



Shadow EU Action Plan on the Implementation of the UN Guiding Principles on Business and Human Rights within the EU

Preface

The Responsible Business Conduct Working Group (RBC Group) of the European Parliament is presenting this *Shadow EU Action Plan* as a signal to the European Commission and the Council of the European Union that time is ripe for the EU to put systematic and effective measures in place implementing the United Nations Guiding Principles on Business and Human Rights (UNGPs).

There is increasing recognition that business, while playing an important role in the social and economic development of modern societies, can equally harm society, damage the environment and violate human rights.

The international community adopted the UNGPs in June 2011, setting up standards for governments and business with the aim to prevent, mitigate and remedy human rights abuses deriving from or linked to business activities. The EU endorsed the UNGPs in 2011 and shortly after presented the Commission's 2011 *Communication on Corporate Social Responsibility* containing a strong commitment to implement the UNGPs in the EU. Fourteen Member States have developed national action plans since then, triggering national processes on the establishment of safeguards for human rights against business-related abuse.

The EU in contrast has so far failed to do so.

It is urgent time for the EU, which is directly bound by its treaties to promote and protect human rights globally, to take action. The EU is the world's largest economy, a trading hub with significant economic and political power to influence the regulation of economic operations worldwide. The EU and its member states are also increasingly subsidizing European companies operating in developing and neighbouring countries. It therefore carries a particular responsibility to prove leadership in the promotion and protection of human rights against business-related human rights abuses.

As a first step, the Commission and the EEAS should come forward with an EU Action Plan on the Implementation of the UNGPs.

To demonstrate its expectations towards the objectives and proposed actions of such a plan the RBC Group has developed this *Shadow EU Action plan*.

The RBC Group is not suggesting integrating the work on the implementation of the UNGPs into the EU's existing policies and actions taken on the SDGs, the Agenda 2030 or the Action Plan on Financing Sustainable Growth. These policies are inextricably linked and policy coherence is crucial, yet objectives and instruments are not always the same and therefore at risk of not sufficiently responding to the EU's human rights obligations.

Note to the Reader:

This Shadow EU Action Plan is a document from within the Parliament. It has not been developed in a structured, participatory process or on the grounds of a baseline assessment – as the actual EU action plan should. It is strongly recommended that a future EU Action Plan will be based on a thorough baseline assessment that will include a systematic consultation of relevant stakeholders from civil society.

Shadow EU Action Plan (2019-2024)

Introduction

The purpose of this **EU Action Plan on the Implementation of the UNGPs within the EU** is the creation of a systematic and coherent approach on the implementation of the United Nations Guiding Principles on Business and Human Rights (UNGPs) in all relevant policy areas while maintaining sufficient flexibility so as to respond to new challenges as they arise. The plan covers a period of 6 years (2019 – 2024).

This EU Action Plan is based on the expectation that all business enterprises domiciled or conducting business within the EU and/or member state (MS) jurisdiction respect human rights throughout their operations. The EU is committed to provide the necessary structures for businesses to fulfil their responsibilities for human rights and to ensure access to remedy in cases where harm has occurred.

The priorities for the EU's work on business and human rights throughout the period covered by this EU Action Plan will be the establishment of human rights due diligence standards for business operations, supply chains and business relationships; improving access to remedy; strengthening the protection of human rights defenders and putting safeguards in place to prevent human rights harm through EU trade and investment.

In order to ensure an effective implementation of the Action Plan, it is important that the European institutions work together, while respecting their distinct institutional roles and competences, and that, where appropriate, the Action Plan is implemented by the Member States. Responsibility for carrying out the actions listed resides with the High Representative/Vice President assisted by the European External Action Service (EEAS), and with the Commission, the Council and Member States, within their respective fields of competence as defined by the Treaty on European Union. The Action Plan covers the period until 31 December 2024 and its implementation will be reviewed in 2022.

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Objectives and activities

Objective	Action	Timeline	Responsibility
Establishing an organisational structure for the implementation of the UNGPs			
1. Demonstrating the EU's strong political commitment to the urgent implementation of the UNGPs.	a) Assigning the implementation of the UNGPs to the dossier of a Commission's Vice President.	2019	Commission
	b) Convening MS on a regular basis on the implementation of UNGPs to prompt swift implementation, exchange of experiences and alignment where conducive.	As of spring 2020	Commission and MS
2. Ensuring the institutional capacity for the implementation of the UNGPs.	a) Establishment of managerial and operational structures and resources dedicated to the effective and speedy implementation of the UNGPs with a mandate to coordinate all DGs involved and ensuring consistency with other relevant international frameworks, such as OECD Guidelines for Multinational Enterprises and the 2018 Guidance on Responsible Business Conduct, Paris Agreement on Climate Change etc.	Spring 2020	Commission
	b) Regular and formalised participatory processes with stakeholders, victims of abuses, (women) human rights defenders, trade unions and experts to inform implementation strategy.	Starting in spring 2020	Commission
	c) Regular reviews of the underlying baseline assessment of UNGP implementation at EU and MS level in cooperation with the Fundamental Rights Agency.	Starting in spring 2020	Commission

3. Establishing monitoring and evaluation capacities.	a) Establishment of organizational structures and resources to monitor and evaluate the - implementation of the EU action plan; - the coherence and effectiveness of the measures; - the integration of due diligence standards in business operations.	Starting in spring 2020	Commission, EEAS, MS
	b) Regular and formalised participatory processes with stakeholders, victims of abuses, (women) human rights defenders, trade unions and experts to inform the monitoring and evaluation.	Starting in spring 2020	Commission, EEAS, MS
4. Establishing disclosure and transparency capacities.	a) Ensuring transparency of all processes around the implementation of the UNGPs through regular public disclosure.	Starting immediately	Commission
	b) Strengthen public communication on the possible risks and impacts of business operations on human rights and environment within and outside of EU and through supply chains.	Starting immediately	Commission
	c) Review the Union's Custom Code with the aim to allow full supply chain disclosure similar as practiced in other jurisdictions such as the US and India.	Starting in 2020	Commission
5. Formalised regular exchange with other regional and international bodies working on the promotion of business and human rights	Formal and regular engagement with bodies such as the OECD, UN, ILO and CoE on how to improve the implementation of UNGPs, including on how to incorporate new tools and guidances, such as the upcoming report of the UN Working Group on Applying a Gender Lens to the UNGPs.	As of 2019	Commission, Council, EEAS, MS

The Role of the EU globally and towards its Member States

6. The EU takes on a leading role on the implementation of the UNGPs	a) The EU engages constructively with the process toward the establishment of a (gender-sensitive) legally binding instrument on business and human rights at the United Nations.	Ongoing	EEAS, MS
	b) The EU incentivises and encourages EU Member States to establish more ambitious and forward-looking National Action Plans (NAPs) and to effectively implement the UNGPs. This includes the establishment of a peer-review mechanism for Member States and the development of guidance on the minimum standards of NAPs.	Ongoing	Commission

Implementing Pillar I of the UNGPs

7. Establishing mandatory due diligence for EU businesses and businesses operating within the EU.	a) Adoption of legislation requiring corporations to carry out human rights due diligence regarding their operations, investments, business relationships and supply chains. The legislation will specify that due diligence procedures need to take into account the specific risks and differentiated impacts of business-related activities on women, youth and other marginalized groups and communities.	By mid-2020	Commission, Council, European Parliament
	b) Integration of effective human rights safeguards and human rights due diligence standards in the action plan on financing sustainable growth and all legislation derived thereof, particularly the Regulation on Disclosures Relating to Sustainable Investments and Sustainability Risks and the Regulation on the Establishment of a Framework to Facilitate Sustainable Investment.	Starting in 2020	Commission

<p>8. Strengthen reporting requirements on human rights due diligence.</p>	<p>Recast of the Non-Financial Reporting Directive to require companies to disclose on their human rights due diligence in their annual reports and based on specified, mandatory criteria; to establish verification requirements and to improve monitoring and oversight by MS.</p>	<p>2021</p>	<p>Commission, EP and Council</p>
<p>9. Protecting human rights defenders and providing them an enabling environment.</p>	<p>a) Development of a strategy to implement the EU Guidelines on Human Rights Defenders as regards the specific situation of Human Rights Defenders (HRDs) and other civil society actors who work on business-related human rights issues, also with regard to the role of business in potentially contributing to human rights harm or in helping to protect defenders and the civic space; addressing also the particular challenges that women and children HRDs face and their specific needs.</p>	<p>2020</p>	<p>EEAS</p>
	<p>b) Support and protect organisations and HRDs working on business and human rights in their work for, and defense of human rights, and encourage them to play a stronger role in holding decision-makers to account on gender equality, women’s rights issues and other human rights abuses.</p>	<p>ongoing</p>	<p>EEAS, Commission, MS</p>
	<p>c) Ensure multi-stakeholder approaches promoted by the EU take into account power imbalances and do not de facto result in expanding the scope for corporate influence while shrinking the space for CSOs working on human rights and related issues such as labour rights, tax justice, and climate justice.</p>	<p>ongoing</p>	<p>EEAS, Commission</p>
<p>10. The EU’s trade and investment policy is geared towards the implementation of the UNGPs.</p>	<p>a) Institutional processes are put into place to ensure that meaningful human rights impact assessments are carried out ahead of trade and investment agreements negotiations and during the implementation of future and existing trade and investment agreements. A gender-sensitive methodology, taking</p>	<p>Starting immediately</p>	<p>Commission</p>

	particularly into account the needs of marginalized people, will be applied.		
	b) Institutionalised processes will be established to ensure – with strong and consistent involvement of civil society - enhanced forms of consultation as well as the full involvement of independent fundamental rights experts in the legal scrutiny of trade and investment agreements and their implementation.	2019	Commission
	c) Institutionalised human rights dialogues during trade and investment agreement negotiations are set up to ensure the creation of an environment facilitating trade and investment for the benefit of human rights, including by setting a timeframe for the ratification of the core international human rights conventions.	2019	EEAS
	d) Trade and investment agreements entail adequate and enforceable safeguards to protect, respect and fulfil human rights standards and address risks related to business conduct or any negative impact the agreement may have on human rights. These agreements further ensure that access to remedy is available to people, workers and communities affected by alleged human rights abuses by and linked to companies benefitting from the agreement, including by setting up adequate complaint mechanisms.	Ongoing	Commission
	e) Efficient and transparent monitoring mechanisms addressing human rights risks and harms are established, applying a gender-sensitive methodology, taking also into account the needs of other marginalized groups.	By 2020	Commission

	f) Commission initiates the review of the Generalised System of Preferences (GSP) Regulation (EU) 978/2012 with the objective to ensure the efficiency of the instrument, participation of civil society, transparency and accountability.	2020	Commission
11. Support/promotion of economic activities ensures the respect of UNGPs.	a) Establish procedures to ensure that any support of economic activities by private actors, such as financing, technical assistance or practical support, directly or through intermediaries, is aligned with the UNGPs, e.g. through (gender-sensitive) human rights impact assessments. Such procedure will include public reporting about the alignment assessment.	Immediately	Commission, EEAS, MS
	b) Ensuring that all economic diplomacy has the efficient implementation of the UNGPs as an objective. This extends also to all activities in the context of the framework of the External Investment Plan and in the framework of the implementation of Agenda 2030.	Immediately	EEAS, Commission, MS
	c) Conduct capacity building activities in business and human rights for EU and MS staff in charge of providing support of business activity.	Starting in 2019	Commission, EEAS, MS
12. EU and MS comply with and promote UNGPs in their own economic activities.	a) EU and MS institutions make human rights criteria part of the procurement policy, based on the most economically advantageous tender principle as foreseen by the 2014 EU Procurement Directive; and provide guidelines for the inclusion of these criteria in public procurement of government authorities.	By first half 2021	Commission

	b) Joint initiative by Commission and MS developing and implementing standards for State-owned enterprises following the recommendations of the UN Working Group on Business and Human Rights from 2016.	Starting in 2020	Commission, MS
13. Supporting business in building due diligence structures, capacities and skills.	a) Support to small and medium enterprises to establish effective due diligence procedures and capacities through the COSME programme.	By 2020	Commission
	b) EU and MS development cooperation assists authorities and companies of partnering countries in strengthening the political will, structures and capacities to implement UNGPs.	Ongoing	Commission

Implementing Pillar III of the UNGPs

14. Ensuring liability for corporate abuse.	a) Adopt legislation establishing liability of companies for environmental or human rights harm, based on the principle of reasonable care, including for damage caused by companies under their control.	Starting in 2020	Commission
	b) The Commission engages with Member States to improve access to evidence for plaintiffs in court proceedings through changes to obligations and procedures as regards disclosure of evidence, burden of proof and other relevant principles	As of 2020	Commission

15. Making collective redress mechanism available to all victims of corporate harm.	a) The Commission initiates legislative proposals to ensure the availability of collective redress mechanisms for all corporate mass harm situations impacting fundamental and human rights, particularly with regards to harm to the environment, public health and equal treatment. Such proposals should go beyond the current proposal on representative actions for the protection of the collective interests of consumers to cover all areas identified in the 2013 Commission Recommendation on Collective Redress ¹ , and should strengthen the standing of third parties whilst promoting efficacy of procedure for victims.	2019	Commission
	b) Member State will be invited to address the availability of collective redress mechanism in the formalized NAP peer- review process covered in point 6 (b) above.	Ongoing	Commission
16. Creating flexibility as regards the applicability of domestic law.	The Commission initiates reform of Rome II Regulation with the aim to ensure that victims of alleged human rights harm have a fair possibility to access remedy.	Starting in 2020	Commission
17. Guaranteeing fair access to justice.	The Commission initiates a review of the Brussels I Regulation with the aim to establish a forum necessitatis.	2021	Commission
18. Creating a EU public fund for litigation.	Creation of an EU public fund support victims of human rights violations, accessible also for extra-territorial tort claims against European business entities for harm to life, limb or property.	By 2021	Commission, Council, European Parliament

¹ <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:52018DC0040>

<p>19. Ensuring a consistent legal framework for access to remedy.</p>	<p>The Commission assesses other relevant EU legislation in light of the outcomes of the three phases of the OHCHR's Accountability and Remedy Project and initiates their review where gaps have been identified.</p>	<p>By 2020</p>	<p>Commission</p>
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