

Recommendations to the new EU Commission: developing and adopting an EU-level Action plan on Business and Human Rights

The European Network of National Human Rights Institutions (ENNHRI) brings together 45 National Human Rights Institutions across wider Europe. Its goal is to enhance the promotion and protection of human rights across the European region. National Human Rights Institutions have initiated a multitude of actions connected to the activities of European companies ranging from investigations of abuses in specific sectors and analyses of legal and policy frameworks to development of guidance and tools for businesses, governments, public buyers and rights-holders.

In the context of the instalment of a new European Commission, ENNHRI would like to share some reflections and recommendations on EU actions to support the respect of human rights in the context of business activities within and outside Europe.

ENNHRI acknowledges that there has been progress in recent years at EU level¹ in addressing business and human rights issues through the following policy and regulatory developments in particular:

- the adoption of a renewed EU strategy 2011-14 for Corporate Social Responsibility (CSR Communication 2011) endorsing the UN Guiding Principles on Business and Human Rights and revising the definition of CSR,²
- the adoption of Directive 2014/95/EU on Disclosure of non-financial and diversity information by large companies and groups³
- the inclusion of Business and Human Rights in the 2015 EU Action Plan on Human Rights and Democracy⁴ and the support of the EU to NAPs and the implementation of the UNGPs outside of the EU, including through EIDHR calls, as well as EU-funded projects in Asia and Latin America;
- the adoption of Regulation (EU) 2017/821 on Conflict Minerals⁵

¹ Refer to staff working document where some of the EU level initiatives are compiled:

<https://ec.europa.eu/docsroom/documents/34482>

² <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0681:FIN:EN:PDF>

³ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0095&from=EN>

⁴ https://eeas.europa.eu/sites/eeas/files/eu_action_plan_on_human_rights_and_democracy_en_2.pdf

⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2017:130:FULL&from=EN>

- the adoption of the EU Action plan on financing sustainable growth⁶ and forthcoming Regulation on sustainability-related disclosures in the financial services sector.

Progress can also be noted at the level of member states. Sixteen member states have published a National Action Plan on Business And Human Rights.⁷ Some states have adopted legislation directly addressing business responsibility in relation to human rights, the most important examples being the Modern Slavery Act in the United Kingdom⁸ and the Duty of Vigilance law in France⁹. However, human rights abuses linked to activities or products of European business have been increasingly documented over recent years. Examples include labour rights abuses in global supply chains; serious human rights abuses linked to sourcing of minerals; environmental damages and loss of land and livelihoods linked to mining, agri-business, hydropower and now renewable energy projects which are critical to mitigating climate change; infringements on rights to privacy and freedom of expression connected to information and communications technology (ICT).

In some cases, rights-holders affected by the operations of European businesses have claimed their rights before national European courts. For instance, rights-holders from Pakistan handed in a complaint against the German textile retailer KiK at the regional court in the city of Dortmund, Germany. However, the Court dismissed the lawsuit because of a statutory limitation¹⁰, which demonstrates the difficulties victims face in accessing an effective remedy.

Furthermore, negative human rights impacts of business activities do not only occur outside of the EU. Cases of modern slavery and trafficking have been documented in relation to agricultural production, construction, fisheries, hospitality, and other industries. Labour arrangements within the “gig economy” are putting at risk fundamental labour rights. Global big tech is not only impacting the rights to privacy and freedom of expression, but it has also been found to be influencing elections and the whole democratic systems.

These issues go to the heart of European ideals of democracy, fundamental rights and rule of law. They demonstrate that the business and human rights agenda is absolutely central to the effective protection and enjoyment of human rights now and in the future. Responsible business will be critical to realising the ambitions of the next European Commission 2019-2024¹¹ as set forth

⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018DC0097&from=EN>

⁷ www.globalnaps.org

⁸ <http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>

⁹ <https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000034290626&categorieLien=id>

¹⁰ <https://www.ecchr.eu/nc/en/press-release/regional-court-in-dortmund-dismisses-pakistanis-complaint-against-kik/>

¹¹ <https://www.europarl.europa.eu/resources/library/media/20190716RES57231/20190716RES57231.pdf>

by the President of the European Commission Ursula von der Leyen, in particular to make the economy work for people, ensure the European green deal is just and leaves no one behind, and that rights are safeguarded in the digital era to name just a few of the priorities going forward.

ENNHRI recommends to the new EU commission to develop and adopt an EU-level Action Plan on Business and Human rights.

A European level Action Plan is needed to better articulate and concretise the commitments of the EU and its member states in relation to the implementation of the UNGPs. The Council Conclusions on EU Priorities in UN Human Rights Fora in 2019¹² state that the “EU will continue to promote the issue of implementation of the UN Guiding Principles on Business and Human Rights both in its external action and internal policies, including through initiatives on human rights due diligence, access to remedy for victims of corporate abuses, and support to environmental and indigenous human rights defenders.” Furthermore, “it will look into options to step-up the implementation of the UNGPs, including a possible related EU Action Plan”.

Such an EU-level action plan should orchestrate relevant EU initiatives, such as the EU action plan on sustainable finance and the upcoming EU Action Plan on Human Rights and Democracy 2020-2024 in a way that they work in tandem to lead to an enhanced and coherent implementation of the UNGPs. While several Directives or Regulations are already in place, an EU Action Plan could help identify further policy or regulatory gaps.

In addition, an EU Action Plan will provide a unique opportunity to enhance the coherence of national level measures. This is particularly timely as a number of initiatives, aiming at encouraging corporate human rights due diligence, are emerging in different member states, which may lead to different level of protection for human rights, as well as different requirements on businesses across Europe.

The development and adoption of such a plan should include a wide participation of stakeholders and should be accompanied by the development of a baseline assessment. The Shadow Action Plan¹³ suggested by the European Parliament Working Group on Responsible Business Conduct constitutes a good point of departure and inspiration for the development of an EU-level action

¹² <https://www.consilium.europa.eu/en/press/press-releases/2019/02/18/human-rights-council-adopts-conclusions-on-eu-priorities-in-un-human-rights-fora-in-2019/>

¹³ <https://responsiblebusinessconduct.eu/wp/wp-content/uploads/2019/03/SHADOW-EU-Action-Plan-on-Business-and-Human-Rights.pdf>

plan. Such a process should also help clarify the lead institutions within the EU and assign resources as appropriate.

ENNHRI recommends that the proposed plan include measures on the following issues:

- **Disclosure and reporting:** The EU Directive 2014/95/EU has contributed to enhancing disclosure and non-financial reporting issues. Nevertheless, the Directive does not prompt adequate disclosures regarding human rights¹⁴, and should be revised in order to increase transparency on human rights due diligence processes, including disclosure of human rights risks and impacts and measures taken by the company to avoid and mitigate those impacts. In addition, it is recommended to review the implementation of the Directive by member states.
- **European Human Rights Due Diligence legislation:** to enhance legal certainty for both rights holders and businesses and to ensure a level playing field within the EU, the Action Plan should aim at avoiding the creation of an eclectic system of human rights due diligence norms that differ from member state to member state and should instead assess options for an EU-level regulation in this area.
- **Public Procurement:** The EU should define more clearly how to include human rights concerns in public procurement pursuant to the revised 2014 EU Procurement framework.¹⁵
- **Trade:** Human rights clauses included in trade agreements should be made more effective, including by systematising the human rights impact assessment of the trade agreement before the agreement is entered into force.¹⁶
- **Marginalized Groups:** The Action Plan should define concrete steps for the implementation of the “EU guidelines on human rights defenders” in the field of business and human rights.
- **Remedy:** Access to justice for rights holders, especially non-EU citizens, within the EU is very limited. The EU action plan should develop measures to implement the recommendations formulated by EU Agency for Fundamental rights (FRA) in a 2017 opinion¹⁷. Key recommendations concerned collective redress mechanisms, improved

¹⁴ <https://www.allianceforcorporatetransparency.org/report-2018>

¹⁵ In spring 2019, ENNHRI sent a letter to the European Commission DG Internal Market, Industry, Entrepreneurship and SMEs (DG GROW) and called for a meeting to discuss stakeholder participation in the revision of the European Commission’s Guide on Socially Responsible Public Procurement.

¹⁶ On this topic see for example, https://www.institut-fuer-menschenrechte.de/uploads/tx_commerce/Studie_A_Model_Human_Rights_Clause.pdf

¹⁷ https://fra.europa.eu/sites/default/files/fra_uploads/fra-2017-opinion-01-2017-business-human-rights_en.pdf

access to evidence and clarifying exceptions to the choice of law and choice of forum in extra-territorial cases.

- **NAPs and peer review.** The EU has supported the development of National Action Plans by European Member states and states outside of the EU and should encourage the strengthening of NAPs for example through institutionalising peer review of NAPs at EU level.

ENNHRI also reiterates its call to the EU and EU member states to engage proactively in the development of a legally binding instrument on business and human rights¹⁸.

ENNHRI and its members stand ready to engage with the next EU Commission in the process of defining key measures that will reinforce the leadership of the EU and European business in relation to human rights.

¹⁸ <http://ennhri.org/ENNHRI-Statement-on-the-Zero-Draft-of-the-proposed-business-and-human-Rights>