**UN Working Group on Business and human rights**

**Questionnaire dd. 13.05.2018**

**on policy coherence in government action to protect against business-related human rights abuse**

**Reply by the Government of Belgium**

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# political commitment to promote business respect for human rights

After the unanimous adoption of the “Guiding Principles on Business and Human Rights” by the UN Human Rights Council in June 2011, the Federal government together with the Flemish, Walloon and Brussels Regional governments decided to develop a **National Action Plan** to implement these standards.

With this plan, Belgium reaffirmed the commitments it made in other fora, such as the Organisation for Economic Co-operation and Development (**OECD**) (through i.a. the Guidelines on Multinational Enterprises) and the International Labour Organisation (**ILO**). In addition, the National Action Plan contributes to Belgium's efforts to fulfil the 2030 **Agenda for Sustainable Development**, in particular goal 8, to “Promote sustained inclusive and sustainable economic growth, full and productive employment and decent work for all” and goal 12, to “Ensure sustainable consumption and production patterns”.

Belgium reiterated this political commitment in the **Michel I Government Agreement**: *“A first “Business and Human Rights” National Action Plan will be drawn up in cooperation with the competent departments and entities”*.

At a regional level, the 2014-2019 **Flemish Government Agreement** stipulates that Flanders has an active human rights policy. In its 2017-2019 Regional Policy Declaration, the **Walloon government** committed to promote “international trade respectful of human development”. The 2014-2019 **Brussels Government Agreement** includes clauses related to human rights and the ILO fundamental labour standards (including freedom of association). It also identifies gender equality as a challenge for democracy and our country's economy.

# The operationalization of Belgium’s political commitment

The National Action Plan was drafted by the **Social Responsibility Working Group of the Interdepartmental Commission for Sustainable Development** (ICSD), which is comprised of representatives from federal administrations and regional entities.

At the federal level, the first stage of the drafting process was launched by the Working Group in late 2013. In April 2014, the ISCD Social Responsibility Working Group organised an **initial stakeholder consultation** which involved 51 civil society organisations, contacted by means of a questionnaire.

In addition to the stakeholders’ contribution, the development of the Action Plan also comprised a baseline study or “**mapping**” which aims at evaluating to what degree the 31 United Nations Guiding Principles on Business and Human Rights are currently being implemented at federal level and in the regions.

During the **second round of stakeholder consultations** (November – December 2015) comments and recommendations were made, based on a preliminary draft National Action Plan. The various civil society organisations involved in the first consultation phase had the opportunity to send their reactions in writing. In addition, a face-to-face consultation was organized between members of the ICSD Working Group (which was responsible for the creation of the preliminary draft NAP) and various stakeholder groups (NGOs and other organisations, unions and businesses).

Finally, different **advisory bodies** were asked to submit their views on the preliminary draft NAP. At the federal level, this included the Federal Council for Sustainable Development, the National Labour Council, the Central Economic Council and the Advisory Council on Policy Coherence for Development, the High Council of the Self-Employed and SMEs and the Consumer Council. In Wallonia, the Economic and Social Council of Wallonia submitted an opinion of this preliminary draft plan, as did the Economic and Social Committee of the Brussels- Capital Region. In Flanders, the Economic and Social Council of Flanders elected not to give an opinion but to align itself with the opinions of the Federal Councils.

The various comments and recommendations from this second consultation phase were then incorporated into the draft “Business and Human Rights” NAP by the ICSD Working Group. In this respect, the content of the opinions from the advisory bodies were processed and incorporated as a priority, given the consensus sought among the different stakeholders

within these advisory councils.

# The need for State owned enterprises, trade and investment promotion entities and public procurement agencies to integrate respect for human rights in policies

## Trade and investment promotion

Action nr. 11 mentions that both the Federal and regional authorities implement a variety of initiatives to support trade and foreign investments through the Belgian Export Credit Agency **“Finexpo”**, the Belgian Corporation for International Investment, Flanders Investment & Trade, the Walloon Export-Investment Agency (AWEX), Brussels Invest & Export, etc. All these public services and their initiatives provide support to Belgian companies that want to export or invest abroad.

Finexpo is an inter-ministerial advisory committee, managed by the Administration for Foreign Affairs and comprised of representatives from Foreign Affairs, Foreign Trade, Development Cooperation, Finance, Economy, Budget and the Belgian Export Credit Agency and the Regions. It reviews applications submitted by companies and/or banks seeking public aid for export credit and issues an opinion to the Council of Ministers, which makes the final decision concerning the granting of the aid in question. This state intervention enables Belgian companies to carry out projects in developing countries and thereby contribute to the growth of these countries.

Finexpo's intervention is focused on companies that export capital goods and related services. Finexpo studies the applications on a case-by-case basis and therefore verifies compliance with the applicable rules, notably from the OECD. Before approving an opinion, the committee examines each application on a case-by-case basis in accordance with the intervention criteria and within the limits of the budgets granted.

Procedurally, export companies interested in tied aid (interest subsidy, interest subsidy with additional contribution, donation, state loan) must complete the official Finexpo or Belgian Export Credit Agency questionnaire. Based on a detailed review of the application and aforementioned questionnaire, the Finexpo Committee will issue an opinion to the Council of Ministers which will take the decision whether to award the interest subsidy, the interest subsidy with additional contribution or the donation.

Belgium is currently actively examining how to integrate human rights criteria into the evaluation of applications introduced to Finexpo.

## Public Procurement

Action nr. 13 of Belgium’s NAP aims to strengthen and monitor the respect for human rights in public procurement. [The Interdepartmental Commission for Sustainable Development's Sustainable Public Procurement Working Group](http://www.icdo.belgium.be/fr/groupes-de-travail/le-groupe-de-travail-marches-publics-durables) will look at how to strengthen and optimise the integration of human rights into the public authority's procurement policy. To this end, in consultation with the Public Procurement Commission and the main stakeholders concerned, including the sectoral federations, the Working Group will formulate **a series of proposals paying particular attention to risk sectors** such as the garment industry, the mining industry, etc.

Description of the federal government's action:

The Federal government will quickly need to transpose the EU Directives on public procurement (Directives 2014/24/EU and 2014/25/EU of 26 February 2014). Monitoring activities will pay particular attention the application of the criteria for awarding a project to a company, including the application of the price as the sole award criteria.

The authority will analyse the best way to verify and monitor compliance with the criteria defined in the procurement procedure for products and services in several sensitive sectors, some of which is produced in so-called "at-risk" countries, in order to ensure that the requirements related to the respect for human rights stipulated in the specifications are indeed observed. Existing good practices in European countries will be a source of inspiration.

To this end, the Sustainable Public Procurement Working Group has analysed different case studies on monitoring compliance with ILO clauses and human rights in supply chains in order to test, through pilot projects, whether such an initiative is possible in Belgium. This initiative will be implemented and monitored in cooperation with the federal, regional and local administrations concerned.

Description of the Walloon government's action:

The Wallonia Public Service which is involved in the Interdepartmental Commission for Sustainable Development's Sustainable Public Procurement Working Group will participate in the aforementioned analysis to identify avenues for optimising the integration of human rights into the public authority's procurement policy.

Since January 2009, there has been a public procurement portal for the Walloon Region and the Federation Wallonia-Brussels[[1]](#footnote-1). A series of tools have been developed and/or brought together on this website by the Wallonia Public Service to promote the inclusion of environmental, social and ethical criteria in public procurement. In 2013, the Walloon government decided to implement a sustainable public procurement policy within Wallonia[[2]](#footnote-2); the Walloon contracting entities were invited to register with this for their purchases of supplies, services and works. Under this plan, discussions and workshops are being conducted to strengthen the environmental, social and ethical clauses in public procurement relating to certain product categories. Respect for human rights therefore appears in these works. This plan will be renewed in late 2016 for the 2017-2019 period and will set out several initiatives for making procurement in Wallonia even more sustainable.

Furthermore, Wallonia will organise a competition honouring those public procurement contracts that include ambitious environmental, social and/or ethical criteria and recognising the public purchasers and companies that have agreed these contracts.

Description of the Brussels government's action:

On 8 May 2014, the Brussels-Capital Region adopted an order on the inclusion of environmental and ethical clauses in the public procurement contracts of the regional and municipal authorities. This order encourages the inclusion of ethical clauses that aim to comply with the fundamental rights of people or social equity, upon which the granting or implementation of subsidies can be conditional, when the contracting authorities acts as the subsidising authority.

In addition, at least one resource person is appointed within each contracting authority and is responsible for ensuring that this order is implemented and then assessed every 3 years.

Description of the Flemish government's action:

On 29 January 2016, the Flemish government approved the 2016-2020 Flemish Public Procurement Plan, while highlight innovation, sustainability, professionalisation and SMEs access. This plan relies on a strategic and coordinated public procurement policy within the Flemish authority and by extension, Flanders.

The Flemish authority will use these public procurement contracts to realise its political objectives, particularly boosting innovation, reducing human rights violations in the production chain, improving SME access to public procurement and the transition towards a circular economy and energy efficiency.

Within this framework, pilot projects[[3]](#footnote-3) are set up where the policy areas of "Employment and Social Economy" and "Chancellery and Public Governance" in association with the purchasers for the various contracting authorities, will monitor the credibility of the supporting documents (concerning respect for human rights etc.) and compliance with the ILO Fundamental Conventions. This is necessary to check that the criteria relating to human rights contained in the special specifications are indeed observed. In this respect, the Flemish authority will initially focus on the procurement of textile products.

Using a governing principle on incorporating social criteria into public procurement contracts[[4]](#footnote-4), the Flemish authority intends to support purchasers with this integration, particularly for diversity, accessibility and sustainable and fair trade and the inclusion of people from at-risk groups. The governing principle is therefore a highly practical instrument giving purchasers an automatic reference point for social criteria for each part of a public procurement contract.

Consequently, sustainable public procurement is an important lever in promoting respect for workers' rights. It is a good way to encourage and/or require companies to make a formal commitment to better working conditions in the companies themselves and in their international supply chains.

# Composition, role and responsibilities of coordination mechanism

The National Action Plan have was developed by the [**Social Responsibility Working Group**](http://www.icdo.belgium.be/fr/groupes-de-travail/le-groupe-de-travail-responsabilite-societale)of the[**Interdepartmental Commission for Sustainable Development**](http://www.icdo.belgium.be/fr/) (ICSD) which is comprised of representatives from federal administrations and in which representatives from regional entities participate.

The ICSD is composed of representatives of all the federal public services and of the Ministry of Defence. The Regions and Communities are also invited to appoint a member. The Federal Planning Bureau and the Institute for the Equality of Women and Men are represented by an observer. The Federal Institute for Sustainable Development (FIDO) chairs the ICSD.

Members representing the Federal Public Services (FPS), the Programmatic Public Services (PPS) and the Ministry of Defence:

* representative of the Chancellery of the Prime Minister
* representative of the FPS Policy and Support
* representative of the FPS Foreign Affairs, Foreign Trade and Development Cooperation
* Representative of the FPS Home Affairs
* representative of the FPS Finance;
* representative of the Federal Public Service for Mobility and Transport
* representative of the FPS Employment, Labour and Social Dialogue
* representative of the FPS Social Security
* representative of the FPS Public Health, Food Chain Safety and Environment;
* representative of the Federal Public Service for Justice; alternate member
* representative of the Federal Public Service Economy, SMEs, Self-employed and Energy
* representative of the Ministry of Defence
* representative of the PPS Social Integration, Poverty Reduction and Social Economy
* representative of the Federal Public Service for Science Policy

Representatives of the community and regional governments:

* representatives of the Flemish Government;
* representative of the Government of the Brussels-Capital Region;
* representative of the Government of the German-speaking Community;
* representative of the Government of the Walloon Region;
* representative of the Government of the French Community;

Observers:

* representative of the Federal Planning Bureau;
* representative of the Institute for the Equality of Women and Men.

The ICSD plays an instrumental **coordinating role** to ensure policy coherence and coordination to implement the Belgian NAP. The action plan's implementation will be assessed annually within the ICSD Social Responsibility Working Group. A **progress report** will be written based on this assessment and published on the website <http://www.rs.belgium.be>.

This report will also be included in the appendices of the ICSD annual report sent to the government, parliament and the Federal Council for Sustainable Development. This will also be sent, for information, to the various Advisory Councils that have been involved in the consultation relating to the development of this National Action Plan.

An **assessment** of the NAP and its implementation, together with the stakeholders, is foreseen within 3 years of the government's approval of the action plan. As a result of this assessment, a decision can be made to modify or update the action plan. At that time, the "mapping" will also be updated as appropriate.

If necessary, the stakeholders will be involved in implementing the actions (potentially thorough the Advisory Councils).

# Participation of other stakeholders in the coordination mechanism

On a regular basis, the ICSD or its members organise **consultations** with stakeholders to determine the actions to be taken to achieve the objective and define the content of the action plans.

On 23rd May that Belgium, together with the support of the EU and Finland organised an **international peer learning** meeting to share best practices in implementing the UNGPs through National Action Plans. Parallel to this event, the Federal Institute for Sustainable Development, which chairs the ICSD, organised its **yearly formal stakeholder meeting** to evaluate the state of play of the implementation of Belgium’s NAP on business and human rights.

# Role of the coordination mechanism in monitoring the implementation of the NAP

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# Role of the Parliament in overseeing the implementation of Belgium’s BHR policy

The yearly Business and human rights progress report is included in the appendices of the ICSD annual report that is sent to the Belgian parliament. Moreover, the different parliaments at the federal level and at the level of the federated entities monitor the implementation of Belgium’s commitments via the mechanism of parliamentary questions, addressed to their respective governments.

# Capacity building in governmental departments in charge of business and human rights related issues

**Belgian missions abroad** are a useful first contact for companies that wish to expand their business overseas. For this reason, action nr. 5 of Belgium’s NAP stipulates that the [business and human rights Toolbox](https://business-humanrights.be/) and the [brochure on remedy mechanisms](https://business-humanrights.be/tool/9/where) is distributed among Belgian representations abroad to raise their awareness about this topic. This allows the Belgian missions abroad to inform and guide companies and ensure that their extraterritorial activities take into account their impact on human rights.

The National Contact Point for the OECD Guidelines in Belgium published two **brochures targeting the issue of corruption**. The brochures provide support and guidance mostly to companies ([MNEs](https://economie.fgov.be/fr/publicaties/guide-anticorruption-pour-les) and [SMEs](https://economie.fgov.be/fr/publicaties/une-pme-de-confiance-rejette)) but represent a good training tool for civil servants wishing to know more on how to help private actors to comply with national and international legislation and to implement due diligence.

These brochures have also been promoted on trade missions like the Belgian Economic Mission to Mexico which took place in early 2019.

These brochures have been duplicated as best practices by Finland and work is on-going in Italy.

# Coordination mechanism to promote the implementation of the 2030 SDG Agenda and linkage made with the UNGPs

The Interdepartmental Commission for Sustainable Development (ICSD), which coordinates the implementation of Belgium’s NAP on business and human rights, is one of the four federal actors to whom the Law of 5 May 1997 entrusts the task of coordinating Belgium’s federal sustainable development policy. It brings together the representatives of federal and regional public services, who are responsible for drawing up, implementing, supporting and evaluating federal SD policy. The ICSD is therefore the interdepartmental body within which the transversal approach is developed that encourages cooperation between federal public services and with other organisations, and in which additional actions are proposed to those carried out within the framework of their own tasks.

Belgium’s NAP on business and human rights contributes to Belgium's efforts to fulfil the 2030 Agenda for Sustainable Development and particularly goal 8, "Promote sustained inclusive and sustainable economic growth, full and productive employment and decent work for all" and goal 12, "Ensure sustainable consumption and production patterns". Each action of the NAP is linked to one or more concrete SDGs which clearly indicates that it is embedded in Belgium’s larger SDG-policy strategy.

# Enhancing coherence between social or environmental policy implementation and policies focus on shaping business practice.

The **Federal Institute for Sustainable Development** (FISD)has the aim to strengthen the federal policy on sustainable development by embedding sustainable development in the government's core policy (<https://www.duurzameontwikkeling.be/fr> ). This institute is the federal public service that assists the Belgian federal government in the preparation of sustainable development policy. It is also responsible for the coordination and implementation of this policy. The FISD falls under the authority of the Minister for Sustainable Development.

The FISD develops both initiatives for the other federal public services and initiatives towards civil society in order to integrate sustainable development into their operations and policies. Sustainable Development requires a transversal policy approach. Cooperation with other public services is organised through various consultative bodies. At the federal level, this is mainly via the Interdepartmental Commission for Sustainable Development (ICSD), in which all federal public services are represented, as well as the regions and communities. The FISD is responsible for the presidency and secretariat of the ICSD.

The **National Contact Point** for the OECD Guidelines in Belgium organised several training sessions on due diligence with a sectoral approach over the past years. These sessions were based on the due diligence guidance developed by the OECD : Agricultural supply chains, sustainable finance, conflict minerals and textile industries. Each sessions were followed by a wide range of stakeholders (business, trade unions, NGOs, administrations)

1. Public Procurement Portal in the Walloon Region and Federation Wallonia-Brussels, <http://marchespublics.cfwb.be/fr/informations-generales/pratiques-de-marche/achats-publics-durables/index.html> [↑](#footnote-ref-1)
2. Wallex, circular of November 2013, <https://wallex.wallonie.be/index.php?doc=26980> [↑](#footnote-ref-2)
3. <http://www.werk.be/nieuws/sociale-criteria-bij-overheidsopdrachten-textielaankopen> [↑](#footnote-ref-3)
4. <http://www.werk.be/sites/default/files/Leidraad_sociale_criteria_inoverheidsopdrachten2012.pdf> [↑](#footnote-ref-4)