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**Desk study EU-Japan Agreement**

***A Scoping Study to Provide an Overview of Human Rights and Environmental Rights Legislation and its Impact on Business***

**Dr Tara Van Ho, Dr Jessica Lawrence, & Dr Tom Flynn**

**Essex Law School, Essex Business and Human Rights Project**

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**EU-Japan Desk Study:**

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**REPORT (FINAL)**

Prepared by Dr Tara Van Ho, Dr Jessica Lawrence, & Dr Tom Flynn

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# Executive Summary

Public authorities around the world are increasingly turning to reporting and due diligence mechanisms as a means of enhancing the protection of human rights and the environment from adverse impacts attributable to the actions of businesses. These regimes range from the voluntary to the mandatory, may be sector-specific or applicable across all sectors of the economy, and may apply only to the largest operators or to businesses of all sizes. They generally build on the UN Guiding Principles on Business and Human Rights, which set out the business responsibility to protect human rights, and the OECD Guidelines for Multinational Enterprises, in addition to other international initiatives and instruments.

Japan and the EU are no exceptions to this global trend. In just the past few years, the landscape of human rights and environmental due diligence (HREDD) in both jurisdictions has changed rapidly, and is continuing to do so. The Japanese approach to date has been to use non-binding guidelines to encourage companies to take up human rights due diligence, whereas the EU is moving towards a more interventionist approach requiring mandatory HREDD, backed by potentially significant sanctions.

It is important to note that the reach of the EU’s mandatory HREDD legislation is global—applying to both EU businesses and businesses that operate within the EU market—and as such it is expected to have a significant impact on companies around the world. This is true even when those businesses are based in countries where domestic legislation does not include similar requirements, or where—as in Japan—due diligence requirements are not mandatory.

This study provides an overview of four primary pieces of legislation of relevance to the EU-Japan trading relationship—the EU Regulation on Deforestation-free Products, the Corporate Sustainability Due Diligence Directive, the Forced Labour Regulation, and the Japanese Guidelines—noting their most important features, scope, and enforcement mechanisms. The study examines the expected impacts of mandatory HREDD on businesses that fall within the scope of the EU-Japan Economic Partnership Agreement, focusing in particular on seafood, agriculture, and other key sectors. The study then provides concrete, pragmatic, and achievable recommendations on preparing for the EU’s mandatory HREDD legislation focusing on four key themes:

* capacity-building within supply chains;
* collaboration among covered businesses;
* collaboration between businesses and stakeholders; and
* designing effective ameliorative and remedial systems.

These recommendations aim to assist businesses, trade unions, NGOs and other stakeholders in thinking through how to prepare for and facilitate the implementation of mandatory HREDD rules.

# 1. Introduction

Public authorities around the world are increasingly turning to reporting and due diligence mechanisms as a means of enhancing the protection of human rights and the environment from adverse impacts attributable to the actions of businesses. These regimes range from the voluntary to the mandatory, may be sector-specific or applicable across all sectors of the economy, and may apply only to the largest operators or to businesses of all sizes. They generally build on the UN Guiding Principles on Business and Human Rights[[1]](#footnote-2) (UNGPs), which set out the business responsibility to protect human rights, and the OECD Guidelines for Multinational Enterprises,[[2]](#footnote-3) in addition to other international initiatives and instruments.

Japan and the EU are no exceptions to this global trend. In just the past few years, the landscape of human rights and environmental due diligence (HREDD) in both jurisdictions has changed rapidly, and is continuing to do so.

In 2022, the government of Japan published its ‘Guidelines on Respecting Human Rights in Responsible Supply Chains’, which, though they are broad in scope—being addressed to all companies doing business in Japan, regardless of size or sector—are voluntary and non-binding. Japanese businesses are reportedly moving quickly to put in place human rights policies and implement due diligence, but there is still some way to go, and while the increased focus on human rights is to be welcomed, environmental due diligence is lagging behind, having been left out of the Guidelines.

The EU, on the other hand, is moving toward a more interventionist approach. Several EU Member States have adopted mandatory HREDD legislation at national level,[[3]](#footnote-4) and the EU is following suit. The EU has already adopted several initiatives in this vein, including the EU Regulation on Deforestation-Free Products (EUDR)[[4]](#footnote-5), the EU Conflict Minerals Regulation,[[5]](#footnote-6) the Corporate Sustainability Reporting Directive,[[6]](#footnote-7) and the Sustainable Finance Disclosure Regulation,[[7]](#footnote-8) and is in the process of negotiating and enacting other initiatives, including the Corporate Sustainability Due Diligence Directive (CSDDD)[[8]](#footnote-9) and the Forced Labour Regulation (FLR).[[9]](#footnote-10)

While the approaches differ in the details of their scope and specific requirements, mandatory HREDD rules generally follow a similar pattern. They require covered businesses to establish and implement due diligence systems consisting of:

1. information regarding the sources and suppliers of any products being placed on the market, and the human rights and/or environmental impact of these supply chains;
2. risk assessment and risk mitigation measures based on the information gathered; and
3. reporting obligations designed to facilitate the enforcement of the due diligence obligations.

These obligations are enforced by means of penalties including the withdrawal of non-compliant products from the market, fines, and additional penalties including exclusion from procurement processes and trading bans.

For example, under the 2023 EUDR, companies trading in cattle, cocoa, coffee, palm oil, rubber, soya, wood, and derivative products such as leather and paper will need to conduct due diligence of their supply chains to ensure that they have not contributed to deforestation, forest degradation, or breaches of local environmental and other laws.

Similarly, the CSDDD, once finalized, will put in place mandatory HREDD rules for large companies, requiring them to identify both actual and potential human rights and environmental impacts within their own operations as well as those of their subsidiaries and business partners, and take steps to prevent or mitigate these impacts. The obligations set out in the CSDDD will be enforceable by fines and the possibility of civil liability (such as in suits brought by trade unions and civil society organisations), and are also intended to be incorporated into the EU’s public procurement framework.

It is important to note that the reach of these legislative initiatives is global—applying to both EU businesses and businesses that operate within the EU market—and as such is expected to have a significant impact on companies around the world. This is true even when those businesses are based in countries where domestic legislation does not include similar requirements, or where—as in Japan—due diligence requirements are not mandatory.[[10]](#footnote-11) As one interviewee pointed out, this can cause surprise and resentment in situations where individual businesses, industrial associations, and governments outside the EU find that they must now comply with sometimes complex regulations on which they have not been consulted if they wish to do business in the EU or with EU business partners.

These EU developments will provide an urgent impetus for Japanese businesses to fully implement HREDD where they have not yet done so, most notably in the case of Japanese companies covered by the EU legislation, but also in the case of companies who may wish to enter into supply chain partnerships or other business relations with covered companies, or who may wish to enter the EU market in future.

The move towards regulation and clear guidance is a manifestation of states’ ongoing international legal obligations to protect human rights and the environment. HREDD standards highlight the complementary and shared responsibility of states and businesses. However, it is important to bear in mind that states bear the primary responsibility under international law to fulfil obligations regarding human rights and the environment, and HREDD regulation and guidance does not divest the state of this responsibility, nor transfer the primary responsibility to businesses. Compliance with the regulatory framework should therefore be seen as both a minimum endeavour and the starting point for a larger collaborative exercise between businesses and states to tackle these issues.

This Desk Study is part of Task 4 of the EU-funded ‘Support to Civil Society Participation in the implementation of EU Trade Agreements project’. It contributes to Result 3: Ensuring civil society groups are aware of, and act according to, their roles and responsibilities provided by the Trade Agreements. Its aims are as follows:

1. To provide the EU-Japan DAG with up-to-date information on the requirements of EU and Japanese HREDD rules;
2. To outline the significance of these rules for businesses that fall within the scope of the EU-Japan Economic Partnership Agreement, focusing in particular on the agriculture and seafood sectors; and
3. To provide practical recommendations to the DAG regarding how to support stakeholders in preparing for the implementation of mandatory HREDD requirements. These recommendations aim to assist stakeholders in making proposals for EU-Japan cooperation in the fields of business, human rights, and environmental due diligence.

In accordance with these purposes and aims, the study is structured as follows:

Following this introduction, section 2 contains an overview of the four primary pieces of legislation that form the central core of the study—the EUDR, the CSDDD, the FLR, and the Japanese Guidelines—noting their most important features, scope, and enforcement mechanisms. Section 3 examines the expected impacts of mandatory HREDD on business that fall within the scope of the EU-Japan Economic Partnership Agreement, focusing in particular on seafood, agriculture, and other key sectors. Finally, section 4 provides concrete, pragmatic, and achievable recommendations on preparing for the EU’s mandatory HREDD legislation focusing on the themes of capacity-building within supply chains; collaboration among covered businesses; collaboration between businesses and stakeholders; and designing effective ameliorative and remedial systems.

# 2. Overview of Legislation

This section will address four significant pieces of HREDD legislation that apply or will soon apply in the EU and Japan: the EU’s 2023 Regulation on Deforestation-Free Products (EUDR); the EU’s Corporate Sustainability Due Diligence Directive (CSDDD); the EU’s Forced Labour Regulation (FLR) and Japan’s Guidelines on Respecting Human Rights in Responsible Supply Chains.

## 2.1 EU Mandatory Due-Diligence Rules

As noted in the Introduction, the EU has recently begun to follow the lead of some of its Member States by adopting mandatory HREDD legislation. In doing so, the EU hopes to leverage its position as a major global consumer to encourage responsible behaviour by businesses operating in the European market. This corresponds with the commitments made as part of the European Green Deal,[[11]](#footnote-12) the Paris Agreement,[[12]](#footnote-13) the Sustainable Development Goals under the 2030 Agenda for Sustainable Development,[[13]](#footnote-14) the Charter of Fundamental Rights of the European Union,[[14]](#footnote-15) and international human rights instruments as well as other relevant EU strategies.[[15]](#footnote-16)

While the EU does not have jurisdiction to require Japanese businesses to comply with its rules, it does have the ability to set rules for products imported into the EU, traded on the EU market, and exported from the EU, and as such Japanese businesses who do business in the EU or who seek to sell products to EU companies subject to HREDD rules will be impacted by this legislation.

### 2.1.1 EU Regulation on Deforestation-Free Products

In an effort to ensure that products listed on European markets do not contribute to global deforestation and forest degradation, as well as to aid in the reduction of carbon emissions and biodiversity loss, the EU has adopted a new Regulation on Deforestation-Free Products.[[16]](#footnote-17) The EUDR, which replaces the 2010 EU Timber Regulation,[[17]](#footnote-18) seeks to move beyond the prior focus on curbing illegal logging and reducing the consumption of illegally harvested timber to a broader focus on the impacts of multiple products on deforestation, whether legal or illegal, in the country of production.[[18]](#footnote-19)

The EUDR sets out due diligence obligations for those seeking to either place on the EU market or export from the EU relevant products[[19]](#footnote-20) that contain, have been fed with, or have been made using seven target commodities: cattle, cocoa, coffee, oil palm, rubber, soya, and wood.[[20]](#footnote-21) Specifically, it prohibits relevant products from being imported into, marketed in, or exported from the EU unless they are ‘deforestation-free’; have been produced in accordance with local laws in the country of production; and are covered by a due diligence statement produced following a due diligence process.[[21]](#footnote-22) If an ‘operator’ (essentially those that import, export, or manufacture relevant products) or ‘trader’ (those other than operators that make the product available on the EU market, for example an EU retailer who purchases goods from an EU importer after they have already crossed the border) cannot show that these requirements have been met, they are not able to market these products in or export them from the EU.

Small and medium-sized enterprises (SMEs)[[22]](#footnote-23) have reduced obligations as compared to non-SMEs, but are still covered by the EUDR. For example, while they are not required to perform due diligence on products for which a due diligence statement has already been submitted;[[23]](#footnote-24) they are required to collect and keep for at least five years the identifying details of operators or traders who have supplied them with relevant products or to whom they have supplied relevant products, along with the reference numbers of the due diligence statements associated with the products with which they have been supplied. They are also required to inform the competent Member State authorities of any relevant new information indicating that a product they have made available on the market is at risk of not complying with the Regulation, and must in general offer the competent authorities all necessary assistance in carrying out checks.[[24]](#footnote-25)

The EUDR entered into force on 29 June 2023, and businesses have a minimum of 18 months to begin complying with its rules. Longer time spans apply for SMEs.

The EUDR’s due diligence requirements generally follow the standard pattern outlined above, establishing information requirements, risk assessment and mitigation requirements, and reporting requirements.

With respect to information, the EUDR requires businesses to gather and preserve a range of documents including, *inter alia*:

1. product descriptions, including information on the content and quantities of covered commodities intended for the EU market or export;
2. information on the countries where covered products or components thereof have been produced, including the specific geolocation coordinates of plots of land where production took place or where cattle are kept;
3. details of suppliers from whom products are purchased and to whom products are supplied; and
4. verifiable information that products have been produced in accordance with the legislation of the country of production and that products are deforestation-free.[[25]](#footnote-26)

On the basis of the gathered information, businesses must then carry out annual[[26]](#footnote-27) risk assessments and take steps to mitigate any risks identified. Risk assessment should take into account, *inter alia*, the level of deforestation risk associated with the country or region of production;[[27]](#footnote-28) the presence of forests and any reports of deforestation or forest degradation; the presence of indigenous peoples and, where present, cooperation with, consultation with, and land use or ownership claims by indigenous peoples; risks posed by corruption, human rights violations, war, and similar issues; and risks posed by the complexity of supply chains or mixing of products covered by the EUDR that increase the likelihood of non-compliance.[[28]](#footnote-29)

Risk assessment may involve the use of verified third-party schemes, where appropriate, though the ultimate responsibility for due diligence remains with the businesses themselves. It should also involve setting up a channel through which businesses can receive information from concerned third parties who may have information regarding their supply chains. Simplified procedures are permissible for products originating in countries or areas designated as ‘low risk’.[[29]](#footnote-30)

Where a risk assessment shows that there is no or only a negligible risk of deforestation or forest degradation, a due diligence report must be submitted and the products may then be placed on the market or exported. In all other cases, the covered business must adopt risk mitigation procedures. Risk mitigation measures include tools such as gathering additional information, carrying out independent surveys, and supporting capacity-building for suppliers.[[30]](#footnote-31)

Affected businesses must also ensure that they have adequate policies and procedures in place to mitigate risks of non-compliance. This includes the development of model risk management processes, reporting, record-keeping, and—for non-SMEs—the appointment of a management-level compliance officer and independent audit function.[[31]](#footnote-32)

To enable the monitoring and enforcement of the EUDR, covered businesses must publish due diligence statements for products they place on the market or export. These due diligence statements are to be published in a central EU database known as the Information System.[[32]](#footnote-33)

Enforcement is also supported by the establishment of a mechanism whereby natural or legal persons may submit concerns to authorities, creating a role for civil society in the monitoring process.[[33]](#footnote-34)

In the case of non-compliance, violators can face a number of consequences. These include the removal of products from the market and their potential confiscation; the confiscation of revenues from sales of those products; exclusion from public procurement processes; trading bans; and the imposition of ‘effective, proportionate and dissuasive’ penalties.[[34]](#footnote-35)

### 2.1.2 EU Corporate Sustainability Due Diligence Directive

In February 2022, the European Commission proposed a new Corporate Sustainability Due Diligence Directive[[35]](#footnote-36) to aid the Union’s objectives under the European Green Deal[[36]](#footnote-37) and the UN Sustainable Development Goals, including in the context of human rights and the environment. On 14 December 2023, the Council and Parliament announced that an agreement had been struck reconciling their two positions on the proposal,[[37]](#footnote-38) but finalization of the Directive was delayed due to objections by Germany and Italy, with the liberal FDP party, part of the governing coalition in Germany, playing a leading role in criticism.[[38]](#footnote-39) On 15 March, the Council agreed a further amended text,[[39]](#footnote-40) which most notably decreased the scope of coverage of the Directive by increasing the number of employees and turnover thresholds for businesses. Parliament approved this amended text at the end of April, and it was formally adopted by the Council on 24 May.

Similarly to the EUDR, the broad contours of the Directive follow the general pattern of mandatory HREDD, requiring businesses to establish due diligence systems, to assess and mitigate risk, and to facilitate enforcement by means of reporting obligations.

The Directive covers all EU companies with more than 1,000 employees and a net worldwide turnover of more than €450m.[[40]](#footnote-41) It also applies to companies that do not themselves reach these thresholds but are the ultimate parent companies of groups that do,[[41]](#footnote-42) and to companies involved in franchising arrangements (the so-called ‘McDonald’s provision’) involving royalties of more than €22.5m and net worldwide turnover of more than €80m.[[42]](#footnote-43)

The Directive also covers non-EU companies, without reference to their number of employees, if their turnover within the Union reaches the €450m threshold.[[43]](#footnote-44) The turnover and royalty thresholds for parent companies and franchisors are the same as for EU companies, provided that the thresholds are met by their activities within the Union (and not worldwide).[[44]](#footnote-45) Covered non-EU companies must also designate a natural or legal person as their authorised representative in the EU.[[45]](#footnote-46)

The timeline for the application of the Directive is staggered according to company size, with a three-year application period for EU companies with more than 5,000 employees and worldwide turnover of €1.5b; four years for EU companies with more than 3,000 employees and worldwide turnover of €900m; and five years for EU companies meeting the baseline threshold of 1,000 employees and worldwide turnover of €450m.[[46]](#footnote-47) Application of the Directive to non-EU companies is similarly staggered, but without reference to number of employees, and the relevant turnover thresholds must be generated within the Union.

Unlike the EUDR, the CSDDD does not distinguish between ‘high’, ‘standard’ and ‘low’ risk jurisdictions and sectors. In previous drafts of the Directive, EU and non-EU companies engaged in certain named industries (textiles, clothing and footwear; agriculture, forestry, and fisheries; food and beverage manufacturing; live animals and wood; mineral extraction; the manufacture and wholesale trade in metal and mineral products; and construction) were to be covered if they met lower employee and turnover thresholds. However, these lower thresholds have been deleted from the final version of the Directive at the behest of the Council.

The obligations imposed on covered companies are broad. As Article 1 makes clear, the Directive imposes obligations and potential liabilities regarding both actual and potential human rights and environmental adverse impacts, with respect not only to a covered company’s own operations, but also the operations of their subsidiaries and their business partners in their chain of activities, both upstream and downstream.[[47]](#footnote-48)

Separately from the specific requirements of due diligence in the environmental and human rights spheres, companies have a general obligation under the Directive to adopt and put into effect a transition plan to ensure the company’s business model and strategy are compatible with the transition to a sustainable economy and the limiting of global warming to 1.5°C.[[48]](#footnote-49) The requirement in previous versions of the Directive that larger companies must promote the implementation of the transition plan through financial incentives for directors and other senior officers has been deleted.

The core obligation imposed by the CSDDD is contained in Article 4, by which covered companies must conduct risk-based HREDD by:

1. Integrating due diligence into company policies and risk management systems;
2. Identifying and assessing actual or potential adverse human rights and environmental impacts;
3. Preventing and mitigating potential impacts and ending actual impacts and minimising their extent, including by remediation and meaningful engagement with stakeholders;
4. Establishing and maintaining a notification mechanism and complaints procedure;
5. Monitoring the effectiveness of their due diligence policy and measures taken; and
6. Publicly communicating on due diligence, including by publishing on their website a sufficiently detailed annual statement.

An ‘adverse environmental impact’ means an adverse impact on the environment resulting from the breach of the prohibitions and regulations listed in the Annex to the Directive.[[49]](#footnote-50) The Annex refers to Articles 1, 6(1), and 27 of the International Covenant on Civil and Political Rights (ICCPR), and Articles 1, 2, 11, and 12 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR), specifically regarding:

1. environmental degradation (including, *inter alia*, water pollution, harmful emissions, and deforestation) where this impairs food production; denies access to safe drinking water; makes access to sanitary facilities difficult; harms health and safety; or substantially adversely affects ecosystems; and
2. the rights of individuals, groups and communities to lands and resources and to not be deprived of the means of subsistence.

The Annex also incorporates a range of international environmental instruments the prohibitions and obligations of which may not be breached, including, *inter alia*, the Convention on Biological Diversity (CBD); the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES); the Minamata Convention on Mercury; and the World Heritage Convention.

An ‘adverse human rights impact’ means an impact on persons resulting from:

1. an abuse of one of the human rights listed in the Annex as those rights are enshrined in certain listed international instruments; as well as
2. an abuse of a human right not specifically listed in the Annex, but included in the listed international instruments, as long as the human right in question can be abused by a company or legal entity, the abuse directly impairs a protected legal interest, and the company could have reasonably foreseen the risk of such abuse.[[50]](#footnote-51)

The Annex includes a broad catalogue of human rights given specific protection. The listed international instruments are the ICCPR, the ICESCR, the Convention on the Rights of the Child (CRC), and eight ILO core/fundamental conventions.[[51]](#footnote-52) Notably, the Commission’s original proposal (with which the Parliament agreed) to specifically protect the rights of indigenous peoples was not supported by the Council and is not in the final Directive.

Under Article 5, the due diligence policy must be developed in prior consultation with the company’s employees and their representatives, and must include a description of the company’s approach to due diligence; a code of conduct to be followed by the company, its subsidiaries, and its direct or indirect business partners; and a description of the policies put in place to integrate and implement due diligence, including measures taken to verify compliance with the code of conduct and to extend its application to business partners.

In seeking to prevent potential adverse impacts, covered companies must provide targeted and proportionate support for SME business partners where necessary in light of the resources, knowledge and constraints of the SME, including capacity-building and training. Where compliance with the covered company’s code of conduct or prevention action plan would jeopardise the viability of the SME business partner, covered companies must provide targeted and proportionate financial support, such as direct financing, low-interest loans, sourcing guarantees, or assistance in securing financing.[[52]](#footnote-53)

Under Article 9, covered companies must provide a mechanism whereby natural and legal persons, trade unions, and civil society organisations can submit complaints where they have legitimate concerns regarding actual or potential adverse impacts, and this mechanism must be fair, publicly available, accessible, predictable and transparent. In addition, EU Member States must designate independent national supervisory authorities to supervise compliance with the Directive,[[53]](#footnote-54) with adequate powers and resources, including the powers to investigate; to order cessation of infringement; and to impose penalties.[[54]](#footnote-55) These supervisory authorities must also provide easily accessible channels through which natural and legal persons can submit substantiated concerns.[[55]](#footnote-56)

The Directive provides for penalties for infringement, which must be ‘effective, proportionate and dissuasive’.[[56]](#footnote-57) The maximum pecuniary penalty may not be less than 5% of the company’s net worldwide turnover. The Directive also imposes civil liability for damage caused to natural or legal persons in certain cases and under certain circumstances.[[57]](#footnote-58) Importantly, companies are not liable for damage caused only by supply chain business partners,[[58]](#footnote-59) and, despite widely-publicised initial proposals, the final Directive leaves company directors’ duty of care unaffected.

### 2.1.3 EU Regulation on Forced Labour

On 5 March 2024, the European Parliament and Council reached a provisional agreement on a Forced Labour Regulation (FLR),[[59]](#footnote-60) originally proposed by the Commission in September 2022. The text is now awaiting approval.

The FLR builds on existing national and EU due diligence and reporting requirements[[60]](#footnote-61) by putting into place investigatory and enforcement institutions and mechanisms in order to prevent the importation into and sale within the Union of products made with forced labour. However, the FLR differs from the EUDR and the CSDDD in important ways. It focuses on products themselves, not on supply chains, individual companies, or forms of corporate structure. Moreover, its scope and application are not inherently sectoral or limited only to larger operators.

The key prohibition is a simple and broad one, contained in Article 3: ‘Economic operators shall not place or make available on the Union market products that are made with forced labour, nor shall they export such products’. As such, the Regulation covers all companies placing or making available products on the Union market or exporting products from the Union[[61]](#footnote-62) regardless of the place of incorporation or size of the company, and specifically covers distance selling, whether online or otherwise.[[62]](#footnote-63)

‘Forced labour’ in this context is defined by reference to Article 2 of ILO Convention no 29.[[63]](#footnote-64)

Each Member State must designate one or more competent authorities responsible for implementing the Regulation.[[64]](#footnote-65) Being a Regulation rather than a Directive, enforcement is relatively centralised under Commission control, with the establishment of a Union Network Against Forced Labour Products to serve as a platform for structured coordination and cooperation between the national competent authorities and the Commission. The Network is chaired by the Commission, which coordinates its work, including the identification of common enforcement priorities and contribution to the development of the Regulation’s guidelines (on which more below).[[65]](#footnote-66)

The Commission must establish an indicative, non-exhaustive database of evidence-based, verifiable, and regularly updated information of forced labour risks in specific geographic areas or with respect to specific products or sectors, prioritising the identification of widespread and severe forced labour risks.[[66]](#footnote-67) Accordingly, though the Regulation itself is universal in scope, in practice enforcement is likely to be focused on the geographic areas, products, and sectors highlighted in the database.

Any natural or legal person, or any association without legal personality, may submit information on alleged violations of the Regulation through a single information submission point, which information will be assessed by either the Commission or the relevant national competent authority, depending on the circumstances.[[67]](#footnote-68)

Though the Regulation does not generally distinguish between SMEs and large companies, the Commission is obliged to develop measures to support the efforts of economic operators and their supply chain business partners, in particular micro-, small-, and medium-sized enterprises. National competent authorities may also organise training for operators on forced labour risk indicators, and on how to engage with authorities during an investigation.[[68]](#footnote-69)

Within 18 months of the Regulation coming into force, the Commission must publish guidelines on forced labour for companies, competent authorities, customs authorities, Member States, and civil society. These guidelines must include, inter alia, guidance for companies on due diligence in relation to forced labour, taking into account applicable national and EU legislation; information on risk indicators of forced labour, including on how to identify them; guidance for civil society on how to submit information; and guidance for Member States on the calculation of financial penalties.[[69]](#footnote-70) As was the case with the database, above, the guidelines are indicative of the Regulation’s general approach, which is to set out at a high level of abstraction the fundamental principle that that products made with forced labour are prohibited, while leaving the detail of how this prohibition is to be enforced to more specific (and easily-amended) subsidiary measures.

The database, the information submission point, the guidelines, and the list of designated competent authorities are to be made available in a Forced Labour Single Portal established by the Commission,[[70]](#footnote-71) along with other information.

Article 13 requires the Commission, as appropriate, to cooperate and exchange information with the authorities of third countries, international organisations, civil society representatives, trade unions, business organisations and other relevant stakeholders.[[71]](#footnote-72) Importantly for the EU DAG under the Japan-EU EPA, this cooperation is to take place in a structured way, for example in the context of existing dialogues regarding the implementation of TSD commitments under trade agreements with third countries.

The overall approach to investigations under the Regulation is to be risk-based, having regard to:

1. the scale and severity of the suspected forced labour;
2. the quantity or volume of products resulting from forced labour; and
3. the share in the final product of the part suspected to have been made with forced labour.[[72]](#footnote-73)

Where forced labour is suspected, the process is divided into three stages: preliminary investigation;[[73]](#footnote-74) the investigation proper;[[74]](#footnote-75) and the decision.[[75]](#footnote-76)

In the preliminary stage, the competent authority (either a national authority or the Commission) shall request information from the companies under assessment (and, where relevant, their suppliers) on the HRDD actions they have taken to identify, prevent, mitigate, bring to an end, or remediate the risk of forced labour. Companies have 30 days to provide this information.

If, on the basis of this or other information, the competent authority finds that there is a substantiated concern of violation of the Regulation, the authority may proceed to a full investigation, which may involve further requests for information; interviews with any relevant natural or legal person who consents to be interviewed; and, in exceptional situations where it is deemed necessary, field inspections. In the case of field inspections outside the territory of the Union, the Commission may only carry out such inspections with the consent of the companies and the government of the third country concerned.

Following the investigation, the relevant authority must come to a decision as to whether the prohibition in Article 3 has been breached. Authorities must endeavour to do so within nine months of initiating the investigation, but this is not a binding time limit.[[76]](#footnote-77) Where a violation of Article 3 has been found, the relevant authority must prohibit the offending products being place on the market or exported; order the company to withdraw the offending products; and order the products to be disposed of,[[77]](#footnote-78) either by recycling, donation (in the case of perishable goods), or being rendered inoperable.[[78]](#footnote-79)

In the event of failure to comply with a decision, the competent authority may impose effective, proportionate, and dissuasive penalties, which must take into account the gravity and duration of the infringement; the company’s past infringements, if any; the company’s degree of cooperation with the competent authority; and any other mitigating or aggregating factor.[[79]](#footnote-80) The Regulation does not set any lower or upper limit on the amount of any pecuniary penalty, but does require Member States when laying down the rules on penalties to ‘take utmost account’ of the guidelines published by the Commission under Article 11.

## 2.2 Japan’s Guidelines on Respecting Human Rights in Responsible Supply Chains

Unlike the EU, the Japanese Government has not yet adopted any mandatory HREDD. However, in September 2022 it published the non-binding Guidelines on Respecting Human Rights in Responsible Supply Chains.[[80]](#footnote-81) These Guidelines, which are based on the UNGPs, the OECD Guidelines for Multinational Enterprises, and the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy,[[81]](#footnote-82) encourage businesses to respect human rights and carry out due diligence. They apply to all companies and independent contractors doing business in Japan, regardless of sector or size, and extend to their group companies, suppliers, and other linked entities.

The Guidelines make three primary recommendations to Japanese companies:

1. establish a human rights policy;[[82]](#footnote-83)
2. conduct human rights due diligence;[[83]](#footnote-84) and
3. establish a grievance mechanism for individuals to report human rights concerns.

Environmental due diligence is not included in the Guidelines.

The Guidelines go on to elaborate on the process, generally following the procedures developed internationally by the OECD and others. The due diligence process involves:

1. identifying and assessing human rights impacts;
2. preventing and mitigating adverse human rights impacts;
3. tracking the effectiveness of preventing and mitigating measures; and
4. communicating and disclosing information on human rights policies and impacts.

These processes should be undertaken in continuous dialogue with stakeholders,[[84]](#footnote-85) should be iterative, and should be conducted prior to new activities or business relations, prior to decisions or changes in business operations, and in response to or anticipation of changes in the operating environment.[[85]](#footnote-86)

The guidelines also encourage a commitment not to infringe on the rights and freedoms guaranteed by the laws and regulations applicable in countries of operation, regardless of whether these are internationally recognized human rights or not.[[86]](#footnote-87)

Since the publication of the Guidelines, the Japanese government has been proceeding at pace in continuing to develop HREDD policy. Further details and examples for businesses on how to apply the Guidelines can be found in the subsequently-published ‘Reference Material on Practical Approaches for Business Enterprises to Respect Human Rights in Responsible Supply Chains’,[[87]](#footnote-88) and more specific materials on sectors of note, including the agricultural sector,[[88]](#footnote-89) are expected to follow. The Ministry of the Environment released a handbook on environmental due diligence in May 2023.[[89]](#footnote-90) The Japanese government has also been engaging in cooperative international efforts on forced labour and human rights in supply chains.[[90]](#footnote-91)

# 3. Specific and Sectoral Risks

As increasing numbers of jurisdictions put in place mandatory HREDD laws, companies will need to be particularly alert to how these requirements apply within their supply chains. This is made more difficult by the generally fragmented and non-unified nature of HREDD rules globally (as emphasised by business representatives interviewed for this study), and can be especially challenging for those businesses sitting in the middle of the supply chain, which may not have direct oversight of or access to production facilities further down the chain. The shifting global geopolitical context also means that the level of risk in different jurisdictions may change over time,[[91]](#footnote-92) and businesses will need to be responsive to this in order to continue fulfilling their obligations.

The EU and Japan are major trading partners, with Japan as the EU’s second-biggest trading partner in Asia and its seventh-biggest overall.[[92]](#footnote-93) The biggest import sectors from Japan to the EU are machinery, motor vehicles, chemicals, optical and medical instruments, and plastics.[[93]](#footnote-94) However, imports of animals and animal products, foodstuffs, textiles, wood, and other products are also notable. Where these products and their importers and traders are covered by HREDD obligations, they will need to conform with the standards set by the EUDR, the eventual CSDDD and FLR, and other rules. This may require significant action on the part of companies operating in ‘high risk’ sectors such as textiles and fisheries, or with strong ties to ‘high risk’ countries in Southeast Asia and elsewhere.

Moreover, the effort needed carries with it the risk of perverse outcomes, against which both EU and Japanese regulators, businesses, and civil society will need to remain vigilant. A general problem highlighted by representatives of businesses interviewed for this study is the danger that HREDD could disadvantage law-abiding companies that go to the effort and expense of complying with their legal obligations in good faith, if they are undercut by less scrupulous competitors that may cut corners or act in bad faith rather than diligently follow the rules. Social auditing, which has often been used by European businesses to address human rights and labour concerns, has a history of corruption that undermines the value of the auditing process itself.[[94]](#footnote-95) There are legitimate concerns that some businesses or industries will develop, foster, or engage in corruption to achieve a semblance of compliance while not in reality undertaking the work necessary to comply with HREDD rules. Covered businesses will therefore need to be careful to conduct their due diligence processes with regard to the risk of corruption and falsification, as noted specifically in the EUDR.[[95]](#footnote-96)

The available evidence suggests that there is much to be done for both EU and Japanese businesses to be confident that they are ready for the new legislation. Prior to the adoption of the Guidelines, in 2021 the Japanese Ministry of Economy, Trade and Industry and the Ministry of Foreign Affairs conducted a survey to determine the extent of business awareness and uptake of human rights due diligence rules. Of the 760 companies that responded, 1 in 5 reported having no human rights guidelines or safeguards.[[96]](#footnote-97) While half of companies reported that they had implemented human rights due diligence, only 25% of these had done so with respect to indirect suppliers.[[97]](#footnote-98) A June 2021 poll by Nikkei Asia found that only 12% of Japanese companies had adequate risk assessment processes.[[98]](#footnote-99) Noting these and other statistics, a study published by the World Benchmarking Alliance and the Business and Human Rights Resource Centre in 2022 concluded that while leading companies had made good progress in adopting responsible practices, there remained a ‘clear gap’ between the commitments that many Japanese companies had made on paper and their actions in practice.[[99]](#footnote-100) While reports of increased uptake of HREDD since the adoption of the Guidelines are promising,[[100]](#footnote-101) a good deal of work remains to ensure that trade relationships between Japan and the EU are due diligence-ready, and can continue to thrive.

In terms of domestic Japanese law, there is still a need to ratify two ILO fundamental conventions:[[101]](#footnote-102) Convention no 111 on Discrimination (Employment and Occupation) of 1958 and Convention no 155 on Occupational Safety and Health of 1981.[[102]](#footnote-103) While the current text of EU due diligence legislation does not require such ratification per se, adverse human rights impacts within the draft CSDDD are defined by reference to international human rights instruments as noted above, including ILO Convention no 111, which could raise issues for businesses that are not meeting the standards set out therein. Concerns have also been raised regarding some domestic Japanese rules and practices, such as the Technical Intern Training Programme, which has been criticised for its potential to cause exploitation of workers from developing countries who do not have access to effective grievance mechanisms to report violations of their labour rights.[[103]](#footnote-104)

A particular issue noted by business representatives interviewed for this study is the Japanese legislation protecting subcontractors from undue burdens imposed by business customers.[[104]](#footnote-105) It is important that small businesses are protected in this way, as discussed in the recommendations below. However, larger Japanese businesses are cautious about this law, and will need reassurance that by working with suppliers to conform to HREDD standards, as discussed in Key Recommendation 1 below, they are not opening themselves to liability under the Subcontractor Act.

Outside of the specifically Japanese legal context, Japanese businesses that are themselves covered or that trade with other businesses covered by EU rules will need to be mindful of their supply chains and ensure that they meet the standards set by HREDD rules. This will be particularly challenging for businesses that trade in ‘high risk’ products or source inputs from ‘high risk’ countries.

The Global Slavery Index ranks Japan as second in the world behind the US (and ahead of Germany in third place) for countries at risk of importing products produced in conditions of modern slavery, noting the electronics, garments, textiles, fish, and solar panels sectors in particular.[[105]](#footnote-106) At-risk imports from China and Malaysia are of concern in the electronics sector, where Japan’s import risk is second in the world, and from Brazil, Argentina, China, Bangladesh, India, Malaysia and Viet Nam in the garments sector, where Japan’s risk is third in the world, following the US and Germany. With regard to textiles and garments, civil society organisations continue to report risks to human rights and labour rights within Japanese supply chains. For example, the Business and Human Rights Resource Centre has raised concerns regarding the treatment of garment workers in Myanmar whose products are sold on to Japanese retailers;[[106]](#footnote-107) and the US recently denied entry to a shipment of clothing from Japanese company Fast Retailing (which owns Uniqlo) due to concerns regarding the use of forced labour in Xinjiang, China.[[107]](#footnote-108)

In the fisheries sector, the Global Slavery Index ranks Japan’s risk of importing products made with forced labour highest in the world.[[108]](#footnote-109) Fisheries at risk include those in Ghana, China, Taiwan, Thailand, and Indonesia. Concerns regarding illegal, unreported and unregulated (IUU) fishing in China, for example, were placed prominently on the agenda following the graphic reports of human trafficking and severe human rights and labour abuses aboard the *Long Xing 629* in 2020.[[109]](#footnote-110) As Japan is one of the world’s largest seafood importers, with China as a major source for imports, Japanese seafood supply chains are at particular risk.[[110]](#footnote-111) Indeed, the Environmental Justice Foundation has identified instances of labour violations, human rights abuses, and environmental harm caused by Chinese vessels exporting seafood to Japan.[[111]](#footnote-112)

Palm oil is another sector of concern, and is one of the commodities covered by the EUDR in addition to being subject to other due diligence rules. The EU is a major importer of palm oil and palm oil products, and will require mandatory due diligence systems to be put in place for imports originating from Indonesia, Malaysia, Colombia, and other important production centres. This will affect Japanese businesses that work with covered palm oil products, which are in large part imported from these same sources.[[112]](#footnote-113)

Recognising these concerns, the Japanese Government has been working to support the efforts of companies to strengthen their human rights due diligence processes, for example through the ILO’s ‘Building Responsible Value Chains in Asia’ project that targets the garment and electronics industries in Bangladesh, Cambodia, and Viet Nam,[[113]](#footnote-114) all of which have links to Japanese industry, and the UNDP B+HR Project,[[114]](#footnote-115) which supports 17 countries with connections to Japanese supply chains in implementing the UNGPs.

# 4. Recommendations

The primary responsibility for compliance with mandatory EU HREDD rules will fall on businesses who import, market, or export relevant products in the EU, or who have subsidiaries within the EU. Because of the potentially severe consequences of failure to comply with the legislation, covered businesses will be keen to ensure that suppliers are aware of the applicable regulations, that they source products responsibly, and that they can demonstrate compliance with EU requirements via appropriate documentation. The implementation of the EUDR, CSDDD, FLR, and other rules may result in shifts to supply chains, and all business should be aware that covered businesses may begin to include due diligence requirements in supply contracts. Though this may present a challenge, it also represents a significant opportunity for responsible businesses: Japanese businesses have been quickly adapting to HREDD, and may benefit if they can demonstrate to EU partners that they can offer due diligence-compliant activity chains, procedures, and documentation. It also represents an opportunity for civil society to work with businesses in developing robust HREDD practices and a culture of compliance.

In order to prepare for the expansion of HREDD, businesses should act now to put robust policies and practices into place so that they are able to demonstrate their compliance with the rules. It is strongly recommended that companies ‘aim high’ with their policies and due diligence processes, so that they will remain in compliance with the expanding number of mandatory HREDD rules that countries around the world are enacting, and be well-placed to capitalise on the growing market for compliant products. ‘Aiming high’ was particularly emphasised by civil society representatives interviewed for this study: if companies base their culture and practices on the fundamental principles of the UNGPs and a genuine and principled commitment to HREDD, then compliance with the specific requirements of any given legislative regime becomes far easier, given that the fundamental processes will already be in place. This form of ‘future-proofing’ the business should extend not just to those businesses already covered by expanding EU regulations but also to those who interact with covered businesses. For example, institutional investors seemingly fall outside the scope of many regulations, but their relationships to human rights abuses and environmental or climate degradation will inevitably come under future scrutiny. Investors should be proactive, and engage effectively to support and pressure investees to adopt necessary reforms.

To assist in this process, this section outlines four categories of ‘key recommendations’ for assisting businesses, trade unions, NGOs and other stakeholders in thinking through how to prepare for and facilitate the implementation of mandatory HREDD rules.

## Key Recommendation 1: Capacity-Building Within Supply Chains

Implementing mandatory HREDD will be challenging across all sectors and all types of business. However, it will pose particular difficulties for SMEs and smallholders, which may lack the capacity, expertise, and experience necessary for compliance.

One concern that can arise is that large companies may be unwilling to invest in capacity-building for their suppliers and may instead choose to turn to larger or more connected suppliers who are more easily able to meet the demands of HREDD traceability requirements. This would be problematic, as it could exclude those who are already in situations of vulnerability and precarity from opportunities to develop their business and improve their environmental and human rights practices.

In the case of the EUDR, for example, the European Feed Manufacturers’ Federation has pointed to logistical difficulties posed by the Regulation, as middlemen and aggregators in the feed supply chain may be unwilling or unable to collect geolocation and traceability data from smallholders due to the complexity of local legal requirements, the absence of clear land title, or the need to comply with data protection rules.[[115]](#footnote-116) These difficulties present a shared challenge for EU and Japanese businesses, and therefore an opportunity for collaboration, whereby EU and Japanese businesses work together to ensure that suppliers have the resources, expertise, and support necessary to fulfil the requirements of the Regulation and to continue operating as due diligence-compliant suppliers.

Best practice within the field of business and human rights is that ties with existing suppliers should not be cut, but instead businesses should work with suppliers to develop the capacity to implement HREDD requirements.[[116]](#footnote-117) Practically speaking, this entails several key points.

First, businesses need to develop stable relationships with their suppliers, in particular where these are SMEs or smallholders. Unstable contractual relationships can cause small businesses or individual producers to undervalue or devalue compliance with HREDD as they cannot be assured of continued supply agreements and the income that these generate. Research shows that even before the Covid-19 pandemic, purchasing practices in textile manufacturing and fashion had a significant impact on working time, contractual terms, and compensation, with additional impacts on health and safety, child labour, forced labour, freedom of association, and discrimination.[[117]](#footnote-118) The Covid-19 pandemic exacerbated these issues.[[118]](#footnote-119) Incentivising compliance requires a degree of predictability and trust.

As Global Compact Germany explains, there are already clear examples of these good practices.[[119]](#footnote-120) One German textile company with supply chains in contexts with known human rights risks has ‘supplier relationships [that] have existed for more than 25 years. The retailer makes sure to place its orders well in advance throughout the year to prevent high-stress peak production times and to enable plannability in the factories. This fosters mutual trust and cooperation.’[[120]](#footnote-121) Similarly, in the agricultural sector, Tony’s Chocolonely addressed HREDD problems within a fragmented and diverse supply chain by bringing cocoa co-op managers into their supply chain oversight systems and agreeing to annual planned production volumes with the co-op managers.[[121]](#footnote-122) A report for the ILO found that ‘placing consistent orders’ can help motivate better HREDD practices, as can adequately planning orders with suppliers.[[122]](#footnote-123)

As the ILO explained, ‘smaller buyers often do not have power over the supplier’ so a good practice is ‘to ask the supplier how much time he needs from the placement of the order to delivery – and to accept this time.’[[123]](#footnote-124) While this can result in longer lead times, it also reduces pressure on the suppliers and can create long-term relationships that ‘build trust and thus facilitate the interactions between the buyer and the supplier because the supplier understands more quickly what the buyer wants and … is more open and willing to move towards the buyer’s main requirements.’[[124]](#footnote-125)

Second, businesses should consider whether the amount they are paying for relevant goods and services provides the requisite capital for putting in place HREDD systems. These costs should not be borne entirely by suppliers—indeed, the draft CSDDD requires that covered businesses support their suppliers where necessary, and Japanese suppliers may need to be cautious regarding the application of domestic law that would limit the burden they place on other businesses.[[125]](#footnote-126) Where the cost of goods is too low or the nature of orders too variable, suppliers may not have the resources or capacity to develop additional systems or to address insufficiencies when those are identified. Good businesses have chosen to invest in their SME partners and provide not just greater predictability but also increased payments where necessary so that suppliers have the flexibility and resources necessary to meet the demands of HREDD. For example, L’Oréal is working diligently to address living wage issues, pledging that their suppliers will be paid a living wage by 2030.[[126]](#footnote-127) Tony’s Chocolonely has taken several steps to create a collaborative environment within the supply chain that accounts for the pricing necessary to provide stable jobs with appropriate pay:

Tony’s … hosts a kick-off event for the annual supply cycle, which brings together farming co-ops, NGOs, and certification bodies along with representatives of other supply chain players including Tony’s main chocolate producer, Swiss-based Barry Callebaut, and leading cocoa bean traders. The group reviews the previous season, aligns plans for the upcoming season, and discusses market risks and opportunities. These events serve to make the various stakeholders feel like partners in a system rather than anonymous counterparties.[[127]](#footnote-128)

Third, businesses should help suppliers make strategic connections with other suppliers of a similar nature, whether this is industry-based or location- or size-based, so that they can develop best practices and learn from one another’s mistakes.[[128]](#footnote-129) Large businesses often have such networks already in place, and share information and best practices with others in the industry and location, allowing for peer learning that enhances compliance across the industry. However, SMEs and smallholders may not have these same kinds of networks in place because of their size and limitations within their industries. Giving them the opportunity for peer learning, both from similar businesses as well as from other links in the supply chain, can help them to develop good practices and prevent the repetition of mistakes or problematic behaviours.[[129]](#footnote-130) As reported by the respected business and human rights advisory organisation Shift:

Participating in peer-learning networks helped a number of SMEs to further crystallise their work on human rights within the organisation, helping them to understand how to better manage human rights risks, and supporting them to make the case that maintaining a focus on human rights is important and that any challenges are also common for industry peers.[[130]](#footnote-131)

Shift also noted that some SMEs ensure that peer-to-peer learning reaches the workers. One small business owner ‘introduced WhatsApp groups to disseminate information on worker rights, as well as fortnightly employee dialogue meetings without management to encourage peer-to-peer learning and to provide a forum for discussion.’[[131]](#footnote-132)

Fourth, businesses need to recognise and communicate that audits are not synonymous with due diligence: audits are merely one part of the due diligence process. By helping suppliers and collaborators understand the relationship between audits and due diligence, larger businesses can facilitate a more transformative approach to due diligence that meets both the letter and spirit of the law, so that all businesses in the supply chain become ‘future-proof’ against further legislative initiatives.

Fifth, larger businesses should have easy-to-understand common forms and documents. The proliferation of different requirements, different types of paperwork, different questionnaires, and so on is inefficient and difficult for businesses of all sizes (as pointed out by some interviewees). However, a proliferation of forms is particularly difficult to manage for smaller businesses and producers who may be overwhelmed by the volume and range of requests for information. The creation of a standardised set of questions and forms for reporting would greatly ease this burden. Consideration should also be given to simplicity of language within the forms and to the need for free translation services in regions where literacy rates even among business leaders may not be high. This is something that organisations might be able to work together to improve.

Each of these processes should be cyclical and iterative so that they build on and enhance due diligence processes on the basis of lessons learned rather than replicating errors.

## Key Recommendation 2: Collaboration among Covered Businesses

There are already a number of business organisations and associations in both Europe and Japan that have experience fostering collaboration and discussion among businesses regarding regulatory barriers and best practices with respect to business and human rights. This needs to be enhanced and expanded to ensure that businesses are in a good position to comply with HREDD, including through developing standardised questionnaires for suppliers (as noted above) and sharing best practices for policies and procedures within and across sectors.

The sharing of information on sources and suppliers, particularly where those suppliers serve multiple businesses, would make compliance more efficient and less burdensome for smaller businesses in the supply chain. Relatedly, covered business should pool resources (insofar as competition law allows) to support common suppliers in developing internal HREDD systems and completing the required steps for HREDD. For example, following the notorious Rana Plaza disaster, private sector garment companies and global and local unions worked to establish the Accord on Fire and Building Safety in Bangladesh, which provides a standard set of policies and practices for those producing garments within Bangladesh.[[132]](#footnote-133)

Resource-pooling can also be advisable for investigating where allegations have arisen, including developing common reporting mechanisms for rightsholders and other stakeholders, as will be discussed below. Over 220 signatory companies to the Bangladesh Accord provide contributions ‘on a sliding scale proportional to the volume of each company’s garment production in Bangladesh (and subject to a cap of $500,000)’ which allowed the Accord (and later the RMG Sustainability Council, which has taken over from the Accord) to establish routine and independent inspections of factories and an independent remedial mechanism.[[133]](#footnote-134)

The development of common remedial mechanisms can help ensure predictable processes and independence in their assessment, and the development of trust with rightsholders and other stakeholders. Similar to the Bangladesh Accord, the sustainable business association Amfori worked with its members to establish a common remedial process, Amfori Speak for Change, which currently operates in Viet Nam, Türkiye, Bangladesh, and India.[[134]](#footnote-135) The process provides a common code of conduct and different means for workers and communities to raise complaints, which can then lead to an independent investigation that Amfori collaborates in.[[135]](#footnote-136) According to Amfori,

if the investigation handler confirms that the complaint is grounded, a remediation process sets in, including all involved parties: not just the initial business partner, but all Amfori members linked to that business partner and relevant stakeholders. Such collaboration on the case is designed to avoid duplication, increase Amfori members’ leverage, and provide actionable insights for all.[[136]](#footnote-137)

Where appropriate, industries can also develop standards and certification regimes demonstrating that suppliers understand HREDD rules and processes (though this certification must not replace iterative due diligence processes).

Importantly, guidance needs to be drawn up to address how these recommendations can be acted upon while still complying with competition regulations. The competition law implications of these recommendations sit beyond the scope of the current report, but the implications of competition law on sharing best practices within the context of HREDD has often been a source of concern for businesses. While the nature of HREDD suggests that competition law should not be a barrier to sharing best practices, external expertise should be secured to evaluate the legality of certain kinds of cooperation within the context of the regulations covered by this report.

## Key Recommendation 3: Collaboration between Businesses and Stakeholders

Trade unions and civil society organisations can play a key role in due diligence and accountability. Indeed, the involvement of trade unions and civil society organisations is either encouraged or required by the various regulations in the field. Even where the involvement of such organisations is not strictly required, good-faith and early engagement with independent organisations will aid companies in gathering information, designing effective policies, and implementing HREDD systems. Trust between the parties is a key factor—both the business sector and civil society must have confidence in the good faith of their counterparts.

One potentially useful practice is to develop multistakeholder initiatives (MSIs) within communities that can help identify common practices and opportunities for enhancing compliance. MSIs can be of mixed quality: some are very productive and supportive of local communities, while others serve merely to placate the need for ‘consultation’ without actually resulting in meaningful exchanges. For MSIs to be truly useful in HREDD processes, measures need to be taken to ensure rightsholders are given a greater voice than businesses. This may be counter-intuitive to business leaders, but a common problem has been that MSIs that are business-led or business-focused do not allow rightsholders to adequately voice their concerns or steer the conversation to the discussion of deep-seated problems. This can undermine the utility of the MSI by excluding opportunities for problem-sharing and can damage trust with NGOs, which can then compound the common problem of lack of engagement noted by several interviewees for this study. When business communities are beginning MSIs, they should work with experienced NGOs and academic partners to establish rules that support engagement and allow for a rightsholder-led agenda.

One problem businesses have often noted is that NGOs are unwilling to work with them or to connect them to local stakeholders. On the other hand, NGOs often suspect that businesses only seek their engagement as a box-ticking exercise. It is important for businesses to develop appropriate relationships with NGOs, but this will often require them to diligently listen rather than to direct or ‘lead’ the conversation; additionally, businesses will often need to establish a strong track record early to show real commitment to their HREDD practices, including on issues that the business may consider to be ‘minor’ but that have been raised by rightsholders, in order to develop the kind of trust necessary for regular engagement with NGOs. Where NGOs are truly unwilling to participate or to support HREDD processes, sometimes academic institutions can be strong partners that can fill this gap.

Businesses should also consider alternative means of securing support and engagement with local rightsholders and stakeholders. For example, Tony’s Chocolonely has developed an important practice to secure stakeholder involvement and to ensure compliance. Rather than relying only on auditors, which can only visit a site occasionally, Tony’s Chocolonely has community facilitators, who are from the communities they serve and who have routine conversations with employees, rightsholders and other stakeholders to help identify instances of child labour and develop individually- and community-focused remediation and solutions.[[137]](#footnote-138) By having people in the community with responsibility for identifying key issues and concerns, Tony’s Chocolonely is able to both provide a stable job for a local worker and build trust with the community, while also monitoring compliance with its cocoa supply chain standards on a more regular basis.

While European states and Japan offer many opportunities for direct collaboration with NGOs, they may face challenges where their supply chains run through less democratic regimes or in situations of conflict where enhanced due diligence should account for international humanitarian and international criminal law. During the 1990s, textile manufacturers in China faced challenges with relying on the state-run trade unions as workers’ issues were not being systematically represented or addressed. In response, large brands based in the United States developed new employee communication boards, with particular rules that ensured they did not replace but rather operated alongside the trade union. These boards, many of which were elected by workers or were developed through a process of self-selection by workers, served as a vehicle for direct communication. The broader issue of conflict-affected regimes is beyond the scope of this report, as it involves a more complex set of issues and challenges than are common within HREDD policies, but corporations should pay close attention to ongoing efforts to understand and elaborate on expectations for businesses operating in conflict-affected areas.[[138]](#footnote-139)

States, including through their local embassies, have a role to play in ‘matchmaking’ businesses and reliable or credible civil society organisations. Often, even in oppressive regimes and conflict-affected areas, European and Japanese embassies are aware of strong and independent civil society organisations that they either support, work with, or rely on for their own understanding of the situation on the ground. These embassies can support the development of HREDD collaborations by pointing businesses to trusted civil society organisations. They can also develop regular consultation and conversation initiatives that bring rightsholders and businesses together routinely to discuss problems identified during HREDD, or problems arising from policies and procedures aimed at compliance with HREDD. By hosting these kinds of events, embassies can allow businesses and NGOs to develop their own relationships so that more organic channels of communication can follow, and thus alleviate the difficulties that some business interviewees reported in finding credible and reputable civil society organisations with which to work.

When working with civil society organisations, rightsholders, and stakeholders, it is important that businesses do not just ‘take’ but that they also ‘give’ a clear benefit to these groups. This requires a level of transparency in reporting around issues identified in HREDD and the steps the business has taken to investigate issues and ensure those issues are mitigated or remediated. Businesses are often hesitant about transparent reporting on these issues, and many reports (even from well-meaning businesses with experience in HREDD) are too vague to serve as a means of trust-building with civil society organisations, rightsholders, and stakeholders. Businesses should rely on existing guidance, including the World Benchmarking Alliance’s Corporate Human Rights Benchmark,[[139]](#footnote-140) to identify the kinds of information needed for an appropriate human rights report that builds trust. In addition to fulfilling formal reporting requirements, businesses should also maintain dialogue directly with parties who have raised HREDD concerns, even when these are not the same individuals as those whose rights have been harmed. All reporting should be done in a timely manner so that civil society organisations can follow up on any outstanding or related issues, and so that the resolution of the issue not only solves the specific problem identified, but also goes towards supporting a gradual and progressive process of building up inter-institutional trust.

## Key Recommendation 4: Designing Effective Ameliorative and Remedial Systems

Businesses should develop ameliorative and remedial systems for addressing identified adverse human rights and environmental impacts of business activities. These processes need to start with confidential avenues for reporting problems, which may be local or (where the political realities on the ground necessitate) transnational, and which may be tailored to individual business or operate across a particular industry. This confidential reporting process is a necessary initial step, but is not in itself sufficient to satisfy the need for a comprehensive non-judicial grievance mechanism. Initiating a procedure should automatically trigger support systems to assist the reporter in understanding the procedure and to ensure that there is an individual capable of working with and advocating on behalf of the rightsholder. The means of initiating the process needs to be communicated routinely to rightsholders and civil society organisations in languages and forms that are accessible to those the mechanism is supposed to reach. At times, the pooling of resources (insofar as competition law allows) for a set of businesses in a geographical area or in a particular industry will be beneficial for all and increase both capacity and efficiency.

To develop an effective process, businesses should consider a range of issues, including:

* Whether the business needs its own process (where, for example, it has a streamlined supply chain that does not or rarely overlaps with others in its industry) or should work to create a common remediation process (where, for example in the textile and agricultural sectors, suppliers often serve a wide number of covered businesses from the same plant or source).
* What legal limits the remediation system faces, either as a matter of domestic law or because of the gravity and severity of the allegation. For example, it would be inappropriate for a corporate grievance mechanism to consider complaints of corporate involvement in war crimes or extrajudicial killings given their criminal nature and the severity of the harm.
* What personnel resources are needed for the remedial system to work effectively, including when technical legal expertise is needed for the grievance mechanism.

Once a business has identified an appropriate structure for its grievance processes, it should consult with civil society, labour unions, and rightsholders on the design, limits, and implementation of the processes. While consultation is always considered a good practice, there are also opportunities for co-production of non-judicial grievance mechanisms with rightsholders, civil society organisations, and labour unions, which can enhance trust in the mechanism. Whether consultation or co-production is the appropriate course of action will often depend on what is already in place within the state and the capacity of local rightsholders to speak free from political or economic pressure. The dialogue with civil society and labour unions should be iterative, with ongoing opportunities for review and revision.

Corporate grievance mechanisms and remedial processes should be accessible to affected rightsholders without restriction. This includes ensuring that rightsholders can access these processes without needing to sign away their rights to also engage with judicial grievance mechanisms where appropriate. While this is always a matter of best practice, it would be particularly problematic for a business to require rightsholders to forfeit their rights to a civil claim in certain circumstances. For example, while businesses should have processes capable of addressing the concerns of minors (particularly with regards to child labour), these remedial mechanisms should not require the minor to give up their legal rights to judicial redress in exchange for access to the non-judicial grievance mechanism. Similarly, emerging best practice with regards to sexual assault in the workplace indicates assault survivors should not be required to sign non-disclosure agreements or to forfeit their legal rights in order to secure remediation.

Businesses should report transparently on the outcomes of grievance mechanisms, and their ongoing dialogue with civil society organisations should be used to evaluate the responsiveness of the grievance mechanism to legitimate claims and risks. As with other transparent reporting processes, this needs to be done in a timely manner so that new or ongoing issues can be addressed. It is important to note, however, that in certain contexts even well-communicated processes are unlikely to be used due to issues of trust. This is where having local liaisons, such as those developed by Tony’s Chocolonely (described above), can be particularly helpful.

Some businesses have company-specific grievance and remedial mechanisms. Perhaps the most well-known is the Meta Oversight Board. The Oversight Board was created by Meta to review decisions on content moderation and free expression made by Meta on its Facebook, Instagram, and Threads platforms.[[140]](#footnote-141) There are, unfortunately, limits to the utility of the Oversight Board as a framework for non-judicial grievance procedures. The Board only takes on a limited number of ‘emblematic’ cases,[[141]](#footnote-142) and has been criticised for weak decisions and recommendations in certain controversial cases.[[142]](#footnote-143) A better system appears to be the one designed by Amfori, the Speak for Change platform discussed above, which provides for a fully-independent and cooperative investigative and remedial process that uses the leverage of all its partners to effect change.[[143]](#footnote-144)

The grievance mechanism needs to be capable of awarding effective reparatory measures that can ‘wipe out’ the consequences of a harm and which will be adhered to by the business. This can include compensation, but compensation alone is not always the best reparatory measure. Sometimes measures such as restitution of a job or of a benefit may be necessary, or rehabilitation where an individual, property, or the environment has been physically (or mentally) harmed. Other times, where an individual’s reputation has been harmed, the business may need to offer a public apology or some form of social rehabilitation. The grievance mechanism should also be able to identify and order changes to the business’s policies or practices to ensure greater respect for human rights and the environment in future.

Decisions by and reports of the grievance mechanism should serve as the starting point for a new iteration of HREDD. Lessons learned from the grievance mechanism should be included in new policies and practices, and should spur the business to begin further investigation and consultation around any particular issues and rights that were identified within the grievance process.

# 5. Conclusion

This report has outlined the major features of four HREDD regimes relevant to EU-Japan trade. As can be seen from the descriptions of these Directives, Regulations, and Guidelines, they differ significantly in terms of their scope, sectoral coverage, and the means of their enforcement. What is more, these four examples sit alongside a host of other HREDD rules that are either already in force, or in development. This complexity, however, should not mask the important underlying theoretical and principled unity of all HREDD schemes. The fundamental features of HREDD are common across these many sets of legislative requirements. In accordance with the UNGPs and the OECD guidelines, businesses should establish and implement due diligence systems consisting of:

1. information regarding the sources and suppliers of any products being placed on the market, and the human rights and/or environmental impact of these supply chains;
2. risk assessment and risk mitigation measures based on the information gathered; and
3. reporting mechanisms designed to increase transparency and enhance the effectiveness of the due diligence processes.

Business that wish to future-proof their operations in this rapidly changing regulatory environment should therefore ‘aim high’ and put in place robust HREDD systems based on international standards. In doing so, they will not only make their operations and supply chains due diligence-ready, and thereby increase their attractiveness as business partners and decrease their regulatory exposure, but also, and more importantly, they will fulfil their obligations to respect human rights and protect the global environment for future generations.

Civil society organisations and trade unions are key to the success of HREDD processes. The successful design of due diligence, mitigation, and amelioration procedures requires collaboration between business and civil society, stakeholders and rightsholders. For this to work, both business and civil society need to build relationships based on trust, transparency, integrity, honesty, and a shared commitment to shared goals. Civil society is also empowered by HREDD legislation to participate in monitoring and enforcement processes, which will create new opportunities to effect positive change.

It is hoped that the information and recommendations provided in this report can assist businesses, civil society organisations, and other stakeholders in navigating this new regulatory environment and achieving these shared goals.

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4. Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010, [2023] OJ L 150/206. [↑](#footnote-ref-5)
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11. European Commission, ‘Communication from the Commission: the European Green Deal’ COM (2019) 640 final <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2019%3A640%3AFIN>>. [↑](#footnote-ref-12)
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13. UN General Assembly, ‘Transforming Our World: the 2030 Agenda for Sustainable Development’ (GA Res 70/1, UN Doc A/RES/70/1 (25 Sept 2015)). [↑](#footnote-ref-14)
14. Charter of Fundamental Rights of the European Union [2012] OJ C 326. [↑](#footnote-ref-15)
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