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Norwegian Ministry of Children and Families

Prop. 150 L

(2020–2021)

Proposition to the Storting (bill)

Act relating to enterprises' transparency and work on fundamental human rights and decent working conditions (Transparency Act)

Norwegian Ministry of Children and Families

Prop. 150 L

(2020–2021)

Proposition to the Storting (bill)

Act relating to enterprises' transparency and work on fundamental human rights and decent working conditions (Transparency Act)

Recommendation from the Ministry of Children and Families of 9 April 2021, approved in Council of State on the same date (Solberg Government)

1 Main content of the Proposition

In this Proposition, the Ministry of Children and Families is presenting a Proposal (bill) for an Act relating to enterprises' transparency and work on fundamental human rights and decent working conditions (Transparency Act). The bill follows-up the Ethics Information Committee's report *Supply chain transparency* and the Committee's proposal for an *Act regulating Enterprises' transparency about supply chains, duty to know and due diligence*, which was submitted to the Ministry in the autumn of 2019.

The safeguarding of human rights and decent working conditions in global supply chains is a significant and complex challenge in many countries. Many people are concerned with products and services being produced under good working conditions, and many enterprises are concerned with contributing positively through their operations and supply chains by creating value, jobs and socially beneficial products and services. However, the global supply chains often go through several countries with varying challenges and may be highly complex. Therefore, many enterprises do not have a sufficient overview of what impacts their operations, supply chains and business partners have on human rights and working conditions. The lack of transparency also makes it difficult for consumers, civil society, trade unions, organisations, the media, investors, government authorities and others to obtain information regarding these conditions and to verify them. The Ministry has assessed that the Transparency Act proposed in this Proposition will address these challenges.

The purpose of the proposed Transparency Act is to promote enterprises' respect for fundamental human rights and decent working conditions in connection with the production of goods and services and to ensure the general public access to information regarding how enterprises address adverse impacts on fundamental human rights and decent working conditions. In order to achieve the purpose of the Act, the Ministry proposes that the enterprises shall be required to carry out due diligence so as to cease, prevent or mitigate adverse impacts on fundamental human rights and decent working conditions that the enterprise has either caused or contributed toward, or that are directly linked with the enterprise's operations, products or services via supply chains or business partners. The Ministry also proposes that the enterprises be required to publish accounts of their due diligence, and that, upon request from the general public, the enterprises shall provide information regarding how they work to address adverse impacts on fundamental human rights and decent working conditions. The Ministry proposes that the Act shall cover larger Norwegian enterprises that offer goods and services in Norway and abroad, and larger foreign enterprises that offer goods and services in Norway and that are liable to tax to Norway. The Ministry proposes that the Consumer Authority shall monitor compliance with the Act and provide guidance to the enterprises.

The proposed Transparency Act will be beneficial for many different actors in society. The public sector makes considerable purchases of goods and services every year and through the Transparency Act it will become easier to monitor enterprises' compliance with Section 5 of the Public Procurement Act. Civil society, the media and academia will gain access to information that can contribute to identifying, influencing and communicating socially important information. Investors who are striving to achieve high environmental, social and corporate governance (ESG) standards in their investments will be able to use the Act to obtain information in order to make ethical investments. The Act will also contribute to meeting consumers' expectations for insight into whether or not human rights and decent working conditions are being safeguarded in the production of goods and services. This will make it easier for consumers to make informed purchase decisions, which will result in fewer products being sold, and thereby being produced under censurable conditions.

The Proposal for a Transparency Act is based on the recommendations in the UN Guiding Principles on Business and Human Rights (UNGP) and the OECD Guidelines for Multinational Enterprises, and the fact that the Norwegian Government is currently expecting that all Norwegian

enterprises act responsibly, are familiar and comply with these recommendations. The proposed Transparency Act shall function alongside these recommendations. This entails that even though the Act only applies to larger enterprises, it is nevertheless expected that other enterprises are familiar and comply with the UNGP and OECD Guidelines, including the due diligence these documents entail. This also entails that even though the Act only concerns fundamental human rights and decent working conditions, it is nevertheless expected that the enterprises also work on other areas that are covered by the international principles and guidelines. e.g., the environment.

The proposed Transparency Act will, in conjunction with other measures, contribute to Norway's efforts to achieve UN Sustainable Development Goal (SDG) number 8 on decent work and economic growth and goal number 12 on sustainable consumption and production. Through these goals, governments, businesses and organisations have undertaken to abolish forced labour, end modern forms of slavery, ensure that the worst forms of child labour are prohibited and eradicated, and promote a safe and secure working environment for all workers. The bill follows up three goals established by the Norwegian Government in the Granavolden Platform. Firstly, the Act contributes to strengthening the right of consumers to information regarding how the products they purchase are produced. Second, the Act contributes to counteracting the importing of goods to Norway that are produced by child and slave labour, under other censurable working conditions, or that otherwise infringe on human rights. Third, the Act addresses the action point in the Granavolden Platform to evaluate a new anti-slavery act based on the model from the United Kingdom.

The Ministry proposes that the Transparency Act shall be evaluated after it has been in force for a period of time. The purpose of such an evaluation will, among other things, be to assess whether smaller enterprises should also be included as duty-bearers and whether the practical applicability of the Act should be expanded to apply to environmental impacts and possibly other areas covered by the OECD Guidelines for Multinational Enterprises.

2 Background for the bill

2.1 Petition resolutions from the Storting

On 1 June 2018, the Norwegian Government appointed the Ethics Information Committee in order to consider whether businesses should be subject to a duty to disclose information relating to responsible business conduct and supply chain management. The background for the appointment of the Committee was two petition resolutions:

1) Petition Resolution No. 890 (2015–2016) of 13 June 2016: *"The Storting asks the Government to investigate and consider proposing a law requiring disclosure of production sites and ethics information to consumers and organisations".*
2) Petition Resolution No. 200 (2017–2018) of 12 December 2017: *"The Storting asks the Government to appoint a committee with broad representation to assess a possible law on ethics information, its scope, what the law should include and to whom it should apply. The Committee should also consider how a law on ethics information might safeguard consumers' and organisations' right to information beyond existing legislation and tools."*

In Recommendation to the Storting 384 S (2015–2016), which formed the basis for Petition Resolution No. 890, the motion refers to how low wages, overtime pressure, poor safety and a lack of respect for rights to organise characterise significant parts of the production of goods for global markets, and that Norwegian consumers have little information and limited rights to access information about how goods are produced.

2.2 Evaluation of the legislative scope

As part of the work of following up Petition Resolution No. 890 of 13 June 2016, the Ministry in 2017 commissioned the law firm Simonsen Vogt Wiik to assess Norwegian authorities' legislative scope to introduce a law on ethics information. Simonsen Vogt Wiik assessed whether national regulations, EEA legal obligations or bilateral/multilateral agreements, including WTO agreements, would impede, or require specific adjustments to, a possible duty to disclose ethics information. Simonsen Vogt Wiik submitted its evaluation in the summer of 2017. The report concluded that there is some scope to impose a duty for enterprises to disclose ethics information. A summary of the report is available as an attachment to the Ethics Information Committee's report *Supply Chain Transparency*. See also the discussion in chapter 7 of the Ethics Information Committee's report.

2.3 The Ethics Information Committee

2.3.1 Appointment and mandate

The Ethics Information Committee was appointed on 1 June 2018. In its mandate, the Norwegian Government referred to the fact that many consumer goods are produced in countries where employee protection is weaker than in Norway, and that the lack of living wages, use of child labour, excessive working hours and the absence of freedom of association are among the challenges in global trade.

In the mandate, the Norwegian Government established that the purpose of an ethics information duty is for consumers and organisations to have access to information about how enterprises work to safeguard fundamental rights and decent working conditions for workers in their supply chains. According to the mandate, consumers will thereby be able to make better informed purchase decisions. The duty to disclose information shall also contribute to increasing the efforts of enterprises to ensure decent working conditions for workers in their supply chains.

The Committee's mandate was two-pronged. Firstly, the Committee was tasked with evaluating whether it is feasible and suitable to impose a duty on enterprises to disclose information to consumers and organisations regarding what production sites are used in the production of goods and how the enterprises work on responsible business conduct and supply chain management. The Committee was also tasked with assessing the impacts of such a duty to disclose information. Second, if the Committee determined that legislation is feasible and suitable, it was to assess what enterprises should be subject to such a duty and how it should be enforced.

According to the mandate, the Committee's assessments were to be viewed in the light of relevant national regulations, EEA law, Norway's WTO obligations and other international regulations by which Norway is bound, cf. the law firm Simonsen Vogt Wiik's assessment of the legislative scope (see point 2.2).

On 27 August 2019, the Ministry expanded the mandate so that the Committee was also requested to prepare a specific bill.

The following individuals were appointed as Committee Members:

- Professor Ola Mestad, University of Oslo, Chair
- Professor Caroline Dale Ditlev-Simonsen, BI Norwegian Business School
- Associate Professor Lars Jacob Tynes Pedersen, Norwegian School of Economics
- Postdoctoral Research Fellow Mark Taylor, University of Oslo
- Steinar J. Olsen, Stormberg AS
- Bente Øverli, Consumer Authority
- Jon Vea, Confederation of Norwegian Enterprise (NHO)
- Gro Granden, Norwegian Confederation of Trade Unions (LO)
- Heidi Furustøl, Ethical Trading Initiative (now Ethical Trade Norway)
- Camilla Skjelsbæk Gramstad, Federation of Norwegian Enterprise (Virke)

See the discussion on the Ethics Information Committee's mandate in the Committee's report *Supply Chain Transparency*, chapter 3.

2.3.2 Report and bill

The Ethics Information Committee began its work in August 2018. The Committee submitted an interim report to the Ministry in June 2019 where it was concluded that it would be appropriate to introduce a statutory duty to disclose ethics information. In the interim report, the Committee notes, among other things, that a statutory duty to disclose information may contribute to greater transparency and access to information about global value chains, which in the longer term can contribute to improved safeguarding of fundamental rights and working conditions in supply chains. Therefore, in accordance with the mandate, the Committee decided to proceed and evaluate the scope, how the duty to disclose information should be worded and enforced, as well as the impacts of legislation. The Committee also commenced work on a specific bill once the mandate was subsequently expanded to encompass this work. The final report *Supply Chain Transparency* was submitted to the Ministry on 28 November 2019.

In Part I of the report, the Committee accounts for its mandate and work, drivers for the evaluation, key development trends and legal frameworks for the Committee's work. Part I also contains the Committee's assessments and bill, in addition to economic and administrative consequences of the proposal.

In Part II of the report, the Committee accounts for the development and challenges in the global production of goods and services, responsible business conduct and supply chain management, as well as the UN SDGs and the 2030 Agenda and international frameworks under the auspices of the UN, ILO and OECD. The Committee also accounts for regulation and policies in the EU and in individual countries, relevant Norwegian law and the government's requirements and expectations for responsible business conduct. The Committee also accounts for

consumer interests and the collective engagement relating to transparency and decent work in enterprises and supply chains. The Committee's account in Part II forms the basis for the Proposal for a Transparency Act.

The Committee proposes an Act relating to enterprises' transparency concerning supply chains, duty to disclose information and due diligence (Transparency Act). The Act is to ensure that consumers, organisations, trade unions and others have access to information about fundamental human rights and working conditions in enterprises and supply chains and shall contribute to promoting enterprises' respect for fundamental human rights and decent work. The Committee proposes that the Act shall apply to enterprises that offer goods and services in Norway.

The Committee proposes that all enterprises shall be subject to a duty to know about significant risks of adverse impacts on fundamental human rights and decent work within the enterprise itself and in the enterprise's supply chains. It is also proposed that consumers, organisations and others, upon request, shall have the right to receive information regarding such conditions, with certain exceptions.

The Committee proposes that larger enterprises shall also be required to carry out due diligence in order to identify, prevent and mitigate adverse impacts on fundamental human rights and decent work, and account for how such work will be managed. The Committee proposes that the enterprises shall publish reports on due diligence and the results thereof.

The majority of the Committee proposes that enterprises that sell goods to consumers shall publish information on the production site that is used in the production of the goods, i.e., the site where the product is mainly assembled before it is sold. The Committee proposes a regulatory statutory authority in order to be able to exempt sectors or groups from this duty.

The Committee proposes that the Consumer Authority shall be the supervisory body with the Market Council as the appeals body. The supervisory body will be responsible for guidance, monitoring, appeals processing and enforcement. The Committee proposes the possibility of imposing sanctions, including enforcement penalties and infringement penalties in case of failure to comply with the duties to disclose information.

The Committee's report and bill are unanimously adopted by the Committee's members, with the exception of a dissenting opinion by a minority in the Committee to the proposal regarding publishing of information regarding production site, and the proposed right to submit a request for information orally (see more detailed discussion in points 8.3 and 8.4 of the Proposition).

2.3.3 Impact assessment

In connection with the work on a Proposal for a Transparency Act, the Ministry has obtained an assessment of the financial and administrative consequences of the Ethics Information Committee's bill. The impact assessment, prepared by Oslo Economics and KPMG, is based on the Committee's assessments of financial and administrative consequences, but to a greater extent specifies and quantifies what impacts such an Act might have for various enterprises in various industries. See more detailed discussion in point 10 regarding financial and administrative consequences.

2.4 The consultation

The Ethics Information Committee's report *Supply Chain Transparency* and proposal for an *Act regulating Enterprises' transparency about supply chains, duty to know and due diligence* was released for consultation from 19 December 2019 until 23 March 2020. Upon request, several consultative bodies were granted a deferred consultation time limit due to the COVID-19 situation. In total, the Ministry received 76 consultation responses. In addition, the Ministry received two consultation responses from private individuals.

The consultation has revealed a broad support for a Transparency Act, and several consultative bodies express that the Ethics Information Committee has completed a thorough work. However, some consultative bodies have input regarding the practical applicability of the Act, its direction and how it can be ensured that the Act will be effective and practically feasible to implement. Some consultative bodies, including the Better Regulation Council, are of the opinion that the bill is too burdensome and difficult to implement for the enterprises, especially for smaller enterprises.

The following consultative bodies received the consultation memorandum to make comments:

The ministries

The Norwegian Labour and Welfare Administration
The Norwegian Directorate for Children, Youth and Family Affairs
The Norwegian Agency for Public Management and eGovernment
The Norwegian Data Protection Authority
The Norwegian Courts Administration
The Norwegian Council on Ethics for the Government Pension Fund Global
The Financial Supervisory Authority of Norway
ECC Norway
The Norwegian Consumer Council
The Norwegian Consumer Authority
The county governors
The Norwegian Directorate of Health
The Norwegian Competition Authority
The Norwegian Food Safety Authority
The Norwegian Environment Agency
The Norwegian Communications Authority (NKOM)
The Norwegian Agency for Development Cooperation (Norad)
The National Contact Point for Responsible Business Conduct Norway
The Norwegian Centre for Human Rights
OsloMet – Oslo Metropolitan University
The Better Regulation Council

The Norwegian Office of the Attorney General
The Norwegian Director of Public Prosecutions

The Norwegian Medicines Agency
The Norwegian Civil Affairs Authority
University of Bergen
University of Oslo – Faculty of Law
University of Tromsø – Arctic University of Norway

The Norwegian National Human Rights Institution
The Office of the Auditor General of Norway
The Norwegian Parliamentary Ombudsman

The county councils
Bergen Municipality
Kristiansand Municipality
Oslo Municipality
Stavanger Municipality
Trondheim Municipality

Innovation Norway
Norges Bank (Central Bank of Norway)
Statkraft AS

Abelia business association of Norwegian knowledge and technology-based enterprises in NHO
The Norwegian Bar Association
The Federation of Norwegian Professional Associations
Amnesty International Norway
BAMA
Bellona
Bergans
Boligprodusentenes Forening (*Norwegian Home Builders' Association*)
The Federation of Norwegian Construction Industries
Byggmesterforbundet (*Norwegian Association of Building Constructors*)
Caritas Norway
Changemaker
ClampOn
Coop Norge SA
Culina
Grocery Suppliers of Norway
The Norwegian Association of Judges
The Norwegian Auditors' Association
DNV GL
DOF Subsea AS
The Norwegian Electrician and IT Workers' Union
Energy Norway
The Norwegian Contractors' Association

Equinor
Eurosko
Fairtrade Norway
Norwegian Council for Africa
Finance Norway
Association of Norwegian Finance
Footstep AS
The Norwegian National Institute for Consumer Research (SIFO)
FOKUS - Norwegian Forum for Women and Development
Future in our hands
Salvation Army
Friele
Grieg Star
H&M
The Norwegian Union of Commerce and Office Employees
BI Norwegian Business School
Hope for Justice Norge AS
Enterprise Federation of Norway (Virke)
IKEA
ICT Norway
IndustriAll
Ethical Trade Norway
Legal Aid for Women
Jussbuss – Law students legal aid clinic
Norwegian Church Aid
The Norwegian Confederation of Trade Unions (LO)
Maler- og Byggtapetsermestrenes Landsforbund (*Norwegian Association of Painting Contractors*)
Human Rights House Foundation
Mester Grønn
Ecolabelling Norway
Zero Emission Resource Organisation
NHO Transport
The Norwegian Motor Trade Association
The Norwegian Agrarian Association
The Association of Norwegian Master Builders
The Norwegian Fishermen's Association
NorgesGruppen ASA
Norwegian School of Economics
The Norwegian Association of Lawyers
Norges Kemner- og kommunekassererforbund (*Norwegian Association of Tax Collectors and Municipal Treasurers*)
YWCA-YMCA Norway
Christian Council of Norway
Friends of the Earth Norway

The Norwegian Shipowners' Association
The Norwegian Forest Owners' Federation
Norsif (*Norwegian forum for responsible and sustainable investments*)
Norsk Bedriftsforbund (*Norwegian Association of SMEs*)
The Norwegian Mineral Industry
The Norwegian Farmers and Smallholders Union
The Norwegian Fish Farmers Association
Norsk Forening for Bygge- og entrepriserett (*Norwegian Association for Construction law*)
Norsk Gjenvinning
Norsk Hydro ASA
The Federation of Norwegian Industries
The Norwegian Union of Journalists
The Norwegian Oil and Gas Association
Norsk ReiselivsForum (*secretariat for the Norwegian Passenger Complaint Handling Body*)
The Norwegian Civil Service Union
Co-operative Housing Federation of Norway
Norske Inkassobyråers Forening (*Norwegian Association of Debt Collection Agencies*)
Norwegian Maritime Suppliers
Norwegian Air Shuttle ASA
Norwegian-African Business Association
The Confederation of Norwegian Enterprise (NHO)
Næringslivets Servicekontor for Markedsrett (*Business Sector's Service Office for Marketing Law*)
Orkla
Rafto Foundation for Human Rights
RE: ACT
Save the Children Norway
Accounting Norway
Rainforest Foundation Norway
Rørentreprenørene Norge (*Norwegian Association of Plumbing, Heating and Ventilating Contractors*)
SAS Norway
Skeidar
SMB Norway
Spire
The Norwegian Consumer Electronics Trade Foundation
Telenor Norge AS
Transparency International Norway
UN Global Compact Norway
UNICEF Norway
UNIO - The Confederation of Unions for Professionals
The Norwegian Development Fund
Varner
Widerøes Flyveselskap AS
WWF – World Wildlife Fund

Yara Norge AS
The Norwegian Confederation of Vocational Unions (YS)

The following consultative bodies have submitted opinions:

The Norwegian Ministry of Defence
The Norwegian Ministry of Justice and Public Security
The Norwegian Ministry of Health and Care Services
The Norwegian Ministry of Climate and Environment
The Norwegian Ministry of Trade, Industry and Fisheries
The Norwegian Ministry of Foreign Affairs

The Norwegian Labour and Welfare Administration
The Norwegian Digitalisation Agency
The Norwegian Consumer Authority
The Norwegian Consumer Council
Research Group for EU/EEA Commercial Law at UiB
The National OECD Contact Point for Responsible Business Conduct Norway
The Better Regulation Council
University of Bergen

The Norwegian National Human Rights Institution

Bergen Municipality
Innlandet County Council
Oslo Municipality
Viken County Council
Bane nor
Statkraft AS

The Norwegian Bar Association
The Federation of Norwegian Professional Associations
Amnesty International Norway
The Federation of Norwegian Construction Industries
BDO AS
Changemaker
Coretta & Martin Luther King Institute for Peace
Ethical Trade Norway
Equinor
Fair Play Bygg Oslo Region
Fairtrade Norway
Norwegian Council for Africa
Finance Norway
Association of Norwegian Finance

Fiskarlaget Nord (*Fishermen's Association in Northern Norway*)
FOKUS - Norwegian Forum for Women and Development
The Norwegian Forum for Development and Environment
Future in our hands (Head Office)
Future in our hands (Oslo Chapter)
Future in our hands (Trondheim Student Chapter)
Future in our hands (private individuals)
Salvation Army
Hope for Justice AS
Enterprise Federation of Norway (Virke)
YWCA-YMCA
Norwegian Church Aid and Christian Council of Norway
Kongsberg Gruppen ASA
KS Bedrift
Norwegian Solidarity Committee for Latin America
The Norwegian Confederation of Trade Unions (LO)
The Norwegian Agrarian Association
The Norwegian Fishermen's Association
Fishermen's Association of Nordland County
The Norwegian Union of Journalists
Green Warriors of Norway
The Norwegian Shipowners' Association
Norsk Hydro ASA
The Confederation of Norwegian Enterprise (NHO)
Mester Grønn
Orkla ASA
Rafto Foundation for Human Rights
Save the Children Norway
Accounting Norway
Rainforest Foundation Norway
Responsible Business Advisors (RBA)
Standards Norway
The Norwegian Consumer Electronics Trade Foundation
Spire
Tekna
Telenor ASA
Unicef Norway
Yara International ASA
The Norwegian Confederation of Vocational Unions (YS)

The following consultative bodies have responded that they have no comments:

The Norwegian Ministry of Transport

2.5 Studies on responsible business conduct

2.5.1 The OECD's National Contact Point for Responsible Business Conduct's study on Responsible Business Conduct 2020

At the turn of the year 2019/2020, Norway's National OECD Contact Point for Responsible Business Conduct conducted a study on Norwegian business leaders' knowledge and work on the OECD Guidelines for Multinational Enterprises. The study consists of a survey of 600 business leaders in Norwegian enterprises. 253 of the respondents are leaders of enterprises with international operations, meaning that they have stated that the enterprise has owners, investments, production, export, own import or import via agents outside of Norway. In addition, seven semi-structured in-depth interviews were conducted.

The results of the Contact Point's study show that voluntariness has not contributed to Norwegian enterprises' compliance with the OECD Guidelines and the expectation of carrying out due diligence. The study shows that there is a low level of knowledge of the OECD Guidelines among Norwegian business leaders. 30 per cent of the business leaders with international operations state that they have only heard of the OECD Guidelines, seven per cent have somewhat familiarised themselves with them and two per cent are well acquainted with them. Many enterprises (50 per cent) have policies for responsible business conduct or sustainability. The proportion of written policies is higher among enterprises with international operations than among the enterprises without international operations (60 per cent compared to 43 per cent). Only 19 per cent of the enterprises with international operations have written policies that refer to the OECD Guidelines. In total, 35 per cent of the business leaders state that the enterprise systematically reports on responsible business conduct.

The UN Guiding Principles on Business and Human Rights (UNGP) and the OECD Guidelines for Multinational Enterprises recommend that enterprises carry out due diligence. In total, 50 per cent of Norwegian enterprises state that they carry out due diligence. The proportion is somewhat higher (54 per cent) among the enterprises with international operations. The enterprises that carry out due diligence were asked about the area(s) in which this was carried out:

- 45 per cent stated that they have carried out an assessment of environmental and climate risks,
- 34 per cent have assessed workers' rights,
- 16 per cent have assessed corruption risks,
- 15 per cent have assessed human rights,
- 58 per cent state "other assessments" such as HSE, reputation and customers.

Furthermore, the enterprises were asked about what stage the risk assessment was carried out. 91 per cent state that they carry out due diligence in the enterprise itself. Only 40 per cent identify conditions in the supply chain and 27 per cent carry out such assessments in relation to business relationships.

Only 19 per cent of the enterprises with international operations state that they have received guidance on responsible business conduct from the government, while 39 per cent answer "yes" to the question of whether the enterprise has a need for more guidance on responsible business

conduct. 45 per cent of the enterprises with international operations have a need for more knowledge in order to identify risks and possible adverse impacts on human beings, society and the environment.

Both the UNGP and the OECD Guidelines express expectations that enterprises shall have grievance and early warning mechanisms. However, the Contact Point's study shows that only 36 per cent of the business leaders state that they have a grievance mechanism relating to responsible business conduct. 58 per cent state that the enterprise has no such mechanism. The proportion that has an early warning and grievance mechanism increases the higher number of employees there are in the enterprise.

2.5.2 Amnesty Business Rating 2019

During the period August to November 2019, Amnesty International Norway conducted a study among 69 enterprises for the purpose of examining the extent to which Norwegian enterprises are exposed to risks of infringing human rights and how well-equipped they are to address such a risk. In the study, the following four business sectors were identified:

1. Energy, oil and gas,
2. Shipping, offshore and fisheries,
3. Consumer, commerce and services,
4. Industry, building and construction.

The study showed that all of the enterprises have policies concerning human rights and 94 per cent conduct training of their employees. However, only 38 per cent make reference to the OECD Guidelines for Multinational Enterprises. Only 36 per cent make reference to the UN Guiding Principles on Business and Human Rights (UNGP). 62 per cent make reference to the UN Universal Declaration of Human Rights.

According to the study, Norwegian enterprises have an increased exposure to the risk of infringing human rights compared to findings from the corresponding survey carried out in 2017. The study shows that the risk exposure is highest in shipping, offshore and fisheries, as well as industry, building and real estate. Despite these findings, 91 per cent of the enterprises in industry, building and real estate state that they do not experience that there is a major risk of them infringing human rights. The same is expressed by 73 per cent of the enterprises in shipping, offshore and fisheries.

47 of the enterprises, i.e., 68 per cent, state that they have assessed the risk of the enterprise infringing human rights. 70 per cent state that they report on human rights in annual or sustainability reports.

48 per cent of the enterprises state that they have problems monitoring the supply chain. In industry, building and real estate, this applies to 64 per cent of the enterprises. 32 per cent of all the enterprises have problems obtaining accurate and complete information and 35 per cent have problems detecting when an infringement of human rights has occurred.

Regarding positive impacts of human rights work, 51 per cent state that the enterprise's reputation is improved, 54 per cent state that the enterprise is perceived as more attractive on the

labour market, and 55 per cent state that it improves self-confidence among employees. Six per cent state that they do not see any positive impacts of their human rights work.

In the study, the enterprises were also asked about the introduction of an act that requires enterprises to carry out mandatory due diligence. 60 per cent of the enterprises in the study responded that they support the introduction of a due diligence act for the business sector. Among other things, it was noted that the act must be unambiguous in order for the enterprises to be able to comply with it. The act must be feasible to implement, relevant and functional and be embedded in international principles. Furthermore, the act must guarantee closer follow-up and monitoring from the government, to ensure compliance.

3 International frameworks and regulations etc.

3.1 UN, ILO and OECD

3.1.1 The United Nations (UN)

3.1.1.1 UN Sustainable Development Goals

The UN Sustainable Development Goals are the world's joint working plan to eradicate poverty, reduce inequality and combat climate change by 2030. The UN Sustainable Development Goals consist of 17 goals and 169 targets. The targets are to serve as a joint global guide for countries, businesses and civil society. The Sustainable Development Goals form the basis for national and international expectations for responsible business conduct. Goal 8 "Decent work and economic growth" and Goal 12 "Sustainable consumption and production patterns", are especially relevant in this context.

Sustainable Development Goal 8 is to promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all. About half of the world's population earns less than a living wage. Creating jobs that pay a living wage is therefore a major challenge for all countries toward 2030. Sustainable Development Goal 8 contains several targets, many of which are relevant to the work with the Transparency Act. Especially relevant is Sustainable Development Target 8.7 to take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms. Also relevant is Sustainable Development Target 8.8 to protect labour rights and promote safe and secure working environments for all workers, including migrant workers, in particular women migrants, and those in precarious employment.

Sustainable Development Goal 12 is to ensure sustainable consumption and production patterns. Sustainable consumption and production is about doing more with fewer resources. Currently, we consume much more than what is sustainable for the planet. For instance, one third of the food that is produced goes uneaten and is wasted. To ensure good living conditions for current and future generations, each individual consumer needs to make lifestyle changes. These changes involve minimising resource use, environmental destruction and greenhouse gas

emissions, as a society and as individuals. Over time, this will lead to economic growth, limit climate change and improve quality of life for human beings. Changes in consumption can also contribute to achieving the goals in the Paris Agreement from 2015 and avoid dangerous climate change. A target of particular relevance for the work with the Transparency Act is Sustainable Development Target 12.6 to encourage companies, especially large and transnational companies, to adopt sustainable practices and to integrate sustainability information into their reporting cycle.

3.1.1.2 The UN Covenants (International Bill of Rights)

The UN Universal Declaration of Human Rights was adopted in 1948. Among other things, it establishes a prohibition against slavery and slave trade, the right to work and favourable conditions of work, equal pay for equal work without any discrimination, the right to rest and leisure, reasonable limitation of working hours and periodic holidays with pay. The UN International Covenant on Civil and Political Rights (1966) and the UN International Covenant on Economic, Social and Cultural Rights (1966) elaborate on the rights in the Universal Declaration of Human Rights and makes them legally binding upon the states that have ratified them.

The UN International Covenant on Civil and Political Rights (1966) is to safeguard fundamental rights including the right to life, liberty and security of person, freedom of thought, conscience and religion and the right to privacy. The Covenant establishes a prohibition against slavery, slave trade and forced labour, and enshrines a right to freedom of association. The latter right includes the right to form and join trade unions for the protection of one's interests.

The UN International Covenant on Economic, Social and Cultural Rights (1966) recognises the right to work and the enjoyment of just and favourable conditions of work. Just and favourable conditions of work include remuneration which provides all workers with fair wages and equal remuneration for work of equal value without distinction of any kind, a decent living for themselves and their families, safe and healthy working conditions, rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays. The Covenant also recognises the right of everyone to form trade unions and join the trade union of their choice.

The above-mentioned UN covenants and the core ILO conventions jointly form the basis for the UN Guiding Principles on Business and Human Rights (UNGP) and the OECD Guidelines for Multinational Enterprises. These documents constitute the minimum standards enterprises are expected to respect. This is expressed, among other places, in the Norwegian Government's National Action Plan for the implementation of the UN Guiding Principles for Business and Human Rights (2015) and the Norwegian Government's report on state ownership Meld. St. 8 (2019–2020) Report to the Storting (white paper) *The state's direct ownership of companies – Sustainable value creation.*

There are also other UN conventions and declarations that are of relevance to responsible business conduct, e.g., the UN Convention on the Rights of the Child of 20 November 1989 and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) from 2007.

3.1.1.3 The UN Guiding Principles on Business and Human Rights (UNGP)

The UN Guiding Principles on Business and Human Rights (UNGP) were adopted by the UN Human Rights Council in 2011. The UNGP clarifies the various roles and responsibilities of states and enterprises in relation to human rights in accordance with international obligations. The UN Universal Declaration of Human Rights from 1948, the UN International Covenant on Civil and Political Rights (1966) and UN International Covenant on Economic, Social and Cultural Rights (1966), as well as the core ILO conventions form the basis for the UNGP. The framework is threefold. It confirms 1) states' duty to protect human rights, 2) that enterprises have a duty to respect human rights, and 3) that the state has a duty to ensure effective grievance and remediation mechanisms.

According to Part I, the state has a duty to protect human rights. The state also has a duty to protect against abuse by third parties, including enterprises, within their jurisdiction. This is done by taking steps to prevent, investigate, punish and redress such abuse through effective guidelines, legislation, regulations and adjudication. The UNGP emphasises that the state should clearly set out the expectation that all enterprises respect human rights throughout their operations.

According to Part II, enterprises have a responsibility to respect human rights, meaning that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved. The responsibility of enterprises to respect human rights applies independently of states' fulfilment of their own human rights obligations. Enterprises should avoid causing or contributing to adverse human rights impacts through their own activities and address such impacts when they occur. They should also seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships. This applies even if they have not contributed to those impacts.

The responsibility of enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors. This will also depend on the severity of the enterprise's adverse human rights impacts. According to the UNGP, enterprises should carry out human rights due diligence in order to identify, prevent, mitigate and account for how they seek to respect human rights. They should also have procedures for addressing adverse impacts on human rights that the enterprise has caused or contributed toward.

According to Part III, states must take appropriate steps to ensure that those affected by the adverse impacts on human rights have access to effective grievance mechanisms and follow-up when abuses occur. In addition to the courts, the state should have other effective and appropriate grievance mechanisms in place. An example of such a grievance mechanism is the OECD's National Contact Point, which processes complaints regarding possible infringements of the OECD Guidelines for Multinational Enterprises (see point 3.1.3) as well as cases under the ILO's Tripartite Declaration of Principles concerning Multinational Enterprises (see point 3.1.2). On their part, enterprises should establish and participate in effective operational-level grievance mechanisms for individuals and local communities that may be affected.

3.1.2 The International Labour Organization (ILO)

3.1.2.1 General information

The International Labour Organization (ILO) was founded in 1919 and its mission is to promote social justice and labour rights. The ILO is distinct from other organisations in the UN system in that its membership is not restricted to states. The ILO system is based on a tripartite structure where the parties of working life (social partners of the economy), as well as the governments of member states, are on equal footing in the drafting of conventions and programmes. In total, the ILO has 190 conventions, six protocols with amendments or additions to the conventions, as well as 206 recommendations pertaining to working life. The conventions, protocols and recommendations establish fundamental principles and rights at work. The conventions and protocols are legally binding upon the states that ratify them, whereas the recommendations are guiding. Norway has adopted 110 of the ILO's conventions and three of its protocols.

3.1.2.2 The core conventions

The most important ILO conventions are the eight core conventions. The ILO's core conventions constitute a minimum of human rights that are to be respected in working life. The core conventions have four main categories: 1) prohibition against child labour, 2) prohibition against forced labour, 3) prohibition against discrimination and 4) the right to freedom of association for employers and employees and to collective bargaining. All ILO member states are required to comply with the principles in the eight core conventions, whether or not they have ratified them. There are special reporting duties attached to non-ratified core conventions.

ILO Convention no. 29 requires member states to suppress the use of forced or compulsory labour in all its forms. ILO Convention no. 105 on the abolition of forced labour requires member states to suppress and not to make use of any form of forced or compulsory labour. It also prohibits states from keeping anyone in forced labour. Forced labour is defined as all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily, cf. ILO Convention no. 29, Article 2, subsection one. The absence of voluntariness entails that the person must have been hired against their will or is denied the possibility to leave the workplace. In 2014, the ILO adopted an important additional protocol to Convention no. 29. This additional protocol requires states to take effective measures to prevent and abolish forced labour, to provide to victims protection and access to appropriate and effective remedies, such as compensation, and sanctions against the perpetrators of forced or compulsory labour.

Child labour is regulated in two ILO conventions, in addition to the UN Convention on the Rights of the Child. ILO Convention no. 138 on minimum age for admission to employment establishes that the minimum age for admission to employment or work shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years. The member states undertake to pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment or work. ILO Convention no. 182 requires member states to prohibit and abolish of the worst forms of child labour. This includes, among other things, slavery, sale of children, debt

bondage, procuring or offering of a child for prostitution and/or for the production of pornography, forced labour, use of children for the production of drugs and the recruitment of child soldiers.

ILO Convention no. 87 on freedom of association and protection of the right to organise requires states to ensure that workers and employers have the right to establish and join organisations of their own choosing. Organisations shall have the right to draw up their constitutions and rules, to elect their own representatives, to organise their administration and activities and to formulate their programmes. The organisations shall also be ensured independence from public authorities. ILO Convention no. 98 concerns the implementation of the principles for the right to organise and the right to collective bargaining. Workers shall enjoy adequate protection against all forms of discrimination relating to the right to freedom of association, e.g., making the employment of a worker subject trade to the condition that they shall not join a union or shall relinquish trade union membership, or that membership in a trade union results in dismissal.

ILO Convention no. 100 and no. 111 concern equal treatment in working life. ILO Convention no. 100 is to ensure equal remuneration for men and women workers for work of equal value. Members states shall promote equal remuneration for workers and that remuneration is determined without discrimination based on sex. Remuneration includes basic or minimum wage or salary and any additional emoluments. ILO Convention no. 111 on discrimination in employment and occupation promotes equality of opportunity and treatment in respect of employment and occupation. Discrimination is defined as any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation.

3.1.2.3 Other relevant ILO conventions and declarations

ILO Convention no. 155 on safety, health and working environment and its accompanying protocol, is key with respect to decent work. Employers shall be required to provide adequate protective clothing and protective equipment to prevent, and ensure that workplaces, machinery, equipment and processes are safe and without risk to health as far as is reasonably practicable. The Convention determines that workers have the right to remove themselves from a work situation if it presents a serious danger to life or health. ILO Convention no. 169 on indigenous and tribal peoples in independent countries concerns the right of indigenous peoples to maintain and develop their own culture, and the duty of governments to take measures to support such efforts. ILO Convention no. 14 concerns the right to weekly rest. ILO Convention no. 131 on fixing of minimum wage pays special regard to the needs of developing countries. ILO Convention no. 135 concerns the protection of workers' representatives in undertakings and their opportunity to perform their activities.

The ILO's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) was first negotiated in 1977 and most recently revised in 2017.

The Declaration establishes principles for employment, training, working conditions and industrial relations. The Declaration describes what conduct is expected of enterprises, governments and the parties of working life in areas including employment, training, conditions of

work and life, as well as industrial relations. The Declaration largely builds on international conventions and recommendations regarding working life, as well as the ILO's Declaration on Fundamental Principles and Rights at Work (1998 Declaration) and the follow-up thereof. In 2017, the ILO updated the Declaration to reflect the developments in the area of responsible business conduct. The Declaration is now also harmonised with the UNGP, the UN Sustainable Development Goals, and the ILO's resolution concerning decent work in global supply chains. A separate dispute resolution mechanism was established and cases concerning the MNE Declaration can now be brought before the OECD's Contact Point in Norway. Multinational enterprises can also receive guidance and assistance from the ILO (ILO Helpdesk for Business).

3.1.3 Organisation for Economic Co-operation and Development (OECD)

The Organisation for Economic Co-operation and Development (OECD) is an international forum for cooperation on economic and social affairs. As of January 2021, its membership comprises 37 countries. The OECD Guidelines for Multinational Enterprises (1976, revised in 2011) are the only multilaterally adopted guidelines for responsible business conduct that all 37 OECD member states and 12 other countries have committed to promoting. The Guidelines are recommendations from governments to multinational enterprises that operate in or from territories of countries that have accepted the Guidelines. The goal of the Guidelines is to strengthen the basis for trust between enterprises and the society in which they operate, improve the climate for foreign investments and strengthen multinational enterprises' contributions to a sustainable development.

The Guidelines were updated in 2011 in accordance with the UNGP in the area of human rights and with respect to the carrying out of due diligence. Due diligence is especially expected in relation to preventing and addressing adverse impacts on human rights, employment and industrial relations, the environment, bribery and corruption, consumer interests and disclosure of information. National contact points are to promote and provide guidance regarding the Guidelines, cooperate internationally and process complaints. The OECD's Working Party on Responsible Business Conduct has prepared a number of guiding documents. Due diligence is key in the guidance as a method for preventing and addressing adverse impacts on human beings, society and the environment.

3.2 Regulation and regulatory developments in the EU

3.2.1 Relevant regulations

3.2.1.1 The Conflict Minerals Regulation

In 2017, the EU adopted Regulation 2017/821/EU laying down supply chain due diligence obligations for importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas. The Regulation will have a direct impact on between 600 and 1000 importers in the EU, and indirect significance for approximately 500 smelters and refiners independent of whether they are based in the EU. The Regulation entered into force on 1 January 2021.

The background for the Regulation is the use of forced labour and conflict financing in the extraction of minerals in politically unstable regions. The objective is to prevent conflict minerals and metals from being imported to the EU, to stop the use of such minerals by smelters and refiners and to prevent the abuse of miners. This is to be achieved by ensuring that importers of minerals in the EU satisfy international standards developed by the OECD and practice responsible monitoring of suppliers.

Importers of tin, tantalum and tungsten, their ores, and gold shall, under the Regulation, inspect what they purchase to ensure that it is not produced in a manner which funds conflict or other illegal practices. Importers must satisfy five requirements:

1 establish solid management systems,
2 identify and assess the risks in the supply chain,
3 develop and implement a strategy to respond to identified risks,
4 conduct an independent third-party audit of supply chain due diligence,
5 report annually on supply chain due diligence.

3.2.1.2 Non-Financial Reporting Directive

Directive 2014/95/EU was adopted in 2014 and amends the Accounting Directive (2013/34/EU) regarding the disclosure of non-financial information and diversity information by certain large undertakings and groups. The goal of the Directive is to increase the transparency of enterprises and generate improved environmental and social results.

The duty to disclose non-financial and diversity information pursuant to Directive 2014/95/EU applies to large undertakings and groups which are public-interest entities exceeding on their balance sheet dates an average number of 500 employees during the financial year. This account shall at least contain information relating to environmental matters, social and employee-related matters, respect for human rights, anti-corruption and bribery matters that are necessary for an understanding of the undertaking's development, performance, position and impact. Furthermore the account shall provide:

1 a brief description of the undertaking's business model,
2 a description of the policies pursued in relation to those matters, including due diligence processes,
3 the outcome of those policies,
4 the principal risks related to those matters, including, where relevant and proportionate, its business relationships, products or services which are likely to cause adverse impacts in those areas, and how the undertaking manages those risks,
5 non-financial key performance indicators relevant to the particular business.

Enterprises that do not have relevant principals or policies in relation to one or more of those matters, shall provide a clear and reasoned explanation for not doing so.

The information shall be reported in the enterprise's annual financial statements or in a separate report that is to be published on the enterprise's website and referred to in the annual financial statements. The Directive only requires that the auditor checks whether or not a report has been provided. National governments determine whether the reporting is to be verified by an independent party.

3.2.2 General information regarding regulatory developments in the EU

In the EU, work relating to responsible business conduct, ethics, transparency and sustainability is often referred to using the umbrella term "Environment, Social and Governance (ESG) Reporting and Disclosure". "ESG" covers the enterprise's work with transparency in relation to:

- Sustainability and climate/environment, including climate risk and how the enterprise is impacted by and impacts climate and the environment.
- Labour rights, gender equality and human rights.
- Corporate governance, including the line to subcontractors.

The EU's measures for sustainability, social matters and corporate governance are linked to the UN's work on the Sustainable Development Goals, the Paris Agreement and issues including the European Green Deal. The EU has put to use a broad range of means to achieve, among other things, the goals in the Paris Agreement, including budget policy. This also applies to the COVID-19 recovery package, "Next Generation EU", where it is stated that more modern corporate governance and company law are to ensure that environmental and social interests are to a greater extent taken into consideration in business strategies for economic recovery following the COVID-19 pandemic and in long-term company development.

3.2.3 Regulatory developments in the European Commission

3.2.3.1 Bill on sustainable corporate governance

Responsible business conduct is high on the European Commission's political agenda. The Commission is working on a bill on sustainable corporate governance which is expected to be presented in the second quarter of 2021, likely in the form of amendments to the Directive on company law (Directive (EU) 2017/1132) and the Directive on shareholder rights (Directive 2007/36/EC).

On 30 July 2020, the European Commission launched an inception impact assessment on sustainable corporate governance for public consultation. The consultation is the preliminary stage for a more comprehensive impact assessment and possible subsequent legislative proposals. A public consultation on sustainable corporate governance was also held between 26 October 2020 and 8 February 2021. According to the European Commission, the problem is that too many enterprises focus on short-term benefits rather than long-term sustainable value creation and sustainability. According to the consultation memoranda, studies show that many enterprises feel pressured into this type of short-term planning and that this has been a trend in the period from 1992 until 2018. This pressure has several unfortunate consequences, the principal of which is that enterprises insufficiently identify and reduce the risk that own value and production chains might have adverse environmental, social or human rights impacts.

The European Commission considers how enterprises can be required to "do no harm" and how corporate boards can better integrate broader interests into its decisions. Among the issues being assessed are:

– How enterprises can identify risks in order to protect against societally harmful impacts of their own activities, e.g., to the environment and human rights, including labour rights and child labour (duties to carry out due diligence).
– How corporate boards can consider all interests that are relevant to the enterprise's sustainability in the long-term, or to those affected by the enterprise's operations (employees, the environment and other stakeholders). This is viewed as part of corporate governance.

The European Commission notes that these measures are closely linked to the revision of Directive 2014/95/EU on non-financial reporting, cf. point 3.2.3.2.

3.2.3.2 Revision of the Non-Financial Reporting Directive

The Non-Financial Reporting Directive (Directive 2014/95/EU) requires some large enterprises to report on assessments and risk management pertaining to environmental, social, human rights, anti-corruption and bribery matters in their annual financial statements, cf. point 3.2.1.2. A consultation on this Directive was concluded on 11 June 2020. The purpose of the consultation was to receive feedback on the Commission's plans to strengthen transparency regarding the social and environmental impacts of enterprises. The revision is occurring in the context of requirements that are already made of investors who are to invest in European enterprises. The goal is for a common thread of reporting and transparency regarding "ESG" to run through the entire market. The Commission is expected to present a proposal for a review of the Directive in the second quarter of 2021. It is expected that Commission's proposal will go further in imposing responsible business conduct than is currently the case. The revision of the Directive will entail changes to the requirements for reporting of sustainability and climate-related matters in Norwegian law.

3.2.3.3 Updated sustainable finance strategy

The European Commission is working on an updated sustainable finance strategy. The first strategy for this field was issued in March 2018, and accompanying regulations have already been adopted that cover the financial market's work on "ESG". The main purpose of the first action plan was to create incentives for a more sustainable financial market by increasing attention regarding "ESG" matters. A consultation on this matter was concluded on 15 July 2020. The updated strategy is expected to be presented in the spring of 2021. It is expected to build on the action plan from 2018. The updated strategy will likely place greater emphasis on risk assessments relating to climate and the environment. Such risk assessments are expected to be two-fold, in that they cover both how an economic activity impacts climate and the environment and how climate change can impact the profitability of an economic activity. This is to contribute to making the business sector more concerned with long-term assessments of profitability. Furthermore, it is expected that the updated strategy will place even more emphasis on increased reporting and transparency regarding "ESG", as an addition to the revision of the Non-Financial Reporting Directive.

3.2.3.4 Deforestation-free value chains

In the second quarter of 2021, the European Commission will also present a proposal for European regulation of raw materials involving a risk of deforestation. The proposal is expected to follow-up the European Parliament's corresponding proposal that was adopted on 22 October 2020, to a certain extent (see point 3.2.4.1). If the European Parliament's proposal is followed-

up by the European Commission, the proposal will entail mandatory due diligence for enterprises and the financial sector in order to minimise or eliminate raw materials involving a risk of deforestation being placed on the European market, and breaches of the regulations will result in sanctions. The European Commission has conducted two rounds of consultations that have received more than 1.2 million responses and is now preparing a proposal for new regulations. An impact assessment is underway to assess the cost-benefit effect of various measures to reduce deforestation, which also contributes to considerable greenhouse gas emissions, causes a loss of biodiversity and is a threat to indigenous peoples. Furthermore, there is the matter of illegal logging, which is often associated with corruption.

3.2.3.5 The EU's green classification system (taxonomy)

In order to contribute to a common understanding of what investments are sustainable, the EU is developing a classification system for sustainable financial activities, known as a "taxonomy". This taxonomy is developed in line with the EU's long-term climate and environmental goals and is intended to make it easier for investors to compare investment opportunities, offer enterprises incentives to make their business models more sustainable and identify sustainable investments. The Regulation on a taxonomy for sustainable financial activities was adopted by the EU in June 2020. The Regulation is of relevance to the EEA, and the Norwegian Financial Supervisory Authority has proposed implementing the Regulation in a new Act relating to information on sustainability. The requirements in the Regulation are directed at actors in the financial market and enterprises that are required to report non-financial information pursuant to the Accounting Directive. Among other things, this entails a requirement that enterprises report on the proportion of their financial activity that is sustainable in accordance with the criteria in the taxonomy. Over the course of the first half of 2021, the Commission will determine delegated acts that define criteria for what contributes to achieving two of a total of six environmental targets (mitigating and preventing greenhouse gas emissions and climate adaptation), which will be effective from 31 December 2021, as well as a delegated act containing more detailed requirements for reporting pursuant to the taxonomy. By the end of 2021, the Commission will establish criteria for the other four environmental targets in the taxonomy (sustainable use of water and marine resources, adaptation to a circular economy, prevention of pollution and biodiversity) which will be effective from 31 December 2022.

3.2.4 Regulatory developments in the European Parliament

3.2.4.1 Report on deforestation-free value chains

The European Parliament is also concerned with the responsible business conduct, ethics, transparency and sustainability of enterprises, and therefore has ongoing processes with separate draft resolutions. The European Parliament does not have the authority to propose regulations. However, it has an important role as legislator after the European Commission has presented a legislative proposal. The draft resolutions are intended to influence the European Commission, which has the authority to propose regulations.

On 22 October 2020, the European Parliament adopted a report on European due diligence for raw materials that cause deforestation and infringe on the rights of indigenous peoples. The European Parliament recommends mandatory due diligence processes for enterprises that place

raw materials that involve a risk of deforestation on the European market. It is also proposed that the obligations cover not only matters that result in deforestation, but also matters that cause destruction to other critical types of nature. It is emphasised in the report that approximately 80 per cent of global deforestation is associated with the expansion of farmland. The EU countries' demand for products such as palm oil, meat, leather, soy, cocoa, corn, timber, rubber etc. is a major driver of deforestation, forest degradation and ecosystem destruction and is associated with human rights violations. The EU Parliament is of the opinion that Europe has a responsibility to protect the world's forests, also because they protect the livelihoods of human beings and biodiversity. The report requests an effective implementation of due diligence processes for small and medium-sized enterprises to reduce their financial and administrative burden.

3.2.4.2 Report on corporate governance

On 17 December 2020, the European Parliament's plenary adopted a report on sustainable corporate governance. The report is intended as input to the European Commission and is designed as recommendations to the Commission to incorporate specific elements into the ongoing work on a legislative proposal relating to sustainable corporate governance (see discussion in point 3.2.3.1).

In the report, the European Parliament requests that the European Commission expand the scope of the regulations on non-financial reporting so that it can cover far more enterprises than is currently the case. The European Parliament is also requesting that the European Commission propose rules regarding collective responsibility for board members to prepare, inform and verify sustainability strategies.

3.2.4.3 Report on corporate due diligence and corporate accountability

In September 2020, the European Parliament commenced discussions regarding a report on corporate due diligence and corporate accountability. The report was finally adopted in the European Parliament's plenary on 10 March 2021. As with the report on corporate governance, the report on corporate due diligence and corporate accountability is also intended as input to the Commission. In the report, the European Parliament requests, among other thing, that the European Commission present a proposal for rules ordering enterprises to assess, prevent and mitigate potential adverse impacts that affect human rights and the environment along their own value chains. The European Parliament is also requesting that the European Commission ensure that enterprises be held accountable for the harm they cause to human rights and the environment. The European Parliament has also prepared a legislative proposal which is included with the report. The European Parliament encourages the European Commission to follow the legislative proposal in the drafting of new regulations.

3.3 Regulation and regulatory development in individual countries

3.3.1 Relevant regulations

3.3.1.1 France

The 2017 French Corporate Duty of Vigilance Law requires enterprises of a certain size to prepare, implement and publish a due diligence plan. The law applies to enterprises headquartered in France, and that meet the following conditions by the end of two consecutive financial years: i) enterprises with at least 5000 employees in France, in the enterprise or in subsidiaries and, ii) enterprises with at least 10,000 employees worldwide, in the enterprise or in subsidiaries. It is estimated that the law covers between 150 and 200 enterprises that represent approximately 50 per cent of French exports.

The Duty of Vigilance Law is based on the UNGP and the OECD Guidelines for Multinational Enterprises. The starting point for the law is the establishment of a vigilance plan and is intended to prevent serious harm to human beings and the environment. The vigilance plan builds on a duty to carry out due diligence. Enterprises' vigilance plans are to account for what measures are initiated in order to identify and prevent serious infringements of human rights, as well as human health and safety and environmental harm. The vigilance plan must contain the following:

- risk mapping that identifies, analyses and ranks risk;
- procedures for the regular assessment of risks association with subsidiaries, suppliers and subcontractors in accordance with the risk mapping;
- suitable measures to mitigate risks or prevent serious infringements or harm;
- a mechanism for alerting and collecting reports on actual or potential risks. This mechanism is to be developed in cooperation with the representative trade unions in the enterprise;
- a system for monitoring the implemented measures and evaluating their effectiveness.

The vigilance plan and the measures therein are to cover the parent company, directly or indirectly controlled enterprises (subsidiaries), suppliers or subcontractors with whom an established commercial relationship is maintained, insofar as the activity is associated with this relationship. The vigilance plan and report on the implementation thereof shall be published and included in the enterprise's annual financial statements. The enterprises are to report regularly on the implementation of the plan.

Following a request from anyone with a legal interest, the courts may order the enterprise to fulfil its requirements to prepare, implement or publish an effective vigilance plan with a time limit of three months. Failure to comply may result in daily fines. Persons who fail to comply with the requirements defined in the law may also incur liability for remedying the harm caused by non-compliance. Such a claim also has to be brought before the courts.

3.3.1.2 United Kingdom

The UK Modern Slavery Act, which was passed into law by the British Parliament in 2015, principally regulates criminal offences relating to modern slavery in the United Kingdom. The Act is intended to increase protection for victims, and an Anti-Slavery Commissioner is to

coordinate the efforts against modern slavery and identify possible victims. Section 54 of the Act, *Transparency in Supply Chains Etc.*, establishes requirements for reporting on efforts against modern slavery in enterprises and in the supply chain. Enterprises headquartered or domiciled in or outside the United Kingdom that are operating in the United Kingdom, that supply goods or services and have an annual turnover not less than GBP 36 million, are subject to the Act. It is estimated that this covers approximately 17,000 enterprises.

Enterprises are to prepare and publish a *Modern Slavery Statement* (declaration) where they account for what they have done to ensure that modern slavery and human trafficking does not occur within the business or the supply chain. The statement is to be prepared on an annual basis. The Act provides examples of information the statement may contain:

- the organisation's structure, its business and its supply chains;
- plans/policies in relation to slavery and human trafficking;
- due diligence processes in relation to slavery and human trafficking in its business and supply chains;
- the parts of its business and supply chains where there is a risk of slavery and human trafficking taking place, and the steps it has taken to assess and manage that risk;
- its effectiveness in ensuring that slavery and human trafficking is not taking place in its business or supply chains, measured against such performance indicators as it considers appropriate;
- the training about slavery and human trafficking available to its staff.

The statement must be published on the enterprise's website or provided on request within 30 days. Enterprises that have not prepared a statement and/or have not published the statement on a prominent place on the website of the enterprise, may be ordered to prepare and publish a statement. If the enterprise fails to provide a statement after this, it may be fined. There is currently no case law relating to this provision. It is possible for the enterprises to report that they have not taken any measures to combat modern slavery and, nonetheless, fulfil the statutory requirement. The British Government believes that reputation and pressure on the part of investors, consumers and society, generally, will influence enterprises to take measures.

The British Parliament is currently considering a bill to ban the importing of raw materials deriving from illegally converted land and forest areas. The legislative proposal will form part of the British Environmental Protection Act. Large enterprises estimated to have more than 500 employees will be subject to the Act.

3.3.1.3 Australia

In November 2019, Australia passed an Act to require some entities to report on the risks of modern slavery. Large enterprises and other entities (enterprises operating in Australia, funds etc.) are required report annually on the risks of modern slavery in their operations and supply chains, and actions to address those risks. The Act is to a significant extent inspired by Section 54 of the United Kingdom's Modern Slavery Act, but the reporting requirement in Australia goes further in setting requirements for the content of the reporting and also requires reporting from the public sector.

The following shall be accounted for in the annual report:

- the enterprise's structure, operations and supply chains;

– the risks of modern slavery, and the enterprise's measures that address and manage the risks of modern slavery in its business and in the supply chain, including the due diligence the enterprise has carried out,
– the effectiveness of these measures and actions,
– the process of consultation with entities that the enterprise owns or controls; and
– any other information that the reporting enterprise considers relevant.

According to the guidance to the Act, the public sector is to focus on the risks of modern slavery in public procurements and in the state's operations, including in investments.

The reports are stored in a public register that is to be available online. In the work on the bill, market-based solutions relating to a desire to maintain a good reputation were considered sufficient to motivate the enterprises. Therefore, no ombudsman scheme or sanctions mechanism was included.

3.3.1.4 United States

California's Transparency in Supply Chains Act became effective on 1 January 2012, and later served as the inspiration for the reporting requirement in the United Kingdom's Modern Slavery Act of 2015. The Act applies to retailers and manufacturers operating in California with annual gross receipts of more than USD 100 million. Approximately 3200 enterprises are affected by the Act.

The Act places a one-time reporting requirement on large retailers and manufacturers regarding their efforts to eradicate slavery and human trafficking from the supply chain. The Act specifies minimum requirements for one-time reporting on efforts to eradicate slavery and human trafficking in the supply chain. Enterprises subject to the Act shall account for the following:

– whether the enterprise engages in verification of product supply chains to evaluate and address risks of human trafficking and slavery and whether third-party verification was used;
– audits of suppliers and how they fulfil and comply with the requirements, including whether the inspection was conducted by an independent party;
– information regarding which certification requirements are demanded of direct suppliers;
– follow-up of internal standards and procedures for employees and contractors failing to meet the enterprise's standards regarding human trafficking and slavery;
– whether the enterprise provides training and skills development to employees and management who have direct responsibility for supply chain management.

Duty-bearers can report that they do not perform any of the above-mentioned activities without having contravened the Act. Annual reports are to be published on the enterprise's website. If an enterprise fails to satisfactorily report, the Attorney General may, among other things, order it to provide additional documentation. There are no fines for enterprises that fail to comply with the Act.

3.3.2 Regulatory development

3.3.2.1 The Netherlands

In May 2019, the Dutch Parliament passed a Child Labour Due Diligence Law. The purpose of the law is to prevent goods and services produced using child labour being sold to consumers in the Netherlands. The law applies to enterprises that offer goods and services in the

Netherlands. This means that it covers not only enterprises that are domiciled in the Netherlands, but also foreign enterprises that sell products to Dutch consumers via the internet.

The enterprises are to publish a statement that they have carried out due diligence to prevent child labour being used in the production of goods and services. This is an implicit requirement to carry out due diligence regarding child labour in the supply chain. The enterprises are to assess whether it is likely that goods and services are produced using child labour. If there is a suspicion that child labour is used, the enterprise is to prepare an action plan in accordance with international guidelines. The enterprises are not required to guarantee that child labour does not occur in the supply chains. If an enterprise fails to comply with the requirement to publish a statement, it may be fined. The same applies if enterprises fail to prepare an action plan or fail to comply with it, if the use of child labour is suspected. Certain individuals may complain to the authorities if they have evidence that the enterprise's products or services are produced using child labour.

In 2020, the Dutch Government submitted a proposal for measures to encourage due diligence on the part of enterprises. The key to doing so is the introduction of general due diligence processes, preferably at the EU level. The Dutch Government has previously stated that if general due diligence processes are introduced at the EU level, these will replace the enacted Child Labour Due Diligence Law. If no effective and feasible proposal is made at the EU level, the Netherlands will consider introducing binding measures at the national level.

3.3.2.2 Switzerland

In late November 2020, Switzerland held a referendum on whether to introduce a duty on Swiss enterprises to carry out human rights and environmental due diligence, with the possibility of sanctions. The result of the referendum was that the proposal was rejected. The alternative proposal by the Swiss Federal Assembly in the referendum thereby enters into force, providing a referendum resulting in a new referendum on the proposal is not initiated. The alternative proposal is limited to larger enterprises with more than 500 employees, enterprises that are associated with conflict minerals and enterprises with a risk of child labour in their supply chain.

3.3.2.3 Germany

In March 2021, a new bill to improve the international human rights situation was introduced. The bill is, among other things, a result of a 2020 survey conducted by the German Federal Foreign Office on how enterprises safeguard human rights in supply chains. The survey comprised enterprises with more than 500 employees and shows that only between 13 and 17 per cent of enterprises satisfactorily fulfil the recommendations regarding due diligence. The bill is part of the follow-up of the 2016 National Action Plan for Business and Human Rights. The Action Plan is based on the recommendations in the UNGP. In the bill, it is noted that self-regulation is insufficient and that legislation is needed.

The proposed entry into force of the bill is January 2023, and it will initially apply to enterprises that have employees or are headquartered in Germany and have at least 3000 employees, regardless of the industry in which the enterprise operates. From 2024, enterprises with at least 1000 employees will also be covered by the reporting duty in the law. Requirements are set regarding enterprises' due diligence in supply chains relating to internationally recognised human

rights. The duty is based on the recommendations regarding due diligence in the UNGP. Risk assessments also cover some environmental aspects and corruption, provided human rights are directly affected. The act will also contain rules relating to monitoring, enforcement and sanctions.

3.3.2.4 Finland

In connection with, among other things, the European Commission's consultation on sustainable corporate governance (see point 3.2.3.1), Finland has expressed that it approves of mandatory due diligence pertaining to human rights and the environment at the EU level.

Finland is also working on evaluating the possibility of requiring enterprises in Finland to carry out human rights and environmental due diligence. In 2019, the Finnish Ministry of Economic Affairs and Employment commissioned a legal memo from Ernst & Young on how responsible business conduct relating to human rights and the environment can be regulated. The report was published on 2 September 2020 and outlines the possibility of introducing a statutory duty to carry out due diligence in Finnish legislation, including possible scope, monitoring and sanctions. The report was released for consultation, in which 48 consultative bodies provided consultation responses. In the continued follow-up, the Ministry has appointed a working group that will until February 2022 be working on the drafting of a statutory duty to carry out due diligence.

4 Relevant regulations in Norway

4.1 The Accounting Act

The Accounting Act establishes a requirement for large undertakings to report on social responsibility, cf. Section 3-3 (c). The requirements in Directive 2014/95/EU on non-financial reporting are largely reflected in the Accounting Act.

Pursuant to Section 3-3 (c) of the Accounting Act, large undertakings are required to account for what the undertaking does to integrate considerations for human rights, labour rights, gender equality and non-discrimination, social matters, the external environment and anti-corruption in their daily operations and in relation to their stakeholders. The account shall at least contain information regarding guidelines, principles, procedures and standards the undertaking uses to integrate the mentioned considerations into its business strategies, in its daily operations and in relation to its stakeholders.

Undertakings that have policies, principles, procedures and standards that are used to integrate the above-mentioned considerations shall state how the undertaking works to convert these into action, provide an assessment of the results achieved as a result of the efforts to integrate the considerations in the undertaking, and inform of expectations for these efforts going forward. Undertakings that do not have such policies, principles, procedures and standards shall inform of this. Reporting on social responsibility pursuant to Section 3-3 (c) of the Accounting Act shall be provided in the enterprise's annual report or in another publicly available document. If the account is provided in another publicly available document, and the undertaking has a duty

to submit annual reports, the annual report shall inform of where the document is publicly available.

Section 3-3 (a) of the Accounting Act regulates the content of annual reports for accountable undertakings that are not small undertakings. Among other things, this provision requires reporting on working environment, as well as conditions in the enterprise, including its input factors and products, which may have a significant impact on the external environment. The latter reporting requirement in Section 3-3 (a) of the Accounting Act must be viewed in the context of enterprises' duty to know and right to information regarding enterprises' environmental impact in the Environmental Information Act (see point 4.4).

Section 3-3 (a) to (c) of the Accounting Act implement the main content of Directive 2014/95/EU on non-financial reporting. The Directive requires that large undertakings prepare an account containing consistent and comparable information relating to sustainability, which covers the environment, social and labour matters, respect for human rights and the combating of bribery and corruption. The account shall contain information necessary to understand the undertaking's development, results and financial position, as well as the impact of its activities. On 18 December 2020, the Ministry of Finance submitted Prop. 66 LS (2020–2021). In the proposition, the Ministry of Finance proposed, among other things, amendments to the Accounting Act necessary to implement the Consolidated Accounting Directive (Directive 2013/34/EU) and the Non-Financial Reporting Directive (Directive 2014/95/EU). Amendments were proposed to Section 3-3 (b) and Section 3-3 (c) of the Accounting Act, in addition to some other provisions to ensure that Norwegian accounting legislation satisfies the obligations in the directives.

4.2 Labour market regulation

4.2.1 Introduction

Working life in Norway is well regulated in acts and regulations and through supervisory bodies that provide guidance and issue orders. Existing labour market regulations will overlap with the rules in the Transparency Act, and an overview of parts of the overlapping labour market regulations etc. is provided below. Several supervisory bodies, including the Labour Inspection Authority and the Petroleum Safety Authority provide guidance on regulations and monitor practice.

4.2.2 The Working Environment Act and working environment regulations

The Act relating to working environment, working hours and employment protection, etc. (Working Environment Act) is the principal protection act for the Norwegian labour market. The working environment legislation has the objective of a thoroughly sound working environment and applies to most employment relationships in private and public enterprises. Separate legislation applies to shipping, hunting and fishing and military aviation. Supplementary working environment regulations provide detailed rules regarding the conditions at Norwegian

workplaces. The Labour Inspection Authority monitors enterprises' compliances with the Working Environment Act and its regulations.

Means in working environment efforts and working environment requirements are provided in Chapters 3 and 4 of the Working Environment Act and its accompanying regulations. Work shall be arranged and structured so that employees are protected against harm to health and accidents. Chapter 2 A of the Working Environment Act provides rules regarding notification of censurable conditions. These rules are based on the public's interest in the identification of censurable conditions and the consideration for a sound working environment, cf. Section 4-1 of the Working Environment Act.

Chapters 6 and 7 of the Working Environment Act contain rules regarding safety representatives and working environment committees. All enterprises with more than ten employees are required to elect safety representatives. Enterprises with more than one safety representative shall have at least one senior safety representative, who is responsible for coordinating the activities of the safety representatives. Enterprises with more than 50 employees shall establish a working environment committee that is to ensure the implementation of a thoroughly sound working environment.

Chapter 8 of the Working Environment Act provides rules regarding information and consultation on issues of importance to employees' working conditions with the employees' representatives. Chapter 9 regulates control measures in the enterprise. Chapter 10 provides rules regarding what constitutes legal working hours, the prohibition against night work, breaks and leisure time. The Working Environment Act provides detailed rules regarding child labour in Chapter 11. The main rule is that child labour is prohibited. The worst forms of child labour are covered by the provisions in the Penal Code.

Chapters 12 to 19 regulate the rights to leaves of absence, protection against discrimination, the main rule regarding permanent employment and conditions for use of temporary employment, rules for employees posted abroad, limitation on the use of temporary agency workers, requirements for objectively justified termination of employment, workers' rights in case of transfer of ownership of the enterprise, disputes regarding working conditions etc.

4.2.3 Internal Control Regulations

Employers are required to work in a systematic manner on HSE to ensure that considerations for employees' health, safety and environment are safeguarded, cf. Section 3-1, first paragraph of the Working Environment Act. The Internal Control Regulations are issued pursuant to Section 3-1 of the Working Environment Act and apply to enterprises that produce, sell or offer goods and services in Norway. The Regulations provide rules for systematic work on health, safety and environment, and also cover protection of the external environment against pollution. The actual requirement for systematic HSE work is the same for all enterprises, but the internal control is to be adapted according to the nature, activities, risks and size to the extent required to comply with requirements set out in or pursuant to health, environmental and safety legislation. The Internal Control Regulations are linked to a number of acts and regulations and are administered by several authorities. The main authorities for such administration are the Labour Inspection Authority, the Directorate for Civil Protection, the Environment Agency and

the Industrial Safety Organisation. In the event of breaches of the regulations, the authorities may order the rectification of matters by a certain time limit. In case of non-compliance, the enterprise may be subject to daily fines that run until the order is fulfilled. Serious matters may also be reported to the police.

4.2.4 Other relevant regulations

There are several regulations containing rules for the handling of chemicals. The Control of Major Accident Hazards Involving Dangerous Substances Regulation covers enterprises that may cause what is referred to as major accidents. The REACH regulation and CLP Regulation establish requirements for chemicals supplies. The REACH Regulation contains provisions regarding registration, assessment, approval and limitation of chemicals. The CLP Regulation contains requirements for classification, labelling and packaging of chemicals. The Chemical Labelling Regulation contains a requirement that chemicals that are imported or sold shall be registered in the Product Register.

4.2.5 The parties of working life have agreed on rules for a decent and sustainable working life

In the Basic Agreement between LO and NHO, a clause was included in 2008 where the parties emphasise the importance of a decent and sustainable working life. The clause refers to the principles on which the OECD Guidelines for Multinational Enterprises and the UN Global Compact are based. Enterprises are encouraged to apply these principles in their operations, both at home and abroad. This clause was continued in the Basic Agreement for 2018–2021.

4.2.6 The General Application Act and regulations

The purpose of the Act is to ensure foreign employees who are working in Norway terms of wages and employment that are equivalent to those of Norwegian employees. Thereby, the Act is to prevent distortion of competition that is detrimental to the Norwegian labour market. When all or part of a collective agreement between the parties of working life is made applicable to anyone who performs work of the nature covered by the agreement, this is referred to as general application of a collective agreement. The Tariff Board, established by Section 3 of the General Application Act, is comprised of representatives from trade unions and employers' organisation and the authorities. The Tariff Board makes decisions regarding general application based on claims made by one or both parties to a collective agreement. The decision is given general application through regulations. In some industries, such as the shipping and shipbuilding and building industry, collective agreements are given general application by the Tariff Board. In practice, generalised clauses regarding wages will represent minimum wages in the industries where this has been introduced.

Furthermore, joint and several liability has been introduced for contractors pursuant to Section 13 of the General Application Act. The joint and several liability applies to supplier enterprises that have undertaken assignments within the scope of general application regulations, and that use one or more subcontractors to perform a part of the assignment. The liability applies

throughout the chain, i.e., from the principal supplier and down the chain. This does not apply to the enterprise that orders the actual product or result, e.g., a building or a ship (the construction client). The contracting authority may be jointly and severally liable for wages and overtime remuneration pursuant to general application regulations and holiday pay pursuant to the Holidays Act. If wages higher than the minimum wage pursuant to the general application regulations are agreed, the contracting authority will only be liable for the minimum wage. The joint and several liability takes effect once wages are due to be disbursed, and the employee is required to submit a written claim within three months. The Labour Inspection Authority monitors the compliance with pay and working conditions pursuant to general application regulations.

4.2.7 Regulations on information and supervisory duties and the right to information

The purpose of the Regulations is to contribute to ensuring compliance with pay and working conditions pursuant to general application regulations. The duty to provide information entails that the ordering party in contracts with contractors or suppliers is to inform that the enterprise's employees shall at least have pay and working conditions pursuant to the prevailing general application regulations. This is to be interpreted such that it also covers temporary agency workers. The supervisory duty entails that the principal contractor and/or ordering party is to ensure that pay and working conditions in the enterprise's subcontractors are in accordance with the prevailing general application regulations. This provisions only applies where the ordering party engages in commercial activity. The supervisory duty entails that systems and routines shall be implemented to investigate and, if necessary, follow-up compliance with general application regulations. As a main rule, the Regulations entail that the principal supplier is required to collect information regarding pay and working conditions from subcontractors and forward such information to the employees' representatives, if the employees' representatives so demand.

4.2.8 Regulations on salary and conditions of work in public works contracts

The Regulations require public contracting authorities to stipulate requirements in contracts that the supplier must provide their employees with pay and working conditions (not pension rights) in accordance with the general application regulations where such apply, possibly in accordance with nationwide collective agreements. These rules only apply to the supplier that has been awarded the contract. The public contracting authority is also required to conduct necessary monitoring of compliance with pay and working conditions during the term of the contract.

4.2.9 The Norwegian Government's strategy for combating work-related crime

Norwegian working life is generally characterised by good and orderly working conditions. However, work-related crime is a significant challenge for some employees, certain enterprises and society at large. Work-related crime involves activities – often organised – that violate Norwegian legislation regarding pay and working conditions, social security and taxation;

exploiting workers or distorting competition and undermining the social structure. Over the past 15 years, social dumping and work-related crime has become so serious that the Norwegian Government has increased funding to combat this trend. This is done through, among other things, the interagency Work-Related Crime Centre (A-krim). In 2015, the Norwegian Government prepared a strategy for combatting work-related crime. The strategy was developed in close dialogue with the parties of working life and was revised in 2017, 2019 and 2021. A number of new measures and extensive cooperation between various agencies have been initiated in order to combat work-related crime. This is referred to as the Revised Strategy of 2021.

4.3 Regulations regarding public procurements

The Public Procurement Act contains several provisions that require public sector purchasers to make considerations regarding the environment, working conditions and social matters in the implementation of their procurements. Section 5 of the Public Procurement Act concerns human rights, the environment and other social considerations.

Pursuant to Section 5 of the Public Procurement Act, the procurement practice shall be arranged so that it contributes to reducing harmful environmental impacts and promotes climate friendly solutions where this is relevant. Contracting authorities are also required to have suitable routines for promoting respect for fundamental human rights in public procurements, where there is a risk of infringements of such rights. Contracting authorities may establish their own requirements and criteria at various stages in the procurement process, so that public contracts are implemented in a manner that promotes considerations for the environment, innovation, working conditions and social matters, provided the requirements and criteria are associated with the deliverable, and the Act's basic principles and more detailed rules in regulations are respected. The Ministry of Trade, Industry and Fisheries has prepared a guide to the provisions of the Public Procurement Act in relation to social responsibility.

The routines shall primarily contribute to preventing infringements of fundamental human rights. Key to the understanding of fundamental human rights are the rights enshrined in the ILO's core conventions. These consist of eight conventions that establish minimum standards for working life. In accordance with the principle of proportionality, the routines are to apply to procurements where there is a risk of infringements of human rights. The risk must involve more than a theoretical risk. Chapter 12 of Meld. St. 22 (2018–2019) Report to the Storting (white paper) *Smartere innkjøp – effektive og profesjonelle offentlige anskaffelser (Smarter purchasing - efficient and professional public procurements)* on increased social responsibility, describes in more detail what is considered to constitute suitable routines.

The Procurement Department of the Agency for Public and Financial Management (DFØ) provides guidance on how public contracting authorities can best implement public procurements within the framework of the procurement regulations. On DFØ's website (www.anskaffelser.no), information is provided regarding how purchasers can establish requirements for social responsibility, including guidance on the preparation of suitable routines to promote fundamental human rights. Among other things, DFØ recommends the use of a list of product

categories with a high risk of infringements of fundamental human rights. Standard contract terms and a criteria guide have also been prepared to assist purchasers in these efforts.

4.4 The Environmental Information Act

The Environmental Information Act regulates both public bodies' and public and private enterprises' duties to hold and disclose environmental information. Environmental information means factual information about and assessments of the environment, factors that affect or may affect the environment and human health, safety and living conditions.

Administrative agencies are required to hold general environmental information relevant to their areas of responsibility and functions and make this information accessible to the public (active duty to disclose information). Administrative agencies and other public bodies shall on request disclose information they hold or should hold pursuant to the duty to know (passive duty to disclose information). All enterprises, both public and private, are required to hold knowledge regarding matters in the enterprise which may have a significant impact on the environment. The duty to know comprises positive and negative environmental impacts, including potential or possible environmental impacts resulting from operations. Enterprises are required to disclose such environmental information on request (passive duty to disclose information). The right to information applies to "any person". The duty to know and duty to disclose information does not cover the supply chain. The right to information from enterprises regarding environmental impacts from production or distribution of products outside of Norway's borders applies insofar as such information is available, i.e., that the enterprise itself possesses such information or the information is easily obtainable. The enterprise shall direct requests to previous stages of the sale if this is necessary in order to respond to the request.

The Environmental Information Act contains no due diligence duty or requirements to carry out due diligence.

4.5 The Product Control Act

Section 3 of the Product Control Act establishes a duty to know and due diligence duty regarding products. Any person that produces, imports, processes, uses or in any other way handles products that may cause harm to health or environmental disturbance, shall exercise due care and take reasonable steps to prevent or limit such effects. Producers and importers have a duty to obtain such knowledge as is necessary to evaluate whether a product can cause such harm to health or environmental disturbance. Owners or managers of enterprises that offer consumer services have a duty to obtain such knowledge as is necessary to evaluate the risk of harm to health. This entails maintaining an overview of existing knowledge and obtaining information and exercising a somewhat critical approach to sources of information and which are relevant and credible.

Furthermore, there is a duty to provide users of consumer products and recipients of consumer services with adequate and relevant information so that they are put in a position to evaluate the safety of the products or services and, if necessary, avoid any risk, unless the action

necessary is clear without such information. The information shall be clear, easily available and adapted to the needs of users and recipients.

Section 5a of the Product Control Act establishes that any distributor of consumer products shall be able to provide the information needed to specify and trace the origin of such products. Such information shall be kept available for inspection for five years from the end of the year in which the information is received.

Section 10 of the Product Control Act grants anyone the right to information regarding products, including information regarding the risk of harm to health or environmental disturbances. On request, anyone is also entitled to demand information about a producer. Furthermore, anyone has the right to receive information regarding the impacts on the environment resulting from the production or distribution of a product outside of Norway's borders, insofar as such information is available. This means that the enterprise is either in possession of such information or such information is easily obtainable. The enterprise shall direct requests for information to previous stages of the sale if this is necessary in order to respond to the request. Therefore, this does not entail a duty to disclose information relating to harm to health or environmental disturbances caused by production or distribution outside of Norway.

4.6 The Penal Code

The rules regarding enterprise penalties, i.e., punishments that affect enterprises and other legal entities in the form of fines, are included in Section 27 and Section 28 of the Penal Code. When a penal provision is violated by a person who has acted on behalf of an enterprise, the enterprise is liable to punishment, cf. Section 27, first paragraph. This applies even if no single person can be penalised for the offence. Thus, the provision also entails that an enterprise can be held criminally liable for all criminal offences committed on behalf of the enterprise. What constitutes "on behalf" of an enterprise, rests on an individual assessment. The perpetrator can either be employed in the enterprise or be a person who works as an independent contractor. According to the preparatory works to the Penal Code, Proposition to the Odelsting (Ot.prp.) no. 90 (2003–2004), page 430, second column, the person must have had a positive basis for acting on behalf of the enterprise. Furthermore, it is stated in the same place that a parent company cannot automatically be held liable for acts committed on behalf of a subsidiary. Whether a parent company can be held liable rests on an assessment of the perpetrator's affiliation with this enterprise, e.g., whether the perpetrator is also employed with the parent company. Generally, the same elements will be relevant as in the assessment of the perpetrator's affiliation with the subsidiary, cf. Ot.prp. no. 90 (2003–2004), page 431. Section 27 of the Act only provides a basis for punishing the parent company if the offence can also be considered to have been committed on its behalf, cf. Ot.prp. no. 27 (1990–91), page 20, second column and Ot.prp. no. 90 (2003–2004), page 431, first column.

The enterprise can be penalised in the form of a fine. The enterprise may also be sentenced to lose the right to operate, or may be prohibited from operating in certain forms, and be subject to confiscation, cf. Section 27, third paragraph.

Section 28 of the Act does not provide an exhaustive list of elements involved in the decision of whether an enterprise should be penalised, and the determination of sentence:

a. the preventive effect of the penalty,
b. the severity of the offence, and whether a person acting on behalf of the enterprise has acted culpably,
c. whether the enterprise could have prevented the offence by use of guidelines, instruction, training, checks or other measures,
d. whether the offence has been committed in order to promote the interests of the enterprise,
e. whether the enterprise has had or could have obtained any advantage by the offence,
f. the financial capacity of the enterprise,
g. whether other penalties arising from the offence are imposed on the enterprise or a person who has acted on its behalf, including whether a penalty is imposed on any individual person, and
h. whether agreements with foreign states prescribe the use of enterprise penalties.

In May 2018, the Ministry of Justice and Public Security, launched a consultation on a proposal for amendments to the Penal Code etc., which, among other things, addresses enterprise penalties and the Penal Code's application to acts committed abroad. The consultation was followed up in the form of Prop. 66 L (2019–2020) (see Chapter 14 and Recommendation to the Storting 328 L (2019–2020)). The legislative amendments to Section 5 of the Penal Code regarding jurisdiction entered into force on 1 July 2020. Currently, an evaluation of the rules regarding enterprise penalties and corruption is also underway, which is expected to be submitted to the Ministry of Justice and Public Security in 2021. According to the mandate for the report, it shall, among other things, be assessed "whether enterprises should, to a greater extent than is currently the case, be held liable for criminal offences committed by agents, other independent contractors and others who can be connected to the enterprise, including an assessment of the scope of liability as an abettor." It will also be assessed "whether it should to a greater extent than is currently the case be possible to hold parent companies liable for criminal offences committed by subsidiaries", and "whether structural and preventive measures to prevent criminal offences should be given greater significance than according to prevailing legislation, and how this should potentially be regulated".

4.7 The Equality and Anti-Discrimination Act

The Equality and Anti-Discrimination Act is to promote equality and prevent discrimination on the basis of gender, pregnancy, leaves in connection with childbirth or adoption, care responsibilities, ethnicity, religion, belief, disability, sexual orientation, gender identity, gender expression, age or other significant characteristics of a person. Among other things, the Act sets out a prohibition against discrimination and harassment. Discrimination means direct or indirect differential treatment that cannot be considered lawful differential treatment pursuant to the Act. Harassment covers acts, omissions or statements that have the purpose or effect of being offensive, frightening, hostile, degrading or humiliating.

On 1 January 2020, amendments to the Equality and Anti-Discrimination Act entered into force which strengthen employers' activity duty and duty to issue a statement. All employers have a duty to make active, targeted and systematic efforts to promote equality and prevent discrimination in relation to all forms of discrimination listed in the Act, with the exception of age, cf. Section 26, first paragraph of the Equality and Anti-Discrimination Act. These efforts shall, among other things, include the areas of recruitment, pay and working conditions, promotion,

development opportunities, adaptation and the possibility to combine work and family life. Pursuant to Section 26, second paragraph, employers in all public and private enterprises with more than 50 employees have a duty to:

a. investigate whether there is a risk of discrimination or other barriers to equality,
b. analyse the causes of identified risks,
c. implement measures suited to counteract discrimination and promote greater equality and diversity in the undertaking, and
d. evaluate the results of efforts made.

Employers in all public and private enterprises with more than 50 employees also have a duty to assess pay conditions by reference to gender, and account for the results of such a review. They are also to assess the use of involuntary part-time work, where the employee so desires and is available to work more. The same applies to employers in private enterprises with between 20 and 50 employees, when one of the parties of working life so demands.

The same employers who have an activity duty pursuant to Section 26, second paragraph, also have a duty to issue a statement pursuant to Section 26 (a) of the Equality and Anti-Discrimination Act. Employers are to issue a statement on the actual status of gender equality in the enterprise and what the enterprise is doing to comply with the activity duty pursuant to Section 26. The duty to issue a statement is intended to ensure that the activity duty is followed up. The statement shall be provided in the annual report or another publicly available document. Employers in public enterprises that are not required to prepare annual reports shall include the statement in another report issued annually.

The responsibility of limited liability companies and public limited liability companies to actively engage in equality efforts is highlighted in Section 26 (c) of the Equality and Anti-Discrimination Act. Here, it is stated that the board of directors shall ensure that the duty to engage actively in equality work and the duty to issue statements in this regard are met in accordance with the Equality and Anti-Discrimination Act and Section 3-3 (c) of the Accounting Act.

The Equality and Anti-Discrimination Ombud is responsible for guidance and follow-up of the activity duty and duty to issue a statement, both for private and public actors, cf. Section 5, fourth paragraph of the Equality and Anti-Discrimination Ombud Act. This entails that the Ombud is to follow-up the activity duty and duty to issue a statement pursuant to Equality and Anti-Discrimination Act, as well as the duty to issue a statement on equality and non-discrimination in accordance with Section 3-3 (c) of the Accounting Act. Among other things, this may entail that the Ombud and the employer prepare a joint approach to how the activity duty is to be followed up in the enterprise. Furthermore, the Ombud may review the equality statements, analyse the findings, and make proposals for improvement measures and strengthened efforts for the equality efforts in the enterprise. The Ombud may also conduct follow-up visits to the enterprises.

The Anti-Discrimination Tribunal enforces the provision regarding employers' duty to issue a statement and may issue administrative decisions in case of non-compliance with the duty to issue a statement. The Tribunal may impose enforcement penalties to ensure fulfilment of an order.

5 General information regarding the proposal for a new Transparency Act

The Ethics Information Committee's report and Proposal for a Transparency Act has generally been favourably received by the consultative bodies, including the business sector. Some consultative bodies have highlighted that a growing number of enterprises are concerned with how they can safeguard their social responsibility and contribute to achieving the UN Sustainable Development Goals. To achieve this, there is a need for clear and harmonised requirements from the government and stakeholders, as well as guidance, tools and cooperation platforms.

The Ministry is concerned with the duties imposed on enterprises in the Transparency Act being anchored in international guidelines and principles for responsible business conduct, including the UN Guiding Principles on Business and Human Rights (UNGP) and the OECD Guidelines for Multinational Enterprises. These standards reflect recommended practice globally and should be familiar in the business sector. Already now, the Norwegian Government expects that all Norwegian enterprises are aware of and comply with the UNGP and the OECD Guidelines. This is expressed, among other places, in the Norwegian Government's National Action Plan for the implementation of the UN Guiding Principles from 2015 and Meld. St. 8 (2019–2020) Report to the Storting (white paper) *The state's direct ownership of companies – Sustainable value creation* (State ownership report).

The Transparency Act does not replace the international principles and guidelines. All enterprises are still expected to be familiar and comply with the UNGP and OECD Guidelines. This expectation applies both to those covered by the scope of the Act and those that are not. This entails that all enterprises should carry out due diligence in accordance with the UNGP and the OECD Guidelines, even if the proposed Transparency Act will only apply to larger enterprises. Similarly, the enterprises continue to be expected to carry out due diligence regarding corruption and environmental impacts, even though the Transparency Act is limited to fundamental human rights and decent working conditions. The fact that the Transparency Act has a narrower scope than the UNGP and the OECD Guidelines must not be interpreted as signalling reduced expectations relating to the UNGP and the OECD Guidelines. On the contrary, the purpose of this Act is to elevate the international principles and guidelines and ensure that they are to a greater extent known and observed.

According to the Ethics Information Committee, the signal from enterprises with which the Committee has engaged in dialogue during the preparation of the report has been that a Transparency Act will contribute to more equal competitive conditions for those that are already working in a systematic manner with improvements of human rights and working conditions. At the same time, some consultative bodies have noted in their consultation responses that Norwegian and foreign businesses operate in an international context, and that relating to various national regulations creates unnecessary obstacles and barriers to global trade. Therefore, these consultative bodies have highlighted the importance of avoiding national regulations that can result in competitive disadvantages for Norwegian enterprises. The Ministry agrees that it is key that the requirements established in the Transparency Act are harmonised with international legislation. Therefore, in the work on the Transparency Act, reference is made to the regulatory developments in the EU and the development of similar statutory requirements in other

countries. The Ministry sees a clear international development in the direction of more regulation and statutory reporting. National regulations moving in this direction have been introduced, among other places, in the United Kingdom and Australia in the form of modern slavery acts, and in France and the Netherlands in the form of due diligence acts, as a response to the UNGP and the OECD Guidelines. Similar processes are underway in e.g., Finland, Germany and Switzerland (see more discussion on this in point 3.3). There are also several ongoing processes in the EU relating to responsible business conduct. For instance, the European Commission is working on changes to company law and corporate governance, which are expected to require enterprises to carry out due diligence in relation to the environment and human rights. The European Commission is also working on revising the Non-Financial Reporting Directive (2014/95/EU) which requires large undertakings to report on responsible business conduct. The European Parliament is also concerned with these issues and is therefore working on its own draft resolutions to ensure sustainable products and value chains. See point 3.2 on regulations and regulatory developments in the EU. The Ministry recognises that the developments in the EU may require changes to the Transparency Act that is being proposed here and will therefore closely monitor the regulatory developments in the EU.

The Ministry also believes that it is important that the Transparency Act becomes part of a unified national regulatory framework, so that enterprises are not subject to unnecessary reporting requirements or overlapping reporting. There already exists legislation in Norwegian law intended to influence the business sector to safeguard human rights and that contributes to the fulfilment of the UNGP and the OECD Guidelines, e.g., the Working Environment Act's requirements regarding working environment and prohibition against discrimination, Section 3-3 (c) of the Accounting Act regarding large undertakings' reporting duty on responsible business conduct, and Section 5 of the Public Procurement Act regarding routines to safeguard human rights and the environment in public procurements. The Transparency Act must, to the greatest extent possible, be harmonised and viewed the context with existing regulations in Norwegian law. See point 4 on relevant regulations in Norway.

The Ministry is concerned with the Transparency Act clearly expressing what is expected of the enterprises. The fact that the Transparency Act lists clear and feasible obligations for the business sector is something that is highlighted as important by several consultative bodies. Several consultative bodies have also highlighted the importance of the Act clearly expressing that it builds on the overarching principles of a risk-based approach and proportionality. These principles entail that what is expected of the enterprises dependents on, among other things, the industry, context, size and maturity. The principles follow from the UNGP and the OECD Guidelines for Multinational Enterprises, on which the Act also builds, and shall, according to the Ministry's proposal, be guiding for the duties imposed on enterprises in the Transparency Act. Since the duties in the Act are closely linked with international guidelines and principles, it is, in the Ministry's opinion, difficult to achieve as detailed and clear duties as desired through legislation without having to interpret the international principles and guidelines, and without having to make necessary delimitations in the Act. The Act must be supplemented by the guidance which the Consumer Authority will be responsible for in accordance with the Ministry's proposal. The Consumer Authority has extensive and good experience with providing guidance to businesses and it will therefore be important that the Consumer Authority

cooperates closely with other key competence communities in order to assist the enterprises in the best possible manner.

6 The bill and EEA legal limitations

Articles 11, 31, 33, 36 and 39 of the EEA Agreement contains general prohibitions against restrictions on free movement of goods and services, as well as freedom of establishment. According to these provisions, restrictions may, however, occur provided they are justified on grounds of public order, public security or public health. As a result of a broad interpretation of the prohibition against restrictions in case law, other considerations have also been accepted as legitimate considerations by the European Court of Justice, see C-120/78 *Rewe-Zentral*, referred to as the Cassis de Dijon case, premise 8. These considerations are referred to as overriding reasons relating to the public interest.

The rules regarding freedoms in the internal market have developed through practice, from being a direct prohibition against discrimination to also covering an indirect prohibition against discrimination and a non-discriminating prohibition against restrictions that covers all forms of regulations, measures or schemes capable of prohibiting, preventing or rendering difficult free movement without being discriminating on grounds of nationality, place of establishment or cross-border activities, see. C-76/90 *Säger*, premise 12.

A Transparency Act that applies to EEA actors can be viewed as entailing restrictions on the free flow of goods and services, as well as to freedom of establishment, as it is capable of preventing, inconveniencing or rending such activities less attractive, considering that it will result in additional administrative or financial burdens, i.e., burdens in addition to those in the home state.

In order for a restriction to be considered to comport with EEA law, it must seek to safeguard a legitimate interest. What interests are considered legitimate depends on whether or not the restriction is directly discriminating. Directly discriminating restrictions can only be justified based on the written, legitimate interests of public order, public security or public health. Restrictions that do not discriminate on grounds of nationality, which is the case for the requirements in the Transparency Act, can also be justified on grounds of overriding reasons relating to the public interest. Relevant overriding reasons relating to the public interest for the Transparency Act are the safeguarding of fundamental human rights, decent working conditions, as well as the general public's access to information regarding enterprises' activities in this regard.

The restrictions must also be deemed proportionate. The proportionality requirements entails that two conditions must be fulfilled. Firstly, the measure must be appropriate for ensuring the objective pursued and it must pursue the objective in a "consistent and systematic manner", cf. among other things, E-8/17 *Kristoffersen* paragraph 118. Second, the measure must be necessary in order to achieve the purpose. In E-4/04, *Pedicel* the EFTA Court worded the requirement of necessity such that "the same objective may not be as effectively achieved by measures which are less restrictive of intra-EEA trade.", cf. paragraph 56. The conditions are cumulative.

The Proposal for a Transparency Act entails that enterprises are to carry out and account for due diligence, cf. point 8.2, and respond to requests for information, cf. point 8.3, in order to achieve greater awareness and transparency in the enterprises regarding human rights and labour rights matters within the enterprise itself, its supply chain and with business partners. In the Ministry's assessment, these duties are appropriate for achieving the purposes of increased safeguarding of fundamental human rights and decent working conditions, which is also reflected in the bill's statutory objective, cf. the discussion in point 7.1. The proposed duty to carry out due diligence will require enterprises to assess adverse impacts on human rights and implement measures to prevent and address such impacts, and therefore entail improvements in the enterprise's production and supply chain. The duty to disclose information is directly justified on grounds of ensuring the general public access to information. Therefore, in the Ministry's opinion, the duties are appropriate for pursuing the objective in a "consistent and objective manner".

Regarding the condition of necessity, the Ministry refers to the fact that both the Ethics Information Committee's report, and studies by the OECD's Contact Point and Amnesty International Norway show that binding legislation is necessary in order to achieve adequate protection of fundamental human rights and decent working conditions. This is also emphasised by several of the consultative bodies. Due diligence is the preferred means to achieve greater awareness and respect for human rights in enterprises, both in accordance with the UN Guiding Principles on Business and Human Rights (UNGP) and the OECD Guidelines for Multinational Enterprises. The regulatory developments in the EU and in other countries, including Finland, France, the Netherlands, the United Kingdom and Germany, are also moving in the direction of an increased degree of regulation in order to ensure transparency in enterprises in accordance with the UNGP and the OECD Guidelines (see point 3.2 and 3.3). In the Ministry's opinion, this shows that the duties proposed in the Transparency Act are necessary in order to achieve the purpose of increased respect for human rights and decent working conditions and to ensure the general public access to information.

For more discussion on the necessity and proportionality of the bill, see point 8.2.3 and 8.3.3.

7 Purpose and scope of the Act

7.1 Purpose of the Act

7.1.1 The Ethics Information Committee's proposal

The Ethics Information Committee proposes a two-pronged purpose for the Transparency Act (see Section 1 of the Committee's bill). Firstly, the Act is to ensure that consumers, organisations, trade unions and others have access to information about fundamental human rights and working conditions in enterprises and supply chains. "Others" especially refers to investors, enterprises seeking information to influence the industry, and public contracting authorities. Second, the Act is to contribute to promoting enterprises' respect for fundamental human rights and decent working conditions. Overall, this is to contribute to an improvement of working

conditions, according to the Committee's comments to the provision. The purpose is sought attained through the proposed duties in the Act.

7.1.2 Opinions of the consultative bodies

The Digitalisation Agency, Equinor, Consumer Council, YWCA-YMCA, Norwegian Church Aid and the Christian Council of Norway, Kongsberg Gruppen, Norsk Hydro, Oslo Municipality, *Statkraft, Telenor* and *Yara International* support the statutory objective as it is proposed. The Digitalisation Agency supports the fact that the bill's purpose of "contributing to promoting enterprises' respect for fundamental human rights and decent working conditions" corresponds with the wording in Section 5 of the Public Procurement Act. The Directorate states that using common wording in the regulations contributes to organising the requirements directed at the business sector and that this contributes to simplifying and improving the efficiency of whether and how the business sector understands and complies with the requirements.

FOKUS – Norwegian Forum for Women and Development, the Norwegian National Human Rights Institution, the Confederation of Norwegian Enterprise (NHO) and *Responsible Business Advisors* (RBA) propose that the Act's second purpose "to contribute to promoting enterprises' respect for fundamental human rights and decent work" be elevated to the main purpose of the Act. FOKUS and RBA note that securing information is not the principal purpose but rather a means of promoting human rights and decent work. NHO also believes that customer behaviour should be included as a part the desired achievements of the Act, i.e., that customers use the information as a basis for purchase decisions, increasing the likelihood of responsible conduct on the part of the seller and the seller's supply chain. *Amnesty International Norway* (Amnesty) and *Save the Children Norway* believe that the Act's purpose to "contribute" to promoting fundamental human rights and decent work, should instead be to "ensure" that the business sector respects fundamental human rights and decent work.

Hope for Justice believes the Act should have a clearer purpose in light of UN Sustainable Development Target 8.7, in order to ensure decent work, as well as prevent forced and child labour.

Amnesty, *Bergen Municipality, Norwegian Council for Africa, Future in our hands – Head Office, the Oslo Chapter and Trondheim Student Chapter, Forum for Development and Environment*, YWCA-YMCA, *Ministry of Climate and Environment, Norwegian Union of Journalists*, Save the Children Norway, *Rainforest Foundation Norway*, *Spire*, *UNICEF Norway* and *Viken County Council* recommend that the purpose of the Act not only refers to fundamental human rights and working conditions, but also the environment.

Oslo Municipality believes it is positive that the statutory objective is broad and explicitly lists a large and diverse group of rights-holders. According to the consultative body, access to information will provide the various actors with a better basis for making purchase and investment decisions and implement other measures that take into consideration the societal impacts of enterprises.

NHO states that there is no reason to highlight any stakeholders in particular in the statutory objective and proposes that the listing be replaced with "any party". Other consultative bodies that comment on the rights-holders in the Act recommend that certain groups be highlighted in

the text of the Act. The Consumer Council states that the listing of the rights-holders in the Act must also explicitly include commercial activity, industries and authorities, in addition to consumers and employee organisations. The Norwegian Union of Journalists proposes that "editor-controlled journalistic media" be added to the list so that the important social mission of the press is more clearly expressed in the provision. The consultative body notes that the media has played a key role in the identification of infringements of fundamental human rights in the business sector.

The Digitalisation Agency, *Innlandet County Council*, Oslo Municipality, *University of Bergen* (UiB) and Viken County Council especially highlight the importance of public contracting authorities being covered by the rights holders of the Act. According to the Digitalisation Agency, 16,750 public procurements are currently carried out each year, and requirements for safeguarding of human rights in public procurements therefore have a major impact on the supplier market. Innlandet County Council, Oslo Municipality, UiB and Viken County Council state that it is positive for them, as public purchasers, that suppliers are subject to transparency requirements. The Transparency Act will provide greater opportunities to review suppliers' compliance with human rights and labour matters and make it easier for public contracting authorities to comply with the requirements in the Public Procurement Act. To emphasise the significance of the Act for the public sector, the Digitalisation Directorate proposes that the public sector be explicitly mentioned in the listing of the rights holders in the Act.

7.1.3 Ministry's assessments

Based on the Ministry's assessment, the Ethics Information Committee's proposed statutory objective appropriately expresses the intentions and objectives of the Act. The statutory objective is two-pronged and the two purposes are closely connected. Access to information will provide the various actors with a better basis for making purchase and investment decisions and implement other measures that take into consideration the societal impact of enterprises. Enterprises being required to have knowledge of and grant access to such information, will promote respect for human rights and decent working conditions in enterprises, supply chains and with business partners.

Nevertheless, the Ministry agrees with the consultative bodies that the Act's two-pronged purpose should be listed in the opposite order in the text of the Act. In the Ministry's assessment, the Act's main purpose is to contribute to promoting enterprises' respect for human rights and decent working conditions. The purpose of the Act to ensure that consumers, organisations, trade unions and others have access to information about human rights and working conditions in enterprises and supply chains is also important. However, in the Ministry's view, this is secondary and more of a means of achieving the main purpose of respect for human rights and decent working conditions.

Regarding the provision's designation of rights-holders, the Ministry agrees with NHO that it is not necessary to highlight individual rights-holders over others. The Act is to ensure access to information. The input from the consultative bodies has revealed that the Act will be used and be useful for several different actors in addition to consumers, organisations and trade unions, which the Ethics Information Committee proposed to highlight in the text of the Act. For

instance, the Act can also be used by journalists, investors, enterprises and public contracting authorities. Through the Act, all of these rights-holders will obtain a better basis for making purchase and investment decisions or for implementing other measures. The various rights-holders will, in different ways, be important in order for the Act to be actively used and to achieve the main purpose of the Act. In the Ministry's assessment, it is difficult to highlight the importance of some rights-holders over others, and therefore proposes that the statutory objective expresses that the "general public" be ensured access to information. The term "general public" is also used in the statutory objective of the Environmental Information Act.

NHO has added that the Act's purpose should also cover changing consumers' customer behaviour. The Ministry believes this is an important sub-goal for achieving the main purpose of contributing to promoting enterprises' respect for human rights and decent working conditions. However, the Ministry does not believe it is necessary to highlight this in the text of the Act.

Certain consultative bodies believe that the Act should "ensure" enterprises' respect for human rights and decent working conditions, instead of "contribute to promoting" enterprises' respect for human rights and decent working conditions. In the Ministry's assessment, the Transparency Act represents an important contribution to the work of holding the business sector accountable and improving working conditions in the global supply chains. However, the Transparency Act will not solve all of the challenges in this area. In the Ministry's assessment, this is more clearly expressed in the Act with the wording "promote enterprises' respect" for fundamental human rights and decent working conditions. However, the Ministry proposes removing "contribute to" in order to achieve a clearer and more ambitious wording.

The Ministry proposes that the wording "in enterprises and supply chains", as proposed by the Committee, be replaced with "in connection with the production of goods and the delivery of services". This is to highlight the fact that the Act applies in the production stages from the raw material stage to the finished product, and that the Act does not apply to future stages after the product is sold and the service is provided. A sold product that is returned to the enterprise as part of a circular economy to be reused in new production, however, will be covered by a new production stage. For more detailed discussion, see point 7.4.3.1 on the scope of the Act. The Act applies to adverse impacts on human rights within and outside the enterprise's production (see point 7.4.3.2).

The practical applicability of the Act and terms "fundamental human rights" and "decent working conditions" are discussed in point 7.2. Here, the scope of the Act is assessed, including whether the practical applicability of the Act should be limited to certain human rights and whether it should include environmental impacts.

See Section 1 of the Proposal for a Transparency Act.

7.2 The practical applicability of the Act

7.2.1 The Ethics Information Committee's proposal

The Committee proposes that the Act shall ensure access to information about "fundamental human rights and working conditions" in enterprises and supply chains, and that the Act shall

contribute to promoting enterprises' respect for "fundamental human rights and decent work", cf. Section 1 of the Committee's bill.

"Fundamental human rights" means the internationally recognised human rights as they are set out in the International Covenant on Economic, Social and Cultural Rights (1966), the International Covenant on Civil and Political Rights (1966) and the ILO's core conventions on fundamental principles and rights at work. cf. Section 3 (d) of the Committee's bill. The definition refers to the internationally recognised human rights, with a basis in the Universal Declaration of Human Rights (1948), which, among other things, enshrines a prohibition against slavery and slave trade, the right to work and favourable conditions of work, equal pay for equal work without any discrimination, the right to rest and leisure, reasonable limitation of working hours and periodic holidays with pay.

The UN International Covenant on Civil and Political Rights is to safeguard fundamental rights, including the right to life, liberty and security of person, freedom of thought, conscience and religion and the right to privacy. Article 8 establishes a prohibition against slavery and slave trade, stating that "[n]o one shall be required to perform forced or compulsory labour". According to Article 22, everyone shall have the right to freedom of association. This includes the right to form and join trade unions for the protection of one's interests. Articles 6 and 7 of the International Covenant on Economic, Social and Cultural Rights recognise the right to work and the enjoyment of just and favourable conditions of work. This should not be interpreted as a right to be hired, but rather to choose whether or not to accept the work. Just and favourable conditions of work includes remuneration which provides all workers with fair wages and equal remuneration for work of equal value without distinction of any kind, a decent living for themselves and their families, safe and healthy working conditions, rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays. Article 8 recognises the right of everyone to form trade unions and join the trade union of their choice. See also the discussion in point 3.1.1.2.

The ILO's core conventions on basic rights and principles at work are made up of eight conventions and can be divided into four categories: 1) the prohibition against child labour, 2) the prohibition against forced labour, 3) the prohibition against discrimination and 4) freedom of association for employers and employees and the right to collective bargaining. According to the Committee, there are also other relevant ILO conventions, including ILO Convention no. 155 (1981) on occupational health and safety and its protocol (2002), ILO Convention no. 14 (1921) on the right to weekly rest, ILO Convention no. 131 (1970) on the fixing of minimum wage, ILO Convention no. 135 (1971) on the protection of workers' representatives in enterprises and their opportunity to perform their activities, and ILO Convention no. 169 (1989) on indigenous and tribal peoples in independent states. See also the discussion in point 3.1.2.

No exhaustive list is provided regarding which human rights are to be considered "fundamental". The term "fundamental human rights" shall, according to the Committee's proposal, be interpreted in the same manner as the corresponding term in Section 5 of the Public Procurement Act, see Prop. 51 L (2015–2016), page 83:

> "The statutory provision does not contain an exhaustive list of the relevant judicial instruments with respect to human rights [...]. However, the Ministry points out that the UN Guiding

> Principles on Business and Human Rights refer to the UN Declaration of Human Rights of 1948, the two UN conventions from 1966 on Civil and Political Rights and Economic, Social and Cultural Rights respectively, and the ILO's core conventions on fundamental rights and principles at work".

"Decent work" means work that respects fundamental human rights and health, safety and the environment in the workplace, and provides a living wage, cf. Section 3 (e) of the Committee's bill. According to the Committee's commentary to the provision, the definition of "decent work" corresponds to fundamental rights at work as they are expressed in the frameworks referred to above in the definition of "fundamental human rights", the Decent Work Agenda of the International Labour Organisation (ILO) and UN Sustainable Development Goal no. 8. In addition to the human rights enshrined in the ILO's eight core conventions, this also encompasses health, safety and the environment in the workplace and wages that enable workers to provide for themselves and their families ("a living wage").

The Committee proposes that the practical applicability of the Act shall exclude the external environment. The is because environmental impact falls outside the Committee's mandate and therefore cannot be considered in the report. Environmental impact is also, according to the Committee, largely covered by existing legislation, such as the Environmental Information Act and the Product Control Act, which grant the right to information regarding environmental impacts.

7.2.2 Opinions of the consultative bodies

7.2.2.1 Regarding fundamental human rights and decent work

Hope for Justice is of the opinion the opinion that the Act should have had a clearer purpose in light the UN's Sustainable Development Target 8.7 in order to ensure decent work, and that the prevention of forced labour and child labour should be given priority when carrying out due diligence. According to the consultative body, the Act's broad purpose to promote enterprises' respect for fundamental human rights may prevent the Act from functioning as an effective tool to promote the right of each individual to decent work. According to the consultative body, applying a narrower focus relating to forced and child labour may contribute to increased engagement from business actors.

Other consultative bodies that commented on the practical applicability of the Act express support for the Committee's proposal that the Act shall apply to enterprises' impacts on fundamental human rights and decent work. *The OECD's Contact Point* emphasises the importance of the bill's definition of fundamental human rights corresponding with the UNGP and the OECD Guidelines, as well as the ILO's Declaration on Fundamental Principles and Rights at Work. *The Norwegian National Institution for Human Rights* (NIM) also believes it is favourable that the bill relates to a broad range of human rights in accordance with the content of the UNGP. This differs from a more limited approach in relation to e.g., modern slavery, as is the case with the British Act. NIM refers to its previous input in meetings with various ministries and in a letter to the Norwegian Government regarding the evaluation of a modern slavery act, as stated in the Granavolden Platform, where NIM wrote, among other things that:

> "NIM believes it will be important, when the mandate for such a committee is established, that the mandate is not formulated too narrowly. There is no doubt that modern slavery and forced labour constitute major infringements of human rights in connection with the business sector, not least in the informal sector. However, NIM believes it would be beneficial to adopt a broader and more holistic starting point in such a legislative evaluation. [...]
>
> By only focusing on modern slavery/forced labour, this in practice excludes the other human rights. The UN's Guiding Principles on Business and Human Rights (UNGP), which is the authoritative international standard for the area, cover a wide range of human rights, set out in UN and ILO conventions (UNGP, Principle 12). Child labour, forced displacement, restrictions on freedom of expression, indigenous peoples' rights, most labour rights, discrimination against women and enterprises' use of security forces that commit abuses are examples of human rights issues that do not fall under modern slavery or forced labour. The Norwegian Government's Action Plan for business and human rights from 2015 concerns the implementation of the UNGP and Norway has clearly expressed its support for the UNGP, both nationally and internationally. When considering the introduction of an act that will limit enterprises' room for manoeuvre in order to safeguard human rights, it may send unwanted signals to limit oneself to a relatively narrow human rights issue (modern slavery), compared to the much broader regulation in the UNGP".

However, NIM raises questions regarding whether the definition proposed by the Committee might end up being read more exhaustively than what follows from the UNGP, and more exhaustively than what has perhaps been the Committee's intention. NIM refers to the fact that Principle 12 of the UNGP states that the conventions represent minimum standards and that one must consider other human rights standards when this is relevant in particular areas. According to NIM, this may include the rights of indigenous peoples, women, persons belonging to minority groups, children and persons with disabilities. NIM proposes that this be more clearly expressed in the Transparency Act or its preparatory works. NIM believes the preparatory works should also flesh out the content of the human rights, e.g., by drawing parallels to the European Convention on Human Rights (ECHR), Chapter E of the Constitution of Norway on human rights and the Human Rights Act.

NIM is also of the opinion that it is sensible that the definition is meant to correspond to the definition of fundamental human rights in Section 5 of the Public Procurement Act and refers to the fact that the preparatory works to the Public Procurement Act state that the list is not exhaustive.

Several of the consultative bodies argue that the Act's definition of fundamental human rights should include additional relevant international instruments. *The Consumer Council* believes the Universal Declaration of Human Rights (1948) should be included in the definition. *The Norwegian Union of Journalists* believes it should be made clear that freedom of expression and privacy are included. *The Labour and Welfare Administration* requests a focus on corruption, which it believes is a powerful barrier to transparency in supply chains. *Amnesty International Norway* (Amnesty) believes the definition should also refer to Chapter E of the Constitution of Norway on human rights, the Human Rights Act, as well as ILO Convention no. 169 on indigenous and tribal peoples in independent states. *The Ministry of Climate and Environment* (KLD) also expresses that the definition of fundamental human rights should include a reference to ILO Convention no. 169, as well as the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and notes that many infringements of indigenous peoples' rights occur in connection with the

production of raw materials and the extraction of minerals in developing countries, and that these infringements of human rights also impact the achievement of the Norwegian Government's Climate and Forest Initiative, as well as the goals of the Paris Agreement.

UNICEF Norway believes the UN Convention on the Rights of the Child should be included in the definition and notes that the UN Convention on the Rights of the Child is the most widely ratified human rights treaty, worldwide. The consultative body states that children are an especially vulnerable group and that their rights are very much impacted by production and supply chains and emphasises that the realisation of children's rights in this context encompass more than child labour. Conditions that impact children may, according to the consultative body, include the absence of decent working conditions for parents, limited rights in relation to pregnancy and childbirth, and the lack of childcare and opportunities to breastfeed in the workplace.

FOKUS – Norwegian Forum for Women and Development requests a clearer emphasis on the fact that sexual harassment, extortion and gender-based violence directed at women are clearly present in global supply chains, and refers to the fact that in 2019, the ILO adopted a new convention on violence and harassment in workplaces (ILO C190). The consultative body notes that 71% of all persons living in conditions of modern slavery are women and that 70 countries lack legislation against gender-based discrimination.

The Coretta & Martin Luther King Institute for Peace states that environmental harm that results in infringements of human rights must be included in the bill. *The Rafto Foundation for Human Rights* states that the Act should clarify that the obligations in accordance with the UNGP also encompass environmental harm that results in infringements of human rights, and notes that the term "environmental harm" should in this context be interpreted broadly and include both environmental harm that directly harms the livelihoods of people and environmental harm that contributes to a deterioration of affected people's living conditions.

The Confederation of Norwegian Enterprise (NHO) and *Federation of Norwegian Construction Industries* emphasise that users of the Act need to know the scope of the Act, and therefore believe it is necessary to expressly mention the substantive provisions in the conventions. According to NHO, the same applies to the definition of decent work. NHO states that the conventions covered by the definition of fundamental human rights also include provisions regarding decent work and that it is unclear what the definition of decent work should include beyond these. NHO believes the Ministry should consider whether this is necessary in the text of the Act.

UNICEF Norway believes the definition of decent work should be reworded to also mention the family and caregiver perspective, i.e., wages that enable people to care for themselves and their families.

7.2.2.2 Regarding environmental impact

The Labour and Welfare Administration states that the exclusion of external environment appears sensible. On the other hand, Amnesty, *Bergen Municipality, Norwegian Council for Africa, Future in our hands – Head Office, the Oslo Chapter* and *Trondheim Student Chapter, Norwegian Forum for Development and Environment*, YWCA-YMCA, KLD, Norwegian Union of Journalists, *Save the Children Norway, Rainforest Foundation Norway, Spire*, UNICEF Norway and *Viken County Council* in various

ways argue in favour of the inclusion of environment, either as part of the Act's purpose or scope, or specifically as part of the duty to know, duty to disclose information or duty to carry out due diligence.

KLD states that the proposal entails more extensive knowledge, information and due diligence duties on enterprises regarding impacts on human rights and working conditions than the Environmental Information Act, Product Control Act and Accounting Act entail regarding environmental impact. The Environmental Information Act's knowledge and information duties do not encompass supply chains, and the Act does not impose any due diligence duty. Therefore, according to KLD, it may be appropriate to more closely examine the possibility of a more holistic approach in a new Transparency Act. In KLD's assessment, including the environment may contribute to increased knowledge and awareness regarding the environmental impacts enterprises and their supply chains have abroad.

Amnesty and Rainforest Foundation Norway note that the bill's exclusion of impacts on the external environment is due to limitations in the mandate and not an active choice to exclude the environment. On the contrary, the Committee recognises that the human rights aspect is closely linked to challenges relating to climate-related risks and environmental impacts. The consultative bodies also note that there are no due diligence obligations relating to environmental impact based on the UNGP model in the prevailing regulatory framework, and that environmental conditions are not sufficiently covered by the duty to know etc. under prevailing legislation.

Rainforest Foundation Norway states that destruction of nature, among other things, poses a threat to biodiversity and that this impacts food chains on which people depend. UNICEF Norway makes reference to the UN Human Rights Council which has determined that climate change is one of the greatest threats to human rights, posing a serious risk to the fundamental rights to life, health, food and an adequate standard of living. Save the Children Norway states that environmental impacts may have consequences for children's rights to health, food security and access to clean drinking water. Spire states that environmental destruction at the global and local level poses a significant risk to enterprises' supply chains and may have disastrous consequences for local populations. According to Spire, due diligence is an excellent tool to identify and precisely prevent such harm and this is also part of the OECD Guidelines for Multinational Enterprises.

Rainforest Foundation Norway refers to the fact that both the French Duty of Vigilance Law and the OECD Guidelines for Multinational Enterprises contain due diligence obligations relating to environmental harm, and that it would be in accordance with the UN Sustainable Development Goals to include the environment in due diligence. The Norwegian Union of Journalists refers to the fact that the bills in Finland, Switzerland and Germany contain a due diligence duty for environmental harm.

If the environmental aspect is included in the Act, Amnesty believes this can be aligned with the existing duty to know about environmental conditions within the enterprise itself pursuant to the Environmental Information Act and other obligations pursuant to the Product Control Act. Rainforest Foundation Norway argues in favour of incorporating nature and the environment into the Transparency Act in relation to due diligence and the duty to disclose information, respectively, and that the Environmental Information Act is thereby replaced by the

Transparency Act. Future in our hands argues that if due diligence is not expanded to cover environmental impacts, it should be specified that all environmental harm that impacts human rights shall be included in due diligence.

7.2.3 Ministry's assessments

7.2.3.1 Regarding fundamental human rights

The Ethics Information Committee proposes that the Transparency Act shall apply to all "fundamental human rights" and that the Act is thereby given a broad scope without being limited to specified human rights. The Ministry agrees with the Committee's assessment. This approach is in line with the UN Guiding Principles on Business and Human Rights (UNGP) and the OECD Guidelines for Multinational Enterprises, which use the term "internationally recognised human rights", which is based on the same conventions as those proposed by the Committee in the definition of fundamental human rights in the Transparency Act. In the Ministry assessment, it is key that the Act builds upon and corresponds with the internationally recognised principles and guidelines. In the Ministry's assessment, it will also be difficult to select some human rights over others to be covered by the Act. While there are challenges with certain human rights in some industries and in some parts of the world, there are challenges with other human rights in other industries and in other parts of the world. A broach approach, as proposed by the Committee, will also be in line with the stated expectations that Norwegian enterprises comply with the UNGP and the OECD Guidelines, cf. the Norwegian Government's National Action Plan for the implementation of the UN Guiding Principles for Business and Human Rights (2015) and the Norwegian Government's report on state ownership, Meld. St. 8 (2019–2020) Report to the Storting (white paper) *The state's direct ownership of companies – Sustainable value creation.* This approach also corresponds with Section 5 of the Public Procurement Act, which also uses the wording "fundamental human rights" without more detailed delimitation. The consultative bodies support this approach.

Even though the Committee's proposal entails a broad scope, it is not expected that the enterprises focus on all fundamental human rights. The duties in the Act are based on the principle of a risk-based approach, cf. point 8.2 and 8.3. This entails that the enterprises shall identify risks and prioritise measures, and that the enterprises shall focus on at-risk human rights based on the conditions in their industry and supply chains. Which human rights the enterprise has to prioritise will depend on a number of variables, e.g., the industry and geographical location. This is in accordance with the UNGP and the OECD Guidelines.

However, several consultative bodies request that the definition of "fundamental human rights" explicitly includes several international frameworks in the text of the Act. The consultative bodies have suggested the inclusion of, among other things, Chapter E of the Constitution of Norway regarding human rights and the Human Rights Act, the Universal Declaration of Human Rights, the UN Convention on the Rights of the Child, ILO Convention no. 169 on indigenous and tribal peoples in independent states, as well as the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). It has also been suggested that environmental harm that results in infringements of human rights should be covered by the definition of fundamental human rights, as well as freedom of expression, privacy and the international framework relating to

corruption. There is also a request for a reference to ILO Convention C190 on violence and harassment in workplaces.

As shown in point 7.2.1, the definition of "fundamental human rights" has a broad scope and covers, among other things, the prohibition against slavery and slave trade, the right to work and favourable conditions of work, equal pay for equal work without any discrimination, the right to rest and leisure, reasonable limitation of working hours and periodic holidays with pay. The listing in the definition is not intended to be exhaustive. The Ministry refers to the fact that the Committee has intended for the definition to correspond with "fundamental human rights" in Section 5 of the Public Procurement Act, and that the preparatory works to this provision note that it does not contain an exhaustive list of relevant legal instruments on human rights. Other human rights conventions will thereby be covered by the definition of fundamental human rights where the individual enterprise assesses that the conventions are relevant in relation to their operations. This also corresponds with the OECD Guidelines and the UNGP, which highlight the same conventions, and which also specify that the mentioned conventions represent a minimum, and that reference must be made to other human rights standards where this is relevant to specific areas, cf. UNGP Principle 12 and the OECD's human rights chapter. The National Action Plan for the implementation of the UN Guiding Principles for Business and Human Rights (2015) also states that other standards may be relevant, depending on various conditions, e.g., the rights of indigenous peoples, women, persons belonging to national, ethnic or linguistic minorities, children, persons with disabilities, as well as migrant workers and their families.

The question is whether the Act's definition of fundamental human rights should only mention the proposed conventions or if the list should include additional international frameworks, possibly an exhaustive list. The question is also whether is appropriate to incorporate national human rights regulations into the definition, including Chapter E of the Constitution of Norway and the Human Rights Act.

In the Ministry's assessment, an exhaustive list will highlight which fundamental human rights enterprises are expected to respect and include in their work fulfilling the obligations in the Act. This may be favourable for the duty-bearers of the Act (larger enterprises), its rights-holders (consumers, organisations, trade unions and others) and the supervisory and guidance authority (the Consumer Authority). NHO proposes that the Act's definition not only includes the relevant international frameworks, but also which substantive provisions are covered by the duties pursuant to the Act. Such a solution would make it even clearer to users of the Act which international obligations enterprises should consider when fulfilling the obligations under the Act.

On the other hand, an exhaustive list of international and national frameworks, including the substantive provisions therein, would entail a need for regular updates and render the Act less dynamic than is desirable. An exhaustive list will also result in the exclusion of relevant legal instruments, and new instruments not being covered by the Act without legislative or regulatory amendments. The Ministry also notes that the relevant standards will depend on various conditions, and the list of relevant legal instruments will therefore differ among enterprises.

In the Ministry's assessment, it is important that the definition of fundamental human rights corresponds with the UNGP and the OECD Guidelines on which the Act builds, and with which enterprises are expected to be familiar. Therefore, the Ministry proposes a definition of "fundamental human rights" in accordance with the Committee's proposal. However, the Ministry is of the opinion that it is not sufficiently clear from the Committee's bill that the list of conventions in the definition is not exhaustive. To prevent a narrower than intended interpretation of the provision, the Ministry proposes clarifying in the text of the Act that the list is not exhaustive. Furthermore, the Ministry proposes an additional regulatory statutory authority in order to be able to provide further guidance on which international and national frameworks are covered by the definition in regulations, if such a need arises.

In the Ministry's assessment, it will be part of the guidance and supervisory body's tasks to prepare an overview of relevant legal instruments and substantive provisions that are covered by "fundamental human rights". Such guidance can be prepared in a dynamic manner with more detailed explanations of what is expected of enterprises. In the Ministry's assessment, this will address the duty-bearers' need for clarity.

See Section 3, first paragraph (b) and second paragraph of the Proposal for a Transparency Act.

7.2.3.2 Regarding decent working conditions

The Ministry proposes a change in wording compared with the Ethics Information Committee's proposal entailing that the term "decent working conditions" is used in the text of the Act rather than the term "decent work". The Ministry agrees with the Committee that it is appropriate to have a separate definition of "decent working conditions". The Ministry acknowledges that there may be some overlap between the definition of "fundamental human rights" and the definition of "decent work" in the Committee's proposal, among other things in that the ILO's core conventions are covered by the definition of "fundamental human rights" at the same time as they specify rights that form the basis for decent working conditions. However, the Ministry notes that human rights and decent working conditions are closely interconnected, and that it is difficult to precisely distinguish between what constitutes fundamental human rights and what constitutes decent working conditions. Therefore, the terms need to be understood in context. In the same manner as for the term "fundamental human rights", the Ministry proposes a regulatory statutory authority in order to provide more detailed guidance in regulations, if such a need arises.

It has been suggested that the definition should mention the family and caregiver perspective, i.e., that decent working conditions provide wages that enable people to provide for themselves and their families. This aspect is not expressly stated in the Committee's bill but does follow from the Committee's comment that a "living wage" means "wages that enable workers to provide for themselves and their families". The Ministry agrees with this. In the Ministry's assessment, it is not necessary to specify this in the text of the Act.

See Section 3, first paragraph (c) and second paragraph of the Proposal for a Transparency Act.

7.2.3.3 Regarding environmental impact

Enterprises' impact on the environment is covered by the Ethics Information Committee's Proposal for a Transparency Act if the environmental impact results in adverse impacts on human

rights. However, several consultative bodies argue that the Act should also cover environmental impacts that do not result in adverse impacts on human rights. They argue that this should either form part of the purpose or scope of the Act, generally, or specifically in relation to either the duty to know, duty to disclose information or the duty to carry out and publish due diligence.

The Environmental Information Act regulates both public bodies' and public and private enterprises' duties to hold and disclose environmental information. Environmental information covers both factual information and assessments about the environment, factors that impact or may impact the environment, and human health, safety and living conditions to the extent people are affected or may be affected by the environmental conditions (see more detailed discussion in point 4.4).

The Environmental Information Act includes both a duty to know and a duty to disclose information relating to the environmental impacts of the enterprise itself. However, the Environmental Information Act does not cover environmental impacts in the supply chain. Nor is a duty to carry out due diligence included. This means that the duties the Ethics Information Committee has proposed in the Proposal for a Transparency Act go further than the duties in the Environmental Information Act.

Human rights and challenges relating to climate and environmental impacts are closely connected, which suggests that the Transparency Act should also be expanded to cover environmental impact. Such an expansion will also ensure a harmonisation of the duties for fundamental human rights and the environment, and with the OECD Guidelines, which also cover environmental impact.

However, since it has not been part of the Ethics Information Committee's mandate to propose new obligations relating to environmental impact, the Ministry does not propose including environmental impact in the Act at this time. The Ministry envisages an evaluation of the Act after a period of time and will consider the received input in the continued work. The Ministry is also aware that the European Commission is working on a proposal for rules regarding due diligence for both human rights and the environment, as well as a proposal on enterprises' due diligence duty to prevent the importing of raw materials that cause deforestation in third countries. These proposals are expected to be presented in 2021 and, if passed, they will result in a need for amendments to Norwegian law.

7.3 The duty-bearers and geographical scope of the Act

7.3.1 The Ethics Information Committee's proposal

The Committee proposes that the Act shall apply to enterprises that offer goods and services in Norway, cf. Section 2, first paragraph of the Committee's bill. "Enterprise" means a company, cooperative society, association, sole proprietorship, foundation or other form of organisation, cf. Section 3 (a) of the Committee's bill. The Act shall also apply to publicly owned enterprises that offer goods and services. According to the Committee's comments, obligations under the Act will be incumbent on all enterprises within a group of companies. Enterprises in a group

with a Norwegian parent company can refer to the parent company for fulfilment of the knowledge and disclosure obligations and the duty to carry out due diligence. According to the commentary to the provision, the Act also covers online retailers, including those based abroad and which offer goods and services in Norway.

The Committee proposes that some of the statutory provisions are limited to a greater extent than is otherwise the case for the Act. This applies, among other things, to the Committee's proposal for Section 10 on implementation and publishing of due diligence, which is proposed to only apply to larger enterprises. "Larger enterprises" means undertakings that are covered by Section 1-5 of the Accounting Act, i.e., public companies, publicly listed companies and other accountable companies, as well as undertakings that meet at least two of the following three conditions on the balance sheet date: 1) sales revenues exceeding NOK 70 million, 2) balance sheet total exceeding NOK 35 million, 3) an average number of employees in the financial year exceeding 50 full-time equivalents. Furthermore, the Committee proposes that Section 6 on the publishing of information regarding production site should only apply to enterprises that sell goods to consumers, and that a regulatory statutory authority be included in order to further limit the scope of Section 6 by exempting sectors and groups of enterprises. The Committee also proposes a legal basis that grants the King authority to issue regulations providing that the Act fully or partially shall apply to enterprises on Svalbard and Jan Mayen, cf. Section 2, second paragraph of the Committee's bill.

7.3.2 Opinions of the consultative bodies

The Norwegian Bar Association, *Amnesty International Norway (Amnesty), Labour and Welfare Administration, Bergen Municipality, Coretta & Martin Luther King Institute for Peace* (King Institute), *Digitalisation Agency, Ethical Trade Norway, Norwegian Council for Africa, FOKUS - Norwegian Forum for Women and Development, Consumer Council, Norwegian Forum for Development and Environment, Future in our hands, Salvation Army, Federation of Norwegian Enterprise* (Virke), *Ministry of Climate and Environment* (KLD), *Norwegian Confederation of Trade Unions* (LO), *Norwegian National Human Rights Institution* (NIM), *Norwegian Union of Journalists, the OECD Contact Point, Rafto Foundation for Human Rights, Rainforest Foundation Norway* and *Spire* voice their support for the Committee's proposal that the Act shall apply to all enterprises that offer goods and services in Norway. Ethical Trade Norway, the Consumer Council and Virke also express their support for the Act applying to online retailers based in other countries that offer goods and services in Norway. According to Ethical Trade Norway, this will raise standards and provide more equal competitive conditions.

At the same time, several of the consultative bodies argue that the Act should be expanded to apply to even more duty-bearers than proposed.

The Norwegian Bar Association, Amnesty, Bergen Municipality, Norwegian Council for Africa, FOKUS, Norwegian Forum for Development and Environment, Future in our hands, Salvation Army, the King Institute, KLD, NIM, the OECD Contact Point, Rafto Foundation for Human Rights, Rainforest Foundation Norway and Spire argue that the scope of the Act should be expanded to include not only enterprises that offer goods and services in Norway, but also Norwegian-registered enterprises that offer goods and services outside of Norway. The OECD

Contact Point and Amnesty include in this expansion Norwegian enterprises' subsidiaries with operations abroad (extraterritorial application). Amnesty refers to the fact that the UN Committee on Economic, Social and Cultural Rights has found that the UN Covenant on Economic, Social and Cultural Rights entails extraterritorial obligations for states parties.

The King Institute states that it is important to expand the Act to also apply to Norwegian enterprises that offer goods and services outside of Norway. This is in order to safeguard the required standards for fundamental human rights and decent working conditions in accordance with the UNGP, and to establish a stronger foundation for equal competitive conditions among all Norwegian enterprises. KLD notes that the operations of Norwegian enterprises that only take place outside of Norway may entail a risk of human rights infringements with consequences for climate and the environment, or as a result of climate and environmental impacts, and that a strengthening of Section 2 should therefore be considered so as to include Norwegian enterprises globally. Rainforest Foundation Norway notes that there are Norwegian enterprises that do not sell goods and services in Norway but that operate in developing countries in sectors including mining, petroleum, hydropower and renewable energy, where there is a high risk of contributing to harm to the human rights of indigenous peoples and other local communities. FOKUS states that the risk of infringements against fundamental human rights in the supply chain has no direct correlation with who is the end customer and that this should be reflected in the Act.

Future in our hands, the King Institute, the OECD Contact Point and Rainforest Foundation Norway express support for the Committee's proposal that the Act shall apply to state-owned enterprises, cf. Section 3 (a). The OECD Contact Point notes that state-owned enterprises operate on a large scale and have a considerable potential for impacting people, society and the environment, and that it is good that such enterprises are covered by the bill.

The Confederation of Norwegian Enterprise (NHO) does not see the need for specifying that the Act also applies to state-owned enterprises that offer goods and services, since all organisations are considered enterprises, regardless of structure and ownership. NHO also states that it is unclear what is to be considered a "state-owned enterprise", that is not already covered by the definition of "enterprise". Enterprises that are part of the public sector, e.g., agencies and directorates are, according to NHO, not usually considered to be "owned" by the state. NHO believes it is necessary to clarify what types or structures of public enterprises are covered.

Amnesty, Norwegian Council for Africa, Future in our hands, *Hope for Justice,* Rafto Foundation for Human Rights and Rainforest Foundation Norway argue that the Act, in addition to applying to state-owned enterprises that offer goods and services, should also apply to public bodies that offer goods and services. Amnesty and Hope for Justice state that the public sector makes considerable purchases of goods and services every year and that the scope of the Act should therefore be expanded to include these. According to Amnesty and Rainforest Foundation Norway, exempting public bodies that purchase and provide goods and services from due diligence requirements in relation to human rights and the environment appears arbitrary and problematic. The King Institute believes it is crucial that public enterprises are covered by the bill as this is essential in order to satisfy the obligations in Pillar 1 of the UNGP. The consultative body states as follows:

> "Public purchases represent a considerable share of the global economy with 15-20% of the global gross national product, and infringements of human rights and unacceptable working conditions occur in supply chains regardless of whether it is public enterprises or private companies that are purchasing the goods or services. Research shows that even if Norway, overall, is leading the efforts to avoid human rights infringements in global supply chains, the efforts in this regard on the part of various public entities are not sufficiently systematic. Including public enterprises in the bill is necessary to prevent taxpayer money from indirectly contributing to the support of illegal activities."

The Labour and Welfare Administration recommends not making general exemptions for sectors or groups of enterprises, but instead that a discretionary assessment should be made in each individual case. LO also believes that it is unfortunate that the bill opens for the exemption of certain commercial activity or industries, and states that it is difficult to see any reason why the requirements regarding transparency and considerations for fundamental human rights and decent work should not apply to all. However, LO recognises that certain industries may have greater needs than others in terms of information and guidance regarding the Act and how it can be adapted to commercial activity in different parts of industries and cultures. According to LO, a starting point will be industries with collective agreements given general application, i.e., industries where a considerable part of the enterprise has been shown to have difficulties complying with statutory or contractual arrangements.

Other consultative bodies argue in favour of possible delimitations of duty-bearers, either for the Act in its entirety or in relation to certain duties.

NHO states that it supports a distinction between small and medium-sized enterprises, and larger enterprises. NHO states that it is ambitious for the Act to apply to all enterprises, and notes that this a new form of regulation for a large number of enterprises, and that many of them are small and medium-sized, with fewer resources to implement activities outside of its core business. According to NHO, larger enterprises largely have better prerequisites for knowledge regarding supply chains and greater opportunities to influence the conditions. *The Norwegian Agrarian Association* believes it is wise to distinguish between small and medium-sized actors in the Act, so that the requirements do not thrust an unnecessarily large bureaucracy and major costs upon small enterprises. *Viken County Council* states that it is good that the Act distinguishes between the requirements for large enterprises and those for small and medial-sized enterprises, at the same time as this does not exempt such enterprises from transparency and the possibility of requests and reviews pertaining to their supply chains. *The Federation of Norwegian Professional Associations* emphasises the importance of the bill and implementation thereof safeguarding smaller actors so that the costs do not become disproportionately large for such enterprises. *The Better Regulation Council* requests a more detailed assessment of whether it is necessary to include smaller enterprises based on a cost-benefit perspective. *KS Bedrift* proposes the establishment of a threshold relating to the enterprise's turnover or number of employees in order to be covered by the Act. NHO argues in favour of various delimitations, e.g., based on the size of the enterprise or the industries where the government believes the risk is greatest. NHO believes the utility value of an Act will be proportionately far greater in relation to the enterprises that have an actual risk and have an ability to influence. The reduced utility of exempting some enterprises from an act will, according to NHO, be correspondingly less. According to NHO, a turnover threshold should therefore be included in the Act that exempts smaller

enterprises from the scope of the Act. This turnover threshold could possibly be established at the same level as in other acts with corresponding exemptions.

According to KS Bedrift, the Act should be more clearly directed at enterprises and industries in markets where there is a documented risk of human rights infringements and unacceptable working conditions. *The Association of Norwegian Finance* also states that a large proportion of Norwegian undertakings operate in service industries where the supply chain issues are largely absent, and questions whether the scope of the Act can be limited to selected sectors.

NHO states that the scope of the Act should more clearly express that it is commercial activity that is covered, i.e., that goods and services are offered for a fee and of a certain scope and for a certain duration. NHO states that the forms of organisations mentioned will generally charge a fee for goods and services, but there are examples of associations and organisations that offer services that benefit someone without any fee being directly associated with the service. Future in our hands proposes that sole proprietorships and associations be exempt from the Act, as they believe the positive effect of regulating the operations of such institutions is very limited. The Better Regulation Council requests an assessment of whether it is necessary to include associations based on a cost-benefit perspective, e.g., sports associations that sell socks to generate revenue for their club. KS Bedrift also believes the Act should only apply to enterprises "that engage in commercial activity", entailing that municipal and other publicly owned enterprises that are established to perform statutory duties and/or offer shared services as an expanded in-house arrangement, fall outside of the scope of the Act. This applies e.g., to inter-municipal crisis centres that provide statutory services pursuant to the Crisis Centre Act and fire and rescue services that mainly perform statutory duties pursuant to fire prevention legislation on behalf of their municipal owners. According to the consultative body, however, municipal enterprises that engage in commercial activity should be covered by the Act.

According to the *Federation of Norwegian Construction Industries*, the Act should be limited to apply to enterprises that import goods to Norway. According to the consultative body, enterprises that purchase goods that have already been imported do not have the same opportunities to influence the actual supply chain.

NHO argues that certain foreign enterprises should be exempt. Burdensome legislation may, according to NHO, make it less attractive for certain foreign enterprises to offer goods and services in Norway. This could make it more difficult and costly for Norwegian enterprises and consumers to obtain the goods and services they demand and thereby weaken competition in the market. NHO also questions whether it is not more difficult to achieve compliance with foreign enterprises than with Norwegian enterprises.

According to *the Norwegian Fishermen's Association*, the bill needs to consider that certain industries need to be protected, and thereby by exempt from the Act. The fishing fleet is already subject to an extensive reporting duty, and the consultative body therefore expects that additional duties are not imposed on the fleet. According to the consultative body, it must be possible to retrieve relevant information from the authority that has received the fishermen's reported information. The consultative body also notes that the whaling industry is at times subjected to threats of boycotting and believes that if transparent schemes are introduced where suppliers' hands are shown to any and all, the groups that oppose whaling will be able to exploit this by

targeting the whaling industry's supply chains and threatening to boycott them. According to the Norwegian Fishermen's Association, this will result in problems for the enterprises that supply goods and services to the whaling industry. *The Fishermen's Association of Nordland County* makes similar arguments.

7.3.3 Ministry's assessments

The Ethics Information Committee proposes that the Transparency Act shall apply to all enterprises that offer goods and services in Norway. Many consultative bodies support this proposal, while some argue that the Act's duty-bearers should be limited based on, among other things, size. Others believe the Act should be expanded to also cover Norwegian enterprises that offer goods and services abroad.

The Ministry is understanding of the Committee's proposal that the Act shall apply to all enterprises. All enterprises, regardless of size, risk infringing human rights. Furthermore, it is currently expected that all enterprises are familiar and comply with the UN Guiding Principles on Business and Human Rights (UNGP) and the OECD Guidelines for Multinational Enterprises upon which the Transparency Act is based. However, for many smaller enterprises, the Transparency Act will entail some new duties. The Ministry understands that the Committee's intention has been to limit the burdens on smaller enterprises through the Act's principles of a risk-based approach and proportionality, and the proposed duty to know that will require less of the enterprises than the duty to carry out due diligence. However, the Ministry is concerned about the burdens that will be imposed on smaller enterprises as a result of the bill. This relates both to individual enterprises that have few employees and limited resources, but also overall, as the costs of including smaller enterprises will be considerable, even with the measures the Committee has proposed. In the Ministry's assessment, larger enterprises currently have better prerequisites for familiarising themselves with and implementing the requirements of the Transparency Act, and to achieve the changes in the global supply chains. Therefore, the Ministry proposes that the Act should initially cover larger enterprises, and that the Act should be evaluated after it has been in effect for a period of time, whereby the effect of the Act is assessed and where it is also considered whether the Act should be expanded to apply to more enterprises, e.g., based on a risk assessment of certain industries. It is also beneficial that the supervisory and guidance body develops good competence in order to be able to provide good guidance before the Act is possibly expanded to also cover smaller enterprises.

The Ethics Information Committee has proposed a definition of larger enterprises that corresponds with what the Accounting Act defines as undertakings that are not small. This means that the definition covers all large and medium-sized enterprises. These are the enterprises that are required to prepare annual reports pursuant to Section 3-1, second paragraph of the Accounting Act. Pursuant to Section 3-3 (a) of the Accounting Act, such annual reports shall provide information regarding working environment, gender equality and conditions in the enterprise, including its input factors and products, which may have a significant impact on the external environment. Some larger enterprises are large undertakings, cf. Section 1-5 of the Accounting Act. These are subject to requirements to report on social responsibility pursuant to Section 3-3 (c) of the Accounting Act. Large undertakings include public limited companies and those that are required to file accounts "whose shares, units, core capital or bonds are listed

on the stock exchange, authorised marketplace or equivalent regulated market abroad" cf. Section 1-5 of the Accounting Act. There are also certain financial firms that are classified as large undertakings in other legislation. In the impact assessment of the proposal for a new Transparency Act, 8830 enterprises are identified as being covered by the definition of "larger enterprises".

The Ministry agrees with the Committee's proposed definition of "larger enterprises". In the Ministry's assessment, it is appropriate that the same duty-bearers are covered by the Transparency Act and the Accounting Act's duty to issue a statement. This will contribute to clarity in the regulations and for enterprises that are to assess whether they are covered by the Transparency Act. Therefore, the Ministry proposes that the Act shall apply to larger enterprises according to the Committee's proposed definition.

Regarding the Act's geographical scope, the Committee has proposed that the Act shall apply to enterprises that offer goods and services in Norway. This includes both Norwegian and foreign enterprises, insofar as they offer goods and services in Norway. Several consultative bodies have also commented that the duty-bearers of the Transparency Act should also include Norwegian enterprises that offer goods and services abroad. In the Ministry's assessment this could weaken the competitiveness of Norwegian enterprises in the international markets in that Norwegian enterprises are subject to duties that are not imposed on international competitors. At the same time, this will ensure equal competitive conditions for all larger Norwegian enterprises. In the Ministry's assessment, where an enterprise's goods and services are offered should not be decisive in relation to whether the enterprise is covered by the Transparency Act. Therefore, the Ministry proposes that the Transparency Act shall cover larger enterprises that are resident in Norway and that offer goods and services in or outside Norway. Such an approach will correspond with the enterprises that are covered by the Accounting Act's duty to prepare an annual report pursuant to Section 3-1, second paragraph, and the international principles and guidelines. This follows from e.g., the first guiding principle in Chapter II of the UNGP regarding states' duty to clearly set out the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.

The question is what the assessment of "larger enterprise" should depend on. According to Section 1-6, fourth paragraph of the Accounting Act, the assessment of whether a subsidiary should be considered a small undertaking is made based on the group, i.e., the parent company and subsidiary, viewed as a whole. Subsidiaries are included in this assessment, regardless of whether they are domiciled in or outside of Norway. The Ministry believes this is also a good solution for the Transparency Act. This will prevent groups that clearly exceed the criteria for "larger enterprise" from structuring themselves in a particular manner so as to circumvent the scope of the Act. The Ministry also believes it is beneficial that assessments pursuant to the Transparency Act follow the same system as the Accounting Act. Therefore, the Ministry proposes that the assessment of whether an enterprise is considered a "larger enterprise" pursuant to the Transparency Act should be made based on whether the group viewed as a whole meets the criterial for "larger enterprise".

Furthermore, the Ministry proposes that the geographical scope of the Transparency Act shall also cover larger foreign enterprises that are liable to tax to Norway and that offer goods and services in Norway. This is in line with the geographical scope of the Accounting Act. Such

foreign enterprises will be obliged to register in Norway. In the Ministry's assessment, it will be challenging to monitor whether foreign enterprises that are not obliged to register in Norway are to be considered a "larger enterprise" that is therefore obliged to comply with the requirements in the Act. Enforcement of the Act, generally, will be difficult in relation to such actors. In the Ministry's assessment, a geographical scope corresponding to the Accounting Act will ensure harmonisation between the duties in the Transparency Act and the duty to prepare an annual report in the Accounting Act.

Many consultative bodies are concerned with the public sector being covered by the Act. The Ministry considers it appropriate to limit the duty-bearers in the Act to the same duty-bearers that are not considered small undertakings pursuant to the Accounting Act. Who is considered accountable pursuant to the Accounting Act is stated in Section 1-2 of the Act and shall correspondingly form the starting point for the duty-bearers pursuant to the Transparency Act. Among other things, this means that municipalities, intermunicipal undertakings and state enterprises, i.e., administrative agencies, will not be covered by the Transparency Act, as these are not accountable pursuant to the Accounting Act. State enterprises, i.e., undertakings that are owned by the state and operated in the same manner as other private enterprises, however, will be covered if the conditions established in the definition are met. In the Ministry's assessment, delimitations or specifications other than those that follow from the Account Act should be avoided. This will give the Act a clear focus and ensure a harmonisation of the Transparency Act and Accounting Act. The Ministry also emphasises that the public sector must relate to the Public Procurement Act when making public purchases. Pursuant to the Public Procurement Act, public contracting authorities are required to take human rights and working conditions into consideration in the implementation of their procurements, cf. Section 5 of the Public Procurement Act.

Some consultative bodies have stated that the Act should be limited to enterprises that engage in commercial activity, and some state that it should be considered whether e.g., sole proprietorships and associations should be exempt from the Act. However, the Ministry proposes no limitation in the definition of "larger enterprises" based on whether or not the enterprises engage in commercial activity. In the Ministry's assessment, a limitation pertaining to "larger enterprises" renders it unnecessary to exempt associations and organisations that offer goods and services from the scope of the Act. The same applies to sole proprietorships. However, the Ministry proposes a regulatory statutory authority to exempt by regulation certain enterprises from the duty-bearers in the Act.

Some consultative bodies argue that the duty-bearers in the Act should be limited based on, among other things, what products are offered or whether they import goods to Norway. In response to this, the Ministry notes that the Act is based on the principles of a risk-based approach and proportionality. This entails that each individual enterprise is to identify where in their production there is a risk of adverse impacts on human rights and, based on this identification, assess how they are to work on human rights and decent working conditions. The principle of a risk-based approach entails that enterprises are subject to different expectations based on, among other things, industry, what products the enterprises offer and where in the world the production takes place. In the Ministry's assessment, it will be an important part of the enterprises' responsibilities to assess whether their production entails a risk of adverse impacts on

human rights. Therefore, in the Ministry's assessment, it will not be suitable to limit the Act based on a general assessment of what constitutes high-risk products. Regarding whether the Act should exempt enterprises that do not import goods due to their lack of possibility to influence the actual supply chain, the Ministry notes that this will also be taken into consideration through the principles of a risk-based approach and proportionality.

It is noted that enterprises that fall outside the scope of the Act are nevertheless considered to be subject to the UNGP and the OECD Guidelines and are thereby expected to comply with these documents.

The Ministry also proposes a regulatory statutory authority corresponding to the Committee's proposal that grants the King authority to determine that the Act shall fully or partially shall apply to enterprises on Svalbard and Jan Mayen. The Ministry also proposes a corresponding regulatory statutory authority for the Norwegian dependencies.

See Section 2 and Section 3 (a) of the Proposal for a Transparency Act.

7.4 Scope of the Act – operations, supply chain and business partner

7.4.1 The Ethics Information Committee's proposal

The Committee proposes that the Act shall ensure information about fundamental human rights and working conditions "in enterprises and supply chains", cf. Section 1 of the Committee's bill. By "enterprise", the Committee means a company, cooperative society, association, sole proprietorship, foundation or other form of organisation, including publicly owned enterprises that offer goods and services cf. Section 3 (a) of the Committee's bill. By "supply chains", the Committee means all enterprises supplying goods and services that supply products or input factors to an enterprise, cf. Section 3 (c) of the Committee's bill. By "input factors", the Committee means raw materials, components, services, as well as transport etc. According to the Committee's comments, the supply chain includes the activities, organisations, actors, technology, information, resources and services that are involved in the process of transporting and processing a product from the raw material stage to a finished product. The Committee also writes that in the modern economy, return schemes and other disposals of purchased goods from the seller will be a part of the supply chain, e.g., after-sales services in conjunction with recycling of an item or part of an item.

7.4.2 Opinions of the consultative bodies

7.4.2.1 Regarding the definitions of enterprise and supply chain

Only the *Confederation of Norwegian Enterprise* (NHO) has commented on the definition of "enterprise" with regard to the scope of the duties in the Act. NHO states that the Act does not appear to set limitations regarding which parts of an enterprise are to be covered by, among other things, the requirements regarding knowledge and information. NHO believes it is reasonable that the duties in the Act are connected to the goods and services that are offered in Norway, and not the goods and services that are offered outside of Norway. Other consultative bodies

that have commented on the definition of "enterprise", make statements regarding the limitation of duty-bearers in the Act (see point 7.3.2).

Regarding the definition of supply chains, *UNICEF Norway* believes that input factors deriving from recycled materials and components should be mentioned as part of the supply chain. The consultative body notes that the environmental benefits of large-scale recycling industries are considerable, but that the hazardous conditions involved in the collection of recycled materials are often hidden. According to the consultative body, children often become waste collectors on the streets or on landfills. Considering the risk of injury, chronic illness and exposure to hazardous substances, child labour in these recycling activities are considered among the worst form of child labour. The consultative body believes the definition of supply chain is not sufficiently clear and that it should also include processing and production of recycled input factors.

Bergen Municipality believes the definition of supply chain may result in the duties in the Act not applying if the enterprise has individuals in its chain (including children) who, for example, pick or collect raw materials and sell them at a local market. Therefore, Bergen Municipality believes it should be considered whether the term enterprise should be expanded, possibly adding that the duties also apply if the contributions of individuals are included in the chain.

Fair Trade Norway states that a focus on the raw material stage needs to be elevated and mentioned explicitly in the Act as part of the supply chain. The consultative body notes that with a number of products, the greatest risk of abetting human rights infringements is found in the raw material stage. According to the consultative body, this is clearly stated in the US Department of Labor's List of Goods Produced by Child Labor or Forced Labor.

NHO notes that the definition of supply chain lists important limits for the duties in the Act, and that these limits should be as precise as possible. According to NHO, without clear limitations in the Act or in a proposition, the Act may be perceived as limitless in terms of the suppliers of which enterprises should have knowledge. NHO encourages the Ministry to clarify the boundaries. NHO notes, among other things, that the term "enterprises supplying goods and services", which forms part of the supply chain definition, should, according to the Ethics Information Committee's comments, include enterprises "that are directly linked to the company's business activity, products or services." According to NHO, there is a limitation in the "direct" link, as opposed to an indirect link. According to NHO, it would be desirable to have a distinction between suppliers that sell fixed tangible assets, which the enterprise/customer uses to generate income ("other operating expenses" under the Accounting Act) and suppliers that contribute to the goods/services that are to be offered ("cost of goods"). A "direct" link would then, according to NHO, apply to the latter. With the reference to "the company's business activity", however, it is not, according to NHO, clear whether such a distinction is intended.

7.4.2.2 Regarding impacts outside the enterprise and supply chains

The Norwegian Bar Association, Amnesty International Norway, Coretta & Martin Luther King Institute for Peace, Fair Play Bygg Oslo Region, Fair Trade Norway, *Norwegian Council for Africa*, *FOKUS – Forum for Women and Development*, *Forum for Development and Environment*, *Ministry of Climate and Environment, the OECD's Contact Point, Rafto Foundation for Human Rights, Save the Children Norway,* Rainforest Foundation Norway and *Responsible Business Advisors* (RBA) comment that the text of the Act, whether in regard to the Act's purpose or scope or the various duties imposed on

enterprises, exclusively focuses on human rights infringements internally "in enterprises and in supply chains", cf. e.g., the scope of the Act in Section 1, the duty to know in Section 5 and the duty to disclose information in Section 7.

The consultative bodies emphasise that human rights infringements are often not seen within enterprises, and they are therefore concerned with the duties not being limited to impacts in enterprises and in supply chains, and that the Act must also apply to impacts outside of the enterprise itself and the enterprise's supply chains, and that this needs to be made clear in the text of the Act. The consultative bodies highlight various groups that are impacted by the enterprises' activities, e.g., indigenous peoples, local populations, trade union leaders and human rights defenders, women, children, persons belonging to minority groups and other vulnerable individuals and groups, as well as the environment.

FOKUS and RBA also highlight land seizure in connection with the expansion of mines, dam facilities or factories, pollution of drinking water in tanning or clothing manufacturing, and excessive use of force by security forces and guards against the local population. The Norwegian Council for Africa highlights that they often see that local communities in areas where enterprises conduct their operations are just as affected by enterprises infringements of human rights as the workers, e.g., in the acquisition of shared land, broken promises regarding infrastructure development, destruction of hunting and fishing areas and pollution of groundwater. The consultative body also highlights that human rights defenders who fight for their own and others' rights and against environmental destruction are often subjected to targeted attacks.

Fair Play Bygg Oslo Region highlights lodging rented out by employers to employees, that is not a workplace and that is often hazardous, unsanitary, a fire hazard and without escape routes, as well as cramped and expensive for the worker. According to the consultative body, employers might also conduct illegal surveillance, read emails and misuse ID, exercise social control and issue threats.

7.4.3 Ministry's assessments

7.4.3.1 Regarding the definition of operations, supply chain and business partner

The Ethics Information Committee proposes that the Act's duties be linked to matters "in the enterprise and the enterprise's supply chain". The Norwegian word "virksomheten" has two different meanings in the Norwegian version of the Committee's bill. First and foremost, it is used to describe the duty-bearer, but it is also in some places used to describe the enterprises' activities and the scope of the duties. In the Ministry's assessment, it is appropriate to use different terms for the duty-bearer and the scope of the duties being regulated. Therefore, the Ministry proposes that the term "forretningsvirksomhet" (operations) is used to describe the activity and scope of the duties in the Act.

In the Ministry's assessment, the meaning of "operations" must be assessed based on the same entity that is assessed in relation to the duty-bearers in the Act. The Ministry proposes in point 7.3.3 that in the assessment of whether a parent company constitutes a "larger enterprise", the group must be considered as a whole. This means that the parent company's operations include the activities of both the parent company and its subsidiaries, regardless of where the parent

company is domiciled. The parent company's due diligence shall therefore include risks associated with both the parent company's and subsidiaries' activities, regardless of where the subsidiaries are domiciled. This corresponds with the UNGP, where, among other things, the second principle regarding states' duties in Chapter II, establishes that states' should clearly set out the expectation that all business enterprises respect human rights throughout their operations. The operations of foreign enterprises will, in the Ministry's assessment include the activities of the part of the enterprise that is domiciled in Norway.

The Ministry specifies that the degree to which parent companies have a legal right to demand the information necessary to carry out due diligence and disclose information about foreign-registered subsidiaries varies, among other things, as a result of national legislation and whether the enterprise is wholly owned or partly owned. In the Ministry's assessment, the parent company's duties pursuant to the Act will have to be adapted accordingly.

Regarding what should be covered by the term "supply chain", some consultative bodies have commented that the definition proposed by the Committee is somewhat narrower than the term "business relationships", which follows from the OECD Guidelines, and which covers supply chains and business relationships that are not part of the supply chain. Some consultative bodies have also questioned whether the definition covers the raw material stage, input factors deriving from recycled materials and components and whether individual contributions are included in the definition. It has also been questioned whether a distinction should be made between direct and indirect contributions to the production of goods and services.

The Ministry agrees that it may seem as though the Committee's proposed definition of "supply chain" is somewhat narrower than the term "business relationships" in the OECD guidelines. The term "business relationships" is defined in the guidelines as "relationships with business partners, entities in the supply chain and any other non-State or State entity directly linked to its business operations, products or services". The Ministry is uncertain of whether it has been the Committee's intention to employ a narrower scope than the Guidelines, or if the intention has been for the wording "supply chain" to cover the same areas as the Guidelines. However, the definition appears to have formed the basis for the Committee's definition of "supply chain". The challenge with the definition of "business relationship" in the OECD Guidelines, however, is that it lacks clear boundaries. This makes it challenging to provide a clear definition that corresponds with the Guidelines.

In the Ministry's assessment, it is appropriate that the definition of supply chains, and thereby the scope of the Act, to the greatest extent possible corresponds with what is covered by "business relationships" in the OECD Guidelines. A solution could have been to use the same term and definition as the OECD Guidelines, i.e., "business relationships". However, in the Ministry's assessment, a regulation of the expectations of the business sector makes it necessary to establish clearer boundaries for what is covered by the Act, than what follows from the OECD Guidelines. In the Ministry's assessment, it will also be appropriate to use the term "supply chain", since this is an embedded term that is also, per se, descriptive of what is covered. Therefore, the Ministry proposes that the term "supply chain" be used in the Act, as proposed by the Committee, but with certain adjustments to its definition.

The Ministry proposes highlighting in the definition that "supply chain" covers the entire chain of suppliers and subcontractors involved in an enterprise's production of goods and delivery of services. The business partners of suppliers and subcontractors will be covered by the wording, insofar as they supply goods and services that are included in the enterprise's (i.e., the duty-bearer's) delivery of services or production of goods. Thereby, it is a requirement that there exists a business link between the suppliers' and subcontractors' business partners and the enterprise that is a duty-bearer pursuant to the Act. Business partners that supply goods and services to suppliers and subcontractors that are not included in the duty-bearer's delivery of services and production of goods will therefore not be covered.

The Committee proposes that the term supply chain shall cover all enterprises supplying goods and services that supply products or "input factors" to an enterprise. In the commentary to the provision, it is specified that "input factors" will be raw materials, components and services, as well as transport etc. The Ministry agrees with this inclusion and proposes that the term "input factors" shall continue to form part of the supply chain definition. In the Ministry's assessment, input factors deriving from recycled materials and components will be covered by the definition. What is covered by the term "input factors" is specified in the commentary to the provision. Even though "raw materials" are, in principle, covered by the term "input factors", the Ministry proposes highlighting in the text of the Act that the supply chain covers all stages in the supply chain, from the raw material stage to finished product. A sold product that is returned as part of a circular economy in order to be reused, will be included in a new supply chain.

Regarding individual contributions to be included in the supply chain, the Ministry agrees with Bergen Municipality's input that this should be covered by "supply chain", so that the duties in the Act apply where the enterprise's chain involves individuals, such as children who pick or collect raw materials and sell them at a local market. However, the Ministry does not propose specifying this directly in the text of the Act but proposes an adjustment of the definition of supply chain by using the wording "any party" in chain of suppliers and subcontractors that supplies input factors, goods or services that are included in an enterprise's supply of services or production of goods. The wording "any party" is intended to also cover the contributions of individuals. This is also specified in the commentary to the provision.

In order for the Act have the same scope as the OECD Guidelines by also including business relationships that fall outside of the supply chain, the Ministry proposes that the Act shall apply to "business partner" in addition to "supply chain". The Ministry proposes that the term "business partner" covers any party that supplies goods or services directly to the enterprise (i.e., the duty-bearer), but that is not covered by the definition of "supply chain". This will cover anyone that is in a direct contractual relationship with the enterprise, but does not supply goods and services that are part of the enterprise's production, e.g., suppliers of office supplies, advertising agencies etc. Suppliers' and subcontractors' business partners that supply input factors, goods or services to suppliers and subcontractors and that are part of the enterprise's (i.e., the duty-bearer's) supply of services and production of goods, will be covered by the definition of "supply chain". In the Ministry's assessment, the definition of "supply chain" and "business partner" will, overall, correspond with the definition of "business relationship" in the OECD's Guidelines.

See Section 3 (d) and (e) of the Proposal for a Transparency Act.

7.4.3.2 Regarding impacts outside the enterprise and supply chains

Several consultative bodies recommend that the Act should also apply outside of the enterprise itself and the enterprise's supply chains, and that the scope is expanded beyond the employer-employee dimension. The Ministry agrees that enterprises' adverse impacts are not limited to internal matters, but that enterprises can also impact e.g., local populations, indigenous peoples, trade union leaders, human rights defenders, women, children, persons belonging to minority groups and other vulnerable individuals and groups and the environment, as well as lodging of employees etc.

In the Ministry assessment, the Act must apply to all impacts on fundamental human rights and decent working conditions that are related to the enterprise's own operations, supply chain or business partners, regardless of whether the impacts occur within or outside of these. In the Ministry's assessment, limiting the scope of the Act to impacts that can only be seen from within would exclude impacts that can have considerable influence on fundamental human rights, and would give the Act a narrower than desired scope. In the Ministry's assessment, it has also not been the Committee's intention to distinguish between adverse impacts within and outside the enterprise and the enterprise's supply chains. For example, in point 8.4.4.2 of its report, the Committee shows how far down the supply chain the Act applies, and writes that, in practice, certain human rights will be at greater risk than others in certain industries and contexts, and that enterprises may be at risk of causing adverse impacts for persons belonging to specific groups or segments of the population.

In order to avoid future ambiguities regarding impacts outside the enterprise and supply chain, the Ministry proposes changes to the Committee's proposed wording. See e.g., Section 4, first paragraph (b) of the Proposal for a Transparency Act, where it is proposed clarified that the adverse impact must have a connection to the enterprise, supply chain or business partners. This will apply regardless of whether the impact is seen within or outside of these. This will also be clarified in the commentary to the provisions.

8 Duties in the Act

8.1 Duty to know

8.1.1 The Ethics Information Committee's proposal

The Ethics Information Committee proposes that all enterprises that offer goods and services in Norway shall be subject to a duty to know, cf. Section 5, first paragraph of the Committee's bill. This entails that enterprises have a duty to know about significant risks of adverse impacts on fundamental human rights and decent work within the enterprise itself and in the enterprise's supply chain. The purpose of the duty to know is to raise awareness of human rights and working conditions in all enterprises and enable enterprises to respond to requests from the general public (see point 8.3 regarding the duty to disclose information).

The scope of the duty to know will, according to the Committee's proposal, vary based on, among other things, the enterprise's size, ownership and structure, activities, sector and types of goods and services. The Committee proposes that the duty to know shall in all circumstances apply where the risk of adverse impacts is highest, such as the risk of forced labour and other slave-like work, child labour, discrimination in employment and occupation, lack of respect for the right to establish and join trade unions and the right to collective bargaining, as well as risks to health, safety and the environment at work, cf. Section 5, second paragraph of the Committee's bill.

It is proposed that the duty to know shall apply to the enterprise and throughout the supply chain. According to the Committee, however, there is no expectation that an enterprise must have detailed information regarding all suppliers and subcontractors.

The proposal for a duty to know is supported unanimously by the Committee. However, Committee Member Ditlev-Simonsen has made special remarks regarding this duty. Ditlev-Simonsen notes that the duty is in principle proposed to apply to all enterprises that offer goods and services, but that the obligation is modified somewhat through the reference to the risk-based approach in the provision. Ditlev-Simonsen believes this must be clarified and made more precise in the text of the Act.

8.1.2 Opinions of the consultative bodies

8.1.2.1 Generally regarding the proposal

The Norwegian Bar Association, Federation of Norwegian Professional Associations, *Amnesty International Norway* (Amnesty), *Labour and Welfare Directorate*, *Bergen Municipality, Digitalisation Directorate, YWCA-YMCA*, *Norwegian Union of Journalists, the OECD Contact Point, Oslo Municipality*, *Save the Children Norway, Rainforest Foundation Norway, Responsible Business Advisors* (RBA), *Tekna, University of Bergen* (UiB) and the *Norwegian Confederation of Vocational Unions* support the Committee's proposal that enterprises shall be required to know of significant risks of adverse impacts on fundamental human rights and decent work within the enterprise itself and in the enterprise's supply chains.

YWCA-YMCA states that a duty to know, combined with a duty to carry out due diligence, will contribute to holding enterprises accountable, and will be key to the effectiveness of the Act. UiB notes that there are major differences in the maturity of enterprises in the area, and states that a statutory duty to know will set a standard and contribute to a simplified follow-up of contractual requirements in relation to suppliers and equal conditions for all enterprises. The Digitalisation Directorate believes the duty to know will be positive for competition in the market, as a generally raised level of knowledge reduces the risk of suppliers withdrawing from participation in public competitive tendering due to a lack of knowledge and lack of implemented due diligence. The Labour and Welfare Administration states that a duty to know will contribute to maturing the market and that it will, over time, provide individual enterprises with better knowledge about risks within the enterprise itself and its supply chain. Such insight can also, according to the consultative body, contribute to public contracting authorities establishing more suitable requirements.

The OECD Contact Point states that it is crucial that the Act builds on the already established expectations deriving from international standards and finds that the proposed duty to know corresponds well with the OECD Guidelines for Multinational Enterprises.

8.1.2.2 The content and proportionality of the duty to know

The Ethics Information Committee proposes that enterprises shall know about significant risks of adverse impacts on fundamental human rights and decent work. *The Federation of Norwegian Construction Industries* (BNL) and *Confederation of Norwegian Enterprise* (NHO) believe the content of the conventions on which the duty to know builds is unclear. BNL states that it is important to have a clear description of the content of the duties, and that the Act needs to specify the substantive provisions in the conventions that are covered by the duty to know. According to NHO, enterprises in Norway and similar countries must also be able to assume that national regulations satisfy the requirements in the conventions, and that the enterprises thereby have to be able to assume that human rights are being safeguarded through compliance with the national rules. According to NHO, enterprises must then be exempt from obtaining the knowledge required in the Committee's bill.

BNL believes the proposal is not sufficiently assessed in relation to composite products containing many components and notes that it is not practically feasible for home builders to know about the value chain for all components in a house, including all nails and screws. Such knowledge will result in considerable costs. BNL believes the most reasonable solution is that those who import the goods to Norway must be subject to a duty to know about the supply chains for the products they import. According to the BNL, enterprises that purchase goods that have already been imported do not have the same opportunities to influence the actual supply chain. BNL believes that it is not stated clearly enough in the text of the Act that small enterprises will have a limited duty to investigate, and that it is also not clear what the consequences will be for an enterprise that conveys knowledge from suppliers if this information is subsequently revealed to be inaccurate.

The majority of the consultative bodies that comment on the duty to know, express support for the Committee's proposal that proportionality and a risk-based approach should form the basis for the duty to know. *The Enterprise Federation of Norway* (Virke) states that enterprises are expected to have a certain degree of knowledge about the risk of contributing to adverse impacts within the enterprise and its supply chain, but that the scope of the duty to know has to depend on, among other things, the enterprise's size, ownership and structure, activities, sector and types of goods and services. According to the consultative body, enterprises cannot be expected to have an overview of everything that is occurring the supply chains and with subcontractors, especially not in complex global value chains. *KS Bedrift* states that the duty to know must be objectively proportionate to the size and turnover of the enterprise, and that it cannot be expected that a smaller enterprise shall know about all matters pertaining to input factors down to the last stage.

Telenor supports Ditlev-Simonsen's special remarks that differentiation of enterprises must be clarified and specified in the text of the Act, since the Committee's bill imposes extensive requirements on enterprises, even though a risk-based approach is proposed in line with the UNGP. *Orkla* believes the point regarding a risk-based approach needs to be more clearly

described in the text of the Act. BNL notes that the duty to know, among other things, depends on certain elements that are listed in the provision, but notes that it is unclear which elements are relevant when the scope of the duty to know is to be determined. *Accounting Norway* believes the boundaries for the duty to know are discretionary and difficult to determine.

Oslo Municipality states that even when taking into account proportionality, it will be possible for a small enterprise to be conscious of what goods are most high risk and which importers, wholesalers or suppliers are selected for cooperation based on their attitudes toward, and possible measures to contribute to the respect for fundamental human rights.

According to *Finance Norway* and NHO, enterprises will always have knowledge regarding the identities of the parties from which they make purchases. However, the Committee's bill requires that enterprises have additional knowledge regarding both the supplier and previous stages of the sale. According to Finance Norway and NHO, this information will not be immediately available to the enterprise. NHO also believes it will be difficult to assess risk without knowledge regarding how the purchased product has been produced. Furthermore, NHO states that the conditions that may indicate a less extensive to know must be clearly stated. As an example of this, the consultative body mentions situations where the supplier is known, that the production occurs in a country with respect for human rights, that the purchases from the supplier are small or that one is a small customer with little power to influence.

Amnesty states that enterprises, at their own risk, should be permitted to utilise credible due diligence from their business partners. Amnesty refers to the Committee's assessment that small and medium-sized enterprises must be able presume that importers, wholesalers and suppliers inspect supply chains and proposes that small and medium-sized enterprises shall be required to disclose this presumption. According to the consultative body, such a presumption can be communicated through a general public declaration, in line with the UNGP's recommendation. Virke notes that there are major differences between traders that sell their own brands and those that sell the brands of others, and states that it must be possible for an enterprise to refer questions to the brand manufacturer, importer or wholesaler.

RBA and *Fair Play Bygg Oslo Region* believe that the duty to know must be followed up by a duty to act if an enterprise obtains knowledge that a supplier infringes on fundamental human rights. According to RBA, knowledge of human rights infringements that is not followed up with actions is of little or no value. According to Fair Play Bygg Oslo Region, there should be sanctions for violations of such a duty to act.

8.1.2.3 The risk concept "significant risks"

The Ethics Information Committee proposes that enterprises shall know about "significant risks" of adverse impacts on fundamental human rights and decent work.

Finance Norway, NHO and Oslo Municipality state that there is a need to clarify the risk concept in the provision. According to Oslo Municipality, there is also a need to clarify how the term "significant risks" should be applied in practice in relation to small enterprises.

Tekna believes the bill's materiality element undermines the threshold for the duty to know. Tekna states that enterprises need to conduct sufficient investigations to understand the risk situation within the enterprise itself and in the supply chain.

YWCA-YMCA believes that a lack of opportunities for freedom of association must be considered a significant risk of adverse impacts on human rights and decent work, which enterprises are therefore required to know about.

The Labour and Welfare Administration states that it is not entirely clear what the difference is between a risk assessment pursuant to the duty to know in Section 5 and the proposed due diligence in Section 10. The consultative body also notes that the regulations for public procurements set out requirements that suppliers must have routines for carrying out regular risk analyses within the enterprise itself and in the supply chain, cf. the Digitalisation Agency's (now Norwegian Agency for Public and Financial Management (DFØ)) contract terms, and that it may have unfortunate consequences if there are discrepancies between the Act and the contract term.

8.1.2.4 Risk areas enterprises must always know about

In Section 5, second paragraph of the Committee's bill, a duty to know is proposed in all circumstances where the risk of adverse impact is most severe. According to NHO, the proposed second paragraph complicates the content of the duty to know. According to NHO, the list in the provision should be exhaustive. Oslo Municipality believes the wording is imprecise and can be interpreted as the listed infringements being categorised as more severe than other types of human rights and labour rights infringements. Orkla believes the wording may be interpreted as there always being a requirement to know about serious human rights infringements, regardless of the scope of enterprises' purchases from the relevant suppliers and regardless of the complexity of the supply chain. Fair Play Bygg Oslo Region believes the duty to know should be strengthened so that the duty to know about forced labour and or slavery-like work is strongest closest to the enterprise in the supply chain. The duty to know will then be greatest in the first stage and somewhat reduced in the second stage, etc.

8.1.2.5 The scope of the duty to know – Who is behind the impact and who are affected

The majority of the consultative bodies that have commented about the duty to know express support for the Committee's proposal that no limitations shall be established in relation to how far down the supply chain the duty to know should apply. However, the Labour and Welfare Administration states that it may be difficult for an enterprise to determine where there is a significant risk of adverse impacts and how far down the supply chain it is necessary to identify such risks. *The Association of Norwegian Finance* also believes there is a need for clarification regarding which supply chains each individual enterprise is required to know about, and how far down the individual supply chain responsibility goes. BNL, Finance Norway and NHO believe the text of the Act needs to clearly state that the duty to know does not apply to all stages of the supply chain.

The Better Regulation Council requests a more detailed assessment of the need and justification for all enterprises, in theory, having to identify the entire supply chain, in order to uncover a possible risk. The Better Regulation Council notes that the Committee, in its report, states that there is no expectation that an enterprise must have detailed information on all suppliers and subcontractors but requests a discussion on whether it may suffice that e.g., all enterprises go one stage down in the supply chain. According to the Better Regulation Council, this will avoid all

enterprises in the chain having to do the same job, and stakeholders will nevertheless be able to obtain a complete overview of the supply chain.

In Tekna's view, the duty to know needs to apply to the supply chain with which the enterprise is in direct or indirect contractual relationships. Amnesty Norway and Rainforest Foundation Norway state that there should be a clearer requirement that enterprises identify where in the supply chain there is the highest risk of adverse impacts, and that such an identification should also include business partners.

Fair Play Bygg Oslo Region believes that conditions outside the workplace must be examined and be covered by the duty to know. As an example, the consultative body mentions that lodging rented out by employers to employees is not a workplace and that such lodging is often hazardous, unsanitary, a fire hazard and without escape routes, cramped and expensive for the worker.

8.1.3 Ministry's assessments

There is a general expectation that enterprises have knowledge about their own operations and their business relationships. The Ethics Information Committee's proposal for a duty to know is a specification of this expectation in relation to significant risks of adverse impacts on human rights and working conditions that may be associated with the enterprise.

In order to respect human rights and decent working conditions, and to address adverse impacts of their own activities, the enterprises must know about their own operations and their supply chains, and what risks these pose in terms of adverse impacts on human rights and working conditions. The purpose of the duty to know is to try to ensure knowledge about potential significant risks of adverse impacts in the enterprise itself and in the enterprise's supply chains. The Ministry agrees with the Ethics Information Committee that a duty to know about significant risks of adverse impacts within the enterprise itself and in the enterprise's supply chains will contribute to raising awareness and improving enterprises' risk management in relation to their societal impact – both in terms of human rights and working conditions. Knowledge may enable the enterprises to predict and prevent or mitigate adverse impacts. This will also enable enterprises to respond to requests for information from consumers, civil society and others (see point 8.3). A duty to know can contribute to enterprises having a more positive impact on society and improve relations and reputation. In turn, this can contribute to value creation, including by reducing costs, improving understanding of markets and suppliers and strengthening risk management.

The Ethics Information Committee proposes that all enterprises be subject to a duty to know, and that larger enterprises be subject to a duty to carry out due diligence. In the Ministry's view, the purpose of the duty to know has been to impose less burdensome duties on smaller enterprises than what is proposed for larger enterprises. As accounted for in point 7.3.3, the Ministry proposes that the Transparency Act be limited to only apply to larger enterprises. Since smaller enterprises are not covered by the Act, the Ministry does not consider it suitable or necessary to include a duty to know. The Ministry proposes that the enterprises covered by the Act be required to carry out due diligence (see point 8.2). The duty to carry out due diligence presumes and requires that enterprises have knowledge of the risks of adverse impacts on

fundamental human rights and decent working conditions within the enterprise and in the enterprise's supply chains. Thus, this duty contains a duty to know. As opposed to the duty to carry out due diligence, the duty to know contains no duty to act or duty to issue a statement regarding what risks have been identified or what measures have been implemented. Thus, the duty to carry out due diligence requires considerably more of the enterprises. Therefore, the Ministry does not propose a duty to know. However, a duty to know may become relevant in the event of an expansion of the Transparency Act to cover smaller enterprises at a later date, cf. point 7.3.3.

8.2 Duty to carry out due diligence

8.2.1 The Ethics Information Committee's proposal

The Ethics Information Committee proposes that larger enterprises be required to carry out due diligence in order to identify, prevent and mitigate potential adverse impacts on fundamental human rights and decent work, and account for how such work will be managed, cf. Section 10, first paragraph of the Committee's bill.

The Committee's proposal for due diligence derives from the UN Guiding Principles on Business and Human Rights (UNGP) and the OECD Guidelines for Multinational Enterprises and shall be implemented in accordance with these documents. Due diligence is a separate process that shall enable enterprises to identify, prevent, mitigate and account for their handling of actual and potential adverse impacts on fundamental human rights and decent work. According to the Committee's comments to the provision, "Adverse impacts" are consequences that the enterprise has either caused or contributed to, or which are directly linked to the enterprise's activities, products or services through a business relationship. Consequences that the enterprise has "contributed to" means as an activity that causes, facilitates or encourages another entity to cause an adverse impact. It does not include minor or trivial contributions. This interpretation derives from Chapter II of the OECD Guidelines for Multinational Enterprises.

In its commentary to the provision, the Committee writes that due diligence shall be risk-based, recurring and preventative. The nature and scope of the assessments and measures to be initiated will depend on factors such as enterprise's size, context and the severity of the adverse impact. Identification and assessment of adverse impacts requires an overall analysis of the enterprise itself and its business relationships. Important initial assessments may, for instance, be whether the range of operations or production process is particularly high-risk, or whether the context creates particular risk. An important part of the activity is to prioritise risks for more detailed assessment and management. When the risk of adverse impacts is probable and severe, more comprehensive assessments and measures will be required. The assessments and measures should be adapted to the nature of the adverse impact.

Enterprises shall, according to Section 10, second paragraph of the Committee's bill, on their own initiative account for the following matters concerning own activities and supply chains:

a) A description of the enterprise's structure, area of operations and supply chains, including management systems and early warning channels for preventing or mitigating any adverse impact on fundamental human rights and working conditions.
b) Due diligence carried out by the enterprise, including information about any actual adverse impact on fundamental human rights and decent work and significant risk of such impact.
c) Results of the due diligence, including measures to mitigate severe risk or harm and remedy adverse impact where this is required.

The second paragraph must be understood in context with the Committee's proposal for Section 7 on the right to information. It must also be understood in context with the requirement to report on social responsibility in Section 3-3 (c) of the Accounting Act, where information in the annual report regarding "guidelines, principles, procedures and standards" employed by the enterprises is required regarding considerations for human rights.

According to the second paragraph, the account shall in all cases cover information regarding risks and measures pertaining to forced labour and other slave-like work, child labour, discrimination in employment and occupation, lack of respect for the right to establish and join trade unions and the right to collective bargaining, as well as health, safety and the environment, cf. the Committee's proposal for the third paragraph.

According to the second paragraph, the account may be included in the reporting on social responsibility pursuant to Section 3-3 (c) of the Accounting Act or publicly disclosed in another manner, cf. the Committee's proposal for the fourth paragraph. The information shall be readily accessible. The annual report shall state where the account is publicly available. According to the Committee's proposal for Section 10, fifth paragraph, the account shall be signed by the managing director and the board.

The proposal to carry out due diligence and publish an account is supported by the Committee unanimously.

8.2.2 Opinions of the consultative bodies

8.2.2.1 Generally regarding the proposal

A number of consultative bodies have commented on the Committee's proposal that larger enterprises shall carry out and publish due diligence. These consultative bodies are favourable to the duty and the fact that it builds on the already established expectations from, among others, the UNGP and the OECD Guidelines. However, some consultative bodies provide input regarding the practical applicability of the duty, its scope, duty-bearers and the public account.

The consultative bodies that support a due diligence duty are *the Norwegian Bar Association, Amnesty International Norway* (Amnesty), *Bergen Municipality, Changemaker, Coretta & Martin Luther King Institute for Peace* (King Institute), *Digitalisation Agency, Equinor, Ethical Trade Norway, Fairtrade Norge, Norwegian Council for Africa, Consumer Council, Norwegian Forum for Development and Environment, Future in our hands, Salvation Army Norway, YWCA-YMCA, Norwegian Church Aid and Christian Council of Norway, Kongsberg Gruppen, Norwegian Solidarity Committee for Latin America* (LAG), *Norwegian National Human Rights Institution* (NIM), *Norsk Hydro* (Hydro), *Norwegian Union of Journalists, the OECD Contact Point*, *Orkla, Rafto Foundation for Human Rights, Rainforest Foundation*

Norway, Responsible Business Advisors (RBA)*, Statkraft, Telenor, University of Bergen* (UiB), *Viken County Council* and *Yara International* (Yara).

According to NIM, enterprises' due diligence is a key mechanism under the UNGP for ensuring enterprises' respect for human rights. Ethical Trade Norway states that all its members have committed themselves to complying with Ethical Trade Norway's Declaration of Principles, which is based on the leading international standards such as the UNGP, and where due diligence is the basic method for members' efforts relating to ethical trade. The Norwegian Forum for Development and Environment states that due diligence is an excellent tool for identifying and preventing harm. The Consumer Council states that a duty to carry out due diligence contributes to highlighting the problems in enterprises that are not currently working satisfactorily on challenges relating to ethics and decent working conditions. The Norwegian Bar Association states that due diligence will contribute to awareness about human rights and possibilities for influence, among other things, by facilitating in order for enterprises to implement measures to reduce risks and remedy adverse impacts on human rights. According to the consultative body, this also corresponds with the international development in the direction of greater regulation, both in individual countries and at the European level. UiB states that the due diligence duty is in line with their desire for simplified follow-up of contractual requirements in relation to suppliers. Viken County Council states that the duty to implement due diligence may result in additional work, but that the benefits to society and individual enterprises makes up for this. Changemaker states that it is praiseworthy that the bill requires Norwegian enterprises to carry out due diligence. The consultative body states that it is morally right, just and efficient for enterprises themselves to take responsibility for human rights infringements in their supply chains, rather than consumers having to take responsibility for making ethical purchases. YWCA-YMCA states that a due diligence duty, in conjunction with the duty to know and duty to disclose information, will contribute to holding enterprises accountable and is key to the effectiveness of the Act.

8.2.2.2 The content of due diligence and relationship with the UNGP and the OECD Guidelines

Bergen Municipality, Changemaker, *Mester Grønn* and *Confederation of Norwegian Enterprise* (NHO) request that the Act or proposition more clearly expresses what due diligence is and what is expected of the enterprises in order to carry out satisfactory due diligence. Mester Grønn states that clarity will ensure that implementation of the Act's requirements will not result in a disproportionate burden on the enterprises. According to the consultative body, the requirements of the Act must also be possible to implement without the enterprises having to deal with expensive memberships or consultants. Bergen Municipality states that it varies greatly how thorough and comprehensive due diligence is and that it often appears to be descriptions of routines of a more general nature. LAG states that clear requirements should be set for enterprises' stakeholder engagement and that due diligence should also include analyses of the power relations between the enterprise and local community.

Several consultative bodies are concerned with the due diligence duty being based on and corresponding with the UN Guiding Principles on Business and Human Rights (UNGP) and the OECD Guidelines for Multinational Enterprises. This includes NIM, which states that it is an important and good approach to build on the UNGP, which is already the prevailing standard

for the area. The OECD Contact Point also supports the bill's principle that due diligence shall correspond with the UN's Guiding Principles. According to the OECD Contact Point, this entails that the requirement, within the Act's area of application, also corresponds with the OECD Guidelines and the requirements therein of carrying out due diligence.

NHO states that many larger enterprises already conduct systematic assessments, including in relation to the UNGP. According to NHO, for the enterprises, and presumably for those requesting information, it will be a major advantage to have a common set of principles that are used regardless of where in the world the activities are taking place. According to NHO, the Ministry should therefore ensure that an Act is drafted in such a manner that the use of these principles will be in line with the Act. Equinor, Hydro, Kongsberg Gruppen, Statkraft and Yara also believe it is important that the Committee has adopted an approach that is similar to the UNGP in key parts of the bill, and that the substantive requirements for due diligence and an active duty to disclose information thereby do not exceed the commitments already made by many enterprises. Furthermore, the consultative bodies state that it will be important that a final text of the Act reflects the wording and terms from the UNGP. According to the consultative bodies, this will, in conjunction with the preparatory works, clarify that it is the UNGP that forms the basis for how enterprises are to fulfil the requirements of the Act. Norwegian Church Aid and Christian Council of Norway state that it is very important that the business sector is obligated to carry out good and thorough due diligence so that human rights infringements can be prevented proactively. According to Changemaker and Norwegian Church Aid and Christian Council of Norway, satisfactory due diligence should be as close as possible to what is described in the UN's Guiding Principles for Business and Human Rights and the OECD Guidelines for Multinational Enterprises. RBA believes that an explicit reference in the Act to the OECD Due Diligence Guidance for Responsible Business Conduct will strengthen the Act and the understanding of what due diligence entails for consumers, other stakeholders and, not least, the enterprises themselves.

8.2.2.3 The practical applicability of due diligence

The OECD Contact Point notes that the bill's principle regarding due diligence is largely in accordance with the OECD Guidelines and the OECD Due Diligence Guidance for Responsible Business Conduct, but that the bill is also somewhat limited in comparison with these documents. The consultative body notes that, due to the limitation in the mandate, corruption and impacts on the external environment are not covered by the proposed requirement for due diligence, unless such matters result in a human rights infringement. The consultative body emphasises that the expectations in the OECD Guidelines to carry out due diligence are more extensive than in the Committee's bill. The OECD Guidelines establish expectations that enterprises carry out due diligence in the following areas: human rights, employment and industrial relations, environment, combatting bribery, bribe solicitation and extortion, consumer interests and disclosure of information. According to the OECD Contact Point, topics relating to the environment and corruption will continue to constitute an important part of the guidance of enterprises in their work on due diligence in order for them to fulfil the OECD Guidelines.

Several consultative bodies, including Amnesty and the Norwegian Forum for Development and Environment, mention that the duty to carry out due diligence needs to be expanded to cover environmental impacts (see point 7.2.2.2 for a more detailed discussion on this matter).

8.2.2.4 Scope of due diligence – who is behind the impact and who are affected

NHO encourages the Ministry to clarify in the text of the Act who is considered to be behind the adverse impact in order to be covered by the enterprises' due diligence. The consultative body refers to the fact that the duty to know, according to the Ethics Information Committee's proposal, applies to impacts "within the enterprise itself and in its supply chains", and that the duty to account for due diligence applies to impacts from "own activity and supply chains", whereas Section 10 of the proposal to carry out due diligence contains no such limitation. However, it follows from the special remarks that the intention is to cover "consequences that the enterprise has either caused or contributed to, or which are directly linked to the enterprise's activities, products or services through a business relationship".

NIM notes that the Committee's bill distinguishes itself from the UNGP in that the requirements for due diligence under the UNGP relate to all the enterprise's "business relationships", whereas the Committee's bill appears to build on a somewhat narrower approach by using the more limited wording "supply chains". NIM emphasises that it is not necessarily a problem that national legislation takes a narrower approach than in more "voluntary" schemes, but that it is nevertheless good to be aware of the fact that the expectations under the UNGP, which many Norwegian enterprises already adhere or will adhere to, have a broader scope.

Rainforest Foundation Norway states that it should be more clearly expressed that the due diligence is to cover the enterprises' value chains. Fairtrade Norway states that due diligence should also cover the supply chain, including the raw material stage where there is a known risk (see also point 7.4.2.1). The Consumer Council notes that the European Commission in its action plan "Financial Sustainable Growth" from 2018, states that requirements should be established requiring enterprises to prepare due diligence pertaining to their supply chains.

Several consultative bodies, including Amnesty, Norwegian Forum for Development and Environment and Rainforest Foundation Norway, believe the duty to carry out due diligence needs to cover external impacts on, among others, indigenous peoples and local populations, and not just within the enterprise itself. Rainforest Foundation Norway states that the most serious infringements of human rights and the impacts of environmental harm, often cannot be seen within the enterprise. See point 7.4.2.2 for a more detailed discussion of this.

8.2.2.5 The risk concept – potential adverse impacts

The King Institute believes the risk concept needs to be clarified in order to facilitate for enterprises to carry out due diligence and disclose their accounts of the process in the most meaningful way possible. The consultative body notes that a misinterpretation of the risk concept can result in matters of critical importance being overlooked and resources for measures not being used where they are needed the most and will be most effective. Two years into the French Duty of Vigilance Law, we have seen that enterprises interpret the risk concept differently, which has reduced the effectiveness of the law in practice. Even though the French law is clear regarding its intentions, 75% of the enterprises have identified risks based on an understanding of what constitutes a risk for the enterprise and not based on what constitutes a risk for people. The explanation for this is that traditional reporting is often carried out with a focus on the risks for the enterprise, an approach which the enterprises may have carried over to this obligation.

NHO states that it interprets "potential" adverse impacts as an indication of a fairly low likelihood, but that it is unclear whether this applies regardless of impacts.

The Labour and Welfare Administration states that it is not entirely clear what the difference is between a risk assessment pursuant to the duty to know and the proposed due diligence.

8.2.2.6 Specifically regarding the principles of a risk-based approach and proportionality

Amnesty, Ethical Trade Norway, Equinor, *Enterprise Federation of Norway* (Virke), Hydro, Kongsberg Gruppen, Orkla, Oslo Municipality, Rainforest Foundation Norway, Statkraft and Yara support the fact that the scope of due diligence is based on a risk-based approach adapted to the enterprise, in accordance with the UNGP and the OECD Guidelines.

According to Amnesty, enterprises will normally not have detailed information regarding all suppliers and subcontractors. Due diligence requires an investigation into which parts of the supply chain, if any, represent such a risk, entailing a requirement of more detailed investigations. According to Amnesty, the scope will thereby be broader for enterprises operating in particularly challenging sectors.

Virke states that prioritising the most serious risks first, does not mean that some fundamental human rights are more important than others, cf. the UNGP and the OECD Due Diligence Guidance, but that an enterprise rarely has the resources required to work on all fundamental human rights at the same time in a satisfactory manner. The method behind due diligence is therefore that there is no expectation of everyone working on everything. Ethical Trade Norway states that due diligence is challenging, and that a proportionality assessment must form the basis for due diligence, as expressed in Principle 14 of the UNGP.

Some consultative bodies have stated that the principle of a risk-based approach would benefit from being clarified in the Act. NHO refers to the fact that the Committee's report and draft for Section 10 expresses that the duty to assess due diligence is relative, but that the draft bill does not provide guidance in this regard in the manner the draft bill does for the duty to know. Furthermore, NHO states that the Ministry should consider more clearly expressing that due diligence shall be risk based. Equinor, Hydro, Kongsberg Gruppen, Orkla, Statkraft, Telenor and Yara request a clearer description of the point regarding a risk-based approach in the text of the Act. Orkla notes that by codifying the legal requirement for due diligence, the business sector will be subject to considerable additional responsibilities, and that it is therefore important that the text of the Act is drafted in such a manner that it does not create unrealistic expectations regarding what the enterprise can and is required to do.

BDO assumes that one should avoid the reporting duty being passed down to subcontractors, something BDO understands has been a challenge in England. Therefore, BDO recommends that the text of the Act specifies that the main contractor/construction client is required to carry out due diligence, including for parts performed abroad. According to the consultative body, this can reduce the leeway for the actual duty-bearer to pass on responsibility to subcontractors, which is especially important in the building and construction industry, where medium-sized and large actors already have very low margins and where new reporting duties can quickly become a significant burden.

8.2.2.7 Duty to account for due diligence

The Consumer Council states that information relating to due diligence enables a more comprehensive overview of the work that is being performed by larger enterprises and makes it easier to compare the actors. The Norwegian Bar Association supports that disclosure of due diligence supplements the requirement to report on social responsibility in Section 3-3 (c) of the Accounting Act and that reporting can be coordinated and occur in the annual report or another similar document, cf. Section 3-3 (c), fifth paragraph of the Accounting Act.

Bergen Municipality finds that it appears unclear what it is enterprises have a duty to disclose. The provision in Section 10, second paragraph (a) could, according to the consultative body, benefit from being more specific through a more detailed definition of what the term "description" means.

NHO states that the manner in which the duty to disclose information is proposed, may entail that the enterprises are required to provide information about suppliers. This might entail that the information identifies suppliers, and that the information contains content with which the supplier disagrees, or which subjects the supplier to persecution by the authorities or business relationships. NHO believes enterprises should not be required to publicly disclose such information.

The King Institute states that it is necessary to have a clear description of what is meant by the word "risk" in relation to the account in Section 10, second paragraph (b) (see point 8.2.2.5).

Future in our hands states that it is important that the reporting on due diligence not only relates to the enterprises' measures, but also the effectiveness thereof. The King Institute also states that in order for the Act to be as effective as possible in practice, it will be necessary to include a separate point that requires large enterprises to clarify the effectiveness of the enterprise's implemented measures. The consultative body states that if the account only focuses on the measures an enterprise has implemented based on the due diligence, and not on the effectiveness of the measures, the Act may become more process oriented than results oriented. Furthermore, the King Institute states that it is necessary to establish an evaluation framework so that the enterprises themselves know what specific effect they have achieved year-by-year by measuring actual changes. An evaluation framework also provides enterprises with the opportunity to continuously work on the due diligence process and adjust measures along the way if necessary, so that they achieve the best possible results through the measures. Furthermore, the consultative body believes it is necessary that the enterprises, in conjunction with an evaluation framework, also use a results framework where, based on due diligence, one accounts for the goals of the measures, the enterprise's sub-goals and the desired results. According to the consultative body, enterprises can thereby refer to a long-term progressive plan that identifies sub-goals year-by-year.

Equinor, Hydro, Kongsberg Gruppen, Statkraft, Telenor and Yara state that they are pleased with the fact that modern slavery is included in Section 10, third paragraph, which contains a specific requirement that enterprises publicly disclose risks and measures pertaining to forced labour and other slavery-like work. The King Institute states that it is important to clarify what definition of forced labour and other slavery-like work is used in the actual text of the Act. Furthermore, the King Institute believes it is crucial that human trafficking be included in the

actual text of the Act in connection with risks and measures for which enterprises must account. According to the consultative body, this is in accordance with the UN Guiding Principles on Business and Human Rights (UNGP), as human trafficking falls under its definition of human rights abuses carried out by third parties such as enterprises and employers. The consultative body states that it is crucial that an act that requires Norwegian enterprises to carry out due diligence and publicly disclose information, covers the prevailing conditions in Norway, as well as internationally, in order to avoid a bifurcated system. Rainforest Foundation Norway states that the account on due diligence should include a living wage and living income, cf. Section 10, third paragraph. Mester Grønn states that it is important that reporting in other contexts constitutes sufficient documentation of e.g., due diligence. This is in order for enterprises that already have considerable resource use on various reporting requirements to different public bodies not to be subjected to additional burdens.

The Norwegian Union of Journalists does not agree that it should be voluntary to include the account on due diligence in the report on social responsibility pursuant to Section 3-3 (c) of the Accounting Act. The Norwegian Union of Journalists believes this needs to be changed to a duty. Furthermore, the consultative body states that the wording that the account can be "disclosed in some other way" is too imprecise. The consultative body refers to the fact that the special remarks state that the information required shall be visible on the enterprise's website so that it is easily accessible to various users. According to the consultative body, this specification should be clearly expressed in the wording of the Act. Furthermore, the consultative body believes that it must be possible to demand updating of information. According to the consultative body, due diligence must be inspected regularly, and the latest version online must reflect the prevailing assessments. Therefore, the Norwegian Union of Journalists proposes the following wording: "Disclosure of information shall be included in the report on social responsibility pursuant to the Section 3-3 (c) of the Accounting Act. Updated information shall be publicly disclosed on the enterprise's website".

The King Institute states that it is crucial that a central register be established where large enterprises are required to publish an account of the due diligence they have carried out, in addition to publishing in their own annual reports and on their own websites. The King Institute states that with a public register, where all duty-bound enterprises account for the processes they have carried out, will improve the effectiveness of the Act from the beginning. According to the consultative body, it will also be easier for investors, civil society organisations, consumers, academics and authorities to monitor the development and quality of the work carried out by the enterprises. A public register where all data is gathered in a single place will to a greater extent motivate best practices by enterprises from the beginning.

The King Institute refers to the fact that one of the strongest criticisms of the UK Modern Slavery Act has been that the authorities did not establish a public register from the beginning. According to the consultative body, without a public register, it has been difficult to monitor which enterprises have a duty to report. To date, the Business and Human Rights Resource Centre (BHRRC) has operated a public register that several civil society organisations worked together to establish. According to the consultative body, the British Government is currently working to establish a public register with guidance from BHRRC. In France, too, no public register has been established, but there is a register that the civil society organisation Sherpa

has established based on the British model. In Australia, a public register is connected to the Act.

Equinor, Hydro, Kongsberg Gruppen, Statkraft, Telenor and Yara state that the Act should be clear about the time frame in which an account by the managing director and board of directors is valid.

NHO states that the Ministry should consider whether it is appropriate that enterprises, instead of an annual account, have the right to provide information in a dynamic manner as the enterprises develop their work. NHO also states that the Ministry should consider whether it is appropriate that an account with so many discretionary considerations and assessments shall be signed by the board of directors and managing director. Among other things, NHO refers to the fact that the legal liability such case processing may entail, means that the documents are processed thoroughly in order to produce precise content. According to NHO, it is possible that a duty imposed on the enterprise per se, will produce more meaningful accounts than if they have to be signed by the board of directors and managing director. According to NHO, Section 3-5, third paragraph of the Accounting Act should apply to the account, regardless.

The Digitalisation Agency states that publicly disclosed due diligence simplifies and improves the efficiency of public procurements. The consultative body states that transaction costs for public undertakings in order to comply with Section 5 of the Public Procurement Act are markedly reduced with the possibility of using publicly disclosed due diligence in high-risk procurements. Instead of performing time consuming manual reviews of self-reporting completed by suppliers, the suppliers' publicly disclosed due diligence can be used as a starting point for the follow-up of contracts.

Amnesty states that the duty to disclose information can contribute to fulfilment of other frameworks, e.g., the Norwegian Accounting Committee's proposed rule in Norwegian Official Report (NOU) 2016: 11, Section 9-6 and Directive 2014/95/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups.

8.2.2.8 Duty-bearers

Some consultative bodies generally support that the Act distinguishes between large and medium-sized enterprises (see point 7.3.2). The Digitalisation Agency, RBA and Virke expressly support that only larger enterprises are required to carry out and publicly disclose due diligence.

NIM states that the proposed requirement for due diligence distinguishes itself from the UNGP in that it does not apply to all enterprises, but instead only the largest. NIM emphasises that it is not necessarily a problem that national legislation takes a narrower approach than in more "voluntary" schemes, but that it is nevertheless good to be aware of the fact that the expectations under the UNGP, which many Norwegian enterprises already adhere or will adhere to, have a broader scope.

Amnesty, Norwegian Council for Africa, Future in our hands, Salvation Army Norway, the OECD Contact Point, Rainforest Foundation Norway and *UNICEF Norway* state that the duty to carry out due diligence should apply to all enterprises, regardless of size. Amnesty, the OECD

Contact Point and Rainforest Foundation Norway state that the industry and country in which one operates is of greater significance than the size of the enterprise.

According to Amnesty and Rainforest Foundation Norway, the UNGP does not distinguish between small and large enterprises but that due diligence expectations vary. The consideration for smaller enterprises' limited resources may, according to Amnesty, sufficiently be accommodated through good public guidance and the relativity in the due diligence norm.

The OECD Contact Point refers to the fact that the UN's Guiding Principles and the OECD Guidelines apply to all multinational enterprises, regardless of industry and size. In a transition from voluntary expectations to statutory requirements, the Contact Point envisages that fulfilment of Section 10 may appear more feasible for larger enterprises. Considering that the method and scope of due diligence, according to the OECD Guidelines and the UN's Guiding Principles, are to be adapted to the size, context and severity of an adverse impact, smaller enterprises are also able to comply with the requirement to carry out due diligence.

Rainforest Foundation Norway believes that it is important that each enterprise embeds assessment and prevention of human rights and environmental risks in their corporate culture. This is because all enterprises, regardless of their size, risk infringing human rights and causing environmental harm. Salvation Army Norway also refers to the fact that exploitation occurs in small and medium-sized enterprises.

According to NHO, the Ministry should consider whether regulation of high-risk sectors is appropriate.

8.2.3 Ministry's assessments

8.2.3.1 Generally regarding the proposal

Enterprises due diligence is a matter of assessing and managing risks of adverse impacts on human rights and decent working conditions. Due diligence only applies to matters over which the enterprise has some degree of influence, which presumes a certain connection between the enterprise and the risk. The purpose of the requirement to carry out due diligence is to mitigate adverse impacts and for the general public to have access to information regarding such matters.

The duty to carry out due diligence has generally been well received by the consultative bodies. The consultative bodies emphasise that the duty builds on the already established expectations from, among others, the UN Guiding Principles on Business and Human Rights (UNGP) and the OECD Guidelines for Multinational Enterprises, and that due diligence is considered an important tool for identifying and preventing adverse impacts on human rights. Several consultative bodies also highlight that the duty can contribute to raising awareness about human rights and decent working conditions in the enterprises and their supply chains, especially among enterprises that are currently not carrying out satisfactory work on these matters.

The Ministry agrees with the consultative bodies regarding the utility value of this duty. In the Ministry's view, due diligence is a key mechanism under the UNGP and the OECD Guidelines and is a crucial means in international regulatory developments at the European level and in individual countries. The Ministry also notes the comments of some consultative bodies that

follow-up of requirements in relation to suppliers will become easier to implement once the duty to carry out due diligence is codified. In the Ministry's assessment, this duty is suitable and appropriate, and the Ministry therefore proposes that the Act shall contain such a duty.

Some consultative bodies have stated that all enterprises must be covered by the duty to carry out due diligence, regardless of the size of the enterprise. The Ministry acknowledges that there are good reasons to expand the duty to apply to all enterprises. As with the Act generally, however, the Ministry proposes that the duty to carry out due diligence shall only apply to larger enterprises (see discussion in point 7.3.3).

Certain consultative bodies have stated that the duty to carry out due diligence must be expanded to cover more than fundamental human rights and decent working conditions. Reference is made to, among other things, the fact that the expectations in the OECD Due Diligence Guidance cover human rights, employment and industrial relations, the environment, bribery and corruption, consumer interests and disclosure of information. Many of the consultative bodies are especially concerned with the duty to carry out due diligence being expanded to also cover environmental impacts. The Ministry recognises that there are good reasons for expanding to other areas such as the environment but proposes for the time being that the duty to carry out due diligence shall apply to fundamental human rights and decent working conditions in the manner the Ethics Information Committee has proposed for the duty and for the Act, generally. The Ministry refers to the planned evaluation of the Act after it has been in effect for a period of time, at which point the input regarding inclusion of other areas, including the environment, will be considered in more detail, cf. point 7.2.3.3. What is to be covered by due diligence must be understood in context with what is covered by the definition of fundamental human rights and decent working conditions (see point 7.2 for a more detailed discussion).

Even though the consultative bodies are generally supportive of a duty to carry out due diligence, several of them have commented on the wording of the duty. The consultative bodies are concerned with the requirement being based on the established expectations from, among other things, the UNGP and the OECD Guidelines, and the Act clearly stating what is expected of the enterprises in the implementation of due diligence. The consultative bodies have also provided input on the scope of the duty, and on the duty to provide an account. This is discussed in more detail in the points below.

8.2.3.2 Relationship with the UNGP and the OECD Guidelines

Several consultative bodies are concerned with the duty to carry out and publish due diligence building on and corresponding with the already established expectations in the UNGP and the OECD Guidelines.

The Ministry agrees that the duty must be worded in such a manner that its content corresponds with what the UNGP and the OECD Guidelines expect of enterprises. An enterprise that fulfils the duty to carry out due diligence pursuant to the Transparency Act shall, in principle, at the same time be able to fulfil the recommendations in the UNGP and the OECD Guidelines regarding due diligence relating to human rights and decent working conditions. Therefore, the Ministry is concerned with the Transparency Act being worded in accordance with the international principles and guidelines so as to avoid enterprises in practice having to carry out two due diligence processes for human rights and decent working conditions for the Transparency

Act and the international principles and guidelines, respectively. Therefore, the Ministry proposes specifying in the text of the Act that due diligence shall be carried out in accordance with the OECD Guidelines. Due diligence carried out in accordance with the OECD Guidelines will, in the Ministry's view, also be in line with the UNGP.

A challenge with this approach, however, is the fact that the OECD Guidelines are vague. This makes it challenging to word the duty to carry out due diligence in a clear and precise manner, without veering too far from the Guidelines. Therefore, the Ministry has attempted to clarify the duty in the Act to the greatest extent possible and provide more detailed explanations in the commentary to the provision. In order to ensure that the Transparency Act's duty to carry out due diligence is to the greatest extent possible interpreted in line with the OECD Guidelines, the provision and commentary to the provision must be supplemented by what follows from the *OECD Due Diligence Guidance for Responsible Business Conduct* and the sectoral guidance the OECD has prepared for various sectors (see point 8.2.3.3).

The Consumer Authority, which the Ministry has proposed as the supervisory and guidance body under the Transparency Act, will also play an important role in concretising the duty. At the same time, the OECD's Contact Point is mandated to provide guidance to enterprises on how to comply with the OECD Guidelines. Even though the Ministry's intention is for the duty to carry out due diligence pursuant to the Transparency Act to build on the OECD Guidelines and thereby be interpreted identically, it will nevertheless, in the Ministry's assessment, be a natural and unavoidable consequence of having two guiding bodies in the field that there will be situations where the duty to carry out due diligence pursuant to the Transparency Act and the expectations that follow from the OECD Guidelines, are interpreted differently. In order to avoid this to the extent possible, the Ministry is therefore concerned with the Consumer Authority and the OECD's Contact Point having a close cooperation (see point 9 for a more detailed discussion regarding the supervisory and guidance task).

The Ministry notes that the practical applicability of the Act is proposed limited to fundamental human rights and decent working conditions, cf. point 7.2.3. It is proposed that the practical applicability of the duty be limited accordingly. Since the OECD Guidelines substantively go further than the Transparency Act by also requiring due diligence for, among other things, the environment and combatting bribery etc., the enterprises must also carry out due diligence relating to these areas in order to fulfil all the recommendations in the OECD Guidelines.

See Section 4, first paragraph of the Proposal for a Transparency Act.

8.2.3.3 General information regarding due diligence and the principles of a risk-based approach and proportionality

As clarified in point 8.2.3.2, the Ministry is concerned with due diligence pursuant to the Transparency Act corresponding with what is expected of due diligence under the UNGP and the OECD Guidelines. The guidelines offer enterprises flexibility to adapt various elements, measures and routines in the due diligence process to their own context. For a more detailed description of due diligence, reference is made to the *OECD Due Diligence Guidance for Responsible Business Conduct* and the sectoral guidance the OECD has prepared for various sectors. The due diligence methodology in the sectoral guidance corresponds with the approach in the OECD's general guidance on due diligence but provides more detailed recommendations adapted to specific industries or

sectors. An introduction to due diligence has also been prepared, which provides a more concise description.

According to the OECD's due diligence guidance, due diligence consists of six different stages, see Box 8.1. In the Ministry's assessment, due diligence under the Transparency Act should consist of the same stages, adapted to the practical applicability of the Transparency Act (fundamental human rights and decent working conditions). The Ministry proposes highlighting the stages in the text of the Act and including an explanation in the commentary to the provision. For a more detailed and specific description of the various stages, however, reference is made to the OECD's Guidance. Here, examples of practical measures relating to each stage are also provided. The mentioned measures are not intended to be an exhaustive checklist for due diligence. Not all measures will be suitable and relevant in all contexts, and there may be situations where it is appropriate to implement measures that are not stated in the Guidance. The OECD's Guidance also includes some key principles for the duty to carry out due diligence (see Box 8.2). In the Ministry's assessment, the same principles shall apply to due diligence under the Transparency Act.

Boks 8.1 Stages of due diligence

The OECD Due Diligence Guidance for Responsible Business Conduct – An introduction describes the various steps in a due diligence process as follows:

1) *Embed responsible business conduct into policies and management systems:* This stage is about having adopted relevant policies and plans for due diligence at the management level. Policies and plans should cover the entire enterprise, supply chain and business relationships. It is important that responsibility for implementing due diligence is clearly assigned and that all those involved understand their duties. This stage is also about contributing to responsible business conduct among suppliers and business relationships, through agreements and contracts.
2) *Identify and assess adverse impacts/harm associated with the enterprise's operations, supply chain and business relationships:* This stage is about identifying the enterprise's potential and actual adverse impacts or harm, including in the supply chain, in order to prioritise the most serious risks to people, society and the environment. This is first and foremost a matter of establishing an overall risk profile, in order to prioritise risk areas for more thorough identification and measures. Furthermore, it is about assessing how the enterprise is involved in potential adverse impacts, so as to determine the appropriate response. The involvement of stakeholders is key.
3) *Cease, prevent and mitigate adverse impacts/harm:* This stage is about handling findings from the identification, both by ceasing own adverse impacts, and by developing and implementing plans and routines for preventing future adverse impacts.
4) *Track implementation and results:* This stage is about ensuring that the enterprise has sufficient information to be able to assess whether the efforts are actually working. Good systems for registering and managing information also form the basis for the enterprise's external communication.
5) *Communicate how impacts are addressed:* This stage is about communicating externally regarding how the enterprise is managing risks, and about how harm in the enterprise itself and the supply chain or with other business relationships is managed. Communication with affected rights holders is important.

6) *Provide for or co-operate on remediation and compensation where this is required:* This stage is about remedying harm which the enterprise has caused or contributed to. It is also about ensuring or co-operating, so that those who are harmed or potentially harmed, have access to a remediation mechanism in order to have their case heard.

[End of box]

The OECD's guidance are dynamic documents and will therefore be adjustable, which will also entail changes in terms of what is expected of enterprises pursuant to the Transparency Act. Therefore, it is important that the enterprises keep abreast of and adhere to possible new versions of the guidance. This also applies to possible changes to the UNGP and the OECD Guidelines.

Boks 8.2 Key principles for due diligence

The OECD Due Diligence Guidance for Responsible Business Conduct – An introduction provides the following key principles for due diligence:

- *Due diligence is preventative* – The purpose of due diligence is to avoid causing or contributing to adverse impacts on people, society and the environment.
- *Due diligence is risk-based and involves prioritisation* – It will rarely be possible to address all potential and actual adverse impacts at once. Each individual enterprise will have to prioritise. The prioritisation of human rights risks is made based on severity, scope and likelihood of potential adverse impacts or harm.
- *Due diligence is dynamic* – The due diligence process is an ongoing, recurring process. The process is continuously evaluated so that the enterprise can learn from what worked and what did not and improve its processes.
- *Due diligence is strengthened through engagement with stakeholders* – Stakeholders are persons or groups who have interests that could be affected by an enterprise's activities. Stakeholder engagement involves two-way communication, not merely information from the enterprise to the stakeholders. Meaningful engagement of stakeholders is necessary in order to make good prioritisations. This is a matter of speaking with and listening to those affected. Examples of stakeholders include workers, workers' representatives, trade unions, representatives from local communities, civil society organisations, investors and professional industry and trade associations.
- *Due diligence does not shift responsibilities* – All enterprises in a business relationship have their own responsibility to identify and address adverse impacts. Due diligence is not intended to shift responsibilities from governments to enterprises, or from enterprises causing or contributing to adverse impacts to associated enterprises.
- *Due diligence concerns internationally recognised standards of responsible business conduct* – Due diligence can help enterprises observe national laws and international standards pertaining to responsible business conduct.
- *Due diligence is appropriate to an enterprise's circumstances* – All enterprises are responsible for identifying and managing adverse impacts, but the measures and their scope may vary based on the size of the enterprise, the context of its operations, its business model, its position in supply chains, and the nature of its products or services.
- *Due diligence involves ongoing communication* – Communication regarding the process, findings and plans is part of the due diligence process itself. This contributes to building trust in the enterprise.

[End of box]

Several of the consultative bodies are concerned with enterprises' due diligence, in line with the UNGP and the OECD Guidelines, building on the principles of a risk-based approach and proportionality, and that this is highlighted in the Act. The Ministry agrees that these are key principles for the duty to carry out due diligence. The risk-based approach entails that the measures an enterprise implements in the due diligence process should be commensurate with the severity and likelihood of the adverse impact. Where the likelihood and severity are high, more will be required of the enterprise. Proportionality entails that the expectations relating to the enterprises' due diligence will vary based on the different circumstances of the enterprises, including, among other things, considerations for the enterprises' resources and that the enterprises operate in different sectors and markets (see also the discussion in Box 8.2). Reference is made to the *OECD Due Diligence Guidance for Responsible Business Conduct*, pages 46 and 47, which provides examples of how resource limitations in the enterprise can be managed and how due diligence can be adapted to the context of the enterprise. The Ministry agrees with the consultative bodies that it is beneficial to clarify in the Act that the duty to carry out due diligence builds on these principles and therefore proposes that this be clarified in the Act.

The Labour and Welfare Administration requests an explanation regarding the difference between due diligence and a risk assessment. The Ministry emphasises that the enterprises' risks assessments will be a key part of their due diligence. However, due diligence also involves other stages, including implementing measures to mitigate and prevent adverse impacts. Regarding stakeholder engagement, the Ministry emphasises that this will be a natural component of due diligence, in line with the OECD Due Diligence Guidance for Responsible Business Conduct. Stakeholders are persons or groups that could be affected by the enterprise, e.g., workers, workers' representatives, trade unions and individuals from the local community. According to the OECD Due Diligence Guidance for Responsible Business Conduct, stakeholder engagement involves interactive engagement processes with relevant stakeholders by way of e.g., meetings, hearings or consultation proceedings. Stakeholder engagement is characterised by two-way communication and depends on, among other things, sharing information at the right time, presented in a manner that is accessible to the stakeholders, which they understand and which enables them to make informed decisions. Reference is made to more detailed discussion in the *OECD Due Diligence for Responsible Business Conduct*, pages 48 to 51. In the Ministry's assessment, it is sufficient that the six stages that make up due diligence are covered by the Act, since these stages include stakeholder engagement. This is also discussed in the commentary to the provision.

The Ministry is concerned with avoiding duplication of effort in that multiple enterprises carry out due diligence relating to the same supply chain. Therefore, enterprises can cooperate, e.g., at the industry level throughout the entire due diligence process, even if the enterprises are always responsible for the implementation of their own due diligence. According to the OECD Due Diligence Guidance, enterprises can, e.g., cooperate on creating a shared knowledge base, in order to increase their ability to influence and to escalate effective measures. It is noted that sectoral collaboration can result in savings and cost-sharing. In the Ministry's assessment, such collaboration can also provide enterprises with greater opportunities to influence supply chains.

An enterprise can also use another enterprise's due diligence as the basis for its own due diligence. For example, an enterprise that is supplied goods from a larger importer, can utilise the importer's risk identification and assessments, insofar as the enterprise assesses that the importer's due diligence is of good quality. Thereby, the enterprise does not need to identify the same risk in the same supply chain as the importer and can then focus on other parts of its operations in its due diligence. Similarly, a subsidiary in a group with a Norwegian parent company can utilise the parent company's due diligence, insofar as the due diligence satisfactorily covers the subsidiary and its supply chain.

See Section 4, first paragraph (a) to (f) and second paragraph of the Proposal for a Transparency Act.

8.2.3.4 The risk concept – adverse impacts

The Ethics Information Committee proposes that the enterprises shall carry out due diligence to identify, prevent and mitigate "potential adverse impacts". Several consultative bodies request a clarification on what is meant by "potential" adverse impacts.

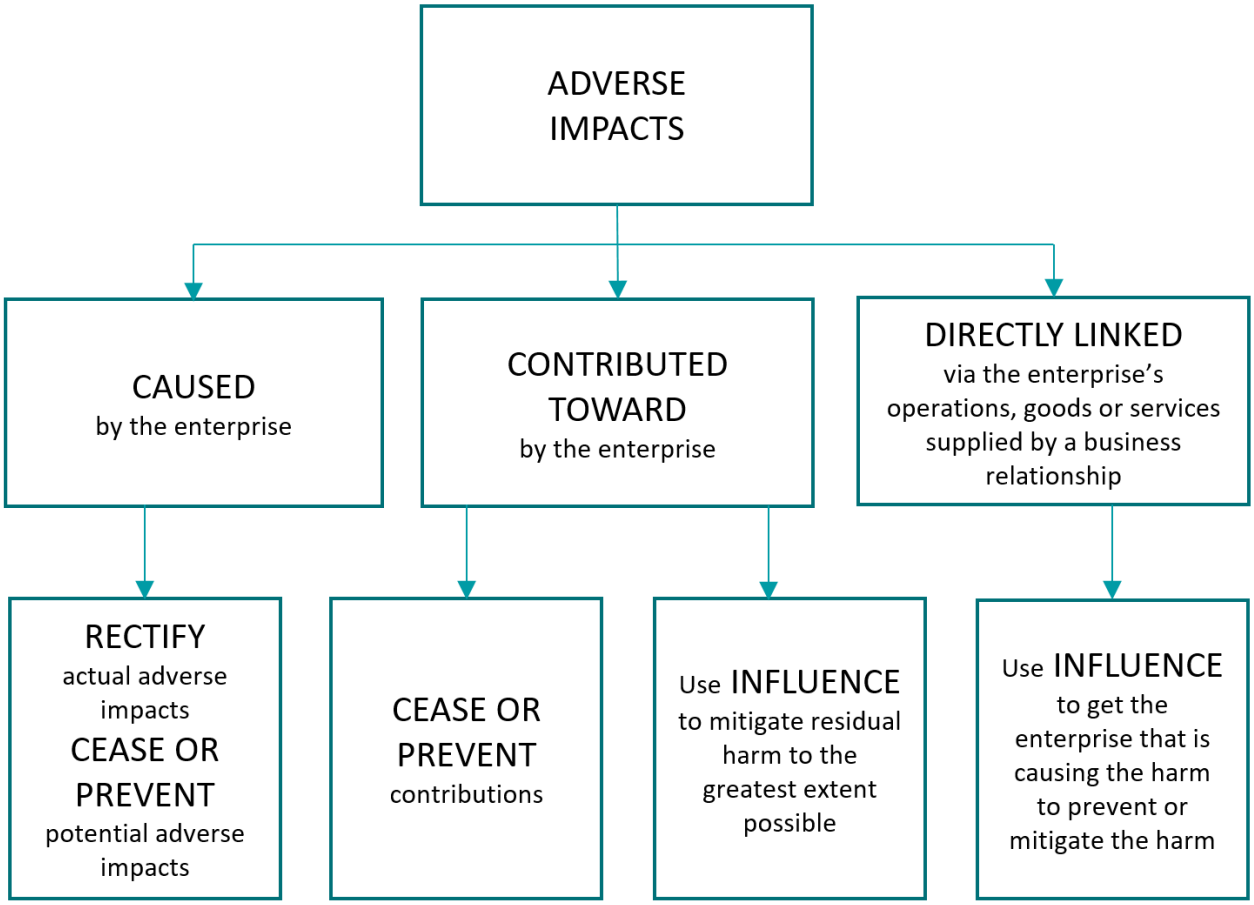
In the Ministry's assessment, the duty to carry out due diligence shall be practiced in accordance with the recommendations in the OECD Guidelines and the UNGP. The Norwegian version of the OECD Guidelines uses the term "negative konsekvenser" (adverse impacts), while the Norwegian version of the OECD Due Diligence Guidance uses the term "negativ påvirkning" (adverse influence). In the Ministry's assessment, there is no substantive difference between the terms and the Ministry proposes using the term "negative konsekvenser" (adverse impacts) in the Act, in accordance with the Guidelines. This means that enterprises shall address adverse impacts on fundamental human rights and decent working conditions. "Adverse impacts" means both actual and potential adverse impacts on individuals' human rights and decent working conditions. This entails that the enterprises shall both identify and assess adverse impacts that have resulted in harm (actual impacts) and risks of adverse impacts that have not yet materialised (potential impacts). Risk is assessed based on the severity or potential severity of the impacts on those affected and the likelihood of adverse impacts. The adverse impact can either be caused by the enterprise, be something to which the enterprise has contributed, or be directly linked with the enterprise's operations, its products or services via a supply chain or business partner (see also point 8.2.3.5). Regarding what adverse impacts enterprises are required to account for, reference is made to a more detailed discussion in point 8.2.3.6. In the Norwegian version of the bill, the terms "påvirkning" (influence) and "konsekvenser" (impacts) are used, though they are intended to be coterminous.

Once actual and potential adverse impacts are identified, the principles of a risk-based approach and proportionality indicate that enterprises must prioritise which actual and potential adverse impacts the enterprise should continue to work on. This must be individually assessed. It will be an important part of the enterprises' work on due diligence to make prioritisations regarding the continued focus, based on, among other things, severity and likelihood of adverse impacts on human rights and decent working conditions, cf. point 8.2.3.3.

8.2.3.5 Scope of due diligence – Who is behind the impact and who are affected

NHO requests clarity in the Act regarding who is envisaged to be causing adverse impacts, including whether it is the "enterprise itself and the enterprise's supply chains", as the Committee has proposed for the duty to know, or if there is potentially another delimitation. NIM notes that the duty to carry out due diligence in the manner proposed by the Committee distinguishes itself from the UNGP in that the requirements for due diligence under the UNGP relate to all of the enterprise's "business relationships", whereas the Committee's bill appears to build on a somewhat narrower approach by using the more limited wording "supply chains". The Ministry sees no reason to deviate from the UNGP and the OECD Guidelines on this matter. In the Ministry's assessment, this has also not been the Committee's intention. Therefore, the Ministry proposes specifying in the Act that due diligence shall not only be connected to impacts caused by the enterprise itself and the enterprise's supply chains, but also by business partners. Regarding the more detailed content and scope of these terms, reference is made to point 7.4.3.1. The Ministry also notes that the raw material stage is considered to be part of the supply chain and is thereby covered by due diligence.

The OECD Guidelines apply to adverse impacts that the enterprise has either caused or contributed to, or which are directly linked to its activities, or the enterprise's products or services through a business relationship. The Ethics Information Committee has in its commentary to the provision stated that the same shall apply for the Transparency Act's duty to carry out due diligence. The Ministry agrees with this and proposes that this be clarified in the provision concerning due diligence. The relationship between the enterprise and the adverse impact, i.e., whether the enterprise has caused, contributed to, or if the enterprise is directly associated with the impact through a supply chain or other business relationships, is an important element that determines how an enterprise shall react to the adverse impact, and whether the enterprise is responsible for remedying or cooperating to remedy the adverse impact. See the illustration in Figure 8.1, which is retrieved from page 72 of the OECD Due Diligence Guidance.



Figur 8.1 How the enterprise's connection to the impact affects its management

The Ministry proposes that the enterprises shall identify and uncover adverse impacts that occur within and external to the enterprise, its supply chain and business partners. Impacts that occur externally include impacts on indigenous peoples and local communities. Therefore, in the Ministry's assessment, it is not decisive *who* is affected, as long as it relates to impacts that are connected to the enterprise's own activities, its supply chain or business partners. Reference is made to the more detailed assessments in this regard in point 7.4.3.2.

See Section 4, first paragraph (b) of the Proposal for a Transparency Act.

8.2.3.6 Accounting for due diligence

Content of the account

The Ethics Information Committee proposes a duty to account for due diligence. The purpose is to ensure the general public access to information regarding the enterprises' due diligence and the results thereof. The Ministry agrees with the Consumer Council that an active duty to disclose information may provide the general public with a more comprehensive overview of the work being done in the enterprises.

Mester Grønn states that it is important that reporting in other contexts is sufficient documentation of, e.g., due diligence, so that the enterprises that already have a considerable resource use on various reporting requirements to different public bodies, are not imposed an additional burden. In response, the Ministry remarks that it is the actual performance of due diligence that is

at the core of the bill, and on which the duty to account for due diligence builds. It is key that the enterprises do not view the duty to carry out due diligence and publishing an account of due diligence purely as a reporting duty, but rather as a duty to work continuously in the enterprises with the stages of due diligence, cf. more detailed discussion in point 8.2.3.3. This shall contribute to enterprises to having an active relationship with and awareness about human rights and labour rights conditions in the production of their goods and services, to a greater extent than is currently the case. The duty to publish an account must be viewed as a natural consequence of the enterprises' work on due diligence, where the purpose is to provide the general public with insight into the enterprises' key findings and implemented measures.

The Ministry proposes that the account shall mainly contain the elements proposed by the Committee. The duty to provide an account can partially be derived from the OECD Guidelines and is a concretisation of information that it is natural for enterprises to publish as a result of the various stages of due diligence. The Ministry refers to stage no. 5 regarding communicating how impacts are managed, which includes disclosing information to the general public, cf. Box 8.1 in point 8.2.3.3. The Ministry also refers to the principle that due diligence involves continuous communication and disclosure, cf. Box 8.2 in point 8.2.3.3. Thus, part of the actual due diligence process is that enterprises communicate regarding their due diligence processes, findings and plans. This contributes to the enterprise building trust in their operations and their decision-making processes and shows that the enterprise is acting in good faith. In the Ministry's assessment, the account must be linked to the due diligence the enterprise has carried out pursuant to the Transparency Act, by specifying what can be considered key information regarding the various stages due diligence comprises. The consultative bodies have not commented negatively about these, but some note that the content of the duty to account for due diligence is unclear. The Ministry agrees with this to a certain extent and proposes some adjustments to the Committee's proposal for the text of the Act, especially regarding the use of terms, in order to clarify obligations.

Firstly, the Ministry proposes that the account shall include a general description of the enterprise itself and its guidelines and routines for work on human rights and working conditions. This is, in part, in line with the Ethics Information Committee's proposal, but is worded somewhat more generally. In the Ministry's assessment, the content of the duty to account for due diligence should not establish too detailed requirements for the enterprises.

Furthermore, the Ministry agrees with the Committee that the account must contain information regarding actual impacts that the enterprise has identified. The Ministry also agrees with the Committee that the account must contain information regarding what significant risks of adverse impacts the enterprise has identified, i.e., potential adverse impacts that are considered significant. What enterprises are required to account for in this regard is less comprehensive than what the enterprises' due diligence shall include. The enterprises' due diligence shall identify, prevent and mitigate "actual and potential" adverse impacts, whereas the account only applies to actual adverse impacts and "significant" risks. The Ministry uses the same interpretation of the risk concept as the OECD Guidelines and the UNGP. This means that risk must be assessed based on the severity or potential severity of the impacts on those affected and the likelihood of adverse impacts. What is to be considered "significant risks" has to be individually assessed.

Furthermore, the Ministry agrees with the Committee that the account must include results of the due diligence, including measures to mitigate severe risks and remedy adverse impacts where this is required. However, the Ministry proposes a change in terminology in that the account must include measures to mitigate "significant risks" instead of "serious risks". This is done in order for the terminology to corresponding the rest of the provision.

Some consultative bodies are concerned with the Act containing a separate point that requires the enterprises to clarify the effect of implemented measures in the account. The Ministry agrees that in order to achieve the purpose of the Act, it will be suitable to focus more on the results of the implemented measures. It is part of the enterprises' due diligence that the measures implemented to cease or mitigate adverse impacts are suitable. In the Ministry's assessment, the enterprises should therefore at least account for how selected measures have contributed to or are expected to contribute to reducing risks or remedying actual adverse impacts. However, it is appropriate that the enterprises be given flexibility to assess how thorough such accounts should be. The Ministry proposes a provision in this regard.

In the Ministry's assessment, it is not appropriate to regulate in more detail how enterprises are to account for due diligence. The enterprises must be given flexibility to design the account at their own discretion, as long as it satisfies the specified minimum requirements. The enterprises must specifically assess what information regarding suppliers and business partners must be stated in order to provide an adequate presentation of the enterprise's due diligence, including whether they need to be named. In the Ministry's assessment, a discussion of what challenges have been identified and what measures have been implemented could also be sufficient without naming suppliers and business partners. Nevertheless, the Ministry proposes highlighting in the Act that the account must, as a rule, not include data relating to an individual's personal affairs and regarding operational and business matters it is important to keep secret, as well as information that is classified pursuant to the Security Act and protected pursuant to the Intellectual Property Rights Act. This is in accordance with corresponding exemptions from the duty to disclose information, and, in the Ministry's assessment, in accordance with the Committee's proposal. Furthermore, the Ministry proposes clarifying in the Act that information regarding actual adverse impacts on human rights with which the enterprise is familiar cannot be exempt from the account. This is in accordance with the corresponding rule for the duty to disclose information (see point 8.3.3.4).

As accounted for in point 8.2.3.3, it will be possible for an enterprise to utilise another enterprise's due diligence as a basis for its own due diligence, so that duplication of effort relating to identification risk in the same value chain is avoided. Correspondingly, in their accounts, it should be possible for the enterprises to refer to other enterprises' accounts relating to identification of risk in the same supply chain, as long as the account with the reference will satisfy the minimum requirements established in the bill, and as long as it provides an adequate overview of the enterprise's due diligence. Subsidiaries in a group with a Norwegian parent company can refer to the parent company's due diligence, insofar as the due diligence satisfactorily covers the subsidiary and its supply chain.

See Section 5, first paragraph and second paragraph of the Proposal for a Transparency Act.

Risk areas and measures the enterprises shall specifically account for

The account regarding due diligence shall, according to the Ethics Information Committee's Proposal, in all cases cover information regarding risks and measures pertaining to forced labour and other slave-like work, child labour, discrimination in employment and occupation, lack of respect for the right to establish and join trade unions and the right to collective bargaining, as well as health, safety and the environment. Some consultative bodies state that it is positive that modern slavery is included in this provision. The King Institute states that it is important to clarify what definition of "forced labour and other slavery-like work" is used in the actual text of the Act, and that human trafficking should be included in the provision.

The Ministry agrees that it is important that the enterprises uncover and account for risks and measures relating to, among other things, forced labour and other slavery-like work. However, in the Ministry's assessment, it is not suitable to require that the enterprises always account for these matters. It could be disproportionately burdensome for the enterprises to always have to account for this, including where there is no actual risk of adverse impacts or significant risk. In the Ministry's assessment, the risk of forced labour and other slavery-like work, child labour etc. shall be accounted for to the same extent as other human rights and decent working conditions that are covered by the Transparency Act. This means if the due diligence has identified actual adverse impacts or significant risks of such impacts. If so, the enterprise shall also account for measures and the effectiveness of implemented measures in order to reduce the risk and remedy the adverse impact. Therefore, the Ministry does not propose a provision regarding risk areas and measures the enterprises shall account for, specifically.

Where the account shall be published and relationship with the Accounting Act

The Ethics Information Committee proposes that the account may be included in the reporting on social responsibility pursuant to Section 3-3 (c) of the Accounting Act or publicly disclosed in another manner. The information shall be readily accessible. Reference is made to point 4.1 for a more detailed discussion regarding the provisions of the Accounting Act.

The Ministry is uncertain whether the account on due diligence will be sufficiently accessible to the general public if the enterprises only include it in their annual reports. In the Ministry's assessment, there will be a higher threshold for consumers, organisations and others to obtain an enterprise's annual report compared to visiting the enterprise's website to find information about an enterprise's work on human rights and decent working conditions. Therefore, the Ministry proposes that the account on due diligence shall in all cases be published on the enterprise's website. The enterprises are also free to include this information in their account on social responsibility pursuant to the Accounting Act. However, it will be sufficient, both in order to fulfil the social responsibility requirement in the Accounting Act and the due diligence requirement in the Transparency Act, that the enterprise states in its annual report where the account has been made publicly available. The enterprises will thereby be able to refer in their annual reports to where on their website the account is available. In the Ministry's assessment, the duty to account for due diligence is congruous with the duty in the Accounting Act to account for social responsibility. The duties in the area of human rights can be coordinated and thereby do not entail double reporting for the enterprises.

The Ministry agrees that it will be appropriate to have a public register where large enterprises are required to publish due diligence accounts, e.g., in addition to their own websites and in annual reports. This will make it easier for consumers, organisations, supervisory bodies and others to locate the enterprises' accounts, without having to visit the various websites. However, at this time, the Ministry does not propose establishing a public register, but will possibly reassess this after the Act has been in effect for a while. This may, e.g., be relevant if it emerges that information regarding the enterprises' due diligence is not sufficiently accessible to the general public on the enterprises' websites.

The Committee proposes that the account shall be signed by the managing director and the board of directors. For enterprises that are covered by Section 3-3 (c) of the Accounting Act, this will, according to the Committee, be a natural extension of the managing director's and board of directors' duty to sign the account regarding social responsibility, cf. Section 3-5 of the Accounting Act. However, NHO states that it should be considered whether it is appropriate that an account with so many discretionary considerations and assessments is processed in such a manner that it must be signed by the board of directors and managing director. According to NHO, it is possible that a duty imposed on the enterprise per se, will produce more meaningful accounts than if they have to be signed by the board of directors and managing director. The Ministry refers to the fact that for accountable parties that have a board of directors, Section 3-5 of the Accounting Act requires that the annual accounts and annual report be signed by all board members. For accountable parties with a managing director, the managing director is also required to sign. For accountable parties that have neither a board of directors nor a managing director, the participants or members shall sign. In the Ministry's assessment, it is appropriate that the Transparency Act's rules regarding signing of the account correspond with the rules in the Account Act regarding the signing of annual accounts and annual report. Similar to the basis for reporting on social responsibility pursuant to the Accounting Act, the Ministry believes the board of directors will be best suited to account for due diligence, and that a duty to account for due diligence on the enterprises per se will contribute to obfuscating the responsibility for the account. A requirement that the account shall be signed by the board of directors and managing director will contribute to holding the board accountable and prevent a practice whereby the account becomes a document prepared by an enterprise's public information department without little embedding in the actual operations of the enterprise. Therefore, the Ministry proposes that the account shall be signed in accordance with the rules in Section 3-5 of the Accounting Act.

See Section 5, third paragraph and fourth paragraph, second sentence of the Proposal for a Transparency Act.

When the account shall be published

Some consultative bodies have requested more detailed regulation regarding when the enterprises are to publish their accounts. Some argue that the enterprises should be required to update the account regularly. In the Ministry's assessment, it is appropriate that the time limit for publishing the account be linked to the time limit for the determination of the annual report pursuant to the Accounting Act, cf. Section 3-1, cf. Section 1-7. This is in order to harmonise the regulations, which is favourable for the business sector, which is already subject to various

duties under different regulations. Therefore, the Ministry proposes that the account shall be updated and published no later than 30 June of each year. At the same time, the Ministry agrees with the consultative bodies that argue in favour of regular updates of the accounts. A lot can happen over the course of a year in the global supply chains, and the information that follows from an annual account can quickly become outdated. Therefore, it is important that due diligence is recurring, cf. Box 8.2 in point 8.2.3.3. Continuous due diligence can uncover a changed risk situation that forms the basis for updating the account more frequently than once a year. The Ministry proposes that the enterprises in such circumstances shall not wait until the next annual update, but instead update the information continuously. However, out of consideration for the burden this entails for the enterprises, the Ministry proposes that the enterprises are only required to update the account if they uncover significant changes.

See Section 5, fourth paragraph, first sentence of the Proposal for a Transparency Act.

8.3 Duty to disclose information

8.3.1 The Ethics Information Committee's proposal

The Ethics Information Committee proposes that all enterprises shall have a duty to respond to specific enquiries for information regarding their relationship with fundamental human rights and decent work in the enterprise itself and in the enterprise's supply chains, cf. Section 7 of the Committee's bill. The purpose is for the general public to receive information about enterprises' impacts on human rights and working conditions. The proposal for a duty to disclose information is largely supported by a unanimous Committee.

Requests for information may relate to a general account of the enterprise's work, systems and measures to prevent or mitigate adverse impacts on human rights and working conditions. Requests for information may also relate to information regarding adverse impacts on fundamental human rights and working conditions, significant risks of such impacts and how the enterprise manages such risks, including in relation to a specific product or a specific service. The basis for the duty to disclose information is the duty to know (see point 8.1) and for larger enterprises, also the duty to carry out due diligence (see point 8.2).

The scope of the duty to disclose information will vary depending on the request for information and the size of the enterprises to which the request is directed. In the Committee's assessment, small and medium-sized enterprises cannot be expected to use considerable resources on examining supply chains. However, they will, e.g., be able to refer to importers, wholesalers or suppliers with various questions. Here, a proportionality assessment needs to be made. The information from the enterprise shall nevertheless be adequate, truthful and comprehensible in relation to the submitted request for information.

The Committee proposes that requests for information do not need to be justified and that they can be submitted both orally and in writing. However, Committee Member Ditlev-Simonsen has a dissenting opinion on this matter and believes that the right to submit oral requests for information should be deleted. The Committee Member states that oral enquiries to random

employees in an enterprise may be unclear and easily misunderstood, particularly if the person asked cannot respond, and has to relay the enquiry within the enterprise.

The Committee proposes that requests for information can be denied if the request is too broadly formulated or does not provide a basis for identifying what the request concerns.

The Committee proposes exemptions from the duty to disclose information if a request is clearly unreasonable or it concerns data about an individual's personal affairs, cf. Section 8, first paragraph of the Committee's bill. An exemption is also proposed if the information concerns operational and commercial matters which it is important to keep secret and which, among other things, may concern business strategies, business ideas, industrial designs or production methods. The exemption from the duty to disclose information pursuant to the first paragraph, however, does not apply to information regarding infringements of fundamental human rights relating to the enterprise and its supply chains that the enterprise is aware of, cf. Section 8, second paragraph of the Committee's bill.

Within the framework of the provision, the enterprise may disclose the information in the form it deems appropriate, cf. Section 9 of the Committee's bill. If the request can be answered adequately using existing and relevant reports and other published information, the enterprise may refer the information seeker to such information.

The Committee proposes that the recipient of a request for information shall consider the request and answer it within a reasonable time, no later than three weeks from the receipt of the request. If the amount or type of information makes it unreasonably burdensome to provide access to it within three weeks, the information shall reach the information seeker within two months. In such circumstances, the enterprise shall within three weeks of receipt of the request explain the reason for the extension and state when the information seeker should expect to receive the information.

If a request for information is summarily dismissed or denied, the enterprise shall refer to the provision justifying the denial and provide information about the right to and time limit for requesting a more detailed justification for the denial and explain the appeal process and time limit for filing an appeal.

In the event of dismissal or denial, the information seeker may within three weeks request a brief justification for the denial. The justification shall be provided as soon as possible and at the latest within three weeks of receipt of the request for a more detailed justification. The justification shall be provided in writing if the information seeker so requests.

The Committee proposes that the right to information shall apply with the limitations that follow from Section 4, second paragraph of the Intellectual Property Rights Act. The Committee presumes that this limitation will have little practical significance.

In point 7.2 of its report, the Committee questions whether incorrect information regarding conditions in the supply chain can be invoked as a defect. According to the Committee, such an error can be invoked as a defect if the consumer has bought a product that he or she would not have bought if the correct information had been provided.

8.3.2 Opinions of the consultative bodies

8.3.2.1 Generally regarding the proposal

A number of consultative bodies have commented on the Ethics Information Committee's proposal that the enterprises be subject to a duty to disclose information, and a majority of these support the Committee's proposal. These consultative bodies are the *Norwegian Bar Association, Federation of Norwegian Professional Associations, Amnesty International Norway* (Amnesty), *Digitalisation Agency, Fairtrade Norway, Consumer Council, YWCA-YMCA, Oslo Municipality, Norwegian National Human Rights Institution*, *Norwegian Union of Journalists*, *Rainforest Foundation Norway, Responsible Business Advisors* and *Confederation of Vocational Unions*. According to Amnesty, providing consumers, non-profit organisations, the media and others with better tools for holding enterprises accountable by requesting answers about enterprises' adverse impacts on human rights and the environment will contribute to enterprises becoming aware of their human rights and environmental risks. According to Amnesty, with increased awareness, enterprises will be able to set requirements for their suppliers. The Consumer Council notes that information is one of the most important tools in consumer policy. According to the Consumer Council, information promotes consumer power and enables consumers to make informed choices. Oslo Municipality notes that transparency is important in order to make informed purchase and investment decisions, and to create trust between enterprises, authorities, local communities and individual consumers. YWCA-YMCA states that the duty to disclose information will be important for consumers, but also for organisations and other actors working on the issue, since the duty to disclose information will become a tool for investigating and evaluating enterprises.

The Consumer Council refers to a survey by Norstat from February 2019, where half of the respondents stated that they are concerned that they risk purchasing goods that are produced under unacceptable working conditions. The Consumer Council believes a right to information will provide consumers, the media and various organisations with a tool to verify claims that a producer is safeguarding ethical considerations in its production. In turn, this can contribute to more reliable information to consumers and to more enterprises taking responsibility for ensuring good ethics in their value chains. Reliable information will also be important for the competitive situation of industry actors that are currently serious about ensuring good labour standards as well as good wage conditions. The Consumer Council also believes an Act that ensures the right to information will contribute to more businesses to a greater extent investigating the conditions in their supply chains and setting requirements for working conditions and determination of wages.

The Consumer Council agrees with the Committee that it will most likely be organisations and not individual consumers that will most often utilise the right to information. However, the Consumer Council notes that a number of organisations have the potential to reach large numbers of consumers and can thereby contribute to many consumers making more informed purchase decisions.

8.3.2.2 Content of the duty to disclose information

Several consultative bodies have proposed adjustments to improve the duty to disclose information.

Finance Norway, *Association of Norwegian Finance* and *KS Bedrift* believe there is a need for a clear delimitation regarding the scope of the duty to disclose information for each individual enterprise. *The Confederation of Norwegian Enterprise* (NHO) notes that the duty to disclose information has been given a broader scope than the duty to know. Whereas the proposal for a duty to know applies to "significant risks of adverse impacts", the duty to disclose information applies to "an enterprise's relationship" with human rights. *The Enterprise Federation of Norway* (Virke) and NHO do not believe there should be a duty to inform of matters for which there is no duty to know. Therefore, the duty to disclose information should not be broader than the duty to know. NHO notes that this is the arrangement in the Environmental Information Act. The Federation of Norwegian Professional Associations questions whether it is sufficiently clear in the bill that the basis for the duty to disclose information is the duty to know. The Federation of Norwegian Professional Associations believes the enterprise's follow-up of the right to organise and the right to collective bargaining, health, safety and environment, workers' representation and early warning channels should be covered by the information the enterprise is required to disclose.

According to NHO, the duty to disclose information is relativised, entailing that it is not expected that e.g., small and medium-sized enterprises will spend considerable resources on compiling the requested information.

Equinor, Kongsberg Gruppen, Norsk Hydro (Hydro), *Statkraft*, *Telenor* and *Yara International* (Yara) believe it is important to further clarify the level of detail in the duty to disclose information. The consultative bodies refer to the fact that the Ethics Information Committee has found it necessary to specifically regulate information regarding production site in the bill. Therefore, the consultative bodies interpret the duty to disclose information such that it does not entail a requirement to disclose individual suppliers' or other business partners' names or specification of production site where possible risks have been identified. The consultative bodies believe this will be an important principle to retain in the final text of the Act.

Regarding the right to receive information relating to a specific product or service, Equinor, Hydro, Kongsberg Gruppen, Statkraft, Telenor and Yara note, among other things, that a definition of "product" or "service" will provide clarification. The consultative bodies note that enterprises produce many "products" that are, in turn, included in the production of the products they offer on the market. They mention, for example, parts that are assembled in oil platforms, gas pipelines and wind farms. The consultative bodies believe it is natural that the reporting requirement is limited to due diligence, risks and action relating to the products or services an enterprise itself offers on the market. Virke believes it is unreasonable to disclose resource-intensive information regarding a product that is not defined as a risk product, or which is not logically viewed as a risk product. Therefore, according to Virke, discretion is required in the assessment of what information can be requested.

Bergen Municipality believes the Act is too vague to grant a customer the right to more detailed information regarding the supply chain. Bergen Municipality believes the Act should go further and grant a right, at least within certain high-risk industries, or for larger enterprises, to insight into supply chains that are known to the enterprise. The consultative body fears that immature industries, in particular, will fail to disclose such information to the general public if a duty to publish such information is not actively stated in the Act.

Orkla fears that the provision on disclosure of information regarding the supply chain of any product will generate ad-hoc work directed at less important issues that may occur at the expense of systematic efforts relating to the problems that are defined as significant.

Save the Children Norway believes the Act also needs to include a duty to disclose the enterprise's mechanisms for ensuring access to remedies for victims of business-related human rights infringements and environmental harm.

Fairtrade Norway believes it is important that it is stated in the text of the Act that the supply chain includes the raw material stage, so that the duty to disclose information also covers the raw material stage where there is a known risk. The same comment is also made by *Green Warriors of Norway*.

The Norwegian Consume Council notes that if the information is to be comparable and function well as a good decision-making tool, it is a prerequisite that enterprises report and publish information based on identical criteria. The Consumer Council is therefore of the opinion that a set of criteria for reporting should be prepared, e.g., in regulations to the Act.

8.3.2.3 Duty-bearers and rights-holders

Oslo Municipality believes it is favourable to specify in the Act that the duty to disclose information applies to all enterprises. According to *the Better Regulation Council* it should be clearly stated in the Act who is required to disclose information and to what extent it is possible to forward enquiries to others. The Better Regulation Council notes that in its report, the Committee has stated that small and medium-sized enterprises cannot be expected to use considerable resources on examining supply chains, but they will be able to refer to importers, wholesalers or suppliers with various questions. However, the Better Regulation Council points out that this is not stated in the Committee's bill.

Tekna believes it is natural that employee representatives are granted a broader right to insight into the enterprise and subcontractors than outsiders who are not employed in the enterprise. Furthermore, Tekna believes the right to receive information from the enterprise, as it is worded in the Committee's bill, should take into consideration the right of trade unions according to collective agreements to insight and information in enterprises. Therefore, according to Tekna, it should be specified that trade unions in enterprises have the right to all information regarding working and wage conditions in the supply chains when such information is requested.

NHO believes there may be reason to reassess certain requirements for the party that requests information, so that e.g., purely political enquiries, campaigns etc. should perhaps not have a right to information.

8.3.2.4 Exemptions from the duty to disclose information

Tekna believes it is understandable and necessary that the enterprises can make exemptions regarding requests for information. Virke emphasises the need for protecting operational and trade secrets. For the general public, Tekna believes it is natural to elaborate what is meant by operational or trade secrets, cf. Prop. 5 LS (2019–2020) Act relating to the protection of trade secrets. However, Tekna is concerned with not allowing for broader exemptions than what is indicated by the enterprise's need for protection. In relation to trade unions and their employee

representatives, Tekna does not believe it would be natural to include such exemptions, since employees will be bound by both a duty of loyalty and a duty of confidentiality through their employment relationship.

The Norwegian Union of Journalists is highly critical of the Committee on the Public Administration Act's bill, and believes the proposal goes in the opposite direction of greater transparency regarding operational and trade secrets, and that the same will apply to the Ethics Information Committee as long as reference is made to the Committee on the Public Administration Act's bill. Bergen Municipality believes it should be specified in the Act that documentation cannot be withheld in its entirety on grounds of trade secrets, but that the information will in such circumstances have to be released in a redacted version.

The Ministry of Health and Care Services remarks that for medications there is largely a duty of confidentiality regarding who manufactures the medications, including the active ingredients, and also where they are manufactured, so that it will be possible under the Ethics Information Committee's bill to deny requests for such information.

Bergen Municipality and the Norwegian Union of Journalists support the specification that infringements of fundamental human rights in connection with an enterprise's operations and in its supply chains, of which the enterprise is aware, cannot be exempted. Bergen Municipality believes, based on experience, that it is very unpopular among enterprises to disclose such information. As a public contracting authority, Bergen Municipality has on several occasions been in discussions with suppliers that want such information to be defined as business sensitive. A clear specification in the Act will simplify Bergen Municipality's work and prevent unnecessary discussions. Bergen Municipality and the Norwegian Union of Journalists believe it is clear that such information may be of significance for the general public and the choices customers make. Equinor, Hydro, Kongsberg Gruppen, Statkraft, Telenor and Yara agree that considerations for transparency regarding infringements of fundamental human rights outweigh e.g., enterprises' interests in keeping trade information secret. However, the consultative bodies request a legal assessment of the content of the provision's relationship with the privilege against self-incrimination under Norwegian and international law, and other laws with which enterprises are required to comply, the rules regarding lawyers' duty of confidentiality, and possible other legal bases for withholding information. The consultative bodies also believe it should be considered whether a duty to disclose information regarding infringements of fundamental human rights should take precedence over the right to deny "clearly unreasonable" requests.

NHO questions whether it is reasonable that the enterprises are subject to a duty to disclose information regarding suppliers' potential infringements of fundamental human rights. The relationship with human rights may a sensitive topic to address with suppliers, and a duty to disclose information might weaken the trust that is necessary in order to cooperate on human rights issues. A risk that information could harm the suppliers might cause the suppliers to become less willing to disclose information to the enterprises that request it. The same views are also expressed by Equinor, Hydro, Kongsberg Gruppen, Statkraft, Telenor and Yara.

NHO believes exemptions must be made in circumstances where the right to information is abused in such a manner that the enterprises are required to respond to enquiries that have no

reasonable purpose. NHO believes a requirement to submit requests in writing will go some way towards addressing this (see point 8.3.2.5).

The Ministry of Defence believes it may be necessary to ensure that a new Transparency Act regarding internal affairs in enterprises is not at the expense of considerations for protecting information in accordance with the Security Act and proposes the inclusion of a provision that exempts classified information.

According to NHO, the relationship between the right to deny a request for information if the request is too generally worded or does not provide a sufficient basis for identifying what the request concerns, according to Section 7, fifth paragraph of the Committee's bill, and the right to deny a request for information according to Section 8, first paragraph, should be clarified and expressed more clearly in the Act.

The Federation of Norwegian Professional Associations believes it will be difficult to review enterprises' claims that a request for information can be denied. Therefore, the Federation of Norwegian Professional Associations believes that in some cases it will be necessary to have a greater right to information for the supervisory or appeal body than for the party requesting access, in order for the body to ensure compliance with the regulations.

8.3.2.5 Form requirements and requirements for justification

The Labour and Welfare Administration, Equinor, Hydro, Kongsberg Gruppen, NHO, Statkraft, Telenor and Yara believe there should not be a right to submit requests for information orally. NHO refers to, among other things, the need for verifiability, since breaches of the duty to disclose information can be sanctioned. Equinor, Hydro, Kongsberg Gruppen, Statkraft, Telenor and Yara note that the vast majority of consumers will be able to submit written requests from their phones via the enterprise's website, including while they are in the shop. Consumers' navigation to the right part of the enterprise can thereby be made significantly shorter than e.g., many shop employees' paths to the managing director or head office. According to these consultative bodies, the right of consumers to easily be able to ask questions is safeguarded even with a requirement that requests be submitted in writing. The requirement that requests be submitted in writing also gives the enterprise greater opportunities to assess the request for information and the right to deny information, and also ensures that the question is directed to the appropriate person or department.

NHO believes that the Committee's bill is worded in such a manner that parties requesting information can both call and visit an enterprise's office and request information. NHO believes enterprises need to have the opportunity to coordinate the receipt of enquiries in a manner that is suitable for them, and that at the same time is sufficiently accessible to those requesting information. According to NHO, this indicates written requests and that the enterprises can refer to a specific contact point.

The Better Regulation Council refers the dissenting opinion of Committee Member Ditlev-Simonsen, who notes that oral enquiries to random employees is not suitable. The Better Regulation Council requests a more detailed discussion regarding to whom such enquiries shall be directed. The consultative body assumes that it is a purpose per se that accurate information is provided. If so, it should be considered whether requests for information should be directed to a

specific department within the enterprise. In the Better Regulation Council's assessment, it is not expected that all employees are capable of providing accurate information or forwarding such oral requests in a sufficiently precise manner. The same comment is also made by Virke.

The Norwegian Bar Association believes it is positive that no requirements are listed regarding how the information will be used, or the provision of a justification for the access. According to the Norwegian Bar Association, this is a prerequisite for the Act to have the intended effect.

Since the right to information is very extensive, NHO believes it is reasonable that the recipient of a request receives a form of justification from the party making the request for information regarding the intended use of the information. Thereby, according to NHO, it will be easier for the enterprise to provide and word the information that is relevant for the purpose, and it will be easier to assess the relationship with the other provisions of the Committee's bill, including exemptions from the duty to disclose information. NHO also believes this will enable the enterprises to get the requesting party to clarify their request for information.

NHO does not agree with the Committee's assertion that incorrect information would give consumers a cancellation right, and states that this possible consequence underlines the need for the requesting party to justify the request for information.

Green Warriors of Norway believes that it should be a requirement that enquiries are answered in writing. The consultative body also notes that the wording of the text of the Act should be as similar as possible to the corresponding provisions in the Freedom of Information Act.

8.3.2.6 Time limit for processing requests for information

NHO notes that larger enterprises may have extensive, complex and multiple supply chains in several countries. NHO believes it is difficult to know anything about the scope of requests for information that an act will result in, and that the duty-bearers should therefore be given a certain amount of time, both to possibly clarify the content of requests and to locate and compile the information they are to disclose. Therefore, NHO believes the time limit to respond will be too short, if the enterprises are to be able to respond adequately. NHO believes there is a need for greater flexibility in the Act. Equinor, Hydro, Kongsberg Gruppen, Statkraft, Telenor and Yara believe the time limit for responding to requests for information should be more than three weeks. The consultative bodies note that all enquiries will require both collection and quality assurance, possibly involving engagement with business partners worldwide. A longer time limit will, according to the consultative bodies, provide the enquirer with a more informative answer.

8.3.3 Ministry's assessments

8.3.3.1 Generally regarding the proposal

The Ethics Information Committee has proposed a passive duty to disclose information, i.e., a duty for the enterprises to disclose information upon request in accordance with the principle of transparency in the UN Guiding Principles on Business and Human Rights (UNGP) and the OECD Guidelines for Multinational Enterprises. The purpose is to provide the general public with access to information about enterprises' efforts regarding human rights and working conditions. Thereby, the general public is to be able to make informed choices and inspect the

enterprises, which in turn will contribute to promoting respect for human rights and working conditions.

A clear majority of the consultative bodies support the proposal of a duty to disclose information. The Ministry agrees with the consultative bodies that the duty has a utility value alongside the duty to carry out and publish due diligence. The right to information enables any party to access information that makes it easier to assess whether and how the enterprise respects human rights and whether the working conditions are decent, and what is being done to improve the conditions. Investors will be able to request information that can contribute to ethical investments. Public bodies will be able to request information that can be used in the assessment of whether the enterprise is complying with the obligations pursuant to Section 5 of the Public Procurement Act. Consumers will be able to request information about e.g., production conditions in order to make ethical purchase decisions. Civil society, the media and academia will be able to request information that can contribute to identifying, influencing and communicating socially important information. Regarding the rights-holders of the duty, see point 8.3.3.3. In the Ministry's assessment, the duty to disclose information will have utility value for the individual actors that are granted a statutory right to information and will be positive for the achievement of the Act's overall purpose. Therefore, the Ministry proposes that the enterprises covered by the Transparency Act be subject to a duty to disclose information upon request.

Even though the consultative bodies support the proposal for a duty to disclose information, several consultative bodies have proposed specifications to improve the duty to disclose information, including by clarifying who should provide the information, to what extent it is possible to forward the request to others, whether employee representatives and trade unions should have an expanded right to information, as well as whether there should be requirements regarding the party that submits a request for information. These matters will be addressed below.

8.3.3.2 Content of the duty to disclose information and duty-bearers

The Ethics Information Committee has based the duty to disclose information on the duty to know. However, the Ministry is not proposing a duty to know in the Act, cf. point 8.1.3, and therefore proposes that the duty to disclose information instead builds on the duty to carry out due diligence. In order for enterprises to be able to respond to requests for information, it is a prerequisite that the enterprises, through due diligence, have obtained knowledge regarding adverse impacts on fundamental human rights and decent working conditions in the enterprise itself, in the supply chain and with business partners. The scope of the request for information can therefore, in principle, be viewed in context with what the duty to carry out due diligence requires of each individual enterprise. A request will still be able to demand that the enterprise obtains information that the enterprise does not possess at the time to of the request, even if it has carried out good due diligence. For instance, if the request concerns information about production conditions that the enterprise has deprioritised, cf. the principles of a risk-based approach and proportionality, or if it concerns unforeseen events that have occurred at a production site.

In the Committee's proposal, a request for information can relate to general information regarding the enterprise's work on fundamental human rights and decent working conditions or relate to adverse impacts or the risk of adverse impacts e.g., for a specific product or service. The

Ministry proposes a right to information in accordance with the Committee's proposal, but that can generally be connected to the enterprise's work on addressing adverse impacts, i.e., the various stages of due diligence. This entails e.g., that a request for information can relate to information about the organisation and structure of the enterprise, what policies and routines the enterprise has established to prevent or mitigate adverse impacts on fundamental human rights and decent working conditions, what adverse impacts the enterprise has identified, how the enterprise is addressing these, and the effectiveness of possible measures. The request for information can be either general or more specifically connected to a particular product or a particular service. The latter could be information regarding the human and labour rights conditions under which a specific product is produced, how the enterprise ensures good working conditions in a specific area or at a production site, or how the local population is affected by the production. The right to information does not entail a duty for the enterprises to disclose the specific production site for a product. The general public shall nevertheless receive adequate and accurate information regarding the safeguarding of human rights and working conditions, without the name of the production site having to be disclosed. Regarding what is considered a "product" or "service", the Ministry believes this must be understood as the products and services the enterprise offers, including the various parts they comprise. However, the Ministry notes that the scope of the duty to disclose information rests on the principles of a risk-based approach and proportionality.

If the request can be answered by way of existing reports or information that is publicly available, the enterprise may refer the information seeker to such information. This may be relevant since the enterprises under the Ministry's proposal shall publish accounts of due diligence, cf. point 8.2.3.6. The enterprises will thereby be able to refer to the account if this answers the request for information in a clear and adequate manner. In some circumstances, however, a simpler composition of information that is based on the account may be suitable, especially where the request is submitted by a consumer. It will also not always be the case that the answer to a request for information is found in the account of due diligence. A request for information may relate to information that is not included in the enterprise's account of due diligence, since the duty to account for due diligence is not required to cover all information about the enterprise's performed due diligence. The request for information may also, as mentioned above, relate to information that the enterprise does not itself possess even though it has carried out good due diligence, and which thereby requires more detailed investigations on the part of the enterprise. In the Ministry's assessment, an enterprise should also in certain circumstances be able to refer to the importer for special questions. As mentioned in point 8.2.3.3, an enterprise can use other enterprises' due diligence, e.g., from an importer, as a basis for its own due diligence, and refer to these assessments in its own account, cf. point 8.2.3.6. Therefore, it should be possible to forward or refer to the importer for questions concerning such due diligence. Subsidiaries in a group with a Norwegian parent company can correspondingly refer to the parent company.

What will constitute a satisfactory reply to a request for information must be individually assessed based on the type of information requested and who is requesting it. The principle of proportionality will here set limits for the enterprise's duties. The principle is key to the Transparency Act as a whole, including the duty to carry out due diligence. If the amount or type of information makes it disproportionately burdensome to respond to the request within the three-

week time limit, the Ministry proposes an extended time limit of up to two months after the request has been received, which will give the enterprises more time to properly respond to the request (see point 8.3.3.6).

See Section 6, first paragraph and Section 7, first paragraph of the Proposal for a Transparency Act.

8.3.3.3 Specifically regarding duty-bearers and rights-holders

The Ethics Information Committee has proposed that the duty to disclose information shall apply to requests from "everyone". This is supported by the consultative bodies. However, NHO believes there may be reason to reassess certain requirements for the party that requests information, so that e.g., purely political enquiries, campaigns etc. should perhaps not have a right to information. The Ministry does not agree with this. The purpose of the duty to disclose information is to ensure everyone access to information and contribute to transparency so that the possibilities for monitoring the enterprise's work are strengthened. This indicates that everyone who is seeking information should be able to request it. Whether a request for information shall be denied must be assessed specifically in relation to the exemptions listed in the Act, and not on the basis of who is submitting a request for information and their motives. The Ministry proposes, in accordance with the Committee's proposal, that "everyone" shall be able to request information.

Regarding whether certain actors, such as employee representatives and trade unions should have an expanded right to information, the Ministry refers to the purpose of the Act, that the Act shall ensure the "general public" access to information. In the Ministry's assessment, no distinction should be listed between the various actors that can request information pursuant to the Transparency Act. The Ministry agrees that it is crucial that employee representatives and trade unions are ensured access to information, but they will receive this with the Transparency Act as it is proposed. Furthermore, there are currently separate rules regarding this matter in collective agreements and in the Working Environment Act. For example, Section 8-1, first paragraph of the Working Environment Act states that in enterprises that regularly employ at least 50 employees, the employer shall provide information concerning issues of importance for the employees' working conditions and discuss such issues with the employee representatives. Employee representatives in countries outside of Norway have to relate to national legislation and thereby be ensured access to information.

See Section 6, first paragraph of the Proposal for a Transparency Act.

8.3.3.4 Exemptions from the duty to disclose information

The duty to disclose information, as it is proposed, is not absolute. The Ethics Information Committee proposes a right to dismiss or deny requests for information based on an individual assessment. The Ministry agrees that the enterprises must have a right to dismiss or deny requests for information and notes that several consultative bodies, in their consultation responses have in particular referred to the importance of being able to exempt business and trade secrets. In the Ministry's assessment, such a right to make exemptions must be based on the prevailing provision regarding the duty of confidentiality in Section 13 of the Public Administration Act and be interpreted accordingly. Data relating to an individual's personal affairs must also be possible to exempt from the duty

to disclose information, in accordance with the Committee's proposal. Such a provision must be interpreted in line with Section 13 of the Public Information Act. The Ministry also proposes the inclusion of a provision that exempts classified information in accordance with the Security Act, in line with the input from the Ministry of Defence. Such information shall never be covered by the right to information. The same applies to information that is protected by the Intellectual Property Rights Act. The Ministry assumes that the latter specification will have little practical significance, but nevertheless proposes such a provision. This is in line with the Committee's proposal for Section 4 regarding the relationship with other legislation, and the corresponding specification in the Environmental Information Act.

The Committee has proposed a right to deny a request for information if it is too broadly formulated or does not provide a basis for identifying what the request concerns. An identical provision is included in Section 16, third paragraph of the Environmental Information Act. In the Ministry's assessment, the rights-holders shall be able to request general information regarding the enterprises' work on human rights and decent working conditions. Therefore, the Ministry does not propose a right to deny requests for information that are too broadly formulated. However, similar to the Environmental Information Act, there should be a right to deny requests that do not provide a sufficient basis for identifying what the request concerns. The Ministry proposes such a provision. This right entails that it must be possible for the enterprises to understand what matters the question concerns. Thus, incomprehensible requests can be denied. Regarding the relationship to the provision regarding the right to deny a clearly unreasonable request for information, the Ministry refers to the identical provision in Section 17, first paragraph (b) of the Environmental Information Act. The right to deny a request for information that is clearly unreasonable, relates to, among other things, the financial and administrative burdens on the enterprise associated with responding to the request for information. If the enterprise has to spend disproportionate resources on obtaining and compiling information in order to respond to the request, there may be a basis for denying the request for information. However, in the Ministry's assessment, this has to be a narrow exemption provision, and must be viewed in context with the right to defer the time limit to respond by two months if the amount or type of information makes it disproportionately burdensome to respond to the request for information within three weeks (see point 8.3.3.6).

The Ethics Information Committee has proposed that the right to deny a request for information can never include infringements of human rights in the enterprise and in its supply chains of which the enterprise is aware. The provision is inspired by Section 12 of the Environmental Information Act and provides indications of the existence of a core area for the right to information that shall always be respected. The purpose is to prevent the grounds for exemptions in the Act from being interpreted too broadly, thereby exempting information that must be considered particularly important for the general public. The Committee's proposal entails that information shall be provided regardless of whether the information concerns trade secrets that there is reason to protect pursuant to Section 13 of the Public Administration Act. Several consultative bodies express support for this, and believe the provision will e.g., simplify the work of public contracting authorities. The Ministry agrees that concerns for transparency regarding actual adverse impacts on human rights outweigh the enterprises' general interest in keeping such information secret. In the Ministry's assessment, the provision is formulated in a general

manner that will rarely conflict with the duty of confidentiality. In principle, it will be possible to communicate information in a good manner without revealing trade secrets or other matters subject to a duty of confidentiality. Regarding overriding the duty of confidentiality, the provision must, in the same manner as the corresponding provision in the Environmental Information Act, therefore be interpreted restrictively, so that this opening in the provision is meant to be reserved for special circumstances.

Some consultative bodies question whether the duty to disclose information regarding infringements of fundamental human rights conflicts with the privilege against self-incrimination. The privilege against self-incrimination, i.e., the enterprise's right not to be compelled to contribute to its own conviction, is considered a basic principle of the rule of law. Before criminal charges are brought, a duty to disclose information, even if it occurs under threats of punishment or administrative sanctions, is not problematic in relation to the right to silence pursuant to Article 6 (1) of the ECHR, cf. Prop. 62 L (2015–2016), point 22.2.1. The duty to disclose information in the Transparency Act concerns responding to requests for information from the enquirer. The duty is not connected to an ongoing investigation or supervisory cases but shall ensure that the general public has access to information. In the Ministry's assessment, the duty to disclose information will therefore not be problematic in relation to the principle against self-incrimination. However, it is conceivable that evidence obtained prior to criminal charges being brought cannot be used in a subsequent criminal case. This will have to be individually assessed. In this connection, the Ministry refers to the more detailed discussion in Prop. 62 L (2015–2016), point 22.2.4.

In the round of consultation, NHO has questioned whether it is reasonable that the enterprises are subject to a duty to disclose information regarding suppliers' potential infringements of fundamental human rights, and refers to, among other things, trust in contractual relationships. In response to this, the Ministry remarks that the Transparency Act, as it is interpreted, presumes that enterprises disclose information regarding actual adverse impacts on human rights. Enterprises have to ensure trust in the contractual relationship in a suitable manner, e.g., by the supplier being informed that the enterprise is required by law to provide the general public with information regarding any actual adverse impacts on human rights.

In the Ministry's assessment, there is no reason to establish an expanded right to information in the Transparency Act for the supervisory body to be able to inspect the accuracy of the enterprise's claims that a request for information can be denied. The Consumer Authority, which is the proposed supervisory body, is granted broad access to collect information from the enterprises. This also includes information that the enterprises are not required to provide to the general public. This gives the supervisory body the opportunity to assess whether one of the exemptions from the duty to disclose information has been fulfilled. Reference is made to the Consumer Authority's right to collect information in point 9.3.3.2.

See Section 6, second to fourth paragraph of the Proposal for a Transparency Act.

8.3.3.5 Form requirements and requirements for justification

The Ethics Information Committee proposes that a request for information can be submitted both orally and in writing. Several consultative bodies argue that the right to submit requests orally should be removed from the bill.

In its report, the Committee notes that it will be especially natural to submit a request orally in a purchase situation. In the Ministry's assessment, the concerns for consumers indicate that a request for information can also be submitted orally. With a requirement that requests be submitted in writing, the threshold for consumers to submit requests for information will become higher.

On the other hand, a requirement that requests be submitted in writing may contribute to consumers who submit requests for information receiving responses that to a greater extent meet the consumers' expectations. The Ministry agrees with the consultative bodies that it cannot always be expected that an employee in a shop can provide the consumer with a satisfactory answer in the purchase situation, especially if the question concerns individual goods in the shop and where the shop has a wide range of products. In such situations, the employee will have to forward the question to the appropriate individual in order to provide an adequate and accurate reply. A question submitted orally in a purchase situation that cannot be answered immediately by an employee, but which must be forwarded to the managing director or the head office, can quickly be misunderstood and change its meaning along the way. A requirement that requests be submitted in writing will entail that the requests for information are directed to the appropriate individual in the enterprise and can simplify the duty for the enterprises. This will contribute to the enterprises gaining a clearer understanding of the scope of the duty to disclose information and will also provide the enterprises with better opportunities to provide clarification to the party requesting information. It will also form a clear starting point for the time limit to respond to the request for information. Based on the above, the Ministry proposes that requests for information must be submitted in writing, e.g., by email or letter delivered to a physical shop.

The requirement that requests be submitted in writing presupposes that the enterprises state where requests are to be sent. If the enterprises' have a website, Section 8 of the Electronic Commerce Act states that they shall state an email address. For enterprises that do not have a website, contact information must be provided in another manner. Regardless of where the contact information is provided, it must be provided in a manner that does not undermine consumers' and others' opportunities to submit a request. This entails that the contact information must be easily accessible. The Ministry does not see a need for regulating this in more detail.

The Ministry agrees with the Committee that no requirements should be listed regarding justifications for submitting a request for information. In the Ministry's assessment, the purpose of the duty to disclose information is to ensure the general public access to information, and the threshold for submitting a request for information can be raised if a justification for seeking the information has to be provided. However, a justification from the information seeker will contribute to said party receiving a more adequate response. A justification can therefore be beneficial for the information seeker, but should, however, be voluntary, in the Ministry's assessment.

Since it is proposed that requests for information shall be submitted in writing to the enterprise, it is also appropriate, in the Ministry's assessment, that the enterprises respond to requests for information in writing. This differs from the Ethics Information Committee's proposal that the enterprises can disclose information in the form the enterprise deems appropriate. The Ministry

proposes a provision that establishes that the enterprises shall respond to requests for information in writing.

Regarding the question of whether incorrect information grants consumers a right to cancel, the Ministry remarks that this must be specifically assessed in the individual situation based on the prevailing statutory and non-statutory contract law.

See Section 6, first paragraph and Section 7, first paragraph of the Proposal for a Transparency Act.

8.3.3.6 Time limit for processing requests for information

The Ethics Information Committee has proposed that a request for information shall be answered by the enterprises within a reasonable time and no later than three weeks from receipt of the request. What is considered "within a reasonable time" has to be assessed individually. The Committee has considered that in cases where reference can be made to existing information, or where a response can be given without further investigation, the answer must be provided within a few days. The Ministry agrees with this assessment. The Ministry also notes that the Committee has taken into consideration that the enterprises may have a need for more time to respond to requests for information. In special circumstances, there will be a time limit of two months to respond to a request for information, e.g., where it concerns a larger amount of information that is to be disclosed or compiled. The Ministry cannot see that there are reasons to extent the time limit for processing requests for information beyond what the Committee has proposed.

See Section 7, second paragraph of the Proposal for a Transparency Act.

8.4 Duty to publish information regarding production site

8.4.1 The Ethics Information Committee's proposal

The Ethics Information Committee proposes that enterprises that sell goods to consumers shall be required to publish information regarding the production site, cf. Section 6 of the Committee's bill. "Production site" is to be understood as the factory where the bulk of the product – meaning the end-product – is assembled prior to sale. Details about the production site can be provided by indicating where production takes place, e.g., the name and address of the factory. The proposal does not entail a duty to publish supplier lists. The Committee proposes that the information regarding production site shall be published on the enterprise's website or otherwise be made easily accessible.

The Committee proposes that exemptions be established in regulations for certain sectors or groups of enterprises – e.g., enterprises under a certain size. The Committee justifies this by stating that while it may be appropriate to disclose the production site in certain sectors, e.g., textiles, footwear, electronics, toys and flowers, it may for certain categories of goods be less appropriate to disclose the production site.

Information regarding production site may in some circumstances be competition sensitive. Considerations for trade secrets are safeguarded, according to the Committee, through the right to exempt such information.

A minority of the Committee (committee members Gramstad and Ditlev-Simonsen) do not endorse the proposal of a duty to publish information regarding production site, and refer, among other things, to the fact that the purpose of the provision may in fact be achieved through the right to information. The minority believes the reporting will constitute a disproportionate burden on actors of different sizes.

8.4.2 Opinions of the consultative bodies

8.4.2.1 Generally regarding the proposal

Amnesty International Norway (Amnesty), *Bergen Municipality*, *Coretta and Martin Luther King Institute for Peace* (King Institute), *Consumer Council*, *Consumer Authority, Future in our hands – Head Office*, *Oslo Chapter*, *Trondheim Student Chapter* and *private individuals*, YWCA-YMCA, Norwegian Church Aid and *Christian Council of Norway*, *Ministry of Climate and Environment* (KLD), *Norwegian Union of Journalists*, *the OECD Contact Point*, *Oslo Municipality*, *Rainforest Foundation Norway* and *Norwegian Confederation of Vocational Unions* (YS) support the proposal that enterprises that sell goods to consumers be required to publish information regarding production site. At the same time, some of the consultative bodies also argue that this duty should go further than what has been proposed, cf. point 8.4.2.2-8.4.2.4.

The Consumer Authority believes it will be appropriate for consumers to have access to information regarding production site, without having to request this from the individual business. According to the consultative body, the proposal will make information more accessible for conscious consumers seeking to make more ethical purchase decisions. YS, too, believes that the proposal provides consumers and other actors with better conditions for requesting more information, and thereby positively influencing the direction of the enterprises. Future in our hands notes that the proposal will make goods more traceable for those interested in knowing where the goods have been produced, especially in relation to a clarification of working conditions. According to the consultative body, traceability, and thereby verifiability, are at the heart of the need for ethical information regarding a product. According to the consultative body, without this link, the enterprises will give the impression that the production of goods is occurring under good working conditions.

Future in our hands states that publishing information regarding the main production site will not be more burdensome than a lot of other information that is published on the website regarding the product, e.g., colour, size, choice of materials and maintenance advice. Future in our hands and YWCA-YMCA note that several large actors already publicly disclose their production sites, including Varner-Gruppen and H&M. YWCA-YMCA states that if two of the biggest actors in the Norwegian garment market can do this, there are no longer grounds for claiming that such a practice would be too burdensome.

Oslo Municipality mentions that the proposal can contribute to more effective and societally beneficial procurements and follow-up of contracts in that the municipality, as the contracting

authority, will have the opportunity to utilise published information regarding production site. However, in order for the provision to be as expedient as possible, Oslo Municipality proposes that the duty to publish information shall also include a reference to what types of products or components in the product are produced at the individual production site.

The Ministry of Health and Care Services (HOD) is in principle supportive of the proposal but considers it important to highlight that there is uncertainty regarding how market actors will react if they are covered by the Act and are required to publish information they would otherwise not wish to release. HOD states that in a situation where there is a global scarcity of medications and where a small market like Norway introduces national requirements that break with the practices of drug manufacturers, without other countries having introduced similar requirements, it is conceivable that drug manufacturers will prioritise markets that do not set such requirements, ahead of the Norwegian market. According to HOD, the most extreme consequence of this may be that access to medications in Norway is weakened.

The Enterprise Federation of Norway (Virke), *Confederation of Norwegian Enterprise* (NHO) and *Orkla* do not support the proposal regarding disclosure of production site. *Mester Grønn* states that it supports the proposal, but that the definition of production site needs to be reassessed. Mester Grønn and Virke note that there may be other parts of the production chain that entail a higher risk of human rights infringements, and that a requirement to disclose the production site will therefore be of little value. Virke believes the proposal regarding disclosure of production site is not commensurate with the risk-based approach on which the rest of the bill is based, and also refers to the dissent from Virke's member on the Committee. Virke believes it will be relatively easy to define the production site in the garment sector, whereas in other sectors and industries this will be more complicated to define.

Mester Grønn and NHO state that the proposal will entail a considerable burden for enterprises with a wide range of goods with different production sites. According to NHO, a requirement to publish the factory name/address will entail that even the smallest shop will have to collect information throughout the supply chain regarding production sites for each individual product that is sold. NHO uses the example of a hair salon having to know where shampoo and shampoo bottles are produced, and that supermarkets will need to have the same information regarding meat, fish and vegetables. If the shop does not receive the information it requests from the supplier, the shop will not be able to sells the product without breaching the duty to publish information regarding the production site. NHO states that the shop will not necessarily have the right to information from the previous stage of the sale, and that it is not certain that the previous stage of the sale has the right to information from its stage of the sale. Therefore, NHO believes that a duty to publicly disclose the production site will have to be inverted. Instead of a regulatory statutory authority to make exemptions from the duty to publish information, a possible statutory authority should involve the possibility to impose the duty in regulations. This way, it will be justified specifically for industries, sectors and goods which advantages and disadvantages disclosure of production site might entail. NHO mentions as an additional alternative that the scope of the duty to publicly disclose production site, in the same manner as for the duty to know, shall depend on the enterprise's size, ownership and structure, activities, sector and types of goods and services.

Orkla believes it will be resource intensive to register, update and share information and that the benefits should be assessed in more detail. Mester Grønn and Orkla propose that a possible duty to disclose product site is made passive, e.g., that information is disclosed upon request for the products in question.

According to NHO, it may be in breach of contractual obligations to disclose information regarding production site. NHO, Orkla, *Better Regulation Council* and *Norwegian Consumer Electronics Trade Foundation* note that information regarding manufacturers may constitute competition-sensitive information. According to Orkla, this might make it easier for competitors to copy the products in question. Orkla refers to the fact that its products are sold via Norwegian grocery chains and other retailers, in competition with the chain's own brand names, and that there is therefore a risk that a duty of transparency regarding manufacturers might result in a weakening of competition in the Norwegian grocery market.

The Better Regulation Council states that neither the UN Guiding Principles on Business and Human Rights (UNGP) nor the OECD Guidelines for Multinational Enterprises contain recommendations for the disclosure of production site, or that the enterprise is to have open supplier lists. On the other hand, Amnesty states that this duty is in line with the UNGP.

The Better Regulation Council questions the extent to which information regarding the name and address of the factory contributes to achieving the objectives of the proposal. The Better Regulation Council requests a more detailed assessment of the usefulness of disclosing such information, and furthermore, whether the requirement is necessary in addition to the duty to disclose information and the right to information. *Accounting Norway* questions whether adequate transparency can instead be achieved through the labelling of packaging or similar measures.

8.4.2.2 The scope of the duty – definition of "production site" and the raw material stage

Fairtrade Norway, KLD and Oslo Municipality also believe the definition of production site will not encompass all risks associated with a product, including the raw material stage. Mester Grønn, too, is sceptical of the definition of production site, and states that it is artificial that the production site is the place where the bulk of the product is assembled. The consultative body notes that there may be other parts of the production chain that represent a higher risk of human rights infringements.

KLD states that the proposal likely encompasses neither the disclosure of where minerals included in batteries and mobile phones are extracted, nor where the raw materials for biofuel or various consumer goods are produced. According KLD, such information will be an important contribution to determining what impacts the production may have on human rights, working conditions, climate and the environment.

Fairtrade Norway states that a bag of cashew nuts labelled "produced in Norway" will be able to state a factory in Norway as the production site, since the product was roasted or salted and bagged in Norway. According to Fairtrade Norway, the bulk of the product (the raw material, cashew nuts), however, is most likely processed in Vietnam and farmed in West Africa with a risk of human rights infringements in both places. Therefore, Fairtrade Norway proposes that the definition of production site be expanded so that when the bulk of the product is a raw

material with a known risk of human rights infringements, the production site, e.g., mine, farm, plantation, at least country and region, shall be disclosed.

Oslo Municipality proposes that larger enterprises shall also be required to publish information regarding the most important production sites for the most important raw materials involving a significant risk of adverse impacts on fundamental human rights and decent work.

Bergen Municipality states that it can be discussed whether enterprises should have a duty to inform customers of changes to productions sites.

8.4.2.3 Scope of the duty – supply chain

Amnesty, Bergen Municipality, *Norwegian Council for Africa*, Consumer Council, *Norwegian Forum for Development and Environment*, Future in our hands – Head Office, Oslo Chapter, Trondheim Student Chapter and private individuals, *Salvation Army Norway*, YWCA-YMCA, the King Institute, Norwegian Church Aid and Christian Council of Norway, Norwegian Union of Journalists, the OECD Contact Point and Rainforest Foundation Norway believe that a new Transparency Act should go further in requiring enterprises to publicly disclose their supplier lists, in addition to production site.

YWCA-YMCA refer to the purpose of the Act to ensure access to information and believes that it will be essential to have open supplier lists in order to achieve this purpose. Salvation Army Norway notes that exploitation often occurs at earlier stages in the supply chains and that open supply chains will therefore be an important tool to fulfil the purpose of the Act.

According to Amnesty, Norwegian Forum for Development and Environment and Rainforest Foundation Norway, information regarding supplier lists will make it possible for stakeholders including investors, trade unions, voluntary organisations, consumers and the media to gain insight into how the enterprise conducts its operations, and thereby inspect the extent to which the enterprise is making an effort to safeguard human rights and decent work.

Amnesty states that enterprises that already operate with transparency regarding production site and open supplier lists report that transparency has not resulted in loss of revenue as result of the disclosure of business-sensitive information. According to the OECD Contact Point, the OECD's sectoral guidance, especially the guide for Responsible Supply Chains in the Garment and Footwear Sector from 2016, shows that a number of enterprises have goods results from their work with responsible business conduct by increasingly opting to publish supplier lists. According to the consultative body, this especially applies to enterprises that are in established cooperative relationships with other actors in the industry. Therefore, the OECD Contact Point believes the duty should include a disclosure of the enterprise's productions sites, supply chains and supplier lists, naming all suppliers and subcontractors from which goods and services are purchased. Future in our hands and the King Institute believe open and updated supplier lists render the business relationship between enterprise and supplier indisputable. According Future in our hands, this confirmation makes the enterprise's responsibilities clearer than if the suppliers are kept hidden. Future in our hands refers to the garment factory collapse at Rana Plaza in 2013 as an example of the challenges in case of lacking transparency regarding supplier lists. None of the approximately 30 clothing chains that purchased goods from the four factories in the building that collapsed had open supplier lists, and it became exceedingly

difficult to get them all to admit that they had purchased goods there, despite findings of both tags and supply agreements.

Both Future in our hands and the King Institute believe supplier lists enable workers and trade unions to quickly notify brand name enterprises that purchase goods from the production site regarding infringements of human rights or significant environmental harm. This gives enterprises the possibility to intervene, create new and improved routines and contribute to remedies, according to the consultative bodies. Future in our hands, Trondheim Student Chapter, also notes that open supplier lists strengthen local trade unions' possibilities to follow-up production sites and their workers without having to expose themselves to the vulnerable situation of requesting information. The consultative body notes that local trade unions in production countries are a vulnerable group with low status but which are essential in order to connect local conditions to global guidelines. According to Amnesty and Norwegian Forum for Development and Environment, transparency is especially important in cases requiring remedy, since it contributes to confirming the enterprise's connection to the production site.

The Consumer Council and Future in our hands highlight the right to verify the actual conditions in production. According to the Consumer Council, a duty to only publish information regarding the factory or facility where the end product is assembled for sale, entails a risk that censurable conditions among suppliers are not disclosed. Future in our hands believes that playing open handed in relation to the production of goods will increase the credibility of the enterprises in that it will eliminate potential suspicions that censurable conditions are being hidden. Bergen Municipality notes that when there is no duty to publicly disclose enterprises' supply chains, it is not possible for stakeholders to obtain necessary information in order to be able to verify who is contributing to, and is possibly responsible for, human rights infringements lower down in the chain. If the enterprises had an active duty to publicly disclose the supply chain, withholding information in an attempt to avoid criticism from customers, the media or others would no longer be a viable strategy. An active duty to publicly disclose the production site will, according to Bergen Municipality, support the responsible suppliers that are already disclosing such information.

The Consumer Council states that several producers have already chosen to open their supplier lists, and the introduction of a statutory duty would contribute to equal competitive conditions for all. Open supplier lists may, according to Future in our hands and the King Institute, also contribute to better cooperation between the enterprises that are customers at the same production site, in that they are given the opportunity to identify one another and jointly work on measures to prevent and uncover human rights infringements. According to Future in our hands, another effect is that the number of suppliers will be reduced, whereby suppliers with good working conditions benefit at the expense of suppliers with poorer working conditions.

On the other hand, the Norwegian Consumer Electronics Trade Foundation states that supply chains for electronic products and components can be complex. For instance, a mobile phone may contain up to 50 different metals. According to the consultative body, thousands of contracts might be necessary for the manufacturing of materials and final assembly of a product. Therefore, the consultative body believes it has to be sufficient to publish information regarding where the end product is produced.

Future in our hands – Head Office, Oslo Chapter and Trondheim Student Chapter – proposes the introduction of exemptions from disclosure requirements, if the duty is expanded to cover supplier lists. Bergen Municipality states that it could possibly be considered whether an expanded requirement for transparency regarding production sites further down in the chain should only apply to certain particularly high-risk industries, such as garments and electronics, or if there should only be a requirement in relation to larger enterprises.

8.4.2.4 Duty-bearers – enterprises that sell consumer goods

Bergen Municipality questions the appropriateness and justification restricting the Act to consumer goods. The consultative body states that for public contracting authorities (customers) and other business actors, this information is just as important and will also ease the efforts of professional actors seeking information regarding enterprises' production sites.

Green Warriors of Norway (NMF) believes the duty to publicly disclose production site should not be limited to enterprises that sell goods to consumers, and that also enterprises that sell raw materials, where consumers are the end customer, must be included. Furthermore, NMF states that the duty should also apply to enterprises that produce or supply feed for animals or fish, food, input factors for food, knowledge services, semi-finished products and/or industrial products. In NMF's opinion, it should also be possible investigate the supply chains of pure industry suppliers, e.g., the petroleum industry or wind turbine enterprises. According to the consultative body, many industrial suppliers obtain their raw materials and sub-products from low-cost countries, where there is not the same focus on working conditions and environment as there is in Norway.

Future in our hands believes that a duty to publicly disclose supplier lists has to apply to all enterprises that are covered by the scope of the Transparency Act.

The Norwegian Union of Journalists states that the regulatory statutory authority that opens for the possibility to establish exemptions from the duty to disclose information, entails an excessively extensive limitation on the disclosure principle, and therefore proposes that the right to issue regulations be removed.

The Consumer Council believes that exemptions can be made from transparency requirements regarding production site and possible supplier lists for smaller enterprises. Oslo Municipality states that it is possible to differentiate between smaller and larger enterprises, and that, if so, larger enterprises should be subject to a more comprehensive duty to publicly disclose information (see point 8.4.2.2).

8.4.2.5 Specifically regarding the disclosure

The Norwegian Union of Journalists believes clearer frameworks need to be established regarding how information is to be publicly disclosed, so that this is not left up to the enterprise to determine. The consultative body proposes that the wording "otherwise be made easily accessible" be removed and that it is clearly stated in the text of the Act that information shall be published on the enterprise's website. The consultative body believes it must be possible to require that information be corrected and supplemented regularly.

8.4.3 Ministry's assessments

According to the Ethics Information Committee, publishing information regarding production site shall contribute to promoting the purpose of the Act of increased access to information in enterprises and supply chains. Transparency is the purpose. The purpose of the UN Guiding Principles on Business and Human Rights (UNGP) and the OECD Guidelines for Multinational Enterprises is to ensure respect for human rights. Ensuring transparency in enterprises will be important in achieving this purpose. Even though there is no recommendation in the UNGP or the OECD Guidelines to publish information regarding production site, such a requirement may be in accordance with the intentions behind the UNGP and the OECD Guidelines.

The input from the consultative bodies may indicate that it is appropriate and expedient to include a duty to publish information regarding production site. Such a duty will make it easier for consumers, organisations and others to inspect enterprises' work on human rights and working conditions, and thereby influence the enterprises in a positive direction, and make it easier for consumers to make good consumer choices. On the other hand, some comments in the consultation indicate that this may be burdensome for the enterprises, and that, out of consideration for the competitiveness of Norwegian enterprises, one should be cautious when introducing national rules that go further than what follows from international principles and guidelines.

Both the discussions in the Committee and the comments in the consultation show that there is a need for thorough assessments of whether the Transparency Act should include a duty to publish information regarding production site and, if so, what this duty should entail, so that it is appropriately formulated to achieve its purpose and at the same time does not impose excessive burdens on the enterprises. It is questioned whether the duty shall be worded in accordance with the majority of the Committee, or if it will be more expedient for it to also include publishing of information regarding the raw material stage and/or the enterprises' supplier lists. It is also questioned whether the duty should apply to enterprises other than those that sell consumer goods, whether certain sectors should be exempt from this duty, and whether the Act should specify the industries, sectors or goods that are subject to the duty. Therefore, the Ministry does not propose including a duty to publish information regarding production site at this time. The Ministry will possibly propose such a duty at a later date if more detailed assessments show that such a duty is appropriate and practically feasible. Furthermore, reference is made to the planned evaluation of the Act after some time. The Ministry also refers to the fact that the duty to account for due diligence and the duty to disclose information will ensure increased access to information from the enterprises and will thereby contribute to increased transparency in the enterprises and their supply chains, cf. the more detailed discussion in points 8.2 and 8.3.

9 Monitoring and guidance

9.1 The need for monitoring and guidance etc.

9.1.1 The Ethics Information Committee's proposal

In the Ethics Information Committee's assessment, there is a need for guidance in order for the Act to function as intended, and to ensure compliance. The Committee also believes there is a need for monitoring to ensure that the enterprises comply with the Act. This especially applies to small and medium-sized actors that operate outside the public eye, but which might involve a considerable risk of adverse impacts on human rights or working conditions.

The Committee points to various ways in which monitoring and appeal processing can be organised under the Act, including the establishment of a new supervisory body, assigning the tasks to an existing supervisory body, or co-locating a supervisory body within an existing supervisory body. The Committee proposes assigning the guidance function and enforcement to the Consumer Authority and Market Council, and notes that this is cost-saving in comparison to establishing a new body. However, the Committee emphasises that this is only an example of how monitoring and appeal processing can be organised. The Committee specifies that the Consumer Authority needs to draw upon other actors' experiences and competence. There are a number of bodies that have competence in this area, especially in relation to due diligence concerning human rights and working conditions. This includes, among others, Norway's OECD Contact Point for Responsible Business Conduct, Ethical Trade Norway, the Norwegian National Human Rights Institution (NIM), employer and employee organisations, industry organisations, voluntary organisations and various networks.

The Committee does not discuss the independence of the supervisory bodies. The Committee's proposal to refer to Section 32 of the Marketing Control Act, however, entails that the Consumer Authority and Market Council shall be administratively independent and not under the control of the Government or Ministry in the enforcement of the Transparency Act.

Reference is made to sections 11 and 13 of the Committee's bill.

9.1.2 Opinions of the consultative bodies

9.1.2.1 The need for monitoring and guidance

All consultative bodies that have commented believe the Transparency Act should be enforced and that guidance must be provided to the enterprises regarding the provisions of the Act.

The Rafto Foundation for Human Rights believes that monitoring and enforcement of the Act is important in order for the Act to have the desired effect. According to the consultative body, the authorities must have effective supervisory bodies with clear mandates and sufficient capacity. *Rainforest Foundation Norway* believes an effective supervisory body is essential in order for the Act to result in changes to corporate cultures and to achieve a positive effect on human rights and the environment. *The Norwegian Council for Africa* believes a strong supervisory body is required with resources to assist enterprises in carrying out good and thorough due diligence,

including further down the supply chain. *Amnesty International Norway* (Amnesty), *Norwegian Forum for Development and Environment, YWCA-YMCA* and *Save the Children Norway* believe it is essential that the authorities have an effective supervisory body with necessary resources in order for the Act to function effectively.

The business sector, including *Enterprise Federation of Norway* (Virke) and *Confederation of Norwegian Enterprise* (NHO) are especially concerned with the provision of guidance to the enterprises that are covered by the Transparency Act.

However, there are differing views on the scope and reach of the guidance and enforcement. This is addressed in more detail in points 9.2 and 9.3, below.

9.1.2.2 Guidance body

There are different views among the consultative bodies regarding what body should provide guidance.

Amnesty supports that a public body shall have a duty to provide guidance, but questions whether the Consumer Authority is best suited to perform this duty. According to Amnesty, the duty to provide guidance will help Norwegian businesses comply with an increasing number of specific measures the EU is introducing in order to implement the UNGP. The consultative body also notes that the public sector's offer of free guidance is, in practice, also supplemented by civil society, e.g., organisations such as Amnesty, the Contact Point for Responsible Business Conduct, Ethical Trade Norway, Norwegian National Human Rights Institution (NIM) et al.

Fairtrade Norway and *Responsible Business Advisors* (RBA) support the need for guidance for enterprises, but believe it is natural that monitoring of the Act and guidance to enterprises is performed by two separate bodies. Fairtrade Norway justifies this based on the need to avoid disqualification where the party that has provided guidance is to monitor compliance. The consultative body also notes that professional competence will be decisive in order for Norwegian businesses to be able to comply with the Act, and it is important that the body that is designated responsibility for guidance is independent and does not have self-interest and manages the interests of members. Fairtrade Norway considers the OECD's Contact Point to be an impartial actor for providing guidance. NHO also questions whether the roles as guide, appeal processor and enforcement body should be combined.

Regardless of where the guidance function is assigned, *the Norwegian National Human Rights Institution* (NIM) believes it is useful to look at the possibilities for drawing upon existing schemes. Here, NIM refers to the OECD's National Contact Point for Responsible Business Conduct Norway. NIM will also be able to contribute with its competence, especially regarding substantive human rights questions, if this is facilitated. If other schemes are included, this will necessarily also have to be reflected in increased allocation of resources thereto.

Ethical Trade Norway and Virke refer to the OECD's National Contact Point for Responsible Business Conduct as an example of an actor that has competence in the field and with which Ethical Trade Norway collaborates. The consultative bodies also refer to Ethical Trade Norway's guidance competence in the field. Ethical Trade Norway has provided guidance to businesses, organisations and the public sector on responsible business conduct for more than 20

years, and the work is based on the UNGP and the OECD due diligence model for the fulfilment of the ILO's core conventions. According to Virke, these actors should be used in the continued work of implementing the Act.

The OECD Contact Point states that it will gladly contribute with its professional competence on responsible business conduct and due diligence in new or established supervisory schemes as a result of the bill. According to the consultative body, this should entail that the Contact Point's expertise is drawn upon or included as part of new guidance and supervisory schemes.

The Consumer Authority believes it is natural that it provides guidance to enterprises. Regarding guidance of consumers, the most known and used first line is the Consumer Council. According to the Consumer Council, it will therefore be natural that it responds to enquiries regarding consumer rights pursuant to a Transparency Act. *Future in our hands* also believes the guidance responsibility in relation to the general public should be assigned to the Consumer Council. The consultative body notes that the Consumer Council currently has such a guidance role in other areas.

Amnesty notes that several of the largest Norwegian enterprises have extensive experience with carrying out due diligence and attempting to prevent risks of human rights infringements. According to the consultative body, the experience and competence they have developed will be useful to share with colleagues in small and medium-sized enterprises. Amnesty believes Norwegian authorities have the overall responsibility for protecting human rights and ensuring that Norwegian enterprises respect human rights. According to Amnesty, for the many Norwegian enterprises that operate abroad, receiving good guidance and information from the Norwegian foreign missions can be particularly useful and contribute to enterprises' compliance with the Act. NIM also notes that the foreign service and the embassies are actors that should have a role in connection with the Act and the offering of guidance, e.g., country-specific guidance. NIM believes there may be a need for increased and coordinated competence in this area in a larger part of the government apparatus.

Amnesty, Ethical Trade Norway, NIM and Virke support the establishment of a guidance centre, as proposed by the Norwegian Government in the National Action Plan for the implementation of the UN Guiding Principles for Business and Human Rights from 2015. RBA encourages facilitation in order for enterprises to be familiarised with the diversity in the resource community. The consultative body proposes e.g., a public resource page, where all resource communities are encouraged to register their services.

9.1.2.3 Supervisory body

There are also divided opinions among the consultative bodies regarding where supervision of a new Transparency Act should be assigned.

The Consumer Authority believes it is appropriate and cost-effective to assign supervisory duties to an existing supervisory body compared to creating a new body. The OECD Contact Point also notes that there may be considerable benefits in assigning monitoring and enforcement to an existing body.

Fairtrade Norway, Consumer Authority, RBA and *University of Bergen* support the assigning of monitoring to the Consumer Authority, with the Market Council as the appeal body. The

Consumer Authority notes that there will be some overlap between a possible monitoring of the provisions in the Proposal for a Transparency Act and the work it already performs relating to ethics and marketing. The Consumer Authority also has extensive experience with guidance of businesses, which the Ethics Information Committee focuses on in particular. The Consumer Authority also mentions that the consumer apparatus is undergoing reform, and that from 1 January 2021, there will be a bigger and expanded Consumer Authority with new tasks and a broader portfolio. According to the Consumer Authority, it will be easier for the supervisory body to integrate a new area of supervision into its activities in connection with this reform process.

Several consultative bodies believe a prerequisite for assigning supervisory authority to the Consumer Authority should be that it develops the necessary competence and is allocated sufficient resources to carry out effective supervision. NHO presumes the Consumer Authority and the Market Council are currently processing types of cases that are quite different in form and content from what a new Act will entail. Large enterprises' supply chains are extensive and complex and the cases that are to be processed will require both resources and competence. *Equinor, Kongsberg Gruppen, Norsk Hydro, Statkraft, Telenor* and *Yara International* also believe that the substantive requirements in the Transparency Act differ considerably from the core duties of the Consumer Authority. The consultative bodies note that the substantive requirements are directed at a large number of enterprises that do not have consumers as their customers. Therefore, the consultative bodies point to the need for the supervisory authority to develop necessary competence. According to the consultative bodies, it is also important that the supervisory body's management has the necessary competence without losing focus on the Consumer Authority's core duties. *The Norwegian Confederation of Vocational Unions* also believes a prerequisite for the supervisory authority to be assigned to the Consumer Authority is that the supervisory body is given resources and competence on human rights and working life, as well as resources to follow up cases and process incoming cases. *BDO* and *Hope for Justice* believe the Consumer Authority and the Market Council do not have the capacity to perform the supervisory duty without the allocation of additional resources. The Consumer Authority and the Consumer Council note that effective monitoring and enforcement of the new Act will require the allocation of additional resources to the Consumer Authority. The Consumer Authority currently does not have the necessary professional expertise on fundamental human rights in supply chains. According to the Consumer Authority itself, satisfactorily supervising a Transparency Act will require the recruitment of necessary competence, as well as close cooperation with other actors with competence in the area, e.g., the OECD Contact Point for Responsible Business Conduct and Ethical Trade Norway.

Future in our hands – Head Office, *Oslo Chapter* and *Trondheim Student Chapter* believe it should be considered whether the functions and areas of responsibility that fall under the provisions concerning guidance, monitoring and appeals can be distributed between institutions that are already to a certain extent working on related tasks: The Consumer Council, Consumer Authority and the OECD's Contact Point. Amnesty, Future in our hands – Head Office, Oslo Chapter and Trondheim Student Chapter, the OECD's Contact Point and Rafto Foundation for Human Rights believe the Consumer Authority will be a suitable body for monitoring the duty to disclose information, which, among other things, has consumers as its target group. For the

remaining duties under the Act, including the duty to carry out due diligence, the consultative bodies question whether the Consumer Authority is the appropriate body. The Rafto Foundation for Human Rights notes that the Consumer Authority has consumers' interests and perspectives as its main area of responsibility. According to the Rafto Foundation for Human Rights and Rainforest Foundation Norway, monitoring and compliance of due diligence obligations requires that the supervisory body works closely with other public bodies that have specific duties in relation to the business sector, as well as other relevant parts of the support structures across the Ministries. The OECD Contact Point notes that if the monitoring is to relate to the quality of the due diligence, including whether the risk assessments are good and thorough enough, whether the measures enterprises have implemented to prevent adverse impacts are good and effective enough, etc., this requires competence regarding due diligence, especially in relation to human rights, which the Consumer Authority currently does not have. The consultative body notes that the complaints that various contact points, including the Norwegian Contact Point, has processed show that such cases can be highly complex, and can present considerable challenges in terms of assessing risks, identifying the actual conditions and assessing what is necessary and effective in the individual case. The Contact Point questions how the Consumer Authority can develop sufficient competence regarding due diligence for responsible business conduct. The OECD Contact Point believes it should be clarified in more detail what the Consumer Authority's monitoring and enforcement of enterprises' due diligence should involve. According to the consultative body, this must be viewed in context with the right to complain to the Contact Point regarding a failure to comply with the OECD Guidelines, including the possibilities for strengthening the Contact Point scheme.

According to the Norwegian Forum for Development and Environment, the supervisory body has to be equipped to actively collect information from enterprises and to guide the enterprises in how they can comply with the Act. The consultative body questions whether the Consumer Authority is the appropriate place for such a supervisory duty. *The Norwegian Union of Journalists* is also uncertain of whether the Consumer Authority is the appropriate body for the supervisory duties pursuant to the Transparency Act. *Changemaker* believes supervisory authority should not be assigned to the Consumer Authority.

Future in our hands – Head Office, Oslo Chapter and Trondheim Student Chapter, believe the OECD Contact Point for Responsible Business Conduct should have the responsibility for guidance and supervision relating to due diligence. The consultative bodies note that the Contact Point is not an advocacy organisation and is therefore largely perceived as independent, and that the Contact Point already has an extensive guidance function in relation to the OECD Guidelines. Future in our hands notes that the Contact Point handles engagement and mediation relating to grievance cases, and thereby contributes to enterprises' compliance of the Guidelines in individual cases.

Amnesty emphasises that if the scope of the Act is expanded to also cover the environment, the supervisory authority for environment can be assigned to the Norwegian Environment Agency.

Consultative bodies including Amnesty, Changemaker and Rainforest Foundation Norway believe a new supervisory body should be established that can monitor compliance with the Act. Future in our hands and the Norwegian Union of Journalists also believe this is something that should be assessed over time. Amnesty and Rainforest Foundation Norway note that the

necessary competence to ensure compliance with all aspects of the Act currently does not exist in a single body, and that this indicates that a new supervisory body should be established. Rainforest Foundation Norway also notes that the Ethics Information Committee has not been mandated to assess whether the Act should go further than proposed, and that a further expansion will highlight the need for the creation of a new body that is assigned guidance and supervisory responsibility for the Act. Rainforest Foundation Norway believes this body has to have a high level of competence regarding the UNGP and the OECD Guidelines, as well as human rights, including the rights of indigenous peoples and the environment. According to the consultative body, by gathering such competence in one place, one will avoid the pitfalls that dividing responsibility between the Consumer Authority and other bodies will entail, and one can be certain that all aspects of the duty to disclose information, due diligence, human rights and the environment are viewed in context. According to Rainforest Foundation Norway, such a body will also be able to aid Norwegian businesses in complying with the increasing number of specific measures the EU is introducing in order to implement the UNGP and to reduce deforestation and adverse impacts on the environment. Changemaker believes the new supervisory authority needs to have sufficient resources in order to not be dependent on monitoring carried out by consumers and civil society.

If a new supervisory body is not established, Rainforest Foundation Norway believes the OECD Contact Point would be better suited than the Consumer Authority to monitor compliance with the Act. Rainforest Foundation Norway notes that the Contact Point has extensive experience with monitoring enterprises' compliance with the OECD Guidelines for Responsible Business Conduct and possesses the necessary competence on due diligence and follow-up of enterprises.

9.1.3 Ministry's assessments

Similar to the Ethics Information Committee and the consultative bodies, the Ministry believes public supervision of the provisions of the Transparency Act is necessary. Civil society has an important role in identifying censurable conditions and bringing attention to enterprises' possible adverse impacts on human rights. However, this should serve as an important supplement and cannot replace a more systematic public supervisory effort. The Ministry also refers to the Ethics Information Committee's assessment that an absence of sanctions has proven to be a weakness in similar legislation in other countries. When proposing public enforcement, guidance regarding the regulations must also be provided. This follows from general administrative law. The scope of the guidance and monitoring is discussed in more detail in points 9.2.3 and 9.3.3.

Both the Ethics Information Committee's report and comments in the consultation show that there is no single body in Norway that possesses the overall experience and competence required to provide guidance on and monitor compliance with rules in a new Transparency Act. However, there are many actors, both public and private, that have extensive experience with either due diligence or enforcement, including the imposition of sanctions. Therefore, some consultative bodies propose dividing the various tasks between the different bodies. However, other consultative bodies believe the tasks should be gathered in a single body.

In the Ministry's assessment, it will be resource intensive, both for the enterprises that are to adapt to the Act and the authorities that are to enforce the rules, if guidance and monitoring is divided between different bodies. As the consultation has shown, there are a number of bodies that are capable of providing good information regarding enterprises' social responsibility and human rights. These bodies will be important cooperation partners for a supervisory body tasked with enforcing the rules. However, in the Ministry's assessment it will be important for the enterprises to be able to relate to a single body when they are to comply with the new rules, and that this body is able to provide good guidance on how the Act is to be interpreted. For the administrative agency to make decisions and also provide guidance on the regulations it is tasked with enforcing is also the normal arrangement in Norwegian public administration. This ensures effective case processing and that the understanding of the rules is the same in the guidance and in enforcement, which will contribute to a unified practice. Neither the administrative agency nor the case officer are disqualified when assessing whether decision are to be made or sanctions are to be imposed in a case for which guidance has previously been provided. Therefore, the Ministry proposes assigning both guidance and supervision to the same body.

Regarding the question of which body is to be tasked with these duties, there are two options that especially stand out: The Consumer Authority, as the Information Ethics Committee has proposed, or the establishment of a new supervisory body. The establishment of a new supervisory body can include the OECD Contact Point for Responsible Business Conduct. Other compromises can also be envisaged where a new supervisory body is established which is co-located with an existing supervisory body. The latter solution was selected for the new Norwegian Grocery Authority, which was co-located with the Consumer Authority in Porsgrunn, see Prop. 33 L (2019–2020) regarding an Act on good business practice in the grocery sector, point 6.2.4.

The establishment of a brand-new supervisory body will result in greater costs for administration, ICT, archiving, personnel etc., than if the duties are assigned to an existing supervisory body. This will also be the case if the supervisory body is established based on the OECD Contact Point, which currently has three permanent employees in its secretariat. By assigning the duties to an existing supervisory body, the additional costs relating to taking on the new duties will be more limited since the shared services will become part of a larger organisation. A co-location with an existing supervisory body may result in some cost-saving but is unlikely to be as cost-effective as a full integration into an existing supervisory body.

The Consumer Authority guides businesses and monitors the consumer protection rules in a number of different acts, including the Marketing Control Act and the Cancellation Act. However, the supervisory body does not monitor the rules in the Marketing Control Act between businesses, and, as a rule, the Consumer Authority does not intervene unless indicated by consumer interests, cf. Section 35, second paragraph of the Marketing Control Act. Furthermore, the Consumer Authority has little knowledge of the due diligence enterprises are required to carry out pursuant to a new Transparency Act.

However, the supervisory body has extensive experience in providing guidance to businesses regarding discretionary rules. The general requirements in the Marketing Control Act are distinct legal standards that set considerable requirements for the supervisory body's guidance

activities. The supervisory body's case processing is based on what is referred to as the negotiation model, cf. Section 36, first paragraph of the Marketing Control Act. The negotiation model also entails that the supervisory body primarily works to ensure that businesses voluntarily comply. The legislation's discretionary character and the negotiation model have resulted in the Consumer Authority having developed a number of guides, including in cooperation with the regulated industries. If businesses fail to comply with the regulations voluntarily, the Consumer Authority can impose both enforcement penalties and infringement penalties.

In the Ministry's assessment, the Consumer Authority is well suited to handle the task of providing guidance on and monitoring compliance with a new Transparency Act. This is an Act containing discretionary provisions where the main task for the supervisory authority will be to ensure that the enterprises voluntarily comply with the rules by providing good guidance, cf. below in point 9.2.3. If needed, the body shall also be able to impose infringement penalties, cf. below in point 9.3.3.3. This is considered a punishment pursuant to the ECHR and raises a number of specific issues, including the privilege against self-incrimination. The Consumer Authority has extensive experience in handling such issues.

However, in terms of due diligence and what is expected according to the UNGP and the OECD Guidelines, the Consumer Authority will have to develop more knowledge. Therefore, it will be natural to have a close cooperation with the actors that have experience in this area, especially in the beginning, but also in the continuing work. This includes, among others, Norway's OECD Contact Point for Responsible Business Conduct, Ethical Trade Norway, Norwegian National Human Rights Institution (NIM), the Agency for Public and Financial Management (DFØ), employer and employee organisations, voluntary organisations and various networks. The Ministry believes the Consumer Authority is best suited to assess the form and scope of the involvement and cooperation with relevant actors. However, in the Ministry's assessment, it will be especially important to have a close cooperation with the OECD Contact Point. The Contact Point's mandate includes to promote the OECD Guidelines and make them accessible, respond to enquiries from the business sector, employee organisations, civil society and other stakeholders and to process and contribute to solving individual cases regarding compliance with the OECD Guidelines. Where engagement or mediation is not possible, the Contact Point shall publish a final statement regarding the case with recommendations for the enterprise. The Contact Point is also tasked with processing complaints relating to the International Labor Organization's (ILO) Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. The duties of the OECD Contact Point can thereby affect both the Consumer Authority's supervision and guidance pursuant to the Transparency Act. At the same time, there will be important differences between the work of the Contact Point and that of the supervisory body. As opposed to the supervisory body, the Contact Point is unable to issue legally binding decisions or demand access to confidential information. The Ministry does not believe it is appropriate to regulate the relationship between the Consumer Authority and the OECD Contact Point in legislation, but will continue to follow up this matter, including through oversight of the supervisory body.

The Consumer Authority has offices in Porsgrunn, Stavanger, Tromsø and Longyearbyen. By assigning the monitoring of a new Transparency Act to the Consumer Authority, the

Norwegian Government's goal of facilitating growth and development nationwide and a more balanced location of government jobs is supported.

See Section 8 and Section 9 of the Proposal for a Transparency Act.

9.2 More details regarding guidance

9.2.1 The Ethics Information Committee's proposal

The Ethics Information Committee proposes that the Consumer Authority shall guide enterprises and others regarding the implementation of the Transparency Act. According to the Committee there is a need for guidance in order for the Act to function as intended, and to ensure compliance.

Regarding the scope of the guidance, the Committee emphasises in its comments to the provision that the guidance shall go somewhat further than administrative agencies' general duty to provide guidance.

Even though the Consumer Authority shall have responsibility for the guidance, the Committee specifies that the guidance must draw upon experiences and be developed in cooperation with other actors with relevant competence.

9.2.2 Opinions of the consultative bodies

The Confederation of Norwegian Enterprise (NHO) believes the guidance function should be strong, and that the Act should state that the guidance shall apply both generally and in individual cases. NHO believes it is difficult for the enterprises to invoke the right to guidance. The enterprises themselves will be responsible for complying with the Act, even though the administrative agency has failed to fulfil its duty to provide guidance. According to NHO, guidance and advice should be the primary function of the supervisory body. The consultative body believes the introduction of an act requires that the authorities have a plan – including funding – for guidance and information. In the same manner as everyone has the right to information from the enterprises, NHO believes the enterprises must have a statutory right to guidance from the supervisory authorities in order to fulfil their duty to know. NHO stresses the importance of clarity in the text of the Act and preparatory works. These documents form the starting point for the guidance and can reduce the need for guidance. *Mester Grønn* believes that adequate resources should be allocated so that the enterprises can receive advice and guidance in order to implement the requirements in the Act without expensive consultants.

The Federation of Norwegian Professional Associations, *Ethical Trade Norway, FOKUS – Norwegian Forum for Women and Development*, *Salvation Army Norway* and *Enterprise Federation of Norway* (Virke) highlight the importance of providing good guidance to the enterprises. Ethical Trade Norway and Virke believe it is also important to have a long transition period in connection with the introduction of the Act. According to the consultative bodies, the workload and burden on the enterprises can be reduced if sufficient resources are allocated for guidance. According to Ethical Trade Norway, even though many enterprises wish to operate sustainably, there may be major

challenges relating to implementation in practice and doing so on their own. *The Norwegian National Human Rights Institution* (NIM), *OECD Contact Point* and *Rafto Foundation for Human Rights* stress the importance of allocating sufficient resources for guidance. The Contact Point notes that entry into force of the Act will require comprehensive escalation of public sector competence and resources in order to provide guidance on responsible business conduct and due diligence, both in a specific supervisory scheme, but also with other public actors that provide support and guidance to the business sector.

FOKUS notes that actual challenges relating to scope and nature, and thereby the solutions for these, will vary depending on, among other things, size, maturity, industry and where the goods are produced. Therefore, according to the consultative body, it is important to facilitate a corresponding diversity in the support structures. From experience, the enterprises will require support from actors with different competence in order to ensure good progress, according to FOKUS.

Equinor, *Kongsberg Gruppen*, *Norsk Hydro*, *Statkraft*, *Telenor* and *Yara International* believe it is important that the supervising authority provides guidance regarding internationally recommended practices, especially to enterprises that have less experience with the UNGP.

NIM notes that even though the Act only codifies that larger enterprises are to carry out due diligence in accordance with the UNGP, the UNGP's expectations and principles regarding both knowledge and due diligence apply to all enterprises regardless of size, and that it is therefore important that there are sufficient resources to provide guidance to smaller enterprises that wish to carry out due diligence even though they are not formally required to do so pursuant to the Act. According to the consultative body, there may be reason to assume that the greatest need for guidance will be with enterprises that have previously had less competence in this area, e.g., because they are smaller in size. Many large Norwegian enterprises have competence in the area and are already complying with the requirements for knowledge and due diligence in accordance with the UNGP.

The OECD Contact Point believes enterprises should also receive advice and guidance from the public sector regarding how they can best report in order to, among other things, satisfy the requirements in the bill. The consultative body notes that there are many good existing reporting tools, including the UNGP Reporting Framework, the OECD's Alignment Assessment Tools, the Norwegian Export Credit Guarantee Agency's (GIEK) reporting form on significant risks for enterprises, Global Reporting Initiative (GRI) reporting and more.

The Federation of Norwegian Construction Industries believes it is very important that a guidance service is in place before the Act enters into force. According to the consultative body, the bill is much broader and will encompass far more enterprises than is the case in the other countries to which the Committee refers. According to the consultative body, it is very important that the guidance service is adapted to the number of enterprises that are covered by the Act.

9.2.3 Ministry's assessments

The Ministry agrees that the supervisory body's primary task should be to provide good guidance regarding the regulations. As pointed out by several consultative bodies, this is an

important measure in order to ensure that the Act is observed without imposing unreasonably high costs on the business sector. Good guidance also simplifies the supervisory work.

The guidance must be provided to the enterprises that are subject to duties, and all the actors that can make requests pursuant to the Transparency Act, be they consumers, organisations or others. The guidance should be provided in many different ways. Written materials should be developed and published, and courses should be held, both generally and within various industries and target groups. Furthermore, direct guidance should be provided to the enterprises and actors that are subject to duties or granted rights pursuant to the regulations. This guidance should be based on the legislation and existing guidelines for the area, especially the OECD's guidance. Guidance should be developed in dialogue with the enterprises that are subject to duties pursuant to the regulations and their representatives. Furthermore, actors with competence in the area should be involved.

In its consultative comment, NHO refers to Prop. 33 L (2019–2020) regarding an Act on good business practice in the grocery sector, as an example of how the guidance should be provided. In the Proposition, it was proposed that the new Grocery Authority shall work according to what is referred to as the "negotiation model", similar to what applies to the Consumer Authority pursuant to Section 36 of the Marketing Control Act. In the Ministry's assessment, this is a part of the supervisory activities and will therefore be addressed below in point 9.3.3.

All administrative agency have an extensive duty to provide guidance pursuant to Section 11 of the Public Administration Act. Through guidance, the administrative agencies are to enable parties and other stakeholders to safeguard their interests in the best possible manner. Parties and potential parties that so request shall receive guidance regarding acts, regulations and practice. However, the duty to provide guidance is linked to specific cases and presumes that the whoever is to receive guidance is either a party or has contacted the administrative body. Therefore, there is no general statutory duty to provide more general guidance through publishing information on websites and conducting outreach information work through the offering of courses and similar. Many authorities, including the Consumer Authority, currently perform this type of work, without it being required to do so by law. In order for general guidance to be given the desired priority, the Ministry believes it is appropriate to establish a statutory requirement for this in the Transparency Act. The Consumer Authority is therefore required to perform this task in the Transparency Act. Good general guidance will become an important tool for achieving the Act's goal in a resource-efficient manner.

Regarding the individual guidance in specific cases, the Ministry considers that the rules in the Public Administration Act are sufficient. These rules impose a comprehensive duty to provide guidance on the Consumer Authority, which can be adjusted depending on the enterprise's resources and the capacity of the supervisory body. It is estimated that 8830 enterprises are covered by the new Act. Providing individual guidance to all these enterprises beyond what already follows from the Public Administration Act is resource intensive and will occur at the expense of more resource-efficient general measures. By prioritising general guidance, the supervisory body will reach more enterprises and to a greater extent ensure compliance with the rules.

There is no duty to issue binding advance statements. In the Ministry's assessment, such a requirement should also not apply to the guidance the Consumer Authority is to provide pursuant to the Transparency Act.

See Section 8 of the Proposal for a Transparency Act.

9.3 More details regarding the supervisory body

9.3.1 The Ethics Information Committee's proposal

The Ethics Information Committee proposes that the Consumer Authority and the Market Council shall monitor compliance with the provisions of the Transparency Act. It is proposed that such monitoring shall occur in accordance with the rules in sections 32 to 41 of the Marketing Control Act, which concern the Consumer Authority's and Market Council's enforcement of the regulations. The Ethics Information Committee referred to sections 32 to 42, but because of amendments to the Marketing Control Act in connection with Prop. 8 LS (2019–2020), this now corresponds with sections 32 to 41. The Committee proposes amending Section 35 of the Marketing Control Act to clarify that the purpose of the Consumer Authority's enforcement of the Transparency Act is to ensure everyone access to information from enterprises regarding fundamental human rights and working conditions.

The reference to the Marketing Control Act entails, among other things, that monitoring shall only be conducted by independent authorities, cf. Section 32. Furthermore, it grants the Consumer Authority broad authority to request information, investigate premises and seize materials that are relevant for identifying breaches of the Transparency Act, cf. Section 34. The Consumer Authority shall utilise the negotiation model in its supervisory activities, cf. Section 36, first paragraph. This means that the supervisory authority must attempt to get businesses to voluntarily comply with the regulations through dialogue and negotiations. The Consumer Authority may demand a written confirmation that the illegal conduct will cease or issue a decision. Regarding appeals of the Consumer Authority's decisions under the Transparency Act, the same solution as in the Marketing Control Act is proposed. This entails that the Market Council processes appeals of the Consumer Authority's decisions and that the Market Council's decisions cannot be appealed, cf. Section 37.

The Committee proposes that the Consumer Authority shall be able to issue decisions regarding prohibitions, enforcement penalties and infringement penalties, as well as decisions directed at abettors, cf. Section 39 of the Marketing Control Act. Enforcement penalties and infringement penalties may only be imposed for breaches of the duties to disclose information in sections 6, 7 and 10 of the Proposal for a new Transparency Act. Regarding infringement penalties, there is also a requirement of culpability and that repeated breaches have occurred.

The Committee specifies that fines and penalties should not be imposed before the enterprises have had time to familiarise themselves with the requirements of the Act and establish new routines.

9.3.2 Opinions of the consultative bodies

9.3.2.1 The purpose of the supervision, information duty and the negotiation model etc.

The Consumer Authority agrees with the Committee that Section 35 of the Marketing Control Act should be amended to highlight that supervision of the Transparency Act shall ensure transparency regarding fundamental human rights and working conditions.

Regarding the Ethics Information Committee's proposal to allow Section 34 of the Marketing Control Act regarding information duty and local inspection to apply in investigations of breaches of the Transparency Act, *the Confederation of Norwegian Enterprise* (NHO) expresses that this provision goes further than what is necessary. NHO also generally expresses that the Ministry should review the provisions referred to in the Marketing Control Act to examine their suitability. The Consumer Authority, however, supports supervision of the Transparency Act being conducted in accordance with the rules in the Marketing Control Act.

Regarding the requirement that the Consumer Authority is to use the negotiation model in its activities, this is not explicitly commented on by the consultative bodies. However, several consultative bodies highlight the importance of dialogue between the supervisory body and the enterprises covered by the regulations. In its consultation response, NHO refers to the deliberations regarding the new Grocery Authority's role in enforcing the Act on good business practice in the grocery sector (see Prop. 33 L (2019–2020)). There, it was among other things highlighted that the Grocery Authority shall work according to the negotiation model.

9.3.2.2 Sanctions and other measures to ensure compliance

All of the consultative bodies that have commented agree that breaches of the Transparency Act should be subject to administrative reactions. However, opinions are divided as to what reactions should be applied for the various breaches of the Act.

Equinor, Kongsberg Gruppen, Norsk Hydro, Statkraft, Telenor and *Yara International* believe the rules regarding sanctions are well balanced in relation to the purpose of the Act. *Enterprise Federation of Norway* supports that only denials of requests for information can be sanctioned, not the quality of e.g., due diligence. *The Norwegian Union of Journalists* supports the proposal that the supervisory authority shall be able to impose enforcement penalties and infringement penalties, so that they have an actual leverage in relation to enterprises that fail to comply with the Act.

BDO believes there are weaknesses relating to enforcement and sanctions, and that this, in conjunction with increased reporting requirements, may have the effect of distorting competition. The consultative body notes that enterprises that comply with the Act, incur increased costs relating to reporting, whereas enterprises that fail to comply with the Act, are not exposed to any significant risk of being discovered and/or sanctioned. BDO highlights that in the evaluation of the UK Modern Slavery Act, the lack of enforcement and sanctions was especially highlighted, and the consultative body therefore believes stricter penalties for breaches of duties should be introduced than those proposed by the Ethics Information Committee. By introducing stricter sanctions in conjunction with extensive and effective enforcement, BDO presumes that more actors will loyally comply with the rules, or that unprofessional actors will disappear from

market due to the penalties imposed. The consultative body notes that it is especially important to detect disloyal actors that re-establish themselves in order to evade already imposed sanctions.

Amnesty International Norway (Amnesty), *Changemaker*, *Norwegian Council for Africa*, *YWCA-YMCA* and *Save the Children Norway* believe it is insufficient that only a failure to comply with the information duties can be sanctioned. According to the consultative bodies, the duty to carry out satisfactory due diligence should be sanctioned. Amnesty refers to considerations for effectiveness and that experience from related areas suggests that the possibility of sanctions is important to ensure enterprises' compliance with the requirements of the Act. According to YWCA-YMCA, in case of infringements relating to decent work, it should be considered whether the enterprise was aware or ought to have been aware of the infringement. If the answer is yes, and this is not stated in the publication of due diligence, the enterprise should be held liable for incorrect information and be sanctioned. According to Amnesty and *Rainforest Foundation Norway*, the sanctions must be proportionate with regard to, among other things, what is reasonable to demand of the enterprise in question under the actual circumstances, the severity of the offence and its frequency. According to Changemaker, the sanctions must be sufficiently strong in order for the enterprises to comply with the Act.

Rainforest Foundation Norway believes that codifying the duties in the UNGP and the OECD Guidelines should also entail a possibility of sanctions in case of inadequate measures or inadequate effects of measures. *The Norwegian Forum for Development and Environment*, *Future in our hands – Head Office*, *Oslo Chapter* and *Trondheim Student Chapter*, Rainforest Foundation Norway and *Spire* believe it is decisive for the effectiveness of the Act that a failure to comply with the requirements regarding due diligence, risk-reducing measures and remedying harm result in appropriate sanctions. Future in our hands notes that the inclusion of sanctions is not only of significance to individual cases but will also put enterprises that are in the starting phase, or that have already commenced work on due diligence and follow-up on notice. According to Future in our hands and Rainforest Foundation Norway, what is to be considered a minimum level for due diligence and follow-up should be clarified in regulations or be determined in another manner. *Hope for Justice* also believes that sanctions should be included for a failure to comply with the duty to act if human rights infringements are identified.

YWCA-YMCA believes there should be a possibility to sanction enterprises that fail to respect and observe fundamental human rights, including the Universal Declaration of Human Rights, the UN Covenant on Civil and Political Rights, the UN Covenant on Economic, Social and Cultural Rights and the ILO's core conventions on fundamental principles and rights at work.

Amnesty notes that considerations for effectiveness indicate that enterprises' central bodies, such as the board of directors and managing director, should to a greater extent be held accountable for breaches of the duties in the Act.

NHO believes possible enforcement penalties must be triggered as a result of a specific decision and not breaches of the Act per se, as the Committee's proposal might indicate. NHO notes that the duty-bearers can thereby know what they must relate to, so that they can avoid enforcement penalties. In the same manner, and with the same justification, NHO believes a decision by the supervisory authority should be the basis for infringement penalties. Furthermore,

NHO refers to the principle that the least intrusive sanction should be selected, and that this indicates that enforcement penalties should be the main means for the supervisory authorities. According to NHO, infringement penalties should only be relevant where enforcement penalties have not worked.

The Consumer Authority believes a reference to Section 42 of the Marketing Control Act regarding the imposition of infringement penalties should be included, since Section 13, third paragraph of the bill concerns infringement penalties. NHO notes that legal persons cannot display intent or negligence, and that breaches that are to be subject to sanctions should therefore be qualified in another manner, e.g., by ranking of severity or repetitions.

The Norwegian National Human Rights Institution (NIM) is uncertain of the envisaged sizes of enforcement penalties and infringement penalties and believes this is something to be aware of in the continued work on the Act. The sizes of penalties, in addition to how they are to be applied in practice in terms of flexibility, guidance etc. may also have some impact in relation to statutory and procedural requirements.

Equinor, Norsk Hydro and Telenor believe the Act will be strengthened and clarified if more detailed rules regarding the imposition of enforcement penalties and determination of infringement penalties are made part of the work on the bill. According to the consultative bodies, requesting the Ministry to assess this in regulations at a later date entails too much uncertainty in relation to enterprises and for the monitoring and enforcement authority.

In addition to enforcement penalties and infringement penalties, Amnesty believes the supervisory authority should have the authority to issue orders regarding exclusion from official international business delegations and the right to public financial support schemes for a specified period of time, as well as that the illegal conduct must cease, remedies for victims of business-related human rights infringements and prohibitions against operating an enterprise for individuals.

BDO notes that the rules regarding enterprise penalties could be at least as good a measure as enforcement penalties and infringement penalties. According to Amnesty, BDO and Rainforest Foundation Norway, the due diligence obligations should be viewed in context with the Ministry of Justice and Public Security's ongoing evaluation of the rules regarding, among other things, enterprise penalties. Amnesty believes it should be considered whether it should be possible to hold parent companies liable for offences committed by subsidiaries.

Furthermore, Amnesty and Rainforest Foundation Norway believe an act containing requirements regarding due diligence in the business sector should include a penal provision in accordance with the objective of effective compliance. According to Amnesty, national and international experience indicates that pure expectations or statutory requirements without adequate sanctions are not enforced as effectively as intended. Amnesty also notes that experiences from anti-corruption work, anti-money laundering and the introduction of the General Data Protection Regulation shows that the business sector quickly incorporates new routines that are subject to criminal sanctions. On the other hand, Amnesty notes that the principle of legality in principle indicates caution with criminal sanctions in light of the draft bill's general references to various human rights. However, Amnesty believes the considerations that justify the principle of legality, the consideration for predictability, can nevertheless be adequately safeguarded.

Amnesty notes that sentences of imprisonment can be made conditional on repeated or gross infringements carried out with intent or gross negligence, and that the time of entry into force can be delayed for a reasonable period of time through transitional provisions. This will ensure a good balance between the consideration for predictability and the consideration for effective compliance. Amnesty believes no one will risk imprisonment if mistakes are made in difficult considerations between various human rights. A right to sanction breaches in the form of punishment will also make enterprise penalties a relevant means of sanctions, in that the entry point under the Penal Code's provision regarding enterprise penalties is the violation of a "penal provision".

NIM agrees with the Committee's view that the implementation can be done in a flexible manner, and that it is beneficial to apply discretion and flexibility in connection with supervision and sanctioning, especially during the introductory phase. In the Committee's view, the use of sanctions will also depend on the quality of the guidance provided. According to the consultative body, the better the guidance the greater room there is for possible sanctioning and vice versa. Future in our hands believes it will be unreasonable if sanctions can be imposed on enterprises that do not carry out due diligence in a satisfactory manner immediately after the Act has entered into force. Therefore, the consultative body proposes an introductory phase for the business sector in that the enterprises are given a multi-year, albeit defined time frame in which to incorporate the statutory requirements before sanctions can be put to use.

9.3.3 Ministry's assessments

9.3.3.1 The purpose of the supervision, independence of the supervisory authority and the negotiation model etc.

The Ministry agrees with the Ethics Information Committee that the supervisory rules in the Marketing Control Act should be applied in the enforcement of the Transparency Act. However, the Ministry nevertheless believes that some of the Marketing Control Act's provisions are not suitable for the Consumer Authority's enforcement of the Transparency Act. Therefore, the Ministry proposes that the monitoring rules are to a greater extent stated in the Transparency Act, in order to clarify what rules apply to the Consumer Authority's monitoring of the Act.

The Ministry agrees with the Committee and the Consumer Authority that it is necessary to clarify which considerations the enforcement of the Transparency Act is to safeguard and proposes that this be specified in the Transparency Act. In the Ministry's assessment, the wording should be simplified compared with the Committee's proposal and reflect the main purpose of the Act, which is to promote enterprises' respect for fundamental human rights and decent working conditions, cf. discussion in point 7.1.3.

The Ministry also considers it important that the enforcement is carried out by professionally independent authorities and therefore supports the Committee's proposal that Section 32 of the Marketing Control Act shall apply for the Consumer Authority's and Market Council's monitoring of a new Transparency Act. This entails that neither the Ministry nor the Norwegian Government can instruct these bodies in relation to individual cases or in the general

interpretation of the Act. Reference is also made to Prop. 93 L (2016–2017), point 6.1 for more detailed discussion regarding the independence of the Consumer Authority and Market Council.

The Ministry agrees that the monitoring of the Transparency Act should occur according to the negotiation model in the Marketing Control Act, as proposed by the Committee and as desired by several of the consultative bodies. This entails that the Consumer Authority must attempt to get the enterprises to voluntarily comply with the regulations. This is initially done through information (see point 9.2.3 regarding the duty to provide guidance). If this is unsuccessful, the supervisory body will have to engage and negotiate with the enterprises to get them to comply. In these negotiations, the Consumer Authority cannot accept solutions that are in breach of the requirements of the Transparency Act. However, the Consumer Authority has no absolute duty to negotiate. For instance, where the enterprise must be assumed to be well acquainted with the rules, it is not necessary for the supervisory body to negotiate before a decision is issued. Reference is also made to Prop. 93 L (2016–2017), point 4.2 where the negotiation model in the Marketing Control Act is accounted for in more detail.

The Committee's proposal also entails that the Consumer Authority can obtain written confirmations that the illegal conditions will cease, cf. Section 36, second paragraph, first sentence, first alternative of the Marketing Control Act. The Ministry believes this could be an appropriate means of ensuring that enterprises comply with the requirements in the Transparency Act and proposes that a corresponding provision be included in the Transparency Act. However, the Ministry does not propose a provision that the Consumer Authority can obtain a written confirmation that the enterprise will offer remediation mechanisms to affected consumers, since this provision does not appear relevant for monitoring of the Transparency Act, and, in principle, is a result of the implementation of the Regulation on consumer protection cooperation in Norwegian law, see Prop. 8 LS (2019–2020), point 10.

Furthermore, the Committee's proposal entails that the Consumer Authority shall be able to issue decisions of an interim nature, cf. Section 39, second paragraph of the Marketing Control Act. This possibility was introduced on 1 July 2020, as a result of the implementation of the Regulation on consumer protection cooperation, see Prop. 8 LS (2019–2020), point 9. The justification for this rule is that the Consumer Authority shall quickly be able to stop breaches of consumer protection rules where there is a risk of serious harm to the interests of consumers. In the Ministry's assessment, such conditions will not be relevant in the Consumer Authority's monitoring of the Transparency Act. Therefore, it is not necessary to issue decisions of an interim nature pursuant to the Transparency Act, and the Ministry therefore does not propose any such provision in the Transparency Act.

See Section 9 of the Proposal for a Transparency Act.

9.3.3.2 Duty to disclose information, local inspection and seizure

According to the Ethics Information Committee's proposal, the Consumer Authority is granted broad authority to, among other things, demand information, including confidential information and to inspect premises, cf. Section 34 of the Marketing Control Act. Since the Committee submitted its report, Section 34 of the Marketing Control Act has been expanded, including with a clear legal basis for seizing documents and objects. The legal bases for inspecting premises and

seizure are very rarely used by the Consumer Authority. Similarly, the Ministry does not believe the Consumer Authority will have a particular need for or capacity to carry out such intrusive investigatory steps in the enforcement of the Transparency Act.

However, there may be a need for a wide-ranging duty to disclose information that also includes confidential information. Therefore, the Ministry proposes that a provision corresponding to Section 34, first and fourth paragraph, first and second sentence of the Marketing Control Act, be included in the Transparency Act. Section 34, fourth paragraph, third sentence, specifies that the Consumer Authority shall have access to certain types of information from providers of electronic communication networks or services, despite the fact that they are subject to a qualified duty of confidentiality pursuant to Section 118 of the Criminal Procedure Act, which does not appear relevant for the Consumer Authority's supervision of the Transparency Act. Similar to the rules in the Marketing Control Act, the Ministry proposes that the Consumer Authority shall be able to impose enforcement penalties on any party that fails to comply with the duty to disclose information.

The Ministry specifies that the duty to disclose information does not take precedence over the right to silence that follows from the privilege against self-incrimination and the requirement of due process, cf. Article 6 1. The privilege against self-incrimination entails that enterprises may be exempt from providing information entailing that they risk sanctions that are considered punishment pursuant to the ECHR. This includes sanctions that are considered punishment pursuant to Norwegian law, but also administrative sanctions, e.g., infringement penalties. The privilege against self-incrimination is described in more detail in Prop. 62 L (2015–2016) Proposition to the Storting (bill), point 22.

See Section 10 of the Proposal for a Transparency Act.

9.3.3.3 Sanctions and other measures to ensure compliance

Introduction

According to the Ethics Information Committee's proposal, the Consumer Authority shall be able to issue decisions regarding orders, prohibitions, enforcement penalties and infringement penalties. Several consultative bodies believe punishment may be a good means of ensuring effective compliance with the Transparency Act. Before the various reactions are considered, the Ministry wishes to briefly clarify the various measures.

An order or prohibition decision must be observed, but breaches of such decision will not have any immediate consequences. To ensure compliance, it is common that breaches of public regulations have consequences. These consequences can be in the form of enforcement penalties, infringement penalties, fines or imprisonment. Imprisonment, which is the most severe reaction, can only be imposed by the courts. An administrative agency can impose enforcement penalties or infringement penalties. The difference between these two reactions is that an enforcement penalty triggers a duty to pay in case of a breach of a specific decision directed at the enterprise, whereas an infringement penalty must be paid in case of a breach of the law. This entails that the enterprises to a much greater extent will be familiar with and aware of the risk of an enforcement penalty. Infringement penalties are considered a punishment pursuant to the European Convention on Human Rights (ECHR). According to the Public Administration

Act's terminology, an infringement penalty is considered an administrative sanction, and special requirements are set for such administrative decisions, cf. Section 43 et seq of the Public Administration Act.

Enforcement penalties

The Ethics Information Committee proposes that decisions regarding enforcement penalties can only be determined in case of breaches of the duties to disclose information in the Transparency Act. This differs from the Marketing Control Act, where, in principle, enforcement penalties shall be established for breaches of any prohibition or order decision issued by the Consumer Authority, cf. Section 41 of the Marketing Control Act. This is to ensure compliance with the decisions. Establishment of enforcement penalties may be omitted if special circumstances so indicate. Several consultative bodies have made stated objections to there being no consequences for breaches of the duty to carry out due diligence.

The Ministry agrees with the Committee that the Consumer Authority shall be able to monitor all of the provisions in the Transparency Act, including the provisions that require the enterprises to carry out due diligence. This entails that the supervisory body shall issue decisions in case of breaches of this requirement. All of the consultative bodies appear to share this assessment. The question is whether or not there shall be consequences for breaches of a decision. As shown above, it is proposed to impose on the Consumer Authority a duty to provide guidance that is more comprehensive than what follows from the Public Administration Act. If the enterprises nevertheless fail to comply with the rules, the Consumer Authority shall through dialogue and negotiations attempt to get them to voluntarily comply. If this, too, is unsuccessful, the supervisory body will issue a decision in the case. In the Ministry's assessment, professional enterprises will either comply with the supervisory body's decision or appeal it to the Market Council. In the Ministry's assessment, it should be possible to impose a reaction on the minority of enterprises that fail to comply with the supervisory body's orders or that invoke their right to appeal. Otherwise, the Act and the supervision of the Act would have the effect of distorting competition in that the enterprises that fail to carry out or carry out highly deficient or fictitious due diligence, will have lower costs compared to the enterprises that loyally follow-up the requirements in the Transparency Act. Therefore, the Ministry proposes the possibility of imposing enforcement penalties for breaches of any decision. In addition to enforcement penalties for breaches of prohibition or order decisions, the Ministry proposes that the Consumer Authority shall be able to impose enforcement penalties for breaches of written confirmations.

As opposed to the rules in the Marketing Control Act, the Ministry proposes that there should not be any requirement that the Consumer Authority, as a rule, shall establish enforcement penalties for all order and prohibition decisions. This assessment should be left to the Consumer Authority in each individual case. To the Ministry's knowledge, this is common for public administration laws that impose duties on the business sector, cf. e.g., Section 73 of the Pollution Control Act.

See Section 11-13 of the Proposal for a Transparency Act.

Infringement penalties

As mentioned in the introduction, an infringement penalty is an administrative sanction pursuant to the Public Administration Act and a punishment pursuant to the ECHR. This is because it is a severe sanction with what is known as a punitive purpose, i.e., similar to a penalty, it is to be perceived as a punishment and has a deterrent effect. Therefore, there are specific requirements for the imposition of this reaction both under the ECHR and in the Public Administration Act. In Prop. 62 L (2015–2016), point 7.4.3. the Ministry of Justice and Public Security issued its recommendations as to when the legislature should use this form of reaction. The first consideration to be made is whether less intrusive means can be used to achieve the purpose. Whether a breach is to be sanctioned should, in principle, be assessed based on the individual obligation. Furthermore, it is a prerequisite that there exists an administrative agency that can enforce the rules, and the imposition of an administrative sanction must be sound in relation to the rule of law. This entails an assessment of whether the rules raise difficult questions or questions regarding evidence, the nature and scope of the sanction, who is affected by the sanction, whether it concerns individuals or enterprises, and what conditions the administrative agency has to ensure satisfactory processing of the cases.

The Ministry agrees with both the Ethics Information Committee and the opinions of consultative bodies that there is a need for enforcement of the Transparency Act, and that this includes a possibility of imposing infringement penalties for breaches of the provisions of the Act. If the only reaction is a decision with a determined enforcement penalty that is triggered in case of breaches of the decision, this may result in enterprises that are covered by the Act opting not to comply with the rules before they are issued a decision or a notification regarding a decision. If so, the Act will fail to achieve the purpose which is to promote all enterprises' respect for fundamental human rights and decent working conditions.

The Committee proposes that only the duty to disclose information shall be subject to infringement penalties. In the Ministry's assessment, it is sound in relation to the rule of law to impose administrative sanctions in case of breaches of the duties to disclose information. The provisions provide clear obligations to disclose information regarding the enterprise's work on fundamental human rights and decent working conditions and due diligence. It will mainly be legal persons and their commercial activity that will be affected by a possible infringement penalty, which generally reduces the risks involved in sanctioning offences. The Consumer Authority has extensive experience with imposing infringement penalties and will therefore be well-equipped to handle such cases in a manner that is appropriate and sound in relation to the rule of law. Regarding whether it shall be possible to sanction breaches of the time limits for responding to requests for information, the Ministry has been uncertain of what has been the Committee's proposal and intention. However, the Ministry believes it should be possible to sanction repeated and clear breaches of the time limits for responding to requests for information with infringement penalties. In the Ministry's assessment, infringement penalties can e.g., be used if an enterprise consistently fails to observe the time limits for responding to requests for information and the content of the requests for information clearly indicates that the information should have been possible to disclose within the time limits in the provision.

Several consultative bodies have expressed that other breaches of the Transparency Act should also result in sanctions, especially breaches of the duty to carry out due diligence. The Ministry

is somewhat uncertain as to whether the consultative bodies are using the term sanctions in a manner corresponding with the terminology of the Public Administration Act or if they consider enforcement penalties to be a sufficient reaction. As accounted for above, the Ministry proposes that is shall be possible to impose enforcement penalties for breaches of any duty under the Transparency Act, including breaches of the duty to carry out due diligence. Regardless, the Ministry believes it is appropriate to limit the legal authority to impose infringement penalties to the duties to disclose information. The duty to carry out due diligence opens for more discretionary assessments, which indicates that infringement penalties should not be imposed for breaches of these provisions. Furthermore, enterprises that have failed to carry out due diligence may have difficulties complying with the duties to disclose information, which can be sanctioned with infringement penalties.

The Ministry proposes a provision in the Transparency Act that grants the Consumer Authority legal authority to impose infringement penalties in case of breaches of the duties to disclose information in the Act, in accordance with the Committee's proposal. Provisions corresponding with Section 42 of the Marketing Control Act, second and third paragraph, are also proposed, which, among other things, provide guidance regarding the size of the infringement penalty and rules regarding time limits for payment.

Regarding NHO's comment that legal persons cannot display intent or negligence; the Ministry agrees with this and therefore proposes that there shall only be a requirement of culpability for natural persons. Infringement penalties for breaches of the Transparency Act can generally be directed at legal persons, but can also be directed at natural persons, see the point on abetting, below.

See Section 14 of the Proposal for a Transparency Act.

Other sanctions and abetting

Several consultative bodies believe the Act should include sanctions in the form of penalties, or that this option should at least be considered by the Ministry. In the Ministry of Justice and Public Security's recommendations in Prop. 62 L (2015–2016), point 7.4.3, the importance of selecting the least intrusive means and actually being able to enforce breaches of the rules is highlighted. As accounted for above, the Ministry proposes that it shall be possible to impose enforcement penalties and infringement penalties in case of breaches of the Transparency Act. The duty-bearers that risk being subject to such sanctions engage in commercial activity and financial means should therefore be sufficient to get the enterprises to comply with the regulations. If it emerges that the enterprises nevertheless fail to comply, increasing the enforcement penalties or infringement penalties may be considered. A possible penal provision will have to be enforced by the prosecuting authority and the courts. These bodies have a considerable workload, and it is uncertain whether the prosecuting authority has the capacity to prosecute breaches of the Transparency Act. Therefore, in the Ministry's assessment, it is not appropriate to sanction breaches of the Transparency Act in the form of punishment.

The Ministry believes enforcement penalties and infringement penalties in conjunction with guidance and public disclosure of decisions are effective means of ensuring that enterprises comply with the Transparency Act. Therefore, the Ministry also does not believe there is a

need for other means in the manner proposed by the consultative bodies, e.g., exclusion from business delegations or public support schemes or a prohibition against operating a business.

None of the consultative bodies made specific comments regarding the proposal that it should be possible to direct decisions regarding prohibitions, orders, enforcement penalties and infringement penalties against abettors, cf. Section 39, third paragraph of the Marketing Control Act. However, some consultative bodies mention the importance of being able to direct sanctions at the managing director or chair of the board, as well as to ensure that the system detects unprofessional actors that wind up and restart in order to evade already imposed sanctions. Liability as an abettor was included in the Marketing Control Act in order to prevent commercial actors from circumventing decisions by winding up enterprises and establishing new enterprises that continue the same illegal activities. Another problem was that the persons behind the illegal activities did not necessarily have formal positions in such enterprises. Based on the input in the consultation, the Ministry retains the proposal of liability for abettors for breaches of the Transparency Act. For a more detailed account of liability for abettors, reference is made to Ot.prp. no. 34 (1994–1995), point 3.2.

See Section 11, second paragraph of the Proposal for a Transparency Act.

Transitional arrangement

The Ministry agrees with the Ethics Information Committee and the consultative bodies that enterprises that are subject to duties should be given a period during which they can familiarise themselves with the rules in the Act and create internal policies, without risking reactions from the public authorities. This can be solved through different dates of entry into force for the substantive rules and the enforcement rules. Entry into force is determined by the Norwegian Government in Council of State (see Section 15 of the bill).

9.4 Processing of appeals

9.4.1 The Ethics Information Committee's proposal

The Ethics Information Committee proposes that denials and dismissals of requests for information can be appealed to the Consumer Authority, which will determine the appeal case. The Committee proposes a time limit for appeals of three weeks from the date the denial arrived at the information seeker, cf. Section 12 of the Committee's bill. The remediation mechanism is inspired by the Public Administration Act and the Environmental Information Act.

9.4.2 Opinions of the consultative bodies

Bergen Municipality, *Consumer Council* and *Confederation of Norwegian Enterprise* support the establishment of a remediation mechanism. *Amnesty International Norway* (Amnesty) and *Rainforest Foundation Norway* believe the right to appeal should also cover inadequate or incomplete information, in addition to dismissals and denials of requests for information. According to the consultative bodies, it needs to be stated more clearly what is considered adequate safeguarding of the duty to disclose information.

Amnesty, *Save the Children Norway* and Rainforest Foundation Norway believe consumers, individuals and organisations should be able to appeal regarding the duty to carry out due diligence. In addition to safeguarding the rights of consumers, *the Rafto Foundation for Human Rights* and Rainforest Foundation Norway believe it is also crucial that those who are vulnerable to human rights infringements and environmental harm, both within and outside of Norway, have genuine access to information, as well as that adversely affected individuals and local communities have access to adequate appeal and remediation mechanisms.

Bergen Municipality questions whether the Consumer Authority, with the role it has in relation to the consumer market, is the most natural appeal body for professional customers from the corporate market and from public contracting authorities. The consultative body questions whether the OECD National Contact Point would be a more appropriate appeal body.

The Consumer Council notes that a joint appeal board for both the Environmental Information Act and the Transparency Act, with a joint secretariat and systems, could be both effective and economical.

9.4.3 Ministry's assessments

The rules regarding the right to appeal deficient information is derived from the Environmental Information Act. As opposed to the Proposal for a Transparency Act, the Environmental Information Act contains no rules regarding public enforcement. Denials of requests for environmental information can be appealed to the Environmental Appeals Board, and a decision by this Board is a special basis for enforcement pursuant to the Enforcement Act, cf. Section 19 of the Environmental Information Act. This entails that appeals can be enforced by the enforcement authorities in that the enterprise is imposed a running enforcement penalty if it fails to disclose or prepare the requested information.

The Ethics Information Committee did not propose corresponding rules for the Consumer Authority's decisions in appeal cases. The Committee proposed that the Consumer Authority may establish a possible enforcement penalty if the enterprises fail to comply with the duties to disclose information. It is unclear whether the proposal entails that the Consumer Authority can impose enforcement penalties in the processing of appeals concerning denied requests for information.

The Ministry agrees that the Consumer Authority should enforce the right to information and enterprises' processing of requests for information, and, if necessary, issue decisions ordering the enterprises to disclose such information under the threat of enforcement penalties. With this proposal, it is not necessary with enforcement according to private law of requests for information and a remediation mechanism corresponding to the content of Section 19 of the Environmental Information Act. Any party that has rights pursuant to the Transparency Act will be able to inform the Consumer Authority of breaches of these rights. It will be up to the Consumer Authority to determine which cases it will address with the enterprises. If the Consumer Authority decides to deprioritise a case, this decision can be appealed to the Market Council, cf. Section 37, second paragraph of the Marketing Control Act. In the Ministry's assessment, this will be a better and more resource-efficient way of ensuring compliance with the

regulations. Therefore, the Ministry does not follow up the proposal of a separate remediation mechanism for denials of requests for information.

10 Financial and administrative consequences

10.1 Introduction

The Transparency Act shall contribute to promoting enterprises' respect for fundamental human rights and decent working conditions. The Act requires the enterprises to carry out due diligence and publish an account of the due diligence, and grants consumers, trade unions, organisations, journalists, public contracting authorities and others the right to information from the enterprises regarding how they work on human rights and working conditions within the enterprise itself, in the supply chains and among business partners.

In the Ministry's assessment, the Act will contribute to the enterprises working more effectively to prevent and address adverse impacts on human rights and decent working conditions in connection with the production of goods and the delivery of services, regardless of where in the world the supply chain stretches, from the raw material stage to finished product. The Act will also contribute to greater transparency in a global and complex business sector, make it easier to make ethical purchase and investment decisions, and to verify the enterprises' work in this field. In the Ministry's assessment, the Act will make it easier to compare enterprises' production and trade practices and will contribute to strengthening the competitiveness of enterprises that are already striving for ethical, sustainable production. Increased focus on ethical trade will also result in enterprises' costs for setting requirements regarding human rights and working conditions being borne by several actors. In time, the Act may result in more ethical production of goods and services that are sold in Norwegian shops.

The bill, in conjunction with other measures, will contribute positively to Norway's efforts to achieve the UN Sustainable Development Goals, especially goal number 8 on decent work and economic growth and goal number 12 on sustainable consumption and production.

10.2 Impacts on the business sector

The Proposal for a Transparency Act will entail financial and administrative consequences for the enterprises that are subject to duties under the Act. In late November 2020, the Ministry assigned Oslo Economics and KPMG to conduct an impact assessment that concretises and quantifies the financial and administrative consequences for various enterprises in the business sector as a result of the Ethics Information Committee's Proposal for a Transparency Act. The impact assessment was to build on the Ethics Information Committee's assessment, but clarify how the costs will vary depending on, among other things, the size, industry, context and maturity of the enterprises. The Ministry received the impact assessment on 5 January 2021.

In order to assess the current situation, Oslo Economics and KPMG have, among other things, examined the existing regulations in Norway and in other countries, existing voluntary schemes, and the anticipated developments in the EU. This has provided them with a basis for

assessing how much a new Transparency Act will demand of the enterprises. They have also interviewed representatives of the various enterprises. However, as a result having completed the impact assessment over a period five weeks, Oslo Economics and KPMG has been forced to make simplifications and generalisations. Therefore, it is emphasised in the report that there is uncertainty regarding the cost estimates, and that these must therefore be considered rough estimates.

The Ethics Information Committee proposes that the supervisory authorities be given an active duty to provide guidance. The Ministry's bill also includes such an active duty to provide guidance, cf. point 9. Therefore, Oslo Economics and KPMG have based their calculation of costs for the enterprises on guidance being provided to the enterprises free of charge and without limitations. This includes courses, guidance materials and individual advice. It is considered that this will contribute to reducing the enterprises costs of fulfilling the various duties in the bill. The public sector's costs for guidance have not been calculated by Oslo Economics and KPMG and will be additional (see more detailed discussion in point 10.3).

Oslo Economics and KPMG estimate that 8830 enterprises will be covered by the Transparency Act's definition of "larger enterprises". This includes 270 large enterprises, cf. the definition in Section 1-5 of the Accounting Act, and 8560 medium-sized enterprises that are neither considered large nor small according to the definitions in Section 1-5 and Section 1-6 of the Accounting Act. The financial and administrative costs of each enterprise will vary. For medium-sized enterprises, industry risk will have major significance for the economic impacts. Enterprises in low-risk industries are expected to have low-cost estimates, whereas enterprises in high-risk industries are expected to have high-cost estimates. For larger enterprises, the maturity of the enterprise will influence the cost estimate. Here, maturity relates to whether the enterprise already conducts similar assessments and is ready to fulfil the duties in the bill. Large mature enterprises are expected to have low-cost estimates, whereas large enterprises with a low level of maturity are expected to have high-cost estimates. The following costs are associated with the duty to carry out and account for due diligence and the duty to disclose information for large and medium-sized enterprises.

Medium-sized enterprises that are expected to have low-cost estimates as a result of the bill include service enterprises such as consulting enterprises, real estate enterprises, building and construction enterprises and some retailers, as well as enterprises with a high-risk in the supply chain that are currently fully or partially working on due diligence. For these enterprises, it is expected that the average cost will be NOK 24,600 in year one, followed by NOK 10,600 annually from year two, as a result of the bill.

Medium-sized enterprises that are expected to have high-cost estimates as a result of the bill typically include shops/online retailers that offer a number of different high-risk products such as electronics, IT equipment, garments, toys and similar, and have many suppliers and a higher number of producers. For these enterprises, it is expected that the average cost will be NOK 125,000 in year one, followed by NOK 123,000 annually from year two, as a result of the bill.

Medium-sized enterprises that sell a limited number of high-risk products and have few suppliers, are expected to fall in between the two aforementioned categories. The same applies to, among others, enterprises that are not directed at consumers. This category covers e.g., wholesalers,

retailers, import enterprises and certain public sector suppliers in various industries. For these enterprises, it is expected that the average cost will be NOK 73,300 in year one, followed by NOK 67,300 annually from year two, as a result of the bill.

Among the large enterprises, it is expected that maturity will vary and influence costs. 30 per cent of the large enterprises are expected to already satisfy the requirement to carry out due diligence and are therefore not expected to incur financial and administrative costs as a result of the bill.

Large enterprises that are expected to have higher cost estimates as a result of the bill include enterprises that currently perform limited work on this area. These enterprises are expected to have to allocate considerable resources to fulfil the duties in the bill, estimated at one dedicated full-time equivalent, i.e., approximately NOK 850,000 annually.

Large enterprises that are already performing some work in the area, but not enough to fulfil the requirements, are expected to fall in between the low and high-cost categories and are expected to have to utilise approximately half a full-time equivalent, i.e., NOK 450,000 annually to fulfil the duties in the bill.

In total, the financial and administrative consequences for the 8830 "larger enterprises" that are subject to duties as a result of the bill are expected to amount to NOK 700 million in the start-up year, followed by approximately NOK 630 million in year two. These figures are limited to the direct costs for the enterprises in fulfilling the duties that follow from the bill. This means that positive impacts of the bill are not included in the estimate. In the Ministry's assessment, the fact that the enterprises work actively on human rights and decent working conditions and are transparent about the conditions within the enterprise itself and in the supply chain may benefit the enterprises, including in the form of improved reputations and more motivated employees.

The Ministry emphasises that the estimates from Oslo Economic and KPMG are rough estimates. For some enterprises, the financial and administrative consequences may exceed the cost estimates in the report. This especially relates to Norwegian parent companies with subsidiaries abroad that are covered by the parent company's duties pursuant to the Act.

Reference is made to the more detailed discussion in the impact assessment by Oslo Economics and KPMG. The impact assessment also covers an assessment of what financial and administrative consequences an expansion to include environmental impacts will have for the enterprises (see chapter 6 of the impact assessment).

10.3 Consequences for the public sector

The Proposal for a Transparency Act entails that the Consumer Authority will be given responsibility for supervision and guidance of the Act. The duty to provide guidance entails that the Consumer Authority shall, among other things, hold courses regarding the duties in the Act, prepare guidance materials that e.g., concretise the human rights that are covered by the Act, and provide the enterprises with more detailed assistance on how they are to proceed in order to fulfil the requirements in the Act.

The supervisory duty will entail that the Consumer Authority shall monitor that the enterprises that are covered by the Act fulfil the duties therein. It is important in the start-up phase that the enterprises are given adequate time to familiarise themselves with the requirements of the Act and to establish good routines. Therefore, it may be relevant to have different dates for entry into force of the duties and enforcement provisions of the Act. In any case, the Consumer Authority's supervisory work will largely be characterised by guidance in the start-up phase. The supervisory body will nevertheless have to comment on the enterprises' fulfilment of their duties, both to ensure – in accordance with the purpose of the Transparency Act – that enterprises are working actively to prevent and address adverse impacts on fundamental human rights and decent working conditions, and to ensure the general public access to information. After the Act has been in effect for some time, it is expected that the Consumer Authority will to a larger extent allocate resources to supervision.

The duties assigned to the Consumer Authority require that the supervisory body develops new and solid competence regarding an area with which the body does not have previous experience, and that it has sufficient resources to be able to satisfactorily perform its duties. Among other things, it is important to contribute to reducing the costs incurred by the enterprises as a result of a new Act (see point 10.2). Additional costs for the state associated with a new Transparency Act are covered by the Ministry's current budgetary frameworks.

In the Ministry's assessment, even though the OECD Contact Point is not assigned new or changed tasks as a result of the Proposal for a new Transparency Act, it is nevertheless expected that the Act will entail financial and administrative consequences for the Contact Point. This will mainly be in the form of more requests for assistance from the enterprises to the Contact Point in order to fulfil the OECD Guidelines. This is a result of the Proposal for a Transparency Act largely building on the international guidelines, which may make the enterprises more aware of these documents and of the right to receive guidance from the Contact Point. At the same time, it is emphasised that the Contact Point's role is to assist the enterprises in fulfilling the OECD Guidelines and that these Guidelines will continue to apply parallel to the Transparency Act. Specific requests for guidance relating to the duties in the Transparency Act will therefore have to be referred to the Consumer Authority. The Ministry presumes that there will be close cooperation between the Consumer Authority and the OECD Contact Point so that the guidance with the Transparency Act will to the greatest extent possible be harmonised with the established practices of the OECD internationally and Norway's OECD Contact Point. Therefore, it is also natural to expect that the Contact Point will have to allocate some resources to coordination and engagement with the Consumer Authority.

11 Comments to the bill

Re Section 1

The section specifies the purpose of the Act and its practical applicability. The main purpose of the Act is to promote enterprises' respect for fundamental human rights and decent working conditions. The practical applicability of the Act is therefore fundamental human rights and decent working conditions. These terms are defined in Section 3 (b) and (c). The second purpose

of the Act, which is also an important means of achieving the main purpose of the Act, is to ensure the general public access to information on how enterprises address adverse impacts on fundamental human rights and decent working conditions. This includes both what enterprises are doing to prevent and mitigate the risk of adverse impacts, and what enterprises are doing to cease and mitigate actual adverse impacts that the enterprise has identified.

In the statutory objective it is specified that the Act applies to fundamental human rights and decent working conditions "in connection with the production of goods and the delivery of services". This specification shall not be interpreted as a limitation regarding who is affected by the adverse impacts. The Act applies to adverse impacts, regardless of whether such impacts affect internal or external conditions. This specification is intended to clarify that the Act applies to adverse impacts relating to the enterprises' production of goods and delivery of services, from the raw material stage to finished product, and that the Act does not apply to potential adverse impacts of the goods or service in future stages, i.e., after the enterprise has sold the product or provided the service. This limitation is also found in the definition of "supply chain" and "business partner" in Section 3, (d) and (e), respectively.

"The general public" means any party, e.g., consumers, organisations, trade unions, journalists, investors, public contracting authorities and enterprises. The Act shall, by granting the general public access to information, make it easier for the individual groups and persons to make ethical purchase and investment decisions, to inspect the enterprises, and thereby contribute to promoting the enterprises' respect for fundamental human rights and decent working conditions.

Reference is made to the more detailed descriptions in points 7.1.3 and 7.2.3.

Re Section 2

This section specifies the duty-bearers and geographical scope of the Act.

The first paragraph determines that the Act applies to larger enterprises (see the definition of "larger enterprises" in Section 3 (a) and the commentary to this provision). It follows from the *first sentence* that the Act applies to larger enterprises that are resident in Norway, regardless of whether they offer goods and services in Norway or outside of Norway. The *second sentence* specifies that the Act also applies to larger foreign enterprises that offer goods and services in Norway, and that are liable to tax to Norway pursuant to internal Norwegian legislation. The geographical scope of the Act must be viewed in context with the corresponding scope of the Account Act (see the Section 1-1 of the Accounting Act, and the specification of accountable enterprises in Section 1-2 of the Accounting Act). The Act applies without limitations regarding subjects and field of application in that it is not limited to specific goods, services or industries. For instance, the Act will cover both those that sell consumer goods and those that provide input factors to industry or are suppliers to the public sector.

The second paragraph grants the King authority to determine that the Act, in whole or in part, shall apply to enterprises on Svalbard, Jan Mayen and the Dependencies of Norway.

Reference is made to more detailed descriptions in point 7.3.3.

Re Section 3

First paragraph (a) defines "larger enterprises". This definition corresponds with which enterprises are covered by the duty to prepare annual reports pursuant to Section 3-1, second paragraph of the Accounting Act, and covers larger enterprises and other enterprises that are not defined as small in the Accounting Act. Section 1-2 of the Accounting Act specifies which types of enterprises are accountable pursuant to the Accounting Act and shall also form the starting point for the duty-bearers pursuant to the Transparency Act. This means that enterprises that are not accountable pursuant to the Accounting Act will also not be considered larger enterprises according to this definition. Whether an accountable enterprise is to be considered a larger enterprise must be specifically assessed in relation to the criteria listed in the definition. The rule in Section 1-6, fourth paragraph of the Accounting Act correspondingly applies in the assessment, entailing that parent companies are to be considered a larger enterprise if the conditions are met for the parent company and subsidiaries viewed as a whole, regardless of whether the subsidiaries are registered in Norway or abroad.

Litra (b) provides a definition of "fundamental human rights". The definition covers the internationally recognised human rights that, based on the Universal Declaration of Human Rights from 1948, are enshrined in the conventions listed in the provision, as well as others that are considered relevant for the individual enterprise. The list in the provision covers the most important human rights conventions, but is nevertheless not exhaustive, cf. "among other places". Other relevant international instruments that are covered by the definition include the UN Convention on the Rights of the Child of 1989 and ILO Convention no. 169 on indigenous and tribal peoples in independent states of 1989 (Indigenous and Tribal Peoples Convention). The Human Rights Act shall strengthen the status of human rights in Norwegian law and incorporates, among other things, the European Convention on Human Rights, in addition to some of the conventions mentioned above. The rights in these conventions will be relevant "fundamental human rights" according to the definition. Examples of human rights that are covered by the definition are the right to life, liberty and security of person, freedom of thought, conscience and religion, right to privacy, prohibition against slavery and slave trade, the right to freedom of association, prohibition against child labour, prohibition against forced labour, the right to work and favourable conditions of work, equal pay for equal work without any discrimination, the right to rest and leisure, reasonable limitation of working hours and periodic holidays with pay. An important part of the supervisory and guidance body's tasks will be to prepare an overview of relevant human rights conventions and human rights that are covered by the definition (see the commentary to Section 8).

Litra (c) provides a definition of "decent working conditions". The definition covers fundamental rights at work as stated in the internationally recognised human rights, enshrined, among other places, in the ILO's core conventions, cf. the ILO's Declaration on Fundamental Principles and Rights at Work (1998). The ILO's Decent Work Agenda establishes four strategic objectives: facilitate employment that provides a living wage, safeguard labour rights, enhance and improve the effectiveness of social protection schemes, and strengthen tripartism. The term "decent working conditions" thereby also encompasses the safeguarding of health, safety and the environment in the workplace and wages that enable workers to provide for themselves and their families ("living wage"). This follows from the ILO's declarations on Fair Globalisation

(2008), Global Jobs Pact (2009) and the ILO's Centenary Declaration for the Future of Work (2019) and is among the purposes described in the preamble of the ILO Constitution ("the provision of an adequate living wage […] the protection of the worker against sickness, disease and injury") and which the tripartite constituents of the ILO, by virtue of their membership, are obliged to observe. UN Sustainable Development Goal no. 8 is largely intended to safeguard the same issues by promoting sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all. Examples of relevant conventions on health, safety and the environment are ILO Convention no. 155 on occupational safety and health in the working environment and ILO Convention no. 187 on a promotional framework for occupational safety and health at work. Articles 6 and 7 of the UN Covenant on Economic, Social and Cultural Rights, which is covered by the definition of "fundamental human rights", offers guidance on decent wages.

Litra (d) defines the term "supply chain". The definition covers any party, e.g., enterprises and individuals, in the chain of suppliers and sub-contractors, which delivers or produces goods, services or other input factors included in an enterprise's delivery of services or production of goods. Thus, the supply chain encompasses any party involved in the process of transporting and processing a product from the raw material stage to finished product. This can be both suppliers and sub-contractors, but also their business partners, as long as their input factors are included in the enterprise's (i.e. duty-bearer's) production. "Input factors", means raw materials, components, services, as well as transport etc. Return schemes and other disposals will be a part of the supply chain, as a result of the circular economy. The definition of "supply chain" is intended to correspond with the equivalent terminology in Article 2 (c) of the EU's Conflict Minerals Regulation (EU/2017/821). In conjunction with the definition of "business partner" in (e), this definition is intended to correspond with the definition of "business relationships" in the OECD Guidelines for Multinational Enterprises.

Litra (e) defines "business partner" as any party that supplies goods or services directly to the enterprise, but that is not covered by the definition of "supply chain" in (d). This definition encompasses actors that are in direct contractual relationships with the enterprise, cf. "directly". Examples of actors that are covered by the definition of "business partner" are consulting firms that develop the website of the enterprise, the company that cleans the enterprise's business premises, the company that supplies office chairs and equipment to the enterprise and advertising agencies. These actors do not supply goods or services that are included in the enterprise's production of goods and services that they offer and are therefore not part of the supply chain pursuant to (d), but nevertheless have a direct connection to the enterprise. In conjunction with the definition of "supply chain" in (d), this definition is intended to correspond with the definition of "business relationships" in the OECD Guidelines for Multinational Enterprises.

Second paragraph, first sentence grants the Ministry authority to determine in greater detail by regulations what is to be considered "fundamental human rights" pursuant to the definition in the first paragraph (b) and "decent working conditions" in the first paragraph (c). *The second sentence* grants the Ministry authority to determine by regulations exemptions from the duty-bearers, i.e., enterprises that fall within the definition of the first paragraph, (a), but are nevertheless not to be considered a duty-bearer pursuant to the Act.

Reference is made to more detailed descriptions in points 7.2.3, 7.3.3 and 7.4.3.

Re Section 4

This section regulates enterprises duty to carry out due diligence.

The first paragraph, first sentence specifies that the enterprises shall carry out due diligence in accordance with the OECD Guidelines for Multinational Enterprises. Due diligence as a method is key to the OECD Guidelines and involves investigating and managing risks within the enterprise itself, and the risks for employees' and others' human rights that are affected by the enterprise. Due diligence in accordance with the OECD Guidelines will also be in line with the UN Guiding Principles on Business and Human Rights (UNGP). The fact that due diligence according to this provision is to be carried out in line with the OECD Guidelines is important in order to avoid the development of parallel systems; one national system and one international system with the UNGP and the OECD Guidelines. What is required pursuant to this provision in order to carry out satisfactory due diligence, will therefore depend on what is expected according to the international principles and guidelines. The Act's provision regarding due diligence shall therefore be interpreted in line with the at all times prevailing principles and guidelines. This entails that the enterprises must use possible revised guidelines from the OECD in their work on due diligence.

Due diligence that is carried out pursuant to this Act shall be related to fundamental human rights and decent working conditions. The duty is substantively limited compared to the international principles and guidelines, which go further by also applying to other areas, e.g., the environment, bribery and corruption.

The OECD Due Diligence Guidance explains how enterprises can carry out due diligence in accordance with the OECD Guidelines. *The OECD Due Diligence Guidance for Responsible Business Conduct – An introduction* provides a brief introduction to the due diligence method and clarifies what responsibilities enterprises have regarding responsible conduct. The OECD's guidance provides enterprises with a comprehensive approach to due diligence as a method and includes explanations, advice and illustrated examples of due diligence, that enterprises are intended to use as assistance in carrying out due diligence pursuant to this provision. There are also sectoral guides that provide specific and practical advice adapted to different sectors. These are the *OECD Due Diligence Guidance for Responsible Supply Chains in the Garment & Footwear Sector*, *OECD Guidance for Responsible Agricultural Supply Chains, OECD Sectoral Guidance on Responsible Business Conduct for Institutional Investors*, *OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas* and the *OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector*. The guidance materials are dynamic documents that can be changed or replaced with new guidance. The enterprises must use the applicable version at the time they are carrying out the due diligence. In order to identify risks and prioritise high-risk areas, the enterprises can also use the DFØ's product-based high-risk list as guidance. However, this list is not exhaustive.

The first paragraph, (a) to (f) lists what the due diligence shall contain and is intended to correspond with the stages in the OECD Due Diligence Guidance for Responsible Business Conduct. The enterprises are only to review the stages that are relevant based on their own operations. This means that if an enterprise e.g., following the identification of risks of adverse impacts on fundamental human rights and decent working conditions pursuant to (b) does not

identify any risks, it will also not be necessary to implement measures or monitor results, cf. (c) and (d).

Pursuant to *(a)* the enterprises shall embed responsible business conduct into the enterprise's policies. This applies regardless of whether the enterprise uses the term “policies” or other another term for its steering documents, routines etc. It is the actual content of the instrument that is key. This stage is to ensure that the enterprises have policies for how they are to work with fundamental human rights and decent working conditions so that this is embedded in the ordinary business operations. According to the OECD Due Diligence Guidance for Responsible Business Conduct, this is a matter of preparing, approving and communicating policies for responsible business conduct and plans for due diligence that clarify the enterprise’s obligations in accordance with the principles in the OECD Guidelines for Multinational Enterprises. This applies to the enterprises’ own operations, the supply chain and other business partners. It is also a matter of embedding the enterprise’s policies for responsible business conduct in the enterprise’s management and governance systems so that they are embedded in the ordinary business operations. At the same time, considerations must be made for the legal guidelines for enterprises’ independence, autonomy and legal structure, which may be relevant through national acts and regulations. Furthermore, it is a matter of embedding expectations and policies regarding responsible business conduct in all contracts with suppliers and business partners. The OECD Due Diligence Guidance for Responsible Business Conduct lists several practical measures the enterprises can implement in order to satisfy this requirement (See pages 22-24 and the questions and answers relating to this issue on pages 56-60.

Pursuant to *(b)* the enterprises shall identify and assess actual and potential adverse impacts on fundamental human rights and decent working conditions. The term “adverse impacts” encompasses actual and potential adverse impacts on the rights of individuals. “Potential impacts” means risks of impacts that have not yet resulted in an actual impact. Examples of adverse impacts on fundamental human rights and decent working conditions are forced labour, child labour, wage discrimination for equal work or work of equal value, failing to respect the right of workers to form and join trade unions, discrimination of workers in employment and occupation on grounds of e.g., race, colour, sex, language and religion, gender-based violence or harassment, payment of wages that does not cover the basic needs of the workers and their families and restriction of people’s access to clean water (see the OECD Due Diligence Guidance for Responsible Business Conduct, pages 38 and 39).

The due diligence shall cover adverse impacts that are to varying degrees connected to the enterprise. “Caused” means that the enterprise alone is sufficient for the impact to occur. An example is if an enterprise discriminates against women or ethnic minorities in employment. “Contributed toward” means an activity that causes, facilitates or encourages another entity to cause adverse impacts. It does not include minor or trivial contributions. An example is if an enterprise sets very short lead times for the delivery of a product, despite knowing from previous similar products that the production time is not feasible, and at the same time limiting the use of pre-approved subcontracting. Such acts increase the risk of excessive use of overtime with the producer. If no measures were implemented to mitigate the risk of the harm occurring, the seller may have contributed to excessive use of overtime on the part of the producer. “Directly linked with” refers to the relationship between the impact and the enterprise’s products, services or operations via a business partner or the supply chain. The wording

"directly" is limited to contractual relationships, such as direct purchases. An example is if an enterprise purchases cobalt that is used in its products, and that is extracted with the use of child labour, the enterprise may be directly linked with the adverse impact, i.e., child labour. In this case, the enterprise has not caused or contributed to the adverse impact itself, but there may nevertheless be a direct link between the enterprise's products and the adverse impact through the business relationships that are involved in the enterprise's cobalt purchases, i.e., with smelters, sellers, as well as the mining company that uses child labour. The terms "supply chain" and "business partner" are defined in Section 3, first paragraph (d) and (e), respectively (see the commentary to the provisions). "Operations" refers to the same entity that is considered to be the duty-bearer pursuant to the definition in Section 3, first paragraph (a). The understanding of the terms "caused", "contributed toward" and "directly linked with" correspond with what is used in the OECD Due Diligence Guidance for Responsible Business Conduct (see especially pages 70 and 71).

Where the impact is identified as having occurred is not significant. Adverse impacts can be identified both within and outside the enterprise's operations, supply chain and business partners. Adverse impacts on e.g., the local population or indigenous peoples are therefore also covered, as long as the adverse impact can be linked to the enterprise's operations, supply chain or a business partner.

In accordance with the OECD Due Diligence Guidance for Responsible Business Conduct, (b) relates to carrying out a broad scoping exercise to identify all areas of the enterprise, all operations and business relationships, including in its supply chains, where risks are most likely to be present and most significant. Relevant elements include, among other things, information about sectoral, geographic, product and enterprise risk factors, including known risks the enterprise has faced or is likely to face. The analysis should enable the enterprise to prioritise the most significant risk areas for further assessment. For enterprises with less diverse operations, in particular smaller enterprises, such a broad scoping exercise may not be necessary before moving to the stage of identifying and prioritising specific impacts.

According to the OECD Guidance, enterprises shall start with the most significant identified risk areas and carry out repeated and increasingly thorough assessments of prioritised operations, suppliers and business partners in order to identify and assess actual and potential adverse impacts. The enterprises shall assess how they are involved in the actual or potential adverse impact that has been identified, in order to determine the appropriate follow-up. This means that the enterprises shall especially assess if i) they have caused or may potentially cause adverse impacts, if ii) they have contributed to or may contribute to adverse impacts, or if iii) adverse impacts are or may become directly associated with the enterprise's operations, products or services via a supply chain or business partner.

Based on the information obtained on actual and potential adverse impacts, the enterprises shall prioritise the most significant risks and adverse impacts with a view of follow-up measures. The prioritisation shall be carried out based on severity and likelihood. Prioritisation must be done where it is not possible to rectify all potential and actual adverse impacts immediately. Once the most significant impacts have been identified and addressed, the enterprise should proceed with addressing less significant impacts. The OECD Due Diligence Guidance for Responsible Business Conduct lists several practical measures the enterprises can implement to

satisfy this requirement (See pages 25-28 and the questions and answers regarding this issue on pages 61-73.

Pursuant to *subsection (c)* the enterprises shall implement suitable measures to cease, prevent or mitigate adverse impacts based on the enterprise's prioritisations and assessments pursuant to (b). According to the OECD Due Diligence Guidance for Responsible Business Conduct, this is a matter or ceasing activities that cause or contribute to adverse impacts, based on the enterprise's assessment of the connection to the adverse impact, cf. (b). Furthermore, the enterprises shall prepare and implement plans that are suitable to prevent and mitigate potential (future) adverse impacts. The enterprises are also to prepare and implement plans to cease, prevent or mitigate actual or potential adverse impacts that are directly linked with the enterprise's operations, products or services. The enterprise's prioritisation of risks shall form the basis for these plans. Appropriate follow-up measures to risks associated with the supply chain or business partner may be 1) continuation of the relationship throughout the course of risk mitigation efforts; 2) temporary suspension of the relationship while pursuing ongoing risk mitigation; or, 3) disengagement with the business relationship either after failed attempts at mitigation, or where the enterprise deems mitigation not feasible, or because of the severity of the adverse impact. A decision to disengage should take into account potential social and economic impacts. These plans should detail the actions the enterprise will take, as well as its expectations of its suppliers and business partners. The OECD Due Diligence Guidance for Responsible Business Conduct lists several practical measures the enterprises can implement to satisfy this requirement (See pages 29-31 and questions and answers regarding this issue on pages 74-81).

Pursuant to *(d)*, the enterprises are to track the implementation and results of measures pursuant to (c). According to the OECD Due Diligence Guidance for Responsible Business Conduct, this is a matter of tracking the implementation and results of the enterprise's due diligence measures to identify, assess, prevent, mitigate and, where appropriate, support remediation of impacts, including with business relationships. The enterprises are then to use the experiences gained from tracking to improve these processes in the future. The Guidance lists several practical measures the enterprises can implement to satisfy this requirement (See page 32 and questions and answers regarding this issue on pages 82-84).

Pursuant to *(e)* the enterprises shall communicate with affected stakeholders and rights-holders regarding how adverse impacts are addressed pursuant to (c) and (d). According to the OECD Due Diligence Guidance for Responsible Business Conduct, this stage entails communicating externally, both with the general public and affected parties. However, this stage must be viewed in context with the duty to account for due diligence in Section 5, which lists minimum requirements for what key information is to be disclosed to the general public. Therefore, this stage only covers information to parties that are affected or potentially affected by the adverse impacts. Such communication may be natural where the enterprises have caused or contributed toward the adverse impacts. Thus, whether communication with affected parties is appropriate depends on the enterprises' connection with the adverse impacts. "Stakeholders" means e.g., workers, workers' representatives, trade unions, representatives from local communities, civil society organisations, investors and professional industry and trade associations. The term "rights-holders" also covers the representatives of the rights-holders. The OECD Due Diligence Guidance for Responsible Business Conduct lists several practical measures the enterprises can

implement to satisfy this requirement (See page 33 and questions and answers regarding this issue on pages 85-87).

Pursuant to *(f)*, the enterprises are to provide for or co-operate in remediation and compensation where this is required. According to the OECD Due Diligence Guidance for Responsible Business Conduct, this entails that when the enterprise identifies that it has caused or contributed to actual adverse impacts, it shall address such impacts by providing for or cooperating in their remediation. Thus, this stage depends on the enterprises' connection to the adverse impacts. What types of remediation mechanisms are suitable depends on the specific circumstances, including the type of harm and scope thereof. Reference should be made to possible existing national and international standards or laws regarding what constitutes suitable remediation. According to the Guidance, the enterprises shall, when appropriate, provide for or cooperate with legitimate remediation mechanisms through which impacted stakeholders and rights-holders can raise complaints and seek to have them addressed with the enterprise. According to the Guidance, referring an alleged impact to a legitimate remediation mechanism may be particularly helpful in situations where there are disagreements on whether the enterprise caused or contributed to adverse impacts, or on the nature and extent of remediation to be provided. The OECD Due Diligence Guidance for Responsible Business Conduct lists several practical measures the enterprises can implement to satisfy this requirement (See pages 34-35 and questions and answers regarding this issue on pages 88-91).

The second paragraph specifies that due diligence shall be carried out regularly and in proportion to the size and nature of the enterprise and the context of its operations, as well as the severity and probability of adverse impacts. Thus, this provision regulates that due diligence shall be adapted to each individual enterprise and be risk-based, proportionate and repeated. Therefore, what is expected of the enterprises will vary. This also follows from the international principles and guidelines. "Size of the enterprise" means that the due diligence must be adapted to the resource situation in the enterprise. "Nature of the enterprise" and "context" mean the industry and what goods and services the enterprise offers, as well as where in the world the enterprise's production takes place, including what challenges and risks exist there. Reference is made to the OECD Due Diligence Guidance for Responsible Business Conduct, pages 46 and 47, which provides examples of how resource limitations in the enterprise can be managed and how due diligence can be adapted to the context of the enterprise. The enterprise's due diligence shall be commensurate to the severity and likelihood of adverse impacts. Thus, due diligence shall be risk-based. Identification and assessment of adverse impacts requires an overall analysis of the enterprise itself, supply chains and business partners. Important initial assessments may, for instance, be whether the range of operations or production process is particularly high-risk, or whether the context creates particular risk. An important part of the activity is to prioritise risks for more detailed assessment and management. Where the actual or potential adverse impacts are severe, this will require more comprehensive assessments and measures. The likelihood of adverse impacts will be a supplementary element in the assessment. That due diligence shall be carried out regularly means that the process is continuous and must be evaluated continuously so that the enterprise can learn from what worked and what did not work and improve the processes.

The third paragraph grants the Ministry authority to issue more detailed regulations regarding how the enterprises are to carry out the due diligence pursuant to the provision.

Reference is made to the more detailed descriptions in point 8.2.3.1 and 8.2.3.5.

Re Section 5

This section regulates the duty to publish an account of due diligence pursuant to Section 4, what the account shall contain, as well as how and when it is to be published.

The first paragraph specifies the enterprises' duty to publish an account and regulates the content of such accounts. The provision lists minimum requirements. It is up to the enterprises themselves to decide whether they wish to publish a deeper account than required by the provision.

Litra (a) specifies that the account shall contain a general description of the enterprise's structure, area of operations, policies and procedures for handling actual and potential adverse impacts on fundamental human rights and decent working conditions. Relevant information in such a description is a general description of the enterprise's structure, what products and services it offers, the markets in which the enterprise operates, how the enterprise has embedded work on human rights and decent working conditions in internal policies and routines, as well as information on early warning channels and remediation mechanisms that are to contribute to identifying adverse impacts.

Litra (b) specifies that the account shall contain information regarding the actual adverse impacts on fundamental human rights and decent working conditions, and significant risks of adverse impacts that the enterprise has identified through its due diligence. The purpose is to provide the general public access to the enterprise's risk assessment and the areas of risk the enterprise has chosen to focus on in its due diligence. According to Principle 21 in the UN Guiding Principles on Business and Human Rights, formal reporting is especially relevant where there is a risk of severe adverse impacts on human rights. What enterprises are required to account for in this regard is less comprehensive than what the enterprises' due diligence shall include. The enterprises' due diligence shall include all "actual and potential" adverse impacts, cf. Section 4, first paragraph (b), whereas the duty to account for due diligence is linked with actual adverse impacts and "significant" risks of adverse impacts. "Risk" means the severity or potential severity of the adverse impacts on those affected and the likelihood of adverse impacts. What is to be considered "significant risks" has to be individually assessed.

Litra (c) specifies that the account shall contain information regarding measures the enterprise has implemented or plans to implement to cease actual adverse impacts and to mitigate significant risks of adverse impacts. Litra (c) may include information regarding systems for receiving and addressing complaints, as well as information regarding how the enterprise remedies adverse impacts and provides possible compensation or remediation. Other relevant information may be information regarding stakeholder engagement with particularly vulnerable groups, e.g., indigenous peoples. It may also include information regarding industry cooperation to solve the challenges. Measures and opportunities to influence will vary based on, among other things, the structure of the supply chain. This provision also specifies that the account shall include a discussion of the results or expected results of the measures the enterprise has implemented or plans to implement. This entails that the enterprises shall at least account for

how selected measures have contributed to or are expected to contribute to mitigating risks or remedying actual adverse impacts.

The second paragraph determines that the account must not include data relating to an individual's personal affairs and operational and business matters that can be exempt from the duty to disclose information, cf. Section 6, second paragraph, (c) and (d), as well as classified information pursuant to the Security Act, and information that is protected pursuant to the Intellectual Property Rights Act, cf. Section 6, fourth paragraph. Reference is made to commentary to these provisions. As with the duty to disclose information, generally, it will not be permissible to exempt information regarding actual adverse impacts on fundamental human rights in connection with the enterprise and its supply chain, with which the enterprise is familiar, cf. Section 6, third paragraph. The duty to account for due diligence does not extend beyond the parent company's actual possibilities according to national legislation to gain access to information from foreign-registered subsidiaries that do not offer goods and services in Norway.

The third paragraph regulates how the account is to be published. *The first sentence* determines that the account shall be published on the enterprise's website. The duty to publish the account on the enterprise's website applies regardless of whether the enterprise additionally opts to include the account in its annual report as part of the account on social responsibility pursuant to Section 3-3 (c) of the Accounting Act. It is taken into account that the enterprises that are covered by the Act largely have their own websites. Enterprises that do not have websites must make the account available in another way. Since the account is published on the enterprise's website, it will be sufficient to include a reference in the annual report to where this information is publicly available in order to satisfy the Accounting Act's requirement of reporting on social responsibility, cf. Section 3-3 (c), fifth paragraph. It is specified in the *second sentence* of the provision that this shall correspondingly apply to accounts of due diligence pursuant to the Act.

The fourth paragraph, first sentence regulates when the account is to be published. This provision specifies that the account shall be updated and published no later than 30 June of each year. This corresponds with the main rule in the Accounting Act regarding the time limit for determination of annual report, cf. Section 3-1, cf. Section 1-7 of the Accounting Act. The account shall otherwise be updated in case of significant changes to the enterprise's risk assessments. This must be viewed in context with Section 4, second paragraph, which determines that due diligence shall be carried out regularly. Continuous due diligence can uncover a changed risk situation that forms the basis for updating the account more frequently than once a year. In such circumstances, the enterprises shall not wait until the next annual update, but instead update the information continuously. The wording "significant changes" indicates the existence of a certain threshold for when new information necessitates updating. What is to be considered "significant changes" has to be individually assessed. *The second sentence* determines that the account shall be signed by the board of directors and managing director in accordance with the rules in Section 3-5 of the Accounting Act. Reference is made to commentary to Section 3-5 of the Accounting Act.

The fifth paragraph grants the Ministry authority to issue more detailed regulations regarding how enterprises are to account for due diligence.

Reference is made to the more detailed descriptions in point 8.2.3.6.

Re Section 6

This section regulates the general public's right to, and thereby the enterprises' duty to respond to requests for information, regarding how the enterprise addresses actual and potential adverse impacts on fundamental human rights and decent working conditions.

The first paragraph, first sentence specifies that "any person" has the right to information. "Any person" means anyone seeking information, e.g., consumers, trade unions, organisations, journalists, investors and public contracting authorities. Information seekers may have different reasons for requesting information. The provision does not require that the information seeker has special reasons for receiving the information and is therefore also not required to provide a reason for the request for information. The request for information must be submitted in writing, e.g., by email, online form, or physical letter that is e.g., sent to the head office or delivered directly in the shop.

The first sentence specifies the main rule that information seekers have the right to information regarding how the enterprise addresses actual and potential adverse impacts on fundamental human rights and decent working conditions. The term "adverse impacts" covers both impacts that are applicable within and outside of the enterprise's operations, supply chains or business partners, as long as the impact is linked with these. Information regarding adverse impacts that affect e.g., the local population or indigenous peoples can therefore be covered by the duty to disclose information.

The starting point for the duty to disclose information is the enterprises' due diligence pursuant to Section 4. This means that the request for information may exceed what follows from the duty to account for due diligence pursuant to Section 5. Furthermore, this entails that requests for information may relate to information that follows from the various stages of due diligence pursuant to Section 4, first paragraph. Therefore, the enterprises will often be in possession of the information the information seeker is requesting, entailing that the request for information will not require additional work to obtain the information. However, a request will still be able to demand that the enterprise obtains information that the enterprise does not possess at the time of the request, even if it has carried out good due diligence. For instance, if it concerns information about production conditions that the enterprise has deprioritised, or if it concerns unforeseen events that have occurred at a production site. See the more detailed discussion in point 8.3.3.2. The scope of the duty to disclose information will vary depending on the request for information and, among other things, the size of the enterprises to which the request is directed. In principle, the larger the enterprise, the more can be expected of the enterprise in terms of responding to requests for information. However, some enterprises will be able to refer to importers, wholesalers or suppliers for various questions, where it can be expected that these actors have an overview of the supply chain.

The request for information can relate to both general information or information relating to a specific product or specific service the enterprise offers, cf. *the second sentence*. A request for information may e.g., relate to general information regarding the enterprise's work, systems and measures to cease, prevent or mitigate adverse impacts on fundamental human rights and decent working conditions. This will typically involve the organisation of the work in the enterprise, the enterprise's policies and routines and systems for due diligence. Information

regarding how the enterprise works overall to prevent adverse impacts and how the enterprise works on setting requirements for and following up health, safety and the environment, and measures to promote worker representation and early warning channels may be important in an overall presentation. The request for information may also relate to information regarding what adverse impacts the enterprises have identified and what measures the enterprise has implemented or plans to implement.

That the request for information may be linked to a specific product or a specific service may e.g., involve more detailed information regarding the origins of a raw material and what the enterprise is doing to safeguard the working conditions at the production site. The right to information does not entail a duty for the enterprises to name the specific production site. The general public shall nevertheless receive adequate and accurate information regarding the human rights and labour rights conditions, without the name of the production site having to be named. This can be done e.g., by providing information regarding where in the world and in what context the production occurs, which potential and actual adverse impacts the enterprise has possibly identified and how the enterprise is working to safeguard the working conditions at the production site. Specific requests for information regarding specific goods and services will often entail that the enterprises have to obtain more information than the information the enterprise has obtained through the due diligence it has carried out to enable it to respond to the request for information in a satisfactory manner. What can be expected of the enterprise's resource use in connection with responding to requests for information must be viewed in light of the principle of proportionality. In certain cases, requests for information relating to a specific product or service can be answered with information regarding identified risks and implemented measures. In other cases, it will be possible to satisfactorily respond to the request for information with information regarding identified risks, and that measures have not been initiated. This is because the principles of a risk-based approach and proportionality, on which the duty to carry out due diligence is based, entails that enterprises are not required to initiate measures relating to all identified risks. If the enterprise identifies many areas of risk, the enterprise will perhaps have to prioritise certain areas of risk to continue working on over others. The duty to disclose information does not require the enterprises to initiate measures but may nevertheless identify conditions that are of such a severity that they should be prioritised in future due diligence.

The second paragraph specifies when the enterprise may deny a request for information. Pursuant to *(a)*, a request can be denied if it does not provide a sufficient basis for identifying what the request concerns. It may be that the request is formulated in such a manner that the enterprises are unable to identify the question. It must be possible to understand what conditions the question concerns. Incomprehensible requests may be denied. However, this is a narrow exemption provision. The information seeker can be "any party" e.g., a consumer, an organisation or a journalist, which entails that the requests for information can be formulated differently and be more or less clearly formulated depending on who is requesting information. For instance, a consumer who does not formulate their request as clearly as a journalist shall not be deprived of their right to information based on this exemption provision. In case of unclear requests for information, it must be expected that enterprises engage with the information seeker to attempt

to clarify what information the information seeker is requesting, before the grounds for denial are potentially used.

Pursuant to *(b)*, a claim may be denied if it is "clearly unreasonable". This is a narrow exemption provision. A corresponding provision is included in Section 17, first paragraph (b) of the Environmental Information Act. This provision is included to protect e.g., against insulting requests or requests that affect the enterprise in an inappropriate manner. The aim of the provision is, among other things, to avoid excessive financial and administrative burdens on the enterprises. The assessment of what is clearly unreasonable entails a consideration of the general public's interests in access to questions covered by the purpose of the Act, and the workload for the enterprise. Requests for information can e.g., be denied if they concern insignificant matters, or if the enterprise has to spend disproportionate resources on obtaining and compiling information in order to respond to the request. However, this ground for denying a request must be viewed in connection with the enterprise's right to extend the time limit for responding to the request for information by two months, if the amount or type of information requested renders it disproportionately burdensome to respond to the request for information within three weeks, cf. Section 7, second paragraph, second sentence.

Pursuant to *(c)*, a request may be denied if the requested information concerns data relating to an individual's personal affairs. The enterprises must adapt the information so that personal affairs are not disclosed. If this is not possible, the request for information may be denied. This provision must be interpreted in the same manner as the corresponding provision in the Public Administration Act; Section 13. "Personal affairs" means data concerning a person which one would ordinarily want to keep private. Such data may e.g., relate to the characteristics of a person or something the person has done that is suited to characterise the person. Such data may, among other things, include genetic or other sensitive biometric data, health condition, beliefs, political opinions or sexual orientation. The duty of confidentiality does not apply to data regarding national ID number, citizenship, place of residence, marital status, occupation, employer or workplace.

Pursuant to *(d)*, a claim may be denied if the requested information concerns data regarding technical devices and procedures or other operational and business matters which for competitive reasons it is important to keep secret in the interests of the person whom the information concerns. The enterprises must adapt the information so that operational and business matters are not disclosed. If this is not possible, the request for information may be denied. This provision must be interpreted in the same manner as the corresponding provision in the Public Administration Act; Section 13. Data regarding operational and business matters will include information that directly relates to the operation of commercial activity, such as information regarding production methods, products, contract terms, marketing strategies, analyses, forecasts or strategies relating to the enterprise. However, the key limitation relates to the condition that it must be important for competitive reasons to keep the data secret. In other words, in order for the data to be subject to a duty of confidentiality, disclosure of the data must be liable to result in financial losses or reduced profits for the enterprise, either directly or in that competitors can exploit the data. In the preparatory works to the Trade Secrets Act it is mentioned that supplier lists may in certain cases constitute trade secrets, cf. Prop. 5 L (2019–2020), point 5.1.5. Even though the definition of trade secrets pursuant to Section 2, first paragraph of the Trade Secrets

Act is not identical to the designation of information that is protected pursuant to Section 13, first paragraph (2) of the Public Administration Act, the Ministry considers that information that will be protected as trade secrets pursuant to the Trade Secrets Act will normally also be covered by the duty of confidentiality pursuant to Section 13, first paragraph (2), (see Prop. 5 L (2019–2020), point 5.1.7).

The third paragraph specifies circumstances where the information shall nevertheless be disclosed. This concerns information regarding actual adverse impacts on fundamental human rights with which the enterprise is familiar. See more detailed descriptions in point 8.3.3.4.

The fourth paragraph establishes that the Intellectual Property Rights Act takes precedence where the right to information pursuant to the Act conflicts with intellectual property rights. This provision is considered to be of little practical significance. Furthermore, it is determined that classified information pursuant to the Security Act shall never be disclosed in responses to requests for information.

The right to information does not extend beyond the parent company's actual possibilities according to national legislation to gain access to information from foreign-registered subsidiaries that do not offer goods and services in Norway.

The fifth paragraph grants the Ministry authority to issue regulations to determine more detailed rules regarding the right to information and the right of enterprises to deny a request for information.

Reference is made to more detailed descriptions in points 8.3.3.1 and 8.3.3.4.

Re Section 7

This section specifies case processing rules for the enterprises required to respond to requests for information pursuant to Section 6, including how the enterprises are to respond to requests for information, the time limits for responding to the requests and the right to demand a more detailed justification for a denial of a request for information.

The first paragraph establishes that the enterprises shall respond to requests for information in writing. This must be viewed in connection with Section 6, first paragraph, which regulates that a request for information shall also be submitted in writing. Denials of requests for information shall also be issued in writing. Furthermore, this provision regulates the quality of the provided response. The response shall cover what the information seeker is requesting and be formulated in a comprehensible manner. This means that the information shall provide an adequate, accurate and comprehensible overview of the requested information. What is required in order to satisfy the requirements will vary depending on the prerequisites of the enterprises and based on who has submitted the request, cf. the principle of proportionality. The workload must be weighed against the consideration for the general public's need for information. See also the commentary to Section 6. The enterprises may refer the information seeker to publicly available information if the response the information seeker will find there satisfies the quality requirements listed in the provision. Referring the information seeker to publicly available information will be practical in cases where the information is already written and made available, e.g., through the account of due diligence, cf. Section 5.

The second paragraph lists time limits for the enterprises' responses to requests for information. The main rule is that a request for information shall be answered within a reasonable time and no later than three weeks after the request for information is received by the enterprise, cf. the *first sentence.* If reference can be made to existing information, or where a response can be given without further investigation, the wording "within reasonable time" indicates that the answer must be provided within a few days. *The second sentence* is an exemption rule that, in special circumstances, extends the time limit for disclosing information to two months after the request for information is received. The exemption rule may, among other things, be applicable where the request involves the disclosure or compiling of larger amounts of information, and where responding to the request for information requires time and work on the part of the enterprise beyond what is normally the case with requests for information. However, this is a narrow exemption rule, cf. the wording "disproportionately burdensome". *The third sentence* determines that the enterprises, in invoking an extended time limit in the second sentence, shall inform the information seeker of the extension of the time limit, the reasons for the extension, and when the information can be expected. Notification regarding an extended time limit for the processing of the request for information shall be provided to the information seeker within three weeks of receipt of the request for information. The notification shall be issued in writing.

The third paragraph establishes the applicable case processing rules if the enterprises deny a request for information pursuant to Section 6, second paragraph. *The first sentence* establishes that the enterprises are required to refer to the legal basis for denying the request for information, as well as inform of the right and time limit for demanding a more detailed justification for the denial. The enterprise shall also inform that the Consumer Authority is the supervisory and guidance body. As opposed to the Environmental Information Act, this Act contains no right to have an appeal of a denial processed according to private law. A request from an information seeker to the Consumer Authority will therefore not be processed as a private law appeal but will in reality become a tip from the information seeker that the enterprise, in the information seeker's assessment, has denied a request for information in breach of the Act. Based on the information seeker's enquiry, the Consumer Authority may address the case with the enterprise if the body believes there are grounds for doing so, cf. Section 9 regarding monitoring and enforcement.

The fourth paragraph, first sentence establishes the right and time limit for the information seeker to demand a more detailed justification of the denial of the request for information. This does not entail a complete and comprehensive review of arguments and considerations, but rather a brief account of why the enterprise believes there is a legal basis for denying the request for information. *The second sentence* establishes the enterprise's time limit of three weeks to provide the information seeker with a more detailed justification. The justification shall be provided in writing.

The fifth paragraph grants the Ministry authority to issue more detailed rules regarding how the enterprises shall process requests for information.

Reference is made to more detailed descriptions in points 8.3.3.5 and 8.3.3.6.

Re Section 8

This section regulates the Consumer Authority's duty to provide guidance to the enterprises regarding the duties in the Act. *The first sentence* specifies that the Consumer Authority, by way of general information, advice and guidance, shall work to ensure that the rules in the Act and Consumer Authority's decisions pursuant to the Act are observed. This provision entails a specification of the Consumer Authority's duty to provide guidance, which extends further than the duty to provide guidance in Section 11 of the Public Administration Act, which is referred to in the *second sentence.* The duty to provide guidance in Section 11 of the Public Administration Act requires the Consumer Authority to provide individual guidance to the consumers. The general guidance may, among other things, consist of preparing information letters, holding courses, e.g., regarding due diligence, prepare guidance materials that e.g., specify which human rights conventions and specific rights are covered by the duties in the Act, and provide the enterprises with general tips and advice on how they should proceed in order to fulfil the requirements in the Act.

Reference is made to more detailed descriptions in point 9.2.3.

Re Section 9

This section regulates who is to monitor compliance with the duties of the Act and what will be the starting point for such supervision. *The first paragraph, first sentence* determines that the Consumer Authority is the supervisory body pursuant to the Transparency Act. *The second sentence* specifies what considerations shall guide the Consumer Authority's supervision of the Act, i.e., to promote enterprises' respect for fundamental human rights and decent working conditions. This must be viewed in connection with the purpose of the Act pursuant to Section 1.

The second paragraph regulates the Consumer Authority's case processing and establishes the principle that the Consumer shall attempt to get the enterprises to comply with the duties in the Act (known as the negotiation model). This will be a strong principle in the Consumer Authority's supervision of the Transparency Act. The provision corresponds with Section 36, first paragraph of the Marketing Control Act.

The third paragraph, first sentence specifies what action the Consumer Authority can take if an enterprise acts in breach of the provisions of the Act. The Consumer Authority shall then obtain a written confirmation that the illegal conduct will cease or issue a decision. The Consumer Authority may issue decisions in all cases. The provision corresponds with Section 36, second paragraph, first sentence of the Marketing Control Act. *The second sentence* establishes the Market Council as the appeal body for the Consumer Authority's decisions. More detailed rules regarding which decisions the Market Council shall process are stated in Section 37 of the Marketing Control Act, which is applicable in accordance with the fourth paragraph of the provision.

The fourth paragraph determines that the Marketing Control Act's rules regarding the independence of the Consumer Authority and Market Council in Section 32, organisation in Section 33, the Market Council's duties pursuant to Section 37 and the more detailed rules regarding the Consumer Authority and Market Council established in the regulations to Section 38, shall apply to the Consumer Authority's and Marketing Council's monitoring of the Transparency Act.

Reference is made to more detailed descriptions in points 9.1.3 and 9.3.3.1.

Re Section 10

This section regulates the Consumer Authority's and Market Council's right to demand information. *The first paragraph* corresponds with Section 34, first paragraph of the Marketing Control Act. *The second paragraph* corresponds with Section 34, fourth paragraph, first and second sentence of the Marketing Control Act, and specifies that information may be demanded irrespective of the duty of confidentiality.

Reference is made to more detailed descriptions in point 9.3.3.2.

Re Section 11

This section specifies what types of decisions the Consumer Authority and Market Council may issue, i.e., prohibition and order decisions pursuant to Section 12, decisions regarding enforcement penalties pursuant to Section 13 and decisions regarding infringement penalties pursuant to Section 14. The section also regulates the right to direct decisions at abettors. It corresponds with Section 39, first, third and fourth paragraph of the Marketing Control Act.

Reference is made to more detailed descriptions in point 9.3.3.3.

Re Section 12

This section establishes the right to establish prohibition and order decisions and corresponds with Section 40 of the Marketing Control Act.

Reference is made to more detailed descriptions in point 9.3.3.3.

Re Section 13

The first paragraph regulates the right to establish enforcement penalties in order to ensure that confirmations pursuant to Section 9, third paragraph and decisions pursuant to Section 12 are observed. This provision corresponds with Section 41 of the Marketing Control Act but differs in that enforcement penalties "may" be established to ensure that decisions are observed, as opposed to in the Marketing Control Act, where the main rule is that enforcement penalties "shall" be established. Thus, there is no requirement that the Consumer Authority shall establish enforcement penalties in all order and prohibition decisions. Instead, this is up to the Consumer Authority to determine. *The second* and *third paragraphs* correspond with Section 41, second and third paragraphs of the Marketing Control Act, and regulate that enforcement penalties may be established as a as a lump sum or as a running charge, and that enforcement penalties may be connected to the duty to disclose information pursuant to Section 10. *The fourth paragraph* determines that a final decision concerning payment of an enforcement penalty is enforceable by distraint. *The fifth paragraph* establishes a regulatory statutory authority to issue more detailed rules regarding the imposition of enforcement penalties in regulations.

Reference is made to more detailed descriptions in point 9.3.3.3.

Re Section 14

The first paragraph regulates the right to impose infringement penalties for breaches of the duty to disclose information in Section 5 and Section 6, and breaches of the time limits for disclosing information in Section 7. It is only the duty to disclose information that can be sanctioned in the form of infringement penalties, i.e., not the content and quality of the information disclosed. However, the Consumer Authority will here be able to use decisions involving enforcement penalties if this is deemed suitable. Infringement penalties may only be imposed in case of repeated breaches.

The second paragraph specifies a requirement of culpability for the imposition of infringement penalties. *The first sentence* lists a near strict liability for enterprises. This means that infringement penalties may be imposed on enterprises without any individual person having demonstrated culpability, in accordance with Section 46 of the Public Administration Act. *The second sentence* lists a requirement of culpability for natural persons which entails that the breach must have been wilful or negligent.

The third and *fourth paragraphs* correspond with Section 42, second and third paragraphs of the Marketing Control Act, and establish elements that are to be emphasised in the assessment of the size of the infringement penalty, as well as rules regarding time limit for payment.

The fifth paragraph establishes a regulatory statutory authority for the Ministry to issue more detailed regulations relating to the assessment of infringement penalties, e.g., by establishing an upper limit for infringement penalties in accordance with Section 44 of the Public Administration Act.

Reference is made to more detailed descriptions in point 9.3.3.3.

Re Section 15

The date of entry into force of the Act is determined by the King in Council. There is an option that different provisions may enter into force at different times. It may then be relevant that the substantive provisions shall enter into force at an earlier date than the provisions regarding enforcement and sanctions. Different dates for entry into force may give the enterprises time to adapt before it becomes relevant to impose sanctions.

The Ministry of Children and Families

hereby recommends:

That Your Majesty approves and signs the submitted proposal for a Proposition to the Storting for an Act relating to enterprises' transparency and work on fundamental human rights and decent working conditions (Transparency Act).

We HARALD, King of Norway,

hereby confirm:

That the Storting will be requested to make a decision on an Act relating to enterprises' transparency and work on fundamental human rights and decent working conditions (Transparency Act).

Proposal

for an Act relating to enterprises' transparency and work on fundamental human rights and decent working conditions (Transparency Act)

Section 1 *Purpose of the Act*

The Act shall promote enterprises' respect for fundamental human rights and decent working conditions in connection with the production of goods and the provision of services and ensure the general public access to information regarding how enterprises address adverse impacts on fundamental human rights and decent working conditions.

Section 2 *Scope of the Act*

The Act applies to larger enterprises that are resident in Norway and that offer goods and services in or outside Norway. The Act also applies to larger foreign enterprises that offer goods and services in Norway, and that are liable to tax to Norway pursuant to internal Norwegian legislation.

The King may issue regulations determining that the Act, in whole or in part, shall apply to enterprises on Svalbard, Jan Mayen and the Dependencies of Norway.

Section 3 *Definitions*

a) For the purposes of this Act, larger enterprises means enterprises that are covered by Section 1-5 of the Accounting Act, or that on the date of financial statements exceed the threshold for two of the following three conditions:
   1. sales revenues: NOK 70 million
   2. balance sheet total: NOK 35 million
   3. average number of employees in the financial year: 50 full-time equivalent

   Parent companies shall be considered larger enterprises if the conditions are met for the parent company and subsidiaries as a whole.
b) Fundamental human rights means the internationally recognised human rights that are enshrined, among other places, in the International Covenant on Economic, Social and Cultural Rights of 1966, the International Covenant on Civil and Political Rights of 1966 and the ILO's core conventions on fundamental principles and rights at work.
c) Decent working conditions means work that safeguards fundamental human rights pursuant to (b) and health, safety and environment in the workplace, and that provides a living wage.
d) Supply chain means any party in the chain of suppliers and sub-contractors that supplies or produces goods, services or other input factors included in an enterprise's delivery of services or production of goods from the raw material stage to a finished product.

e) Business partner means any party that supplies goods or services directly to the enterprise, but that is not part of the supply chain.

The Ministry may issue regulations regarding what is considered fundamental human rights pursuant to the first paragraph (b) and decent working conditions pursuant to the first paragraph (c). The Ministry may issue regulations regarding exemptions from larger enterprises pursuant to the first paragraph (a).

Section 4 *Duty to carry out due diligence*

The enterprises shall carry out due diligence in accordance with the OECD Guidelines for Multinational Enterprises. For the purposes of this Act, due diligence means to

a) embed responsible business conduct into the enterprise's policies
b) identify and assess actual and potential adverse impacts on fundamental human rights and decent working conditions that the enterprise has either caused or contributed toward, or that are directly linked with the enterprise's operations, products or services via the supply chain or business partners
c) implement suitable measures to cease, prevent or mitigate adverse impacts based on the enterprise's prioritisations and assessments pursuant to (b)
d) track the implementation and results of measures pursuant to (c)
e) communicate with affected stakeholders and rights-holders regarding how adverse impacts are addressed pursuant to (c) and (d)
f) provide for or co-operate in remediation and compensation where this is required.

Due diligence shall be carried out regularly and in proportion to the size of the enterprise, the nature of the enterprise, the context of its operations, and the severity and probability of adverse impacts on fundamental human rights and decent working conditions.

The Ministry may issue regulations regarding the duty to carry out due diligence.

Section 5 *Duty to account for due diligence*

The enterprises shall publish an account of due diligence pursuant to Section 4. The account shall at least include

a) a general description of the enterprise's structure, area of operations, guidelines and procedures for handling actual and potential adverse impacts on fundamental human rights and decent working conditions
b) information regarding actual adverse impacts and significant risks of adverse impacts that the enterprise has identified through its due diligence
c) information regarding measures the enterprise has implemented or plans to implement to cease actual adverse impacts or mitigate significant risks of adverse impacts, and the results or expected results of these measures.

Section 6, second paragraph (c) and (d), third and fourth paragraph correspondingly apply to the duties pursuant to the first paragraph.

The account shall be made easily accessible on the enterprise's website and may form part of the account on social responsibility pursuant to Section 3-3 (c) of the Accounting Act. The enterprises shall in annual reports inform of where the account can be accessed.

The account shall be updated and published no later than 30 June of each year and otherwise in case of significant changes to the enterprise's risk assessments. It shall be signed in accordance with the rules in Section 3-5 of the Accounting Act.

The Ministry may issue regulations regarding the duty to account for due diligence.

Section 6 *Right to information*

Upon written request, any person has the right to information from an enterprise regarding how the enterprise addresses actual and potential adverse impacts pursuant to Section 4. This includes both general information and information relating to a specific product or service offered by the enterprise.

A request for information may be denied if

a) the request does not provide a sufficient basis for identifying what the request concerns
b) the request is clearly unreasonable
c) the requested information concerns data relating to an individual´s personal affairs
d) the requested information concerns data regarding technical devices and procedures or other operational and business matters which for competitive reasons it is important to keep secret in the interests of the person whom the information concerns.

The right to information regarding actual adverse impacts on fundamental human rights with which the enterprise is familiar, applies irrespective of the limitations in the second paragraph.

The right to information does not cover information that is classified pursuant to the Security Act or protected pursuant to the Intellectual Property Rights Act.

The Ministry may issue regulations regarding the right to information and the right of enterprises to deny a request for information.

Section *7 Enterprises' processing of requests for information*

Information pursuant to Section 6 shall be provided in writing and shall be adequate and comprehensible.

The enterprise shall provide information within a reasonable time and no later than three weeks after the request for information is received. If the amount or type of information requested makes it disproportionately burdensome to respond to the request for information within three weeks, the information shall be provided within two months after the request is received. The enterprise shall then, no later than three weeks after the request for information is received, inform the person requesting information of the extension of the time limit, the reasons for the extension, and when the information can be expected.

If the enterprise denies a request for information, it shall inform about the legal basis for the denial, the right and time limit for demanding a more detailed justification for the denial and that the Consumer Authority is the supervisory and guidance body.

Any person whose request for information is denied may within three weeks from the denial was received, demand a more detailed justification for the denial. The justification shall be provided in writing, as soon as possible and no later than three weeks after the demand for a more detailed justification was received.

The Ministry may issue regulations regarding the enterprises' processing of requests for information.

Section 8 *Guidance*

The Consumer Authority shall by way of general information, advice and guidance work to ensure that the rules in the Act and decisions pursuant to the Act are observed. The rules

regarding the duty to provide guidance in Section 11 of the Public Administration Act otherwise apply.

Section 9 *Monitoring and enforcement*

The Consumer Authority monitors compliance with the provisions of the Act. This supervision is based on the interest of promoting enterprises' respect for fundamental human rights and decent working conditions.

The Consumer Authority shall on its own initiative, or based on a request from others, seek to influence enterprises to comply with the Act, including by conducting negotiations with the enterprises or their organisations.

If the Consumer Authority finds that an enterprise is in breach of the Act, the Consumer Authority shall obtain a written confirmation that the illegal conduct will cease or issue a decision. The Market Council processes appeals of decisions made by the Consumer Authority.

Furthermore, the Marketing Control Act, sections 32, 33, 37 and regulations issued pursuant to Section 38, correspondingly apply to monitoring and enforcement pursuant to this Act.

Section 10 *Duty to provide information*

Everyone is obligated to provide the Consumer Authority and the Market Council with the information these authorities require to carry out their duties pursuant to this Act. The information may be required to be provided in writing or orally, within a given deadline. Under the same conditions as those mentioned in the first and second sentences, surrender of all types of information and the storage medium of such information may be ordered.

The duty to provide information pursuant to the first paragraph applies irrespective of the duty of confidentiality. However, this does not apply to the duty of confidentiality as mentioned in sections 117 to 120 of the Criminal Procedure Act, with the exception of Section 118, first paragraph, first sentence.

Section 11 *Decisions made by the Consumer Authority and the Market Council*

The Consumer Authority and the Market Council may, if they find that interventions are necessitated based on considerations as mentioned in Section 9, first paragraph, second sentence, issue individual decisions regarding:

a) a prohibition or an order pursuant to Section 12
b) an enforcement penalty pursuant to Section 13
c) an infringement penalty pursuant to Section 14

A decision pursuant to (a) and (b) applies for a period of five years unless otherwise is stated in the decision. The maximum duration of a decision is ten years. A decision can be renewed.

Decisions pursuant to the first paragraph may also be directed at abettors.

Legal proceedings concerning the Market Council's or Consumer Authority's decisions must be instituted no later than six months from the party received notification of the decision. The time limit is calculated pursuant to the rules in sections 148 and 149 of the Courts of Justice Act. Reinstatement may be granted if a time limit has lapsed pursuant to the rules in sections 16-12 to 16-14 of the Dispute Act.

Section 12 *Prohibitions and orders*

Prohibitions and orders may be issued to ensure that sections 4 to 7 are observed.

Section 13 *Decisions regarding enforcement penalties*

To ensure that confirmations or decisions pursuant to Section 9, third paragraph and Section 12 are observed, enforcement penalties may be established which must be paid in case of non-compliance with the confirmation or decision.

The enforcement penalty may be established as a running charge or as a lump sum. When determining the enforcement penalty, emphasis shall be given to the consideration it must not be profitable to breach the decision.

To ensure that orders pursuant to Section 10 are observed, an enforcement penalty to be paid in case of non-compliance with the order may be determined. The second paragraph, first sentence applies correspondingly.

A final decision concerning payment of an enforcement penalty constitutes a ground for enforcement of the amount due.

The Ministry may issue regulations regarding the imposition of enforcement penalties.

Section 14 *Decisions regarding infringement penalties*

In case of repeated infringements of sections 5, 6 or 7, an infringement penalty may be imposed, which is to be paid by the party to whom the decision is directed.

An enterprise may be imposed an infringement penalty when the infringement has been committed by someone acting on behalf of the enterprise. An infringement penalty for wilful or negligent infringements may be imposed on natural persons.

In the determination of the amount of the penalty, emphasis shall be given to the severity, scope and effects of the infringement.

The infringement penalty is due for payment four weeks after the decision is made. A final decision concerning an infringement penalty constitutes a ground for enforcement of the amount due.

The Ministry may issue regulations relating to the assessment of infringement penalties.

Section 15 *Entry into force*

The Act applies from the date determined by the King. The King may determine that the individual provisions enter into force at different times.