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COMMISSION STAFF WORKING DOCUMENT

on Implementing the UN Guiding Principles on Business and Human Rights - State of Play

CONTENTS

This Staff Working Document of the European Commission has been prepared by the Directorate General for Internal Market, Industry, Entrepreneurship and SMEs, in association with the Directorates General for Justice and Consumers, Trade, International Cooperation and Development, and with the European External Action Service. It is the result of wide consultation and collaboration across all Commission services.

INTRODUCTION

On 16 June 2011 the United Nations Human Rights Council (UNHRC) adopted by unanimity the United Nations Guiding Principles on Business and Human Rights (UNGPs). Widely seen as the most comprehensive global framework, the UNGPs have played an important role in addressing the risk of adverse impacts of business activity on human rights.

While private businesses have a broadly positive impact on the social and economic development of modern societies - creating wealth and jobs, adding value and providing services- their operations can also have a significant impact on civil and political rights, economic, social and cultural rights, and labour rights. The UNGPs provide a coherent framework for addressing such possible adverse corporate impacts on human rights, as well as provisions for respect of international humanitarian law in situations of conflict.

The European Union (EU) plays a leading role in the interrelation between business and human rights and recognises the UNGPs as a "the authoritative policy framework" in addressing corporate social responsibility. Accordingly, the European Commission coordinates its approach to business and human rights through its wider Strategy on Corporate Social Responsibility (CSR). In its 2011 Communication on Corporate Social Responsibility [1], the Commission referred to the importance of working towards the implementation of the UNGPs in the EU. It emphasised that better implementation of the UNGPs would contribute to EU objectives – some of them enshrined in the Treaties - in relation to specific human rights issues, such as child labour and forced prison labour, as well as core labour standards, including gender equality, non-discrimination, freedom of association and the right to collective bargaining. The Commission has also actively encouraged EU Member States to develop national action plans (NAPs) in relation to UNGPs.

A public consultation on the Commission's CSR Strategy in 2014 confirmed support for the Commission's continued role in fostering the implementation the UNGPs at EU level, with 81% of respondents considering this as important or very important. Broken down by stakeholder type, these figures show 78% support from industry representatives, 83% of SMEs and 91% of civil society organisations. In terms of successful implementation, over half of the respondents (54%) believed that such actions had been well implemented to date, whereas 13% believed that the Commission was not successful in promoting the UNGPs.

This staff working document serves as a stocktaking exercise on where the European Union stands in terms of implementing the UNGPs. The report is a situational analysis of the political, judicial and non-judicial framework conditions in the EU. It is not a policy document, but a technical staff working document of descriptive nature that aims to achieve the following:

(1) To describe the status quo from the perspective of the Commission and the High Representative of the Union for Foreign Affairs and Security Policy as regards the implementation of the UNGPs;
(2) To explain the existing competencies of the EU vis-à-vis Member States for various activities required to implement the UNGPs;

[1] COM(2011)681 of 25/10/2011; http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr/new-csr/act_en.pdf

(3) To provide an update on various activities by Commission services and the European External Action Service (EEAS); and
(4) To identify the potential gaps in the implementation of the UNGPs.

This report aims to describe the EU's current regime relating to business and human rights. The main body of the document addresses the current implementation of the UN Guiding Principles, whereas the annex contains further information regarding existing EU policy and law which support the UNGPs.

The report is structured around the three pillars of the UNGPs, taking into account internal and external dimensions of EU action.

What are the UNGPs?

The UNGPs are the **first universally accepted global framework** addressing and aiming to reduce corporate-related human rights abuses. They were developed as a means to implement the UN's "Protect, Respect and Remedy" Framework that had been drawn up in a six year process of extensive consultations with governments and stakeholder groups, including NGOs and businesses, and were endorsed by the Human Rights Council in June 2011. The work was led by Harvard Professor Dr. John Ruggie, who served as the UN Secretary-General's Special Representative for Business and Human Rights from 2005-2011
The UNGPs are a set of 31 guiding principles, structured according to three distinct but interrelated pillars:

(1) The state duty to **protect** against human rights abuses by third parties, including businesses, through appropriate policies, regulation and adjudication;
(2) The corporate responsibility to **respect** human rights, in essence meaning to act with due diligence to avoid infringing on the rights of others; and
(3) The need for greater access by victims to effective **remedy**, judicial and non-judicial.

The UNGPs are neither legally binding nor do they introduce new international law on Business and Human Rights. As Dr. Ruggie stated in his report to the UN Human Rights Council (UNHRC), their "normative contribution lies […] in elaborating the implications of existing standards and practices for states and businesses; integrating them within a single, logically coherent and comprehensive template; and identifying where the current regime falls short and how it could be improved."[2]

Today, the UNGPs enjoy wide recognition and support from the business and civil society communities. Some of its core provisions have also been incorporated into key international documents, including the new human rights chapter in the OECD Guidelines for Multinational Enterprises and ISO 26000, and in strategies adopted by international institutions, such as the new Sustainability Policy of the International Finance Corporation, the EIB's Environment and Social Handbook and the European Commission's policy on Corporate Social Responsibility. To further promote the dissemination and implementation of the UNGPs, the UN Human Rights Council established a 'Working Group on Human Rights and Transnational Corporations and other Enterprises' in 2011, renewing the mandate in 2014.

[2] http://www.ohchr.org/Documents/Issues/TransCorporations/HRC%202011_Remarks_Final_JR.pdf

At the June 2014 Human Rights Council session, a resolution establishing an Inter-Governmental Working Group (IGWG) to elaborate an international legally-binding instrument was also adopted, albeit with a weaker political mandate as the Council was divided [3]. The IGWG is due to be convened for the first time before the 30th Human Rights Council session (September 2015), and to meet for one week annually for an indefinite duration.

EU Competencies in the Field of Business and Human Rights

The EU's scope of action is governed by the so-called principle of conferral, enshrined in Article 5 TFEU. Accordingly, the EU shall only act within the confines of the competences conferred upon it by the Member States in pursuance of the objectives set out in the Treaties. Competences not conferred upon the Union by the Treaties therefore remain with the EU Member States.

"Business and human rights" is not a stand-alone issue; it touches upon a wide range of different legal and political areas, including but not limited to human rights law, labour law, environmental law, anti-discrimination law, international humanitarian law, investment and trade law, consumer protection law, civil law, and commercial law, corporate or penal law. The EU's regulatory competence, and hence the Commission's ability to act, varies according to the scope of competence awarded to the EU in respect of each of those areas.

Human rights are among the common values upon which the EU has been founded, as stated in Article 2 of the Treaty. These values include the respect for human dignity, freedom, democracy, equality, the rule of law, respect of human rights, rights of persons belonging to minorities, pluralism, non-discrimination, tolerance, justice, solidarity, and equality between women and men. The EU Charter of Fundamental Rights has become legally binding since the entry into force of the Lisbon Treaty (Art. 6 TEU), ensuring a comprehensive framework for the duties to "respect, protect, promote", in line with the international human rights obligations that already bind the EU's Member States. The Charter applies to the European Union in all its actions, and to Member States whenever they implement EU law. As such, it does not extend the EU competencies but rather obliges the EU and its Member States to comply with human rights standards whenever EU law is implemented.

Concerning the Union's external action, Article 21 TFEU states that "the Union shall define and pursue common policies and actions, and shall work for a high degree of co-operation in all fields of international relations, in order to (…) consolidate and support democracy, the rule of law, human rights and the principles of international law".

With regard to right to equality and non-discrimination Article 10 TFEU stipulates that in defining and implementing its policies and activities, the Union shall aim to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

This principle is reaffirmed in Article 207(1) TFEU, which confirms that the EU's trade relations and agreements form part of this framework, stating that "the common commercial policy shall be conducted in the context of the principles and objectives of the Union's

[3] Resolution HRC26/9 was presented by Ecuador, backed by South Africa, and co-sponsored by Bolivia, Cuba, South Africa and Venezuela. 20 countries voted in favour, 14 against, 13 abstained.

external action", and in Article 208(1) of the TFEU regarding EU development policy, which states that "Union policy in the field of development cooperation shall be conducted within the framework of the principles and objectives of the Union's external action". The same is true for economic, financial and technical cooperation with third countries with reference to Article 212, and for humanitarian aid with reference to Article 214 TFEU.

Regarding migrant workers' rights, the EU has already developed a substantial amount of legislative tools to protect third country nationals' labour rights.

This is the case of Directive 2003/109/EC concerning the status of long-term residents or directives protecting specific categories of migrants, such as Council Directive 2004/114/EC on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service; Council Directive 2005/71/EC on a specific procedure for admitting third-country nationals for the purposes of scientific research. These two Directives have been recast into a single proposal which is under discussion.

Later on Council Directive 2009/50/EC (Blue Card) was adopted setting standards on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment and granting them equal treatment as regards, for example, working conditions, social security, pensions, recognition of diplomas, education and vocational training and after 18 months of legal residence possibility to move to another Member State to take up highly qualified employment (subject to the limits set by the Member State on the number of non-nationals accepted).

On the other hand the framework Directive 2011/98/EU on a "single application procedure for a single permit for third-country nationals to reside and work in the territory of the Member States and on a common set of rights for third country workers legally residing in a Member State" also grants a common set of rights and equal treatment to third country workers admitted under national schemes. These rights include working conditions (pay, dismissal, health and safety); collective labour law (freedom of association and affiliation); education and vocational training, recognition of diplomas (Directive 2005/36/EC) and access to all branches of Social Security (as set out in Regulation No 883/2004) and payment of acquired pensions when moving to a third country. One key aim of this Directive is to reduce the unfair competition between nationals and third country workers, resulting from the possible exploitation of the latter (Recital 19).

Last year the first directive on circular migration for low-wage workers, providing for equal treatment with national workers as regards terms of employment and working conditions, was adopted: Directive 2014/36/EU of the European Parliament and of the Council on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers,

Finally, Directive 2014/66/EU of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer creates an attractive EU scheme harmonising the conditions of entry, stay and intra-EU mobility for third-country workers (managers, specialists and trainee employees) being posted by a group of undertakings based outside the EU to an entity based on the EU territory.

PILLAR I: THE STATE DUTY TO PROTECT

The first pillar of the UNGPs designates the state duty to protect. It should therefore be understood that the primary responsibility for the protection of human rights lies with states, thus, within the context of the European Union, the UNGPs bind the Member States. However, the EU shares that duty with regard to areas of exclusive or shared competence. Furthermore, the EU has a role in protecting, promoting and furthering human rights and in supporting its Member States in effectively fulfilling their obligations.

The first pillar of the UNGPs includes the following five categories of principles:

- Foundational principles (GP 1 – 2)
- General State regulatory and policy functions (GP 3)
- The state business nexus (GP 4 – 6)
- Supporting business respect for human rights in conflict affected areas (GP 7)
- Ensuring policy coherence (GP 8 – 10)

1.1. Foundational principles (Guiding Principle 1-2)

Guiding Principle 1. States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.

Guiding Principle 2. States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.

The foundational principles address the duty of the state to protect against human rights abuses within their territory and jurisdiction by third parties, as well as a clear outline of a state's expectations towards business enterprises. While the competencies of the Union are limited, it is still concerned by these foundational principles.

The European Commission services primarily see their role in facilitating the sharing of experience and good practice regarding business and human rights between EU Member States. The EU role here does not duplicate the role of the UN Working Group or other existing mechanisms for sharing experience and good practice, but rather complements them.

1.1.1 EU Internal Policy

Communication setting out the European Strategy on Corporate Social Responsibility

The main internal EU policy framework addressing implementation of the UNGPs is the 2011 Communication setting out the European Strategy on Corporate Social Responsibility (CSR)[4]. It defines CSR as the "responsibility of enterprises for their impacts on society", and identifies human rights as one issue to be addressed by enterprises in order to meet that responsibility.

[4] COM(2011)681 of 25/10/2011

The CSR Strategy sets out an agenda for action, including:

1. Enhancing the visibility of CSR and disseminating good practices
2. Improving and tracking levels of trust in business
3. Improving self- and co-regulation processes
4. Enhancing market reward for CSR
5. Improving company disclosure of social and environmental information
6. Further integrating CSR into education, training and research
7. Emphasizing the importance of national and sub-national CSR policies
8. Better aligning European and global approaches to CSR.

The Commission's approach to CSR is built upon "a smart mix of voluntary policy measures and, where necessary, complementary regulation" as well as on the notion that "the development of CSR should be led by enterprises themselves". This approach also holds true for implementing the UNGPs. The forthcoming revision of the EU CSR Strategy will retain these underlying principles, which were widely supported in a public consultation in mid-2014, and at a European Multi-Stakeholder Forum on CSR in February 2015.

National Action Plans

In its 2011 CSR Communication, the Commission invited Member States to produce business and human rights action plans. Subsequently it established a peer review process on CSR, to (inter alia) assist Member States in developing national action plans. Several governments have adopted CSR statements or policies that mention human rights. To date, six Member States (United Kingdom, Netherlands, Italy, Denmark, Finland and Lithuania) have published their plans and at least seven more EU Member States are currently preparing national action plans on business and human rights.[5]

Likewise, more than half of the EU Member States (15 according to a Compendium[6] published by the Commission in June 2014 at the end of the peer review referred to in the previous paragraph) have adopted National Action Plans on CSR, which incorporate human rights issues. Several other Member States are also preparing national action plans on CSR, with final versions expected to be released in 2015 and 2016.

With regard to GP 2, the Commission's 2011 CSR strategy stipulates that all enterprises are expected to meet the corporate responsibility to respect human rights in accordance with the UNGPs. The modern understanding of CSR presented in that Communication explicitly refers to the integration of human rights into business operations and strategy.

1.1.2 EU External Policy

In a globalised environment, EU internal policies and external actions are increasingly interlinked and in line with the Europe 2020 agenda and the Lisbon Treaty, the mutual reinforcement of internal and external actions is underlined.

The Group of 7 (G7) and Responsible Supply Chains

[5] http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/human-rights/ http://www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx

[6] https://ec.europa.eu/digital-agenda/en/news/corporate-social-responsibility-national-public-policies-european-union-compendium-2014

In 2015, the European Union took an active role in G7 dialogue,[7] with specific reference to global supply chains and decent work. Owing to the increasingly international position of both multinational enterprises and SMEs in the European Union, global supply chains can generate adverse effects. The risks can be particularly higher in when (European) firms outsource activities to local suppliers in countries with weak governance mechanisms that cannot actively address working conditions, enforce occupational safety and health, or struggle with the rule of law. The political dialogue provides a platform for sharing experience and address solutions to mitigating risks in supply chains across sectors.

EU Strategic Framework and Action Plan on Human Rights and Democracy

The main external policy framework in the area of human rights is the EU Strategic Framework on Human Rights and Democracy, adopted in June 2012. The 2012/2014 Action Plan on Human Rights and Democracy, annexed to it, comprises 97 specific actions tailored to implement, streamline and promote human rights in all aspects of EU politics and policies, addressing EU institutions as well as Member States. With regard to Business and Human Rights, Action 25 determined three distinct tasks and corresponding responsibilities, in line with the Commission's business and human rights activities of its 2011 CSR strategy:

25a. Ensure implementation to the Commission Communication on CSR, in particular by developing human rights guidance for three business sectors.
25b. Publish a report on EU priorities for the effective implementation of the UNGPs
25c. Develop National Action Plans for EU Member States on implementation of the UNGPs

Progress has been made with regard to each of the tasks provided for under the 2012/2014 Action Plan, as discussed elsewhere in this report. The Council Working Group on Human Rights (COHOM) monitors the state of implementation of the Action Plan on Human Rights and Democracy. In the context of its discussions, an informal peer review takes place among Member States as regards the implementation in particular of task 25c above.

With the Action Plan's validity now technically expired in December 2014, preparations for a new action plan for the period 2014-2019 are advanced, with a view to adoption by Member States in Council in summer 2015. On 28 April 2015, the Commission' published a Joint Communication with the EEAS on the Action Plan on Human Rights and Democracy (2015-2019) "Keeping human rights at the heart of the EU agenda."[8]

Regarding the implementation of the UNGPs, the Communication proposes future activities focusing, in particular, on further awareness-raising of the UNGPs in the EU's external action, strengthened capacity-development of tools and initiatives in relation to the implementation of the UNGPs, as well as a proactive engagement with business, civil society and public institutions. The Communication also proposes to aim at the systematic inclusion in trade and investment agreements of references to internationally recognised principles and guidelines on Corporate Social Responsibility, such as the OECD Guidelines for Multinational Enterprises, the UN Global Compact, the UN Guiding principles on business and human rights (UNGPs), the ILO Tripartite Declaration of Principles concerning

[7] Dialogue on responsible supply chains and decent work, German Presidency of the G7 in 2015
[8] JOIN(2015) 16 final

Multinational Enterprises and Social Policy, and ISO 26000.

Development Policy

As far as EU development policy is concerned, a legal commitment to Policy Coherence for Development flows from Article 208(1) TFUE, stating that "The Union shall take account of the objectives of development cooperation in the policies that it implements which are likely to affect developing countries".

The Commission is moving towards a rights-based approach encompassing all human rights in EU development cooperation, including private sector development support. The Communication on *'A stronger role of the private sector in achieving inclusive and sustainable growth in developing countries'*[9] defines the future direction of EU policy and support to private sector development in its partner countries, and introduces private sector engagement as a new dimension into EU development cooperation.
One of the twelve actions included in the Communication provides for the promotion of responsible business practices through EU development policy. The Communication underlines that companies investing or operating in developing countries should respect human rights, and should ensure that they have systems in place to assess risks and mitigate potential reverse impacts related to human rights, labour, environmental protection and disaster-related aspects of their operations and value chains. Companies should confer with governments, social partners and NGOs in this respect.

The Communication also proposes guiding principles for the design and implementation of public support to private sector development and public-private collaboration in development cooperation. This includes a set of criteria on the provision of direct support to private sector actors to ensure that public support is complementary to what the private sector can do on its own. This includes crowding in private sector resources for development while not distorting the market and leads to measurable development impact. Within these criteria, adherence to social, environmental and fiscal standards, including respect for human rights, is mentioned as a precondition for EU support to private sector actors.

1.2. General State regulatory and policy functions (Guiding Principle 3)

Guiding Principle 3. In meeting their duty to protect, States should:
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;

a) Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;
b) Provide effective guidance to business enterprises on how to respect human rights throughout their operations;
c) Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.

1.2.1 EU Legal Framework

In the last two years, the EU has adopted significant pieces of legislation with specific

[9] (COM(2014)263) adopted on 13th May 2014

impacts on business and human rights and in particular with regard to GP 3. They are further outlined in the following paragraphs.

Accounting Directives

As a result of the revision of existing Accounting Directives[10] regarding the disclosure of non-financial and diversity information large companies and groups will be required, as of 2017, to disclose information on policies, risks and results as regards the respect for human rights, anti-corruption, bribery issues, environmental matters, social and employee-related aspects, as well as the diversity on boards of Directors. The UNGPs are specifically referred to as one of the international frameworks that companies may rely on when complying with this Directive. The Commission is tasked to report back on the implementation of the Directive in EU Member States in 2018. The Commission made a proposal for the revision of the Shareholders rights Directive in 2014 which aims at incentivizing institutional investors and asset managers to take non-financial information better into account in investment decisions and engage with companies on such issues. The proposal is currently being negotiated in the Council and the European Parliament.

In 2013, the EU also introduced a new reporting obligation for large extractive and logging companies on payments they make to governments (the so called country-by-country reporting: CBCR)[11]. The new disclosure requirement will improve the transparency of payments made to governments all over the world and will subsequently provide civil society in resource-rich countries with the information needed to hold governments accountable for any income made through the exploitation of natural resources. By requiring disclosure of payments at project level, local communities will have insight into the sums paid by EU companies to governments for exploiting local oil/gas fields, mineral deposits and forests. This will also allow these communities to better hold governments to accounts for how money has been spent locally. Civil society will be in a position to question whether the contracts entered into between governments and extractive and logging companies have delivered adequate value to society and government. By the same token, the EU aims to promote the adoption of the Extractive Industries Transparency Initiative (EITI) in these same countries.

In March 2014, the European Commission High Representative backed the integrated EU approach to tackle the problem of the use of trade in certain minerals for the financing of armed groups in conflict and high-risk areas such as Africa's Great Lakes Region. As a result, the Commission proposed a regulation[12] setting up a voluntary system of supply chain due diligence for EU importers, which is now in the ordinary legislative process. This Regulation lays down the supply chain due diligence obligations of Union importers who choose to be self-certified as responsible importers of minerals or metals containing or consisting of tin, tantalum, tungsten and gold.

Trafficking in Human Beings

Trafficking in human beings is the only crime that is explicitly mentioned in the EU Charter

[10] Adopted by the European Parliament on 15 April 2014 and by the Council on 1 October 2014, and published in the Official Journal on 15th November 2014. Member States are required to implement the terms of the Directive into domestic law by 6 December 2016.
[11] Accounting Directive 2013/34/EU of 26 June 2013
[12] COM(2014) 111 final of 5.3.2014

of Fundamental Rights (art 5) and it is recognized as a human rights violation and a form of serious organised crime. Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims and the EU Strategy towards the Eradication of Trafficking in Human Beings recognise the fundamental role of the private sector and stakeholders, in preventing and combating trafficking in human beings and protecting and assisting its victims, in particular in their efforts to reduce demand for trafficking in human beings and develop supply chains that do not involve trafficking in human beings.

2.2.2 EU Guidance and Information for Companies

Apart from the introduction of legislative measures, the Commission services have also encouraged non-binding private sector initiatives for responsible supply chain management. In 2011, they published a study[23] which focused on three industrial sectors (cotton, sugar cane and mobile phones) and identified good practices and challenges for EU based companies. The study made the following recommendations:

- Increase supply chain transparency
- Strengthen responsible supply chain management in the revision of the OECD Guidelines for Multinational Enterprises;
- Enhance access to remedy for victims of supply chain abuse;
- Address inter-state competition in relation to labour rights;
- Ensure due diligence in relation to high-risk sectors/companies;
- Promote responsible supply chain management through public procurement.

The Commission services have supported the creation of three sectoral platforms for CSR for the fruit juice, social housing and machine tools sectors.[24] These have brought together the main stakeholders to set out strategies that take into account the specific nature of the sectors, and to propose actions and tools to assist companies.

The Commission services also published specific practical guidance on human rights for companies in 3 sectors (Employment and Recruitment Agencies[25], Information and Communication Technology [26], and Oil & Gas[27]) in June 2013. The aim was to help companies translate the UNGPs to their own systems and cultures in these sectors through practical steps, without proposing a "one-size-fits-all" system or method. The guidance was based on wide field research and consultations with business people, human rights organisations and experts and trade unions.

The particular challenges for small and medium-sized enterprises (SMEs) in implementing the UNGPs led the Commission services to publish a guide for SMEs[28] entitled "My Business and Human Rights" in several languages in the form of a handbook in March 2013, including:

- Six basic steps expected of companies according to the UNGPs;
- Questions to be posed in 15 different business situations that might carry a risk of negative impacts on human rights;
- A list of human rights risks and brief examples of how enterprises could have a negative impact if they are not careful

Furthermore, in 2013, the Commission services published five case studies with the objective to "De-mystify Human Rights for Small and Medium-sized Enterprises"[29].

Guidance is also available for non-EU citizens who wish to migrate to the European Union in the form of an EU Immigration Portal launched by the Commission in 2011. It contains up-to-date web-based information on EU and national immigration procedures and policies, as well as the rights of migrants in the EU. The information explains how to enter EU borders legally and describes the risks related to irregular migration. Workers, researchers, students and those looking to join their families already in the EU can find information adapted to their needs.

An EU-funded project has been developed in 2014 by Euratex (the European Apparel and Textile Confederation) and Industry-All (European Trade Union). The tool is designed for the textiles sector and assists firms - particularly smaller and medium size enterprises – assess human and environmental risks before engaging in business with suppliers. The tool is designed according to algorithms, with the support of detailed indicators and assessment against criteria such as the ISO 26000 Standard on Social Responsibility, allowing firms to obtain a country by country snapshot of various risks. The tool will continue to be refined through 2016 with an aim to have it disseminated as an online instrument.

EU support in Developing Countries

The European Commission is also increasingly supporting responsible business practices among European companies in developing countries and responsible management of supply chains[13].

Many EU programmes support partnerships between businesses and Civil Society Organisations (CSOs) to promote sustainable production patterns and decent work. For example the SWITCH-Asia programme promotes *sustainable production* and *consumption* patterns in Asia, through an improved understanding and strengthened cooperation between Europe and Asia and within Asia, notably by supporting SMEs in adopting Sustainable Consumption and Production. In this framework a strong emphasis falls on the implementation of the Occupational Health and Safety Regulations. Similar models adapted to each region were created for the Mediterranean region through SWITCH-Med, Eastern Partnership with EAP Green, and Africa regions with SWITCH Africa Green) Such partnerships are also targeted by the Thematic Programme “Civil Society Organisations and Local Authorities” under the Development Cooperation Instrument 2014-2020, through which a variety of CSOs, including Cooperatives, are supported to contribute to the improvement of business environment and practices and economic services' quality - highlighting governance and corporate social responsibility - by stimulating informed demand and structuring feedback mechanisms, notably using Information and Communication Technologies.

Similarly, the EU Forest Law Enforcement, Governance and Trade (FLEGT) Action Plan aims to close the EU market to illegal timber products. While principally an environmental initiative, under the bilateral agreements between the EU and timber exporting countries (Voluntary Partnership Agreements), only timber and timber products that have been harvested and produced in compliance with the laws and regulations of the partner country can obtain a FLEGT Licence to enter the EU market. Information can be traced back through

[13] COM(2014)263 final of 13.5.2014 Communication on "A Stronger Role of the Private Sector in Achieving Inclusive and Sustainable Growth in Developing Countries".

the whole supply chain. The EU Timber Regulation prohibits the sale of illegally harvested timber and derived products in the EU, and requires operators to exercise “due diligence” in order to minimise the risk of illegal timber in their supply chain.

Following the Rana Plaza tragedy, the EU took partnered together with the ILO, Bangladesh and the Unites States to launch the "Sustainability Compact for Continuous Improvements in Labour Rights and Factory Safety in the Ready-Made Garment and Knitwear Industry in Bangladesh." The objective of the Compact is to improve labour, health and safety conditions for workers as well as to encourage responsible behaviour by businesses in the ready-made garment industry in Bangladesh. Two years on, improvements have been made: some laws have been changed, factory inspections are carried out, buyers are taking actions together with trade unions to improve working conditions in the country and private, public, national, international stakeholders cooperate with each other.

The EU together with the Governments of Myanmar/Burma, the United States of America, Japan, Denmark and the International Labour Organisation launched an Initiative to "Promote Fundamental Labour Rights and Practices in Myanmar/Burma." This initiative focuses on labour law reforms, institutional capacity building as well as full involvement of stakeholders, including business, employers' and workers' organizations. The Commission proposal to be part of the initiative was endorsed by the Council on 07 May 2015.

1.3 The state-business nexus (Guiding Principle 4-6)

Guiding Principle 4. States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.

Guiding Principle 5. States should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights.

Guiding Principle 6. States should promote respect for human rights by business enterprises with which they conduct commercial transactions.

Public Procurement Rules

In February 2014, the EU completed a major overhaul of its public procurement rules[14]. The new provisions include critical modifications to facilitate the use of social and environmental criteria in public procurement processes. In the future, public authorities will be able to take social, labour and environmental concerns into account, with the aim to contribute to the implementation of environmental and social policies.

For this purpose, the new rules include a cross-cutting 'social clause', under which:

- Based on respecting applicable environmental, social or labour law obligations under EU and national rules, collective agreements or international law, Member States and public authorities must ensure compliance with the obligations in force at the place

[14] http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0024

where the work is carried out or the service is provided; This includes the fundamental ILO Conventions on Freedom of Association and Protection of the Right to Organise (N°. 87), Right to Organise and Collective Bargaining (N°. 98), Abolition of Forced Labour (N°. 105), Minimum Age (N°. 138), Discrimination (Employment and Occupation) (N°. 111), Equal Remuneration (N°. 100) and Worst Forms of Child Labour (N°. 182)

- Any company failing to comply with the relevant obligations may be excluded from public procurement procedures;
- Public authorities will be required to exclude any abnormally low tenders if these result from failure to comply with environmental, social or labour law obligations under EU or national rules, collective agreements or international law.

Until the new rules are transposed and enter into force in 2016, existing guidance relating to the social and environmental criteria for public procurement remains available and valid.

Support from European Financial Institutions

The European Investment Bank (EIB), of which the Commission is a 30% shareholder, constitutes the largest supranational borrower and lender in the world with an annual investment volume of ca. €7 billion per year, and it is the biggest international investor in development policy. With the revision of its Environmental and Social Handbook[15] at the end of 2013, the EIB integrated the UNGPs in their standards on investments abroad. This Handbook sets out the EIB's policies, principles and standards when investing in non-EU countries and is applicable to EIB staff and external actors alike. The UNGPs provide one of the core international texts that the EIB's environmental and social standards rely on.

1.4 Supporting business respect for human rights in conflict affected areas (Guiding Principle 7)

Guiding Principle 7. Because the risk of gross human rights abuses is heightened in conflict-affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by:

a) Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships;

b) Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence;

c) Denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation;

d) *Ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses.*

The European Commission's support to responsible business practices in developing countries is all the more relevant for companies investing or operating in fragile developing countries, which face specific challenges in respect of human rights. One of the principles underlined in the Commission's Communication *'A stronger role of the private sector in achieving inclusive and sustainable growth in developing countries'* [16] is that specific

[15] http://www.eib.org/attachments/strategies/environmental_and_social_practices_handbook_en.pdf
[16] Ibid

approaches are required particularly for fragile and conflict-affected states that are urgently in need of jobs and economic opportunities to restore social cohesion, peace and political stability.

Transparency in Specific Supply Chains

Building on the experience of the Kimberley process, the Extractive Industries Transparency Initiative (EITI), the Forest Law Enforcement, Governance and Trade (FLEGT) and the EU Timber Regulation, the Commission supports initiatives to further transparency throughout the supply chain, including aspects of due diligence in different sectors. The Commission encourages use of the OECD Guidelines for multinational enterprises, and OECD's due diligence guidance for responsible supply chains of minerals from conflict-affected and high risk areas.

In March 2014, the Commission has proposed "A comprehensive EU supply chain initiative for responsible sourcing of minerals originating in conflict-affected and high-risk areas"[17]. This aims to stop profits from trading minerals being used to fund armed conflicts and support responsible sourcing by promoting transparent supply chains of minerals (namely tin, tantalum, tungsten and gold) originating from conflict-affected and high-risk areas. This should also improve the ability of EU operators to comply with existing frameworks and the livelihood of local communities dependent on mining activities.

A draft Regulation[18] sets out an EU system of self-certification for importers of tin, tantalum, tungsten and gold which choose to import responsibly into the Union. The system is based on the five steps of OECD Due Diligence Guidance. To increase public accountability of smelters and refiners, enhance supply chain transparency and facilitate responsible mineral sourcing, it is also proposed to publish an annual list of EU and global 'responsible smelters and refiners'.

The proposed Regulation is accompanied by a joint Communication[19] presenting the overall integrated foreign policy approach on how to tackle the link between conflict and the trade of minerals extracted in affected areas. The initiative also proposes a number of incentives to encourage supply chain due diligence by EU companies, such as:

- Public procurement incentives for companies selling products such as mobile phones, printers and computers containing tin, tantalum, tungsten and gold;
- Financial support targeting Small and Medium sized Enterprises (SMEs) to carry out due diligence and for the OECD for capacity building and outreach activities;
- Visible recognition for the efforts of EU companies who source responsibly from conflict-affected countries or areas;
- Policy dialogues and diplomatic outreach with governments in extraction, processing and consuming countries to encourage a broader use of due diligence;
- Raw materials diplomacy including in the context of multi-stakeholder due diligence initiatives;
- Development cooperation with the countries concerned;
- Support by EU Member States through their own policies and instruments.

[17] http://ec.europa.eu/smart-regulation/impact/planned_ia/docs/2013_trade_019_conflict_minerals_en.pdf
[18] COM(2014) 111
[19] JOIN(2014) 8 final

In parallel, the European Union continues to cooperate with and provide support to developing country partners on sustainable mining, geological knowledge and good governance in natural resources management.

Financial support is also foreseen for the "EU Resource Transparency Initiative" within the Development Cooperation Instrument 2014-2020, in the Global Public Goods and Challenges Programme[20].

1.5 Ensuring policy coherence (Guiding Principle 8-9-10)

Guiding Principle 8. States should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State's human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support.

Guiding Principle 9. States should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts.

Guiding Principle 10. States, when acting as members of multilateral institutions that deal with business related issues, should:

a) Seek to ensure that those institutions neither restrain the ability of their member States to meet their duty to protect nor hinder business enterprises from respecting human rights;

b) Encourage those institutions, within their respective mandates and capacities, to promote business respect for human rights and, where requested, to help States meet their duty to protect against human rights abuse by business enterprises, including through technical assistance, capacity-building and awareness-raising;

c) Draw on these Guiding Principles to promote shared understanding and advance international cooperation in the management of business and human rights challenges.

1.5.1 Internal Policy Coherence

Institutional Procedures

Policy coherence on business and human rights within the EU is needed at different levels: within different EU institutions; between those institutions; and between the EU and its Member States. Within the Commission policy coherence is ensured through the collegial decision-making process and procedures and the clusters under the responsibility of the HR/VP and respective Commissioners. The European CSR Strategy was adopted by the College of Commissioners and provides the basis for strategic policy coherence in all aspects of CSR. Operational coordination on aspects of business and human rights is ensured via inter-service groups on CSR and on Human Rights. The Consultative Committee on CSR brings together EU Member States under the chair of the Commission to consider issues relevant to the CSR Strategy, including business and human rights.

EU Charter of Fundamental Rights

In line with Guiding Principle 8, the Commission must ensure that all EU actions, including legislative proposals, comply with the Charter of Fundamental Rights of the European

[20] https://ec.europa.eu/europeaid/sites/devco/files/mip-gpgc-2014-2017-annex_en.pdf

Union.[21] Naturally, this includes all EU actions and legislative proposals relating to business activities. It presented in 2010 a "Strategy for the effective implementation of the Charter of Fundamental Rights by the EU"[22] and publishes annually a report to monitor progress on the enforcement of the Charter in areas where the Union has powers to act.

The Commission's policy on smart regulation also emphasises the assessment of the impact of legislation and policies on fundamental rights.[23] In terms of concrete guidance of how to take account of fundamental rights in impact assessments, the Commission adopted in 2011 its Operational Guidance framework[24]. These Guidelines make explicit reference, *inter alia*, to the UN Convention on the Rights of the Child and to the UN Convention on Rights of Persons with Disabilities, which the Union signed and ratified. Depending on the policy context, the Commission may also need to take into account international customary law when interpreting the rights set out in the Charter.

1.5.2 External Policy Coherence

Noted above, Article 21 TFEU states that "the Union shall define and pursue common policies and actions, and shall work for a high degree of co-operation in all fields of international relations, in order to (…) consolidate and support democracy, the rule of law, human rights and the principles of international law". As previously outlined, the Action Plans on Human Rights and Democracy constitute the main framework of reference for the implementation of external policy activities in the area of human rights and aims to provide for improved coherence and consistency between internal and external policies of the EU.

The COHOM Council Working Group actively cooperates with relevant geographic and thematic Working Parties of the Council, with the aim of mainstreaming human rights in all aspects of EU external relations. Furthermore, COHOM engages with the Working Party on Fundamental Rights, Citizens' Rights and Free Movement of Persons, FREMP, with a view to further strengthening the coherence and consistency between the EU's internal and external human rights policies.

Trade and Investment

Impact assessments are carried out for Commission's proposals with significant economic, social or environmental impacts, including the opening of trade and investment negotiations with third countries. The Commission's 2010 Communication on European investment policy states that "a common investment policy should also be guided by the principles and objectives of the Union's external action more generally, including […] human rights […]."[25] By virtue of the Regulation 1219/2012, Member States can be authorised by the Commission to negotiate Bilateral Investment Treaties with third countries on condition, inter alia, that such agreements are consistent "with the Union's principles and objectives for external action as elaborated in accordance with the general provisions laid down in Chapter 1 of Title V of the Treaty on European Union" (Article 9 (1)(c) of the Regulation), which include human rights and fundamental freedoms.

[21] With reference to Article 51 of the EU Charter, with reference to EU law in the field of application
[22] COM(2010)573
[23] COM(2010)543
[24] SEC(2011) 567 final
[25] COM(2010)343

The Commission's communication on "Trade, Growth and Development - Tailoring trade and investment policy for those countries most in need"[26] (January 2012) sets out explicitly to ensure coherence between trade and investment and development policies; it encourages responsible business conduct, promotes CSR instruments and has been welcomed by Member States.[27]

All recent Free Trade Agreements (FTAs) concluded by the EU with third countries (e.g. Korea, Colombia/Peru, Central America, Georgia, Moldova, Singapore; the EU-Caribbean Economic Partnership Agreement - EPA) include provisions on the promotion of CSR, and these have been addressed as part of their implementation, well as in other trade-related meetings, such as the EC-Turkey sub-committee on Industry and Trade, and the EU-Chile Association Committee meeting.

Generalised Scheme of Preferences

A new reformed Generalised Scheme of Preferences Regulation entered into force on the 1st of January 2014[28].The Generalised Scheme of Preferences Plus (GSP+) is a key EU trade policy instrument to promote human rights, labour rights, environmental protection and good governance in vulnerable developing countries. It provides unilateral, generous market access to vulnerable developing countries that commit to ratify and effectively implement 27 core international conventions (among which 7 UN Human Rights Conventions and the 8 ILO fundamental Conventions, which are also classified as human rights).

The EU ensures that GSP+ beneficiaries comply with their legal obligations under the GSP+ framework by a stringent and systematic GSP+ monitoring mechanism. The monitoring is built on two inter-related tools: the "*scorecard*", summarising the list of most salient issues identified by the monitoring bodies (or any other accurate and reliable source) under the 27 Conventions and the "*GSP+ dialogue*", engaging with authorities in an open discussion on actions (prioritisation and timing) to deal with those shortcomings. The objective is to build a relationship of cooperation with GSP+ countries and raise their awareness on the shortcomings to implement those conventions, discuss difficulties but also promote and recognise progress.

The Commission will report every two years on the implementation record of GSP+ beneficiaries to the Council and the European Parliament, with the first report due on 1 January 2016.

Development policy

Regarding EU development policy, the EU has a legal commitment to Policy Coherence for Development stemming from Article 208(1) of the Treaty on the Functioning of the European Union states that “The Union shall take account of the objectives of development cooperation in the policies that it implements which are likely to affect developing countries”. This is more specific than overall coherence among all policies, as it implies avoiding that other policies undermine the primary development objective of poverty eradication, and creating

[26] COM (2012) 22 final of 27.1.2012 http://trade.ec.europa.eu/doclib/docs/2012/january/tradoc_148992.EN.pdf
[27] http://trade.ec.europa.eu/doclib/docs/2012/june/tradoc_149615.pdf
[28] http://ec.europa.eu/trade/policy/countries-and-regions/development/generalised-scheme-of-preferences/index_en.htm

synergies between other policies and the objectives of development policy.

The EU moved in 2014 towards a rights-based approach for its development policy on the basis of the Commission Staff Working Document designing a tool-box to this purpose ("A right based approach, encompassing all human rights for EU development cooperation") endorsed by the Council Conclusions of May 2014. This provided political impetus and concrete guidance on how to integrate a rights-based approach into any development programme or project along five working principles: applying all rights, participation and access to the decision making process, non-discrimination and equal access, transparency and access to information.

This change of narrative and approach will apply to private sector development support and strengthen the positive and pro-active impact of development activities to promote and protect Human Rights as a key element of sustainable and inclusive growth. It represents also a major EU input to the post-Millennium Development Goals (MDG) debate and a concrete step forward to further improve delivery and results on development.

In addition, the European Instrument for Democracy and Human Rights (EIDHR) entails the specific commitment both in its legal basis and its objectives for 2014-202 to promote and protect (Article 2(xii) and 2(xiii)) Economic, social and cultural rights, including the right to an adequate standard of living and core labour standards and corporate social responsibility, in particular through the implementation of the UN Guiding Principles on Business and Human Rights. This work is supported in third countries by a comprehensive network of EIDHR and Human Rights Focal Points in Delegations helping to transfer this commitment into realities on the ground.

EU Member States in the European Council have called on the Commission to ensure that social protection is included in policy dialogues with developing countries and is underpinned by principles of universality and inclusiveness, with particular attention to the most vulnerable, excluded and disadvantaged people, for example women, children, persons with disabilities and victims of HIV-AIDS[29]

The Communication on *'A stronger role of the private sector in achieving inclusive and sustainable growth in developing countries*[30]*'* (see section 2.1.1) promotes private sector engagement and responsible business practices through EU development policy. Its action 10 recommends promoting international CSR guidelines and principles through policy dialogue and development cooperation with partner countries, and enhancing market reward for CSR in public procurement and through promotion of sustainable consumption and production.

The Communication *'A Global Partnership for Poverty Eradication and Sustainable Development after 2015'*[31] forms EU positions in preparation for the Third Financing for Development Conference in Addis Ababa in July 2015 and the Post-2015 UN Summit in New York in September 2015 on the Post 2015 Development Agenda (including the Sustainable Development Goals). The global partnership needs to promote more effective and inclusive forms of multi-stakeholder partnerships, operating at all levels involving the private sector and civil society, including social partners. It should be based on the principles of shared responsibility, mutual accountability, respective capacity, human rights, good

[29] http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/132875.pdf
[30] (COM(2014)263) of May 2014
[31] (COM(2015)44) and its annex adopted on 5th February 2015

governance, the rule of law, support for democratic institutions, inclusiveness, non-discrimination, and gender equality.

The Communication recalls that each country needs an effective legislative and regulatory framework to achieve policy objectives, including by providing fair and predictable legal frameworks that promote and protect human rights. The Communication also underlines the need to mobilise the private sector as a key actor to achieve sustainable development and poverty eradication. It recalls EU efforts to facilitate private sector engagement, encourage responsible investment and production in developing countries as well as sustainable consumption, and to enhance market reward for CSR, including by promoting the uptake of internationally agreed principles and guidelines, such as the UNGPs. It recommends in its annex that the private sector should further improve its contribution on protecting human rights including through addressing labour conditions, health and safety at work, access to social protection, voice, empowerment and gender-related issues.

Human rights dialogues at bilateral level and co-operation with regional organisations

The EEAS also conducts regular human rights and other dialogues with third countries. Topics discussed are decided on a country-by-country and case-by-case basis. In an increasing number of cases, the topic of business and human rights has been included for discussion and exchanges of experiences, in particular with countries in Latin America (Mexico, Brazil, Peru, Colombia and Ecuador), Asia (China, Indonesia) and Africa (South Africa). The EU Special Representative for Human Rights prioritises exchanging views and sharing practices on business and human rights during his meetings with key partner countries.

The EU promotes a dialogue on business and human rights with regional organisations, such as the African Union (AU) Dialogue has also recently begun with the Association of Southeast Asian Nations (ASEAN). Following up on the November 2013 EU-African Union human rights dialogue, the two sides agreed to organise a joint EU-AU event on business and human rights. This event took place in Addis Ababa in the margins of the regional UN conference on business and human rights in September 2014. The EU is working on the practical follow-up to that event.

A similar approach of regional cooperation is currently being fostered with the the Community of Latin American and Caribbean States (CELAC) following the I EU-CELAC Summit which took place in Santiago, Chile, in January 2013. The Heads of State and Government expressed commitments in the Summit Declaration[32] and also in their bi-regional Action Plan to enhance cooperation on CSR between the EU and CELAC regions including by developing national action plans on CSR. Since the Santiago Declaration two seminars of senior officials have taken place in Brussels, in October 2013 and in September 2014, to exchange best practices and ways of cooperation to move the CSR agenda forward. A further senior officials meeting took place in Costa Rica in November 2014 with a view to accelerating the development of CSR national action plans in CELAC countries and preparing for the II EU-CELAC Summit in June 2015.

EU Delegations in third countries increasingly are called on to advise companies seeking to do business in the countries in which they are situated. Training activities on business and

[32] http://www.eeas.europa.eu/la/summits/docs/2013_santiago_summit_declaration_en.pdf

human rights are organised for the benefit of officials working in the network of EU delegations throughout the world.

The EU is actively engaged in support of the UN tracks to foster the implementation of the UNGPSs. The EU has participated at high level in all annual Forums on Business and Human Rights in Geneva. The EU is supportive of the "Accountability and remedy" project initiated by the UN Office of the High Commissioner for Human Rights, which aims to deliver credible, workable guidance to States to enable a more consistent implementation of the Guiding Principles in the area of access to remedy.

The European Union, as an international organization, supported in 2012 the *"Montreux Document on pertinent legal obligations and good practices for States related to operations of private military and security companies during armed conflict"*, which recalls existing obligations and compiles good practices in this field – 23 EUMS support the Montreux Document. In December 2014, at the constitutional meeting of the Montreux Document Forum, the EU was elected in the Group of Friends of the Chair (Switzerland, International Committee of the Red Cross) and is a member of the Working Group on the International Code of Conduct Association – launched in Geneva in September 2013. Furthermore, EU has engaged in processes in the Human Rights Council relating to the possible further development of an international regulatory framework on the regulation, monitoring oversight of private military and security companies.

PILLAR II: CORPORATE RESPONSIBILITY TO RESPECT HUMAN RIGHTS

The second pillar of the UNGPs contends with the corporate responsibility to protect and address human rights through their activities. Owing to the fact that the private sector is the leading actor behind the second pillar, the role of the European Union is limited in terms of implementation. Nonetheless, as demonstrated in both the first and third pillars, the European Commission and European External Action Service (EEAS) have been proactive in supporting activities that can facilitate the progress of responsible business conduct among enterprises registered in the European Union.

In its 2011 Communication on Corporate Social Responsibility (CSR), the European Union defined CSR as "the responsibility of enterprises towards their impact on society."[33] Within this context, the European Union understands that enterprises can have both positive and negative impacts on society. Any adverse effects must be properly understood and any mitigated appropriately. Measures

While it fully endorses the UN Guiding Principles on Business and Human Rights, the European Union's policy on corporate social responsibility also recognises several other internationally recognised frameworks and guidelines which can assist firms in mitigating human and environmental risks through their core business activities concurrently implement Pillar II of the UNGPs.

The EU recognises the UN Global Compact, International Organisation for Standardization (ISO) 26000 Standard on Social Responsibility, the International Labour Organization (ILO) Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) and the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises as tools which can mobilise responsibility in the core business activities of enterprises. While diverse, the fundamental bases of these tools/initiatives are to boost responsible – and sustainable – business conduct. The EU views these tools as support for businesses in addressing the UNGPs.

The European Union will continue efforts in strengthening actions which European enterprises can deploy in their efforts of tackling Pillar II of the UN Guiding Principles on Business and Human Rights.

[33] COM(2011)681 of 25/10/2011; http://ec.europa.eu/enterprise/policies/sustainable-business/files/csr/new-csr/act_en.pdf

PILLAR III: ACCESS TO REMEDY

As regard EU policy on access to justice the establishment of a comprehensive EU Justice Policy has played a major role in enforcing the common values in particular concerning fundamental rights, equality and the rule of law, upon which the EU is founded and in underpinning economic growth. It has promoted the adoption of rules facilitating the life of citizens and ensuring that all people can be confident that their rights would be protected throughout the EU.

The State's duty to protect is weakened if appropriate means are not available to investigate, punish and redress business-related human rights when abuses do occur. The third pillar of the UNGPs specifies that the state is responsible to ensure access to remedy through judicial, non-judicial, administrative and legislative means as well as the corporate responsibility to prevent and remediate any infringement of human rights that they contribute to. The Foundation Principle for this pillar states that:

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

This is backed up by operational principles relating to:

- judicial remedies (GP26),
- non-judicial remedies (GP27-30)
- effective criteria for such non-judicial grievance mechanisms (GP31).

These are taken in turn in the rest of this section.

3.1 Judicial remedies

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

The European Commission and EU Member States are significant players in the development of a comprehensive system ensuring effective remedy for business-related human rights abuses across the European Union. In line with Article 47 of the EU Charter of Fundamental Rights and consistent with Articles 81 and 82 TFEU, the Commission supports the establishment of an EU policy in the area of access to justice which aims at building a consistent body of law, which includes rules governing issues of jurisdiction and the recognition and enforcement of judicial decisions in civil and commercial matters, the applicable law, as well as judicial assistance in cross-border situations. Outside of these areas, EU Member States remain competent for ensuring effective remedies for victims of corporate-related human rights harm.

In line with the UNGPs, the EU has focused its recent efforts to ensure that EU judiciary systems are made simpler and more effective for the protection of human rights, as to foster the right to an effective remedy before a court.

The Communication '*A Global Partnership for Poverty Eradication and Sustainable Development after 2015*'[34] notes that simple, transparent and stable rules and institutions, backed up by functioning justice and dispute-resolution systems are crucial elements for an inclusive and conducive business environment and to promote sustainable investments.

3.1.1 Civil Justice

When it comes to fostering access to judicial remedies in civil and commercial matters, the EU has developed a functioning system of mutual recognition between EU Member States. The EU's legal framework lays down clear rules on the recognition and enforcement of judgments between EU Member States. This legal framework is backed up with rules which allocate jurisdiction as well as applicable law between EU Member States, and which set certain mandatory standards of procedural law to be applied across the EU.

Applicable jurisdiction: Brussels I Regulation

The so-called "Brussels I Regulation" [35] establishes rules regulating the allocation of jurisdiction in civil or commercial disputes of cross border nature, including civil liability disputes concerning the violation of human rights. The Regulation ensures that judgements are recognised and enforced among EU Member States.
According to the Regulation, a person domiciled in an EU Member State can generally be sued in the courts of that Member State (Art. 4). This means that transnational corporations, if they commit human rights violations, can be sued before the courts of the EU Member State where the company has its seat, central administration or principal place of business (Article 63 defines the domicile of companies), even for violations of human rights committed outside the EU. The definition of the domicile of the company in Article 63 is quite extensive thus giving broad possibilities to sue companies before the European courts, for example, in a situation where the company's seat is not located in an EU Member State but the company nevertheless has its central administration is within an EU Member State.

Alternatively, a claim against an EU domiciled company could be brought:

- in disputes relating to tort or non-contractual obligations, the national courts of a Member State of the place where the harmful event occurred; or
- in disputes related to contractual obligations, before the courts of the place of performance of the contractual obligation in question.

The Brussels I Regulation prevents (within its scope of application) national courts from applying the *forum non conveniens* doctrine [36]. In fact, the European Court of Justice clarified[37] that Art. 4 of the Brussels I Regulation precludes a national court of a Member

[34] (COM(2015)44)
[35] Regulation No. 1215/2012/EU of 12 12 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. As of 10 January 2015, this Regulation replaced Regulation No 44/2001/EC on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.
[36] The forum non-conveniens doctrine allows, where it is applied, courts to prevent a case from moving forward in the jurisdiction in which it is filed on the basis that another jurisdiction is ostensibly more convenient for the parties and witnesses.
[37] In its judgement Owusu v. N.B. Jackson Case C-281/02 concerning the Brussels I Convention. The Brussels I Regulation (44/2001/EC) supersedes the Brussels Convention of 1968, which was applicable between the EU countries before the Regulation entered into force. The Convention continues to apply with respect to those territories of EU countries that fall within its territorial scope and that are excluded from the Regulation pursuant

State from declining the jurisdiction conferred on it on the ground that a court of a third State would be a more appropriate forum for the trial of the action, even if the jurisdiction of no other Member State is in issue or the proceedings have no connecting factors to any other Member State.

Thus, the Brussels I Regulation ensures access to the courts of EU Member States in actions against (parent) companies domiciled in the Union. The Regulation does not regulate international jurisdiction of national courts of the Member States over defendants domiciled in third states (e.g. third state subsidiaries of Union companies) except for limited exceptions concerning claims brought by consumers and employees and some other claims where the domicile of the defendant is irrelevant (e.g. claims falling under exclusive jurisdiction). Jurisdiction in such cases is determined by the domestic law of the Member States. Most EU Member States provide for jurisdiction of their courts over third state defendants when some connection to the Member State concerned exists, for instance when the defendant company has assets within that Member State or on the basis of *forum necessitatis* rules.

The extension of jurisdictional rules of the Brussels I regulation to third State defendants was recently discussed in the Union within the framework of the recast of the former Brussels I Regulation (i.e.: Regulation 44/2001). In fact, in its proposal of 2010 for a recast of the Brussels I Regulation, the Commission proposed first to unify all international jurisdiction rules in the Member States (as a result, access to the European courts would have been ensured in civil and commercial disputes even if the defendant is domiciled in a third State, insofar as there is a link with the European Union) and, second, to establish a necessity forum (*forum necessitatis*) which would allow claims to be brought before the courts of the Member States in situations where there would be a risk of denial of justice if no access to court were foreseen in the EU. The Commission also proposed an additional jurisdiction rule for disputes involving third State defendants, namely, the jurisdiction based on the presence of the defendant's assets in the Union subject to certain conditions. This proposal was not supported, however, by the Council and the European Parliament. Regulation 1215/2012 therefore does not contain a fully harmonised jurisdictional regime (except for the benefit of consumers and employees) nor does it contain a necessity forum as proposed by the Commission.

The applicable law: Rome I and Rome II Regulation

When a court in a Member State has jurisdiction in a case with a cross-border element, it has to determine which country's law is applicable to the dispute. The respective rules have been harmonised at EU level by the Rome I Regulation for contractual obligations[38] and by the Rome II Regulation for non-contractual obligations (also referred to as torts or delicts).[39]

The Rome I Regulation can be relevant whenever corporate human rights violations occur vis-à-vis parties with whom a European parent corporation or a third country subsidiary has a contractual relationship, for example its suppliers. The Regulation generally allows the parties to choose the applicable law. In the absence of choice, it prescribes the applicable law of the country where the party required to effect specific performance under the contract has

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to Article 299 of the Treaty establishing the European Community (now Article 355 of the Treaty on the Functioning of the European Union).

[38] Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations

[39] Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations.

its habitual residence. This can be the law of a third country. Irrespective of the applicable law in a given dispute, the court will be able to apply the overriding mandatory provisions of the law of the forum. Special rules also exist to protect employees under the Regulation.

With regard to tort, according to the general rules of the Rome II Regulation, the applicable law is that of the country where the damage occurred. In the case of corporate human rights violations this rule could lead to application of the substantive laws of the third State which would then govern the establishment of liability, damages, the limitation periods, etc.

The Rome II Regulation builds in certain safeguards which allow exceptions to the obligation to apply foreign law when it is necessary to take into account considerations of public interest. Under the Regulation courts can refuse to apply a provision of a foreign law on the grounds that the result of such application would be incompatible with their public policy. This may be the case for example if the foreign law legitimises manifest breaches of human rights. The ECJ has already developed clear guidelines on the concept of public policy under the EU civil justice instrument, particularly in the framework of the Brussels I Regulation. The Rome II Regulation also allows not applying foreign law when certain provisions in the forum State are of an overriding mandatory nature, which means that the forum State will apply such provisions irrespective of the law otherwise applicable to the non-contractual obligations at issue.

The above instruments are limited to determining which law applies. They do not regulate the content of the applicable law. As a result, Finally, the legal liability as such of parent companies for the actions of a subsidiary company, which is an issue of substantive liability laws, which is not governed by EU but by national laws.

Collective redress

Collective redress mechanisms could potentially decrease the costs of litigation for victims of human rights infringements. At EU level, the Commission adopted a Recommendation on collective redress[40], which establishes common principles on collective redress for ensuring effective access to justice against violations of rights granted under EU law. The Recommendation requires EU Member States to establish collective redress mechanisms and implement these principles by July 2015.

In this context, it should be noted that Lithuania, France, Belgium and United Kingdom have recently adopted new legislation in the field of collective redress. The Netherlands is considering introducing judicial compensatory collective redress in its national system. The Commission will carefully assess Member States' measures to ensure that the objectives of the Recommendation are fully met, and determine by July 2017, if any further action, including legislative measures, is needed.

Application of legal aid in cross-border disputes

As regards the costs involved in cross border disputes, Directive 2003/8/EC on legal aid ensures that persons who lack sufficient resources are granted legal aid where this is

[40] Commission Recommendation of 11 June 2013 on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law, OJ L 201, 26.07.2013, p. 60.

necessary for them to pursue their claim and ensure their access to justice. The Directive applies to persons domiciled or habitually resident in a Member State, irrespective of whether they are an EU citizen or third country national. It does not apply to third country residents which may, however, be covered by other international instruments. Legal aid in the sense of the Directive includes pre-litigation advice and legal assistance and representation in court, as well as an exemption from the cost of proceedings. It notably covers costs related to the cross-border nature of the dispute.

3.1.2 Criminal justice

While specific legislation with regard to business-related human rights abuses is not in place, legislative acts concerning the financial sector were adopted, which concern *inter alia* the fight against crimes in the financial sector, fraud and the protection of the euro.

Minimum Rules and Mutual Recognition in Cross border Criminal Matters

The Lisbon Treaty provides a specific legal basis to adopt criminal legislation at an EU level. The Council and the European Parliament may adopt legislation in the area of procedural criminal law and substantive criminal law respectively.

More concretely, the Treaty stipulates in Art. 82 that the European co-legislators may establish minimum rules to the extent necessary to facilitate mutual recognition of judgements and judicial decisions, as well as police and judicial cooperation in criminal matters that have a cross-border dimension. So far, based on this legal basis, legislation was adopted on the mutual admissibility of evidence between Member States, the rights of individuals in criminal proceedings, or the rights of victims. In the future, this scope may be extended if the EU Council wishes to identify other aspects of criminal procedure for approximation.

Art. 83, on the other hand, concerns the regulation of substantive criminal law, and states that the EU Council and the European Parliament may establish minimum rules on the definition of criminal offences and sanctions in the area of particularly serious crimes with a cross-border dimension. This concerns terrorism, trafficking in human beings and sexual exploitation of women and children, drugs and arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime. Here, too, the EU Council may identify in the future other areas of crime where EU legislation is necessary, in accordance with the criteria laid down in Art. 83 (1).

In addition, Article 83(2) allows the establishment of "minimum rules with regard to the definition of criminal offences and sanctions if the approximation of criminal laws and regulations of the Member States proves essential to ensure the effective implementation of a Union policy in an area which has been subject to a harmonisation measure." This clause does not list specific crimes, but makes the fulfilment of certain legal criteria a precondition for the adoption of criminal law measures at EU level. There are a number of policy areas which have been harmonised and where it has been established that criminal law measures at EU level are required. This concerns notably measures to fight serious damaging practices and illegal profits in some economic sectors in order to protect activities of legitimate

businesses and safeguard the interest of taxpayers.[41]

In the field of the protection of the Union's financial interests, the EU can establish a European Public Prosecutor's Office responsible for the investigation, prosecution and bringing to judgment of perpetrators of, and accomplices in, offences against the Union's financial interests.[42]

Until now, the legislative activities based on these new provisions in the Lisbon Treaty focused on the following aspects:

- Strengthening the rights of suspects and accused in criminal proceedings;
- Improving the protection of citizens;
- Fighting financial crime; and
- Supporting the fight against organised crime and terrorism.

Liability of Legal Persons for Offenses in the EU

A study for the Commission in 2012 concluded that the EU should encourage its Member States to make sure that a form of liability – not necessarily criminal liability – for legal persons is possible.

There have been already instruments at EU level that require Member States to ensure the liability of legal persons, such as the Second Protocol of the Convention on the protection of the Communities' financial interests of 1997[43]. This foresees that Member States ensure that legal persons held liable are punished by effective, proportionate and dissuasive sanctions, which may be in the form of criminal or non-criminal fines and may include also other sanctions. Similar provisions exist in the area of environmental law.

Mutual Recognition of Decisions and Judgments

In the area of Criminal Procedural Law, several measures have been taken to facilitate the mutual recognition of decisions and judgments. These aim to combat serious cross-border crime, which may include crimes perpetrated by business entities. Measures include the European Arrest Warrant, the European Investigation Order, the Framework Decision on the Mutual Recognition of Financial Penalties, and the Framework Decision on the application of Mutual Recognition to Confiscation Orders (2006).[44] Many of these instruments contain remedies provisions to protect the fundamental rights of the suspected/accused person.

Protection of Procedural Rights

The European Commission attaches great importance to the respect of the procedural rights for suspects and accused persons in all EU Member States. Concrete measures with a view to guaranteeing the right to a fair trial in criminal proceedings have already been taken, including the adoption of three Directives on the right to interpretation and translation[45], on

[41] Directive 2014/57/EU of 16 April 2014 on criminal sanctions for market abuse, OJ L 173/179 of 12 June 2014.
[42] COM(2013) 534 final
[43] OJ C 221, 19.7.1997, p. 12
[44] Council Framework Decision 2006/783/JHA of 6 October 2006, OJ L 328 of 24.11.2006, p59-78.
[45] Directive 2010/64/EU of 20 October 2010, OJ L 280 of 26.10.2010, p. 1–7.

the right to information[46] and on the right of access to a lawyer[36] in criminal proceedings[47].

The Commission expects that these Directives will strengthen the protection of procedural rights in the Member States, and will be closely following their implementation. Moreover a package of proposals[37] for further measures, concerning in particular the right to provisional legal aid for persons deprived of liberty, procedural safeguards for children, and on the guarantee of the presumption of innocence, was proposed by the Commission in November 2013.

Protection of Victims' Rights

The Victims Directive [48] ensures that victims receive appropriate information, support and protection and are able to participate in criminal proceedings. The Directive is to be transposed in EU Member States by 16 November 2015.

The Directive applies to all victims of crime. 'Victim' is defined as a natural person who has suffered harm, including physical, mental or emotional harm or economic loss which was directly caused by a criminal offence. Also family members of a person whose death was directly caused by a criminal offence and who have suffered harm as a result of that person's death is defined as a 'victim' under the Directive.

The Victims Directive applies in relation to criminal offences committed in the Union and to criminal proceedings that take place in the Union. However, its aim is not to criminalise certain acts or behaviours in the Member States. Thus, whether the Directive will apply and define as a ‘victim’ a person who has been a victim of specific conducts depends on whether such acts are criminalised and prosecutable under national law.

In this situation, national rules on jurisdiction have to be examined, notably the application of the active personality principle ("nationality" rules applicable to legal persons such as companies and corporations). Consequently, the Directive also confers rights on victims of extra-territorial offences who will become involved in criminal proceedings, which take place within the Member States. Moreover, the application of the Directive in a non-discriminatory manner also applies to a victim’s residence status (Member States should ensure that rights set out in this Directive are not made conditional on the victim having legal residence status on their territory or on the victim’s citizenship or nationality).

The Victims' Directive does not harmonise national rules on remedies or appeals. Nevertheless it provides for a right to victims to have a decision not to prosecute reviewed, in case the criminal proceedings takes place in the Union.[49]

Issue and sector-specific policies of relevance to corporate-related access to remedies

[46] Directive 2012/13/EU of 22 May 2012, OJ L 280 of 26.10.2010, p. 1–7.
[47] Directive 2013/48/EU of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, OJ L 294 of 6.11.2013, p. 1-12.
[48] 2012/29/EU of 25.10.2012 - Directive establishing minimum standards on the rights, support and protection of victims of crime
[49]Following directive 2011/36/EU victims of trafficking in human beings are entitled to unconditional access to assistance, support and protection.

In certain policy areas as well as sector-specific policies, the Commission adopted further reaching measures to ensure that victims of corporate-related harm have access to judicial remedies. For instance, in terms of trafficking in human beings, an important legal provision in relation to the responsibility of businesses is Article 5 in the anti-trafficking Directive (2011/36/EU) clearly stipulates that Member States shall take the necessary measures to ensure that legal persons can be held liable for the offense of trafficking in human beings.

The Employer Sanction Directive[50] forbids the employment of irregularly staying third-country nationals and establishes minimum standards across the EU on financial and criminal sanctions and measures against employers who violate this prohibition. Under the Directive, before recruiting a third-country national, employers are required to check if they are authorised to stay, and to notify the relevant national authority – the start of a working relationship; employers who comply with these obligations in good faith cannot be held liable if it turns out that a third-country national produced a forged document and was not entitled to stay and work in the EU. As many irregularly-staying migrants work in private households, the Directive also applies to private individuals as employers.

The Employers Sanction Directive also provides for criminal sanctions for the employers of illegal third country nationals who use work or services from these persons with the knowledge that they are victims of trafficking.

The Employers' Sanctions Directive grants some rights to and facilitates access to justice for irregular migrants. Member States have to ensure that employers who hire irregular migrants are liable to pay any outstanding remuneration to them, even after they have left the EU; moreover, Member States are bound to establish an effective mechanism allowing irregular migrants to lodge complaints against employers, either directly or through third parties, such as trade unions or other relevant associations.

Personal data protection is a fundamental right in Europe, enshrined in Article 8 of the EU Charter of Fundamental Rights of the European Union, as well as in Article 16(1) of the Treaty on the Functioning of the European Union and needs to be protected accordingly. Based on this new legal basis, the Commission developed a modernised and comprehensive approach to data protection and the free movement of personal data, also covering police and judicial cooperation in judicial matters[51].

The rapid pace of technological change and globalisation has profoundly transformed the way in which an ever-increasing volume of personal data is collected, accessed, used and transferred. In this new digital environment, individuals have the right to enjoy effective control over their personal information. Therefore, a high level of data protection is crucial to enhance trust in online services and to fulfil the potential of the digital economy, thereby encouraging economic growth and the competitiveness of EU industries.

Consequently, in January 2012 the European Commission proposed a strong and consistent legislative framework across Union policies, enhancing individuals' rights and the Single Market dimension of data protection. The personal data protection reform proposals consist

[50] 2009/52/EC of 18.6.2009 – Directive providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals

[51] Specific rules for processing by Member States in the area of Common Foreign and Security Policy shall be laid down by a Council Decision based on Article 39 TEU.

of two legislative instruments in a package: a Regulation[52], setting out the general EU framework for data protection; and a Directive[53] for police and criminal justice authorities.

The reform sets out to put individuals in control of their own personal data, on the basis that this will benefit all stakeholders: individuals, businesses and regulators. The reform explicitly sets out the "right to be forgotten" as well as provisions on data portability. Both the EU's Data Protection Directive[54] and the EU data protection reform proposals[55] require Member States to lay down the right of every person to a judicial remedy for any breach of the rights guaranteed under these instruments. Supervisory authorities will be able to apply effective sanctions that can reach as much as 2% of the global annual turnover of a company.

Companies based outside the EU, offering goods or services in the EU or monitoring behaviour of citizens, will also have to apply the new EU data protection rules.

3.2 Non-judicial remedies

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

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

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

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

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

a) Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;
b) Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;
c) Predictable: providing a clear and known procedure with an indicative timeframe for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;
d) Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair,

[52] Proposal for a Regulation on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation)', COM (2012) 11 final
[53] Proposal for a Directive on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data', COM (2012) 10 final
[54] 95/46/EC
[55] http://ec.europa.eu/justice/data-protection/

informed and respectful terms;

e) *Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;*

f) *Rights-compatible: ensuring that outcomes and remedies accord with internationally recognised human rights;*

g) *A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;*

Operational-level mechanisms should also be:

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

Operational non-judicial remedy mechanisms can be effective and in some cases preferable, for example providing early-stage recourse and resolution. But such mechanisms tend to be more effective if backed up by the possibility of judicial mechanisms. Such mechanisms can be based on mediation (such as via National Contact points under the OECD Guidelines) or adjudication (such as government-run complaints offices), but in all cases should meet the criteria set out in GP31. Care is needed to ensure that there are no practical or procedural barriers to access for non-judicial remedies for legitimate cases, and that access for more vulnerable groups is balanced.

This report cannot provide an overview of the state of play in respect of operational level and collaborative initiatives (GP 29 & 30) as these are not within the remit of the European institutions[56], however some initiatives are relevant in relation to state-based non-judicial mechanisms and state support for access to non-State-based grievance mechanisms.
EU law promotes the use of mediation in cross-border disputes by obliging EU Member States to grant the parties certain procedural guarantees and to ensure that the agreement resulting from mediation can be made enforceable[57]. While this obligation is limited to disputes involving both parties domiciled in different Member States, some Member States have transposed part of the rules in a broader way, thus covering cases involving parties from third countries.

OECD National Contact Points

The European Commission takes part in the work of the OECD, but does not have the right to vote on decisions or recommendations presented before the OECD Council for adoption. Within the remit of this work, the European Commission actively contributes to work on the OECD guidelines for multinational enterprises, under which the so-called national contact points (NCPs)[58] are set up by adhering governments. Their main role is to undertake

[56] Recent work has been conducted in this area by CSR Europe http://www.csreurope.org/sites/default/files/Report%20Summary-%20Management%20of%20Complaints%20assessment-%20final%20Dec%202013.pdf

[57] See Mediation Directive 2008/52/EC which seeks to facilitate access to alternative dispute resolution and to promote the amicable settlement of disputes, particularly through the use of mediation. Essentially, the Directive requires Member States to establish a procedure whereby an agreement reached through mediation can be made enforceable by a court. The Directive applies to disputes where both parties are domiciled in different Member States but at least part of the rules have been transposed without that restriction by many Member States.

[58] http://www.oecd.org/corporate/mne/ncps.htm

promotional activities, handling enquiries and contributing to the resolution of issues that arise from the alleged non-observance of the guidelines in specific instances.
To ensure that all NCPs operate in a comparable way, the concept of “functional equivalence” is used. NCPs report to the OECD Investment Committee and regularly meet to share their experiences. The Guidelines are the only government-backed international instrument on responsible business conduct with a built-in grievance mechanism – specific instances. Under this mechanism, NCPs are tasked to provide a platform for discussion and assistance to stakeholders to help find a resolution for issues arising from the alleged non-observance of the Guidelines. While the European Commission does not have an operational NCP function, and leaves action in this area to the competence of the Member States (including on specific instances, parallel proceedings and related aspects), it encourages coordination among their NCPs, including concerning their working practices and monitoring, as a way to further strengthen the efficiency of the implementation of the guidelines.

Information on Access to Justice

The European Commission co-funds the organisation of a series of events dedicated to *Access to Justice in Business and Human Rights* through its civil justice programme. The events took place in Paris, London, Berlin and Brussels between June and November 2014. The aim is to raise awareness of the issue and to gain an understanding of the legal and institutional frameworks pertaining to civil justice in business and human rights.

CONCLUSIONS & NEXT STEPS

The UN Guiding Principles on Business and Human Rights remain the most practical, widely-endorsed and wide-ranging approach to preventing and redressing business-related human rights abuses. The UNGPs reflect decades of steady progress and development, and efforts undertaken since June 2011 to implement them demonstrate that the process is advancing.

This report sets out the state of progress within the European Union. It shows that much has already been achieved at EU level in terms of implementing the UNGPs on business and human rights, given the limits of the EU's competencies in this field. Through its 28 Member States and its institutions, the EU is widely seen as leading by example in business and human rights and in corporate social responsibility. The report aims so serve as an important reference point for the development of future actions in the context of the revision of the European CSR Strategy.

As far as the external dimension of EU activities is concerned, attention to the issue of business and human rights has grown considerably since the adoption of the Action Plan on Human Rights and Democracy in 2012, which has been central in promoting and better coordinating actions taken in this field. Issues in relation to business and human rights have been increasingly raised with a number of third parties in the context of EU human rights dialogues, focusing on the exchange of good practices. Furthermore, a new regulation for comprehensive supply chain management in minerals sourcing is currently being drafted. Other initiatives taken include the introduction of respect for human rights as a precondition for EU support for the private sector, enhanced disclosure and reporting obligations for large companies, private sector partnerships between businesses and NGOs, as well as the inclusion of CSR clauses and impact assessments in trade and investment negotiations.

The Peer Review of national action plans for CSR was a useful and successful exercise, leading to the publication of a Compendium in September 2014.[47] Some Member States have requested that the Commission should develop a peer review mechanism to assist EU MS in the development of NAPs on business and human rights.[59]

Due diligence is one of the guiding themes of the UNGPs, and has potential to ensure effective responsible supply chain management. Several recent EU Regulations and Directives set out due diligence requirements: for example the proposed Conflict Minerals Regulation, the Non-Financial Reporting Directive, the Data Protection Regulation and the Timber Regulation. An analysis of these experiences, and their practical application, would help identify good ideas and allow some general recommendations to be developed for application in other areas, whilst bearing in mind that sectors and markets have many specific characteristics and require tailored approaches.

Owing to human resources, funding, and the vast reach of industry and sectors, the Commission cannot actively support responsible supply chain projects in all sectors and markets. However, it can actively encourage actors in key sectors to build on the experience achieved in projects supported in other sectors and facilitate the sharing of good practice. Member States and the private sector should also play an active role here.

A first analysis shows the existence of some practical problems with access to justice in cases of business related human rights abuses and to identify remedies. The current framework of judicial means for access to remedies is comprehensive and even allows, within certain parameters, extra-territorial access to remedies for victims of corporate-related harm. However, there remains a certain dichotomy between actions against companies with a seat domiciled in the EU (for which jurisdiction is regulated at EU level) and actions against companies with domicile outside the EU (for which jurisdiction is regulated at national level). Any changes to this legal framework will require a willingness from the co-legislators to take this forward.

EU Member States can prosecute perpetrators registered in the EU face prosecution even if they commit their crimes outside the Union (e.g. business-related human rights abuse). In such cases Member States can recur to available national and international instruments (including bilateral or multilateral treaties on extradition, mutual assistance or a transfer of the proceedings), cooperation with third countries and international organisations with a view to combating this abuse. In EU development cooperation work, strengthening judicial systems for access to remedies can also play a role.

Moreover, EU Member States can pursue dialogue and communication with countries outside the Union in order to be able to prosecute perpetrators, under the relevant national legislation. Member States should ensure that legal persons are held liable for offences committed within the EU. This liability does not need to be criminal liability in nature; however it needs to be effective, proportionate and dissuasive.

As regards the EU's external policy, increased efforts need to be undertaken in the future. The proposed new Action Plan on Human Rights and Democracy attributes increasing importance to the issue of business and human rights. It suggests future actions to raise further awareness of the UNGPs in the EU's external action and to strengthen the role and expertise of EU

[59] COHOM meeting on the Action Plan for Human Rights & Democracy, 27-28.05.2015.

delegation with respect to business and human rights. Moreover, it sets the objective of including references to internationally agreed CSR instruments, for instance with regard to the UNGPs, in EU trade and investment agreements.

The EU needs to continue its engagement within the UN framework in order to promote and support the proper implementation of the UNGPs and in this respect should encourage all parties involved to step up or maintain their current efforts and engagement.

The UN Working Group on Human Rights and Transnational Corporations and other Enterprises is currently setting up a network of best practice sharing between prosecutors working on gross human rights violations through companies. This could be a very practical and effective way to raise awareness and promote expertise in applying existing law.

There are ways to increase non-judicial access to remedies, for example by promoting company-based grievance mechanisms or providing a mediation role in conflicts. The EU delegations can play a role in this (for example in providing information and guidance on access to remedies). More generally there is scope for mutual learning on effective approaches to non-judicial remedies in line with the criteria set out in UNGP 31. Through its work, the European Commission services to promote, strengthen and implement the UNGPs through its reach on both business and human rights and responsible business conduct in line with the European CSR Strategy.

ANNEX - OVERVIEW OF ACTIONS AND POLICIES RELEVANT TO THE IMPLEMENTATION OF THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

Pillar 1: THE STATE DUTY TO PROTECT HUMAN RIGHTS

Foundational Principles (principles 1-2)

Principle	EU or Member State competence?	What do we do already?
1. States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication.	Legal obligation is on Member States. But some areas in which MS should act to meet obligations are EU competence or shared competence.	The European CSR Strategy (Communication of 2011) invites MS to develop National Action Plans for the implementation of the UNGPs by the end of 2012. A peer review process has taken place of national CSR policies, which included a dimension related to the UNGPs. A compendium of EU Member States' policies on CSR was produced at the end of the peer review in October 2014, which included information on business and human rights. Projects aiming at promotion, respect and protection of fundamental rights, including training activities, will be supported under the Justice and Rights, Equality and Citizenship Programme in the new funding period (2014-2020) The 2007-2013 Fundamental Rights and Citizenship Programme included the policy priority to support financially projects aiming at training of EU legal practitioners, including lawyers, prosecutors and judges, on fundamental rights. The 2007-2013 Criminal Justice Programme co-financed judicial training activities.

		In addition, training of legal practitioners in the field of gender equality, anti-discrimination and on the UN Convention on the Rights of Persons with Disabilities was further supported through the PROGRESS programme 2007-2013.
2. States should set out clearly the expectation that all business enterprises domiciled in their territory and/or jurisdiction respect human rights throughout their operations.	MS and EU	The 2011 CSR Communication states the expectation of the Commission that all enterprises should respect human rights in accordance with the UNGPs. The modern understanding of CSR presented in the communication explicitly refers to the integration of human rights into business operations and strategy. The Commission plans to collect and publish information on the policy commitments of large companies to take account of global CSR guidelines and principles, which could have a dimension related to HR / UNGPs. Under the proposed Regulation on data protection,[60] companies based outside the EU, offering goods or services in the EU or monitoring behaviour of citizens will also have to apply EU data protection rules. Companies will be able to offer their customers assurances, backed up by a clear regulatory framework, that valuable personal data will be treated with the necessary care and diligence. The Communication *'A stronger role of the private sector in achieving inclusive and sustainable growth in developing countries'*

[60] http://ec.europa.eu/justice/data-protection/

		(COM(2014)263) underlines that companies investing or operating in developing countries should respect human rights, and should ensure that they have in place systems to assess risks and mitigate potential reverse impacts.

General State regulatory and policy functions (Principle 3)

Principle	EU or Member State competence?	What do we do already?
3. In meeting their duty to protect, States should:	MS and EU	
(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;		Directive 2006/54/EC[61] lays down a general framework on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation. In December 2013 the Commission adopted a Report on the application of Directive 2006/54/EC, particularly focusing on assessing the application of the provisions on equal pay in practice. Directive 2000/43/EC[62] prohibits discrimination based on racial or ethnic origin in employment, social protection (including social security and health care), education and access to goods and services. Directive 2000/78/EC[63] prohibits discrimination on grounds of religion or belief, disability, age, or sexual orientation in employment and occupation. Article 5 in the anti-trafficking Directive 2011/36/EU stipulates that Member States shall take the necessary measures to ensure that legal

[61]Directive 2006/54/EC of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast) (OJ L 204 of 26 July 2006, p. 23);
[62]Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ L 180, p. 22.
[63]Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation, OJ L 303, 2.12.2000, p.16

		persons can be held liable for the offense of trafficking in human beings. In January 2014 the Commission adopted a Joint implementation report on the implementation of Directive 2000/43/EC and Directive 2000/78/EC. EU legislation on data protection, notably Directive 95/46/EC, requires all businesses that collect and process personal data to abide by the rules contained therein in order to ensure respect of the fundamental right of individuals to the protection of their personal data.
3 (b) Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;		The Commission ensures that fundamental rights considerations are taken into account in new policy proposals and the Charter of Fundamental Rights is respected in Commission legislative proposals and by Member States when they implement EU law. The revision of existing Accounting Directives[64] regarding the disclosure of non-financial and diversity information will require large companies and groups to disclose from 2017 information on policies, risks and results as regards their respect for human rights, anti-corruption, bribery issues, environmental matters, social and employee-related aspects, as well as the diversity on boards of Directors.
3 (c) Provide effective guidance to business enterprises on how		Commission published guidance for 3 business sectors on the corporate responsibility to respect human rights, as well as guidance

[64] Adopted by the European Parliament on 15 April 2014 and by the Council on 1 October 2014, and published in the Official Journal on 15th November 2014. Member States are required to implement the terms of the Directive into domestic law by 6 December 2016.

to respect human rights throughout their operations;		material on human rights specifically adapted to SMEs. The Commission implements a wide range of activities in the area of non-discrimination and equality between women and men at the work place, including awareness raising, good practice exchanges and financial support to Member States and civil society through the PROGRESS programme and the Rights, Equality and Citizenship programme. The Commission supports provision of technical assistance in third countries, e.g. for better respect of labour standards. Development of specific policies on child labour (TRADE), rights of the child (JUST), forced prison labour (TRADE), trafficking in human beings (HOME). DG JUST funded an awareness raising project (2012-2013) to promote gender equality and equal pay for women and men doing the same work or work of equal value within companies. The purpose of the action was to support employers in their efforts to tackle the gender pay gap and to promote gender equality in their organisations. Tools and training activities for companies on the "business case" for gender equality were developed and disseminated Exchanges of good practices between companies on actions to foster gender equality were also promoted.
3 (d) Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.		EU Directive on the disclosure of non-financial information by companies (see 3b above) makes reference to human rights. Article 10 of Directive 95/46/EC on the protection of personal data requires businesses that collect and process personal data provide

		consumers with appropriate information on the way their personal data is used ad to inform them of their rights in this regard (e.g. individuals' right of access to and rectification of their personal data held by the company).

The state-business nexus (principles 4-6)

Principle	EU or Member State competence?	What do we do already?
4. States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.	Member States	The European Investment Bank has integrated the UNGPs in their standards on investments abroad, as laid out in their Environmental and Social Handbook.
5. States should exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon	Member States	As stated in the Operational *Guidance on taking account of Fundamental Rights in Commission Impact Assessments* SEC(2011) 567 final, depending on the policy context, it may be necessary to take international human rights conventions into account when interpreting the rights set out in the Charter. This concerns in particular the conventions to which either the Union is a contracting party - such as the UN Convention on Rights of Persons with Disabilities - or all Member States are contracting parties – namely the International Covenant on

the enjoyment of human rights.		Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Elimination of Racial Discrimination, the Convention against Torture and the Convention on the Rights of the Child. The UN Convention on the Rights of Persons with Disabilities, concluded by the EU, signed by all Member States and already ratified by the majority of them, is relevant in this respect. In particular Article 9 obliges States Parties to take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. Among other things, States Parties shall take appropriate measures to ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities. Article 28(1) of Directive 95/46/EC requires Member States to set up independent supervisory authorities to monitor the application of the protection of personal data and which enjoy investigative powers, effective powers of intervention and the power to engage in legal proceedings in cases of violations of personal data protection rules.
6. States should promote respect for human rights by business enterprises with which they conduct commercial transactions.	EU and Member States	Revision of the EU Public Procurement Directives (2014). Facilitates use of social and environmental criteria, including an obligation on accessibility for people with disabilities, but makes no direct reference to fundamental or human rights.

		Publication of guide on social considerations in public procurement (EMPL and MARKT).

Supporting business respect for human rights in conflict-affected areas (principle 7)

Principle	EU or Member State competence?	What do we do already?
7. Because the risk of gross human rights abuses is heightened in conflict-affected areas, States should help ensure that business enterprises operating in those contexts are not involved with such abuses, including by:	Mainly Member States	
7 (a) Engaging at the earliest stage possible with business enterprises to help them identify, prevent and mitigate the human rights-related risks of their activities and business relationships;		First EU delegations training on business and human rights took place on 17 November 2014 to build capacity.
7 (b) Providing adequate assistance to business enterprises to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence;		

7 (c) Denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation;		
7 (d) Ensuring that their current policies, legislation, regulations and enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses.		The "Comprehensive EU supply chain initiative for responsible sourcing of minerals originating in conflict-affected and high-risk areas"[65] was adopted by the Commission in March 2014. It aims to stop profits from trading minerals being used to fund armed conflicts and support responsible sourcing by promoting transparent supply chains of minerals (namely tin, tantalum, tungsten and gold) originating from conflict-affected and high-risk areas. This should improve the ability of EU operators to take into account the wellbeing of local communities dependent on mining activities. The "Country-by-Country Reporting Directive"[66] obliges large undertakings and public-interest entities which are active in the extractive industry or logging of primary forests to disclose material payments made to governments in the countries in which they operate in a separate report, on an annual basis. Following the Rana Plaza tragedy, the European Commission and the EEAS partnered with the ILO, Bangladesh and the United States in launching the "Sustainability Compact for Continuous Improvements

[65] http://ec.europa.eu/smart-regulation/impact/planned_ia/docs/2013_trade_019_conflict_minerals_en.pdf
[66] 2013/34/EU of 26/6/2013 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:182:0019:0076:EN:PDF

		in Labour Rights and Factory Safety in the Ready-Made Garment and Knitwear Industry in Bangladesh." The objective of the initiative is to improve labour, health and safety conditions for workers as well as to encourage responsible behaviour by businesses in the ready-made garment industry in Bangladesh. Two years on, improvements have been made: some laws have been changed, factory inspections are carried out, buyers are taking actions together with trade unions to improve working conditions in the country and private, public, national, international stakeholders cooperate with each other. The EU together with the Governments of Myanmar/Burma, the United States, Japan, Denmark and the International Labour Organisation launched an initiative to "Promote Fundamental Labour Rights and Practices in Myanmar/Burma." This initiative focuses on labour law reforms, institutional capacity building as well as full involvement of stakeholders, including business, employers' and workers' organizations. The Commission proposal to be part of the initiative was endorsed by the Council on 07 May 2015. The Commission and EEAS services are exploring the idea of launching an EU Initiative on responsible management of the supply chain in the garment sector in the framework of the European Year for Development 2015. Research project on Privatisation of War (PRIV-WAR) and recommendations for EU regulatory action in the field of private military and security companies. The EU supported in 2012 the "Montreux Document on pertinent legal obligations and good practices for States related to operations of private military and security companies during armed conflict", which recalls existing obligations and compiles good practices in this field –

		23 EUMS support the Montreux Document. In December 2014, at the constitutional meeting of the Montreux Document Forum, the EU was elected in the Group of Friends of the Chair (Switzerland, International Committee of the Red Cross). and is a member of the Working Group on the International Code of Conduct Association – launched in Geneva in September 2013

Ensuring policy coherence (principles 8-10)

Principle	EU or Member State competence?	What do we do already?
8. States should ensure that governmental departments, agencies and other State-based institutions that shape business practices are aware of and observe the State's human rights obligations when fulfilling their respective mandates, including by providing them with relevant information, training and support.	Member States and EU	The Commission aims to ensure that all EU policies comply with fundamental rights and that all proposals and legal acts it adopts respect the EU Charter of Fundamental Rights. A "Strategy for the effective implementation of the Charter of Fundamental Rights by the EU" was adopted to this end in October 2010 (COM(2010)573final). The Commission developed Operational Guidance on taking account of Fundamental Rights in the Commission Impact Assessments (SEC (2011) 567 final) in 2011. Each year the Commission adopts an annual report on the application of the Charter (http://ec.europa.eu/justice/fundamental-rights/charter/application/index_en.htm . The Communication on Smart Regulation (COM(2010)543) COM reinforces assessment of impact of legislation and policies on fundamental rights.

9. States should maintain adequate domestic policy space to meet their human rights obligations when pursuing business-related policy objectives with other States or business enterprises, for instance through investment treaties or contracts.	Free Trade Agreements and bilateral investment treaties are EU competence. Host country agreements with investing companies remain MS competence.	2010 Communication on European investment policy (COM(2010)343 final) states that "A common investment policy should also be guided by the principles and objectives of the Union's external action more generally, including […] human rights […]." The EU's international trade agreements have since the 1990s been governed by a human rights clause that permits one party to take 'appropriate measures' in the event that the other party violates an 'essential elements' clause containing an obligation to comply with human rights and democratic principles. These clauses function in trade and cooperation agreements covering around 120 states. They permit the application of sanctions in response to human rights violations. In practice, the EU has used these clauses to suspend financial aid to regimes. All recent agreements are so-called 'mixed agreements' concluded by the EU and its Member States together. The Commission also encourages the ratification and effective implementation of international labour and environmental conventions in the EU's political dialogue with partner countries and through EU trade policy. The EU Free Trade Agreements include a chapter on trade and sustainable development which includes provisions on both labour and environmental commitments and objectives. The EU Generalised System of Trade Preferences Plus provides significant trade tariff advantages to those vulnerable economies that commit to ratify and effectively implement 27 core international conventions on human and labour rights, environmental protection and good governance.
10. States, when acting as members of multilateral institutions that deal with business related issues, should:	Mainly MS, but relevant to EU to the extent that it is a member of or participates in international organisations.	The European Commission is a multilateral institution in itself. In most relevant instances it is not a member of other international organisations in its own right, but often performs a coordinating role where some or all EU Member States are members.

(a) Seek to ensure that those institutions neither restrain the ability of their member States to meet their duty to protect nor hinder business enterprises from respecting human rights; **(b) Encourage those institutions, within their respective mandates and capacities, to promote business respect for human rights and, where requested, to help States meet their duty to protect against human rights abuse by business enterprises, including through technical assistance, capacity-building and awareness-raising;** **(c) Draw on these Guiding Principles to promote shared understanding and advance international cooperation in the management of business and human rights challenges.**		The Commission has worked with EU Member States to promote a shared understanding of in respect of business and human rights, based on the guiding principles. It has conducted an extensive peer review exercise in this respect, and published a compendium of results. The European Union is actively engaged in support of the work streams in the United Nations to implement the UN Guiding Principles e.g. "Accountability and remedy Project" initiated by the UN Office of the High Commissioner for Human Rights.

Pillar 3: ACCESS TO REMEDY

Foundational principle (principle 25)

Principle	EU or Member State competence?	What do we do already?
25. As part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.	Mainly Member States, some EU	The Brussels I Regulation enables to sue European domiciled companies before the European courts for damages caused and/or arising outside the Union. The Rome II Regulation establishes the applicable law for the tort cases, including torts relating to human rights infringements. Recommendation 2013/396on collective redress requires the EU Member States to put in place collective redress mechanisms on the basis of the basic principles set out in the Recommendation. Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, replacing Council Framework Decision 2001/220/JHA of 15 March 2001 as of 16.11.2015 on the standing of victims in criminal proceedings Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals Support for OECD Guidelines Raising awareness of the existence of equality bodies - their main objective is to promote equal treatment and some of them have tribunal status.

		The Commission proposals for the 2014-2020 Rights and Citizenship Programme and Justice Programme enable continued support for such types of judicial training activities. The European e-Justice Portal provides in 23 languages general information on judicial systems, including fact sheets on fundamental rights of EU citizens and allows for improving the access to justice throughout the EU. Chapter III of Directive 95/46/EC on the protection of personal data provides an obligation for Member States to ensure adequate remedies and sanctions in cases of infringements of the rights of individuals to protection of their personal data guaranteed under the Directive. Under the proposal for a Regulation on data protection, supervisory authorities will be able to apply effective sanctions that can reach as much as 2% of the global annual turnover of a company. Showing citizens that a strong EU data protection framework effectively protects and upholds their rights will help to build trust. Member States must ensure that all victims of trafficking in human beings have unconditional access to assistance, support and protection, catering to the particular needs of individuals as per EU Directive 2011/36/EU.

State-based judicial mechanisms (principle 26)

Principle	EU or Member State competence?	What do we do already?
26. States should take appropriate steps to ensure the effectiveness of domestic judicial mechanisms when addressing business-related human rights abuses, including considering ways to reduce legal, practical and other relevant barriers that could lead to a denial of access to remedy.	Mainly Member States, some EU	Brussels I and Rome II Regulations. EU Directive on legal aid Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, replacing Council Framework Decision 2001/220/JHA of 15 March 2001 as of 16.11.2015 on the standing of victims in criminal proceedings. Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals The 2007-2013 Fundamental Rights and Citizenship Programme includes the policy priority to support financially projects aiming at training EU legal practitioners, including lawyers, prosecutors and judges, on fundamental rights. The 2007-2013 Criminal Justice Programme also allows supporting such types of training activities. The 2007-2013 Fundamental Rights and Citizenship and Civil Justice Programmes also enable to support network activities between EU legal practitioners and/or exchanges of best practices between EU Member States' jurisdictions. The Commission proposals for the 2014-2020 Rights and Citizenship Programme and Justice Programme enable continued support for such types of training and networking activities.

		Follow-up on the Recommendation on collective redress by assessing, at the latest by July 2017, if any further action on EU level, including legislative measures, is needed to ensure that the objectives of the Recommendation are met.

State-based non-judicial grievance mechanisms (principle 27)

Principle	EU or Member State competence?	What do we do already?
27. States should provide effective and appropriate non-judicial grievance mechanisms, alongside judicial mechanisms, as part of a comprehensive state-based system for the remedy of business-related human rights abuse.	Mainly Member States, some EU	Support for OECD Guidelines, including support for inclusion of HR chapter in the 2011 update. Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters, OJ L136, 24.5.2008, p. 3. DG SANCO and DG JUST A2 projects on ADR. The 2007-2013 Civil Justice Programme enables to support projects aiming at promoting judicial cooperation in civil matters and more particularly on certain aspects of mediation in civil and commercial matters in the EU as well as at training EU legal practitioners on the operation of mediation in civil matters and on mediation techniques, especially for cross-border cases.

Non-state-based grievance mechanisms (principle 28-30)

Principle	EU or Member State competence?	What do we do already?
28. States should consider ways to facilitate access to effective non-State-based grievance mechanisms dealing with business-related human rights harms.	Member States and EU	Some EU support to HR defenders in 3rd countries is relevant in this context.
29. To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted.	Member States and EU	
30. Industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards should ensure that effective grievance mechanisms are available.	Member States and EU	

Effectiveness criteria for grievance mechanisms (principle 31)

Principle	EU or Member State competence?	What do we do already?
31. In order to ensure their effectiveness, non-judicial grievance mechanisms, both State based and non-State-based, should be: **(a) Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;** **(b) Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;** **(c) Predictable: providing a clear and known procedure with an indicative timeframe for each stage, and clarity on the types of process and outcome**	Member States and EU	In this respect the UN Convention on the Rights of Persons with Disabilities binds State parties to ensure effective access to justice for persons with disabilities (art. 13).

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

preventing future grievances and harms; **Operational-level mechanisms should also be:** **(h) Based on engagement and dialogue: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.**		