



CDDH(2021)R95 Addendum 2  
18/10/2022

**STEERING COMMITTEE FOR HUMAN RIGHTS  
(CDDH)**

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**Report on the implementation of the Recommendation CM/Rec(2016)3  
of the Committee of Ministers to member States  
on Human Rights and Business**

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## *List of abbreviations*

CDENF	Steering Committee for the Rights of the Child
CDMSI	Steering Committee for Media and Information Society
CSR	Corporate Social Responsibility
ECSR	European Committee of Social Rights
ESC	European Social Charter
ILO	International Labour Organisation
NAP	National Action Plans on Business and Human Rights
NCP	National Contact Point under the OECD Guidelines for Multinational Enterprises
NHRI	National Human Rights Institutions
OECD	Organisation for Economic Co-operation and Development
PACE	Parliamentary Assembly of the Council of Europe
RBC	Responsible Business Conduct
SDG	Sustainable Development Goals
SMEs	Small and medium-sized enterprises
UNGC	United Nations Global Compact
UNGPs	Guiding Principles of the United Nations on business and human rights

1. On 2 March 2016, the Recommendation CM/Rec(2016)3 of the Committee of Ministers on Human Rights and Business was adopted. This recommendation encourages Council of Europe member States to implement the United Nations Guiding Principles on business and Human Rights (UNGPs) in the Council of Europe region.
2. The Recommendation CM/Rec(2016)3 recommends, inter alia, that the governments of member States :
  - share examples of good practices related to the implementation of this recommendation with a view to their inclusion in a shared information system, to be established and maintained by the Council of Europe, and which is to be accessible to the public, including through reference to existing information systems;
  - share plans on the national implementation of the UN Guiding Principles on Business and Human Rights ("National Action Plans"), including revised National Action Plans and best practice concerning the development and review of National Action Plans in a shared information system, to be established and maintained by the Council of Europe, which is accessible to the public, including through reference to existing information systems;
  - examine, within the Committee of Ministers, the implementation of this recommendation no later than five years after its adoption, with the participation of relevant stakeholders.
3. In implementation of the Recommendation CM/Rec (2016)3 an [Online Platform on Human Rights and Business](#) was established in 2019. The platform enables member States to submit their relevant information to the Secretariat, which is then in turn curated and published on a specifically created webpage of the CDDH. The information contained on the public pages of the platform includes: a list of relevant standards and guidance in the field of Business and Human Rights (at the level of the UN, Council of Europe, EU, OECD and ILO); an index of the published National Action Plans on Business and Human Rights (NAPs), searchable by State; as well an index of submitted implementing actions, searchable by State or by Pillar of the UNGPs. At present a total of 21 member States are featured on the platform. 19 NAPs and a selection of 30 practices have been summarised and published to the public pages of the platform. In addition, a private page in the HELP Online Platform has been created where member States can register their relevant representatives or interlocutors in order to upload information or engage with other users. At present this has not been widely used.
4. Building on the information gathered through the Online Platform<sup>1</sup> the Bureau of the CDDH, at its 103<sup>rd</sup> meeting (19 May 2020), agreed to continue the collection of information and invited those members of the CDDH who have not yet replied to the questionnaire sent to member States in 2019<sup>2</sup>. At the same time, the Bureau instructs the Secretariat to organise consultations with the Steering Committees, Treaty Bodies and other sectors of the Organisation in charge of cooperative activities to ensure a comprehensive and cross-cutting approach to the collection of information. These various bodies were invited to provide any information they had collected or produced in their fields of competence or on the basis of their mandate with regard to the implementation by member States of the Recommendation CM/Rec(2016)3. In accordance with

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<sup>1</sup> CDDH(2019)01, 23 January 2019.

<sup>2</sup> Ibid.

the decision of the Bureau of the CDDH, a questionnaire on "access to remedies" was also sent at the beginning of July 2020 to the different committees of the Council of Europe.<sup>3</sup>

5. Based on the information provided by member States in response to these processes the CDDH, at its 93<sup>rd</sup> meeting (14-16 December 2020)<sup>4</sup> and at its 94<sup>th</sup> meeting (15-18 June 2021),<sup>5</sup> discussed a draft report on the implementation of Recommendation CM/Rec(2016)3 and at the same time invited those member States which had not submitted their contributions to do so. The member States which had already provided their contributions were invited to submit updates or corrections.
6. Throughout these processes, 14 of the 47 member States have replied to the questionnaire<sup>6</sup> namely Belgium, the Czech Republic, Denmark, France, Georgia, Germany, Ireland, the Netherlands, Poland, Portugal, Slovenia, Spain, Sweden and Switzerland. The Danish, French and Slovak National Human Rights Institutions (NHRIs) as well as the Portuguese and Azerbaijani Ombudsmen also responded to the questionnaire. All of these responses have been compiled and posted on the Platform for Business and Human Rights. In early 2021, 7 more submissions were considered for the revision of this report. In particular, Austria, Estonia, Finland and the United Kingdom submitted their feedback for the first time whereas Belgium, the Czech Republic France, the Netherlands and Switzerland had done so previously.
7. Five committees responded to the questionnaire: the Steering Committee on Media and Information Society (CDMSI); the Consultative Committee of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (T-PD); the Gender Equality Commission (GEC); the Steering Committee for the Rights of the Child (CDENF) and the Group of Experts on Action against Trafficking in Human Beings (GRETA).
8. The following report consists of a compilation and review of the different responses of member States to the two questionnaires mentioned above on the implementation of the Recommendation CM/Rec (2016)3 as well as relevant information collected by the Secretariat.

### **I- Overview of National Action Plans (NAPs)**

9. Within the framework of the UNGPs, States have been encouraged to develop action plans for their implementation at the national level. These guidance documents set out the priorities and actions that states must take to comply with international and national standards relating to business and human rights. The Council of Europe in paragraph 10 of the Annex to the Recommendation CM/Rec(2016)3 calls on member States, if they have not already done so, to develop and adopt NAPs.
10. Nineteen member States of the Council of Europe have established a NAP (Belgium, Czech Republic, Denmark, Finland, France, Georgia, Germany, Ireland, Italy, Lithuania, Luxembourg, Netherlands, Norway, Poland, Slovenia, Spain, Sweden, Switzerland, and United Kingdom). The majority of NAPs are structured to follow the three pillars of the UNGPs or the 31 guiding principles. All NAPs explicitly address domestic business operations, and all but one explicitly address foreign business operations. Many NAPs address issues affecting

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<sup>3</sup> CDDH(2020)26, 30 June 2020.

<sup>4</sup> CDDH(2020)R93

<sup>5</sup> CDDH(2021)R94

<sup>6</sup> CDDH(2019)01, 23 January 2019.

vulnerable groups of rights holders, but some groups receive less attention than others, including migrant workers, persons with disabilities and indigenous peoples. Among the topics included in the 19 NAPs are the rights of the child, conflict-affected areas, equality and non-discrimination, human rights due diligence, judicial remedy, and non-judicial complaint mechanisms, among others. The Swiss NAP includes indicators on the implementation since its revision on 15 January 2020. The modalities of revision have been improved with the integration of indicators for increased measurability and transparency.

11. The Slovak National Centre for Human Rights as well as the Ombudsman of the Republic of Azerbaijan indicated in their respective replies to the questionnaire that Slovakia and the Republic of Azerbaijan have not yet adopted a NAP. However, these NHRI have expressed their commitment and actions at the national level in favour of the respect of human rights, the implementation of the UNGPs and the adoption of a NAP in their respective States.
12. **Austria** has not adopted a NAP on business and human rights. However, Austria acknowledges all efforts to foster systematic compliance with internationally recognised principles and guidelines in the field of CSR and RBC, especially compliance with human rights, environment, labour and social standards by companies, as in particular stipulated in the UNGP, the OECD Guidelines for Multinational Enterprises and the ILO-Declaration of Principles concerning Multinational Enterprises and Social Policy. Through the National Contact Point established according to the OECD Guidelines, Austria implements the Guidelines' human rights chapter, which is fully in line with the UNGPs. The government programme 2020-2024 provides for an examination of additional measures to strengthen corporate responsibility for human rights within the meaning of the OECD Guidelines. Moreover, the 2018 Austrian Foreign Trade Strategy is strongly based on values and sustainability and contains a range of specific measures in this regard, including a further strengthening of the NCP. Currently, Austria is awaiting the outcome of the ongoing discussion on the European Commission's "Sustainable Corporate Governance Initiative".
13. In 2018, the Danish Institute for Human Rights conducted a study<sup>7</sup> and analysed 18 NAPs for the period 2013-2018 and concluded that the majority of them were autonomous action plans, established to follow the structure of the UNGPs. Their length varies considerably from one state to another.
14. In the process of developing their NAP, all states held events with stakeholders and rights holders and, with the exception of one state, all processes involved both business and civil society. States have organised various stakeholder engagement events including national multi-stakeholder seminars on business and human rights, stakeholder dialogues for specific geographic areas, public consultations, open dialogues, expert consultations and plenary conferences. Such events also took place at different points in the NAP process.
15. The extent of stakeholder and rights holder participation has varied considerably. For example, six States (Denmark, Georgia, Germany, Italy, Spain, Switzerland and Georgia) have taken steps to involve special interest groups and vulnerable groups such as indigenous peoples and persons with disabilities. 14 States have established a mechanism for interested parties to submit formal responses or comments to the State and three of them have published these responses. Regarding the possibility of commenting on a draft national action plan, only 10 States have offered this option to right holders and stakeholders.

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<sup>7</sup> The Danish Institute for Human Rights (2018), 'National Action Plans on Business and Human Rights : an analysis', available at: <https://www.humanrights.dk/publications/national-action-plans-business-human-rights-analysis-plans-2013-2018>

16. Four states publicly shared timetables covering the entire NAP development process and two others published partial timetables covering specific stages of the development process.
17. Of the 19 states with NAP, four have conducted a national baseline assessment designed to identify gaps in human rights protection before developing a NAP. Four of these assessments were conducted by organisations on behalf of the state and one jointly with the state.
18. In order to effectively implement the UNGPs, NAPs should not only be monitored, revised, and reported on, but should also be updated periodically. The inclusion of a commitment to update a NAP allows for the application of lessons learned in the creation, implementation and review process and demonstrates a commitment to progressively realize the "protect, respect and remedy" framework of the UNGPs. In this sense, six NAPs commit the State to undertake a second NAP, or to update or review it.
19. With regard to monitoring reports on the implementation of commitments, 12 NAPs provide for this, and to date, four states have published such reports.
20. Four NAPs commit the State to report on business and human rights to a human rights mechanism ("The Danish CSR Council and the OECD Investment Committee for Denmark (although the former body no longer exists), the Universal Periodic Review process for Spain and the UN Committee on the Rights of the Child for Finland and Switzerland).

## **II- Action by member States to implement the Recommendation CM/Rec(2016)3**

### *2.1. Dissemination and translation of the Recommendation CM/Rec(2016)3 and UNGPs*

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21. The UNGPs have been published on the websites of the governments of all States that responded to the questionnaire to member States mentioned in paragraph 5 above. However, the publication of the Recommendation CM/Rec(2016)3 is not effective in all countries and only Poland, France and Germany have published it on these same sites.
22. In **Austria**, the Federal Ministry for Climate Protection, Environment, Mobility, Innovation and Technology has published the UNGPs in German on its website. The **Czech** translation of the UNGPs has been published on the Czech national information portal on quality management and CSR.<sup>8</sup>
23. The services of the Committee of Ministers of the Council of Europe have ensured the dissemination of the Recommendation CM/Rec(2016)3 in the official languages of the Council of Europe. At the national level, only **Poland**, through its Ministry of Foreign Affairs, has provided its citizens with a Polish translated version of the Recommendation.
24. Poland has also established a partnership in 2017-2018 for the translation into Polish of the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector. The partnership was established by government, business representatives, industry organisations and civil society organisations.

<sup>8</sup> Czech translation of the *NAP for Business and Human Rights 2017-2022*, available at: <https://www.narodniportal.cz/narodni-akcni-plan-pro-byznys-a-lidska-prava-na-obdobi-2017-2022/>

## 2.2. Review by member States of national legislation and practices

25. Only five States that responded to the questionnaire have carried out a review of national legislation and practices to ensure their conformity with the recommendations, principles and other guidelines set out in the annex to the Recommendation CM/Rec(2016)3.
26. The **Irish** Department of Foreign Affairs and Trade commissioned an independent consultancy firm to prepare a comprehensive baseline assessment of the regulatory and legal framework for business and human rights in Ireland. The study was published in March 2019<sup>9</sup> and recommends, inter alia, that:
- establish the Business and Human Rights Implementation Group (to be set up by the Department of Foreign Affairs and Trade) and that this group begin its work as soon as possible;
  - implement another forum of key stakeholders to provide updated information to the above-mentioned Implementation Group;
  - conduct another section-by-section analysis of the legislation to fully inform the Implementation Group;
  - conduct further research on access to remedies and gaps in the remedies available to individuals and groups for human rights violations in a business context in Ireland;
  - develop the role of the OECD National Contact Point in light of developments in other jurisdictions such as Denmark, England and Wales, as well as the recommendations of the Irish Human Rights and Equality Commission;
- with regard to the duty of care, the study invites the State to continue to develop its strong reputation for human rights protection to consider the adoption of mandatory human rights due diligence. In the absence of a mandatory regime, the state could consider the provision of additional benefits to companies that adopt human rights due diligence. This would serve to develop human rights due diligence as a norm in business, upon which a mandatory regime could in turn be developed.
27. In the **Netherlands**, a study to review national legislation and practice to ensure compliance with the UNGPs was conducted in 2015. The study revealed several points requiring attention, relating to legal and practical obstacles in the Dutch legal system. The government is committed to incorporating these points into future draft legislation and has taken already some concrete steps to this goal. The Netherlands has passed a new law on collective redress (the 'WAMCA') which makes it possible for an organisation acting on behalf of injured persons to demand compensation in a collective action. It also provides that the party ordered to pay compensation in a successful action will also be ordered to pay the plaintiff's legal costs. This may be relevant to victims of business-related human rights violations for which Dutch enterprises are liable. The law entered into force on 1 January 2020. In June 2020, the government also submitted a Bill to Parliament to modernise and simplify the rules of evidence. Better integration of the right of inspection is part of this draft Bill.

<sup>9</sup> Department of Foreign Affairs and Trade (2019), 'National plan on business and human Rights: Baseline assessment of legislative and regulatory framework', available at: <https://www.dfa.ie/media/dfa/ourrolepolicies/internationalpriorities/Baseline-Study---Business-and-Human-Rights.pdf>.

28. In **Finland**, a study on the *Status of Human Rights Performance of Finnish Companies* (SIHTI) was published in 2021.<sup>10</sup> The main objective of this project was to obtain a comprehensive and in-depth overview of how Finnish companies are fulfilling their human rights responsibility and how they have met the expectations set in the UNGPs. The methodology developed by Corporate Human Rights Benchmark (CHRB) was used to assess the companies' human rights performance. The study will support the implementation of the Government policy on RBC, including possible formulation of new legislative measures.
29. In **France**, on 21 February 2013, the government formally requested the opinion of the National Consultative Commission on Human Rights (CNCDH) in order to prepare its action plan for the implementation of the UNGPs.<sup>11</sup> The National Consultative Commission on Human Rights in its opinion adopted by its Plenary Assembly<sup>12</sup> proposed courses of action on the State's obligation to protect human rights when third parties, including companies, violate them and the right of victims to an effective remedy. With regard to the first point, the National Consultative Commission on Human Rights recommends that the NAP promotes respect for human rights by companies owned or controlled by the State or with which it conducts commercial transactions, particularly in the context of public-private partnerships; requires State operators to carry out comprehensive human rights impact assessments, with increased information and consultation with stakeholders and civil society at the various stages of project implementation; imposes a legal obligation of human rights due diligence on companies for their activities and those of their subsidiaries and business partners, both in France and abroad.
30. With regard to the effectiveness of remedies, the National Consultative Commission on Human Rights calls on the French government to ensure the effectiveness of judicial mechanisms. Indeed, the study stresses that in France, company law provides for a principle of legal autonomy for companies within a group. This principle prevents parent companies from being held responsible for human rights violations committed by their subsidiaries, even though in practice they control them. Similarly, the reality of supply chains prevents French companies from being held liable for their subcontractors or business partners over whom they often exert influence. Extending the extraterritorial jurisdiction of French courts, both civil and criminal, would also make it possible to ensure that certain human rights violations committed by subsidiaries of French companies abroad do not go unpunished. The State should also strive to ensure the effectiveness of non-judicial reparation mechanisms. The study recalls that in each of the countries adhering to the OECD Guidelines for Multinational Enterprises, there is a National Contact Point (NCP) which is responsible for promoting and disseminating these principles and for responding, if necessary, to referrals for non-compliance. The National Consultative Commission on Human Rights recommends involving independent experts in its work and establishing a structured and interactive dialogue with civil society actors.
31. In **Germany**, a review of national legislation is gradually being undertaken as part of the national action plan and its implementation within the circle of the Inter-ministerial Committee for Business and Human Rights. The federal government is currently examining all related

<sup>10</sup>Ministry of Economic Affairs and Employment (2021), 'Status of Human Rights Performance of Finnish Companies', available at: <https://julkaisut.valtioneuvosto.fi/handle/10024/162936>.

<sup>11</sup> Ministry of Foreign Affairs and International Development, National Action Plan for the implementation of the United Nations Guiding Principles on Human Rights and Business, 26 April 2017, [https://www.diplomatie.gouv.fr/IMG/pdf/3\\_-\\_pnadh\\_fr\\_version\\_finale\\_bandeau\\_cle0be656.pdf](https://www.diplomatie.gouv.fr/IMG/pdf/3_-_pnadh_fr_version_finale_bandeau_cle0be656.pdf)

<sup>12</sup> National Consultative Commission on Human Rights (CNCDH), "Business and Human Rights : opinion on issues concerning the implementation by France of the United Nations Guiding Principle", 24 October 2013 <http://www.cncdh.fr/fr/publications/entreprises-et-droits-de-lhomme>

issues and working on draft legislation. Areas for action to be examined include measures in the area of public sector protection (public procurement, promotion of foreign trade, etc.), due diligence obligations, including specification at the sectoral level, and corresponding support measures.

32. In **Poland**, the analysis was carried out by the ministries concerned and was included in the first edition of the NAP. The work on the NAP required a comprehensive analysis of the current legal framework to determine whether and where Polish law and practice require specific changes and adjustments. To this end, the government carried out consultations with a wide range of stakeholders, mainly with employers' organisations, trade unions and NGOs, which resulted in specific recommendations for the NAP. This analysis focused on the situation in Poland regarding access to remedies in cases of corporate abuse. The main conclusion of this analysis is that Poland still faces many gaps in the legal regulations protecting human rights in companies, which can however be eliminated to some extent, both under the new legislation and under the current legislation, mainly through a change in the practice of using the applicable regulations.
33. The analysis also points to the need to amend the regulations concerning actions in a remedy by extending the possibility of filing them also in cases involving the protection of personal property. It also mentions the need to abandon the introduction of regulations and to remove provisions limiting the catalogue of parties to proceedings and the rights of social organisations in order to facilitate their participation in proceedings. A lack of interest on the issue of respect for human rights throughout the supply chain is also highlighted. This can be reinforced by adequate requirements imposed on bidders in the context of public procurement procedures conducted, as well as by the introduction of relevant obligations associated with the provision of non-financial information. The introduction of subsidiary legal liability of parent companies for human rights violations by their subsidiaries should be considered according to the study. This analysis concludes with some comments on the functioning of the NCP in Poland, which requires greater visibility towards citizens.
34. **Switzerland** actively participated in the elaboration of the recommendation on human rights and business adopted by the Committee of Ministers of the Council of Europe on 2 March 2016. By implementing the NAP, Switzerland contributes to the implementation of this recommendation. It also supports the Council of Europe's activities to improve access to redress for victims and its online platform on the topic of "Business and Human Rights".
35. The **UK** Government strongly backs the business and human rights agenda and has consistently supported the UNGPs. In 2013, the UK was the first State to produce a NAP to implement the UNGPs.<sup>13</sup> The NAP was reviewed and updated in 2016, reaffirming the UK's commitment to this agenda. The NAP follows the same structure as the UNGPs, based around three pillars. Recent developments in the UK's approach are set out below: In order to give effect to this duty, the UK government has taken a number of measures.
36. Firstly, it introduced the Modern Slavery Act 2015.<sup>14</sup> This both updated the law and introduced a requirement for businesses with a turnover of £36 million or more to publish a statement on their website, setting out what steps the business has taken to ensure that modern slavery is

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<sup>13</sup> Foreign & Commonwealth Office and Foreign, Commonwealth and Development Office (2013), 'Good Business: Implementing the UN Guiding Principles on Business and Human Rights', available at: <https://www.gov.uk/government/publications/bhr-action-plan> (updated May 2016)

<sup>14</sup> See Modern Slavery Act (2015), available at: <https://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>

not taking place in its business and supply chains. The UK was the first country in the world to require businesses to report on the steps which they have taken to tackle modern slavery.

37. In September 2020, the government announced an ambitious package of changes to strengthen and future-proof the Modern Slavery Act's transparency legislation, including: extending the reporting requirement to public bodies with a budget of £36 million or more, a global first; mandating the specific reporting topics statements must cover; requiring organisations to publish their statement on the new Government digital reporting service; setting a single reporting deadline on which all modern slavery statements must be published.
38. In January 2021, these announcements were followed by a commitment to introduce financial penalties for non-compliance. Building on these commitments, in March 2021 the government launched a modern slavery statement registry to enhance transparency and provide increased visibility of the steps which organisations are taking to prevent modern slavery and to empower investors, consumers, and civil society to scrutinise the action which businesses are taking.<sup>15</sup>
39. Secondly, the **UK Government**, published its first 'Government Modern Slavery Transparency Statement' in March 2020, to lead the way for the public sector and explain the steps taken to eradicate modern slavery from its government procurement and supply arrangements. All ministerial departments are now working towards publishing their individual modern slavery statements from 2021.
40. Thirdly, it published a Policy Procurement Note and detailed guidance document, setting out a risk-based approach to mitigating modern slavery in government supply chains, and specific measures to be adopted at each stage of the commercial life-cycle.<sup>16</sup>
41. Fourthly, it launched the Modern Slavery Assessment Tool.<sup>17</sup> This supports public bodies in assessing their own supply base for modern slavery risks, and provides tailored recommendations to suppliers on how to improve their anti-slavery processes.
42. Fifthly, it implemented the requirements of the OECD 2012 common approaches for undertaking environmental and social due diligence. These requirements are to identify, consider, and address the potential environmental and social impacts and risks relating to applications for officially supported export credits, as an integral part of decision-making and risk management systems.
43. Moreover, the **UK** developed partnerships with other countries seeking to implement the UNGPs, sharing best practice from the Modern Slavery Act and the UK National Action Plan. Also, it strengthened international rules relating to digital surveillance.

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<sup>15</sup> See Modern slavery statement registry, available at: <https://modern-slavery-statement-registry.service.gov.uk/>

<sup>16</sup> Cabinet Office (2019), 'Procurement Policy Note 05/19: Tackling Modern Slavery in Government Supply Chains', available at: <https://www.gov.uk/government/publications/procurement-policy-note-05-19-tackling-modern-slavery-in-government-supply-chains>

<sup>17</sup> See The Supplier Registration Service for Government, available at: <https://supplierregistration.cabinetoffice.gov.uk/>

### **2.3 Inter-institutional coordination**<sup>18</sup>

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44. In order to ensure the coherence of the policies pursued within their governments, a number of member States have set up bodies specifically dedicated to the issue of human rights and business. In this way, they ensure concordance and coherence at all political levels. In this sense, since 2017 in **Ireland**, one of the commitments of the NAP is that the mandate of the Interdepartmental Committee on Human Rights, which ensures the coherence of the policies of the different ministries in terms of human rights, be modified to include the monitoring of the National Plan. The National Plan is now a permanent item on the agenda of this Committee, which has enabled the dissemination of information related to business and human rights through the different ministries and government departments.
45. Similarly, in **Germany** the governance structure of the NAP, including the new Inter-ministerial Committee for Business and Human Rights and the Stakeholder Platform, allows for this policy coherence. The Advisory Council for Sustainable Development and Corporate Social Responsibility, an auxiliary body to the Minister of Investment and Economic Development, was created by ministerial order in May 2018. The basic function of the Advisory Council is to create a space for dialogue and exchange of experiences between the public administration, social partners, NGOs and academia in the field of CSR.
46. In **Austria**, the NCP established according to the OECD Guidelines for Multinational Enterprises fosters policy coherence by regularly informing its steering committee, senior officials in the Federal Ministry for Digital and Economic Affairs, officials responsible for trade missions, the Austrian Export Credit Agency and the Austrian Development Bank about NCP activities and specific instances. Moreover, according to chapter 2 of the 2018 Austrian Foreign Trade Strategy, Austrian foreign trade policy builds on values such as human rights, environment and sustainability. In this context, chapter 2 inter alia refers to the OECD Guidelines. In the context of preventing trafficking in human beings, the Sixth Austrian National Action Plan against Trafficking in Human Beings 2021-2023 focusses on strengthening the legal and institutional framework and on improving transparency in supply chains.
47. In addition to the creation of specific bodies, policy coherence is achieved through training, as it raises awareness among the staff of ministries, embassies and implementing agencies of health and human rights issues and of the State's obligation in this area.
48. In **Switzerland**, as provided for in the CSR Action Plan 2020-2023, an interdepartmental group on CSR - which also deals with human rights issues - brings together the federal offices involved in the various action plans and strategies of the Confederation related to RBC. The offices responsible for these action plans meet regularly to exchange information on their respective activities and to coordinate their activities. The interdepartmental group analyses conflicts of interest and structures the political discussion to achieve a consistent application of the UNGPs within the administration. In the area of international human rights policy, an interdepartmental federal group of the Confederation (KIM), consisting of representatives of the offices responsible for international human rights conventions, serves as a platform for exchange. The cantons are also represented. The activities of the NAP are regularly presented to the interdepartmental KIM group. In the raw materials sector, the Interdepartmental Raw Materials Platform promotes synergies between the various sectoral policies and monitors national and international developments in the raw materials sector in particular. The results of this interdepartmental cooperation are also reflected in the policy coherence between the

<sup>18</sup> CM/Rec (2016)3, Appendix, paragraph 3.

various departments in bilateral consultations with other States, in multilateral forum and in public statements.

#### 2.4. Training

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49. Training is provided in various member States for government officials, judges, prosecutors and other officials whose duties relate to the issue of corporate liability.
50. In **France**, training and awareness-raising activities dealing with human rights and businesses are conducted for judges and future judges by the National School of the Judiciary, and for court registries by the National School for Registrars.
51. In **Poland**, the National School for the Judiciary and Public Prosecution provides continuing education for a wide range of judicial officials and has organised specific sessions on human rights to supplement their expertise and professional skills in this area. In 2018, a catalogue of good practices concerning human rights and business for Polish embassies and other institutions subordinate to the Ministry of Foreign Affairs was prepared by the latter in consultation with Polish embassies, which catalogue was forwarded to the embassies and to institutions subordinate to the aforementioned Ministry. The 2019 calendar included training on business and human rights issues, such as access to justice, uniform procedural guarantees, anti-discrimination, human trafficking, employee rights, copyright and environmental protection.
52. In **Germany**, the Federal Academy of Public Administration offers a wide range of continuing education activities that also address the protection of fundamental and human rights in different ways. The Federal Ministry of Foreign Affairs has included a module on business and human rights in the curriculum of young diplomats trained at this Ministry. "Business and Human Rights" is also part of the general training courses for diplomats posted abroad before they take up new positions as economic and commercial attachés in German missions abroad. This is also the case for the on-the-job training that the Federal Foreign Office and other ministries offer to German attachés posted to missions abroad in the fields of energy/climate and development cooperation.
53. In the **Netherlands**, the government offers an e-learning module on business and human rights for civil servants whose tasks are related to the issue of corporate responsibility. The e-learning module provides an overview of international frameworks and focuses on the UN Guiding Principles, the respective duties of States and companies.
54. In **Switzerland**, as part of the annual human rights course for federal government staff and human rights training for future diplomats, a module on business and human rights is integrated into the annual course. In addition, Switzerland is committed to specifically strengthening the know-how of staff working in Swiss representations abroad.
55. Training programs have also been developed in the context of public procurement contracts in order to make more companies aware of their responsibilities and, ultimately, to ensure greater human rights due diligence on the part of these companies. The **Netherlands** recently launched a training program for buyers and contract managers to teach them how to properly follow due diligence requirements. In **Germany**, the Competence Centre for Sustainable Public Procurement offers training courses for public purchasers and other relevant target groups to increase awareness and knowledge. The **Czech Republic** included human rights

- issues in public authorities' training courses on public procurement from 2019. **Poland** has implemented extensive educational activities to promote social public procurement among public procurement participants. The Public Procurement Office carries out activities to promote social issues in public procurement, mainly in the framework of the National Action Plan for Sustainable Public Procurement for 2017-2020. These activities mainly include: organising training and conferences on social public procurement, preparing publications discussing existing legal solutions and presenting examples of good practices related to the application of social aspects in public procurement procedures.
56. Specific training courses are also offered to companies and their employees. In **Germany**, the federal government offers "practice days" to SME throughout the country to provide support, information and exchange with other companies on responsible supply chain management and sustainability reporting. In **Switzerland**, the Federal Department of Foreign Affairs and the Federal Department of Economic Affairs, Education and Research organised awareness-raising events and training courses on the topic of "business and human rights" for interested companies, business associations and chambers of commerce between 2018 and 2020. These trainings encompassed an introduction to corporate human rights due diligence processes and a presentation of the Confederation's strategy. With the revision of the NAP and the CSR Action Plan<sup>19</sup> on 15 January 2020, Switzerland will continue to organise trainings to raise awareness of Swiss companies on the topic of human rights and to communicate more intensively the Federal Council's expectations of them. The Confederation conducted a needs assessment of the private sector to offer Swiss companies of different sizes and sectors targeted assistance in implementing their human rights due diligence based on the UNGPs and the OECD Guidelines for the evaluation of the diligence. A special attention is given to the needs of Swiss SME. The Confederation also plans to organise a Swiss Forum on Business and Human Rights to enable an exchange of experiences and best practices.
  57. In **Estonia**, cooperation with the private sector and the Hotel Association has been strengthened and already for two years in a row there have been cooperation seminars, one of which was dedicated to CSR, including risk assessment in subcontracting chains, paying fair salaries, and also preventing trafficking in human beings.
  58. In **Austria**, the National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises regularly offers events for companies, employees and civil society in order to promote the Guidelines. In 2021, the NCP's promotion activities focus on due diligence in supply chains with webinars for companies on the practical implementation of due diligence, events to inform specific stakeholders and events to enable an exchange on the issue among various stakeholders. Its promotional activities regularly also target government officials.
  59. Similarly, States are trying to set up conferences for all stakeholders to facilitate their cooperation. In **Poland** on 2 October 2017 a conference entitled "UN Guiding Principles on Business and Human Rights: Implementation of the Polish National Action Plan" was held. It was the first meeting addressed mainly to the public administration, but also to representatives of companies and non-governmental organisations. The main objective of the conference was to present the issues at stake in the new National Action Plan and to provide a space for collective discussion on the most effective methods of implementing the NAP on Human Rights and Business, potential activities of partners and legislative measures requiring action that will ensure full implementation of the UN Guiding Principles.

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<sup>19</sup> SECO (2020), 'Position paper and action plan of the Federal Council on corporate responsibility towards society and the environment – State of implementation 2017-2019 and action plan 2020-2023', available at: [www.csr.admin.ch](http://www.csr.admin.ch).

## 2.5. Measures that assist, encourage and provide effective guidance to business on respect for human rights

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60. Since 2016, a number of member States have developed practical tools on business and human rights for public and private entities to inform and assist them in respecting human rights. The aim is to provide effective guidance to businesses on how to respect human rights throughout their operations. EU ISF-P funded FLOW project (Flows of illicit funds and victims of human trafficking: uncovering the complexities 2018 - 2020) focused on analysing the business model of labour exploitation and the links between labour trafficking, exploitation and economic crimes in Finland, Estonia, Latvia and Bulgaria. Several guidelines for businesses for guaranteeing labour and human rights were worked out.<sup>20</sup>
61. In **Germany**, the federal government provides various types of support to facilitate the practical implementation of the UN Recommendation and Guidelines. For example, comprehensive information on the main activities of the NAP and the measures of the federal government are available on the official website [www.csr-indeutschland.de](http://www.csr-indeutschland.de). In addition, an internal digital information platform on business and human rights has been put online to enable diplomatic and consular staff around the world to find complete and up-to-date information.
62. The **Czech Republic** has set up a national information portal on quality management and CSR. This common web page managed by the Ministry of Industry and Trade provides all necessary information on human rights and business and CSR, including the NAP, the UNGPs and other Czech and international documents from international organisations, companies, associations, trade unions, public authorities and civil society.
63. **Belgium** has developed a toolbox entitled "Toolbox Human Rights". This toolbox aims to provide a set of accessible instruments to guide organisations (and their stakeholders) in their human rights obligations in the context of their activities.<sup>21</sup>
64. The **Irish** Ministry of Foreign Affairs and Trade will also soon launch a similar Business and Human Rights Toolkit for public and private entities to assist them in their human rights' due diligence.
65. The Government of the **Netherlands** has commissioned a reference document for companies, developed by Shift, Oxfam and the Dutch Global Compact network to provide general guidance on due diligence for all sectors.
66. Similarly, in **Finland**, the 2018 report *Human rights impacts of own operations: insights for due diligence* aims to support Finnish companies in taking appropriate steps to carry out due diligence to prevent, mitigate, or remedy adverse human rights impacts of their own operations, as outlined in the UN Guiding Principles, especially in countries where protection of human rights may be insufficient or the enforcement of existing legislation weak.<sup>22</sup>
67. In **Switzerland**, the State Secretariat for Economic Affairs and the Federal Department of Foreign Affairs has developed and published in November 2018 a guide for companies active

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<sup>20</sup> HEUNI (2021), 'FLOW. Flows of illicit funds and victims of human trafficking: uncovering the complexities', available at: <https://heuni.fi/en/-/flow>

<sup>21</sup> See Toolbox Human rights for business and organisations, available at: <https://entreprises-droitshomme.be/>

<sup>22</sup> Ministry of Economic Affairs and Employment (2018), 'Human rights impacts of own operations: insights for due diligence', available at: [https://julkaisut.valtioneuvosto.fi/handle/10024/160573#\\_blank](https://julkaisut.valtioneuvosto.fi/handle/10024/160573#_blank).

in commodity trading.<sup>23</sup> This guide is intended to help these companies to implement the UNGPs and the OECD Guidelines on RBC in their corporate systems and cultures. It also provides a tool for the industry as a whole to develop a shared practice of responsible trading in line with relevant international human rights standards. Since then, federal departments concerned organised a series of workshops and conferences to ensure a good comprehension and broad dissemination of practices of the guide. Switzerland also launched in July 2018, a web portal about the NAP that presents an overview of the various activities carried out by the federal administration in relation to the NAP and gives access to a compilation of information relevant to businesses and civil society. In 2019, the federal administration published a brochure for SMEs.<sup>24</sup> It outlines their human rights responsibilities and provides a practical overview of the opportunities and challenges of responsible business management. It was developed as part of the implementation of the Swiss NAP.

68. The **UK government** has taken a number of measures to support practical action by businesses. In particular, it has amended and subsequently strengthened the Companies Act 2006, to require certain companies to report on material human rights impacts, where relevant for an understanding of the business, as part of their annual reports. The Department for Business, Energy and Industrial Strategy has been assessing early experience with these changes to strategic reporting by companies, which were introduced a while ago. Research examining stakeholder perceptions of the non-financial reporting regime since the changes were made was published in October 2019.<sup>25</sup> In addition, the UK government provided guidance to companies on the transparency in the supply chains requirement of the Modern Slavery Act, and launched a contacts database for businesses to register for tools and resources to support effective reporting under the Act; partnered with the cyber growth partnership industry providing guidance on assessing human rights risks relating to cyber security exports; and provided funding for the Corporate Human Rights Benchmark Initiative, a private sector initiative that seeks to rank the largest companies in the world on their human rights performance.<sup>26</sup> Other measures include, supporting the UNGPs' Reporting Framework, a voluntary, comprehensive guide for companies to report on how they respect human rights;<sup>27</sup> and continuing to provide financial support to the UNGC.<sup>28</sup> This encourages and enables companies to align their operations and strategies with universally accepted principles on human rights, labour, environment, and anti-corruption.
69. Some member States have also developed, as **Germany** did in 2019-2021, **sectoral guidelines** and good practices on human rights due diligence in the context of sectoral dialogues. The objective of these multi-stakeholder dialogues is to provide advice to companies in sectors facing particular human rights challenges and to assist them in implementing the NAPs due diligence requirements. This should ultimately reduce the number of human rights violations in these sectors and improve their protection in global supply and

<sup>23</sup> See "The Commodity Trading Sector Guidance on Implementing the UN Guiding Principles on Business and Human Rights", of the State Secretariat for Economic Affairs SECO and the Federal Department of Foreign Affairs available at: <https://www.seco.admin.ch/>

<sup>24</sup> State Secretariat for Economic Affairs, Federal Department of Foreign Affairs (2019), 'Brochure for small and medium-sized enterprises (SMEs)', available at: <https://www.nap-bhr.admin.ch/napbhr/en/home/unternehmen/handlungsanleitungen/lignes/brochuresme.html>

<sup>25</sup> Department for Business, Energy and Industrial Strategy (2019), 'Non-financial reporting regime: stakeholder perceptions', available at: <https://www.gov.uk/government/publications/non-financial-reporting-regime-stakeholder-perceptions>

<sup>26</sup> World Benchmarking Alliance (n.d.), 'Corporate Human Rights Benchmark', available at: <https://www.corporatebenchmark.org/>

<sup>27</sup> Shift (n.d.), 'Reporting Framework', available at: <https://www.ungpreporting.org/>

<sup>28</sup> See United Nations Global Compact, available at: <https://www.unglobalcompact.org/>

value chains. The **UK** worked to raise awareness and increase the impact of the Voluntary Principles Initiative (see the 2019 updated report on GOV.UK).<sup>29</sup> The Voluntary Principles Initiative advances the implementation of the Voluntary Principles on Security and Human Rights, through guidance on responsible business practices to oil, gas, and mining companies, which often operate in high-risk and conflict-affected areas.<sup>30</sup> In addition to this, the UK continued to work closely with the UK Private Security Company (PSC) sector through the Security in Complex Environments Group, which provides a valuable forum to strengthen further industry standards for UK-based PSCs operating internationally.

70. In other instances, assistance is given to companies to respect human rights through **partnerships and grant programs**. The Ministry of Foreign Affairs of the **Netherlands** intends to assist companies in meeting their responsibility to respect, *inter alia*, through two programs aimed at assisting SMEs. From June 2021 onwards, one of them will help SMEs create sustainable business cases in developing countries. Under the other program, SMEs can apply for a CSR voucher that will cover 50% of the expenses the SMEs incurs when it seeks advice from a CSR consultant.
71. Some member State encourage companies to increase their cooperation with NGOs and trade unions to conduct risk assessments and use their combined leverage to address them. In the **Netherlands**, the government recently commissioned a study analysing the risks of certain sectors of the Dutch economy that operate internationally. The aim was to measure the extent to which they are at risk of being linked to, amongst others,–corruption, exploitation or environmental pollution. The government invited high-risk sectors to meet with NGOs and trade unions to conclude international agreements on RBC. By signing these agreements, companies, governments, and other stakeholders seek to prevent and mitigate these risks. Since June 2018 **Poland** has also established a "National Forum of Agenda 2030 Stakeholders", an innovative platform for multi-sectoral cooperation and partnership in the field of sustainable development. This initiative serves to create a space for in-depth debate, exchange of experiences and best practices in the implementation of specific projects. The development of this form of cooperation aims to program better quality actions in the long term and to undertake effective initiatives through joint development planning. Twice a year in **Germany**, a "Stakeholder Roundtable on Sustainability" is held, which is an opportunity to share information and enable business associations to feed into their recommendations for the Ministry's sustainability policy. The Coordinating Office for the National Action Plan on Business and Human Rights, the **Swiss** Federal Department of Economic Affairs, Education and Research (EAER) and the Federal Department of Foreign Affairs (FDFA) also promote and participate in multi-stakeholder initiatives in the area of business and human rights. The initiatives supported include those in the areas of raw materials, security, agriculture, textiles, finance and the service sector.
72. Some other member States have committed to **providing human rights assistance to businesses abroad**. This enables companies to act by learning about local conditions and complying with general human rights standards. **Czech** embassies and consulates help Czech companies to start operations abroad in assessing the local legal and economic situation, and also with regard to the rule of law and the protection of human rights, and to adapt their

<sup>29</sup> Foreign and Commonwealth Office (2020), 'Voluntary Principles on Security and Human Rights for businesses operating in fragile environments: 2019 UK update report', available at: <https://www.gov.uk/government/publications/voluntary-principles-on-security-and-human-rights-for-businesses-operating-in-fragile-environments-2019-uk-update-report>

<sup>30</sup> Foreign and Commonwealth Office (2018), 'Voluntary Principles on Security and Human Rights for businesses operating in fragile environments: 2017 UK annual report', available at: <https://www.gov.uk/government/publications/voluntary-principles-on-security-and-human-rights-for-businesses-operating-in-fragile-environments-2017-uk-annual-report>

activities to general human rights standards<sup>31</sup>. The **UK** continued to update and promote the government's Overseas Business Risk (OBR) service, providing information about business environments in the countries where UKTI has a presence.

73. Incentives are also provided to reward companies and investors that meet a number of human rights standards through public support. **Poland** is planning to introduce a new investment support system and new support instruments under the new Law on Support for New Investments of May 10, 2018. These new support instruments provide, among other things, that in addition to quantitative criteria concerning the value of investments and job creation, support will be targeted at investors who will contribute to the development of regions in the social, environmental protection, labour culture and vocational training fields. Investors who provide or plan to provide highly paid (services) and specialised (industry) jobs under employment contracts will be supported in a specific way that is in line with the International Labour Organisation (ILO) Declaration or the Declaration of Philadelphia. In addition, the criteria provide for the possibility of obtaining public support if the investor contributes to the personal development of the employee and the full use of his or her potential.

#### 2.6. Government measures that require companies to respect human rights

74. In accordance with paragraph 25 of the Appendix to the Recommendation CM/Rec(2016)3, member States should, when the companies referred to in paragraph 20 are represented in a business mission to member States and third countries, examine and discuss the possible negative effects of future operations on the human rights situation in those countries and require participating companies to respect the UN Guiding Principles or the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises. In July 2018 in **Germany**, the Federal Ministry of Economics and Energy adopted a new procedure for organising trade missions. All companies that wish to express their interest in participating in a specific trade mission must sign a declaration on RBC, which refers to the OECD Guidelines for Multinational Enterprises and the complaint procedure before the German NCP.
75. In several countries, standards are being introduced in the conclusion of public procurement contracts to require companies **to respect human rights and the environment**. In **France**, the National Action Plan for Sustainable Public Procurement (PNAAPD) set up by the French government through the Ministry in charge of sustainable development is intended to support government departments, local authorities and hospitals to facilitate the consideration of sustainable procurement in the framework of Order no. 2015-899 of July 23, 2015 and Decree no. 2016-360 of March 25, 2016 relating to public procurement. It encourages government purchasers and those of other public entities in the territories to introduce social or environmental clauses in their contracts. The new legal framework for public procurement gives buyers several means of acting against social and environmental violations. Transposing Article 57 of Directive 2014/24 of February 26, 2014 on public procurement, French law excludes from any contract any economic operator who has been convicted of fraud, corruption, trafficking and exploitation of human beings in order to ensure that sustainable development is better taken into account in procurement and public contracts.
76. In the **Netherlands** since April 2017, for ten categories of high-risk public contracts, buyers must, for tenders exceeding EU thresholds, include a contractual requirement that the supplier must demonstrate due diligence and report on the results. The Ministry of the Interior and

<sup>31</sup> This system is currently developing.

Kingdom Relations is currently considering next steps, such as developing product categories and award criteria for due diligence among others.

77. The **German** Federal Government is considering whether and to what extent binding minimum requirements for the exercise of human rights due diligence by companies can be enshrined in the Public Procurement Act in a future revision. It is also considering a step-by-step plan on how to achieve this goal.
78. In **Switzerland**, the Federal Law on Public Procurement and its Ordinance entered into force on 1 January 2021. When the Confederation concludes public procurement contracts, companies must comply with the provisions on workers' protection and working conditions in force in the place where the service is provided. For services provided in Switzerland, the contracting authority may carry out or have checks carried out on working conditions and equal treatment between men and women. For services provided abroad, at least the eight fundamental ILO conventions must be respected.
79. In **Austria**, the 2018 Federal Public Procurement Law fully conforms to current community rules on public procurement, according to which social and environmental aspects are to be taken into account when awarding public contracts, as well as requiring the contracting authority or entity to exclude economic operators which have committed certain crimes (among them child labour and other forms of trafficking in human beings).
80. When concluding trade, investment or other relevant agreements, and for the duration of such agreements, states shall examine the possible effects of the measures taken. **Germany** is in the process of setting up a foreign trade and investment promotion program based on the examination of environmental, social and human rights aspects. The federal government expects projects benefiting from untied investment, export credits or loan guarantees to meet the relevant standards. For export credit guarantees, the review follows the provisions set out in the OECD Common Approaches, which require the identification, assessment and mitigation of human rights risks in accordance with the UN Guiding Principles. Where there is a high likelihood of serious human rights impacts associated with the project, the federal government may require specific human rights due diligence reports.
81. Some companies are required to disclose non-financial information, as well as annual reviews of environmental, social and labour conditions, human rights, and anti-corruption and anti-bribery issues. These reports are useful when filing complaints of human rights violations by a company. In **France** (since 2001) and **Denmark** (since 2009), companies have legal obligations to report on CSR. These laws apply only to the largest companies in these two countries. These legislative measures oblige companies to make their actions in terms of human rights and the environment more transparent. In addition, a growing number of companies are adopting voluntary reporting systems as part of good internal practices. In 2014, the European Union adopted a Directive on Non-Financial Reporting (2014/95/EU) by public interest entities with more than 500 employees, making their CSR reporting on the above-mentioned themes (environment, social and employees' issues, respect for human rights and the fight against corruption) mandatory. This directive was then transposed in the Member States, for entry into force as from the financial year starting on 1 January 2017 or in the course of 2017. Thus, for example, in 2016, the **Netherlands** implemented this Directive or **France** also through Ordinance No. 2017-1180 of 19 July 2017. The public interest companies issued consequently their first report in 2018. In the Netherlands, there is a transparency benchmark that assesses the quality and content of the non-financial reports of nearly 500 entities every two years, while France requires that the information published by

companies be verified by an independent third-party body and that this verification results in a notice to shareholders. The Directive on Non-Financial Reporting concerns about 6,000 large companies in the European Union. The European Commission has launched a review of this text in order to standardise the information reported and thus improve the quality and comparability of the information. A legislative proposal is expected in the first half of 2021.

82. On 14 January 2019, the **German** federal government introduced a certification mark into German law. The relevant European legislation already provided for the introduction of a European certification mark and gave member States the possibility to introduce their own in addition. Such a mark can be used to certify compliance with certain human rights standards in supply and value chains. The responsibility for verification lies with the certification body, i.e. the holder of the certification mark. The mark is intended to contribute to greater transparency for consumers and create positive incentives for companies in the form of a competitive advantage from this means of communicating their compliance with human rights standards in the marketplace. In this sense, the non-binding ISO 26000 standard on the social responsibility of organisations has existed since 2010 and has been adopted by **France** in particular.
83. Various new campaigns have been launched for the introduction of national laws requiring mandatory due diligence with respect to human rights and environmental impacts. In May 2019, the Business and Human Rights Resource Centre launched a portal dedicated to tracking initiatives for mandatory due diligence laws<sup>32</sup>. The portal currently lists 14 states where such initiatives have been discussed or adopted: Austria, Belgium, Denmark, Finland, France, Germany, Italy, Luxembourg, the Netherlands, Norway, Spain, Sweden, Switzerland and the United Kingdom.
84. At present, **France** is a pioneer in being the only country to have adopted a law on the Duty of Vigilance of Parent and Instructing companies. Adopted on 27 March 2017, Article 1 of this law requires companies employing for two years at least 5,000 employees themselves and in their direct or indirect subsidiaries headquartered in France, or at least 10,000 employees themselves and in their direct or indirect subsidiaries headquartered in France or abroad, to establish and effectively implement a vigilance plan.
85. This plan shall include "reasonable vigilance" measures to identify risks and prevent serious impacts on human rights and fundamental freedoms, on the health and safety of individuals and the environment. These risks result from the activities of the company and the companies it directly or indirectly controls within the meaning of Article L. 233-16 II of the French Commercial Code, as well as from the activities of subcontractors and suppliers with whom it has an established business relationship. The vigilance plan and the report on its effective implementation shall be made public and included in the company's management report.
86. Non-compliance with these obligations is sanctioned by Articles L. 225-102-4 II and L. 225-102-5 of the Commercial Code, which respectively allow any person with an interest in acting, such as human rights or environmental associations, to give formal notice to the company to comply with its obligations in terms of duty of vigilance and to hold companies liable in the event of failure to establish and implement the vigilance plan. Article L. 225-102-5 of the Commercial Code also provides for compulsory compensation by the perpetrator of the

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<sup>32</sup> Business & Human Rights Resource Centre (2021), 'National & regional movements for mandatory human rights & environmental due diligence in Europe', available at: <https://www.business-humanrights.org/en/latest-news/national-regional-movements-for-mandatory-human-rights-environmental-due-diligence-in-europe/> .

breach, on the basis of extra-contractual liability, for the damage that the fulfilment of these obligations would have prevented.

87. In May 2019, the **Dutch** Senate passed a Child Labour Due Diligence Act, which requires Dutch and foreign companies delivering products to the Dutch market to declare that they have addressed the issue of child labour in their supply chains.
88. In **Switzerland**, a popular initiative of 2016, entitled "Responsible Business Initiative" was rejected in a vote on 30 November 2020. This proposal aimed to make human rights due diligence mandatory for multinational companies. This means that the Parliament's indirect counter-proposal applies, which provides for a new non-financial reporting obligation for large public companies and financial institutions on environmental and labour issues, human rights and anti-corruption, in the same way as the EU Directive 2014/95/EU. In addition, a duty of care and notification is introduced for companies that import into Switzerland or process in Switzerland minerals or metals consisting of tin, tantalum, tungsten or gold from conflict zones and high-risk areas as in the EU Regulation (EU)2017/821. The same applies to companies offering products or services where there are reasonable grounds to suspect that they have been manufactured or supplied using child labour.
89. In **Germany**, it was announced in December 2019 that a draft "German Supply Chain Act" would be published in 2020. In July, two federal ministries published a list of requirements for a "draft federal law on strengthening corporate due diligence to avoid human rights impacts in global value chains" (the Due Diligence Act). The proposed legislation would require companies to conduct ongoing due diligence commensurate with the risk - that is, the likelihood and potential severity - of impacts in their global value chains. Companies would be required to establish human rights complaints mechanisms as an early warning system. While the proposed legislation does not impose a duty on companies to prevent human rights impacts, its due diligence obligation would require companies to act when they identify impacts or potential impacts. The proposed law would apply to all companies (or groups of companies) based in Germany that employ more than 500 people. A company would be considered "based in Germany" if its major business decisions are made in Germany. Thus, like tax laws, the proposed Due Diligence Act would cover certain businesses that are registered outside Germany. It is not clear whether each company in a group of companies subject to the proposed law would have to comply with it autonomously or whether it is sufficient for the parent company to ensure compliance at the group level. Each year, companies will also be required to report publicly and transparently on their human rights' due diligence procedures to an "experienced" federal authority. This authority will have the power to impose fines for failure to comply with due diligence obligations. It is also planned to prosecute companies in German courts where failure to comply with due diligence obligations has caused foreseeable harm to human rights or the environment anywhere in the world.
90. The governments of **Luxembourg** and **Finland** have committed in their governmental programs to evaluate the adoption of human rights due diligence legislation in the coming years. The **UK** Modern Slavery Act applies to large companies operating in, or part of, any part of the United Kingdom. It requires them to disclose measures taken to ensure that slavery and human trafficking do not take place "(i) in any of their supply chains", and "(ii) in any part of their own business". The UK Corruption Act applies to companies incorporated under the law of any part of the United Kingdom and applies to corrupt activities associated with such companies that take place anywhere in the world.

91. In **Finland**, based on the Government Programme, the Ministry of Economic Affairs and Employment published a judicial analysis on the Corporate Social Responsibility Act written by Ernst & Young in June 2020.<sup>33</sup> The analysis outlines the nature of the due diligence obligations that could be imposed on companies within a legislative framework in Finland.
92. In February 2021, the Finnish Ministry of Economic Affairs and Employment appointed a working group to support legislative efforts related to the EU and national regulation on mandatory due diligence.<sup>34</sup> The group represents stakeholders such as trade unions, NGOs, academia, business organisations and relevant Ministries (Ministry for Foreign Affairs, Ministry of Justice and Ministry of the Environment).
93. Additionally, the Finnish Government's State-ownership strategy states that State-owned companies are expected to follow the UNGPs. The Finnish Government Resolution on the State Ownership Policy (8 April 2020) states that, among other things: State-owned companies are required to integrate CSR into their business operations and pursue a goal-oriented CSR policy; companies need to recognise the impacts of their own operations on the climate, environment and biodiversity as well as establish ambitious goals in this respect compared with their peer companies; and human rights issues need to be considered transparently in both in-house activities and across supplier chains with due regard to the requirements imposed by the UN Guiding Principles. The Ownership Steering Department in the Prime Minister's Office monitors companies' CSR performance and, if necessary, carries out analyses and studies in this field.
94. Under **Finland's** public procurement legislation, social considerations, including human rights can be included in all stages of the procurement process. At the same time, the purpose of the legislation is to ensure that public procurement procedures are transparent, non-discriminatory, and in observance of European Union legal standards.<sup>35</sup> The first ever national public procurement strategy was published on 9 September 2020 by the Ministry of Finance.<sup>36</sup> The strategy consists of eight development themes, one of which is social sustainability. Under social sustainability, there are two concrete goals: 1) to promote the employment of those in weaker labour market situation and 2) to promote human and labour rights in public procurement. The Ministry of Finance has set up a working group to plan and execute actions that help to reach the goals set out in the strategy. The aim of the working group is to provide further tools to execute social aspects for those carrying out public procurement in State/Government institutions, municipalities and congregations.
95. Recent trends have seen increasing support from some large multinational companies (including German, Finnish, and Swiss) and investors for mandatory human rights due

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<sup>33</sup> Ministry of Economic Affairs and Employment of Finland (2020), 'Judicial Analysis on the Corporate Social Responsibility Act', available at: <https://julkaisut.valtioneuvosto.fi/handle/10024/162411>.

<sup>34</sup> Piirto, Linda (2021), 'Business expected to respect human rights – regulation considered both in Finland and at EU level', Ministry of Economic Affairs and Employment of Finland, available at: <https://tem.fi/en/blog/-/blogs/business-expected-to-respect-human-rights>.

<sup>35</sup> Ministry of Economic Affairs and Employment of Finland (2016), 'Act on Public Procurement and Concession Contracts', available at: <https://www.finlex.fi/en/laki/kaannokset/2016/en20161397.pdf>.

<sup>36</sup> Ministry of Finance of Finland (2020), 'National Public Procurement Strategy identifies concrete ways in which public procurement can help achieve wider goals in society', available at: [https://vm.fi/en/-/national-public-procurement-strategy-identifies-concrete-ways-in-which-public-procurement-can-help-achieve-wider-goals-in-society#\\_blank](https://vm.fi/en/-/national-public-procurement-strategy-identifies-concrete-ways-in-which-public-procurement-can-help-achieve-wider-goals-in-society#_blank).

diligence regulation. The Business and Human Rights Resource Centre has also provided a non-exhaustive list of such support.<sup>37</sup>

## 2.7. Cooperation with third countries

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96. In **Germany**, cooperation between the German Institute for Human Rights (*Deutsches Institut für Menschenrechte*) and Colombia on coal mining and the energy supply chain has been established. Through strategic and coordinated efforts, both the German Institute for Human Rights and Colombia's NHRI, the *Defensoría del Pueblo*, have increased their institutional capacities and improved their work on business and human rights. The *Defensoría* has begun to develop an institutional action plan for business-related human rights violations. This plan includes a guideline that specifies the duties that the *Defensoría* intends to carry out in the area of prevention, control and access to remedies. These principles will be integrated into internal work processes through standardized procedures, guidelines and methodological training for the *Defensoría*'s staff. The capacity building of the employees serves mainly to prepare them to implement effective strategies for interaction with the relevant rights holders, public entities and companies. The German Institute for Human Rights organised a meeting between German energy groups and the *Defensoría* in Colombia. This meeting allowed companies to recognize that NHRI can play a key role in assessing and addressing human rights risks.
97. The German Federal Ministry for Economic Cooperation and Development has funded the Global Business Network program from 2017 to 2020, which aims to "combine entrepreneurship with sustainable economic and social activity". To this end, the project is setting up Business & Cooperation Desks in selected countries in Africa and Asia where previously there were no offices of German Chambers of Commerce or German industry and trade delegations. Eight coordinators of the Global Business Network are currently working in Cooperation Desks: in Ethiopia, Rwanda (with responsibility for Uganda, Senegal, Ivory Coast, Namibia and Cameroon) and Cambodia. The sectors on which the offices are focusing in particular include food, production, renewable energy, water, medical technology, and information and communication technology. In cooperation with the Global Compact Network Germany (DGCN), the Global Business Network organised training courses focusing on the NAP in 2018. Another area of German development cooperation with Latin America is strengthening the rights of indigenous women. Since 2009, the German government has also been supporting the Organisation of American States (OAS) in the realisation of indigenous rights within the inter-American system.
98. In Asia and Africa too, **Germany** integrates the concerns of many indigenous peoples and other marginalized groups into its development cooperation activities.
99. The **UK** government developed Principles to Guide Government Action to Combat Human Trafficking in Global Supply Chains, together with Australia, Canada, New Zealand, and the United States of America.<sup>38</sup> These Principles are intended to align with the UNGPs, and call

<sup>37</sup> Business and Human Rights Resource Centre (2021), 'List of large businesses, associations & investors with public statements & endorsements in support of mandatory due diligence regulation', available at: <https://www.business-humanrights.org/fr/latest-news/list-of-large-businesses-associations-investors-with-public-statements-endorsements-in-support-of-mandatory-due-diligence-regulation/> (last updated in March 2021)

<sup>38</sup> UK Home Office (2020), 'Trafficking in supply chains: principles for government action', available at: <https://www.gov.uk/government/publications/trafficking-in-supply-chains-principles-for-government-action>

on all States to encourage the private sector to prevent and address human trafficking in its supply chains. The Principles follow the Call to Action to End Forced Labour, Modern Slavery and Human Trafficking in 2017, which now has 90 endorsements. In addition to this, the UK supported projects through the Foreign, Commonwealth and Development Office's human rights and democracy programme fund to work on remedy procedures in other countries.

100. The member States through their diplomatic and consular missions also protect and support the work of human rights defenders concerned with the impact of economic activities on human rights in third countries, in accordance with existing international and European standards. In 2013, **Switzerland** published guidelines on the protection of human rights defenders. It recognizes the essential role played by human rights defenders and publicly advocates for better protection of human rights defenders. The guidelines, which clearly present different proven methods, aim to ensure a single approach to human rights defenders and to raise the awareness of the employees of Swiss representations abroad of the problems and challenges they face. The guidelines offer a concrete mechanism for dealing with problems relating to defenders and are a useful instrument for the daily work of Swiss representations abroad and other institutions and organisations.
101. For years, the **Austrian** Development Cooperation (ADC) is supporting the Austrian Network of the UNGC, which is the world largest initiative on RBC. Based on 10 principles regarding human rights, social and environmental standards it pursues the vision of an inclusive and sustainable world economy for the benefit of all human beings. UNGC is uniquely positioned to support Austrian companies on their journey to align their practices along the value chain to a sustainable and inclusive future. Furthermore, ADC supports activities of international labelling organisations for sustainable and fair production and trade, avoiding above all forms of child labour.

### III - Access to remedies

#### *3.1. Access to State-based judicial mechanisms*

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102. Some member States have already implemented or have implemented the necessary legislative and other measures to ensure that human rights abuses caused by companies under their jurisdiction give rise to civil liability under their respective laws.
103. Under **French** civil law, like all legal persons, companies must ensure that any damage they cause to others, in particular to the rights and freedoms of individuals, is compensated. Articles 1240 and 1241 of the French Civil Code require them to compensate for the consequences of their fault, even recklessness. The burden of proof of fault, damage and the causal link between fault and damage lies with the victim who is the plaintiff.
104. Anyone who believes that his/her rights have been violated in **Germany** by the actions of a company may bring an action before the civil courts. In addition, anyone who believes that his/her rights have been violated abroad by actions of a German company may bring an action in Germany, normally before the court having jurisdiction over the company's registered office. German law on international civil procedure also contains additional provisions according to which German courts may be seized of matters relating to certain offences committed abroad, provided that a sufficient internal connection can be demonstrated. In Germany, in cases where at least 50 consumers are involved, certain consumer protection associations can bring a standard declaratory action against the enterprise in order to obtain a single court decision

clarifying the main factual and legal issues for all consumers involved. If consumers wish these findings to apply to them as well, they must enter their claims in the register of the model declaratory action within a given time limit. For consumers who have registered, the limitation period for the claim is also suspended. The declaratory action model is free of charge for consumers; they do not need a lawyer.

105. On the basis of **Dutch** civil law, the injured party victim of an illegal act ("onrechtmatige daad") can claim compensation before the civil law courts. Where such an act has been committed by a company, the court may order the company not only to stop the abuse but also to compensate the victim for the damage caused (article 6:162 of the Civil Code).
106. There is always a forum in **Switzerland** for private law claims based on an unlawful act that are brought in Switzerland against a company located in Switzerland (art. 2 PILA and art. 2 of the Lugano Convention). Even against companies located abroad, it is possible to file a complaint in Switzerland if the damage (caused in particular by a human rights violation) materializes in Switzerland or has had immediate effects there, or if it was caused by an establishment in Switzerland (art. 129 LDIP, art. 5, no. 3 and no. 5 of the Lugano Convention). Alternatively, Switzerland may constitute a forum of necessity (art. 3 LDIP) when proceedings abroad prove impossible or cannot reasonably be required to be brought there, provided that the case has a sufficient connection with Switzerland. When the damages are less than 30'000 Swiss francs, a simplified procedure applies. Where such a claim is related to a contract of employment, the procedure is exempt from court fees. Before filing a complaint, a conciliation procedure before a state conciliation authority is mandatory. This procedure may be replaced, by mutual agreement between the parties, by a mediation procedure to be financed by the parties.
107. In **Belgium**, the Civil Code provides for the possibility for victims of a harm to obtain compensation from companies and/or the State in the event of extra-contractual civil liability. Claims against the State follow the same legal route as extra-contractual civil liability actions against a company. If the necessary conditions are met, such action may arise when the state fails to comply with its obligation to regulate companies, when it acts as an economic agent, or when it provides subsidies to companies committing human rights abuses. Where the human rights violation is also a criminal offense, victims may choose to file a civil suit in the criminal proceedings, or to seek redress in the civil courts after a favourable ruling by the criminal courts. In some cases, victims can seek redress in the civil courts even if the accused was acquitted. Victims can request the annulment of an administrative act, regulation, or implied act that causes injury before the Council of State, or to bring an extra-contractual civil liability action against the State. This action is the only possibility if the damage was caused by a failure by the State, or if compensation is claimed against both a company and the State. The civil tribunal does not have the capacity to annul an administrative or regulatory act, but he or she can however decide not to apply it if he or she considers that the act is contrary to a higher standard. The annulment of an administrative or regulatory act must be requested from the Council of State.<sup>39</sup>
108. The **UK** government commissioned an independent survey of the UK provision of access to remedy. Additionally, the UK maintained a range of judicial mechanisms which help to support access to remedy for human rights abuses. The recent case law of UK courts confirmed that there are avenues to pursue civil law claims (e.g. under tort law) in the UK in relation to human

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<sup>39</sup> Federal Institute for Sustainable Development (2018), 'Brochure « Access to remedies in Belgium', available at: [https://www.developpementdurable.be/sites/default/files/content/en\\_brochure\\_droits\\_de\\_lhomme\\_062018.pdf](https://www.developpementdurable.be/sites/default/files/content/en_brochure_droits_de_lhomme_062018.pdf)

rights abuses by business enterprises, including when they occur overseas and are the result of the activity of a foreign subsidiary of a UK-domiciled company (see e.g., Vedanta Resources PLC and another v. Lungowe and others [2019] UKSC 20).

109. The arbitration system operates in **Georgia** and, by agreement of the parties, civil proceedings are possible through this mechanism. The law determines all the rules for the establishment and operation of arbitration. The Law on Arbitration does not contain a clause on the restriction of arbitration to labour or other disputes, however, the Law on Arbitration provides that the arbitral award will not be enforced if the dispute cannot be arbitrated.
110. Member states have examined the possibility of applying legislative and other measures necessary to ensure that **companies can be held liable under their criminal law**. In **France**, following the generalisation of the principle of responsibility of legal persons with the entry into force of the law no. 2004-204 of 9 March 2004, prosecutors have the possibility to bring charges against legal persons, notably in particular disputes. In order to guarantee and facilitate the engagement of this responsibility, a circular was issued by the Ministry of Justice on 13 February 2006 and a technical guide on the citation of legal entities under private law has been distributed and updated, the last time in December 2020, for public prosecutors. A second document setting out the concept of de facto manager and the investigations to identify this person, was also distributed in July 2018. In France, the main sanction provided for legal entities in criminal or correctional matters (Articles 131-37 et seq. of the French Criminal Code) is a fine. The Criminal Code also provides, where the texts allow, for specific sanctions for legal entities, such as dissolution, closure of one or more of the company's establishments, exclusion from public contracts and prohibition from receiving any public aid. The penalty of reparation may also be pronounced against a legal person in criminal matters. Since the law of 9 December 2016, known as "Sapin II", the texts also provide for the possibility of pronouncing against a legal entity charged with an act of corruption, the obligation to submit, under the supervision of the French Anti-Corruption Agency (AFA), to a compliance program. Lastly, a decision of the French Court of Cassation of 25 November 2020 marked an important jurisprudential development by authorising, under certain conditions, a transfer of criminal liability between legal persons in the event of a merger by absorption.
111. In the **UK**, there are opportunities to pursue criminal claims before the UK courts, including under the Bribery Act 2010, the Modern Slavery Act 2015, the Serious Crime Act 2007, the Corporate Manslaughter and Homicide Act 2007, and the Gangmasters (Licensing) Act 2004.
112. Under **Dutch** criminal law, criminal offences can be committed by both natural and legal persons (article 51 of the Criminal Code). This means that all the possibilities offered by Dutch criminal law and criminal procedure law to remedy human rights violations can be invoked, even when the violation took place wholly or partly abroad. There are numerous general and special criminal provisions and clauses in place that protect human and environmental interests and impose obligations on companies.
113. Under **Swiss** criminal procedure, a company established in Switzerland may be liable in Switzerland for violations committed abroad in the course of business activities consistent with its goals. With regard to the geographical connection, it is primarily a question of the place where the company committed the offence, i.e. the place where the company should have taken the necessary organizational measures, i.e., as a rule, the company's headquarters. When criminal proceedings are instituted against a company established in Switzerland, victims and injured parties have the rights to participate in the proceedings, to claim damages and to obtain compensation for non-material damage that derive from the Code of Criminal

Procedure. The Victim Assistance Act also provides for counselling services if the crime was committed abroad.

114. In **Belgium**, where human rights violations committed by companies are also an offence, the complaint can be challenged before a criminal court. Cases of minor offences are brought before the Police Court. Serious or intermediate offences are dealt with by the criminal court. In Belgium, the criminal liability of natural and legal persons is possible. Companies can share criminal liability with directors and employees of the company.<sup>40</sup>
115. In **France**, the Constitutional Council has recognised the right of individuals, and in particular parties who are victims of human rights abuses committed by companies, to appear before a judge to obtain adequate compensation. In its decision of April 9, 1996 (DC No. 96-373), the Constitutional Council recognised the constitutional value of the right to an effective remedy. In its decision of 23 July 1999 (DC n° 99-416), it clarified the consequences of this reasoning, in particular by linking to the right to an effective remedy "respect for the rights of the defence", which it considers to be "one of the fundamental principles recognised by the laws of the Republic". France ensures that individuals, and in particular the parties who are victims of human rights violations committed by companies, can avail themselves of this right before a judge, both theoretically and practically, and obtain adequate reparation.
116. The **Dutch** Constitution (articles 93 and 94) provides that the generally applicable provisions of international treaties, such as the European Convention on Human Rights and the Charter of Fundamental Rights of the European Union, have direct effect in the Dutch legal order, and that national laws that violate an international provision will not be applied. Consequently, Dutch citizens may invoke the above-mentioned provisions before a national court. Article 17 of the constitution provides that no one may be prevented from bringing an action before a competent court and thus provides for access to justice.
117. National governments also take steps to **provide legal aid** in order to give full effect to the principle of equal access to justice. **French** legislation has established a legal aid scheme enabling the most disadvantaged persons to assert their rights before French courts (Law No. 91-647 of July 10, 1991 on legal aid).
118. Similarly, in **Germany** legal aid is available and granted on request and subject to an examination of the needs of the applicant and the chances of success of the case. The legal costs and the costs of the applicant's lawyer are thus covered - in part or in full - by the State.
119. Financial support (total or partial) is also provided in **Belgium** for victims who do not have sufficient resources to pay for judicial or non-judicial proceedings and to cover the costs of the intervention of the bailiff to initiate proceedings against the State, stamp duty and registration fees, the intervention of witnesses (including expert witnesses) and mediation before a certified mediator.<sup>41</sup> Victims can also benefit from free first-line legal aid, which consists of an initial legal advice or practical information. Moreover, victims who do not have sufficient resources can also benefit from the granting of completely or partially free second-line legal aid, meaning coverage of fees and lawyer's costs in the framework of a procedure or not.

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<sup>40</sup> Federal Institute for Sustainable Development, Brochure « Access to remedies in Belgium », June 2018, available at: [https://www.developpementdurable.be/sites/default/files/content/en\\_brochure\\_droits\\_de\\_lhomme\\_062018.pdf](https://www.developpementdurable.be/sites/default/files/content/en_brochure_droits_de_lhomme_062018.pdf)

<sup>41</sup> Federal Institute for Sustainable Development, Brochure « Access to remedies in Belgium », June 2018, available at: [https://www.developpementdurable.be/sites/default/files/content/en\\_brochure\\_droits\\_de\\_lhomme\\_062018.pdf](https://www.developpementdurable.be/sites/default/files/content/en_brochure_droits_de_lhomme_062018.pdf)

120. In **Ireland** the Legal Aid Board is an independent, publicly funded organisation that provides legal aid and advice in civil matters, family mediation services, and operates three ad hoc legal aid schemes related to criminal cases. The organisation was established under the Civil Legal Aid Act 1995 to provide civil legal aid and advice to people who cannot afford to pay for a lawyer. Legal aid in criminal proceedings is granted by the courts and provided by lawyers in private practice. At Labour Relations Board and Labour Tribunal hearings, parties may represent themselves or choose to obtain legal representation, union representation, or in addition be represented by a non-lawyer.
121. Independent state bodies have been established by some member States to ensure respect for human rights. For example, Irish labour rights legislation is monitored and enforced by the Workplace Relations Commission. The Workplace Relations Commission is **Ireland's** independent statutory body responsible for workplace relations services. The Commission provides mediation, information, advisory and arbitration services in relation to equality and employment complaints and disputes.
122. Some states have also introduced in their national legislation the possibility of **class actions** to enable individuals to resolve their disputes and generally to sue a company for financial compensation. In 2020 and again in 2021, a bill on collective actions in civil and commercial disputes was submitted to Parliament in the **Czech Republic**.
123. In **France**, class actions - known as *actions de groupe* - are possible for victims of violations of their fundamental rights by companies. Initially limited to consumer and competition lawsuits, in 2016 the class action was extended to cover disputes relating to health, the environment, personal data and discrimination. On the basis of this common basis, the class action is open to several persons who consider themselves victims as soon as they are "placed in a similar situation" and "suffer damage caused by the same person, having for common cause a failure of the same nature to comply with their legal or contractual obligations".
124. **Switzerland** plans to introduce the possibility of such a recourse in its draft revising the Code of Civil Procedure scheduled for the end of 2021.
125. In **Belgium**, to the extent that a human rights violation also violates the rights of consumers, it is possible to file an action for collective reparation. The victims must not reside in Belgium necessarily. Only a representative of the consumer group can introduce it. The representative has no mandate and must not seek financial gain. He must be a consumer rights protection association, a member of the Consumer Council, or otherwise approved by the Minister competent in the field of the protection of consumers. Public consumer mediation services may also take on this role, but only to have agreements approved by a judge. Consumers can opt into a class action if they wish to participate, or opt out if they wish to be excluded. Opting out is irrevocable.
126. In **Slovenia**, the Class Actions Act introduced collective actions and collective settlements into the Slovenian court system in 2017/2018. One of the main objectives of this Act is to facilitate access to justice for individuals in cases where the Act on Situations of Collective Injury is applied and to speed up legal proceedings. If the joint collective action is applied, they are not required to pay the costs of the proceedings. The purpose of collective actions under Slovenian law is to resolve disputes in the field of consumer contracts, disputes arising from producer liability for product defects, antitrust disputes and disputes between issuers and investors on the financial instruments market, labour disputes and civil disputes arising from environmental

accidents. The State Attorney or non-profit legal entities under private law will be authorized to bring actions. If the court authorizes class action, it will also have to decide whether to apply the principle of inclusion (opt-in) or exclusion (opt-out) for injured parties. The compensatory class judgment will either decide the total amount of compensation with identified criteria, which will determine the amount belonging to each injured person, or it will declare the amount that the defendant will have to pay to each injured person. Collective compensatory judgments are binding on all members of the representative entities (class), except those who are not to be included (inclusion option) or those who are excluded (exclusion option). If the class action fails, a subsequent independent action in civil proceedings will not be permitted.

### *3.2. Access to State-based non-judicial grievance mechanisms*

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127. NCPs have been established under the OECD Guidelines<sup>42</sup> and are present in all countries that responded to the questionnaire. The NCP assists companies in implementing the OECD Guidelines for Multinational Enterprises. These NCP can receive complaints and offer mediation services that can lead to redress, but their mandates do not allow them to provide redress. Their institutional structure, funding, or support for victims differ significantly from country to country.
128. **Germany** established its NCP in 2001 and it was restructured in 2016 to meet the requirements contained in paragraphs 52 and 53 of the Annex to the Recommendation CM/Rec(2016)3.
129. Since June 2012 in **Denmark**, private and public companies may be subject to a complaint to the Danish National Contact Point for failing to comply with human rights due diligence expectations. It is also possible to file a complaint regarding Danish public authorities. Official statements of non-compliance must be published by the Danish National Contact Point to the OECD.
130. The **French** NCP is composed of three colleges representing the State, French trade unions and French companies. Its rules of procedure were revised in 2012 and again in 2014 with a view to increasing its efficiency in handling referrals (indicative time limit for processing cases, possibilities for following up on its recommendations, increased communication with the publication of communiqués on the admissibility of a referral, follow-up communiqués and the possibility of communicating at any time during the processing of a case). In addition, the NCP has reinforced the possibility of calling on outside contributors recognised for their technical expertise at any time, as well as various meetings with the National Consultative Commission on Human Rights. The overhaul of the French NCP's rules of procedure has also increased transparency on its work and structured the dialogue with civil society.
131. The **Dutch** NCP is composed of four independent members, appointed by the Minister for Foreign Trade and Development cooperation and has a secretariat of government officials. It has also a multistakeholder advisory body. The NCP can be seen as a comprehensive external recourse mechanism, as it is accessible to all stakeholders and provides impartial mediation to help parties in specific instances to resolve the issues at stake. At the end of a procedure,

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<sup>42</sup> OECD Guidelines for Multinational Enterprises, 2011 Edition, available at: <https://www.oecd.org/corporate/mne/48004323.pdf>.

the NCP issues a final statement in which it describes the process, the agreement reached and/or makes recommendations concerning the implementation of the OECD Guidelines. The parties may agree that the solution - including compensation - will be offered by the company. The NCP's process is non-judicial, and its final statement is not legally enforceable.

132. In **Switzerland**, the NCP for the OECD Guidelines for Multinational Enterprises is available to advise in case of questions regarding the Guidelines and serves as a platform for dialogue and as an out-of-court mediation body. Thus, it is authorised to receive reports of alleged breaches and to offer support to parties in resolving issues raised, which may lead to remedies. In addition to its mediation function, the NCP will position itself more strongly as a contact point for the prevention of issues related to RBC (e.g. through a presence on social media, at stakeholder events).
133. **Finland** also adheres to the OECD Guidelines for Multinational Enterprises. Complaints under the OECD Guidelines are processed by the Ministry of Economic Affairs and Employment together with the Committee on Corporate Social Responsibility as the Finnish National Contact Point.<sup>43</sup>
134. In **Poland**, the NCP was established in 1998 within the central government structures. In June 2016, in order to unify public administration operations in the area of CSR and RBC, the NCP was transferred to the Ministry of Economic Development (MIED). The MIED website provides detailed information on the OECD Guidelines for Multinational Enterprises and the activities of the NCP. To file a notification of alleged non-compliance with the OECD Guidelines for Multinational Enterprises, the appropriate form (available on the MIED website) must be completed, referring in particular to the specific provisions of the OECD Guidelines to which the notification applies, and providing a detailed description of the company's activities that caused the non-compliance. Upon receipt of the notification, the case is subject to detailed review by the NCP, which may refer the case to mediation if accepted.
135. In **Estonia**, at the moment, the NCP is established at the Ministry of Economic Affairs and Communications. In May 2021, however, the NCP will be transferred to the Consumer Protection and Technical Regulatory Authority. The website provides detailed information on the OECD Guidelines for Multinational Enterprises and the responsibilities of the NCP.<sup>44</sup> It also contains the complaint handling procedure and a complaint form.
136. To support access to remedy for human rights abuses by businesses, the **UK** government has set up an NCP, a complaints mechanism which considers allegations of non-compliance by UK companies with the OECD Guidelines for Multinational Enterprises. The UK NCP seeks to mediate an agreement between the parties, but where this is not possible, a determination of whether the enterprise has acted inconsistently with the OECD Guidelines is published and available for public dissemination. The UK Government thereby provides a neutral forum to address business-related human rights harms.
137. In **Austria**, the NCP is part of the Federal Ministry for Digital and Economic Affairs. It raises awareness of the OECD Guidelines for multinational enterprises and provides a dialogue and mediation platform for complaints about alleged breaches of the OECD Guidelines. Its steering

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<sup>43</sup> Ministry of Economic Affairs and Employment of Finland, (n.d.), 'Committee on Corporate Social Responsibility', available at: <https://tem.fi/en/committee-on-corporate-social-responsibility>

<sup>44</sup> Ministry of Economic Affairs and Communications, (n.d.), 'OECD guidelines and surveillance', available at: <https://www.mkm.ee/en/objectives-activities/economic-development/oecd-guidelines-and-surveillance>.

committee, which consists of representatives of the government, the Federal Chamber of Labour and the Trade Union Federation, acts as advisory and oversight body. The 2018 Austrian Foreign Trade Strategy foresees a strengthening of the NCP as “one-stop-shop” for RBC.

138. **The role of NHRIs** in some member States should be highlighted. They provide expertise and offer advice to victims of human rights violations on possible remedies. NHRIs can also investigate complaints, offer conciliation services and make recommendations to the authorities on adaptations of legislation and administrative practices. In **Belgium** the bill to create a Federal Institute for the protection and promotion of Human Rights was finally adopted in April 2019.<sup>45</sup>
139. In **Germany**, on behalf of the Federal Ministry for Economic Cooperation and Development (BMZ), the German Institute for Human Rights studied the human rights risks in sectors where human rights violations are particularly frequent from 2015 to 2017, namely raw material extraction, textile production and land investments. To do so, it collaborated with other NHRI. The results of the research are incorporated into the advice given to the Federal Ministry for Economic Cooperation and Development, which focuses on how development policy can promote respect for human rights in the context of transnational corporations.
140. Member states use **independent** and objective **ombuds offices** (ombuds office, ombudsperson) to investigate complaints. While ombudsmen and mediators do not have the competence to deal specifically with business and human rights issues, they deal with specific aspects that may also be found in the relationship between business and human rights. This is the case with offices created specifically for cases dealing with discrimination, data protection or children's rights, for example. In general, ombudsmen can make recommendations but cannot issue binding decisions. Mediation offices may receive individual or collective complaints in areas defined by law or by non-binding instruments in relation to existing law.
141. In **Portugal**, following the adoption of the NAP, the Directorate General for Economic Activities will be responsible for the coordination, monitoring and implementation of the Action Plan and will be assisted by the informal working group in which various Ministries will be represented, as well as the Ombudsman, who will be a permanent member.
142. In **France**, any individual or legal entity may refer a matter to the Defender of Rights because of his or her competence in matters of discrimination. The role of the Defender of Rights is to investigate and mediate cases that may be of interest in relation to CSR.
143. In **Switzerland**, there are a number of mediation offices or ombudspersons. However, like other states, none of them has the competence to deal with specific issues related to business and human rights. In general, ombudspersons in Switzerland can make recommendations but cannot issue binding decisions. Ombudsmen offices can receive individual or collective complaints in areas defined by law or by non-binding instruments in relation to existing law.
144. In **Belgium**, alternative dispute resolution methods can settle disputes without resorting to judicial remedies, thus offering faster and less costly solutions. They are voluntary but may lead to a binding settlement. In case of non-compliance, their enforcement requires the use of

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<sup>45</sup> Brochure « Spotlight on the national action plan: business and human rights », available in French at: <https://www.developpementdurable.be/sites/default/files/document/files/pdf-b1hr-fr-final.pdf>

judicial mechanisms. Mediation in civil and commercial matters is the most common form of alternative dispute resolution, together with conciliation. In court proceedings, mediation can also be proposed by the parties or imposed by a judge, unless the parties object. A mediation agreement concluded by the parties with the assistance of a certified mediator and confirmed by a judge becomes an authentic and enforceable judgment. These alternative dispute resolution methods can result in an agreement that provides for redress for abusive acts, financial compensation or cessation of the infringement. In penal matters, mediation can take place before the public prosecutor in order to obtain compensation for moral and material damages.<sup>46</sup>

145. Public financing instruments are also used as non-judicial complaint mechanisms by states, particularly export credit agencies and national ("bilateral") development finance agencies. Non-judicial grievance mechanisms are not yet widespread in the export credit agencies of the countries studied.
146. **Other mechanisms** based on public authority, such as labour inspectorates, consumer protection bodies and environmental agencies, and national equality bodies are established by member States. The **Czech Republic** has various public inspection authorities such as the labour inspectorate, the Czech Trade Inspection and the Czech Telecommunications Authority.
147. In **Germany**, the Law on Alternative Dispute Resolution in Consumer Matters (Gesetz über die alternative Streitbeilegung in Verbrauchersachen - VSBG) regulates a particular type of dispute resolution for consumer contracts. This law provides consumers with a convenient and free method of dispute resolution; it also provides businesses with a mechanism for dealing with consumer complaints in a way that improves their image and avoids disputes. The same alternative dispute resolution method exists in the **Czech Republic** and has been analysed in 2021 with a view to its improvement.<sup>47</sup>
148. There is also the possibility of recourse to an arbitration court (non-judicial) if the parties agree to do so. This is the case in **Germany**.

### *3.3. Access to non-State-based grievance mechanisms*

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149. **Swiss** companies, particularly those that are highly exposed to human rights risks, are encouraged by states to establish appropriate domestic grievance mechanisms so that victims can seek redress.
150. In the **Czech Republic**, some companies employ an ombudsman to handle complaints and alternative dispute resolution. In **France**, companies set up internal complaint mechanisms to enable any potentially affected stakeholder to question and challenge the company about its activities. In practice, the complaint mechanisms set up within companies are formalised mechanisms at group level (ethics line/alert system, mediator, etc.); mechanisms dedicated to certain issues, such as harassment, discrimination, or to certain activities or countries; mechanisms at the operational level related to a particular project; and institutional or voluntary social dialogue bodies (Works Council, International Framework Agreements, Health, Safety and Working Conditions Committee, etc.).

<sup>46</sup> Federal Institute for Sustainable Development (2018), 'Brochure « Access to remedies in Belgium »', available at: [https://www.developpementdurable.be/sites/default/files/content/en\\_brochure\\_droits\\_de\\_lhomme\\_062018.pdf](https://www.developpementdurable.be/sites/default/files/content/en_brochure_droits_de_lhomme_062018.pdf)

<sup>47</sup> This dispute resolution method will be included in the new Strategy of consumer policy 2021-2030.

151. The **UK** tasked its trade promotion teams, in the markets where they operate, to advise UK companies on establishing or participating in grievance mechanisms and collaborating with local authorities where necessary. The **UK** also encouraged companies to extend effective grievance mechanisms to their overseas operations.
152. In the **Netherlands**, when a company establishes that it is causing or contributing to a human rights violation, it is expected to rectify the situation and/or provide compensation. Complaint procedures at company level can be an effective means to this end. The procedure should be consistent with the UN Guiding Principles and be based on dialogue and commitment to finding an acceptable solution. An example is the independent complaints mechanism of the Netherlands Development Finance Corporation, which is further supported by an independent panel of experts, which decides on the admissibility of a complaint and manages all subsequent processes. A second example is the good practice of RBC agreements. In the RBC agreement for the banking sector, 10 banks have agreed that, insofar as this is not yet the case, they should create a publicly accessible complaints procedure for employees, customers and third parties, or adapt the existing complaints procedure for this purpose.
153. Some of the agreements on RBC have their own complaint mechanisms. First, under the Dutch Agreement on Sustainable Garments and Textile (AGT) an independent Complaints and Disputes Committee has been established<sup>48</sup>. Workers or parties adversely affected by a business that have signed this Agreement can turn to this Committee with a complaint or dispute. The Committee has the power to make binding decisions. However, parties should attempt to resolve the issue amicably prior to submitting such a complaint. Secondly, under the same Agreement another route exists for providing access to remedy, namely by raising an issue with the AGT Secretariat. Any third party may raise issues concerning (alleged) negative impacts concerning production locations on the list with the AGT compan(y)(ies) involved via the AGT Secretariat. Once an issue has been brought to the attention of the AGT Secretariat, it will contact the compan(y)(ies) concerned, point out the (alleged) wrongdoing and encourage them to look into the issue by carrying out proper 'due diligence' and, in case an issue turns out to be well-founded, to do everything in its power to resolve or minimize the abuse and to prevent recurrence and provide compensation where necessary. Should the complainant be of the opinion that the outcome does not resolve, or insufficiently contributes to resolving the issue, the Secretariat may refer the issue raised to the Complaints and Disputes Committee.
154. In **Switzerland**, the International Code of Conduct Association of Private Security Companies receives and deals with complaints about alleged violations of the Code by member private security companies. When a complaining party seeks support, the Association facilitates access to fair and accessible procedures and offers effective remedies, including providing access to the Association's good offices. In addition, the Association advises member companies in their process of developing and implementing a fair and accessible complaints handling mechanism in accordance with the Code. Two types of complaints may be filed with the Association. First, complaints from an individual, or his or her representative, alleging harm caused by an alleged violation of the Code by a member company. Second, complaints from an individual or group who has reason to believe that violations of this Code have been or are about to be committed by a member company of the Association.

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<sup>48</sup> See Complaints and Disputes Committee Dutch Agreement on Sustainable Garments and Textile, available at: <https://www.ser.nl/en/themes/irbc/complaints-disputes-committee>

155. In **Slovenia**, a compulsory non-state complaint mechanism is provided for in the laws governing employment relations, which gives the employee the right to request in writing that the employer eliminate the violation and/or fulfil his obligations if he/she believes that the employer has not fulfilled his obligations arising from the employment relationship or has violated one of his/her rights arising from the employment relationship. If the employer does not fulfil its obligations arising from the employment relationship or does not eliminate the violation within a specified period of time, the worker may apply for judicial protection before the competent labour court.
156. In **Germany**, the Federal Ministry of Justice and Consumer Protection has launched a research project on the viability of mediation and other alternative dispute resolution methods in relation to the impact of business on human rights. The project will assess experiences with consumer conciliation and how they can be used to develop guidelines for alternative dispute resolution mechanisms in the area of business and human rights, particularly at the industry level. These mechanisms will take into account the specific characteristics of human rights disputes, including cross-border cases and asymmetry of power between the parties, and will incorporate a gender-based approach, considering the grievances of women.

#### **IV - Additional safeguards of the Recommendation CM/Rec (2016)3**

##### *4.1. The workers*

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157. In the **Czech Republic**, the Ministry of Labour and Social Affairs evaluates the effectiveness of the fight against illegal work, legal tools and measures, the deterrent nature of sanctions and the accessibility of remedies for victims. A final evaluation will be published in 2022 in order to propose any necessary additional measures.
158. From 2019 to the end of 2020, **Germany** has carried out an analysis of human rights violations in the palm oil value chain and developed recommendations for human rights due diligence. The German Forum for Sustainable Palm Oil (FONAP) conducted a study for its member companies to find out what measures these companies can take to mitigate the risk of human rights violations and to comply with their human rights' due diligence.
159. In **Poland**, the Act amending the Trade Unions Act and certain other laws, which entered into force on 1 January 2019, provides for the right to form and join trade unions for both employees and persons performing paid work other than in the context of an employment relationship. This includes persons performing work under civil law contracts. Individual contractors (so-called independent contractors) who perform work for a given entity under a contract may also form and join trade unions. The right to join existing trade unions is also granted to volunteers, trainees and others who personally perform work without compensation. The amendment also guarantees persons performing work, other than employees, the rights necessary to carry out activities, such as the free time needed to carry out ad hoc activity or special protection for union activists.
160. In **Poland**, an analysis of the Recommendation CM/Rec(2016)3 has also been carried out in order to assess the conformity of law and practice in Poland and to formulate proposals for possible actions necessary to implement it in the framework of the fight against trafficking in human beings, including forced labour. The analysis concerns the introduction of an obligation for employers to provide information on the fight against forced labour, preventive actions to

combat forced labour, including information and education of employers in this regard, support to the public and private sector in the prevention of forced labour, and verification of the elements of the crime of trafficking in human beings for their criminalization. Regular specialized training sessions are organised by the police and border guards with the participation of representatives of the Ministry of Interior and Administration, the public prosecutor's office, the courts, and NGOs.

161. In 2018, the Ministry of Interior worked out a special action plan for preventing illegal employment in **Estonia**. Action plan covers several activities which helps to address the labour issues, including labour rights of the foreigners working in Estonia and also has the purpose to prevent trafficking in human beings.

#### 4.2. Children

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162. Legislative measures are in place in member States to require companies to respect children's rights. In **France**, the law of 5 August 2013 included trafficking in minors in the list of offenses in article 706-47 of the Code of Criminal Procedure, allowing a special regime to be applied to these offenses.
163. **Switzerland** carries out projects dedicated to the improvement of working conditions, including elimination of child labour, within the framework of economic cooperation programs. Switzerland attaches particular importance to education in its development cooperation activities. The Confederation is also committed to supporting awareness-raising projects that focus on the issue of child labour.
164. In **Poland** it is planned to undertake a modification of the regulations on the provision of hotel services, in order to introduce legislation on the prevention of sexual exploitation of minors in hotel facilities as recommended by the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse.
165. In **Estonia**, cooperation seminars are held with the private sector, namely with Hotel Association in Estonia. The first seminar was focused on raising awareness on THB and to increase identification of victims of human trafficking, including all forms of violence against children in the hotels and restaurants sector.
166. In **Germany**, the Federal Ministries of Food and Agriculture and Economic Cooperation and Development published a 10-point plan for a sustainable cocoa sector. This multi-stakeholder initiative aims to abolish abusive forms of child labour in cocoa production.
167. In April 2019, the **Slovenian** Ministry of Justice introduced the new Non-Contentious Procedure Act, which reinforces the obligation of courts to perform all acts necessary to protect the rights and interests of minors and other persons who are unable to protect their rights and interests by themselves due to mental illness or other circumstances. The amendments also provide for the possibility of including in the procedure another organization that deals with the interests of children, such as the human rights ombudsman and its experts.

#### 4.3. Indigenous Peoples

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168. The **German** government is considering ratification of ILO Convention 169 on the Protection of Indigenous Peoples. The protection of the human rights of indigenous peoples and the principle of free, prior and informed consent in planning processes that affect indigenous peoples and local communities are important elements of the Federal Ministry for Economic Cooperation and Development strategy paper on human rights published in 2011 and its guidelines on the integration of human rights standards and principles, including gender, into program proposals of German bilateral technical and financial cooperation (2013). For German development policy, the active participation of indigenous peoples is an essential prerequisite for the realization of their human rights. In addition to its involvement in UN bodies, the Federal Ministry for Economic Cooperation and Development also uses its bilateral contacts with countries that have an indigenous population to defend their interests in political dialogue. The Federal Ministry for Economic Cooperation and Development also aims to strengthen the rights of indigenous peoples in accordance with international frameworks. To date, bilateral cooperation to strengthen the rights of indigenous peoples has focused on Latin America.

#### 4.4. Gender equality

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169. **Georgia's** Ministry of Economy and Sustainable Development has set up a platform to identify the needs of women entrepreneurs. Together with the Advisory Council for Private Sector Development, the ministry has created a sub-council for the promotion of women's entrepreneurship that aims to identify challenges and ways to overcome them. Two sessions of the sub-council were held in 2019. Participants included women entrepreneurs from government agencies, members of the sub-council and representatives of the Association for the Empowerment of Women.
170. In **Sweden**, a feminist approach to trade policy is adopted in order to ensure equality between women and men in this area.
171. In March 2018, **France** presented its four-year international strategy on equality between women and men. With regard to companies, the strategy lists the levers for CSR action in the development of companies abroad. There are since 2011 already, under the law No 2011-103, rules for the balanced representation of women and men on boards of directors and supervisory boards which impose the search for gender parity on companies whose stock is admitted to a regulated market with these gradual steps and, eventually, on companies that meet certain criteria of turnover and number of employees. The law No 2019-486 extended this obligation to members of the management board and to deputy chief executives. It also provides for the sanction of the nullity of deliberations of the boards of directors or supervisory boards of listed companies that do not respect their gender-balance obligations.
172. **Poland** organised a plenipotentiary seminar for heads of provinces and equal treatment coordinators on 26 September 2018, within the framework of the project entitled "Development and implementation of a coherent gender equality monitoring system and a model of cross-sectoral cooperation for gender equality". The program included information on the UN Guiding Principles and the National Action Plan. The aim was to increase the level of knowledge on the implementation of the principle of equal treatment and the fight against discrimination, including initiatives to strengthen the gender equality policy and the benefits of applying the diversity and equal opportunity policy.

#### 4.5. Environment

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173. In **France**, on 21 April 2015, a circular was published on the orientations of criminal policy with respect to environmental offences. The circular calls on the national public prosecutor's offices to "seek the liability of legal entities, as soon as environmental offences have been committed on their behalf", without excluding the individual liability of natural persons. The circular aims to combat the steady decline in the number of convictions in the area of environmental offences, the protection of which is enshrined in the Environmental Charter, which has had constitutional rank since 2004. The circular allows for greater coordination with the Administration and greater vigilance in the repression of environmental violations, particularly in the area of community disputes. Regional courts specialised in environmental matters (civil and criminal litigation) were created by the law of 24 December 2020. This law also allows, within the framework of an agreement between the public prosecutor and the legal entity, approved by the judge, for the legal entity to be subject to an obligation to comply and to repair the ecological damage, as well as to the payment of a so-called 'public interest' fine, without a conviction being pronounced. The new legal framework for public procurement, mentioned in paragraph 70 of this report, proposes various remedies to act against social and environmental damage and to promote sustainable purchasing. In addition, French law requires public purchasers to reject irregular bids when they fail to comply with applicable legislation, particularly in social and environmental matters.
174. In **Switzerland**, the Federal Law on Public Procurement of 16 December 1994, has been revised as of 1 January 2021 and aims to guarantee services and works that meet high environmental requirements throughout their life cycle. The Confederation intends to set an example by purchasing goods and services or constructing buildings that are environmentally and health-friendly and produced in a responsible manner.
175. Since 2019, the **German** government has been using the expertise of the Competence Centre for Sustainable Procurement on human rights issues when entering into agreements and encourages companies to use its expertise as well. This has been the case for Bitkom (Association of German Digital Goods and Services Companies), which has concluded a sector agreement with this Competence Centre in the form of a declaration on the social sustainability of information technology with reference to the ILO core conventions.
176. 138. The **Slovenian** National Centre for Human Rights noted the ongoing adaptation and implementation of the Agenda 2030 for Sustainable Development and the Sustainable Development Goals (SDGs) in **Slovenia**, which in 2017 adopted its new national development strategy in accordance with the SDGs.
177. The **Danish** government's work on the implementation of the UN Guiding Principles on Business and Human Rights is to a large extent based on the recommendations of the Danish Council for CSR. The Council was replaced in 2018 by the Council for Corporate Accountability and Sustainable Development Goals (CABS).
178. In **Poland**, a partnership for the implementation of SDGs was launched in June 2017 and is based on three principles: openness to cooperation, voluntary participation and the declaration of cooperation. So far, more than 100 entities have joined the initiative, with the partnership having resulted in more than 130 commitments, in which the signatories confirm the implementation of specific actions aimed at achieving the selected SDGs. The objective of the partnership is to integrate representatives from diverse backgrounds into the cooperation in order to effectively achieve sustainable development goals. The initiative raises awareness

among a growing number of beneficiaries of the existence of sustainable development goals, their meaning for different social groups and the need to cooperate to achieve them effectively.

179. **Georgia** plans to establish incentive mechanisms to protect the environment. In its chapter on business and human rights of the Government Action Plan of Georgia (2018-2020), measures have been introduced to meet the main objectives of the Action Plan on Business and Human Rights by, inter alia, implementing best practices in the business sector in terms of environmental protection. With regard to environmental protection, LEPL Enterprise Georgia implements the technical assistance component of the Decree 365 of the Government of Georgia and reimburses the costs incurred for the implementation of advanced international and local environmental norms and standards. This component aims to ensure that beneficiaries comply as much as possible with environmental standards and their protection tools. **Portugal, Ireland, the Czech Republic, the Netherlands, Slovenia and Switzerland** also have a unit, department or ministry dedicated to sustainable development and have indicated in their questionnaire responses the interest in the environment on the part of their governments.

## V - Council of Europe action supporting the implementation of the Recommendation CM/Rec(2016)3

### 5.1. *The Parliamentary Assembly of the Council of Europe*

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180. In its Resolution 1757 (2010) "Human rights and business"<sup>49</sup>, the Parliamentary Assembly of the Council of Europe (PACE) expressed its concern about the differences between individuals and companies in the scope of human rights protection. It noted that "while a company has the possibility of bringing a case before the Court if it considers that its rights, protected by the European Convention on Human Rights, have been violated by a state body, an individual claiming a violation of his/her rights by a private company cannot bring his/her claims before the same court" (paragraph 4). It recalled that while the primary responsibility for the protection of human rights lies primarily with states, companies also have responsibilities in this area, particularly where states have "privatized" functions traditionally attributed to them, such as certain military or law enforcement activities (paragraph 2).
181. In Resolution 2398 (2021) "Addressing issues of criminal and civil liability in the context of climate change"<sup>50</sup>, the Assembly calls for the adoption of a "legally binding instrument on business activities and human rights", acknowledging that businesses hold responsibilities for human rights abuses, especially regarding environmental destruction. The Assembly stresses the urgent need of a "legal responsibility for conduct that might have an impact on climate change"<sup>51</sup>. In the light of the 2021 Autumn PACE session, the Assembly adopts a total of six comprehensive resolutions recalling CM/Rec(2016)3 on human rights and business and its own Resolution 2311 (2019) and Recommendation 2166 (2019) "Human rights and business – what follow-up to Committee of Ministers Recommendation CM/Rec (2016)3?"<sup>52</sup>, stating that the victims of such human rights abuses shall have access to effective remedies.

<sup>49</sup> PACE, Resolution 1757 (2010), 'Human Rights and Business', available at: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=17903&lang=en>

<sup>50</sup> PACE, Resolution 2398 (2021), 'Addressing issues of criminal and civil liability in the context of climate change', available at: <https://pace.coe.int/en/files/29512/html>.

<sup>51</sup> Ibid.

<sup>52</sup> PACE, Resolution 2311 (2019), 'Human rights and business – what follow-up to Committee of Ministers Recommendation CM/Rec (2016)3?', available at: <https://pace.coe.int/en/files/28296/html>

182. In Resolution 2396 (2021) "Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe"<sup>53</sup>, the Assembly calls for revision by the member States of CM/Rec(2016)3 to strengthen corporate environmental responsibility of enterprises, operating under the member states' jurisdiction in order to reduce their harmful environmental footprint. Additionally, the Assembly states that "a legally binding and enforceable instrument"<sup>54</sup>, such as an additional protocol to the Convention or to the Charter would give the Court a "non-disputable base for rulings concerning human rights violations arising from environment-related adverse impacts on human health, dignity and life"<sup>55</sup>. The drafting of such element, as a "5P" convention for instance, shall preferably incorporate "the principle of transgenerational responsibility"<sup>56</sup>, recognising the right of future generations to a healthy environment.
183. With regard to alleged human rights abuses by companies occurring in third countries, particularly outside Europe, the Assembly noted the difficulty of bringing cases of extraterritorial corporate abuse before national courts or the Court (paragraphs 2 and 3). In this resolution, the Parliamentary Assembly called on member States to fill the legal vacuum that exists in this area, to raise awareness and encourage corporate responsibility with regard to human rights and to legislate to protect individuals against violations of the rights enshrined in the European Convention on Human Rights and the revised European Social Charter.
184. Furthermore, in its Recommendation 1936 (2010), the Assembly addressed a number of recommendations to the Committee of Ministers aimed at promoting corporate responsibility in the field of human rights. This led to the elaboration and adoption of the Recommendation (2016)3 of the Committee of Ministers to member States on human rights and business.
185. At the same time, the Assembly also dealt with specific issues related to this subject. In its Resolution 1993 (2014) "Decent work for all", for example, it dealt with several issues related to conditions of employment, stressing that member States should strengthen the implementation of the European Social Charter as well as ethics and CSR.<sup>57</sup> More recently, in its Recommendation 2123 (2018) "Strengthening international regulations prohibiting trade in goods used for torture and the death penalty", it reaffirmed its commitment to end trade in goods used for the death penalty, torture or inhuman or degrading treatment or punishment.<sup>58</sup>
186. The Assembly continued its work in this field with a follow-up report and adopted Resolution 2311 (2019) inviting Council of Europe member States to take all necessary measures to implement the UNGPs and the Recommendation CM/Rec (2016)3, including the elaboration and sharing of National Action Plans, and to review their national legislation, practices and policies to ensure their compliance with the requirements deriving from the Guiding Principles and the Recommendation CM/Rec (2016)3.

## 5.2. The European Committee of Social Rights and the European Social Charter

<sup>53</sup> PACE, Resolution 2396 (2021), 'Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe', available at: <https://pace.coe.int/en/files/29499/html>

<sup>54</sup> Ibid.

<sup>55</sup> PACE, Resolution 2396 (2021), 'Anchoring the right to a healthy environment: need for enhanced action by the Council of Europe', available at: <https://pace.coe.int/en/files/29499/html>

<sup>56</sup> Ibid.

<sup>57</sup> PACE, Resolution 1993 (2014), 'Decent work for all', available at: <https://pace.coe.int/en/files/20890/html>

<sup>58</sup> PACE, Recommendation 2123 (2018) 'Strengthening international regulations prohibiting trade in goods used for torture and the death penalty', available at: <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24497&lang=en>

187. The European Social Charter (ESC) and the Revised European Social Charter (ETS No. 35 and ETS No. 163) complement the protection offered by the Convention by guaranteeing a set of social and economic rights, such as the prohibition of forced labour, fair, safe and healthy working conditions, protection against sexual and psychological harassment, freedom of association, non-discrimination, and others. Among the rights guaranteed by the 1961 European Social Charter are, in particular, the right to work, the right to organise, the right to collective bargaining, the right to social security, the right to social and medical assistance, the right of the family to social, legal and economic protection, and the right of migrant workers and their families to protection and assistance.
188. The European Social Charter established a European Committee of Social Rights (ECSR), which, on the one hand, adopts conclusions within the framework of a system of national reports and, on the other hand, issues "decisions" which are binding on the states concerned. However, they are not enforceable in the domestic legal order, within the framework of a system of collective complaints open to national and international organisations representing employers and workers, as well as non-governmental organisations. These conclusions and "decisions" must be endorsed by the Committee of Ministers of the Council of Europe.
189. The Additional Protocol to the European Social Charter providing for a System of Collective Complaints (ETS No. 158), adopted in 1995, establishes a mechanism that allows the social partners and certain NGOs to bring before the ECSR appeals alleging violations of the Charter in states that have ratified it. The collective complaint is examined by the ECSR which, if the formal requirements are met, decides on its admissibility. It then adopts a decision on the merits of the complaint and transmits it to the parties and the Committee of Ministers in a report, which is made public no later than four months after its transmission. On the basis of the ECSR's report, the Committee of Ministers adopts a resolution. Where appropriate, it may recommend that the state concerned takes specific measures to bring the situation into conformity with the Charter.
190. The ECSR examines compliance with the Charter by collective complaints lodged by the social partners and other non-governmental organisations (collective complaints procedure). In this context, the monitoring and interpretation activity of the ESC has made a significant contribution to clarifying and putting into practice the rights and duties relating to the theme of "Business and Human Rights". The ECSR makes interpretative statements relating to the various articles of the Charter. The "jurisprudence"<sup>59</sup> of the ECSR is made up of all the sources in which it sets out its interpretation of the provisions of the ETUC and its jurisprudence relating to companies is quite extensive given the numerous provisions of the ETUC concerning employment and labour rights.

### *5.3. The work of the intergovernmental and conventional committees*

191. Council of Europe committees also monitor compliance with the UNGPs and the principles contained in the Recommendation CM/Rec(2016)3.

### The Steering Committee for the Rights of the Child (CDENF)

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<sup>59</sup> Digest of the case-law of the ECSR, December 2018, available at: <https://rm.coe.int/digest-2018-parts-i-ii-iii-iv-en/1680939f80>

192. The Steering Committee for the Rights of the Child (CDENF) assisted in the drafting of the Recommendation CM/Rec(2018)7 of the Committee of Ministers to member States on guidelines for the respect, protection and fulfilment of the rights of the child in the digital environment, which provides guidance to member States on measures to be taken with regard to all stakeholders, including businesses. The guidelines recommend that member state governments require companies to take responsibility and enforcement measures to respect children's rights in the digital environment and encourage them to cooperate with state stakeholders, civil society organisations and children, taking into account relevant international and European standards and guidelines.<sup>60</sup>
193. The preamble of the Guidelines also makes explicit reference to the Recommendation CM/Rec(2016)3 and the UN Guiding Principles on Business and Human Rights. The annex to the Guidelines provides more concrete measures to be taken by member States in relation to business. These measures are extracted from the annex and summarised in the table below:

**States shall require or ensure that companies:**

- respect their human rights responsibilities and be held accountable
- participate in the development and implementation of parental controls, considering the evolving capacities of children and respecting the rights of the child;
- do not engage in unfair commercial practices towards children, clearly distinguish between commercial advertising and limit commercial processing of children's data;
- take reasonable, proportionate and effective measures (EPR) to ensure that their networks or services are not used for criminal or other unlawful purposes that could harm children; and;
- apply hash lists (companies concerned);
- promptly take all necessary measures to ensure the availability of metadata concerning child pornography material, to make it available to law enforcement authorities, to delete it and, pending its deletion, to restrict access to it (companies concerned);
- have readily accessible means to report materials or activities of concern, with efficient and timely receipt and processing;
- exercise due diligence with respect to the rights of the child;
- conduct regular child rights risk assessments and demonstrate reasonable and proportionate measures to manage and mitigate risks;
- take EPR measures to ensure the application of their conditions.

**States shall encourage, promote or provide incentives to companies to:**

- cooperate with relevant stakeholders;
- implement Safety by Design, Privacy by Design and Default Privacy as guiding principles for products, services, etc. intended for or used by children;
- develop and implement policies to combat cyberbullying, harassment, and incitement to hatred and violence in the digital environment;
- put in place recourse and complaint mechanisms;
- provide accessible and age-appropriate information in the child's language on how to file a complaint and seek redress;

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<sup>60</sup> Recommendation CM/Rec (2018)7 of the Committee of Ministers (2018), 'Guidelines to respect, protect and fulfil the rights of the child in the digital environment'. p. 9, available at: <https://rm.coe.int/guidelines-to-respect-protect-and-fulfil-the-rights-of-the-child-in-th/16808d881a>

- develop, implement, review and evaluate industry policies, standards and codes of conduct related to children on a regular basis

**The States commit the companies:**

- in the design, development, implementation and evaluation of a national strategy or action plan;
- in the implementation of sectoral policies;
- through a multi-stakeholder approach and the establishment of frameworks, procedures and processes for cooperation;
- like Internet Service Providers and Social Network Providers, play an active role in preventing and suppressing illegal content.

**States help companies:**

- to assume their responsibility to respect the rights of the child by creating a clear and predictable legal and regulatory framework;
- raising their awareness and supporting them in their role, responsibilities and impact on children's rights, as well as their cooperation with relevant stakeholders.

194. The forthcoming Handbook for Policy Makers on Children's Rights in the Digital Environment will provide additional and concrete guidance to those responsible for implementing the guidelines.
195. The Strategy for the Rights of the Child (2016-2021) identifies the involvement of the private sector in the development of standards and tools as a priority action for the implementation of children's rights in the digital environment. Companies were consulted on a number of projects and documents, including the above-mentioned manual. Finally, a recent report on the rights of children with disabilities in the digital environment highlighted the need for the digital industry to pay greater attention to the rights of children with disabilities, including identifying design adaptations needed to make digital equipment as accessible as possible; ensuring that the opportunities offered by the digital environment are as inclusive as possible for children, regardless of their disability; and identifying potential privacy issues when children with disabilities use technology.
196. The CDENF has also included measures relating to access to an effective remedy in section 3.7 of the Guidelines for the Respect, Protection and Realization of the Rights of the Child in the Digital Environment. These include ensuring the provision of available, known, accessible, affordable and child-friendly places through which children, as well as their parents or legal guardians, can lodge complaints and seek redress (paragraph 67). In particular, the Guidelines note that:
- « 71. States, as the primary duty bearers, should protect children from human rights abuses committed in the digital environment by commercial enterprises and ensure that children have access to an effective remedy ..." (para. 67). In particular, they should:
- a. *implement policies and measures that encourage commercial enterprises to establish their own complaints and redress mechanisms, in line with the criteria for effectiveness set out in the UN Guiding Principles on Business and Human Rights, while ensuring that these mechanisms do not prevent children from accessing state judicial or extra-judicial mechanisms;*

- b. *encourage business enterprises to provide accessible, age-appropriate information, in the language of children, on how to make a complaint and seek redress through grievance and redress mechanisms;*
- c. *require commercial enterprises to provide, on their platforms or as part of their services, easily accessible means for any person, in particular children, to report any content or activity that is problematic for them, and for reports received to be dealt with effectively and in a timely manner.»<sup>61</sup>*
197. An analysis of the way member States implement paragraph 71 shall be carried out as part of a review, with the involvement of relevant stakeholders, no later than five years after the adoption of the guidelines (as referred to in Recommendation 5 of the guidelines). A child-friendly brochure on the Guidelines has also recently been produced, which provides accessible information for children, including on their right to an effective remedy in this context.
198. The CDENF has collected and analysed information on private mechanisms through which grievances about business-related human rights violations can be raised and a remedy can be sought. In the context of the rights of children with disabilities in the digital environment, a recent report identified the need for the digital industry to "Adapt the design and evolution of online reporting mechanisms (...) to ensure that they are accessible and responsive from the outset" (page 19).

#### The Consultative Committee of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (T-PD)

199. The Consultative Committee of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (T-PD) shall ensure prior to any accession to the Convention for the Protection of Individuals with regard to the Processing of Personal Data (Convention 108+) that the applicant State complies with a number of good practices aimed at facilitating the exercise of the right of access or the right to erase data and applies data protection rights of the persons concerned. It also gives an opinion on the level of data protection in the applicant State. Article 10 of Convention 108+ requires that controllers and, where appropriate, processors, shall "take all appropriate measures to comply with the obligations of this Convention and shall be able to demonstrate (...) in particular to the competent supervisory authority provided for in Article 15"<sup>62</sup>, that the processing of data under their control complies with the provisions of this Convention. This also implies guaranteeing data subjects the rights set out in Article 9, including point (f) the right of recourse.<sup>63</sup>

#### The Group of Experts on Action against Trafficking in Human Beings (GRETA)

<sup>61</sup> Committee of Ministers, Recommendation CM/Rec(2018)7 (2018), 'Guidelines for the Respect, Protection and Realization of the Rights of the Child in the Digital Environment', available at: <https://rm.coe.int/guidelines-to-respect-protect-and-fulfil-the-rights-of-the-child-in-th/16808d881a>

<sup>62</sup> Convention 108+ (2018), 'Convention for the protection of individuals with regard to the processing of personal data'. Art. 10, available at: <https://edoc.coe.int/en/international-law/7729-convention-108-convention-for-the-protection-of-individuals-with-regard-to-the-processing-of-personal-data.html>

<sup>63</sup> Convention 108+ (2018), 'Convention for the protection of individuals with regard to the processing of personal data', available at: <https://edoc.coe.int/en/international-law/7729-convention-108-convention-for-the-protection-of-individuals-with-regard-to-the-processing-of-personal-data.html>

200. Through its monitoring of the Council of Europe Convention on Action against Trafficking in Human Beings, GRETA has focused its attention on monitoring supply chains (with a view to detecting and combating forced labour and human trafficking) and creating public-private partnerships to prevent trafficking for labour exploitation. GRETA's 7th General Report (2018) provides a number of examples in this area. In paragraph 164, this report notes that "building on the 2011 UN Guiding Principles on Business and Human Rights, the Committee of Ministers of the Council of Europe adopted the Recommendation CM/Rec/(2016)3 on Human Rights and Business, a text that provides guidance to member States on human rights abuses by business enterprises, including child and forced labour. A number of States Parties have adopted national action plans to implement the UN Guiding Principles on Business and Human Rights, which include measures to combat human trafficking"<sup>64</sup>.
201. In its various reports, GRETA also refers to the principles and recommendations contained in the Recommendation CM/Rec(2016)3. GRETA's 2nd report on the United Kingdom refers to the supply chain transparency provisions of the Modern Slavery Act 2015, which requires companies of a certain size to prepare a "Statement on Slavery and Human Trafficking" for each financial year, indicating the measures taken to ensure that slavery and human trafficking are not present in any of the supply chains and in any other part of the company. Failure to produce such a statement may result in the Secretary of State initiating civil proceedings in the High Court to obtain an injunction against the companies concerned. GRETA's 2nd report on France refers to a law on the due diligence of parent companies and main companies operating with subcontractors which was adopted on February 21, 2017. It creates an obligation for certain companies to set up a due diligence plan "aimed at identifying and preventing risks of violation of human rights and fundamental freedoms, serious environmental or health damage resulting from its activities and those of companies under its direct or indirect control, as well as the activities of subcontractors or suppliers over which they exercise a decisive influence"<sup>65</sup>. The company's civil liability will be engaged in the event of failure to comply with the newly created obligations.
202. The Recommendation CM/Rec (2016)3 is also systematically mentioned in GRETA's country evaluation reports. For example, in the third report on Austria (published in June 2020): "GRETA considers that the Austrian authorities should strengthen their engagement with the private sector, in line with the UN Guiding Principles on Business and Human Rights [3] and the Recommendation CM/Rec(2016)3 of the Committee of Ministers of the Council of Europe on Human Rights and Business, with a view to raising awareness of the important role and responsibility of business in supporting the rehabilitation and recovery of victims and providing access to effective remedies"<sup>66</sup>. For the current third evaluation cycle of the Convention, GRETA continues to pay attention to this issue. GRETA considers that national authorities should adopt legislation integrating the prevention of human trafficking and labour exploitation into public procurement policies and promoting transparency in supply chains in order to enable the review of the performance of enterprises in preventing human trafficking and labour exploitation. All but one of the States Parties evaluated by GRETA have legislation under which legal persons can be held liable for human trafficking offences. However, only five of the 25 countries evaluated in the second evaluation round reported cases where corporate liability has been invoked in human trafficking cases.

### The Gender Equality Commission (GEC)

<sup>64</sup> GRETA (2018)1, '7<sup>th</sup> General Report on Greta's activities', available at: <https://rm.coe.int/greta-2018-1-7gr-en/16807af20e>

<sup>65</sup> <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000034290626/>

<sup>66</sup> GRETA (2020)05, 'Evaluation Report on Austria', available at: <https://rm.coe.int/greta-2020-03-fgr-aut-en/16809eb4fd>

203. The recommendations of the GEC generally refer to private actors and encourage relevant actions on their part to eliminate gender discrimination and promote equality between women and men.
204. The **Recommendation CM/Rec(2019)1** adopted by the Committee of Ministers of the Council of Europe on 27 March 2019 on preventing and combating sexism also encourages the various private actors to become involved in this field, including for example with regard to sexism in the workplace and in the media. The recommendation encourages companies to develop and implement codes of conduct or guidelines on sexism, in line with the overall policy framework on eliminating sexism, and allocate adequate resources for these activities. The recommendation also recalls Article 2.e of the 1979 United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and calls on states to take "all appropriate measures to eliminate discrimination against women by any person, organization or enterprise".<sup>67</sup>
205. A new analytical report examining the current legal and political situation regarding equality between women and men and in the media has been published jointly by the GEC and the Steering Committee on Media and Information Society (CDMSI). It reviews progress made since the adoption of the **Recommendation CM/Rec(2013)1** on equality between women and men and the media, on the basis of a questionnaire addressed in 2019 to member States, media organisations, media regulators and media self-regulatory bodies. The report concludes that some progress has been made in national legislation and media regulation. It also highlights some promising concrete initiatives and awareness-raising activities undertaken by different stakeholders. However, despite some progress, media coverage of gender issues and violence against women as well as gender inequalities in the profession, high levels of violence against women journalists and low representation of women in decision-making roles still need to be addressed. The report stresses that the mentality and culture in newsrooms must be addressed, with the participation of the industry, in order for the media sector to fully contribute to gender equality.
206. The GEC has also produced a document providing guidance to member States on Article 17 of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), entitled "Encouraging the involvement of the private sector and the media in the prevention of violence against women and domestic violence: Article 17 of the Istanbul Convention"<sup>68</sup>, which encourages the private sector and the media to become involved in the prevention of violence against women. This document recalls the negative impact of violence against women on companies and their staff, in particular the fact that in many European countries, employers have a legal responsibility to prevent sexual harassment at work and potential legal proceedings can have a considerable financial impact on companies. But also, the fact that violence against women also negatively affects companies in their productivity in particular but also by the social and economic costs they generate. This document aims to provide relevant information to companies in order to give

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<sup>67</sup> Art. 2 (e) of the Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979, available at: <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>

<sup>68</sup> Council of Europe (2016), 'Encouraging the participation of the private sector and the media in the prevention of violence against women and domestic violence: Article 17 of the Istanbul Convention', available at: <https://edoc.coe.int/fr/violence-l-gard-des-femmes/6804-encouraging-the-participation-of-the-private-sector-and-the-media-in-the-prevention-of-violence-against-women-and-domestic-violence-article-17-of-the-istanbul-convention.html>

them reasons to become more involved in the prevention of violence against women and domestic violence. It contains practical examples of actions that companies can take to improve the situation: awareness-raising and training of staff, internal company support systems for employees at risk of violence, integration of these issues into staff benefit schemes (psychological, medical, legal support) etc. Examples of good practices are also discussed and illustrated.

### Steering Committee on Media and Information Society (CDMSI)

207. As leading players in the digital transformation, companies have a major share of responsibility for this direct, immediate and global impact.
208. In this context, within the framework of its mandate, which includes the areas of freedom of expression, media, Internet governance and other issues related to the information society and the protection of personal data, the Steering Committee on Media and Information Society (CDMSI) draws extensively on the Recommendation CM/Rec(2016)3 and the UN Principles on Business and Human Rights and promotes them in its work.
209. The standard-setting instruments and follow-up studies prepared by CDMSI refer to the UN Principles as well as the Recommendation CM/Rec(2016)3, emphasizing the human rights responsibilities of private sector actors, in particular Internet intermediaries and those involved in the design, development and deployment of algorithmic systems.
210. In this sense, the Recommendation (2020)1 of the Committee of Ministers to member States on the human rights impacts of algorithmic systems<sup>69</sup> proposes a set of guidelines for States and public and private sector actors. These guidelines cover multiple aspects of the deployment of algorithmic systems: data management, modelling and analysis, transparency, accountability and effective remedies, as well as precautionary measures, research, innovation and public awareness. The Declaration by the Committee of Ministers on the manipulative capabilities of algorithmic processes<sup>70</sup> of February 13, 2019 recognizes, inter alia, the need to take into account, at the national and international levels, the increasing responsibility of industry in all sectors to perform its functions and exercise its significant influence with commensurate levels of fairness, transparency and accountability, consistent with its responsibility to respect human rights and fundamental freedoms, and under the leadership of public institutions.
211. The Recommendation (2018)2 of the Committee of Ministers to member States on the roles and responsibilities of Internet intermediaries<sup>71</sup> sets out a policy based on the rule of law for the relationship between public authorities and Internet intermediaries and their respective human rights obligations and responsibilities, both online and offline.

<sup>69</sup> CM Recommendation (2020)1 on the human rights impacts of algorithmic systems, available at: [https://search.coe.int/cm/pages/result\\_details.aspx?ObjectId=09000016809e1154](https://search.coe.int/cm/pages/result_details.aspx?ObjectId=09000016809e1154)

<sup>70</sup> Declaration by the Committee of Ministers on the manipulative capabilities of algorithmic processes (Adopted by the Committee of Ministers on 13 February 2019 at the 1337th meeting of the Ministers' Deputies) [https://search.coe.int/cm/pages/result\\_details.aspx?ObjectId=090000168092dd4b](https://search.coe.int/cm/pages/result_details.aspx?ObjectId=090000168092dd4b)

<sup>71</sup> CM Recommendation (2018)2 on the roles and responsibilities of internet intermediaries, available at: [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=0900001680790e14](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=0900001680790e14)

212. The CDMSI has also addressed the issue of the responsibility of private actors with regard to human rights in some of its studies, including the study on "Responsibility and Artificial Intelligence"<sup>72</sup> and the study on "Algorithms and Human Rights"<sup>73</sup>.

#### 5.4. *The European Programme for Human Rights Education for Legal Professionals (HELP)*

213. HELP launched on 13 October 2021 the online course "The Environment and Human Rights", on the interconnection of the protection of human rights and the environment. The online course was designed for a total of 40 legal professionals from Council of Europe member States. Participants will discuss how to apply a human-rights based approach to environmental protection, while assessing different international legal frameworks combining the protection of the environment and human rights.
214. The online course consists of four modules dealing with the following topics: defining key concepts related to the legal protection of the environment (1), a human rights-based approach to environmental protection (2), green human rights in regional human rights systems in Africa or the Americas (3) and the link between environmental degradation and corporate accountability (4). The online course was developed under the Project "Online Platform for Business and Human Rights" and lasts eight weeks.

## VI. Conclusions

215. Almost all States which have responded to the questionnaire have established a structured NAP based on the UNGPs and with the cooperation of a multitude of stakeholders. The information provided on these NAPs is detailed and clear.
216. The UNGPs are widely disseminated and translated in member States. However, efforts are still needed to ensure wide dissemination of the Recommendation CM/Rec(2016)3 to relevant authorities and stakeholders, with a view to raising awareness of and contributing to the respect for human rights in the field of CSR.
217. The member States that responded to the questionnaire show significant efforts with regard to their duty to ensure respect for human rights. Review of national legislation has been carried out, training has been provided to both the private and public sector to ensure knowledge of the standards, principles and values held in the Recommendation CM/Rec(2016)3.
218. The question how business enterprises conduct environmental and human rights due diligence as well as the question how victims of human rights and environmental adverse impacts access remedies requires closer examination. In this regard the CDDH recalls that it discussed various aspects of these questions in the context of environmental protection in the workshop that it organised in cooperation with the German Presidency of the Committee of Ministers on "Human Rights and Business: A framework for addressing environmental protection challenges", on 27 April 2021. Taking into account these discussions as well as the Parliamentary Assembly Recommendation 2211(2021) Anchoring the right to a healthy environment: Need for enhanced action by the Council of Europe as well as the Parliamentary

<sup>72</sup> Council of Europe study DGI (2019)=5, 'Responsibility and AI', available at: <https://rm.coe.int/responsability-and-ai-en/168097d9c5>

<sup>73</sup> Council of Europe study DGI (2017)12, 'Algorithms and human rights. Study on the human rights dimensions of automated data processing techniques and possible regulatory implications', available at: <https://rm.coe.int/algorithms-and-human-rights-study-on-the-human-rights-dimension-of-aut/1680796d10>

Assembly Recommendation 2213(2021) Addressing issues of criminal and civil liability in the context of climate change, the CDDH intends to pursue further work in the framework of its mandate during the next quadrennium.

219. Against this background, the CDDH will continue the review of the implementation of Recommendation CM/Rec(2016)3 with a thematic focus on the implementation of the standards of the Recommendation on due diligence and access to effective remedies in particular in the field of environmental protection while ensuring the participation of relevant stakeholders in the review process.
220. As regards possible further normative guidance on these issues, the CDDH has invited its Drafting Group on Human Rights and the Environment (DH-ENV) to explore the possibility of using the due diligence approach in the context of human rights and the environment and examine the issue of due diligence of business enterprises, including identification, assessment, prevention, mitigation, monitoring, communication, accountability for, addressing and remedying the potential and/or actual adverse impacts on human rights and the environment, including climate change. On the basis of the results of this line of work as well as the examination of the implementation of Recommendation CM/Rec(2016)3 referenced in the above-mentioned paragraph, the CDDH will consider the desirability and feasibility of possible further action by the Council of Europe.
221. In addition, it appears that further efforts are needed to encourage member States to ensure that the mandates of NHRIs clearly address business and human rights and that their complaint mechanisms are accessible to citizens whose rights have been violated.
222. The CDDH recommends that member States regularly update the information concerning their achievements and/or activities on the Council of Europe's Platform for Human Rights and Business to ensure that the development described in this Report and further developments are reflected there.