly challenging for companies which import composite products, or products from countries with unclear legislation.

By contrast, the approach taken in the MSA requires less knowledge of source and processing countries' legislation, but may be at odds with local laws, regulations or locally acceptable customs, for example the use of informal child labor on family smallholder farms in some countries. Without appropriate development intervention inconsistencies of this sort may make it challenging for importers to exclude the undesired behavior or products from their supply chains without negative consequences – for example excluding products from smallholders. However, it should be noted that the Act does not run counter to WTO rules since it does not prohibit trade in any kind of products.

4.2 Requirements to Act

As noted above, the key element of the EUTR is a requirement for due diligence by regulated operators, defined in three stages:

- **Information:** the operator must have access to information describing the timber and timber products, country of harvest, species, quantity, details of the supplier, and information on compliance with national legislation.
- **Risk assessment:** the operator should assess the risk of illegal timber in its supply chain, based on the information and taking into account criteria set out in the regulation.
- **Risk mitigation:** when the assessment shows that there is any risk of illegal timber in the supply chain, the risk can be mitigated by requiring additional information and verification to show that the timber has been produced in compliance with all relevant laws in the country of harvest.

The operator's system of due diligence can be reviewed by the national enforcement agency at any time, but is not required to be published by operators, or to be made available on request to any other party. There is scant information about the numbers of companies across the EU that have been subject to review of this sort, but surveys by Forest Trends show that from October 2015 to September 2016, respondents from 13 government regulators indicated that they had conducted 1,513 assessments of due diligence systems and 822 site inspections, as well as issuing a total of 565 corrective action requests, 75 injunctions on the sale of timber products, and 59 sanctions or financial penalties.¹⁶ In addition, the publication of case details in Sweden, Denmark, and the Netherlands show that regulators and courts have concluded that operators' risk mitigation for a number of key imports had been inadequate, resulting in injunctions and financial penalties.

To date in the UK only one company has faced a court action resulting in financial penalties, but significant resources have been made available to scrutinize companies and important product categories, and many companies have been the recipients of notices of remedial action and formal warning letters, resulting in a shift in levels of mainstream compliance. It has been reported by the regulator that there will be more focus on regularly sanctioning egregious non-compliance, now that general levels of compliance have reached a reasonable standard.

Although the EUTR in the UK has been enforced at a moderate pace, and the industry has not yet seen prosecutions or financial penalties, many companies with recognized retail brands still report that they do not buy illegal products, not only in order to comply with the legislative requirements, but also to avoid reputational risk associated with NGO investigations.

¹⁶ Forest Trends, Timber Regulation Enforcement Exchange Newsletter Fall 2016 (Forest Trends, 2016). http://www.forest-trends.org/documents/files/doc_5494.pdf

The scope of the statement required to be published under Section 54 of the MSA is similar in some respects to the requirements of the EUTR, in the sense that they may contain information about both the assessment and management of the risk of buying goods produced using slave labor, as well as a report of the efficacy of that management –

- (4) A slavery and human trafficking statement for a financial year is—
 - (a) a statement of the steps the organisation has taken during the financial year to ensure that slavery and human trafficking is not taking place—
 - (i) in any of its supply chains, and
 - (ii) in any part of its own business, or
 - (b) a statement that the organisation has taken no such steps.

- (5) An organisation’s slavery and human trafficking statement may include information about—
 - (a) the organisation’s structure, its business and its supply chains;
 - (b) its policies in relation to slavery and human trafficking;
 - (c) its due diligence processes in relation to slavery and human trafficking in its business and supply chains;
 - (d) the parts of its business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps it has taken to assess and manage that risk;
 - (e) its effectiveness in ensuring that slavery and human trafficking is not taking place in its business or supply chains, measured against such performance indicators as it considers appropriate;
 - (f) the training about slavery and human trafficking available to its staff.

As noted above, however, the MSA supply chain provisions do not explicitly require any changes in buying behavior from companies. A company could comply with Section 54 by reporting in full on the absence of any measures to assess or manage the risk of slavery and human trafficking taking place in any of its supply chains. It is assumed that reputational risk and responsible shareholder pressure will encourage companies not to follow this route, but rather to stop buying undesirable products, or to educate and invest in their suppliers to avoid slavery and forced labor practices, once information about the risks has been published. However, this assumption may not hold true if companies do not have brand reputations that they need to protect, are privately owned rather than exposed to shareholder influence, or if their statements are not subject to consistent quality control and/or validation.

4.3 Implementation and Enforcement Status Quo

Implementation of both pieces of legislation has been criticized for slowness, with the Section 54 requirements of the MSA considered significantly less well understood than the domestic provisions. While an estimated 12,000 companies would qualify under the Act’s requirements to publish a statement, only 3,200 had done so by November 2017, according to the list of statements maintained by the Business and Human Rights Resource Centre (the government itself does not maintain a central registry).¹⁷

¹⁷ Modern Slavery Register, 2017 available at <http://www.modernslaveryregistry.org>

The quality of the statements published also appears to be poor, particularly when compared with the suggested scope of reporting set out in the Act and its associated guidance (see above). In April 2017 Kevin Hyland, the Independent Anti-Slavery Commissioner, published a letter to Chief Executive Officers urging them to do more:

Despite some positive steps forward since the Modern Slavery Act and a number of good statements being published, I remain disappointed that analysis has shown the quality to be weak overall. Many fail to meet the minimum requirements of being placed on a company's home page or signed off by senior leadership. Even statements that do legally comply have a lot of room for improvement with many simply being reiterations of generic human rights policies.¹⁸

An analysis of those statements which were published in March 2017 found that most lacked detail and were limited to broad descriptions of processes and activities.¹⁹ Due diligence processes were not, in general, reported in detail, and while supply chains were relatively well covered, there was a significant gap in relation to contractors, such as labor providers, outsourced service providers, or sub-contractors in construction, all areas where cases of forced labor have been identified. The most informative statements had been made by large multinationals, which are usually consumer-facing, with complex international business models, and which are often exposed to investor scrutiny.

Similarly, a detailed analysis of 49 statements from companies in the construction sector and suppliers to construction companies in November 2016, found that only two provided detailed information on risk assessments, only one on monitoring and auditing and only one on actions taken to remediate or reduce risk.²⁰ It was expected, however, that the quality of statements would improve over time, and it was felt that the sector had much to learn from retail businesses and brands with longer exposure to supply-chain labor issues.

In the absence of a requirement on operators to publish their supply chain information under the EUTR, there is no comparable data set by which to judge levels of compliance. However, the UK Timber Trade Federation (TTF), which represents companies responsible for around 80 percent of the UK's timber imports, published a first set of compliance data in 2017, based on the mandatory requirement for its members to follow its Responsible Purchasing Policy, which is aligned with the EUTR. While this does not cover all regulated products (for example, importers of furniture and paper products are not represented by the TTF), it suggested that over 70 percent of the companies audited in the first quarter of 2017 passed, with fewer than 10 percent deemed by the auditor (the Soil Association) to require further attention.²¹

The Responsible Purchasing Policy includes a toolkit for understanding the legal framework in countries of harvest and processing, and helping operators to ensure that their suppliers can document compliance with all laws relevant to the scope of the EUTR.

¹⁸ Letter to CEOs one year on from Section 54 of Modern Slavery Act, <http://www.antislaverycommissioner.co.uk/news-insights/letter-to-ceos-one-year-on-from-section-54-of-modern-slavery-act/>

¹⁹ *Modern Slavery Statements: One year on* (Ergon Associates, April 2017).

²⁰ Steve Gibbons (Ergon Associates), "Modern Slavery Reporting What is happening in the sector?" Presentation at Building Research Establishment symposium on "Modern Slavery & Ethical Labour in Construction Leadership," London, 10 November 2016.

²¹ Based on interviews with the UK TTF.

5. Timber-importing, Processing, and Retailing Companies and MSA Section 54

In line with both pieces of legislation, UK companies responsible for placing timber or forest products on the UK market with an annual turnover of £36 million or more are now required to produce a slavery and human trafficking statement as well as to comply with the EUTR.

Thanks to the focus on eliminating illegal and unsustainable timber from corporate supply chains over the last two decades, many timber companies, particularly the larger ones, already have mechanisms in place to assess risk when sourcing from countries with poor governance and high levels of illegal logging, where, it is reasonable to assume, in many cases there may be an overlap with the risk of slavery. Accordingly, while labor standards and the rights of workers are arguably not identified in the “applicable legislation” listed in the EUTR, the process of complying with its requirements has led companies to create systems which in fact help them monitor labor protection as well as the legality of harvest and other relevant legislation – thereby helping eradicate slavery and human trafficking from their supply chains, along with illegal timber.

Assessing supply chains and suppliers for the risk of forced labor is a logical extension of the requirements of the EUTR, and several companies have reported anecdotally that they are using the same information management systems to establish compliance with both pieces of legislation. Indeed, the UK TTF has developed an MSA component for its Responsible Purchasing Policy, and plans to incorporate reporting on the MSA in its annual assessment of compliance for the EUTR from 2018.

While the regulatory requirements are structured in a different way, in practice similar compliance options are available for companies wishing to eliminate undesirable practices and products from their supply chains in line with both pieces of legislation.

5.1 Risk Assessment Lessons

Companies complying with the EUTR generally undertake risk assessments, based on the country of harvest and/or origin, for their products, species, and named suppliers or sub-suppliers. For each of these categories, in each documented supply chain, the EUTR requires operators to document the sources considered when assessing the likelihood of buying illegal wood.

Where a supplier is not directly responsible for harvest, scrutiny of sub-suppliers is necessary, which is often most effectively undertaken in the form of a standardized questionnaire, seeking information about the legality of harvest and other legal compliance issues. Where the supplier mixes raw material or products from a number of sub-suppliers, scrutiny of all sources of raw material, not just those directly implicated in an individual supply chain, is increasingly deemed necessary in order to minimize risk.

As well as desk-based scrutiny, most responsible companies undertake field visits to harvest and processing sites to ensure that their suppliers have the capacity to manage and document the flow of all products into and out of their plants. This may, in particularly high-risk situations, include meetings with local community representatives to discuss any relevant concerns and validate supplier claims of legal compliance where possible.

Data sources that have emerged in the EUTR context as reliable, well-used indicators of risk are NGO investigative reports, formal independent forest monitoring (IFM) reports, global indices such as Transparency International’s Corruption Perceptions Index and the World Bank’s Governance Indicators, and country-of-origin media reports.

In order to assess the possibility of modern slavery in supply chains, a number of similar general sources are available for risk assessment at the national level, including the membership organization Sedex, the world’s largest collaborative

platform for sharing responsible sourcing data on supply chains;²² the International Trade Union Confederation's Global Rights Index, which rates countries based on the degree of respect for workers' rights;²³ the ILO's rating of countries by risk of vulnerable employment;²⁴ and the Sweat & Toil smartphone app developed by the US Department of Labor for child labor, forced labor, and human trafficking.²⁵ The International Finance Corporation is also reportedly developing its Global Map of Environmental and Social Risks in Agro-Commodity Production.²⁶ However all these resources are country- rather than product- or supplier-specific and do not appear to take into consideration the increasing appearance of multi-country supply chains.

After assessing the country, a comprehensive risk assessment at the product and supplier level would need to consider the possibility that undesirable behavior is present amongst the workforces of the company's suppliers and sub-suppliers. In the forestry sector, where possible these rely on IFM reports, which detail individual incidences of law breaking in a number of timber-producing countries with particularly high levels of illegal logging. For modern slavery, fewer resources appear to exist that identify named suppliers. In particular, compared to forestry there is a shortage of undercover investigations by NGOs, which are, in many producer and processing countries, facing an increasingly hostile legal context.

Host country governments can also be a source of information about individual companies implicated in forced labor, but in practice many lack the capacity, political will, or awareness of the problem, despite often possessing labor and human rights legislation which outlaws these practices. Brazil is an exception, where an aggressive anti-slavery strategy launched by the government in the mid-1990s included, from 2003, the publication of a "dirty list" by the Ministry of Labor, eventually including more than 300 companies found to be profiting from slave labor.²⁷ Companies stayed on the list for two years, during which time they were blocked from receiving loans from government or private banks, and had restrictions placed on the sales of their products. If after two years a company had paid all its fines and proved that it had improved working conditions, it was removed from the list. In late 2014, however, in response to a case brought by the construction companies' trade association, Brazil's Supreme Court ordered the Ministry to suspend the release of the dirty list. Since then, the NGO Repórter Brasil has used freedom of information laws to publish similar information, and is lobbying for the reinstatement of the dirty list.²⁸

A number of innovative systems have been developed in response to the needs of operators in the EU wishing to comply with the EUTR. A notable example, again in Brazil, where the level of government data collection and transparency is extremely high, is the Responsible Timber Exchange, a trading and due diligence platform run by BVRio.²⁹ The platform automatically validates government-issued evidence of legal compliance (for example harvest documents, receipts for tax payments, transport, and export permits), and cross-references them against other public data sets, such as judicial rulings and trade embargoes, and satellite imagery which can identify deforestation and forest disturbance (logging), to assess the possibility that the wood offered for export is illegal. The expansion of the Responsible Timber Exchange into Cameroon, Indonesia, Ghana, Peru, and China is being supported by the UK Department for International Development.

The action of ruling out particular suppliers before purchasing is viable in countries like Brazil, where there are many competing suppliers of relatively interchangeable products. It is less effective in supply chains for products such as

²² SEDEX company website available at <https://www.sedexglobal.com>

²³ International Trade Union Federation Survey of Trade Union Rights available at <http://survey.ituc-csi.org>

²⁴ International Labour Organization World Employment and Social Outlook available at http://www.ilo.org/global/about-the-ilo/multimedia/maps-and-charts/WCMS_443264/lang-en/index.htm

²⁵ United States Department of Labor Sweat and Toil: Child Labor, Forced Labor, and Human Trafficking Around the World available at <https://www.dol.gov/dol/apps/ilab.htm>

²⁶ International Finance Cooperation available at http://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/Sustainability-At-IFC

²⁷ HNGN available at <http://www.hngn.com/articles/179868/20160217/modern-day-slavery-brazil-340-brazilian-companies-blacklisted-forced-labor.htm>

²⁸ Anastasia Moloney, "More than 300 Brazilian companies busted for modern-day slavery – campaigners". *Reuters*, February 16, 2016.

<http://uk.reuters.com/article/brazil-slavery-idUKL8N15U3CD>

²⁹ BVRio Responsible Timber Exchange available at <http://bvrio.org/timber/>

furniture where design, quality control, and other similar factors are more important, or where specific characteristics of wood species such as Burmese teak reduce the possibility of easy substitution. In these situations, there is evidence that operators are more willing to invest in longer term business relationships that allow them to build the capacity of suppliers to understand the relevant regulations and manage risk in their own raw material sub-supply chains. While this option is cost-intensive in the short term, it is preferable to simply ruling suppliers in or out based on a “tick box” audit process, which lacks the close engagement likely to be crucial to changing behavior in the long term, achieving positive supply chain impacts without any negative consequences, such as lost livelihoods.

The potential contents of the MSA Section 54 reports (see above) point to this way of working, but the Act does not mandate close scrutiny of, or engagement with, suppliers, or create any market incentive for companies to invest the relatively significant sums necessary to achieve this. The Sedex collaborative platform for sharing responsible sourcing data on supply chains does reduce the costs of supply-chain scrutiny by allowing companies to share information about site audits with other Sedex members, therefore reducing the need for duplication of effort.

Under the EUTR, the resource-intensive nature of undertaking meaningful supply chain documentation and risk assessments has resulted in a shift towards more geographical consolidation, sourcing from fewer countries, and contracting larger volumes from fewer suppliers; both steps reduce the number of suppliers that need to be risk-assessed and increase the leverage that individual operators have over each supplier. It has also created pressure to remove unnecessary actors from supply chains, leading to more purchasing directly from the source rather than via agents or transit countries. Recent injunctions in Sweden in particular, where agents have been instrumental in making supply chains less transparent, will increase the consensus of regulators that more direct sourcing has less inherent risk.

5.2 Risk Mitigation Lessons

In the implementation of the EUTR, there is a growing consensus that self-declaration by operators, suppliers, or harvesting bodies does not provide robust evidence of legal origin or sourcing. There has also been a recent shift, in line with EU guidance published in February 2016,³⁰ to reject sole reliance on government paperwork, in countries with a high incidence of corruption, as evidence that legal requirements have been met. Recent EUTR rulings in Sweden and the Netherlands have made this explicit, suggesting that independent auditing of harvest sites and supply chains is necessary to mitigate risks associated with significant public-sector corruption, in these cases in Myanmar and Cameroon, respectively.

Use of Certified Products

Timber certification schemes, of which the main ones are those of the FSC and PEFC, are designed to provide independently audited assurance of the sustainability of timber production, including criteria relating to legal compliance, and are widely used by companies possessing commitments to eliminate deforestation from their supply chains or to encourage sustainable forest management. As noted above, they are also in general the easiest means of satisfying public procurement requirements. Choosing products covered by recognized certification schemes is one of the most frequently reported measures used by companies as means of risk mitigation, although there remains somewhat patchy evidence of increased market share for certified products.

Both the FSC and PEFC schemes are relevant to compliance with both the EUTR and the MSA, since they each contain criteria relating to the rights of workers, including rights to health and safety standards, employment, wages, and other benefits.

The social criteria in the PEFC standard are explicitly based on ILO’s 1998 Declaration on Fundamental Principles and Rights at Work, which includes the elimination of all forms of forced or compulsory labor; these are set out in more detail in two of the ILO’s eight “core conventions.” In January 2017, PEFC UK released a short information sheet explaining how PEFC certification could assist companies to prepare their slavery and human trafficking statement

³⁰ European Commission Guidance Document for the EU Timber Regulation, February 2016. Available at http://ec.europa.eu/environment/forests/timber_regulation.htm

under Section 54 of the MSA.³¹ It concluded that: “The use of PEFC-certified material sourced through an independently certified supply chain could be referenced and included in a company’s Slavery and Human Trafficking statement to help demonstrate the steps taken with the timber supply chain towards meeting the requirements of the Modern Slavery Act 2015.” The current FSC standard (version 4) references only two of the ILO core conventions, on the rights to freedom of association and free collective bargaining. The revised standard (version 5), which is still in the process of being implemented, however, contains a commitment to the ILO Declaration on Fundamental Principles and Rights at Work, as in the PEFC standard.

A number of the slavery and human trafficking statements produced so far under Section 54 of the Modern Slavery Act contain references to FSC or PEFC certification, or both, as a demonstration of the company’s commitment to workers’ rights and the avoidance of forced labor. These include not just companies whose main business lies in timber and timber products, such as International Plywood, Moores Furniture Group, or Premier Paper, but a wide range of other companies, including Bettys & Taylors (for its use of packaging), Great Portland Estates (developments and refurbishments), Informa and News Corp (both paper for publishing), and Transport for London (timber). One (unnamed) company statement analyzed by Ergon Associates included a reference to the absence of FSC or PEFC certification flagging up as potentially high risk as part of its risk assessment and prioritization process.³²

Other Second and Third-party Audited Options

Aside from certification schemes which audit supply chains against their own social and environmental criteria, it is also increasingly possible to buy forest produces with third-party audited assurance of legal compliance. The growth in these schemes – often known as Verified Legal Origin (VLO) schemes – has been a direct response to concerns about illegal logging and requirements for companies to buy demonstrably legal wood, in line with public procurement policies and, more recently, the EUTR. In these schemes, producers pay for independent auditing companies to ensure legal harvest and compliance throughout the supply chain. Legality verification schemes of this sort do not automatically cover labor standards or the rights of workers, although some do theoretically cover labor rights that are enshrined in local laws and regulations.

Alternative arrangements for tracing material back to a legal source can also be made by operators themselves – a process often known as second-party auditing. This can be through an ad hoc arrangement with an auditor with expertise in a particular source country or product supply chain, in the event that a risk assessment raises particular concerns, or a regular contract where the auditor takes on the role of visiting suppliers and collecting supply chain documentation. In these scenarios the operator themselves sets the terms of the audit; these could include the need to check compliance with local labor laws in harvest and processing sites, or require the auditor to exclude products associated with modern slavery risks.

EUTR rulings in both Denmark and Sweden include indicative examples of robust risk mitigation, primarily focusing on the need for independent auditing of supply chains in countries with a high risk of public sector corruption.

Meaningful mitigation in high risk supply chains is a complex and time-consuming process, particularly if companies are frequently changing suppliers and sub-suppliers. As noted above, it generally requires the company to have a presence in the supplier country or to make regular visits to it.

Forensic Testing

Although the EUTR does not rule out trade in any particular tree species, fiber testing for species identification is increasingly being used by both enforcement officials and companies to spot check the reliability of supply chain paperwork. For example, in 2015 the UK enforcement authority for the EUTR uncovered false species declarations in 9

³¹ PEFC UK, “How PEFC certification can help demonstrate compliance with the Modern Slavery Act,” January 2017.

³² *Reporting on Modern Slavery: The current state of disclosure* (Ergon Associates, May 2016), 5.

out of 13 samples of Chinese plywood being sold in UK retail outlets, using microscopic testing.³³ While the testing could not prove explicitly that any of the fiber was illegally sourced, the results demonstrated that the supply chain documentation provided by the suppliers was incorrect or fraudulent, rendering the operator's due diligence system ineffective. Similar testing has been used on paper products, notably from Indonesia, which have been shown to include fibers from mixed tropical hardwoods grown in natural forests, when due diligence paperwork identified them as containing only a small range of plantation species.

Isotopic testing has also proved useful in identifying area of harvest, particularly in relation to national borders and protected areas.

5.3 EUTR Compliance through FLEGT Licensing

In November 2016, Indonesia, producer of over a third of the EU's imports of tropical wood, and historically a hotspot of illegal logging, began issuing FLEGT legality licenses (known in Indonesia as SVLK licenses) for all exports of forest products. The licensing system introduced in line with its VPA with the EU (see Section 3.1), and is underpinned by an independently audited system to check compliance with all relevant local laws. As noted above, buying products accompanied by FLEGT licenses allows operators in the EU to comply with the EUTR without the cost or complication of undertaking due diligence exercises.

Anecdotal evidence suggests that Indonesia's SVLK certificates and FLEGT licenses have been well received, and some market benefits were seen immediately. On March 17th, 2017 the *Jakarta Post* reported that "many exhibitors at the recent Indonesian International Furniture Exhibition (IFEX) said the SVLK helped them increase exports, especially to the EU."³⁴ The report quotes one Indonesian furniture exporter suggesting that "with the SVLK, buyers from the EU are more confident about us and we can even sell directly to them without using traders, and so we enjoy high profit margins and a market under our own brand." The profit margin was reported to be up to 40 percent, compared to 10 percent previously.

There is similar anecdotal evidence from European importers. In an interview published on the Global Timber Forum website in February 2017, a representative of one of Europe's largest importers of Indonesian plywood said that "arrivals from Indonesia have increased over the last few weeks as importers and traders are stocking up on FLEGT licensed material."³⁵ It has also been suggested anecdotally that operators in the EU are increasingly interested in shifting to suppliers in Ghana, in light of the anticipated imminent introduction of FLEGT licensing under Ghana's VPA with the EU.

While this information is still patchy, it begins to show that it is possible to negotiate bilateral agreements that align trade priorities with regulatory ambitions to increase the positive social and environmental impacts of global corporate supply chains. More concrete data should be produced in due course by the independent market monitor established by the EU, tasked with collecting data from countries trading in FLEGT-licensed timber, with a view to assessing the impact on market share for those products covered by the license.

³³ Nicolas Pillet and Michael Sawyer, "EUTR: Plywood Imported from China" (National Measurement and Regulation Office, 2015). https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/402325/Chinese_Plywood_Research_Report.pdf

³⁴ Global Wood Markets Info, "EU trade with Indonesia in the spotlight following FLEGT licensing," May 2, 2017. <https://www.globalwoodmarketsinfo.com/eu-trade-with-indonesia-in-the-spotlight-following-flegt-licensing/>

³⁵ Global Timber Forum, "GTF TradeDialogues: FLEGT-unlike due diligence-create a level playing field," January 25, 2017. <http://www.gtf-info.com/news/flegt-unlike-due-diligence-creates-level-playing-field/>

6. Slavery Corporate Reporting Provisions in Other Countries

In introducing the supply chain provisions of the Modern Slavery Act, the UK was one of the first in a broader movement across many countries. In May 2016, eight national parliaments, including the House of Lords, launched an initiative at EU level to call for “duty of care” legislation protecting individuals and communities whose human rights and local environment were affected by the activity of EU-based companies.³⁶ In October 2016, the European Parliament voted for a (non-legally binding) resolution calling on EU member states and the European Commission to adopt regulations on corporate liability for serious human rights abuses in global supply chains, including a certified “abuse-free” product label at EU level.³⁷

December 2016 was the deadline for EU member states to transpose into law the EU Non-Financial Reporting Directive (2014/95/EU). Companies which have more than 500 employees and are of significant public relevance because of the nature of their business, size, or their corporate status (about 6,000 in total in the EU) will be required to report on how the organization’s performance, position, and activities affect environmental, social, employee, human rights, anti-corruption, and bribery issues. Information should cover the company’s policies on each issue and their outcomes, its due diligence processes, principal risks, the business relationships, products, and services which are likely to cause adverse impacts in those areas of risk, and a description of how the company manages the principal risks.

In December 2016 the Consumer Goods Forum, a global industry network of some 400 retailers, manufacturers, service providers, and other stakeholders across 70 countries, announced three “Priority Industry Principles” designed to eradicate forced labor from supply chains.³⁸ Resolving to uphold these practices in their own operations, member companies also committed to use their collective voice to promote the adoption of the principles industry-wide, with an initial focus on two supply chains of particular relevance: seafood, and palm oil in Southeast Asia.

In February 2017, France adopted a corporate *devoir de vigilance* (due diligence) law applying to companies with more than 5,000 employees in France or 10,000 world-wide.³⁹ Companies subject to the legislation (an estimated 150–200) must implement a diligence plan seeking to identify and avoid human rights violations, breaches of fundamental freedoms, violations of health and safety rights, and environmental damage. Building on the UN Guiding Principles on Business and Human Rights, agreed in 2011, this includes the identification of risks, procedures for regular assessments of subsidiaries, sub-contractors and suppliers, actions to mitigate risks or prevent serious harm, and mechanisms for alerts and monitoring.

In March 2017, the proposed penalties for failing to prepare such a plan – fines of up to €10 million, or up to €30 million if the failure to develop a plan led to injuries that could otherwise have been prevented – were struck down as unconstitutional.⁴⁰ The requirement to implement a diligence plan remains, however, as well as civil liability mechanisms in case of failure to implement the plan or weaknesses in it. This obligation is more stringent than mere reporting, such as the California and UK requirements (though much smaller in terms of numbers of companies). Companies will be required to implement specific concrete actions and cannot limit themselves just to reporting on whether or not they have done anything.

³⁶ European Coalition for Corporate Justice, “Members of 8 European Parliaments support duty of care legislation for EU corporations,” May 31, 2016. <http://corporatejustice.org/news/132-members-of-8-european-parliaments-support>

³⁷ See <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2016-0405&format=XML&language=EN>

³⁸ The Consumer Goods Forum, “Consumer Goods Industry Sets Bar in Fight Against Forced Labour,” December 6, 2016. <http://www.theconsumergoodsforum.com/consumer-goods-industry-sets-bar-in-fight-against-forced-labour>

³⁹ Corentin Chevalier, “French National Assembly Adopts Corporate Duty of Vigilance Law,” *Corporate Social Responsibility and the Law*, February 28, 2017. <http://www.csrandthelaw.com/2017/02/28/french-national-assembly-adopts-corporate-duty-of-vigilance-law/>

⁴⁰ Morgan Lewis, “French Companies Must Show Duty of Care for Human and Environmental Rights,” *JD Supra*, April 4, 2017. <https://www.jdsupra.com/legalnews/french-companies-must-show-duty-of-care-56981/>

Also in February 2017, the Dutch Parliament adopted the Child Labor Due Diligence Bill; if approved by the Senate, this will enter into force in 2020.⁴¹ The legislation would require companies (including any registered or selling products in the Netherlands, including through online sales although small businesses are exempted) to produce a declaration that they have exercised due diligence to prevent the goods and services they supply to have been produced with the involvement of child labor. A company exercises due diligence by investigating whether there is a reasonable presumption that child labor is present and, if this seems likely, by developing an action plan to eliminate it. A company can be fined for not submitting the declaration as well as for not conducting due care. Declarations will be submitted to the government, which will publish them online.

February 2017 also saw the Australian Parliament announce a new inquiry into establishing a Modern Slavery Act,⁴² and in August, the Australian government published a consultation on establishing a reporting requirement for modern slavery in supply chains.⁴³ In Switzerland, a campaign to amend the constitution to require companies to incorporate respect for human rights and the environment in all their business activities, including their activities abroad, is under way, aiming at a popular referendum.⁴⁴

In the US, as noted, the California Transparency in Supply Chains Act 2010 provided a model for Section 54 of the Modern Slavery Act. At a federal level, the Business Supply Chain Transparency on Trafficking and Slavery Act was introduced to the House of Representatives in 2011, 2014, and 2015 and to the Senate in 2015; essentially it mirrored the California legislation's provisions to require companies with a turnover above \$100 million to disclose the policies and management systems they have in place to identify and eradicate slavery and human trafficking within their global supply chains.⁴⁵ On each occasion the bill was referred to a committee and failed to make further progress.

⁴¹ Cees Van Dam, "Statutory human rights due diligence duties in the Netherlands." https://www.rsm.nl/fileadmin/Images_NEW/Sites/Chair_IBHR/Publications/Van_Dam_-_Statutory_HRDD_duties_in_NL.pdf

⁴² See http://www.apf.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/ModernSlavery/Terms_of_Reference

⁴³ *Modern Slavery in Supply Chains Reporting Requirement: Public Consultation Paper and Regulation Impact Statement* (Attorney General's Department, Australian Government, August 2017).

⁴⁴ The Swiss Coalition for Corporate Justice website available at <http://konzern-initiative.ch/initiativtext/?lang=en>

⁴⁵ For further information, see www.congress.gov – legislation – HR2759 (2011–12), HR4842 (2013–14), HR3226 (2015–16) and S1968 (2015–16).