

Paper TC NGO's on Mandatory Environmental and Human Rights Due Diligence

The European Green Deal aims at getting Europe on track to achieve the Sustainable Development Goals (SDGs) which are based on human rights and the planetary boundaries. Tobacco is thwarting sustainability in all stages of the production and consumption chain. Tobacco use causes 8 million deaths per year and is the single most preventable risk factor for all non-communicable diseases (NCDs). Therefore, the WHO Framework Convention on Tobacco Control (WHO FCTC) is specifically mentioned as the prime instrument to achieve SDG 3, namely as Target 3.A. At the same time, human rights violations and environmental destruction are rampant in the supply chain of tobacco while tobacco corporations ignore their responsibility to act upon these in a significant way.

The European Commission will introduce in 2021 a proposal for legislation on mandatory human rights and environmental due diligence for companies as part of the Commission's 2021 work plan and the European Green Deal¹. The EU plays a leading role in the world when it comes to environmental protection and human rights. By adopting an ambitious mandatory due diligence legislation, the EU could confirm its leadership.

Key messages:

- 1. Mandatory human rights and environmental due diligence for companies is absolutely necessary to achieve the Sustainable Development Goals, to protect and fulfil human rights obligations and avoid environmental destruction.**
- 2. The tobacco industry has an ecological footprint which is comparable to that of entire countries. The human rights violations include the worst form of child labour in tobacco growing, according to ILO.**
- 3. Mandatory human rights and environmental due diligence should include transparent reports on standardized criteria, the obligation to develop and implement an ambitious plans of action, permanent monitoring structures, enforcement and sanctions.**

What impact have tobacco products on the environment and human rights?

Environment

The environmental impact of the tobacco industry has been described in detail in the following study of the WHO/FCTC: Cigarette smoking. An assessment of tobacco's global environmental footprint across its entire supply chain, and policy strategies to reduce it:²

¹ The December 2019 Communication on the European Green Deal highlights that sustainability should be "further embedded into the corporate governance framework, as many companies still focus too much on short-term financial performance compared to their long-term development and sustainability aspects", p. 17

² <https://www.who.int/fctc/publications/WHO-FCTC-Enviroment-Cigarette-smoking.pdf?ua=1&ua=1>, Maria Zafeiridou, Nicholas S Hopkinson, Nikolaos Voulvoulis, 2018

'Cigarette production and consumption have seen dramatic growth in recent decades and although the health effects of smoking are widely recognized, its impacts on the environment are largely overlooked. From tobacco cultivation³ ⁴ and curing, to cigarette manufacturing, distribution, consumption and discarding, every stage in the global tobacco supply chain involves considerable resource inputs, and results in the production of wastes and emissions. Consequently, tobacco puts pressure on the planet's already stressed natural resources and its fragile ecosystems, threatening the livelihoods and future development of communities around the world⁵. The environmental damage that tobacco causes, on top of its negative health, social and economic impacts, makes it incompatible with the global development agenda. Reducing and ultimately eliminating cigarette production and consumption should be an integral part of strategies to achieve the Sustainable Development Goals (SDGs) (including goals 12, 13, 14, and 15).'

Tobacco butt pollution is also an essential issue to consider. About 4.5 trillion cigarettes⁶ are discarded each year worldwide, amounting to 80 million kilograms of tobacco waste and making cigarette butts the most littered item on Earth.⁷ Cigarette butts are toxic to animals and children that may swallow them, they pollute groundwater, and they leach chemicals into soil. Compounding this problem is the waste from other items related to smoking such as cigarette packages and lighters or matches. Cigarette butts and other tobacco-related trash are a massive environmental problem.

The ecological footprint of tobacco is comparable to that of entire countries. Globally, the tobacco supply chain contributes about 84 Mt CO₂ equivalents in emissions, e.g. equaling the combined footprint of Denmark, Luxembourg, Latvia and Lithuania.⁸

Next to traditional cigarettes, e-cigarettes cause environmental damage. From mining to manufacturing, using, and disposing, each stage of the e-cigarette product lifecycle presents novel environmental harms

³ Deforestation: https://unfairtobacco.org/wp-content/uploads/2018/12/Mangora_Unfairtobacco_Tanzania_deforestation.pdf

⁴ Pesticides: https://unfairtobacco.org/wp-content/uploads/2018/12/Akhter_Unfairtobacco_Bangladesh_pesticide-pollution.pdf

⁵ *Tobacco's total environmental footprint is comparable to that of entire countries and its production is often more environmentally damaging than that of essential commodities such as food crops. For the six trillion cigarettes manufactured annually, 32.4 Mt of green tobacco are cultivated on 4 million ha of arable land and are then processed into 6.48 Mt of dry tobacco worldwide. Globally, the tobacco supply chain contributes almost 84 Mt CO₂ eq emissions to climate change, 490,000 tons 1,4-DB eq to ecosystem ecotoxicity levels, over 22 billion m³ to water and 21 Mt oil eq to fossil fuel depletion annually. As a result of the shift of tobacco production from richer to poorer regions, these environmental impacts are not felt equally around the world. Developing countries and the most vulnerable communities bear most of the burden, <https://www.who.int/fctc/publications/WHO-FCTC-Environment-Cigarette-smoking.pdf?ua=1&ua=1>, Maria Zafeiridou, Nicholas S Hopkinson, Nikolaos Voulvoulis, 2018*

⁶ <https://www.nationalgeographic.com/environment/2019/08/cigarettes-story-of-plastic/#:~:text=Cigarette%20butts%20leach%20toxic%20chemicals,as%20long%20as%2010%20years.&text=Did%20You%20Know%3F-About%204.5%20trillion%20cigarettes%20are%20discarded%20each%20year%20worldwide%2C%20making,level%3B%20some%20companies%20recycle%20them.>

⁷ <https://apps.who.int/iris/bitstream/handle/10665/255574/9789241512497-eng.pdf;jsessionid=299567FD41B1E3B90D0ECFA6BADB7FC5?sequence=1>

⁸ <https://www.worlddata.info/greenhouse-gas-by-country.php>

compared with traditional cigarettes.⁹ Tobacco companies already recognize that e-cigarettes pose new environmental burdens, necessitating them to “manage new areas of impact due to the increasing use of electronics and batteries in [their] products.”¹⁰ *‘Improper disposal of e-cigarettes and e-liquid products can hurt the environment. If thrown in the trash or flushed into the sewer system, the nicotine solution in an e-liquid product can seep into the ground or water and become a danger for wildlife and humans. As e-cigarette batteries degrade, the compounds in them can also seep into nearby water. Additionally, lithium ion batteries have been linked to explosions in recycling trucks when batteries are not properly disposed of.’*¹¹

The tobacco industry ignores its responsibility when it comes to the environmental costs on ecosystems, humans, flora and fauna of their business. These companies have promoted policies that avoid all environmental responsibility of the producer, and they attempt to divert public attention away from their environmental responsibilities through corporate social responsibility programmes.¹² The external environmental costs are borne by society and the low- and middle income countries in particular¹³.

Human Rights

Tobacco smoke and exposure to secondhand smoke kills more than 8 million people each year¹⁴. To address this global epidemic, the Framework Convention on Tobacco Control (FCTC, joined by 182 Parties) was developed ‘to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke’¹⁵. Besides the general right to life and the right to health, tobacco products violate children’s rights¹⁶, including the protection of children from child labour in tobacco production¹⁷ and from misleading information (e.g. advertising) and women’s rights¹⁸, including protection from the impact of (passive)

⁹ Yogi Hale Hendlin, Alert: Public Health Implications of Electronic Cigarette Waste, AJPB November 2018, Vol 108, No. 11

¹⁰ Yogi Hale Hendlin, Alert: Public Health Implications of Electronic Cigarette Waste, AJPB November 2018, Vol 108, No. 11

¹¹ Tips for Safe Disposal of E-Cigarettes and E-Liquid Waste, FDA, 10/22/2020

¹² Thomas E Novotny et al., The environmental and health impacts of tobacco agriculture, cigarette manufacture and consumption, Bull World Health Organ 2015;93:877–880 | doi: <http://dx.doi.org/10.2471/BLT.15.152744>

¹³ Mlinaric M, Schreuders M, Graen L, Lessenich S. (2019): Transnational tobacco companies and the mechanism of externalization: A realist synthesis. In: Health & Place, Volume 61, January 2020, 102240.

<https://www.sciencedirect.com/science/article/pii/S1353829218312917>

¹⁴ <https://www.who.int/news-room/fact-sheets/detail/tobacco>

¹⁵ <https://www.who.int/fctc/cop/about/en/>

¹⁶ Children’s Rights and Tobacco Control, The right to a tobacco-free world, Unfairtobacco, January 2020.

<https://unfairtobacco.org/en/material/brochure-childrens-rights-and-tobacco-control/>

¹⁷ Child labour in tobacco growing has been defined as one of the worst forms of child labour (according to ILO Convention 182) due to its detrimental effect on the physical and mental health of the children, especially from nicotine poisoning.

ILO Convention 182:

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C182:

<https://www.theguardian.com/world/2018/jun/25/revealed-child-labor-rampant-in-tobacco-industry>

¹⁸ https://unfairtobacco.org/wp-content/uploads/2020/02/CEDAW_submission_Germany_2020_Unfairtobacco.pdf

smoking on pregnancy, and adversely impacts the rights of other vulnerable populations, such as the LGBT community, racial minorities, and indigenous populations, largely through targeted advertising.¹⁹

The impact of tobacco products on human rights has been noted in a number of human rights fora, directly and implicitly. The Committee on Economic, Social and Cultural Rights, in its General Comment No. 14, stated that the “failure to discourage production, marketing and consumption of tobacco” constitutes a violation of the obligation to protect under Article 12 of the International Covenant on Economic, Social and Cultural Rights, mirroring language in the FCTC Chapeau. Likewise, General Comment 15 of the Committee of the Rights of the Child noted that governments must implement and enforce the FCTC as part of their obligations under the Convention on the Rights of the Child.²⁰

There are also examples of human rights treaty bodies replying directly to countries about the impacts of tobacco products. For example, in 2010, in its concluding observations, the Committee on the Elimination of all forms of Discrimination Against Women (CEDAW) expressed concern about the negative impacts of tobacco on the women of Argentina, particularly about tobacco advertising directed at women. The Committee went on to urge Argentina to ratify and implement the FCTC.

After conducting a human rights assessment for a multinational tobacco company, the Danish Institute for Human Rights concluded: “According to the UNGPs companies should avoid causing or contributing to adverse impacts on human rights. Where such impacts occur, companies should immediately cease the actions that cause or contribute to the impacts. Tobacco is deeply harmful to human health, and there can be no doubt that the production and marketing of tobacco is irreconcilable with the human right to health. For the tobacco industry, the UNGPs therefore require the cessation of the production and marketing of tobacco.”²¹

The link between environment and human rights in tobacco cultivation is rightfully included in the FCTC’s Article 18 “Protection of the environment and the health of persons” which stipulates that “In carrying out their obligations under this Convention, the Parties agree to have due regard to the protection of the environment and the health of persons in relation to the environment in respect of tobacco cultivation and manufacture within their respective territories”.

The link has also been recognized by countries that include the environment in their national action plans (NAPs) on human rights, for example, Belgium, Denmark, France, Germany, Poland, and many others.²²

Why do we need a mandatory environmental and human rights due diligence initiative?

Non-binding environmental and human rights due diligence exists at international level. In 1976, the non-binding OECD Guidelines for Multinational Enterprises were adopted and were revised for the last

¹⁹ <https://ash.org/declaration/>

²⁰ https://2bark924ef5o2dk1z21reqtf-wpengine.netdna-ssl.com/wp-content/uploads/2019/03/Primer_Global-Forum.pdf

²¹ <https://www.humanrights.dk/news/human-rights-assessment-philip-morris-international>

²² <https://globalnaps.org/issue/environment-and-climate-change/>

time in 2011.²³ The OECD also developed sector-specific due diligence schemes, such as for garment and footwear supply chains. The UN Guiding Principles on Business and Human Rights (UNGP)²⁴ were endorsed by the Human Rights Council in its resolution 17/4 of 16 June 2011. UNICEF launched the Children's Rights and Business Principles (CRBP's) together with the UN global Compact²⁵ and Save the Children in 2012. The international guidelines are addressed to State Parties and not directly to companies.

Corporate Social Responsibility (CSR) is a crucial part of due diligence, as companies need to ensure that their suppliers are also meeting all the CSR commitments. In a globalizing world tobacco corporations, just like many other multinational companies, have adapted to public expectations deriving from these initiatives and developed CSR schemes on a voluntary basis.²⁶ In tobacco growing countries such as Brazil, India, Indonesia or Malawi, tobacco companies fund programs that aim to mitigate the environmental losses due to tobacco.²⁷ Furthermore, all major multinational tobacco corporations fund the Eliminating Child Labour in Tobacco Growing Foundation²⁸ which aims at alleviating poverty, freeing children from child labour and supporting their education. As well, tobacco corporations included the narrative of sustainable development into their corporate strategies.²⁹

Although these voluntary CSR schemes exist, it is clear that their scope is completely insufficient to reverse the dramatic environmental impact of tobacco production and consumption nor the continuing violation of human rights³⁰, as described above³¹. These voluntary schemes are also used as part of communication strategies to portray the companies' practices under the best light.³² "Voluntary disclosure results in environmental impact data that is vague, unclear and inconsistent in its coverage and methodologies"³³. This creates several problems :

There is no industry-wide standardized format which makes it difficult to track progress or make comparisons between companies. New units of measurements were created able to obscure the true scale of the environmental impact. Companies are free to set their own goals and choose to disclose on topics that portray their practices in the best light.

²³ <http://www.oecd.org/daf/inv/mne/48004323.pdf>

²⁴ <https://www.unglobalcompact.org/library/2>

²⁵ The UN Global Compact has excluded tobacco companies in 2017, see board meeting report https://d306pr3pise04h.cloudfront.net/docs/about_the_gc%2FIntegrity_measures%2FIntegrity-recommendation-2017.pdf

²⁶ CSR: to promote voluntary measures as an effective way to address tobacco control and create an illusion of being a 'changed' company and to establish partnerships with health interests, [Tobacco industry interference with tobacco control \(who.int\)](#)

²⁷ <https://tobaccotactics.org/wiki/greenwashing/>

²⁸ <https://tobaccotactics.org/wiki/eclt-d29/>

²⁹ <https://www.unfairtobacco.org/en/tobacco-industry-highjacking-the-sdgs/>

³⁰ <https://www.unfairtobacco.org/en/tobacco-workers-to-ilo-quit-tobacco-industry/>

³¹ <https://tobaccotactics.org/wiki/greenwashing/>

³² <https://tobaccotactics.org/wiki/csr-strategy/>

³³ <https://tobaccotactics.org/wiki/greenwashing/>

Tobacco companies not only use voluntary CSR schemes to improve their public image but also to weaken and undermine tobacco control policies by preventing the introduction of legally enforceable tobacco control measures which have a proven record of effectiveness in reducing tobacco consumption.³⁴ ³⁵ According to WHO, tobacco companies use CSR to ‘compromise’ or to propose voluntary agreements that would obviate the need for legislation or regulation.³⁶ ‘Research and experience have shown, however, that voluntary agreements and compromises with the industry do not translate into public health gains. Therefore, the tobacco industry’s proposal to substitute self-regulation for government regulation is essentially ineffective; governments are more effective in tobacco control when they do not endorse voluntary codes of conduct or self-monitoring by the tobacco industry and do not accept assistance from or direct consultation with the tobacco industry on appropriate language for tobacco control legislation or other legal instruments (apart from legitimate forums, such as public hearings and written submissions)’.³⁷

The tobacco industry is therefore an excellent example to emphasize that voluntary CSR schemes do not advance human rights and environmental protection, but serve as a tool to continue making profits without conscience. Thus, a mandatory due diligence framework is needed to achieve the SDGs and to protect and fulfil human rights.

Different Member States within the European Union have taken legislative initiatives or are in the process of developing due diligence legislation. In not less than 11 EU Members States (and Norway, Switzerland) initiatives towards due diligence laws have been discussed or adopted³⁸. Some examples: the Netherlands adopted in 2019 the Dutch Child Labour Due Diligence Act to prevent child labour being used in goods and services brought to the Dutch market. The French Duty of Vigilance Law, adopted in 2017, wants to identify risks and prevent human rights and environmental impact, and requires companies to publish a ‘vigilance plan’. As well, Germany is in the process of drafting a law on human rights and environmental due diligence following strong pressure from civil society.

Just as voluntary CSR schemes fail to achieve their objectives, academic research has shown that voluntary corporate tools that implement due diligence have not been sufficiently effective at securing respect for rights.³⁹

³⁴ Fooks, G., Gilmore, A., Collin, J. *et al.* The Limits of Corporate Social Responsibility: Techniques of Neutralization, Stakeholder Management and Political CSR. *J Bus Ethics* **112**, 283–299 (2013). <https://doi.org/10.1007/s10551-012-1250-5>

³⁵ By taking broad-based but effective action against the environmental hazards created by the tobacco industry, the demand for tobacco products will be further reduced. With strengthened environmental policies, there will be increased costs for tobacco products, decreased social acceptance of tobacco use and changes in the most commonly used tobacco products. Authors propose seven recommendations for Parties to the FCTC to consider, Thomas E Novotny *et al.*, The environmental and health impacts of tobacco agriculture, cigarette manufacture and consumption, *Bull World Health Organ* 2015;93:877–880 | doi: <http://dx.doi.org/10.2471/BLT.15.152744>

³⁶ [Tobacco industry interference with tobacco control \(who.int\)](https://www.who.int/news-room/fact-sheets/detail/tobacco-industry-interference-with-tobacco-control), p. 15

³⁷ [Tobacco industry interference with tobacco control \(who.int\)](https://www.who.int/news-room/fact-sheets/detail/tobacco-industry-interference-with-tobacco-control), p. 15

³⁸ <https://www.business-humanrights.org/en/national-movements-for-mandatory-human-rights-due-diligence-in-european-countries>

³⁹ [Towards a mandatory EU system of due diligence for supply chains \(europa.eu\)](https://www.europa.eu/press-room/media/infographic/item/12345), p. 6

Taking this into account, we are of the opinion that an European mandatory due diligence on environment and human rights⁴⁰, which explicitly includes the tobacco industry, is a necessary step to achieve sustainable development as it would ensure:

- o that one binding framework is implemented in a coordinated way over the whole of the EU, while leaving the implementation to the Member States
- o a level playing field for companies operating in the EU
- o companies are addressed directly (not via State Parties) as well
- o to find solutions to mitigate the environmental impact of tobacco products
- o put the responsibility on the tobacco companies as a polluter
- o a contribution for companies to the overall solution to achieve the Sustainable Development Goals.

When it comes to the tobacco industry, some ‘challenges’ to make due diligence a success have to be taken into account:

- The lack of robust data on and awareness of tobacco’s true environmental cost among smokers, general public, and even policy-makers;
- The differences in national regulations being exploited by tobacco companies to avoid reporting or paying for the damage caused by their activities;
- Dependence on tobacco as a cash crop in a number of lower income countries;
- Strong tobacco lobby and the growing uptake of smoking, particularly in low and middle income countries.⁴¹

What have tobacco control NGO’s done towards due diligence up to now?

Due diligence has been at the forefront of the work of tobacco control advocates since the negotiations on the WHO Framework Convention on Tobacco Control in the early 2000s. The advocacy of civil society groups led to the Convention explicitly referring to the supply chain in article 18: “In carrying out their obligations under this Convention, the Parties agree to have due regard to the protection of the environment and the health of persons in relation to the environment in respect of tobacco cultivation and manufacture within their respective territories.”

Tobacco control advocates have been working to highlight connections between tobacco control and human rights for years, and have made significant progress. Due to the efforts of civil society, tobacco

⁴⁰ The concept of human rights due diligence was originally developed in the UN Guiding Principles on Business and Human Rights (UNGPs), principle 17, policies and processes, to identify, prevent, mitigate, and account for the adverse human rights impacts that they may cause or contribute to through their own activities, or that may be linked to their operations, products or services by their business relationships
www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

⁴¹ <https://www.who.int/fctc/publications/WHO-FCTC-Enviroment-Cigarette-smoking.pdf?ua=1&ua=1>, Maria Zafeiridou, Nicholas S Hopkinson, Nikolaos Voulvoulis, 2018, p. 29

control and the goals of the FCTC were included as a target in the Sustainable Development Goals, goals that are grounded in human rights⁴². In 2017, after discussions with tobacco control groups, the Danish Institute for Human Rights (DIHR) concluded that: “There can be no doubt that the production and marketing of tobacco is irreconcilable with the human right to health.”⁴³ In 2018, the World Conference on Tobacco or Health (WCTOH) adopted an exemplary Cape Town Declaration supported by 165 organizations and formally submitted to the Office of the High Commissioner for Human Rights.⁴⁴ Similar declarations were adopted by civil society at conferences in Madrid and Bucharest⁴⁵.

Civil society has been working to include human rights and due diligence in domestic tobacco control efforts as well. For example, in May 2020, an alliance of 19 civil society organizations working on tobacco control, public health, sustainable development and children’s rights jointly submitted the alternative report “Children’s Rights and Tobacco Control in Germany” to the UN Committee for the Rights of the Child during the 5th/6th reporting cycle for Germany.⁴⁶ Additionally, school children were supported to submit their own report “We want tobacco to stop being sold” also referring to child labour in the tobacco supply chain.⁴⁷

Early in 2020, an alliance of 10 civil society organizations submitted the report “Tobacco control in Germany: Failure to protect the right to health and women’s rights in supply chains” to the UN Committee on the Elimination of Discrimination Against Women. This report led to the CEDAW asking the German government about their legislation to hold corporations accountable for women’s rights violations in their operations abroad.⁴⁸

What are key issues for a EU Mandatory Environmental and Human Rights Due Diligence?

General scope:

The future EU law should include all global human rights treaties and cover all types of violations, including specific human rights conventions such as UN Convention on the Rights of the Child (CRC), the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Right of Persons with Disabilities (CRPD), the International Convention on All Migrant Workers and Members of their Families (ICRMW), the Indigenous and Tribal People Convention (ILO 169), the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), the International Covenant on Economic, Social, and Cultural Rights (ICESCR) and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).

⁴² <https://sdgs.un.org/goals>

⁴³ <https://ash.org/quitpmi/>

⁴⁴ <https://ash.org/cape-town-declaration/>

⁴⁵ <https://ash.org/bucharest-declaration/>

⁴⁶ https://unfairtobacco.org/wp-content/uploads/2020/05/Parallel-report_UN-CRC_Germany_2020.pdf

⁴⁷ <https://www.youtube.com/watch?v=pD49GvgZmC8>

⁴⁸ <https://unfairtobacco.org/en/women-need-tobacco-control/>

All companies have the responsibility to protect the environment and respect human rights. The legislation should cover all companies - either domiciled in an EU Member State or placing products or providing services in the internal market - regardless of their size and take a non-sector specific approach.⁴⁹ The scope of obligations should be differentiated by criteria such as the companies' risk profile and their annual turn-over.

Specific Rights – example: the Rights of the Child

It is necessary that the mandatory due diligence legislation explicitly refers to additional measures for vulnerable groups, such as children. The UN CRC should be referred to as a minimum standard for businesses to respect, keeping in mind that the UN CRC has been ratified by almost all countries in the world.

Children and adolescents are particularly vulnerable to the effects of tobacco production and consumption. The widespread use of child labour in connection with the living and working conditions in tobacco cultivation specifically violates the children's rights to health (UN CRC Art. 24), to adequate standard of living (UN CRC Art. 27), to education (UN CRC Art. 28), to leisure (UN CRC Art. 31) and to protection from economic exploitation (UN CRC Art. 32). Both the marketing of addictive and harmful tobacco products, which is specifically targeted at children and adolescents, and the lack of protection from secondhand smoke violate children's rights to life (UN CRC Art. 6), to information (UN CRC Art. 17), to health (UN CRC Art. 24) and to protection from narcotic drugs (UN CRC Art. 33). In 2013, the UN Committee on the Rights of the Child published its General Comment on the Right to Health and explicitly referred to the need to transpose the WHO Framework Convention on Tobacco Control into domestic law.⁵⁰

The UNGP (UN Guiding Principles on Business and Human Rights (UNGP) have very little reference to children. The commentary of Principle 12 states that '*depending on circumstances*, business enterprises *may* need to consider additional standards' and further on implicitly refers to the UN CRC by referring to the United Nations instruments on the rights of children. However, the UNGP does not explicitly refer to the CRC as a minimum standard for businesses to respect.

Likewise, the OECD guidelines use in chapter IV on Human Rights the same conditional wording⁵¹ as the UNGP. Besides the general guidelines, sector specific due diligence guidance exists for different business sectors. Concerning the worst forms of child labour, the OECD has developed a guidance only for companies with a mineral supply chain.⁵²

⁴⁹ Substantive elements of potential legislation on human rights due diligence - a study requested by the European Parliament's subcommittee on Human rights 'Substantive Elements of Potential Legislation on Human Rights Due Diligence', June 2020

⁵⁰ https://www.unfairtobacco.org/wp-content/uploads/2020/02/Brochure_Childrens-Rights_EN.pdf, p. 5

⁵¹ *Depending on circumstances*, enterprises *may* need to consider additional standards.

<http://www.oecd.org/daf/inv/mne/48004323.pdf>, Chapter IV, p. 32

⁵² <http://mneguidelines.oecd.org/Practical-actions-for-worst-forms-of-child-labour-mining-sector.pdf>

Implementation:

It should be highlighted that the tobacco industry conducts activities described as socially responsible to distance its image from the lethal nature of the product it produces and sells or to interfere with the setting and implementation of public health policies. Activities that are described as ‘socially responsible’ by the tobacco industry, aiming at the promotion of tobacco consumption, is a marketing as well as a public relations strategy that falls into the definition of advertising, promotion and sponsorship of the FCTC. According to WHO, corporate social responsibility of the tobacco industry is an inherent contradiction, as industry’s core functions are in conflict with the goals of public health policies with respect to tobacco control. It should be avoided at all times that this EU initiative on due diligence will be used by tobacco corporations to polish their image.

In that respect, the strict application of Art. 5.3 FCTC is decisive. This article states that Parties to the Convention should protect their public health policy against the commercial interests of the tobacco corporations.

Identify and assess companies’ risks:

The due diligence should require to identify risks and prevent human rights and environmental impact of the whole life cycle of the product for the company and the partners within the supply chain, services and business partners. For the tobacco industry the life cycle impacts of tobacco can be roughly divided into five key stages: (1) growing and curing; (2) product manufacture; (3) distribution and transportation; (4) product consumption, including second-hand and third-hand smoke exposure; and (5) post-consumption tobacco product waste disposal.⁵³ Due diligence concerns stages (1) to (3). For each of these three stages a list of possible risks should be established in cooperation with stakeholders leading to a clear understanding of the environmental harm and human rights violations caused by tobacco production and consumption. Clear guidance and criteria are needed.

Once the risks are defined and assessed, the company should reverse the impact of these risks by ceasing, preventing or mitigating within the own company but also with the partners throughout the whole supply chain, services and business partners. This should be an ongoing process and clearly reported and communicated in all transparency.

⁵³ Tobacco compared to other commodities: To help put the environmental footprint of tobacco into perspective, the impacts of a tonne of green tobacco can be compared to those of other crops, specifically the crops considered by WHO FCTC as potentially viable substitutes to tobacco in a number of developing countries (Keyser, 2015). It was found that the cultivation of a tonne of green tobacco has an approximately 2 to 3 times higher contribution to climate change than a tonne of tomatoes or potatoes but lower emissions than a tonne of wheat or rice. The average water depletion resulting from the cultivation of one tonne of tobacco is similar to that of rice but over 8 times higher than that of potatoes and 5 times higher than that of fresh tomatoes. The estimated freshwater eutrophication levels caused by the cultivation of a tonne of tobacco are lower than that of wheat but similar to the levels associated with potatoes and tomatoes, <https://www.who.int/fctc/publications/WHO-FCTC-Environment-Cigarette-smoking.pdf?ua=1&ua=1>, p. 23.

Monitoring

The EU mandatory ENV and HR DD should go beyond the simple obligation for companies to report on the steps that a company has taken (or not!). It is highly recommended the report should include a set of EU harmonized criteria to make sure that a minimum level of accurate information is published, in all transparency, and that this accurate information is comparable between companies and sectors. As well, the report should include a plan of action on how to reverse the impact of these risks.

An example is the ‘vigilance plan’ as integrated in the French Due Diligence Law

1° Une cartographie des risques destinée à leur identification, leur analyse et leur hiérarchisation ;

2° Des procédures d'évaluation régulière de la situation des filiales, des soustraitants ou fournisseurs avec lesquels est entretenue une relation commerciale établie, au regard de la cartographie des risques ;

3° Des actions adaptées d'atténuation des risques ou de prévention des atteintes graves ;

4° Un mécanisme d'alerte et de recueil des signalements relatifs à l'existence ou à la réalisation des risques, établi en concertation avec les organisations syndicales représentatives dans ladite société ;

5° Un dispositif de suivi des mesures mises en œuvre et d'évaluation de leur efficacité.⁵⁴

The Dutch Child Labour Due Diligence Act also goes beyond simple reporting and states in Art. 5.1 that *‘if the subject company has a reasonable suspicion of child labor in the production of the goods or services, it must adopt and implement a plan of action. A joint action plan aimed at ensuring that affiliated companies exercise due diligence that is developed by or among one or more social organizations, employees’ organizations or employers’ organizations and approved by the Minister for Foreign Trade and Development Cooperation will satisfy this requirement.*⁵⁵

Enforcement and sanctions

An absolute necessary addition to companies identifying, assessing, preventing, mitigating, monitoring and reporting in transparency on potential and actual environmental impact and human rights violations are enforcement and sanctions where victims receive remedy. Sanctions may include administrative fines (in proportion to the company’s annual turn-over), civil liability and in the case of severe violations even criminal liability, as stated in the FCTC Article 19. The burden of proof and other possible barriers on access to justice should be minimized. thus include a set of different implementation mechanisms, including administrative, civil and possibly even criminal law instruments together with sanctions in requiring states to adopt approaches that will result in penalties sufficient to have a deterring effect. In any event, Member States would be required to implement the HRDD legislation effectively in accordance with generally accepted principles of EU law.

⁵⁴ [https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank mm/decisions/2017750dc/2017750dc_ccc.pdf](https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank_mm/decisions/2017750dc/2017750dc_ccc.pdf), p.2

⁵⁵ <https://www.ropesgray.com/en/newsroom/alerts/2019/06/Dutch-Child-Labor-Due-Diligence-Act-Approved-by-Senate-Implications-for-Global-Companies>

Local civil society is key in the implementation and monitoring of such legislation, and there must be channels for the civil societies to interact with the authorities and provide feedback.

LIST OF SUPPORTING ORGANISATIONS:

Advocacy Center for Life	Department of Public Health and Social Medicine, Medical University of Gdansk, Poland
Airspace Action on Smoking and Health	Development and Salutast Astana (Kazakhstan)
Alliance contre le tabac	DNF - Pour un Monde Sans Tabac
ASH	European Medical Student Association (EMSA)
ASH Finland	ENSP
ASH Ireland, Council of the Irish Heart Foundation	EuroHealthNet
ASH Scotland	European Cancer Patient Coalition
Asian Consultancy on Tobacco Control	European Respiratory Society (ERS)
Austrian Council on Smoking & Health	FCTC Implementation and Monitoring Center in Georgia
Austrian medical chamber	Fondation contre le cancer, Belgique
Belgian Alliance for a Smoke Free Society	Healis Sekhsaria Institute for Public Health
BLUE 21 / Unfairtobacco	Health Care Plus UG
BlueLink Foundation	Health Funds for a Smokefree Netherlands
Cancer Research UK	Health Promotion Foundation (Poland)
Cancer Society of Finland	Heart Foundation of Jamaica/Jamaica Coalition for Tobacco Control
Catalan Institute of Oncology	Heartland Initiative
CATR, Portugal	Indraprastha Public Affairs Centre
Center for public health support (Kazakhstan)	Japan Society for Tobacco Control
Cigarette Butt Pollution Project	Kenya Tobacco Control Alliance
Comité National Contre le Tabagisme (CNCT)	Kosovo Advocacy & Development Centre (KADC)
Corporate Accountability	Lithuanian Tobacco and Alcohol Control Coalition
Corporate Accountability Lab	Mexico Salud-Hable Coalition
Cyprus National Addictions Authority (NAAC)	
Danish Cancer Society	

Macedonian Respiratory Society

Nofumadores.org (Spain)

Norwegian Cancer Society

Progressive Reinforcement of Organizations and
Individuals (PROI)

Resource Centre For Primary Health Care

Romanian Society of Pneumology

SEATCA

Slovenian Coalition for Public Health,
Environment and Tobacco Control

Smoke Free Israel

Smoke Free Life Coalition

Smoke Free Partnership (SFP)

Smoke-Free Bulgaria

Smokefree Kazakstan Coalition

Sociedad Uruguaya de Tabacologia

Stichting Rookpreventie Jeugd (Netherlands)

Suomen ASH / ASH Finland

TerraProject

The International Union Against Tuberculosis
and Lung Disease

The Public Health Law Center

TobaccoFree Research Institute Ireland

University of Beira Interior, faculty of Health
Sciences (Portugal)

XQNS, Spain

Youth Network No Excuse Slovenia