Parliamentary Assembly
Assemblée parlementaire
http://assembly.coe.int

1949.2019

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Doc. 15004
30 October 2019

Human rights and business – what follow-up to Committee of Ministers Recommendation CM/Rec(2016)3?

Report[1]
Committee on Legal Affairs and Human Rights
Rapporteur: Mr Elshad HASANOV, Azerbaijan, Members not belonging to a Political Group

Summary

Following the adoption, in 2011, of the United Nations Guiding Principles on Business and Human Rights, it is now widely recognised that businesses hold responsibilities in this area. Accordingly, States have been encouraged to develop national action plans (NAPs) to ensure implementation of these guidelines.

At European level, Committee of Ministers Recommendation CM/Rec(2016)3 on human rights and business further encourages Council of Europe member States to implement the guidelines. However, to date, only 18 member States, almost all of which are members of the European Union, have drawn up NAPs.

Council of Europe member States are called on to take all necessary measures to implement these two instruments and, in particular, disseminate them widely, draw up and/or update NAPs and review their legislation and practices. The Committee of Ministers should also, as soon as possible, examine the implementation of Recommendation CM/Rec(2016)3 and ensure that the online platform for human rights and business becomes operational in order to disseminate good practices.

1. Reference to committee: Doc. 14377, Reference 4330 of 13 October 2017.

Contents **Page**

A. Draft resolution 3
B. Draft recommendation 5
C. Explanatory memorandum by Mr Elshad Hasanov, rapporteur 6
1. Introduction 6
2. Businesses' responsibilities in protecting human rights in the European Convention on Human Rights and other Council of Europe's conventions 6
3. Recent work of the Council of Europe's bodies on human rights and business 8
4. International legal standards on businesses' responsibilities in protecting human rights 9
5. The UN Guiding Principles 10
6. Committee of Ministers' Recommendation CM/Rec(2016)3 on human rights and business 13
7. National action plans (NAPs) on business and human rights 14
8. Conclusion 15

A. Draft resolution[2]

1. The Parliamentary Assembly recalls its Resolution 1757 (2010) and Recommendation 1936 (2010) on "Human rights and business" as well as its Resolution 1993 (2014) on "Decent work for all" and Recommendation 2123 (2018) on "Strengthening international regulations against trade in goods used for torture and the death penalty".

2. The Assembly notes that trans- or multinational companies are nowadays increasingly influential. Their influence can help contribute to the realisation of human rights, for example by creating employment and indirectly by paying taxes. They can also, however, be at the root of human rights abuses, such as exploitative or hazardous working conditions, child labour, pollution, employment discrimination and surveillance of employees while at work. Many of the alleged human rights abuses by business occur in third countries, especially outside Europe, making it very difficult for victims to seek remedies.

3. The Council of Europe has adopted a number of conventions covering a wide range of issues of direct relevance to business activities, such as social and economic rights, bioethics, information society, children's rights, combating corruption and trafficking in human beings. Moreover, although the European Convention on Human Rights (ETS No. 5, "the Convention") does not allow an individual alleging a violation of his/her rights by a private law company to bring a case against that company before the European Court of Human Rights ("the Court"), the Court has accepted that the Convention may in some cases have direct effect between private parties, especially if the State Party to the Convention does not fulfil its "positive obligations".

4. Over the past few decades, attempts to define the responsibilities of businesses in the area of human rights protection were principally based on the concept of "corporate social responsibility" and voluntary approaches. Nevertheless, although the primary duty to protect human rights lies with States and although there is still no legally binding instrument on business accountability for human rights abuses, it is now widely recognised that businesses hold responsibilities in this area.

5. The Assembly notes that the United Nations "Guiding Principles on Business and Human Rights: Implementing the United Nations "Respect, Protect and Remedy" Framework" ("the UNGP"), endorsed by the United Nations Human Rights Council in 2011, have been a big step forward in this respect. This set of guidelines for States and companies has been the first universally recognised standard in this area. It is based on three pillars: the State duty to protect human rights, the corporate responsibility to respect human rights, and the right of victims to access an effective remedy.

6. The Assembly notes that soon after the adoption of the UNGP States have been encouraged to develop action plans on their national implementation (National Action Plans – NAPs), which are policy documents identifying priorities and actions that States adopt in order to comply with international and national standards on business and human rights. The Assembly notes that only eighteen member States of the Council of Europe have adopted NAPs (Belgium, Czech Republic, Denmark, Finland, France, Germany, Ireland, Italy, Lithuania, Luxembourg, the Netherlands, Norway, Poland, Slovenia, Spain, Sweden, Switzerland and the United Kingdom), almost all of which are members of the European Union.

7. The Assembly welcomes the adoption of Committee of Ministers Recommendation CM/Rec(2016)3 on human rights and business on 2 March 2016 and stresses the importance of its role in encouraging member States of the Council of Europe to implement the UNGP at the regional level. It welcomes the fact that some Council of Europe member States – mainly European Union member States – have adopted comprehensive measures to implement this Recommendation, including legislative measures imposing a duty to implement human rights due diligence procedures in business enterprises.

8. The Assembly therefore calls on Council of Europe member States to take all the necessary measures to implement the UNGP and Recommendation CM/Rec(2016)3 on human rights and business, and in particular to:

8.1. develop NAPs, if they have not yet done so, and to review and update them on a regular basis, in a transparent process and in consultation with businesses, businesses' organisations, trade unions, non-governmental organisations, national human rights institutions and other relevant stakeholders;

8.2. share NAPs and good practices related to the implementation of the UNGP and Recommendation CM/Rec(2016)3 with other Council of Europe member States, in particular through the shared information system which is being developed within the Council of Europe;

2. Draft resolution adopted unanimously by the committee on 3 October 2019.

8.3. ensure translation and a wide dissemination of these two instruments, especially within relevant State authorities, State agencies and business enterprises;

8.4. review their national legislation, practice and policies to ensure that they comply with the requirements stemming from these two instruments; in doing so, national parliaments and governments should pay particular attention to:

8.4.1. a State's responsibility in the context of its commercial activities, including its responsibility for State-owned or -controlled companies and State agencies, and for giving support to certain companies and privatising the delivery of certain services;

8.4.2. potential risks of human rights abuses by businesses operating abroad;

8.4.3. potential risks of human rights abuses by businesses conducting operations in conflict-affected areas;

8.4.4. the need to adopt legislation on businesses' responsibilities for their activities having an adverse impact on human rights, in particular through developing human rights due diligence procedures for businesses;

8.4.5. the need to provide judicial (civil, criminal and administrative) as well as extra-judicial remedies for victims of human rights abuses by businesses;

8.4.6. gender-related risks and the needs of vulnerable or marginalised individuals and groups (such as workers, children, indigenous people and human rights defenders);

8.4.7. the need to provide appropriate information, training and workshops on human rights issues in third countries to businesses wishing to operate in such countries and to diplomatic and consular staff assigned to them.

9. In line with its Recommendation 2123 (2018), the Assembly calls on member States of the Council of Europe to take all the necessary measures to prohibit businesses domiciled within their jurisdiction from trading in goods which have no practical use other than for the purpose of capital punishment, torture, or other cruel, inhuman or degrading treatment or punishment and to regulate their trade in goods that can be abused for such purposes.

10. Moreover, the Assembly invites member States of the Council of Europe to support the adoption of a legally binding instrument on business activities and human rights, which is now being examined by the United Nations Open-ended inter-governmental working group on business and human rights (OEIGWG).

11. The Assembly also calls on member States of the Council of Europe to enhance their co-operation with other international organisations, in particular the United Nations, the International Labour Organisation (ILO), the Organisation for Economic Cooperation and Development (OECD) and the European Union, in order to consolidate coherent standards on businesses' responsibilities in the area of human rights protection and promote implementation of the UNGP. In particular, member States should continue to support the work of the United Nations and its Working Group on the issue of human rights and transnational corporations and other business enterprises.

B. Draft recommendation[3]

1. Referring to its Resolution … (2019) on "Human rights and business – what follow-up to Committee of Ministers Recommendation CM/Rec(2016)3?", the Parliamentary Assembly recommends that the Committee of Ministers:

1.1. take all necessary measures to ensure a wide dissemination of Recommendation CM/Rec(2016)3 on human rights and business;

1.2. examine the implementation of Recommendation CM/Rec(2016)3 as soon as possible and, in any event, not later than five years after its adoption;

1.3. consider conducting further reviews of the implementation of Recommendation CM/Rec(2016)3 on a regular basis;

1.4. continue to support the work of the Steering Committee for Human Rights (CDDH) on human rights and business;

1.5. take all the necessary measures to make the CDDH's Online Platform for Human Rights and Business operational without delay;

1.6. take all the necessary measures to encourage Council of Europe member States to adopt, review and/or update action plans on the implementation of United Nations Guiding Principles on Business and Human Rights (UNGP), if they have not yet done so, and to share them with other Council of Europe member States, in particular through the Online Platform for Human Rights and Business;

1.7. step up the co-operation between the Council of Europe and other international organisations, in particular the United Nations, the Organisation for Economic Co-operation and Development (OECD), the International Labour Organisation (ILO) and the European Union, with a view to promoting consolidation of coherent standards on businesses' responsibilities in the area of human rights and the implementation of the UNGP as well as exchanging good practices in this area;

1.8. engage in the works of the United Nations open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (OEIGWG) on a legally binding instrument on business activities and human rights.

3. Draft recommendation adopted unanimously by the committee on 3 October 2019.

C. Explanatory memorandum by Mr Elshad Hasanov, rapporteur

1. Introduction

1. The motion for a resolution entitled "Human rights and business – what follow-up to Committee of Ministers Recommendation CM/Rec(2016)3?" was referred to the committee on 13 October 2017 for report. On 12 December 2017, the committee appointed as rapporteur Mr Vusal Huseynov (Azerbaijan, EPP/CD). Following his departure from the Assembly, the committee appointed me as rapporteur on 26 June 2018. On 27 June 2019, the committee held a hearing with the participation of:

– Ms Jo Reyes, Director, Global Business Initiative on Human Rights (GBI), United Kingdom;

– Ms Claire Methven O'Brien, Chief Adviser, Human Rights and Business, The Danish Institute for Human Rights, Copenhagen, Denmark; and

– Ms Anita Ramasastry, member of the United Nations Working Group on the issue of human rights and transnational corporations and other business enterprises, Roland L. Hjorth Professor of Law and Director of the Graduate Program in Sustainable International Development at the University of Washington School of Law, United States (via video conference).

2. The above-mentioned motion for a resolution recalls that businesses, especially trans- or multinational companies, have gained much power and influence, with some companies' assets exceeding the gross domestic product (GDP) of the States in which they operate. They can benefit society and contribute to the realisation of human rights, including by providing employment and paying taxes. However, they are also implicated in human rights violations, such as exploitative or hazardous working conditions, environmental pollution, employment discrimination and violations of employees' right to privacy, including via cyber monitoring. Whilst businesses can enjoy rights, they are not, as yet, directly bound by human rights treaties. The primary duty to protect human rights lies with States. It is widely recognised that businesses hold responsibilities in this area. However, such responsibilities may extend further where States have "privatised" their classic functions in areas such as law enforcement or military activities.

3. The motion for a resolution also recalls that in its Resolution 1757 (2010) on human rights and business, the Assembly called for the legal vacuum in this area to be filled. On 2 March 2016, the Committee of Ministers adopted Recommendation CM/Rec(2016)3 on human rights and business, which provides governments, businesses and other stakeholders with guidance on how to implement the United Nations Guiding Principles on Business and Human Rights ("the UN Guiding Principles" or "UNGP") as the current globally agreed baseline in this field. The recommendation also calls on Council of Europe member States to share information on good practices and sets up a process of review of the recommendation's implementation no later than five years after its adoption. In the meantime, the signatories of the motion for a resolution call on the Assembly to take stock of the implementation of the UN Guiding Principles in member States, examine ways of ensuring that the standards and principles reflected in Recommendation CM/Rec(2016)3 are applied throughout Europe and engage with member States facing obstacles to implementation.

4. Over the past decades, the issue of businesses' responsibility for human rights abuses has gradually attracted greater attention. Although in international human rights law States occupy the role of primary duty-bearer, there has been a growing trend towards wider acceptance of businesses' duties in this area, especially with the adoption of the UN Guiding Principles. In this report, I will briefly recall the existing international legal standards in this area and will refer to the recent developments which have occurred in this field mainly within the United Nations and the Council of Europe. Furthermore, I will refer to the state of implementation of the UNGP and to the action plans on their implementation at national level ("National Action Plans" or "NAPs"), which are policy documents identifying priorities and actions that States adopt in order to facilitate compliance with international and national standards. The elaboration of a NAP is crucial for showing a State's commitment to promote respect of human rights by the business sector and, so far, many existing NAPs have provided examples of good practices in this field.

2. Businesses' responsibilities in protecting human rights in the European Convention on Human Rights and other Council of Europe's conventions

5. The European Convention on Human Rights ("the Convention" or "ECHR") explicitly protects individuals against actions or omissions by States and does not usually have direct effect between private parties.[4] Applications lodged with the European Court of Human Rights ("the Court") against individuals or companies are inadmissible *ratione personae* (Article 34 of the Convention). However, the Court has recognised that States Parties to the Convention have "positive obligations" to prevent human rights violations for persons

within their jurisdiction where the competent authorities had known or ought to have known of a real and immediate risk of such violations, including where such risks come from third parties. They also have to establish relevant legislation, including if need be criminal laws, to prevent abuses by private actors. Such requirements have been developed especially in the Court's case law concerning the right to life (Article 2 of the Convention),[5] prohibition of torture and inhuman and degrading treatment or punishment (Article 3 of the Convention),[6] prohibition of slavery and forced labour (Article 4 of the Convention),[7] the right to liberty and security (Article 5 of the Convention),[8] the right to respect for private and family life (Article 8 of the Convention),[9] the right to manifest one's religion (Article 9 of the Convention),[10] the right to freedom of expression (Article 10)[11] or the right to freedom of association (Article 11 of the Convention).[12] In the context of Article 2 of the Convention, the Court has examined cases in which individuals had died because of dangerous industrial activities (for example, waste-collection sites), reaffirming States' obligations to take appropriate steps to prevent accidental deaths and to ensure there is an adequate legal framework to protect the right to life.[13] Issues related to noise and other pollution by private companies were examined under Article 8 of the Convention; according to the Court, an individual's right to respect for private and family life may be violated due to a State's failure to regulate private industry properly.[14]

6. Moreover, the Court has established that the Convention's provisions also generate "procedural obligations", meaning that, once a violation has occurred, a State Party has to ensure an adequate investigation into the circumstances of the violation.[15] Beyond that, Article 13 of the Convention grants an effective remedy before a national authority to anyone who claims that their Convention rights and freedoms have been violated, although the remedy need not be judicial. Although this provision may only be violated by a State, and not by a private entity, in certain circumstances it may be invoked in connection with abuses by non-State actors under the "positive obligations" doctrine.[16] Finally, Article 6§1 of the Convention grants everyone the right to a fair trial before a court "in the determination of his civil rights and obligations", including in actions brought against corporations. It also applies to criminal charges brought against an individual but does not guarantee an individual's access to a court when bringing criminal proceedings against third persons, including corporations.[17]

7. The applicability of Convention protection depends primarily on where an alleged violation occurs. According to Article 1 of Convention, States Parties to the Convention have to secure the rights and freedoms guaranteed therein to everyone within their "jurisdiction", which generally refers to the territory of a State Party. An extra-territorial act would fall within the State's jurisdiction under the Convention only in exceptional circumstances, such as when a State Party exercises effective control over an area outside its own territory.[18] Even then, the responsibility of a State Party to the Convention for abuses by non-State actors will be

---

4. C. Methven O'Brien, A handbook for legal practitioners, Council of Europe, 2018, p.66.
5. See, for example, *Osman v. the United Kingdom*, application no. 23452/94, judgment of 28 October 1998 (Grand Chamber), paras. 115-116.
6. See, for example, *Z and others v. the United Kingdom, application* no. 29392/95, judgment of 10 May 2001 (Grand Chamber), para. 73.
7. See for example, *Rantsev v. Cyprus and Russia*, application no. 25965/04, judgment of 7 January 2010, paras. 286-287, or *Siliadin v. France*, application no. 73316/01, judgment of 25 July 2010.
8. See, for example, *Kurt v. Turkey,* application no. 24276/94, judgment of 25 May 1998, para. 124.
9. See, for example *López Ostra v. Spain*, application no. 16798/90, judgment of 9 December 1994; *Taşkin and Others v. Turkey*, application no. 46117/99, judgment of 10 December 2004 or *Fadeyeva v. Russia*, application no. 55723/00, judgment of 9 June 2005.
10. *Eweida and Others v. the United Kingdom,* application no. 55170/00, judgment of 13 April 2006, paragraph 95.
11. *Fuentes Bobo v. Spain*, application no. 39293/98, judgment of 29 February 2000, paragraph 38.
12. *Wilson, the National Union of Journalists and Others v. the United Kingdom,* applications nos. 30668/96, 30671/96 and 30678/96, paragraph 48.
13. *Öneryildiz v. Turkey*, application no. 48939/99, judgment of 30 November 2004.
14. See footnote 9.
15. See, for example, *McCann and others v. the United Kingdom*, application no. 18984/91, judgment of 27 September 1995 (Grand Chamber), para. 161 (with regard to Article 2 of the ECHR); *Assenov and others v. Bulgaria*, application no. 24760/94, judgment of 28 October 1998, para. 102 (with regard to Article 3 of the ECHR); *Rantsev v. Cyprus and Russia*, application no. 25965/04, judgment of 7 January 2010, paras. 288 (with regard to Article 4 of the ECHR); *Orhan v. Turkey*, application no. 25656/94, judgment of 18 June 2002, para. 369 (with regard to Article 5 of the ECHR) or *M.C. v. Bulgaria*, application no. 39272/98, judgment of 4 December 2003, para. 153 (with regard to Article 8 of the ECHR).
16. See, for example, *Hatton and Others v. United Kingdom,* application no. 36022/97, judgment of 8 July 2003 (Grand Chamber), paragraphs 137-142, or *Cordella and Others v. Italy,* applications nos. 54414/13 and 54264/15, judgment of 24 January 2019, paragraphs 175-176. In both cases, the Court considered that the applicants had no effective remedies to complain respectively about the increase in night flights noise and the lack of decontamination measures.
17. CDDH, Explanatory Memorandum to Recommendation CM/Rec(2016)3, CM(2016)18-addfinal, 2 March 2016, paragraph 52.

circumscribed by the limits of the doctrine of "positive obligations"; however, so far the Convention, as interpreted by the Court, does not provide a basis for State liability for failure to exercise control over the conduct abroad of business enterprises.[19] Hence, the case law of the Court does not solve all the issues related to human rights and business, and in particular not in the area of access to justice.[20]

8. The European Social Charter and the revised European Social Charter (ETS No.35 and ETS No.163) complement the protection offered by the ECHR, by guaranteeing a series of social and economic rights such as: prohibition of forced labour, fair, safe and healthy working conditions, protection from sexual and psychological harassment, freedom to form trade unions, non-discrimination and others. Their implementation is monitored by the European Committee of Social Rights through national reports drawn up by States Parties and, if the State Party has agreed, through collective complaints lodged against States Parties by social actors, including trade unions and some NGOs.[21]

9. A number of other Council of Europe conventions addressing certain specific issues – such as bioethics, trafficking in human beings, children's rights, the processing of personal data, cybercrime and corruption – entail further obligations for States that are party to them and thus may have implications for businesses operating in such States.[22]

3. Recent work of the Council of Europe's bodies on human rights and business

10. In its Resolution 1757 (2010) on human rights and business,[23] the Assembly expressed concern about the existing imbalance in the scope of human rights protection between individuals and businesses. It noted that "while a company may bring a case before the Court claiming a violation by a state authority of its rights protected under the European Convention on Human Rights (…), an individual alleging a violation of his or her rights by a private company cannot effectively raise his or her claims before this jurisdiction" (paragraph 4). It recalled that, while the primary responsibility to protect human rights lies with the States, businesses also had responsibilities in this area, especially where states had "privatised" classic state functions such as certain law enforcement or military activities (paragraph 2). It called for the legal vacuum in this area to be filled, as it had already done in Recommendation 1858 (2009) on private military and security firms and erosion of the state monopoly on the use of force. Since many of the alleged human rights abuses by businesses occurred in third countries, especially outside Europe, the Assembly noted that it was difficult to bring extraterritorial abuses by companies before national courts or the Court (paragraphs 2 and 3). It therefore called on member States to, inter alia, foster accountability for corporate human rights conduct (for example, by adopting guidelines on public procurement and investment of public funds aimed at excluding companies associated with human rights abuses and establishing bodies to advise governments on ethical issues and investment), legislate to protect individuals from corporate abuses of rights enshrined in the European Convention on Human Rights and in the revised European Social Charter and raise awareness of the Council of Europe's standards among businesses.

11. In its Recommendation 1936 (2010), the Assembly addressed a number of recommendations to the Committee of Ministers to promote corporate responsibility in the area of human rights. It recommended that the Committee of Ministers take a number of measures for this purpose, such as preparing a study – and possibly a recommendation – on corporate responsibility in the area of human rights and examining the feasibility of elaborating a complementary legal instrument, such as a convention or an additional protocol to the European Convention on Human Rights. In its Reply to this Recommendation of 8 July 2011 (Doc. 12686), the Committee of Ministers considered that the Assembly's proposal to draft a convention or an additional protocol to the ECHR was not the most appropriate solution. It took note of the proposals to prepare

---

18. For example, European Court of Human Rights, *Al Skeini and Others v. the United Kingdom*, application no. 55721/07, judgment of 7 July 2011, paragraph 135 or *Ilaşcu and Others v. Moldova and Russia,* application no. 48787/99, judgment of 8 July 2004 (Grand Chamber), paragraphs 314 and 318.
19. C. Methven O'Brien, A handbook for legal practitioners, op.cit., p. 63.
20. European Union Fundamental Rights Agency (FRA), Opinion 1/2017 "Improving access to remedy in the area of business and human rights at the EU level", 10 April 2017, p. 70.
21. Under the Additional Protocol of 1995 providing for a system of collective complaints, ETS No. 158.
22. The Convention on Human Rights and Biomedicine (ETS No. 164), the Convention against Trafficking in Human Beings (ETS No. 197), the Convention on Preventing and Combating Violence against Women and Domestic Violence (ETS No. 210), the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (ETS No. 201), the Convention for the protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108), the Convention on Cybercrime (ETS No. 185), the Criminal Law Convention on Corruption (ETS No. 173) and the Civil Law Convention on Corruption (ETS No. 174).
23. Report by the Committee on Legal Affairs and Human Rights, Doc. 12361 of 27 September 2010 (rapporteur: Mr Holger Haibach, German, EPP/CD).

a study and a draft recommendation on the human rights responsibilities of businesses, together with guidelines for national authorities, businesses and other actors and recalled that some of these ideas had already been discussed by the Committee of Experts on the Development of Human Rights (DH-DEV) and by the Steering Committee for Human Rights (CDDH).

12. In January 2013, the Committee of Ministers entrusted the CDDH with the task of conducting work on corporate responsibility for violations of human rights. The activity was conducted between 2013 and 2016. The CDDH elaborated the Declaration of the Committee of Ministers supporting the UN Guiding Principles and the Recommendation CM/Rec(2016)3 on human rights and business, which were respectively adopted by the Committee of Ministers on 16 April 2014 and 2 March 2016. In June 2017, the CDDH organised a High-Level Seminar on this topic. The issue of human rights and business has also been closely followed by the Council of Europe Commissioner for Human Rights[24] and the Conference of INGOs.[25] Moreover, a course on business and human rights is available on the Council of Europe's HELP (Human Rights Education for Legal Professionals) website.

13. In the meantime, the Assembly has also dealt with specific issues related to this subject. For example, in its Resolution 1993 (2014) on "Decent work for all", it addressed a number of issues related to employment conditions, stressed that member States should strengthen the implementation of the European Social Charter as well as corporate social responsibility and ethics.[26] More recently, the Assembly reaffirmed its commitment to end trade in goods used for capital punishment, torture or inhuman or degrading treatment or punishment in its Recommendation 2123 (2018) on "Strengthening international regulations against trade in goods used for torture and the death penalty".[27]

4. International legal standards on businesses' responsibilities in protecting human rights

14. As noted in Assembly Resolution 1757 (2010), "over the past few decades, a number of frameworks and toolkits have been adopted at international and European levels in an attempt to define the human rights responsibilities of businesses". They were principally based on the concept of "corporate social responsibility" (CSR)[28] and were essentially only "soft" law instruments or voluntary codes of conduct. Since then however, it has become more commonly accepted that businesses have responsibilities in the area of human rights and that these obligations are not of a voluntary nature, as they are derived from the Universal Declaration of Human Rights of 1948 and existing international human rights treaties.[29] Several international human rights treaties contain specific provisions applicable to corporations and their conduct: the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) of 1979 (Articles 2(e) and 13 (b)), the Convention on the Elimination of Racial Discrimination (CERD) of 1965 (Article 2(d)), the Convention on the Rights of the Child (CRC) of 1989 (Article 32(1)), the Convention on the Rights of Persons with Disabilities (CRPD) of 1965 (Article 27(1)) or the International Labour Organisation's (ILO) conventions (for example, Article 5 of the Forced Labour Convention of 1930 or Article 6 of the Worst Forms of Child Labour Convention of 1999). International anti-corruption treaties, such as the United Nations Convention against Corruption of 2003 or the Organisation for Economic Cooperation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 1997, require States to adopt legislation criminalising certain types of corporate conduct, such as bribery of foreign government officials. Moreover, civil liability for specific forms of corporate misconduct with environmental effects, such as oil pollution, has been addressed in specific treaties regulating these issues (for example, International Convention on Civil Liability for Oil Pollution Damage of 1969 and Protocols Thereto). Finally, relevant provisions of international humanitarian law (IHL) apply to businesses in situations of armed conflict.[30]

---

24. See, in particular, the Commissioner's Human Rights Comment, Business enterprises begin to recognise their human rights responsibilities, 4 April 2016.
25. See its recommendation CONF/PLE(2017)REC2.
26. See also the report by the Committee on Social Affairs, Health and Sustainable Development, Doc. 13456 of 21 March 2014 (rapporteur Mr Roel Deseyn, Belgium, EPP/CD).
27. See the report by the Committee on Legal Affairs and Human Rights, Doc. 14454 of 15 December 2017 (rapporteur: Mr Vusal Huseynov, Azerbaijan, EPP/CD) and the Committee of Ministers' reply of 14 September 2018, Doc. 14614.
28. CSR was previously understood as a concept "whereby companies integrate social and environmental concerns in their business operations and in their interaction with their stakeholders on a voluntary basis (…) over and above their legal obligations"; European Commission, Communication on a renewed EU strategy 2011-2014 for Corporate Social Responsibility, COM(2011) 681 final, 25 October 2011, paragraph 1. However, in the said communication (paragraph 3), the European Commission put forward a new definition of CSR as "the responsibility of enterprises for their impacts on society".
29. C. Methven O'Brien, A handbook for legal practitioners, op.cit., pp. 65-71.

15. Besides that, international organisations have prepared a number of documents on the responsibility of business to respect human rights, which may be grouped in the following way:

– At the UN level: the Ten Principles of the United Nations Global Compact of 2010 (which are based on a voluntary approach) and the UN "Guiding Principles on Business and Human Rights: Implementing the United Nations "Respect, Protect and Remedy" Framework" of 21 March 2011 (which are recognised as authoritative interpretation of existing international human rights law in the context of business activities; see below);[31]

– the ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, adopted in 1977 and amended on several occasions (most recently in 2017);

– the OECD Guidelines for Multinational Enterprises adopted in 1976 and revised on several occasions (most recently in 2011) and the Due Diligence Guidance for Responsible Business Conduct (of 2018);

– in the European Union: the European Commission's Communication on a renewed EU strategy 2011-2014 for Corporate Social Responsibility (of 2011) and Staff Working Document on Implementing the UN Guiding Principles on Business and Human Rights (of 2015) and the Council Conclusions on Business and Human Rights (of 2016) (the latter three documents reaffirm the EU's commitment to implement the UN Guiding Principles);

– the International Organisation for Standardisation ISO 26000:2010 – Guidance on social responsibility (of 2010) and ISO 20400:2017 – Sustainable Procurement Guidance (of 2017).

5. The UN Guiding Principles

16. In June 2011, the UN Human Rights Council endorsed the UN "Guiding Principles on Business and Human Rights: Implementing the United Nations "Respect, Protect and Remedy" Framework". The UN Guiding Principles are a set of guidelines for States and companies to prevent, address and remedy human rights abuses committed in business operations. They are the first universally recognised standard in this area and were proposed by UN Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie. They are addressed to all States and all business enterprises and clearly spell out the implications of the existing international human rights norms for both governments and businesses.[32] They "clarify and elaborate on the implications of relevant provisions of existing international human rights standards", "provide guidance on how to put them into operation" and "refer to and derive from States' existing obligations under international law".[33] They are based on three pillars: the State duty to protect human rights, the corporate responsibility to respect human rights, and the right of victims to access an effective remedy.

17. The **first pillar** refers to States' human rights obligations and contains two "foundational" principles (Principles 1 and 2). Firstly, "States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises (…)" (Principle 1). Although States are not *per se* responsible for human rights abuses by private actors, they must take steps to prevent, investigate, punish and redress such abuses through the full range of permissible measures (policies, legislation, regulations and adjudication). Secondly, "States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations" (Principle 2). This principle highlights the need for States to consider and address the impact on human rights that their companies may have in other countries. The remaining principles from the first pillar are "operational" (Principles 3 to 10) and they concern general State regulatory and policy functions (Principle 3), the "State-business nexus" (Principles 4 to 6), supporting business respect for human rights in conflict-affected areas (Principle 7) and ensuring policy coherence (Principle 8). In particular, as regards the "State-business nexus", the relevant principles describe the duties of a State in the context of its commercial activities and address issues of State-owned or controlled enterprises, State support to businesses (through a range of State

30. International Committee of the Red Cross, Business and International Humanitarian Law: An Introduction to the Rights and Obligations of Business Enterprises under International Humanitarian Law.

31. See also Committee on the Rights of the Child, General Comment No. 16 on state obligations regarding the impact of the business sector on children's rights, 2013; UN Office of the High Commissioner for Human Rights (OHCHR), OHCHR Guidance – Business and Human Rights: Improving accountability and access to remedy for victims of business-related human rights abuse, A/HRC/32/19, 10 May 2016 (and related documents) and Committee on Economic, Social and Cultural Rights, General Comment on State Obligations in the Context of Business Activities, 2017.

32. C. Methven O'Brien, A handbook for legal practitioners, op.cit., p. 12.

33. UN Office of the High Commissioner for Human Rights, Frequently asked questions about the guiding principles on business and human rights, 2014.

agencies such as, for example, export credit agencies), privatisation and contracting-out of public services to the business sector and public procurement. Concerning the privatisation of the delivery of certain State services that may impact upon the enjoyment of human rights, Principle 5 sets forth that in such cases "States should exercise adequate oversight in order to meet their international human rights obligations (…)".

18. The **second pillar** affirms that business enterprises have an independent responsibility to respect human rights which is distinct from State obligations and contains five foundational principles. Firstly, business enterprises should respect human rights, i.e. they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved (Principle 11). Secondly, business enterprises' responsibility for human rights refers to internationally recognised human rights, i.e. at a minimum those set out in the "International Bill of Human Rights" (including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights) and the ILO's Declaration on Fundamental Principles and Rights at Work (Principle 12). Depending on circumstances, additional human rights standards should be considered, for instance international humanitarian law in cases of armed conflict or standards concerning specific groups of persons (children, persons with disabilities, national minorities, etc.). Thirdly, as businesses' activities may have directly or indirectly adverse human rights impacts, Principle 13 states that business enterprises should: a) avoid causing or contributing to such impacts through their own activities and address them when they occur; b) seek to prevent or mitigate such impacts that are directly linked to their operations, products or services by their business relationships, "even if they have not contributed to those impacts". Fourthly, according to Principle 14, business enterprises' responsibility to respect human rights applies "to all enterprises regardless of their size, sector, operational context, ownership and structure." Nevertheless, the means through which enterprises meet their responsibility may vary according to these factors and with the severity of their adverse human rights impacts. Fifthly, business enterprises should have in place appropriate policies and processes, including: a) a policy commitment to meet their responsibility to respect human rights; b) a human rights due diligence to identify, prevent, mitigate and account for how they address their impacts on human rights; and c) processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute (Principle 15).

19. These requirements are further specified in the remaining guiding principles (Principles 16 to 24), which are of operational nature. In particular, Principle 16 requires that companies should explicitly express their commitment to respect human rights through a "**statement of policy**", which should: a) be approved at the most senior level of the enterprise; b) be informed by relevant expertise; c) stipulate the enterprise's human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services; d) be publicly available as well as internally and externally communicated; e) be reflected in operational policies and procedures necessary to embed it throughout the business enterprise. Moreover, **human rights due diligence** is the core requirement of business in meeting its responsibility to respect human rights under the UNGP; it is a process through which enterprises should identify, prevent, mitigate and account for how they address their adverse human rights impacts (Principle 17). It comprises four steps: 1) human rights and impact assessment; 2) integrating human rights impact assessment findings and taking appropriate action; 3) monitoring effectiveness of company responses and 4) communicating and reporting (Principles 17-21). It should be pointed out that Principle 19, which describes the second step, refers to the concept of "leverage" in addressing adverse human rights impact. According to the Commentary to the UNGP, leverage exists if an enterprise has the ability "(…) to effect change in the wrongful practices of an entity that causes a harm". If the enterprise has leverage to prevent or mitigate the adverse impact, it should exercise it; if it lacks it, there may be ways to increase it, for example, by offering capacity-building or collaborating with other actors. Moreover, Principle 22 establishes the duty of remediation: businesses have to provide or cooperate in the remediation of any adverse human rights impacts to which they have caused or contributed. They also have to first seek to prevent and mitigate the most serious or irremediable adverse impacts on human rights (Principle 24). Finally, Principle 23 a) reaffirms that business enterprises have to "comply with all applicable laws and respect internationally recognised human rights"; this obligation applies "wherever they operate" and "in all contexts".

20. The **third pillar** focuses on access to remedies for business-related human rights abuses (Principle 25). This foundational principle holds that "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 an effective remedy." Operational Principles 26-31 give more specific guidance on access to remedies. While States are required to take appropriate steps to ensure effective and appropriate judicial (State-based) and non-judicial (State-based or non-State based, including mediation-based, adjudicative or other) mechanisms (Principles 26-28), business enterprises should also set up complaint mechanisms at their level to provide early warning and resolve grievances before they escalate (Principles 29-30). According to the

Commentary to the UN Guiding Principle 25, remedies may include "apologies, restitution, rehabilitation, financial or non-financial compensation and punitive sanctions (whether criminal or administrative, such as fines), as well as the prevention of harm through, for example, injunctions or guarantees of non-repetition". As regards non-judicial grievance mechanisms (both State-based and non-State-based), Principle 31 requires them to be legitimate, accessible, predictable, equitable, transparent and rights-compatible; they should also be "a source of continuous learning". The UN Office of the High Commissioner for Human Rights is currently working on Accountability and Remedy Project, which is aimed at delivering guidance on access to remedy.

21. The UN Guiding Principles should be implemented in a non-discriminatory manner, with particular attention to the rights and needs of groups and persons that "may be at heightened risk of becoming vulnerable and marginalised" and "with due regard to the different risks that may be faced by women and men" (General Principles, fifth paragraph).

22. When adopting the UN Guiding Principles in 2011, the UN Human Rights Council also established the UN Working Group on human rights and transnational corporations and other business enterprises, composed of five independent experts and tasked, amongst other things, with promoting and exchanging good practices on the implementation of the said principles. The working group also guides the work of the Forum on Business and Human Rights, the world's largest global gathering on business and human rights. Soon after the UNGP had been endorsed by the United Nations, it started to call upon governments to develop NAPs as a means to implement this document. It has also issued a number of reports on various issues related to the interpretation and implementation of the UN Guiding Principles.[34] For example, in May 2016, it released a report to the Human Rights Council focusing on the obligations of State-owned enterprises and concluded that States did not ask their own companies or enterprises to abide by the UN Guiding Principles.[35] In June 2018, the Working Group presented a report on the Human Rights Council focusing on "economic" or "commercial" diplomacy policies and tools (including export credit, trade missions and advocacy and other support for trade). While it found evidence of some good practices, it concluded that very few States had fully aligned their trade and investment and other business support mechanisms with the UN Guiding Principles (and in particular Principle 4).[36] In May 2019, the working group released new guidance on "Gender dimensions and the Guiding Principles on Business and Human Rights", in which it proposed gender guidance specific to each of the 31 UN Guiding Principles.[37] It will also soon launch another guidance document on the UNGP and human rights defenders and is engaged in a project focused on the UN Guiding Principles and conflict-affected areas, which should be finalised in October 2020.

23. Moreover, by Resolution 26/9 of 26 June 2014, the UN Human Rights Council also established an open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (OEIGWG), which has been tasked with drafting "a legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises." At its fourth session in Geneva on 15-19 October 2018, the OEIGWG discussed a first draft of such an instrument (along with a draft optional protocol). Following its discussions, a revised draft legally binding instrument on business activities and human rights has been released and will be examined at the forthcoming fifth session of the OEIGWG (Geneva, 14-18 October 2019). In its current version the preamble to the revised draft legally binding instrument refers to the UN Guiding Principles and underlines that all business enterprises have the responsibility to respect all human rights. According to Article 1.2 of the draft, "human rights violation or abuse" shall mean any harm committed by a State or a business enterprise, through acts or omissions in the context of business activities, against any person or group of persons, individually or collectively, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their human rights, including environmental rights. The draft legal instrument shall apply to all business activities, including transnational ones (Article 3.1), contains a number of definitions, including that of "victims" (Article 1.1), and provisions regulating issues such as rights of victims, prevention of human rights violations or abuses, legal liability, adjudicative jurisdiction, mutual legal assistance, international cooperation, etc. It also foresees the establishment of new bodies: a committee of experts to interpret this legal instrument, a conference of States Parties to consider any matter related to its implementation and an international fund for victims of human rights violations or abuses by businesses. It is too early to predict when and in what form the binding instrument will be adopted. Its feasibility and potential effectiveness have been discussed at length in the doctrine, with some scholars having doubts about whether it could in practice be binding under international human rights law, and others stressing its possible usefulness to the victims.[38] These questions would certainly deserve further attention and more detailed analysis.

---

34. For the list see at: https://www.ohchr.org/EN/Issues/Business/Pages/Reports.aspx
35. UN Human Rights Council, A/HRC/32/45, paragraphs 92-93.
36. UN Human Rights Council, A/HRC/38/48, paragraphs 93-94.
37. UN Human Rights Council, A/HRC/41/43.

6. Committee of Ministers' Recommendation CM/Rec(2016)3 on human rights and business

24. Although the UNGP are a soft law instrument without automatic legal implications, they are widely recognised as the basis for policy approaches towards business and human rights and received wide support from governments, businesses, civil society and international organisations. The Council of Europe supported them, *inter alia*, by adopting Recommendation CM/Rec(2016)3 on human rights and business (hereinafter "the Recommendation") which recalls the Council of Europe member States' obligation to respect human rights and fundamental freedoms stemming from the European Convention on Human Rights, the European Social Charter and the revised European Social Charter and other legal instruments and explicitly recognises that business enterprises have a responsibility to respect human rights. It builds on the UN Guiding Principles and its three pillars and is aimed at contributing to their effective implementation at the European level.[39] Therefore, it recommends that the governments of Council of Europe member States:

– review their national legislation and practice to ensure that they comply with the recommendations, principles and further guidance set out in the Appendix to the Recommendation;

– ensure a wide dissemination of the Recommendation;

– share good practices related to the implementation of the Recommendation with a view to their inclusion in a shared information system, to be established and maintained by the Council of Europe;

– share plans on the national implementation of the UN Guiding Principles, including revised National Action Plans and best practice concerning their development and review in a shared information system, to be established and maintained by the Council of Europe;

– examine, within the Committee of Ministers, the implementation of the Recommendation no later than five years after its adoption, with the participation of relevant stakeholders.

25. The Appendix to the Recommendation includes seventy paragraphs focusing on the implementation of the UN Guiding Principles (referring to its three pillars) and additional protection for specific groups such as workers, children, indigenous peoples and human rights defenders (in paragraphs 58-70). In the part on "general measures", it recalls that member States should effectively implement the UNGP "as the currently globally agreed baseline in the field of business and human rights (…)" (paragraph 1) and in a "non-discriminatory manner with due regard to gender-related risks" (paragraph 2). It also provides further guidance on how Council of Europe member States could implement the UNGP, in particular, through their translation and dissemination (paragraph 6), encouraging third countries to do so and developing partnerships (paragraph 7), supporting the work of the UN and its Working Group on Business and Human Rights (paragraph 9). Moreover, it calls on member States to develop and adopt NAPs (paragraph 10), if they have not yet done so. This issue will be examined in detail below.

26. As regards the first pillar ("the State duty to protect human rights"), paragraphs 13-19 of the Appendix refer to the obligations stemming from the ECHR (paragraph 15) and recalls that the European Social Charter, the European Social Charter (revised) and the Additional Protocol to the European Social Charter providing for a system of collective complaints are "other key instruments that afford protection against business-related human rights abuses, in particular with regard to the rights of workers" (paragraph 16). Therefore, "in line with their international obligations, member States should ensure that their laws relating to employment are effectively implemented and require business enterprises not to discriminate against workers on any grounds", in accordance with Article 14 of the European Convention on Human Rights (paragraph 17). Member States should also ensure that "their legislation creates conditions that are conducive to the respect for human rights by business enterprises and do not create barriers to effective accountability" (paragraph 18) and should pay particular attention to "vulnerable or marginalised" individuals and groups (paragraph 19).

27. Concerning the second pillar ("State action to enable corporate responsibility to respect human rights"), paragraphs 20-30 of the Appendix include a number of specific recommendations to member States on how to ensure respect of human rights by business enterprises (paragraphs 21-30). In particular, member States should carry out human rights due diligence where they own or control business enterprises, grant substantial support and deliver services through agencies (such as export credit agencies and official investment insurance or guarantee agencies) to business enterprises, grant them export licenses, conduct commercial transactions with them (including through the conclusion of public procurement contracts) and privatise the

---

38. See, for example, S. Deva, *Alternative Paths to a Business and Human Rights Treaty*, and J. Letnar Černič, *European Perspectives on the Business and Human Rights Treaty Initiative*, in: J. Letnar Černič and N. Carrillo-Santarelli (eds.), 'The Future of Business and Human Rights. Theoretical and Practical Considerations for a UN Treaty', respectively at pp. 31 and 244-249.

39. For more information, Explanatory Memorandum to Recommendation CM/Rec(2016)3, op.cit.

delivery of services that may impact upon the enjoyment of human rights (paragraph 22). Member States should also consider possible human rights impacts when they conclude trade or investment agreements and include therein human rights clauses, if need be (paragraph 23). They should ensure that business enterprises domiciled within their jurisdiction do not trade in goods which can only be used for capital punishment, torture, or other cruel, inhuman or degrading treatment or punishment (paragraph 24) and should inform business enterprises on the potential human rights consequences of carrying out operations in conflict-affected areas (paragraph 27).

28. In light of the Council of Europe's *acquis* on access to effective remedies, the Recommendation focuses a lot on the third pillar – "access to remedy". Section IV of the Appendix provides more specific guidance on access to judicial mechanisms (civil and criminal liability and administrative remedies) and non-judicial mechanisms (including State-based mechanisms such as labour inspectorates, consumer protection authorities and environmental agencies, national human rights institutions, ombudsperson institutions and national equality bodies). In line with Principle 31 of the UN Guiding Principles, member States should encourage business enterprises to establish their own grievance mechanisms (see paragraph 54 of the Appendix).

29. As a legally non-binding document the Recommendation has its strengths and weaknesses. On one hand, it became immediately operational upon its adoption and across all Council of Europe member States. On the other hand, as a "soft" law document, in case of non-compliance with its provisions, it is not enforceable in a court of law, although it may serve as a basis for judicial interpretation. As a regional document, it complements the implementation of the UN Guiding Principles at the European level, addresses current gaps in human rights protection and inspires other regions of the world.[40]

7. National action plans (NAPs) on business and human rights

30. As indicated above, Recommendation CM/Rec(2016)3 calls on Council of Europe member States to share NAPs and good practices through an information system to be maintained by the Council of Europe. The Appendix to the Recommendation encourages member States, which have not yet done so, to develop and adopt such plans and to ensure their publication and wide distribution. In the process of developing NAPs, member States should refer to the available guidance, including that provided by the UN Working Group on Business and Human Rights. They should seek the expertise and involvement of all stakeholders, including business organisations and enterprises, national human rights institutions, trade unions and non-governmental organisations. With the participation of those stakeholders, they should continuously monitor the implementation of their NAPS and periodically evaluate, update and share them with each other (paragraphs 10-13 of the Appendix).

31. The CDDH is currently working on a project aimed at establishing a digital platform for the collection and dissemination of good practices and information on the implementation of Recommendation CM/Rec(2016)3 and the UN Guiding Principles. For this purpose, it has sent a questionnaire to the member States and National Human Rights Institutions and received replies from ten States (Belgium, Czech Republic, Denmark, France, Germany, Ireland, Netherlands, Poland, Portugal and Switzerland) and four National Human Rights Institutions.[41]

32. The UN Working Group on transnational corporations and other business enterprises with respect to human rights systematically encourages States to develop and adopt NAPs and published guidance on the development of a NAP in 2014. Moreover, in 2014, the Danish Institute for Human Rights published a Toolkit for the Development, Implementation, and Review of State Commitments to Business and Human Rights Frameworks, which is already in use in all regions of the world by governments, national human rights institutions and civil society. So far, only 22 States have produced NAPs.[42] This list includes eighteen member States of the Council of Europe (chronologically): the United Kingdom, the Netherlands, Denmark, Finland, Lithuania, Sweden, Norway, Switzerland, Italy, Germany, France, Poland, Spain, Belgium, Czech Republic, Ireland, Luxembourg and Republic of Slovenia.

---

40. Ministry of Foreign Affairs of Denmark and the Danish Institute for Human Rights, Business and Human Rights in Europe : Next Steps in Strengthening Implementation and Accountability, report of Stakeholder Workshop, 2 December 2016, Copenhagen.
41. See CDDH(2019)01 for the questionnaire, CDDH(2019)20 for the information provided by the CDDH Secretariat and CDDH(2019)06 for the compilation of replies received.
42. As of 25 September 2019, see at: https://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx.

33. In 2018, the Danish Institute for Human Rights analysed 21 NAPs for the period 2013-2018. It concluded that the majority of NAPs are stand-alone action plans and are structured to follow the design of the UNGP. Their lengths vary considerably. Although all States held stakeholder and right-holder events during the development of NAPs, the extent of the involvement of such groups varied considerably. While many NAPs address issues concerning vulnerable groups, certain groups receive less attention than others (migrant workers, persons with disabilities and indigenous peoples).[43] It is also important to note that many NAPs refer to the UN 2030 Agenda for Sustainable Development.[44]

34. An overview of the NAPs produced by Council of Europe member States shows that they have taken various legislative initiatives to prevent corporate-related human rights abuses and to ensure access to remedies. This includes, in particular, laws requiring companies to disclose their due diligence efforts. For example, under the Modern Slavery Act 2015 companies that carry on a business or part of a business in the UK and which meet a minimum turnover threshold must produce a slavery and human trafficking statement each financial year. These statements must explain the measures that the company has taken to ensure human trafficking is not taking place in its business and supply chain (Provision 54). Moreover, the EU Non-Financial Reporting Directive 2014/95/EU requires all EU member States to implement measures that oblige companies with over 500 employees (approximately 6,000 across the EU) to disclose information in annual reports on the impact of its activity, relating to, as a minimum, environmental, social and employee matters, respect for human rights, anti-corruption and bribery matters.[45] In order to implement this directive, Poland, for example, amended its Accounting Act by making compulsory for certain large entities, primarily in the financial sector, to report on their human rights policies in business practice.[46]

35. Moreover, some States have adopted laws imposing a duty to implement full human rights due diligence (HRDD) procedures. The French Duty of Vigilance Law of 2017 is the best-known example, as it establishes a duty of due diligence for large French companies to develop, disclose and implement a "vigilance plan" which should include reasonable vigilance measures adequate to identify and prevent risks of violations of human rights, as well as injury, health and environmental damage risks.[47] In May 2019, the Dutch Senate passed the Child Labour Due Diligence Law; according to its provisions, Dutch companies and companies from elsewhere that deliver products to the Dutch market will have to declare that they have addressed the issue of child labour in their supply chains.[48] In Switzerland, in 2016, following a citizens' legislative initiative, a proposal to include mandatory HRDD on multinational companies has been examined by the two Chambers of the Federal Parliament. However, its adoption has been postponed up to now following a blockage over a legislative counterproposal backed by multinational companies.[49] The governments of Luxembourg, Germany and Finland have included in their government programmes a commitment to assess the adoption of HRDD legislation in the upcoming years.

8. Conclusion

36. Although businesses can make a positive contribution towards the fulfilment of human rights and the achievement of national development objectives, their activities can also have adverse impacts on the human rights of individuals with whom they interact. These activities have an increasing impact on people's lives, their human rights and fundamental freedoms in times of economic globalisation and intensifying inequalities. The use of internet and social media platforms, high rates of unemployment, massive migration, modern slavery, privatisation of public services, environmental pollution and climate change create new challenges, which might involve private sector accountability for human rights violations. There are new grey areas showing that

43. Danish Institute for Human Rights, National Action Plans on Business and Human Rights. An Analysis, Copenhagen, 2018.
44. On the role of this document in contributing to human rights, see the report by the European Union Fundamental Rights Agency, Implementing the Sustainable Development Goals in the EU: a matter of human and fundamental rights, 2019.
45. For information about its transposition by member States, see: https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=CELEX:32014L0095
46. Act of 15 December 2016 amending the Accounting Act, Journal of Laws 2017, Item 61, 11 January 2017.
47. *Loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre* (1), Journal of Laws no.0074 of 28 March 2017, item 1.
48. European Coalition for Corporate Justice http://corporatejustice.org/news/15081-the-netherlands-takes-a-historic-step-by-adopting-child-labour-due-diligence-law
49. https://initiative-multinationales.ch/communiques-de-presse/le-lobby-des-multinationales-gagne-au-conseil-des-etats-naufrage-du-compromis/

the line between States' and business enterprises' responsibility is still very thin. In the absence of a legally-binding instrument on business accountability for human right abuses, there is no monitoring mechanism to assess States' and business enterprises' actions in this area.

37. For many decades, the issue of businesses' liability for human rights abuses focused on voluntary approaches based on "corporate social responsibility" and therefore the adoption of the UNDG was a big step forward. However, since this document is more geared towards the business sector, its national implementation has been limited and quite slow. Moreover, there is no systematic review of national efforts to implement the UN Guiding Principles, including the adoption of NAPs, despite some actions taken at the UN level and the growing interest in the issue of corporate responsibility to respect human rights. Interestingly, the majority of States that have produced NAPs are members of the European Union (and of the Council of Europe at the same time). That also means that only eighteen out of the 47 member States of the Council of Europe have produced NAPs to implement the UNGP. Almost all of these member States (with the exception of Switzerland) are EU member States. Although some States have already started the process of developing NAPs, more efforts are needed to encourage States to prepare NAPs and promote awareness of the recommendations stemming from the UN Guiding Principles and Recommendation CM/Rec(2016)3, especially between member States of the Council of Europe which do not belong to the European Union.

38. NAPs provide a useful policy tool to help strengthen policy frameworks to protect against business-related human rights abuses. As indicated above, many States have adopted legislative measures imposing obligations on businesses. NAPs' development and review should be used as an opportunity for States to conduct an effective and comprehensive review of existing legal and regulatory framework and to consider introducing appropriate legislation when voluntary commitment of companies proves insufficient to ensure business respect for human rights and access to a remedy when abuses occur. States should be further encouraged to review their NAPs on regular basis and to adopt them as soon as possible, if they have not done so yet. The Assembly could play a particular role here by inviting national parliaments to adopt laws aimed at preventing corporate-related human rights abuses and ensuring access to a remedy. In particular, if need be, such laws should include human rights due diligence procedures. The Assembly could also invite governments to include in their relevant programs issues related to businesses' responsibility for human rights abuses.

39. The Council of Europe's Recommendation CM/Rec(2016)3 foresees a mid-term review of its implementation of the recommendation within the five years following its adoption, a period during which good practices will be collected and shared among member States. This means that such a review will not be available before March 2021 and currently there is no other mechanism to assess States' efforts in this area. Nevertheless, one should welcome the efforts made by the CDDH, which has already collected some examples of good practices through the answers received to its questionnaire on business and human rights and which will soon launch its Platform on Human Rights and Business. Therefore, member States of the Council of Europe should be further encouraged to support the work of the CDDH in this area. The Committee of Ministers could further reflect on how to promote the implementation of Recommendation CM/Rec(2016)3 and what other steps could be taken within the Council of Europe to promote the adoption of a legally-binding instrument on business accountability for human rights abuses. In particular, it should continue and even strengthen its cooperation with the United Nations and other international organisations in this field.