

National Action Plan of Luxembourg

for the implementation
of the United Nations Guiding Principles
on Business and Human Rights

2018-2019



THE GOVERNMENT
OF THE GRAND DUCHY OF LUXEMBOURG
Ministry of Foreign and European Affairs

Foreword

Human rights: an Obligation for the State, a Responsibility for Companies



The globalization of the last decades has enhanced the role of commercial corporations – domestic but most of all international ones – in a spectacular way. The proliferation and constant intensification of interactions at the global level, between companies and individuals, companies and States, companies and civil society – in addition to interactions among companies themselves – have turned these enterprises into powerful and ubiquitous actors. The turnover of some corporations greatly exceeds the GDP of some sovereign States.

Certainly, the beneficial effects of this development are well documented in terms of employment opportunities, wealth generation and technological and scientific advancements, notably in the field of public health, and this is to be welcomed. Nonetheless, we cannot close our eyes to the negative effects that corporate activities can have in economical and environmental terms, such as the relocation

of commercial activities, an increasingly visible inequality between rich and poor, the depletion of natural resources, and rising emissions of green house gasses. In the most unfortunate cases, corporate activities directly cause violations of human rights. This is unacceptable, and while we must act accordingly, we should do so without unfairly calling names or imputing motives.

Building on our commitment at the international level to work relentlessly and consistently for peace and security, for development and the respect for human rights, including through our work in the UN Security Council from 2013 to 2014, through the implementation of the 2030 Agenda and the Sustainable Development Goals – and hopefully soon as a member of the Human Rights Council – we are eager to walk the talk.

In Luxembourg, public authorities and private actors are acutely aware of the legal obligations incumbent upon the State, on the one hand, and the responsibilities of commercial enterprises in the event of human rights violations, on the other. It is precisely for this reason that we welcome the United Nations Guiding Principles on Business and Human Rights, which were unanimously adopted by the Human Rights Council in 2011.

Our determination to take action has been encouraged by the former High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, during his visit to Luxembourg in January 2017. Accordingly, we have launched the drafting of the first National Action Plan for the implementation of the Guiding Principles. I am particularly proud to underline that the document that is now in your hands – or on your screen – is the outcome of a truly collaborative effort between the government, the private sector, civil society and trade unions. This demonstrates the growing awareness, on all sides and at all levels, of the complex problem of human rights violations caused by corporate activities, as well as the willingness to pursue, in accordance with one's competences, expertise and means, solutions worthy of our international commitments, our democracy and our rule of law.

HE Mister Jean Asselborn

Minister of Foreign and European Affairs

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Introduction

Among the first signatories of the Universal Declaration of Human Rights, the Grand Duchy of Luxembourg is an open-economy democracy governed by the rule of law. Equality for all, and human rights are principles enshrined in the Constitution and legislation.

As a strong supporter of the universality of human rights, Luxembourg has ratified seven of the nine international human rights instruments, and is in the process of ratifying an eighth instrument, the International Convention for the Protection of All Persons from Enforced Disappearance.¹ For Luxembourg, the principle of the indivisibility of human rights is of paramount importance. While civil and political rights are essential conditions for the public participation and personal and collective development of citizens, economic, social and cultural rights are equally important to guarantee their well-being.

For these reasons, the Government attaches particular importance to the implementation of the United Nations 2030 Agenda for Sustainable Development. It has presented a voluntary national report to the High-Level Political Forum on Sustainable Development in New York in July 2017. The role played by Luxembourg at the COP 21 of the United Nations Framework Convention on Climate Change in Paris in December 2015, when it held the Presidency of the Council of the European Union, and its high-level participation in the COP 22 in Marrakesh and the COP 23 in Bonn, demonstrate the importance that the government attaches to an effective fight against climate change in all its aspects, including human rights. Naturally, Luxembourg is also a signatory of the *Geneva Pledge on Human Rights in Climate Action*.

Luxembourg remains very strongly committed to an effective multilateral system, with the United Nations system at its core. This system is more important than ever to preserve international peace and security and to ensure sustainable development for all, based on the respect for, and protection of, human rights which are universal, indivisible and inalienable. Luxembourg has applied for membership of the UN Human Rights Council for the period of 2022 to 2024.

The United Nations Human Rights Council unanimously adopted the UN Guiding Principles on Business and Human Rights (UN Guiding Principles) in its resolution 17/4 of 16 June 2011. The UN Guiding Principles have been elaborated by the United Nations Secretary General's Special Representative on Human Rights and Transnational and Other Business Enterprises. They apply to all States and to all businesses, whether national, transnational or otherwise, regardless of their size, sector of activity, location, ownership or structure.

1 The list of human rights instruments to which the Grand Duchy of Luxembourg is party can be consulted on the website of the UN High Commissioner for Human Rights: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=62&Lang=EN

This document describes the international and national context which saw the adoption of the first edition of Luxembourg's National Action Plan (NAP) for the implementation of the UN Guiding Principles. It is prepared by the Government, under the coordination of the Ministry of Foreign and European Affairs, within the framework of the Inter-ministerial Committee on Human Rights and on the basis of an in-depth dialogue with private sector non-governmental actors and civil society.² In this context, regular contacts have taken place with, inter alia, the four national human rights institutions:

- The mission of the Consultative Commission on Human Rights (CCDH) is to promote and protect human rights in the Grand Duchy of Luxembourg. Accordingly, the CCDH provides the government with independent advice, research, opinions and recommendations, either at the request of the government or on its own initiative, on all matters of general importance concerning human rights in Luxembourg. It advises the government on the preparation of reports to be submitted by Luxembourg to regional and international human rights bodies. The CCDH addresses public opinion directly or through any press organisations, particularly in order to publicize its opinions and recommendations, and maintains a dialog with all the national and international human rights institutions and bodies.
- The Centre for Equal Treatment (Centre d'égalité de traitement) aims to promote, analyse and monitor the equal treatment of all persons without discrimination on the grounds of race, ethnic origin, gender, sexual orientation, religion and beliefs, disability or age.
- The Ombudscommittee on the Rights of the Child (Ombuds-Comité pour les droits des enfants) issues opinions and proposes amendments on draft laws and regulations on the rights of the child; it reports on the situation of children and ensures the implementation of the Convention on the Rights of the Child and presents an annual report to the Government and to Parliament on its activities and on the situation of rights of children in Luxembourg. The Committee promotes the freedom of expression of children and their active participation on the issues that concern them; it examines situations in which the rights of the child are not respected and makes recommendations to remedy them. The Committee receives information, complaints and grievances from children and tries to mediate and give advice to ensure the best possible protection for children.
- The Ombudsman receives complaints by physical or legal persons, about a case concerning them, and relating to the functioning of government or municipal services. He is also in charge of ensuring the external control of places of detention.

The National Commission for Data Protection is one of the primary interlocutors in the development of the NAP because of its role in ensuring the respect of personal freedoms and fundamental rights with regard to data protection and privacy. The same applies to the trade unions based on their interests and expertise in labour law in the context of human rights.

² A non-exhaustive list of public and non-governmental actors is included in the appendix.

Businesses are expected to play an important role in the implementation of Sustainable Development Goals (SDGs) adopted by the Heads of State and Government in September 2015 at the UN in New York, as well as in the implementation of the UN Guiding Principles. In this light, the present NAP is designed to complement the efforts of the Luxembourg Government to achieve the SDGs by providing businesses with the information and means to enable them to respect human rights internally and throughout their economic value chains. The Union des entreprises luxembourgeoises (UEL), being the umbrella organization for business enterprises in Luxembourg, therefore is a unique entry point to initiate discussions on the UN Guiding Principles with private sector actors.

The present document describes, in three successive parts, (I) the reasons why Luxembourg has adopted a NAP for the implementation of the UN Guiding Principles, (II) the process leading to the adoption and implementation of this NAP and (III) the content of the first edition of the NAP covering the period from 2018 to 2019.

The NAP has been adopted by the Government on June 22nd, 2018.



Part I

Rational Framework for the Development, Adoption and Implementation of a National Action Plan (NAP) for the Implementation of the United Nations Guiding Principles on Business and Human Rights

Luxembourg's decision to develop, implement and subsequently update a NAP on Business and Human Right derives from its multilateral international commitments at the level of the United Nations as well as the European Union and the Organisation for Economic Co-operation and Development (OECD).

The NAP takes into account the economic and social situation in Luxembourg and fits into the national context in a coherent and effective way.

1. International Context

At the international level, the United Nations, the European Union and the Council of Europe have elaborated and respectively adopted principles on business and human rights and asked their member States to implement them, notably through a national action plan.

Other international organizations, such as the International Labour Organization (ILO) and the OECD, endorsed the Guiding Principles developed within the United Nations and incorporated them as best practices in the implementation of their respective mandates.

The same is true for the following initiatives: *UN Global Compact*, *ISO 26000*, *International Financial Corporation Performance Standard*, *Equator Principles*, and *Global Reporting Initiative*.

1.1. United Nations

The United Nations Human Rights Council unanimously approved the Guiding Principles on Business and Human Rights in its resolution 17/4 of 16 June 2011.³ These Guiding Principles have been developed by the UN Special Representative on Human Rights and Transnational Corporations and Other Business Enterprises, Professor John Ruggie. They apply to all States and to all businesses, whether commercial, transnational or otherwise, regardless of their size, sector of activity, location, ownership and structure. Under the three pillar framework 'Protect, Respect and Remedy', the 31 Guiding Principles on Business and Human Rights:

- a) recall the duty of States to respect, protect and fulfil human rights and fundamental freedoms under international law (Guiding Principles 1-10). States can achieve these either through legislation or through incentives consistent with the UN Guiding Principles;
- b) describe the role of corporations and their responsibility as specialized organs of society performing particular functions to comply with all applicable laws and to respect human rights (Guiding Principles 11-24). They do not introduce any new legally binding obligations on enterprises;
- c) underline the need for appropriate and effective remedies – judicial and non-judicial – for human rights violations at both State and enterprise levels (Guiding Principles 25-31).

The *UN Global Compact*⁴ supports enterprises to conduct business responsibly by aligning their strategies and operations with its ten principles on human rights, labour, the environment, and the fight against corruption. The *Global Compact* is recognized as a strong proponent of the UN Guiding Principles on Business and Human Rights. 24 business enterprises from Luxembourg have adopted the ten principles

³ A/HRC/RES/17/4, 16 juin 2011.

Cf. http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_FR.pdf

⁴ <https://www.unglobalcompact.org/>

of the Global Compact. It should also be noted that 2017 CSR Europe⁵ (*The European Business Network for Corporate Social Responsibility*) signed a Memorandum of Understanding with the UN Global Compact. In Luxembourg, CSR Europe is represented by IMS Luxembourg (*Inspiring More Sustainability*). The National Institute for Sustainable Development and Corporate Social Responsibility (INDR) and IMS are in talks with *UN Global Compact* to represent the local network.

1.2. European Union

Human dignity, liberty, democracy, equality, the rule of law and respect for human rights are values enshrined in the European treaties. The rights of EU citizens are proclaimed in the Charter of Fundamental Rights.

In its communication of 25 October 2011, the European Commission invited the member States of the EU to develop, or update, national action plans to promote corporate social responsibility (CSR), on the one hand, and on the other, to develop “national action plans for the implementation of the UN Guiding Principles on Business and Human Rights”.⁶ Based on the UN Guiding Principles, the European Commission has published an introductory guide to human rights addressed at SMEs. The guide makes enterprises aware of the main international principles in this area and supports them in their application.

In its conclusions of 20 June 2016, the Council of Ministers of the European Union emphasized “the significant role that business should play in helping to achieve the Sustainable Development Goals (SDGs) and in the implementation of the 2030 Agenda for Sustainable Development”. Further, it recognized that “corporate respect for human rights and its embedding in corporate operations and value and supply chains is indispensable to sustainable development”. Finally, the Council recalled the leading role of the EU member States on developing and adopting national action plans to implement the UN Guiding Principles or integrating them into national CSR Strategies.

The Directive 2014/95/EU on disclosure of non-financial and diversity information by certain large undertakings and groups was adopted in 22 October 2014. The directive, transposed into national legislation by the law of 23 July 2016,⁷ imposes an obligation on certain companies identified by national authorities as “public interest entities” exceeding an average number of 500 employees during the financial year, including listed companies, banks, insurance companies and other companies, to include information in their annual management report with respect to human rights. The goal is to help investors, consumers and policymakers to assess the non-financial performance of these companies and encourage them to develop responsible business conduct.

5 <https://www.csreurope.org/>

6 COM 2011(682) Final, Brussels.
Cf. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011DC0681&from=EN>

7 <http://data.legilux.public.lu/file/eli-etat-leg-memorial-2016-156-fr-pdf.pdf>

1.3. Council of Europe

The Council of Europe sets out legal standards in the areas of the protection of human rights, the strengthening of democracy and the rule of law in Europe. On 4 November 1950, the members of the Council adopted the Convention for the Protection of Human Rights and Fundamental Freedoms.

On the basis of the UN Guiding Principles, the Committee of Ministers of the Council of Europe adopted Recommendation CM/Rec (2016)3 on human rights and businesses.⁸ This instrument offers more targeted recommendations to help member States prevent and rectify human rights abuses by businesses and focuses on measures to encourage business to respect human rights, particularly vulnerable groups of people, including workers, indigenous peoples and human rights defenders. In this same instrument, the Council of Europe invites member States to strengthen their efforts to respect their obligations towards children, under the European Convention on Human Rights, the ILO Conventions and other international instruments and to take into consideration the Principles on Children's Rights and Business developed by UNICEF, the *Global Compact* and *Save the Children*.

1.4. International Labour Organization (ILO)

On 17 March 2017, the ILO revised the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.⁹ The text provides guidance to businesses on how to contribute to the achievement of decent work for all. The principles contained in the Declaration are addressed to governments, employers' organizations and workers from the country of corporate registration and from host countries, as well as multinational enterprises, and make direct reference to the UN Guiding Principles and the implementation of the "protect, respect and remedy" framework.

1.5. The Organisation for Economic Co-operation and Development (OECD)

Responsible business conduct is at the core of the functioning of an open space for international trade and investment. Establishing a responsible business environment is in the interest of all stakeholders.

It is in this context that Luxembourg, in adopting the OECD Declaration on Investment and Multinational Enterprises in 1976, also adhered to the OECD Guidelines for Multinational Enterprises (OECD Guidelines), which was annexed to the Declaration, and which for the first time, established international standards for responsible business conduct for multinational corporations operating in or from countries adhering to the Guidelines. The OECD Guidelines have since been revised five times, most recently at the OECD 50th Anniversary Ministerial Council Meeting of 25 May 2011. A separate chapter on human rights was

⁸ Committee of Ministers, Recommendation CM/Rec(2016)3 of the Committee of Ministers to member States on human rights and business, 2 March 2016.

[https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CM/Rec\(2016\)3&Language=lanFrench&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383&direct=true](https://wcd.coe.int/ViewDoc.jsp?p=&Ref=CM/Rec(2016)3&Language=lanFrench&Ver=original&Site=CM&BackColorInternet=C3C3C3&BackColorIntranet=EDB021&BackColorLogged=F5D383&direct=true)

⁹ http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/documents/publication/wcms_124923.pdf¹¹
<http://www.oecd.org/fr/investissement/mne/2011102-fr.pdf>

added to the Guidelines on this occasion, aligned with the UN Guiding Principles. From a human rights perspective, the 2011 revision is a significant step and, by broadening the scope, has particularly widened the access to remedies – currently about a quarter of the complaints filed to National Contact Points (NCP) in OECD member States concern violations of human rights.

The OECD Guidelines represent a comprehensive and global framework for responsible business conduct, covering, in addition to human rights, areas such as labour rights, human rights, environment, information disclosure, combating bribery, consumer interests, competition, taxation, and intellectual property rights. The OECD Guidelines are still the only international instrument for responsible business conduct that includes a built-in dispute resolution mechanism to ensure their implementation.

The NCPs were set up in the 1984 revision of the OECD Guidelines and their role was strengthened in the revision of the Guidelines in 2000. In the 2000 review NCPs terms of reference have been clarified and expanded, and a detailed Procedural Guidance on their role and functions were provided in order to promote their effectiveness. The important role played by the NCPs was emphasized by Ministers at the 2017 OECD Council Meeting and was reiterated at their meeting in 2018. The G20, in July 2017, also made a reference to the OECD NCPs as a non-judicial platform for the resolution of conflicts. Indeed, the NCPs are currently the only state-based, non-judicial grievance mechanisms. OECD NCP complaints mechanisms provide a channel to stakeholders wishing to raise issues related to conduct of companies operating in or from adhering countries. The impact and influence of the instrument goes even further if we consider that large enterprises from industrialized countries, most of them member States of the OECD, have considerable power over non-member States through the increasingly global network of supply chains and outsourcing and, therefore, have the ability to impose their standards. It is therefore essential as part of a process such as the NAP, to gauge the full scope and the leading role of these mechanisms.

The Luxembourg NCP was established as an entity coordinated by the secretariat of the Economic Committee under the auspices of the Ministry of the Economy. As such, it could be likened to a tripartite structure allowing union representatives, employer representatives as well as members of the government to be brought together. In early 2018, the Luxembourg NCP carried out a review of the other NCPs and, in particular, relied on best practices to codify its rules of procedure and functioning which it formally published on its website. A similar exercise is under way with regard to the structure of the NCP, notwithstanding the body must remain neutral and independent when informing and soliciting third parties and organizations on an ad hoc basis. While handling the complaints, the Luxembourg NCP can also rely on the contribution of other departments concerned more particularly by complaints relating to non-compliance with the Guidelines, since its structure allows it to receive the assistance of an interdepartmental support program involving the Ministry of Finance, the Ministry of Labour and the Ministry of Foreign and European Affairs.

In concrete terms, the Luxembourg NCP carries out the following tasks with a view to promote and implement the Guidelines:

- management of the internet page of the Luxembourg NCP;
- securing and handling of complaints (“specific instances”) submitted to the NCP;
- responding to inquiries from the public and domestic businesses;

- participating, supporting and initiating events and publications to promote the OECD Guidelines to the public and national enterprises;
- consultation, sharing and exchange of good practices with other NCPs as well as the Secretariat of the OECD;
- drafting the annual report to the OECD Investment Committee.

1.6. Trade and Investment Agreements

All trade and cooperation agreements concluded with third countries include a human rights clause specifying that these rights constitute a fundamental aspect of relations with the EU, which has repeatedly imposed sanctions for violations of human rights.

2. National Context

2.1. Constitution

Public freedoms and fundamental rights are guaranteed by the Constitution and by the judicial interpretation that the Constitutional Court gives to the Article 11 of the Constitution, which states, “the State shall guarantee the natural rights of the individual and the family”.

Worth noting in this context is that the parliamentary revision proposal for the adoption of a new constitution includes a chapter on fundamental rights, a sub-chapter on human rights and an article on human dignity.

In addition, the notion of sustainable development is implicitly enshrined in Article 11bis of the Constitution. This reference is important because of the link the United Nations and the European Union have made between respect for human rights and sustainable development, as well as the role that business should play in implementing the Sustainable Development Goals (SDG).

2.2. Government Program

The government has reaffirmed its commitment to human rights values in the government program adopted in 2013, and displays its sense of responsibility in this area, particularly in its external action:

- “Our voice also reflects the values we defend: freedom, peace, democracy, sustainable development, the fight against poverty, exclusion and climate change, as well as unwavering commitment to respect human rights”.
- “Luxembourg will continue to work towards conflict prevention, peacekeeping and peacebuilding and for development, with the conviction that there is an intrinsic link between security and development

which is a condition of stability and democracy around the world and that we will neither achieve sustainable security and peace, nor development without respect for human rights. Luxembourg is constantly working for fundamental rights, public freedoms and the promotion of the rule of law”.

At the national level, the Government addresses the subject “business and human rights” in its work program, by means of corporate social responsibility:

- “The Government will ensure equitable access to public tenders. Appeals procedures will be analysed in consultation with the relevant professional circles and will be adapted according to the framework of Community provisions. The specifications will take into account criteria of innovation, respect for the environment and CSR”.

2.3. Foreign Policy Statement to the Chamber of Deputies

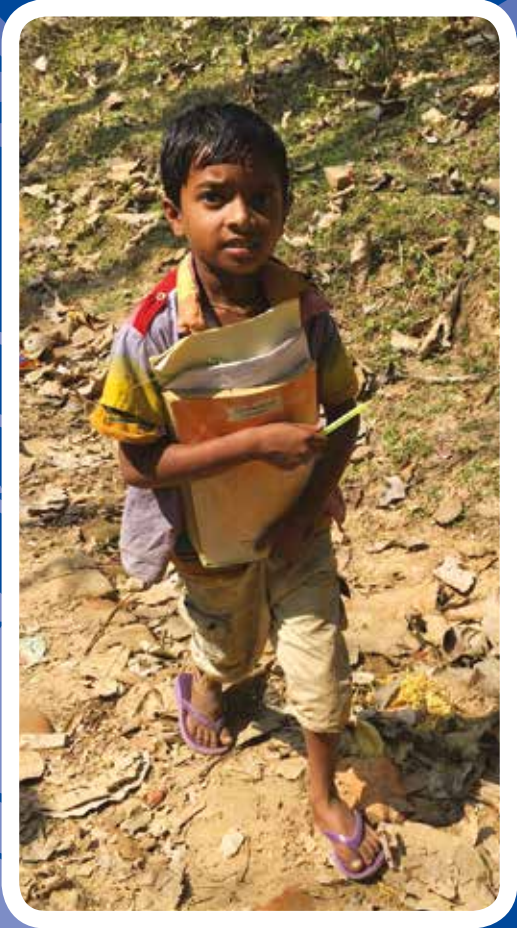
The Minister of Foreign and European Affairs confirmed the intention of the Government to adopt a national action plan for the implementation of the UN Guiding Principles on March 13th, 2018, during his address on foreign policy to Parliament.

According to the mission statement of the Ministry of Foreign and European Affairs, “Luxembourg diplomacy defends the values of freedom, peace and security, democracy, human rights, good governance, the rule of law, solidarity and sustainable development, with an on-going concern to preserve and strengthen the international legal framework within which international relations evolve”.

2.4. Council of Government

On May 8, 2015, the Council of Government gave a green light for the establishment of an Inter-ministerial Committee on Human Rights in order to improve inter-ministerial cooperation and coordination on human rights issues and to strengthen the coherence between Luxembourg’s internal and external human rights policies. In general, the Committee is in charge of monitoring the implementation of Luxembourg’s human rights obligations by various actors, and does so in consultation with national human rights institutions and civil society. Each ministry has a seat at the committee that is coordinated by the Ministry of Foreign and European Affairs.

Implementation and follow-up of the UN Guiding Principles on Business and Human Rights is a regular item on the agenda of the Inter-Ministerial Committee. In addition, a national action plan on CSR is also being developed under the auspices of the Ministry of Economy. Human rights are explicitly identified as a national issue for businesses.



Part II

Process leading to the adoption of Luxembourg's National Action Plan for the implementation of the United Nations Guiding Principles on Business and Human Rights

The present part describes the different stages in the development of the NAP, its continuous cycle of implementation, as well as the follow-up and update through subsequent editions.

The first phase of the development of the NAP was initiated with the government's formal commitment to implement the UN Guiding Principles on Business and Human Rights. A transversal working method was defined that includes all the concerned ministries. The body in charge of the process has been identified. A framework for cooperation with the private sector and the civil society was put in place. A work plan containing the means of implementation was established.

In the second phase on evaluations and consultations helped to define a common understanding of the potential negative human rights impacts that business activities may entail. The priority areas were identified through taking stock of the existing gaps in the implementation of UN Guiding Principles by the State and the companies and through consultations with parties involved.

Based on multi-stakeholder consultations, the third phase regarding drafting the NAP included finalization, publication and launching the implementation of the first edition of the instrument.

The fourth phase on implementation is defined by taking concrete actions to implement the action points foreseen in the NAP. This phase is discharged through continuous inter-departmental collaboration and through multi-stakeholder monitoring.

The fifth phase on evaluation measures the impact of the actions taken and identifies any remaining gaps. On-going stakeholder consultation facilitates the identification of further issues where intervention is needed. Drafting of the updated version leads to the launch of the next edition of the NAP.

The first three phases are explained in more detail below, while the fourth and fifth phases are treated in the third part of the document.

1. Initiation

1.1. Formal commitment of the Government for a NAP

The NAP reflects Luxembourg's commitment to implement the UN Guiding Principles on Business and Human Rights. These 31 principles are based on three foundational pillars: "protect, respect and remedy". They underline the measures that States must take to encourage business to respect human rights; they provide companies with a blueprint for managing the risk of negative human rights impact and offer stakeholders a set of benchmarks for assessing companies' respect for human rights. At the heart of the current process lies the desire to raise awareness among companies on the UN Guiding Principles, to facilitate cooperation between the respective players and to propose a framework for evaluating the implementation of the principles. In this respect, it is important to stress that the UN Guiding Principles do not impose new legally binding obligations for companies. The Government reserves the right to consider the full range of authorized prevention and remediation measures, including policies, laws, rules, regulations, enforcement and judicial proceedings.

The Government's decision to draft a NAP derives from its international commitments including at the level of the UN, the EU and the OECD.

The United Nations Human Rights Council unanimously approved the UN Guiding Principles in its resolution 17/4 of 16 June 2011.¹⁰ The UN Guiding Principles have been developed by the UN Special Representative on human rights and transnational corporations and other business enterprises, Professor John Ruggie. They apply to all States and to all businesses, whether commercial, transnational or otherwise, regardless of their size, sector of activity, location, ownership and structure.

In its conclusions of 20 June 2016, the Council of Ministers of the European Union emphasized "the significant role that business should play in helping to achieve the Sustainable Development Goals (SDGs) and in the implementation of the 2030 Agenda for Sustainable Development". Further, it recognized that "corporate respect for human rights and its embedding in corporate operations and value and supply chains is indispensable to sustainable development". Finally, the Council recalled the leading role of the EU member States on developing and adopting national action plans to implement the Guiding Principles or integrating the UN Guiding Principles into national CSR Strategies.

The Luxembourg Government is fully aware of these obligations and is committed to respect them. To this end, the Government recognizes the implementation of the UN Guiding Principles as the primary vehicle to prevent negative human rights impacts of business activities and, where necessary, to address their consequences.

¹⁰ A/HRC/RES/17/4, 16 juin 2011.

Cf. http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_FR.pdf

The overall objective of this NAP is to strengthen the protection and promotion of human rights within the context of policies, governance and economic activities of business enterprises. In this spirit, the NAP aims to raise awareness of the UN Guiding Principles, to apply them at company level and to monitor their implementation.

1.2. A coordinated inter-departmental approach

The Inter-ministerial Committee on Human Rights is convened and coordinated by the Ministry of Foreign and European Affairs; it is chaired by the Ambassador-at-Large for Human Rights. The drafting of the NAP for the implementation of the UN Guiding Principles is coordinated by the Ministry of Foreign and European Affairs within the framework of the Inter-ministerial Committee on Human Rights. They are conducted in the spirit of close cooperation between public authorities, representatives of the private sector and civil society. In order to promote dialogue, the Inter-ministerial Committee meets in two distinct formats, either restricted to ministries and administrations or open to non-governmental actors.

During the course of 2017, a working group was established within the Committee which elaborated the first draft of the NAP to be submitted to the government. This work was triggered at a meeting involving private sector representatives which was held during the visit of the UN High Commissioner for Human Rights in Luxembourg in January 2017. A meeting between representatives of different ministries, the private sector and the civil society has taken place on April 28, 2017. Bilateral contacts with the stakeholders as well as regular follow-up meetings of the Inter-ministerial Committee on Human Rights have taken place throughout the year.

The NAP is one of the regular items on the agenda of the Inter-ministerial Committee meetings.

1.3. A joint work program

The joint work program includes:

- an analysis of the existing situation and mapping of the potential negative impacts of business activities on human rights on one hand, and of existing efforts to prevent these risks or to mitigate their consequences on the other, which allows the establishment of a common basis;
- the coordination of a structured dialogue between all the actors involved;
- awareness-raising, information and promotional campaigns on the UN Guiding Principles that equips companies with a better understanding of the scope of their obligations and what is expected of them, but also of the opportunities that respecting the UN Guiding Principles can present in terms of risk management and competitiveness;¹¹

¹¹ As an example of good practice: Diversity Day organized annually in May by IMS (IMS) and the National Forum for Occupational Safety and Health, open to all companies, organized annually by INDR / UEL / AAA. (UEL / INDR)

- the elaboration, adoption and implementation of a National Pact on the Respect for Human Rights in the Activities of Business Enterprises, in light of the previous efforts in this regard, in particular the Luxembourg Diversity Charter (“Charte de la Diversité Lëtzebuerg”) launched by IMS, the National VISION ZERO Charter (“Charte nationale VISION ZERO”) initiated by UEL, INDR and AAA;
- the organization of training modules based on the UN Guiding Principles for the subscribing companies, with the training sessions on CSR in mind, that are open to all companies and are organized by the INDR in collaboration with the House of Training;
- updating the CSR Guide of the INDR in line with the objective of “respect for human rights”.¹²
- other initiatives to be defined between partners from the public sector, the private sector and civil society.

2. Appreciation and consultation

The effective and efficient implementation of the UN Guiding Principles largely depends on a good understanding of the realities and specifics of the State concerned and the potential negative human rights impact of the companies registered in a given State, their domestic as well as international operations.

A proper appreciation of these risks, inter alia, through consultation with civil society actors, is needed in order to identify priority areas for State intervention and to strengthen efforts to implement the UN Guiding Principles.

3. Drafting, adoption and launch of the NAP

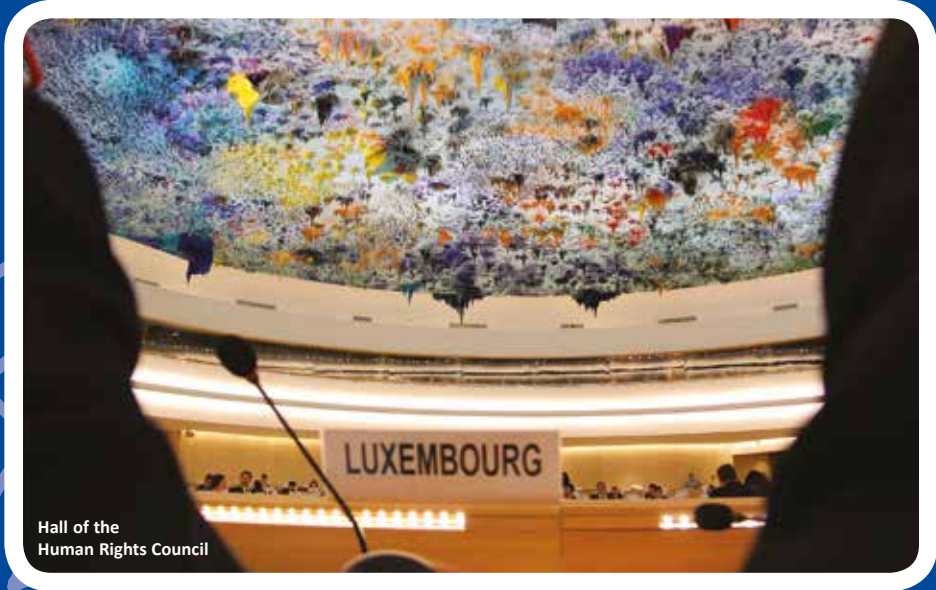
The initial drafting of the Luxembourg NAP on the implementation of the UN Guiding Principles is overseen by the Ministry of Foreign and European Affairs. The Ambassador-at-Large for Human Rights coordinates the drafting process.

The existing NAPs of other member States of the European Union, notably France, Belgium, Germany and the Netherlands, served as inspiration during the drafting of the Luxembourg NAP. Luxembourg is ready to share its own experience in developing and implementing the NAP with other States at the international fora, including during bilateral visits, economic missions, as well as in the context of relations with other countries that includes the partner countries of the Luxembourg Cooperation.

¹² 1000 companies are sensitized, 150 of them have received the CSR labelling CSR (UEL / INDR)

The NAP is finalized following the discussions between ministries and administrations, on the one hand, and with private sector actors and representatives of civil society, on the other. The dual format of the Inter-ministerial Committee – composed of government departments and agencies and open to non-governmental actors – lends itself well to this type of exercise.

Due to its crosscutting and multidisciplinary nature, the finalized NAP is submitted for approval by the Government.



Hall of the
Human Rights Council



Part III

National Action Plan for the Implementation of the United Nations Guiding Principles on Business and Human Rights

2018-2019

1. Declaration of Commitment

The Government's decision to draft a NAP for the Implementation of the UN Guiding Principles on Business and Human Rights is based on international commitments made on behalf of the country, at the level of the United Nations, the European Union and the OECD.

Following the adoption of the UN Guiding Principles by the UN Human Rights Council, the Council of Ministers of the European Union recalled, in its conclusions of 20 June 2016, the commitment of EU member States to develop and adopt national action plans to implement the UN Guiding Principles or to incorporate these principles into their national strategies for corporate social responsibility.

The Luxembourg Government fully subscribes to these commitments and has decided to implement them. To this end, the Government recognizes the implementation of the UN Guiding Principles as the primary vehicle for preventing negative human rights impacts through business activities and, where appropriate, for addressing their consequences. As such, the UN Guiding Principles form the basis of this NAP.¹³

The Government expects companies to fully respect human rights in general, and in particular to:

- prevent human rights violations as a result of their activities;
- adopt the necessary policy instruments for this purpose, in particular by introducing a due diligence process. In this context, due diligence refers to the process that enables companies, as an integral part of their decision-making and risk management mechanisms, to identify, prevent and mitigate potential human rights impacts of their activities, as well as to report on how they address this issue.¹⁴ The nature and scope of reasonable and adequate due diligence in specific situations depends on factors such as the size of the business enterprise, the context of its operations, the specific recommendations of the Guiding Principles and the scope of the negative impact. When business enterprises have a large number of suppliers, they are asked to identify the general areas where the risk of adverse human rights impact is most significant and to prioritize risk assessment for human rights due diligence with regard to such suppliers;
- redress any adverse impacts of their activities on human rights.

The overall objective of this NAP is to strengthen the protection and promotion of human rights in corporate policies, governance and economic activities of business enterprises. In this spirit, the NAP aims to raise awareness of the UN Guiding Principles, to apply them to business enterprises and their value chains and to monitor their implementation.

The decision of the Council of Government is recorded in the minutes of its meeting of June 22, 2018.

¹³ See annex for the list of 31 UN Guiding Principles.

¹⁴ In particular in accordance with the law of 23 July 2016 concerning the publication of non-financial information.

2. Context

The UN Guiding Principles on Business and Human Rights have been elaborated by the United Nations Secretary General's Special Representative on Human Rights and Transnational and Other Business Enterprises. They apply to all States and to all businesses, whether national, transnational or otherwise, regardless of their size, sector of activity, location, ownership and structure.

In its conclusions of 20 June 2016, the Council of Ministers of the European Union emphasized “the significant role that business should play in helping to achieve the Sustainable Development Goals and in the implementation of the 2030 Agenda for Sustainable Development”. Further, it recognized that “corporate respect for human rights and its embedding in corporate operations and value and supply chains is indispensable to sustainable development” and to the implementation of the SDG.

The Government of Luxembourg shares this view, which also echoes the statement made by the former UN Secretary-General Kofi Annan in his report “In Larger Freedom” in 2005:

“There can be no security without development, no development without security. And both depend on the respect for human rights and the rule of law”.

In this spirit, the NAP complements strategies and policies in place in Luxembourg, such as the Luxembourg National Sustainable Development Plan. This instrument calls for better coordination at planning and consultation processes between the ministries with the aim of achieving integration of economic, social and ecological interests in accordance with national and international contexts, frameworks and conventions, including human rights.

Moreover, in the strategic study of 14 December 2016, mandated by the Government, on the Third Industrial Revolution in Luxembourg, the protection of human rights is included in the list of quality of life indicators that make it possible to evaluate the general economic well being of a society. The study states that human rights are an integral part of the ethical and moral values that are essential and vital elements of society, and that respect for human rights is never definitively acquired, but should be treated as a process to be monitored on an on-going basis. The NAP perceives the relationship between business and human rights precisely on this on-going basis.

In the same vein, the NAP also aims to support and complement the corporate social responsibility strategies of the private sector in Luxembourg, emphasizing the human rights aspect as an integral part of CSR. The European Commission shares this approach.

3. Government Response

The Government observes and acknowledges that its economic fabric, the international nature of its financial centre, the structure of its labour market and the composition of its workforce expose Luxembourg – like any democracy with an open economy – to the potential risk of adverse human rights impacts by activities of companies registered in its territory. The Government makes the political commitment to work to mitigate this risk through the development and implementation of the NAP. The Government is counting on the collaboration and diligence of the private sector and civil society to do so.

A preliminary observation allows for the identification of potential adverse human rights risks of certain commercial activities. This has been most notable in the financial sector, extractive industries, information and communication technologies – including the field of artificial intelligence – data protection, the construction sector and the hotel and catering sector, partly because of their general predominance in the Luxembourg economy, the national and international nature of their activities and the origin and number of their employees.

Even if international human rights treaties do not impose direct legal obligations on business enterprises at this stage, they – by virtue of the UN Guiding Principles – still have a responsibility to respect human rights, since their activities may have a direct or indirect impact on all human rights. Concretely, this is to say that business enterprises have a right to exercise their activities in accordance with the law as long as they do not infringe upon human rights. In this respect, it is necessary to point out that the risk of an adverse human rights impact by a business enterprise and the possible measures that it would be expected to take depends to a large extent on the economic sector in which the enterprise operates, as well as on its size and economic scope.

The *Human Rights Guidance Tools* developed by the UNEP Finance Initiative offers a sectorial human rights risk analysis, including the financial sector. This tool can be used to structure the dialogue with private sector actors and their sectorial professional organizations.

Concerning the protection of children's rights in the context of business activities, UNICEF and the *Danish Institute for Human Rights* (DIHR) have developed a supplement to the *Human Rights Guidance Tools, on Children's Rights in National Action Plans on Business & Human Rights*, in order for governments and other stakeholders to understand how obligations regarding children's rights could be implemented in practice.

Regarding the level of corporate commitment, it is interesting to take note of a study on corporate social responsibility that the international consulting firm KPMG published in 2017.¹⁵ For the first time, this study analysed the extent to which human rights were perceived as a business issue in the 4,900 largest companies in 49 different countries (including Luxembourg) and in the 250 largest companies in the

¹⁵ KPMG, *The Road Ahead*, 2017, www.kpmg.com/crreporting.

world. According to the findings, Luxembourg is among the countries in which companies produce reports on their social responsibility at a lower rate than the world average. While this average is 72 per cent, in Luxembourg only 59 per cent of companies submit CSR reports. Accordingly, it can be concluded that, in Luxembourg, human rights are still perceived as insufficiently important as a business issue. Therefore, an effort of information, promotion and awareness raising through the NAP by the government, appears useful and necessary for the implementation of the UN Guiding Principles, and to ensure that businesses develop their internal rules and regulations to respect human rights, and means for implementation and follow-up to address potential adverse human rights impacts.

3.1. Dialogue with non-governmental actors

The proposed work method together with non-governmental actors to ensure the effective implementation of the UN Guiding Principles builds on the guidance issued by the UN Working Group on Business and Human Rights. Dialogue with all public and non-governmental actors is organized and coordinated by the Inter-ministerial Committee for Human Rights, under the auspices of the Ministry of Foreign and European Affairs.

The proposed working method also takes into account the specificities of Luxembourg and is characterized by its inclusive, multi-stakeholder and multidisciplinary approach. It is inspired by the model of a public-private partnership and is based on a purely voluntary participation. Participants share the above-mentioned general objective, but act according to their own individual and / or institutional reasons and motivations.

In particular, a unique institutional set-up in Luxembourg facilitates this approach. The *Union des entreprises luxembourgeoises* (UEL), through its member organizations, serves as a single institutional entry point to all companies. Corporate Social Responsibility, to which a number of Luxembourg companies have already subscribed, risk management and data protection are important topics for launching the dialogue with the private sector.¹⁶

3.2. A joint work program

An analysis of the existing framework (in terms of State duties, corporate obligations and access to remedy), as well as a mapping of, on the one hand, the potential adverse impact of corporate activities on human rights, and on the other of existing efforts to prevent these risks or mitigate their consequences will provide a common point of departure. The Inter-ministerial Committee and its working group on “business and human rights” will seek the external expertise necessary for an objective execution of the mapping exercise and will establish the necessary contacts to this end in the course of the first semester of the 2018.

¹⁶ In this context, it is worth reiterating the national Socially Responsible Enterprise program (awareness raising, evaluation, commitment, CSR labelling) of the INDR and the Diversity Charter launched by IMS-Luxembourg.

A structured dialogue organized by the Inter-ministerial Committee between all the actors involved allows:

- to specify the human rights risks and obligations of business enterprises by economic sector;
- to note the level of existing corporate commitment, notably through efforts in the areas of corporate social responsibility (CSR – as defined by the European Commission), risk management and data protection;
- to identify gaps, both on the State and the business side, and define priority areas for intervention;
- to introduce the subject “business and human rights” in the political dialogue with the governments of the Luxembourg Cooperation partner countries;
- to assess the need to update the NAP for the period beyond 2019.

Awareness-raising, information and promotional campaigns on the UN Guiding Principles can provide companies with a better understanding of the scope of their obligations and of what is expected of them, but also the opportunities that respecting the UN Guiding Principles can present in terms of risk management and competitiveness. Special emphasis will be placed, inter alia, on human trafficking for forced labour. Furthermore, a general communication, including through the media, should help to raise public awareness on the positive role that businesses can play in regards to human rights in their own activities, and their relationships with their suppliers and customers. The Inter-ministerial Committee will coordinate this campaign throughout the year 2018.

The elaboration, adoption and implementation of a National Pact on the Respect for Human Rights in the Activities of Business Enterprises formalizes the partnership and the joint commitment between the State and the businesses in order to honour their respective obligations under the UN Guiding Principles. It is for this reason that the proposal has been put forward to invite representatives of the State and companies to sign a joint formal declaration of intent to respect human rights at an official public event. The Pact will involve a number of concrete undertakings by business enterprises, particularly in terms of specific training. The Inter-ministerial Committee is in charge of the related work during the second half of 2018.

Training sessions based on the UN Guiding Principles are proposed for the subscribing companies as a way to ensure a concrete follow-up and to measure the commitment made by the parties. For this purpose, collaboration between INDR and the *House of Training* is encouraged for the second half of 2018. The participation of non-governmental actors may be considered for the development of specific training modules, for example, on “business and children’s rights”, on prevention of forced labour and human trafficking in supply and production chains or on “*Business and Human Rights*” proposed by CSR-Europe through IMS-Luxembourg.

To give a well-deserved visibility to those enterprises that live up to their human rights obligations, it is proposed to update the CSR labelling process of INDR with a module on the respect of human rights, end of 2018, early 2019.

Other measures:

1. Promotion of the UN Guiding Principles in international fora and international relations, including in international economic relations and relations with the Luxembourg Development Cooperation partner countries;
2. Put in place pilot projects on due diligence in enterprises in which the State is the main shareholder;
3. Steps in preparation of the implementation in Luxembourg of the European regulation on conflict minerals;
4. Envision the ratification of the Protocol (P29) of 2014 of the ILO Convention against Forced Labour;
5. Raising human rights awareness of contracting authorities as part of their public procurement procedures;
6. Inserting language that will raise human rights and corporate social responsibility awareness into the files of economic missions from Luxembourg abroad;
7. Considering ways to strengthen links with the OECD National Contact Point for the implementation of the OECD Guidelines for Multinational Enterprises.

4. Follow-up and update

The promotion and implementation of the UN Guiding Principles on Business and Human Rights requires a coordinated, long-term effort. This edition of the NAP covers the years 2018 and 2019 and should be understood as a first step towards the overall objective of strengthening of the protection and promotion of human rights in the context of policies, governance and activities of business enterprises.

It is clear that this objective cannot be achieved after two years. Therefore, a timely update of this NAP enabling successive editions, with the aim of an effective and sustainable implementation of the UN Guiding Principles, is necessary.

The Inter-ministerial Committee for Human Rights assesses the above-mentioned joint work program during its bi-monthly meetings as well as working group meetings. In view of its findings, the Committee is mandated to reflect, together with the non-governmental actors, during the second half of 2019 on the next phases and to submit a draft 2020-2021 NAP for approval to the Government by the end of 2019.



**PRINCIPES DIRECTEURS
RELATIFS AUX ENTREPRISES ET
AUX DROITS DE L'HOMME**

mise en œuvre
du cadre de référence
«protéger, respecter et réparer»
des Nations Unies



NATIONS UNIES
DROITS DE L'HOMME
HAUT-COMMISSARIAT

The United Nations Guiding Principles on Business and Human Rights

I. STATE DUTY TO PROTECT HUMAN RIGHTS

1. States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.
2. States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.
3. In meeting their duty to protect, States should:
 - a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps;
 - b) Ensure that other laws and policies governing the creation and on-going operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;
 - c) Provide effective guidance to business enterprises on how to respect human rights throughout their operations;
 - d) Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.
4. States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence
5. States should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights.
6. States should promote respect for human rights by business enterprises with which they conduct commercial transactions

7. Because the risk of gross human rights abuses is heightened in conflict-affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by:
 - a) Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships;
 - b) Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence;
 - c) Denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation;
 - d) Ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses.
8. States should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State's human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support.
9. States should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts.
10. States, when acting as members of multilateral institutions that deal with business-related issues, should:
 - a) Seek to ensure that those institutions neither restrain the ability of their member States to meet their duty to protect nor hinder business enterprises from respecting human rights;
 - b) Encourage those institutions, within their respective mandates and capacities, to promote business respect for human rights and, where requested, to help States meet their duty to protect against human rights abuse by business enterprises, including through technical assistance, capacity-building and awareness-raising;
 - c) Draw on these Guiding Principles to promote shared understanding and advance international cooperation in the management of business and human rights challenges.

II. THE CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS

11. Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.
12. The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set out in the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work.
13. The responsibility to respect human rights requires that business enterprises:
 - a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;
 - b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.
14. The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise’s adverse human rights impacts.
15. In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:
 - a) A policy commitment to meet their responsibility to respect human rights;
 - b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;
 - c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.
16. As the basis for embedding their responsibility to respect human rights, business enterprises should express their commitment to meet this responsibility through a statement of policy that:
 - a) Is approved at the most senior level of the business enterprise;
 - b) Is informed by relevant internal and/or external expertise;

- c) Stipulates the enterprise's human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services;
 - d) Is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties;
 - e) Is reflected in operational policies and procedures necessary to embed it throughout the business enterprise.
17. In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence:
- a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;
 - b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;
 - c) Should be on-going, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve.
18. In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should:
- a) Draw on internal and/or independent external human rights expertise;
 - b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.
19. In order to prevent and mitigate adverse human rights impacts, business enterprises should integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action:
- a) Effective integration requires that:
 - i) Responsibility for addressing such impacts is assigned to the appropriate level and function within the business enterprise;
 - ii) Internal decision-making, budget allocations and oversight processes enable effective responses to such impacts;

b) Appropriate action will vary according to:

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

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

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

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

In all instances, communications should:

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

22. Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.

23. In all contexts, business enterprises should:

- a) Comply with all applicable laws and respect internationally recognized human rights, wherever they operate;
- b) Seek ways to honour the principles of internationally recognized human rights when faced with conflicting requirements;
- c) Treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate.

24. Where it is necessary to prioritize actions to address actual and potential adverse human rights impacts, business enterprises should first seek to prevent and mitigate those that are most severe or where delayed response would make them irremediable.

III. ACCESS TO REMEDY

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

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

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

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

29. To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.

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

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

- a) Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;
- b) Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;
- c) Predictable: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;

- d) Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;
- e) Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;
- f) Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights;
- g) A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;

Operational-level mechanisms should also be:

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



Annex 1

Non-exhaustive list of actors involved

Public Sector

Ministries and administrative bodies
Parliament
Conseil d'Etat
SYVICOL
Public institutions, including CNPD

Private Sector

UEL
Chambre de commerce
Chambre des métiers
clc
Fédération des artisans
FEDIL
ABBIL
ALFI
ACA
Horesca
INDR
IMS
Big 4
LuxFLAG
Barreau

Civil Society

Commission consultative des Droits de l'Homme
Ombudsman
Centre d'égalité de traitement
Ombudscomité fir d'Rechter vum Kand

Non-governmental organizations (NGOs) engaged
in the field of human rights

Trade Unions
Chambre des salariés

International partners

Office of the UN High Commissioner
for Human Rights

United Nations Forum on Business
and Human Rights

United Nations Environment Program –
Finance Initiative (UNEP-FI)

Annex 2

Stakeholder Proposals

Proposals from members of civil society and the trade union community

As part of the NAP process, members of civil society and the trade union community propose the following:

- develop tools available to businesses to encourage them to implement the UN Guiding Principles on Human Rights and Business;
- introduce into the legislation a due diligence duty on human rights for companies registered in Luxembourg, in the course of their activities, including those in their value chain;
- seek harmonized application at the level of the European Union (and other international institutions) by the Luxembourg State with regard to the rules on human rights and businesses, including the question of the due diligence duty;
- strengthen the consideration of respect for human rights in public procurement criteria in order to enhance the commitments made by companies to respect internationally recognized human rights standards;
- strengthen the dialogue structures of the NCP with civil society through a multi-stakeholder approach (annual dialogue meeting with civil society, use of its expertise according to needs).

Proposals from the private sector

The position of the Union of Luxembourg Enterprises (UEL) on the National Action Plan for the implementation of the UN Guiding Principles on Business and Human Rights is as follows:

- UEL believes that raising awareness of business enterprises is a priority in order to provide them with the elements to understand not only the expectations in this regard, but also the opportunities that compliance with the UN Guiding Principles may present in terms of competitiveness and risk management, in particular reputational risk.
- The UN Guiding Principles do not impose new legally binding obligations for companies. The reasonable due diligence put forward in the national action plan therefore remains a voluntary approach.

- UEL supports training initiatives in order to engage businesses in the pursuit of human rights diligence.
- The CSR labelling, granted by the INDR and supported by the UEL, includes the human rights dimension. Companies are encouraged to formalize their approach by labelling themselves “CSR-socially responsible company”.

Proposals from academia

- The adoption of the first version of the NAP is a welcome first step as it expresses Luxembourg’s commitment to address the issue of business and human rights.
- The process leading to the adoption of the NAP included consultations with stakeholders, including the possibility to contribute in writing. The provisions concerning the implementation, evaluation and updating of the NAP are also welcome. For effective implementation and evaluation, it is crucial that the government ensures that multi-stakeholder collaboration continues.
- In terms of content, the recognition that in Luxembourg human rights are insufficiently perceived as a business topic by companies is a significant aspect of the NAP. The Government proposes to address this gap through awareness-raising, training, capacity building and other voluntary measures that are relevant and necessary at this stage.
- That said, going forward, it is important to remember that the UN’s framework recommends States to take into consideration a mix of binding and voluntary measures to strengthen respect for human rights by business enterprises.

ISBN 978-2-9199537-0-7



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