

NATIONAL ACTION PLAN FOR THE IMPLEMENTATION OF THE UNITED NATIONS GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

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INTRODUCTION

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.

As such, France adheres to the United Nations Guiding Principles on Business and Human Rights, which were unanimously adopted by the United Nations Human Rights Council in its resolution 17/4 of 16 June 2011. It is committed to implementing these principles, in particular by developing a groundbreaking corporate social responsibility (CSR) policy.

The United Nations Guiding Principles are a universal roadmap supporting the creation of rules to make businesses accountable in the human rights field. Their unanimous adoption was a key step towards acting on the observation that, if human development is to be sustainable in a globalized world, both public and private actors must be responsible towards the society and planet they live and operate in. Every day, this need for responsibility is visible in international events, particularly the Rana Plaza tragedy, which highlighted the importance of updating international action on globalization.

In January 2013, France submitted a preparatory document for the French National Plan for the Development of Corporate Social Responsibility (CSR) to the European Commission. This document showed that human rights were central to its actions supporting the promotion and development of CSR at the European and international levels. This action plan confirms this position. It is France's response to the European Commission's request that all Member States develop integrated or additional human rights action plans tying into their CSR action plans (additional, in this case).

Methodology

Given the importance the French Government places on this issue, it formally requested an opinion from the National Consultative Commission on Human Rights (CNCDH) on 21 February 2013 in order to prepare its action plan for the implementation of the United Nations Guiding Principles.

This opinion, adopted at a plenary assembly of the CNCDH on 24 October 2013, included a wide range of recommendations for implementing the guiding principles at a high level.¹ The CNCDH also suggested actions for pillars 1 (the State's obligation to protect against human rights abuses by third parties, including businesses) and 3 (victims' right to effective remedy). These recommendations can be viewed at the following address: <http://www.cncdh.fr/fr/publications/entreprises-et-droits-de-lhomme> (in French). Those that have not already been implemented are included in this action plan.

¹ The French Business Confederation MEDEF observes that it was not present at the plenary assembly of the CNCDH on 24 October 2013 when the opinion was adopted and, as a result, its amendments could not be integrated.

The CNCDH's proposals were carefully examined by an inter-ministerial working group run by the CSR Ambassador (members included representatives from the French 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). This group distinguished between the recommendations it considered had already been largely implemented by the Government and could be reinforced, those that could form the basis of further proposals for action, and those that should be examined or applied in a more relevant context. This enabled them to establish an overview and develop appropriate proposals for action.

The National CSR Platform had also begun work on this issue. This platform was created by the Prime Minister in June 2013 at the request of organizations representing employers, employees and civil society. It supports dialogue and consultation between different actors in French society (including representatives of businesses, employees, non-profit organizations, NGOs and multi-stakeholder structures) and public authorities (including representatives of central administration, parliament and local government). Its first recommendations have also been used to structure and add depth to the proposals in the French action plan.

The document produced by the inter-ministerial working group incorporated the proposals of the CNCDH and the National CSR Platform, as well as the results of preliminary hearings conducted during the platform's earlier work with the main stakeholders. The platform, of which the CNCDH is a member, then held a consultation on the document. The working group concerned met 12 times between November 2015 and June 2016. The action plan is therefore the result of extensive discussions and cooperation with all stakeholders.

Following an agreement with stakeholders, only proposals adopted unanimously have been included, ensuring that parties are able to collectively commit to their implementation. The action plan distinguishes between proposals that are currently being implemented and those to be implemented at a later date. It was also decided that the main proposals upon which an agreement could not be reached would be included in an appendix. The main difference of opinion concerned whether arrangements for supervising the operations of multinational enterprises should be voluntary or binding. Where possible and relevant, the action plan distinguishes between voluntary and binding arrangements, and between judicial and extra-judicial supervisory mechanisms (judicial mechanisms involving a domestic or international judge). All of these proposals were discussed during a second inter-ministerial consultation and validated by the Prime Minister.

The document that follows is the French Action Plan for the Implementation of the United Nations Guiding Principles on Business and Human Rights. It was submitted to the European Commission in addition to and consistent with the National Plan of Priority Actions on CSR Development (which the National CSR Platform, mandated by the Prime Minister, has also commented on in a separate document). It incorporates the three principles of the "Ruggie framework": protect, respect and remedy. For each pillar, it discusses the principles, the recommendations of the CNCDH and the National CSR Platform, actions already underway in France, and proposals for more actions to enforce the principles.

The French Action Plan for the Implementation of the United Nations Guiding Principles on Business and Human Rights and actions implemented will be monitored and evaluated by the CNCDH, acting as an independent administrative authority, in line with the recommendation issued by the United Nations working group on business and human rights. The CNCDH will evaluate the policy implemented, issuing regular reports.

THE UNITED NATIONS GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

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

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

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

- (a) Enforce laws that are aimed at, or have the effect of, requiring business enterprises to respect human rights, and periodically to assess the adequacy of such laws and address any gaps;
- (b) Ensure that other laws and policies governing the creation and ongoing operation of business enterprises, such as corporate law, do not constrain but enable business respect for human rights;
- (c) Provide effective guidance to business enterprises on how to respect human rights throughout their operations;
- (d) Encourage, and where appropriate require, business enterprises to communicate how they address their human rights impacts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Principle 11. *Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved.*

Principle 12. *The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights and the principles concerning fundamental rights set*

out in the International Labour Organization's Declaration on Fundamental Principles and Rights at Work.

Principle 13. *The responsibility to respect human rights requires that business enterprises:*

- (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur;*
- (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts.*

Principle 14. *The responsibility of business enterprises to respect human rights applies to all enterprises regardless of their size, sector, operational context, ownership and structure. Nevertheless, the scale and complexity of the means through which enterprises meet that responsibility may vary according to these factors and with the severity of the enterprise's adverse human rights impacts.*

Principle 15. *In order to meet their responsibility to respect human rights, business enterprises should have in place policies and processes appropriate to their size and circumstances, including:*

- (a) A policy commitment to meet their responsibility to respect human rights;*
- (b) A human rights due diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights;*
- (c) Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute.*

Principle 16. *As the basis for embedding their responsibility to respect human rights, business enterprises should express their commitment to meet this responsibility through a statement of policy that:*

- (a) Is approved at the most senior level of the business enterprise;*
- (b) Is informed by relevant internal and/or external expertise;*
- (c) Stipulates the enterprise's human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services;*
- (d) Is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties;*
- (e) Is reflected in operational policies and procedures necessary to embed it throughout the business enterprise.*

Principle 17. *In order to identify, prevent, mitigate and account for how they address their adverse human rights impacts, business enterprises should carry out human rights due diligence. The process should include assessing actual and potential human rights impacts,*

integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed. Human rights due diligence:

- (a) Should cover adverse human rights impacts that the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships;*
- (b) Will vary in complexity with the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations;*
- (c) Should be ongoing, recognizing that the human rights risks may change over time as the business enterprise's operations and operating context evolve.*

Principle 18. *In order to gauge human rights risks, business enterprises should identify and assess any actual or potential adverse human rights impacts with which they may be involved either through their own activities or as a result of their business relationships. This process should:*

- (a) Draw on internal and/or independent external human rights expertise;*
- (b) Involve meaningful consultation with potentially affected groups and other relevant stakeholders, as appropriate to the size of the business enterprise and the nature and context of the operation.*

Principle 19. *In order to prevent and mitigate adverse human rights impacts, business enterprises should integrate the findings from their impact assessments across relevant internal functions and processes, and take appropriate action.*

(a) Effective integration requires that:

- (i) Responsibility for addressing such impacts is assigned to the appropriate level and function within the business enterprise;*
- (ii) Internal decision-making, budget allocations and oversight processes enable effective responses to such impacts.*

(b) Appropriate action will vary according to:

- (i) Whether the business enterprise causes or contributes to an adverse impact, or whether it is involved solely because the impact is directly linked to its operations, products or services by a business relationship;*
- (ii) The extent of its leverage in addressing the adverse impact.*

Principle 20. *In order to verify whether adverse human rights impacts are being addressed, business enterprises should track the effectiveness of their response. Tracking should:*

- (a) Be based on appropriate qualitative and quantitative indicators;*
- (b) Draw on feedback from both internal and external sources, including affected stakeholders.*

Principle 21. *In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns*

are raised by or on behalf of affected stakeholders. Business enterprises whose operations or operating contexts pose risks of severe human rights impacts should report formally on how they address them. In all instances, communications should:

- (a) Be of a form and frequency that reflect an enterprise's human rights impacts and that are accessible to its intended audiences;*
- (b) Provide information that is sufficient to evaluate the adequacy of an enterprise's response to the particular human rights impact involved;*
- (c) In turn not pose risks to affected stakeholders, personnel or to legitimate requirements of commercial confidentiality.*

Principle 22. *Where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes.*

Principle 23. *In all contexts, business enterprises should:*

- (a) Comply with all applicable laws and respect internationally recognized human rights, wherever they operate;*
- (b) Seek ways to honour the principles of internationally recognized human rights when faced with conflicting requirements;*
- (c) Treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue wherever they operate.*

Principle 24. *Where it is necessary to prioritize actions to address actual and potential adverse human rights impacts, business enterprises should first seek to prevent and mitigate those that are most severe or where delayed response would make them irremediable.*

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

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

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

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

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

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

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

- (a) Legitimate: enabling trust from the stakeholder groups for whose use they are intended, and being accountable for the fair conduct of grievance processes;*
- (b) Accessible: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;*
- (c) Predictable: providing a clear and known procedure with an indicative time frame for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;*
- (d) Equitable: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;*
- (e) Transparent: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;*
- (f) Rights-compatible: ensuring that outcomes and remedies accord with internationally recognized human rights;*
- (g) A source of continuous learning: drawing on relevant measures to identify lessons for improving the mechanism and preventing future grievances and harms;*

Operational-level mechanisms should also be:

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

I – THE STATE’S OBLIGATION TO PROTECT HUMAN RIGHTS

France helps reinforce human rights and social and environmental standards at the national, European and international levels, offering constitutional, legislative and regulatory protections.

France adheres to all the instruments that are part of the international business and human rights framework, and is present in all relevant forums (the United Nations–UN, the International Labour Organization–ILO, the Organisation for Economic Co-operation and Development–OECD, the European Union–EU, the Council of Europe, the International Organization for Standardization–ISO, etc.).

In the diplomacy field, France appointed an ambassador for bioethics and corporate social responsibility (CSR) in 2008.

“With the challenges of sustainable development increasingly high on the international agenda, corporate social responsibility (CSR), defined as the ways in which businesses integrate Sustainable Development Goals into their operations by controlling their societal impacts and incorporating societal expectations, is currently being negotiated in a large number of forums.”²

THE INTERNATIONAL FRAMEWORK

1. THE UNITED NATIONS (UN)

The list of human rights instruments to which France is a party can be consulted on the website of the United Nations Commission on Human Rights: http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?CountryID=62&Lang=EN

Most international CSR standards refer to the UN instruments that are part of what is known as the “International Bill of Human Rights”, which includes the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), its two optional protocols, and the International Covenant on Economic, Social and Cultural

² Extract taken from: <http://www.diplomatie.gouv.fr/fr/politique-etrangere-de-la-france/diplomatie-economique-et-commerce-exterieur/peser-sur-le-cadre-de-regulation-europeen-et-international-dans-le-sens-de-nos/focus-l-engagement-de-la-france-pour-la-responsabilite-sociale-des-entreprises/> (in French)

Rights (ICESCR). Under this charter, States have an obligation to protect all human rights, which are considered indivisible (see the Vienna Declaration of 1993), in their home territories and abroad.

Furthermore, France is one of the countries with the largest commitment to the UN Global Compact. Today, more than 900 French businesses participate in this international programme, forming the second-largest network in the world. This voluntary social accountability initiative was popular among French businesses even before the UN Guiding Principles were adopted in 2011.

In addition, despite voting against this initiative, France is an observer of the UN's intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, which seeks to elaborate an international legally binding instrument. This working group was founded in June 2014 by the UN's Human Rights Council. France took part in the first two meetings and was joined in 2016 by the EU, whose participation had been conditional on a number of parameters being met to ensure the process's credibility.

During the World Summit on Sustainable Development on 25 September 2015, the UN adopted the 2030 Agenda, a set of 17 [Sustainable Development Goals](#) (SDGs). The SDGs apply to all UN Member States, including France. They are global goals that aim to end poverty, fight inequalities and tackle climate change. This programme builds on the eight [Millennium Development Goals](#) (MDGs).

Businesses are strongly encouraged to take measures to help attain these 17 goals, and to include their results in management reports.

France also 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. This group successfully advocated for reporting to be reinforced and extended to all SDGs.

Lastly, France hosted the 21st Conference of the Parties to the UN Framework Convention on Climate Change (COP 21) in December 2015. Following this conference, an agreement was reached to fight climate change and keep the global temperature rise below 2° C.

Not only were these negotiations between States extremely important, they were also an opportunity for the private sector to show its willingness to take part in the crucial battle for the future of the planet. Commitments to global climate issues will be carefully monitored, particularly through reporting on action taken to deliver them.

2. THE INTERNATIONAL LABOUR ORGANIZATION (ILO)

France is second to just one other country in its ratification of ILO conventions. It has ratified 127 conventions, including the eight fundamental conventions and the four governance conventions (considered priority instruments). It regularly publishes reports on the enforcement of these conventions, which are submitted to the organization's Committee of Experts on the Application of Conventions and Recommendations. The observations and recommendations of this committee are taken into account when revising national regulatory instruments and practices. France is committed to seeing ILO, a source of international labour laws, establish a shared reference standard based on a common interpretation of conventions. It actively supports the universal ratification process for ILO's eight fundamental conventions. For several years, it has also underlined the need to reinforce the organization's supervisory system.

France is one of ILO's more active members and has a permanent seat on the organization's Governing Body. It adheres to and promotes the Decent Work Agenda, and fully supports the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (the MNE Declaration). The country has signed a four-year partnership agreement with the International Labour Office, which involves implementing CSR initiatives and contributing to the Better Work Programme.

3. THE ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT (OECD)

France adheres to the OECD Guidelines for Multinational Enterprises, which were revised in 2011 to include the UN Guiding Principles.

The French National Contact Point (NCP) for the OECD Guidelines—see Part III below—is a mediation body that aims to resolve conflicts while promoting and applying these guidelines. Although the measures it applies are not binding (particularly in the legal sense), it is one of the most active of the 46 existing NCPs. Its actions to promote the OECD Guidelines include: publishing a report on the actions to be taken following the Rana Plaza tragedy,³ organizing a ministerial session chaired by France and the Netherlands which took place on the sidelines of the OECD Forum on Responsible Business Conduct in June 2014, contributing to work completed by the G7 on global supply chains in 2015, and promoting the Guidelines and the work of the NCP.

The NGO coalition OECD Watch published a report analysing NCP complaints filed by NGOs over a 15-year period (which represented around 50% of all cases). It highlighted the need to reinforce the mechanisms and resources available to NCPs to improve efficiency and provide real access to remedy for victims.

Lastly, France finances actions supporting the implementation of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. It is also very active in the working group developing a guide for the textile industry, following the recommendations of its NCP in this field.

³ French National Contact Point for Implementation of the OECD Guidelines for Multinational Enterprises, [NCP Report on Implementation of the OECD Guidelines in the Textile and Clothing Sector](#), December 2013.

4. THE INTERNATIONAL ORGANIZATION FOR STANDARDIZATION (ISO)

France actively contributed to work completed by ISO which resulted in the adoption of the ISO 26000 standard on social responsibility for businesses and organizations. This standard seeks to promote a common understanding of social responsibility, but cannot be used for certification. The ISO 26000 standard deals with seven core subjects, one of which is human rights.⁴

The ISO 26000 standard introduces the notion of a sphere of influence (Article 2.9), which is defined as an “area or political, contractual or economic relationships across which an organization has the ability to affect the decisions or activities of individuals or organizations”. It covers the area over which an organization exercises power – for example, its capacity to affect others’ actions and behaviour without challenging their legal autonomy.

The standard also defines the concept of due diligence, describing it as a “comprehensive, proactive process to identify the actual and potential negative social, environmental and economic impacts of an organization’s decisions and activities over the entire life cycle of a project or organizational activity, with the aim of avoiding and mitigating negative impacts”.

In addition, France steered work on the voluntary international standard ISO 20400, which provides guidance on sustainable procurement for organizations in the public and private sectors, through the French standardization organization AFNOR. This standard aims to establish a basic frame of reference to tackle the practices of social and environmental dumping. It was approved in late January, which paved the way for its publication.

5. THE INTERNATIONAL ORGANISATION OF LA FRANCOPHONIE (OIF)

At their 12th summit in Quebec in October 2008, OIF Heads of State and Government formally undertook to “promote social/societal and environmental corporate responsibility, in particular by encouraging the companies from La Francophonie Member States to adhere to the relevant instruments and international standards and principles, as well as by promoting their harmonization.”

France therefore supports social and environmental corporate responsibility, as stated in the final declarations of the 2008 and 2014 summits. The OIF could be encouraged to cooperate with national consultative human rights commissions on these issues.

⁴ The seven core subjects dealt with by the ISO 26000 standard are: organizational governance, human rights, labour practices, the environment, fair operating practices, consumer issues, and community involvement and development.

PROPOSAL FOR ACTION NO.1

ACTIONS UNDERWAY:

- France is participating in work carried out by 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, subject to the integration of parameters defined with our European Union partners, in order to ensure that the process respects the unanimity and integrity of the UN Guiding Principles (applicability to all businesses, consultation with businesses and integration of UN Guiding Principles).
- Working with the [Group of Friends of Paragraph 47 of the Rio+20 Declaration](#), France supports the reinforcement of reporting requirements in the environmental, social and governance fields, especially with respect to the implementation of the [Sustainable Development Goals adopted on 25 September 2015](#).
- France encourages States to ratify and apply ILO conventions, especially fundamental conventions, by making full use of the supervisory system.
- France seeks to ensure that the issues of decent work, occupational health and safety and supply chains are addressed by the G20, particularly by working with Germany, whose presidency runs from 2016 to 2017. It also seeks to build on the G7's commitments to the UN Guiding Principles in 2015, as well as commitments made during the International Labour Conference in June 2016, one of the three themes of which was "decent work in global supply chains".
- France actively contributes to OECD activities in the field of responsible business conduct, particularly its work on due diligence (in the textile and finance sectors) and reinforcing the OECD Guidelines to mark their 40th anniversary (from June 2016 onwards).
- France supports the implementation of the ICESCR, in particular in the economic and technical fields, through national efforts and international assistance and cooperation.
- The French Government and French businesses are committed to addressing their actions' adverse impacts on populations in regions in which they operate, in France and abroad, in accordance with the country's obligation to provide protection under the ICESCR.
- As outlined in the UN Guiding Principles, France encourages embassies to be vigilant with respect to the human rights and environmental performances of French economic actors. In particular, the French Ministry of Foreign Affairs and International Development has sent the CSR guide to all diplomatic posts since 2015.

ACTIONS TO BE IMPLEMENTED:

- Implement the UN Guiding Principles in the battle against climate change, following commitments made during COP 21.
- Work to enhance cooperation between the World Trade Organization (WTO) and ILO to better integrate international social standards on responsible production processes and methods (for example, targeting child labour and forced labour), in order to promote a level playing field that takes into account existing frameworks and regulations.

THE EUROPEAN FRAMEWORK

6. THE COUNCIL OF EUROPE

France supported the adoption of a resolution on human rights and business in 2010. In early 2013, the Committee of Ministers recommended that a political declaration supporting the UN Guiding Principles be drafted by the end of 2015 along with a non-binding instrument incorporating good practices to bridge gaps in the implementation of the Guiding Principles in Europe. The political declaration supporting the UN Guiding Principles was adopted in April 2014 and the [Recommendation CM/Rec\(2016\)3 on human rights and business](#) was adopted by the Committee of Ministers of the Council of Europe on 2 March 2016.

Currently this recommendation includes the following provisions:

“II. The State duty to protect human rights

13. Member States should:

- apply such measures as may be necessary to require business enterprises operating within their territorial jurisdiction to respect human rights;
- apply such measures as may be necessary to require, as appropriate, business enterprises domiciled in their jurisdiction to respect human rights throughout their operations abroad;
- encourage and support these business enterprises by other means so that they respect human rights throughout their operations.

[...]

20. Member States should apply such measures as may be necessary to encourage or, where appropriate, require that:

- business enterprises domiciled within their jurisdiction apply human rights due diligence throughout their operations;
- business enterprises conducting substantial activities within their jurisdiction carry out human rights due diligence in respect of such activities; including project-specific human rights impact assessments, as appropriate to the size of the business enterprise and the nature and context of the operation.”

A mid-term review of the implementation of the recommendation is planned within the five years following its adoption.

7. THE EUROPEAN UNION (EU)

France has played an important role in ensuring that these issues are high on the European agenda, particularly with respect to the adoption of the European directive on binding non-financial reporting, which France actively supported during negotiations.⁵ It also promoted the inclusion of social, environmental and governance standards in trade and investment

⁵ See Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups, OJ L 330 of 15 November 2014.

agreements (see section 8 below). It helped to ensure that the conclusions of the Council of the EU under the Dutch Presidency were adopted, supporting the enforcement of the UN Guiding Principles on Business and Human Rights and their integration into development policy.

Following the proposal for a European regulation on the traceability of minerals from conflict zones,⁶ France supported an ambitious draft regulation on responsible supply chains for minerals in conflict zones and high-risk areas. The regulation on due diligence for conflict minerals was approved at a plenary session of the European Parliament in March 2017, following the political understanding announced by the Council in June 2016. France will work to ensure that it is correctly implemented and quickly evaluated so it can be reinforced if necessary.

France could play a key role in the adoption of a common European framework on due diligence. The French National Assembly launched a parliamentary “green card” initiative to this effect.

PROPOSAL FOR ACTION NO.2

ACTIONS UNDERWAY:

- France has made human rights a requirement in non-financial reporting following the transposition of European Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups.
- France is promoting the notion of due diligence at the European level to encourage the creation of a common framework based on the legislative framework adopted in France.
- France has transposed the European Directive on trade secrets into national law, allowing businesses to protect trade secrets while assuring the necessary transparency of business activities and conduct, and the protection of whistleblowers acting in the public interest.

France’s General Secretariat for European Affairs will support this work and distribute relevant documentation to lead ministries, in order to guarantee inter-ministerial coordination on European issues and their assessment by European institutions.

⁶ European Parliament, *Les minéraux de conflits. La proposition de règlement européen* (Conflict minerals, proposal for a European regulation), briefing, February 2015.

8. TRADE AND INVESTMENT AGREEMENTS

In its 2013 opinion, the CNCDH underlined that “the need for coherence should guide France’s foreign policy” and recommended that, in accordance with Guiding Principle no.10, “the Government support and promote the aforementioned instruments within multilateral institutions dealing with economic, commercial and financial issues, including those that are binding, that are designed to ensure that businesses respect human rights.”

As for the National CSR Platform, it issued the following recommendations:

- “ - Promote CSR and human rights in international trade, finance and investment agreements;
- Increase the involvement of stakeholders in impact studies completed before trade negotiations with respect to CSR;
- Ensure social and environmental clauses are included and respected under these agreements;
- Reinforce the monitoring and evaluation of these agreements.”⁷

France discussed CSR issues in a report on its international trade strategy and European trade policy (December 2015), clearly indicating that CSR is a concern addressed in its trade policies.

State measures to control access to domestic markets are powerful tools when it comes to protecting and supporting businesses that respect human rights.

However, in a document dated 24 June 2016, the Committee on Economic, Social and Cultural Rights expressed its concern at “the failure to devote sufficient attention to the impact that bilateral or multilateral trade or investment agreements concluded or being negotiated by the State party or the European Union have or will have on the enjoyment of Covenant rights in the other countries that are party to those agreements. The Committee is particularly concerned by the fact that the mechanisms for settling disputes between States and investors provided for in several agreements could reduce the State’s ability to protect and achieve some of the Covenant rights (art. 2 (1)).”⁸ Indeed, most bilateral investment agreements and a growing number of bilateral and regional trade agreements implement mechanisms for investor-State dispute settlement (ISDS). ISDS enables foreign investors to bring arbitration proceedings when they consider that host States have not complied with the terms of the original agreement. ISDS makes it possible to obtain rulings against States that do not respect their commitments (for example, due to discrimination on the basis of gender, religion, nationality, etc.). In 2014, more than 600 cases were registered around the world, not including private disputes between parties whose details were kept confidential.

In 2013, the EU and the United States began negotiating a Transatlantic Free Trade Agreement (TAFTA,) also known as the Transatlantic Trade and Investment Partnership (TTIP), which originally featured an ISDS clause. The EU has suggested replacing the ISDS clause with a bilateral investment dispute court or Investment Court System until a

⁷ Source: *Rapport du Groupe de travail n°3 – Implications de la responsabilité des entreprises sur leur chaîne de valeur (filiales et fournisseurs)* (report by working group 3 – The implications of corporate responsibility on businesses’ value chains (subsidiaries and suppliers) , CSR Platform, November 2014

⁸ Concluding observations on the fourth periodic report of France. CESCR E/C.12/FRA/CO/4

permanent multilateral court can be established. This reform is being defended in all European trade negotiations, and has already been accepted by Canada and Vietnam.

European trade agreements incorporate CSR and adherence to international conventions on labour and the environment. EU free trade agreements all include sustainable development chapters, which contain provisions on labour law and environmental protection. These chapters also refer to CSR. Provisions mainly reiterate key existing multilateral agreements (for example, ILO's fundamental conventions in the labour field and multilateral environmental agreements in the environmental field). They also set out cooperation mechanisms for the parties in order to support progress in these fields. Sustainable development chapters in EU free trade agreements and investment agreements contain two further important provisions: one prevents parties to the agreement from lowering social and environmental standards to promote trade and attract investments; the other confirms States' right to regulate in the social and environmental fields.

These provisions have been included in European trade agreements since 2008. They are now systematically incorporated into agreements being negotiated, including the TTIP. The European Commission can adapt commitments to social and environmental standards based on a country's level of development.

Otherwise, France is currently revising its model agreement for the protection of investments. In particular, it is planning to significantly reinforce provisions on CSR and the State's capacity to regulate in the social, environmental, health and cultural fields, as per the European draft model.

From the French perspective, addressing these issues in free trade agreements results in a number of weaknesses:

- Firstly, State-to-State dispute settlement (SSDS) mechanisms do not apply to social and environmental standards and human rights clauses. If standards are not met, consultations take place between the EU and the third country, after which an expert committee is created to suggest possible solutions. Moreover, European trade agreements do not provide for sanctions, unlike US agreements, which have lower human rights standards than those concluded by the EU. The lack of sanctions makes these provisions difficult to enforce.
- Secondly, although trade agreements include social and environmental standards and human rights clauses taken from the main international texts on labour laws and the environment, international organizations (the UNDP, ILO, etc.) are not involved in negotiations, despite the fact they carefully monitor the implementation of these texts (through regular reports by State parties, etc.). Instead, in trade agreements, a committee meeting at least once per year is charged with monitoring the implementation of sustainable development chapters. Civil society (NGOs and non-profit organizations) can also act as whistleblowers if these regulations are breached, although this power is not institutionalized. Discussions with civil society are generally formalized by way of an annual forum or consultative committee bringing together stakeholders from different backgrounds.

To respect human rights and support responsible practices, social and environmental costs must be included in cost prices. The EU condemns social and environmental dumping and selling at a loss. France must encourage the international bodies to which it is party to implement measures guaranteeing fair and undistorted competition.

In 2013, France issued a number of proposals to improve the way in which social and environmental standards were addressed in European trade agreements.⁹ These proposals are still relevant.

These proposals focus on five main areas:

1. Improving cooperation with international organizations working in the labour and environmental protection fields (ILO, UNDP, UNEP, etc.). Some of these organizations, particularly UN organizations, are running cooperation projects in countries currently negotiating trade agreements with the EU. Some of these cooperation activities are oriented in such a way that they directly support the social and environmental goals set down in agreements. This is the case for some countries that have just concluded trade agreements or countries benefitting from Europe's Generalised Scheme of Preferences (GSP).¹⁰
2. Improving the evaluation of sustainable development chapters through rigorous impact assessments. These impact assessments must provide a clear overview of social and environmental standards in countries negotiating agreements with the EU. France has completed a major revision of the European manual used to write these impact assessments. This could lead to progress in the field.
3. Giving civil society more power to monitor these chapters. In addition to the annual forums currently planned by the European Commission, European trade agreements could give civil society (NGOs and trade unions) a formal "whistleblower" role, denouncing breaches of social and environmental standards. The Commission has decided not to look further into this option at this stage.
4. Improving the enforcement of existing sustainable development chapters by reinforcing implementation mechanisms. In November 2015, the French Minister of State for Foreign Trade sent a letter to European Commissioner Cecilia Malström asking the European Commission to investigate ways of including these chapters in dispute settlement mechanisms in trade agreements.
5. Increasing the involvement of businesses by including CSR requirements in sustainable development chapters in trade agreements. Currently, these chapters contain a short paragraph on CSR, but this should be reinforced by adding references to key international texts on the subject (particularly the OECD Guidelines).

PROPOSAL FOR ACTION NO.3

ACTIONS UNDERWAY:

- France has undertaken to promote the UN Guiding Principles in its trade relations with other States and confirms its commitment to the hierarchy of norms when signing trade and investment agreements.

⁹ Proposals by the French Ministry of Foreign Trade to reinforce social and environmental standards on the European level, submitted to the European Commission in March 2013.

¹⁰ The European Generalised Scheme of Preferences (GSP) regulation makes it possible to give trade preferences to developing countries based on economic criteria (GDP) as well as social and environmental criteria (ratification of international agreements).

- France also checks that all trade and investment agreements comply with international human rights law.
- France, working with other European partners who support this initiative, is building on proposals made to the previous European Commission (in March 2013) to reinforce social and environmental standards in free trade agreements and monitor their enforcement.
- France supports the inclusion of a new European model investment chapter in all EU trade negotiations and, in the long run, the adoption of this approach in bilateral French agreements, in order to reinforce States' right to regulate and overhaul investor-State dispute settlement procedures.
- France contributes to the debate on setting up a permanent multilateral court to deal with investment disputes.

ACTIONS TO BE IMPLEMENTED:

- Monitor compliance with the recommendations issued by the Committee on Economic, Social and Cultural Rights in its opinion of 24 June 2016.
- Encourage impact assessments to be completed before and after agreements are concluded and make all free trade agreements conditional on the inclusion of human rights clauses and the prioritization of the UN Guiding Principles.
- Ensure that sustainable development chapters in EU free trade agreements are binding and enforceable under these agreements' dispute settlement mechanisms.
- Support responsible businesses by giving goods and services produced in compliance with human rights obligations better access to French and European markets.
- Initiate discussions on the consequences of failing to respect human rights and the inclusion of human rights in policies tackling unfair competition.
- Contribute to debate on recognizing the concept of a group of companies in the EU.

France's General Secretariat for European Affairs will support this work and distribute relevant documentation to lead ministries, in order to guarantee inter-ministerial coordination on European issues and their assessment by European institutions.

THE NATIONAL FRAMEWORK

9. THE PROTECTION OF HUMAN RIGHTS AND THE ENVIRONMENT: CONSTITUTIONAL GUARANTEES

In addition to international treaties, which take precedence over national laws, some of these principles are guaranteed in constitutional documents, including the Declaration of Human and Civic Rights of 1789 (published in the preamble) and the Charter for the Environment of 2004.

The charter acknowledges a number of rights, including "the right to live in a balanced environment which shows due respect for health" (Article 1), the obligation for public policies

to “promote sustainable development” and “reconcile the protection and enhancement of the environment with economic development and social progress” (Article 6), the right to “have access to information pertaining to the environment” and to “participate in the public decision-taking process likely to affect the environment” (Article 7), as well as the principles of precaution and prevention in the environmental field.

These constitutional guarantees justify a number of standards that apply to consumer products. However, they can be challenged as a result of free trade agreements.

10. THE REINFORCEMENT OF LEGISLATION

Recent public policies have led France to adopt new legislative measures supporting CSR.

- For approximately ten years, French legislation has required all large companies to publish detailed information on their CSR policies. The 2001 Act on New Economic Regulations, otherwise known as the NRE Act, requires listed companies to disclose specific social and environmental information in their management reports. The Act of 12 July 2010, also referred to as the Grenelle II Act, reinforced transparency requirements in two ways:
 - Under Article 224 of this act, the annual reports of asset management companies must mention the ways in which their investment policies take into account environmental, social and governance criteria.
 - Under Article 225 of this act and the decree of 24 April 2012, companies must provide more detailed information, non-listed companies that exceed thresholds (for example, the threshold of 500 employees) must respect transparency obligations,¹¹ and independent third parties must check the information published.
- Articles 70-IV and 173-IV of the Act on Energy Transition for Green Growth of 17 August 2015 extended reporting requirements by introducing the concept of the circular economy and asking companies to provide information on how the use of their goods and services affected climate change. An implementing decree was adopted in August 2016 to clarify these obligations.¹²

France also played a key role in developing transparency obligations for companies at the European level. It was the main supporter of the draft directive on non-financial reporting obligations, published on 22 October 2014, which requires large European listed companies to publish reports on their social, environmental, human rights and corruption policies. France encouraged the European Commission to take an ambitious approach when adopting the guidelines discussed in the directive. The directive is currently in the final stages of being transposed into French law. This will reinforce existing non-financial reporting requirements for companies.

- In the development field, the Act of 7 July 2014 on France’s strategy for development and international solidarity states that policy in this field must take into account “the

¹¹ Listed companies and non-listed companies with over 500 employees and more than €100 million in net turnover (excluding SASs or simplified joint stock companies, SARLs or limited liability companies, SNCs or partnerships, SCIs or property investment companies and GIEs or economic interest groups) must publish non-financial information.

¹² Decree 2016-1138 of 19 August 2016 implementing Article L. 225-102-1 of the French Commercial Code on environmental information to be provided for in the management report.

social and environmental responsibility of public and private actors”. In addition, “France shall promote this requirement to partner countries and other donors”. Furthermore, “It shall also encourage businesses with their headquarters in France and with offices abroad to implement the OECD Guidelines for Multinational Enterprises and the UN Guiding Principles on Business and Human Rights”. Also under this act, “Companies shall implement risk management procedures to identify, prevent or mitigate social, health and environmental damage and human rights abuses that may arise as a result of their operations in partner countries”.

- The Act of 10 July 2014 on unfair social competition was adopted to transpose into national law the European Directive on the posting of workers, which seeks to fight illegal labour practices and fraud in this field. Not only does the act create due diligence obligations, it also provides for joint liability (over and above the requirements in the European Directive) whenever posted workers are used (it establishes the liability of project owners and principals with respect to their subcontractors and co-contractors).
- The Act of 21 July 2014 defined the scope of the social and solidarity economy (SSE) for the first time. The notion of an SSE enterprise now covers traditional actors (non-profit organizations, mutual societies, cooperatives, and foundations) as well as new forms of social enterprise (commercial companies which pursue socially useful goals and decide to adopt SSE principles). Under this definition, the SSE represents 10% of GDP and 2.3 million employees. After the Rana Plaza tragedy, France wished to give consumers the ability to check manufacturing conditions for goods sold in France by distributors, manufacturers and producers. Article 93 of the SSE Act, which discusses transparency obligations with respect to the social conditions of a product's manufacture, entered into force on 1 August 2014.

Article 13 of the SSE Act seeks to ensure that more public purchases are made from socially responsible businesses (many of which are part of the SSE) and that better use is made of social clauses in procurement contracts. It states that, if a maximum annual procurement amount is exceeded, contracting authorities must adopt schemes promoting socially responsible purchases. This article came into force on 1 February 2015 (Decree of 28 January 2015).

- Article 11 of the SSE Act creates a “socially useful solidarity-based enterprise” accreditation which is awarded to businesses with high social standards so they can attract private financing from socially minded investors, particularly solidarity-based employee savings. This article came into force in the first quarter of 2015 after the Conseil d'Etat (Council of State) issued a decree to this effect.
- An act on a duty of vigilance for parent companies and outsourcing companies was promulgated on 27 March 2017. Under this act, companies that employ more than 5,000 employees in France, or more than 10,000 employees in France and abroad, must draft and implement due diligence plans. Plans must set out reasonable measures to identify risks and prevent serious abuse of human rights, fundamental freedoms, health, personal safety and the environment, arising as a result of the operations of the company, of companies under its direct or indirect control, or of subcontractors and suppliers with which it has well-established commercial relationships.

11. THE INTER-MINISTERIAL EXEMPLARY ADMINISTRATION ACTION PLAN AND THE NATIONAL ACTION PLAN FOR SUSTAINABLE PUBLIC PROCUREMENT

On 17 February 2015, the Prime Minister issued instructions concerning the 2015-2020 Inter-ministerial Exemplary Administration Plan, on the basis of which each ministry was requested to draw up its own exemplary administration plan. These plans must outline initiatives to be implemented by 2020 in the fields of energy saving, sustainable mobility, resource consumption, waste reduction and biodiversity preservation. They may also address social and societal impacts as part of their focus on social and environmental responsibility.

➤ Public procurement policy^{13 14}

Under Article 15 of Decree 2016-360 of 25 March 2016, contracting authorities may choose to include general administrative terms and conditions in public contracts. These terms and conditions cover general rather than specific provisions (performance of services, payment, auditing of services, presentation of subcontractors, deadlines, penalties, general conditions, etc.). Article 6 of these terms covers the protection of labour and working conditions, and states that contract holders must respect the working conditions set down in the labour laws and regulations of the country in which workers are hired or, otherwise, ILO's eight fundamental conventions where these have not been incorporated into the country's laws and regulations.

The National Action Plan on Sustainable Public Procurement seeks to help the State, local government and hospitals make sustainable purchases as per Ordinance 2015-899 of 23 July 2015 and Decree 2016-360 of 25 March 2016 on public procurement.

This national action plan encourages those making purchases for the State or local government to introduce social and environmental clauses in public contracts. To this end, it sets specific targets for social and environmental provisions. These targets may be reflected in special requirements in the tender's terms and conditions, specific criteria used to select suppliers' bids and/or performance clauses supporting social and/or environmental progress that are applicable to successful tenderers. A register (of public procurement contracts worth over €90,000 with provisions) is kept by France's Economic Observatory for Public Procurement, with the results being published annually.

The new legal framework for public procurement gives purchasers several ways of addressing social and environmental impacts. Having transposed Article 57 of Directive 2014/24/EU of 26 February 2014 on public procurement, French law now states that public contracts may not be awarded to economic operators that have been found guilty of fraud, corruption or the trafficking or exploitation of human beings (Article 45 of Ordinance 2015-

¹³ In an opinion dated 24 April 2008, the CNCDH recommended that the Government ensure that the public procurement policy of the State and local government respected human rights at the national, European and multilateral levels.

¹⁴ More information can be obtained in the following document: National CSR Platform, *Contribution de la Plateforme RSE pour le Plan national d'actions prioritaires pour le développement de la RSE* (French National Plan for the Development of Corporate Social Responsibility (CSR)), part III(5)(4), "Développer et promouvoir les achats responsables (publics/privés)" (Developing and promoting responsible procurement (public-private)).

899). Article 59 of Decree 2016-360 obliges public purchasers to reject bids that do not comply with applicable laws, particularly in the social and environmental fields. Transposing Article 69 of the abovementioned directive, the decree also enables purchasers to reject tenders that are abnormally low because they do not respect applicable environmental, social and labour obligations established by French law, European law, collective agreements or by international environmental, social and labour law provisions (Article 53 of the abovementioned ordinance and Article 60 of the abovementioned decree). This also applies to subcontractors (Article 62 of the abovementioned ordinance and Article 133 of the abovementioned decree). Finally, over and above the analysis of tenders, Article 18 of Directive 2014/24 requires Member States to “take appropriate measures to ensure that in the performance of public contracts economic operators comply with applicable obligations in the fields of environmental, social and labour law established by Union law, national law, collective agreements or by (...) international environmental, social and labour law provisions.”

12. THE FRENCH PLATFORM FOR PROMOTING GLOBAL ACTION ON CORPORATE SOCIAL RESPONSIBILITY

In a letter dated 24 July 2012, 16 organizations representing employers, employees and civil society asked the French Prime Minister to set up a national platform to support dialogue and consultation between different actors in French society with an interest in CSR (including representatives of businesses, employees, non-profit organizations, NGOs and multi-stakeholder structures) and public authorities (including representatives of central administration, parliament and local government). Its main goal was to prepare a response to the European Commission's request that Member States establish “their own plans or national lists of priority actions to promote CSR in support of the Europe 2020 strategy”.

The Prime Minister agreed to this request and created the French platform for promoting global action on CSR on 17 June 2013.¹⁵

The French platform for promoting global action on CSR is a multi-stakeholder consultation body that is composed of five main groups: economic organizations, trade unions, CSR researchers and developers, public institutions and civil society.

PROPOSAL FOR ACTION NO.4

ACTIONS UNDERWAY:

- The State and local government are committed to promoting and respecting the UN Guiding Principles in all of their activities—as lawmakers, employers and producers.
- The State is committed to ensuring that businesses in which it holds shares respect human rights and the environment.

¹⁵ More information (in French) is available at: <http://www.strategie.gouv.fr/travaux/plateforme-rse/presentation-de-plateforme>

- France ensures that the UN Guiding Principles and other established international texts are respected in public procurement guides, public procurement policies and training for purchasers.
- France is implementing the act on the corporate duty of vigilance.

ACTIONS TO BE IMPLEMENTED:

- Give government services the financial and material resources required to monitor the enforcement of the UN Guiding Principles.
- Encourage the centralization of documentary resources for economic actors so they are more easily accessible by creating, for example, a digital platform for business and human rights.

13. THE ROLE OF PUBLIC AGENCIES

In a 2013 opinion, the CNCDH recommended that the State adopt “measures designed to enable COFACE and its clients to introduce a due diligence process with regards to human rights”. It emphasized that “COFACE's policies and procedures regarding due diligence should be disclosed, along with the projects they insure” and that “it would also be desirable for the information and assessment process adopted with regard to the impact on human rights of operations insured by COFACE to also fall within the jurisdiction of the Ministry of Foreign Affairs and/or the Ministry of the Economy and Finance, the departments of which are able to provide an analysis for each country with regards to respecting human rights, based notably on the ‘information for travellers’ that they produce.” Finally, it stated that “the annual report on the activities of COFACE submitted by France to the European Commission (in accordance with Regulation (EU) 1233/2011) should be discussed at the National Assembly and/or at the Senate and should be the subject of consultations with civil society.”

In addition, the CNCDH recommended that “representatives of civil society and users of those services that are likely to be the subject of public-private partnerships (PPPs) be given a more central role as part of an approach designed to protect and promote the most vulnerable of populations. Indeed, in order for PPPs to be useful for development purposes, it is essential that all stakeholders, including the State, community representatives and users, be kept informed and consulted at all stages of the PPP creation process.” It added that, “in accordance with Guiding Principles nos. 4 and 6, the French State should, by means of its development aid network (the AFD, PROPARCO, the Ministry of the Economy and Finance, the ADETEF, etc.), fulfil its obligation to protect by imposing a series of specifications that include exhaustive impact studies regarding human rights.”

Meanwhile, the National CSR Platform, in its report on the implications of corporate responsibility on businesses’ supply chains (November 2014), recommended that the due diligence measures used by the AFD and COFACE be reinforced, and that these agencies be encouraged to set up mechanisms to deal with complaints from financial beneficiaries in the event of fundamental rights abuses.

➤ **Compagnie française d'assurance pour le commerce extérieur (COFACE)**

The French export credit agency COFACE, which provides guarantees on behalf of the State, systematically applies the Recommendations of the OECD Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence (the "Common Approaches"), most recently negotiated in 2012 by the OECD Export Credits Group. These recommendations cover all types of credit insurance transactions with a repayment term of more than two years, and require reasonable due diligence to be undertaken to ensure that each project complies with host country regulations and the international standards of the World Bank and International Finance Corporation (IFC). The Common Approaches establish strict common standards for OECD countries, and are more ambitious than the UN Guiding Principles as they require detailed due diligence determining project impacts on human rights. They also provide for the quarterly publication of a list of projects guaranteed for more than €10 million, and the publication of data on high-impact projects on the websites of credit agencies one month prior to transactions taking place. Discussions with civil society are held regularly at the OECD. Detailed impact assessments must be completed before COFACE awards government guarantees to projects likely to have major impacts on CSR (pollution, population movements, etc.), especially human rights. The inter-ministerial guarantee commission based at the Ministry of the Economy and Finance, which authorizes COFACE to allocate public funding on behalf of the State, also examines these requirements. Impact assessments are published on COFACE's government guarantees website, and COFACE may request to visit industrial sites while carrying out due diligence or during the guarantee period. These analyses generally result in the inclusion of specific suspensive conditions (financial covenants) and detailed action plans to manage human rights impacts during the credit period. The OECD Common Approaches only apply to credit insurance transactions of more than two years.

Businesses that request government guarantees from COFACE are systematically given information on the OECD Guidelines. When applying for credit insurance, businesses must confirm they have read and understood the OECD Guidelines.

A group of technical experts from export credit agencies has been mandated by the OECD Export Credits Group to work on the implementation of the Common Approaches, particularly in the field of human rights.

➤ **The Agence Française de Développement (AFD)**

As mentioned above, pursuant to Article 8 of the French Act of 7 July 2014 France's strategy for development and international solidarity, the development and international solidarity policy must take into account the social and environmental responsibility of public and private actors. Furthermore, companies must implement risk management procedures to identify, prevent or mitigate social, health and environmental damage and human rights abuses that may arise as a result of their activities in partner countries.

Also pursuant to Article 8, the AFD must incorporate social responsibility into its governance system and operations. It must implement measures to evaluate and control the environmental and social risks of the operations it finances, and to promote the financial transparency of businesses involved in these operations, country by country. Its annual report must mention the ways in which it addresses social responsibility requirements.¹⁶

The AFD considers human rights when selecting the projects it finances. Every year, it produces a corporate social responsibility report which mentions human rights in accordance

¹⁶ [French Law of 7 July 2014 on guidelines and programme priorities concerning the development and international solidarity policy \(Article 8\)](#) (in French)

with the ISO 26000 standard. It also has an exclusion list which prevents it from financing projects that involve forced labour, child labour, serious environmental damage, the destruction of cultural heritage, the broadcasting of discriminatory or anti-democratic statements, and diamond mining activities outside of the Kimberley Process.

Financing agreements with partners and beneficiaries contain binding due diligence clauses, which must mention the duty to respect ILO's fundamental conventions. From the social perspective, all risks connected with respecting fundamental human rights, as established in recognized international standards, texts and agreements, are considered.

To reinforce this policy, the AFD adopted a 2014-2016 CSR action plan developed with internal and external stakeholders. The goals of this action plan are to increase transparency by consulting with relevant parties and by publishing information on AFD-funded projects and final reports. Other information is available upon request, including social and environmental impact assessments. Since 2015, the AFD has published project data on AFD-funded projects on an open data platform,¹⁷ designed using the International Aid Transparency Initiative (IATI) accountability framework. Since January 2016, the AFD has published information on all sovereign financing.

The owners of projects with the highest social and environmental risks are asked to implement grievance management mechanisms to deal with alerts, questions, recommendations and requests from all interested parties at any time. In parallel, the AFD and PROPARCO define the structure and organization of specific grievance management mechanisms in the environmental and social fields. These mechanisms will enable third parties affected by AFD- or PROPARCO-funded projects to lodge complaints for environmental and/or social reasons (pollution, destruction of natural resources, human rights, land grabbing, forced displacement, etc.). These initiatives took effect in 2016.

In addition, the AFD is in the process of reinforcing CSR requirements in public works contracts, with the goal of awarding these contracts to qualified companies with experience in managing projects with significant social and environmental impacts. This initiative to include more stringent social and environmental clauses in contractual documents for projects with high social and environmental risks affected 22 contracts in 2015, exceeding the target of 16 set by the Agency's 2014-2016 targets and resources contract.

The AFD has a set of robust rules and procedures to assess social and environmental risks and impacts for each of the projects for which it receives funding proposals. Recently, these procedures were amended and their scope widened to include an explicit reference to the World Bank's Safeguard Policies (PROPARCO continues to apply the IFC standards).

Currently, the AFD does not apply Article 5 of Chapter III of the Act on France's strategy for development and international solidarity, in particular the requirement to implement measures promoting the financial transparency of businesses involved in operations, country by country. Instead, the financial operators and private sector actors with which the AFD Group and PROPARCO work are encouraged to disclose information on their turnover, profits, employee numbers and taxes paid in each country they are based in. This measure, called "country-by-country reporting", is already compulsory for European banks.

¹⁷ [Opendata.afd](https://opendata.afd.fr/)

PROPOSAL FOR ACTION NO.5

ACTIONS UNDERWAY:

COFACE

- COFACE Government Guarantees and the Ministry of the Economy and Finance are currently examining whether to implement an IT module widening the scope of checks, to highlight at-risk industries or countries in the short, medium and long term. This would make it possible to check compliance with the UN Guiding Principles by reviewing all credit insurance operations and assessing human rights risks.

- COFACE is continuing efforts to make information on reasonable due diligence in the social and environmental fields (which include human rights) visible and accessible on its website.

THE AFD

- When evaluating extractive industry projects, the AFD ensures that funding recipients comply with the Extractive Industries Transparency Initiative (EITI), without excluding those who respect EITI standards but are not based in EITI countries.

- The AFD supports the implementation of universal social protection and the promotion of initiatives to develop decent work (the creation of decent jobs, skills upgrading, training and the transition towards sustainable employment) in accordance with the AFD's partnership with the International Labour Office and the priority areas in the ILO-France partnership agreement.

- The AFD has implemented a grievance management mechanism to deal with environmental and social complaints.

- The AFD is reinforcing CSR and human rights criteria in 80% of pending public works contracts with high social and environmental impacts.

- The AFD is working to reduce gender inequality in AFD-funded operations.¹⁸

- The AFD is reinforcing the human rights focus of social clauses.

- The AFD seeks to ensure that this policy regarding "non-cooperative jurisdictions" is respected.

ACTIONS TO BE IMPLEMENTED:

- Allocate the resources necessary to raise business awareness of the OECD Guidelines in AFD- and COFACE-funded operations.

- Make AFD funding for businesses conditional on implementing or undertaking to implement non-financial reporting and a CSR due diligence plan for projects, or on the enforcement of host country or international standards.

¹⁸ In line with its framework for crosscutting action on gender, AFD has committed to ensuring that at least 50% of operations funded in foreign countries in 2017 are graded 1 or 2 by the OECD Development Assistance Committee gender equality policy marker (with the exception of AFD funding in the form of global or sectoral budget assistance or unallocated credit lines). In 2015, 39.4% of operations met this criterion.

14. REINFORCED RISK ANALYSIS AND INFORMATION

The State must be exemplary and apply all international framework texts on CSR, especially in the human rights field. To do so, it conducts activities providing information and training on the implementation of all major international CSR texts.

On 8 July 2002, France ratified the **Aarhus Convention** on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. This convention seeks to ensure that everyone is able to receive information, participate in decision-making and access justice in the environmental field. As stated in the preamble, “adequate protection of the environment is essential to human well-being and the enjoyment of basic human rights(...)”.¹⁹

The National CSR platform issued recommendations to:

“Involve the State in efforts to inform, be exemplary and monitor the implementation of the main international framework texts on CSR, especially in the human rights field:

- Conduct activities providing information and training on the implementation of all major CSR texts;
- Include CSR in graduate studies and continuing education;
- Ensure that businesses are aware of and comply with these texts.”

PROPOSAL FOR ACTION NO.6

ACTIONS TO BE IMPLEMENTED:

- Complete comparative country risk and industry risk analyses.
- Hold collective discussions on risk analysis.
- Look into creating a database combining embassy information and information from other sources (business circles, international organizations, trade unions, NGOs, etc.).²⁰
- Produce and distribute an educational document summarizing and comparing the main international texts by allocating sufficient resources, particularly to the main public websites concerned.
- Continue to distribute the information brochure and raise awareness among embassies.
- Provide training, particularly to staff of the State and local government, on human rights and environmental obligations for businesses (in business schools, engineering schools, the judiciary, etc.).

15. ECONOMIC SECTORS AND HUMAN RIGHTS

¹⁹ [Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters](#) (Aarhus Convention).

²⁰ Source: *Rapport du Groupe de travail n°3 – Implications de la responsabilité des entreprises sur leur chaîne de valeur (filiales et fournisseurs)* (report by working group 3 – The implications of corporate responsibility on business's value chains (subsidiaries and suppliers), November 2014, §A and §D

Not only must the authorities promote and raise awareness of CSR standards, they must also require extra vigilance with respect to high-risk economic sectors, geographic areas and products.

PROPOSAL FOR ACTION NO.7

All economic sectors:

- Reinforce due diligence, particularly in sectors and countries at risk of human rights abuses.
- Encourage French businesses to develop and implement due diligence plans on the basis of their size.
- Capitalize on the observations in the French NCP's report on the textile and garment sector and begin promoting and adapting these recommendations so they can be enforced in all sectors.

➤ The agricultural and food sector

The strategic importance of national food security and economic opportunities in the agricultural sector have led a number of countries and businesses to invest (and support investment) in agrifood production. Given this large-scale investment, which often involves large-scale land purchases, the international community has sought to implement guidelines and directives to regulate these projects. Two major initiatives have been launched:

- The Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (also known as the VGGT), adopted by the Committee on World Food Security (CFS) in May 2012;
- The Principles for Responsible Investment in Agriculture and Food Systems (also known as the RAI), adopted by the CFS in October 2014, which are partly based on the UN Guiding Principles on Business and Human Rights.

France supports and is politically, technically and financially committed to adopting and implementing these texts. Working with actors involved in French cooperation efforts, it developed the Guide to Ex-Ante Analysis of Agricultural Investment Projects that Affect Land and Property Rights to facilitate the enforcement of these principles. France also actively participated in the drafting of the OECD-FAO Guidance for Responsible Agricultural Supply Chains.

ACTIONS UNDERWAY:

- Partner States are encouraged to apply the Voluntary Guidelines on the Responsible Governance of Tenure of Land (VGGT) and the Principles for Responsible Investment in Agriculture and Food Systems (RAI).
- Recommendations in the Guide to Ex-Ante Analysis of Agricultural Investment Projects that Affect Land and Property Rights are being integrated into the AFD's due diligence procedures in the land, social and environmental fields.

ACTIONS TO BE IMPLEMENTED:

- Ensure the VGGT and RAI are respected by French economic actors abroad. Training on the implementation of these principles and directives will be offered to government employees (in embassies and economic services) and agencies.

➤ The textile and garment sector

Following the collapse of the Rana Plaza textile factory in Bangladesh in April 2013, France's Minister for Foreign Trade at that time asked the OECD National Contact Point (NCP) to clarify the scope of the OECD Guidelines with respect to outsourcing companies' supply chains, and to issue recommendations reinforcing the application of these guidelines so such negligence could be prevented in the future.

The NCP report, produced following hearings with all parties involved, was submitted to the Minister and published online on 2 December 2013. It addresses all actors, and establishes a full range of measures which, once implemented, will enable businesses to oversee supply chains in this sector. The recommendations were shared widely, particularly with the OECD, ILO and EU, and were followed by similar reports published by the Italian and Belgian NCPs.

Following the publication of these recommendations, the OECD set up a working group to develop a guide for the enforcement of the guidelines in the textile sector, at France's insistence. This working group brings together international organizations such as ILO, the private sector, civil society, NCPs and States. The guide will include reinforced due diligence measures to be implemented in this specific sector. The OECD has also planned to set up a platform for shared dialogue and good practices.

As for the EU, it has set up a multi-stakeholder platform for the textile sector.

The G7 included the issue of supply chains in the Leaders' Declaration issued under the German Presidency following the Elmau Summit in June 2015. This was followed by a roadmap, which was adopted by the French Ministries of Social Affairs and Development in October 2015. While the scope of these initiatives extends beyond the textile sector, approved measures will initially apply to this industry. This is the case for the "Vision Zero Fund", which will be created to reinforce workplace safety and reduce workplace accidents in producer countries.

Meanwhile, the NCP is continuing to implement and build on its recommendations, particularly in order to harmonize auditing baselines and mutualize supplier audits.

ACTIONS UNDERWAY:

- France is continuing to raise awareness of the NCP report issued on 2 December 2013, and monitor the implementation of its recommendations in the French textile, garment and distribution sectors.

- France is helping to finalize the OECD Due Diligence Guidance for Responsible Supply Chains in the Garment and Footwear Sector.

- France is promoting the mutualization of audits by outsourcing companies through the working group created by the Ministry of Labour and relevant actors in cooperation with ILO, in connection with initiatives currently being examined by the OECD and European Commission.

- France is determining whether to support the "Vision Zero Fund" following the G7's Leaders' Declaration at Elmau.

➤ The extractive sector

Extractive industries are often considered opaque and at high risk of environmental and human rights abuses. As such, they are subject to heightened due diligence measures and initiatives seeking to address sector-specific risks.

France's actions in this field focus on multilateral and European initiatives reinforcing the legal and regulatory framework for businesses working in the extractive sector, especially in regions with fragile governance systems.

- France helps monitor and finance the implementation of the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas. This document is an international reference in the field of good practices for businesses seeking to identify and manage non-financial risks in their mineral supply chains (funding for armed groups and terrorism, human rights abuses, child labour, corruption, etc.).
- France also helped draft and adopt the OECD Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector. This guide contains recommendations to help businesses in the sector identify and manage the adverse impacts of their operations on communities affected by mining projects.
- France is also active at the EU level. For example, it took part in negotiations on the Conflict Minerals Regulation, which concluded on 22 November 2016. It played a key role in pushing through the adoption of Chapter 10 of the Accounting Directive of 26 June 2013, which requires companies in the extractive sector to report all payments to governments in the countries they operate in, broken down by country and by project. France was one of the first European countries to transpose this requirement.
- Lastly, the French President committed to making France one of the countries of the Extractive Industry Transparency Initiative (EITI). Between 2014 and 2016, France represented the European countries that support this initiative by sitting on the EITI Board.

Implementing the EITI will help reinforce the transparency of financial flows and support dialogue between businesses, the State and civil society addressing the extractive sector's social and environmental impacts on national territories.

ACTIONS UNDERWAY:

- France has launched an ambitious process to become an EITI country.
- France raises awareness among French businesses of their due diligence obligations with respect to mineral supply chains as set out in relevant regulatory initiatives (the OECD Due Diligence Guidance, the EU Conflict Minerals Regulation and national law on due diligence).

➤ The financial sector

Given the financial sector's importance in providing loans, managing assets and financing projects, it has a duty to promote the adoption of responsible management practices by the companies it finances or invests in, especially in the human rights field.

In France, these activities represent €1.063 trillion in loans²¹ (including €303 billion to large businesses), more than €3 trillion in assets managed for third parties²² (including €900 billion invested in businesses)²³ and several hundred billion euros in financing for large projects.²⁴ The leverage effect is therefore considerable. In a statement dated 27 May 2013, the OECD's Norwegian NCP specified that like other enterprises, investors are expected to comply with due diligence requirements recommended by the OECD Guidelines for Multinational Enterprises regarding the respect and protection of human rights including in relation to minority shareholdings.²⁵ The OECD also set up a multi-stakeholder Working Party on Responsible Business Conduct in finance, and developed recommendations to support the implementation of the Guidelines in this sector. France monitored this work closely. Recommendations on responsible business conduct for investors have been established.

One of the instruments France has implemented for businesses is increased transparency by way of non-financial reporting requirements.

There have been a number of voluntary international initiatives by the financial sector to promote human rights (the Equator Principles,²⁶ UNEP Finance Initiative,²⁷ the development of Socially Responsible Investment,²⁸ and the Global Compact²⁹). However, France has implemented a regulatory framework that is relatively unique in that some of its provisions specifically target this sector (the Grenelle II Act of 12 July 2010).

²¹ Drawn and undrawn, source: Banque de France
(https://www.banque-france.fr/uploads/tx_bdfstatistiquescalendrier/2014-03-france-stat-info-credit-aux-entreprises-encours.pdf)

²² Assets can be managed on one's own behalf or on behalf of third parties; in other words, an investor (an individual or institution) can delegate the financial management of capital/savings to a financial intermediary, which most often takes the institutional form of an asset management company.

²³ 2013 data, Source: AFG
(<http://www.afg.asso.fr/en/key-data-2/>)

²⁴ Project finance consists in collecting, combining and structuring funding contributions from various sources to finance large-scale private, public and mixed investments (i.e. transport infrastructure, new industrial complexes, power plants, etc.) and assessing financial viability.

²⁵ https://www.regjeringen.no/contentassets/8d118fcbacdb41918795434c4838f848/nbim_final.pdf

²⁶ The Equator Principles are a risk management framework, adopted by financial institutions, for determining, assessing and managing environmental and social risk in project finance operations. They are based on sustainable environmental and social performance standards and the International Finance Corporation's directives on the environment, health and safety, both general and specific to the financial sector.

²⁷ UNEP Finance Initiative (UNEP-FI) is a global partnership between the United Nations Environment Programme and the financial sector. Over 200 financial institutions, including banks, insurers and investors, work with UNEP to understand the impact of social and environmental considerations on financial performance.

²⁸ Socially Responsible Investment (SRI) is an investment that reconciles economic performance and social and environmental impact by financing enterprises and public bodies that support sustainable development, regardless of their sector of activity. By influencing governance and behaviour, SRI encourages the development of a responsible economy. In France, SRI represented €170 billion in 2013.

²⁹ 1. Businesses should support and respect the protection of internationally proclaimed human rights. / 2. Businesses should make sure that they are not complicit in human rights abuses.

ACTIONS UNDERWAY:

- France promotes, at the national and European levels, investment policies that incorporate due diligence and highlight the principles and practices of institutional investors.
- France promotes initiatives and commitments by the financial sector, particularly those based on the Equator Principles and the Thun Group.
- France is examining whether to extend environmental, social and governance reporting requirements for institutional investors in Europe to cover human rights.

EXAMPLES OF RESPONSIBLE PRACTICES ABROAD:

The Netherlands: risk analysis instrument: www.csrriskcheck.com

Denmark:

- An online platform on human rights indicators, created by the Danish Institute for Human Rights in 2010, aims to identify and manage human rights risks in countries where businesses operate or have suppliers.
- A similar initiative, GoCSR, has been launched for the textile industry.

Sweden:

- The Ministry of Finance launched and directed the publication of a report on the OECD Guidelines and the UN Guiding Principles to help State-owned enterprises apply them in government policy.

The United Kingdom:

- A Business and Human Rights Toolkit has been created to provide detailed guidance to officers in overseas missions, and a Business and Human Rights Resource Centre has been set up.
- An online platform has been funded to provide guidelines and information on the UN Guiding Principles.
- Support has been pledged for an initiative ranking companies' human rights performance:
<https://www.gov.uk/government/news/jo-swinson-pledges-support-for-a-new-ranking-of-companies-human-rights-performance>.

Switzerland:

- The Swiss Federal Council has introduced a major amendment to its export licensing legislation in order to ensure surveillance technologies that might be used for human rights abuses are not exported from Switzerland. Following this amendment, Swiss authorities must reject companies' requests to export surveillance technologies if there "are reasonable grounds to believe" that the items could be used for repression in the country of destination: <https://www.privacyinternational.org/node/589>.

II – BUSINESSES’ RESPONSIBILITY TO RESPECT HUMAN RIGHTS

Human rights are a key issue for businesses, which must respect and promote these principles wherever they operate. The growing number of international initiatives encouraging companies to take responsibility in this field reflects the mobilization of businesses, especially French businesses, which consider that respect for human rights is a condition for their long-term success.

However, in some situations or countries, respecting human rights can be a complex exercise: local human rights laws may be lacking, or local laws and practices may directly or indirectly contradict principles in internationally recognized texts.

Given the complexity of this issue, companies must continue efforts to develop tools and good practices in the human rights field, at all levels of the production chain. Not only does this allow them to meet their obligations, it is also a key factor in their long-term viability and the image they project to investors and the public. To help companies, especially SMEs, manage this logistically and financially challenging process, a wide range of tools and support is available from actors in the public and private sectors. Most of these resources are free, publicly available and adaptable to business requirements.

Businesses therefore have the means at their disposal to become key human rights defenders. Their obligations in this field, however, do not exclude those of the State. Businesses play an important role in promoting human rights. They work alongside States, but cannot replace them.

In November 2014, the National CSR Platform recommended that the State “encourage businesses to publicly commit to enforcing the main international texts on CSR”. To attain this goal, it suggested the following measures:

- “Begin State-led work on interpreting these baselines in coordination with stakeholders;
- Encourage multinational enterprises to voluntarily and publicly announce their adhesion to the UN Guiding Principles and the OECD Guidelines, and request them to describe the ways in which they will be applied internally;
- Encourage the generalization and reinforcement of international framework agreements that include human rights criteria, measures to regularly monitor their implementation and ex-post evaluation mechanisms.”

In March 2015, the National CSR Platform agreed on the following points with respect to due diligence:

Parent companies and outsourcing companies should undertake due diligence (which some considered should be voluntary and reasonable, and which others considered should be compulsory) with respect to subsidiaries and subcontractors in order to improve human rights and environmental risk prevention.

This due diligence could include the following measures:

- Defining the scope of the fundamental rights concerned. The Universal Declaration of Human Rights, the UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises and the Charter of Fundamental Rights of the European Union could serve as a basis for this definition.

- Setting a size threshold over which companies and groups would be obliged to implement due diligence processes.
- Defining the operational content of reasonable due diligence processes for companies in due diligence plans. These plans would distinguish between subsidiaries and subcontractors given the different due diligence processes applicable to each of these cases. The goal of these plans would be to identify and prevent human rights and environmental risks resulting from business operations. The French NCP's work on the textile and garment sector could be a useful reference. Parent companies and outsourcing companies would have to disclose the due diligence processes they implement, in compliance with the European directive on non-financial reporting.

PROPOSAL FOR ACTION NO.8

ACTIONS UNDERWAY:

- France encourages and enhances the commitments made by businesses to respect internationally recognized human rights standards.
- France encourages businesses to adhere to the UN Global Compact or other voluntary initiatives such as ISO 26000 or the Voluntary Principles on Security and Human Rights, which help spread the UN Guiding Principles.
- France is reinforcing training for employees on issues related to business and human rights.
- The French Ministry of Foreign Affairs and International Development issues advice for businesses operating in conflict zones and/or high-risk areas.

ACTIONS TO BE IMPLEMENTED:

- Monitor the implementation of legislation requiring some companies to disclose due diligence plans addressing subsidiary and subcontractor risks at each level of the supply chain, and, if necessary, take measures to enforce this legislation.
- Help achieve the Sustainable Development Goals.
- Reinforce human rights requirements in purchasing criteria.
- Promote social dialogue and employee expression as tools to reinforce respect for human rights at all levels of the supply chain.

1. CHARTERS AND CODES OF CONDUCT

Charters and codes of conduct are voluntary initiatives that create legitimate expectations among stakeholders. Company charters aim to:

- Set down and disclose the company's commitments to human rights;
- Explain expectations to employees, subsidiaries and subcontractors.

The following points are key to their implementation:

- They must send a clear and strong message from the highest level of the business;

- They must enable businesses to respect internationally recognized human rights and make commitments appropriate to their size and activity;
- They must cover relationships with commercial partners and not be limited to “direct” activities.

Existing tools:

- The Guide on How to Develop a Human Rights Policy, published by the UN Global Compact, which contains recommendations for businesses on developing and implementing human rights policies (<https://www.unglobalcompact.org/library/22>);
- Examples of human rights commitments by international businesses, collected by the Business and Human Rights Resource Centre (<https://business-humanrights.org/en/company-policysteps>);
- The charter for French businesses working in Africa, which was adopted at the Africa-France Summit in 2010;
- The Human Rights Reporting and Assurance Frameworks Initiative (RAFI);
- The Fibre Citoyenne initiative, aimed at businesses in the textile-garment sector, by the NGO Yamana.

2. TRAINING AND INFORMATION FOR BUSINESSES

All staff members must be made aware of CSR. Because CSR involves protecting, developing and enhancing an organization’s human capital, it is dependent on training. Training is central to sustainable development, enabling people to adapt their skills to economic, professional and societal changes. Training efforts must also target appropriate populations.³⁰

Thanks to the implementation of innovative partnerships between the public, private and non-profit sectors, regional movements are providing information, raising awareness, offering training and supporting actions to defend and promote human rights. Regional business networks are also committed to human rights, women’s rights and the rights of newcomers, workers, vulnerable populations, etc. These networks, which support multi-stakeholder dialogue and operations, develop tools and initiatives adapted to the needs of businesses (micro, small, medium and large enterprises) using cooperative approaches.³¹

PROPOSAL FOR ACTION NO.9

ACTIONS UNDERWAY:

- Training efforts are being continued, especially in the fields of purchasing, employee representatives, etc.
- Measures may be examined with businesses to encourage adherence to rules on the products authorized for sale and consumption in countries that have ratified the UN Guiding Principles.

³⁰ See the report *RSE et dialogue social* (CSR and social dialogue) published by the General Inspectorate of Social Affairs/General Council for the Environment and Sustainable Development in July 2013.

³¹ See, for example, the [Guide for Companies: Responding to Violence against Women](#), a joint publication developed by French and European actors from the public, private and non-profit sectors.

Existing tools and responsible practices:

- **Entreprises pour les Droits de l'Homme (Businesses for Human Rights – EDH)** is a non-profit organization bringing together 12 French businesses working in various sectors. It has developed an e-learning tool and one-day training programme on business and human rights for employees (<http://e-dh.org/fr/formation.php>);
- **The Global Business Initiative on Human Rights (GBI)** is a platform bringing together 18 businesses from various sectors operating in 190 countries. It organizes learning workshops where businesses can share knowledge on human rights issues: good practices, tools, challenges, etc. (<http://www.global-business-initiative.org>);
- Some businesses include human rights modules in sustainable development training programmes for directors. Others offer specific training to purchasers, human resources staff, legal staff, etc.

3. RISK ANALYSIS AND IMPACT ASSESSMENT

Businesses must understand the type and scope of adverse human rights impacts (both real and potential) caused directly or indirectly by their operations, particularly in their business relationships. This enables them to identify measures to prevent, remedy and mitigate these impacts.

Practically speaking, businesses analyse their human rights risks by:

- Using external risk analysis tools (see below), which may or may not be adaptable;
- Identifying human rights issues that are specific to their operations or sector;
- Carrying out country risk assessments by compiling the available external data;
- Carrying out background checks and audits on suppliers and other stakeholders.

Many tools are available to help businesses analyse risks and assess the impact of their operations. If necessary, they can also call on employers' organizations and other appropriate stakeholders.

PROPOSAL FOR ACTION NO.10

ACTIONS UNDERWAY:

The following points are key to the implementation of risk management measures:

- **Impact assessments must be completed for new operations, projects, commercial relationships, countries, etc.;**
- **Human rights risks must be regularly evaluated for all of the business's operations, and action plans implemented for the risks identified;**
- **Issues specific to the operation, country and commercial relationships must be addressed.**

ACTIONS TO BE IMPLEMENTED:

- Promote the completion and publication of voluntary impact assessments, ensuring that all appropriate stakeholders are included (if necessary, through the free, prior and informed consultation of populations), particularly rights holders for companies that are not required to complete project-specific impact assessments, and ensure these assessments are monitored.

Existing tools and responsible practices:

Self-assessment tools: The Global Assessment Tool (2010), produced by the Global Compact, and the Human Rights Compliance Assessment 2.0 (2010), produced by the Danish Institute for Human Rights, can be used to check whether business practices comply with the UN Global Compact and the UN Guiding Principles on Business and Human Rights.

Country risk assessment tools: Data on national legislation, treaty ratification and existing practices in countries can be found on the following websites:

- The Human Rights and Business Country Guide website: <http://hrbcountryguide.org>;
- The websites of international organizations:
The UN: (www.ohchr.org/EN/Countries/pages/HumanRightsintheWorld.aspx);
ILO: (www.ilo.org/dyn/natlex/natlex_browse.home?p_lang=en);
- The United States Department of State (www.state.gov/j/drl/rls/hrrpt/) for annual country reports on human rights practices;
- The Maplecroft website (paying subscribers only) for country-specific human rights risk indexes and ratings (www.maplecroft.com).

Practical tools addressing specific issues:

- The **Business and Human Rights Resource Centre** (www.business-humanrights.org) is an online library with connections to a wide range of working documents and conceptual tools published by businesses, NGOs, governments, sector-specific initiatives and institutions. Many tools have been sorted by issue, country, sector or company policy/steps (policy, impact assessment, training, reporting, etc.).
- **ILO** has created a **business helpdesk** providing questions and answers, resources and tools on issues connected with workers' rights: discrimination, freedom of association, collective bargaining, wages and benefits, occupational safety and health, forced labour, child labour, etc. It also offers free and confidential assistance for company directors and workers (<http://www.ilo.org/empent/areas/business-helpdesk/lang--en/index.htm>).
- The **Human Rights and Business Dilemmas Forum** helps businesses understand and resolve the human rights dilemmas they face, particularly in emerging countries. For each dilemma, it outlines the relevant international standards, risks for businesses, case studies, practical suggestions and available resources (<http://human-rights.unglobalcompact.org>).

At the European level:

- The website of the Ministry of Foreign Affairs
- Assistance offered by the European Instrument for Democracy and Human Rights (EIDHR)
- The European Commission's working document dated 14 July 2015 on the creation of business practice guides
- The European Commission's guides for three economic activities: employment and recruitment agencies; oil and gas; and information and communications technologies
- The CSR Compass (2005), a self-assessment tool supporting CSR policies for Danish businesses, with a special focus on SMEs and businesses with an international presence
- Tools produced by the Danish Institute for Human Rights: the Human Rights Compliance Assessment (HRCA), the HRCA Quick Check (a free and more concise version of the HRCA), the China Business and Sustainability Check, etc.
- The Business Anti-Corruption Portal for recruitment agencies, oil and gas industries and ICT

At the sector level:

- Distribution: Initiative Clause Sociale (Social Clause Initiative – ICS)
- Electronics: Electronic Industry Citizenship Coalition (EICC)
- Chemicals: Together for Sustainability
- Finance: Equator Principles for Financial Institutions (EPFI)
- Oil and gas: the Business and Human Rights Project by the International Petroleum Industry Environmental Conservation Association (IPIECA)
- Telecommunications: Industry Dialogue

4. INTERNATIONAL FRAMEWORK AGREEMENTS

An international framework agreement is an instrument negotiated between a multinational enterprise and a global union federation. It defines the rights of those working for the group's subsidiaries and subcontractors around the world, as well as the social and environmental standards the parties wish to comply with. Generally, the agreement includes a monitoring mechanism involving trade union participation. International framework agreements enable businesses to make international commitments to human rights by working with employees and trade unions and respecting the same standards in all the countries they operate in. Businesses should be encouraged to conclude such agreements.

As of October 2015, 112 international framework agreements had been signed around the world.

One of France's goals under this action plan is to significantly increase the number of international framework agreements.

Responsible practices:

The French observatory on CSR, ORSE, regularly publishes a list of agreements on its website, where visitors can access the content of these agreements (in French):

<http://www.orse.org/nos-publications/accords-syndicaux-sur-la-rse-au-niveau-mondial>

PROPOSAL FOR ACTION NO.11

ACTIONS UNDERWAY:

- France encourages the generalization and reinforcement of international framework agreements that include human rights criteria, measures to regularly monitor their implementation and ex-post evaluation mechanisms

5. EMPLOYEE REPRESENTATIVES

In its 2013 opinion, the CNCDH recommended that “employee and union representatives be kept informed and consulted and be able to express their opinions when it comes to producing a company's management report”, as this would “improve the credibility of such reports”. It added that each company should “be obliged to indicate whether there is in fact any form of union or employee representation within each of its entities and subsidiaries.”

The Act of 14 June 2013 on job security introduced several new provisions in this field. It gave employee representatives the right to vote on the administrative boards of large French companies (meaning they also had the right to discuss the content of management reports submitted to these boards). The act also reinforced obligations to keep employees informed by improving processes for consulting with and providing information to works councils.

The act on job security has several additional provisions for improving the information given to employees and reinforcing social dialogue in businesses and groups. Works councils must now be consulted on companies' strategic goals and their impact on operations, employment, careers and skills development, work organization, and the use of subcontractors, temping staff, temporary contracts and internships. To prepare this consultation, databases must be created for employee representatives to assemble all useful information that is regularly communicated to works councils. Information must be kept up-to-date and have a forward-looking focus based on data and trends for the next three years. Employee representatives given access to companies' sensitive and strategic data must comply with strict confidentiality requirements. Decree 2013-1305 of 27 December 2013 on economic and social databases and time periods for consultations with the works council implemented Article 8 of the Act of 14 June 2013 mentioned above. The decree stated that economic and social databases must be created by 14 June 2014 for companies with 300 employees or more, and by 14 June 2015 for companies with less than 300 employees. Regularly communicated information must be included in the database and made available to works council members by 31 December 2016 at the latest.

In 2013, the CNCDH recommended “including stakeholders outside of the company in the term 'interested parties' used in Article L.238-1 of the Commercial Code so as to enable such persons to ask the judge hearing applications for interim relief to order the company to provide any information it might not have provided in its 'sustainable development' report.”

Under current legislation, judges sitting on interim matters can rule on the admissibility of claims by stakeholders outside of the company (in other words, they can name these stakeholders “interested parties” in specific circumstances). A number of different laws contain provisions on whistleblowers: Article L 1161-1 of the Labour Code applies to corruption; Article L 5312-4-2 of the Public Health Code applies to the safety of certain health products; Article L 1351-1 of the Public Health Code and Articles L 4133-1 *et seq.* of the Labour Code apply to serious public health and environmental risks; Article 25 of the Act of 11 October 2003 applies to conflicts of interest; and Article L 1132-3-3 of the Labour Code applies to tax fraud and serious economic and financial crime.

French legislation also creates specific rights for works councils to act as economic whistleblowers (Article L 2323-78 *et seq.* of the Labour Code). Under [Article L 2323-78](#) of the Labour Code, “when the works council has knowledge of facts that are likely to adversely affect the enterprise’s economic situation, it can request the employer to provide explanations. This request must be recorded in the agenda of the next works council meeting” (paragraphs 1 and 2 of Article L 2323-78). If the employer provides insufficient information or confirms the adverse situation, the works council draws up a report. In businesses with 1,000 employees or more, this report is drawn up by the economic commission described in [Article L 2325-23](#). This report, considered an economic alert, is transmitted to the employer and auditor.

The works council is also entitled to inform the general assembly directly of its opinion on the management report and communication.

PROPOSAL FOR ACTION NO.12

ACTIONS UNDERWAY:

- France ensures staff representative bodies have sufficient operating resources to defend human rights.

6. REPORTING³²

Businesses must monitor the human rights measures they adopt and disclose on their initiatives in this field.

Under European Directive 2014/95/EU, human rights will become one of the pillars of CSR. This position will be reflected in French reporting requirements when the directive is transposed into national law. It should be noted that human rights reporting is already a requirement under the regulatory provisions of the Commercial Code. Decree 2012-557 of 24 April 2012 on the social and environmental transparency obligations of businesses places human rights on an equal footing with other issues.

PROPOSAL FOR ACTION NO.13

ACTIONS UNDERWAY:

- France is continuing to implement monitoring indicators and communicate with external stakeholders on business commitments and enforcement under the UN Guiding Principles on Business and Human Rights.

ACTIONS TO BE IMPLEMENTED:

- Implement provisions to help transpose the European Directive on non-financial reporting into French law.

³² See work completed by the National CSR Platform on “[Comment améliorer la transparence et la gouvernance des entreprises](#)” (Improving corporate transparency and governance), October 2014.

The performance of measures adopted by businesses to respect and communicate on human rights can be monitored in the following ways:

- By using existing global and sector-specific indicators or new company-specific indicators, and by formalizing internal annual reporting systems for the actions implemented;
- By including points to be checked in existing internal supervisory mechanisms;
- By monitoring and addressing human rights incidents;
- By issuing annual reports that can be viewed by the public.

Existing tools and responsible practices:

- Businesses publish information on their human rights initiatives and operations on the Business and Human Rights Resource Centre website (www.business-humanrights.org).
- The Global Reporting Initiative (GRI) has published G4 guidelines for sustainability reporting (<https://www.globalreporting.org/information/g4/Pages/default.aspx>).
- Shift and Mazars have developed the UN Guiding Principles Reporting Framework for companies to report on human rights (<http://www.ungpreporting.org/>).
- The Danish Institute for Human Rights has developed a set of 1,000 Human Rights Indicators for Business (HRIB), enabling businesses and stakeholders to evaluate their human rights policies, procedures and practices (<http://business-humanrights.org/en/platform-for-human-rights-indicators-for-business-hrib>).

III – ACCESS TO REMEDY

In its 2013 opinion, the CNCDH made the following recommendations:

“In order to bring French law into line with Guiding Principle 26, the CNCDH recommends allowing parent companies to actually be held responsible for acts committed by their foreign subsidiaries.

- The CNCDH recommends that consideration be given to the possibility of extending the exception to the principle of legal independence of companies, which is currently limited to environmental issues, to the field of human rights.

- Vicarious liability is an example of something that could be used in civil law to hold the parent company responsible in the event of any violation of human rights committed by its subsidiaries.

- Drawing inspiration from the duty to protect and remedy in the environmental sphere, the CNCDH recommends that a duty of vigilance on the part of the parent company with regards to its subsidiaries be legally imposed with the aim of preventing any violations of human rights that might occur over the course of its activities.

- It should also be possible to hold a contracting party responsible for acts committed by its subcontractors, where it is proven that the relationship with the commercial partner is likely to influence them to operate in a way that is more human rights-friendly.

- With regards to criminal matters, the CNCDH recommends that the competent authorities consider the issue of extending the extraterritorial jurisdiction of French criminal courts. French courts should be able to consider themselves competent with regards to certain offences committed abroad by French companies without being subject to the dual criminality requirement.

- With regards to civil matters, the CNCDH recommends that the government extend the notion of extraterritoriality to the parent company in the case of violations of human rights committed by a foreign subsidiary.

- The CNCDH believes it would be desirable for subsidiary jurisdiction based on the denial of justice to be granted in civil matters in the event that the State competent for recognising detrimental acts on the part of the subsidiary is deemed unable or does not want to initiate and see through to their conclusion legal proceedings.

- The CNCDH recommends that France extend this consideration of the possibility of attributing greater responsibility in civil and criminal matters to businesses for their international activity in the framework of the discussions currently under way in the European Union.”

1. JUDICIAL MECHANISMS

AT THE INTERNATIONAL LEVEL

1.1. THE PROTOCOL TO THE ILO FORCED LABOUR CONVENTION

(NO.29)

France ratified the Protocol to the 1930 ILO Forced Labour Convention (no.29) on 7 June 2016. France was the fifth country to ratify the Protocol.

This Protocol was adopted at the ILO International Labour Conference on 11 June 2014 in Geneva. It supplements the convention, which is one of ILO's most ratified instruments, by dealing with new forms of forced labour.

The Protocol provides for access to appropriate and effective remedies such as compensation. It also reinforces international cooperation in the fight against forced and compulsory labour. It highlights the important role played by employers and workers in tackling this issue.

This ratification is evidence of France's commitment to fighting all forms of forced labour and promoting the universal ratification of ILO's fundamental conventions.

AT THE EUROPEAN LEVEL

1.2. THE EUROPEAN COURT OF HUMAN RIGHTS

Any individual can lodge an application with the European Court of Human Rights, provided that they have exhausted all domestic remedies and the case falls under the European Convention for the Protection of Human Rights and Fundamental Freedoms.

Once the European Court of Human Rights has delivered a judgment, the State is required to implement all necessary enforcement measures to ensure the violation is not repeated. The enforcement of the judgment is monitored by the Committee of Ministers of the Council of Europe. States must report on the solutions implemented (this covers individual measures such as financial compensation, and general measures such as the revision of legislation).

AT THE NATIONAL LEVEL

1.3. CIVIL AND CRIMINAL LIABILITY

The right to effective remedy is enshrined in several European and international texts to which France adheres. It is mentioned in Article 8 of the Universal Declaration of Human Rights, Article 47 of the Charter of Fundamental Rights of the European Union (concerning the “rights and freedoms guaranteed by the law of the Union”), and Article 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (concerning the “rights and freedoms [...] set forth in this Convention”).

Since the French Constitutional Council’s decision of 9 April 1996 (DC 96-373), the right to effective remedy has been protected by the French Constitution. However, the Council also acknowledged that this right did have limits and lawmakers could restrict its scope, provided they did not impose “substantial constraints” (recital 83). In a further decision dated 23 July 1999 (DC 99-416), the Constitutional Council discussed the consequences of this decision, particularly by linking the right to effective remedy to respect for defence rights, which it considered were one of the fundamental principles recognized in French legislation.

To ensure that the constitutional right to effective remedy is recognized as a real and tangible right in France, the State has taken theoretical and practical steps to enable individuals, especially victims of human rights abuses by businesses, to lodge complaints with judges and obtain appropriate reparation.

Under the rules of French civil procedure, the party applying to enforce the rule of law must prove the facts necessary for the success of their claim (Article 9 of the French Code of Civil Procedure).

Pursuant to French civil law, individuals and companies must remedy the harm they cause to others. Under Articles 1382 and 1383 of the Civil Code (Articles 1240 and 1241 as of 1 October 2016), they must remedy the consequences of their fault, even if this was committed through imprudence. The burden of proving the fault, damage and causal link between the two falls on the party requesting remedy.

Other legal texts establish liability in other circumstances. Specifically, Article 1384 of the Civil Code (Article 1242 as of 1 October 2016) deals with vicarious liability for acts committed by people under one’s responsibility or by things in one’s custody. When this text applies, the burden of proof is lighter for plaintiffs. Thus, when a “thing” commits an “act”, its custodian is considered liable, unless they can prove an exonerating cause such as force majeure.

In addition, under Act 2016-1087 of 8 August 2016 on the reclaiming of biodiversity, nature and landscapes, new articles on remedying ecological damage have been incorporated into the Civil Code.

1.4. PROCEEDINGS

➤ *The jurisdiction of French courts to hear civil matters*

The rules determining whether French courts have the international jurisdiction to hear non-contractual civil liability cases against companies or other legal entities differ depending on the State in which this entity is domiciled.

If a company or legal entity has their statutory seat, central administration or principal place of business in an EU Member State, they are considered to be domiciled there under Article 63 of the European Regulation 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. Pursuant to Article 4 of the Regulation, entities domiciled in an EU Member State shall be sued in the courts of that Member State. Consequently, any person suffering harm caused by a company domiciled in France can lodge a request for remedy with the French courts, regardless of the victim's nationality and State of residence, and regardless of where the harm occurred.

When the company or legal entity that caused the harm is domiciled in another EU Member State or in Switzerland, Norway or Iceland, the victim can lodge a case with the French courts if the harmful event (the harm or the act causing the harm) occurred in France, pursuant to Article 7(2) of the Brussels I Regulation (recast) and Article 5(3) of the Lugano II Convention of 7 October 2007 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

If the entity that caused the harm is domiciled outside the EU and the European Economic Area (EEA), the victim can still file proceedings with the French courts if the harmful event (the harm or the act causing the harm) occurred in France, pursuant to Article 46 of the French Code of Civil Procedure. Furthermore, if the harmful event occurred outside the EU and the EEA, victims domiciled in France can file proceedings with the French courts on a subsidiary basis, regardless of their nationality, pursuant to Article 14 of the French Civil Code.

Finally, even when the company and the harmful event are both based outside the EU and the EEA, and victims are not French citizens and not domiciled in France, proceedings can be filed with French courts on the independent jurisdictional grounds of a “denial of justice”. In this case, victims must prove that they are *de jure* or *de facto* unable to file proceedings with foreign courts.

However, in practice, it is very difficult and sometimes impossible to establish a chain of liability.

➤ *The jurisdiction of French courts to hear criminal matters*

Generally speaking, unless otherwise stipulated in legislation, companies and legal entities are liable for the criminal offences they commit, provided that these offences can be attributed to one of the company's “organs” or representatives, and the offences were committed on their behalf.

More specifically, French legislation is strict in combating human rights violations by legal entities. Under French law, it is a criminal offence for companies to engage in activities that breach people's rights (violations of human dignity, working conditions that violate human dignity, forced labour), equality laws (gender discrimination, anti-union discrimination, denying the freedom to work, corruption), environmental laws (pollution), or social, health and safety laws (hindering organizations representing employees, concealed work, involuntary injuries or death due to workplace accidents).

Companies found guilty of these offences must pay fines equal to a maximum of five times the amount payable by individuals under the law punishing the offence. If the law does not specify fines for individuals who commit these crimes, the fine for companies is set at €1 million.

In addition, victims can sue companies for civil injury and request remedy for harm arising as a result of offences. Specifically, under French law, parent companies can be found criminally liable for acts committed by their subsidiaries, including acts committed abroad, if it can be established that they committed or were complicit in the offence. It should be noted that French law stipulates that those complicit in offences are subject to the same criminal sanctions as those who commit the offence. However, when the main offence is committed in another country, two conditions must be met before this complicity can be established (the offence must be considered a criminal act in both countries, and a definitive judgment must have been obtained in the country where the offence was committed). These conditions make these provisions difficult to apply.

Parent companies can be found criminally liable in other situations, for example when they hide or whitewash offences committed by foreign subsidiaries.

Although French criminal law provides for the criminal liability of legal entities and sets out specific offences and sanctions for companies, victims still face obstacles when seeking judgments and effective remedies, especially when a business's international operations are concerned. These obstacles are considered by some to be guarantees of legal certainty, and include provisions in Articles 113-5 and 113-8 of the Criminal Code.

Under these provisions, parent companies can only be found complicit in a subsidiary's offence abroad if two conditions are met. Firstly, the offence must be considered a criminal act in the State where it was committed and in France (the principle of double criminality). Secondly, a final foreign judgment must have been obtained (Article 113-5 of the Criminal Code). This second condition requires victims to have the offence acknowledged by a foreign court.

Article 113-8 of the Criminal Code concerning infractions is another obstacle that prevents victims from seeking remedy or, more commonly, attempting to sue a company for civil injury. This article effectively gives the public prosecutor a monopoly in terms of filing proceedings for crimes committed by French entities abroad and crimes suffered by French victims abroad.

➤ **Collective actions**

In its opinion dated 24 October 2013, the CNCDH recommended “extending collective action, to matters relating to the environment and health in particular. It is also essential that any French or foreign individual or legal entity residing in France or abroad be able to get involved in any collective action initiated against a French company.”

Collective action, which initially only applied to consumption and competition disputes, was extended to cover health disputes on 1 July 2016, pursuant to the provisions of the Act of 26 January 2016 on the modernization of the health system.

Act 2016-1547 of 18 November 2016 on the modernization of the 21st century justice system widened the scope of collective action provisions. Articles 60 to 84 of this Act define a common procedural framework for collective actions and pave the way for their use in a large number of areas.

Under this common framework, a group of plaintiffs can launch a collective action when they experience a similar situation and suffer harm caused by the same person’s breach of a contractual or statutory obligation. Plaintiffs can request a stop to the breach or a remedy for the harm caused. It should be underlined that collective actions do not exclude plaintiffs on the basis of their nationality or place of residence provided they experience a similar situation, as described above.

Given the different fields of application mentioned in the bill, collective actions will become a tool allowing plaintiffs to stop or remedy discrimination in the labour field and elsewhere, including with respect to the provision of services, accommodation, transport, etc. Collective actions will also be possible in the environmental, health, and personal data protection fields.

➤ **Legal aid**

In order to make the principle of equal access to justice fully effective, France has created a legal aid system giving underprivileged populations the ability to defend their rights in French courts (Act 91-647 of 10 July 1991 on legal aid).

Under this Act, legal aid is awarded to French citizens and European and non-European nationals on the basis of means testing. Non-European nationals must also show that France is their habitual and lawful place of residence.

However, exceptions have been created to the residency and means testing requirements in order to provide legal aid to applicants whose cases are particularly worthy of interest given [their] subject matter and the likely cost”. In cross-border disputes, exceptions can be made to the means testing requirement for people who prove that they could not pay the costs specified in Article 24 of this Act due to the differences in the cost of living between France and the Member State of domicile or habitual residence.

Lastly, some international agreements make legal aid available to nationals of countries that are not members of the EU in situations not covered by the 1991 Act.

To conclude, while legal aid is not automatically awarded to victims of human rights violations committed by companies or subsidiaries in countries outside the State in which these entities are domiciled, legal aid agencies nevertheless appear to have considerable discretion when assessing the circumstances of victims to determine whether they are eligible for legal aid.

1.5. THE DENIAL OF JUSTICE

As underlined by the National CSR Platform in 2014, it is important to find practical solutions to flagrant and serious denials of justice in the event of major events. According to the platform, this was especially true given the fact that access to courts likely to deal fairly and equitably with complaints concerning fundamental rights violations by companies was difficult in many countries.³³

The platform therefore recommended that the French Government launch an international debate on finding legal solutions to the problem of the denial of justice. A denial of justice occurred when plaintiffs attempted to take legal action against groups domiciled in States subject to the rule of law to obtain remedies for harm caused by subsidiaries operating in countries where courts did not have the necessary independence to deliver justice, or where plaintiffs were threatened. These legal solutions should not challenge the general principle of territorial jurisdiction. According to the platform, this initiative, supported by France, could aim in particular to launch a European movement. By situating this initiative within a European or wider framework (OECD), the risk of French businesses facing an uneven playing field would be minimized.³⁴

The French administration is aware of these issues. During negotiations to update the Brussels I Regulation and widen its scope to cover defendants based in countries outside the EU, France suggested giving plaintiffs attacking European companies the option to go before a European judge on the basis of the *forum necessitatis* principle.

In its 2013 opinion, the CNCDH stated that “it would be desirable for subsidiary jurisdiction based on the denial of justice to be granted in civil matters in the event that the State competent for recognising detrimental acts on the part of the subsidiary is deemed unable or does not want to initiate and see through to their conclusion legal proceedings.”

³³ See *Rapport du Groupe de travail n°3 – Implications de la responsabilité des entreprises sur leur chaîne de valeur (filiales et fournisseurs)* (report by working group 3 – The implications of corporate responsibility on business's value chains (subsidiaries and suppliers), National CSR Platform, November 2014, page 16.

³⁴ See *Rapport du Groupe de travail n°3 – Implications de la responsabilité des entreprises sur leur chaîne de valeur (filiales et fournisseurs)* (report by working group 3 – The implications of corporate responsibility on business's value chains (subsidiaries and suppliers), National CSR Platform, November 2014, page 16.

1.6. WHISTLEBLOWER RIGHTS

The Act 2016-1691 of 9 December 2016 on transparency, fighting corruption and modernizing the economy replaced earlier sector-specific provisions on whistleblowers. Under the new Act, a single framework was created to protect whistleblowers who now share a common status regardless of the field concerned.

The whistleblower status now includes:

- a) A general definition: a whistleblower is defined as an individual who reveals or reports, disinterestedly and in good faith, a crime or offence; a serious and manifest breach of an international commitment duly ratified or approved by France, of a unilateral act of an international organization adopted on the basis of such commitment, or a serious breach of a law or regulation; or a serious threat or harm to the public interest, of which the whistleblower has had personal knowledge.
- b) A process for raising alerts: in order to receive legal protection, the whistleblower must respect a three-step process, raising the alert first with his/her employer or the contact person designated by the employer, second with the judicial or administrative authority and third with the public, as a last resort.
- c) Three forms of legal protection:
 - Professional protection against all forms of retaliation for raising the alert;
 - Protection against criminal liability: whistleblowers are not considered criminally liable for disclosing information that is a legally protected secret if this disclosure is necessary and proportionate to the interests being defended and the whistleblower respects the alert process described above. However, this exemption does not cover whistleblowers who disclose national defence secrets, medical secrets or lawyer-client communications.
 - Protection against being prevented from raising the alert : any person who interferes with the transmission of an alert by a whistleblower is punishable by law by up to one year of imprisonment and a €15,000 fine. The Act also reinforces sanctions for malicious defamation proceedings against whistleblowers.

PROPOSAL FOR ACTION NO.14

ACTIONS TO BE IMPLEMENTED:

- Amend Article 113-8 of the Criminal Code so that a prosecutor's decision not to open an investigation into a complaint lodged by the victim of a crime committed by a French entity abroad can be appealed.
- Continue to examine national and international options to address the denials of justice faced by plaintiffs attempting to take legal action to obtain remedy for harm caused by the subsidiaries of groups operating in countries where courts do not have the necessary independence to deliver justice, or where plaintiffs are threatened.

2. NON-JUDICIAL MECHANISMS

AT THE INTERNATIONAL LEVEL

2.1. THE OECD NATIONAL CONTACT POINT (NCP)

The French NCP is very active in promoting responsible business conduct and the OECD Guidelines for Multinational Enterprises. Following the Rana Plaza tragedy, the NCP stepped up its activities, especially in the field of due diligence for supply chain risks, human rights and workers' rights. The collapse of Rana Plaza In April 2013 highlighted the importance of the latest revision of the OECD Guidelines, which led to the integration of the UN Guiding Principles adopted in June 2011. This revision also sought to make NCPs more efficient by reviewing their Procedural Guidance.

NCPs are set up to promote and monitor compliance with the OECD Guidelines for Multinational Enterprises. They are non-judicial dispute resolution bodies that support remedial measures by offering their good offices and, where possible, giving parties access to mediation. Successful remedial measures rely on an environment of trust being established between the parties and constructive dialogue being initiated between the parties and the NCP, to improve compliance with OECD recommendations.

France's NCP is tripartite, involving government, trade union and business representatives. This structure was praised by OECD Watch in its report "Remedy Remains Rare" (June 2015). Since the French NCP was created, the State's involvement has enabled it to adopt a balanced multi-sectorial and inter-ministerial model that is relatively unique among its peers. 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 Foreign Affairs and International Development. 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. The French NCP's decisions are all consensual.

Following the Procedural Guidance review, the French NCP revised its internal rules in 2012 and 2014 to improve its efficiency in dealing with requests (timeline for dealing with files, options for following up on recommendations, and enhanced communication by way of statements on the admissibility of requests, follow-up statements and statements issued during the processing of files). The French NCP has also made it easier to call on external technical experts at any time, as seen during the Rana Plaza hearings and meetings with the CNCDH.

The revision of the French NCP's internal rules has also improved the transparency of its work and helped structure dialogue with civil society. The NCP now holds an annual information meeting and an annual consultation meeting with organizations representing civil society. During these meetings, it presents its activity report and decisions, discusses current issues regarding responsible business conduct, and highlights the OECD's role supporting responsible business conduct (through the Global Forum, consultative groups, sector-specific guides, roundtables, etc.). The NCP's website³⁵ is regularly updated, and features

³⁵ See www.pcn-france.fr (in French)

links to statements on requests, decisions and activities (activity reports, request dashboards, lists of promotional activities), as well as information on the OECD Guidelines for Multinational Enterprises and Global Forum on Responsible Business Conduct launched by the OECD in 2013.

In addition, the French NCP has recently been granted additional resources, with the promotion of the Chairman to the position of Advisor to the Director-General of the Treasury in 2012, and the appointment of a full-time Secretary-General in 2013 (who is an agent of the Directorate-General of the Treasury). The NCP's main tool is the publication of decisions, which was reinforced following the 2011 revision. The NCP's decisions are all made public and include case details and explanations, subject to confidentiality requirements. The NCP is committed to providing detailed answers to questions asked by complainants, including those concerning compliance with the OECD Guidelines, which is optional under the Procedural Guidance. If applicable, the NCP rules on non-compliance or partial compliance with the Guidelines, which not all NCPs do. In addition to offering good offices, the French NCP can rule on the feasibility of mediation, which it can perform directly if the parties agree to be bound by its ruling. If necessary, the NCP issues recommendations to parties. It can decide to follow up on decisions, including in the long term (see the specific instances on the Groupe Michelin in India and Socapalm – Groupe Bolloré in Cameroon, as well as the Rana Plaza report). Lastly, it can use all modern means of communication to contact complainants based abroad.

In 2013, the OECD launched an ambitious programme in which the French NCP is very involved. It is participating in innovative actions such as the horizontal review process (for example, dealing with NCP requests and communications), the sharing of experiences and regional capacity-building seminars for NCPs. The French NCP is also taking part in the peer review process, and is currently chairing a peer review of the Italian NCP. These actions are part of the OECD's Action Plan to Strengthen National Contact Points³⁶ and the G7 Action Plan of 13 October 2015, which seek to establish good practices for the entire NCP network, ensuring that they are functionally equivalent.

However, the decisions issued by NCPs are non-binding legal instruments. As such, NCPs cannot force a business to comply with the OECD Guidelines, even when they rule that these guidelines have been breached.

PROPOSAL FOR ACTION NO.15

ACTIONS UNDERWAY:

- **NCPs could play a key role in supporting access to remedial measures and promoting responsible business conduct and the OECD Guidelines around the world. France is therefore advocating that the OECD increase its support to NCPs so they can improve coordination, become functionally equivalent, develop procedures for sharing information and make the NCP network more dynamic.**
- **In order for the French NCP to continue being one of the most efficient NCPs in terms of fulfilling its goals and responding to new requests, France recommends allocating sufficient operating resources to allow it to perform its duties.**
- **The French NCP will continue to support other NCPs and take part in peer reviews, including a peer review of its own operations.**

³⁶ <http://mneguidelines.oecd.org/action-plan-to-strengthen-ncps.htm>

ACTIONS TO BE IMPLEMENTED:

- Reinforce the NCP's tools supporting dialogue with civil society by optimizing provisions in its internal rules (annual information meetings, annual meetings to discuss issues with civil society, calling on experts as required).

2.2. ILO ENFORCEMENT MECHANISMS

A unique international enforcement mechanism exists for International labour standards, ensuring that States apply the conventions they ratify. The ILO regularly checks whether these conventions are being correctly applied and highlights areas for improvement. If countries encounter difficulties in applying standards, it provides help in the form of social dialogue and technical assistance.

Two ILO bodies examine the reports submitted by Member States describing the steps they have taken in law and practice to apply the conventions, as well as the related observations formulated by employers' and employees' organizations. These bodies are the Committee of Experts on the Application of Conventions and Recommendations and the tripartite Conference Committee on the Application of Conventions and Recommendations.

There are also three specific procedures for examining representations and complaints: the procedure for examining representations about the failure to observe ratified conventions, the procedure for examining complaints about the failure to observe ratified conventions, and the special procedure for examining complaints about freedom of association (heard by the Committee on Freedom of Association).

Lastly, Article 37.2 of the ILO Constitution provides for the creation of a tribunal to hear disputes or questions relating to the interpretation of conventions.

PROPOSAL FOR ACTION NO.16

ACTIONS TO BE IMPLEMENTED:

- Ensure that fundamental labour standards are applied in France and support their universal application by encouraging ILO to establish stricter enforcement mechanisms for States.
- Encourage discussion on the social coherence of economic, financial and trade policies which would increase the ILO's importance and influence among the institutions involved in the multilateral system and lead to the introduction of social conditions.

2.3. THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESC) was ratified by France on 18 March 2015 and took effect three months later on 18 June 2015. The Protocol does not create new obligations for France, but constitutes an additional means of enforcing the obligations it entered into when ratifying the ICESC in 1980. These obligations require it to respect, protect and implement the rights mentioned in the Covenant in its territory and in the territories of other States in which it is present, particularly through public and private actors operating abroad in the economic, trade and financial fields.

This protocol introduces a procedure for individuals or groups seeking to establish their rights under the Covenant, after exhausting all domestic remedies, to submit communications to the Committee on Economic, Social and Cultural Rights. This mechanism enables alleged victims of a violation of the Covenant who have not obtained effective remedy at the national level to access justice through the United Nations by having their case heard by an independent committee of experts, which may award compensation for harm caused.

This communication mechanism is intended to:

- Make the application of economic, social and cultural rights more effective and encourage States to implement them;
- Clarify State obligations in the human rights field by supporting the adoption of positive measures and access to domestic justice.

The Optional Protocol is one of a range of similar mechanisms created for international conventions in the human rights field. Communications can also be submitted to the Human Rights Committee, the [Committee on the Elimination of Discrimination against Women](#), the [Committee against Torture](#), the [Committee on the Rights of the Child](#), the [Committee on the Rights of Persons with Disabilities](#), the [Committee on the Elimination of Racial Discrimination](#), the [Committee on Enforced Disappearances](#) and individual communication mechanisms for special procedures (the Special Rapporteur on extreme poverty and human rights, the human right to safe drinking water and sanitation, etc.).

2.4. THE EUROPEAN SOCIAL CHARTER

In order to promote and guarantee social rights not covered in the European Convention on Human Rights, the Council of Europe drew up the European Social Charter, which was adopted in Turin in 1961. Significantly, the 1961 Charter covers the right to work, the right to organize, the right to bargain collectively, the right to social security, the right to social and medical assistance, the right to the social, legal and economic protection of the family, and the right to protection and assistance for migrant workers and their families.

The European Social Charter of 1961 was revised in 1996 to incorporate the rights mentioned in the Additional Protocol of 1988, to reinforce and improve several existing rights, and to add new rights.

France ratified the revised 1996 version of the European Social Charter, which took effect on 7 May 1999, at the same time as the 1995 Protocol providing for a system of collective complaints (ratified by 15 of the Council of Europe's 47 Member States).

To enforce the Charter, a European Committee of Social Rights was created. This Committee adopts conclusions on the national reports submitted by State Parties, and adopts non-binding "decisions" on collective complaints lodged by national and international employers' and employees' organizations and NGOs. These conclusions and decisions must be approved by the Committee of Ministers of the Council of Europe.

AT THE NATIONAL LEVEL

2.5. THE DEFENDER OF RIGHTS³⁷

The Defender of Rights, whose legal authority has been enshrined in the Constitution, was created in 2011. This independent administrative entity has jurisdiction to deal with subjects in four specific areas.

Any individual or legal entity can call on the Defender of Rights when they consider that they have been discriminated against or when they observe public or private representatives of law and order (police officers, customs officers, security guards, etc.) engaging in improper conduct.

The Defender of Rights can also be called on to address difficulties in dealing with public services (the Family Allowances Fund or CAF, the national employment agency or Pôle emploi, retirement funds, etc.).

Lastly, the Defender of Rights can be called on whenever someone considers that a child's rights are not being respected.

Complaints can be lodged by way of an online form, a letter, or through one of the Defender's deputies.

This Defender of Rights replaces four previous entities: the Mediator of the Republic, the Defender of Children, the High Authority in the Fight against Discrimination and for Equality (HALDE), and the National Commission on Security Ethics (CNDS).

Given the Defender of Rights' jurisdiction over discrimination-related matters, he/she plays a role in dealing with cases and mediation proceedings concerning CSR.

2.6. GRIEVANCE MECHANISMS IN COMPANIES

Pursuant to UN Guiding Principle 29, "To make it possible for grievances to be addressed early and remediated directly, business enterprises should establish or participate in effective operational-level grievance mechanisms for individuals and communities who may be adversely impacted", companies establish their own grievance mechanisms. Their goal is to enable any affected stakeholder to question or lodge a complaint about the business's operations.

As stated in Principle 31, in order to ensure their effectiveness, these mechanisms should be:

- Legitimate
- Accessible
- Predictable
- Equitable

³⁷ See www.defenseurdesdroits.fr (in French)

- Transparent
- Rights-compatible
- A source of continuous learning
- Based on engagement and dialogue at the operational level.

In practice, grievance mechanisms in companies are generally:

- Formal group-level mechanisms: whistleblower hotline/whistleblower procedures, mediators, etc.;
- Mechanisms dealing with specific issues: harassment, discrimination, specific activities or specific countries;
- Operations-level mechanisms for specific projects;
- Institutional or voluntary bodies supporting social dialogue: works councils, international framework agreements, workplace health and safety committees, etc.

PROPOSAL FOR ACTION NO.17

ACTIONS TO BE IMPLEMENTED:

- Encourage the establishment of grievance mechanisms by businesses that meet the following criteria for implementation:

***They support dialogue, consultation and complaints for people who consider themselves adversely impacted;**

*** Information is provided on the existence of these mechanisms;**

*** Any complaints are dealt with at the earliest possible opportunity;**

*** Reports on the implementation and/or results of these mechanisms are provided to stakeholders.**

Existing tools:

“Rights-Compatible Grievance Mechanisms: A Guidance Tool for Companies and Their Stakeholders”, Harvard Kennedy CSR Initiative (<http://www.reports-and-materials.org/sites/default/files/reports-and-materials/Grievance-mechanisms-principles-Jan-2008.pdf>)

“Addressing Grievances from Project-Affected Communities”, IFC: <http://www.ifc.org/wps/wcm/connect/cbe7b18048855348ae6cfe6a6515bb18/IFC%2BGrievance%2BMechanisms.pdf?MOD=AJPERES&CACHEID=cbe7b18048855348ae6cfe6a6515bb18>

APPENDIX

THE POSITIONS ADOPTED BY THE DIFFERENT GROUPS OF THE NATIONAL CSR PLATFORM

Proposals by the civil society and trade union groups:

- Civil (and possibly criminal) liability and a duty of vigilance should be introduced for French parent companies and outsourcing companies that commit human rights violations in France or abroad over the course of their activities or those of their subsidiaries or subcontractors. Under this regime, the burden of proof would be on companies, enabling victims to trace the abuse to the highest level of the chain of responsibility.
- France should comply with and implement its international commitments to monitor transnational private actors operating in France and abroad (by applying its extraterritorial obligations under the ICESCR, for instance).
- Exceptions should be extended to the principle of the legal independence of companies and provide for the legal recognition of the concept of a “group of companies” when human rights abuses are committed.
- France should support the harmonious application of rules on the European and international levels. However, when this is impossible, it must at least apply the UN Guiding Principles and ensure that they are applied to the companies under French control and the products sold in the French market.
- Companies cannot refuse to respect human rights on the grounds that other companies abuse these rights and they would be at a competitive disadvantage. However, to support responsible conduct and European requirements concerning fair and undistorted competition, the French (and even European) markets should only be open to goods and services produced in compliance with the UN Guiding Principles.

Position adopted by the economic group:

- Companies acknowledge their liability for harm caused over the course of their operations. However, they prefer measures such as voluntary initiatives and the sharing of good practices, despite the fact that State intervention may be necessary and justified in specific areas to ensure compliance with general French legal principles.
- Furthermore, the State should seek to promote homogenous initiatives and rules at the European and international levels.
- Companies are not in principle opposed to binding frameworks. They are opposed to enforcement mechanisms whose application would be purely punitive.

Position adopted by researchers and developers:

The effective protection of human rights often requires the juridification of corporate social responsibility. Voluntary good practices can contribute to this process, as can interactions between self-regulation, joint regulation and regulation, as well as hard and soft law. In this respect, the draft National Plan appears to have struck a good balance between existing legal provisions, provisions yet to be adopted and the freedom necessary for companies to adapt their operations to human rights standards and to implement (or even launch) responsible initiatives.

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