

NATIONAL ACTION PLAN ON BUSINESS AND HUMAN RIGHTS



GOBIERNO
DE ESPAÑA

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Commitment to implement the United Nations Guiding Principles on Business and Human Rights

Protecting and promoting human rights is a priority for Spain, and one that reflects a clear demand of Spanish society. Spain has assumed very broad-reaching commitments in this area at the international level, which are reflected internally in the country's legislative, institutional and public policy frameworks.

This document presents Spain's National Action Plan to implement the UN Guiding Principles on Business and Human Rights. Through this Plan—as a specific manifestation of our broader commitment to protecting and promoting human rights—Spain undertakes to protect human rights against any adverse impacts from business activities, and to provide the potential victims of such impacts with an effective remedy.

The Guiding Principles on Business and Human Rights (hereinafter, the Guiding Principles) were presented in a report submitted to the UN Human Rights Council by the UN Secretary-General's Special Representative on Business and Human Rights (A/HRC/17/31), and were endorsed by said Council through the adoption of Resolution 17/4 on 16 June 2011. The Guiding Principles therefore constitute a benchmark for State actions in the area of business and human rights.

Pursuant to these Guiding Principles, business enterprises are expected, both in Spain and abroad, to act in accordance with their responsibility to respect human rights, i.e. they must act with due diligence to avoid violating the rights of third parties and to address the adverse impacts of their activities.

Many Spanish business enterprises have already incorporated this responsibility regarding human rights into their business strategies. Others, in particular small and medium-sized enterprises (SMEs), can find in this Action Plan the necessary tools to assume that responsibility to respect human rights throughout their operations. A large number of Spanish business enterprises have reinforced their commitment to human rights in recent years by joining the UN Global Compact, steadily advancing understanding of the impacts of their activities on human rights at the international level. This commitment is of utmost relevance if we consider that, in today's world, business enterprise's reputation is particularly sensitive to risks related to human rights issues. Moreover, business enterprises are increasingly aware that respect for human rights is an asset in business terms, shaping how an enterprise is viewed by consumers, investors and partners, boosting its reputation, brand, and staff motivation levels, and reducing certain risks, such as those related to business continuity and to litigation.

This Action Plan will bolster the competitive advantage of Spanish business enterprises in the global market, offering them an optimal framework in which to carry out their operations, preventing and mitigating human rights-related risks and strengthening their capacities in this regard. The Action Plan aims to support those business enterprises that have already included the Guiding Principles in their business strategies, while at the same time raising awareness in those that have yet to complete said process. It is therefore presented as a Business and Human Rights Plan aimed at raising awareness of and promoting human rights among corporate, public and private actors.

Business enterprises and civil society have an essential role to play in applying the UN Guiding Principles, and their contribution shall prove decisive for the effective implementation of this National Plan on Business and Human Rights.

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Background and context

As reflected in the Report presented by the Special Representative of the UN Secretary-General to the Human Rights Council (A/HRC/17/31), the issue of business and human rights was definitively included in the global political agenda in the 1990s, due to the significant expansion of the private sector during that period, as well as to a substantial increase in transnational economic activity. These developments rose awareness of the impact of business activity on human rights and led the UN to pay closer attention to the issue.

The mandate of the Special Representative of the UN Secretary-General on Business and Human Rights was created in 2005, and Professor John Ruggie was appointed to the position. The establishment of this mandate, and the work carried out by the Special Representative, gave rise to the current development of national plans on business and human rights.

In June 2008, after three years of research and extensive consultation with governments, business enterprises, trade unions, civil society organizations and experts dedicated to identify existing standards and practices, the Special Representative presented the “Protect, Respect and Remedy” Framework to the Human Rights Council, receiving the Council’s unanimous support through Resolution 8/7. The Framework is based on three pillars:

1. The State duty to protect against human rights abuse by third parties, including business enterprises;
2. the corporate responsibility to respect human rights; and
3. the need for greater access by victims to effective remedy, both judicial and non-judicial.

In that same Resolution 8/7, the Human Rights Council also requested that the Special Representative present specific and practical recommendations to implement the “Pro-

tect, Respect and Remedy” Framework.

Pursuant to this request, the Special Representative developed the UN Guiding Principles on Business and Human Rights, which were submitted to and endorsed by the Human Rights Council through the adoption of Resolution 17/4 by consensus on 16 June 2011. As regards the Guiding Principles, the following should be emphasized:

- they apply to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure
- nothing in them should be read as creating new obligations under international law, or as limiting or undermining any legal obligations a State may have undertaken or be subject to under international law with regard to human rights.
- they should be implemented in a non-discriminatory manner, with particular attention to the rights and needs of, as well as the challenges faced by individuals belonging to groups or populations exposed to a higher risk of becoming vulnerable or marginalized, and with due regard to the different risks that women and men may face.

The Guiding Principles encompass both foundational principles, which set forth and explain the corresponding obligations, and operational principles, which detail the measures to be adopted to put the foundational principles into practice.

The Guiding Principles have played an important role in the development of similar reference frameworks in other international and regional organizations, thereby leading to the convergence of standards. Thus, the corporate responsibility to respect human rights is reflected in the 2011 update of the Guidelines for Multinational Enterprises of the Organisation for Economic Co-operation and Development (OECD), in the International Organization for Standardization Guidance on Social Responsibility Standard (ISO 26000) and in the Performance Standards on Environmental and Social Sustainability of the International Finance Corporation (part of the World Bank Group).

In the framework of the European Union (EU), first we should mention the EU Charter of Fundamental Rights, in addition to relevant initiatives such as the European Platform against Poverty and Social Exclusion—one of the seven pillars of the Europe 2020 Strategy—and the Single Market Act of 2010, which also address Corporate Social Responsibility. The Communication of the Commission presented to the European Parliament, the Council, the European Economic and Social Committee and the European Committee of the Regions, entitled “A renewed EU strategy 2011-14 for Corporate Social Responsibility”, (Brussels, 25.10.2011 COM(2011) 681 final), calls on Member States to develop a plan for the implementation of the Guiding Principles. In May 2014, the Commission presented the Communication “A Stronger Role of the Private Sector in Achieving Inclusive and Sustainable Growth in Developing Countries” (COM(2014) 263 final) in order to promote



the Corporate Social Responsibility of European business enterprises operating outside the EU. One of the objectives of the 2015-2019 EU Action Plan on Human Rights and Democracy is to advance on business and human rights and, to this end, Section II.18 of the Plan lists a number of activities to be carried out by Member States, the European External Action Service and the European Commission, including initiatives aimed at implementing the Guiding Principles on Business and Human Rights. The actions referred to in the Plan include the development and implementation of National Action Plans for the application of the UN Guiding Principles. Furthermore, the role of business enterprises has been widely debated in the context of the EU's development cooperation. The Conclusions of the Council of the EU on sustainable garment value chains, approved in May 2017 is worth mentioning in particular. The purpose of these Conclusions is to highlight the areas in which cooperation can improve labour, social and environmental conditions in the textile sector, supporting the efforts of all the actors involved, including the Governments of the producer countries, as well as civil society and private sector organizations.

In the framework of the United Nations, the key initiative is the 2030 Agenda for Sustainable Development, approved by UN General Assembly (UNGA) Resolution 70/1 of 25 September 2015. This Resolution, which is universal in nature, sets social, economic and environmental objectives for achieving the 17 Sustainable Development Goals (SDGs) and their 169 targets by 2030. Paragraph 67 expressly mentions the Guiding Principles on Business and Human Rights in the framework of promoting a dynamic and efficient

business sector, an idea that is reinforced in UNGA Resolution 70/224 of 22 December 2015 on global partnerships. The Addis Ababa Action Agenda, approved by UNGA Resolution 69/313 of 27 July 2015, included in the 2030 Agenda as a means of implementation, also refers to these Guiding Principles in its paragraph 37. The 2030 Agenda invites business enterprises to align their corporate strategies with the development goals to identify added values that could be their contribution in developing countries, for which the SDGs provide a perfect framework. Business enterprises understand that in parallel with obtaining profits they must meet society's demands and generate trust as development actors. A development agenda can be elaborated in the business sphere through the Global Compact Local Networks. With regard to the Spanish Cooperation, mainstreaming of the development objectives in business agendas could further be promoted to achieve impacts in the area of sustainable development. Additionally, the Madrid Declaration "The Social Economy, a business model for the future of the European Union", signed by representatives of 11 EU Member States on 23 May 2017, reaffirms the signatories' commitment to the SDGs.

On 4 April of 2013 Spain's Congress of Deputies approved a Non-Legislative Motion on Corporate Social Responsibility and Human Rights, which calls on the Government to advance on business and humans rights through a number of different actions. More recently, at its meeting of 28 March 2017, the Spanish Senate's Foreign Affairs Committee approved a motion urging the Government to adopt a national action plan to engage business enterprises and institutions with the universal principles and protection of human rights.

Finally, on 24 October 2014, the Council of Ministers approved Spain's Corporate Social Responsibility Strategy. As a concept, corporate social responsibility gives extensive consideration to the impact of business on societies. Human rights constitute one among many other aspects of corporate social responsibility, including social and environmental aspects, work-life balance, good governance and transparency. However, due to its particularities, the relationship between business and human rights has been subject to specific consideration in the Guiding Principles, applied through the adoption of this Plan.

3

Areas of action and measures

3.1. Common provision

Commitments derived from the application of the measures of the Plan are subject to limitations according to annual budgetary availability and the budgetary stability objectives set by the Government, and may not give rise to a net increase in expenditure related to personnel at the service of the State Administration.

3.2. Pillar I: the State duty to protect Human Rights

3.2.1. Foundational principles

Guiding Principle 1. States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.

The international obligations assumed by Spain require that it respect and protect human rights. This includes the obligation to protect human rights from violations or abuses committed by third parties, including business enterprises. This Plan reaffirms Spain's commitment to protecting human rights, in addition to addressing any adverse human rights impacts of business activities, and to provide an effective remedy for any victims of human rights abuses.



Plenary Sitting of the International Labour Organization, headquartered in Geneva.

The State's obligation of protection refers to the obligations set forth in the treaties it has ratified. Spain is state party to practically all the main treaties concerning human rights and, in particular, the following:

- The International Covenant on Civil and Political Rights and its Optional Protocols;
- The International Covenant on Economic, Social and Cultural Rights and its Optional Protocol;
- The Convention on the Elimination of All Forms of Racial Discrimination;
- The Convention on the Elimination of All Forms of Discrimination against Women;
- The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol;
- The Convention on the Rights of the Child and its three Optional Protocols;
- The Convention on the Rights of Persons with Disabilities;
- International Convention for the Protection of All Persons from Enforced Disappearance.

Furthermore, in the case of all the aforementioned treaties, Spain has accepted the com-

petence of the corresponding treaty bodies to assess any individual complaints submitted against the country that allege violations of the rights recognized therein.

Spain has also ratified the eight fundamental conventions of the International Labour Organization (ILO):

- C029 - Forced Labour Convention
- C087 - Freedom of Association and Protection of the Right to Organise Convention
- C098 - Right to Organise and Collective Bargaining Convention
- C100 - Equal Remuneration Convention
- C105 - Abolition of Forced Labour Convention
- C111 - Discrimination (Employment and Occupation) Convention
- C138 - Minimum Age Convention
- C182- Worst Forms of Child Labour Convention

Spain is also a party to the ILO's C169 Indigenous and Tribal Peoples Convention.

At European level, Spain has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms.

At EU level, the Charter of Fundamental Rights of the European Union has been included in the EU Treaties, bearing the same legal enforceability as the Treaties since the entry into force of the Treaty of Lisbon in December 2009, pursuant to Article 6.1 of the Treaty of the European Union.

The legally binding international instruments on human rights are supplemented by soft-law instruments to which Spain has also expressed its commitment, such as the ILO's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the ILO Declaration on Fundamental Principles and Rights at Work and the OECD Guidelines for Multinational Enterprises.

Guiding Principle 2. States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.

The State expects Spanish business enterprises, both in Spain and abroad, to operate

in accordance with their responsibility to respect human rights, i.e. they must act with due diligence, as appropriate to their size and circumstances, to avoid the abuse of the rights of third parties and to address the adverse impacts of their activities. In this regard, in addition to the obligation of the State to protect human rights—including from abuses deriving from business operations—it is worth referring to the need to safeguard the State's reputation and to promote Marca España.

In short, the State expects Spanish business enterprises to exercise their responsibility to respect human rights in accordance with the foundational and operational principles of Pillar II of the Guiding Principles, with special emphasis on the following:

Guiding Principle 13. The responsibility to respect human rights requires that business enterprises:

- a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;*
- b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.*

Guiding Principle 15. In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:

- a) A policy commitment to meet their responsibility to respect human rights;*
- b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;*
- c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.*

Guiding Principle 16. As the basis for embedding their responsibility to respect human rights, business enterprises should express their commitment to meet this responsibility through a statement of policy that:

- a) Is approved at the most senior level of the business enterprise;*
- b) Is informed by relevant internal and/or external expertise;*
- c) Stipulates the enterprise's human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services;*

- d) Is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties;
- e) Is reflected in operational policies and procedures necessary to embed it throughout the business enterprise.

Guiding Principle 17. In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence:

- a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;
- b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;
- c) Should be ongoing, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve.

Guiding Principle 18. In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should:

- a) Draw on internal and/or independent external human rights expertise;
- b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.

Guiding Principle 19. In order to prevent and mitigate adverse human rights impacts, business enterprises should integrate the findings from their impact assessments across relevant internal functions and processes and take appropriate action.

- a) Effective integration requires that:
 - i) Responsibility for addressing such impacts is assigned to the appropriate level and function within the business enterprise;
 - ii) Internal decision-making, budget allocations and oversight processes enable effective responses to such impact.

b) Appropriate action will vary according to:

- i) Whether the business enterprise causes or contributes to an adverse impact, or whether it is involved solely because the impact is directly linked to its operations, products or services by a business relationship;*
- ii) The extent of its leverage in addressing the adverse impact.*

Guiding Principle 20. In order to verify whether adverse human rights impacts are being addressed, business enterprises should track the effectiveness of their response. Tracking should:

- a) Be based on appropriate qualitative and quantitative indicators;*
- b) Draw on feedback from both internal and external sources, including affected stakeholders.*

Guiding Principle 21. In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders. Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them. In all instances, communications should:

- a) Be of a form and frequency that reflect an enterprise's human rights impacts and that are accessible to its intended audiences;*
- b) Provide information that is sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact involved;*
- c) In turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality.*

In this context, and with regard to the expectations of the State towards Spanish business enterprises, it should be recalled that Spain has endorsed and supports the OECD Guidelines for Multinational Enterprises.

MEASURES PLANNED:

1. The Government shall clearly and coherently convey its expectations to the business sector concerning respect for human rights by business enterprises.
2. The Government shall undertake awareness-raising and training actions in relation to the UN Guiding Principles on Business and Human Rights and the National Plan on Business and Human Rights, and to the State's expectations with

regard to this issue. These campaigns may be organized, inter alia, with the National Contact Point for the OECD Guidelines for Multinational Enterprises, business associations, UN Global Compact Networks and civil society organizations. These initiatives shall primarily be aimed at those business enterprises in which the State participates, or to which it provides financial, diplomatic or any other support, as well as to business enterprises that could affect vulnerable groups, and those which have been endorsed by Marca España. The awareness-raising campaign shall be aimed at all individuals involved in different decision-making levels within business enterprises, including boards of directors and management bodies.

3. In particular, the Government shall undertake campaigns to raise awareness of actions aimed at protecting the most vulnerable groups. In collaboration with leading Spanish and international organizations, the Government shall disseminate the UNICEF, Save the Children and Global Compact document on “Children's Rights and Business Principles” among the business sector, and shall give particular consideration to General Comment no. 16 of 2013 of the UN Committee on the Rights of the Child.
4. The Government shall also promote self-regulatory codes, following the example of significant sector-specific initiatives, such as the Global Code of Ethics for Tourism of the World Tourism Organization (WTO) or the Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism, as well as the relevant labour conventions of the ILO.
5. Similarly, an awareness-raising strategy shall be implemented on how to avoid discriminatory practices (including distinction, exclusion or preference) in public and private enterprises, on the basis of gender, age, ethnic origin, race, religion, disability, membership of a political party or trade union, sexual orientation, nationality, civil status, socio-economic background or any other personal difference.
6. Information shall be provided to business enterprises and sectors exposed to the greatest risks related to “C169 Indigenous and Tribal Peoples Convention” (1989) of the ILO and the UN Declaration on the Rights of Indigenous Peoples (2007). This awareness-raising action shall demonstrate the benefits that respect for human rights can have for business enterprises, as well as provide examples of best practices.
7. The Government shall establish channels for the promotion of internal measures, procedures and systems among Spanish business enterprises and business enterprises operating in Spain, which can contribute effectively to preventing and/or mitigating the adverse human rights impacts of their activities. The Government shall also establish channels for the dissemination of best practices aimed

at preventing such impacts, or which may contribute to their prevention, reduction or remediation, especially in case of business enterprises that have leverage over other enterprises that cause such impacts. Efforts shall be made to promote the implementation of internal procedures of assessment and determination of actions to be taken to prevent other adverse human rights impacts.

8. The Monitoring Committee shall design a system of incentives for large, small and medium-sized enterprises to encourage them to adopt adequate policies in the sphere of human rights. This system of incentives shall be presented to the Government, which shall decide on its adoption. The incentives, which could be economic or commercial, or related to presence, visibility or image, among others, are intended to ensure that business enterprises have the necessary policies in place, and that they duly corroborate that they have comprehensively implemented such procedures as are appropriate to their size and circumstances, and specifically:

- A public commitment to assume their responsibility to respect human rights in accordance with Guiding Principle no. 16;
- A due diligence process in line with the pertinent OECD sector guides (due diligence guidance), underpinned by stakeholder dialogue, which enables them to identify, prevent, mitigate and account for how they address the impacts of their own activities and of those activities that are directly related to their business relationships pursuant to Guiding Principles 17 to 21;
- Processes to redress all adverse human rights impacts business enterprises have caused or to which they have contributed pursuant to Principles 22, 29, 30 and 31.

3.2.2. Operational principles

Guiding Principle 3. In meeting their duty to protect, States must:

a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps;

b) Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;

c) Provide effective guidance to business enterprises on how to respect human rights throughout their operations;



The Monitoring Committee shall design a system of incentives for large, small and medium-sized enterprises

d) Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.

MEASURES PLANNED:

1. The Government shall organize training campaigns for civil servants and other government employees on business and human rights, targeting those groups which, due to the work they carry out, need to be familiar with these issues.
2. The Government, through development cooperation, shall contribute to capacity building in other States as regards business and human rights.
3. The Monitoring Committee, referred to in Chapter IV of this Plan, shall evaluate periodically—in collaboration with the National Council on Corporate Social Responsibility (CERSE)—whether the laws and standards referred to in Guiding Principle 3 are adequate.
4. Regulations shall be implemented, and Directives shall be transposed. Moreover, an evaluation shall be carried out to assess the alignment of Spanish law with the Recommendations and Decisions of the EU regarding the Guiding Principles, also taking into account the studies published by the European Commission on the Legal Framework on Human Rights and the Environment Applicable to European Enterprises Operating outside the European Union (2010) and on Responsible Supply Chain Management (2011), as well as other relevant reports.

5. Business associations and trade unions, either general or sector-specific, including organizations representing social economy entities, as well as chambers of commerce, both in Spain and abroad, universities, and business schools, shall all be encouraged to implement initiatives aimed at promoting online training, guidance and advice. These efforts shall be coordinated within the work carried out to implement Spain's Corporate Social Responsibility Strategy.
6. Pursuant to EU recommendations, the Government shall put special emphasis on promoting information and capacity building for SMEs and social economy entities, through all the means available in business associations, and shall promote the creation of sector-specific learning forums to debate best practices and reach commitments of interest to each sector.
7. At the same time, the Government, in collaboration with independent and specialized institutions having proven experience in human rights and which do not have conflict-of-interest issues, shall participate in the creation and consolidation of face-to-face training programmes, and promote the inclusion of specific human rights content in the training activities of business organizations and of the Public Administration.
8. The Government of Spain shall collaborate with other governments on developing training materials and tools.
9. Pursuant to Act 2/2014, of 25 March, on the State's External Action and Foreign Service, the Government shall provide its Foreign Service staff, as well as staff of agencies tasked with promoting Spanish business abroad, with training on business enterprises' responsibility to respect human rights and on due diligence and remedy procedures. It shall also incorporate the Guiding Principles into its Annual Plans for Foreign Action and for Marca España. Likewise, it shall disseminate tools and action guides adapted to the characteristics of each country through its Diplomatic Missions and Permanent Representations and their respective Specialized Offices, particularly their Economic and Trade Offices, as well as through Consular Offices, Technical Cooperation Offices, and Training Centres operated by Spanish Cooperation/AECID abroad.
10. To increase transparency and boost consumer's and investor's confidence in Spanish business, the Government shall compile reports that business enterprises issue voluntarily, pursuant to Spain's Corporate Social Responsibility Strategy and to Article 39 of the Sustainable Economy Act. Business enterprises shall be encouraged, in such Corporate Social Responsibility reports, to take into account the human rights impacts of their activities, including their value chains, and shall include a specific chapter for this purpose. Furthermore, as regards the reports mentioned in Article 35.2.a) of the Sustainable Economy Act, which establishes obligations for public trading companies and public corporations under

the umbrella of the General State Administration, the inclusion of a section on human rights shall be promoted therein. In addition, Directive 2014/95/EU on the dissemination of information on non-financial data and about diversity by certain large enterprises and groups, shall be transposed.

11. The National Contact Point for OECD Guidelines shall act as a focal point for information and advice on issues concerning business enterprises and human rights.

Guiding Principle 4. States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.

In this context, it is worth noting that Spain supports the OECD Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence.

MEASURES PLANNED:

1. Within a year of the approval of this Plan, a Task Force shall be created as part of the Strategic Plan for Internationalizing the Spanish Economy, which shall elaborate a specific Action Plan to examine the consistency of policies supporting business internationalization and their alignment with the Guiding Principles. The Task Force, which shall present its conclusions to the Government, shall study how development cooperation, official credit bodies, export credit and official insurance and investment guarantee bodies at every administrative level can condition, modulate, or revise the investment support on the basis of exercising the obligation to respect human rights by the beneficiary business enterprises, both inside Spanish territory and abroad.
2. The Government shall carry out an information and training campaign on the Guiding Principles targeting all government departments and bodies and other state institutions whose work focuses on supporting the internationalization of Spanish business.
3. As regards public-sector enterprises, the Government shall promote the principles of Socially Responsible Investment. In particular, investments must be evaluated in terms of human rights, within and outside Spanish territory.
4. The Government shall support the inclusion of human rights aspects into the financial institutions working on regional and international development issues.

Guiding Principle 5. States should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights.

Guiding Principle 5 covers the situations in which the State hires services of business enterprises that may potentially impact the enjoyment of human rights. In case business enterprises that render such services lack guarantees regarding respect for human rights, that may have damaging consequences for the State itself, not only in terms of reputation but also in legal terms.

MEASURES PLANNED:

1. The Public Administrations shall perform appropriate oversight of the potential impact on human rights when they hire services of business enterprises, within and outside Spanish territory. This oversight must take into account the criteria of specialized institutions, in application of Spain's Corporate Social Responsibility Strategy.

Guiding Principle 6. States should promote respect for human rights by business enterprises with which they conduct commercial transactions.

MEASURES PLANNED:

1. The Government shall examine how to apply criteria that are aligned with the Guiding Principles, as regards Royal Legislative Decree 3/2011, of 14 November, approving the consolidated text of the Public Sector Contracts Act, and Act 24/2011, of 1 August, regarding public sector contracts in the spheres of defence and security, as well as other prevailing applicable provisions.
2. The Government shall ensure that business enterprises strictly respect human rights in the commercial transactions in which it engages with such enterprises, and shall establish the necessary measures to prevent discrimination against SMEs, ensure the respect for the provisions of the EU Treaty as regards non-discrimination, equal treatment and transparency, and the prevention of additional administrative burdens for contracting authorities or business enterprises.

Guiding Principle 7. Because the risk of gross human rights abuses is heightened in conflict-affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by:

- a) ***Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships;***



The Government shall carry out an information and training campaign on the Guiding Principles targeting all government departments and bodies and other state institutions whose work focuses on supporting the internationalization of Spanish business.

b) Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence;

c) Denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation;

d) Ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses.

Any measures adopted in application of Guiding Principle 7 shall go along with the obligations of the State arising from International Humanitarian Law in situations of armed conflict, and pursuant to International Criminal Law, in particular those obligations derived from the signing of the Rome Statute of the International Criminal Court.

In this regard, it should be noted that Spain is a signatory of the Montreux Document on pertinent international legal obligations and best practices for States related to operations of private military and security companies during armed conflict.

MEASURES PLANNED:

1. The Government, through its Missions abroad, shall inform business enterprises of the risks that their activities and business relations entail, particularly in areas affected by conflict.
2. In application of the 2nd National Action Plan on Women, Peace and Security, the Government shall develop tools and handbooks for action, aimed at business enterprises, as regards how they can address the risk of sexual violence and gender violence in conflict situations.
3. The Government is committed to including clauses on respect for human rights in agreements for hiring private military or security services, pursuant to the Basic Principles of the United Nations on the Use of Force and Firearms by Law Enforcement Officials (1990), the Code of Conduct for Law Enforcement Officials (1979) and the Arms Trade Treaty (2013).
4. The Government shall promote the application of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals in Conflict-Affected and High-Risk Areas.
5. The Government shall participate in the multilateral efforts aimed at improving prevention, mitigation and remedy of situations in which business enterprises are involved in serious human rights abuses.

Guiding Principle 8. States should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State's human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support.

MEASURES PLANNED:

1. The following ministries and their dependent entities shall offer relevant information, training and appropriate support about the Guiding Principles to the departments, government organizations, and other state institutions that encourage and support the establishment of business enterprises, business competitiveness, and commercial and financial practices in business, in order to promote policies and processes that are consistent with the Guiding Principles and with international human rights law by which Spain is bound: The Ministry of the Treasury and of the Civil Service, the Ministry of Foreign Affairs and Cooperation, the Ministry of the Economy, Industry and Competitiveness, and the Ministry of Energy, Tourism and the Digital Agenda.



The Ministry of Foreign Affairs and Cooperation will offer relevant information and provide sufficient support to other departments with regard to the guiding principles.

2. The Government shall distribute the National Plan on Business and Human Rights in printed and electronic format to civil servants and other government employees who need to be familiar with this area to perform their duties

Guiding Principle 9. States should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts.

MEASURES PLANNED:

1. The Government shall promote the inclusion of references to respect for human rights in agreements on trade, investments and other issues linked to business activities that are signed by Spain and affect the areas covered by the Guiding Principles. In addition, the Government shall promote the inclusion of such references in agreements between the European Union and third States on such issues.
2. The Government shall disseminate knowledge on and promote the application of the recommendations in the United Nations Principles for Responsible Contracts, as developed in 2011 by the former Special Representative of the Secretary-General, John Ruggie (A/HRC/17/31/Add.3, 2011).

Guiding Principle 10. States, when acting as members of multilateral institutions that deal with business-related issues, should:

a) Seek to ensure that those institutions neither restrain the ability of their member States to meet their duty to protect nor hinder business enterprises from respecting human rights;

b) Encourage those institutions, within their respective mandates and capacities, to promote business respect for human rights and, where requested, to help States meet their duty to protect against human rights abuse by business enterprises, including through technical assistance, capacity-building and awareness-raising;

c) Draw on these Guiding Principles to promote shared understanding and advance international cooperation in the management of business and human rights challenges.

MEASURES PLANNED:

1. Spain shall promote the effective application of the Guiding Principles in the framework of the mandate and activities of the United Nations Human Rights Council.
2. Spain shall promote the adherence of States, that are not members of the OECD, to the Declaration on International Investment and Multinational Enterprises, which includes the OECD Guidance on Multinational Enterprises..
3. Spain shall promote greater involvement of the International Labour Organization in the application of the Guiding Principles.
4. Spain shall support the development of strategies within the framework of the European Union as regards the application of the Guiding Principles.
5. The Government shall promote that the European Union, international organizations and international financial institutions, of which Spain is a member, share best practices with a view to promoting coherent policymaking and technical support for Member States that request such assistance.
6. Spain shall include in its Universal Periodic Report information on its activities as regards business enterprises and human rights and shall promote inclusion thereof in the reports of other States.

3.3. Pillar III: access to remedy

3.3.1. Foundational principles

Guiding Principle 25. As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.

As regards access to remedy, the role of human rights defenders should be highlighted, as should the considerable hindrance that threats against or repression of such defenders represent in terms of access to remedy. In this regard, reference must be made to the Programme for Protection and Temporary Shelter of Threatened Human Rights Defenders, run by the Human Rights Office of the Ministry of Foreign Affairs and Cooperation since 1995. The Programme is aimed at human rights defenders who are threatened or at high-risk situations, due to their non-violent activities in the defence of Universally Recognized Human Rights. The Programme is being run in close collaboration with civil society organizations, which can request that specific individuals be included in the Programme. Civil society organizations play a fundamental role in providing assistance to defenders who are provided shelter.

MEASURES PLANNED:

1. Within a year from the date of approval of this Plan, the Monitoring Committee shall prepare a report on the legal mechanisms to enforce civil responsibility of business enterprises that have undertaken actions violating or infringing human rights, including such abuses arising from a failure to act with due diligence to prevent abuses, including by their employees or agents, or by business enterprises that form part of the same group of companies.
2. The Government shall collaborate with civil society organizations to disseminate the means of remedy available to victims of human rights abuses caused by business activities.
3. The Government shall fulfil its commitments arising from the United Nations Declaration on Human Rights Defenders.

3.3.2. Operational principles

Guiding Principle 26. States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.

The independence of the judiciary, enshrined in Article 117 of Spain's Constitution, is essential to guaranteeing access to effective legal remedy.

As regards the need to remove any obstacles that may limit access to remedy, including time limits on submission of the corresponding claims, it should be noted that Spain's legal system ensures the non-applicability of a statute of limitations on the most serious of crimes, i.e. genocide, war crimes and crimes against humanity.

Furthermore, in 2010 a system of criminal responsibility for legal persons (Article 31.bis of the Criminal Code) was incorporated into Spain's legal system, to which technical improvements were added in 2015. This system is an important mechanism for providing remedy to victims for damage caused by activities of business enterprises.

Lastly, the Free Legal Aid Act guarantees that lack of resources shall not hinder access to legal remedy mechanisms.

MEASURES PLANNED:

1. The Government, through its development cooperation policy, shall support the efforts of third States to strengthen the independence of the judiciary.
2. Specific training on business enterprises and human rights shall be provided to judges and prosecutors.
3. The Government shall develop and promote instruments that enable any citizen to access easy-to-understand information on all of the remedy mechanisms they may have access to, if they consider it necessary. For this purpose, a handbook of available legal aid resources shall be prepared and disseminated.

Guiding Principle 27. States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive State-based system for the remedy of business-related human rights abuse.

Non-judicial grievance mechanisms include Spain's National Contact Point for the OECD Guidelines on Multinational Enterprises.

Furthermore, the Ministry of Employment and Social Security's Labour and Social Security Inspectorate offers arbitration, conciliation and mediation services; for such services to be rendered they must be accepted by the affected parties in the labour dispute.

Since in cases of human rights abuses caused by business enterprises there may also be allegedly irregular action of the Public Administration, any citizen may request the services of Spain's Ombudsman.

MEASURES PLANNED:

1. The Monitoring Committee shall elaborate a study of existing legal provisions, existing non-judicial grievance mechanisms for receiving complaints and for mediation between parties, and potential needs expressed by parties. Within one year from approval of this Plan, based on the recommendations arising from the aforementioned study, recommendations may be made regarding an extension of existing non-judicial mechanisms, or the creation of new mechanisms pursuant to the criteria of Guiding Principle 31.

Guiding Principle 28. States should consider ways to facilitate access to effective non-State-based grievance mechanisms dealing with business-related human rights harms.

MEASURES PLANNED:

1. The Government shall promote the preparation of practical handbooks and shall compile best practices as regards the establishment of grievance mechanisms that are managed by business enterprises pursuant to the criteria of Guiding Principle 31, with the aim of making this information available to business enterprises.

Guiding Principle 30. Industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available.

Guiding Principle 30 concerns the role of States as participants in collaborative initiatives.

MEASURES PLANNED:

1. The Government shall support the development of effective remedy mechanisms—which reflect the criteria of Guiding Principle 31—in the collaborative initiatives in which it participates.
2. The Government shall issue appropriate recommendations in order that business enterprises establish or participate in effective operational-level grievance mechanisms that are available for people who suffer from the adverse impacts of their activities.

Guiding Principle 31. In order to ensure their effectiveness, non-judicial grievance mechanisms, both State-based and non-State-based, should be:

- a) ***legitimate: enabling trust from the stakeholder groups for whose use they are***

intended, and being accountable for the fair conduct of grievance processes;

b) Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;

c) Predictable: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;

d) Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;

e) Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;

f) Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights;

g) A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;

Operational-level mechanisms should also be:

h) Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.

The Report that contains the Guiding Principles (A/HRC/17/31) clarifies that the first seven criteria apply to any state or non-state resolution or mediation mechanism. The eighth criterion is specific to the operational-level mechanisms that business enterprises help to manage.

MEASURES PLANNED:

1. Measures planned as regards Guiding Principles 27, 28 and 30.

4

Monitoring and updates

The National Plan on Business and Human Rights must not be understood as a definitive and lasting result, but rather as a first step in an ongoing process. Periodic updates of the Plan are therefore essential. This initial Plan does not aim to cover each and every issue relating to the impact that business activities might have on human rights; instead, the expectation is that progress in this regard shall be the result of ongoing reviews and updates of the measures contained in the Plan.

The Plan shall remain in place for three years following its approval by the Council of Ministers.

The Government shall create a Monitoring Committee for the Plan within three months following its approval. The Monitoring Committee shall comprise representatives from the Ministry of the Presidency, the Ministry of Foreign Affairs and Cooperation, the Ministry of Employment and Social Security, the Ministry of Energy, Tourism and the Digital Agenda, the Ministry of the Economy, Industry and Competitiveness, the Ministry of the Treasury and the Civil Service, the Ministry of Justice, and the Ministry of Health, Social Services and Equality. The Committee may decide to invite other Ministries to its meetings. Each Ministry shall name one or more representatives to attend the Committee meetings. When a Ministry is already represented in the State Council on Corporate Social Responsibility, if possible, the same person shall be the Ministry's representative in both bodies, in order to maintain the strongest possible link between the two. The decisions of the Committee shall be made by consensus.

At its first meeting, the Monitoring Committee shall approve its procedural rules and appoint a chairperson and a secretary.

The Monitoring Committee may invite the Ombudsman's Office to its meetings, with the right to express views but not to vote. The Committee may also appoint eminent experts to support its work through their knowledge and experience. The experts may come from the public, academic or business sector, business associations, trade unions or social organizations or may be professionals who work on the protection and defence of human

rights. The experts may participate in the meetings of the Monitoring Committee as advisors or may be consulted on specific matters, but they shall not have decision-making powers.

The Monitoring Committee shall meet at least once every six months.

The Monitoring Committee shall take into consideration the opinions of the different social stakeholders that are related to the areas covered by the Plan (non-governmental organizations, trade unions, business enterprises, business associations, universities). To this end, the Committee shall convene a meeting at least once a year with civil society, interested business enterprises and business associations. The meetings shall be convened publicly, and any organization that wishes to attend may do so. The objective of the meetings shall be to explain the actions undertaken by the Monitoring Committee and by the Government, as well as to exchange points of view on possible courses of action.

Furthermore, the Monitoring Committee may convene sectorial meetings to assess specific aspects of the Plan.

A meeting shall be requested annually with the Standing Committee of the State Council on Corporate Social Responsibility, in order to promote the cohesion of the two bodies' activities.

The Monitoring Committee shall prepare an annual report assessing the implementation of the measures included in the Plan and shall propose updates to the Plan. To this end, the Monitoring Committee shall create a follow-up sheet for each measure. This document shall describe the measure in question, the Ministry or entity/ies responsible for its implementation, the indicators of fulfilment and the schedule for implementation.

The Monitoring Committee shall submit an annual report to the Spanish Parliament on the application of the Plan.

Two years from the approval of this Plan by the Council of Ministers, the Monitoring Committee shall, within a six-month period, perform an impact assessment as regards prevention, mitigation and remedy of the potential adverse human rights impacts of business activities. Channels shall be established so that various stakeholders involved—civil society representatives, business enterprises, trade unions, universities, etc.—can participate in and contribute to the assessment process.

Based on the assessment and the consultations, the Monitoring Committee shall promote the drafting of an updated version of the National Plan on Business and Human Rights, which must be finished within the three years that this Plan is scheduled to cover. The review of the Plan shall be carried out pursuant to the guidelines and recommendations on the preparation of national action plans contained in the Guidance on National Action Plans on Business and Human Rights, prepared by the United Nations Working Group on Business and Human Rights, and adapted as necessary to the circumstance of being a review and update of this initial Plan.



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