



The
Federal Government



Business &
Human Rights

National Action Plan Implementation of the UN Guiding Principles on Business and Human Rights

2016 – 2020



IMPRINT

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Given our prominent share in the globalization process, G7 countries have an important role to play in promoting labour rights, decent working conditions and environmental protection in global supply chains. We will strive for better application of internationally recognized labour, social and environmental standards, principles and commitments (in particular UN, OECD, ILO and applicable environmental agreements) in global supply chains. We will engage with other countries, for ex-ample within the G20, to that end. We strongly support the UN Guiding Principles on Business and Human Rights and welcome the efforts to set up substantive National Action Plans. In line with the UN Guiding Principles, we urge private sector implementation of human rights due diligence. We will take action to promote better working conditions by increasing transparency, promoting identification and prevention of risks and strengthening grievance mechanisms. We recognize the joint responsibility of governments and business to foster sustainable supply chains and encourage best practices. (...) To promote safe and sustainable supply chains, we will increase our support to help SMEs develop a common understanding of due diligence and responsible supply chain management.

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(Excerpt from the Leaders' Declaration adopted at the conclusion of the 2015 G7 Summit: Global Economy – Responsible Supply Chains)

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I. Introduction

Responsible shaping of a sustainable and successful global economy is of particular importance to Germany. Few countries' economies are so internationally entwined as that of the Federal Republic of Germany. Throughout the world, German companies make an important contribution to creating jobs and raising environmental and social standards. The "Made in Germany" label stands for high quality and reliability. At the same time, the increasing involvement of German enterprises in global supply and value chains presents both opportunities and challenges. New markets and production facilities are established, which creates employment and prosperity. At the same time, however, companies operating in global supply and value chains are exposed to risks arising from a lack of transparency and the frequently inadequate respect for human rights and for labour, social, and environmental standards. This applies especially to production in developing and newly industrialised countries but also within Germany.

The legal system of the Federal Republic of Germany contains numerous instruments that are focused primarily on the protection of human rights. They are binding on all enterprises. Where the business operations of an enterprise have an international dimension, procedures for identifying any actual or potential adverse impact on the human rights of people affected by its business activity should be developed and implemented.

The Guiding Principles on Business and Human Rights which were adopted by consensus by the UN Human Rights Council in June 2011 address this need and offer the very first international reference framework and human rights in the context of business, clearly defining the duties and responsibilities of all players in a three-pillar model known as the "Protect, Respect and Remedy" Framework. A key element of this framework is its focus on the role of the responsibility of enterprises to conduct human rights due diligence.

What are the UN Guiding Principles on Business and Human Rights?

In June 2011, the United Nations Human Rights Council, acting by consensus, adopted the Guiding Principles on Business and Human Rights. This was the culmination of several years of research and consultation led by UN Special Representative Professor John Ruggie and actively supported by the Federal Government. These Guiding Principles are based on the following three pillars:

- (I) the state duty to protect human rights
- (II) the corporate responsibility to respect human rights
- (III) access to remedy.

These pillars, which were first defined by Professor Ruggie, were underpinned with 31 guiding principles. These UN Guiding Principles have become firmly established as a reference framework for activities in the realm of business and human rights on the part of many international organisations, such as the OECD, the IFC, and the EU. They do not create any new human rights standards or contain any additional obligations in international law but refer back to existing binding and non-binding human rights instruments. The ultimate obligation to protect human rights continues to lie with states.

Objectives of the National Action Plan

The Federal Government attaches great importance to worldwide protection and promotion of human rights. The European Commission, in its Communication of 2011 entitled "A renewed EU strategy 2011–14 for Corporate Social Responsibility", called on all EU Member States to develop their own national action plans for the implementation of the UN Guiding Principles. The Federal Government, in the coalition agreement of 2013, committed itself to implementing the UN Guiding Principles in Germany. Through the present National Action Plan for Business and Human

Rights (NAP), it wishes to contribute to improving the human rights situation worldwide and to giving globalisation a social dimension in accordance with the 2030 Agenda for Sustainable Development.

The objectives of the NAP are:

- to make the UN Guiding Principles on Business and Human Rights applicable in practice for all players,
- to highlight duties and responsibilities of the state and business respectively,
- to guarantee policy coherence, and
- to ensure that German business remains sustainable and competitive.

In the light of these objectives, the present Action Plan is intended to launch a process of creating a road map for the practical implementation of the Guiding Principles. Its aim is to pool the capacities of the various players from government, business, civil society and trade unions, particularly with a view to contributing actively to improving the human rights situation throughout supply and value chains in Germany and worldwide. Through the establishment of reliable basic conditions for German enterprises, the Federal Government thus wishes to work towards a global level playing field and to continue the process launched in 2015, when the Heads of State or Government of the G7 countries adopted their declaration on sustainable supply chains. A common understanding by all players worldwide of due diligence as described in the UN Guiding Principles is an indispensable means to this end.

The state duty and corporate responsibility to protect human rights

With their three-pillar approach, the UN Guiding Principles create a stock taking manual for governments as well as defining state duties and corporate responsibilities. They do not create any new human rights standards or contain any additional obligations in international law but refer back to existing binding and non-binding human rights instruments, namely:

- the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights;
- the ILO Core Labour Standards: freedom of association, the right to collective bargaining and the elimination of forced labour, abolition of child labour and of discrimination in employment and occupation.

Responsibility for the protection of human rights lies with states. This state duty to protect cannot be delegated to other players within society. The UN Guiding Principles show where the state has the greatest responsibility to discharge its duty of protection in the context of business activity and highlight the policy areas in which there is leverage to raise human rights standards in global markets.

At the same time, the UN Guiding Principles make it clear that enterprises also have a social responsibility to respect human rights. Their activity can have both beneficial and adverse implications for human rights, the risk of adverse effects being greatest where host states do not discharge their duty of protection. Enterprises should therefore establish human rights due diligence processes to prevent, reduce or counterbalance adverse impacts on human rights. Consideration should also be given in this context to beneficial effects of corporate activity in the form of best practices. The OECD Guidelines for Multinational Enterprises, particularly chapter IV (Human Rights), make reference to the UN Guiding Principles.

States must also ensure that those whose human rights are adversely affected have access to state and, where necessary, non-state grievance mechanisms and redress. Enterprises must play an active part in state instruments and should also play an active part in non-state grievance mechanisms. Where these are lacking, enterprises themselves should establish non-state mechanisms.

Document structure

The federal ministries involved in drawing up the NAP (see chapter II) undertook an almost two-year consultation process, in which all stakeholder groups played an active part (see chapter II). The present document addresses the priority issues that were identified during this process and satisfies participants' wishes that the Federal Government communicate its behavioural

expectations clearly to enterprises. This approach is described in chapter III and establishes a binding procedural obligation. The description set out in that chapter is then particularised and underpinned with appropriate measures that are binding to a greater or lesser degree. This process can assume a sectoral character.

Chapters IV and V focus on the identified areas where action is required; these areas are briefly described, the current situation is presented, and the measures planned by the Federal Government are specified. Chapter VI describes the planned monitoring process that is planned following the adoption of the NAP.

II. The process of drawing up the Action Plan

In 2014, the Federal Foreign Office assumed primary responsibility for the development of the NAP. The Federal Ministry of Labour and Social Affairs, the Federal Ministry of Justice and Consumer Protection, the Federal Ministry for Economic Affairs and Energy, the Federal Ministry for Economic Cooperation and Development and the Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety were actively involved. The process of drawing up the Plan was based on international recommendations, especially those of the Office of the UN High Commissioner for Human Rights.

At the end of 2014 a steering group was appointed. Besides representatives of the six government ministries listed above, it included three representatives of business organisations (the Confederation of German Employers' Associations, the Federation of German Industries, and the Association of German Chambers of Commerce and Industry), two representatives of associations of non-governmental organisations ("Forum Menschenrechte" and the Association of German Development and Humanitarian Aid NGOs), one representative of the German Trade Union Confederation, and two advisory members, the German Institute for Human Rights and econsense. For expert consultation and public involvement, two formats were created: plenary conferences and hearings. The members of the steering group played a major role in shaping both of these formats.

The help of additional experts was enlisted on an ad hoc basis for event planning. A process document was published and an information page with access to documentation was created on the Federal Foreign Office website www.diplo.de to publicise the process.

The first plenary conference, held in the Federal Foreign Office in November 2014, served to identify priority issues, the final list of which was adopted by consensus by the participants from business, trade unions, non-governmental organisations, and federal ministries. Thematic mentors were chosen from the steering group to prepare the discussion of each issue. In May 2015, the German Institute for Human Rights presented a National Baseline Assessment, a review of the current situation based on interviews with experts from the various groups of participants in the process. This assessment was discussed with interested members of the public at a second plenary conference, conducted by the Federal Ministry of Labour and Social Affairs and the Federal Foreign Office in May 2015. A total of 12 hearings on the priority issues took place between April and November 2015, each attended by about 40 experts. The results of these hearings were collated at the third plenary conference, held by the Federal Ministry for Economic Cooperation and Development and the Federal Foreign Office in December 2015, which concluded the consultation process. Following a phase of consultation with the other government ministries, the Action Plan was presented to the Federal Cabinet in December 2016.

III. Federal Government expectations regarding corporate due diligence in respecting human rights

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

“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.”

UN Guiding Principle No 14

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

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

Enterprises should prevent and mitigate any adverse impact of their business activity on human rights. When due diligence in the realm of human rights is

defined and exercised, consideration should be given to the beneficial effects of corporate activity and to the diverse perspectives of the company’s own employees, the relevant stakeholders and others who may be affected. Within large enterprises, these include the staff of the human resources, purchasing, compliance and sales divisions. From outside the enterprise, suppliers, customers and trade unions but also bodies from civil society, business organisations and governments should be involved. Particular attention should be given to the rights of their respective employees and to those of local populations who may be affected.

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

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

Core elements of due diligence in the field of human rights

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

▶ Policy statement

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

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

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

The consideration of potentially adverse impacts on human rights is a continuous task that accompanies work processes and, in particular, is performed with a sectoral focus. It should take place when new divisions, products or projects are launched as well as in the con-

text of existing business activities. When potential risks are examined, a distinction must be made between the following types of impact:

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

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

The size of an enterprise, the sector to which it belongs and the nature of its business activity directly influence the risk that its operations will have an impact on human rights. The required depth and breadth of the risk assessment depends on these factors. An initial risk analysis on the part of an enterprise should

be conducted for each division or each product category and possibly for each location too. The starting point may be a simple overview of the company's main activities and of the value chains and business relations these activities entail. On the basis of this overview and with due regard to the international human rights standards enshrined in instruments such as the Universal Declaration of Human Rights, the International Covenants on Human Rights, the ILO Core Labour Standards and the OECD Guidelines for Multinational Enterprises, potential risk areas can be identified. Contextual circumstances such as the political framework and the presence of vulnerable groups of people (indigenous populations, for instance) should be factored into the analysis. The choice of method and the assessment of risks can be made on the basis of the analysts' own research, interviews in-house, in subsidiary enterprises and/or with business partners and input from external specialists.

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

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

▶ Measures and effectiveness tracking

On the basis of the results of the analysis, measures should be identified and incorporated into business activity. Such measures may, for example, comprise specialised training of particular employees in-house or with suppliers, adaptation of particular management processes, changes in the supply chain and participation in sectoral initiatives. So that potential or actual impacts can be properly addressed, enterprises should define clearly where competence lies for particular issues and establish the corresponding review mechanisms. Depending on the type of impact, an enterprise itself can initiate remedial measures. If the enterprise does not possess sufficient leverage to implement

successful measures, it should cooperate with other players to increase its influence. Withdrawal from an area of business activity or from a location should only ever be a last resort in such situations. The enterprise should focus first and foremost on developing remedial measures. To this end, objectives should be formulated and be communicated internally and externally as the relevant measure dictates. With the aid of effectiveness tracking, the enterprise should regularly review the efficacy of the measures it has taken and, to this end, engage in dialogue with affected stakeholders.

▶ Reporting

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

▶ Grievance mechanism

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

The procedure should provide maximum transparency for all stakeholders and should comply with international human rights standards. Existing complaints

offices within an enterprise or its environment should be screened for compliance with the criteria defined above.

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

Measures

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

defined above have incorporated the elements of human rights due diligence described in chapter III into their corporate processes by 2020 and the target is thus missed, the Federal Government will consider further action, which may culminate in legislative measures. In this context, the Federal Government will also examine, in consultation with the National Regulatory Control Council, the necessity of the corporate compliance costs arising from this plan and will consider a widening of the number of enterprises to be reviewed, in order to potentially include enterprises with fewer employees in future assessments and subsequent additional measures.

IV. Key areas for action

The following chapters deal with key areas in which, in the view of all stakeholders involved in the process, the Guiding Principles give rise to a need for action on the part of the Federal Government, of enterprises and of civil society and trade unions. In relation to the three pillars of the UN Guiding Principles, the following are the primary areas for action:

- the nexus between state action and corporate activities,
- effective exercise of corporate due diligence with regard to human rights, and
- access to grievance and remedy mechanisms.

It emerged from the process of dialogue and consultation on this Action Plan that the extent to which measures to be adopted to advance the implementation of the UN Guiding Principles would have to be binding would vary between these key areas. In addition to these measures, incentives and support services are to be created which would enable all participants, especially small and medium-sized enterprises, to implement the Guiding Principles successfully.

1. THE STATE DUTY TO PROTECT

“States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. (...)”

UN Guiding Principle No 1

“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 (...)”

UN Guiding Principle No 3(a)

The Federal Government takes particular account of the protection of human rights in the business context in the following circumstances:

1. when it formulates basic rules governing its own economic policy,
2. when it contracts with business enterprises,
3. when it supports enterprises or accords them preferential treatment, and
4. when enterprises are in state ownership.

1.1 Basic rules of economic policy

Protection within states’ own territory – challenges within Germany

The Basic Law as well as the international and regional human rights conventions require the legislature, the administration and the judiciary in Germany to respect, protect and guarantee human and fundamental rights. Accordingly, the statutory standard of human rights protection is very high, and this also applies in the realms of labour, social, commercial, company and civil law, which are of relevance in the present context. Germany has ratified most international human rights instruments without reservation and possesses, moreover, an independent national institution dedicated to human rights, the German Institute for Human Rights (DIMR). Among the core tasks of the DIMR are policy consultancy, research, the dissemination of information on human rights issues, education on human rights, and dialogue and cooperation with national and international organisations.

The current situation

Germany has ratified major strategic international instruments codifying the protection of human rights, including labour rights, thereby incorporating them into national law. The same applies to the particularly important ILO instruments known as the Core Labour Standards. The instruments that are now binding in Germany include, for example, the International Covenant on Civil and Political Rights, the UN Convention on the Rights of the Child, most of the conventions of the International Labour Organization and major European agreements such as the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter.

People in vulnerable situations pose a particular challenge in Germany as elsewhere. These include migrants and, in general, employees in precarious work. These groups of people are exposed to a high risk of labour exploitation. The introduction of a general statutory minimum wage in Germany has established an effective instrument against excessively low wages. Since 1 January 2015, a minimum hourly wage of €8.50 has been payable, and its rate is to be adjusted every two years by an independent commission. The minimum wage has increased the earnings of four million people, whose income has risen by an average of 18 %.

People who are affected by or at risk of labour exploitation need information about their rights and assistance in enforcing them. In recent years, advice and contact centres have been created in various parts of Germany, some with national and some with regional funding. With support from the Federal Government and the European Social Fund (ESF), for example, the German Trade Union Confederation (DGB), through a project called “Faire Mobilität” (fair mobility), provides such advice to employees, especially those from the EU Member States in Central and Eastern Europe. There is no permanent nationwide advisory structure yet for employees from all geographical origins and occupational sectors. In the fight against human trafficking and exploitative employment, Germany is also bound by EU Directive 2011/36/EU and has ratified both the Council of Europe Convention of 2005 on Action against Trafficking in Human Beings and the Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. To coordinate the diverse activities designed to combat human trafficking, the Federal Government established the Federal Working Group on Trafficking in Human Beings in 1997, whose members include representatives of non-governmental organisations.

The protection of whistleblowers is a highly valuable accompanying measure in the detection of exploitative employment. General provisions in the field of labour law (sections 612a and 626 of the German Civil Code and section 1 of the Protection against Unfair Dismissal Act) and in constitutional law (Articles 2(1), 5 and 20(3) of the Basic Law) provide the legal basis for such protection.

There are also numerous provisions of special legislation which supplement the protection of whistleblowers guaranteed by the aforementioned provisions in particular areas of activity, examples being section 13 of the Money Laundering Act and section 17(2) of the Occupational Health and Safety Act.

The Federal Government is currently preparing for the incorporation of numerous international legal instruments into German law. These include the Protocol to the ILO Forced Labour Convention (No 29). The Federal Ministry of Labour and Social Affairs is planning the examination prior to ratification of the ILO Minimum Wage Fixing Convention (No 131) and Indigenous and Tribal Peoples Convention (No 169) as well as of the Optional Protocol of 2008 to the International Covenant on Economic, Social and Cultural Rights and the revised Social Charter.

Measures

- To supplement the existing structures, the Federal Government has shifted the focal point of its efforts towards the fight against human trafficking for the purpose of exploitative employment. A joint federal level-state level working group is currently developing a strategic approach designed to reinforce prevention, establish advisory structures and improve criminal prosecution and the data situation.
- The Federal Government has reached agreement on a bill designed to combat abuses of temporary agency work and abuses of work and services contracts. This means that there will be clear rules in future to prevent abuses and the circumvention of employment standards.
- As part of the transposition of European Directive 2016/943/EU on the protection of undisclosed know-how and business information (trade secrets), the protection of whistleblowers in German law is being further developed. The purpose of this legislation is to make it clear that the disclosure of trade secrets is lawful if its purpose is to expose professional or other misconduct or illegal activity in order to protect the general public interest.

The precept of equal rights for men and women is constitutionally enshrined as a fundamental right in Article 3(2) of the Basic Law. Participation by men and women on an equal footing at all levels is a top priority of the Federal Government. Since 1 May 2015, for example, the Act on the Equal Participation of Women and Men in Leadership Positions in the Private and the Public Sector has been in force. The aim of the Act is to increase significantly the percentage of women in executive positions

in the medium term with a view to ultimately achieving parity with men. The principle of equal pay for equal work has also been firmly enshrined in the European treaties since the adoption of the Treaty of Rome.

In Germany there remains a substantial pay gap between women and men. Career choices based on role stereotypes, women in marginal part-time employment and disparities in career prospects because of structural conditions, the effects of material incentives and discrimination – mainly indirect – against women regarding remuneration are still preventing the realisation of equal pay for equal work. Even where men and women have the same formal qualifications and meet other criteria to the same extent, there is still a measurable pay gap of 7%. These pay differentials are a problem throughout the economy, a problem for which all relevant stakeholders must face up to their responsibility. The Federal Government has initiated a dialogue between employers' and employees' organisations on this issue and has introduced numerous non-legislative measures such as the Equal Pay Day and a new computer-assisted assessment procedure for the identification of corporate pay discrimination.

Bi- and multilateral economic relations

Under Article 207 of the Treaty on the Functioning of the European Union (TFEU), commercial policy lies within the sphere of competence of the EU. Within the Federal Government, the Federal Ministry for Economic Affairs and Energy is responsible for formulating German positions in the realm of commercial policy and advancing them in European and global forums. For the export-driven German economy, particular importance attaches to the elimination of trade barriers and reinforcement of the multilateral trade system. Trade, moreover, can make a major contribution to sustainable development. In this context, it is important that trade should be shaped in a development-friendly way. This means, for example, that environmental, social and human rights standards should firmly underpin free-trade agreements, which should be accompanied by impact-assessment and monitoring mechanisms.

The current situation

The institutions and Member States of the EU are also bound by their human rights obligations when implementing Union legislation. Germany supports the EU practice of agreeing on provisions designed to safeguard human rights in framework agreements with trading partners and using sustainability chapters in all new

free-trade agreements to enshrine high labour, social and environmental standards. Germany is committed to the negotiation of comprehensive binding standards for inclusion in these sustainability chapters. The EU 'Trade for All' strategy which was presented in the autumn of 2015 also emphasises that commercial policy should advance sustainable development and human rights throughout the world. At the same time, free-trade agreements also guarantee the right to regulate, which preserves the necessary leeway for states to protect human rights.

The Federal Government supports further development of the range of instruments for human rights impact assessment of trade and investment agreements.

Measures

- The Federal Government is pressing for the inclusion of an ambitious sustainability chapter in the planned TTIP agreement with the United States.
- The Federal Government advocates and supports further development of the range of instruments for human rights impact assessments of the EU's trade and investment agreements. Moreover, comprehensive impact assessments should be conducted before negotiations begin, so as to guarantee that the findings of the assessments can influence the negotiations.
- In the framework of the Aid for Trade initiative, the Federal Government supports developing countries' efforts to improve their trading opportunities. In the future, the Federal Government will focus even more sharply on supporting compliance with labour, social and environmental standards.
- The EU Special Incentive Arrangement for Sustainable Development and Good Governance ('GSP+') can be used as a format for promoting the observance and application of human rights standards by governments of developing countries. In the forthcoming review process of 2018, the Federal Government will press for further strengthening of that instrument.

Development policy

German development policy is value-based and is guided by the principle of human rights, because every indi-

vidual worldwide must have fair development opportunities. Respecting, protecting and guaranteeing human rights are binding requirements and form a key component of the 2030 Agenda for Sustainable Development, which, in 2015, the international community resolved to implement. With its globally and universally applicable Sustainable Development Goals (SDGs), the 2030 Agenda serves as a compass and reference framework and has been in force since 1 January 2016. The 2030 Agenda underlines the aspiration of the Federal Government to combine economic development with sustainability, with the basic principles of social and green market economics and with decent working conditions.

Through its development policy, Germany works proactively at all levels – globally, in partnership with other countries and nationally – to ensure that human rights are upheld by fostering the creation of requisite legal and institutional conditions, pertinent state regulation, and the monitoring of corporate activity. To this end, assistance is given to governments of developing countries as well as to international and multilateral organisations, for example, in aligning their economic and social policies more closely with human rights and sustainability standards.

German development policy actively supports dialogue between governments and enterprises (and their associations), trade unions and civil society on subjects such as vocational training, health and safety at work and minimum wage rates in partner countries.

In addition, the Federal Government, directly or together with these partners, implements development projects or programmes that target greater respect for human rights and the reduction of risks to human rights. Other aims of German development policy are to strengthen the rule of law and to improve access to justice, especially for marginalised sections of the population in partner countries.

The current situation

Activities in the fields of development cooperation with the private sector and promotion of economic development are governed by the UN Guiding Principles. Back in 2011, the Principles were incorporated into the strategy paper of the Federal Ministry for Economic Cooperation and Development on human rights in German development policy. This strategy is binding on the organisations that implement public development policy on behalf of the Federal Government. Contractual obligations to this effect have also

been incorporated into agreements on development partnerships with the German and European private sector under the *develoPPP.de* programme.

With their environmental and social standards, international financial institutions such as the World Bank and regional development banks set benchmarks for environmental and social regulation. The Federal Government will continue to track the reform processes in international financial institutions with a view to ensuring that their operations are even more sharply focused on human rights.

Seeking to identify practical approaches to development which will boost corporate responsibility for human rights, the Institute for Development and Peace (INEF) has implemented, on behalf of the Economic Cooperation and Development Ministry, a research programme entitled “Human Rights, Corporate Responsibility and Sustainable Development”. A research project sponsored by the same ministry at the German Institute for Human Rights, moreover, supports national human rights institutions in partner countries in the field of human rights and business.

In addition, the Federal Government has undertaken to implement the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests and has initiated a number of development cooperation projects to assist governments of developing countries in enforcing the land-tenure rights of marginalised groups, in strengthening stakeholders in civil society and in raising awareness among companies, for example those investing in agriculture, and gaining their support for the application of these guidelines with a view to preventing illegal actions such as land-grabbing.

In the G7 framework, the Federal Government is pressing for improvement of the economic position of women. Partners in developing countries are to be assisted in eliminating discrimination and violence against women as well as other cultural, social, economic and legal obstacles to the economic participation of women. One objective is to increase, by 2030 the number of women and girls learning occupational skills by one third. The Federal Government actively supports the Women’s Empowerment Principles and is committed to having as many enterprises as possible subscribe to them.

In the Leaders' Declaration following the G7 summit in 2015, the Federal Government also undertook to foster multi-stakeholder partnerships and to assist producer countries, by means of capacity-building measures, in meeting and applying sustainability standards.

Measures

- The instruments of development policy relating to cooperation with business will be reviewed for compliance with the requirements of the UN Guiding Principles. In particular, the contractual clauses of the develoPPP.de programme are to be fleshed out to include the due diligence requirements with regard to human rights.
- It is important to the Federal Government that National Action Plans on Business and Human Rights should be drawn up in developing and newly industrialised countries. The Federal Government will use the means at its disposal to promote such processes, for example by supporting national human rights institutions.
- The Federal Government will also take specific action to step up its wide-ranging commitment to the protection of human rights defenders when applying the UN Guiding Principles. In the field of business and human rights, as elsewhere, development policy is about standing up for the rights of vulnerable groups, such as indigenous peoples or children and youth or persons with disabilities.
- The requirements set out in the UN Guiding Principles and in the National Action Plan, in particular in its chapter III, on due diligence with regard to human rights, also apply to the organisations that implement development policy, including bodies that provide financing for development. They also serve as a basis for further assessment and monitoring and, where appropriate, further development of the grievance procedures that state implementing organisations, including financing bodies, have already established.
- In addition, the Federal Government will continue to track the reform processes in international financial institutions with a view to ensuring that their operations are more sharply focused on human rights.

1.2 Public procurement

The total value of public procurement contracts amounts to about €280 billion a year. The federal, state, and local authorities bear particular responsibility in this domain, in that they must discharge the state duty to protect human rights and ensure that the use of public funds does not cause or foster any adverse impact on human rights. By placing greater emphasis on sustainability in their procurement transactions, public authorities not only perform their function as role models but can also wield significant leverage in increasing the supply of sustainable products. The 2030 Agenda also makes explicit reference to sustainable public procurement as an instrument in the quest for sustainable development.

The current situation

Germany has fully transformed into domestic law its obligations to protect human rights under international agreements. This applies, for example, to the prohibitions of child labour and forced labour that are imposed by the ILO core conventions. If enterprises break the law in Germany in either of these respects, they can be disqualified from receiving public contracts. The Federal Government is already implementing a number of measures designed to promote sustainable public procurement by federal, state and local authorities and institutions:

- Since 2010, the federal, state and local authorities have been cooperating in the framework of the Alliance for Sustainable Procurement, chaired by the Federal Government. Its purpose is to contribute to a significant increase in the percentage of sustainable goods and services among the purchases made by public bodies. The Alliance enables the main public procuring bodies to share their experience and is intended to contribute to more widespread application of uniform national and international standards by all three tiers of government – federal, state and local.
- Since 2012, the Centre of Excellence for Sustainable Procurement at the Procurement Office of the Federal Ministry of the Interior has been assisting public contracting bodies in applying procurement criteria. The Centre of Excellence is available to assist procurers in situ, for example by providing advice in person or by telephone and by forwarding information material. In 2014, the Centre of Excellence, along with the BITKOM association of German digital goods and service

firms, drew up an initial sectoral agreement in the form of a Declaration on Social Sustainability for IT, which provides for adherence to the ILO core labour standards in procurement procedures. Other sectoral agreements on critical product categories are planned.

- Other Federal Government initiatives and support measures are to be found in the Programme of Sustainability Measures, into which Federal Government targets for sustainable procurement have been incorporated.
- “Kompass Nachhaltigkeit” (sustainability compass), an information platform funded by the Federal Government, provides an overview of sustainability standard systems and supplementary requirements and assists public contracting bodies in incorporating a sustainability dimension into their procurement procedures.
- The “Fair Procurement Network“ of municipalities, which is part of the Service Agency Communities in One World, provides advice to municipalities, among other things, and familiarises local authorities with the issue of sustainable procurement through specialised promoters. An information and dialogue campaign entitled “Deutschland Fairgleicht “ informs municipal decision-makers and contracting bodies and raises their awareness of sustainable procurement.

Following the reform of procurement law in 2016, with which three new EU procurement directives were transposed into German law, the new Part IV of the Restraints of Competition Act lays particular emphasis on observance of the law, especially taxation, labour and social legislation (sections 97(3) and 128(1) of the Act). The new legal framework enables procurement bodies to make greater use of public contracting to underpin the pursuit of strategic goals such as social standards, environmental protection and innovation.

Measures

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

→ The expertise of the Centre of Excellence for Sustainable Procurement in matters of human rights, including the application of the ILO core conventions to procurement procedures, and in the implementation of the UN Guiding Principles will be used to expand the knowledge of procurement staff in the context of training courses.

1.3 State support

Subsidies

Subsidies always require special justification and regular effectiveness tracking, because long-term arrangements that benefit one side at the expense of others have adverse effects as a rule. For example, by altering relative prices over a sustained period, subsidies can send the wrong economic signals and lead to inefficient resource allocation. Competitive enterprises may be forced out of the market by subsidised enterprises.

For these reasons, subsidies must not be granted unless they are necessary and reasonable and do not restrict competition. Subsidisation, moreover, must not conflict with other political aims, such as protection of human rights.

The current situation

To increase the transparency of subsidisation, the pressure to justify it and the scope for controlling it, the Federal Government follows Subsidy Policy Guidelines, which constitute a voluntary commitment by the Federal Government in connection with subsidy measures under its remit. In the run-up to the 25th Subsidy Report, the Federal Cabinet reinforced the Subsidy Policy Guidelines in January 2015, adding a sustainability assessment and an evaluation of subsidies, which will normally be conducted on a regular basis. By introducing the sustainability assessment, the Federal Government is underlining its intention to take more account of the sustainability principle in its subsidisation policy. The assessment is essentially based on the goals of the National Sustainability Strategy and focuses on long-term economic, environmental and social impacts.

Measures

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

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

The instruments of external-trade promotion in Germany provide assistance for German enterprises in accessing and safeguarding foreign markets. The range of instruments includes the provision of advice by German diplomatic and consular missions, the network of German Chambers of Commerce Abroad and the Germany Trade & Invest (GTAI) agency. The Federal Government also supports participation in trade fairs abroad, arranges visits by delegations and funds hedging instruments such as export credit guarantees, known as Hermes guarantees, to insure export transactions, federal guarantees for direct investments abroad (DIAs) and untied loan guarantees as insurance for banks against the risk of default.

The current situation

The processing of export credit guarantees, DIA guarantees and untied loan guarantees is undertaken on behalf of the Federal Government by the mandated companies Euler Hermes and PwC. Respect for human rights is already an element in the assessment of applications. Where there is reason to do so, environmental and social aspects as well as human rights considerations are closely examined.

How closely depends on the potential impact of the project. The minimum requirement for the assumption of a guarantee is compliance with the national standards of the target country. Projects with a considerable impact on human rights are subjected to a more thorough examination.

In the case of projects falling within the scope of the OECD Common Approaches and for investment guarantees with far-reaching environmental, social and human rights implications, compliance with international

standards such as those of the World Bank Group, particularly its sectoral Environmental, Health and Safety Guidelines, is required in addition. In projects with such implications, compliance with these standards must be checked and confirmed by an independent assessor. The decision to give a guarantee is taken jointly in the competent interdepartmental committees by the Federal Ministry of Economic Affairs and Energy, the Federal Ministry of Finance, the Federal Foreign Office and the Federal Ministry for Economic Cooperation and Development. Depending on the environmental, social and human rights relevance of a given project, enterprises may have to routinely report on the progress of the project as well as on the human-rights situation. If it receives complaints, the Federal Government may require remedial action.

Measures

- The Federal Government will ensure that human rights, which have hitherto been an element of the environmental and social impact assessment, are given more specific consideration and a higher profile in assessment procedures. It will measure the existing assessment procedures against the requirements set out in chapter III above and make adjustments where necessary. One particular priority will be measures for better identification of risks to human rights as part of the assessment process.
- Better information and greater transparency will serve to draw corporate attention, as early as during the initiation stage of projects, to the great importance attached to human rights due diligence and to the OECD Guidelines. In particular, the Federal Government will extend its support for the affected enterprises in the form of information material.
- In addition, it is planned to introduce human rights due diligence reports into the assessment procedures of the insurance instruments for foreign trade in cases where there is a high probability of serious implications for human rights.
- The National Contact Points for the OECD Guidelines (see subsection 4.2 below) will be upgraded to become the central grievance mechanism for external trade promotion projects.

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

1.4 Enterprises in public ownership

Enterprises in public ownership or under state control within the meaning of this subsection comprise all enterprises subject to private or public law in which federal, state and/or local authorities hold a direct majority share. If a business enterprise is under state control, in other words if a majority stake is held directly by the public treasury, or if its actions may otherwise be attributed to the state, such an enterprise bears special responsibility under the UN Guiding Principles to respect human rights.

The current situation

The general standard of protection given to human rights by enterprises in which the public treasury holds a stake is already very high, since public-private entities in which the state holds a controlling stake and whose organisational form is governed by private law as well as public companies in sole state ownership which are organised in a form governed by private law are directly bound by the enshrined constitutional fundamental rights. The acquisition of shares in enterprises subject to private or public law is done autonomously at the various tiers of government in the federal system – national, regional and local – on the authorities' own responsibility. Besides being bound by the constitutional fundamental rights in their economic activity, the three tiers of government are also bound by the provisions of ordinary legislation, such as the Federal Budget Code and municipal instruments.

In addition, there is a federal regulatory instrument known as the Public Corporate Governance Code of the Federation (PCGK Bund), comprising recommendations and suggestions for good corporate governance and addressed to enterprises in which the Federal Government holds a majority stake. The federal administration of shareholdings is organised on a decentralised basis and is the task of whichever federal ministry is responsible for the company's area of activity. Section 1.4 of the Public Corporate Governance Code states that the federal ministry responsible for the shareholding should ensure that enterprises acknowledge and comply with the Code and embody it in their corporate rules. The Code is part of the Principles of Good Corporate Governance and Management of Federal Holdings, which were adopted by the Federal Government and published by the Federal Ministry of Finance in its role as the lead body in this field. They form the foundations for responsible management of federal stakes in enterprises and provide for standardised performance of this task by the various federal ministries. Several federal states and municipalities have separate management codes for their own holdings.

The annual report on federal holdings lists about 700 enterprises in which the Federal Government has a direct or indirect stake. The Federal Government has direct holdings in 60 companies with business activities (as of 31 December 2014), 41 of these being direct majority holdings. Of the companies in which a direct majority stake is held, 13 have more than 500 employees. Among the matters covered by the report on federal holdings are the implementation of the Public Corporate Governance Code of the Federation, gender equality and the general sustainability of the listed enterprises.

Measures

→ The Federal Government, in cooperation with the Council for Sustainable Development, will expand the training courses of the federal holding management bodies to include sustainability matters and so focus its attention on responsibility for human rights in the enterprises in which it holds a direct majority share. The scope of the training curriculum of the holding management bodies shall be inserted as part of the next revision into the Public Corporate Governance Code of the Federation. At the annual meeting of the bodies managing federal and state holdings, the states shall be urged to follow this federal practice.

→ The Federal Government is keen to increase the percentage of enterprises in which it holds a majority share that apply the German Sustainability Code, including its obligation to report on human rights. From the 2018 financial year, the report on federal holdings will list, in its chapter on sustainability, all internationally active enterprises with more than 500 employees in which the Federal Government has a majority shareholding that apply the German Sustainability Code or a comparable framework with compulsory reporting on human rights and those that do not.

2. CHALLENGES IN CORPORATE PRACTICE

“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.”

UN Guiding Principle No 11

Enterprises can impact beneficially as well as adversely on the exercise of human rights within their own production processes and in their supply and value chains, both through their own business activity and through their business relationships. The ability of individual enterprises to meet systemic challenges in particular regions and/or sectors is often constrained or non-existent. It is therefore advisable for companies within a given sector to formulate a specific common definition of due diligence as described in chapter III above. Advice, experience-sharing and coordinated measures on the part of government, civil society, trade unions and enterprises help to pool resources and contribute to the creation of a global level playing field.

2.1 Ensuring the protection of human rights in supply and value chains

Throughout the world, the expectations of consumers, civil society and trade unions in terms of product quality and transparency of production are rising. Their attention is increasingly focused on factors such as environmental protection and social and employment standards along manufacturers' supply chains. In many

cases these supply chains are not transparent, and it is difficult to assess the situation with regard to individual enterprises within the chain. This increases the risk of adverse impacts on human rights and on social, labour and environmental standards in host countries. These countries often lack an adequate legislative basis or state supervision and enforcement of compliance with existing laws.

The Federal Government nevertheless expects enterprises to discharge their responsibility to exercise due diligence as regards human rights and therefore to create and apply appropriate management instruments that minimise the risk of involvement in the generation of any adverse impact (see chapter III above). The fact is that every enterprise, through its business activity, has an influence on the living and working conditions of its employees, on its customers and suppliers, on the environment and on the wider economic context. The OECD Guidelines for Multinational Enterprises, to which Germany is committed, call on enterprises, within the context of their own activities at home and abroad, including those of their subsidiaries, to respect human rights and to do everything they can to avoid causing or contributing to adverse human rights impacts. This also offers German enterprises the opportunity to positively shape the operating environment in host countries by joining efforts and so to improve the conditions for stable business activity and for the creation of new markets.

The current situation

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

- support efforts to set up substantive national action plans for the implementation of the UN Guiding Principles,
- increase transparency within supply chains,
- promote instruments for the identification and prevention of risks,

- strengthen grievance mechanisms,
- encourage best practices
- and, in particular, assist small and medium-sized enterprises in developing a common understanding of due diligence and responsible supply-chain management.

Host countries are assisted by means of capacity-building measures in introducing and upholding environmental and social standards. The Federal Government has long been supporting multi-stakeholder initiatives that have been launched in various sectors for the purpose of devising strategies and monitoring procedures.

- These include, for example, the Sustainable Cocoa Forum, founded jointly by the Federal Ministry of Food and Agriculture, the Federal Ministry for Economic Cooperation and Development, the business community and civil society. In the Forum, the Federal Government, together with representatives of civil society, the confectionery industry and the food trade and in cooperation with partner countries, presses for improved production conditions and living standards in cocoa-growing areas and for sustainable cocoa farming.
- The Partnership for Sustainable Textiles, which was initiated by the Federal Ministry for Economic Cooperation and Development, has established an obligation to comply with sustainability standards and to guarantee corporate due diligence in the textile and clothing sector. All members of the Partnership are required to pursue its social and environmental objectives. They submit to a review process, which is conducted by an independent third party and is designed to bring about continuous improvement. Individual schedules of measures (road maps) are compiled annually by all members; the first of these is to be produced by the end of January 2017. A robust sanctions regime and regular reporting on the implementation of the road maps will ensure credibility and transparency. The Textile Partnership creates a reference framework and an independent review system of international scope.
- With support from the Federal Government-funded German Global Compact Network, the

“Round Table on Human Rights in Tourism” was launched in 2012. Its aim is to specify the precise requirements of the UN Guiding Principles on Business and Human Rights for the tourism industry and to develop, in a multi-stakeholder format, solutions to human rights challenges that are specific to tourism.

Measures

- The Federal Government will support the systematic inclusion of sustainability chapters in free-trade agreements, which will prescribe, among other things, compliance with the ILO Core Labour Standards.
- The Federal Government will publish a study identifying high-risk sectors and regions of particular relevance to the supply and value chains of German business. On the basis of this study, with the Federal Government in a moderating role, sector-specific guides to the exercise of human rights due diligence and examples of best practice will be drawn up in cooperation with the relevant business associations and with the aid of dedicated multi-stakeholder forums.
- The Federal Government will continue to promote the Vision Zero Fund, which was initiated on the basis of a G7 decision. The Fund is to be administered by the International Labour Organization and will serve to prevent and reduce work-related deaths and serious work-related accidents in global supply chains.
- Through its development cooperation programme, Germany supports the application of sustainability standards in host countries, for example through the regional project entitled “Social and labour standards in the textile and garment sector in Asia”, which covers three countries – Bangladesh, Cambodia and Pakistan.
- By means of the Partnership for Sustainable Textiles, the Federal Government supports a multi-stakeholder initiative combining voluntary and compulsory elements. The Textile Partnership is designed to comply with the UN Guiding Principles. The aim is to have 75 % of the German textile and clothing market signed up to the Textile Partnership by 2018. The Partnership

should serve as a model for the definition of due diligence requirements in other industries.

- The “Round Table on Human Rights in Tourism”, a model initiative for the development of a specific sectoral understanding of due diligence with regard to human rights, will receive increased financial support from the Federal Government.

2.2 Transparency and communication regarding corporate impacts on human rights

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

The current situation

The number of enterprises that already present regular sustainability reports on a voluntary basis is steadily increasing. For example, the participants in the Global Compact, more than 300 in number, have committed themselves to presenting annual reports. The reports from German enterprises, and particularly from the large enterprises, are mostly based on the voluntary standards of the Global Reporting Initiative (GRI). The Federal Government has also supported the development of a German reporting standard in the German Sustainability Code (DNK). Sponsored by the Federal Ministry of Labour and Social Affairs, the Institute for Ecological Economy Research (IÖW) assesses the quality of sustainability reports from large enterprises and SMEs and draws up a league table for each of these categories. This ranking is intended to stimulate corporate competition in the realm of sustainability reporting and to highlight and propagate benchmarks for high-quality reporting.

Through their purchasing decisions, consumers influence the supply of sustainably produced and delivered goods and services. Instruments such as the information platform www.siegelklarheit.de (sustainability standards comparison tool), initiated by the Federal Government, create transparency and help consumers to adopt sustainable purchasing habits.

Measures

- On 21 September 2016, the Federal Cabinet adopted the law transposing into German Law Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial information by certain large undertakings and groups (the CSR Directive).
- The Federal Government is considering the introduction of a certification mark into German law. The relevant EU legislation already provides for the introduction of a European certification mark and gives Member States the option of introducing a national certification mark in addition. Such a mark could be used, for example, to certify compliance with certain human rights standards in supply and value chains. Responsibility for verification would rest with the certifying body. The mark can contribute to greater transparency for consumers and create positive incentives for enterprises in the form of a competitive edge derived from this means of communicating their compliance with human rights standards in the marketplace.

2.3 Business activity in conflict zones

The UN Guiding Principles attach particular priority to assisting enterprises in respecting human rights in areas torn by conflicts. One characteristic of such areas is an especially high risk of serious human rights violations resulting from the frequent total absence of state structures. The Federal Government therefore considers that it has a responsibility to try to ensure that German enterprises operating in such conditions have no part in any adverse impacts on human rights. Enterprises operating in these conditions are to be supported whenever they are able, through their investments and business activities, to contribute to the stabilisation and development of such areas. In fragile or war-torn countries, there is often a danger that trade in raw materials is cornered by destabilising players, who will use it for their own ends and thereby fuel existing conflicts. Importance therefore attaches not only to international commodity diplomacy but also to local contributions in cases where specific interests are affected by the exploitation of raw materials.

The current situation

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

The European Commission has presented a proposal for a regulation setting up a Union system for supply chain due diligence self-certification of responsible importers of tin, tantalum and tungsten, their ores, and gold originating in conflict-affected and high-risk areas. Based on the aforementioned OECD guide, the Commission’s draft regulation would establish a voluntary undertaking to observe due diligence rules within supply chains when importing the minerals referred to above so as to ensure that proceeds from their sale are not used to fund armed struggles in conflict zones or other high-risk areas. The European Parliament, on the other hand, expressed itself in favour of a binding instrument for downstream operators, that is to say along the whole value chain. A basic compromise has now been reached between the European Parliament, the Council and the European Commission on a binding instrument focused on the upstream area, i.e. the supply chain. Further details will now have to be negotiated in the context of the triologue conducted by the EU institutions.

In the quest for targeted improvements in the protection of human rights, the Federal Government is sponsoring a research project that is being conducted by the German Institute for Human Rights. Through the project, selected national human rights institutions in countries with which Germany engages in development cooperation are strengthened in their work in the raw materials sector. In the framework of technical cooperation, human rights analyses are being conducted in the Andean countries. “Human Rights Risks in Mining – A Baseline Study”, presented by the Federal Institute for Geosciences and Natural Resources at the beginning of 2016, contains an in-depth analysis of the

impact of mining on human rights. In addition, the Federal Government is promoting conflict-sensitive management of natural resources, particularly in Africa (Mali and the Democratic Republic of the Congo), in a project in which representatives of government, the private sector, civil society and affected populations are brought together in a dialogue with a view to reconciling their diverse interests in a participative and conflict-sensitive framework.

Measures

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

3. AVAILABLE MEANS OF PRACTICAL IMPLEMENTATION SUPPORT

The Federal Government would like to assist small and medium-sized enterprises in particular in fulfilling the extensive corporate due-diligence requirements and expectations relating to human rights (see chapter III above).

The current situation

Numerous measures and services are already available for this purpose. A selection of existing and planned measures is described in some detail below:

- The National CSR Forum, which was launched by the Federal Ministry of Labour and Social Affairs in 2009, consists of currently 41 members – high-ranking experts from business, trade unions, non-governmental organisations and research bodies as well as representatives of the participating federal ministries. Among the main tasks of the National CSR Forum are the provision of advice to the Federal Government on the continuing development of the national CSR strategy and the formulation of recommendations on specific issues. In 2010, the National CSR Forum, with the Federal Ministry of Labour and Social Affairs in

the lead role, discussed and developed a National CSR Action Plan. The measures and activities that have been carried out in the framework of the Action Plan have reached numerous enterprises. In a decision taken on 30 August 2012, the National CSR Forum expressed its support for “a smart mix of voluntary policy measures and, where necessary, complementary regulation” (2012, p. 11). Through the ESF promotion scheme for “social responsibility in SMEs”, more than 3,000 SMEs received advice and training in social responsibility, and regional CSR networks have been made permanent. Numerous specialised events have been staged in the framework of the CSR Forum to advise enterprises on the exercise of due diligence.

- The Federal Ministry for Economic Cooperation and Development makes information and guidance available to enterprises of various sizes from various sectors, particularly by funding the work of the German Global Compact Network. Ever since 2004, the Ministry has been promoting the Network in close consultation with the Federal Foreign Office. The Network unites the German signatories of the UN Global Compact, whose core principles include respect for fundamental human rights and labour standards. As a business-driven multi-stakeholder forum, the Network has been providing training courses for management staff in the exercise of corporate responsibility for human rights ever since 2008.
- The Agency for Business and Economic Development of the Federal Ministry for Economic Cooperation and Development was expanded in 2015/2016 and provides advice on development-related support opportunities and information services for enterprises operating in developing and newly industrialised countries. In addition, ever since 2009 the ILO has been offering the services of a help desk to assist multinational companies in the practices of applying international labour standards and to advise them on the current legal situation in individual countries.
- Ever since 2012, the Federal Government has been supporting the Business and Human Rights Resource Centre information platform. In 2014, it succeeded in having a German-language version of the platform made available. The website provides information on human rights challenges by region, issue and risk group and even by enterprise.

- The Chambers of Industry and Commerce are already very active in providing enterprises with guidance. German Chambers of Commerce Abroad can inform enterprises of the current legal and *de facto* situation in foreign countries. In some countries, the Chambers, in cooperation with German development cooperation agencies, provide facilities known as “CSR centres of excellence”, which provide advice on CSR measures.

Measures

Helpdesk and initial consultation

- The Federal Government will significantly increase the reporting and consultation output of German diplomatic and consular missions in collaboration with the other pillars of external-trade promotion, namely the Chambers of Commerce Abroad and Germany Trade & Invest. To this end, basic and continuing training will also be focused more sharply on advisory skills in the field of business and human rights.
- Within the Agency for Business and Economic Development of the Federal Ministry for Economic Cooperation and Development, which operates as a one-stop business advisory centre on development-related support opportunities in developing and newly industrialised countries, a helpdesk on business and human rights will be created. The core task of the helpdesk will be to provide initial consultation on request or referral and to raise awareness of the issues involved. The Agency serves enterprises and business organisations as a first stop, informing them of existing services, contacts and networks. The services of the Agency are broadened and underpinned by the provision of advice in the framework of existing networks operating at the interface between business and development cooperation, such as “EZ-Scouts” and “ExperTS”.

Information services and best practices

- The Federal Government CSR Award recognises exemplary enterprises for their contributions to sustainability. It also promotes a learning process, since each enterprise is scored on the basis of its individual contribution to sustainability. An additional special prize is to be awarded in future for responsible supply chain management.

→ The website www.csr-in-deutschland.de is currently being developed into the central Federal Government gateway to content on corporate social responsibility. Information on the main activities and measures of the Federal Government is to be posted there in a coherent whole-of-government format.

→ Continued efforts will be made to increase the availability of information in German through the production of guides and through support for the Business and Human Rights Resource Centre.

Opportunities for training and dialogue

→ The range of advisory and training services offered by the German Global Compact Network will be expanded and supplemented by services such as a graduated range of webinars and other formats relating to specific elements of human rights due diligence just like practical questions and answers.

→ As the third-largest contributor to the International Labour Organization, the Federal Government is a major sponsor of the support services offered by the ILO. The ILO Helpdesk for Business on International Labour Standards assists enterprises in applying international labour and social standards correctly. Besides an informative website, the Helpdesk also provides prompt replies to individual queries on a confidential basis as well as training courses.

→ In cooperation with business networks, 'practice days' for SMEs are offered nationwide. These sessions provide support, information and exchanges with other enterprises on responsible supply chain management and high-quality sustainability reporting.

Creating a global level playing field

→ In multilateral forums such as the G20, the EU and ASEM and in close cooperation with international organisations such as the ILO, the OECD and the UN, the Federal Government will press for the creation of a global level playing field with regard to terms of competition. To this end, the G7 leaders decision on sustainable supply chains will be further fleshed out with a view to arriving at a common global understanding of due diligence and of sustainable supply chain management.

4. GUARANTEEING ACCESS TO REMEDIES AND REDRESS

“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.”

UN Guiding Principle No 25

4.1 Access to justice and the courts for injured parties

Civil remedies in Germany

Germany's judiciary works independently and efficiently. Anyone who considers that his or her rights have been infringed in Germany by the actions of an enterprise can make claims before the civil courts. Anyone, moreover, who considers that his or her rights have been infringed abroad by the actions of a German enterprise, can bring an action in Germany, normally at the court with local jurisdiction for the registered office of the enterprise. Germany's international civil procedure law also contains additional provisions whereby the German courts may be seized of matters relating to certain offences committed abroad, provided that a sufficient domestic connection can be demonstrated (e.g. specific jurisdiction for tort under section 32 of the German Code of Civil Procedure).

German civil procedure law contains mechanisms that facilitate access to German civil courts. Litigants of limited means, for example, can obtain legal aid. Following a means test and an assessment of the prospects for a successful action, beneficiaries have their court costs and their own lawyer's fees paid in full or in part, depending on their degree of need. Litigants who are not German nationals can also receive legal aid for German court proceedings. All legal entities based in the European Economic Area – victims' associations, for example – can also receive legal aid if they fulfil the conditions set out in the German Code of Civil Procedure. The German Code of Civil Procedure also provides for collective remedies in the form of joinder of parties and consolidation of claims.

Scope for penalising enterprises under the law governing regulatory offences

Enterprises, moreover, may be held liable under the Regulatory Offences Act for conduct in breach of criminal law on the part of their management, including company-related violations of human rights, for which they may be fined up to €10 million. Higher fines may be imposed if, in addition, the economic benefit derived from the offence is being disgorged.

Support for remedy mechanisms in third countries

With regard to potential human rights violations within supply chains, great importance attaches to reinforcement of the rule of law and democracy in the relevant third countries, because that will create conditions for the introduction of effective redress mechanisms in those countries.

One contribution to the achievement of this objective is made by the German Foundation for International Legal Cooperation (IRZ), which was established by the Federal Government in 1992. The IRZ is now operating in almost 30 partner countries, providing advice when they reform their legal system and their judiciary. In this context, it also advises partner states seeking to reform their entire system of procedural law, providing advice not only on civil, including commercial, procedural law but also on the law governing criminal procedure, on administrative procedural law, including the creation of an administrative jurisdiction, and on the law relating to the enforcement of judgments. The IRZ also deals at various levels with the question of the best way to structure a system of legal aid so that it will be effective in guaranteeing access to justice. Alternative means of dispute settlement such as arbitration tribunals and mediation also feature in the work of the IRZ.

As its name indicates, the IRZ not only provides advice on procedural law but also provides consultancy in the various areas of substantive law, advising on matters of civil and commercial law such as civil codes, intellectual property rights and insolvency provisions as well as on matters of criminal law and more besides.

This consultancy is accompanied by numerous in-service training courses for those who apply the law, designed to help ensure that the reformed legislation is actually implemented in everyday practice too. The purpose of this training is to make court judgments more transparent through trackability of judicial activity and through statements of reasons, measures

designed to contribute in the long run to greater legal certainty and to more reliability and predictability and hence to greater public confidence in the judiciary.

Measures

- Those who are affected by human rights violations cannot use the existing remedy mechanisms unless they are sufficiently well informed about them. To this end, the Federal Government will produce a multilingual information brochure on access to justice and the courts for injured parties, which gives potentially affected persons an easy-to-follow summary of the remedies available to them under German civil procedural law.
- The Federal Government is currently preparing the introduction of compensation for surviving dependants, as envisaged in the coalition agreement. In the event of a close relative being killed, the new provision would enable the surviving dependants to make a pecuniary claim against the party responsible for the fatality as a token of reparation for the survivors' grief and as a gesture of sympathy, respect, and solidarity.
- The existing rules for the imposition of sanctions on enterprises for conduct in breach of criminal law will be expanded, as envisaged in the coalition agreement. Specific and coherent sanctioning principles will be created for corporate fines.
- The IRZ Foundation established by the Federal Government will include in its consultancy programmes advice for partner states on the areas of procedural and substantive law with a significant bearing on business and human rights, focusing on the need to ensure access to justice. At the Fifth International Conference of the Parliamentary Committees on Legal Affairs of IRZ partner states, held in October 2016, issues of CSR and anti-corruption efforts were among the subjects discussed under the Conference theme of "Politics, business and human rights".
- There are already enterprises that give their own employees and outsiders the opportunity to report potential or actual violations of human rights in the framework of in-house or industry-wide grievance procedures. The Federal Government will highlight best practices in future and promote the adoption of such mechanisms.

4.2 National Contact Point for the OECD Guidelines

The National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises has been operating ever since 2001 as an extrajudicial grievance mechanism. It is based at the Federal Ministry for Economic Affairs and Energy and has a remit to disseminate information about the OECD Guidelines, to raise awareness and to promote compliance with them. The NCP also helps to resolve problems arising in connection with the implementation of the Guidelines. To this end it examines incoming complaints and, if a complaint falls within its responsibility, offers to mediate between the parties. Among other things, the NCP is responsible for complaints of insufficient respect for human rights and of insufficient consideration for human rights in the exercise of companies' due diligence as defined in the OECD Guidelines. In their revised version of 2011, containing specific recommendations relating to the respect for human rights by companies, the OECD Guidelines are based explicitly on the UN Guiding Principles on Business and Human Rights. This means that the grievance mechanism for which the OECD Guidelines provide serves the implementation of the UN Guiding Principles on Business and Human Rights.

The NCP takes its decisions in consultation with the Interministerial Steering Group on the OECD Guidelines and with the "OECD Guidelines" Working Group. The Interministerial Steering Group comprises representatives of the Federal Foreign Office, the Federal Ministry of Labour and Social Affairs, the Federal Ministry of Food and Agriculture, the Federal Ministry of Finance, the Federal Ministry of Justice and Consumer Protection, the Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety and the Federal Ministry for Economic Cooperation and Development. The decisions of the NCP are taken in coordination with this Interministerial Steering Group. Besides the aforementioned government ministries, the members of the Working Group also include representatives of the German Global Compact Network, business associations, trade unions and non-governmental organisations. The Working Group provides a forum for discussion about current issues relating to the Guidelines. Its members are also kept informed of the receipt and outcome of complaints. Explanatory notes on the grievance procedure (including information on complaints received and their processing) are accessible online on the website of the Federal Ministry for Economic Affairs and Energy and were revised jointly with the Working Group in 2014.

In the context of the German G7 presidency, the Federal Government in 2015 advocated for the strengthening of mechanisms providing access to remedies in the event of human rights violations. To this end, the G7 encouraged the OECD to promote peer reviews of National Contact Points. The German NCP will undergo a peer review in the second quarter of 2017.

Measures

- In future, the German NCP will raise awareness of the OECD Guidelines, promote compliance with them and raise the profile of the NCP and of its special role as an effective extrajudicial grievance mechanism in implementing the UN Guiding Principles on Business and Human Rights. It is being reorganised and further strengthened. To this end a new organisational entity will be created within the Federal Ministry for Economic Affairs and Energy. In addition, the number of staff in the NCP will be increased.

V. Ensuring policy coherence

Implementing the UN Guiding Principles on Business and Human Rights will mean pooling the efforts of all stakeholders, creating incentives to improve the human rights situation throughout supply chains and in target countries for investments and preventing serious violations of human rights in the context of business operations. These efforts will complement each other, but they are no substitute for the primary obligation of states in whose territory production facilities are located to provide protection against human rights infringements and to eliminate any adverse impacts that may have arisen from such activities (the state duty to protect, respect and remedy). None of the elements of this Action Plan may be interpreted as implying that jurisdiction lies with the judicature of another state or is to be shared by the domestic and a foreign judicature. Efforts to empower states to discharge of their duties must be continued through support for structures designed to guarantee the general rule of law.

To ensure that Federal Government policy in the realm of business and human rights bears fruit, the competent institutions will systematically focus their respective policies on that goal. To this end, the measures taken by the Federal Government will be subject to prior interdepartmental coordination.

Care must also be taken to ensure that federal ministries and authorities, but also the state and local authorities, are empowered to act in ways that are consistent with Germany's human rights obligations and with this Action Plan. The Federal Government will continue to press in global as well as other forums for a common understanding of due diligence. In the 2030 Agenda for Sustainable Development, all states pledged themselves to promote, among other things, sustained, inclusive and sustainable growth and decent work. The Federal Government regards itself as a trailblazer in the implementation of the agenda and is pressing nationally and internationally for a robust monitoring system.

Measures

- An interministerial committee will be established (see chapter VI below) to verify the coherence and implementation of the adopted measures. The Federal Government's National CSR Forum will accompany the activities of the government ministries for the implementation of the NAP and make appropriate recommendations for action to the Federal Government.
- The Federal Government will create corresponding training opportunities for the relevant staff in the supreme federal authorities, including the German diplomatic and consular missions, on the subject of business and human rights.

VI. Monitoring

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

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

- To support the monitoring system, a permanent interministerial committee will be appointed, with the Federal Foreign Office as the lead department. The latter, along with the other departments involved, will be allocated the staff and budget required for their new additional tasks.
- The interministerial committee will verify the implementation and coherence of the adopted measures and drive forward the development of the NAP implementation process. The main areas of activity to come under its scrutiny will be the measures relating to the state duty to protect (public procurement, promotion of external trade, etc.) and the fleshing-out of due diligence obligations (chapter III above), including the planned definition of sectoral specifications and the corresponding support services.
- The NAP steering group, comprising representatives of business, civil society and trade unions, will be integrated into the existing National CSR Forum of the Federal Government. The Forum will monitor the activities of the interministerial committee for the implementation of the National Action Plan and make appropriate recommendations for action to the Federal Government. To this end, the interministerial committee will report regularly to the CSR Forum.
- Progress in the corporate implementation of the elements of human rights due diligence described in chapter III above will be reviewed by means of an annual survey conforming to current scientific standards, beginning in 2018. The survey will be conducted on the basis of a representative sample to establish the number of enterprises that have introduced the elements

of due diligence listed in chapter III above and will also include qualitative interviewing on the substantive depth of these measures and the challenges encountered during their implementation in enterprises. The yardstick for this review will be the objectives formulated in chapter III.

- On this basis, the review will establish whether at least 50% of all German-based enterprises with more than 500 employees have incorporated the elements of human rights due diligence described in chapter III into their business processes by 2020. The review will also include a 'comply or explain' mechanism, whereby enterprises that are not implementing particular procedures and measures can explain why this has not been happening. An updated status report will be produced in preparation for a revision of the 2016–2020 National Action Plan.

Abbreviations

ASEM	The Asia-Europe Meeting
CSR	Corporate social responsibility
DIA	Direct investment abroad
DIMR	Deutsches Institut für Menschenrechte (German Institute for Human Rights)
DNK	Deutscher Nachhaltigkeitskodex (German Sustainability Code)
ESF	European Social Fund
EU	European Union
GTAI	Germany Trade & Invest
IFC	International Finance Corporation
ILO	International Labour Organization
IRZ	Deutsche Stiftung für Internationale Rechtliche Zusammenarbeit (German Foundation for International Legal Cooperation)
NAP	National Action Plan
NCP	National Contact Point
OECD	Organisation for Economic Co-operation and Development
SMEs	Small and medium-sized enterprises
UN	United Nations

