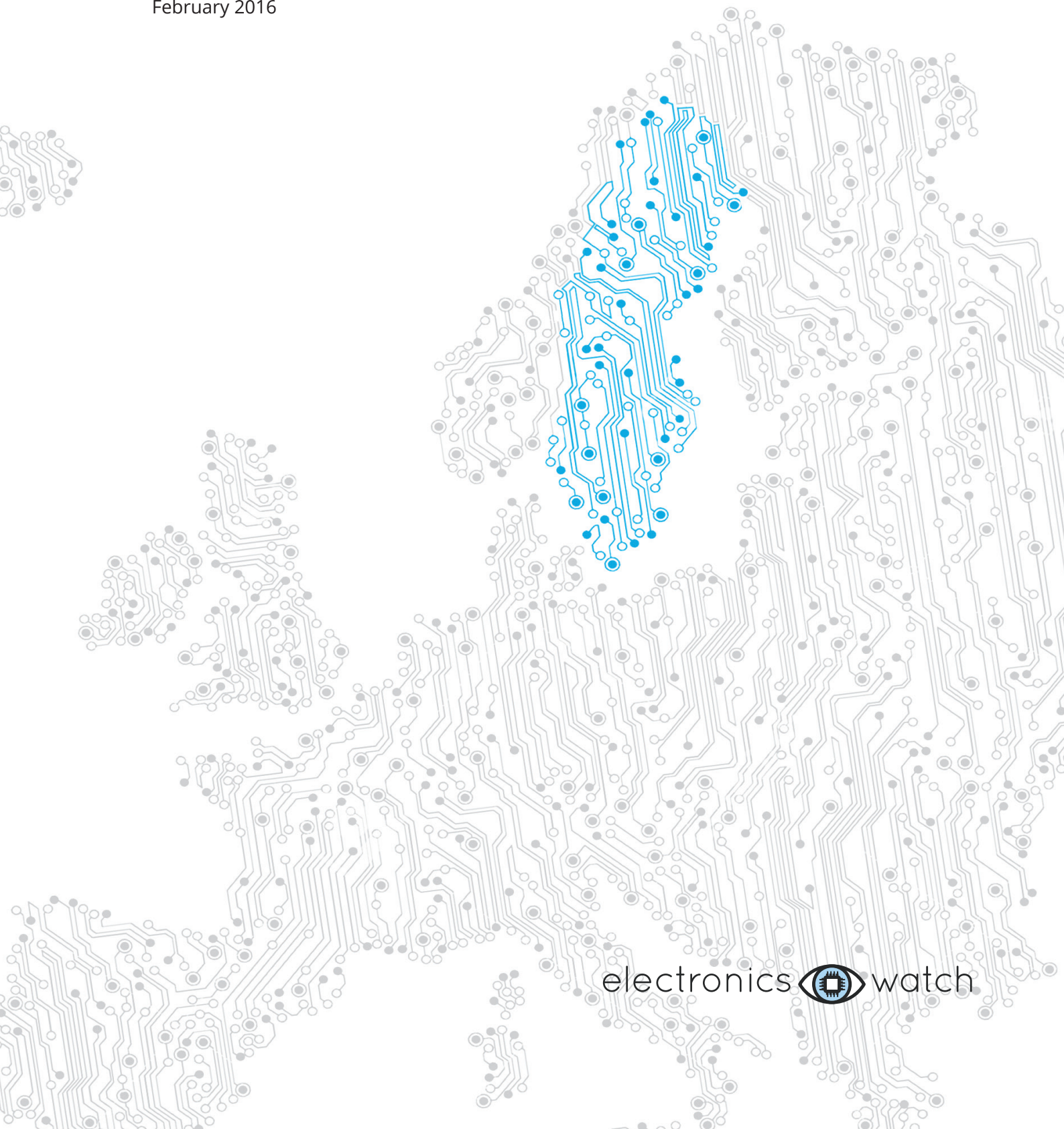


Public Procurement and Human Rights Due
Diligence to Achieve Respect for Labour Rights
Standards in Electronics Factories:
A Case Study of the Swedish County Councils
and the Dell Computer Corporation¹

February 2016



Executive Summary

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The Swedish county councils' two-year, on-going, and in-depth review of the human rights policies and due diligence² of its IT contractor, Atea, and subcontractor, Dell, to respect workers' rights has helped increase both companies' capacity to manage their supply chains responsibly.³ The county councils' experience in this case contains valuable lessons for other public sector buyers that seek to ensure compliance with international labour rights standards in their global supply chains by holding contractors accountable for any failure in investigating and addressing labour rights violations.⁴

The Stockholm County Council contracted with Dell from September 20, 2010 to September 14, 2014 to supply desktop and laptop computers for its public employees. In September 2014, the Stockholm County Council signed a new four-year framework contract for computers worth 156 million SEK (€17 million) with the reseller Atea, which also provides Dell computers. This contract is ongoing at the time of writing and available for administrations and companies within Stockholm County Council to use.

In November 2013, the Danish NGO, DanWatch, released a report on labour rights and safety violations in four electronics factories in China, which supply a range of electronics brands, including Dell. When the county council network, Social Responsibility in Public Procurement, learned about the report in early 2014 they contacted Dell and initiated a long-term engagement process to ensure the company used its full leverage and capacity to remedy the labour rights violations and to prevent their recurrence. After the Stockholm County Council signed an agreement with Atea to supply the computers, the county council network expanded its engagement on the compliance issues identified in the DanWatch report to this reseller. In this process, the county councils have helped to identify measures that these companies should take to address actual or potential violations in the supply chains, and steps that public buyers can take to demand contractors undertake effective human rights due diligence to respect workers' rights and hold them accountable if they do not. Key impacts of the process of engagement include:

- Dell has disclosed its full audit reports and detailed corrective action plans for factories that provide the goods which form the subject of the Stockholm County Council computer contract, albeit under a non-disclosure agreement. Dell is also providing better supply chain transparency in other contracts with the Stockholm County Council.
- Based on those disclosures and in-person observation of industry audits of two Dell supplier factories that supply goods under the contract, the Stockholm County Council has developed new compliance conditions for Atea to improve its risk assessment and audit methodology, make audit reports and corrective action plans

² Following the United Nations Guiding Principles on Business and Human Rights (UNGP), human rights due diligence is a continuous process to identify and address any actual or potential adverse human rights impact of a company, across its operations and products, and throughout its supplier and partner networks (UNGP 17). Identifying actual and potential adverse human rights impacts requires a company to, among other steps, engage in meaningful consultation with groups whose rights have been affected by a company's operations (UNGP 18). Addressing actual or potential adverse impacts means taking action to prevent and mitigate such impacts by integrating the findings horizontally across the business enterprise (UNGP 19) and engaging in remediation, by itself or in cooperation with other actors, when companies have caused or contributed to adverse impacts (UNGP 22). Similarly, the Swedish county councils require that contractors implement adequate "routines" to ensure that the goods they purchase are made in compliance with their code of labour rights standards, and define certain minimum requirements for those routines.

³ Based in Norway, Atea is the largest Nordic and Baltic supplier of IT infrastructure with an annual revenue of 25 billion NOK (€2.6 billion) in 2014. Based in the United States, Dell is one of the largest computer vendors in the world.

⁴ Electronics Watch has developed Contract Conditions that require contractors to exercise due diligence to achieve compliance with the Electronics Watch Code of Labour Standards. Contractors are required to take certain necessary steps and exercise their leverage to identify actual or potential violations of the Code, to prevent and mitigate the risk of violations, and to remedy violations when they have occurred.

¹ This case study is made possible by the dues of Electronics Watch affiliates. Electronics Watch gratefully acknowledges the comments and contributions by Pauline Göthberg and Kristian Hemström of the Swedish County Councils, Bruno Sarda of Dell, Kajsa Nylander of Ernst and Young, Andreas Rydell of Atea, as well as Olga Martin-Ortega and Robert Stumberg.

more accessible, and to address root causes of overtime and other violations, including pricing and delivery practices. In addition, the Stockholm County Council has incorporated the lessons from this engagement in the development of new selection criteria and contract conditions, including time-bound compliance plans, for other electronics contracts.

The account and analysis that follows are based on review of documents provided by the Swedish county councils.⁵ Electronics Watch looks forward to reviewing and discussing the lessons of this case with public sector buyers in an effort to promote socially responsible global supply chains in the electronics sector.

2 The Swedish County Council Network: Social Responsibility in Public Procurement

The Swedish county councils are responsible for healthcare, dental care, and public transportation, and procure products and services valued at more than 120 billion SEK (€13 billion) annually. Because many of the products they buy are made in factories globally where there is high risk for labour rights and human rights violations, the county councils have developed tools and processes to exercise social responsibility in public procurement; that is, to identify actual or potential violations in their supply chain, to mitigate and prevent violations, and to remedy harms to workers. While the county councils conduct separate procurements, they have worked collaboratively to increase their capacity for social responsibility in procurement since 2010.

The 21 county councils use the same code of labour standards and contract performance conditions to facilitate nationwide coordination. By entering into contract with any of the Swedish county councils, a supplier agrees to deliver products made in compliance with the UN Universal Declaration of Human Rights, the ILO core conventions, Article 32 of the UN Convention on the Rights of the Child, and all work-related health and safety legislations and labour laws in the manufacturing country. The contractor's responsibility is threefold:⁶

- To implement adequate "routines," or due diligence processes, to ensure that the goods they purchase are made in compliance with the code of labour rights standards. These routines must at a minimum include:
 - Delegation of internal responsibility for social responsibility in their global supply chains.
 - A method for evaluating suppliers' social responsibility.
 - A mandatory code of labour standards equivalent to the code of the county councils.

⁵ These documents are available on request. Some are in English and some in Swedish. Translations in this report are by Electronics Watch.

⁶ Stockholms läns landsting, "Uppföljning av sociala krav i avtal SL830 Personatorer stationära och bärbara," October 2015: pp. 3-4.

- A system of verification and engagement with suppliers, adequate to ensuring compliance with the code of labour standards.
- A method for ensuring corrective action in case of violations of the code of labour standards.
- To demonstrate compliance with the code of labour standards on request of the contracting authority, and to ensure access for the county councils to conduct their own independent inspections of the contractor or subcontractors, including factories.
- To ensure corrective action according to a time-bound plan in case of breach of any contract conditions, including the due diligence requirements, on request of the contracting authority.

In case of breach of contract, the contracting authority is authorized to terminate the contract, wholly or in part. In case the contractor fails to take adequate corrective action, the contractor may also impose a price penalty proportionate to the breach.

The county councils have developed a national network on Social Responsibility in Public Procurement to promote effective and efficient compliance monitoring. In 2012, the network hired a national coordinator who is accountable to a five-member national steering committee, representing the chief procurement officers and environmental managers of the 21 county councils. The network also includes a group of experts with representatives from each procurement region. The network provides the training and education for members of the expert group to ensure they can properly evaluate suppliers for compliance with the code of labour standards, conduct risk assessments, understand social audits and corrective action plans, and procure third-party audits to help the county councils determine whether or not there is breach of contract. Finally, each county council appoints a point of contact to serve as "ambassador" for socially responsible public procurement within the region, share information from the steering committee and group of experts internally, and implement new tools and processes relating to social responsibility in public procurement.

In order to ensure necessary funding for social audits and related work, the 21 county councils pool resources based on population. Each county contributes 40 Swedish cents, about €0.04, per capita.

3 Chronology of the Case

November 2013: DanWatch releases report on four Dell supplier factories

DanWatch releases "IT Workers Still Pay the Price for Cheap Computers," a report about working conditions at four electronics factories in the Chinese provinces of Guangdong and Jiangsun.⁷ The factories supply a range of electronics brands, including Dell, ASUS, HP, Samsung, Microsoft, and IBM. The report presents evidence of severe labour rights and safety violations, including:

- Excessive working hours, up to 74 hours a week.
- Forced overtime and wages below the local legal minimum wage.
- Inadequate occupational health and safety conditions.

According to the report, working conditions are the same for all the brands.

February 7, 2014: Letter from the county council network to Dell

The Stockholm County Council receives the DanWatch report in January 2014.⁸ On February 7, Social Responsibility in Public Procurement, a network of the 21 Swedish county councils, alerts Dell to the DanWatch findings of excessive working hours, low wages, and unacceptable occupational health and safety conditions. Their letter to the CEO of Dell Sweden states: "In signing our code of conduct you have agreed to deliver products to the County Councils that are manufactured in accordance with the UN declaration of human rights, ILO core conventions – number 29, 87, 98, 100, 105, 111, 138 and 182, UN Convention on the Rights of the Child, article 32, all work-related health and safety legislation in the manufacturing country and the labour law, including legislation on minimum wage and the relevant social security insurance, in the manufacturing country."

The county council network requests immediate dialogue with Dell to address the compliance issues at the four Dell supplier factories.⁹

March 4, 2014: County council network conference call meeting with Dell

The county council network notes that the purpose of this meeting is to "receive further information concerning the working conditions at Dells' suppliers in China as well as to what extent Dell takes an interest in and/or seeks to influence these working conditions."

Dell explains that the company has developed corrective action plans for each supplier based on its own audits, and categorized each issue as "short term, medium term or long term." Excessive working hours is a "long-term issue," according to Dell, and a challenge for the whole

industry. Dell also observes that there is a discrepancy between the EICC (Electronics Industry Citizenship Coalition) standard on working hours and Chinese law. While the EICC allows a 60-hour workweek, Chinese law only permits nine hours per week of overtime. "Therefore a worker can be over the local limit but not exceeding the EICC standard," the company states. Dell promises to raise this issue with EICC in their June 2014 meetings.

Dell also explains that excessive working hours are not directly related to the way the county councils place orders, "i.e. ... short lead-time which in turn requires overtime to meet the demand." The problem is related to "general demand for products rather than orders of one or a few customers."

Dell will initiate a follow-up meeting in June to provide an update on the corrective action plans for the four factories in the DanWatch report. Dell will also investigate whether or not the county councils purchase products made in any of those factories.¹⁰

June 26, 2014: County council network conference call meeting with Dell

Dell reports that the company has corrected all violations in the four factories except excessive working hours, which "is a problem for all companies operating in this region" and "for multiple industries." Dell further reports that there will be an EICC board meeting in October 2014 in which the industry group will decide on "punitive measurements [sic] for members not in compliance with the rules for overtime." Dell also confirms that the county councils receive products made in the four factories.¹¹

The county councils request the audit reports and the corrective action plans of the four factories in question. They note that: "The immediate risk of health hazards are great and Dell should work to mitigate these."¹²

June 2014: Correspondence from Dell to the county council network (unspecified date)

Dell reports that according to the terms of their supplier contracts, Dell must notify them before they can disclose audit reports, "but we have started the process and will follow up as soon as possible to make sure you receive them quickly."¹³

July 7, 2014: Correspondence between Dell and the county council network

Dell sends an undated report, "Dell response to DanWatch report," to the county councils. The report compares Dell's findings to the DanWatch findings, but fails to address several violations in the DanWatch report. The county councils again request the corrective action plans from Dell.¹⁴

⁷ See, https://peopleandplanet.org/dl/dell_report.pdf

⁸ Undated notes in Swedish of "Kalla Fakta" interview with Thomas Wedegren, Chairman, Social Responsibility in Public Procurement. Kalla Fakta is a Swedish investigative journalism TV program.

⁹ Letter in English to Stefan Alariksson, Dell AB, from Thomas Wedegren, Chairman, Social Responsibility in Public Procurement, February 7, 2014.

¹⁰ County council network meeting minutes in English of "Dell supplier meeting," March 4, 2014. Conference call participants included the National Coordinator of Social Responsibility in Public Procurement, a legal counsel and procurement officer for the two county councils, and representatives of Dell Nordics, Dell Sweden, and Dell Corporate Responsibility.

¹¹ The Stockholm County Council later learned that they only buy products made in one of the four factories.

¹² Meeting minutes in English of "Telephone-meeting Dell," June 26, 2014. Conference call participants included the National Coordinator of Social Responsibility in Public procurement, and representatives of Dell Corporate Responsibility and Dell Sweden.

¹³ Kalla Fakta interview, *ibid*.

¹⁴ Kalla Fakta interview, *ibid*.

August 12, September 2, and October 6, 2014: Correspondence between Dell and the county council network

On August 12 and September 2, the county councils again request the corrective action plans, and Dell promises to send them immediately. On October 6, the county councils repeat the request.¹⁵

October 22, 2014: Letter from Dell to the county council network

Dell provides general information about its audits and social responsibility programs. Dell also stresses that it cannot on its own remedy violations of legal limits of working hours. According to Dell: “Problems like excessive working hours in China will not be solved by one company or even by one industry, but rather by a committed and hard-working multi-stakeholder group that includes governments, industry and NGOs.”¹⁶

November 4, 2014: County council network steering committee meeting

The Steering Committee notes continuing contract breaches and violations of Chinese labour law in the four factories. In addition, the Steering Committee observes, “Dell has refused to provide the evidentiary basis [the corrective action plans] and demonstrates lack of desire to take responsibility.” The county council network’s next step is to request the corrective action plans from Dell and to inform the company that they may carry out their own investigations.¹⁷

November 17, 2014: County council network letter to Dell

The Chair of Social Responsibility in Public Procurement for the county councils notes that Dell and the county councils have engaged in communication about the four Dell supplier factories during the course of the year. However, the “the dialogue has not yielded results” as “Dell has been unwilling to share corrective action plans and claims that violations are partially industry-wide problems rather than problems that Dell can address through their own contracts with suppliers.”

The letter further states: “Nine months after we initiated contact it is critical that Dell discloses the specific corrective action plans in the four factories,” and gives Dell a deadline of November 28, 2014 to comply.¹⁸

December 7, 2014: County council network receives Dell’s “One-Year Update”

Dell sends a one-year update on the findings in the DanWatch report, including general, but not specific, corrective action plans for each of the four factories. The company notes, “this update contains confidential and sensitive information,” and requests that the county councils keep the report for their “internal review only.”

Dell claims that more than 75% of the issues from all four suppliers

have been closed, 16% downgraded, and only nine per cent remain open. However, the company continues to stress that “some of the allegations in the DanWatch report are systemic in nature and they will only be solved by a collective effort by all industries who manufacture in the region.” This includes violations of “working hours” and “consecutive days of work.”¹⁹

December 15, 2014: Memorandum from the county council’s National Coordinator for Social Responsibility in Public Procurement to the Steering Committee

The National Coordinator of Social Responsibility in Public Procurement analyses Dell’s one-year update for her steering committee. She highlights concerns about transparency and lack of sufficiently detailed information about some key findings in the DanWatch report. The following are excerpts from her analysis:

Concerns about transparency:

“Since February 2014 we have participated in and encouraged an open and transparent dialogue with Dell. That is why I read with amazement that Dell claims that its report contains confidential information and that we can only use it internally. I have read the report and cannot find anything in it that could be considered confidential. ... One aspect of our work nationally is to share information both internally with all counties and regions but also with the general public. This is, I think, an important principle.”

In addition, the National Coordinator notes that “Dell still provides too little information” about the DanWatch findings regarding violations of the right to unionize and access to a grievance mechanism. Based on Dell’s “One-year update” it is difficult to understand the root causes of these problems and how Dell is working to address them, she says.

Concerns about excessive working hours:

“Dell does not account for any effort or resources committed to this issue, but again characterizes working hour violations as industry-wide problems. According to Dell’s own audits, workers state that they are not forced to work overtime, but if their wages are low and not sufficient to meet their basic needs, overtime may be the only solution for workers. By law the employer must consult with employees and the union before requiring overtime. Dell’s statement that workers are now permitted to tell their supervisors that they do not wish to work overtime is, so to speak, to shift the burden of responsibility for compliance with overtime regulations from the employer to the workers.”

Concerns about working conditions:

“The DanWatch report observed that workers were forced to stand during their entire shift at Mingshou (Pegatron) and MSI.

¹⁵ Kalla Fakta interview, *ibid*.

¹⁶ Letter in English to Pauline Göthberg, National Coordinator, Social Responsibility in Public Procurement, Swedish County Councils and Regions from Mark Pringle, Vice President, General Procurement, Dell, Inc., October 22, 2014.

¹⁷ Kalla Fakta interview, *ibid*.

¹⁸ Letter in Swedish to Stefan Alariksson, Dell AB, from Thomas Wedegren, Chairman, Social Responsibility in Public Procurement, November 17, 2014.

¹⁹ Dell, “DanWatch report One-Year update November 2014”

Dell does not address this issue in its internal report, but the question remains: Do the workers in these factories have seats or not? Furthermore, if sleeping quarters are crowded Dell should not simply report on the average number of workers per room or the number of toilets on a floor. ... Workers have the right to a minimum number of square meters per person, a maximum number of persons per room, access to a minimum standard of living, the guarantee that only workers from the same shift sleep in the same room (otherwise they may never be able to sleep), and free access to hot water and heat.”

Conclusion:

“My personal view is that a slow negotiation and dialogue with Dell where we do not ask specific questions about details and where Dell replies and we request additional information, etc., is risky. ... We can arrive at a situation where Dell claims they have replied to our questions and that they have taken necessary action. I do not believe that Dell can ensure that they comply with the contractual obligations (for example, regarding overtime, hazardous working conditions, and worker representation) and that we can guarantee that Dell is manufacturing products responsibly at these four factories one year after the discovery of violations. Thus we have direct or indirect contractual agreements with a supplier that violates the law in its Chinese factories.”²⁰

January 26, 2015: County council network steering committee meeting

Because Dell still has not corrected all violations revealed in the DanWatch report and because the company still has not provided the detailed audit reports and corrective action plans the steering committee decides to conduct an in depth study of Dell. The study is to be conducted by the Stockholm County Council within its IT framework contract, SLL830, laptop and desktop personal computers.²¹

February 2, 2015: Letter from the county council network to Dell

The National Coordinator of the county council network notifies Dell that the Steering Committee has decided that the Stockholm Council will carefully monitor Dell's and Atea's compliance with the contract performance conditions on social responsibility in the IT framework contract, SLL830.²²

April-May, 2015: Correspondence between the Stockholm County Council and Atea

On April 20 the Stockholm County Council sends 15 follow-up questions to Atea regarding Dell's compliance with their code of labour standards. On May 6 Atea replies that they have found significant risk of violations in Dell's supply chain and that they need additional information to determine whether or not the levels of risk have been reduced.

²⁰ Memorandum in Swedish from Pauline Göthberg to the County Council Steering Committee of Social Responsibility in Public Procurement, December 15, 2014.

²¹ Stockholms läns landsting, “Uppföljning av sociala krav i avtal SL830 Persondatorer stationära och bärbara,” October 2015: p.5.

²² Undated notes in Swedish of “Kalla Fakta” interview with Thomas Wedegren, *ibid.*

May 18, 2015: Stockholm County Council announces it will cut Dell

The Stockholm County Council announces publicly it will no longer purchase Dell computers and has instructed Atea to find another supplier. “Addressing abuses in risk areas is long-term work. That is why we work closely with contractors and subcontractors, but in this case progress has not been satisfactory,” the head of procurement for Stockholm County Council says. However, the county council work to monitor Dell's compliance with the contract performance conditions on social responsibility will continue. Cutting Dell is a message to the company that it must make improvements in its social responsibility work in order to be eligible as a supplier in the future.²³

May-June, 2015: Meetings between the Stockholm County Council and Atea

The Stockholm County Council and Atea conduct several meetings regarding Atea's human rights due diligence processes. On June 18, Atea notifies the Stockholm County Council that based on information it received from Dell, the company appears to have taken satisfactory steps to address violations in its supply chain, and that the level of risk of violations has been reduced. Atea cancels its “stand-still” status on Dell in the IT framework contract, SLL830.²⁴

June-July 2015: Planning meetings between the Stockholm County Council, Atea and Dell

Despite Atea's new risk assessment, the Stockholm County Council decides to audit two Dell supplier factories that supply products under the contract, SLL830, and notifies Dell of its intention. Dell replies that it is not possible for the Stockholm County Council to conduct independent audits within the required timeframe, but invites the county to participate as observer in two audits of factories connected to the SLL830 contract, planned for the month of August, in order to evaluate the audit process. One audit will be a full EICC audit, and the other a follow-up on the DanWatch findings. The Stockholm County Council accepts the invitation and decides to contract with the auditing firm, EY (a member of Ernst & Young Global Limited), to participate as observer together with a Stockholm County Council representative at the two factory audits and to undertake an in-depth documentary review of Dell audit reports and corrective action plans. The EY study is detailed below.²⁵

September 9, 2015: Stockholm County Council announces study complete and Dell is an acceptable supplier

In a news release the Stockholm County Council states that Dell has improved its work to ensure social responsibility in its supply chain. The County Council will again allow Atea to supply Dell products but stipulates new compliance conditions. These new conditions are detailed below.

²³ Stockholms läns landsting, “Landstinget ändrar sortiment för persondatorer,” May 18, 2015, <http://www.sll.se/verksamhet/halsa-och-varld/nyheter-halsa-och-varld/2015/05/Landstinget-andrar-sortiment-for-persondatorer/> (accessed December 14, 2015).

²⁴ Letter from Andreas Rydell, Atea, to Thomas Wedegren, Stockholm County Council, June 18, 2015.

²⁵ Stockholms läns landsting, “Avslutad uppföljning om persondatorer,” September 9, 2015, <http://www.sll.se/nyheter-stockholms-lans-landsting/2015/11/Avslutad-uppfoljning-om-persondatorer/> (accessed December 14, 2015).

4 Monitoring Dell's and Atea's Human Rights Due Diligence

In August 2015 the Stockholm County Council contracted with the auditing firm, EY, to undertake two related investigations: a desk study of Dell audit reports and corrective action plans to determine if Dell systematically identifies, addresses, and corrects violations in its supply chain; and in-person observations of EICC factory audits in two of the factories in China that supply goods under the contract, SLL830, to determine whether or not the quality of the audit process is adequate to ensure compliance with Stockholm County Council code of labour standards. EY was also tasked with determining whether or not the EICC code of conduct is strong enough to ensure potential violations of the Stockholm County Council code of labour standards can be identified and corrected by audits against the EICC code. In addition the Stockholm County Council itself evaluated Atea's due diligence to identify and address risks in its supply chain.²⁶ The County Council explained why the reseller Atea was a focus of the study: "Despite the fact that Atea does not produce its own products but delivers ready-made products to the County the company must be able to ensure that the County Council's requirements for socially responsible production are communicated up the supply chain."²⁷

4.1. Findings

Observation of Factory Audits

EY and a Stockholm County Council representative observed third-party EICC audits at two of Dell's supplier factories in Jiangsu Province. The audit at "Factory A" was a third party audit ordered by the factory itself. The audit at "Factory B" was a follow-up to the DanWatch findings of November 2013 ordered by Dell. Dell selected both factories for the EY observation. EY delivered its Observer's Report Relating to EICC Supplier Audits to the Stockholm County Council on September 21, 2015.

Factory A

EY noted a number of flaws of the EICC audit of Factory A. Those flaws included:

- A "secret meeting" between management and workers, closed to the EICC auditors and to the EY observers. EY suspected management coaching or "pre-educating" workers for the audit and noted that the EICC auditors did not account for this meeting in the audit report.²⁸
- A manager observing a worker interview at a workstation at a distance of three meters.²⁹
- No off-site interviews with workers, and no interviews at the dormitory.³⁰

²⁶ Stockholms läns landsting, *ibid.*, p. 6.

²⁷ Stockholms läns landsting, *ibid.*, p. 7.

²⁸ EY, "Observation Summary of Factory Social Audit on-site," Factory A, August 27, 2015, Section 4, Interview Techniques.

²⁹ EY, *ibid.*, Section 4, Interview Techniques.

³⁰ EY, "Observer's Report Related to EICC Supplier Audits," September 21, 2015, p. 5.

- Failure to address health issues, including a "notably noisy working environment" and lack of adequate protective equipment. EY observed that the "audit team highlights the fact that the workers are provided with ear plugs " but failed to tell management that "some of the workers were not using ear plugs" and to note this failure in the audit report.³¹

Factory B

At Factory B, EY observed two interviews and noted:

- The auditor failed to ask some questions to "completely cover the core issues or penetrate the problems." For example, when asking about workers' willingness to work overtime, the auditor did not ask workers if they "were informed about overtime at least one day in advance or if they were allowed to refuse to work overtime."³²

Audit Design

In Factory A, EY noted that:

- Worker representatives were not invited to participate in the opening and closing of the audit, thus missing a valuable opportunity to contribute their own insights to the audit and to learn about the audit findings.³³

Similarly, in Factory B, EY noted:

- Lack of worker participation in opening and closing of audit, "which means they could not contribute ... information nor be informed about the findings of the audit."³⁴

EY observed that worker participation in the opening and closing of audits is not an EICC requirement, though it is a required element of several other audit standards.

Furthermore, in Factory B, EY noted lack of transparency in the audit process. Following EICC audit protocols, individual worker interviews are not open to observers. While the EY observer was allowed to be present during two of the interviews, this was not sufficient for EY to "get a complete picture of how the facts regarding the workers' situation and health is collected."³⁵

Data Corroboration in Factories A and B

The EY observers noted lack of sufficient investigative data points to support the findings at Plant A and the preliminary findings at Plant B. For example, the EICC audits lacked data "to make credible conclusions regarding...the existence of forced overtime, wages below minimum wage and acceptable working conditions."³⁶

³¹ EY, "Observer's Report Related to EICC Supplier Audits," p. 6.

³² EY, "Observer's Report Related to EICC Supplier Audits," p. 6.

³³ EY, "Observer's Report Related to EICC Supplier Audits," p. 4.

³⁴ EY, "Observation Summary of Factory Social Audit on-site," Factory B, August 28, 2015, Section 1, Interview Techniques.

³⁵ EY, "Observer's Report Related to EICC Supplier Audits," p. 9.

³⁶ EY, "Observer's Report Related to EICC Supplier Audits," p. 6.

Documentary Review

EY and Stockholm County Council representatives gathered at Dell's office in Stockholm to review eight audit reports of Dell's supplier factories connected to SLL830 as well as summaries of findings from six Dell factories and 13 Original Design Manufacturers that together represent 95% of Dell's ODM manufacturing. EY found that the audit reports appeared to have been appropriately executed according to the EICC standard, that the audits were thorough and included additional action plans for each finding, and that Dell had closely monitored priority non-conformances, but warned "it is difficult to assess the quality of the audits and the level of competence of the Auditors from solely reading the reports."³⁷ In addition, EY found that the EICC audit process is adequate to identify potential violations of the Stockholm County Council code of labour standards, and that the EICC code itself is more detailed than the Stockholm County Council code in several areas.

However, EY cautioned: "Although the requirements and methodology of EICC is comparable to other audit standards commonly used, we have observed some shortcomings that may have an effect on the reliability of the audit findings."³⁸

The Stockholm County Council itself conducted a documentary review to analyse Atea's due diligence to identify and address risks in their supply chain, finding that Atea:

- Has a code of labour standards equivalent to the code of the Stockholm County Council;
- Has assigned personnel to address social responsibility in its supply chain;
- Conducts risk assessments of subcontractor supply chains at least annually based on information available from the Swedish Ministry for Foreign Affairs, NGO's, international institutions, and audits conducted by the supplier and third-party organisations.
- Implements time-bound corrective action plans to address risks in the supply chain.

In the case at hand, Atea had identified risks in the areas of working hours, freedom of association, and working conditions in the Dell supply chain, but judged that Dell had developed adequate procedures to mitigate the risks.³⁹

4.2. The Stockholm County Council Conclusions and Compliance Conditions

Based on the 18-month engagement with Atea and Dell, as well as the documentary review and audit observations described above, the Stockholm County Council reached the following conclusions:⁴⁰

- Atea's due diligence to ensure social responsibility in its supply chain is acceptable. The County Council notes that the company has created systems to identify and address risks in the supply chain. Notably, in the case of Dell, the reseller has shifted its focus from reviewing Corporate Social Responsibility reports, designed to instil confidence in customers, to the more detailed and frank social audit reports and corrective action plans. Atea has also developed its own model of time-bound corrective action plans for suppliers based on its engagement with Dell. Yet, because of continuing code violations in the supply chain, Atea must continue to develop its supply chain oversight capacity.
- Dell's due diligence to ensure social responsibility in its supply chain is also acceptable. The EICC code and audit process require the company to systematically correct violations within specific time limits; however, the quality of the audits themselves must be improved.
- Violations of the legal limits on working hours must be addressed long-term through development of strategies to both remedy violations and prevent their recurrence.

In order to strengthen the due diligence of Atea and Dell to ensure compliance with the County Council code of labour standards in the supply chain connected to the SLL830 contract, the Stockholm County Council added the following four compliance conditions, requiring the contractor, Atea, to:⁴¹

- **Improve risk identification and risk mitigation:** Atea must report on its own work to assess and prevent risk of worker rights violations at least twice a year, and must share suppliers' audit reports and corrective action plans that are relevant to the contract. In addition, Atea must more thoroughly evaluate its suppliers' strategies for social and environmental sustainability and determine if these strategies are adequate to ensuring compliance with the County Council code of labour standards, particularly for vulnerable workers, such as student workers.
- **Increase supply chain transparency:** Status reports, audit reports, and corrective action plans must become more accessible. Atea and its subcontractor, Dell, in this case, must together develop procedures for disclosing such information, and Atea must present a plan at the second follow-up meeting with the County Council or earlier.
- **Improve the quality of social audits:** In order to improve the quality and reliability of the audit methodology Atea must initiate dialogue with EICC, in collaboration with Dell as needed, and report to the County Council on the results of the dialogue at the second follow-up meeting or earlier. Atea must address the weaknesses of the EICC audit methodology identified by EY to protect the

³⁷ EY, "Observer's Report Related to EICC Supplier Audits," p. 7.

³⁸ EY, "Observer's Report Related to EICC Supplier Audits," p. 10.

³⁹ Stockholms läns landsting, *ibid.*, pp. 7-8.

⁴⁰ Stockholms läns landsting, *ibid.*, pp. 17-18.

⁴¹ Stockholms läns landsting, *ibid.*, Appendix 4.

confidentiality of workers who are interviewed and ensure that workers can report violations without fear of reprisals. In addition, Atea must ensure the transparency of the audit process to both outside observers and workers. The Stockholm County Council notes that it retains the right to conduct its own independent audits.

- **Develop a short and long-term compliance plan:** Atea must work with Dell to develop a short and long-term compliance plan to be presented at the second follow-up meeting or earlier. The plan must include actual and potential risks of violations; an account of how pricing and delivery practices reflect its social and environmental responsibility goals; an explanation of how both Atea and Dell exercise leverage with suppliers to ensure code compliance; and recommendations for how the end user can help to create a sustainable supply chain.

5 Analysis

This case study yields important insights into the process of human rights due diligence to ensure respect for labour rights standards in global supply chains, and the possibilities and challenges for public sector buyers to hold contractors accountable for failure to exercise effective due diligence.

Lesson 1: Legally binding contract performance clauses are necessary to hold contractors accountable for failure to perform effective human rights due diligence

Because no contractor can offer a certification or guarantee of compliance with labour rights standards in global supply chains, contract performance clauses that require the contractor to perform human rights due diligence and assert the right of the contracting authority to conduct independent inspections is a necessary legal tool; award or selection criteria alone are not sufficient. Ultimately, though exceptionally, contract sanctions, including termination, may be necessary in order to spur improvements or find an alternative supplier. In the present case, the Stockholm County Council contractually required specific measures of human rights due diligence to ensure respect for labour rights standards, including facilitating access for the County Council to carry out its own investigations and observations of industry audits. The investigations identified weaknesses in the suppliers' human rights due diligence and led the County Council to require contractually enforceable compliance conditions to improve their risk assessment, transparency, and audit methodology, and to account for their use of leverage and pricing and delivery practices to address persistent violations. Based on its experience in this case, the County Council is implementing similar compliance conditions in new contracts for electronics products in order to sharpen suppliers' human rights due diligence as a tool to improve working conditions.

Lesson 2: Long-term contractor engagement may be necessary to improve human rights due diligence

Long-term contractor engagement during the course of a contract is sometimes necessary to achieve the objectives of the contract, improve contractor human rights due diligence and improve working conditions. In the present case, the engagement began in February 2014 and is continuing at the time of writing, two years later. While the Stockholm County Council has determined that both Atea and Dell have made sufficient improvements in their due diligence processes to resume procurement of Dell computers, it will continue to meet regularly with Atea until the end of the contract period to ensure compliance and continued improvement.

One challenge in this regard is that public contracts are relatively brief and always finite. When a contract comes to an end, safety and labour rights issues in the supply chain may not be resolved or adequately remedied. Coordination across procurement jurisdictions—in the Swedish case, nationally—is key to meeting this challenge. When the Stockholm County Council's contract with Atea ends, it is likely that the national county council network can continue its engagement to strengthen Atea's human rights due diligence and improve working conditions in its supply chain through another county council that holds a current contract with the same supplier. The broader the coordination, the greater the capacity for long-term engagement and sustainable improvements in the supply chain.

Lesson 3: Public buyers should strive to increase leverage through collaboration in order to address apparently intransigent violations

Time alone is sometimes not sufficient to remedy labour rights violations and too lengthy engagement is not always productive. As the national coordinator of the county council network noted ten months after initiating dialogue with Dell, "Slow negotiation and dialogue with Dell...is risky." Public buyers need sufficient leverage to achieve timely results, which requires extensive coordination and cooperation to create markets large enough to compel suppliers to make significant changes in their supply chain management. In the present case, the Swedish county councils have worked together to improve conditions in the factories in question; yet, wider collaboration still may be helpful to create the market influence to address persistent breaches, such as overtime violations.

Lesson 4: Suppliers should also strive to increase leverage to exercise human rights due diligence effectively

The commentary to UN Guiding Principle 19 makes clear that if a business enterprise lacks leverage to mitigate or prevent an adverse human rights impact, it should work to increase its leverage. UN Guiding Principle 22 states that business enterprises should remedy

adverse human rights impacts, which it has caused or to which it has contributed, either acting singly or in collaboration with other actors if that is necessary. The Stockholm County Compliance now requires both Atea and Dell to report how they exercise leverage to ensure code compliance in the supply chain. Dell, in particular, should demonstrate increased leverage and impact on the issue of overtime violations through its collaboration with the industry association, EICC.

Lesson 5: Public buyers should build internal capacity to be able to hold contractors accountable for their failure to perform human rights due diligence

Holding contractors accountable for their failure to undertake effective human rights due diligence to investigate and address labour rights violations in global supply chains requires financial investment in personnel, education, and monitoring capacity. The Swedish county councils have developed staff capacity to assess risk in their supply chains and made available resources to conduct independent factory audits.

In 2015 the county councils increased the capacity of its own staff to assess the risk of supply chain violations in three new areas and provided for five members of the network, representing three different counties, to become experts in risk assessment and measures to mitigate risk based on the United Nations Guiding Principles on Business and Human Rights. This group of internal experts, all of whom are professionals in different areas of work, is a valuable resource for the county councils, enabling them to conduct their own risk assessments as needed in areas such as ICT hardware, surgical instruments, pharmaceuticals, apparel and textiles, and rubber gloves. In addition, the county council network continued to evaluate and audit the compliance of suppliers in several industries, allocating responsibility for each supply chain to a different county council.⁴²

Lesson 6: Resellers and distributors are capable of exercising effective due diligence

The UN Guiding Principle on Business and Human Rights apply to all business enterprises regardless of their size or location. Public sector buyers can expect that small and medium-sized businesses as well as resellers are not too small or too far removed from the factories to investigate and mitigate risk and ensure subcontractors address violations in the supply chain.

For Atea, the largest distributor of IT infrastructure in the Nordic countries and Baltic region and a company with hundreds of suppliers, proactive human rights due diligence across its supply chain may be a challenge requiring increasing corporate investment. However, following the UN Guidelines on Business and Human Rights, the company must respect the human rights of workers in its supply chains by taking immediate action to mitigate adverse human rights

⁴² Meeting minutes of County Council Steering Committee of Social Responsibility in Public Procurement, January 26, 2015.

impact in its supply chains when they have occurred and prevent their recurrence. Thus the Stockholm County Council requires this reseller to take significant further steps, alone or in collaboration with Dell and the EICC, to improve its risk assessment and risk mitigation, and to exercise its leverage to ensure corrective action and remedies for workers who have suffered harm in connection with making products for Dell, Atea and the Stockholm County Council.

Lesson 7: Transparency is a necessary step to improving human rights due diligence

The Swedish county councils steadfastly demanded transparent and detailed reporting from Dell. After a long process of engagement, Dell disclosed all records they had requested—including the detailed audit reports, records of working hours, corrective action plans, and status reports—under a non-disclosure agreement. In addition, a representative of the Stockholm County Council participated as observer, along with the auditing firm EY, at two EICC factory audits in China. The county councils were able to identify weaknesses in Dell's human rights due diligence and now requires improvements through legally binding contract conditions.

Notably, Dell has also taken steps to improve its transparency across its customer base. The company has revised its contract terms with suppliers to include the right to share audit reports with all customers. In 2015, Dell reported that all contracts will include these new transparency terms within two years.⁴³ The Stockholm County Council is encouraging other contractors to follow suit.

Lesson 8: Public transparency is important to the integrity of socially responsible public procurement systems

Dell's disclosures to the Swedish county councils under a non-disclosure agreement is a step in the right direction, but public transparency is essential for the integrity of socially responsible public procurement. As the National Coordinator of the county council network wrote to her Steering Committee at one point: "One aspect of our work nationally is to share information both internally with all counties and regions but also with the general public. This is, I think, an important principle." The principle of public access to information, to be able to hold public officials to account and to foster informed democratic engagement, is enshrined in Swedish law.⁴⁴

Public supply chain transparency allows civil society watchdogs to alert public buyers about possible contract breaches and human rights and labour standards violations in their supply chains. This external reporting and oversight can be an important aspect of public buyers' capacity for risk assessment and for their consequent engagement with contractors to improve supply chain management and remedy violations. Indeed, the capacity of public procurement systems to integrate external supply chain reports into its own social

⁴³ Stockholms läns landsting, *ibid*, p. 14.

⁴⁴ Public Access to Information and Secrecy Act, <http://www.regeringen.se/informationsmaterial/2009/09/public-access-to-information-and-secrecy-act/>.

responsibility management systems is an important measure of the efficacy and integrity of such systems.

In the present case, the DanWatch report on four electronic factories in China, “IT Workers Still Pay the Price for Cheap Computers,” triggered a long-term process to improve suppliers’ human rights due diligence and address compliance issues in the factories, which would not have been possible without the report. Yet, it was not initially clear whether or not any of the factories investigated by DanWatch did in fact supply any of the county councils. Improved supply chain transparency would facilitate external reporting relevant to public sector procurement, increasing the capacity for socially responsible public procurement, and, ultimately, benefitting workers.

Lesson 9: Public buyers need capacity to verify factories’ compliance with human rights and labour rights standards independently of the industry and through engagement with workers

Human rights due diligence in the supply chain must result in better conditions for workers. Workers themselves are the best source of information about the outcomes of due diligence processes.

While the EICC should correct the audit flaws documented in this case in order to improve its own work to address violations in electronics factories, public sector buyers cannot rely on industry audits to measure the impact of the industry’s human rights due diligence. It is difficult for companies’ own auditors and third-party auditors to instil the confidence in workers to speak freely about labour rights abuses, or to express concerns or worries about working hours or possibly harmful substances, when they fear they might be fired or punished if they do not follow management’s instructions regarding what to say to social auditors, as is often the case. In the present case, the EY observers suspected management coaching of workers based on their observation of a closed-door management-worker meeting and an interview that took place under a manager’s watchful eye. However, evidence of management coaching or intimidation of workers is often not apparent to social auditors, and not accounted for in audit reports.

Following UN Guiding Principle 18, identifying actual and potential adverse human rights impacts requires engagement “in meaningful consultation with groups whose rights have been affected by a company’s operations.” When identifying adverse human rights impacts on electronics workers, meaningful consultation in most cases requires engagement with workers through competent local organisations that they know and trust, and in settings, outside the factory, where they feel safe. Without the capacity for such engagement it is difficult for public sector buyers to accurately evaluate companies’ human rights due diligence.

Lesson 10: Findings of human rights and labour rights violations in the supply chain should influence companies’ overall business activities, not just corporate social responsibility programs

Two years of engagement between the Swedish county councils, Dell, and Atea to improve human rights due diligence has not yet resulted in adequate remedy for one of the most important DanWatch findings, the excessive working hours. EICC acknowledges that, “Excessive working hours in electronics manufacturing remains a key challenge for EICC members.”⁴⁵ EICC’s own explanation for this persistent problem has little to do with social audits and implementation of corrective action plans, but instead takes note of a core dynamic in the electronics industry:

“The speed of production and rapid evolution of products and design, combined with a highly competitive market driven by innovation, requires fast-paced manufacturing operations that are flexible and can scale up or down on short notice. The member companies of the EICC are the makers of the most innovative and useful electronics products on the planet—but they are also concerned that this fast pace can have negative repercussions for workers as they put in the hours to meet the demands of the industry and consumers worldwide.”⁴⁶

Following UN Guiding Principle 19, human rights impact findings should be integrated horizontally across a business enterprise and business functions. In this case, by the industry’s own acknowledgement, fast pace and rapidly changing production patterns result in excessive working hours. Consequently, any viable strategy to maintain sustainable working hours, within legal limits, must include a review of production schedules. Accordingly, the Stockholm County Council compliance conditions include a requirement that Atea and Dell provide “an account of how pricing and delivery practices reflect its social and environmental responsibility goals” as well as “recommendations for how the end user can help to create a sustainable supply chain.”

Long-term strategies to address the root causes of excessive working hours should be supplemented by short-term efforts to provide remedy to workers. Such efforts should address the low wages, particularly as the EY audit observations concluded that the EICC audits lacked data to make credible conclusions about wages below the legal minimum. As the county council network National Coordinator observed: “According to Dell’s own audits, workers state that they are not forced to work overtime, but if their wages are low and not sufficient to meet their basic needs, overtime may be the only solution for workers.” Increasing wages may mitigate the risk of overtime violations.

⁴⁵ See, <http://www.eiccoalition.org/initiatives/working-hours/>.

⁴⁶ Ibid.

6 Conclusion

The Swedish county councils have made a significant contribution to the practice of human rights due diligence in global supply chains, and helped to increase the capacity of both its contractor, an IT reseller, and a global computer brand to manage their supply chains responsibly. The county councils experience in this case contains valuable lessons for public sector buyers in other countries who are committed to socially responsible procurement of electronics and other products.

Electronics Watch looks forward to discussing these lessons with public sector buyers and other stakeholders, and supporting the process of implementing the lessons by:

- Developing and evaluating contract conditions to ensure effective human rights due diligence (lesson 1);
- Fostering broad collaboration and coordination among public sector buyers in Europe to achieve leverage for timely results, and create capacity for long-term engagement with specific contractors and IT brands as necessary (lessons 2 and 3);
- Building the knowledge-base necessary for risk assessments and contractor engagement (lesson 5);
- Developing capacity for worker-based monitoring to identify adverse human rights impacts in IT supply chains, ensure adequate remedies, and evaluate outcomes of human rights due diligence processes (lesson 9); and,
- Engaging with contractors and IT brands over time to address root causes of persistent violations (lesson 10).

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