

This informal note was put together by the Working Group on Business and Human Rights as part of preparations for its report to the 2018 UN General Assembly, which addresses trends and emerging practices relating to corporate human rights due diligence in line with the UN Guiding Principles on Business and Human Rights. The present note contains a compilation of references to human rights due diligence in existing State national action plans on business and human rights. For more information about the Working Group's work on national action plans, see:

<https://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>.

For information about the Working Group's work on human rights due diligence, see:

<https://www.ohchr.org/EN/Issues/Business/Pages/CorporateHRDueDiligence.aspx>.

## Compilation of NAP references to due diligence

### Germany

The National Action Plan, approved in 2016, establishes a set of clear expectations and goals concerning the implementation of human rights due diligence by German companies:<sup>1</sup>

- "The Federal Government expects all enterprises to introduce the process of corporate due diligence (...). Their compliance will be reviewed annually from 2018."
- "In the absence of adequate compliance, the Federal Government will consider further action, which may culminate in legislative measures and in a widening of the circle of enterprises to be reviewed."
- "The aim is that at least 50% of all enterprises based in Germany with more than 500 employees will have incorporated the elements of human rights due diligence described in this chapter into their corporate processes by 2020."
- "If (...) the target is thus missed, the Federal Government will consider further action, which may culminate in legislative measures."

### Comments from NGOs:<sup>2</sup>

- State-owned companies do not face binding requirements for human rights due diligence in their operations abroad. Nor are companies excluded from federal public contracts, subsidies or foreign trade promotion if they have disregarded their due diligence obligations.
- The announcement that otherwise a legal regulation will be considered from 2020 onwards is an important signal. However, it is problematic that the legal regulation is only being considered instead of being announced unequivocally. Moreover, according to the NAP the monitoring will depend on available budgetary funds.
- Instead of legally requiring human rights due diligence from companies, the German government merely expresses a corresponding expectation. Companies that do not comply with this request have no consequences to fear in the coming years. Even for state-owned companies, binding obligations are lacking.
- The requirements described in the German NAP are limited to preventive measures and ignore the responsibility of companies to remedy harm and compensate those affected.

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<sup>1</sup> <http://www.bhrinlaw.org/key-developments/59-germany#DE NAP>

<sup>2</sup> [http://www.cora-netz.de/cora/wp-content/uploads/2017/03/2017-02-06\\_German-NAP\\_NGO-Comments.pdf](http://www.cora-netz.de/cora/wp-content/uploads/2017/03/2017-02-06_German-NAP_NGO-Comments.pdf)

- The German government announces that it “wants to achieve” that companies fulfil their due diligence obligations when benefiting from foreign trade promotion. However, it remains unclear how it wants to achieve this.
- The requirements for companies are subjected to the condition that this does not entail disproportionate bureaucratic burdens for the companies. Financial services between banks or insurance companies are categorically excluded from the due diligence obligations described.
- The NAP does not establish any effective enforcement mechanisms for ensuring that the companies implement the processes described.

### Belgium<sup>3</sup>

- **Action point 15**, Incorporate the principle of “due diligence” into the management of the company, also in the terms of human rights is the main action point on human rights due diligence. Concretely, the action will consist of contacting those responsible for the two Belgian corporate governance codes in order to examine the possibility of integrating international developments, in particular with regard to human rights, which will entail the attempt to minimize the administrative burden on public authorities or enterprises, but without impairing the application and implementation of ambitious criteria and controls. The integration of the ‘due diligence’ obligation for companies covered by the EU Directive 2014/95/EU concerning human rights in the instruments of corporate governance will allow for the creation of new business opportunities, as well as clarify the expectation of the public authority vis-à-vis companies, in particular companies that do not yet have a comprehensive social responsibility policy, with an emphasis on prevention rather than punishment.
- **Action point 1**, Develop a toolkit for companies and organizations on human rights, presents the action of developing, in collaboration with experts and its main human rights stakeholders and organizations, a toolbox that will help companies prevent human rights violations and promote the respect for human rights through their activities. This “Toolbox” will be composed of different elements including concrete tools for applying the principle of human rights due diligence.
- **Action point 20**, Promote state enterprises that are socially responsible also touches upon human rights due diligence. The action’s objective is to create a learning network for public enterprises, which strives to bring together knowledge, to pool expertise and exchange experiences in order to realize CSR commitments and ambitions. Particular attention will be paid to how public enterprises can integrate and promote respect for human rights within their organization through tools such as reporting and/or “due diligence”.
- In the context of the **Action point 22**, Encourage responsible supply chain management with a sector-wide approach, the NAP mentions human rights due diligence in reference to several OECD guidelines such as:
  - The “OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas”
  - The “OECD-FAO Guidance for Responsible Agricultural Supply Chains”
  - The “OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector”

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<sup>3</sup> <https://globalnaps.org/issue/human-rights-due-diligence/> see also [https://www.sdgs.be/sites/default/files/publication/attachments/20170720\\_plan\\_bs\\_hr\\_fr.pdf](https://www.sdgs.be/sites/default/files/publication/attachments/20170720_plan_bs_hr_fr.pdf)

## Chile<sup>4</sup>

- **Pillar I Action Point 8.1.** (p. 60): The Ministry of Economy will support the legal provision committed in the Agenda for Productivity, Innovation and Growth seeking to create a legal framework for social business enterprises, by encouraging the incorporation of business and human rights criteria.
- **Pilar I Action Point 9.1** (p. 60): The National Copper Corporation (CODELCO) will carry out a due diligence pilot project about human rights in one of its operations, in accordance with the commitments set out in the Corporate Sustainability Policy passed in December 2016.
- **Pilar I Action Point 9.2** (p. 60): The National Oil Company (ENAP), with the support of independent experts, will prepare a baseline to identify eventual impacts on human rights and the promotion and respect actions the company is currently performing. This has the purpose to identify gaps and manage the relevant plans for human rights remediation and mitigations. Priority subjects included in the study will be: life, health, environment, water, communities and workers. This initiative is based on the new Sustainability Policy passed by the Board of Directors in December 2016. It is composed of four strands: consideration of stakeholders, environment, integrated management and human rights.
- **Pilar I Action Point 9.3** (p. 60): The Ministry of Economy, Development and Tourism will support the incorporation of the Guiding Principles in the business enterprises forming part of the System of Public Business Enterprises (SEP).
- **Pilar I Action Point 1.6** (p. 43): The Ministry for the Environment will: In coordination with the Environmental Assessment Service, expand the training carried out in technical-environmental matters to representatives of the civil society and indigenous peoples to facilitate their involvement and the exercise of their rights during the process of citizen's participation.
- **Pillar I** (p.63): To amplify the impact of NAP, the Ministries of the Inter-Ministerial Working Group will encourage the adoption of policies, statements or codes of conduct by business enterprises and urge the implementation of mechanisms of due diligence.
- **Pillar II** (p. 65): What does the Government expect from business enterprises?
  - That they comply with and respect the existing legislation.
  - That they know and get acquainted with the international instruments on social responsibility, such as the UN Guiding Principles on Business and Human Rights, OECD Guidelines, and ILO Tripartite Declaration.
  - That they apply due diligence in the field of human rights with the purpose of identifying the potential risks of impacts on human rights by their operations.
  - That they create operational-level grievance mechanisms allowing them to identify potential impacts and establish remedial actions in case these occur.
- **Pilar I Action Point 1.5** (p. 42): The Ministry of Social Development, through the Division of Public-Private Cooperation, will include the focus on business, human rights and sustainable development in training activities about Public Incentives to Benefit Social Development by means of Workshop-seminars about Public Incentives to Benefit Social Development for Business Enterprises and public-private cooperation in accordance with the Guiding Principles and the 2030 Agenda, thus strengthening the State-Business nexus and promoting due diligence in human rights.

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<sup>4</sup> <https://globalnaps.org/issue/human-rights-due-diligence/> see also [https://www.business-humanrights.org/sites/default/files/documents/plan\\_de\\_accio\\_n\\_nacional\\_de\\_derechos\\_humanos\\_y\\_empresas.pdf](https://www.business-humanrights.org/sites/default/files/documents/plan_de_accio_n_nacional_de_derechos_humanos_y_empresas.pdf)

- **Pilar I Action Point 3.7** (p. 49): The Ministry of Energy will promote the respect of human rights of indigenous peoples in the development of energy projects. It will do this through the implementation of the Indigenous Chapter the 2050 Energy Policy, developing consultation and participation processes pursuant to ILO Covenant 169, and drafting a guide for indigenous participation in the development of energy projects.
- **Pillar II Action Point 2.2** (p.71): The Ministry of Economy, Development and Tourism will create working groups in conjunction with the Under-Secretariat of Fisheries and Aquaculture and the Under-Secretariat of Tourism, which will have the duty to analyze and create mechanisms to monitor these sectors regarding their respect for human rights. It will encourage and work with SEP for the adoption of an audit system in the field of human rights.
- **Pillar I Action point 2.4** (p.45): The Ministry of Energy, the Ministry will promote the development of “local governance mechanisms” in the localities where energy projects are installed. They will be composed of representatives from the community, business enterprises, local authorities and other actors that the parties may consider relevant, with the purpose of carrying out dialogue processes aimed at decision making connected with local development initiatives that may be developed from the presence of an energy project within the territory.
- **Action Point 4.1** (p. 50): The Ministry of Energy will encourage, within the framework of the Local Development Policy, the participation of communities in the different stages of the life-cycle of energy projects so that their interests may become known and be taken into consideration, as well as contributing to the general development of the localities receiving them. Diverse mechanisms will be promoted to facilitate participation (detailed in theme 2) and transparency in the processes carried out. Considering the above, an online Transparency Platform will be developed for communities to have access to the dialogue processes that are taking or have taken place, the agreements reached and compliance, among other things.
- **Pilar I Action Point 5.1** (p.52): The Chilean System of Public Purchases, (Chilecompra), has the mission to facilitate the contracting of goods and services by the State through a public market web platform, in the different purchase procedures. Chilecompra will: Incorporate an “Integrity Agreement” clause, where the supplier bounds himself/herself to respect human rights in accordance with the Guiding Principles. Through the integrity agreement, suppliers commit, inter alia, to act with transparency, probity and truthfulness regarding the information and details submitted in the tender papers. This clause will be included in all terms and conditions of the Framework Agreement, and use thereof will be encouraged in the terms and conditions of public tenders. For the correct understanding of this clause, Chilecompra will train suppliers in its contents, including the issues of business and human rights.

## Colombia<sup>5</sup>

- **Objective 8** (p. 8): “Contribute to the execution of due diligence as the enterprises’ management process and base for responsible investment in Colombia.”
- **Action point 2.2** (p. 12): “The Colombia Compra Eficiente agency will adjust the current public procurement system to comply with such criteria as for respect for human rights, by including them in their objectives and including measures to make sure that suppliers execute the human rights due diligence.”
- **Action point 5.1** (p. 16): “The Working Group will coordinate the preparation of a guide intended to define what executing due diligence means; what the practice is, particularly applied to the high risk business activity sectors.”
- **Action point 5.2** (p. 16): “The State entities with the highest procurement volume will determine and implement due diligence mechanisms in their own procurement processes.”
- **Action point 5.3** (p. 16): “Promote the implementation of the United Nations Guiding Principles and other international standards on business and human rights by the trades and the enterprises part thereof, so they may adopt human rights policies. Thus, during the first year of the execution of this Plan, the Council to the President for Human Rights will convene high level meetings with the trades to determine the inclusion goals in the multi-actor initiatives and human rights performance follow-up mechanisms. These actions must be coordinated with the entities of the Working Group, especially with the Ministry of Commerce, Industry and Tourism and in cooperation with the Post-Conflict Directorate.”
- **Action point 5.6** (p. 17): “The Ministry of Commerce, Industry and Tourism will promote the business efforts to adjust their policies to the OECD Guidelines for Multinational Enterprises, for which purposes it will assess, within six month from the execution of this Plan, its strategy to disseminate the Guidelines so as to make them widely known.”
- **Action point 5.7** (p. 17): “The Working Group will assess and analyze the best ways for enterprises to include the reporting of the human rights due diligence in their Sustainability Reports or rendering of accounts. Such assessment will be carried out within the year following the launching of this Plan and accompanied by the several sectors.”
- Action Point VII is dedicated to the State’s promotion and support for implementation of due diligence procedures in business enterprises: **Action point 7.1** (p. 19): “The Working Group, advised by the Expert Committee, will encourage discussion fora to determine the best ways for enterprises to establish easy-to-access, transparent and effective complaint and claims offices or mechanisms for prevention and mitigation and remedy of adverse human rights effects as may be caused by their activities.”
- **Action point 7.2** (p. 19): “The Ministry of Commerce, Industry and Tourism will encourage large enterprises to foster and boost their human rights support and guidance efforts for such SME they have business relationships with.”
- **Action point 7.4** (p. 19): “The Ministry of Commerce, Industry and Tourism will encourage business enterprises to foster talks with consumers.”

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<sup>5</sup> <https://globalnaps.org/issue/human-rights-due-diligence/> see also: <https://globalnaps.org/wp-content/uploads/2018/04/pna-colombia-english.pdf>

- **Action point 7.6** (p. 19): “The Working Group will tend towards enterprises, through their complaint offices, receiving and diligently managing the citizen and community claims, as considered to be affected by the adverse effects caused by their operations.”
- **Action point 7.7** (p. 20): “The Working Group, advised by the Expert Commission, will encourage companies to have follow-up strategies in place to know about the progress and follow-up to the mitigation of adverse impacts caused by the development of business activities.”
- **Action point 7.8** (p. 20): “The Working Group, advised by the Expert Commission, will encourage business enterprises to assess their risks and impacts on people and the environment as a result of their operation.”
- **Action point 8.1** (p. 20): “The Ministry of Commerce, Industry and Tourism will design a differentiated incentive strategy for large, medium and small enterprises with the purpose of having them to implement human rights policies involving:
  - Public commitment
  - Due diligence procedure
  - Result verification mechanism”
- **Action point 9.2** (p. 22): “The Corporate Social Responsibility programs are to foster productivity in the areas of influence of their projects to generate the development and economic empowerment of communities under the due diligence and respect for human rights principle.”

#### Czech Republic<sup>6</sup>

- **UN Guiding Principles on Business and Human Rights** [page 5] “...The second pillar, declaring the corporate responsibility to respect human rights, is aimed at businesses, who are responsible for not breaching human rights actively, not being directly involved in human rights infringements, and acting with due diligence to lay bare any such violations. ...”
- **Disqualification of a member of a body** [page 13] “Current state of play: The disqualification of members of governing bodies from holding such office was introduced into Czech law in 2014 by the Business Corporations Act. This makes it possible to punish those who have bankrupted their company or have repeatedly and seriously breached the tenet of due diligence. They may be disqualified for up to 3 years.”
- **Supply chains and conflict minerals** [page 21]
  - **Current state of play:** ...The Czech Republic was involved in the consultation and approval of OECD recommendations on the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas and Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector. The Ministry of Industry and Trade IS now considering how they can best be implemented in the Czech Republic.
  - **Tasks:** Establish one or more competent bodies responsible for the application, in the Czech Republic, of Regulation (EU) 2017/821 of the European Parliament and of the Council laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas, and notify that body

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<sup>6</sup> [https://globalnaps.org/wp-content/uploads/2017/11/cz\\_nap\\_bhr\\_2017-2022\\_-\\_draft\\_english\\_translation.docx](https://globalnaps.org/wp-content/uploads/2017/11/cz_nap_bhr_2017-2022_-_draft_english_translation.docx)  
see also: <https://globalnaps.org/issue/human-rights-due-diligence/>

(those bodies) to the European Commission. Coordinator: Ministry of Trade and Industry. Deadline: 9 December 2017”

- **State aid, guarantees and subsidies** [page 25] “In June 2012, the OECD Council adopted the Recommendation on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence, which expands and reinforces the original provisions on the environmental and social aspects of officially supported exports.”
- **Pillar II baselines: Human rights as a moral and ethical obligation** [page 29] “The introduction of efficient mechanisms to safeguard respect for human rights is not only moral and ethical, but also purely pragmatic: damages for human rights abuse can be sought in judicial proceedings. Modern legal systems allow high levels of damages to be awarded, and any such judgment could generate very bad publicity among customers, partners and the general public. Reasonable control mechanisms and thorough due diligence in keeping with best practice make it possible to work around – or at least curb – such risks even if damage has already been caused.”
- **Pillar II, Scope and content of the obligation to respect human rights** [page 32] “How should respect be shown? Recommended measures will differ depending on the size of a business, the market on which it is active, the sector, and a host of other factors. The UN Working Group on Business and Human Rights makes the following recommendations in particular: ... Introduce and apply the internal control mechanism of “human rights due diligence”.
- **Due diligence** [page 35-36] “The Government of the Czech Republic recommends that businesses consider introducing an internal due diligence mechanism to spot and eliminate human rights risks, or incorporate human rights risks – as another evaluation criterion – into their existing due diligence mechanisms. The term “due diligence” is broadly known in the business community and denotes in-depth reviews into businesses and or the transactions they are preparing. The UN Working Group on Business and Human Rights defines human rights due diligence as a process to identify and evaluate human rights risks, a series of steps to understand how a company’s activities can affect human rights. It must also include appropriate responses to the findings. A fundamental difference between financial risk and human rights risk is that, while financial audits and financial due diligence explore the ramifications for the business itself, human rights due diligence examines the effects on third parties – the holders of human rights (customers and people living in the vicinity of a business or who are affected by its operations). The search for and eradication of human rights risks should form part of all major commercial operations, not just because any violations of human rights that are exposed could lead to hefty financial losses (compensation, loss of customers, a tarnished reputation), but mainly because – unlike economic loss – human rights loss cannot be fixed so easily. An effective due diligence mechanism should meet the following criteria:
  - Consider the internal risks (stemming from the business’s own operations) and external risks (particularly in relation to business partners and other entities with which the business works).
  - Identify existing risks (with a view to eliminating them) and potential risks (with a view to preventing any loss or damage).
  - Adapt the mechanism to the size of the business, the nature of its operations and specific local factors.
  - Implement the mechanism in the internal management system.
  - Regularly update the mechanism to reflect evolving conditions.
  - Leverage the experience and knowledge of independent experts who operate externally or maintain a high degree of personal independence.

- Engage employees, as they should have the opportunity to draw attention to risks and provide assistance in the removal thereof.
- Engage the public directly concerned, stakeholders in the community and vulnerable groups in the formation of the mechanism.

Public engagement can take many forms. First of all, this may entail consultations with those affected by businesses' operations (holders of human rights) because these people are best placed to highlight the problems looming over them. Likewise, employees should be involved as they need to know how to deal with the knowledge they accrue in their work. Finally, public engagement may comprise external expert opinions, opposing views, etc.

Most companies have already introduced control mechanisms that can be tweaked so that they also apply to human rights risks. These tend to be compliance mechanisms, used by businesses to keep track of requirements imposed by legislation, regulators, investors and capital markets (the conditions for participating on the stock exchange etc.). Businesses should view the obligation to respect human rights as a legal compliance matter. Even if the duty to comply with human rights in the course of business operations may not derive directly from a particular country's legal system, businesses should act as though this were the case and attribute the weight of the law to moral and ethical rules in their internal decision-making. This will enable them to incorporate human rights protection into existing mechanisms used to run checks on legal obligations. As a result, businesses will comply with their duty to respect human rights and take due care at minimum extra cost, thereby making big savings.

Human rights auditing should extend beyond the actual business to some extent and touch on the activities of external entities, such as those in the supply chains. Businesses could have a hand in violations of human rights through their own negligence, including via their subsidiaries and suppliers. Such conduct, despite not being wilful or intentional, does not relieve a business of liability as it could be viewed – by the courts and the public – as a form of negligence or failure to engage in appropriate supervision.

Although it is impossible for a business to carry out due diligence at an external entity to the same extent as internal due diligence, those areas that are most at risk should be identified, someone should be singled out as liable for infringements of rights and, where possible and feasible, specific steps to eliminate these risks should be demanded. If external risks identified, businesses should exercise any influence they have to stave off those risks, for example by sharing good practices and their own experience. Businesses lacking such influence should leverage their links with other entities (customers, suppliers, business associations, trade unions and bodies of public administration). If they have no way of influencing such conduct, they should weigh up the option of terminating cooperation.

Businesses who decide to publish the results of due diligence should:

- Choose a form that the general public can readily understand. Besides conventional reports, they might consider personal meetings, online discussions and public hearings.
- Choose a scope and frequency that enables them to pass on all necessary information without overwhelming the reader.
- Publish not only the risks that have been identified, but also the steps to tackle them.



- Withhold information that could encroach on the privacy or other legitimate interests of employees and other persons, and refrain from disclosing business secrets.”
- **Voluntary non-financial reporting** [page 38] “What should be included in a report? Human rights standards, as opposed to financial reporting, which is governed by sophisticated and internationally reputed respected standards, are still inchoate. Even so, the following information should not be left out of a report:
  - Whether a human rights commitment has been made, how it has been devised, whose rights it affects, how it is communicated, and whether and how responsibility for compliance is addressed within the business.
  - A specification of key issues, i.e. areas viewed by the company as operationally risky, or in which it is most involved. Information about how such issues have been identified and, if the company has operations in multiple countries, information as to which countries are affected.

## Denmark<sup>7</sup>

- **2.2 Recommendations from the Council for CSR on the state duty to protect** [page 10-11] “In November 2011, the Danish Council for CSR started working on recommendations to the Government on how the UNGPs on the state duty to protect could be implemented. The council finished its work in January 2012 where the recommendations were handed over to the Government. Among other initiatives, the Council for CSR recommended that the Danish Government:
  - Expands the existing Danish corporate non-financial reporting requirement to include mandatory reporting on human rights;
  - Encourages responsible public procurement by requiring government contractors to perform due diligence on human rights in relation to the products or services covered by the contract, including regularly supervising the contractual requirements;
  - Requires state-owned companies and governments agencies which distribute significant government funds to incorporate due diligence in their business activities; ...”
- **2.3 Actions taken.**
  - Danish Government’s expectations to companies [page 11] “... at Danish embassies in emerging markets, the Trade Council in co-operation with the Danish Business Authority holds workshops in responsible supply chain management, especially focusing on small and medium-sized companies and their local business partners (GP 3c). The courses are held on an annual basis. They include practical guidance on how to demonstrate due diligence in business operations in regard to adverse impacts on human rights.”
  - Protection of human rights through state regulation and policy [page 12] “Companies involved in Danida Business Partnerships – an instrument that facilitates and provides economic support to develop commercial partnerships between Danish companies and partners from developing countries – are now required to integrate CSR strategically in their business operations and to demonstrate due diligence, including human rights, in order to mitigate adverse impact.”
  - Companies that receive substantial support and services from State agencies [page 13] “The Environmental & Social Due Diligence Policy of the Danish Export Credit Agency (EKF) states that

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<sup>7</sup> <https://globalnaps.org/issue/human-rights-due-diligence/> see also: [http://www.ohchr.org/Documents/Issues/Business/NationalPlans/Denmark\\_NationalPlanBHR.pdf](http://www.ohchr.org/Documents/Issues/Business/NationalPlans/Denmark_NationalPlanBHR.pdf)

- EKF is committed to implementing the UN Guiding Principles on Businesses and Human Rights (GP 4).”
- Providing effective guidance on how to respect human rights [page 13-14] “...To ensure that companies have the right tools and the necessary guidance to handle the new due diligence requirements, the Government has updated the existing web tool, the CSR Compass and the Global Compact Self-Assessment Tool in accordance with the due diligence requirements of the UNGPs. The revised Compass includes a guide for small and medium-sized companies on how to exercise due diligence (GP 17) and also gives guidance on ways to solve company conflicts by actively engaging in a dialogue with the company’s stakeholders (GP 29). The revised Global Compact Self-Assessment Tool works as a self-Assessment guide to a CSR due diligence going through a questionnaire covering aspects of human rights, worker’s rights, environment and anti-corruption and including a template for a followup action plan.”
  - **3. The corporate responsibility to respect human rights. Introduction** [page 17] “While, the Danish Government has an important role in promoting the UNGPs by clarifying and communicating expectations towards companies, the Government acknowledges that in the short term it can be a significant challenge for companies to implement due diligence in their business operations – especially if the company has a complex supply chain or if the company is an SME. Thus, the Government supports the implementation of the corporate responsibility to respect by carrying out initiatives which are aimed at supporting and assisting companies with this effort.”
  - **3.1 UNGPs on the corporate responsibility to respect human rights** [page 17] “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: ... b) A human rights due-diligence process to identify, prevent, mitigate and account for how they address their adverse impacts on human rights; ...”
  - **4. Access to remedy. 4.3 Actions taken. Access to non-judicial remedy** [page 20-21] In the second national action plan for CSR from March 2012, the Danish Government announced the establishment of a Mediation and Complaints-Handling Institution for Responsible Business Conduct. ... The institution will base its assessments on the OECD Guidelines for Multinational Enterprises, which incorporate the UN Guiding Principles on Business and Human Rights, including in particular the due diligence concept as described in the UN Guiding Principles, when looking at a complaint. ... So far the promotional activities have included among other: Development of guidance on due diligence in the supply chain and company-based conflict resolution;”
  - **Appendix 1, GP 2. Status in Denmark**
    - Initiatives implemented before the UN ratification of the Guiding Principles [page 24] “In 2004 the Ministry for Business and Growth in collaboration with the Confederation of Danish Industry developed the CSR Compass. The CSR Compass is an online tool which Danish companies can use when requiring customers and suppliers to respect human rights and perform due diligence.”
    - Initiatives implemented before the UN ratification of the Guiding Principles [page 25] “Together with other OECD members, Denmark has worked and will continue to work to ensure that project-related social and human rights impacts are included in the OECD Common Approaches, including that relevant elements from the UNGP and Human Rights become part of the way export credit agencies undertake their due diligence”
    - Initiatives taken or planned as a dedicated measure to implement the UNGPs (after the UN ratification of the Guiding Principles) [page 25] “Denmark has contributed actively to the

discussions in OECD on how to embrace Human Rights in the "Recommendation of the Council on the Common Approaches for Officially supported Export Credits and Environmental and Social Due Diligence (Common Approaches)". Together with other OECD members, Denmark has worked to ensure that project-related social and human rights impacts are included in the OECD Common Approaches, and also that relevant elements from the UNGPs and Human Rights become part of the way export credit agencies demonstrate due diligence. Furthermore, the revised Common Approaches now ensure policy coherence with the OECD Multinational Guidelines."

- **Appendix 1, GP 3c. Initiatives taken or planned as a dedicated measure to implement the UNGPs (after the UN ratification of the Guiding Principles)** [page 27]
  - "...The Trade Council under the Ministry of Foreign Affairs advises Danish companies and their local partners on how they should handle their social responsibility in a number of export markets. The advisory services include human rights due diligence.
  - The Trade Council in co-operation with the Danish Business Authority holds workshops in Responsible Supply Chain management, especially focusing on small and medium-sized enterprises and their local business partners (GP 3c). The courses are held on an annual basis. They will include practical guidance on how to demonstrate due diligence in business operations in regard to adverse impacts on human rights. To further assist the Danish companies in emerging markets, the embassies are also conducting free CSR reviews of local business partners. The reviews include a due diligence component. ...
  - Companies involved under Danida Business Partnerships are required and guided to undertake a CSR due diligence covering human rights, workers' rights, environment and anti-corruption and to follow-up with an action plan in order to mitigate adverse impacts of business activities on employees and society at large.
  - The ministry of Foreign Affairs is also working on competence development courses within UNGPs and CSR for embassy staff, including e-bites, guidance on how to perform CSR due diligence and workshops for Danish companies operating abroad and local companies in new growth markets. ..."
- **Appendix 1, GP 4. State Duty to Protect** [page 28]. "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." Status in Denmark (**initiatives implemented before the UN ratification of the Guiding Principles**) [page 28]
  - "EKF's Environmental & Social Due Diligence Policy states that EKF is committed to implementing the UN Guiding Principles on Businesses and Human Rights.
  - When conducting due diligence IFU uses the Global Compact Self Assessment tool, which contains a robust assessment of human rights conditions."

Finland<sup>8</sup>

## **Government covering note on the UN Guiding Principles on Business and Human Rights National Action Plan**

### **Legislative report**

“A report on legislation pertaining to national and international business and human rights is to be drafted based on the principles stated in the UN Guiding Principles. The objective is to examine whether legislation corresponds with the aims of the UN principles and determine the necessity of initiatives taken to otherwise improve corporate operating practices, particularly where due diligence, corporate reporting obligations and remedies for victims of human rights violations are concerned. It is also to propose concrete recommendations for change, wherever necessary.”

### **Due diligence**

“With regard to the due diligence, the working group rightly emphasises in its report the need to identify best practices and the concept of more functional international specifications. At the same time, it is vital that the discussions be continued also at the national level. The aim of the round table discussions presented in the report should be to not only increase dialogue, but also to establish as broad a national understanding as possible on what due diligence means and how it can be properly implemented in various sectors and business areas. Stakeholders from different fields are invited to the round table discussions, whose final outcomes are addressed by the Committee on Corporate Social Responsibility.”

### **Introduction [page 11]**

“...companies have the responsibility to respect human rights, regardless of the states’ obligation. Companies should therefore carry out due diligence ...”

### **1 The state obligation to protect human rights**

#### **1.2 Activities in international organizations [page 14]**

“In international human rights bodies, Finland has emphasised development related to due diligence.”

#### **1.3 Activities in the EU [page 16]**

### **NON-FINANCIAL REPORTING**

“On 18 April 2013, the European Commission made a proposal to amend the accounting directive for the disclosure of so-called non-financial information of certain large companies.

The proposal shall be applied to companies of significant public interest with more than 500 employees on average on the account closing date. According to the proposal, such companies should include in their annual report a declaration stating material data related to the environment, social affairs, employees, human rights, and the prevention of corruption and bribery. The declaration should contain a short description of the business model, a description of the policies related to the areas mentioned above as well as the due diligence related to them, the results obtained in the policies, the main risks

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<sup>8</sup> <https://globalnaps.org/issue/human-rights-due-diligence/>

and risk management that apply as related to the areas mentioned above, and the non-financial performance indicators significant for company business. Instead of a declaration attached to the annual report, companies may also publish separate reports on certain conditions.”

### **3 Expectations towards companies and support services**

#### **3.1 Clarification of due diligence [page 24-26]**

“The OECD Guidelines for Multinational Enterprises<sup>12</sup> were updated in 2011. In the same connection, the UN Guiding Principles on Business and Human Rights were included in the Guidelines along with due diligence. In the OECD Guidelines, due diligence is seen as an examination process with which companies identify and prevent the actual and potential adverse impacts of their activities in their decision making and risk management. This means that due diligence is not a single action. Instead, it is an ongoing process where the human rights impacts of business activities are assessed with appropriate and sufficient care.

Due diligence also includes the mitigation of adverse impacts and communication on how companies deal with these adverse impacts. Potential effects are dealt with by preventing or mitigating them, whereas actual impacts will be dealt with by remedying them.

By following due diligence, an attempt is made to prevent the adverse impacts which a company will either cause itself, to which it will considerably contribute towards, or which are directly related to the company’s activities, products or services through a business relationship.

The contribution refers to a situation where that contributing impact is substantial. This means activities resulting in indirect adverse impacts caused, promoted or encouraged by another party. This does not cover minor or insignificant contributions. If a company contributes to a detrimental effect on human rights, it should take the necessary measures and use its influence to prevent or alleviate the adverse impact.

In the Guidelines, business relationships cover relations with business partners, supply chain operators and other operators independent of the state and governmental operators that are directly related to the company’s business activities, products or services. If the company has a lot of suppliers, it should identify the areas where the risk of adverse impacts is highest and contribute to the prevention of these risks.”

France<sup>9</sup>

### Description

Part II, Introduction (p41): the NAP cites the CSR Platform's recommendation of March 2015 regarding human rights due diligence (paragraph 1-5, p41):

*"The duty of care (which some propose to call voluntary due diligence and that others wish to see made compulsory) for parent and subcontracting companies vis à vis their subsidiaries and subcontractors is essential in order to improve the prevention of risks to human rights and the environment.*

*This duty of care could contain the following provisions:*

*– Prior definition of the scope of the fundamental rights concerned; in this respect the Universal Declaration of Human Rights, the United Nations Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises and the Charter of Fundamental Rights of the European Union could, in particular, form the basis for this.*

*– The setting of a threshold of company or group size from which due diligence processes should apply.*

*– Definition of the operational content for companies of these due diligence procedures through a vigilance plan. Distinguishing clearly the case of subsidiaries from that of subcontractors is necessary. Vigilance cannot be of the same order in these two cases. The purpose of this vigilance plan would be to identify and prevent risks of human rights violations and environmental damage, within the framework of a company's activities. The work of the NCP on the textile-clothing sector could constitute one of the useful references. Due diligence procedures implemented should be made public by the parent or subcontracting company, as called for by the European directive on the publication of non-financial information."*

Part I, section 6 on activities within the Council of Europe (p17):

The NAP quotes article 20 of Council of Europe Recommendation [CM/REC\(2016\)3](#) related to human rights due diligence: "Member States should apply such measures as may be necessary to encourage or, where appropriate, require that:

- *business enterprises domiciled within their jurisdiction apply human rights due diligence throughout their operations;*
- *business enterprises conducting substantial activities within their jurisdiction carry out human rights due diligence in respect of such activities;*

*including project-specific human rights impact assessments, as appropriate to the size of the business enterprise and the nature and context of the operation."*(paragraph 2, p17)

Part I, section 7 on activities at the European level (p18, paragraph 3):

*"France could play a leading role in the adoption of a common European framework on duty of care. In this sense, a "green card" parliamentary initiative was launched by the French National Assembly".*

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<sup>9</sup> <https://globalnaps.org/issue/human-rights-due-diligence/>

Part I, section 10 on strengthening the domestic legal framework (p23-25): The NAP cites the duty of care law for parent and subcontracting companies promulgated in March 2017, which requires the design and effective implementation of vigilance plans for companies employing at least 5 000 individuals on the national territory and at least 10 000 individuals in France and abroad, the breach of which can lead to sanctions (paragraph 3, p25).

Part I, section 13 on the role of public agencies (p26-33):

The NAP recalls the CNCDH's 2013 recommendation regarding France's export credit agency [COFACE](#), namely the establishment of human rights due diligence procedures including exhaustive human rights impact assessments, better transparency and information, and better civil society and affected stakeholders participation (paragraph 1, p28). It also recalls the CSR Platform's recommendation for the development agency [AFD](#) and the export credit agency COFACE to reinforce their due diligence procedures and to establish grievance mechanisms (paragraph 2, p29).

Annex p 68, the NAP clarifies the positions of the different groups composing the CSR platform, which were not the object of a consensus but listed nonetheless in the [CSR Platform's recommendation](#). The civil society and trade union group's propositions include: *"create an obligation of vigilance for French parent and subcontracting companies when, in the course of their activities, or those of their subsidiaries or subcontractors, violations of human rights are committed in France or abroad."*

Part III on access to remedy, Introduction (p51): the NAP cites the CNCHDH's 2013 recommendation to *"Drawing on the obligation of prevention and reparation in environmental law, impose a legal obligation of vigilance falling on the parent company vis à vis its subsidiaries with a view of preventing human rights violations that could arise in the course of its activities"*.

## Actions

Part I, Proposed Actions n°1, Ongoing Activities, p16:

*"France actively contributes to the activities of the OECD on Responsible Business Conduct, including the work on due diligence (textile, finance) and on the strengthening of the Guidelines on the occasion of the 40th Anniversary (June 2016 and beyond)".*

Part I, Proposed Actions n°2, Ongoing Activities, p18:

*"Promotion of the concept of the duty of care at the European level, with a view to the adoption of a common framework on the basis of the legislative framework adopted in France"*.

Part I, Proposed Actions n°4, Ongoing activities, p28:

*"Accompany the implementation of the proposed law on the duty of care."*

Part I, Proposed Actions n°5, regarding the development agency AFD, Actions to be implemented, p32:

*"At AFD, condition the financing of a company to the existence of, or failing that, to a commitment to implement a non-financial reporting plan and a (CSR) due diligence plan for projects, or respect the host country's or international standards."*

Part I, Proposed Actions n°7, Actions to be implemented, p34:

*“- Enhance vigilance in particular in sector and countries presenting high human rights risks.*

*– Encourage French companies, depending on their size, to develop and effectively implement due diligence plans.”*

Part I, Extractive sector, ongoing actions, p37:

*“Raise awareness among French companies on the obligations they are subject to in the framework of the exercise of the duty of vigilance in minerals supply chains, on the basis of relevant regulatory initiatives (OECD, European regulation on conflict minerals, domestic law on duty of care).”*

Part I, Financial sector, ongoing actions, p38:

*“Promoting investment policies in France and in Europe taking into account the duty of vigilance, emphasizing on the principles and practices of institutional investors.*

Proposed Actions n°8, Actions to be implemented, p41:

*“Monitor the implementation and take the possible measures of application of the legislation providing for the publication by certain companies of vigilance plans relating to the risks associated with subsidiaries and subcontractors throughout the value chain.”*

## Germany<sup>10</sup>

The German NAP includes a chapter on due diligence and reference is made to due diligence throughout the NAP.

III. Federal Government expectations regarding corporate due diligence in respecting human rights [page 7-12]

“With regard to corporate respect for human rights, the Federal Government expects all enterprises to introduce the process of corporate due diligence described below in a manner commensurate with their size, the sector in which they operate, and their position in supply and value chains. This applies especially when they operate in countries where the rule of law is not enforced or is only partly enforced. Such expectations are without prejudice to the fundamental duty of a state to guarantee the protection of human rights within its territory.

### **Scope and practical structuring of due diligence in the field of human rights**

“The responsibility to exercise due diligence applies in principle to all enterprises, regardless of their size, the sector in which they operate, or their operational context within a supply or value chain with an international dimension. The nature and exercise of due diligence for any given enterprise should be commensurate with these factors; it should be possible for the enterprise to incorporate its due diligence obligations into its existing processes in an appropriate manner without the creation of undue bureaucratic burdens.

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<sup>10</sup> <https://globalnaps.org/issue/human-rights-due-diligence/>



Enterprises should prevent and mitigate any adverse impact of their business activity on human rights. When due diligence in the realm of human rights is defined and exercised, consideration should be given to the beneficial effects of corporate activity and to the diverse perspectives of the company's own employees, the relevant stakeholders and others who may be affected. Within large enterprises, these include the staff of the human resources, purchasing, compliance and sales divisions. From outside the enterprise, suppliers, customers and trade unions but also bodies from civil society, business organizations and governments should be involved. Particular attention should be given to the rights of their respective employees and to those of local populations who may be affected.

Depending on the size of the enterprise, the nature of its products or services, the potential risk of particularly adverse impacts on human rights and the operating context, the measures to be taken are likely to vary in scope. It may be appropriate to conduct certain elements of the process in combination with other enterprises within an association or industry, subject to compliance with antitrust legislation. Small and medium-sized enterprises in particular should make use of the advisory and support services to be offered by the Federal Government and business associations under the National Action Plan. The expertise of organizations within civil society and trade unions should also be brought to bear.

The elements of human rights due diligence described in binding form in the following paragraphs are not to be understood as a rigid sequence. On the contrary, findings relating to one element should be used continually for the revision and development of the other elements so that learning processes can take place. There must be scope for the incorporation of present and future legal requirements for the exercise of human rights due diligence.”

#### **Core elements of due diligence in the field of human rights**

- “a human rights policy statement
- procedures for the identification of actual or potential adverse impact on human rights
- measures to ward off potentially adverse impacts and review of the effectiveness of these measures
- reporting
- a grievance mechanism”

#### **Policy statement**

“With the aid of a policy statement, enterprises should state publicly that they are meeting their responsibility to respect human rights. This statement should be adopted by the senior management of the enterprise and be communicated both internally and externally. It should be used, on the one hand, to address human rights issues of particular relevance to the enterprise and/or the sector in which it operates, citing the international reference instruments in the field of human rights and, on the other hand, to describe the procedure used by the enterprise to exercise human rights due diligence. In particular, this includes the clear assignment of responsibilities within the enterprise, underpinned by the necessary training of staff employed in the relevant divisions. The statement should be continually revised and developed.”

## **Procedure for the identification of actual and potential adverse impacts on human rights**

“Central to the exercise of due diligence is the establishment of a procedure that serves to identify, to prevent or to mitigate potentially adverse effects of corporate activity on human rights. It is not – or not only – a matter of considering risks to the company’s own business activity but is primarily about risks to the human rights of those who may be affected by corporate activity, such as employees of the enterprise itself or of other companies in the supply chain, local populations and customers.

The consideration of potentially adverse impacts on human rights is a continuous task that accompanies work processes and, in particular, is performed with a sectoral focus. It should take place when new divisions, products or projects are launched as well as in the context of existing business activities. When potential risks are examined, a distinction must be made between the following types of impact:

- those generated directly by the enterprise itself,
- those to which the enterprise contributes, for example through direct contractual relations with suppliers, and
- those connected indirectly with the enterprise through its business relations, its business activity or its products or services even though no direct contractual relationship exists, for example in situations involving numerous intermediary dealers. Granting loans, issuing credit lines and providing other financial services to other banks, insurers or other financial service providers do not in themselves constitute a relationship in the above sense if those transactions cannot be unambiguously attributed to a particular business activity in the real economy.

This systematic approach to identifying key impact factors and risks is nothing new and is already part of established management systems and processes, as may be seen, for instance, in Annex I to Regulation (EC) No 1221/2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), which deals with the internal environmental review to be conducted by participating organisations.

The size of an enterprise, the sector to which it belongs and the nature of its business activity directly influence the risk that its operations will have an impact on human rights. The required depth and breadth of the risk assessment depends on these factors. An initial risk analysis on the part of an enterprise should be conducted for each division or each product category and possibly for each location too. The starting point may be a simple overview of the company’s main activities and of the value chains and business relations these activities entail. On the basis of this overview and with due regard to the international human rights standards enshrined in instruments such as the Universal Declaration of Human Rights, the International Covenants on Human Rights, the ILO Core Labour Standards and the OECD Guidelines for Multinational Enterprises, potential risk areas can be identified. Contextual circumstances such as the political framework and the presence of vulnerable groups of people (indigenous populations, for instance) should be factored into the analysis. The choice of method and the assessment of risks can be made on the basis of the analysts’ own research, interviews in-house, in subsidiary enterprises and/or with business partners and input from external specialists.

With the aid of this analysis, enterprises should determine whether an in-depth review is needed. This is most likely to be the case if the risk of an adverse impact on the human rights of particular groups is particularly high and fuller information is required before any action can be taken. For this reason, the recognised problem areas should be ranked in order of priority.

The risk of a particularly adverse impact arises, for example, in cases where a large number of people may be affected or the potential impact would have serious, unforeseeable, or irreversible consequences. The in-depth review should at least include local dialogue with actually or potentially affected parties and recourse to both internal and external expertise in the field of human rights.”

### **Measures and effectiveness tracking**

“On the basis of the results of the analysis, measures should be identified and incorporated into business activity. Such measures may, for example, comprise specialised training of particular employees in-house or with suppliers, adaptation of particular management processes, changes in the supply chain and participation in sectoral initiatives. So that potential or actual impacts can be properly addressed, enterprises should define clearly where competence lies for particular issues and establish the corresponding review mechanisms. Depending on the type of impact, an enterprise itself can initiate remedial measures. If the enterprise does not possess sufficient leverage to implement successful measures, it should cooperate with other players to increase its influence. Withdrawal from an area of business activity or from a location should only ever be a last resort in such situations. The enterprise should focus first and foremost on developing remedial measures. To this end, objectives should be formulated and be communicated internally and externally as the relevant measure dictates. With the aid of effectiveness tracking, the enterprise should regularly review the efficacy of the measures it has taken and, to this end, engage in dialogue with affected stakeholders.”

### **Reporting**

“Enterprises should keep information at their disposal and communicate it, where appropriate, to external recipients in order to demonstrate that they are aware of the actual and potential impact of their corporate activity on human rights and are taking appropriate steps to address the situation. The form in which this information is communicated should be tailored to its recipients. Enterprises whose business activity poses a particularly high risk of adverse impacts should issue regular public reports on that subject. Such reporting may be done in the framework of the company’s existing reporting format or take the form of separate reports focused on human rights. At the same time, such reporting obligations should not impose disproportionate administrative burdens on the reporting companies or on the SMEs in their supply chains.”

### **Grievance mechanism**

“For the early identification of (actual or potential) adverse impacts, enterprises should either establish their own grievance procedures or play an active part in external procedures. Such procedures may, for example, be established by sectoral associations. The mechanism should be structured to match the target group. Accordingly, the target group should be consulted when the procedure is being devised. When new mechanisms are established as well as when existing mechanisms are used, care should be taken to ensure that they provide a fair, balanced and predictable procedure which is accessible to all those who might be affected (for instance by eliminating linguistic or technical barriers). As an extra measure, consideration should be given to the creation of offices with which complaints can be lodged anonymously.

The procedure should provide for maximum transparency for all stakeholders and should comply with international human rights standards. Existing complaints offices within an enterprise or its environment should be screened for compliance with the criteria defined above.

The grievance mechanism of each enterprise and its whole process of corporate due diligence should be subjected to regular practice-based reviews to assess their effectiveness.”

## Measures

- The Federal Government expects all enterprises to introduce the processes described above in a manner commensurate with their size, the sector in which they operate and their position in supply and value chains. Their compliance will be reviewed annually from 2018. In the absence of adequate compliance, the Federal Government will consider further action, which may culminate in legislative measures and in a widening of the circle of enterprises to be reviewed (see chapter VI below).
- The National Corporate Social Responsibility (CSR) Forum of the Federal Government, comprising representatives of the political and business communities, trade unions, civil society and academic professions will draw up an intersectoral “CSR consensus” paper on corporate responsibility in value and supply chains and present it to the Federal Government as a recommendation. One element of that paper, among other things, is to reinforce the expectation of a responsible management of due diligence in the realm of human rights as described in the present chapter. Further information is made publicly accessible online at [csr-in-deutschland.de](http://csr-in-deutschland.de). The possibility to join the “CSR consensus” is open to all enterprises that operate in Germany. The list of companies that have joined will be updated continuously and made publicly available at [www.csr-in-deutschland.de](http://www.csr-in-deutschland.de).
- The aim is that at least 50% of all enterprises based in Germany with more than 500 employees will have incorporated the elements of human rights due diligence described in this chapter into their corporate processes by 2020. Enterprises which have not adopted particular procedures and measures should be able to explain why they have not done so (the ‘comply or explain’ mechanism). If fewer than 50% of the enterprises defined above have incorporated the elements of human rights due diligence described in chapter III into their corporate processes by 2020 and the target is thus missed, the Federal Government will consider further action, which may culminate in legislative measures. In this context, the Federal Government will also examine, in consultation with the National Regulatory Control Council, the necessity of the corporate compliance costs arising from this plan and will consider a widening of the number of enterprises to be reviewed, in order to potentially include enterprises with fewer employees in future assessments and subsequent additional [sic]”

### 1. Key areas for action [page 13]

In relation to the three pillars of the UN Guiding Principles, the following are the primary areas for action: ...

- effective exercise of corporate due diligence with regard to human rights ...”

## **1.1 Basic rules of economic policy**

### **Development policy**

#### **Measures [page 20]**

- “The instruments of development policy relating to cooperation with business will be reviewed for compliance with the requirements of the UN Guiding Principles. In particular, the contractual clauses of the develoPPP.de programme are to be fleshed out to include the due diligence requirements with regard to human rights. ...
- The requirements set out in the UN Guiding Principles and in the National Action Plan, in particular in its chapter III, on due diligence with regard to human rights, also apply to the organisations that implement development policy, including bodies that provide financing for development. They also serve as a basis for further assessment and monitoring and, where appropriate, further development of the grievance procedures that state implementing organisations, including financing bodies, have already established. ...”

### **Public procurement**

#### **Measures [page 22]**

“The Federal Government will examine whether and to what extent binding minimum requirements for the corporate exercise of human rights due diligence can be enshrined in procurement law in a future revision. It will draw up a phased plan indicating how this aim can be achieved.”

## **1.2 State support**

### **Subsidies**

#### **Measures [page 23]**

“The Federal Government will examine to what extent the sustainability assessment for which the Subsidy Policy Guidelines provide is consistent with the requirements set out in the UN Guiding Principles and how enterprises receiving significant subsidies can be subjected to a future obligation to apply the elements of due diligence described in chapter III above.”

### **Export credits, investment guarantees and other instruments for the promotion of external trade**

#### **Measures [page 25]**

- “Better information and greater transparency will serve to draw corporate attention, as early as during the initiation stage of projects, to the great importance attached to human rights due diligence and to the OECD Guidelines. In particular, the Federal Government will extend its support for the affected enterprises in the form of information material.
- In addition, it is planned to introduce human rights due diligence reports into the assessment procedures of the insurance instruments for foreign trade in cases where there is a high probability of serious implications for human rights. ...

- The detailed procedure for assessing applications for the provision of export credit guarantees, guarantees for direct investments abroad and untied loan guarantees will be further reinforced as regards respect for human rights; this will entail measuring the procedure against the specific requirements set out in the NAP. To this aim, human rights will be treated as a separate point in future project assessments. The aim is to ensure that enterprises which avail themselves of foreign trade promotion instruments exercise due diligence. In particular, this includes participation in grievance proceedings initiated against them before the German National Contact Point for the OECD Guidelines for Multinational Enterprises.”

## **2.1 Ensuring the protection of human rights in supply and value chains [page 28-30]**

“Throughout the world, the expectations of consumers, civil society and trade unions in terms of product quality and transparency of production are rising. Their attention is increasingly focused on factors such as environmental protection and social and employment standards along manufacturers’ supply chains. In many cases these supply chains are not transparent, and it is difficult to assess the situation with regard to individual enterprises within the chain. This increases the risk of adverse impacts on human rights and on social, labour and environmental standards in host countries. These countries often lack an adequate legislative basis or state supervision and enforcement of compliance with existing laws.

The Federal Government nevertheless expects enterprises to discharge their responsibility to exercise due diligence as regards human rights and therefore to create and apply appropriate management instruments that minimise the risk of involvement in the generation of any adverse impact (see chapter III above).”

### **The current situation**

In the framework of the German presidency of the G7 in 2015, the Federal Government was a driving force behind the successful proposal to include a chapter on responsible supply chains in the Leaders’ Declaration. In that chapter, the private sector is being urged to exercise due diligence with regard to human rights. Together with the Heads of State or Government of the other G7 nations, the Federal Chancellor declared the Government’s support for the promotion of sustainability standards in global supply chains, including decent working conditions. To this end, the G7 are to:

- support efforts to set up substantive national action plans for the implementation of the UN Guiding Principles,
- increase transparency within supply chains,
- promote instruments for the identification and prevention of risks,
- strengthen grievance mechanisms,
- encourage best practices
- and, in particular, assist small and medium-sized enterprises in developing a common understanding of due diligence and responsible supply-chain management.

...

The Partnership for Sustainable Textiles, which was initiated by the Federal Ministry for Economic Cooperation and Development, has established an obligation to comply with sustainability standards and to guarantee corporate due diligence in the textile and clothing sector. All members of the Partnership are required to pursue its social and environmental objectives. They submit to a review process, which is

conducted by an independent third party and is designed to bring about continuous improvement. Individual schedules of measures (road maps) are compiled annually by all members; the first of these is to be produced by the end of January 2017. A robust sanctions regime and regular reporting on the implementation of the road maps will ensure credibility and transparency. The Textile Partnership creates a reference framework and an independent review system of international scope.”

### **Measure**

- “The Federal Government will publish a study identifying high-risk sectors and regions of particular relevance to the supply and value chains of German business. On the basis of this study, with the Federal Government in a moderating role, sector-specific guides to the exercise of human rights due diligence and examples of best practice will be drawn up in cooperation with the relevant business associations and with the aid of dedicated multi-stakeholder forums. ...
- By means of the Partnership for Sustainable Textiles, the Federal Government supports a multi-stakeholder initiative combining voluntary and compulsory elements. The Textile Partnership is designed to comply with the UN Guiding Principles. The aim is to have 75% of the German textile and clothing market signed up to the Textile Partnership by 2018. The Partnership should serve as a model for the definition of due diligence requirements in other industries.
- The “Round Table on Human Rights in Tourism”, a model initiative for the development of a specific sectoral understanding of due diligence with regard to human rights, will receive increased financial support from the Federal Government.”

## **2.2 Transparency and communication regarding corporate impacts on human rights [page 30]**

“Transparency requirements for corporate activity are an elementary component of due diligence with regard to human rights. These requirements are not limited to formal sustainability reporting but also entail willingness to engage in open dialogue with consumers, customers and actual or potential stakeholders and to share information on request.

## **2.3 Business activity in conflict zones [page 32-33]**

### **The current situation**

“An important contribution to these efforts is being made by the deliberations, which Germany is backing, on what are known as ‘conflict minerals’, an intense discussion being conducted within both the OECD and EU frameworks. In 2011, the OECD published a guide to corporate responsibility along supply chains in which minerals from conflict zones are traded and handled. The guide, entitled OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, has also been available in German since 2015. The primary aim of the Guidance is to curb the funding of armed conflicts from the proceeds of trade in raw materials; in addition, compliance with its recommendations would help to prevent serious human rights violations, especially child labour.

The European Commission has presented a proposal for a regulation setting up a Union system for supply chain due diligence self-certification of responsible importers of tin, tantalum and tungsten, their ores, and gold originating in conflict-affected and high-risk areas. Based on the aforementioned OECD guide, the Commission’s draft regulation would establish a voluntary undertaking to observe due diligence rules within supply chains when importing the minerals referred to above so as to ensure that proceeds from

their sale are not used to fund armed struggles in conflict zones or other high-risk areas. The European Parliament, on the other hand, expressed itself in favour of a binding instrument for downstream operators, that is to say along the whole value chain. A basic compromise has now been reached between the European Parliament, the Council and the European Commission on a binding instrument focused on the upstream area, i.e. the supply chain. Further details will now have to be negotiated in the context of the trialogue conducted by the EU institutions.”

## **Measures**

“The Federal Government is pursuing the aim of preventing the use of proceeds from the sale of tin, tantalum and tungsten, of their respective ores and of gold to fund armed struggles in conflict zones and other high-risk areas. It is committed to the establishment of binding due diligence rules, which should be proportionate and should not entail unnecessary red tape, particularly for small and medium-sized enterprises.”

### **3. Available means of practical implementation support**

#### **Measures [page 35-36]**

##### **“III. Opportunities for training and dialogue**

- The range of advisory and training services offered by the German Global Compact Network will be expanded and supplemented by services such as a graduated range of webinars and other formats relating to specific elements of human rights due diligence just like practical questions and answers. ...
- 1. Creating a global level playing field
  - In multilateral forums such as the G20, the EU and ASEM and in close cooperation with international organisations such as the ILO, the OECD and the UN, the Federal Government will press for the creation of a global level playing field with regard to terms of competition. To this end, the G7 leaders decision on sustainable supply chains will be further fleshed out with a view to arriving at a common global understanding of due diligence and of sustainable supply chain management.”

#### **4.2 National Contact Point for the OECD Guidelines [page 39]**

“Among other things, the NCP is responsible for complaints of insufficient respect for human rights and of insufficient consideration for human rights in the exercise of companies’ due diligence as defined in the OECD Guidelines.”

#### **V. Ensuring policy coherence [page 40]**

“The Federal Government will continue to press in global as well as other forums for a common understanding of due diligence.”

#### **VI. Monitoring [page 41]**

“The National Action Plan marks the starting point of a process that will be continuously updated and developed. The process will be shaped by the implementation of the measures for which this Plan provides as well as by a comprehensive procedure for monitoring the implementation of these measures by all players.



To this end, the Federal Government is planning, subject to budgetary approval, the immediate execution of the following steps: ...

- The interministerial committee will verify the implementation and coherence of the adopted measures and drive forward the development of the NAP implementation process. The main areas of activity to come under its scrutiny will be the measures relating to the state duty to protect (public procurement, promotion of external trade, etc.) and the fleshing-out of due diligence obligations (chapter III above), including the planned definition of sectoral specifications and the corresponding support services. ...
- Progress in the corporate implementation of the elements of human rights due diligence described in chapter III above will be reviewed by means of an annual survey conforming to current scientific standards, beginning in 2018. The survey will be conducted on the basis of a representative sample to establish the number of enterprises that have introduced the elements of due diligence listed in chapter III above and will also include qualitative interviewing on the substantive depth of these measures and the challenges encountered during their implementation in enterprises. The yardstick for this review will be the objectives formulated in chapter III.
- On this basis, the review will establish whether at least 50% of all German-based enterprises with more than 500 employees have incorporated the elements of human rights due diligence described in chapter III into their business processes by 2020. The review will also include a 'comply or explain' mechanism, whereby enterprises that are not implementing particular procedures and measures can explain why this has not been happening. An updated status report will be produced in preparation for a revision of the 2016 – 2020 National Action Plan.”

Ireland<sup>11</sup>

## **Section 2: Current legislative and Regulatory Framework**

### **Supply Chain [page 15]**

“The Government supports the proposal by the European Commission for an EU Council Regulation which provides for the establishment of an EU-wide system for supply chain due diligence of responsible importers of tin, tantalum and tungsten, their ores, and gold originating in conflict-affected and high-risk areas. The main objective of this proposal is to help reduce the financing of armed groups and security forces through mineral proceeds in conflict-affected and high-risk areas by supporting and further promoting responsible sourcing practices of EU companies. Of course, supply chain diligence is not limited to the extractive industries and areas of conflict.

Irish expertise has also been commissioned by multi-national corporations and technical cooperation programmes to undertake third party audits in the context of supply chain due diligence on factory standards. The design and implementation of a long-term building inspection and enforcement regime for all buildings in Bangladesh has, for example, been greatly assisted by Irish engineering expertise. Where possible, including through our Overseas Development Assistance, the Government will look to support such initiatives.”

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<sup>11</sup> Ibid

## Section 3: Actions

### II: Initial priorities for the Business and Human Rights Implementation Group [page 18]

- “i. develop a practical toolkit on business and human rights for public and private entities within 12 months to assist them in their human rights due diligence
- iii. Encourage and support awareness of effective human rights due diligence by State owned or controlled companies.
- iv. Encourage and support effective human rights due diligence in the context of State support to business and NGOs.
- vii. Promote awareness of relevant multi-stakeholder and multilateral initiatives such as the UN global Compact, the Principles for Responsible investment and the Children’s Rights and Business Principles among state owned or controlled companies.
- ix. Encourage companies and NGOs funded by the State to carry out human rights due diligence as appropriate to their size, the nature and context of operations and the severity of the risk of adverse human rights impacts.
- xi. Encourage and facilitate the sharing of best practice on human rights due diligence, including effective supply chain audits”

### Annex 1 – List of additional and ongoing actions to be carried out across Government commits

#### EU and Multilateral Efforts [page 20]

“6. Support the implementation of the Regulation establishing an EU-wide system for supply chain due diligence of responsible importers of tin, tantalum and tungsten, their ores, and gold originating in conflict-affected and high-risk areas.”

#### Italy

The National Action Plan adopted by the government in 2016 recommends in the "Planned measures" section to foster the implementation of the United Nations Guiding Principles on Business and Human Rights to: "Conduct a comprehensive review of the existing commercial and civil law to assess and evaluate legislative reform introducing provisions such as the ‘duty of care’ or due diligence for companies".

In particular, it includes: "Conduct a comprehensive study of the Law 231/2001 in order to evaluate potential extension of the scope and application of the administrative liability of legal entities".<sup>12</sup>

“As already mentioned in the joint contribution released by HRIC in September 2016, the clear reference among the six National Priorities (pag. 7, Part II C – NAP English version) to the support of a Human Rights Due Diligence (HRDD) process is favorably welcomed, especially in the light of the recent adoption of the French Law providing a mandatory HRDD (devoir de vigilance) for multinational corporations. The reference contained in the Italian NAP, however, is limited to a mere ‘promotion’ of this kind of initiatives

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<sup>12</sup> [http://www.cidu.esteri.it/resource/2016/12/49117\\_f\\_NAPBHRENGFINALEDEC152017.pdf](http://www.cidu.esteri.it/resource/2016/12/49117_f_NAPBHRENGFINALEDEC152017.pdf)

and does not imply the adoption of a legal instrument that provides an obligation for enterprises to annually publish a plan de vigilance, as in the French case<sup>13</sup>.

At the same time, it is worth mentioning the inclusion of some measures for tackling caporalato and any form of exploitation, forced labour, children labour, slavery, and irregular work, with a particular reference to migrants and modern slaves, following the recently adopted legislation<sup>14</sup> and that could hopefully restate a renewed commitment of the Italian Government in this field.

For what concerns the Government expectations towards business (pag. 9, Part III – NAP English version), HRIC welcomes the transposition by the Italian Government of the EU Directive on Non-Financial Reporting with the decree 254/2016 (entered into force on January 25th, 2017) that provides the obligation for enterprises (with more than 500 employees, or more than 20.000.000 € of turnover or more than 40.000.000 € of net revenues) to annually publish a Non-Financial Report.

Besides the already-mentioned necessity to promote due diligence process for Small and Medium Enterprises - that represent the majority of Italian enterprises - the text also highlights that need for companies operating in «weak governance zones» to apply HRDD throughout their supply chains, in light of the EU Regulation on conflict minerals approved on March 2017 (pag 23, Part IV B - NAP English version).

Moreover, among the planned measures there is the commitment to conducting a «comprehensive study» of the Decree No. 231/2001 on administrative liability for offences committed by legal entities, in order to assess the scope of its implications in relation to the UNGPs (pag. 15, Part IV B – NAP English version). The Decree provides the adoption of compliance programs, called ‘models of organization, management and control’, and has thus raised awareness among companies about the idea of preventing eventual offences, in accordance with the objectives of HRDD. By providing such “administrative” (but substantially criminal) liability – to be ascertained by a penal judge – the Decree should guarantee access to judicial remedies for victims of the alleged offences listed in its Art. 24 and following.

In order to avoid incurring in liability, the company shall demonstrate that it has efficiently adopted a ‘model of organization, management and control’ able to prevent the crime occurred and that has established an internal body entrusted with monitoring and supervising the compliance with the model. Otherwise, both fines (including confiscation of the crime profits) and the interruption of business activity are provided.”<sup>15</sup>

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<sup>13</sup> The law adopted by the French Parliament does not provide criminal penalties in case of non-compliance, according to the decision of the French Constitutional Council

<sup>14</sup> Please refer to Law 199 of October 29th, 2016, that amended art. 603 bis Criminal Code by widening the scope of the application of the crimes of illegal intermediation and labour exploitation in order to ensure greater efficiency of criminal action against this phenomenon

<sup>15</sup> [https://www.business-humanrights.org/sites/default/files/documents/Italian%20NAP\\_HRIC%20assessment\\_ENG.pdf](https://www.business-humanrights.org/sites/default/files/documents/Italian%20NAP_HRIC%20assessment_ENG.pdf)

The Italian NAP lists supporting Human Rights Due Diligence (HRDD) process as one of the areas of the six National Priorities (page 7, Part II C – NAP English version). The reference, however, is limited to a mere ‘promotion’ of this kind of initiatives and does not imply the adoption of a legal instrument that provides an obligation for enterprises. Reporting obligations on the large companies will be however imposed following implementation of the EU directive on non-financial reporting.<sup>16</sup>

Italian NAP makes a reference to human rights due diligence in several sections.

- The Government expectations towards business [page 9]: “According to the ‘Responsibility to Respect’, in order to prevent and avoid negative human rights impacts enterprises have to conduct processes aimed at preventing the risk of causing (or contributing to adverse human rights impact and at adopting specific measures able to mitigate eventual harmful consequences. Companies are thus expected to: (...) set up and implement due diligence processes to identify, assess and prevent any potential human rights risks, which could be incurred in across their operations and activities (or business partners or suppliers)”
- The Children’s rights section: responsible business conduct and OECD due diligence practices [page 18]: “With reference to the promotion of responsible business conduct, the Italian OECD NCP is committed to implement the OECD Guidelines for Multinational Enterprises by promoting them through an in-depth dialogue with businesses, trade unions, non-governmental organizations, representatives of civil society. Since the 2011 review of the OECD Guidelines, the NCP developed tools to make international standards operational especially for SMEs such as the “Due Diligence Guidance for SMEs” and activities for awareness raising and pilot projects involving large companies and SMEs with the aim of spurring a proactive responsible supply chain management through training, information and assistance.”
- The Government commitments [page 20]: “Promote common understanding of due diligence among companies and strongly encourage companies to engage in human rights policy and due diligence processes involving the entire supply chain. (...) Participate to initiatives in the context of the OECD, EU and other international fora on sustainable supply chains, human rights and due diligence”.
- Human rights due diligence in the State-business nexus section quotes the GP4. It later states in section on planned measures [page 22] that: “Within the framework of the monitoring mechanism set in the Plan give special attention to due diligence of business enterprises owned or controlled by the State”.

Supporting business respect for human rights in conflict affected areas (GP7) the planned measures include [page 23]: “Further promote the knowledge of the OECD due diligence guidance ‘Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones’ and ‘Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas’, encouraging and supporting SMEs to follow as well this guidance tools.

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<sup>16</sup> <https://globalnaps.org/issue/human-rights-due-diligence/>

### **3.1 An active role for the government [page 14]**

“As the government pointed out in its policy letter ‘CSR Pays Off’ and as is discussed under point 3 below on due diligence, the challenge in the next few years will be timely identification of risks in Dutch companies’ supply chains. The government wants to work on structural solutions within international chains, not incident management.”

### **3.3 Clarifying due diligence [page 21-28]**

“A point raised during the consultations was that the government should clarify the UN Guiding Principles, using language companies understand. Companies feel that the government has failed to say what it expects of them in terms of due diligence.

Due diligence is a core concept of the UN Guiding Principles, as set out by Professor Ruggie. It may be defined as follows:

- Identifying and assessing human rights impacts: taking proactive, ongoing steps to understand how existing and proposed activities may cause or contribute to human rights impacts.
- Taking action and tracking effectiveness of response.
- Externally communicating how the business has addressed adverse impacts: it is possible that these impacts are not the direct result of a business’s own operations, but are caused elsewhere within the supply chain.
- Due diligence is not a one-off activity but an ongoing process.

In the 2011 update of the OECD Guidelines, the recommendation to apply due diligence was extended to the CSR domain. In all its communications with and conditions for the business community, the government uses the OECD Guidelines as its framework of reference for ICSR [International Corporate Social Responsibility]. Companies must take account of the potential social impact of their activities. Due diligence is thus the most important new element in the CSR policies of companies operating internationally and/or within international supply chains. Corporate responsibility for applying due diligence is part of good business practice. But what the most effective due diligence process entails depends on the size of the company, the nature of its trade relations and the sectors and countries in which it operates.

### **Raising companies’ awareness**

“The aim of the information strategy described in the policy letter ‘CSR Pays Off’ is to raise companies’ awareness of the need for due diligence. As an earlier study showed, SMEs operating internationally mainly need practical information. There are various aids for companies wishing to apply due diligence, and new ones are currently being developed, by the Social and Economic Council (SER), for instance. The government also has a role to play in making information and aids accessible. The knowledge centre CSR Netherlands plays an important role, while NL Agency and the embassies are major sources of information for companies operating at international level.

The government supports the SER with a grant for workshops to help companies shape the human rights component of their CSR policies, and to assist them in charting and prioritising the risks they face. These

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<sup>17</sup> Ibid

workshops are organised by SHIFT, a non-profit organisation set up with Professor Ruggie's support to help companies and government authorities put the UN Guiding Principles into practice. The SER has also been given a grant to investigate whether the ISO 31000 risk management standard is applicable to CSR due diligence.

It is essential for companies to have access to all available information on due diligence. The European Commission has published human rights guidance for three business sectors: ICT companies, oil and gas companies and employment and recruitment agencies. These guides advise companies on how they can implement their responsibility to respect human rights in their everyday operations. At each step, the guides give a short account of what the UN Guiding Principles expect of them, and present a whole range of strategies and examples to help them put the principles into practice. The European Commission has also published a guide for SMEs and has developed a number of case studies. As mentioned above, the OECD has published a guide on responsible supply chains for conflict minerals and is working on a guide for responsible investment in agriculture supply chains. In 2010 Global Compact Netherlands published the results of a pilot study of application of the Ruggie Framework in ten Dutch companies. A follow-up publication is currently being discussed with Global Compact Netherlands."

### **CSR Risk Check**

"Using a grant from the Minister for Foreign Trade and Development Cooperation, CSR Netherlands has developed the CSR Risk Check for companies wishing to apply due diligence. Based on the sector and country in which a company is operating, this internet tool provides an indication of possible social impacts. CSR Netherlands works with the agency responsible for carrying out Sector Risk Analyses to harmonise the information on which the two instruments are based. This information will be used in the course of 2014 to compile sectoral world maps on which colour coding will be used to indicate whether a certain theme (e.g. child labour, discrimination of women) plays a role in a given country or region."

### **Sector Risk Analysis**

An issue raised during the consultations was that the government should help companies to take a proactive approach in identifying risks to human rights.

As announced in the CSR policy letter, Sector Risk Analysis has been introduced to identify the sectors that present the greatest risk of adverse social impacts and where priority should be given to strengthening company policy in relation to them. This forms part of the Dutch government's due diligence towards the business community. In this way, it is helping the business community to fulfil its responsibility to apply due diligence on CSR. Both the business community and civil society organisations will be closely involved in the analysis. The government will enter into dialogue with the sectors identified in the analysis to explore how the situation can be improved. Human rights issues may also be raised. The government will report to the House of Representatives on progress with the project in early 2014.

Where specific issues relating to human rights and the Dutch business community play a role, the government will enter into dialogue with the companies concerned.

The government has reached agreement with a number of sectors on the subject of due diligence. Agreements with, for example, the textile sector and energy companies are now in preparation. The government is willing to remove obstacles identified by the companies concerned. It will support them in upscaling initiatives to international level – e.g. through the Better Coal Initiative dialogue – and will work

for a level playing field for Dutch companies. The contents of these voluntary CSR agreements will depend on the nature of the problem, the degree to which the sector is organised and whether companies commit to achieving certain results or making certain efforts. The Minister for Foreign Trade and Development Cooperation and the Minister of Economic Affairs have requested the SER to advise them on effective CSR agreements with the business community. The SER is expected to issue its recommendations in early 2014. The sectors with which the government plans to enter into voluntary agreements will be announced in mid-2014.

### **Due diligence by government**

“A point raised in the consultations was that the government should also apply due diligence to its own activities, for example in providing support for companies in the form of grants or other types of finance for activities abroad, export credit insurance and trade missions. In all these cases, the government requires the companies concerned to apply due diligence.

For some time now the government has applied ICSR [International Corporate Social Responsibility] frameworks for risk assessment (due diligence) to all applications for support. These frameworks differ, depending on the goals and the nature of the instrument in question. For example, the ICSR framework for trade missions differs from the frameworks for project grants or export credit insurance. Assessment is based on the risk profile of the project or instrument, so that high-risk projects are subject to more thorough assessment than projects with fewer risks.

Companies should always take responsibility for their activities and the ICSR assessment frameworks provide guidance in this respect. Participation in a voluntary CSR agreement will of course help companies wanting support from the government to fulfil the requirements set out in the frameworks.”

### **ICSR in relation to export credit insurance**

“Under CSR policy on export credit insurance, both the government and companies are required to take responsibility for CSR. Companies using export credit insurance sign a declaration that they will seek to abide by the OECD Guidelines. The export credit agency Atradius DSB is responsible for carrying out a due diligence risk analysis of applications for insurance. The companies concerned are responsible for supplying the necessary information. If they are unable to do so, insurance will not be provided for the export transaction.

International agreements on the due diligence procedure for export credit insurance are set out in the OECD’s common approaches for export credit agencies. The common approaches apply to all OECD member states and, in terms of assessment of environmental and social impact, safeguard a level playing field between the member states’ export credit agencies. In the context of the common approaches, the OECD member states represented in the Export Credit Group have agreed that projects with potential adverse environmental and social impacts will always be screened for compliance with the IFC Performance Standards. The OECD Export Credit Group, in which all member states with export credit facilities are represented, is working on a strategy for assessing project-related human rights. The Netherlands plays an active part in this group, which is responsible for improving risk assessment.”

## 4. Action points

### Clarifying due diligence [page 41]

- “The government will enter into dialogue with educational institutions providing courses in management-related studies on including business ethics and/or CSR in their curriculums.
- The government supports the SER with a grant for workshops to help companies shape the human rights component of their CSR policies, and to assist them in identifying and prioritising the risks they face. The SER has also been given a grant to investigate whether the ISO 31000 risk management standard is applicable to CSR due diligence.
- The government has entered into talks with Global Compact Netherlands on a follow-up to its publication ‘How to do Business with Respect for Human Rights’ (2010). • The Ministry of Foreign Affairs will shortly provide an interministerial training course for civil servants whose work calls for knowledge of the UN Guiding Principles, and a refresher or other course for implementing organisations on the significance of the OECD Guidelines for companies.
- In 2014 an independent committee will investigate whether the obligations of Dutch companies in relation to CSR are adequately regulated in Dutch law, and in accordance with the UN Guiding Principles. The committee will take into account the relevant case law, the situation in neighbouring countries and the business climate.”

### Norway<sup>18</sup>

Norwegian NAP devotes the HRDD the whole section Due diligence, in which it explains the concept [page 33]: “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.”

Norwegian NAP refers to HRDD also in following sections:

- The Government’s expectations of business enterprise [page 9]: “Business enterprises have an independent responsibility under the UN Guiding Principles to respect human rights by developing a public strategy or policy, exercising due diligence and helping to ensure a consultation and remediation process for individuals and communities affected by their activities. (...) In brief, the Government expects business enterprises to: (...) exercise due diligence and assess

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<sup>18</sup> <https://globalnaps.org/issue/human-rights-due-diligence/>



the human rights-related risks in the context of their operations. This applies particularly to enterprises that operate in demanding markets”.

- Due Diligence by GIEK, Export Credit Norway and Innovation Norway [page 24]: “GIEK and Export Credit Norway often provide financing for the same projects, and have established formal cooperation on CSR. The cooperation includes human rights due diligence based on the expectations of export credit institutions set by the UN Guiding Principles, and is an integrated part of GIEK’s and Export Credit Norway’s loan and guarantee activities. All projects for which financing is being considered are submitted to an internal risk classification, even projects where this is not required by the OECD Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence. On the basis of the risk classification and considerations relating to opportunities for exerting influence, appropriate measures are taken to avoid, reduce and/or remedy potentially negative outcomes. In markets where there is a high risk that human rights will not be safeguarded in connection with business operations, it may be logical for example to require business enterprises to have adequate systems and strategies for risk assessment and follow-up. Innovation Norway practises environmental and social due diligence when dealing with all financing applications from business enterprises. The information on the company and the project for which support has been requested is assessed on the basis of a red flag checklist and a checklist based on the 10 principles of the UN Global Compact and adapted to Innovation Norway’s mandate and target groups.
- The red flags are: risk of corruption, the nature of the company’s activities in low-cost countries, ethical dilemmas and environmental pressure from commercial activities. CSR scores reflect the level of CSR-related risk connected with the project or whether CSR may be a reason for giving the case priority. One of the conditions laid down in the contract with the client is that the enterprise must have high ethical standards and avoid contributing to corruption, human rights violations, poor working conditions or adverse impacts on local communities or the environment”.
- The Corporate responsibility to respect human rights with regards to conflict areas [page 32]: Political unrest and conflict entail a particularly high risk of human rights abuses. Companies that operate in such areas should therefore exercise particular due diligence if they are to avoid becoming involved in such abuses.”

#### Poland<sup>19</sup>

Polish NAP makes an explicit reference to human rights due diligence only in section devoted to Responsible business conduct (CSR/RBC) and human rights [page 6], in which it describes the content of the OECD Guidelines: “In Chapter IV [of the *OECD Guidelines for Multinational Enterprises*], Human Rights, it is stated that enterprises should respect human rights; avoid causing or contributing to adverse human rights impacts and address such impacts when they occur; seek ways to prevent or mitigate adverse human rights impacts that are directly linked to their business operations, products, or services through business relationships; have a policy commitment to respect human rights; carry out human rights due diligence; and co-operate through legitimate processes in the remediation of adverse human rights impacts.”

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<sup>19</sup> ibid

It further refers to HRDD in Pillar II – 1. Corporate responsibility to respect human rights, where it points to the advantages of the HRDD for entrepreneurs, as described in the Interpretive Guide to the United Nations Guiding Principles on Business and Human Rights (page 28) as well as in Pillar II – 6. UN Guiding Principles in the operations of the Export Credit Insurance Corporation, where it points out that “The issue of respecting human rights in the operations of export credit agencies was raised both in the work on the 2012 Recommendation (modification of the 2007 33 document) and during several years of its revision, culminating in the adoption of the current version by the OECD Council on 6 April 2016. The current version of the Recommendation, officially published on 3 April 2016 (TAD/ECG (2016) 3) takes greater account of the requirements for respecting human rights in a procedure known as due diligence in the social and environmental aspects, e.g., in the classification of export undertakings and risk assessment.”

Spain<sup>20</sup>

### **Guiding Principle 2:**

Measure 4:

*“The self-regulation codes will also be promoted, taking as an example relevant sector experiences, 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 and adolescents against sexual exploitation in the Tourism and Travel Industry, as well as the relevant labor conventions of the ILO.”*

Measure 6:

*“Companies and vulnerable sectors will be informed about ILO Convention 169 on Indigenous and Tribal Peoples (1989), and the United Nations Declaration on the Rights of Indigenous Peoples (2007). This awareness-raising action will demonstrate the benefits that the respect for human rights can have for companies, as well as highlight examples of good practices.”*

Measure 7:

*“The Government will establish networks among Spanish companies or that the ones that operate in Spain for the promotion of: measures, procedures or internal systems that can effectively contribute to the prevention and/or mitigation of the negative consequences of business activities on human rights; as well as for the dissemination of good practices aimed to avoid these consequences, or to influence their avoidance, reduction or remedy. The establishment of procedures for internal assessment and determination of action will be promoted in a manner that avoids other negative consequences on human rights.”*

Measure 8:

*“The Monitoring Commission will design and submit to the Government the adoption of an incentive system that includes both large companies and Small and Medium Enterprises (SMEs) that carry out policies in the field of human rights. These incentives may be economic, commercial, visibility and image,*

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<sup>20</sup> ibid

or other nature, to encourage companies to have policies and reliably certify that they have implemented adequate procedures at a global level according to their size and circumstances, namely:

- *A public commitment to assume its responsibility to respect human rights in accordance with the provisions of the Principle no. 16;*
- *A process of due diligence aligned with the sectorial guides regarding the OECD (due diligence guidance), and based on the dialogue with stakeholders that allows identification, prevention, mitigation, and accountability of how they address the impact of their own activities and those that are directly related to their business relationships in accordance with the provisions of Principles no. 17 to no. 21;*
- *Some processes that allow to remedy all the negative consequences on human rights that have caused or contributed to provoke according to what is established in Principles no. 22, no.29, no. 30, no. 31.”*

### **Guiding Principle 3:**

Measure 10:

*“In order to increase transparency, and the confidence of consumers and investors on Spanish companies, the Government will compile the reports that companies write voluntarily, in accordance with the Spanish Strategy for Corporate Social Responsibility, and the Article 39 of the Sustainable Economy Law. It will be encouraged that these take into account the impact of their activities on human rights, including the value chain, introducing a specific chapter for that purpose. Likewise, and in relation to the reports and reports mentioned in the article 35 2 a) of the Sustainable Economy Law, which binds state business corporations, and public business entities attached to the General State Administration, it will be promoted the inclusion of a section on human rights. In addition, the transposition of Directive 2014/95 / EU on disclosure of non-financial information and information about diversity by certain large companies and certain groups will be carried out.”*

### **Guiding Principle 4:**

Measure 3:

*“Regarding public sector companies, the Government will promote the principles of Socially Responsible Investment, and must value this investment, in particular, from the perspective of respect for human rights, both within and outside Spanish territory.”*

Measure 4:

*“The Government will support the inclusion of human rights considerations in financial institutions for regional and international development.”*

### **Guiding Principle 5:**

Measure 1:

*“The Public Administrations will exercise an adequate supervision of the possible impact on human rights when contracting the services of companies, both within and outside of Spanish territory. This supervision*

*must take into account the criteria of the specialized institutions, in accordance with the application of the Spanish CSR Strategy.”*

**Guiding Principle 7:**

Measure 1

*“The Government, through its representations abroad, will inform companies about the risks involved in their business activities and relationships, especially in areas affected by conflicts.”*

Measure 5:

*“The Government will participate in multilateral efforts aimed at improving the prevention, mitigation and remedy of situations in which companies are involved in serious human rights abuse.”*

**Guiding Principle 25:**

Measure 1:

*“Within one year from the approval of this Plan, the Monitoring Commission will prepare a report on the legal mechanisms through which the civil liability of companies that cause damage or harm to human rights, including damage or harm caused through the lack of action on due diligence for the prevention of their own behavior, or that of their employees or agents, or that of the companies belonging to the same business group.”*

Sweden<sup>21</sup>

**2 The corporate responsibility to respect human rights [page 14]**

“In keeping with the UN Guiding Principles, businesses’ human rights efforts are expected to include the following main points: ...

Procedure ...

- Establish an integrated and ongoing process in the company to identify, prevent and manage human rights risks and opportunities, as appropriate to the size, nature and context of the operations, i.e. due diligence”

**Annex: Measures taken [page 22-24]**

**The State as actor**

- “Sweden is carrying out awareness-raising activities on this issue and supports the OECD’s work on how companies are to identify risks in the supply chain and avoid trade in conflict minerals (OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas).”

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<sup>21</sup> ibid

### **Action by government agencies**

- “Over and above the projects and sectors covered by the OECD’s ‘Common Approaches’ recommendations, the EKN has requirements and processes in place for conducting due diligence with respect to the environment and human rights in all other business transactions. The EKN also produces country risk analyses for many countries (www.ekn.se). The due diligence and any more in-depth review proceed from the potential seriousness of the impact of a business transaction and depends on the size of the transaction. ...
- The Swedish International Development Cooperation Agency (Sida) has developed forms of cooperation with the private sector with a view to mobilising additional resources for development. CSR is a precondition for cooperation. Based on the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises and the principles of the UN Global Compact, a due diligence tool has been developed for assessing and facilitating dialogue with potential partners on business and human rights. ...”

### **Annex: Measures planned [page 28-29]**

#### **How can the State support the business sector?**

- “The Government Offices is considering conducting special due diligence in sectors facing distinct challenges.”

#### **The State as owner**

- “The Government will work to increase knowledge about the UN Guiding Principles on Business and Human Rights in state-owned companies and will ensure that these companies, where appropriate, conduct human rights due diligence in order to assess and address any significant risk to human rights.”

#### **Corporate action**

- “The Government’s clear expectation is that companies operating in Sweden or abroad comply with the UN Guiding Principles for Business and Human Rights and other relevant guidelines in this area, and review their due diligence and redress mechanisms. Companies operating in markets where human rights challenges are particularly serious should place special emphasis on work in the area.”

### Switzerland<sup>22</sup>

Swiss NAP refers to human rights due diligence in section Role of the State and of business enterprises [page 11]: “The State duty to protect is supplemented by the corporate responsibility to respect human rights. With this in mind, Guiding Principles 11-24 and 28-31, which are aimed at business enterprises, are also important cornerstones of the federal government’s work to fulfil its State duty to protect. These Guiding Principles describe the scope of the corporate responsibility to respect human rights, specifically by conducting human rights due diligence as a core element of fulfilment.”

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<sup>22</sup> ibid

In the section devoted to Operational Principles; legislative and information policy measures (GP 3) the Federal Council is discussing policy instruments to implement the GPs with regards to human rights due diligence [page 14]:

“Swiss legislation does not make any provision for business enterprises having to conduct general, legally binding human rights due diligence. Potential regulation in this area would have to have a broad base of international support to avoid placing Switzerland at a disadvantage as a business location. The Federal Council supports due diligence on a voluntary basis, however. In May 2014, in fulfilment of postulate 12.3980 from the National Council Foreign Affairs Committee, the Federal Council had a report drawn up to compare legally binding due diligence obligations in other countries. It also discussed options for Switzerland in an accompanying commentary. The report shows that no country makes any provision for a comprehensive duty to conduct human rights due diligence. In March 2015, the National Council rejected a motion from its Foreign Affairs Committee to introduce a binding obligation for business enterprises to conduct human rights due diligence.

A key concern for a number of stakeholders is the introduction of legally binding human rights due diligence. In April 2015, an alliance of 66 civil society organisations launched the Responsible Business Initiative, which would like to see a general human rights due diligence obligation enshrined in law. The popular initiative was submitted on 10 October 2016, and on 1 November 2016 the Federal Chancellery confirmed that it will go forward to a referendum.”

NAP mentions also Guidelines for business enterprises on implementing the UNGP [page 17]:

“The federal government has supported the development of a variety of guidelines on business and human rights in recent years. Further to Recommendation 11 in the Federal Council’s Background Report on Commodities, the federal government is joining forces with NGOs and commodity trading.”

The NAP mentions human right due diligence in section devoted to the State-business nexus (GP4) [page 22]: “Guiding Principle 4 concerns the activities of business enterprises that are owned or controlled by the federal government (referred to below as federal government-associated businesses), or which receive considerable support and services from federal agencies. Given its direct influence on the activities of these companies, under the UNGP the federal government has a particular obligation to ensure that these federal government-associated businesses protect human rights, for example by conducting human rights due diligence. Where the acts of a business enterprise can be attributed to the federal government, abuses of human rights may entail a violation of Switzerland’s own international law obligations to respect human rights.”

Further on, the NAP explains PI17 [page 22] regarding Human rights due diligence by federal businesses and federal government-associated businesses, PI18 [page 23] regarding Requirement that business enterprises covered by Swiss Export Risk Insurance (SERV) conduct human rights due diligence and PI19 [page 23] regarding Human rights due diligence by the authorities in public-private development partnerships, PI19 regarding Human rights due diligence by the authorities in public-private development partnerships and PI20 [page 24] regarding Human rights due diligence for private security service providers.” The NAP makes a reference to human rights due diligence also with regards to GP7 in the section devoted to Business respect for human rights conflict-affected areas [page 25].

PI22 concerns Guidelines on human rights due diligence in conflict-affected and high-risk areas. In section Policy coherence, the NAP states [page 28]: “The Federal Council incorporated the UNGP, as a key reference framework for State activities in the business and human rights sphere, into the Sustainable Development Strategy, which it endorsed as part of its legislative planning programme in early 2016.

The Principles incorporated into the Strategy include recognition of the federal government’s duty to protect, as well as the responsibility of business enterprises to respect human rights – one of the means of doing so being the implementation of human rights due diligence.”

The Appendix to the NAP [page 44, 45] provides an overview of implementation, with a number of actions being of relevance to human rights due diligence: “- Support for and promotion of human rights due diligence by business Enterprises; Draft of guidance on human rights due diligence for international sporting events and commodities trading; implementation of the SDC Risk Assessment Guidelines for Partnerships with the Private Sector; Implementation of the Federal Act on Private Security Services provided Abroad; Support for the implementation of guidelines on human rights due diligence in conflict-affected and high-risk areas.”

### United Kingdom<sup>23</sup>

**The UK 2013 NAP** provides in *Government expectations of business* that [page 13]:

“The UNGPs guide the approach UK companies should take to respect human rights wherever they operate. The key principles of this approach are to:

- adopt appropriate due diligence policies to identify, prevent and mitigate human rights risks, and commit to monitoring and evaluating implementation”

**The UK 2013 NAP** states in *Further actions planned* that [page 15]:

“We will:

(ii) encourage trade associations/sector groupings of companies to develop guidance relevant to their members’ sector of activity on developing human rights policies and processes, including due diligence. There is generic guidance online about doing this e.g. at the Business & Human Rights Resource Centre. Some sector-specific guidance also exists, for example the International Council on Mining and Metals has produced a guide for mining companies on human rights due diligence. The European Commission has created guidance on the information communications technology (ICT), oil and gas and employment and recruitment sectors; <http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/human-rights/index>”

**The UK 2016 Updated NAP’s Introduction** states [page 3]:

“The G7 Leaders’ Declaration (7-8 June 2015) contained the following commitments:

- To enhance supply chain transparency and accountability, we encourage enterprises active or headquartered in our countries to implement due diligence procedures regarding their supply chains

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<sup>23</sup> ibid

**The UK 2016 Updated NAP's Introduction** further states [page 3]:

“Companies understand the business case for respecting human rights and the benefits this brings. They understand that positive action, supported by due diligence, transparency and reporting can:

- help to protect and enhance a company's reputation and brand value;
- safeguard and expand their customer base;
- help them attract and retain good staff;
- build and maintain sustainable and effective relationships with employees and external stakeholders;
- reduce risks to operational continuity resulting from conflict inside the company itself or with the local community or other parties;
- reduce the risk of litigation for human rights abuses;
- attract institutional investors, including pension funds, who are increasingly taking ethical , including human rights, factors into account in their investment decisions;
- help companies become partners/investors of choice for other businesses or governments concerned about human rights risks;
- support company ethics and values.”

**The UK 2016 Updated NAP** states in *Actions taken* that [page 8]:

“We will continue to promote implementation of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict Affected and High-Risk Areas.”

**The UK 2016 Updated NAP** states in the case study on *Support for Land Tenure and Other Property Rights* that [page 13]:

“Jointly with US, Germany, France, the AU Land Policy Initiative and FAO, the UK has developed a land investment due diligence framework based on the VGGT [Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (Land Guidelines, VGGT)] and other international standards, to guide private sector investments under the New Alliance for Food Security and Nutrition.”

**The UK 2016 Updated NAP** in *Government expectations of business* that [page 14]:

“The UNGPs guide the approach UK companies should take to respect human rights wherever they operate. The key principles of this approach are to:

- adopt appropriate due diligence policies to identify, prevent and mitigate human rights risks, and commit to monitoring and evaluating implementation;”

**The UK 2016 Updated NAP** makes a reference to human rights due diligence in a NCP case study concerning World Wildlife Fund & SOCO International Plc [page 23]:

“As part of the statement, SOCO (...) also stated that “when we undertake human rights due diligence, the processes we adopt will be in full compliance with international norms and standards and industry best practice, including appropriate levels of community consultation and engagement on the basis of publicly available documents.”



## **The National Action Plan**

### **Leading By Example [page 7]**

“The U.S. government will continue to encourage and model good practices by leveraging its purchasing power, which totals more than \$450 billion for goods and services each year, including nearly \$25 billion on services performed overseas. Through this influence, the U.S. government aims to accelerate the pace at which RBC practices are developed, adopted, and sustained globally by improving awareness of best practices related to human rights among the tens of thousands of companies with which it does business each year, and encouraging contractors to exercise due diligence and take steps where existing practices can be strengthened.”

### **Outcome 1.4: Conducting Due Diligence in U.S. Development Funding and Trade Finance**

#### **New Actions [page 12]**

“Enhancing Overseas Private Investment Corporation (OPIC) and Export-Import Bank of the United States (EXIM) Standards: [OPIC](#) and [EXIM](#) will enhance existing procedures and standards that require companies receiving their support to implement RBC principles. OPIC is reviewing its Environmental and Social Policy Statement, while EXIM has developed an improved mechanism for interested parties to provide comments, complaints, or suggestions on the environmental and social consequences of its pending and currently approved transactions, including reviewing ways to improve the [new portal for online submission](#).” – *Implementing Department or Agency: OPIC, EXIM*

“Social Safeguards for U.S. Development Assistance: USAID will develop a social safeguards screening questionnaire that Missions may use as an assessment tool when designing new projects (including public-private partnerships) to ensure due diligence on social and human rights issues. USAID will also establish a resource library of tools and human resources that can be deployed for various social analyses; conduct a gap analysis to identify topics not addressed by current guidance; convene stakeholder consultations regarding recommendations for future guidance or policies; and pilot the social safeguards assessment tool with interested USAID missions. These actions will be in line with international best practice, existing G-7 commitments, and safeguard policies already in place by U.S. agencies.” – *Implementing Department or Agency: USAID*

“Land Tenure in Development Assistance Activities: The U.S. government reaffirms its support for the consistent implementation of the Voluntary Guidelines on the Responsible Governance of Tenure (VGGT), which provides a global framework for improved land and resources governance. The U.S. government will commit to adhering to and aligning its relevant overseas development assistance activities to the VGGT.” – *Implementing Department or Agency: USAID*

#### **Facilitating RBC By Companies [page 17]**

“The U.S. government encourages businesses to treat tools like the OECD Guidelines and the UN Guiding Principles as a floor rather than a ceiling for implementing responsible business practices, and to recognize that implementing RBC should be a continuing process. The U.S. government is supportive of company efforts to voluntarily report on human rights impacts, anti-trafficking measures, transparency and anti-

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<sup>24</sup> *ibid*

corruption efforts, and other related aspects of their global operations, including the opportunities and challenges they face. Given the heightened risk of serious human rights impacts in conflict-affected areas, the U.S. government particularly encourages corporate due diligence and reporting under such circumstances.

The U.S. government generates and vets relevant information that can be used to conduct appropriate due diligence and risk assessment. While the concept of due diligence is increasingly well understood and accepted among businesses, the tools and resources available to effectively conduct detailed and appropriate risk and impact assessments can be sparse, particularly in many of the complex environments where this type of data is most needed.

To help address those gaps, the U.S. government deploys significant resources to produce and disseminate a variety of reports that help describe the state of human rights, labor rights, [commercial](#), and investment conditions across the world, and produces [international company profiles](#) to provide U.S. companies with information to help them vet potential business partners. In certain instances, the government also funds third-party reports that contain information useful to those seeking to promote and implement RBC. As part of the ongoing effort to facilitate RBC, the U.S. government will continue to enhance these resources, making them increasingly user-friendly and easier to find for the purposes of corporate human rights due diligence and social impact assessment.”

### **Outcome 3.1: U.S. Government Reports**

#### **Ongoing Commitments and Initiatives [page 18]**

“[DOL Child Labor and Forced Labor Reports](#): DOL publishes and updates three reports on international child labor and forced labor (the Findings on the Worst Forms of Child Labor, the List of Goods Produced by Child Labor or Forced Labor, and the List of Products Produced by Forced or Indentured Child Labor) that serve as valuable resources for government action, civil society advocacy, and private sector due diligence on these issues. Since 2015, DOL releases these three reports through a new mobile application, [Sweat & Toil: Child Labor, Forced Labor, and Human Trafficking Around the World](#), which streamlines this wealth of information and makes it available on mobile devices. DOL regularly engages with companies and industry groups on how they can use these tools to strengthen their social compliance programs.” – *Implementing Department or Agency: DOL*

“[Dodd-Frank Section 1502](#): ... Section 1502 requires certain companies to submit annually a description of the measures taken to exercise due diligence on the source and chain of custody of the four “conflict minerals.” ...” – *Implementing Department or Agency: State, USAID, SEC, Commerce, USGS*

#### **Annex II: Key Domestic Executive Orders and Regulatory Efforts [page 26-29]**

“Money Laundering and Bank Integrity: ... Effective AML programs include, among other things, the ability to detect and report suspicious activity, including corruption, and to conduct due diligence and enhanced measures when banks, broker-dealers, or other institutions deal with senior foreign political figures ...”

“Transparency: ... Treasury recently announced a final rule to increase transparency in the financial system. The final Customer Due Diligence rule, which was first noticed in 2014 and was subject to a public comment process, will require that financial institutions—including banks and other entities—collect and verify the personal information of the real people (also known as beneficial owners) who own, control, and profit from companies when those companies open accounts. ...”