



# Government policy to stimulate **international responsible business conduct**

CHANGE  
IN CONTEXT

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# 1 Executive summary (English)

This report provides an overview of the main judicial and other measures taken by a selection of European governments to ensure enterprises under their jurisdiction take responsibility for their actions and impacts internationally. To keep the report legible, the research is focused on awareness-raising and capacity building activities, non-financial reporting requirements and policies to stimulate due diligence. More indirect policy measures such as sustainable investment and sustainable public procurement are therefore not covered in this report. The countries included in the scope of the research are France, Germany, the Netherlands, the United Kingdom and Switzerland, as well as the context of the policies of the European Commission.

## 1.1 All governments in this research actively stimulate international responsible business conduct.

International responsible business conduct is primarily seen as the responsibility of business. In their policies to stimulate companies, the countries in this research reference a core set of international frameworks to define responsible business conduct, namely the OECD Guidelines for Multinational Enterprises, the UN Guiding Principles on Business and Human Rights, ISO 26000, the ILO Labour Standards. Most also refer to the UN Global Compact and the Global Reporting Initiative.

## 1.2 All countries have informational measures in place to raise awareness and to build capacity in companies.

The governments in this research all offer guidance for companies through their websites and specific guidance documents. The Swiss and German web portals especially offer comprehensive access to available documents as well as links to other relevant websites. All governments also partner with different organizations to engage a wider group of companies, with special emphasis on reaching SMEs.

## 1.3 The EU Non-Financial Reporting Directive has been transposed into law in all EU countries, but not all in the same way.

All EU Member States now require at least public interest entities (listed companies, banks, insurance companies) with over 500 employees to report on non-financial topics. However, not all countries in the scope of this research transposed the EU directive in the same way.

# 1 Executive summary (English)

France has the most elaborate law on non-financial reporting, requiring all companies over 500 employees to report and mandating assurance for all listed companies. Germany, Netherlands and the UK do not require assurance and have limited the scope to only public interest entities with over 500 employees. The only non-Member State in the scope of this research, Switzerland, does not have reporting legislation.

	European Union	The Netherlands	France	Germany	United Kingdom	Switzerland
Non-financial reporting	EU Non-Financial Reporting Directive					Voluntary
		Required of Public Interest Entities (PIEs) with 500+ employees	Required of companies with 500+ employees. Mandatory assurance.	Required of PIEs with 500+ employees	Required of PIEs with 500+ employees	

## 1.4 Due diligence is an emerging policy topic, with recent developments in each of the researched countries.

After the adoption of the UN Guiding Principles on Business and Human Rights in 2011 and the accompanying request by the UN to have all Member States draw up a national action plan, a renewed focus has been applied to due diligence. As a result, due diligence in the supply chain is a topic that has emerged in legislation and/or discussions in all countries in this research. In 2015, the UK adopted the Modern Slavery Act applicable to all large companies offering goods and services on the UK market. In 2017, France adopted due diligence legislation applicable to very large French companies and other companies with a substantial presence in France. The EU Conflict Mineral Regulation will be effective as of 2021.

The Netherlands has not adopted legislation, but currently has six voluntary sector covenants in place. A Bill on Child Labour Due Diligence has been passed by House of Representatives, but not (yet) by the Senate. The German government has established due diligence as an expectation for business. It will consider legislation if less than 50% of large companies do this voluntarily by 2020. And in Switzerland, a popular initiative was launched for legislation

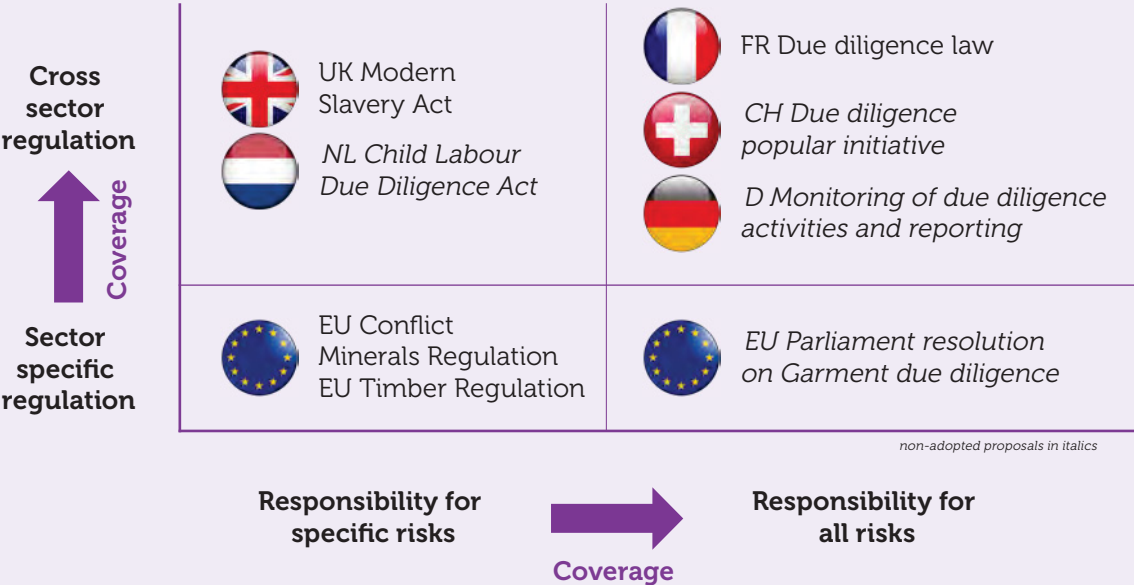
	European Union	The Netherlands	France	Germany	United Kingdom	Switzerland
Due diligence measures	EU Timber Regulation, Conflict Minerals Regulation					<i>Popular initiative on due diligence</i>
	<i>Parliament resolution on Garment due diligence</i>	Voluntary sector covenants <i>Child labour bill</i>	Due diligence legislation	Monitoring of corporate due diligence activity and reporting	Modern Slavery Act	

*non-adopted proposals in italics*

on due diligence. This has not been turned into legislation; early 2018, the Swiss Parliament will decide on a potential referendum on this topic.

**1.5 The transition of due diligence into legal instruments is fragmented.**

The legal requirements related to due diligence are evolving differently in each of the selected countries. While some focus on specific sectors, like the EU Conflict Minerals Regulation and the EU Timber Regulation, others apply across sectors, like the UK Modern Slavery Act. And while some focus on specific risks, like the proposed Child Labour Bill in the Netherlands, others apply to all risks, like the French Due Diligence Law.



**1.6 Most legal instruments are directed at large companies, voluntary initiatives are more sector-focused.**

Most CSR legislation applies to large, listed companies, in some cases also to large non-listed companies and specific sectors. For SMEs, the countries in the scope of this research have stimulation programs (mostly informational) and most governments explicitly want to avoid a disproportionate administrative burden.

# 1 Executive summary (English)

	European Union	The Netherlands	France	Germany	United Kingdom	Switzerland
Sector guidance and information (not exhaustive)	ICT, Oil & Gas, Employment & Recruitment	CSR Risk Check Sectoral Risk Analysis	Agriculture, Textile & Garments, Extractives, Finance	Minerals	Minerals	Extractives, Raw Materials, Agriculture, Finance, Security, Garments, Oil & Gas
Voluntary sector initiatives	Garments	Garments & Textile, Banking, Gold, Sustainable Forestry, Vegetable Protein, Natural Stone		Textiles, Cocoa, Tourism, Palm Oil, Bananas	Private Security Services, Cybersecurity Exports	Raw materials & Commodities
Sector regulation	Timber, Conflict Minerals, Oil & Gas, Mining, Logging					Private Security Services

All countries in the scope of this research have sectoral measures in place. The sector measures vary across the countries in terms of their reach; they can be informational, voluntary or legislative. The range of sectors also differs per country, yet many countries include the garment and extractives industries.

## 1.7 The European Commission has been a key driver of (international) CSR policy development in the past years, but for the years ahead, this leading and coordinating role is less clear.

In the past years, many of the key legislative developments have been led and coordinated by the European Commission, leading to the Non-Financial Reporting Directive, Conflict Mineral Regulation, and a proposal for country-by-country reporting. The European Commission has also changed the way the countries in the scope of this research define CSR. The shift to a more impact-focused definition of CSR in the 2011 CSR Strategy (away from a purely voluntary approach) has been followed by all countries in the scope of this research, except the UK.

An area where the EU has been less involved is due diligence on human rights. This is an area currently led by individual countries. As a result, the policies on this topic vary from country to country. Many parties are eager to have the EU take a leading role on due diligence/human rights legislation to avoid fragmentation.

Since its release in 2011, the EU CSR strategy has not been updated. Repeatedly, Member States (including France, UK, and the Netherlands) have requested the European Commission to update the document. They also call for a due diligence initiative for EU-based companies on human rights and the environment affected by the activities of these companies.

In response, the European Commission shared an overview of current EU policies and measures. The same document states that there are no plans to adopt further legislation at this stage but that the Commission will closely monitor Member State developments.

### **1.8 Stakeholders and multiple ministries were involved to develop National Action Plans. Continued stakeholder engagement and interministerial coordination differs across countries.**

In 2011, the European Commission called on all Member States to develop National Action Plans on CSR and Business and Human Rights. All countries in scope of this research launched a National Action Plan on Business & Human Rights between 2013 and 2017.

The CSR National Action Plans vary more in terms of their launch dates and their stage of development. Of the countries included in this research, the Netherlands is the only one with an explicit demarcation between national and international responsible business conduct as policy areas.

Most of the plans were created through multi-stakeholder consultation processes. For the implementation, many governments also continue to engage stakeholders, either structurally (like in France and Germany) or incidentally (like in Switzerland and the EU). All of the plans include action points for different ministries, but none of the plans foresee in structural interministerial coordination on the implementation and progress, except for the German Business & Human Rights plan which includes a process of bimonthly meetings.

### **1.9 Little research has been conducted on the effect of public policy on the responsible business conduct of companies.**

Research data does show an increase in non-financial reporting by large companies in all countries in scope, but it is uncertain what impact this has had on actual corporate behaviour. As many of the policies were implemented quite recently, it is too early for an impact assessment, but evaluations are planned in the coming years by several countries.



## 2 Executive summary (Nederlands/Dutch)

Dit verslag biedt overzicht in de voornaamste wettelijke en andere maatregelen welke zijn getroffen door een selectie van Europese overheden om ervoor te zorgen dat onder hun jurisdictie vallende ondernemingen verantwoordelijkheid nemen voor hun internationale acties en impact. Om dit verslag leesbaar te houden is het onderzoek gericht op maatregelen die bewustzijn en vaardigheden opbouwen, niet-financiële verslaglegging en *due diligence* stimulerende maatregelen. Maatregelen met een meer indirecte werking zoals duurzaam beleggen en duurzame inkoop door de overheid zijn niet opgenomen in dit verslag. De landen die deel uitmaken van het onderzoek zijn Frankrijk, Duitsland, Nederland, het Verenigd Koninkrijk en Zwitserland, evenals de context van het beleid van de Europese Commissie.

### 2.1 Alle overheden binnen dit onderzoek hebben beleid om internationaal maatschappelijk verantwoord ondernemen te stimuleren.

Internationaal maatschappelijk verantwoord ondernemen wordt primair gezien als de verantwoordelijkheid van bedrijven. Alle landen verwijzen in hun beleid naar eenzelfde kern van kaders en richtlijnen om maatschappelijk verantwoord ondernemen te definiëren, namelijk de OESO-richtlijnen voor multinationale ondernemingen, de UN Guiding Principles on Business and Human Rights, ISO 26000, de arbeidsnormen van de ILO. De meeste verwijzen daarnaast ook naar het UN Global Compact en het Global Reporting Initiative.

### 2.2 Alle landen bieden informatie om bij bedrijven bewustwording en vaardigheden op het gebied van MVO te stimuleren.

De overheden in dit onderzoek bieden allen via websites en documentatie informatie en richtsnoeren voor bedrijven. Vooral de Zwitserse en Duitse web portals bieden op een overzichtelijke manier toegang tot beschikbare documenten en links naar andere relevante websites. Alle overheden werken samen met verschillende organisaties om een grotere groep bedrijven te betrekken, met extra nadruk op het bereiken van het MKB.

### 2.3 De EU Richtlijn Niet-Financiële Verslaglegging is in alle EU landen omgezet naar lokale wetgeving, maar niet allemaal op dezelfde manier.

Alle EU-lidstaten vereisen nu dat (ten minste) organisaties van openbaar belang (beursgenoteerde bedrijven, banken, verzekeringsmaatschappijen) met meer dan 500 werknemers verslag doen over hun niet-financiële prestaties. Echter, niet alle landen binnen dit onderzoek hebben de EU-richtlijn op dezelfde manier omgezet. Frankrijk heeft de meest uitgebreide wetgeving inzake niet-financiële verslaglegging, waarbij alle bedrijven met meer

dan 500 werknemers verplicht zijn te rapporteren. Daarnaast zijn alle beursgenoteerde ondernemingen met mee dan 500 werknemers verplicht deze informatie te laten controleren. Duitsland, Nederland en het Verenigd Koninkrijk vereisen deze controle niet en hebben de reikwijdte beperkt tot alleen organisaties van openbaar belang met meer dan 500 werknemers. De enige niet-Lidstaat in dit onderzoek, Zwitserland, heeft geen wetgeving op het gebied van niet-financiële verslaggeving.

	EU	Nederland	Frankrijk	Duitsland	VK	Zwitserland
Niet-financiële verslaggeving	EU Richtlijn Niet-Financiële Verslaggeving					Vrijwillig
		Verplicht voor bedrijven met 500+ werknemers Verplichte controle.	Verplicht voor bedrijven met 500+ werknemers Verplichte controle.	Verplicht voor OOBs met 500+ werknemers	Verplicht voor OOBs met 500+ werknemers	

## 2.4 Due diligence (ofwel zorgplicht) is een relatief nieuw beleidsonderwerp, met recente ontwikkelingen in ieder van de onderzochte landen.

Na de goedkeuring van de UN Guiding Principles on Business and Human Rights in 2011 en het bijbehorende verzoek van de VN aan alle lidstaten om een nationaal actieplan op te stellen, is de focus op *due diligence* gegroeid. Als gevolg hiervan is *due diligence* in de toeleveringsketen een onderwerp dat in alle landen in dit onderzoek naar voren komt in discussies en/of wetgeving. In 2015 heeft het Verenigd Koninkrijk de *Modern Slavery Act* aangenomen die van toepassing is op alle grote bedrijven die goederen en diensten aanbieden op de Britse markt. In 2017 heeft Frankrijk *due diligence*-wetgeving ingevoerd die van toepassing is op zeer grote Franse bedrijven en andere bedrijven met een aanzienlijke aanwezigheid in Frankrijk. Vanaf 2021 treedt de EU Conflict Mineralen wetgeving in.

Nederland heeft geen wetgeving op dit gebied, maar heeft voor zes sectoren vrijwillige convenanten. Het Wetsvoorstel Zorgplicht Kinderarbeid is aangenomen door de Tweede Kamer, maar (nog) niet door de Eerste Kamer. De Duitse overheid heeft aangegeven *due diligence* te verwachten van alle bedrijven met meer dan 500 werknemers. Het zal op dit vlak wetgeving overwegen als in 2020 blijkt dat minder dan 50% van de grote bedrijven dit vrijwillig doet. En in Zwitserland is een volksinitiatief opgezet voor *due diligence* wetgeving. Dit is niet omgezet in wetgeving; begin 2018 zal het Zwitserse parlement een besluit nemen over een mogelijk referendum hierover.

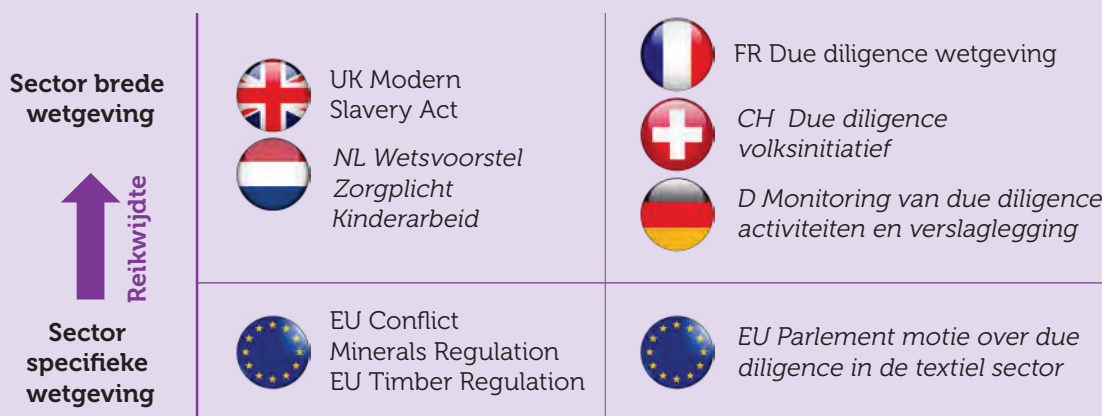
## 2 Executive summary (Nederlands/Dutch)

	EU	Nederland	Frankrijk	Duitsland	VK	Zwitserland
Due diligence maatregelen	EU hout wetgeving, Conflict Mineralen wetgeving					<i>Due diligence volksinitiatief</i>
	<i>Parlementaire motie over due diligence in textielsector</i>	Vrijwillige sector convenanten <i>Wet zorgplicht kinderarbeid</i>	Due diligence wetgeving	Monitoren van due diligence activiteiten en verslaglegging	Moderne slavernij wetgeving	

*nog niet goedgekeurde initiatieven cursief*

### 2.5 De ontwikkeling van wetgeving op het gebied van due diligence is gefragmenteerd.

De wettelijke vereisten op het gebied van *due diligence* ontwikkelen zich anders in elk van de onderzochte landen. Sommige instrumenten zijn gericht op specifieke sectoren, zoals de EU Conflict Mineralen Wetgeving, terwijl andere juist sector breed van toepassing zijn, zoals de UK *Modern Slavery Act*. Ook richten sommige instrumenten zich op specifieke risico's, zoals de voorgestelde *Wet Zorgplicht Kinderarbeid* in Nederland, terwijl anderen juist op alle risico's van toepassing zijn, zoals de Franse *due diligence* wetgeving.



*Nog niet goedgekeurde initiatieven cursief*

Verantwoordelijkheid voor specifieke risico's



Verantwoordelijkheid voor alle risico's

Reikwijdte

### 2.6 De meeste juridische instrumenten zijn gericht op grote bedrijven, vrijwillige initiatieven zijn meer sectorgericht.

De meeste MVO-wetgeving is van toepassing op grote, beursgenoteerde ondernemingen, in sommige gevallen ook op grote niet-beursgenoteerde ondernemingen en specifieke sectoren. Voor het MKB hebben de landen in dit onderzoek (meestal informatieve) stimuleringsprogramma's en willen ze onevenredige administratieve lasten vermijden.

	EU	Nederland	Frankrijk	Duitsland	VK	Zwitserland
Sector richtlijnen en informatie (niet uitputtend)	ICT, Olie & Gas, Uitzendwezen & Recruitment	MVO risico checker Sector risico analyse	Landbouw, Textiel & Kleding, Mijnbouw, Financiële sector	Mijnbouw	Mijnbouw	Mijnbouw, Grondstoffen, Landbouw, Financiële sector, Beveiliging, Kleding, Olie & Gas
Vrijwillige sector initiatieven	Kleding	Kleding & Textiel, Bancaire sector, Goud, Duurzame Bosbouw, Plantaardige Eiwitten, Natuursteen		Textiel, Cacao, Tourisme, Palmolie, Bananen	Private Beveiligings- dienststen, Cybersecurity	Grondstoffen & Commodities
Sector wetgeving	Hout, Conflict Mineralen, Olie & Gas, Mijnbouw					Private Beveiligingsdienststen

Alle landen binnen dit onderzoek hebben sectorgerichte initiatieven. De reikwijdte van deze maatregelen varieert; ze kunnen informatief, vrijwillig of wettelijk zijn. Het scala van sectoren verschilt ook per land, maar bijna alle landen hebben aandacht voor de textielindustrie en mijnbouw.

## 2.7 De Europese Commissie was de afgelopen jaren een belangrijke drijfveer voor de ontwikkeling van het (internationale) MVO-beleid, maar voor de komende jaren is deze leidende en coördinerende rol minder evident.

De afgelopen jaren zijn veel van de belangrijke wettelijke ontwikkelingen geleid en gecoördineerd door de Europese Commissie. Dit heeft geleid tot verplichte niet-financiële verslaglegging, de wetgeving over conflict mineralen en een voorstel voor *country-by-country* verslaglegging over afgedragen belastingen. Voor de landen in dit onderzoek heeft de Europese Commissie ook een grote invloed gehad op de definitie van MVO. De verschuiving naar een impactgerichte definitie van MVO in de 2011 EU CSR-strategie (in plaats van een vrijwillige aanpak) is door deze landen gevolgd, met uitzondering van het VK.

Een onderwerp waarop de EU minder is betrokken, is *due diligence* met betrekking tot mensenrechten. Dit is een gebied dat momenteel wordt opgepakt door afzonderlijke landen. Als gevolg hiervan variëren de beleidsmaatregelen over dit onderwerp van land tot land. Veel partijen willen graag dat de EU een leidende rol op zich neemt bij de *due diligence* wetgeving om fragmentatie te voorkomen.

Sinds 2011 is de MVO-strategie van de EU niet bijgewerkt. De lidstaten (waaronder Frankrijk, het VK en Nederland) hebben de Europese Commissie herhaaldelijk verzocht het document

## 2 Executive summary (Nederlands/Dutch)

bij te werken. Ze pleiten ook voor een *due diligence* initiatief op het gebied van mensenrechten en het milieu voor in de EU gevestigde bedrijven. Als reactie op deze verzoeken heeft de Europese Commissie een overzicht gestuurd van het huidige EU-beleid en de huidige EU-maatregelen. In hetzelfde document staat dat er in dit stadium geen plannen zijn om verdere wetgeving aan te nemen, maar dat de Commissie de ontwikkelingen in de lidstaten met aandacht zal volgen.

### **2.8 Stakeholders en meerdere ministeries waren betrokken bij het ontwikkelen van de actieplannen, maar de verdere stakeholderbetrokkenheid en de interministeriële coördinatie verschillen van land tot land.**

In 2011 riep de Europese Commissie alle lidstaten op om nationale actieplannen voor MVO en voor Business and Human Rights te ontwikkelen. Alle landen in het kader van dit onderzoek publiceerden tussen 2013 en 2017 een nationaal actieplan voor Business and Human Rights. De nationale MVO-actieplannen tonen grotere verschillen, zowel in termen van hun publicatiejaar als hun ontwikkelingsstadium. Van de landen in dit onderzoek is Nederland het enige land met een expliciete splitsing tussen nationaal en internationaal MVO als beleidsterrein.

De meeste plannen zijn gemaakt door middel van raadplegingsprocessen met meerdere belanghebbenden. Ook gedurende de implementatie blijft een aantal overheden stakeholders betrekken, ofwel structureel (zoals in Frankrijk en Duitsland) ofwel incidenteel (zoals in Zwitserland en de EU). Alle actieplannen bevatten actiepunten voor verschillende ministeries, maar geen van de plannen voorziet in structurele interministeriële coördinatie over de uitvoering en de voortgang, met uitzondering van het Duitse Business and Human Rights plan, dat gepaard gaat met een proces van tweemaandelijks overleg.

### **2.9 Er is weinig onderzoek gedaan naar het effect van overheidsbeleid op het internationaal maatschappelijk verantwoord gedrag van bedrijven.**

Onderzoeken tonen wel een toename van de niet-financiële verslaglegging door grote bedrijven in alle landen, maar het is onduidelijk welke impact dit heeft gehad op het daadwerkelijke gedrag van bedrijven. Omdat veel van de beleidsmaatregelen recent zijn doorgevoerd is het nog te vroeg voor een effectbeoordeling. Wel zijn evaluaties gepland in de komende jaren door verschillende landen.

**This report provides an overview of the main judicial and non-judicial measures taken by a selection of European governments to ensure enterprises under their jurisdiction take responsibility for their actions and impacts internationally. The countries included in the scope of the research are France, Germany, the Netherlands, the United Kingdom and Switzerland, as well as the context of the policies of the European Commission.**

### 3.1 Background and objectives

This research project has been commissioned by the Netherlands Ministry of Foreign Affairs to respond to questions stemming from the General Consultation on International Responsible Business Conduct (May 2017) and a roundtable meeting in the House of Representatives (February 2017). These questions focused on how the Dutch government policies compare to the policies of other countries, with specific reference to France, Germany, Switzerland, and the United Kingdom. These countries were selected due to recent developments in the area of due diligence policy.

The objective of the research project is to create insight into the policies of a selection of European governments. To provide wider context to the country specific policies, the European Union has been added to the scope. The main topics to be addressed are the scope of the policies, the guidelines and frameworks referenced, the role of the government, the policy instruments used, and the scope of these instruments, as well as any relevant research results on the impacts, pros and cons of these policies and lessons learned.

The findings will be used to inform the Netherlands' House of Representatives and by the Dutch Ministry of Foreign Affairs to assess whether the Dutch approach can be further improved, or whether there is reason for elements of the Dutch approach to be followed by other countries and the European Union. They will also feed into the review of the Dutch policies to stimulate international responsible business conduct, which will be carried out by the Policy Evaluation Department of the Ministry of Foreign Affairs in 2018.

### 3.2 Focus and structure of this report

The report starts with an executive summary of the findings in both English and Dutch. The main body of the report is structured by country, to provide a holistic overview of the policy instruments employed by each government to stimulate responsible business conduct. Each country chapter starts with an introduction to the current policies on CSR and Business and Human Rights, followed by a review of the relevant policy instruments. Each country chapter highlights one particular policy instrument which is relatively unique to that particular country. And each chapter closes with a summary overview of the policies.

The structure of the research findings is inspired by the work of Reinhard Steurer, who published an academic paper to characterize public policies on Corporate Social Responsibility in Europe<sup>1</sup> in 2010. His work recognizes four main themes in government policy: raising awareness and building capacities; improving disclosure and transparency; fostering socially responsible investment; and leading by example.

This research focuses on government instruments directly stimulating companies to take responsibility for their impacts in their international operations and supply chains: raising awareness and building capacities and improving disclosure and transparency. The report excludes more indirect policies with the same intent, such as sustainable procurement activities by public authorities and socially responsible investment policies. This report also excludes measures which are solely focused on the domestic actions of those same corporations, such as national environmental policies.

An additional theme included in this research is due diligence. Due to the adoption of the United Nations Guiding Principles on Business and Human Rights in 2011<sup>2</sup>, there has been an increased focus on human rights and due diligence in various countries, with a close link to CSR. Therefore, each country chapter also reviews due diligence instruments, in addition to the awareness-raising and capacity building instruments and those geared towards improving disclosure and transparency. However, many policy instruments do not solely fall into one of the categories. Therefore, the country chapters are loosely structured by these three themes, yet without attempting to force fit instruments into one theme or another.

<sup>1</sup>The Role of Governments in Corporate Social Responsibility: Characterising Public Policies on CSR in Europe, Reinhard Steurer, Universität für Bodenkultur Wien, 2010

<sup>2</sup>Guiding Principles on Business and Human Rights, United Nations, 2011

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The appendices to the report include summary matrices of the relevant policies per country, a glossary of terms and abbreviations and a list of the people interviewed. All documents and websites referenced are included as footnotes on the respective pages of the report.

### **3.3 Methodology and disclaimer**

The research was conducted through extensive desk research, with focus on the National Action Plans on CSR and the National Action Plans on Business and Human Rights.

This desk research was complemented by interviews with relevant civil servants as well as representatives from business and NGO groups in the respective countries. Before publication of this report, each of the country chapters was reviewed by the respective civil servants.

The research was conducted by an independent consultant, Marjolein Baghuis of Change in Context between October and December 2017. This report is not an in-depth academic study or analysis. It is a general research report with a limited scope in countries, prepared for the purpose of generating insights on the international responsible business conduct policies of a selection of European governments and to inform discussion.



## 4.4 The European context for national CSR policies

The work of the European Union in the area of CSR informs and influences the CSR policies at the national level of the Member States. All countries in the scope of this research are Member States, with the exception of Switzerland. And even as a non-Member State, Switzerland monitors the EU developments quite closely.

The impact-focused definition of CSR put forth in the 2011 EU Strategy on CSR<sup>3</sup> has been referenced by all of the countries in this research, except the UK. The EU CSR strategy also calls for Member States to develop both a CSR national action plan and a national action plan for the implementation of the UN Guiding Principles for Business and Human Rights.

### 4.4.1 Strategies and action plans

Sustainable development is an overarching and long-term goal of the European Union. In 2001, the EU launched its first Sustainable Development Strategy<sup>4</sup>, providing a framework for a long-term vision in which environmental protection, economic prosperity, social cohesion and global responsibility are mutually supportive. That same year, the EU published its *Green Paper promoting a European framework for Corporate Social Responsibility*<sup>5</sup>. It invited public authorities, business, social partners, NGOs and other stakeholders to express their views on the development of a new framework for the promotion of corporate social responsibility. Based on the input received, in 2002, the EU published a *Communication concerning Corporate Social Responsibility: A Business Contribution to Sustainable Development*.<sup>6</sup> In 2006, the EU published an updated CSR strategy: *Implementing the Partnership for Growth and Jobs: Making Europe a Pole of Excellence on Corporate Social Responsibility*.<sup>7</sup> In both the 2002 and 2006 strategies, CSR was positioned as something voluntary for enterprises.

When preparing a new CSR strategy, the impact of earlier policies on CSR was assessed. Indicators of progress include increases in the number of EU enterprises signing up to the ten CSR principles of the United Nations Global Compact, the number of organisations with

<sup>3</sup> A renewed EU strategy 2011-2014 for Corporate Social Responsibility, European Commission, 2011

<sup>4</sup> A Sustainable Europe for a Better World: A European Union Strategy for Sustainable Development, European Commission, 2001

<sup>5</sup> Green Paper: Promoting a European framework for Corporate Social Responsibility, Commission of the European Communities, 2001

<sup>6</sup> Communication concerning Corporate Social Responsibility: A Business Contribution to Sustainable Development, Commission of the European Communities, 2002

<sup>7</sup> Implementing the Partnership for Growth and Jobs: Making Europe a Pole of Excellence on Corporate Social Responsibility, Commission of the European Communities, 2006

sites registered under the Environmental Management and Audit Scheme, the number of EU companies signing transnational company agreements with global or European workers' organisations, the number of members of the Business Social Compliance Initiative and the number of European enterprises publishing sustainability reporting according to the guidelines of the Global Reporting Initiative<sup>8</sup>.

In preparation of the 2011 strategy, the Commission identified factors to further increase the impact of its CSR policy. These were :a balanced multi-stakeholder approach, better clarification of the expectations of enterprises and alignment with updated international principles and guidelines, promoting market reward to responsible business conduct, consideration of self- and co-regulation schemes, addressing company transparency from the view of all stakeholders, greater attention to human rights and the acknowledgement of the role that complementary regulation plays in creating an environment more conducive to enterprises voluntarily meeting their social responsibility.

In 2011, an updated CSR Strategy was launched, ***A renewed EU strategy 2011-14 for Corporate Social Responsibility***<sup>9</sup>. This communication follows from the Europe 2020 Strategy published in 2010<sup>10</sup>, in which the Commission made a commitment to renew the EU strategy to promote CSR. By renewing efforts to promote CSR, the Commission aims to "create conditions favourable to sustainable growth, responsible business behaviour and durable employment generation in the medium and long term". The new strategy included a more ambitious definition of CSR and led to an increase in attention and staffing to develop and implement several legislative and non-legislative policy measures as listed below.

In 2014, a public consultation was carried out to provide feedback on the Commission's work in the area of Corporate Social Responsibility and to set the agenda for future action plans<sup>11</sup>. Stakeholders expressed a high general approval rate for the action stream of the EU CSR agenda. The non-financial reporting directive and the enhanced visibility of CSR were considered the key successes. Almost half of the respondents felt the strategy showed shortcomings in the area of support for SMEs, action planning for the UN Guiding Principles on Business and Human Rights and addressing global supply chain matters.

The outcomes of the public consultation were discussed in a multi-stakeholder forum early 2015<sup>12</sup>. The conclusions of that forum were:

<sup>8</sup> A renewed EU strategy 2011-2014 for Corporate Social Responsibility, European Commission, 2011

<sup>9</sup> A renewed EU strategy 2011-2014 for Corporate Social Responsibility, European Commission, 2011

<sup>10</sup> Europe 2020, A European strategy for smart, sustainable and inclusive growth, European Commission, 2010

<sup>11</sup> The CSR Strategy of the European Commission, Results of the Public Consultation, European Commission, 2014

<sup>12</sup> Executive Summary: Multi-Stakeholder Forum CSR, European Commission, 2015

- The ultimate goal of CSR should be to embed social responsibility into the DNA of companies, rendering it obsolete through normative compliance.;
- The European Commission must continue to play an important role in providing open platforms for exchanging dialogue, best practices and;
- The media needs to be engaged in CSR;
- A new EU strategy on CSR should continue to be aligned with global principles and guidelines, which are supported by a great number of companies;
- Most companies welcome overarching legislation which emerged from the previous strategy, as they were seen as tools which assisted in creating a level playing field.

Within the EU, the responsibility for CSR is shared across different directorates, including Internal Market, Industry, Entrepreneurship and SMEs (GROW); International Cooperation and Development (DEVCO), Trade (TRADE), Justice and Consumers (JUST); Financial Stability, Financial Services and Capital Markets Union (FISMA); Employment, Social Affairs & Inclusion (EMPL). Until 2017, DG GROW was responsible for the coordination of these efforts, a role now taken on by the Secretary-General.

Since its release in 2011, the EU CSR strategy has not been updated. Repeatedly, the European Council and Member States have requested the European Commission to update the document. In the 2016 Council Conclusions on The EU and Responsible Global Value Chains<sup>13</sup>, the European Council calls on the Commission and Member States to “intensify their work on Responsible Business Conduct”, including the launch of a new EU RBC Action Plan in 2016. In May 2016, eight national parliaments (including France, UK, and the Netherlands) launched a “green card” initiative at the European Union<sup>14</sup>. This is an informal form of political dialogue through which EU national parliaments can jointly propose new legislative or non-legislative initiatives. Prompted by the French parliament, this “green card” initiative called on the European Commission to “table an ambitious legislative proposal implementing the CSR principles at European level”, applying to all EU headquartered enterprises, including precise obligations regarding the duty of due diligence and effective, proportionate and dissuasive sanctions.

<sup>13</sup> The EU and Responsible Global Value Chains, Council of the European Union Council Conclusions, 2016

<sup>14</sup> Corporate Social Responsibility, proposal for an initiative by the European Union, Assemblée Nationale de France, 2016

<sup>15</sup> Reply to National Parliament Opinions on Corporate Social Responsibility, European Commission, 2016

In response to the “green card” initiative, the European Commission shared an overview of current EU policies and measures<sup>15</sup>. In this document, First Vice-President Frans Timmermans explicitly states that “In light of the many actions already undertaken or in progress, the Commission has no plans to adopt further legislation at this stage, but is carefully monitoring, in close collaboration with the main stakeholders, how the situation is evolving in the Member States and in the international bodies involved in the corporate social responsibility process.” It is unclear whether an update of the action plan will be made in the near future. In the meantime, the strategic content of the 2011 EU Strategy<sup>16</sup> is still considered to be valid by both Member States and other stakeholders.

As of 2015, the EU’s focus has shifted to implementation of earlier plans on CSR, the implementation of the plans on Business and Human Rights, and the 2030 agenda based on the Sustainable Development Goals. In 2015, the Commission launched an **Action Plan on Human Rights and Democracy**<sup>17</sup>. It contains a number of actions relevant to CSR and Business and Human Rights. In 2015, the European Commission also presented a new trade and investment strategy, *Trade for All*<sup>18</sup>. This includes trade and investment policy initiatives which tackle the new economic realities of global value chains.

The EU High Representative of the Union for Foreign Affairs and Security Policy / Vice-President of the Commission, Federica Mogherini, is responsible for carrying out the EU Action Plan on Human Rights, assisted by the European External Action Service (EEAS), the Commission, the Council and the Member States. The EU has appointed Mr. Stavros Lambrinidis as the first Special Representative for Human Rights to contribute the implementation of the Action Plan.

In its 2016 communication on the *Next steps for a sustainable European future*<sup>19</sup>, in which it sets out its vision on the Sustainable Development Goals, the Commission announced that it would intensify its work on Responsible Business Conduct, based on the 2011 CSR Strategy. In October 2017, a multi-stakeholder platform on the 2030 agenda was appointed<sup>20</sup>, to be chaired by First Vice-President Frans Timmermans. It is likely that their work will relate to CSR and responsible business conduct.

<sup>16</sup> A renewed EU strategy 2011-2014 for Corporate Social Responsibility, European Commission, 2011

<sup>17</sup> EU Action Plan on Human Rights and Democracy 2015-2019, European Commission, 2015

<sup>18</sup> Trade for All, European Commission 2015

<sup>19</sup> Next steps for a sustainable European future: European action for sustainability, European Commission, 2016

<sup>20</sup> Multi-stakeholder platform on the implementation of the Sustainable Development Goals in the EU, European Commission website

<sup>21</sup> A renewed EU strategy 2011-2014 for Corporate Social Responsibility, European Commission, 2011

#### 4.4.2 Defining Corporate Social Responsibility

The European Commission defines Corporate Social Responsibility as “the responsibility of enterprises for their impact on society, over and above their legal obligations”. This applies to all enterprises. According to the Commission, addressing corporate social responsibility is “in the interests of enterprises and in the interests of society as a whole”. This definition, launched in the 2011 EU Strategy<sup>21</sup>, is quite different from the previous definition of CSR “an approach whereby companies integrate social and environmental concern in their business operation and their interactions with their stakeholders on a voluntary basis.”<sup>22</sup>

The 2011 EU strategy calls on enterprises to “have in place a process to integrate social, environmental, ethical, human rights and consumer concerns into their business operations and core strategy in close collaboration with their stakeholders, with the aim of maximising the creation of shared value for their owners/shareholders and for their other stakeholders and society at large, and identifying, preventing and mitigating their possible adverse impacts.”

#### 4.4.3 Guiding principles and frameworks

The 2011 EU CSR strategy explicitly references the OECD Guidelines for Multinational Enterprises, the ten principles of the United Nations Global Compact, the ISO 26000 Guidance Standard on Social Responsibility, the ILO Tri-partite Declaration of Principles Concerning Multinational Enterprises and Social Policy, and the United Nations Guiding Principles on Business and Human Rights. This set of internationally recognised principles and guidelines is positioned as an evolving global framework for CSR. This same list is referenced in the EU Action Plan on Human Rights and Democracy.

### 4.5 The Role of the European Union and its Member States

The 2011 EU Strategy<sup>23</sup> makes it clear that corporate social responsibility should be led by enterprises themselves. Public authorities play a supporting role through a smart mix of voluntary policy measures and where necessary, complementary regulation.

<sup>22</sup> Implementing the Partnership for Growth and Jobs: Making Europe a Pole of Excellence on Corporate Social Responsibility, Commission of the European Communities, 2006

<sup>23</sup> A renewed EU strategy 2011-2014 for Corporate Social Responsibility, European Commission, 2011

In the 2011 EU CSR strategy document<sup>24</sup>, the European Commission lists the following roles for itself:

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

The 2015 EU Action Plan on Human Rights and Democracy<sup>25</sup> also contains a number of EU level actions relevant to CSR and Business and Human Rights, including:

- Developing capacity and knowledge in the implementation of Business and Human-Rights guidelines;
- Ensuring a strong focus on business and human rights in the overall EU strategy on CSR;
- Encouraging Member States to develop and implement National Actions Plans on the UNGPs or integrate the UNGPs in national CSR strategies.

## 4.6 Key policy instruments

### 4.6.1 Support for Member States

When the EU CSR strategy was launched, a High-Level Group on Social Responsibility was set up, for Member States to share experiences on responsible business conduct and to discuss progress in implementing their CSR National Action Plans.

In 2014, the Commission released a Compendium of CSR National Public Policies in the European Union<sup>26</sup>. It provides an overview of the national policies on CSR. It was based on seven Peer Reviews on national CSR policies which took place in 2013.

To support the Member States, in 2015, the EU released a *Staff Working Document on implementing the UN Guiding Principles on Business and Human Rights*<sup>27</sup>. This document highlights how various EU policies and action plans relate to the UN Guiding Principles on Business and Human Rights.

<sup>24</sup> A renewed EU strategy 2011-2014 for Corporate Social Responsibility, European Commission, 2011

<sup>25</sup> EU Action Plan on Human Rights and Democracy 2015-2019, European Commission, 2015

<sup>26</sup> Corporate Social Responsibility National Public Policies in the European Union, European Commission, 2014

<sup>27</sup> Commission Staff Working Document on Implementing the UN Guiding Principles on Business and Human Rights, European Commission, 2015

#### 4.6.2 Information and support for companies

To inform and support companies regarding their CSR activities, the website of the European Commission provides information on a wide variety of topics related to Corporate Social Responsibility. However, this information is spread out across multiple directorates and not always interlinked. In addition, some of the pages are outdated and/or contain dead links. In 2013, the European Commission published human rights guidance for three business sectors<sup>28</sup>: ICT companies, oil and gas companies and employment and recruitment agencies.

These guides were developed by Shift and the Institute for Human Rights and Business to advise companies on how they can implement their responsibility to respect human rights in their everyday operations. At each step, the guides give a short account of what the UN Guiding Principles expect of them and present a range of strategies and examples to help them put the principles into practice. The European Commission has also published a guide on human rights specifically for SMEs<sup>29</sup>.

#### 4.6.3 EU Timber Regulation

While many policy measures include due diligence elements, only a few require companies to apply due diligence (as opposed to reporting on it). The EU Timber Regulation and Conflict Mineral Regulation go beyond reporting.

In 2010, the EU adopted the Timber Regulation<sup>30</sup> that applies to timber and timber products placed in the EU market. It requires EU companies importing timber to exercise due diligence in their supply chains to minimise the risk of illegal timber. It went into force in 2013. It is implemented in each Member State via national legislation and enforced by national authorities<sup>31</sup>. A guidance document for this regulation is available in 23 languages<sup>32</sup>, as well as additional information on the website of DG Environment<sup>33</sup>.

<sup>28</sup> European Commission Sector Guides on Implementing the Guiding Principles, Shift and Institute for Human Rights and Business, 2013

<sup>29</sup> My Business and Human Rights: a guide to human rights for small and medium-sized enterprises, European Commission, 2014

<sup>30</sup> Regulation (EU) No 995/2010 of the European Parliament and of the Council laying down the obligations of operators who place timber and timber products on the market, European Commission, 2010

<sup>31</sup> The EU Timber Regulation implementation and enforcement updates, ClientEarth website, accessed December, 7 2017

<sup>32</sup> Guidance Document for the EU Timber Regulation, European Commission, 2016

<sup>33</sup> Timber Regulation webpage, DG Environment European Commission



On an irregular basis, UNEP WCMC provides briefing notes on the implementation of the EU Timber Regulations<sup>34</sup>. These briefing notes list legal action against companies illegally importing timber into the EU as well as measures taken by the competent authorities. In 2016, the Commission released a report on the effectiveness of the EU Timber Regulation<sup>35</sup> during its first two years of implementation. The report finds that the EU is on track to achieve its objectives to combat illegal logging and associated trade in illegal timber, but challenges remain. It highlights positive trends, namely that EU operators are gradually taking steps to ensure the legality of their suppliers and that there is more awareness of the problem of illegal logging amongst EU consumers. However, it also states that more effort is needed from the Member States and the private sector to ensure effective and efficient application.

#### 4.6.4 Conflict Minerals Regulation

Trade in certain minerals is used to finance armed groups in conflict and high-risk areas. The European Parliament and Council adopted a new regulation in 2017 to create an integrated EU approach to tackle trade issues related to such conflict minerals<sup>36</sup>. It sets up a EU system for due diligence in supply chains for importers of tin, tantalum and tungsten, their ores and gold originating in conflict-affected and high-risk areas. It creates legally binding obligations for importers of these minerals to conduct due diligence in their supply chains and to identify and mitigate the risk of conflict financing.

The regulation applies directly to an estimated 600 to 1000 EU importers. These companies will be required to establish strong company management systems, identify and assess risk in the supply chain, design and implement a strategy to respond to identified risks, carry out an independent third-party audit of supply chain due diligence, and report annually on supply chain due diligence. This is a five-step framework, laid out in the OECD's *Due Diligence Guidance for Responsible Supply Chains from Conflict-Affected and High-Risk Areas*<sup>37</sup>.

The conflict mineral regulation will take effect as of January 2021 to allow companies time to adapt to it. A special website on combatting conflict minerals has been set up on the EU website<sup>38</sup>. The EU encourages covered by the regulation to apply due diligence before this date. This EU regulation does not need to be separately transposed by the Member States. Checking compliance with this regulation is left to the EU Member States.

<sup>34</sup> UNEP WCMC resources and data, online database

<sup>35</sup> EU Timber Regulation Implementation Report, European Commission, 2016

<sup>36</sup> Regulation laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas, European Parliament and the Council of the European Union, 2017

<sup>37</sup> Due Diligence Guidance for Responsible Supply Chains from Conflict-Affected and High-Risk Areas, OECD, 2016

<sup>38</sup> Combatting conflict minerals, EU website on conflict minerals and the regulation



#### 4.6.5 Non-binding resolution on the garment sector

In April 2017, four years after the Rana Plaza tragedy in Bangladesh, the European Parliament adopted a non-binding resolution on the EU flagship initiative on the garment sector<sup>39</sup>.

This resolution calls for strict and binding legislation on textiles imported into the EU.

The document urges the European Commission to adopt a binding legislative proposal for due diligence, based on the OECD guidelines, that covers the whole supply chain. This resolution also proposes to set conditional trade preferences for textile exporting countries and to develop new clothing labels stressing the social impact of the production of clothes.

#### 4.6.6 The EU Non-Financial Reporting Directive

In 2014, the European Parliament and the Council of the European Union adopted the Non-Financial Reporting Directive<sup>40</sup>. It requires an estimated 6000 large companies and other public-interest entities with more than 500 employees to disclose relevant and useful information on their policies, principal risks and results obtained in terms of environmental matters, social and employee aspects, respect for human rights, anti-corruption and bribery

Spotlight on the EU Non-Financial Reporting Directive	
Year in force	Reporting year 2017
Goal	Transparency on non-financial policies and performance
Duty	Integrate non-financial reporting into the company's annual reporting cycle
Topics	Environmental performance, social and employee matters (including diversity), human rights performance, corruption, and anti-bribery matters
Sectors	All
Scope	Suggested scope: all companies with over 500 employees and public interest entities, estimated to be 6000 companies in the EU. Exact scope determined by each country separately.
Enforcement	Determined by each country separately

issues, and diversity on boards of directors.

If companies do not have a policy on one of these areas, the non-financial statement should explain why not. To support enterprises in the effective application of the directive, in 2017, the EU has published non-binding guidelines on non-financial reporting<sup>41</sup>. By December 2017, the EU Non-Financial Reporting Directive had been transposed into national legislation<sup>42</sup> by all Member States. More details on each of the national requirements and the companies required to report are provided in the respective country chapters of this report and in a joint publication by CSR

<sup>39</sup> EU flagship initiative on the garment sector, European Parliament resolution, 2017

<sup>40</sup> Directive 2014/95/EU on disclosure of non-financial and diversity information by certain large undertakings and groups, European Parliament, 2014

<sup>41</sup> Guidelines on non-financial reporting (methodology for reporting non-financial information), European Commission, 2017

<sup>42</sup> National transposition measures communicated by the Member States, EUR-Lex website, accessed December 7, 2017

Europe and the Global Reporting Initiative<sup>43</sup>. A review of the EU Directive on Non-Financial Disclosure will be led by DG FISMA, most likely starting in the first half of 2019.

#### 4.6.7 Proposal for Country-by-Country Reporting

In 2015, the Commission launched a *Corporate Taxation Action Plan*<sup>44</sup>, presenting a broader approach to corporate taxation to ensure effective taxation where profits are generated. The Commission wants to promote good tax governance globally, support developing countries and to develop an EU process for assessing and listing third countries that fail to respect good tax governance standards. In the *External Strategy for Effective Taxation*<sup>45</sup>, published in 2016, the Commission proposes a framework for a new EU external strategy for effective taxation. It identifies the key measures which can help the EU to promote tax good governance globally, tackle external base erosion threats and ensure a level playing field for all businesses.

To avoid base erosion and profit shifting (BEPS), the European Commission adopted a proposal for a Country-by-Country Reporting Directive<sup>46</sup> in 2016. This directive would mandate country-by-country reporting on revenues, profits, income tax paid, income tax accrued, capital, earnings, tangible assets and the number of employees. As of 2017, this directive applies to multinational enterprises which operate in the EU and have a consolidated group revenue of at least Euro 750 million. This group is estimated to include 6000 multinationals. The country-by-country tax report has to be filed with the tax authority of the parent company and be available on the company website.

Since 2015, banks and investment firms established in the EU have had to publish a country-by-country report<sup>47</sup>. Any bank in the EU must disclose this report and publish it together with its financial statements. The report includes country-by-country information on the names, nature of activities and geographical location, turnover, number of employees on a full-time-equivalent basis, profit or loss before tax, tax on profit or loss and public subsidies received.

Public country-by-country reporting is also already required for listed and large non-listed companies active in the oil, gas, mining or logging sectors<sup>48</sup>. They must report on the taxes,

<sup>43</sup> Member State Implementation of Directive 2014/95/EU, CSR Europe and Global Reporting Initiative, 2017

<sup>44</sup> Corporate Taxation Action Plan, European Commission, 2015

<sup>45</sup> External Strategy for Effective Taxation, European Commission, 2016

<sup>46</sup> Country by country reporting for MNEs, European Commission, 2016

<sup>47</sup> Directive 2013/34/EU on financial statement and reporting, European Parliament and Council, 2013

<sup>48</sup> Public country-by-country reporting for extractive and logging industries, European Commission

royalties, and bonuses that they pay worldwide, broken down by country and projects. These requirements are laid down in the EU accounting directive and the transparency directive.

#### 4.7 Summary of the European CSR policy

The European Commission's CSR policies are contained in the 2011 EU CSR Strategy<sup>49</sup> and the 2015 Action Plan on Human Rights and Democracy<sup>50</sup>. A more current overview of EU CSR initiatives was provided in December 2016<sup>51</sup>, in response to a call for an updated CSR Action Plan by a number of European parliaments. In all of these policy documents, there is no clear demarcation between national and international CSR policies.

The responsibility for international responsible business conduct lies with the companies themselves, but the EU sees a role for itself and its Member States to stimulate companies to take the responsibility for their impacts. This is done through legal measures, such as the Non-Financial Reporting Directive, the Country-by-Country Reporting Directive, the Timber Regulation and the upcoming Conflict Mineral Regulation. But also through awarenessraising and capacity-building initiatives directed at companies and Member States.

While the reporting directives are applicable to large multinational companies only, the timber and conflict mineral regulations apply to all importers. The capacity building instruments are mostly broad in scope across sectors, but for specific industries, guidance is provided such as the textiles & garment sector, the ICT sector, the oil and gas sector and the employment and recruitment sector.

The EU actions on CSR have had a significant influence on corporate transparency and national policies, including harmonization of policies across countries. Therefore, across the countries and the different parties interviewed for this project, people in several members states are looking to the EU for to develop an updated action plan on CSR, including a more coordinated approach to business and human rights and due diligence.

<sup>49</sup> A renewed EU strategy 2011-2014 for Corporate Social Responsibility, European Commission, 2011

<sup>50</sup> EU Action Plan on Human Rights and Democracy 2015-2019, European Commission, 2015

<sup>51</sup> Reply to National Parliament Opinions on Corporate Social Responsibility, European Commission, 2016

## 5.1 The CSR Context in the Netherlands

In the Netherlands, collaboration and consultation are key mechanisms to create and implement plans and policies of any kind. As a trading nation, the Dutch are inclined to find pragmatic joint solutions, as opposed to setting things in law.

### 5.1.1 Strategies and action plans

The national CSR policy was released in 2013 by the Social and Economic Council of the Netherlands (SER). The policy document entitled **Corporate social responsibility pays off**<sup>52</sup> divides CSR policy into a national and an international part. National CSR policy focuses on the contribution that businesses can make to sustainable development over and above what the law obliges them to do. International CSR policy focuses on the conduct of Dutch businesses operating in countries where local legislation is inadequate or not effectively enforced. Both the national and international policies captured in this policy document are geared towards influencing the behaviour of companies with the intent to do no harm. Through collaboration with different parties, the intent is to increase the number of companies taking responsibility for the impacts in their supply chains.

The Minister of Economic Affairs is responsible for the national CSR policy and the Minister for Foreign Trade and Development Cooperation for the international CSR policy. Other ministries are involved as well, such as Infrastructure & Water Management, Social Affairs & Employment, Finance, and Education, Culture & Science. However, there is no structural coordination mechanism in place. Collaboration and coordination currently take place based on personal connections and trust. In 2018, the international part of the Dutch CSR policy will be evaluated by the Policy and Operations Evaluations Department (IOB) of the Ministry of Foreign Affairs.

In 2014, the Dutch Ministry of Foreign Affairs published its **National Action Plan on Business and Human Rights**<sup>53</sup>. The Netherlands was the second country in the world to publish such a plan. The Ministry of Foreign Affairs led an inter-ministerial working group (Economic Affairs, Finance, Security & Justice, Social Affairs & Employment) which compared the UNGPs to national policy and consulted a variety of stakeholders on the implementation. The National Action Plan provides a detailed account of the consultations that were held with business, civil society, implementing organizations and other experts.

<sup>52</sup> Corporate Social Responsibility Pays Off, SER, 2013

<sup>53</sup> National Action Plan on Business and Human Rights, Ministry of Foreign Affairs, 2014

During the 2016 EU Presidency, the Netherlands made business and human rights a focus area on the agenda. This was very visible and often cited positively during the interviews in the other countries in the scope of this project.

### 5.1.2 Defining Corporate Social Responsibility

In the '90's, in the Netherlands, CSR was mostly defined as companies giving back to society, including philanthropy. From 2000 to the beginning of the financial crisis, CSR shifted in the context of the government's acknowledgment that it needs businesses to achieve its societal goals. As of 2011, with the launch of the revised OECD Guidelines<sup>54</sup>, the UNGPs<sup>55</sup> and the updated EU CSR Strategy<sup>56</sup>, the Netherlands' government expects companies to take further responsibility for their actions and impacts.

The Dutch CSR strategy<sup>57</sup> positions CSR as an important part of running a business and states that CSR pays off for businesses and society as a whole. Legislation is seen as the basic framework and "CSR is about what businesses do over and above what the law prescribes. It is up to businesses to weigh up opportunities, dilemmas, and challenges in terms of people, planet and profit." Active engagement with shareholders and stakeholders is considered an important part of CSR. Civil society organizations are seen as indispensable partners in creating improvements in supply chains.

The Netherlands is the only country in the scope of this research project that has a separate definition and policy for international CSR. It is highlighted as a responsibility in the Dutch CSR strategy<sup>58</sup>. "Dutch companies operating internationally have to be aware of the potential positive and negative effects of their activities around the world, both directly and through their chain of suppliers and clients." A 2013 memorandum on foreign trade and development cooperation<sup>59</sup> positions international corporate social responsibility as a "condition for sustainable and inclusive growth. Businesses have a responsibility to society and government monitors their activities to ensure that they fulfil it."

<sup>54</sup> OECD Guidelines for Multinational Enterprises, Organization for Economic Co-operation and Development, 2011

<sup>55</sup> Guiding Principles on Business and Human Rights, United Nations, 2011

<sup>56</sup> A renewed EU strategy 2011-2014 for Corporate Social Responsibility, European Commission, 2011

<sup>57</sup> Corporate Social Responsibility Pays Off, SER, 2013

<sup>58</sup> Corporate Social Responsibility Pays Off, SER, 2013

<sup>59</sup> A World to Gain: A new agenda for aid, trade and investment, Ministry of Foreign Affairs, 2013

The national action plan on Business & Human Rights<sup>60</sup> reinforces this. The government expects companies operating abroad, in particular in countries where legislation or enforcement falls short, to pursue the same standards for CSR and human rights as they would in the Netherlands.

### 5.1.3 Guiding Principles and Frameworks

The Dutch government uses the OECD Guidelines for Multinational Enterprise as the main framework of reference for CSR. When the guidelines were updated in 2011 to integrate the UN Guiding Principles on Business & Human Rights, due diligence became an important expectation and a new element in the CSR policies of companies operating internationally and/or within international supply chains.

In the Dutch CSR strategy<sup>61</sup>, ISO26000 is referenced as the international standard for the implementation of CSR within organizations. The Global Reporting Initiative is mentioned as the provider of the best known international guidance on sustainability reporting. The other framework cited in the policies is the ILO Labour standards.

To promote a level playing field within the OECD countries and to enhance the international authority of the OECD MNE Guidelines, the Netherlands has provided the OECD with a special representative for the Guidelines for the period 2013-2017. Furthermore, in multilateral forums such as the EU, OECD, ILO, and UN, the Netherlands consistently calls for attention to the UN Guiding Principles and urges Member States to adopt them as the guiding principles of their policy.

## 5.2 The role of the government

In the CSR strategy document<sup>62</sup>, the Netherlands recognizes the following tasks for government in relation to CSR:

- Ensuring that the frameworks for CSR are as clear as possible and that businesses are fully informed about them;
- Promoting a level playing field for Dutch businesses;
- Making other governments aware of their responsibilities, for example through economic diplomacy;
- Promoting transparency and stakeholder dialogue;
- Leading by example, for instance by pursuing a sustainable procurement policy.

<sup>60</sup> National Action Plan on Business and Human Rights, Ministry of Foreign Affairs, 2014

<sup>61</sup> Corporate Social Responsibility Pays Off, SER, 2013

<sup>62</sup> Corporate Social Responsibility Pays Off, SER, 2013

### 5.3 Key policy instruments

#### 5.3.1 Raising awareness and building capacities in companies

Research<sup>63</sup> shows that in 2016 nearly all Dutch businesses were familiar with the concept of CSR, but concrete guidance on how to put it into practice is needed, especially for SMEs.

The Dutch government recognizes three target groups for **CSR communications**:

- Businesses falling under the EU Non-Financial Reporting Directive;
- Businesses falling under the existing criteria for social reporting;
- Small and medium-sized enterprises with direct commercial contacts abroad.

These businesses are approached through various channels including RVO, SER, IDH, CSR Netherlands, sector organizations, NCP, UN Global Compact and the Dutch embassies.

**CSR Netherlands** (MVO Nederland) plays an important role in the provision of information and to encourage networking on the CSR topic. Initially, this organization was structurally funded by the Dutch government, but currently, it is mostly financed by its business and sector organization members. The Dutch government does continue to provide grants for specific projects. CSR Netherlands provides a wide range of information, resources, and specific sector support. On request of the NCP, the CSR navigator website was set up, relating all information sources to the OECD Guidelines. The CSR Risk Check<sup>64</sup> is an internet tool which helps companies to apply due diligence based on their sector and country in which it operates. This internet tool provides an indication of possible social impacts and is even referenced as a useful resource in the CSR policies of other countries.

Since 2013, CSR Netherlands commissions the *International CSR thermometer*<sup>65</sup>, research across 1200 SMEs on their relationships and CSR behaviour in and with developing countries. Of the surveyed SMEs, 11% works in or with developing countries. They are eager to behave responsibly, but find it challenging to make this concrete and nearly half are unaware of the key issues in the developing countries in which they do business.

<sup>63</sup> IMVO Thermometer (in Dutch), CSR Netherlands, 2016

<sup>64</sup> CSR Netherlands CSR Risk Check, online tool

<sup>65</sup> IMVO Thermometer (in Dutch), CSR Netherlands, 2016



The **Socio-Economic Council (SER)** regularly convenes meetings and publishes papers on the topic of CSR. As early as 2000, it published a report on CSR, *De winst van waarden*<sup>66</sup>. For example, in 2014, it published a report on due diligence<sup>67</sup> as well as a workshop report together with Shift<sup>68</sup>, which include recommendations and instruments for businesses.

The Dutch government funded the **Global Perspectives Project**, a collaboration between the Global Compact Network Netherlands, Oxfam, and Shift. Between 2014 and 2016, they developed a comprehensive guide entitled *Doing business with Respect for Human Rights*<sup>69</sup>.

The government also calls companies' attention to the need to comply with the mandatory **Corporate Governance Code** and the principle that members of the management and supervisory boards should take account of CSR in fulfilling their duties. This code applies to listed companies but is referenced by many others. In 2016, the Dutch Corporate Governance Code was revised, placing a stronger emphasis on long-term value creation and transparency on non-financial topics.

**Embassies** are well-placed to inform Dutch companies abroad on the OECD Guidelines and the UN Guiding Principles. They bring Dutch and local entrepreneurs and civil society organisations together and are active in providing information on CSR, human rights themes, the OECD Guidelines and National Contact Point (NCP) procedures. They can also identify country-specific risks.

CSR has become a permanent feature of the Netherlands' **trade missions**. The government expects companies represented in a trade mission to look into the possible adverse effects of their operations on communities, including on human rights, in the country in question, and to pursue policies to mitigate them.<sup>70</sup>

The Netherlands Environmental Assessment Agency (PBL) published research in 2013 on making **international supply chains** more sustainable.<sup>71</sup> This research primarily focused on the role of sustainability labels, standards, and certification of agricultural products like cocoa, coffee, fish, palm oil, wood and soy. The research applauds the initiatives taken by Dutch companies to make their natural resources supply chain more sustainable and shows

<sup>66</sup> De winst van waarden (in Dutch), abstract available in English, SER, 2000

<sup>67</sup> Themarapportage due diligence (in Dutch), SER, 2014

<sup>68</sup> Business and Human Rights Impacts: Identifying and Prioritizing Human Rights Risks, New York, 2014

<sup>69</sup> Doing Business With Respect for Human Rights, Global Perspectives Project, 2016

<sup>70</sup> Corporate social responsibility in economic missions (in Dutch), House of Representatives, 2013

<sup>71</sup> Verduurzaming Internationale Handelsketens: Voortgang, effecten en perspectieven. (in Dutch), Planbureau voor de Leefomgeving, 2013



an increase in the market share of certified resources. The associated impacts on the people and environment in the producing countries are less clear. To further grow the market share of sustainable resources, the authors recommend a stronger role for government, ranging from sustainable public procurement and transparency guidelines to taxes and regulation.

The **National Contact Point** supports companies in putting the OECD Guidelines into practice. The Dutch NCP is an independent organization with three core tasks: raising awareness of the OECD Guidelines and fostering application, handling complaints and differences of opinions on the application of the guidelines and to conduct cross-company research on behalf of the government. It consists of four independent members from different disciplines as well as four advisory members from the most relevant ministries. The NCP secretariat is hosted and staffed by the Ministry of Foreign Affairs.

For admissible cases, the NCP offers its services to help settle issues raised out of court. Its recommendations are published in a report. Since its inception in 2000, the Dutch National Contact Point has filed 28 instances of alleged misconduct in the OECD database. On average this is between one and two cases per year.

### 5.3.2 Sectoral approaches to due diligence

To set the agenda for CSR issues that require urgent attention and encourage business to take a pro-active approach to risks in their production and supply chains, the Dutch government commissioned a **sector risk analysis**<sup>72</sup>. This forms part of the Dutch government's due diligence towards the business community. The analysis was conducted by KPMG in 2014 with the goal to identify sectors in which risks are relatively higher and to prioritize company policies related to those risks. The research narrowed it down to 13 sectors and mapped the material risks for each of these sectors.

A unique part of the Dutch CSR policy are the International Responsible Business Conduct **sector covenants**<sup>73</sup>. These agreements are developed at the sector level by companies in collaboration with government, NGOs and trade unions. The goals of each of the covenants are to achieve substantial improvements on risks specific to the sector within three to five years and to offer shared solutions to address systemic problems that companies cannot tackle by themselves. Through a multi-stakeholder approach, covenants have been agreed

<sup>72</sup> MVO Sector Risico Analyse, Aandachtspunten voor dialoog, KPMG, 2014 (in Dutch)

<sup>73</sup> International Responsible Business Conduct website, SER

### Spotlight on the International Responsible Business Conduct Sector Covenants

Year in force	As of 2016, but varies per covenant
Goal	To prevent abuses in international supply chains and to offer collective solutions to problems that businesses are unable to solve on their own.
Duty	Development of action plan and report
Topics	Child labour, low wages, human rights violations, environmental pollution (emphasis varies per sector)
Sectors	Covenants in place: Garments & Textile, Banking, Gold, Sustainable Forestry, Vegetable Protein, Natural Stone In development: Insurance, Food, Metallurgy, Floriculture.
Scope	Differs per sector, with focus on covering majority of market share in the sector
Enforcement	All covenants include a grievance mechanism. Enforcement details agreed by covenant parties per sector.

for the following sub-sectors: Garments & Textile, Banking, Gold, Sustainable Forestry and Vegetable Protein. A pilot has been launched for the procurement of natural stone. Further covenants are in development on Insurance, Food, Metallurgy, Floriculture, Tourism, Agriculture, Technology, Pensions, Sustainable Energy, and Shipping.

The sector covenants are voluntary mechanisms; they apply only to those sector organizations and companies which have signed them. The objective is to have each covenant signed by those sector organizations and companies that jointly have a dominant majority of the market share. Each of the covenants has clear deliverables against which progress is

monitored. Due diligence is a key element of all of the sector covenants currently in place. For the covenants, there are no legal enforcement mechanisms in place. But as they are generated by the industry, with relevant stakeholders, a high level of adherence is expected.

The Dutch government also supports the **European Partnership for Responsible Minerals**<sup>74</sup>. This is a multi-stakeholder partnership with the goal to create better social and economic conditions for mine workers and mining communities by fostering responsible mining practices in conflict and high-risk areas.

### 5.3.3 Research on the duty of care by Dutch companies

In 2015, at the request of the Ministry of Safety & Justice and the Ministry of Foreign Affairs, the University of Utrecht conducted a comparative research study on the state of the Dutch law in light of the UN Guiding Principles on Business and Human Rights<sup>75</sup>. This research highlights that within the Dutch law, specific legal norms exist to protect people and environment from the harmful effects of companies. Yet, in line with neighbouring countries,

<sup>74</sup> European Partnership for Responsible Minerals, website

<sup>75</sup> Zorgplichten van Nederlandse Ondernemingen inzake internationaal maatschappelijk verantwoord ondernemen (in Dutch), Universiteit Utrecht, 2015

there currently is no legal obligation for Dutch companies to comply with the established guidance on the responsibility to respect as set out in the UN Guiding Principles on Business and Human Rights. A select group of large companies is required to report on human rights as of the 2017 reporting cycle (see below), but this does not to a wider set of companies, nor does it mandate the creation and implementation of a human rights action plan. The report also highlights that under Dutch corporate law the liability of companies is limited regarding their responsibility for the behaviour of their subsidiaries and suppliers.

#### **5.3.4 Proposed Child Labour Due Diligence Bill**

In February 2017, the lower house of the Dutch Parliament adopted a law requiring companies to determine whether child labour exists in their supply chains and set out a plan of action on how to combat it. The proposed Child Labour Due Diligence Bill (Wetsvoorstel Zorgplicht Kinderarbeid)<sup>76</sup> was discussed by the Senate on December 18, 2017. The discussions were suspended and will be continued in January 2018. The bill requires companies selling goods and services to Dutch end-users to determine whether child labour occurs in their supply chains. If so, companies must set out a plan of action on how to combat it and issue a due diligence statement on their investigation and plan of action. In cases of non-compliance, companies risk a fine up to a maximum of EUR 820,000 or, alternatively, 10% of their annual turnover. The law would take effect in 2020.

#### **5.3.5 Improving disclosure and transparency**

Transparency and stakeholder dialogue are essential elements of CSR and the Dutch government sees it as its task to promote both. Companies can do so in various ways, for example in meetings or consultations with stakeholders, or by issuing formal, public reports. For the government, it is important that the information requested leads to effective communication with the relevant stakeholders.

As a result of the implementation of the 2003 EU Modernisation Directive into Dutch law, organizations should provide financial and non-financial information about the environment, employees, and risks in their annual reports. This is required of all listed companies irrespective of size as well as large non-listed companies.

<sup>76</sup> Wetsvoorstel Zorgplicht Kinderarbeid (in Dutch), House of Parliament, 2016

Since 2009, Dutch state-owned enterprises have to report on their non-financial performance, using the GRI Guidelines. These same companies are also expected to have their sustainability information externally verified.

The **transparency benchmark**<sup>77</sup> is an assessment of companies' transparency on non-financial topics, performed every year by the Ministry of Economic Affairs among the largest 500 companies in the Netherlands. The benchmark was updated in 2013 to incorporate the UNGPs and the EU non-financial reporting directive.

The Foundation for Annual Reporting coordinates the activities of the **Dutch Accounting Standards Board**. Guideline 400 specifies what information should be contained in an organization's annual report, including details on CSR. In 2008, the foundation has also published guidance on sustainability reporting<sup>78</sup>, which is in line with the GRI guidelines. Since 2010, this guidance is also included as an appendix to the guidelines for annual reporting for large and medium-sized legal entities.

In 2016, the Dutch government transposed the **EU Non-Financial Reporting Directive**. It applies to public interest entities with over 500 employees, including listed companies, banks, and insurance companies. On a comply or explain basis, these 115 companies need to report on environmental, social and employee engagement, respect for human rights and anti-bribery and corruption. Assurance of the non-financial disclosures is not required. The Financial Market Authority (AFM) is responsible for checking whether these companies comply with the new reporting criteria.

According to the KPMG Survey of Corporate Responsibility Reporting<sup>79</sup>, 82% of the largest 100 Dutch companies published a corporate responsibility report in 2017, up from 80% in 2015. This places the Netherlands in the second quartile of the scope of the KPMG global study across 49 countries.

<sup>77</sup> Transparency benchmark website, Ministry of Economic Affairs

<sup>78</sup> Handreiking voor Maatschappelijke verslaglegging (in Dutch), Raad voor de Jaarverslaggeving, 2008

<sup>79</sup> KPMG Survey of Corporate Responsibility Reporting, KPMG, latest edition 2017

#### 5.4 Summary of Dutch CSR Policy

The Netherlands is the only country within the scope of this research which has a separate definition for international responsible business conduct. It is defined as the responsibility of Dutch companies operating internationally to be aware of the potential positive and negative effects of their activities around the world, both directly and through their chain of suppliers and clients.

Subsequently, the Dutch government is the only country within the scope of this research which has an explicit policy regarding international responsible business conduct. Providing information and support to companies to raise awareness and building capacity are the key focus areas of the Dutch policy. Transparency is another key pillar of Dutch CSR strategy.

Since 2004, the Ministry of Economic Affairs has conducted research on the non-financial transparency of the largest companies in the Netherlands. The EU non-financial reporting directive was transposed in 2016 and applies to public interest entities with over 500 employees.

Since 2014, the government stimulates the creation of sector-specific covenants or agreements for select high-risk sectors. Through multi-stakeholder processes, companies and relevant sector stakeholders reach agreement on key risks and topic to focus on and joint goals to achieve in international supply chains within three to five years. The covenants are currently in place for six (sub)sectors and another four are in development. The sector covenants apply to companies of all sizes which voluntarily join the covenant.

The house of parliament has passed a bill on Child Labour Due Diligence which will be discussed further by the Dutch Senate early 2018. This would apply to a much wider set of companies than current policies. At the time of writing, it is unclear whether this bill will be adopted.

## 6.1 The CSR context in France

Compared to the other countries in this research, France has a longer history of policy and legislation on Corporate Social Responsibility, especially in the area of non-financial reporting. France actively promotes an ambitious vision on CSR at the European and international levels. Topics raised by France include respect for human rights, non-financial reporting, social dialogue with stakeholders, combating climate change and promoting biodiversity and sustainable practices in developing countries.

### 6.1.1 Strategies and action plans

In 2013, France published a **Preparatory document for the French National Plan for the development of Corporate Social Responsibility**<sup>80</sup>. The preparation of the 2013 document included consultations with various committees and a public consultation. It is unclear whether a final version of the French CSR National Action Plan will be released.

At the request of organizations of employers, employees and civil society to the French Prime Minister, in 2013 the **National CSR Platform**<sup>81</sup> was created. This platform brings together representatives of companies, employees, civil society, public authorities and researchers. The CSR Platform provides advice and makes recommendations on social, environmental and governance issues related to CSR. It aims to “promote CSR, both through public policies and through support for voluntary initiatives by private actors, highlighting best practices and encouraging the consultation of parties, upstream and in support of international standards negotiations.”

In 2017, France launched the **National Action Plan for the Implementation of the United Nations Guiding Principles on Business and Human Rights**<sup>82</sup>. It opens with: “Human rights are among the founding values of the French Republic. Promoting the highest standards in this field is a fundamental goal of its action at the national, European and international levels.” Human rights are central to the French government actions in promoting and developing CSR. In preparation of the National Action Plan, the government consulted the National Consultative Commission on Human Rights (CNCDH) and the National CSR Platform.

<sup>80</sup> Preparatory document for the French National Plan for the development of Corporate Social Responsibility, République Française, 2013

<sup>81</sup> Plateforme RSE, France Stratégie website (in French)

<sup>82</sup> French National Action Plan for the Implementation of the United Nations Guiding Principles on Business and Human Rights, French Ministry of Foreign Affairs and International Development, 2017

The input from these multi-stakeholder groups was examined by an inter-ministerial working group, including representatives from the Ministry for Foreign Affairs and International Development, Ministry for the Economy, Ministry of Finance, Ministry of Labour, Ministry of Justice and Ministry of the Environment.

The Ministry of Foreign Affairs coordinates the activities of the different ministries involved in the CSR and Business & Human Rights action plans. This is the responsibility of the special representative for bioethics and corporate social responsibility.

The National Action Plan on Business and Human Rights will be monitored by the CNCDH. The CNCDH will evaluate the policy implemented and regularly issue reports.

### 6.1.2 Defining Corporate Social Responsibility

The French term for CSR is RSE, which stands for *Responsabilité Sociétale des Entreprises* (which translates to the societal responsibility of business). According to the French preparatory document on CSR<sup>83</sup>, it should be “a lever for the competitiveness of businesses and a tool for assessing the overall performance of businesses, making it possible to encompass the various dimensions of their contribution to sustainable development. CSR should allow stakeholders inside and outside the company, particularly investors, to have the most complete information possible on the social, environmental and societal impact of the company’s activity”.

The National Action Plan on Business and Human Rights<sup>84</sup> integrates the Sustainable Development Goals into the definition of CSR: “corporate social responsibility is defined as the ways in which businesses integrate Sustainable Development Goals into their operations by controlling their societal impacts and incorporating societal expectations.”

For the international context, the French definition of CSR follows the 2011 EU definition: CSR is “the responsibility of enterprises for their impact on society, over and above their legal obligations.”<sup>85</sup>

<sup>83</sup> Preparatory document for the French National Plan for the development of Corporate Social Responsibility, République Française, 2013

<sup>84</sup> French National Action Plan for the Implementation of the United Nations Guiding Principles on Business and Human Rights, French Ministry of Foreign Affairs and International Development, 2017

<sup>85</sup> A renewed EU strategy 2011-2014 for Corporate Social Responsibility, European

### 6.1.3 Guiding Principles and Frameworks

The preparatory document on CSR lists the following frameworks and fora: OECD MNE Guidelines, UNGPs, ILO, ISO26000 and the UNGC. In addition, the National Action Plan on Business and Human Rights refers to the United Nations, the Sustainable Development Goals, the European Union and the Council of Europe.

## 6.2 The role of the French government

The Preparatory document on CSR<sup>86</sup> lists the commitments of the French public authorities as follows:

- a proactive CSR policy which is coherent with France's international commitments;
- compulsory reporting for large companies on social, environmental and societal criteria with a view to harmonizing European standards;
- responsible finance in support of the ecological transition, basic rights and competitiveness;
- promotion of standardization and voluntary labelling initiatives;
- CSR promoted by territories, a relevant level for the commitment of small and medium enterprises (SMEs);
- a consultation, social dialogue, training and research dynamic;
- the State, a responsible economic actor leading the way for CSR;
- France as a supporter and promoter of CSR development at European and international levels.

## 6.3 Key policy instruments of the French government

### 6.3.1 Raising awareness through standards and labels

France raises awareness of CSR through the promotion of **standards and labels for responsible businesses**. Key standards referenced are ISO26000, the EU Eco-Management and Audit Scheme (EMAS), the Global Reporting Initiative (GRI) reporting guidelines and the work of the International Integrated Reporting Council (IIRC). Since 2010, there is a multistakeholder working group on responsible business labels French sector risk analysis to establish a framework for the recognition of labels and to work with professional associations to draw up sectoral and territorial CSR benchmarks.

In the National Action Plan for Business and Human Rights<sup>87</sup>, one of the actions planned is a **comparative country risk analysis and an industry risk analysis**.

<sup>86</sup> Preparatory document for the French National Plan for the development of Corporate Social Responsibility, République Française, 2013

<sup>87</sup> French National Action Plan for the Implementation of the United Nations Guiding Principles on Business and Human Rights, French Ministry of Foreign Affairs and International Development, 2017 Commission, 2011



The French government encourages **active stakeholder engagement** for the development of CSR policies by companies: “a dynamic of dialogue and consultation with all stakeholders regarding CSR themes”. The government is not prescriptive in how such a stakeholder consultation should be structured.

To **support SMEs** with the integration of CSR, the French government partners with the Chambers of Commerce and Industry and other regional authorities. The Chambers of Commerce stage awareness-raising events on CSR, launch initiatives on value chains, and partner in award schemes such as the Business and Environment awards.

The French **National Contact Point** for the OECD was created in 2001 to promote and apply the OECD Guidelines for multinational enterprises. It is a tripartite body which brings together companies, labour unions, and government. It is chaired and staffed by the French Ministry of Economic Affairs. Its members include representatives of the Ministry of the Economy and Finance, the Ministry of the Environment, the Ministry of Social Affairs, Labour and Employment, and the Ministry of Europe and Foreign Affairs. Another unique feature of the French NCP is its broad representation of labour groups, with six national trade unions featuring among its members. The employers’ organization MEDEF represents French businesses.

For admissible cases, the NCP offers services to help settle the raised issues out of court and publicly reports its recommendations. According to the OECD database, since its inception, the French National Contact Point has filed 23 instances of alleged misconduct in the OECD database<sup>88</sup>. On average, this is between one and two cases per year.

### 6.3.2 Mandating due diligence by large companies

In March 2017, the French government passed a law on the duty of vigilance of parent and subcontracting companies<sup>89</sup>. Full compliance is required as of 2018. The law does not focus on specific sectors but applies to all companies headquartered in France with over 10,000 employees and foreign companies with over 5,000 employees in France. An estimated 200 companies meet the criteria of this law.

<sup>88</sup> OECD Database of Specific Instances, online database accessed December 5, 2017

<sup>89</sup> Loi relative au devoir de vigilance des sociétés mères et des entreprises donneuses d’ordre (in French), 2017

Spotlight on the French Duty of Vigilance Law	
Year in force	2017
Goal	Responsible business conduct
Duty	Due diligence plan and report
Topics	Human rights, health & safety, environment
Sectors	All
Scope	Companies headquartered in France with at least 5000 employees and international companies operating in France with at least 10000 employees globally.
Enforcement	Notice and injunction, civil liability

Under this law, these companies must establish, implement and publish a vigilance plan. They must also publish an implementation report annually. The plan needs to identify risks and prevent harm resulting from the company itself, the companies it controls and subcontractors and suppliers with whom it has an established commercial relationship. Topics to include are human rights, health, and security as well as the environment.

The law establishes a mechanism to ensure compliance with the duty of care and a civil liability regime in case of actual harm. Following a formal notice, a court may order a company to establish the vigilance plan, ensure its publication and account for its effective implementation. Furthermore, victims of business failing to comply with their vigilance plan, or with an inadequate vigilance plan, can seek damages for negligence. The burden of proof lies on the injured party, who has to prove that the failure to comply led to the harms suffered.

### 6.3.3 Encouraging due diligence by other companies

In addition to the law for large companies, the French National Action Plan on Business and Human Rights<sup>90</sup> also highlights actions to encourage due diligence for a wider set of companies. The French government focuses on a selection of high-risk sectors like the agricultural and food sector, the textile and garment sector, the extractive sector, and the financial sector.

To help companies, especially SMEs, a wide range of tools and support is available. Most of these resources are free, publicly available and adaptable to business requirements. Companies are encouraged to establish grievance mechanisms, to provide access to remedy. France helps to monitor and finance the implementation of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. France also helped draft and adopt the OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector.

<sup>90</sup> French National Action Plan for the Implementation of the United Nations Guiding Principles on Business and Human Rights, French Ministry of Foreign Affairs and International Development, 2017

France participates in the UN intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, which has been mandated to elaborate an international legally binding instrument.

#### 6.3.4 A long history of legislation on non-financial reporting

France has a relatively long history of legislation on non-financial reporting<sup>91</sup>. The government's policy in support of Corporate Social Responsibility, which was initiated in the 2000s, aimed from the outset to implement a legal instrument regulating the social and environmental transparency of businesses. Since 1977, companies with more than 300 employees have had to report on social indicators.

As of 2001, France has made annual non-financial reporting compulsory for publicly traded companies. The 2001 New Economic Regulations (NRE) Law obliges these companies to include in the board report information "on how the company takes into account the social and environmental consequences of its activity and impact on its societal commitments in support of sustainable development, combating discrimination and promoting diversity". An implementing decree from 2002 details some 30 subjects which this information had to cover.

Mandatory reporting was extended to more companies and on more criteria in 2007, following the Grenelle Environment Forum. In 2010, the French Parliament adopted the Grenelle Act<sup>92</sup>. This act made CSR reporting mandatory not only for listed companies but also for unlisted companies with more than 500 employees and at least €100m in revenue. It also made CSR reporting mandatory for state-owned enterprise and asset management companies. The list of subjects was extended to 42 social, environmental and societal criteria to be included on a comply or explain basis. This act also made external verification of the CSR information in the annual reports mandatory.

France transposed the **EU Non-Financial Reporting Directive** in 2017. It applies to public interest entities (listed companies, credit institutions, and insurance providers) with over 500 employees, with a net turnover of €40 million or a balance sheet total of over €20 million.

<sup>91</sup> The French legislation on extra-financial reporting: built on consensus, Ministry of Foreign Affairs, 2012

<sup>92</sup> Loi portant engagement national pour l'environnement (in French), 2010

Non-listed companies and investment funds also need to report if they have a net turnover of €100 million. The information needs to be published in the annual report within 8 months of the end of the financial year. Of the countries in this research, France is the only one with mandatory assurance of non-financial information. This is mandatory for companies with more than 500 employees and a turnover of €100 million or a balance sheet of over €100 million.

France chairs the **Group of Friends of Paragraph 47** of the Rio+20 Declaration. This group promotes sustainable development reporting to better ensure that economic actors respect social, environmental, good governance and human rights standards.

As a result of the legislative focus on transparency, France has **high non-financial reporting** rates, raking in the top quartile globally. Following the Grenelle Acts, the percentage of the largest 100 French companies reporting on environmental, social and governance efforts grew from 59% to 94% in three years, as shown by the KPMG Corporate Responsibility Reporting Survey<sup>93</sup>. In 2015, the percentage of large French companies with a corporate responsibility report peaked at 97%. In the 2017 KPMG review, the percentage dropped slightly to 94%.

The Grenelle Act of 2010 calls for a government report to Parliament every three years on the corporate application of the transparency requirements. The 2013 report<sup>94</sup> focused on the governance of the Grenelle law, which was deemed to be successful. The 2016 report<sup>95</sup> highlighted improvements in listed companies, yet displayed a more varied uptake by nonlisted companies.

<sup>93</sup> KPMG Survey of Corporate Responsibility Reporting, KPMG, latest edition 2017

<sup>94</sup> Rapport d'information fait au nom de la commission sénatoriale pour le contrôle des lois Grenelles, French Senate, 2013

<sup>95</sup> Rapport du Gouvernement Relatif à l'application par les entreprises des dispositions de l'article L.225-102-1 du code de commerce et du décret Grenelle II, French government, 2016

#### 6.4 Summary of French CSR policy

France's CSR policies are contained in the Preparatory document for the French National Plan for the development of Corporate Social Responsibility<sup>96</sup> and the French National Action Plan for the Implementation of the United Nations Guiding Principles on Business and Human Rights<sup>97</sup>. In its policies, it does not have a specific approach to international responsible business conduct, the policies apply to both domestic and international business activities. At the moment, the policies apply across sectors with an emphasis on large companies. For a limited number of sectors, there are sectoral initiatives in place.

Compared to other countries included in this research, France has more legislation on Corporate Social Responsibility. France has had a long history of mandatory non-financial reporting. As a result, nearly all of the largest French companies already publish information on their non-financial performance. Besides the longer tenure of such regulation, France is the only country in the scope of this research that requires assurance of non-financial information (from companies meeting certain financial thresholds).

France is the only country in the scope of this research with legislation in place on a wider set of due diligence topics, the bill on the due diligence or the duty of care of parent and subcontracting companies<sup>98</sup>. Under this law, companies must establish, implement and publish a vigilance plan. Full compliance is required as of 2018 by approximately 200 large French and international companies.

<sup>96</sup> Preparatory document for the French National Plan for the development of Corporate Social Responsibility, République Française, 2013

<sup>97</sup> French National Action Plan for the Implementation of the United Nations Guiding Principles on Business and Human Rights, French Ministry of Foreign Affairs and International Development, 2017

<sup>98</sup> Loi relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre (in French), 2017

## 7.1 The CSR context in Germany

Of the EU Member States included in this research, Germany is the only country which has a CSR plan that was launched before the EU Strategy on CSR<sup>99</sup>.

### 7.1.1 Strategies and Action Plans

In October 2010, the German Federal Government published the **National Strategy for Corporate Social Responsibility – Action Plan for CSR**<sup>100</sup>. The development was led by the Federal Ministry of Labour and Social Affairs, in collaboration with a multi-stakeholder National CSR Forum. The plan outlines the joint responsibility of different members of German society: “Successful corporate social responsibility requires committed enterprises which integrate CSR into their business strategies, a dynamic civil society that calls for and rewards CSR, and active public policies that formulate societal aims and establish a positive environment.”

The German government strives to use existing structures to implement the CSR Action Plan, avoiding the establishment of parallel structures and harnessing synergies. The multistakeholder approach has proved valuable for fostering CSR and to continue an ongoing dialogue with all actors and social groups involved. The multi-stakeholder **National CSR Forum**<sup>101</sup> was therefore continued after its input on the CSR Action Plan, to advise and assist the federal government with the implementation of the plan. It currently consists of 41 members, experts from business, trade unions, NGOs and research bodies as well as representatives from participating federal ministries. The Ministry of Labour and Social Affairs hosts the secretariat for this steering committee. Some of the main tasks of the National CSR Forum are advice to the Federal Government on the continuing development of the national CSR strategy and recommendations on specific issues. The forum usually meets once a year, with a focus on supply chain issues. The last meeting of the National CSR Forum took place in April 2017.

In December 2016, the German **National Action Plan on the Implementation of the UN Guiding Principles for Business and Human Rights**<sup>102</sup> was published by the German

<sup>99</sup> A renewed EU strategy 2011-2014 for Corporate Social Responsibility, European Commission, 2011

<sup>100</sup> National Strategy for Corporate Social Responsibility – Action Plan for CSR, German Federal Government, 2010

<sup>101</sup> National CSR Forum, CSR in Deutschland webpage, accessed December 5, 2017

<sup>102</sup> National Action Plan: Implementation on the UN Guiding Principles on Business and Human Rights, published in German in December 2016, English translation in August 2017

Federal Government. The objectives of the action plan are: “to make the UN Guiding Principles on Business and Human Rights applicable in practice for all players, to highlight duties and responsibilities of the state and business respectively, to guarantee policy coherence, and to ensure that German business remains sustainable and competitive.”

The Federal Foreign Office led the development of this National Action Plan. The Federal Ministry of Labour and Social Affairs, the Federal Ministry of Justice and Consumer Protection, the Federal Ministry for Economic Affairs and Energy, the Federal Ministry for Economic Cooperation and Development and the Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety were actively involved. A multistakeholder steering group (comprising representatives of business, civil society and trade unions) was appointed in 2014. To prepare the drafting of the National Action Plan, three plenary conferences and 12 hearings were held for expert consultation and public involvement. Consultation of the draft text of the national action plan was not part of the process, which has been criticized by all stakeholders.

To support the implementation of the National Action Plan on Business and Human Rights and to ensure a coordinated approach across the entire government, a permanent interministerial committee has been appointed, with the Federal Foreign Office as the lead department. Each of the ten ministries in this interministerial committee has at least one measure of the National Action Plan within its scope. The interministerial committee meets every other month to verify the implementation and coherence of the adopted measures and drive forward the implementation and monitoring process. The multi-stakeholder steering group meets in the alternate months to be updated and to accompany the activities of the interministerial committee for the implementation of the National Action Plan and to decide by consensus on recommendations for action to the Federal Government. This steering group is chaired by the German Institute for Human Rights. The Ministry of Labour and Social Affairs hosts the secretariat for this steering committee.

### 7.1.2 Defining Corporate Social Responsibility

In Germany, two terms have been used interchangeably to refer to CSR: the English abbreviation CSR and the German word *Nachhaltigkeit* (which translates to sustainability). In recent years, the English term Corporate Responsibility is starting to replace CSR, as the word “social” is often misunderstood to mean supporting the socially-disadvantaged.

According to the German government's webportal on CSR<sup>103</sup>, CSR refers to a company's responsibility for its impact on society. This definition is in line with the 2011 EU definition and has been agreed upon by the CSR Forum. This responsibility includes social, environmental and economic aspects. More specifically, CSR involves fair business practices, staff-oriented human resource management, economical use of natural resources, protection of the climate and environment, sincere commitment to the local community and also responsibility along the global supply chain. The website also makes it clear that CSR varies from company to company, but that all companies should anchor CSR in their business activities.

The Federal German Government includes the entire global supply chain in the responsibility of private enterprises, yet it does not have separate definitions or policies for national versus international CSR. On the CSR webportal, there is a section on International CSR policies, but this refers to the EU's CSR policies and global CSR frameworks, rather than highlighting specific policies for international CSR by German companies.

### 7.1.3 Guiding Principles and Frameworks

In the policy documents and the CSR website, the following frameworks are referenced: the fundamental ILO declaration on multinational enterprises and social policy, the OECD Guidelines for Multinational Enterprises, the Universal Declaration of Human Rights, the International Covenants on Human Rights, the UN Guiding Principles on Business and Human Rights, the UN Global Compact and ISO 26000.

## 7.2 The role of the German government

Through the Action Plan for CSR<sup>104</sup>, the German government aims to "organise and shape the interaction between the political sector, business, unions and civil society in ways that enable joint solutions to meeting major economic, social and environmental challenges."

Key strategies for the government are:

- Improve embedding of CSR into business and public administration;
- Increase participation by small and medium-sized enterprises (SMEs) in CSR;
- Heighten visibility and credibility of CSR;
- Optimize political conditions for CSR;
- Contribute to the social and environmental composition of globalization.

<sup>103</sup> German government website on CSR, coordinated by the Ministry of Labour and Social Affairs. An English version of the website (with more limited information) is also available.

<sup>104</sup> National Strategy for Corporate Social Responsibility – Action Plan for CSR, German Federal Government, 2010



Furthermore, sustainability checks are in place to connect Germany's CSR Strategy to regulation. Since 2009, as part of the Regulatory Impact Assessment, each law and ordinance has been checked against the effects that the proposal will have for aspects of sustainable development.

## 7.3 Key policy instruments of the German government

### 7.3.1 Raising awareness and building capacities

In January 2012, the Federal Ministry of Labour and Social Affairs launched a website<sup>105</sup> and a publication, **CSR Made in Germany**<sup>106</sup>. It gives concrete examples of what is expected of German companies and helps them get started to take next steps on their CSR journey. It incorporates and links CSR content from other ministries and sources.

One of the key objectives of the National Action Plan on CSR is to “win over more enterprises for CSR and sustainable management”, with a particular focus on SMEs. Key instruments to **increase awareness and capabilities within SMEs** are:

- A guidance and coaching programme for SMEs on topics related to CSR;
- Promoting regional and national activities to share information and experience between larger companies and SMEs and/or their suppliers;
- Research on CSR in SMEs;
- Improved advisory and guidance services provided to SMEs interested to do business in developing countries.

Through the European Social Fund (ESF) promotion scheme for social responsibility in SMEs, more than 3,000 German SMEs received advice and training in social responsibility, and regional CSR networks have been established. Numerous specialised events have been staged in the framework of the CSR Forum to advise enterprises on the exercise of due diligence.

In cooperation with business networks, ‘practical days’ (*Praxistage*) for SMEs are offered nationwide. These sessions provide support, information, and exchanges with other enterprises on responsible supply chain management and high-quality sustainability reporting.

<sup>105</sup> German government website on CSR, coordinated by the Ministry of Labour and Social Affairs. An English version of the website (with more limited information) is also available.

<sup>106</sup> CSR Made in Germany, Ministry of Labour and Social Affairs, 2012

In 2017, the **Corporate Governance Code for listed companies**<sup>107</sup> was amended to underline the importance of not only the legal but also the ethical and self-responsible basis for good corporate governance. Compliance with the code is not mandatory, but deviations have to be explained.

The **Agency for Business and Economic Development (AWE)** of the Federal Ministry for Economic Cooperation and Development provides advice on development-related support opportunities and information services for enterprises operating in developing and newly industrialised countries. In order to support the private sector with the implementation of the National Action Plan on Business and Human Rights, the Agency for Business and Economic Development has established a Helpdesk for Business and Human Rights.

The **German Global Compact Network** Secretariat is partially funded by the Federal Ministry for Economic Cooperation and Development. Since 2008, this network provides training courses for multinationals and SMEs on human rights, reporting, climate, environment, and anti-corruption. With its particular expertise on human rights, the German Global Compact Network is an important partner for the implementation of the National Action Plan on Business and Human Rights.

The German government also partners with leading companies and relevant networks to disseminate guidance documents and success stories; and it fosters **public recognition** through a CSR Award, a Social Entrepreneur Prize and a ranking of Corporate Sustainability Reports. A separate prize is awarded for responsible supply chain management.

The German government expects all companies to take responsibility for their impacts. In recognition of different issues applying to different industries, in 2018, the Federal Government will commission a **study identifying high-risk sectors and regions** of particular relevance to the supply and value chains of German business. Based on this study, the German Federal Government then plans to develop and disseminate **sector-specific guides on human rights due diligence**, including examples of best practices. The development of these sector-specific guides will take place in close cooperation with the respective business associations and dedicated multi-stakeholder forums. The Federal Government has a moderating role in this process. In order to increase both the relevance and practical use of these sector-specific guides, the Federal Ministry of Labour and Social Affairs draws upon, among others, the expertise and experience of key stakeholders from the national CSR Forum and the working group on business and human rights. In this context, a first consultation

<sup>107</sup> Deutscher Corporate Governance Kodex, German Government Governance Code Commission, 2017

event took place in November 2017, with members of the two aforementioned bodies and further experts sharing their views, expectations, and recommendations on the further development process.

The National CSR Forum will draw up an intersectoral CSR consensus paper on corporate **responsibility in value and supply chains** and present it to the Federal Government as a recommendation. This is currently in progress.

The German government supports several multi-stakeholder sector initiatives that have been launched in Germany to build capacity and monitor performance on environmental and social standards. This includes the Sustainable Cocoa Forum<sup>108</sup>, the Round Table on Human Rights in Tourism<sup>109</sup>, the Forum for Sustainable Palm Oil (FONAP)<sup>110</sup>, the Action Alliance for Sustainable Bananas<sup>111</sup>, and the Partnership for Sustainable Textiles<sup>112</sup>.

The **Sustainable Textiles partnership** was initiated by the Minister for Economic Cooperation and Development in 2014. It is a multi-stakeholder initiative with almost 150 representatives from government, business, NGOs, unions and standards organizations. The partnership members aim to achieve social, ecological and economic improvements along the entire textile supply chain. At the core of the partnership lies a mandatory mechanism for all members, which includes reporting and action planning (roadmaps). Based on jointly defined goals, all members commit to individually binding and verifiable targets for their due diligence approach. This mechanism creates binding processes beyond legal obligations.

In May 2017, the Ministry of Economic Cooperation and Development published a report on the joint achievements in the textile sector<sup>113</sup>. A key achievement highlighted in the report is that within two years, membership grew from 30 to around 150 organizations, covering around 50 percent of the German textile and garment retail turnover. Of these members, over 40 have voluntarily published their first action plans (roadmaps) for 2017 on the partnership website<sup>114</sup>. As of 2018, publication of the action plans is binding for all 150 members.

<sup>108</sup> Forum Nachhaltiger Kakao, German Initiative on Sustainable Cocoa, website in German and English

<sup>109</sup> Roundtable Human Rights in Tourism, website

<sup>110</sup> Forum Nachhaltiges Palmöl, website

<sup>111</sup> Aktionsbündnis für nachhaltige Bananen, website

<sup>112</sup> Bündnis für nachhaltige Textilien, Partnership for Sustainable Textiles, website in German and English

<sup>113</sup> Joint achievements in the textile sector – Partnership for Sustainable Textiles, Ministry for Economic Cooperation and Development, 2017

<sup>114</sup> Partnership for Sustainable Textiles membership page, website accessed December 5, 2017

The OECD Due Diligence Guidance for **Responsible Supply Chains of Minerals** from Conflict-Affected and High-Risk Areas<sup>115</sup> has been available in German since 2015. Germany supports the discussions on conflict minerals within the OECD and EU frameworks. In 2016, the report *Human Rights Risks in Mining - A Baseline Study*<sup>116</sup>, was presented by the Federal Institute for Geosciences and Natural Resources, which contains an in-depth analysis of the impact of mining on human rights.

In February 2017, the OECD Due Diligence Guidance for **Responsible Supply Chains in the Garment and Footwear Sector**<sup>117</sup> was published. The Federal Ministry for Economic Cooperation and Development has chaired the OECD advisory group for the drafting process of this sectoral Guidance. Following the publication, the Federal Ministry for Economic Cooperation and Development supported the alignment of the Partnership for Sustainable Textiles' reporting mechanism with the Guidance.

Ever since 2012, the Federal Government has been supporting the **Business and Human Rights Resource Centre (BHRRC)**<sup>118</sup> and their Corporate Response Mechanism. In 2014, a German-language version of the online platform was made available. The website provides information on human rights challenges by region, issue and risk group and even by enterprise. In December 2017, the Federal Ministry for Economic Cooperation and Development extended the support. The German government also sponsors the support services offered by the ILO. The **ILO Helpdesk for Business** on International Labour Standards assists enterprises in applying international labour and social standards correctly.

The **German National Contact Point** was set up in 2000 to raise awareness of the OECD Guidelines and promote compliance with them. It is hosted by the Ministry of Economic Affairs and Energy. It is supported by an advisory board composed of several ministries, as well as business organisations, trade unions, and NGOs. The NCP takes its decisions in consultation with the Interministerial Steering Group on the OECD Guidelines and with the "OECD Guidelines" Working Group. The Interministerial Steering Group comprises representatives of the Federal Foreign Office, the Federal Ministry of Labour and Social Affairs, the Federal Ministry of Food and Agriculture, the Federal Ministry of Finance, the Federal Ministry of Justice and Consumer Protection, the Federal Ministry for the Environment, Nature Conservation, Building and Nuclear Safety and the Federal Ministry for Economic Cooperation and Development.

<sup>115</sup> OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, OECD, 2016

<sup>116</sup> Human Rights Risks in Mining - A Baseline Study, 2016, Max Planck Foundation for International Peace and the Rule of Law

<sup>117</sup> OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector, OECD, 2017

<sup>118</sup> Business and Human Rights Resource Centre, website

The NCP also helps to resolve problems arising in connection with the implementation of the Guidelines as well as any complaints of insufficient respect for human rights and of insufficient consideration for human rights in the exercise of companies' due diligence as defined in the OECD Guidelines. It examines incoming complaints and, if a complaint falls within its responsibility, offers to mediate between the parties. Failure to comply with the NCP process can negatively impact the eligibility of a company to trade promotion instruments. Since its inception, the German National Contact Point has filed 26 instances of alleged misconduct in the OECD database<sup>119</sup>. In the years 2013-2015, there were three to four cases per year, but on average there are one to two cases per year.

### 7.3.2 Fostering due diligence

In the framework of the German presidency of the G7 in 2015, the Federal Government was a driving force behind the proposal to include a section on responsible supply chains in the Leaders' Declaration<sup>120</sup>. In that section of the declaration, the private sector is urged to exercise due diligence with regard to human rights.

The National Action Plan on Business and Human Rights<sup>121</sup> clarifies what the government sees as the **core elements of due diligence** in the field of human rights, using the model of the UN Guiding Principles on Business and Human Rights. This includes a human rights policy statement, procedures for the identification of actual or potential adverse impact on human rights, measures to ward off potentially adverse impacts and review of the effectiveness of these measures, reporting, and a grievance mechanism. This section of the action plan also makes it clear that this is a continuous process.

The Federal Government expects all enterprises to introduce processes for human rights due diligence in a manner commensurate with their size, the sector in which they operate and their position in supply and value chains. The aim is for at least 50% of all enterprises based in Germany with more than 500 employees to have incorporated human rights due diligence into their corporate processes by 2020. This applies to an estimated 6285 companies.

**Implementation will be monitored annually from 2018.** A European tender process for the

<sup>119</sup> OECD Database of Specific Instances, online database accessed December 5, 2017

<sup>120</sup> Leaders' Declaration G7 Summit Germany, G7, 2015

<sup>121</sup> National Action Plan: Implementation on the UN Guiding Principles on Business and Human Rights, published in German in December 2016, English translation in August 2017

### Spotlight on the German human rights due diligence monitoring process

Year in force	2018-2020
Goal	Responsible business conduct
Duty	Due diligence plan and report
Topics	Human rights
Sectors	All
Scope	All German companies with more than 500 employees
Enforcement	In the absence of adequate compliance, the German government will consider further action, which may include legal measures

implementation monitoring will commence early 2018. There are no national human rights due diligence legislative measures at this point in time, except for reporting on human rights as part of mandatory non-financial reporting (covered in a later section). But “In the absence of adequate compliance, the Federal Government will consider further action, which may culminate in legislative measures and in a widening of the circle of enterprises to be reviewed.”

In addition to these measures related to corporate behaviour, the National Action Plan also gathers more than 50 Government commitments to strengthen various human rights policies. These include regulatory and non-regulatory instruments. In this vein, the Government will examine whether the **sustainability assessment for subsidies** is consistent with the UNGPs and whether a future obligation for enterprises receiving significant subsidies to apply due diligence is feasible. Human rights have also been given a higher profile in the assessment procedures for export credits and other instruments for the promotion of external trade.

### 7.3.3 Improving disclosure and transparency

The German government explicitly states that transparency is “not limited to formal sustainability reporting but also entail willingness to engage in open dialogue with consumers, customers, and actual or potential stakeholders and to share information on request.”<sup>122</sup>

As mentioned before, at the latest by 2020, German companies with over 500 employees are expected to report on human rights due diligence. From the financial year 2017 onwards, a subset of these same companies must provide data on environmental, social and labour aspects of their operations as well as on respecting human rights and fighting corruption in their supply chain. The **EU Directive on Non-Financial Reporting**<sup>123</sup> was adopted by the German Federal Government in September 2016 in the “Act to strengthen non-financial

<sup>122</sup> National Action Plan: Implementation on the UN Guiding Principles on Business and Human Rights, published in German in December 2016, English translation in August 2017

<sup>123</sup> Directive 2014/95/EU on disclosure of non-financial and diversity information by certain large undertakings and groups, European Parliament, 2014

reporting by companies in their management and group management reports<sup>124</sup>. The law applies to public interest entities (credit institutions, insurance undertakings, capital market oriented companies) with over 500 employees, a net turnover over € 40 million or a balance sheet total of over € 20 million. Other companies are advised consider reporting on their non-financial performance. The companies to which the law applies will request data on the non-financial performance of their key suppliers, which include many SMEs.

The non-financial information has to be published within four months of the balance sheet date. Assurance of the non-financial information is not mandatory, but if the report is verified by an independent assurance provider, the audit report has to be published. The report does have to checked and approved by the management board. Failure to comply with the reporting law can result in fines up to the amount which is the highest of the following: € 10 million or 5 % of the total annual turnover of the company or twice the amount of the profits gained or losses avoided.

The German law does not prescribe the use of specific reporting frameworks, but it does refer to the EU guidance. Large German companies currently mostly use the voluntary guidelines and standards of the Global Reporting Initiative<sup>125</sup>. The German government has also supported the development of a German reporting standard in the German Sustainability Code<sup>126</sup>. The Code was updated in July 2017, to reflect the updated reporting requirements after the ratification of the EU Directive. The SD-KPI Standard 2010-2014<sup>127</sup> provides guidance on the sustainable development key performance indicators that industries should strive for and use in their sustainability reports. Reports created in the context of sector-based multi-stakeholder initiatives can be used to fulfil the non-financial reporting obligation.

<sup>124</sup> Gesetz zur Stärkung der Nichtfinanziellen Berichterstattung der Unternehmen in ihren Lage- und Konzernberichten, Deutscher Bundestag, 2017

<sup>125</sup> Global Reporting Initiative Standards, Global Reporting Initiative, 2016

<sup>126</sup> The Sustainability Code, Benchmarking Sustainable Business, German Council for Sustainable Development, 2017

<sup>127</sup> SD-KPI Standard 2010-2014, Sustainable Development Key Performance Indicators, commissioned by the Federal Ministry for the Environment, Nature Conservation, and Nuclear Safety, 2010



Sponsored by the Federal Ministry of Labour and Social Affairs, the Institute for Ecological Economy Research (IÖW) **assesses the quality of sustainability reports** from large enterprises and SMEs and draws up a league table for each of these categories<sup>128</sup>.

This ranking intends to stimulate better quality sustainability reporting and highlights best practices in reporting. The latest edition of this ranking assesses reports covering the 2015 financial year. Key trends were a stronger focus on material topics, an increase in integrated reporting, and an increase in online reporting. The report also highlights increased societal expectations for companies to manage their supply chains responsibly and transparently. Last but not least, it warns that extensive reporting and management systems by no means offer a guarantee against abuses, manipulation, and criminal behaviour.

According to the KPMG Survey of Corporate Responsibility Reporting<sup>129</sup>, 73% of the largest 100 German companies published a corporate responsibility report in 2017, up from 69% in 2015. This is **the lowest reporting percentage** of the countries in the scope of this report, also ranking in the third quartile of the scope of the KPMG global study across 49 countries.

All German companies need to be transparent on their ecological, social and human rights performance to be able to apply for trade promotion instruments like export credit guarantees. The assessment of these corporate statements is performed by a third party (Euler Hermes) on behalf of the government.

The Federal Government is considering the introduction of a certification mark into German law. The relevant EU legislation already provides for the introduction of a European certification mark and gives Member States the option of introducing a national certification mark in addition. Such a mark could be used, for example, to certify compliance with certain human rights standards in supply and value chains. A ministerial draft of the law was developed in 2017, but due to the September 2017 election and the ongoing government formation process, the German parliament could not yet vote on it.

<sup>128</sup> Ranking der Nachhaltigkeitsberichte, website by IÖW und future (in German, limited information available in English)

<sup>129</sup> KPMG Survey of Corporate Responsibility Reporting, KPMG, latest edition 2017



#### 7.4 Summary of German CSR policy

Germany's CSR policies are contained in the National Strategy for Corporate Social Responsibility – Action Plan for CSR<sup>130</sup> and the National Action Plan: Implementation on the UN Guiding Principles on Business and Human Rights<sup>131</sup>. Germany does not have a specific approach to international responsible business conduct, the policies apply to both domestic and international business activities.

Germany's current CSR policies are mostly focused on awareness and capacity building activities, primarily targeting SMEs. At the moment, the policies apply across sectors.

The only sectors for which more guidance is in place are textiles and mining. Discussions are underway to conduct a sector risk analysis and/or develop sector-specific initiatives.

Germany's CSR legislation is limited to non-financial reporting requirements which apply to large public interest entities only. However, the German government has announced it will consider legal measures to mandate human rights due diligence if large German companies do not voluntarily start to develop and publish human rights due diligence plans by 2020.

<sup>130</sup> National Strategy for Corporate Social Responsibility – Action Plan for CSR, German Federal Government, 2010

<sup>131</sup> National Action Plan: Implementation on the UN Guiding Principles on Business and Human Rights, published in German in December 2016, English translation in August 2017

## 8.1 The CSR context in the United Kingdom

### 8.1.1 Strategies and action plans

In September 2013, the UK was the first country in the world to publish a National Action Plan on Business and Human Rights, ***Good Business: Implementing the UN Guiding Principles on Business & Human Rights***<sup>132</sup>. The action plan was positioned as the UK's national action implementation plan for the UNGPs and "embodies our commitment to protect human rights by helping UK companies understand and manage human rights." The plan was updated in May 2016<sup>133</sup>.

In April 2014, the Department for Business Innovation & Skills (now BEIS) published ***Good for Business & Society: government response to call for views on corporate responsibility***<sup>134</sup>. This document was created after a three-month consultation period during which 152 responses from various stakeholders were received. This document presents a summary of the responses from stakeholders on the topic, including their views on the role of the government itself. A strategy or action plan for the UK government was not part of the document.

BEIS is in the lead on the CR plan, the Foreign and Commonwealth Office on the plan on Business and Human Rights. From the two documents, it is not clear which Ministry is in charge of which part of the policy. There is no formal operational coordination mechanism across the Ministries involved, but as many of the respective civil servants have been in their role for quite some time, people across the different ministries are quite aware of who is doing what.

In 2017, a Joint Committee on Human Rights reviewed the National Action Plan on Business and Human Rights<sup>135</sup>. One of the conclusions was that "the government must do more to help relevant stakeholder understand the various departmental responsibilities".

<sup>132</sup> Good Business: Implementing the UN Guiding Principles on Business & Human Rights, HM Government, 2013

<sup>133</sup> Good Business: Implementing the UN Guiding Principles on Business and Human Rights, Updated May 2016, May 2016, HM Government

<sup>134</sup> Corporate Responsibility: Good for Business & Society: government response to call fo views on corporate responsibility, UK Department for Business Innovation & Skills, 2014

<sup>135</sup> Human Rights and Business 2017: Promoting responsibility and ensuring accountability, House of Lords/House of Commons Joint

### 8.1.2 Defining Corporate Social Responsibility

The 2014 government response on corporate responsibility<sup>136</sup> defines corporate responsibility as “the voluntary action businesses take over and above legal requirements to manage and enhance economic, environmental and societal impacts. It is about being a responsible business and a part of an integrated and strategic approach creating shared value for business and society.” The same document also explicitly states that “corporate responsibility is by definition voluntary and therefore success relies on a business-led approach.” It also highlights that corporate responsibility has evolved from how businesses spend their money to how they earn it, that a flexible approach is required to account for the differences between businesses and that collaboration is an increasingly important aspect of corporate responsibility.

There is no separate definition for national and international CSR.

### 8.1.3 Guiding principles and frameworks

The UK action plan on Business and Human Rights<sup>137</sup> and the government response on corporate responsibility<sup>138</sup> refer to a number of frameworks and fora: the ILO, the OECD MNE Guidelines, the UNGPs, the Voluntary Principles for Security and Human Rights, the Kimberley Process, the International Code of Conduct for Private Security Service Providers, the OECD Due Diligence Guidelines for Responsible Supply Chains of Minerals from Conflict-Affect and High Risk Areas, the UN Global Compact, the Extractive Industries Transparency Initiative (EITI), the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security, the Ethical Trading Initiative and the Sustainable Development Goals.

## 8.2 The Role of the Government

In the 2013 Action Plan on Business and Human Rights<sup>139</sup>, the UK government highlights the following roles for itself on business and human rights:

- implement UK Government obligations to protect human rights within UK jurisdiction where business enterprises are involved;

Committee on Human Rights, 2017

<sup>136</sup> Corporate Responsibility: Good for Business & Society: government response to call for views on corporate responsibility, UK Department for Business Innovation & Skills, 2014

<sup>137</sup> Good Business: Implementing the UN Guiding Principles on Business & Human Rights, HM Government, 2013

<sup>138</sup> Corporate Responsibility: Good for Business & Society: government response to call for views on corporate responsibility, UK Department for Business Innovation & Skills, 2014

- support, motivate and incentivise UK businesses to meet their responsibility to respect human rights throughout their operations both at home and abroad;
- support access to effective remedy for victims of human rights abuse involving business enterprises within UK jurisdiction;
- promote understanding of how addressing human rights risks and impacts can help build business success;
- promote international adherence to the UN Guiding Principles on Business and Human Rights (UNGPs), including for States to assume fully their duties to protect human rights and assure remedy within their jurisdiction;
- ensure policy consistency across the UK Government on the UNGPs.

## 8.3 Key policy instruments

### 8.3.1 Raising awareness and building capacities

The 2013 Action Plan on Business and Human Rights<sup>140</sup> states that “The responsibility of businesses to respect human rights exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations.” The plan recognizes that different businesses will need different approaches to embed the UNGPs and that this is a progressive process. It lists eight key principles that the government expects UK businesses to use in their approach to respecting human rights.

The UK government encourages companies to establish or join effective grievance mechanisms for those potentially affected by their activities. It also encourages companies to review their existing grievance mechanisms to ensure they are fair, transparent, understandable, well-publicised and accessible by all.

Actions taken by the government to encourage and support businesses include the **Overseas Business Risk service**<sup>141</sup> to provide country-specific human rights information and relevant guidance; a **Business & Human Rights Toolkit**<sup>142</sup> for government officials; instructions for embassies and high commissions to work with local stakeholders to help inform companies on the human rights risks; supporting convening mechanisms to bring together business and NGOs and funding of the **Business and Human Rights Resource Centre**<sup>143</sup>, an online hub providing guidance and information on the UNGPs.

<sup>139</sup> Good Business: Implementing the UN Guiding Principles on Business & Human Rights, HM Government, 2013

<sup>140</sup> Good Business: Implementing the UN Guiding Principles on Business & Human Rights, HM Government, 2013

<sup>141</sup> Overseas Business Risk website, UK Foreign & Commonwealth Office and Department for International Trade, launched in 2014 and updated continuously

<sup>142</sup> Business and Human Rights Toolkit, UK Foreign & Commonwealth Office, 2011

The UK Government also financially supports **Corporate Human Rights Benchmark Initiative**<sup>144</sup>, a project to rank companies on their human rights performance.

Early 2017, the UK held a consultation to “consider what changes might be appropriate in the **corporate governance** regime to help ensure that we improve business performance and have an economy that works for everyone.” The resulting government response<sup>145</sup> sets out a proposal for reform in three areas: executive pay, stakeholder engagement and reforming the corporate governance of large privately-held businesses. The UK government also funded a document with specific guidance for board directors: *Business and human rights: A five-step guide for company boards*<sup>146</sup>.

On a sector level, there are initiatives on the certification of Private Security companies, related to international code of conduct for private security service providers as well as industry guidance on cybersecurity exports. The UK government also supports the European Partnership for Responsible Minerals<sup>147</sup>. This is a multi-stakeholder partnership with the goal to create better social and economic conditions for mine workers and mining communities by fostering responsible mining practices in conflict and high-risk areas. The **UK National Contact Point** was established to promote the OECD Guidelines for Multinational Enterprises. The UK NCP is part of the Department for International Trade. Its work is partly funded by the Department for International Development. The work of the NCP is overseen by a steering board with members from business, trade unions, NGOs and other government departments.

The NCP is also responsible for implementing a complaints mechanism for allegations of non-compliance by UK companies with the OECD Guidelines. The NCP seeks to mediate an agreement between the parties. Where this is not possible, the NCP will publish an assessment of whether the enterprise has acted inconsistently with the OECD Guidelines. Since its inception, the UK NCP has filed 48 instances of alleged misconduct in the OECD database<sup>148</sup>. This is a higher number than that of the other NCPs covered in this research.

<sup>143</sup> Business & Human Rights Resource Centre, website

<sup>144</sup> Corporate Human Rights Benchmark Initiative

<sup>145</sup> Corporate Governance Reform: The Government response to the green paper consultation, UK Department for Business, Energy & Industrial Strategy, 2017

<sup>146</sup> Business and human rights: A five-step guide for company boards, Equality and Human Rights Commission, 2016

<sup>147</sup> European Partnership for Responsible Minerals, website

### 8.3.2 The Modern Slavery Act

The UK Modern Slavery Act<sup>149</sup> went into force in July 2015. It applies to any commercial organisation in any sector, which supplies goods or services, and carries on a business or part of a business in the UK with an annual turnover of GBP 36 million (including turnover outside of the UK). This is estimated to apply to 9 000 to 11 000 companies. These companies are required to produce a slavery and human trafficking statement for each financial year, setting out what steps they have taken to ensure that slavery and human trafficking is not taking place in its business and supply chains. The statement must be approved by the board of directors and signed by a director, member or partner of the organization.

The Act specifically states that the statement must include 'the steps the organisation has taken during the financial year to ensure that slavery and human trafficking is not taking place in any of its supply chains, and in any part of its own business'. Companies that have taken no steps to avoid slavery and human trafficking must still publish a report to state they have not taken steps.

The Act is not prescriptive on how companies should develop an effective strategy. According to the Home Office, the Act seeks to create a race to the top by requiring businesses to be transparent about what they are doing. If companies fail to produce such a statement for a particular financial year, the Secretary of State may seek an injunction through the High Court requiring the company to comply. If it fails to comply with the injunction, they will be contempt of a court order, which is punishable by an unlimited fine.

Spotlight on the UK Modern Slavery Act	
Year in force	2015
Goal	Transparency in supply chains
Duty	Statement (comply or explain)
Topics	Slavery and human trafficking
Sectors	All
Scope	Any company that carries on a business in the UK with an annual turnover of £ 36 million (including turnover outside of the UK).
Enforcement	Injunction

In 2015, the Home Office published guidance for business on transparency in supply chains and implementing the reporting requirement in the Modern Slavery Act. This guidance was updated in 2017<sup>150</sup>. The UK Government has also launched the Business Against Slavery Forum. This forum is a new partnership between Government and business to accelerate progress in tackling modern slavery. It will focus on sharing best

<sup>148</sup> OECD database of Specific Instances, online database accessed December 6, 2017

<sup>149</sup> Modern Slavery Act 2015, UK Legislation, 2015

<sup>150</sup> Slavery and human trafficking in supply chains: guidance for businesses, UK Home Office, initially published in 2015,

practice and building new initiatives to tackle modern slavery in global supply chains. The forum will also look at ways we can drive compliance with the Modern Slavery Act and support other businesses, particularly those with fewer resources and capacity, so that the forum can have a much wider impact.

The Home Office is the lead Government department on implementing the provisions in the Modern Slavery Act and works closely with the Foreign & Commonwealth Office and Department for International Development to implement the Government's international strategy on eradicating modern slavery. The Act also created the role of an Independent Anti-Slavery Commissioner.

Two private members bills have been introduced into the House of Lords that seek to amend the Modern Slavery Act 2015. If enacted into law, these amendments would heighten the protection of victims and make amendments to the Modern Slavery Act reporting requirement.

In 2017, the Joint Committee on Human Rights reviewed the National Action Plan on Business and Human Rights<sup>151</sup>. While much of the report comments on the quality of the action plan and the role of the government, it also looks into the early effects of the Modern Slavery Act. The key shortcomings of the Act listed in the report are inadequate and unclear reporting requirements, no list of companies that are required to report, no central repository of reports and the law being too narrow in scope. These same shortcomings have also been highlighted by NGOs. It is up to consumers, investors and NGOs to engage and/or apply pressure where they believe a business has not taken sufficient steps.

### 8.3.3 Improving disclosure and transparency

The UK Companies Act was revised in October 2013 to ensure that directors of listed companies consider human rights issues when making their annual strategic reports<sup>152</sup>. In December 2016, the Companies Act was adjusted again when the UK transposed the EU **Non-Financial Reporting Directive** into UK law<sup>153</sup>. It requires listed companies and

last updated in 2017

<sup>151</sup> Human Rights and Business 2017: Promoting responsibility and ensuring accountability, House of Lords/House of Commons Joint Committee on Human Rights, 2017

<sup>152</sup> The Companies Act 2006 (Strategic Report and Directors' Report) Regulations, UK Legislation, 2013

other public interest entities (credit institutions and insurance undertakings) with an average of 500 employees to prepare a non-financial statement as part of their management report. In the UK, this applies to approximately 600 companies. Assurance of the non-financial information is not mandatory, but if the report is verified by an independent assurance provider, the audit report has to be published. Failure to comply with the reporting law can result in fines which are determined on a case-by-case basis.

In 2014, the UK Reports on Payments to Government Regulations 2014<sup>154</sup> came into force. This law transposes the EU accounting directive on **country-by-country reporting** (2013/34/EU) and applies to companies incorporated in the UK that are involved in exploration, prospection, discovery, development, and extraction of minerals, oil, natural gas deposits or other materials, or the logging of primary forests. These companies are required to report payments made to governments in the countries where they undertake extractive and logging operations. Reports should include the total amount per type of payment, the government to which each payment has been made, the total amount of payments to each government and where those payments have been attributed to a specific project, the total amount per type of payment, made for each such project and the total amount of payments for each such project.

To support companies to report on the UN Guiding Principles on Business and Human Rights, the UK government financially supports the development of the *UN Guiding Principles Reporting Framework*<sup>155</sup>.

As a result of the different acts requiring companies to disclose non-financial information, the UK has **one of the highest non-financial reporting rates in the world** among its largest 100 companies. 99% of the 100 largest UK companies published non-financial information in 2017, up 1% from the 98% in 2015. This high percentage places the United Kingdom in the highest quartile of the 49 countries in the KPMG Survey of Corporate Responsibility Reporting<sup>156</sup>.

<sup>153</sup> The Companies, Partnerships and Groups (accounts and Non-Financial Reporting) Regulation, UK Legislation, 2016

<sup>154</sup> Reports on Payments to Governments Regulation, UK Government, 2014

<sup>155</sup> UN Guiding Principles Reporting, website



#### 8.4 Summary of UK CSR Policy

An overview of the UK's CSR actions is provided in the Corporate Responsibility: Good for Business & Society: government response to call for views on corporate responsibility<sup>157</sup> as well as the 2013 National Action Plans on Business and Human Rights<sup>158</sup> and its 2016 update<sup>159</sup>.

Like all other countries in this research, except the Netherlands, there is no separation of national and international CSR in these policies.

The policies apply across sectors with an emphasis on medium and large companies. The Modern Slavery Act<sup>160</sup> applies to any company that carries on a business in the UK with an annual turnover of £ 36 million (including turnover outside of the UK). The amendments in the Companies Act that relate to Non-Financial Reporting apply to all public interest entities (listed companies, banks, and insurance companies) with 500 employees or more.

Within the scope of this research project, the UK is the only country that has had human rights-related reporting legislation in place for a few years. As of 2015, the Modern Slavery Act<sup>161</sup> requires companies operating in the UK with a turnover of over £36 million to publish a statement on slavery and human trafficking in its business and supply chains.

<sup>156</sup> KPMG Survey of Corporate Responsibility Reporting, KPMG, 2017

<sup>157</sup> Corporate Responsibility: Good for Business & Society: government response to call for views on corporate responsibility, UK Department for Business Innovation & Skills, 2014

<sup>158</sup> Good Business: Implementing the UN Guiding Principles on Business & Human Rights, HM Government, 2013

<sup>159</sup> Good Business: Implementing the UN Guiding Principles on Business and Human Rights, Updated May 2016, HM Government, 2016

<sup>160</sup> Modern Slavery Act 2015, UK Legislation, 2015

## 9.1 The CSR context in Switzerland

Switzerland is a country of dialogue and consensus. The referendum democracy urges parties to find a solution to avoid an actual referendum, as is currently the case related to a popular initiative asking for legislative measures on due diligence and liability. Due to the continuous search for compromises, things do not move quickly. Also in government, there is a balanced system, with very few changes in the past years. As a result, there is a policy of pragmatic, small steps.

### 9.1.1 Strategies and action plans

In 2015, Switzerland released its **Position Paper and Action Plan of the Federal Council on the Responsibility of Companies for Society and Environment**<sup>162</sup>. The paper makes it clear that CSR has to be primarily implemented by companies and clarifies the government's expectations for companies. It includes an action plan for the period 2015-2019. In June 2017, two years after the release of the action plan, an update paper was published on its implementation<sup>163</sup>. It showed progress on the action plan, yet did not provide insight on the impact of the policies. In the context of the report on commodities, the Federal Council proposed potential provisions to strengthen transparency in the extractive sector as part of the draft for the revision of the company law. This will be discussed in the Parliament in the spring of 2018.

In December 2016, the Federal Council launched the **National Action Plan for the Implementation of the United Nations Guiding Principles on Business and Human Rights**<sup>164</sup>. The objective is "to improve the protection of human rights in the context of business activities. It also helps to communicate what the Federal Council expects of business enterprises, to raise awareness among and facilitate cooperation with the corporate sector, and also to improve the consistency of government action." It was created in consultation with stakeholders such as business, NGOs, labour unions and research institutes. It is focused on the responsibility of the state and does not create any new and legally binding measures. Pillar 2 of the UNGPs, which concerns the corporate responsibility to respect human rights, is not dealt with directly in this Action Plan. In light of the rapidly

<sup>161</sup> Modern Slavery Act 2015, UK Legislation, 2015

<sup>162</sup> Positionspapier und Aktionsplan des Bundesrates zur Verantwortung der Unternehmen für Gesellschaft und Umwelt, 2015, Swiss State Secretariat for Economic Affairs (SECO) (also available in French)

<sup>163</sup> Bericht des Bundesrates zum Stand der Umsetzung des Aktionsplans, 2017, Swiss State Secretariat for Economic Affairs (SECO) (also available in French)

<sup>164</sup> Report on the Swiss strategy for the implementation of the UN Guiding Principles on Business and Human Rights, Swiss Federal

changing environment, an external analysis of the implementation of the NAP will be carried out in 2018 and an eventual update of the plan is foreseen for 2019.

In the National Action plan on Business and Human Rights, the Federal Council explicitly states that the action plan and the CSR position paper are complementary and of equal status.

The State Secretariat for Economic Affairs (SECO) is in charge of the coordination of the implementation of the CSR action plan across the Swiss Ministries. The Federal Department of Foreign Affairs (FDFA) and the State Secretariat for Economic Affairs (SECO) are jointly responsible for the coordination of the implementation of the Business and Human Rights Action Plan. There is a Monitoring Group that reports regularly on progress with the implementation of the NAP.

There is a CSR group across the different ministries that meets regularly. From time to time, external stakeholders are invited to join. The federal government also maintains an Interministerial Human Rights Policy Core Group, in which all involved departments and offices are represented. Its role is to support coordination and consultation between federal agencies on all human rights matters.

### 9.1.2 Defining Corporate Social Responsibility

In Switzerland, various terms are used interchangeably to refer to CSR. Companies use English terms like corporate social responsibility (CSR) and corporate responsibility (CR), as well as French and German translations for responsible business conduct or corporate sustainability. German terms include *Gesellschaftliche Verantwortung der Unternehmen*, *verantwortungsvolle Unternehmensführung*, *Unternehmensnachhaltigkeit*. Common French terms are *responsabilité sociétale des entreprises*, *conduite responsable des entreprises*, *gestion durable des entreprises*.

According to the Swiss action plan on corporate social responsibility<sup>165</sup>, CSR means “that companies are responsible for the effects of their activities on society and the environment. CSR is a contribution to sustainable development made by companies. CSR covers a wide range of aspects that must be taken into account when managing a company, including working conditions (including occupational health), human rights, environment,

Council, 2016

<sup>165</sup> Positionspapier und Aktionsplan des Bundesrates zur Verantwortung der Unternehmen für Gesellschaft und Umwelt, 2015, Swiss State

anticorruption measures, fair competition, consumer interests, taxes, transparency, etc. To implement CSR, companies need to take stakeholder interests into account (e.g. shareholders, employees, consumers, local communities, and NGOs)."

The action plan on CSR also positions CSR as a "contribution to the sustainability of a company while benefiting the companies' stakeholders (shareholders, employees, consumers, local communities, etc.)". There is no separation between national and international CSR in the action plan. The Swiss Federal Council expects companies to assume their social responsibility in Switzerland and wherever they operate.

### 9.1.3 Guiding principles and frameworks

Switzerland states that it is keen to align its policies with recognized international standards to avoid creating unfavourable conditions for Swiss companies. Frameworks referenced are ISO26000, OECD MNE Guidelines, UNGPs, EU Strategy on CSR, SDGs, UNGC, and GRI.

## 9.2 The Role of the Government

The Swiss government recognizes four priority roles for itself:

- Co-developing CSR framework conditions (which includes work on the harmonization and coherence of frameworks);
- Raising awareness among and supporting Swiss companies as they implement CSR;
- Promoting CSR in developing countries and transitional economies (which includes development cooperation);
- Encouraging transparency on CSR activities.

## 9.3 Key policy instruments

### 9.3.1 Raising awareness and building capacities

The Swiss government communicates and informs specific target groups about CSR standards and instruments. Target groups are first and foremost companies, but also other interested parties from civil society and the wider public. The State Secretariat for Economic Affairs hosts a "one-stop shop" **webportal on Corporate Social Responsibility**<sup>166</sup> which offers information on the CSR policies of the Swiss government, international developments in the CSR domain as well as detailed information about tools, including links to websites of other ministries and relevant external organizations. For example, in 2017, a new guide was released on the operational application of the OECD Guidelines for Multinational Enterprises<sup>167</sup>.

Secretariat for Economic Affairs (SECO) (also available in French)

<sup>166</sup> Swiss Government Corporate Social Responsibility webportal, SECO (in French, German, English and Italian)

<sup>167</sup> OECD Guidelines for Multinational Enterprises in practice, Guidance for application in business operations, SECO and Global Compact

SECO also funds the **information platform Sustainability Compass**<sup>168</sup>. It provides support to integrate sustainability aspects into the procurement of services and products. It is primarily focused on procurement by SMEs and public authorities. The government supports companies in the implementation of CSR, using instruments such as stakeholder dialogues, public-private partnerships, training, sharing of best practices and other information and awareness-raising activities. The target audience is companies of all sizes and sectors, especially **SMEs**.

Spotlight on the Swiss CSR webportal	
Year launched	2017
Goal	Inform companies and other stakeholders on CSR and relevant tools, coherence of total government policy
Duty	Swiss companies are expected to take responsibility for impacts wherever companies operate and to comply with internationally recognized CSR standards.
Topics	Social, human rights, environment
Sectors	All
Scope	All Swiss companies, with special support for SMEs
Enforcement	Not applicable

In the National Action Plan on Business and Human Rights, the federal government states that it will carry out awareness-raising programmes geared specifically for SMEs to raise consciousness about the issue of business and human rights with information events and materials. This program will also communicate the government's expectations to businesses. Information materials on business and human rights are included on the CSR webportal<sup>169</sup>.

In the CSR Action Plan<sup>170</sup>, the Swiss government clearly states that implementation of CSR should not lead to disproportionate administrative burdens and costs, especially for SMEs. To support SMEs, sector associations and large companies are expected to share best practices.

The Federal Council intends to promote good practice by creating an **award** for the Swiss Business and Human Rights Champion of the year. It will recognise business enterprises which make an outstanding contribution to the field of business and human rights.

Network Switzerland, 2017

<sup>168</sup> Kompass Nachhaltigkeit, SECO, ÖBU and Pusch, website

<sup>169</sup> Swiss Government Corporate Social Responsibility webportal, SECO (in French, German, English and Italian)

<sup>170</sup> Positionspapier und Aktionsplan des Bundesrates zur Verantwortung der Unternehmen für Gesellschaft und Umwelt, 2015, Swiss State Secretariat for Economic Affairs (SECO) (also available in French)

The Swiss government partially funds the Swiss organization of the **UN Global Compact**. A specific objective is to scale up the Swiss UNGC network, especially by providing relevant courses and information for SMEs.

The Swiss government is supportive of **sectoral initiatives**, among others through economic development cooperation. These initiatives focus on the following sectors: raw materials/commodities (including the Better Gold Initiative); the agricultural sector (including initiatives on cotton, coffee, cocoa, wood and soy and the Netherlands based Sustainable Trade Initiative IDH); the financial sector (including institutional investors and the Thun group of banks); security services and the garment and footwear sector (including the ILO Better Work program).

The National Action Plan on Business and Human Rights<sup>171</sup> mentions several sectors at risk for human rights offenses. As of 2015, providers of private security services have to submit a declaration before they can conduct business abroad. Details of this act are covered in the following section on improving disclosure and transparency. Other sectors specifically mentioned to be at risk are war materials and technologies for internet and mobile communication surveillance. The regulations and conditions for their respective export licenses are considered appropriate guarantees that human rights will be respected. For the manufacture and import of biofuels, there are environmental and social requirements for tax exemption. For these industries, the Federal Council regards the present legal foundation and practices sufficient and is not planning any further measures.

On the CSR webportal, a specific section<sup>172</sup> is dedicated to informing specific sectors on relevant challenges and related guidance. The sectors highlighted are the Raw Materials Sector, the Agricultural Sector, the Financial Sector, the Security Sector, and the Garment and Footwear Sector.

In March 2017, the Institute for Human Rights and Business published a report on *The Swiss Commodities Trading Industry: A Mapping Study*<sup>173</sup>, which was commissioned by the Swiss government. The government is working with NGOs and commodity trading firms to draw up guidelines for the implementation of the UNGPs in commodities trading. This will include guidance on human rights due diligence and reporting. Sectoral guidelines are also in development for sporting events.

<sup>171</sup> Report on the Swiss strategy for the implementation of the UN Guiding Principles on Business and Human Rights, Swiss Federal Council, 2016

<sup>172</sup> Subsite on CSR for specific sectors, SECO (in French, German, English and Italian)

<sup>173</sup> The Swiss Commodities Trading Industry: A Mapping Study, 2017, Institute for Human Rights and Business

The Swiss government has supported the drafting of a number of guidelines addressing the situation in conflict-affected areas. These include the Guidance on Conflict Sensitive Business Practice for the extractive sector<sup>174</sup> issued by International Alert, and the Red Flags initiative. Switzerland also provides financial support for the implementation of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas<sup>175</sup>. In the coming months, the Federal Council will present a report on gold trading and human right risks. SECO is working alongside the Better Gold Initiative to extend the initiative from Peru to Colombia and Bolivia and to increase the traded volume of responsible gold from small-scale mining.

Furthermore, Switzerland financially supports the Institute for Human Rights and Business in London, specifically on the Oil & Gas sector initiative on "Voluntary Principles on Security and Human Rights".

**Swiss embassies** in developing countries also play a role in such awareness-raising activities. The federal government will involve Switzerland's representations abroad more closely in its efforts to raise awareness of and provide support for respect for human rights among business enterprises. Among other measures, this will involve training and awareness-raising for embassy staff, better experience-sharing between representations and with the relevant federal agencies in Bern, and more active communication about the representations' activities.

The Swiss **National Contact Point** for the OECD Guidelines for Multinational Enterprises promotes the observance of the Guidelines and discusses with the parties concerned all relevant issues so as to contribute to the resolution of any problems which might arise. This is done through active promotion with interest groups and through educational platforms. The secretariat of the Swiss NCP is hosted and staffed by the State Secretariat of Economic Affairs (SECO). An advisory board advises the NCP on its strategic orientation as well as on the implementation of the OECD Guidelines. The advisory board consists of 14 representatives, including the Director of SECO, other members of the Federal Administration, and representatives of employer associations, trade unions, business associations, NGOs, and academia. SECO operates the secretariat of the advisory board.

<sup>174</sup> Guidance on Conflict Sensitive Business Practice for the extractive sector, International Alert, 2005

<sup>175</sup> OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, OECD, 2016

For admissible cases, the NCP offers services to help settle the raised issues out of court and publicly reports its recommendations. Since its inception in 2000, the Swiss National Contact Point has filed 18 instances of alleged misconduct in the OECD database<sup>176</sup>.

### 9.3.2 Improving disclosure and transparency

According to the action plan on CSR “Transparency promotes the credibility of CSR measures, the dissemination of good practices and the dialogue of companies with stakeholders.”

The Swiss government promotes transparency on CSR topics. It focusses on internationally accepted guidelines and strives to ensure the administrative burden is proportionate and focused, especially for SMEs. The Federal Council supports the development, updating, and promotion of instruments that contribute to sustainability reporting and other forms of transparency on corporate CSR topics. It financially supports organizations such as the Global Reporting Initiative (GRI) and the Extractive Industries Transparency Initiative (EITI). Representatives of the Swiss government are also involved in the Group of Friends of Paragraph 47 and the Intergovernmental Working Group of Experts on International Standards of Accounting and Reporting within UNCTAD.

However, Swiss companies are **not obliged to report** on sustainability issues. Companies are encouraged to introduce sustainable practices and to include sustainability information in their reporting. Accounting legislation requires all companies that are subject to an ordinary audit to include a general assessment of risk in their management report. This also includes human rights risks, where these are present. Listed companies are obliged to report on human rights matters where these might affect the company’s share price. The Federal Council recommends incorporating the human rights risks which business enterprises identify in their due diligence processes in their sustainability reports.

In the action plan on CSR, the Federal Council intends to prepare a **consultation report on sustainability reporting**, which is based on the regulation in the EU and thus does not lead to a disadvantage of the economic situation. A consultation on this topic will be considered as soon as sufficient information is available on the implementation of the EU Directive by the EU Member States.

<sup>176</sup> OECD Database of Specific Instances, online database accessed December 6, 2017



Despite a lack of legislation on non-financial reporting, 82% of the 100 largest Swiss companies published non-financial information in 2017, up 7% from the 75% in 2015. This places Switzerland in the second quartile of the 49 countries in the KPMG Survey of Corporate Responsibility Reporting<sup>177</sup>.

The only sector where disclosure is currently mandatory is the **Private Security Services** Sector. As of 2015, companies that provide private security services abroad from Switzerland are required to submit a prior declaration. The Act on Private Security Services Provided Abroad<sup>178</sup> prohibits security firms based in Switzerland from participating directly in hostilities in an armed conflict abroad and forbids activities that support the commission of serious violations of human rights. It also contains reporting requirements for companies which provide private security services abroad and obliges Swiss-based providers to uphold the International Code of Conduct for Private Security Service Providers. The Private Security Services Section of the Federal Secretariat of Foreign Affairs is responsible for implementation of the Act. They examine incoming declarations and initiate a review procedure if there are indications to suggest that the planned activities could be in conflict with the purpose of the Act. If the Private Security Services Section deems an activity to be in conflict with the purposes of the Act, it will prohibit the declared activity.

In 2017, the authority in charge published its first activity report. Over 300 declarations were submitted by 34 companies between September 2015 and December 2016. Six review procedures were initiated by the authority. In two instances, a company was allowed to pursue the declared activity. Two companies withdrew their declaration following the opening of the review procedure and decided not to pursue the planned activity. In one instance, the competent authority prohibited the declared activity. One procedure was still pending at the end of the period under review.

An updated ordinance on **credit insurance** entered into force in January 2016. It expressly sets out the insurance applicant's duty to provide information on human rights. Swiss Expert Credit Insurance (SERV) does not grant cover, neither can it accept any liability in the event of a claim, if the project being supplied or financed by the policyholder does not meet international human rights standards.

<sup>177</sup> KPMG Survey of Corporate Responsibility Reporting, KPMG, 2017

<sup>178</sup> Federal Act on Private Security Services Provided Abroad, Federal Department of Foreign Affairs, 2013

For other economic sectors with high economic and social relevance for Switzerland, the government may pursue a **sectoral approach**. In June 2014, the Federal Council proposed to introduce legally binding transparency rules for Swiss companies involved in extracting raw materials as part of the revision of the company law. In May 2014, the Federal Council produced a framework for the commodities sector which integrates a transparency requirement compatible with EU provisions on the obligations to disclose payments to governments. The Federal Council is proposing that listed and major companies in the extractive sector must disclose the payments they make to governments. This will be discussed in the Swiss Parliament in the spring of 2018.

The Federal Council is tracking international developments towards transparency and due diligence concerning minerals from conflict-affected areas, especially in the EU, and is observing their impact on the Swiss economy. If the EU were to introduce a certification system and/or disclosure obligations for companies, the Federal Council will consider putting forward appropriate proposals for a Swiss solution in line with the European policies.

### 9.3.3 Fostering due diligence

The National Action Plan on Business and Human Rights<sup>179</sup> clarifies the position of the Federal Council: Business enterprises that are exposed to particularly high human rights risks should develop internal policies and procedures for their human rights due diligence for the business activities concerned. Their precise form will depend on factors such as the size of the enterprise and the nature of its business (sector, geographical scope, etc.). Attention should be paid to the specific circumstances of and options open to SMEs. Swiss business enterprises, and especially those that are particularly heavily exposed to human rights risks, should provide appropriate grievance mechanisms at the corporate level to allow those affected by abuses to claim remediation. Such mechanisms are believed to also have a preventative effect.

<sup>179</sup> Report on the Swiss strategy for the implementation of the UN Guiding Principles on Business and Human Rights, Swiss Federal Council, 2016

Swiss legislation does not make any provision for business having to conduct general, legally binding human rights due diligence. A report entitled *Comparative legal analysis – Human Rights and Environmental Due Diligence in relation to extraterritorial operations by Swiss corporations*<sup>180</sup> was published in May 2014 along with a report by the Swiss Institute of Comparative Law<sup>181</sup>. The report stated: “The density of international corporations domiciled in Switzerland is extremely high. The question whether Switzerland shouldn’t act as a role model in the implementation of the UN Guiding Principles on Business and Human Rights as well as other international standards on human rights and the environment, is therefore justified”. The committee’s motion which – on the basis of the report – called for a consultation draft, was adopted in March 2015 with 91:90 votes, the president casting the deciding vote. Under pressure from the Swiss People’s Party as well as business associations, a request to reconsider the issue was granted. A few minutes before the end of the meeting, the National Council voted again and the motion was rejected with 95:86 votes. Potential regulation in this area would have to have a broad base of international support to avoid placing Switzerland at a disadvantage as a business location.

In April 2015, an alliance of 80 NGOs launched the **Responsible Business Initiative**<sup>182</sup>. This initiative strives for the Swiss government to put in place legally binding measures on due diligence on human rights and the environment for the international activities of all companies headquartered in Switzerland. By October 2016, it had collected the required number of signatures to propose an amendment to the Swiss constitution. The proposal includes a liability mechanism. In November 2016, the Federal Chancellery confirmed that it would hold a referendum on this matter. While the Federal Council recognized the concerns of the popular initiative in principle, in September 2017, it recommended the parliament to reject it without a counterproposal, as legally measures would go too far, in particular with respect to liability. Discussions in the Swiss Parliament and respective commissions on this have started late 2017.

<sup>180</sup> Comparative legal analysis – Human Rights and Environmental Due Diligence in relation to extraterritorial operations by Swiss corporations, Swiss Confederation, 2014

<sup>181</sup> Gutachten über Gesetzliche Verpflichtungen zur Durchführung einer Sorgfaltsprüfung Bezüglich Menschenrechte und Umwelt bei Auslandaktivitäten von Unternehmen und zur Berichterstattung über Getroffene Massnahmen, Swiss Institute of Comparative Law, 2013

<sup>182</sup> Responsible Business Initiative, website

## 9.4 Summary of Swiss CSR policy

Switzerland's CSR policies are contained in the Action Plan on CSR<sup>183</sup> and the report on the implementation of the UNGPs<sup>184</sup>. In its policies, Switzerland does not have a separate approach to international responsible business conduct, the Swiss Federal Council expects companies to assume their social responsibility in Switzerland and wherever they operate.

The Swiss government expects Swiss companies to implement internationally recognized CSR standards, such as the OECD Guidelines for Multinational Enterprises. The focus of the Swiss strategies are on creating framework conditions, raising awareness and capacity building, fostering CSR in development cooperation as well as fostering transparency. Through the CSR webportal<sup>185</sup> and (support of) other activities, companies and other stakeholders have access to information. The focus is placed on tools for SMEs and a selection of higher-risk sectors. Also, attention is paid to the coherence of all the measures across different departments and with international guidelines.

In line with the expectation for companies to lead, Switzerland has a limited set of specific legal measures in place to foster responsible business conduct. Legislation is in place for public procurement (which is outside of the scope of this research) and Private Security Providers.

In case the Responsible Business Initiative<sup>186</sup> proposal is accepted by the Swiss population in a potential referendum, the situation would change, putting in place legally binding measures on due diligence on human rights and the environment for the international activities of Swiss companies.

<sup>183</sup> Positionspapier und Aktionsplan des Bundesrates zur Verantwortung der Unternehmen für Gesellschaft und Umwelt, 2015, Swiss State Secretariat for Economic Affairs (SECO) (also available in French)

<sup>184</sup> Report on the Swiss strategy for the implementation of the UN Guiding Principles on Business and Human Rights, Swiss Federal Council, 2016

<sup>185</sup> Swiss Government Corporate Social Responsibility webportal, SECO (in French, German, English and Italian)

<sup>186</sup> Responsible Business Initiative, website

## 10.1 Glossary of terms and abbreviations

- AWE (D): German Agency for Business and Economic Development
- BHRRC: Business and Human Rights Resource Centre
- CNCDH (F): French National Consultative Commission on Human Rights
- CSR: Corporate Social Responsibility
- CSR Netherlands (NL): MVO Nederland
- Due diligence: a process to identify, prevent or mitigate and account for how actual and potential adverse impacts are addressed
- GRI: Global Reporting Initiative, international organization which provides guidelines and standards for sustainability/non-financial reporting
- House of Representatives (NL): Tweede Kamer
- ICESCR: International Covenant on Economic, Social and Cultural Rights
- IDH: Sustainable Trade Initiative
- ILO: International Labour Organization
- ISO 26000: International Standard Organization's guideline for CSR management
- NCP: National Contact Point for the OECD Guidelines
- OECD: Organisation for Economic Co-operation and Development
- OECD Guidelines for Multinational Enterprises: non-binding principles and standards for responsible business conduct in a global context consistent with applicable laws and internationally recognised standards
- PIEs: public interest entities, defined differently per country, but usually include at least listed companies, banks, and insurance companies
- Platforme RSE (F): French National CSR Platform, a multi-stakeholder initiative set up by the French government to provide input on CSR topics to the government.
- RBC: Responsible Business Conduct
- RVO (NL):
- SDGs: Sustainable Development Goals
- SER (NL): Social and Economic Council which advises government and parliament on national and international social and economic policy and legislation.
- Senate of the Dutch Parliament (NL): Eerste Kamer
- SMEs: Small and Medium-sized Enterprises
- UN: United Nations
- UNGC: United Nations Global Compact
- UNGPs: United Nations Guiding Principles on Business and Human Rights
- WTO: World Trade Organization

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### Switzerland

- **State Secretariat for Economic Affairs (SECO)**, Alex Kunze, Senior Advisor CSR (October 19, 2017)
- **Swiss Coalition for Corporate Justice members**
  - **Alliance Sud**, Laurent Matile, Senior Policy Advisor Business & Human Rights (October 17, 2017)
  - **PublicEye**, Urs Rybi, Corporate Accountability (October 19, 2017)
- Swiss UNGC committee, Antonio Hautle, Senior Programme Leader (October 19, 2017)

### United Kingdom

- **CORE Coalition**, Marilyn Croser, Director (November 21, 2017)
- **Department for Business, Energy and Industrial Strategy (BEIS)**, Chris Tollady, Assistant Director, Corporate Responsibility and Edward Greatex, Policy Officer (October 5, 2017)
- **Foreign & Commonwealth Office**, Stephen Lowe, Team Leader Modern Slavery Unit Human Rights & Democracy Department (October 5, 2017)
- **Home Office**, Fared Amir, Modern Slavery Policy Adviser (October 5, 2017)

### Other

- **Global Reporting Initiative (GRI)**, Karen Diaz, Policy Coordinator (August 31, 2017)
- **Organization for Economic and Development (OECD)**, Roel Nieuwenkamp, Chair OECD Working Party on Responsible Business Conduct (October 2, 2017)

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