

ESG & SUSTAINABILITY

Business and human rights advisory series – Part 2

*International guidance on
business and human rights*

10 MIN READ

In the first part of our business and human rights advisory series, we provided an insight into the human rights aspects of the legislative initiatives and the mandatory due diligence and disclosure obligations being introduced in the European Union (EU). In this part of our series, we examine related human rights guidance issued by the United Nations (UN) and the Organisation for Economic Co-operation and Development (OECD). We also demonstrate the interconnection between this guidance and the mandatory human rights obligations discussed in part one.

The influence of this guidance on the mandatory legislative requirements being placed on companies makes understanding it essential.

Recognition that businesses have an impact on human rights is nothing new. International organisations such as the UN and the OECD have been highlighting both the positive and negative impacts

that companies can have on human rights for years. Corporate focus has been shifting from solely seeking to maximise profits to considering social responsibility and impact. This shift is leading to the promotion of a stakeholder-centric perspective, rather than one that is singularly tied to shareholder value.

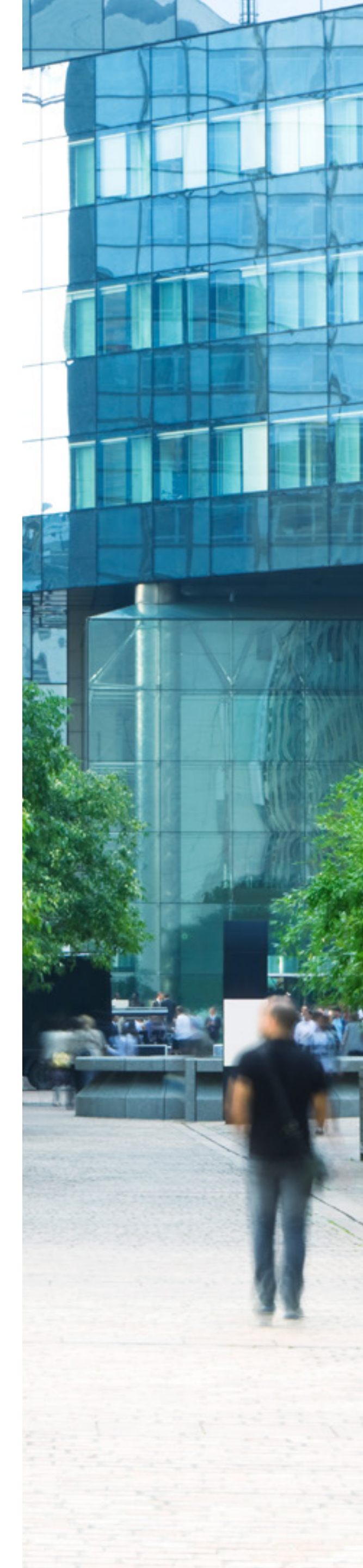
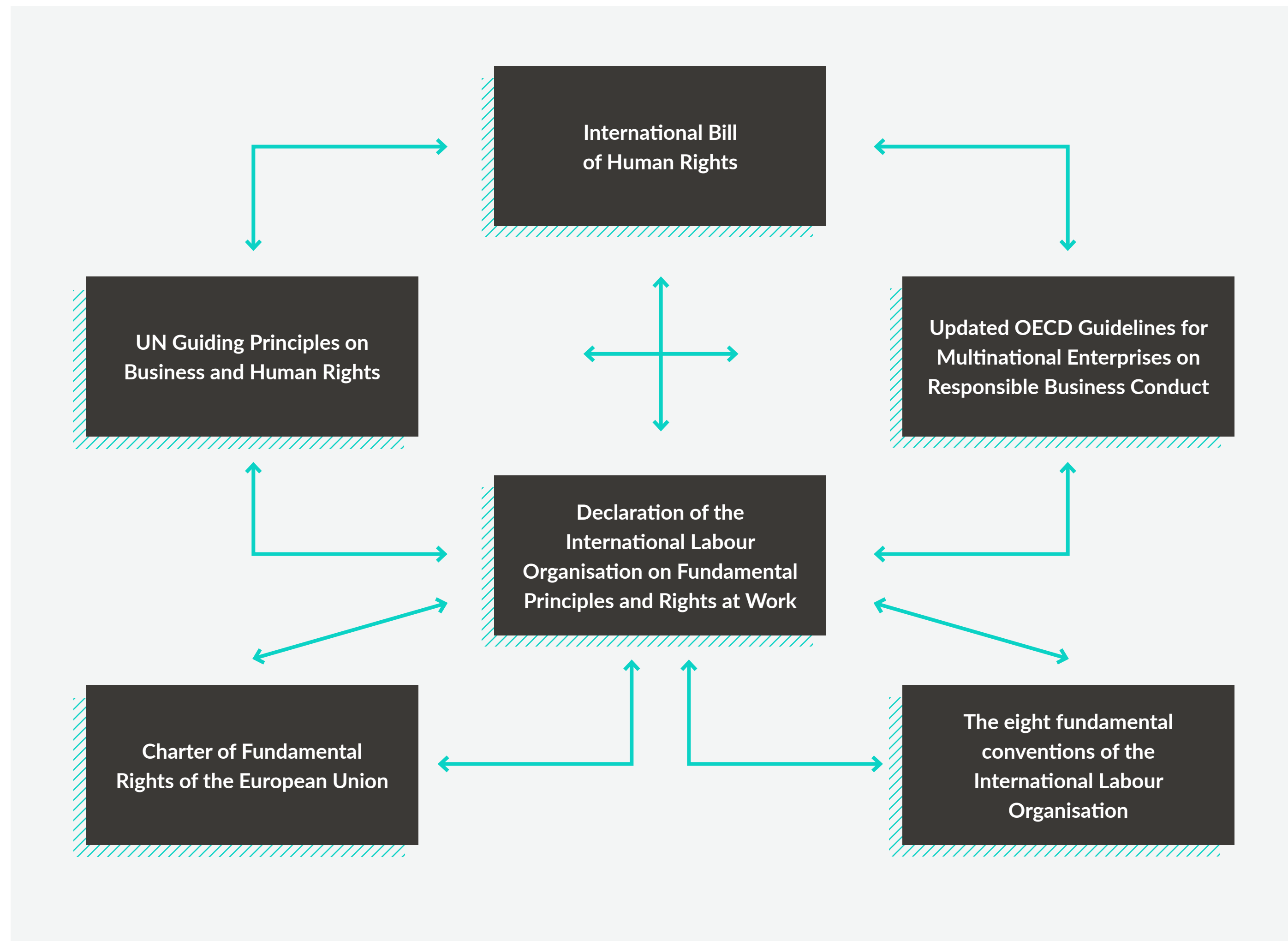
In her former role as High Commissioner for Human Rights of the UN, former Irish president Mary Robinson stated that “the issue of human rights is central to good corporate citizenship and to a healthy bottom line”.¹ This sentiment explains why non-binding guidelines have been introduced. Namely, to encourage companies to have regard to human rights in their business operations.

¹ <https://www.ohchr.org/sites/default/files/Documents/Publications/BusinessHRen.pdf>



International guidance relating to business and human rights

The first part of our advisory series focused on the human rights aspects of mandatory sustainability due diligence and disclosures obligations being introduced in the EU. In this section, we provide an overview of the international instruments referenced by the EU legislation that introduce these obligations.



International Bill of Human Rights

Made up of five key UN human rights documents,² the International Bill of Rights (**the Bill**) defines and protects a wide range of human rights. The constituent parts of the Bill do not establish binding legal obligations; however, aspects of the Bill have been so regularly invoked by States that the Bill has been perceived as forming part of customary international law.

UN Guiding Principles on Business and Human Rights

The UN Guiding Principles on Business and Human Rights (**UNGPs**) were published in 2011 and consist of 31 Guiding Principles setting out human rights related responsibilities for businesses to follow. The UNGPs detail the three pillars of protect, respect and remedy, which define the actions businesses are expected to take to prevent human rights abuses in company operations.

International Labour Organisation Guidance

The International Labour Organisation (**ILO**) has published eight fundamental conventions, declarations and guidance that span the areas of:

- collective bargaining
- forced labour
- child labour
- freedom of association
- sustainable workplace practices
- equality
- non-discrimination

Much of the ILO's publications are directed towards multinational companies, and they strongly feature in EU legislation imposing mandatory human rights related obligations on companies.

OECD Guidelines

The OECD has developed Guidelines for Multinational Enterprises on Responsible Business Conduct (the **OECD Guidelines**). There are 46 national governments adhering to the OECD Guidelines, including Ireland. The OECD Guidelines encompass key areas of business responsibility, including human rights, the environment, and labour rights. The 2023 update to the OECD Guidelines includes recommendations relating to climate change, biodiversity and supply chain due diligence.

Charter of Fundamental Rights of the European Union

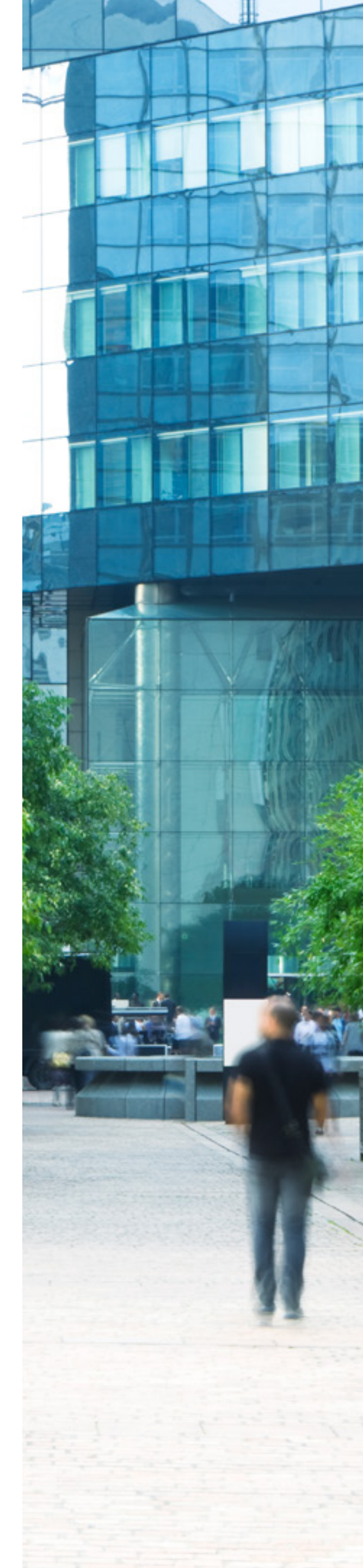
The Charter of Fundamental Rights of the European Union (the **Charter**) has as its purpose the promotion of human rights in the EU. It compiles significant rights and freedoms bestowed on EU citizens into one legally binding instrument. Unlike the other guidance discussed in this article, the Charter is as legally effective as other binding EU legislation, therefore citizens can enforce their rights under the Charter.

Other guidance

Other guidance mentioned in the EU legislation covered in the first part of this series include:

- Sustainable Development Goals (**SDGs**)
- UN Global Compact
- ISO 26000 standard on social responsibility
- UN Principles for Responsible Investment
- core UN human rights conventions, including:
 - » UN Convention on the Rights of Persons with Disabilities
 - » International Convention on the Elimination of All Forms of Racial Discrimination
 - » Convention on the Elimination of All Forms of Discrimination Against Women
 - » UN Declaration on the Rights of Indigenous Peoples

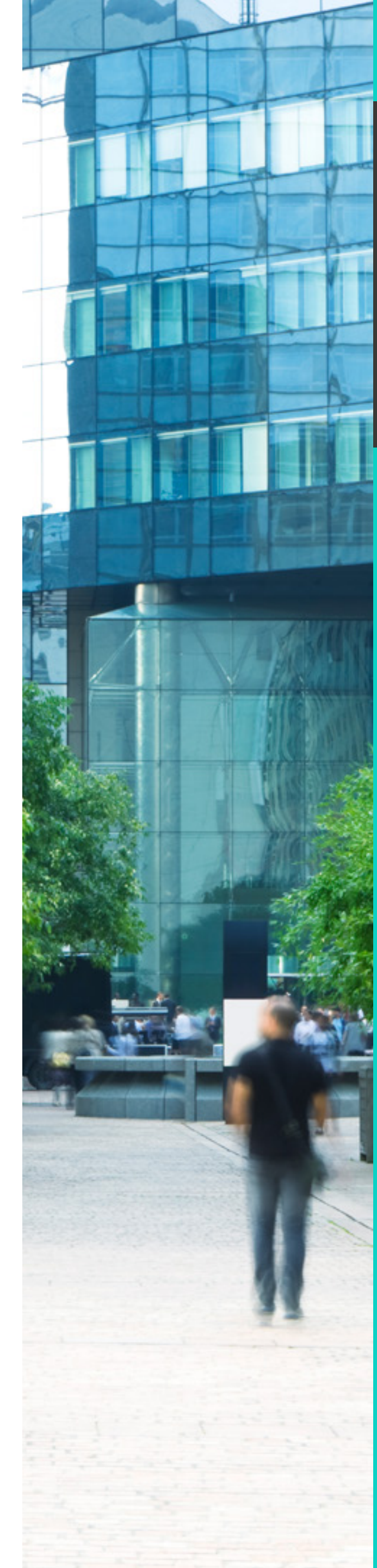
² *Universal Declaration of Human Rights (UDHR), the International Covenant on Economic Social and Cultural Rights (ICESCR), the International Covenant on Civil and Political Rights (ICCPR) and two optional ICCPR protocols.*



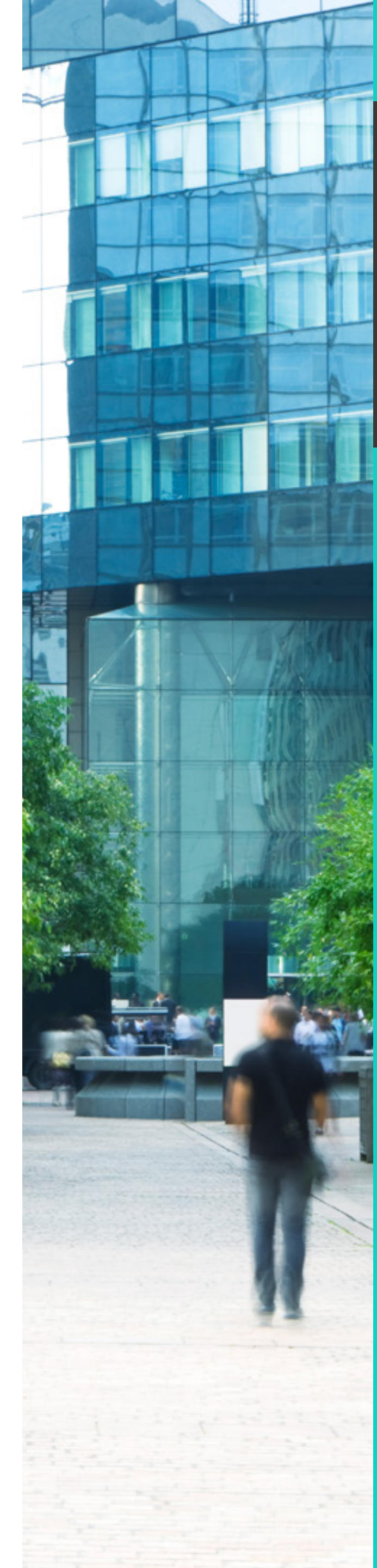
Relationship between international guidance and the mandatory due diligence and disclosure requirements that has been introduced in the EU

References to the international guidance referred to in the above section can be found in each of the pieces of EU legislation/ legislative proposals covered in part one of this advisory series. To give a sense of how this guidance is referenced, we have set out key examples in the below table.

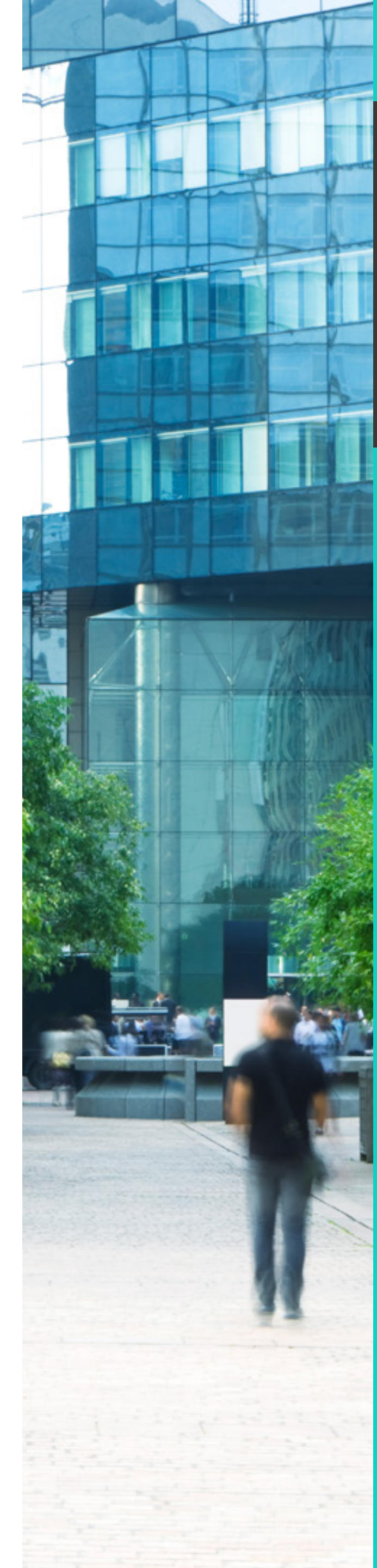
EU LEGISLATION	KEY EXAMPLES OF REFERENCES TO HUMAN RIGHTS GUIDANCE
<p>Corporate Sustainability Reporting Directive</p>	<ul style="list-style-type: none"> ■ Article 29b(2)(b) states that sustainability reporting standards shall specify information that companies are to disclose about social and human rights factors including <i>“respect for human rights, fundamental freedoms, democratic principles and standards established in respect for the human rights, fundamental freedoms, democratic principles and standards established in the International Bill of Human Rights and other core UN human rights conventions, including the UN Convention on the Rights of Persons with Disabilities, the UN Declaration on the Rights of Indigenous Peoples, the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work and the fundamental conventions of the International Labour Organization, the European Convention for the protection of Human Rights and Fundamental Freedoms, the European Social Charter, and the Charter of Fundamental Rights of the European Union.”</i> Further detail is also set out in recital 49. ■ <i>To ensure consistency with international instruments such as the UN ‘Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework’ (‘UN Guiding Principles on Business and Human Rights’), the OECD Guidelines for Multinational Enterprises and the OECD Due Diligence Guidance for Responsible Business Conduct, the due diligence disclosure requirements should be specified in greater detail...”</i> – Recital 31 ■ <i>“Sustainability reporting standards should also take account of internationally recognised principles and frameworks on responsible business conduct, corporate social responsibility, and sustainable development, including the SDGs, the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises, the OECD Due Diligence Guidance for Responsible Business Conduct and related sectoral guidelines, the Global Compact, the International Labour Organization’s (ILO) Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the ISO 26000 standard on social responsibility, and the UN Principles for Responsible Investment.”</i> – Recital 45



EU LEGISLATION	KEY EXAMPLES OF REFERENCES TO HUMAN RIGHTS GUIDANCE
<p>Corporate Sustainability Due Diligence Directive</p>	<ul style="list-style-type: none"> ■ The recitals refer to the UNGP recognising “<i>the responsibility of companies to exercise human rights due diligence by identifying, preventing and mitigating the adverse impacts of their operations on human rights and by accounting for how they address those impacts</i>” and highlight that the concept of human rights due diligence was specified and further developed in the OECD Guidelines. The recitals also note that the concept of due diligence is also embedded in the recommendations of the ILO’s Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. ■ The recitals emphasize that this directive aims to comprehensively cover human rights, including all five fundamental principles and rights at work as defined in the 1998 ILO Declaration on fundamental principles and rights at work. ■ The definition of “adverse human rights impact” specifically refers to an impact on “<i>persons resulting from:</i> <ul style="list-style-type: none"> i. <i>an abuse of one of the human rights listed in Part I, Section 1, of the Annex to this Directive, as those human rights are enshrined in the international instruments listed in Part I, Section 2, of the Annex to this Directive;</i> ii. <i>an abuse of a human right not listed in Part I, Section 1, of the Annex to this Directive, but enshrined in the human rights instruments listed in Part I, Section 2, of the Annex to this Directive, provided that:</i> <ul style="list-style-type: none"> » <i>the human right can be abused by a company or legal entity;</i> » <i>the human right abuse directly impairs a legal interest protected in the human rights instruments listed in Part I, Section 2, of the Annex to this Directive; and</i> » <i>– the company could have reasonably foreseen the risk that such human right may be affected, taking into account the circumstances of the specific case, including the nature and extent of the company’s business operations and its chain of activities, the characteristics of the economic sector and the geographical and operational context;”.</i> International covenants as well as ILO conventions are specifically mentioned in the Annex.



EU LEGISLATION	KEY EXAMPLES OF REFERENCES TO HUMAN RIGHTS GUIDANCE
Deforestation Free Products Regulation	<ul style="list-style-type: none"> ▪ The definition of “relevant legislation of the country of production” includes reference to human rights protected under international law. ▪ Article 10 relating to the risk assessment states that the criteria that need to be taken in account as part of the risk assessment process include <i>“concerns in relation to the country of production and origin or parts thereof, such as... violations of international human rights...”</i>
Proposed Forced Labour Regulation	<ul style="list-style-type: none"> ▪ The recitals in the proposal refer to ILO conventions and international guidelines and principles established by international organisations, including the ILO, the OECD and the UN. ▪ Reference is also made to Article 5(2) of the Charter of Fundamental Rights of the European Union and Article 4 of the European Convention on Human Rights which state that <i>“no one is to be required to perform forced or compulsory labour”</i>. ▪ The definition of forced labour is expected to align with the definition set out in the ILO’s Convention on Forced Labour. ▪ Before a competent authority initiates an investigation to determine whether a product made with forced labour is placed on the EU market, competent authorities are required to request from entities that are under assessment, information on actions taken to identify, prevent, mitigate or end risks of forced labour in their operations and value chains with respect to the products under assessment, including on the basis of <i>“due diligence guidelines or recommendations of the UN, ILO, OECD or other relevant international organisations”</i>.
Taxonomy	<ul style="list-style-type: none"> ▪ Article 18 sets out minimum safeguards that need to be satisfied for an economic activity to qualify as environmentally sustainable, these safeguards are defined as procedures aligned with the OECD Guidelines, the UNGPs, the eight fundamental conventions of the ILO and the Bill.
SFDR	<ul style="list-style-type: none"> ▪ The definition of “sustainability factors” refers to respect for human rights. ▪ The statement on principal adverse impacts of investment decisions on sustainability factors set out in a delegated act of SFDR specifically includes indicators relating to respect for human rights. For example, violations of UN Global Compact principles and the OECD Guidelines.



National developments in business and human rights

The Irish government launched their first National Plan on Business and Human Rights (**National Plan**) in 2017 in order to give effect to the UNGPs.³ At present, the Department of Foreign Affairs and the Department of Enterprise, Trade and Employment are preparing a second National Plan, for which there was a consultation that closed on 8 September 2023.

As part of the National Plan, the government established the Business and Human Rights Group. The group is an independently chaired body, comprised of business, government, and civil society representatives, responsible for presiding over the implementation of the National Plan. The Minister of State at the Department of Enterprise, Trade and Employment, Deputy Dara Calleary, has stated that 91% of the commitments under the National Plan have been achieved and expressed his ambition to finalise the second National Plan this year.⁴

Despite developments in the field of business and human rights at the national level, a report published by the Centre for Social Innovation at Trinity Business School, analysing the implementation of the UNGPs by the 'Top 50' largest companies with operations based in Ireland, suggests an under-preparedness for mandatory human rights legislation on the part of these companies. The report examined implementation based on a marking system and found that 86% of companies scored less than 50% of the available marks, and that 52% scored below 30%.

Given the dependency of both existing and forthcoming human rights due diligence legislation on the UN Guiding Principles on Business and Human Rights, as well as other international guidance, the picture depicted by the report suggests that companies have much work to do to ensure preparedness for impending human rights due diligence obligations.

Concluding thoughts

Businesses need to be aware of the guidance on human rights matters referred to in this article and how these may impact on their operations. This is particularly important for those companies that are in scope of the EU legislation that impose human rights obligations.

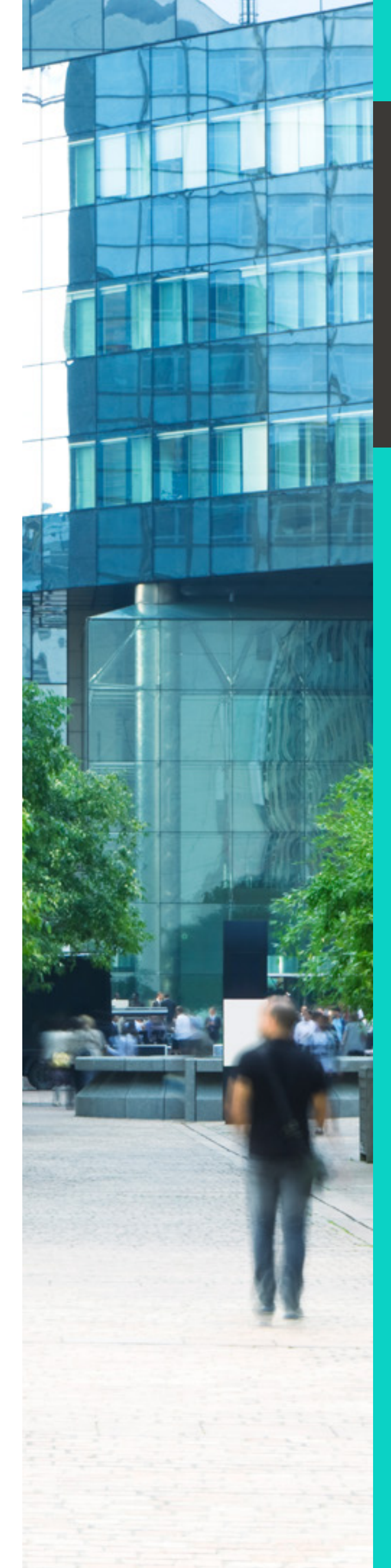
As seen in the first part of the advisory series, there is a litany of EU legislation establishing mandatory human rights duties that have already been enacted and proposals that are currently working their way through the EU's legislative process. Regardless of the status of legislation relating to human rights responsibilities for business, the best way to guarantee compliance is to understand the themes covered in the international guidance. This will enable companies to better meet the obligations being introduced.

With thanks to Eric Ehigie for his assistance in the preparation of this article.

For more information in relation to this topic, please contact [Jill Shaw](#), ESG & Sustainability Lead or visit our [ESG & Sustainability Hub](#).

³ gov - National Plan on Business and Human Rights (2017- 2020) (<https://www.gov.ie/en/publication/5bf5e-national-plan-on-business-and-human-rights-2017-2020/>)

⁴ Ceisteanna ar Sonraíodh Uain Dóibh - Priority Questions – Dáil Éireann (33rd Dáil) – Thursday, 18 Apr 2024 – Houses of the Oireachtas (<https://www.oireachtas.ie/en/debates/debate/dail/2024-04-18/14/?highlight%5B0%5D=business&highlight%5B1%5D=human&highlight%5B2%5D=rights#s18>)



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