

Mandatory human rights and environmental due diligence and its relevance with effective regulation of artificial intelligence (AI)

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The upcoming (in 2021, with prior formal consultation) [EU legislative initiative](#) on cross-industry mandatory human rights and environmental due diligence is a key opportunity to “build back better” after the pandemic and strengthen corporate respect for human rights and the environment, including among companies creating and utilising artificial intelligence (AI) technology. It is led by DG JUST and builds on [national-level developments](#). There is considerable momentum for such legislation, including growing [support from businesses](#) who see the benefits of a level playing field and increased legal certainty, among other factors. With regard to AI technology, effective mandatory due diligence legislation would prevent AI-related human rights and environmental abuses in companies’ operations and value chains, and ensure existing abuses are remedied.

Due diligence as outlined in the [UN Guiding Principles on Business and Human Rights](#) (UNGPs), the OECD Guidelines for Multinational Enterprises, and related guidance is an ongoing risk management process that companies would then be legally required to follow to identify, prevent, mitigate, remediate and account for how they address their actual and potential adverse human rights (and environmental) impacts. Companies are expected to focus on those issues in their operations and value chains that are at risk of having the most severe negative impact on people, society and the environment ([‘salient’](#) issues). Due diligence covers actual and potential adverse impacts a company may cause or contribute to, or which may be directly linked to its products, services or operations through a business relationship. Therefore, negative human rights and environmental impacts related to AI development, distribution and use (including in a company’s supply and value chain) would and should clearly fall under a legal duty to conduct due diligence.

Mandatory human rights and environmental due diligence legislation must cover all industries and come with [effective enforcement mechanisms](#) for when responsibilities are not met, including liability rules for harm arising out of human rights and environmental abuses, and meaningful access to remedy for rightsholders that incorporates judicial remedy before courts. While it can play a supportive role, mere disclosure of due diligence processes and practices through mandatory corporate reporting alone falls far short of what is needed for behavioural change across industries and meaningful access to remedy for impacted people.

‘AI companies’ should be classified as companies operating in a ‘high-risk’ industry. This would ensure that smaller SMEs, which may (initially) be excluded from the personal scope of due diligence legislation (although proportionality and scalability of measures are already built into the concept of due diligence), would still fall under the law if from the AI industry. The considerable [risks](#) associated with AI for people, society and the environment, including risks of bias, discrimination, and job loss, justify this.