

National Baseline Assessment: Contribution to the update of the National Action Plan on Business and Human Rights

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German Institute
for Human Rights

Analysis

National Baseline Assessment

Contribution to the update of the National
Action Plan on Business and Human Rights

Melanie Wüdsch | Michael Windfuhr



The Institute

The **German Institute for Human Rights** is the independent National Human Rights Institution of Germany (§ 1 GlHR law). It is accredited according to the Paris Principles of the United Nations (A-status). The Institute's activities include the provision of advice on policy issues, human rights education, information and documentation, applied research on human rights issues and cooperation with international organisations. It is supported by the German Bundestag. The Institute is mandated to monitor the implementation of the UN Convention on the Rights of Persons with Disabilities and the UN Convention on the Rights of the Child and established Monitoring Bodies for these purposes.

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Michael Windfuhr is also a member of the independent complaint's mechanism of the development banks of Germany, France and the Netherlands (DEG, FMO, Proparco).

This analysis reflects the views of the German Institute for Human Rights.



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Foreword of the German Institute for Human Rights

Ensuring respect for human rights throughout global supply and value chains is an ongoing task. Framework conditions can change rapidly, as has been most recently illustrated by the pandemic-related disruptions to global supply chains and the trade implications of Vladimir Putin's war of aggression in Ukraine.

Germany committed to the UN Guiding Principles on Business and Human Rights and their implementation by adopting its first National Action Plan 2016–2020 (NAP). Important steps have been taken to raise awareness and improve human rights protection, and companies have addressed the issue in depth and started to make changes. This National Baseline Assessment (NBA) shows how far Germany has come in the implementation process, which further steps would make sense for the continuation of the NAP process from a human rights perspective, and which new challenges the federal government should take into account due to their large overlap with the UN Guiding Principles.

NBAs are an important component of the NAP development process. They assess the current state of implementation of the UN Guiding Principles and analyse the gaps remaining in legal and political implementation. NBAs can thus provide a basis for the formulation and prioritisation of measures in a NAP.

In summer 2021, the Federal Foreign Office commissioned the German Institute for Human Rights to prepare this NBA. In the course of the drafting process, representatives from politics, business, trade unions and civil society contributed their perspectives and expertise. Based on these contributions, the Institute has formulated its recom-

mendations in this NBA, which it provides to the federal government for the preparation of a new NAP.

In the Institute's view, the federal government should use the update of the NAP to formulate an ambitious strategy for its business and human rights agenda. This strategy should give appropriate consideration to the dynamic development of the events of the decade since the UN Guiding Principles were adopted, and meaningfully and coherently link the relevant national, European and global processes with one another. In particular, the NAP should address the expectations of international experts as formulated in the Roadmap UNGPs 10+ and at the very least, fully implement the voluntary commitments contained in the Coalition Agreement.

In addition to effective support for the implementation of the Act on Corporate Due Diligence Obligations in Supply Chains (LkSG), which comes into force on January 1, 2023, measures contained in the first and third pillars of the UN Guiding Principles should be strengthened. In order to promote coherent alignment with the 2030 Agenda and its Sustainable Development Goals, the German government should focus not only on human rights but also on environmental due diligence.

As such, this NBA recommends guidelines for how the German government's strategy could be formulated in a new NAP that can build on the implementation successes already achieved and expand them in a topical manner.

Michael Windfuhr

Deputy Director of the German Institute for Human Rights

Foreword of the Federal Foreign Office

The first National Action Plan (NAP) on the implementation of the United Nations Guiding Principles on Business and Human Rights was published in 2016. The NAP was a milestone. It marked the increasing sense of responsibility of business and consumers towards the social and human rights conditions of those involved in supply chains for products sold on the German and European markets.

In the six years since the publication of the NAP, there have been significant developments in the national and international debate on due diligence in supply chains as concerns business and human rights. At the same time, important experience has been gained, including the realisation that voluntary measures alone are not sufficient to enforce corporate due diligence to the desired extent. The German government therefore initiated the Act on Corporate Due Diligence Obligations in Supply Chains (LkSG), which was passed by the Bundestag in June 2021 and will enter into force on January 1 2023.

With the LkSG, the balance in the “smart mix” of voluntary and mandatory measures shifts significantly towards binding obligations for companies. This falls in line with a worldwide trend: corresponding laws have been passed or discussed in other countries too. Above all, a directive on due diligence at the EU level should create comparable competitive conditions within Europe.

But even independently of the LkSG, the further development of the debate on the sustainability of

our economic model makes a new edition of the NAP necessary. The importance of climate and environmental protection, as well as gender justice, has further increased. The COVID-19 pandemic and Russia’s attack on Ukraine have once again highlighted the high importance of supply chains for international trade flows, not least due to their economic impact. Digitalisation has progressed in all areas of life, and poses new risks to human rights. It was clear upon adoption of the UN Guiding Principles that their implementation would take place in the context of changing conditions. The UN Working Group on Business and Human Rights therefore recommended a limited timeframe of 4-5 years for the National Action Plans. Before the revision of an NAP, an independent institution – usually the respective National Human Rights Institution – should take stock in a National Baseline Assessment (NBA).

In accordance with these recommendations, in October 2021 the Federal Foreign Office commissioned the German Institute for Human Rights to prepare this NBA. The NAP on Business and Human Rights will be revised on the basis of this report. We would like to thank the Institute very much for its careful work in creating a basis of independent recommendations upon which a coherent NAP may be developed, taking into account UN documents, our own findings and the participation of stakeholders.

Wolfgang Bindseil

Head of Department 401, Business and Human Rights, Federal Foreign Office

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1 Introduction

The German Institute for Human Rights (Institute) was commissioned by the Federal Foreign Office in 2021 to prepare a National Baseline Assessment (NBA) for the update of the National Action Plan on Business and Human Rights (NAP) and, to develop proposals in connection with this for the update of the NAP. The first NAP was presented by the Federal Government on 21 December 2016. In doing so, the Federal Government complied with the request of the UN Working Group on Business and Human Rights and the EU Commission to develop an implementation plan for Germany for the UN Guiding Principles on Business and Human Rights (UNGPs) adopted by the Human Rights Council in 2011. In this first NAP, the German government explained how it intends to fulfil its obligations under international law in the context of economic activities and what it expects from German companies with regard to their responsibility to respect human rights.

The first NAP focused primarily on voluntary measures for companies. In addition, it was agreed that a monitoring process would examine whether these voluntary measures were sufficient for companies to implement human rights due diligence. According to the NAP target, at least 50 percent of all German companies with over 500 employees should have integrated the core elements of human rights due diligence into their business processes by 2020. However, the results of the 2019 and 2020 surveys showed that the actual figures were significantly lower. As a result, a law on due diligence in supply chains was drafted and passed in 2021, the Act on Corporate Due Diligence in Supply Chains (LkSG).

Further important NAP measures included conducting and evaluating a study to identify particularly relevant at-risk sectors in the German economy, and the initiation of a sector dialogue with the automotive industry with the involvement of the various stakeholders.

The Federal Government has confirmed that it will continue the NAP beyond 2021, an objective that was reaffirmed in the Coalition Agreement of the newly formed Federal Government in 2021.

In the first implementation phase of the NAP, the focus was primarily on the responsibilities borne by companies. However, the UN Guiding Principles, with their three-pillar structure, also provide for numerous governmental tasks – namely the implementation of Germany’s obligations under international law (pillar 1), including the creation of effective opportunities to claim human rights in judicial proceedings and before governmental extrajudicial grievance mechanisms (pillar 3).

The first German NAP was developed under the leadership of the Federal Foreign Office. In a consultation phase (2014–2015), a steering group made up of all relevant social groups participated in the development process. This steering group consisted of six federal ministries, representatives of the umbrella organisations of non-governmental organisations and business associations as well as the German Trade Union Confederation. Together with the business network econsense, the Institute was involved in an advisory capacity in the development process. In spring 2015, it prepared a status quo analysis for the steering group, the first NBA.¹ This presented the implementation status of the UN Guiding Principles in Germany to the

¹ National Baseline Assessment: Umsetzung der UN-Leitprinzipien für Wirtschaft und Menschenrechte. Berlin: Deutsches Institut für Menschenrechte (accessed on 2.6.2022).

steering group, identified deficits and formulated review requests. There was a public debate concerning the NBA.²

The NAP is to be updated in 2022. To initiate the process and foster an equally lively debate between the Federal Government and the various stakeholders, the Federal Foreign Office has once again commissioned the Institute to take stock in the form of an NBA. The central task of the NBA is to assess the extent to which the NAP measures to date have led to UNGP implementation and identify deficits in implementation that should be redressed. At the same time, the NBA is to identify which new developments have emerged in the field of business and human rights in recent years and should be addressed by the NAP.

The Institute evaluated various documents for this review: It first evaluated the hearing protocols of the consultation hearings that were conducted in 2015 when the first NAP was drafted. This was in line with the common wish of all stakeholders of the Working Group on Business and Human Rights (German WG)³, as a comparably resource- and time-intensive consultation process such as the one that took place in 2015 was deemed unnecessary. Instead, it was considered sufficient to evaluate the old consultations for implementation deficits and to identify which relevant suggestions from 2015 could not be taken up in the first NAP. The Institute carried this out by way of a coded evaluation procedure that used the MaxQDA programme; the evaluation can be found on the Institute's website.⁴ Secondly, the Institute evaluated the statements of the stakeholders and the status report of the Federal Government, which were prepared at the end of the implementation phase of the first NAP in summer 2021. Thirdly, between the end of November 2021 and mid-January 2022, the Institute held discussions with all stakeholder

groups in which they were able to formulate their perceptions of deficits in the implementation process and voice their concerns for the update of the NAP.

The key objective for the update of the NAP must be to focus on improving the living conditions of the people who work in the supply chains and to define this as the most important objective. The UN Guiding Principles were developed to prevent harm to people along global supply chains as far as possible and, in the case of harm and human rights violations that have already occurred, to ensure that these are investigated and compensated as a form of reparation. The measures of the NAP should therefore be designed in such a way as to include the perspective of those affected, where possible and necessary. This applies to all NAP measures, both those within the scope of the state's duty to protect and those directed at companies within the scope of their human rights due diligence, up to and including the design and implementation of grievance instruments and measures for redress.

In the following, the recommendations of the Institute derived from the analysis described above are formulated for the update of the NAP. At the request of the Federal Foreign Office, the recommendations in this section are supplemented by the relevant contents of the Coalition Agreement and the Roadmap UNGP 10+ of the UN Working Group on Business and Human Rights⁵ for the planning of the second decade of implementation of the UN Guiding Principles.

2 The business associations published a statement in which they assessed the described implementation deficits as too extensive and the status of implementation in Germany more positively.

3 A multi-stakeholder working group on business and human rights which advises the German Interministerial Committee on Business and Human Rights

4 Comparison of the consultation protocols from 2015 with the NAP 2016-20202 and the status report of the federal government; accessible at <https://www.institut-fuer-menschenrechte.de/publikationen/detail/nba-datenanhang>

5 UN-Working Group Business and Human Rights: Guiding Principles on Business and Human Rights at 10: Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, Geneva 2021, UN-Doc A/HRC/47/39; <https://www.ohchr.org/sites/default/files/Documents/Issues/Business/UNGPs10/Stocktaking-reader-friendly.pdf> (accessed on 10.06.2022).

2 Institute's recommendations for the NAP 2

2.1 Contextual conditions and current challenges

The central task for the continuation of the NAP will be to react appropriately to current contextual conditions and to provide guidance on how policymakers and companies should act in the further development and implementation of measures in this field. Three key questions therefore need to be answered first:

(1) To what extent should environmental due diligence and due diligence oriented towards the Sustainable Development Goals be considered in the NAP?

The first NAP was exclusively dedicated to the implementation of the UN Guiding Principles in Germany. This implementation mandate should remain at the centre of a new action plan. However, the Institute considers it necessary to depict the substantive developments towards human rights due diligence holistically and in the context of sustainable development – an extension that has already found its way into other processes. If the new NAP were to limit itself to the implementation of the UN Guiding Principles, it would ignore the fact that the field of business and human rights has developed considerably since 2011 and that current developments at national (Act on Corporate Due Diligence in Supply Chains, LkSG) and EU and OECD level will have a signifi-

cant impact on the design of corporate due diligence in Germany. This extension corresponds to the implementation mandate and the logic of the United Nations Sustainable Development Goals as well as the German Sustainable Development Strategy. To strive for a NAP without this further framework would run counter to international development and hardly contribute to a coherence of the standards and policy formulation processes.

Companies are increasingly required by law to minimise negative impacts on the environment by fulfilling due diligence obligations.⁶ Furthermore, due to the close connection between the environment and human rights, content-based discussion is both logical and to be welcomed from a human rights perspective:

- In terms of content, the concerns of human rights protection and environmental protection often overlap. The inclusion of environment-related obligations facilitates the counteraction and prevention of environmental impairments that develop into human rights violations (only in the medium or long term.
- The strong interdependence of the two areas is recognised (especially through the 2030 Agenda and the Sustainable Development Goals) and is increasingly being brought into focus, for example through the recognition of the right to a healthy environment.⁷

⁶ The Act on Corporate Due Diligence in Supply Chains (LkSG) provides for environmental due diligence obligations related to the eight environmental risk elements specified in § 2 para. 3 nos. 1-8. In addition, it provides for a general clause with environment-related human rights risks (§ 2 para. 2 no. 9). The EU draft of the Corporate Sustainability Due Diligence Directive (CSDDD) also provides for environmental due diligence obligations that relate to adverse effects resulting from a violation of ten environmental agreements. It also provides for the introduction of a climate protection plan (Art. 15). The current EU draft of the Corporate Sustainable Reporting Directive (CSRD) also provides for reporting on corporate due diligence and refers, among other things, to the OECD Guidelines, which also address environmental concerns. In addition, there are already due diligence regulations with an environmental focus, such as the French "Loi de Vigilance" or – to a certain extent – the EU's legislative proposal on deforestation-free supply chains.

⁷ A/HRC/RES/48/13, adopted on 18 October 2021

- The UN Guiding Principles and the work of the UN Working Group on Business and Human Rights are also increasingly addressing the interface between the environment and human rights, including environmental due diligence (see in particular the UNGP 10+ Roadmap).
- Due diligence obligations can relate equally to human rights and environmental protection in the way they are regulated. The OECD Guidelines are a tried and tested example of this.
- Simultaneous treatment allows the discussion of possible conflicts of objectives between human rights and environmental concerns and the development of possible solutions.

The inclusion of environmental due diligence in the NAP and the monitoring of implementation within the framework of the German WG would also offer the opportunity to jointly discuss implementation issues and synergies in a large stakeholder group, to exchange experiences and to consider corresponding aids for implementation. The joint, ongoing treatment of both sets of issues would enable mutual learning; for example, in the area of the environment, companies can often build on environmental management systems that have already been introduced elsewhere.

At the same time, the Institute emphasises that such a step must be carefully prepared and that the NAP implementation phase should be designed in such a way that companies receive sufficient consultation and support in implementing the expanded framework. Within the framework of the NAP, it is important to identify the existing implementation challenges companies face with the current requirements and which targeted support is necessary to support them in this action. This in turn will help pinpoint which form these extended duties of care may take on in the context of the new NAP, and which framework conditions must be created so that this can succeed.

The new NAP should develop a set of instruments that allows the topic of business and human rights in Germany to be depicted holistically. This set of instruments should be designed coherently so that all actors involved can receive comparable standards from

different policy formulation processes and the measures can be implemented as practically as possible.

(2) How can developments be reflected in the NAP that have not yet been completed?

Important contextual conditions in the next period of the NAP starting in 2023 include the relevant European legislative acts, first and foremost the further elaboration and finalisation of the EU proposal for the Directive on corporate sustainability due diligence presented on 23 February 2022. This draft aims to “foster sustainable and responsible corporate behaviour throughout global value chain”⁸. Another important process, also regarding environmental due diligence and the strengthening of the complaints system, is the revision of the OECD Guidelines for Multinational Enterprises. In the following, we formulate proposals on how such consistency could be established in the NAP. Among other things, we consider the following five steps to be useful for this expanded perspective:

The NAP should classify and address the EU draft Directive on sustainable corporate governance. This includes an evaluation and overview of which new topics should additionally be taken up in the NAP to take account of the EU draft and prepare for national implementation. However, it would not make sense to pre-empt the results of the negotiations in Brussels. The Institute therefore proposes that the NAP be designed in such a way that it can be progressively updated and thus react to and build on important developments. The NAP should outline clear processes on how the relevant Inter-Ministerial Committee (IMC) and the German WG should proceed with regard to the corresponding update of the NAP as soon as the EU Directive on sustainable corporate governance has been adopted (step-by-step NAP). This will help ensure that relevant processes, the results of which are not currently foreseeable, are adequately addressed and that the new NAP remains up to date despite dynamic developments.

The NAP should concurrently take into account the OECD Guidelines revision process and advocate for coherent stakeholder positions at EU and OECD level.

⁸ https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1145, accessed on 28.03.2022.

The NAP should set up a process with a clearly determined timetable for the definition of environmental due diligence. In this context it should also be examined how the decision of the Federal Constitutional Court on Article 20a of the Basic Law ("Climate Decision"; decision of the First Senate of 24 March 2021- 1 BvR 2656/18 -,) affects the state duty and the NAP process.

The NAP should, for example, aim at organising a symposium on the appropriate implementation of environment-related due diligence and be oriented towards established processes (for example environmental management systems). In this context, the links to the German Sustainable Development Strategy and the implementation of the 2030 Agenda should be clarified and described.

In the context of the NAP, a publication should also be developed which deals with the substantiation and implementation of the right to a clean, healthy, and sustainable environment in the area of business and human rights.

The contextual conditions at European level also include the EU Corporate Sustainability Reporting Directive, which is currently being developed, the Sustainable Finance Disclosure Regulation, the design of "minimum safeguards" according to Art. 18 of the EU Taxonomy Regulation as well as the planned social taxonomy as a supplement to the EU taxonomy for sustainable activities and the planned EU framework on business and human rights (European NAP). Consistency of the regulations should also be ensured with sectoral regulations; these include the EU Conflict Minerals Regulation, the draft Batteries Regulation, the Sustainable Products Initiative, or the EU Regulation on deforestation-free products, which has been available in a draft version since November 2021. Their impact on the NAP should also be examined.

(3) What other challenges and contextual conditions are relevant?

Russia's war of aggression on Ukraine is effecting change throughout global supply chains. In some cases, these changes are profound, not only due to the loss of supplier relationships from Ukraine itself, but also as a result of the sanctions applied to sectors dealing with the procurement of energy and other raw materials. The effects of these changes are not yet foreseeable in detail and will depend on the further course of the war. The new NAP should therefore react flexibly to crises and challenges – including climate change and digitalisation. Against the backdrop of the current war, it would make sense to hold expert discussions, for example on the effects of sanctions on supply chains and their controllability. Such expert discussions should serve to identify the effects of such developments on companies in terms of respecting human rights due diligence and what tasks lie ahead for the federal government.

An important task in the implementation of the UN Guiding Principles will continue to be the initiation of national implementation processes in more countries than before. This also applies within the EU, where only half of the member states have a NAP. The goal of promoting this throughout the EU was already set out in the Council conclusions in December 2020 within the framework of the German Presidency of the Council of the EU.⁹ It should also be part of German foreign and development policy to encourage and support third countries to develop NAPs and to support compliance with and enforcement of human rights and environmental standards. It will be important to further strengthen the infrastructure of the United Nations to promote these activities, specifically the UN Working Group on Business and Human Rights, the Office of the High Commissioner for Human Rights (OHCHR) and the ILO.

⁹ st13512-en20.pdf (europa.eu), accessed on 28.03.2022.

2.2 Inclusion of stakeholder recommendations

The Institute addresses the evaluated concerns of the stakeholders in its recommendations for the further NAP process as follows:

General recommendations:

In order to continue with the implementation of international standards of business and human rights, it is important first to recognise what companies are already doing. Businesses are partners in the implementation of the Action Plan and accordingly many of the proposals in the NBA focus on how they can be effectively supported in the implementation process. In recent years, many companies have achieved a great deal with regard to business and human rights, setting up sustainability or CSR departments, investing in internal processes and learning steps, and educating themselves both at the company level and at the level of chambers of commerce and industry and employers' associations. One indicator of this is participation in sector initiatives – those initiated during the implementation of the first NAP or older sector initiatives. The UN Guiding Principles foresee increased capacity in companies leading to increased demands on them to fulfil their responsibility to respect human rights.¹⁰

The Institute is convinced that a thorough evaluation of the measures already implemented would be very helpful for the continuation of the NAP process in order to gain a better understanding of where further instruments would be desirable and useful. It will be important for the implementation of the NAP to have more multi-stakeholder exchange formats with policymakers, on the one hand to gain more political support in implementing human rights due diligence in the companies themselves, and on the other hand to discuss possible solutions to dilemma situations.

The implementation of the third pillar of the UN Guiding Principles has played a subordinate role in

the NAP process so far. In particular, barriers to remedy and redress through state complaint mechanisms – including access to justice – should be given greater prominence in the further NAP process in order to improve the enforcement of victims' rights. This must include strengthening victims' access to justice and effective legal protection.

The measures of the NAP corresponding to all three pillars of the UNGPs should be designed to include the perspective of affected people where possible and appropriate. Among other things, sufficient resources must be made available for the effective inclusion of these rights holders.

Specific stakeholder recommendations supported by the Institute

- (1) Improving or establishing policy consistency, especially with regard to the following processes and political fields:
 - Financial sector/sustainable finance
 - EU drafts on Corporate Sustainability Due Diligence, Corporate Sustainability Reporting, Batteries Regulation, Sustainable Products Initiative, proposal on deforestation-free supply chains
 - Trade policy, especially sections on human rights and sustainability (incl. trade and environment) in trade agreements
 - Public procurement and foreign trade policy
 - UN treaty negotiations and possible alternatives
 - Accompanying regulatory processes with foreign and development policy measures during implementation in partner countries
 - Gender equality
 - Addressing the link between environment, climate, and human rights, especially against the background of a “right to a clean, healthy and sustainable environment” and the decision of the Federal Constitutional Court on Article 20a of the Basic Law (preservation of the natural foundations of life).

¹⁰ UNGP 15: “In order to meet their responsibility [...], business enterprises should have in place policies and processes appropriate to their size and circumstances [...]”.

- (2) Addressing challenges in sectors that are particularly exposed to major changes in the context of the transformation towards sustainability: The stakeholder discussions made it clear that the NAP should focus on identifiable conflicting goals or dilemma situations in the sectors that are particularly relevant to the envisaged transformations of the economy:
- Digitalisation (platform business models, data economy) and its human rights implications
 - Climate protection measures, the conflict between the expansion of renewable energies and human rights violations in the supply chains of the plants required for this purpose
- (3) Monitoring the implementation of the Act on Corporate Due Diligence in Supply Chains: Several suggestions relate to measures that should be pursued within the NAP to support the implementation of the Act on Corporate Due Diligence in Supply Chains:
- Reports on the human rights situation in non-Member States: It remains to be clarified which institution in Germany could conduct these on a regular basis. It could make sense to concentrate on countries presenting major challenges.
 - Support services (e.g. expansion of information and counselling services)
 - ▶ For German companies, especially SMEs in the supply chains of companies falling within the scope of the Act on Corporate Due Diligence in Supply Chains
 - ▶ and for foreign companies involved in the supply chains
 - Good examples of effective participation of rights holders; possibly as a category in the CSR Award (or as a special category) of the federal government
 - Publish generic recommendations for action (from the NAP sector dialogue in the automotive industry) that clearly show how the five core elements of human rights due diligence can be implemented
 - Guidance for the application of certifications and sustainability standards and, if necessary, the definition of binding quality criteria
- Develop guidelines for dealing with sensitive political contexts in countries involved in the supply chain (including corruption, fraud, money laundering, sanctions)
- (4) Improve the accessibility and usability of grievance mechanisms.
- Handbook for the development and interaction of effective grievance mechanisms (based on the insights from the NAP sector dialogue), including the perspective of affected persons/ rights holders
 - Support prototypes by way of the NAP sector dialogue (projects carried out inside companies, on sector-wide and cross-sector levels are conceivable). Consider the perspective of rights holders as early as the design stage of these prototypes
 - Address reparations in different formats, e.g. documentation and exchange of best practice examples in an implementation working group, or discussion formats on different types of reparations, their effectiveness and efficiency. These consultations should clarify what should realistically be expected from companies, both in terms of stopping a violation and beyond.

2.3 Summary of the table of recommendations

The table below has the following structure: The recommendations first refer to the NAP as a whole and then individually to the three pillars of the UN Guiding Principles. They are directly linked to an attribution of responsibility. As described at the beginning, the recommendations are – where possible – related to relevant passages from the Coalition Agreement and the Roadmap UNGP 10+ of the UN Working Group on Business and Human Rights.

A basic recommendation is to measure the progress made throughout the implementation phase. Where possible, NAP measures should be designed so that they are measurable. This will allow for the proper monitoring of progress made. Such monitoring helps to evaluate whether and to what extent NAP measures are working or need to be adapted. Furthermore, it is important not to look at the NAP in isolation, but to include all contexts – especially the current processes at EU level – in the NAP.

Regarding the **first pillar of the UN Guiding Principles**, we recommend systematically addressing existing gaps in protection – in particular, migrant workers in Germany should be put in a position to fully exercise their rights. Digitalisation has a central role to play in two respects: on the one hand, digital potentials should be more fully exploited, for example when it comes to increasing the transparency of long supply chains. On the other hand, the digital sector is often characterised by highly precarious working conditions, which migrant workers in particular suffer from. Their rights should be strengthened. With regard to the equality of women in the world of work, much has been undertaken since 2016, but further efforts are needed and should be addressed by the NAP. The same applies to the area of collective bargaining autonomy and worker participation.

In terms of trade policy, the NAP should define the position of the German government in order to advocate for a human rights- and environment-based reorientation in Brussels. Working towards an improved incentive structure for the GSP+ scheme should also be part of this positioning. At the United Nations level, the German government should

constructively promote the reform of the World Trade Organisation, also with a view to the UN's Sustainable Development Goals. Another recommendation is to better involve civil society in the decision-making processes of the ECOWAS EPA.

With regard to the nexus of state and economy, the Institute recommends that the Federal Government use the instruments of public procurement and guarantees in a more targeted manner in order to create incentives for the accelerated implementation of the UN Guiding Principles. Another recommendation is to use appropriate NAP measures to ensure that the Federal Government, both in its governmental function and as an economic actor, is fundamentally equipped to take on a role model function in the implementation of the UN Guiding Principles.

As the national legislative process on corporate due diligence in supply chains initiated in the wake of the first NAP was concluded in summer 2021, the German government is now called upon to advocate for appropriate minimum standards and fair competitive conditions in the EU and beyond. The Institute therefore recommends that a new NAP should focus on the German government's positioning in these processes – which, in addition to the EU and the UN Human Rights Council, also include the G7, G20, OECD, WTO and ILO.

The area of major sporting events also has close points of reference to the UN Guiding Principles and should therefore be considered in the context of a new NAP and aligned with the UNGPs.

With reference to the **second pillar of the UN Guiding Principles**, the Institute recommends using the new NAP to advance the implementation of the Act on Corporate Due Diligence in Supply Chains, to provide appropriate support to companies in this process and, in particular, to equip the Federal Office of Economic Affairs and Export Control (BAFA), which is responsible for monitoring implementation, to fully perform its monitoring function. Furthermore, the Institute recommends using the structure of the German WG to regularly gather stakeholder perspectives and thus provide BAFA with broad multi-stakeholder expertise to carry out its work.

The Institute recommends a total of nine measures that can be used to support companies. These aim, for example, at providing better information and advisory services for companies, improving networking and consolidation of collaborative approaches at home and abroad, and responsible joint solution-seeking by all stakeholders in situations that are particularly challenging and sensitive from a human rights perspective.

Since labels, audits and certifications play an increasingly important role in the fulfilment of due diligence obligations, the Institute recommends that the Federal Government establish binding quality criteria that make it possible to measure the significance of these instruments and establish comparability. In addition, we recommend examining the extent to which audit and certification bodies should be held liable for the facts they certify. It is important to stress that this should not be a safe-harbour arrangement, i. e. not an exclusion of liability of the acceding companies, but an additional liability (joint and several liability) of the certifiers for the work they perform alongside the work the companies do to fulfil their due diligence. The responsibility for the appropriate exercise of due diligence should not be delegated to the certifiers.

In the area of the **third pillar of the UN Guiding Principles**, the Institute suggests a stronger focus on the aspect of reparation and that remediation should not be understood as merely stopping a violation of rights. We also recommend that companies be supported in the establishment of effective grievance mechanisms through the development of practical guidelines, including piloting effective and accessible local mechanisms in partner countries. With regard to the NCPs, we recommend maintaining a dialogue on how they could play an even more important role as an extrajudicial state complaints body. With regard to judicial remedies, the Institute recommends commissioning a study to systematically identify the existing barriers to legal protection and access in Germany, both for plaintiffs in Germany and for plaintiffs in countries involved in the supply chains. The study should in particular include recommendations on how the identified barriers can be removed.

General expectations of NAP 2.0

- ▶ Address the link between human rights, environmental and climate protection (esp. the right to a clean, healthy and sustainable environment; consequences of Art. 20a of the Basic Law and other environmental agreements)
- ▶ Conference on the implementation of environmental due diligence obligations
- ▶ Draft a background publication on the formalisation and implementation of the right to a clean environment

Federal Ministry for the Environment, Nature Conservation, Nuclear Safety and Consumer Protection, Federal Foreign Office

Coalition Agreement, p.147:

“We will advocate at UN level for the formalisation and enforcement of the right to a clean environment.”

UNGP 10+ Roadmap, Goal 1.1, p.5:

“Respecting people and the planet, by preventing and addressing adverse impacts across business activities and value chains, is the most significant contribution most businesses can make toward sustainable development. [...] The Human Rights Council’s recognition of the human right to a clean, healthy and sustainable environment – citing the UNGPs – is but the latest global articulation of how climate change, the environment and human well-being are inextricably linked.”

1st pillar

Closing gaps in protection

- Identify and close legal gaps in the area of precarious employment, e. g. in agriculture, logistics, automotive suppliers or household-related services
- (Re)evaluation of the ratification of relevant conventions with a clear timetable as part of the NAP
- Address the connection between human rights, environmental and climate protection more strongly in NAP implementation forums (inter-ministerial committees, German WG) (esp.: right to a clean, healthy, and sustainable environment; consequences of Article 20a of the Basic Law; other environmental agreements)
 - ▶ ILO conventions, e. g. on employment protection, awarding contracts and minimum wages
 - ▶ Additional Protocol to the UN Social Covenant

Federal Ministry of Labour and Social Affairs, Federal Ministry for Economic Affairs and Climate Action, Federal Ministry of Food and Agriculture //

Federal Foreign Office, Federal Ministry for the Environment, Nature Conservation, Nuclear Safety and Consumer Protection

Closing gaps in protection

Coalition Agreement, p.147:

“We will ratify the Additional Protocol to the UN Social Covenant”

- Include measures to improve working and living conditions for foreign workers living in Germany in the NAP
 - ▶ Legislation setting minimum standards for accommodation and regular monitoring of compliance
 - ▶ Abolish business registration by agents, make personal appearance a requirement, also renewed personal appearance one year after registration
 - ▶ Collection of unpaid wages by an authority for employees corresponding to the authorities that collect social insurance contributions from employers
 - ▶ Clarification in law that courts are exempted from the obligation to provide information on residence law matters to immigration authorities
 - ▶ Introduce effective control measures when awarding contracts for work to subcontractors abroad

Federal Ministry of Justice, Federal Ministry of Labour and Social Affairs

Coalition Agreement, p.70:

“In the case of the Temporary Employment Act (Arbeitnehmerüberlassungsgesetz), in the event of European case law, we will examine whether and which legal changes need to be made, taking into account the evaluation of the law. We will improve the protection of workers on cross-border assignments and reduce bureaucratic hurdles. For seasonal workers, we will ensure full health insurance coverage from their first day of work. We will strengthen “fair mobility” and thus better inform workers about their rights. We will ratify the International Labour Organisation (ILO) Convention No. 184 on Safety and Health in Agriculture.”

Closing gaps in protection

- Strengthen workers' rights on digital platforms
 - ▶ Effective enforcement of the right to collective bargaining, crackdown on price fixing
 - ▶ Strengthen the right to informational self-determination, especially with regard to the traceability of previous activities
 - ▶ Offer more training/retraining to counteract the loss of jobs through digitalisation
 - ▶ Ensure co-determination rights of employees of delivery services: in particular, counter growing pressure due to the performance evaluation of employees based on the speed of delivery

Federal Ministry of Labour and Social Affairs, Federal Ministry of Justice, Federal Ministry for Economic Affairs and Climate Action

Coalition Agreement, p.72:

“Digital platforms are an asset for the world of work, which is why good and fair working conditions are important. With this in mind, we will review existing law and improve the data basis. To this end, we will enter into dialogue with platform providers, platform workers, self-employed workers and social partners. We will constructively support the EU Commission’s initiative to improve working conditions on platforms. In shaping AI in the world of work, we will rely on a people-centred approach, social and economic innovation as well as a focus on the common good. We support the EU’s risk-based approach.”

- Explore and harness the potential and risks of digital opportunities for UNGP implementation, e. g. to increase transparency in supply chains
- Take measures to promote the responsible use of digital technologies and other products that have the potential to contribute to the violation of human rights
 - ▶ Measures to effectively prevent and punish arbitrary and illegal control of the civilian population with the help of (exported) surveillance technology
 - ▶ Measures to effectively protect the security of human rights defenders and other disproportionately affected groups

Federal Ministry for Digital and Transport

Closing gaps in protection

UNGP 10+ Roadmap, Goal 1.3, p.III:

“There is a well-established understanding that digital technologies can contribute to the achievement of the Sustainable Development Goals (SDGs), and that such technologies are essential to harness accelerated potential to be able to reach the goals by 2030. [...] The UNGPs provide a compelling starting point for companies and States seeking to address the potential harms of digital technologies by effectively managing associated risks to people, as they precisely seek to manage the gap between rapid change (in this case technological change) and the capacity of society to manage its consequences.”

- Set framework conditions for an inclusive labour market; the focus should be on creating employment opportunities in accessible jobs with public and private employers in the general labour market; the situation of women with disabilities should be afforded special attention in this context.
 - ▶ Re-adjust incentive and regulatory structures in the employment sector
 - ▶ Continuously review and improve counselling and support services for trainees or employees with disabilities and for companies
 - ▶ Special structures in the field of work and employment, such as workshops for people with disabilities or during the transitional phase between school and training, should be continuously transformed into inclusive standard structures
 - ▶ Continuously and rapidly increase the proportion of barrier-free workplaces and training centres as a priority policy goal, as well as increasing the diversity and inclusion competence of managers, trainers and colleagues
- Measures to promote the equality of women in German companies and in the supply chains
 - ▶ SMART¹¹ formulation of targets to increase the proportion of women in management positions in the German economy
 - ▶ SMART formulation of targets to reduce the gender pay gap in Germany
 - ▶ Effective implementation of ILO Convention No. 190

Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, Federal Foreign Office, Federal Ministry of Labour and Social Affairs, Federal Ministry for Economic Cooperation and Development

Federal Ministry of Labour and Social Affairs

Federal Ministry for Family Affairs, Senior Citizens, Women and Youth

11 specific, measurable, assignable, realistic and time-related

Closing gaps in protection

- ▶ Promote the ratification of conventions containing women's rights in partner countries
- ▶ Formulate an expectation that companies should commit to the UN Convention on the Rights of Women and relevant ILO conventions in a declaration of principles
- ▶ Apply a gender-sensitive approach to risk and impact assessments and take into account the risks of multiple discrimination and gender-based violence

Coalition Agreement, p. 115:

“We will ratify ILO Convention No. 190 on the Elimination of Violence and Harassment in the World of Work. [...] In order to make successes and needs for action more visible, we will expand the scope of reporting for the annual information of the federal government on the development of the proportion of women and men at management levels and in bodies of the private sector and the public sector and, if necessary, tighten the law. We intend to close the pay gap between women and men. Therefore, we will further develop the Pay Transparency Act and strengthen its enforcement by enabling workers to assert their individual rights through associations by way of litigation. We want to improve the compatibility of family and work. In order to enable more employees to take advantage of bridge part-time work in the future, we will revise the so-called “excessive demands clause” accordingly and at the same time make it clearer for companies. We want to further develop family taxation in such a way that partnership responsibility and economic independence are strengthened with regard to all family forms. In the course of improved digital interaction between taxpayers and the tax administration, we will transfer the combination of tax classes III and V to the factor procedure of tax class IV, which will be simple and unbureaucratic to apply and create more fairness.”

- In cooperation with trade unions, develop incentive structures to increase collective bargaining autonomy both in Germany and in the supply chains, if necessary, in cooperation with regional ILO structures

Federal Ministry of Labour and Social Affairs

Closing gaps in protection

Coalition Agreement, p.71:

“We intend to strengthen the autonomy of collective bargaining, the collective bargaining partners and the degree of collective bargaining coverage so that fair wages are paid in Germany – this will also promote the necessary wage adjustment between East and West. In order to strengthen collective bargaining coverage, public procurement by the federal government will be tied to compliance with a representative collective agreement in the respective sector, with the awarding of contracts based on a simple, unbureaucratic declaration. We will prevent the spin-off of companies with the same owner for the purpose of evading collective agreements by ensuring that the applicable collective agreement remains in force. Section 613a of the German Civil Code (rights and obligations in the case of the transfer of undertakings) remains unaffected. In dialogue with social partners, we will determine further steps to strengthen collective bargaining and in particular discuss possibilities for further experimental areas.”

- Strengthen the right (and its enforcement) to co-determination
 - ▶ Preventing legal circumvention methods to prevent co-determination in companies
 - ▶ Introduce dissuasive sanctions in case of violations
 - ▶ In close cooperation with trade unions, create incentive structures to increase co-determination in companies in the supply chain
 - ▶ Analyse the barriers to the exercise of rights created by the increase in people working from home and develop measures to counteract them

Federal Ministry of Labour and Social Affairs

Closing gaps in protection

Coalition Agreement, p.71:

“We will further develop co-determination. Works councils should be able to decide for themselves whether they work in analogue or digital form. Within the framework of the standards as required by the constitution, we will test online works council elections in a pilot project. We will modernise the right of trade unions to have the same digital access to workplaces as they do resulting from their analogue rights. Socio-ecological transformation and digitalisation can only be effectively shaped with the help of employees. With regard to these issues, we will evaluate the Works Council Modernisation Act. In future, we will classify the obstruction of democratic co-determination as an official offence. [...] Germany occupies a globally important position in corporate co-determination. We will preserve the existing national regulations. We want to prevent abusive circumvention of existing co-determination law. The Federal Government will work to ensure that corporate co-determination is further developed so that the growth of SE companies no longer leads to the complete avoidance of co-determination (freezing effect). We will transfer the group attribution from the Co-Determination Act to the One-Third Participation Act if there is de facto real control.”

Trade and investment protection policy

- Take a clear position in Brussels for a social, ecological, and human rights-based reorientation of EU trade and investment protection policy
 - ▶ Promote the review and reform of sustainability impact assessments, sustainability clauses and the Generalised Scheme of Preferences within the EU framework.
 - ▶ Demand binding formulation of sustainability chapters and their submission to the respective sanction and dispute settlement mechanism
 - ▶ Demand that the substance of sustainability chapters be expanded (human rights/UNGP, high standards concerning climate, environmental and labour)
 - ▶ Strengthen the obligation in trade agreements that states implement human rights, environmental and ILO agreements in national law
 - ▶ Demand that human rights and environmental clauses be included as general exception clauses in new trade agreements, i. e. allow individual trade policy measures to be suspended in the event of serious human rights impacts

Federal Ministry for Economic Affairs and Climate Action, Federal Ministry for Economic Cooperation and Development

Trade and investment protection policy

- | | | |
|---|---|--|
| <ul style="list-style-type: none"> ▶ Demand that sustainability impact assessments be carried out and published before negotiations begin (including consultations with affected groups and NGOs) ▶ Advocate that trade agreements are only concluded with countries that have signed the Paris Agreement ▶ Commitment to dismantling trade barriers for sustainable products: Exemption from customs duties, exemption from VAT for certified companies | <ul style="list-style-type: none"> – Advocate for GSP+ improvements <ul style="list-style-type: none"> ▶ Improve the incentive structure of GSP+: e.g. extend preferences only if ratified ILO conventions and human rights conventions are successfully implemented. Also examine, where necessary, additional preferences for products certified according to certain sustainability criteria ▶ Call for an independent review of the conditions of both the GSP+ and the withdrawal clause, e.g. by an independent panel of experts, as also provided for in various EU FTAs | <p>Federal Ministry for Economic Affairs and Climate Action</p> |
| <ul style="list-style-type: none"> – Commitment to a functioning multilateral trade policy, the further development of the World Trade Organisation and rules-based free trade <ul style="list-style-type: none"> ▶ Also include the alignment of the WTO with the Paris Climate Agreement and the UN Sustainable Development Goals | <p>Federal Ministry for Economic Affairs and Climate Action</p> | <p>Federal Ministry for Economic Affairs and Climate Action</p> |
| <ul style="list-style-type: none"> – ECOWAS EPA (economic partnership agreement): The Consultative Committees should involve civil society as well as social partners <ul style="list-style-type: none"> ▶ Results of SIAs (sustainable impact analyses) must be published in good time during the negotiation process (before the Council issues the trade mandate to the Commission), human rights must always be taken into account in negotiations: before, during and after the mandate is issued during the evaluation ▶ Guidelines must be developed on how to take human rights into account ▶ Diplomatic missions should have a mandate to monitor compliance with agreements and receive complaints regarding trade activities. Information on human rights violations in the EU may also be provided as part of this framework. | <p>Federal Ministry for Economic Affairs and Climate Action, Federal Ministry for Economic Cooperation and Development</p> | <p>Federal Ministry for Economic Affairs and Climate Action, Federal Ministry for Economic Cooperation and Development</p> |

Trade and investment protection policy***Coalition Agreement, p.34:***

“We want to strengthen rules-based free trade on the basis of fair social, ecological and human rights standards and advocate for a German and European trade policy against protectionism and unfair trade practices. [...] We support the strengthening of multilateralism and the further development of the World Trade Organisation (WTO), including the renewal of the rules on market-distorting subsidies, the lifting of the blockade of the Dispute Settlement Mechanism and an alignment with the Paris Climate Agreement and the UN Global Sustainability Goals. We support the reorientation of the EU trade strategy and plan to equip future EU trade agreements (e. g. with Chile, New Zealand, Australia, ASEAN, India) with effective sustainability standards using a dispute settlement mechanism. At European level, we will advocate for the strengthening of the decision-making powers of the EU Parliament in the further development of treaties through regulatory cooperation. [...] Together with the USA, we intend to advance multilateral trade, the reform of the WTO, the establishment of ecological and social standards, prosperity and the dynamics of sustainable world trade. We are committed to an ambitious agreement with the USA that will allow for a legally secure and data protection-compliant data transfer according to European protection standards. We will decide on the ratification of the Comprehensive Economic and Trade Agreement (CETA) after the Federal Constitutional Court has completed its review. We will only support the ratification of the Mercosur Agreement if the partner countries first enter into legally binding commitments on environmental, social and human rights protection that can be implemented and verified, and if practically enforceable supplementary agreements on the protection and preservation of existing forest areas have been concluded. Ratification of the EU-China Investment Agreement in the EU Council cannot take place at present for various reasons. We will work towards reciprocity. We advocate for investment agreements that focus investment protection for companies abroad on direct expropriation and discrimination and want to prevent the misuse of the instrument – in the pending agreements as well.”

State-economy nexus

- Measures designed to exploit the potential of public procurement as an accelerator of UNGP implementation
 - ▶ Use the upcoming reform/evaluation of the EU Public Procurement Directive; focus not only on ILO core labour standards, but also on human rights and environmental due diligence obligations
 - ▶ Make changes to the draft Introductory Act Against Constraints of Competition (GWB-E), in particular: explicit reference to ILO core labour standards, reference to the entire supply chain, regulation on controls and sanctions in the law
 - ▶ Need for control in subcontracting, e.g. disclosure of which parts of the service are carried out by whom
 - ▶ Provide sufficient human and financial resources to train the contracting authorities and to review the information provided by the companies

Federal Ministry of the Interior, Federal Ministry for Economic Affairs and Climate Action, Federal Ministry of Labour and Social Affairs, Federal Ministry for Economic Cooperation and Development

Coalition Agreement, p.33:

“The Federal Government will orient public procurement and the awarding of contracts in an economic, social, ecological and innovative way and strengthen their binding nature without endangering the legal certainty of award decisions or increasing the access barriers for small and medium-sized enterprises. We will specify the existing requirements in national public procurement law in accordance with European public procurement law.”

- Measures to review and ensure coherent UNGP implementation both internally and externally (e.g. fundamental “NAP check” for relevant legislative processes, investments, trade policy measures, etc.)

Interministerial Committee on Business and Human Rights

UNGP 10+ Roadmap, Goal 2.1, p.IV:

“[L]aws and policies that govern the creation and ongoing operation of business enterprises, such as corporate laws, should be leveraged to shape more responsible business conduct. The UNGPs also clarify that the human rights obligations of States apply when pursuing investment policy objectives, when they act as economic actors, or when they outsource public services that lead to adverse human rights impacts. Improving policy coherence also means that States should actively promote business respect for human rights in the context of multi-lateral forums and organizations that deal with development, finance, investment and trade.”

State-economy nexus

- Measures to use the potential of external economic promotion as an accelerator of global UNGP implementation
 - ▶ Encourage companies backed by guarantees to undertake UNGP-based human rights due diligence in specific projects and make this a binding requirement for them if the projects are in business areas associated with significant human rights risks
 - ▶ Review the extent to which transparency about the screening criteria, guidelines and sources used can be improved
 - ▶ This may also apply to information on projects with human rights and environmental impacts; here it should be examined whether and how additional transparency beyond the existing rules should be introduced, while at the same time safeguarding company and business secrets
 - ▶ Regularly update human rights policy for the promotion of foreign trade
 - ▶ Examine the extent to which strengthening the central complaints office (NCP) with sufficient resources would be appropriate: local grievance mechanisms are often only suitable for “minor” problems, not for those of a structural nature
 - ▶ If necessary, conduct project-related ex-ante assessment in difficult country contexts as to whether these aspects (e.g. restrictions on civil liberties, corruption, violations of social human rights) have been sufficiently taken into account, as they can have an impact on the quality of consultation processes, for example. Identify which institution could carry out such audits
 - ▶ Set exclusionary criteria
 - (if not already regulated in export control) devices for electronic surveillance to security agencies in authoritarian states;
 - for companies that repeatedly fail to comply with their human rights due diligence obligations
 - ▶ Improve access to information and transparency
 - When granting guarantees for large projects, not only the budget committee should be informed, but also relevant technical committees upon request for individual projects.

Interministerial Committee on foreign trade promotion

<p>State-economy nexus</p>	<ul style="list-style-type: none"> • Stakeholders: In the context of a symposium, examine whether and, if so, how further information on projects backed by federal guarantees should be made available, including monitoring and participation processes. Euler Hermes should not only contact local companies, but also, where possible, local civil society and potentially affected persons. <p>Coalition Agreement, p.35:</p> <p><i>“We support credit guarantees for exports in the form of Hermes guarantees, especially for SMEs with small-ticket financing. At the same time, they should not stand in the way of climate policy goals.”</i></p> <ul style="list-style-type: none"> – The German government is responsible for enabling all publicly owned companies to take a leading role in implementing corporate due diligence in Germany, according to their size and circumstances. ▶ Best practice examples can be tested and solutions developed with state-owned companies, particularly with regard to those steps in the due diligence process that present companies with particular challenges (e. g. effective involvement of the stakeholder perspective, acting in politically sensitive situations, prioritising risks in extensive supply chains). 	<p>Interministerial Committee on Business and Human Rights</p>
<p>International negotiations</p>	<ul style="list-style-type: none"> – Positioning on current international negotiation processes should play a central and prominent role in the NAP and be clearly formulated in terms of both substance and urgency (concerns both negotiations at EU and OECD level as well as negotiations in international forums including the UN Human Rights Council, the ILO, the WTO, G7, G20) – Constructive participation and engagement in UN Treaty negotiations (or possible alternatives) <ul style="list-style-type: none"> ▶ The German government should work to ensure that a proactive position is taken within the EU on the UN treaty process and that an EU negotiating mandate is achieved ▶ If applicable, participation as federal government or in the EU circle in the Group of Friends of the Chair 	<p>Federal Foreign Office, Federal Ministry of Justice, Federal Ministry of Labour and Social Affairs, Federal Ministry for Economic Cooperation and Development</p> <p>Federal Foreign Office</p>

International negotiations

- EU-Processes
 - ▶ Clear commitment to a social taxonomy that defines minimum human rights and social standards as well as activities, products and services that contribute to a socially acceptable transition that promotes human rights
 - ▶ Corporate Sustainability Due Diligence Initiative: The federal government should advocate for a strong EU-wide regulation that focuses on rights holders and their most pertinent human rights risks. This means, among other things, that effective participation of rights holders at various points in the due diligence process should be compulsory, and that remedial action, based on the needs and in cooperation with the affected persons, should play a greater role in the draft. Moreover, in order for companies to address the most serious risks, due diligence should not be limited to established business relationships. Once the Directive has been adopted, the German government should incorporate it into a national implementation law that is designed as an intervention standard and fully exploits the potential of the Directive in accordance with the UNGP
 - ▶ Forced labour: The German government should actively support the EU initiative to ban the placing of products on the EU internal market that are associated with child labour or forced labour and advocate for effective and comprehensive regulation. For the effective elimination of child labour and forced labour, these bans should be accompanied by other holistic measures against child labour and forced labour. Due to the complexity of the causes, a distinction must be made between child labour and forced labour.
- Consistency with other EU regulations
 - ▶ Human rights aspects and standards defined in the context of the social taxonomy by the working group of the Sustainable Finance Platform should be coherently examined and included in the planned CSRD guidelines
 - ▶ Review whether the current restrictions on raw materials should be lifted in the Batteries Regulation

Federal Foreign Office, Federal Ministry of Justice, Federal Ministry of Finance, Federal Ministry for Economic Affairs and Climate Action, Federal Ministry for Economic Cooperation and Development

Federal Ministry for Economic Affairs and Climate Action, Federal Foreign Office, Federal Ministry for Economic Cooperation and Development, Federal Ministry of Justice

International negotiations

- ▶ At EU level, a revision of the Conflict Minerals Regulation is planned for the coming year. This could be used to create consistency and to align the Conflict Minerals Regulation and the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas more closely with the UNGPs, examine the inclusion of environmental responsibilities, and extend the scope to more minerals. The OECD Secretariat recommends such a review of the Guidance.
- ▶ Deforestation-free supply chains: Review mandate for environmental due diligence; indigenous rights should be taken into account more comprehensively.

Coalition Agreement, p.34:

“We support an effective EU supply chain law based on the UN Guiding Principles on Business and Human Rights that does not overburden small and medium-sized enterprises. [...] We support the EU Commission’s proposal for a law on deforestation-free supply chains. We support the EU’s proposed ban on imports of products from forced labour.”

Coalition Agreement, p.147:

“Based on the UN Guiding Principles on Business and Human Rights, we advocate for a European Action Plan on Business and Human Rights.”

Coalition Agreement, p.170:

“Climate and sustainability risks are financial risks. We advocate for European minimum requirements for ESG ratings and the mandatory inclusion of sustainability risks in the credit ratings of the major rating agencies. We advocate for the establishment of a uniform transparency standard for sustainability information for companies at European level. We intend to integrate ecological and, where appropriate, social values into existing accounting standards in dialogue with the business sector, starting with greenhouse gas emissions. We therefore support the European Commission’s plan to develop a Corporate Sustainability Reporting Directive. The German government will implement a credible Sustainable Finance Strategy with international reach based on the recommendations of the Sustainable Finance Advisory Council. The Advisory Council should be continued as an independent and effective body.”

International negotiations

UNGP 10+ Roadmap, Goal 6.1, p.VII:

„Addressing the role of the financial sector is equally critical, given its role in fuelling economies and the behaviour of companies within them. Investors and other financial sector actors are expected to respect human rights by knowing the risks to people connected with their investment activities and showing how they take action to manage those risks. Engaging stakeholders in this process is essential. Progress in how financial sector actors implement their responsibility will also be a key means to speed and scale up business respect for human rights overall. Growing ESG momentum provides an opportunity for faster progress. However, to ensure that this development helps drive better business practices that lead to positive outcomes for people and environment, there is a need to mainstream the understanding that the UNGPs provide the core content of the S in ESG, while the UNGPs are also relevant across ESG considerations.“

Sport and human rights

- Addressing sport and human rights, in particular major sporting events

Coalition Agreement, p.114:

“The awarding and organisation of major international sporting events should be strictly linked to the observance of the UN Guiding Principles on Business and Human Rights and Sustainability. We will support the Special Olympics 2023 in Berlin and the European Men’s Football Championship 2024 as well as future bids for major sporting events from Germany such as the Olympic and Para-Olympic Games that are based on these principles and involve the population in good time.”

Federal Ministry of the Interior and Community, Federal Ministry of Justice, Federal Foreign Office, Federal Ministry for Economic Cooperation and Development

2nd pillar

Corporate due diligence

- The Federal Government should promote the implementation of the Act on Corporate Due Diligence in Supply Chains with the current NAP
- The Federal Office for Economic Affairs and Export Control should
 - ▶ be adequately staffed and funded
 - ▶ be equipped with the necessary powers (cooperation, unannounced on-site visits)
 - ▶ Use multi-stakeholder formats for the exchange and collection of positions when difficult questions arise (e. g. regarding the human rights expertise of the staff, responsibilities of the authority, human rights review criteria, balancing of diverging interests) in order to include the experience and knowledge of the various stakeholder groups
- The German Working Group on Business & Human Rights should actively accompany the implementation process of the Act on Corporate Due Diligence in Supply Chains; the Federal Office for Economic Affairs and Export Control should also report directly to the Working Group when necessary (not only through the Federal Ministry for Economic Affairs and Climate Action and the Federal Ministry of Labour and Social Affairs).

Federal Ministry for Economic Affairs and Climate Action, Federal Ministry of Labour and Social Affairs, Federal Office for Economic Affairs and Export Control

Federal Office for Economic Affairs and Export Control, Federal Ministry of Labour and Social Affairs, Federal Ministry for Economic Affairs and Climate Action

Coalition Agreement, p.34:

“The law on corporate due diligence in supply chains will be implemented unchanged, and improved where necessary.”

Coalition Agreement, p.147:

“We will revise the National Action Plan on Business and Human Rights in line with the Supply Chain Act.”

UNGP 10+ Roadmap, Goal 1.4, p.III:

“To support coherence and effectiveness of efforts that leverage the role of business in addressing global challenges, including through ensuring consistent expectations to business and more level playing fields, it is critical to build on the common understanding and conceptual clarity provided by the UNGPs.”

Offers to support the implementation of due diligence

- Early warning systems: Providing up-to-date human rights-related country data on states relevant to German supply chains
 - ▶ Hold a symposium with the aim of developing an appropriate concept and assigning responsibilities
- Further expand foreign support networks and focus more on rights holders
 - ▶ Support for companies, reliable contact points for rights holders on the ground and mutual information are the common goals. This requires institutionalised agreements under the leadership of the missions abroad and, if necessary, the close institutionalised involvement of national human rights institutions, local civil society and trade union actors, and regional UN organisations where they are available.
 - ▶ Conduct a systematic analysis of the need for information and advice on, among other things, the Act on Corporate Due Diligence in Supply Chains, as well as voluntary standards such as the OECD Guidelines for MNEs by companies, civil society and trade unions in partner countries
- Develop clear requirements for impact-oriented stakeholder and rights holder consultations (especially in the context of risk analysis, the measurement of the effectiveness of remedial actions, development of internal grievance mechanisms)
 - ▶ Formulate requirements in such a way that they are of use to companies as concrete guidance for their day-to-day activities
 - ▶ Clarify that consultations are measured by their impact and the resulting gain in knowledge (avoid box-ticking)

Federal Foreign Office, Federal Ministry for Economic Cooperation and Development

Federal Foreign Office, Federal Ministry for Economic Cooperation and Development

Federal Foreign Office, Federal Ministry for Economic Cooperation and Development, Federal Ministry of Labour and Social Affairs, Federal Ministry of Justice

Offers to support the implementation of due diligence

UNGP 10+ Roadmap, Goal 5, p.VII:

„As a cross-cutting issue to support better prevention and remediation, meaningful stakeholder engagement should be at the heart of State and business strategies to realize legitimate and effective responses in addressing human rights risks and impacts in a business context. Meaningful stakeholder engagement, including effective social dialogue, means seeing affected individuals and communities, trade unions, human rights and environmental defenders, civil society organizations and others who play an essential role in monitoring State and business practice as partners. Adhering to the UNGPs' call to focus on risks to people (rather than just risks to business), and in particular to focus on rights-holders in situations that make them vulnerable (including attention to gender-related risks), can help facilitate the move to "stakeholder capitalism", sustainable development and just transition that leaves no one behind.“

- Initiation of further sectoral dialogues similar to the sectoral dialogue with the automotive industry
 - ▶ Provide funding to NGOs and, where possible and appropriate, to stakeholders to encourage participation in MSIs
 - ▶ Gather examples of best practice on how to promote effective social dialogues on the ground. Proposal of two pilot projects
 - ▶ Link the idea of the Global Fund for Social Protection with the NAP process

- Continue successfully established MSIs, continue to support them financially if necessary; where appropriate, support the establishment of new MSIs
 - ▶ Existing sustainability initiatives should be maintained, as a lot of capacity building has gone into them and positive impacts are measurable
 - ▶ MSIs should evaluate themselves after a few years and based their further development based on their lessons learnt

Federal Ministry of Labour and Social Affairs

Federal Ministry for Economic Cooperation and Development, Federal Ministry of Labour and Social Affairs

Offers to support the implementation of due diligence

- The Helpdesk on Business & Human Rights should at least be maintained in its current form as an initial referral advice centre, disseminator, organiser of informational events and provider of online support tools (CSR Risk Check, SME Compass, Business & Human Rights Practice Guide, eLearning courses). Due to the increasing political relevance (Act on Corporate Due Diligence in Supply Chains, EU Directive, etc.) and the need for support from companies and disseminators of information, it may be make sense to expand the helpdesk in order to adequately fulfil these tasks in the future.
- Cooperation with other countries
 - ▶ Strengthen rights holders in partner countries (promotion of local civil society, NHRIs, whistleblower protection)
 - ▶ Use ILO structures (also regional) and other existing structures on the ground (e.g. OHCHR, UNDP). Learn from these and cooperate with them
 - ▶ Where requested, provide support for the development of NAPs in partner countries

Federal Ministry for Economic Cooperation and Development, Federal Ministry of Labour and Social Affairs

Federal Ministry for Economic Cooperation and Development

Coalition Agreement, p.151:

“Together with trade unions, companies and civil society, we advocate for fair and formal working conditions and living wages worldwide. We want to actively support our partner countries in the fight against poverty by building up social protection systems. To this end, we also want to support an international financing instrument (Global Fund for Social Protection) for those countries that do not have sufficient resources at their disposal.”

UNGP 10+ Roadmap, Goal 1.2, p.II:

“Alliances between States and between businesses, as well as multi-stakeholder alliances involving rights-holders, business, governments, unions, civil society and international organizations, which develop collective action founded on business respect for human rights, accountability and meaningful stakeholder engagement are essential for building trust and increasing leverage to deal more effectively with them.”

<p>Offers to support the implementation of due diligence</p>	<ul style="list-style-type: none"> – Address grievances that the Federal Office for Economic Affairs and Export Control encounters abroad in the daily work of the Federal Foreign Office and the Federal Ministry for Economic Cooperation and Development and allow them to deal with such issues in a parallel manner; the two agencies should also share knowledge with the Federal Office for Economic Affairs and Export Control (create structures for this if necessary) – Handling of sensitive political contexts: provide a clear framework for the behaviour expected of companies in countries that deliberately disregard human rights, especially if national law conflicts with international standards or German and EU law <p>UNGP 10+ Roadmap, Goal 3.1, p.V:</p> <p><i>“A critical existing challenge concerns conflicting requirements, when local legal frameworks (e.g. gender or LGBTI discrimination) contradict international human rights standards. Major challenges also continue particularly where activities or business relationships connect to corruption, criminal activities, or contexts requiring “heightened” due diligence, notably conflict-affected areas or other situations where atrocities are a known risk, such as in authoritarian regimes or in situations of illegal occupation. Yet, emerging practices over the course of the past decade demonstrate that meeting the business responsibility to respect is possible. For the next decade, uptake needs to move more widely into the mainstream of the business community, beyond pioneers, and with a step change in moving from commitments to changes in business processes and practice.”</i></p>	<p>Federal Office for Economic Affairs and Export Control, Federal Foreign Office, Federal Ministry for Economic Cooperation and Development</p> <p>Federal Foreign Office, Federal Ministry for Economic Cooperation and Development, Federal Ministry of Labour and Social Affairs</p>
<p>Audits, official labelling, certifications</p>	<ul style="list-style-type: none"> – Examination of measures to safeguard/improve the comparability, independence and quality of sustainability labels <ul style="list-style-type: none"> ▶ Organise a series of technical meetings as part of the NAP process to discuss how this could best be developed and safeguarded within the European legal framework ▶ Official labels should primarily be awarded by independent third parties rather than by the producing companies themselves – use of guaranteed certifications rather than individual certifications ▶ Examine legal regulatory options for independent quality assessment and monitoring of sustainability labels and certifications 	<p>Federal Ministry for the Environment, Nature Conservation, Nuclear Safety and Consumer Protection, Federal Ministry for Economic Cooperation and Development</p>

Audits, official labelling, certifications

- ▶ Recognition of seals/certifications can only have a supporting function and should not be designed as a safe harbour regulation
- Consider the introduction of a liability mechanism for audit and certification bodies for the matters they certify
 - ▶ Any liability mechanism must not lead to an automatic release from liability of the companies using audits, labels or certificates (joint and several liability)

Federal Ministry of Justice

UNGP 10+ Roadmap, Goal 7.2, p.IX:

“[W]e need to see progress in measuring how businesses implement their responsibility through better policies and processes, and how effective these are in actually preventing and addressing human rights harms.”

3rd pillar

Non-state-based grievance mechanisms

- Federal government should develop interdisciplinary and practice-oriented guidelines for the establishment of effective and accessible intra-company and sector-wide grievance mechanisms (also for SMEs).
- Pilot on-site grievance mechanisms (building on the experience of the automotive sector dialogue)
 - ▶ Companies are often overwhelmed by the task of setting up a grievance mechanism; they need points of contact that possess country expertise in partner countries (for stakeholders and those affected) and can also act as mediators in order to reach a compromise/dispute settlement
 - ▶ Grievance mechanisms must be fundamentally effective, transparent and reliable
 - ▶ Potentially affected persons must be involved and continuously consulted from the time the grievance mechanism is established
 - ▶ There must be interlinked and cooperating grievance mechanisms on site and in Germany (reporting must be ensured from the beginning to the end of the supply chain)

Federal Ministry of Labour and Social Affairs, Federal Ministry of Justice

Federal Ministry for Economic Cooperation and Development

<p>Non-state-based grievance mechanisms</p>	<p>UNGP 10+ Roadmap, Goal 4, p.VI:</p> <p><i>“The UNGPs envisage that access to effective remedy for business-related human rights abuses should be enabled through a remedy ecosystem involving complementary State-based judicial mechanisms, State-based non-judicial grievance mechanisms, and non-State-based grievance mechanisms to ensure the best possible outcomes for rightsholders. Meaningful progress for this core component of the UNGPs is a major and urgent priority for the next decade – and a critical issue for realizing human rights and sustainable development for all.”</i></p>	
<p>State-based non-judicial grievance mechanisms</p>	<ul style="list-style-type: none"> – Discuss with the NCP how it could be systematically used as an effective extrajudicial complaints body <ul style="list-style-type: none"> ▶ A feasibility study on this would be desirable, building on the findings of the Viadrina study ▶ Organisation of a symposium with the NCP (incl. advisory board), the German Working Group on Business and Human Rights and the Federal Office for Economic Affairs and Export Control ▶ Clarify the issue: The NCP is not really accessible to affected persons abroad without the strategic mediation of NGOs and can therefore not effectively fulfil its role as a grievance mechanism according to UNGP 31 	<p>Federal Ministry for Economic Affairs and Climate Action, Federal Ministry of Labour and Social Affairs</p>
<p>State-based judicial mechanisms</p>	<ul style="list-style-type: none"> – Federal government should conduct a comprehensive study to determine and publish the practical obstacles to legal protection and access in Germany and how these can be addressed (building on basic research by OHCHR and the EU Agency for Fundamental Rights). <ul style="list-style-type: none"> ▶ For plaintiffs in Germany ▶ For plaintiffs in the supply chain (e.g. lack of collective redress and other aspects mentioned in the Viadrina study) 	<p>Federal Ministry of Justice, Federal Ministry for Economic Cooperation and Development</p>

State-based judicial mechanisms***Coalition Agreement, p.106:***

“We will expand collective redress. We will modernise existing instruments, such as the Capital Markets Model Case Act, and examine the need for further ones. We will implement the EU Collective Redress Directive in a user-friendly manner and in further development of the model declaratory action, and will also open up this possibility for small businesses. We will adhere to the tried and tested requirements for associations entitled to sue. We will enable the establishment of English-speaking special chambers for international commercial and economic disputes.”

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