



# **Requirements for effective Multi-stakeholder initiatives to strengthen corporate due diligence**

Recommendations from  
the perspective of civil society



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## SUMMARY

This position paper analyses the challenges and opportunities of multi-stakeholder initiatives (MSIs) and gives recommendations on how to initiate and implement meaningful MSIs. It builds on the position paper „[Multistakeholder-Initiativen: Grenzen und Voraussetzungen aus Sicht der Zivilgesellschaft](#)“, published in 2017 by the CorA Network for Corporate Accountability, Forum Menschenrechte, Forum Environment and Development, VENRO and the Federation of German Consumer Organisations. This update intends to contribute to the current debate on how multi-stakeholder initiatives can support corporate due diligence in light of an increasing trend towards mandatory due diligence. The focus is particularly on MSIs to strengthen the implementation of due diligence along supply chains.

The main challenges in existing MSIs have been the voluntary participation and the accompanying lack of sanctions, the high cost in relation to the usually low level of ambition, and, in the German context, the insufficient or even absent coordination between the federal ministries involved. However, MSIs can be a useful addition to regulatory measures by pooling the activities of involved stakeholders and thus extending the influence of individual companies. This requires multi-stakeholder initiatives to be used on the basis of an effective supply chain law. The mere participation in MSIs cannot be regarded as proof of compliance of human rights and environmental due diligence.

To realise the potential of MSIs, this paper identifies a number of requirements for effective multi-stakeholder initiatives. These should be taken into account both in the initiation of new MSIs (such as the NAP sector dialogues), and the future development of existing MSIs.

### **1. Sound preparation:**

Upfront, a review of existing due diligence approaches within MSIs is necessary. In addition, lessons learned from other MSIs should be taken into account, as well as avoiding the repetition of existing activities and specifically addressing gaps in the implementation of due diligence processes by companies. Thereby, new MSIs can effectively complement existing standards and initiatives.

### **2. Mandatory principles**

All MSIs should be based on the internationally recognised *UN Guiding Principles on Business and Human Rights* and the *OECD Guidelines for Multinational Enterprises*. These are based on a holistic understanding of corporate due diligence, which includes respect for human rights, environmental protection and the prevention of corruption in the up- and downstream parts of the value chain.

### **3. Binding objectives**

Objectives should be binding at the individual company-level and include deadlines. The objectives should lead to measurable changes along the supply chain, not just due diligence processes within the company.

### **4. Governance**

All groups of stakeholders should be equally involved in the planning and implementation of the multi-stakeholder initiative.

### **5. Transparency**

The MSI process should be as transparent as possible to external stakeholders and as confidential as necessary for members. Participating companies should disclose identified risks and the effectiveness of due diligence measures in order to enable effective cooperation within the MSI.

### **6. Impact measurement**

Impact orientation should be at the heart of all measures agreed within the MSI. Therefore, monitoring should be carried out regularly to check whether the measures used are suitable to improve the living conditions of workers and communities along global supply chains.

## **7. Grievance mechanisms and sanctions**

MSIs should provide a grievance mechanism open to all members, in case of a violation of the agreed objectives by a member. Moreover, the grievance mechanism should be open to NGOs, trade unions, workers and other stakeholders in case of specific problems alongside the supply chains of participating companies. Sanctions, including suspension from the MSIs, should be applied if companies repeatedly fall behind the agreed standards and fail to remedy the situation.

## **8. Enabling conditions**

Civil society organisations need to have sufficient resources for preparation of and participation in the MSIs or be provided with these resources if needed. Moreover, legal experts should accompany the process whenever required.

In addition to these requirements for preparation and implementation of meaningful multi-stakeholder initiatives, the participating stakeholders need to fulfil certain conditions and tasks. The government needs to fulfil its duty to protect human rights by creating a legal framework for the implementation of human rights due diligence. Furthermore, in the interest of policy coherence, the government should take own measures based on the results of the dialogue. Private sector actors should be open and prepared to make structural changes that go beyond the status quo. Civil society actors with relevant expertise should be well connected to further civil society organizations. However, this cannot replace the need to continuously and systematically take into account the perspective of rightsholders along the supply chains of companies.

Under no circumstances can the membership of companies in MSIs be regarded as a blanket-guarantee for the implementation of due diligence by these companies and can therefore not replace an effective supply chain law. However, considering the requirements described above, multi-stakeholder initiatives can make an effective contribution to strengthen corporate due diligence, as long as they are used in conjunction with legal measures.



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## INTRODUCTION

In order to strengthen human rights and environmental due diligence as well as corporate accountability along the supply chains of sectors, products and raw materials, so-called multi-stakeholder initiatives (MSIs) are used nationally and internationally. At present, those initiatives substitute legal regulation. These are forums, dialogues or initiatives with different forms and degrees of commitment, which include at least non-governmental organisations (NGOs), trade unions, companies and government representatives as stakeholders. In some cases, these initiatives aim to achieve concrete commitments agreed by all members, in others it is a matter of developing a social or ecological standard or certification.

In the *UN Sustainable Development Goals*, „Partnerships for the goals“ (Goal 17) play a key role in the implementation of the Agenda 2030. In Germany, the *National Action Plan for Business and Human Rights* (NAP) cites existing MSIs such as the *Partnership for Sustainable Textiles*, the *Initiative on Sustainable Cocoa* and the *Roundtable Human Rights in Tourism* as positive examples for addressing challenges in the implementation of the *UN Guiding Principles on Business and Human Rights* in business practice. Based on this, the German NAP decided to initiate multi-stakeholder forums (hereinafter referred to as „sector dialogues“) to develop sector-specific guidelines and best practice examples on human rights due diligence and German high-risk sectors.<sup>1</sup>

In view of the large number of similar initiatives at international level, civil society is repeatedly confronted with the question to which extent participation in MSIs can provide additional value. Previous experiences with MSIs, for example in the *Partnership for Sustainable Textiles*, have shown that participation in MSIs is very time-consuming and often only limited progress is made. Moreover, due to their voluntary basis, they often cover only small parts of the market and thus do not achieve the same level of due diligence by all companies.

In the light of this, the editors of this paper emphasise that strengthening corporate accountability to protect the environment and human rights should primarily be achieved through state regulation. States have the primary responsibility at national and international level for the protection of human rights. To fulfil this responsibility, they need to introduce binding regulation on corporate HRDD. Dialogue processes aimed at developing guidelines or voluntary codes of conduct for companies can complement legal instruments at best, but are no substitute for binding national and international regulation on corporate accountability.

Based on existing challenges with the instrument of multi-stakeholder initiatives, this paper therefore explains the opportunities MSIs can provide as an accompanying instrument to legal regulation and the requirements they should fulfil, in order to make a meaningful contribution to strengthen corporate due diligence.

<sup>1</sup> For a better understanding, this paper uses „multi-stakeholder initiatives“ as a generic term for partly institutionalised initiatives such as the *German Initiative on Sustainable Cocoa*, the *Partnership for Sustainable Textiles* or the *Fair Wear Foundation*, whereas „sector dialogues“ are a specific form of MSIs in the context of the German NAP. Furthermore, MSIs are to be distinguished from Sector-Standards, which are currently being discussed under a German supply chain law.

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## CHALLENGES OF MULTI-STAKEHOLDER INITIATIVES

Participation in MSIs poses numerous challenges for the stakeholders involved. In the following, particular attention is paid to experiences in existing MSIs, such as the *Partnership for Sustainable Textiles*, the *Roundtable Human Rights in Tourism*, the *German Initiative on Sustainable Cocoa* or the *Dutch International Responsible Business Conduct (IRBC) Agreements*.

- **Voluntariness leads to unequal competitive conditions**

The voluntary nature of MSIs is one of its main limitations. Companies that implement due diligence measures and make complementary and substantial contributions to MSIs, have additional expenses compared to companies that do not attempt to address human rights risks in their supply chains. Because of competitive pressure, many companies take far less ambitious measures than they would in case of a level playing field. This level playing field can only be created by mandatory HRDD regulation.

- **Lack of sanctions**

The lack of binding agreements within an MSI is, among others, based on the failure to include sanctions. Although a suspension can be called for in the event of a permanent disregard of common objectives, companies usually anticipate this step by exiting the MSIs on their own. The situation is often intensified by the weak role of government stakeholders in MSIs, which omit state pressure in favour of voluntary commitments.

- **High costs and unequal benefits**

A key challenge of all MSIs is the relationship between cost and benefit for the individual stakeholder groups. While companies receive support from MSIs in carrying out their due diligence, civil society is expected to contribute its knowledge of sector- and country-specific human rights problems, the effectiveness of due diligence measures and the perspective of rightsholders.<sup>2</sup> However, NGOs can only fulfil these expectations through a great amount of extra work, which accrues in addition to ongoing tasks and projects and is hardly feasible due to a lack of resources.

<sup>2</sup> In the context of this paper, rightsholders are understood as stakeholders such as workers, producers, communities and particularly affected groups along the supply chain of companies.



- **Low level of ambition and Civil society as a „fig leaf“**

The often low level of ambition within MSIs is an obstacle to the implementation of credible and effective due diligence measures. Many MSIs rely on the use of certifications, which are controversial in their effectiveness and therefore cannot replace companies' own due diligence processes. Existing MSIs such as the *Partnership for Sustainable Textile* show that the degree of ambition correlates negatively with the participation rate of companies: The higher the ambitions of a multi-stakeholder initiative, the lower the participation of the industry. In other MSIs, such as the *Initiative on Sustainable Cocoa*, the level of ambition is based on the lowest common denominator of what the majority of company members implement anyway (e.g. purchase of certified raw materials). Thus, these MSIs fail to constitute frontrunner initiatives. For this reason, governments and companies should purposefully integrate the expertise of civil society within MSIs, instead of using them as a „fig leaf“ for unambitious processes without real added value.

- **Rightsholders are insufficiently involved**

Stakeholders along the supply chain, i.e. producers, trade union representatives and NGOs from producing countries are generally not sufficiently involved in MSIs. A „representation“ by NGOs from the Global North is only partly possible and cannot replace the continuous integration of the perspective of those affected by human rights violations.

- **Business associations as the supposed voice of all companies**

Business associations often play a significant role in MSIs. Support for due diligence regulation by business associations would be highly welcome. Experience shows however, that business associations usually only represent the lowest common denominator of their members and therefore act as a brake on the ambitious implementation of due diligence regulations. Positions of companies that are more advanced in the implementation of due diligence are rarely represented by trade associations.

- **Lack of coordination and missing timetable for a *Smart Mix***

So far, the German government failed to communicate its strategy on how sectoral dialogues and existing MSIs on business and human rights can be integrated into a *Smart Mix*<sup>3</sup>. This is particularly apparent in the large number of initiatives developed at the initiative of the German government. As an example, a dialogue to create a set of social, ecological and economic minimum requirements for German, EU and non-EU agricultural feedstocks for

<sup>3</sup> As part of the state's duty to protect, the *UN Guiding Principles on Business and Human Rights* describe the development of a smart mix of national and international, binding and voluntary measures to promote the respect for human rights by companies (commentary on Guiding Principle 3).

the food industry was set up by the *Federal Ministry of Food and Agriculture* (BMEL) at the same time the *Initiative for Sustainable Agricultural Supply Chains* was launched by the *Federal Ministry for Economic Cooperation and Development* (BMZ), without putting the two initiatives in relation to each other. A similar picture appears from the *Roundtable Human Rights in Tourism* and the multi-actor partnerships within the framework of the BMZ's Sector Dialogue on *Tourism for Sustainable Development*. This can lead to a mutual weakening of initiatives as relevant stakeholders only have limited capacities and as companies tend to engage only in the „easier“ or more prestigious initiative.

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## OPPORTUNITIES OF MULTI-STAKEHOLDER INITIATIVES

As described above, MSIs are far from being a magic bullet and do not always act as a catalyst for efficient and effective implementation of due diligence in certain industries. However, MSIs have the potential to make a positive contribution as they increase the awareness on requirements of due diligence amongst participating companies.

- **Useful addition to legal regulations**

First, MSIs can make a contribution to the *Smart Mix* by complementing regulatory measures. In particular, the elaboration of previously defined legal due diligence can create added value for industry stakeholders. However, due to the challenges described above, participation in MSIs can in no way guarantee that companies implement due diligence requirements. The *UN Guiding Principles on Business and Human Rights* and the *OECD Guidelines for Multinational Enterprises* further emphasise that HRDD should be exercised individually by each company.

- **Leverage through coordinated action**

A unique selling point and significant value of MSIs is their potential for leverage. By combining corporate activities, the influence of individual companies can sometimes be expanded and in particular reach lower tiers of the supply chain. Therefore, the core of any multi-stakeholder initiative should be to identify and exploit opportunities for coordinated action in the area of corporate due diligence, while respecting applicable antitrust law. Examples can be:

- Identification of common challenges in the implementation of due diligence
- Development of joint measures to deal with these challenges
- Anchoring of minimum requirements for the implementation of HRDD in international standards, certifications and guidelines of business associations relevant to the sector
- Design and implementation of multi-stakeholder pilot projects including impact monitoring
- Establishment of industry-wide or cross-company grievance mechanisms

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## **REQUIREMENTS FOR MULTI-STAKEHOLDER INITIATIVES**

The previous sections identified a number of opportunities inherent to MSIs in addition to a variety of risks. To realize these opportunities and thus have a positive impact, MSIs should meet a number of requirements. In addition to the continuous integration of the rightsholders' perspective and sound preparation, these requirements include the aspects further outlined below.

## Sound preparation

- » In order to avoid parallel multi-stakeholder initiatives and to ensure they are complementary to international initiatives, existing approaches and guidelines should be reviewed before starting. It should furthermore be clear that many companies cannot be assigned to individual industry sectors and that most human rights and environmental risks affect several sectors from a certain stage of the supply chain onwards. Therefore, lessons learned from MSIs in other sectors have to be taken into account.
- » The review should take into account the extent to which MSIs involve all relevant stakeholders<sup>4</sup>, explicitly including rightsholders and those affected.
- » Before initiating MSIs, it is necessary to analyse at which level the different issues can be most effectively addressed (at sectoral level or below; at national, European or international level).<sup>5</sup> This is important because global business activities of many companies require cooperation, e.g. between producing countries and their governments, in order to strengthen the implementation of human rights due diligence.
- » Based on this, new MSIs should specifically close the gaps in companies' due diligence practices that were identified during the review process.

### HANDS-ON EXPERIENCE:

In the Netherlands, a cross-industry cooperation between the *Dutch Banking Sector Agreement* and the *Responsible Gold Agreement* has helped to identify significant risks of corporate loans for gold-related businesses.

## Mandatory principles

- » MSIs should strengthen internationally recognised frameworks, rather than developing new or even weaker standards on corporate due diligence. The basis for MSIs should therefore be the *UN Guiding Principles on Business and Human Rights* and the *OECD Guidelines for Multinational Enterprises*. Therefore the respect for human rights, environmental protection and the prevention of corruption are embedded in corporate due diligence.

<sup>4</sup> Government, industry (companies, associations), trade unions, civil society, rightsholders <sup>5</sup> This recommendation is based on the evaluation by the *Social and Economic Council of the Netherlands (SER)* of the *International Responsible Business Conduct Agreement*, which was jointly adopted in the Netherlands by companies, government, civil society and trade unions. For further information see SER (2014): [Advisory Report – Agreements on International Responsible Business Conduct](#)

- » If available, the sector-specific guidelines of the OECD should also be used as guidelines for action.<sup>6</sup> In order to ensure that the MSIs and the measures and products developed (e.g. guidelines for action) do not fall short of these requirements and add to international standards, a review by the OECD should be sought. Any recommendations resulting from this review should be considered for a future revision of the MSIs.
- » The entire supply chain should be subject to HRDD, i.e. from the extraction of raw materials to the disposal or recycling of end products.
- » The risk analysis should identify all risks and then prioritize the „most severe“ risks to human rights, instead of the most economically relevant ones for the company.
- » The risk analysis should take into account that risks can affect women differently from men. For this reason, a gender-sensitive monitoring should be used regularly to assess whether the due diligence measures are suitable for improving the living situation of female rightsholders, such as workers and producers.
- » Consultations with local stakeholders, i.e. rightsholders in production and mining sites as well as neighbouring communities, should form the basis for risk analysis, impact assessments and ensuing due diligence measures.
- » The root cause analysis needs to consider all factors influencing social and environmental issues along the supply chains and address these accordingly. This also includes structural causes of human rights violations such as purchasing practices.
- » Living wages and living income should be a central reference point for all multi-stakeholder initiatives. The MSI's objectives and measures need to reflect this.

## HANDS-ON EXPERIENCE:

In the case of the *Partnership for Sustainable Textiles*, the review of criteria by the OECD in 2019 has helped to identify necessary improvements to meet the *OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector*. This will increase the international connectivity of the initiative.<sup>7</sup>

<sup>6</sup> There are currently sector-specific OECD Guidance for Responsible Agricultural Supply Chains (2016), Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (2016), Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector (2017), Responsible Business Conduct for Institutional Investors: Key Considerations for Due Diligence under the OECD Guidelines for Multinational Enterprises (2017) and Responsible Supply Chains in the Garment and Footwear Sector (2018). <sup>7</sup> *Partnership for Sustainable Textiles* (2020): [OECD published results of the Alignment Assessment](#)

- » Audits and certifications can be used as support but should not be used as the only measures to exercise due diligence. If used, they should meet minimum quality standards.<sup>8</sup>
- » Due diligence should not be passed on along the supply chain from companies to suppliers. Instead, companies and manufacturers should empower and support the stakeholders along their supply chains to implement due diligence. Appropriate measures for enforcement should be integrated into contracts.
- » In addition to the empowerment of suppliers to implement due diligence, activities of the MSIs should aim to strengthen the capacities of rightsholders. This can be achieved, for example, by establishing local structures to be included in monitoring and grievance mechanisms.
- » Besides the implementation of effective grievance mechanisms, access to remedy is a central part of human rights due diligence.

## Binding objectives

- » Objectives should be binding at the individual company-level and include deadlines. Moreover, it should be agreed on successive improvements.
- » The starting point for objectives should be measurable changes along the supply chain, not just due diligence processes within the company. The impact on the origin countries needs to be included in the monitoring system of the MSI.

## Governance

- » In accordance to the multi-stakeholder approach, all stakeholders should participate equally in planning, decision-making and implementation bodies. This ensures greater acceptance among the stakeholders and the subsequent implementation of the MSI's agreements.
- » Rules of cooperation as well as decision-making should be drawn up by mutual agreement.

<sup>8</sup> These include transparency of audit results, involvement of rightsholders, independence of auditors, payment for the audit by an independent organisation and collaborative development and follow-up of action plans. See *Clean Clothes Campaign* (2019): [Fig Leaf for Fashion. How social auditing protects brands and fails workers](#) and CorA (2015): [Siegel, Standard-Systeme und gesetzliche Regelungen zur Durchsetzung von Arbeits- und Menschenrechten](#). At the same time, auditors liability should be created, see Terwindt, C. & Burckhardt, G. (2019): [Social audits in the textile industry: How to control the controllers?](#)

- » Inspection, verification and certification organisations should not be equated with NGOs and trade unions, but categorized as a separate stakeholder group.
- » A supporting secretariat and, if necessary, a host, should be independent of all stakeholders and appointed by mutual agreement. Both should have expertise in the area of corporate accountability and be familiar with the relevant international standards (UN Guiding Principles, OECD Guidelines and sector-specific standards).

## Transparency

- » The dialogue should be as transparent as possible for external stakeholders. Therefore, the following information should be published:
  - Participating stakeholders including possible exits or suspensions
  - Decision-making structures
  - Sanctions
  - Individual and, if applicable, common objectives as well as the steps for implementing them
  - Monitoring reports
  - Financial structure
- » As part of the dialogue, companies involved should disclose identified risks as well as the effectiveness of their due diligence measures in order to enable effective cooperation within the MSIs.

### HANDS-ON EXPERIENCE:

In the Dutch *Agreement on Garments and Textiles*, companies provide the MSIs secretariat with a [list of production sites](#), which is collected and published. This makes it possible to identify common suppliers and possible leverage effects, while also respecting possible trade secrets and being able to link complaints to participating companies.

! However, this approach via anonymised collection is time-consuming and not always necessary, depending on the respective antitrust law.

- » In order to create a basis of trust, it can be useful to agree on confidentiality with regard to certain information. However, confidentiality obligations should be clearly defined and limited in their scope, so that NGOs can continue to carry out their work with the help of independent information.

## Impact measurement

- » It should be monitored regularly:
  - whether participating companies and, if applicable, government stakeholders, have made progress in the implementation of their individual objectives. This could for example pertain to processes that have changed within the company.
  - whether common objectives have been achieved,
  - whether the measures employed by the MSIs are suitable for improving the living situation of rightsholders along global supply chains.
- » In order to check the effectiveness of agreed measures and objectives, it is important to establish a baseline and develop a theory of change.<sup>9 10</sup>
- » The review should be carried out by a monitoring committee consisting of independent experts, to be appointed by mutual agreement. The committee should have expertise in the area of corporate accountability and in the relevant international standards (UN guiding principles, OECD guidelines and sector-specific standards) and should equally consist of women and men.
- » In addition to the information provided by the companies themselves, the monitoring committee should also take into account external complaints about the company, as well as randomly consulting affected parties and rightsholders along the supply chain.
- » The review shall not only consist of certification and audits. Companies should describe in concrete terms, what steps they have undertaken to implement their own due diligence. If certifications are used within the scope of the MSIs, an appeal mechanism should be established to review the awarding and execution of the certification.
- » All monitoring results (including audits) and reports of the Monitoring Committee should be published.

<sup>9</sup> A theory of change is a methodology often used in development cooperation to test a project's effectiveness. It defines how a project can achieve its objectives (i.e. through which measures and stakeholders) and which factors play an important role. See Dhillon, Vaca (2018): [Refining Theories of Change](#). <sup>10</sup> This recommendation is reflected in the current evaluation of the Dutch *IRBC policy*. According to this, the lack of a baseline makes it difficult to effectively assess the effectiveness of the *IRBC agreements*. Therefore, outcome indicators should be defined in the future to measure changes at the level of companies and suppliers. See *Ministry of Foreign Affairs of the Netherlands* (2019): [Mind the governance gap, map the chain](#). Evaluation of the Dutch government's policy on internationally responsible business conduct (2012-2018)



## Grievance mechanisms and sanctions

- » The following possibilities to raise grievances should be available within the framework of an MSI:
  - for members, in case of violation of the common objectives by another member;
  - for NGOs, trade unions as well as those affected, regarding problems along the supply chain of member companies that contradict the objectives of the MSI.
- » Grievance mechanisms should be established in accordance with the requirements set out in the *UN Guiding Principles on Business and Human Rights*.<sup>11</sup>

### HANDS-ON EXPERIENCE:

In the Dutch *Agreement on Garments and Textiles*, affected parties or civil society organisations that are members of the MSI can file **complaints about misconduct** based on the aggregated list of production locations. The complaint is to be filed with the *Complaints and Dispute Committee* - a MSI-affiliated body.

**!** So far, this possibility to raise grievances is hardly used, as the procedure is unknown in the relevant production sites. Moreover, the detour via the MSI's secretariat is an additional hurdle for those affected and a complaint to the *Complaints and Disputes Committee* has to be preceded by a long dialogue with the company/companies concerned.<sup>13</sup>

### HANDS-ON EXPERIENCE:

All Dutch *IRBC agreements coordinated by the Social and Economic Council of the Netherlands* (SER), such as the *Agreement on Internationally Responsible Investment in the Insurance Sector*, have established a dispute settlement procedure. It describes the steps and timelines for solving a conflict between members with regard to the objectives jointly agreed within the MSIs. The final decision in the event of a disagreement between the members is made by the recommendation of an independent mediator to the committee of the MSIs.<sup>12</sup>

- » There should be the possibility of sanctions, all the way to the exclusion of companies from the MSIs, if they repeatedly fall short of the agreed standards and fail to remedy the situation.

<sup>11</sup> According to the effectiveness criteria of Guiding Principle 31, non-judicial grievance mechanisms, both State-based and non-State-based, should be legitimate, accessible, predictable, equitable, transparent, rights-compatible and a source of continuous learning. <sup>12</sup> SER (2018): *Agreement on International Responsible Investment in the Insurance Sector* <sup>13</sup> Avance Impact (2019): *Agreement on Sustainable Garments and Textile - Midterm Evaluation*

## HANDS-ON EXPERIENCE:

Both in the *German Initiative on Sustainable Cocoa* and the *Partnership for Sustainable Textiles*, members who have acted against the interests of the MSIs can be expelled.<sup>14</sup> In the *Forum for Sustainable Palm Oil*, members can be penalised for a negligent breach of duty to the association's objectives or its own public commitment. In addition to expulsion from the forum, penalties include a reprimand, the provision of compensation or the withdrawal of voting rights for up to one year.<sup>15</sup>

! Often an expulsion is the only, but also the ultimate sanction in voluntary initiatives such as MSIs. As a rule, companies avoid this by leaving the MSIs voluntarily.

## Enabling conditions

- » Civil society organisations need to have sufficient resources for preparation, follow-up and monitoring of MSIs. If necessary, it should be possible to apply for funding to cover human resources and other related costs. This applies in particular to the participation of rightsholders from producing countries.
- » Antitrust law should not be used as an obstacle to create or participate in an MSI. Rather, antitrust law experts should be involved when required and an existing MSI secretariat should be trained as the first instance.

## HANDS-ON EXPERIENCE:

As part of the implementation of the *Extractive Industries Transparency Initiative* in Germany, the government has been supporting civil society organisations in the multi-stakeholder group with [annual grants](#) since 2015.

! However, the negotiation and processing of these grants is always associated with fluctuations and bridging periods, which makes it difficult for the participating civil society organisations to work and plan continuously. In addition, applying for funds to participate in MSIs can be at the expense of other civil society projects.

<sup>14</sup> *Initiative on Sustainable Cocoa* (n.d.): [Statutes of the Initiative on Sustainable Cocoa](#) and *Partnership for Sustainable Textiles* (2018): [Rules of cooperation of the Partnership for Sustainable Textiles](#) <sup>15</sup> *Forum for Sustainable Palm Oil* (2018): [Statutes for the Forum for Sustainable Palm Oil](#)

## HANDS-ON EXPERIENCE:

In an antitrust report for the *Partnership for Sustainable Textiles*, it was emphasised that company agreements on social standards, such as the fight against human rights violations or agreements to achieve transparency and traceability throughout the supply chain, are not considered as breach of applicable law.<sup>16</sup>

- » The Federal Government should work at national and international level to review and adapt antitrust law wherever it hinders ambitious MSIs.

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## STAKEHOLDER GROUPS WITHIN MSIS AND THEIR ROLES

Each stakeholder group has a specific role in an MSI. A clear definition of these different roles is therefore helpful to ensure a goal-oriented and focused work.

### Government

- » According to the *UN Guiding Principles on Business and Human Rights*, states have an obligation to respect, protect and fulfil human rights including protecting against human rights abuses by third parties, such as businesses. Therefore, the government as a stakeholder or initiator of MSIs should step beyond a neutral and moderating role and instead demand an ambitious implementation of international human rights and labour rights standards by companies.
- » An important condition for the success of MSIs is that the government creates and implements a legal framework for human rights due diligence as well as disclosure and reporting obligations. This framework should apply to companies within MSIs and companies that do not join these initiatives.
- » The government should clarify the role of multi-stakeholder initiatives launched by the government with regard to legal regulations and establish a roadmap for a smart mix. Mere participation in MSIs should not count as evidence for compliance with human rights and environmental due diligence or lead to a limitation of liability.

<sup>16</sup> *Partnership for Sustainable Textiles* (2017): Guide to the antitrust law – Do's and Don't's. Available on request. See also BMAS (2019): [Background paper on the 3rd cross-industry NAP specialist event „Antitrust law issues in sector cooperation“](#).

- » In the interest of policy coherence, it is up to the government to adopt own measures and objectives based on the results of the dialogue. It should play a pioneering role in implementing the minimum requirements of international human rights, social and environmental standards that were drawn up within the framework of MSIs. This can be achieved by consistently applying these jointly developed standards in public procurement processes, state owned companies and foreign trade promotion. This creates additional incentives for both member and other companies to put the minimum social and environmental standards into practice.
- » The government should ensure coordination of activities among individual ministries and at European level. At national level, this concerns the interaction between multi-actor partnerships in the framework of Agenda 2030 and multi-stakeholder initiatives in the National Action Plan.

### HANDS-ON EXPERIENCE:

In addition to public procurement, the Dutch government has committed itself in the *IRBC Agreements* to measures such as closing loopholes in legislation and strengthening due diligence at the international level.<sup>17</sup> Local governments, which are part of the Dutch-Flemish *TruStone initiative*, require the implementation of due diligence as an award criterion in the public procurement of natural stones.<sup>18</sup>

## Private Sector / Companies / Industry Stakeholders

- » Frontrunner companies should take a leading role in MSIs to achieve further improvements in the implementation of HRDD along global supply chains. In doing so, the companies' ambition and willingness to change should be more important than overall market penetration.
- » All participating companies should be prepared to make structural changes that go far beyond audits. Participating company representatives should have sufficient influence in the company to ensure that the agreed commitments are actually implemented. Therefore, an appropriate mandate from the management is needed.
- » As a minimum, business associations and sectoral organisations are responsible for the dissemination of the recommendations developed and for building the capacity of their members to apply these recommendations. They should also promote participation in MSIs among their members in order to increase the potential leverage effect of MSIs.

<sup>17</sup> See Ministry of Foreign Affairs of the Netherlands (2019): *Mind the governance gap, map the chain. Evaluation of the Dutch government's policy on international responsible business conduct (2012–2018)* <sup>18</sup> SER (2019): *TruStone Initiative - Stakeholders working towards responsible business conduct in the natural stone sector*

## Civil society, trade unions and rightsholders

- » Participating NGOs should have expertise in the respective industry sector and should be well connected to further civil society.
- » In addition to its role as a watchdog for human rights abuses, the participation of civil society organisations and trade unions supports the development of effective and ambitious measures and standards within the MSIs. With their expertise, civil society and trade unions contribute in particular to the critical assessment of frequently used due diligence measures such as audits and certifications.
- » Since the „representation“ of rightsholders by NGOs from the Global North, trade unions and other organisations is only partly possible, structures for a continuous exchange of information and knowledge with affected rightsholders along the supply chain should be created within the framework of MSIs. Their participation should take place right from the start and should not be limited to certain parts of the process. This can be done, for example, by involving rightsholders in events or the submission of written position papers.
- » NGOs in the countries of the Global North have the responsibility to inform civil society in producing countries about relevant political processes and measures developed in the context of MSIs. This also includes the development of expertise on the legalisation of due diligence and their potential impact on producing countries and rightsholders.

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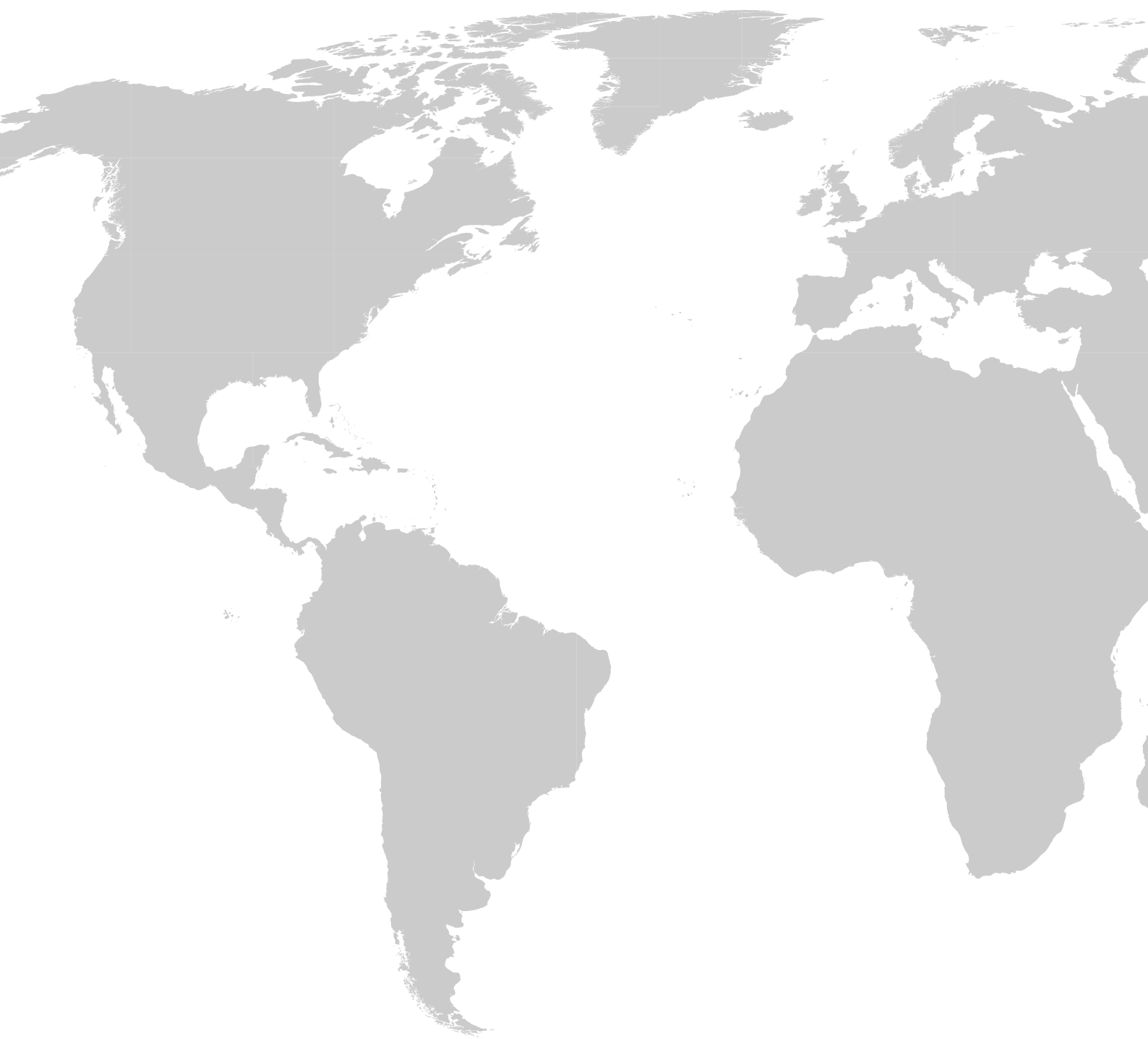
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